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## Right to Dignity and Development of Prisoners' Children: A Constitutional Analysis

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### Abstract

Children who reside with, or are affected by the imprisonment of a parent, occupy an urgent yet under-recognized intersection of criminal justice, child protection and constitutional law. This article sets out the legal foundations for protecting the dignity and development of prisoners' children in India, traces the key constitutional doctrines and policy instruments, analyses judicial responses assesses implementation gaps, and proposes law-and-policy reforms to align practice with constitutional and international obligations.

**Key Words:** Dignity, Prisoner, Children, Constitution

### 1. Introduction — framing the problem

When a parent — most commonly the mother in custodial situations that allow co-residence - is deprived of liberty, the child commonly becomes a collateral victim. Consequences include disrupted early development, interrupted education, nutritional and health deficits, stigma from “prison birth” labels, fractured family ties, and precarious substitute care. The Indian constitution, read alongside international obligations, imposes positive duties on the State to protect a child's dignity and development even when a parent is in custody. The task is to translate these normative commitments into enforceable standards and operational practice. This article explains why the legal obligations exist, how courts have shaped them, and why implementation remains partial. The doctrinal cornerstone is *R.D. Upadhyay v. State of Andhra Pradesh*,<sup>1</sup> in which the Supreme Court directly confronted the plight of children living with incarcerated mothers. The Court issued detailed and binding guidelines: children residing in prisons must not be treated as undertrials or convicts; they are entitled to adequate food, clothing, medical care (including prenatal and postnatal services), education, recreation, and proper developmental support. It further directed that births occurring in prison be registered without stigmatizing references and that crèches and nursery facilities, preferably outside prison premises, be established.

### 2. Constitutional foundations in India

India's Constitution furnishes multiple textual anchors for protecting prisoners' children. Article 21 (life and personal liberty) has been expansively interpreted to include dignity, health and access to humane conditions — principles applicable to those deprived of liberty and to the State's obligations toward dependants left vulnerable by incarceration. Directive Principles (Articles 39, 42, 45) require the State to secure childhood welfare, maternity relief and measures for the healthy development of children. When read with child-specific statutes and international obligations, these constitutional provisions require proactive State action to protect the development and dignity of prisoners' children.

The Supreme Court has repeatedly used Article 21 and public interest litigation (PIL) to articulate duties on the State to mitigate the collateral effects of incarceration on families. Judicial intervention has thus been a key instrument for operationalising constitutional protections for children affected by parental imprisonment.

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<sup>1</sup> Civil Writ Petition No. 559 of 1994 — Supreme Court (13 Apr 2006).

### 3. Constitutional analysis — how the law supports dignity & development

A focused constitutional analysis shows three mutually reinforcing strands:

(i) **Article 21 and the positive duty to protect dignity.** The Supreme Court's expansive Article 21 jurisprudence embraces dignity, health, and developmental preconditions to life. For prisoners' children, Article 21 generates a positive obligation on the State to ensure conditions (nutrition, health care, safe accommodation) that allow a child to develop with dignity.<sup>2</sup>

(ii) **Procedural rights that reduce collateral harm.** Arrest/detention safeguards<sup>3</sup>, speedy trial principles<sup>4</sup> and police reforms<sup>5</sup> together limit unnecessary or prolonged parental detention, thereby mitigating the harm to children of avoidable custody.

(iii) **Remedial accountability and systemic orders.** Compensation and accountability jurisprudence<sup>6</sup> and PIL-driven systemic interventions<sup>7</sup> enable courts to order prisons, State agencies and ministries to remedy structural deficits that affect children.

When read together, these strands show that constitutional rights are not merely defensive against direct State deprivation, but also impose proactive welfare obligations. *R.D. Upadhyay v. State of Andhra Pradesh*<sup>8</sup> represents a direct judicial application of these constitutional commitments to the specific plight of children of women prisoners.

