

2013

NOV Workshop Report



Prison Visiting System

&

Role of Non-Official Visitors



Commonwealth Human Rights Initiative

NOV Workshop Report



Workshop on Prison Visiting System

Co-hosted by:

State Human Rights Commission, Rajasthan,
Department of Prisons and Correctional Services
&
Commonwealth Human Rights Initiative (CHRI)

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PURPOSE OF THE WORKSHOP

Openness and accountability are essential tools to prevent delay in justice to prisoners, who often suffer extremely unfavourable conditions of detention and delay in trial. An effective visiting system can ensure better prison conditions and can tackle problems like overstays and overcrowding through an accountable oversight mechanism intended to aid the prison administration. Non-Official Visitors (NOVs) are people from the civil society appointed by the government to facilitate this.

Towards this, a workshop was organized for the **Non-Official Visitors (NOVs)** from Jodhpur Division and Nagore district of Rajasthan. The workshop was held on 2nd& 3rd August, 2013 in Jodhpur, Rajasthan and co-hosted by State Human Rights Commission (SHRC), Commonwealth Human Rights Initiative (CHRI), Rajasthan Directorate of Prisons and the District Administration of Jodhpur. The aim of this workshop was to ensure that these designated prison visitors develop the knowledge, skill and commitment necessary to work in the prisons as responsible functionaries of the system.

The two day workshop saw a series of discussions, jail visit and many inputs from the Jail authorities, experienced NOVs, government representatives, the State Human Rights Commissioner and CHRI and a glance through the many materials provided. All felt strongly empowered with knowledge and practical guidance on how to go about their work with a better understanding of their duties and functions. They successfully articulated their relationship with the jail authorities and prisoners and could name their priorities.





Suggestions for NOVs

1. During the **appointment of NOVs** it is important to ask their consent. It is not enough to send them just the notification of appointment. The letter should go with a short guide indicating their role, powers, duties and the expectations from them.
2. The collector should make a **roster** of visitors and visits on which each visitor can visit either by himself/herself or with others. But in the absence of his initiative the visitors can themselves come together to develop a roster and a feedback system for themselves.
3. NOVs should meet and decide on the **division of labour** and visiting times.
4. NOVs should insist on creation of **Board of Visitors** and press for their regular meetings.
5. NOVs should also equip themselves with the Acts and Rules related to Prison and Prisoners. They should dedicate one month out of 24 months of appointment to read **Part 23 of Prison Rules** to acquaint themselves well of the roles and responsibilities as an NOV.
6. NOVs should view their role not to be confrontational or 'against' the jail staff, but to see themselves in **a facilitative role**
7. It is the duty of the NOV to satisfy himself that the law and rules regulating the management of prisons and prisoners are duly carried out in the prison, **visit all parts** of the prison and to see all prisoners, and to hear and **inquire into any complaints that any prisoner** may make to him.
8. NOVs have a duty to sensitize the jail establishment about **prisoner's rights** as well as help make them more accountable and more efficient.
9. To **talk to prisoners**, it is a practical option for NOVs to talk to groups of prisoners barrack by barrack. It is also advisable to talk to undertrials separately from convicts and out of hearing from convict warders. This is so that individual complaints can be kept anonymous where necessary and will minimise victimisation.
10. There are many unnecessary arrests, no effective lawyer, trial delays and overstays. A lot of the dysfunction of prisons, its corruption and violence stem from overcrowding. 60% of all inmates are under trials. The authorities have to address the **problem of under trials**.
11. There should be specific **escort** joined to jails so that there is less delay in presenting undertrials at court.

12. Creation of legal means by which prisoners can talk to their families like PCOs or use of a cell phone in the control of authorities. **Getting in touch with families** is essential. It is happening anyway through illegal smuggling of cell phones and sim cards so new arrangements must be made. The prison authorities should create a system which the prison authorities can monitor rather than allow illegalities to continue.
13. NOVs should try to bring **society into jails** and to build more transparency. Leveraging their position and reach in the society, prisoners should get community support for their welfare as well as protection of their rights
14. Help the collector with arranging for a **coordination meeting** with various authorities from the district that have a duty towards ensuring that the prison conditions are maintained to safe and habitable standards with timely repairs and renewals.
15. NOVs can write directly to the Home Secretary not only about jail conditions but about **policy changes** as well.
16. Speak collectively to the **magistrates** who are designated by the high court to visit jails and share concerns.
17. Meet with local **legal aid lawyers** to ask what their concerns about meeting their clients are and to check if they are going regularly to legal clinics etc.
18. Document observations in the **visitor's notebook** diligently and follow up with the prison authorities on the action taken against each. Send notes made on the visitor's notebook to the DG and the Home Department as a matter of regularity.
19. If recommendations have not been attended to at all after several efforts, take the matter to the higher levels through **letters**. This will also indicate that as an NOV, one is doing his/her duty.
20. Inform and **network with other NOVs** with a draft letter so that they could also write similar letters in their districts about the illegal practice of paper warrants going to court and send it to their CJMs and to the SP of the district. Check whether the **names of NOVs and the Board of Visitors** and their schedule have been put up outside the jail like it should be both under the Jail Rules and under the RTI Act.



