Protection of Human Rights of Children of Incarcerated Mothers: A Study

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Abstract:
Crime is increasing at a rapid rate, and along with it concepts regarding it are changing very fast. It has always been considered a problem peculiar to all times. As discussed earlier, very few studies have been conducted on women prisoners and their children to highlight the criminal propensity peculiar to them, the human rights of such prisoners and the rights of the children living with them. In India, statistics on female criminality consistently inform us that female offenders constitute a numerically much smaller proportion than male offenders. Yet the gravity of challenges which modern society is facing has become all the more severe. At the same time the old notion that prison is a place for punishment has now given way to the new idea that it should be an abode of reformation, where prisoners get an opportunity to reform themselves enabling them to take up active social life on release. It becomes all the more important when these mothers have to ensure a decent future of its children. The main objective of the incarceration has now become to deter and reform the prisoner concerned so as to check recidivism and make him or her better individual. Prison practices leave a scar on ones psyche and dignity. For women prisoners the ‘gender’ syndrome aggravates this inhumanity. A sensitive system with a sound penology must handle compassionately woman detainees because they are by virtue of their very sex, susceptible to many vulnerable circumstances so, intelligent and effective safeguards against violations and victimization are essential in a fair justice system. Such sensitivity can only be created if the authorities know the problem area. An all round study will help to understand the issue in reality and then only the problems can be tackled with. The present study is aimed to conduct an analyses of rights of children of prisoners.

I. INTRODUCTION

"in your untapped potential lies the power to create the future. but first you have to choose the future." Nobody can deny the fact that children are our future and it is our responsibility to nourish the same. What is worrisome is that a good number of ‘our future’ is languishing in jails for no crimes. These are children leading deplorable lives inside jails not only in India but all over the world. And they are not there because of delinquent activities but because their mothers are locked in those jails. Incarceration of either parent particularly mother adversely affects a child and may hinder his growth physically as well as mentally. It was proclaimed that motherhood and childhood are entitled to special care and assistance and it is their right to have an adequate standard of living for their health and well-being. It also states that human beings are born free; having right to life and liberty as well as the right not to be subjected to torture or to cruel inhuman or degrading treatment or punishment and these basic rights are recognised as legally binding International Human Rights Convention. For small and dependent children the deprivation of liberty of the main care giver has adverse effects on their lives and on the enjoyment of their basic human rights- all fundamental human rights given in the almost universally ratified Convention on the rights of the child, adopted by the United Nation General Assembly on 20th November, 1989. Children get into prison in one of two ways: the move there or they are born there. Policies and practices applicable to children in prison affect their lives to a great extent. Child’s best interests, the key issue, is to be kept in mind by the officials and policy makers and it should always be remembered that they are not criminals and should not be treated as such. Children in prisons live in very restrictive conditions than they did outside even when they are not prisoners and should never be treated as such. We have to strike a balance between the benefits of maintain mother-child relationship and the negative effects of a prison environment.

II. RESEARCH METHODOLOGY

Many studies have been made in India in relation to Women Prisoners but very few including their children. The vital ones from the past 30 years have been studied to understand the approach of the government towards the issues of women prisoners and their children highlighted in these studies. As in these 30 years international law has developed a great deal enumerating several rights related to women prisoners and their children. The long drawn list of study was important to know the efforts actually put towards their cause.

