



Policies and Programmes for Children of Prisoners in India

A Policy Document

By

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Guidelines Laid Down by Courts

1. R.D. Upadhyay vs. State of Andhra Pradesh (Writ Petition (Civil) 559 of 1994) dated April 13, 2006¹

This was a PIL filed by R.D. Upadhyay about the situation of under trial prisoners in India. The Supreme Court passed various orders in the PIL over a period of time. It also took up the issue of situation of children living in prisons with their imprisoned mothers. Prayas submitted its suggestions regarding the issue based on a study it had conducted in 2002 titled *Forced Separation: Children of Imprisoned Mothers*. The Court included several its suggestions in the guidelines it issued, which are summarized as follows:

- A child shall not be treated as an under trial/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.
- 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

Food, clothing, medical care and shelter

- 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.
- State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
- 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.
- Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
- Clean drinking water must be provided to the children. This water must be periodically checked.
- 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.
- 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.
- Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
- Children of prisoners shall have the right of visitation.
- 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.

¹ <https://indiankanoon.org/doc/1258611/>

Education and recreation for children of female prisoners

- 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 creches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.
- There shall be a creche 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 creche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said creche and nursery outside the prison premises.
- 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.
- 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.

Diet and milk

- The child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available
- 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.

Other administrative guidelines

- 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
- 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.
- 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.

- 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.

2. The Bombay Court in a Suo Moto PIL (No 107/2014) dated October 12, 2017

The Bombay High Court took suo moto cognizance of the Prayas study *Forced Separation: Children of Imprisoned Mothers* (2002) as a result of a presentation made by Prayas before the High Court Juvenile Justice Committee in 2014, and converted it into a Suo Moto PIL. Prayas was appointed Amicus Curae in the PIL. Prayas gave several suggestions in the PIL over three years leading to final orders passed by the Court in 2017. The highlights of the orders are as follows:

- Department of Welfare of Children's Development (DWCD) to take steps to recognize at least one NGO in each district to work with women prisoners and their children left outside.
- DWCD shall appoint one full-time lady Probation Officer in all women's sections of Central Prisons and major District Prisons like Byculla and Kalyan.
- Government may consider increasing the budgetary allocation of grant-in-aid scheme for released prisoners from Rs. 12 lakhs per annum to at least Rs. 2 crores per annum.
- Government may consider increasing the grant amount under the Bal Sangopan Yojana (under DWCD) from the current Rs. 425/- per child per month, to Rs. 1,000/- per child per month.
- Installation of refrigerators in the women's sections to keep milk for children of female prisoners.
- The State to consider creating a post of DIG Prison (Welfare and Rehabilitation) in the Prison Department, to look into welfare and rehabilitation needs of prisoners and their children, and take necessary action in near future.
- It is directed that women prisoners should be transferred to the district where their children are living, at least once in three months, so that, they can meet their children. Accordingly, the State to take steps to make effective changes in Prison Manual.
- Details about the property of the arrested woman (house or land) should be entered in the station diary and charge-sheet. In case the arrested woman has no family member to look after her house/property, the police should bring this to the notice of the remand/trial Court and seal the premises till the woman is released from custody or she authorizes someone to use her premises/land. The State may issue suitable Government Resolution in consonance with this direction.
- At the time of an under trial woman being transferred from police to judicial custody, the police should specify details about the location and address of her children's residence or the name and address of institution where they are admitted. These details should be entered in the station diary and charge-sheet.
- At the time of arrest of a parent, who is accused in murder of his/her spouse, and if a child is witness to the murder, the police should inform a DLSA lawyer or Probation Officer to remain present during questioning of the child.

Policies for Children of Prisoners

National

The Model Prison Manual 2016 was drafted by the Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, which the states are supposed to adopt with necessary modifications (as per their local context). The suggestions in the Manual relating to children of prisoners are as follows:

- A crèche and nursery school should be set up in every prison where children are present.
- Once the child crosses the age limit of 6 years, he/she should be placed in care of the family of the prisoner or in protective custody at an appropriate children's home.
- The process of removal of the child from the mother's care must be done with sensitivity towards the needs of the child, and only after ensuring that adequate alternative arrangements for the child have been done.
- Prison administration should ensure that their facilities are tailored towards children living under their care.ⁱ
- The Ministry of Women and Child Development implements a centrally sponsored Child Protection Services (CPS) Scheme (erstwhile Integrated Child Protection Scheme) for supporting the children in difficult circumstances.
- The primary responsibility of implementation of the scheme lies with the State Governments/UT Administrations. Under the scheme institutional care is provided through Child Care Institutes (CCIs), as a rehabilitative measure.ⁱⁱ
- The JJ Act, 2015, is the primary law for children in the country. As per Section 2 (14) (vi) of the JJ Act, a child who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him is included as a "child in need of care and protection."
- The Act provides a security net of service delivery structures including measures for institutional and non-institutional care to ensure comprehensive well-being of children in distress situations. The primary responsibility of execution of the Act lies with the States/UTs.ⁱⁱⁱ

