



Maintaining Family Ties: Legal Perspectives On Children Visiting Incarcerated Parents In India

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Abstract

A multifaceted and frequently neglected area of legal and social concern in India is the convergence of children's rights and parental incarceration, especially concerning the rights of children to meet their parents in prison. This research study addresses children's legal rights to visit their imprisoned parents in India. It examines current legislation, regulations, and laws in order to assess their efficacy in safeguarding the visiting rights and welfare of such children. The study emphasizes the necessity of preserving family ties, the psychological effects of parental incarceration upon children, and the steps required to change the current legal landscape. This paper aims to present comprehensive recommendations to reform existing laws by thoroughly reviewing legislation, court rulings, and international best practices.

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Introduction

Parental incarceration can have a significant impact on children, posing a variety of behavioural, psychological, and social issues. Children deprived of parental presence due to their imprisonment often experience sentiments of abandonment, anxiousness, and melancholy. Furthermore, these children may experience stigma from society and isolation, exacerbating their emotional distress. In India, the legal structure created to protect these children's rights, particularly the right to visit their parents who are behind bars, is fragmented and frequently lacking in coherency. Existing rules offer insufficient and uneven protection, denying many children ample opportunities to keep meaningful connections with their parents. This lack of a consistent legal approach can lead to disparities in procedures among states and jails, resulting

in unbalanced access to rights of visitation. The purpose of the paper is to comprehensively review the existing legislative provisions addressing this issue, identify deficiencies and discrepancies within the present regulatory structure, and make specific recommendations for ensuring that these children's rights are preserved and protected. By addressing these legal flaws, the paper hopes to stand for a more holistic and child-centered strategy, with the ultimate goal of mitigating the negative impacts of incarceration of parents affecting children in India.

1. Challenges in Harmonizing Child Welfare with Prison Policies

The maintenance of familial ties is significantly impacted by the incarceration of a parent, particularly for children. The separation of a child from an incarcerated parent in India, where family bonds are profoundly ingrained in societal values, presents both emotional and legal dilemmas. The Indian legal system acknowledges the significance of the psychological well-being of children and the integrity of the family. Nevertheless, the practical application of laws that safeguard the right of children to visit their parents in prison is still unequal and rife with obstacles. This research paper examines the legal perspectives on children's rights to visit incarcerated parents in India, examining the extant legal provisions, judicial interpretations, and international obligations that impact this aspect of family law. The maintenance of familial ties is significantly impacted by the incarceration of a parent, particularly for children. The separation of a child from an incarcerated parent in India, where family bonds are profoundly ingrained in societal values, presents both emotional and legal dilemmas. The Indian legal system acknowledges the significance of the psychological well-being of children and the integrity of the family. This research paper examines the legal perspectives on children's rights to visit incarcerated parents in India, examining the extant legal provisions, judicial interpretations, and international obligations that impact this aspect of family law.

The Indian judiciary has construed Article 21 of the Constitution of India in a broad manner, recognising that, it encompasses the right to life and personal liberty, including the right to maintain familial bonds, even in cases where a parent is in prison. The Supreme Court of India, in the case of “Kharak Singh v. State of Uttar Pradesh”, acknowledged that the term “life” as mentioned in Article 21 encompasses all elements that contribute to the significance of an individual's existence, including their familial connections.¹ In the case of “Francis Coralie Mullin v. The Administrator”, Union Territory of Delhi, the Court stressed the need of treating inmates in a compassionate manner and recognised their entitlement to communicate with their relatives.² These judgements establish the basis for comprehending the way in which the rights of imprisoned individuals overlap with the rights of their offspring.

In addition, India has ratified the “United Nations Convention on the Rights of the Child (UNCRC)”, which focuses on the rights of children to preserve personal relationships and direct communication with both parents regularly, unless it adversely affects the child's best interests.³ The principles of the UNCRC are highly applicable in the situation of parental incarceration, as they promote the idea of minimising any negative impact on the child's life and preserving the relationship between parent and child whenever feasible. Nevertheless, even though there are international commitments and constitutional rights in place, the enforcement of policies that enable child-parent visitation in Indian prisons varies inconsistently among different states.

