
EMANCIPATING INNOCENCE: REDEFINING CUSTODY NORMS FOR CHILDREN OF INCARCERATED MOTHERS

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ABSTRACT

Incarnation is based on punitive and retributive jurisprudence of crime. The focus has traditionally been on punishing individuals who have committed crimes as a means of retribution and accountability. However, in blindly following this traditional approach of punishing the individuals, the dependents of the guilty also suffer. The young child of the incarcerated parents suffers the most as the child may face, trauma, familial disintegration, intergenerational cycles of incarceration, etc. This research paper specifically intends to investigate the complex and often overlooked issue of custodial norms of children of incarcerated mothers, thereby challenging the traditional perspectives and advocating for a dire need for re-evaluation of the current practices. This paper is quadruplicated. Firstly, it dissects the extent to which these norms affect children in the long term, considering both the psychological and sociological ramifications. Secondly, it analyses the concepts of 'caged childhood' and 'clipped wings', trying to discern the better approach under current circumstances. Thirdly, in this, the principle followed in examining child custody cases- 'the best interest of the child', also comes under scrutiny, decoupling its theoretical significance from practical interpretations and analysing its effectiveness in an ambiguous context that brings together questions of justice, child rights and constitutional mandates. Fourthly, as extensive research exists on the consequences of parental incarceration, this paper takes a novel approach by shifting the focus from the punitive aspects to the rehabilitative and supportive measures necessary for these children. Conclusively, this paper aims to contribute to a more enlightened and humane discourse surrounding this critical issue, offering a roadmap towards a future where children of incarcerated mothers can thrive, unburdened by the harsh constraints of current custodial norms.

Keywords: Incarcerated mothers, custody, best interest of the child, child rights, caged childhood, clipped wings.

Introduction

The criminal justice system, guided by principles of retribution and societal order, often inadvertently neglects the collateral consequences of its punitive measures. Within the intricate tapestry of India's legal landscape, the custodial treatment of young children born to or residing with incarcerated mothers emerges as an exigent and nuanced concern. Juveniles or minors are identified by their limited maturity in both physical and mental abilities, setting them apart from adults. Children constitute 42% of the population in India.¹ At the intersection of justice and familial welfare lie the children of incarcerated parents, particularly those under the age of 6 years, whose destinies are shaped by the prevailing custodial laws.²

Children of incarcerated parents are often considered forgotten children and ignored victims of justice.³ Only very rarely do they experience a sense of justice and closure following their involvement in the criminal justice process.⁴ This imperative arises from the foundational belief that children should not bear the consequences of their parents' errors whereas, youngsters exist in seclusion, devoid of contact with the external world, compelled to reside within the confines of the prison alongside other female inmates. In such situations, their mental maturation and development are prone to impairment.

This legal examination embarks on a critical analysis of the current legal framework governing the custody of young children, born, or residing with mothers undergoing incarceration. It is imperative to scrutinize the legal provisions that dictate the fate of these children, especially given the emphasis on the purported 'best interest of the child' principle within prevailing custodial laws. The legal framework, as it stands, dictates that children aged 6 or younger, stay with their mothers in prison, and this arrangement may extend until the child reaches the age of 6 if the mother was pregnant at the time of sentencing.

In 2012 about 3,85,135 prisoners were housed in 1,394 total prisons across the nation, according to Prison Statistics India Snapshots from the National Crime Records Bureau. There

¹Shrikant Asawa, Sandeep Bhowate, Pardeep Singh; Juvenile Delinquency: Retribution / Reform? =Futuristic Vision VIS a VIS Changing Scenario; Indian Journal of Forensic Medicine & Toxicology. July-December 2014, Vol. 8, No. 2

² Oliver Robertson. *Children Imprisoned by Circumstance*. Quaker United Nations Office, Human Rights & Refugees Publications; 2008

³ Petersilia, Joan. *From Cell to Society: Who Is Returning Home?* Newyork, Cambridge University Press; 2005.

