

BEHIND BARS, BEYOND BLAME: Prisoners' Forgotten Children

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Abstract : “When a parent is imprisoned, a child is sentenced too; though no court ever records it.” This quiet tragedy unfolds across the globe, hidden in the shadow of criminal convictions. The incarceration of a parent delivers an invisible yet profound blow to a child’s emotional, social, and developmental well-being. While criminology often focuses on the offender and penology on the system of punishment, the collateral victims (children) remain largely peripheral to both theory and practice. This paper probes deep into the rights and plight of children of incarcerated parents, arguing that the Indian criminal justice system must be critically re-examined through a lens sensitive to the child’s silent suffering. Drawing upon relevant criminological theories such as strain theory, social learning theory, and labeling theory, the paper analyzes how parental incarceration disrupts family dynamics, alters roles and responsibilities, and strains communication pathways. It highlights the systemic apathy rooted in societal stigma, fragmented legal protections, and a criminal process that rarely considers the familial fallout of punishment. The paper lays out how children of prisoners are rendered ‘secondary victims’ absorbing the punitive consequences of crimes they neither committed nor controlled. The discussion recognizes the complexity of balancing public safety and offender accountability with the rights and dignity of children left behind. In acknowledging these layered realities, the paper argues for a fundamental policy, law, and public attitude shift. It calls for reforms that incorporate child impact assessments at the sentencing stage, strengthen family-based support mechanisms, reform prison environments to prioritize child-parent bonds, and dismantle the structural invisibility surrounding these children. Justice must move beyond retribution to restoration; only then can criminology truly serve its highest purpose: to not just understand crime, but heal the fractures it leaves behind.

Keywords - Children of Incarcerated Parents, Collateral Victimization, Criminal Justice System, Intergenerational Disadvantage, Rights of Children, Criminology and Victimology

I. INTRODUCTION: Unveiling the Hidden Population.

1.1 Setting the Stage: When Punishment Extends Beyond the Prison Walls.

Imagine a stone thrown into a calm pond. The ripples spread far beyond the point of impact, disturbing waters that seemed untouched moments before. Similarly, when a parent is incarcerated, disruption extends well beyond the individual to engulf their family, most poignantly their children. These young lives, though uninvolved in the crime, often serve a silent sentence parallel to that of their parent.

Globally, it is estimated that over 19 million children have a parent behind bars at any given time,¹ out of which about 2.7 million are in a U.S. jail facility (i.e., approximately one in every twenty-eight currently have a parent behind bars).² Although India’s incarceration rate is relatively lower than that of the United States, it ranks fourth globally in terms of the total number of people imprisoned. Estimates suggested that by 2024, India’s prison population had reached approximately 5,73,220.³ As of 2021, women represented about 4.1% of this population,⁴ with 1,537 women in prison, accompanied by 1,764 children.⁵ Indian prisons hold both individuals serving sentences and those awaiting trials, with the latter being a significant majority, around 77%.⁶

Yet despite the growing attention towards prisoners’ rights and prison reforms, the children of incarcerated parents (hereinafter COIP) continue to be invisible stakeholders. Their struggles rarely enter criminological inquiry, policy debates, or even public consciousness. The criminal justice system, built around the principles of retribution and deterrence, often fails to recognize these unintended victims.

¹ Children of imprisoned parents-Penal Reform International (<https://www.penalreform.org/issues/children/what-were-doing/children-incarcerated-parents/>)

² Programs for Incarcerated Parents: Preliminary Findings from a Pilot Survey | RAND (https://www.rand.org/pubs/research_reports/RRA1412-1.html)

³ Incarceration Rates By Country 2024, World Population Review. (<https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>).

⁴ India, World Prison Brief. (<https://www.prisonstudies.org/country/india>)

⁵ National Crime Records Bureau Ministry of Home Affairs, Prison Statistics India 2022, (New Delhi: National Crime Records Bureau, 2023), 41, <https://ncrb.gov.in/uploads/nationalcrimerecordsbureau/custom/psiyearwise2022/1701613297PSI2022ason01122023.pdf>

⁶ National Crime Records Bureau, Prison Statistics India 2022, 83.

The fallout from a parent's imprisonment can set off a domino effect: emotional trauma, disrupted schooling, social stigma, economic hardship, and, in worst cases, a slide towards delinquency. Thus, understanding their plight is not just a matter of social welfare; it is a pressing concern for criminology, justice, and child rights. This paper seeks to illuminate these shadowed lives, beginning with defining who they are, understanding why their experiences matter, and framing key research questions that drive this exploration.

