



2015
In the High Court at Calcutta
Appellate Side
Administrative Department

No. 2830 G

Dated Calcutta,

The 10th July, 2015

From: Shri Sugato Majumdar,
Registrar General,
High Court, Calcutta.

To: The District & Sessions Judge, Darjeeling
The District & Sessions Judge, Cooch Behar
The District & Sessions Judge, Jalpaiguri
The District & Sessions Judge, Uttar Dinajpur
The District & Sessions Judge, Dakshin Dinajpur
The District & Sessions Judge, Malda
The District & Sessions Judge, Murshidabad
The District & Sessions Judge, Burdwan
The District & Sessions Judge, Birbhum
The District & Sessions Judge, Bankura
The District & Sessions Judge, Purulia
The District & Sessions Judge, Nadia
The District & Sessions Judge, Hooghly
The District & Sessions Judge, Howrah
The District & Sessions Judge, North 24 Parganas
The District & Sessions Judge, South 24 Parganas
The District & Sessions Judge, Paschim Medinipur
The District & Sessions Judge, Purba Medinipur
The District & Sessions Judge, Andaman & Nicobar Islands.
The Chief Judge, City Civil Court, Calcutta
The Chief Judge, City Sessions Court, Calcutta
✓ The Chief Judge, Presidency Small Cause Court, Calcutta.

Subject: Guidelines issued by the Hon'ble Supreme Court of India in connection with Writ Petition (Civil) No. 559 of 1994 (R.D. Upadhyay Versus State of A.P. & ORS.)

Sir,

I have been directed to forward herewith a copy of the **Guidelines** issued by the **Hon'ble Supreme Court of India**, in connection with the case mentioned above, for your information and taking necessary steps for implementation of the **item No. 13** of the said Guidelines.

Encl: as stated.

Yours faithfully,

S. Sugato Majumdar

Registrar General

08/07/15

Received
22/07/15

Seen and vinitate at once
13/07/15

Seen: H.A. comply at once and report.
22/7
13/07/15

Recd Copy 22/07/15
Received copy 22-7-15

Received copy 22/7/15
22/7/15

Recd. copy 22/07/15

Guidelines issued by the Hon'ble Supreme Court of India *vide* order dated
13th November, 2014 in the matter of

WRIT PETITION (CIVIL) NO.559 OF 1994
R.D.UPADHYAY Petitioner(s)
VERSUS
STATE OF A.P & ORS Respondent(s)

Serial No.	Guidelines of Hon'ble Supreme Court	Status of Compliance
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.	Already been implemented in all Correctional Homes in West Bengal, as reported by ADG, Prison.
2.	<p>Pregnancy:</p> <p>(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 prenatal and post-natal care for both, the mother and the child.</p> <p>(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</p>	<p>Basic minimum facilities for providing pre-natal and post-natal cases are available to Women Correctional Home as well as in a <u>FEW</u> Central/District Correctional Homes.</p> <p><u>Action:</u> List of such FEW Central/District Correctional Homes where such facilities are not available, to be obtained from ADG & IG, Correctional Services.</p>

	<p>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.</p> <p>(c) Gynecological 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.</p>	<p>Already existing.</p>
3.	<p>Child birth in prison:</p> <p>(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.</p> <p>(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.</p> <p>(c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.</p>	<p>Already been circulated in all Correctional Homes in West Bengal.</p> <p>Already implemented.</p> <p>Already exists.</p>

<p>4.</p>	<p>Female prisoners and their children:</p> <p>(a) Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.</p> <p>(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.</p> <p>(c) Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/he her own livelihood.</p> <p>(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.</p> <p>(e) When a female prisoner dies and</p>	<p>Steps are being taken for amendment of Jail Manual and relevant provisions of the West Bengal Correctional Services Act, 1992, Section 69(1) of West Bengal Correctional Services Act, 1992 to be modified.</p> <p>Such children are handed over to near relatives of the female inmates as per wishes of female prisoners.</p> <p>Followed.</p> <p>Details to be taken from Correctional Services.</p> <p>Report to be obtained for</p>
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	<p>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.</p>	<p>such cases from Correctional Services.</p>
<p>5.</p>	<p>Food, clothing, medical care and shelter:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(d) Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.</p> <p>(e) Clean drinking water must be</p>	<p>(a) Clothing to children are provided as per rule 957 of West Bengal Jail Code (1967 Edition).</p> <p>(b) Already provided as per G.O. No. 1249-HJ/4M-175/07 dated 28.11.2007.</p> <p>(c) As above.</p> <p>(d) No report. Report to be taken from Correctional Services.</p> <p>(e) Existing.</p>

	<p>provided to the children. This water must be periodically checked.</p> <p>(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.</p> <p>(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.</p> <p>(h) Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.</p> <p>(i) Children of prisoners shall have the right of visitation.</p> <p>(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.</p>	<p>(f) Existing.</p> <p>(g) Existing.</p> <p>(h) Existing.</p> <p>(i) Already exists.</p> <p>(j) To be empowered.</p>
6.	<p>Education and recreation for children of female prisoners:</p> <p>(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</p>	<p>(i) Non-formal education is given to such children Correctional Services Authority and Mass</p>

	<p>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.</p> <p>(b) 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 crèche and nursery outside the prison premises.</p>	<p>Extension Education Department to chalk out plan jointly.</p> <p>(ii) Whether crèches/play houses exists in all correctional homes? Report to be submitted by Correctional Services.</p> <p>(b) Details age-wise to be obtained from Correctional Services.</p>
7.	<p>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.</p>	<p>Such sub-jails are to be identified and proposal to be obtained from Correctional Services, till then such women prisoners with their children may be shifted where proper facilities can be ensured.</p>
8.	<p>The stay of children in crowded barracks amidst women convicts, under trials, 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.</p>	<p>Suggestions of Correctional Services to be obtained.</p>

<p>9.</p>	<p>Diet :</p> <p>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:</p> <p>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</p>	<p>As per G.O. No. 1249-HJ/4M-175/07 dated 28.11.2007, diet is provided which, prima-facie, matches the guidelines given by Supreme Court.</p>
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	<p>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.</p>	
10.	<p>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.</p>	<p>Necessary measures are to be taken for amendment of Jail Code and West Bengal Correctional Services Act, 1992. Proposal to be obtained from Correctional Services Department.</p>
11.	<p>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.</p>	<p>Area of intervention to be pin-pointed by the Correctional services Department.</p>
12.	<p>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.</p>	<p>Report to be obtained from the State Legal Services Authority.</p>

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.	Matter relates to Judicial Department.
14.	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	Within a fixed time frame report to be obtained from all concerned.

16/3/15