Commitments by the Authorities

- Notices would be put up to inform the convicts working in the workshop on their daily earnings based on the slab of skilled, unskilled and semi-skilled work.
- Special focus would be given to malnutrition in jails. Malnutrition is an area that doesn't get much attention and it would be made part of the doctor's role to identify and treat them.
- A weekly menu would be pushed for with the contractor in order to have variety in food for the prisoners.
- A counsellor is being sought to provide counselling services to prisoners especially the new entrants who go through a lot of mental pressure once they come to the prison.
- Orders would be given to Jailors and Superintend about any rules, orders and instructions related to NOV's so that they are aware of it.
- It is the role of the Jail Superintendent to review the Visitor's notes and take action on them.
- If the NOV's do not see action taken on their observations that require immediate attention after repeated reminders and discussions, they can write to State Human Rights Commission and can be assured of action taken on them.
- The State Human Rights Commission in their next report will suggest the State to increase the number of Open Jails.



Concerns

No Clarity/Information on Roles and Responsibilities:

One issue that was echoed during the workshop unanimously was that NOVs were not informed of their roles and responsibilities. They were just sent an appointment letter. They expected an invite from the prison authorities or the Home Department to make a visit to the prison. This led to many NOVs not visiting the prison even once. For those who did visit, came the concern that NOVs were not welcome. Too often the prison authorities make the process of entry as long and complicated as possible. Another way to neutralize the effectiveness of NOVs, which was used frequently, was to delay entry into the jail with offers of hospitality while the situation in the prison was 'managed.'

Participant NOV (Jaisalmer): "For 2 years no one in the jail authority knew that I am the NOV or anything about a circular. We were not aware of what we should be doing. The state authorities don't bother to inform the jail authorities. On 16.5.13, the state asked me what I had done over the past 2 years."

Overburdened Prison Staff:

On the other hand prison authorities were careful to point out that they had an already difficult job of security and discipline on their hands and their own service conditions were harsh and unfulfilling. So another level of scrutiny from untrained politically connected people with agendas of their own may prove to be an additional layer to the already dysfunctional system. The NOVs would be viewed with suspicion and seen only as a nuisance and pressure point on an establishment that was already demoralized.

Lack of Knowledge about Oversight:

Both sides viewed the lack of knowledge as a major impediment to making the oversight system work. The authorities have little or no knowledge of the existence of the NOV system let alone about the role of NOVs. The NOVs accepted that the role had been provided to them by virtue of their being active citizens in their local areas and beyond that no information had been provided to them to be capable of efficiently pursuing their work.

Prison Visit

A prison visit to Jodhpur Central Prison was organized with the help of Prison Administration to equip the NOVs with the practical knowledge of their role. NOVs were guided through the male section, female section as well as the workshop section of the prison.

For many NOVs who had never visited the prison, it was the first time and this exercise ignited a thought process in them and brought them more closer to their role as an NOV. Groups were divided into 4 and each group was given a specific area (with a set of questions) to observe during their visit.

After the visit, a debriefing session was organized. Each group presented their observations and responses were provided by the panel to get a holistic understanding of the issues. This session also helped in breaking the ice between the NOV and the prison officials. The discussion based on observations made by NOVs in Jodhpur Central Prison, resulted in some important outcomes, decisions and commitment by the DG, Prisons and SHRC.

NOV Participant: “After the training we have gained the courage to enter jail.”

Mr. Omendra Bharadwaj, DG Prisons, Rajasthan: “A common strain from your visit was that this was a first time visit. But having broken the ice you have broken your fear of the unknown.”



Role of NOVs

Hon'ble Mr. Justice H. R. Kuri, Chairperson, Rajasthan State Human Rights Commission: The ultimate goal of the prison is reformation and all NOVs should work towards this objective. You have to be the voice of prisoners and act as a bridge between the inmates and the society.

One of the core themes that were discussed throughout the two days of workshop was related to the value and role of the visitors. The consensus was that the NOV must be a bridge between: society and the inmate; the authorities and the community; authorities and the inmate.



The administration regretted that for far too long NOVs had not been appointed in Rajasthan. The appointment of current NOVs by the Home Ministry was because the individuals chosen were felt to be able and qualified. However, an orientation was necessary to help them know their duties, functions, powers and limitations.

Knowing their Authority:

One misconception that the workshop righted was that NOVs were required to be asked by the jail or the administration to visit before they can become active. Many were waiting for this invitation and hence did not visit the prison even once for the past 1.5 years of the 2 years appointment term. Resource people emphasized several times throughout the workshop that the NOV get their authority from their appointment under the Home Ministry. Their functions are engraved in the Prison Rules and are therefore fully authorized to visit unannounced without being invited in the jail to which they are nominated.

Not Confrontational but Facilitative:

Another theme was that their role was not to be confrontational or 'against' the jail staff but to see themselves in a facilitative role. The status of visitor had been envisaged to bring an independent set of eyes and ears into a closed environment. It was repeatedly highlighted that the visitor must be a facilitator and should take fair account of both the difficulties of the authorities and the problems of isolated, fearful people sequestered away from society. NOVs have an important role to play in both improving the physical conditions of the jail and to ensure that prisoners rights are not violated, including their legal rights. There is then no built in conflict in the relationship of the NOV and the prison authorities. It is not about surveillance but to make sure that what the law has prescribed is followed.

