

Welfare Challenges for Women Prisoners with Children in India: Policy and Implementation Gaps

H.afifa Sherin

Research Law Assistant, Hon'ble Judges of The Madras High Court, Chennai-600104, Tamil Nadu, India

Corresponding author's E-mail address: sherinhistory@gmail.com

Abstract

This research article analyzes the severe welfare challenges faced by children of incarcerated mothers in India, arguing that institutional failures transform adult penalties into child punishment. Although progressive mandates exist, such as the Supreme Court's R.D. Upadhyay guidelines and the Model Prison Manual 2016, a critical implementation gap persists. This failure is primarily driven by the protracted judicial delay, which keeps 75-77% of women as under trials, subjecting over 1,700 children to years in an unsuitable environment. Further systemic barriers include infrastructural deficits, chronic underfunding, and administrative fragmentation (e.g., Child Welfare Committee jurisdictional failures), resulting in acute deficiencies in nutrition and developmental support inside, and socioeconomic trauma and family estrangement outside. To achieve child-centric justice, definitive structural reforms are necessary, including expanding rehabilitative open prison models for undertrial women and establishing a dedicated, single agency to coordinate welfare and ensure accountability.

Keywords: *Maternal Incarceration, Undertrial Prisoners (UTPs) Policy-Practice Disconnect, Judicial Delay, Open Prisons, Social Stigma, Developmental Trauma, Integrated Facilities*

1. Introduction

The incarceration of mothers represents a profound challenge to the principles of child welfare and social justice, transforming punitive measures intended for the adult into inadvertent punishment for the child. The global scale of this issue is significant, with an estimated 19,000 children living with their primary caregivers, typically mothers, in correctional facilities. The situation in India is persistent: statistics show that between 2009 and 2019, an average of 1,586 women prisoners, roughly 9% of the total female inmate population, had dependent children with them. By 2021, records indicated that 1,537 women were housed with 1,764 children in Indian prisons.

A defining feature of the custodial challenges facing India is the extremely high number of women classified as undertrial prisoners (UTPs). A striking 75% to 77% of all women inmates are detained awaiting trial, rather than serving a conviction sentence.

This protracted detention period, which occurs before a conviction, significantly hinders access to crucial services such as legal assistance, maintaining family connections, and participating in rehabilitation programs, many of which are typically available only to convicted individuals.

Critics argue that the Indian prison structure is fundamentally flawed because penal institutions were "traditionally designed to suit the needs of men," which creates structural disadvantages for both women and their dependent children. Specialists emphasize that this setting is intrinsically "not congenial" for ensuring the comprehensive, holistic development of minors.

To address these endemic problems, India established a forward-thinking policy structure, anchored by the Supreme Court's pivotal ruling in *R.D. Upadhyay vs. State of A.P. & Ors* (2006), the Model Prison Manual (MPM 2016), and the embrace of global standards like the United Nations Bangkok Rules (2011). While this framework mandates extensive, child-focused care, analyses consistently show a pervasive "gap between implementation and policy," meaning the protective provisions rarely materialize for the intended recipients.

2. The Regulatory and Judicial Mandate: A Foundation of Rights

The legal and correctional policy frameworks in India explicitly recognize the unique vulnerability of women in custody and the inherent rights of children living within the prison environment.

A. Provisions of the R.D. Upadhyay Guidelines (2006)

The Supreme Court's 2006 judgment in *R.D. Upadhyay* established a fundamental set of rights for children in prison, acknowledging that they are in custody through "no fault of their own". The ruling stipulated that a child must not be "treated as an under trial/convict" and is entitled to essential guarantees, including adequate food, clothing, medical care, shelter, education, and recreation. Specific directives mandated prenatal and postnatal care, proper diets, and separate living quarters away from crowded barracks to minimize negative developmental effects. Furthermore, to lessen the severe social stigma associated with confinement, the court directed that children born in custody must have their births officially recorded *outside* prison documentation, using the address provided by the mother.

B. Model Prison Manual (MPM 2016) and International Standards

The Model Prison Manual (MPM 2016), issued by the Ministry of Home Affairs, incorporates and expands these judicial requirements, encouraging state governments to adopt them with necessary local adaptations. The MPM 2016 mandates that every prison housing children must establish a crèche and nursery school. It also details precise diet charts for pregnant and lactating mothers, infants, and children aged three to six years, in addition to the standard prisoner diet. The Manual also stipulates that education is a compulsory daily activity for at least one hour for women inmates, alongside vocational training and recreational facilities.

