

REPORT OF THE NATIONAL TRAINING ON PRISONERS' RIGHTS

BY

Centre for Constitutional Rights, India (CCRI),
Human Rights Law Network (HRLN)

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Report of the National Training on Prisoners' Rights

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We are grateful to the Resource Persons for sharing their experiences, as well as the lawyers, activists, researchers and students for participating in the training programme and making it a success.

We would like to extend a special word of thanks to Mr. Prashant Singh from JGU; Mr. Ajay Verma from IBJ; Ms. Madhurima Dhanuka and Ms. Sugandha Shankar from CHRI; and Mr. Vijay Raghavan from TISS for extending their cooperation in putting this training programme together.

Above all, a special word of thanks to all the interns, especially Ms. Ambikka Singh, Ms. Megha Chawla, and Ms. Andrina D'Souza, and the team of HRLN without whose dedication and hard work the Training and this Report would not have been possible.

RITU KUMAR

Coordinator, Prisoners' Rights Initiative, HRLN

INTRODUCTION

Centre for Constitutional Rights India, Human Rights Law Network (HRLN) in collaboration with O.P. Jindal Global University, National Legal Services Authority (NALSA), Commonwealth Human Rights Initiative (CHRI), International Bridges to Justice India (IBJ), Tata Institute of Social Sciences (TISS) and India Vision Foundation (IVF) organised a 3-day National Training on Prisoners' Rights. The training was organised at O.P. Jindal Global University, Sonapat, Haryana from 29th June – 1st July 2018.

The training was conducted with the objective to:

1. Educate and inform lawyers, activists, and concerned civil society groups about the issues faced by undertrial prisoners, and equip them with tools to address the same.
2. Build and strengthen the legal aid system in India through fostering partnerships with District, State and National legal aid service authorities, lawyers, NGOs and civil society groups.
3. Build partnerships and a network of prison reform activists, lawyers, NGOs working with prisoners, academics, and other concerned members of the civil society to bring them on a common platform.

The training had about 250 participants from all over the country including advocates working with state and district legal service authorities, as well as NGOs, researchers, academicians, eminent social activists, civil society groups, law students, etc. working in the field of human rights in general and prisoners' rights in particular.

The 3-day training programme provided an insight to the participants about the various issues that relate to prisons like the prison conditions, prison legal aid schemes, legal procedures from the role of magistrates to the role of lawyers, the various directions of the Supreme Court with regard to checking

unnecessary detentions, constitution and working of undertrial review committees, directions and guidelines with regard to investigations in deaths in prisons, constitution of visitors' boards, functioning of jail adalats, etc.

During the course of the 3-day training programme, the participants had opportunity to hear and interact with distinguished experts in the field, such as, Mr. Chaman Lal, Former Special Rapporteur, National Human Rights Commission; Justice A.K. Mittal, Acting Chief Justice of Punjab & Haryana High Court; Member Secretaries of NALSA and Delhi State Legal Service Authority; Senior Advocates like Colin Gonsalves, Navkiran Singh; activists like Soni Sori, as well as academicians like Prof. Mrinal Satish, Prof. Aparna Chandra, Prof. Vijay Raghavan, Prof. Dr. Y.S.R. Murthy, to name a few. The training also had participation from senior prison officials and senior government officials like Dr. Kiran Bedi, Shri Ajay Kashyap, DG Tihar, and Dr. Upneet Lalli, Dy. Director RICA, who have been involved in running the prisons as well as making policies in order to improve the prison system.

At the end of the 3 days, a Plan of Action was formulated, where the panel lawyers, activists, and lawyers working with HRLN, CHRI, IBJ and TISS identified issues in their own States. These included issues on legal aid like access to trial court records; release on personal bond; determining the bail amount as per the socio-economic capacity of the arrestee; release of prisoners with mental illness; appointment of counselors, doctors, gynaecologists and female doctors for women prisoners; appointment of a strong and independent visitors board; improvement of mulaqat infrastructure; etc.

This Report comprehensively documents the proceedings of the National Training to enable the lawyers, researchers, and students of law, interested in issues of prisoners' rights to understand the critical issues that are faced by the prisoners and to help them overcome these to the extent possible.

TABLE OF CONTENTS

Introduction.....	ii
I. Inaugural Address	
- Sr. Adv. Colin Gonsalves.....	1
- Prof. Dr. Y.S.R. Murthy.....	2
II. Overview of Prison Reforms - Mr. Chaman Lal.....	4
III. Key Note Addresses – Dr. Kiran Bedi.....	7
– Prof. Dr. C. Raj Kumar	9
IV. Prison Conditions	
A. Maharashtra - Prof. Vijay Raghavan.....	11
B. Haryana- Ms. Sabika Abbas	13
C. Bihar - Adv. Anshu Raj.....	14
D. U.P- Mr. Tapan Vahal	16
E. Odisha - Adv. Jyotiranjana Senapati.....	17
V. Prison Legal Aid schemes	
Overview - Justice A.K. Mittal.....	19
NALSA – Mr. Alok Agarwal.....	20
DSLISA – Mr. Sanjiv Jain.....	22
VI. Women and women with children	
Conditions of Women Prisons in India - A Study by National Commission for Women - Ms. Avni Bahri.....	25
Women in custody – Adv. Anu Narula.....	27
VII. Vulnerable Categories in Prisons	
A. Mentally Ill in Prisons – Dr. Anbu Dorai & Dr. Sandeep Govil.....	29
B. Disabled, sick, elderly in prisons – Ms. Seema Baquer & Mr. Nipun Malhotra.....	31
C. Juveniles - Mr. Ranvir & Adv. Ajay Verma	36
D. Foreign Nationals - Ms. Palak Chaudhari.....	38
VIII. Checking Unnecessary detentions	

A.	Role of Magistrate - Prof. Vijay Raghavan & Mr. Raja Bagga	41
B.	Lok Adalats and Jail Adalats – Mr. S.S. Rathi, Adv. Silvin Kale, Mr. Narendra Singh.....	44
C.	Role of Lawyers - Adv. Ajay Verma.....	46
D.	Role of Students - Prof. Ajay Pandey, Ms. Amrita Paul, Ms. Garima Tiwari.....	47
IX.	SC: Re- Inhuman Conditions in 1382 Prisons	
A.	Overview – Adv. Gaurav Agarwal.....	51
B.	Undertrial Review Committees – Mr. S.S. Rathi, Mr. Sunil Chauhan, Mr. Narendra Singh, Ms.Sugandha Shankar.....	54
C.	Sentence Review Boards – Adv. Sunil Gupta.....	60
X.	How to do a PIL – Sr. Adv. Colin Gonsalves.....	62
XI.	Leading judgements on Prisoners' Rights	
A.	Dr. Aparna Chandra, NLUD.....	64
B.	Dr. Mrinal Satish, NLUD.....	70
XII.	Political Prisoners and Prisoners in Conflict Zones	
A.	Ms. Soni Sori, Chhattisgarh.....	74
B.	Adv. Amarnath Pandey, Chhattisgarh.....	78
C.	Adv. Kishore Narayan, Chhattisgarh	79
D.	Adv. Arun Ferreira.....	80
E.	Adv. Shah Faisal, Kashmir.....	81
F.	Adv. Shadab Ansari, Jharkhand.....	82
XIII.	Custodial Torture and Deaths in Prisons	
A.	Prof. (Dr.) Y.S.R. Murthy.....	84
B.	Shri D. Suresh Kumar.....	85
C.	Adv. Sunil Gupta.....	86
D.	Shri Pupul Dutta, NHRC.....	87
E.	Adv Navkiran Singh, LFHRI.....	89
F.	Dr. Murali Karnam.....	90
XIV.	Legal representation of prisoners on death row	
	– Case studies - Ms.Shreya Rastogi.....	92
XV.	Visitors' Boards - Ms. Madhurima Dhanuka & Adv. Ritu Kumar.....	97

XVI. Changes needed in the Model Prisons Manual	
A. Ms. Sugandha Shankar.....	101
XVII. Experience Sharing by Senior Prison Officials	
A. Dr. Upneet Lalli, Director, RICA.....	104
B. Jitendra Agarwal, Dy. Inspector General (Mandoli)	106
C. Shri Harinder Singh, SP, JInd, Haryana	107
XVIII. Experiences shared by Lawyers from Legal Services Authorities	
A. Mr. Abhay Jain	108
B. Ms. Neha Phillip	109
C. Ms. Archana Rupwate	110
D. R. Alagumani.....	111
E. Ms. Agnees Kharshing	113
F. N. Syngkon.....	114
XIX. Role of lawyers in protecting human rights of prisoners	
A. Ms. Madhurima Dhanuka, CHRI.....	116
B. Adv. Sunil Gupta.....	117
XX. Visitation Rights	
A. Interaction between lawyers and clients	
- Shri Ravindra Vaidya, VARHAD.....	119
B. Visitation rights of families	
- Ravi Srivastava, IVF.....	120
XXI. Prison Wages - Victim Compensation Fund/ Victim Welfare Fund	
A. Shri Santosh Upadhayay.....	122
B. Ms. Katyayini.....	123
XXII. Plan of Action.....	125
XXIII. Annexures	
Annexure 1 – Powerpoint presentations	131
Annexure 1A- PPT- Sabika Abbas - Prison Condition.....s	131
Annexure 1B- PPT- Anshu Raj Singh - Prisons of Bihar, Status Report.....	134
Annexure 1C- PPT- Tapan Vahal -Conditions of prisons: Uttar Pradesh.....	137
Annexure 1D- PPT- Jyotiranjana Senapati - Conditions of Prisons in Odisha.....	140

Annexure 1E- PPT- Avni Bahri- Custodial Home Reform Cell	143
Annexure 1F- PPT- Dr. Sandeep Govil- Detention of Mentally ill in prisons.....	148
Annexure 1G- PPT- Seema Baquer - Disabled / Elderly Prisoners	152
Annexure 1H- PPT- Nipun Malhotra- Life of a Prisoner with a Disability.....	156
Annexure 1I- PPT- Palak Chaudhari- Foreign National Prisoners.....	163
Annexure 1J- PPT- Raja Bagga- Conditions of legal Aid in Prisons	172
Annexure 1K- PPT- Amrita Paul - Role of Universities and students.....	177
Annexure 1L- PPT- Garima Tiwari – Legal Aid Clinics	184
Annexure 1M- PPT- Sugandha Shankar-Under Trial Review Committees.....	189
Annexure 1N- PPT- Arun Fereira - Political Prisoners.....	197
Annexure 1O- PPT- Shreya Rastogi- Legal representation of death row prisoners.....	200
Annexure 1P- PPT- Madhurima Dhanuka- Prison Oversight	209
Annexure 1Q- PPT- Ritu Kumar- Board of Visitors	212
Annexure 1R- PPT- Ms. Sugandha Shankar- Changes in the Model Prison Manual, 2016	216
Annexure 1S- PPT- Madhurima Dhanuka - Role of Lawyers	223
Annexure 1T- PPT- Sunil Gupta- Rights and Duties of Prisoners	227
Annexure 1U - PPT- Mr. Ravi Srivastava-Visitation Rights of families	231
XXIV. Annexure 2 - List of participants	243

I. INAUGURAL ADDRESS

Sr. Adv. Colin Gonsalves

Founder, Human Rights Law Network (HRLN)

Sr. Adv. Mr. Colin Gonsalves, Founder, Human Rights Law Network (HRLN), welcomed all the participants to the 3-day National level training programme. He extended a warm welcome to Prof. Dr. Y.S.R. Murthy and O.P. Jindal Global University, as well as the National Legal Services Authority for extending their support for the 3-day National Training on Prisoners' Rights. Mr. Gonsalves also welcomed the other partners, Commonwealth Human Rights Initiative, International Bridges to Justice India, Tata Institute of Social Sciences and India Vision Foundation for partnering with Human Rights Law Network for the 3 day National Training Programme.



Mr. Gonsalves informed the participants that during the course of three days, the participants would be listening to the foremost experts on Prisoners' Rights in the country, ranging from cases of torture in prisons, custodial deaths, the terrible conditions prevailing in most prisons, to lack of legal aid and health conditions in prisons.

Mr. Gonsalves noted that though Supreme Court is now looking at the overall conditions in prisons, but it is important for the High Courts to monitor the prisons in their States and implement the orders of the Supreme Court. He regretted that the number of PILs filed in the area of prisoner's rights has remained relatively low, and it was important that more public interest litigations (PILs) should be filed in High Courts across India. He also stressed that young, restless lawyers willing to dedicate their lives to the poor were vital to bring about change in India for those prisoners still suffering under the current conditions, and to improve the conditions for the poor in general in India.

Speaking on the issue of legal aid, Mr. Gonsalves opined legal aid is still devoid of struggle and stuck to charitable function within a limited framework. Tribals from Chhattisgarh are being dispossessed of their rights, slum demolitions are going on in Delhi, lynching is taking place every day and legal aid to such persons is not being made available. When we talk of legal aid, we stay at a particular level. It is important to go to the people who are under attack, he emphasised. It is important to go to 'ground zero'. "We're looking for people

with anger against injustice”. Don't stay within the confines of your firms and colleges. You'll understand the real need when you come to the grassroot level. No one really works for the poor.

The courts and the law are partial instruments. It is important to combine power of law with the power of struggle, to stand up to the India of violence, discrimination and those who tear people apart, Mr. Gonsalves concluded.

Prof. Dr. Y.S.R Murthy

Registrar, O.P. Jindal Global University

Prof. Dr. Y.S.R. Murthy, Registrar, O.P. Jindal Global University (JGU), welcomed the participants to the training programme.

Dr. Murthy welcomed Mr. Chaman Lal, the Former Special Rapporteur of the National Human Rights Commission, recalling their shared work on a number of fact finding missions. He also highlighted the dedication, passion and achievements of Mr. Chaman Lal in his work of documenting the plight of the poor in India in a number of reports like the starvation deaths of Orissa, mental health conditions, prisons, etc.



Dr. Murthy then went on to point out the success of JGU in the field of education and human rights. He informed that JGU has been ranked in the top 300 universities by the US and has been conferred as the cleanest campus under the Swachhata Abhiyan. JGU has also been recently conferred the status of being an autonomous university by Ministry of Human Resource Development. He also spoke of the Centre of Human Rights Studies, of which Dr. Murthy is the Executive Director. The Centre has been involved in documenting the Manipur extrajudicial executions along with Human Rights Law network and has helped the amicus curiae in the process of justice for victims of extra-judicial executions. The Centre has also been involved in various researches like abolition of death penalty and organising seminars and conferences on Human Rights issues. The present training programme has been co-organised by the Centre as well.

On the issue of prisons, Dr. Murthy spoke of custodial violence, which he said was a very important issue that needs to be addressed. He also spoke of the huge prison population suffering from mental health issues, and combined with substance abuse it would amount to almost 65% of the prison inmates, whose problems need to be looked at from a human rights perspective. He stressed that we should all care about Prisoners' rights – the prison system puts at risk prisoner's mental health and leaves them essentially helpless.

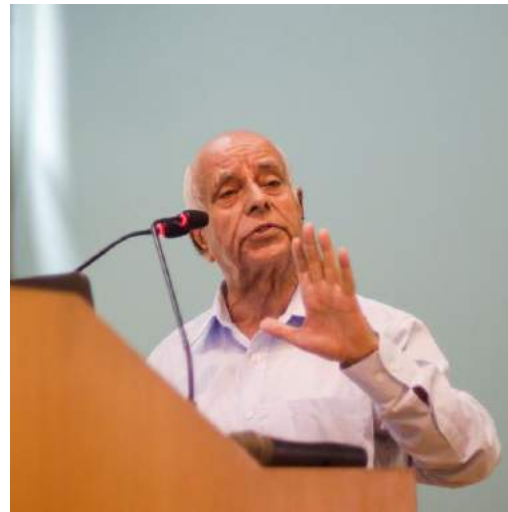
He concluded by quoting Winston Churchill, "*You can understand a civilisation by the way it treats its prisoners*".

II. OVERVIEW OF PRISON REFORMS

Mr. Chaman Lal

Former Special Rapporteur, National Human Rights Commission, and Padmashri Awardee

Prisoners are one of the most vulnerable groups of Indian society when it comes to human rights protection. The conditions prevailing in most Indian prisons are poor and dehumanising – prisons are unhygienic, ill equipped and run by little and sometimes even unpaid staff. Despite the fact that reforms have been announced and administrative action has been taken, little about



these conditions has improved over the past years. In India, 75% of all prisoners are undertrial, and since well beyond 80% are poor and powerless, they are not considered worthy of any expenditure whatsoever, or any effort to improve their conditions.

Ever since the Indian independence, pronouncements by the Supreme Court of India have marked a progressive trend with regards to rights that should be attributed to prisoners: Prisoners are not the slaves of the state. A prisoner is entitled to all rights except for those that are explained by the penalty of incarceration. The state has an obligation to rehabilitate and reform. In short: Total deprivation of liberty transformed into a right to dignity of the prisoners.

These principles have been established in cases such as:

- Hussainara Khatoon & Others vs Home Secretary State of Bihar, 1979 AIR 1369, 1979 SCR (3) 532
- Sunil Batra vs Delhi Administration, 1980 AIR 1579, 1980 SCR (2) 557 – solitary confinement
- Charles Sobhraj vs The Suptd., Central Jail, Tihar, New Delhi, 1978 AIR 1514, 1979 SCR (1) 512 – right to life means right to dignity, and protection against torture
- Francis Coralie Mullin vs The Administrator, Union Territory of Delhi and Others 1981 AIR 746, 1981 SCR (2) 516

- Prem Shankar Shukla vs Delhi Administration 1980 AIR 1535, 1980 SCR (3) 855 – use of handcuffs
- Ramamurthy vs. State of Karnataka AIR 1997 SC 1739

There are two aspects of imprisonment – custody and treatment of prisoner. The four approaches - punishment, deterrence, incapacitation and reform – all four have to be used in a balanced way, he said. Mr. Lal gave insight into his personal fight for the rights of prisoners: He stressed that it was important to accept the limitations set by the law, but also acknowledge the lack of clarity embedded within it, in particular with regard to the purpose of prison.

Mr. Lal suggested that all four purposes should find their way into a functional prison system. This requires a balanced approach between the interests of the custodial system and the interests of the prisoners and activists, including:

- The right to be treated in a humane manner.
- Fundamental right to basic minimum needs – Some UN documents refer to rights to clothing and bedding, healthcare, recreation, education, training, work, etc. The Mulla Committee has looked at these aspects.

Mr. Lal went on to speak about the reality of **overcrowding in prisons**. He said that prisoners were not evenly distributed among all prisons, leading to some prisons being severely overcrowded. In extreme cases, this may even force prisoners to sleep in shifts.

Another important concern which he highlighted was the prisoners’ **right to communication**. Mr. Lal pointed out that as the criminal justice system should make better people of the prisoners, it was necessary not only for prisoners to be willing, but also to be able to lead a better life. To this end, prisoners should be assisted in keeping in touch with their families. Mr. Lal particularly criticised the ‘interview galleries’ in prison, in which prisoners and visitors would speak, or rather shout, to each other across a corridor that maybe around one metre wide.

Mr. Lal also raised the **prisoners’ right to access to legal aid**. According to him, the slowness of trials, and unavailability of free legal aid were other major concerns usually faced by the prison inmates. Mr. Lal gave a particularly shocking example of Silong Jail, in which, until his visit in 2002, no-one had even been aware of the requirement of free legal aid. Even prisoners sentenced to life were represented very poorly. There is no system of training and evaluation of the kind of services that are being provided by lawyers. It is important that quality legal aid is provided to prisoners.

According to him, prisons should be designed to rehabilitate prisoners, it should make them better people, enhance their self-esteem and enable them to live a better life. In reality however, the prison system is creating more criminals and more hardened criminals. It is for this reason that vocational training for these prisoners is needed, in particular through work. Mr. Lal clarified that the jail industries used to be very strong even after the Indian independence. Jail industries used to have great production. However, funds are no longer allocated for raw materials for running the jail industries, he observed. It is also very important that inmates are paid for the work they are doing in the prisons. They should be given minimum wages. In 1998, the Supreme Court settled that every State should have minimum wages – and a part of it should be given to victim's families. The money which is being deducted from the wages is running into crores, but the money is not being utilised. It is important to find out what is happening to that money.

He also spoke about the draft Act which has been prepared by NHRC to replace the archaic Act on Prisons of 1894. It is important that the new Act should be implemented, as we need a modern Act to address the new, emerging conditions in the prisons, he observed.

Mr. Lal concluded by saying that for prisons to improve, two conditions are necessary:

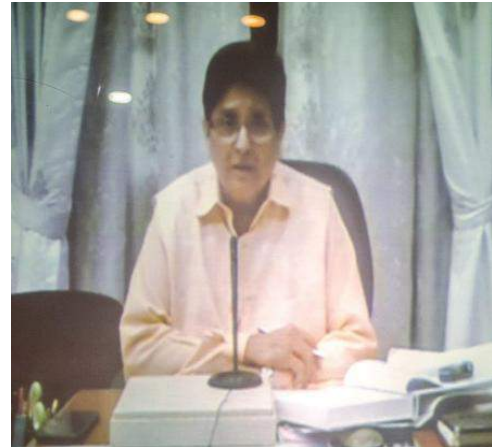
- First, the Director General should visit the jails under his supervision on a regular basis.
- Second, NGOs should be given more comprehensive access to prisons.

III. KEYNOTE ADDRESSES

Dr. Kiran Bedi

Lt. Governor, Puducherry, Former Director General, Tihar prisons

Dr. Bedi spoke to the participants through video conference from RajNiwas, Puducherry.



Dr. Kiran Bedi spoke about her journey of transformation of Tihar jail when she was posted there as the Director General. She spoke of motivation, persistence and perseverance as the distinct traits of determined, dedicated individuals who can make things happen. It's always possible, even when the task is awesome to transform the mindsets of human beings.

Located in the capital city of India, New Delhi, Tihar is one of the largest prisons in the world. Within a prison complex of over 200 acres were housed over 11,000 inmates - men, women, adolescents, children, Indians and foreigners, she explained. They comprised of unconvicted alleged offenders, convicts and remandees. It was a limping and languishing institution, condemned by the media, isolated from the community, exploited, used and abused, yet 'housed'. Dr Kiran Bedi (then 44) was appointed the Inspector General of Tihar prison on May 1, 1993. She brought about fundamental changes, giving a human face to the administrative structure-creating an exemplary system covering every possible aspect of prison management. The whole objective was to initiate and strengthen collectively and individually the transition from a wooden system to a responsive and sensitive administration. Through her effort, she was able to unfold the process of reformation of prison administration, prisoners and the community, towards one common goal - correction through a collective and community-based approach.

She spoke about her book 'Its Always Possible: One woman's transformation of Tihar Prison', where she recounted her efforts in transforming Asia's biggest prison complex. Giving some insights into how this transformation can be brought about, she referred to the following initiatives that can be taken by the authorities:

- Protocols, Rules and Judgements to bring in change in the Prisons should be made based on humanitarian ground.

- Prisoners will be able to get their rights only when the authorities will understand their responsibility. But if they do not recognize their responsibilities as managers, as supervisors, as legal defenders etc., there can be a number of good laws, but the prisoner will never get his rights, and will always be in trouble.
- The rights of the prisoners are in the hands of the people outside the prison. Manager's responsibilities will aid prisoners' rights.
- It is for the managers to understand that the responsibility lies with them and not the prisoner. Complaining about the Prisoners is not the solution. He is in the prison because he committed a mistake and now the responsibility is on the managers to change such an attitude.
- If NGOs, Lawyers and officials like the Director General of the police, Superintendent, Medical Superintendent, visit prisons regularly and take rounds to see what's happening in the prison, they won't have to rely on fake reports.
- It is important to nudge the prisoners in the right direction, ensure control of abuse of substances, find out the vision of the prisoners, what is their status, how cooperative a prisoner is, or how educated and, if needed, help them complete their education taking the help of Civil Society.

Remembering her duration as an IG in Tihar, Dr. Bedi shared that there was nothing upto the mark. Nothing in the nature of rights were given to Prisoners. The funds were grossly misused or not used for the purpose it was meant to be. Dr. Bedi allowed the prisoners **to celebrate various festivals**, hence a sense of harmony and peace prevailed. It was a moment when people of different faiths collected together and restored communal harmony.

The second step that she took in Tihar Jail, was the **petition box** of which only Dr. Bedi had the key. Since some of the prisoners won't speak of their problems outright either due to fear or any other reason, even during the face to face visits, they had an alternative to anonymously write or speak up about any of their issues in Jail. The onus of confidentiality was on the Prison Officials.

Rather than looking upon a person as a criminal it is important on the part of prison officials to change his mentality and bring in **Restorative Justice**. One way to do this is creating **different Panchayats in Jail like education panchayat, food panchayat, even legal aid panchayat**. Prison is like a township, she explained, and a town whether big or small, is a town with all requirements like food, water, spirituality, time management, religion and

spirituality. Don't think you're giving the prisoner his right but providing what is his need, she emphasised. All the rights like Right to life, medical care, right to food, etc. are his needs.

Dr. Bedi concluded by saying that **lawyers are like Angels** for those who are in Prison and since the time in Prison is limited one must ensure that false hopes are not given to them. Lawyers need to ensure that the prisoners get access to their rights, be it quality of life or by having good prison atmosphere, reformation activities, etc. Every law is based on common sense and these rights are important so that a prisoner's environment is good so as to ensure that a person can improve and doesn't return to criminality again. Similarly, if a horrible environment is present we are breeding nothing but, repeat offenders. That is why we need a good environment for growth.



Prof. Dr. C. Rajkumar

Vice Chancellor, Jindal Global University

Prof. Dr. C. Raj Kumar is a distinguished human rights worker and has published extensively on the issues of human rights and also prisoner's rights. In 1997, Prof. Raj Kumar wrote a comprehensive report on the standards of Indian prisons.

While addressing the participants, Prof. Raj Kumar began by observing that the most important way to differentiate between democratic and undemocratic societies is the way justice is provided to the prisoners in a democracy. Giving a background on how prisoners' rights have evolved in the country, Prof. Raj Kumar noted that the people who have written the constitution and people who were part of the freedom movement were themselves a part of the unjust regime. They spent many years in custody and their human rights were violated. They came out of that institution with a strong sense of belief in the ideals of justice including protection of rights and freedom. Therefore, the normative framework on which Indian Democracy was established was our constitution through which we draw the rights and freedom as well.

The second aspect of prisoner's rights is the role and contribution of the courts in India, particularly the Supreme Court of India. The growth and evolution of the prisoner's

jurisprudence has been addressed through the courts in India, as they have been extremely sensitive in as far as prisoner's rights should be upheld. The courts have been quite progressive in interpreting the provisions of the constitution, Prof. Raj Kumar noted.

The third important aspect is the rise and growth of the international human rights law. They have reinforced the prisoner's rights and have laid down the rule of law to be followed by the States. The role of media and civil society organisations, is another important aspect which has contributed in the recognition of prisoners' rights in the country, Prof. Raj Kumar stated.

Dr. Raj Kumar further elaborated that in the year 1993, the Protection of Human Rights Act was passed and the National Human Rights Commission was established. Unlike many such institutions around the world, the Commission was passed by the parliamentary legislation which provided it protection and institutional stability to function. However, the rights of prisoners were not given adequate attention for a long time, despite these interventions. Violations are still continuing unabated and the prisoners are still the most vulnerable sections of the society. Thousands of Under Trial Prisoners are languishing in jails despite serving their quantum of punishment, hence it is visible that lacunae exist in the overall system.

Dr. Raj Kumar urged the participants as Human Rights Defenders, as academicians, Media Persons, Civil Society members to take steps in a coherent manner so as to help the prisoners. Future of Prisons in India needs to be talked about as a priority, he emphasised. Time is ripe that we should decriminalize certain offences and change the approach of penology to rehabilitative and re-integrative centric. After Jail life is as important as life inside the Jail and therefore, a re-integrative approach needs to be adopted. Dr. Raj Kumar concluded by emphasising that the Prisoners' Rights are central to democratic functioning of society so aim should be to help prevail a sense of rule of law.

IV. PRISON CONDITIONS



A. MAHARASHTRA

Prof. Vijay Raghavan

Prof. Vijay Raghavan, Prof. at Tata Institute of Social Sciences (TISS), Mumbai, has developed the Prayas project of the Centre for Criminology and Justice at TISS. He is also a member of the Justice Radhakrishnan Committee.

Prof. Vijay Raghavan highlighted five problems he considered to be key in all the prisons in India:

- First, **prisons in India are severely overcrowded.** In particular in big cities like Mumbai, Pune and Thane, the prison capacity is exceeded by up to 300%. For example, a Mumbai Central prison has a capacity of around 900 inmates, but in practice accommodates around 3000 prisoners. It is evident that such overcrowding negatively impacts on all other facilities in the jail.
- Second is the **issue of undertrials.** 70% of the prisoners are undertrials. In the Maharashtra out of 30,000 prisoners, 20,000 are undertrials.



- **Access to Legal Aid** - Overcrowding can only be properly addressed through better access to legal aid. According to Prof. Raghavan, one of the main reasons for the lack of legal aid lies in the extremely low honorarium paid to legal aid lawyers. Through a PIL, Prayas had filed, the honorarium was raised to some extent, however the same is also not enough. It follows that this issue has to be addressed in order to effectively combat overcrowding. Prof. Vijay Raghavan said: *"If we are serious about overcrowding, we have to attack the issue of honorarium of legal aid, and simplify the process of obtaining the honorarium."* Even the honorarium for duty counsels is not enough. As per the PIL filed by Prayas the honorarium has been increased for duty counsels from Rs. 60 per visit to Rs. 500.
- Third, prisons take **inadequate care of the physical and mental health of the inmates**. In many prisons, vital posts of psychiatrists are vacant, and there is no indication that these posts are being filled. Problems of escorts for hospital visits are not available. As per the Radhakrishnan committee, of which Dr. Raghavan is a member, established under the orders of Bombay HC, the suggestion of the nearest civil hospital to start an OPD inside the jail, to provide medical services once a week, as the issue of escorts is very severe.
- Fourth issue is with regard to **videoconferencing**. Though this facility is being extended in jails to prisoners, but legal aid lawyers are not available. It is important that a legal aid lawyer is present when a prisoner is being produced before the magistrate through video conferencing. Despite the fact that the Bombay High Court has clarified that legal assistance is needed to be present in the jail whenever prisoners were being presented via video conference, this is in many cases not followed in practice.
- Fifth, and finally, a crucial problem in many prisons is **lack of personnel**. Many prisons in India are heavily understaffed. The staff vacancies are 30-40%. This puts prison officers under tremendous stress, who often have to work for more than twelve hours a day in terrible conditions.

B. HARYANA



Ms. Sabika Abbas

Project Officer, Prison Reforms Programme, CHRI

Ms. Sabika Abbas gave insight into her current work on the prison system in Haryana, a study sanctioned by the Haryana Legal Service Authorities, as an outcome of the Supreme Court judgement in *Re-Inhuman Conditions in 1382 Prisons*.

In all, there are 19 jails in Haryana – 3 central and 16 district jails. 62.7 % of the prison population in Haryana comprises of undertrial prisoners. Overcrowding in Haryana prisons is lower than in many other states, amounting to only around 10%. However, distribution is uneven, and while some jails are even under-crowded, some were exceeding their capacity by as much as 40- 50%.

According to Ms. Abbas, one of the core issues in Haryana is that there are **no separate jails for women**. Women are housed in separate sections of jails designed for originally designed for men. In terms of medical infrastructure, while general facilities such as ambulances were available, **specialized medical officers like gynecologists, psychiatrists and dermatologists were generally not available**. Skin diseases are very common in the jails, but no doctors were available for that. Although drug addiction is one of the most common diseases for prison inmates, there are no rehabilitation centres.

In many prisons, **juveniles as young as 14 years old were held in the prisons**. Ms. Abbas pointed out that CHRI was fighting for their relocation to observation homes. Legal awareness among the prisoners was generally very low.

Another problem which was found was the **mandatory use of Aadhaar** for purposes such as opening bank accounts or access to canteens. This proved particularly difficult for convicts in Haryana from other states (such as migrants).

Ms Abbas also referred to some of the **good practices followed in Haryana prisons**:

- Haryana is the only state using the ‘Phoenix’ system, a prisoner information software developed by a prisoner in a Gurgaon jail which provides information relating to remission, parole, etc.

- As a part of a prison modernization programme in the mid-2000s, Haryana invested heavily in revamping its prisons. The prisons are now spacious and there is little overcrowding. The State is also building new prisons in areas like Palwal, Panipat, etc. to deal with its 10% overcrowding issue.
- There is a very active canteen facility which has been made cashless.
- While Haryana prisons follow an intercom system for communication between the prisoners and the families, the infrastructure of the '*mulaqat*' area is very good. Families and the inmates are divided by a glass wall, they can communicate through intercom, there is CCTV surveillance, places to sit for the inmates and their families and at times these areas are air-conditioned.

Ms. Abbas concluded by saying, that there is a lot that lawyers can do - take a proactive role and act as a link between judiciary and the prisoners.

C. BIHAR



Anshu Raj Singh

Advocate, HRLN Bihar Unit

In 2015, HRLN was given the opportunity to inspect all prisons in Bihar. A team from HRLN went into all prisons, talk to prisoners and obtain all relevant information on the conditions prevailing there. The team asked questions about the prisoners' cases, how long the inmates had been inside, problems they faced. Additionally the team assessed the prison infrastructure, prison hospitals, prison kitchen and also talked to prison staff about what the key problems are.

Mr Singh explained that the overall infrastructure in most prisons was horrible: Prison buildings were old and often did not even have lights, making them appear like straight from a "*horror movie*". Toilets were dysfunctional, walls were damp, and prisoners had no other choice but to sleep on the floor. Mr Singh recalled a particularly striking incident in 2015. During the course of the research, an earthquake occurred near

the prison. While the prison staff immediately ran out, the prisoners were left inside the building, with many inmates screaming for help. The research team subsequently discovered that in Bihar, no plans whatsoever existed on how to deal with such emergencies.

A second problem concerned **access to justice and legal aid**. The honorarium paid to legal aid lawyers for a five-day visit was Rs. 800 in 2015. Mr. Singh stated that he did not know of any lawyers who would work for that rate. In the prisons, there is no proper, functional *mulaqat system*. Inmates are separated from their visitors by a one meter gap, As around 20 to 30 inmates have their visits at any given point in time, inmates and visitors alike are shouting from the top of their voices to make themselves understandable. This system is even used for communication with lawyers.

A third concern is court production. In many cases, inmates are not taken in front of a magistrate. In contrast, someone comes to take their signatures and then presents them to the magistrate. It follows that many of the functions by the magistrate remain unperformed. Despite a number of court orders ordering for the correct enforcement of this process, nothing has happened in this area.

Women inmates in Bihar face a number of specific problems. There is no hospital for women, if an inmate falls sick, she will stay in her ward until a male doctor comes. There were only 6 specialised female doctors in Bihar prisons, none of which were posted in women-only prisons. Female prisoners face social ostracism. Their family members abandon them because they do not have the money to visit them in jails. Many of the women prisoners did not know what case they were involved in or whether they were even legally represented.

Finally, Mr. Singh explained the health issues prevailing in the prisons. Paracetamol is the only medicine available, medical equipment is generally dysfunctional, and medical staff is scarce. In theory, prisoners should be screened for serious diseases such as TB and HIV when they first come to a prison. However, in practice, none of the necessary kits were available in the prisons, and officials would simply ask the inmates whether they were suffering from the respective diseases.

D. UTTAR PRADESH



Tapan Vahal

Advocate, TISS Fellow

Mr. Tapan Vahal provided an overview of the prison conditions in Uttar Pradesh. He has worked in three district prisons - Bulandshahar, Aligarh and Gautam Budh Nagar as TISS criminal justice fellow from 2016 to 2018. His area of work included the identification and support of prisoners in need of legal aid, the identification of cases where bail should have been granted but has not been granted so far, and the improvement of medical facilities in the prisons.

Mr. Vahal described the overall conditions in the prisons as very poor. On average, prisons are exceeding their capacities by 70%. In contrast, only two thirds of the prison staff posts officially sanctioned by the government are actually filled. While 134 doctors should be available in prisons in Uttar Pradesh, there are, in fact, only 77. Given that there are about 70 prisons in Uttar Pradesh, this amounts to roughly one doctor per prison. Mr. Vahal added that other issues concerned the inability to furnish the bail amount or surety, the lack of proper monitoring of ongoing matters, and a dismal state of the legal aid system.

Giving more specific information on the prisons he had worked in, Mr. Vahal stated: In Bulandshahr, the prison was overcrowded by 220 percent. 73 percent of the prisoners were under trial – 2 percent more than the U.P. average. Aligarh was even overcrowded by 300%, and 80% of all inmates were under trial. Gautam Budh Nagar or Noida, was fortunately under-crowded, since its a newly constructed prison. However, it has a very high undertrial population, 91% of all inmates were undertrial, which is higher than the undertrial population of the rest of the State.

Mr. Vahal described a number of obstacles he faced during his work. He stressed that getting access to prisons was a challenge, and permissions were often delayed. Mr. Vahal pointed out that there were no proper channels in place to assist prisoners and no proper coordination between existing channels. There is thus a need for coordination between courts, prison staff and the DLSA. He also added that there was a dangerous lack of awareness about the rights of prisoners on the side of many officials.

In addition to increasing prison staff strength, Mr. Vahal suggested a collaboration between prisons and law and medical colleges – law students could assist in providing legal aid and medical students could set up medical camps. The honorarium for legal aid lawyers could be adjusted according to a performance-based system. Finally, Mr. Vahal pointed out that there was a need to sensitize the general population towards the rights of prisoners. Increasing the accessibility of prisons would increase their accountability and transparency.

E. ODISHA



Mr. Jyotiranjana Senapati

Advocate

Mr. Jyotiranjana Senapati gave insight into prison conditions in Odisha. Odisha currently operates 91 prisons, including one open air jail. These prisons have a total accommodation capacity of 16,830 inmates, and 16,010 prisoners are currently held there, 580 of which are women. This means that Odisha is not exceeding its accommodation capacities on an overall basis. In Odisha, however, 78 percent of all prison inmates and 79 percent of all women prisoners are undertrials.

Mr. Senapati emphasized the issue of understaffing concerning general and medical staff in Odisha jails. He explained that only a total of 23 doctors are employed on regular basis, while doctors on contractual basis are being posted in 48 prisons across Odisha. Pharmacists are only available in 13 prisons, and psychiatrists only in 2 – despite the fact that a total of 265 prisoners are known to be having mental health problems. This is despite the fact that there are 2,346 officially sanctioned posts, while only around 1,883 are currently filled, thereby putting immense pressure on existing personnel. As a result, the health and medical facilities were in a poor state, in particular for the mentally ill prisoners.

Similar deficiencies were observed regarding education and vocational opportunities for Odisha prisoners. Teachers were posted in only 11 prisons across Odisha, and library facilities were available in only 25 jails. While some of the prisons were offering vocational

training to the inmates, this was by far not the rule. The infrastructure of the prison buildings was overall insufficient.

Speaking about the issue of unlawful detention, Mr. Senapati stated that there was an obvious delay in transfer of custody from the executive to the judicial magistrate, in many instances.

Mr. Senapati concluded by making a number of suggestions to improve overall conditions in the prisons in Odisha:

- In order to better meet the needs of mentally ill inmates, psychiatrists should be appointed in more institutions.
- To combat the problems resulting from drug addiction, de-addiction centres need to be established.
- Permanent law officers should be appointed in the DLSA.
- Mr. Senapati equally supported the approach of linking prisons with law schools to provide better legal assistance to prisoners. Para-legal Volunteers should start making home visits.
- A centralised database of all cases and their progress, would also help in improving the delays in cases.

V. PRISON LEGAL AID SCHEMES



Justice A.K. Mittal

Acting Chief Justice of Punjab and Haryana High Court

Justice Mittal started the panel discussion by stating that every person is entitled to free legal aid, whether undertrial or convict. He regretted that availability of services like legal aid for those on remand though already exist in all the States, but even today, the majority of prisoners are unrepresented, and are largely unaware of the details of their cases. It is thus crucial for the Legal Services Authorities to be efficient in their work. It is also important that the legal aid lawyers are competent and efficient.

Justice Mittal elaborated that in Haryana, an attempt has been made to ensure that a person is provided with adequate representation and highly competent and professional lawyers are engaged by legal aid authorities for undertrials. Further, it is important to update undertrials with the status of their cases. In Haryana, records of court proceedings are being uploaded to the jail web portal so as to digitize the available information and to increase accessibility and transparency for the prisoner and his family. With the availability of data even ancillary rights which accrue to the prisoners or their families also are being provided. For example, a child of the accused is entitled to Rs. 2000 as assistance, with the data being uploaded on the website, their rights are also being realised. The digitisation of

data has also helped both the accused and the family of the accused in filing of appeals on time, which was not happening earlier, as the information was not available.

The video conferencing facilities have also been made available in the lower courts through which the judges can speak to the prisoners through video conferencing facility.

These facilities have been made mandatory to be implemented in all the prisons in the country through the efforts of NALSA. He requested Mr. Alok Agarwal, Member Secretary to elaborate on the schemes of NALSA.



Shri Alok Agarwal

Member Secretary, National Legal Services Authority

Mr. Agarwal began his speech by stressing the importance of the basic realisation that like any other person, a prison inmate is a human being, and therefore as a human being he is entitled to all the human rights as enumerated in the Universal Declaration of Human Rights. These rights are fundamental in nature and cannot be compromised or relegated. Due to being incarcerated, a prisoner's liberty, his freedom to movement and freedom to speech and expression to some extent are restricted but beyond that he cannot be touched. A prisoner thus remains entitled to his right to food, clothing, water, a life of dignity, and all the other fundamental rights enumerated in the various UN declarations and the Constitution of India.

