Ensuring Legal Safeguards for Children of Incarcerated Parents: A Contemporary Comparative Analysis

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ABSTRACT

Children affected by parental imprisonment have their rights to care, education, health, protection and family relationships. These rights vary depending on whether the children are living with a mother in prison or outside the prison while their parent is in prison. This research paper examines the legal protections available to both groups, with India as the primary jurisdiction and nine selected comparative jurisdictions, including Australia, Canada, China, England and Wales, France, Japan, Singapore, Sweden and Switzerland. The selection of these jurisdictions is made systematically, based on their varied approaches such as residence, separation, family visiting, review and alternative measures, rather than ranking national legal systems. This research paper adopts a doctrinal and comparative research design, based on constitutional and statutory provisions, judicial pronouncements, official administrative policy and international standards. A central difficulty is allocating institutional responsibility for the child. The analysis thus goes beyond limitations on residence to investigate early detection of dependent children, individual care plans, sound decision making about residence and separation, provision of legal help, safety and coordination of services until parents are released from prison. The research paper also explores barriers to implementation, resource needs and stakeholder responsibilities, along with the possible effects of the suggested improvements. The research paper concludes that effective protection demands a sustained, accountable and reviewable response to the particular situation of each child, not a limited welfare response to young children residing in prison with their parents.

Keywords: incarceration, children's rights, best interests of the child, prison administration, family contact child protection, India.

1. INTRODUCTION

Parental incarceration is not merely a matter of criminal justice, it is also a significant child rights concern with far reaching social and legal implications. If a parent gets arrested, detained or imprisoned the children tend to be suddenly confronted with changes in their daily lives, including care arrangements, education, emotional security and support services. This happens through no fault of the child, yet criminal justice practice often overlooks their particular needs. Children of those who are imprisoned form an invisible population whom criminal justice procedures do not reach and whose welfare is at risk because of the lack of coordination between the relevant institutions.

As to legal status, such children's rights are independent of their parents' rights and obligations. Although family ties are important for a child's proper development, decisions about residence, separation, contact and substitute care must also consider safety, dignity, developmental needs and the child's best interests. Neither separation from an incarcerated parent nor non-co-residence in a custodial setting is always appropriate.

This research explores the legal measures that can be taken to protect children of incarcerated parents through a comparative analysis of India and other selected jurisdictions. It achieves this by evaluating constitutional provisions, laws, judicial measures, administrative approaches and international norms to identify institutional weaknesses. The research proceeds on the premise that effective protection must extend beyond prison walls and ensure continuous support, accountability and review throughout every stage of parental custody.

2. RESEARCH OBJECTIVES OF THE STUDY

The study has four objectives,

- To clarify the rights of children affected by parental incarceration,
- To examine the interaction between Indian prison administration and child protection law,
- To compare selected procedures for residence, contact and separation and
- To develop recommendations that assign responsibility for implementation.

The central research question is how criminal justice and welfare institutions can protect a child throughout the period of parental custody without making assistance dependent on residence inside a prison.

3. RESEARCH METHODOLOGY

This study adopts a **doctrinal and comparative methodology**. The analysis draws on constitutional provisions, legislation the Supreme Court's decision in ***R.D. Upadhyay* v. *State of A.P.***[1] international instruments and selected official administrative policies. India is treated as the principal jurisdiction. The comparative jurisdictions are selected on four stated criteria, (i) availability of identifiable legal or official policy material, (ii) variation in approaches to children residing with incarcerated parents, (iii) variation in admission, review, separation and family contact procedures and (iv) practical relevance of institutional arrangements that may inform Indian policy without assuming that foreign rules can be transplanted directly. The study is therefore a structured comparison of selected models, not an exhaustive survey or ranking of countries.

4. LIMITATIONS OF THE STUDY

The study has important methodological limitations. It includes no interviews with children, parents, prison officials, police officers, judges, or child protection personnel, no prison inspections, no original quantitative dataset, and no independent evaluation of programme outcomes. Consequently, it cannot measure the prevalence of harm, determine causal effects of parental incarceration or establish that one jurisdiction produces better developmental outcomes than another. The legal and policy materials show what institutions are required or authorised to do. Still they do not by themselves establish the consistency, quality or accessibility of implementation in every locality. Comparative observations are therefore used to identify institutional design options rather than to make empirical claims of superiority. The absence of empirical evidence also limits conclusions concerning cost, uptake, satisfaction and long term child outcomes. Future research should supplement this doctrinal study with child sensitive interviews, administrative data, prison level audits and evaluation of pilot programmes, while maintaining strict safeguards for privacy and informed participation.

