

Supreme Court of India

R.D. Upadhyay vs State Of A.P. & Ors on 13 April, 2006

Author: S . Y.K.

Bench: Y.K. Sabharwal, C.K. Thakker, P.K. Balasubramanyan

CASE NO.:

Writ Petition (civil) 559 of 1994

PETITIONER:

R.D. Upadhyay

RESPONDENT:

State of A.P. & Ors.

DATE OF JUDGMENT: 13/04/2006

BENCH:

Y.K. Sabharwal, C.K. Thakker & P.K. Balasubramanyan

JUDGMENT:

J U D G M E N T [With WP (C)No.133/02, SLP (C) Nos.14303-14305/98, CA No.2468/98, SLP (C) No._____/98 (CC-5347/98) Crl.A.No.69/2000 and WP (C) No.84/98] Y.K. Sabharwal, CJI.

Concerned by the plight of the undertrial prisoners languishing in various jails in the country, various directions were issued by this Court from time to time. Presently, we are considering mainly the issue of directions for the development of children who are in jail with their mothers, who are in jail either as undertrial prisoners or convicts. Children, for none of their fault, but per force, have to stay in jail with their mothers. In some cases, it may be because of the tender age of the child, while in other cases, it may be because there is no one at home to look after them or to take care of them in absence of the mother. The jail environment are certainly not congenial for development of the children.

For the care, welfare and development of the children, special and specific provisions have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts which are also significant. The best interest of the child has been regarded as a primary consideration in our Constitution. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. The other provisions of Part III that may be noted are Articles 14, 21 and 23. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits trafficking in human beings and forced labour. We may also note some provisions of Part IV of the Constitution. Article 39(e) directs the State to ensure that the health and strength of workers, men and women, and the tender age of children are

not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. 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 against moral and material abandonment. Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief. Article 45 stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Apart from the aforesaid constitutional provisions, there are wide range of existing laws on the issues concerning children, such as, the Guardians and Wards Act, 1890, Child Marriage Restraint Act, 1929, the Factories Act, 1948, Hindu Adoptions and Maintenance Act, 1956, Probation of Offenders Act, 1958, Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, the Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000, the Infant Milk Substitutes, Feeding Bottles and Infant Foods, (Regulation of Production, Supply and Distribution) Act, 1992, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Immoral Traffic (Prevention) Act, 1986.

The Juvenile Justice Act, 2000 replaced the Juvenile Justice Act, 1986 to comply with the provisions of the Convention on the rights of the child which has been acceded to by India in 1992.

In addition to above, the national policy for children was adopted on 22nd August, 1974. This policy, inter alia, lays down that State shall provide adequate services for children both before and after birth, and during the growing stages for their full physical, mental and social development. The measures suggested include amongst others 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 prevention of exploitation of children.

India acceded to the UN Convention on the rights of the child in December 1992 to reiterate its commitment to the cause of the children. The objective of the Convention is to give every child the right to survival and development in a healthy and congenial environment.

The UN General Assembly Special Session on children held in New York in May 2002 was attended by an Indian delegation led by Minister of Human Resource Development and consisted of Parliamentarians, NGOs and officials. It was a follow up to the world summit held in 1990. The summit adopted the declaration on the survival, protection and development of children and endorsed a plan of action for its implementation.

The Government of India is implementing various schemes and programmes for the benefit of the children. Further, a National Charter for children 2003 has been adopted to reiterate the commitment of the Government to the cause of the children in order to see that no child remains hungry, illiterate or sick. By the said Charter, the Government has affirmed that the best interests of children must be protected through combined action of the State, civil society and families and their obligation in fulfilling children's basic needs. National Charter has been announced with a view to securing for every child inherent right to enjoy happy childhood, to address the root causes that negate the health, growth and development of children and to awake the conscience of the community in the wider societal context to protect children from all forms of abuse, by strengthening the society and the nation. The National Charter provides for survival, life and liberty of all children, promoting high standards of health and nutrition, assailing basic needs and security, play and leisure, early childhood care for survival, growth and development, protection from economic exploitation and all forms of abuse, protection of children in distress for the welfare and providing opportunity for all round development of their personality including expression of creativity etc. The National Institute of Criminology and Forensic Sciences conducted a research study of children of women prisoners in Indian jails. The salient features of the study brought to the notice of all Governments in February 2002, are :

(i) The general impression gathered was the most of these children were living in really difficult conditions and suffering from diverse deprivations relating to food, healthcare, accommodation, education, recreation, etc.