State Governments

Kerala^{iv}

- The Government of Kerala has an annual budget of Rs 20 lakhs for financial assistance for education of children of prisoners.
- Rs 15 lakhs has been sanctioned for the assistance of their basic education and Rs 5 lakh as the aid for their professional studies.^v

Beneficiaries	Children of Prisoners
Benefits	<ul style="list-style-type: none">• 1st Std. to 5th Std - Rs 300/- per month• 6th Std. to 10th Std. - Rs 500/- per month• +1 (Plus one) & +2 (Plus two) - Rs 750/- per month

	<ul style="list-style-type: none"> Degree/Professional Course - Rs 1000/- per month (Degree/ Professional course must be in Govt./ Aided Sector)
Eligibility Criteria	BPL (Financial aid can be provided to the children even though the relatives who are liable to protect them and falls under APL category, provided both the parents are in jail, For that an enquiry report of District Probation Officer is essential).
How to Avail	Applications are collected and submitted by Prison Superintendents with recommendation. Financial aid is disbursed through jail Superintendents which is approved by Director of Social Justice. The amount is directly transferred to the bank account of the beneficiaries.

- There is another scheme intended to rehabilitate the dependents of the indigent convicts. It aims to assist/encourage resource less wives, unemployed and unmarried sons, daughters etc.
- The maximum amount of financial assistance to a family will be Rs. 15,000 at a time. This is a loan-linked scheme.
- 30% of loan subject to a maximum of Rs. 10,000/- will be given as subsidy from the Government for the loan they avail from Banks, Kerala State Women's Development Corporation, Kerala State Backward Classes Development Corporation, Kerala State Development Corporation for SCs/STs etc.

Eligibility to avail the scheme

- Families of such convicts who had undergone imprisonment for a period of 7 years or above are eligible for financial assistance.
- The families are eligible for the assistance only during the period of imprisonment of the convict.
- The total family income of the convict should not exceed Rs. 24,000/- a year
- The dependants of the convict who have crime records other than the undergoing one are not eligible for financial assistance under the scheme.
- Financial assistance shall be given only once for the dependents of a prisoner for the purpose.
- The financial assistance will be provided to those eligible persons who have not availed the amount for the same purpose previously.

Application process

- The application for starting self-employment should accompany the details of the project to be started with the financial assistance and a recommendation letter by the concerned ward members/councillor.
- Financial assistance for the purpose will be sanctioned only for the viable projects.
- Since the amount is given as subsidy, the beneficiary has to avail a bank loan for the proposed project first and produce sanction letter from bank to avail the subsidy amount as per the scheme.
- After assessing the amount required, the District Probation Officers concerned shall communicate it to the Director of Social Justice. The amount will be distributed in the form of Demand Draft by the concerned District Probation Officers.

Delhi^{vi}

- Crèche facility is provided for children of women prisoners.

Scheme for Financial Sustenance, Education & Welfare of Children of incarcerated Parents, 2014

- Provision for free education, uniform, books/copies etc. in Government/Aided/ Private (if enrolled as EWS) Schools by treating them as Economically Weaker Section (EWS) Child in Delhi.
- Provision for protective environment and welfare measures for the child including passing of order for sending a child to a fit institution and order for providing medical treatment, and provision of free legal aid for interaction with incarcerated parents.

Educational assistance

- Child/Children shall be entitled to the following assistance as far as educational needs are concerned-
 - Admission in a nearest Government/Aided School in appropriate standard with
 - all entitlements under the other Schemes.
 - Full waiver of tuition fees or any other such charge by the school authority, in
 - Private School, if already enrolled.

Eligibility to avail the scheme

- Child/Children whose only surviving parent or both parents is/are in jail shall be eligible for financial assistance under this scheme.
- The parents of child shall be ordinarily living in Delhi for the last 5 years.
- Period of incarceration of parent, whose child is intended to avail the benefit under the Scheme, should not be less than 30 days.
- The Annual income from all sources of the incarcerated parent(s) should not exceed Rs.2,00,000/- (Rupees Two lakh only) or the limited to the amount as amended from time to time by the Government of National Capital Territory of Delhi.
- The Child between ages 5-18 years shall mandatorily attend the School/academic institutions to clean the benefit under this Scheme. Parent/Guardian will give undertaking for initiation of schooling within six months of receipt of benefit, if the child is not yet enrolled with any School.

