

RIGHTS OF THE CHILDREN OF WOMEN PRISONERS

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This article is about the rights of the children of women prisoners. It is significantly related to human rights provisions under the law and convention at the national and international levels, United Nations Convention on the Rights of the Child, 1989. The article specifically gives a notion about the problems faced by maternal prisoners and their children. It has an adverse and hostile effect on the mental and physical state of the children which may hinder their development as human beings. So, there are some important conventions and laws to protect the rights of the child whose mother is in prison. However, the international convention cannot be enforced upon its ratified states but they are obligated to follow the rules and submit the report periodically. The articles of the convention enumerate the civil, political, economic, and cultural rights of the child (popularly known as fundamental rights) that should be protected and applicable universally. The article states the Indian laws with respect to different provisions implemented by the state government for the promotion and protection of the fundamental rights of children in the country. The article concludes with a brief explanation of all the mentioned facts and some personal suggestions related to improper and ineffective implementation of the said provisions and its repercussions on the development of children.

INTRODUCTION

Children are considered a vulnerable group when it comes to human rights enjoyment due to their incapability in comprehending such things and this is a kind of inherent characteristic. The word children are defined under Article-1 of the Convention on the Rights of the Child, 1989¹, which states that a child means every human being who is below the age of 18 is known as a child. they need specific requirements, care, and responsibility for socializing and their progress as human beings that distinguish them from adults (above the age of 18) then need proper physical, emotional, cognitive, educational, and social care for their holistic growth and development. Furthermore, children's vulnerability can be accelerated by the following factors such as poverty, discrimination, violence, improper care, inadequate or no education, exploitation, depriving the full enjoyment of their fundamental rights and liberty, etc. It is

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¹United Nation Convention on the Right of the Child.

specifically mentioned under para 2 of Article 25 of the Universal Declaration of Human Rights² that childhood is entitled to special care and assistance. According to the International Convention on Human Rights, it is stated that the rights of minority groups should also be protected under the ambit of the constitutional provision, therefore in the case of the rights of women prisoner's children, it should also be guaranteed under the national and international provision of human rights.

PROBLEMS FACED BY THE CHILD OF A WOMAN CONVICT

Globally, around 19,000 women are in prison with their children. About 1,800 children below the age of 18 live with their mothers in Indian prisons as per the report published by the National Crime Record Bureau.³ During the imprisonment of maternal women, the child below the age of 6 usually accompanies his or her mother in prison case the child above 6 years is not allowed to be brought into the prison in that circumstance relatives never come forward to take care of the child any of these are unavailable then the child can be admitted to the Child Welfare Committee (CWC) by police or court if required. However, jail is not an appropriate place and environment for the upbringing and socialization of children. Children play a very important role in making the future of a country so they must be able to enjoy every right for their mental and physical growth and if it gets hindered then it shall be the responsibility to ensure a favorable environment so that they can enjoy their rights without any distinction and interruption. The prison system of India is going through various impediments including overcrowding, inadequate and poor living conditions, poor health facilities, poor education facilities, cuts from major parts of society, unfavorable environment for child sustainability, and so on. It can be said that the imprisonment of mothers has a detrimental effect on their children's holistic growth and development. They could not get normal childhood life in jail even though they are deprived of getting the primary education. The children in prison with their mothers could not get a proper social system to skill and socialize themselves they are devoid of the major part of society therefore safeguarding their fundamental rights. There are different conventions and constitutional provisions nationally and internationally.

² Universal Declaration on Human Rights.

³Prison Statistics India, 2015, National Crime Record Bureau.

INTERNATIONAL CONVENTION

The United Nations Convention on the Rights of the Child (UNCRC) - It is an international legal framework for the protection of every right of every child. It had been adopted on 20th November 1989 by the United Nations General Assembly under its resolution 44/25⁴. This convention has been inspired by the following international convention on human rights:

Article 25 of the Universal Declaration on Human Rights states that childhood is entitled to special care and assistance.⁵

The International Covenant on Civil and Political Rights under Article 23 and Article 24⁶ and the International Convention on Economic Social and Cultural Rights, ⁷under Article 10, specifically mentioned the rights of children and that they should be given special care and attention. Although these conventions proclaim the holistic development of the child irrespective of any kind of discrimination under any circumstances, these principles are not legally binding on its state members. Therefore, the United Nations Convention on the Rights of the Child came to be proved as an enforceable and effective international convention that is legally binding on its state members. Therefore, its ratified state has to follow the stipulated provisions under its constitution. The convention has 54 articles, the following important articles for the protection of the rights of the child are as below: ⁸

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Article 1 - It lays down the definition of the child anyone who is below the age of 18 years old has all the rights given which is stated in the convention.

Article 2(Non-discrimination) -This article States about non-discrimination among children. The convention of UNCRC applies to every child without any kind of discrimination based on sex, ethnicity, religion, language, family background, or any other status.

