

## RIGHTS OF CHILDREN OF INCARCERATED PARENTS

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### ABSTRACT

The first section briefs the research methodology that was used to analyze the issue and develop solutions for it. The paper is based on mainly on primary sources of information as well as secondary sources. The second section of the paper attempts to illustrate a basic understanding of the problem and the intensity of it. The third section analysis the legal standing of the child right laws in India in the given context. The fourth section analysis the child right laws in various other countries. The purpose of the section is not to do a comparative analysis but to look at additional possible solutions that may be feasible and applicable in the Indian scenario and may be adopted. The fifth section discusses various reports and research articles on the topic which may give us a sense of the situation and help device suggestions and solutions. The next section discussed the primary sources such as the interviews conducted and its interpretation and analysis. The last section gives a list of possible solutions and suggestions that needs to be adopted by the state in order to address the issue of the rights of children with incarcerated parents, based on the results and additional resources. Overall, it is an attempt to sensitize the population regarding the urgent issue that has been neglected for long.

### INTRODUCTION

*“Until quite recently, the issue of children affected by parental incarceration has not been regarded as a children’s rights issue—but it surely is a children’s rights issue. Article 8 of the European Convention of Human Rights guarantees to ‘everyone’ the right to respect for their private and family lives. ‘Everyone’ includes children as well as grown-ups. The prevention of a disorder or crime is of course the legitimate aim of the interference, but the question remains whether the seriousness of the crime is such as to justify the seriousness of the interference of the child’s rights.”*

*- The Right Hon the Baroness Hale of Richmond, 2012V*

Let us consider a situation where the husband is a daily drunkard. He constantly neglects his wife and child. One day he returns home drunk. When his wife questions him, in a fit of anger he kills her. The police arrest him, and the court sentences him to a lifetime imprisonment. Do you understand the only character that we have failed to pay attention to? The child. What happens to the child, now that his mother is dead, and his father is sentenced to life?

The present paper seeks to address this most crucial but neglected issue in India – the rights of the children of Incarcerated parents. These children are the ‘the invisible victims of the criminal justice system.’ The goal of this paper is mainly to highlight and urge to bring about a reform through a separate legislation giving special facilities and provision for these vulnerable children and guidelines to be followed by the police and prison authorities with respect to the handling of the children.

## **A. RESEARCH METHODOLOGY**

### **1. Research question**

This project deals in general regarding the children of incarcerated parents. This is within a certain context and background understanding which is elaborated in the next part of the section. In specific the project asks the following questions: -

- a. What happens to the children in case of parental arrest (either one of both) and in situations with no one to claim the children?
- b. What are the problems and issues faced by them, physically, mentally, financially and socially?
- c. How sensitive is the criminal justice system towards vulnerable children?
- d. How efficient is the criminal justice system in making laws and implementing them, in the present context?
- e. What and how are the non-state entities protecting the children?
- f. What is the global stand on the rights of children of incarcerated children?
- g. What are the possible measures and guidelines that need to be adopted in order to provide better care and protection of the children of incarcerated parents?

By asking these questions the project seeks to analyze the efficiency of child rights in India and areas that require attention and improvement.

## 2. Context

To understand the context within which the project seeks to address its questions and the intensity of it, it may be important to understand a few facts surrounding the issue.

Firstly, not all children living with incarcerated parents stay in prison. It is only children within the age of six who are allowed to stay with their mothers within the prison, the ones above six years old are legally not permitted and hence need to stay outside.<sup>1</sup> Eventually, upon attaining the age of six even those staying inside the prison need to move out. Thus, the vulnerable group of children here belong to two categories – those who stay within the prison with their parents and eventually must move out and those that live outside. A third category can be added which involves children born in prison and who must eventually move out upon attaining the age of six. The paper largely tries to address children belonging to the second category and children belonging to the third category after they leave the prison cells.

Secondly, NCRB report as of 2017 shows that 70% of the prisoners in Indian prisons are illiterate and uneducated highlighting that these prisoners belong to the economically backward society.<sup>2</sup> Thus even before incarceration the prisoners were unable or barely sustaining themselves. Hence while leaving the children behind, they plunged deeper into a financial crisis. This plays a great role in determining the quality of life the children live especially after the imprisonment of the sole bread winner. One must also keep in mind the costs of legal procedures that befalls the family upon the arrest.

