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IMPACTS OF IMPRISONMENT OF WOMEN ON THE RIGHTS OF THEIR CHILDREN: AN INDIAN PERSPECTIVE

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Abstract

Securing the human rights of prisoner is on the basic test of humanity and by which we contribute towards the positive development of society. Human dignity cannot be crushed in our era of human rights without the state being guilty of crime against humanity. Unfortunately, the legal framework for the protection of the rights of women prisoners with child alongwith the rights of child in prison with mother where the child is not accused of any crime are not properly addressed in India. This paper is attempting to highlight the different aspects of rights getting affected due to the imprisonment of women on children which the judges may consider while imprisoning a woman, especially with child.

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INTRODUCTION

The main purpose of law is to protect the interest of the people in the society with the application of the tool popularly known as justice. According to Danial Webster, justice is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Today, particularly after the Supreme Court pronouncements in Maneka Gandhi (AIR 1978 SC 597) and Francis Coralie (A.I.R 1981 SC 746) cases the scope of the term life as stated in the Part- III of the Constitution has been extended to a great extent. Securing the human rights of prisoner is one of the basic tests of humanity which contributes towards the positive development of society. Human dignity being a part of the right to life U/ Art. 21, cannot be crushed or compromised without the procedure established by law. In the eye of law a person, evidenced with the commission of a crime is subjected to penalty under the law governing, irrespective of class, caste, gender, colour, creed and religion. The nature of penalty may be varying from fine to imprisonment (both simple and rigorous), to death sentence. While a person is placed into prison for some reason, may be undertrial or prisoner, the very person doesn't lose his human existence. This paper is attempting to highlight the different aspects of rights getting affected due to the imprisonment of women on children and the Indian legal framework addressing the situation.

IMPACTS OF IMPRISONMENT OF WOMEN ON CHILDREN: Prisons are daunting places even for adult men and probably far worse for women prisoners due to several reasons. Jail manuals that govern the running of prisons do not contain any special provisions for children of women prisoners who constitute a particularly vulnerable category. The women are in prison either as undertrials accused of an offence, or as convicts. Unlike other inmates, the children are in jail not for any delinquent behaviour but because their mothers are in jail. Either they are born in jail, or they are too young to stay away from their mothers, or there is no one to look after them in

the absence of their mother. Again, losing a parent to prison affects multiple aspects of children's life and affects them to varying degrees. According to the National Crime Records Bureau's *Prison Statistics India Snapshots – 2012*, 1,394 existing prisons housed 385,135 inmates in the country. There were a total of 344 women convicts with their 382 children and 1,226 women awaiting trial with their 1,397 children lodged in various prisons in the country. Impacts of imprisonment of women on children may be analysed in the ways as under:

- **Pregnant women in prison:** Many prisons have inadequate capacity to provide adequate maternity and post-natal care, or appropriate access feminine hygiene products, during pregnancy that reflects on child growth in mother womb. Further, the stress of imprisonment can have a deleterious effect on the progression of a pregnancy. Restraining pregnant women in the same way as other women prisoners may endanger both women and the foetus. The children may live with lifelong health problems that result from their mother's failure to receive proper nutrition during pregnancy, or to receive treatment for health conditions that contribute to poor pregnancy outcomes. Pregnant women in prison live lonely or unethical environment but other pregnant women get facilities of family environment. This also causes additional mental health problem and also affects child's mental and physical development. Restraints make it difficult for doctors to monitor properly the condition of the mothers and the foetus and to provide prompt medical intervention when necessary. During pregnancy the women are unable to work in prison, hence, in the absence of specific provision, as it stands, they are again deprived. Failure to comply with recognized standards of health care during pregnancy result in poor health outcomes for children born to women who are imprisoned.
- **Lactate women in prison:** Mother's ability to lactate because compromised by poor nutrition, whether creates an inability to breastfeed or an inability to produce adequate amounts of milk for their babies; during imprisonment period. Mother's breast milk protects the baby against illness by either providing direct protection against specific diseases or by stimulating and strengthening the development of the baby's immunity systems. This result in better health, even years breastfeeding for up to 6 months followed by appropriate complementary feeding practices, with continued breastfeeding up to 2years or beyond provides the key growth and healthy development. This practice has been recommended by the World Health Organization (W.H.O).
- **Mother with child/ children in prison:** This environment is characterized with the features and impacts thereof as follows-
 - ✚ The violent character of the inmates and use of abusive language by them creates adverse effects on the psychological development of children also stayed with mother in the prison.
 - ✚ Limited facilities provided by the prison authorities not attaining equal satisfaction to the inmates i.e. mother with child in specific. In many prison, pre-schooling facilities were not provided because of number of children of mother prisoner is very low.
 - ✚ The quality of food, nutrition, education, health etc. provided by the prison authority are also found to be average, which is supposed to hamper the natural growth and development of children in the prison.
 - ✚ Further, location of women prison/ women prison cell is at far distance from his family aggravates problem to children for visiting and maintaining family ties.