Article 3 -This article enumerates the best interests of the child that must be the best of their needs, desires, and top priorities in taking any kind of decision that may affect the child.

Article 4 - This article says the effective implementation of the convention. The state government that has ratified the convention must do and facilitate all favorable measures to

⁴United Nation Convention on the Rights of the Child.

⁵Article-25, Universal Declaration on Human Rights.

⁶ICCPR

⁷ICESCR

⁸Article – 1,2,3,4,6,8,9,18,19,24,26,27,28,Convention of Protection of the Right of the Child.

ensure that every child can enjoy their rights by creating a system and enacting legislative provisions. This will promote and protect children's rights.

Article 6 - It ensures the child's right to life, survival, and development. Every child has a right to life. Every state government must take all possible actions to ensure that children survive and develop to their full potential.

Article 8 – (Production and preservation of Identity), every child has the right to an identity and the state government must respect and protect their identity and family relationship from being changed unlawfully.

Article 9 - It explains that the child should not be separated from his parents. Children must not be separated from their parents against their will unless it is in their best interest.

Article 18 -This article talks about parental responsibilities and state assistance both parents share responsibility for socializing with their child. The state government must support parents in availing of favorable services that are required for a child's upliftment.

Article 19 - This article provides protection from violent abuse and neglect.

Article 24 - This article provides health services to every child. They should have the best possible health. The Government must ensure that every child is getting proper healthcare, clean water, nutritious food and hygienic environment, and education on health and sanitation, especially for poor children.

Article 26 - This article lays down provisions of social security for the child. State government must provide social security including economic support education and other benefits.

Article 27 - This article provides specifically an adequate standard of living for every child. The example given, physical and social needs for the development of the child. Government should help poor family is who can't afford to provide the necessities for their child's progress.

Article 28 -This article provides the right to education. Every child has the right to get an education. There should be free primary education and different forms and scope for secondary education for children.

All of the above crucial articles are also available to the children of women prisoners and the government should ensure that all children who live with their mothers are not devoid of the enjoyment of these basic rights for their proper and justified upbringing and development.

There are also other international provisions that especially enumerate the rights of the child of a woman prisoner.

1. The United Nations Standard Minimum Rules for the Treatment of Prisoners Popularly Known as Nelson Mandela Rules:⁹ This rule has been adopted by the United Nations General Assembly including India on 17th December 2015. This set of rules enumerates the minimum standards for the treatment of prisoners. The rules are based on the principle to treat all prisoners with respect and dignity and the very basic human rights must not be infringed. In this NMR there are also some rules for the rights of the children of women prisoners that are mentioned under Rule 28 and Rule 29.
2. The United Nations rule for the treatment of women prisoners and non-custodial measures against women offenders, popularly known as the Bangkok rule.¹⁰

These rules were adopted by the United Nations General Assembly in 2010 to provide a framework for the treatment of women prisoners, including the need to acknowledge the best interests of the children of incarcerated women. These rules have also been adopted by India.

NATIONAL LAWS

Children are the supreme treasure for any country because they are the future generations who will lead the country in the future. Therefore, the state should take progressive measures for the protection of their civil political, economic, and cultural rights. The state has made important fundamental rights guaranteed to children by the constitution of India which includes:¹¹

1. Article 21- right to the protection of life and individual Liberty
2. Article 39(e) -Securing the minor-age children by ensuring that they are not abused or forced to enter into any unlawful act.

⁹Nelson Mandela Rules.

¹⁰Bangkok Rules.

¹¹Constitution of India

3. Article 39 (f) -Children are given opportunities and facilities to develop in a healthy environment and healthy manner protected against exploitation and against moral and material abandonment
4. Article 21(a) -Compulsory primary education for children of age between 6 years to 14 years.
5. Article 45 the state shall endeavor to provide early childhood care and education for children until they complete the age of 6 years.
6. Article 46 states shall promote with special care the educational and economic interests of the vulnerable sections of the people and states that protect them from social injustice and all forms of exploitation.
7. Article 15 (3)- Empowers the state to make a special provision for women and children.

India has also ratified the UNHRC in 1992 which has since then been legally binding on India to follow significant articles of the convention to promote and protect the rights of the child through national and local legislation. There are also various crucial laws enacted by the Indian government for the pursuance of the rights of the child. The following laws are:

Commission for Protection of Child Rights Act, 2005¹²

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Juvenile Justice (JJ) Act, 2015¹³

Right to Education, 2009¹⁴

Protection of children against sexual offense act (POCSO),2012¹⁵

The Guardian and Wards Act, 1890¹⁶

Factory Act, 1948¹⁷

Child Marriage Restraint Act, 1929¹⁸

¹² Commission for protection of child's right.

