

**Submission to the Committee on the Rights of the Child  
For the Day of General Discussion on  
“Children of Imprisoned Parents”**

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**Submission by  
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## Introduction<sup>1</sup>

Children of prisoners in India, as in any other country of the world consist of two categories of children, those who live with their mothers within the jail premises, and those who are living outside in the community.

There are no estimates of the actual number of children who are living with their parents in jails. There were some important studies undertaken of children living in prisons with their mothers such as the one undertaken by the National Institute of Criminology and Forensic Science, Delhi (A Study on children of Women prisoners in Indian jails. (1998). Chatteraj, B.N., et.al) and the other by the Prayas Project of the Tata Institute of Social Sciences, Mumbai (Forced Separation: Children of Imprisoned Mothers: Social Work in Criminal Justice (2002 Shekar, Sanober, et al). These studies document the conditions of deprivation and criminality in which they are forced to grow up, lack of proper nutrition, inadequate medical care and little opportunity for education. These children are forced to live in the jails along with other adult criminals and a suspect in a seriously adverse situation.

A few sporadic reports give an idea of the extent of the problem. In 1997, 885 young children were found living with their mothers in jails, of whom three fourths mothers of children were under-trials. Of the total children living in jails with their mothers, 58.3 percent were males and 41.8 percent were females.<sup>1</sup>

**Women Prisoners & Children lodged in Different Jails  
(as on June, 1997)**

State	No. of women Prisoners			No of Children Staying in Jails with their Mothers
	Convicts	Undertrials	Total	
Uttar Pradesh	68	834	902	155 (17.51)
Madhaya Pradesh	293	449	742	110
Andhra Pradesh	101	524	625	51
Maharastra	194	491	685	70
Bihar	99	866	965	61
Delhi	47	354	401	60
West Bengal	121	284	405	54
Rajasthan	65	203	268	54
Punjab	83	307	390	51
Hararyana	89	165	254	51
Mizoram	85	152	237	42
Orissa	40	205	245	23
Tamil Nadu	115	196	311	20
Karnataka	16	206	222	19
Assam	27	77	104	18
Gujarat	48	119	167	15
Himanchal Pradesh	6	2	8	Nil
Jammu & Kashmir	20	64	84	Nil
Kerala	78	106	184	Nil
Tripura	2	12	14	Nil
Meghalaya	2	4	6	Nil
Sikkim	Nil	2	2	Nil
Arunchal Pradesh	Nil	Nil	Nil	Nil
Manipur	Nil	Nil	Nil	Nil
Nagaland	Nil	Nil	Nil	Nil
Total	1599	5622	7221	885

Source: Chatteraj, B.N. N I C F.C., Delhi, 2000

<sup>1</sup> This Submission is being made by Enakshi Ganguly Thukral and Co-Directors, HAQ: Centre for Child Rights. We thank Ms. Dawn Valson who was an intern for her research support and pulling together the first draft.

The numbers have consistently risen, showing how important it is to pay attention to their condition.

Total Number of Women With Children Living in Prison		Total Number of Children Living in Prison <sup>ii</sup>	
Year	Number	Year	Number
2008	1774	2008	2135
2007	1698	2007	1918
2006	1394	2006	1595
2005	1251	2005	1413
2004	1484	2004	1507

While there is some information on children living with their mothers inside the prisons, there is almost no information regarding children of prisoners who are living in the community. A sample survey on the socio-economic conditions of these Children back home living in the community throughout the State of West Bengal (in the east of India) had identified thousands of Children between the age group of 4-18 years.<sup>iii</sup>

#### **Losing more than freedom**

Director General (Prisons), Tihar, Ajay Agarwal, said, "There are cases when both the father and mother are in prison, or one parent has killed the other. There is no one to care for the children. There are many NGOs in Delhi that feed, clothe and educate them. I make an effort to bring the children to see their mothers every three months. It has a good effect on the women."

The Hindu, April 2003

Although some initiatives were taken to address the issues of these children, it was only in April 2006, that the Honourable Supreme Court recognized children of prisoners as a distinct group through its landmark judgment RD Upadhyay. Vs. State of Andhra Pradesh & Ors. Writ Petition (C) 559 of 1994.