⁴https://www.researchgate.net/publication/254809988_Victims'_Rights_and_Restorative_Justice_Piecemeal_Reform_of_the_Criminal_Justice_System_or_a_Change_of_Paradigm

were 1,226 women awaiting trial with their 1,397 children in various prisons across the nation, in addition to 344 women who had been convicted and were living with their 382 children. Due to such vast numbers and unique needs, these vulnerable kids face many challenges. In 2012, according to Prison Statistics India Snapshots from the National Crime Records Bureau, the nation housed approximately 385,135 prisoners distributed across 1,394 total prisons. Among these incarcerated individuals, there were 1,226 women awaiting trial accompanied by 1,397 children, and an additional 344 women who had been convicted and were residing with 382 children in various prisons nationwide.⁵ The situation did not get any better in fact the number increased, as of December 31st, 2022, the population of women prisoners with children in correctional facilities stood at 1,537, encompassing a total of 1,764 children. Within this cohort, there were 1,312 women prisoners categorized as undertrial prisoners, who were accompanied by 1,479 children. Additionally, there were 198 convicted prisoners among the women population, with 230 children in their care.⁶

The paper will delve into the problems faced by children due to the present custodial laws in India. Therefore, in this paper, the author will analyse the current laws governing the custody of young children, specifically, children under the age of 6 years, of incarcerated mothers. This will be done by backing the analysis on the grounds of legal and psychological theories such as the renowned 'best interest of the child' theory. Herein, the author will also examine whether the existing provisions are in consonance with the constitutional and human rights provisions. The paper will then proceed to the analysis of already present, quantitative as well as qualitative data. By way of this comparative analysis, this paper aims to offer concrete recommendations for policymakers, social workers, and correctional institutions to reshape custodial norms and provide a more nurturing and supportive environment for children affected by maternal incarceration in the last section. In doing so, it seeks to challenge societal preconceptions and foster a more equitable and inclusive system of care for these often overlooked and marginalized children.

This paper delves into the multifaceted landscape of maternal incarceration and its profound impact on the lives of young children. "Caged Childhood" and "Clipped Wings" vividly illustrate the stark realities faced by these children, living within prison confines and the consequent developmental challenges they encounter. The exploration of the problems faced

⁵ NATIONAL CRIME RECORDS BUREAU, Prison Statistics India – 2012

⁶ NATIONAL CRIME RECORDS BUREAU, Prison Statistics India – 2022

by these young souls forms a critical narrative thread. Moving into the legal realm, the paper provides a juridical understanding, scrutinizing the custodial laws and constitutional provisions that shape their fate. Delving into the psychological theories of child development vis-a-vis the 'best interest of the child' test, the paper unveils the intricate interplay between legal mandates and psychological well-being. Culminating in a call for reform, the recommendations and suggestions pave the way for reshaping custodial norms, aiming to foster a more nurturing and equitable environment for these often overlooked and silenced children.

Empirical Analysis

The Supreme Court, in the case of *R.D. Upadhyay v. State of Andhra Pradesh & Ors.*, brought attention to the challenges faced by women prisoners and their children residing in Indian jails. It provided guidelines aimed at safeguarding and enhancing the rights and well-being of these children to ensure their overall development. While acknowledging the efforts made by certain states in this regard, the Court emphasized that much more needs to be done across states and union territories to cater to the needs of these children adequately. Furthermore, the Court highlighted that the prison environment is not conducive to a child's growth and urged government authorities to take reasonable measures to protect the interests of children living in Indian jails.

The court illuminated a concerning reality within the prison system, revealing that at the time of the case, there were 6496 under-trial women, accompanied by 1053 children, and 1873 convicted women, with 206 children. Building on this precedent, recent prison statistics from 2019 further highlight the persisting issue, indicating that as of December 31, 2019, there were 1,543 women prisoners in the country, and notably, they were accompanied by a substantial 1,779 children⁷. This continuation of a considerable number of children residing in correctional facilities emphasizes the enduring significance of addressing the custodial rights and overall well-being of this vulnerable population.

The Court also issued directives compelling States and Union Territories to provide detailed information on the situation of female prisoners, including the nature of their offenses, the duration of their detention, and the presence of children with incarcerated mothers. Subsequently in the responses, it was found that, in India, the provisions governing the age

⁷ Prison Statistics Report, 2019

limit for children to reside with their incarcerated mothers exhibit a significant lack of uniformity across states. Notably, these regulations differ widely, with age limits ranging from 2 to 6 years. In Assam, Chhattisgarh, Delhi, Mizoram, Tamil Nadu, and Uttar Pradesh, children are permitted to stay with their mothers up to the age of 6 years, reflecting a relatively consistent approach. However, Bihar and Jharkhand set the age limit at 2 and 5 years, respectively, with Bihar allowing an extension to 5 years in special cases. Himachal Pradesh and Madhya Pradesh introduce a discretionary element, enabling approval by the Superintendent for an extension up to 6 years in special cases. Maharashtra, on the other hand, requires children to be weaned away between the ages of 3 to 4 years. In Orissa, children can stay with their mothers up to 4 years, with a provision for Superintendent approval for an extension up to 6 years in special cases.