The Union Home Ministry has issued the Model jail Manual, which offers explicit standards for jail visits, including visits by children. However, the implementation of these regulations differs greatly in reality, frequently based on the categorisation of the inmate (such as under-trial or convict) and the level of security in the jail.

Furthermore, the frequency and purpose of these visits are governed by specific regulations that differ from one state to another, potentially leading to further challenges. At times, the judiciary has taken action to address these deficiencies by advocating for visitation situations that are suitable for children and emphasising the importance of finding a middle ground between security and humanitarian concerns.

2. Overview of Relevant National and International Legal Landscape

The issue of children visiting incarcerated parents is influenced by national and international frameworks that prioritize family integrity and child welfare. In India, guidelines and policies aim to balance security concerns with protecting family relationships. However, implementation varies across regions, leading to disparities in

¹ Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

² Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

³ Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3.

visitation rights. Globally, conventions advocate for regular contact between children and parents, even when one parent is imprisoned. This emphasizes a child-centered approach considering emotional needs and developmental impact. Aligning national practices with international standards is crucial to ensure children of incarcerated parents receive the support and protection they deserve.

2.1. Legislative approach in India

India's legislative framework for children visiting incarcerated parents aims to maintain family ties while balancing security and administrative considerations. It uses constitutional provisions, statutory rules, and administrative guidelines to ensure the rights and welfare of prisoners and their families. Implementation varies across states and prison security levels. The laws promote a humane environment, recognizing the importance of family connections in inmate reintegration and child emotional well-being which can be discussed under following heads.

2.1.1. Constitution of India

Article 21 upholds every individual's right to life and personal liberty. The Indian courts have expanded this right to encompass the right to live with human dignity, which includes the preservation of familial relationships ("Maneka Gandhi v. Union of India, 1978"). The view provides a foundation for claiming that children ought to be given the right to see their jailed parents in order to maintain familial relationships.

2.1.2. The Juvenile Justice (Care and Protection of Children) Act, 2015

This act intends to protect children in challenging circumstances, which might encompass children of incarcerated parents. Section 3(i) of the act underlines the notion of the best interests of the child, which can be used to justify visitation access rights.

2.1.3. The Prison Act, 1894 and Model Prison Manual

Although these texts offer broad principles for managing prisons, they do not include particular regulations on the visitation rights of children. The Model Prison Manual, which was revised in 2016, contains recommendations for family visits; however, it does not require provisions for child-friendly visiting facilities or protocols.

2.2. Judicial approach in India

India's judicial approach to children visiting incarcerated parents has evolved through landmark rulings emphasizing the importance of maintaining family relationships and addressing children's rights. The Indian judiciary interprets constitutional guarantees to include the right to family life, considering children's emotional and psychological needs even in incarceration. Key Supreme Court decisions emphasize humane treatment for prisoners and policies facilitating regular contact between children and their parents, reflecting a commitment to upholding individual dignity and family bonds.

The judicial response to the rights of children visiting incarcerated parents in India has been significantly shaped by several landmark Supreme Court judgments that emphasize the importance of preserving family bonds even in the case of incarceration. The Supreme Court of India in the landmark decision of "Kharak Singh v. State of Uttar Pradesh"⁴ recognised that the right to life and personal liberty guaranteed under Article 21 of the Indian Constitution encompasses the right to preserve family relationships. Consequently, the court underscored the importance of maintaining personal liberties even in the event of imprisonment. This interpretation established the foundation for acknowledging the importance of familial bonds for both Prisoners and their families.

The Court further emphasised in "Francis Coralie Mullin v. The Administrator, Union Territory of Delhi"⁵ that the right to a dignified life protected under Article 21 encompasses the right to humane treatment and regular family contact. This case emphasised the necessity of facilitating family interactions for prisoners and the significance of humane conditions. The ruling in Sunil Batra v. Delhi Administration⁶ further elaborated on these principles by discussing the issue of prison conditions and affirming that the psychological well-being of both detainees and their families is contingent upon the preservation of family bonds.

