

PRISONS OF BIHAR



STATUS REPORT- 2015

Based on

Survey, Inspection and Analysis

Made by and on behalf of

Bihar State Legal Services Authority

Budh Marg, Patna – 800 001

Foreword

Inspection of the 58 prisons in the State of Bihar was undertaken at my behest, as earlier as an Inspecting Judge of the Judgeship while inspecting prisons myself because of the time constraint, I could not interact with each of the prison inmate to ascertain from the prisoners themselves about factual compliance of the various provisions of law as also the Prison Manual and always requested the District Judge concerned to keep regularly visiting the prison to ascertain from the prisoners about the compliance of different provisions of law or otherwise affecting their plight. The District Judge and others in spite of their sincere effort could not interact with each of the prison inmate and expressed their inability to do so as the jail inmates never felt free to confide in them as they were never ready to forget the rank and position of the Judicial Officer. Majority of the prisoners are under-trial who come from economically deprived background, are voiceless in the Criminal Justice System. To reach out to such prisoners was a stupendous task.

Having become the Executive Chairman, Bihar State Legal Services Authority in July, 2014 I was conscious of my responsibilities towards prisoners as they were not only entitled to legal services in terms of the provisions contained in sub-clause (g) of Section 12 of the Legal Services Authorities Act 1987 but also access to justice as envisaged under the Act required of the Authority to at-least hear their voice in person. I was looking for a suitable person to do the job. Incidentally, Human Rights activist Ms. Smita Chakraborty working with Social Legal Information Center – Human Rights Law network (SLIC-HRLN) invited me to inaugurate their State Level Consultation on Prisoners Rights. During the inaugural function, I deliberated with Ms. Chakraborty and found that she has experience of teaching Human Rights at Loreto College, Kolkata and that she has right bent of mind, required dedication to interact with the prisoners and sensitivity to deal with their problems. She was also keen to undertake prison inspection, enter every single ward and individually speak to each prisoner. In her, I got the person of my choice to undertake prison inspection and accordingly, requested her to inspect all the 58 prisons in the State, enter every single ward and individually speak to each prisoner and submit report. I also joined her in her inspection of Phulwari Sub-Jail, Patna along with Member Secretary, Joint Secretary of the Authority and noticed the ease, confidence with which she could speak to the prisoners individually and obtain pointed answers from them about

the compliance of the provisions of law and the Prison Manual at the time of their first production, remand and other steps during their stay in the prison and the efficacy of the Legal Aid Clinic established inside the prison and also legal aid lawyers coming to the Clinic for providing legal aid to the inmates who required the assistance. For a prisoner to step into the Clinic and ask for a lawyer, he has to cross socio-economic and psychological hurdle(s). Given the demography of the prisoners, it is but obvious to understand that the Legal Aid Clinic even though fully functional in its capacity fail to reach out to each of the prisoners. Prisoners are not aware of their rights, they lack legal literacy and they see legal aid as a favour not as a matter of right. They suffer from the burden of obligation and shy away from approaching the Clinic. Thus, the onus of providing legal aid remain with the State Legal Services Authority and the Judge before whom the case of the prisoner is pending.

I could find in Ms. Chakraburttty a person to whom the prisoners will speak freely and confide in her. Initially, I asked her to submit report directly to me and keep all information confidential even from her employer. I appreciate the support rendered by Mr. Colin Gonzalves, Senior Advocate who heads SLIC-HRLN. I thank him for releasing Ms. Chakraburttty from all her duties in the Organisation and deputing her exclusively for prison inspection work in Bihar and supporting her with salary though not aware of the finding till the publication of the final report.

The report is a blue print of current status of prisons in Bihar. It identifies the problem and steps have been taken to provide immediate relief by the concerned courts and respective authorities, yet to eradicate the problem identified in its totality needs to be dealt with through consistent and sustained effort on all fronts.

To conclude, I would like to thank Home Commissioner of Bihar Sri Amin Subhani, I.G. Prison Bihar Sri. Prem Singh Meena, their subordinates in the Secretariat, Superintendent of the different prisons without whose support inspection of all the 58 prisons in the State may not have been possible. Special thanks to Member Secretary Sri Om Prakash, Bihar State Legal Services Authority, and other members of BSLSA, also District Legal Services Authority.

— Hon'ble Mr. Justice V.N. Sinha,
Executive Chairman,
Bihar Legal Services Authority
Standing Judge Patna High Court.

Acknowledgements

I would like to express my sincere gratitude to **Hon'ble Mr. Justice V. N. Sinha, Executive Chairman Bihar State Legal Services Authority and Judge Patna High Court**, for commissioning the pointed inspections of prisons and allowing me the honor of having the grand opportunity of inspecting all the 58 prisons of the state of Bihar. I am indebted to him for the continuous motivation, for his patience and immense support. Most importantly, he made his presence felt during every hurdle I came across and it is due to his support I overcame every obstacle that came my way and successfully completed the massive task assigned to me. I feel honoured to have the opportunity of working under Justice Sinha.

Besides Hon'ble Mr. Justice V.N. Sinha, I would like to thank Sri Om Prakash, Member Secretary of Bihar State Legal Services Authority for his insightful comments and encouragement, but also for the hard questions which incited me to widen my findings from various perspectives. He was the man behind the scene. I could not have completed the task without his support. He facilitated my ground work of visiting each prison across 38 districts, his attention to minute details in the report and taking necessary action made my work effective.

My sincere thanks to other members of Bihar State Legal Services Authority, Sri. Manoj Tiwari Joint Secretary, and Sri. Vipul Sinha, Registrar, for undertaking the painstaking task of reading each Prisoner letter that I had received during the time of inspection and has taken necessary action to resolve the problems thus mentioned by the inmates.

Special thanks to Human Rights Law Network-Socio-Legal Information Center (HRLN-SLIC), who is my employer and has supported me through a salary. I am especially thankful to Mr. Colin Gonsalves, Senior Advocate Supreme Court who also heads HRLN, for releasing me of my office duties for the months that I was in Bihar. HRLN is a funded organization, an NGO at the national level thus it has prior commitment towards funders, but Colin respected me as an activist, he stood by my commitment of working towards the

cause of prisoner rights and let me be in Bihar for 5 long months. I am grateful to Colin for having faith in me, as he had not seen any of the interim reports because I had instructions of nondisclosure even to my employer, of the findings from inspection. Thus HRLN maintained the policy of noninterference yet silently supported me for which I am ever so grateful.

Special Thanks IG Prison of Bihar, Sri. Prem Singh Meena and the entire prison department for facilitating the inspections and also looking into my travel requirements. I have gone around the state of Bihar 2½ times, over 4500 kms by road, the extensive travel was made possible through support extended by the Inspector General of Prisons.

In addition I would also like to thank Additional Director General of Prisons of West Bengal, Sri. Adhir Sharma, for finding the time to respond to my urgent queries and also for proactively providing me with additional information that he thought would prove useful for me.

Lastly but not the least the work would have been impossible without the cooperation I received from the prisoners. To each among the 30070 individual prisoners I spoke to, I remain deeply indebted. I am humbled by their hospitable nature and display of patience while living in adversity.

— **Smita Chakraborty**

Human Rights Activist

Associated with

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METHODOLOGY

Action Plan :

Stage 1 : Route Map was prepared by BSLSA regarding prison visit and sent to the respective District Judgeship

Stage 2 : Physical Inspection of Prison. Hon'ble Justice V. N. Sinha issued order of pointed prison inspection of all the 58 prisons of the State of Bihar. Pointed inspections translated into entering each ward of every prison and speaking to every individual inmate lodged in the prison on the date of inspection.

Stage 3 : Filing of interim reports of the inspection finding to Hon'ble Justice V.N.Sinha, Executive Chairman BSLSA, BSLSA, respective District Judge and DLSA.

Stage 4 : DLSA takes necessary action based on findings in the interim report.

Stage 5 : DLSA submits a compliance report to BSLSA (DLSA informs BSLSA what action they have taken)

Stage 6 : Issues that are beyond DLSA, are taken up by BSLSA or High Court

Stage 7 : Filing of final report, to Hon'ble Justice V. N. Sinha and BSLSA, after completion of inspections of all the 58 prisons of the state of Bihar.

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INTRODUCTION

Prison is a taboo. Being an opaque institution prisons arouse curiosity and are subject to miss conjured notions. Prisoners bear the burden of the tag. To the society at large there is no difference between Remand Prisoner, Under Trial Prisoner and a Convicted Prisoner. Acquittal after remaining in prison also does not provide much of an alibi to the stigma of being imprisoned. The prisoner no matter of what category, to the society at large is a dreaded criminal, whose evil existence is loathed and every act of cruelty thus shown towards a prisoner is popularly justified as justice.

The law of the land has taken progressive leaps and the idea of justice is no longer punitive in a democracy. To establish the principle of correction in action and in spirit it was essential to find out the status of prisoners. Considering the demography of the prisoners who come from humble back grounds where legal literacy is nonexistent, to put the onus of legal aid on the prisoner would be unfair.

Though in practice the onus of legal aid is put on the accused, Hon'ble Mr. Justice V. N. Sinha thought it would be best if one reaches out to the prisoners and speak to them in person. He thus commissioned pointed inspections of all the 58 prisons of the State of Bihar. His idea was to go from knocking from door to door, here in this case from prison to prison, from ward to ward, to speak to every single prisoner and report the findings directly to Hon'ble himself on a regular basis. **Thus this status report which is an analysis of the findings, is followed by 58 interim reports which may be seen on website of Bihar State Legal Services Authority (www.bslsa.bih.nic.in)**

As ordered by Justice Sinha, I visited all the prisons of the State of Bihar, and spoke to approximately 30070 inmates (as on date of inspection). I faced the wrath of nature while conducting inspections. I witnessed a storm that came crashing down and destroyed towns over night. I felt the earth twist and turn and the ground shift beneath my feet during the earthquake. The thumping of hurried feets were heard as people ran out of the court room, within moments the court building was empty, not a single soul remained inside the building barring the handful of prisoners, who were trapped in the quake, locked up in court hayat. Thus while experiencing the earthquake I was also witnessing restrains of confinement.

I witnessed the scorching summer of Bihar where prison wards felt like fuming furnaces. A monsoon that brought with it the uneasiness of humidity and prison walls turned sticky due

to water seepage from incessant rains. I have witnessed the plight of the prisoners, forbidden from the right to liberty, which is an essential right of a living, thinking human being. I have witnessed how confinement is in itself an absolute punishment.

Prolonged stay in prison due to lengthy trial, inadequate or no legal representation, prison punishments, lack of medical attention, inhuman living conditions are some of the problems frequently witnessed in prisons. Other major problems such as juveniles behind bars, women prisoners whose family has forgotten them, aged prisoners, mentally ill prisoners, terminally ill prisoners were all witnessed in the prisons. Though the concerned courts took prompt action on my findings by providing necessary relief, it remains a constant struggle to provide remedies to the problems thus identified. The report elaborates on the present situation prevailing in the prisons of Bihar. Due to the thorough inspections thousands of prisoners have received relief, and other systematic reforms have been initiated. However, the inspections and the report are not a permanent solution in itself. The extensive work that has gone in identifying the bottle necks and providing immediate relief requires to be effectively sustained.

Hon'ble Mr. Justice V. N. Sinha initiated an extraordinary measure to improve conditions prevailing in the long neglected institution of prison and its inmates. This rare initiative was a much required necessity for improving conditions of the prisons of Bihar. The work spilled over from the BSLSA office to Department of Home, Bihar Human Rights Commission, Bihar State Commission for Protection of Child Rights who all extended support and worked closely to provide necessary relief within their domain to the problems that were pinpointed through the inspections.

However, apart from immediate relief some systematic reforms need to be drawn up and implemented. Perhaps, the Department of Justice may further the much welcomed initiative of Hon'ble Mr. Justice V. N Sinha by forming a high powered committee consisting of interested members, who have the required expertise, experience and sensitivity to carefully analyze the problems and draft possible solutions, the committee will further determine the cause of Access to Justice and Prison Reforms.

Table No. 1: Segregated Data on Number of Inmates Per Prison					
Sl. No.	Name of the Prison	Total Number of Inmates on the Date of Inspection	Male Inmates on the Date of Inspection	Female Inmates on the Date of Inspection	Date of Inspection
1	Ara District Prison	907	884	23	16. 06.15
2	Araria District Prison	420	397	23	28. 04.15.
3	Aurangabad Prison	527	518	9	11. 06. 15
4	Bagha Prison	305	294	11	26. 07.15
5	Banka	375	366	9	27. 05. 15
6	Barh Sub Divisional Prison	375	366	9	27. 08. 15
7	Begusarai Prison	961	938	23	20. 04. 15
8	Benipur Sub Divisional Prison	149	143	6	28. 07. 15
9	Bettiah Prison	757	718	39	18. 06. 15
10	Beur Central Prison and Correctional Home	2063	1973	90	01.09.15 to 05.09.15
11	Bhagalpur Special Central Prison	811	811	0	26. 05. 15
12	Bhagalpur Women's District Prison	61	0	61	26. 05. 15
13	Bihar Sherif Prison	470	455	15	05. 06. 15
14	Bikramganj Sub Correctional Home	118	113	5	08. 08. 15
15	Birpur Sub Prison	54	54	0	30. 07. 15
16	Buxar Central Prison Report	866	866	0	05. 08. 15
17	Buxar Open Prison	103	103	0	06. 08. 15
18	Buxar Women Sub Prison	12	0	12	06. 08. 15
19	Chappra Prison	951	907	44	02. 06. 15
20	Dalsinghsarai Sub Prison	54	48	6	17. 08. 15
21	Danapur Sub Divisional Prison	161	161	0	31. 08. 15
22	Darbhangha Mandal Kara	337	321	16	28. 07. 15
23	Daudnagar Sub Correctional Home	126	124	2	09. 08. 15
24	Gaya Central Prison	1626	1564	62	11. 08. 15 & 12.08.15
25	Gopalganj Prison	590	569	21	20. 06. 15
26	Hajipur	598	560	38	17. 04. 15
27	Hilsa Sub Divisional Prison	307	292	15	15. 08. 15

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28	Jahanabad Prison	560	545	15	03. 06. 15
29	Jamui Prison	460	444	16	06. 06. 15.
30	Jhanjharpur Sub Divisional Prison	145	138	7	01. 05. 15
31	Jubba Sahani Central Prison Bhagalpur	945	875	70	26. 05. 15
32	Kaimur Prison	312	293	19	13. 06. 15
33	Katihar Prison	610	586	24	24. 04. 15
34	Khagaria Prison	604	595	9	21. 04. 15
35	Kishanganj Prison	250	231	19	27. 04. 15
36	Lakhisarai Prison	374	370	4	29. 05. 15
37	Madhepura Prison	297	290	7	23. 04. 15
38	Madhubani Prison	498	477	21	30. 04. 15
39	Masouri Sub Divisional Home	113	110	3	27. 04. 15
40	Motihari Prison	1747	1670	77	18. 06. 15
41	Munger Prison	539	526	13	28. 05. 15
42	Muzaffarpur Prison	1640	1571	69	02. 05. 15
43	Naugachiya Prison	375	366	9	02. 08. 15
44	Nawada Prison	490	480	10	04. 06. 15
45	Patna City Sub Divisional Prison	102	102	0	29. 08. 15
46	Phulwarisherif Prison	700	700	0	09. 05. 15
47	Purnea Central Prison	1144	1104	40	25. 04. 15
48	Rohtas Prison	611	597	14	12. 06. 15
49	Roshra Prison	195	195	0	16. 08. 15
50	Saharsa Mandal Kara	485	475	10	22. 04. 15
51	Samastipur Prison	445	422	23	05. 05. 15
52	Seohar Prison	123	121	2	03. 05. 15
53	Sheikhpura Prison	119	118	1	30. 05. 15
54	Sherghati Sub Prison	270	261	9	13. 08. 15
55	Sitamarhi Mandal Kara	653	636	17	04. 05. 15
56	Siwan District Prison	550	528	22	11. 04. 15
57	Supaul Prison	444	432	12	29. 04. 15
58	Udakishungunj Prison	186	184	2	01. 08. 15
	Total	30070	28987	1083	

Chapter-1

PHYSICAL CONDITIONS OF PRISONS

On Prison Architecture

Old Buildings :

Some of the prisons buildings are over a hundred years old. Prison buildings being over a hundred years old are problematic on two counts. Primarily post colonial India claims to be a thriving democracy, where the idea of imprisonment ideally speaking is correction of the individual and not punitive in nature. The prison architecture being from a colonial era reeks of repression, the objective is punishment of individuals through cadging them, keeping them behind bars.

The architecture of these old prisons are intimidating in character. Broadly describing most wards in these prisons resembles gigantic dark pits, huge wards, housing several inmates and very scarce entry of light. Tall lock up gates with thick bars, colossal locks, damp walls, these wards even though of different prisons, situated hundreds of kilometers apart have an identical frightfully depressing aura about them.

Mulla Committee Report had suggested back in 1983 that all old prison buildings having outlived their utility should be demolished. (*Rec 31*). It is now time to reassess the requirements physical structures and the living conditions of prisoners.

Compelling specific instances

Prison with structures that have outlived its time :

In **Ara District Prison**, there exists a ward which lodges over 400 inmates, a figure way beyond its capacity. It is the shape of a dome more accurately the shape of a turtle shell with openings on the outer surface. Rumor has it that the ward used to be stable for horses during the British era. But post independence inmates were kept in the horses stable. In other words the place which the occupying imperial regime deemed fit for animals, post independence the democracy decided to keep its prisoners in the structure in place of animals.