Sensitizing the Jail Establishment:

NOVs have a duty to sensitize the jail establishment about prisoner's rights as well as help make them more accountable and more efficient. It is important to note that sustained improvements in the

Mr. Govind Singh Charan (Additional Divisional Commissioner): "NOVs should work towards creating sustainable changes in prison so that the next set of NOVs appointed can take it from there. They should take inspiration from you and even after years, one should remember what work you have done"

prison system rely on becoming institutionalized and the precedents set by NOVs. Once that practice is repeated, it sets the tone for the future. The importance of present NOVs working diligently lies in creating the space for improvements little by little by embedding the power and function of the NOV and their ability to force situations.

Bringing Society into Jails:

Another important aspect of role of NOVs is to bring society into the jails which by nature are highly secured and closed institutions. It is a prevalent thought since ages that all prisoners are guilty and they deserve to be separated from the 'civil' society. This led to prisons being a dumping ground for the societal waste and it became an institution with the least amount of social visibility. However, the reality today (and has always been) is that neither all people who are guilty are in jail nor all people in jail are guilty. Hence, prisons become an imperfect solution. This reality was realized even in 1894, when the Prisons Act was made and value was given to the role of NOVs. A window to the world was created via the appointment of lay visitors under section 59(25) of the Prisons Act.

Mr. Omendra Bharadwaj (D.G. Prisons, Rajasthan): "Jail and society can be brought together by NOV. We want that via NOVs prisoners feel that they are not cut off from society and still have a place in it"

Visiting Rules/Norms

Section 5 of the Prison Rules (Part 23) entitles a prison visitor to make monthly inspections of the prisons to which they have been appointed. It is a misconception to think that only a few visits are possible. Properly spaced and diligently attended it is almost not possible to fulfil the number of visits sanctioned. Some can be done without permission from the jail authorities and some with information but not permission.

Roster:

Ideally the collector is to make a roster of visitors and visits on which each visitor can visit either by himself or with others (Section 5). But in the absence of his initiative, the visitors can themselves come together to develop a roster and a feedback system for themselves. The fact that there is no officially created roster made by the busy administration does not debar visits by the NOV's. The jail authorities merely need to be informed of the date and time and cannot be denied entry except for very good reasons such as sudden security alerts or lack of accompanying officers. But if one notices a pattern of refusal to allow visits then this in itself can be a matter of complaint to higher authorities. It is important to signal this protest against not creating a roster or not being allowed into prison for visits or being obstructed. If questioned, it should be explained that the provision is as per rules and it only brings convenience to the prison administration which can manage the visitor cadre including doctors, lawyers, etc. in a better way.

Surprise visits:

The issue of surprise visits was brought up during the workshop and the discussion circled around the 'ideal' situation and 'practical'. There is indeed a possibility of going unannounced but it was pointed out by the jail authorities that because security requirements necessitated a careful procedure at the entry point there is hardly any element of surprise possible. Even when you go unannounced the jailor will take some time for preparations inside. So this in itself dilutes the element of surprise.

Mr. R.K. Saxena (Retd. IG Prisons, Consultant to CHRI): "Even if the jail administration covers up before your visit, an alert NOV can notice what is new and recently been covered up. One should be able to gauge through observation, interaction with prisoners and discussion with the prison authorities."

Collective:

There is value in working as a collective for NOVs appointed in the same prison. As per rules, six NOVs are appointed in Central Prisons and three in every district prison. NOVs from each prison should be in constant touch and discussion with each other to work as one force. It can help in creating a pool of knowledge and networks. NOVs can divide the duties and the points for observation according to ability and experience. This will also avoid repetitions or contradictions in the comments mentioned by the NOVs in the visitors notes and can help in giving focus to particular issues. For example, if there is a lawyer in the group, they can ask questions like *what is the situation of under trials, is there any unnecessary detention, whether they have a lawyer, if they can benefit from 436*, etc. As a collective, they can bring systematic changes and pressurize the government to appoint a Board of Visitors as well.

Board of Visitors

To coordinate the efforts of the official and non-official visitors, there is a provision for the establishment of a 'Board of Visitors' for each jail. The Board consists of two official and two non-official members. A meeting of the Board of Visitors is mandated by the Prison Rules once a quarter. The Model Prison Manual, 2003 also recommends a constitution of the Board of Visitors as given in the Mulla Committee Report.

The State Human Rights Commission expressed their discontent in having to put huge effort to even find out who the NOVs were in Rajasthan, let alone the BOVs for this workshop. Once they found, the Commission noticed that some NOVs whose terms were extended were deceased. It was reiterated that it is important for the BOVs to be formed and constantly review the work that each member does. The NOVs should insist the Collector to form the Board of Visitor in their districts and educate them about the value and role of BOVs.