1.2 Defining the Scope: Who are COIPs?

Defining the scope of 'child of incarcerated parents' is crucial for a nuanced understanding. At first glance, it might seem straightforward, yet the lived realities complicate this identity. This paper adopts a broad definition encompassing individuals under the age of 18 who have experienced the incarceration of a biological, adoptive, step-parent, or a primary legal guardian. This definition acknowledges the diverse familial structures that exist and the significant emotional and practical impact the absence of a key caregiver, regardless of legal ties, can have on a child's development. Furthermore, it recognizes that the period leading up to incarceration, including arrest and trial, can also be a time of immense instability and trauma for the child. The living arrangements of these children are varied, ranging from being cared for by the other parent, extended family members, foster care systems, or, in the most precarious situations, navigating life with inadequate or unstable adult supervision.

Crucially, familial structures before incarceration (whether nuclear, single-parent, blended, or community-supported) significantly shape the child's post-incarceration trajectory. A family already vulnerable to poverty, violence, or social marginalization may find these vulnerabilities magnified manifold once a parent is imprisoned. Thus, this paper does not treat these children as a homogeneous group. It recognizes the diversity of experiences shaped by intersections of class, caste, gender, geographic location, and the nature of the parents' crime.

In criminological terms, these children exist at the confluence of secondary victimization and social strain, bearing costs for crimes they did not commit, navigating a society that often brands them as tainted by association.

1.3 Significance of the Study: Why Their Stories Matter?

The significance of rigorously examining the experiences of COIP cannot be overstated. If society, through the criminal justice system, seeks to reduce crime and rehabilitate offenders, it cannot ignore the unintended, long-term consequences parental incarceration inflicts on the next generation. Research increasingly suggests a correlation between parental incarceration and adverse childhood experiences (ACEs), which are linked to a higher risk of various negative outcomes, including behavioral problems, mental health issues, substance abuse, and future involvement in the criminal justice system. Ignoring the plight of these children not only violates principles of social justice but also carries significant social and economic costs for society as a whole. By understanding their challenges, more effective interventions and policies can be developed aimed at mitigating the negative consequences and fostering resilience.

From a criminological standpoint, their experiences invite interrogation through multiple theoretical prisms. Strain Theory suggests that these children, denied legitimate pathways to success, may be pushed towards delinquency. Labeling Theory warns how societal stigma can entrench criminal identities prematurely. Social Learning Theory highlights how environments saturated with criminalization and instability can normalize deviant behaviors.

This study seeks to address several key research questions. Firstly, how do existing legal, social, and correctional frameworks address or fail to address the needs of these children? Secondly, what criminological theories best explain the vulnerabilities and resilience observed among COIP? Finally, what policy recommendations and interventions can be implemented to better support COIP and promote their well-being?

Through these questions, the study aims to weave together theory, doctrinal explanation, and policy analysis into a compelling argument for systemic change, ensuring that the stones we throw into society's pond do not sink innocent futures.

II. THE GLOBAL GLIMPSE OF INTERTWINED WORLDS

Understanding the Broader Canvas of Crime, Punishment, and Family

2.1 Criminological Perspectives on Parental Incarceration.

To truly grasp the intricate web spun by parental incarceration, one must first anchor oneself in the established tenets of criminological thought. These theoretical lenses offer invaluable frameworks for understanding both the pathways that lead to parental imprisonment and the reverberating consequences that extend far beyond the prison walls, profoundly shaping the lives of their children.

➤ *STRAIN THEORY (Robert K. Merton)*⁷: He argued that societal structures and values can create a 'strain' or pressure on individuals, potentially leading them to engage in criminal behavior to achieve culturally valued goals. This theory is also called 'anomie theory', focuses on the disjunction between societal goals (like wealth or status) and the legitimate means available to achieve them. Imagine a family striving for societal goals, financial stability, a safe environment, and educational opportunities,

⁷ Robert Agnew, *Foundation for a General Strain Theory of Crime and Delinquency*, 30 *Criminology* 47 (1992). Also See: Merton's Strain Theory of Deviance and Anomie in Sociology (<https://www.simplypsychology.org/mertons-strain-theory-deviance.html>)

yet facing systemic barriers that limit their access to legitimate means. This disjuncture between aspirations and available avenues can create strain, potentially leading to involvement in criminal activities as a means of adaptation. When a parent succumbs to this strain and is incarcerated, the very foundation of the family's ability to achieve these goals is further eroded, often plunging the remaining family members (including the children) into deeper economic hardship and social precarity. The child, witnessing this cycle of struggle and the eventual absence of a parent due to it, may internalize feelings of frustration, anger, and hopelessness, potentially increasing their own vulnerability to future deviance, a tragic echo of the initial strain.