Although the Honorable Supreme court passed various guidelines (listed below) for protection and care of the children living with the parent inside the prison, there are no guidelines or any provisions specified for the care and protection of children of prisoners who are older than the age upto which they can live with their parents continue to live at home.

These children usually face discrimination and social stigma in the society for being the children of prisoners thereby bear the burden of punishment given to their parent or parents. With no support and guidance, there are chances of such children getting into anti-social behavior up as 'they are discriminated in the society and are thrown into the darkness of neglect and deprivation'.<sup>iv</sup>

#### **Government's recognition of Children of prisoners**

The recognition of children of prisoners as a vulnerable category by the government, for the first time came in **1997 when it recognized them as part of the children in difficult circumstances, in a document titled *Universal Children's Day, 50 Years of Child Development-The Challenges Ahead*.**

It was in the decade of the 2000 they came to be identified in the various government documents. “The need to protect some children is certainly greater than others due to their specific socio-economic and political circumstances and geographical location. These are the children who are more vulnerable in terms of the harm/danger/risk to their right to survival/development/participation. *They are recognised by the Government as children in difficult circumstances and include Children of Prisoners*”<sup>v</sup> and hence find mention in the **National Plan of Action for Children, 2005** (11.2.2) in its list of Children in Difficult Circumstances. Subsequent government documents mention them as children who need care and protection.

In 2001-02, the Committee on Empowerment of women (2001-2002), of the Thirteenth Lok Sabha examined the situation of Women in Detention. The Committee made its recommendations based on reports from the Ministry of Home Affairs, Ministry of Human Resource Development (Department of Women and Child Development) National Commission for Women. This Committee also examined the recommendations made by an Expert Committee on ‘Women Prisoners’ constituted by the Government in 1986-87 under the Chairmanship of Justice V.R.Krishna Iyer, former Chief Justice of the Supreme Court of India, which had made a number of very useful recommendations for women prisoners and suggested a National Policy for Custodial Justice for Women. Unfortunately, **for almost thirteen years the Government remained silent on the implementation of the Report till the Committee on Empowerment of Women took up this subject for detailed examination. The Committee laid down that :**

*“The children who are born in jails and those who accompany their mothers to jails are compelled to live behind bars without being offenders. There is no Act in the country to take care of these children. As crèche facilities are not available in every jail, they lack guidance and proper care. Infant care facilities like crèches and Integrated Child Development Services (ICDS)<sup>2</sup> project should be established/run in each prison for proper care and development of children accompanying the women inmates”.*

Despite all the above, in undertaking a mid –term appraisal of the **Tenth Five Year Plan** and in preparing for the **Eleventh Plan** of the Government of India, it **has been observed that no there is no specific interventions for children Prisoners.**<sup>vi</sup> Jail manuals of different states had different specifications regarding what was to be provided to the children and how long they were allowed inside the prisons etc.

It was only in April 2006, in recognizing children of prisoners as a distinct group, the Honourable **Supreme Court (RD Upadhyay. Vs. State of Andhra Pradesh & Ors. Writ Petition (C) 559 of 1994)** issued the following minimum standards for mother and child while in prison thereby reconciling the diversity of actions laid down in the state Jail Manuals:

- Before sending a pregnant woman to jail, the jail must have the basic minimum facilities for child birth, prenatal and postnatal care.
- As far as possible, childbirth must take place outside of the prison. If a birth in prison occurs, the prison shall not be recorded on the birth certificate. Only the locality shall be recorded.

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<sup>2</sup> ICDS is a programme run by the Government of India for provision of early child care and education services and is implemented across the country

- A child living in jail should only be a last resort when all other possibilities of keeping the child under safe custody elsewhere have been tried and failed.
- Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six. Upon reaching the age of six, the child shall be handed over to a suitable surrogate as per the wishes of the mother or sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on visitation. Children kept in an institution shall be allowed to meet the mother at least once a week.
- A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
- Prisons much have a crèche for children below the age of three and a nursery for children below the age of six.
- Food must be provided that is separate from the prisoners and meets the children's nutritional needs as prescribed by the state governments.
- Clean drinking water must be supplied to the children and the water must be checked periodically.
- Children must be given separate utensils, clothing, and bed sheets.
- Children shall be regularly examined by the female medical officer and shall be vaccinated.
- Sleeping facilities that are provided to the mother and child should be adequate, clean, and hygienic.
- Children should be separated from offenders relating to violent crimes on a priority basis.
- Adequate arrangements should be made available in all jails to impart education. Diversified recreational programs and facilities should also be made available to the children.
- Expenses of food, clothing, and medical care shall be borne by the respective state.