When one child stay in prison with his or her mother and it create deprivation of emotional attachment of father and other family members and the child is also deprived of his childhood care, love and affection and friendship. When a women prisoner with child transferred from one prison to another, it creates additional problem to the child regarding adaptation and stability in the new environment.

- **Inmate mother with child outside:** Imprisonment of mother creates feelings that life of the child was a vacuum that never be filled by anyone else. When the police officer making arrest, a woman having children, it creates anxiety of both children and mother and this trauma is more acute if the arrest is violent and forcible. This is especially problematic for women who were the role model of children before their imprisonment. Visiting of prison by a child to his mother in a harsh environment create frustrating experience and create additional distress on the child because of entering into a grim building, being searched by a strange adult creates a shocking experience to the child. If the mother of a child is in the prison, it creates a sense of untouchability on the children in the society and they are frequently verbally abused by the others. Imprisonment of mother creates a feeling towards the child that his or her mother not only committed wrong against society but also the role as a mother. The impacts of imprisonment of mother can give birth to several health problems on the children who are outside the prison such as *changes in the sleeping patterns or eating behavior, starting or increasing their use drugs, alcohol and tobacco, stress, depression and symptoms of post-traumatic stress disorder such as flash about crime and arrest*. During the absence of the mother sometimes children may get employed in a shop, house and some other places without paying attention to study.

Under the Indian legal framework a child may be allowed to live with mother in prison up to 6 years of age. Here, the main concern is that when a child after completing the age of 6, came out from prison leaving his or

her mother as inmate, it creates a sense of heaven or hell difference for the child and he/ she finds it difficult to adapt into the new environment, sometimes, without a sole guardian. Among the school going children of imprisoned mother, it has been found that they are securing with poor grades; irregularity or unwillingness to go to school and school dropouts.

Apart from the things as specified, the followings are also noticeable:

- ✚ Single parent households become increasing with little education to their children; impact of imprisonment create joblessness; increase chances of divorce and separation and sometimes it leads to irregular employment and low wages to the person who formally suffered imprisonment.
- ✚ When a mother is in the prison, most of the children are compelled to live with grandparent and in many other cases children are placed to foster care.
- ✚ Children of pregnant women in the criminal justice system experience a variety of parental stress e.g. *poor nutrition, high level of stress associated with criminal activity and imprisonment.*
- ✚ Most of the woman prisoners are also mother and their children are staying with them in the prison is not place for healthy growth of a child.