It is to ensure that an incarcerated person's rights are protected, that the Legal Services Authorities (LSA) come in with the duty to intervene where such rights are violated. Mr. Agarwal stressed that it was the role of the LSAs to guarantee to all the prisoners a right to counsel and free legal aid as mentioned in Section 12 of the Legal Services Authorities Act.

The right to have a counsel is recognised in Article 22(1) of the Constitution of India, S. 304 of Cr. PC and the Supreme Court has vociferously defended this right in the case of Mohd. Ajmal Amir Kasab vs State of Maharashtra. It is the duty of the trial court and LSAs to make sure that absolutely nobody goes undefended in a criminal case. Mr. Agarwal stressed that he hoped and believed that this is being followed in practice everywhere.

Today, based *inter alia* on the Mulla Committee on Prisons' Report 1983 and UN declarations, a Model Prison Manual of 2016 has been developed. It recognises a number of rights of the prisoner, *inter alia* the right to be defended by a lawyer, the right to access the legal services institutions, the right to access to information of legal provisions regulating their detention, the right to receive all case documents, the right to be informed about the right to appeal, the right to effective representation of complaints and grievances, the right against arbitrary prison punishments and the right to be released on the due date. These are the rights that the Legal Services Authorities are entrusted to protect. He stated that much had already been done to ameliorate these problems. These are being addressed through legal services clinics set up inside the jails, referring to 1157 legal services clinics inside the jails and 369 prisons that were equipped with computers. He said efforts were being made to equip more jails with computers and software through which the information of cases of the prisoners could be accessed easily.

Mr. Agarwal went on to say that while conditions were certainly changing for the better in Indian prisons, a number of issues, including overcrowding and lack of basic facilities, still remain. In order to improve overcrowding, the Supreme Court of India had formed undertrial review committees in all districts to identify possible releases under section 436A CrPC as well as in accordance with 12 established categories including women, sick prisoners and compoundable cases. NALSA has created a Standard Operating Procedure (SOP) on the directions of Supreme Court, which will be circulated to all the LSAs and High Courts. He added that NALSA was additionally going into jails in order to create legal awareness amongst prisoners and had also launched a 10-day campaign to assess the conditions of female prisoners and to make sure that they are treated appropriately.

Mr. Agarwal narrated two incidents where interventions by LSAs could make a big impact in the lives of prisoners. In the first incident during the legal camp setup in Hisar a female prisoner who had two daughters, but was not aware of the whereabouts of one of her daughters, had approached them. NALSA was able to trace the daughter with the help of NGOs and medical staff in a child care centre. In the second incident, the NALSA team had been able to guarantee access to psychological counselling for two women who were severely depressed, and were on the verge of committing suicide. Therefore, such impacts make a huge difference in the lives of the inmates and the work of LSAs is therefore very critical, he concluded.



Mr. Sanjiv Jain

Member Secretary, Delhi State Legal Service Authority

Mr. Sanjiv Jain spoke about the schemes being implemented in Delhi jails. To this end, Mr. Jain began to ask for the purpose of jails and their use as a measure of punishment? He clarified that this was because personal liberty is considered to be the most precious right of a person. He also added, however, that this could not mean that the fundamental human rights of the prisoners would cease to exist.

Mr. Jain said that the key focus in providing legal aid services, four key aspects are focused upon. First, a fair trial should be guaranteed. Second, there should be awareness of legal rights and of legal aid schemes. Third, human rights should be guaranteed within the jails. And fourth, jails should ensure skill development training to ensure proper reintegration of the prisoners after their time in jail. All the schemes and programmes are designed around these four broad parameters.

Mr. Jain, while explaining the situation in Delhi, he elaborated that there are 16 jails in Delhi. He clarified that every jail, every observation home and every safety home was assigned to a legal aid secretary, who are in charge of the activities of the particular jail. The underlying idea is that the Legal Aid Secretary should visit the jail regularly, at least once a month, and speak to all relevant parties, and take steps to improve the situation. He clarified that in 2017, jails had been visited in Delhi more than 600 times.

He added that all Delhi jails also had legal aid clinics, which include an e-kiosk, a working library, furniture and infrastructure. These legal aid clinics are visited by legal aid lawyers six days a week - to give advice, draft bail applications, petitions, appeals, and coordinate with DSLSAs for their trials - so as to take the case to its logical end.

Mr. Jain emphasised that DSLSA intends to provide a comprehensive legal aid framework from the very first step at the police station after the arrest until the possible conviction. In two districts legal aid on call basis is being experimented, and it has been successful. It maybe replicated in other districts, as well. Legal aid clinics have been set up in all the lock ups, with proper infrastructure of laptops, and are directly connected to concerned DSLSAs.

However, there is one fundamental problem faced by lawyers - of accessing records of the prison inmates. To address this problem, now the Prison Management System has been

introduced. Mr. Jain pointed out that through the introduction of the **Prison Management System (PMS)**, information about the inmate, the status of cases he or she is involved in, upcoming hearings and health issues could be stored centrally and be made accessible also for legal aid advocates, thereby giving the responsible parties the information necessary for drafting a variety of applications. E-kiosks have been established to procure the information by advocates. The idea is to connect the e-kiosks with the websites of the district courts, so that orders, and other documents are accessed by the lawyers.

Further, with regard to the **issue of delays in filing of applications**, Mr. Jain pointed out that now advocates have been asked not to send applications to jail authorities without a date, and jail authorities have also been instructed to not accept applications if there is no date. As a result of this, DSLSA is able to receive quarterly reports on the progress of applications, and review delays, if any.

Awareness remains a key element to the successful work of the DSLSA. Mr. Jain pointed out that a number of steps had been taken to make progress in this area: Boards have been put up at the entrance and within all prisons and pamphlets are being distributed to prisoners. Most importantly, around 300 paralegal volunteers in total have been trained so far from the convicts of the jail – DSLSA observed that first time convicts may be more open towards their fellow inmates, which has made this measure particularly effective. Results with these programmes appear to have been positive overall.

Apart from these measures, around 350 programmes have been conducted in different jails relating to health issues, sanitation, legal rights, legal aid and other areas of interest. In addition, following intervention of DSLSA, special needs of women were addressed, such as providing more sanitary pads and warming milk for children of the inmates in the night. To help inmates who are unable to speak Hindi, DSLSA is trying to involve more translators to communicate with the prisoners. Besides legal awareness programmes are being conducted regularly. We are also focusing on skill development of inmates, especially for those who are close to being released.

Mr. Jain concluded that it is a clear approach of DSLSA to ensure regular interactions with inmates, regular meetings with jail authorities to take feedback and to keep improving the system. He concluded that while the Delhi system might be better than the systems of many other states, many gaps still remain to be filled, and we hope to keep taking inputs for improving the systems.

Discussion

The following discussion session raised, in particular, the issue of the prevailing fee structures in many states in India, and the rejection of appeals and cases filed on behalf of prisoners on technical issues.

- Prof. Vijay Raghavan suggested that the honorarium for legal aid lawyers should be increased substantially to attract good lawyers. This would mean, in his opinion, an amount of at least Rs. 2,000 per hearing and Rs. 1,500 per jail visit. Responding to this suggestion. Mr. Agarwal explained that the NALSA and all LSAs were independent authorities and the NALSA could only set a minimum honorarium. However, the appropriate honorarium from state to state, taking into account the fact that in some states people earned substantially less than in others, could only be set by the LSAs themselves. Mr. Jain added that a lucrative fee structure itself was not the only solution, as it would in turn attract lawyers interested only in the financial benefits, and not out of concern for the prisoners. He added that this issue was already present in Delhi, which had one of the more attractive fee structures in place (e.g. Rs. 1,800 per jail visit), where the authorities had to select 1,000 legal aid lawyers from 12,000 applications. Justice Mittal added that legal aid lawyers did not only earn money as legal aid lawyers but also through private practices which they were not prohibited from having.
- A panel lawyer from Orissa High Court raised the issue of a petition being dismissed on the ground that the affidavit was signed by the family members, of the person in custody. Mr. Alok Agarwal, replied to her query saying that this is a problem and this issue has been raised by NALSA before the Supreme Court. Justice Gogoi is looking into this issue, and hopefully this requirement may be done away with. She also raised the issue of appeals being rejected due to delay. Mr. Jain replied that in Delhi such issues have been addressed by digitisation of records, where a register is being maintained for the limitation period. The cases are being monitored, if a prisoner has not filed an appeal in the limitation period, then he is asked if he requires a legal aid lawyer. This helps in addressing the issue of delay.

VI. WOMEN AND WOMEN WITH CHILDREN IN CUSTODY

Conditions of Women Prisons in India – A Study conducted by NCW



Ms. Avni Bahri

National Commission for Women (NCW)

Ms. Avni Bahri spoke on the conditions of Women Prisons in India. As incharge of the study being conducted by the National Commission for Women on the prisons for women in India, she has been inspecting jails in India. In 2017, the National Commission of Women (NCW) developed a “Proforma for Jail Inspection”, which is a detailed checklist helping in structuring the assessment of infrastructure, healthcare facilities, skill development programmes, welfare activities and legal safeguards available in the prisons. Besides the proforma also contains open-ended questions and is available on the website of the National Commission for Women.

Ms. Bahri explained that the Commission is mapping the central jails, and the State Commissions are visiting the district and sub jails, since it is not possible for the Commission to cover all the jails.

As per the findings of the study, she shared that the women who are in confinement – are mainly between the ages of 18 and 45 under the charges of murder, gangrape, domestic violence and NDPS Act. Though there are older women, as well, but they are fewer in number.

Ms. Bahri highlighted the main issues that were noticed in women jails:

- The central issue in jails was the **shortage of staff**, even ad hoc and temporary staff. There was also a major shortage of medical staff, especially female staff like gynaecologists, psychiatrists, etc.
- The general infrastructure in the jails visited was mainly poor or average.
- **Overcrowding** constitutes a serious problem, in particular in district jails.

- **Healthcare facilities are in a dismal state** – professionals such as psychiatrists, counselors and social workers, female-specialist doctors such as gynecologists are rarely available, let alone round the clock. The health cards of inmates are poorly maintained, and vaccinations and medication are not provided to pregnant and lactating women or their children. Medical staff is not available round the clock and they are dependent on paramedical staff. Only one sanitary napkin provided to women in a day which is not enough.
- General welfare facilities such as a prayer room, vocational facilities, schools and crèches are often not available. There is no roadmap for providing the same either.
- There is lack of availability of legal aid counsels. However, video conferencing facility is available in most jails.
- **Less involvement of NGOs in women jails** - There is an evident lack of recreational activities for women. There is little diversity in the vocational and educational programs provided to women when compared to those provided to men, and women inmates are not given certificates for the training or other sessions they undergo. Most activities are based on gender stereotypes.
- **No kitchen facility in women jails**, the food is provided from men's jails. Hot water facility is not provided in women's jails.
- In terms of general observations, prisoners with special needs, including physically or mentally disabled inmates, but also pregnant and lactating women, are not accommodated separately, but all housed together. Jail staff is not trained to handle women with special needs and women face discrimination from the prison staff based on their crime and their socio-economic background.

Ms. Bahri concluded with a number of recommendations:

- First, prisoners that have certain skills and are literate should be encouraged to train other inmates.
- Second, to improve the medical support for prisoners, interns and residents of medical colleges in the area could be asked to provide services.
- *Third, and last, a comprehensive after-care program should be put in place focusing on how women can be integrated back into society.*



Anu Narula

Advocate, Visiting Advocate in Women's Jail, Tihar

Adv. Anu Narula shared **three cases of women prisoners** she had personally handled, stories she felt could provide food for thought and insight into the problems and possible solutions women face during their time in jail.

- The first case she cited was that of one, *Gyan Shree*, who had been accused and convicted of killing her husband. The prosecution version was that she had killed her husband who was an alcoholic and had battered her over a long period of time. One day in a moment of passion she retaliated and killed her husband. She had four children of whom the eldest was a girl aged 15 years old, and the youngest was a 5 year old boy. Of her four children, all the four said that their mother was sleeping, while the youngest, who was 5 or 6 years old at that time, said that he was sleeping, when he got up he saw his father was standing with an axe with his mother next to him, and that she had in fact killed him. Based on this testimony Gyan Shree was convicted, the motive being that she had been battered. Ms. Narula said that during the proceedings, it was not considered that there was grave and sustained provocation, as in Indian law **there is only a concept of grave and sudden provocation, and there is no such concept of grave and sustained provocation.** Which raises the question, should there be similar policies and legal provisions for both men and women, as women's issues are much more serious and larger? She made a comparison with a similar case in UK, where the woman after being battered killed her husband and was acquitted. In the instant case Gyan Shree was neither acquitted nor given bail.
- The second case cited by Ms. Narula, was that of *Madhubala* who had allegedly killed her husband, gravely injured one of her step-daughters and killed the other one. She was found sitting on the stairs, not having changed her clothes. While the prosecution acknowledged that **she was a schizophrenic patient**, there was no provision of a comprehensive medical check-up. Her illness was, therefore, not discovered during her original trial, and that plea was not taken up by the defence. As a result she was convicted. It was only during the appeal proceedings, when her case came to Adv. Narula, that she realised that she was mentally ill, and based on that applied for her bail. Though the High Court granted her bail, however, her

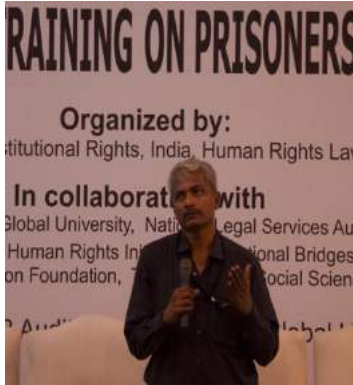
family did not want to take her back. Then, the question that arose was where to accommodate her. It was not safe to keep a schizophrenic patient in the jail, as she could be a danger to herself as well as to others. The Delhi High Court in consultation with the Government, eventually ordered that she should be moved to the half-way homes designed to help people with physical, mental and emotional disabilities to learn or to develop necessary skills to re-integrate into society. A separate PIL has been filed in the Delhi High Court on the issue of establishing half way homes or open prisons for women prisoners, which is currently being heard. Therefore, as per Adv. Narula **this case raises two moot questions, which need to be considered - the issue of medical examination of persons suffering from mental illness, and when detected, where should such persons be housed - whether in jails or half way homes/ open prisons or in mental institutions, if the family is not willing to take them back.**

- The third case narrated by Adv. Narula was about one, *Poonam*, in which the prosecution version was that her husband and brother-in-law had gone to Haridwar. She was at home with her mother-in-law and due to her constant nagging she could not contain her irritation, and killed her mother-in-law. She had two children, one 2 year old and another 4 year old. While she was in custody, the husband filed a divorce petition. She was convicted by the trial court, but the High Court came to her rescue. She was not only acquitted, the High Court noted that the **amount of agony she must have gone through, after being separated from her 2 year and 4 year old children.** The court also observed that it is important to think of **rehabilitation of such women**, like giving elementary education, providing courses and training in nursing, stenography, etc.

Adv. Narula said that it is important that judgements like *R.D. Upadhyay, and Mulla Committee* observations are followed for women and their children, and are given an environment in the jails where they can pursue financially viable vocations, besides being provided with other basic facilities. She also referred to the judgment in *Sheela Barse* case which directs that the Metropolitan Magistrate (MM) should enquire from the woman prisoner when she appears in the court whether her medical examination has been conducted or not, and ask for the said report. However, these guidelines are sadly not being followed, she concluded.

VII. VULNERABLE CATEGORIES IN PRISONS

A. Mentally Ill



Dr. Anbu Dorai

Psychiatrist, The Banyan, Working with prisoners in Chennai prisons

Dr. Anbu Dorai introduced the session on vulnerable categories with the intriguing question: *“How many bodies do you have?”* After a number of answers from the audience, he suggested that it was possible to say that there are a total of three bodies: the physical body, the mind body, and the social body, all three of which are seamlessly integrated. Mr. Dorai clarified that while we are generally aware of the former two, this is less so for the social body.

Dr. Dorai went on to suggest that it is important to focus on the marginalised groups in the society. In prisons, mentally ill in prisoners are one of the most marginalised groups. Through various examples, he explained that if the status of the marginalised was raised, this would have an overall impact, over the other groups.

While working with mentally ill in prisons, the approach suggested by Dr. Dorai in this context was the so-called community medicine approach, which includes members of the community as auxiliary workers to form a bridge between the community and the generalists and specialists. In jails, the lawyers can be the auxiliary workers who can help the inmates suffering from mental illness, to be a bridge between getting medical help as well as legal aid.

Dr. Dorai made a number of key suggestions, including jail themed books and films in a variety of languages, posters on the walls making them aware about their rights, manuals, etc. He clarified that it was crucial for NGOs to exchange information on their work to make sure that all areas of interest were covered, as opposed to some issues being addressed by all NGOs and others by none.

The Banyan has a specialized unit for volunteer mobilization and a suicide risk check-list, inside the jails, which helps in identifying the inmates who need help.



Dr. Sandeep Govil

Former visiting psychiatrist, Tihar jail

Dr. Sandeep Govil used to be a regular psychiatrist in Tihar Jail for around 5 years. He spoke on the conditions of detained mentally ill prisoners, beginning with a historical perspective: When there was no expertise in psychiatry and no drugs were available for mentally ill persons, prisons and jails were used to house mentally ill people, and these individuals were termed as “lunatics” or “mad people”. In the United States, from 1694 onwards, people started realizing that “lunatics” should not be held in jails. The concept of mental asylums emerged already in 1712, but another 250 years passed until the realization that mentally ill persons should not be held in regular jails truly sunk in.

Dr. Govil remarked that even in law if a person who is of unsound mind commits a crime, it is not punishable. He shared a case, where a person who committed a crime while he was suffering from a mental illness, because of which he believed that he was a *khalistani*, and in that state of mind he committed a crime. He was in the jail, despite the family arguing that he was mentally ill. Such persons maybe in jail for a long time, despite the fact that they are suffering from a mental illness.

There is a large number of prisoners suffering from mental illnesses in jails in India. Out of the 4,00,000 prisoners across the country, nearly 5,000 are seriously mentally ill persons. The highest number can be found in Uttar Pradesh, followed by Madhya Pradesh, Karnataka, Telangana and Andhra Pradesh.

Mentally ill people face a number of **difficulties and problems in jail**: They may attack the staff or in turn be attacked or otherwise discriminated against by their fellow inmates. They are disproportionately abused, beaten and / or raped. Often, they are made a mockery of, or become an “entertainment source” for other prisoners who make them dance or sing. In many instances, their mental illness may deteriorate in the jail environment. As a consequence, the suicide rate among mentally ill prisoners is substantially higher than the average.

What is more, the general organization of prisons is not designed to accommodate the particular needs of the mentally ill: For instance, many mentally ill persons are unable to

receive a good character certificate from jail because they do not have the capabilities to understand how to act in prison.

To improve the status quo, Dr. Govil suggested stricter control over the ban on the entry of illegal substances such as alcohol, cannabis and beedi as well as the introduction of yoga, meditation sessions and psychological counselling to stabilize the minds of mentally ill prisoners, and to **identify the psychiatrically ill patients**.

Citing the instance of Tihar jail, Dr. Govil stated that they have trained the jail staff like head warders and jail wardens, munshis, etc. to equip them with identifying persons suffering from mental illness, as they are the first point of contact. They had conducted a psychological workshop for the jail staff. NGOs and spiritual organisations or groups like Art of living, Ramdev, and volunteer workers are also regularly **conducting yoga and meditation camps**, especially in the psychiatric wards, which helps to calm their mind.

He pointed out a number of **good practices** being followed by Tihar. Tihar has the country's largest **drug de-addiction centre** and a specialised care centre for smack addicts, which is maintained by AIIMS hospital. Also there are separate wards for psychiatric patients, so that they are not tortured. The number of counsellors have also been increased recently by the orders of the Delhi High Court. The Delhi High Court has also passed an order for setting up of **'halfway homes'** specifically designed for accommodating mentally ill prisoners.

To conclude, Dr. Govil added that while it is crucial to provide mentally ill prisoners with the facilities and services they needed, it is equally important to ensure that other prisoners do not take advantage of this system to claim such services for themselves.

B. Disabled, sick, old and terminally ill prisoners



Ms. Seema Baquer

Independent Consultant on Cross-Disability Issues

Ms. Seema Baquer began by referring to a case she had been involved in recently together with HRLN: RTIs had been filed to assess how many physically disabled prisoners were currently

located in Delhi prisons. She noted that when the RTIs were filed in 2013, they were only filed with regard to physical disabilities, i.e. people with visual, hearing and orthopaedic disability. At that time we were doubtful whether prisons had sufficient capabilities and facilities to detect individuals with intellectual disabilities at that time as it was not a recognized disability, therefore they were not included. This was the case even when only 7 categories of disabilities were officially recognised, and is likely even more so after the passing of the Rights of Persons with Disabilities Act, 2016, under which the number of categories has been increased to 21.

Ms. Baquer continued to explain that **vulnerable categories of prisoners included disabled prisoners, prisoners with special medical needs, sick prisoners and old prisoners**. To give an example of a prisoner with special medical needs, she cited another case filed by HRLN, *Jose Abraham vs. Govt. of NCT Delhi*, which was filed in the High Court of Delhi on behalf of a prisoner, Santosh Kumar who had drunk acid at one point of his life and hence needed various forms of medical support, including liquid diet. However, the grinder and special diet he was initially provided in prison were gradually taken away from him. As a result, he lost 30 kilograms within 3 months, which remained undetected by the responsible staff. He also developed tuberculosis while he was in prison. He died as a result of this negligence on the part of the prison authorities. To further elaborate on sick prisoners, Ms. Baquer clarified that some prisoners may contract diseases like tuberculosis or HIV, during their time inside the jail and require special care, sensitive attitude and treatment. Old Prisoners, in turn, may develop hearing, visual and/or mobility issues during their time in prison, thereby requiring special assistance.

Ms. Baquer explained that 'disability' is a fluid term: A person may arrive in prison with a disability, but also may become disabled while in prison through fights, accidents or torture, and may develop mental health problems. Again others may develop only temporary disabilities such as fractures, which are curable.

Another area, which is not a prison setup but falls within the criminal justice system, where a large number of people with disabilities can be found, are **Beggary Homes**. Leprosy colonies, where persons affected by leprosy are still widely forced to resort to begging to survive, and there are around 170 leprosy colonies in India, also fall within this ambit. In addition, there are many individuals with mental health issues in these homes, in particular those who were abandoned by their families and left on the roadside. Some beggary laws allow authorities to pick up "*blind, crippled or otherwise incurably helpless*" individuals.

Ms. Baquer stressed that despite the fact that individuals within the prison system, have their personal liberty taken away from them, they remain entitled to their inherent dignity.

There is an obligation to ensure that disabled prisoners do not face discrimination because of their disability in accessing and participating in prison life. This also includes **reasonable accommodation**. While the Rights of Persons with Disabilities Act of 2016 (RPWD Act, 2016) does not place an unrestricted obligation on the state in this regard, it is acknowledged that to the extent where reasonable accommodation can be provided without undue financial burdens on the system, it should be provided. This would mean in the case of Santosh Kumar, referred to earlier, to provide for a grinder and a liquid diet.

A number of national and international rights covering these rights can be outlined:

- First, the United Nations Convention on the Rights of Persons with Disabilities of 2007, which India has signed and ratified.
- Second, the Rights of Persons with Disabilities Act of 2016, modelled on the UNCRPD.
- Third, the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, and
- Fourth, UN Resolution 70/175 on Standard Minimum Rules for the Treatment of Prisoners (the “Nelson Mandela Rules”).

Ms. Baquer concluded by pointing out what are the requirements for disabled prisoners in the prison system. These include:

- First, a more sensitive approach to the issue of disabled prisoners. The prison staff needs to be properly trained to handle people with special needs and persons with disabilities.
- Secondly, the provision of aids and appliances is essential – simple distribution is not enough, as it is vital to ensure that they are functional and maintained properly. She shared the example of a prisoner in Tihar Jail who needed crutches. The crutches provided to the prisoner lacked the rubber tips essential for traction. As a consequence, the prisoner fell and broke a leg, rendering him further disability.
- Third, accessibility inside the prisons needs to be improved
- Facilities like braille books in libraries in the prison, hearing aids, etc., but also the availability of support persons such as interpreters.
- Fifth, authorities should exchange with relevant disability organisations and experts.

- Sixth, there should be an effective grievance redressal system for prisoners with disability. In UK they have a disability liaison officer who attends to the needs of the disabled prisoners. This can be replicated in India.
- Lastly, the concerns of disabled prisoners should become a question of financial planning since there was no special budgetary position for the needs of prisoners.



Mr. Nipun Malhotra

CEO, NIPMAN Foundation

Mr. Nipun Malhotra spoke about the daily lives of prisoners with disabilities in Delhi jails with a focus on three physical disabilities: Locomotor disabilities, vision disabilities and deafness. Three jails in Delhi, including Tihar, Rohini and Mandoli jail, were audited in this regard to assess their facilities.

He stated that he saw the American criminal justice system as a model for other countries, including its stance on disabled prisoners' rights. The American system had crucially developed through the cases *Goodman v. Georgia* 546 U.S. 151; *Gorman v. Easley* 257 F.3d 738 (8th Cir.2001); and *Duffy vs. Riveland* 98 F.3d 447 (9th Cir. 1996) and the subsequent implementation of the American Disabilities Act of 1990. In contrast, in India, most jails do not have a single Indian sign language interpreter. Despite the fact that India signed the UN Convention on the Rights of Persons with Disabilities of 2007, which in its Article 15 specifically talks about prisoners' rights, there has been little or no reform through the Rights of Persons with Disabilities Act, 2016, for prisoners as such.

Mr. Malhotra went on to share that in the ongoing cases of HRLN on prisons, specifically *Jose Abraham vs. Govt. of NCT, the Delhi High Court*, asked us to do a **disability audit of the jails**. The Tihar, Rohini and Mandoli jails were audited, in Delhi. In all jails, already the entrance doors were not very wide and many had steps making them inaccessible for a wheelchair user. The administrative areas often had counters that were too high for a wheelchair user. The medical centre in Tihar had a steep ramp leading up to it. Rohini Jail had a flight of stairs.

Mulaqat rooms again faced different problems: In addition to general inaccessibility, the communication windows in Tihar and Rohini were too high. This was quite a problem for

both prisoners with disabilities as well as the people visiting them who might be disabled or aged prisoners and may have a difficulty in standing and talking on the phone. Since Mandoli is a newer jail, the facilities there were better. On interacting with the jail authorities, many said that disabled would always be assisted and it would be ensured that they could meet their relatives at some other place. However, this still leaves fundamental matters in the autonomous power of the supervisory staff.

Despite being the oldest of the three jails, there were **beds in Tihar for prisoners with disability**, though they were not adjustable. The other two did not have beds for prisoners. So as to avoid that prisoners with disabilities had to sleep on the floor, many would be simply kept in the medical ward, where they would lie 24 hours a day, 7 days a week, which was not the best solution.

Mandoli Jail was the only jail with **accessible toilets**. In other jails, despite generally not being usable for disabled persons and in particular wheelchair-users, flushes were at a high level or there was a step to even enter the toilet. None of the toilets were clean.

The kitchens and canteens were inaccessible in all jails except Mandoli, which had a ramp. As a result, people with disabilities were not able to work in the kitchens – despite the fact that this could otherwise be a very adequate source of employment for them.

Mr. Malhotra continued to say that it is necessary to ensure that prisoners with disabilities get opportunities to develop new skills, take up a job or be active otherwise. He clarified that in most cases, they were segregated due to lack of facilities in jails. Recreational centers like the yoga rooms, FM rooms, etc. are all inaccessible. He mentioned G.N. Saibaba case which as a person with disability, it is important that his basic rights and dignity are protected.

Mr. Malhotra concluded that it is vital to ensure accessible infrastructure, abolition of all discriminatory policies, establishing counselling facilities and partnerships with NGOs for skill development, such as electronic and computer training, as this would ensure that any person with disability is equipped with his or her basic human rights and dignity. It is important to have NGO partnerships for persons with disabilities which is absolutely missing in all the jails. The NGOs can help in skill development, provide counselling services and also help with aids and appliances. Therefore, it is crucial that such partnerships are encouraged in the prisons for addressing the needs of persons with disabilities in custody.

(C) Juveniles



Ranvir

Society for Promotion of Youth and Masses (SPYM)

Mr. Ranvir spoke about his work which is with juveniles, who are in conflict with law and are afflicted with some addiction. In this context, he introduced three projects of Society for Promotion of Youth and Masses (SPYM) is currently involved in. The first of these projects was a juvenile de-addiction and rehabilitation centre in Delhi. This is the only centre in South Asia catering to juveniles in the Seva Kutir complex of the Ministry of Women and Child Development. Mr. Ranvir explained that this centre had proven highly successful, catering to over 3,000 boys under the age of 18 over the course of the past six years. Apart from general counselling, most of the sessions focus on life skills and vocational training, and are generally led by peers, i.e. other former addicts that have already gone through the programme. Vocational training programmes, like in plumbing, electric training, computers, etc. which are very important to avoid relapse as once they gain skills and get into employment then it helps them if they are gainfully employed.

A second centre focuses specifically on young offenders, aged 18-21, in Tihar Jail. Two or three counsellors are going to the jail on a daily basis to sensitise a small number of prisoners on substance abuse and its impact, which in turn will motivate their peers in prison. Almost 2,000 sessions were conducted in Tihar over the past year.

A third de-addiction centre focuses on women and adolescent girls sent by Child Welfare Committees and the Juvenile Justice Board. Around 200 women and, where necessary, their children, have been treated to date with literacy, life skills and vocational training.

Mr. Ranvir also referred to a number of sensitization activities conducted by them. For instance, training programmes for police officers on substance abuse, and legal provisions dealing with this menace. He also spoke about S. 77 of the Juvenile Justice Act, which deals with drug addiction among juveniles and selling of items of substance abuse to juveniles. Due to the advocacy efforts of SPYM, this section has been amended so as to ban sale of thinners and whiteners to juveniles.

Mr. Ranvir concluded by saying that besides these interventions, SPYM also regularly conducts awareness programs in school in collaboration with Delhi government for children as well as principals and teachers to help them identify the children, who maybe afflicted with addiction of any kind, as they come from very difficult circumstances and may resort to such practices. He said it was important to understand the inherent relationship between crime and drug addiction, and therefore it is crucial to identify and assist young people with their problems and addictions before they become criminally active.



Mr. Ajay Verma

Advocate, Country Manager, International Bridges to Justice India; Panel lawyer Delhi High Court Legal Services Committee

Advocate Ajay Verma began by going over the general provisions of the Juvenile Justice Act. He spelt out the substantial changes to the treatment of children in the criminal justice system brought about through the Juvenile Justice Act 2015, where if a child, under the age of 18 years, is in conflict with law, he should be tried differently as an adult. For instance, when a child is arrested, he should be placed under the supervision of a designated child welfare police officer or a Juvenile Police Officer, who should produce the child in front of the Juvenile Justice Board. If an enquiry has satisfied the Board that the child has committed a petty offence or if he is below the age of 16 years and has committed a heinous offence, he may be allowed to go home after advise or admonition, direct him to participate in group counselling, or community service, release him on probation or direct him to a special home for a period not exceeding 3 years.

Mr. Verma stated that many developments have happened post Nirbhaya case. As per the recent developments, a child can now be tried as an adult for heinous crimes, if a child is 16 years or more. Heinous crimes are those which are punishable for more than 7 years. Under this provision an FIR maybe recorded, he can be tried as an adult for heinous offences like rape or murder committed with adults. Though a child is entitled to bail, but if there are reasonable apprehensions that the child may re-offend, or if the release may expose him to psychological, moral or physical danger, the bail may not be granted. The juveniles can only be incarcerated in the Juvenile homes and not in adult jails.

Mr. Verma also shared some of the important judgements with regard to juveniles. As per the *Abuzar Hussain Gulam Hussain vs State of West Bengal (2008) 13 SCC 133* of Supreme Court, a claim of juvenility can be raised at any time. However, for a prima facie case of juvenility to be made, some essential documents should be produced, but in the absence of such records a medical opinion can be taken, like the bone ossification test be done. This is as per *Shah Nawaz v State of UP (2011) 13 SCC 751* and *Ashwani Kumar Saxena v State of MP (2012) 9 SCC 750*, where while examining the scope of S. 12, the court further noted that this should be a normal enquiry and the court should not do fish hunting for examining the claim of juvenility.

Mr. Verma also spoke about *Sampurna Behrua vs. Union of India* case which was being argued by HRLN, for the implementation of JJ Act in the country, as well as for establishing child friendly courts. This has been recently decided by the Supreme Court vide judgement dated 9th February 2018.

He concluded with the case which is being currently heard by the Delhi High Court, i.e. *WP(C) 8889/2011*, wherein guidelines have been issued with directions to the investigating officer to send an age memo which will reflect the age of the person, which has been made mandatory and the jail authorities may refuse to take the person if there is no age memo. This provision has helped in checking the incarceration of juveniles in adult jails.

D. Foreign Nationals



Ms. Palak Chaudhari

Project Officer, Commonwealth Human Rights Initiative

Ms. Palak Chaudhari spoke on the issues faced by foreign nationals in Indian jails. She said in India, if a foreign national does not have proper documents, the person is sent to a detention centre. He cannot get bail or parole unless he has proper documents to prove it.

She listed out five issues which foreign nationals face in India.

- First, foreign national prisoners face a problem of **access to justice**, as they do not understand the language. Ms. Chaudhari clarified that since many foreign prisoners did not know their rights and were not supported by their embassies, many had

only limited access to justice. In addition, the foreign prisoners were at a higher risk of being detained in the first place due to legislations like Section 14 of the Foreigners Act, mandating the detention of illegal immigrants. They do not have consular access.

- Second, foreign prisoners face discrimination during their time in jail. This includes basic rights available to Indian prisoners such as **bail or parole**, which are in practice hardly ever available to foreigners.
- Third, an obvious and central issue is language – according to Ms. Chaudhari, this is equally the root cause of a number of follow-up issues, such as discrimination by fellow inmates.
- Fourth, foreign inmates face problems caused by their immigration status.
- Fifth, and last, culture and religion are equally core concerns for many foreign prisoners.

Of the total number of foreign prisoners, only 5.7 percent have received consular access. While the involvement of the embassy of the foreigner in all stages of the criminal procedure is vital, this often does not happen in reality. The Bangladeshi embassy, for instance, had information on 700 inmates, while in reality 2,500 Bangladeshis were being detained.

Ms. Chaudhari went on to clarify that different procedures applied to asylum seekers and they could not simply be detained under Section 14 of the Foreigners Act. Asylum seekers come from different countries to seek asylum due to either persecution or economic reasons. They are granted refugee status only if they are granted asylum.

With regard to repatriation, Ms. Chaudhari informed the participants, that if there is a bilateral agreement with a country, then the person can be transferred to his home country to complete the rest of his sentence in his country. Currently, there are agreements with 32 countries, which aim at enabling prisoners to serve their sentence in their home country on humanitarian grounds, as they can meet their family, etc. Except for one case of a Bangladeshi prisoner, which was done by HRLN, who has been recently repatriated to Bangladesh, this provision is not being implemented. She clarified that while there were a number of specific and detailed rules that should govern repatriation, many of these procedural requirements did not operate in practice.

Ms. Chaudhari concluded by summing up what lawyers can do for foreign nationals in prisons:

- Inform the embassies at the time of arrest
- Ensure that nationality identification takes place because only then consular access can be provided
- If the family is not informed then ensure they are informed.
- Ensure means of communication are established between family and the foreign national. A few States have video conferencing options, like Himachal Pradesh, West Bengal, Delhi.
- If the person is seeking refugee status or are asylum seekers they need to be put in touch with UNHCR.
- Inform the client about the status of his case in case he is not informed.
- When the foreign nationals are coming to an end of their sentence arrange for their travel permits, verification of nationality which is a one year process. Arrange for FRRO and passport, etc.

VIII. CHECKING UNNECESSARY DETENTIONS



A. Arrest Procedures & Role of Magistrate

Prof. Vijay Raghavan

Professor, Tata Institute of Social Sciences

Speaking about unnecessary detentions, Prof. Vijay Raghavan raised a number of issues that could be improved in order to check such detentions.

- Prof. Raghavan spoke about the relevance of the revised Section 41 of CrPC and how it is not being implemented by the police. Where the maximum sentence is less than 7 years, Section 41 clarifies that arrest should only be made where necessary. In practice, this rule is not being followed sufficiently, and police officials are still arresting without regard to a need to do so. Lawyers should thus take up cases focusing on this issue.
- Second, Prof. Raghavan stressed that Section 436A CrPC should be given more attention. Under 436 A even if people are eligible, and have already been granted bail, they are still languishing in prisons. He felt that there was an inherent bias in many Magistrates on the issue of personal bonds, and that for this reason, the

corresponding provision of Section 436A was not being used sufficiently, despite contrary orders from the Supreme Court.

- Third, cases of undertrial prisoners who have not been produced for two court dates should be identified.
- Fourth, people are being arrested for not being able to pay fines. These people are unnecessarily taking up places in jail, although they could easily be released on admonition or under Sections 3, 4 and 6 of the Probation of Offenders Act. Prof. Raghavan clarified that he believed that a PIL should be filed targeting the improper implementation of the Probation of Offenders Act in practice.
- Fifth, to address this issue, Prof. Raghavan suggested that law colleges students should make more prison visits. DLSAs could organize surveys, lawyers could tie up with NGOs for support inside the prison and increase their reach.
- Lastly, he felt it was important that more lawyers get enrolled on the legal aid panel in order to be able to access the prisons.

Mr. Raja Bagga

Project Officer, Commonwealth Human Rights Initiative

Mr. Bagga clarified that around 60 to 70 lakh arrests are taking place in India every year. According to the National Police Commission, 60% of these arrests are unnecessary, and 40% of the expenditure in jails is spent on persons who should not have been arrested in the first place. He confirmed that the revised **Section 41 CrPC** could play a crucial role in this context, and urged lawyers to make sure that it was properly implemented by the authorities.

Mr. Raja Bagga spoke about CHRI's study on legal aid through which they have conducted a survey in about 25 states. He clarified that while India may be a diverse country, there was a startling commonality in how it treated prisoners across the country.

Mr. Bagga summarised the key facts that characterised the conditions in Indian jails. With two thirds of the total prison population still awaiting trial, only 19 countries in the world have a higher level of undertrial inmates. On average, one prisoner dies in an Indian prison every 5.5 hours. A study among prison inmates reveals that two thirds of the prison population belong to scheduled castes and scheduled tribes, which is reflective of who we

are incarcerating. Female population in prisons has increased by 61 percent over the past 15 years, and 70% of the prison population is either illiterate or has not studied until class X.

Mr. Bagga went on to speak about the specific conditions of legal aid. Even though there are officially 1062 legal aid clinics in India as of march 2018, the ground reality is very different, he stated.

Assigning lawyers to prisoners takes a long time, in particular in states such as Kerala, MP, Delhi, Karnataka, Himachal, Assam and Rajasthan. What is more, different states often follow highly different procedures. Sometimes the mere application process of applying for a legal aid lawyer and the lawyer being appointed itself takes a long time. In some states it takes about 20 – 30 days, while in Kerala it was done the same day.

Visits to prisoners are often very difficult: there is a lack of space for organised visits in the prisons, prisons are often far away from the courts, and many lawyers simply do not consider it necessary to visit their client in the first place. Though in Sikkim they had issued a letter that lawyers would be paid if they visit jails, and provided a shuttle service from the courts to the prisons for lawyers to visit prisons.

One good practice found in a Bihar jail concerned the maintenance of records. The jail had 9 registers, each one was based on a separate categorization. Such practices should also be followed in other states and prisons, in particular in Tamil Nadu and Haryana, Maharashtra and Andhra Pradesh.

Conclusion: The session on prison conditions was concluded by Vijay Raghavan, who summarised the main points as highlighted:

- *Aadhaar card is a matter of concern which is being insisted in some prisons for all facilities to be accessed inside the prisons. This issue needs to be challenged, he felt.*
- *complete lack of preparedness in the case of a disaster situation or calamity for prisoners, as pointed out in Bihar*
- *the abysmal situation of producing undertrials on their court dates, and even if they are being taken to court, they are not being produced in courts*
- *the issue of illegal detention, being kept under the judicial magistrate for 6-8 months before they are taken to the court*

Good practices

Haryana – good canteen practices, and not too much overcrowding

Bihar, Khagariya – good maintenance of reports

Maharashtra – 20 social workers have been appointed in six prisons, and Prayas is a knowledge partner

“Reforming the prison system in India is no rocket science, there are enough reports. It is just showing the lack of political will.”

B. Lok Adalats and Jail Adalats

Mr. S.S. Rathi

Director, National Legal Services Authority



Mr. Rathi mentioned that Lok Adalats falls under Arbitration and Conciliation Method. Legal Services introduced lok Adalats with the introduction of S. 19 as per which, lok Adalats were constituted. Lok Adalat is a 2 member body, comprising of one judicial member (retired/ sitting) and one other member who maybe either a lawyer/ a doctor/ or an engineer, depending on the subject matter of the kind of cases that are being heard. For example, for motor accident cases it is important to have a doctor to inform the kind of

medical cases which need to be compensated. However, Lok Adalats do not pass judgements, the settlement is mutual, and an award is granted, which is like a decree.

Mr. Rathi further informed that Permanent Lok Adalats (PLA) have also been set up under S. 21(A) of the Legal Services Act. It is for pre-litigation stage, where the Lok Adalats also have the power to adjudicate in case the parties are not satisfied with the settlement. With regard to Jail Lok Adalats, Mr. Rathi informed that Lok Adalats in jails, are not being encouraged by NALSA as a policy, as Lok Adalats can be done only in compoundable offences, and as a pre-litigation measure. While for inmates their cases are already in the courts, due to which they are held in custody.

