

**2012**

# State Level Coordination Meeting on the Criminal Justice System vis-à-vis Prisoners

## A Report on Proceedings

**JUDICIARY**

**POLICE**

**CORRECTIONAL  
HOMES**

**LAWYERS**

**HUMAN  
RIGHTS  
COMMISSIONS**

**GOVERNMENT**

*Organised by:  
Commonwealth Human Rights Initiative  
In collaboration with West Bengal Human Rights Commission*



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***“I know not whether Laws be right or whether Laws be wrong;  
all that we know who live in gaol is that the wall is strong; and  
that each day is like a year, a year whose days are long.”***

***---- Oscar Wilde***

## Context & Background

The extent to which it is appropriate in a democratic society for the individual elements of a criminal justice system to be planned, coordinated or integrated is a vexed question. On one hand it can be argued that the operations of police, prosecutions, courts and corrections must each be independent of each other in order to protect human rights of individual citizens.

On the other hand, the operation of criminal justice agencies in a totally uncoordinated manner must not be tolerated. The current state of the criminal justice system with its multifarious problems demands that consideration be given to the consequences of failure in one part of a criminal justice system on the other parts. There is therefore a need to balance the competing claims for independence of the elements of criminal justice systems with the coordination of those elements.

*The Commonwealth Human Rights Initiative (CHRI)* is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. The prison reforms programme at CHRI aims at increasing transparency of a traditionally closed system and ensuring accountability. A major area of its work is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstays, and engaging in interventions to ease this.

CHRI has been working in the state of West Bengal for the past three years. From our experience we have observed that there are a number of gaps in the functioning of the various agencies of the criminal justice system, much to the detriment of human rights and in particular, prisoners' rights. Lack of physical production, delay in trials, pro-longed pre-trial detention, access to legal aid, lack of surety, lack of proper post-rehabilitative schemes etc. have emerged as some of the major areas of concern especially with respect to prisoners.

The State Level Coordination Meeting on Criminal Justice System vis-à-vis Prisoners was an attempt to nurture discussions on these issues with an aim to bridge the gaps in the functioning of the criminal justice system. The consultation was held in the form of a round table with the various agencies of the criminal justice system. The meeting aimed at highlighting the issues and collectively developing solutions to address these gaps. The scheme of the meeting was:-

- Session I: Prisoners & the Criminal Justice System: Bottlenecks
- Session II: Under-trials & Prolonged detention
- Session III: Juveniles & the law
- Session IV: Convicts & Pre-mature Release

# Inaugural Session

The inaugural session was presided over by Hon'ble Justice Ruma Pal, former Judge, Supreme Court of India & Member of the Executive Committee of the Commonwealth Human Rights Initiative, Hon'ble Justice AK Ganguly, Former Judge, Supreme Court of India and presently Chairperson, West Bengal Human Rights Commission, Mr. Damodar Sarangi, Special Rapporteur, National Human Rights Commission, Prof. Ishwara Bhatt, Vice Chancellor, National University of Juridical Sciences and Ms Madhurima, Consultant, Prison Reforms Programme, Commonwealth Human Rights Initiative (CHRI).

Being a Member of the Executive Committee of CHRI, Justice Ruma Pal introduced the same as an independent, non-partisan and non-governmental organization, ensuring the practical realization of the human rights in the commonwealth. Established in 1986 and having a special consultative status with UN's ECOSOC it focuses on access to justice with programmes on police and prison reforms.

Amidst its various other contributions, CHRI has in collaboration with the Correctional Services department of West Bengal made an audio visual clip explaining the rights, duties and restrictions of prisoners - titled '*Pahel - Ek Nayee Shuruuat*'; has prepared several publications for stakeholders focusing on information on the basic rights of the prisoners, handbook on the duties of prison authorities and containing guidelines by the NHRC, compilations on Supreme Court judgments and recommendations of officials.

In her opinion, the most significant contribution so far by CHRI has been the introduction of the software named E-POD - Evaluation of Period of Detention of Undertrial Prisoners - which is essentially a prison management software and provides very quick and readily available information to anyone interested in the subject. It is extremely helpful for judges and as well as the prison authorities in terms of seeking quick and precise information with respect to prisoners, their appropriate sentences, the statutory period of detention, eligibility for being released under section 436A of the Cr.P.C. and any other query to that effect. Many prisoners have already reaped benefits through its usage. CHRI, also in collaboration with the National University of Juridical Sciences and the State Legal Services Authority has established a very effective legal aid program called "*Shadhinota*" to ensure that even law students can play their part in bringing about prison reforms.

She further added CHRI's experience in the state reveals that a prisoner is not really interested in the number of activities he participates in while at prison but is essentially concerned about speedy trial, release on bail and his family back home.

She emphasized that access to effective legal aid is a major issue in West Bengal and steps must be taken to remedy it immediately. She identified a few problems like lack of oversight and lack of coordination between the authorities and suggested that:

- A panel consisting of a competent legal aid lawyers be empanelled/appointed for each correctional home. A Committee of legal aid for prisoners should be established in each correctional home along with a proper accountability mechanism. The District Legal Services Authority and the State Legal Services Authority shall ensure proper monitoring of this body.
- Institutionalization of a collaborative body composed of all judicial agencies to monitor the continuous implementation of the legal provisions to ensure that the rights given to prisoners are enforced and used.

The welcome address was followed by the inaugural address which was delivered by Justice AK Ganguly. He enlightened everyone about the constitutional goals, stating that the Constitution of India provides that behind every right guaranteed lies the inherent principle that the dignity of the individual must be ensured. Even the agencies of the criminal justice system must ensure the same while carrying out its functions. As soon as a person is taken in as a prisoner he must be provided with the rights he deserves and it has to be ensured that he does not altogether lose them all. Moreover, the fact that ‘jails’ have been rechristened ‘correctional homes’ show that the system of punishment is moving towards being reformatory more than being deterrent or retributive. However, there is still a lot of scope for improvement in the efficacy of the criminal justice system. There are legislative and executive bottlenecks that must be dealt with.

A particular procedural and executive bottleneck can be seen when dealing with Bangladeshi prisoners. The Border Security Force wants to release the prisoners and leave them on the other side of the border but the Bangladeshi counterparts are not willing to take them in. A proper protocol must be formulated to ensure the proper release of such prisoners.

The inaugural address was followed by the Keynote Address which was delivered by Mr. Damodar Sarangi. He stated that it is common belief now that criminal justice system does not really exist. That, it has become dysfunctional or maybe even non functional in our country, mainly because of the following reasons:

- A large section of police officers including the ones in the leadership strata believe that law and order can no longer be maintained by lawful means, and this has led to the practice of showing reluctance in accepting FIRs and involving in backdoor preventive detention, torture in custody, planting of arms and drugs into the suspects for implication in serious crimes, fake encounters etc.

- Delay in trials, reluctance of courts to grant bail to accused, overdependence on lawyers, lack of judicial scrutiny of the police action at the pre-trial stage and finally,
- Violation of human rights of the detainees and prisoners.

He stated that in India the situation is peculiar whereby the Investigating Officer usually starts with the arrest of the suspects and works his way up to the collection of evidence against him. The reverse system is practiced. A criminal becomes a prisoner simply upon arrest, even before he has been proved guilty, whether lawful or otherwise. Cases of innocent persons being arrested and subjected to prolonged detention are not rare. Ability to convict the guilty and acquit the innocent with least delay and in the intervening period to treat the accused humanely shows the efficacy of a well functioning criminal justice system. It is here that the system is faltering.

Unfortunately, a large section of the functionaries of the criminal justice system believe that the prisoners are to be treated so harshly that they shall never commit the crime again and it shall serve as a warning to the other members of the society never to commit such a crime. Undertrials are rotting in prisons; there is huge delay in disposing of appeals, especially in West Bengal, where the authorities are tight in granting pre mature release of eligible prisoners, failing to release old and sick prisoners.

To remedy this, he suggested that sensitization of the various functionaries of the criminal justice system especially the courts, strict adherence to the laws and procedures and exemplary punishment for those who are found guilty of violation of prisoner's rights would help in improving the situation. He also suggested that visiting jails, to ensure reformation and protection, study of their living conditions, reviewing of rights guaranteed to them by or under the constitution or any other law, protection of their human rights and recommending measures for their effective implementation are necessary to handle the deteriorating situation.

Prof. Ishwara Bhatt delivered a short welcome address on behalf of the NUJS and suggested that identifying the shortcomings of the criminal justice system and also recognizing the plus points and the best practices involved is imperative so that we can effectively dwell upon the problems to make the whole system more robust. Participation from the human rights commission and civil society groups should be encouraged. It is a fact that 1978 onwards the procedural aspects have strengthened due to the active participation of the NGOs and the emergence of public interest litigation especially towards the improvement of the conditions of women and juveniles. With these contributions the inaugural session paved way into the following sessions of the meeting.

# Session I: Prisoners and the Criminal Justice System: Bottle necks

Prisoners, especially under-trials lie at the heart of the Criminal Justice System. From arrest to trial to sentencing to release, prisoners embrace every agency of the criminal justice system. This session aimed at highlighting the various bottlenecks & issues which hamper its efficient functioning.

The session was chaired by Justice KJ Sengupta, High Court of Calcutta and had Mr Damodar Sarangi, Special Rapporteur, NHRC & Dr GD Gautama, Information Commissioner, West Bengal as panelists. The session included an interactive discussion at the end. The following bottlenecks were identified in the working of the criminal justice system.

## Problems:

### Police

According to a recent research on West Bengal conducted by the Government of India on the state's justice system, 32% of the cases were reported after considerable delay resulting in delay in police investigation. Attention to this was drawn by Justice K.J. Sengupta, who chaired the session. He also added that according to the same research it was found that in 72% of the cases charge sheeted under section 173 of the Cr.P.C. were taking 1 to 3 years on an average whereas the rule book necessitates its delivery within 90 days. This is a major barrier. In some of the cases, charge-sheets were being filed after 3 to 5 years which could be attributed to inefficient investigation officers, non availability of medical reports when required and the abscondence of persons on bail. Justice Sengupta, referring to the report again, said that in 72% of the cases there was a delay of 1 to 5 years in simply supplying the charge-sheet to the accused in jail or on bail. This is a major barrier considering the importance of the charge-sheet to the accused in deciding the course of action in defending his charge.