5. RESEARCH SCOPE OF THE STUDY

The research examines the legal and social frameworks addressing the challenges faced by children of incarcerated parents. It evaluates Indian and selected comparative perspectives, highlighting systemic gaps, judicial interpretations and policy recommendations. By focusing on rehabilitation and child welfare the research proposes sustainable reforms to ensure these children's rights and well being.

6. DIFFERENTIATING THE CHILDREN ELIGIBLE FOR THE STUDY

6.1 Children living with a mother who is in prison

This category of children requires proper accommodation, nutritious diet, health care, education, play and protection from the prison environment. A child's presence in prison must not turn the child into a prisoner. Arrangements must recognise that these children will eventually leave the prison and must therefore provide for access to the outside world, family relationships and preparation for departure.

[1] R.D. Upadhyay v. State of Andhra Pradesh, AIR 2006 SC 1946.

6.2 Children not living in prison

Children whose mother, father or both parents are imprisoned may live with their other parent, relatives, foster parents or in a children's home. Some stay in the same secure environment while others lose their only reliable caregiver. Relevant questions concern the guardian's authority and security, available resources, continuity of education and the possibility of contact. Support must be provided according to need and it should not be assumed that all affected children must be removed from their families. Special care is required where both parents are incarcerated where the arrested parent was the only caregiver where the child has a disability or where no safe relative is available to care for the child. Burdens may also be gendered, girls may face heavier household and schooling pressures, boys may face pressure to earn and children of any gender may experience emotional distress.

7. INTERNATIONAL PRINCIPLES

The Convention on the Rights of the Child provides the central treaty framework. Art. 2 addres discrimination associated with a parent's status, Art. 3 makes the child's best interests a primary consideration and Art. 12 protects participation in decisions affecting the child. Arts. 9 and 20 are relevant to separation, contact and alternative care. Health, education and an adequate standard of living are addressed in Arts. 24, 27 and 28. These provisions support a child focused assessment rather than presuming that a parent's custodial status determines the child's entitlements.[2] The Bangkok Rules provide more specific international standards for women prisoners and non custodial measures. Rules 49 to 52 concern children living in prison with their mothers, including decisions on their stay and on separation whereas Rule 64 provided that non custodial sentences should be preferred where possible and appropriate for pregnant women and/of women with dependent children, taking into account the gravity of the offence, any continuing danger and the best interests of the child.[3]

In institutional terms these principles require decision makers to identify the affected child, assess realistic alternatives to the proposed course of action, record the reasons for the course adopted and provide a process of review.

8. LEGAL AND SOCIAL CHALLENGES

In an effort to solve the problems experienced by children whose parents are imprisoned, it is necessary first to analyse the principal legal and social problems created by parental incarceration. These problems, which can have lasting negative effects on children's lives, are described below,

- **Insufficient Information,** Children whose parents are imprisoned are among the most vulnerable and neglected groups. Despite the rising number of incarcerations, little information exists about these children, which makes it hard to estimate their needs and design interventions. Many criminal justice systems collect little information about prisoners' families, so children affected by a parent's imprisonment often cannot be identified at the time of arrest or sentencing.[4]

- **Inadequate Judicial Attention,** Courts often do not take into account the caregiving responsibilities of those being sentenced. Sentencing decisions may disregard the impact of incarceration on families, leading to inadequate support during and after a parent's imprisonment. Additionally, prisons are frequently located in remote areas and lack facilities suitable for children visiting their parents, compounding the difficulty of maintaining parent child relationships.[5]

- **Lack of Education and Healthcare,** Children who reside in prison or whose parents are incarcerated may not receive adequate nutrition, health care and education. Some prisons teach children of different

[2] UNCRC arts. 2, 3, 9, 12, 20, 24, 27-28, Nov. 20, 1989, 1577 U.N.T.S. 3, https,//www.unicef.org/child-/convention-text.
[3] United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), G.A. Res. 65/229, Annex, rr. 49-52, 64 (Dec. 21, 2010).
[4] Ministry of Home Affairs, NCRB*, Prison Statistics India 2016* (Gov't of India 2019).

