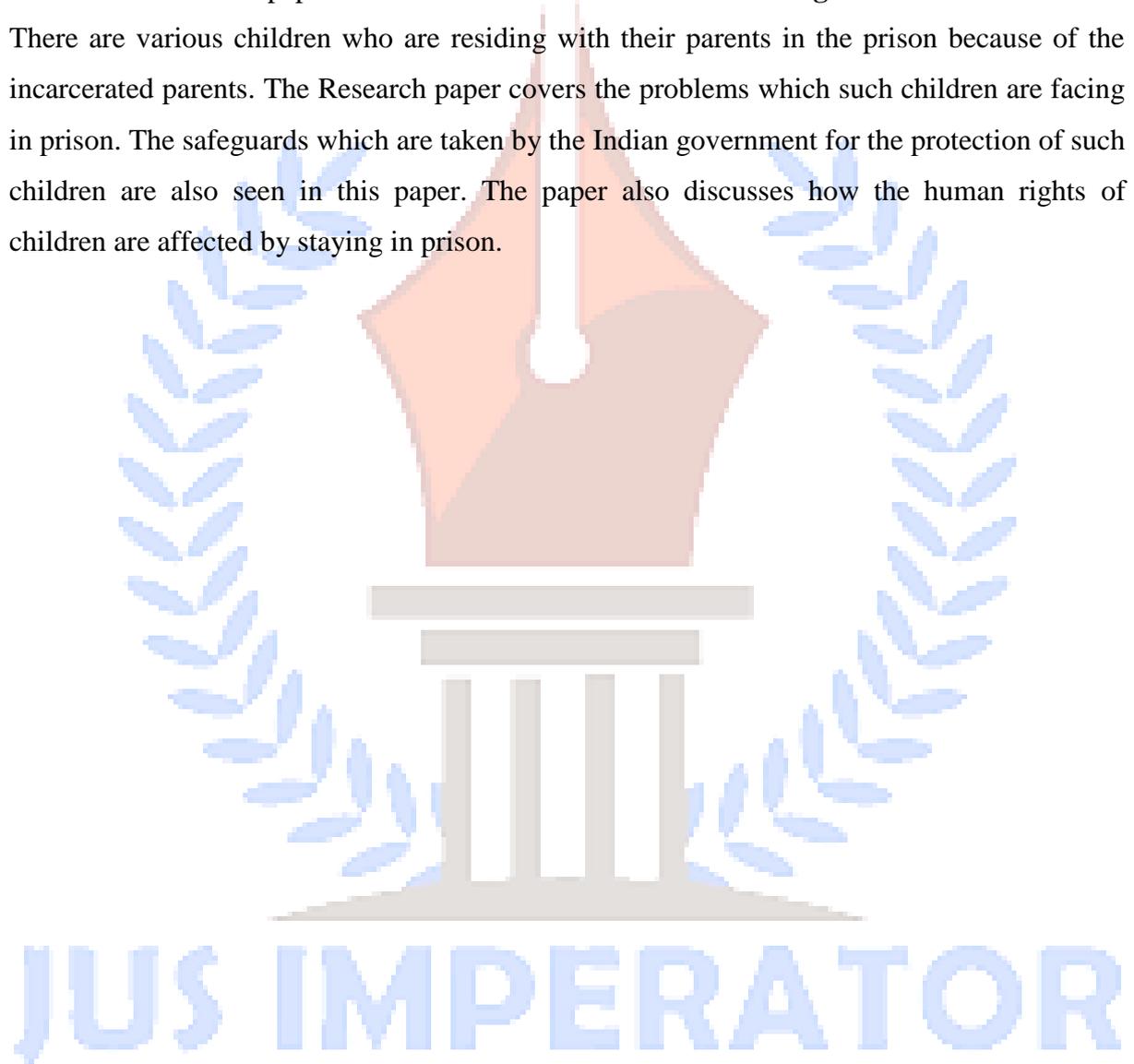


STATUS OF CHILDREN RESIDING WITH PARENTS IN PRISON

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Abstract:

The Research paper is about the **Status of Children residing with Parents in Prison**. There are various children who are residing with their parents in the prison because of the incarcerated parents. The Research paper covers the problems which such children are facing in prison. The safeguards which are taken by the Indian government for the protection of such children are also seen in this paper. The paper also discusses how the human rights of children are affected by staying in prison.



Introduction:

The Research topic is **Status of Children residing with Parents in Prison**. It focuses upon such children who are residing in prison with their parents. It seeks to analyse the situation of children with incarcerated parents in India. Those children who are facing problems in prison while residing with parents in prison.

