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# Effects of Maternal Incarceration on the Well-Being of the Child

| Nivedita Gautam



Curated Voices

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# Effects of Maternal Incarceration on the Well-Being of the Child

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## ABSTRACT

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This essay analyses how keeping the mother in custody can turn punitive for her child. In India, when mothers are incarcerated, their children under the age of 6 accompany them in prison. Otherwise, most children end up homeless. This piece uses National Crime Records Bureau [NCRB] data, judgements, and ethnographic data to explore the various issues arising from a child growing up in prison or without a guardian due to the latter's detainment. It particularly analyses how the child's shelter needs are compromised here. The issue brief concludes by exploring rehabilitative alternatives, such as the early releasing of incarcerated mothers and allowing women to serve their sentence in an open prison where they can live with their children.

**Keywords:** Maternal incarceration, rehabilitative justice, child well-being, Indian justice system, open prisons, imprisonment.

## INTRODUCTION

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While prisons separate all inmates from their social world on the outside, it is relatively more disruptive for female inmates due to the limited number of women's jails in India. Of the total 1306 jails in the country, 29 are women's jails which house 3,094 inmates (NCRB, 2020). Many states have no jails which house only women, implying that female inmates are housed in the same prison systems as men or are sent away to women's jails in different states. Transferring women to prisons far from their homes severely disrupts communication and maintaining contact with family outside the institution. The distance also disrupts consistent visitations from family, especially children. Thus, this disengagement from the outside world is a social amputation that these women's children also feel.

This piece analyses the correlation between a child's well-being and their mother's incarceration and the existing provisions meant to address this situation. In such cases, the mother, whether convicted or not, and her child face intended and unintended consequences of institutional punitive measures. This issue brief concludes by suggesting their welfare and rehabilitation via a reformed prison system in India.

## METHODOLOGY

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The findings of this paper are based on secondary and primary research. Some key sources are data provided by the National Crime Records Bureau, project Prayas by Tata Institute of Social Sciences, Supreme Court judgements, and the Model Prison Manual. For primary research, ethnographic methods were implemented to document the experiences of incarcerated women and children who grew up in prisons with their guardians. The interviewees included former inmates and social workers working in prisoner rehabilitation.

## MATERNAL INCARCERATION IN INDIA

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Often when a mother is imprisoned, the children dependent on her are either appointed a suitable guardian or, in the absence of one, are taken into the custody of the Child Welfare Committee [CWC] (Tata Institute of Social Sciences [TISS], 2018). Under the Juvenile Justice (Care And Protection Of Children) Amendment Act, 2006, each state should establish a CWC or two in every district, which then functions like a magistrate (Government of Maharashtra, n.d.). A child whose mother is facing incarceration can be brought to the Committee by the police, social workers, or even concerned citizens. The Committee's role is to provide accommodation for the child while the mother's case is deliberated.

A report titled 'Children of Women Prisoners' by TISS details the experiences of mothers and their children in prisons. The report reveals that several financially vulnerable women with no other social or financial support systems cannot find an appropriate guardian when they are arrested, and their children have no other suitable guardian. Furthermore, the CWCs in India face several issues, such as limited staff, technical delays, and poor infrastructure (Rekhi, 2018). Administrative and logistical issues in the functioning of the state institutions often lead to poor records maintenance and children

getting lost in the system without adequate accommodation or protection.

Personal interactions with former inmates and social workers provided insight into cases where the elder children had to take care of their 6 younger siblings. Still dependents, they had to quit their education and find daily-wage work to sustain themselves and their family. The TISS report states that children, who have to take up responsibilities that adults would otherwise handle, often have to find financial means to provide their parents with legal and financial aid (TISS, 2018). The report elucidates that sometimes when the mother is taken into custody, the police officials do not give the accused sufficient time to find a suitable guardian or accommodation for her children, leaving these children to fend for themselves (TISS, 2018). Mehreen<sup>1</sup> (personal communication, January 2022), says that several children might spend days without any guardian or shelter and consequently fall into patterns of substance abuse and begging and may even get trapped in child trafficking networks.

The mother can take a child under 6 inside the prison if alternatives cannot be arranged. As per the Prison Statistics India report by the NCRB (2020), 1,427 women live in prisons with as many as 1,628 children. All prisons in India have documented measures to take care of these children and ensure that the prison is safe for them to be raised. However, children may experience trauma, deteriorating health, and social stigmas associated with growing up in prison. Many state documents and judgements have actively recognised growing up in prison as detrimental to a child's well-being. They have urged that the space be made more accommodative and rehabilitative.

