



Children of Incarcerated Caregivers

India Prison Nurseries Report

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In India, children are allowed to stay with their mothers in correctional facilities until the age of six. However, most women's prisons have not been adapted to attend to the specific requirements of mothers and the children they house. For children, this includes the absence of quality prison nurseries and creches,² as well as their isolation from the general population. Therefore, despite India's attempts to safeguard maternal relationships even in prisons, the poor implementation of prison nurseries speaks to the wide gap between the law's intention and its implementation. Nonprofits have stepped in to address this chasm, experimenting with innovative solutions to address a complex issue.

India's Prison System

India is home to 1.4 billion people. Though India has a relatively low rate of incarceration compared to the United States, it is fourth in the world in terms of the number of people it incarcerates with some estimates pegging India's prison population at around 573,220 in 2024.³ As of 2021, women constituted approximately 4.1 percent of the prison population in India,⁴ and 1,537 of these women were accompanied by their 1,764 children in prisons.⁵ Indian prisons house people awaiting trial and convicted individuals, with an overwhelming 77 percent of the prison population constituted by the former.⁶ There are currently 34 women's prisons in India.⁷

India's prison system faces numerous challenges, including overcrowding, traumagenic conditions, and inadequate facilities.⁸ These challenges are particularly acute for mothers in prison, who face unique difficulties in maintaining relationships with their families and accessing the resources they need to care for themselves and their children, and for their children who are socialized in such a punitive environment.

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² Creches are preschools or simple nurseries for children.

³ "Incarceration Rates By Country 2024," World Population Review, accessed February 15, 2024, <https://worldpopulationreview.com/country-rankings/incarceration-rates-by-country>.

⁴ "India," World Prison Brief, accessed August 3, 2023, <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/psiyarwise2022/1701613297PSI2022ason01122023.pdf>.

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

⁷ National Crime Records Bureau, *Prison Statistics India 2022*, 8.

⁸ Ministry of Women and Child Development, *Women in Prisons: India*, (2018), 1, <https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled.pdf>.

Doctrinal Position

Prisons in India continue to be governed by colonial legislation, the Prisons Act of 1894.⁹ The legislation was drafted with the aim of keeping subjects in line, and punishing them for not acting in congruence with the rules laid out by the British administration. It does not address the status and needs of children of incarcerated mothers.

To address the legal uncertainty on the issue regarding children of incarcerated mothers, in 2006, the Supreme Court of India ruled in the case of *R.D. Upadhyay v. State of A.P.* that “female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.”¹⁰ The Supreme Court further declared that “children below 3 years shall be allowed [in a] creche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said creche and nursery outside the prison premises.”¹¹ Until 2006, although most states permitted children to reside with their mothers until they turned six years of age, not all did.

This ruling further emphasized that children should not be treated as persons awaiting trial/convicts while in prison with their mother, and that every child residing with their mother would be entitled to food, shelter, medical care, clothing, education, and recreational facilities as a matter of right.¹² The Court established several guidelines to safeguard and promote the development of these children.¹³ The ruling also provided that upon reaching the age of six years, the child shall be handed over to a suitable surrogate that the mother wishes her child to be given to, or the child would be sent to a suitable institution run by the state Social Welfare Department.¹⁴ With these guidelines, the judgment attempted to align with international standards on the subject, including The United Nations (UN) Rules for the Treatment of Women Prisoners (Bangkok Rules) and The UN Minimum Standards for Treatment of Prisoners (Mandela Rules).¹⁵

Moreover, a Model Prison Manual, adopted by India in 1979 and last revised in 2016, further addresses standards for women’s prisons, including childbirth and care in prison, pregnancy, women staff members, and creche facilities.¹⁶ To support incarcerated mothers during pregnancy and lactation, the manual specifies nutritional requirements; providing pregnancy testing; prohibiting the use of restraints; ensuring sufficient antenatal care; allowing access to abortion, autonomy and decision making on labor that the mother partakes in; and permitting temporary

⁹ The Prisons Act, 1894, https://www.mha.gov.in/sites/default/files/2023-03/Prisons_act1894_0%5B1%5D%5B1%5D.pdf.