- Delay in police investigation
- Delay in filing of charge-sheet
- Inefficient investigation officers
- Arbitrary arrests
- No physical production by Magistrate

Mr.Sarangi alleged gross violation of human rights before arrest where the police detain persons before arresting them passing it off as questioning. After arrest no physical production was taking place where the accused remained in the prison van while orders on them (eg: remand) were being passed by the Magistrate. This, he alleged was rampant. After remand the accused were also being deliberately implicated in other cases. The Code also provides the right of granting bail by the

police to the accused in certain circumstances. However, this power is highly neglected.

Mr.Sarangi further pointed out that as far as release of prisoners are concerned, especially with respect to bail or parole the record of West Bengal was not good, for which, rather than the jail authorities, the judiciary and the police were to be held responsible.

Dr GD Gautama also confirmed that there are a variety of problems and much was needed to be done in a short span of time. Referring to his work in the Government, he suggested that there is a huge lacuna in the functioning of the Police force. It is first necessary to meet the challenges and then the coming together of everyone so that the same may be resolved.

### Courts

There is considerable delay on the part of the courts in the framing of charges. This is an impediment. At the trial stage the lack of momentum of plea bargaining as an alternative remedy could be also be termed as a problem. Also, the provisions of the Cr.P.C. to speed up trials were not being followed. Mr. Sarangi further pointed out that the courts in West Bengal were averse to granting bail and in some cases the diseased, the aged and the infirm were also victims of such reluctance. This is further aggravated by the reluctance of the jail superintendents to draw the court's attentions to such deserving prisoners. Once the trial starts it does not continue regularly. A huge number of appeals are still pending and in the meantime the prisoners suffer detention even beyond the maximum statutory period. Right to assist the lawyers is very important but is overlooked. Further, briefs are not being returned by the lawyers to their prisoner clients.

- Delay in framing of charge
- Lack of use of plea bargaining
- Lack of willingness to grant bail even for vulnerable groups such as the sick, infirm, aged etc.
- Pendency of appeals
- Lack of access to effective legal aid

### Prisons

Mr Sarangi stated that though India's prison population is very low it has the highest percentage of under-trials which is about 70%. Lack of infrastructure could not be an excuse. The problem was of lack of accountability and sectarianism. Another problem was the non-realization of the rights of the convicts. There were custodial deaths and the jail manual was not being followed. The release record was the worst in West Bengal despite the West Bengal Prison Act being the most liberal in its scope. Convicts may be given leave twice a year, yet according to a statistic available with him,

- Huge under-trial population
- Custodial deaths
- Non-realisation of prisoners' rights
- Reluctance to release prisoners on parole/pre-mature release

out of 700 convicts only 1 person have been given such leave. There were prisoners lodged up in jail for more than 30 years yet nothing has been done about it. It was further pointed out that the prisoner's right to work and participate in workshops was hardly being realized in West Bengal prisons. Mr. Sarangi pointed out that the pre mature release conditions in West Bengal were very bad when compared to the other states. Dr Gautama discussed the plight of Bangladesh Nationals, who due to bureaucratic issues continue to be detained even after completion of their period of conviction. Repatriation of Bangladesh Nationals, termed as *jankhalash prisoners* is a major issue so far as prisons are concerned.

### Legal Aid

During the interactive session, Justice Ruma Pal pointed out that although there are legal aid centres established in correctional homes, the performance of such lawyers are very poor due to lack of adequate incentives and a proper monitoring body. Justice Sengupta pointed out that the best lawyers are not coming forward to provide legal aid due to the above problems. He also alleged that legal aid lawyers often charge money from prisoners who are ignorant of their rights to free legal aid. Mrs Madhurima Dhanuka of CHRI also added that in addition to the above problems, legal aid lawyers do not receive appropriate training required for this purpose. Non-attendance of legal aid lawyers is also a problem. As a solution to this malady, Mr Ranvir Kumar, IG, Correctional Services, impromptu suggested that it should be mandatory to give legal aid service on part of the lawyers during the initial years of their practice. The Member-secretary of the SLSA brought to notice that many Paralegal training centres had been established to ensure that paralegals in the correctional homes can properly work with the prisoners. Dr Bipasha Roy from Juvenile Justice Board (JJB) further added that in addition to an effective legal aid clinic in the correctional homes a legal aid clinic for the juveniles (inside the JJB too) is an immediate necessity.

- Lack of monitoring body
- Legal aid lawyers taking money
- Quality of legal aid lawyers
- Lack of training of legal aid lawyers
- Lack of legal aid lawyers in Juvenile Boards

### Government/Others

Justice Ruma Pal identified an intransigent lacuna in the criminal justice system, i.e. the lack of accountability of the Government officials and also amongst legal aid lawyers. She stated that it is most essential to have a monitoring body that will ensure that legal aid lawyers and the officers in charge of the various agencies of the criminal justice system are made accountable for their actions at every stage before such body.

- Lack of accountability
- Lack of monitoring body

After discussion of the problems, possible solutions were proposed to remedy the bottlenecks.

## Solutions:

Justice K.J.Sengupta suggested that the judiciary intervene and make it mandatory to frame charges within a month, barring exceptions. The courts have to take the decision of resorting to speed trials to dispose of cases. However, this shall be conducted with caution to prevent hasty decision making and overlooking of important facts. He suggested in cases of rape and dowry death, examination of witnesses can take place in the court itself. Ss 284, 294, 295, 296 of the Cr.P.C. relating to attendance of witness, affidavit in proof of conduct of public servants and so on can be implemented. Doctors can be examined through affidavits which shall save a lot of time. As a matter of fact some of these methodologies have already been adopted to fair success. Compoundable offences should be decided by the lok adalats.

Mr Sarangi advocated the concept of pre-trial judicial review to check injustice at the pre-trial level. Regarding the repatriation of Bangladeshi nationals, Justice Sengupta suggested that the Home Department should take it up through diplomatic channels to push them back easily and effectively and deliver justice to both sides. The Repatriation of Prisoners Act, argued Mr.Sarangi, which has been agreed with Bangladesh, should be implemented and infiltrating nationals should be sent back to Bangladesh once they are convicted.

Mr.Sarangi hoped for further improvement of the present system of availability of reports on prisons on the internet. Dr Gautama suggested that participation of the civil society at the grassroots level and spreading awareness and commitment amidst such people is the first essential thing to be done to eradicate all possible problems.

In cases where legal aid lawyers take money, Justice Sengupta asserted that such practices should be brought to the notice of the Member Secretary of the State Legal Services Authority and he promised of appropriate action hence.

- Mandatory framing of charges within 1 month
- In court examination of witnesses in cases of rape & dowry death
- Examination of doctors through affidavits
- Compoundable offences to be decided by lok adalats
- Superintendents of correctional homes to bring cases of improper detention to the immediate attention of concerned courts
- Stringent Pre-trial judicial review to check injustice at pre-trial stage
- Appropriate training of legal aid lawyers
- Unprofessional practices of legal aid lawyers to be brought to the notice of State Legal Services Authority

## Session II: Under-trials and Prolonged detention

As already highlighted in the last session, prolonged pre-trial detention is a major concern in India with more than 65% of the prison population comprising of under-trials. This session focused on identifying key areas of concern and proposing solutions to overcome them. The session was chaired by Justice Joymalya Bagchi, High Court of Calcutta and Mr Damodar Sarangi, Special Rapporteur, NHRC & Mr Ranvir Kumar, Inspector General of Correctional Services, West Bengal as panelists. The session also included an interactive discussion at the end.

### Problems:

Justice Joymalya Bagchi emphasised that contrary to the criminal jurisprudence which our country, through its courts have tried to adhere to i.e. the acknowledged presumption of innocence coupled with the constitutional guarantee that the dignity of the individual shall at all times be upheld, in reality the condition was disheartening when it came to detention - rather prolonged and unjustified detention of the prisoners. There is no doubt that the living conditions in a jail are in as much not as deplorable as one may think. Rather, the basic necessities of an average Indian may well be satisfied in a correctional home than he could otherwise manage for himself. But here the question arises as to why the need to jail so many people every year.

- Arbitrary arrests
- Abuse of investigative power by police
- Delay in trial resulting in prolonged pre-trial detention
- Lack of legal representation in courts

He further stated that whereas the penal laws of our country provide that once a person has been taken into custody on grounds of investigation, upon sufficient evidence which shall convince the court to order him to remain as an under-trial till the final disposal of the case and if proven guilty, his period of conviction includes the period spent as an under-trial. However, there are no provisions in any of the laws of the country providing that when a person has been proved not guilty and has yet spent a considerable time in a jail, he may be compensated for the same. It seems in India the thing that can be lost most easily, is liberty.

Prior to the amendment of Section 41 of the Cr.P.C. there were no statutory regulations on the powers of the police even at the rank of Sub-inspector to arrest a person and detain him at the slightest notion of his belief resulting in the violation of the dignity of an individual, contrary to the ethos of the constitution and criminal jurisprudence in our country. He referred to the *Joginder Kumar* judgment in this regard. Further, in the *D.K Basu* case and in the *State v. Joy Emanuel*, the courts interpreted Article 21 for giving protection and preventing arbitrary arrests.

He questioned the prevailing atmosphere where pursuant to an FIR against a person, arrest would announce the commencement of proceedings. Crime may not begin and end with arrest. The procedure for granting of bail by the courts is a highly debatable issue. It depends much on the subjective satisfaction of the court based on the pre-embryonic material brought before it, which may or may not be transferred to have proper evidentiary value at a later stage of the trial.