On the international front, the Bangkok Rules (2011) serve as a supplementary guideline. These rules, which enhance the earlier Standard Minimum Rules for the Treatment of Prisoners, require authorities to consider the "distinctive needs of women prisoners". Penal Reform International points out that these rules were vital because historically, prison systems failed to account for women's specific requirements, impacting everything from physical facilities to health services and procedures for family contact.

C. The Undermining Effect of Judicial Delay

Despite the clarity of these policy mandates, their successful implementation is hampered by a critical structural failing: the justice system's inability to prioritize cases involving women undertrials. The Supreme Court explicitly commanded courts to grant priority to the cases of women prisoners who have children in jail, aiming for their swift resolution. However, the ongoing sluggishness of the trial process means that 75% to 77% of women remain undertrials for extended periods.

This systematic delay, characteristic of judicial backlog, effectively intensifies the penalty imposed on the innocent child. Protracted undertrial status often prevents the mother from accessing viable rehabilitative alternatives, such as open prisons, which are typically restricted to convicted individuals. As a direct consequence, children endure years of institutional life in a developmentally restrictive environment, flagrantly disregarding the judicial goal of minimizing their time in detention. The failure to uphold the "priority disposal" directive is thus a primary driver subjecting children to chronic developmental setbacks.

3. The Structural Inequity: Systemic Barriers and Administrative Silos

The persistent disconnect between established policy and daily practice is rooted in structural inequalities stemming from inadequate infrastructure, consistent underfunding, and fragmented administration, all made worse by the fact that women constitute a minority in the prison population.

A. Infrastructural and Logistical Constraints

The architecture of the prison system fundamentally restricts effective welfare provision. India currently has only 34 dedicated jails for women, and 21 states and Union Territories (UTs) possess no separate facilities for female inmates. Consequently, only 17.1% of women are held in women's prisons; the remainder reside in women's enclosures located inside male-dominated facilities.

This infrastructural shortfall translates directly into major logistical challenges. Women are frequently moved to prisons located far from their homes, which "severely disrupts communication and maintaining contact with family". This distance results in inconsistent family visits and creates a "social amputation" that children outside the prison walls also keenly feel. Moreover, the absence of customized facilities means many women and children are housed in overcrowded barracks, a situation the Supreme Court acknowledged has a "harmful impact upon the development of the child". Inspection reports have documented critical deficiencies, such as the complete lack of beds for pregnant inmates in some central jails, forcing them to sleep on the floor amidst unhygienic conditions.

B. The Nexus of Underfunding and Staffing Deficits

A major obstacle to implementing specialized welfare is the insufficient financial allocation for correctional services. Experts frequently use the low number of women inmates as a reason why establishing dedicated infrastructure for them is "economically unviable". However, the deeper failure lies in the overall chronic neglect of prison funding across the board.

Data shows that correctional facilities operate on severely limited budgets. Nineteen states and UTs allocate between Rs 20,000 and Rs 35,000 per inmate annually, amounting to less than Rs 100 per day per prisoner. This minimal financial commitment is insufficient for the

necessary investment in specialized infrastructure, quality nutritional programs, medical services, and critically, the trained personnel required to comply with the MPM 2016 mandate.

The ongoing staffing crisis further weakens the system's capacity for reform. Staff vacancies across prisons average between 33% and 38.5%. This shortage disproportionately affects specialized correctional roles, such as welfare officers, psychologists, and social workers, who are indispensable for managing the sensitive psycho-social needs of women and children.

C. Administrative Fragmentation and Resource Pooling

The justification of economic non-viability often masks a more profound administrative issue: the distribution of welfare responsibilities across different silos. The provision of care for women and children in custody currently involves multiple agencies—the Prison Administration, the Department of Women and Child Development (WCD), and Judicial/Probation Services. This compartmentalized approach ensures poor collaboration. The failure to consolidate administrative efforts means that available resources are not efficiently utilized.

To counter the problem of low inmate numbers, structural reform proposes the mandatory establishment of integrated facilities in every district. This involves combining prisons for women with existing social services like Nari Niketans (women help centers or rescue homes) within a single campus. By aggregating the female population across judicial and welfare categories, these complexes can achieve the necessary critical mass to share common resources—including vocational training, counselling services, and specialist staff—thereby making specialized, gender-sensitive investment both economically sensible and logistically feasible.

4. The Compromised Childhood: Welfare Deficiencies Inside Prison (Ages 0-6)

Children who remain with their mothers inside prison until the age limit of six are subjected to environments that actively hinder their physical, psychological, and social development, directly contravening the stipulations of the MPM 2016.

