

**3RD NATIONAL CONSULTATION  
ON  
PRISONERS' RIGHTS,  
LEGAL AID, AND  
PRISON REFORM**

**Co-organised by**

**Human Rights Law Network (HRLN)  
Tata Institute of Social Sciences (TISS)  
Commonwealth Human Rights Initiative (CHRI)  
International Bridges of Justice India (IBJ)  
Multiple Action Research Group (MARG)**

**At Tata Institute of Social Sciences (TISS),  
Deonar, Mumbai  
19th - 20th March 2016**

## **Acknowledgements**

The report is based on the '3rd National Consultation on Prisoners' Rights, Legal Aid and Prison Reforms' held in March 2016 by Human Rights Law Network in Mumbai. The focus of the consultation was primarily legal aid in the purview of prison reforms. The report represents the main issues, problems and ideas we shared in the forum with a hope that we work in solidarity towards achieving them.

We extend our gratitude to organizations that participated in the Consultation. Their experiences, views and suggestions have been incorporated and are precious. It would help us in building and following a common path.

The Consultation was a result of the combined effort of the entire team of Criminal Justice Initiative project at Delhi and Mumbai, Human Rights Law Network. A special word of thanks to Ms. Ritu Kumar for her coordination for the Consultation and for putting the publication together.

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## Introduction

The 3rd National Consultation on Prisoners' Rights, Legal Aid and Prison Reform was organized from 19th–20th March in Tata Institute of Social Sciences, Mumbai. As in the earlier consultations, NGOs, lawyers, activists, academicians, working with prisoners on various aspects, gathered, discussed and shared their experiences in the prisons. The aim of these consultations has been to identify plaguing problems and ambiguities in prisons, and come up with solutions to address these concerns. This Consultation focussed on building and strengthening the legal aid system, ensuring an effective monitoring mechanism and building partnerships and a network of prison reform activists.

The National Consultation was organized by Human Rights Law Network in collaboration with Tata Institute for Social Sciences (TISS), Commonwealth Human Rights Initiative (CHRI), International Bridges to Justice India (IBJINDIA) and Multiple Action Research Group (MARG). About 120 lawyers, activists, academicians, from across India participated in the consultation for two days to review current practices and produce specific recommendations to accelerate the process of reform and to form a network for carrying the recommendations forward to the next stage.

The Consultation saw participation from National Legal Service Authority (NALSA) and Delhi State Legal Service Authority (DSLSA), with the officials sharing the ways in which they have sought to improve legal services under their jurisdiction. The officials also engaged with the lawyers in order to find a solution to improve legal aid systems in the prisons.

The participants shared their experiences in legal aid from conflict zones to studies conducted in various states by different NGOs, to best practices.

Former inmates shared their experiences in the prisons which moved the participants. The consultation also highlighted the lacunae in legal aid in the various States of India – with lawyers trying to raise their concerns on the plight of poor prisoners. Some lawyers expressed their concerns on lack of access to prisons resulting in conflicts with officials and how the same could be improved.

The issues of juveniles, women inmates, and the harassment faced by prisoners from minority communities were discussed at length. The various options of filing PILs, RTIs, and setting up of Legal Aid Clinics as possible solutions were also discussed.

At the end of the two days, it was resolved that to address the various concerns that have been highlighted in the course of the consultation - a National Forum would be created, where the various NGOs can come together on a common platform to raise the issues collectively in order to bring change in the Indian prison system.

## **Critical Issues on Prisoners' Rights, Legal Aid and Prison Reform**

### **COLIN GONSALVES**

*Senior Advocate*

*Founder Director, Human Rights  
Law Network*

Sr. Advocate, Colin Gonsalves welcomed everyone to the consultation.

Looking back in time, Mr. Gonsalves observed that perhaps, the state of India's prisons was marginally better a few decades back. He stated that despite some landmark judgments on the part of the Supreme Court, there is little change of reality on the ground. He cited the case of Soni Sori, who was illegally detained by the police and tortured in prison in Chhattisgarh.



People languish in jail long past the maximum sentence possible, let alone half the sentence, he stated. So is the case with respect to those arrested on bailable and petty offences under Sec. 107 and 110 of the Cr.P.C. Mr. Gonsalves called for everyone to be insurgents of law. He appealed to one and all that the system of law must be hammered with persistent effort to bring about change.

He cited the report on prisons in Bihar prepared by Adv. Anshu, which gives a horrific detail of the state of India's prisons.

He acknowledged the presence of some brilliant judges in India's courts, who are handicapped by the fact that not many cases are coming up before them. He urged everyone to use the instrument of PILs with active urgency when it comes to tackling issues such as prison reforms.

He cited the rising number of deaths in custody, including juveniles, petty offenders, mentally disabled prisoners etc. Incarceration has become a terrible crime in itself, he said.

He acknowledged the Delhi model of Legal Aid, led by Mr. Dharmesh Sharma.

Time for change has come. Kanhaiya Kumar emphasizes that change, it is time to bring about 'azaadi' to India's prisons. A terrible history is no longer an excuse, he said. Change must come to India's prisons if we work hard and together.

## **ARVIND TIWARI**

*Dean, School of Law, Rights and Constitutional Governance (TISS)*

Prof. Arvind Tiwari extended a warm welcome to everyone, on behalf of TISS, HRLN, CHRI, IBJ and MARG. He traced the history of prison reforms in India, from the time of Sir Walter Reckless, on whose recommendations the Prison Manuals were first sought to be revised in 1952. Walter Reckless, who was instrumental in setting up the Centre for Criminology and Correctional Administration at TISS, Mumbai had consulted various parties and stakeholders in his time here, especially at TISS.



Prof. Tiwari elaborated that TISS has a specialized programme in Rights and Justices, and a Masters program which allows students to spend a semester studying and understanding the condition of prisons.

He spoke about the new Prison Manual of 2016 which has provisions for access to legal aid services, rights of prisoners, etc. He, however, expressed his concern over the new prison guidelines which were causing problems to civil society in bringing any further developments in the prisons, especially provisions such as the requirement of a deposit of Rs. 1 lakh for conducting research on prisoner's conditions.

He also questioned the training and expertise of prison officials, the specificity of the training they go through, as they are the ones on the ground to enforce such rights of the prisoners.

Acknowledging the opportunity the consultation will provide to everyone, he hoped that it will bring in a lot of ideas and inputs in improving the prisoners' conditions in the country.

## **MAJA DARUWALA**

*Executive Director, CHRI*

Ms. Maja Daruwala acknowledged the work of every one present at the conference. She observed that issues with prisons and prisoners' rights are not necessarily new but judiciary's active role in safeguarding prisoners' rights is. She referred to the 'stop and go nature of prisoner reforms in India', a trend disruptive of the interest and activism exhibited by civil society.



Talking about the gaps, she pointed out that the top echelons

of the Prison Services are held by police officials, who are clueless about the situation on the ground, and do not have adequate training to tackle the nature of such correctional facilities. Structural Issues are consistent and ever-encompassing, she said. In Rajasthan, the DG of Prisons has stated that 'prisons are severely understaffed'.

She mentioned that there is a certain inconsistency with the efforts of all concerned stakeholders. There is no uniform action to tackle such issues. She called for the formation of a National Forum, with stakeholders from all parties and organisations to tackle such issues.

There is a general complacency and attitude problem with the bureaucratic nature of prisons in India. Everyone feeds off the myth that, nothing can be done and prisons shall always remain as they are, therefore hardly anything is done about such issues.

She cited an example where advocates for prisoners are inconsistent with marking their presence in court, which is why remand of prisoners is unduly extended.

She stated that the system of bureaucratic comfort must be broken by bringing in a system of accountability against those who fail to do their duties and therefore, endanger the rights of the prisoners they are supposed to serve.

State Human Rights Commissions are singular in their focus on prisoners' rights, ignoring the multi-faceted nature of the issue at hand. In Rajasthan for instance, statutory law is thrown out of the window and legal bodies such as 'Visitor's Boards' in Prisons are largely ignored. Consistent call for new legislation is an unnecessary fallacy as on-ground implementation is missing.

She pointed out that every organization in civil society may be limited by their own mandate. So it is even more important for the cooperation of all concerned organizations to work together to tackle such issues.



## **Role of Legal Aid Authorities and Monitoring Committees**

### **R.K GOEL**

*Director NALSA, Additional District & Sessions Judge*

Mr. R.K. Goel began with the importance of understanding the meaning of who is a 'prisoner'. Prisoners are not just those persons who are confined in jails. But a person sitting in the police station from 5-6 hours, for the registration of his legal grievance is also a prisoner, even though for the police he would be considered as an arrestee.



A prisoner is a person 'whose legal liberty has been denied, and who has been confined to a particular place against his will'. Therefore, a prisoner is the person who is in police custody or judicial custody, who is facing a trial or has already been convicted.

The prisoners have human rights, full constitutional rights, right to have access to good food, to shelter, to security, to legal representation, the right to meet their family members and relatives, they have every right except one.

The only right they don't have is that they can't be released from the jail as per the law, only an order from the court can have them released.

NALSA is an institution working at the national level, at the state level with state legal services authority, at the district level with district legal services committees. Each of these institutions is headed by some judicial officer.

The work of NALSA has been influenced by a number of judgements which have asked these legal institutions to do something. One of the main judgements is the Kasab judgement. that emphasises on the importance of legal representation, he said.

### **Remand Advocates**

Following the Kasab judgements, NALSA has given the mandate of appointing remand advocates in all the courts. A remand advocate means that an advocate has to be there in every court dealing with criminal matters. Mr. Goel explained that these advocates would be funded by the legal service institutions. The remand advocate has to be present in every court across the country which is dealing with criminal matters, even on holidays and Sundays. For instance, in case some person has been arrested by the police on Saturday, and that person has to be produced before the court within 24 hours, in other words on a Sunday, a remand advocate has to be there to represent that undertrial prisoner.

### **Jail Clinics**

Another direction from NALSA has been on the existence and implementation of jail clinics Mr. Goel stated. As per the directions of the Hon'ble Supreme Court, there has to be a jail clinic in every jail. The purpose of establishing jail clinics is that as soon as a new person is lodged in jail, he has the opportunity to meet the legal aid counsel there. Jail visiting advocates working with NALSA are supposed to be in jails, everyday, or once a week, or twice a week as per the requirement.

Mr. Goel, however, expressed his concern over the discrepancies between their information and the reports he received from other organisations. Their information, which was based on the responses sent by all state legal services authorities, stated that there was a jail clinic in every jail. However, the reports from NGOs are showing that even if jail clinics are existing on paper, in theory, they are actually not working.

He, therefore, requested all the NGOs attending the consultation to tell him and NALSA if the system of jail clinics is efficiently working or not.

### **Appointment of Defense Lawyers on Pilot basis**

Mr. Goel also shared that NALSA was thinking, of implementing a scheme of having a full time defense lawyer available from 10am to 5pm and on public holidays, on a pilot basis. He explained that the payment for the same would be made by NALSA itself, and the amount would be more or less the wage of an independent advocate. It would be implemented in 4 states, as part of the experiment, and most probably Haryana would be one of the States.

### **Role of Monitoring Committees**

Talking about the Role of Monitoring Committees, he said there are two kinds of committees - Monitoring Committee and the Undertrial Prisoner Review Committee. The role of both these committees are very different.

### **Undertrial Review Committee**

The Undertrial Review Committee, was initially established pursuant to the order of Hon'ble Supreme Court in the case of *Re: Inhuman Conditions in 1382 Prisons*. After which, the Ministry of Home Affairs issued a directive dated 13th March 2013 to all district collectors, and prison heads, to constitute a committee

having District Judge as a chairman, and SP and DC as members. The District Secretary has been made a member of the Undertrial Review Committee.

The first directive to that committee is that they have to have a meeting every three months, which is mandatory, and the committee is expected to consider the cases mentioned under the following three categories:

- of undertrials who are entitled to be released under 436A
- when an undertrial has been granted bail but not released because of not being able to furnish a bail bond.
- of undertrials who can be released in compoundable offences

Recently, the functions and the scope of the committee has been extended and the committee can look into jail petitions also.

He urged the NGOs to give information regarding the cases mentioned in these three categories. He assured that they will let the organisation know within one week what has happened to the inmates whose names were given to NALSA and whether they could be released.

However, Mr. Goel warned the participants to be careful on the data they collect and share with the officials, as some prisoners are not willing to have legal aid for multiple reasons: as every case is a particular one and represents different realities and features.

### **Monitoring Committee**

As far as the monitoring committee is concerned under the NALSA Free & Competent Resolutions 2010, NALSA has applied for certain amendments to be made to the constitution of that committee, Mr. Goel explained. A senior officer of the judiciary, a member from the Bar and the secretary at the district level also would be a member of the Committee, as per the suggested amendments.

The task assigned to that committee is two-fold: First, the committee is concerned only with those cases which are court-based, i.e. providing legal aid to those cases pending before the court. Basic job of this committee, is to check the progress of the cases where they have provided legal aid.

The monitoring committee has the right to access judicial records, and to check the competence and performance of the legal aid counsels. I found that the monitoring committee was not working, but this is a challenging feedback for us and we are working on these two aspects, Mr. Goel concluded.

## **SANJEEV JAIN**

*Special Secretary, Delhi State Legal Services Authority*



Mr. Sanjeev Jain began his presentation by observing some of the comments of earlier speakers on whether the current system in India was not functioning.

**“Has system failed us, or have we failed our system?”**

An answer to this question may only be found by addressing the fundamental issues that plague this system of ours, he said. As members of civil society, everyone has two choices; change or to sustain the status quo. The process of change is a hard one, in face of opposition and criticism.

Despite the fact that it has been over 60 years since independence, we are far from a democracy in every aspect of our roles, duties and responsibilities, Mr. Jain commented.

The fundamental rights of a Prisoner include Bail, Fair Trial, Sentencing and other Rights of Convicts.

## Probation for First Time Offenders

Talking about sentencing, he said traditionally in law there are three options: Fines, Imprisonment and Death Sentence. Now a days, in all the training programs of Delhi State Legal Service Authority (DSLISA), we are taking up this particular subject of the sentencing policy very specifically and telling our judicial officer, legal aid advocates, and the Hon'ble members of the Bar, that even though we cannot change the law right now, within the given system of the law of sentencing, we have so many options. In this country, the provision of probation is rarely used despite S.361 in CrPC which specifically states that court has to give a special reason to decline the provision of giving probation in the case of first time offenders. I hardly find any order when the court gives special reasons. This provision is in the benefit of all - the prison authorities, society at large, the individual, the country, and the public exchequer. For eg., when a young person is arrested for contempt of law, he may be jailed for six months, but the court has the option, where he may be admonished or he may be released on probation. He emphasised on the use of this provision.

Mr. Jain also spoke about the provision of **remand advocate** in each and every court in Delhi, with 366 days presence. This is a system that has worked fairly well in Delhi, he said.

He also spoke of the **Legal Services Clinics** which have been opened by DSLISA and are functioning across all 11 jails in Delhi. The timings are 3-7 pm on all working days. Inmates serving long term sentences serve as **Para Legal volunteers**.

**Legal Awareness and literacy**, especially on plea-bargaining cases has risen to great response.

**E-Kiosks**, also known as "Chakkar" areas have been provided to all inmates in Delhi's jails to facilitate them access to all information pertaining to their cases.

**Monitoring Committee** has been established.

**Inspections by DLSA** to all jails and observation homes to ensure that rights of such inmates have not been violated.

**Translators/Interpreters** are going to be provided in Women's Jails.

**Software** has been devised having a master compendium of all convictions recorded in Delhi, one which shall be easily accessible to all.

Further, **grievance slips** are now being made available for undertrial prisoners and **Medical Aid** to inmates is being provided.

A lot has been done. A lot more is left to be done. Mr. Sanjeev Jain called for **collective action** on the part of all to bring about change in the status and conditions of the prisoners across India.

## Discussion

**Q.** Quality of lawyers as remand advocates or legal aid services is pitiful. Is there a selection of competent lawyers for the job? Is there a mechanism where a person if not satisfied by the services of a legal aid officer, can avail of any other such officer?

**Sanjeev Jain :** Quality of lawyers depends a lot on the quality of the Bar. He stated that the selection of such lawyers for such responsibilities is on the shoulders of higher judicial officers. If however, such selectees are failing in their duty, then truly the system has failed.

