

CHRI 2009

LIBERTY AT THE COST OF INNOCENCE

A Report on Jail Adalats in India



CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of *human rights* in the countries of the Commonwealth

Commonwealth Human Rights Initiative

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

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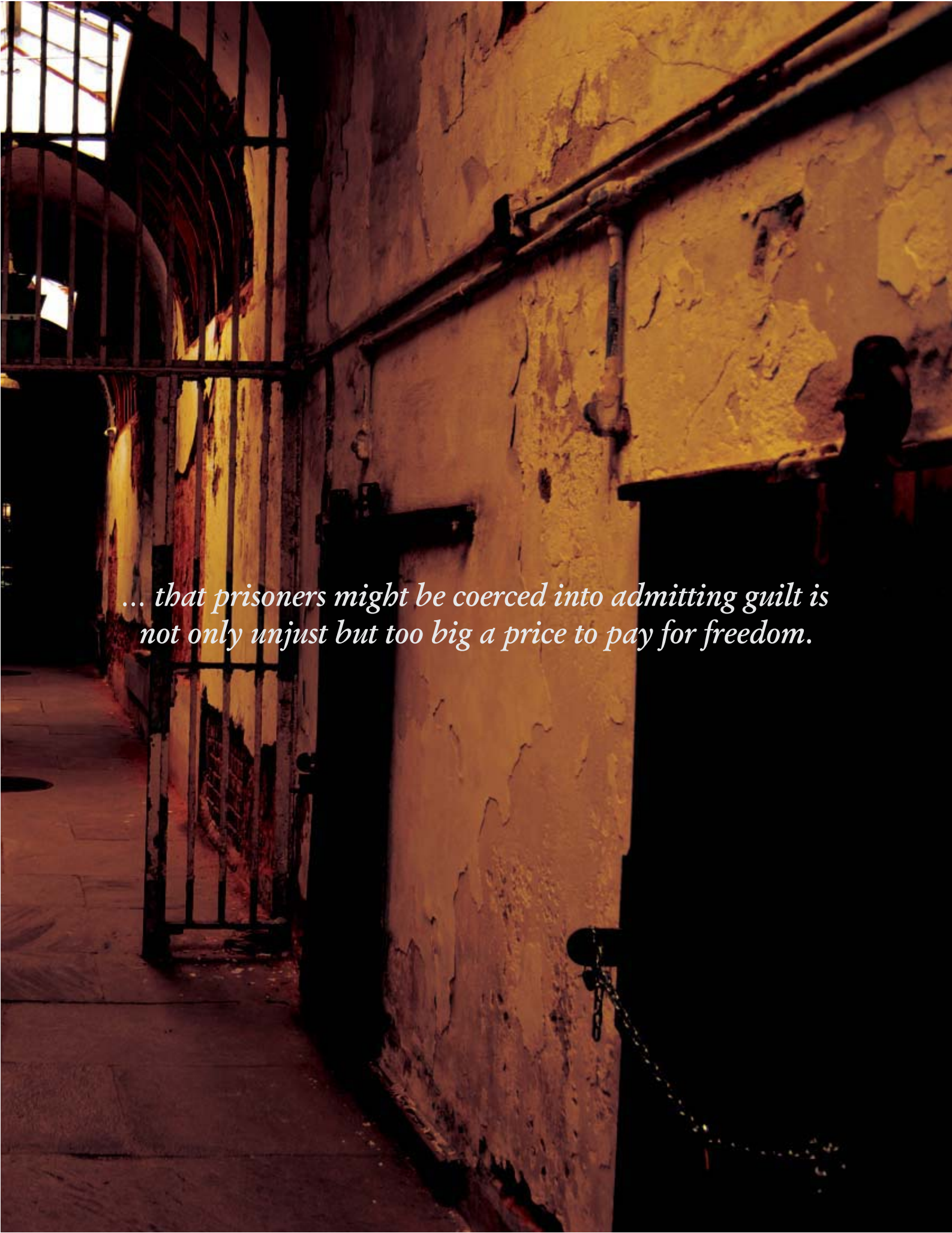
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A photograph of a prison hallway. On the left, there is a large, arched metal gate with vertical bars. The hallway leads to a door on the right, which is partially open. The walls are made of light-colored, peeling plaster. The lighting is dim and warm, creating a somber atmosphere. A chain is attached to the bottom of the door.

... that prisoners might be coerced into admitting guilt is not only unjust but too big a price to pay for freedom.

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Abbreviations

| | |
|---------------|---|
| BPRD | Bureau of Police Research & Development |
| CJM | Chief Judicial Magistrate |
| CMM | Chief Metropolitan Magistrate |
| Cr.PC. | Code of Criminal Procedure |
| CJS | Criminal Justice System |
| DLSA | District Legal Services Authority |
| IPC | Indian Penal Code |
| JMFC | Judicial Magistrate of First Class |
| MM | Metropolitan Magistrate |
| NCRB | National Crime Records Bureau |
| RTI | Right to Information Act 2005 |
| SHRC | State Human Rights Commission |
| SLSA | State Legal Services Authority |

Introduction

Jail Adalats: Problem or Panacea?





“anyone arrested or detained on a criminal charge...shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subjected to guarantees to appear for trial”

The most striking characteristic of the Indian prisons is its high under-trial¹ population. India stands at number 14 in the list of 195 countries across the world with the highest number of pre-trial detainees.² More than 65 per cent³ of the prison inmates in India are awaiting trial. All these people are innocent in the eyes of the law.

How can a system that calls itself just and fair, justify depriving 2,45,244 “innocent” people of their liberty?

*“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family”.*⁴

The principle of presumption of innocence is arguably tempered by another jurisprudential principle, “namely, that the course of justice must proceed unhindered by the activities of those who would seek to subvert it”.⁵ The primary reason for incarcerating people presumed to be innocent, therefore lies in the requirement to ensure the availability of the accused to meet the criminal charges against them. However, it has long been accepted that imprisonment is not the only way to meet this requirement.

The accused can be released on bail if they or a person known to them executes a bond that guarantees their presence at trial. In some cases, bail may be denied if there are cogent reasons to believe that the accused may tamper with evidence or commit other offences while on bail. However, all persons in detention must be tried within a reasonable time period to avoid unnecessary hardship on those who are innocent and yet imprisoned. The *International Covenant on Civil and Political Rights* requires that:

*“anyone arrested or detained on a criminal charge...shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subjected to guarantees to appear for trial”.*⁶

Jail Adalats as a Proposed Remedy

Policy makers in India have recognised the magnitude of the problem of high percentage of under-trial population in prisons. The Law Commission dealt with the issue in a separate report in 1979.⁷ Its major recommendations included a liberalised bail policy and expeditious disposal of cases. Thirty years hence, overcrowding in prisons remains a problem. The government is not denying that over-representation of the under-trial population within the prisons is a grave problem, but the solutions suggested by the Law Commission have not been realised in practice.

The legislature and the judiciary have both stepped in to ensure that the bail regime is liberalised, but the practice remains far removed from the intent. Disposal of cases still takes a long time. In fact so much systemic dysfunction has piled up that there is a growing justification for adopting “short-cut” mechanisms – that also dilute the ‘due process rights’ – so that the system can be seen to be functioning. Fast track courts, plea-bargaining, *jail adalats* are some of the institutionalised examples of this. Others include proposed ideas to allow police to record confessions, reduce the burden of proof from ‘beyond reasonable doubt’ to the ‘subjective satisfaction’ of the judge.

Translated literally as prison court, *jail adalats* see judges holding courts in prisons to dispose off cases of “petty” offenders who are willing to admit guilt. Devised as a strategy to deal with overcrowding and high under-trial population, *jail adalats* have not been able to address the problem. In fact, many argue that they have themselves become a part of the problem.

Those opposed to *jail adalats* argue that these courts are not just. They are short in procedure and exploit the vulnerability of the poor prisoners. Those who have the means are released on bail and the poor are given a dubious choice. They can stay in prison and await a trial for months or years, or they can opt to confess and be released after recording a conviction for the period (of imprisonment already) undergone. Proponents of *jail adalats*, on the other hand, argue that while these courts may not be the best solution, they at least offer some choice to poor people to get out of the horrifying conditions that prevail in prisons. They argue that the choice, albeit a dubious one, must lie with those who suffer imprisonment. These difficult decisions of whether or not to hold *jail adalats* must not be taken by people who claim to represent the prisoners without ever having faced harsh prison conditions.

Aim of the Study

Jail adalats have received repeated and consistent endorsement from Chief Justices⁸ of the Supreme Court and the High Courts as well as high powered committees⁹ set up by the judiciary. This alone makes a study of the mechanism useful. But combined with both, the complete lack of documentation on the subject and inconsistent procedure and practices, the study is particularly relevant.

This study was undertaken to examine how the process is carried out in different states. One of the primary aims of the study was to identify good practices of holding *jail adalats* and examine whether these could be adopted in other states. This was based on the assumption that even though *jail adalats* are not the best way to reduce the number of under-trial prisoners, they can be used in the interim period while broader systemic criminal justice reforms are underway. It was assumed that though short on technical procedure, these *adalats* are perhaps a just way to deal with “petty” offenders who, if willing to admit guilt, can be released from the prisons after recording a conviction. However, having conducted the study, these assumptions have been reconsidered (as shown by the findings in the report).

This report seeks to encourage a debate on the use of short-cut mechanisms in the criminal justice system like the *jail adalats*. It brings to the fore, the problems that these hastily thought out “solutions” give rise to. The target audience for this report includes the prison and judicial officers who arrange and hold these *adalats*; the political leaders who may be induced into thinking that these *adalats* should be given statutory recognition without any further debate; other state agencies like the human rights commissions which recommend their use; and the civil society.

Methodology

Jail adalats have been conducted in many prisons across India since 1999, after the then Chief Justice of India (Justice A.S. Anand) sent a letter to the Chief Justices of all the High Courts. This letter (see Annexure A) exhorted the Chief Justices to hold courts in prisons in order to address the problem of high under-trial prison population. However, there are no studies or statistics on the functioning of these courts. The Commonwealth Human Rights Initiative (CHRI) decided to study this mechanism in ten select states, namely: Andhra Pradesh, Chhattisgarh, Delhi¹⁰, Jharkhand, Karnataka, Madhya Pradesh, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh.

CHRI has been working towards bringing about systemic reform in the prisons, in eight of the ten states where this study was conducted. Due to the lack of information on the practice of *jail adalats*, it was an obvious decision to conduct it in states where CHRI had its presence. Uttar Pradesh and Jharkhand – the two states where CHRI does not work specifically on prisons – were included in the study because they are among the most overcrowded states with a significant proportion of under-trial prisoners.¹¹

Prison Statistics in 2006

| State | Under-trial Population (per cent) | Overcrowding (per cent) |
|----------------|-----------------------------------|-------------------------|
| Andhra Pradesh | 65.4 | 124.2 |
| Chhattisgarh | 58.6 | 195.5 |
| Delhi | 81.6 | 214.4 |
| Jharkhand | 64.4 | 183.2 |
| Karnataka | 68.1 | 107.7 |
| Madhya Pradesh | 52.1 | 158.0 |
| Maharashtra | 63.5 | 128.1 |
| Rajasthan | 59.3 | 79.7 |
| Tamil Nadu | 15.5* | 106.6 |
| Uttar Pradesh | 75.2 | 184.8 |

* Tamil Nadu does not count its 45.1 per cent remand prisoners as under-trials (as is done by other states). If it did, the total under-trial prisoners population in the state would be as high as 60.6 per cent instead of 15.5 per cent.

Sample

To get a representative sample of the prisons in the entire state, CHRI decided to obtain data from five central prisons from each state, excluding prisons in metropolitan areas. This sample would give a broad and representative view of the situation across the state. We deliberately chose to include one women prison wherever possible.

The ten states and the prisons that were selected are mentioned below:

| States | Central Prisons | District Prisons | Sub-jails |
|----------------|--|---|--|
| Andhra Pradesh | Ranga Reddy – Charlapally, Hyderabad – Chenchalguda, Warangal, East Godavari- Rajahmundry, Visakapatnam, Kadapa, Nellore | Mahboobnagar, Karimnagar, Adilabad- Asifabad, Nizamabad, Medak-Sangareddy, Nalgonda, Vijaywada, Guntur, Anantapuram, Chittoor, Prakasham- Ongole, Vizianagaram | Khammam, Srikakulam, West Godavari, Kurnool |
| Chhattisgarh | Ambikapur, Bilaspur, Durg, Jagdalpur, Raipur | | |
| Delhi | Tihar, Rohini | | |
| Jharkhand | Ranchi, Hazaribagh, Dumka | | |
| Karnataka* | Bangalore, Mysore, Darwad, Belgaum, Bellary, Gulbarga, Bijapur | Shimoga, Raichur, Ramanagara, Kolar, Chitradurga, Chamarajanagar, Tumkur, Chickmagalur, Bidar, Medikeri, Hasan, Karwar | |
| Madhya Pradesh | Gwalior, Jabalpur, Indore, Riwa, Sagar, Bhopal | | |
| Maharashtra | Amravati, Aurangabad, Kolhapur, Mumbai, Nagpur, Thane, Nashik, Yerwada | | |
| Rajasthan | Kota, Udaipur, Bharatpur, Jaipur Women Reformatory, Ajmer, Jaipur, Jodhpur, Bikaner | | |
| Uttar Pradesh | | Lucknow, Agra, Jhansi, Gorakhpur, Meerut, Rai Bareilly, Faizabad | |
| Tamil Nadu | Madurai, Coimbatore, Thiruvallur, Cuddalore, Trichy, Vellore Women Reformatory | | |

* Information for Karnataka was not collected through RTI applications. It was given by the prison officials in Karnataka who were extremely helpful.

However, depending upon the specific situation in the given jurisdiction, we had to change the proposed sample population. In Delhi and Jharkhand, we had to be satisfied by including lesser number of prisons because of the specific situation of these jurisdictions.¹² In some states like Uttar Pradesh, we found that district prisons would be a

better option to explore as compared with central prisons. The capacity of the five central prisons of Uttar Pradesh is significantly low (5,974) compared to the capacity of 50 district prisons (28,874) in the state. Among the 50,163 under-trial prisoners, only 1,754 are housed in central prisons and a significant number of under-trial prisoners (47,781) are kept in district prisons.¹³ Hence, data was collected from district prisons and not central prisons for this state. In Andhra Pradesh, we had already conducted a preliminary study in the year 2006-2007 and had obtained data from all central and district prisons. Indeed, in most of the states, we included some additional prisons in the sample, assuming that we might not obtain information from all the prisons we send applications to, seeking information under the *Right to Information Act, 2005* (referred to as RTI applications from hereon).

Data Collection

Given the dearth of documentation on the subject, this research study is mainly based on primary sources. Prisons are closed institutions and obtaining information on prison systems is a tedious task and often does not yield the desired results. Information sought is refused on the pretext of security. A multi-modal approach was adopted to obtain data and maximise the accuracy of this research study. Data for the study was procured through RTI applications and interviews with prison officers and judicial officers. In addition, documents produced by various state agencies were thoroughly examined to obtain information pertaining to disposal of cases of under-trial prisoners. These included reports by the Law Commission of India; recommendations by Supreme Court convened committees, the National Draft Policy on Prison Reform and Correctional Administration; statistics from the National Crime Records Bureau (NCRB) as well as relevant case law.