A. Failure to Meet Nutritional Norms

The guidelines of the MPM 2016, which mandate a special diet for pregnant and lactating mothers, as well as specific meal plans for infants and children aged three to six, are routinely ignored on the ground. Testimonies confirm significant failures in providing adequate nutrition. Mothers report that their children are given the same food served to adult inmates for dinner, lacking a special diet suited to their needs. Specific reported instances of inadequacy include pregnant women receiving "just an extra banana" beyond the standard meal, and new mothers receiving supplementary milk that was unboiled and would often "split by evening". Although prison officials in certain areas, such as Delhi, claim children receive a suitable diet (milk, *dalia*, *khichdi*), inmate experiences show that the quality or quantity is often insufficient or unsuitable.

A key finding related to service delivery is the consistent institutional failure to inform women of their entitlements. Even where specific dietary provisions exist—such as eggs or specialized meals available upon request in some Haryana jails—women prisoners are often "not aware of this facility". This lapse in communication suggests that the implementation gap is not just logistical but also a fundamental institutional failure to transparently communicate rights and provisions to the incarcerated population.

B. Developmental Trauma and Social Isolation

The custodial setting inflicts considerable psychological and social trauma. Life in custody, surrounded by women accused or convicted of various crimes, "can never be normal for any child". This environment results in the "confinement of their psyche," leading to prolonged negative effects on their overall development. Children raised here exhibit poor social skills because their social circle is restricted largely to women prisoners. They often lack the concept of a normal home and find external elements, such as stray animals (seen during court transfers), to be frightening.

The environmental impact can lead to deeply atypical behavior. Boys, having been raised solely among women in the female ward, may display traits such as "impersonating and talking like the female gender". Exposure to a negative atmosphere can trigger aggression, withdrawn behavior, and in some cases, physical beatings from mothers who are coping with their own frustrations. This trauma is exacerbated by the frequent, unsettling transfer of children and mothers between prisons due to overcrowding, leading to "uprooting and unsettling" and further destabilizing the child's world.

C. Creche Facilities and Specialized Learning Deficits

The MPM 2016 requires the provision of creche facilities to enable mothers to access education and vocational training while ensuring children receive necessary developmental care. However, these provisions are seldom realized. Correctional experts note that creche and educational facilities are "few and far between," and "most jails don't even have a functioning creche".

In locations where facilities, such as *balwadis* (pre-schools), have been established, they frequently owe their existence to the dedicated efforts of non-governmental organizations (NGOs) like Prayas and the India Vision Foundation (IVF). Prayas successfully set up *balwadis* in Maharashtra, but only after years of overcoming bureaucratic resistance regarding the rule of "prescribed minimum number of children" needed to justify the facility. Furthermore, NGOs have found it necessary to develop specialized learning curricula for children aged 0-6 because the "regular ones do not work for children who are raised in jail," highlighting the severity of the cognitive and social deficits resulting from the custodial environment.

5. The Invisible Casualties: Challenges for Children Left Outside (Ages 6+)

Children who exceed the age of six, or those for whom no suitable guardian can be found, are separated from their mothers and face a complex range of trauma, economic destitution, and institutional displacement. They become the "hidden victims" of parental punishment.

A. Disruptive Arrest Procedures and Economic Catastrophe

The initial separation is often traumatic due to failures in police protocol. Police frequently arrest women "without allowing them time to speak to their children or to make alternate arrangements in their absence". This lack of child-friendly procedure has resulted in cases where children spent days alone, unaware that their mother had been imprisoned.

For the family unit, the mother's incarceration—especially if she was the main financial contributor or caretaker—often triggers a severe socio-economic collapse. Families experience a sudden "fall in the standard of living," resulting in food insecurity, missed rent or bill payments, and sometimes leading to homelessness. This financial strain forces children

into premature adult responsibilities, making them drop out of school to earn money, care for younger siblings, or even try to arrange legal aid for the incarcerated parent.

B. Failure of Child Welfare Committees and Jurisdictional Deadlock

If a suitable guardian is unavailable, children over six are typically placed in state-run childcare institutions via the Child Welfare Committee (CWC), which is mandated under the Juvenile Justice Act to provide protective custody and accommodation. However, CWCs often struggle with limited staff, poor infrastructure, and technical delays.