The children are the group that require a special kind of attention and treatment each time we deal with them. They relate to such a category that requires tenderness and an extra kindness while treating and dealing with them.

Even though humans always go along very smoothly with another human but the children, while in certain situation or a circumstance requires special type of treatment.

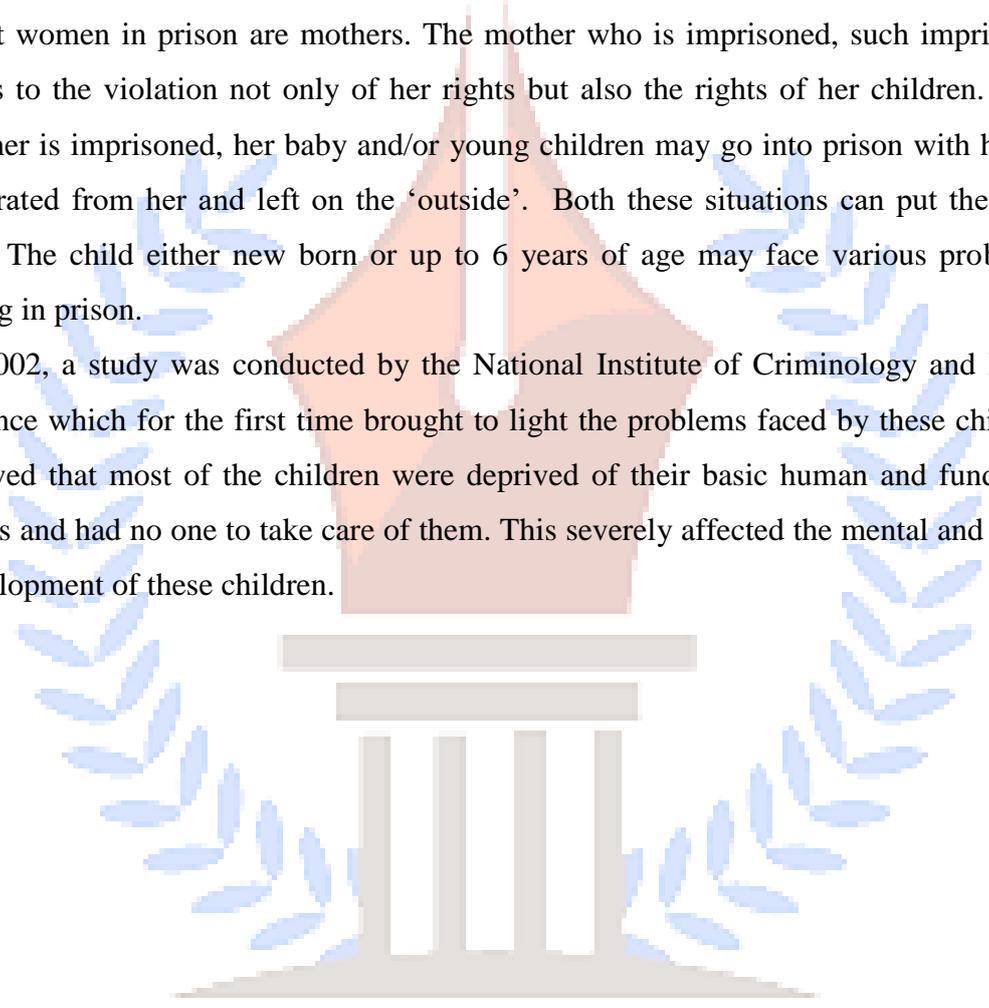


Children Residing with Parents in Prison:

There are many children residing in prisons, they are residing in prison not because of any delinquent activities but, because of their incarcerated parents. This happens because they are either born in prison or have nobody to take care of them other than their incarcerated parents. Children with imprisoned parents are affected adversely.

Most women in prison are mothers. The mother who is imprisoned, such imprisonment leads to the violation not only of her rights but also the rights of her children. When a mother is imprisoned, her baby and/or young children may go into prison with her or be separated from her and left on the 'outside'. Both these situations can put the child at risk. The child either new born or up to 6 years of age may face various problems of living in prison.

In 2002, a study was conducted by the National Institute of Criminology and Forensic Science which for the first time brought to light the problems faced by these children. It showed that most of the children were deprived of their basic human and fundamental rights and had no one to take care of them. This severely affected the mental and physical development of these children.