To explain the structure of the ward one can use the example of a circle. If there is a circle the gates of the wards are lined on the circumference of the circle, light enters the

wards through the gates and windows lined up on the circumference. But the ward is huge, thus light doesn't reach the core of the ward. Only one row of prisoners who are positioned by the outer side of the ward i.e. lined by the circumference of the ward receives light, rest of the prisoners do not get light and the electric bulb remains on all day 24x7, heating up the ward and making it unbearably hot during summer months. To imagine a prisoner spending years in that ward is by itself horrifying, leave apart encountering actual instances. *(The description of a circle is used for descriptive purposes in an attempt to explain the closest resemblance of the actual physical condition prevailing in the ward, for lack of actual architectural term).*

Gaya Central Prison and Correctional Home, is a 1854 construction. It is an old, beautiful prison worthy of being a heritage site, but due to lack of maintenance the building is in a dilapidated state. It is house to migratory birds and gracefully aged majestic banyan tree, but it is in no condition to house humans.

The ceiling of most of the wards are damaged which causes water seepage. The floor of the wards are damaged, thus remain damp round the year. The walls are also cracking, in a terrible decrepit state, appeared unsteady, as if about to collapse. The tall prison buildings have beautiful old wooden stairs that tremble when stepped on to. The wards had a similar stale, damp smell, resembling that identified in Ara.

The prison has lost track of time, it still appears to be lost in the past century and reminds one of colonial rule. It is difficult to believe that in a thriving democracy, the prison is still operating and is in such shambles due to neglect. The architecture of the prison, the thick powerful iron bars, the unrealistic gigantic locks, all carry overwhelming traces of repression, a place to condemn and confine human beings, with an objective of punishment and vengeance and not correction of an individual.

As one stepped into the wards, it was swarming with people as if spilling over each other, in the dark, hot and humid pits. The wards didn't have enough fans, as the ceilings are weak and cannot bear to take the weight of fans. There was no natural light or proper ventilation in most of the wards.

The Prison Administration has been complaining about the water seepage from the ceiling for the past 2 yrs to the Building Construction Dept. Yet no step has been initiated. New construction of around 20 new wards has been raised behind the prison campus but the same has not been in use as the perimeter wall has not been constructed for the past 2 yrs.

Buxar Central Prison and Correctional Home, too has some wards resembling that of Gaya. The wards are dilapidated, lack of light and proper ventilation. There is water seepage in many of the wards and prisoners live in hellish conditions. Due to water seepage, some wards have less number of inmates than the capacity and others are overcrowded.

Ward number 5 of Aurangabad District Prison, is in dilapidated state. It is below the surface level of the prison floor. Its situated in the center of the prison and a drain circulates it. The Drain level is above the surface level of the floor of the ward. No ventilation, sunlight or air passes through the ward. Open prison garbage bin where rotten food and vegetables from the kitchen are stashed, is next to the ward. The stench from the garbage bin and drain makes the air in the ward difficult to breath. Unhygienic conditions exposes inmates to serious health hazards. Inmates live in inhuman conditions, an absolute violations of Article 21 of the constitution of India. The ward needs to be demolished at the earliest. For the time being the inmates should be shifted to other wards since with the rains, water over flowing from the clogged drain will flow through the ward.

In 1978(2) SCC 424 Nandini Satpathy Vs. P.L. Dani Hon'ble Supreme Court laid down following guidelines about Right of accused to consult Advocate.

(a) Under Article 22(1), the right to consult an advocate of his choice shall not be denied to any person who is arrested. Articles 20(3) and 22(1) may be telescoped by making it prudent for the police to permit the advocate of the accused to be present at the time he is examined. Overreaching Article 20(3) and Section 161(2) will be obviated by this requirement. But it is not as if the police must secure the services of a lawyer, for, that will lead to 'police station-lawyer' system with all its attendant vices. If however an accused expresses the wish to have his lawyer by his side at the time of examination, this facility shall not be denied, because, by denying the facility, the police will be exposed to the serious reproof that they are trying to secure in secrecy and by coercing the will an involuntary self-incrimination. It is not as if a lawyer's presence is a panacea for all problems of self-incrimination, because, he cannot supply answers or whisper hints or otherwise interfere with the course of questioning except to intercept where intimidatory tactics are tried and to caution his client where incrimination is attempted and to insist on questions and answers being noted where objections are not otherwise fully appreciated. The lawyer cannot harangue the police, but may help his client and complain on his behalf. The police also need not wait for more than a reasonable time for the advocate's arrival.

(b) Where a lawyer of his choice is not available, after the examination of the accused, the police officer must take him to a magistrate, a doctor or other willing and responsible non-partisan official or non-official and allow a secluded audience where he may unburden himself beyond the view of the police and tell whether he has suffered duress, in which case he should be transferred to judicial or other custody where the police cannot reach him. The collocutor communicate the relevant conversation to the nearest magistrate."

Prisons with problem of overcrowding

Though in Bihar prisons, overcrowding is not a problem for majority of the prisons. New prisons are under construction for most prisons facing problem of overcrowding. But some prisons still remain frightfully crowded, their complementary new prisons are yet to come up and inmates in these prisons live under inhuman conditions. Detailed description of the overcrowded prisons are as follows :

Araria District Prison has a serious problem of overcrowding, especially in the woman ward. The Woman Ward is a small ward with capacity of 2 inmates. However on the date of inspection 23 inmates, 2 children were lodged there. No crèche. Inmates did not have enough space to sit together in the ward leave apart laying down or sleeping. As a practical solution measure the woman ward is not locked up in the night, so the woman sleep in small corridor in front of the ward. What they do during monsoons or during winter remains unknown.

Barh prison is an old prison. The run down construction houses 376 inmates, a strength way higher than its original capacity of 167 inmates. The wards are over crowded. The floor in the wards have eroded over time and water seeps through ceilings. Ward numbers 1, 2 and 4 have asbestos ceiling, which are old and have not been repaired in several years, they have now all cracked and water pours in during rains. Severe cracks have appeared in 9 wards and in the perimeter wall as an aftermath of the earthquake. The rickety jail can prove fatal for the inmates in case of occurrence of another fit of tremor. There is no space for prisoners to stand in the prison campus, so even during earth quake the prisoners remained inside the ward.

Ward numbers 5,6, 7, 8 were constructed only 11 yrs ago, but the building is in shambles. The walls, floors, pillar, doors and windows are all ripping off, falling apart from the building. Contractor one Mr. Binay Singh had constructed the building only 11 yrs ago but the building is falling apart now.

<p>Good practice: There are water tanks above each building so the inmates avail running water round the clock.</p>
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However, the flowing water system is to be complemented by a proper drainage system which the prison fails to provide. Again, the area surrounding the prison is higher than the prison ground, so there is a problem of water and sewage flowing out of the

prison. Water accumulates, especially during the monsoons water stagnates inside the prison.

There is a row of toilets behind the prison building which are dysfunctional. 16 new toilets were constructed for out door purpose but work is on hold from March 2015. The toilets are all dysfunctional as they do not have drainage system so sewage doesn't pass. Thus inmates use night toilets which are constructed inside the wards. But the number of toilets are disproportionately lower in number than the requirements of the prisoner. The prison had around 9 functional toilets for 375 inmates on the date of inspection. Also, the space in front of the new toilets have been cemented as if to make a foot path but the path is already broken and eroded in the past 4 months after its construction. New toilet construction started on the 15th of March, 2015 and abruptly stopped on the 29th of March 2015.

The Prison Store House and offices are constructed outside the prison building. The Medical Clinic is some how squeezed at the gate of the administrative building.

There is a problem of acquiring land for construction of new prison. The land for construction of new prison has not been identified at the district level, by the DM Office, since 2013.

Danapur: There are 4 wards, which are over crowded. The prison is an old dilapidated construction. The flooring of the prison is also damaged. The building is damp and water seeps in during the monsoons. Inmates claimed during the summer it's the dampness that keeps the wards cool but the same dampness becomes unbearable during the winter months. And due to water seepage during monsoons its becomes very difficult for inmates to stay in it. The wards are over crowded and has ventilation problem.

There is a problem of water drainage, as the prison floor is lower than the surrounding area, so sewage water stagnates in the prison. The problem of water drainage becomes acute during the monsoons, when after a heavy shower water from surrounding area enters the prison and accumulates there.

There is also scarcity of water as there are no water tank above any of the wards. There is only one water tank, which is situated outside prison on the barrack ward. Even in case of the existing water tank, it is smaller than the required size thus the prison administration has been informed to put up a 5000 liters water tank.

There are 20 toilets in the prison out of which 12 toilets are dysfunctional.

Jammui District Prison, is dreadfully over crowded. It has a capacity of 188 prisoners but on the date of inspection 450 inmates were lodged in the prison. It has 9 wards with each lodging over 60 inmates and on an average has 2 fans per ward. The inmates do not have enough space to sit or stand together in the ward. How they sleep in the night remains a mystery, an inmate informed they take turns to sleep. Inmates wanted that the ward should remain open in the night so that they can sleep in the space in front of the ward. But if inmates come out of the ward in the space in front there too isn't enough space for them to spread their bedding and sleep.

Madhepura District Prison, was also in shambles 10 wards all over crowded, leaking ceilings, dim lights and damp walls. The floors in most wards were damaged. Most of the walls had cracks in them and building seemed infirm. The toilets were overflowing. Ironically, within days after the inspection due to earthquake one of the walls inside the prison crashed. The prison in its present status will not be able to survive another tremor. The life of inmates staying in it is under threat. Also, the space for all administrative functions is so small that medical screening of the inmates on admission in the prison, visitors hour '*mulaquati*' of prisoners and all administrative works are done at the same place. There is no bathroom for prison staff. Some fund was allotted to the PWD for the modification of prison infrastructure but no work had happened till date of inspection. New prison is under construction for years now and no where close to completion.

Patna City Sub Divisional Prison, is overcrowded and there is serious deficiency of water. Three deep cracks appeared in the perimeter wall due to earth quake. The Executive Engineer had come to inspect the prison after earthquake and has observed the cracks. However, repair work hasn't started yet. The prison is small and overcrowded. There is no open space in the prison. A small courtyard, which can barely accommodate enough space for inmates to stand together is present, which the inmates use to dry clothes. Thus, there is no space for inmates recreation, no library or gym can be allotted due to lack of space. The prison building is old and dilapidated. Due to lack of space the prison administrative office is situated outside the prison. The Super and the jailor and other prison staff, sit in office outside the prison.

Prison with Special Problems

Beur Central Prison and Correctional Home- Ganga Khand is a 3 storied building, situated beside the perimeter wall. Immediately outside the perimeter, within 10 feet distance there is completely operational construction of private flats 4-5 stories tall. There is no privacy for the inmates. The interior of the ward is completely visible from the surrounding buildings. Inmates claimed that the surrounding area was all water bodies which were filled up from after 1999 and these private constructions came up. Such constructions were noticed beside some district prisons too. However Chapter 25 of the Bihar Prison Manual, rule 712 clearly states no building other than the prison, shall be constructed within 50 meters of the prison wall of a central prison, within 30 meters of the prison wall of a district prison and within 20 meters of the prison wall of a sub-divisional prison.

Udakisangunj Sub Divisional Prison does not have a DDA Code in Prison: The Prison is running for over 10 months without DDA Code. Which means the prison does not have any bank account. As a result there is no money with the prison, even for paying regular bills. Buying of ration and prison necessities are done on loan from local businessmen. Prison staff both permanent as well as daily wage earners, including prison Superintendent has not received salary till now. The District Magistrate advanced Rs. 10,000 to the prison administration, which is being used to locally purchase urgent medicines.

DDA Code is received from the Finance Department of the State Government. In case of such a great delay in receiving the DDA Code, especially for a running prison, matter needs to be vigorously pursued by the Inspectorate of Prisons.

Baggha Sub Divisional Prison, has a new building Construction which has no utility at the moment. New construction of a building consisting of 4 wards has been going on for around 10 years. Yet the construction is incomplete. Report to the IG Prison, on the status of the construction, has been submitted recently on 17.07.15.

There seems to be no requirement for the new building due to substantial decrease in the number of inmates population in prison. The number of inmates in the prison is below the capacity. In the existing strength of inmates already 4 wards are empty. Moreover, the construction is going on for 10 years and still incomplete. It's a two story building but no stairs have been constructed for going on the roof. So the roof is already cracking by now. Also, on one hand a new building is being constructed and on the other hand constant depreciation of the construction is happening. No steps are taken for maintenance of

existing structure. The under construction building is already in a dilapidated condition.

Bikramgunj Sub Correctional Home, has been constructed on 11.3 acres of land. The road from prison to court, the only road that connects the prison to the outside world runs through a private agricultural land. When the prison was being constructed and the road was being constructed the land owner didn't complain but as soon as the construction work completed years ago, then he wanted compensation.

The compensation money has not been estimated by the Land Acquisition Department. The Prison Department is willing to pay compensation for acquiring land but they cannot pay unless the amount is estimated according to current land price by the Land Acquisition Department. In the mean time the land owner has got into a legal battle with the prison administration regarding the same. Prison Superintendent has sent in repeated reminders to DM and SDO since the land price estimate is to come through their office. However, no response has come till now.

The prison staff and inmates are having to suffer the consequence of the above mentioned land dispute. The land owner cuts the road in front of the prison. The road is the only connecting road of the prison. Thus every time the road is disconnected the prison vehicle is unable to commute, as a consequence prison administration cannot send prisoners for court production till the road is repaired and made commutable again. When the prison gets disconnected due to road cut, all mechanisms in prison comes to a standstill, prison staff has to undergo great difficulty just to come or go out of prison.

Conditions Requiring Immediate Attention

About Drinking Water: There is a severe scarcity of drinking water in the prisons. No drinking water facility in majority of the prisons. Water purifier preferably along with water coolers need to be set up and prisoners be provided with clear and safe drinking water facility. Mulla Committee recommended that clean drinking water should be supplied to prisoners and it should be tested periodically (Rec 66).

About Fans: The number of ceiling fans in the prison wards are disproportionately low compared to the number of prisoners, on an average the inmate: fan ratio is around 9:1 i.e one fan for every 9 inmates. Again, in case of the newly constructed prison buildings it was observed that the ceiling fans are too high up and the wind blowing from the fans does not reach the inmates. Thus it is pointless to have fans placed at such height that it renders ineffective.

(Bihar being a seismic zone where temperatures rises to over 45 Celsius, coupled with extreme humid conditions, ceiling fans are an essential requirement).*

About Toilets: In Bihar prisoners usually depend on toilet for night use since in most prisons toilets outside wards are dysfunctional or are too less in number.

According to recommendation suggested by Mulla Committee, all wards/cells should be fitted with flush type latrines and the ratio of latrines to prisoners should be 1:6, and the system of open basket type latrines should be discontinued (Rec. 73, 74 & 37). Open Basket/Cadge type latrines still exist in some of the prisons of Bihar and there are only a handful of prisons that have running water facility in the toilets inside wards or toilets for night use. Flush toilets are a rarity in Bihar. Even the newly constructed prison buildings that has been handed over around the end of 2014, do not have two night toilets in the sleeping wards and do not have flush toilet mechanism as recommended in the Bihar Prison Manual (Rule: 715).

Mulla Committee also recommended that every prison should provide cubicles for bathing at the rate of 1:10 i.e one cubicle for ten prisoners, with proper arrangements to secure privacy (Rec. 78).

Again the Model Prison Manual of 2003 provides that each barrack meant for sleeping will have sufficient number of attached WCs, urinals and wash places. The ratio of such WCs will be 1:10 prisoners. The ratio of the WCs, which can be used during the

daytime will be 1:6 prisoners (*Ch. 2.13.1*). Every prison will have covered cubicles for bathing, at the rate of 1:10 i.e one for every ten prisoner, with proper arrangements to ensure privacy (*Ch. 2.14.1*). However, conditions prevailing in Bihar prisons, is far from satisfactory and requires immediate attention.

On Earth quake

Implementation of the Recommendations of All-India Committee on Jail Reform mentions; *“Forethinking and planning are important for handling emergency situations in jails. Have the Jail Departments compiled a manual or guidelines for tackling escape, riot, suicide attempt, food poisoning, etc. in jails?...A similar issue arises in respect of nature-made emergencies (flood, earthquake, cyclone, etc.) in jails. It is observed (Table 6.23) that only one state (Jammu & Kashmir) and one UT (Delhi) has done this. Needless to say, other states and UTs need to proceed into the matter; or alternatively they may consider adopting such manuals compiled by Jammu & Kashmir or Delhi”*.

No measure of safety present in Bihar prisons in case of an emergency situation like earthquake. Incidentally, earthquake occurred during the time of inspection and it was noticed that there was no mechanism in place to prevent casualty. The Model Prison manual has mention of some measure in case of an earth quake, however some additional measures needs to be put in place.

Model Prison Manual Recommendations:

Earth Quake

12.86. In the event of an earthquake the following action shall be taken:

- (i) The prisoner shall be asked to take cover (kneel down, and cover head with arms)
- (ii) The prisoners shall be asked to remain in the same position for a few minutes, due to after-shocks.
- (iii) The prisoners shall be kept at least 14 feet away from windows, mirrors, chimneys, tall book cases, furniture, old and high buildings, poles, trees and electric wires.
- (iv) The prisoners shall be asked to walk towards an open place, in a calm and composed manner
- (v) Evacuation and rescue measures should be undertaken on instructions from an evacuation team and unnecessary crowding of affected area should be avoided.

The above measures though useful are not exhaustive. Bihar witnessed a powerful earthquake of 5.8 magnitude on the Richter scale during the time of prison inspection, on three occasions. The 1st tremor was felt while the inspecting team was in court. Within moments the court rooms were empty, even judicial officers dashed out of the court rooms. When all ran for safety towards open ground the hapless prisoners remained standing behind bars staring in disdain the commotion caused by people running in-search of safety. The 2nd tremor was felt when the inspection team was inside the prison. This time too the inmates were inside their wards as it was lock up time. And the 3rd tremor was felt the same day when inmates were outside lock-up and all ran to the open ground for safety. Later that evening the inmates refused to be inside lock-up. The tremors were felt the following day and a few more times during the following week.

After witnessing the ground reality it was strongly felt that immediate attention to be paid to the safety and security of the inmates during an earth quake. The Model Prison Manual though mentions what is to be done after the quake it does not mention what is to be done during the quake and the period of following after-shock. In Bihar there were no official orders passed by the Prison Secretariat regarding keeping prisoners outside lock up during earth quake and the period of after- shock. Thus the Prison Superintendents were not sure as to what is to be done, different prisons took different measures. The prisoners agitated and refused to get inside lock-up and that further ignited the situation.