➤ **SOCIAL LEARNING THEORY (Albert Bandura)⁸:** This theory posits that behavior is learned through observation, imitation, and reinforcement. A child growing up in a household where a parent engages in criminal behavior, even if unknowingly, may be exposed to attitudes, beliefs, and behaviors that normalize or even glorify such actions. The subsequent incarceration of that parent, while seemingly a deterrent, can paradoxically reinforce negative associations with authority figures and societal norms. Furthermore, the absence of a positive role model and the potential exposure to negative influences within their altered living situation can exacerbate the risk of a child adopting similar behavior patterns. It's as if a shadow of the incarcerated parent's actions lengthens, potentially engulfing the next generation.

➤ **LABELLING THEORY (Howard Becker)⁹:** This theory highlights the power of societal reactions and labels in shaping an individual's identity and future behavior. When a parent is incarcerated, the entire family often becomes stigmatized. The label of 'child of an incarcerated parent' can be a heavy burden, leading to social exclusion, judgment from peers and even institutions, and a diminished sense of self-worth. This external labeling can internalize, leading the child to see themselves as somehow tainted or predisposed to negative outcomes. The societal ostracism acts as a self-fulfilling prophecy, potentially pushing the child towards delinquent behavior as a means of acting out or finding belonging within marginalized groups who share similar experiences. It's a cruel irony where the punishment intended for the parent inadvertently brands the child, potentially setting them on a more challenging trajectory.

These are but a few of the criminological lenses through which one can begin to understand the complex interplay between crime, punishment, and the family unit. Acknowledging these theoretical underpinnings, move beyond simplistic notions of individual culpability and begin to appreciate the broader social and systemic factors that contribute to parental incarceration and its enduring impact on the innocent lives caught in its wake.

2.2 Family Dynamics: A Universal Yet Invisible Struggle

In a small town in Sweden, a little boy clutches a letter sent by his father from prison, tracing the words with trembling fingers he cannot yet read. Across the world, in a cramped apartment in New York City, a teenage girl lies awake, wondering if wearing her father's last name will permanently brand her an outcast. Meanwhile, in an overcrowded village in India, a young boy drops out of school because the "thief's son" is no longer welcome among his peers. Different continents, different cultures, different legal systems; Yet the *pain* and *stigma* borne by COIPs remain strikingly and tragically similar across the globe.

Parental incarceration is a global phenomenon that transcends borders but remains largely invisible in legal discourses or criminological narratives. While the world has made significant strides in understanding victimology and restorative justice, the COIPs remain marginalized, seen neither as victims nor as independent stakeholders within the justice system. The arrest, trial, and subsequent imprisonment of a parent act as a seismic event, shattering the established equilibrium of a family. The immediate aftermath of an arrest is often characterized by chaos, fear, and profound uncertainty. Children may witness the traumatic removal of a parent, leaving indelible emotional scars. The ensuing trial period, with its legal complexities and emotional rollercoaster, further destabilizes the family, often consuming financial resources and emotional energy that could otherwise be directed towards the children's well-being.

2.3 Comparative Legal and Social Frameworks.

Across jurisdictions, responses to the plight of prisoners' children vary not only in scope but also in philosophical underpinnings, revealing deep contrasts in how societies conceptualize justice, punishment, and familial integrity.

The United States presents a particularly paradoxical landscape. With the highest incarceration rate in the world, American penal policy historically emphasized retribution and incapacitation over rehabilitation or social reintegration. While advocacy initiatives such as the *Children of Incarcerated Parents Bill of Rights* emerged in San Francisco, affirming children's rights to stability and parental contact, such efforts remain fragmented and non-binding. Media and educational campaigns, like Sesame Street's "*Little Children, Big Challenges: Incarceration*", sought to humanize prisoners' children and reduce stigma, yet systemic reforms have been piecemeal at best. From a criminological standpoint, U.S. practices reflect the dominance of *classical criminology*, with its emphasis on individual responsibility and punitive deterrence, leaving little room for understanding crime as a relational or familial phenomenon.

In contrast, the United Kingdom demonstrates a more pronounced shift toward child-sensitive justice, albeit inconsistently. Judicial guidance requires sentencing courts to consider the best interests of dependent children, following the landmark case of *R*

⁸ Albert Bandura's Social Learning Theory In Psychology (<https://www.simplypsychology.org/bandura.html>)

⁹ Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance* (Free Press 1963). Also see: Labeling theory | Concepts, Theories, & Criticism | Britannica (<https://www.britannica.com/topic/labeling-theory>)

v Petherick (2012).¹⁰ Simultaneously, civil society organizations such as *Barnardo's*¹¹ have pioneered support services, including child-friendly visiting centers and counseling for children coping with parental imprisonment. Nevertheless, austerity-driven cuts to social services often blunt the impact of these initiatives. The UK's approach tentatively integrates restorative justice theories, recognizing the importance of sustaining familial bonds as a means of reducing recidivism and mitigating secondary harms.