Mr. Rathi informed that **Lok Adalats are different from Jail Adalats**. Jail Adalat is when an adalat is set in a jail. A criminal judge sits in a jail and holds his court there. It is basically for petty offences, and is a quick access to get out of the jail. Since, a Magistrate has to give a hearing every 15 days, it maybe difficult for the inmates to be produced. Sometimes the dates are given for 3 months. Therefore, Jail Adalats can help in early adjudication of cases. In Delhi, in Tihar, Jail Adalat is held on every 3rd Saturday, where atleast 20-30 persons are released. Repeat offenders are discouraged. It is mainly for petty offenders, Mr. Rathi concluded.

Mr. Silvin Kale

Advocate, PRAYAS, TISS

Mr. Silvin Kale shared his experience of Jail Adalats or Jail Courts in Mumbai. Before 2009, a Magistrate asks the persons to raise their hands, whose cases are pending and asks them to plead guilty. Earlier, the undertrials who were not being taken to the court for their hearings, sometimes for 8-9 months, were being forced to plead guilty.

With the intervention of Prayas, discussions were conducted to make jail Courts not just for pleading guilty, but releasing undertrials on Personal bond, and to remove the forceful element. it was ensured that trials are conducted, and the inmates are taken to the courts on hearing. Now Jail Courts are being conducted regularly, where the magistrates come with the case files, and persons can be released on bail, as well as charges can be framed and sentence recorded there. This has helped the prisoners quite a bit, where the persons being released through Jail Courts, without having to plead guilty.

It is important to give justice to the prisoner, and the Jail Courts have to bear this in mind.

Shri Narendra Singh

Secretary, Haryana LSA

Mr. Narendra Singh explained that in a Lok Adalat both the victim and accused have to be present. Therefore, it is not possible to hold Lok Adalats in jails.

With regard to jail Adalats, there are 2 judicial officers who go for the Jail Adalat, alongwith one panel lawyer, who represents the accused.

Lok Adalats decide cases of less gravity, and can be decided by talking to the parties. Public utility services are decided through this mechanism. These include disputes related to electricity, education, water, etc. can be decided through Lok Adalats. This can be pathbreaking to solve disputes, and can also help in reducing the burden of the courts.

C. Role of Lawyers



Ajay Verma

Advocate, Country Manager, International Bridges to Justice India

Mr. Ajay Verma discussing the role of the lawyers in the protection of prisoner's rights, stressed that it was important for lawyers to be empathetic about situation of their client and recounted a case he had recently been involved in: In Delhi jails 325 persons were given bail but could not be released as they could not furnish the bail bond or surety. Mr. Verma filed a PIL that led to a decision forcing courts to take *suo moto* cognizance to see that prisoners were released within 10 days. As a result, 295 persons were released.

Mr. Verma went on to stress that it is important to understand the role of lawyers. He referred to International documents such as the United Nations Basic Principles on the Role of Lawyers, which lists out the role of lawyers, especially with regard to the obligation

of governments to inform criminal detainees of their right to be represented by a lawyer, education and safety of lawyers and confidentiality of communication, as laid down in Principles 7, 9, 16 and 17. These principles are also replicated by Indian law, *inter alia* through Articles 22 and 39A of the Constitution and Sections 303 and 304 CrPC, as well as Advocates Act and the terms and conditions of Legal Services Authorities Act.

He also referred to Supreme Court judgements, *Khatri, Ajmal Kasab* which ensure that a person should be provided with legal aid. *D.K. Basu* speaks about right to legal aid from the point of arrest. The police has to inform the legal aid lawyer after he is arrested.

He also spoke of plea bargaining and where the persons are many times not informed the **repercussions of plea bargaining**, as his conviction can create a stigma in his life. The lawyers have a right to be present at the time of prosecution and at the time of taking evidence during the course of the trial. There should be free access to lawyer, for a prisoner lodged in jail.

Mr. Verma lastly stressed on the obligations of lawyers such as lawyers should not tamper with the evidence, suppress documents or any evidentiary material, the legal aid lawyers should not be charging their clients, etc. He concluded by stressing how fulfilling the task of assisting prisoners could be, and called upon lawyers to accept this responsibility with an open mind and absolute commitment.

D. Role of Students

Prof. Ajay Pandey

Professor, O.P. Jindal Global University

Professor Pandey clarified that he expected the session to lead to a roadmap for students with regard to their involvement in legal aid. He clarified that he considered students as an unexplored potential that could play major role in legal aid.

Professor Pandey went on to say that legal aid in India was in a difficult state. He clarified that while Delhi had 24/7 provision of legal aid service in theory, many facilities and services were not operative in practice. He recalled a visit to the legal aid centre in Gol Market, Delhi in the centre of the



world's largest democracy's capital, where things were in a disastrous state. He concluded by stating that a huge potential could lie in particular with regard to clinical legal education which should be explored by the law colleges in India.

Ms. Amrita Paul

Project Officer, Commonwealth Human Rights Initiative

Ms. Amrita Paul spoke about her work in the correction homes, i.e. prisons, in the state of West Bengal. She explained that under NALSA, legal aid clinics have been established since 2010 in order to provide inexpensive local support in particular for the indigenous and backward classes and communities.

For the University based legal aid clinics, the Bar Council rule states that legal aid clinics should be set up by colleges and be run by final years students in all universities. The addressees of these clinics should specifically also be persons in custody. Through these clinics, students would be able to not only learn the bare law, but also to understand how criminal law actually works in practice. Clinics could increase accountability and educate students at the time, increasing tolerance and respect and human rights values.

Ms. Paul clarified the advantages of the active involvement of students. The direct involvement is drafting of applications on behalf of the prisoners, and an increased physical presence of students to raise awareness. The indirect benefit is the additional facilitation of the work of the LSA and the possibility of bringing about systemic change. Furthermore, students could assist in reducing problems created by the absence of coordination between all relevant stakeholders by acting as watchdogs and assisting legal services authorities.

Ms. Paul then introduced the CHRI project Shadhinota, literally '*freedom*', created in 2010. Its purpose was to bridge the gap between prisoners in need of legal aid and legal aid lawyers. The project involved raising awareness among prisoners, who were, often for the first time, informed about their right to legal aid. Proformas were created, and undefended prisoners were entered into registers with the Legal Services Authorities. As a result of their efforts, the time for appointing legal aid lawyers have since decreased from three weeks to less than one day. Since 2012-13, round tables are being held with student volunteers and sometimes even with legal aid lawyers to discuss cases.

Throughout this process, a lot of people in need of legal aid, in particular from vulnerable groups, were identified: Juveniles and mentally ill prisoners were found in regular

correctional homes. Afterwards, a PIL was filed, to shift a 100 juveniles to a a correctional facility, and many mentally ill persons were sent back to their families. Foreign national prisoners were also identified, and with the help from students, it was possible to translate for them into their respective native language.

Ms. Paul clarified that the long-term goals were to prevent unnecessary pretrial detention, to galvanize the system, to increase speed, to, sensitize prison staff and inmates regarding the fundamental rights of prisoners, to monitor the quality of legal aid and to improve coordination between prison departments and legal aid services. She stressed that in all these respects, Shadhinota had already made significant contributions. Another success of Shadhinota, was to change the system from having adhoc secretaries in the correctional homes to appointing permanent secretaries, who could spend more time in providing legal aid services. Similar projects have now also been established in other states.

Dr. Garima Tiwari

Assistant Professor, Bennett University

Dr. Garima Tiwari gave an insight into the legal aid clinic she has set up recently at Bennett University. She explained that by the third year of law school, students were being streamlined towards doing corporate law. Therefore, she decided that students could possibly be oriented towards legal aid from the very first year.

Ms. Tiwari conducted the first orientation programme in February 2018, with the help of Advocate Ajay Verma. She selected a number of volunteer students, and oriented them about the basic rights of prisoners and in particular undertrial prisoners. The students were then taken to Mandoli prison for a legal rights awareness camp, where they sat with undertrials, spoke to them and got a first-hand idea of the problems. Subsequently, some students were involved in research projects on legal aid, attempting to find new solutions for existing problems.

Ms. Tiwari stressed that it was crucial for law schools to come together as legal aid faculties so as to establish a comprehensive program. From the very first year, students should be encouraged to complete internships in this area so as to actually learn something and not only add something to their CV. Ms. Tiwari stressed through these channels, students could truly assist in bridging the gap between prisoners and the legal aid system.

Ms. Tiwari concluded by stating that the institutionalization of legal aid clinics was extremely important in order to bring about change in the system. This required strong research projects which did not just reveal problems, but actually engaged with the root causes of the problems as well as with all responsible stakeholders so as to develop comprehensive solutions for systematic failures and challenges.

Discussion

It is important to make sure that students who are really interested in legal aid should be oriented towards the needs of prisoners. It is also important to ensure that students do not use such programmes as a way of pass time but really do use such programmes to learn.

The follow up of the work undertaken by the students is also important to ensure that it reaches its desired conclusion.

The work undertaken by TISS in this regard has been exemplary in many instances as it has helped in release of prisoners based on the applications filed by the students who visited the prisons.

IX. SC: RE-INHUMAN CONDITIONS IN 1382 PRISONS

A. Overview

Adv. Gaurav Agrawal

Advocate, Amicus Curiae in Re-Inhuman conditions in 1382 prisons



Mr. Gaurav Agrawal giving an insight into the proceedings before the Supreme Court of India, as they have developed over the last 4-5 years, explained that the current case was taken up by the apex court based on a letter written by the Former Chief Justice of India, Justice Lahoti, to the then Chief Justice of India in 2013. In the letter Justice Lahoti had pointed out four major problems plaguing the Indian jails - overcrowding, custodial deaths, lack of staff, and lack of training of prison personnel. Based on the letter petition, a PIL was registered *suo moto* by the Supreme Court, **Re-Inhuman Conditions in 1382 Prisons, [Writ Petition (Civil) No. 406 of 2013]**, and notices went to all the states. For the first time, a social justice bench under Justice Lokur was constituted in the Supreme Court to take care of this PIL. Mr. Agrawal was appointed as an *amicus*, to help the court in this matter.

Mr. Agrawal continued to explain the four main issues covered by the PIL.

- First, based on data provided by the states to the court, a large number of jails were overcrowded by up to 600%. For instance, Arthur Road Jail in Bombay exceeded its capacity by 400%, forcing prisoners to take turns sleeping.
- Second, prisons in India are under-staffed, with many jails having only half the number of staff required to cater to the huge number of inmates.
- Third, legal aid is deficient, and not enough lawyers were going into prisons to provide legal aid.
- Fourth, deaths in jail, torture by jail personnel and torture by inmates were equally assessed under the PIL.

Mr. Agrawal informed that the directions issued by the Supreme Court are all available online and went on to point out some key substantive issues treated during the proceedings.

- The first issue concerns **deaths of prisoners** during their time in jail. Mr. Agrawal described the death of an inmate as a particularly shocking event. The human being is placed in the custody of the State and he has to undergo the sentence for whatever he has done. While he is inside, the state and its officers have a duty to take care of him. In cases of unnatural deaths in a jail – for instance due to lack of proper medical care, an attack by fellow inmates, or by the instance of the jail staff – there is an entitlement to be paid compensation for such death. **The Supreme Court in this case directed all High Courts to institute suo moto PILs and take cognizance of all deaths which have taken place from 2012 onwards and which may happen in the future.** Mr. Agrawal clarified that if clients were approaching lawyers regarding an unnatural death in jail, it would be possible to approach the High Court in these suo moto PILs, in order to commence an inquiry and possibly receive compensation.
- The second development concerns the constitution of the **Undertrial Review Committee (UTRC)**, which is a body advised by the Ministry of Home Affairs but was not functioning in all districts. **The Supreme Court in 2015 directed that all districts should have a UTRC headed by a district judge, with members including SP and Secretary, DLSA.** The UTRCs were meant to help those people who are not able to be released due to a systemic failure of the prison system, as he is not as resourceful. The UTRC is mandated to *suo moto* examine the cases of undertrial prisoners to see if they deserve bail and but have not been granted it, or have been granted it but have not yet been released for reasons which can be addressed.
- As a third development, the **Supreme Court is working on the digitization and computerization of jails.** Once the data will be available, it would help in keeping up to date all stakeholders with all available data, particularly lawyers. This includes data on when the accused has arrived in jail, which jail he is currently in, what offences he is currently charged with, and others.
- Fourth, the Supreme Court requested states to set up **‘open jails’**, which are institutions between a closed jail and full freedom. A person is able to get out during the day, where he can have an employment, but he has to return to the open jail during the night. Open jails can assist in the process of reintegration of criminals into society.
- Fifth, the Supreme Court has clarified **rules on children of female prisoners in jail.** Where a woman has a child below the age of six years, the women are currently entitled to take the child inside with her. These children really need to be taken care of because they are not going to school, they have no interaction with society

and hence their growth and stimulus is very different. Another case is when the sole parent is inside jail, as there are no institutional mechanisms for what happens to their children, especially if they are above 6 years.

Mr. Agrawal concluded that prison sentence was not the end of all problems, but can be the origin of a whole new set of problems. Many of these problems are currently still being looked into by the Court. This is a very slow process involving a large number of stakeholders. He stressed that lawyers and activists should go into jails and see whether there was something missing in the district jails which would improve conditions there. If that was the case, it would be possible to ask the court to direct the government to provide the facilities to prisoners. Mr. Agrawal clarified that the Supreme Court was conscious of the fact that all is not well in jails. It was thus even more crucial that lawyers made use of this positive climate and contributed to it in any way they could.

Discussion

Mr. Agrawal addressed a range of issues from how to address issues of undertrial prisoners with regard to being released under 436-A, elderly, seriously sick prisoners, visitation rights, custodial deaths, to funding issues, etc. He explained that all the High Courts have been directed to take up suo motu cases with regard to custodial deaths, overcrowding and staff vacancies.

With regard to the role of lawyers, Mr. Agrawal pointed out 2-3 aspects how lawyers can help in better implementation of Supreme Court orders, especially with regard to checking unnecessary detentions u/s 436-A, petty offences, and persons who are eligible to be released, as listed out by the Supreme Court in their orders dated - 6.5.16 and 3.10.17 in *WP(C) 406/2013, in Re-Inhuman Conditions in 1382 Prisons vs. State of Assam and Ors.*

He advised that lawyers could bring such cases to the attention of the Secretary, DLSA, who is a member of the Undertrial Review Committees. He also shared that even though UTRCs powers are limited, as it is not a court, but it is a review mechanism, which reviews the case of a person who could be released and the said recommendation is sent to the concerned court. It is however, a prerogative of the concerned Magistrate whether to release the person based on the recommendation of the UTRC. The lawyers can therefore, help in bringing such cases to the notice of the High Court for better implementation.

B. UNDER TRIAL REVIEW COMMITTEES

Mr. Surinder S. Rathi

Director, NALSA



Mr. S.S. Rathi taking a more positive approach towards the jail, said the jail could be referred to as a '*sudhaar griha*', an '*ashram*' or a '*correctional home*'. He referred to some of the literary works that had been written in jail like Jawaharlal Nehru's '*Discovery of india*', Gandhi ji's '*My Experiments with Truth*', Nelson Mandela's '*Conversations with myself*' and Sir Martin Luther King Jr.'s famous book, '*Injustice Anywhere is a threat to justice Everywhere*'.

Talking about legal aid services, Mr. Rathi referred to Section 39(a), which was inserted by 42nd Amendment Act, 1976 which initially provided for equal justice and free legal aid to economically backward classes. In 1995, the Legal Services Authorities Act was notified under which NALSA and the State, District and Tehsil level Legal Services Authorities were established. There are currently 21,000 legal services clinics all over India, 1157 jails have legal aid clinics, 900 panel lawyers and 60,000 lawyers and 71,000 paralegals working with legal services authorities pan India, Mr. Rathi informed.

Mr. Rathi further informed that recently a digital portal has been established, which are part of the '**e-prisons portal**'. Under this project the legal services clinics are being digitised. He also spoke of a '*Scheme for welfare, education and sustenance of children of*

incarcerated parents', where the only earning member in the family is incarcerated, which has been currently notified in Delhi and Haryana and NALSA is also planning to adopt it.

Mr. Rathi referred to the *Hussainara Khatoon* judgement in 1979 of the apex court which highlighted that people are incarcerated even when they have completed their maximum sentence. To address this issue, S. 436A Cr.PC was introduced in 2005, which required that undertrials should be released if they have completed half of their maximum sentence, if their trial was pending. However, for better implementation of this provision, the Ministry of Home Affairs constituted a Committee in 2013, i.e. the Undertrial Review Committee (UTRC). Mr. Rathi invited his colleague Mr. Sunil Chauhan, to elaborate on the functioning of the UTRC.



Mr. Sunil Chauhan

Project Officer, NALSA

Mr. Sunil Chauhan began by talking about the *Rudul Shah's case* (1983) 4 SCC 141, where the person was acquitted in the year 1968, and despite the order of acquittal, he continued to remain in prison for 14 years after being acquitted. A petition for habeas corpus was filed in 1982, where his case was brought before the Supreme Court. The court noticed the facts and circumstances of his case, and for the first time in history directed the State to award him Rs. 30,000 as compensation for putting him through such an ordeal. Mr. Chauhan stated that it is the aim of the Undertrial Review Committee that an incident like Rudul Shah is not repeated.

Mr. Chauhan explained that the Undertrial Review Committees have been established by the Supreme Court of India as an oversight mechanism that is headed by a judicial officer and find representation from the district administration, probation, police and prison departments. They periodically visit jails to conduct reviews of cases of under trials who have visibly stayed longer in prison than necessary. Mr. Chauhan elaborated that there are 14 core areas, which the Undertrial Review Committee is mandated to look at. These specifically do not cover the undertrials but some convict prisoners as well.

Mr. Chauhan listed out the core areas of the Undertrial Review Committees (UTRCs) as follows:

- 1. Under trial prisoners (UTPs) who are entitled to the benefit of Section 436A of the Code, i.e. if the UTP has undergone half the period of incarceration for the offence with the greater punishment;**
- 2. UTPs who are unable to furnish bail and are still in custody for that reason;**
- 3. Persons accused of compoundable offences**
- 4. UTPs accused of a bailable offence under Section 436 of CrPC**
- 5. Convicts who fall under Ss. 3 and 4 of the Probation of Offenders Act;**
- 6. Convicts who have undergone the sentence and are recommended for release, or have been granted remission;**
- 7. Persons eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;**
- 8. Are imprisoned for offences which carry a maximum punishment of 2 years;**
- 9. Are detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 107, 108, 109 and 151 of Cr.P.C.;**
- 10. Become sick or infirm and require specialized medical treatment (S.437 of the Code);**
- 11. Women offenders (S.437 of the Code);**
- 12. Are first time male offenders between the ages 19 and 21 who are in under trial custody for offences punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;**
- 13. Are of unsound mind and must be dealt under Chapter XXV of the Code;**
- 14. Are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.**

Mr. Chauhan clarified that the orders passed by the Undertrial Review Committee are only recommendatory in nature as it is not a statutory body. It is the courts which have to look at the recommendations of the UTRC and apply their mind to it, while passing the orders.



Narendra Singh

Secretary, Haryana Legal Service Authority

Mr. Narendra Singh began with a quote,

“Unke cheheron ko dekh ke lagta hai har khata me maafi hai, kuch hum samajh gaye hain, kuch samajhna abhi baaki hai,

Gunahon ke devta toh shayad nahi hai woh, phir bhi kya sazaa zaroori hai”

Mr. Singh said it is important to understand the suffering of the people who are incarcerated. He defined ‘sufferers’ as those who are law abiding citizens. The UTRC has been formed for such people who are suffering in the prison, due to the delay in the court procedures, where the processes of law are not being followed. However, the system needs to change in order to improve the situation. And the system can only improve when the mentality of the persons who are responsible will change. He said unless we change the mindset of the judicial officers, the staff in the courts, the prison officials things will not improve.

Speaking of the rationale behind establishing the Undertrial Review Committee, Mr. Singh stated that it is due to the non-functioning of the system that the need of the Committee was felt. It is the role of the judiciary to give the rightful entitlement of the prisoner to him - which due to either lack of manpower or lack of the will of the persons in authority, that most of the rights have not been granted to the persons incarcerated in prisons. The Committee targets persons who have been incarcerated, without their trials being conducted on time, while being denied bail at the same time. It is the right of the prisoner to be released on bail or be granted remission if he is a convict and is entitled to the same, and because such a right is being denied to him that the UTRC has been established. The Committee has to look at the 14 criteria that have been listed out.

Referring to the cases that are being looked at by the UTRC in Gurugram, Mr. Singh pointed out that there are only two types of prisoners that are still in the jails in Gurugram, out of the 14 categories. These include -

- Those who are incarcerated despite being granted bail, but are still in the jail for not providing bail bond. While looking into such cases it was found that there are a no. of persons held under S. 198A for cheque bouncing, but do not want to come out on bail as they are also involved in a no. of cases of financial misdealings like forgery, fraud, etc., and therefore, cannot be released.

- The other category are those who are suffering from mental illness, and need treatment. In the whole Gurugram there is only one psychiatrist. We are trying to provide the best possible treatment to the inmates.

Mr. Singh concluded by inviting the participants to the Gurugram jail and said that it is one of the best jails in the country, and in the real sense is like an ashram.

Ms. Sugandha Shankar

Senior Programme Officer, Prison Reforms Programme, CHRI

Ms. Sugandha Shankar spoke about the background of how the Undertrial Review Committees (UTRCs) were formed. She informed that the first step towards setting up of the UTRCs was taken in 1979 when the Committee of Chief Secretaries of all the States met and recommended setting up of a Review Mechanism for under trial prisoners. Rajasthan was the first state to form such a committee, which was called the '*Adhunik Samiksha Samiti*', with which CHRI had worked closely.

Referring to the 14 categories of prisoners that are to be reviewed by the UTRCs for their release, Ms. Shankar pointed out how the lawyers can help in better implementation of these by the courts.

- **For better implementation of S.436, and in case a person is unable to furnish bail bond** - Ms. Shankar referred to the ***Motiram & Ors. vs. State of M.P. [1978 AIR 1594, 1979 SCR (1) 335]*** judgment which says that a person "does not stay in jail because he is guilty or any sentence has been passed or is any more likely to flee before trial. He stays in jail for one reason only-because he is poor....". Motiram judgement directs the person to be released on personal bond, if he is unable to pay surety. Further, S. 440 Cr.PC allows the Magistrate to decrease the surety amount, considering the person's economic condition.
- **S.320** - compoundable offences - it's important for lawyers to check if the cases can be compounded. There are two categories of cases which can be compounded, some are compoundable while some sections can be compounded with the permission of the court.

- **First time offenders between the ages of 19 and 21 and have completed 1/4 th of the maximum sentence** - Sec. 3 and 4 of Probation of Offenders' Act, 1958 apply for first time offenders, and the lawyers should ask for the report of the Probationary officer in this regard.
- **Implementation of Probation of Offenders Act** - The benefit of S.3 could only be given to first time petty offenders convicted of offences punishable with not more than two years of imprisonment whereas S.4 could be applied, to all offenders, including repeat offenders, who are found guilty of committing any offence other than punishable with death or life imprisonment.
- Imprisonment for offences which carry a maximum punishment of 2 years- Of all the offences punishable with up to 2 years, except for 11 offences (Ss. 153AA, 170, 229A, 241, 254, 267, 274, 295, 353, 354, 354-A, IPC), all other offences are bailable and therefore, S.436 of the CrPC applies. Also, make sure that the benefit of Probation of Offenders Act, 1958, is given to the accused.
- For **detainees held under chapter VIII of CrPC. Section 107, 108, 109 and 151** - an application can be filed under S. 123 Cr.PC to release/discharge such persons.
- **Section 437 (sick/ infirm and require specialized medical treatment, and women offenders)** - lawyers should use these provisions while filing bail applications, and can request the concerned court to seek the report from medical board, in case of persons who are sick or infirm.
- **Section 437(6) Cr. P.C.**, where a case triable by a magistrate and trial of a non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case– the lawyer should keep track of the period within which the trial is being conducted, and apply for bail accordingly.
- **Accused of unsound mind (under Chapter XXV of CrPC)** - a bail application can be filed under S.330 of the Code, to release a person suffering from mental illness under care of a family member or a guardian. Lawyers can also help in identifying such a person.
- **Convicts who have undergone their sentence or are entitled to release because of remission granted to them** - Lawyers have a right to get a copy of History Ticket, which contains all the information of the convict. This covers all the information of the prisoner, based on which the application can be filed.

Further, to ensure that UTRCs are functioning in your district as per their mandate, lawyers can file RTIs to access the minutes of the Undertrial Review Committees. The UTRCs have to meet quarterly, and there should not be a gap of more than three months. Ms. Shankar spoke about the RTIs filed by CHRI, where they reviewed the functioning of UTRCs in 26 States and 256 districts. However, most of the Districts had not complied with the mandate set out. The meetings were held at a gap of 5-6 months, and based on the reports, they made the recommendation that the meeting should be held every 3 months.

She concluded with the observation that over the last 2-3 years, the functioning of the UTRCs has improved considerably with the efforts of NALSA. She also commended the efforts of NALSA in developing the Standard Operating Procedures (SOPs) to which the UTRCs are required to adhere to, which will further streamline the functioning of UTRCs.

Discussion

Mr. Rathi clarified that NALSA is currently developing a software for filtering the data, by which the information of inmates who fall under each of the categories will be listed out automatically. He explained that currently the UTRCs are functioning as filtering of these cases, but this will help in making the UTRCs more focussed. Mr. Rathi also referred to the Standard operating Procedures (SOPs) which will further ensure that the UTRCs have a clear mandate before them and will help in making them more efficient in considering the cases before them.

C. Sentence Review Boards



Sunil Gupta

Advocate, Former Legal Officer, Tihar

Mr. Sunil Gupta mentioned the Mulla Committee report which had stated that 80% of arrests are unwanted. And as per his experience in the Tihar for the last 40 years, he felt that the most of the prisoners are inside due to the circumstances in which they got caught.

With regard to the functioning of Sentence Review Board, Mr. Gupta explained that it was established as per the recommendation of NHRC. The role of the Sentence Review Board is to advise the Lt. Governor as to which prisoner can be prematurely released. Though, life imprisonment literally means a sentence for the whole life of the person, however in 1978, 433 A was introduced as per which a prisoner has to spend 14 years in imprisonment, after which his case can be placed before the Sentence Review Board.

The Sentence Review Board comprises of the Jail Minister of the state, Secretary law, Secretary (Home), Chief Probation Officer, and Director General of Prisons. The meeting is held once in 3 months. The Board considers cases for release and for rehabilitation of prisoner when he is recommended for release based on the police report, probationary officer's report and the report of the Superintendent, Jail. The cases which are fit for release, are recommended to the Lt. Governor or the Governor, as the case maybe.

If someone has committed murder simpliciter, the punishment is normally 20 years including remission, while if the murder is more brutal in nature it is normally 25 years with remission. However, there is no uniformity in such cases, in some states like Andhra, the cases for release can be considered even after 8 years of imprisonment, Mr. Gupta concluded.

X. HOW TO DO A PUBLIC INTEREST LITIGATION (PIL)



Mr. Colin Gonsalves

Senior Advocate, Founder, Human Rights Law Network

Mr. Colin Gonsalves spoke about how it is possible for any lawyer, even if he is practising in the lower courts, to file a Public Interest Litigation in the High Court. It is not at all complicated, and in fact arguing in the lower court in the trial cases is much more complicated, in comparison. Mr. Gonsalves explained that a PIL can be filed on any issue like, visitation rights, whether the people are able to meet during mulaqat, handcuffing, prison wages, any issue that the lawyers feel are important. For example, HRLN lawyers in Bombay took a photograph of people being brought to the court in Bombay, tied to ropes, etc., based on which a PIL was filed against handcuffing.

Mr. Gonsalves also explained that it is important to do some research work in certain cases, which organisations like Commonwealth Human Rights Initiative can help with, as they have done pathbreaking work in research. It is also important to do some fact finding, for example to go and meet the person and talk to him. For example, in a lynching case or a starvation death, it is important to go and meet the family and do the investigation. However, the case can be filed without any documentary evidence. For example, in a rape case, even if there is no medico-legal report, no witness, the statement of the victim can be filed on an affidavit, and if she is strong with her statement the court will order for further investigation. The Supreme Court has said that no corroboration or medical evidence is necessary, in fact the clear, unflinching and unbroken testimony of the prosecutrix is enough, which can lead to conviction.

Mr. Gonsalves listed out the simple steps on how a PIL could be filed -

- The first step is the name of the petitioner. The respondent maybe the State. It is best to get the victim to be the petitioner, or the victim's family. But if they are scared to be the petitioners, then someone else can be the petitioner, as well. Any person can file a PIL, any lawyer, any professor, even a student can file a PIL, but the

person filing should be genuine, as the judges want to know that the person does not have any questionable credence.

- The second paragraph is the facts of the case. These would include the events as they occurred - of how a person got injured or any particular incident that is being highlighted. If there are any press reports those could be attached. But it is important not to base the report merely on the press report. It is important that the lawyer should contact the victim or his/her family and get the facts. In case there are any fact finding reports done by an NGO, or any other research papers or reports of the incident, the same should be attached.
- It is not necessary to state many case laws, etc., as the judges are aware of the legal position.
- However, it is very important to state what is being asked for, very clearly. For example, if the compensation is being demanded, we should look at the global standards and ask for an adequate compensation. In cases of enquiries or investigation, we could ask for CBI inquiry if we feel that the investigation is not being conducted in a fair manner.

Mr. Gonsalves further observed that it is also possible to bypass the role of the lawyer completely while filing a PIL. The social activist can argue the PIL themselves, and they are much better many times than the lawyers, as they are aware of the facts of the case.

He expressed hope that the gathering of lawyers, activists, students and academicians in this training programme, will identify the issues that they want to take up and file at least 20-25 PILs in different States. He asked the participants to be in touch with HRLN lawyers, as well as IBJ and CHRI to identify and file the PILs in their States, at the end of the programme, and follow up on the same.

XI. LEADING JUDGEMENTS ON PRISONERS' RIGHTS



A. *Dr. Aparna Chandra*

Asst. Professor, National Law University, Delhi

Dr. Aparna Chandra, while addressing the participants, highlighted some of the judgements that can be useful in legal interventions for lawyers while arguing their cases in the courts. The cases referred to are a part of the compendium on leading cases on prisoners' rights, co-authored by Dr. Aparna Chandra and Dr. Mrinal

Satish in collaboration with HRLN titled '**Prisoners' Rights' Vol-I &II.**

Dr. Chandra stated that the judgements have to be located within the context of **2 general principles** –

- Prisoners' do not leave their fundamental rights behind at the prison gate, and that
- they do not lose these rights on imprisonment

Sunil Batra vs. Delhi Administration, (1978) 4 SCC 494 - This is a landmark case for locating prisoners' rights within a constitutional jurisprudence and the starting point of any inquiry into prisoners' rights. It makes the point that prisoners retain their fundamental rights and that imprisonment amounts to deprivation of personal liberty, which would be an infringement of Article 21, unless the imprisonment is in compliance with procedure established by law. Therefore, the constitutionality of imprisonment has to be tested on the basis of Article 21.

Dr. Chandra went on to talk about the leading judgements which govern the areas: Arrest, bail, legal aid and quality of legal aid.

1. ARREST

- ***Joginder Kumar v. State of U.P., (1994) 4 SCC 260*** – The Supreme Court in this case has observed that the police has a tendency to make unnecessary arrests. No arrests can be made because it is lawful for the police officer to do so. Just because the police officer has the power to arrest, does not make the arrest necessary or justified. No arrest should be made without a

reasonable satisfaction reached after some investigation as to the genuineness of the complaint and the reasonable belief both in the person's complicity and even so as to the need of the arrest. This principle has been reiterated in ***Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1.***

- ***Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273*** - Parliament made an amendment to Cr. PC in 2009 and introduced Section 41 (1) (b) which laid down conditions of arrest for offences where the maximum punishment is 7 years or less. This provision came to be discussed by the Supreme Court in *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273*. Here, the Court reiterated the point that the police make a lot of unnecessary arrests, and that no arrest should be made only because the police officer has the power to do so. The apex court, in the case of offences with the maximum punishment of 7 years or less, stated,
 - arrest for such offences can take place only when it is necessary to protect the arrestee from reoffending,
 - from tampering with evidence or intimidating witnesses, for proper investigation or
 - to secure the presence of the person in trial.

Police needs to be satisfied based on material before it that these grounds are met and on the first production of the person, the Magistrate must scrutinize, and be satisfied that the police has followed the law in making the arrest under 41(1)(b). If the police and Magistrate fail to do their duty, then there should be departmental proceedings against them.

Dr. Chandra observed that *Arnesh Kumar* is being blatantly violated across the country, especially in Delhi. In Delhi, the format of the arrest memo was changed to incorporate the *Arnesh Kumar* grounds, but it is just in the nature of a checklist. Half the police stations do not even have the new form, many still use the old form, and overwhelmingly in most cases even the checklist is not filled by the police. Moreover the Magistrate does not scrutinize, whether the police is following the laid down criteria. The question that arises therefore, is-

- Should the Magistrate release the person as the arrest was unjustified,
- Should the person be released on bail, or
- Should the Magistrate satisfy himself/herself independently of whether the grounds of *Arnesh Kumar* were satisfied

However, CrPC is silent on the implications of non-observance of *Arnesh Kumar*.

- ***Raghuvansh Dewachand Bhasin v. State of Maharashtra, (2012) 9 SCC 791***
- The Supreme Court in this case has held that if an arrest is made with malicious intent, then person may be entitled to compensation.

2. PROCEDURES AND SAFEGUARDS TO BE FOLLOWED DURING AND AFTER ARREST -

Dr. Chandra referred to various Supreme Court decisions on procedures to be followed to protect the rights of the persons who have been arrested. These include:

- ***D.K. Basu v. State of W.B., (1997) 1 SCC 416*** – Dr. Chandra referred to *D.K. Basu*, which lays down procedural safeguards to ensure that arrest takes place in a bona fide manner and that when the person is arrested their relatives are informed, right to legal aid is protected, etc.

Women Arrestees-

- ***Sheela Barse v. State of Maharashtra, 1983 SCC (Cri) 353*** – The apex court has laid down certain guidelines for protecting the rights of **women arrestees**. and also says that the woman arrested has to be informed of -
- The grounds of the arrest
- The right to seek bail / right to bail
- Right to legal aid

3. BAIL - Dr. Chandra pointed out that the Supreme Court has recognized that bail is an essential criterion of fair process under Article 21. She referred to the following judgements that elaborate on the criteria for granting bail.

- ***Gudikanti Narasimhulu v. Public Prosecutor, High Court of A.P., (1978) 1 SCC 240*** - When a person is refused bail, their personal liberty is impacted and Article 21 comes into play. Therefore the judicial power with regard to granting bail has to be carefully exercised as refusal to grant bail comes under the purview of Art. 21. This principle was reiterated in ***Babu Singh v. State of U.P., (1978) 1 SCC 579, and Supreme Court Legal Aid Committee v. Union of India, (1994) 6 SCC 731***, in which the court said that the deprivation of personal liberty without ensuring speedy trial is not in consonance with Article 21, and if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 would receive a jolt.
- ***State of Rajasthan v. Balchand, (1977) 4 SCC 308*** - As per this case, the mantra, “Bail not jail” was laid down by the apex court.
- ***Moti Ram v. State of M.P., (1978) 4 SCC 47*** - This broader constitutional philosophy is reiterated in *Moti Ram*, which locates bail within a broad constitutional framework. Supreme Court in this case gives important observations:
 - you cannot insist on local sureties;
 - Wherever the CrPC mentions bail, it means bail with or without surety.
- ***Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360*** - In this case broad concerns were highlighted by the Supreme Court with respect to bail, i.e. **bail by its very nature is an “anti-poor measure”**; because when you look at bail you’re looking at monetary or property based assurance that the person will not flea and this has a disparate impact on the poor.
- ***Sagayam v. State, (2017) 3 MLJ (Cri) 134*** – In Madras various other conditions were imposed on bail such as that the surety on bail had to be a blood relative, government officer, or a person cannot be surety for more than one person, etc. In this case Madras High Court gave directions that these kinds of conditions are unconstitutional and the Court has to be satisfied with the genuineness of the surety and the ability of the surety to guarantee the presence of the accused.

4. ELIGIBILITY CRITERIA FOR BAIL - Dr. Chandra, further elaborated on the eligibility criteria for bail, as laid down by the apex court.

- ***Gurcharan Singh & Others vs. State (Delhi Administration), 1978 (1) SCC 118***, the following eligibility criteria have been laid down for granting bail:
 - the severity of offence and punishment;
 - likelihood of conviction based on the nature and strength of evidence;
 - likelihood of the person absconding;
 - likelihood of the person tampering with evidence or intimidating witnesses;
 - likelihood of person committing offences when out on bail;
 - the protracted nature of the trial;
 - loss of opportunity to the accused in preparing his defense;
 - circumstances of the accused in terms of health, age and sex; *larger public interest*.

Section 436A CrPC - In the context of bail, Dr. Chandra referred to S. 436 A, Cr.PC, which has been recently introduced. According to this provision, if a person is in prison for more than half of their term of imprisonment as an under trial, then the person is eligible for bail.

- ***Bhim Singh v. Union of India, (2015) 13 SCC 603*** – In this case, the Supreme Court has given a series of directions for the implementation of 436A. 436A is not the solution of our bail problems but a symptom of the problems itself. Question arises as to how this is to be calculated, particularly in cases of multiple sentences, she observed.
- **Re: Inhuman conditions in 1382 prisons, WP(C) 406/ 2013** - In this case the Supreme court has said that an Undertrial Review Committee in every district, consisting of District Judge, District Magistrate, the Superintendent of Police, and the Jail Superintendent, will review the case in compliance with article 436A. The consideration for bail should happen when half the imprisonment for the lesser offence has been completed.

5. LEGAL AID

Dr. Chandra further elaborated on the principles that govern legal aid. She explained that the principles for legal aid are derived from Articles 21, 22, and 39A

of the Constitution. She referred to the following cases that touch upon this principle:

- ***M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544; Hussainara Khatoon v. State of Bihar, (1980) 1 SCC 98; Khatri v. State of Bihar, (1981) 1 SCC 627*** – In these cases the court has stressed on the fact that the individual person has a right to free legal aid as an aspect of fair trial under Article 21 and not providing such legal aid is a violation of Art. 21.
- ***Suk Das v. UT of Arunachal Pradesh, (1986) 2 SCC 401***– As per this case, the right to legal aid operates automatically and a person does not have to apply for it.

At what stage does the right to legal aid begin –

- ***Mohd. Ajmal Amir Kasab v. State of Maharashtra, (2012) 9 SCC 1*** - In this case, the court opined that the right to legal aid begins right at the moment of first production. However, as per Dr. Chandra, the implication that the role of the lawyer is negligible pre-trial can be problematic.

6. QUALITY OF LEGAL AID - With reference to the quality of legal aid being provided, Dr. Chandra referred to the following judgements.

- ***Kishore Chand v. State of H.P., (1991) 1 SCC 286***- In this case, the Supreme Court recognized the need to have an effective and experienced lawyer, particularly for serious offences. If the accused does not have an experienced lawyer and the other side does, then that would be an unequal defense. However, when it has come to actually implementing this, the Supreme Court has stepped back, she observed.
- ***Mohd. Hussain v. State, (2012) 2 SCC 584*** – In this case, the accused, an illiterate foreign national, was unable to engage a counsel to defend himself during the trial. Even though he was convicted, and his sentence confirmed by the High Court, the Supreme Court sent the matter back for re-trial, based on the fact that no effective assistance of counsel had been provided to him.
- ***Surendra Koli v. State of U.P., (2011) 4 SCC 80*** - In this case, a review petition was filed on the grounds that there was no effective assistance of

counsel. The Supreme Court rejected the petition on the ground that there was a delay in filing the petition. The court however reiterated the point that the obligation is not only to provide legal aid, but to provide experienced lawyers.

This jurisprudence is at its nascent stage and needs to be worked upon, Dr. Aparna concluded.



B. Dr. Mrinal Satish

Professor, National Law University Delhi

Dr. Mrinal Satish dealt with three main issues: Interrogation, Torture, and Prison Facilities.

7. INTERROGATION:

While speaking of interrogation, Dr. Satish emphasised upon the '**Right against Self-incrimination**', which is recognised under **Article 20(3) of the Constitution**. With regard to the application of Article 20(3) at the stage of investigation, Dr. Satish referred to the following cases:

- **Selvi v. State of Karnataka (2010) 10 SCC 263** - In the case, the court very clearly says that **Article 20(3) applies to both pre-trial stage and investigation stage**, as well. These rights exist during the pre-trial stage and before the formal charge sheet is filed.
- **Nandini Satpathy v. PL Dani (1978 2 SCC 424)** - In this case, the Supreme Court has held, "the expression "**to be witness against himself**" means more than the court process, any giving of evidence, any furnishing of information, if likely to have an incriminating impact ensures the description of being witness against himself." Another question which was considered in this case was '**what do you mean by compelled testimony?**' Justice Krishna Iyer, while explaining this in his judgment which also applies in the cases of Narco Analysis test, stated that "Compelled testimony must be read as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods, and the like". In Narco analysis test the person is not in terms with what is happening around him, he observed.

- **Director of Enforcement v. Deepak Mahajan 1994 SCR (1) 445** - Dr. Satish while referring to this case, explained that the Supreme Court has held that a formal accusation is sufficient to bring a person within the purview of ‘person accused of an offence’, and thus under the ambit of Article 20(3). The question in the case of **Selvi** dealt with **the reliability and unreliability of the evidence** as well and the major factor that Supreme Court takes into consideration in Narco analysis test is the unconstitutionality, unreliability of the evidence. The court says that by injecting the chemical in the person and getting the person into semi conscious state and asking him questions, the statements they get are not completely reliable and since the statements are not reliable they are held to be unconstitutional. This was the period when Narco analysis test became O2 for the police officers.