RTI applications were sent to all the selected prisons except for prisons in Karnataka.¹⁴ These applications (see Annexure I) sought information about the number of *jail adalats* held; the number of cases referred by prison officials; and the number of cases disposed off.¹⁵ After sending the first round of RTI applications in the first week of June 2008 to all the eight states, interviews were conducted with Sessions and District Judges, Chief Judicial Magistrates (CJM), Chief Metropolitan Magistrates (CMM), Judicial Magistrate of First Class (JMFC) and prison officers from Andhra Pradesh, Madhya Pradesh, and Uttar Pradesh. The second round of interviews was conducted in Maharashtra in the third week of July and Andhra Pradesh in the second week of October 2008. In these interviews, we discussed with them the practice of *jail adalats*, plea bargaining, the problem of overcrowding and the systems in place to address this issue.

During our interview with judges and prison officers, they had defined petty offence differently – the range of maximum period of sentence for an offence to be considered as a petty offence differed from three months to seven years. Hence, we tried to obtain additional data on under-trial prisoners charged for offences punishable with a maximum sentence of seven years. In August 2008, fresh RTI applications were sent to get information on the number of under-trial prisoners held for offences punishable with imprisonment up to a maximum of seven years and the length of time spent by each in prison. However, the data received in response to our RTI applications was inconsistent - discarding the other charges that these under-trial prisoners were imprisoned for - and could not be used.

Limitations

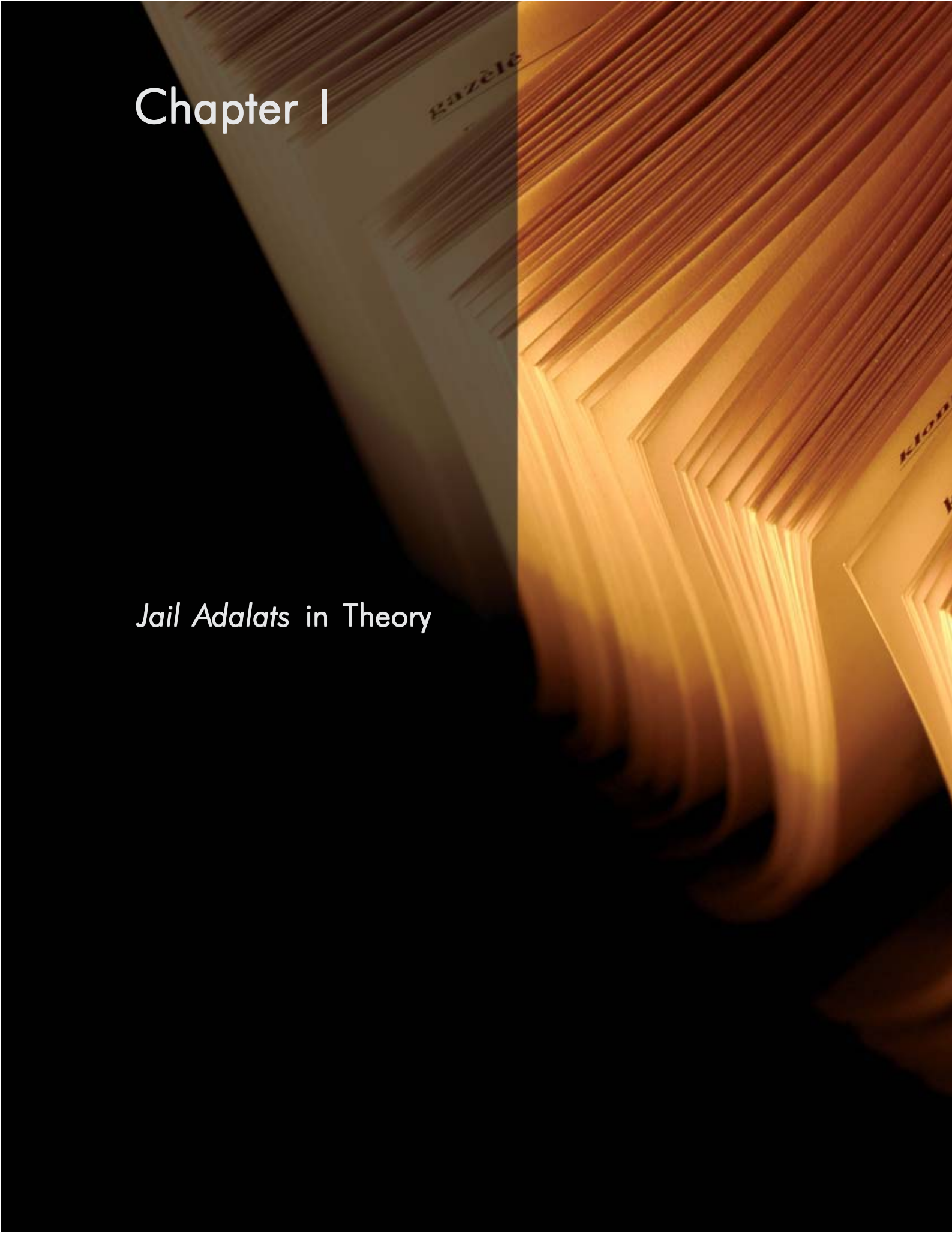
The lack of literature on *jail adalats* meant that the process of researching was very challenging. A major limitation of the study is that we were unable to observe a *jail adalat* in practice. Despite requests, we were not allowed access to these *adalats*. The study is, therefore, based on certain assumptions. It was assumed that prison authorities were familiar with the procedures surrounding *jail adalats* and that the information obtained was accurate. However, we observed that in some cases, the prison officials were confused and unclear on what kinds of cases were being dealt with through the mechanism of *jail adalats*. The data obtained from the prison departments with the aid of RTI applications is assumed to be reliable and accurate.

Structure of the Report

The report begins with a theoretical exploration of the origin of and the need for *jail adalats*. Chapter II examines how they function in practice. Chapter III examines the arguments in favour and against the holding of *jail adalats*. The last chapter concludes that the way *jail adalats* are working in practice, they violate the fair trial guarantees as well as fundamental rights of the prisoners.

Chapter I

Jail Adalats in Theory





'a very large number of under-trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable cases, to furnish bail bonds and get released on bail...'

This chapter explores the origin of and the need for *jail adalats*. It discusses the problems that led to the use of *jail adalats* and critically examines whether there are other solutions that could have been adopted instead.

Origin

Jail adalat is a form of summary disposal of cases against prisoners who have committed relatively minor offences and are willing to confess their guilt. The practice of *jail adalats* was initiated in 1999 at the recommendation of the then Chief Justice of India, Justice A.S. Anand. The stated objective of these courts was to provide speedy justice to the poor under-trial prisoners, and reduce the jail population.¹⁶ The letter of the Chief Justice (see Annexure A) came in the wake of a series of cases challenging delayed trials and overcrowding in prisons. He suggested that “every Chief Metropolitan Magistrate or the Chief Judicial Magistrate of the area, in which a district jail falls, may hold his Court once or twice in a month, depending upon the workload, in jail to take up the cases of those under-trial prisoners who are involved in petty offences¹⁷ and are keen to confess their guilt”.

Justice Anand did not use the expression “*jail adalat*” in his letter. This expression was used later by others. The Parliamentary Committee on Empowerment of Women (2001-2002), which looked into the living conditions of women prisoners in the country, observed that suitable and adequate steps were not being taken by the concerned authorities to expeditiously dispose cases of under-trials. “The Committee strongly recommended that *jail adalats* should be held frequently in all the jails so as to ensure early disposal of the cases of under-trials”.¹⁸ Almost all the chief justices’ annual conference have emphasised the importance of *jail adalats* to address the pendency of cases before courts and relieve prisons of overcrowding.

Functioning on Judicial Orders

There is no statutory basis for holding *jail adalats*. The High Courts in many states have issued circulars/executive orders directing the subordinate judiciary to hold *jail adalats* at regular intervals. Allahabad High Court, for example, has directed Chief Metropolitan/Chief Judicial Magistrates to hold court once or twice a month in jail - depending upon the work load – and take up cases of those under-trial prisoners who were involved in petty offences.¹⁹ Similar directives were issued by the High Court of Andhra Pradesh (see Annexure B).²⁰ This instruction was reiterated in a second circular²¹ noting ‘considerable progress...made in this direction’ and directing the holding of courts in jails ‘on such occasions wherever the necessity arises’, and that if a detainee pleads guilty, his or her stay in prison during trial can be set off against his or her sentence and released (see Annexure C).

The High Courts have the necessary powers under the Constitution to issue directions for courts to be held in jails, with all authority to dispose off cases, record convictions and sentence. The Constitution (Article 227) empowers the High Courts to “have superintendence over all courts and tribunals” under its jurisdiction, including the power to ‘make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts...’. Nevertheless, rules of fair trial require that all trials be public save in exceptional cases.²² Section 327 of Code of Criminal Procedure (Cr.P.C.) mandates that the “place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access”. Given this, there are valid concerns about holding courts in prisons to which the general public do not have any access.

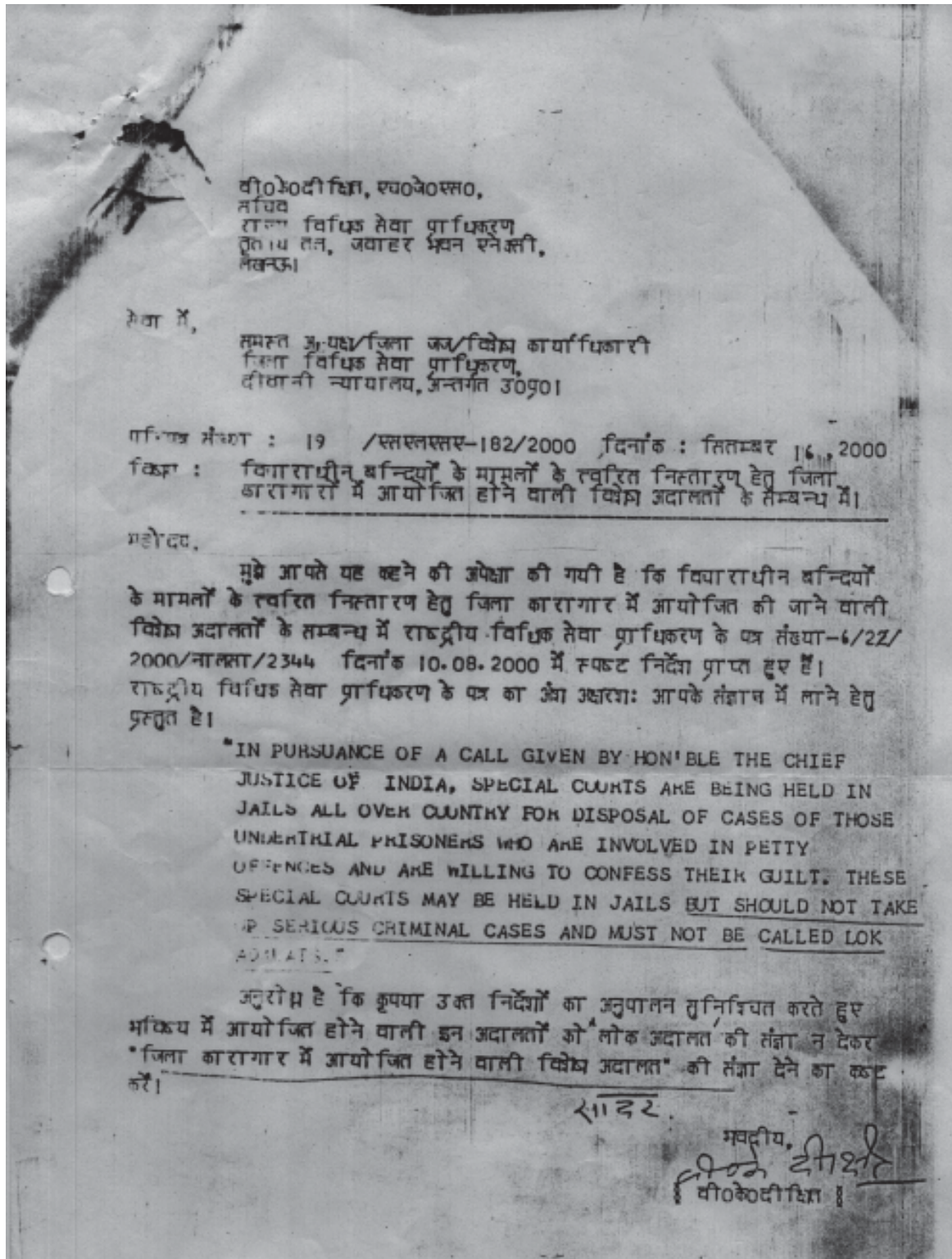
Different than Lok Adalat

The terms *lok adalat* and *jail adalat* are often used interchangeably, even amongst relatively senior officials in the prison administration and members of the judiciary. This misrepresents the differing nature of *lok* and *jail adalats*.

Lok adalat is a judicial institution established statutorily to settle litigation by negotiation, arbitration or conciliation. It is essentially a dispute resolution mechanism, provided for by Section 22(B) of the Legal Services Authorities Act, 1987. Parties to a dispute negotiate a settlement that both agree on, this is then stamped by the overseeing judicial officer. That agreement then becomes binding on both parties and is not open to appeal. It is designed as alternative dispute resolution mechanism to relieve the overburdened court system, similar to arbitration. The parties do not have to go through the prolonged extremely technical court procedures, followed in a regular court which often is the cause of inordinate delay in the disposal of cases. This process is also economically cheaper. Because of the nature of these arbitration forums, they only consider compoundable²³ criminal cases and usually deal with civil cases which do not impose a jail term.

Jail adalats are fundamentally different and limited, constituted for the disposal of pending cases against under-trial prisoners held for petty offences who are ready to plead guilty. In practice, these *adalats* involves the State and the complainant but not the injured party to the dispute. *Jail adalats* are properly constituted criminal courts (though held in a jail and observing summary procedure - usually comprising only a magistrate and the accused) with full powers to record convictions and sentence. The Uttar Pradesh State Legal Services Authority (SLSA) has, in fact, issued a circular, (see below), to district judges emphasising the difference between the two *adalats*.

Figure: Circular issued by Uttar Pradesh State Legal Services Authority (SLSA) for district judges



Why Jail Adalats?

Jail adalats are clearly a response to the problem of excessive under-trial population and overcrowding in prisons. They are certainly not the only possible response to the problem.

Problems are Known

Indian prisons are notoriously overcrowded. NCRB at the end of 2006, reported an occupancy rate of 141.4 per cent in prisons across the country. Delhi has the highest occupancy rate of 214.4 per cent. The total prison population in India is 3,73,271 against an authorised capacity of 2,63,911.²⁴ Much of the overcrowding is due to the high number of under-trial prisoners held awaiting trial that make up around two-thirds of the prison population.

2,45,244 of the 3,73,271 prisoners (65.7 per cent) held at the end of 2006 were prisoners awaiting trial.²⁵ Interestingly, this figure is not an accurate representation and is in reality much higher. Tamil Nadu is the only state that does not count its remand prisoners²⁶ as under-trial prisoners. If the state had included the 45.1 per cent remand prisoners it holds as under-trials (as is done by other states), the under-trial prisoners population in the state would be as high as 60.6 per cent instead of 15.5 per cent.²⁷ This statistical non-uniformity skews the national statistics of under-trial prisoners.

The disproportionately high under-trial population across Indian prison system is largely due to under-utilised bail provisions and indeterminate delay in the disposal of cases.

A. Under-utilised Bail Provisions

In *State of Rajasthan vs. Balchand*, the Supreme Court held that the “basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner”.²⁸

Despite this basic rule, Indian prisons see a vast population of under-trial prisoners, many accused of relatively minor, petty offences. Implicated in minor, compoundable²⁹ and bailable offences, it is not uncommon for them to remain in prison even beyond the period that they would have been reasonably sentenced to, upon conviction. This is because they cannot afford the surety, or have no lawyer to take forward the bail request. Notably, prisoners in India are overwhelmingly from the lower socio-economic background. Judicial backlog and delays see them stay in jail for years, awaiting trial.