Thirdly, the inefficiency of the justice system worsens the situation. The incarcerated parent/s being held in prison for years together and separate from their family, while awaiting trial. The NCRB report of 2016 shows that 67% of 4.33 lakh inmates of prisons around the country

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<sup>1</sup> R.D Upadhyay v. State of Andhra Pradesh, (1998) 5 S.C.C 696 (India).

<sup>2</sup> Prison Statistics of India-2017, NCRB

are under trial.<sup>3</sup> The plight of mothers separated from their children without being convicted is bad. Getting a bail is impossible due to the economic conditions.

Lastly, the judiciary in India has over the years widely interpreted the fundamental rights. Today the fundamental rights include the right to education for all children<sup>4</sup>, right to nutritional food<sup>5</sup> and right to live with dignity<sup>6</sup>. In other words, these rights are available to all citizens and in the present case all children irrespective of their background.

These four facts are crucial for the understanding of the issues highlighted in this paper.

### 3. Data Collection

The data collection and the research methodology involved both primary as well as secondary sources. The entire paper is an original work based on interactions with Child right activists, NGO's, police officers and some children at shelter homes. A major part of the paper is also an interpretations of various case studies, reports and articles written by authors and activists.

#### *a. Secondary data.*

The secondary sources include reports by various NGO's and articles by human rights and child rights activists from all over the country. These articles and reports were crucial as it highlighted the different possible angles and perspectives of looking at the situation. It provided a ground scenario of the situation of the children as some of the reports included interviews of the children themselves or the relatives or the incarcerated parents themselves. Hence these reports gave an insider view of the homes of these children and their day-to-day struggle.

#### *b. Primary Data.*

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<sup>3</sup> Prison Statistics of India-2016, NCRB

<sup>4</sup> Mohini Jain vs. state of Karnataka, (1992) A.I.R 1858 (India); J.P. Unnikrishnan v. State of Andhra Pradesh (1993) A.I.R 2178 (India); State Board of Secondary and Higher Education vs. K.S. Gandhi (1991) 1 S.C.C 187 (India).

<sup>5</sup> People's Union for Civil Liberties v. Union of India & Others, (1997) 1 S.C.C 301 (India).

<sup>6</sup> Maneka Gandhi vs. Union of India (1978) AIR 597 (India); Francis Coralie vs. Union Territory, (1981) AIR 746 (India).

The primary data for the project was collected through a series of interview of NGO's working for the cause and police officers [Annexure A]. It also includes government reports such as the prison statistics of India were used to present the statistics relevant for the situation. This was to understand the vastness of the situation and the urgent need for reforms. Determining the legal position of the Indian criminal system was crucial to understand the laws, the scope of its implementation and its drawbacks and inefficiencies. Hence various laws and cases were also analyzed to analyze the legal situation.

#### **4. Problems and obstacles faced**

Due to the time of the project, the groundwork had to be limited to calls due to the lockdown and covid-19 situation.

However, the main obstacle faced was that there were very few literatures on the topic in the Indian scenario. There were absolutely no data as to the number of children with their parents in prison. Most of the NGO's that were working for child rights were new to the questions asked and explicitly highlighted the lack of groundwork of research on the specific question. Some Child Rights Activists explicitly highlighted the need for the Indian community and the state to recognize the situation. For this there is a necessity to vocalize the situation and spread awareness regarding it. While many articles addressed the conditions of the children within the prison and emphasized the need to improve the situation within, very few tried to highlight or determine the condition and situation of children outside the prison often living by themselves. Police officers interviewed also showed that the question of children of incarcerated parents was merely a matter of procedure for them and not a duty of care. Thus, the entire project had to reach its conclusions mostly based on interpretations and assumptions due to the lack of groundwork and research in the area. However, there is a hope that the depth of the problem will soon be recognized by the state as well as the non-state actors and attempt to vocalize the situation and improvise the same.