The existing provisions regarding the age limit for children to reside with their incarcerated mothers in various states across India lack uniformity, revealing a noteworthy disparity in the treatment of this vulnerable population within the prison system. The divergent regulations stipulate different age limits, ranging from 2 to 6 years, and include discretionary clauses allowing extensions in special cases by the approval of the Superintendent. This lack of consistency underscores the pressing need for a unified and specific provision addressing the custodial rights and well-being of children of incarcerated mothers. The disparate standards in different states highlight the urgency for a comprehensive, nationwide framework that ensures a standardized and compassionate approach, safeguarding the best interests of these children while promoting a cohesive and equitable legal landscape across the country.

The inconsistency in age limits for children residing with their incarcerated mothers across states not only highlights the urgent need for a standardized nationwide framework but also emphasizes the importance of incorporating successful provisions already implemented in certain states into such a unified approach.

While acknowledging the challenging conditions faced by children living with their mothers in prisons across India, it is crucial to recognize that certain states have implemented commendable provisions that can serve as positive examples for the improvement of overall conditions. In Tamil Nadu, a noteworthy distinction is made, where children under 3 years are cared for in the crèche, while those up to the age of 6 are accommodated in the nursery. Maharashtra, limiting the stay of children to 4 years, facilitates a nursery school conducted by the NGO 'Sathi' within the female jail, ensuring educational opportunities and access to toys.

In Himachal Pradesh, a separate ward with dedicated toilets has been established, addressing the specific needs of mothers and children. Delhi stands out for its collaborative efforts with NGOs such as Mahila Pratikraksha Mandal and Navjyoti Delhi Police Foundation, providing crèches, educational opportunities, and exposure to the outside world through picnics.

Chhattisgarh's comprehensive approach includes the provision of normal food, additional milk, medical care, educational centers, and recreational activities. Bihar, although allowing children up to the age of 2 years, ensures supplementary rations for nursing mothers and specified provisions for children aged 12-24 months under the guidance of medical officers.

These positive provisions demonstrate that even within the challenging prison environment, it is possible to implement measures that prioritize the well-being and development of children. These states serve as exemplars, showcasing the potential for improvement in conditions for children of incarcerated mothers. Urgent intervention is imperative to foster a more compassionate and equitable legal system, ultimately safeguarding the rights and well-being of these children within the criminal justice system in India.

Caged Childhood vs. Clipped Wings

The dilemma surrounding the decision between allowing children to remain with their incarcerated mothers in prison, colloquially termed as a "caged childhood," versus separating them upon maternal imprisonment, denoted as "clipped wings," raises complex legal considerations, particularly concerning children of incarcerated mothers in India. The concept of a "caged childhood" underscores the confinement and restriction of a child's development within the prison environment, while "clipped wings" epitomizes the abrupt severance from maternal care and nurturing. In this legal analysis, the author scrutinizes the implications of these options, focusing on their legal, psychological, and developmental ramifications within the Indian legal framework.

The notion of a "caged childhood" posits that children who cohabit with their mothers in prison encounter an environment inherently unsuitable for their holistic development. The prison milieu, characterized by confinement, resource limitations, and exposure to adverse influences, undermines children's access to fundamental components of a wholesome upbringing. This encompasses educational opportunities, socialization with peers beyond prison confines, and exposure to positive role models beyond their incarcerated mothers. Moreover, the dearth of

stimulation and autonomy inherent in the prison environment may impede children's cognitive and emotional progression, potentially precipitating enduring repercussions on their mental well-being and social adaptability.

