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**Case Comment on
R.D. Upadhyay v. State of A. P⁺**

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Introduction

Depending on the circumstances, children of incarcerated parents may be placed with their mothers in prison or raised by those relatives who are outside, when their parents are incarcerated. In most cases, people who fall into the first category are stigmatized and regarded to be prisoners themselves. The situation is made even worse by the deplorable conditions of the overcrowded prisons, which violate both the fundamental rights and the rights guaranteed by the United Nations Conventions on the Rights of the Child, passed in 1989. As a result, these children's physical, social, and mental development is stunted, and they are unable to reach their full potential.¹ Children who are incarcerated face a number of challenges, the most significant of which is a crisis of identity and a fundamental misunderstanding of how society is organized. For as long as they are incarcerated, these children are cut off from the larger society, and their continued association with criminals may hinder the growth of their minds.²

On the one hand, the Juvenile Justice (Care and Protection of Children) Act, 2015 provides that children who are in conflict with the law cannot be kept in adult prisons till they attain the age of 21 years and on the other,

⁺ A.I.R 2006 SC 1946

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¹ Sarangi, S., Children of prisoners: A rights-based perspective, DCPCR, (2012).

² Schlafer, R. J., Hardeman, R. R., & Carlson, E. A., Reproductive justice for incarcerated mothers and advocacy for their infants and young children, IMHJ, 725-741 (2019).

there are these innocent children who stay in prison with adult offenders. These children are disadvantaged in two different ways. First, they suffer emotional trauma due to the acts of their parents, and secondly, they have to be victims of the poor prison system of the country. Additionally, a child's development is stunted when he or she does not receive the love and attention of both parents. When a child lives in prison with his or her mother, the absence of a father during these formative years can profoundly impact the child's development.³ In the judgment of R.D Upadhyay, the Court held that pregnant women prisoners should be provided with healthy eating facilities. Those facilities should be available during the prenatal and postnatal stages of both. The Court also issued guidelines for establishing various medical camps in jail for women prisoners, which provide appropriate health care to the prisoners, and to include pediatricians in the medical camps to conduct medical examinations of children so that their health rights are secured.

Facts of the Case

India's Criminal Justice and Juvenile Justice Systems have been awaiting reforms for a long time. The Indian prisons, or correctional homes, are burdened with long pending cases and significant overcrowding that comes as a consequence. The developmental environment is inhospitable for children born in custody to incarcerated parents and violates their fundamental rights. Moreover, with parental incineration, there is a multitude of impediments that children face, which affect their mental and physical health. They are often observed to be driven into illegal activities

³ Balua, Nanthini, Children of Incarcerated parents: An experimental study of life-skills intervention on self-esteem, emotional problems and resilience, *TURNCOAT*, 12(10), 3822-3825 (2021).

and face a certain degree of social exclusion for no fault of their own.⁴ Hence, a petition was filed in the Supreme Court to examine the status of children living in various prisons in this country and to issue guidelines for their care and protection.

Legal Regime

The following statutes were referred to by the Court in the matter of R.D Upadhyay V. State of AP, 2006:

1. Article 14, 15(3), 21, 23, 24, 39(e) (f), 42, 45, 46, 47 of the Indian constitution, 1950.
2. Criminal Procedure Code, 1973.
3. The Guardians and Wards Act, 1890.
4. Child Labour (Prohibition and Regulation) Act, 1986.
5. Juvenile Justice (Care and Protection of Children) Act, 2000.
6. The Infant Milk Substitutes, Feeding Bottles and Infant Foods, (Regulation of Production, Supply and Distribution) Act, 1992.
7. Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

Issues of the case

The Court issued its judgment on the following issues-

1. What are the issues and challenges faced by the children staying in prison with their mothers?
2. Whether the existing statutes safeguard the rights of the female prisoners and their children?
3. Whether the children of the undertrial prisoners are neglected due to a lack of awareness?

⁴ Ashmitha, P., & Annalakshmi, N., Social Competence, Family Resilience, Positive School Climate, and Connectedness Support Resilience in the Context of Parental Incarceration, *IJHW*, 13(2), 125-131 (2022).

4. Whether the prison manuals of various states provide the primary means for the survival of the prisoner's child?

Arguments

The Learned Solicitor General made a note on March 20th, 2001, stating that the number of women in jail and the length of their sentences should be known before any arrests of female inmates were made. The court directed the States and Union Territories to display the affidavit of the following directions:

- (i) The nature of the offenses and the number of undertrial female prisoners inside the jail.
- (ii) Time duration of the detained prisoners.
- (iii) How many children are present with the convicted or undertrial female prisoners?
- (iv) Facilities available to give birth to the child and their upbringing of them.