Mechanism to replace legal service advocate is being devised if the accused is dissatisfied with his service.

**Mr. Goel:** The fee structure for the panel of legal services advocates is being reviewed and hiked soon.

Legal aid for the witness is also being looked into.

## Legal Aid for Prisoners of Conscience

### VIJAY HIREMATH



Mr. Vijay Hiremath stated that he did not differentiate between a prisoner of conscience or any other. Legal Aid is required for every prisoner, for any offence committed by him. This is seriously hampered by legal service officers who are unqualified, or least interested in providing legal services.

### Examples of cases

He cited the case of Aseem Trivedi who was charged under sedition for drawing a simple cartoon, wherein lawyers refused to represent him for fear of violence against them.

He further cited the case of a local Urdu editor who re-printed the Charlie Hebdo cartoons in a magazine. Vendors who had sold these magazines were also arrested. Sai Baba, released on bail for a while but, is now in custody, due to personal issues between judges.

Today, differential or liberal thought has become a crime, he said. This has led to a fear of speaking out. If there is an organization that is ready to assist and help such people, perhaps there will be more people capable of speaking more freely.



## **NIHAL SINGH RATHOD**

*Advocate, HRLN, Nagpur*

He stated that the time has come that as lawyers of conscience, we must stand with prisoners of conscience. We cannot stand silent as people are arrested just because they don't subscribe to the thought and thinking of the majority.

### **Examples of cases**

He noted a case wherein a man was tortured and charged with falsified murder cases so as to make him an informer for the police. Similarly, a highly educated man in Chandrapur was picked up outside court, in front of a battery of lawyers.

He cited the case of Umar Khalid, who is viewed widely by most as terrorist through highly doubtful and gullible eyes.

He noted another case of a 65 year old who has been in jail without bail for over 6.5 years, for being a member of a banned organisation, not an offence under Indian Law. There are more who have been in jail for periods longer than that.

He reiterated the case of Sai Baba, a man who is 90% disabled, who has been in custody and tortured, for simply running a campaign against the government for commercializing tribal property.

**He concluded by saying that representation should not depend on our subscription or non-subscription of any particular ideology or ideologue.**

## Strategies for Release of Undertrials



### **MAHESH BORA**

*Senior Advocate, Rajasthan*

Mr. Mahesh Bora began by emphasizing that this is the most crucial session of the consultation as most of the undertrials are downtrodden and are in jail for petty offences. He said these undertrials are most at risk for remaining in jail for years, over the more affluent prisoners. This includes many, who are in jail for bailable offences, which is a fundamental right of such prisoners.

Provisions of law which contemplate the release of undertrials on personal bonds are not followed. There are also cases where rightful parole is denied because the person is unable to furnish security or surety. Amendments have been made to the sections regarding bail, especially Ss.436 and 436(A) but the new measures have not

been implemented. For instance, if a Magistrate tries a case after framing of charges, the trial should be completed within 6 months or so. Now, if there are 50 or 100 witnesses, there is no question of completing the trial within the stipulated period.

The system of surety is flawed as often, courts insist on local surety. However often, persons are arrested in places where they know no one. This in fact, is restrictive of the prisoner's right to be released on bail, even as bail can be granted against personal surety.

This is also reflective of the fact that rights in India are always attached with riders. The system of bail in India, as granted by a Magistrate in Court is distinctly similar. Rights, such as the right to bail must not lie wholly on the Magistrate as this hampers the right to exercise bail by such undertrials.

There is also an issue with the training and attitude of judges, especially in the lower courts where even those charged with petty offences are viewed as serious criminals, and are therefore, left to languish in jails without opportunity to exercise their right to bail.

## **CAROLINE COLLASSO**

*Advocate, HRLN, Goa*

Caroline Collasso began with a focus on the large no. of undertrials in Goa, especially those charged under the NDPS Act.

### **Imposition of costs on PP for non-appearance of witnesses**

She said trials stretch up to almost 5 years for a single case. S.309 gives the power to the court to postpone or adjourn proceedings, but

it has got a rider which says that adjournment can be granted, by imposing costs to the Public Prosecutor (PP) and to the advocate. In NDPS courts where a particular witness does not come for 8 - 9 times, and yet the judge continues to give an adjournment. In such cases, exemplary costs are needed to be imposed, because the minute exemplary costs are put on the PP, they will bring their witnesses to the court or atleast they will be stricter in bringing their witnesses to the court.

### **Examination of technical witnesses on affidavit**

Further, in an NDPS case, there are approximately 7 or 8 witnesses. Of these, atleast 3 major ones are technical witnesses, like the chemical analyst, or the scientific assistant who takes the drugs. In a murder case there is the autopsy doctor, the blood reports, etc. Therefore, all the technical witnesses should be examined on affidavit, as this saves a lot of time of the court.

### **Better treatment of witnesses**

Another issue is the reason why the witnesses do not want to come before the courts. One of the reasons is that the witness is subjected to stand in the witness box, he is not given any transport money or food, and maybe subjected to hours and hours of cross examination. The witnesses should be treated better.

### **S. 436**

On the aspect of bail, S. 436 is very clear. The person 'shall be granted bail', and if the person cannot furnish the bail amount, within a month the court should assume that he is indigent and therefore should be granted bail.

### **Solvency of surety should not be insisted upon**

Under S. 437 in bailable offences if granted bail, it should not be insisted that the surety should be solvable. Solvency of the surety is with regard to property, and to get the solvency, one has to go to a collector. If a person is from another State, and he has to get a solvency certificate from a Collector, it leads to corruption. Therefore, it may be easier to get a fixed deposit receipt and/or an RC book of a vehicle, which can be impounded in case of non-compliance.

Further, deposits should be allowed instead of local surety under S. 445.

### **Right to bail for not filing of a chargesheet under S. 167**

The judge should inform the accused of their right to bail, and release the undertrial on bail immediately if the chargesheet is not filed by the mandatory 90 day, 180 day, or 360 day rule, as applicable.

**Remand Advocate** is required as this allows such accused a legal remedy or awareness of right before trial.

**Plea-bargaining** is still considered a sentence, while **compounding of an offence** is looked on as an acquittal. Therefore, instead of plea-bargaining, compounding of offence maybe used for first time offenders.

**Training of legal aid lawyers** must be stepped up. **Increase in number of judges**, especially those dealing specifically with criminal cases.

## **SR. SUMA SEBASTIAN**

*Advocate, HRLN, Delhi*

Sr. Suma Sebastian began with stating the directions given by the Hon'ble Supreme Court in *Re: Inhuman Conditions in 1382 prisons, W.P. (C) 406/2013* to reduce the number of prisoners in overcrowded jails and directions to prison authorities to take steps to release those languishing in jail for not being able to pay the bail bond.



She said this approach is revealing a new trend, and the same is very heartening to note. She recalled the case of a TB patient, who was also a proclaimed offender, of impoverished means from Uttarakhand and was granted bail on personal bond thanks to a really progressive judge. She pointed out that though the system is flawed, there are still good judges who are willing to provide bail on personal bond, if the fact about their poor circumstances is brought before them.

She said with the help of some of the SC judgements like *Hussainara Khatoon* and *Motiram* where J. Krishna Iyer says bail is a fundamental right, she has been able to argue effectively and convince the judges in granting bail on personal bond, and for reducing the bail amount in some cases.

Expressing hope in the legal system, Sr. Suma said civil society and bodies such as DSLSA and NALSA should work together with the judiciary and lawyers to make way for a brighter future for our prisoners. It is our duty and responsibility to fight for those behind bars, she said.

## **RAVINDRA VAIDYA**

*VARHAD*

Mr. Ravindra Vaidya explained that he is a social worker who works with prisoners in the jails in Maharashtra. He said most of the requests of the inmates are related to legal aid. However, the same is not very effective.

He cited a case study from Central Jail in Maharashtra, where not a single case has been found eligible for release under S. 436A in the last 1 year. Questioning the setup of Jail Adalats, he said though most prisons in Maharashtra already have Jail Adalats, where Magistrates visit, however less than 10 people have been released.

In Maharashtra there are 9 Central jails, and though the presumption is that Jail Adalats will help the prisoners, but in reality they are not helping a large number of prisoners.

Further, Prison Administration is complicit in failing to ensure the enforcement of the provision of release on bail on personal bond. Undertrials are not being produced in court, as there are **not many officials present to escort** such accused to Court, he noted.

Composition of undertrials has been changing dramatically. Today, a rising no. of undertrials are charged under S. 376 because after the Nirbhaya case, courts are reluctant to grant bail in such cases.

**Legal Aid Committees are often interested in going to trial**, and not concerned with bail which is a right guaranteed to many of the prisoners, especially those booked under a charge of a bailable offence.

Mr. Vaidya further questioned the functioning of the legal services authority and the committees in Maharashtra, stating that there was a gap in the **communication between the committees and the prisoners**.

## SILVIN KALE PRAYAS

Mr. Silvin Kale appraised the many legislations that are there in law but noted that implementation is far from satisfactory.

He called for a much more **careful reading of Section 436** concerned with arrest on bailable offences. He pointed out that bail shouldn't be granted after a brief stay in custody or jail, but must instead, be enforced soon after arrest.

**Plea-bargaining** is a wasted system as the collapsing infrastructure is in no way equipped to deal with the current practice.

He cited and commended the Probation of Offenders Act. However, he felt that **Judges and Magistrates were not sensitized enough to follow the provisions of this law.**



## Legal Aid in Conflict Zones

### AMARNATH PANDEY

*Advocate, HRLN, Chhattisgarh*

Mr. Amarnath Pandey began with a discussion on the changing definition and idea of what constitutes a conflict zone. He continued by reminiscing of a time when no person was subjected to torture in police custody.



Recounting his work in the Surguja district in 1998, he said the Maoist Movement had come into operation. During that time the villagers were being picked up and thrown into the jails. Surguja district is a big district, with courts in Ambikapur, Ramanujganj and Pratakpur, which are more than 100-150 kilometres away from each other.

Since in those times we believed in the law, and that if the police would take someone they would inform the neighbours, we went to the police superintendent to complain that the law was not being followed. The police superintendent laughed it away, but I didn't understand it and thought that maybe the superintendent thought I was lying. But I slowly experienced the reality. I found that as the Maoist Movement spread in Surguja district, the police brutality against the villagers spread with the same speed.

In Chhattisgarh, Maoism has become synonymous with police

violence and torture on poor villagers. People began to be picked up by the Police, only to end up dead after questioning. There are more falsified cases than actual ones.

There is also an attempt to suppress the people who are on the side of justice.

There is an advocate in Ambikapur who was providing legal aid but was tortured to such an extent that he went mad and his treatment is being done in Ranchi. There has been so much torture inflicted upon me that I have suffered from depression and anxiety. I had 28 trials against me. I went to High Court and put forth my petition. Three months ago, all those trials against me were quashed by the High Court.

The actions that takes place against legal aid workers is not a new thing. Legal Aid in conflict zones therefore is a difficult and hard work.

## **SHALINI GERA**

*Jagdalpur Legal Aid Group (JAGLAG)*

Ms. Shalini Gera began with giving the audience a background to Jagdalpur Legal Aid Group (JAGLAG).

When we started, we wanted to understand what legal aid means. So a large part of our work there was actually on documenting what the legal requirements were and we started with under trial prisoners. We have 3 jails in Jagdalpur in Bastar division and we started with looking at these 3 jails.



Chhattisgarh has the distinction of having the most overcrowded prisons in all of India. In India, overcrowding on average is 118%, which means that with a capacity of 100 prisoners, there are 118 prisoners. In Chhattisgarh, it is 261%. And in district jails, for eg. Kanker District Jail in 2013 it was 428%, which crossed to 600% in 2014. There is not enough space for the prisoners to sleep. The causes for over-crowding is that they are a poor state and a poor district.

In India overall we have 34 prisoners per lac population, but in Bastar we have 78 prisoners per lac population. Just looking at the undertrials for that population in Dantewada, the numbers here are 5 times the national average, 105 compared to 21. The arrest figures showed that the problem was not that a lot of people were being arrested, but once they get into jails they are not able to get out. A large number of cases from Dantewada's session court were that of group crimes. Almost half of the cases disposed had more than 5 named accused, 25% had more than 10 named accused. In fact, there are charge-sheets where more than 90 individuals are named as accused. Entire villages are picked up and put as accused.

While in India, on an average, a third of the undertrial population is facing charges for Murder/Attempt to Murder, in Dantewada 86% of undertrials are facing charges u/s 302, 307. That means bail is difficult to get. All that is happening is basically overcrowded jails full of Adivasi prisoners, with really poor conditions put for heinous crimes for really long periods of time.

They're not able to get out on bail, but when they do get the judgements, the acquittal rate between 2005-2013 is 96%.

There is a Naxalite Mission 2016 that is being carried out in Bastar, with the view of taking out all Naxalites but which really translates on the ground as taking out all tribals instead.

For our documenting of cases of how the troops were going in on anti-naxal operations and terrorising the entire village by destroying homes, throwing away their supplies and engaging in mass sexual violence, gang rapes, disrobing and beating up women; we have been persecuted by the local bar association, the police, the press, and the society. As a result, we have had to leave Jagdalpur after being constantly threatened and harassed.

## **LIX ROJ**

*HRLN, Chhattisgarh*

Mr. Lix Roj stated that the system of law as it stands in the State of Chhattisgarh, is facilitating atrocities and violence sponsored by the State. He said that all organs of the State are hand-in-hand in facilitating such atrocities on the people.

Displacement, State and the Law itself are primarily responsible for the rise of conflict in this zone. For eg., in the name of Land Acquisition Bill, people have been kicked out without being given compensation. This has been followed by exploitation and atrocities by the corporates, contractors, and the 'gundas'.

Legal Aid should be provided at the point where the conflict starts, when the people are targeted, when they are in the process of being taken into custody.

Going to prison on fake charges, going through the process of being charged, pushed behind bars, going to courts, looking for bail, applying for bail amount is in itself a punishment for the innocent persons. Medical treatment isn't given, other facilities are not there.

How do we tackle this? How to provide justice through the temple of injustice, he questioned.

## SHAH FAISAL

*Advocate, HRLN, J&K*

Mr. Shah Faisal spoke of the absence of any Child Welfare Boards or Juvenile Justice Boards in the State of Jammu & Kashmir, even though there have been orders passed to this effect by the High Court.

He also spoke of the J&K Public Safety Act, 1978, wherein the Deputy Commissioner has the power to send any person to jail for 6 months to a year by simply prescribing that the individual is anti-national, anti-social, anti-state, etc. This law has been abused and misused from time to time, he stated. 90% of such cases have been quashed by the High Court. He called it the “lawless law”.

He said it was difficult for a lawyer to work in conflict areas. He recounted that his senior was asked by the IB personnel to be in the police station once a week. Such things make it difficult for lawyers to work in Kashmir. But we are doing whatever is possible, he concluded.

## SHAFQAT

*Advocate, HRLN, J&K*

Shafqat began by stating that Jammu and Kashmir has for long lived an aloof and detached existence from the rest of India under a different system of rule of law and double standards regarding rights. We have AFSPA, wherein you can kill someone on the basis of suspicion, you can blast his house and whosoever protests against that they label them as terrorists, he said.



As far as providing legal aid is concerned, I remember an incident, where one of my friends was a counsel to one of the accused persons who was charged under sedition law. He got a bail order in his favour, but since there was nobody to take that bail order to the police station, he himself went to the police station. After coming back from the police station, his clothes were torn, he was bleeding. When this is the situation with a lawyer, you can imagine what is happening with ordinary people.

There was a case in Shaben area of two girls, who were sisters-in-law, he recounted. They were first gang-raped by the army, then dumped in the stream. Whole of Kashmir protested against this incident for 2 months. There was a total shutdown of the whole of Kashmir. CBI was appointed to cover-up, not to solve the case. CBI in its finding said that they died after drowning in the stream, even though the water level in that stream at that point of time was not more than 1½ feet. The persons who were fighting their cases, for eg., the doctor who gave evidence was charged for giving false evidence, the lawyers who represented the case from the side of the girls were charged under different sections of IPC and many people who supported that movement, all were labelled as terrorists. This is what happens in conflict zones, he stated.

Laws and its machinery have facilitated the sustained practice of atrocities on the civilian population in Kashmir.

