
PROTECTION OF CHILDREN'S RIGHTS: AN INTERNATIONAL CONCERN

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Abstract

Children who live with, or are affected by, parental imprisonment occupy a neglected intersection of criminal justice, child protection and human rights law. This paper maps the domestic and international legal framework protecting these children in India; examines judicial pronouncements that shape their status; assesses gaps between law and implementation; and offers recommendations to align policy and practice with the best-interests principle under international law.

Key Words: Children, Prisoner, Protection, International

1. Introduction: why children of prisoners matter?

When a parent—overwhelmingly the mother in India's custodial situations that produce co-residence—enters prison, children frequently suffer collateral harms: interrupted health and early childhood development, lost education, stigma, precarious care arrangements, and material deprivation. These harms are compounded where prisons are designed for adults and lack child-appropriate facilities. The law recognises that children are rights-holders: their best interests must guide decisions that affect them. Yet translating principle into prison practice has been uneven in India. This paper synthesises legal standards, judicial interventions and policy positions to set out where the law currently stands and what needs to change.

2. International Legal and policy framework

The principal international obligations that protect children of incarcerated parents include:

(i) United Nations Convention on the Rights of the Child (UNCRC) — The Convention on the Rights of the Child (UNCRC), ratified by India in 1992, provides a comprehensive human rights framework that directly applies to children of incarcerated parents, including those residing in prisons with their mothers. The principle of non-discrimination, requiring States Parties to ensure that every child enjoys their rights without distinction of any kind, including discrimination based on the status or activities of their parents, which clearly encompasses parental imprisonment.¹ It establishes the foundational “best interests of the child” principle, mandating that in all actions concerning children—whether undertaken by courts, administrative authorities, or legislative bodies—the best interests of the child shall be a primary consideration. This principle is central when determining whether a child should remain with an incarcerated mother or be placed in alternative care.²

It provides that a child shall not be separated from his or her parents against their will except when such separation is necessary for the child's best interests, thereby requiring careful judicial scrutiny in cases of custodial detention.³ Complementing this, it affirms that even when separation occurs, the child has the right to maintain personal relations and direct contact with both parents on a regular basis, except where contrary to the child's welfare.⁴ It recognizes the primary responsibility of parents in child-rearing while obligating the State to render appropriate assistance in the performance of these responsibilities, a duty that becomes particularly significant when a parent is incarcerated.⁵ Furthermore, it guarantees the child's

¹ UNCRC ; Article 2

² Id. Article 3(1)

³ Id. Article 9(1)

⁴ Id. Article 9(3)

⁵ Id. Article 18(1)

right to the highest attainable standard of health⁶; it secures the right to an adequate standard of living necessary for physical, mental, spiritual, moral, and social development;⁷ and it protects the right to education. Collectively, these provisions impose a positive obligation on the State to ensure that children living in prisons with their mothers, as well as those separated due to parental incarceration, are not deprived of their fundamental rights to dignity, development, health care, education, and family life.⁸

(ii) United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the “Bangkok Rules”, 2010) — The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, commonly known as the Bangkok Rules, constitute the most specific international instrument addressing the rights and needs of incarcerated women and their dependent children. These Rules adopt a gender-sensitive and child-centred approach to criminal justice. It emphasizes the necessity of an individualized, gender-sensitive framework in the treatment of women offenders, recognizing that women in conflict with the law often have distinct social roles and caregiving responsibilities.⁹ It requires authorities to consider women’s caretaking responsibilities at the pre-trial and sentencing stages, thereby encouraging courts to take into account the impact of imprisonment on dependent children before imposing custodial sentences.¹⁰

It clearly provides that children residing in prison with their mothers shall never be treated as prisoners, reinforcing their independent legal status as rights-holders.¹¹ It mandates that pregnant women and breastfeeding mothers receive adequate and appropriate health care services, including prenatal and postnatal care, ensuring protection of both maternal and child health.¹² It stipulates that decisions regarding whether a child should remain in prison with the mother must be guided by the best interests of the child, and that suitable child-care facilities, nutrition, and developmental support must be ensured where children reside in prison.¹³ Finally, it establishes a strong preference for non-custodial measures for pregnant women and women with dependent children, recognizing that imprisonment should be a measure of last resort when it would adversely affect a child’s welfare. Collectively, these provisions place a clear obligation on States to harmonize penal policy with child protection principles, ensuring that children of incarcerated mothers are safeguarded from secondary victimization and developmental harm.¹⁴