⁴ Kharak Singh v. State of Uttar Pradesh, AIR 1963 SC 1295.

⁵ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi, (1981) 1 SCC 608.

⁶ Sunil Batra v. Delhi Administration, AIR 1980 SC 1579.

The case of *V.D. Jhingan v. Union of India*⁷ also contributed to this jurisprudence by supporting the notion that prisoners are entitled to certain fundamental rights, such as the preservation of family relations, as an aspect of their right to live with dignity. While *Gian Kaur v. State of Punjab*⁸ predominantly addressed the right to life vis-à-vis the death penalty, it indirectly supported the preservation of family relationships for prisoners by reinforcing the broader interpretation of Article 21. Collectively, these rulings demonstrate the Indian judiciary's dedication to reconciling security concerns with the fundamental rights of detainees and their families, thereby integrating constitutional concepts with the practical realities of incarceration. These decisions demonstrate the judiciary's dedication to protecting fundamental rights and attending to children's emotional needs in these situations.

3. International Legal Landscape

The right to sustain family relations is a fundamental human right often described as the right to privacy and family life and is recognised in a variety of international instruments. This right encompasses the following: (1) the capacity to establish and maintain familial relationships, (2) the prevention of isolation from one's family, and (3) the preservation of communication with family members in the event of separation. These elements are indispensable for guaranteeing the emotional and psychological well-being of people, especially children, who may be impacted by circumstances such as parental incarceration.

The right to sustain family relations is a fundamental human right that is frequently referred to as the right to a private and family life and is recognised in a variety of international instruments. This right includes the capacity to establish and maintain familial relationships, prevent isolation from one's family, and maintain communication with family members in the event of a separation. These elements are essential for the emotional and psychological well-being of children, particularly those who have been impacted by circumstances such as parental incarceration. This particular right is safeguarded by various prominent international human rights treaties. Article 16 of the Universal Declaration of Human Rights (UDHR) provides that individuals of legal age, regardless of their race, nationality, or religion, have the right to get married and start a family. This highlights the essential role of family life in personal growth and maintaining social stability.⁹ Similarly, Article 23 of the International Covenant on Civil and Political Rights (ICCPR) underscores that "the family is the natural and fundamental group unit of society and is entitled to protection by society and the State," thereby requiring states to safeguard family relationships and guarantee their continuity.¹⁰ Furthermore, Article 8 of the European Convention on Human Rights (ECHR) guarantees that "everyone has the right to respect for his private and family life, his home, and his correspondence," emphasising the significance of safeguarding family connections from arbitrary interference.¹¹

This right is further emphasised by the "United Nations Convention on the Rights of the Child (UNCRC)". Article 9 of the UNCRC mandates that India, as a signatory, is obligated to ensure that "children should not be separated from their parents against their will, except when such separation is in the child's best interests."¹² This provision underscores the importance of states facilitating consistent communication between children and their parents, even in instances of separation caused by incarceration. The importance of these international norms is substantiated by scholarly research. In "The Right to Family Life in International Law: Its Impact on Domestic Legislation," A.T. Williams contends that international human rights instruments establish a critical framework for protecting family life and influence domestic legal systems to safeguard familial relationships across borders.¹³ In the same vein, Laura Brown's "Children's Rights and Family Life: A Comparative Study" investigates the application of international standards on family life in a variety of jurisdictions and their implications for domestic law and policy.¹⁴ These references emphasise the global dedication to safeguarding family life and the importance of India's domestic laws being in accordance with these international principles to guarantee that the rights of children to stay in touch with their parents are protected, even in the case of adversity.

⁷ *V.D. Jhingan v. Union of India*, AIR 1966 SC 830.

⁸ *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648.

⁹ Universal Declaration of Human Rights, art. 16, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948).

¹⁰ International Covenant on Civil and Political Rights, art. 23, Dec. 16, 1966, 999 U.N.T.S. 171.

¹¹ European Convention on Human Rights, art. 8, Nov. 4, 1950, E.T.S. No. 5.

¹² United Nations Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹³ Williams, A. T., *The Right to Family Life in International Law: Its Impact on Domestic Legislation* (2010).