K.D Sikka (1986)\textsuperscript{6} from Tata Institute of Social Sciences (TISS) summarised the points of a study conducted way back in 1986 by TISS which identified that prison environments were detrimental to the normal growth of children and such children failed to experience normal family life as they do not see a stable settlement. The socializing patterns of male children of women prisoners got severely affected in an all-female environment. Murthy et al (1998) deals with the aggravated emotional somatic symptoms during crises points in prison. In Kaushik and Sharma (2009)\textsuperscript{7} it was concluded that the conditions of women convicts in Jaipur central jail were highly unsatisfactory. Again in B N Chattoraj\textsuperscript{8} (2009), this study in the form of the book primarily discusses the condition of children living with their mothers in various jails. It stresses on state intervention for proper implementation of jail manual regarding children of prisoners.
State Commission for Women in Odisha (2014-15)\(^9\) the Study by State Resource Center for Women (SRCW), Women & Child Development Department, Government of Odisha has highlighted many issues like overcrowding, diet, sanitation and health problems of women prisoners. The present paper deals with rights of children of women prisoners specifically. Several studies have revealed that children were never the focus of these surveys. They have also not been paid adequate attention of the jail authorities and the government. Therefore all efforts of the government to improve the conditions of women prisoners, particularly their children, and passing of several rules and regulation are nothing but eyewash. The following statistical present the numerical data about women prisoners and their children in prison, convicts as well as under trials. Out of the total number of inmates in Indian Jails, 17834 or 4.3% account for women inmates alone. According to the ‘Prison Statistics India’, 2015, a total of 374 women convicts with their 450 children and 1,149 women under trials with their 1,310 children were lodged in various prisons in the country at the end of 2015.\(^5\) In 2014 approximately 1800 children were living with their mothers inside the prison, out of which 390 women convicts stayed with their 457 children and 1,172 women under-trials had their 1,320 children living with them. This includes 34 other women prisoners living with their 40 children in the prisons across India. The following table represents the population of women prisoner in India since 2011 up till 2015. The National Crime Records Bureau has not released official data since 2016.\(^6\)

Table 1. Number of Women Prisoners 2011-2015

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Year</th>
<th>No. of Women Prisoners in India</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2011</td>
<td>16,024 (4.3%)</td>
</tr>
<tr>
<td>2.</td>
<td>2012</td>
<td>16,951 (4.4%)</td>
</tr>
<tr>
<td>3.</td>
<td>2013</td>
<td>18,188 (4.4%)</td>
</tr>
<tr>
<td>4.</td>
<td>2014</td>
<td>17681 (4.2%)</td>
</tr>
<tr>
<td>5.</td>
<td>2015</td>
<td>17,834 (4.3%)</td>
</tr>
</tbody>
</table>

As we can find from the table that the percentage of women prisoners has not lessened over a period of time and has remained the same approximately over the last few years. Another table represents the number of children languishing in jails along with their mothers.\(^7\)

Table 2. Number of Children of Women Prisoners 2011-2015

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Year</th>
<th>Women (Convicts)</th>
<th>Children</th>
<th>Women (Undertrials)</th>
<th>Children</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>2011</td>
<td>383</td>
<td>440</td>
<td>1,177</td>
<td>1,289</td>
</tr>
<tr>
<td>2.</td>
<td>2012</td>
<td>344</td>
<td>382</td>
<td>1,226</td>
<td>1,397</td>
</tr>
<tr>
<td>3.</td>
<td>2013</td>
<td>342</td>
<td>407</td>
<td>1,252</td>
<td>1,518</td>
</tr>
<tr>
<td>4.</td>
<td>2014</td>
<td>390</td>
<td>457</td>
<td>1,172</td>
<td>1,320</td>
</tr>
<tr>
<td>5.</td>
<td>2015</td>
<td>374</td>
<td>450</td>
<td>1,149</td>
<td>1,320</td>
</tr>
</tbody>
</table>

The grim picture of number of children in prisons, without any fault of theirs, is sufficient to raise concerns about the future of large number of these children when exposed to the environment of prisons. Surprisingly the number of children with undertrials is much more and this is of deep concern as they otherwise also fall out of the policies of the prison because their mothers are under trials. So we need to protect these children and make sure that their rights are well available to them. Imprisonment of a mother automatically raises concern regarding their children. The overall development of the child gets affected as there is a social impact on their mental and emotional health. The question pertaining to health of children in prison is an emergent one and needs special attention with lack of facilities in prison the threat to the health and physical development of such children is very apparent. Babies and small children may not have a good mental condition as compared to those children who are brought up in a more cared for environment. As these children cannot be separated from mothers at this tender age, ways must be devised so as to minimize pain of separation from the mother. So the primary objective of this paper is to study of the Human Rights of Children of women prisoners residing with them in light of the international laws, Constitutional provisions and statutory laws in India, applicable to these children in prisons. The following discussion presents the state of rights of these unfortunate children.