Turning to the fundamentally different Scandinavian model (epitomized by Norway, Sweden, and Denmark), where criminal justice systems emphasize minimal incarceration, short sentences, and humane prison conditions aimed at preserving social ties. Open prisons, community sentencing, and family integration programs are not anomalies but standard practices. Incarcerated individuals are viewed not merely as offenders but as social citizens whose relational ties must be nurtured to facilitate successful reintegration. These practices align closely with *social democratic criminology*, wherein crime is understood less as a moral failing and more as a symptom of social disintegration, demanding welfare-oriented, rather than strictly punitive, responses. Thus, comparative analysis reveals a criminological continuum: from systems driven by retributive control to those grounded in relational restoration. Importantly, it shows that addressing the needs of prisoners' children is not merely a moral or humanitarian imperative but a strategic investment in breaking cycles of criminality.

2.4 Rights-Based Approaches: The Human Rights Imperative.

The rights of children, particularly those in vulnerable situations, are enshrined in various international and national legal frameworks. The United Nations Convention on the Rights of the Child (CRC), adopted in 1989, recognises in Article 9 the child's right to maintain contact with an incarcerated parent unless contrary to the child's best interests.¹² Complementing this, the Bangkok Rules of 2010¹³ specifically advocate for gender-sensitive treatment of incarcerated women, emphasizing arrangements for mothers and their dependent children.

However, despite these normative advances, implementation remains erratic. Many states, especially in the Global South, have yet to institutionalize mechanisms to uphold these rights domestically. Even where legal frameworks exist, such as in parts of Europe and Latin America, practical obstacles, ranging from overcrowded prisons to bureaucratic inertia, often nullify their effect. From a critical criminological perspective, this gap between rights and reality underscores the structural tensions between penal populism (the political impulse to be tough on crime) and human rights-based governance. In this dynamic, COIPs become collateral casualties of a criminal justice system more attuned to public vengeance than to social repair.

It is thus evident that invoking human rights principles is insufficient unless accompanied by deliberate institutional designs that place children's welfare at the center of sentencing, incarceration, and reintegration practices.

2.5 Lessons for India: Gaps and Opportunities.

Within India, the Constitution guarantees fundamental rights to all citizens, including children. Article 21, guaranteeing the right to life and personal liberty, has been interpreted by the Supreme Court to include the right to dignity and a healthy environment, which can be argued to extend to the well-being of children affected by parental incarceration. Adding to that are Article 15(3) and 39 (e)-(f), which mandate the State to create conditions conducive to the welfare of children. Furthermore, the Juvenile Justice (Care and Protection of Children) Act, 2015, and its subsequent amendments, provide mechanisms for the protection of *children in need of care* (which can include COIPs).

The Act emphasizes the importance of family-based care and the need to provide support services to vulnerable children. However, the practical application of these legal frameworks in the context of parental incarceration often falls short. Challenges such as a lack of specific guidelines addressing the unique needs of these children within the criminal justice system, inadequate resources for providing support services & societal stigma hinder the effective implementation of these rights.

Learning from global experiences, India has the opportunity and arguably, the duty to incorporate child-sensitive practices within its justice system. This includes reforms such as mandatory child impact assessments during sentencing, development of child-friendly visitation spaces in prisons, expansion of non-custodial sentencing alternatives for primary caregivers, and systematic social support mechanisms for affected children. Such reforms are not only in keeping with India's constitutional and international obligations but are also critical investments in preventing future criminality and promoting a more equitable and humane society.

¹⁰*R v Petherick* (2012). EWCA Crim 2214, 3 October 2012.

¹¹ Barnardo's (<https://www.barnardos.org.uk/>)

¹² United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3. (<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>)

¹³ THE BANGKOK RULES (https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf)

III. THE SHADOWS IN HOMELAND: Indian Landscape of Overlooked Victims.

"The child is the father of the man." - William Wordsworth.

3.1 The Invisible Demographic: Absence of Data, Presence of Pain.

The wisdom of Wordsworth reminds us that today's children are tomorrow's citizens. Their bruises, dreams, and silences will one day shape the soul of a nation. India's sprawling criminal justice system, the third largest prison population in the world after the United States and China, holds within it an ignored constituency: the children. As of the latest Prison Statistics India 2022, 5,546 children were living inside Indian prisons alongside their incarcerated mothers. These are children below six years of age who, as per the Model Prison Manual 2016, are allowed to stay with their mothers until reaching the age limit of six years. However, there is a vast, undocumented population of COIPs living outside prisons, who are forced to navigate abandonment, poverty, and stigma alone.