The Supreme Court gave prisons three months to comply. However, years have passed and jails still have not fully complied with the judiciary's orders.<sup>vii</sup>

**In the course of HAQ's work we came across...**

Navjot (name changed), an 11-year-old girl in Punjab, was found taking care of her three younger siblings all alone. Her father and mother were taken to the police station 2 months ago. Navjot had no idea where her mom and dad were or when they would come back home.

A young boy, Imran (name changed), 12, who is a co-accused in the murder of his father, along with his mother and brother over a fight over property. His father deserted the family and had remarried. He now wanted to evict Imran, his mother and brother and sell the family home. A fight ensued between the father, the mother, and the siblings in which his father was killed. His mother and his brother were arrested and taken to prison. He was sent to Juvenile Facility known in India as Observation Home. His sister who was 19, and hence left alone was moved to a shelter home for women. For several days, Imran could not be granted bail as there was no one to take his guardian ship. Finally, his uncle, mother's brother came from out of town and had him (on bail) and his sister released. However, he did not wish to take any further responsibility and so he and his sister are left them alone at the family home. With the only wage earners behind bars, the electricity and water has been cut off, he and his sister have to steal electricity and water. What is more, all the relatives are now eying the house with greed...

However, this judgment did not address the children who are being left behind in the community and thus cut off from their parents and more often than not left unattended.

The Eleventh Five Year Plan (2007-12) has clearly identified them as a category needing special attention:

*“Another set of children who are often neglected are the children of prisoners. The fact that a large number of women prisoners are with children (or have children in prisons), means that this category of deprived children suffer from social isolation and absence of healthy interaction. Those separated from their imprisoned mothers and fathers have different problems. Their problems are largely the hidden and uncalculated costs of imprisonment. The National Plan of Action 2005 as well as the Juvenile Justice (Care and Protection) Act has now finally recognized their need for care and protection”.*

**India has yet to ratify the UN Rules for the Treatment of Women Prisoners**, also known as the Bangkok Rules, which lays down guidelines for the treatment of children of women prisoners.

#### **Lack of Police Protocol with respect to Children of Women Prisoners**

Article 9.4 of the UN Convention on the Rights of the Child (CRC), which India ratified in 1992, stipulates that *when a parent is separated from a child from any action initiated by a State Party, such as detention, imprisonment, or death while the person is in the custody of the State, that State Party shall provide the parents, the child, or another member of the family with the essential information concerning the whereabouts of the absent member unless the information would be detrimental to the well-being of the child.*

Additionally, the Indian Code of Criminal Procedure (Amendment) Code requires the police to inform the relatives of what happened and the arrestee can inform others of the arrest and location of imprisonment.

The arrest of a parent can be a frightening and traumatic experience for children.<sup>viii</sup> Officers are not always sensitive to children who are present at the time of the arrest and are forced to watch their parent taken away. Children might be left unattended or spend days alone, once the parents are taken away.

There is also no clear protocol on how law officials should treat children of the arrested parent. Police are more focused on making the arrest than on the children left behind or present on the scene at the time of arrest. Police and concerned officials fail to tell children where their parent is going and why and intimate them in case they are transferred to another prison. Also, law enforcement does not have an official protocol to make arrangements for children after an arrest.

At the same time, the Police also do not seem to have a legal obligation to inform female arrestees of their right to bring infants to jail with them. Most women are unaware that they can bring their child with them if it is below the specified age.<sup>ix</sup> Small children are separated from their mothers at a very

early age and with no warning or preparation. This is particularly unfortunate to breastfeeding babies and very young children.