¹³ Juvenile Justice Act,2015

¹⁴ Constitution of India

¹⁵ POCSO act, 2012

¹⁶ GWA, 1890

¹⁷The Factory Act, 1948

¹⁸ Child Marriage Restraint Act, 1929

The Child and Adolescent Labour Prohibition and Regulation Act Amended 2016

These all are formulated to protect the rights and liberty of every child in the country without any kind of distinction. The progressive and effective measures are effectively enforced in India for the physical and mental development of children in India. The published report by the National Crime Record Bureau (NCRB) in 2015 stated that around 450 children of women prisoners and 1300 children of women under trial were imprisoned in various prisons with their mothers. It has been closely analyzed by the data of NCRB, more than 1700 children are deprived of a normal family environment as well as their basic rights and freedom.¹⁹ Despite various provisions related to the legal safeguards for the protection of children from all hazardous and exploitation deprivation of fundamental rights, the children of women prisoners are more vulnerable and oppressed living in adverse situations that hinders their physical and mental growth. Prison or jail is not an adequate and proper favorable place for the upbringing and socialization of the child. But children cannot live without their mother, especially those who are below the age of 06 years old, so the children below 06 years old are allowed to stay with their prisoner mother. This was legalized through the final verdict of the supreme court in the case of R D Upadhyay V the State of Andhra Pradesh in 2006.²⁰ It was held out that all states and UTs are obligated to allow the children to live with their mother in prison until they turned 06 years old. The rationale of the court was that separating a child from his mother at such a young age would have an adverse and hostile impact on the child. However, after the completion of six years of the child's age, he is supposed to be handed over to a relative, surrogate, or any other recognized institution that can take care of the child. The child is allowed to meet his mother once a week. Moreover, the National Policy for Children was adopted on 22nd August 1974²¹. This policy enumerates that the state shall provide adequate service for every child before and after his birth and also during the growing age for their social, physical, and mental development. This policy also includes the rights of the child whose mother is in prison such as proper health benefits, health services to pregnant prisoners, nutritious food for mother and child, nursery, education facilities, etc. Various state governments have submitted their report regarding the provisions of the protection of the basic rights of the child of a woman prisoner.²²

¹⁹Prison Statistics India, 2015, NCRB

²⁰ www.idiankanoon.org

²¹National Policy for Children

State and Union Territories	Age of the Child	Aid enacted by the respective government
Andaman & Nicobar	5 years old	A special diet plan for the children including vitamins and minerals to take care of the proper nutritious food is provided to them.
Assam	6 years old	Women teachers are available for the children to provide primary education and sufficient study materials with toys and books.
Bihar	2 years old	Health and education facilities are provided by the state government to the children in jail.
Chhattisgarh	6 years old	Nutritious food and additional milk is provided to the children. Periodical polio and other vaccination and other medical benefits. An education center is also there, park visits for the children, and clothing facilities. Educational

		training is provided for further studies.
Himachal Pradesh	4 years old	Children within 1 year get milk and medical facilities. Proper rooms are there for the mother and the child.
Jharkhand	5 years old	Health and food are taken care of by the jail superintendent. Clothing, toys, and basic education are also provided.
Karnataka	6 years old	Proper education is provided which is looked after by some NGOs.
Madhya Pradesh	4 years old	Cow milk for children within 1-year-old. Ration and toys are also provided.
Mizoram	6 years old	Special diet plan as per the rule of the jail manual.
Orissa	4 years old	Proper diet plan for children and mothers. Clothing, toys, and stationery are provided by NGOs.

Tamil Nadu	6 years old	A special diet plan, clothing, and nursery.
Uttar Pradesh	6 years old	Special diet plan as per the jail manuals. ²³

CONCLUSION

Children are regarded as the future of a nation that can uphold the growth and development of the country. Children are considered a vulnerable group in society as well because their basic rights have always been infringed and since they cannot comprehend the things as other age of people can do and are also unaware of their rights (human rights) entitled to them by their birth. These rights are protected and promoted by the state authority through progressive measures, education, and awareness programs. The childhood and rights of the children of women prisoners have always been infringed upon because they are separated from their mothers in the initial age of upbringing which causes an adverse effect on their mental and physical health. They cannot live a normal life like other children who have a mother. The social and personal development of such children is hindered or stopped. They face trauma, stress, malnutrition, and so on. They do not even complete their primary education as these children mainly belong to weaker sections of people wherein the father is either dead or no longer capable of looking after their child. This results in child labor, a child getting indulge in illegal activities to earn money, they can be easily trafficked, etc. All these things lead to great social backwardness and negative consequences in society which may deteriorate the actual development of society. Therefore, on an important note, a convention has been specially adapted for the protection and promotion of child's rights i.e. United Nation convention on the Rights of the Child, a very effective measure which is obligated by its state members and they are bound to make certain laws for the protection and promotion of child's right. For example, India has also adopted the convention and made various provisions regarding the same. There must be proper implementation of the provisions to protect the rights of children. There should be periodic surveillance by the National Commission for the Protection of Child's Rights and other legally recognized institutions to ensure there are no children left who are not enjoying their rights.

²³Report to National Policy For Children, 2013