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Situation of Children Residing in Prison:

The Project is to analyse the problems of such children which they are facing in prison.

There are various problems faced by children in prison:

1. The prison environment hindered the growth and development of children.

When the child is with parents in prison, he sees the culture of prison and the way of living is also different, because of which the child is not developing as a normal child.

2. Most children never experience a normal family life.

The child in prison is just staying in prison with parents, but only some hours are given to parents to be with their children, so such children never experience a normal family life, they do not get personal time with their parents.

3. Socializing patterns got severely affected due to the prison life.

The children are kept in prison with parents for a certain age only, after that they are not allowed to stay with their parents. After coming out of prison, they are not able to socialize with others, because his image is created in society as a prisoner and his development is also affected because of this.

4. Children were unsettled due to the constant transfer from one prison to another.

The prisoners are constantly transferred from one prison to another, and so the children of prisoners transferred are also transferred along with them. These children are unsettled because of constant transfer and it affects their development personally and even socially.

5. The children in the prison showed violent and aggressive tendencies.

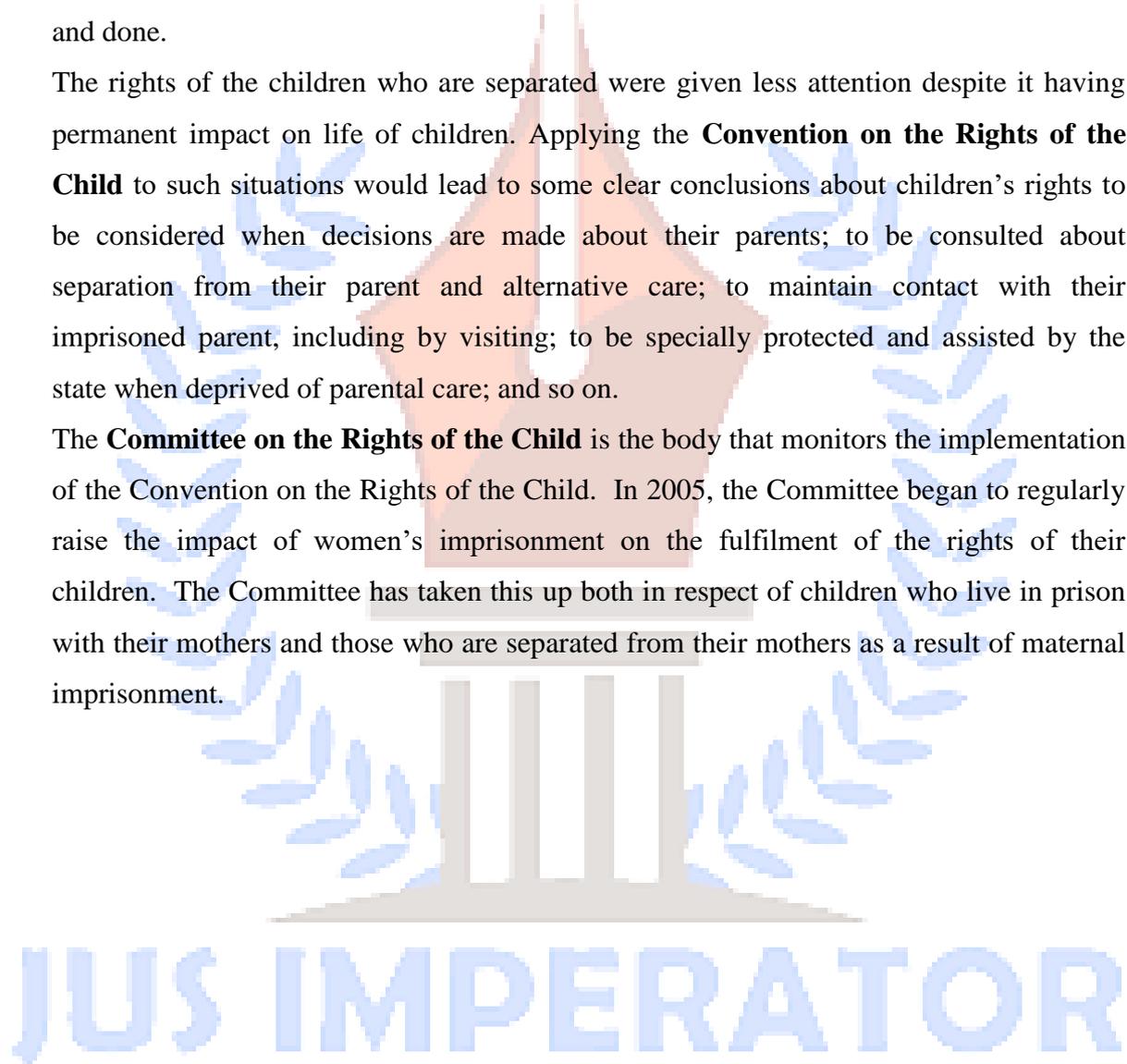
The children who have stayed in prison, becomes violent and aggressive because they have seen such actions since their childhood and so, they tend to become violent on even small matters.