## **FARHANA LATIEF**

*TISS*

Ms. Farhana Latief explained the situation in Kashmir stating that it has been declared as a disturbed area under the Disturbed Areas Act. There is AFSPA, Public Safety Act and many other acts to secure and grant impunity to the agents of the State to maintain law and order. Though whether Kashmir is a law and order problem is a debate in itself.



Talking about legal aid in conflict zones, she said for a lawyer or an authority to grant legal aid to prisoners or arrested persons, one needs to look at the stage of filing of an FIR. We have two detaining agencies working in Kashmir, one is the police, the second is the Armed Forces of the Indian State.

At the level of the police, where there are thousands of arbitrary detentions, the legal aid would begin when an FIR is registered. The police would have to show that they are in custody of the persons, but that does not happen. She noted that public holidays in Kashmir have become an excuse for the security forces to round up young boys in the name of law and order. Most of these boys are underage. No FIRs are registered and no other record of arrest maintained. Police starts to harass the family for money in exchange for an official record of arrest and possibly, a safe detention. If the family is ready to pay a good amount of money, the case wouldn't be registered against the person and he is released, and if they are not able to pay the money, FIR is lodged, the juvenile is put in the prison.

Ms. Latief stated that, on the other level, the detentions by the Army and the Armed Forces have resulted in "Enforced Disappearances", as they are called in Kashmir. There are tens of thousands of such persons in Kashmir, who are missing, for whom there are no records. This has stopped recently because there is a movement happening in Kashmir against those Enforced Disappearances.

In such a scenario, even if there is legal aid which is being provided by the State mechanism, there is a huge trust deficit. How can people go to the lawyers who work for the State in a legal services mechanism, and trust them to fight for the persons who

have been victims of the violence of the same state, she questioned.

This has caused a huge contradiction and has resulted in a lack of faith between the civilian population and the law enforcement machinery.

## **RUDRA PRASAD**

*Advocate, HRLN, U.P.*

Mr. Rudra Prasad spoke about the Adivasis (Tribals) in Bundelkhand, UP, who form two-thirds of the population there. The Adivasis are implicated and sent to jail, in the name of unsocial elements or dacoits. The problem is related to drinking water and wood, for which they have to travel 5-10 kms. The men go with 2-3 female relatives, and when they return, they get dry wood for cooking for which the forest officials attack them. They rape the women, beat them, and if they protest, they file cases and send them to jail. These Adivasis are picked up by the police, and locked up for 10-15 days in jail, beaten up, and not given any food. When the Adivasis die, the police say that they have run away or committed suicide.

HRLN fought their cases, as a result of which the police officials have landed in jail. Because of this the officials have destroyed our office. And now if someone tries to assist any of the women, the police gets them involved in some case. There have been threats against us as well.

Mr. Prasad suggested that Legal Awareness programmes with respect to Legal Aid should be conducted amongst the Adivasis, especially the youth, so that they can understand and fight for their rights.

## **Discussion**

**Q:** The Bar Association is clearly opposing the functioning of Jaglag in Chattisgarh. What is the outlook of the Adivasi lawyers



who are practicing in Jagdalpur? Are they in support?

**Shalini Gera:** We were largely in two district courts, Dantewada and Bastar. Bastar does not have a large number of lawyers, neither of them do, but we haven't faced problems in Dantewada. Even in Bastar, we have had individual support from a lot of lawyers, but the environment is such that no one feels confident in supporting us publicly. We get sympathetic messages in our phone calls when we are surrounded. But it's not like no one can take the Bar Association on. There is a close nexus between the police, the Samajik Ekta Manch and the Bar Association. The same people are behind them and there is a question of terror that if you're seen publicly supporting this then you're going to be the next target. So it's not that individually we're not getting support but that's not enough in the State of Terror.

**Q:** For local areas, there would be some lawyers who are filing cases for defending tribals, and what is the attitude of the police towards those lawyers.

**Shalini Gera:** Over there most of the cases are Naxali related cases and most of the lawyers are fighting those cases so we're not doing something that is uncommon. We started being targeted as Naxalite Lawyers largely because we started raising uncomfortable questions, a lawyer over there does not feel comfortable enough to go to the thana and take the police head on, asking, 'Why are you not filing an FIR in the case of an extradition killing?'. It's not that the local lawyers do not want to do that but they know the vulnerabilities. Those were the issues we started raising when we got into trouble. We chose some of our cases and went after them, just those would have been tolerated. But it's when we went after filing of FIRs in cases of rapes by security forces and cases of extradition killings, that is when we started coming under fire. And those are the things that local lawyers are not comfortable doing because of this attitude of the police.

## Women/ Mentally Ill/ Minorities in Prisons

### ANU NARULA

*Advocate, Delhi*

#### Women in Prisons

Talking about her experience of working with women prisoners, Ms. Anu Narula observed that women are generally unaware and misinformed of the peculiarities of their case, unlike their male counterparts.



She said women inmates can broadly be divided into 4 categories –

- 1) Organized Crime Arrestees like drug trafficking, flesh trade, kidnapping children, using them for begging, liquor, etc. (Kingpins are usually not in jail.)
- 2) Mother-in-laws and sister-in-laws, where the daughter-in-law committed suicide, or died in dowry death. (Husband is in a separate jail and is given more attention for defence, etc.)
- 3) For murdering their husbands or boyfriends. These are victims of sustained provocation, which is not recognised in law - includes young girls who were sexually/ emotionally exploited by their husbands/ boyfriends, and end up committing a serious crime in retaliation.
- 4) White collar criminals, along with their husbands. Involved in embezzlement of money, etc.

The third category are the worst sufferers because they get abandoned by their parental family as well as their in laws. Women from higher strata, if they have some property or wealth left by the husband, after conviction they are disinherited under the Hindu Succession Act. From the lower strata, whatever the husband leaves is usurped by the in-laws. Section 437(a) of Cr.P.C allows women and the infirm to be released on bail on judge's discretion. However, bails are easy to reject on grounds of it being a serious offence and lack of surety.

When they are inside the jail and have nobody to fall upon for financial or moral support, they become vulnerable and an easy target to the first category of women. Regarding these vulnerable women, we need to look at parts where the legislation is quiet and the judiciary quieter.

There have been certain progressive judgments, like *R.D. Upadhyay (2008)* which talks about women with children, how the children can be saved from torture at micro and macro level, and how to help these women and children out.

In the judgement, the Hon'ble SC observed that 3 problems had been brought before them:

- Less number of courts
- Women with children/pregnant women in jail
- Mentally ill persons

SC addressed the issue of women with children being in jail. The other two grave issues were not addressed.

### **Mentally Ill**

In IPC, one type of mental infirmity is addressed – having a mental incapacity at the time of commission of offence. Another type is those who committed the offence, and the trial is ongoing, or

conviction has happened, and then it comes to notice that the inmate is not mentally capable, the investigation/trial must be stopped till he recovers. He or she must be capable of understanding or formulating the defence.

Such people must be released on bail/surety, with the condition that the person must not harm themselves or others, and be produced before the court whenever needed.

### **Where do we keep mentally ill prisoners?**

In a pending case, a lady was schizophrenic, and it was found out after the trial as the illness is not continuous. She went to jail for killing her husband and daughter, and nobody showed the court any medical records. By the time we reached the appellate stage, her condition was so bad that it became obvious. HC gave bail, but her family refused to keep her as they were scared. Now 5 years on, she can't be kept at home or in jail, and we have not found a home for her.

The suffering is, if you keep her in jail, you only give her medicines. Mentally ill prisoners need more than that, they need a specially devised plan, unlike terminally ill people. They need yoga, walks, meditation, counselling, etc, which they don't get.

There is also a lack of awareness about mental illness. A lady was suffering from epilepsy, which was brought to the court's notice, who refused to treat it as insanity. We then tried to prove to the judges that epilepsy dims your cognitive facilities – you do not know when to eat, understand things, wake up, you're depressed and suicidal. How can these inmates formulate their defence and assist lawyers?

**We need to give some thought to these people and see if we can bring some reforms through legislations, executive and the judiciary.**

## **Prof. Shamim**

*Chairperson, Centre for Law and Society, TISS*

Prof. Shamim said working with the tribal and indigenous population in India today has become synonymous with being called a Naxalite. She spoke of her being implicated in false cases, as she was taking up cases for the adivasis in Betul, Hardal and Khanwar districts in the State of MP. She had been fighting cases of the Adivasis, who were demanding wages which had not been paid by the Forest department. She took up cases of labourers working in saw mills, as a result of which the mining and timber mafia came together to implicate her in cases of dacoity, loot, etc. They closed the mills, and arrested her without telling her the charges.



Speaking of her experience as a prisoner, jailed under false cases and being denied bail, she said prisons are used as an instrument to humiliate an accused. I was not allowed to meet my lawyer, I did not know when my bail was rejected. When I went to the Harda court, there were huge rats in the prison. They terrified me, so I asked for a net of sorts to protect me. The superintendent told me that it's a jail, not a 5 star hotel. I asked to see the Jail Manual, because every morning, somebody or the other would be bitten by rats.

They refused to give me the Jail Manual, which seems to be the hardest document to obtain. I filed a case in Jabalpur court about treatment of women prisoners, and finally the Chief Justice had to say, give her a copy of the manual and then I got a photocopy.

After I came out of jail, I had to remind myself that I'm a human being, they humiliate you so much. Which Supreme Court judgment can stop this humiliation and stripping? Directions of the Hon'ble SC are only on paper. Implementation and awareness of such directions is sorely missing on the ground.

When I went to the court and asked for a monitoring committee, the Committee which was formed comprised of Commissioner, IG Prison - the very same people who indulge in these practices.

The mindset of the colonial era which only saw torture being inflicted upon prisoners needs to change. There needs to be a complete overhaul of the persisting attitude and mindset of the authorities towards prisons and prisoners.

## **ABRAHAM PATTIYANI**

*Member, Minorities Commission*

The Constitution in a stricter indication lays down two types of minorities – linguistic and religious. These are the ones present in our prisons.

Sharing his thoughts on religious minorities in prisons, Mr. Abraham Pattiyani said that only 6 are notified as religious minorities in India. As per the census, 21% of our population belongs to these minorities, with the Muslim community being the most prominent.



However, if we compare the general population and prison population, it is shocking to see that the proportion of minorities is extremely high in prison.

### **Why the high number of minorities in prison, and why are they in bad shape?**

The prisoners from minority communities do not get a chance to practice or worship their faith in the prisons. The prison staff and officers are not bothered about religious thoughts and studies and are unaware of the values, practices of the religious minorities. For a reform, it is very much required to have a place to worship God

in times of loneliness or difficulty. Officers and jailers should be sensitised to understand the values, teachings and practices of the various religions in our country.

Necessary interventions should be made to protect and avoid discrimination towards religious minorities.

There is a need for giving special focus on programmes for rehabilitating the minority prisoners like vocational training, skill development, etc.

Since majority of the prisoners are adivasis, dalits and minorites, it may be time to think about private and community jail to protect the interests of certain sections of the society.

## Discussion

**Q:** If you had to think of a priority which would break the atrocities in this system and bring back accountability of the judiciary/police/prisons, what are the singular things/methods you would use?

**Prof Shamim:** When I was in jail, I used to wait for my appearance in court, so I could tell the judge everything. But all that happens in namesake. The judge doesn't see you, you don't get to meet him, you go to the babu, you sign, and done. The whole purpose of being produced in court is rendered fruitless. As an activist, I shouted that I want to talk to the judge, and then he had to acknowledge me because there was media outside. I was hypertensive and had chest pain, and there was no doctor there. So first, the judiciary is not bothered, and they need to take on the responsibility. Secondly, there has to be a monitoring mechanism, a grievance redressal where you aren't constantly on the watch. This prison monitoring system must enable people like us to speak to the people in prison who have courage to speak out. A monthly committee with experts and activists with courage to tell the truth.

## Experience Sharing by Former Prisoners

### APARAJITA

*Kolkata*

Ms. Aparajita shared her story of being implicated in a false case by her mother-in-law, as a result of which she was incarcerated in a correctional home for 13 years. She spent 13 years without the company of her children. Eventually, she was acquitted.

The conditions in prisons were awful, she recalled. Cockroaches used to float in the food. Sanitary napkins were not provided to women prisoners. Water was not provided for all inmates, and they were asked to pay for the same. Once, when she questioned the date of expiry for Paracetamol tablets, she was put in a cell. No one listens to the desperate voices of the prisoners.

Some advocates, after taking signatures from the inmates, don't care about them and time keeps passing by. I have seen these things and the bad state of affairs, she said. She commended the work of HRLN for prisoners' rights, especially to provide advocates who would work sincerely for the inmates, because no one was concerned about their rights.

She stated that she, like most of the inmates in prison, was unaware of the system of parole available until an IAS officer visited the correctional facility. She expressed her concern for the prisoners in Calcutta, who are unfairly treated and are left to languish in the jails there.



## **WAHID SHAIKH**

*Mumbai*

Wahid Saikh recounted that there were 7 bomb blasts in the Mumbai Local Trains in 2006, for which 13 people were arrested, and he was one of them.

He was arrested and languished in jail for 9 years, until late 2015 when he was acquitted. 7 of the co-accused in the case have been sentenced to death, while others have been sentenced to life.

He stressed on the fact that there was a deliberate attempt by the state machinery to discriminate and target minorities, especially Muslims for any crime or offence. There is also a targeted attempt to put behind bars, educated persons from minorities under acts such as TADA, POTA etc.

All security forces, whether the police or the jail authorities, are complicit in their role in framing innocent people. He said that a fictional story was created around bare facts.

He said, most of the accused are represented with a false, truncated copy of the chargesheet. They are not provided an opportunity for adequate defense.

The lawyer appointed for him through legal aid was a farce as the said lawyer had no experience or knowledge of the case. He was given no time to get acquainted with the case, and was against the best PP in the State of Maharashtra.

The accused were not even told of the names of the witnesses on the basis of which they were held in prisons.

Depositions by the accused were discarded over technicalities, while discrepancies between the reports of the State, Centre and the ATS were ignored.

The judiciary too is a frustratingly, endless ladder to climb, offering little or no relief to the prisoners.

About his prison experiences, Wahid stated that he was welcomed to the jail with a severe beating with sticks, which was only the beginning of systematic torture.

Prison meals are ridden with insects and dead animals. There are no opportunities for Muslims within the premises of the jails to worship. He was threatened with violence for his right to worship.

## **TESTIMONY OF EX-PRISONOR**

*As read out by Sukanya, Amnesty*

I got very happy when invited for this conference because it shows that there still exist some courageous people in the country who organize such meetings in the environment that surrounds us right now. But I'm sorry I couldn't gather courage to come up and talk to you personally today but will still like to share my experiences.

I had never interacted with the police in my life before I was called for police verification regarding a passport. My life changed within minutes after my encounter with the police; they abused me and my family members and I was very uncomfortable. They threatened me to sign whatever they were asking me to. They labeled me as terrorist and I was put under police custody. They didn't investigate or question me but prepared their own reports. I didn't expect justice from the court except that after more than 4 years, I was released from jail.

All along, there was a different world in the prison. On my first day, I cried and only a few Muslim men gave me some words of courage but soon disassociated themselves. There was no difference for allegation and conviction for the prison authorities. I never got

a feeling that Indian prisons are meant for reformation but realized that they are centres of torture. Many of them are falsely accused but still are helpless and subject to torture. Many inmates had no lawyers or family members for help and as a result some had ended up in prison for years. Seldom the judges made prison visits but with prison authorities around us, deterring us from saying anything against them.

There are some suggestions which I think would be of some help.

- i) Police accountability needs to be increased and legal action should to be taken against investigation officers.
- ii) Provision for default bail after particular period of time should be extended to more offences and should be followed.
- iii) Conjugal rights should be given to prisoners after some time in the prison.
- iv) In some cases since a lot of time is needed, after a particular defined time, the accused should have the option of seeking parole before conviction too.
- v) Judges should be pro-accused while listening to bail applications and should also consider the plight of the family members of the accused.
- vi) Prisoners should be allowed to practice their religion and worship their deities without restriction.
- vii) An intermittent training of prison guards should be in place including soft-talking with prisoners and some scope for sharing of ideas with them.

## **Prisoners' Rights (Visitation, Health, Communications, Food, etc.) and Grievance Redressal Mechanisms**

**ARUN FERREIRA**

*Prison Ministry India*

Mr. Arun Ferreira highlighted the rights of prisoners to visitation from lawyers. This is symptomatic of the larger problem with regard to lack of access to legal services for prisoners. Sometimes, it happens that a person is taken into police custody at about 5 o'clock on Saturday. The cops would make sure that the person is not able to communicate this to his lawyers throughout the course of the weekend. This is against the constitution and hampers access to lawyers.