[5] Eric Martin, Hidden Consequences, *The Impact of Incarceration on Dependent Children* (Nat'l Inst. of Just. 2017).

ages together informally, which denies them adequate learning opportunities. Health care for children is often limited or absent, especially for those who need mental health support because of trauma.[6]

- **Financial Barriers,** Cost is a Major obstacle to children visiting incarcerated parents. Visits involve considerable expense and the visiting rooms in some prisons are poorly designed for children.[7]

- **Mental and Behavioural Effect,** Parental incarceration may lead to mental and behavioural difficulties among children. These may include sadness, fearfulness and difficulty concentrating and, in some cases, more serious problems such as aggression or substance misuse. Children may also feel guilty about their parent's punishment, which can worsen their mental state. These outcomes are not inevitable, parental incarceration should not be read as a predictor that a child will offend and stable caregiving and support can protect against adverse outcomes.[8]

- **Social Stigma,** Children who have parents in prison often suffer from social stigma and discrimination. They may feel isolated, ashamed or alienated due to their parent's incarceration. Relationships with extended family members can also suffer, further limiting their support network. The stigma can harm their self esteem and limit their access to opportunities for personal growth and development[9].

9. ADDRESSING THE CHALLENGES

Efforts to support children of incarcerated parents must involve a coordinated approach, including improved data collection, greater consideration of family responsibilities in judicial processes and enhanced access to education, healthcare and psychological support. Reducing social stigma through awareness campaigns and community programs is also essential to foster a supportive environment for these children. Recognising their unique challenges and prioritising their well being is critical to breaking the cycle of disadvantage and ensuring a brighter future for them.

10. THE INDIAN LEGAL FRAMEWORK

Constitutional Protection

The Arts. 14 and 21 provide the foundation for equality, dignity and personal liberty. The Art. 15(3) permits special provision for women and children. Art. 21A establishes free and compulsory education for children aged six to fourteen. Together these provision support the proposition that a parent's imprisonment does not extinguish the child's independent constitutional protection. The Directive Principles reinforce the State's welfare responsibilities. Arts. 39(e) and 39(f) concern protection against exploitation and conditions for healthy development. Art. 45 deals with early childhood care and education up to the age of 6 while Art. 47 relates to nutrition and public health. Art. 39A provides for equal justice and free legal aid. These Directive Principles must be distinguished from justiciable fundamental rights. For example, Art. 45 does not itself confer the right to education guaranteed by Art. 21A.[10]

Art. 23 prohibits trafficking and forced labour and Art. 24 prohibits the employment of children below fourteen years in factories, mines and other hazardous work. The provisions would be relevant in situations where deprivation of care or loss of earning capacity of a parent leads to trafficking or forced labour of a child. Art. 22 deals with arrest and detention. It should not be used to treat children staying with their parents as accused persons. Their care and protection require a separate legal consideration.

[6] Eric Martin, Hidden Consequences, *The Impact of Incarceration on Dependent Children* (Nat'l Inst. of Just. 2017).

[7] *Ibid.*

[8] *Ibid*.

[9] *Ibid*.

[10] Indian Const. arts. 14, 15(3), 21, 21A, 22-24, 39, 39A, 45, 47.

Judicial Directions for Children Residing in Prison

In ***R.D. Upadhyay v. State of A.P.***[11], decided on 13 April 2006 the Supreme Court issued directions concerning children living with imprisoned mothers. The Court made clear that these children were not to be treated as undertrials or convicts. Its directions addressed food, clothing, accommodation, medical care, education and recreation, permitted children to remain with their mothers until 6 years of age and required arrangements for care after that age. The judgment also addressed daycare, nurseries and continuing contact after placement outside prison. The decision remains central to the subject, but its focus must be understood accurately. A 6 year threshold, is a direction concerning co residence with imprisoned mothers, not a general authority to confine children. Nor does this threshold define the entire population needing support, older children and children of imprisoned fathers require protection through other legal and welfare mechanisms.

A Child Protection and Alternative Care

The Juvenile Justice (Care and Protection of Children) Act 2015 as amended, provides the principal statutory framework for children in need of care and protection. Parental incarceration does not automatically place every child in that category. The statutory criteria must be considered in light of the child's actual circumstances, including whether safe and adequate care is available. Where the Act applies the Child Welfare Committee is the competent body for the relevant care and protection proceedings. Its functions must be distinguished from those of the Juvenile Justice Board, which deals with children alleged or found to conflict with the law. Sections 27-30 cover the Committee and its functions, Sections 36-40 address enquiry, orders, rehabilitation and restoration and Sections 44-45 cover foster care and sponsorship. These mechanisms should be considered based on legal eligibility and individual need.[12]

Placement decisions should examine the suitability of available relatives the child's relationships and wishes the need for support and the risks of the proposed arrangement. Kinship care is not necessarily safe merely because the caregiver is related to the child. Equally, economic hardship should not be treated as proof of parental or family unfitness without examining available assistance. Institutional care should not become the routine response to imprisonment.