A structural impediment that profoundly affects these children is the failure to coordinate welfare services across different jurisdictions. A reported case involving children living in Odisha while their mother was in custody in Mumbai exposed a complete bureaucratic standstill. The CWC in Mumbai refused jurisdiction, and subsequent appeals to authorities in Odisha, including the CWC and District Protection Officer, received no effective response for two years, citing the lack of a court order. This jurisdictional impasse effectively ensures the denial of the child's right to family contact, demonstrating that welfare is frequently overridden by administrative inertia across state boundaries.

This failure is worsened by the tendency of state childcare institutions to prioritize their own institutional logistics over maintaining family unity. Siblings from the same family are often separated based on age and gender and housed in different facilities, negatively impacting their familial bonds and disrupting their already fragile support network.

C. Irregular Contact and Loss of Familial Assets

The separation is frequently made permanent by the lack of consistent contact. Although regulations mandate regular visits (*mulakat*), state childcare institutions often lack the personnel or resources to regularly transport children to the prisons. Meetings typically only happen after the mother makes an explicit complaint to the jail superintendent. Geographical distance further complicates contact, often resulting in interactions being "infrequent, irregular, or non-existent".

Furthermore, the property rights of these vulnerable families are often ignored. When a house or land is left unattended, incarcerated women and their children risk the property being broken into, encroached upon by relatives, or lost due to the non-availability of legal

documents. While some High Court directives have mandated police to document and seal property, this protective measure is not consistently applied.

6. Social Stigma, Mental Health, and Post-Release Vulnerability

Maternal incarceration exposes women to a degree of social stigmatization far greater than that experienced by their male counterparts, severely impacting their mental health and future rehabilitation prospects.

A. Gendered Stigma and Family Estrangement

The stigma attached to women who have been jailed is harsh. Female prisoners often report that their maternal families are unsupportive, frequently refusing to visit. Experts note that while a man is generally "accepted by the family and society" after his sentence is served, "it is not the same for women".

This intense stigma often creates intergenerational trauma. In instances where children are placed with paternal relatives, those relatives sometimes "tend to poison the minds of the children," leading to emotional detachment where children begin to resent their mothers. This outcome is not merely social exclusion but an active psychological undermining of the primary familial relationship, causing lasting emotional pain for the mother.

B. Mental Health Neglect in Custody

For the incarcerated mother, the persistent uncertainty regarding her children's well-being outside prison constitutes a "greater punishment... than the imprisonment per se". The psychological stress and torment, particularly for undertrials who are unaware of the situation of their loved ones, are major contributors to anxiety and depression.

Despite the acknowledged need and the efforts of NGOs offering basic counseling, the provision of structured mental health support is critically deficient. Former inmates in large facilities, such as Tihar, report that neither they nor other women received consistent counseling, revealing a serious institutional failure to implement standard correctional care protocols. This neglect compromises the mother's ability to cope while in custody and to successfully reconnect with her family upon release, frequently resulting in "further isolated from the society" and potentially increasing recidivism.

7. Pathways for Systemic Rehabilitation and Structural Reform

The persistent disparity between reform policy and institutional execution demands a fundamental change in approach, shifting from punitive confinement toward integrated, rehabilitative support. This requires legislative, administrative, and infrastructural changes designed to make specialized care economically and logistically viable.

A. Reforming Infrastructure through Integrated Facilities

To tackle the constraints imposed by the low number of women prisoners and the resulting claim of economic non-viability, the State must mandate the adoption of a resource-pooling model. This involves creating centralized correctional facilities in each district that integrate spaces for women prisoners with existing social welfare institutions like *Nari Niketans* (women help centers) and rescue homes. This structural combination allows for the joint utilization of common facilities, including vocational training workshops, counseling services, and administrative staff, thereby making the provision of specialized, gender-sensitive infrastructure economically viable across multiple correctional and welfare categories.

Furthermore, empowering women, especially undertrials, to contribute financially is crucial for their family's stability. Allowing undertrial women to earn a livelihood within the prison premises after a stipulated period (e.g., three months) can alleviate the financial hardship plaguing their families and help maintain a standard of living external to the prison.

B. Expanding Non-Custodial and Open Prison Models

The most effective method for upholding the child's rights during maternal incarceration is the expansion of non-custodial sentencing and the broad application of rehabilitative open prison models. International standards strongly advocate for non-custodial sentences for primary caregivers whenever possible, with the child's best interests being the paramount consideration.

The open prison model, which permits long-term convicts with good behavior to reside with their families and engage in outside employment, offers a normalizing, rehabilitative environment. India has successful precedents, such as the Shri Sampurnanand Khula Bandi Shivir in Rajasthan, which houses women inmates who work externally and whose children

attend nearby community schools, significantly reducing the detrimental effects of confinement.