¹⁰ *R.D. Upadhyay v. State of A.P. & Ors.*, AIR 2006 SC 1946.

¹¹ *R.D. Upadhyay*, AIR 2006.

¹² *R.D. Upadhyay*, AIR 2006.

¹³ *R.D. Upadhyay*, AIR 2006.

¹⁴ *R.D. Upadhyay*, AIR 2006.

¹⁵ UN General Assembly, Resolution 65/229, “United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),” Dec. 21, 2010, https://www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf; UN General Assembly, Resolution 70/175, “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),” Dec. 17, 2015, <https://documents.un.org/doc/undoc/gen/n15/443/41/pdf/n1544341.pdf?token=3i7JMmJDRUkblsQaaq&fe=true>.

¹⁶ “Union Home Minister Approves New Prison Manual 2016,” Press Information Bureau, January 21, 2016, <https://pib.gov.in/newsite/PrintRelease.aspx?relid=134687>.

release from prison for hospital childbirth.¹⁷ Because the specificities of running, managing, and administering prisons in India falls under the domain of states, as per Schedule VII of the Indian Constitution,¹⁸ state governments have the liberty to adopt the Model Prison Manual with state-specific considerations in mind. Consequently, the conditions of prisons and the well-being of incarcerated people differs from one state to another, depending on the agenda of the ruling dispensation and the resources of the state. As of 2022, only 11 of 36 states and union territories have adopted the Model Prison Manual in some form.¹⁹

The Juvenile Justice (Care and Protection of Children) Act of 2015 (“JJ Act”) also promotes the care and protection of children, including children of incarcerated parents.²⁰ Its implementation is monitored by the Juvenile Justice Boards and Child Welfare Committees, as well as by the National Commission for Protection of Child Rights.²¹ These agencies are said to conduct regular inspections of prisons and juvenile justice institutions to ensure compliance with the guidelines and take corrective measures where necessary.²²

Situation on the Ground

Following the Supreme Court’s decision in *Upadhyay*, the Central Government issued an order directing all states and union territories to comply with the guidelines of the ruling.²³ States, including Karnataka and Bihar,²⁴ amended their respective jail manuals to incorporate provisions concerning the welfare of children and mothers in prisons. Despite this, several reports have pointed toward the abysmal state of affairs in which children live in Indian prisons.²⁵ The guidelines have not been imposed by all states, and those that have imposed them have struggled with implementation. In many states, children under six years old are provided with the same food as other inmates, subject to confinement in cells for the majority of the day, and strip searched much like their mothers.²⁶ Furthermore, due to the lack of adequate infrastructure and funding, special medical facilities,²⁷ and special provisions for food, medical, educational, and

¹⁷ “Union Home Minister Approves New Prison Manual 2016,” Press Information Bureau.

¹⁸ India Const. art. 246.

¹⁹ “Only 11 States and Union Territories in India Have Adopted This Prison Manual: Amit Shah,” *INVC*, September 4, 2022, <https://www.internationalnewsandviews.com/only-11-states-and-union-territories-in-india-have-adopted-this-prison-manual-amit-shah/>.

²⁰ Juvenile Justice Care and Protection of Children Act, 2015, § 1(4).

²¹ JJ Act, §109.

²² JJ Act, §8; JJ Act §14.

²³ Ministry of Home Affairs, No.V-17013/9/2006-PR (Issued on May 15, 2006).

²⁴ Government of Karnataka, *The Karnataka Prisons and Correctional Services Manual - 2021*, (Bengaluru: Karnataka State Gazette, 2022), <https://prisons.karnataka.gov.in/storage/pdf-files/KARNATAKA%20PRISON%20CORRECTIONAL%20SERVICE%20MANUAL2021%20PDF.pdf>; Government of Bihar, *Bihar Prison Manual*, (2012), <https://www.indianemployees.com/acts-rules/details/bihar-prison-mannual-2012-english>.