With regard to general visitation rights by family members, he mentioned that the right to visitation in Maharashtra jails was not available. Even where such a right was made available, the provisions of communication between the inmates and visitors are in such a bad state that no proper conversation can take place through a glass and mesh. This applies to communication by phones as well.

Mr. Ferreira further mentioned that there is limited personal touch in prison visitations. Conjugal rights of prisoners also must be ensured to some extent, as with a prisoner, his family too has to bear the pain of his imprisonment.

Further, there is a limit to writing just one letter per month from the prisons in Maharashtra, which needs to be changed.

In the health domain also problems exist, he said. Usually, in cases of serious illness, the CMO does not give the entire course of medication partly because there is a possibility that it will fall short for other inmates and partly because of the reason that he does not have the entire course of medicines himself.

He said that the attitude of India's prisons to its inmates is British oriented, archaic and outdated, and needs to be changed.

### **JOHNSON J. EDAYARANMULA**

*Director, Alcohol and Drugs Information Centre (ADIC) and Indian Centre for Alcohol Studies (INCAS), Kerala*

He began by sharing the Kerala Prison Scenario as he had witnessed remarkable positive changes there over the last 26 years. Thanks to the Political Consciousness, the positive efforts of prison authorities and the intervention of human rights activists, media and judiciary, he stated that things have changed for the better.

The major challenges they had to confront were the latent corruption, the over-crowding population of prisoners, the lack of infrastructure, facilities, basic amenities and staff, the trafficking of drugs inside jails, and the negative attitude of the society towards prisoners.

- Nowadays in Kerala, the Prison Department is focusing on the betterment of jails, their vision includes:
- provide safe and secure detention of the prisoners committed to Prison custody

- provide the facilities for correction and reformation with a view for the rehabilitation of prisoners, after release
- provide the best possible facilities admissible as per law to prisoners to maintain human dignity

He then noted two remarkable initiatives: Prisons Technicalia - the Technical Survey Report of all the Jail Institutions in Kerala and the Kerala Prisons and Correctional Services (Management) Rules, 2014.

He asserted that because of their efforts, Kerala Prisons are now ensuring the rights of the prisoners, as per the provisions of the law. All persons admitted to the Jails in Kerala were being provided hygienic living conditions, adequate food, clothing and medical care.

However, he noted that there were still challenges, especially with regard to the staff working in prison and their commitment and professionalism. He said there were delays in trials, especially with the increasing number of migrant prisoners with language, diet and other difficulties.

## **SISTER ADELE**

*Prison Ministry India, Karnataka*

Sr. Adele spoke of her experience of working in Bangalore Central Jail for 12 years. She said that in those 12 years I have realised that if we take trouble, we can really improve the conditions of prisons. Firstly, this change needs to come in our attitude towards prisoners, in not looking at them as criminals but as brothers and sisters because in God's eyes, even a wicked criminal is precious.

Our initial aim is to provide them psychological relief from what they are undergoing. It will take time for them to get out of prison but if treated with some dignity, they will feel free from hatred and loneliness inside their heart. There is a church, a mosque and a few small temples inside the prison premises for people to pray according to their faith. We allow the practices which will make them feel liberated.

She stated that PMI volunteers in Bengaluru have been given the freedom and liberty to work freely in prisons, providing educational and rehabilitative programmes for the inmates. Sports between inmates is encouraged, and on demand from such inmates, literacy in English classes have been started. Well-educated prisoners have taken the initiative in starting and preparing other inmates for B.Com, M.Com etc. Besides, we have some software engineers and lawyers as prisoners who have started taking classes and teaching others. A lot of improvement thus comes with the presence of NGOs and their actions inside the prisons.

Though, food is okay and sufficient, however, it is served too early which is why, by the time it is time to eat, the food becomes too cold to eat. Bribing prison officials to avail heating facilities is therefore, common. Those who can afford to pay and bribe get the best place to sleep. She said, this surely is problematic and is not encouraged but it is not interfered with a lot.

Usually, when inmates don't have a lawyer and approach the DIG saying that they have no lawyer, they are made to write a letter as a consequence of which they receive a letter allotting them a lawyer. Even though a lawyer comes through this way, money is required to be given to him by the client to get a representation. This situation also extends to provision of escorts to the inmates and in the absence of lawyers these people are not able to go to courts for a long time. We as PMI provide lawyers to these inmates.

Even though some doctors and nurses are there in the prison, some costly medicines are not available. We as NGOs are also playing a role in providing such important medicines and physiotherapy.

Further, in Bangalore jails allowing easy access and communication between families and their prisoners, also comes at a cost. Physical interaction is done through a mesh. There is a provision of special entry also wherein the husband, wife and child can talk together but again that is available through shelling out money. But if we intervene, we try to create a scenario to show that it is physically required for them to sit and they can't stand in queue for long.

Some people have to wait for a long time to get parole, some of them wait for 15 years. We are also trying to work in this regard to ensure that they can get timely paroles.



## **Torture and Custodial Deaths**

### **KARUNANIDHI**

*Advocate, Peoples' Watch*

Mr. Karunanidhi, speaking of his personal experiences, said that he decided to become a lawyer after seeing torture in prisons through his childhood. He said that during 1990-93, at the Tamil Nadu-Karnataka border, special task force police officers indiscriminately arrested and killed people in encounters besides inhumanly torturing them. His father was also arrested on the ground of supplying rice and dal from his grocery shop and after 9 years of being in custody without any bail, he was acquitted of all charges.

He said that the conditions in prisons is questionable and the actual data of what happens inside the prisons is not available. About 14,000 deaths have taken place in prisons between 2001 and 2010. In Tamil Nadu prisons, 69 deaths took place in the year 2013-2014. Due to People's Watch intervention, NHRC and Tamil Nadu Government are reporting custodial deaths - the second one states 69 deaths in custody under mysterious circumstances. The report has been filed before the Madras High Court.

Two weeks back, a mentally ill person was beaten to death by another person in mysterious circumstances and such things are regularly happening inside the prison.

Therefore, it is important to establish a Board of Visitors with independent non-official members who are trained and skilled, for visiting the jails on a regular basis.

Further, there is a need to have a parole system for emergency

leaves for prisoners, Mr. Karunanidhi stressed. The judiciary needs to be sensitised on this issue, as well.

Further, the judiciary should respond to the issue of illegal detention by the police since everyday, a few cases occur. High Court should impose costs on police on not following DK Basu. This needs to stop; torture is inhumane and needs to be done away with at any cost.

Legal assistance should also be given to persons on death row with respect to mercy petitions to stop the execution sentences. Prison management and the legal service authorities should draft and pursue these petitions properly for the same get dismissed for want of proper details.

## **Dr. MURALI KARNAM**

*TISS*

Dr. Murali Karnam stressed on the importance of legal aid for undertrial prisoners, as the same was essential for them to fight their cases since their guilt had not yet been proved. Talking about the plight of undertrial prisoners, he said that in 2014, there were 1700 deaths reported in the prisons, and 95 in police custody, most of which were under trial prisoners.



Further questioning the data, he said, of these, 195 deaths were reported to be unnatural deaths of which, 150 deaths were suicides; besides 1500 deaths were reported to be natural and only 1 due to the excesses by the prison authorities. He said it was questionable as to who collects such data and certifies the cause of deaths.

**Whether the judicial process is similar for ordinary accused**

### **citizen and an accused public servant?**

In 2013, in a Mumbai Police Station, a boy was killed, having been accused of stealing from an exhibition. A case was listed afterwards and there was investigation and conviction of 4 constables for 7 years. This conviction happened because the doctor who was doing the post mortem found 56 wounds/injuries on the body. Prosecution said that since the police station is inaccessible to people, there is no evidence beyond what the police provides and thus, it cannot be proved beyond reasonable doubt that the policeman was guilty. The defense argued that police should be treated in the same way as ordinary citizens for the crime.

### **Biased nature of reporting**

The NCRB data reflects the biased nature of reporting by terming the offensive acts of police officers as complaints, as compared to the illegal acts committed by citizens of the country as crimes. Out of the complaints that are reported against police officers, 45% complaints are reported to be false, as compared to 5.6% for ordinary citizens. Even though the conviction rate for ordinary citizens in India is about 30%.

Further, mere dismissal of police officers for their offences (which happens sometimes) is not equivalent to the treatment of ordinary citizens who have to go to prison.

Further, Indian government has stated explicitly that it does not want to sign the Convention against Torture besides not wanting to provide compensation for victims of torture.

There needs to be in place an independent, impartial unit to look into human rights violations by Public Servants. Also, there needs to be independent human rights organizations, not affiliated to the government, which could result in fair inquiry for ordinary citizens and public servants alike.

### **Suggestions**

- In case of custodial death, witnesses apart from police are required. – independent witnesses- his/her inmates.
- Within the custody, state has a vicarious liability for safety of inmates.
- CAT should be ratified by India.

## Status of Prison Legal Aid

### RAJA BAGGA

*CHRI*

The need of legal aid evaluation

Talking about the need of legal aid evaluation, Mr. Raja Bagga noted that less than 3% of all people in custody benefit from legal aid schemes. In Rajasthan, he said, less than 1% of all persons in custody have been provided legal aid, most of whom are from SC/ST communities.



He said, it is therefore necessary that the status of legal aid, its success and failures be urgently evaluated. He stated that this evaluation must be based on a strategic balance between ensuring the compliance with certain parameters, for eg. no. of beneficiaries, access to legal aid, quality of legal aid, legal aid budgets, etc. He also stressed upon comparing the changes over years and to look for solutions and strategically advocate for specific solutions.

Mr. Bagga mentioned that to ensure legal aid there needs to be appointed,

- a. The Right Person
- b. At the Right Place
- c. At the Right Time
- d. Doing the Right Thing

He stressed on the fact that a legal aid lawyer should be appointed on the same day an application for the same is received from the prison and the legal service authority should ensure that a lawyer visits the inmate in prison within 24 hours.

Citing the lack of monitoring of legal aid services, he said there is no review of the cases referred to legal aid lawyers and that the proceedings in a case are not conveyed to the concerned parties.

### **Monitoring of legal aid services**

He mentioned that NALSA has a monitoring committee, but is almost non-existent. He said that the infrastructure, was in no shape to support legal aid. There was no registry of visitations, and the number of jail visiting lawyers was insufficient.

Further, remand lawyers in Rajasthan failed to submit monthly reports to the LSA.

Mr. Bagga made the following recommendations for monitoring of legal aid services: Orientation of duty holders, detailed appointment letters, responsibility note, feedback from client, standardized formats, use of technology to further legal aid and a presentation of a monthly report.

### **Findings of the Study on Legal Aid Delivery in West Bengal**

Presenting the study conducted by CHRI on legal aid delivery in West Bengal, Mr. Bagga highlighted the following main findings:

#### **Visits to correctional homes**

District Legal Services Authorities (DLSA) has its presence in 92 per cent of the Correctional Homes (CH) in West Bengal. In 33 out of the 39 correctional homes a representative from the DLSA visits the correctional home.

### **Frequency of Visits**

In those CHs visited by DLSAs, the frequency of visits varies considerably.

In 15 CHs - DLSA visits once a month

In 13 CHs - DLSA visits are made rarely

In 3 CHs - visits are weekly.

### **Constitution of Legal Aid Clinics in Correctional Homes**

In accordance with the SLSA directives of 2013 Permanent Legal Aid Clinics (PLACs) have been established in 32 CHs. However, in 6 CHs, the PLACs have not been setup.

### **Appointment of Jail Visiting Lawyer**

Out of 39 CHs, panel lawyers have been appointed in 29 for visiting the correctional homes. 10 CHs responded that no lawyer has been appointed till date.

### **Frequency of Visits**

Among the 29 correctional homes where panel lawyers are appointed for visiting correctional homes, in 11 CH weekly visits are made. In 5 fortnightly visits are made, in 2 monthly visits are made and in 1 CH daily visits are made. 10 CHs did not provide any specific response to any query.

### **Whether Paralegal Assigned or not**

Out of the 32 CHs where Permanent Legal Aid Clinics (PLACs) have been setup, paralegal volunteers have been assigned in 24 CHs, while in 5 CHs paralegal volunteers need to be appointed in order to

make the PLACs functional. Out of the 24 CHs, in 6 homes convicts have been appointed as para legals.

### **Number of Cases taken up and Releases Effectuated**

Since appointment 2589 cases have been taken up by panel lawyers who visits correctional homes. Of these, there are 383 reported cases of releases in cases taken up by panel lawyers.

### **Solutions**

- Proper information needs to be passed to the prisoner to avoid any misunderstanding.
- Grievance redressal mechanisms need to be put in place.

## **KIRAN SINGH**

*Advocate, MARG*



Ms. Kiran Singh described the work of MARG in conducting legal aid awareness programmes and providing training exercises to prisoners, police officials etc. She also explained MARG's role in monitoring juveniles in jail with the National Commission for protection of child rights (NCPCR), an exercise which revealed that juveniles are often

treated as and with adults.



She presented the highlights of the study conducted by MARG on the status of legal aid in 7 states.

### **Madhya Pradesh**

Talking about the study of central and district jails in Madhya Pradesh, she said that legal awareness programme were conducted and it was found that level of assistance as well as the quality of lawyers was poor. No Lok Adalats were being held in the jails as well.

In a central jail in Ranchi, it was found that there was a weekly visit by a Magistrate and a District LSA representative. However, more legal awareness programmes were required.

### **Chhattisgarh and Odisha**

Interviews with the jail authorities in Chhattisgarh and Odisha, also reported that more legal awareness programmes are required to be held. However, Lok Adalats are being held in jails and the work of the LSA is satisfactory. The only problem however, is that **cases are not disposed of in time.**

### **Recommendations**

Ms. Singh recommended development of a systematic empanelment process for lawyers. Criteria should include:

- appointment of lawyers committed to social justice,
- monitoring and evaluation of lawyers to be done through case tracking and client feedback,
- regular fee payment to lawyers, and
- pro-active grievance redressal mechanism for legal aid clients.

## SWATI MEHTA

*TISS*



### What is Legal Aid

Expounding on the meaning of Legal Aid, Ms. Swati Mehta said that ‘Legal Aid’ includes legal advice, assistance, representation, legal education, information, awareness, and other services through ADR, lok adalats in compoundable cases, etc. She explained that legal aid should be available at all stages – from the first time the accused is produced before the court and at all stages of trial including appeals.

Noting Mr. Bagga’s point about why it takes over 8 weeks for a monitoring committee to decide a case, she said that the reason is that it is not a rights-based law - people are not right holders but are instead, beneficiaries.

### NALSA guidelines

She highlighted the requirements under the NALSA guidelines on legal aid:

- Regular Jail visit by Secretary, DLSA to identify: UTs languishing in prisons for want of legal aid ; Juveniles at the time of arrest , Mentally ill persons, care provided to children below six years of age.
- Appropriate remedial action by way of legal aid to be provided.
- Organising lok adalats in compoundable matters

## Judicial Pronouncements

Ms. Mehta also elaborated on the *Kasab judgement*, where it was observed that the magistrate must inform the accused of his right to have a legal practitioner and not doing so may vitiate the trial and make the concerned magistrate liable to departmental proceedings.

Referring to the SC judgements in *Bhim Singh case* and *Re: Inhuman Conditions in 1382 Prisons*, she spoke about the following directions given by Supreme Court:

- Composition of the Undertrial Review Committee
- Implementation of S. 436 A
- panel lawyers to take up cases of prisoners unable to furnish bail
- Member Secretary to take steps for compounding of cases where possible

## Model Prison Manual, 2016

She also elaborated the guidelines on legal aid in the Model Prison Manual, 2016, especially the requirement of the States:

- to appoint jail visiting advocates on fixed day to help poor and unrepresented inmates
- Setting up of Legal Services Clinics with panel lawyers and PLVs providing legal services on all working days.
- Legal literacy classes on rights and duties of prisoners and on availability of free legal aid.
- Implementation of 436A
- Magistrate under a duty to inform accused of their right to have a lawyer

- Panel lawyers to be deputed as remand /duty advocate in every court dealing with criminal cases.
- Superintendent to inform convicts of their right of appeal against conviction.

