

Parents Behind Bars Children Beyond Books: Impact of Parental Incarceration on Education of Children

Ms. Saloni Rathore^{1*}, Ms. Anu Singh², Ms. Alpika Verma³, Mr. Prakhar Saxena⁴, Mrs. Megha Mishra⁵, Mr. Moiz⁶, Prof. (Dr) Shaukat Ali⁷

^{1*}Assistant Professor, Department of Law, Invertis University, Bareilly (U.P.), Email ID- 14saloni1991@gmail.com

²Assistant Professor, Department of Law, Invertis University, Bareilly (U.P.), Email ID- anusinghmam@gmail.com

³Assistant Professor, Department of Law, Invertis University, Bareilly (U.P.), Email ID- alpikaverma261196@gmail.com

⁴Assistant Professor, Department of Law, Invertis University, Bareilly (U.P.), Email ID- Saxena.prakhar13@gmail.com

⁵Assistant Professor, Department of Law, Invertis University, Bareilly (U.P.), Email ID- 10mishra1megha@gmail.com

⁶Assistant Professor, Department of Law, Invertis University, Bareilly (U.P.), Email ID- 16.moiz@gmail.com

⁷Professor, Invertis University, Bareilly (U.P.) Email ID- Shaukat.a@invertis.org

*Corresponding Author: Ms. Saloni Rathore

*Email ID- 14saloni1991@gmail.com

Citation: Ms. Saloni Rathore, et.al (2024), Parents Behind Bars Children Beyond Books: Impact Of Parental Incarceration On Education Of Children, *Educational Administration: Theory and Practice*, 30(1), 1528-1536

Doi: 10.53555/kuey.v30i1.6397

ARTICLE INFO

Received: 09-03-2024

Accepted: 21-04-2024

ABSTRACT

Children of incarcerated parents are one of the neglected sections of the society. Parental incarceration may substantially disrupt a child's upbringing which may lead to numerous problems including their pursuit of education. This paper will examine how parental imprisonment affects the education of children in India. Although this topic has been slightly touched in India, studies from other nations show that children having incarcerated parents are exposed directly to the challenges of life, specifically with schooling, such as decreased participation in school, poorer grades, and higher rates of dropping out. Moreover, such children are also subjected to the indirect consequences of parental incarceration, such as weakened family dynamics and extra responsibilities which have a negative impact on their scholastic chances. This paper will identify and analyse the difficulties that children with imprisoned parents are likely to encounter and analyse the present legal framework in India directed towards the protection of educational rights of children of incarcerated parents. Further, this paper proposes and suggest inputs for policy reforms with regards to education and measures to protect children with incarcerated parents.

Keywords- Children, Education, Family, Incarcerated Parents, Prison.

1. INTRODUCTION

It is an irrefutable cruel reality that once a person is jailed; the world cares less about what happens inside bars. The term "forgotten victims" is frequently used to describe the family members of individuals who are incarcerated. They are the people who have endured the wrath of the criminal justice system without being acknowledged or afforded the opportunity to be heard. Despite their prevalence and resemblance to direct crime victims, these concealed victims receive minimal personal support and do not benefit from the societal systems that are typically available to direct crime victims. The ones who are affected majorly by the incarceration of family member are the children of the incarcerated. Children of inmates who remain in detention with them as well as those who are left behind outside the jail constitute an especially vulnerable subset of the neglected prisoners.

Incarceration of parent affect the children in a lot of ways. The mental health, social behavior, and academic success of a child can all be adversely affected by the imprisonment of a parent. The emotional distress and practical obstacles of a disrupted family life can be further exacerbated by the social stigma that children may encounter as a consequence of having a parent in prison or detention. Children of incarcerated parents may encounter financial challenges as a result of the loss of their parent's income. Apart from this range of problems, parental incarceration disrupts a very crucial element of a child's wellbeing and that is impact on the education

of the child. Parental incarceration has an extensive effect on their children, especially when it comes to the area of education.