Rights of Children of Women Prisoners

It cannot be ignored that rights of such children need to be recognized and enforced as they are the penultimate victims of the crimes committed by their mothers and are in prisons without any fault of theirs. By virtue of the fact that some human rights are available to entire mankind irrespective of gender and status, therefore some of their rights are protected under international instruments which can be Global or Regional in application. A brief introduction of these rights is as follows.

Global Mechanisms:

Global Mechanisms are those instruments of human rights which are universally applicable to all without any discrimination. To facilitate the study, global mechanisms can further be divide into the following sub sets. This division does not suggest any hierarchy or priority.

1. **General-** These are those rights which generally applicable to all human beings irrespective of their status. Some of them are also applicable to women in incarceration as well. They are listed as:
   - “Universal Declaration of Human Rights, 1948 (UDHR)”
   - “International Covenant on Civil and Political Rights,1966 (ICCPR) and its 2 Optional Protocols”
   - **1. Specific-** The rights are specially protected under these documents. These instruments are applicable to women and children all over the world. They are listed as:
     - “Declaration on Elimination of Discrimination against Women, 1967”
     - “Convention on Elimination of All Forms of Discrimination Against Women, 1979(CEDAW)”
     - “Declaration on the Elimination Of Violence Against Women, 1993”
     - “Convention on Rights of Child, 1989”

There is a third branch of rights which is available in the nature of obligations and duties on the administration. Referred to as Human Rights in the Administration of Justice, some relevant documents are listed as under:


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to be observed in treatment of prisoners during imprisonment irrespective of gender.

b. “The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2010”- providing for, for the first time, non-custodial measures for women convicts. It also defines specific treatment of women prisoners owing to their special status.


e. “Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, 1984”

As the situation of “imprisoned pregnant women and imprisoned mothers” has been discussed at the Congress, a resolution of the 8th UN Congress stated that “the use of imprisonment for certain categories of offenders, such as pregnant women or mothers with infants or small children, should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.” So far as the rights of children of women prisoners are concerned they have not been given under any specific policy or framework under international laws as well as India. As there are no special rights available to the children of women prisoners these children are completely dependent upon the rights and treatment of their incarcerated mothers for protection of their human rights. This itself explains that why we need to make more efforts to protect rights of these children exclusively apart from their mothers.

III. INTERNATIONAL LAWS

Convention on Rights of Child, 1989 (CRC)
The CRC is the only international document that envisages the rights related to only to children. Though they find mention in other instruments. They get actual recognition as a right holder under CRC. CRC, in the present form, finds its origin in The Declaration of The Rights of Child in 1924. It can be seen as the “first international instrument dealing with children’s rights”. Under it the mankind was under an obligation which it owes to the child to give the best it has to offer. In 1959 the United Nations General Assembly adopted a Declaration of the Rights of the Child, based on the structure and contents of the 1924 original, with ten principles. The UN General Assembly adopted the Convention and opened it for signature on 20 November 1989 (the 30th anniversary of its Declaration of the Rights of the Child, 1959). It also establishes a “United Nations Committee on Rights of Child” as dispute settlement body. The CRC grants all kinds of civil and political rights along with other social rights to afford a chance to the child for overall development. It is unusual among human rights treaties because these rights under CRC are not operative only in times of peace but also during armed conflict. So it protects the child in all situations. However there is no specific provision “regarding children accompanying an adult or a young parent in prison” nevertheless it contains such provisions which provide assistance and care to children in special situations, and these provisions are applicable to small children living in prisons with their mothers, as described below. CRC gives that obligation on the State to ensure that no child shall be separated from his or her parents against their will unless it is in the best interest of the child. In its approach, the State must adopt the following principles in realizing the goals of CRC:

- Non-discrimination: State parties must ensure “that all children within their jurisdiction enjoy their rights without discrimination”. Justice Sachs noted, a child “cannot be treated as a mere extension of his or her parents, unbekindly destined to sink or swim with them; the sins and traumas of fathers and mothers should not be visited on their children”. Is not it that these children should be kept away, as far as possible, from the justice delivery system to ensure that they suffer minimal abuse of their human rights? However it is not so. A small child often accompanies the mother to and from the police station during investigation if there is no one back at home. Also the child is essentially sent to prison when he or she is dependent upon the mother. His rights are compromised due to his parents for no fault of his.

- Best interest of the Child: Philip Alston refers to the principle as “the lens through which all other rights are viewed. Yet it is in the CRC where the principle is both a right in itself and one through which the other rights are viewed and interpreted”. The best interests of children are paramount to every decision taken in this regard. As all rights are subject to the rights, interests and duties of others therefore “best interest has not been fundamental to the dispensation of justice that it should trump all other considerations”. This means that the best interest of the child subsides when it comes to investigation, trial and conviction of the mothers. The paramount interest of the child is not the priority and this principle has gone long lost in the zeal to punish the offender completely forgetting what can be the larger ramifications of such incarceration of mothers.

- The Right to Life, Survival, and Development: The term development in this context should be interpreted in a broad sense, adding a qualitative dimension—not only physical health but also mental, emotional, cognitive, social, and cultural development. This again is a principle which can be observed at all in cases of children of incarcerated mothers. It is needless to say the merely ‘living’ in closed boundaries of prisons is far from a natural dignified life. Children behind prisons seldom receive little or no opportunity in terms of education and better prospects of life.

- The View of the Child or the Participation Right: Children have the right to be heard and to have their views taken seriously, including any judicial or administrative proceedings affecting them. Now this principle is something which poses a tricky situation. The view of the child is an important aspect of basic principle of CRC. However when it comes to children of prisoners this is a failure yet again. Children accompanying mothers to the prisons are very small to have said to form any kind of an opinion. Opinion, if any, is a result of the natural attachment of the small child on the mother as she is the primary care giver. At the same time if it is an older child then also the judicial system is such that the child will be essentially kept away from the mother even if he or she wants to stay with the mother. The view of the child is never of any concern in such matters. The Convention has adopted two optional protocols. The First Optional Protocol limits any kind of the participation of children in “military conflicts” and the Second Optional Protocol forbids selling of children, child prostitution and child pornography. A third optional protocol relating to communication of complaints was adopted in December 2011 and it became effective in 2014. It introduced the mechanism of filing individual claim regarding violations of rights guaranteed in the Convention. The third protocol has capacitated the ‘child’ to exercise and claim these rights. These protocols are applicable to all the children without any discrimination.
Regional Mechanism

Regional standards often bound countries in a particular part of the world. These standards must be applied to women detained therein the countries to which they apply. These standards include the European Prison Rules, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas and the work of the Special Rapporteur on Prisoners and Conditions of Detention of the African Commission on Human and Peoples’ Rights and of the Inter-American Commission on Human Rights, Rapporteur on the Rights of Persons Deprived of their Liberty. Out of all the regional mechanisms it is pertinent to mention the African Charter on Prisoners’ Right which is one of its own kind that provides legal protection from incarceration to mothers thus ensuring maximum safety to their children.