Conversely, the concept of "clipped wings" accentuates the abrupt disruption of familial bonds and support systems consequent to the separation of children from their imprisoned mothers. This separation engenders profound psychological ramifications on children, including feelings of abandonment, bereavement, and disorientation. In the absence of maternal presence, children may grapple with the trauma of separation and the ambiguity surrounding their future custodial arrangements. Additionally, placement in substitute care settings, such as orphanages or with extended family members, may not invariably ensure a nurturing and stable environment, exacerbating children's sense of dislocation and vulnerability.

The plight of children with incarcerated mothers is a complex and multifaceted issue that demands careful examination, particularly within the context of India. The decision of whether to allow these children to stay with their mothers in prison or to separate them upon her sentencing presents a moral and practical dilemma, underscored by concerns about the child's well-being, familial bonds, and the capacity of the prison system to provide a safe and nurturing environment. Through this examination, we seek to elucidate the complexities inherent in this decision-making process and highlight the urgent need for comprehensive policies and support systems to safeguard the rights and well-being of these vulnerable children.

Caged Childhood; Children living along with their mothers in prison

Exposure to the adult criminal justice system can have adverse consequences for children and families, especially those aged six years or younger residing in custody alongside women accused or convicted of crimes. The prison environment, unsuitable for fostering holistic development, deprives young children of a typical family life during their formative years. This confinement not only stifles their psychological growth but also severely hampers their socialization patterns due to prolonged exposure to negative and restrictive surroundings. Furthermore, the scarcity of positive male role models, primarily comprised of authoritative police and prison officials, impedes children's comprehension of a conventional family structure. Moreover, boys raised solely among female inmates may adopt feminine mannerisms

and speech patterns, exacerbating their sense of dislocation⁸. Encounters with unfamiliar stimuli, such as stray animals enroute to court with their mothers, evoke fear in these children. Additionally, frequent transfers between prisons, driven by overcrowding, disrupt their sense of stability, precipitating instances of violent or withdrawn behaviour.

As of December 31, 2022, a total of 4,258 individuals were incarcerated in various women's jails across India, comprising 4,240 females and 18 transgender individuals. This population is housed in facilities with a total capacity of 7,080 inmates, including 7,071 females and 9 transgender individuals. Among the states, the highest number of inmates were lodged in jails located in Delhi, totalling 675, followed by Tamil Nadu with 610 inmates, Rajasthan with 476, and Punjab with 433.⁹

At the national level, the occupancy rate of women's jails stood at 60.1%. However, certain states reported significant overcrowding issues. Mizoram recorded the highest overcrowding rate among women's jails at 168.8%, followed by Tripura at 156.0%, Maharashtra at 130.9%, and Bihar at 110.4%.¹⁰ These statistics highlight the urgent need for measures to address overcrowding in women's jails, as overcrowded facilities can lead to compromised living conditions, increased risks to safety, and limited access to essential services for incarcerated individuals.

In addition to the challenges of overcrowding and insufficient living conditions, the prison system faces a massive shortage of manpower or staff within jail premises, further exacerbating the plight of children in these environments. Recent data indicates that out of 156 positions, a staggering 124 are vacant in the prison, highlighting a severe deficiency in personnel required to ensure the welfare and proper care of incarcerated individuals, including children.

Furthermore, while efforts are made to address educational needs, there remain significant gaps in providing adequate schooling and educational opportunities for children within the prison system. Although around 71% of child care institutions have enrolled children in nearby schools and 12% have utilized the National Institute of Open Schooling (NIOS), a concerning 13% of these institutions have not enrolled children in any educational programs. Moreover,

⁸ https://tiss.edu/uploads/files/Children_of_Women_Prisoners_-_The_Invisible_Trial.pdf

⁹ NATIONAL CRIME RECORDS BUREAU, Prison Statistics India – 2022

¹⁰ *ibid*

approximately 4% of child care institutions neither enroll children in schools nor provide any form of bridge courses or informal learning within their facilities.

Counselling facilities, crucial for addressing the psychological and emotional needs of children in such environments, are also inadequate. There are concerns regarding the availability and qualifications of counsellors. Many facilities have vacant positions for counsellors, and some do not meet the prescribed norms of the JJ Act, 2015, leading to a lack of trained professionals available to provide essential support to children.