Safeguards established for Children residing in Prison:

When the mother is imprisoned, and she is pregnant, then care is to be taken by the jail authorities by providing her the facilities needed by the pregnant women. And it should be presumed that the babies should not be separated from their mother unless there are compelling reasons to separate them. The well being of the babies should be recognized and done.

The rights of the children who are separated were given less attention despite it having permanent impact on life of children. Applying the **Convention on the Rights of the Child** to such situations would lead to some clear conclusions about children's rights to be considered when decisions are made about their parents; to be consulted about separation from their parent and alternative care; to maintain contact with their imprisoned parent, including by visiting; to be specially protected and assisted by the state when deprived of parental care; and so on.

The **Committee on the Rights of the Child** is the body that monitors the implementation of the Convention on the Rights of the Child. In 2005, the Committee began to regularly raise the impact of women's imprisonment on the fulfilment of the rights of their children. The Committee has taken this up both in respect of children who live in prison with their mothers and those who are separated from their mothers as a result of maternal imprisonment.



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Indian Laws for Children residing in Prison:

In **India**, for the welfare, growth and development of children in prison or otherwise, specific provisions have been made in Part III and Part IV of the Constitution. Apart from this, special laws are made by the government such as, Juvenile Justice Act 2000, Child Marriage Restraint Act 1929 and Child Labour Prohibition and Regulation Act 1986 to protect children.

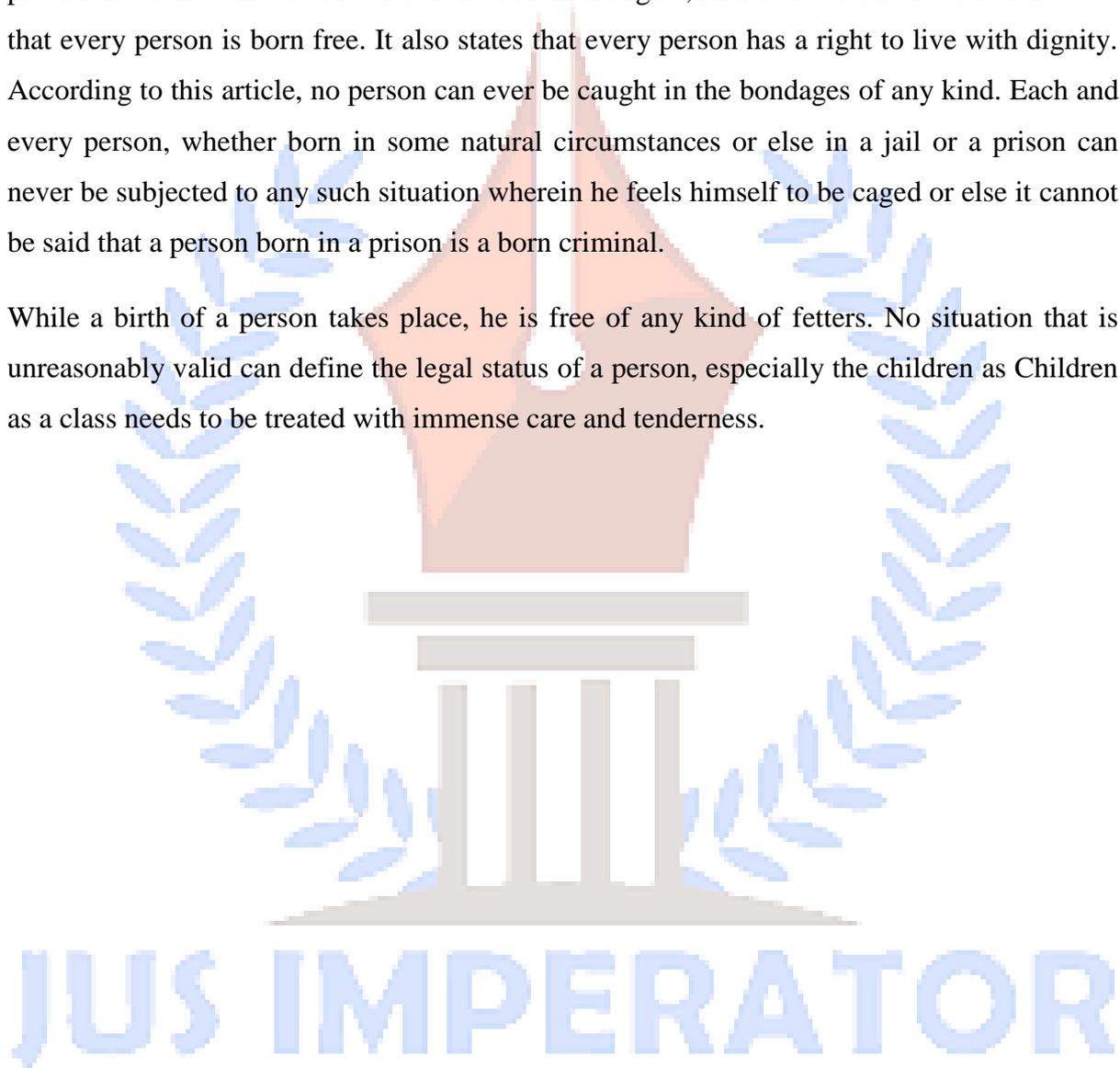
India is also part of the International convention for child rights and has implemented various schemes and programs to reiterate its commitment to the cause of children. It also adopted a national charter in 2003 to provide for the health, growth and development of children and to promote the community in the fight against all forms of abuse against children.