African Charter on Prisoners’ Rights, 2001

The Charter on prisoner’s Right was adopted as a minimum standard set. Apart from the general principle of humane treatment, equality and non-discrimination, the charter has a separate set of rights for female prisoners. It affirms that there must be separate institutions for men and women and the premises should be allocated entirely for women. All women institutions must be well equipped for pre and post natal care of prisoners. It also declares that pregnant women and newborn mothers cannot be awarded capital punishment. However it is interesting to note that Africa has not carried out a single execution of any prisoner, including women, since last decade but is continuing with imposition of death sentences. In fact the last execution carried out on a woman in South Africa was on 2nd June 1989. The practice of moratorium has led to abolition of Death Penalty in South Africa all together.

The African Charter on the Rights and Welfare of Children has a specific provision on the issue of children of imprisoned mothers, which reads as follows:

“Article 30: Children of Imprisoned Mothers
I. States Parties to the present Charter shall undertake to provide special treatment to expectant mothers and to mothers of infants and young children who have been accused or found guilty of infringing the penal law and shall in particular:
(a) Ensure that a non-custodial sentence will always be first considered when sentencing such mothers;
(b) Establish and promote measures alternative to institutional confinement for the treatment of such mothers;
(c) Establish special alternative institutions for holding such mothers;
(d) Ensure that a mother shall not be imprisoned with her child;
(e) The essential aim of the penitentiary system will be the reformation, the integration of the mother to the family and social rehabilitation.”

The Children’s Charter was passed member states of the AU believed that “the CRC missed important socio-cultural and economic realities particular to Africa. It emphasises the need to include African cultural values and experiences when dealing with the rights of the child such as protecting imprisoned expectant mothers and mothers of infants and young children”.

IV. RIGHTS OF CHILDREN IN NATIONAL REGIME

Constitutional Rights

There are no separate rights of these children behind bars for the simple reason that they, under the law, enjoy all the rights which are available to other children in India. For the care, welfare and development of the children, “special and specific provisions” have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts which are also significant. “The best interest of the child has been regarded as a primary consideration in our Constitution.” Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children.” Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. The other provisions of Part III that may be noted are Articles 14, 21 and 23. Article 14 provides “that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits trafficking in human beings and forced labour. Part IV of the Constitution also protects the child in many ways. The State is under an obligation to ensure health and strength of workers, men and women, and must prevent abuse of children of tender age. Article 39(1) directs the State to ensure “that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment”. Article 42 provides that the State shall make provision for “securing just and humane conditions of work and maternity relief”. Article 45 emphasises that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years”. All these provisions protect children right from their birth but their status is compromised as their primary care giver is behind the bars or they have no one to take care of them. To add to their problems they are many a times equated with their mothers and suffer detest and ignorance.

Rights Under Other Statutory Laws

Apart from the aforesaid constitutional provisions, there is wide range of rights available to children under existing laws. These laws touch all facets of their lives. However as they are not of much relevance to the present study they have not been discussed in detail. However in 2012 a special legislation was passed to safeguard children from any kind of sexual abuse. The way women prisoners have been protected under IPC Section 376 D. Similarly children are protected within the jail premises even when they are accompanying the mother.”

In addition to above, the national policy for children was adopted on 22nd August, 1974. This policy, inter alia, lay down that “State shall provide adequate services for children both before and after birth, and during the growing stages for their full physical, mental and social development”. “The measures suggested include amongst others a comprehensive health programme, supplementary nutrition for mothers and children, promotion of physical education and recreational activities, special consideration for children of weaker sections and prevention of exploitation of children”. Despite several programs introduced by the Government of India like National Charter for Children 2003 and The National ECCE Policy, 2013, none of the laws discusses the plight of these children behind prisons and they have to depend upon the some basic provisions of the jail manuals and minimalistic efforts of the prison authorities. It was only in year 2006 that the court for the first time was approached to lay down guidelines regarding.
imprisoned mothers, their right to pre and post natal care and rights of children of such imprisoned mothers. In R.D. Upadhyayav. State of Andhra Pradesh & others50, the Supreme Court after analyzing national and international provisions related to personal freedoms including the same for the women prisoners and their children, issued guidelines for the Union Government, State Government, Union Territories and State Legal Services Authority to provide pre-natal and post-natal care to the women prisoners and directed them to submit a compliance report in four months. The court also mandated that a child could only stay in jail until the age of six years. This itself explains that why we need to make more efforts to protect rights of these children exclusively apart from their mothers.