### **Problems in Legal Aid**

Reporting the findings of a student study, she stated that even though most undertrial prisoners have a lawyer, they do not know them well or enough as lawyers do not visit prisons. With video-conferencing, meeting lawyers during remand stage is rare and lawyers or magistrates do not raise any concern on non-production of accused in court.

She highlighted the fact that there is an undeniable link between poverty and a denial of liberty, irrespective of a legal aid or a private lawyer. Lawyers so appointed are not accountable to anyone for their non-performance.

Further, monitoring committees are rarely functional, and it is worse in the districts and talukas. There is also no linkages with university legal aid clinics and there is no redressal mechanism.

### **What can be done?**

- A regular audit and peer review must be encouraged.
- Ensure adoption of model prison manual by States.
- Ensure that the prison system is transparent and open.
- Forming cross-linkages with universities, commissions, LSAs and NGOs.

Ms. Mehta gave the example of South Africa's Legal Aid programme which provides legal aid for under \$2, a success owed

to quality-monitoring partnerships with Universities and NGOs. A similar system has been recently adopted by New Zealand, she concluded.

## SUKANYA SHANTHA

*Amnesty International, India*



Ms. Sukanya spoke about the work of Amnesty on legal aid, which has conducted an All India Research and has filed hundreds of RTIs asking for information on Undertrial Review Committees, release under S.436A, availability of legal aid lawyers, police escorts, video conferencing, etc. However, the replies received aren't always satisfactory, and information is sometimes withheld on account of 'sensitivity', she said.

*She narrated the story of a man who was arrested as a landless labourer for murder of a man, and was held in Tumkur jail. He was arrested in 2008 and in 2010, he was convicted by Tumkur district court for life sentence. He was later shifted from the Tumkur prison to Bangalore prison in 2010. By this time, he had spent all his resources when other convicts suggested, that he approach legal aid services. On his request, a legal aid lawyer was appointed by the HC committee but he never met his lawyer. In 2013, he started filing applications to know about his case. In 2015 he got to know that he had actually been acquitted in 2013. Thus, he spent 2 years in illegal detention. He has filed a case against the legal aid service.*

Ms. Sukanya also visited 6 prisons with her team and conducted interviews of 63 inmates, who had consulted legal aid lawyers. From the interviews it was found that out of the 63 inmates interviewed, 42 had to wait for 5 months to get a lawyer appointed, out of which only 21 knew who their lawyers were, and of these only 12 had met their lawyer, but only to sign the 'vakalatnama'. Very few inmates could tell what sections they were charged under. 19 of the inmates had been asked for money by their lawyers and 11 of them actually paid. The demands raised were between Rs. 5,000 and Rs. 40,000.

As per the Supreme Court annual report, 4.5 lakh inmates have been provided legal aid across India. In Karnataka only 240 inmates have been provided legal aid. However these figures are contradictory to the Karnataka state legal services authority's claim, according to which 140-160 lawyers are provided every month for legal aid services.

Sukanya gave an example of Mr. K.T.S Kutty, a former prisoner who has set up legal aid clinics in Bangalore Central Jail. He has managed to get 169 prisoners released from the prison. He made a genuine attempt to find out what is happening in their cases and what all remedies were available to them and the strategies and techniques he could use to help the prisoners, she said. Good Legal Aid is therefore, not impossible, she concluded.

## **ANSHU**

*HRLN, Bihar*

Mr. Anshu spoke about his experience of surveying the jails in the state of Bihar, and his interviews with the inmates housed in such jails. Questions were posed before the



inmates asking if they were produced before the judge or not. By the answers it was evident that most prisoners weren't presented before the court, instead they were made to meet the judges casually in their houses and were interrogated there.

**Further, 90% of inmates had no clarity as to whether they had a lawyer or not. The main reason behind this is that most of them were illiterate and visitation was impossible. The only way for them to know was when they were produced in courts.**

**He said, inmates rarely are produced before the Magistrate and they stay in the lock ups or in the back of the courts. Therefore, lawyers have no opportunity to meet their clients.**

**Further, most of the inmates had been convinced by the jail authorities to not opt for legal representation. Even where there was legal representation, meeting was restricted. Representation therefore was hampered.**

Explaining the problems of juveniles, he said that as per their inspection, the age of the juvenile offenders was often manipulated and offenders between the age of 15-17 were shown to be 18 years or above and the reason why even their lawyers aren't ready to disclose their age before the court is that they will lose the case. Further, even if the lawyers disclose the age to the magistrates, the magistrates refuse to accept the school/birth certificates as conclusive proof of their age and ask the accused to go for ossification tests. These tests take another 3-4 months and sometimes the results are even tampered with.

He said that sometimes even parents don't want the child offenders to be treated as juveniles as the children are sent to juvenile homes where conditions are worse than prisons.

He also shared a case on the issue of protection of inmates. In their findings, they discovered a case of custodial rape where a

woman was raped by a guard in the prison and when she tried to retaliate by using force against the guard, she was charged under section 324 of the IPC. Only a slight disciplinary action was taken against the guard who was suspended for six months and later retired with full benefits.

## **XITIZ DUBEY**

*HRLN, Chhattisgarh*

Mr. Xitiz Dubey spoke of a difficult situation in the State of Chhattisgarh, perhaps far worse than any other state in India. Primarily a tribal area, where there is consistent violence between Naxals and the security forces, he said it is perhaps the primary reason why prisons there are overcrowded by 300-400%. Prisoners are kept in inhuman and cramped conditions. Because of the unhygienic conditions in prison, most of them have contracted diseases, but have no access to medical facilities.



Legal Aid in the State is merely in name. 90% of all inmates in Chhattisgarh are illiterate and indigent and are accused of grave offences. They are uninformed and ill-aware of their right to legal representation, and therefore do not have a legal aid lawyer. Most of the prisoners are allotted legal aid lawyers on paper but they've never interacted with each other.

He recalled an incident as a defense counsel where a 75 year old was arrested and charged with being an absconder for arson in a village he had never been to. He himself didn't have any document for identification and therefore, he could not tell the authorities that he was not the person the police said he was. Bail was refused too.



During the course of his trial, the accused became paralyzed and it was pleaded that the case be closed. However, the request was refused and soon, the accused died.

Legal Aid is of utmost priority in places where people are unaware and misinformed of their right to legal representation, especially where the people in question are illiterate. Therefore, it is our duty to take this responsibility, he said.

### **Discussion/ Suggestions**

- With regard to the case mentioned by Sukanya, it is shocking that release orders were never received by the jail authorities when they were served and ordered by the Court because, every day after the order of acquittal is illegal detention.
- **Sanjeev Jain** - There are a lot of flaws with our system of legal aid. However, a complete overhaul may not bring about ideal change. Change must be consistent, not radical and a step-by-step change must happen.
- **Adv. Mahesh Bora** - Legal Aid should be given irrespective of State and NALSA support. It should be driven by personal commitment to social justice.

## **Best Practices of Prison Administration / Model Prison Manual / Visitors Boards**

**UPNEET LALLI**

*Institute of Correctional Administration, Chandigarh*

### **Best Practices in Prison Administration**

Ms Upneet Lalli said that as per the UN, best practices have to be sustainable. It should not be dependent on one person who starts a good practice and when they're transferred, the same is also over. Good experiments have mostly been a result of a partnership between civil society and the Government.

Referring to the UN standards, i.e. the Bangkok Rules, as well as the Model Prison Manual, she said the rules call for a change, especially on safeguards protecting women inmates, those being given the death penalty, which should also reflect the Supreme Court judgements.

The culture of prisons is not very open or susceptible to change. Prisons in India are insufficient, which is why most of them are severely overcrowded with a significant number of undertrials with inadequate legal aid services. Though number of prisons have increased slightly, but some old prisons have also shut down, she said.

Ms. Lalli enlisted the areas where best practices have occurred. These include security, use of technology, prison management, information dissemination, staff development, prisoners' contact with the rest of the world, grievance redressal, educational and

vocational programmes, community involvement, cultural therapy, etc. She mentioned the Yellow Ribbon project in Singapore as a success in the rehabilitation of ex-offenders.

Video conferencing to meet relatives and advocates has been introduced in some states such as Himachal Pradesh. Placement services have been instituted in Tihar and mobile units for selling products have been initiated in states such as Kerala.

With regard to grievance redressal, health and medical facilities, she said, these facilities vary across the country. Tihar would have more doctors, whereas some other prison may have only 1 doctor for 3000 prisoners. Food quality, diet, non-veg food also varies from place to place. Women prisoners vocational programs also varies – from good to nothing at all. Facilities for children inside the prison, whether being allowed creche facilities, or sending them out for picnics and education, are interpreted differently.

To be idle 24 hours is the most punishing thing that can happen, she observed. In recent years, educational and vocational facilities are now being provided everywhere. Shops outside jail have proved to be a successful experiment in Gujarat, where prisoners are moving out and working. Kerala has worked tremendously on sustainable environment issues. Creative art and cultural therapy has worked well in West Bengal for last few years. Religious and spiritual mediation programs are there in almost all places.

Legal aid, special courts in some prisons, etc. are also some areas where some good practices are taking place. As a good practice, credit must be given to paralegals and volunteers for spreading legal awareness and facilitating good prison practices. Further, every prison should have more than ten copies of the jail manual so that they are easily accessible to all prisoners.

In Himachal, video conferencing is a new project that has been introduced, for prisoners to meet their relatives, both foreigners and locals. Placement officers, environmental initiatives, mobile units under CSR, getting vans from corporates and moving products outside - these work as a good message for society as well, removing stereotypes about offenders. Good practices are often picked up by other states, hence we must share.

### **Model Jail Manual**

Talking about the Model Jail Manual, which has been revised recently, of which she was one of the members, she elaborated that as prisons is a state subject, there are different laws in different areas, with no uniform policy. Manual provides uniformity, basic framework and sets basic procedures. She said the new Model Jail Manual covers some issues that have not been addressed earlier, especially in view of new court decisions, etc.

Mentioning two things specifically, she said the new Manual covers information being stored under the Prison Management System (PMS) system, and how it should be entered. The new Act of 2013 has been incorporated, with information about their case, legal assistance, psychological support, etc. Secondly, for women prisoners, the issues of sexual abuse have been addressed. Rule 8 of UN Bangkok Rules, which deals with medical confidentiality, has been incorporated, including reproductive health screening, which will not be mandatory and depends on the woman.

Further, for the undertrials, they must have information from the prison board, probable date of release, point of entry and admission, etc. Undertrials would need execution of will. Training of paralegals, using civil society, social workers, etc. are also the other areas which have been looked at.

The correctional wing should be headed by a joint director of

the correctional services, who will not be a prison or police officer, and he will look at the probation, welfare and educational programs.

The prisons are opaque institutions, it is difficult to enter them, and they cannot be improved if they are kept as closed institutions. Therefore, it is important to have collaborations with universities, social workers, etc. It is recommended to use socio-legal counselling volunteers, law researchers and scholars, and let them get the academic credit, as per permission given by the head of their institutions.

Further, each jail should have at least 10 copies of the Jail Manual, and prisoners must be given access to those. States are revising their manuals and will find this useful for the same.

### **R.K. SAXENA**

*Consultant, CHRI*

*Formerly Director of the All India Committee on Prison Reforms*

### **Why prisons were created?**

Mr. Saxena stated that the nature of intervention in prisons, in the form of visitor's boards or otherwise, must be understood by first realizing the nature of prisons. He said, prisons were created as a *social dustbin* for the purpose of relegating anyone who violated the established laws of society. Through the Prisons Act of 1894, the government created the prisons as closed institutions, which are obscure places. The perception of it as a dustbin is carried to this day – people should not be allowed to enter prisons, or write about it without security. We want to cover them up with a lid so the stench doesn't go out.

However, a window was kept open for society to peep into it and see what happens inside. This is the prison visiting system, or board of visitors.

## Board of Visitors

This window or the prison visiting system is accepted by prison authorities. As per the law, for every central jail, 6 people should be selected from society, who are *ex officio* visitors. A board has to be prepared under the chairmanship of the district collector, who has to decide who will visit the prisons. As per the Rule, people selected for visiting the jail must understand the working of the prison, should be interested in correctional work and welfare of prisoners, have an idea of how to institute goodness, and are well-intentioned. However, even though the senior most officials are on the board, but the lowest level officials are sent to visit, who are disinterested in the rights of prisoners or the prevailing conditions in such prisons.

It is therefore, important to invite understanding people who are interested in welfare of prisoners like teachers, lawyers, doctors, rotary club members, professors from universities, members of women's associations, etc.

The duty of the Visitors Board is to ensure that the rules, regulations and management of all prisons is duly maintained. An **empowered visitors' committee** of district level people can ensure that the local problems in jails can be resolved locally by using prison's resources and skills.

## Transparency regarding prisons

Openness and transparency in prisons can improve conditions and the same can be introduced by empowering visitor's boards and similar institutions to check the conditions prevailing inside the prisons.

**RAKESH MOHAN**

*Superintendent, High Security Jail, Ajmer*

Mr. Rakesh Mohan agreed that there were a lot of systematic flaws within the system of criminal justice in India. He stated that many of the stakeholders so involved, including the prison authorities, the police or the judiciary have their own motives behind their actions and are therefore, performing below par.

In India, most of the prisons are governed by the police, who have no experience in managing a prison. Accumulated knowledge of such institutions should be a pre-requisite among those who are chosen to head such institutions. It is our responsibility to change these so-called 'social garbage' into 'manure', or else, this will hamper the society's interests at large in the long run.

**Best Practices**

He commended the success of a **rehabilitation and legal aid programme** organized by CHRI in one of the Central Jails in Rajasthan. It was also innovative in its cooperation and the participation of National Law University (NLU) and other university students in the initiative helped in giving them a platform, a broadened view and professionalism. Our prisoners, who weren't educated, their applications, follow ups, answers and copies were obtained. They became aware of their lawyers, their contact details and court appearances. The involvement with goodwill leads to good results, he said.

Talking about the concept of **Open Prisons**, Mr. Mohan said this has been a successful experiment of the State Government since 1963. Presently 1,375 convicts are outside the boundary wall of prisons, they have the liberty to live with their families, earn. This is the transition stage for them, while they learn to adapt to and fit in with the outside world and society, making themselves worthy of working and staying with their families, and reviving

their relations. Bank accounts have been opened for a significant number of prisoners, who have become self-sufficient. Some even pay income tax. The concept of open prisons has been a success in Rajasthan. This is reflected by the fact that recidivism rates among such prisoners are few.

Another experiment to increase prisoners' interaction with society is by preparing '*bandi bands*'. Prisoner bands are operating at Jaipur and Jodhpur central jails, and that band has earned more than 5 lakhs in a year. The prisoners earn by participating in every function: wedding, birthday, etc. These prisoners are from inside the prison, not from open air camps. They are the ones on whose conduct the administration trusts. They are selected and trained, and out of this earning 50% directly goes to their accounts. So they can earn more inside the prison than outside. The money they earn goes directly into their bank accounts.

Rajasthan jail department has been innovative in another area. Instead of keeping 650 released women in other government run accommodations, they were kept in our open jail campus. They were given a chance. The capacity went from 650 to 1325. People feared they may escape or commit crimes, but such incidents are negligible. Hardly 2-3 such incidents happen in a year, criminal activities are even rarer. Everyone loves the liberty they have, he concluded.

### **Discussion/ Suggestions**

- Visitors' Board rules state that the S.G shall appoint non-officials on the recommendations of the District Magistrate. The Maharashtra example is an example as here, members were not appointed as rule prescribed and were thus appointed through the NHRC.
- The purpose behind the appointment of members to the Visitor's Club is to bring in knowledgeable officials. However often, the most important consideration is political in nature.



Such an appointment cannot be done away with without the involvement of the Magistrate or the Collector, as one can get easily swayed by political or legal considerations.

