

BEHAVIOURAL SYNDROME

OF INCARCERATED CHILDREN: A CASE STUDY OF ODISHA.



RESEARCH PROJECT

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Abstract

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Children are placed in the criminal justice system both as victims of crime and perpetrators of offences and despite Constitutional guarantees of opportunity and civil rights, millions of children face wide-spread deprivation and discrimination, then how does it affect incarcerated children languishing in jail with their mother differently? Are the children languishing in jail with their mother the widest gateway to adult crime? What are the social constraints that prohibit these children languishing in jail with their mother from taking appropriate advantage from socio-political and legal systems? What are the causes of their plight? Do the state, civil societies NGOs fulfill their obligation towards the children's basic needs & awake the conscience of the community in the wider social context to protect children from all abuses or is it just a eye wash? Should judiciary be more active to mitigate this social problem? Should we break the mindset of institutional care for children, which have been posed as the only solution? These are some of the vital questions currently debated and the plights of children languishing in jail with their mothers are also closely linked to this general debate. These aspects have radically altered the discourse regarding incarcerated children as a victim of crime into an issue of jurisprudence and state politics. These are some of the issues which encompass the research article and become the epicenter of it.

Keywords: incarcerated children, languishing, social constraints, institutional care.

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INTRODUCTION:

Children throughout the world continued to be confined in conditions that violated international law and standards. In many cases, children in confinement were subjected to violence at the hands of guards and other detainees, commingled with adults, denied access to education, medical, or mental health services, deprived of family visits, religious services, and contacts with their communities, and even denied adequate food or basic sanitary facilities. They live on the fringes of society, ostracized by people they call their own, unloved & uncared for; even the government continues to squabble over numbers of affected children.

Around the world children who have even not committed any crime live in prison. These children with their mothers accused or convicted of an offence are too often ignored by prison systems and officials, with their needs and best interests unmet. The decision whether to allow a child to live in prison with her/his mother involves two unpalatable options: should the child be separated from her/his mother or allowed to live in prison? But the issue is much broader than a single decision and the impact on the child is felt before, during and after the period of imprisonment. At all stages of the criminal justice process, from the point of arrest to the time of release and reintegration into the community, a woman may have children living with her. At all of these stages the needs and best interests of the children should be considered and to acclimatizing them to the world outside poses challenge not only to promote their development, but also to prepare them for living in the community once they leave prison.

SCOPE OF THE STUDY

The study has provided data base and review of pertinent literature that is useful for formulative research as well as evolving strategies for tackling the emerging problems of women prisoners and their children living with them in prisons in particular and bringing prison reforms in India in general. It is still an unfolding one.

OBJECTIVE OF THE STUDY

1. To analyze various constraints and other disadvantages experienced by these children languishing in jail with their mother.
2. To study behavioural problems particularly aggression & hyperactivity or internalized behaviour like anxiety and depression & to find links between their life experiences and behavior
3. To examine existing laws, codes and provisions relating to child rights and safeguards to incarcerated children and to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in legislative provisions and practices.
4. To review the working & performance of all prisons under research including Observation Home, Special Home & Children Home functioning in the state of Odisha.
- 5 To evaluate various programmes and developmental measures taken for children in the state of Orissa & participate & advise on the planning process of all round development of children languishing in jail with their mother.

REVIEW OF LITERATURE:

The literature reveals that the study of crime and criminals, including females, has passed through two major stages of development; the pre-scientific stage and the scientific stage. Most of the literature on women was inadequate during the pre-scientific period since at that time women deviants were negligible in number to draw sufficient attention. The few studies that dominated **scientific stage** concentrated on **biological factors** in the explanation of female crime (Pike, 1876, Warker, 1986). Lombroso and Ferrero (1899), Thomas (1923), Fernald (1933), Davis (1961), and Pollak (1950, 1959) emphasized on conditional factors as related to female criminology.