Mr. Shreenath Sharma, Adv. (NOV, Gopal Garh, Bharatpur):

When I was appointed as an NOV to Bharatpur Central jail, I only got a notification. Despite being a lawyer I didn't bother to read anything about the roles and responsibilities of NOVs and what they were expected to do. I only looked at the documents again when I was invited to a workshop organized by CHRI. During the two days of workshop, I found out what it meant to be an NOV. 2 out of 6 NOVs appointed in our jail did not come but the rest 4 got activated due to the workshop. The materials provided by CHRI also helped a lot. Soon after the workshop, we went off to meet the jail superintendent. The jail authorities entertained us but knew nothing of rosters, NOVs, BOV or related laws. We wrote to the District Magistrate and met them for our roster creation. He too did not know. So it was a question of gently educating him and others as well so that we could go about our work. We then made the rosters and successfully pushed for the creation of a BOV. The additional District Magistrate was made the chair. We began our prison visits and meeting prisoners. Many issues came to the forefront: electricity, water, sanitation, cleanliness. We put them down in the visitor's book and noted it. Without that there is no purpose to our visiting. We had to send our requests and information to all the main authorities who were responsible. Local problems could be sorted immediately. For example, when we saw open wiring (whenever the electricity was to be turned off/on, the wires would be manually separated and then rejoined), we felt that this was terribly dangerous. Anybody could commit suicide or die by accident. We immediately phoned the engineers. Within one hour we got the engineer. He said he needed a budget to do any permanent job. We told the chair to call a meeting and once again, we had to explain what the BOV was and got the ex officio visitors to come. Rs 10,000 were sanctioned and all the wiring was sorted. For water we discussed with the district administration and got the water authority in until it was solved. Due to our efforts, water from the new Chambal canal project was diverted to supply to the jail.

Observation Areas in Prison

NOV Participant: I went on 30th July to the prison and the jail authorities treated me well. There are no issues about water supply because there are tube wells. But the water is blackish and the storage tank is open and dirty. The toilets have no water and are filthy. The prisoners are using blankets to lie on even in hot summers and there are no cotton sheets; there are no doors to the toilet and there is only one days ration in store. I was told that it will come in the evening and the contractor comes twice a day to deliver food. Though the prisoners did not complain of the food but this arrangement meant that if there is an emergency and the contractor cannot come for some reason, then there is no arrangement. In the kitchen there is no cylinder; there is only a wood fire and three brick cooker. There is no grinder. The gas cylinders must be sanctioned but not sure where it is allocated. There is plenty of land but no garden or vegetable plot. I have made a full report and will give it to the authorities.

The most common problems that NOV's can expect to find in prisons can be categorized in 4 areas:

- a) **Observable Conditions:** Issues related to food and water and physical structure.
- b) **Administrative Problems:** Issues related to short fall of resources, manpower and finance in the establishment.
- c) **Uncertainty of State Policies:** Policies which need to be amended e.g. should prisoners be allowed to go out and get educated;
- d) **Systemic Problems:** Issues that cascade down like those of delay in courts, lack of escorts, etc.

It was emphasized in multiple ways that the NOV have to know the laws and rules in order to address each of these problems. It was suggested that NOV's can dedicate one month out of 24 months of their appointment to read Part 23 of Prison Manual and other relevant sections/laws that would be helpful for their work. They can also refer to the 29 observation areas mentioned as an 'indicative' list as an annexure to the Prison Rules. However, NOV's should not feel limited by this. These points were written in 1894 and much has changed since then which has led to the expansion of duties/responsibilities of the NOV's.

Part 23 (section 11) of the Prison Rules begins by making it clear that the NOV have a broad license while visiting prisons and it is framed not merely as a function but as a *duty*.

Sec 11(a) It is the duty of a visitor to satisfy himself with the law and rules regulating the management of prisons and prisoners are duly carried out in the prison, in ***visit all parts*** of the prison and to see all prisoners, and to hear and ***inquire into any complaints that any prisoner*** may make to him. He may for this purpose talk to ***any*** prisoner out of the hearing but in the full sight of the officer accompanying him. Such conversations with prisoners shall not exceed 20 mins during a visit a list of questions indicating some of the points to which a visitor may direct his inquiries is appended to these rules.

This section makes it clear that the 29 points are only *some* areas where their attention is to be directed. NOVs can go well beyond that. It is their *duty* to *inquire* into *any complaint* that *any* prisoner may make to him. This indicates that the role of a prison visitor is an active role and has a larger mandate. It is for the benefit of the prisoners who, otherwise, would have even less access to anyone's ear.

It was suggested that there are two kinds of observations that an NOV can make after any prison visit – one which requires immediate attention and the other which may require progressive steps. The prison authorities acknowledged that NOVs have an added advantage of talking to the prisoners and understanding their needs as an outsider. When the jail authorities speak to the prisoners, they are looked at with suspicion of having a motive or an agenda behind their action. NOVs could do a scoping study with the prisoners to bring their issues under these two categories. However, this requires regular visits by the NOVs to gain their trust as well as making practical suggestions with the jail authorities on the doable areas to be successful.

