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# Child Support and Child Incarceration in India

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KOWSALYA DEVI M.<sup>1</sup>

## ABSTRACT

*We are brought up with the term that food clothing and shelter are the three essentials for life. There are many more things that are required for a healthy living. Children, being in the primary stage of their growth, they need proper maintenance, care and support. A man is responsible to provide maintenance to his parents, wife and children when they are unable to maintain themselves. The concept of child support arises when a child's parents decides to get separated or divorced. The child born from the marriage suffers emotionally and economically, so the parents are supposed to provide child support till the age of 18. The psychological health of parents whose children are incarcerated is a serious concern in India but largely ignored. This article provides the information regarding child support and child incarceration and the laws relating the same.*

**Keywords:** *Children, Support, Incarceration, Mothers, Emotional consequences.*

## I. INTRODUCTION

According to the principle of social justice, a man is entitled to provide essential amenities to his parents, wife and children in the form of maintenance. Child maintenance in India is recognized. Indian courts have also said that a major child, whether daughter or son, is entitled to get maintenance from father if they are dependent on parents under family law. Dependency on parents means that they are not in a position to earn as they may be studying or any other reasons. When the parents of the child decide to get divorced, the child born from the wedlock suffers and there is a need to provide child support.

Child custody is a complex matter. It depends on the circumstances and situations in the family where a child was born. The custody of a child under age of five is usually given to mother and the older boys to father and older girls to mother. Until the age of six, children are allowed to live with their imprisoned mother. The incarcerated children are neither convicts nor trials. They are entitled to food, clothing, shelter, education, medical care.

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<sup>1</sup> Author is a student at Tamilnadu Dr. Ambedkar Law University, India.

## **II. BACKGROUND**

This article explains the concepts of child support, child maintenance and child incarceration and the sad reality undergone by the incarcerated children and the laws that are available for child support and child incarceration in India.

## **III. CHILD SUPPORT**

Child support is defined as parent's obligation to contribute to the financial maintenance of their child. The concept of child support is initiated when the parents of the child decide to live separately. It is the duty of the parents to bestow to the financial well-being of the child. The judges had observed that there are different cases in which their approach towards child support is different.

Family law and public policies offer child support for the financial benefits of the infant, on a continuing, annual payment by the parent after the conclusion of marriage or other partnership. There are certain rules for child support. Child support is a non-taxable income, but the parents must take care when reporting children as tax dependents. In general, it resides with the custodial parent for tax purposes and the parent may claim on the laid conditions.

The court determines the amount of child support to be given by the non-custodial parent on the basis of their income and financial background. However if one denies to pay child support, the effects may be,

- The court can seize their property
- Cancellation of business licence
- Cancellation of driver's license
- Revocation of tax refund
- Salary garnishment
- Sentence to jail.

## **IV. CHILD SUPPORT LAWS IN INDIA**

### **(A) Hindu Adoption And Maintenance Act:**

Section 20 of the Hindu Adoption and Maintenance Act states that, "a Hindu is bound during his lifetime, to maintain his or her legitimate or illegitimate children and aged parents". In case of mutual consent divorce, the husband and wife can mutually decide upon the amount of child maintenance the husband would be required to pay to the wife.

**(B) Criminal Procedure Code:**

Section 125 of the Criminal Procedure Code entitles the father to provide maintenance to the wife, children and parents and states that he should provide maintenance for

1. His wife, unable to maintain herself or
2. His legitimate or illegitimate minor child, whether married or not, unable to maintain or
3. His legitimate or illegitimate child(unmarried), unable to maintain by any abnormality
4. His father or mother are unable to maintain themselves.

**V. IMPORTANT CASE LAWS****1. Bakulabai v. Gangaram<sup>2</sup>**

In this case the son named Maroti, was born from a bigamous marriage. The court held that though bigamous marriage is illegal under Section 11 of Hindu Marriage Act, 1955 the child attains legitimate status as he was born when the parties were living together as husband and wife for several years.

**2. Jagadish Jugtawat v. Manju Lata<sup>3</sup>**

In this case, two children were born and the parents got separated. Out of two, a major girl, filed petition to get maintenance from her parents. The court held that reading Section 125 of Cr.P.C. with Section 20(3) of the Hindu Adoption and Maintenance Act, the girl being major and unmarried is entitled to get maintenance from her parents.