(ii) No appropriate programmes were found to be in place in any jail, for their proper bio-psycho-social development. Their looking after was mostly left to their mothers. No trained staff was found in any jail to take care of these children.

(iii) It was observed that in many jails, women inmates with children were not given any special or extra meals. In some cases, occasionally, some extra food, mostly in the form of a glass of milk, was available to children. In some jails, separate food was being provided only to grown up children, over the age of five years. But the quality of food would be same as supplied to adult prisoners.

(iv) No special consideration was reported to be given to child bearing women inmates, in matters of good or other facilities. The same food and the same facilities were given to all women inmates, irrespective of the fact whether their children were also living with them or not.

(v) No separate or specialised medical facilities for children were available in jails.

(vi) Barring a few, most mother prisoners considered that their stay in jails would have a negative impact on the physical as well as mental development of their children.

(vii) Crowded environment, lack of appropriate food, shelter and above all, deprivation of affection of other members of the family, particularly the father was generally perceived by the mothers as big stumbling blocks for the proper development of their children in the formative years of life.

(viii) Mother prisoners identified six areas where urgent improvement was necessary for proper upkeep of their children. They related to food, medical facilities, accommodation, education, recreation and separation of their children from habitual offenders.

(ix) No prison office was deployed on the exclusive duty of looking after these children or their mothers. They had to perform this duty alongside many other duties including administrative work, discipline maintenance, security-related jobs etc. None of them was reported to have undergone any special training in looking after the children in jails.

Some of the important suggestions emanating from the study are :

(i) In many States, small children were living in sub-jails which were not at all equipped to keep children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper bio-psycho-social growth of children.

(ii) Before sending a woman in stage of pregnancy, to a jail, the concerned authorities must ensure that particular jail has got the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both to the mother and the child.

(iii) The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crime including violent crimes, is certainly harmful for such children in their personality development. Children are, therefore, required to be separated from such an environment on priority basis, in all such jails.

(iv) A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children to them on regular basis.

(v) Children of women prisoner should be provided with clothes, bed sheets, etc. in multiple sets. Separate utensils of suitable size and material should also be provided to each mother-prisoner for giving food to her child.

(vi) Medical care for every child living in a jail has to be fully ensured. Also, in the event of a women prisoner falling ill herself, alternative arrangements for looking after the child should be made by the jail staff.

(vii) Adequate arrangements should be available in all jails to impart education, both formal and informal, to every child of the women inmates. Diversified recreational programmes/facilities should also be made available to the children of different age groups.

(viii) A child living in a jail along with her incarcerated mother is not desirable at all. In fact, this should be as only the last resort when all other possibilities of keeping the child under safe custody elsewhere have been tried and have failed. In any case, it should be a continuous endeavour of all the sectors of the criminal justice system that the least number of children are following their

mothers to live in jails.

The State Governments and Union Territories were requested to consider the aforesaid suggestions for implementation.

By filing IA Nos.1 and 7, the attention of this Court has been drawn to the plight of little children on account of the arrest of their mothers for certain criminal offences. I.A. No. 1 was filed by Women's Action Research and Legal Action for Women (WARLAW), through its program coordinator, Ms. Babita Verma stating that more than 70% 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. There are two non-Governmental organizations (NGO's), namely Mahila Pratiraksha Mandal and Navjyothi who are counsellors. Adjoining the jail premises at Delhi there is Nari Niketan which is a women's reform home. Some of the children who are detained in jail are sent to Kirti Nagar Children's home for their studies. The arrangement pertaining to the education and looking after of these children is not adequate. To the best of the information of the applicant, there is no specific provision or regulation in Jail Manual for facilitating the mother prisoners to meet the children. It is for the family protection of these women prisoners including their minor children that the trial period of undertrials shall be minimised and a period of two years shall be fixed.

It was suggested that arrest of women suspects be made only by lady police. Such arrests should be sparingly made as it adversely affects innocent children who are taken into custody with their mother. To avoid arrest of innocent children the care and custody of such children may be handed over to voluntary organizations which can assist in the growth of children in a congenial and healthy atmosphere. Periodic meeting rights should be available to the women/mother prisoners in order to mother the healthy upkeep of the children.

A letter dated 8th March, 2000 written by a 6 years old girl child, studying in upper KG in a school at Bangalore, to Chief Justice of India enclosing an article 'Dogged by Death in Jail' in a women's magazine dated 20th January, 2000 narrating plight of children in jail with their mothers, was registered as IA No.7. The article, inter alia, notes that the fate of the women undertrials is more pitiable because some of them live with their tiny tots whether born at home or inside the jail and that a visitor to jail is sure to see a series of moving scenes.