The educational rights of children are a fundamental aspect of their overall well-being and development. All children, regardless of their background or circumstances, should have equal opportunities to access education and thrive academically¹. Education is a basic need for each person to guarantee their survival to be more dignified. In India, unfortunately, there is a group of children who face unique challenges in accessing education – the children of incarcerated parents. These children are often overlooked and left behind in the education system. The issue of educational rights for children of incarcerated parents is a complex one that requires attention and action. Educational rights are considered as human right issue globally, and every child, including those with incarcerated parents, has the right to receive as education. The right to education for children of incarcerated parents is protected under various international human rights instruments, including the Universal Declaration of Human Rights and the United Nations Convention on the Rights of the Child. In India, the right to education is also enshrined in the Constitution of India under Article 21A, which guarantees free and compulsory education to all children between the ages of 6 and 14. However, despite these legal protections, the educational rights of children of incarcerated parents in India are often neglected and not adequately addressed. The lack of attention to the educational rights of children of incarcerated parents in India stems from various factors, including social stigma, institutional barriers, and limited awareness and understanding of the unique challenges faced by these children. The first step towards addressing the educational rights of children of incarcerated parents is to recognize and understand the specific barriers they face in accessing education. One significant barrier is the social stigma associated with having an incarcerated parent. Children of incarcerated parents often face discrimination and social exclusion, which can have a detrimental impact on their educational opportunities. Another barrier is the lack of support and resources for these children within the education system. Because of the far-reaching ramifications for the educational results and life trajectories of afflicted children, this topic has attracted growing interest in academic and policy circles. Children with incarcerated parents confront numerous hurdles in their educational path. One important aspect contributing to this adversity is the vulnerability of family dynamics and the lack of a stable home atmosphere, which can lead to increased emotional stress and poor academic performance.

Furthermore, financial difficulties caused by a parent's incarceration might limit access to key educational resources such as quality instruction, extracurricular pursuits, and educational materials. Research shows that when a parent is incarcerated, family incomes decline, leading to financial strain and decreased resources for the education of their children.² Moreover the stigma and humiliation linked to parental incarceration can result in sense of isolation and an unwillingness to seek help from instructors and peers. As a result, children may exhibit behavioural issues and have a weakened sense of belonging in the educational context. These cumulative effects produce a negative cycle in which academic obstacles compound, increasing the chance of school dropout and decreasing opportunities for further study and future achievement. Addressing the consequences of parental incarceration requires a multifaceted approach that includes targeted systems of support, mental health services, and policies with the goal of mitigating the negative effects on children's higher education and fostering resilience and academic growth. This research paper explores the critical but frequently disregarded issue of protecting the educational rights of children whose parents are incarcerated.

2. REVIEW OF LITERATURE

Nidhi Singal, in her article “Inclusive Education in India: International concept, national interpretation” examines the educational adventures of children from underprivileged families, paying particular attention to children with impairments. Governmental records from the post-independence era show that children with impairments had access to a variety of educational possibilities.

Laurel Davis & Rebecca J. Shlafer in their article “*Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*” examines to ascertain if parent-child relationships mediate the relationship between parental incarceration and teenage mental health, and whether adolescents who have an incarcerated parent report higher levels of mental health problems than adolescents without an incarcerated parent.

In their article “Parental Incarceration and Children’s Wellbeing”³ Kristin Turney and Rebecca Goodsell discussed that how parental incarceration has significantly impacted children's wellbeing throughout their life, particularly for vulnerable children. The article by Kristin Turney and Rebecca Goodsell highlights the link between parental incarceration, physical absence, trauma, and stigma. Research shows that incarceration negatively impacts behaviour, education, health, suffering, and deprivation. Despite the negative consequences, numerous programs focus on incarcerated mothers, but few have been conclusively

¹ Nidhi Singal, *Inclusive Education in India: International Concept, National Interpretation*, 53 INTERNATIONAL JOURNAL OF DISABILITY, DEVELOPMENT AND EDUCATION 351 (2006).

² Laurel Davis & Rebecca J. Shlafer, *Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*, 54 JOURNAL OF ADOLESCENCE 120 (2017).

³ Turney, Kristin, and Rebecca Goodsell. “Parental Incarceration and Children’s Wellbeing.” *The Future of Children* 28, no. 1 (2018): 147–64. <https://www.jstor.org/stable/26641551>.

demonstrated to enhance the well-being of children both during and after their incarceration. To mitigate inequality among children of incarcerated parents, Turney and Goodsell recommended that families' economic well-being be enhanced, their relationships be fortified, and their substance misuse be addressed.