A child is tomorrow's citizen. He/ she may be subjected to discrimination in various forms: e.g. during the admission process in school etc. Impact of imprisonment of child with mother may transform the child into a man against society or criminal. The stigma of imprisonment is even more severe for family members than offender. Today, there is need to develop a system of support within our community that provides assistance to the prisoner transition from prison to the community. Further, the system should also empower the children of such people so that their growth is proper;

RIGHT OF CHILDREN OF PRISONERS: AN ANALYSIS

INTERNATIONAL LEGAL FRAMEWORK AND CHILDREN OF PRISONERS: All international instruments of human rights, following protection and safeguards are provided to the maintenance of human dignity; facilitate the development, prisoners against torture, or other cruel inhuman or degrading treatment. To study the rights of children of women prisoners, we require understanding the rights of child first and followed by the rights of women prisoners.

International documents regarding the rights of children: Among the different international instruments, the followings are most important with special reference to the on right of children:

- ***Universal Declaration of Human Right, 1948:*** The Universal Declaration of Human Right, 1948, under article 25(2) provides that motherhood and child hood are entitled to *special care and assistance*. The same article also provides that all the *children whether born in, or out of, wedlock shall enjoy the same social protection*. Further, Article 26 recognizes everyone has the *right to education*.
- ***International Covenant of on Economic, Social and Cultural Rights, 1966:*** The International Covenant of on Economic, Social and Cultural Rights, 1966, under article 10(2) and 10(3) respectively provides that special protection for mothers during a reasonable period before and after childbirth and special measures of protection and assistance should be taken on behalf of all children. Under article 12 of the said convention provides that right to the highest attainable standard of physical and mental health. This above provision is for healthy development of the child. Under article 13 of the said convention recognize right to education of the children.
- ***International Covenant on Civil and Political Right, 1966:*** Under article 24 of the International Covenant on Civil and Political Right, 1966 provides that every child shall have without any discrimination as to race, color, sex, language, religion, national, social origin, property or birth, the right to such measures of protection as are required by his status of a minor on the part of his family, society and state.
- ***Convention on the Rights of the Child, 1989:*** The Convention on the Rights of the Child, 1989 under 6 articles recognize that every child has inherent right to life and under article 9 ensure that *a child shall not be separated from his or her parents against their will unless it is necessary for the best interest of the child without lawful determination*. Under Article 24 of the said convention recognize *the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health*. Under Article 27 of the said convention recognize that *right of every child to a standard of living adequate for the child physical, mental, spiritual, moral and social development*.

International Instruments for the protection of women in prison: All the international instruments concern themselves with ensuring those basic minimum conditions in prisons which are necessary for the maintenance of human dignity and facilitate the development of prisoners into better human beings. Among the different international instruments the followings most important:

- The **Universal Declaration of Human Rights, 1948** under article 5 states that “No one shall be subject to torture or cruel inhuman or degrading treatment or punishment”.
- The **International Covenant on Civil and Political Rights, 1966** under article 10 provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.
- The **European Convention on Human Right, 1950** under article 3 provides that “no one shall be subject to torture or to inhuman or degrading treatment or punishment”. The standard of Minimum Rules for the Treatment of Prisoner, 1955, under Rule 31 provides that “Corporeal punishment, punishment by placing in dark cell, and all cruel inhuman, degrading punishment shall be completely prohibited as punishment for disciplinary offences.”
- The **Declaration on the Protection of All Person from Being Subjected to torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975**, under article 2 provides that “Torture is not only an offence to human dignity but also constitutes as a denial of the charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights.”
- The **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984** under article, 2 provides that “Each state party, to take effective legislative, administrative, judicial or other measure to prevent acts of torture in any territory under its jurisdiction and that no exceptional circumstances whatsoever, not even an order from a superior officer or a public authority may be pleaded as defense.”
- The **Body of Principles for the Protection of All Person under Any Form of Detention or Imprisonment 1988**, under principle 6 provides that “No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”

Among the instruments referred above, India is a signatory to almost all the instruments of human rights, following protection and safeguards are provided to the prisoners against torture, or other cruel inhuman or degrading treatment or punishments.

