

# HANDBOOK ON REFERRAL BODIES IN THE CRIMINAL JUSTICE SYSTEM

*for socio-legal assistance for prisoners*

COMPILED BY THE COMMONWEALTH HUMAN RIGHTS INITIATIVE



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BEHIND BARS BUT NOT BEYOND JUSTICE





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## CONTENTS

<b>A. ROLES AND RESPONSIBILITIES OF OFFICIAL VISITORS</b>	<b>4-7</b>
<b>B. COMPOSITION &amp; MANDATE OF UNDERTRIAL REVIEW COMMITTEE</b>	<b>8-9</b>
<b>C. POWERS OF JUVENILE JUSTICE BOARD, CHILD WELFARE COMMITTEE AND THE PROCEDURE OF AGE DETERMINATION</b>	<b>10-13</b>
<b>D. ROLES AND RESPONSIBILITIES OF DIRECTOR GENERAL AND OTHER INSTITUTIONAL PERSONNEL</b>	<b>14-18</b>
<b>E. NATIONAL HUMAN RIGHTS COMMISSION AND STATE HUMAN RIGHTS COMMISSION</b>	<b>19-21</b>
<b>F. SUGGESTED MODES OF INTERVENTION IN CASES OF FOREIGN NATIONAL PRISONERS</b>	<b>22-23</b>
<b>G. STRUCTURE &amp; FUNCTIONS OF LEGAL AID IN INDIA</b>	<b>24-26</b>



BEHIND BARS BUT NOT BEYOND JUSTICE





## **A. ROLES AND RESPONSIBILITIES OF OFFICIAL VISITORS**

### **DUTIES OF ALL VISITORS (Official and Non-Official)<sup>1</sup>:**

All visitors at every visit shall:

1. Examine the cook food;
2. Inspect the barracks, wards, work-sheds and other buildings of the prisons;
3. Ascertain:
  - a) whether considerations of health, cleanliness and security are attended to
  - b) whether proper management and discipline is maintained in every respect
  - c) whether any prisoner is illegally detained or is detained for undue length of time while awaiting trial
4. Examine prison registers and records, except secret records and records pertaining to accounts
5. Hear and attend to all representation and petition made by or on behalf of the prisoners
6. Direct, if deemed advisable, that any such representation or petition be forwarded to the Government
7. Suggest new avenues for improvement in correctional work.

### **LIST OF OFFICIAL VISITORS<sup>22</sup>:**

1. The District Judge at the District level, or the Sub-Divisional Judicial Magistrate exercising Jurisdiction, at Sub-Division level
2. The District Magistrate, at the District level or Sub-Divisional officer at Sub-Divisional level
3. District Superintendent of Police
4. The Chief Medical Officer of the Health Department, at the District level or the Sub-Divisional Medical Officer at Sub-Division level
5. The Executive Engineer, PWD at the District level, or Assistant Engineer PWD at Sub-Divisional level
6. The District Education Officer dealing with literacy programmes
7. District Social Welfare Officer
8. District Employment Officer
9. District Agricultural Officer
10. District Industrial Officer

### **SPECIFIC DUTIES OF THE OFFICIAL VISITORS:**

#### **A. The District Judge at the District level, or the Sub-Divisional Judicial Magistrate exercising Jurisdiction, at Sub-Division level:**

1. Dispose off the cases of under-trial prisoners in an appropriate and timely manner.
2. Take timely action on the appeals of prisoners.

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<sup>1</sup> Chapter 29, Model Prison Manual 2016

<sup>2</sup> Ibid



3. Ensure that copies of the decision and order are supplied on the day of judgement itself.
4. Take instantaneous action on the applications and requests of prisoners during visit to jails.<sup>3</sup>

**B. The District Magistrate, at the District level or Sub-Divisional officer at Sub-Divisional level:**

1. The District Magistrate has a general control over all the prisons in his area of jurisdiction.<sup>4</sup>
2. He can grant casual leave to Superintendent.<sup>5</sup>
3. A District Magistrate may remove a prisoner from one prison to another within the district and to other district, with prior approval of the District Magistrate of that district, any person detained in custody in a prison due to pending inquiry, investigation or trial under any writ, warrant or order of any court.<sup>6</sup>
4. The State Government may authorize the District Magistrate to release under armed custody the prisoners detained in the respective prisons in their district, for a maximum of 15 days in the following emergency situations:
  - i. In the event of the death of a prisoner's parent, spouse or child
  - ii. Marriage of a prisoner's own daughter or son
  - iii. Own marriage of a prisoner<sup>7</sup>
5. If a foreign prisoner dies in custody, an immediate report should be sent to the District Magistrate.<sup>8</sup>
6. When a woman dies in custody and leaves a child behind a report should be sent to the District Magistrate who makes arrangements for further care of the child.<sup>9</sup>
7. Release of a prisoner on parole/furlough should be intimated to the District Magistrate and the District Superintendent of Police.<sup>10</sup>

**C. Superintendent of Police:**

1. Visit personally otherwise ensure that the Additional District Magistrate/ SDMs visit and report to the DM on a monthly basis.
2. Call for periodic status reports from the Superintendents
3. Take appropriate decisions on visitors' notes and ensure their timely implementation.
4. Ensure that the vehicles, arms and ammunition, stores and buildings belonging to the department are maintained in good condition
5. Verify that a prisoner is a bonafide resident of a district before transferring him to another district
6. Arrange for escorts for transferring prisoners

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3

[http://www.humanrightsinitiative.org/publications/prisons/monitoring\\_prisons\\_a\\_visitor's\\_guid\\_e.pdf](http://www.humanrightsinitiative.org/publications/prisons/monitoring_prisons_a_visitor's_guid_e.pdf)

<sup>4</sup> Section 28 B, Bihar Jail Manual 2012

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Ibid

<sup>8</sup> 7.97.3, Model Prison Manual, 2016

<sup>9</sup> 7.87.4, Model Prison Manual, 2016

<sup>10</sup> 19.22, Model Prison Manual, 2016



7. Obtain the details of intended residence of the prisoner after release
8. Assess the prisoner's case for premature release
9. Make arrangements as seem advisable for a concerted plan of action in the case of an outbreak.
10. Maintain record of the deaths of prisoners