(iii) UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules, 2015): The United Nations Standard Minimum Rules for the Treatment of Prisoners, widely known as the Nelson Mandela Rules, establish universally accepted minimum standards for the humane treatment of persons deprived of liberty. Although primarily directed at the treatment of prisoners, several provisions are particularly relevant to children residing in prisons with their mothers. It mandates that special accommodation shall be provided for pregnant women, women with infants, and nursing mothers, and that appropriate pre-natal and post-natal care and treatment must be ensured. This provision recognizes the distinct physiological and health needs of incarcerated women and, by extension, the developmental and health rights of infants living with them.¹⁵

It explicitly clarifies that children living in prison with their parents shall never be treated as prisoners. This rule affirms the independent legal identity and rights of the child and reinforces the principle that a

⁶ Id. Article 24

⁷ Id. Article 27

⁸ Id. Article 28

⁹ The “Bangkok Rules”, 2010, Rule 2

¹⁰ Id. Rule 4

¹¹ Id. Rule 23

¹² Id. Rule 48

¹³ Id. Rules 49 to 52

¹⁴ Id. Rule 64

¹⁵ Nelson Mandela Rules, 2015; Rule 28

child's presence in prison is incidental to parental incarceration, not a form of punishment.¹⁶ Furthermore, it guarantees that prisoners shall be allowed, under necessary supervision, to communicate with their family and friends at regular intervals through correspondence, visits, and other means.¹⁷ This provision is vital in safeguarding the child's right to maintain contact with an incarcerated parent, thereby preserving family bonds and mitigating the psychological harm that may arise from prolonged separation. Together, these rules contribute to a rights-based framework that seeks to balance custodial administration with respect for family life and child welfare. Together these instruments prescribe that a child's development, health, education and family relationships must be prioritised — a standard that India has accepted through treaty ratification and frequent invocation by domestic courts.

(iv) UN Rules for the Protection of Juveniles Deprived of their Liberty (1990)

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish comprehensive standards for safeguarding the rights and welfare of children who are deprived of liberty. Although primarily applicable to juveniles in conflict with the law, the principles contained in these Rules are equally instructive in the context of children residing in prisons with their incarcerated parents. It affirms that the deprivation of liberty of a juvenile should be a measure of last resort and for the shortest appropriate period of time, thereby reinforcing the fundamental principle that detention must be exceptional and strictly necessary. This standard reflects the broader international commitment to minimizing custodial exposure for children due to its potentially harmful developmental consequences.¹⁸ It further provides that every juvenile deprived of liberty shall have the right to maintain contact with their family through correspondence and visits, except in exceptional circumstances. The preservation of family ties is recognized as essential to a child's emotional stability and social reintegration. In the context of parental imprisonment, this rule underscores the obligation of States to facilitate regular and meaningful contact between children and incarcerated parents, whether the child resides inside or outside the prison. Collectively, these provisions reinforce the principle that child welfare and family integrity must remain central considerations in custodial policies and practices.¹⁹

(v) International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights (ICCPR), to which India is a State Party, provides foundational human rights protections that are directly relevant to children affected by parental incarceration. It mandates that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. This obligation extends to prison administration practices and requires conditions of detention that do not violate basic standards of dignity, a principle that indirectly safeguards children who reside with incarcerated parents or are impacted by custodial environments.²⁰

It recognizes the family as the natural and fundamental group unit of society and affirms its entitlement to protection by society and the State. This provision imposes a duty on States to respect and preserve family unity wherever possible, including in the context of imprisonment.²¹ Furthermore, it guarantees that every child shall have the right to such measures of protection as are required by their status as a minor, without discrimination as to race, colour, sex, language, religion, national or social origin, property, or birth.²² When read together, these provisions establish a binding international obligation on India to ensure humane custodial treatment, protection of family life, and special safeguards for children, including those whose parents are incarcerated.