Furthermore, prisoners may not be informed about the whereabouts of their children and who is taking care of them. The lack of updates is mainly because police officers do not keep track of the children themselves. Many women prisoners stated that they were deeply disturbed about what was happening to their children left outside. They worried about the physical security of their children. For example, one woman prisoner had no idea whether her son who had polio was being treated or whether her two other sons were staying at their grandparents, at an orphanage, or had run away.<sup>x</sup>

### **Children Living In Prison**

Children can stay with their imprisoned mothers until they reach the age of six per Supreme Court guidelines. The rationale behind this policy is that children should not be separated in their formative years from their mothers, especially when there are no close family members willing or available to take them in.

However, prisons are often unsuitable environments for the proper development of young children. Children are negatively affected by the lack of proper food, the physical and social atmosphere of the jail, and the lack of educational facilities.

Jails have meagre budgets and generally do not allocate a good portion of their budget for the children who live there.<sup>xi</sup> How children are treated is left up to the discretion of the prison superintendent or medical officer.<sup>xii</sup> Several organizations across the country are working in partnership jail authorities to reform the jail system. Social activists and groups have been helping reform jails. One social activist had monitored and greatly improved Hyderabad jail. There had been a lot of sexual abuse of the young boys in jail before the jail became women's only with her help.<sup>xiii</sup>

As result the picture that one gathers from across the country is disparate.

- In most jails, there are no cribs, toys, or children's book. The food for the children is of the same average quality as the food for the inmates.<sup>xiv</sup> However, there are others such as Delhi's Tihar Central Jail, where these facilities are made available to the children. In the Jail exclusively for women, there is a creche and a nursery being run with support from NGOs. The children who have attained six years are admitted into a boarding school is the parent agrees. The female jail has been awarded 1901-2000 Certification for maintaining International Standards for the treatment of women prisoners.<sup>xv</sup> India Vision Foundation, a prison reform organization, runs a crèche at the jail that has toys and puzzles for the children to play with and they are taught mantra and how to pray.
- As recent as March 2011, women prisoners in a Tamil Nadu jail revealed that the children living in the jail were deprived of their full ration of milk and eggs.<sup>xvi</sup> The milk they received was diluted with water. Prisons also have no special consideration for children before their birth.<sup>xvii</sup> Pregnant inmates

are given the same food and level of nutrition as the other inmates. Poor nutrition can compromise a woman's ability to lactate.<sup>xviii</sup>

***Zahira arrived at the jail six-months pregnant and with a two-year old girl. She was forced to sleep in the toilet for a month by the older inmates. They said she had to earn her place in the overcrowded cells.***<sup>xix</sup>

- Pregnant woman also do not get regular check-ups. This deprivation of proper healthcare puts children at a higher risk of chronic health problems.
- Article 28 of the CRC states that primary education is an inalienable right, which is guaranteed to all children both in and out of prisons. Article 31 of the CRC states that children have the right to engage in recreational activities. Nevertheless, prisons often neglect providing the children who live there with proper facilities for education and recreation. One reasons that the authorities give for denying children this right is that population of children per prison is usually low. For example, in Uttar Pradesh, there was an average of six young children living in a jail concomitantly,<sup>xx</sup> and the jail authorities did not think it is feasible to implement an educational system for only a few children.
- At the same time, several jails have implemented an educational system where children attend regular schools outside the prison. Some schools have even lowered their tuition fees for children who are staying in prisons to make it more possible for children living in prisons to attend. Jails can save money by not having to create an educational facility and children can get educated and be mainstreamed at the same time. Here are two examples:

*In December 2005 with Headquarters at Amritsar Central Prison undertook an innovative programme wherein the children living with them were enrolled in the schools outside the prison for the first time in the history of Punjab Prisons.*<sup>xxi</sup>

*In West Bengal, the Apostolic Carmel, a NGO partner of the Prison Directorate and the National Legal Services Authority (NALSA), provides for transport to the children inside the prison to go the school outside the prison.*<sup>xxii</sup>

- Developmental experts also say that prisons do not prepare children for the outside world in the formative years. Children have greatly reduced contact with the outside world. Some jails have rules that do not allow children to leave the jail, much like a prisoner. Children living in prisons also have no contact with their incarcerated father. Prisons have strict regulations separating male and female prisoners. Even when both parents are held in the same facility, the children do not get to see their fathers. All these have long term impacts on children-