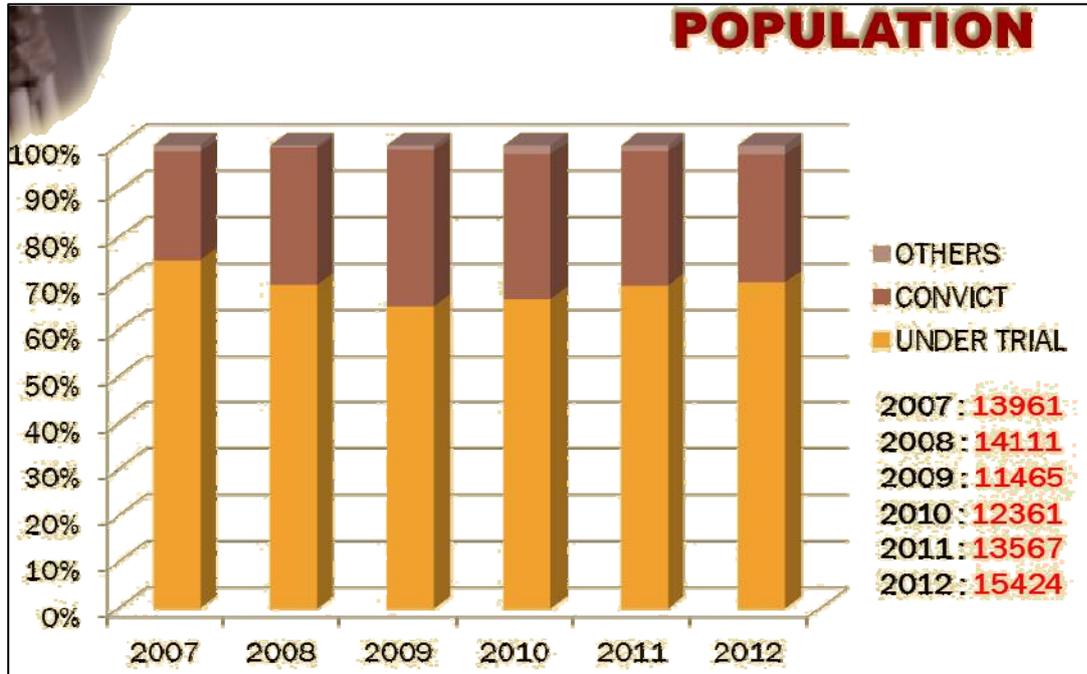
Justice Bagchi alleged that the police power was being used for the recovery of money by spicing up the case and then charging money, mainly to skirt lengthy proceedings. Another troublesome area, he identified, was the trafficking of human beings and what was required was closed interrogation which could be made possible only after arrest.

He reiterated that the increasing number of under-trials in our country is alarming. The investigation procedure has become such that the police wish to first identify a suspect and then based on his attributes and conduct proceeds to collect evidence which may be conducive to the situation. There have been instances where deliberate planting of evidence against a person has been made in order to falsely implicate him. The system has much reversed itself from its original adversarial to an inquisitorial system, by virtue of which it is the investigation first that should prompt the police and then the court to determine the guilt of the accused, unlike the detention of the accused first and then following up a trail of investigation leading unto him. This aspect was highlighted both by Justice Bagchi and Mr. Damodar Sarangi.

Mr Sarangi pointed out that in the *L.N. Mishra* case, where the accused was imprisoned for more than 30 years, the Supreme Court realized the need to set a limit on time under which the police must complete its investigation to prevent prolonged detention. However, imposition of such a limit has eluded the courts. Sometimes even files of accused go missing leading to unnecessary detention.

Mr Ranvir Kumar provided relevant data on West Bengal on population of prisoners, period of detention, overcrowding etc. He pertinently pointed out that the primary reason for the increase in number of under-trials is because prisoners are undefended. Prisoners are unable to employ competent lawyers, unable to furnish sureties for being released on bail, delay in trials, and delay of acceptance or rejection of appeal petitions and so on. As a result, certain consequences ensue such as space crunch and overpopulation, restlessness, escapes, grievances, group clashes, sexual and health hazards and even custodial deaths. Of the many, overcrowding is perhaps the most serious problem of all. He informed that correctional homes at Jhargram, Jangipur, Kandi, Coochbehar and many more are suffering from tremendous overcrowding as a result of teeming number of under-trials. He also stated that prisoners mainly complain of inordinate delay in trial, failure of production before the magistrate etc. Of late prisoners have also

resorted to hunger strikes in an attempt to make their grievances known to the concerned authorities.



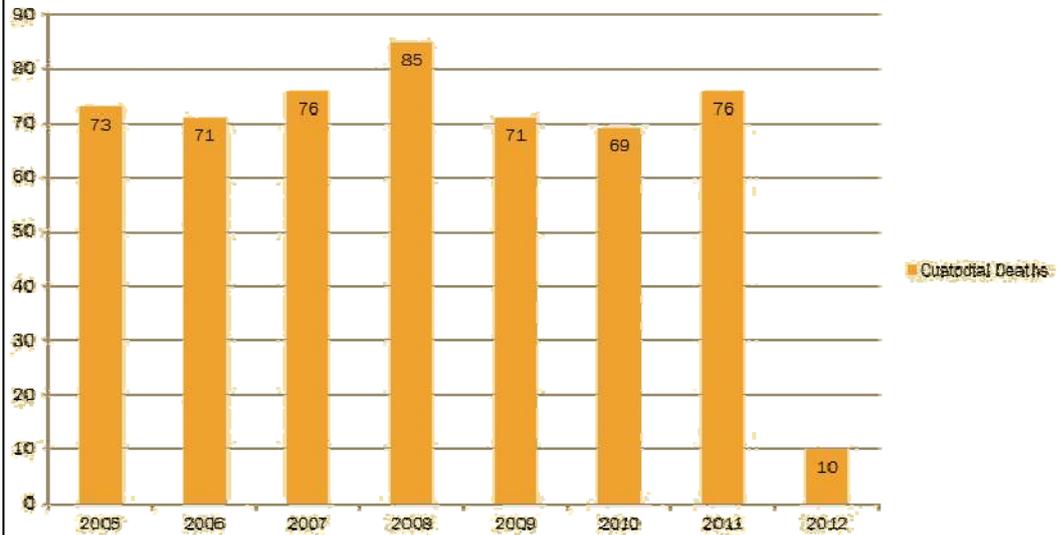
### Period of Detention of UTPs

| YEAR | Upto 3m | 3-6 m | 6-12 m | 1-2 yrs | 2-3 yrs | 3-5 yrs | 5yrs + | Total |
|------|---------|-------|--------|---------|---------|---------|--------|-------|
| 2011 | 7476    | 2044  | 1600   | 1102    | 644     | 497     | 204    | 13567 |
| 2010 | 5994    | 2411  | 1860   | 940     | 609     | 303     | 244    | 12361 |
| 2009 | 5499    | 1952  | 1822   | 1032    | 674     | 383     | 103    | 11465 |