Critically, this model must be proactively extended to the majority of the population: undertrial women, particularly those with dependent children. This approach aligns with international best practices, such as Finland's shift to Family Prison Units, where dedicated child welfare workers operate constantly, and parents live in equipped apartments designed to simulate normal life, thus consistently prioritizing the child's well-being throughout the correctional process.

Table 1: Policy Mandates vs. Observed Implementation Gaps for Women and Children

Policy Area (R.D. Upadhyay/MP M 2016)	Specific Policy Mandate	Observed Implementation Failure	Source of Disconnect
Child Nutrition	Special diets for infants, children (3-6 years), pregnant/lactating mothers.	Mothers report no specialized dinner; unboiled milk; mothers unaware of special diet availability (e.g., eggs).	Lack of allocation oversight, monitoring, and transparency.
Developmental Care	Creche facilities, balwadis, tailored learning, recreational programs.	Facilities are "few and far between"; most jails lack a functioning creche; bureaucratic hurdles prevent establishment.	Economic non-viability argument; institutional inertia; lack of dedicated curriculum.
Judicial Support	Priority disposal of criminal trials for women prisoners with children.	Undertrials constitute 75-77% of women inmates, leading to prolonged stays in detrimental environments.	Systemic judicial delay and backlog.

Policy Area (R.D. Upadhyay/MP M 2016)	Specific Policy Mandate	Observed Implementation Failure	Source of Disconnect
External Contact	Regular visitation rights (mulakat) for children housed externally.	Visits are irregular, non-existent, or dependent on mother’s complaints; jurisdictional CWC deadlock.	CWC/Probation officer staff shortages; lack of dedicated inter-state agency.

8. Conclusion

The examination of maternal incarceration in India reveals a persistent and severe institutional failure to close the gap between progressive correctional policy and execution on the ground. Despite the clear directives set forth by the *R.D. Upadhyay* judgment and the Model Prison Manual 2016, systemic obstacles—primarily driven by judicial sluggishness, insufficient resources, and administrative fracturing—actively undermine the protective measures intended for women prisoners and their dependent children.

The single most significant structural issue identified is the overwhelming rate of undertrial detention (77%), which, in the absence of judicial prioritization, exposes innocent children to chronic, psychologically harmful environments for years. This judicial failing is exacerbated by the economic viability argument, which must be overcome through mandated structural integration, such as combining women’s prisons with *Nari Niketans* to facilitate the sharing of specialized resources.

For children residing in prison, the inadequacy is acute in core welfare areas, including nutrition and developmental support, where mandatory policies exist but are routinely ignored or concealed from inmates. For children placed externally, the failure is emotional and economic, characterized by the immediate fragmentation of the family unit, bureaucratic paralysis across child welfare jurisdictions, and the enduring psychological burden of intense, gendered social stigma.

To transition from mere policy aspiration to child-centric reality, the State must prioritize definitive structural reform: the extension of rehabilitative, non-custodial open prison models to include undertrial women with children, dedicated funding explicitly linked to the quality of welfare services, and the creation of a single, accountable agency to manage the complex needs of these vulnerable families. Only through such comprehensive and determined action can the justice system cease to inflict indirect, yet severe, punishment upon children who are guilty of no fault.

References

1. Goyal, G., & Vedula, K. (2021). Understanding Open Prisons in India. *Economic & Political Weekly*.
2. Ministry of Home Affairs. (2016). *Model Prison Manual 2016*. Government of India.
3. National Crime Records Bureau (NCRB). (2021). *Prison Statistics India 2021*. Ministry of Home Affairs, Government of India.
4. Nivedita, G. (2024). Maternal Incarceration in India. *SPRF India Curated Voices*.
5. Prayas, Tata Institute of Social Sciences (TISS). (2018). *Children of Women Prisoners: The Invisible Trial*. Mumbai, India: Author.
6. *R.D. Upadhyay v. State of A.P. & Ors*, Writ Petition (Civil) No. 559 of 1994, Supreme Court of India. (2006, May 15).
7. Tata Trusts. (n.d.). *India Justice Report (IJR) 2022: Prisons Pillar*. Author.
8. United Nations Office on Drugs and Crime (UNODC). (2011). *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*.
9. Van Zyl, R. (2021). Prison Nurseries in Finland: Balancing the Child's Best Interests. *Columbia Journal of Gender and Law*, 30(1).