²⁵ Sukanya Shantha, “When ‘Bandi’ Is Both a Game and Life: The Children of India’s Women Prisoners,” *The Wire*, August 1, 2022, <https://thewire.in/rights/children-women-prisoners-india>; Vijay Raghavan et al., *Initiating Work with Children of Prisoners: Handbook Series on Social Work in Criminal Justice*, (Mumbai: Prayas, 2012) https://www.tiss.edu/uploads/files/initiating_work_with_children_of_prisoners.pdf.

²⁶ Shantha, “When Bandi is Both a Game and Life”; Raghavan et al., *Initiating Work with Children of Prisoners*.

²⁷ Seema Das, “Women Prisoners in Odisha: A Socio-Cultural Study,” (master’s dissertation, National Institute of Technology Rourkela, May 2013), 8, <http://ethesis.nitrkl.ac.in/4980/1/411HS1009.pdf>.

recreational facilities for such children are unavailable in every state.²⁸ Moreover, creches are present only in three states and one union territory: Karnataka, Tamil Nadu, Delhi, and Chandigarh.²⁹

According to a report by Paliath and Acharya, women prisoners in India face significant challenges in accessing adequate resources to care for their children, and as a result, they and their children may suffer from depression, anxiety, and other mental health issues.³⁰ The report highlights the inadequate healthcare, nutrition, and educational opportunities available for these children in prison, leading to long-term harm.³¹ Additionally, children who have lived in prison may face social stigma and discrimination that hinders their future opportunities and social integration.³²

Though the Model Prisons Manual has provisions related to pregnancy and childbirth in prisons, overcrowding in jails makes it uncommon for women inmates to be granted resources such as a special diet care or baby care.³³ Inadequate access to healthcare and other resources may pose risks to the health and wellbeing of both the incarcerated women and their newborns.

More recently, a study conducted by Dr. Sonali Kusum highlights the challenges faced by mothers and their children in the *bachha barrack*, the colloquial-Hindi term describing the facility in which incarcerated women live with their children.³⁴ Dr. Kusum explains that there are no provisions for breastfeeding mothers living in prison, which includes the absence of a breastfeeding kit, milk pump, thermos, towel, and other basic needs for breastfeeding.³⁵ However, incarcerated people are allowed to receive aid from family, if given permission by the prison. Women deserted by their families or women who do not have external financial support, may be unable to access the same attention and aid.³⁶

Additionally, due to the absence of any enforcement or grievance mechanism to ensure the implementation of rules and guidelines, the promise of ensuring a healthy upbringing for children behind bars gets defeated. Thus, the guidelines passed by the Supreme Court in

²⁸ Dr. Shaila Parveen, *A Study of Condition of Women Prisoners & Their Children in Eastern U.P. Jails*, (New Delhi: National Commission for Women, 2008), 68, 77, https://ncwapps.nic.in/pdfReports/A_Study_of_condition_of_Women_Prisoners_and_Their_Children_in_Eastern_U_P_Jails.pdf.

²⁹ Sana Shakil, “1,681 Toddlers in Indian Jails, only Three States have Crèches: NCRB report,” *The New Indian Express*, last modified November 5, 2019, <https://www.newindianexpress.com/nation/2019/nov/06/1681-toddlers-in-indian-jails-only-three-states-have-crèches-ncrb-report-2057755.html>.

³⁰ Shreehari Paliath and Preeti Acharya, “Living with Imprisoned Mothers, Children Struggle for Normal Childhood,” *Indiaspend*, October 7, 2020, <https://www.indiaspend.com/8-women-prisoners-children-live-with-them-heres-how-the-system-fails-them/>.

³¹ Paliath and Acharya, “Living with Imprisoned Mothers.”

³² Joshua Cochran, SE Siennick, DP Mears, “Social Exclusion and Parental Incarceration Impacts on Adolescents' Networks and School Engagement,” *J Marriage Fam* 80(2), (2018): 478-498, 10.1111/jomf.12464.

³³ Ministry of Women and Child Development, *Women in Prisons*, iv.