**D. The Chief Medical Officer of the Health Department, at the District level or the Sub-Divisional Medical Officer at Sub-Division level:**

1. Find out the status of medical facilities in the jail, health problems of prisoners and provide solutions to them
2. Depute adequate number of well qualified and experienced doctors to all prisons in the state.
3. Visits personally, otherwise ensure that the Civil Surgeon or Medical Officer of the district visits the jail regularly and discharges his/her duties professionally. <sup>11</sup>

**National Health Programmes**

1. National Mental Health Programme: A District Mental Health Programme is run under NMHP to provide Community Mental Health Services and integration of mental health with General Health services. The DMHP has a community based approach to the problem, which includes:
  - I. Training of mental health team at identified nodal institutions
  - II. Increasing awareness and reduce stigma related to Mental Health problems
  - III. Provide services for early detection and treatment of mental illness in the community<sup>12</sup>

**E. The Executive Engineer, PWD at the District level, or Assistant Engineer PWD at Sub-Divisional level**

1. The Superintending Engineer of the Circle, the Executive and Assistant Engineers of the District and their employees, shall, during business hours, have free access to the jail to such extent as may be necessary for purposes connected with the discharge of the official duties of their Department, but not otherwise.<sup>13</sup>
2. The duties of The Executive Engineer of PWD as an official visitor include ensuring that the requirements of availability of potable water and edible food to prisoners are being met by PWD.

**F. The District Education Officer (dealing with literacy programmes)<sup>14</sup>:**

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<sup>11</sup>

[http://www.humanrightsinitiative.org/publications/prisons/monitoring\\_prisons\\_a\\_visitor's\\_guide.pdf](http://www.humanrightsinitiative.org/publications/prisons/monitoring_prisons_a_visitor's_guide.pdf)

<sup>12</sup> <http://mohfw.nic.in/WriteReadData/l892s/9903463892NMHP%20detail.pdf>

<sup>13</sup> Section 59, Haryana Prison Manual, Section 16, Rajasthan Prison Rules , 1951

<sup>14</sup> Directorate of Education, Govt. of NCT of

Delhi, [http://www.edudel.nic.in/welcome\\_folder/17\\_manuals\\_dt\\_081008/69-2.pdf](http://www.edudel.nic.in/welcome_folder/17_manuals_dt_081008/69-2.pdf)



1. Grant of scholarships to the students under various schemes
2. Implementation of National Scholarship Scheme
3. Grant loans to students
4. Implementation of centrally sponsored scheme of post-matric scholarship to SC/ST students
5. Grant of pre-matric scholarship to the children of parents engaged in unclean occupations
6. Free supply of textbooks and stationary to SC/ST students

**G. District Social Welfare Officer<sup>15</sup>:**

1. Responsible for the implementation of the provisions of the Disabilities Act, 1995.
2. Responsible for the proper and effective implementation of the ICDS projects in their districts.
3. Supervisory officer of his respective districts and regular inspections of all the units within his districts are his primary responsibility.

**H. District Employment Officer:**

1. To provide Vocational Guidance, Career Counselling and Employment Assistance for jobs in private sector and Government Sector as well as for self-employment.
2. To inspect subordinate Employment Exchange.
3. To hold recruitment drives in various jails for placing prisoner into jobs suiting their education, skill and experience.
4. Oversee the functioning of the Industrial Training Institutes

**I. District Agricultural Officer<sup>16</sup>:**

1. To arrange timely supply of Fertilizer in different sales in the District
2. To ensure that no Fertilizer of low quality is distributed.
3. To ensure that timely arranging and socking of Agriculture inputs.

**J. District Industrial Officer<sup>17</sup>:**

1. Provide training on masonry, mobile phone repairing, and plumbing etc.
2. Oversee the functioning of the Industrial Training Institutes

<sup>15</sup><http://delhi.gov.in/wps/wcm/connect/doi/socialwelfare/SocialWelfare/Home/About+Us/Activities+at+District+Offices>

<sup>16</sup> Himachal Pradesh Government, [www.hpagriculture.com/Job\\_Profile.pdf](http://www.hpagriculture.com/Job_Profile.pdf)

<sup>17</sup>[https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKEwjF\\_vnxstbMAhUlpI8KHbAkC4YQFghNMAk&url=http%3A%2F%2Fwww.aponline.gov.in%2FAportal%2FHomePageLinks%2FRTIA%2FRTIA%2FIndustries%2520and%2520Commerce%2520Department%2FRight%2520to%2520Information%2520Act-%2520Commissioner%2520of%2520Industries%2520Handbook.doc&usq=AFQjCNH5SmAwmAVTzUY\\_qAXJ0lwv7JP\\_4A&sig2=1q5N\\_JmhJ3wYUc8kljAY9A&bvm=bv.122129774,d.c2l](https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=10&cad=rja&uact=8&ved=0ahUKEwjF_vnxstbMAhUlpI8KHbAkC4YQFghNMAk&url=http%3A%2F%2Fwww.aponline.gov.in%2FAportal%2FHomePageLinks%2FRTIA%2FRTIA%2FIndustries%2520and%2520Commerce%2520Department%2FRight%2520to%2520Information%2520Act-%2520Commissioner%2520of%2520Industries%2520Handbook.doc&usq=AFQjCNH5SmAwmAVTzUY_qAXJ0lwv7JP_4A&sig2=1q5N_JmhJ3wYUc8kljAY9A&bvm=bv.122129774,d.c2l)





## B. UNDERTRIAL REVIEW COMMITTEE

### COMPOSITION

1



**District & Sessions Judge  
CHAIRPERSON**

- The highest court in each district is that of the District and Sessions Judge. This is the principal court of civil jurisdiction. This is also a court of Sessions. Sessions-triable cases are tried by the Sessions Court.
- A District Court, headed by the District & Sessions Judge exercises control over all its subordinate Courts functioning in its territorial jurisdiction. District Judge is also the Chairman of the DLSA.
- Every person in custody has been sent there under an order of the court. His presence on the Review Committee allows him to assess the proceedings of each case, identify over-long incarceration of an undertrial, where the delays lie, how quickly cases are disposed and identify causes why prisoners are not let out on bail.