¹⁴ Brown, Laura, *Children's Rights and Family Life: A Comparative Study* (2015).

4. Challenges and Barriers

The right of children to continue having contact with incarcerated parents is confronted with a multitude of challenges and obstacles. These include logistical challenges, the absence of child-friendly facilities in prisons, social stigma, and insufficient legal frameworks and inconsistent implementation of visitation rights. In order to effectively address these obstacles, a comprehensive and sensitive approach is necessary, as they undermine the ability to preserve family bonds and safeguard the emotional well-being of children.

4.1. Inadequate Legal Frameworks and Implementation Gaps

The inadequacy of current legal frameworks and the inconsistent adoption of visitation rights across various jurisdictions are among the most significant obstacles. Despite the fact that international standards such as the "United Nations Convention on the Rights of the Child (UNCRC)" highlight the significance of preserving parent-child relationships during incarceration, numerous countries, including India, encounter substantial disparities in the alignment of domestic laws with these international obligations.¹⁵ For example, the absence of a unified national policy leads to a variety of practices that frequently fail to meet the necessary standards, despite the fact that certain Indian states have implemented child-friendly visitation policies in prisons.¹⁶

4.2 Administrative and Logistical Obstacles

Substantial obstacles are posed by logistical issues, including the distance that exists between prisons and the residences of children, the cost and time associated with travel, and the absence of suitable transportation facilities. Research indicates that children who reside in remote areas frequently encounter challenges when attempting to visit their parents who are incarcerated, resulting in diminished emotional support and diminished communication.¹⁷ Additionally, the lack of meaningful parent-child interactions can be exacerbated by the restrictive rules and limited visiting hours of penitentiary facilities.¹⁸

4.3 Lack of Child-Friendly Facilities in Prisons

Another substantial impediment is the dearth of child-friendly facilities within prisons. In numerous prisons, there is a dearth of designated areas for family visits that are designed to meet the requirements of children, including play areas, private meeting spaces, and psychological assistance services. The mental health of children and their willingness to preserve contact with their incarcerated parents can be adversely affected by the intimidating and traumatic environment in many institutions.¹⁹

4.4 Psychological Consequences of Social Stigma

The ability of children to maintain contact is also impacted by the social stigma linked to having an incarcerated parent. Children and their families are frequently discouraged from visiting prisons due to the fear of being judged or ostracised by society. This can result in psychological strain and the deterioration of family bonds.²⁰ Research has demonstrated that such stigma can have a lasting psychological impact on children, affecting their self-esteem and social development.²¹

5. Comparative Analysis

An examination of many countries demonstrates contrasting strategies for preserving familial connections between jailed parents and their children. While several countries have adopted visitation programs and surroundings that prioritise the needs of children, others have established comprehensive policies and services to guarantee significant connections between parents and children. Through an analysis of the United Kingdom, Norway, and the United States, we may gain insight into how various legal and institutional systems prioritise the welfare of children impacted by parental incarceration.

¹⁵ United Nations Convention on the Rights of the Child, art. 9, Nov. 20, 1989, 1577 U.N.T.S. 3.

¹⁶ Ministry of Home Affairs, *Model Prison Manual for the Superintendence and Management of Prisons in India* (2016).

¹⁷ Fritsch, Travis A., and John D. Burkhead, "Behavioral Reactions of Children to Parental Absence Due to Imprisonment," *Family Relations*, vol. 30, no. 1, 1981, pp. 83-88.

¹⁸ Robertson, Oliver, *The Impact of Parental Imprisonment on Children* (Quaker United Nations Office, 2007).

¹⁹ Minson, Shona, "The Impact of Visiting Prison on Children," *Criminal Law Review*, 2014, pp. 390-402.

²⁰ Murray, Joseph, and David P. Farrington, "Parental Imprisonment: Long-Lasting Effects on Boys' Internalizing Problems Through the Life Course," *Development and Psychopathology*, vol. 20, no. 1, 2008, pp. 273-290.

²¹ Hairston, Creasia Finney, "Focus on Children with Incarcerated Parents: An Overview of the Research Literature," *Annie E. Casey Foundation* (2007).