In some prisons lock up keys were kept with the warders and the warders kept standing inside the respective wards. However, to imagine that a couple of warders standing with the keys of lock up gates trying to run up to each ward and open the lock-up gate within the few seconds in which the quake occurs is not a practical solution. Again, some Superintendents complained that there were not enough guards due to severe understaffing or else they could have kept the inmates out of lock-up inside prison for a few days till the period of after-shock passes.

Though an earth quake is a rare phenomenon and Bihar hadn't witnessed such a quake since 1934 yet it is crucial to have a mechanism in place. An emergency drill to be drawn up as per standards suggested by the Bihar State Disaster Management Authority and such drill to be practiced at regular intervals in the prisons, so that both prison staff and inmates know exactly what is to be done during an earth quake. Also, necessary changes requires to be made in the Bihar Prison Manual as to suggesting necessary action that Superintendents should take during such a period of a natural calamity.

No fire alarm mechanism was in place in any of the prisons. Fire extinguishers, fire hydrants and fire-fighting equipments were not found in the prisons. Neither was there any mechanism in place such as a preplanned firefighting drill drawn up by the superintendents as a preventive measure. Such actions need to be in place at the earliest as per the rules provided in the Bihar Prison Manual. (Bihar Prison Manual, Ch16. D. Precautions for preventing fire, Rule 526)

On Kitchen

Forced Labour- A Contemporary Form of Slavery

Model Kitchen construction work has been initiated in the prisons of Bihar that would encourage smoke free cooking. In some prisons the construction part of the work is complete but the work on gas lines and exhaust fans are pending because the work has been brought to a stand still due to scarcity of funds (as informed by prison staff).

Under Trial Prisoners were found working in almost all the prisons of the state of Bihar. Kitchen labour is hard labour, and can only be imposed on convicted prisoners, those of whom have been sentenced to rigorous imprisonment. Under trial prisoners are not supposed to be working in kitchens. But not only were under trial prisoners found working in kitchen it was also discovered that they were not remunerated for the labour which they put in as a kitchen worker. And thereby super of the prison and the others taking work from them are liable to be prosecuted for the offence for the unlawful compulsory labour u/s 374IPC. Compulsory labour is a contemporary form of slavery and unfortunately it was found in full practice in the prisons of the state of Bihar.

Prison staffs were completely unaware of the fact, that under trial prisoners are not supposed to be working inside kitchens. Some staff members though on rare instances, informed that they didn't have convicted prisoners in the prison so they had no option but to ask under trial prisoners to work in kitchen. Even in such instances no matter how rare bonded labour cannot be accepted as a normative blight. Also, ignorance of the law cannot be a justification for breaking the law.

Prisoners are not sensitized about their rights or else no prisoner would willingly come to work in kitchen. The usual practice observed was that prison staff allots duties to prisoners. Usually no inmate would refuse work allotted by the prison administration, as

completion of allotted task would mean good conduct on the part of the prisoner and refusing to do the same would mean vic-ver. Similarly, kitchen duty is also allotted to inmates and inmates accept the responsibility without further questions.

Unfortunately it was also discovered that the under trial prisoners working in the kitchens were usually the poorest of the poor. Most under trial prisoners working in the kitchen did not have private lawyer as they could not afford one and they were also not aware of their right to legal aid. Most under trial prisoners working in the kitchen thus asked for legal aid lawyers.



Hon'ble Supreme Court in Criminal Appeal No. 1899-1900 of 2011 Mohd. Ajmal Mohd. Amir Kasab @ Abu Mujahid Vs. State of Maharastra has observed in Para 484 to 488 as follows :-

484. We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. We, accordingly, hold that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.

485. It needs to be clarified here that the right to consult and be defended by a legal practitioner is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he intended to make a confessional statement in terms of Section 164 CrPC; to represent him when the court examines the charge sheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial. It is thus to be seen that the right to access to a lawyer in this country is not based on the *Miranda* principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. The right to access to a lawyer is for very Indian reasons; it flows from the provisions of the Constitution and the statutes, and is only intended to ensure that those provisions are faithfully adhered to in practice.

486. At this stage the question arises, what would be the legal consequence of failure to provide legal aid to an indigent who is not in a position, on account of indigence or any other similar reasons, to engage a lawyer of his own choice?

487. Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the Constitutional duty of the court to provide him with a lawyer before commencing the trial. Unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused (see *Suk Das v. UT of Arunachal Pradesh* 95).

488. But the failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial. It may have other consequences like making the delinquent magistrate liable to disciplinary proceedings, or giving the accused a right to claim compensation against the State for failing to provide him legal aid. But it would not vitiate the trial unless it is shown that failure to provide legal assistance at the pre-trial stage had resulted in some material prejudice to the accused in the course of the trial. That would have to be judged on the facts of each case. [95 (1986) 2 SCC 401]

Chapter-2

ACCESS TO JUSTICE

ON COURTS

(Personal Observation)

Speaking for the Prisoners :

The prisoner resembles the humble, rather systematically humbled character as in the novel '*The Castle*' by Franz Kafka, the celebrated early 20th century Central European writer. His book captivantly describes a man's struggles to gain access to a castle that towers high above a village and all the common folk. To the prisoner the institution of justice is similar to that of the Kafkaesque high tower castle that remains beyond the access of the common man.

Blind conformity to the law is what that is demanded of the prisoner. As opposed to the principle of justice, the trial courts in practice evaluates "justice" as "punishment" for breaking a law. The punishment does not need to fit the crime. And when the prisoner fails to attract the attention of a legal representative, s/he is subjected to prolonged imprisonment.

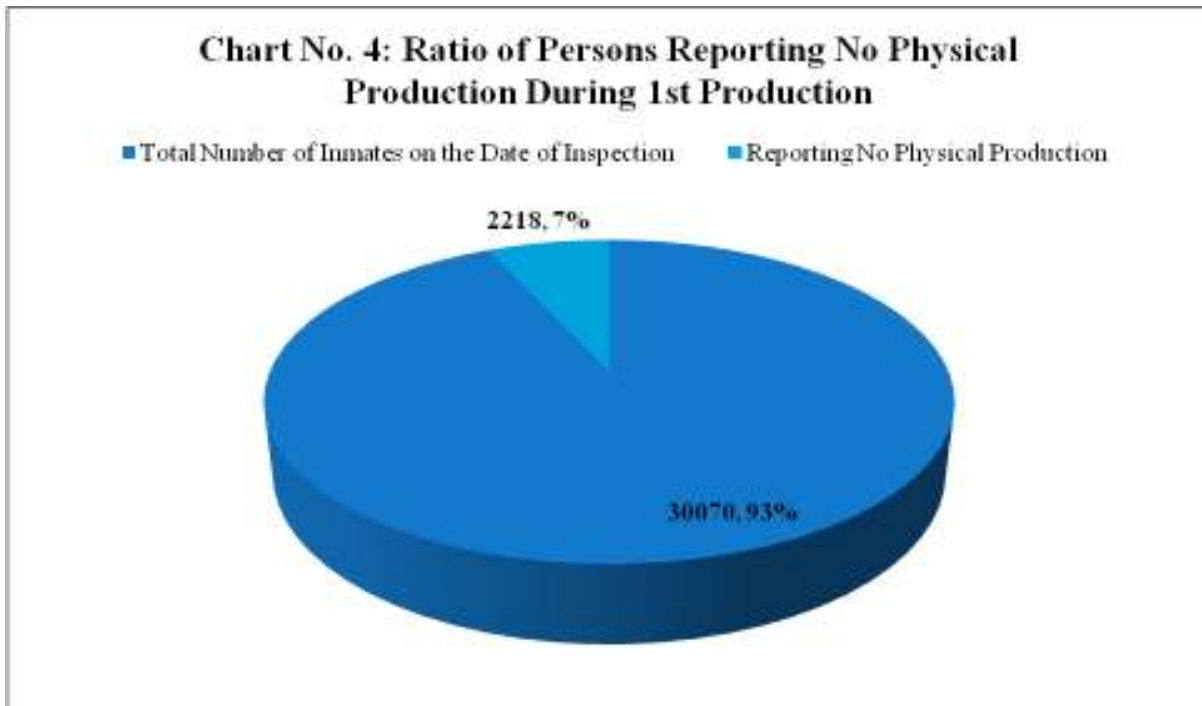
The shock of bearing the burden of the tag of 'criminal' and the silence of reclusion from the society that the prisoner gets shunned into are not simply two isolated and opposed phenomena; nor are they different only on the surface. They represent corrosion between the underlying principle of Justice and the law in practice, a profound altercation in the very principle of reformative justice turning it punitive in practice. The underlying principle of Justice is reformative and not punitive, but the observation made from the prison visits evokes doubt on the idea of justice, especially when court practices are observed.

Non compliance of 167Cr.P.C and mechanical remand is justified as a normative blight which is a slur on the face of the criminal justice system. Since then a person is alienated from access to justice, stamped as a 'criminal', pushed behind bars, with an objective to re-educate his spirit by carefully regulating his every action and tracking him moment by moment in prison. Prison then translates into a rigorous regulation of space, where the prisoner is subjected to rigid regulation of the use of time hour by hour, subjecting the individual to surveillance with an objective of control, then the very essence of the principle of criminal jurisprudence is damaged and the idea of justice is hurt.

On 1st Production

(Prisoner Narratives)

Majority of the prisoners claimed, they were brought from the police stations to the court, for the purpose of Court Production. In the court they were kept in the court lock up and not taken in front of the magistrate. From the narratives it was derived that the accused remained in court lock up all through the day and was never taken to the Court Room in front of the magistrate. End of the day they were brought into prison.



(Limitation: The above chart shows the number and percentage of inmates who proactively claimed that they didn't have 1st production. This ratio is similar to the ratio of prisoners who asked for Legal Aid Lawyers. As during inspection when the prisoners informed about not having a lawyer, it was asked if the magistrate asked him/her about having a lawyer during 1st production as in compliance with Section 167 of Cr. P.C. But they responded that they have not met the magistrate or were not taken inside court room or the magistrate did not speak to them and the response was recorded which does not reflect the actual figure. The actual figure of persons not being physically produced before the Magistrate during 1st production is much higher. As the sample size was huge (30070 prisoners) thus individual accounts and experiences regarding first production in court and

consecutive productions could not be recorded. However, some cases of no first production were recorded as can be observed in every interim report, just to indentify broad trends and problematic area.)

Second case scenario was another huge section of prisoners claimed that they were brought from the police station to the court. Then they were taken inside court room. They were kept standing at the back side of the court room and the presing magistrate however did not interact with them. They then brought to a court lock up 'hajat', kept there for hours and brought to prison.

Another set of prisoners claimed, though this is a very small group of prisoners, claimed that they were taken to court in police vans, they waited inside police van all day, end of the day they were brought to the prison.

A segment of the prisoners also claimed they spoke to the magistrate, and their lawyers were present with them when they spoke to the magistrate. These were particular instances of prisoners who had surrendered in the court.

Again, in case of habitual offenders of serious crimes, like extortion, kidnapping, carrying of fire arms, claimed to have been physically produced before the magistrate. These were instances that roughly speaking 5 out of 500 would claim to have experienced.

For the majority of the prisoners courts remained this place of constant harassment, where they are taken to be kept in lock ups and then brought back to prison.

Strangely for prisoners who have been staying in prison for a long duration of time, going to court is like an outing, a change of scene. There is a considerable delay in charge sheet a case, sometimes the lawyers deliberately delay charge framing and at times it is due to the failure of all the parties to appear together for charge framing thus the charge could not be framed. They know the guards by now, so the guards get them little snack available from the court vendors. So coming to court becomes a ritual of getting out of prison on the 14th day, for a few hours during the long phase of being in remand without the trial even having started. Thus making the entire purpose of physical production futile.

On Court Lock ups :

(Prisoners Narrative about access to lawyers)

There exists no mechanism of meeting lawyer in the court lock ups. In practice court lock ups are usually away from the court rooms and lawyer "sherestas" *(traditionally these

were the tents where the lawyers sat and spoke to their clients), lawyers do not need to venture towards that part of the court premise, unless they have taken specific permission from the magistrate to meet a client in the lock up. Most lawyers do not take the pain of getting permission from the magistrate to meet his client in the court lock up, as to him it simply is a waste of valuable time, as imprisoned client is usually poor.

The existing practice is that the family members consult lawyer in their *serestas* and the lawyer do not enter the court lock up. Thus the accused does not have access to lawyer unless someone hires a lawyer and informs the lawyer about the case. Also, visitors/family members are not allowed in the lock ups. Thus it becomes a challenge for the accused to have information about his/her lawyer.

Again, the court lock ups are small over crowded coups where there is hardly any room to stand, sit or lay down. There are no fans or if there are fans they hardly work. The lock-up toilets are open (no privacy) and are rarely cleaned. Access to drinking water is a rare privilege and food is unheard of. Thus the accused remain standing behind bars all day long with no information of what is happening to their case in the court.

On Mulakati :

In the prison there too exists no mechanism for a prisoner to meet his lawyer, unless the lawyer himself visits the prisoner in prison. Even if on a rare occasion the lawyer does pay a visit there in Prison there is no mechanism present where the prisoner can speak to his lawyer, in privacy.

The practice prevailing in Bihar prisons is '*mulakati*' space is usually the area in the administrative building of the prison where the inmates stand by 2-3 windows and the visitors stand outside the prison building behind a wall. There is no separate *mulakati* space in most of the prisons. Construction of new visitors space is happening in a handful of prisons but they are far from reaching completion. It will be years before all the prisons of Bihar will have access to proper visiting rooms.

The present scenario of *mulakati* time; is that visitors stand outside the wall which is situated around 6-7 feet away from the window where the prisoner stands. On any given day there are about an odd 20 prisoners standing by the window and around 25-30 visitors standing behind the outside wall. And they all speak to each other at the same time. Prisoners poke, elbow, pull at each other to get a better peak from the window and end up getting into fights with each other. The sipahis rush in, hold them back and sends them back

inside the prison. Thus mulakati time translates into a roaring chaos time in every prison.

Again, mulakati time, date and hour of interview with prisoner is to be fixed by the Prison Superintendent. (Rule 307, Bihar Prison Manual, 2012). In Bihar prisons the usual visiting hour is between 8 am to 12 noon.

Family members come from far off places, at times from places where there exists no public transport. They travel long distances to reach prison. At times it is a matter of luck or divine intervention if they can reach the prison within the stipulated time. Again, in the stipulated time the visitors have to seek permission from the Superintendent to be allowed the interview with the inmate. (Rule 305, Bihar Prison Manual, 2012). And it is up to the Superintendent to grant the permission for the interview. (Rule 306, Bihar Prison Manual, 2012).

The visitor often come with essentials, like uncooked/dry food, clothes, toiletries, medicines which are to be checked at the gate of the prison before it is handed over to the prisoner. The visitor has to be searched before s/he is allowed interview with inmate. (Rule 312, Bihar Prison Manual, 2012). For this the visitor has to stand in a long queue, which moves ahead slowly.

Often, even if the visitor succeeds in passing off the items to the inmates, by that time, the time to meet and speak to the inmate has already passed. Some inmate family members try to overcome the double hurdle of meeting inmate and passing necessary items to him/her, by coming as a pair. For an example, the father and the brother of the inmate come together, while the father of the inmate speaks to the inmate, the brother stands at the line to pass the items through the checking gate.

However, one cannot forget the fact the most inmates come from extremely poor backgrounds. Most family cannot afford travel cost of a single person from home to prison, leave apart coming as a team, in a group or a pair. Again, there are no provisions of drinking water, shade, toilet provided for the visitors. Thus prison visit for family members of inmates is a test of time, energy and money. One can only imagine what happens to a female prisoner who is dependent on family or in-laws, who would rarely go through the elaborate effort and expense to meet her, even if on very few occasions. Inmates who are sole earning members of the family, inmates who have dependents in the family usually have visitors. If the inmate is an aged person or a female prisoner the family gives up on prison visit sooner than later.

Thus speaking of lawyers visit to prisoner in privacy, in separation, to discuss the case details under the given circumstances is a farfetched dream. Again, mulakati period per prisoner is short about 20 minutes per prisoner (Rule 309, Bihar Prison Manual, 2012). And for a prisoner to afford a private lawyer to come to meet him/her in prison is also not a feasible option for most inmates.

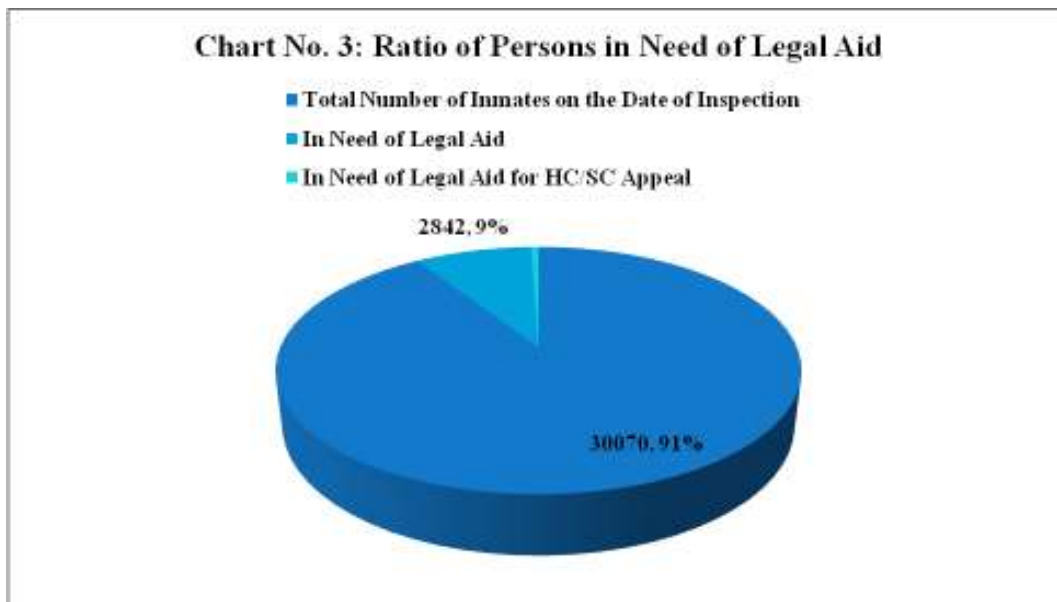
On Lawyers

Access to lawyers

(Prisoner Narratives)

Most of the inmates were not sure if they had a lawyer. The reason behind this confusion primarily depended on the fact that there exists no mechanism of the prisoner to meet his lawyer. The lawyers are supposed to come to prison to meet client but that is hardly maintained, here the prisoner demography has to be kept in mind that they belong from very poor back ground and can barely afford fees for private lawyer. The only option thus remains with the prisoner is to meet his lawyer during court production but in most instances they had never entered the court room, so did not have the opportunity to witness a lawyer representing them in the court and they had never met their lawyer, thus were not sure. To most of the inmates the lawyer was the man you would get them out of prison, since they were still in prison they logically concluded that they didn't have a lawyer. Moreover, some inmates claimed they didn't have a lawyer because they didn't have money for the lawyer.