An additional facet of the aforementioned issue merits consideration, one that underscores the anguish experienced by incarcerated mothers who grapple with the decision to have their children accompany them in prison. It is often the case that these mothers, through no fault of their own, find themselves in a predicament where their young children, typically between the ages of 0 to 6 years and wholly dependent upon them, inadvertently become residents of the correctional facility. Consequently, during their crucial formative years, these children find themselves immersed in an environment characterized by confinement, limited resources, and the presence of individuals convicted of various crimes.¹¹ The absence of opportunities for quality education and wholesome meals, coupled with the constrained living space and exposure to criminal elements, can significantly hinder the child's emotional and cognitive growth during their critical developmental stages.

Clipped Wings; Children separated from their mothers

In the context of children who are separated from their mothers due to incarceration, the provision of adequate support and communication between the child care institutions and the incarcerated mothers is of paramount importance. However, the information reveals that there are significant challenges in facilitating regular visits between these children and their mothers in prison. While approximately 79% of child care institutions are making efforts to ensure such meetings occur, 13% did not provide any information during the interview, and 8% have not arranged periodic meetings at all. Moreover, the irregularity of visits is exacerbated by logistical issues, as many of the homes where these children reside are located in different

¹¹ NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS; 'Education Status of Children of Women Prisoners in India'; 31/3/2021

cities, far away from the prisons where their mothers are detained. The process for arranging visits is often prolonged, with delays in obtaining approval from the relevant authorities.

Despite these challenges, child care institutions strive to provide support to the children under their care. Teachers engage in remedial or extra classes to address educational needs, and children are encouraged to seek assistance from staff if they encounter any problems in their daily lives or education. However, it is concerning to note that around 12% of children reported instances of bullying by classmates, who make derogatory remarks about their mothers' incarceration. Such bullying can have severe consequences for the affected children, including physical, psychological, social, and educational harm, further highlighting the vulnerability and challenges faced by children separated from their incarcerated mothers. Efforts must be made to address these issues comprehensively, ensuring that children receive the support and protection they need to thrive despite the adversity they face.

In the context of children who are separated from their mothers due to incarceration, facilitating regular and meaningful visits between them is essential for maintaining familial bonds and supporting the well-being of both the children and their mothers. However, the reality observed during visits to various prisons across India reveals significant challenges and inconsistencies in facilitating such meetings.

In accordance with guidelines issued by the Supreme Court of India, children are entitled to visit their mothers in prison at least once a week to maintain healthy relations. Yet, the implementation of these guidelines varies widely across different prison facilities. For example, children from Byculla jail are permitted to visit their mothers once every quarter, while those from Yerwada Jail have monthly visits. Conversely, in Andhra Pradesh, visits between children and mothers are irregular and may not occur for extended periods due to the distance between the institutions where the children reside and the prisons where their mothers are detained.

In some cases, arrangements for visits are contingent upon the initiative of prison authorities or the capacity of the child care institutions. For instance, in Special Prison for Women, Rajahmundry, there is no certainty regarding when children will meet their mothers, and communication with the child care institutions is relied upon to arrange visits. Similarly, in Nari Bandi Niketan, Lucknow, children are permitted to visit their mothers on special occasions, while in District Jail, Ghaziabad, visits occur once every three months.

Overall, while efforts are made to facilitate visits between separated children and their mothers, the inconsistencies and challenges observed underscore the need for comprehensive and consistent policies to support these vulnerable families. Adequate measures must be implemented to ensure that children maintain meaningful contact with their incarcerated mothers, while also addressing the logistical, emotional, and safety concerns inherent in such arrangements. Only through concerted efforts can the adverse effects of maternal incarceration on children be mitigated, and their well-being safeguarded.

Discerning the better approach amongst ‘Caged Childhood’ and ‘Clipped Wings’

The findings reveal that the children living in prisons face challenges such as irregular meetings with their mothers, lack of study materials, and inadequate educational facilities. On the other hand, children residing in children's homes and hostels are enrolled in nearby schools, but some face issues such as bullying and inadequate religious teaching. It also highlights the role of children's homes and hostels in providing educational and basic amenities to these children, as well as the responsibilities of prison officials and the need for coordination with child welfare committees.

In comparing the two groups, it is evident that children living in prisons face more significant challenges in terms of access to education and a nurturing environment. On the other hand, children in children's homes and hostels have better access to educational facilities, but still face issues such as bullying and inadequate religious teaching. Overall, both groups of children require better support and coordination between prison officials, child welfare committees, and educational institutions to ensure their well-being and access to education.