INDIAN LEGAL FRAMEWORK AND CHILDREN OF WOMEN PRISONERS

India had acceded to the UN Convention on the Rights of the Child, in 1992, and the UN General Assembly Special Session on Children in 2002 with the objective of giving every child the right to survival and development in a healthy and congenial environment. Further, the National Charter for Children 2003 by the Government of India, to secure for every child the right to enjoy a happy childhood and to address the root causes that negate the health, growth and development of children. The charter provides for life and liberty of all children, promoting high standards of health and nutrition, assuring basic needs and security, play and leisure and all-round development of personality including expression of creativity. In India, the Right of prisoners has been designed in the following manner:

CONSTITUTION OF INDIA: The Preamble of the Constitution gives justice, social, economic and political and equality of status and opportunity to all citizens, to achieve the goals of our constitution. Prisoners should be treated with human dignity. Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth. However, it allows special provisions for women and children. Article 21A provides for free and compulsory education to all children in the age group of six to 14 years. Article 24 prohibits employment of children below 14 years in mines, factories or any other hazardous employment. The court also took note of Article 14 guaranteeing equality, and Article 21 providing that a person cannot be deprived of life and liberty except according to procedure established by the law. Similarly, Article 23 prohibiting human trafficking and forced labour was also referred to in the court's judgment.

- **RIGHT TO EQUALITY:** Under Article 14 of the Constitution of India ensure equality before law and equal protection of law, it means that child of prisoner should not deprived from this treatment of equality. Under Article 15(3) of the Constitution empowers the state to make special provision for women and children within this ambit, the government may make welfare provision for the children of prison and mother within meaning reasonable criteria mentioned in article 14.
- **RIGHT TO LIFE, LIBERTY, and DIGNITY:** Under Article 21 of the Constitution guarantee right to life or personal liberty to all individuals and the Supreme Court by interpreting this Article enumerated same basic right to all such as right to live with human dignity, right to shelter, right to health and medical assistance etc. The main question that how or the nature of right to life and personal liberty of a child enjoyed when

he or she with his/her mother in the prison, it leads to de-attachment from father and other family members and if the child outside the prison, it leads to de-attachment from mother, although child is innocent, right to life of a child does not mean without father or mother. Under Article 21(a) of the constitution provides free and compulsory education to all the children of the age of 6 to 14 years in such manner as the state by law determine. Under Indian legal frame work a child may be stay in prison with upto the age of 6 years, context how child of mother prisoner shall be given education and how much it fruitful is a matter of question. Under Article 47 of the Constitution mention that it is the duty of the state raise of the level of nutrition and standard of living of its people. Mother in prison or child in prison with mother, how healthy environment and level of nutrition get it is a matter of question. Under 7th schedule of the Constitution, list-iii of entry 5 deals with 'infants and minor', it is within the ambit of the both central and state government to protect the child. The Supreme Court in A.K.Gopalan case (A.I.R. 1950 SC 27) held that prisoner 'personal liberty' in Article 21 means nothing more the liberty of the physical body that is freedom of arrest and detention without authority of law and also held that the expression 'procedure established by law' must mean procedure prescribed by the state. But in Maneka Gandhi case (AIR 1978 SC 597), the apex court open new dimension and laid down that procedure can't be arbitrary, unfair or unreasonable in which both laws and executive actions are made to subject to the 'reasonableness' and 'right', 'just and fair test'.

- **RIGHT AGAINST EXPLOITATION:** Right to personal liberty is never real if some people are exposed to exploitation by others. Arts. 23 and 24 of the constitution are designed to prevent exploitation of men by men. Thus rights ensured by these two articles may be considered as complimentary to the individual rights secured by Arts. 19 and 21 of the constitution. The right against exploitation, given in Articles 23 and 24, provides for two provisions, namely the abolition of trafficking in human beings and Begar (forced labour). Child Labour is considered a gross violation of the spirit and provisions of the constitution. Under Article 39(e) and 39(f) respectively provided that tender age of children are not abused and that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Moving away from fundamental rights to the directive principles, the court pressed into service provisions relating to the health of women and children. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and moral and material abandonment. Article 42 directs the State to make provisions for just and humane conditions of work, and maternity beliefs. Article 45 stipulates that the State shall provide early childhood care and education for all children until the age of six. Article 47 lays down the raising of level of nutrition and standard of living of people, and improvement of public health as a primary duty of the State.