*For example, the head of the crèche at a Tihar jail said that when he would take the children on picnics outside the jail, they would get bewildered by things other children consider ordinary and mundane. It would take time for them to adjust to the traffic, sit in a bus, and see women and*

*men interact with one other.<sup>xxiii</sup> Some of the boys only talk in the female gender because they grew up among women in the female ward.*

- Children are also affected by the prison culture. Many states have not created an exclusive women's prison because of the relatively low amount of women criminals compared to male criminals. Instead, prisons have separate enclosures for women. The barracks are often filled way past capacity.<sup>xxiv</sup> Even where there are separate jails for women, mothers and their children are packed in the same cell with females convicted of committing violent crimes or habitual offenders.<sup>xxv</sup> The female inmates use abusive language, can be territorial, and even violent- behaviour that impacts children.
- There is also no specially trained staff member to look after the children of women inmates. The same guards who watch the female inmates watch the children. They have no trained mind to watch over the psychological and social development of young children.
- Prisons differ in their placement of children after they reach age six. In some jails, children continue living in prison with their mother despite Supreme Court guidelines. In one Jharkhand prison there were children ages 7 – 15 are still living in the jail.<sup>xxvi</sup> No relatives have collected the children. One of the major principles of the Juvenile Justice (Care and Protection of Children) Act ("JJ Act") for children in need of care and protection is social reintegration of every child as a normal citizen in the community. Prisons letting kids spend most of their childhood behind bars inhibits the children's social reintegration. Older children have an increased difficulty of being able to live in the outside community because their socialization pattern gets severely affected.

The newly adopted UN Rules for the Treatment of Women Prisoners states that children should be provided with a healthy environment and regular exercise opportunities. **If India ratifies the rules, then prisons would be more conducive to the proper development of a child.**

### **Children Left Behind In the Community**

Children left outside when their parent is in prison are forced to adjust to a "parentless" existence. It is even harder when the children find themselves without their mother after they are sent out at the age, especially if both parents are in jail. Children react differently to the situation. However, all children left behind in the community have to deal with the stigma of having incarcerated parents, finding a new home and turmoil and financial insecurity.

- It varies based on the nature and quality of the relationship between the child and parent. Some children might experience trouble sleeping, emotional withdrawal, regressive behaviours like bedwetting, and/or difficulty forming secure relationship with others.<sup>xxvii</sup>

- Some children might experience relief that their mother or father is behind bars, if they had been in abusive home. Yet, the lack of a home is traumatizing and children have been known to testify and take back their statements just so that they can have their parent back.
- The community looks down on children of prison inmates.<sup>xxviii</sup> It sees them not as innocent victims but as criminals themselves. *For example, children of prisoners in Karnataka are called kallara makkalu which means thief's child in the Kannada language.*<sup>xxix</sup>
- Children of prisoners have a high risk of failure in school or decline in school performances.<sup>xxx</sup> If other kids at school discover the truth, they get teased and bullied at school.
- Visiting a parent in prison is helpful in maintaining continued contact between imprisoned parents and the children left outside, the reaction of children differs. While for some children it alleviates the harsh effects of parental incarceration and reassures them that the parent/s are alive and okay, it is not so for others. For such children, the stigma of being a child of a prisoner is so harsh that children feel like criminals for visiting a jail. They feel uncomfortable telling teachers and classmates that they are missing school to go visit a parent in jail. Also, prisons are designed without considering the impact on young children.<sup>xxxi</sup>
- Incarcerated parents miss their children and want to see that they are safe.<sup>xxxii</sup> However, the distance and prison restrictions put up a real obstacle between prisoners and their children. Prisons tend to be located far from major population centres.<sup>xxxiii</sup> Children need to be accompanied with an adult for such a long trip. It might be hard to find someone willing to take off from work for a few days. Prisons also have restrictions on the number of visitors per day. A family of several children would have to stretch their trip over a span of a few days so that all the children could see the parent. This involves more days off from work for the accompanier and spending money on a hotel.
- While it is widely acknowledged that the best place for a child is the family, and hence kinship care<sup>3</sup> in the absence of parents, there is a very strict and careful monitoring required when such children are placed in extended families. It is very common in India and typically arranged without formal legal proceedings. There is no legislation or government policy to support kinship carers and there is no agency or monitoring mechanism in place.<sup>xxxiv</sup> In the worst case these children have been exploited and abused by their relatives in the form of child labour, prostitution, and sexual abuse.<sup>xxxv</sup>