- Model Prison Manual is not a Model Act or rules. Therefore, there is no enforceability to it and no State is under any compulsion to follow the same.
- **Audience:** On the board of visitors, except from Maharashtra, where there has been a judgment from Bombay High Court that NHRC may appoint them, what is the situation of other states' board of visitors?
- **R.K. Saxena:** As far as the visitor's board is concerned, the rules say that the State Government shall appoint members as per the recommendations of the district magistrates. In Maharashtra, as they didn't appoint prison visitors in the regular manner, the State Govt. told the NHRC to appoint them. It is an exception. The rules say that prison visitors will be appointed amongst the concerned citizens of societies, from the names recommended by the district courts.
- **Audience:** The methodology needs to change, because the DM recommends ex-prisoners sometimes.
- **Upneet Lalli:** There are variations as to how members get appointed to the board of visitors. In a number of states, non official visitors have been appointed, in a number of states, they haven't. The Prison Act calls for it, and the Model Prison Manual due to variations, we've incorporated that persons who are knowledgeable and interested in prison administration should be appointed, also a review of their performance. At times, it becomes a nuisance for prison officers, if they don't visit a prison in say 6 months, then they are out, you appoint somebody else. An assessment needs to be followed up, the inspection reports that they do. Based on the Sunil Batra judgment, you need to have a board of visitors, make the prison administration

more transparent, accountable to the public. The Model Prison Manual also mentions areas that must be looked into, and what action has been taken after the report.

- **R.K. Saxena:** I have met Collectors throughout the country, every one of them is so busy. They are members and chairpersons of hundreds of committees. An ADM should be made chairman and supervised, with NOVs, hold department meetings atleast twice a year. At state level, meetings should happen atleast once a year, and all their reports should be discussed with time-bound actions to be taken. Only then will it be successful.
- **Audience:** It should also be published on the local level. The committee should make a presentation.
- **Maja Daruwala:** You're right, but right now when they get a letter, they don't even know why they've been appointed. We've done a lot of training in Rajasthan, and we do not get responses proportionate to our efforts. Sometimes people write to us, telling us they went to jail, and this is what they saw, but I don't think one orientation can lead to too many changes. State needs to give us mediums to fund these trainings, or even cooperate, which doesn't happen.
- **Audience:** We are also trying to get a board of visitors in Delhi, and we've had resistance but now there's some kind of consensus with the Tihar officials, does the new manual have anything on the non official visitors, because the old one did not. Secondly, is there any mandate or encouragement to state govts to adopt this manual?
- **Upneet Lalli:** Regarding the NOVs, there was an advisory by the Home Ministry, circulated to all the states to appoint, train and sensitise NOVs in association with some NGOs and institutes which train prison officers, so they know how to inspect and write reports. The new manual has rules about the same.
- **Audience:** Do they specify who will constitute the NOVs?

- **Upneet Lalli:** There was a lot of discussion as to whether it should be DM or State human rights commission, so I'm not very sure right now, but it was also decided that the names would come from the State human rights commission, State women commission and from the district legal services authority. Women would be some of the members, and persons having genuine interest in the administration, correction and welfare of prisoners.
- **Audience:** A lot of discussion is taking place in Vellore between civil society organisations, about how the Mandela rules can actually be made implementable. A practical realisation is not going to be easy due to budgetary constraints.
- **Upneet Lalli:** As for implementation of the Mandela rules, so far the awareness of the rules is negligent. Changing of prison rules is still to take place. You can't expect changes to take place instantly. I can foresee a lot of conflict in terms of adopting something new. As for BOVs, the focus was that you need them, and it should be mandatory for the states to appoint them, and it should be a regular process.
- Regarding investment of resources, we cannot bring out improvement without them. In the first phase of modernisation, grant was given by the central government upto 75% and 25% by the states for improving certain areas of prison administration, particularly physical infrastructure. Unfortunately, the 2nd phase still hasn't gotten pushed through, the central govt and finance commission have refused to allocate the funds to prisons for modernisation.
- **R.K. Saxena:** Model Prison Manual has not been made under any law, thus it is upto states, and subject to variation. If a state adopts it, it must amend its rules or give administrative instructions. The manual is not compulsorily or legally applicable to any state.

## Incarceration of Juveniles

### ANUP BHAMBHANI

*Sr. Advocate, Delhi*

Sr. Adv. Anup Bhambhani spoke about the psychology of children and why if a child aged 7-16 years old, misbehaves, throws tantrums, breaks things, steals his classmate's pencil, or beats a classmate up, as a parent we keep a close eye on him. When we were young, a bad form of punishment would be being locked up in the bathroom. Posing a question he asked, why do you do only this, and nothing more? Because you believe that developmentally, children are different from adults. Their take on the world is different.



Comparing the situation with how a State deals with a child who is misbehaving, like theft or burglary, and you may be the person in charge to deal with this, would you do the same or something different, he asked. When we talk of the State getting involved, we lose track of the fact that those are also our children. He said according to psychologists, the most significant difference between an adult and a child is not that they can't know the implication of their actions but that they can't help themselves and they lack self-control. There is however, a varying amount of responsibility on the parents for the actions of their children.

## Key provisions of the new JJ Act

Mr. Bhambhani highlighted some key provisions of the new JJ Act. He spoke of the main sections, including Section 3(xii), (xiii), Sec. 8(2)(g), Sec. 12 (Bail is a right. Reasons if denied and shall override the provisions of the Cr. P.C), Sec. 18, Sec. 39 (process of rehabilitation and social integration be undertaken in observation/special homes), Sec. 97 (release of a child to live with parents/guardians), etc.

Talking about the change in thinking he said today, moral indignation against rising juvenile delinquency has risen with a demand for change towards a **punitive model over the rehabilitative model of punishment**. In the early 1900s, Clifford Shaw, of the Chicago School of sociology, said that juvenile delinquency is the result of social disorganisation of neighbourhoods, which experience a breakdown of more conventional institutions like family, and the key to solving it is strengthening of community ties and institutions.

Intent of law and application are at odds when it comes to juvenile justice. Conditions in correctional and observational homes like Majnu ka Tilla and Kingsway Camp vary greatly. Majnu Ka Tila was an ammunition dump in the British era, with walls 8 feet thick, made to prevent a blast, and is a hellhole. In the name of security, serious offenders have better conditions to live in over those charged with petty offences, with a separate room with carpeting, TV, separate bath. Secondly, there are a lot of common stories of violence from guards, boy-on-boy physical assault and sexual harassment. This institution has no mental health unit, no psychologists other than NGOs, no medical unit in house, and every time there is a problem, they have to be taken out by public transport. It is predominantly poor children being held there, there is social stereotyping. Their only offence is that they were born in a poor family.

The children should be allowed to participate in community supervised projects and must be allowed to attend school or some

sort of training. The real reason that there is violence in the institution is the fact of confinement. The moment they see themselves being released, they behave themselves.

### **The Solution**

We need to shift the focus from juvenile institutionalisation to juvenile rehabilitation, which is not happening currently. Reliance must be on preventive programs, alternatives to incarceration and community based solutions such as group homes, day treatment centres. There must be a supportive relationship between guards and juveniles. The children that leave the facility to work in the community on supervised projects, the juveniles must be permitted to attend school, instead of sentencing them to institutions, we should sentence them to training schools. You put a man into a cage, and you make him into an animal.

### **ASHA MUKUNDAN**

*TISS*

Prof. Asha Mukundan speaking about the incarceration of juveniles said that if the Juvenile Justice Act is followed in letter, then there will be no incarceration of juveniles. As per Section 19(3) of the Act, no one until the age of 21 should be sent to prison for custody.

### **Borstal Schools**

Ms. Mukundan elaborated on the concept of Borstal schools and why they should be revived. She said that the philosophy behind Borstal Schools is that of correctional treatment and rehabilitation treatment of juvenile offenders. The head of a Borstal School is called a principal. It provides technical training to inmates in various courses. The first Borstal School was set up in Dhanbad in

1921, as it was not considered proper to send a boy aged 16 years to a jail. However, after the JJ Act, the age criterion for correctional and observational homes overlapped with that of the Borstal home, she explained.

The borstal school is a better option in light of the absence of special homes and institutions that provide vocational training within the ambit of the JJ Act. However, borstal schools are now treated as prisons and run according to the prison manual. They are known as “Baba Barracks” in district and central jails, she said.

In 2012, there were borstal schools in 12 states. According to NCRB data of 2014, they have been reduced to 9 states, including HP, Jharkhand, Kerala, Karnataka, Maharashtra, Punjab, Rajasthan, Tamil Nadu and Telangana. Tamil Nadu has converted sections of their district prisons into borstal schools.

She concluded by stating that borstal homes and other observational homes are a necessary step towards reducing the impact of hardened criminals on juvenile first-time offenders.

## Discussion

- General unanimity in opposing the new provision in the JJ Act where juveniles will be treated as adults if charged with serious crimes. Law passed by hysteria?
- Non-separation of juveniles on basis of age-groups. Younger juveniles abused by older ones.
- Ex-DGR guard children' homes which is why there is no training or expertise in working with children. Force is thus used.

## Legal Aid in Death Sentence Cases

### NAVRATAN SINGH

*Lawyers for Human Rights International (LFHRI)*

Mr. Navratan Singh began by talking about his organisation which has been fighting against custodial violence, torture in prisons and has also campaigned for the abolition of the death penalty. He spoke about some of the cases of prisoners on death row, which the organisation has been fighting for.



### *Devender Pal Singh Bhullar*

Devendra Pal Singh Bhullar was charged with bomb blast in Delhi and acts of terror. He was convicted on the basis of a confessional statement obtained through torture by police officials. By doing so, and accepting such a confession which was presented before the police officials, the Courts have violated the very provisions of the Indian Evidence Act in favour of the draconian measures under TADA. The Supreme Court has recently commuted the death sentence of Bhullar on account of the inordinate delay by the President in deciding his mercy plea.

### *Dharam Pal Singh*

The second case is of Dharam Pal Singh who is currently in the



Ambala Jail. After dismissal of his mercy petition by the governor of Haryana, his mercy petition is pending before the President of India since 7<sup>th</sup> February, 2000. Dharam Pal is living in a pitiable and subhuman condition in a cell in which there is no cross ventilation and almost no access to sunlight. As per the version of the jail staff, no other cell could be provided to a convict suffering from death penalty due to security reasons. Since last year, Dharam Pal is only permitted to come out of the cell in a small area in order to use the lavatory. Otherwise he uses a small hole on the back wall of the prison for urine and a plastic pot for excreting. After a petition was filed by HRI in 2013, his death sentence has been commuted, The SC held in accordance with Shatrughan Chauhan's case saying that "if there is an undue inordinate delay in deciding the mercy petition, it will be undue and unjust to execute death sentence irrespective of the gravity of the offence committed as long as the delay was not caused at the instance of the condemned prisoner. In this case, the delay of the disposal of the mercy petition was very long i.e. 13 years 5 months."

Apart from the unexplained delay, there were other circumstances like he was kept in solitary confinement for more than 13 years. During the pendency of his petition, there were certain cases material facts which were not placed before the President. He was first convicted u/s 376, then under 302. Later, he was acquitted under 376. This means that his cases do not fall under rarest of rare cases.

### ***Pyara Singh***

The third accused whom I will talk about is Pyara Singh. He was 82 back in 2010 and lodged in Amritsar Jail. He was booked u/s 302, 307 of IPC and 25, 27 and 59 of the Arms Act. His mercy petition is lying before the court since 1997. LFHRI visited him on 16<sup>th</sup> August, 2006. It was found out that Pyara Singh was not even allowed to come out of his cell in the initial years until a judge in the Punjab & Haryana High Court visited the prison who allowed

him to be taken out of his cell twice in the evening and morning. He was suffering from various disease like depression, spondylitis and various old age diseases. Unfortunately, Pyara Singh died before any relief could be granted to him.

There are so many jails across India where prisoners on death row are kept in solitary confinement and there is a need to protect their rights.

### **DR. ANUP SURENDRANATH**

*Professor, National Law University, Delhi*

Dr. Anup Surendranath spoke about his work with death row prisoners since 2013, when he began interviewing those who were on death row. A report prepared by NLUD is set to be presented before the NALSA meeting.



As per our research findings, it was found that most of the prisoners on death row had during trial stage, hired **private counsels**, even though most of them were poor and almost indigent. This reflects the perception among many, the fear of state-sponsored counsels among the public. Quality too, is seriously lacking in the practice of advocates under legal aid services.

Legal Aid services in general, have begun to discount prisoners in the course of their discussion. Prisoners are not informed of the dates of their hearing, let alone what the court said. Such prisoners are never briefed about the case, and are never consulted about the case at any stage. Template petitions are being submitted for

repeated death roll appeals in the higher courts, a practice followed by most of the legal aid counsels.

The convict is considered to be the most irrelevant part of the litigation proceedings. They are not informed about the court proceedings. They are not even consulted or contacted by the lawyers about the most viable course of action or any other strategy that is to be adopted during the trial. Quality litigation and competent lawyers which include marquee names come into play only in the last stages of a death penalty trial when the mercy petition has been rejected or the date of the execution has been fixed. This is a general trend. However, there are exceptions in lawyers who really involve themselves with the convicts during trial proceedings.

Today, there is a renewed enthusiasm towards death penalty with respect to terrorism and sexual violence. Lower courts must be more cautious in handing out death penalties because, it gets very difficult to countermand as soon as they reach the higher courts.

India sentences around 110 prisoners to death every year. 30% of these cases go from death penalty in the trial court to complete acquittals to the High Courts. Further, 65% get commuted to life in prison. There is a belief among trial judges to be not seen as being soft on cases which have stoked public hysteria.

He concluded with a reference to an order of the Constitutional Bench in the Rajiv Gandhi case which allows the High Courts and the Supreme Court to impose death sentence without the possibility of parole. This should not be considered a victory because it is an extremely problematic punishment. A significant amount of effort needs to be channeled to challenge this decision. There is a lot of discussion on the fact of execution, the fact of killing but, there is very little focus on the daily suffering of being on death row, which is a cruel act of violence in itself.

## **PILs / RTIs Filed on Behalf of Prisoners**

**SANA DAS**

*CHRI*

Ms. Sana Das explaining the work of CHRI said that filing of PILs and RTIs is an important part of CHRI's work to ensure compliance with court directives.



### **PILs**

She spoke of some of the interventions that have been made by CHRI in the courts to get important directions. These include direct filing of letter petitions in West Bengal and Maharashtra, intervention in cases in Rajasthan, and the direction by the Supreme Court to assist the amicus in a very recent case which is linked to setting up and monitoring under-trial review committees in 1382 jails across India, she said.

### ***Intervention in the Suo motu case in Rajasthan High Court***

Ms. Das spoke about the suo motu case taken up by the Rajasthan High Court in 2012 regarding the rights of prisoners and conditions of prisons. CHRI intervened in the case in 2014 by sending letters to the Chief Justice relating to complaints from inside the prisons

regarding the dismal conditions in prisons, food, health and smuggling of mobile phones. We intervened after the Courts started ordering District Judges and Chief Judicial Magistrates to make surprise visits to prisons. We argued about constituting a Board of Visitors and appointing non – official visitors.

We gave the Court a report on the discrepancies on the no. of visits of non-official visits. No non – official visitors were appointed in the last two years. 250 visitors were appointed following our interventions. Further, we brought before the court the total no. of visits undertaken by the visitors, which amounted to 250 visits in a year when it was actually supposed to be at least 1500 visits in 35 prisons in a year. The court subsequently called for the formulation of a Constitution and a roster of visits. It led to the formation of a four tier monitoring system.

The court sought a report from the amicus of whether the State was actually fulfilling its responsibilities in improving the dietary, sanitary and health conditions in prisoners. It sought more information about inter – department coordination and a ground report of government actions and interventions in prisons. Our report reflected that not much had been done in terms of state action. The Court passed orders in directing the Chief Secretary to monitor and file reports on the status of government actions being carried out in prisons. The District Magistrate was also directed to file reports on his official visits to the prisons. The Board of Visitors were also made to report to the IG.

### ***Maja Daruwala vs. State of Maharashtra***

The PIL was filed by CHRI in 2010, based on a letter petition sent to the Chief Justice for the constitution of an independent review committee. The Mumbai HC passed an order to constitute a Board of Visitors in every district and deputed the District Magistrate to formulate the Constitution of these Boards. Resources were also to be pledged to the District Magistrate's office and a chain of public

servants like the tehsildars were made accountable to the DM, who in turn reported to both the Home Department and the Prison Department.

However, much of the directives remain unaccomplished. Boards have not been constituted and sub-jails are still dry on funds. There was partial compliance in districts like Nandurbar, Latur, Ahmadnagar and Naik. We have returned the report cards to the DMs and highlighted their lackaisidical performance in forming visitor boards, holding meetings, spending the allocated budget etc. A contempt petition is being considered, she stated.