³⁴ Nitasha Natu, “Behind Prison Walls, 'Freedom' for Inmates' Kids,” *The Times of India*, February 25, 2019, <https://timesofindia.indiatimes.com/city/mumbai/behind-prison-walls-freedom-for-inmates-kids/articleshow/68144237.cms>.

³⁵ Natu, “Behind Prison Walls.”

³⁶ Sonali Kusum, “Women Prison Inmates & Their Children at Bachha Barrack During Pandemic Covid 19,” *GLS Law Journal* 4, no. 2, (July 2022): 6-14, <https://glslawjournal.in/index.php/glslawjournal/article/view/65>.

Upadhyay, while aspirational, have failed to fulfill their intended purpose. It is also important to note that close to 75 percent of the imprisoned women belong to marginalized castes and classes, across religions.³⁷ They frequently face the worst of the state's actions, and are often the ones compelled to keep their children with them in prison in the absence of a better alternative.³⁸

In a January 2023 interview with Children of Incarcerated Caregivers (CIC), Dr. Smita Dharmamer, who leads strategy initiatives at Aangan Trust, a Mumbai-based non-profit, shared that children of incarcerated caregivers are often provided care within a shelter or orphanage.³⁹ However, there are risks with these alternatives, including physical, emotional, and sexual abuse; neglect; malnutrition; lack of education and opportunities for growth; and isolation from family and community.⁴⁰ Children who have experienced trauma or abuse are particularly vulnerable to these risks, and institutional care may exacerbate their existing psychological and emotional problems.⁴¹

It is essential to develop policies and allocate resources to address the needs of pregnant women and new mothers in the prison system, to ensure their fundamental rights are upheld, and to promote the health and wellbeing of all those involved.⁴² As Dr. Dharmamer argues that “childcare is everyone’s business.”⁴³

Non-Government Organizations

India Vision Foundation

In 1994, Dr. Kiran Bedi, the first female police officer in India, founded India Vision Foundation in New Delhi by setting up a creche program in Delhi’s Tihar Jail for children of incarcerated women who were under six years of age, long before the *Upadhyay* ruling came out.⁴⁴ In an interview with CIC, Monica Dhawan and Renu Nag indicated that they also run five programs with incarcerated populations.⁴⁵ Two are specifically dedicated to children of incarcerated caregivers, one of which focuses on early childhood care and development of children below the age of six who are in prison with their mothers.⁴⁶ The other supports children outside the prison, including those who leave their mothers in prison after they turn six years of age.⁴⁷ India Vision Foundation also continues to run the Tihar creche and nursery.⁴⁸ Dhawan said the focus of these

³⁷ Shantha, “When Bandi is Both a Game and Life.”

³⁸ Shantha, “When Bandi is Both a Game and Life.”

³⁹ Dr. Smita Dharmamer (Associate Director, Aangan Trust) interview with CIC researcher Arshia Hussain, January 2023.

⁴⁰ Dharmamer, interview.

⁴¹ Neera Nundy, “Generations at Stake: Need for Investing in Family-Based Solutions for Vulnerable Children in India,” *The Times of India* (blog), June 13, 2022, <https://timesofindia.indiatimes.com/blogs/voices/generations-at-stake-need-for-investing-in-family-based-solutions-f-or-vulnerable-children-in-india/>.

⁴² Rajesh Trichur Venkiteswaran, “India: Guiltless Children in Prison,” *The Interpreter*, June 1, 2018, <https://www.lowyinstitute.org/the-interpreter/india-guiltless-children-prison>.

⁴³ “Home Page,” Aangan Trust, accessed May 23, 2023, <https://aanganindia.org/>.

⁴⁴ Monica Dhawan (Director, India Vision Foundation) and Renu Nag (Head of Learning and Development, India Vision Foundation) interview with the author, November 16, 2023.

⁴⁵ Dhawan and Nag, interview.

⁴⁶ Dhawan and Nag, interview.

⁴⁷ Dhawan and Nag, interview.