The Supreme Court has criticised the ‘property orientated approach’, which prioritises surety provision and discriminates against the poor. It held that the ‘Courts must abandon the antiquated concept under which pre-trial release is ordered only against bail with sureties’.³⁰ Instead the Court urged that if ‘the accused has his ties in the community and there is no substantial risk of non appearance, the accused may, as far as possible, be released on his personal bond’. The Court emphasised that unjust or harsh conditions imposed while granting bail - the de facto denial of bail - violate Article 21 of the Constitution.³¹ However, bail practices continue to see an overemphasis on monetary surety as the condition for pre-trial release. In the letter dated 29 November 1999, the then Chief Justice Anand accepted that:

‘a very large number of under-trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable cases, to furnish bail bonds and get released on bail...’

The importance of bail and its under use are consistently emphasised. The NHRC has recorded its opinion that the ‘[r]elease of under-trial prisoners [on bail] will lessen the congestion in jail and help more efficient prison management’.³² There is a marked difference between the policy and the practice.

Information recently collected in response to an RTI application filed on behalf of the National Anti-Corruption and Crime Preventive Council suggested that 72 per cent of prisoners in Mumbai’s Arthur Road prison were awaiting trial for bailable offences.³³ Arthur Road - a prison built for 800 - is running at three times its capacity because those accused of bailable, sometimes relatively minor offences, are not being granted bail.³⁴ This situation is reflective of the

wider picture across the country and does not sit well with the reference, in the recent government Draft National Policy on Prison Reforms and Correctional Administration, to the 'liberal attitude of our courts to grant bail'.³⁵ Clearly, the Law Commission's recommendations³⁶ regarding the liberalisation of conditions of pre-trial release have not yet found expression in the practice of the subordinate courts.

It is not just the judiciary, NHRC, Law Commission and the National Draft Policy that recognise the problem of high percentage of under-trial prisoners making up the prison population in Indian prisons. The Parliament also recognises this, and has amended the existing bail provisions with a view to reduce the number of under-trial in prisons.

Chapter XXXIII of the Cr.P.C. deals extensively with the right to bail and the procedure for granting bail to inmates. Section 436 deals with the grant of bail as a right in bailable offences. The 2005 amendment sought to facilitate the release of the poor who are unable to afford bail amount.³⁷ The provision clarifies that where a person is unable to give bail within a week of the date of his arrest, the court or the officer shall presume the person to be indigent and release him on personal bond. The legislative reform also saw the introduction of section 436A – prescribing the maximum period for which an under-trial prisoner can be detained.

The insertion of section 436A is a makeshift remedial measure to deal with the faulty criminal justice system – bogged down by lengthy trials – and aims to provide relief to under-trial prisoners. Section 436A requires the courts to release on bail, all under-trial prisoners who have undergone half the period of the maximum punishment prescribed for the offence with which they have been charged. The only exception to section 436A is that it is not applicable to offenders who have been sentenced to death. The Court may refuse to release the applicant for reasons to be recorded in writing. However, no prisoner can be detained for a period longer than the maximum prescribed period of imprisonment.

Notably, even before the legislative intervention in 2005, the provisions of the Cr.P.C. were sufficient to release majority of the people on bail, especially when read in the light of the Supreme Court judgments. The Cr.P.C. itself mandates that the amount of every bond "shall be fixed with due regard to the circumstances of the case and shall not be excessive".³⁸ It empowers the sessions court and the High Court to reduce the bail where it is deemed to be high.³⁹ In the case of under-trial prisoners accused of a non-bailable offence, which is triable by a magistrate, if the trial is not concluded within 60 days after the first date for the recording of evidence, the prisoner has the right to be released on bail.⁴⁰ In cases, where charge-sheet is not filed by the police within the prescribed time period, the person is entitled to be released on bail.⁴¹ However despite adequate provision, both in the Cr.P.C. and in the judgments of the Supreme Court, bail is still under-used because of an overarching prejudice that sees courts unwilling to grant bail without surety.

B. Delay in Disposal of Cases

The Supreme Court in *Hussainara Khatoon and Others (1) vs. Home Secretary, State of Bihar*⁴² case found that "though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21". "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21".⁴³

The state prison manuals as well as the model prison manual requires the superintendents to do periodic review of under-trial prisoners and their length of stay in the prison. Fortnight reports are to be sent to district and sessions judges. Despite getting regular reports on the status of the prisoners, the judiciary takes a long time to try the cases. On many occasions, the trial does not commence for as long a period as three to four years after the accused is remanded to prison.⁴⁴ The Law Commission of India has observed that 'in several cases the time spent by the accused in jails before the commencement of trial exceeds the maximum punishment which can be awarded to them even if they are found guilty of offences charged against them'.⁴⁵ The status of disposal of various categories of Indian Penal Code (IPC) cases by courts and the conviction rate have both been on a decline from a 30.3 and 64.8 per cent in 1961 to a mere 13.7 and 42.3 per cent respectively in 2007.⁴⁶ 84.2 per cent IPC cases remained pending for trial at the end of the year in various criminal courts. This signifies the enormity of pendency in trial of criminal cases. In 2007, out of the total 10,25,689 completed trials; 31,046 trials (3 per cent) were completed after 10 years of trial; 11.4 per cent between 5 to 10 years; 21.8 per cent between 3 to 5 years; 32.6 per cent between 1 to 3 years; 18.2 per cent between 6 months to a year; and 13 per cent within 6 months. It may be seen that maximum disposal of cases by various courts (32.6 per cent) took place between 1 to 3 years followed by 3 to 5 years (21.8 per cent).⁴⁷ The backlog of cases is rising exponentially.

Reasons for Delay in Trial

The delay in disposal of cases may be attributed to three primary causes:

1. Large number of vacancies for the position of judicial officers;
2. Inability/failure of the police to complete investigation on a timely basis; and
3. Lack of police escort to produce the accused in court.

One of the reasons attributed to the huge increase in the number of pending cases in High Courts is the vacant judges' positions. In 2001, of the 12,205 posts of judges and magistrates (in the district and subordinate courts), 1,500 were vacant.⁴⁸ To strengthen the subordinate judiciary, the Law Commission of India recommended avoiding long delays in filling up vacancies of judicial officers and promptly considering every recommendation of the High Court to increase judicial strength.⁴⁹ The situation has not changed over the years. In fact, the High Courts also suffer from the same problem. In January 2009, of the total 886 sanctioned strength of High Court judges, 278 (31 per cent) positions remained vacant.⁵⁰

The accused have to wait for long periods even before their trial commences. This is because the police fail to file charge-sheet in time. The charge-sheet is nothing but a final report of the police officer under Section 173(2) of the Cr.P.C. If the charge-sheet is not filed, the magistrate cannot take cognizance of the case. In a report analysing ten case studies of judicial delays in Delhi⁵¹, it was often observed that even though the investigation was over, the police took a significant amount of time just to file the charge-sheet. In *State vs. Shah Nawaj & Another*, for example, while the offence was allegedly committed on 5 November 1998; the police filed a charge-sheet on 22 April 2000, i.e. around one-and-a-half years after the date of incident.⁵² A perusal of the charge-sheet further revealed that it had been finalised on 28 March 1999 but was presented to the court on 22 April 2000.

The Law Commission recommended that in order to ensure prompt and efficient investigation of crime, there should be a dedicated investigating agency devoid of other duties and independent of executive interference.⁵³ Similar suggestions have been made by the second Administrative Reforms Commission.⁵⁴ This would assist in quick disposal of cases and prevent miscarriage of justice. The suggestion was made in view of the fact that the police in India are overburdened with duties relating to maintenance of law and order. The National Police Commission⁵⁵ and the Police Act Drafting Committee⁵⁶ have both suggested that the law and order wing of the police be separated from the investigative one.

A major cause of delayed criminal trials is the unavailability of police officers to escort prisoners from the jails and produce them before the judiciary. In Karnataka, of the 4,673 inmates required to be produced before the court in November 2007, only 1,554 were actually produced.⁵⁷ In June 2008, various courts in the state extended the remand of 330 accused though they were not produced before them. The procedure of production is intended to facilitate judicial oversight and ensure the safe custody of the prisoners. However in Karnataka, on an average, there are about 450 inmates at the Bangalore Central Prison alone who need to be produced before the court every day. Of them only 60 are escorted to the court, while about 200 inmates are heard through videoconferencing.⁵⁸ The remaining 190 are not produced. It is also debatable if those produced through videoconferencing have their case and investigation properly reviewed by the judge. However, this is beyond the realms of this study.

Escort problems persist even at the stage of trial - after the investigation and the filing of the charge-sheet - and the accused are not produced for trial regularly, resulting in further delays. The net result of accused regularly missing court hearings due to escort problems is the increasing number of accused shut behind bars for months and years. Notably, the courts seem unwilling to exercise their powers of oversight of police and reprimand them for making unnecessary arrests; or failing to file the charge-sheet on time or producing the accused on the date specified - all of which, eventually increase the backlog of cases and put an additional burden on the already overcrowded prisons.

Solutions are Known

The judiciary and the legislature have both identified over representation of under-trial population in Indian prisons as a major problem. While the judiciary has attempted to liberalise the bail provisions, the government has made necessary amendments to the existing law. The Law Commission and National Human Rights Commission (NHRC) have also suggested ways to address this issue. Even the existing prison manuals contain provisions for adequate judicial oversight to check unnecessary detention of prisoners for a prolonged period.

The existing prison manuals authorise district magistrates to visit the jails once every fortnight and ascertain whether any prisoner is awaiting trial.⁵⁹ Different state prison manuals oblige the prison officials to send periodic reports to the

judiciary on the status of under-trial prisoners.⁶⁰ Tamil Nadu Jail Manual requires the superintendent to conduct a periodical review (10th of every month) of all cases of under-trial prisoners on the period of detention, and send reports to the district magistrate or sessions judge.⁶¹ The Delhi Jail Manual directs all prison visitors - to ascertain whether any prisoner is illegally detained, or is detained for an undue length of time awaiting trial - during every visit.⁶² The Model Prison Manual⁶³ directs the superintendent to send a statement - of under-trial prisoners whose cases have been pending for more than three months – to the sessions judge or district magistrate on the fifth of each month.⁶⁴

Measures Proposed to Expedite Trials

Any delay in the disposal of criminal cases is much more severe for those held in prison awaiting trial. With high under-trial population in prisons, and the subordinate judiciary seemingly unwilling to liberalise bail practices, expediting the disposal of under-trial prisoners' cases has become a priority.

In his inaugural address at the 2006 Chief Justices' conference, the Chief Justice of India referred to the letters he had sent to the Chief Justice of each High Court expressing 'deep concern about the delay in disposal of cases'. He recommended setting up special High Court benches to deal exclusively with the regular hearing of old criminal appeals/petitions. Other suggestions included utilisation of Article 224-A of the Constitution for engaging the services of retired judges and the appointment of special magistrates in adequate numbers to deal with petty offences that clog the system.⁶⁵

In 2006, the Supreme Court constituted an "Arrears Committee" to look into the pendency of cases before the courts and identify cases to be transferred from regular Magisterial Courts to Courts of Special Metropolitan/Judicial Magistrates. The Committee was also mandated to identify the pending cases before High Courts needing to be heard and disposed on a priority basis; identify the cases pending in subordinate courts to be assigned to the courts earmarked for such cases; and to identify the pending cases in High Courts which could be dealt with by ad hoc judges appointed under Article 224-A of the Constitution.⁶⁶ In its interim report of 6 March 2006, the Committee recommended prioritisation of certain cases; the setting up of exclusive courts for certain categories of offences including petty offences; and more frequent use of *lok adalats* and *jail adalats*.⁶⁷

To deal with the problem of delay in trials, the *Draft National Policy on Prison Reforms and Correctional Administration* recommends that a provision for speedy trial - 'day to day' – of those accused held in custody awaiting trial, be incorporated in the Cr.P.C. as section 305A.⁶⁸ The policy recommends that precedence be given to the cases of under-trial prisoners over those released on bail; video conferencing facilities to be extended for conducting trials; operationalise plea bargaining sections of the Cr.P.C.; fully utilise bail provisions; and release of prisoners under section 436A.⁶⁹ It also recommends expediting the second phase of the 'Prison Modernisation Scheme' and the expansion of the use of *jail adalats* and fast track courts to dispose off cases.⁷⁰

Expediting Disposal of Cases by Encouraging Plea-bargaining and/or Jail Adalats

One of the ways to quickly dispose of cases advocated by governmental bodies and agencies since 1991 is plea-bargaining. Indeed, *jail adalats* are also a form of plea-bargaining where petty offenders plead guilty in exchange of reduced⁷¹ sentences. The Law Commission in its 142nd report (1991), recommended measures for the concessional treatment of offenders who choose to plead guilty without bargaining - in effect encouraging or rewarding prisoners who do not contest their case or drag it through the overburdened court system.

The concessional treatment would see either a suspended sentence imposed or release of the prisoner on probation where they were willing to waive the right to contest their case. To determine the quantum of substantive punishment of imprisonment in jail [excluding those relating to offences punishable with death or imprisonment for life] under the concessional treatment scheme, appropriate guidelines need to be formulated. The competent authority would form an opinion, having regard to the gravity of the offence and the circumstances of the case viewed in totality.⁷² The formula would limit the tariff of imposable sentence to no more than half of what is provided for, under the IPC for the crime with which they are accused. The report articulated that "unless there is a reasonable chance of his [the prisoner] securing some advantage, no offender would be able to persuade himself to avail this scheme. He would feel persuaded only if he can foresee either an advantage or a situation where he is not worse off".⁷³

Plea bargaining has now been introduced in the Cr.P.C.⁷⁴ (see Annexure K) to expedite the disposal of cases of under-trial prisoners willing to plead guilty in return for 'leniency'⁷⁵ in sentencing. The law lays down an elaborate procedure

for plea-bargaining (please see the next chapter for a discussion on the procedure). The plea bargaining provisions build in some statutory safeguards to ensure the voluntariness of the guilty plea, and allow lawyers to be present throughout the process to ensure that fair trial guarantees are not breached.

The *Draft National Policy*, however, goes much further than the Cr.P.C. on the recommendations of the Law Commission and actively discourages the accused from contesting their case. It suggests that not only would a lesser sentence be appropriate where the accused does not contest,⁷⁶ but advocates a mandatory maximum sentence awarded on conviction in a contested case. Such a policy of holding out a lighter sentence for those ready to confess guilt and a maximum sentence for a contested case is not only an attempt to lure an accused by inducing him/her to plead guilty, but also an attempt to discourage people to contest their cases. Clearly, a law that discourages people from contesting their cases violates Article 21 of the Constitution, which guarantees that laws depriving people of their liberty must be fair and just. The Law Commission of India in its 142nd Report has also observed that “inducing an accused to make a voluntary confession of guilt is undoubtedly against public policy...”.⁷⁷

Reducing Under-trial Population in Prisons: Some Suggestions by NHRC⁷⁸

As the chair of the National Human Rights Commission, Justice Anand had written to all the Chief Justices of the High Courts observing:

Slow progress of cases in Courts and the operation of the system of bail to the disadvantage of the poor and the illiterate prisoners is responsible for the pathetic plight of these “forgotten souls” who continue to suffer all the hardships of incarceration although their guilt is yet to be established.