**The figure of 5yrs+ stands to **288** as on 01.08.12**

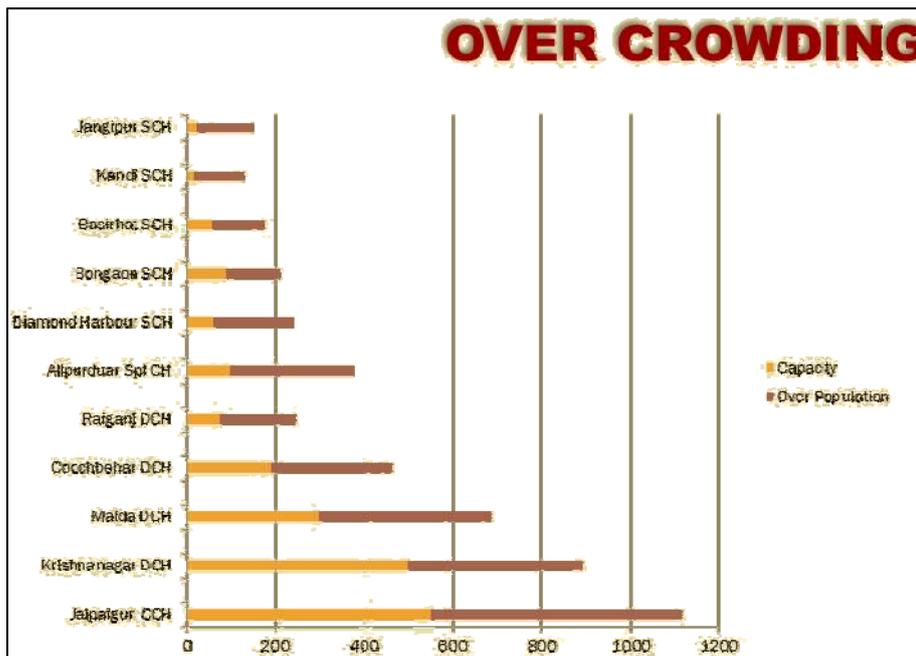
# CUSTODIAL DEATH

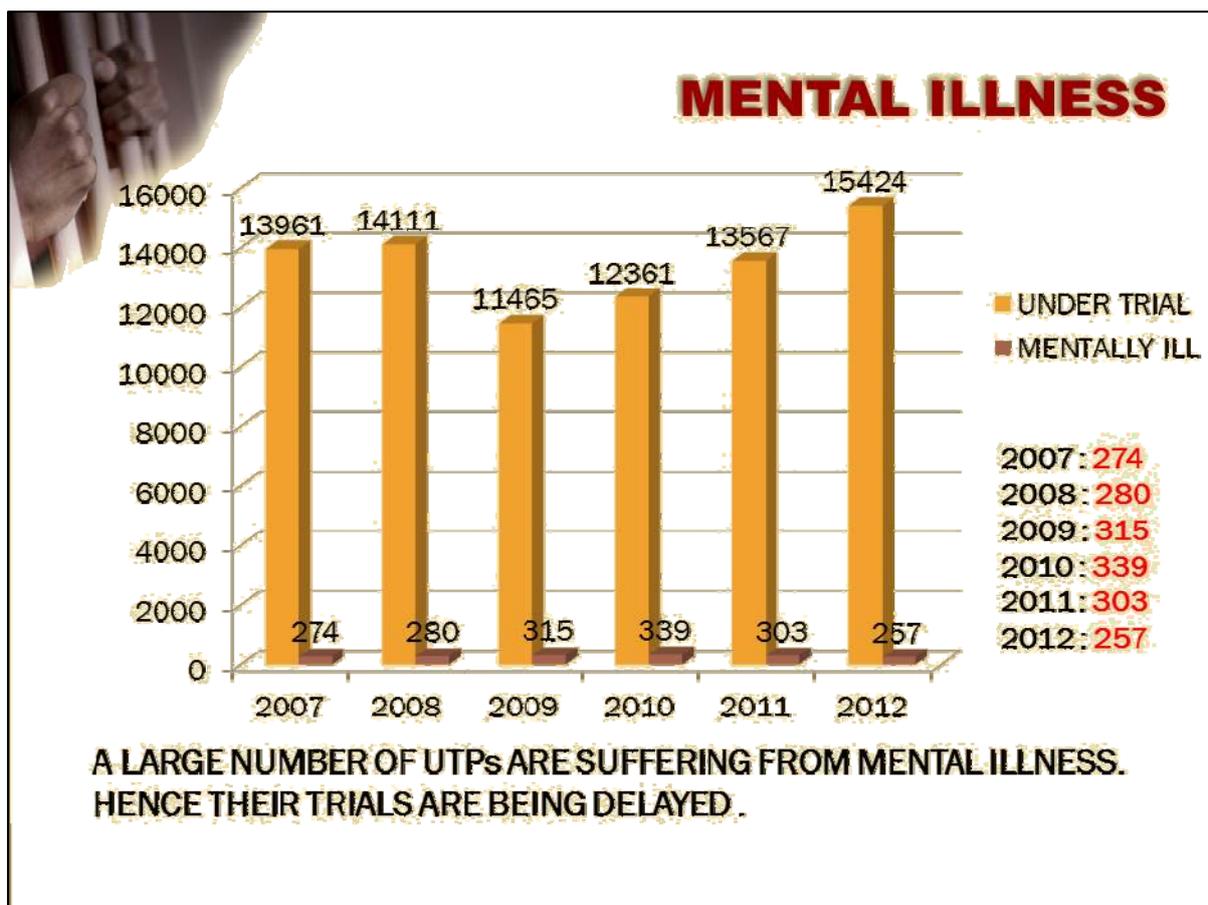
Custodial Deaths



EVERY YEAR A SIGNIFICANT NUMBER OF CUSTODIAL DEATH TAKES PLACE IN CORRECTIONAL HOMES OF THE STATE AND ALMOST ALL OF THEM ARE UNDERTRIALS

# OVER CROWDING





### Solutions:

Amendment of section 41 of the Cr.P.C., 1973 has been a great leap and a much needed one towards ensuring some degree of accountability on part of the police to prevent flagrant miscarriage of justice by leaving one's right to personal liberty under jeopardy. Justice Bagchi also pointed out that courts in many cases have been laying down law to not arrest unless required. He referred to S. 160 of the Cr.P.C. and proposed judicious use of it ensuring that the right to interrogate remains untrammelled regardless of arrest. This way the efficacy of the system could be increased and better justice provided. He also referred to *Nandini Sathpati* judgement of 1978 (Supreme Court) and also referred to Article 22 of our Constitution.

Legislations are required to lay down the basic and minimum standards that must be met for proper administration of criminal justice system. Since India is a country of limited resources of competing interests, funds should be used judiciously for victim rehabilitation and compensations to reduce expenses on mere under-trials even before they are legally convicted. This was Justice Bagchi's suggestion. However, Mr Sarangi suggested that instead making any laws,

existing ones should be unearthed and implemented. Mr. Ranvir Sharma suggested many remedial measures of which a few noteworthy ones were increasing the efficacy of already existing legal aid clinics and establishing new ones, regularizing the visits of legal aid lawyers, sensitization of the judicial officers with legal aid schemes and programmes and regular monitoring of long term pending cases of under-trials by district and state level review committee. It is important to acknowledge that detention of under-trials is a troublesome area teasing uneasiness. It is hence pertinent that a conjoined and collaborative effort be made between law enforcing agencies, the judiciary and the prisons.

The participants felt an immediate need of intervention to curb lack of legal assistance, overcrowding and access to justice. Mr.Sarangji drew the attention of the House to the provisions of the Protection of Human Rights Act, pursuant to which NHRC has appointed advocates for those in need of them in certain cases. He felt it was possible to have a legal cell in the NHRC itself and promised serious endeavour in this regard.

- Increasing accountability of police esp. regulating the power of arrest
- Implementation of existing laws on bail
- Increased collaborative effort between law enforcing agencies esp. judiciary and correctional homes
- Establishing legal aid facilities in all correctional homes
- Setting up of Counselling and Conciliation Centres - Legal Aid Clinics in all correctional homes;
- Appointment of “Legal Aid Advocates” and “Legal Aid Counsel” in all correctional homes
- Regularization of visits of legal aid advocates/counsellors to correctional homes
- Accreditation of NGOs for Legal Literacy and Legal Awareness campaign
- Publicity to Legal Aid Schemes and programmes to make correctional home inmates aware about legal aid facilities
- Emphasis on competent and quality legal services to the aided persons
- Sensitization of Judicial Officers with regards to Legal Services Schemes and programmes
- Regular monitoring of the pending cases of the long term Undertrials at District level by District Level Review Committee and State Level Review Committee.

## Session III: Juveniles and the law

The Juvenile Justice (Care and Protection of Children) Act of 2000 deals with **juveniles in conflict with law** (apart from children in need of care and protection). Under the Act a separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. However, even with a plethora of judgments, directions and orders,

*“We are guilty of many errors and faults, but our worst crime is abandoning the children, neglecting the foundation of life. Many of the things we need can wait. The child cannot, right now is the time his bones are being formed, his blood is being made and his senses are being developed. To him we cannot answer ‘tomorrow’. His name is ‘today’.”*

Gabriala Mistral - Nobel Laureate

many juveniles still find their way into adult correctional facilities. This session aimed at discussing these issues and was chaired by Prof (Dr.) P Ishwara Bhat, Vice Chancellor, NUJS with Dr. Bipasha Roy, Member, Juvenile Justice Board, Kolkata and Ms. Neeloo Sherpa Chakraborty, Deputy Commissioner of Police, Bidhannagar, West Bengal as panelists.

### Problems:

To begin with Prof. Bhat threw light on the fact that our society has a moral responsibility not to impose hardships on children. It must ensure an educational, cultural and healthy environment for the upbringing of the country’s future and thereby fulfil the constitutional aspirations for the same. Exploitation and trafficking of children must be avoided at any cost and special measures need to be taken while dealing with them. For the above purposes the Juvenile Justice (Care and Protection of Children) Act 2000 has been implemented. In spite of the existence of a very exhaustive legislation, the lack of effective and fruitful implementation of the same has perhaps been the biggest defect of the system. The Act provides for special homes and observation homes for children in conflict with law and child in need of care and protection. Sadly the conditions of these homes are poor, below average and lack the basic infrastructure meant for protection and care of children.

Dr. Bipasha Roy, pointed out several noteworthy malpractices which have made the smooth implementation of the Act even more difficult.

- *Firstly*, when children in conflict with law are apprehended by the police, they are, in the police station itself, referred to lawyers who are not legal aid lawyers. Hence, the provision of availing free legal aid has never been well exploited.

- *Secondly*, there is a huge lack of co-ordination amongst the State Juvenile Police Unit (SJPU) and new investigating officers are not well trained to handle such matters. This was reiterated by Neeloo Sherpa Chakraborty.
- *Thirdly*, a panel list was once given for providing well qualified legal aid lawyers, but it was soon discontinued on grounds of inadequate remuneration. Thus, children go unrepresented in their proceedings. The parents/guardians of these children are forced to engage lawyers whom they have to pay. As most of these parents are illiterate and poor the chances of them getting exploited are very high. The children are denied their right to avail of free legal aid.
- *Fourthly*, as a result of all the above problems children sometimes land up without a defence lawyer and find themselves in adult correctional homes, ultimately defeating the whole purpose of the Act.
- *Finally*, in cases where a child is a co-accused along with an adult offender, he is often made to “await the original record” of his case being transferred from the Magistrate of the adult court. This further aggravates the situation, failing speedy disposal. The juvenile boards have cases pending for more than ten years.

Further problems like part time principal magistrate who usually sits after 2 pm and only for a very short time span, non-accountability of attendance of such Board members/Probation Officers, non-submission of performance appraisal reports are crippling the system from within. It was also very pertinently pointed out by other participants that when the Magistrate of the First class of a court is appointed as the Principle Magistrate of the JJB, the Act provides that such Magistrate should be trained in child psychology but in reality they are not, adequately, which results in insufficient sensitization of child welfare issues.

Ms Chakraborty further highlighted the duties of police officers vis-à-vis juveniles. She stated that in case of petty offences (punishable with fine up to Rs.1000/- only), the police may dispose of the case at the police station itself. In case of non-serious offences (punishable with imprisonment up to 7 years) a juvenile can be apprehended only if it is "necessary in the interest of the juvenile". In case of serious offences (punishable with imprisonment for more than 7 years) the juvenile can be apprehended.

Upon apprehension of a juvenile, the police shall not hand-cuff, chain or otherwise fetter the juvenile or send the juvenile to police lock up or jail. The police shall inform the designated JCWO of the nearest police station to take charge of the juvenile and matter. Police shall also inform the parents/guardian about apprehension of the juvenile, along with the address of the Board and date and time of production.

It is the duty of the officer apprehending such juvenile to:-

1. Explain to the parents/guardian about the possible need of personal bond /surety;
2. Give copy of police report to the parents/guardian free of cost;
3. Ask the parents/guardian to bring documents regarding age of juvenile;
4. Inform the Probation Officer;
5. Record social background of the juvenile and circumstances of apprehension in the case diary and forward to the Board;
6. Be responsible for the safety, food and basic amenities during the period of apprehension; and,
7. Produce before the Board within 24 hours of apprehension, and in case the Board is not sitting, the juvenile shall be produced before a single member of the Board, who is empowered to pass all orders except final disposal. Where juvenile is not released on bail, he shall be sent to an Observation Home.