V. CONCLUSIONS

Keeping in mind the above-mentioned conditions and after observing the lacunae in law the following suggestions can be given. For protection of rights of prisoners and their children, first of all it is “essential to recognize that women prisoners have gender-specific needs different from men”. “gender-specific rules” must be incorporated in the laws. As the researcher has discussed that the abuse of human rights are visible from the very first time the woman comes in contact with the police. Each organ of the criminal justice system should follow human rights provisions while dealing with women prisoners. Apart from regular infrastructural conditions like problem of food, inadequate space, drinking water etc, the researcher find sit fit that the suggestions can be proposed for three stages of prisonisation:

Before Conviction; During Imprisonment and Post Release.

i. Approach Before Conviction

The truth is that imprisonment itself leads to human rights abuse as women are lodged in that environment where they do not receive the attention of the authorities due to their small numbers leading to their neglect and neglect of their children. To begin with the courts must think about the alternative means of punishment keeping in mind the position of women and their children. Before passing the sentence the court must try to establish a dialogue between the victim and the offender. On the lines of VOEG communication (Victim Offender Education Group) working in several countries including United Kingdom, USA, Australia, Spain, Italy etc. The court may try to establish a dialogue between the parties where a mediator, if appointed by the court, may help the victim to forgive the offender. Alternatively she may be asked to pay the fines. This will save the pain of children going to prison at all. This communication can also be useful when the woman is to be released on probation. On the lines of Tokyo Rules and Bangkok Rules, non-custodial methods of punishment should be considered for women. South Africa has abolished any kind of sentencing for convicted mothers and it now sticks to non-custodial sentence. As they are minimum security prisons with open areas they offer better environment to women and to mothers with children inside prisons. Women are not hardened criminals and therefore they must be not be handled in that manner.

ii. Efforts During Imprisonment

First of all, the prison manual should be amended to provide for compulsory education to women prisoners. Education is the real key to their upliftment. As it was found in Haryana majority of women were illiterate with no facility of even basic education. Reading and writing will give them the confidence to face the world upon their release. In prisons, imprisoned mothers shall be separated from other convicts at any cost. This will bring lot of protection for the children they carry along them. Mothers also require trainings. Through the tiresome and exhausting journey of her trial a mother may very naturally become confused and scared about herself and the future of her children. A proper training will help her understand the intricacies of training and vocational programmes and may well assure her that she can utilize her time to make herself self-dependent and fetch a better living for her child after release. Rules can be introduced to provide for community services during prisonisation. Open Prisons can be the best option for women in absence of non custodial sentence. As they are minimum security prisons with open areas they offer better environment to women and to mothers with children inside prisons. Women are not hardened criminals and therefore they must be not be handled in that manner.

iii. Post Release Methods

The State cannot abridge itself with the responsibility of rehabilitating the released convicts especially in cases of women. Once they go behind the bars no amount of punishment or remorse can bring back their lost grace and they suffer social dismemberment. Jails have a certain allocated amount which is to be given on release. However this practice is not uniform and is seldom followed moreover the amount of money is not up to the mark. The authorities shall make such disbursements a compulsory feature with a raised amount of money. So as to avoid dismemberment the prisoner, immediately before her release, may be allowed to visit her family over weekends to spend their time with children living outside prison. The researcher chooses to call them cohesion visits where they can be comforted to go back to their homes. Pre-release orientation programmes may be organized by prison authorities with the help of psychologists to facilitate the ‘home coming’ of these prisoners. The child undergoes the hardships from the very beginning when the mother is accused of a crime to the final outcome where she is convicted. The problems faced at police stations and during under trials are even worse than the actual conviction. And therefore an all round study and solution is required to properly implement the various legal instruments in providing special and better care to these unfortunate ‘victims’ of the crimes with which they had nothing to do.