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5.1 United Kingdom

The United Kingdom has established child-centered visiting programs that prioritise the requirements of children and cultivate a supportive environment to preserve family ties. These programs offer structured activities, child-friendly visitation rooms, and support services that encourage positive interactions within children and their incarcerated parents. Oliver Robertson posits that these initiatives are intended to mitigate the detrimental effects of incarceration on children and to maintain meaningful family relationships by establishing a nurturing environment that fosters emotional well-being.²²

5.2 Norway

Norway's prison system prioritises the welfare of inmates' families, providing a wide range of support services to guarantee that children can visit their parents in a supportive and pleasant environment. Family spaces and facilities that are specifically designed to facilitate positive and constructive visits are frequently found in Norwegian prisons. Peter Scharff Smith's research emphasises that these child-friendly environments foster the preservation of family connections, thereby providing psychological advantages to both children and incarcerated parents.²³

5.3 United States

Many states across the United States have adopted child-friendly visitation initiatives that are tailored to meet the special requirements of children. These programs offer transportation services and designated visitation sites that are designed to be child-friendly. These programs acknowledge the need of preserving parent-child relationships and offer the required administrative assistance to permit frequent visits. Joyce A. Arditti's research highlights the importance of these programs in mitigating the psychological distress faced by children with incarcerated parents and promoting the ongoing growth of their connections.²⁴

6. Suggestions and Recommendations

In order to tackle the difficulties encountered by children with parents who are in prison, it is essential to implement comprehensive strategies that prioritise their welfare and protect their entitlements. This entails the implementation of policies that are specifically designed to be suitable for children, the enhancement of jail facilities, and the guarantee of uninterrupted availability of support services. Strategic and empirically-supported approaches can enhance familial connections and alleviate the adverse effects of parental incarceration on children.

6.1 Legislative reforms

Implement precise law that specifically protects the right of the children to see their imprisoned parents. The rules should provide comprehensive instructions regarding the frequency and circumstances of visits in order to maintain uniformity across various states and correctional facilities.

6.2 Visitation facilities designed to be suitable for children.

Create and enforce protocols for establishing jail environments that are suitable for children to visit. These locations should be secure, hospitable, and favorable for constructive interactions between children and parents, thereby mitigating the distress linked to prison visits.

6.3 Training and Awareness

Organize awareness programs and training sessions for jail staff to enhance their understanding and sensitivity towards the needs of children who visit the facility. This should encompass training in the art of empathetic and compassionate handling of visits, so that the staff is equipped to create a nurturing atmosphere for children.

6.4 Provision of assistance

²² Oliver Robertson, *The Impact of Parental Imprisonment on Children* (Quaker United Nations Office, 2012).

²³ Peter Scharff Smith, *When the Innocent are Punished: The Children of Imprisoned Parents* (Palgrave Macmillan, 2017).

²⁴ Joyce A. Arditti, *Parental Incarceration and the Family: Psychological and Social Effects of Imprisonment on Children, Parents, and Caregivers* (New York University Press, 2012).

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Offer social and psychological services to children and their parents in order to tackle the emotional difficulties associated with parental incarceration. These interventions may encompass support groups, counseling, and educational initiatives aimed at assisting children in managing the repercussions of having a parent who is incarcerated.

6.5 Enforcement and Oversight of Policies

Create systems to guarantee the efficient execution and oversight of policies pertaining to the visitation rights of children. It is important to regularly perform audits and assessments to assess adherence as well as identify areas for improvement. This will ensure that policies are effectively safeguarding the rights of children.

Conclusion

The legal entitlement of children to see their imprisoned parents in India necessitates substantial focus and restructuring. India can enhance the protection of vulnerable children by rectifying the existing loopholes in legislation and adopting child-centric policies and practices. This study emphasizes the immediate necessity for a thorough strategy to guarantee that children with incarcerated parents are not denied their entitlement to retain familial connections and emotional welfare. The purpose of this paper is to offer suggestions to policymakers on how to establish a clear and reliable legal framework that gives priority to the child's best interests.