In case of apprehension apparently in the interest of juvenile, the police shall make a report to the Board for transferring the child to the Child Welfare Committee. In case of a non-serious offence, no FIR or charge-sheet is required. Police may record the information regarding the alleged incident in the General Diary. A social background report, circumstances of apprehension and offence shall be submitted to the Board before the first hearing.

- Lack of free legal aid for juveniles
- Lack of training of investigation officers on JJ Act
- No setup of Special Juvenile Police Units
- Juveniles sometimes ending up in adult correctional homes
- Custody warrants not reflecting age of accused
- Delay in cases at JJB due to 'awaiting original records' from courts
- Part-time principle magistrates
- Probation officers not informed upon arrest of juvenile by the police
- No legal aid centres setup in JJBs

One of the participants, a probation officer aptly pointed out that sometimes probation officers are not even informed, or are informed much later, about the apprehension of the juvenile by the police. This is contrary to the provisions of the Act. Ms. Neeloo also conceded that the police, too, were overburdened with work and this led to lapse in fulfilling duties as per the Act. Ideally, the Superintendent of Police was supposed to monitor the situation, however, that was not being done with dedication for similar reasons.

Dr Roy also pointed out that even after the Supreme Court has mandated the National Legal Services Authorities in its order dtd. 19.08.2011 in *Sampurna Behrua v. Union of India & Ors.* W.P.(C) No.473/2005 to put in place Legal Aid Centres attached to the Juvenile Justice Board (s) in the State capitals - there has been no implementation of the same. Due to this many children, especially foreign nationals, often go unrepresented in their proceedings, which is detrimental to their interest.

There was a general consensus that NGOs are yet to involve themselves actively in the arena of running institutions for children in conflict with law. Lack of experience and infrastructure in handling these children make them hesitant taking on their responsibility and rehabilitating them.

Mr S.N. Roy, Member, WBHRC claimed that another problem was often the authorities live in denial about their shortcomings and that prevents the development of the right attitude towards rectification. He alleged the non-functioning of the Child Development Ministry in this regard.

Mr Ranvir Kumar informed the house that custody warrants did not mention the age of the person being sent to the prisons. Therefore it was not possible for the jail authorities to identify who was or wasn't a juvenile.

### **Solutions:**

It was identified unanimously that the Juvenile Justice Act was implemented to make the system liberal and to move away from the Criminal Justice system as far as the juveniles were concerned. The present scenario provided a wide scope for improvement and many practical solutions have been offered. A document on needs and requirements, as submitted by a panellist, Dr Bipasha Roy, member JJB, Kolkata District, is annexed to this report as Annexure II-B. The following are the most important ones:

- When a person claims juvenility the courts must look into the age of the person at the time of commission of the offence and not when he has been produced before the court. Courts must exercise caution in this regard.
- A full time Principal Magistrate and accountability of attendance of the Board Members is a sine qua non for the effective implementation of the Act.
- Establishing a Special Juvenile Police Unit as mandated by JJ Act in every district and ensuring the proper co-ordination among them.
- Introduction of a system of handing-over and taking-over of charges by the Juvenile/Child Welfare officers/Investigating Officers of every police station once they get transferred.
- Facilitate the process of issuing certified copies of original case record to the concerned Investigating Officers, for the Juvenile Justice Board. Speedy transfer of the original case record to the Juvenile Justice Board after the case is disposed off in the courts.
- Most importantly, the infrastructure of the special homes, observation homes and the children's homes must be improved ,in terms of health and hygiene, ensuring proper well trained staff to look after the children, improving the infrastructure of the JJ Boards, ensuring effective medical care by means of providing doctors and nurses (male/female)/emergency

room in all the Government Homes and encouraging active participation of non-governmental organizations for the protection of juveniles in the state.

- Activation of the Juvenile Welfare Fund.
- When a child is arrested, the Probation Officer should be present at the Police Station itself. Legal aid should also be provided right at the Police Station stage.

## Session IV: Convicts and Pre-mature Release

NCRB's Prison Statistics reveal that in the year 2010 of the 25476 inmates released on parole all over the country only 19 inmates were released on parole in West Bengal. Whereas, of the 3228 prisoners released pre-maturely across India, West Bengal accounted for only 17 of the total numbers. The Prison statistics for the year 2010 also reveal that the number of convicts in West Bengal was 5778. Of these, 2658 convicts are serving life sentence, implying that the only possibility of their release is via parole or pre-mature release. In conclusion one could say that for the majority of the convict population attempts for correction and rehabilitation serve no end unless and until the state reviews the system for pre-mature release/parole. The session was chaired by Justice NC Sil, Member, West Bengal Human Rights Commission with Mr S Chakraborty, former Commissioner of Police, Kolkata and Mr GM Chakraborty, DG & IGP (Traffic), Kolkata as panelists.

### Problems:

Justice NC Sil said that keeping in mind the importance and the necessity of reformatory theories and in an attempt to implement the same, practices like pre-mature release and parole have been recognized. Today the term prisoners have been done away with and jails are now referred to as "correctional homes".

He further pointed that the procedure for releasing a convict pre-maturely involves a lot of complications. Notwithstanding such complications the main hurdle seems to lie in the enthusiasm of the prison and police officers to make appropriate recommendations which shall ensure that the convict shall be released. Legally, after a specified time span a convict maybe entitled to pre-mature release but he cannot ask for it as a matter of right. The recommendations sent by the prison officers and police officers must be in his favour. But in most the cases it is found that such report does not approve release and often negates the same. The reason for this lies in the approach of the officers towards convicts and the system. They are reluctant to release prisoners. Article 161 of the Constitution of India empowers the Governor to show pardon, remit and even commute sentences of convicts, implying that ultimately it is the executive that can exercise superiority in terms of imposing punishment, even above the courts. Once the courts pronounce a judgment, it indeed has very little to do to ensure the implementation of the same via sections 432, 433 & 433A of the Cr.P.C. Its only role is to however ensure that executive powers are not used in an arbitrary and capricious manner which can potentially crush the whole system.

Further, Mr S Chakraborty very pertinently directed the attention of all participants to certain specific practical problems this system suffers from. According to him, there are too many codes of conduct that bind the police department and have disallowed its smooth functioning. Apart from a host of statutes like the IPC of 1860, Police Act of 1861, the Prisoners Act of 1894, the Jail Code of 1898 and others, the Police Register (PR) system, the Police Register Transfer (PRT) system, the surveillance system (which has however been turned down by the Supreme Court with much scathing remarks), the Jail Parade system which involves the identification of the prospective released convicts by the police officers and lastly the system of bad character roles, all together has given rise to, what can be aptly called, a “police culture”. These factors have inculcated in the police a notion that a convict can never be reformed and he shall remain a perpetual suspect in the eyes of the law. They wish to protect the interests of their clientele which is the society itself and protect them by ensuring that the convicts remain behind the bars for as long as possible. Mr. G.M Chakraborty further elaborated on this “mindset” problem and felt this attitude had much to do with the public perception that it was very difficult to actually punish the guilty in our country and state, and that in most cases; the guilty could avoid punishment and go scot-free by exploiting the poor justice delivery system.

Moreover, the NHRC and the Supreme Court have often issued guidelines to the police departments with regard to better implementation of the system of pre-mature release but seldom have such instructions been read, understood or implemented. They are merely a source of documentation. In addition, the lack of co-ordination between the police department, the officers of the correctional homes and the probation officers have made things worse and stagnant.

- Too many codes of conduct for police have hampered smooth functioning
- Reluctance of the system to release prisoners which can be termed as a mindset problem
- Routine negative police reports
- Lack of coordination between police, prisons & probation officers
- Current system exploited for release of political prisoners

Mr G.M. Chakraborty spoke about the functioning of the review board for pre-mature release, where the police report played a very critical role, and more often than not, the police preferred to give negative reports. Mr Dipankar Deb, an ex-convict, felt the same and said that the authorities simply take into account the past criminal record of a person but does not consider whether while in prison he has undergone transformation or not. This was very wrong and unjustified, he felt. Another major problem, Mr G.M Chakraborty felt, was that the review board and the provision of pre-mature was being used more and more to secure release of political workers by their political masters. This was resulting in gross misuse of

the provisions, while the prisoners deserving pre-mature release but without political connections continued to languish in jail.

### **Solutions:**

As suggested by Justice N.C. Sil, the recommendations to be sent by the prison & police officers must be based on the subjective satisfaction pertaining to each individual case. The officers must look into the potentialities of the convict, his status, his physical condition, age and every other attribute that shall count in determining whether he can be released or not. The courts should also play a monitoring role to ensure that executive power is not misused and convicts do not suffer in the hands of prejudiced officers. The courts have much to do and should not be hesitant to take steps for proper implementation of the rules.

Mr S Chakraborty suggested that the following immediate and imperative actions must be taken to ensure proper implementation of the system of pre-mature release and parole.

- Training, as previously mentioned, is an absolute must, but a joint training is required of the police, the officers of the correctional homes and the probation officers. It is important to instil in them the idea of reformation, its possibilities, effectiveness and necessities. Unless these three agencies do not believe in the system of reformation, the process cannot be effectively put into operation. Even senior officers should be trained and if necessary the Human Rights Commission should intervene to train them on subjects of penology and sociology of punishments.
- It is also of great importance to ascertain with surety that convicts who may be released on grounds of good behaviour within the correctional home shall also remain so outside its boundaries. NHRC has issued guidelines to ensure with certainty that a convict must be psychologically tested and verified by a competent person, that no dormant feeling of anger, vengeance or propensities to commit a crime or to instigate commission of a crime exists in the mind of the convict. Lack of mention of such verification in the recommendations to be sent to the Review Board shall obviously result in the negation of the proposal for pre-mature release. This condition is a *sine qua non*.
- With respect to paroles it is the Inspector General of Prisons who has the ultimate authority to grant parole. He must be given specific tasks to find out suitable and deserving convicts who may be given parole and to give effect to them.
- Women convicts should be handled more liberally.