Eminent experts in the field of criminology develop various theoretical models. Highlighting the **strain theory** of criminality based on tension or pressure of work, Merton (1949) states that social structures and society were equally responsible for crime causation. As per his remarks women are prone to commit crimes when they are failed to attain 'culturally defined goals' through 'institutional means'. Over emphasis on cultural goals at the expense of institutions means creates a tendency towards anomie. Durkheim (1897) while linking crime with social change has viewed that crime is a social fact and considered it to essential for social change. Therefore, it is functionally inevitable for the society. Fernald (1920) found that two influences are related to female delinquency i.e. poor economic background, lack of education or training and inferior mentality. While Bishop (1931) argued that due to emancipation movement more women became 'criminal minded'. While expanding the biological and **psychosomatic** condition of female criminality, Fernald (1931) states that women who turn to crime do so as a form of rebellion against their natural feminine roles and because they are maladjusted to their biological limitations. But **liberation model** on the other hand argues that liberation is responsible for involving women in criminal activities.

A few criminologists have used **role theory** in explaining female crime in terms of sex roles, other than biological or psychological variables (Heidensohn, 1968, Hoffmann Bustamante, 1973, Klein, 1973, Rosenblum, 1975). These authors viewed women's crimes as the illegitimate expression of role expectations.

Exclusive **sociological** studies had given the disruptive amount of statistical figures without discussing the nature and patterns of crime (Nagla, 1982). Three decades ago Sharma (1965) was the first to attempt a sociological research on women criminals in U.P. After her, Rao (1967) and Ahuja (1969-70) made attempts to study female criminality from sociological point of view. Sohoni (1974), Bhanot and Mishra (1978), and Singh (1981) furnished a statistical account of the nature, extent and patterns of female criminality.

In the Constitution of India, Article **21A** envisages for free and compulsory education to all children from the ages of six to 14 years. Article **24** prohibits employment of children below 14 years in mines, factories or any other hazardous employment. Moving away from fundamental rights to the directive principles, there are several provisions relating to the health of women and children. Article **39(f)** 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

moral and material abandonment. Article 42 directs the State to make provisions for just and humane conditions of work, and maternity beliefs. Article 45 stipulates that the State shall provide early childhood care and education for all children until the age of six. Article 47 lays down the raising of level of nutrition and standard of living of people, and improvement of public health as a primary duty of the State.

There are around 12 laws, ranging from the Guardian and Wards Act and Child Marriage Restraint Act to the Juvenile Justice Act and Immoral Traffic (Prevention) Act which make provisions for the benefit of children. There exists national policy for children and the National Charter for Children 2003 directing the state to provide adequate services for children both before and after birth, and during the growing stages, for their full physical, mental and social development. The policy suggests 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 the prevention of child exploitation. India had acceded to the UN Convention on the Rights of the Child in 1992, and the UN General Assembly Special Session on Children in 2002 with the objective of giving every child the right to survival and development in a healthy and congenial environment.

As per Report of the National Crime Record Bureau (NCRB) on December, 2020, there are 1306 jails of different types functioning in the country. Out of which 145 central jails, 413 district jails, 565 sub jails, 29 women jails, 19 borstal, 88 open jails, 14 special jails and 03 other jails are functioning in India. Out of 4, 88,511 total inmate prisoners there are 20,046 women prisoners and 4, 68,465 male prisoners in India. A total of 259 women convicts with their 308 children, 2518 women under trials with their 2768 children, 6 detenues with 7 children and 183 women prisoners with 201 children were lodged in various prisons in India at the end of 2020.

In Odisha, there are 92 jails constituting 5 central jails, 9 district jails, 73 sub jails, 1 women jail, 1 borstal, 1 open jail and 2 special jails and 1 other jail . Occupancy rate of prisoners in Odisha is 90.7 % in comparison with the national level i.e. 118.0 % . Out of the total 18,881 prison inmates (18,219 male and 662 female) are captivated in different jails in Odisha. Out of 662 women prisoners, 107 are convicted and rest 555 women prisoners are undergoing as under trials. There are 8 foreign women under trials are staying in jails in Odisha. Only 1 woman convicts with her 1 child and 113 women undertrials with their 120 children were lodged in various prisons. In Odisha, out of 469 women prisoners, 48 are convicted and rest 421 women prisoners are undergoing as under trials. A total of 2 women convicts with their 2 children and 26 women under trials with their 26 children were lodged in Delhi at the end of 2020.