Human Rights and the related aspects to these Children:

Human Rights are the basic and the fundamental rights that each and every human being deserves. The importance of these Human Rights has been acknowledged by the provisions of the Universal Declaration of Human Rights by the United Nations. If we look into the provisions of the Universal Declaration of Human Rights, Article 1¹ of The Declaration states that every person is born free. It also states that every person has a right to live with dignity. According to this article, no person can ever be caught in the bondages of any kind. Each and every person, whether born in some natural circumstances or else in a jail or a prison can never be subjected to any such situation wherein he feels himself to be caged or else it cannot be said that a person born in a prison is a born criminal.

While a birth of a person takes place, he is free of any kind of fetters. No situation that is unreasonably valid can define the legal status of a person, especially the children as Children as a class needs to be treated with immense care and tenderness.



¹UNIVERSAL DECLARATION ON HUMAN RIGHTS, 1948, Article 1 –

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Supreme Court Guidelines:

In *R.D. Upadhyay vs State Of A.P. & Or*², Supreme Court laid down various guidelines for the welfare and development of the children residing in prison, after taking into consideration various reports, affidavits of various State Governments, Union Territories, Union of India; and various submissions. Following are those guidelines:

- Children living with parents in prison should not be treated as a convict or under-trial. They should be entitled to food, shelter, medical facilities and other basic rights.
- When a female prisoner is found or suspected of pregnancy, she must be sent to the district government hospital for medical examination and delivery if required. Before sending a pregnant woman to jail, the authorities must make sure that the jail has basic minimum facilities for delivery, pre-natal and post-natal care.
- As far as possible prisoners should be given a temporary release from prison for delivery. However, if delivery does occur in prison this fact shall not be recorded in the registration office, and naming rites shall be extended.
- Children shall be permitted to stay in the prison with their mother until the age of six. After this, they will be transferred to the surrogate of the mother's choice or a suitable institution run by the Social Welfare Department. Such children shall be kept in protective custody either until the release of their mother or till they are old enough to earn a livelihood.
- The children shall be given proper education and recreational opportunities in prison. When their mothers are working in jail, they will be kept in day care centres under the care of a female warden. Every prison shall have a day care centre and nursery. Children till the age of three shall be looked after in a day care centre, and children above the age of three shall be placed in a nursery.
- Woman prisoners with children shall not be kept in sub-jails unless proper facilities are ensured.
- 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.

²R.D. Upadhyay vs State Of A.P. & Or [2006 (4) SCALE 336].

- 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.
- Children of prisoners shall have the right of visitation.
- Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. 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.
- Courts should take into consideration the guidelines mentioned above when it is sentencing convicts with children.
- Various jurisdictions and State Legislatures also provide financial support for the children of incarcerated parents.
- The State of Kerala “pays a monthly stipend to children of prisoners serving at least a two-year sentence,” and the State of West Bengal has a law providing “that if a detained person has dependent children studying in school or college, the state government will help to pay for the child to continue attending school.” In addition, “some schools in India have lowered their tuition fees for children who are staying in prisons.”
- While the court has laid down guidelines to safeguard children with incarcerated parents, there is no authority to verify that these guidelines are being implemented in jails.
- There are various reports that in some places the children are deprived of basic human rights. In Assam, they have to eat and live with prison convicts as a prisoner.