Asha Bhandari in her research paper "Women Prisoners and their Dependent Children: A Study of Jaipur and Jodhpur Central Jails of Rajasthan"⁴ examines the light of children in India's Central Jails, specifically in Rajasthan. It focuses on 60 mothers imprisoned in Jodhpur and Jaipur, using a developmental lens to understand their impact on children and their potential involvement in the criminal justice system. The paper recommends policy and practice changes to minimize harm and support these children.

Danielle H. Dallaire's article "Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families"⁵ is a comparison of the documented rates of incarceration for family members, adult children, and the living situations of minor children between inmate mothers and fathers. The results suggest that mothers are 2.5 times more likely to report adult child incarceration, and that regular drug use predicts adult child incarceration. Incarcerated moms report increased family incarceration, and their young children are more likely to be placed in foster care.

Neelam Sukhramani and Shivangi Gupta in their article "Children of incarcerated parents", discussed that Psychosocial health of children with incarcerated parents is neglected in India, with disparities in practise and socioeconomic disadvantages. In addition, parental incarceration has an influence on their educational, interpersonal, and emotional well-being. Improving elements to reduce negative repercussions and tackling penal populism are critical.

3. RESEARCH METHODOLOGY

The objective of this study is to perform an explanatory and remedial qualitative doctrinal investigation on the impact of incarceration of parents on children's schooling. The research will look into the ways parental incarceration will impact the various facets of educational experiences of their children. Furthermore, the research will investigate the present legal framework and doctrinal issues pertinent to the rights and assistance systems accessible to children who have parents who are currently in prison. To grasp the nuances of this topic in depth, the study will use a qualitative research approach, and an iterative exploratory design will be used, focusing on qualitative data first and then recommending corrective measures based on the findings.

4. STATISTICAL DATA ON CHILDREN WITH INCARCERATED PARENTS IN INDIA

Children with incarcerated parents can be classified into two groups: those children who can remain in the prison along with mother for a period of up to six years, as well as children who are left behind when one or both of their parents are incarcerated. Children who are left behind have the option to reside with the surviving parent, other caretakers, in a child-care facility, or independently. Insufficient data is available concerning the total number of these children, with the exception of those who reside with their mothers in correctional facilities. Based on the fertility rate and the number of prisoners in the reproductive age group, a very approximate calculation suggests that there could be over 800,000 children with incarcerated parents in the country. Concerned researches have predominantly concentrate on children residing with their mothers in prison, as they are more visible and accessible in a confined environment.

India has not yet established an integrated system in the Criminal Justice System to gather information on the survival status of children of offenders at the time of their arrest. However, the National Crime Record Bureau (NCRB) has been keeping statistics of children under the age of six since the year 2001. The latest prison statistics highlight the need for a symmetric representation of the children's population outside prison.⁶ According to the five-year data, around 1,400 women convicts with at least 1,600 children under the age of six are housed in Indian prisons each year.

5. AN OVER-VIEW OF THE IMPACT OF PARENTAL INCARCERATION ON THEIR CHILDREN

Children of incarcerated parents have been split into two groups:

1. Those who can reside in the prison with their mother (up to the age of six years in general)
2. Those who are left behind after one or more of their parents are imprisoned.

There can also be a third category of children who have taken birth in the prison but had to leave after they attain the age of 6 years of age. Each group of these children encounters distinct challenges that are specific to their individual circumstances.

5.1 Children living in prison with their mothers

⁴ Bhandari, Asha. "Women Prisoners and Their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan." *Sociological Bulletin* 65, no. 3 (2016): 357–79. <http://www.jstor.org/stable/26369541>.

⁵ Danielle H. Dallaire. "Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families." *Family Relations* 56, no. 5 (2007): 440–53. <http://www.jstor.org/stable/4541687>.