The landmark judgement in *R.D. Upadhyay vs the State of A.P. & Ors* (2006) recognised these children as being in custody through "no fault of their own". The judgement observed that the child's "food, healthcare, accommodation, education, recreation, etc." are compromised as they are "living in really difficult conditions" of a prison (ibid.). It recognised adequate accommodation as a crucial area that requires improvement. It also elaborated on the processes for ensuring that the child's shelter and accommodation needs are met. For instance, when a woman is taken into custody, the Child Development/Welfare Departments or Social Welfare Departments must ensure that the child is taken into protective custody until the mother is released or another suitable accommodation is found. The judgement further elaborates that the Juvenile Justice Care Act (2006) mandates that neglected children be provided safe accommodation and rehabilitation so that they are not at the receiving end of punitive actions, directly or indirectly.

The judgement's recommendations were also incorporated in the 2016 Model Prison Manual. The manual states several provisions for the well-being of the child, including the following:

1. The premature release of women to avoid delivery in prison;
2. The creation of separate creches for the children; and
3. Children meant to remain under protective custody until the mother's release OR until they are of an age when they can afford to earn a living on their own (Government of India: Ministry of Home Affairs, 2016).

The judgement and the manual recognise that the nature of the incarceration and the mother's well-being directly impact the well-being of her children. If certain aspects of these guidelines are implemented appropriately and are well-documented, safer accommodation can be ensured for the children without significant disruption in their relationship with their mother.

<sup>1</sup> - Mehreen (name changed to protect identity) has been working for the welfare of the prison population in the National Capital Region and some areas of Uttar Pradesh since 2015. She primarily works with the female inmate population and their families.

## THE WAY FORWARD

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Many women and children in this situation, where the child is detained either with their mother or left without shelter, are from vulnerable backgrounds. They lack the financial and social means to find alternatives to ensure the child's accommodation. This impacts the child's emotional development, education, and socialisation. While measures are in place to ensure the children's well-being, they must be implemented better for rehabilitation rather than punishment.

Other measures, like the treatment meted out to convicts and undertrials, can also ensure the welfare of the mother and child in this situation. Of the 20,046 women inmates in India, 75% are undertrials (NCRB, 2020). The trial and conviction process is slow in India. Hence, these women often stay in prisons for long periods as undertrials. During this period, they have little to no sources of income if they have no economic support outside the prison. Mehreen also revealed that if the woman has a daughter, the rest of the family, including the husband, may disown the child and the woman. The children could suffer, inside or outside the prisons, due to meagre or no financial means. Incarceration can thus become a source of severe income depletion, especially for the economically weak. A prison sentence should not have to mean a financial crisis for the entire family. Allowing undertrials to earn a living within the prison premises after completing 3 months can ensure a means of living.