STATUTORY POSITION IN INDIA:

- **THE PRISON ACT, 1894:** It is the Prison Act, 1894 on the basis of which the present Jail management and administration is operating in India. In 1980 the Government of India set-up a committee on jail reform under the chairmanship of Justice A.N. Mulla. The committee suggested *removal the diarchy of prison administration at Union and State level*. The committee further recommended inter alia- *a total ban on the heinous practice of clubbing together juvenile offender with hardened criminal in prison* and also suggested *segregation of mentally disturbed prisoner to mental asylum*. Again in 1987, the Government of India appointed, Justice Krishna Iyer committee to undertake a study on the **situation of women prisoner in India**. It has recommended inter alia, *induction of more women in the police force in view of their special role in order to tackle women and child offenders*. In 2000, the Government of India appointed a committee for the Foundation of a model prison manual which would be a pragmatic prison manual in order to improve the Indian prison management and administration according to the International standard. The prison Act, 1894 inter alia includes the provisions as under-
 - i. Section 4 and Section 7 of the Prisons Act 1894 provides provisions for the proper accommodation of prisoners.
 - ii. Section 31 makes provision for the maintenance of civil or unconvinced criminal prisoners from private sources.
 - iii. Section 33 makes provision for the supply of clothing and bedding to civil and unconvicted criminal prisoner by state government.
 - iv. Section 39 of the Prisons Act 1894 provides that in every prison a hospital or proper place for reception of sick prisoner shall be provided.

- **THE COMMISSION FOR THE PROTECTION OF CHILD RIGHTS ACTS, 2005:** Under this Act the National Commission for Protection of Child Rights has assigned power and function to look into the matter relating to children of prisoner under Section 13(e) of the said Act.

MULLA COMMITTEE REPORT: The working group on prisons (1972) and the Mulla committee under the chairmanship of Justice A. N. Mulla (1980) have given recommendations for prison policy and reformation. The Mulla committee recommended interalia as under-

- Bail should be liberally granted to women under trial prisoners, and those not able to furnish surety might be released on personal recognizance.
- Newly admitted women prisoners should be medically examined for pregnancy. Pregnant women prisoners should be transferred to local maternity hospital for purposes of delivery.
- While registering the birth of a child to a woman prisoner, the place of birth should not be mentioned as 'prison'. If such a birth takes place there, the name of locality be mentioned.
- Pregnant and nursing women prisoners should be prescribed special diet and exempted from certain types of work.
- There should be a separate women ward in prison hospitals
- Children (up to the age of 5 years) accompanying women prisoners may be allowed to be kept with them in specially organized crèches outside the main prison building.
- State government should encourage and support voluntary women organizations in looking after women offenders.
- Voluntary organizations should be encouraged and given financial aid to set up children institutions for such children as they cannot be released on probation or on license.
- Prison superintendent should take a monthly review of children in prison and send a report to the appropriation authorities for necessary action.
- Juvenile probation and non-institutional services for children should be effectively organized.
- Each state and Union Territory should prepare master plan for setting up a network of non-institutional and institutional services for children.
- Children, dependent on prisoners, preferable be kept with the relatives or friends of such prisoners.

REPORT OF THE TATA INSTITUTE OF SOCIAL SCIENCES: A report by the Tata Institute of Social Sciences, which put forward five grounds as the basis for suggestions on the provision of facilities for minors accompanying their mothers in prison, was placed before the court. The report says:

- Prison environments are not conducive to the normal growth and development of children.
- Many children born in prison have never experienced normal family life up to the age of four-five years.
- The socialisation pattern of children is severely affected due to their stay in prison. Their only image of a male authority figure is that of the police and prison officials. They are unaware of the concept of a 'home'. Boys sometimes talk in the female gender, having grown up only among women in the female ward. Sights like animals on roads frighten these children because of lack of exposure to the outside world.
- Children get transferred with their mothers from one prison to another. This unsettles them.
- Such children sometimes display violent and aggressive, or withdrawn behaviour in prison.