2



**District Magistrate  
MEMBER**

- The District Magistrate (DM) is the administrative head of the district and the entire administration of the district works directly or indirectly under his supervision and control.
- Executive Magistrates are appointed by the State Government. All Executive Magistrates, other than the Additional District Magistrate, are subordinate to the District Magistrate. In metropolitan areas, Commissioner of Police is also conferred as Executive Magistrate. They have several powers under the Code of Criminal Procedure, 1973 (CrPC), including the powers of arrest in certain situations and therefore his presence in the Review Committee is crucial.
- In relation to prisons, the DM is also one of the ex-officio visitors and is responsible for making regular visits to the prison. He is empowered to issue orders to ensure the effective working of the prison administration.

3



**District Superintendent  
of Police  
MEMBER**

- The Superintendent of Police (SP) is the policing head of the district and is mainly responsible for the maintenance of law and order.
- Apart from his main policing functions, an important task is to ensure the availability of police escorts or "chalani guards" as they are commonly known, to ensure that every undertrial reaches court in a timely manner on the date specified by the court warrant that asks for his appearance. The need to produce the accused before the court on each date requires coordination with the prison authorities and a police presence at the Review Committee is intended to facilitate this.
- Police is also responsible for completing timely investigation and filing of chargesheet within the statutory limit (60/90 days) as provided under S.167 of the Code of Criminal Procedure, 1973.

4



**Secretary,  
District Legal  
Services  
Authority  
MEMBER**

- Secretary of DLSA and other members who possess prescribed qualification assist the Chairman in the functions of the District Legal Services Authority (DLSA). While in some districts a full-time Secretary is appointed, in others the Chief Judicial Magistrate (CJM) has an additional charge.
- DLSA co-ordinate the activities of the Taluk Legal Services Committee and other legal service in the District, to –
  - Provide legal services free of cost to the needy
  - Organise legal awareness programmes in prison and community
  - Organise Lok Adalats
- For promoting the cause of legal service to the poor District Authority must co-ordinate with Non-Governmental institutions and Universities.



## PERIODICITY OF MEETINGS

Meetings of Under Trial Review Committees must take place **quarterly**.

**NOTE:** If the meeting, in your district, has not taken place for more than three months you can bring it to the attention of the District & Sessions Judge or the Secretary, DLSA.



## MANDATE OF UNDER TRIAL REVIEW COMMITTEES (UTRCs)

As per the directions of the Supreme Court in an ongoing writ petition, 'Re-Inhuman Conditions in 1382 Prisons', the UTRCs are mandated to review the cases, mainly of undertrials, who –

- ✓ have completed half or more than the maximum prescribed punishment for the offence charged – **S. 436A, CrPC**;
- ✓ are accused of a bailable offences under **S. 436, CrPC**. (*The 2005 amendments to the Code provides that the person be considered indigent and should be released on personal bond, without sureties, if he/she is unable to provide surety within a week from the date of his/her arrest*);
- ✓ **are unable to furnish bail** and are still in custody for that reason;
- ✓ are accused of **compoundable offences** (*The Court directed the State Legal Services Authority, through the Member Secretary of NALSA to urgently take up the issue with the panel lawyers*);
- ✓ fall under the implementation of the Probation of Offenders Act, 1958, particularly first time male offenders between the ages 19 and 21 who are in undertrial custody for offences punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
- ✓ become eligible to be released on bail under Section 167(2)(a)(i) & (ii) of the Code read with Section 36A of The Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;
- ✓ imprisoned for offences which carry a maximum punishment of 2 years;
- ✓ detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 107, 108, 109 and 151 of CrPC.;
- ✓ sick or infirm and require specialized medical treatment (S. 437 of the CrPC);
- ✓ Women offenders (S.437 of the CrPC);
- ✓ are of unsound mind and must be dealt under Chapter XXV of the CrPC;
- ✓ are eligible for release under Section 437(6) of the CrPC, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case; and
- ✓ **Convicts** who have undergone their sentence or are entitled to release because of remission granted to them.



## **C. POWERS OF JUVENILE JUSTICE BOARD, CHILD WELFARE COMMITTEE AND THE PROCEDURE OF AGE DETERMINATION**

### **POWERS AND FUNCTIONS OF JUVENILE JUSTICE BOARD**

1. The new Juvenile Justice (Care and Protection) Act, 2015 mandates every district to have one or more juvenile justice boards consisting of a Metropolitan or Judicial Magistrate of first class, not being a Chief Judicial Magistrate or Metropolitan Magistrate (also referred as principal magistrate) having at least three years of experience and two social workers (one of them has to be a woman).<sup>18</sup>
2. The Act mandates the Board to meet at necessary times and thus should check if the procedures for Juvenile Delinquents are child friendly or not. They must also take care of the fact that the environment should be unlike regular courts and hence not intimidating to the children. Further in case of a conflict between views of different members, opinion of principal magistrate would be final.<sup>19</sup>
3. As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended.<sup>20</sup>
4. When a juvenile person<sup>21</sup> is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. However, the Board can record reasons for not giving bail to that particular juvenile if it has reasonable grounds for believing that release would expose him to moral, psychological or physical danger or thus would defeat ends of justice.<sup>22</sup>
5. In case a child<sup>23</sup> is not released on bail then the board is empowered to use its own discretion to send the child to observation home or place of safety.<sup>24</sup> as required by the situations.
6. When a child is produced before Juvenile Justice Board in relation to a crime, the Board is obliged to make a preliminary inquiry, after satisfying themselves of absence of any ill

<sup>18</sup> Section 4, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>19</sup> Section 7, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>20</sup> Section 10 (1), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>21</sup> “juvenile” means a child below the age of eighteen years, Section 2(35), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>22</sup> Section 12 (1), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>23</sup> “child” means a person who has not completed eighteen years of age, Section 2(12), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>24</sup> Section 12 (2), Juvenile Justice (Care and Protection of Children) Act, 2015



treatment to the child. The Act also provides to also carry out the inquiry in a simple manner providing him every adequate opportunity of hearing.