**3. Padmaja Sharma v. Ratan Lal Sharma<sup>4</sup>**

In this case it was held that Hindu earning mother is also obliged to maintain children. It was held that Hindu divorcee father and Hindu divorcee earning mother should contribute for child maintenance.

**4. Noor Sabha Khatoon v. Mohd. Quasim<sup>5</sup>**

In this case it was held that the benefit under Section 125 of Cr.P.C. is available to all children irrespective of religion.

**VI. CHILD INCARCERATION IN INDIA**

Children of incarcerated parents are divided into two categories,

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<sup>2</sup> Bakulabai v. Gangaram, (1988) 1 SCC 537

<sup>3</sup> Jagadish Jugtawat v. Manju Lata, (2002) 5 SCC 422

<sup>4</sup> Padmja Sharma v. Ratan Lal Sharma, (2004) SCC 266

<sup>5</sup> Noor Sabha Khatoon v. Mohd. Quasim, (1997) 6 SCC 233

- a) Those can live along with their mother in prison(up to age of 6)
- b) Those who are left behind(may live with other parent)

Women who face trial or found guilty of a crime, are allowed to keep their children with them in prison. The constitution of India assigns state governments to look after the management of prisons. The age of children up to which mothers are allowed to keep the children with them differs from state to state.

According to research by the Indian government in 2015, Indian prisons house 419,623 inmates, of whom 4.3 percent, or around 18,000 are women. This study raised crucial questions about the children living with their mothers of the basic human rights.

Sometimes end up committing a crime which lands him in excess troubles. There are so many legal measures that safeguards minors with rights relating to liberty, growth and care, non-discrimination, educational rights, and so on.

**(A) The Indian Constitution:**

Article 15(3)-Specific laws for women and children

Article 39(f) - children should be provided opportunities to develop in a healthy manner.

**(B) The Indian Penal Code:**

Section 82-Nothing done by a child under of age seven is an offence

Section 83-Immature understanding as an act committed by a child over age of 7 but below 12

**(C) Criminal Procedure Code:**

Section 27- Anyone under the age of 16 at time of their appearance before the court is not subjected to death or life imprisonment.

**(D) Juvenile Justice Act:**

The Act establishes a complex structure for caring of children who have been neglected or abused. The act mandates that neglected minors be brought before the juvenile welfare boards established under the act, which serves as a court of magistrates. This is an act to consolidate and amend the law relating to children, to provide proper care, protection, treatment, development.

## **VII. SUPREME COURT GUIDELINES**

The Supreme Court guidelines for children of Prisoners mentioned in the Prisoner's manual, 2016 are as follows:

- The prisons should have appropriate facilities for pre-natal and post-natal care for both the female prisoners and their children.
- Regular gynaecological examinations should be done for female prisoners in the District government hospital.
- Suspension of sentence in case of minor offender should be allowed to have delivery outside the prison in high-risk cases.
- It should not be mentioned in the birth certificate of the child that he was born in prison. The address of the locality should be recorded.
- The children should be able to acquire food, clothing, shelter, medical care and education inside the prison.
- Children should be examined by a lady medical practitioner and should be vaccinated properly. Supplementary diet and clothing must be provided.
- Children can live with women prisoners up to age of six. Then they should be ceded over to welfare institutions run by Social welfare department of that town or city.
- Child can live in such institution till mother is released or competent enough to earn livelihood.
- The Director of Social Welfare Department shall ensure that the children meet their mother at least once in a week.
- The State Legal Services Authorities shall take measures to inspect jails with direction of children and mothers.

## VIII. CONCLUSION

After a divorce, the most difficult topic is child support or child custody. Custody of a child is not an automatic result of divorce, one must apply to the court for custody of the child and it varies by religion. Children of incarcerated parents are known as "orphans of justice". These people feel powerless to campaign for their rights. The stigma has made them vulnerable to insensitivity, ridicule and harassment from their relatives. The non-uniform and poor implementation of rules and guidelines has aggravated the condition.

Special provisions for dietary, education and medical facilities should be made available for children and their mothers in all prisons. Separate prisons if provided for mothers and children would build a good atmosphere for parenting the primary stage of children. State governments should consider the above mentioned recommendations to ensure healthy treatment of children

as the form the future nation.

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