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## HUMAN RIGHTS OF THE CHILDREN OF WOMEN PRISONERS: A SOCIO-LEGAL STUDY WITH SPECIAL REFERENCE TO THE STATE OF HARYANA

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### ABSTRACT

The children born to or residing with incarcerated mothers represent one of the most disadvantaged and underserved constituencies in the criminal justice ecosystem. This paper endeavours to conduct an all-encompassing socio-legal investigation of the human rights of the children of women prisoners, chiefly the prisons and the socio-legal milieu of the State of Haryana in India. Using the United Nations Convention on the Rights of the Child (UNCRC, 1989), the Bangkok Rules 2010, the constitutional framework of India and relevant statutes such as the Prisons Act, 1894, Juvenile Justice (care and protection of children) Act, 2015 and Model Prison Manual, 2016, the study finds these children experience a wide range of rights violations from right to identity, education, health, right not to be discriminated and right to family. The writer integrates observations made during an empirical study of certain district jails in Haryana and a secondary jurisprudential analysis to show the glaring gaps in implementation of policy, infrastructure and legal protection. The research offers tips for legislative reform, institutional accountability, child-centred approaches to prison administration.

**Keywords:** *Children of prisoners, women in prison, human rights, Haryana prisons, UNCRC, Bangkok Rules, child welfare, prison reforms, juvenile justice, India.*

### 1. INTRODUCTION

The freedom of a woman is not just the freedom to make and act on choices. Incarceration takes away a woman's liberty and denies her children of a mother, caregiver and protector. The children serve the invisible sentence of their mother when her mother is imprisoned. Children who have not committed any offence but still are made to suffer the consequences of the decision of the criminal justice system. A mother's imprisonment creates a void that cannot be filled by the state, at least not in India, where child-rearing is a family affair and not a state affair.

According to National Crime Records Bureau popularly known as NCRB data, women constitute a large percentage of India's prison population, most of whom are mothers of minor children. As per Prison Statistics India Report 2022, 21,572 women were lodged in various jails of the country and Haryana has a disproportionate share analysis with respect to the population (NCRB, 2022). Juvenile children below six years old are allowed by law to live with their incarcerated mothers at the prison premises. However, above that age, children are either accommodated in their relatives' homes or sent to juvenile homes or are left altogether to live or fend for themselves. This totally harms

their physical, psychological and developmental well-being.

The state of Haryana is a very useful case study. Haryana has a comparatively high per capita income and development indices, but its prisons are characterised by chronic overcrowding and defective child-care infrastructure, while mother-child dyad facilities are virtually non-existent. The patriarchal social structures of our state further jeopardise this vulnerable group. The children of women prisoners are often abandoned, stigmatised, and denied their inheritance and identity rights.

The focus of this paper is to analyse the human rights framework available to the children of women prisoners through a social legal lens, the extent to which this framework is operationalised in the prisons in Haryana and recommend systemic reforms which are based on constitutional guarantees and international human rights law.

## 2. REVIEW OF LITERATURE

The academic conversation surrounding children of incarcerated parents has seen significant growth in the last thirty years however the Indian context is under-examined. Murray and Farrington (2008) carried out a groundbreaking longitudinal study in Cambridge that showed children with imprisoned parents are much more likely to become anti-social, drop-out from school, and develop mental disorders. The effects of this research show that children suffer harm. This is not merely correlational. It is because of the disruption of their attachment, routine, and socio-economic stability.

According to a publication by the Quaker United Nations Office (Robertson 2007) at international level, children of prisoners are amongst the most invisible victims of crime and punishment and that the best interests of the child are routinely not taken into account by states when making incarceration decisions regarding primary caregivers. The report said that prison policy

must mainstream child rights as a matter of justice, not charity.

Bhardwaj (2014) studied women prisoners in Tihar Jail, Delhi. In the Indian context, he found that the criminal law process and child welfare process were completely unconnected. As a result, children were impacted when they were taken into institutions meant only for adult punishment. Bajpai (2010) has also pointed out that the out dated prison laws of India, which are the Prisons Act, 1894 still continues to govern despite India ratifying the UNCRC. 1894 Prisons Act, which is a colonial law only, do not provide specifically for the rights of the child.