Below is a chart showing the number and percentage of inmates claiming to have no lawyer or are not sure about having a lawyer, all translating into in need of Legal Aid Lawyer.



The probable reasons behind the confusion about having a lawyer can be attributed to the fact that inmate was not produced in front of the magistrate thus was not informed by the magistrate about legal aid lawyer. Most prisoners were not aware of their right to legal aid.

Accused in the court lock up is already under confinement and has forgone the right to personal liberty. It is difficult for a man behind bars to look for a lawyer on his own unless he is offered external help. In the absence of Physical Production in court the accused is under obligation to the Court lockup police, or the 'muhuri' or the "peshkar" or family member to get him a lawyer. It should be kept in mind as explained previously in the above mentioned sections on court lock ups and on mulakati, that the family cannot meet the accused inside the court lock up. Thus, whether a private lawyer was availed by the family remains inconclusive to the accused.

From the responses of the inmates during the inspections it was observed that there are a few off the record ways through which the accused gets his legal representative. In most cases it is through the court clerk. The court clerk visited them in the court lock up, took contact details of family, took 'thumb impression' of the accused on paper, (thus on record physical production is happening) and after the family got in touch with court clerk and paid him, private lawyer was provided.

Other inmates claimed that they didn't get a lawyer in spite of the court clerk visiting them in the court lock up. This claim usually comes from persons who haven't met family or lawyer and has concluded that his case has gone without legal representation.

Members from the prison administration suggested, to ask "whether the inmate had signed or put thumb impression on any paper in the court lock up", it was more appropriate to understand the status of lawyer. According to the members from the prison administration, if the inmate responded in the affirmative then s/he probably has a lawyer.

However, the suggested bend in the question also was subject to probability since even if the inmate did put a thumb impression on a 'vakalatnama', it does not mean that s/he still has a lawyer. As the usual trend is that the family of the accused will manage money from somewhere to get a lawyer in the court for moving of bail application but as bail gets rejected the family by this time has also exhausted resources to make further payments to lawyers. So even if there was a lawyer representing the inmate during the 1st bail move it does not ensure that s/he still has a lawyer.

Prison administration and the inmate would not be sure unless the family confirms with the inmate or the lawyer himself visits him in court during his future productions. Ironical but true the members in the prison administration also operate from the confines of the prison and are dependent on external actors to inform them about what happens in court.

In most of the cases the court clerks provide a lawyer, incase the family is traced in court and is capable of providing the lawyer fees and a cut percentage to the court clerk.

In other cases family avails private lawyer for the accused and informs the accused through the court lock up police.

Also, the accused gets informed about private lawyers through other inmates, who in some cases gets his/her lawyer to take up the case of the inmate.

Other production related issue

Lengthy trial and prison over stays

Table No.5: Prison Wise Segregated Data on Candidates Undergoing Lengthy Trial and Reasons Stated						
Sl. No.	Name of the Prison	Reporting Lengthy Trial (above 3 1/2 years)	Case not charged	IO has not come	Witness not passed	Do not know of the stage of case
1	Ara	27	0	1	5	4
2	Araria District Prison	1	0	0	0	0
3	Aurangabad Prison	16	0	2	7	0
4	Bagha Prison	7	1	0	5	0
5	Banka	10	0	0	1	0
6	Barh Sub Divisional Prison	22	1	3	6	1
7	Begusarai Prison	8	0	0	1	0
8	Benipur Sub Division Prison	2	0	0	1	1
9	Bettiah Prison	41	2	2	24	0
10	Beur Central Prison and Correctional Home	135	9	14	31	10

Prisons of Bihar

11	Bhagalpur Special Central Prison	12	0	0	2	1
12	Bhagalpur Women's District Prison	1	0	0	0	0
13	Bihar Sherif Prison	20	0	0	16	0
14	Bikramganj Sub Correctional Home	1	0	0	1	0
15	Birpur Sub Prison	1	0	0	0	0
16	Buxar Central Prison Report	14	0	0	2	0
17	Buxar Open Prison	1	0	0	0	0
18	Buxar Women Sub Prison	0	0	0	0	0
19	Chappra Prison	45	1	1	38	0
20	Dalsinghsaral Sub Prison	1	1	0	0	0
21	Danapur Sub Divisional Prison	6	0	2	0	1
22	Darbhanga Mandal Kara	3	0	0	0	0
23	Daudnagar Sub Correctional Home	2	1	0	0	0
24	Gaya Central Prison	96	4	0	28	1
25	Gopalganj Prison	22	0	0	11	0
26	Hajipur	5	0	0	0	0
27	Hilsa Sub Divisional Prison	22	1	2	11	0
28	Jahanabad Prison	13	0	3	4	0
29	Jamui Prison	22	0	0	19	5
30	Jhanjharpur Sub Divisional Prison	3	0	0	0	0
31	Jubba Sahani Central Prison Bhagalpur	14	0	0	0	0
32	Kaimur Prison	7	0	0	4	0
33	Katihar Prison	2	0	0	0	1
34	Khagaria Prison	0	0	0	0	1
35	Kishanganj Prison	2	0	0	0	0

36	Lakhisarai Prison	14	0	0	12	0
37	Madhepura Prison	4	0	1	0	1
38	Madhubani Prison	10	0	0	0	0
39	Masouri Sub Divisional Home	0	0	0	0	0
40	Motihari Prison	74	2	2	42	0
41	Munger Prison	32	3	3	21	0
42	Muzaffarpur Prison	16	0	0	0	0
43	Naugachiya Prison	10	0	0	7	1
44	Nawada Prison	22	1	1	9	2
45	Patna City Sub Divisional Prison	11	1	2	5	0
46	Phulwarisherif Prison	10	0	2	2	0
47	Purnea Central Prision	11	0	0	0	0
48	Rohtas Prison	30	0	5	3	0
49	Roshra Prison	8	2	2	2	2
50	Saharsa Mandal Kara	4	0	0	0	2
51	Samastipur Prison	13	1	4	3	1
52	Seohar Prison	4	0	0	2	0
53	Sheikhpura Prison	3	0	0	0	0
54	Sherghati Sub Prison	4	1	0	0	1
55	Sitamarhi Mandal Kara	6	0	3	1	0
56	Siwan District Prison	0	0	0	0	0
57	Supoul Prison	4	1	0	0	0
58	Udakishungunj Prison	1	0	0	0	0
	Total	875	33	55	326	36

Chart No. 6: Ratio of Inmates Undergoing Lengthy Trial

■ Total Number of Inmates on the Date of Inspection ■ Reporting Lengthy Trial (above 3 and 1/2 years)

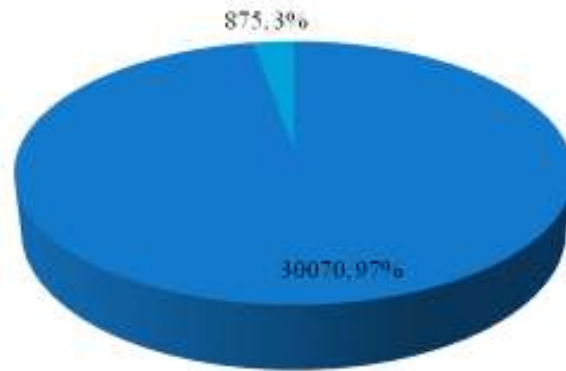
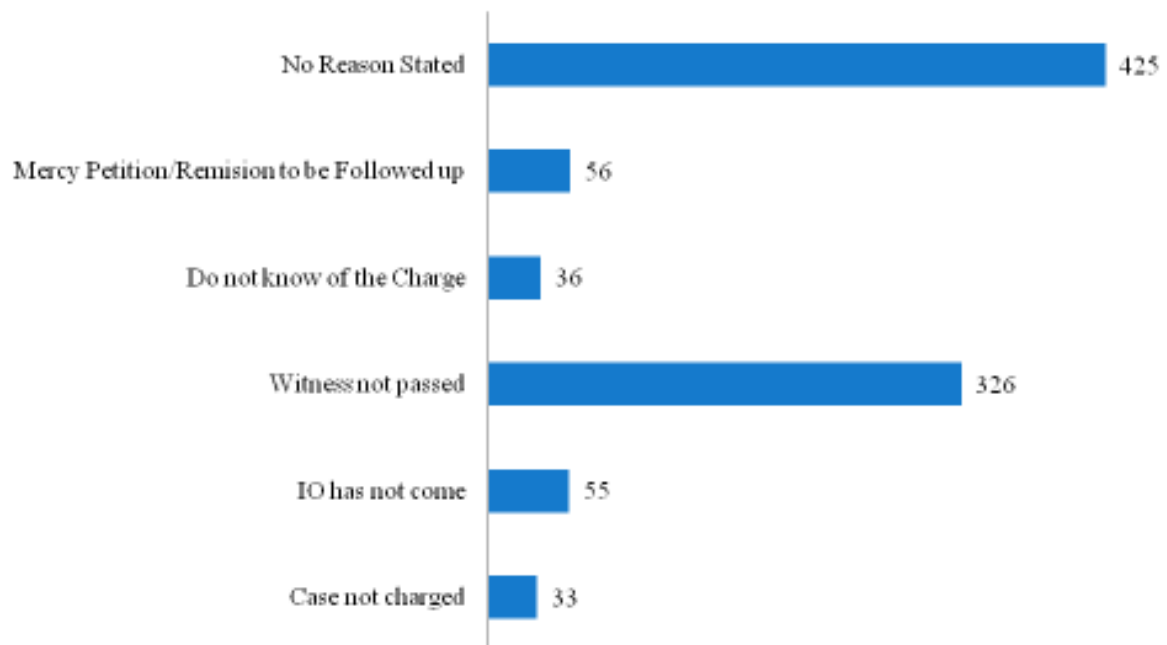


Chart No. 7: Reasons Stated for Lengthy Trial

■ Series1



The above chart no. 6 shows the number of people undergoing lengthy trials. By lengthy trial it is meant that trial has been continuing for over 3 ½ yrs. This category of inmates includes people who has overstayed in prison due to excessively lengthy trial, some cases identified in the interim reports show that inmate has been in prison as a Under Trial Prisoner for over 8-10 yrs as well. The above mentioned 875 prisoners out of 30070 prisoners proactively informed about undergoing lengthy trial.

Limitation: *Since the sample size was large thus specific accounts of lengthy trial could not be recorded and the actual figure is much higher than that reflected in the chart. The instances of lengthy trial came up as a fringe issue in reference to court production and having access to lawyers and the instances were recorded as and when inmates complained that they do not know what is happening in court and do not know if they have a lawyer and similar accounts. Thus the instances of lengthy trial were recorded as and when it appeared to identify a broad trend.*

In the chart no. 7, the prisoners who proactively informed about having to undergo lengthy trial and state the reason for the same and asked for remedy are shown. This figure is exclusive of the 875 prisoners as shown in chart 6.

Limitation: *the chart reflects only inmates who have registered a specific complaint during inspection regarding lengthy trials. The actual figure is much higher this the chart represents only reported figure. Also the instance of problem in remission will be dealt with at a later chapter in the report.*

Reasons Stated for Lengthy Trials

The Bottle Necks identified :

No reason stated: 425 inmates stated no reason for lengthy trial yet complained about lengthy trial. These were inmates who were not aware of what was happening in court, had a high probability of not having a lawyer but could not confirm to the same. The table data is traced in the interim reports it will be observed that these were UTP who had no clue of what was happening in court, had no information regarding stage of case and could not inform if they had a lawyer. However, this figure was not added to the in need of Legal Aid Lawyer segment as the inmates claimed that some outside prison was looking after the case thus they are not in a position to ask for a lawyer. However, these inmates were sensitized about free and compulsory Legal Aid thus in case they later found out they

did not have a lawyer then they would apply for the same through the legal aid clinic in the prison.

Also, it must be observed that these are cases mostly recorded while inspecting Sub Divisional prisons and the last central Prison Beur. In Sub Divisional Prisons the number of inmates are low thus is possible to get into details of some broader issues identified while inspecting larger prisons. Also the interim reports filed on Sub Divisional Prisons are much more detailed in nature compared to District or Central Prison reports. Thus the actual number of inmates under this category is much higher than has been reflected in the above chart.

Do not know of the Charge: Another category of inmates emerged from the above category of inmates, around 36 inmates claimed to be in prison for a long time but they did not know of the charge, yet they refused to accept support of legal aid lawyer claiming the same ground that someone outside is looking after his/her case. They too were informed about legal aid lawyer and if required they would apply for the same from the prison legal aid clinic. Again, the number reflected in the chart is not the actual number, since these were instances mostly recorded while inspecting Sub Divisional Prisons, which had low prisoner strength thus detailed interim reports could be drafted.

Witness not passed: Compelling instances of witness not appearing in court for long duration of time was noticed. If traced in the interim reports it will be observed that several reasons were mentioned regarding witness not happening in the court. Some reasons mentioned was that trial has come to a stand still, nothing is happening in court, witness was sent repeated summons but no specific address of witness thus even witness warrants when issued also proved ineffective and also another reason stated for witness not passing was that trial has come to a standstill due to empty court rather transfer of the concerned judge.

Inquiry Officer hasn't appeared: Though the above chart doesn't reflect the actual figure which is much higher this is a compelling issue. IO are the inquiry officer who poses an important witness during a trial. Now IO are police officers who have transferable job. A particle problem also appears that IO are investigating officers and they stand witness in several cases. Police officers inform that if IO starts to regularly appear in court for cases and travel from the present posting in Police Station to the concerned court, then he will have regular court appearances and will have to forgo all task of investigating new cases.

The reason that the concerned IO has been transferred from the concerned Police Station to a new area due to which s/he is unable to attend court though can be practical problem but it appears to be extremely problematic and causes much damage to the trial courts. It leads to lengthy trials, causing slow disposal of cases leading to over burdening of courts. Not to mention the lengthy trials causes over stay of prisoner under confinement which is a violation of article 21 of the constitution of India.

Good Practice- Probable Solution to IO appearance problem: In Bihar a sizable number of Judicial Officers come from Uttar Pradesh. After discussions with several members of the judiciary a probable solution was identified to the problem of IO not appearing in court as witness. The simple solution to the problem is a mechanism of good co-ordination between the court and Police Commissionerate.

Suggestion- Possible Solution

In UP the following procedure is followed:

- i. Every Police Station under the jurisdiction of a court sends one personnel to the court every day during the 2nd half.
- ii. The police personnel then gather trial dates from the concerned court and report to the Superintendent of Police office by the evening.
- iii. SP offices then co-ordinate among each other and the concerned IO is informed way in advance of the next hearing date when s/he has to appear as a witness. This gives considerable amount of time to the IO to plan the court appearance and avoid delay in appearance.

Case not Charged : There are two reasons for this particular problem one is a common practice noticed among lawyers to delay charge framing in the court, as their probably is a bail petition pending in the High Court thus they wait till the decision on the pending bail petition comes through from the High court. Also, if the prisoner is granted bail from the High Court in all probability the lawyer will further manipulate the charge framing and will ask for lengthy court dates, this also results in high pendency of cases in the trial courts.

It has also been noticed that such tactic has been initiated by the lawyer who is representing a group of accused. The other co-accused might be out on bail and one or two

accused remain inside prison whose bail petition is pending in the High Court. The lawyer here is representing all co-accused and this manipulation of the court charge framing by postponing dates in the court usually benefits the co-accused persons who are out of prison on bail and the person behind bars languishes for indefinite period.

Another reason was identified after speaking to prisoners that during charge framing all parties must be present in the court. Instances were identified where the other party is not appearing in the court deliberately with an objective of prolonging the stay in prison of the accused person. Also there were some instances where the co-accused who were out of prison were not appearing in the court out of fear of being imprisoned.

Probable Solution: The probable solution as identified after taking opinion of several members of the judiciary was that if the court takes suo moto cognizance of such cases and initiates charge framing by separating the cases of the accused persons, with an objective of providing speedy trial for the prisoner. However, it is a matter of discretion of the concerned judge.

No Concurrent Production: Some prisoners complained of instances that they had cases in other districts but they rarely went for hearing in the other district court. They complained that cases in different districts weren't run concurrently. A segment of such prisoners complained that production warrants came from the distant district court but they were not sent for the hearing. When inquired the prison administration informed the procedure for sending inmate to other district court was a lengthy procedure.

The procedure is that on receiving a production warrant the prison administration then has to make a formal request to the respective Police Superintendents office for guards who will take the prisoner to the respective court. But this is a time taking procedure as guards are not readily available. Thus the prison administration needs to inform SP office way in advance. However productions warrants from other district courts often come in late leaving no time for the procurement of guards from SP office thus the prisoner misses court hearing date due to non-availability of guards.