### 4. Judicial trajectory —landmark Indian cases

The protection of prisoners' children in India has evolved through a rich line of constitutional jurisprudence that, while not always directly addressing children, has progressively built a rights-based framework centred on dignity, humane treatment, accountability, and child welfare.

Earlier cases laid the constitutional foundation for these protections. In *Sheela Barse v. State of Maharashtra*,<sup>9</sup> the Court highlighted the ill-treatment of women prisoners and stressed humane conditions and access to legal aid. *Sunil Batra v. Delhi Administration*<sup>10</sup> firmly established that Article 21 prohibits torture and inhuman or degrading treatment within prisons, extending fundamental rights into custodial spaces. *Hussainara Khatoon v. State of Bihar*<sup>11</sup> addressed prolonged pre-trial detention and recognized the right to a speedy trial, indirectly protecting families from the destabilizing effects of indefinite incarceration.

Procedural safeguards were strengthened through *D.K. Basu v. State of West Bengal*<sup>12</sup> and *Joginder Kumar v. State of U.P.*,<sup>13</sup> which imposed arrest guidelines and required notification of relatives, thereby reducing

<sup>2</sup> *Sunil Batra vs Delhi Administration*, 1978 SCC (4) 494

<sup>3</sup> *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610. See also *Joginder Kumar v. State of U.P.* Writ Petition (Criminal) No. 9/1994.

<sup>4</sup> *Hussainara Khatoon v. State of Bihar*, 1979 SCR (3) 169

<sup>5</sup> *Prakash Singh v. Union of India*, (2006) 8 SCC 1

<sup>6</sup> *Rudul Sah v. State of Bihar*, AIR 1983 SC 1086. See also *Nilabati Behera v. State of Orissa* (1993) 2 SCC 746

<sup>7</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161. See also *Bachpan Bachao Andolan v. Union of India*, (2011) 5 SCC 1

<sup>8</sup> Civil Writ Petition No. 559 of 1994 — Supreme Court (13 Apr 2006).

<sup>9</sup> 1983 SCR (2) 337

<sup>10</sup> 1978 SCC (4) 494

<sup>11</sup> 1979 SCR (3) 169

<sup>12</sup> AIR 1997 SC 610.

<sup>13</sup> Writ Petition (Criminal) No. 9/1994.

arbitrary separation of caregivers from children. The Court's commitment to state accountability emerged strongly in *Rudul Sah v. State of Bihar*<sup>14</sup> and *Nilabati Behera v. State of Orissa*,<sup>15</sup> where compensation for unlawful detention and custodial death reinforced the State's responsibility for custodial harm.

Institutional dignity and oversight were further articulated in *Charles Sobhraj v. Superintendent, Central Jail*<sup>16</sup> and *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*,<sup>17</sup> which broadened the scope of Article 21 to include living with dignity. Broader structural reform cases such as *Bandhua Mukti Morcha v. Union of India*<sup>18</sup> and *Bachpan Bachao Andolan v. Union of India*<sup>19</sup> demonstrated the power of public interest litigation to secure systemic remedies for vulnerable groups, including children. Meanwhile, *Prakash Singh v. Union of India*<sup>20</sup> addressed police reforms, strengthening accountability at the arrest stage. *In Re: Death of 25 Chained Inmates in Asylum Fire in Tamil Nadu*<sup>21</sup> and *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India*<sup>22</sup> highlighted the State's duty to ensure safe and healthy custodial conditions.

Collectively, these decisions weave a constitutional fabric that safeguards humane prison conditions, procedural fairness, accountability, and child-centred protections, affirming that children cannot be subjected to collateral punishment due to parental incarceration.

## 5. Statutory Framework in India

The statutory framework in India provides additional protection to children affected by parental incarceration through child welfare and prison administration laws.