In a field-based survey on selected jails in Haryana, Kumar and Singh (2019) found that 73% of the women inmates having children were not assessed by any government agency for the welfare needs of their children at the time of imprisonment. In violation of constitutional provisions and the Juvenile Justice (Care and Protection of Children) Act, 2015, children living in prisons are deprived of being sent to school, getting proper food, and recreation.

Chandna (2021) reported separation anxiety, depression, post-traumatic stress and other symptoms of psychological trauma among children separated from jail-inmate mothers in Haryana and that there was a near-total absence of counselling in prisons.

These studies all point to the need for a rights-based, child-centred approach to prison management.

## 3. CONCEPTUAL AND THEORETICAL FRAMEWORK

### 3.1 The 'Best Interests of the Child' Principle

The primary concern delineated by international law concerning child rights should be the best interests of the child as contained in Article 3 of the UNCRC (1989). The principle of best interests of the child comes into play in all actions concerning the child, whether undertaken by a public or private social welfare institution, a court of law, an administrative authority, or a legislative body. This principle, given a broad interpretation, requires that a court should

specifically assess and adequately provide for the welfare of the dependent children of the mother so sentenced.

### **3.2 The Bangkok Rules Framework**

The Bangkok rules, 2010 i.e. standard rules for the treatment of prisoners and non-custodial measures for female offenders of the United Nations of interdependent and other contribution became a comprehensive international instrument which concerns women prisoners and their child. Rule 2 mandates the provision of gender-specific healthcare for women prisoners. According to Rules 49–52, when children of imprisoned mother should not be separated before individual assessments. Maintenance of the bond should occur unless it is not in the best interest of the child. The authorities are required to make suitable arrangements for care both inside and out of prison. Rule 54 also stresses that placements of children of women prisoners must be determined with the best interests of the child in view.

### **3.3 Constitutional Framework in India**

The Constitution of India has solid but underused guarantees on Children's Rights. Article 21 was given a broad interpretation by the Supreme Court. For example, it includes the right to live with dignity; the right to education; the right to health etc. Articles 39(e), 39(f) and 45 of the Directive Principles of State Policy provide that the State shall, in particular, direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner. In conditions of freedom and dignity. Article 45 contains the provision for free and compulsory education. In light of India's international treaty commitments under the UNCRC, one can read these provisions to create a normative architecture that is far more than adequate for the protection of rights of children of women prisoners. The failing is in the implementation and not in the legal content.

## **4. LEGAL FRAMEWORK GOVERNING CHILDREN IN PRISON**

### **4.1 Prisons Act, 1894**

The legislation governing prison administration in India is the Prisons Act, 1894. The Act is a remnant of colonial rule that was aimed primarily at ensuring custodial discipline rather than rehabilitation or protection of rights. Under the provisions of the Act, Section 27 allows for keeping children with their imprisoned mothers but does not provide any operational guidelines with regard to their care, education, medical treatment, or placement. The failure of this elementary legislation to include provisions just for children has led, at best, to an incomplete filling of a legal void by state prison regulations.

### **4.2 Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice Act, 2015 is India's primary piece of legislation for children's welfare and under section 2(14)(iv), "a child of incarcerated parent" comes under "children in need of care and protection". The JJ Act mandates Child Welfare Committees (CWCs) to assess the circumstances of these children, determine appropriate placement and monitor them regularly. In practice, however, there remains a non-functional interface between prison authorities and CWCs in Haryana. According to a research by the Haryana State Legal Services Authority (HALSA) in 2021, it was found that not more than thirty percent of women prisoners in the state have been visited by any CWC member at one point or another (HALSA 2021).

### **4.3 Model Prison Manual, 2016**

The 2016 Model Prison Manual, introduced by the Ministry of Home Affairs, Government of India, is arguably the most progressive statement on the rights of the Child in prison administration. Women prisoners and children are discussed in the Manual's Chapter 36. It permits the setting up of crèches, nursery and learning spaces in jails; periodic medical examination of the children; arrangement of formal schooling for children above the age of three; and engagement with

child development experts. Haryana has adopted the provisions of the Manual in a limited manner and on an ad-hoc basis, being a non-binding model document which has been implemented only partially in various states.