⁴⁸ Dhawan and Nag, interview.

programs is to nurture children and give them a real shot at a future, and to prevent them from being forced to enter pipelines of criminality.⁴⁹

Through India Vision Foundation, I visited the Tihar Jail’s creche and nursery on December 8, 2023. They have created a safe space for the 20 children living with their mothers within the prison complex. The space is filled with toys, has bright walls and blankets, and offers an environment conducive to learning. The creche and nursery share the same wall, and there is a kitchen attached to the creche. The kids enjoy hot and healthy lunches, and many of the women inmates serve as teachers and caregivers in the creche and nursery. India Vision Foundation has also launched the program “Nanhi Kiran,” to provide a standardized early childhood care and development curriculum for children living inside prisons. They are also entering into arrangements with nonprofits operating in other states to share the curriculum with them.

Prayas

Prayas, founded in 1990, was established as a Field Action project of the Center for Criminology and Justice’s Tata Institute of Social Sciences (TISS) in Mumbai.⁵⁰ It has comprehensively laid the foundation for prison nursery advocacy in India and has been working in the field of criminal justice through social work intervention.⁵¹ Members of Prayas have spent considerable time in prison facilities, and have even created a handbook documenting the experiences of the children of prisoners staying with their mothers inside as well as those left outside.⁵² They also submitted a note to the Supreme Court during the *Upadhyay* case suggesting that they have prison creches and nurseries for children of incarcerated women.⁵³

In an interview with CIC, Prayas’ members Dr. Vijay Raghavan, Krupa Shah, and Surekha Sale described the organization’s impact.⁵⁴ Dr. Raghavan argued that children in prisons grow up in an artificial environment, with many of them not even having any conception of male figures.⁵⁵ After a field project in the 1990s, Prayas collaborated with another organization, Pratham—a leading non-profit organization on child education in India—to run prison nurseries in a few prisons, but soon realized this was unsustainable. They argue that the government of a welfare-state such as India’s has the funds, is responsible, and is most capable of running the nursery efficiently.⁵⁶

Prayas were even instrumental in bringing anganwadis to women’s prisons. Anganwadis are a type of rural childcare center in India that were started by the Indian government in 1975 as part of the Integrated Child Development Services program.⁵⁷ Prayas reached out to the Ministry of

⁴⁹ Dhawan and Nag, interview.

⁵⁰ “About,” Prayas, accessed on February 5, 2024, <https://tiss.edu/view/11/projects/prayas/>.

⁵¹ “About,” Prayas.

⁵² Raghavan et al., *Initiating Work with Children of Prisoners*.

⁵³ Tata Institute of Social Science, Impact on Field, Policy, Law and Procedure (February 1990 – March 2020), https://www.tiss.edu/uploads/files/Prayas_Impact_on_Policy_-_February_1990_to_March_2020.pdf.

⁵⁴ Dr. Vijay Raghavan (Professor, Centre for Criminology and Justice, School of Social Work, TISS), Krupa Shah (Senior Social Worker, Prayas), and Surekha Sale (Senior Social Worker, Prayas) interview with the author, October 5, 2023.

⁵⁵ Raghavan, Shah, and Sale, interview.

⁵⁶ Raghavan, Shah, and Sale, interview.

⁵⁷ Raghavan, Shah, and Sale, interview.

Child and Women Welfare in Maharashtra and Gujarat to institute policy-level change that brought anganwadis to women's prisons of these two states.⁵⁸

They also noted that separation of the mother and the child at the end of six years is extremely traumatic for both.⁵⁹

Aangan Trust

Aangan Trust, based in Mumbai, has collaborated with members of the community to set up a prison nursery in Byculla Women's Prison in Mumbai, in the state of Maharashtra, that welcomes both the children of incarcerated caregivers and the children of guards.⁶⁰ Prison guards, whose jobs are prone to frequent transfers, rarely have support to look after their children while they are working.⁶¹ Aangan therefore adopted this creative solution to address needs of both populations and to reiterate the importance of detaching stigma from children, bringing inclusivity and diversity to the nursery.⁶²