(It must be remembered here that the Prisons of Bihar are seriously understaffed. They do not have recommended strength of guards at the prison. Similar problem arises when the prisoner needs to be sent to a hospital that is in another district. Prison has to apply for guards at the SP Office and it is a time consuming process. Due to non availability of guards delay occurs even in medical treatments).

On Right to Legal Aid

The principle of 1st production and Right to Legal Aid

Table No.3: Segregated Data on the Status of Prisoner's Access to Justice Per Prison				
Sl. No.	Name of the Prison	In Need of Legal Aid	In Need of Legal Aid for HC/SC Appeal	Proactive Reporting on No Physical Production
1	Ara	100	1	0
2	Araria District Prison		0	61
3	Aurangabad Prison	64	1	56
4	Bagha Prison	47	1	8
5	Banka	61	2	66
6	Barh Sub Divisional Prison	11	0	2
7	Begusarai Prison	35	0	31
8	Benipur Sub Divisional Prison	20	0	14
9	Bettiah Prison	99	6	85
10	Beur Central Prison and Correctional Home	216	36	7
11	Bhagalpur Special Central Prison	57	4	62
12	Bhagalpur Women's District Prison	3	0	0
13	Bihar Sherif Prison	65	3	68
14	Bikramganj Sub Correctional Home	22	0	20
15	Birpur Sub Prison	17	0	8
16	Buxar Central Prison Report	47	15	26
17	Buxar Open Prison	0	0	0
18	Buxar Women Sub Prison	2	0	0
19	Chappra Prison	71	3	69
20	Dalsinghsaral Sub Prison	8	0	0
21	Danapur Sub Divisional Prison	36	0	2
22	Darbhanga Mandal Kara	11	0	5
23	Daudnagar Sub Divisional Prison	29	0	0
24	Gaya Central Prison	207	23	2

Prisons of Bihar

25	Gopalganj District Prison	63	0	69
26	Hajipur District Prsion	27	0	30
27	Hilsa Sub Divisional Prison	52	1	0
28	Jahanabad District Prison	67	0	66
29	Jamui District Prison	41	1	31
30	Jhanjharpur Sub Divisional Prison	5	0	31
31	Jubba Sahani Central Prison Bhagalpur	64	10	4
32	Kaimur District Prison	23	7	8
33	Katihar District Prison	47	3	164
34	Khagaria District Prison	17	0	59
35	Kishanganj District Prison	56	0	50
36	Lakhisarai District Prison	19	12	33
37	Madhepura District Prison	37	1	60
38	Madhubani District Prison	41	1	53
39	Masouri Sub Divisional Prison	21	0	2
40	Motihari District Prison	220	6	213
41	Munger District Prison	45	5	30
42	Muzaffarpur District Prison	89	3	125
43	Naugachiya District Prison	19	0	11
44	Nawada Prison	50	1	40
45	Patna City Sub Divisional Prison	23	0	2
46	Phulwarisherif Prison	115	1	113
47	Purnea Central Prison	59	14	71
48	Rohtas Prison	63	1	2
49	Roshra Prison	23	3	0
50	Saharsa Mandal Kara	35	2	38
51	Samastipur Prison	52	8	103
52	Seohar Prison	26	0	40
53	Sheikhpura Prison	18	2	25
54	Sherghati Sub Prison	57	0	0
55	Sitamarhi Mandal Kara	48	2	88
56	Siwan District Prison	2	0	0
57	Supoul Prison	22	0	54
58	Udakishungunj Prison	25	0	11
	Total	2799	179	2218

The Table shows that 2978 prisoners among total of 30070 prisoners met during the time of inspection did not have lawyers or as explained above were not sure about having lawyers.

About Prisoner case sections

During inspection it was observed that most prisoners were accused u/s of cognizable offences. A brief glance through any of the interim report will reveal the sections that were repeatedly stumbled upon. However it seemed every alternate person has been booked under section 302 IPC.

A short description of the most frequently found sections are as follows.

- **Murder** – Section 302 of the IPC
- **Rape** – Section 376 of the IPC
- **Culpable Homicide not amounting to murder**-Section 304 of the IPC
- **Dowry Death**- Section 304B of the IPC
- **Attempt to murder**(*Marpeet Case*)- Section 307 of the IPC
- **Kidnapping** (*Apharan*)- Section 363 of the IPC
- **Arms Act**
- **Extortion** (*Rangdaari*)
- **Armed Robbery** (*Dacoity*)

A brief description on the above mentioned sections:

Under the Criminal Law in India, all offences can be classified in terms of “Cognizable Offence” or “Non-cognizable Offence”. Cognizable as per a dictionary means perceptible or clearly identifiable.

Cognizable Offences - Section 2 of the Cr.P.C defines it as, *”cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under and other law for the time being in force, arrest without warrant*”. In simple English, this means an offence where police can register an FIR and can arrest without a warrant.

Section 154 of the CrPC deals with information in cognizable cases. Cognizable

offences are serious criminal offences and all offences which have a punishment of over 3 years under the IPC are considered to be cognizable offences.

Jurisprudence on Physical Production

The Indian Constitution provides for several safeguards and/or rights to a person to protect his personal liberty against any unjustified and unlawful action by the State. Personal liberty is a sacred and cherished right under the Constitution. The expression life or personal liberty envisages the right to live with human dignity and thus includes within itself a guarantee, against torture and assault by the State or its functionaries. In particular and primarily, Article 22 guarantees every individual protection against arrest and detention in certain cases and directs that all persons arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. This article also declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

In addition to the constitutional guarantees for prompt production of arrested persons, statutory law provides the framework within which remand must be carried out. Section 167 (2) (b) Cr.P.C.

Thus, from a perusal of the constitutional and statutory provisions it is evident that production before a Magistrate shall always imply physical production. The Hon'ble Supreme Court of India as well as various High Courts in the country have observed the same in a number of judgments and have directed that physical production of a person before the Magistrate is mandatory.

The question of physical production of the accused person before the Magistrate, especially at the stage of investigation and remand becomes even more significant when one links it to an accused person's right to legal representation, especially for those, who cannot afford to engage a private lawyer. An individual's entitlement to legal aid has been elucidated by the apex court in the recent judgment of *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra*¹. The court observed,

*"... We have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. **We, accordingly, hold that it***

is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings.....according to our system of law, the role of a lawyer is mainly focused on court proceedings.

Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. **Even if the accused does not ask for a lawyer or he remains silent, it is the Constitutional duty of the court to provide him with a lawyer before commencing the trial.** Unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused”.

The duty of magistrates in this regard has also been explained by the Supreme Court in the case of *Khatri & Others Vs. State of Bihar & Ors*,

“..the right to free legal services would be illusory for an indigent accused unless the Magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principle items of the programme of the legal aid movement in this country to promote legal literacy. **It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services.** Legal aid would become merely a paper promise and it would fail of its purpose. **The Magistrate or the Sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable**

to engage the services of a lawyer on account of poverty or Indigence, he is entitled to obtain free legal services at the cost of the State.”

The above mentioned judgements make it clear that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware of his right to free legal aid. But in practice Legal Aid Lawyers are only provided to persons who have spent a considerable amount of time in custody and remained unrepresented by a lawyer. Thus violating the right to legal representation of the accused during the the time of 1st production.

In practice during 1st production the Magistrate mechanically grants remand to custody without a proper perusal of the documents before him/her and without effective legal representation of the accused, thus destroying the pillars of fair trial.

Again, if one glances through any of the interim prison reports it will be observed that groups of people are in prison without lawyer as in instances of mass arrests. Thus explaining how every alternate person is booked under the section of 302 IPC. The common practice of arrest as observed in cases of a murder committed in a village, a mass arrest will follow, where every individual will be charged under section 302IPC. There is surely something wrong in the way the Magistrate then discharges his/her duty in such cases as the Magistrate treats individuals as a group.

While the burden of excessive workload on the Magistrate and the lack of infrastructure need to be acknowledged, lack of time cannot be a justification for not complying with the letter and spirit of the law as mentioned under the Section 167.

Essence of Physical Production

Merely producing accused persons in the courtrooms is not enough. Without the Magistrate individually identifying the accused and interacting with him the process of physical production remains an existential fallacy. It also opens the gate infinite possibility, for abuse of process by the police, prolonged detention of accused, torture of accused etc. Adhering to constitutional mandates on production seeks to assure transparency, accountability and the viability of access to justice. The law prescribes that the magistrates must interact with the accused persons to ascertain their identity as well as to give the accused persons an opportunity to ventilate their thoughts/grievances if any.

In other words, the mandate of law is that mechanical remand has to stop. It is

unfortunate that the Magistrates are taking a light note on physical and actual production of the accused before the Courts and do not insist upon the physical production of the accused persons so that the accused persons had a direct access to him to have their say and advance their grievances, if any.

The series of inspections provides proof that court practices in reality are far from the rights the Indian constitution guarantees to all individuals. Physical production is only a small step towards a much larger goal, but it is of great relevance since it is the first interaction of the accused with the judicial system. It is the impact of this 1st impression that will leave its mark and decide whether the accused will develop faith in the system of justice.

The following suggestions are made to ensure that the rights of accused are preserved :

1. Accused person must be physically produced before a Magistrate for interaction and expressing his grievance and in 1st production/consecutive production the Magistrate to inform the accused of his right to Legal Aid Lawyer.
2. The Secretary, DLSA must ensure that retainer lawyer from the legal aid panel be present in the court room where production is going on to ensure that no Juvenile should be remanded to jail (by incorrectly mentioning his / her age to be 18 or above) and mentally ill accused be given medical and legal aid and every prisoner be informed about his Right to get free legal aid.
3. Retainer Legal aid lawyers shall be responsible to *suo moto* take up cases of an accused who is unrepresented and ensure engagement of legal aid lawyer for him for further dates.

(Note: In Bihar every court, including newly opened sub divisional courts has empanelled legal aid lawyers).

4. Where no bail petition has been moved due to lack of lawyer, Magistrate may scrutinize the case record themselves.
5. Jail PLV's to send applications for appointment of lawyer to DLSA with copy of concerned courts
6. Courts to denote name and details of legal aid lawyers in court/production warrant itself

7. Superintendent/ prison administration to have the names and phone numbers of the empanelled lawyers of the DSLSA. So that in case of non appearance of the lawyer in the court the inmate can inform the prison administration and the concerned lawyer can be easily contacted.
8. Prison Legal Aid Clinic, should have a list of the names of the Legal Aid Lawyers put up (without Ph numbers). So that Prisoners are familiarised with who his/her lawyer is.
9. The Jail PLV's, should inform each inmate seeking legal aid about the lawyer and point out on the Lawyer Names list. So in case the inmate forgets the name of his/her lawyer he can look up the name in the chart thus put up in the legal aid clinic.
10. Similar list of legal aid lawyers to be put up in the court lock ups. So that the accused in the court lock up is assured that legal representation is rightfully available to him/her.

□□□

Chapter-3**ON WOMEN PRISONERS****Legal awareness is empowerment for woman prisoners.**

Data regarding woman prisoners in need of legal aid lawyer could not be collated as the women were unaware of their legal status. The female inmates usually informed that their '*guardian*' was looking into their case. By '*guardian*' they meant any male member in the family or from the community they belonged to. There were several instances where it was observed that the family had lost touch with the inmate and the inmates did not know if they had a lawyer in the court. But the women inmates refused to take legal aid lawyers as they were unable to decide if they should ask for a lawyer without consulting their guardian.

Prison staff suggested that one should inquire if their family/guardian was in touch with them, if the response was in the affirmative then it could be presumed that the inmate had a lawyer and vice-versa. However, this process too could not confirm if the inmate had a lawyer or not as there were women who claimed that their family members did not have the time or money to visit them regularly, but the family/guardian had already paid the lawyer who should be doing the needful at the court.

It could be concluded that the legal aid authority fail to reach out those who require legal assistance the most. The authority is rendered helpless if the inmate refuses to take their assistance. A possible solution would be to initiate legal awareness clinics inside the woman wards. Every DLSA may empanel female lawyers who would visit female ward of the prison and discuss the case with the inmate. The legal counseling by the panel lawyer would be a good bonding exercise and gradually the inmate would develop confidence in the panel lawyer. The panel lawyers also need to proactively and regularly inquire about the case status of inmates and inquire about family/guardian visit. This exercise would also inculcate some amount of curiosity among the female prisoners about their own case and possibly then they would come forward to decide on their case proceedings. Legal awareness is empowerment, most essential to a female prisoner.

Also woman prisoners have other special requirements. They remain traumatized and face immediate social rejection. Family members loose touch sooner than later with the woman prisoner. In most cases the female prisoners was not an earning member of the

family and contributed to the requirements of the family through looking after the members. Being imprisoned she loses her requirement in the family and becomes a financial burden instead. The hapless inmates wait endlessly for their family members but more often than not it has been noticed that the family loses touch. Thus the female prisoners suffer extra-judicial punishment. The trauma of imprisonment, seclusion from family and the uncertainty of reacceptance by the family is an added suffering.

Thus female prisoners have special requirements. Catering to the special needs of woman prisoners the Model Prison Manual observes that socio-legal counselling cell need to be set up in each institution and to be managed by volunteers from a designated law school, school of social work, or a non-governmental voluntary agency. (Ch. 24.99)

In addition to this it was noticed that woman inmates were silently suffering from medical conditions. As there are hardly any female doctors in the prisons of Bihar. The woman inmates shy to speak up to male doctors and thus in most cases suffer from gynaecological problems without being detected by doctor till the condition worsens and turns critical.

Below is the report of Buxar Sub-divisional Woman Prison. The cases of the inmates mentioned in the report will help highlight the critical problems that the female prisoner encounters.

Glimpses of Buxar Women's Sub Prison.

Urgent Action Required : There is no hospital in the prison. NO permanent doctor in the prison. No facility of gas for heating water. Food is cooked in a "charcoal chulha". Yet there was a pregnant woman (9 months pregnant), who was found making roties. The woman had difficulty moving around. Another inmate had a 1 month old child who she gave birth in the prison, she is a lactating mother now. The prison has no capacity to house the 2 ladies, both the life of the mother and the child is under threat.

- One ward: 5 Fans- 1 fan not working.
- Total number of inmates on date of inspection: 12

Case 1 :

Chanda Devi

In prison for 4 months, charged u/s 302 IPC. **She was found 9 months pregnant**

on the date of inspection. She appeared much younger though claimed to be 20 yrs old. Her father in-law and husband has been granted bail. In total 4 male members in her family has been granted bail but she and her mother in-law **Shanti Devi** are in prison. She had difficulty in moving since she was **heavily pregnant**. Yet, she was making roties sitting on the floor by the “*chulha*”.

Case 2 :

Chandravati Devi

She has been in prison for nearly a year charged under 498A. Her husband has been granted bail 2 months ago. She had no information regarding the status of her case, claims to have a private lawyer by the family/guardian but her lawyer has never met her in prison or in court. No family members come to visit her either.

Case 3 :

Meena Turhain

She is in prison for 6 months, charged under 302 IPC. Claims that her tenant who was also a distant relative of hers used to stay in her house, who died of cancer. But the family members framed her for murder. She claims to have the required documents of the deceased suffering from cancer. She has a private lawyer but the lawyer never meets her in the court and she has no visitors in from home.

Case 4 :

Savita Devi

She is in prison for 15 days. She is undergoing trauma and needs special attention. In an attempt to commit suicide she had mixed poison in her food and her little daughters food. She is booked under 309, 328 and 302 IPC. Her trauma is that she feels that her 3 yrs old daughter is alive, where as the police report says that the child died. She begged and pleaded requesting that her daughter be sent to prison to stay with her as there was no one at home to feed the little child. She wailed that her daughter would not swallow a morsel without the mother. Here in prison she was worried sick about her daughters well being where as she was imprisoned for the murder of the little child. She refuses to accept that the child is dead and she mourns the separation from her child.

Case 5 :

Kiran Devi

She has a 1 month old child. She has been in prison past 2months. She delivered the child inside prison. She is the 2nd wife of her husband. She is booked for the death of the 1st wife. She didn't have a court marriage with her husband. She is waiting for her husband to provide her with a lawyer. She is being provided milk by the prison authority and the child is provided with medicine. She had no lawyer and her family as in her parents had abandoned her. She was unable to determine if she would take assistance of a legal aid lawyer as she was hoping that her husband would know best what needs to be done.

Case 6:

Seema Devi

She claims that a man was killed and her husband is in Buxar central Prison. She is accused of conspiracy of the murder. She is in prison for a year. Her brother had come to meet her once in prison. She has no idea of her lawyer. She also doesn't get to meet her husband.

Legal Aid Clinic :

Two female advocates were available:

1. Dipika Kumari
2. Reema Kumari

When asked about the above mentioned cases to the 2 female lawyers who were also present during the time of inspection, informed that inmates are not aware of their legal status and are not sure if they have a lawyer, since its mostly the guardians of the inmates who do the work. When asked why haven't they taken up any case from the prison itself or found out about the case status or inquired about the private lawyers of the inmates. The lawyers responded saying *"the inmates haven't asked us to take up their case or the family members haven't come and met us in the court"*.

Matter of concern here is inspite of the legal aid clinic running for two months with a strength of 2 legal aid lawyers for 12 inmates. The inmate lawyer ratio is one of the highest ever witnessed among any other prison in the state, ratio of 6:1 lawyer, yet it is proving futile as the conditions of inmates haven't changed. Lawyers visiting prison should

bring to the notice of the ACJM, the condition of the inmates and should proactively find out about the legal status of the inmate to help clear the air of confusion among the inmates. Empowerment comes through awareness. Or else mechanical visit to prison by legal aid lawyers and signing on a register makes the entire effort of setting up legal aid clinic cosmetic and useless.