⁶ Prison Statistics of India, NCRB

The early years of childhood are pivotal for the development of physical, emotional, social, and cognitive abilities. Prisons are not suitable for accommodating children under the age of 6 with their mothers due to the lack of appropriate physical and social conditions. Research shows that prisons lack separate space for female inmates and their children, leading to overcrowding and impacting children's development.⁷ Limited exposure to the outside world significantly impacted children's understanding of the world, leading to fear of men and male relatives.⁸ The research revealed that the lack of a family environment has a detrimental effect on the social development of children, as they are deprived of the chance to engage in playing with siblings and learn and adopt familial values and norms, particularly in correctional facilities.⁹ Children born or living in prison at an early age struggle with alphabet recognition, number recognition, word pronunciation, and understanding age-appropriate instructions due to lack of stimulating environment.¹⁰ Overall, children whose parents are incarcerated have an increased risk of developing psychological issues, such as melancholy and antisocial behaviour.¹¹

5.2 Children above 6 years residing outside the prison

There has been a scarcity of research conducted on children who are abandoned after their parents are arrested. The lack of a comprehensive database for these children, combined with the absence of any documentation at the time of their parents' incarceration, presents significant challenges for conducting research on this population. Children above six years old who are outside prison face sudden deprivation of their parents. These children are divided into four categories: those who lose their mother, who face psychological challenges, those who have lost their father, who also suffer financial loss, and those who lose both parents and have to live with any relative or guardian. These children face significant social stigma in school, community, and society. The most deprived category is those who lose both parents and are left without anyone to claim or be their surety. They experience social stigma, loss of caretaker, financial loss, and psychological and mental health issues. The condition of these children varies, with some being left alone, while others are placed in shelter homes or privately run NGO's. The most lamentable group consists of individuals who are considered missing, as they are frequently reported to the police but cannot be located. While the number of missing children may be relatively fewer compared to other categories, the issue of missing children is still a significant matter that demands urgent attention.

5.3 Children born in prison who leave the prison after the age of six years

Children in this category are typically highly susceptible as they are suddenly placed in an entirely unfamiliar world. Typically, these children are placed in shelter homes or are taken care of by NGOs. Nevertheless, the children encounter social stigma and have various psychological consequences when they engage with the external world, including their schools. Parental incarceration leads to severe financial difficulties for children and caregivers, as they must borrow money to meet basic necessities, skimp on meals, drop out of school, or enter the labour force. Abject poverty can result in children pilfering things to ensure food for the family, and families may sell or mortgage assets to meet daily expenses. Retaining accommodation can also be a challenge for families living on rent. These challenges highlight the need for effective financial management and support for children and caregivers. Paternal incarceration frequently leaves mothers unprepared since they had not entered the workforce before and in some circumstances, had never left their homes without their spouses.

6. CURRENT LEGAL FRAMEWORK DEALING WITH EDUCATIONAL RIGHTS OF CHILDREN OF INCARCERATED PARENTS IN INDIA

The education of children of inmates is crucial to their general well-being and in determining the trajectory of a child's life. Due to the rapid development of children's minds during this time, it is vital to foster their cognitive abilities. In addition to nurturing social skills and emotional intelligence, early childhood education promotes creativity. Children who receive high-quality early childhood education and care are more likely to demonstrate enhanced social skills, elevated self-esteem, and improved academic performance, according to research. Additionally, they are less likely to participate in illicit behaviour in the future. Hence, allocating resources towards early childhood education and care yields societal benefits in addition to those that benefit individual children. This applies to those children who live inside the jail with their detained parents and those who are left beyond the jail.

6.1 Law Ensuring the Educational Rights of Children Living in Jail with the Incarcerated Parents

⁷ Neelam Sukhrmani & Shivangi Gupta, *Children of Incarcerated Parents*, 57 INDIAN PEDIATR 199 (2020).

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Hidden Consequences: The Impact of Incarceration on Dependent Children | National Institute of Justice, <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children> (last visited Apr 27, 2024).