There are two categories of children of women prisoners; one children who are left behind in the family when their mother is imprisoned and two, children who accompany their mother when she is in prison, or those who are born in prison because the mother was imprisoned when she was pregnant. It may be grouped as 1. Children born to mothers while in custody. 2. Minors permitted to be taken into prison custody with their mothers. 3. Minors taken into penal custody with this mothers who have been taken sent outside while the mother remains incarnated. 4. Minors taken into custody with their mothers. 5. Minors left outside when either of both parents is taken into custody. 6. Minor children who grow into adulthood while their mother services her sentence.

RESEARCH GAP

The children are not prisoners as such but are merely victims of unfortunate circumstances. In many respects, they suffer the consequences of neglect. However, little attention is paid to study psychological aspects of incarcerated children and factors contributing to their criminality. The present study will give a new insight into the issue which will prompt other researchers to undertake studies on this phenomenon.

HYPOTHESIS

1. The children languishing in jail with their mother are the widest gateway to adult crime.
2. Treatment of children languishing in jail is a human problem and not necessarily a penal one.
3. Correctional not institutional approach be applied to treat young children languishing in jail.
4. It is imperative to take a gender perspective into account in examining the situation of children.
5. Confinement of children in jails without committing any crime amounts to violation of their basic human rights.

METHODOLOGY

The methods of this research are both descriptive and analytical including the study of documents available in IAS. The intricacy & regularity of the discriminatory behaviour in different situations of the mothers with their incarcerated children was analyzed through **behavioural method**. **Case-study**, **Random sampling method**, methods of **interview** through questionnaires & schedules and **observation** were applied to collect data of abstract or qualitative phenomena of these women prisoners with children. **Statistical & Comparative methods** were applied to various cross sections of women prisoners without children, juvenile's conflict with law, even some male prisoners with and without children to make the analysis a holistic one.

AREA OF COVERAGE AND TARGET POPULATION

The plight of little children on account of the arrest of their mothers for certain criminal offences is deplorable. More than 80% of the women prisoners are married and have children. At the time of arrest of the women prisoners having children, indiscriminate arrest is not confined only to women/mother prisoners but such arrest is automatically extended to these children who are of tender age and there is no one to look after the child and take care of the child without their mother. Such children are perforce subjected to a kind of arrest for no offence committed by them. Further, the atmosphere in jail is not congenial for a healthy upbringing of such children.

It is revealed that the 121 numbers of children (as on 30.12.2020 report of NCRB) were languishing in jail with their mother in Odisha .As many as 662 women prisoners were captivated in 59 jails out of 92. On the other hand, as per the records available in National Crime Bureau, during this period 3284 children of 2966 women prisoners were staying in different jails in India. Out of which 308 children of 259 convicted women prisoners in central jails, 2768 children of 2518 under trials women prisoners in district jails, 7 children of 6 detenues in sub jails and 201 children of 183 other women prisoners in women jails were captivated.

RESEARCH DESIGN [FORMAL & RANDOMIZED]

The present study involves methods of psychological and sociological repertory. As regards the material, the information is collected from secondary sources; like project reports, departmental publications, official records and research studies in IAS library. This project believes in collecting, classifying, analyzing and interpreting data, which are collected according to age, gender, family, and crimes [convicted & under trials], from primary sources, through extensive field survey, by using various techniques such as observation, interview, schedules, questionnaires and photography etc.

Type of Research is **descriptive** (survey & fact finding inquiries), **analytical** (critical evaluation of this social problem), **applied** (suggestive in nature to bring changes in the policy), **qualitative** (study of behaviour, motives & attitudes of women prisoners, incarcerated children of 5-6 yrs of age and juveniles) , **empirical**(sample is free from bias), **clinical** (critical analysis of case study) and **decision- oriented**.

Approach of the research is inferential, where a sample of population is studied as it is inferred that population has the same characteristics & there is subjective assessment of attitudes, opinions & behaviour of individual character.