The option of foster care has not been explored in India as yet, although it is mandated by the Juvenile Justice (Care and Protection) Act, 2000 (Amended in 2006). This is the fulltime care of a child by a responsible caretaker. This law mandates every state to formulate a policy on foster care under section 42. However, foster care is not well accepted in India.<sup>xxxvi</sup> Some states like Goa has only as recently as October 2010 formulated a foster care system<sup>xxxvii</sup>, while other states are yet to do so.

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<sup>3</sup> Kinship care and foster care are two options that can provide a family environment for a child whose parents are incarcerated.

There are examples of organizations that have taken children of prisoners under their wing and are supporting them :

*Socare Ind (Society's Care for the Indigent) in Rajajinagar, which has been giving shelter to and bringing up the children of prisoners. All the 14 children given shelter by the society got admission to a school on that day. Besides those from the City and outskirts, some of the children are from Bijapur and Chikmagalur districts. Started with two children Socare Ind has come a long way. It has now a good number of children to look after and the organisation has come to stay. All the inmates are children of parents who are serving life terms in the Bangalore Central jail. East West School has admitted them knowing that they are the children of prisoners. However, the school authorities have requested Socare Ind to be "discreet" in revealing their identity, for the parents of other children in the school may not appreciate it and might even raise objections. However, Socare Ind is convinced that the children would have to live the reality<sup>xxxviii</sup>*

*The initiative was designed by the Inspector General of West Bengal Prison Directorate in which he joined hands with the National Legal Services Authority (NALSA) and NGOs, for children both inside and outside the prison. The effort has been to help facilitate a wholesome and sustainable development of prisoners' children in their own homes. Through this programme, the community has been made aware about such neglected juveniles and voluntary services by schools and institutions to come forward and use part of their institutional funding for the welfare and advancement of these children has been welcomed. These organizations along with NALSA and Prison Directorate of West Bengal have provided support to the families and children of prisoners in the community. They have not only been provided educational assistance, but have also provided social security to them by building up homes to the families who were earlier without any shelter. The bigger children are trained according to their talent and inclinations into professions of their choice.*

Rule 21 of the newly adopted UN Rules for the Treatment of Women Prisoners states that visits involving kids should be positive with regard to staff attitudes, open contact between parent and child, and extended hours. Rule 26 states that women prisoners' contact with their children should be encouraged and facilitated by all reasonable means. If India ratified these rules, children will be more willing to go to prisons and visit their parents regularly.

- Children have to readjust when a parent goes to prison and the children are left behind. The whole family undergoes a social and economic crisis. Children of prisoners have to take on new roles to "provide domestic, emotional, or financial support for other family members."<sup>xxxix</sup> Undertrial detention creates many of the same problems for children as post-trial imprisonment. Undertrial detention can last many months, sometimes longer than the actual conviction sentence.<sup>xl</sup> During this time, arrestees can lose their jobs even if they are found innocent because they have been absent for so long. Children without working parents have a high risk of turning to a life of drugs, alcohol and delinquency and are at high risk for intergenerational incarceration.<sup>xli</sup>

*Vidya Rani and Prahba are the daughters of Veerappan, notorious killer, and know the hardships of being the child of a prisoner very well. Their mother was detained in prison for almost three years as an undertrial for alleged involvement. No one would give their mother a job when she got out of jail, even though she was acquitted.<sup>xlii</sup> Vidya and Prahba rely on supporters of their father to provide them income and pay for their education.<sup>xliii</sup> At school, Vidya had no friends and did poorly in her Class XII because the stress was too much.<sup>xliv</sup>*