However, a word of caution to be kept in mind is that the system of pre-mature release is a very sensitive one and the agencies involved in giving effect to them must be careful in seeing that no undeserving convict is benefitted, or else it may result in unproductive and inappropriate effects of huge detriment to society at large.

- Recommendation of prisoners must be based on individual cases, giving due weightage to his/her physical condition, age and other attributes
- Check on misuse of power by the executive
- Joint training of police, officers of correctional homes & probation officers.
- Convict must be psychologically tested post-release to ensure that he maintains good behaviour after release
- Every application for pre-mature release must be accepted or rejected by way of a speaking order

# Recommendations

Against the entropic problems of arbitrary arrest, delay in filing of charge-sheet, unnecessary remand, pathological conditions of overcrowding, prolonged detention, lack of physical production of accused, lack of sureties, pendency, stringent use of bail provisions, and overall lack of accountability and monitoring at the police, magistrate, lawyer and legal aid levels of the criminal justice system, the following suggestions were made:

## CORRECTIONAL HOMES

- Superintendents of correctional homes to bring cases of improper detention to the immediate attention of concerned courts
- Regular monitoring of the pending cases of the long term Undertrials at District level by District Level Review Committee and State Level Review Committee.
- Publicity to Legal Aid Schemes and programmes to make correctional home inmates aware about legal aid facilities
- Increase collaborative effort between law enforcing agencies esp. judiciary and correctional homes

## JUDICIARY

- Need for higher judiciary to embolden subordinate judiciary to speed up trials, reduce trial period and management of court's time
- Ensure charge-sheet is filed within 30 days of arrest
- Ensure physical production of accused/persons in custody on date of production
- Mandatory framing of charges within 1 month
- In court examination of witnesses in cases of rape & dowry death
- Examination of doctors through affidavits
- Compoundable offences to be decided by lok adalats
- Stringent Pre-trial judicial review to check injustice at pre-trial stage
- Sensitization of Judicial Officers with regard to Legal Services Schemes and programmes
- Implementation of existing laws on bail
- Increased collaborative effort between law enforcing agencies esp. judiciary and correctional homes

## JUVENILE JUSTICE BOARDS (JJBs)

- Need to make speedy transfer of cases from Criminal Courts to JJB
- Certified copies of original records to be provided to JJB at the earliest

- Need to privilege JJB over courts for submission/presentation of original records in order to avoid delays caused by transfer of records
- Guideline or notification needed for acceptability of certified copies of original records are the best solution to deal with trials in both courts
- Need for Special Public Prosecutors for JJBs for everyday presence and to avoid delays
- Mechanism needed to ensure that Magistrate, public prosecutor and probation officers give at least 5 hours a day to juvenile justice courts so that rehabilitation is addressed and waiting hours for the child in conflict with law are reduced
- Need for greater training to the judges of the Juvenile Justice Boards
- Need to devise accountability mechanism for board members of the JJBs
- Need for a performance appraisal system for all representatives engaged under the Juvenile Justice Act
- Need for Management Committees to ensure compliance to standards by observation homes

#### **LEGAL AID SERVICES**

- A monitoring body over legal aid system should be setup to make delivery of legal aid accountable and effective
- A body of competent legal aid lawyers to be set up in each correctional home either in the form of a committee for legal aid for prisoners (CLAP) or legal officers.
- Appointment of “Legal Aid Advocates” and “Legal Aid Counsel” in all correctional homes and regularization of visits of legal aid advocates/counsellors to correctional homes
- All legal aid lawyers must undergo training in criminal defence and fair trial principles to ensure quality of legal aid services
- NALSA needs to provide better pedagogical grounding for paralegal volunteers in its paralegal training programmes
- Provision for legal aid lawyers for children in conflict with law to be made available right from the police station level and at the juvenile justice board
- Need for Legal Aid Clinics or paralegals at the Juvenile Justice Boards to ensure that juveniles do not go unrepresented in their proceedings
- Unprofessional practices of legal aid lawyers to be brought to the notice of State Legal Services Authority
- Accreditation of NGOs for Legal Literacy and Legal Awareness campaign

#### **POLICE**

- Attention to arbitrary arrest urgently needed in the form of pre-trial judicial review process and judicial disapproval

- Need to shift attention from compensation to prevention of arbitrary arrest
- Increasing accountability of police esp. regulating the power of arrest
- Need to monitor adherence to S 41 A, 41 B Cr.P.C. and the D. K. Basu Guidelines more stringently
- Need for greater attention to powers of investigation to police under S 160 Cr.P.C to counter unreasonable arrests and closed investigation
- Need to amend Cr.P.C. to facilitate police investigation without necessarily putting person in custody
- Mechanisms needed to ensure that probation officers and legal aid lawyers are available at the police station as first line of help and not fourth as it is currently
- Mechanism needed to ensure that police informs both the family of the suspect as well as the probation officer in the area
- Need to set up Special Juvenile Police Unit as mandated by the Juvenile Justice Act in all districts
- Need for better field investigations and field reports by the police for effecting pre-mature release of prisoners
- Joint training of police, officers of correctional homes & probation officers.

#### **SENTENCE REVIEW BOARD**

- Every application for pre-mature release must be accepted or rejected by way of a speaking order
- Separate report to be sought from psychologists to aid the NHRC Review Board to decide pre-mature release
- Recommendation of prisoners must be based on individual cases, giving due weightage to his/her physical condition, age and other attributes
- Convict must be psychologically tested post-release to ensure that he maintains good behaviour after release
- Appropriate rehabilitative schemes should be established for such convicts so as to facilitate their reintegration into the society

#### **STATE HUMAN RIGHTS COMMISSION**

- The State Human Rights Commission could set up a panel of lawyers to take up cases of arbitrary arrest so as to ensure compliance to D.K. Basu guidelines
- Regular monitoring of the pending cases of the long term Undertrials at District level by District Level Review Committee and State Level Review Committee.

# ANNEXURE I

## STATE LEVEL COORDINATION MEETING ON THE CRIMINAL JUSTICE SYSTEM VIS-À-VIS PRISONERS

Venue: West Bengal National University of Juridical Sciences, Dr. Ambedkar Bhawan, 12 LB Block,  
Sector III, Salt Lake City, Kolkata - 700098, West Bengal

Saturday, 15<sup>th</sup> September 2012

### AGENDA

#### CONTEXT & AIM

The proposed meeting aspires to discuss the role of the various CJS agencies vis-à-vis prisoners and try and identify from each agency the bottlenecks in their functioning; identify, develop and implement best practice or innovative solutions to address gaps in the functioning of the criminal justice system in West Bengal; and provide a forum for solution based collaboration and problem solving among key criminal justice agencies.

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| <b>REGISTRATION</b> | <b>10.15 - 10.30</b> |
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#### **INAUGURAL SESSION:**

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| Welcome Address   | Hon'ble Justice Ruma Pal, EC Member - CHRI       | 10.30 - 10.35 |
| Inaugural Address | Hon'ble Justice AK Ganguly, Chairperson, WBHRC   | 10.35 - 10.40 |
| Keynote Address   | Mr. Damodar Sarangi, Special Rapporteur, NHRC    | 10.40 - 10.45 |
| Welcome for NUJS  | Prof. (Dr) P Ishwara Bhat, Vice Chancellor, NUJS | 10.45 - 10.47 |
| Introductions     | Ms Madhurima, Consultant, CHRI                   | 10.47 - 10.50 |

#### **SESSION I: Prisoners & the Criminal Justice System: Bottlenecks**

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|-------------|---|---------------|
| Chair:      | Hon'ble Justice KJ Sengupta, Calcutta HC      | 10.50 - 11.00 |
| Panelist 1: | Mr. Damodar Sarangi, Special Rapporteur, NHRC | 11.00 - 11.10 |
| Panelist 2: | Dr GD Gautama, Information Commissioner, WB   | 11.10 - 11.20 |

#### Context & Aim:

Prisoners, especially under-trials lie at the heart of the criminal justice system. From arrest ⇒ trial ⇒ sentencing ⇒ release prisoners embrace every agency of the criminal justice system. Under the legal framework, each agency of the CJS has been attributed a set of responsibilities for smooth and effective functioning of the CJS. However, in practice, one finds that there are often hurdles in the functioning of the CJS which leads to the violation of human rights of prisoners. This session aims to highlight the role & functions of CJS in the justice delivery system.

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| <b>Discussion:</b> | <b>11.20 - 11.40</b> |
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| <b>TEA</b> | <b>11.40 - 11.55</b> |
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#### **SESSION II: Under-trials & Prolonged detention**

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| <b>Chair: Hon'ble Justice Joymalya Bagchi, Calcutta HC</b>       | <b>11.55 - 12.05</b> |
| <b>Panelist 1: Mr. Damodar Sarangi, Special Rapporteur, NHRC</b> | <b>12.05 - 12.15</b> |
| <b>Panelist 2: Shri Ranvir Kumar, IG, Correctional Services</b>  | <b>12.15 - 12.25</b> |

**Context & Aim:**

Prolonged pre-trial detention is a major concern in India with more than 65% of the prison population comprising under-trials. This session seeks to discuss among others certain key areas to minimise pre-trial detention viz.

1. Production of accused in court
2. Liberalisation of bail/release on personal bonds
3. Access to free legal aid
4. Use of alternatives to incarceration viz. probation, plea bargaining etc.

**Discussion:** **12.25 - 1.00**

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| <b>LUNCH</b> | <b>1.00 - 2.15</b> |
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**SESSION III: Juveniles & the law**

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| <b>Chair: Prof. (Dr.) P. Ishwara Bhat , Vice Chancellor, NUJS</b> | <b>2.15 - 2.25</b> |
| <b>Panelist 1: Dr. Bipasha Roy, Member Juvenile Justice Board</b> | <b>2.25 - 2.35</b> |
| <b>Panelist 2: Smt. Neeloo Sherpa Chakraborty, DCP, BDN</b>       | <b>2.35 - 2.45</b> |

**Context & Aim:**

The Juvenile Justice (Care and Protection of Children) Act 2000 deals with juveniles in conflict with the law. Under the JJB Act a separate adjudicating and treatment mechanism has been established for persons below 18 years of age who have committed an offence. They are not to be treated in the same manner as are treated adult offenders. However, even with a plethora of judgments, directions & orders, many juveniles still find their way to adult correctional facilities. Moreover, the condition of the observation homes where juveniles are detained is also questionable.