Hon'ble Mr. Justice H. R. Kuri, Chairperson, Rajasthan State Human Rights Commission: *Any prisoner cannot be deprived of his/her fundamental rights just because he/she is in prison. The Commission is mandated to realize these objectives enshrined in the Constitution in its true meaning and form. The Commission is concerned towards the protection of life of mentally ill and physically ill prisoners. Parole and timely release of prisoners needs to be rationalized. Scrutiny and thorough evaluation of free legal aid system is needed. Improving the level of cleanliness and hygiene is required. The main requirement is to strengthen the infrastructure. Human Rights Commission is of the view that 'Rehabilitation of Prisoner' is an important condition of imprisonment.*



The Value of Law

The importance of working as a collective was highlighted in relation to knowing the law. Many NOVs are drawn from the community of local advocates. Their knowledge of law can be shared by the collective to bring relief to under trials, reduce pre-trial detention, and consequently reduce overcrowding in prisons. For instance, the NOV should know the provisions that say that a terminally ill prisoner or an aged prisoner can be considered for release¹. The necessity to understand the laws and provisions were illustrated by Mr. R.K. Saxena in the circumstances mentioned below:

Mentally ill

Studies have shown that people with mental disabilities are in jail. Ideally they need to be in a facility that can treat them towards a cure and as per law, it is their right. The administration and fellow inmates are not equipped to work with them and consider them to be a 'difficulty'. However, the law does allow them to remain in prison if the place is so designated². But there is every danger that they then slip through the cracks because the trial can be postponed until he is able to mount his defence. S 328 Cr PC says that the trial is postponed till they recover from their unsoundness of mind and are fit to stand trial. But there is nothing said about how long the delay may be allowed. One man, Raghu who was mentally ill, was released after 27 years. Then there is Baba Khan³, a mentally ill prisoner, who allegedly set two other mentally ill patients in prison on fire, waited for several years for his trial to commence. If appropriate steps were taken in a timely manner, it is possible that Baba Khan would have come under special care long before he did. But a broken system ensured that he remained unnoticed and unheeded for many years. So the visitor must have a special concern about the mentally ill person - both about their condition and about their rights.

The questions that an NOV can raise are- *who is representing them, whether family and friends come to visit, what is their case status; whether they are being treated and whether the drugs are doing any good; do they have access to mental health services and so on.* Also, a mentally ill prisoner, especially when under trial has the benefit of being reviewed by the Periodic Review Committee⁴

¹Rajasthan Prison Manual [Part V, sections 1,2,9,10 & 12]

²Mental Health Act, 1987

³To read about this case, refer to CHRI Publication(2011) – Undertrials: A Long Way to Justice (A Report on Rajasthan's Periodic Review Committee), Page 7

⁴For functions of PRC, see CHRI Publication(2011) – Undertrials: A Long Way to Justice (A Report on Rajasthan's Periodic Review Committee)

The Periodic Review Committee

The function of this committee is extremely valuable in terms of reducing overcrowding and reducing periods of pre-trial detention. Recognizing that more than 60% of people in prison are under trial prisoners and that many of them are overstays the government has amended the Criminal Procedure Code to ensure that bail is made a right after 60 or 90 days. In addition, the prison advisory⁵ indicates that the legal services authority must review and assist those that have finished $\frac{1}{4}$ of their possible sentence if found guilty. Sadly however, neither the PRC nor the legal aid authorities meet regularly or perform their duties fully. The NOV can ensure that they do.

Questions that an NOV could raise are: *how often does it convene; do all the members attend; how many prisoners are reviewed; have recommendations from the PRC gone to the court and have eligible prisoners benefitted from this.* The NOV can also examine the minutes of the PRC meetings to see how it is progressing. The NOV can write to the Chief Judicial Magistrate mentioning the plight of particular prisoners and the need to hold regular meetings.

Mass arrests

Another common practice that the NOV can keep an eye on is the overcrowding and injustice that results from mass arrests. These are predictable and take place just prior to festivals like the Urs⁶. The provision used is Section 109⁷ of CrPC under which the police detain many people during this festival and carry an endless process of verification of name and address. While they do, the person is put into jail and remains there until the process is completed to their satisfaction. Of course there is the magistrate and the person's counsel available to the person to safeguard his rights and there is little that the NOV can do to prevent mass arrests (except to draw the attention of local authorities to this possibility before festivals and events that trigger them). However the NOV can check to see if formalities like informing family members etc have been completed and work with the local legal aid cell to reduce the time spent in jail. Due to such arrest and lack of support mechanisms behind bars, many petty offenders remain in prison for long time.

⁵Prison Advisory No. V - 13013/70/2012 - IS(VI), Dated 17th January, 20th January, 2013, MHA (CS Division), GOI

⁶Urs is an annual festival in Ajmer held over six days (which commemorates the death anniversary of the Sufi saint Moinuddin Christli) where thousands of Muslim devotees and pilgrims visit from all over India and abroad.

⁷§109 CrPC states that 'When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without securities, for his good behaviour for such period, not exceeding one year, as the Magistrate thinks fit.'

Probation of Offender's Act

One common concern that was shared by many NOVs in the workshop was that petty offenders are mixed with habitual offenders which bring them closer to recidivism defeating the purpose of rehabilitation. It is also an essential point mentioned in the 29 Observation areas for NOVs. Though the Prison Rules clearly specify that they should be kept separately, the prison administration is unable to do so due to overcrowding, lack of infrastructure and funds. In such situations, visitors can connect with Probation Officers in their district to activate a disused provision in the law i.e. Probation of Offender's Act (1958). Under Section 3⁸ of the Act, petty offenders need not even be in prison and he/she can be released on admonition by the judiciary. The NOV can work with the lawyer or take these cases to PRC for their review. They can also work with the Probation Officers to identify cases of prisoners who are eligible to be released under probation from the prison under section 4⁹ of the Act.