An outline of India's legal system governing the education of children of jailed parents has been governed by various State governments. Such governments in India have jurisdiction over jail administration and management under the Indian Constitution, although they are subject to national regulations such as the Prisons Act of 1894, resulting in disparities in management of prisons and population welfare. In India, the law safeguarding children in prison with their mothers has not been uniformly codified and differs by state. In the case of "*R.D. Upadhyay v. State of Andhra Pradesh*,"¹² the Supreme Court issued directions focused on food, healthcare facilities, lodging, age of residency, education, and recreation. State jail guidelines have been revised to provide provision for these mothers and their children. The age at which children are permitted to remain in prison with their mothers varies by state, for example. Children below the age of six are allowed to live with their mothers in states such as Delhi and Assam. In Bihar, however, they are only permitted to stay for two years inside the prison with their mothers. However, it is crucial to bear in mind that the early childhood education is very important in the formative years of a child's life, which begins from the ages of 0 to 6 years. When a child is born or raised in captivity, isolated from the outside world, there is a major psychological effect on their mental well-being, to say the least. The vision of the Right to Education was reflected in the 86th Constitutional Amendment and the Right to Education Act. It should be noted that the Right to Education does not pertain to simply learning the alphabet or numbers. Education in the initial years from 0 to 6 years attempts to increase the capacity for creative thought and imagination while also enabling children to become involved with their surroundings. Further, we are aware that, the life in prison is very complicated which creates, various hurdles for those children who live in jail with their parents. The restrictive environment restricts access to appropriate education, resulting in disturbed or inadequate education. Their cognitive development is hampered due to a lack of age-appropriate materials and skilled teachers. Their capacity to focus and engage in learning is hampered by emotional pain caused by separation and stigma. Furthermore, the sporadic nature of their living arrangement undermines academic continuity, limiting their advancement. These difficulties perpetuate a cycle of academic disadvantage, jeopardising their future chances and emphasising the need for tailored interventions and assistance to ensure that these at-risk kids receive the education they deserve. Implementing the guidelines laid down in the case of "*R.D. Upadhyay Vs. State of Andhra Pradesh*" remains a top priority to ensure children's rights. Because of the division of powers, the upkeep of prisons is a governmental responsibility. The size, location, infrastructural level, and quality of life in jails vary across the country. While some literature may acclaim observations from well-known city prisons where significant effort has been made, many tier-3 cities and tiny rural areas have yet to see the light of day. When compared to the total amount of children the educator is meant to handle, the jail systems that adopted the education model experience a shortage of teaching aid. This diminishes the focus and emphasis given to a specific child, which contradicts the aim of policy change itself.

The right to education of children whose parents are incarcerated are not expressly recognised by any comprehensive legislation in India. However, several provisions in enacted legislation and international treaties and conventions indirectly safeguard these children's rights and interests.

The right to life and personal liberty is guaranteed in Article 21 of the Indian Constitution. The landmark decision of "*Mohini Jain v. State of Karnataka*" in the year 1992 broadened the definition and breadth of the phrase 'life and personal liberty' to include the realisation of various other rights critical to an individual's complete development. In this decision, the Supreme Court determined that although the Constitution does not directly guarantee the Right to Education as a fundamental right, it is clear from the Preamble and the Directive Principles included in it that the government has an obligation to ensure education for its citizens. In addition, they determined that the collecting of capitation fees by private educational institutions was in violation of the Right to Education, which is implied by the Rights to life, human dignity, and equal treatment under the law. This was one of the first cases to recognise the right to education as inherent in Article 21.¹³

Further, in the case of "*Unni Krishnan, J.P & Ors v. State of Andhra Pradesh*"¹⁴ decided in the year 1993, The constitutional validity of governmental regulation regarding capitation fees levied by specific private professional educational colleges was challenged. The states of Karnataka, Tamil Nadu, Andhra Pradesh, and Maharashtra have implemented legislation to regulate capitation fees, labelling any extra charges received by managerial staff as capitation fees. The Supreme Court has emphasized the state's responsibility to provide necessary facilities and opportunities, preventing destitution and squalor, and ensuring the welfare of its citizens. The Supreme Court of India decided that the fundamental Right to Life (Article 21) encompasses the entitlement to a basic standard of education. This right must be interpreted in conjunction with the Directive Principles of State Policy, namely Article 45, which requires the State to ensure that all children under the age of 14 receive compulsory and cost-free schooling. The Court determined that Article 21 does not provide a fundamental entitlement to education leading to the acquisition of a professional degree. However, it was concluded that the 44 years after the adoption of the Constitution had effectively transformed the unenforceable right of children under 14 to a legally obligatory responsibility for education. Upon reaching the

¹² R.D. Upadhyay v. State of Andhra Pradesh. A.I.R 2006 SC 1946

¹³ Mohini Jain v. State of Karnataka, 1992 SCC (3) 666.

¹⁴ Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors, 1993 AIR 217

age of fourteen, their right to get an education is limited by the financial resources and level of development of the state, as outlined in Article 41.

The 86th Amendment Act of 2002 introduces three explicit provisions to the Constitution, firstly introducing Article 21A in Part III of the Indian Constitution establishing that children aged 6 to 14 hold a fundamental right to receive education that is both free and compulsory.