7. The Act has commission or alleged commission of heinous offences by children at its primary focus. When a juvenile /child is accused of having committed a heinous offence then a preliminary assessment should be conducted determining the mental and physical capacity of the delinquent at the time of commission of an offence. Also the circumstances of the juvenile at the time of the commission of the offence should be considered.<sup>25</sup>
8. The Juvenile Justice Board has also been empowered by the new act to review the pendency of the cases before the board and also record reasons for such delay, The Principal Magistrate here has the discretion to adjust frequency of the board.
9. Once the Board along with the Principal Magistrate is satisfied of the innocence of the child it can pass appropriate orders for setting the child free or for putting him in a place of safety. <sup>26</sup>
10. When a board after inquiry is satisfied of a commission of a petty offence, or serious offence by the child or commission of a heinous offence by a child below the age of sixteen, it can
  - a. Either send child back home after advice or admonition
  - b. Direct him to participate in group counselling.
  - c. Order him to perform community service
  - d. Order the child or his parents to pay fine
  - e. Direct the child to be released on probation on grounds of good conduct and to be placed in care of his parents or guardian.
  - f. Direct the child to be sent to a special home.<sup>27</sup>
11. Additional orders could be passed by CJM and the board directing him to attend school, therapeutic centre or vocational activities.
12. Where the Board after preliminary assessment under section 15 passes an order that there is a need for **trial of the said child as an adult** (the prominent feature of the amended act) then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.<sup>28</sup>
13. The Board has also been entrusted with the mighty responsibility of rehabilitation of Juvenile Delinquents. The Board or the Committee shall recognise a facility being run by a Governmental organisation or a voluntary or non-governmental organisation to be fit to temporarily take the responsibility of a child for a specific purpose after due inquiry regarding the suitability of the facility and the organisation to take care of the child in such manner as may be prescribed.

<sup>25</sup> Section 15, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>26</sup> Section 17, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>27</sup> Section 18(1), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>28</sup> Section 18(2), Juvenile Justice (Care and Protection of Children) Act, 2015



14. The Board or the Committee shall, after due verification of credentials, recognise any person fit to temporarily receive a child for care, protection and treatment of such child for a specified period and in the manner as may be prescribed.

#### **POWER AND FUNCTIONS OF CHILD WELFARE COMMITTEE**

1. The Child Welfare Committees will look at institutional care for children in their respective districts. Each committee will have a chairperson and four other members, all specialists in matters relating to children.<sup>29</sup>
2. The state government shall by notification in the official gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitization of all members of the committee is provided within two months from the date of notification.<sup>30</sup>
3. The committee under the Act is supposed to function as a bench and will be entrusted with all the powers of a metropolitan Magistrate as prescribed under Code of Criminal Procedure, 1973.<sup>31</sup>
4. The District Magistrate shall act as a Grievances Redressal Authority for the Child Welfare Committee and anyone connected to the child has the liberty to file petition to him and he can thus pass appropriate orders.<sup>32</sup>
5. The Act mandates the committee to meet at least twenty days in a month and should follow prescribed rules and procedures. If not in session, the child in need of care and protection could be put before an individual member of the committee. So that he could be placed in a Children's home or in custody of a fit person.<sup>33</sup>
6. The Child Welfare committee shall have the power to dispose off the cases regarding protection, care and rehabilitation of children in need of care and protection.<sup>34</sup>
7. The functions and responsibilities of the Child Welfare Committee are to:
  - a. take cognizance of and receiving the children placed before it,
  - b. conduct an inquiry related to safety issues of the child,
  - c. direct the child welfare officers and probation officers to conduct an investigation if needed, and submit the report accordingly,
  - d. conduct inquiries to find a fit person for care of children in need of care and protection, directing placement of children in foster care, ensuring his care, safety, development and rehabilitation keeping in mind his individuality,

<sup>29</sup> Section 27(2), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>30</sup> Section 27, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>31</sup> Section 27(9), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>32</sup> Section 27(10), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>33</sup> Section 28, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>34</sup> Section 29(1), Juvenile Justice (Care and Protection of Children) Act, 2015



- e. select institutions for the placement of child on the basis of their age, gender, disability and needs and the capacity of the institution.
- f. conduct investigation at least twice a month of the residential facilities of the child in need of care and protection,
- g. ensure that all efforts are being made to restore abandoned or lost children to their families,
- h. take action for rehabilitation of sexually abused children who are reported to be children in need of care and protection by Special Juvenile Unit or local police.<sup>35</sup>

#### **PROCEDURE RELATED TO AGE DETERMINATION OF JUVENILE**

In case of absence of obvious determination of a person from his physical appearance on the basis of discretion of board and the committee, and when it has reasonable grounds for suspecting a person allegedly juvenile to be not so, they can rely upon following methods:

- a. obtaining the date of birth certificate from the school or an equivalent matriculation certificate of the person from the concerned examination board or,
- b. to rely upon birth certificate issued by municipal authority or panchayat or
- c. only in the absence of the above two methods, an ossification test should be conducted.<sup>36</sup>

However where it is obvious to the Committee or the Board based on the appearance of the person before it and they are convinced of it being a child, then committee or board could record reasons for their such discretion and proceed with the inquiry without waiting for the conformation of age.<sup>37</sup>

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<sup>35</sup> Section 30, Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>36</sup> Section 94(2), Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>37</sup> Section 94 (1), Juvenile Justice (Care and Protection of Children) Act, 2015



## **D. ROLES AND RESPONSIBILITIES OF DIRECTOR GENERAL AND OTHER INSTITUTIONAL PERSONNEL**<sup>38</sup>

### **Director General/ Inspector General:**

- The State Government appoints the Director General/ Inspector General of Prisons and Correctional Services who exercises general control and superintendence over all prisons situated in the State.
- The Director General/ Inspector General ensures the implementation of the provisions of the Prisons Act through other officers as appointed by the government for assisting him at the headquarters, regional organisation, at the prisons and at other institutions under his control.