Psychological Theories of Child Development Vis a Vis ‘Best Interest of The Child’ Test of Custody

In the intricate interplay between psychological theories of child development and the 'best interest of the child' test within custody laws, a critical examination arises regarding the congruence between established legal frameworks and the nuanced needs of a specific demographic – children of incarcerated mothers. The paramount concern is whether the prevailing custody laws adequately align with the well-established psychological theories delineating the profound impact of early life experiences on a child's developmental trajectory. This subtopic delves into the essential question: Are the current custody laws equipped to cater

to the unique circumstances and challenges faced by children affected by maternal imprisonment, or is there a pressing need for distinct provisions or custody guidelines tailored to safeguard the best interests of these children? Through an in-depth analysis of psychological theories and their implications on child custody, this research aims to unravel the complexities inherent in this intersection, guiding the discourse toward potential legal reforms that could better address the multifaceted needs of children of incarcerated mothers within the custody adjudication process.

The "best interest of the child" is a fundamental principle in child custody cases in India. The welfare of the child is the primary consideration in determining custody, and Indian courts aim to balance the provisions of personal law and central law while deciding custody. However, the psychological theories of child development vis-a-vis the custody of children of incarcerated mothers in India are contradictory to the current laws, and the best interest of the child is not present in the current custody laws of children of incarcerated mothers.

Research has shown that children of incarcerated parents are at higher risk for exposure to stress, violence, and abuse, which can significantly impact their socio-psychological development.¹² Spending their formative years in prison can have a huge negative impact on children, affecting their physical and mental health, education, and recreation.¹³ The early childhood years are crucial for a child's development, and the prison environment may not provide the necessary nurturing and stable conditions for healthy growth and development.¹⁴ The formative experiences during early childhood, exert enduring influences on human development. Consequently, it is imperative to afford children comprehensive protection from potentially traumatizing encounters to the greatest extent feasible. Instances of childhood trauma, neglect, and abuse stemming from parental imprisonment or being raised within a prison environment are inherently predisposed to impart adverse repercussions on the developmental trajectory of the child. It is crucial, within a legal framework, to recognize and

¹² Ghasiram Panda, Sandeep Chachra, Why children of incarcerated parents need special attention, <https://www.downtoearth.org.in/blog/governance/why-children-of-incarcerated-parents-need-special-attention-82451>, last visited on- 14/11/23

¹³ WOMEN IN PRISONS INDIA, Ministry of Women and Child Development Government of India

¹⁴ Ghasiram Panda, Sandeep Chachra, Why children of incarcerated parents need special attention, <https://www.downtoearth.org.in/blog/governance/why-children-of-incarcerated-parents-need-special-attention-82451>, last visited on- 14/11/23

address these detrimental effects, emphasizing the imperative to safeguard children from circumstances that may compromise their well-being and hinder their holistic development.¹⁵

Child development theories, particularly attachment theory and social learning theory, posit that the early years of a child's life play a pivotal role in shaping their cognitive, emotional, and social well-being. Attachment theory underscores the critical nature of secure and continuous bonds between children and their primary caregivers, emphasizing the profound impact of early relationships on trust, emotional regulation, and future interpersonal connections. During the formative years, typically up to the age of 6, children develop a sense of attachment to their caregivers, particularly their mothers, which serves as a foundation for their emotional security, trust, and overall mental health.

As children reach the age of 6, they have gained a level of consciousness and understanding about the world around them. Separating them from their primary caregivers, especially their mothers, at this juncture can be deemed detrimental according to attachment theory. The profound impact of early relationships on a child's trust and emotional regulation suggests that abrupt separation at this stage could disrupt the established attachment bonds, potentially leading to emotional distress and challenges in forming future interpersonal connections. Attachment theory thus provides a compelling basis for arguing that, in alignment with the child's developmental needs, the separation of a child from their incarcerated mother should occur after the age of 3. By this age, the child has undergone critical stages of attachment formation and is likely to have developed a foundational sense of security and trust. Continuing to reside in a prison environment beyond this period may expose the child to risks associated with the disruption of their attachment bonds, hindering their emotional well-being and social development.