Secondly, Article 45 underwent a modification, replacing its language with a statement that emphasises the responsibility of the State to provide early childhood care and free and compulsory education for every child up to the age of six years. Lastly, Article 51A has been amended to include a new clause, which clearly states that parents or guardians are required to ensure that children aged 6 to 14 are given the chance to acquire an education [Article 51A (k)]. The purpose of this amendment is to safeguard the educational rights of individuals and acknowledge the educational difficulties faced by India. As a result of this amendment, free and compulsory education became a legally binding and justifiable fundamental right.

To give effect to Article 21A of the Constitution, the Indian Parliament passed the Right to Education Act, 2009 on August 4, 2009, which made it compulsory for children between the ages of 6 and 14 to get free education. India became one of the 135 countries to recognise education as a fundamental right for all children on April 1, 2010. The legislation sets forth fundamental criteria for primary schools, prohibits unaccredited institutions, and opposes the imposition of admission fees and child interviews for government-aided schools. The Right to Education Act aims to ensure that every child, regardless of their socio-economic background, has the fundamental right to receive quality education between 6 to 14 years. This includes children who may have parents incarcerated.

The right outlined in Article 21A is congruent with the Right to Education Act (RTE Act). The judgement of the Apex Court places a strong emphasis on giving children of jailed women access to schooling. Although it seems like a decent idea on the surface, the application has a number of conceptual and legal flaws. The RTE Act specifically states that Children who are entitled to compulsory and free schooling must fall between the age range of six to fourteen. According to the directions given in "*R.D. Upadhyay Vs. State of Andhra Pradesh*", a child can stay with the mother in jail only up to the age of six years, rendering the provision of educational facilities mandated by the RTE Act only a "choice" in the hands of the different State governments.

In accordance with Article 45 of the Indian Constitution, which is a part of the Directive Principles of State Policy, the State is required to make every effort to provide for children's Education up to the age of six years. It states that "The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years."¹⁵ The DPSPs' inapplicability, however, leaves a gap in the legislation governing the education of young inmates under the age of six.

The Juvenile Justice (Care and Protection of Children) Act, 2015 addresses the rights and interests of children who require care and protection, including children whose parents are incarcerated. The right to education is emphasised in Section 8 of the Act for all children in need of care and protection.

According to the Juvenile Justice (Care and Protection of Children) Act, Child Welfare Committees are tasked with determining appropriate actions for children in need of protection and nurturing. These committees can ensure that children living inside the prison with their detained parents have access to schooling. They may work with prison officials to build or facilitate educational resources for such children.

Guidelines provided in the case of "*R.D Upadhyay v. State of Andhra Pradesh*" states that while living in jail with his or her mother, a child shall not be identified as an undertrial/convict. As a matter of right, such a child has the right to nourishment, shelter, medical treatment, clothes, education, and recreational facilities. Female inmates can keep their kids in jail till they reach the age of six. After the child reaches the age of six, he or she is relocated to an appropriate surrogate or Social Welfare Department institution, minimising physical distance. Children in protective custody have the opportunity to see their mothers a minimum of once a week. In certain states, anganwadi centres (childcare centres) and schools are established within the grounds of specific jails to meet the requirements of children whose parents are incarcerated. These centres aim towards offering early childhood education and care, as well as older children's education.

There are still a number of issues with the current legal system, despite the fact that Indian laws have made an attempt to safeguard the right to education of children who are housed in jail with their imprisoned parents. Some of the obvious flaws include:

- **Lack of Comprehensive Law:** Although the Juvenile Justice Act addresses the legal rights of children seeking care and protection, including those who live with parents who are behind bars, there is a need for a more thorough and specific law that focuses on the particular difficulties faced by these children and guarantees their right to education. On the one hand, the Juvenile Justice (Care and Protection of Children) Act of 2015 states that children in conflict with the law cannot be held in adult prisons until they reach the age of 21, but on the other hand, there are these innocent children who are imprisoned alongside adult offenders.
- **Inadequate Implementation:** In spite of the legislative requirements, many governments and areas still have inconsistent implementation of policies to promote these educational opportunities for children.

¹⁵ Article 45, The Constitution of India.

Children who live with their jailed parents may not have equal access to educational opportunities as a result of the inconsistent enforcement of these rules.