Education and Protection from Exploitation

The Right of Children, to Free and Compulsory Education Act 2009 gives statutory effect to the education entitlement for children from aged 6 to 14 years. A practical response to parental detention, should address admission, attendance, school transfers and access to learning materials. Pre-school support and the educational needs of older adolescents require attention through the relevant education and welfare arrangements.[13] The Protection of Children from Sexual Offences (POCSO) Act 2012 applies where sexual offences against children are involved, it does not replace the general care and protection framework.[14] The Child and Adolescent Labour (Prohibition and Regulation) Act 1986, as amended,[15] and the Prohibition of Child Marriage Act 2006, address distinct risks of exploitation. Their application depends on the particular harm or risk affecting the child.[16]

Prison Policy and Union State Responsibility

Prison administration is primarily a state responsibility. The Ministry of Home Affairs describes the Model Prison Manual-2016 and the Model Prisons and Correctional Services Act 2023 as instruments supplied to States and Union Territories for adoption or enactment. They must not be described as a single automatically operative prison code throughout India. The applicable State law and rules, constitutional obligations and binding judicial directions must be identified separately.[17] This distinction has practical consequences.

[11] R.D. Upadhyay, supra note 2, https,//indiankanoon.org/doc/1258611/.
[12] Juvenile Justice (Care and Protection of Children) Act 2015, No. 2 of 2016, §§ 2(14), 3, 27-30, 36-40, 44-45 (India).
[13] Right of Children to Free and Compulsory Education Act 2009, No. 35 of 2009 (India).
[14] Protection of Children from Sexual Offences Act 2012, No. 32 of 2012 (India).
[15] Child and Adolescent Labour (Prohibition and Regulation) Act 1986, No. 61 of 1986 (India).
[16] Prohibition of Child Marriage Act 2006 No. 6 of 2007 (India).
[17] Ministry of Home Affairs, Gov't of India, Prison Reforms (PR Section), *Model Prison Manual, 2016 and Model Prisons and Correctional Services Act 2023,* https,//www.mha.gov.in/en/commoncontent/prison-reforms-pr-section.

A recommendation to improve conditions should specify which authority must amend a rule, issue an administrative direction, provide funds or deliver a service. Compliance with a judicial direction cannot be treated as optional simply because a model administrative instrument has not been adopted. Conversely, a national model does not prove that every prison has the required facilities.

11. COMPARATIVE ANALYSIS AND SYSTEMATIC SELECTION OF JURISDICTIONS

India, remains the principal jurisdiction, while Australia, Canada, China, England & Wales, France, Japan, Singapore, Sweden and Switzerland are selected. They illustrate distinct institutional approaches to residence, separation, review, family contact and non custodial responses. The comparison is not intended to suggest that any jurisdiction provides a universally superior model. Instead the analysis identifies specific procedural features that India may consider after testing them against Indian constitutional requirements, State prison rules, child protection law and available administrative capacity.[18]

For consistency, every jurisdiction discussed in the narrative is included in the summary table at the end of the comparative (Table 1). The table should be read together with the detailed discussion, age or residence limits are only one element of protection while admission assessment, written reasons, review, transition planning, child welfare involvement and continuity of care are equally relevant.[19]

12. COMPARATIVE ANALYSIS

Australia[20]

In Australia the rules for children living with incarcerated mothers vary by state and territory, but all aim to prioritise the children's well being. Guidelines generally ensure the child's best interests are met, with accommodations designed to be as domestic as possible. In some regions, like the Australian Capital Territory children under four can live with their mothers in dedicated facilities. States such as New South-Wales and Queensland offer various residency programs, with specific age limits for children to stay with their mothers. In some locations, such as South Australia and Victoria, specific units for mothers and babies exist while Tasmania and Western Australia also allow children to live with their mothers under certain conditions.