Another question to take into consideration is that, **if after administering Narco analysis, you make a discovery under Section 27, will that be admissible evidence?** Interestingly in the recent judgement in *Selvi*, the court referred to the decision of the eleven judge bench in ***State of Bombay vs. KathiKaluOgadh, 1962 (3) SCR 10***, that a discovery/recovery made under Section 27 of the IEA, based on a confessional statement taken by violating Article 20(3), will be ultravires the Constitution, and hence inadmissible.

8. TORTURE

- ***Francis Coralie Mullin V. Administrator, Union Territory of Delhi & Ors., AIR (1981) SCC 608*** - In the context of ‘prevention of torture’, Dr. Satish stated that *Francis Coralie Mullin* is the classic case that we rely on where the Supreme Court has held that torture and cruel degrading treatment constitute abject violation of right to life guaranteed under Article 21 of our constitution. Similarly, in the case of *Selivi* (supra), compulsory and involuntary administration of narco analysis drug leads to inhuman treatment and is in violation of article 21.

Solitary Confinement, Handcuffing

- ***Sunil Batra v. Delhi Administration (1978) 4 SCC 494*** - In this case, the apex court had held that the convict cannot be placed in solitary confinement until the person’s death sentence and execution were beyond judicial scrutiny. The Court also held that that ordinary prisoners cannot be kept in bar fetters.
- Subsequently in the case of ***Prem Shankar Shukla v. Delhi Administration (1980) 3 SCC 580*** and in ***Sunil Gupta v. State of Madhya Pradesh, (1990) 3 SCC 119***, Supreme

court held that **handcuffing** cannot be routinely and habitually used in light of the prohibition against torture.

Guidelines to install CCTV cameras - Dr. Satish referred to recent decisions, wherein guidelines have been issued to install CCTV cameras to ensure that torture doesn't take place. But one thing we need to look at, is that torture can still happen behind the camera. Also we need to keep in mind that most of time the cameras do not work, where is the feed from the camera going and who is monitoring, he observed. The footage in the camera is only there for 15 days and if you're late in reporting the incident, then the prison authorities can just say that it got overwritten.

Compensation - In the context of compensation, Supreme court in the case of ***Nizamuddin v. State of Orissa 1993 (2) SCC 746*** has held that any form of torture is the violation of fundamental right and hence compensation as a remedy is available which can be exercised by the courts using Articles 32 or 226 of the Constitution.

Departmental Proceeding against Errant officials - In ***Smt Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble & Anr. (2003) 7 SCC 749***, the court held that in the case of criminal proceedings in case of torture against the police officer, if he gets acquitted it does not mean that departmental proceedings cannot take place. In the case of ***S.P. Vaithianathan v. K. Shanmuganathan 1994 (4) SCC 569***, the Court has held that no limitation applies to filing a complaint on torture against a police officer.

9. PRISON FACILITIES:

- In ***Sunil Batra(II) v. Delhi administration (1980) 3 SCC 488***, the supreme court very clearly said that prisoners do not lose their life, liberty and dignity just because they have been imprisoned. Some of these rights can be taken away with fair procedure.
- In the case of ***State of Maharashtra v. Prabhakar Pandurang Sangzgiri (1996) 1 SCR 702***, the supreme court said that there is no bar on publishing of books.
- ***Ankur Chandra Pradhan v. UOI (1997) 6 SCC 1*** - In this case, the supreme court held that right to vote is a statutory right and not a fundamental right and therefore you can curtail the right to vote.
- In ***Prabha Dutt v. UOI (1982) 1 SCC 1***, the Supreme court said that the press has the right to interview the convicts with their consent and if the jail authorities deny the right then a strong reason must be given for the denial.

Conjugal Rights - Regarding the conjugal rights of the prisoners, Dr. Satish referred to the following important decisions.

- ***Jasvir Singh and Anr. v. State of Punjab and Ors., CWP no. 5429 of 2010, (O&M) decided on 29.05.2014*** - In this case, the Punjab and Haryana High Court held that there is right to conjugal visits
- In the case of ***Mrs. Meharaj v. State of Tamil Nadu, Order dated 11 January 2018 in the habeas corpus petition no. 1837 of 2017***, Madras high court took a very interesting course when the man was allowed to get infertility treatment.

Right to Free Legal Aid

- In the case of ***M.H Hoskot v. State of Maharashtra 1978 3 SCC 144***, the Supreme Court held the right of a prisoner to free legal aid.

Official and Non-Official Visitors

- ***Sunil Batra*** (supra) has also laid down the importance of having both official and non-official visitors. The prisons have the concept of having official and non-official visitors and the role of the visitors is to ensure that the rights of the prisoners are not being violated. Official visitors are authorised by the district judge and the non official visitors are appointed by the government.

Right to meet the Lawyer

- The court in ***Sunil Batra*** has held that a prisoner's right to meet his lawyer cannot be taken away. But in case of these meetings, the lawyer does not get enough privacy with the client.

Physical Exercise

In terms of physical exercise, ***Sunil Batra*** case stated that you should provide physical exercise in the prison and said that prisoners must be provided with minimum facilities in the prison.

XII. POLITICAL PRISONERS AND PRISONERS IN CONFLICT ZONES



SONI SORI

Social Activist, Chhattisgarh

Ms. Soni Sori began with expressing her thanks to HRLN and Mr. Colin Gonsalves, in particular, for fighting her case and for helping her getting released on bail. She said with the help of HRLN, she is now trying to help other prisoners who are locked up in jails in Chhattisgarh.

Ms. Sori shared that she had been incarcerated in jails in Raipur, Jagdalpur, Kolkata and Tihar. She felt that the conditions in jails in Chhattisgarh and Kolkata were quite pathetic. She shared some of the common problems that are being faced by the inmates, especially women inmates in Chhattisgarh.

- **Overcrowding** – The jails are heavily overcrowded. In a jail with capacity of 200 persons, 800 are being kept. For 200 inmates there is only 1 toilet. The inmates fight with each other for using the toilets and for getting space to sleep in the night.
- **Food** – Speaking about the quality of food provided in the jail, she explained that the dal is full of water and that too served in very less quantity. They are not given proper vegetables and the rice is full of worms. While she was in the prison, she

refused to eat the food, which had worms floating on top of it. She spoke to other inmates and did a fast for being provided better food. If a pregnant lady asked for more food either for her or for her small baby, they are beaten up by the jail authorities. Recalling an incident of 15th August, she shared that all the inmates were in the spirit of patriotism so they prepared good food but before it could be served the jailor mixed four buckets of water in the vegetable, telling them *“tumhari aukaat nahi hai itna accha khana khane ki”*. They have to eat that food just to survive. We all have a Right to Food, but the same is not being provided to the incarcerated persons, she stressed.

- **Pregnant Women or women with children** - For pregnant women or women with young children there is no provision for special diet or extra nourishment. Sometimes the young child of the women needs to eat in the night, however there is no food available for them. Many women who have been incarcerated and their children are not with them, it is difficult for them to get any help for tracing their children and knowing their whereabouts. This causes a lot of anguish for the women. For children, there are no facilities being provided inside the jails. Even the children grow up in fear because of the way they are treated.
- **Medical Facilities** – The inmates are not given proper medicines. When she wanted to know the name of the medicine she was being given, the jail official gave her 12 tablets and forced her to have them. There are no proper and regular medical checkups.
- **Basic rights being denied** - Women are not given clothes. Many times they would not go to the court, because they did not have proper clothes for wearing outside. They are not given proper soap and other hygiene products for keeping themselves clean. They are not given sanitary pads. They have to tear their cloth and wear soiled clothes which are wet and as a result, contract many infections. After Ms. Sori protested on their behalf, they started providing them sanitary pads.
- **Rape** – Women are raped at the police station, even before they enter the prison. The police authorities pick the girls who go to forest to collect wood and they rape them and make false cases against them. While they are in the prison, they realise they are pregnant. She narrated one such incident of the girl, who was about 15-16 years of age, and had been raped before entering the prison. She could not understand that she was pregnant. She kept complaining of stomach ache. When the women got to know that she was pregnant, they had to explain

to her. She wanted to kill her child as she could not understand how she got pregnant.

- **Physical and Mental Torture** – The women inmates are mentally and physically tortured. They are stripped naked, their nipples are cut or electrocuted. Men are beaten like dogs, and if they protest, rods are put into their anus. She explained that if someone protests for their rights like being provided proper diet, and other facilities in the jails, they are beaten up and tortured. She gave the example of Santosh and Lingaram Kodopi who, while in prison were put through immense torture. They were beaten up with rods, electrocuted, for asking for better facilities for prisoners and have undergone depression and become mentally unstable, as a result.

She shared an incident where an inmate died in the jail premises because of being beaten up and tortured. The other inmates wanted to perform last rites for him. They asked for a coffin. But the prison authorities refused to provide even that. All the women inmates then decided to make a coffin of their dupattas, and torn clothes, by sewing them together.

Ms. Sori narrated another incident where a man, who was deaf and dumb was arrested while he was in his village sitting with his sick daughter. The police came and arrested him. His wife who was pregnant at the time, tried to enquire from the police where they were taking him, but she was beaten up by the butt of the rifle. For two days, she kept running helter skelter to find his whereabouts, but was not informed. After two days, while in immense pain she gave birth to a premature baby. With a small baby in her arms, she was running from the police station to the court. She contacted Ms. Soni Sori, who tried to help her. She was able to get them to meet. After a few days, the wife caught infection and was admitted to the hospital, where she died. She tried to get the husband to do her last rites, for which she got order from the court. But the police, despite the court order, brought him to the hospital in chains and did not let him touch either his wife or children, and took him back without letting him perform the last rites for his wife.

- **Delay in trials** - She explained that most of the Adivasis are acquitted, as they are found innocent, but this happens after they have already undergone a prison

term of seven or eight years. In those seven or eight years the kind of torture that they have to undergo, renders them useless to live a normal life once they are released. She shared an incident of a 15-16 year old girl who was beaten so badly that she had a gap in her spine, and was constantly raped. She was released after eight years, but is now unable to do anything. The body of the Adivasis after undergoing torture in prisons, becomes riddled with infection and disease and the person also becomes mentally unstable. She felt that if the trial can be completed within one or two years, it would save the Adivasis from undergoing torture at the hands of the police. She observed that due to the amount of torture the adivasis are put through, they are unable to work or do anything once they are out of the prison.

- **Role of lawyers** – Ms. Sori stressed on the importance of good and committed lawyers for the tribal prisoners. She felt that the lawyers are in a position to help the inmates when they face issues of torture or have medical requirements. Even the issue of the quality of food being served to the inmates can be brought before the magistrate, who is more receptive to such problems. Speaking about her own incarceration and the constant humiliation she was put through, she could stand up to the authorities and in some instances was able to make a difference, because she had strong lawyers behind her. She said that in some instances when the lawyers are not sensitive enough to their issues, and are only taking a case for money, the adivasis end up losing their farm, home, livestock, etc. and gradually they are left with nothing. In some cases, even the person whom the lawyer is defending has died in the prison. She therefore felt legal aid is very important especially for such poor and illiterate Adivasis, who do not even understand the language and are not able to understand the legal procedures, in which they get caught, and end up losing their life.

Ms. Soni Sori concluded by narrating her own story, when she was arrested as a Naxalite, because she did not want to shut down the school that she was running. Seeing the atrocities happening around to the Adivasis she started to fight for the Adivasis, and for the right of prisoners while she was in custody. In order to make her stop her fight the authorities started torturing her husband. He was arrested and brutally beaten up and tortured. As a result, her husband's left body got paralysed. Even in that condition, he was being kept in chains and starved. She felt very helpless and tried to meet him, but was not allowed to meet. Even after his acquittal, the authorities did not let them meet in the prison. He was left at home, in his paralysed state. After three months he died. Ms. Sori

could not meet her husband despite repeated requests. Since she herself had strong lawyers behind her, therefore, she was able to fight the system. She was put through a lot of mental torture herself, like being stripped naked and made to sit naked for hours. The authorities also tried to prove that she was mentally unstable and wanted to shift her to a mental asylum. However, by the orders of the Supreme Court, a medical team was sent to examine her. The team asked her several questions, which she was able to answer, and later told them that she was not mad but has been put through extreme torture, due to which any person can lose their mental stability. She narrated the incidents that had happened with her since she was arrested. The team noted that she was not mad, but because of the torture she had to undergo, she might be reacting angrily at times. The Supreme Court ordered that she be medically examined every morning and evening to make sure that she was not being put through any torture.

She concluded by saying that (*mera toh mujhe kuch nahi mila par mein aur logo ke liye lad rahi hun. Meri tarah bahut log hai jail ke andar hai, unke liye jo karna chahiye who nahi ho raha hai.*) though she has lost everything, but she fights for others, to save them from undergoing such harassment. She wishes that other Adivasis are also released from jails and are able to stand in front of people and speak out against the injustice that is being meted out to them.

Mr. Amarnath Pandey

Advocate, Human Rights Law Network, Chhattisgarh

Adv. Amarnath Pandey spoke about the political prisoners in conflict zones. Even the stand of the government against the common population is unconstitutional. In Chhattisgarh, the government terms everyone as Maoist, where people do not get justice.

He narrated an incident which is currently being heard, where two Telengana High Court Advocates, two professors and some students had come for a fact finding in Bastar area from Telengana, Usmania University. Even though they had IDs and proper tickets, they were nabbed by the police in the night while they were travelling. False cases were registered against them, saying that they have been holding meetings in Bastar area for last one month, despite their having documents to the contrary. He stated that the Daily

Entry Register which is kept at the Police Station, is being deliberately manipulated with by the police officials. Even the courts generally believe the version of the police, on which

ground the bail is rejected. For example, the advocates had appeared in the court on the same day and orders were passed, as well, on which the police had the entries of their being in Bastar. Similarly, the student had appeared for an exam in Telengana on the said date. Despite such anomalies, their bail was rejected both by the Sessions Court and the High Court.

Mr. Pandey stated that these are common occurrences and the Chhattisgarh jails are filled with political prisoners, those whose ideologies do not match the Government's.

Mr. Kishore Narayan

Advocate, Human Rights Law Network, Chhattisgarh

Mr Kishore Narayan, while talking of the situation in Conflict Zones, touched upon some of the common features which prevail in conflict zones. In most of these States, like Chhattisgarh, Jharkhand, Orissa, there is a Maoist movement going on, and they also have a large tribal population. In such states, the situation of political prisoners – who have been implicated of their belief or ideology, which is different from that of the Government.

In Chhattisgarh, there are 3 prisons – Jagdalpur, Dantewada and Karke, where the actual number of prisoners vis-a-vis its capacity is almost 3-4 times. For example, in Jagdalpur, which has a capacity of 889 prisoners, has almost 1950 prisoners being housed in it.

Discussing about the pattern of cases in these zones, he gave an example that if a blast takes place in Chhattisgarh, the modus operandi of Police/ security forces is they will immediately go to the affected areas, conduct search operation, randomly pick up villagers, who may have no involvement at all. They torture them for 5- 6 days, if 10 people are arrested, they release 5 of them, 2 might have been killed in fake encounter, and 3 will be produced before the Magistrate. The Magistrate, though he has a duty to ask if the person was tortured or not, the Magistrate will never enquire about the same. With regard to bail, despite ludicrous arguments made by the government counsel saying that the person will eventually be acquitted, so the only time he can be in jail is during his trial, the bail is not granted.

Eventually, when a person is acquitted, another false case is made out against him/her and he/she is again put into custody. He discussed about a case in Jagdalpur jail, where a girl was put in jail at the age of 15 or 16 years, and was released when she was 30. After

coming out of the jail, she could not mix with the society due to the kind of trauma she was put through in the jail.

He also discussed about how the journalists have been booked by the State Government. One journalist who had approached the Supreme Court, was tortured so badly, that he now comes across as an abnormal person. The lawyers practising in the High Courts are addressed by tags such as urban naxals, and are mentally harassed. Even some of the police officers who are honest, and may question such practices, are slapped with sedition charges, and are tagged as anti-national.

Arun Ferreira

Advocate and Activist

Advocate Arun Ferreira started by talking about Advocate Surendra Gadling, who has been recently arrested and is currently in Yerawada jail. Advocate Surendra Gadling has always fought for political prisoners, and was currently fighting the case of Prof. Saibaba.

While going into the background of what constitutes a Political Prisoner, Mr. Ferreira stressed that this practise has been continuing from the time of British era. There has always been a differential treatment with regard to political prisoners. The State does not want to term them as political prisoner. The detainee authority usually terms them a naxalite or a terrorist. In Maharashtra, for example, in TADA cases mainly Muslims are convicted, have been kept in jails for sometimes upto 60 years. As per the British officer, Reginald Redhawke, who conceptualized the idea of political prisoners, the political prisoners were segregated as he felt that their thinking might influence other prisoners. The British therefore, sent such prisoners to Burma or '*Kala Pani*', i.e. Andaman and Nicobar islands. Later they were sent to Hazaribagh jail in Jharkhand. Such a practice still continues.

While talking about the details of Sai Baba's case, Mr. Ferreira shared that Sai Baba was kept in a high security jail, which is called the *Anda jail*, in Nagpur. Sai Baba is a paraplegic, he has 90% disability but he was kept there, in total isolation. To enter the *Anda jail*, there are 7 locks through which they have to go through. These are termed as High Security jails, and the inmates are not produced for the court hearing in the name of security. That is the kind of isolation that they are put through.

Despite such isolation, they are not given the status of 'Political Prisoner'. Mr. Ferreira gave the example of West Bengal, where there is a category of 'Political Prisoner' under the offences against the State list. The Court and the government interpreted such offences as 'those involved in non-violent events'. This was later amended to be read as those who are not involved in 'unlawful activities'. He also spoke of the Torture bill which was drafted by the Government, but those arrested under unlawful activities and Special Acts were not protected by it.

Mr. Ferreira also discussed the definition of '**Political prisoner**' or '**Prisoner of conscience**' – which is so defined by Amnesty International. There is also a status of '**Prisoner of War**', which is similar to 'Political Prisoner' status, but this is not recognised by the Government, for example in places like J&K, which the government does not recognise. Therefore, in such conditions, the basic rights of the political prisoners are not granted, **like right to be represented, right to free and fair trial, right to be produced during proceedings.**

He gave an example of a bomb blast accused, Abu Jundal, who was kept in the jail which was designed for Ajmal Kasab. Therefore, it is important to raise our voice against such practices as they would otherwise continue unabatedly by the government.



Shah Faisal

Advocate & Coordinator, HRLN Srinagar

Mr. Shah Faisal spoke about one of the cases in which he has been appointed as amicus curiae. The case was regarding the implementation of the Juvenile Justice Act and Constitution of the Juvenile Justice Boards and Child Welfare Committees. After the directions of the Supreme Court, many High Courts in India are taking suo moto cases, and this was one of them. As an amicus curiae, Mr. Faisal visited all jails across Jammu and Kashmir and submitted a report to the High Court of Jammu and Kashmir, which gave the order that there should be legal aid clinics in all the jails which were at that time in abysmal condition. On the basis of the report filed by them, the High Court also directed that the ICDS scheme should be implemented, and 150 persons were appointed. The central government sanctioned Rs. 30 crores for the same. The court also directed that no juvenile should be lodged in the jail, and if a juvenile was in the jail, they should be sent to the juvenile homes or handed over to their parents. As a result, 50-60 who were in jails were

released. Some were sent to their parents and some to juvenile rehabilitation homes. Further, Juvenile justice Boards and Child welfare committees have been constituted.

Mr. Faisal also spoke about the agitation in 2016, after which there was rampant use of pellet guns in the Kashmir Valley and nearly 4500 young persons between the ages of 21 and 25 lost their eyesight due to this. He did a fact-finding for the same and filed a petition in the Supreme Court which is still pending in the court. In the year 2016-17, they got bail for 150 young individuals between the ages of 14 and 25 years. He also spoke about their work where they are providing legal aid to those who are illegally detained by security forces against whom the Public Safety Act, which is a draconian detention law is being used.

Mr. Faisal concluded with the case regarding a 14-year-old Rohingya girl who was trafficked from Rakhine state of Myanmar to India and sold to a Kashmiri man in Delhi for Rs. 80,000. Mr. Faisal filed a complaint with the SP and SHO but the police officers refused to do any investigation, and take action against the accused. So he moved the High Court of J&K. The Chief Justice took note of the petition filed by them, and the girl was eventually rescued and handed over to the juvenile rehabilitation home. Though the Central authorities wanted to deport her back to Myanmar, but the Court directed that she be granted a stay visa and directed that her custody be given to her maternal uncle living in Delhi. She has now been granted a proper visa, and is now living with her uncle in Delhi.

Mohammed Shadab Ansari

Advocate, HRLN Jharkhand

Mohammed Shadab Ansari, Advocate stated that Jharkhand is considered to be a conflict zone with a lot of ongoing cases related to naxals. He met some political prisoners who have faced a lot of problems and to meet them was a difficult task in itself.

He narrated an incident of in which an 80 year old political leader was granted bail and all that was needed to be done was to sign the papers to get the bail bond processed. When they went to meet the SP, they were told that you are young right now, do not get involved in such cases. They took their names and other details, etc. After they were satisfied that they were lawyers, they were asked to meet the Superintendent to get the details. Even their they were questioned. So, even a simple process of getting a bail bond was made

really difficult. Mr Ansari stated that bail is the constitutional right of prisoners but there are numerous hurdles that obstruct the realization of even this right in Jharkhand.

At present, most of the incidents related to lynching are taking place in Jharkhand. The first conviction for lynching in India took place in Ramgarh, and HRLN was representing the victims. In this particular case, they had support but this is not the situation in most cases in the state. In some instances, the victims would be saying one thing and something entirely different was written down in the charge sheets; they are being threatened. When they used to go to the trial court, there were around 100-150 people at the gate daily. On the day of the judgment, there were around 150-200 people and the atmosphere was very tense; slogans against the judge; he had to be very careful and leave from the backdoor. This is the scenario across Jharkhand.

There are no advocates to take up cases of lynching. The BJP government also puts a lot of pressure on the public prosecutor. Currently, Mr. Ansari is trying to ensure that they have someone representing victims in all trial courts so as to secure convictions similar to Ramgarh in all districts.

Discussion

Mr. Gonsalves gave an example of Kobad Ghandy, who is a classic case of a 'Political Prisoner'. He had an allegation that he was a mastermind against bomb blast and a politburo member of Maoist party. He was charged with 18 cases, and he has been acquitted in most of the cases, as there has been no iota of evidence found against him. However, when one case finishes, another case starts. He has spent 8-9 years in jail, and still some cases are pending against him. He only spoke against capitalism, and advocated for socialism. Mr. Gonsalves referred to Justice Katju's judgement in the case of ***Arup Bhuyan vs. State of Assam, 2011 (3) SCC 377***, which says that unless there is an act of violence or the person incites people to violence or creates public disorder by violence or incitement to violence, mere association is not enough for a person to be charged under such provisions.

XIV. CUSTODIAL TORTURE AND DEATHS IN PRISONS



Prof.(Dr.) Y.S.R.Murthy

Registrar, JGU

Prof. Dr. Murthy spoke about how the definition of custodial violence and torture has been expanded to include not only physical acts of violence but also the mental forms of torture as well as the conditions of incarceration.

The International Covenant on Civil and Political Rights talks about torture to include cruel and degrading treatment, the treatment of prisoners with respect to their human dignity. The Human Rights Committee on Covenant on Civil and Political Rights has specifically held about the conditions of detention, overcrowding, putting people in a cell without natural sunlight, lack of provision of medical attention, violate the article on torture. amounts to torture. Regarding custodial deaths, the NHRC had issued guidelines in 1993 and the reports are sent to the Commission from time to time. However, most of the reports do not give the clear picture.

Even for persons on death row and the way they are kept waiting on the final execution, the conditions under which the sentence is imposed is also a violation of their rights. Prof. Murthy noted that India signed the Convention on Torture in 1997 but it has not yet been ratified. Though the Government came out with a bill on torture, but the same has been very weak and has not been passed through the Parliament.

Mr. D. Suresh Kumar

Advocate, Indian Association of People's Lawyers (IAPL)

Mr. D. Suresh Kumar began by stating that in Indian law torture has not been defined. The broad meaning of torture is an act by a strong human being on another human being to impose his will.

Custody of any authority, means legal custody, which is as per the order of the court, or judicial custody, but there is also illegal custody which is without the order of the court. The most of the torture happens in illegal custody, when the person is tortured by the police.

A lawyer's duty starts when a person is taken in illegal custody. Mr. Kumar has filed many Habeas Corpus petitions if a person is detained in the police station, even for two days. In our writ petitions, we used to make a prayer for not only to be produced in the court, but also to record his evidence and to conduct his medical examination. Nowadays, however, illegal detention is being made legal, giving time to police, to make false documents, and registering false cases.

Mr. Kumar gave examples of some of the cases filed by his organisation-

- In Hyderabad, there were series of blasts that had occurred in 2007 after which many youth, in particular Muslim youths, were taken into illegal custody, they were tortured and were given electric shocks. We filed various Habeas Corpus petitions. In such cases since evidence was difficult to get, we used to file before SHRC. It is possible to make a case there, as the police have to file their counter, and with our counter, we could then approach the High Court. The Minorities Commission appointed a one man commission, on behalf of the 32 youth to conduct an enquiry. As a result, the High Court awarded 3 lakh compensation. We also wanted to prosecute the police officers, however, now a stay has been given on the same, and the case is still pending.
- In another case, 11 tribal women were gang raped by the police. When it came in the news there was a lot of outrage. Many organisations were involved and an enquiry was conducted. However, the names of the police officers were not given by any organisation or institution, except one institution, which mentioned the names of the police officers. Based on that we filed a private complaint. After the case was filed, the police officials started targeting the lawyers who were arguing

the case with false charges. The case went upto the Supreme Court, and it is only after 11 years that the trial has now finally started in that case.

- In Vijaywada, in a custodial killing case, also they had to face similar problems, as the complaint was against police officers. Even that case went upto the Supreme Court. Supreme Court ordered a CBI enquiry.
- Another writ petition filed by Mr. Kumar was with regard to conducting an enquiry by a judicial magistrate in a custodial death case, under S. 176 (1A) Cr.PC. Mr. Kumar noted that though this provision has been there in the Cr.PC for sometime but he could not find even one case under which such an enquiry was ordered by the court.

Mr. Kumar concluded by stressing that the lawyers should file cases under S. 176 (1A) for ensuring that enquiries are conducted by a judicial magistrate, in cases of custodial deaths and rape, whenever they come across such incidents in the prisons.

Sunil Gupta

Advocate, Former Legal Officer, Tihar

Mr. Sunil Gupta spoke about his work in Tihar where he had served for 38 years. According to him, they had conducted a research in the Tihar jails, where 80% of the population comes from the lower strata of society and are economically and socially disadvantaged. Most of the prisoners at the time of admission, according to Mr. Gupta suffer from diseases like Tuberculosis (TB), and are also suffering from drug related problems.

Talking of deaths in prisons, Mr. Gupta said, according to the 2015 prison statistics, 1584 deaths have occurred in jails across the country. UP has the highest incidence of death followed by Punjab. Custodial deaths are generally classified into natural and unnatural deaths. Most of the natural deaths in prisons are due to TB.

Unnatural deaths include death by suicide, murder, group/gang rivalry, negligence by the police and medical staff. As per Mr. Gupta, the most common reason for unnatural death in prison is due to - group rivalry, followed by negligence of staff and torture by prison officer. Many deaths can be saved if the inmates are given treatment in time. Lack of police escort or ambulance also results in the delay in providing treatment, which subsequently results

in death. The prison officials then send the dead person to the hospital where they are declared to be brought dead.

As per the procedure laid down, in the case of a death that occurs in the prison, the National Human Rights Commission needs to be informed about a prison death within 24 hours. Further, if there is a suspicion, that if a death is unnatural, the Superintendent has to get the death investigated by Sub Divisional Magistrate or Judicial Magistrate as required under S. 176 Cr. PC. As per Mr. Gupta, the Tihar Jail has a policy of investigating every death by a Judicial Magistrate so as to erase any suspicion. Delhi High Court has stated that the courts aren't obliged to award any compensation in natural deaths without negligence. Supreme Court has recently directed that compensation needs to be awarded in all unnatural deaths.

There is a need to take curative steps to curb deaths in prisons. We need to make sure the prison officers don't use unproportionate or excessive use of force, but only minimum force. In cases of riots, the prison officers shoot the prisoners and usually show that the prisoners were trying to escape.

Now in the Model Prison Manual, some of the provisions have been added. These include, using minimum force, taking action against the prison staff, and lastly to ensure counselling for the depressed prisoners, Mr. Gupta concluded.



Mr. Pupul Dutta

Investigation Officer, National Human Rights Commission

Mr. Pupul Dutta who works in the investigating agency of the National Human Rights Commission (NHRC), spoke about the procedure followed by the Commission to investigate deaths in prison. He referred to the detailed guidelines for investigation in cases of custodial deaths issued by NHRC in 1993. As per the guidelines, every death in custody is required to be reported to NHRC within 24 hours. Since the guidelines have been issued, each death is registered, whether it is a natural or unnatural death. Those guidelines were very relevant, as most deaths used to go unreported prior to that, Mr. Dutta stated.

The Commission, after receiving the information, conducts its own investigation, which is a thorough scientific investigation that takes place under the Human Rights Act.

Mr. Dutta laid down each of the steps that are followed in conducting the investigation in a custodial death as required by NHRC.

- As per Mr. Dutta, the first report which is necessary is the inquest report to find out the apparent cause of death. This is mostly conducted by an Executive Magistrate in presence of independent witnesses, family members, etc. This step is the first examination of the dead body, to look at any external injuries, whether rigor mortis has set in, which also indicates the time of death.
- The second step is the postmortem which is conducted by a forensic doctor, and is required to be videographed to ensure that there is no foul play. Videography is essential where there is either a suspicion or allegation. A viscera, histopathological report may also be required to come to a final cause of death.
- The Commission, requires an enquiry to be conducted by a Magistrate - judicial or executive. The enquiry maybe conducted by an Executive Magistrate, in cases where there is no no foul play prima facie. This is done to save precious judicial time. The Commission has laid down guidelines about magisterial inquiry that includes- visiting the place of death, witness examination, examination of family members, as soon as possible, recording of statements, looking at all the reports and arriving at a conclusion. A Magisterial enquiry, which is perfunctory does not help, Mr. Dutta explained. In some cases, where the Commission feels a further enquiry maybe required, the Commission can send its team to the prison.

Mr. Dutta further explained that an important question, which needs to be determined by the Commission, in cases of custodial death is whether a death is natural or unnatural. In this regard, the Commission has issued guidelines as to what are the requirements, when a prisoner enters the prison. The Commission has prescribed a health screening proforma, which has to be filled at the time of the entry of the inmate in the prison. If the health screening report indicates that the prisoner was healthy at the time of entry in the prison, then that raises the question whether his death could be avoided if he was given adequate medical attention. There are panel of experts in NHRC, who opine whether there was negligence in diagnosis, or palliative care. For example, in the case of a cardiac arrest, even though the same maybe looked at as natural, but if the prisoner did not have any such condition at the time of entry in prison, or it was such which could be managed, then the death is unnatural and cannot be termed as natural.

In cases of unnatural death, the Commission awards compensation, and ensures that the right to health and right to life of a person in custody is protected, Mr. Dutta concluded.

Mr. Navkiran Singh

Advocate, General Secretary, Lawyers for Human Rights International (LFHRI)

Mr. Navkiran Singh as one of the foremost human rights lawyer in the country, has been visiting prisons and providing legal aid to persons in custody. Speaking on the laws on custodial violence and torture, he said the government has not taken any adequate measures to protect the persons in custody. He further said 99% of atrocities are done while a person is in illegal custody, i.e. in the police custody, without police remand. At any given time, there are atleast 20-25 persons who are in illegal custody.

Mr. Singh pointed out that it is the duty of the police officer to report to the judicial magistrate after a person is taken in custody, and at the same time it is also the duty of judicial magistrate to ensure that no person is kept in illegal custody, by making surprise visits to the police stations. However, many persons are kept in illegal custody with the knowledge of the judicial magistrate. Mr. Singh quoted S. 25A which was added in 2009 through an amendment, that talks about the health and safety of arrested person, and requires the person in whose custody the accused is, to take reasonable care of the health and safety of the accused.

However, ironically there is no instance of any action being taken against the person, in whose custody the accused dies. Even NHRC merely grants compensation. People commit suicide due to the amount of torture, the judges are busy and keep changing and hence poor barely ever get compensation. As a human rights lawyer, you start searching for judgments where people have been convicted for custodial crimes but you rarely find any against the torturer.

"After 70 years of independence, there is no human rights of the citizens of India." Basic amenities are missing from the jails like water, cot, even a chair. The police think that person who is brought in the police station who is a suspect is already a convict. He is arguing a case where two persons died in the jail, after they were made to clean the sewerage. However, no compensation has been granted and no action has been taken against the officials. The laws give public servants immunity, and are safeguarded even

they violate the law. Till the time, they are not held accountable, the people won't get their human rights.

However, there are no safeguards offered to the person who is defending such victims. The human rights lawyers are arrested or killed for standing up against such injustices, and no action is taken.

When laws have been amended for custodial rape so that the accused can be given life sentence till death, why can't there be such serious laws for perpetrators of torture, as well, Mr. Singh questioned. Until the police and persons in power become accountable, the situation on the ground will not improve. The prison staff is not properly trained either. The Sunil Batra judgment (1978 AIR 1675), which was passed in 1978 against solitary confinement, was not implemented in Punjab and Haryana until 2010.

Mr. Singh concluded by appealing to the students of law and young lawyers to come forward to work for the citizens' rights and fight for the human rights of persons.

Dr. Murali Karnam

Advocate, Professor, NALSAR Hyderabad

Dr. Murali Karnam began his presentation by raising certain questions with regard to our role as a civil society. He pointed out that the civil society through the constitution has entrusted the responsibility of protecting our safety and security to the state. But in asking this, have we given the mandate to the state to protect our safety and security at any cost, which means depriving the life and liberty of people who are in conflict with law? Is the cost of safety and security, the incarceration of 60 lakh people per year and on average 4 lakh people per day and death of the 6 people per day and 1600 people per year? Do the people with less credibility deserve substandard treatment by the society? What are the standards we want the State to follow to ensure our safety and security?

Article 21 does not differentiate between the people on the basis of their economic and social background. Poor people go to the prison to die. The moment a person enters the prison, he has no freedom to take care of his health or life. In such circumstances how can a death be termed natural? What is the meaning of a natural death in the prison, when the person has lost his liberty, Dr. Karnam questioned. The Supreme Court has asked that if there is no doctor is it a natural death? When people die in the prison, does anyone come

forward to fix the vicarious liability on a person for not being given an escort, or taken to the hospital, whether it is the NHRC or a Magistrate?

Dr. Karnam pointed out that the prison is designed in such a way that preventing preventable deaths is difficult. In many jails, medical escort is provided only on Saturday. If someone has a heart attack, it is not before 2 or 3 hours that the person can be taken to a hospital.

Even though there are laws and guidelines but neither the National Human Rights Commission nor the Courts talk about compliance and following the Principle of Equivalence. The standard of medical help available outside should be available to persons in custody. How can one explain that a disease like Tuberculosis is incurable? Prison doctors are careless, they give wrong diagnosis and hence wrong medication resulting in death. 60% of persons who die in the prison are undertrials. In India the prison mortality rate is 400. In Punjab, it is 750, for every 1 lakh prisoners who are incarcerated.

Are these deaths being investigated under S. 176 (1A)? In Karnataka, the Magistrate goes to prison and talks to the Superintendent and just writes a 3-page report, he doesn't talk to the inmates, nor the family, or the doctors.

Dr. Karnam stated that he had investigated 129 deaths that happened in 2005. In 6 cases, the outside doctor recorded that the person died because of wrong diagnosis and wrong medical treatment. Though he filed the reports before the SHRC but no action has been taken.

The people are vulnerable to custodial torture because of the crime of 'poverty'. No medical facilities are provided in sub-jails, no accountability of why torture occurred. Most of the crimes occur when the person is in police custody. Who will ensure that such a crime occurred? We are good in setting the standards, but things are not as good as they are being portrayed, Dr. Karnam concluded.

Suggestion: If any deaths happen within 2 months of custody, should be treated as suspicious death.

XV. LEGAL REPRESENTATION OF PRISONERS ON DEATH ROW



Ms. Shreya Rastogi

Associate, Centre on Death Penalty, National Law University, Delhi (NLUD)

Ms. Shreya Rastogi began with explaining the meaning of the term 'person on death row' which means - any person who has been sentenced to death by the trial court and from trial court to Supreme Court, the appeal has been rejected, and post Supreme Court, the mercy petition has been rejected. While giving a background of persons who are on death row, she said that since there is no government data available of the number of persons who are on death row, one has to go from prison to prison to get the data.

As per the data gathered under the Death Penalty India Report, 2016 by the Centre on the Death Penalty, National Law University Delhi, (now known as Project 39A) she stated that the total number of prisoners on death row in the year 2016 was between 371-399.

She discussed about the categories of the reported offences with maximum number of cases being reported on murder simpliciter - 216, followed by sexual offences - 84, terror offences - 31, kidnapping with murder - 24, dacoity with murder - 18, defence legislations - 2 and drug offences - 1.

While referring to the background of the persons who actually get the death penalty, Ms. Rastogi said that it's important to understand their economic background. As per the Death Penalty India Report, 2016, 74.1% prisoners who get death penalty are economically vulnerable, out of which 50% were the sole earners for their families. It is important to understand that those who are the primary earning members in their families, their family is also affected. She pointed out that the economically non-vulnerable categories comprise of 25.9%, with the least number taken up by the non-earning members i.e. students / or unemployed persons comprising 7.7%. Among the non-earning members, data shows that those students who did not complete their secondary education, as well as those who never went to school are the ones who are more engaged in the offences.

Economically Vulnerable categories - With regard to the legal representation for the economically vulnerable groups, it was found that most of the prisoners had private representation in the trial courts, 68.7% of them had private legal representation in high courts, while only 29.9% had a private lawyer in the Supreme Court. While discussing the reasons for going for a private lawyer, it was found that they did not trust the state legal representatives. As a result they sold their land, and other possessions to pay for the lawyers' fee. By the time the case reached upto the Supreme Court, however, they were not able to afford a private lawyer, and therefore they either had a legal aid lawyer or a pro-bono lawyer.

When it comes to **interaction with lawyers**, nearly 70.2% prisoners did not discuss case details with their trial court lawyers. 68.4% prisoners never interacted with or even met their High Court lawyers, and 44.1% prisoners did not even know the name of their lawyer representing them in the Supreme Court.

Ms. Rastogi stressed on the need of the lawyer to meet his client, especially for persons on death row, as the odds for them are very high. Further, they are the best persons who can give details of their cases, and point at crucial evidence which the court may have overlooked. She gave examples of some of the cases in which such anomalies were noticed by the Supreme Court.

Durga Domar v. State of Madhya Pradesh (2002) 10 SCC 193 - In this case, Durga Domar was accused of killing his five children. However, before the Supreme Court, the issue of his mental condition was raised, and it was noted that in the course of his case proceedings, both at the trial court and the High Court, the mental health condition of the accused was never inquired or raised before the court. He had legal aid lawyers throughout his trial, but his counsels had not communicated to him or ever met him. The Supreme Court in this case noted as follows: *“He, perhaps, had no occasion to communicate to his counsel and consequently the counsel who had defended the case would not have had any occasion to ascertain the mental disposition of the accused either at the relevant time or during the succeeding periods. As this is a case where he is sentenced to death our judicial conscience compels us to get a medical report regarding his mental condition.”*

In the case of ***Dhal Singh v. State of Chhattisgarh, (2016) 16 SCC 701***, Dhal Singh was accused of killing his children and wife, in view of the fact that Dhal Singh was the only one, who was inside the house, and since the house was locked from inside, so he was the only one who could have committed the crime. However, when Ms. Rastogi along with her colleague went to meet Dhal Singh, he informed

that the house in his village has a wall which is 4 ft. high, which evidence was overlooked by both the trial court and the high court. This fact was brought before the court for the first time, by Sr. Adv. Colin Gonsalves while arguing on behalf of the accused. Thus, the fact that anyone could have climbed the wall and committed the crime, did not prove his guilt beyond doubt, and on that basis his sentence was set aside, by the Supreme Court.

Thus, the need for interaction with their client is very crucial for lawyers who are defending such persons, and cannot be overlooked, Ms. Rastogi stressed. She stated that the mitigating circumstances

While talking of the **claim of juvenility**, Ms. Rastogi pointed out that in their interactions with the inmates on death row, at least 18 prisoners i.e. 5.8% claimed that they were juveniles at the time of incident. This claim was, however, not raised at the time of the trial.

Life imprisonment without remission – To be awarded life imprisonment without remission, is worse for prisoners, and while interacting with them the inmates have stated that they would rather prefer to die than to spend their entire life in prison.

In limine dismissals - The Supreme Court, if dismisses the death sentence appeals *In limine*, without looking at the evidence, in a one word order, then that should be challenged, as the death sentence is a very harsh punishment and the person has a right to be heard on the facts and evidence of the case. In the case of ***Md. Ajmal Md. Amir Kasab v. State of Maharashtra (2012) 9 SCC 1***, the court stated that “since it is a case of death sentence, we intend to examine the materials on record first hand, in accordance with the time-honoured practice of this Court, and come to our own conclusion on all issues of facts and law, unbound by the findings of the trial court and the High Court.”

Issue with proving Compulsion- She referred to S. 27 of the Evidence Act, where a confession is accompanied by evidence, it takes away from the issue of proving compulsion. In the case of ***State of Bombay v. Kathi Kalu Oghad (1962) 3 SCR 10***, it was held the facts discovered through confession to a police officer are admissible “unless compulsion has been used in obtaining the information.” She also discussed the case of ***Nandini Satpathy v. PL Dani (1978 SCR (3) 608*** where the accused was compelled to give the testimony by not merely using physical violence but also by psychical torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like.