SAMPLE DESIGN

Stratification is decided on the basis of the knowledge of the traits of the children languishing in jail with their mother from pilot studies & past data. **Choice of frame** is **32 jails (out of 92) where 71 children (out of 121) incarcerated with their mother and 380 women prisoners (out of 662) are captivated**. So also, **57 juveniles** out of 578 juvenile's conflict with law are considered for comparative analysis. These children have characteristic properties with limited variations.

Keeping these facts in view, each jail is considered as **stratum**. The displaced children languishing in jail with their mother are divided into homogeneous groups [**strata**] on the basis of their inhabitation. Members within any stratum are **homogeneous** with regard to the characteristics under investigation are ensured. Samples are drawn from each stratum to get as much information as possible of the whole universe by examining only a part of it or will be done in such a way that each element of population has some **non-zero probability** of getting included in the sample.

Taking into consideration of the size and character of universe, nature of study, nature of respondents, precision **desired 200 samples** is drawn to make the research a holistic one. The desirability of choosing the samples beliefs the laws of statistical regularity, laws of inertia of large number & decided on the basis of degree of accuracy, efficiency, representativeness & times and resources required for carrying out for complete enumeration. As the universe is large in number, the **optimum size of the sample is (i) 71 women prisoners with children living in 32 jails , (ii) 10 % of 380 other women prisoners in those 32 jails or 38 numbers (iii) 10 % of rest 282 women prisoners in other 60 jails or 28 numbers (iv) 10% of the Juvenile's conflict with law i.e 57 out of 578 children** from 'Observation Home'/ 'Probation Hostel', 'Children's Home'/'Ashram School' in Odisha and (iv) **6 male prisoners (10% from with and without female prisoners)**. So, **stratified random sampling** method with restricted, proportional & probability perception is used for collection of data by means of personal interview, through scheduled questionnaires [both specific & open]. Care is taken to make the process simple, logically arranged, free from bias & bears originality.

RELEVANCE OF THE STUDY:

There has been a spurt in crime against children in all over the country with incidents of child rape, kidnapping for marriage, ransom, lawful guardianship, begging and for exporting and slavery. The incidence of infanticides, foeticides, and the trend in the quantum of children arrested under Immoral Trafficking in Children Act is recording a sharp increase. Besides, the rights of children are curtailed and affected by domestic violence and HIV/AIDS. The other disadvantages experienced by the children are low socio-economic status, marital disorder, and unstable family life, mothers who drink and smoke and have poor mental health, poverty, broken families, sexually abusive relatives, and the resultant emotional trauma due to uncared adoption. Sometimes, children for none of their fault but out of compulsion have to stay in jail with their mothers. These Children display more behavioural problems, particularly aggression and hyperactivity or internalized like anxiety and depression. Emphasis on correctional and non-correctional approach has been the battle cry of sociologists & penologists

MODELS USED TO DICTATE CRIME AND SOLUTION

$$K = \frac{CI(E_1, E_2, E_3)}{CR(S, R, P)}$$

CI -: Crime inducing function

E₁ -: Economy, E₂ -: Exploitation, E₃ -: Expectation

CR -: Crime repulsive function

S -: Societal factors, R -: Religious factors, P -: Punishment

K > 1, committed to crime. K < 1, restraint to crime. K = 1, prone to crime

Economy: poverty, unemployment, deprivation, inequality or not sharing with power and money, inaccessibility to livelihood and services...
Exploitation: Domestic violence, sexual abuse, emotional distress, low self esteem, unfair judicial system...
Expectation: peer pressure, self identity, self- ego, addiction, curiosity towards adolescence...

Societal factors: societal norms, standards and values, all inclusiveness, parental care, Institutionalization of societal structure, NGOs...
Religious factors: religious scriptures, tolerance, salvation, cultural awakening, participation
Punishment: awareness of punishment, police, judiciary, family esteem, introspection...

$$S \propto \frac{1}{C}$$

Society (S) is inversely proportional to Crime (C)

IR solution for alternative punishment:

(1) by increasing the difficulties of committing crime, (2) by increasing the immediate risks of getting caught, (3) by reducing the rewards of offending, (4) by removing excuses for offending, and (5) by reducing temptations and provocations we can prevent crime instead of emphasizing punishment.