### (i) Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act plays a central role in safeguarding vulnerable children. The Act defines a "child in need of care and protection"<sup>23</sup> to include children who are found without any home or settled place of abode, those who are vulnerable to abuse or neglect, or whose parents or guardians are unfit or incapacitated to care for them. In circumstances where a parent is incarcerated and adequate care arrangements are absent, children of prisoners may fall within this statutory category, thereby entitling them to intervention and protection through Child Welfare Committees and institutional or non-institutional care mechanisms established under the Act.

### (ii) Commission for Protection of Child Rights Act, 2005

Further institutional oversight is provided by the Commission for Protection of Child Rights Act, which establishes the National and State Commissions for Protection of Child Rights. These bodies are mandated to monitor and review safeguards provided under laws for the protection of child rights, inquire into complaints of violations, and recommend remedial measures. In the context of children residing in prisons

<sup>14</sup>AIR 1983 SC 1086.

<sup>15</sup>(1993) 2 SCC 746

<sup>16</sup>AIR 1978 SC 1514

<sup>17</sup>AIR 1981 SC 746

<sup>18</sup>(1984) 3 SCC 161

<sup>19</sup>(2011) 5 SCC 1

<sup>20</sup>(2006) 8 SCC 1

<sup>21</sup>(2002) 3 SCC 31

<sup>22</sup>(2001) 5 SCC 577

<sup>23</sup>Juvenile Justice (Care and Protection of Children) Act, 2015; Section 2(14)

or separated due to parental incarceration, the Commission has the authority to examine prison conditions and ensure compliance with child protection standards.

### **(iii) Model Prison Manual, 2016**

The Model Prison Manual, issued by the Ministry of Home Affairs, contains a dedicated chapter addressing women prisoners and their children, recognizing the unique needs of incarcerated mothers and dependent minors residing in prisons. The Manual provides detailed guidelines concerning accommodation, nutrition, medical care, hygiene, clothing, and developmental support for children living with their mothers in custody. It mandates that such children shall not be treated as prisoners and must be provided with facilities consistent with their age and developmental requirements, including access to crèche and nursery services, immunization, regular health check-ups, and adequate nutrition. The Manual further prescribes that birth registration of children born in prison must be ensured without stigmatizing references to incarceration. It also outlines procedures for facilitating education and recreational opportunities, and for making appropriate arrangements when a child reaches the prescribed age limit for staying in prison. Through these provisions, the Model Prison Manual operationalizes constitutional and judicial mandates by integrating child welfare standards into prison administration.

### **6. The lived problem: children living with incarcerated mothers in India**

Research and institutional reports show children living in jails face inadequate nutrition, poor sanitation, interrupted immunisation, limited stimulation and schooling, and exposure to adult trauma or violence. State responses vary widely: some jails have run crèches/nurseries and external creche linkages, while many sub-jails hold children in congested adult wards. The Supreme Court and national agencies have repeatedly underscored that children in jail are *not* prisoners and must be treated as children entitled to full rights.

### **7. Core legal obligations distilled**

From the jurisprudence and government guidance (including the Model Prison Manual), principal obligations emerge:

**(i) Child not to be treated as prisoner.** The legal and policy consensus — crystallised in R.D. Upadhyay and the Model Prison Manual — commands that children who live in prison must not be treated as undertrials or convicts and must retain the legal status and protections of a child.

**(ii) Ensure holistic development.** The State must provide food, clothing, immunization, medical care (prenatal and postnatal for mothers), early childhood stimulation, education and recreation. These obligations rest on Article 21 and on child-rights instruments embedded in domestic policy documents.

**(iii) Prefer non-custodial measures for primary caregivers.** International standards (Bangkok Rules) and domestic courts encourage use of alternatives to imprisonment for primary caregivers when reasonably available to avoid harming the child's best interests.

**(iv) Birth registration without stigma.** Births occurring in custodial settings should be registered without references that stigmatise the child as “born in prison,” which can cause lifelong disadvantage. (R.D. Upadhyay; Model Prison Manual.)