### **Authority and Powers of the Director General/Inspector General of Prisons:**

The general functions of the Director General/Inspector General are:

- 1) To implement prison policies as laid down by the State Government
  - 2) To plan, organise, direct, coordinate and control the various prison and correctional services
  - 3) To define the functions and fix lines of authority and channels of command of the prison personnel
  - 4) To inspect institutions with special reference to care, welfare, training and treatment of inmates, staff training, discipline and welfare, etc.<sup>39</sup>
- As the Head of the Department, the Director General/Inspector General will have all necessary financial, administrative and disciplinary powers.
  - The Director General/Inspector General will prepare the budget for the various services under his control. Subject to the rules and orders of the State Government and the requirements of the Accountant-General, the expenditure of the Department of Prisons and Correctional Services will be controlled by the Director/Inspector General.<sup>40</sup> The Director General/Inspector-General may sanction any item of expenditure provided in the budget, but the sanction of State Government will be obtained to all special and unusual charges for which distinct provision may not have been made or which are newly entered in the budget. Subject to provisions of this rule, an adequate grant will be placed at the disposal of Director General/Inspector General to meet expenditure of a special nature.<sup>41</sup>
  - The Director General/ Inspector General will manage the personnel in the department and exercise disciplinary powers, including powers of redeployment of staff, on par with the powers of the Director General of Police.<sup>42</sup>

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<sup>38</sup> The provisions of Model Prison Manual are compiled with the view that it would correspond to the state prison rules. For specific provisions, it is suggested to refer the state prison rules.

<sup>39</sup> Chapter 3, Model Prison Manual 2016

<sup>40</sup> Ibid

<sup>41</sup> Ibid

<sup>42</sup> Ibid



- At the time of admission, from prisoners every article will be taken away except personal clothing. Other necessities of life such as bedding will be permitted by Director General/Inspector General of Prisons.<sup>43</sup>
- For transfer of a sick prisoner which is required on medical grounds to any specialised hospital outside the jurisdiction of the prison, the approval of the Director General/Inspector General should be obtained. If the Chief Medical Officer is of opinion that prior approval of the Director General/ Inspector General of Prisons will take such time as will endanger the life of a sick prisoner, the transfer may be made in anticipation of sanction of the Director General/ Inspector General of Prisons.<sup>44</sup>
- When a convicted prisoner, in the opinion of a Medical Board, is in danger of death from sickness (not due to an infectious disease) with no hope of recovery within or outside the prison, the Superintendent shall report the fact to the Director General of Prisons if it is considered desirable to allow such prisoner the comfort of dying at home.<sup>45</sup>
- The Director General/ Inspector General of Prisons or any other officer of the rank of DIG and above from the Prisons Headquarters shall inspect minimum of 25% of the prisons in the State every year. This allotment shall also be done by the Director General of Prisons in advance by 15th of January every year.<sup>46</sup>

### **INSTITUTIONAL PERSONNELS AND THEIR POWERS AND DUTIES**

The personnel strength of the prison will be determined according to the duty posts, taking hours of duty per day as the basis for each category of staff. The institutional set-up will be fixed in accordance with the size of the institutions, the inmate population, workload and distribution of the functions.

**a) Superintendent:** The Superintendent will be the head of prison and will be assisted by officers subordinate to him. He will be in charge of the executive management of the prison in all matters relating to economy, discipline, labour, expenditure, punishment and control in general. He will also subject to any order of the State Government/ Director General/ Inspector General of Prisons and the Regional DIG.<sup>47</sup>

#### **DUTIES:**

1. General supervision over security and custody arrangements;
2. Custody of secret and confidential documents;
3. Supervision over care and welfare of inmates;
4. Supervision over office administration;

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<sup>43</sup> Chapter 5, Custodial Management, 5.45

<sup>44</sup> Chapter 7, Medical Care, 7.49

<sup>45</sup> Chapter 20, Premature Release, 20.10

<sup>46</sup> Chapter 28, Inspection of Prisons, 28.04

<sup>47</sup> Chapter 4, Model Prison Manual 2016





5. Control over financial matters;
  6. Implementing State policy pertaining to correctional administration;
  7. Planning, organising, directing, guiding, coordinating, supervising and controlling all institutional programmes and operations;
  8. Inmate discipline and morale;
  9. Classification of prisoners, training and treatment programmes and correctional activities;
  10. Inspection and supervision of work, employment and production programmes;
  11. Inspection of the prison activities, prison hospital, kitchen, canteen, etc.;
  12. Personnel matters, staff welfare and staff discipline, allocation of duties to personnel under his control, safety of the prison personnel, protection of human dignity, rights and providing decent work conditions, acquainting institutional personnel with current policies of correctional administration and the role they have to play in a welfare state; organizing personnel training programmes at the institutional level;
  13. Reports to the Director General/Inspector General and liaison with other government agencies for the purpose;
  14. Developing an institutional atmosphere conducive to the correctional role and providing leadership in every aspect of institutional management;
  15. Daily inspection round and weekly night inspection round;
  16. Control of stock and stores, maintenance.<sup>48</sup>
- **On the History Ticket of every convict, the Superintendent shall record:**
    - (i) Any special order he may have to give related to any prisoner, e.g. the imposition or removal of fetters, permission to hold an interview or write a letter, separation by night
    - (ii) The award of every punishment
    - (iii) Sanction for employment on extra - mural work
    - (iv) Promotion to the grade of Convict-watchman, Convict-overseer or Convict warder
    - (v) The award of special remission<sup>49</sup>

**b) Deputy Superintendent/ Jailer:** The Deputy Superintendent is the chief executive office of the Prison and is subordinate to the Superintendent. He is responsible for observance of all prescribed rules and orders.