Canada[21]

Correctional Service Canada's Commissioner's Directive 768 provides a detailed framework for the federal Institutional Mother Child Program. Full time residency in a living unit ends at the fifth birthday, part time residency in a living unit ends at the seventh. A separate private family visit unit option has a different age criterion. Participation depends on eligibility, assessment capacity, rather than age alone. The directive identifie a coordinator, provides for child welfare input, written decisions and redress, periodic review and transition planning. These procedure offer useful design features for India an identified contact person and a documented handover can make responsibility clearer. However, the programme's existence does not guarantee universal access or successful outcomes for every participants.

China[22]

Chinese law does not ordinarily provide for children to live with their incarcerated mothers. Instead the Criminal Procedure Law allows a limited exception, a pregnant woman or a woman breastfeeding her own infant may be permitted to serve her sentence temporarily outside prison so she can care for her child. This provision recognises

[18] Correctional Service Canada*, Commissioner's Directive 768, Institutional Mother-Child Program* pp. 13-16, 19-20, 37-38 (Jan. 24, 2020), https,//www.canada.ca/en/correctional-service/corporate/acts-regulations-policy/commissioners-directives/768.html.
[19] Government of the United Kingdom, *Prison Life, Pregnancy and Childcare in Prison*, https,//www.gov.uk/life-in-prison/pregnancy-and-childcare-in-prison.
[20] Australian Institute of Criminology, Standard Guidelines for Corrections in Australia (2012).
[21] *Supra note* 19.
[22] Criminal Procedure Law of the People's Republic of China, art. 214 (China), https,//english.court.gov.cn/2015-07/17/c_1170051_21.htm.

the needs of mother and child in the early period of the child's life, but it does not address arrangements for children living with their mothers.

England and Wales[23]

The official guidance refers to mother and baby units for children normally up to 18 months. An admissions board assesses whether admission is in the child's interests, refusal can be appealed. Where the mother's sentence will extend beyond the child's eighteenth month, planning for separation begins when she enters prison. The absence of a place necessitates care arrangements outside prison. The comparison here concerns the admission and departure processes. Together the decision point, appeal process and advance planning offer a framework for analysis that could be used to evaluate how well a prison performs. A shorter residence requirement does not in itself show improved protection, whatever lies behind the decision must also be judged.

France[24]

Under French law, a mother may keep her child with her in prison until the child's eighteenth month. Then a commission, bringing together lawyers, social workers, educators, doctors and other experts, may grant a further 18 month extension if the mother applies. Few women are affected, however, only 16 of the 1, 794 cells available for women are for mothers and their children.

Japan[25]

In Japan, incarcerated mothers are allowed to care for their infants in prison until the child turns 1 year old, if they choose to do so. This period can be extended for up to six additional months if the mother requests it and the prison authorities determine that it is necessary for the well being of either the mother or the infant. During this time the infants receive medical care provided by the prison.

Singapore[26]

In Singapore the Prisons Regulations allow children under the age of three to stay in prison with their mothers. Once a child turns three the prison's medical officer evaluates whether it is appropriate for the child to remain. With special permission from the Minister for Home Affairs, a child may stay with their mother in prison beyond the age of three, up to the age of four. If no relatives are available to care for the child the Superintendent must seek guidance from the Commissioner of Prisons on the next steps.

Sweden[27]

Swedish law permits infants to stay with their incarcerated parents if deemed in the child's best interest, subject to approval from the Social Services Committee. Introduced in 2011, this provision applies equally to mothers and fathers and extends the definition of "infant" to include children over one year old. However, it is primarily intended for short term situations, such as brief prison sentences or impending deportation. Alternative care, such as foster placement, is used if parents cannot provide care. Sweden also frequently employs noncustodial sentences like probation or electronic monitoring and pregnant inmates can defer sentences to ensure proper prenatal and postnatal care.

- The comparison supports procedural learning rather than importing a foreign age limit. Transferable features include individual assessment, written reasons, a named coordinating officer, periodic review, child welfare participation, an appeal or redress route, advance separation planning and documented

[23] Government of the United Kingdom, supra note 20.
[24] Ministère de la Justice, France, *La prise en charge en détention*, https,//www.justice.gouv.fr/justice-france/prise-charge-personnes-condamnees-ou-prevenues/prise-charge-detention.
[25] *Pregnant Japan Prisoners Stay Shackled*, Newborns Separated, Rights Group, NDTV (Jan. 2024), https,//www.ndtv.com/world-news/pregnant-japan-prisoners-stay-shackled-newborns-separated-rights-group-4572567.
[26] Shreehari Paliath & Preety Acharya, *Living with Imprisoned Mothers, Children Struggle for Normal Childhood,* IndiaSpend (Oct. 7, 2020), https,//www.indiaspend.com/8-women-prisoners-children-live-with-them-heres-how-the-system-fails-them.
[27] Government of Sweden, Sweden's Fifth Periodic Report to the UN Committee on the Rights of the Child. pp. 209-213 (2012).

continuity of care. Canada illustrates coordinator and transition procedures, England and Wales illustrate an admissions decision, appeal and advance separation planning, Australia illustrates variation across sub national prison systems, China illustrates the use of temporary service outside prison for certain pregnant or breastfeeding prisoners and the remaining jurisdictions illustrate differing residence or alternative care approaches.