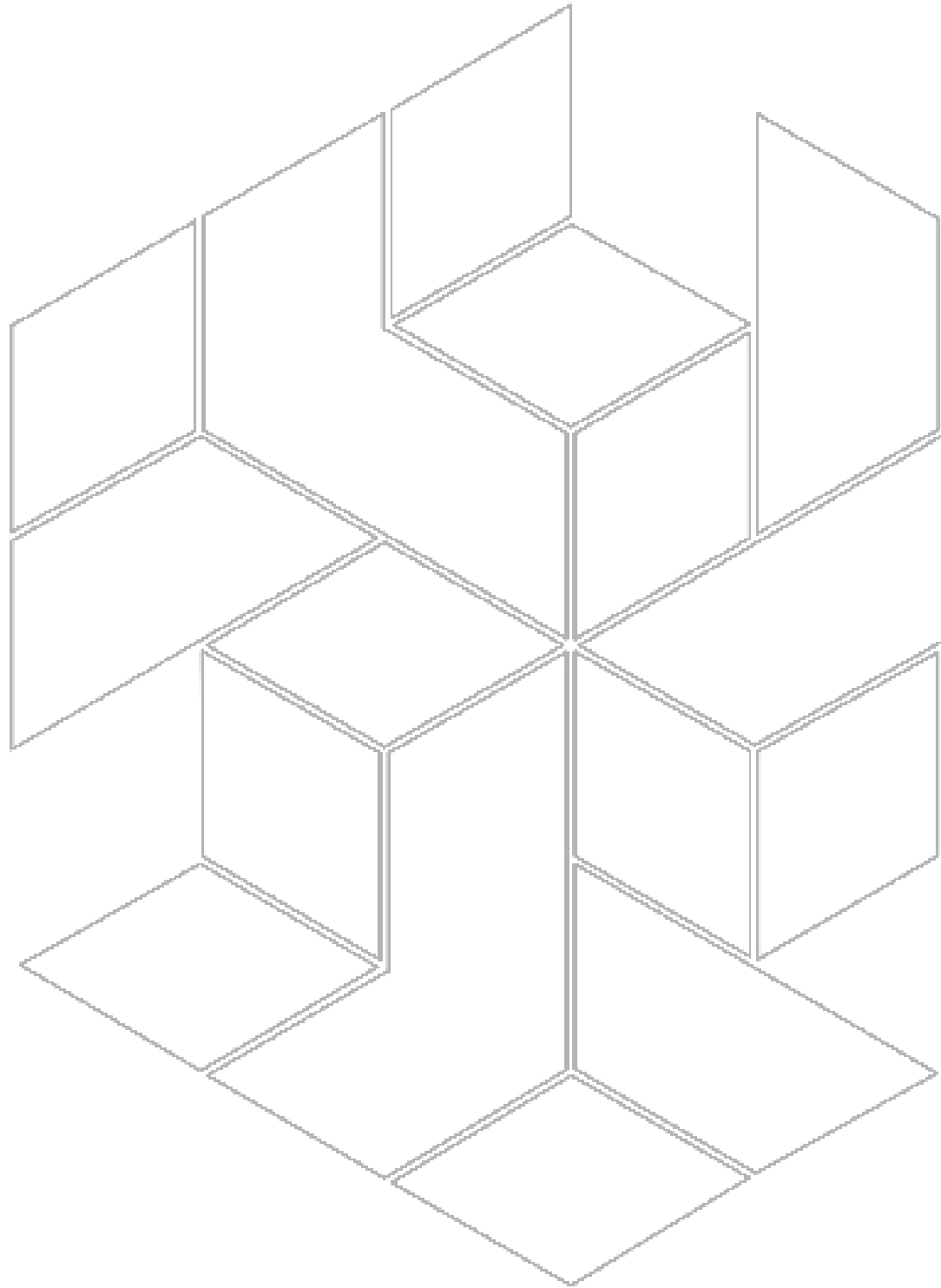
Open prisons allow prisoners serving long sentences with improved behaviour to live in prisons with lesser surveillance and more access to the outside world. When incarceration is not viewed as an answer to social issues, many inmates can earn a sustainable living and even reside with their families in such prison systems, especially in open colonies (Moore, 2021). On the other hand, a closed prison system subjects the inmates to punitive measures, with few 'deserving' open prisons. Open prisons hold the potential to transform the justice system from punitive to more rehabilitative efficiently. A rehabilitative space provides safer physical and emotional shelter to a child. Open prisons have been adopted in many countries and significantly contribute to the social welfare and development of the prison population. One such country is Finland. The country's approach to rehabilitating convicts is also seen as contributing to the civilians' overall high personal freedom levels and the country being socially just (Moore, 2021).

Recognising the need for reformation and rehabilitation, India adopted a similar prison system model in the 1960s. India has one of the most intricate open prison systems in establishments like Tihar in Delhi, Yerwada in Mumbai, Anantapur in Andhra Pradesh, Shri Sampurnanand Khula Bandi Shivir in Rajasthan, and Nettvketheri in Kerala (Goyal & Vedula, 2021). In open prisons or open colonies, convicts can reside with their families and go outside for work. Their families can visit as well. On the outskirts of Jaipur, the Shri Sampurnanand Khula Bandi Shivir houses 150 inmates, 10 of whom are women (Goyal & Vedula, 2021). The inmates can exit the premises for work within a 10 km radius between 6 AM and 7 PM. They teach or engage in daily-wage labour. Their children also attend nearby schools.

In India, open prisons are largely accessible to convicts and male inmates. Extending open prisons to undertrial women – especially those with children – could contribute immensely to the well-being of these women and their families. If a mother is in an open prison with her child, she could earn a living, ensuring that the child is not rendered homeless and can still avail of prison facilities. With better accountability from state-level Social and Child Welfare Departments and an option for the child to stay with their mother in a safer environment, the justice system can protect several children from neglect and homelessness.

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