**DUTIES:**

1. Supervision over security, custody and discipline, supervision over care and welfare of prisoners;
2. Supervision over personnel matters, staff discipline and staff welfare assisting the Superintendent in all matters pertaining to institutional management;

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<sup>48</sup> Ibid

<sup>49</sup> Model Prison Manual, Chapter 5, Custodial Management, 5.57



3. Inspecting kitchen and canteen visit to hospital;
4. Admission and release work prison manufacturers;
5. Classification of prisoners and their training;
6. Deputy Superintendent shall see that prisoners are clean in their persons and clothes and that they have the authorized amount of clothing and bedding and no more;
7. Shall, at uncertain times but at least once a week, cause every prisoner and all clothing, bedding workshops, wards and cells to be thoroughly searched;
8. Shall be responsible for the execution of all orders regarding the labour of prisoners. He shall assign to each prisoner his work on the recommendation of the classifying Committee constituted in each Central Prison for the purpose. The said Board shall consist of the Superintendent of the concerned prison, Medical Officer and the Deputy Superintendent. He shall ensure that the assigned works are performed by the prisoner.
9. He shall supervise the cultivation of the garden and be responsible for the adequacy of the supply of vegetables. He shall supervise the prison farm and all other outside operation.
10. He shall jointly with the Medical subordinate be responsible for the proper preparation and distribution of food to prisoners.
11. He shall supervise the working of the guards. At least once a week, at uncertain time, he shall visit the prison after 10.00 P.M. and satisfy himself that the standing guard is present, the sentries posted are on the alert, and that the rounds are properly maintained.
12. He shall be responsible for custody of all warrants and for the strict enforcement of their terms and that no prisoner on any account be released before his due time or kept in prison beyond the termination of his sentence.<sup>50</sup>

**c) Medical Officer:** The medical personnel will be directly responsible for the medicare and health of prisoners. They will also advise the maintenance of minimum standards of hygienic conditions in the prison premises. The specific duties of each of the medical personnel will be assigned by the prison authorities in the following areas:

**1) Preventive Service<sup>51</sup>**

Examination of all inmates on admission and periodical reexamination, immediate provision of whatever treatment is indicated, immunisation, segregation and treatment of those having contagious or infectious conditions, 6 inspection and advice regarding diet, clothing, equipment, industrial safety, environmental and institutional sanitation and hygiene, health education for inmates and personnel.

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<sup>50</sup> Ibid

<sup>51</sup> Ibid



**2) Curative Services<sup>52</sup>**

Treatment of diseases, dental care, treatment of skin ailments, correction of defects of sight, hearing, speech and posture, provision of artificial limbs, glass eyes, trusses and other prosthetic devices, prescription of special diets and exercise and physiotherapy, and treatment of substance-related and addictive disorders and psychological disorders.

**3) General<sup>53</sup>:** Hospital administration, hospital discipline, classification of prisoners, assessing work and employment potential of inmates, suggesting special precautionary measures where necessary for certain types of offenders, daily visit to prisoners under punishment, prisoners under sentence of death, inspection of kitchen, canteen provisions and supplies, medical treatment of personnel, assisting the Superintendent in matters pertaining to institutional management, liaison with local officers of medical and health departments.

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<sup>52</sup> Ibid

<sup>53</sup> Ibid



## **E. NATIONAL HUMAN RIGHTS COMMISSION<sup>54</sup> AND STATE HUMAN RIGHTS COMMISSION**

### **NATIONAL HUMAN RIGHTS COMMISSION**

It has been set up under the Protection of Human Rights Act, 1993 for the better protection of human rights and the matters related to it.

### **STATE HUMAN RIGHTS COMMISSION**

Under the Protection of Human Rights Act, 1993, a State Government has the power to constitute a State Human Rights Commission to exercise the powers conferred upon and to perform the functions assigned to a State Commission.

The functions of the State Human Rights Commission are as follow:

1. It can visit any jail or any other institution of the State Government where persons detained or lodged for purposed of treatment reformation or protection for the study of the living conditions of the inmates.<sup>55</sup>
2. Make any recommendation thereon to the Government<sup>56</sup>

### **PROCEDURE FOR INQUIRY INTO COMPLAINTS<sup>57</sup>**

Commission while inquiring into complaints of violations of human rights may:

- Call for information or report from the State Government or any organization subordinate thereto, within such time as may be specified by it;
- If the information or report is not received within the time stipulated by the Commission, it may proceed to inquire into the complaint on its own;
- If on receipt of information the Commission is satisfied either that no further inquiry is required or that the required action has been initiated or taken by the concerned Government or authority, it may not proceed with the complaint and inform the complainant accordingly.

### **Members Act as Ex-officio Visitors**

In several states, the members of the State Human Rights Commission are also official visitors who are required to visit prisons regularly. In such states, they also are part of the Board of Visitors, a body comprising of Official and Non-Official Visitors. Nominated by the District Magistrate it is mandated to meet regularly to look into the various prison issues including living conditions, infrastructure, facilities as well as to monitor detentions.