No comprehensive national survey has ever been undertaken to estimate the number of children indirectly impacted by parental incarceration in India. Unlike countries such as Australia, where the *"Invisible Victims"* report (2015) offers detailed data, India's silence reflects a profound criminological blind spot. Without data, there is no discourse; without discourse, there is no reform. As a result, policies remain ill-informed, piecemeal, and paternalistic, treating affected children as afterthoughts rather than central figures of concern. This systemic invisibility echoes David Garland's theory of the *'criminology of the other'*, a framework in which certain groups are cast outside the boundaries of normal civic empathy. In India, COIPs are the 'others' even among the marginalized, bearing the twin burdens of familial loss and societal suspicion.

3.2 Legislative Lacunae: Where Law Fails to See.

From a purely statutory standpoint, India possesses fragmented references to children in its penal policies, but no consolidated legal framework dedicated to children of incarcerated parents. The CrPC under Section 437 makes a minor reference to the possibility of granting bail to women if they are pregnant or have young children. The Juvenile Justice (Care and Protection of Children) Act, 2015 includes *'children in need of care and protection'*, but fails to specifically mention children affected by parental incarceration unless they become destitute enough to come under the state's watch.

The judiciary, sporadically, has shown flashes of sensitivity. In *Rakesh Kaushik v. Superintendent, Central Jail* (1981), the Delhi High Court allowed a prisoner's child to continue residing with the incarcerated mother after the standard six-year limit, recognizing the child's emotional dependency. Yet these judicial interventions are case-specific, not systemic. No statute mandates that courts conduct a *child impact assessment* at the time of sentencing practice recommended globally by the CRC under its General Comment No. 14 (2013). In criminological parlance, India reflects what John Pratt has called a *'populist punitiveness'*, a cultural environment where political capital lies in being seen as 'tough on crime', often at the expense of compassion or nuanced understanding. Thus, Indian legislation mirrors societal attitudes: rigid, punitive, and unwilling to complicate the offender-victim binary.

3.3 Stigma and Structural Violence: The Social Sentencing of Children.

Beyond legal lacunae, the social realities confronting prisoners' children in India are grim, layered, and deeply gendered. Imprisonment of a parent often leads to abrupt breakdowns in family structures, forcing children into the care of reluctant relatives, underfunded state homes, or worse, into homelessness. A 2013 study by *Dr. Vijay Raghavan of TISS*, titled *"Children of Prisoners in India: Social and Psychological Impact"*, revealed that children often face bullying, social ostracism, and expulsion from schools due to their parents' criminal status. Girls, in particular, endure a heavier stigma, as families fear they will "bring shame" and thus restrict their mobility, education, and aspirations. The burden of shame becomes a form of 'social sentencing' an invisible but crippling punishment handed down by community and kin. Here, criminology must confront the concept of *structural violence*, as articulated by Johan Galtung. Structural violence refers to harm caused not by direct physical force but by entrenched social structures that limit access to dignity, rights, and opportunities. For COIP, it manifests in the slow suffocation of dreams, in doors closed before they can even knock.

3.4 Institutional Neglect: Prisons as Non-Child Spaces.

Although Indian prisons are legally mandated to accommodate young children residing with their mothers, the reality is often bleak. The Model Prison Manual 2016 prescribes nutritional, educational, and recreational facilities for such children. However, reports by the Commonwealth Human Rights Initiative (CHRI) and the National Commission for Protection of Child Rights (NCPCR) highlight massive gaps in implementation.

Basic facilities such as safe drinking water, sanitation, pediatric healthcare, and early education are often missing. Children grow up in environments dominated by barbed wire, authoritarian surveillance, and emotional deprivation, spaces fundamentally antithetical to healthy child development. In 2021, NCPCR inspections across prisons in Uttar Pradesh, Madhya Pradesh, and Bihar revealed alarming instances where even minimal standards for children's welfare were absent. Crumbling crèches, absence of child psychologists, and an atmosphere of fear rather than nurturing characterized many of these so-called 'child care' units within prisons.

While the Constitution speaks eloquently of dignity, equality, and child welfare, its criminal justice apparatus often grinds these values to dust for those most vulnerable. Wordsworth's observation holds even more bitter truth in this context: if the child is indeed the father of man, then India's future will be shaped not only by the heroes it celebrates but by the broken children it

forgets. Criminology, if it is to remain a discipline committed to understanding and preventing crime, must turn its gaze to these invisible victims, not out of pity, but out of the clear-eyed understanding that justice, if blind, must not also be deaf to the soft cries behind the prison walls.

IV. THE SILENT BETRAYAL: Institutional Apathy and Judicial Shortcomings.

“Justice will not be served until those who are unaffected are as outraged as those who are.”