Remand

Remand period extension is a problem across the country which leads to overcrowding of prisons and unnecessary detention. Due to shortage of police escorts, a majority of undertrial prisoners are not produced in courts on their due dates. Instead, the prison authority write on the court warrant that they cannot send the prisoner for their production and another date may be given. The court in turn accepts this and stamps another date on the warrant and it is returned to the jailor. Throughout this process the accused does not know what has happened or is happening in his name. His lawyer does not know either (though he/she should). Even when the prisoner is taken to the court, it is a common practice that their cases never appear in the Magistrate's court at all. So though on paper they had their 'production', nothing of that actually happened. In such instances, their remand dates get extended for unduly long periods. The NOV should insist on adequate number of police escorts to be provided and presiding judges to hear all prisoners lodged in court lockups in person and on the same day. If the NOV encounters any such case in prison where the person has not been produced repeatedly, the NOV can draw the attention of District Magistrate to take immediate action.

⁸Section 3 refers to power of court to release certain offenders after admonition

⁹Section 4 refers to power of court to release certain officers on probation of good conduct.

Adv. Mr. Shree Nath Sharma, NOV, Bharatpur: I wrote to the CJM about the issue of production and went and visited the High Court registrar. Due to continuous efforts, the Superintendent of Police was ordered by the Court that the police must give the number of vehicles and escorts required to bring the inmate to court. We believe this has contributed to curbing in absentia practices at least in our area and in absentia processes had stopped. Now we hear that there is again slippage and we will take it up as a PIL.

Similarly, many prisoners are eligible for parole but while the Parole Board and Police must verify their cases before granting this provision, their reports don't come back for 3 -4 months. Many a times, this is a method used to defeat paroles when they don't want to consent to. Also it is a fall out of not bothering to check in the local area. We asked why paroles were not being granted. The police are bound to give reasons. The main reason we found was that the police have a practice of sending an escort with the parolee and they don't want to give that manpower. Here we intervened and worked with the prison department to bring change in the existing practice. Now paroles are given without delays.

We are a country that believes in the rule of law and there are various mechanisms existent today that are beneficial to the inmates (particularly undertrials). For this, several agencies have a legal duty to fulfil their mandates and if NOVs are aware of such provisions, they can insist to extend them for the benefit of the inmates. For instance, Juvenile Justice Act, S 436& 436A, the mandate of the State Legal Services Authority, system of bail and preventing unnecessary remand, etc. Obviously, this highlights the need to know the law. One should know how to use every avenue to get attention to an issue. But the role does not stop there. One should also keep monitoring the changes brought in the system or things can easily slip again.



Government Budgets

Another area for NOV's attention is budgets. By looking at the budgets of jail, NOVs can create pressure through their post and can also push things to be done through various departments like PWD, Department of Drinking Water and Sanitation (DDWS), etc. who have their own priorities. More funds are available now than ever before. But complex procedures and routine delays prevent the money from being optimized to the use it is meant for. Similarly corruption that goes unchecked eats up tight budgets.

Jail authorities who would like to do much more are often impeded by the availability and budgetary processes. Money for jails comes from plan and non-plan heads. Unspent non-plan money can be carried over but plan money lapses. Typically the Public Works Department (PWD) makes its tenders right at the end of the financial year due to which there is no time left to vet tenders and get pending work started as it happened in one case in Balotra. Work has not been done and the matter is pending. Money allocated for jail repairs also goes into the common PWD fund rather than being ring fenced or separated. So it becomes difficult to follow where the money was actually spent. For example, money meant for a jail septic tank could go to repair of the officer's quarters if attention is not paid to such aspects and questions are not asked and pursued. The NOV is well within his rights to ask where such money went or ask - why despite money being allocated, a septic tank or sweet water reservoir has not been built. NOVs have strong and active networks with the local community and political clout too. Personal contacts are important and good relations with providers of goods and services to prisons help get recommendations and repairs attended to on time.

Another problem that relates to finance is sanction of budgets. Prison is not a revenue earning department and prisoners are not a vote bank so priority is low. Due to low visibility and lack of value given to the prisoner's rights, problems lie for many years. For instance, in Bundi and Deeg there is no road to the prison. The prison authorities are well aware of the fact that building renovation is necessary for nearly all jails and have been making efforts towards it for a long time. Mr. Bharadwaj, DG Prisons, Rajasthan, mentioned that he has worked diligently towards this issue and it took a lot of convincing with the appropriate authorities to sanction money. The government has now given Rs.5 crores in contrast to Rs.50 lakh which was usually given. With this budget, the last two years have seen repairs that were not been done for decades before. But because there was such a backlog it's going to take time to get to a good state. However, when it comes to observations regarding infrastructure, we must understand that most people behind prisons come from low socio-economic backgrounds and many below poverty line (BPL). For them, the existing infrastructure is much better than what they are used to outside prison and hence do not feel the shortfalls. Therefore there is no demand for a better buildings or better water. We tend to compare the situations according to our lifestyle and the standards that we have set for our living. Still that is no excuse for not giving them a basic standard as we would like to see.