This session aims to discuss these issues and also ways to implement the law & resolve any inter-agency issues involved in effective implementation.

**Discussion:** **2.45 - 3.00**

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| <b>TEA</b> | <b>3.00 - 3.15</b> |
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**SESSION IV: Convicts & Pre-mature Release**

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| <b>Chair: Hon'ble Justice N.C. Sil, Hon'ble Member, WBHRC</b>                 | <b>3.15 - 3.25</b> |
| <b>Panelist 1: Shri S Chakraborty, Former Commissioner of Police, Kolkata</b> | <b>3.25 - 3.35</b> |
| <b>Panelist 2: Shri GM Chakraborty, DG &amp; IGP (Traffic), Kolkata</b>       | <b>3.35 - 3.45</b> |

**Context & Aim:**

Recent NCRB's Prison Statistics reveal that in the year 2010 of the 25476 inmates released on parole all over the country only 19 inmates were released on parole in West Bengal. Whereas of the 3228 prisoners released pre-maturely across India, West Bengal accounted for only 17 of the total numbers. The Prison Statistics for year 2010 also reveal that the number of convicts in West Bengal was 5778. Of these 2658 convicts are serving life sentence, meaning that the only possibility for their release is via parole or pre-mature release. In conclusion one could say that for

majority of the convict population attempts for correction and rehabilitation serve no end unless and until the state reviews the system for premature release/parole.

The root cause behind the failure lies in the typical process of granting pre-mature release and parole. Even after several guidelines by the National Human Rights Commission & Supreme Court of India, both parole and pre-mature releases are not being granted - much to the agony of the convicted prisoners who have spent more than 20 years of actual imprisonment in correctional homes of West Bengal. This session aims to identify the problems within the CJS and discuss practical solutions to overcome the hurdles.

Discussion: 3.45- 4.00

**SESSION V:**

**Valedictory Address: Shri SN Roy, Hon'ble Member WBHRC 4.00 - 4.10**

**Vote of Thanks: Shri J. Sundara Sekhar, Secretary & CEO, WBHRC 4.10-4.20**

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| <b>CLOSING</b> | <b>4.20 - 4.30</b> |
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## ANNEXURE II - A

### LEGAL AID & PRISONERS<sup>1</sup>

One of the pre-requisites of a civilized state is its commitment towards guaranteeing those indicted of violating its laws with adequate legal representation. It is thus the duty of every nation to ensure legal aid or 'legal services' for all. To expedite this process, the Indian government has drawn up the Legal Services Authorities Act, 1987. Under this statute, any person who satisfies certain criteria is entitled to 'legal services' which is defined as follows:

*“legal service” includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter;”*

Bodies have been formed at the national, state, district and taluka level for responding to the need for legal aid. Despite the good intentions, the supply has barely met the demand for quality legal counsel resulting in a crisis of the criminal-legal system. The problem is sharply pronounced in the prisons where both under trials and convicts are languishing in the absence of good lawyers. Recent data collected by the National Legal Services Authority clearly states that in the year 2010, a mere 1475 prisoners were given legal aid, whereas there are more than 18000 prisoners in West Bengal.

#### SHADHINOTA- A STEP TOWARDS LEGAL EMPOWERMENT OF INMATES

In order to get to the bottom of the above problems and find solutions to them, the Commonwealth Human Rights Initiative and the Legal Aid Society of the National University of Juridical Sciences, Kolkata have launched the programme *Shadhinota*. The main aim of the project is to facilitate legal empowerment of the inmates. Through the organisation of regular legal aid camps in prisons like the Presidency Correctional Home [CCH] and the recently initiated clinic in Dum Dum CCH, the project makes legal aid accessible to those who are in dire need of it. In the process, the project co-ordinators collaborate with the State Legal Services Authority, District Legal Services Authority [s], and High Court Legal Services Committee who are responsible for the appointment of lawyers at various stages of pre-trial and trial period.

The practical experiences gained under the project highlighted certain problems imbibed in the existing system, such as

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<sup>1</sup> Written by Madhurima Dhanuka, Consultant, Prison Reforms Programme, Commonwealth Human Rights Initiative (CHRI) & Tanaya Sanyal, Intern, CHRI.

1. Delay in appointment of legal aid lawyers
2. Lack of accountability & supervision for their work
3. Lack of communication between lawyer and client
4. Non-appearance of the lawyer on dates of court productions and hearings
5. Lawyers demanding money for free legal services

The project in its initial phase, achieved some success with appointment of legal aid lawyers, release of a few inmates on bail etc. However, collaboration with the various Authorities and Committees, although generally rewarding and beneficial, are often time-consuming and extend the period of detention of the accused. His right to a free, fair and expeditious trial is thus jeopardised. To reduce such instances of delay, the following suggestions are put forth on behalf of the team working for *Shadhinota*.

### **INSTITUTION OF A 'COMMITTEE OF LEGAL AID FOR PRISONERS' FOR EACH PRISON**

A body consisting of a panel of legal aid lawyers shall be created in every Central Jail, District Jail, Sub/Special Jail & may be termed as Committee for Legal Aid for Prisoners (CLAP)

- The lawyers shall be appointed on the recommendation of the DLSA Chairperson for the district in which the concerned prison is located.
- A **Central Jail** shall empanel **8 lawyers** of which 3 shall be practising in the High Court while 5 shall be lawyers at the District Court.
- A **District Jail** shall comprise of **6 lawyers** of which 2 shall be practising in the High Court and 4 will be lawyers at the District Court.
- A **Sub/Special Jail** shall comprise of **3 lawyers** of which 1 shall be practising in the High Court and 2 shall be a lawyer at the District Court.

Note: The number of lawyers may vary depending on the inmate population of each jail.

### **THE FUNCTIONS OF CLAP**

In addition to the functions as outlined under the Act and NALSA regulations,

- The members of CLAP shall make regular weekly visits to the prison for rendering legal aid services, which would include legal counselling, informing the inmate about the status of his/her case, explaining the details & progress of the case to the inmate etc.
- They can be assisted in their work by the student members of the *Shadhinota* project. The students could be given the work for drafting, researching, etc. for the assistance of the members of CLAP.
- All cases arising from each jail shall be routed through CLAP. This will facilitate them to identify and follow-up the cases requiring immediate legal counsel and ensure their speedy disposal.

- Along with other members from the DLSA hold a para-legal training camp every month to empower the inmates with basic legal knowledge.

### **MONITORING - A SYSTEM OF CHECKS AND BALANCES**

It is important that there be instituted an accountability mechanism to overview the working of CLAP.

- Preparation of a monthly report by the Superintendent of the respective prison reviewing the performance of each member of CLAP.
- The report shall include the details of the number of visits paid, the number of cases referred to CLAP and the rate of effective disposal of cases by them.
- Every month the report shall be submitted to the Chairperson and Member Secretary of the SLSA as well as the Chairperson of the DLSA.
- The Chairperson of the DLSA shall conduct a bi-monthly review of the performance of the body based on the report submitted by the Superintendent of the concerned jail. A copy of the review report shall be sent to the Chairperson and Member Secretary of SLSA.
- Based on the review report lawyers empanelled in CLAP shall be struck off from legal aid lawyers list if their performance is found to be dissatisfactory.
- A Biannual report of the functioning of CLAP in each prison shall be compiled by the Member Secretary, SLSA and submitted to the Member Secretary NALSA.

This system, if implemented, can help to improve the overall efficiency of providing legal aid. It involves checks at every level and attempts to cure the problems at their very root.

# ANNEXURE II - B

## THE JUVENILE JUSTICE BOARDS, WEST BENGAL

### Needs & Requirements<sup>2</sup>

AIMS & OBJECTIVES OF THE JUVENILE JUSTICE ACT ARE TWO FOLD:

1. *Speedy disposal of cases*
2. *The four "R"s*
  - Reform
  - Rehabilitation
  - Restoration
  - Repatriation

STAKE HOLDERS:

- ❖ THE JUVENILE JUSTICE BOARD
- ❖ POLICE
- ❖ ADULT COURTS
- ❖ STATE LEGAL AID AUTHORITY/DISTRICT LEGAL AID AUTHORITY
- ❖ GOVERNMENT OBSERVATION/SPECIAL HOMES/AFTER CARE CENTRES
- ❖ NGOs/COMMUNITY
- ❖ FAMILY

#### A. THE JUVENILE JUSTICE BOARD

##### Requirement # 1

- Full-time Principal Magistrate
- Regular attendance of both members of the Board
- The Board to sit for the requisite five hours per day
- Accountability of Members/PP/Probation Officer

##### ***Benefit -***

- Volume of cases dealt with daily may increase, resulting in speedy disposal
- The time devoted by the Board to each child increases
- Individual care plan for every child may be chalked out
- Reformative/Rehabilitative measures for children explored and implemented
- Liaison with various agencies in terms of meetings, discussions, letters etc.