The letter suggested the following measures to reduce the congestion of under-trials in the prisons:

1. Regular holding of special courts in jails and its monitoring by the Chief Justice/Senior Judge of the High Court.
2. Monthly review of the cases of under-trials in the light of the Supreme Court’s judgement on *Common Cause vs. Union of India* [1996(4) SCC 33 and 1996 (6) SCC 755]. In this judgement, the Supreme Court has issued clear directions for (a) release on bail and (b) discharge of certain categories of under-trials specified in the judgement.
3. Release of under-trials on personal bonds: A number of under-trials are found to be languishing in jails even after being granted bail simply because they are unable to raise sureties. Cases of such under-trials can be reviewed after 6-8 weeks to consider their suitability for release on personal bonds, especially in cases when they are first offenders and punishment is also less than 2/3 years.
4. Visit of district and sessions judge to jail: The Jail Manuals of all the State contain provisions for periodical visit of the district and session judge as an ex-officio visitor to jails falling within their jurisdiction. Besides ensuring an overall improvement in management and administration of the prison, such visits can help in identifying the cases of long-staying under-trials, which need urgent and special attention. The Commission has observed a marked improvement in the situation in the States where this obligation is being discharged seriously and sincerely by the subordinate judiciary. It would be useful to issue directions for such visits by all the ex-officio visitors to jails falling in their jurisdictions.

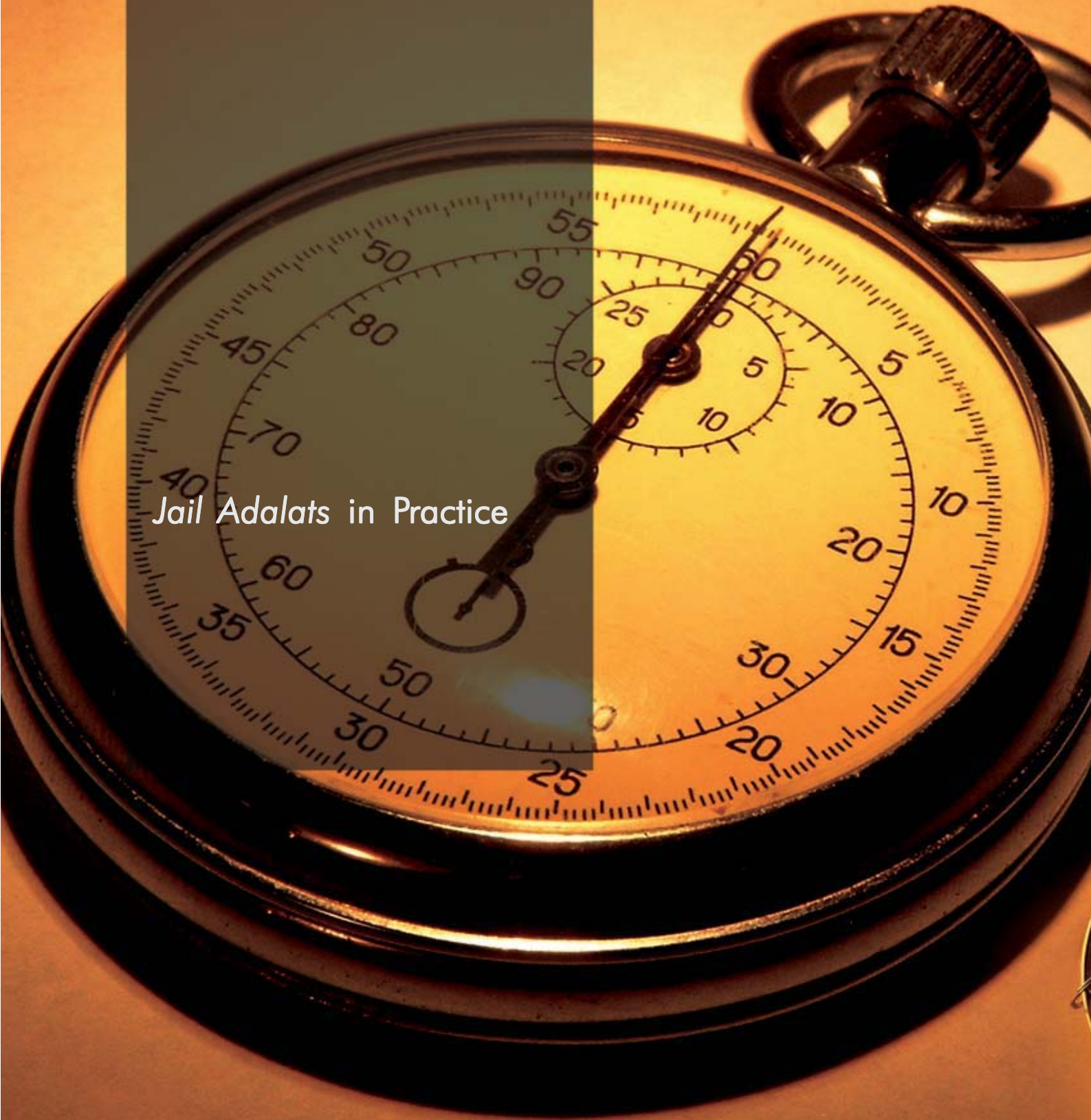
Clearly, holding special courts in jails is not the only way to respond to the problem of high under-trial population. If held at all, NHRC rightly emphasises the need for monitoring the *jail adalats* by the High Court. Without such monitoring, these *adalats* could become a tool to coerce poor prisoners into pleading guilty.

Implementation Remains a Problem

Given that problems and their solutions are known, the challenge lies in implementing the solutions. Lack of political will has meant that solutions remain unimplemented while other “short-cuts” are experimented with. The government and the judiciary recognise that there are serious questions about the credibility of a system that routinely permits overstays in its prisons and cannot seem to try people within a reasonable time. What is dangerous, however, is the recent trend where the State admits that the system is not working and then instead of initiating systemic reforms, adopts short-cuts such as *jail adalats* to retain credibility. The image of the system – being seen as functional – has become more important than ensuring that it works.

Chapter II

Jail Adalats in Practice





“There is no set pattern common to all states for holding these adalats. Information collected...revealed huge disparity in the frequency across different states. Even within these states there is huge inconsistency”.

This chapter is based on the field study conducted by CHRI and seeks to bring to the attention of the key players in the criminal justice system, the ways in which *jail adalats* are functioning in practice. It records varying procedures and practices in holding these *adalats*, not only across the states but also within them. The frequency of holding these *adalats*, the kind of cases that they deal with, and the sentencing that is allowed - are all varied, with much confusion in the minds of those responsible for holding them.

Disparity in the Frequency of Holding Jail Adalats

There is no set pattern common to all states for holding these *adalats*. As mentioned, Chief Justice Anand in his letter as well as the High Courts in Uttar Pradesh, Andhra Pradesh and other states have directed that *jail adalats* be held once or twice a month depending on the workload.⁷⁹ Information collected through field visits and RTI applications revealed huge disparity in the frequency of *jail adalats* across different states. Indeed even within the states, there is huge inconsistency. While in some states like Rajasthan and Madhya Pradesh, *jail adalats* are not being held at all, in others like Tamil Nadu and Uttar Pradesh, they were being held regularly. Puzhal Central Prison in Tamil Nadu reported holding *jail adalats* four times a month whereas those in Uttar Pradesh hold them once a month. In Karnataka, they are held regularly in the Bangalore Central Prison, but are not being held in any other central jail or district jail.

In Jharkhand, *jail adalats* held in both Birsa Munda and Lok Nayak prisons have been infrequent. In Lok Nayak, over a period of one year, six *jail adalats* were held, which disposed off only 14 cases. However, all these six *jail adalats* were held in the first seven months with none in the last five months. In Birsa Munda, although 131 cases were referred to the *jail adalats* with 62 of these being disposed off during the year, these were all heard in just two *adalats* held on 15 August 2007 and 2 October 2007.

Prison officials in Madhya Pradesh and Rajasthan suggested that *jail adalats* were not being held because there was a lack of under-trial population held for petty offences that would necessitate them.

Frequency and Disposal Rate of Jail Adalats

(April 2007 – March 2008)

| Selected Prisons* | Frequency (Jail Adalats held in the past one year) | No. of Cases Referred by the Prison | Total Cases Disposed Off | Disposal Rate (per cent) |
|---|---|---|-----------------------------|--------------------------------|
| Andhra Pradesh (August 2007 – July 2008) | | | | |
| Central Prisons | | | | |
| Ranga Reddy – Charlapally | 9 | 1403 | 654 | 46.6 |
| Hyderabad – Chenchalguda | 6 | 545 | 45 | 8.2 |
| Warangal | N/A | N/A | N/A | N/A |
| East Godavari-Rajahmundry | 5 | 19 | 19 | 100 |
| Visakapatnam | 0 | 0 | 0 | 0 |
| Kadapa | 0 | 0 | 0 | 0 |
| Nellore | 18 | 598 | 276 | 46.1 |
| District Prisons | | | | |
| Mahboobnagar | 0 | 0 | 0 | 0 |
| Karimnagar | 9 | 711 | 689 | 97 |
| Adilabad-Asifabad | N/A | N/A | N/A | N/A |

| Selected Prisons* | Frequency (Jail Adalats held in the past one year) | No. of Cases Referred by the Prison | Total Cases Disposed Off | Disposal Rate (per cent) |
|---|---|---|-----------------------------|--------------------------------|
| Nizamabad ¹ | 5 | 92 | 92 | 100 |
| Medak-Sangareddy | N/A | N/A | N/A | N/A |
| Nalgonda | 2 | 52 | 6 | 11.5 |
| Vijaywada | 0 | 0 | 0 | 0 |
| Guntur | 4 | 93 | 93 | 100 |
| Anantapuram | 0 | 0 | 0 | 0 |
| Prakasham-Ongole | N/A | N/A | N/A | N/A |
| Vizianagaram | 0 | 0 | 0 | 0 |
| Sub -Jails | | | | |
| Chittoor | 0 ² | 0 | 0 | 0 |
| Khammam | N/A | N/A | N/A | N/A |
| Srikakulam | 0 | 0 | 0 | 0 |
| West Godavari | 9 | 31 | N/A | N/A |
| Kurnool | 0 | 0 | 0 | 0 |
| Chhattisgarh | | | | |
| Ambikapur | 6 | 10 | 5 | 50 |
| Bilaspur | 23 | 149 | 41 | 27.5 |
| Durg | 19 | 29 | 27 | 93.1 |
| Jagdalpur | 0 | 0 | 0 | 0 |
| Raipur | 20 | 392 | 135 | 34.4 |
| Delhi | | | | |
| Rohini District Jail | 12 | 59 | 32 | 54.2 |
| Tihar | 11 | 677 | 404 | 59.6 |
| Jharkhand | | | | |
| Birsa Munda | 2 | 131 | 62 | 47.3 |
| Lok Nayak J.P.N. | 6 | 14 | 14 | 100 |
| Karnataka | | | | |
| Bangalore | N/A | 136 | 136 | 100 |
| Central Prisons: | | | | |
| Mysore, Darwad, Belgaum Bellary, Gulbarga, Bijapur | 0 | 0 | 0 | 0 |
| District Prisons: Shimoga, Raichur Ramanagara, Kolar, Chitradurga Chamarajanagar, Tumkur Chickmagalur. Bidar, Medikeri Hasan, Karwar | | | | |
| | 0 | 0 | 0 | 0 |

| Selected Prisons* | Frequency (Jail Adalats held in the past one year) | No. of Cases Referred by the Prison | Total Cases Disposed Off | Disposal Rate (per cent) |
|---------------------------------------|---|---|-----------------------------|--------------------------------|
| Madhya Pradesh | | | | |
| Gwalior, Jabalpur, Riwa, Indore | | | | |
| Bhopal, Sagar | 0 ³ | 0 | 0 | 0 |
| Maharashtra | | | | |
| Amravati | N/A | 98 | 49 | 50 |
| Nagpur | 2 | 10 | 10 | 100 |
| Nashik Road | 11 | 100 | 95 | 95 |
| Thane | 8 | 67 | 67 | 100 |
| Yerwada Pune | 12 | 363 | 184 | 50.6 |
| Rajasthan | | | | |
| Ajmer, Jaipur, Bharatpur & Udaipur | 0 ⁴ | 0 | 0 | 0 |
| Uttar Pradesh (District Jails) | | | | |
| Agra | 12 | 494 | 140 | 28.3 |
| Aligarh | 12 | 323 | 49 | 15.1 |
| Faizabad | 12 | 238 | 97 | 40.7 |
| Gorakhpur | 10 | 183 | 51 | 27.8 |
| Jhansi | 8 | 620 | 99 | 15.9 |
| Lucknow | 12 | 2064 | 748 | 36.2 |
| Meerut | 12 | 483 | 223 | 46.2 |
| Tamil Nadu | | | | |
| Coimbatore | 11 | 35 | 35 | 100 |
| Madurai | 47 | 218 | 59 ⁵ | 27 |
| Puzhal | 46 | 3375 | 380 | 11.2 |
| Trichy | 33 | 87 | 87 | 100 |
| Trichy Special Prison Women | 6 | 19 | 19 | 100 |
| Special Prison for Women, Vellore | 0 | 0 | 0 | N/A |

* Central prisons unless otherwise indicated; N/A: Information not available

¹ The last jail adalat organised in Nizamabad District Prison was around September 2006. They have not held any *jail adalat* since then.

² No petty offenders in the jail, as per information received.

³ No petty offenders in the jail, as per information received.

⁴ No petty offenders in the jail, as per information received.

⁵ In Madurai, apart from disposing off the 59 cases, *jail adalats* also extended the remand period in 160 cases. However, these 160 cases are not counted as 'disposals'. Only convictions (released or further sentenced) are counted as disposals, for the purpose of this table.

Effects of Varying Practice on the Disposal Rate

There were major inconsistencies reported about the practice, procedure and mandate of *jail adalats*. For instance, in Andhra Pradesh, the secretaries of the District Legal Service Authority (DLSA) inform the prisoners about the *jail adalats*, and collect the names of those willing to plead guilty. In Arthur Road Central Prison (Mumbai), it is the jail officials who inform the prisoners about *jail adalats*. In each barrack they allot a particular prisoner, sufficiently educated, to file applications on behalf of prisoners in his barrack to be considered in jail *adalat*. Some jails provide standard application forms (see Annexure E) to facilitate requests from prisoners.⁸⁰ The applications are then forwarded to the concerned courts in which the case is pending for trial. All this impacts upon the disposal rate of the cases referred to the *jail adalats*.

In Delhi, Chhattisgarh and Uttar Pradesh, the average disposal rate of cases referred for *jail adalats* was 56.9, 51.2 and 29.7 per cent respectively. As per the information obtained through RTI applications, the disposal rate in Aligarh and Jhansi in Uttar Pradesh was as low as 15 per cent. The lower disposal rate in Uttar Pradesh can be explained both by the delay in filing the charge-sheet by the police and the application process employed.⁸¹ The disposal rate of cases in *jail adalat* forums is significantly affected by delays in filing the charge-sheet. Even if the prisoner is ready to plead guilty and files an application for his case to be considered in the *jail adalat*, the Magistrate cannot dispose off the case, if the police have not filed the charge-sheet.

In so far as the application process is concerned, some states allow the prisoners to initiate the process by filing applications through the prison authorities or in the court when appearing before them. In other states, the courts in which the case is pending, identify appropriate cases and refer it to the CJM who then visits the concerned prisoner asking them if they are willing to plead guilty. In these cases, the disposal rate is higher. In Thane central prison, the disposal rate was 100 per cent. In this prison, *jail adalat* hearings for suitable prisoners are held at the instigation of concerned courts in the surrounding talukas, who forward potentially suitable cases to the CJM sitting in the district capital who then visits these prisoners to ask if they want to plead guilty. If the prisoner agrees, his file is forwarded to the concerned Magistrate and taken up during *jail adalat*.