- Children of prisoners also have a high risk of dropping out of school. Children who remain uneducated are stuck in poverty because their income earning potential is reduced. The Home Minister of Kerala implemented an educational assistance program.<sup>xlv</sup> It pays to children of prisoners serving at least a two-year sentence a fixed amount of money per month up to the 10<sup>th</sup> standard for children of prisoners and then an increased amount from plus two onwards to pursue their education. West Bengal has a law that if a detained person has dependent children studying in school or college, the State government will help pay for the child to continue going to school.<sup>xlvi</sup> Also, the West Bengal Prison Directorate encourages schools and institutions to allocate a part of their funding for the welfare and advancement of children of prisoners.<sup>xlvii</sup>

## **What is required?**

### **1. Officers of the law must be sensitive to the children of the individuals they are arrested.**

When arresting a parent at home with children present, officers should try to have children put in another room in order to not witness the arrest and should not pull out weapons unless necessary. Law enforcement should also explain to women that they have the legal right to bring children younger than 6 with them to prison so that small children are not separated from their mothers. If police have arrested the sole caretaker or both parents, then officers must explain the situation to the children in a sensitive and age appropriate way. Officers should also make arrangements for the children to be taken care of by the person of the arrestee's choosing. If no one is selected or the appointed person is unwilling, then the officers should send the child to a responsible relative. If no relative is found or willing to care of the children, then to a social institution. Law enforcement should keep track of the children of the arrested to ensure their safety and security and to keep the prisoner informed on their whereabouts.

### **2. There is a need for uniformity of understanding of the circumstances in which children must be allowed to accompany their mothers in prison.**

There must be set standards regarding the kind of facilities that a pregnant woman and children living with their mothers must have so that they do not feel that they are growing up "imprisoned" and are prepared for the world outside the prison when the time comes for them to leave (In India for example it is at the age of six).

While living in prisons children must have access to health, nutrition, crèches and other services essential for their healthy physical and cognitive growth. Non-governmental organizations may be encouraged to work with the jail authorities in providing these services.

**3. Women living with children in prisons should have separate accommodations.**

Children are entitled to shelter as a matter of right. The shelter should be safe and conducive to a healthy environment. Children should not be exposed to women that use abusive language, behave violently, or might be dangerous. They should not share cells with female inmates that are not their mother. Also, children need sufficient space to move around. They should not have to stay in over-crowded cells that may prove detrimental to their healthy growth.

**4. Children of prisoners should receive educational assistance from the state to pursue their education to the fullest.**

Education is a fundamental right. Children of prisoners have a difficult time going to school because they cannot afford it or schools will not let them attend. NGO's have been helping children of prisoners receive educational assistance and some have been able to pay for college. However, NGO's have limited financial resources. The burden should be on the state to ensure children are going to school and able to attain higher education.

**5. Special attention for children of prisoners in the community**

Children of prisoners living in the community are children in need of care of special care and protection. In the absence of both parents, their living conditions need to be carefully monitored to see that they are not being treated in any discriminatory manner in case they are with relatives and stigmatized for being child of prisoners. In case they do not have a safe place to live, options of foster care need to be explored. In case the principal earning member is in prison, putting the family into economic distress, sponsorship possibilities must be explored for the child/children and employment possibilities for the remaining adult, unless it she or he is too old as can be case with children living with grandparents.

If all fails, as a last resort they should be looked after in a child care institution meant for children in need of care and protection.

**6. Prisons should be sensitive to imprisoned parents maintaining contact with their children.**

Prisons should encourage imprisoned parents maintaining contact with their children. Therefore, parents should be kept in prisons close to the children. This would reduce any geographical or financial burden in visitation.

Plus, prisons should be more flexible with visitation restrictions for children. This would mean allowing private time between children and parents, and letting children touch and talk to their parent in a room.

Staff should also be more sensitive to the needs of the children and be friendly, explain to the children the different security checks, and have toys and books for children while they are waiting.

**7. Inspection and regular audits of prisons and the facilities and conditions of children is a must.**

Many jails are found housing children above 6, lacking the proper diet, medical care, recreational and educational facilities that by the law they should have. Independent organizations must be part of the inspection teams, and their mandate must include the inspection of and facilities for children living in prisons. They should conduct regular audits of prisons and see to it that prisons comply fully with the laws of the state which include meeting the nutritional, medical, recreational and educational needs of the children.

## ENDNOTES

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