Mobilising Society for Jail Reforms

Immediate problems also have to be dealt with pragmatically which can also lead to bad practices arising. For instance, if someone falls acutely ill there may be no ambulance available to take him to hospital. Equally 2 or 3 guards may be required depending on the number of prisoners. Jailors fear the consequences of escape. The authorities and wardens are always fearful of having to explain a death in custody and will therefore make the best arrangements they can from around the locality or through their own means like driving a person on a motorbike to hospital.

Mr. Rakesh Mohan Sharma, Superintendent, Central Prison Jodhpur:
"These difficulties and fear of consequences become the basis for decisions by jail staff who can't rely on assured infrastructure. Who then should get the privilege of treatment, is decided at the discretion of the person making that decision. This will be influenced by prejudice and money."

An NOV can help in such situations by looking into what medical facilities are available with the jail itself, whether the doctor comes regularly, if there are essential medicines stocked in the dispensary and what essential medication is needed. He can as well use his networks outside the prison to get medical camps held regularly, dental and optical facilities brought in from time to time. However, medical camps should also be coupled with regular follow-ups. For example, dental problems are one of the most neglected issues among prisoner health. Camps could be organized but without regular follow-ups, there will be no cure. The efforts should be directed towards 'Cure' of the prisoner and not just about number of medical camps. Most importantly work should be aimed at getting commitments from local society to provide funds toward purchase of a dedicated ambulance. Charity collections done imaginatively to collect, say spectacle frames for prisoners, can improve the situation of prisoners as well. In general terms, the NOV can also look into the possibility of accessing MLA/MPLAD funds for seeding some schemes and facilities.





Ms. Maja Daruwala, Director, CHRI: Most of the NOVs have a political background which places them at a better advantage than us. You have more power and are much better resourced. However, it is up to you on how you can use that. You can go beyond the restricted role of an NOV and leverage on your networks in getting funds for better condition of prisoners, getting government authorities to work, organizing camps or even bringing communities/society to prisons.

The emphasis on working with the community resources also comes from the fact that there is a huge shortfall of jail staff. There is 60% vacancy today in jail staff for middle level officers. The difficulty in recruiting people at this level is that the eligibility requires certain number of years of experience. That is possible only if people currently employed with the jail move up the ladder. Though efforts are being made to fill this gap, it would take time. Therefore, NOVs, while seeing that the jail administration does the best it can, must mobilize networks in the society to supplement prison budgets.

Hon'ble Mr. Justice H. R. Kuri, Chairperson, Rajasthan State Human Rights Commission: State Human Rights Commission would want you to be like their eyes to increase transparency of the system and to protect human rights of prisoners behind bars. I trust that each NOV will live up to the expectations and hope with which CHRI has organized this workshop and will work in your respective prisons as the protector of human rights.

OBSERVATION AREAS FOR NOV- SUGGESTED CHECKLIST

PHYSICAL

1. Infrastructure and Buildings – overcrowding, secure, repair, facilities 
2. Drainage & Water Supply – Regular cleaning, sufficient & clean water 
3. Hygiene – Regular bathing, washed clothes, bathroom cleaning, etc. 
4. Food – Good Quality & Sufficient Quantity 
5. Bedding & Clothing – Sufficient, clean, blankets

SPECIAL CATEGORIES

6. Women Prisoners & Children – Segregation, female doctors, health, diet, Immunization, welfare 
7. Terminally Ill & Elderly – release, medical services 
8. People with disabilities – Physical and Mental, infrastructure, medical services 
9. Foreign National Prisoners – Consular access, family connect, legal aid 
10. Death Row Prisoners – Family connect, appeal process 
11. LGBTQ - non-discriminatory 

ADMINISTRATION

12. Labor – Convicts, Minimum wages, Undertrials, Quality of Work, Documentation 
13. Discipline – Non-abusive, regular search, as per prison manual, proportionate, non-discriminatory 
14. Family Connect Process – Mulaqat, letters, waiting area, guide for families, etc. 
15. Medical Services – General doctor, psychiatrist, psychologist, counselor, therapist, outpatients 
16. Access to Information – Rights & Duties
17. Admission – Instructions, legal help, counseling, history ticket, information to family 
18. Maintaining registers – admission, release, letters, hospital, property, punishment, etc. 

PROCESSES

19. Grievance Redressal – Complaint system, Non abusive, Access to Information 
20. Non Abusive Environment – Free from verbal, physical and sexual abuse 
21. Rehabilitative Schemes – Education, recreation, work, post sentence NGO network 
22. Periodic Review Committee & Probation Mechanism – Proper referral of eligible prisoners 
23. Fair Trial & Rights in Custody - Legal Aid, bail, parole, remission, trial issues and court production 
24. Advocacy - Amendments to Prison Rules, Act, etc. 