In Lucknow District Jail, where the prisoners initiate the request to be heard by *jail adalats*, only between 15 and 20 per cent of applications are processed.⁸² In April 2007, around 136 applications were forwarded and around 30 processed. In March 2008, over 200 applications were forwarded to the CJM and around 80 cases processed by *jail adalat*. This low disposal rate can be explained by the perceived unsuitability, by the judiciary, of the case to be disposed off by the *jail adalats*. It also points to the need for clear communication between the judiciary and the prison staff who refer these cases, about the eligibility criteria of cases to be considered for *jail adalat*. Ensuring that there is a clarity about the eligibility criteria will not only save time and resources of those who refer and sort these cases but also check the disappointment of prisoners who are at present making applications which cannot even be considered.

Determining Eligibility: No Clear Guidelines

The criteria for selecting cases to be disposed off by the *jail adalats* vary across the states. The study found that different officials dealing with the process in the same jail were not agreed/clear on the eligibility criteria. For instance, one jailor in Nagpur Central Prison informed us that *jail adalats* took up cases of under-trial prisoners accused of compoundable and non-cognizable offences triable by magistrate with a maximum punishment of two years. It included offences under the *Bombay Police Act, 1951* and *Bombay Prevention of Gambling Act, 1887*. The CJM held these courts on first and third Saturday of the month. However, the another jailor of the same prison informed us that the cases of under-trial prisoners charged under sections 122 and 110 of IPC with a maximum sentence of three months were taken up in the *jail adalats*, which were held on second and fourth Saturdays of the month. A civil judge in the same district considered petty offence as those defined under section 206 of Cr.P.C. (see the next section for a discussion on this provision).

Similar confusion about what cases could be taken up in *jail adalats* was seen in other states as well. In Amravati, for example, there was major inconsistency found in what the CJMs informed us about the practice, and the circular issued by Maharashtra IG Prisons (see Annexure C). The CJM in Amravati reported that cases of under-trial prisoners accused under section 110 and 117 of IPC were taken up in *jail adalats*. However, the list of offences

mentioned in the (Marathi) circular issued by the IG Prisons to the Superintendent of the Amravati prison does not include these sections. Section 379 is also omitted from the list of petty offences enumerated by IG Prisons in that circular. However, the CJM mentioned that this provision dealing with the offence of theft was treated as a petty offence and taken up in *jail adalats* but only in those cases where the amount of property stolen was less than Rs. 2000.⁸³

The letter circulated by Chief Justice of India, Justice Anand, to the Chief Justices of the all the states suggested that courts be held in jails to “take up the cases of those under-trial prisoners who are involved in petty offences and keen to confess their guilt”. Of the three criteria suggested by the Chief Justice of India – under-trial prisoners, accused of petty offences, and willing to admit guilt – it is the second criterion that is causing much confusion. There is no clear and widely accepted definition of petty offences, except a broad understanding that the most heinous crimes are not covered in this category of offences.

The Ambiguity of the Term ‘Petty Offences’

During the course of the study, the CHRI team came across various definitions of the term ‘petty offences’.

Definition by the Code of Criminal Procedure

Section 206 of Cr.P.C. defines petty offence for the purposes of that section as “any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the Motor Vehicles Act, 1939 [now 1988], or under any other law which provides for convicting the accused person in his absence on a plea of guilty”. It states that a person charged of a petty offence (as defined above) may be tried summarily under sections 260 and 261 of the Cr.P.C. These sections deal with the procedure for summary trial and elaborate the types of offences that may be tried, or disposed of summarily in courts observing lesser procedure.

Definition by the Prison Department, Maharashtra

A circular was issued by the Inspector General of Prisons, Maharashtra (see Annexure F) to the Jail Superintendent of Amravati Central Prison directing him to set up a system to make the holding of *jail adalats* more structured. The proposed system mandated the circle jailor/judicial jailor/yard *subedar*⁸⁴ to prepare a list of under-trial prisoners eligible for *jail adalats*. The following is the criteria for determining eligibility:

- Under-trial for three months or more;
- Accused of charges (petty offences) mentioned below;
- Charge-sheet has been filed; and
- Willing to plead guilty.

This list is forwarded to the CJM of the concerned court, for him/her to obtain all the details and documents of the case before coming to hold *jail adalat* every first and third Saturday of the month, for speedy disposal of cases. The offences that fall in the list of “petty offences” are as follows (see Annexure G for a detailed analysis of these offences):

Offences under the Indian Penal Code

Sections: 137, 140, 154, 155, 156, 160, 172, 171(E), 171(M), 171(I), 172, 173, 174, 175, 176, 180, 184, 185, 186, 187, 188, 263(A), 277, 278, 283, 290, 294, 334, 336, 352, 358, 426, 448, 489(E), 490, 510

Of the total 35 IPC sections listed above, 30 per cent are punishable only with a fine amount ranging from a minimum of Rupees 100 to a maximum of Rupees 1000. Prisoners charged for offences (as listed above) punishable by imprisonment, may get a jail term of 24 hours to a year, upon conviction (see analysis in Annexure G). Of the offences punishable with imprisonment, 46 per cent offences have a jail term of one month and 30 per cent have a jail term of three months. Ideally, all the prisoners incarcerated under the above mentioned sections should be out on bail, as all of these are bailable offences.

Offences under the Bombay Police Act, 1951

Sections: 122(K), 124, 117 (99-116), 117, 118(i), 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130(A), 131, 131(A), 132, 133, 134, 135 (2)(3), 136, 138, 139, 140, 144, 145, 146, 149, 151(A)

The penalties for the offences under the *Bombay Police Act, 1951* listed in the circular, range from a fine amount, to imprisonment, or a combination of both. The fine amount under these provisions varies from a minimum of Rs. 100 to a maximum of Rs. 20,500, and the imprisonment term ranges from a minimum of one month to a maximum of one year. Majority of the offences (41 per cent) under these sections are penalised with an imprisonment term of 3 months, and another 35 per cent with a prison term of one month. Of the total 28 sections, 39 per cent are punishable by a fine amount only, without any term of imprisonment.

Offences under the Indian Railways Act, 1989

Sections: 138, 141, 142, 143, 155, 156, 157, 158, 159, 162, 163, 165, 166, 167, 168, 176(a)(b).

A majority of the petty offences under the *Indian Railways Act, 1989* are punishable with some fine amount and are not punishable by imprisonment. It is unclear why are people imprisoned under these provisions, unless they have been charged for additional unlawful acts or for non-payment of fine. Some sections are also punishable by a jail term, which ranges from a minimum of one month to a maximum of three years.

Definition by the Supreme Court of India

The Apex Court in *Common Cause, a Registered Society through its Director v. U.O.I. and Ors*⁸⁵ while directing all the states and union territories to release under-trial prisoners who have been detained for undue length of time observed: "It is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years - or even less - with or without fine, the proceedings are kept pending for years together". Therefore, the Supreme Court indicates minor or petty offences as those punishable by a maximum of three years.

Definition by the Delhi High Court

This disparity in the definition of 'petty offence' was recognised by a CMM in Delhi who was responsible for holding *jail adalats*. The CMM in 1999 had requested for a clarification as to what type of cases should be included under the definition of petty offences that are to be taken up in *jail adalats*. The High Court in *Essang Nyong and Ors. vs. State (NCT of Delhi)*⁸⁶, directed that it is an intentional effort to refrain from interpreting "petty offence" in a narrow sense, as that would defeat the purpose for which this exercise was suggested by Justice Anand in his letter in November, 1999. Petty offence should be interpreted just as was defined in his letter, without further interpretation.

The High Court of Delhi stated that the letter clearly indicates the realm of petty offences:

"(i) minor offences where gravity of the offence is less and the punishment is not going to be very severe; or (ii) the offences in which the prisoners are involved being first offenders may entitled to benefit of probation; or (iii) may be let off by the Courts on payment of fine only".

Procedure in Jail Adalats

The practice of *jail adalats* seems to be regulated as much by custom in practice as by law, with newly appointed CJMs continuing practices inherited from predecessors. In all the states studied,⁸⁷ the case files of prisoners willing to plead guilty from surrounding courts are forwarded to the concerned judges⁸⁸ in the district headquarters to dispose off, in the presence of the accused in the prison. The CJMs are rarely holding the *jail adalats* and delegate the duty to their subordinates (JMFCs/MMs). In Thane, the JMFC holds the *jail adalats*. In Delhi, they are held by Metropolitan Magistrates (MM), whereas in Lucknow, it is CJMs who hold these *adalats*.

Although devised as a mechanism to dispose off cases involving petty offenders by releasing them on probation or for the period already undergone, or with some minor imprisonment, some jurisdictions are using *jail adalats* to extend the remand period (Madurai Central Prison, Tamil Nadu) or to grant bails (Aurangabad District Prison, Maharashtra).

The procedure for dealing with petty offenders who plead guilty in the *jail adalats* is not prescribed in law. Prior to 2006, the only procedure that could be used to deal with these cases was the one prescribed for summary trial under Chapter XXI, Cr.P.C. (see Annexure D).⁸⁹ However, a pre-requisite of using the procedure under this chapter was that the offence be punishable with imprisonment upto six months. After 2006, the scope was widened to include offences punishable with imprisonment up to two years. Yet, *jail adalats* are being held to deal with offences punishable with imprisonment up to seven years also. After the year 2006, another option available to deal with cases in *jail adalats* is to use the procedure prescribed in Chapter XXIA for plea bargaining. (see Annexure J)

The provisions dealing with plea-bargaining clarify that this procedure will not apply to cases punishable with imprisonment for a period exceeding seven years.⁹⁰ It will also not apply to “offences affecting the socio-economic condition of the country”.⁹¹ It mandates the court to satisfy itself about the voluntary nature of the application.

The court must give notice to all the concerned parties including the police, the prosecutor, the victim and the accused to work out a satisfactory disposition of the case. The court is duty bound to ensure that the entire process is completed voluntarily by all the parties participating in the meeting. Both the victim and the accused have the right to have their lawyers present in these meetings. After receiving the report of this meeting, the court will dispose of the case in the manner prescribed in law. Where the court finds that the application was not filed voluntarily, or the accused has been convicted previously for the same offence, or a satisfactory disposition of the case could not be worked out in the meeting, then the provisions of plea-bargaining do not apply and the court must decide the case in accordance with the other provisions for trial. The law clarifies that the statements or facts stated by the accused in the application for plea bargaining cannot be used for any other purpose except for the purpose specified in the plea-bargaining provisions.

None of the *jail adalats* that were studied have used the provisions of plea-bargaining to dispose off the cases of the petty offenders. There was no clarity on the law governing the procedure used by the judges in these *adalats*. Even though many judges suggested that they were following the procedure prescribed for summary trials, they failed to follow that properly. Some of the offences that were being dealt with in these *adalats* carried imprisonment for a much longer time than envisaged by sections 260.⁹²

Sentencing

Jail adalats record a conviction and then hand down a sentence - usually to time already served or a balance of a concessional number of days to be served before release. For instance, if a three month sentence is given and the prisoner has served two and half months already, he will serve another 15 days before release.

The power of the court to award a sentence in summary trials is set out by section 262(2) of the Cr.P.C. It provides that ‘no sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.’

Despite the provision by section 262(2) in the Code of Criminal Procedure, 1973, in 2007 in Nizamabad Central Prison, Andhra Pradesh, a Chief Judicial Magistrate sentenced an under-trial in a *jail adalat* for a term of three years. Since then no under-trial prisoner has pleaded guilty or shown willingness to be tried summarily. *Jail adalats* are not being held in the prison from then on.

The other option available for sentencing prisoners in *jail adalats* is the one prescribed by the plea-bargaining provisions. However, for the courts to exercise those powers, they must follow the procedure prescribed by Chapter XXIA. Thereafter, they may award compensation to the victim on the basis of the report of the meeting⁹³. After hearing the parties, it may release the accused on Probation of Offenders Act, 1958, or sentence the accused to one-fourth of the prescribed punishment. Where a minimum punishment has been provided, the court may punish the accused to half the prescribed period.

The procedure followed by judiciary in administering *jail adalats* is not established by law. They fail to follow the procedure prescribed either by Chapter XXI or XXIA in its entirety. What the prisoner has to be satisfied with is a hotchpotch of both the provisions.

Chapter III

Coercing to Choose:
Prolonged Stay in Prison
or Short-cut to 'Justice'





“The practice of jail adalats is based on the assumption that innocent prisoners will not plead guilty. These adalats would be extremely unfair and unjust, if they were to become a mechanism to induce innocent prisoners into pleading guilty, just to avoid long periods of incarceration while awaiting trial”.

The study indicates that there is no uniformity in the mandate, procedure and practice of *jail adalats* across the country. These *adalats* do not follow any procedure prescribed by law; they do not allow lawyers to be present during the trial; and allow prisoners to plead guilty without adequate counselling. Yet, they seem to be a practical way to ensure a quick release from prisons for many people who are willing to confess. If these *adalats* are not held, under-trial prisoners will continue to stay in prisons for a long time. This chapter examines the arguments against and in favour of holding *jail adalats*.

Jail Adalats: at the Cost of Justice?

All offences tried summarily and disposed off by the *jail adalats*, are relatively minor infractions and petty crimes. Importantly, they are mostly bailable. There is a strong argument that offenders charged with these types of offences should not be in prisons. They should not be kept in overcrowded prisons for months and years, and should not be forced into alternative justice delivery forums. In Madhya Pradesh, senior prison officials stated that the majority of those accused who would be subject to the jurisdiction of *jail adalats* - those held for petty offences - are granted bail.⁹⁴ Other states could follow this practice without having to resort to *jail adalats* that are controversial.

Research recorded concern by prison officers over the impact of *jail adalats*. In most of the states, the prisoners are not informed or counselled about the consequences of a guilty plea and a conviction. A Superintendent in the Tihar Central Prison Complex (Delhi) agreed that there are severe implications of a prisoner pleading guilty, which most prison officials fail to recognise and hence fail to inform the prisoners. He confirmed that those who are convicted and released (after pleading guilty) are often rounded up by the police in case of any suspicious illegal act in the concerned person's locality, and harassed by them. This Superintendent mentioned that he ensures that he informs the prisoners about the likely consequences before they consider themselves for *jail adalat*. Without adequate counselling, these *adalats* become tools for coercing confessions from poor prisoners who are not armed with legal knowledge either to contest their case or understand the social and legal consequences of a guilty plea and conviction. They plead guilty even where they might not be and get a record of criminal history.

Against established fair trial principles, there are no lawyers present at the *jail adalat* proceedings, which comprise only the magistrate, a clerk and the accused.⁹⁵ The Law Commission has noted that concessional treatment of offenders after making them plead guilty and without letting them contest their case can be unconstitutional, unfair, unjust and against public policy.⁹⁶ The practice of *jail adalats* is based on the assumption that innocent prisoners will not plead guilty. These *adalats* would be extremely unfair and unjust, if they were to become a mechanism to induce innocent prisoners into pleading guilty, just to avoid long periods of incarceration while awaiting trial.

Another issue of concern is the possibility of using the confession of prisoners against them in regular criminal trials, in cases where their applications for *jail adalat* are rejected. In Uttar Pradesh - where prisoners initiate the application process - the small number of applications that are ultimately processed implies that around 80 per cent of the 'confessing' applicants do not receive the benefit of that confession.⁹⁷ This could pose a problem, and prejudice the prisoner if they wanted to contest their case at a later date. If their previous 'confession' could be presented as evidence by the prosecution, these prisoners would be highly disadvantaged. The plea bargaining procedure under the Cr.P.C. clarifies that the confession made for the purposes of that chapter cannot be used otherwise. Since *jail adalats* do not follow that procedure, the prisoners could be prejudiced. However, there is no known case where this has happened and the prison officials indicated that this was highly unlikely.