#### **4.4 Judicial Pronouncements**

The Indian courts have intervened time and again to define the rights of children of prisoners. In the case of R.D. Upadhyay v. State of A.P. In 2006 the Supreme Court laid down a comprehensive directive pertaining to children who were living in jails with their mothers. It stated that the states must provide nutritious food, separate sleeping arrangements, medical facilities as well as education to these children. The Court ruled that 'the child of a prisoner cannot be punished for the crime of the parent'. In Sheela Barse v Union of India (1986), it further said that the state has custodial obligation for children/the incarcerated. Despite being progressive, there have been poor enforcement and monitoring about them.

### **5. SITUATIONAL ANALYSIS: WOMEN PRISONERS AND THEIR CHILDREN IN HARYANA**

#### **5.1 Prison Demography**

Haryana has got 19 district and two central jails. Its sanction capacity is about twenty thousand prisoners as of the year 2022. According to NCRB (2022), there were 1247 women prisoners in Haryana. Of these, an estimated 620 were mothers of minor children. Approximately 84 children, all below the age of six, lived inside prison premises with their mothers. The actual number of affected children, which includes children outside prison, is likely to be much more, given that there is no enumeration mechanism.

#### **5.2 Infrastructure for Children in Haryana Prisons**

Field observations and secondary data that are available suggest that adequate physical infrastructures for children in the prisons of Haryana are not available. Most of the district jails have no separate nursery area; children are kept in the barrack with adults. Medical care for children takes the form of consultations from a

generalist paediatrician in the prison dispensary, which is irregular. Anganwadi services, which are legally mandated for all children under six years of age, operating in just three Haryana jails in 2023. The lack of separate sleeping quarters, play areas and educational spaces for kids breaches the Model Prison Manual, 2016 as well as the Supreme Court directions in R.D. Upadhyay (2006).

#### **5.3 Education and Developmental Deprivation**

According to the Article 21-A of the Indian Constitution and the Right to Education Act, 2009, every child in the age group of 6 to 14 years has the right to free and compulsory education. The prison environment is not given to children residing in prison above the age of six. They will either be placed in one of their relatives or kept in a government-run observation home. Nonetheless, the exit from prison custody is often abrupt and unplanned, and many children from economically marginalised households undergo long periods of educational disruption. According to a Chandna (2021) study, 61% of children of women prisoners in Haryana experienced dislocation in schooling for at least a year after they were jailed.

#### **5.4 Psychological and Social Impact**

Psychological effects of maternal incarceration on children have been extensively studied in literature. The bereavement of the parent who is alive subjected the children to meshing of a nasty surprise grieving; financial destitution, community stigma and institutional neglect. In Haryana, where caste identity and familial reputation are very important for the people, maternal imprisonment is particularly stigmatized. Children are often excluded from community activities, older girls have lower prospects for marriage, and reputational damage passes down generations. In Haryana's correctional system, there are no mental health services aimed at this population.

### **5.5 The Separation Crisis: Children Above Six Years**

One of the most serious human rights violations may involve forced separation of children from their imprisoned mother at the child's sixth birthday. According to the law, children up to the age of six can live with their imprisoned mothers. But there is no established procedure for separating them. If there are no relatives to take custody of the child, the child may be placed in a state-run home under the JJ Act. A 2022 report by National Commission for Protection of Child Rights (NCPCR) declared that several child care institutions in the state are failing to meet minimum standards of care and inadequately staffed, and poorly equipped. The quality of care in Haryana child care institutions has always been a concern.

### **6. SPECIFIC HUMAN RIGHTS VIOLATIONS**

As per the above analysis, following categories of violations of human rights of children of women prisoners in Haryana can be identified.

**Right to Identity and Registration:** Children born in the premises of the prison are not registered under the Birth and Death Registration Act, 1969. This creates difficulties for them in claiming their educational, social and legal rights later on. This is in violation of Article 7 of the UNCRC.

**Right to Education:** The interruption of schooling caused by maternal incarceration and subsequent placement instability violates Article 21-A of the Constitution, as well as Article 28 of the UNCRC.

**Right to Health:** The inadequacy of nutrition, irregular immunisation and non-provision of paediatric care in the prison premises violates Article 24 of the UNCRC and the right to health that is implied in Article 21 of the Constitution.

**Right to Non-Discrimination:** The right to non-discrimination incorporated in Article 2 of the UNCRC, has been violated by stigma, social exclusion and institutional discrimination faced by these children.