These features should be treated as design options, not evidence that any one model has better child outcomes. Any Indian adaptation should be evaluated through district level pilots and child centred outcome measures.

Switzerland[28]

In Switzerland the legal framework provides for tailored prison arrangements for expectant mothers and those with young children, emphasising the child's welfare. However the law lacks specific guidelines on what constitutes the child's best interests or the nature of these accommodations. Children generally remain with their mothers in prison until around three years of age, as this is considered the developmental threshold where broader social interaction becomes vital.[29] Swiss cantons independently manage prisons conditions for mothers, resulting in varied resources, including specialised units and access to daycare.

The comparison supports procedural learning rather than importing a foreign age limit. Transferable feature include individual assessment, written reasons, a named coordinating officer, periodic review, child welfare participation, an appeal or redress route, advance separation planning and documented continuity of care. Canada illustrates coordinator and transition procedures, England and Wales illustrate an admissions decision, appeal and advance separation planning, Australia illustrates variation across sub national prison systems, China illustrates the temporary service of sentences outside prison for certain pregnant or breastfeeding prisoners and the remaining jurisdictions illustrate differing residence or alternative care approaches.

These features should be treated as design options not evidence that any one model has better child outcomes. Any Indian-adaptation should be evaluated through district level pilots and child centred outcome measures. Globally, practices differ, reflecting diverse cultural, legal and developmental priorities regarding incarcerated parents and their children.

Table 1, Comparative Summary of Selected Jurisdictions

Jurisdiction	Residence/care framework	Procedural or institutional feature relevant to India
India	Children may reside with imprisoned mothers up to 6 years under the Supreme Court directions discussed above, children outside prison fall under ordinary care and protection mechanisms where legally applicable.	Judicially defined care standards, post separation arrangements, Child Welfare Committee involvement where the Juvenile Justice Act applies and State prison administration.
Australia	Rules vary by State and Territory, mother and child arrangements and age limits differ across jurisdictions.	Subnational variation shows the need for clear minimum standards, assessment procedures and defined responsibilities.
Canada	Full time residency in the Institutional Mother Child Program ends at the fifth birthday, part time living unit residency ends at the seventh, subject to eligibility, assessment and capacity.	Named coordinator, child welfare input, written decisions, review, redress and transition planning.
China	Children do not ordinarily reside with incarcerated mothers, certain pregnant or breastfeeding prisoners may be permitted to serve a sentence temporarily outside prison.	Alternative execution arrangement can reduce the need for custodial separation in qualifying cases, subject to legal conditions and supervision.

[28] Swiss Criminal Code art. 80(1)(c) (Switz.).
[29] Bundesgericht [BGer] [Federal Supreme Court] June 12, 2020, BGE 146 IV 267, 274 (Switz.).

England and Wales	Mother and baby units ordinarily accommodate children up to eighteen months, admission is assessed according to the child's interests.	Admissions boards, appeal mechanisms and early separation planning, arrangements are required when a place is unavailable.
France	Mother and child accommodation ordinarily up to eighteen months, with a possible extension through a professional review mechanism.	Specialised accommodation and review beyond the ordinary residence period, separation planning remains necessary.
Japan	Infant residence with incarcerated mothers up to one year, with a possible extension in specified circumstances.	Medical care and an individualised assessment of whether continued residence serves maternal or infant welfare.
Singapore	Residence of young children with their mothers subject to institutional assessment and exceptional permission beyond the ordinary age limit.	The comparative lesson is the need for an explicit best interests assessment, basic necessities, healthcare and alternative care where residence is not approved.
Sweden	Infants may stay with an incarcerated parent where this is considered in the child's best interests, with Social Services Committee involvement, non custodial measures are also used.	Best interests assessment, social services involvement and non custodial options can reduce unnecessary disruption of care.
Switzerland	Tailored arrangements for expectant mothers and mothers with young children, with significant cantonal variation in resources and facilities.	Local variation highlights the importance of minimum standards, specialised facilities where needed and clear accountability for service quality.