Since *jail adalats* are being conducted on the basis of informal directions without any procedure established by law, they are arguably unconstitutional. Article 21 mandates that no one can be deprived of their liberty without procedure established by law. The *jail adalats* use an *ad hoc* procedure, which is neither in accordance with regular trials, nor with plea bargaining procedures or summary trials. Yet, they record convictions and sentence people to imprisonment either for the period already undergone or for some further period. The research recorded at least one case where the prisoner was sentenced for three years.⁹⁸

The *jail adalats* can be highly discriminatory whereby the poor prisoners who do not get adequate legal aid or are unable to produce surety are coerced to consider pleading guilty, to get out of the oppressing environment of a prison. In Lucknow District Prison, (see Annexure E) the Superintendent confirmed that the prisoners being processed through *jail adalats* belong to the economically marginalised sections of the society. The Supreme Court of India has observed that "this might induce an innocent accused to plead guilty to suffer a light and inconsequential punishment

rather than go through a long arduous criminal trial...".⁹⁹ Because of the way these *adalats* operate in practice, they violate the constitutional guarantees of equality before the law and cannot be regarded as fair, just and reasonable.

If the *National Draft Policy on Prison Reforms and Correctional Administration* is adopted, the encouragement to plead guilty will be doubly increased. The draft recommends the addition of a section 305-B to the Cr.P.C. providing for mandatory maximum sentence on conviction in contested cases.¹⁰⁰ The Law Commission recognised that the 95 per cent acquittal rate in criminal trials means that an accused going to trial with counsel would generally expect acquittal:

*'...rich, influential and well informed-accused [those able to afford counsel] would seldom undertake the risk of social and personal consequences of a confession'. Without adequate counsel, 'it is eventually the poor who may come forward to making confessions and suffer the conviction'.*¹⁰¹

The Commission had suggested some safeguards to ensure that a guilty plea is both voluntary and informed, none of which exist in the *jail adalat* system. The concessional treatment scheme suggested by the Law Commission was never implemented. It guarantees access to a lawyer and an explanation to the accused by the 'judicial officer' or 'committee of two retired High Court judges' of the consequences of pleading guilty as recommended in the report. The Law Commission was clear that the concessional treatment would be fair only when these conditions were met. Notably, the plea-bargaining provisions under the Cr.P.C. also guarantee these minimal safeguards. *Jail adalats*, however, do not afford any such safeguards and have a strong potential to violate the basic fair trial guarantees as well as the fundamental rights of the under-trial prisoners.

Jail Adalats: A Practical Way to Ensure Justice?

Proponents of *jail adalat* argue that due to the backlog of cases in courts, a large number of under-trial prisoners suffer in prisons for lengthy period of time awaiting trial. They may or may not be guilty of the offence they are charged for. However, keeping them in jail wastes public money as well as has severe implications on their personal and professional lives. The endemic delay in judicial proceedings and backlog of cases is deeply rooted, and cannot be resolved overnight. *Jail adalats* provide a respite by releasing them from the prison in a short span of time. They give them an opportunity to save time and money, and earn a concession in the form of a less serious sentence.

The Law Commission considers the practice of concessional treatment of offenders desirable as the correctional process starts immediately after conviction.¹⁰² It is advantageous for both the state and the accused, to avoid the possibility of maximum sentence authorised by law. The amendment to the Cr.P.C. introducing the chapter on plea-bargaining is also based on this premise.

Those in favour of *jail adalats* argue that like any other newly introduced scheme, the mechanism of *jail adalats* also has its glitches. We should focus on removing the existing faults in the *jail adalats* and not throw the baby with the bath water, so to say. It is easy for those who are not suffering the daily hardships of prison environment to press for long-term changes that would speed up the regular trials. No one denies that this must be done. However, in the meanwhile, the poor and oppressed continue to suffer.

Safeguards could be built in the *jail adalat* system. Lawyers could be allowed in these proceedings and judges could be mandated to ensure that the confessions are voluntary. If the problem with *jail adalats* is that there is no consistency in procedure across the country or that they are without any statutory basis, this can be cured through legislation. If the objection against these *adalats* is that they lead to a record of conviction leading to subsequent harassment by the police, then this could be addressed by advocating the use of *Probation of Offenders Act, 1958* (see Annexure I). This law allows the court to release after admonition - instead of sentencing - first time offenders accused of offences punishable with two years imprisonment.¹⁰³ In other cases, it also allows the courts to suspend the sentence of the accused, and release them upon execution of a bond, with or without sureties, to appear and receive sentence when called.¹⁰⁴ In the meanwhile, the person must keep peace and be of good behaviour. The law states that the persons dealt with under either of these provisions "shall not suffer disqualification, if any, attaching to a conviction of an offence under such law".¹⁰⁵ The use of this law will take care of most of the objections raised against the use of *jail adalats*.

Conclusion & Recommendations

Beyond Patch-up
Remedies





“Jail adalats undermines fair trial rights and weakens the presumption of innocence, encouraging and even inducing guilty pleas, and a consequent criminal history with the threat of an undetermined stay in prison”.

Conclusion

The criminal justice system has failed the poor. It refuses to release them on bail because of its 'property oriented approach' and it is unable to try them within a reasonable time. *Jail adalats* and other such parallel systems are, in fact, face saving exercises. Realising that statistics show a dismal picture of the criminal justice system, the state agencies including the judiciary are trying their best to retain some semblance of credibility. Mechanisms like *jail adalats* not only reduce the under-trial population and overcrowding in prisons, but also improve the overall conviction rate. Government is happy because its international image is improved. Judiciary is happy because it can show an increased rate of disposal of cases as well as conviction. The poor prisoners are happy just because they come outside the prison. They do not have a choice. They are denied any realistic alternative. Given the vested interests, who will question the dilution of the fair trial guarantees?

The report finds *jail adalats* a problematic alternative for reducing overcrowding and addressing the problem of under-trial prisoners. Arguably, these *adalats* provide an opportunity to prisoners for speedy disposal of cases and for their immediate release where they are sentenced to time already served. However, they are weak on any due process or fair trial guarantees afforded to the accused - lawyers are not present; prisoners are given little or no legal advice; and the extent of the judiciary's examination of these cases is questionable. This process undermines fair trial rights and weakens the presumption of innocence, encouraging and even inducing guilty pleas, and a consequent criminal history with the threat of an undetermined stay in prison.

Short-cut mechanisms like the *jail adalats* are a dangerous trend. They lower the bar in order to accommodate a dysfunctional criminal justice system. They bypass and ignore the major problems in the judicial system, constituting a patch-type remedy of alternative [weaker] justice delivery that then becomes the standard for the poor. They do not address the structural and systemic problems that contribute to the problem of over-representation of under-trial prisoners. Instead, they treat the symptom rather than the cause, thereby perpetuating the problem.

This study concludes that there is no alternative to long-term reform of the judicial process whereby bails are liberalised and trials are completed within a short period of time. There is no reason why petty offenders should be in prisons for a long time. If they are, they should either be released on bail, or discharged, depending upon the offence. Where the prisoners are willing to plead guilty, they should be dealt with under the existing legal provisions. Special courts may be constituted to deal with petty offences, but the procedure should be one established by law and should conform to fair trial guarantees.

Recommendations

CHRI believes that due to the unconstitutional nature and violation of fair trial guarantees, the practice of *jail adalats*, as it exists, should be discontinued and completely done away with. The recommendations for different target groups below, however, take into account the fact that the practice of *jail adalats* may continue in some form or the other because of the pressure to reduce the under-trial population in prisons.

If the practice of *jail adalats* is continued, certain minimum safeguards should be implemented. There is wide-spread lack of knowledge about the scope and mandate of *jail adalats* even amongst those who organise these *adalats*. Procedures have not been made explicit. The practice varies across states and across districts within a state. Any system of *jail adalats* must address the existing inconsistencies, and ensure that fair trial rights of the accused are not compromised.

The Government Must:

- Decriminalise some petty offences (examples include anti-vagrancy and begging laws that criminalise poverty);
- Curtail the wide powers of arrest of the police, especially in the case of petty offences;
- Fill vacant positions of judicial officers;
- Devise a mechanism for proper implementation of the *Probation of Offenders Act 1958* including strengthening the infrastructure of probation services;
- Ensure fair trial guarantees; and
- Put in place mechanisms to monitor

- a. the judicial practice of granting bails; and
- b. the functioning of *jail adalats*

The Prison Department Must:

- Regularly review the list of under-trial prisoners imprisoned for petty offences and forward to the SLSA, and the district and sessions judge for appropriate action;
- Inform prisoners about the consequences of pleading guilty, before accepting their application for *jail adalats*; and
- Train and sensitise prison officers on procedures in dealing with prisoners willing to admit guilt.

The Judiciary Must:

- Liberalise bail procedures - ask for personal bond instead of monetary surety;
- Put procedures in place to ensure that prisoners are pleading guilty voluntarily after understanding the consequences of such a plea;
- Clearly define petty offences;
- Ensure that *jail adalats* follow procedures established by law;
- Ensure that fair trial rights of the accused are not compromised – that they have access to lawyers and their trial is public in nature;
- Ensure that *jail adalats* are open courts, accessible to the public and lawyers; and
- Train the magistrates on procedures to be used when holding *jail adalats*, including the procedures under the *Probation of Offenders Act, 1958*.

The State Legal Services Authority (SLSA) Must:

- Ensure that lawyers are provided to all prisoners;
- Ensure that the legal aid lawyers:
 - a. provide and assist prisoners with legal alternatives to *jail adalats*;
 - b. counsel the prisoners about the implications of pleading guilty; and
 - c. are present during *jail adalat* sessions.
- Put in place mechanisms to monitor the quality of counselling and service provided to the prisoners by their lawyers.

Glossary

Bail: Monetary amount for or condition of pre-trial release from custody, normally set by a judge at the initial appearance. (*Black's Law Dictionary sixth Ed.*)

Bailable Offence: Any offence which is shown as bailable in the First Schedule of the Cr.P.C., or which is made bailable by any other law for the time being in force. When charged with these offences, a person has a right to be released on bail. (Section 2(a) Code of Criminal Procedure, 1973)

Compoundable Offence: Any offence in which the complainant or victim of the offence can drop the charges against the accused.

Cognizable Offence/Case: An offence/case in which a police officer can arrest without a warrant. (section 2(c), Code of Criminal Procedure)

Non-bailable Offence: Any offence which is shown as a non-bailable offence in the First Schedule of the Code of Criminal Procedure. Although bail is not granted as a matter of right in these cases, the expression "non-bailable" does not imply that bail cannot be given. Courts grant bail on the merits of the case.

Non-cognizable Offence/Case: An offence/case in which a police officer has no authority to arrest without warrant. (section 2(l) Code of Criminal Procedure, 1973)

Occupancy Rate: The number of inmates accommodated in jail against the authorised capacity of 100 inmates. (National Crime Records Bureau (2006) *Prison Statistics*, p. ii, Ministry of Home Affairs)

Overcrowding: The occupancy rate of more than 100 per cent results in overcrowding in the jail. (National Crime Records Bureau (2006) *Prison Statistics*, p. ii, Ministry of Home Affairs)

Personal Bond: A formal written agreement by which a person undertakes to perform a certain act (such as appear in court or fulfil the obligations of a contract) or abstain from performing an act (as committing a crime) with the condition that failure to perform or abstain will obligate the person or often a surety to pay a sum of money or will result in forfeiture of money put up by the person or surety. (Merriam Webster Dictionary of Law)

Plea-bargaining: The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. (*Black's Law Dictionary sixth Ed.*) In India, plea-bargaining is a process governed by chapter XXI A Code of Criminal Procedure, which allows an accused to plead guilty to offences punishable with imprisonment up to seven years in exchange for reduced punishment. The process involves the victim, prosecutor, police and the accused to work out a mutually satisfactory disposition of the case.

Petty Offence: A minor crime, the maximum punishment for which is generally a fine or short term in jail or house or correction. (*Black's Law Dictionary sixth Ed.*)

Summary Proceeding: Any proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings; eg. Conciliation or small claims court proceedings as contrasted with usual civil trial. (*Black's Law Dictionary sixth Ed.*)

Summons-case: A case relating to an offence triable summarily and not being a warrant-case. (section 2(w) Code of Criminal Procedure Amendment Act, 2008)

Surety: The Code of Criminal Procedure does not define surety. The term can have two meanings:

1: a formal engagement (as a pledge) given for the fulfillment of an undertaking;

2: one (as an accommodation party) who promises to answer for the debt or default of another. (Merriam Webster Dictionary of Law)

Under-trial Prisoners: A person kept in prison (judicial custody) while the charges against him are being tried. (National Crime Records Bureau (2006) *Prison Statistics*, p. ii, Ministry of Home Affairs) In India, remand prisoners are also treated as under-trial prisoners even though in such cases, the police has not filed a charge-sheet and no cases is being tried at the moment. Tamil Nadu is an exception where remand prisoners are not counted in under-trial prisoners.

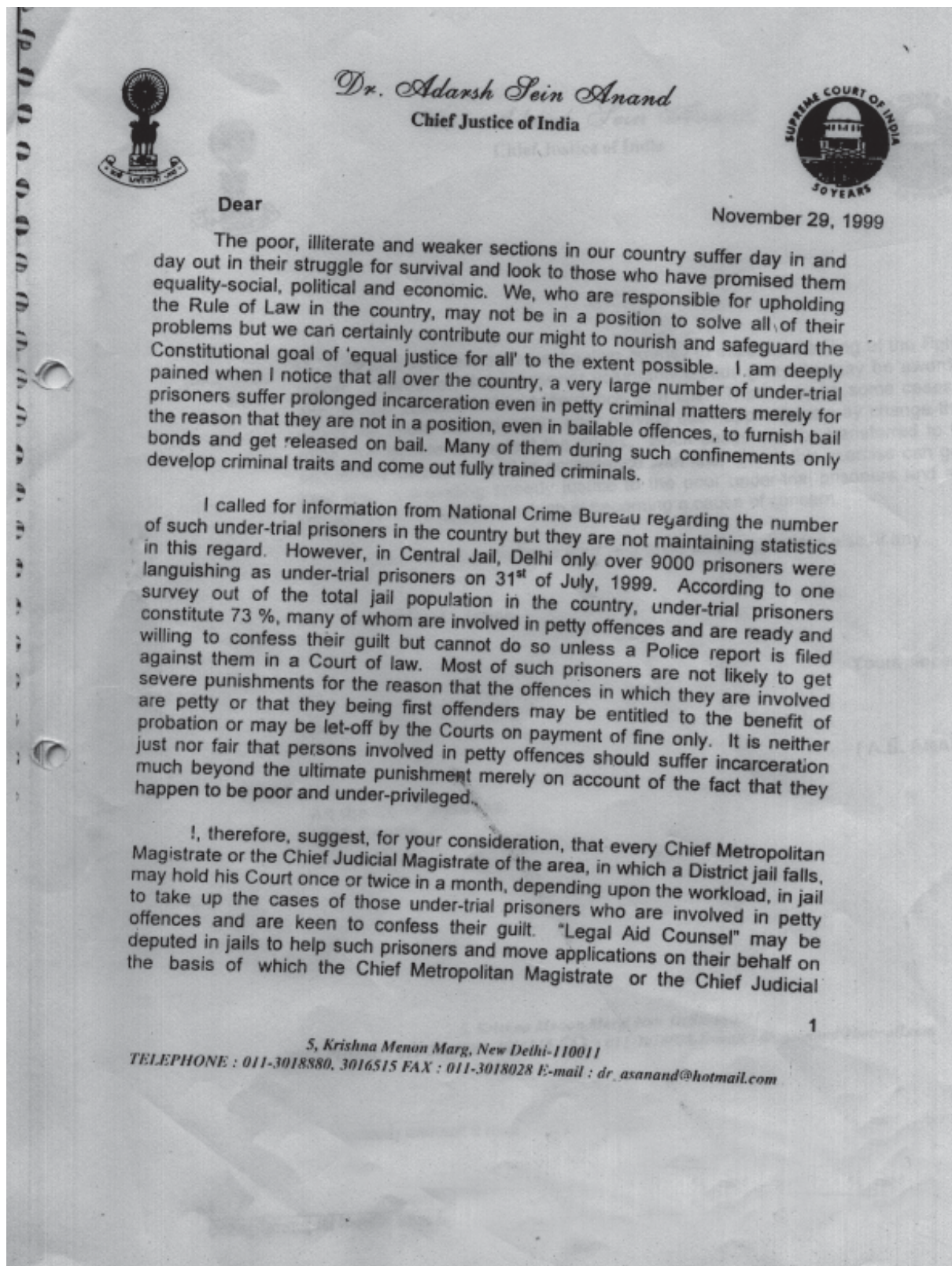
Warrants-case: A case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding three years. (section 2(x) Code of Criminal Procedure Amendment Act, 2008)