- Benjamin Franklin

Benjamin Franklin’s timeless reminder draws a stark contrast to the Indian reality, where the muted suffering of children of incarcerated parents rarely stirs outrage beyond their immediate circles. As these silent victims tread the tightrope between abandonment and survival, the twin institutions (judiciary & child welfare machinery) entrusted to guard their rights often look away, trapped in archaic frameworks and procedural apathy. This chapter interrogates how systemic inertia and narrow legalism conspire to forsake the very children whom justice ought to protect.

4.1 Legal Recognition: A Lacuna that speaks Volumes.

The Indian Constitution, in its Preamble and Fundamental Rights, proclaims its commitment to dignity, equality, and child welfare. Yet these lofty ideals ring hollow when seen through the lens of children impacted by parental incarceration. There is no mention in the Indian Penal Code, 1860; the Code of Criminal Procedure, 1973; or any criminal legislation about assessing the impact of sentencing on prisoners’ children.

At the international level, India is a signatory to the United Nations Convention on the Rights of the Child (CRC), 1989, which mandates that the best interests of the child shall be a ‘primary consideration’ in all actions concerning children.¹⁴ However, India’s domestic incorporation of these principles remains skeletal and fragmented. The JJ Act¹⁵ offers some hope by defining children in need of care and protection,¹⁶ which arguably includes COIP. Yet, it operates reactively, stepping in only after the child becomes destitute rather than proactively recognizing and safeguarding children as soon as parental incarceration occurs. Thus, legal frameworks in India exhibit a tragic irony: while they protect theoretical children, *children in abstract*, they routinely fail the tangible, breathing children left in the wake of the criminal justice process.

4.2 Judicial Oversight: Compassion Lost in Codification.

Indian courts, on occasion, have shown flickers of empathy toward children of incarcerated parents. In *R.D. Upadhyay v. State of A.P.*,¹⁷ the Supreme Court laid down guidelines concerning the living conditions of children residing with mothers in prisons, stressing access to proper food, education, and recreation. Yet these guidelines, noble in intent, have rarely translated into systematic reform. Another instructive case is *Sheela Barse v. Union of India* (1986),¹⁸ where the Court emphasized the importance of creating child-friendly spaces within prisons. However, as field studies conducted by the CHRI in 2021 reveal, ground realities remain dismal, with many prisons failing to even designate separate spaces for children.

The judiciary has failed to institutionalize a practice of ‘child impact assessments’ during sentencing, a concept advocated internationally. For instance, *Scottish Sentencing Guidelines* explicitly advise judges to consider the collateral consequences of sentencing on an offender’s dependents. In contrast, Indian judgments continue to treat imprisonment as an isolated event, severed from its ripple effects on innocent dependents. Here, the Indian judiciary seems to mirror the broader pathology identified by legal scholar Nicola Lacey, ‘*individualization of criminal responsibility*’, where systemic, familial, and societal dimensions are surgically excised from adjudication. Thus, the failure is not merely procedural; it is a philosophical failure to see crime and punishment as embedded within human ecosystems rather than isolated acts of deviance.

4.3 Child Welfare Committees: Promise Deferred.

The JJ Act envisages Child Welfare Committees (CWCs) as quasi-judicial bodies tasked with the care and protection of vulnerable children. Ideally, children whose parents are imprisoned and who lack immediate caregivers should be brought under CWC protection. However, studies by the Centre for Child & Law, NLSIU Bangalore, indicate that CWCs are grossly under-resourced and undertrained to deal with the specific emotional and psychological needs of prisoners’ children. Officers are often ill-informed about the nuances of parental incarceration, viewing such children as mere cases of *abandonment* without recognizing the deeper trauma involved.

Moreover, bureaucratic inertia delays placement decisions, leading to children languishing in shelter homes far removed from familiar environments. Shelter homes themselves suffer from staff shortages, poor quality of education, and insufficient mental health support. Thus, CWCs, rather than acting as lifelines, often become bottlenecks where children slip further into invisibility, an institutional equivalent of being forgotten between the cracks of a crumbling floor.

¹⁴ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁵ Juvenile Justice (Care and Protection) Act, 2015

¹⁶ Section 2(14) Defining Child in need of care and protection

¹⁷ AIR1999 SC 2183

¹⁸ 1986 SCR (3) 443

4.4 Societal Stigma and Administrative Indifference: A Deadly Cocktail.

If the law and judiciary offer little solace, society at large compounds the injury. The children of prisoners often face brutal stigmatization, being labeled as “*criminal progeny*” by communities, schools, and even potential foster families. Sociologist Gresham Sykes, in his classic study *The Society of Captives*, speaks of ‘pains of imprisonment’ experienced not only by prisoners but by their families through mechanisms of shame, exclusion, and secondary victimization. In India, these pains are magnified by caste, class, and gender hierarchies.