Psychology of false confessions - She discussed about the psychology of false confessions, wherein 25% of the DNA exonerations involved false confessions. Ms. Rastogi explained the three types of false confessions -

1. **Voluntary false confession** – the person believes himself, and most of the people undergo mental disorder
2. **Compliant false confession** – Cause of re-technique of interrogation, in this the person is intimidated and harassed to an extent where they agree to anything.
3. **Internalised false confession**- they start believing that they have done the crime (most of them are suffering from mental disorder, or are vulnerable).

Therefore, S. 27 Evidence Act is arbitrary, and needs to be re-looked at, as it is bound to be abused by authorities.

Mitigation Circumstances – Ms. Rastogi discussed about the case of *Bachan Singh v. State of Punjab (1980) (2 SCC 684)*, where it is important to look at mitigating circumstances. Talking about mitigation she explained, that it isn't an excuse for the crime. It is not meant to have any effect on the determination of guilt, but is meant to act as a tool to individualise the sentencing and conviction. It is important to not have **same day sentencing**, as the court should look at mitigating circumstances before sentencing. 92 (44%) out of 211 cases across Delhi, Madhya Pradesh and Maharashtra had same day sentencing

Mental health evaluation: Legal insanity is referred to as 'unsoundness of mind' in the IPC, however an operational definition of the same is lacking. The term insanity is now considered obsolete in the medical community with its use being increasingly confined to the legal context. Medical insanity refers to the presence of varying degrees of mental disorders (disturbances in thought, behaviour and mood). She also referred to the following forms of insanity:

- Defence of insanity – Section 84 of IPC
- At the time of commission of the offense - 'Unsoundness of mind' because of which the accused does not know the nature of the act, to know its wrongfulness or that it is contrary to law
- Legal Insanity v. Medical Insanity

She referred to mental illness as supervening circumstances, where the Supreme Court has stated that a person with mental illness cannot be executed in our country. Ms. Rastogi mentioned two cases which deal with the mental health evaluation during sentencing, *Gopalan Nair v. State of Kerala (1973) 1 SCC 469* - evidence towards proving 'legal

insanity' can be used in the sentencing hearing, and the case of ***Bachan Singh v. State of Punjab (1980) 2 SCC 364***- Mental and emotional state of the accused while committing the offence.

Ms. Rastogi pointed out the figures of mental illness, wherein 50 out of 88 (56.8%) prisoners on death row were found to be suffering from at least one mental illness. Besides, 32.9% prisoners had major depression and 20% prisoners had dysthymia (persistent depressive disorder).

Regular mental health evaluation of the prisoners on death row is therefore very important. Further, consideration of insanity/mental illness/schizophrenia as a supervening circumstance must be considered by the Executive while deciding the mercy petition, Ms. Rastogi concluded.

XVI. VISITORS' BOARDS

Ms. Madhurima Dhanuka

Coordinator, Prison Reforms Programme, CHRI

Ms. Madhurima Dhanuka referred to the main issues that are there in the prisons, which include custodial violence, deaths, overcrowding, lack of basic amenities, unnecessary detentions, inadequate prison staff, etc. She said that it is important to have an oversight mechanism to ensure that the issues faced by prison inmates are being addressed by the authorities.

Ms. Dhanuka referred to the International standards on the oversight of prisons, which include:

- United Nations Standard Minimum Rules for the Treatment of Prisoners
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders
- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

To keep an eye on *prisons in India*, the primary mechanisms that exist in the Prison Manual are the Board of Visitors. Further, under Section 59(25) of Prisons Act, 1894, every jail must have a board of visitors which is made up of officials, elected representatives, and also people of good standing from the local community known as non-official visitors (NOVs).

Besides the Board of Visitors, judicial officers, legal services authorities, Human Rights Commissions, Parliamentary committees, are also empowered to visit prisons.

Ms. Dhanuka spoke about the Composition of Board of Visitors:

1. **Official Visitors** i.e. visitors by virtue of their office. This includes members of the judiciary, police, department of public health, etc.
2. **Non-Official Visitors** i.e. lay people from local society who have an interest in the welfare of prisoners and administration of prisons. NOVs ideally should be doctors, psychiatrists, lawyers, journalists, social workers, etc.

Basic functions of the Visitors are inspection of the prison by observing of prison life (what is the prison regime, what time do they get up, how many times is counting done, etc.; documentation of observations; prevention of any violations such as unlawfully keeping prisoners in solitary confinement; improvement of prison conditions such as water, food; redressal of prisoners' complaints; disbursement of medicines and visits of doctors, etc. Thus, the overall scope is very broad. The visitors can visit every part of the prison, and can access documents relating to any complaints faced by the inmates. Visitors to jails need to be independent, and it is important that the visit is a surprise visit.

However, even though the system is in place, the Board of Visitors is not functioning as per its mandate. As per a National Study conducted by CHRI on the State of implementation of the Board of Visitors in 2015, it was found as follows:

- Only 3 states have a Board of Visitors constituted in all their jails
- 10 States have BOVs constituted in some of their jails
- Only 7 states prescribe professional qualification and background as appointment criteria
- Only 3 jails appointed visitors according to the criteria

Talking about the reasons as to why the BOV system is not functioning as required, Ms. Dhanuka pointed out that the appointments are usually, "*highly political in nature*", i.e. the local MLAs and politicians try to become part of the BOVs, and then go into the jails to try to get privileges for their kin or their party members, while ignoring the basic functions the BOV is mandated to perform. She therefore, concluded that though the concept of Board of Visitors is a very old concept, which exists, however it is not very well understood and followed.

Ms. Ritu Kumar

Coordinator, Prisoners' Rights Initiative, HRLN

Ms. Ritu Kumar started by talking of the importance of Board of Visitors, which is one of the monitoring mechanism in order to ensure that the rights of prisoners are safeguarded. She referred to the Supreme Court judgements, wherein the apex court has emphasized on the importance of Board of Visitors.

- In ***Sunil Batra (II) vs. Delhi Administration, 1980 (3) SCC 488***, the Supreme Court, while emphasising on the importance of BOVs noted as follows – *“the judicial members have special responsibilities and they must act as wholly independent overseers and not as ceremonial panelists. The judges are guardians of prisoners’ rights because they have a duty to secure the execution of the sentences without excesses and to sustain the personal liberties of prisoners without violence on or violation of the inmates’ personality.”*

The judgement summed up the role of the judicial members as visitors, who are to be like watchdogs in the prison. Since a person is inside a prison because of a judicial order, therefore, the judiciary has the mandate to protect that person, and to ensure that the prisoner is being treated as a human being and that his rights are protected. Thus, there needs to be an independent system to see what is happening inside the prison.

The Ministry of Home Affairs advisory on 18th February, 2011 directed all the States and Union Territories on appointment of Non-Official Visitors without delay - *“The system of appointment should be transparent and democratic with prescribed criteria. Members who are selected as NOV’s should have knowledge and/or expertise in areas such as prison reforms, legal rights, counselling, social work, criminology... etc.”*

Ms. Kumar listed out the persons who can be appointed as Official and Non-Official Visitors. These include:

- **Official Visitors:** District and Sessions Judges; District Magistrate; Director, Social Welfare Department; Member, National Commission of Women; Member, Department of Health; Member, Minority Commission of India, etc.
- **Non Official Visitors:** Social Activists, Social Workers, Lawyers, Retired Judicial Officers, Retired public officers, Doctors, Psychologists, Counsellors, etc.

In ***Sanjay Suri vs. Delhi Administration, Delhi and Anr., 1988 (Supp) SCC 160***, the Supreme Court listed out the composition of the Board of Visitors, with regard to Non-Official Visitors - *“The Visitors’ Board should consist of cross-sections of society, people with good background, activists, people connected with news media, lady social workers, jurists, retired public officers from the judiciary as also the executive, etc.”*

Ms. Kumar then proceeded to give certain examples of the Delhi system. She stated that in Delhi, when the Board of Visitors was notified after directions from the High Court, the

official visitors included 9 jail superintendents (one from each of the 9 jails), as well as the DIG and DG. Out of the 19 official visitors at least 11 were prison officials. This was challenged in a Writ Petition before the High Court of Delhi, in which it was contended that a person cannot be a judge in his own case. After several rounds of meetings with the officials, the names of the prison officials were finally removed. With regard to the non-official visitors also the contentions were raised that they need to be independent persons, and should not include those who are providing services in the jails. Further, the guidelines which governed the Board of Visitors also needed to be amended, to allow surprise visits, and an independent inspection of the jails.

Ms. Kumar concluded by giving the following suggestions which need to be kept in mind while constituting a Board of Visitors:

- In order for this system to work effectively, the BOVs must be an independent body. The non-official visitors appointed should be strong and independent in their functioning.
- They must be able to conduct surprise visits and communicate with the inmates without the presence of an official, and surprise visits should be allowed at anytime of day or night.
- While the Supreme Court has specified that the BOVs must visit the jail at least once or twice a month, in order to make a real difference, frequent visits are required.
- The guidelines for Board of Visitors should not be restrictive but should be broad enough to give the visitors independent powers to assess the situation inside the prison and recommend changes, wherever needed.

XVII. CHANGES NEEDED IN THE MODEL PRISON'S MANUAL

Ms. Sugandha Shankar, CHRI

Ms. Sugandha Shankar while talking about the Model Prison Manual, stated that the amendment to the prison manual was conducted more as a mechanical exercise. She spoke about the three aspects that need focus in the Model Prison Manual, which are: Women prisoners, Open Prisons, and Board of Visitors. With regard to each of these she pointed out the following provisions which need to be looked at.

Women Prisoners

'Women only' prisons - There are just 18 'women only' prisons in the country while every state should have atleast one prison for women. This is important to ensure safety of women inmates. There is a need to focus on the gender discrimination and special health needs of the women inside the common prison set up. As suggested by Krishna Iyer committee, there is a need for separate psychologists for women. There is a need for separate wards for women in hospitals in central and district prisons.

Vocational Trainings for women inmates - The women are needed to be empowered. Since, they get cut-off from their families after coming to prison, it is difficult for them to survive after they come out of the prison.

Searches - With regard to searches, the manual has given a general provision of checking to be only conducted by women, but there needs to be detailed guidelines of how prisoners should be searched, the kind of searches allowed, what kind of prisoner should be searched, privacy issues, etc. There is a need to check the small nuances of the searches.

Pregnant Women - For pregnant women, there should be a provision for temporary relief for women one month before the expected delivery and 3 months after the delivery of the child. Pre and post-natal care for the pregnant and lactating women and clean bed sheets should also be provided. There should be proper supplies for the need of the child of the convict. Presence of a pediatrician especially is required and not just a doctor. This is not mentioned in the manual but needs to be provided.

Children of women prisoners - The women can keep her child with herself only till the child is of 6 years. There is a need for a scheme regarding prisoners' children. The child

should be given monetary support if both the parents are in prison. Rajasthan and Haryana's foster care which is quite well managed, can be replicated in other States.

Women's clothing and hygiene - In some prisons women inmates are only allowed to wear Sarees which can be quite cumbersome. They should be allowed to wear salwar kameez, as well. Minimum number of sanitary pads provided free of cost are a must for women prisoners.

Communication with counsellors, advocates and families - Women inmates should be allowed reasonable facilities to communicate with counsellors and advocates. They should also be allowed to communicate with their families, make ISD calls, or video conferencing. There is no provision for conjugal visits in the manual, either.

Foreign inmates - Provision must be added for food provisions for foreign nationals as their diet may be significantly different from the local population. There should also be a provision of translators for foreign national prisoners due to language barrier between the prisoner and the advocate or counsellor.

2. Open Prisons:

Ms. Shankar spoke about the different terminologies used for open prisons, which need to be standardised. There are a number of variants used for open prisons in the jail manuals and there is a need for standardization of a clear terminology for open prisons in the manual.

Eligibility for the Open prisons - Another issue, highlighted by Ms. Shankar was the long list of ineligibility for the Open prisons. The list is arbitrary and the selection committee is very subjective. If there are too many criteria for ineligibility, then a major prison population is being excluded from even being considered. There is a need to have an objective assessment system. Justice Mulla Committee states that the nature or length of the crime shouldn't be considered for admission in open prisons, she stated.

Good Practices - Rajasthan is a pioneer state in open prisons. They have about 30 open prisons and have even habitual offenders staying there. Madhya Pradesh have separate prisons especially from dacoits. One needs to start looking beyond their own states.

Welfare and Probation Officers - Recruitment of welfare and probation officers in open institutions is also required. West Bengal has a new correctional act that talks about loans for the prisoners to start any small business, such provisions should be incorporated in Manual Prison Manual.

3. Board of Visitors

Ms. Shankar while talking about the Board of Visitors, referred to chapter 26 of the Model Prison Manual, which talks about Board of Visitors comprising Official and Non-official members at District and Sub-divisional level. While referring to the 2011 MHA Advisory on Prison reforms, Ms. Shankar stated that it is very progressive regarding the list of people that should be part of the Board like Representatives for women, State Minority Commission and Probation officer. But such suggestions from the MHA Advisory have not been included in the Model Prison Manual. She also pointed out that the Official Visitors hold certain positions and hence have a mandate to visit the inmates in the prison. There are also the Unofficial Visitors who need to make regular visits to the prisons.

Ms. Shankar concluded with the observation that any good policies or good practices in any State across India regarding Prison should be incorporated in the Model Prison Manual.

XVIII. EXPERIENCE SHARING BY SENIOR OFFICIALS

Dr. Upneet Lalli

Dy. Director, Regional Institute of Correctional Administration, Chandigarh

Dr. Upneet Lalli while sharing her experiences stated that though she is not a prison official, but she has seen the system very closely, from the perspective of the inmates, from the perspective of the prison staff as well as that of the administration.



Prisons always reflect the status of a society and the prison is the last end of the chain of the justice system. The person may come battered through the whole process of dealing with the police, judiciary, legal aid, when he enters the prison.

For the prison officials, it is important to understand that they are not dealing with numbers but humans beings, Ms. Lalli expressed. Understanding and compassion are two important aspects. In the prison, most of the prisoners come from poor backgrounds and they lose touch with their families. As a result, they suffer from an identity crisis, and the mental health of the inmates becomes the crux of the problem.

There is a need to understand the purpose of prisons. While earlier it had been detention, now it is reformation. Physical structural changes are always easy, the difficult part is to change the system from within. New prisons are too far flung. The prisoner's condition doesn't bother the government because they have no right to vote.

The most difficult aspect in bringing about change is the resistance to change, and therefore to bring about change a strong leadership and a will to change is important. Good leadership needs to be proactive and positive. Delhi and Haryana have been two good examples of bringing about the change in the prisons.

New Prisons Act - Ms. Lalli while talking of a new framework for the prisons, shared that though she has worked on the new Prisons Act to bring about structural changes, but one can't get impatient, as the government has its own process. The legislation is currently pending with the MHA and the NHRC, and hope that it will be implemented soon.

Classification of Prisoners - Talking about classification of prisoners, she said it is very important how prisoners are classified. The prisoners can go through a lot of harassment because of the type of barracks they are assigned to.

Health Rights - Need more doctors and better medical health care facilities. Women doctors are not available in all women prison enclosures. Psychologists and counsellors are not available in many states.

Women Prisoners - No provision in many manuals for sanitary pads, hence the managers don't give them to women because they don't want to spend on something when they are not asked to. Ms. Lalli stated that she had filed a public interest litigation and some recommendations were given, but not all of them have been implemented.

Constructive time management of the prisoners - When the person is inside 24 hours, it is very important to constructively manage the time of the inmates. Whether they are involved in educational programmes, trainings, or work in certain industries, they should be able to constructively manage their time.

Educational Qualification and degrees - Ms. Lalli shared that she met two students of Jindal Global University a day before at the Sonapat jail, who had completed four years of their education, but were not sure about their future prospects. She suggested the University to consider awarding these students degrees, since if they have a graduate degree, they can consider pursuing some vocations. Ms. Lalli also appealed to the civil society to help with integration of young offenders back into the society.

Children of Prisoners - Children of Prisoners who are outside while their parents are in custody, also need to be supported with educational facilities, as well as their stay, etc. for which Child Welfare Committees, and Social Welfare Departments need to work closely with the prisons.

Rehabilitation and integration - Rehabilitation and integration of prisoners back into the society after their release is very important. Prisoners can be helped with providing Aadhar cards, certificates, mobile numbers, post release. After release care and follow up is very critical for effective rehabilitation of prisoners in society. This is not just the responsibility of the jail authorities but also the role of different departments. Hence streamlining is another uphill task else the life of the prisoner shall remain as it is when he was inside the jail, Ms. Lalli concluded.



Mr. Jitendra Agarwal

Dy. Inspector General, Delhi Prisons, Mandoli

Mr. Jitendra Agarwal, while giving a brief about the Tihar jails, explained that now there are 16 jails in Delhi - 9 jails in Tihar, 1 in Rohini, and 6 jails currently been built in Mandoli. Total 15,000 prisoners are housed in these jails, among which 3000 are convicts.

He stated that that the prison complex is indeed like a town, as stated by Dr. Bedi earlier and prisoners are given all the facilities like legal aid, entertainment, food, lodging etc. They have a hospital inside the jail, where 200-300 inmates can be treated at one time, and all possible medical facilities are extended to the prisoners.

With regard to education, Mr. Agarwal stated that prisoners have a right to education. The prisoners who can pursue education are identified and are enrolled in IGNOU distance education. He gave some examples, where prisoners who have entered as only a high school graduate have left the prison as a graduate. One of the prisoner who was an IIT graduate, set up an LED manufacturing unit in Tihar. They now have 2-3 LED centres, in each of which 25-30 prisoners are employed. They also have Bakery units, carpentry unit, stitching units, and also produce blankets, durries, mustard oil, etc. Some of them pursue their talent even after they are released. Many of the inmates are now yoga instructors.

The idea is to keep the inmates busy as many of them did their crimes in the spur of moment and now regret it. We try to identify the talent of the inmates, hone them, and help them use it. All prisoners aren't always ready for such training and work and thus, we need to convince them. They also have many recreational activities like sports, music and theater.

We have recently launched a programme with the help of National Mental Health Foundation, under which counsellors are being appointed who can identify the depressed prisoners so that they can seek help and they can immediately be transferred somewhere else, Mr. Agarwal informed.

Jails must not only have medical and legal aid facilities, but to truly reform the prisoners they need to engage them in training programs and other such activities. It is important to engage the prisoners in various kinds of programmes and activities inside the prison for their transformation, Mr. Agarwal concluded.



Mr. Harinder Singh

Superintendent, Jind, Haryana

Mr. Harinder Singh stated that one needs to look beyond Delhi, for working in jails. He invited NGOs and civil society to work in Haryana jails.

While working in Haryana prisons, Mr. Singh spoke about the Phoenix software which has been created by a woman prisoner in Haryana prison. It is one of the best softwares, and people who made it, ran it, and supervised were all prison inmates.

Besides, they have yoga, education programmes, and art programmes running successfully in Haryana jails.

As a prison officer, one acts like a teacher, guardian, plumber, electrician and a friend. No other department can offer so much to work. A person who is in prison is at his most vulnerable and it is at this time that he needs the most help, and therefore, it is important to stand by that person, and we are there for that person in his time of need.

XIX. EXPERIENCES SHARED BY LAWYERS FROM LEGAL SERVICES AUTHORITIES



Mr. Abhay Jain

Advocate, Shivpuri, Madhya Pradesh

Mr. Abhay Jain shared his work in Shivpuri, as a law student. He spoke of a tribal group, the Sahariya tribe which is a particularly vulnerable tribal group in the forests of Shivpuri. The people of this tribe were dying of malnutrition, many of them suffering and dying from Tuberculosis and many were bonded labourers. The area had been drought-stricken for three years, the families had to fetch water from camps. Thus, there was need that these drastic environmental changes had to be address legally and socially. As law students, they to address the issues in three areas - they filed a case in National Green Tribunal, Bhopal for environmental conservation. In 5 months they got a good order for removing the encroachments, and conserving the water bodies. After which we approached the authorities for implementation, and as a result 250 establishments were removed from natural drainage, cleaned after 50 years and natural form and flow could be seen. Soon, the encroachments were removed and the water bodies cleansed.

in another village in Shivpuri, on the walls of the BPL houses, it was written “mera parivar gareeb hai”/ “main gareeb hun” (my family is poor/ I am poor.) More than 150 villages in Shivpuri had these writings on their walls. The villagers told them that government officials

had told them to write that or else they wouldn't receive entitlements such as ration. A complaint was lodged in the NHRC and these writings were removed within 2 days after that. In the village both electricity and water supply was restored. In Balarpur village which was 10 kms inside the national park, in 2000 forest authority had asked them to move and told the families that they will be given land but nothing was done, few of them were given but others were not. They have filed complaints in MP Human Rights Commission.

They are also representing people in the case of 'Narmada Bachao Andolan', where even after various Supreme Court and High Court orders, thousands of people are yet to be rehabilitated and supposed to be provided compensation.

The legal aid clinic in Shivpuri, has been accredited by the SLSA. At present they are trying to come up with a two-fold model that would involve not just going to the court but also empowering the communities.



NEHA PHILLIP

Advocate, HRLN, Mumbai

Ms. Neha Phillip, Advocate started by talking about her first case that was about a woman who was a victim of human trafficking but she was charged with transplantation of human organs, cheating and forgery. As a lawyer she filed for bail for her. The woman was granted bail but there was a huge bail amount which did not take into account her socio-economic position.

Ms. Phillip stated that they have come across various such cases. Thereafter, she filed an RTI to figure out how many people have been granted bail but are unable to furnish it. She also interviewed police officers who helped in understanding the scenario in a much better way. She filed a PIL in the Bombay High Court, in the name of her colleague, Archana Rupwate. The matter is tagged with another PIL under which the Justice RadhaKrishnan committee has been formed. A final report has now been filed by the Committee. Ms. Phillip stated that the judiciary needs to understand that just granting of bail does not help. What is required is that you apply your mind to understand what a reasonable amount of bail and surety given an individual's socio-economic situation is.

She also felt that there was a need to address issues with regard to conducting of Jail lok adalats and jail courts. A letter sent by the Bombay High Court to the magistrate allows for such jail Lok adalats and courts for “people who have been charged with petty offences or who want to plead guilty”. The people are being asked to plead guilty without being told the implications of doing so. If they are involved in a case of petty offence or theft, and once they are convicted, they continue getting arrested by the same police station or police officers. These consequences are not being told to them. They have now filed a PIL to challenge the constitutionality of Jail Courts.



ARCHANA RUPWATE

Advocate, HRLN Mumbai

Ms. Archana Rupwate has worked for 6 years in legal aid, and is regularly visiting the prisons for providing legal aid to prisoners. However, in her opinion the legal aid lawyers are being mostly used by the authorities to provide data to NALSA, or the Supreme Court to state that they have complied with certain directions and guidelines, and provide the requisite numbers for fulfilling their task. Recently she was called by the legal aid secretary to collect data on women’s health conditions in prisons. But the data collection was very superficial, and the authorities simply took the photographs of the legal aid lawyers. Even some students were present, and they had come to see the jail and the working of its system. It is important that students are cautious while submitting a form for somebody who has been in jail for years.

It is important that legal aid is provided to women who are raped by officers in conflict zones. Recently she went to refugee camps in Bangladesh and interacted with women who were raped by the Myanmar security forces, their husbands were shot dead, children were drowned in the river and even slaughtered before their eyes. The same condition exists in our country in states like Manipur, Jharkhand and Chhattisgarh.

Who will provide legal aid to them? And to the victims of lynching? We should push the government because it’s their duty and they should do these cases. Similar situation exists

in terms of farmers. Farmers are committing suicide, and their situation is so bad but there is nobody to provide them with legal aid, legal awareness or legal resources.

Inside the prisons, Dalits and minorities are over-represented and there are very few individuals from an upper class background, who usually are able to get bail. However, for Dalit prisoners, even for theft of Rs. 500, the bail amount demanded is Rs. 15,000, which they are obviously unable to furnish. Nobody is thinking that how is it possible for a person who has stolen Rs. 500 to give surety of Rs. 15,000. We have therefore filed a PIL challenging the surety conditions and that judges should consider the socio-economic position of prisoners while setting bail amount.

Ms. Rupwate stressed that as legal aid lawyers we need to think about not only prison legal aid but also other minority and backward communities who are in dire need of legal aid as well.



R. Alagumani

Advocate, Legal Aid Service, Madurai, Tamil Nadu

Mr. R. Alagumani has filed more than 4000 habeas corpus petitions against preventive detention cases. He has found that most of the preventive detention prisoners were from weaker sections, particularly minorities and Dalits.

He is currently working with Mr. K.R. Raja and has filed some PILs to protect the prisoner's rights in Tamil Nadu.

Recounting some of those PILs he said these relate to-

- **Setting up of child friendly interview halls** – there are no child friendly interview halls in Tamil Nadu. If a prisoner's child is below 18 years of age, and goes to prison to meet his/ her parents, there is no child-friendly environment for them there.
- **Distribution of prisoners' wages-** In Tamil Nadu, 50% of the prisoners' wages are deducted for the state government, 20% is deducted for the victim family and only 30% is left for the prisoner. The 20% of the fund which is deducted for giving to the victim's families is not being paid to the victims, but is being accumulated in the

prison fund. They have filed a petition in the High Court to dispense those funds meant for victim families within 6 months, and to reduce the 50% amount being deducted from prisoners' wages for the State government.

- **Release of aged prisoners** – For the premature release of senior citizen prisoners above the age of 65. Tamil Nadu government had earlier issued a GO (government order) for life convicts who have undergone more than 5 years for premature release, but the government has withdrawn that order. Now we are challenging that in the High Court.
- To **open de-addiction centers** which are mandated by the Juvenile Justice Act
- Against the **separate holding of prisoners from different castes**- As per Mr. Alagumani, in Tamil Nadu prisons, if there are 5 blocks, scheduled castes would be in 2 blocks or 3 groups of backward community would be in 3 blocks together. He has filed a petition against checking this system.
- He also filed a petition to prepare a **scheme relating to the care of children of prisoners**, particularly in case of life convicts, which is pending in the High Court.
- Another petition filed by them relates to **'Aftercare Centres'** for prisoners who come out of the jail after 15-20 years. These centres are now being closed down. They have filed a petition against that.

Mr. Alagumani works with a small team with 4-5 junior advocates and some law students. They use small portions of the money given by rich prisoners to work on other prisoners as just with Rs. 500-600 you can file a petition.

He also shared some new ideas for PILs he has come up with after attending these sessions. These relate to-

- stripping down of clothes for checking when the individual enters the prison, their dignity goes.
- The second is relating to the implementation of Prem Shankar Shukla vs. Delhi Administration (1980 SCC (3) 526) judgment.

- Third is relating to the prisoners' wages, the deduction from which family is very high.
- Others are relating to the review of the Prison Manual
- for the establishment of open air prisoners
- aftercare homes for women and juveniles,
- prisoners' interview hall with the family,
- access to libraries as only influential prisoners get access to these
- relating to food timings as in Tamil Nadu jails, dinner is provided to the prisoners at 4 pm.



AGNES KHARSHING
President CSWO, Meghalaya

Agnes Kharshiing, who is a social activist, shared her own experience in prison, when she was arrested for helping 8 families who were being evicted on false charges by the government. The Government wanted to take over the land that belonged to these people. Since they helped in stopping the eviction, they themselves were implicated on false charge of trying to burn down the JCB that was going

to mow down their houses.

Sharing the details of her own case, she said that the authorities had made out two cases against her of the same incident. The cases were from the year 2013, and it was only in 2018, that they managed to get them clubbed together. Speaking about her experiences in the jail, she shared that when she was in jail, she learnt about the rights of the inmates. She helped other women to realise their rights in the jail, as well. A woman who was charged under Section 506, IPC, had not yet been produced in court, she wrote on her behalf that she be produced in court. Some jail wardens were making the undertrial prisoners work, wash clothes, etc. She informed the other women inmates that undertrial prisoners cannot be made to work. The wardens did not like that, and wanted her to leave.

Speaking about legal aid, she said that it has to come from the heart, because if it doesn't come from the heart, you cannot do it. Injustice is happening and will continue because the rich want to suppress the poor. She said that if you are fighting the government you have to be very careful, because they will implicate you in a fake case.

She narrated an instance of a jail break and a murder convict, whose bail they were opposing, as he had slit the throat of two women. However, he was released on bail shortly, but was killed in a fake encounter. Soon she found herself on the opposite side. They filed an FIR. There was a commission of inquiry to look into this issue. However, after the order was passed by the judge, strangely the next day the judge died. The person whose name was there in the order who was the DGP, became the special rapporteur of Northeast for the NHRC. She protested this through the use of social media, as this man was involved in the fake encounter. Now he has been removed. She had to file the FIR many times, as sometimes when the FIR is turned into a case, they do not inform you until after the hearing has taken place. She had to file the FIR three times. At one point, she managed to take out some documents to prove her case. Now the case has been given to SP to investigate.

She concluded by advising the lawyers that if you want to work, do not think of the charges. Think of the injustice that is going around you. If we put in a little, God will see to the rest.



N. Syngkom
Shillong

Mr. Syngkom discussed some of the cases that he has been working on. One of the case was of a police officer who had seized 32 trucks loaded with gold. Just after seizing these trucks, he was found lying dead with a bullet injury to his head. There was strong suspicion of who might have killed him. Thereafter, they filed a writ petition in the High Court of Meghalaya seeking for the CBI inquiry, on two grounds - one, that the medical report clearly stated that the bullet entered from behind his head and exit from the forehead, and secondly, the gun was found in his left hand while he was actually a right-handed person. The police however, came up with the theory that it was a suicide. The petition filed by them, was rejected by the High Court of Meghalaya. They have now moved the Supreme Court, which is still pending.

Speaking about the issues relating to the environment, he said that large tracts of forest land have been destroyed without taking the forest clearance by companies who own cement plants. These 7-9 factories are located in the Jaintia Hill areas. Despite several reports, they have continuously been destroying the forest and have now started mining in those areas. There have been reports that the water from the nearby river, at times has turned blue and all the fish in it are found floating dead. They have filed a petition before the High Court, but it was returned with the direction to move to the National Green Tribunal. They have also filed PILs relating to bad conditions of roads in Meghalaya, as a result, of which the roads have improved.

XX. ROLE OF LAWYERS IN PROTECTING HUMAN RIGHTS OF PRISONERS

Ms. Madhurima Dhanuka

Coordinator, Prison Reforms Programme, CHRI

Ms. Madhurima Dhanuka talking about the role of lawyers, stated that lawyers have a broader role than just fighting a case in the court. It also includes advising and assisting the individuals and communities. Lawyers can make a difference not only in the life of an individual but also in the life of a family, community, and the legal justice system.

Ms. Dhanuka referred to the basic principle on role of lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba in 1990. As per these principles, the duties of lawyers include:

- (a) Advising clients as to their legal rights and obligations,
- (b) Assisting clients in every appropriate way, and
- (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

She stressed the client's instructions are very important for the lawyers to follow, and interaction with the clients is the most crucial.

Talking about the role of lawyers, Ms. Dhanuka elaborated that this includes,

- educating clients, witnesses, and others involved in criminal proceedings, and also in identifying and seeking to remedy systemic problems in criminal justice systems.
- Identifying systemic problems and developing solutions
- Having identified systemic problems, lawyers and paralegals can tackle them in a variety of ways, including through public interest litigation.

In prisons, lawyers can assist with the following:

- Identifying persons who are suitable for release or who are illegally detained
- Identifying and preventing unlawful actions by police

- Identifying those who are in need of medical attention/ special care
- Identifying children and other vulnerable suspects and defendants
- Assisting with diversion from formal criminal proceedings

Ms. Dhanuka concluded with stressing on the role of lawyers in the early stages of the criminal justice process, when the person arrested or detained is at his most vulnerable and maybe at risk of torture or other forms of ill-treatment.



Mr. Sunil Gupta
Advocate

Mr. Sunil Gupta while speaking about the right of prisoners spoke of the following rights that they are entitled to:

- Right to basic minimum needs
- Right to communication
- Right to access to law
- Rights against Arbitrary Prison Punishment
- Right to meaningful and gainful employment
- Right to be released on due dates

He also discussed about the remedies available to the inmates. These include,

- Intervention of lawyer at early stage of arrest
- To meet their client regularly and discuss each and every thing with the client.
- Disciplinary action can be taken if lawyer is not provided at an early stage.
- Effective communication with the clients

While talking about the role of lawyers in defending their clients, Mr. Gupta covered the following aspects;

- Effective handling of cases

- Effective representation

However, it is important that the lawyers are provided with records of prisoners which can otherwise lead to delay in procuring bail for their clients. Mr. Gupta stated that digital records should be provided to the lawyers.

During trials, the lawyers should be able to:

- Cross-examine all the witness and they should be the master of facts.
- Statement of defense should be made with proper interaction with their clients.

XXI. VISITATION RIGHTS



A. Interaction between lawyers and clients

Mr. Ravindra Vaidya

President, VARHAD

Mr. Ravindra Vaidya, who runs an NGO, VARHAD spoke about his organisation which is working for last 16 years in Amravati District, Maharashtra. Speaking about the importance of interaction between lawyers and clients, Mr. Vaidya said this is the most difficult area that is faced by the inmates who are incarcerated. With interaction, the social workers are able to solve many issues that are faced by the inmates. They are also working with children of prisoners who are outside the prison, for their education and other support services. They help with the Mulaqat of the parents and children inside the prisons, where a direct mulaqat is arranged without any mesh in between. Last year, the Maharashtra prison government has adopted a similar Mulaqat scheme for children for meeting their parents. The Government has also adopted a scheme of providing educational support to children of parents who are incarcerated.

In addition, VARHAD provides sureties to inmates who are poor, and are unable to furnish sureties. They are also filing petitions for providing parole and furlough to convicts after identifying such prisoners and sensitising the families. They filed 55 Writ petitions in a single year in Nagpur for releasing prisoners on parole and furlough. As a result, the system has improved of granting parole and furlough to prisoners in the Amravati and Vidarbha

area where they work. For some prisoners, they have also approached the legal aid service committee of the Supreme Court.

With regard to legal aid to convict prisoners, Mr. Vaidya explained that the problems faced by prisoners once they are convicted are very severe. They lose contact with their families since they are shifted to the Central prison, and the family members, by then have sold all their belongings like land, etc. to take care of the expenses during the trial. For such prisoners, they are not able to have access to legal aid advocates for filing appeals, either. VARHAD, with the help of social workers, identified such prisoners, and filed their appeals through advocates. In some cases they have filed appeals even after 5-6 years, which delay the High Court had waived off. In Supreme Court cases, out of 100 prisoners, only about 10 prisoners have been able to file appeals, due to various constraints of accessing legal aid lawyers, etc. Since they are an NGO they are only able to pay about Rs.500-1000 for filing an appeal. Through the initiative of VARHAD, 62 appeals were filed in Nagpur Bench out of which 31 prisoners were either acquitted or released on bail from High Court, Mr. Vaidya highlighted.

Mr. Vaidya concluded by saying that it is important to find ways to help prisoners languishing in jails through practical solutions which can help in solving their issues.

B. Visitation rights of families

Mr. Ravi Srivastava

Prison Program Manager, India Vision Foundation (IVF)

Mr. Ravi Srivastava spoke about the work being undertaken by India Vision Foundation, which was established by Dr. Kiran Bedi with the money awarded under the Magsaysay award. The Foundation works for vulnerable families and women and children.

IVF works with the children of prison inmates and manages the creches in Tihar as well as provides home support and community support to children of these inmates. For children upto 6 years, the children reside in the creches.

For the children above 6 years, IVF ensures that the children are admitted to schools. The children are provided with other support services like educational facilities, counselling, and other reformation programmes. In Haryana they provide IT programmes in 11 jails. Sports activities are also organised regularly inside the prisons.

IVF also ensures that the children are in touch with their families, especially the mother if she is incarcerated. They also make sure that regular meetings are held with the parents in the jail, where the parents are told about the progress of their children.

Under skill development, they have various activities, like making Khadi products. They also have reformation programmes through theater and dance therapy.

Mr. Srivastava shared an instance where they organised an open meeting of about 100 parents and children, where they could all meet freely without any bars, which was a very emotional event for both the parents and children.

Discussion

Mr. Ajay Verma stressed on the importance of interaction of lawyers and convicts. He spoke of the facts can only be ascertained by the person who is accused. He gave an example of an accused, who had already served his sentence, and he was appointed as his lawyer, he shared that the person was ultimately acquitted due to some evidentiary material that the accused had pointed out.

XXII. PRISON WAGES - VICTIM COMPENSATION FUND/ VICTIM WELFARE FUND



Santosh Upadhyay

Social Activist, Secretary, Bandi Adhikar Andolan

Mr. Santosh Upadhyay spoke about the torture that the prisoners are put through in prisons. Talking about the situation of Bihar, he says rate of conviction is connected to the good governance. Giving adequate wages to prisoners is not seen as a right of prisoners. He gave the differences that a worker earns for the same work outside the prison as compared to that inside the prison.

He stated that about 60% of wages of prisoners are cut and the money is not refunded to them neither when they are in jail or after they are released. Most of the prisoners are going through slavery while in prison. They are beaten up if they do not work, if they work they are not given their rightful dues, whatever they are producing they cannot use it, and they cannot form unions. These are all forms of slavery. Even though we talk of minimum wages, but this is not considered important for prisoners.

The prisoners mostly come from a very poor background. Their economic status is already very poor and the prisons add to their vulnerable situation.

Articles 21, 39, 41 and 43 of the Constitution of India recognize the rights of the prisoners related to their wages. The wages for semi-skilled and skilled work need to be given to the prisoners in accordance with the criteria as set by the State Government of a particular State, Mr. Upadhyay stressed. The undertrials should also be allowed to work, and not just convicts.

Mr. Upadhyay concluded with the following suggestions:

- The government should take measures to give their minimum wages to the prisoners in time, so that the family could benefit from it.
- The government should work and create means to train the prisoners and develop skills in them rather than treating them like slaves, so that they can improve economically.



Ms. Katyayini

Advocate, International Bridges to Justice, India

Victim Compensation Fund/ Victim Welfare Fund

Talking about the Victim Compensation Scheme, Ms. Katyayini informed that in every state, the parameters are laid down for awarding the compensation to the victims.

With regard to the Victim Welfare Fund, the prison administration can deduct certain sum of amount from the salary of the prisoners for his benefit. So, the money is deducted from the wages towards the victim welfare. However, this fund is lying unutilised.

Referring to a Supreme Court case, ***State of Gujarat and Anr. v. High Court of Gujarat, decided on 24.09.1998***, she informed that in this case, the apex court had directed to form a welfare fund by deducting wages from the salary of prisoners. Pursuant to this order, the Delhi government had amended the Delhi Prison Rules, 1988 in 2006. A new rule, Rule 39 A was inserted, which states that 75% of the wages shall be given to the prisoners and 25% of the wages shall be deducted and paid to the victim or their legal representative. It was also laid down that a 'common welfare fund' should be constituted in every jail in which wages shall be deposited and the superintendent shall be the head of the Victim Welfare Fund.

Prior to 2008, section 357 in CrPC dealt with the compensation to be given to the victims of the offences. In 2008, CrPC was amended and S.357A was inserted which stated that every state should have a victim welfare scheme, which would be guided by the Central Compensation Victim Fund. The fund had 200 crores to support and implement these schemes. In her research, Ms. Katyayini found two audit reports of these schemes, one of jail no. 6 and another of jail no. 7, Tihar. In the report of Jail no. 6, the auditors clearly stated that in 2016, around 19 lakh sum was lying unutilised. No register was being maintained and the same was the condition with regard to jail no. 7.

Ms. Katyayini further referred to a Himachal Pradesh High court case, ***Mahesh Kumar and Ors. v. State of H.P. and Ors., CWPII no. 11 of 2007, decided on 13.6.13***, where the High

Court of Himachal Pradesh directed that the wages that had been deducted from the prisoners' earnings be refunded stating that these deductions were unconstitutional, unlawful, and illegal. The court further directed that an interest of 9% be paid to the convicts from whom the wages have been deducted.

Therefore, in view of the fact, that the deduction from prisoners' wages is not a valid deduction, they have challenged the victim welfare scheme, as it exists in Delhi, Ms. Katyayini informed.

XXIII. PLAN OF ACTION



After the three-day training programme along with discussions and consultations, a Plan of Action was formulated taking in view the suggestions put forward by the resource persons and the participants from different States. It was agreed that lawyers along with activists and other civil society organisations, academicians, researchers, etc. will take up issues that they feel are important in their particular State. The lawyers further agreed that they would be filing Public Interest Litigations in their States, along with RTIs, as well as following up with the concerned authorities to address these issues.

Some of the issues that were discussed and highlighted in the 3-day meeting are listed out as follows:

1. **Legal Aid** - For improving legal aid in their particular States, the lawyers and activists from the following States expressed their willingness to take up some of the issues by filing public interest litigations or through their respective LSAs.