Annexures

- A Letter by Chief Justice A.S.Anand (Nov 1999) recommending the practice of *jail adalats*
- B Circular issued by High Court of Andhra Pradesh (July 2000) to hold *jail adalats*
- C Circular issued by High Court of Andhra Pradesh (Jan 2001) reminding to hold *jail adalats*
- D Procedure for Summary Trial
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- I Sample RTI application requesting information pertaining to *jail adalats*
- J The Probation of Offenders Act, 1958
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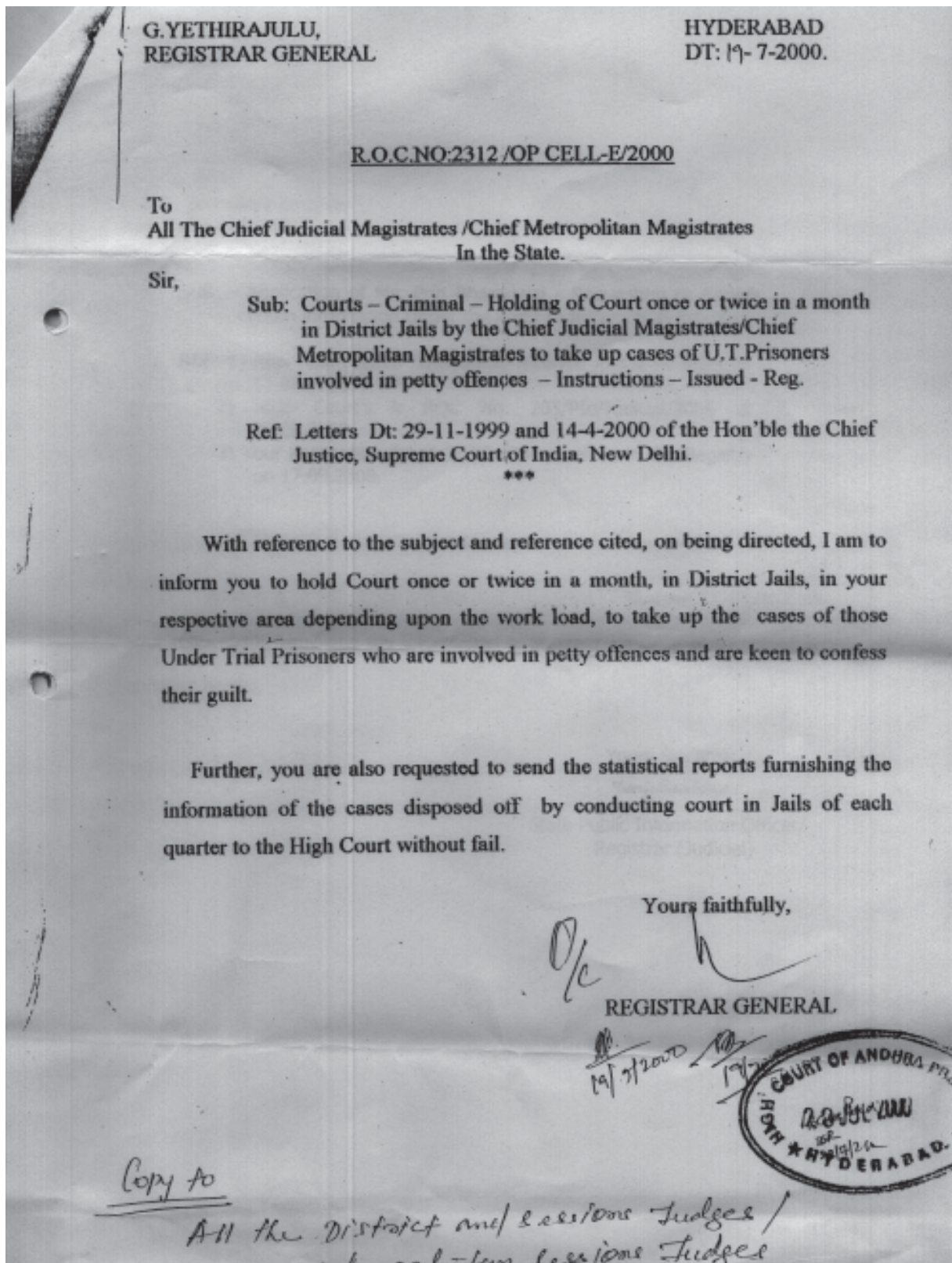
Annexure A

Letter by Chief Justice A.S.Anand (Nov 1999) recommending the practice of *jail adalats*



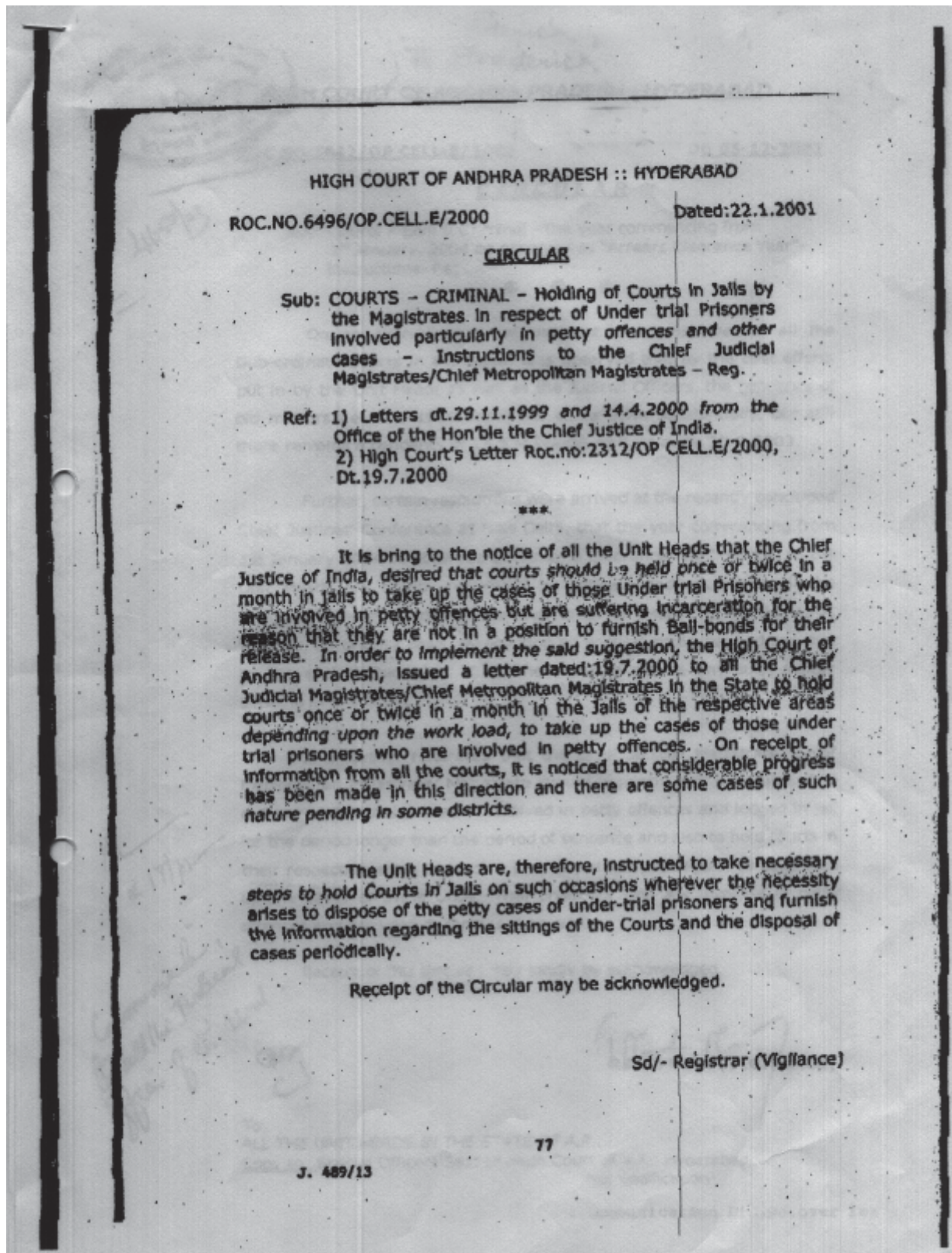
Annexure B

**Circular issued by High Court of
Andhra Pradesh (July 2000) to hold jail adalats**



Annexure C

Circular issued by High Court of Andhra Pradesh (Jan 2001) reminding to hold *jail adalats*



Annexure D

Procedure for Summary Trial Chapter XXI, Code of Criminal Procedure (1973),

260 Power to try summarily. – (1) Notwithstanding anything contained in this Code –

- (a) any Chief Judicial Magistrate;
- (b) any Metropolitan Magistrate;
- (c) any Magistrate of the first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences: -
 - (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
 - (ii) theft, under section 379, section 380 or section 381 or the Indian Penal Code (45 of 1860), where the value of property stolen does not exceed two thousand rupees;
 - (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed two thousand rupees;
 - (iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code (45 of 1860) where the value of such property does not exceed two thousand rupees;
 - (v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);
 - (vi) insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under section 506 Indian Penal Code (45 of 1860);
 - (vii) abetment of any of the foregoing offences;
 - (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
 - (ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871 (1 of 1871).

(2) When, in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witness who may have been examined and proceed to re-hear, the case in the manner provided by this Code.

Annexure D

262 Procedure for summary trials

(1) In trials under this Chapter, the procedure specified in the Code for the trial of summons -case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

263. Record in summary trials.- In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct, the following particulars, namely:-

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the date of the report of complaint;
- (d) the name of the complainant (if any);
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;
- (g) the plea of the accused and his examination (if any);
- (h) the finding;
- (i) the sentence or the other final order;
- (j) the date on which proceedings terminated.

264. Judgment in cases tried summarily.- In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

265. Language of record and judgement

(1) Every such record and judgment shall be written in the language of the Court.

(2) The High Court may authorize any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgment or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgment so prepared shall be signed by such Magistrate.

Annexure E

Application for *jail adalat* used in Lucknow District Prison

न्यायालय श्रीमान A . E . J (J.D.) 36 महोदय, लखनऊ

उमेश कुमार पुत्र श्री राम नरेश

निवासी L.D.A कार्लो गीलरेंस प्रार्थी / अभियुक्त

उत्तर प्रदेश प्रति

असं 609/05
घारा 379/411/100
थाना सोमना - 121C
एफ0एफ0 18.6.08

प्रार्थना - पत्र वास्ते किये जाने अपराध स्वीकारोक्ति


महोदय,

1. यह कि प्रार्थी / अभियुक्त दिनांक 30.3.07 से जिला कारागार लखनऊ में निरूद्ध है।
2. यह कि प्रार्थी / अभियुक्त अपने अपराध को स्वीकारोक्ति स्वेच्छा से कर रहा है। भविष्य में कोई अपराध नहीं करेगा।
3. यह कि प्रार्थी / अभियुक्त को जेल में बिताई गयी अवधि की सजा आवश्यक एवं न्यायोचित है।

अतः माननीय न्यायालय से विनम्र अनुरोध है कि प्रार्थी / अभियुक्त की जेल बिताई गयी अवधि की सजा देकर मुक्त करने की कृपा करें। आप की महान कृपा होगी।