Other issue :

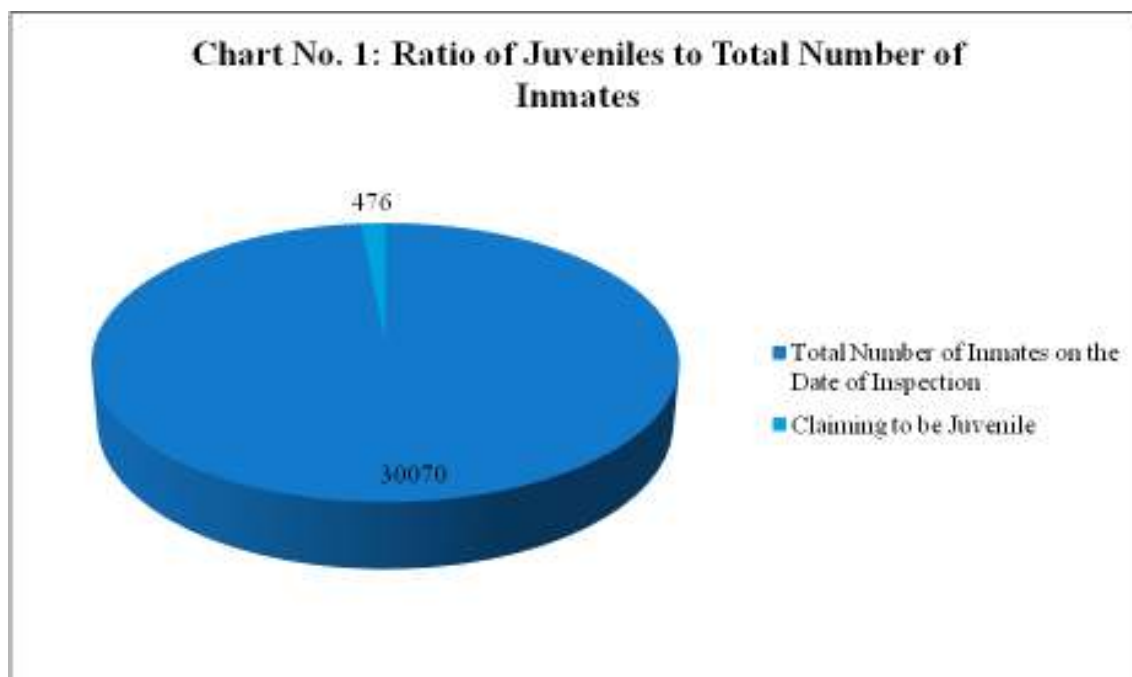
- There was no provision of clean and safe drinking water in the prison.
- No crèche for children
- There was no kitchen. Though a new kitchen has been constructed yet it is not functional as of now. Inmates cook in the open and has great difficulty in making and storing food when it rains.
- No hospital ward, only basic medicines are available in the office. Yet there is one heavily pregnant woman in the prison and one woman gave birth to a child a month back in the prison. There is no facility of prenatal and postnatal care.
- CCTV cameras were there but they have been dysfunctional past one year or even more.
- No videoconferencing facility

□□□

Chapter-4**ON JUVENILES AND AGED PRISONERS**

Table No. 2 : Segregated Data on Age Group of Inmates Per Prison			
Sl No	Name of the Prison	Claiming to be Juvenile	Reporting above 65 Years of Age
1	Ara	18	12
2	Araria District Prison	6	6
3	Aurangabad Prison	5	11
4	Bagha Prison	3	14
5	Banka	5	2
6	Barh Sub Divisional Prison	4	0
7	Begusarai Prison	6	11
8	Benipur Sub Division Prison	1	3
9	Bettiah Prison	20	19
10	Beur Central Prison and Correctional Home	11	29
11	Bhagalpur Special Central Prison	5	1
12	Bhagalpur Women's District Prison	0	0
13	Bihar Sherif Prison	16	12
14	Bikramganj Sub Correctional Home	1	2
15	Birpur Sub Prison	0	1
16	Buxar Central Prison Report	7	16
17	Buxar Open Prison	0	8
18	Buxar Women Sub Prison	0	0
19	Chappra Prison	16	6
20	Dalsinghsaral Sub Prison	0	0
21	Danapur Sub Divisional Prison	2	2
22	Darbhanga Mandal Kara	5	12
23	Daudnagar Sub Correctional Home	1	2
24	Gaya Central Prison	20	32
25	Gopalganj Prison	27	18
26	Hajipur	5	9

27	Hilsa Sub Divisional Prison	3	7
28	Jahanabad Prison	8	12
29	Jamui Prison	7	7
30	Jhanjharpur Sub Divisional Prison	3	3
31	Jubba Sahani Central Prison Bhagalpur	25	7
32	Kaimur Prison	4	11
33	Katihar Prison	7	10
34	Khagaria Prison	8	8
35	Kishanganj Prison	8	2
36	Lakhisarai Prison	14	1
37	Madhepura Prison	4	13
38	Madhubani Prison	11	9
39	Masouri Sub Divisional Home	1	1
40	Motihari Prison	24	27
41	Munger Prison	8	0
42	Muzaffarpur Prison	22	11
43	Naugachiya Prison	1	0
44	Nawada Prison	7	13
45	Patna City Sub Divisional Prison	2	0
46	Phulwarisherif Prison	23	6
47	Purnea Central Prison	15	37
48	Rohtas Prison	14	10
49	Roshra Prison	2	4
50	Saharsa Mandal Kara	19	28
51	Samastipur Prison	11	9
52	Seohar Prison	6	0
53	Sheikhpura Prison	2	0
54	Sherghati Sub Prison	1	4
55	Sitamarhi Mandal Kara	14	5
56	Siwan District Prison	0	5
57	Supoul Prison	14	4
58	Udakishungunj Prison	4	5
	Total	476	487



On Juveniles :

Total number of prisoner claiming to be juvenile (as on date of inspection) is 476. The number is nearly equivalent to the number of juveniles lodged in remand homes. There are only 10 remand homes in the state of Bihar having an average capacity of about 50 beds in each home. If the juvenile identified in the prisons during inspection are sent to the remand homes then the remand homes would be severely overcrowded. Point to be noticed here is that in the State of Bihar there is not have enough space to accommodate juveniles in conflict with the law. Among the 476 prisoners claiming to be juvenile by conservative estimates over 250 children appeared to be under the age of 16 yrs.

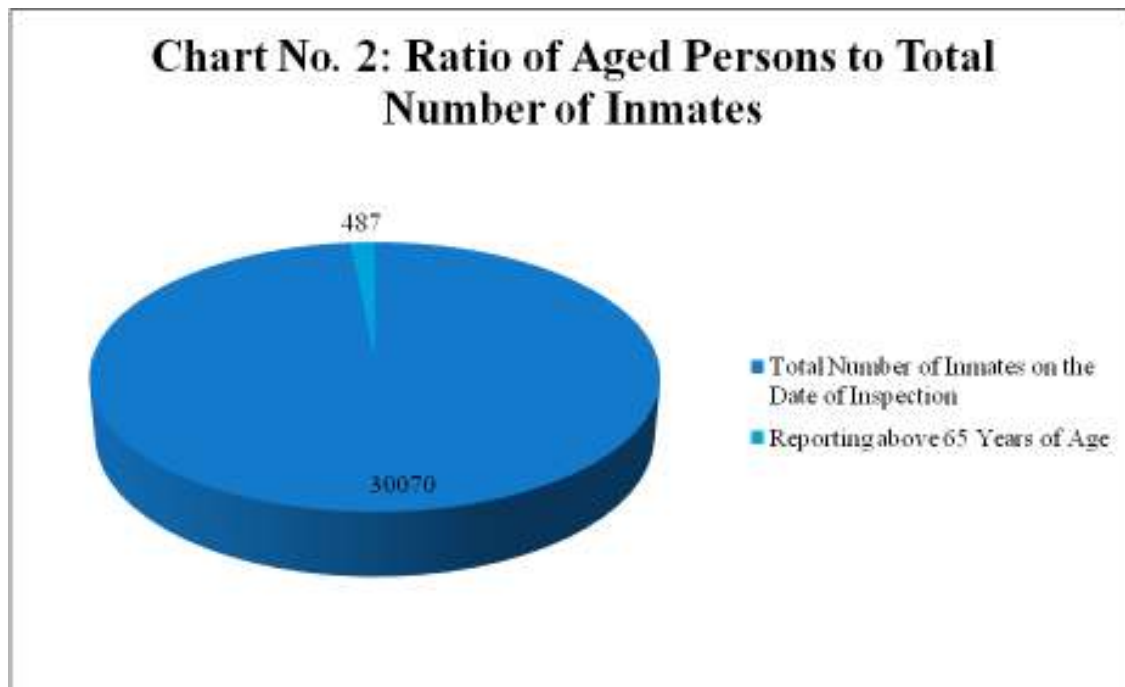
In most prisons the staff informed that there is no remand home in the district thus even when the under age prisoner is sent to the remand home problem arises in court production and family visit thus creating problem of legal representation. Some prison staff informed that even if the prisoner appears to be below 15 yrs of age according to the warrant they are around 19-20yrs old. The juveniles are kept in young offenders ward in the prison. Some prison staff also claimed that there are instances where the family members of the juvenile do not want to contest the fact that their son is under age, as then the prisoner will be sent to remand home which is far from the area. However even if there is a scarcity of remand homes that cannot be a ground to send children in prison. This also

points out to the fact of paper production happening in courts resulting into mechanical remands.

While going through the interim reports it will be observed that most juveniles did not have visitors and asked for legal aid lawyer. Thus there is a high probability that the family was not informed or the child is a run-away and has lost contact with family. Also, it was found out that in Bihar there are no **“Place Of Safety”** as provided by Juvenile Justice (Care & Protection of Children) Act, 2000 for keeping the offender in Conflict with law who has attained age above 16 years during investigation or inquiry, if the competent authority does not feel it proper to keep him in Home. Such offenders are kept in a ward nominated as youth offender ward of prison which is against the spirit of Juvenile Laws and rather in violation of it.

Suggested Solution :

- Retainer Lawyers of DLSA, to pro bono take up the case of juvenile during court production.
- Retainer Lawyer might also initiate informing child welfare officer
- Remand homes should be set up in all the districts of the state of Bihar
- Place of safety for young offenders should be set up in all the districts in the state of Bihar. The work can be initiated from commissioner towns in the 1st phase.



Approximately 487 inmates were found in prison (as on date of inspection) who appeared to be aged and visibly infirm. Here too it was found that in their warrants in most cases the mentioned age was around 60-65 yrs, but they appeared much older and physically infirm.

There was a man in Chapra prison who was 104 years old. He was convicted for murder and was in prison for over 5 years. His warrant mentioned that he was around 85 years old. But he appeared to be very old had become lean and small and needed to be carried around by other inmates. There was another under trial prisoner in Beur prison who was 96 yrs old was in prison for over 10 months, he was accused of rioting. He was physically infirm and hard of hearing. In such circumstances provisions under section 437 Cr. P. C need to be considered under humanitarian grounds.

Another problem that was identified was that the aged prisoners had no idea of their age. Most of them had no age proof such as birth certificate. A handful of these inmates had voter cards but again the age in the voter card was a random estimated age. Thus there is no documental proof of their age.

Prisons do not have the required medical infrastructure to provide proper care for the aged prisoners. Other prisoners in the ward look after the aged prisoners, but the quality of care in such an informal set up varies in degrees and is subjective in nature.

Good Practice :

Bhagalpur Central Jail and Correctional Home- Jubba Sahni

Aasra - The Home

This ward is a welcome initiative by the Superintendent for aged inmates. The aged Prisoners are kept in a separate ward named “Aasra-The Home”. In this ward aged prisoners are taken care of by an inmate who has no visitors and considers the persons living in this ward his functional family. The initiative of the Superintendent is of great relief to the aged inmates.

Though a lot more medical facility is required for the aged inmates since most of them are unable to move about on their own and needs to be taken special care of. Yet within the limited resources and the personal capacity of the Superintendent, the aged prisoners have a better living condition in Bhagalpur Central jail. Such initiative maybe furthered in all the district and central prisons.

All concerned authority need sensitization regarding aged and physically infirm prisoners on humanitarian grounds and Section 437 Cr. P.C may be utilized with more liberty.

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Chapter-5

ON PRISONERS HEALTH

The medical conditions prevailing in all the prisons of the state of Bihar need immediate attention. The prisons do not have proper facility of storing medicine, medical store in the prison are ill equipped, medical equipments such as X-Ray machines are dysfunctional, refrigerator for storing medicines are not operational. Medical clinics are usually run by compounders who keep only basic medicines such as paracetamol and some B-Complex vitamins, required medical kits such as pregnancy kits, HIV kits to conduct medical test as mentioned in the Prisoner Health Screening Form is also not available in the prisons. There is a severe shortage of medical staff in prison. Also, lady doctors are only available in around 6 out of 58 prisons of the state.

Again, due to non availability of resident doctors compounders are incapable of recommending cases to the district hospital. The procedure of sending inmate for medical check-up or treatment to District Hospital is extremely lengthy. The lengthy procedure coupled with severe understaffing causes unusual delays leading to loss of golden period of treatment of an inmate. Also, often the medical procedure is delayed due to non availability of guards, more over prisons have no ambulance, these too cause delays. Thus by the time the inmate reaches hospital there is little or no chance of recovery or else some inmates those who can afford get treated in private, i.e family members get medicines for the inmate. However, given the demography of the prisoners who come from humble back grounds, such facility can be availed only by a few inmates in each prison. The lengthy procedure of sending inmate to district hospital for required treatment and the severe understaffing in prison also leads to prison staff ignoring medical complains of prisoners and also avoiding the mechanism of transfer of inmate to District Hospital to avoid the burden of official paper work. These deliberate negligence can prove fatal for the prisoner.

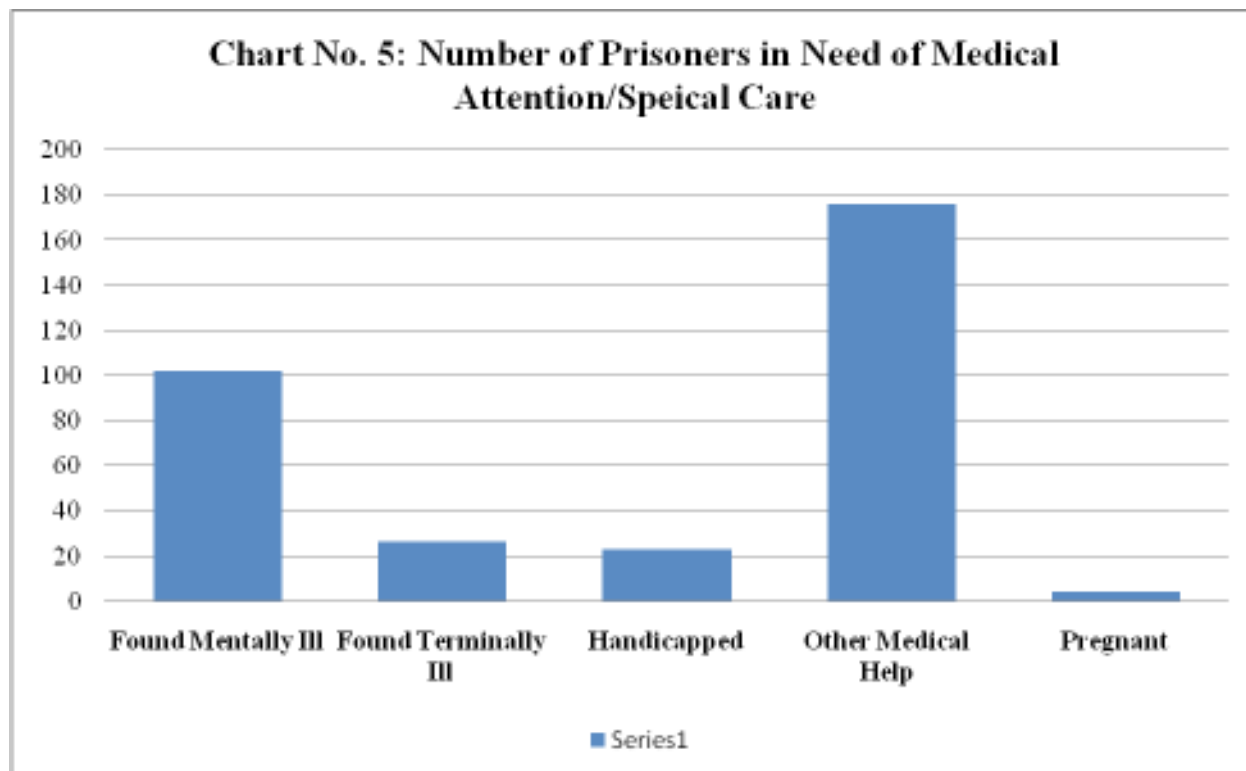
Health Status of Prisoners :

Table No.4: Segregated Data on the Health Status of Prisoners						
Sl. No.	Name of the Prison	Found Mentally Ill	Found Terminally Ill	Handi-capped	In Need of other Medical Help/ Spectacles/ hearing aid etc	Pregnant
1	Ara	1	0	2	10	0
2	Araria District Prison	0	0	1	0	0
3	Aurangabad Prison	4	0	0	6	0
4	Bagha Prison	1	2	0	1	0
5	Banka	0	0	0	0	0
6	Barh Sub Divisional Prison	1	0	0	0	0
7	Begusarai Prison	2	1	0	7	0
8	Benipur Sub Division Prison	1	1	0	2	0
9	Bettiah Prison	0	0	1	0	0
10	Beur Central Prison and Correctional Home	9	7	5	18	0
11	Bhagalpur Special Central Prison	0	0	0	1	0
12	Bhagalpur Women's District Prison	0	0	0	0	0
13	Bihar Sherif Prison	1	1	0	2	0
14	Bikramganj Sub Correctional Home	0	2	0	2	0
15	Birpur Sub Prison	1	0	0	0	0

16	Buxar Central Prison Report	2	1	1	15	0
17	Buxar Open Prison	0	0	0	5	0
18	Buxar Women Sub Prison	1	0	0	0	1
19	Chappra Prison	5	1	1	2	0
20	Dalsinghsaral Sub Prison	0	0	0	0	0
21	Danapur Sub Divisional Prison	2	0	0	2	0
22	Darbhanga Mandal Kara	3	0	0	11	0
23	Daudnagar Sub Correctional Home	0	0	1	1	0
24	Gaya Central Prison	8	1	0	3	0
25	Gopalganj Prison	0	0	0	0	0
26	Hajipur	1	0	1	5	0
27	Hilsa Sub Divisional Prison	2	0	0	0	0
28	Jahanabad Prison	0	0	0	3	0
29	Jamui Prison	1	0	1	1	2
30	Jhanjharpur Sub Divisional Prison	2	0	0	0	0
31	Jubba Sahani Central Prison Bhagalpur	0	0	1	8	0
32	Kaimur Prison	0	0	0	1	0
33	Katihar Prison	3	3	0	2	0
34	Khagaria Prison	3	0	0	3	0
35	Kishanganj Prison	1	0	0	4	1
36	Lakhisarai Prison	1	0	0	1	0
37	Madhepura Prison	3	0	0	3	0

Prisons of Bihar

38	Madhubani Prison	5	1	1	1	0
39	Masouri Sub Divisional Home	1	0	0	1	0
40	Motihari Prison	1	1	1	6	0
41	Munger Prison	3	0	0	0	0
42	Muzaffarpur Prison	2	0	0	7	0
43	Naugachiya Prision	4	0	0	1	0
44	Nawada Prison	1	0	0	0	0
45	Patna City Sub Divisional Prison	0	0	0	0	0
46	Phulwarisherif Prison	1	2	1	1	0
47	Purnea Central Prision	7	0	0	14	0
48	Rohtas Prison	5	1	2	2	0
49	Roshra Prison	0	0	0	3	0
50	Saharsa Mandal Kara	6	0	2	6	0
51	Samastipur Prison	2	0	0	1	0
52	Seohar Prison	0	1	0	2	0
53	Sheikhpura Prison	0	0	0	0	0
54	Sherghati Sub Prison	1	0	1	3	0
55	Sitamarhi Mandal Kara	1	0	0	3	0
56	Siwan District Prison	0	0	0	5	0
57	Supoul Prison	2	0	0	0	0
58	Udakishungunj Prison	1	0	0	1	0
	Total	102	26	23	176	4



Glimpses from Beur Central Jail Hospital ward

Beur Jail is one of the largest and the best equipped prisons located in Patna which is the capital of the state of Bihar. Glimpses from hospital ward of Beur Central Jail will help to understand the status of other prisons of the state which do not have half the facilities provide in Beur Central Jail.