In light of attachment theory, advocating for the relocation of a child from the prison setting after the age of 3 aligns with the principles of prioritizing the child's best interests. This approach seeks to mitigate potential adverse effects on the child's emotional health, acknowledging the significance of the early years in shaping the foundation for their overall well-being.

¹⁵ Asha Bhandari, *Women Prisoners and their Dependent Child A Study of Jaipur and Jodhpur Central Rajasthan*, Sociological Bulletin 65 (3), JSTOR, September - December 2016

Another important theory in psychology is, Social Learning theory which posits that children learn by observing and modelling the behaviours of those around them. The environment in which children are raised, particularly during their early years, significantly influences their learning experiences and behavioural development. Research and literature on the application of social learning theory to the correctional setting and prison populations highlight the impact of the prison environment on the learning experiences and behaviours of individuals, including children living with their incarcerated mothers.¹⁶ The theory emphasizes that individuals, including children, learn from behaviours observed in their environment, and these behaviours can lead to reinforcing consequences.¹⁷

It is evident that children of incarcerated mothers have a fundamental need for their mothers as primary caregivers, which aligns with Erikson's theory of psychosocial development. Erikson's theory of psychosocial development for children aged 0-3 years includes the second stage of autonomy versus shame and doubt.^{18 19} According to Erikson, children at this stage are focused on developing a sense of personal control over physical skills and a sense of independence. The conflict arises when children are encouraged and supported in their increased independence, which makes them more confident and secure in their ability to survive. On the other hand, if children are not encouraged and supported in their independence, they may develop a sense of shame and doubt about their abilities.²⁰

Therefore, according to Erikson's theory, during the first stage (0-1 year), infants develop a sense of trust when their needs are consistently met, and during the second stage (1-3 years), children begin to assert their independence and develop a sense of autonomy. The absence of a mother due to incarceration can significantly impact the child's development during these crucial stages, emphasizing the importance of the mother as the primary caregiver. The psychological connection between a parent and a child is essential in forming the feeling of stability and security, which underscores the significance of the mother as the primary

¹⁶ Malika Busbee, Markell Fanning, Social Learning Theory and Prison Work Release Programs, Semantic Scholar, Journal of sociology

¹⁷ S J Stalgaitis; A W Meyers; J Krisak, Social Learning Theory Model for Reduction of Correctional Officer Stress, Federal Probation Volume: 46 Issue: 3 Dated: (September 1982) Pages: 33-40

¹⁸ Erik Erikson, Theory of Psychological Development, Erikson's Theory of Psychosocial Development - Stage 2 (Toddler) for Nursing RN (picmonic.com), last visited on 17 November, 2023

¹⁹ Erik Erikson, Stages of Psychological Development, Erik Erikson's Stages of Psychosocial Development (simplypsychology.org), last visited on 13 November, 2023

²⁰ Erik Erikson, Stages of Psychological Development, Erik Erikson's Stages of Psychosocial Development (simplypsychology.org), last visited on 13 November, 2023

caregiver.²¹ This underscores the need for supportive interventions and policies to ensure that children of incarcerated mothers stay with their mothers in this early stage of development and that they are provided with the basic necessities to live in prison.

In the realm of child development, the period spanning from 3 to 6 years is a critical stage marked by pronounced cognitive, emotional, and social advancements. Piaget's Theory of Cognitive Development delineates the Preoperational Stage during these years, where children engage in symbolic thinking and imaginative play. This phase, crucial to intellectual growth, underscores the importance of providing environments that stimulate language acquisition and creativity. Erikson's Psychosocial Development Theory posits the Initiative vs. Guilt stage during this period, emphasizing the child's burgeoning sense of independence. Legal considerations at this stage should recognize the significance of fostering environments that allow children to take initiative in their activities, contributing positively to their psychosocial development.

Vygotsky's Sociocultural Theory underscores the Zone of Proximal Development (ZPD), which expands during these years. This highlights the importance of social interactions and collaborative learning experiences. From a legal standpoint, recognizing the value of supportive educational environments and ensuring access to quality early childhood education becomes imperative in facilitating optimal cognitive development. Freud's Psychoanalytic Theory identifies the Phallic Stage during ages 3 to 6, where children develop awareness of their gender identity. Legal frameworks should acknowledge and respect the diversity of familial structures and support educational practices that promote inclusivity and understanding of diverse gender identities.