#### **B. CHILDREN OF INCARCERATED PARENTS The immediate effect of incarceration on the children**

The children of incarcerated parents can be divided into three categories



- (i) Children below 6 years old who stay with their mothers in the prison or are born in the prison
- (ii) Children above 6 years of age and who stay outside the prison
- (iii) Children born in the prison but above 6 years of age and stay outside the prison.

The present project is concerned with the second and the third category. The Supreme Court of India in the case of R.D Upadhyay<sup>7</sup> has laid down many guidelines to be followed in order to provide better facilities and care for the children born or living within the prison.

### ***Children above 6 years of age and who stay outside the prison***

The children below the age of six but present outside the prison confront a sudden deprivation of bread winner of the family. Let's further divide these children into four categories in order to understand the problems faced by them.

Firstly, those children who have been deprived of their father. These children confront a sudden deprivation of the bread winners of the family. The dominant loss that they suffer is that of a financial loss.

Secondly, those children who have been deprived of their mother. These children are deprived of the primary caretaker. They are suddenly plunged into a world of responsibilities and caregiving. The dominant affect that they suffer is that of psychological. Also, these children are susceptible to abuse by their father, as some instances show the fathers to be drunk or highly abusive towards the children.

Thirdly, the children who lose both their parents and are claimed by their relatives or guardians who become their surety. These children face the deprivation of both their parents and are hence affected significantly. Their dominant suffering is the social stigma in social areas such as school, within their community and society and sometimes even amongst the relatives.

Fourthly, the children who lose both their parents and do not have anyone to claim or be their surety. This could be children with no relatives or relatives who refuse to take care of them. These children are the most deprived of all as they are plunged suddenly into a world

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<sup>7</sup> R.D Upadhyay v. State of Andhra Pradesh, (1998) 5 S.C.C 696 (India).

without parents. They suffer all kinds of financial loss, loss of caregiver, social stigma and other kinds of mental and psychological effects. Our research suggests that the condition of these children and what happens to them is different with every case. One category of these children is those who are left by themselves. Cases where there are siblings, the siblings tend to take care of each other. However, if the child is alone, they are completely thrown into loneliness and need to take care of themselves. Often the children have to drop out of school in order to work. Sometimes paying the rent and retaining their house just until the parent returns becomes a strenuous job for these children. Another category of children is those who are left at the shelter homes for the children set up by the children. Sometimes these children are taken care by privately run NGO's. The situation of these children is far better than the ones mentioned above. Although statistically unavailable, these children are very low in number compared to total number of children whose parents stay at the prison. The last and the most dangerous category are those children who are missing. This means that although the parents report the details of their children including the address, the children are nowhere to be found. Although the number of such cases is lesser compared to the other categories the very fact of missing children is a matter of serious concern and begs immediate recognition and attention.

### ***Children born in the prison but above 6 years of age and stay outside the prison.***

Children belonging to this category are usually most vulnerable as they are suddenly thrown into a completely unknown world. However, since the child was brought up in the prison and only leaves at the age of seven, the parent or parents usually have control over where their children need to go. Generally, these children end up in shelter homes or are taken under of case of NGOs. There are very few instances that show a major problem being faced by the children. However, the children do face social stigma and other psychological effects when they interact with the world outside such as their schools.

### **C. Issues faced by the children while they stay outside**

There are various specific problems that the children seem to face outside the prison. The extend of the suffering depends on factors such as the financial situation of the family, their access to NGOs and other help centers, their region of residence etc. Let us take a look at some of the major issues that the children face. Some of these issues are interconnected. However, the children seem to face all of these issues in varying degrees.

## **Drop in Education and health**

The first impact of the incarceration on the children is on their education and health. The most crucial aspects of a child's growth physically and mentally come to a halt. This affects their fundamental right to food and education.

Reasons for dropping out varies. Pressure of responsibilities at home (such as taking care of the father or siblings or both), financial loss, stigma at school. Fortunately, there wasn't a case of dismissal by the school of a student due to parental incarceration encountered within the scope of this project.

The deprivation of good nutritional food in the homes of poor in the country is underrated. It is often left unrealized that many children go to beds with an empty stomach. Even the available ration are usually of bad quality and definitely carry less nutritional value. The children in shelter homes and NGO's are given the basic nutrition required. But the plight of children staying by themselves is worse off. Their aim usually is to fill a stomach to sustain themselves rather than living a healthy life.