Conclusion:

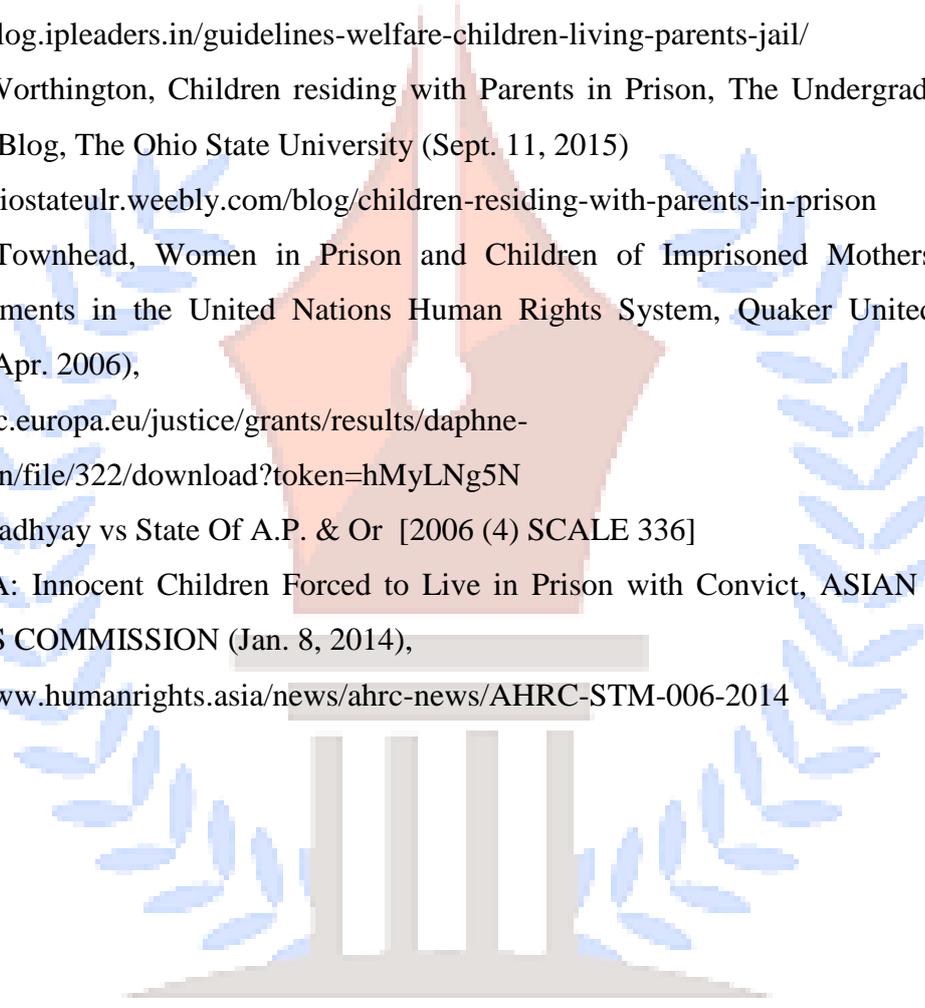
The guidelines and various laws are made, but the enforcement of such laws is not done and because of that the situation of such children doesn't change. The government should make institutions to check whether such laws and guidelines are implemented or not in the prison. The eye should be kept on the prison authorities so that they follow these guidelines and the rights of the children are given to them.

Merely making the laws do not decide the impact that they will cause to the future or to those for whom the laws have been made, but their implementation will be deciding the same. Even when the judiciary and the legislature has put many efforts for combating the ill conditions of these children, There lies some amount of lacuna that needs to be filled. And may be that can be filled only by taking steps that are actually effective and practical and not merely in the black and white.

There is a need of some more effective steps, proper planning, and perfect implementation and may be more stringent laws in order to see that the proper care and attention is provided to these children. Even though this is a big problem which has found its place nationwide, it is not big enough that the Indian Judiciary and the people of today cannot deal with. 21st Century, being so much advanced in almost all the fields we can name can also tackle and combat the situations like this and just few effective steps can easily lead us to an India full of happy children, a Happy India wherein no children would be cursing his life ever!

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