¹⁶ Id. Rule 29

¹⁷ Id. Rule 58

¹⁸ The United Nations JDL Rules 1990, Rule 1

¹⁹ Id. Rule 59

²⁰ ICCPR 1996, Article 10(1)

²¹ Id. Article 23(1)

²² Id. Article 24(1)

3. International Case Laws

In *Khoroshenko v. Russia*,²³ the Grand Chamber of the European Court of Human Rights examined the compatibility of severe restrictions on long-term prison visits with Article 8 of the European Convention on Human Rights, which guarantees the right to respect for private and family life. The applicant, serving a life sentence, was subjected to an extended regime that drastically limited his ability to receive family visits. The Court held that such excessive and prolonged restrictions, particularly where they significantly curtailed meaningful contact with close relatives, amounted to a violation of Article 8. It emphasized that while imprisonment inevitably entails limitations on certain rights, prison authorities must ensure that restrictions on family contact are proportionate, necessary, and justified by legitimate penological objectives. The judgment reinforces the principle that maintaining family ties is a vital component of human dignity and rehabilitation, and that States have a positive obligation to facilitate meaningful and regular contact between prisoners and their families, including children.

In *V.C. v. Slovakia*²⁴, the European Court of Human Rights examined the sterilization of a woman without her full and informed consent while she was in a vulnerable hospital setting following childbirth. Although the case did not directly concern imprisonment, the Court's reasoning is highly relevant to custodial contexts because it affirmed the centrality of reproductive autonomy, bodily integrity, and maternal dignity under Articles 3 and 8 of the European Convention on Human Rights. The Court held that medical procedures carried out without informed consent violate the right to respect for private and family life and may amount to inhuman or degrading treatment. The judgment underscores that women, particularly those in situations of vulnerability or institutional control, retain full reproductive rights and must be treated with dignity and respect. In the broader context of detention, this principle reinforces the obligation of States to safeguard the reproductive health, maternal autonomy, and informed consent of incarcerated women, thereby indirectly protecting the rights and welfare of their children.

In *R (P and Q) v. Secretary of State for the Home Department*,²⁵ the English courts considered the legality of detaining mothers in immigration custody where such detention resulted in the separation of young children from their primary caregivers. The case examined whether the State's exercise of immigration detention powers adequately accounted for the rights and welfare of affected children. The Court emphasized that while the State retains authority to detain individuals for legitimate immigration purposes, such decisions must be exercised in a manner consistent with fundamental rights, including respect for family life. It was held that the best interests and welfare of the child are a primary and guiding consideration in determining the lawfulness and proportionality of detention that leads to family separation. The judgment underscores that administrative convenience or enforcement objectives cannot override the obligation to carefully assess the impact of detention on dependent children, thereby reinforcing the centrality of child welfare principles in custodial decision-making.

In *Forneron and Daughter v. Argentina*,²⁶ the Inter-American Court of Human Rights examined whether state authorities had unlawfully interfered with a father's relationship with his biological daughter by facilitating her adoption without ensuring his effective participation in the proceedings. The Court held that the State had violated the rights to family life, judicial protection, and due process under the American Convention on Human Rights. It emphasized that children have a fundamental right to preserve their family identity and maintain personal relationships with their biological parents, except where separation is strictly necessary to protect the child's best interests. The judgment reinforced the principle that the preservation of family ties is a core component of human dignity and child welfare, and that States bear a

²³ No. 41418/04, ECHR 2015 (Grand Chamber judgment of June 30, 2015),

²⁴ (Application no. 18968/07)-2011

²⁵ [2001] EWHC Admin 357.

²⁶ Judgment of April 27, 2012, Inter-Am. Ct. H.R. (Ser. C) No. 242 (2012).

positive obligation to prevent arbitrary or disproportionate interference with family relationships. This reasoning is particularly instructive in contexts involving parental detention, where maintaining meaningful contact between children and incarcerated parents must remain a central legal consideration.

4. Key judicial and legislative directions in India (what the law requires in practice)

Indian jurisprudence and government guidelines impose clear obligations on authorities regarding children living with incarcerated mothers. The Juvenile Justice (Care and Protection of Children) Act 2015 plays a pivotal role by defining a “child in need of care and protection” to include children who lack proper care, are vulnerable to neglect or abuse, or whose parents are incapacitated. Where a parent is imprisoned and adequate caregiving arrangements are unavailable, such children may fall within this category, entitling them to protection and rehabilitation through Child Welfare Committees and institutional or non-institutional care mechanisms.