- **Gujarat** - Capacity building / training of panel lawyers
- **Chhattisgarh** - Access to trial court records to panel lawyers
- **Orissa** – speedy trial / analyse the court delay
- **Haryana** – work allotted to panel lawyers outside their work purview

- **Meghalaya/ Rajasthan** - For issuing of advisory against lobbying for empanelment
 - Enhancement of honorarium for panel lawyers to ensure more quality work.
2. **Bail / Bonds / Sureties** - For issues with regard to bail, personal bond, sureties, the following States agreed to file petitions:
- **Chhattisgarh/ Punjab/ Rajasthan/ MP/ Manipur/ Orissa/ Tripura/ Meghalaya LSA** - The lawyers from these States expressed the need to,
 - Challenge the rigorous conditions on bail;
 - File PIL for release on personal bond as per Moti Ram judgment
 - File RTIs for data
 - Challenge the constitutionality of S.437A of CrPC
 - **Maharashtra (Albir Foundation)** - File a petition on bail amount, which should be determined as per the socio-economic condition of the arrestee.
3. **Women Prisoners** - For women prisoners, the following issues were highlighted to be addressed through PILs:
- Female doctors in female prisons
 - Gynaecologists
 - Open prisons for women
 - Facilities for children staying in prisons
 - Hygiene – availability of sanitary pads, toiletries, clothing, etc.
 - Involvement of NGOs
 - For setting up of guidelines for searching and frisking of women prisoners
 - Separate kitchen and management for female prisons
 - Addressing issues regarding women with battered women syndrome.
4. **Mental Health** - On issues of prisoners suffering from mental health in prisons, lawyers and activists from the following States agreed to take up some of the issues:

- **Gujarat/ Chhattisgarh/ Rajasthan** - Appointment of counselors in prisons
 - **Tamil Nadu (The Banyan)** - Capacity building of the prison staff on identification of inmates with mental health issues
 - **Gujarat** - Release of prisoners with mental illness as per directions in the case - Re: Inhuman Conditions in 1382 Prisons
 - **Rajasthan** - Implementation of existing guidelines
5. **Disabled / Elderly Prisoners** – For disabled and elderly prisoners, the following issues were earmarked:
- Identify prisoners with disability and elderly prisoners and make availability of aids and appliances
 - Identify NGOs working in disability to work with prisoners with disability on rehabilitation, recreation facility, availability of braille/ audio books, or facilities for hearing impaired
 - **Rajasthan/ Chhattisgarh** - Conduct access audits in prisons
 - **Delhi** - Appointment of disability liaison officers in prisons
 - Training of prison staff on the needs of disabled/ elderly prisoners
 - File PILs for release of disabled and elderly prisoners based on directions given in Re-Inhuman conditions in 1382 prisons.
6. **Foreign Prisoners** - For foreign prisoners, the following issues were highlighted for filing PILs:
- Issue of denial of bail, parole or furlough
7. **Juveniles** - For juveniles, the following issues were agreed to be taken up:
- Infrastructure and facilities in observation homes
 - Child friendly environment before the juvenile justice board and child welfare committee
 - Right to education
 - Challenging the transfer of cases of juveniles between the age group of 16-18 years apprehended for heinous crimes to Children’s Court.
 - Challenge to the rule of 18 to 16 – where a person has been wrongly treated as an adult

- Appointment of counselors, and better medical facilities

8. **Medical Aid Facilities in Prisons** - With regard to providing better medical aid facilities in prisons, it was agreed to file RTIs and PILs on the following issues:

- Lack of doctors
- Lack of medicines
- Medical examination by prison doctors to identify cases of police torture at admission time
- Weekly visit of doctors from civil hospitals for examination of inmates to ensure there is no negligence

9. **Checking Unnecessary Detention**

With regard to improving arrest procedures and to ensure that the Magistrates are able to check unnecessary detentions, the following issues were identified to be taken up -

- Compliance of section 41 of the CrPC and implementation of guidelines set out by Supreme Court in the case, ***Arnesh Kumar v. State of Bihar***
- Availability of remand data after arrest to panel lawyers – **Rajasthan**
- Training of magistrates in compliance of guidelines set out by Supreme Court in ***Re-inhuman Conditions in 1382 Prisons***.

10. ***Re-inhuman Conditions in 1382 Prisons*** - For better implementation of directions laid down in *Re-inhuman Conditions in 1382 Prisons, W.P.(C) 406 of 2013*, by the Supreme Court of India, the need was felt to file RTIs / PILs on the following issues:

- Accessing reports of Undertrial Review Committees
- Accessing data of the no. of persons eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the CrPC read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985;
- Releasing on bail persons imprisoned for offences which carry a maximum punishment of 2 years;
- Releasing on bail persons detained under Sections 107, 108, 109 and 151 of Cr.P.C.;

- Accessing data of the no. of persons who are sick or infirm and require specialized medical treatment (S.437 of the Code), through RTIs and filing applications/ PILs for their release;
- Accessing details of women offenders (S.437 of the Code) through RTIs and filing applications/ PILs for their release;
- Identifying the no. of first time male offenders between the ages 19 and 21 who are in custody for offences punishable with less than 7 years of imprisonment and have undergone atleast 1/4th of the maximum sentence, and file PIL for their release;
- Accessing data of no. of persons who are of unsound mind through RTIs and filing applications/ PILs for their release;
- Identifying the no. of persons who are eligible for release under Section 437(6) of the Code and file PILs for their release;
- Implementation of Probation of Offenders Act;
- Guidelines to be set as per section 55A of the CrPC (health and safety of arrested person)
- Remission of sentence

11. **Custodial Torture and Death cases** - In cases of death in custody, or custodial torture cases, the following issues were identified to be taken up through PILs:

- Investigation/ inquiry whether conducted in cases of Custodial torture and Death
- Compensation whether granted in cases of Custodial torture and Death
- Compliance of section 176(1)(a) of the CrPC
- Definition of unnatural death is unclear under the Indian law.

12. **Appointment of a Visitors Board** - For the appointment of a Visitors Board it was agreed that PILs need to be filed in different States for an-

- Independent and strong Visitors Board comprising of : Doctors, Counselors, Lawyers, Criminologists, Social Activists to be appointed as Non-Official Visitors, along with the Official Visitors, as per the MHA Advisory, 2011 and the Supreme Court guidelines in ***Sanjay Suri vs. Delhi Administration, Delhi and Anr., 1988 (Supp) SCC 160.***

13. **Communication/ Visitation Rights** - For lawyers and families visiting the inmates the following issues need to be addressed-

- Inspection of female visitors by female prison officials
- Mulaqat infrastructure – in person interaction
- Weekly call

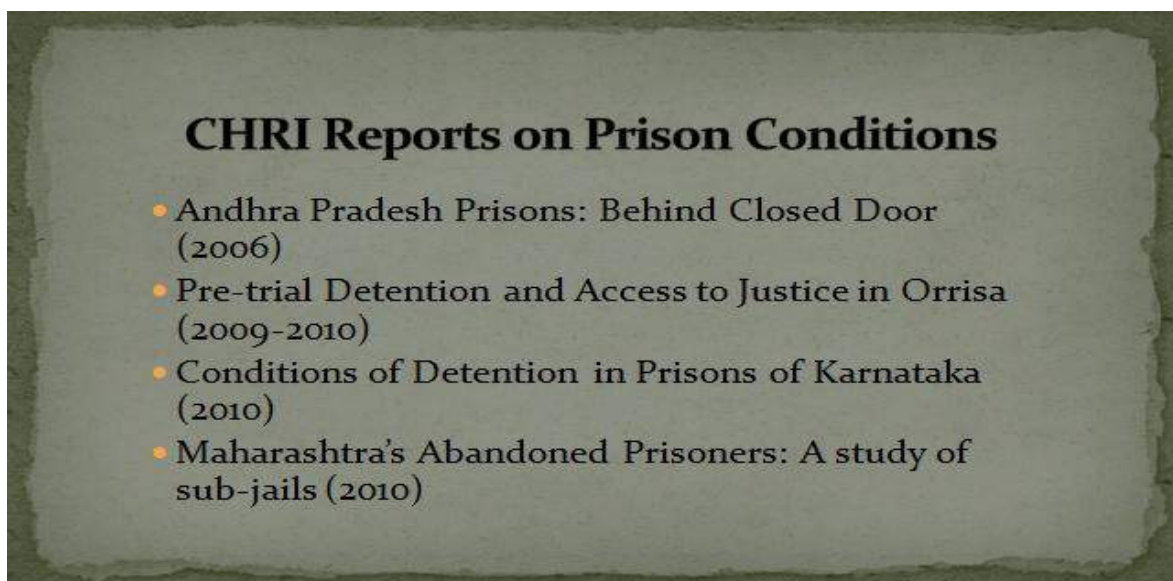
14. **Minimum Wages for the Prisoners** – File PILs on the following issues:

- Compliance of minimum wages for the prisoners
- Increase in the wages for the prisoners.

ANNEXURE 1

ANNEXURE 1A

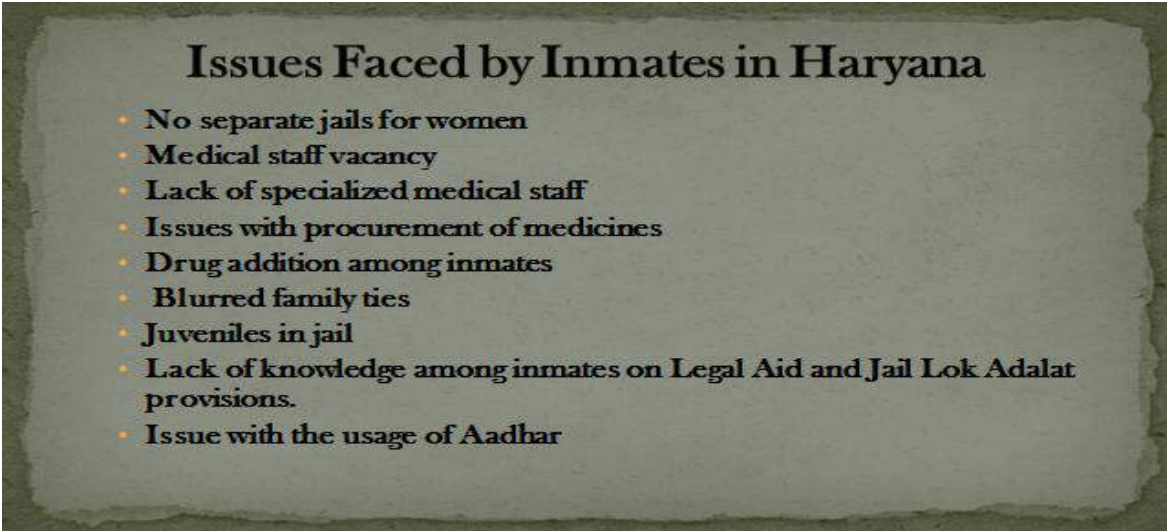
Ms. Sabika Abbas-Prison Conditions





Overview of Haryana Prisons

- Total 19 Jails: Three Central Jails and 16 District Prisons
- Prison Capacity: 18,196
- Total Population, as on 1st October 2017, 20,100 comprising of 19,431 male and 669 female prisoners.
- Convicted prisoners: 7192 male and 299 female
- Undertrial prisoners: 12,239 male and 370 female
- 62.7% Undertrial population
- Total Overcrowding: 10%



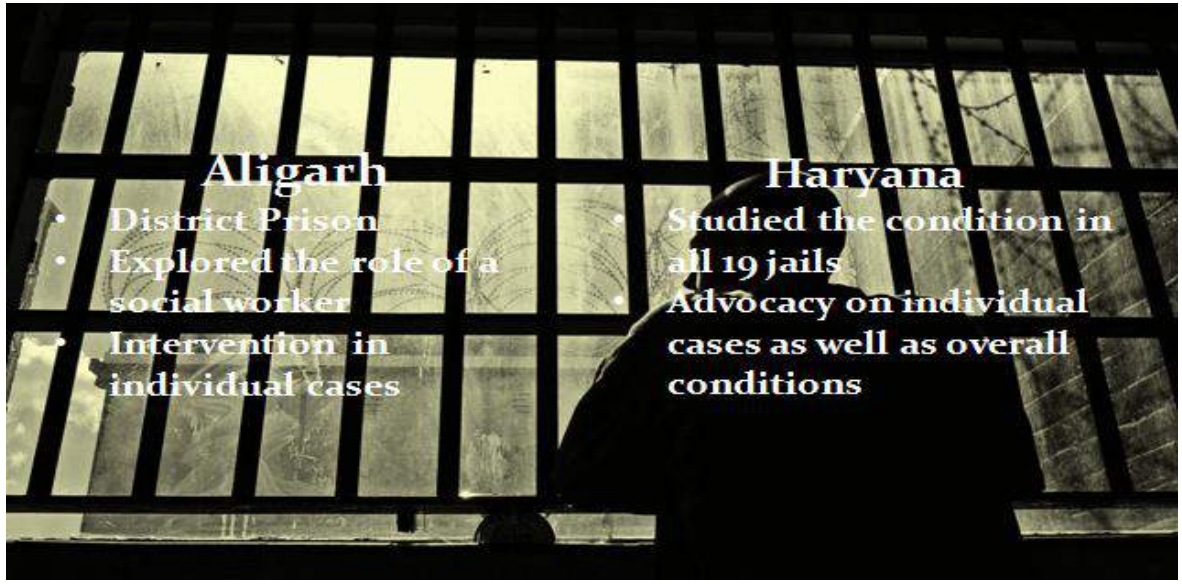
Issues Faced by Inmates in Haryana

- No separate jails for women
- Medical staff vacancy
- Lack of specialized medical staff
- Issues with procurement of medicines
- Drug addition among inmates
- Blurred family ties
- Juveniles in jail
- Lack of knowledge among inmates on Legal Aid and Jail Lok Adalat provisions.
- Issue with the usage of Aadhar



Good Practices

- Prisoner information software: PHOENIX
- Prison Infrastructure
- Prison Inmate Calling System (PICS)
- Active canteen: cashless system
 - *Mulqaat* system
 - Comprehensive website
- NIOS and IGNOU classes and courses
- Technical training through Public-Private Partnership



Aligarh

- District Prison
- Explored the role of a social worker
- Intervention in individual cases

Haryana

- Studied the condition in all 19 jails
- Advocacy on individual cases as well as overall conditions

Prison Reforms: Role of Lawyers

- Lawyers: protector and enforcers of rights
- Can play pro-active role in limiting abuse of power
- Can act as watchdogs of the system
- Can use PIL as a tool to represent the vulnerable voices
- Can act as a link between the prisoner and the judiciary
- Case study: Role played by legal aid lawyers in Hisar

ANNEXURE 1B

Mr. Anshu Raj Singh-Prisons of Bihar- Status Report

Prisons of Bihar – Status Report

- In association with Bihar State Legal Services Authority (BSLSA), HRLN did an inspection of all the prisons of Bihar.
- The team went inside every prison ward and interacted with every inmate. Questions regarding their case, legal representation, Court production, issues they face in the prison etc. were asked.
- In addition to this, the team also went to the prison hospital, kitchen, the common toilets, had a look at the prison infrastructure and interacted with the prison staff regarding the issues they face.
- During the visits the team from HRLN was accompanied by either the CJM or ACJM from the local Court as the representative of DSLSA.
- On the basis of the inspections, interim reports for every prison and a final status report were published.

MAJOR ISSUES RAISED

- **Prison Infrastructure.**
- **Access to Justice.**
- **Problems Specific to Women Prisoners.**
- **Prisoner's Health.**
- **Remissions.**
- **Prison Punishments.**

INFRASTRUCTURE

- Old dilapidated colonial buildings.
- Overcrowding in many prisons.
- Dysfunctional Toilets.
- Disproportionately low number of fan in wards.
- No plan to deal with disasters like fire, earthquake etc.

ACCESS TO JUSTICE

- Mechanical Court Production.
- Barely functional legal aid system.
- No proper mechanism to do 'Mulaqat'.

WOMEN PRISONERS

- No prison hospital for women inmates.
- Lady doctors only in 6 prisons.
- Extreme lack of legal awareness.
- Social Ostracism.

PRISON'S HEALTH

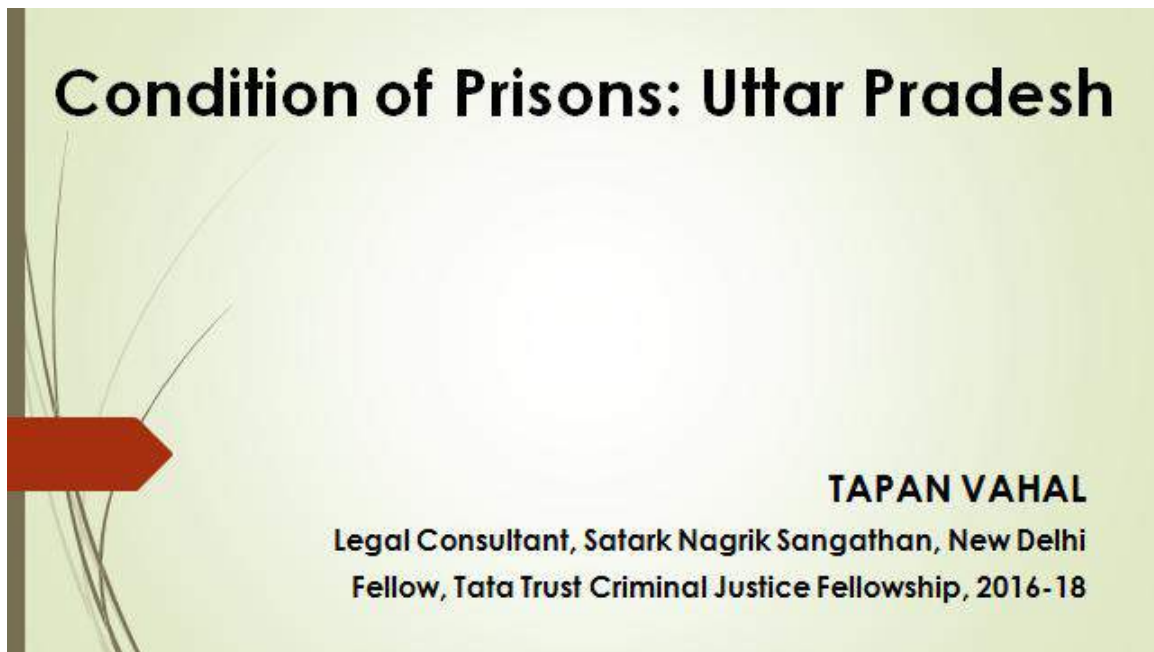
- Lack of medicines as well as facilities to store them.
- Machines like X-Rays etc. mostly dysfunctional.
- KITS required as per the Prisoner Health Screening Form not available.
- Severe shortage of medical staff.

REMISSIONS & PRISON PUNISHMENTS

- Premature release was stopped at the time of inspection because of the stay by the Supreme Court.
- Some punishments mentioned in the prison manual are inhuman and violative of the fundamental rights.

ANNEXURE 1C

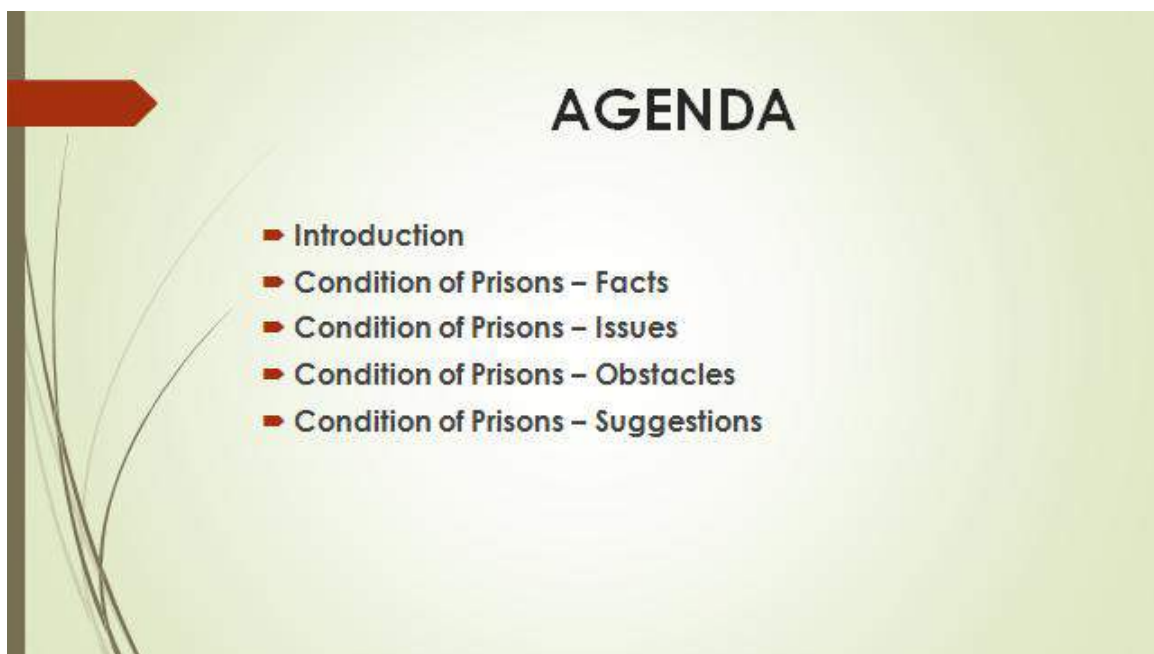
Mr. Tapan Vahal - Conditions of prisons: Uttar Pradesh



Condition of Prisons: Uttar Pradesh

TAPAN VAHAL
Legal Consultant, Satark Nagrik Sangathan, New Delhi
Fellow, Tata Trust Criminal Justice Fellowship, 2016-18

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AGENDA

- Introduction
- Condition of Prisons – Facts
- Condition of Prisons – Issues
- Condition of Prisons – Obstacles
- Condition of Prisons – Suggestions

The slide features a light green background with a decorative vertical bar on the left side containing thin, curved lines and a red arrow pointing right. The word 'AGENDA' is centered in a large, bold, black font. Below it, a list of five items is presented, each preceded by a red square bullet point.

INTRODUCTION

- **Worked with DLSA in the districts of Bulandshahr, Aligarh & Gautam Budh Nagar:**
 - **Legal aid**
 Identification of the prisoners who are in need of legal aid and forwarding their matters to the respective DLSAs
 - **Bail**
 Identification of cases where bail should have been granted as a matter of right
 - **Improvement of Medical facilities**
 Set-up medical camps in the prison with the assistance of local medical association and other stakeholders

FACTS

	Official Strength	Actual Population	Undertrial	Convicted
Uttar Pradesh	58400	96580	69125	27455
Bulandshahr	890	1979	1448	531
Aligarh (+ Hathras)	1148	2482+928	2041+697	441+231
Gautam Budh Nagar	3750	2108	1931	177

This data is extracted from the Prison Administration and Reform Services, Government of Uttar Pradesh. The data was last updated on April 30, 2018.

FACTS (contd.)

	Official Strength	Actual Data
Prison Staff	10407	6972
Doctors	134	77

ISSUES

- Over-crowding
- Inability to furnish Bail amount or Surety
- Lack of proper monitoring of ongoing matters
- Lack of Medical facilities
- Performance of District Legal Service Authorities
- Dysfunctional state of Courts

OBSTACLES

- Access to Prison
- Delay in receiving permissions
- Lack of proper channels in place to assist prisoners
- Lack of awareness amongst the stakeholders

SUGGESTIONS

- Collaboration with local institutions like Civil Society Organizations, Universities and other similar establishments
- A system of performance-based review of the honorarium of the legal aid lawyers
- Increase in accessibility of prisons will also increase their accountability and transparency
- Sensitivity towards the rights of prisoners
- Increase in Prison staff strength

ANNEXURE 1D

Mr. Jyotiranjana Senapati - Conditions of Prisons in Odisha

Condition of prisons in Odisha

JYOTIRANJANA SENAPATI
ADVOCATE
ODISHA

Prisons in Odisha

Sl.No	Categorie	Number
1.	Open Air Jail	1
2.	Circle Jail	5
3.	District Jails	9
4.	Nari Bandi Niketan	1
5.	Special Jail	2
6.	Special Sub-Jail	5
7.	Sub-Jail	68
8.	Total	91

Prison population in Odisha

Sl.No		Number
1.	Total accommodation capacity	16,830
2.	Prison population	16,010
3.	Convicted	3,550
4.	Undertrial	12,460

Women prisoners & their children

Sl.No		Number
1.	Total women prisoners	580
2.	Convicted prisoners	117
3.	Undertrials	462
4.	Children in the prisons with their mother	43

Health & medical facility in prisons

- Regular Doctors are posted in 23 prisons
- Doctors on contractual basis are posted in 48 prisons
- In 13 prisons, pharmacists are available.
- Prisoners having mental health issues-265
- Psychiatrist is available in two circle jails.

Staffs

Total sanctioned staffs-2346

Total staff-1883

Education & vocational training

- In 11 prisons, Teachers are posted
- Library facility is available in 25 prisons.
- Some of the prisons are giving vocational training to the prisoners.

Broader Issue


- Unlawful detention
- Delay in transfer of custody from executive to judicial magistrate

Suggestions

- Appointment of Psychiatrists.
- Establishment of De-addiction centres.
- Appointment of permanent law officers in DLSA.
- Linking prisons with law schools.
- Home visit by the PLVs.
- Centralised data-base of cases and its progress.

ANNEXURE 1E

Ms. Avni Bahri-Custodial Home Reform Cell



**CUSTODIAL HOME
REFORM CELL**

Avni Bahri
Legal Expert
National Commission For Women

29th JUNE 2018

INSPECTION OF CUSTODIAL HOMES

- ❖ To study conditions and facilities available to women inmates in jails
- ❖ Sharing of recommendations
- ❖ Analysis of the action taken report
- ❖ Monitoring of progress

2

MANDATE

- ❖ The National Commission for Women under Section 10 (1) (k) of the National Commission for Women Act, 1990 is *inter-alia* mandated to inspect or have inspected a jail, remand home, women's institution or other place of custody where women are housed as prisoners.

1

JAIL INSPECTION PROFORMA

Proforma for inspection of jails

- ❖ Infrastructure
- ❖ Health-care facilities
- ❖ Skill Development Training
- ❖ Welfare activities
- ❖ Availability of legal safeguards

3

OBSERVATIONS

- ❖ **Vacancy**
 - Shortage of staff owing to vacant positions
 - 90% of male staff is recruited against the sanctioned posts
- ❖ **Infrastructure**
 - Good in some while average in most
 - Overcrowding (mainly district jails)

6



OBSERVATIONS

- ❖ **Vacancy**
 - Shortage of staff owing to vacant positions
 - 90% of male staff is recruited against the sanctioned posts
- ❖ **Infrastructure**
 - Good in some while average in most
 - Overcrowding (mainly district jails)

6

OBSERVATIONS

- ❖ **Health-care facilities**
 - Non-availability of health care professionals, psychiatrists/ counsellors/ social workers
 - Absence of female specialist doctors
 - Health-card are not maintained
 - Vaccinations are not administered
 - Medical staff is not available round the clock

7

OBSERVATIONS

❖ Welfare Measures

- Common areas such as prayer room, vocational room/facilities, school, creche etc. are not made available in most district jails
- Lack of recreational activities
- No road-map prepared
- No initiative to make the inmate's children familiar with the outside world
- Absence of adult literacy classes in most jails

8

OBSERVATIONS

❖ Vocational/Skill Development Training

- Lack of diverse educational, vocational, and other programs as available in men's prisons
- The programs tend to reflect stereotypical "female" occupations
- Certificate of training not provided in most district jails

9

GENERAL OBSERVATIONS

- Inmates with special needs- physically/ mentally challenged/ pregnant/ lactating are not kept separately
- Number of sanitary napkin packets provided are not adequate
- Exclusive kitchen/ kitchen garden not available
- Hot water facility not available
- Jail staff not trained in handling the women with special cases
- Less involvement of civil society/NGO
- Judgemental attitude of the staff

11

RECOMMENDATIONS



- Sensitization and training of the staff
- Legal aid to be made meaningful, increase in the salary of lawyers.
- Case status to be updated online by SLSA/DLSA
- Separate cell to be created for inmates with special needs esp. women post-natal stage
- Literate inmates or inmates trained in specific skill to be engaged in teaching other inmates
- Segregation of first time offenders from convicts
- Access to female counselors/psychologists at least on a weekly basis or as frequently as needed by them.

13

RECOMMENDATIONS



- Interns/residents of medical colleges in the vicinity for attending the inmates could also be explored
- The media and public men should be allowed to visit prisons and allied correctional institutions periodically so that public may have first-hand information about conditions inside prisons and be willing to co-operate with prison officials in rehabilitation work.

14

RECOMMENDATIONS



- Comprehensive after-care programme to be put in place, covering employment, financial support, regaining of child custody, shelter, counselling, continuity of health care services etc.
- Vocational/ skill development training through the Vocational Training Institutes recognized by Directorate General of Employment and Training under the Ministry of Labour and Employment.

15

ANNEXURE 1F

Dr Sandeep Govil-Detention of Mentally ill in prisons

Detention of Mentally Ill in Prisons

Dr.Sandeep Govil
Consultant Psychiatrist
Max Super Speciality Hospital,
Shalimar Bagh

History of the Problem: Have We Learned Anything in 200 Years?

- Prisons and jails were commonly used to house mentally disordered persons in colonial America. If a “lunatic” or “mad person” was not violent, he or she would usually be kept at home. But those that were assaultive or violent would be confined in jail. As early as 1694, legislation was passed in the Massachusetts Bay Colony authorizing confinement in jail for any person “lunatic and so furiously mad as to render it dangerous to the peace or the safety of the good people for such lunatic person to go at large.

History

- From 1770 to 1820 in the United States, mentally ill persons were routinely confined in prisons and jails. Because this practice was regarded as inhumane and problematic, until 1970, such persons were routinely confined in hospitals. Since 1970, we have returned to the earlier practice of routinely confining such persons in prisons and jails.
- In 2012, there were estimated to be 356,268 inmates with severe mental illness in prisons and jails. There were also approximately 35,000 patients with severe mental illness in state psychiatric hospitals. Thus, the number of mentally ill persons in prisons and jails was 10 times the number remaining in state hospitals.

Mentally Ill Person In jail

- Not only are the numbers of mentally ill in prisons and jails continuing to climb, the severity of inmates' illnesses is on the rise as well.
- Many inmates with mental illness need intensive treatment, and officials in the prisons and jails feel compelled to provide the hospital-level care that these inmates need.
- The root cause of the problem is the continuing closure of state psychiatric hospitals and the failure of mental health officials to provide appropriate aftercare for the released patients.

Problems association with incarcerating mentally ill persons

- Jail/prison overcrowding resulting from mentally ill prisoners remaining behind bars longer than other prisoners
- Behavioral issues cause disturbance to other prisoners and correctional staff
- Physical attacks on correctional staff and other prisoners
- Victimization of prisoners with mental illness in disproportionate numbers
- Deterioration in the psychiatric condition of inmates with mental illness as they go without treatment

Problems Associated with Placing Seriously Mentally ill Individuals

- Mentally ill prisoners remain in prison and jail longer than regular prisoners and thus contribute to overcrowding.
- Mentally ill prisoners, especially those not being treated, cause major behavioral problems in prisons and jails.
- Mentally ill prisoners are disproportionately abused, beaten, and/or raped.
- Mentally ill prisoners often become much sicker in prison and jail, especially if they are not being treated.
- Mentally ill prisoners are much more likely to spend time in solitary confinement

Problems Associated with Placing Seriously Mentally ill Individuals

- Suicides in prisons and jails occur disproportionately more often among prisoners who are mentally ill.
- Mentally ill prisoners cost the country and state much more than other prisoners.
- Mentally ill prisoners are much more likely than regular prisoners to return to prison or jail in a “revolving door” phenomenon.

Indian Scenario

- As of now, According to National crime Records bureau, there are 5,394 mentally ill prisoners out of total 418,536 people in jail

Indian Scenario

- Mental Health services follow British model.
- Mental asylums were built primarily to protect the community...not necessarily for treatment.
- October 2017 ,NIMHANS Survey revealed that South indian states have most such mentally unstable prisoners.
- Karnataka and Kerala top the list with 383 and 305 , while Andhra and Telangana 144 and 133 .

Indian Scenario

- Banning the Restricted items like Alcohol, cannabis , Beedi , ganja inside the prison improved the Mental Health
- Staff prisoner ratio also shown improved effects
- Introduction of the Yoga and meditation along with Psychological Counselling help to stabilize mind better.

Indian Scenario

- Drug de-addiction ward in Tihar jail and Separate Psychiatric Ward in Tihar jail Hospital .
- Regular Yoga and Meditation With help of NGO.
- Half way Homes for Mentally ill Prisoners, proposed by Delhi high Court .

ANNEXURE 1G

Ms. Seema Baquer-Vulnerable categories: Disabled, Sick, Old, Terminally ill



Prisoners with Disabilities

PIL: Concerned Action vs Govt. of NCT Delhi & Ors (HRLN), 2013

Prisoners with Disabilities are present in almost all the jails of Delhi

Total of 54 such prisoners

Range includes:

- Physical disability
- Locomotor disability
- Speech and Hearing impairment
- Visual disability
- Psycho-social disability (mental illness)

Changed Scenario

Replacing Act: The Rights of Persons with Disabilities Act, 2016

Gone from 7 to 21 disabilities

Disabilities include:

Physical Disability: Locomotor Disability (Leprosy-cured; cerebral palsy; dwarfism; muscular dystrophy; acid attack victims), Visual Impairment (blindness, low-vision), Hearing Impairment (Deaf, Hard of Hearing), Speech and Language Disability

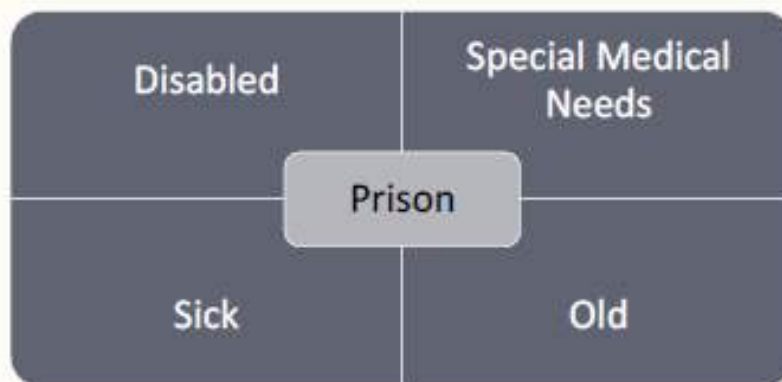
Intellectual Disability: Learning Disabilities & Autism

Mental Illness

Disability due to: Neurological Disorders (Multiple Sclerosis, Parkinson's), Blood Disorders (Haemophilia, Thalassemia, Sickle Cell Disorder)

Multiple Disabilities including Deaf Blindness

Vulnerable Categories Within



The Fluid Category



Beggary Homes

Persons affected by leprosy

Persons with psychological disabilities

Can also extend to blind, cripple or otherwise incurably helpless

Why

Respect for inherent dignity

Recognition of the heterogenous nature of the prison population

Non-discrimination on the grounds of disability

Reasonable accommodation

Duty of care on prison authorities & State

Responsibility of health needs

Supporting Documents

UNCRPD, 2007: Art 13 (Access to Justice) & Articles 3, 4 & 5

Rights of Persons with Disabilities Act, 2016: Articles 3 & 12

Principles for the protection of persons with mental illness and the improvement of mental health care (UN Resolution 46/119 of 17 December 1991)

UN Resolution 70/175 on Standard Minimum Rules for the Treatment of Prisoners (Also known as the Nelson Mandela Rules): Rules 1, 2(2), 5(2), 22, 24, 25 & 26

International Covenant on Civil and Political Rights (ICCPR): Article 7 & 10

Needed

Sensitive approach

Accessibility: Physical, Communication, Provisions & Transport

Aids & Appliances

Case by case approach

Special needs like dietary requirements

Regular training of staff (Initial & On-job refresher)

Inter-linkage with disability organisations & experts

Enlistment of support persons interpreters, special educators etc.

Grievance redressal mechanisms

Review Committee

Financial commitment – Budgetary allocation

Thank you

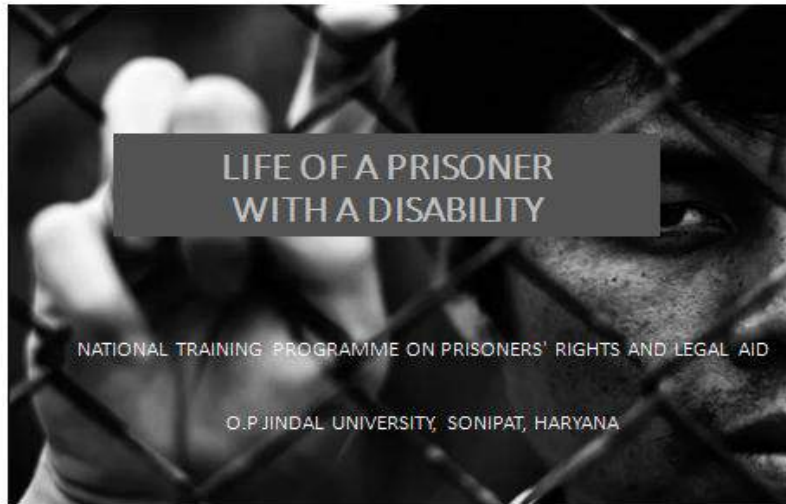
Further Reading

Handbook on Prisoners with Special Needs, UN Office on Drugs and Crime, 2009

Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders, UN Office on Drugs and Crime, 2012

ANNEXURE 1H

Mr Nipun Malhotra-Life of a Prisoner with a Disability



INTRODUCTION

- The Americans with Disabilities Act, 1990 vs. Rights of Persons with Disabilities, 2016
- Rights of Prisoners under Indian Law
- The Reality of Prisoners with Disability in India
- A Look Inside the Delhi Jails
- The Case of GN Saibaba
- Recommendations



RIGHTS OF PRISONERS WITH DISABILITIES IN THE AMERICAN DISABILITY ACT, 1990

- Prison Rights for the Prisoners with Disabilities came into limelight after the following cases. For example,
 - Goodman v. Georgia
 - Gorman v. Easley
 - Duffy vs RivelandThese cases helped in the better implementation of the ADA within prison boundaries.
- Prisoners with disabilities are protected by the following two laws in the US:
 - Section 504 of the Rehabilitation Act of 1973;
 - Title II of the Americans with Disabilities Act (State & Local Government Activities)





RIGHTS OF PRISONERS WITH DISABILITIES IN THE UNCRPD, 2006

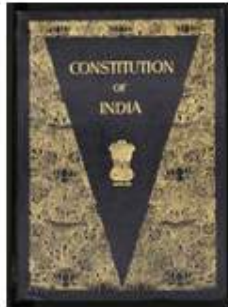


- India is a ratifying signatory to the UN Convention on the Rights of Persons with Disabilities (UNCRPD) wherein, specific protections for persons with disabilities in relation to state custody are described under
 - **Article 15(1)** stating: *"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."*
 - **Article 15(2)** of the Convention places an obligation on the state to protect persons with disabilities from cruel degrading or inhuman treatment and punishment states that *"States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities from being subjected to torture or cruel, inhuman or degrading treatment or punishment."*

WHAT THE RIGHTS OF PERSONS WITH DISABILITIES, 2016 SAYS ABOUT PRISONERS WITH DISABILITIES

NOTHING !!!

RIGHTS OF PRISONERS UNDER INDIAN LAW



The fundamental rights are applicable to all prisoners despite the crime committed. Thus, the Golden Triangle of the Indian Constitution protects them when confined to the jails too.

Article 14: Equality before the law. The state shall not deny any person equality before the law or equal protection of law within the territorial limits of India or prohibition on the grounds of race, caste, religion, sex or place of birth.

Article 19: Protection of certain rights pertaining to an individual's freedom of speech & expression, assembling in public spaces, free movement, employment etc.

Article 21: Protection of life and personal liberty, no person shall be deprived of his personal liberty except according to the procedures established by law.

The serious lack of implementation of the Indian Law leaves us with one critical question:

"Have persons with disabilities been forgotten?"

THE REALITY IN INDIA

Source: Access audits of Tihar, Mandoli, and Rohini Jails conducted by Nipman Foundation

Physical Infrastructure	✗
Physical and Mental Health	✗
Skill Development	✗



*Only for Source: H

8

INSIDE DELHI JAILS

Entrances



Entry to the Jail HQ at a height of 10"
(Mandoli Jail)



In accessible entry via the small iron gates. Small iron gates at a height of 17" from the floor surface.
(Rohini Jail)



Upon entry into the Jail HQ, Biometric device placed at a height of 47"
(Mandoli Jail)

9

Administrative Area



Table for administrative use at an appropriate height, Clear knee space for wheelchair users. (Mandoli Jail)



Registration table at a height of 48", inaccessible to a wheelchair user (Rohini Jail)



Air cooler obstructing the passage to the washroom
Distance of only 22" between the cooler and handrail.
Flight of five steps leading to the Shinakt Kaqsh with abruptly ending handrails (Rohini Jail)

10

Medical Facility



Entrance to the medical facility has a steep ramp (Tihar Jail)



Flight of five steps with a total height of 28" leading to the Medical Inspection Room and Meeting Room (Rohini Jail)

11

Mulaqaat Rooms (Meeting Rooms)



Presence of the Meeting room on the second floor, completely inaccessible to wheelchair users. And an unsystematic and unexpected presence of a steep ramp in between flight of steps connecting two floors. (Rohini Jail)



Entrance to the Meeting/Mulaqaat Room has steps (Tihar Jail)



All 34 counters inside the Mulaqaat Room were at an appropriate height of 36". (Mandoli Jail)

12

General Facilities



Presence of a ramp of an appropriate slope with hand rail on one side at two levels leading to Ward No. 1 (Mandoli Jail)



Presence of a wheelchair with signage upon entry into the building. (Mandoli Jail)

13

General Facilities



Bad condition of the only wheelchair available (Tihar Jail)



Absence of operational water cooler for inmates on the ground floor, while present on 1st and 2nd floor (Rohini Jail)

14

Bedding



In firm bed height not adjustable (Tihar Jail)



No beds available for inmates* (Rohini and Mandoli Jail)

*Representative image

15

Toilets and Bathrooms



Accessible washrooms with grab bars at both sides at a distance of 24"; accessible wash basin and doorway (Mandoli Jail)



Steps to the toilet (Tihar Jail)



No handles on the door and no grab bar near the urinal (Tihar Jail)

16

Langar Room (Kitchen/Canteens)



Presence of a ramp at a height of 13" towards the Canteen and the Press Room (Mandoli Jail)



Entry into the Langar room (Kitchen)
Absence of a ramp; flight of two steps with a total height of 9.5" (Mandoli Jail)



Canteen counters at a height of 44.5", inaccessible to a wheelchair user (Rohini Jail)

17

Recreational Area



Entrance to the Yoga Room has steps (Tihar Jail)



Entrance to the FM Room with a width of 18" (Tihar Jail)



Un levelled circumference around trees and plantations; obstruction of the path due to improper placement of plant pots in recreational area. (Tihar Jail)

18

THE CURIOUS CASE OF GN SAIBABA



- In 2015, Wheelchair-bound GN Saibaba, English Professor of Delhi University, has been accused of having links with Maoists. The Bombay High Court canceled his bail. Senior lawyers and civil liberties activists questioned the timing and the nature of a surrender order that requires Saibaba, who he is paralysed from waist-downward.
- His wife claimed he had 90% disability only in both legs. But by the time he finally got bail in July 2015, his left arm which was functional earlier had got disabled. ***"My husband needs help in even using the toilet," she said. "There, he could not even access a western toilet for six months, he was exposed to the rain and cold in the solitary and [extra-security] cell. His left arm's ligament and spinal cord got damaged in jail. The court wants him to now surrender within 48 hours. Do they have any idea of the problems a 90% disabled person faces?"***
- After 3 years he has been sentenced to life imprisonment but it will be appealed in the higher courts. Although we are not challenging the verdict but our discussion here is rights of prisoners.