Hospital Ward-5

24 inmates and 9 fans

Upendar Kumar, was in prison for 11 days, on the date of inspection u/s 302 IPC. He was bleeding, has bedsore, yet PMCH would not admit him. He was being sent to PMCH regularly, and PMCH was sending him back. He is not in his senses. And there is no facility to treat him in Beur Hospital Ward.

Ramnath Mahato, was transferred from Motihari Prison, he was completely paralyzed. UTP. He could not move a limb. He could not carry day to activities such as eating, cleaning himself. Prison administration cannot provide him with any assistance. He

is left at the mercy of other inmates, who too cannot take proper care of him. Inmates taking care of him informed that he cannot move and cannot hear a word, he is just there as if in coma.

Mahinder Mahato, in prison past 1 yr, on date of inspection, NDPS. He doesn't have legs, moves with the help of hands. **No Lawyer. Needs Legal Aid Lawyer.**

Dilip Kumar, u/s 304 B, on date of inspection was in prison for 15 days, he had a head injury past 15 days, open wound needed immediate medical attention.

Mahinder Chawdhury, on date of inspection was in prison for 5 months, no idea of charge, he was suffering from severe breathing problem. Aged prisoner, age above 70 yrs. **No Lawyer. Needed Legal Aid Lawyer.**

Pramodh Kumar, was in prison for 2 months on date of inspection. No idea of case. **No Lawyer. Needed Legal Aid Lawyer.**

Chottan Yadav, was in prison for 1 month on date of inspection, u/s theft. **No Lawyer. Needed Legal Aid Lawyer.**

Hospital Ward- 6

(**Glaring practice** observed in prisons of Bihar. That HIV positive patients are kept with TB patients. From a medical point of view, this condition is highly inappropriate for HIV positive patients).

In Beur Prison the situation is the same.

5 Inmates were identified as HIV Positive:

Inmates with TB:

- Ravi Kumar (U/S 304B, 5yrs, UTP)
- Kallu Ram Rajak, aged 70 yrs old (u/s 420 IPC- UTP-2yrs in prison)
- Sanjay Yadav (UTP-u/s 302 IPC- 3yrs in prison)
- Bhuddan Ansari (5 yrs- Convicted u/s 376 IPC- HC Appeal)
- Md. Mumtaz (38 months- Convicted- SC Appeal)
- Sonu Kumar (20 days-UTP-Abduction)
- Sanjay Kumar suffering from Leprosy (19 months- UTP-u/s 302 IPC- **No Lawyer Needs Legal Aid Lawyer**)

Chapter-6

SPECIAL CASES

Special Case 1 :

Report on Alleged Custodial Rape and Torture.

(Finding from Seikhpura Prison Inspection conducted on 30.05.15)

Name of inmate - Devi.

(Name Changed)

Inmate for two and half years, convicted u/s 302 IPC.

1st Incident: Alleged Custodial Rape

Devi- Victim

Devendra Ram- Accused

Victim Narrative :

- On **05.04.13**, the lady guard '*jamadarni*' was outside the womens ward, she was doing her duty in the visitors area, (checking of items brought by the visitors). So **Devi** (the victim) was alone as the only other women inmate had gone to the Court.
- During this time **Devendra Ram** (the accused) entered the womens ward and started groping her. When the victim resisted and tried to shout, she alleges that she was gagged and raped.
- According to Devi when she ran towards the gate of the womens ward she found that two other inmates (Sanjay Singh & Rama Singh) were standing outside the gate there. She alleges that the two inmates were standing with the intention of guarding the gate to facilitate the rape and they were intending to join the accused in committing the same. But because she raised a hue and cry they fled the sight.
- The victim alleges that in spite of her many requests the jailor (D.N.Manjhi) didn't come and meet her, and went on leave on the same evening. Only the Bara Babu came to meet her.

1st FIR:

Sheikhpura Police Station case no. 150/13 was lodged.

- The victim complained that no action has been taken till now on this issue. Her medical examination was conducted after a **delay of 14 days**.

(N.B: BSLSA immediately took up the matter and several steps have been taken from the date of inspection of Shekpura Prison).

- The District Magistrate, Mr. Pranav Kumar, informed that charge sheet has been filed by the Police on December, 2014 and cognizance has been taken around a week ago from day of Sekhpura Prison Inspection (30.05.15).
- The victim was neither aware of her **charge sheet** nor did she have a copy of the same or the **FIR**, or the **report of her medical examination**.
- The victim alleged that she doesn't know if she has a lawyer in the case and if a legal aid lawyer was representing her then she is not aware of such lawyer as the lawyer never met her.
- The victim also alleged that after the incident she was continuously being pressurized by the prison administration to withdraw her case.

2nd Incident: Alleged Custodial Torture

Victim: Devi

Accused: Nagina Singh 'sipahi'

: Rajkishore Singh 'bara babu'

Victims Narrative:

- On **04.09.13**, guard **Nagina Singh**, entered the womens ward, stripped her and beat her senseless.
- Devi shouted to raise a hue and cry, to which Rajkishore Singh 'bara babu' also came inside and joined Nagina Singh in beating her.
- She claimed to have suffered an injury in her head due to the said incident which was not medically treated. She showed an injury mark in her head.

- The other inmates namely Biru Singh, Bhola Mistiri, Vijay Yadav, informed that on that day there was a lot of hue and cry heard from the women wing. On hearing so when they ran towards the women wing, they were chased away by the prison guards, who threatened to beat them if they didn't go inside lock-up.

2nd FIR

Mahila police station case no. 41/13

Other Inmates Narrative :

- Later that day all the inmates went on a fast to protest the brutality perpetrated against a female prisoner that they had witnessed. They also wrote an application, which was signed by **102 inmates** addressed to the Chief Judicial Magistrate asking him to take action. On the basis of that complaint, Mahila police station case no. 41/13 was lodged

(Number of inmates on the date of inspection was 118 inmates i.e if this is the average population of the prison then nearly all inmates present in the prison during the date of incident had signed the petition),

- District Magistrate Mr. Pranav Kumar, informed that in the case final report (FF) was filed by the police on 23.11.13.
- No one could inform about the date of filing of Chargesheet in Sheikhpura police station case no 150/13 or in the Mahila police station case no. 41/13.

Following 2nd Incident: A Case was filed against the Victim :

The victim informed that currently she is being prosecuted for hitting the **guard with her slippers** during that incident.

Area of Concern regarding the alleged custodial rape and torture cases :

1. Delay of nearly 2 weeks in conducting medical examination
2. Delay of nearly 2 yrs in filing of Charge Sheet
3. Delay of nearly 2 yrs in charge framing
4. Victim unaware of case status and lawyer

5. Victim claims she cannot afford a private lawyer and legal aid panel lawyers do not want to fight her cases of alleged custodial rape and torture.

In an instance of a custodial rape where victim is a prisoner it is difficult for the inmate to come up to the prison administration to register the complaint which may lead to delay and tampering of evidence. Apart from being hesitant the inmate also may not be aware of the steps that need to be taken. Here the onus to take action and secure the safety of the inmate remains on the prison administration. The prison administration should initiate immediate medical examination of the inmate and initiate other legal steps, necessary actions.

Case 2 :

Alleged Case of False Framing

Daudnagar Sub-divisional Prison.

Case Story- Prisoner Narrative

Name: Chunnu Kumar @ Sonu Kumar

Inmate has been in prison for 1 month 10 days. Is a '*thelavala*', vegetable vendor and also '*chai wala*'. Runs petty errands for street vendors for little money, does whatever little comes his way to earn money. He is the sole bread earner in his family.

Inmate claims that he used to go to police station to give tea at times, so the cops knew him. He claims that one day he was suddenly picked up by the police in an abduction case. He claims that the police has framed him. He says that his is not a case of mistaken identity but the police has deliberately picked him up because they were unable to find the actual person alleged to have committed the crime.

He has a private lawyer but he doesn't have money to pay lawyer. He claims that his mother had to borrow money to get him a lawyer. So he wanted to change lawyer and take up a legal aid lawyer. He was not aware that he has a right to free and compulsory legal aid. During the inspection as soon as he heard of Legal Aid Lawyer, he asked for help and narrated his story. He is unable to read or write, thus asked for someone to write down his story and submit it to BSLSA.

Case 3 :

Alleged incident of Custodial Torture and illegal Detention in Police Custody

Documented during inspection of Bettiah Mandal Kara on 19.06.15.

Alleged custodial torture and illegal detention in police custody were documented on **19.06.15** in Bettiah Mandal Kara in the prison Superintendents Office in the presence of the CJM Sri Rajkishore Pandey, ACJM Mr. Khedan Prasad, and Sub Judge 3 Mr. Vijay kr. Pandey.

Three Victims of Torture and illegal detention in police custody.

Victim 1:

Name – Mnohar Pandey

(Name Changed)

Date of Arrest - 06.06.15

Time of Arrest - 1 am, from his home in Musharwa (Sathi Police Station)

Taken to Court - 5 pm on 07.06.15

Arrested by - SI Mukesh Kumar from Balthar Police Station. There were vehicles of 5 police stations present at the time of his arrest.

The victim alleges that he was not produced in the court within 24 hrs of arrest but kept in police station instead where he was tortured.

Chronology : Prisoner Narrative

- Kept in Balthar police station from 1 am on 06.06.15 to 5 pm on 07.06.15
- Beaten with sticks / lathis by SI Mukesh Kumar, and two other police men, from 8 a.m. in the morning to 5 p.m. in the evening on the 06.06.15.
- Beaten again on 07.06.15 all day and taken to Court in the evening.
- Swelling in the left hand from fist to the elbow. Injury and wounds on the bum. Both feet swollen up to the knee, because of the beating.
- The victim alleges that he was suspended from the ceiling, in an upside down position. He lost consciousness during the process.

Victim 2 :

Name - Sanjay Pandey

(Name Changed)

Date of Arrest - 06.06.15

Time of Arrest - Around 1 am, from his home in Pare Tola (Sathi Police Station).

Taken to Court - 5 pm on 07.06.15

The victim alleges that he was not produced in the court within 24 hrs of arrest but kept in police station where he was tortured.

Chronology : Prisoner Narrative

- Kept in Balthar police station from 1 am on 06.06.15 to 5 pm on 07.06.15.
- Beaten at the police station from around 8 am to 5 pm in the evening on 06.06.15 by SI Mukesh Kumar and 2 other policemen.
- He had injury marks on his left leg, feet and left hand.

Victim 3 :

Name - Vipul Pandey

(Name Changed)

Date of Arrest - 05.06.15

Time of Arrest - Around 11 pm, from his house in Inarwa. (Inarwa Police Station).

Taken to Court - 5 pm on 07.06.15

The victim alleges that he was not produced in the court within 24 hrs of arrest but kept in police station where he was tortured.

Chronology : Prisoner Narrative

- Kept in Balthar police station from 11 pm 05.06.15 to 5 pm on 07.06.15.
- Beaten in the police station at around 12 in the night on 05.06.15.

- Then again he was beaten up by the SI Mukesh Kumar in the morning from 8 am and the beatings ended only around 5 pm in the evening on 06.06.15.
- Beaten again on 07.06.15 and taken to Court in the evening.
- He was also suspended from the roof, upside down, during the torture.
- He had beating marks on both legs, on his back around the shoulders and beneath the arms around chest area and also on the left and right hand.

Suggestion : When torture victim come to prison from court the prison administration should send the inmate for immediate medical treatment. If torture victim come to prison without mention of the same in the medical report, the prison administration should bring the matter to the notice of the concerned court at the earliest.

(N.B: The report of the above mentioned alleged cases of torture in police custody was reported the same day of inspection and BSLSA immediately took up the matter).

Case 4 :

The Gandhi Maidan Blast Accused :

1. **Faqrudin**
2. **Umar Siddique**
3. **Md. Mojibullah Ansari**
4. **Md. Firoz Asllam**
5. **Azharuddin Qureshi**
6. **Haider Ali**

Prisoner Narratives :

No access to charge-sheet :

They are all in prison since December 2013. None of them were allowed to keep a copy of the charge sheet. Apparently the charge-sheet is over a 1000 pages long so lawyer asked for a huge amount of money to get each their certified copy. One certified copy of

charge-sheet was obtained but then pages were missing from the charge sheet. It is the principle right of the accused to have a free copy of the charge-sheet.

However, the accused persons informed that they were not aware if the court had restricted them from having a copy of the charge-sheet but it is the prison administration that was not allowing them the copy of the charge-sheet. It was informed that the police SP had forbidden them from having any document, pen, pencil, paper, as their case is under the NIA, so extreme measures are taken and prison administration is on high alert.

No access to lawyer :

They can't raise the matter in the court as their lawyer is also not very co-operative. They suffer the burden of the tag of being a **“terrorist”**, thus the lawyer is not very keen to defend terror accused.

Again, accused persons not only suffer the burden of the terror tag but they also have to suffer the consequences of being extremely poor. Being extremely poor and bearing the terror tag has acted as a double headed spear which is crippling their case. The lawyer has completely lost interest in the case and does not attempt meeting them even in the court.

More over in the court they are so heavily covered by security that lawyer will have to go through special procedure every time he has to meet them. Considering the paltry sum lawyer receives from his client, he clearly lacks inclination to meet client. Neither can the accused persons afford lawyer visit in prison.

The indifference on the part of the lawyer is seen as a sign of patriotism. However this is a clear violation of the right to fair trial of the accused.

No access to medical treatment:

Haider Ali, needs special treatment. He is suffering from a slip disk. He cannot move and remain bed ridden. He was taken to PMCH once but then his treatment was discontinued.

It has been suggested that Hider Ali be transferred to Tihar for further medical treatment. Also, he has a case pending in Delhi court thus he may be shifted to Delhi and the case pending in Bihar can be continued through video-conferencing.

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Chapter-7

REMISSION

The Quality of Mercy

The Code of Criminal Procedure, 1973 provides for remission and commutation of sentences in Part E of Chapter XXXII. Section 432 empowers the appropriate Government with or without condition to remit the sentence of imprisonment of convict. Section 433 empowers the appropriate Government to commute the sentence of death, imprisonment for life, rigorous, simple imprisonment for a term not exceeding 14 years or for fine. Aforesaid power to grant remission or to commute the sentence is subject to restriction under Section 433A, in terms whereof sentence of rigorous imprisonment for life imposed on a convict cannot be remitted or commuted for a period less than 14 years of actual stay in the prison. Conjoint reading of the provisions in the aforesaid Chapter would indicate that the power of the appropriate Government to grant remission or commutation is not absolute, rather the same is to be exercised as per the remission policy framed by the appropriate Government. The object behind putting the offender in prison is to reform the offender. The conduct of the convict is watched by the prison authorities on day to day basis while he is serving the sentence in the prison and records about his behaviour maintained by the prison authorities. From the records of the prison if it appears that the convict seldom committed gross misconduct then only he is entitled for grant of remission that too as per the notified norms.

It would thus appear that grant of remission to a convict is in terms of the provisions of Cr.P.C. and the policy, norms formulated by the Government which the prison authorities including the Remission Board constituted by the Government is required to follow in both letter and spirit for achieving longer purpose of reforming a convict. Punishment is not for revenge and retribution; it is for securing reformation in the convict. Failure of the authorities not to consider and grant remission to a convict whose case is covered by the policy will be arbitrary and infracting Articles 14, 21 of the Constitution.