## **Financial loss**

Either through the deprivation of the father or both parents the children as completely left without a source of income. This leads to children dropping out school and taking up jobs however meagre it is. Sometimes girl children end up working at houses and boy children taking up casual labor. Some cases have also shown children taking up illegal jobs such as drug distribution in order to earn some money. In addition the children must make effort to incur the legal costs of incarceration of parents – such as getting a bail, lawyer charges (not in all cases due to the availability of free legal assistance to the prisoners, however the efficiency of these advocates are questionable as they receive no incentive out of it), and other documentation and procedural costs that may have to face. Many a times children tend



to borrow money from their neighbors promising to pay them back once their mother was out of jail. This also leads to a major psychological hurt within the child.

## **Social stigma**

In India the stigma attached to the imprisonment is quite high and the effect it has on the children cannot be underestimated. Especially given the community and the society that these children belong to, they face social neglect and embarrassment in the society. This has a major effect on their attendance at schools. As if the sight of their parents being arrested in front of the entire public i.e. people well known to them is not enough, some children also make the effort of attending the court hearings of their parents each time hoping that they would get out. Most of the time they are treated with the preconception of “a thief’s child will be a thief” attitude. They further find difficulty in finding jobs later on.

## **Psychological harm**

One of the major problems, is the deprivation of family and physical and verbal interactions with parents. Despite the shelter homes taking care of the children’s basic needs a child needs its parents for a holistic growth and this is stolen from them in an unnatural way. It is to be noted that the children being spoken of here are an age group of merely six years old to twenty-one years, the age exactly where a child’s mind develops and tries to adopt to the world outside.

## **A bad impression of the criminal justice system**

The child at a tender age is forced to interact with the criminal justice system. This is often in terms of meeting corrupt officers, going through elaborate procedures. For instance, in order to simply meet the mother the child must go through a procedure of security check, filling up forms and talking to the mother through a glass window or iron bars.

## **Vulnerable to abuse and other risks**

The missing category of children brings out a darker side to this issue. Although the number of cases is relatively low the very possibility of it is frightening. Further these children are also vulnerable to abuse by relatives and sometimes drunk fathers. There is no provision whatsoever that requires any state authorities such as child welfare workers or police officers to check on these children. One of the NGO had highlighted a situation where the child was found to have been constantly abused by her grandparents and was rescued by the volunteers there. Ever since the NGO had started to make random visits to check on the condition of the children living with grandparents.

## C. CHILD RIGHTS LAWS IN INDIA

Most of the child rights law in India has focused right to education and health, protection from exploitation (child labor and sexual exploitation), juvenile offenders and protection against trafficking. However, there are very few laws that talk about children with vulnerable families. This section enumerates those laws and policies that applies or may be interpreted to apply to specifically children with incarcerated parents.

### Case Laws

The case of *RD Upadhyay v. State of Andhra Pradesh*<sup>8</sup> was the first and a crucial judgement to address the issue of rights if the children with incarcerated parents. The judgement laid down various rules in the form of facilities to be given and taken care of in case of children accompanying parents to the prison and pregnant women. The case was also landmark in pronouncing the maximum age of the children in prison to be 6 years after which they need to be moved out of prison, with the reasoning that the prison environment is not conducive for the child's growth and development. However, it failed to lay down any rules with respect to the fulfillment of the rights of the children outside the prison.

### Constitution of India

The constitution in various Article puts an obligation on the state to fulfill the rights of these children:

- The right of the child to live with dignity, a livelihood is interpreted under Article 21 of the constitution.

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<sup>8</sup> R.D Upadhyay v. State of Andhra Pradesh, (1998) 5 SCC 696 (India).

- Every child has the right to be treated equally and get an equal chance to succeed and prosper in their lives can be said to be guaranteed under Article 14 of the constitution.
- Article 15 exempts the state from discrimination on the basis of place of birth (right of children born within the prison) and further directs the state to provide special provisions for women and children.<sup>9</sup> The children of these vulnerable families deserve special provisions for their upliftment.
- Article 21 A provides for free and compulsory education for children between the age of 6-14.
- Article 24 gives Right to be protected from abuse and forced by economic necessity to take up jobs that are unsuitable for a child.
- “that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength” – Article 39(e).
- “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 against moral and material abandonment” - Article 39(f)
- Article 46 provides for weaker sections of the society (includes children) to be protection from all forms of exploitation and social injustices
- Article 47 provides for right to nutrition and standard of living.