Institutional oversight is further reinforced by the Commission for Protection of Child Rights Act, 2005 which establishes National and State Commissions empowered to monitor child rights safeguards, investigate violations, and recommend corrective measures, including scrutiny of prison conditions affecting children.

Additionally, the Model Prison Manual 2016 provides detailed guidelines for women prisoners and their children, mandating appropriate accommodation, nutrition, healthcare, immunization, education, crèche facilities, and non-stigmatizing birth registration. Together, these statutory measures integrate child welfare standards into custodial administration and affirm the State’s obligation to protect children’s dignity and development.

Under R.D. Upadhyay v. State of Andhra Pradesh,²⁷ children must not be treated as undertrials or convicts and remain independent rights-bearing individuals. Authorities must ensure adequate food, shelter, clothing, medical care, immunization, education, and recreational facilities, consistent with the Model Prison Manual 2016 and Ministry of Home Affairs guidelines. Non-custodial measures should be preferred for mothers with young children in line with international standards. Births in prison must be registered without stigma, crèche and nursery facilities must be provided, and family contact must be facilitated to preserve social bonds.

However, implementation gaps persist. Many prisons lack proper childcare facilities, sanitation, and health services; immunization and pediatric care remain inconsistent. There is no comprehensive national data on children in prisons, alternatives to custody are underutilized, and weak inter-agency coordination hampers effective service delivery, limiting the realization of these legal protections in practice.

5. Comparative notes — international norms and lessons

The **Bangkok Rules** explicitly require that states consider the carer role of most detained women and arrange alternatives, proximity to family and child-friendly facilities (including non-custodial measures). The UN juvenile rules insist that deprivation of liberty for children or placements in adult institutions should be exceptional. These standards are more protective than the status quo in many Indian jails; remedying this requires policy shifts (non-custodial sentencing for mothers where appropriate, funded crèches outside prison compounds, and inter-agency rehabilitation support).

6. Jurisprudential Synthesis

International human rights law establishes a coherent normative framework for the protection of children affected by parental incarceration. The Convention on the Rights of the Child enshrines the best interests principle under Article 3, mandating that in all actions concerning children, their welfare must be a primary consideration. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules) reinforce this framework by prescribing a preference for non-custodial measures for pregnant women and mothers with dependent children (Rule

²⁷ Civil Writ Petition No. 559 of 1994 — Supreme Court (13 Apr 2006).

64) and by clearly affirming that children residing in prison must never be treated as prisoners (Rule 23). Complementing these protections, the International Covenant on Civil and Political Rights recognizes the family as the natural and fundamental unit of society under Article 23 and requires humane treatment of persons deprived of liberty, thereby safeguarding family life even in custodial contexts. Comparative jurisprudence, particularly from the European Court of Human Rights, further emphasizes the right to family life and proportionality in restrictions affecting parental relationships.

7. Conclusion

Indian courts have established a clear normative architecture: children who live with incarcerated parents are not prisoners and are entitled to full child-rights protections. Decisions such as R.D. Upadhyay operationalised that principle with detailed directions; other decisions (Sunil Batra, D.K. Basu, Hussainara Khatoon, Rudul Sah, Nilabati Behera) underpin state accountability and humane custodial standards. Yet law alone is not enough — consistent implementation (facilities, budgets, alternative sentencing, inter-agency coordination and data) is necessary to translate rights into lived improvements for children. International norms like the UNCRC and the Bangkok Rules offer ready templates; India's policy challenge is to convert them into funded, monitored practice across a diverse prison estate.

The Court's expansive reading of Article 21 of the Constitution, combined with public interest litigation jurisprudence protecting vulnerable groups, has transformed abstract rights into enforceable obligations. A combined reading of these international instruments and constitutional jurisprudence creates a clear legal mandate: children of prisoners in India are independent constitutional rights-holders. They cannot be subjected to indirect punishment for parental incarceration, and the State bears a positive obligation to safeguard their dignity, health, development, education, and meaningful family contact.