- **Lack of Adequate Educational Facilities in Jails:** Many times, jails don't provide enough educational facilities for children whose parents are incarcerated. Despite the fact that certain governments have established anganwadi centres or schools inside of jails, the accessibility and calibre of these establishments vary, and some children could not even receive any formal education at all.
- **Limited Attention to Holistic Development:** It's possible that the current legal system isn't doing enough to support the holistic development of children who live in jail with their incarcerated parents. While education is important, it's possible that these kids also need unique emotional and psychological assistance, which the current legislation might not fully cover.
- **Lack of Coordination between Agencies:** It's likely that there isn't enough communication going on between the organisations in charge of criminal justice, education, and child protection. This may result in a lack of the essential support being given to these kids and may prevent them from accessing educational opportunities.
- **Limited Information:** There is a dearth of thorough information regarding the educational standing and requirements of kids who are housed in jail with their detained parents. This makes it more difficult to develop tailored programmes and policies that successfully help these kids.

6.2 Legal Framework Governing Educational Right of Children Of Incarcerated Parents Living Outside Of Jail

Whenever a parent is incarcerated, their children left outside of jail confront a slew of obstacles, with access to education being a critical issue that must be addressed right away. Education is critical in determining a child's future and breaking the cycle of crime and poverty. As a result, in order to provide protection to the educational rights of children whose parents are incarcerated, India has put in place a legal framework geared at giving support and assistance to guarantee these children have an opportunity for quality education despite their tough circumstances. The various remedies to ensure that the children living outside jail after their parents are incarcerated under Indian legal framework can be discussed as under-

The Right to Education Act of 2009: A comprehensive piece of legislation known as the Right to Education Act ensures that children between the ages of six and fourteen receive free and compulsory education. It includes provisions that guarantee that children from low-income families, including those with jailed parents, have access to a high-quality education.

Sarva Shiksha Abhiyan (SSA): SSA is a government programme that aims to provide universal primary education. Specific efforts may be made under this programme to identify and enrol out-of-school children, notably those impacted by parental incarceration.

Non-governmental organisations and civil society organisations may organise education and rehabilitation programmes for children who are impacted by parental incarceration, assisting them in accessing schooling and addressing their specific needs.

While Indian laws have established provisions to protect the right to education of children of detained parents who are left behind the jail following the parent's incarceration, the legal framework still has various deficiencies. The following are some major flaws:

- **Limited Focus on Children's Educational Needs:** While the Right to Education Act and other relevant legislation have general measures aimed at providing education for all children, there is a dearth of particular provisions addressing the unique issues faced by children of incarcerated parents. The existing laws do not address the special educational demands and support that these children require.
- **Inadequate Identification and Support Mechanisms:** There aren't enough effective identification and support mechanisms available for finding children who have been affected by parental incarceration and provide them with the educational support they need. As a result, many youngsters may fall between the gaps and miss out on educational possibilities.
- **Difficulties to School Enrolment and Retention:** Children of jailed parents may encounter enrolment and retention difficulties in school for a variety of reasons, including social stigma, prejudice, and financial restraints. These challenges are not sufficiently addressed by the legal framework, resulting in gaps in educational opportunity for these children.
- **Absence of Family Support:** Children who are left outside the jail following their parent's incarceration may lack proper family support since their carer may be overloaded with financial and emotional issues. The legal framework does not always have mechanisms in place to deal with these support gaps and offer the assistance required to ensure the children's educational continuity.
- **Lack of Specialized Counselling and Guidance:** Children of detained parents may require specialised counselling and guidance in order to deal with the psychological and emotional impact of their parental incarceration. The current legislative framework does not handle this issue consistently, resulting in inadequate mental health care for these youngsters.
- **Collaboration Issues Between Education and Correctional Authorities:** There exists a lack of collaboration between education authorities and correctional facilities, impeding efforts to properly support

the education of children whose parents are incarcerated. This can lead to a disorganised approach to meeting these children's needs.

- **Inadequate understanding and Sensitization:** There is a lack of understanding and sensitization concerning the issues experienced by children of incarcerated parents among educators, school workers, and the general public. This can lead to stigma and discrimination, negatively impacting the child's school experience.
- **Inadequate Data and Research:** The absence of adequate data and research on the educational status as well as requirements of children of parents in custody who are left outside the jail stymies evidence-based policymaking and the creation of targeted interventions.