The order dated 20th March, 2001 notes that the learned Solicitor General shares the concern of the Court regarding the plight of the children in jail and the submission that with a view to frame some guidelines and issue instructions, it would be necessary to first ascertain the number of female prisoners in each of the jails, in each of the States/union Territories, the offences for which they have been arrested; the duration of their detention and whether children with any of those female prisoners are also lodged in jail. The Court directed the States and Union Territories to disclose on affidavit the following :

- (i) The number of female prisoners (undertrial) together with the nature of offence for which they have been detained;
- (ii) Period of their detention;
- (iii) Children, if any, who are with the mothers lodged in the jail;
- (iv) Number of convicted female prisoners and whether any children are also lodged with such convicts in the jails;
- (v) Whether any facilities are available in the jail concerned for taking care of such children and, if so, the type of facilities."

Various State Governments and Union Territories submitted reports which provided detailed answers to the aforestated questions. The following is a brief conspectus of the reports filed :

In the Andaman & Nicobar Islands, children are allowed to live with their mothers up to the age of 5 years. A special diet is prescribed for children by the Medical Officer including proper vitamins and minerals. As far as the future of the children is concerned, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Andhra Pradesh, milk is provided to the children every day with a protein diet for elder kids. Special medical facilities are available as prescribed by the Medical Officer. Vaccines like Polio etc are provided at regular intervals. Education is also provided.

In Assam, children are allowed to live with their mothers up to the age of 6 years. Literary training is provided to small children who are lodged with their prisoner mothers. Lady teachers are also present. Instructions have been issued to provide sufficient study material to the children, as also adequate playing material. As for their future, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Bihar, children are allowed to live with their mothers up to the age of 2 years and up to 5 years in special cases where there is no other caretaker for child. Provision is made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of one year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months, and from 18-24 months or as specified by the Medical Officer. Health and clothing facilities are provided by the Government. Toys and other forms of entertainment are also available in some jails.

In Chandigarh, a special diet is provided for. Medical facilities are also present.

In Chhattisgarh, children are allowed to live with their mothers up to the age of 6 years. Normal food and additional milk is provided. Polio drops are provided on pulse polio day. Medical treatment is done by full time and part time doctors present in the jail. Children are sent outside for expert medical treatment and advice if required. NGO's have provided for clothes. Inside the jail, a child education centre is being run so that they develop interest in education and may learn to read and write. TV and fans for the female prisoners and their kids have been provided by some social service organizations, as also sports and recreation material, swings and cycles. Children are taken to public parks and for public functions to get acquainted with the outside world. After the age of six, these children are sent to the local 'children's home', where their primary education starts. Female children are sent to the Rajkumari Children's Home at Jabalpur where there is adequate arrangement of education. In Delhi, children are allowed to live with their mothers up to the age of 6 years. A special diet inclusive of 750 gm milk and one egg each is provided to children in jail. Proper diets and vaccine for popular diseases are adequately provided for the children. Clothing is also provided for. Children above 4 years are taught to read and write. They are prepared for admission to outside schools. Sponsorships for the funding of the children education is provided for by the CASP (Community Aid Sponsorship Programme). Two NGO's by the name of Mahila Pratikraksha mandal and Navjyoti Delhi Police Foundation run crèches. Picnics are arranged by NGO's to take them to the Zoo and parks and museums to make them familiar with the outside world. Admission of the children above 5 years of age to Government cottage homes and to residential schools is facilitated through NGO's.

In Goa, the report states that dietary facilities for children are provided by the Government. The Medical Officer of the primary Health Centre, Candolim visits prisoners and children twice a week. If required, they are sent for better treatment to Government Hospitals. In Gujarat, a special diet and special medical facilities as prescribed by the Medical Officer are available for children. Cradle facilities are provided for infants. In Haryana, a standard diet of rice, flour, milk and dal is provided with a special diet provided on the advice of Medical Officer. Health issues are looked after as per the advice of Medical Officer. Regular literacy classes are taken by two lady teachers on deputation from the State Education Dept. at Borstal Jail, Hissar. Books and toys are provided.

In Himachal Pradesh, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. Children under the age of 1 year are provided with milk, sugar and salt. Provision is also made for ration for children from 12- 18 months and from 18-24 months. Extras may be ordered by the Medical Officer. Female prisoners and their children are in a separate ward, with its own toilets. This ensures that there is no mixing between the children and the male prisoners.