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<sup>2</sup> Prepared by Dr Bipasha Roy, Member Juvenile Justice Board, Kolkata District

- Building a data bank regarding the socio-economic/academic/ parental background of the children and correlate it with the category of offences committed by them
- Accountability of Members would ensure their regular attendance/knowledge of records/ acquaintance with the children of the Board/work towards reform and rehabilitation of the child in conflict with law (CCLs)
- Accountability of PP would ensure his regular attendance resulting in smooth/speedy disposal of cases
- Accountability of Probation Officer would ensure his/her submitting the indispensable social background report of the children in time, enabling the Board to take vital decisions regarding the CCLs

***Current Problem:***

- Part-time Principal Magistrate
- The Board sits after 2pm for two to three hours a day
- Non-accountability of the attendance of the Board members/ PP/ Probation Officer
- Non- submission of performance appraisal report of the Board members/ PP/ Probation Officers to the concerned authorities
- Appointment of counsellors

**Requirement # 2:-**

- Separate spacious rooms for boys/girls and offender/victim
- A room to run an academic study center
- A room to run the legal aid clinic
- A record room

***Benefit:***

- Space, which denotes lack of restrictions to a child, is quintessential
- Coaching centre in the Board would enable children admitted to Open Schooling to avail free tuition
- Free Legal Aid clinic would ensure free legal aid to every CCL

***Current Problem:-***

- The Juvenile Justice Board needs to be more spacious to accommodate the aforesaid children
- A room specified to run coaching centre need to be demarcated
- The Board yet to have a free legal aid clinic to provide legal aid to every CCL

## B. LEGAL SERVICES AUTHORITY

### ***Requirement:-***

- Ensuring legal aid to every juvenile at State expense
- DLSA to prepare a list of young panel lawyers (preferably women) to work in JJB/CWC
- The list of panel lawyers containing their names, addresses and contact numbers may be communicated to the Principal Magistrates and the Members of the JJB.

### ***Benefit:-***

- Implementation of Rule - 14(3) The JJRules,2007 the Legal Officer in the District Child Protection Unit and the State Legal Services Authority shall be under obligation to provide free legal services to all the children in conflict with law.
- Ensures that the CCLs are not at the mercy and exploitation by others.

### ***Current Problem:***

- By the time the CCL is produced before the Board the parents/guardians have already engaged a defense lawyer. Usually, they engage a lawyer while the child is at the police station.
- The JJB has not received the list of panel lawyers containing their names, addresses and contact numbers from DLSA.
- In the absence of List of panel lawyers, the Board is availing of free legal aid from voluntary organizations like Human Rights Law Network

## C. SPECIAL JUVENILE POLICE UNIT

### ***Requirement:-***

- Independent/exclusive Special Juvenile Police Unit for every district
- Existence of GRO section in every Juvenile Justice Board in all the districts
- Regular interaction of concerned police officers with JJB members and CWC members
- Introduce a system of handing over and taking over of charges by the Juvenile/Child welfare officers/IO's of every police station once they get transferred out

### ***Benefit:-***

- Exclusive Special Juvenile Police Unit in every district would -
- Function as a watch-dog for providing legal protection against all kinds of cruelty, abuse and exploitation of child or juvenile.

- Take serious cognizance of adult perpetrators of crimes against children; get them apprehended and booked under the appropriate provisions of law.
- Seek assistance from the voluntary associations, panchayats and gramsabhas or Resident Welfare Associations in identifying CCLs and in reporting cases of violence against children, child neglect and child abuse.
- GRO section in every JJB ensures the safety and security of the child in the Board premises along with receiving the case record from the IO at the time of first production of the child.
- GRO receives the Charge-sheet/Case Diary submitted by the IO and forwards it to the Public Prosecutor.
- GRO section liaisons with the IO of every PS to ensure speedy submission of reports.
- Regular interaction of police officials with members of JJB & CWC would entail exchange of information; sorting out problem areas; orientation and awareness of the new recruits.
- A system of handing-over, taking-over of duties and responsibilities amongst the IO's of concerned PS would minimize confusion and lack of knowledge regarding the role of police in the JJ System.
- Guidelines defining the role of police in JJB & CWC should be prominently displayed in every police station.

***Current problem:-***

- Every district in the State of West Bengal do not have a Special Juvenile Police Unit
- The few that have, the SJPU's are not functioning independently but it is an additional charge with other department.
- All the Juvenile Justice Boards are yet to form the GRO section.
- Lack of coordination between the Board & CWC members and SJPU.
- Lack of monitoring by the SJPU the work of every police station relating to children in their district.
- Lack of a system of handing-over taking-over of charges by the IO's and lack of specific guidelines results in confusion and non-implementation of the tenets of the JJAct by the new IO.
- Lack of policy guidelines issued by the SJPU to each police station has resulted in confusion and lack of awareness the tenets of the Juvenile Justice System.

**D. JUDICIARY**

***Requirement:-***

- Physical production of offenders (below the age of 21yrs) before the adult magistrate to be made mandatory.

- Facilitate the process of issuing certified copies of original case record to the concerned IO, for the Juvenile Justice Board.
- Speedy transfer of the original case record to the Juvenile Justice Board after the case is disposed of in the adult court.

***Benefit:-***

- Enforcement of Sec-7/Sec-7A JJAct, 2000.
- A child is not sent to an adult correctional home.
- Speedy disposal of case where a child is embroiled in a case along with an adult.

***Current problem:-***

- Lack of physical appearance of the offender before the adult court magistrate results in a child languishing in correctional home for months/years.
- Coordination between the police and adult court would enhance the process of speedy disposal of cases where a case involves a child and an adult. The phrase “awaiting original record” would be a thing of the past.

**E. STATE GOVERNMENT**

***Requirement:-***

- Strengthen the infrastructure of observation homes
- Separate observation homes from special homes
- Separate observation homes from children’s home
- Strengthen the infrastructure of juvenile justice boards and child welfare committees
- Constitution of exclusive functioning Special Juvenile Police Units for each districts
- The State Child Protection Unit & District Child Protection Units in each district to ensure implementation of this Act. [Sec-62A]

***Benefit:-***

- The Juvenile Justice Act, 2000 [Sec-62A] & Juvenile Justice Rules, 2009 [Rule-80, Rule-81] defines the specific functions of the State Child Protection Unit and the District Child Protection Unit who shall:-
- Ensure effective implementation of the Act at district or city levels by setting up and providing adequate infrastructure to the JJB/ CWC/ Government Homes/Special Juvenile Police Unit
- Ensure supervision of agencies & institutions; co-ordinate with all government departments on child protection issues

***Current problem:-***

- The State Government yet to ensure adequate infrastructure in every Juvenile Justice Boards; Government Homes
- Exclusive Special Juvenile Police Units to be formed in all the districts
- The District Child Protection Units to function effectively in implementing the tenets of the JJAct

**F. GOVERNMENT HOMES**

***Requirement:-***

- Doctors/female/male nurses in concerned Homes.
- Attachment of Government Homes to de-addiction centers and centers to treat mentally ill (MI) & mentally retarded (MR) children, HIV affected children.
- Ambulance and fire extinguishers.
- Vocational education centers.
- Guarding staff
- Regular maintenance by PWD (civil & electrical) of the observation homes.
- The requisite Management Committee to be functional in every Government Homes

***Benefit:-***

- The children get the required medical treatment well in time along with the regular medical check-up
- Transfer of children addicted to drugs or of unsound mind from Govt Homes to adequate treatment centers
- Ambulance; fire extinguishers in each home would minimize the health and safety hazard of each child
- Networking with ITI, Jan Shikshan Sanathan, Government & Private Organization or Enterprises, Agencies or NGOs with expertise or placement agencies would provide gainful vocational training the children
- Presence of requisite guarding staff would allow the CCLs to have adequate recreation time as in going out to play in the playground
- Management Committee ensures proper care and treatment as per the individual care plans and monitors the progress of each child

***Current problem:-***

- Non-existence of a permanent doctor/male/female nurse endangers the life of each child staying at the Govt Home
- Non-attachment of Homes to any de-addiction or mental hospitals renders the transfer of the concerned children to these centers difficult
- Lack of ambulances & fire extinguishers in every Home

- Lack of adequate guarding staff in Observation Homes results in children allowed to play outdoor games for maximum half an hour a day and locked up in their dormitories for forty eight hours on Saturdays/ Sundays and Govt holidays
- Management Committees in every Govt Home yet to be formed and made functional

## G. NGOs/CIVIC BODIES

### ***Requirement:-***

- Active involvement of NGOs promoting a child centered juvenile justice system
- Run institutions/ After Care Organizations for the children in conflict with law
- Establish fit institutions to receive children on bail
- Prepare Social Investigation Reports
- Advocacy through public interest litigation; by applying the Right to Information Act
- Render support in the functioning of the JJBs & collaborate in creating SJPU's

### ***Benefits:-***

- Quality care for children in the institutions would be ensured
- A 'fit institution' run by a NGO may receive a child on bail and guide him from the production before the JJB by the police, through the procedures in the Board, to final rehabilitation of the child. The NGO run after care programmes in their After Care Organizations would enable a CCL to lead an honest, industrious and constructive life
- In the absence of Probation Officer in JJB, an NGO may obtain 'Social Investigation Report' enabling the Board in arriving at decision in the best interest of the child
- Advocacy would lead to Law reform and accelerate implementation of the Act
- Responsive NGOs play a crucial role in the reformation, rehabilitation and social reintegration of children in conflict with law

### ***Current problem:-***

- The NGOs are yet to involve themselves actively in this arena of running institutions for children in conflict with law
- Lack of experience and infrastructure in handling these children make them hesitant taking on their responsibility and rehabilitating them

## **SUMMING UP**

Our short-time goal:-

- **Speedy** disposal of cases along with rehabilitation
- **Full-time** Magistrate along with **accountability** of the member/PP/PO of the Board
- Ensure **free** legal aid to every CCL through DLSA
- **Strengthen** the infrastructure of the Board/Govt Homes
- Establish **independent** SJPU in every district
- Orientation of adult court Magistrates to ensure **transfer** of juveniles to JJB
- The adult court Magistrates to **facilitate** the transfer of original case records and submission of certified copies by Investigation officer to JJB
- Involvement of voluntary organizations in **rehabilitating** the children
- The State Child Protection Unit & District Child Protection Units in each district to ensure **implementation** of this Act.

# Commonwealth Human Rights Initiative (CHRI)

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network. These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

## CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

### **Human Rights Advocacy:**

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since

1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

#### **Access to Information:**

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy-makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

#### **Access to Justice:**

**Police Reforms:** In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at increasing access to effective legal aid for prisoners. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock on effect on the administration of justice overall.