VI. REFERENCES

International Agreements

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http://ijesc.org/
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• The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2010
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[3]. ibid. Articles 1.3 and 5.

[4]. Somalia has signed but not ratified the convention.


[6]. “K. D. Sikka “Women In Indian Prisons: Major Issues” 47 No.2 IJSW (July 1986)”


[9]. Study conducted by State Resource Center for Women (SRCW), Women & Child Development Department, Govt of Odisha, 2014-15”


[11]. “The figure does not include 74 other women with their 46 children who are not either convicts norundertrials.”

[12].“Prison Statistics India, 2014.”

[13].“http://ncrb.nic.in”

[14].Ibid.


[20]. Universal Declaration of Human Rights (UDHR), 1948;the International Covenant on Civil and Political Rights (ICCPR), 1966; the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). 1984; Health for All Declaration, 1978; Maternity Protection Convention, 2000;


[22]. Ibid.

[23].In between another version with seven principles was adopted in 1948. It was later replaced by 1959 declaration.


[26].“This is another way to classifying the rights under the Convention on the Rights of the Child. The civil rights of children include right to a name and a nationality, protection from torture and maltreatment, special rules governing the circumstances and conditions under which children may be deprived of their liberty or separated from their parents etc. The economic rights under the CRC include the right from to benefit from social security, the right to a standard of living adequate to ensure proper development and protection from exploitation at work. The social rights include the right to the highest attainable standard of health services, the right to social care for handicapped children, protection from sexual exploitation and abduction, and the regulation of adoption. Right to education, access to appropriate information, recreation and leisure, and participation in artistic and cultural activities are included in the cultural rights of the children under the CRC.”

[27]. Supra at 90.

[28].Article 9, CRC, 1989.

[29].Id. Art. 2.


[32]. Supra note 98 Art. 3.


[34]. Canadian Foundation for Children, Youth & the Law v Attorney General &Ors, Canadian Supreme Court (30 January 2004.

[35].Supra note 98. Art. 6.

[36].Id at.Art. 12. provides that “States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child … for this purpose, the child shall in particular be provided the opportunity to be heard.”


[43]. Moratorium is a practice of temporary suspension of a law to allow a legal challenge to be carried out.


[45]. Some others being Challenging traditional African views which often conflict with children's rights such as child marriage; Outright prohibition on the recruitment of children (i.e. under 18 years old) in armed conflict and deals with conscription of children into the armed forces;Prohibiting marriages or betrothals involving children; Granting girls the right to return to school after pregnancy; Encouraging the state to provide support for parents “in times of need.”

[46]. “Article 39(e), The Constitution of India, 1950.”


[48].“5.Aggravated Penetrative Sexual Assault: (d) whoever being on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection established by or under any law for the time being in force, commits penetrative sexual assault...
on a child, being inmate of such jail, remand home, protection home, observation home, or other place of custody or care and protection commits aggravated penetrative sexual assault.”

6. **“Punishment for aggravated penetrative sexual assault:**
Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.”

[49]. These have been adopted to reiterate the commitment of the Government to the cause of the children in order to see that no child remains hungry, illiterate or sick.

[50]. AIR 2006 SC 1946.

[51]. Also known as Victim Offender Mediation Programme in some countries.

[52]. “The UN Standard Minimum Rules for Non-custodial Measures lists the following as non-custodial sanctions that could be used to dispose of cases: verbal sanctions such as admonition, reprimand and warning; conditional discharge; status penalties; economic sanctions and monetary penalties, such as fines and day-fines; confiscation or an expropriation order; suspended or deferred sentence; probation and judicial supervision; community service order; referral to an attendance centre; house arrest; any other mode of non-institutional treatment; some combination of the measures listed above.”

[53]. this provision has now been included in Model Prison Manual, 2016.