LIST OF PARTICIPANTS

RESOURCE PERSON

1. Justice H.R. Kuri, Chairperson, Rajasthan State Human Rights Commission
2. Mr. Omendra Bharadwaj (D.G. Prisons, Rajasthan)
3. Mr. R.K. Saxena (Retd. I.G., Prisons) and CHRI Consultant
4. Mr. Shreenath Sharma, Adv. (NOV, Gopal Garh, Bharatpur)
5. Mr. Govind Singh Charan, Additional Divisional Commissioner, Jodhpur

NON OFFICIAL VISITORS

- | | |
|------------------------------|--------------------------------------|
| 1 Shri Radheysham Sangwa | 14 Shri Chaganlal Kumawat, Advocate |
| 2 Shri Purushottam Bhandari | 15 Shri Ramesh Chand Bohra, Advocate |
| 3 Shri Gordhan Singh | 16 Shri Gajanand Sharma, |
| 4 Shri Damaram Mali | 17 Shri Ranidan Sewak, Advocate |
| 5 Shri Moti Lal Sankhala | 18 Shri Kishna Ram Vishnoi |
| 6 Shri Jasaram Meghwal | 19 Shri Jalaram Puneja, Advocate |
| 7 Smt. Shameem Motiwala | 20 Shri Popatbhai Jain |
| 8 Shri Jitendra Jori | 21 Shri Laxman Singh, |
| 9 Shri Keshav Dev | 22 Shri Madan Lal Joshi Brothers |
| 10 Shri Daulatram | 23 Shri Iqbal Khan |
| 11 Shri Anil Gaur | 24 Shri Sajjan Singh |
| 12 Shri Manglaram Tank | 25 Shri Babulal |
| 13 Shri Chatraram Deshbandhu | 26 Shri Gautam Tank |

PARTICIPANTS FROM CIVIL SOCIETY ORGANIZATIONS

1. Shashi Bhushan Gupta, Legal Helpline Society
2. Mr. Vishnu Sharma, Academy for Socio- Legal Studies (ASLS)
3. Mr. Vinod Kumar, Gravis

CHRI STAFF:

1. Mrs. Maja Daruwala, Director
2. Ms. Sana Das, Programme Coordinator
3. Ms. Vinu Sampath Kumar, Coordinator Planning
4. Ms. Sugandha Shankar, Programme Officer
5. Mr. Raja Bagga, Project Officer
6. Ms. Kakoli Jadala, Administrative Assistant
7. Ms. Anisha Joseph, Project Officer

AGENDA

DAY 1: 2nd August, 2013

10.00 - 11.00 am	Registration & Tea
11.00 - 11:30 am	Introductions <ul style="list-style-type: none"> • <i>Welcome Note: CHRI & Mr. Govind Singh Charan (Additional Divisional Commissioner, Jodhpur)</i> • <i>Introductions of NOVs : NOVs' Perspective of Prison and Prisoner</i>
11:30am -12:15 pm	Significance of Prison Visiting System as an Effective Oversight in Prisons <ul style="list-style-type: none"> • <i>Mr. R.K. Saxena (Retd. I.G., Prisons)</i>
12:15 pm -1:30pm	Steps to a Prison Visit & Observation Areas for an NOV in the Prison: <ul style="list-style-type: none"> • <i>Mr. R.K. Saxena (Retd. I.G., Prisons)</i> • <i>Mr. Shreenath Sharma, Adv. (NOV, Gopal Garh, Bharatpur)</i>
1:00 - 2:00 pm	Lunch Break
2.00pm - 5pm	Prison Visit - Jodhpur Central Prison
5pm - 6pm	Discussion on Jail Visit Experience: Problems Observed & Solutions <ul style="list-style-type: none"> • <i>Mr. R.K. Saxena (Retd. I.G., Prisons),</i> • <i>Mr. Omendra Bharadwaj (D.G. Prisons, Rajasthan)) : Role & Support of Prison Administration in Prison Visiting System</i> • <i>Ms. Maja Daruwala (Director, CHRI)</i> • <i>Justice H.R. Kuri (Chairperson, SHRC, Rajasthan)</i>

DAY 2: 3rd August, 2013

9:00 - 9.30 am	Registration and Tea/Coffee
9:30- 11:30 am	Making Interventions in Prisons (Risks, Challenges, Consequences of Interventions) <ul style="list-style-type: none"> • <i>Mr. R.K. Saxena (Retd. I.G., Prisons),</i> • <i>Mr. Shreenath Sharma, Adv. (NOV, Gopal Garh, Bharatpur)</i> • <i>Ms. Maja Daruwala (Director, CHRI)</i> • <i>Justice H.R. Kuri (Chairperson, SHRC, Rajasthan)</i>
11:30am-12:30 pm	Reflecting on Key Decisions & Breakthroughs; <ul style="list-style-type: none"> • <i>Mr. R.K. Saxena (Retd. I.G., Prisons),</i> • <i>Ms. Maja Daruwala (Director, CHRI)</i> • <i>Justice H.R. Kuri (Chairperson, SHRC, Rajasthan)</i>
12.30pm - 1.00 pm	Valedictory Session : Awarding of Certificates and Prison Visiting Identity Cards
1.00-2:00 pm	Vote of Thanks and Lunch



ABOUT 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. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, 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.

The Prison Reform Programme of CHRI is focused on increasing transparency of a traditionally closed system and exposing malpractice. The programme aims to improve prison conditions, reform prison management, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system in place of the prevailing indifference and discrimination. It seeks to achieve its goals through research, legal analysis and advice, advocacy, capacity building, network building and conference facilitation.