However, only the first five are fundamental and hence enforceable against the state.

## **National Policy for children**

National policy for children was created as early as 1974 by the government of India.<sup>10</sup> The policy for the first time emphasized the need for child protection and care policies in India in consonance with the UNDRC. The policy lays down measures regarding healthcare, education, equality of opportunity, protection against neglect, cruelty and exploitation. The policy lists a set of measures that ‘shall’ be adopted by the state for the attainments of the objectives of the policy. Some of the measures are

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<sup>9</sup> INDIA CONST. art. 15, cl. 3.

<sup>10</sup>National Policy for Children Act, 1974, Acts of Parliament, 1974 (India).

*“(xiv) existing laws should be amended so that in all legal disputes between parents or institutions the interest of children are given paramount consideration*

*(xv) In organizing services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realized within the normal family, neighborhood community environment”<sup>11</sup>*

However, the achievement or the implementation of these policies are far from reality in our country. For example, the detainment of under trial prisoners (parents) and refusal of bail despite being a parent are a clear violation of measure number (xiv). The National Policy for children 2013's main focus was on children with disabilities.

### **National Commission for protection of child rights**

National commission for protection of child rights was set up in 2007 under the Commission for Protection of Child rights Act 2005. The commission is a statutory body that works under the control of Ministry of Women & Child development. The core function of the commission is to make sure that all laws made are in consonance with child rights under the constitution, UNCRC. However, the commission has not worked specifically in the field of children of vulnerable families – their rights and issues.

### **Problems with the laws**

It is amply clear from the above illustration of various laws that the rights for children of incarcerated parents is not a complete vacuum. The existing laws are not implemented or are very inefficient. For example, an implementation of proper measures that provide healthcare and nutrition is a scheme that requires ample importance.

There are general guidelines and policies that do provide a basic framework within which specific laws need to be made. However, the issue of child rights of vulnerable families has been neglected and no laws or policies laying down strict measures have been created. The lack of specific laws is the major drawback of the system.

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<sup>11</sup> National Policy for Children 1974, Section 3 (xiv) and (xv)

## D. INTERNATIONAL LAW

The rights of children of incarcerated children are set out in Article 9 of the Convention of the Rights of the child. On the day of 30 September 2011, the Committee on the rights of the child of the held a day's general discussion on the topic "Children of Incarcerated parents". It later then decided to hold an 11 day discussion on the topic. The discussion aims at fostering a deeper understanding of the convention related to the specific topic of child rights of children with imprisoned parents.

The 24<sup>th</sup> Session of the Human Rights Council held a Panel discussion on the "Human rights of children of parents sentenced to the death penalty or executed" in Geneva in 2013. It aimed at the examination of the effects of incarceration of parents on children, promotion of better understanding of the situation and discussing protection and assistance to be given to the children.

## E. LITERATURE REVIEW

### (i) "Impact Study of 'Children of Vulnerable families'" by India Vision Foundation<sup>12</sup>

This report helped in understanding that the issue faced by the children of incarcerated children were bigger in problem as well as in number. It also helped to understand the lack of state responsibility and sensitivity in the said matter.

### (ii) "Forced Separation: Children of Imprisoned Mothers" – a project by Prayas<sup>13</sup>

The report elaborated in the alterations in the daily life of an independent living child and focused on the financial burden – loss of income and dependency, loss of education due to social stigma, but mostly out of necessity and eventually employed in small works including as domestic help, starvation and declining hygiene and nutrition due to the mother's care and

<sup>12</sup> India Vision Foundation, *Impact Study of 'Children of Vulnerable families'* (2016).

<sup>13</sup> Tata Institute of Social Sciences, *Forced Separation: Children of Imprisoned Mothers*, PRAYAS (2002).



poverty, loss of house sometimes – such as landlords evacuation, makeshift houses, illness and inadequate medical care. Some cases of children living with their father or the relatives showed signs of abuse, but the probability here cannot be said to be too high.