13. Lessons For India

India's response must operate within its constitutional framework, judicial directions, State prison rules and district child protection institutions. Transferable features include individual assessment, reasons for decisions, periodic review and continuity of care. An assessment of success should examine childrens lived conditions, not simply whether a programme has been formally established.

14. Implementation Challenges, Resource And Institutional Roles

The principal implementation barriers are fragmented institutional responsibility, incomplete information at the point of arrest, differences among State prison systems, limited child protection capacity, travel and communication costs, shortage of trained personnel, privacy risks and the possibility that additional recording requirements become paperwork without producing services. A further barrier is the assumption that a child accompanying a mother in prison represents the whole affected population. Older children, children of imprisoned fathers, children living with relatives and children whose sole caregiver is detained may remain invisible. Reform should therefore begin with a practical referral pathway rather than creating a large public register.

The resource requirements should be proportionate and should include trained prison welfare staff, designated child protection contacts, referral and case management capacity, transport or communication support. The

justified, child friendly visiting spaces, health and psychosocial referral services, secure record systems and periodic independent review. The responsible institution should be clearly identified, police should identify immediate dependent child risks at arrest. The courts and legal aid lawyers should place reliable caregiving information before the court where legally relevant, prison administration should maintain welfare contacts, safe visits and transition information. District Child Protection Units should coordinate community services, Child Welfare Committees should exercise their statutory functions where the Juvenile Justice framework applies, schools and health services should protect continuity without unnecessary disclosure and District Legal Services Authorities should facilitate legal assistance and complaints. No recommendation should depend on an institution exercising a power that it does not legally possess.

15. RISKS REQUIRING AN INSTITUTIONAL RESPONSE

Incomplete information is an early obstacle, thus a record of prisoners accompanied by children cannot measure the wider population living outside prison. Without a safe process for asking about dependents and checking immediate care arrangements, authorities may miss children who need urgent help. Information gathering must serve a defined welfare purpose and avoid creating a public register that exposes children to stigma. Family contact can also be difficult to sustain. Distance, travel costs, unsuitable visiting hours and inaccessible facilities may make a formally available visit impractical. Where safe and wanted by the child, contact arrangements should take account of schooling, disability the accompanying caregiver and the child's emotional readiness. Remote communication can supplement contact but its value depends on the child's age, access and preferences.

Emotional responses vary. A child may experience grief, anger, anxiety, relief, confusion or several of these together. Parental incarceration should not be treated as evidence that a child will develop criminal behaviour. Support should assess individual needs and protective relationships without assigning a presumed behavioural trajectory. Counselling must be accessible and appropriate to the child's age and language. The point of separation can create a second disruption while parental release may introduce new uncertainty about housing, employment and caregiving. A completed prison sentence does not automatically resolve these matters. Planning should continue until responsibility has been accepted by the receiving caregiver or service and the child's immediate needs have been addressed.

16. RECOMMENDATIONS FOR IMPLEMENTATION IN INDIA

Identify dependent children when custody begins

Police and prison Dept. admission procedures should include a confidential enquiry about dependent children their location, immediate caregiver and urgent needs. A standardised screening form should identify whether a child is alone, lacks essential medication, food or supervision or is at immediate risk. The principal barrier is inconsistent identification, the minimum resource requirement is staff training and a secure referral protocol. The process should collect only information necessary for a lawful welfare purpose and should not create a public register that exposes children to stigma.

Create an individual care plan and assign responsibility

Every child requiring coordinated support should have a proportionate care plan. The District Child Protection Unit should coordinate community services, with Child Welfare Committee orders where required by law. A named prison welfare contact should keep in touch with the family and the agencies involved. The plan should set out the identified caregiver, educational and health needs, arrangements for contact livelihood support, a review date and the person responsible if the parent is moved or released. Implementation is primarily about clarity of case ownership rather than the creation of a new institution.

Make the child visible in judicial decisions

Legal aid lawyers should place factual, reliable information about dependent children before courts deciding on detention, bail or sentence where relevant. Courts should weigh the consequences for caregiving within the

legal framework under which they decide and record how those considerations were weighed. Parenthood should not operate as an automatic ground for release, but the child's living circumstances should not be ignored. Any community based intervention must be calibrated to the powers available in law.