### ***Lack of police escorts for prisoners in Rajasthan***

Talking about another case being handled by CHRI, she explained that it pertains to the lack of police escorts for prisoners for production in courts in Rajasthan. Because of this reason a lot of inmates were not being produced before the Magistrate. We collaborated with the Prison Department in order to collect the statistics pertaining to the no. of productions of prisoners lodged in District and Central jails (excluding the sub jails), she further stated. At least 30% of the prisoners could not be produced in jails due to lack of police escorts. It was in this regard that a PIL was filed, and meanwhile the rate of non-production has gone up to around 40%. CHRI is also filing RTIs seeking the status of court production in the various districts.

### ***Litigation in West Bengal- Non Production before Magistrate***

Prisoners are kept in court lock-ups and are not physically produced before the Magistrate. This was supported by a survey based on the accounts of prisoners in West Bengal. Therefore, a PIL was filed with HRLN.

Here, the court passed directives asking for compliance with statutory physical production and compliance with the directions

given in DK Basu. Further, it passed directives to ensure the presence of legal aid lawyers in Magistrate courts.

There is a wide gap between statutory law and its implementation in law. To ensure such implementation, CHRI has disseminated court directives to all stakeholders, has conducted surveys in prison and vigilance units in prisons and filed RTIs to ensure compliance with such directives. However, despite the initial positives, it is back to square one, she said.

In another case, juveniles were illegally detained in adult correctional homes, and were also denied access to legal aid. Here, the Court directed that the districts ensure full compliance with the Sampurna Behrua judgment.

There is a prospect of collective intervention, especially with regard to production before court as well as with regard to the constitution of Visitor's Boards.

## **RTIs**

CHRI has filed RTIs with regard to prison monitoring, prison management, police escorts, government mandates, etc.

CHRI has used RTIs to gather information, for researching on issues, taking it up through advocacy, and capacity building of stakeholders. For research, surveys and questionnaires are used.

## **Challenges in filing RTIs**

The following challenges are generally faced with regard to RTIs:

- Language is a barrier
- Information management is a barrier

- No standard format
- Uncertainty regarding the keeper of information
- Unnecessary forwarding of request
- Vague responses
- Lack of information on whom to seek the information from
- Prisons have been most responsive
- Police has been least responsive

There is a need to reduce reliance on Section 6 of the RTI Act. Government should be transparent, regular and information should be updated constantly without reliance on this section.

## **VIJAY RAGHAVAN**

*Associate Prof., Centre for Criminology and Justice, Dean of Social Protection Office, PRAYAS*

### ***Shabnam Minwalla vs. State of Maharashtra***

Mr. Vijay Raghavan highlighted the points he had raised as a member of PRAYAS in *Shabnam Minwalla* case. The focus of the said case was to secure the release of undertrials on personal bonds, those who had already served half of their sentence etc, as well as recommendations which may provide long-term relief to such prisoners in such situations. Further, the language of communication of the court to be Hindi or Marathi so that the under trial prisoners understand what is being said, proper implementation of Probation of Offenders' Act, as a





lot of under trial prisoners can be released and it will also solve the problem of overcrowding of jails. The other issues included legal aid not being implemented efficiently, and police escorts not being provided to prisoners especially women prisoners. Bail release on personal bonds was also not being used by courts.

One of the long term suggestions that we gave to the Court was to have a state level interdepartmental state committee on prisoners having members from every field. This suggestion was accepted by the court, and a state-level committee empowered with making changes to the conditions of prisons was constituted, with members from all departments and headed by the Chief Secretary, as well as members of the civil society. This was further facilitated by a government resolution so passed by the Maharashtra government.

### ***R.D. Upadhyaya***

In another case, a study was conducted based on the issues and problems faced by children whose mothers were behind bars. This study was summarized and attached with the pending petition, *R.D. Upadhyaya* and guidelines issued by the Courts to all states and U.T.s were to include recommendations for children and women in prisons as well.

Anganwadi centres have been started in four jails across India through ICDS.

However in the said case, suggestions with regard to children of prisoners left outside were left out. The court took suo motu cognizance of this issue and presently, the State and U.Ts have been asked to respond and jails have been asked to survey the number of children left outside and away from their mothers.

Further, there is a huge number of prisoners in jail who have not been released from jail simply because their cases had not been

disposed of. The UP high Court had asked PRAYAS to do a detailed study on the conditions of prisoners in the state of Uttar Pradesh. The High Court has included over 90% of all these recommendations. However, the extent of its implementation is yet to be considered.

PRAYAS works on the ground level by engaging with the system without trying to confront it, but by coercing a positive change, such as the starting of Anganwadi centres, vocational training for prisoners etc.

## **RITU KUMAR**

*Advocate, HRLN*

### ***Multiple Action Research Group vs. Govt. of NCT of Delhi***

Ms. Ritu Kumar spoke about the PILs filed with regard to the violence in Tihar, as well as the implicit nexus between prison officials and a section of prisoners themselves, which is why there was a cycle of torture, blade cutting, beatings etc. On instructions of wardens, open beatings were daily and regular.



The complaints of the same were first forwarded to the NHRC. However, no action was taken. Therefore, a PIL was filed in the High Court, asking for an enquiry in the cases of torture, blade cutting, drug smuggling, beatings, etc. On enquiry, it was found that all such complaints of violence were true and therefore, recommendations were made.

The petitioners further asked for constitution of a grievance redressal body, appointment of human rights officers, and constitution of a Board of Visitors.

As per the various directions of the High Court, a Board of Visitors was constituted. However, it comprised of police and jail officials as Non-official visitors. This notification was again challenged by us, asking for an independent Board of Visitors to be constituted.

After various meeting with the prison officials, the Superintendents, DIG, DG, etc. were removed from the Board.

We asked for implementation of Sanjay Suri case guidelines for constitution of an independent Board of Visitors. We further asked for atleast 2-3 Non official visitors per jail. The authorities agreed to appoint 2 non-official visitors per jail.

The new notification is pending.

### ***Jose Abraham v Govt. of NCT Delhi***

This was a case of medical negligence where the inmate died in custody, due to medical negligence of the doctors, Superintendent, etc.

We had some letters written by the deceased inmate saying that he had been denied a special diet, and not taken to the hospital despite his repeated pleas. The inmate had developed Tuberculosis, which had not been detected till it was too late, and had died of malnutrition and septicaemia.

We filed a petition in the High Court of Delhi asking for an inquiry in the case. The District Judge conducted an enquiry in which the doctors and other staff were examined. He concluded that there was negligence, and that he had not been given proper

attention by the authorities. He said that it was a case of systemic failure, where none of the facilities were made available to him.

We are asking for a medical committee to be constituted in the case to recommend proper medical facilities, and safeguards to ensure that the poor inmates are not neglected.

***Sr. Suma Sebastian vs. Union of India & Ors.***

In this case which is pending in the Supreme Court we have asked for release of prisoners on personal bond, all those undertrials who have completed 1/4th of the maximum possible sentence in accordance with the circular of UOI dated 17.1.13, as well as release of persons under Sections 436 A, 167 (2) (a)(i), 167 (2)(a)(ii), 107, 109, 110 Cr.PC, including first time offenders, disabled persons, sick, women with children, dalits, tribals, young offenders, and homeless persons.

## **Role of Universities and Students in Prison Legal Aid and Legal Aid Clinics**

**MADHURIMA  
CHRI**



Ms. Madhurima began the session with an introduction to the concept of Legal Aid Clinics which was first envisioned in the NALSA's vision and strategy document, on the basis of which the NALSA Legal Aid Scheme of 2010 was formulated.

The aim of the scheme is to provide an inexpensive local machinery for rendering legal services like legal advice, drafting of petition, notices, replies, applications, other documents of legal importance. NALSA's legal aid clinics scheme also talks about legal aid clinics run by law students. Though, the scheme does not specifically mention setting up of legal aid clinics in prisons, however, the objective of the scheme is to provide legal services to the poor, marginalized and weaker sections of the society as categorized under section 12, and persons in custody fall under those categories. As such a bare reading of the objectives would actually mean that clinics can also be run inside the prisons.

The importance of legal aid clinics in prison has also been mentioned in the Government of India and UNDP study of 2011.

For the University based clinics, the mandate comes from, Part IV of the Rules for Legal Education Schedule III Physical Infrastructure

which states, 'Each institution shall establish and run a Legal Aid Clinic under the supervision of a Senior Faculty Member who may administer the Clinic run by the Final year students of the Institution in cooperation with the Legal Aid Authorities with list of voluntary lawyers and other Non-Government Organizations engaged in this regard in the locality generally from which the student community of the Institution, hail from.'

Further, since 1997, the BCI has mandated that law schools teach legal aid and education as a compulsory course. These courses are important in providing an insight into prison conditions across India.

### **Types of Models followed by Legal Aid Clinics**

There are two types of models which legal aid clinics can follow. One is the direct model where students visit the prisons and they deliver direct services, like drafting of bail applications, affidavits, etc. The other model is the indirect model, which facilitates delivery of legal aid services by legal services authorities, improving coordination between legal services authorities, prisons and the courts; and acting as a watchdog for the legal service authorities over legal aid in prison.

### **Shadhinota**

"Shadhinota" is an example of the indirect model as followed by CHRI in collaboration with the National University of Juridical Sciences in Kolkata. In August 2010, CHRI initiated this legal aid clinic, which was also endorsed as one of the best practices by the Government in the UNDP study. One other university in Goa, the Salgaocar University, was also doing similar work.

The purpose of 'Shadhinota' (legal aid clinic) was to bridge the gap between the inmates in need of legal aid and legal aid lawyers who were mandated by the legal services authorities to render effective legal aid. Here problems were documented, discussed and

analysed with students, petitions' drafter and followed up and finally, assessing the final outcomes or impact of the said petition. This was done in collaboration with CHRI, NUJS, Department of correctional services (prison department), and the West Bengal SLISA.

Impact: 95% case referrals to the LSA have been provided with Legal Service advocates, increased vigilance by LSA, Increase in the visits by LSA representatives etc.

Challenges to legal aid clinics in prisons: Permission, avoiding setup of parallel legal representation, accommodation of student calendar etc.

We have a brochure that we had made based on our experience, called the 'Legal Aid Clinic', a guide book for law schools. It is applicable for universities, TISS has a case in this as well. It's on our website, if you want hard copy, you can email us and we can send you a copy and we would be happy to provide the basic knowledge or framework if you wish to replicate the system.

## **PROF. B.P. PANDA**

*Vice Chancellor, Maharashtra National Law University*

With regard to setting up of legal aid clinics and involving students in legal aid in prisons, Prof. B.P. Panda felt that even though there a lot of opportunities where the law students can do wonderful things however, legal aid cannot be done by Law Schools independently. He explained that there is a deficit in confidence within the prison authorities, the prison administration and the prisoners with regard to involving students.



With regard to the students, it is not the question of helping somebody, it is a question of commitment. Understanding the problem, and how to look into the problems, with the provisions of law. For this we started looking at the possibility of involving stakeholders, NGOs and even State authorities. This would also address the problem of sustainability as law students would come and go, however for a programme to be sustainable, it needs to be institutionalised, and the process should be taken forward by a dedicated faculty who takes up this particular service and makes that particular bridge.

Borstal schools are an institution that are almost on the verge of dying. Students of law through legal aid programmes and clinics are in a good position to help take such schools out of the general apathy and ignorance exhibited by the general legal services. The fact that existence of such an institution is barely known to many people is reflective of the general trend of ignorance in this respect. This is a very important institution that I've studied, where when nobody is taking care of it, the students of law can take care of it through starting a legal aid programme.

Legal Aid clinics can be further enhanced by the active participation and promotion of such services by students of law. Students should be made to realize that such a service is not only reflective of having a social commitment, it will also help them gain some constructive growth in this regard.

Sustainability of such legal aid clinics is important, now that it has received active support from the NALSA and BCI. However, there would be some who will no longer find such programme to be a viable and sustainable concept. Therefore, special care must be taken to take forward this idea.

Further, since prisons are a closed institution it is difficult to get access. Therefore, with the involvement of different stakeholders and NGOs this could be made possible for law students to access.



Also, it is important to change the terms used to house our inmates. Perhaps, the words 'jail' and 'prison' could be replaced by 'correctional institutions'.

## **PROF. PARASURAMAN**

*Director, TISS*

Prof. Parasuraman talked about his fascination for prisons, and the reason he has visited prisons in different countries, with different socio-economic contexts. For instance, in US where prisons were privatized, the more people they held, the more money they get, so there was an incentive to keep them there. In Ireland, it was like a factory, prisoners were forced to work on Nike shoes so as to make money for the company by using prison labour. In South Africa, the greater the poverty, greater the number of people in prisons. He said there is a positive co-relation between level of poverty, marginalized group of people and the prison population.

On BBC there was an interesting documentary on the Wealth of Nations, which said that 1% of the population owns 99% of the world's wealth and how Governments are increasingly trying to make money out of the bottom of the pyramid. So, more and more of these poor and young people are ending up in jails because then you don't need to give them jobs, they become captive labour. And these are the people who have no access to justice.

AT TISS, we have started Master of Law in access to justice, and the third batch would be coming out this year, Prof. Parasuraman informed. As has been proposed here and on which we have been working as well - whether the law schools across the country can come together, create a framework whereby making it mandatory for the fourth and fifth year students to create documentation on under trials as well as those who have been tried. We have been trying to convince the Vice Chancellors to get a network of law universities

that make legal aid as a mandatory condition. To let them go one day every week to a prison, or a detention home, whereby these young people can actually do some work.

Secondly, along with Keele University's law school, a new website has been designed and developed which now allows anyone in distress to register a complaint of grievance online. This complaint will subsequently be linked to a lawyer who can provide the necessary legal aid.

The website is fully developed and it is being translated into local languages and we want to roll it out.

A detailed research must be conducted on the varying models of prison management which are in existence. Law schools must take charge of providing basic legal services and advice to the downtrodden and the marginalized, and websites are a good way to link up with the society and the system.

The law schools need to play a much important role, we need to encourage increasing number of young people to get into working with people rather than working for capital, there are a number of things that can be done but that can only be done collectively.

## **Proposed Action Plan for 2016-2019**

The participants of the consultation agreed that the prison system in the country needed to change and thus, there was a need to create a common platform for all the stakeholders to come together and arrive at a common objective on working towards prison reforms in the country.

Thus, the 3rd National Consultation agreed to build a National Forum of various stakeholders with the broad objective of improving the prison conditions in the country for the incarcerated and building a more efficient and transparent prison system.

From the various issues that were discussed and debated upon, the following main issues have been highlighted to focus upon for initiating prison reforms in the country and to work towards in the next two-three years.

### **1. Access To Legal Aid In Prisons**

Often inmates do not know how to avail legal aid in prison. They do not have any idea if they have a lawyer or not, even though a lawyer may have been appointed by the court.

Prisoners should be able to ensure the quality of legal aid provided.

**Proposed solutions:** to provide access to legal aid, every prison facility should provide a jail clinic. All undertrials should have easy access to legal aid lawyers, and be allowed to spend adequate time with them. The judges should inform undertrials of their rights and provide legal aid lawyers.

## **2. Legal Aid Lawyers**

Training of the legal aid lawyers is important to ensure that the legal aid lawyers are able to handle the cases they are assigned. For eg: Many times civil lawyers defend in criminal cases and sometimes there is no cross examination or a bad cross examination, which can lead to a conviction.

**Proposed solutions:** Mandatory on-going trainings for legal aid lawyers to exchange information and share their problems, if any, to improve the quality of legal aid provided. The trainings can be imparted in collaboration with NGOs and National and State legal service authorities.

Regular fee payment for lawyers should be implemented as an incentive, and fees of legal aid lawyers should be increased.

Supervision system for the legal aid lawyers should be put in place. There are models of supervision in the world. For eg: The judge before whom the legal aid lawyer appears makes a remark in the board.

## **3. Remand Advocates**

The availability of remand advocates was questioned as there is a lack of trained lawyers and their appearance in court. A remand advocate, funded by legal services institutions, should attend every criminal matter across the country. Even on days when the court is not open, the remand advocate should be available to assist a person who may have been arrested on a Saturday or a Sunday, and who needs to be presented before the Magistrate. The remand advocate should be appointed at the time a person is arrested so the advocate can advise the person arrested about his right to bail, including his right to mandatory bail u/s 167 that has to be granted on 90th day if the chargesheet has not been filed.