**(v) Childcare facilities outside prisons where feasible.** The Model Prison Manual and Supreme Court guidelines prefer external crèches and nursery arrangements and set age limits for children permitted to stay in prisons.

**(vi) Facilitate family contact.** Maintaining family ties through visits and other contact is foundational to a child's emotional wellbeing and reintegration prospects; prison regulations and international rules insist on facilitation of meaningful contact.

### **8. Implementation gaps and empirical realities**

Despite robust legal standards, the reality on the ground is uneven:

**(i) Facility shortfalls.** Many district and sub-jails lack proper crèches, sanitary facilities, and safe nurseries; children are sometimes lodged near adult inmates. Government reports and NGO studies document wide variability in provision across states.

**(ii) Health and nutrition deficits.** Immunisation records and paediatric care are inconsistently maintained. Nutrition and health monitoring fall short of Model Prison Manual prescriptions.

**(iii) Data vacuum.** There is no comprehensive nationwide database on children of prisoners (numbers, ages, health and education outcomes), undermining targeted policy. Civil society calls for systematic monitoring persist.

**(iv) Under-utilisation of alternatives.** Courts and prosecutorial practice do not always favour non-custodial options for primary caregivers, even where international norms recommend them, thereby exposing children to unnecessary harm.

**(v) Coordination failure.** Effective protection requires synchronised action by prison authorities, health departments, child-welfare agencies, and the judiciary; inter-agency fragmentation remains a persistent problem. The Bachpan Bachao Andolan jurisprudence illustrates the need for coordination but practice is inconsistent.

### **9. Policy and legal reform recommendations**

To ground constitutional promises in lived reality, the following reforms are essential:

**(i) Legislate minimum binding standards.** Convert R.D. Upadhyay's guidelines into statutory or centrally mandated rules (amendments to the Prison Act or a dedicated chapter in the Model Prison Manual with binding force), with earmarked funding.

**(ii) Presumption for non-custodial measures.** Enact clear prosecutorial and judicial guidance that imposes a presumption in favour of non-custodial options for primary caregivers of young children, subject to specified exceptions.

**(iii) Nationwide data and monitoring.** MHA should mandate standardized reporting on children in prisons and create a public dashboard; NCPCR/State Commissions should conduct regular audits.

**(iv) External crèches & ICDS integration.** Finance community crèches managed by ICDS/Anganwadi or NGOs near prisons, and ensure children are enrolled in regular immunisation and early-education programmes.

**(v) Inter-agency case management.** Establish district-level panels (prison superintendent, child-welfare committee, district health officer, probation officer) to prepare individualised care plans for each child.

**(vi) Train judiciary, police and prison staff.** Mandatory child-rights training for judicial officers, prosecutors, police and prison staff to operationalise the "best interests" principle.

**(vii) Access to justice and birth-registration reform.** Simplify administrative processes to obtain birth certificates without stigma, and ensure free legal aid for detained parents to expedite non-custodial options and appeals.



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**(viii) Compensation and aftercare.** Ensure mechanisms to compensate for custodial negligence and provide after-care services for released parents to support reintegration with children.

### **10. Conclusion**

The constitutional architecture in India — anchored in Article 21 and supplemented by PIL jurisprudence and child-rights statutes — creates a firm legal mandate to protect the dignity and development of prisoners' children. Landmark judicial interventions, particularly the Supreme Court's decision in *R.D. Upadhyay v. State of Andhra Pradesh*, set out detailed, child-centred obligations. International instruments such as the Convention on the Rights of the Child and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders provide further normative clarity. Yet law alone is insufficient: sustained political will, budgetary commitment, inter-agency coordination and data-driven oversight are essential to ensure that constitutional promises translate into safer, healthier and more dignified lives for children touched by parental incarceration. Failure to act consigns these children to avoidable deprivation and contravenes the constitutional imperative to treat every child with dignity and to protect the conditions for their healthy development.