**Right to Family Life:** involves not separating children from their mothers on a sudden or unplanned basis without an individualised assessment of a child's best interests that seeks to avoid that outcome. This is a violation of Article 9 of the UNCRC and Bangkok Rules 49-54.

**Right to Participation:** Children's views and preferences regarding care arrangements are never sought, in violation of Article 12 of the UNCRC on the right of children to be heard.

### **7. COMPARATIVE PERSPECTIVES: LESSONS FOR INDIA**

A knowledge-dissemination comparative survey of international prison systems indicates that several jurisdictions have developed innovative, rights based approaches to the care of children of imprisoned mothers. In Norway, the Bastoy Prison operates as a 'family island' where prisoners, including mothers, can reside with their children in a non-institutionalised environment which reduces the prison-like character of incarceration. The Holloway Prison in the UK and women's prisons in Scotland, have got dedicated Mother and Baby Units (MBUs) where children can stay with the mother up to 18 months of age with full childcare.

In the United States, the Children of Incarcerated Parents Programme in the State of Oregon provide case management for children at the time of arrest of a parent to ensure continuity of schooling and health care and emotional support. Australia has a strong approach as Cunningham and Baker (2003) point out, which is scrutinising the childcare implications of custodial sentences before they are imposed. This gives the courts an opportunity to consider alternative sentences when a custodial sentence would cause undue hardship to dependent children.

India's Mirzapur Women's Jail, located in Uttar Pradesh, has been noted to possess features that would assist in the development of a child-friendly prison design. These features include a crèche, a school and maternal health services (Bhardwaj, 2014). We must learn from nationwide

and worldwide models to reform prisons in the state of Haryana.

## **8. RECOMMENDATIONS**

### **8.1 Legislative Reform**

The Prisons Act, 1894 should be repealed and replaced by a modern legislation which must specifically provide for the rights of children of prisoners. Draft Prison and Correctional Services Act of the Ministry of Home Affairs should contain some provision regarding child welfare assessment prior to and during incarceration and informing the Child Welfare Committee at the time of the admission of mother into custody.

### **8.2 Mandatory Best-Interests Assessment**

Before sentencing the primary caregiver to imprisonment, courts must be legally obliged to undertake a child impact assessment. When such aspect is established then a court must record the arrangements made for the custody of the child and inform the welfare officials. The Bangkok Rule 57 provides for the sentencing process to consider children's rights.

### **8.3 Infrastructure Development**

The government of Haryana should make budgetary allocation for upgrading the child-related infrastructure in all jails having women. The establishment of crèches and learning centres in all jails with more than 10 women inmates; provision of regular Anganwadi services and paediatric medical visits; and construction of children-friendly residential spaces separated from adult criminal areas.

### **8.4 Strengthening CWC-Prison Interface**

The government should issue an order requiring the Child Welfare Committees in every district of Haryana to conduct monthly visits to district jails and prepare a care plan for every child affected by the incarceration of the mother. They should also ensure continuous follow-up of the children who are placed in child care institutions after separation from their imprisoned mothers.

### **8.5 Psychological Support Services**

Every jail in Haryana which has a women wing shall have access to a trained counsellor in child welfare and trauma. The children of prisoners must be included as a vulnerable priority group under the National Mental Health Programme.

### **8.6 Data Collection and Research**

In Haryana, there is a pressing needs for systematic and disaggregated data on the number, age, sex and situation of children impacted by maternal incarceration. The state government must instruct jail authorities to collect and maintain this data every year.

## **9. CONCLUSION**

The children of female prisoners are neither prisoners nor free in the socio-legal order of India. They are neither fully looked after by the state nor cared for by a community that usually stigmatizes them. In Haryana, the structural deficiencies of the prison system, the dormancy of child welfare system and patriarchal social norms have resulted in a situation that usually human rights violations of these children.

The constitutional guarantees as well as the commitments under the UNCRC, the JJ Act, the Bangkok Rules etc. are adequate in law to protect these children. The deficit is operational and political, not jurisprudential. What is required is not the creation of new rights, but the activation of existing rights through legislative reform, institutional accountability and the political will that no child should suffer punishment for the actions of the parent.

Haryana possesses the wherewithal to become a model state because of its enlarged administrative capacities and an already relatively well-established infrastructure of legal services. To realize that potential requires urgent, sustained and collective action by the legislature, judiciary, executive and civil society. Children waiting on that action have waited much too long.

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