PROBLEMS INVESTIGATED

The condition upon which a child is living in a jail along with her incarcerated mother is nothing but a violation of Human Rights. The legal aid authorities failed to eradicate this social stigma or uphold human dignity and provide emotional support and counsel to the women convicts and their children. Treatment of children languishing in jail is a state subject in India. The degree of neglect perceived in the realm of care and rehabilitation of these socially handicapped children has been just too shocking. The Probation Department in relation to the welfare measures like 'Sarva Shiksha Yojna', Reproductive

and Child Health Programme, and Integrated Child Development Projects and the Swadhar scheme are just eye wash. The Jail Manual Bill (The Prison Management Bill, 1998) had been prepared which, inter alia, deals with the plight of women prisoners, under Chapters XIV and XVI. This Bill was prepared with the laudable aim but fails to bring uniformity in jail management across the country.

There are several causes which forced the women to be captivated in Jail, more important of them are maladjustments resulting from disharmonious spouse relationship, the loosening of the joint family system, mother deprivation, broken, neglected or overcrowded homes, poverty, lack of education, superiority or inferiority complex, defects in the nervous system, etc. Rapid industrializations, slum culture, physical hardships and exploitation of minors by adults, especially in the larger cities also phenomenally contribute to their problem. The most dreadful aspect of the problem is that the children languishing in jail with their mother are the widest gateway to adult crime.

OBSERVATIONS :

1. More than three fourth mothers of children (113) were under trials of the total children living in jails with their mothers, 58.0 percent are males and 42.0 percent are females.
2. In terms of age, all the children are less than 6 years and mostly less than 2 years (50 percent).
3. In terms of period of stay in jails, 37 percent are living in jails from less than one year. The stay of about 11 percent children is between 1 to 2 years. But 12 percent, 10 percent, 13 percent and 17 percent children are between 2 to 3 years, 3 to 4 years, 4 to 5 years and 5 to 6 years respectively.
4. Out of total children in jails, 30 percent children are from general castes while rest belongs to backward classes and weaker sections of society. Again, about half of the children are Hindus while 21 percent children are Muslims.
5. Most of the children belong to married prisoners while 83.0 percent mothers are found to be illiterate. Out of total children, 68.0 percent children are from rural background and mostly from nucleus families.

Most of the children belong to low-income group families i.e. less than Rs.2000 per month (74.0 percent) only, 17.0 percent children belong to middle income group and rest belong to upper middle and higher class.

RESEARCH FINDINGS:

- Most children are living in difficult conditions and suffering deprivation relating to food, healthcare, accommodation, education and recreation.
- There are no programmes for the proper bio-psycho-social development of children in prisons. Their welfare is mostly left to the mothers. There is no trained staff to take care of the children.
- In many jails, women inmates with children are not given any special or extra food. In some jails, extra food was given in the form of a glass of milk; in others, separate food are being provided only to children over the age of five. The quality of food supplied is the same as that given to adult prisoners.

- No special consideration is given to child-bearing women. The same food and facilities are given to all women, irrespective of whether their children are living with them or not.
- No separate or specialized medical facilities for children are available in jails.
- Most mother prisoners felt that the stay in jail will have negative impact on the physical and mental development of their children.
- A crowded environment, lack of appropriate food and shelter, deprivation of affection by other members of the family, particularly the father are perceived as stumbling blocks in the development of these children in their formative years.
- Mother prisoners' identified food, medical facilities, accommodation, education, recreation and the separation of children from habitual offenders are six areas that require urgent improvement.
- There is no prison staff specially trained to look after children in jails. Also, no separate office with the exclusive duty of looking after the children or their mothers.
- Prison environments are not conducive to the normal growth and development of children.
- Many children born in prison have never experienced normal life up to the age of four-five years.
- The socialization pattern of children gets severely affected due to their stay in prison. Their only image of a male authority figure is that of the police and prison officials. They are unaware of the concept of a 'home'. Boys sometimes talk in the female gender having grown up only among women in the female ward. Sights like animals frighten these children because of lack of exposure to the outside world.
- Children get transferred with their mothers from one prison to another unsettles them and such children sometimes display violent and aggressive behaviour in prison.