Quantum of Financial Assistance

- The quantum of Financial Assistance to a child shall be fixed as Rs. 3,500/- for the first child, additional Rs. 3,000/- for the second child (in case of 3 or more children, this maximum amount of Rs. 6,500/- shall be utilized for welfare of all children) till he/ she attains the age of 18 years or parent(s) is/are released from incarceration whichever is earlier.

Gujarat

- The Social Defense Division in the Department of Social Justice and Empowerment has has a self-employment scheme for families of prisoners sentenced to five or more years of imprisonment.
- Families of such prisoners would be provided one-time assistance of Rs 25,000/-. “This had been done so the families of prisoners can earn a living on their own.”^{vii}

Maharashtra^{viii}

Bal Sangopan Yojana

- This project has been running since the year 2008 under the Department of Women and Child Development.
- The objective of the Children’s Compounding Scheme is to assist single parent, family in distress, students with divorced or hospitalized parents, and help them continue their education.
- The main objective of the scheme is to give students the confidence to continue their education.
- Each beneficiary child gets a monthly benefit of Rs 2250/- per child per month under this scheme.
- The objective of implementing Bal Sangopan Yojana is to provide care for orphans, homeless, and other vulnerable children in the age group of 0 to 18 years in a family environment.
- Under this scheme, children whose parents are unable to take care of them due to various reasons will temporarily take them to another Family support will be provided.
- Children of prisoners left outside and children of women rescued from commercial sexual exploitation are included under this scheme.

Andhra Pradesh

- The Department has taken up an innovative step of sending these children to schools, outside the prison to get their primary education.

Tamil Nadu^{ix}

- A crèche and nursery have also been attached to the Special Prisons for Women to look after the children.
- Special care is bestowed on the nursing women inmates and they are supplied with half a litre milk per day.
- Special care is bestowed on the nursing women inmates and they are supplied with half a litre milk per day.
- For the convenience of school and college going children and working spouse of the prisoners, special interviews are arranged on the first Sunday of every month.

Assam

- In the past, the National Commission for Protection of Child Rights (NCPCR) had asked for the number of children in the age group of 0 to 6 years living in prisons from the state of

Assam. Based upon the information, it was found that 5 -6 children are living with their mother in the prisons. However, they are not given much attention.

- Assam Child Protection Society works with children falling under child protection laws (JJB), street children and children of single parent. They have a shelter home for these children.
- Open shelter for street children. Children are free to come out of choice and stay. These children can access these organizations whenever they want, but more children are admitted to this institution through the police and CWC (Child Welfare Committees).
- There are a total of 60 child protection officers in the state of Assam. Towards the end of the meeting, Shree Sharmah, Assam SCPS requested Prayas to conduct a workshop on children of prisoners (issues and responsibilities) to create awareness so that the officers can work independently on the said issue in their department. It was also discussed that due to elections in Assam, the workshop should be held in June 2021.

ⁱ https://wcd.nic.in/sites/default/files/Prison%20Report%20Compiled_0.pdf

ⁱⁱ <https://pib.gov.in/PressReleasePage.aspx?PRID=1606115>

ⁱⁱⁱ <https://pib.gov.in/PressReleasePage.aspx?PRID=1606115>

^{iv} http://swd.kerala.gov.in/scheme-info.php?scheme_id=NzdzVjh1cVIjdkn=
http://swd.kerala.gov.in/scheme-info.php?scheme_id=NzdzVjh1cVIjdkn=

^v <https://www.newindianexpress.com/states/kerala/2020/nov/07/kerala-government-grants-rs-20-lakh-aid-for-education-of-children-of-prisoners-2220639.html>

^{vi} <http://dlsa.org/wp-content/uploads/2015/12/Scheme-for-Financial-Sustenance-Education-Welfare-of-Children-2014.pdf>

^{vii} <https://timesofindia.indiatimes.com/city/ahmedabad/welfare-scheme-for-prisoners-announced/articleshow/80141037.cms>

^{viii} <https://womenchild.maharashtra.gov.in/content/homecontent/schemes.php>

^{ix} https://ncrb.gov.in/sites/default/files/psi_table_and_chapter_report/Chapter-10_2019.pdf