**Possible solutions:** The remand lawyer to be appointed at the time a person is arrested. The quality of remand advocates should be subjected to evaluation under a supervision system with feedback from the client, a presentation of a monthly report, the use of detailed appointment letters and responsibility notes for the advocates.

NALSA to appoint remand advocates in every court. A monitoring system be put in place by NALSA while appointing the remand advocates.

#### **4. Monitoring of Cases by State Legal Service Authorities**

The cases done by the legal aid lawyers should be monitored by the legal service authorities to ensure that the services provided by the lawyers are up to the mark.

A system of checking the status of cases assigned to the legal aid lawyers, should be put in place to ensure that the prisoners are being provided with proper legal assistance.

**Proposed solutions:** DSLSA is developing an electronic warrant, which will contain the day's information and a brief summary of the case, so that it is updated day to day, and all the updated proceedings are submitted by the legal aid lawyers, which will also help in monitoring of the cases by the legal service authorities.

#### **5. Bail, Personal Bond, Surety**

##### ***Bail***

Bail is a matter of right in bailable offences under S. 436, Cr.PC, which says a person 'shall be released on bail'. In case a person is not released on bail for lack of representation, etc. the inmate's

case should be referred to a legal aid lawyer for ensuring that his application for bail is moved in time.

**Proposed solutions:** Orders should be sent to Jail Superintendents so that they are communicated to the inmates in time.

### *Personal Bond*

As per S. 436, in case a person cannot furnish the bail bond, within a week of the date of arrest, it shall be sufficient ground for the court to presume that he is an indigent person, and therefore should grant the person bail on personal bond. The Prison administration and the legal aid lawyers should ensure that if a person has not deposited the bail amount within a week, the application for release on personal bond should be automatically filed for him, assuming the fact that he is indigent.

### *Surety*

The system of surety is flawed as courts insist on local surety. Often, persons are arrested in places where they know no one. This in fact, is restrictive of the prisoner's right to be released on bail, even as bail can be granted against personal surety.

For eg: A person coming from another state, for work, etc. cannot get a local surety.

In Goa in cases of foreigners who have come from Belgium or Switzerland, it is impossible to get a local surety? It leads to corruption, as he gets a local person, he pays him not only the surety but he pays him money for standing as a surety, and therefore it increases corruption. The judges know that the local surety who is coming there is saying yes I know this foreigner because he met him in the shacks etc. is not genuine, so it is better to do away with local surety.

There are judgments of Justice Krishna Iyer, which clearly say that you cannot insist on local surety.

**Proposed solutions:**

To release people on personal sureties. Also, in cases where people can pay money, to grant sureties under S. 445, which allows deposits instead of recognisance.

File PIL to do away with or move away from the surety requirement, like FD receipts, vehicle documents, property requirement, solvency certificate, etc., and allow for deposits instead of sureties u/s 445.

**Statutory bail** - It is the duty of the judge to inform the undertrial about his rights, and provide him a legal aid lawyer, at the time of production.

**Better Implementation of bail provisions** – For better implementation of bail provisions, awareness and training exercises should be conducted periodically among the undertrials in custody, jail staff, legal aid lawyers, judges, etc.

**Need for training and change in attitude of Judges** - Some judges, especially in lower courts, are denying bail to those charged with petty offences, as a result of which petty offenders are left to languish in jails for months and years.

**6. Non-Implementation of Ss. 436A, 437(6), 428, 41A**

**S. 436A** –As soon as the warrant is received by the prison superintendent he should write the date on which the under-trial would be released. Lawyers should also take note of the date. There is a problem in calculation of 436A. The e-suits should have a calculation system. Multiplicity of offences must be taken into consideration when bail under Section 436 A is requested.

Proposed solutions: After the Bhimsingh judgement, the judiciary

was given orders to see every jail and check which prisoners could be released under 436A. If we have to follow up on it in a meaningful fashion, the judiciary at the time of the sentencing must declare the maximum sentence so that no one in a thana has to do so. This has to be done at the time of framing of charges, this amendment has to be made to reap the actual benefits of the section. There should be system to ensure that on the day half the sentence is over, the court takes up the case automatically and disposes it.

UT review committee for 436A, 437(6), 428 & jail conditions has been constituted by NALSA under the SC directions, with DJ as chair and DLSA as Secretary.

**Sec. 41A** - Up to 7 years possible sentence no arrest (Sec. 41A). Therefore all those in lesser crimes should be released at once. PILs.

## ***7. Plea-bargaining***

Though Plea bargaining (Chapter XXI, Cr.P.C.) helps in releasing the first time offenders, but it comes with the stigma of a conviction, as the condition of being released is that the accused has to plead guilty, even though he maybe innocent.

Instead of a conviction, plea bargaining should result in acquittal. This could be possible under Section 320, Cr.PC as per which an offence is compounded, the acquittal follows not a conviction. Under this provision, the disputes can be resolved amicably between the victim and the accused. **It is laid down in Section 320 of the Criminal Procedure Code that if the offence is compounded , composition shall have the effect of acquittal .**

**Proposed solutions:** Similar to compounding, plea bargaining should result in an acquittal.

Filing PIL on the issue.



## 8. *Filing of False Cases and Malicious Prosecution*

False cases are quite common in cases where there is enmity between two parties, or when the police want to put the blame on someone to save themselves from inaction. In such cases, if the family is ready to pay a good amount of money, the case wouldn't be registered against the person, but if you aren't able to pay the money, FIR will be lodged, and the person will be put in the prison.

In such cases, if there is acquittal after long incarceration, compensation should be provided and State should support rehabilitation.

**Proposed solutions:** Action against the police officer should be taken. Adequate compensation should be given to the victims and their families.

A PIL on the issue is proposed to be filed.

## 9. *Delay in trials due to non-appearance of witnesses*

### **Imposition of costs**

Under section 309, court has the authority to postpone or adjourn proceedings. The section talks about proceedings taking place day to day until the witnesses are examined. S. 309 is most often in breach, day to day trial do not happen, witnesses are not examined, as a result the cases delayed for years.

However, S. 309 has a rider which says that adjournment can be granted, of course, by imposing costs to the PP and to the advocate. Sometimes there are cases, where a particular witness has not come even after summons being issued 8 times, 9 times, and yet the judge continues to give an adjournment. Therefore, it is important to impose exemplary costs on the PP, so they are forced to bring their witnesses to the court. One NDPS judge who did this in Goa, and

it really worked, he was able to clear about 80 pending cases in a matter of literally 1.5 years, by insisting on costs to the PP.

### **Technical witnesses**

Further, in some cases like NDPS, etc. if there are 7 or 8 witnesses, out of these, atleast 3 major ones are technical witnesses, like the chemical analyst, the person in charge of the *muddemal*, maybe the scientific assistant who takes the drugs. In a murder case again, there is the autopsy doctor, the blood reports, etc. so many witnesses are technical. Technical witnesses can be examined on affidavit. This is being done in civil cases, where evidence is taken on affidavit of technical witnesses, even to the extent of S. 161. This reduces a lot of court time in typing, and recording evidence.

### **Better treatment of witnesses**

Another reason as to why exactly the witnesses do not come before the courts, is that they are made to stand in the witness box, which is not very interesting or easy for them. The witness is subjected to stand, he is not given any transport money nor food and of course subjected to hours and hours of cross examination. If the witnesses are treated better, they will come to court. Their lethargy or not wanting to come to court is mostly due to the treatment that they are meted out in a criminal court proceeding, which looks at the witnesses as an adversary, rather than helping out the prosecution. Treating our witnesses well would bring them forward to the court.

### **10. *Non-production of inmates before the Magistrate/ Concerned court***

Most inmates are not produced or rarely produced before the Magistrate on ground of lack of police escorts. Lack of staff in prisons prevents the legal procedure to be fully implemented. In some cases signatures are falsely taken.

**Proposed solutions:**

Filing PIL on the issue.

**11. Lack of Sensitised and Trained Staff in Prisons**

Prison services are manned by police officials who have no idea of the reality on the ground nor have any training to tackle the nature of such correctional facilities. Police officials have no work experience or expertise of the functioning of a prison.

**Proposed solutions:**

- Filing PIL on the issue for appointment of trained prison officials.
- Intermittent training of prison guards.
- A regular audit and peer review must be encouraged.
- Replicate CHRI's work in Rajasthan

**12. Video-conferencing**

Lawyers do not visit prisons. With video-conferencing, meeting lawyers during remand stage is rare and lawyers or magistrates do not observe non-production of accused in court.

There is lack of documentary evidence on presentation before court. There are issues while recording of evidence through video-recording, and remand through video-recording.

**Proposed solutions:**

Video-conferencing should not be allowed in the first two-three productions.

If video-conferencing has to be allowed it should have proper safeguards (PUCL v. State of Maharashtra).

Legal aid lawyers should be present during video-conferencing.

Analysis & proper analytical work to look into the provision of video-conferencing.

### **13. Jail court**

The Magistrate should visit the jail atleast once a month to hear pleas and grant bails, etc., especially in places where the inmates are not being produced in courts regularly, due to lack of staff.

**Proposed solutions:** Jail courts should be established in every jail.

### **14. Training of Inmates as Paralegals**

Inmates can be trained as para legals to help other inmates, especially convict prisoners.

**Proposed solutions:** Training courses could be undertaken by legal aid authorities, and NGOs working on legal aid.

### **15. Legal Aid Clinics**

Promote legal aid clinics run by students in law colleges in collaboration with universities.

- Students could also take up Borstal schools.
- Training of paralegal volunteers

### **16. E-Kiosk**

An e-kiosk should be made available in all the jails, with comprehensive data on all inmates. This can be manned by especially trained staff, with the help of prison officials. This would help in providing better legal services to inmates. This would also save time for legal aid lawyers, and would help in providing better services to the undertrials.

## **17. Juveniles**

The **age determination** is often a problem. Also, if a client is proved to be a juvenile, lawyers will lose the case. That is why sometimes lawyers are not even helping to determine the age.

**Juvenile rehabilitation** There were a common trend of moral indignation against rising juvenile delinquency which has preferred the punitive model over the rehabilitative model of punishment.

Absence of any Child Welfare Boards or Juvenile Justice Boards in Jammu & Kashmir. The JJBs in many states are not functioning as per the Act, and do not have proper facilities.

### **Proposed solutions :**

- There must be a shift from juvenile institutionalization to juvenile rehabilitation and sensitisation and follow a rehabilitative model. Juveniles should be able to have access to trainings and attend schools. The children should be allowed to leave the facility to work in the community on supervised projects.
- There must be a supportive relationship between guards and juveniles.
- Borstal homes and other observational homes are a necessary step and more such homes should be built as the number of Borstal Homes is insufficient.
- JJBs should be made more effective in other states.

## **18. Women Prisoners**

Women prisoners are generally unaware and misinformed of the peculiarities of their case and have no contact with their family. Section 437 A of Cr.PC allowing women and infirms to be released on bail on judge's discretion is hardly implemented.

### **Proposed solutions:**

- To give women awareness trainings and orientation programmes
- To ensure that the grievances of women are heard and addressed regularly.
- Activists to hear women inmates issues regularly and address them.
- PILs to implement R.D. Upadhyay judgement

### **19. Mentally Ill Inmates**

Most of the prison inmates undergo a mental trauma and need counselling services. Counsellors in jails should be available on a regular basis. There is a lack of counsellors. The judges should be sensitive to the mentally ill patients and release them on bail.

There is a lack of awareness among the prison staff, and the judiciary about such inmates. For eg., in a case where a lady was suffering from epilepsy, when it was brought to the court's notice, the court refused to treat it as insanity, even though the lawyer tried to prove to the judges that epilepsy dims one's cognitive facilities like - when to eat, understand things, wake up. The person is depressed and suicidal.

These inmates cannot formulate their defence and assist lawyers.

At the most, mentally ill prisoners get medicines. But they need more than that. They need a specially devised plan, unlike terminally ill people. They need yoga, walks, meditation, counselling, etc, which they don't get.

**Proposed solutions:** Thought needs to be given to people suffering from severe mental illness issues and try to bring some reforms through legislations, executive and the judiciary.

Efforts should be made to try to release them on bail or shift them to open jails.

## **20. Prisoners' Rights**

### **Food, Medical Treatment**

The inmates with resources are able to get the best facilities inside the prisons. They are able to get proper space to sleep, special food is provided to them, etc. For sick inmates, who are resourceful, they get medicines and hospital visits if required. However, the vulnerable inmates from poor families, are the ones who have to suffer the hardships. They are also made to do all the hard and dirty work inside the prisons.

Some NGOs working in the prisons have tried to ensure that the quality of food inside the prisons is maintained. They also have tried to intervene in cases of sick prisoners, for taking them to the hospital and making medicines available.

### **Family Rights and Conjugal Rights**

Usually family members have to wait a long time before they are allowed to meet the inmates. The waiting conditions are not very good. Physical interaction is done through a mesh. Sometimes, there is a provision of special entry also wherein the husband, wife and child can talk together but again that is available through shelling out money.

### **Proposed solutions:**

- Basic facilities like food, medicines, clothes and other items of utility should be allowed for everyone without discrimination.
- Conjugal rights should be allowed and family visitation should be made easy. During the family visits, the intimacy and privacy of the inmates and their families should be respected.
- NGOs could play a role in ensuring that the inmates are provided the basic facilities. They could also help in bringing these issues in the courts.

- Visitors committees should ensure that the basic facilities are provided to all without discrimination by doing regular rounds and talking directly to the inmates.

## **21. Access to Jails to NGOs**

NGOs should have easy access to jails, especially those who are providing important services to the prison inmates like counselling, trainings, legal aid services, etc.

Ministry of Home Affairs (MHA) has certain conditions, which gives restrictive access to NGOs for visiting prisons. Application has to be filed 2 months before, and one lakh has to be paid for the same. The same should be challenged.

### **Proposed solutions:**

PIL to give access to NGOs working in the jails. The MHA order to be challenged.

## **22. Visitors' Boards in Prisons**

Visitors' Boards and Committees are useless with respect to checking Human Rights violations as inmates are always fearful of retaliation from the authorities or other inmates.

The Visitors Boards usually comprise of Commissioners, IG Prisons, the same people who are associated with the prisons and are the same people who are indulging in negative practices in the prisons. Unless there are independent people appointed, the visitors boards will not be effective.

The system of Visitors' Boards should evolve and be implemented better across the States.

### **Proposed solutions:**

- It is important that non official members, trained and skilled independent persons are appointed in the board.



- Sanjay Suri judgement should be implemented with regard to appointing non-official visitors.
- PILs in different states for appointment of visitors committees.

### **23. Jail Visiting Judges**

The visits by jail visiting judges should not be merely formal visits, but should be more interactive, where the judges are able to meet and interact with prisoners on a regular basis.

The visits should be surprise visits and the judges should not be accompanied by Superintendent during their rounds.

### **24. Monitoring Committees**

NALSA has the task of monitoring legal aid services in India. The Monitoring Committee under the NALSA Free & Competent Resolutions 2010 has the task of monitoring court-based legal aid cases, providing legal aid to those cases pending before the court. Basic job of this committee is to check the progress of the cases where they have provided legal aid. The monitoring committee has the right to access judicial records, to check the competency and performance of the legal aid counsels. Though the monitoring committee was not working earlier, but NALSA has been trying to work on it on issues pertaining to prisoner's rights, and the quality and competency of the legal aid counsels.

#### **Undertrial review committee**

Undertrial Review committee has been established by the Supreme Court for reviewing the release of undertrials under the following Sections or conditions:

- Who are entitled to be released under S. 436A – i.e. they have completed half of their maximum sentence
- Who are in jails for those offences that are compoundable under S.320 CrPc

- Where bail order has been passed but they have not been released for lack of furnishing a bail-bond. If a bail order has been passed and the prisoner is still lying in jail, a counsel appointed by NALSA will move the appropriate application for the court's consent so that he can be released on a personal bond.

**Proposed solutions:**

NALSA to be sent list of the undertrial prisoners, under the above mentioned categories to ensure that such prisoners are released from the jails.

**25. Role and participation of media in highlighting prison issues**

The Role of media is important in highlighting some of the prison issues. Though there is a danger of sensationalizing some of the cases, however, it is important to involve media to bring about changes in the prisons. In Delhi, the involvement of media in highlighting the Tihar issues has made the judiciary more watchful and responsive.

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