Children from marginalized castes or tribal communities suffer doubly, facing discrimination both as lower-caste and as criminals’ children, creating a grim intersectionality of disadvantage. Administrative actors (police, prison officials, and welfare officers) often share these biases, treating such children with suspicion rather than empathy. There are situations where children, instead of being treated as innocent dependents, are subjected to surveillance, interrogations, or being asked to ‘prove’ their worthiness for aid. Thus, society and the state together create a vicious feedback loop where neglect is normalized and cruelty is bureaucratized.

4.5 Towards a Reimagined Framework: Lessons from Global Models.

If India must break free from this cycle of apathy, it must learn from global innovations that have attempted to address the needs of COIPs. In New Zealand, the *Pillars Trust (Pillars Ka Pou Whakahou)*¹⁹ works directly with children of prisoners, offering mentorship programs that build resilience and self-worth. Norway’s prison system, under the ‘Children First’ principle, ensures that parental incarceration minimally disrupts a child’s life, including regular, child-sensitive visitation systems. Even within the Global South, South Africa’s Child Justice Act, 2008 mandates explicit consideration of family ties and child-care responsibilities during sentencing, a model India could adapt to its realities.

Thus, India must move from seeing these children as collateral damage to recognizing them as rights-bearing individuals whose futures deserve safeguarding. Policy innovations could include: Mandatory recording of dependent children’s status at the time of arrest and sentencing; Creation of specialized child welfare officers within prison systems; Community-based alternative care models prioritizing kinship care over institutionalization. In criminological terms, it is time for India to shift from a model of ‘*institutional containment*’ to ‘*social reintegration*’, ensuring that children of prisoners are not predestined to become the next subjects of the criminal justice system.

To conclude, the Indian legal and administrative response to the plight of children of incarcerated parents is not merely inadequate; it is complicit in deepening their trauma. By refusing to recognize their existence in law, by relegating their needs to bureaucratic backwaters, and by allowing societal prejudice to dictate outcomes, the state commits a silent betrayal of its constitutional promises. As criminologists and policymakers, the call is clear: justice cannot be transactional, limited to courtrooms and case files. It must be transformational, encompassing the unseen lives touched and torn by every act of state-sanctioned punishment. Until the Indian criminal justice system learns to see the children who stand unseen behind convicts in the dock, its scales of justice will remain forever unbalanced, weighted against the most innocent of all.

V. MENDING BROKEN BRIDGES: Towards a Child-Sensitive Justice Framework.

*“The arc of the moral universe is long,
but it bends towards justice, only if we put it with all our might.”*

- Martin Luther King Jr.

The Indian criminal justice system stands today at a fragile crossroads, an inflection point where its inertia risks ossifying injustice for an entire generation of children left in the shadows of prison walls. The fractures exposed in the previous chapters are neither incidental nor inevitable. They are the predictable outcomes of an architecture that sees the convict but not the child, that delivers retribution but forgets rehabilitation. To change this trajectory, reforms must be both systemic and soulful: not merely a rewriting of manuals but a rekindling of moral imagination. Only a child-sensitive criminal justice framework, informed by empathy, grounded in rights, and steeled by accountability, can mend these broken bridges. This chapter seeks to chart that difficult but necessary journey.

- **Legislating Visibility: Recognising the Invisible Victims-** The first and most crucial step is legislative acknowledgment. Without express recognition of prisoners’ children as a vulnerable group deserving special protections, all other efforts risk being cosmetic. Drawing inspiration from the UN Committee on the Rights of the Child’s General Comment No. 21 (2017), which emphasizes the specific vulnerabilities of children in street situations (often including COIPs), India must amend both its JJ Act and criminal procedure laws to: Mandate recording of dependent children’s status at the time of arrest; Require judicial consideration of child welfare during sentencing decisions; Establish protocols for immediate placement or guardianship determination upon parental incarceration. The metaphor here is poignant: *one cannot build a home for a child without first admitting the child exists*. Legislative silence is not neutrality; it is abandonment.
- **Child Impact Assessments: Humanizing the Sentencing Process-** Criminal courts must move beyond the mechanical application of punishment to recognize the cascading effects their sentences unleash. A *Child Impact Assessment*, much like an

¹⁹ About Us | Pillars Ka Pou Whaka (<https://www.pillars.org.nz/about-us>)

environmental impact assessment, should become a prerequisite in cases where the accused has dependent children. The Scottish Sentencing Council's 2018 guidelines provide a useful blueprint: before sentencing, courts must assess how incarceration would affect an offender's family, and explore alternatives where feasible without undermining justice. In India, child impact assessments could: Involve probation officers compiling comprehensive reports about the child's needs; Allow defense counsel to submit evidence regarding alternative caregiving arrangements; Guide sentencing discretion where appropriate (e.g. community sentences for primary caregivers in non-violent offenses). Far from diluting justice, this approach enriches it, anchoring retribution within the broader ethical compass of societal healing.