**(iii) “Children of Incarcerated Parents” by Professor Neelam Sukramani<sup>14</sup>**

This article gives insights into the children both within and outside of the prison cells. This article is of importance as it is one of the latest to be published on 15 March 2020. It analyzes both the categories of children – ones that stay in the prison with their mothers and the ones that live outside. It gives its readers a picture into the scenario inside the prison and various issues they face – congestion of the prison, crèche and education facilities, health and medical support and other recreational facilities. While taking a look into the situation of the children outside the prison the article highlights the financial burden, the poor self-care, hygiene and medical attention, and Education.

Some of the other significant research articles include:

**(iv) “Women Prisoners and their Dependent Children: A study of Jaipur and Jodhpur Central Jails in Rajasthan”<sup>15</sup>** by Asha Bhandari which provides a regional perspective of the children of prisoners in Rajasthan, the paper is a highlight of empirical studies.

**(v) “Children of women Prisoners: The Invisible Trial”<sup>16</sup>** through Prayas an initiative by Tata Institute of Social Sciences, Mumbai. The article is crucial for an in depth understanding as it provides significant case studies of children.

## F. ANALYSIS OF PRIMARY SOURCES

<sup>14</sup>Sukhramani N, Gupta S. *Children of Incarcerated Parents*, 57(3) Indian Pediatrics, 199-203 (2020).

<sup>15</sup> Asha Bhandari, *Women Prisoners and their Dependent Children: A study of Jaipur and Jodhpur Central Jails in Rajasthan*, Vol. 65, No. 3, SOCIOLOGICAL BULLETIN, 357-379 (2016)

<sup>16</sup>Tata Institute of Social Sciences, *Children of women Prisoners: The Invisible Trial*, PRAYAS (2018).

The various Non-governmental Organizations play a great role in helping the children. The Indian Vision Foundation is an organization that works solely for this cause. They accommodate a huge number of kids in their shelter homes and provide good education and healthcare. They also work at prisons in taking care of the mothers and children residing within the prison facility. There are also regionally based NGOs that have started to recognize and address the problem, such as the Global Network for Equality set up in the Tirunelveli district of Tamil Nadu and slowly spreading to the rest of the state. Other NGOs too come across such children time to time. Mr. Prabhakaran of the Save the Children organization emphasized frequently that the foremost issue here is that the issue lacks recognition, data, statistics, adequate research and state and non-state organizations committed to the protection of these children. The NGO's also frequently release reports which is the only source of data that addresses the issue.

The police officers interviewed were unaware of this situation and merely were following their procedures. One of the officers, Mr. Ramu, Superintendent of Police of Katpadi district in Tamil Nadu, claimed that the record or the remand report submitted by him to the magistrate upon the presenting of accused always contained details regarding the status of the accused, his family and their conditions. Thus, he always made sure that the children were either left with the surety or at the children's home set up by the state government of Tamil Nadu. Such practices must be continued in order to hold the police accountable to the child condition immediately after the parent or parents' incarceration. However, this was not the case with other officers – some of them said that the children were left with the neighbor and were eventually taken away by a relative. This means that the police assume their safety. The lack of accountability has led to the failure of police to make a responsible choice as to the condition of the child. They also explained that there was a rule regarding so, but the Police Act 1861 does not contain provisions for what has to be done with the child during an arrest. Further explanation regarding existing laws is explained in the next section.

## G. POSSIBLE SOLUTIONS AND SUGGESTIONS

Based on the analysis of data and research the following possible suggestions maybe considered:-