Source - Scroll

19

BASIC RIGHTS AND RECOMMENDATIONS



- ✓ Assistive care
- ✓ Skill based utilization
- ✓ Accessible infrastructure
- ✓ No discrimination policies
- ✓ Counselling facilities for inmates
- ✓ Reasonable living conditions to PwDs' requirements
- ✓ Partner with NGOs working for disabilities to address work-based problems
- ✓ Monitoring of participation that must be provided by prison authorities



NGO PARTNERSHIP FOR SKILL TRAINING



ELECTRONIC TRAINING



VOCATIONAL TRAINING



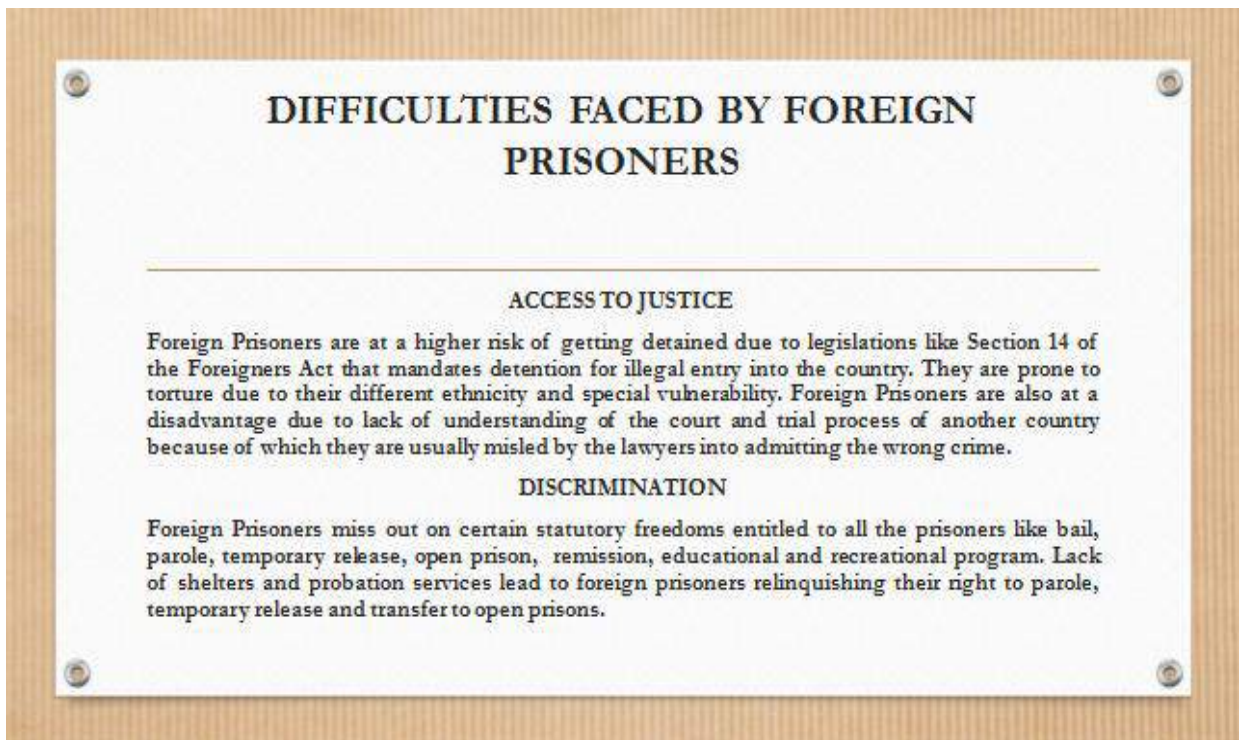
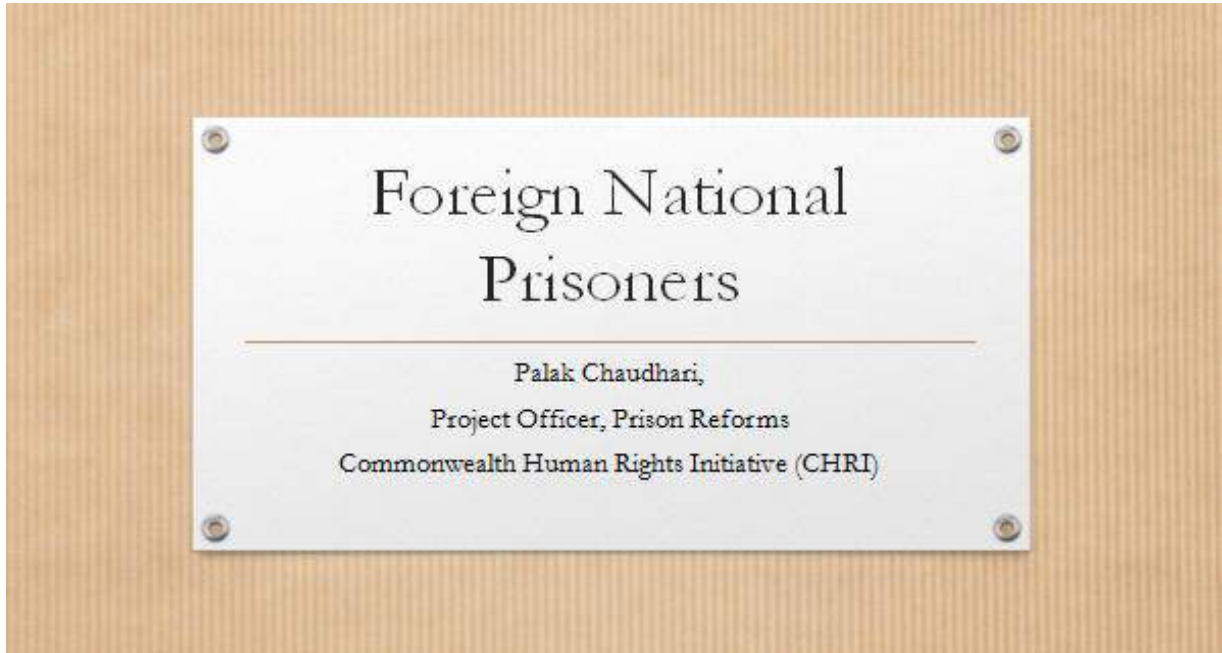
COMPUTER COACHING

*All images in this slide are representative.

21

Annexure 1I

Ms. Palak Chaudhari-Foreign National Prisoners



LANGUAGE BARRIER

Absence of good interpreters renders the prosecution and trial of a foreign prisoner hazardous. It furthers their isolation in an unknown country. Linguistic difference also leads to their exclusion from different vocational and educational program.

IMMIGRATION STATUS

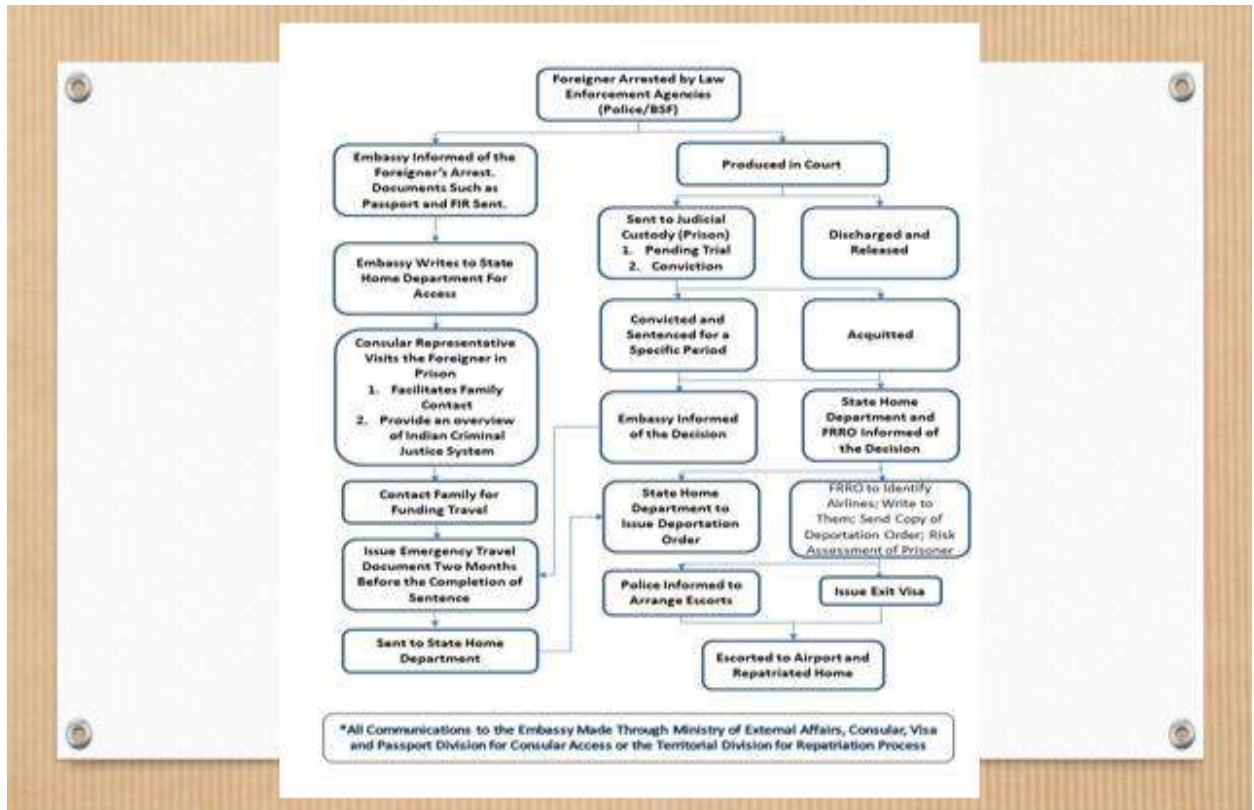
Foreign Prisoners are left with only two choices: Imprisonment and Deportation. Sometimes the home country does not want to take the prisoner back which leads to his prolonged detention.

CULTURE AND RELIGION

The religious, dietary, spiritual needs of a foreign prisoner end up not getting addressed by the Prison authorities. Psychological support is inadequate due to lack of understanding about other cultures. Also they are unable to keep contact with their families, which is a very important part in rehabilitation.

RTI BASED INTERVENTION

- Foreign National Undertrials – 1647
- Foreign National Convicts – 1377
- Foreign Nationals Awaiting Repatriation - 871
- About 5% of the Under Trial Foreign Nationals (83) have received consular access and 5.7% (222) of the total Foreign Nationals Population in prison have received consular access, as per our RTI findings. It is a ballpark, as some of states have not responded.



WHEREAS IN REALITY.....

- The embassy is to be communicated the information, but many a times that is not the case.
- Police says it's the duty of the Prison authorities and vice versa.
- Resulting in these foreign nationals getting arrested, to reaching conviction, to serving their sentences, all while their next of kin in a foreign country/ the embassy and their families back home, are unaware of their whereabouts.

VIENNA CONVENTION ON CONSULAR RELATIONS - 1963

- Article 36 : Communication and contact with nationals of the sending State
- 1. With a view to facilitating the exercise of consular functions relating to nationals of the sending State:
 - (a) consular officers shall be free to communicate with nationals of the sending State and to have access to them. Nationals of the sending State shall have the same freedom with respect to communication with and access to consular officers of the sending State;
 - (b) if he so requests, the competent authorities of the receiving State shall, without delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph;
 - (c) consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgement. Nevertheless, consular officers shall refrain from taking action on behalf of a national who is in prison, custody or detention if he expressly opposes such action.

ASYLUM SEEKER / REFUGEE / MIGRANT

- An asylum seeker is a person who has sought protection as a refugee, but whose claim for refugee status has not yet been assessed. When a person flees his / her country for fear of persecution and seeks sanctuary in another country, he / she applies for asylum.
- A refugee is a person who, owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his / her country of origin and is unable or, owing to such fear, is unwilling to avail himself / herself of the protection of his / her country of origin.
- Migrants choose to move not because of a direct threat of persecution or death, but to improve their lives by finding employment, education, health facilities, family reunion, or other reasons and therefore they do not fall within the criteria for refugee status.

PROVISIONS GOVERNING REPATRIATION

- The Repatriation of Prisoners Act, 2003
- The Repatriation Rules, 2004
- Guidelines issued for the Repatriation of foreign prisoners from India and vice versa, under the Repatriation of Prisoners Act - 10th August 2015
- Prisons Act, 1984
- Various State Manuals
- UNODC - Handbook on the International transfer of sentenced prisoners

EXISTING BILATERAL TREATIES AND THOSE IN THE PROCESS

- The Government of India have signed the Agreement on Transfer of Sentenced Persons with the following countries United Kingdom, Mauritius, France, Bulgaria, Egypt, South Korea, Saudi Arabia, Bangladesh, Sri Lanka, Cambodia, Israel, Bosnia & Herzegovina, United Arab Emirates, Iran, Italy, Turkey, Maldives, Thailand, Russian Federation, Brazil, Kuwait, Vietnam, Australia, Qatar, Hong Kong Special Administrative Region (HKSAR), Mongolia, Kazakhstan, Bahrain, Estonia and Somalia.
- Treaties with Vietnam, Canada, Spain and Nigeria are in the pipelines, as per the website of the Press Information Bureau.
- The Government of India have also acceded to the Multilateral Convention, Inter-American Convention on Serving Criminal Sentence abroad of the OAS, with the Organization of American States.
- The Union Cabinet has given its approval for requesting the Council of Europe for India's accession to the Council of Europe Convention on the transfer of Sentenced Persons.

SALIENT FEATURES OF RPA 2003

- The humanitarian intent behind the Act is to allow convicted foreign nationals a chance to get transferred to their home countries, and prisoners of Indian origin in other states to be brought back to India, to serve the remaining part of their sentences.
- It is based on the belief that being close to their families in their native countries would help prisoners in the process of rehabilitation.
- The transfer application has to be filed. It may be filed by a person other than the prisoner, if and when the prisoner is unable to do it him/herself due to old age, ill-health, mental condition or being a minor.
- The Centre would seek information from the country where the prisoner wants to get transferred. This would include a check on whether the convict is indeed a citizen of that country or not; the relevant law for the offence for which he is undergoing sentence; the duration of sentence for the particular offence in that country; and, finally, an undertaking from that country to administer the remaining sentence on the prisoner.
- In case of Indian prisoners in prison abroad seeking transfer, if the sentence of imprisonment passed against the Indian prisoner in that country is found incompatible with Indian law, either regarding its nature or duration, or both, the Centre may make it compatible, by order – ‘sentence adaptability’

REPATRIATION FROM A PRISON IN INDIA TO THEIR HOME COUNTRY- GUIDELINES

- “no objection” certificate from the concerned state government
- Report from the Intelligence Bureau can be sought
- Comments from the agency that arrested him and charged him
- Would the sentence require adaptation?
- Coordination meeting
- Willingness on part of the receiving country
- Hand-over and Repatriation

Indian Case Laws

- * **Sheikh Abdul Aziz vs. State of NCT Delhi** – Deportation to take place within two weeks. Prisoner to be transferred to Detention Center within 1 week. Prisoner to be issued long term visa and identity certificate if the nationality cannot be ascertained. Cases to be referred to United Nations for third country resettlement.
- * **Chandra Prakash Gajurel vs. State of Tamil Nadu** – Supreme Court held that there is no difference between Indian Citizen and a Foreign National and Article 21 has to be broadly interpreted while granting bail.
- * **Fogia v. State of Rajasthan** - It was laid down that the Department of Home that has authorized the detention of the prisoner will arrange for legal and other assistance for him in order to get his citizenship determined. If the citizenship is not determined by the Department within 1 month, the order for detention of the prisoner will be quashed and his deportation would be restrained.
- * **James W. Litchfield v. Narcotics Central Bureau** - The court held that merely because one is a foreign national, he cannot be deprived of his right to bail and if sufficient security is given one can be given bail.
- * **Sheela Barse v. State of Maharashtra** - The Supreme Court laid down that all, including the foreign prisoners have the right to free legal aid and should provide the same by the government.

CASE STUDY 1

- * **Facts:**
- * 60 year old Afghan male
- * Charged under various sections of NDPS Act
- * Arrested in 1999, release should have been in 2012, but repatriated in 2015
- * Unable to pay fine after serving his sentence and ended up incarcerated for further 3 years (default for non-payment of fine)
- * In the meanwhile, his family was reduced to beggars on streets
- * Why such a delay?
- * **Solution:** Early contact must be established with the family; reducing multiple hurdles in the bureaucratic processes and procedural infirmities

CASE STUDY 2

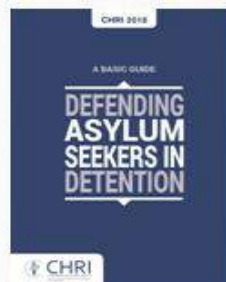
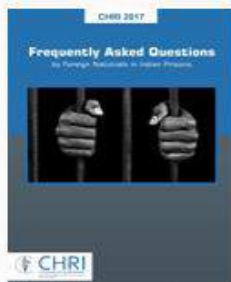
- **Facts:**
- 50 year old, Palestinian male
- Charged under both Foreigners Act and Indian Penal Code
- Arrested in 1993 and sentence completed in 2013
- Process for confirming his identity (nationality verification) began in 2013
- Passport tracked down in another part of the country after 2 years in 2015
- Embassy and allied organizations hostile in assuming responsibility
- Funds for the deportee's travel
- Procedural maze
- **Solution:** Early sharing of information with embassy/ high commission, collection of documents and request for timely responses

WHAT YOU CAN DO!

- **ARREST:**
- Inform the embassy of their citizen's case and status.
- Ensure nationality verification.
- If the family is not aware of their kin's arrest and detention, to communicate the same would be very important.
- If you notice an absence of consular access for a long period of time, after repeated efforts from the prison authorities, bringing it to the notice of the court would help.
- **TRIAL/ CUSTODY:**
- Ensure that consular access has been provided to foreign nationals. If not, then contact the concerned embassy.
- Keep the client updated with their case status and ensure they are not facing any other problems in prison.
- Ensure there are means of communication established between foreign national prisoners and family.
- If person claims they are an asylum seeker/ refugee, then bring it to the notice of the appropriate authorities.

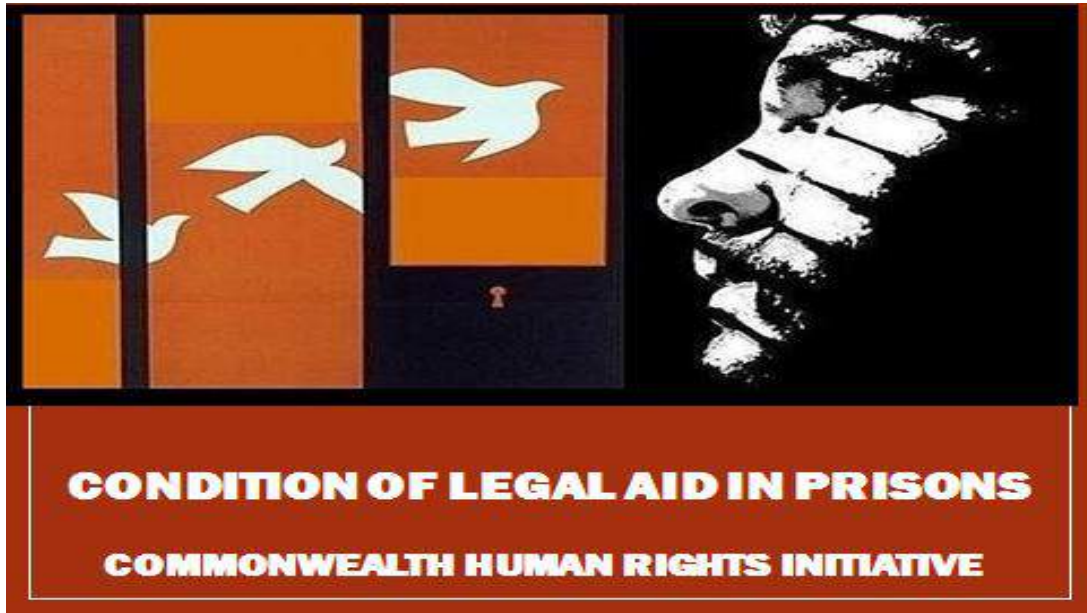
- **CONVICTION:**
- If foreign national belongs to a country with whom India has a bilateral treaty for transfer, then inform them of the provisions of the Repatriation of Prisoners Act, which permits them to serve their sentence in their home country.
- When your client is nearing end of their conviction, bringing it to the notice of the concerned authorities to ensure prompt nationality verification and issue of travel per mit.
- **POST COMPLETION OF SENTENCE:**
- If the period of sentence is completed, and arrangements for repatriation not done, then immediately bring case to the notice of the embassy, prison authorities and if no action is taken then move petition in competent court for release.

OUR RECENT PUBLICATIONS



Annexure 1J

Mr.Raja Bagga-Conditions of legal Aid in prisons



ACCESS TO LEGAL REPRESENTATION & PRISON CONDITIONS

- UNDERTRIAL POPULATION
- PRISON DEMOGRAPHY
- OVERCROWDING
- GREVIANCES
- MEDICAL NEEDS

LEGAL AID CLINICS IN PRISONS

- NALSA (Legal Aid Clinics) Regulations 2011
- NALSA 2015 Letter
- NALSA SOP for Representation of Persons in Custody 2016

- As on March 2018, 1062 Legal Aid Clinics in Jails.
- Pre-2011 Legal Aid Clinics in Jails : 28 Jails- Haryana, Orissa, Rajasthan

- CONVICT PARALEGALS & JAIL VISITING LAWYERS (RETAINER LAWYERS)
- Rajasthan, Tamil Nadu, Sikkim

PRACTICE

❖ Time taken in Assigning Lawyers

Kerala, MP, Delhi, Karnataka; Himachal, Assam, Rajasthan

❖ Visit of Jail Visiting Lawyers

Varying mandate, Following the mandate

❖ Visit of Panel Lawyers

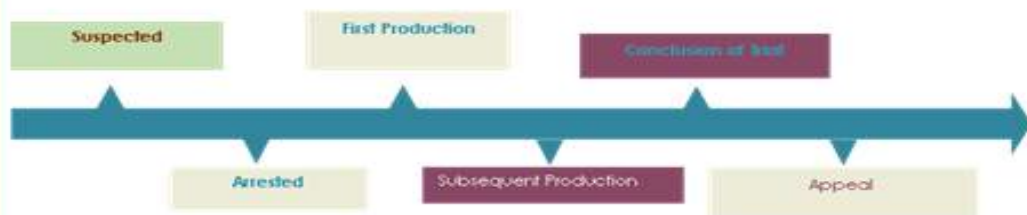
Barriers – Space, Distance, Culture

❖ Maintaining Records

Work & Attendance Registers; Khagaria; In-Out Register

Reviewing Registers- TN & Haryana; Maharashtra, Andhra Pradesh

Early Access to Legal Aid



CHECKING UN-NECESSARY DETENTION

- Arrest Procedures & Safeguards
- Remand & Bail Procedures
- Access to Legal Representation

Arrest Procedures & Safeguards

- Arrest Statistics: 61,30,507
- Unnecessary Arrests:

The National Police Commission –

"Around 60% of arrests are un-necessary and more than 40% of expenditure in jails is spent on persons who should not have been arrested at all."

- New Amendments to Section 41 of the CrPC : Section 41A,B CrPC.

Remand & Bail Procedures

- Effective implementation of S.167 by judiciary to minimize mechanical remand to custody
- Access to Legal Aid Counsel at the time of first production & remand
- Effective use of liberal bail provisions
- Releasing on personal bond under S.436 & S.437, CrPC
- Judicial discretion on bail amount to be governed by S.440, CrPC
- Effective implementation of S. 3, 4 & 6 of the Probation of Offenders Act, 1958

Remand Orders: Observations
Courts: Five courts were chosen- CMM Court, Two ACMM Courts, Two MM Courts in Jodhpur

Cases Observed	60	(In 86)
Discharged	0	0%
Granted Bail	0	0%
Remanded to Police Custody	18	30%
Remanded to Judicial Custody	42	70%

Legal Representation & Legal Aid at Police Station

- Article 32(a) of the Constitution :
"Protection against arrest and detention in certain cases
 (a) *No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."*
- Section 43 D CrPC:
"Right of arrested person to meet an advocate of his choice during interrogation. - When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation."
- Article 39A , Constitution & Section 12 (g) of LS Act 1987

The collage contains the following text on its cards:

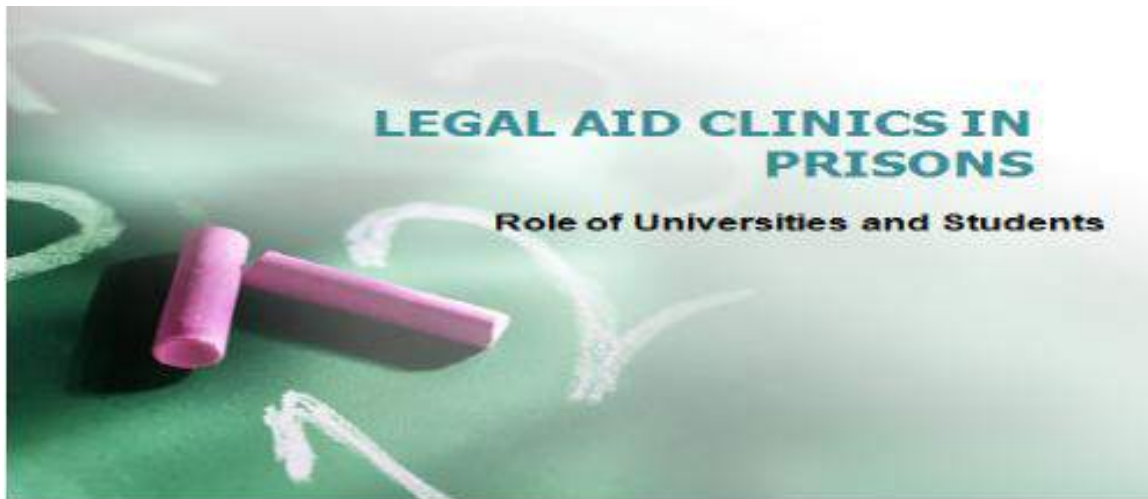
- Red Card:** The International Commission on the Rule of Law (ICRL) 2013 calls for a global effort to ensure that all people who are arrested and detained have access to legal aid and counsel. The right to access to legal aid for arrested individuals is a basic human right. It is essential for the protection of the individual against the abuse of power.
- Green Card:** The Human Rights Committee (HRC) has stated that the right to counsel is a fundamental part of the right to a fair trial. It is essential for the protection of the individual against the abuse of power.
- Purple Card:** The State has a duty to provide legal aid to all those who are arrested and detained. This duty is derived from the right to a fair trial and the right to counsel. The State must ensure that legal aid is available to all those who are arrested and detained, regardless of their financial situation.
- Blue Card:** The right to counsel is a fundamental part of the right to a fair trial. It is essential for the protection of the individual against the abuse of power. The State has a duty to provide legal aid to all those who are arrested and detained.
- Orange Card:** The State has a duty to provide legal aid to all those who are arrested and detained. This duty is derived from the right to a fair trial and the right to counsel. The State must ensure that legal aid is available to all those who are arrested and detained, regardless of their financial situation.

At the bottom of the collage, there is a red box with the following text:

Meeting the need for access to legal aid at the police station. In 2011, UNODC and UNODC developed a handbook titled "Early access to legal aid in criminal justice systems: A handbook for practitioners and practitioners". The handbook aims to provide a guide for early access to legal aid in criminal justice systems.

Annexure 1K

Ms. Amrita Paul-Role of Universities and students



Legal Aid Clinics

- Legal aid clinic is one of the thrust areas envisioned in the NALSA's Quinquennial vision & strategy document.
- NALSA (Legal Aid Clinics) Scheme 2010
 - *Legal Aid Clinics are intended to provide easy access to legal remedies to the indigent and backward sections of our society.*
 - *The aim of the Scheme is to provide an inexpensive local machinery for rendering legal services of basic nature like legal advice, drafting of petitions, notices, replies, applications and other documents of legal importance*



University based Legal Aid Clinics

Mandate

- Bar Council of India, Part IV-Rules for Legal Education, Schedule III, Physical Infrastructure
 - *11. Each institution shall establish and run a Legal Aid Clinic under the supervision of a Senior Faculty Member who may administer the Clinic run by the Final year students of the Institution in cooperation with the Legal Aid Authorities with list of voluntary lawyers and other Non-Government Organizations engaged in this regard in the locality generally from which the student community of the Institution, hail from.*



University based Legal Aid Clinics

Mandate cont...

- NALSA (Legal Aid Clinic) Scheme 2010, Rule 21

Legal Aid Clinics run by the Law Students

- ❑ *The provisions under the scheme are applicable to the student legal aid clinics set up by the law colleges and law universities also.*
- ❑ *However, in such clinics the students in the final year classes may render legal services and the junior students may assist them.*
- ❑ *The students legal aid clinic shall always be under the supervision of a faculty member who shall be present in such clinics for immediate consultation.*



Legal Aid Clinics in Prisons

• Mandate

- *Not specifically mentioned in NALSA (Legal Aid Clinics) Scheme 2010*
- *However, the objectives state that 'the Scheme is to provide legal services to the poor, marginalised and weaker sections of the society as categorised in Section 12 the Legal Services Authorities Act 1987'*
- *Since Section 12 includes persons in custody thus legal aid clinics should also be established in prisons under the Scheme*



Legal Aid Clinics in Prisons...

- The importance of legal aid clinics in prison also mentioned in
 - *Government of India & UNDP Study on Law School Based Legal Aid Clinics, 2011*
 - *The Policy Recommendations for Legal Services Authorities (LSA), state,*
'LSA could use final year students in providing Legal Aid to the prisoners. Students can be grouped with the Legal Aid lawyer and organize a visit to the prisons, lock ups and other correctional homes. NALSA must involve the faculty and students in policy making particularly when it involves matters other than representation in Courts.'



Legal Aid Clinics in Prisons...

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Legal Aid Clinics & Clinical Legal Education

- Since 1997, the Bar Council of India has mandated that each law school in the country teach clinical legal education (legal aid) as a compulsory course.
- Legal Aid Clinics in Prisons
 - *Provide an insight into the realities of the prison system*
 - *Gives practical experience in client counselling*
 - *Improves working knowledge of criminal procedural law*
 - *Fosters professionalism and a sense of public service*
 - *Equip students with the skills necessary to provide legal support to vulnerable persons*
 - *Imparts values of tolerance and respect for all human beings regardless of their sex, religion and financial status*

Type of models

- Direct
 - *Rendering basic legal services to inmates - drafting & filing of bail applications, affidavits, public interest litigations*
 - *Representation of clients in court via pro bono lawyers/private lawyers attached with the clinics*
 - *Increase legal awareness by holding legal awareness camps within prisons*
- Indirect
 - *Facilitating delivery of legal aid services by the legal services authorities*
 - *Improving coordination between legal services authority, prison and court*
 - *Acting as watchdog for the legal services authority over legal aid delivery in prisons*



Our Model – ‘Shadhinota’

- Based on Indirect Model
- Setup in August 2010
- Endorsed as Best Practice by Government of India & UNDP Study on Law School Based Legal Aid Clinics, 2011

Purpose:

- *To bridge the gap between the inmates in need of legal aid and legal aid lawyers who are mandated by the Legal Service Authorities Act, 1987 to render effective legal aid*

Collaborators:

- Commonwealth Human Rights Initiative
- National University of Juridical Sciences, Kolkata
- Department of Correctional Services, West Bengal
- West Bengal State Legal Services Authority

Structure:

- Step 1: Visit and Problem Documentation (through Interview Schedule/Questionnaire)
- Step 2: Discussion & taking action
- Step 3: Drafting/research/follow-up
- Step 4: Assessing the Outcomes/impact

Goals: Short-term

- Identifying, and assisting, persons illegally detained or suitable for release
- Assistance for vulnerable groups, e.g., juveniles in prison, mentally ill inmates, prisoners of foreign origin etc.
- A mode of clinical legal education – hence sensitising future lawyers to problems in the existing CJS
- Securing appointment of legal aid lawyers
- Creating awareness amongst prisoners of their rights

Goals: Long term

- Preventing illegal/unnecessary pre-trial detention
- Improved access to legal aid lawyers for indigent defendants/pre-trial detainees
- Increasing inmate confidence in the legal aid system
- Sensitisation/raising awareness amongst prison staff on legal procedures
- Monitoring of quality of legal aid
- Improving coordination between prisons department & legal aid services
- Replication & expansion of project to other districts or states
- Documentation of problems/issues within the criminal justice system
- Collection of information leading to strategic litigation



Impact

- 95% case referrals to the State Legal Services Authority and legal aid lawyers appointed to majority of these cases
- Increased vigilance of the State Legal Services Authority on the delivery of legal aid to indigent defenders
- Increase in visits by representatives of legal aid authorities to prison
- Decrease in number of inmates approaching Shadhinota clinics for securing appointment of legal aid lawyers over the last 5 years. For e.g. in the first year over 100 inmates approached in 1 month, now approximately 10 inmates approach in a month.
- Decrease in time taken for making appointments or taking appropriate action in response to letters from prison
- Improved communication between prison authorities and legal services authorities



Impact...

- Filing of 3 public interest litigations in the Calcutta High Court on production of accused persons, detention of juveniles in adult correctional facilities and deportation of Bangladeshi nationals. Thus,
 - Securing release of more than 70 juveniles from correctional homes to observation homes/on bail thus facilitating implementation of Juvenile Justice Act
 - Issue of directives ensuring legal representation for juveniles before Juvenile Boards
 - Securing release of 330 Bangladeshi nationals in West Bengal prisons who had overstayed their sentence
- Issue of directives for setup of Permanent Legal Aid Clinics in all Prisons, with regular visits by para legal volunteers (SLSA)
- Appointment of retired district judges to central correctional homes to ascertain needs of inmates and render legal aid services on behalf of legal services authorities (SLSA)
- Replication of Legal Aid Clinics in other states - Swadhikar in Rajasthan



Challenges faced

- Securing permission to enter prison & security concerns w.r.t. prison visits
- Avoiding setup of parallel systems of legal representation - 'slippery slope'
- Accommodating prison visits and other activities within the academic calendar of law students to enable effective participation in the project
- Ensuring quality of legal aid services - even after appointment, lawyers fail to show up in court
- Change in administrative set up at prison or legal aid services - may or may not work to ones advantage
- Maintaining confidence of prisoner in cases where not much can be done



Our Model – ‘Swadhikaar’

- Based on Direct Model
- Setup in August 2012

Purpose:

- *To provide legal aid & advice to prisoners. Comprised visits by lawyers and students to not only give advice, but also represent cases in court. Services covered a range of issues including contact with family, temporary release etc.*

Collaborators:

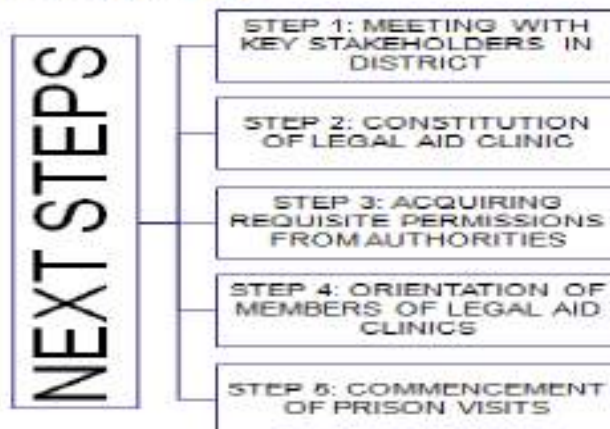
- Commonwealth Human Rights Initiative
- National Law University, Jodhpur

Legal Awareness Materials

- *Pamphlets*
 - Arrest and Detention, Legal Aid, First Information Report, Police Interrogation and Questioning and Victims of Sexual Offences
 - Available in various languages
- *Posters*
 - Steps from Arrest to Appeal
 - Legal Aid & You
- *Video's*
 - Right of access to legal aid of prisoners
 - Rights of trafficked victims

What Universities/Students can do

- Replicate the Models





For more information see

- CHRI's Brochure on Legal Aid Clinics – A Guidebook for Law Schools
 - Available on our website www.humanrightsinitiative.org
 - Email to request a hard copy on info@humanrightsinitiative.org

THANK YOU

Amrita Paul

Programme Officer
Prison Reforms Programme, CHRI
amrita@humanrightsinitiative.org

Annexure 1L

Ms. Garima Tiwari-Legal Aid Clinic





www.bennett.edu.in

POSTER MAKING COMPETITION



www.bennett.edu.in

LEGAL AID COMMITTEE



www.bennett.edu.in

TWO DAY WORKSHOP BY ADV. AJAY VERMA, IJBJ [FEBRUARY 2018]



www.bennett.edu.in

Legal Rights Awareness and Legal Aid Camp at Jail No 12 Mandoli Prison Complex, Delhi Prisons on 5th May



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ESSAY WRITING AND PUBLICATION



"ADVOCATES FOR JUSTICE" - STUDENT ESSAY PUBLICATION ON LEGAL AID

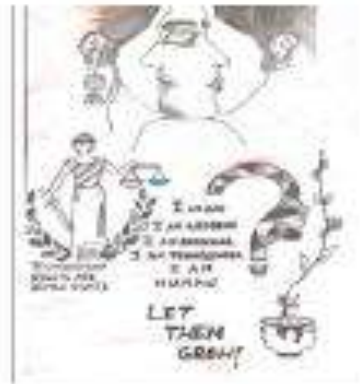


Ayush Srivastava bagged an All India 4th Rank in the 2nd Dr. A P J Abdul Kalam National Legal Essay Competition - 2017 for his essay "Legal Aid, Challenges and Education: Where are the *Advocates* for Justice?" and it has now been published in a book titled "Legal Aid and Awareness in India: Issues and Challenges" (Chapter 4, Lambert Publications)

Link - <https://bit.ly/2uNpqcV>

www.bennett.edu.in

National Colloquium on Transgender Rights (April 2018)



www.bennett.edu.in

PARTICIPATION IN WORKSHOPS



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INTERSHIPS



www.bennett.edu.in

Annexure 1M

Ms. Sugandha Shankar- Under Trial Review Committees - A key to end prison maladies





Re-Inhuman Conditions in 1582 Prisons

- 1 Ministry of Home Affairs Advisory, January 2013
Use of Section 436A of the CrP Code leads overcrowding of prisons
- 2 Four Member Committee
 - Director & Sessions Judge (Chairperson)
 - District Magistrate
 - Superintendent of Police
 - Secretary, District Legal Services Authority
 - Superintendent of Prisons



1



completed half or more than the maximum prescribed punishment for the offence charged – S. 436A, CrPC

- ✓ *To get the person released on personal bond with or without sureties.*

2



unable to furnish bail and are still in custody for that reason

- ✓ *To file an application before the concerned court under S. 440 of the Code.*
- ✓ *To get the undertrial released on personal bond according to the directions given under Moti Ram & Ors vs State of M.P. [1978 AIR 1594, 1979 SCR (1) 335]*

3



accused of compoundable offences

- ✓ *Visit the accused in prison and explain the provisions of S. 320 of the Code.*
- ✓ *File an application before the concerned court.*

10



case triable by a magistrate and trial of a non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case – S. 437(6) of the Code

✓ *File a bail application to release the accused on bail under S.437(6) of the Code.*

11



accused of unsound mind and must be dealt under Chapter XXV of the Code

✓ *File bail application to release on bail mentally ill prisoners whose trial has been suspended and their family members are willing to take them in their care under S.330 of the Code.*

12



women offenders – S.437 of the Code

✓ *Seek a special consideration in granting bail for women inmates under S.437 of the Code*

13



convicts who have undergone their sentence or are entitled to release because of remission granted to them

- ✓ *Coordinate with prison authorities to get a copy of the history ticket which provides for the remission earned by the convict every quarter and seek appropriate action from the court.*

14



implementation of Probation of Offenders Act, 1958

- ✓ *The benefit of S.3 could only be given to first time petty offenders convicted of offences punishable with not more than two years of imprisonment whereas S.4 could be applied, to all offenders, including repeat offenders, who are found guilty of committing any offence other than punishable with death or life imprisonment.*



25 States & Union Territories

357 districts responded

155 districts provided information

296 minutes of meetings

What's on Paper

Vs

What's on Ground

Were UTRC meetings held quarterly?