Behaviourism, as articulated by Skinner and Watson, emphasizes operant conditioning during these years. Legal considerations should recognize the impact of reinforcement on behaviour shaping and advocate for positive reinforcement strategies in educational and familial settings. Bronfenbrenner's Ecological Systems Theory introduces the Microsystem and Mesosystem, highlighting the impact of immediate environments and interactions between different systems. In a legal context, this theory underscores the importance of comprehensive policies that

²¹ Psychology of children with incarcerated parents, Psychology of Children with Incarcerated Parents | Free Essay Example (studycorgi.com), last visited on 16 November, 2023

address the interconnectedness of various systems influencing a child's development, such as family, preschool, and peer groups.

These theories relate to the development of children of incarcerated mothers and their state of living with its impact on their psychological development. The Piagetian lens reveals potential challenges for cognitive development as the prison environment may lack the diversity of experiences essential for symbolic thinking and imaginative play. Legal considerations should encompass provisions that facilitate appropriate early childhood education and cognitive stimulation within the prison setting, recognizing the distinct challenges faced by these children. Erikson's psychosocial stage of Initiative vs. Guilt acquires unique dimensions in the context of children residing in prisons. The limited physical space and constrained resources may hinder children's opportunities to assert their independence, potentially impacting their psychosocial development. Legal frameworks should prioritize the creation of environments within prisons that allow for age-appropriate activities, acknowledging the significance of a nurturing and encouraging atmosphere.

In conclusion, legal frameworks must intricately weave developmental theories into policies addressing the distinct requirements of children dwelling in prisons with their incarcerated mothers. By doing so, legal systems can establish an environment that champions the cognitive, emotional, and social development of these youngsters within the constraints of a prison setting. As children attain the age of 6 and gain awareness, the separation from primary caregivers becomes a critical concern. Various theories can be found in psychology which underscores the significance of early bonds, emphasizes that abruptly removing a child from their mother after the age of 3 may inflict lasting harm on their emotional well-being. The sudden elimination of the sole familial connection known to the child underscores the necessity of revisiting legal provisions, incorporating an age-appropriate transition that aligns with developmental principles. Such an approach ensures that legal systems actively prioritize the child's best interests, fostering an environment conducive to their holistic growth and safeguarding their rights even within the challenges of maternal incarceration.

Suggestions

The research paper on "Rethinking Child Custody Norms of Children of Incarcerated Mothers in India" aims to address critical gaps in the existing system and proposes alternative measures to enhance the well-being of these children. One notable alternative to traditional incarceration

is the concept of house arrest. Instead of separating mothers from their children, house arrest allows them to remain together within the family unit, fostering a sense of stability and continuity. Halfway houses provide another viable option, enabling mothers and young children to stay together in a supportive environment that facilitates rehabilitation.

Day reporting programs represent a progressive approach, allowing mothers to attend correctional facility programs during the day while returning home at night. Additionally, the establishment of prison-based nurseries offers a unique solution for mothers with infants, promoting early bonding and development. These alternatives might require participation in community service, supervised jobs, drug treatment, counselling, and parenting education, contributing to holistic rehabilitation. However, the implementation of such alternatives should be expanded to a broader population of female offenders, as current availability is limited, as reported by Devine (1997).

Community-based sentencing has shown promising results in reducing recidivism, proving cost-effective, and preserving family bonds. Despite their advantages, these programs are unfortunately accessible to only a small fraction of female offenders, highlighting the need for broader integration. The paper emphasizes the importance of revisiting and reformulating child custody norms within the prison system to accommodate the unique challenges faced by children of incarcerated mothers.

The research acknowledges the scarcity and often poor quality of existing studies on children of incarcerated women. Methodological issues, such as obtaining representative samples and considering the perspectives of children, mothers, and caregivers simultaneously, are highlighted. It underscores the necessity for comprehensive studies employing reliable, standardized measures to better understand the unique needs and experiences of this vulnerable population.

In conclusion, the research proposes a reconsideration of child custody norms for children of incarcerated mothers in India. It advocates for the expansion of alternative programs and community-based sentencing while highlighting the necessity for rigorous research methodologies to truly understand the experiences of these children. The paper underscores the urgency of implementing specific provisions catering to the custody of children living with incarcerated mothers, especially emphasizing that children up to the age of 0-3 years should be the primary focus for such provisions.