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<sup>54</sup> <http://nhrc.nic.in/>

<sup>55</sup> Protection of Human Rights Act 1993, Sec.12(c)

<sup>56</sup> Ibid

<sup>57</sup> Protection of Human Rights Act 1993, Sec.17



### **SPECIAL RAPPORTEUR:**

A special rapporteur is an individual who works on behalf of the NHRC and acts as an investigator under the guidelines and reports back to NHRC on matters concerning the human rights.<sup>58</sup>

- A special rapporteur can visit area of interests, jails, police lock ups and other place of detention, as and when required in connection with discharge of his duties.
- The Special Rapporteur examines monitors, advises and reports on human rights problems by undertaking any special procedures, conducting visits and providing advice.<sup>59</sup>
- They also engage in general promotional activities towards promotion and protection of human rights or any other duty as assigned by the NHRC.<sup>60</sup>

Following is the list of Special Rapporteurs (Zone wise):

<b>SNo</b>	<b>Name</b>	<b>Zone</b>	<b>Contact</b>
1	Smt.S.Jalaja, IAS (Retd)	Central Zone-II (Bihar and Jharkhand)	09971344116, <a href="mailto:sjalaja@hotmail.com">sjalaja@hotmail.com</a>
2	Shri Anil Pradhan, IPS (Retd.)	North Eastern Zone-II (Assam, Meghalaya, Sikkim and Arunachal Pradesh)	9436104755, <a href="mailto:anilpradhanshilong@gmail.com">anilpradhanshilong@gmail.com</a>
3	Shri Damodar Sarangi IPS (Retd)	East Zone-1 (West Bengal, Odisha, Andaman & Nicobar Islands)	9871152870, sprep2.nhrc.nic.in
4	Shri. Gopo Bihari	Central Zone-I (Madhya Pradesh, Chattisgarh and Rajasthan),	09868958887, 011-26155790, gopo_panda.yahoo.com
5	Shri. Jacob Punnoose, IPS (Retd.)	South Zone-I (Tamil Nadu, Kerala, Puducherry & Lakshadweep)	09446111221, <a href="mailto:jacobpunnoose@gmail.com">jacobpunnoose@gmail.com</a>
6	Shri A.K.Jain	North Zone-I (Punjab, Haryana, Chandigarh, Delhi, Himachal Pradesh, Jammu & Kashmir and Uttarakhand)	09771498189, <a href="mailto:akhilkjain@nic.in">akhilkjain@nic.in</a>
7	Shri Sunil Krishna	North Zone-I (Uttar Pradesh)	09868211020, 0120-2485445, <a href="mailto:sunil_krishna@yahoo.com">sunil_krishna@yahoo.com</a>

<sup>58</sup>[http://nhrc.nic.in/Documents/Scheme\\_And\\_Guidelines\\_for\\_Engagement\\_of\\_Special\\_Rappoteurs\\_05\\_01\\_2016.pdf](http://nhrc.nic.in/Documents/Scheme_And_Guidelines_for_Engagement_of_Special_Rappoteurs_05_01_2016.pdf)

<sup>59</sup> Ibid

<sup>60</sup> Ibid



8	Shri P.G Kammath, Lt.Gen.(Retd.)	South Zone-II (Andhra Pradesh, Telangana and Karnataka)	08105149081 080-23433318, <a href="mailto:pgkamath11@yahoo.com">pgkamath11@yahoo.com</a>
9	Vacant	North Eastern Zone-I (Nagaland, Manipur, Mizoram and Tripura)	
10	Vacant	West Zone (Maharashtra, Goa, Gujarat, Dadra & Nagar Haveli and Daman & Diu)	

## **COMPLAINTS**

The commission has handled a various issues since its formation. The major types of complaints in respect of police administration are:

- Failure in taking action;
- Unlawful detention;
- False implication;
- Custodial violence;
- Illegal arrest;
- Other police excesses;
- Custodial deaths;
- Encounter deaths;
- Harassment of prisoners;
- Jail conditions

### **Procedure on Death of a Prisoner<sup>61</sup>**

The death of any prisoner, which is a custodial death, shall be handled as per the procedure laid down in the Code of Criminal Procedure, 1973, and the guidelines issued by the National Human Rights Commission from time to time.

### **Procedure in case of death of a prisoner in transit<sup>62</sup>**

When a prisoner dies in transit, the officer in charge of the escort shall at once report the circumstances to the nearest police station, which in turn will inform the judicial Magistrate. The Executive Magistrate shall enquire into the case and submit his/her report directly to the Inspector General and shall arrange for the disposal of the dead body. The officer in charge of the escort shall also intimate the death of a prisoner to the Superintendent of the prison to which the prisoner was being transferred, and the Superintendent of the transferring prison immediately. The latter shall inform the deceased prisoner's relatives, the Government, and the National Human Rights Commission, of the death of the prisoner.

<sup>61</sup> Model Prison Manual, Chapter 7, Medical Care, 7.95

<sup>62</sup> Model Prison Manual, Chapter 9, Transfer of Prisoners, 9.39



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## **F. PROBLEMS FACED BY FOREIGN NATIONAL PRISONERS & SUGGESTED MODES OF INTERVENTION**