60 percent of the districts **DID NOT** comply

Was the full mandate followed?

S.436A – 252/256 meetings

Bail no surety – 180/256 meetings

Compoundable Offences – 139/256 meetings

Only 54/357 districts complied

How many undertrials were released?

Recommendations – Rajasthan, Delhi & Sikkim

S.436A – 126

Bail no surety – 84

Compoundable Offences – 93

Applications moved by Panel Lawyers – Mizoram, Delhi, UP

1037

Releases – Mizoram, UP, Tamil Nadu

515/2112

Annexure 1N

Mr. Arun Ferreira-Political Prisoners

POLITICAL PRISONERS

If "the degree of civilization in a society can be judged by entering its prisons," (Fyodor Dostoevsky),
then by analogy,
"the degree of democracy in a society can be judged by its political prisoners."

Differential treatment of Political Prisoners

- The detaining State has always sought to treat Political Prisoners differently and as a separate category.
- During colonial rule various categories were used viz. 'seditionist', 'conspiracy case prisoners', 'raj kaidi', 'state prisoner', 'detenu', 'security prisoner', 'superior class' or 'class A/B/C' came into usage. After 1947, some new categories such as 'class A/B/C', 'satyagrahi' or 'detenu'.

Contention over definition of 'Political Prisoners'

Formulations by the State

- (i) During British Rule:
'Seditionist', 'Conspiracy case prisoners', 'Raj kaidi', 'state prisoner', 'detenu', 'security prisoner', etc.
- (ii) Post 1947:
'Satyagrahi', 'detenu', 'anti-nationals' or 'terrorists'.
- Problem of charges defining as per Act/charges.

Contention over definition of 'Political Prisoners' (other voices)

(a) The violence v/s non-violence discourse

Amnesty International (AI):

- 'Prisoners of Conscience' denotes those persons who 'are imprisoned, detained or otherwise physically restricted by reasons of their political, religious or other consciously held belief or by reason of their ethnic origin, sex, colour or language provided that they have not used or advocated violence.'
- 'Political Prisoners' denotes those arrested in cases which 'have a significant political element; whether (in) the motivation of the prisoner's acts, the acts in themselves, or the motivation of the authorities.'

Contention over definition of 'Political Prisoners' (other voices)

(b) The 'pro-oppressed' discourse

Committee for the Release of Political prisoners (CRPP): "... Persons who have been arrested or detained for partaking in struggles of political, social and economic significance in favour of exploited classes and oppressed castes/communities, in whatever form, and were guided not by selfish interest, but by definite political views or ideologies irrespective of the charges that the State have put on them, should be considered political prisoners."

Bandi Mukti Committee: "those arrested for committing 'offences' not out of any self interest, but out of doing good to the people."

Contention over definition of 'Political Prisoners' (other voices)

(c) The 'Prisoners of War' (POW) discourse

Geneva Convention relative to the Treatment of Prisoners of War (1949) defines POW among other things to include those imprisoned as armed insurgents who are members of militias or organised resistance movements operating in the territory of the State Party.

Internationally used by American anti-imperialist political prisoners such as Marilyn Buck, David Gilbert and Laura Whitehorn and organisations such as the Jericho Movement, Irish Republican Army (IRA), etc.

Greivances and demands

First and foremost, their unconditional release.

- Usually charged under draconian provisions

More particularly relevant for political prisoners:

- Freedom from torture and Cruel treatment
- Freedom from isolation and seclusion.
- Freedom from malicious media trials.
- Right to defense (right to be represented).
- Right to free and fair trial.
- Right to be produced during proceedings, etc.

CATEGORIES OF OFFENCES



*Death Penalty India Report, 2016 Centre on the Death Penalty

WHO GETS THE DEATH PENALTY?

ECONOMIC PROFILE



*Death Penalty India Report, 2016 Centre on the Death Penalty

WHO GETS THE DEATH PENALTY?

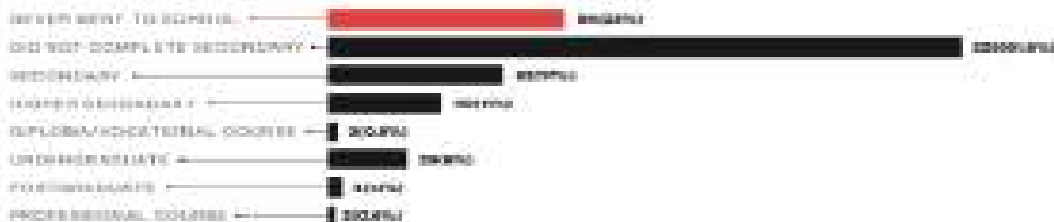
ECONOMIC PROFILE



*Death Penalty India Report, 2016 Centre on the Death Penalty

WHO GETS THE DEATH PENALTY?

EDUCATIONAL PROFILE



* *Death Penalty India Report, 2016 Centre on the Death Penalty*

LEGAL REPRESENTATION

Private legal representation

70.6% - Trial Court
68.7% - High Court
29.9% - Supreme Court

Of the prisoners accessing private lawyers in the trial courts and High Courts, **70.6%** were economically vulnerable.

* *Death Penalty India Report, 2016 Centre on the Death Penalty*

ISSUES WITH LEGAL REPRESENTATION

Durga Damar v. State of Madhya Pradesh (2002) 10 SCC 193

"He, perhaps, had no occasion to communicate to his counsel and consequently the counsel who had defended the case would not have had any occasion to ascertain the mental disposition of the accused either at the relevant time or during the succeeding periods. As this is a case where he is sentenced to death our judicial conscience compels us to get a medical report regarding his mental condition."

INTERACTION WITH LAWYERS

For **70.2%** prisoners, their trial court lawyers did not discuss case details with them.

68.4% prisoners never interacted with or even met their High Court lawyers.

44.1% prisoners did not know the names of the lawyers representing them in the Supreme Court.

** Death Penalty India Report, 2016 Centre on the Death Penalty*

NEED FOR INTERACTION

- Crucial information relevant to evidence -- *Dhal Singh v. State of Chhattisgarh*
- Juvenility – **18 prisoners (5.8%)** claimed to be juveniles at the time of incident
- Sentencing related information – mitigation exercise
- Life imprisonment without remission - *Union of India v. V. Sriharan – (2016) 7 SCC 1*

ISSUES IN APPEALS

• Conviction is often not challenged in appeals by the lawyers or the appellate courts do not look at these issues

• Supreme Court in *Md. Ajmal Md. Amir Kasab v. State of Maharashtra (2012) 9 SCC 1*

"We may also state here that since it is a case of death sentence, we intend to examine the materials on record first hand, in accordance with the time-honoured practice of this Court, and come to our own conclusions on all issues of facts and law unbound by the findings of the trial court and the High Court."

IN LIMINE DISMISSALS

Special leave petitions **dismissed at the threshold** without a full appreciation of the facts and evidence in the case.

Name of prisoner	Dismissed in
Lal Chand	February 2004
Jafar Ali	April 2004
Tote Dewan	August 2005
Banjay	July 2006
Bandu	July 2006
Dryaneshwar Borkar	July 2006
Magan Lal	January 2012
Jitendra @ Jeetu, Babu @ Koton and Sanni @ Devendra	January 2015
Babasaheb Maruti Kamble	January 2015

ISSUES WITH PROVING COMPULSION

- Section 27, Indian Evidence Act – Fact discovered through confession to a police officer are admissible "unless compulsion has been used in obtaining the information." (*State of Bombay v. Kathi Kalu Oghad* (1962) 3 SCR 10)
- *Nandini Satpathy v. PL Dani* - 1978 SCR (3) 608 - 'compelled testimony' - not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like-not legal penalty for violation.

PSYCHOLOGY OF FALSE CONFESSIONS

- 25% of the DNA exonerations involved false confessions.
- Psychology of false confessions have been ignored. Three types of false confessions –
 - Voluntary false confession
 - Compliant false confession
 - Internalised false confession

BACHAN SINGH V. STATE OF PUNJAB



WHAT IS MITIGATION?

- **Not an excuse for the crime**
- It is not meant to have any effect on the **determination of guilt**
- It is meant to act as a tool to individualise punishment, to determine if there exists **extreme culpability**
- "Equally Circumstanced capital defendants" – **Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498**

SENTENCING IN DEATH PENALTY CASES

- Bifurcation of trial – section 235 (2) CrPC – conviction and sentencing stages
- **Life is the rule, death is the exception** – section 354 (3) requires special reasons to be recorded while imposing the death penalty

SAME DAY SENTENCING

- **Allauddin Mian v. State of Bihar** (1989) 3 SCC 5 – “If the choice is made, as in this case, without giving the accused **an effective and real opportunity** to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc. before the Court, the Court’s decision on the sentence would be vulnerable.”
- **Malkiat Singh v. State of Punjab** 1991 SCC (4) 341 “absence of a proper sentencing hearing would normally have the effect of **remanding the case to the trial court.**”

STATISTICS OF SAME DAY SENTENCING

92 (44%) out of 211 cases across Delhi, Madhya Pradesh and Maharashtra had same day sentencing

**Trial Court Sentencing Project, Project 204 – Report to be released*

STATISTICS OF SAME DAY SENTENCING

State	Cases with Same day sentencing	Cases with no mitigating circumstances considered	Cases with no mitigating circumstances considered with same day sentencing
Madhya Pradesh	50 of 83	51 of 83	41 of 51
Maharashtra	31 of 90	43 of 90	16 of 43
Delhi	2 of 43	18 of 43	2 of 18

**Trial Court Sentencing Project, Project 204 – Report to be released*

MENTAL HEALTH EVALUATION

- Competence to stand trial – section 328 and 329 CrPC
 - 'Unsoundness of mind'
 - **Vivian Rodrick v. State of West Bengal (1969) 3 SCC 176** – extend to confirmation hearings before High Court
- Defence of insanity – Section 84 IPC
 - At the time of commission of the offense - 'Unsoundness of mind' because of which the accused does not know the nature of the act, to know its wrongfulness or that it is contrary to law
 - Legal insanity v. Medical insanity

MENTAL HEALTH EVALUATION

- During Sentencing
 - **Gopalan Nair v. State of Kerala (1973) 1 SCC 469** – evidence towards proving 'legal insanity' can be used in the sentencing hearing
 - **Bachan Singh v. State of Punjab (1980) 2 SCC 964** – Mental and Emotional state of the accused while committing the offense
- Before the execution of the death sentence
 - Consideration of insanity/mental illness/schizophrenia as a supervening circumstance which must be considered by the Executive while deciding the mercy petition
 - Regular mental health evaluation of the prisoners on death row

ARGUMENTS ON MENTAL HEALTH

- Mental health concerns are not limited to diagnosable mental illnesses such as schizophrenia, major depressive disorder, dysthymia (persistent depressive disorder), or anxiety disorder.
- Sentencing in death penalty cases should also consider the mental health problems: elements belonging to the psychological, social and emotional realms of a person's life.
- Some aspects to consider to examine a person's mental health:
 - Poverty
 - Inability to access support systems such as family and friends,
 - Neglect in school
 - Social isolation
 - Unavailability of nutritious food and proper health services,
 - Physical and sexual abuse

MENTAL HEALTH RESEARCH PROJECT

- Mental health evaluation of prisoners on death row in five states i.e. Delhi, Karnataka, Madhya Pradesh, Kerala and Chhattisgarh
- **50 out of 88 (56.8%)** prisoners had at least one mental illness
- **32.9%** prisoners had major depression and **20%** prisoners had dysthymia (persistent depressive disorder)

IN RE INHUMAN CONDITIONS IN 1382 PRISONS

- Challenged the provisions in existing prison manuals through an intervention application filed by Dr. Anup Surendranath, Director, Centre on the Death Penalty,
 - Solitary, cellular and segregated confinement
 - Right to seek educational and work opportunities
 - Right to privileged communication and for effective communication with lawyers
 - Right to access to social workers and mental health professionals
- Supreme Court directed the amicus to send letters to state governments and seek their responses to these issues



www.project39a.com

Useful references - <https://www.project39a.com/case-re-designating-lln-act/>

Annexure 1P

Ms. Madhurima Dhanuka-Prison Oversight



PRISON OVERSIGHT & PRISON REFORMS

COMMONWEALTH HUMAN RIGHTS INITIATIVE

INTRODUCTION TO CHRI

The Commonwealth Human Rights Initiative (CHRI) is an **independent, non-governmental, non-profit** organisation headquartered in **New Delhi**, with offices in **London, United Kingdom** and **Accra, Ghana**. CHRI works for the practical realisation of human rights across Commonwealth countries. It has specialised in the areas of **Access to Justice (Police and Prison Reform)** and **Access to Information** for over two decades. It has special consultative status with the **UN Economic and Social Council** and is recognised for its expertise by governments, oversight bodies and civil society. It is registered as a society in India.

The **Prison Reform Programme** of CHRI is more than 15 years old. The programme focuses on **improving prison monitoring** through the **strengthening** of **independent review mechanisms** and **prison visiting system** nationally, and **ensuring early safeguards against unnecessary pre-trial detentions**, specifically in Rajasthan and West Bengal. The programme also advocates for timely **repatriation** of foreign national prisoners and immediate release of **asylum seekers**. **Evidence-based research, advocacy, capacity building** of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme.



Imprisonment 'as' or 'for' punishment

- Lack of Basic amenities
- Custodial Violence & Deaths
- Inadequate Prison Staff & Trainings
- Overcrowding
- Detention Beyond Completion of Sentence
- Old Prisons Acts & Manuals

WHO KEEPS AN EYE ON PRISONS?



INTERNATIONAL STANDARDS

The UN Standard Minimum Rules for the Treatment of Prisoners

- Primary instrument mandates inspection of prisons – Rule 22, 23, 25
- Two fold system – external and internal mechanisms
- Inspectors to choose which prison to visit and make unannounced visits
- Every visit to be followed by written report

UN Rules for Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

- Calls for regular inspections – Rule 23
- Independent and competent authority to investigate complaints
- Prioritises principle of confidentiality

UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- Recognises importance of monitoring places of detention – Art 17

WHO KEEPS AN EYE ON PRISONS INDIA

BOARD OF VISITORS (B.O.V.)



By law (Section 59(25) of Prisons Act, 1949) every jail must have a Board of Visitors. The Board is made up of **officials, elected representatives** and also **people of good standing from the local community** known as **Non-Official Visitors (NOVs)**.

Visited by others

- Judicial officers
- Legal services authorities
- Human Rights Commissions
- Parliamentary Committees etc.

INTERNAL MECHANISMS

Prison inspections as per Prison Act/Rules etc.

COMPOSITION OF BOARD OF VISITORS

OFFICIAL VISITORS

- Visitor by virtue of office
- Judiciary, Police, Department of public health, social welfare, education, employment, industry, factories, agriculture.

NON OFFICIAL VISITORS

- Lay people from local society who have interest in welfare of prisoners and administration of prisons
- Ideally should be doctors, psychiatrists, lawyers, journalists, social workers etc.

MANDATE



DOES IT WORK?

- Only 4 states have a Prisons Act of their own
- Only 4 states have Board of Visitors constituted in all their jails
- 19 states have Board of Visitors constituted in some of their jails
- Only 7 states prescribe professional qualifications and background as appointment criteria
- Only 9 jails appointed visitors according to the criteria

Annexure 1Q

Ms. Ritu Kumar-Board of Visitors

Board of Visitors

By
Ritu Kumar

Supreme Court

- The Supreme Court of India in *Sunil Batra (II) vs. Delhi Administration, 1980 (3) SCC 488* has emphasized on the importance of a Board of Visitors which is independent in its functioning,
 - *"In the sensitive area of prison justice, the judicial members have special responsibilities and they must act as wholly independent overseers and not as ceremonial panelists. The judges are guardians of prisoners' rights because they have a duty to secure the execution of the sentences without excesses and to sustain the personal liberties of prisoners without violence on or violation of the inmates' personality. Moreover, when a wrong is done inside jail the judicial visitor is virtually a peripatetic tribunal and sentinel, at once intra-mural and extra-mural, - observer, receiver and adjudicator of grievances."*

Supreme Court

- *Sanjay Suri vs. Delhi Administration, Delhi and Anr., 1988 (Supp) SCC 160* has laid down very clear guidelines.
 - *"The Visitors' Board should consist of cross-sections of society; people with good background, social activists, people connected with the news media, lady social workers, jurists, retired public officers from the judiciary as also the executive. The Sessions Judge should be given an acknowledged position as a visitor and his visits should not be routine ones. Full care should be taken by him to have a real picture of the defects in the administration qua the resident prisoners and undertrials."*

Ministry of Home Affairs

- The Ministry of Home Affairs advisory on 18th February, 2011 to all States/ UTs on appointment of Non-Official Visitors without delay.
 - *"The system of appointment should be transparent and democratic with prescribed criteria. The members who are selected as NOV's should have knowledge and/ or expertise in areas such as prison reforms, legal rights, counseling, social work, criminology, adult education, vocational training courses for adult populations, diet and nutrition, child care, music, yoga etc. Minimum number of NOV's to each category of prisons must be clearly mandated. NOV system must become operational on a regular and stable basis. Women visitors may also be appointed as Non-official Visitors to look into the issues of women prisoners."*

Official Visitors

- District and Sessions Judge
- District Magistrate
- Director, Social Welfare Department
- Member, National Commission of Women
- Member, Department of Health
- Member, Minority Commission of India

Non Official Visitors

- Social Activists
- Social Workers
- Lawyers
- Retired Judicial Officers
- Retired public officers
- Doctors / Psychologists / Counsellors

Writ Petitions in High Court of Delhi


- *Multiple Action Research Group vs. Govt. of NCT Delhi, WP (C) 4588 of 2014, and WP(C) 4425/ 2012 are pending in the High Court of Delhi for composition of Visitors Board in Delhi jails.*
- *Various notifications have been quashed by the High Court of Delhi as the composition of the Visitors Boards has not been as per the SC guidelines.*

Writ Petitions in High Court of Delhi

- To constitute a strong visitors board which is independent in its functioning and can function without interference of the Prison authorities
- Visitors should be allowed to
 - conduct surprise visits
 - communicate with the inmates without the presence of an official
 - Have access to all jail records
 - Have access to all parts of the prisons

Monitoring of Prisons

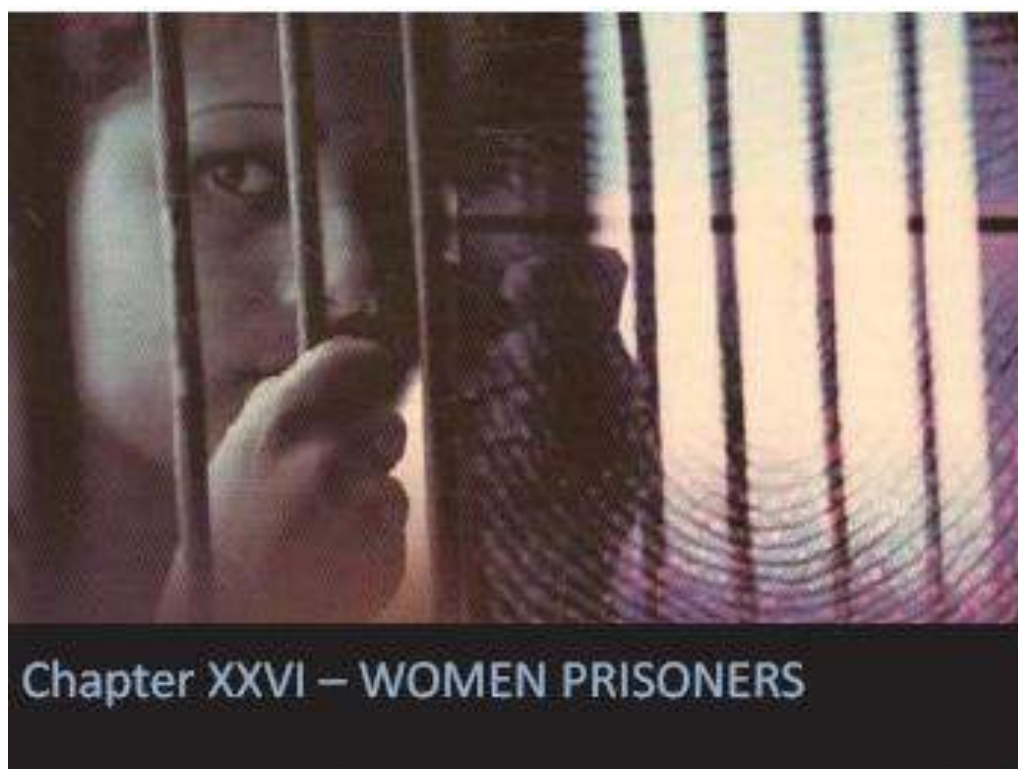
- A strong Visitors Board can ensure transparency and monitoring of prisons and can help in improving the prison system in India.



Thank you!

ANNEXURE 1R

Ms. Sugandha Shankar-Changes in the Model Prison Manual, 2016



The focus should be to address the gender discrimination and the vulnerability attached to it.

Special considerations regarding their mental health needs need to be addressed.

The institutional aim must be to empower their independence, enhance their confidence and equip them to be able to support themselves and their children, often without the support of their families.

Urgent need to boost the infrastructure of the existing women wards in all Central, District and Subjails to cater to the special needs of women prisoners.

There should be a detailed description of the manner and procedure of conducting searches.

This should address:

• kinds of searches allowed

• to what extent the search can be made

• can a search be made against the will of the prisoner

• under a particular situation what kind of prisoners should be searched in which manner

• the place for the search among other things

At least one month before the expected date of delivery and three months post childbirth women prisoners should be able to apply for temporary release (bail/furlough/parole). This may be specified under the prison rules/other laws.

Essential supplies to be provided for the infant such as wearing apparels and bedding.

If a child is being born in prison, there must be a provision for the presence of the pediatrician at the time of birth and periodically in the postnatal stage.

Delhi Prison Manual, in special circumstances, the child may stay with their mother beyond 6 years.

States could introduce foster care schemes for children if either of the parents are in prison as implemented in Haryana (foster care scheme) and Rajasthan (Paasankar yojna).

The Chhattisgarh prison manual addresses an important safeguard to ensure that children above six years meet their mother in prison at regular intervals by suggesting that the child will not be transferred outside the town or city.

Women prisoners should also be given the option of wearing salwar-kameez and dupatta.

For convicted mothers in post natal stage, bed sheets must also be provided along with the mattress and blankets.

Foreign nationals should be provided with translators on specific intervals to help them communicate with prison officials and other prisoners to help them understand the prison rules, procedures and daily activities.

In the absence of a provision to allow foreign nationals to make ISD calls, new technological tools like VOIP calling, Skype calls or video conferencing may be allowed to the foreign national to be in regular contact with their family.

Provision must be made to add on to the food provisions to meet the dietary requirements of women prisoners who are foreign nationals.

No provision for –

Conjugal visits provided in the Manual

Separate wards for women in hospitals located in central and district prisons.

Minimum number of sanitary pads that must be given to every women prisoner at the start of the month to enable them to maintain proper hygiene

No solitary confinement (Punishment by close confinement or disciplinary segregation)

Chapter XXIII OPEN INSTITUTIONS

Recruitment of Welfare Officers and Probation Officers in open institutions:

One broad provision for special considerations and to deal with an exceptional case.

As far as possible, employment opportunities must be sought from outside and prisoners must be encouraged to pursue a vocation of their interest.

For convicts in open colonies, Superintendent shall assist the prisoners in obtaining small trade loans from any nationalised bank. Government shall stand as guarantor for repayment of loan. (West Bengal, Ch-39 of the Code)

Convicts in open institutions must be allowed conjugal visits.

Orientation to convicts on open prison rules as soon as a convict enters prison so that he/she is mindful of eligibility and would help prison staff to maintain discipline.

Reiteration awareness on open prison rules through posters and writings on walls.



Chapter XXIX BOARD OF VISITORS

Missing from the Board of Visitors -

Standards of appointment must be laid down.

Provision for surprise visits must be included.

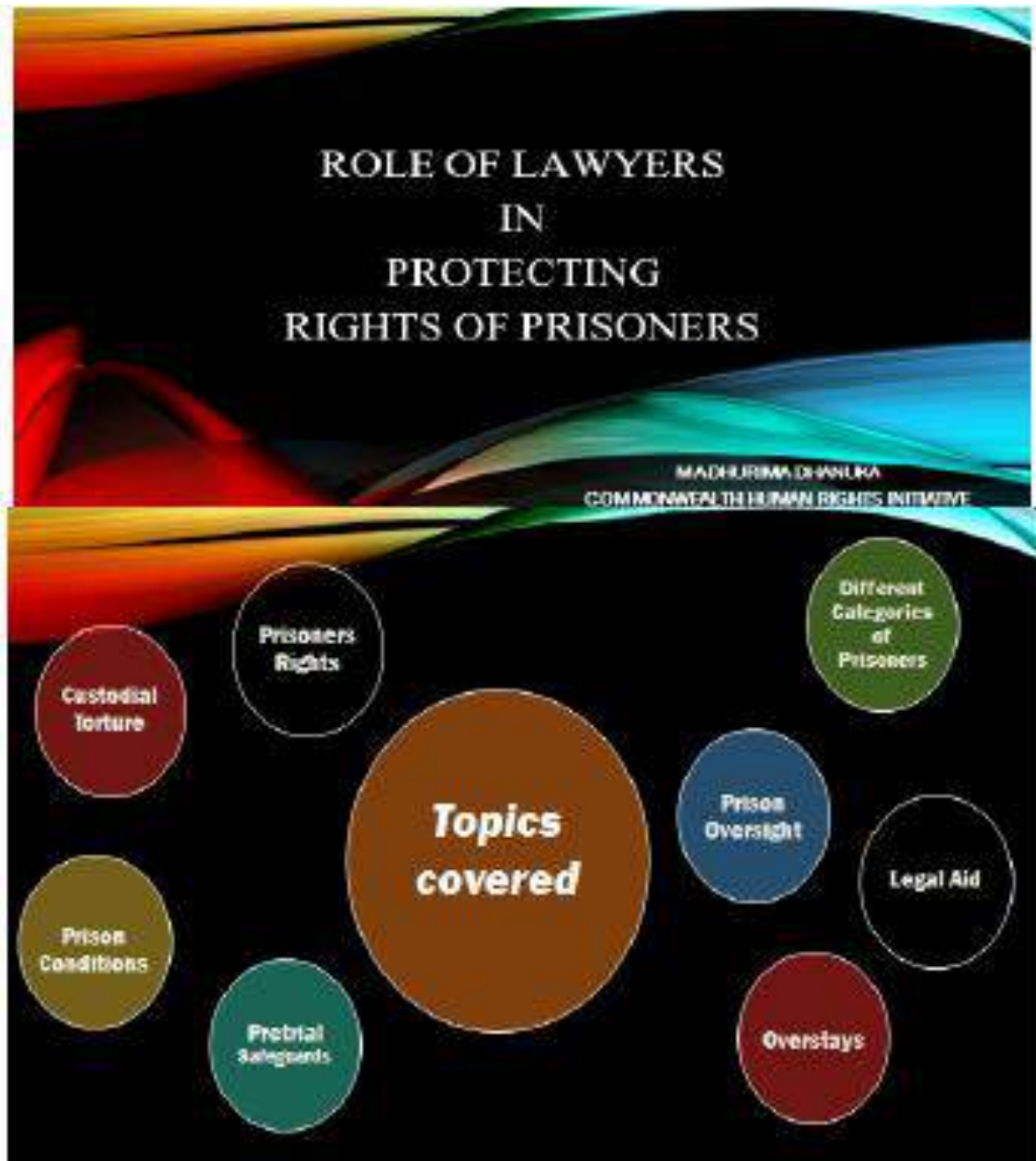
Nor more than 50% of one gender. Women visitors are either not appointed not even in women jails or mostly appointed as token presences.

Criteria for reappointment must be made and must be inclusive of the visitor's performance in the preceding tenure.

sugandha@humanrightsinitiative.org

Annexure 1S

Ms. Madhurima Dhanuka-Role of Lawyers



Do Lawyers Really Matter?

There is evidence from around the world that effective and prompt intervention by lawyers in the criminal process can have positive benefits not only for those they advise and assist, and for their families and communities, but also for the efficiency and efficacy of criminal justice systems and the wider society.

Lawyers have a role to play in advising, assisting, and representing individuals at three stages of the criminal justice process: the investigative stage, the trial stage, and the appeal stage.

Acceptance of Lawyer's Role in Criminal Justice Systems

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment:

"The possibility for persons taken into police custody to have access to a lawyer during [the period immediately following deprivation of liberty] is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs."

UN Human Rights Committee, CDPH (General Comment 32, 2007): *"The right to communicate with counsel required that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."*

The Basic Principles on the Role of Lawyers: mentions the obligation of the State to inform the public of "their right to be assisted by a lawyer at their own request arrest or detention or when charged with a criminal offence".

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) (UN General Assembly Resolution 43/173): provides that "[a] detained person shall be entitled to have the assistance of a legal counsel. He [or she] shall be informed of his [or her] right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it."

Basic Principles on the Role of Lawyers

Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba in 1990

Duties and responsibilities:

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

- (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
- (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
- (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

What Role Can You Play?

1. **Direct Benefit** – improve quality of justice in substantive terms – for individuals
2. **Benefits to the system** – ensure that criminal justice processes are carried out effectively, efficiently and expeditiously
3. **Education & Policy Improvement** – of working to educate individuals, criminal justice professionals, and communities about their rights and responsibilities in relation to criminal justice, and improving the transparency and accountability of criminal justice processes and institutions.

What Role Can You Play?

Cont...

Assisting with the Administration of Justice

1. Identifying persons who are suitable for release or who are illegally detained
2. Identifying and preventing unlawful actions by police
3. Identifying those who are in need of medical attention/ special care
4. Identifying children and other vulnerable suspects and defendants
5. Assisting with diversion from formal criminal proceedings

Improving the Efficiency of the Criminal Justice System

1. Providing information to police/prosecutors/courts
2. Ensuring that court hearings are effective
3. Improving procedures

What Role Can You Play?

Cont...

Education and Policy Improvement

1. Lawyers and paralegals, particularly working collectively (for example, through public defender offices, NGOs, or bar associations), can play a key role in educating clients, witnesses, and others involved in criminal proceedings, and also in identifying and seeking to remedy systemic problems in criminal justice systems.
2. Identifying systemic problems and developing solutions
3. Having identified systemic problems, lawyers and paralegals can tackle them in a variety of ways, including through public interest litigation.

"The early stages of the criminal justice process—the first hours or days of police custody or detention—are crucial for those who have been arrested or detained in respect of a criminal offence. Decisions made and actions taken, or not taken, will determine their ability to effectively defend themselves, the length of their detention, whether and when they are produced before a court, whether appropriate decisions are made about prosecution or diversion from the criminal justice system and, ultimately, whether they receive a fair trial. During this period, suspects and accused persons are at greatest risk of torture or other forms of ill-treatment, ranging from neglect and demands for bribes, to coerced confessions and unlawful detention."

*"Early access to legal aid in criminal justice processes:
A handbook for policymakers and practitioners" (UNODC)*

THANK YOU

**Madhurima Dhanuka
Coordinator**

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Presentation prepared by: Madhurima Dhanuka

Annexure 1T

Mr. Sunil Gupta-Rights and Duties of Prisoners



RIGHTS AND DUTIES OF PRISONERS

by
SUNIL KUMAR
FORMER LEGAL ADVISOR,
DELHI JAILS



"No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment"

Hon'ble Supreme Court in *Sunil Batra Vs Delhi Administration*
(1980) 3 SCC 408.

◆ Total Number of Jails in the Country : 1,481

Central jails	134	Open jails	63
District jails	379	Boastal schools	20
Sub jails	741	Special jails	43
Women jails	18	Other jails	3

◆ Total Capacity of Jails in the Country : 1,66,781

Central jails	1,59,156 (45.0%)	Open jails	5,330 (1.5%)
District jails	1,37,473 (37.6%)	Boastal schools	1,840 (0.5%)
Sub jails	46,368 (12.6%)	Special jails	38,915 (10.8%)
Women jails	4,786 (1.3%)	Other jails	420 (0.1%)

◆ Total Number of Jail inmates as on 31.12.2013 : 4,39,623

Male : 4,24,789 (95.7%)	Female : 14,834 (4.3%)
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◆ Occupancy Rate :

2013 - 118.6%	2014 - 117.4%	2015 - 114.4%
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Convicts : 1,84,768 (32.0% of total inmates)	Undertrials : 2,82,078 (67.2% of total inmates)
Male : 1,28,428 (69.7% of total convicts)	Male : 2,70,169 (95.8% of total undertrials)
Female : 5,740 (4.3% of total convicts)	Female : 11,910 (4.2% of total undertrials)
Detainees : 2,562 (0.6% of total inmates)	Others : 887 (0.2% of total inmates)
Male : 2,490 (97.2% of total detainees)	Male : 711 (87.0% of total others)
Female : 72 (2.8% of total detainees)	Female : 106 (13.0% of total others)

Convicts : 2,353 (Male : 2,154, Female : 199)	Undertrials : 3,798 (Male : 3,276, Female : 519)	Detainees : 37 (Male : 36, Female : 1)
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MISSION **Delhi Prisons**

3 Rs

- **REFORMATION**
- **REHABILITATION**
- **RE-INTEGRATION**

RIGHTS OF PRISONERS

(A) Right to Human Dignity

- ❖ Entitled to be treated dignity and will enjoy all the fundamental and other Rights.
- ❖ Have the right to protection against torture and physical and mental harassment.
- ❖ No one shall be subjected to cruel, inhuman or degrading treatment or punishment.

(B) Right to Basic Minimum Needs

- ❖ Every person detained in any prison shall be entitled to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic living conditions including, sanitation and personal hygiene, clean, adequate clothing, bedding and other equipment.

(C) Right to Communication

Every person detained in any prison shall subject to overall considerations of security, safety and discipline in the prison -

- ✦ Have the Right to Communication with the outside world, his/her family members as prescribed under the rules.
- ✦ Be entitled to periodic interviews with members of his/her family or friends, to be notified at the time of admission by him, and to receive information about the outside world through communication media as prescribed by the extant rules made under this Act.

(D) Right to Access to Law

Every person detained in any prison shall -

- ✦ Be entitled to have adequate legal remedies and legal aid both within and outside the prison;
- ✦ Have the right to consult or to be defended by a legal practitioner;
- ✦ Have the right to access to legal service and legal aid services;
- ✦ Be entitled to petition to the prison authorities for any lapse in the provision of basic amenities and facilities mentioned above, arbitrary punishment or any other matter which he/she perceives to be violative of prescribed rules;
- ✦ To be produced before the court on the date fixed for his remand or trial either physically or through electronic method.

(E) Right Against Arbitrary Prison Punishment

- ✦ Any person detained in any prison, in case of disciplinary violation, shall be entitled (i) to have precise information as to the nature of violation of Prisons Act and Rules, (ii) to be heard in defence, (iii) to communication of the decision of disciplinary proceedings, (iv) to be made aware of consequences of such punishment; and (v) to appeal as provided in rules made under the Act.

(F) Right to Meaningful and Gainful Employment

Any person id detained in any prison will

- ✦ Have a right to meaningful and gainful employment in the prison labour according to which he has been sentenced and
- ✦ Be paid as per Minimum Wages Act for the work done in prison, after making allowance for the prescribed contribution to be made towards victim compensation fund and his maintenance expenses in the prison.

(G) Right to be released on the due date


- ✦ Every person detained in prison shall be released on the due date calculated as per the court orders and the prescribed rules.
- ✦ The aforesaid provisions respecting rights of prisoners shall be displayed prominently on boards written in local language(s) generally understood by the inmates.

DUTIES OF PRISONERS

- ✦ Obey all lawful orders and instructions issued by the competent prison authorities;
- ✦ Abide by all prison rules and regulations and perform obligation imposed by these rules and regulations;
- ✦ Maintain the prescribed standards of cleanliness and hygiene; and prison discipline;
- ✦ Respect the dignity and the right to life of every inmate, prison staff and others;
- ✦ Abstain from hurting religious feelings, beliefs and faiths of other persons;
- ✦ Use Government property with care and not to damage or destroy the same negligently or willfully;


Annexure 1U

Mr. Ravi Srivastava-Visitation Rights of families




India Vision Foundation
Save the Next Victim...

A 24 year old New Delhi based Non Governmental Organization(NGO) founded by Dr. Kiran Bedi , first lady IPS officer



India Vision Foundation
Save the Next Victim...

Our Inception Story



Receiving the Magsaysay Award from the Philippines President Fidel Ramos

"The Magsaysay Award has propelled me to consolidate, expand and share my work. For this I have registered a Trust, called India Vision Foundation. I am breathing life into it. I will carry forward projects in the field of prison reform, drug abuse prevention, child welfare, crime prevention empowerment of women, mental disability and sports promotion. THE FINAL objective being to save the NEXT VICTIM! LETS get together!"

Kiran Bedi

www.indiavisionfoundation.org

Our Vision



Justus Vision Foundation promotes & emphasizes on the education of their children, who if not secured would probably lose their way while their parents remain imprisoned. Hence, our aim is to save 'The Next Victim'.

www.justusvisionfoundation.org

Focus Areas



www.justusvisionfoundation.org

Beginnings & Then...



www.justusvisionfoundation.org

Education for children of inmates – Crèche



The Report of National Expert Committee on Women Prisoners (1985-1987), popularly known as Justice VR Krishna Rao observed that jail rules developed locally under Prison Act accept the rights of the prisoner mother to keep her child with her until 5-6 years of age.

www.indiavisionforabetterindia.org

Education for children of inmates – Children of Vulnerable families project(CVF)



This programme is targeted at children above the age of 6. These children are not parented mostly with their mothers or parents within prison premises and often suffer deprivation. For each children we act a foundation through Children of Vulnerable Families Project and support. Till date, we have reached out to more than 200 children through our project.

www.indiavisionforabetterindia.org

Programs under CVF Project

Children of Vulnerable Families

Older than 6 years are admitted to formal schools.

Residential Support



Home Support



Community Program



www.indiavisionforabetterindia.org



Psychological intervention & Capacity building



www.intravisionfoundation.org



Regular Parents' Meetings at various under the Community Support Program



www.intravisionfoundation.org



Mother-Child meet



www.intravisionfoundation.org

Kid with us, are professional today



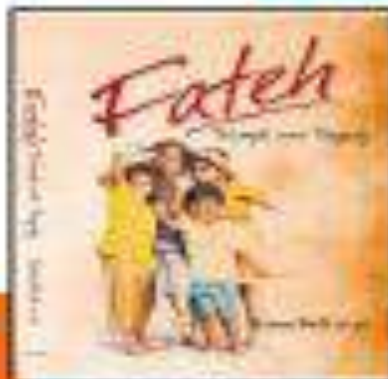
www.lattavisionfoundation.org

Our Alumni



www.lattavisionfoundation.org

Fateh – Triumph over Victory



'Fateh' is a compilation of real life accounts of young people who battled extreme circumstances & emerged victorious

www.lattavisionfoundation.org



Sharing their success to proud Guardians

Today 99% children supported under the CVT project are leading happy, joyful lives free of stigma.

Social Integration of the 80% of the beneficiaries and parents has helped the foundation by contributing to the reduction in residential care.



www.iyattavisionfoundation.org



Innate Prison Project



With a vision of social integration, rehabilitation and formation of inmates, by building their capacity in various skills. Till date we have reached out to more than 50,000 inmates across three states of New India, Haryana, Uttar Pradesh since our inception.

www.iyattavisionfoundation.org



Thru network



www.iyattavisionfoundation.org

Rehabilitation through Art, Dance, Music or Therapies



<https://www.youtube.com/watch?v=111111111111>

Preventing Mental Contamination through Sanitation, Vegetables & Moral Education



<https://www.youtube.com/watch?v=111111111111>

Vocational courses



Handmade Soap Making



Handmade Soap Making



Handmade Soap Making



Handmade Soap Making

<https://www.youtube.com/watch?v=111111111111>

Empowering Digital Divide through IT Training



Eriger



Eravore



Haridas



Haripur



Kollam



Arakkal



Thiruv



Cheruvil

www.indiavisionfoundation.org

E-Library



www.indiavisionfoundation.org

Health Care



www.indiavisionfoundation.org

Sports Activities



www.indiavisionfoundation.org

Festivals & Celebrations



Dussehra Day



Ganesh Visarjan



Navratri



Raksha Bandhan



Onam



Christmas

www.indiavisionfoundation.org

Training



We envisage to share our best practices of prison reforms and our expertise of working with prison inmates, their children and their families. We have till date trained more than 30 prison officials from different states & 30 warden of Uttar Pradesh Prison Department and Deraa prison. In future, IVF hopes to go international and share its best practices of information, reintegration and rehabilitation.

www.indiavisionfoundation.org

Training Programme



www.insightsfoundation.org

Training Programme for Women



www.insightsfoundation.org

Kiosk Vithagai (Open meet)



www.insightsfoundation.org

ICRA & Outlook (Open ended)



- ICRA made progress with their circular economy plan
- Outlook estimates a decline in demand of their products
- ICRA made progress with their circular economy plan

www.indiavisionfoundation.org

Home Visits for families of inmates



www.indiavisionfoundation.org

Success Stories of Re-Integration & Reformation



As a new initiative this year, nearly 10 released youth were helped to reintegrate back into the society by the foundation.

Success stories of released inmates of the foundation who were helped to reintegrate back into the society by the foundation.



www.indiavisionfoundation.org



Our Partners & Supporters



Imperial



MetLife

www.indiavisionfoundation.org



India Vision Foundation Family



www.indiavisionfoundation.org



Connect with us!

Feel free to connect with us through social media or email at info@indivision.org



For any further collaboration or partnership feedback suggestions contact us at info@indivision.org

www.indiavisionfoundation.org

ANNEXURE - 2

Participants List

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