During inspection of the prison while interacting with prisoner, several inmates informed that their case for remission is not being considered, even though they have

become entitled for being released in terms of the remission policy as there was order of stay granted by the Supreme Court restraining the authorities from exercising power of remission. The stay order has now been vacated by the Supreme Court, yet the cases of the convicts (specific complaint letters on remission were sent to BSLSA by prisoners) for grant of remission is not being considered by the prison authorities subject to procedural delays pertaining to official paper work such as receiving reports from SP, Prison Superintendent-respective authorities. However, this delay tantamounts to infracting the remission policy, as in terms of the remission policy the case of the convict for grant of remission is required to be considered every six months and those found qualified in terms of the policy be released, otherwise the very purpose behind the concept of remission to allow the reformed convict to become a responsible member of the society and to lead a civil life is followed more in breach than in compliance. The Home Commissioner and I.G. Prison, Bihar should ensure consideration of the case of each convict for grant of remission within a reasonable time of the convict having become entitled for such grant.

Suggestion : Remission is hope to the one confined/imprisoned/jailed. It is hard earned, thus it is obligatory on the part of the administration to see that the inmates remission is duly recorded, and meticulously tabulated. Remission has a deep impact on the inmate and defines the institution of correction. Thus innovative and spirited ways of granting special remission and increasing the spectrum of ordinary remission might be considered by the concerned Government.

A humble submission to the concerned authority would be to consider grant of remission without strain. Though grant of remission cannot be forced but remission has a high standing principle of the quality of mercy, of forgiveness, of justice that stands for human right against human wrongs.

On Condemned Prisoners :

*“For each man kills the thing he loves,
Yet each man does not die.
He does not die a death of shame
On a day of dark disgrace,
Nor have a noose about his neck,
Nor a cloth upon his face,
Nor drop feet foremost through the floor
Into an empty space.
He does not sit with silent men
Who watch him night and day;
Who watch him when he tries to weep,
And when he tries to pray;
Who watch him lest himself should rob
The prison of its prey”.*

– Oscar Wilde, *The Ballad Of Reading Gaol*

Even after the turn of a century from when Oscar Wilde wrote these chilling lines, the plight of the condemned remains the same. The condemned prisoner is kept in isolation from the general ward in high security cells under the silent observation of warders. Death Row inmates remain under great distress and are often severely depressed some inmates also loose mental stability. In such instances if condemned prisoner shows signs of insanity, which according to the District Level Medical Board is not feigned, or require observation to determine whether they are feigned or not, the circumstance shall at once be reported to the Law Department and execution of the sentence shall be deterred...(Rule 642: Bihar Prison Manual-2012).

As a matter of concern there can exist other mental illness which are yet to be formally recognized by medical institutions. One such phenomenon is under discussion in international circles the “Death Row Syndrome” or “Death Row Phenomenon”, though the terms are often used interchangeably but are not the same. According to the particular phenomenon the inmates suffer from a unique psychological disorder developed due to the harmful death row conditions, caused due to prolonged confinement coupled with the

mental anxiety of awaiting death. This syndrome is a subject of study among international circles and nothing specific can be defined as a clinical condition since neither Death Row Syndrome nor Death Row Phenomenon has received formal medical recognition, some even refute the syndrome by terming it as “medicalization of morals”.

Point of observation here is that under any circumstances death row conditions aggravate anxiety, agitation, delusions, paranoia, and even self-destructive behaviour since prisoners are under great psychological distress. It is inhuman to keep a person under such agonizing mental trauma. Also the Prisons of Bihar including the Central prisons do not have regular visits from psychiatrists, there exists no formal procedure to observe the mental health of the Death row prisoner. It must be kept in mind that the death row prisoner is not allowed to step out of prison, even outside the campus of the high security ward. He is not produced in court even if there are other cases pending, in such cases either a special court is held inside the prison or through video-conferencing mechanism (Rule 638: Bihar Prison Manual-2012). Death Row prisoners are not allowed to participate in recreational activities or prison work. Death row prisoners are not granted parole or remission and the procedure of appeal is usually lengthy and the fate of the inmate remains in suspended animation till the final verdict comes through. The above facts denote the conditions under which the death row prisoner is confined under, the circumstances are so severe that the prisoner suffers the consequences even after if appeal is granted and the inmates is removed from death row.

Special Case : Beur Central Prison

Sanaullah Khan, condemned prisoner was given capital punishment, thus he was kept in isolation for 9 yrs. Then High Court converted sentence to life imprisonment. He has developed psychological disorder.

When he was kept in a separate cell he tried to burn himself several times, was often heard wailing, weeping, shouting and would often stop eating for long period of time.

He is now kept in the medical ward with other inmates but he still remains emotionally rattled. As he rarely speaks to other inmates and is often found speaking to the wall. He sits for hours staring at the wall with his back towards the other prisoners in the hospital ward. His only request was that he should be kept in company of others.

Another area of concern is that the death row prisoner is allowed certain facilities. Accordingly, the prisoner shall be allowed interviews with family/friends/Legal Advisors in

their cells in the presence of the Deputy Superintendent (Rule 636: Bihar Prison Manual-2012). No such procedure is maintained in the prisons of Bihar. Thus the scope provided by the Prison Manual for the death row prisoner no matter how little has also been strangled due to absence of effective mechanism.

(N.B : A personal opinion-The above instances have been mentioned as a factual narrative with no intention of sugar-coating the noose. I vehemently oppose death penalty).

On Open Prisons

Buxar Open Prison

Open Prison is a special type of prison and has special requirements. Buxar has the only open prison of the state of Bihar. Below is a list of special problems of prisoners that were identified during the open prison visit.

Date of visit : 06.08.15

Special Problems of inmates from Open Prison :

- 1.** Balmukund Rastogi, he was suffering from Hepatitis B, thus was sent to PMCH and examined. However, he was not treated in PMCH, he wasn't provided any medicine and not examined later to see if the ailment has come under control. As he was not treated in PMCH he treated himself through a private doctor. He complained about prison doctors who did not cooperate with him. For an inmate it is too expensive to get treated for Hepatitis B in private, he didn't have the money to buy medicine or other necessities for his treatment.
- 2.** Bhola Ram, 67 yrs. Needed immediate treatment for cataract. He is steadily losing vision.
- 3.** Ram Avatar Singh, he is in open prison for over 3 years. He needs immediate eye treatment. He was sent for cataract surgery and after surgery the eye got infected. Now he needs to be treated for the infection.
- 4.** Kapil Mahato, needs spectacles. He wears child sized specks, which the prison administration provided him. The specks frame is ridiculously small in size and he ties his specks with a string to make it effective.
- 5.** Kisan Bihari Pandey, is also very old but has no idea about age. He is an asthma patient and needs immediate treatment.

6. Raj Nath Singh, aged around 85 years and appears very weak. His family doesn't stay with him. He needs someone to take care of him.
7. Kapil Singh, he is diabetic and above the age of 85 years. Heeds a special diet but he cannot afford the expense. He too stays alone as his family hasn't come to stay with him, thus he too has no one to look after him.
8. Nagender Panday, needs hearing aid. He complained that his canteen money is pending, prison administration hasn't cleared it. A very long time ago, he could not tell the year, inmates were paid Rs. 6 per month as canteen money. That money is pending, he wants that pending money clearance. He is very old and infirm.
9. Baleswar Singh, he writes chits at the Buxar Central Prison gate for visitors who wait in queue for meeting inmate. He charges Rs. 2 per chit. But now he is growing old steadily, cannot sit for hours under the open sun. He also has no one to look after him. No family visits him or comes to stay with him. He wants to do odd jobs of writing for prison administration. He is too old to go out looking for jobs.
10. Dinesh Kumar Mahato, claims that he has been paid for his labour by the Prison Administration according to the rates of the old wages where as the rates have changed in 2012 itself.
11. Ishwar Chandra (52 yrs old. In prison for 14 years. Convicted 7 years ago) and Avad Bihari Rai, (80 yrs old), Lala Jamadar (80 yrs old) for all three inmates the remission periods are not getting calculated due to missing custody of previous imprisonment period. They have submitted a letter to BSLSA.

(Suggestion : Remission gets calculated only after conviction, however, it is the discretion of the court to grant remission considering lengthy under trial period as well. They could not move to the Patna High Court, for remission matter as they didn't have the money to pay lawyer).

Age related problems of inmates :

Inmates staying in the open prison have special requirements. They are partially independent and the objective to keep them in Open Prison is to gradually make them independent so that they can find their feet back into the society. However, there are many aged prisoners in the open prison whose family has lost touch with them over the prolonged stay in prison. They are aged prisoners and are also physically infirm. They have earned their stay in open prison through good conduct while they were serving their sentence in

prison. Now, to send them back to central jail would be unfair however to keep them neglect too is unfair.

Aged prisoners need to be protected against neglect. For those who do not have family to look after them, for those who cannot afford private medical treatment the State Welfare Department may initiate steps to for the care and protection of the aged and physically infirm.

Suggestion : *A best possible solution would be to open special old age home for convicted aged prisoners in the open prison premises and the aged inmates taken care of there. There are also several aged prisoners who are convicted prisoners languishing in the prisons of the state of Bihar. An old age home for the inmates would benefit them immensely and would set a good precedent for correctional services. The old age home can also open an option of employment for the other inmates in open prison who are looking for work and finding it difficult to secure a job because of bearing the tag of being a prisoner. The other inmates of the open prison can also serve in the old age home and be trained as paramedics, cooks and similar trainings that can benefit the running of the old age home.*

Problem of Employment of Inmates :

Prisoners have no source of employment. Some prisoners in open prison come from affluent back grounds and run their own business. But most of the inmates do not have that privilege as they come from humble back ground. Inmates either are old and physically infirm, or are very poor thus they need help of the Government to employ them.

Inmates were provided employment under NREGA schemes for around 3 years but then it stopped, inmates want the process of employment to start again.

Suggestion : *The Open prison has been constructed over an area of around 40 acres of land. Inmates are trained in fishery, so they can practice the same in the prison campus with support to start up the work from the Government. Agriculture, animal husbandry, fruit gardening and improved scientific methods of dairy and poultry can also be initiated. Cottage industry work can be initiated in the open prison. The end product need to marketed for profit making so that the inmates working can get proper remuneration.*

Computer training centre that remains dysfunctional can be restarted for training of inmates.

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Chapter-8

PRISION PUNISHMENTS

On revisiting certain problematic sections in Bihar Prison Manual-2012

Some problematic sections were observed in the Bihar Prison Manual which need to be revisited. There are certain rights of the prisoners that have been established through various landmark judgments and NHRC Guidelines.

Rights of the Prisoners :

- Prisoner has the right to write and receive letters.
- Prisoner has the right to meet family and friends.
- Prisoner has the right against handcuffing.
- Prisoner can receive books, newspapers and other publications at their expenses.
- Prisoner can publish books and articles while in prison.
- Prisoner has the right to be interviewed by journalists while in prison.
- An undertrial prisoner cannot be forced to do labour while in prison. An undertrial prisoner who voluntarily works, or a convicted prisoner sentenced to more than 3 months who has completed the first 3 months of his sentence, should be paid reasonable wages for his labour while in prison.
- Prisoner cannot be kept in solitary confinement.

Imprisonment is an absolute punishment by itself. However, Prison Administration feel the need to have some powers for disciplinary measures to tackle an unruly inmate. But a disciplinary measure should be carefully weighed in light of human rights which are inalienable and universal in nature. Thus care must be given to the protection of rights of the prisoner. Also, there are several disciplinary measures such as curtailing of certain privileges of an inmate, which have proven to have more effect on an inmate than a punishment that would require implementation of force or are cruel in nature.

The Bihar Prison Manual has some forms of punishment which have spilled over from the Prisoners Act of 1894. The nation has undergone several changes over the last 100 years. In a democracy there should remain no scope for medieval, inhuman, cruel

forms of punishment especially within an institution of the democratic state. More so since prisons are now seen as correctional homes where a prisoner is lodged with an objective of reform, rehabilitation and correction. In this light the following rules need to be revisited especially since there is no mention of an appellate body in the manual and these punishments remain solely the discretion of the Prison Superintendent.

Rule 395. On Minor Punishments: (vi), (vii) and (ix).

(vi) Imposition of Handcuffs for not more than 48 hrs

(Such punishment leads to cruel and inhuman treatment of prisoner).

(vii) Change of labour for 15 days to some irksome or severe form

(Such punishment might result to force labour)

(ix) Cellular and separate confinement for a period upto 30 days.

(Such punishment without appellate body might lead to solitary confinement which is cruel and inhuman)

Rule 396. On Major Punishments: (i), (ii), (v), (vi), (vii), (xi), (xii).

(i) Hard Labour for a period not exceeding 7 days in the case of prisoners not sentenced to rigorous imprisonment

(Such punishment might result to force labour)

(ii) Forfeiture of remission earned, exceeding 15 days

(Such punishment without an appellate body and no upper cap, leads to cruel and inhuman treatment)

In the above matter a complaint was filed to Bihar Human Rights Commission.
Case of : Sh. Ashok kr. Singh:- Arbitrary forfeiture of remission earned by a life convict in Bihar Sharif Jail. (File No. BHRC/Comp.943/12).

In this case the Superintendent had forfeited remission of 665 days out of the total remission that Ashok Kr. Singh had earned between 2002 to 2008. After hearing both sides the Prisoner Ashoke Kr. Singh was granted remission.

BHRC concluded that such arbitrary forfeiture cannot be accepted to which the Prison Administration assured that they would look into the particular section and recommend necessary changes.

(v) Separate confinement for a period exceeding 14 days but upto 30 days

(Such punishment without appellate body might lead to solitary confinement which is cruel and inhuman)

(vi) Imposition of handcuffs for 15 days

(Such punishment leads to cruel and inhuman treatment of prisoner).

(vii) Exclusion of parole facility for 1 year

(Such punishment without appellate body is subject to abuse)

(xi) Any combination of minor punishments admissible under section 47 of the Act.

(Such punishments leaves scope for corporal punishment)

(xii) In exceptional circumstances bar fetters for a period not exceeding 30 days

(Such punishment leads to cruel and inhuman treatment of prisoner).

Conclusion :

On Good Practices and exemplary measures

A Suggestion :

Access to lawyer in Court :

Though lawyers are to visit prisons to meet the prisoner but that, as has been described earlier is a rare scenario in the existing context. Even if lawyer visit inmate there hardly exist a suitable atmosphere where the lawyer and client can discuss the case in its minute details. A probable solution to the problem might be considered by facilitating the lawyer prisoner interaction in the court itself. Certain architectural changes within the court room itself, can aid access to lawyer by the prisoner.

Prisoner lawyer meeting in the court :

Keeping in view that the prisoner has the right to meet and speak to his counsel, the Court Administration and the State Government should consider redesigning the court lock ups with facilities to make possible interaction of the accused with his counsel in segregation. It is suggested that court rooms for trial of custody cases should be specifically designed and there may be 2-3 such court rooms connected with court lock ups, specifically designed

court where the trial judge shall conduct trial. These court rooms must be equipped with video-conferencing facilities as well as it maybe designed as per suggestion given by law commission report.

There maybe sound proof rooms connected with such courts where the accused may have interaction with their counsel before framing of charge, within visibility of the judge and the guards. The wall of such room facing towards court room may of transparent glass or one way glass and the accused may remain in such room.

Remedy for non-appearance of official witnesses :

In some of the districts instructions have been issued to maintain mobile numbers and email address of official witness that is of the IO and the Doctor. So that at the time of recording of trial the concerned witness maybe informed through mobile or sending email may also be helpful in this respect.

Doctors of PHC or Hospital mostly prepare Injury Reports and/or Post Mortem Reports. They are obviously witness in several cases. It will be beneficial for expeditious trial that the cases in which same doctor is witness are identified and such cases are heard in group on any day in a month. It will not only expedite the trial but it will also save such doctor from attending courts at the cost of their duty to treat the patient in the hospital. It has been reported that some of the courts in Bihar had adopted such policy of registering witness of the doctors.

In a criminal trial it would be beneficial if the official witnesses excepting IO are examined in the beginning of the trial so that incase of their transfer the trial may not prolong for their appearance as witness.

It would also be beneficial if jail superintendents are instructed to send list of prisoners with their case number and name of court, a day prior to the dates fixed in their case so that the records of such prisoner maybe taken out from the court office and put up before concerned judicial officer. By adopting such practice the custody cases may not remain unattended and progress in such cases on every date maybe ensured. It is reported that there was such instruction and practice in Gaya in the year 2003 under the then concerned CJM (The name of the then CJM has not been disclosed on his request).

Again it is reliably learnt that in the year 2006 a state level workshop on the topic Criminal Justice System Reforms was held in Patna. In which all DM's, SP's, DJ's, Fast Track Court Trial Judges and Public Prosecutors as well as Senior Government Officers,

like Chief Secretary, Home Secretary, Director General of Police, Inspector General of Police as well as Hon'ble High Court Judges, including the Hon'ble Chief Justice of Patna High Court participated in the work shop.

During the workshop the participants were divided into 4 groups, each headed by a Senior High Court Judge. The groups were insisted to discuss the issues relating to

- i. Requirements of Amendments in Criminal Law
- ii. Requirements of improvements in infrastructural facilities
- iii. Requirements of improvements of qualitative investigation and Prosecution
- iv. Steps to be taken for speedy trial and protection of witnesses

The discussion continues for 2 days, on the 3rd day presentation was made by each group in presence of the Chief Justice of the Patna High Court and the Chief Minister. Then after a high level committee was constituted, to study the recommendations and propose course of action to be taken. Several recommendations made during the workshop were implemented. It resulted in disposal of thousands of criminal cases and qualitative prosecution improved during the next 3-4 years and record number of convictions was observed. However, several recommendations of the Committee have not been implemented till date. There is requirement of implementing the recommendations and also of holding such workshop at regular intervals of every 2-3 years.

Lastly and most importantly, prisoners are an important part of the Criminal Justice System and Access to Justice is of prime priority. Through prisoner narratives broad trends in court practices have been observed and problematic areas, which obstructs access to justice has been identified in this status report. The best possible conclusion of the extraordinary endeavour of Bihar State Legal Services Authority, under the exceptional Chairmanship of Hon'ble Mr. Justice V. N. Sinha, would be if Department of Justice considers the Bihar prison inspection status report as a blueprint. In light of the status report on prisons the Department of Justice may commission the formation of a high Powered Committee at the national level to look for possible solutions to the problems thus identified and implement them.

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