KEY NOTES:

1. The separation of mother from her children on being arrested and subsequently imprisoned leads to a series of rapid changes in the lives of both. For many women, especially first timer, this is certainly one of the worst aspects of imprisonment.
2. After being arrested most women reported that they were not allowed to meet their children. Many also mentioned not being informed that rules permitted their taking into custody with their children below five years. So babies who were few months old too were left behind.
3. Where a child is present at the time of arrest, the forcible separation in fact the suddenness with which the situation is precipitated, appeared to have left many women in trauma.
4. Women arrestees and women prisoners are deeply disturbed about what must be happening to their minor children left outside. They look extremely worried about the health, physical security, illness about their children left behind.

5. Women prisoners carry acute anxiety about the welfare of their children their underlying fear also being that children may not recognize them after her release from the prison.

6. Many women prisoners completely believe that their removal from their child, life becomes a vacuum that can never be filled by anyone else.

7. Imprisoned mothers are often overwhelmed with distress about what their minor/dependent children have had to undergo as a consequence of their incarceration.

8. Minor and dependent children of imprisoned mothers face lot of difficulties, especially in such families where there is no responsible adult person to take care of children when the father remains out in the day for work.

9. The women in jails are violent and use abusive language. This affects the psychological development of young children

LIMITATION OF THE STUDY:

There is strict prohibition of using electronic gadgets like camera, tape recorder etc, which obstructed in collecting more information. Due to academic constrains and long official procedure to get appointment the research failed to carry out the field work for long time. Again the shortage of time and difficulty in getting permission to various jails has reduced the sample size of the study. The political crisis and administrative rigidity did not allow much time to interact with the prisoners.

SUGGESTIONS:

The stay of children in crowded barracks amidst women convicts, under trials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis. Jail Manual and/or other relevant rules, regulations, instructions etc. should be suitably amended to protect these children. Schemes and laws relating to welfare and development of such children should be implemented in letter and spirit. The State Legal Services Authorities should take necessary measures to periodically inspect jails to monitor their activities. The Courts dealing with cases of women prisoners whose children are in prison with their mothers should give priority to such cases and decide their cases expeditiously.

Privacy and dignity: Women prisoners' privacy and dignity must receive the topmost priority.

Female staff: There must be a female doctor inside the prison as well as female guards in charge of the female prison premises.

Health check-up: Women prisoners must be routinely screened for physical and mental health problems and provided treatment at the earliest.

Peer support group: Self-help groups among women prisoners can be of great help both to their children and themselves during stressful.

Mental health and counseling: Effective planning for mental health care after release is vital, particularly for women and their children with severe mental illness.

De-addiction facility: De-addiction facility should be made available to women with substance use problems.

Family counseling: Involvement of family members in counseling is an essential component to good health of women prisoners and their children.

Vocational and Behavioural rehabilitation .Adequate planning for livelihood after release particularly for women without family support is extremely important.

Suicide prevention strategies: Frequent meetings with prisoners and counseling with their children will reduce stress. Prison staff requires training on how to identify mental illness and use crisis intervention techniques.

CONCLUSION

The children are not prisoners as such but are merely victims of unfortunate circumstances. Every day we see articles focusing on the shining and the non-shining 'bits' of India. But we should not forget that if anything or anyone truly shines in India today, it is her children, comprising over one fourth of our population.

CHAPTERIZATION

The study has been divided into six chapters. Chapter 1st is introductory one which deals with social change and crime, female criminality and state of jail administration. Chapter 2nd is related to rationale, objectives and methodology. The study is empirical in nature and based on mainly primary data collected through field survey in selected jails of Orissa. Chapter 3rd deals with the theoretical frame work and review of literature. Chapter 4th is related to children of women prisoners of Odisha. Chapter 5th is concerned with facilities and programmes for development of children of women prisoners in theory and praxis. Chapter 6th is concluding one.

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