In Jammu & Kashmir, a special diet is available, as prescribed by the Medical Officer. Supplements are also provided to breast feeding mothers.

In Jharkhand, children are allowed to live with their mothers up to the age of 5 years. Provisions are made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of 1 year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months.

Health and clothing are taken care of by the Jail superintendent. Toys and items of entertainment have been provided in some jails.

In Karnataka, children are allowed to live with their mothers up to the age of 6 years. Education is looked after for by various NGO's. When the children are to leave the jail, they are handed over to the relatives or to some trustworthy person, Agency or school.

In Kerala, a special diet and medical facilities are made available as prescribed by the Medical Officer. Special clothing can also be so prescribed.

In Lakshadweep, it was reported that there is no undertrial prisoner lodged in jail along with her child and, therefore, need for making arrangements for children along with mothers is not felt necessary.

In Madhya Pradesh, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. There is provision for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of 1 year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. For children who are leaving the jail, in consultation with the District Magistrate the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself. In Maharashtra, children are allowed to live with their mothers up to the age of 4 years. They are to be weaned away from their mothers between the ages of 3 to 4 years. A special diet is prescribed under the Maharashtra Prison Rules. Changes can be recommended by the Medical Officer. Specific amounts of jail-made carbolic soap and coconut oil are to be provided for by the authorities. Garments are to be provided as per the Maharashtra Prisons Rules. Two coloured cotton frocks, undergarments and chaddies per child have been prescribed per year. A nursery school is conducted by 'Sathi', an NGO in the female jail on a regular basis. Primary education is provided for by 'Prayas', a voluntary organization in Mumbai Central Prisons. A small nursery with cradles and other reasonable equipments is provided in each women's ward. Toys are also provided for by the authorities. On leaving the jail, children are handed over to the nearest relative, in whose absence to the officer- in-charge of the nearest Government remand home, or institution set up for the care of the destitute children under the Bombay Children Act, 1948.

In Manipur, provision is made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of one year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. The Superintendent is entrusted with the responsibility of providing clothing for children who are allowed to reside with their mothers. In Meghalaya, children are allowed to live with their mothers up to the age of 6 years. All aspects of the children's welfare are taken care of according to the Rules under the State Jail Manual.

In Mizoram, children are allowed to live with their mothers up to the age of 6 years. A special diet is prescribed under the Rules of the Jail Manual. However, no proper facilities for education or

recreation exist. In Nagaland, the provisions of the Assam Jail Manual have been adopted vis-à-vis facilities for women and for children living with their mothers.

In Orissa, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. A special diet is available, as prescribed by the Medical Officer. Children are provided with suitable clothing. On leaving the jail, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself. In Pondicherry, a special diet is available as prescribed by the Medical Officer. Play things, toys etc. are provided to the children at Government cost or through NGOs.

In Punjab, children under the age of one year are provided with milk and sugar. Provision is also made for ration for children from 12-18 months and from 18-24 months. Extra diet is available on the advice of the Medical Officer. There is a play way nursery and one aaya or attendant who looks after the children from time to time. In Rajasthan, a special diet is available under the rules of the Jail Manual. Special medical facilities are also provided for as prescribed in the manual. Clothing and toys are provided for by NGOs.

In Tamil Nadu, children are allowed to live with their mothers up to the age of 6 years. A special diet and special clothing are available as prescribed by the Medical Officer. Children under 3 years of age are treated in the crèche and those upto the age of 6 years are treated in the nursery. Oil, soap and hot water are available for children. On leaving the jail, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Tripura, the diet of children is as per the instructions of the Medical Officer. Medical care and nursing facilities are available. Mothers accompanied by children are kept separately.

In Uttar Pradesh, children are allowed to live with their mothers up to the age of 6 years. A special diet is available under the Rules of the Jail Manual. On leaving prison, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Uttaranchal, food is provided as under the Rules of the Jail manual. Education provided for by the Government, which also makes arrangement for extra-curricular activities such as sports.