1. The group of children with incarcerated parents must first be recognized by the Indian community as well as the state. This is the first and most crucial step that must be taken towards evolving a possible solution for the problem. Without the recognition of a problem no solutions can be arrived at. Secondly, the immediate need for addressing the issue must be emphasized. It is an emergency a significant population of India are children<sup>17</sup>. Neglecting the children is neglected a huge part of the Indian population. Apart from the measures and strict rules that need to be implemented the recognition of the children must aim to eliminate discrimination and provide equal opportunity and participation of the children in the society. Recognition also plays a great role in reducing the social stigma attached and unburdening children of mental pressure.
2. Currently there are no data or statistics in the field. The only data and research available are the reports by various NGO's and activists. However, these reports are either regional or limited in their scope. A nation-wide recognition of the problem and a statistical and methodological analysis is crucial towards devising a solution for the problem. Without a doubt the number of prisoners with children is immense. However, only a specific collection of data and research with children of incarcerated parents as a target group can give us a true picture of the situation. The responsibility falls on the government of India to conduct the survey and make an analysis of the situation as a furtherance of child rights in India.
3. It is suggested that given the wide scope and intensity of situation India may require a separate legislation to address the issue. The study of child laws in United States show that the effect of parental imprisonment must not be taken lightly. The act of parental arrest is a single incident that may shape the entire life of a child who is the future of India. The neglect of children at this stage may lead to a critical situation of poor growth and development in India. Apart from the economic loss, the child is also a citizen of India and child rights is a part of human rights. Hence the child has a basic right to education, good food, healthy living including a conducive environment and freedom from mental and physical agony.

Following are a few suggestions that may be incorporated into the legislation for the protection of children of incarcerated parents: -

- (i) The legislation must specifically address each category of children that is - Children below 6 years old who stay with their mothers in the prison or are born; Children above 6 years of age and who stay outside the prison; Children born in the prison but above 6 years of age and stay outside the prison.
- (ii) The legislation must make strictly to hold the police officer in charge of the arrest responsible for the deposition of the children into safe hands.
- (iii) Alternatively the rule may require the police officer to produce the child/children before the magistrate who would then make a responsible decision regarding the child after consultation with the parents and ensure the disposition of the child at the right hands.
- (iv) The legislation may direct the state governments to set up institutions under the Ministry of women and child development for the protection and care for these children and ensure its proper functioning.
- (v) The legislation may alternatively appoint clinicians to be called at the scene of arrest who would take care of the child.
- (vi) The legislation must direct the state government to keep a registry of children with parents in prison and the institution set up must keep a note of their conditions through visits occasionally (regardless of whether the child stays alone or with relatives)
- (vii) The legislation must make rules to ensure that the prisoner gets his/her child's custody upon release.

4. The state should be made more child sensitive. The legislature that must make sure that the laws made by them are child sensitive. For example, while passing rules for regulation of prisons, police and prisoners, it must make sure that it keeps in mind the interaction of children with the system. The legislature must also consider amendments to make laws that are less strenuous on child – they can either reduce the strict procedural requirements or can appoint help for children.

The executive specifically police whose interaction with the public is child sensitive. This includes reducing procedural requirements such as filling up forms, security checks and carrying out the investigation of the particular case by keeping in mind that the child is involved. It is of crucial importance, that the police are trained to meet situations of arrest of parents, take care and provide support to children at the scene of arrest. It is stressed repeatedly that the major point of impact on the children is the scene of the arrest. The visual scene of arrest especially in front of their community or society, the sudden fear and feeling of loneliness and embarrassment has a huge impact on the children. The police must be trained to handle this situation with patience and give support and assurance of safety for the child. It is while making the arrest that the police must make sure to contact the relative, childcare home or an NGO and make sure that the child is delivered into safe hands. Of course, it is also important to inform the prisoner regarding the whereabouts of their children. Hence the police must have adequate training to carry out the steps in a child sensitive fashion.

Lastly, the judiciary must be made more child sensitive. The penalties or sentencing of the prisoner must be made keeping in mind the existence and the living conditions of the children. Further in cases of bail the court must consider the children and their living conditions and ensure speedy and less-costly decisions. The frequency of interaction of the child with the criminal system must be reduced to however extent possible. This may be made sure through speedy disposal of petty cases.

5. The non-state entities such as NGOs play a great role in providing care and basic facilities to the children. Some NGOs such as India Vision Foundation makes frequent visits to the child's home to ensure safety against any kind of abuse or exploitation. The state institutions and authorities must work with these NGOs and compliment their work. They may be done by providing financial support or by simply coordinating with them to keep track of the situation. The police also need to constantly interact with the organizations and report situations of arrest with an unattended child on the scene. In case of no surety the organizations can accommodate the child.