Addressing these deficiencies necessitates a holistic approach that includes legislative reforms, capacity building for educators and related authorities, promotion of awareness, and data collection. To ensure the inclusion and preservation of these vulnerable children's educational rights, the legislative framework must be strengthened. Policymakers should explore provisions that address the special issues encountered by children of incarcerated parents and adopt support systems to assure their access to quality education and holistic development. Furthermore, collaboration between the education, social welfare, and criminal justice sectors is critical to properly protecting the right to education of children left outside the jail after their parents' incarceration.

7. CONCLUSION AND SUGGESTIONS

To summarise, the impact of parental imprisonment on children's education is a serious issue that requires immediate attention. Through this paper, emphasis is being laid upon the multiple barriers to education and academic success that children with jailed parents confront. The Indian legal framework, which includes statutes such as the Juvenile Justice Act and the Right to Education Act, recognises the rights of these vulnerable children and emphasises the need to protect and educate them. However, there is an urgent need to ensure that these regulations are effectively implemented in order to bridge the inequalities in educational accessibility and assistance systems across various parts of the country.

Coordination between the government, non-governmental organisations, and civil society is required to address the educational requirements of children of parents in jail. These stakeholders may collaborate on resources and expertise by working together to establish improved support systems. Cooperation between the education, social care, and criminal justice sectors is critical for meeting these children's educational requirements holistically. A better coordinated and supportive structure can be created through an interdisciplinary approach.

In addition, given their particular emotional and psychological difficulties, it is necessary to offer children who suffer from parental incarceration specialised educational help and counselling. The negative effects of imprisonment of parents on children's education can be significantly reduced by preventive interventions such as grassroots support, awareness campaigns etc. Early detection of children susceptible of academic issues owing to parental incarceration may provide access to timely treatments, lessening the negative influence on their education.

Policymakers should evaluate and tighten existing legislation to provide more complete protection for children with incarcerated parents' educational rights. Specialised assistance, flexible educational choices, and family reunification programmes should all be considered.

Training programmes for teachers, school administrators, and law enforcement officers can help them better grasp the unique issues that these children encounter. Increasing their ability to support and voice for such children can result in more successful interventions.

Launching community-wide awareness initiatives can assist lessen stigma and discrimination encountered by children of jailed parents. These efforts should emphasise the value of education and solicit community involvement.

REFERENCES

- 1) Nidhi Singal, *Inclusive Education in India: International Concept, National Interpretation*, 53 INTERNATIONAL JOURNAL OF DISABILITY, DEVELOPMENT AND EDUCATION 351 (2006).
- 2) Laurel Davis & Rebecca J. Shlafer, *Mental Health of Adolescents with Currently and Formerly Incarcerated Parents*, 54 JOURNAL OF ADOLESCENCE 120 (2017).
- 3) Turney, Kristin, and Rebecca Goodsell. "Parental Incarceration and Children's Wellbeing." *The Future of Children* 28, no. 1 (2018): 147–64. <https://www.jstor.org/stable/26641551>.
- 4) Bhandari, Asha. "Women Prisoners and Their Dependent Children: A Study of Jaipur and Jodhpur Central Jails in Rajasthan." *Sociological Bulletin* 65, no. 3 (2016): 357–79. <http://www.jstor.org/stable/26369541>.
- 5) Danielle H. Dallaire. "Incarcerated Mothers and Fathers: A Comparison of Risks for Children and Families." *Family Relations* 56, no. 5 (2007): 440–53. <http://www.jstor.org/stable/4541687>.
- 6) Neelam Sukhramani & Shivangi Gupta, *Children of Incarcerated Parents*, 57 INDIAN PEDIATR 199 (2020).

-
- 7) Hidden Consequences: The Impact of Incarceration on Dependent Children | National Institute of Justice, <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children> (last visited Apr 27, 2024)
 - 8) Marian S. Harris and J. Mark Eddy, *Children of Incarcerated Parents: Challenges and Promise* (Routledge, 2018).
 - 9) *Mohini Jain v. State of Karnataka*, 1992 SCC (3) 666.
 - 10) *R.D. Upadhyay vs. State of Andhra Pradesh*. A.I.R 2006 SC 1946
 - 11) *Unni Krishnan, J.P. & Ors. v. State of Andhra Pradesh & Ors*, 1993 AIR 217