- **Prisons as Transitional Spaces, Not Childhood Graveyards-** For infants and young children who must reside with incarcerated mothers, prisons must undergo a profound reimagining. The 2015 Model Prison Manual offers recommendations for creating child-friendly spaces, yet implementation remains sparse. Building on best practices observed in countries like Sweden and Germany, where prison nurseries resemble daycare centers rather than carceral enclosures. Indian prisons must establish vibrant 'child units' separated physically and symbolically from punitive spaces. Ensure access to trained child psychologists, educators, and pediatric care. Also, regularize non-contact visitations with extended family members to prevent social isolation. In the poetry of rebuilding, prisons must become *bridges back to society, not walls that sever ties to humanity*.

- **Strengthening CWC: Capacity, Accountability, and Compassion-** Child Welfare Committees are the keystones in this fragile architecture. Without robust CWCs, reforms crumble. Urgent steps include specialized training modules on the unique vulnerabilities of prisoners' children, streamlined processes for emergency foster care placement, minimizing shelter home dependency and independent monitoring mechanisms to audit decisions and prevent systemic apathy. Moreover, an interdisciplinary team, bringing together child rights experts, psychologists, legal scholars, and community leaders, should be institutionalized to assist CWCs in complex cases. CWCs must cease to be administrative stopgaps and must become islands of hope for children adrift.

- **Harnessing Community-Based Solutions: The Power of Proximity-** No amount of institutional care can substitute for the security of familiar human bonds. Wherever possible, community-based alternatives, prioritizing kinship care, foster parenting within extended families, and local mentorship programs, should be promoted. Organizations like New Zealand's Pillars Trust and the United States' Children of Incarcerated Parents Partnership (CIPP) offer models worth adapting. Community volunteers can be trained to provide: Emotional support and educational assistance; Regular, supervised visitations to maintain parent-child bonds and Advocacy to ensure the child's voice is heard in legal and welfare proceedings. In this vision, the child is not a passive recipient of charity but an active subject of rights, resilience, and redemption.

- **Public Awareness and De-Stigmatization Campaigns-** Finally, stigma is the silent assassin of opportunities. Public campaigns modeled after South Africa's "Children's Rights are Human Rights" movement must challenge the myths surrounding prisoners' children. Messaging must pivot away from narratives of inherited criminality toward those of courage, resilience, and potential. Media collaborations, school sensitization programs, and community dialogues can together dismantle the "invisible prison" of prejudice these children are forced to inhabit. True justice demands not just legal reform, but a cultural reawakening.

To conclude with what Mahatma Gandhi once said, "*The true measure of any society can be found in how it treats its most vulnerable members.*" By that measure, India has a long journey ahead. Children of incarcerated parents did not choose their circumstances. Yet unless we act, legislatively, judicially, administratively, and culturally, they will continue to inherit the consequences of crimes they never committed. Justice must be imagined not as the closing of a file, but the opening of a future where no child grows up forgotten behind bars, not of their own making.

VI. FINAL REFLECTIONS: Justice beyond the Prison Gates.

As the ink dries on sentencing orders and prison gates clang shut, it is tempting to believe that justice has been served, that the balance between right and wrong has been restored. But the story does not end there. For thousands of children across India, that moment marks not a resolution but the beginning of an untold suffering, an intergenerational injury inflicted not by lawbreakers but by the law itself. This paper has traversed the silent territories where these children live in the shadows of courts, in the neglected corridors of shelter homes, and in the harsh judgments of an unkind society. In every step, a pattern emerges: a criminal justice system that punishes not only the guilty but also the innocent who happen to be born in their orbit.

Criminology itself must broaden its analytical lens. It cannot be content to study crime and punishment in isolation. It must interrogate how legal systems create collateral damage and how societal structures exacerbate it. A Criminology of Care insists that prevention, reformation, and protection are not peripheral to justice; they are its lifeblood. By focusing on the children of prisoners, criminology forces society to confront the brutal myopia of traditional justice paradigms. As scholars like Loïc Wacquant remind us, punishment policies are deeply intertwined with broader patterns of social exclusion. The fates of prisoners' children are not unfortunate footnotes; they are structural indictments.

In the end, the children of prisoners are not problems to be managed, nor tragedies to be pitied. They are lives to be honored, nurtured, and empowered. They are the unfinished business of any society that claims to stand for justice. *To see them is the first act of justice, to care for them is the second, and to build a system that never forgets them is the justice we must strive for.* As long as even one child grows up bearing invisible sentences for crimes they did not commit, the true sentence against our collective conscience remains incomplete.

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