In West Bengal, normal facilities are available and in addition to that Inner Wheel club also runs a Homeopathic clinic for children. A non-formal school is run by an NGO for rendering elementary education to the children. From the various affidavits submitted, it seems that there were 6496 undertrial women with 1053 children and 1873 convicted women with 206 children. On 23rd January, 2002, it was noted that three matters were required to be dealt with by the Court: (1) Creation of sufficient number of subordinate courts as well as providing adequate infrastructure and filling up of the existing vacancies; (2) necessary direction with regard to dealing with the children of women undertrial prisoners/women convicts inside jail; and (3) arrangement required to be

made for mentally unsound people who are either undertrial prisoners or have been convicted. It was then directed that the question of dealing with the children of women undertrial prisoners and women convicts be taken up first. That is how we have taken up this issue for consideration, perused various reports, heard Mr. Ranjit Kumar, Senior Counsel, who assisted this Court as Amicus Curiae, Mr. Sanjay Parikh and other learned counsel appearing for Union of India and State Governments. We place on record our appreciation for the able assistance rendered by learned Amicus and other learned counsel. It may be noted that on 29th August, 2002, a field action project prepared by the Tata Institute of Social Science on situation of children of prisoners was placed before this Court. Responses thereto have been filed by the Union of India as well as the State Governments. The report puts forward five grounds that form the basis for the suggestion to provide facilities for minors accompanying their mothers in the prison :

- a) The prison environment is not conducive to the normal growth and development of children;
- b) Many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four to five years);
- c) Socialization patterns get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of a home, as we know it. Boys may sometimes be found talking in the female gender, having grown up only among women confined in the female ward. Unusual sights, like animals on the road (seen on the way to Court with the mother) are frightening.
- d) Children get transferred with their mothers from one prison to another, frequently (due to overcrowding), thus unsettling them; and
- e) Such children sometimes display violent and aggressive, or alternatively, withdrawn behavior in prison.

Specific suggestions have been put forward vis-à-vis children once they reach the confines of the prison. The minimum is the existence of a Balwadi for such children, and a crèche for those under the age of two. The Balwadi should be manned by a trained Balwadi teacher and should have the facilities of a visiting psychiatrist and pediatrician. A full-time nurse could also be made available. Immunization should take place on a regular basis. If the child is sick and needs to be taken outside the prison, the mother should be allowed to accompany the child. The Balwadi would provide free space, toys and games for children. It can also organize programmes on mother and child care, hygiene and family life for mothers. It has also been suggested that these facilities should be located outside, but attached to the prison. This would combat the negative psychological impact of the prison environment and expose the children to 'normal' figures not found in the women's barracks. It is also suggested that specialized clothing including winter-wear and bedding including plastic sheets should be provided to children. Concerns have also been raised regarding the issuance of a birth certificate that mentions the prison as the place of birth of a child born in prison. It is suggested that child's residence should be mentioned as the place of birth and not the prison.

Emphasis has been placed on the diet of such children. It recommends that a special diet be prescribed, as per the norms suggested by a nutrition or child development expert body such as the National Institute of Public Cooperation and Child Development. The diet should be standardized according to the age of the child and not prescribed as uniform irrespective of the age of the child. The special needs of the child should be kept in mind, for instance, milk needs to be kept fresh which will not be the case if it is handed out only once in the morning. Toned milk may be required or boiled water may need to be provided. For satisfying these needs and providing a satisfactory diet may even require the creation of a separate kitchen unit for children.

Several suggestions have been made vis-à-vis the judiciary, legal aid authorities, the Department of Women and Child Development/Welfare and the Juvenile Justice Administration (under the Juvenile Justice Act) and the Probation Department in relation to the welfare measures that can be taken for children of undertrial and incarcerated prisoners, both living within and outside the jail premises. The Union of India, in its affidavit, has pointed out that it has taken several measures for the benefit of children in general, including children of women prisoners in this larger group. These measures include 'Sarva Shiksha Yojna', Reproductive and Child Health Programme, and Integrated Child Development Projects and passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 for the welfare of children in general.

Union of India also pointed out that the Swadhar scheme has been launched by the Department of Woman and Child Development with the objective of providing for the primary needs of shelter, food, clothing, care, emotional support and counselling to the women convicts and their children, when these women are released from jail and do not have any family support, among other groups of disadvantaged women.

Reference has already been made to the report of the National Institute of Criminology and Forensic Sciences which was forwarded to various States and Union Territories in 2002.

Union of India also brought to the notice of the Court that a 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 of bringing uniformity to jail management across the country. It is important to note that Chapter II of the Bill delineates various rights and duties of prisoners. The rights include the right to live with human dignity; adequate diet, health and medical care, clean hygienic living conditions and proper clothing; the right to communication which includes contact with family members and other persons; and the right to access to a court of law and fair and speedy justice. Clearly, the rights of children of women prisoners living in jail are broader than this categorization, since the children are not prisoners as such but are merely victims of unfortunate circumstances. It is also important to note that Section 33 of the Bill mandates the provision of a Fair Price Shop in all prisons accommodating more than 200 prisoners. This shop should also offer essential items for children of prisoners. In addition, Section 60 (1)(d) provides for temporary or special leave being granted to a prisoner who shows sufficient cause to the State Government or the concerned authority. This can be utilized to grant parole to pregnant women. It may also be noted that Chapter IV of the Bill relates to release and after care and Chapter XVI deals with special categories of prisoners. Both

these chapters have a special significance when considering the rights of Children of Women prisoners.