REPORT OF THE NATIONAL INSTITUTE OF CRIMINOLOGY AND FORENSIC SCIENCES: The salient features of the study conducted by the National Institute of Criminology And Forensic Sciences is as under:

- Most children were living in difficult conditions and suffered deprivation relating to food, healthcare, accommodation, education and recreation.
- There were no programmes for the proper bio-psycho-social development of children in prisons. Their welfare was mostly left to the mothers. There was no trained staff to take care of the children.
- In many jails, women inmates with children were not given any special or extra food. In some jails, extra food was given in the form of a glass of milk; in others, separate food was being provided only to children over the age of five. The quality of food supplied was the same as that given to adult prisoners.
- No special consideration was given to child-bearing women. The same food and facilities were given to all women, irrespective of whether their children were living with them or not.
- No separate or specialised medical facilities for children were available in jails.

- Most mother prisoners felt that the stay in jail would have a negative impact on the physical and mental development of their children.
- A crowded environment, lack of appropriate food and shelter, deprivation of affection by other members of the family, particularly the father, were perceived as stumbling blocks in the development of these children in their formative years.
- Women prisoners with children require special attention towards food, medical facilities, accommodation, education, recreation and the separation of children from habitual offenders as areas that require urgent improvement.
- There were no prison staff specially trained to look after children in jails. Also, no separate office with the exclusive duty of looking after the children or their mothers

SUPREME COURT AND THE WOMEN PRISONERS WITH CHILD

The Supreme Court in *R.D. Upadhyay v. State of A.P. and others*, (A.I.R. 2006, SC 1946) issued guidelines for the development of children who are in jail with their mothers, who are either as undertrial prisoner or convicts. The Chief Justice Y.K. Sabharwal in this case observed that, “The jail environment is certainly not congenial for development of children”. Some of the issued guidelines are as follows:

- i.* A child shall not be treated as an undertrial or convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
- ii.* Before sending a women who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for providing pre-natal and port-natal care for both the mother and the child.
- iii.* As far as possible and provided she has a suitable option, arrangement for temporary realise or parole should be made to enable an expectant prisoner to have her delivery outside the prisoner.
- iv.* A children properly examined by a lady medical officer.
- v.* There shall be a crèche and a nursery attached to the prison for women where the children of women prisoner will be looked after.

CONCLUSIONS AND SUGGESTIONS: A child who without committing any crime because of the reason of his/her mother has been accused/ convicted of crime should not be subjected to any societal ill-treatment. Hence, the government should look into the followings:

- A major focus is required to be given to the development of child, his education and relationship with parents. The government may promote the system of **probation, parole** and **plea- bargaining** to avoid negative impact of imprisonment for women with child.
- More parole be given to the mother when the child is outside the prison for maintaining relationship and pregnant women also.
- There is need of special training programme for the prison officials to ensure proper attention to the women with child.
- The government may conduct ‘awareness programme (including free legal aid)’ among the prisoner from time to time.
- The government may set up one ‘redressal forum’ in every prison which deals with arbitrary and inhuman action of the prison authority against women prisoners.
- Maternity facilities (maternity benefits) should be extended to the women prisoners.
- The Government may provide or family residential programme during pregnancy as an alternative method to imprisonment.
- Postponement of the execution of the sentence or delay in trial of the pregnant women for betterment of the child.
- Open jail system may be introduced and the women may be put there unless they haven’t committed any heinous crime.
- There should be a separate set up for kindergarten education for the children of the inmates lodged in prison alongwith a proper child care facilities.