The argument of the learned counsel also emphasized the Mental Health Act of 1987 and the Indian Lunacy Act of 1912. Because of the conditions within the jail, the children of the female inmates may behave in a manner that is hostile and, at times, insane. Therefore, the application of the Act in question has been appropriately interpreted to provide a more favorable setting for the children. The cited judgment of Justice Y.K. Sabharwal, Justice C.K. Thakker & Justice P.K. Balasubramanyan stated that no female prisoner is allowed to keep their child who has completed the age of six years, and therefore, each State Government is required to amend the provisions and to provide exclusive privileges to the women prisoners and their children as they are considered a vulnerable group of society.

Held

The judgment of a full bench composed of Justice Y.K. Sabharwal, Justice C.K. Thakker & Justice P.K. Balasubramanyan held that the children living with parental prisoners need to be protected more efficiently. The children suffer in various ways, so the pronounced judgment issued guidelines to safeguard the rights of children living with their incarcerated mothers to be adopted by all states and union territories to uplift the living of the women prisoners' children. Some guidelines issued by the Hon'ble Supreme Court of India are:-

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. Before sending a pregnant woman to jail, the concerned authorities must ensure that the jail in question has the basic minimum facilities for child delivery as well as for providing prenatal and postnatal care for both the mother and the child. As far as possible and provided the woman prisoner has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of the 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.
3. When a child is born in prison, he/she shall be registered in the local birth registration office. But the fact that the child has been born in prison shall not be recorded in the birth certificate. Only the address of the locality shall be mentioned.
4. Female prisoners shall be allowed to keep their children with them in jail till they attain 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 to minimize undue hardships on both mother and child due to physical distance. Children kept under protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week.

All states and union territories must adhere to the stated guidelines for the most effective execution of the verdict. Under any circumstances, if the death of a female prisoner occurs, then the District Magistrate will command them to take adequate care of the child. After the child attains the age of 6 years, the court may either appoint a guardian for the children or, in other situations, send the child to social welfare development for support. Children after the age of 6 years should be allowed to meet their mothers at least once a week. It has been specified that the State Legal Service Authorities will be entitled to take sufficient care and required procedures for a better upbringing. According to the court, women inmates who come with children younger than six years have been given special consideration. To furnish justice, the bench directed that the rules, regulations, interpretation of statutes etc., should be amended within three months, and the jail condition and facilities need to be upgraded to better reform prisoners and protect their children.

Conclusion

Female under-trial prisoners are entitled to live with their children till they attain the age of 6 years. The Hon'ble Court has noticed that the children live with their prisoner mothers inside the jail without fault or conviction. This could be because of a lack of guardianship, improper home, and survival in the absence of their mothers. Children between the ages of 1-5

years are very vulnerable, and guardianship laws explain why they should remain in the care of their mothers. However, the societal perspective and the upbringing of children inside the jail are not congenial for the children, so they should not be raised by prisoners. Based on the facts presented and the cited ruling, the Hon'ble Supreme Court of India correctly issued the relevant guidelines. The court has ordered the prisons to keep a tally of the female inmates awaiting trial and any children they have with them. The child should not be neglected by the jail authorities or deprived of any right which is available to the children. Proper food, education, and other benefits should be available to children. After the children attain the age of 6 years, the court should appoint a trustworthy guardian for them or send them to welfare homes. In light of the final verdict, several recommendations have been made:

- The children of the female prisoners are living with them. An effective environment and facilities need to be provided to the children, which will for the bio-psycho-social growth of the children. Young children lack the cognitive capacity to distinguish between acceptable and unacceptable actions. As such, they should face no injustice or unfair treatment. However, the consequences will vary based on the specifics.
- Many pregnant women enter detention centers. Therefore, before sentencing the woman and sending her to prison, the court should assess the jail's capacities for childbirth and care and should assess the importance of prenatal and postnatal care advantages for mother and child.
- A Special jail should be established for better treatment of the children and their mothers, as the current prisons are overcrowded, impacting the child's minds.
- The children should get formal and informal education with proper medical care.

The Hon'ble Supreme Court in R.D Upadhyay's case stated that a child should 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.