The Union of India noted that the "National Expert Committee on Women Prisoners", headed by Justice V.R. Krishnaiyer, framed a draft Model Prison Manual. Chapter XXIII of this manual makes special provision for children of women prisoners. This manual was circulated to the States and Union Territories for incorporation into the existing jail manuals. It is significant to note that this committee has made important suggestions regarding the rights of women prisoners who are pregnant, as also regarding child birth in prison. It has also made suggestions regarding the age up to which children of women prisoners can reside in prison, their welfare through a crèche and nursery, provision of adequate clothes suiting the climatic conditions, regular medical examination, education and recreation, nutrition for children and pregnant and nursing mothers. Various provisions of the Constitution and statutes have been noticed earlier which cast an obligation on the State to look after the welfare of children and provide for social, educational and cultural development of the child with its dignity intact and protected from any kind of exploitation. Children are to be given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity. We have also noted U.N. conventions to which India is a signatory on the Rights of the Child.

This Court has, in several cases, accepted International Conventions as enforceable when these Conventions elucidate and effectuate the fundamental rights under the Constitution. They have also been read as part of domestic law, as long as there is no inconsistency between the Convention and domestic law (See *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241]). In *Sheela Barse v. Secretary, Children's Aid Society* [(1987) 3 SCC 50] which dealt with the working of an Observation Home that was maintained and managed by the Children's Aid Society, Bombay, it was said:

"5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognised. India as a party to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased."

True, several legislative and policy measures, as aforesaid, have been taken over the years in furtherance of the rights of the child. We may again refer to the Juvenile Justice Act which provides for the care and rehabilitation of neglected and delinquent children, under specially constituted Juvenile welfare boards/courts. It provides for institutionalization of such children, if necessary. Juvenile children's homes have been set up both by the State as well as by NGO's to house such

children. In some states, Social Welfare and Women and Child Development/Welfare Departments have specific schemes for welfare and financial assistance to released prisoners, dependants of prisoners and families of released prisoners. Some States have appointed Prison Welfare Officers to look after the problems of prisoners and their families. In some other States, Probation Officers are performing this task, apart from their role under the P.O. Act, 1958.

However, on the basis of various affidavits submitted by various State Governments and Union Territories, as well as the Union of India, it becomes apparent that children of women prisoners who are living in jail require additional protection. In many respects, they suffer the consequences of neglect. While some States have taken certain positive measures to look after the interests of these children, but a lot more is required to be done in the States and Union Territories for looking after the interest of the children. It is in this light that it becomes necessary to issue directions so as to ensure that the minimum standards are met by all States and Union Territories vis-à-vis the children of women prisoners living in prison.

In light of various reports referred to above, affidavits of various State Governments, Union Territories, Union of India and submissions made, we issue the following guidelines :

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:

a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.

b. When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

c. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

3. Child birth in prison:

a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to

enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children: a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter: a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.

b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

e. Clean drinking water must be provided to the children. This water must be periodically checked.

f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

i. Children of prisoners shall have the right of visitation.

j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crchches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

b. There shall be a crhche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crhche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crhche and nursery outside the prison premises.

7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

8. The stay of children in crowded barracks amidst women convicts, undertrials, 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.

9. Diet :

Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally." It is noted that since an average Indian mother produces approximately 600-800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians - A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets - 45, 60-120 and 150-210 grams respectively; Pulses - 15, 30 and 45 grams respectively; Milk - 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers - 50, 50 and 100 grams respectively; Green Leafy Vegetables - 25, 50 and 50 grams respectively; Other Vegetables - 25, 50 and 50 grams respectively; Fruits - 100 grams; Sugar - 25, 25 and 30 grams respectively; and Fats/Oils (Visible) - 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.

12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

14. Copy of the judgment shall be sent to Union of India, all State Governments/Union Territories, High Courts.

15. Compliance report stating steps taken by Union of India, State Governments, Union territories and State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.

In view of above, Writ Petition (Civil) No.133 of 2002 is disposed of.