### **Factors Contributing to the Vulnerability of Foreign National Prisoners**

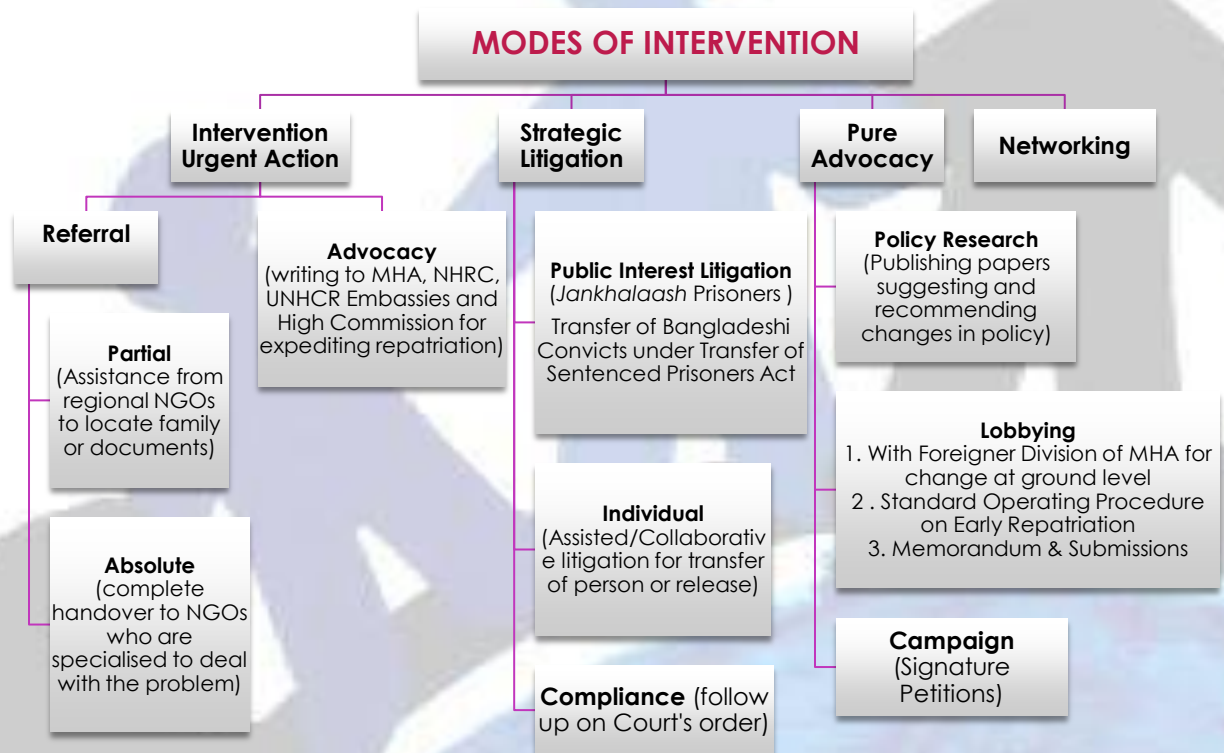






### Current and Possible Mode of Interventions by CHRI

Please see below a flow chart showing the various modes of interventions taken up by CHRI while dealing with the cases of foreign nationals. There is no single intervention that can be applied to a particular category of cases concerning foreign nationals. CHRI's experience shows that every case is unique and requires a different set of interventions with different stakeholders depending on case details and nationality. The intervention goes much beyond referral and requires persistent follow ups, advocacy and even litigation.







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## Persons entitled to legal aid:

1. a member of a Scheduled Caste or Scheduled Tribe;
2. a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
3. a woman or a child;
4. a mentally ill or otherwise disabled person;
5. a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
6. an industrial workman; or
7. in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987);or
8. in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

## LEGAL AID SCHEMES FOR PERSONS IN CUSTODY

### NALSA (FREE AND COMPETENT LEGAL SERVICES) REGULATIONS 2010

The scheme has been formulated to provide quality legal services by creating a panel of legal aid lawyers to take up legal aid cases which would be monitored by the legal services institutions. Under the scheme panel and retainer lawyers are appointed by the legal services institutions to take up legal aid cases. The progress in these cases are tracked by a monitoring committee consisting of the senior most judicial officer of the district, a lawyer with fifteen years of experience and the member secretary of the legal services institution.

### NALSA (LEGAL AID CLINICS) REGULATIONS, 2011

The scheme mandates establishment of legal aid clinics where there are barriers to access legal services institutions. The SLSAs are required to formulate guidelines based on the NALSA Scheme which includes establishing legal aid clinics in jails. The jail legal aid clinics are supposed to be operational regularly and manned by prisoner paralegal volunteers (PLVs) who are trained specifically for this activity. Jail visiting lawyers (JVLs) are also expected to visit the jail periodically and render free legal aid. The working of the clinic is recorded in work and attendance registers maintained by the PLV.

### NALSA'S MODEL SCHEME FOR 'LEGAL AID COUNSEL' IN ALL COURTS OF MAGISTRATES

The scheme mandate appointment of lawyers to be attached to each magistrate court who are required to represent the inmate during remand, throughout the trial and even at the appellate stage. The lawyers are expected to be present during remand hours in their designated courts to oppose remand, apply for bail and file other applications for those who need a legal aid lawyer. These lawyers are expected to submit their monthly work reports to the District Legal Services Authority (DLSA) and the courts are supposed to issue monthly attendance certificates for the lawyers.



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### **NALSA'S SCHEME FOR PARA-LEGAL VOLUNTEERS (REVISED)**

The scheme provides for appointment of Para-Legal Volunteers (PLVs) who are expected to act as intermediaries bridging the gap between the common people and the legal services institutions. With basic legal knowledge, the PLVs would assist their immediate neighborhood; help them understand their rights and make them aware of different beneficial schemes of Central and State Governments. They are also expected to amicably settle simple disputes between the parties at the source itself. The scheme details the modules for training and orientation of the PLVs. The scheme also mandates appointment of prisoner PLVs and provides for the visit of community PLVs to police stations and prisons.

### **NALSA (LEGAL SERVICES TO THE MENTALLY ILL AND MENTALLY DISABLED PERSONS) SCHEME 2015**

The scheme issues guidelines to the legal services institutions to give legal services to mentally ill and persons with mental disability in psychiatric homes, hospitals and other similar facilities and in jails. Specific directions have also been made to provide legal services to the mentally ill and mentally disabled persons during court proceedings and those who are wandering, homeless and destitute.

**About CHRI and its Prison Reform Programme:** The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organization mandated to ensure the practical realization of human rights in the countries of the Commonwealth. Commonwealth Human Rights Initiative was founded in 1987 by Commonwealth professional associations; it is headquartered in New Delhi, India since 1993, and has offices in Accra, Ghana and London, UK.

CHRI advocates for better respect for protection and promotion of international human rights standards and ensuring greater adherence to Commonwealth Harare principles. Issues relating to accountability and participation in governance – access to justice and access to information – are at the heart of CHRI's work. It also overviews the human rights situation in countries of the Commonwealth, looking especially at human rights defenders, compliance with international treaty obligations and monitoring the performance of Commonwealth members of the United Nations Human Rights Council.

The *Prison Reforms Programme* of CHRI has its focus on early safeguards against unnecessary detention and addressess overcrowding of prisons. Currently the programme is working collaboratively with the West Bengal and Rajasthan Prison Departments and the respective State Legal Services Authority to provide legal assistance to various categories of undertrial prisoners for availing early access to counsel, legal aid safeguards and suitable non-custodial measures.

Visit [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org) for more information