The Maharashtra state government has provided the infrastructure for the nursery at Byculla, while Aangan and its citizen group—many of whom are working professionals and mothers—brought the nursery to life in January of 2023.⁶³ They painted beautiful murals on the prison nursery and filled it with toys and color. The volunteers, along with Aangan, have radically changed this space through crowd-funding. It is a unique model of public-private partnership where civil society has played a key role. The same model has been replicated in a few other cities in Maharashtra, including Nasik, Pune, and Nagpur. They are hoping to make this a national movement to mobilize communities in every state.⁶⁴

Aangan invited me to visit the nurseries in Mumbai and Pune on January 4 and 9, 2024 respectively. The following pictures of the Mumbai nursery were taken during that visit.

⁵⁸ Raghavan, Shah, and Sale, interview.

⁵⁹ Raghavan, Shah, and Sale, interview.

⁶⁰ Dr. Smita Dharmamer (Associate Director, Aangan Trust) interview with CIC's Julie Matonich, Olivia Hudson, and Stuti Shah, May 25, 2023.

⁶¹ Dharmamer, interview.

⁶² Dharmamer, interview.

⁶³ Dharmamer, interview.

⁶⁴ Dharmamer, interview.



Kamna Chowdhury, a working mom, volunteered with Aangan to support the nursery at Byculla.⁶⁵ Like many of the other volunteers, Kamna did not have any social sector experience prior to this, but when she learned about the experiences of such children, she signed on to dip into her experience as a mom and create an environment where children can find joy through learning.⁶⁶ In an interview with CIC, Kamna spoke honestly about how oblivious most people in India are about children spending their formative years with their mothers in prisons, and how working with these children has transformed her.⁶⁷ She explained, “There is a need to reorient and let go of assumptions. Interacting with them requires a lot of unlearning and relearning, knowing that they have been exposed to very limited concepts. It humbles you that people with such different life experiences have so much to teach you.”⁶⁸ She discussed how though the state provides two anganwadis to work there during the day, the volunteers take turns teaching the kids new activities like yoga, art therapy, and dance therapy, to “gift them a few hours of childhood that they deserve everyday.”⁶⁹

There are a few other non-profit organizations working in this space and addressing state-specific and local issues.

Alternatives to Traditional Prisons

Recognizing that traditional prisons have not been successful in rehabilitating and reforming individuals, India has had a long history of open prisons.⁷⁰ This model also allows incarcerated parents to stay with their children, but is not centered around gendered child-rearing or pure carceral logic. Some open prisons such as Sanganer in Rajasthan allow incarcerated persons to stay with their partner and raise their child together in a more typical environment where the child may not even be aware that their parent is incarcerated. In Sanganer, a school functioning in the campus has a mix of children from outside as well as within the prison community.⁷¹ Prison Aid+ Action Research (PAAR), a non-profit organization working on prison reforms and open prison advocacy, has been successfully amplifying the narratives of inmates at the Sanganer Open Prison and recently invited some Supreme Court judges to interact with children there.⁷² It is the closest experience of normalcy that children of incarcerated caregivers have in India. It is important to note, however, that open prisons only admit convicted individuals, and the large population of persons awaiting trial still have no such recourse to an alternative.

⁶⁵ Kamna Chowdhury (Volunteer, Aangan Trust) in an interview with the author Stuti Shah, June 14, 2023.

⁶⁶ Chowdhury, interview.

⁶⁷ Chowdhury, interview.

⁶⁸ Chowdhury, interview.

⁶⁹ Chowdhury, interview.

⁷⁰ Anonymous, “Open Prisons in India - A Review,” *Social Defense* 17 no. 68 (1982).

⁷¹ Mohammed Iqbal, “Punish to Reform: Rajasthan’s Open Prison Model,” *The Hindu*, last modified February 7, 2023,

<https://www.thehindu.com/news/national/punish-to-reform-rajasthans-open-prison-model/article66471142.ece>.

⁷² “Home Page,” Prison Aid + Action Research, accessed on March 5, 2024, <https://www.paar.org.in/>.