Provide suitable services for children residing in prison

State prison departments should assess accommodation against the binding judicial directions and applicable rules while health, early childhood and education departments remain responsible for their respective services. Budgets should include funding for trained childcare providers, nutrition, sanitation, safety and play, health services, learning support and access to community resources. Inspections should assess the adequacy and quality of services provided, not whether a crèche or mother and child room exists.

Plan for separation before the residence limit is reached

The plan of separation should be made well before the residence limit and include identification of the potential receiving caregiver and a plan for introductions, transfer of health and education records and counting contact between mother and child. Prepare the child and mother with an appropriate explanation. If removal is necessary due to danger, it should proceed and be followed immediately by legal processing and review.

Support children and caregivers in the community

District authorities should help eligible children and their families gain access to education, nutrition, care and other social protection programmes under existing schemes. Schools should designate a trusted source of support, address barriers to enrolment or learning and respond to bullying without revealing the reasons for a child's family member's incarceration. Providers of health services should screen for distress and developmental issues and provide referrals. Caregivers may need assistance with documentation and legal authority. Existing schemes should be used before establishing parallel systems.

Safeguard safe contact and visits

Prisons should adopt consistent visiting policies, transparent procedures and accessible designated children's spaces. Support for travel or communication should be targeted, based on assessed need and funding. Restrictions should be proportionate, lawful, imposed in response to a concrete problem and subject to regular review. Children's views should be elicited in a sensitive manner and no child should be compelled into contact they fear. Service standards should be measured using anonymised aggregate data.

Ensure access to justice and independent complaint mechanism

District Legal Services Authorities should provide advice and representation when children or caregivers need support with care proceedings, identification and access to entitlements. Complaints must be accessible outside the immediate prison system through child rights and legal channels. Children need straightforward information about how to complain and help doing so without fear of penalisation. Complaints procedures should specify where to report the time for response and who is responsible.

17. PILOT AND EVALUATION

Start with a district level review of current procedures then pilot a referral and care planning process. A pilot should include baseline indicators, required training, referral completion, time to obtain care, school stability, health referrals, contacts made, placements maintained and unresolved complaints. Roll out should then follow, contingent on evidence that referrals lead to services and that children and carers can navigate the system. A programme that refers more children but does nothing to improve their safety, stability or access to services is not a success.

18. POTENTIAL IMPACT OF THE PROPOSED RECOMMENDATIONS

The proposed framework, if implemented, could produce four potential impacts. *First*, early recognition of

needs and individualised care planning reduce the number of children whose needs or whose parents' caregiving responsibilities go unidentified after a parent is detained. *Second*, tracking review and transition processes could reduce avoidable disruption. When a child reaches the residence threshold or a parent is moved or released. *Third* the potential for safer, more predictable contact could mean greater continuity of relationships where this is in the interests of the child. *Fourth*, better allocation of responsibility could make failures easier to trace and strengthen institutional accountability. These are potential impacts, not findings of the present doctrinal study.

Comparative systems offer reference models for testing these hypotheses. Canada has an institutional mother child programme of coordination, review, child welfare participation and transition planning while England and Wales have an admissions route, appeal process and separation planning in advance. These features may be adaptable to India for a pilot project, although existence of a written procedure does not show that it is effective.

District pilots in India would therefore assess whether the procedures result in children receiving services on time and in children and caregivers having a voice and a stable environment. These outputs should be distinguished from child outcomes and identifiable information should be avoided wherever possible.

19. CONCLUSION

The lives of children with incarcerated parents are affected far beyond the penal sphere. When a parent is in custody, children regularly experience disruptive changes in living circumstances, security, schooling and social integration. Although they bear no responsibility for their parent's offence, they are not insulated from its consequences, which may impede their growth and development and, consequently their full exercise of their rights. Their rights should therefore be protected independently of their parents' rights and an adequate judicial and institutional response should be created to secure those safeguards. This study shows that India has constitutional, legislative and judicial protections to safeguard the interests of children at risk. Yet, delayed or uneven implementation and divided, uncoordinated responsibilities weaken the effectiveness of these protections. A comparative analysis of the selected jurisdictions suggests that substantial protection depends less on custodial placements and more on state guided, monitored and supported decision making processes and on clearly defined institutional roles. An effective legal framework for vulnerable children must then, prevent a child who has a parent in prison from becoming “invisible” in the system. The effective protection must include early detection, ongoing care and support, consistent caregiving and access to education, healthcare and family contact. Real and lasting change requires an integrated, accountable and child centred approach.