लखनऊ प्रार्थी / अभियुक्त

दिनांक 11.6.08



- 2 -

बयान मुल्जिम

नाम..... उम्र

पिता/पति का नाम अ0स0

धारा

वालानी थाना

प्रश्न - क्या आप पंजीकृत अपराध संख्या..... दिनांक कि घटना में शामिल थे ?
उत्तर

प्रश्न - आपके विरुद्ध पंजीकृत मुकदमा क्यों चला ?
उत्तर

प्रश्न - क्या आप उक्त अपराध को स्वेच्छापूर्वक स्वीकार कर रहे हैं ?
उत्तर

प्रश्न - क्या आप कुछ और कहना चाहते हैं ?
उत्तर

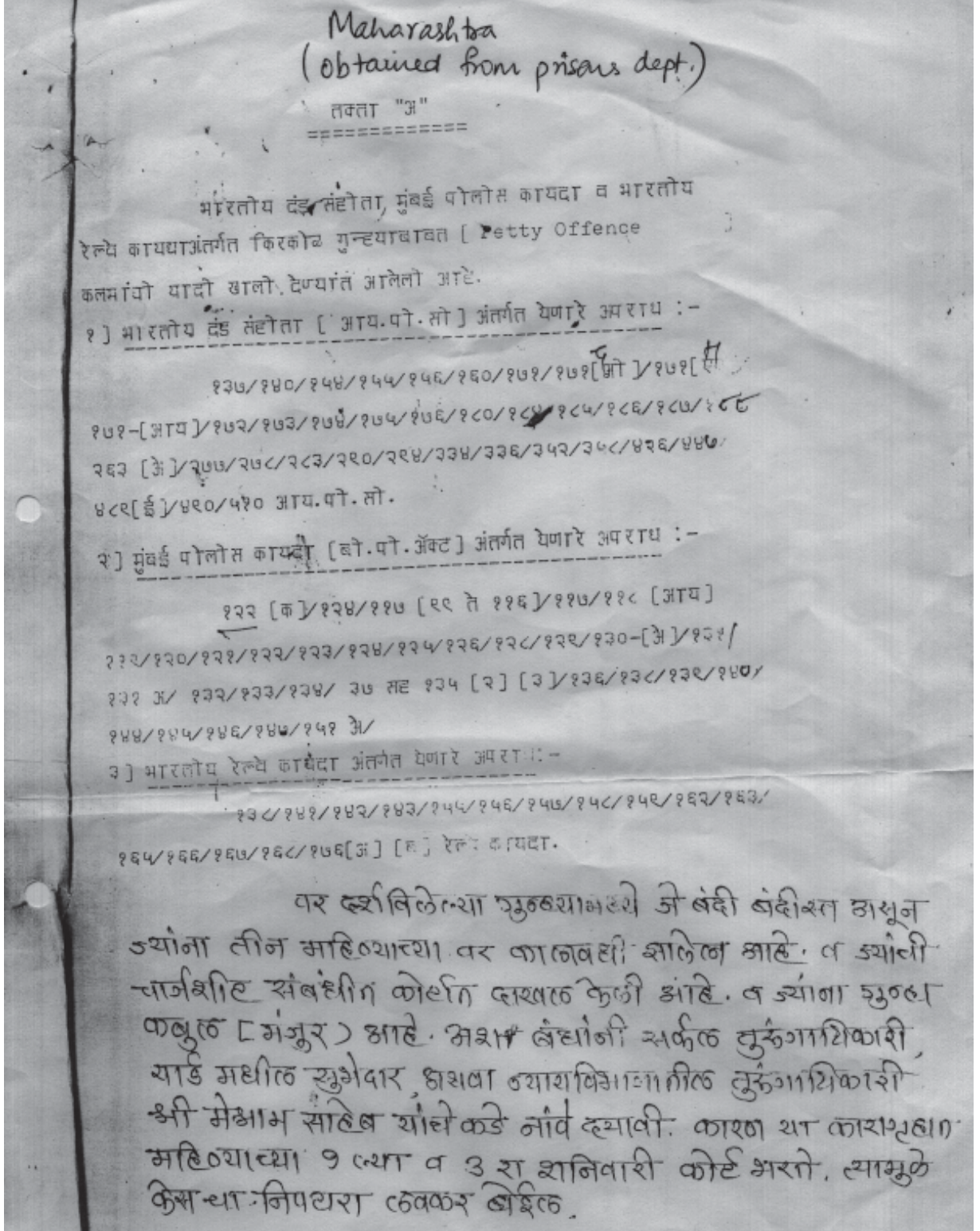
दिनांक सुनकर तस्दीक किया।

आदेश

आज दिनांक को जिला कारागार लखनऊ में आयोजित विशेष
अदालत में अभियुक्त के द्वारा स्वेच्छा से अपना अपराध स्वीकार किया गया है।
अभियुक्त के स्वेच्छा से जुर्म स्वीकोरवित पर उसे मु0अ0स0
के अन्तर्गत धारा थाना
जिला-लखनऊ के अपराध में सिद्ध दोष पाया जाता हूँ। अभियुक्त को अन्तर्गत धारा
में दिन का कारावास तथा
रू0 अर्थदण्ड किया जाता है। अर्थ दण्ड न करने पर अभियुक्त को
उक्त अपराध में दिन का अतिरिक्त कारावास का दण्ड भोगना
होगा। जिला कारागार में विचाराधीन बंदी के रूप में बिताई गयी अवधि उक्त दण्डादेश में समायोजित की जाय।

Annexure F

Definition of 'petty offence': Marathi circular issued by IG (Prisons), Maharashtra for Amravati Central Prison



Annexure G

Analysis of the Marathi Circular

IPC Sections:

137, 140, 154, 155, 156, 160, 172, 171(E), 171(M), 171(I), 172, 173, 174, 175, 176, 180, 184, 185, 186, 187, 188, 263(A), 277, 278, 283, 290, 294, 334, 336, 352, 358, 426, 448, 489(E), 490, 510

| Sections | Cognizable/ Non-cognizable | Bailable/ Non-bailable | Fine amount/ Imprisonment |
|----------|-------------------------------|---------------------------|------------------------------|
| 155 | Non Cognizable | Bailable | Fine |
| 489(E) | Non Cognizable | Bailable | Rs. 100 |
| 490 | Non Cognizable | Bailable | Rs. 100 |
| 263(A) | Cognizable | Bailable | Rs. 200 |
| 283 | Cognizable | Bailable | Rs. 200 |
| 290 | Non Cognizable | Bailable | Rs. 200 |
| 137 | Non Cognizable | Bailable | Rs. 500 |
| 171 (H) | Non-cognizable | Bailable | Rs. 500 |
| 171(I) | Non Cognizable | Bailable | Rs. 500 |
| 278 | Non Cognizable | Bailable | Rs. 500 |
| 156 | Non Cognizable | Bailable | Rs. 1000 |
| 154 | Non Cognizable | Bailable | Rs. 1000 |
| 510 | Non Cognizable | Bailable | 24 hours |
| 160 | Cognizable | Bailable | Rs. 100/ One month |
| 172 | Non Cognizable | Bailable | 1 month |
| 358 | Non Cognizable | Bailable | 1 month |
| 334 | Non Cognizable | Bailable | 1 month |
| 172 | Non Cognizable | Bailable | 1 month |
| 173 | Non Cognizable | Bailable | 1 month |
| 174 | Non Cognizable | Bailable | 1 month |
| 184 | Non Cognizable | Bailable | 1 month |
| 185 | Non Cognizable | Bailable | 1 month |
| 187 | Non Cognizable | Bailable | 1 month |
| 188 | Cognizable | Bailable | 1 month |
| 140 | Cognizable | Bailable | 3 months |
| 426 | Non Cognizable | Bailable | 3 months |

| Sections | Cognizable/ Non-cognizable | Bailable/ Non-bailable | Fine amount/ Imprisonment |
|----------|-------------------------------|---------------------------|------------------------------|
| 171 | Cognizable | Bailable | 3 months |
| 180 | Non Cognizable | Bailable | 3 months |
| 186 | Non Cognizable | Bailable | 3 months |
| 277 | Cognizable | Bailable | 3 months |
| 294 | Cognizable | Bailable | 3 months |
| 336 | Cognizable | Bailable | 3 months |
| 352 | Non Cognizable | Bailable | 3 months |
| 175 | Non Cognizable | Bailable | 6 months |
| 176 | Non Cognizable | Bailable | 6 months |
| 448 | Cognizable | Bailable | 1 year |

| No. of Sections | Punishable By |
|-----------------|------------------------|
| 12 | Fine |
| 1 | 24 hour incarceration |
| 11 | 1 month incarceration |
| 9 | 3 months incarceration |
| 2 | 6 months incarceration |
| 1 | 1 year incarceration |
| 36 | |

Sections under the *Bombay Police Act, 1951* considered as Petty Offences

| Sections | | Fine (Rs.) | Imprisonment |
|----------|---|------------|--------------|
| 117 | Penalties for offenders under sections 99 to 116 | 1200 | N/A |
| 118 (i) | Penalty for failure to keep in confinement, cattle, etc | 4000 | One month |
| 119 | Punishment for cruelty to animals | 2500 | One month |
| 120 | Wilful trespass | 2500 | 1 month |
| 121 | False alarm of fire or damage to fire-alarm | 3000 | 3 months |
| 122 | Being found under suspicious circumstances between sunset and sunrise | 1000 | 1 year |

| Sections | | Fine (Rs.) | Imprisonment |
|---------------------------|--|----------------------------|-------------------------------|
| 123 | Carrying weapon without authority | 12500 | N/A |
| 124 | Possession of property of which no satisfactory account can be given | 5000 | 1 year |
| 125 | Taking spirits into public hospitals or into barracks or on boards of vessels of war | 3000 | 2 months |
| 126 | Omission by pawn-brokers, etc. to report to police possession or tender of property suspected to be stolen | 2000 | N/A |
| 128 | Taking pledge from child | 2000 | N/A |
| 129 | Permission of disorderly conduct at places of public amusement, etc. | 2500 | N/A |
| 130(A) | Gambling in street | 2500 | N/A |
| 131 | Penalty for contravening rules, etc., under section 33. | Ranging from 500 to 12,500 | Ranging from 8 day - 6 months |
| 131(A) | Penalty for not obtaining license... | Ranging from 2000 to 5000 | 1 month |
| 132 | Penalty for disobedience to order under section 31 | 5000 | 3 months |
| 133 | Penalty for contravening rules, etc., under section 35 | 5000 | 3 months |
| 134 | Penalty for contravention of rule etc., under section 36 | 5000 | N/A |
| 37 r.w. 135(ii) and (iii) | Penalty for contravention of rules or directions under section 37 | 20500 and 2500 | 1 month |
| 136 | Penalty for contravening rules etc., under section 38 | 5000 | 3 months |
| 138 | Deleted by Mah. 28 of 1964, s.9 | N/A | N/A |
| 139 | Penalty for contravention of a regulation made under section 43 | 2500 | 3 months |
| 140 | Penalty for contravening directions under section 68 | 500 | N/A |
| 144 | Neglect or refusal to serve as a Special Police Officer | 200 | N/A |
| 145 | Penalty for making false statement, etc., and for misconduct of Police officers | 100 | 3 months |
| 146 | Penalty for failure to deliver up certificate of appointment or of office or other article | 200 | 1 month |
| 149 | Penalty for opposing or not complying with direction given under section 70 | Also liable to fine | 1 year |
| 151(A) | Summary disposal of certain cases ¹⁰⁶ | 2000 | N/A |

Sections under the *Indian Railways Act, 1989* considered as Petty Offences

| Sections | Fine (Rs.) | Imprisonment |
|------------|------------|--------------|
| 138 | 50 | N/A |
| 141 | 1000 | 1 year |
| 142 | 500 | 3 months |
| 143 | 10,000 | 3 years |
| 155 | 500 | N/A |
| 156 | 500 | 3 months |
| 157 | 500 | 3 months |
| 158 | 500 | N/A |
| 159 | 500 | 1 month |
| 162 | 500 | N/A |
| 163 | 500 | N/A |
| 165 | 500 | N/A |
| 166 | 500 | 1 month |
| 167 | 100 | N/A |
| 168 | Bond/50 | N/A |
| 176 (A)(B) | 100 | N/A |

N/A: Information not available.

Annexure H

Questionnaire

Interviewee:.....

Date:.....

1. What mandate do *jail adalats* have? Are they provided for in law? Has there been any High Court directives in this state regarding the holding of *jail adalats*?
2. Is it mandatory or discretionary?
3. What are petty offences defined as? Is this the 7 year sentence cut off? Do all states have the same definition?
4. Why are petty offenders remanded to judicial detention in the first place/why are there so many remanded to prison? Do you have any statistics on the percentage of prisoners remanded for petty offences?
5. [Why] do *jail adalats* have to be limited to petty offenders and cases where the accused wants to plead guilty? Could there be provision for those cases of a more serious nature to be disposed of by a higher authority such as High Court Judges (as suggested by the Law Commission's 142 report on Concessional Treatment for Offenders Voluntarily Pleading Guilty)?
6. Do these encourage a guilty plea on the part of the accused? Do you see any problem with this?
7. Is the 'concession' afforded only the expediting of the case and set-off of detention served against the imprisonment imposed or is there any further sentence mitigation? (as provided for in the 142 Law Commission report; 9.28- imposition of half the minimum term where a minimum sentence is provided for; and; 9.33- imposition of a term not exceeding half the maximum provided for the offence)
8. Is there accommodation for sentence bargaining at *jail adalats*? Is this concessional treatment procedure covered by the provisions under 265A- L Cr.P.C? Does this count as 'plea bargaining' - seeking concessional treatment?
9. What are the criteria for referring a prisoner's case to the *jail adalat*? Who initiates the referral? What is the procedure for a prisoner applying to be heard by *jail adalat*?
10. Do you think these *adalats* [could] significantly impact the problem of under-trials and overcrowding?
11. Who is responsible for holding *jail adalats*?
12. Who should be held responsible if it is not being held?
13. Where can we obtain data/ literature/ statistics pertaining to *Jail Adalats*?
14. Why are they not held?
15. In terms of procedure is there any safeguard in the form of a preliminary hearing to determine if the application was made voluntarily without coercion or pressure from the prosecutor? (suggested in the Law Commission's 142 report of 1991, 10.14;10.15) Is there any provision that any court order rejecting an application for concessional treatment must be kept confidential to prevent prejudice to the accused? (9.20; 9.21 of the Law Commission Report)

Annexure I

Sample RTI application requesting information pertaining to *jail adalats*

Date: 2 June 2008

From

to
The Public Information Officer
Prison Headquarters
Raipur
Chhattisgarh - 492 001

Dear Sir,

Sub: Application for information under section 6(1) of *The Right to Information Act, 2005* - *Jail Adalats* held in Ambikapur Central Prison

In pursuance of the orders passed on 13-10-1999 and 7-12-1999 by the Supreme Court of India, the case –R.D Upadhyay Vs. State of Andhra Pradesh & others, the Central Government wrote to all the State governments and UT Administrations to take urgent necessary steps for expeditious disposal of cases of undertrials who are languishing in various jails in the country. In letter a dated 19 November 1999 the chief justice of India addressed all the High Courts directing Chief Judicial Magistrate/Chief Metropolitan Magistrate/Magistrate to visit jails once or twice in a month in their jurisdiction and hold courts in them to take up the cases of those undertrial prisoners who are involved in petty offences and are keen to confess their guilt. I request you to provide me the information on the pattern and regularity of conducting the *Jail Adalats* in Ambikapur Central Prison by the chief metropolitan magistrate/chief judicial magistrate in the past one year from April 2007 to March 2008.

I have paid the prescribed application fee of Rs. 10. I would like to receive the requested information by registered post to the above address. Kindly inform me of any additional fees, if any payable towards obtaining this information.

Thanking you,

Yours sincerely,

Annexure I

Name of Jail:..... District:.....

| S No | Jail Adalats held on | No of Cases Referred by the Prison | No of Cases Disposed | No. of Accused Released/Benefited |
|-------|----------------------|------------------------------------|----------------------|-----------------------------------|
| 1 | April 2007 | | | |
| 2 | May 2007 | | | |
| 3 | June 2007 | | | |
| 4 | July 2007 | | | |
| 5 | August 2007 | | | |
| 6 | Sept 2007 | | | |
| 7 | October 2007 | | | |
| 8 | Nov 2007 | | | |
| 9 | Dec 2007 | | | |
| 10 | January 2008 | | | |
| 11 | February 2008 | | | |
| 12 | March 2008 | | | |
| Total | | | | |

Sign & stamp of Jail Superintendent

The Probation of Offenders Act, 1958

Section 3. Power of court to release certain offenders after admonition: When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition.

Explanation- For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

Section 4. Power of court to release certain offenders on probation of good conduct:

(1) When, any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matters as court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Section 12. Removal of disqualification attaching to conviction: Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of section 3 or section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. Provided that nothing in this section shall apply to a person who, after his release under section 4, is subsequently sentenced for the original offence.

Plea Bargaining: Chapter XXIA, Code of Criminal Procedure (1973)

265A. Application of the Chapter — (1) This Chapter shall apply in respect of an accused against whom—

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life or of imprisonment for a term exceeding seven years, has been provided under the law for the time being in force, and after examining complainant and witnesses under section 200, issued the process under section 204,

but does not apply where such offence affects the socio-economic condition of the country or has been committed against a woman, or a child below the age of fourteen years.

(2) For the purposes of sub-section (1), the Central Government shall, by notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265B. Application for plea bargaining — (1) A person accused of an offence may file an application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by a Court in a case in which he had been charged with the same offence.

(3) After receiving the application under sub-section (1), the Court shall issue notice to the Public Prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the Public Prosecutor or the complainant of the case, as the case may be, and the accused appear on the date fixed under sub-section (3), the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily and where—

(a) the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the Public Prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the Court finds that the application has been filed involuntarily by the accused or he has previously been convicted by a Court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this Code from the stage such application has been filed under sub-section (1).

265C. Guidelines for mutually satisfactory disposition — In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265B, the Court shall follow the following procedure, namely:

(a) in a case instituted on a police report, the Court shall issue notice to the Public Prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the Court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused may, if he so desires, participate in such meeting with his pleader, if any, engaged in the case;

(b) in a case instituted otherwise than on police report, the Court shall issue notice to the accused and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the Court to ensure, throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be, so desires, he may participate in such meeting with his pleader engaged in the case.

265D. Report of the mutually satisfactory disposition to be submitted before the Court — Where in a meeting under section 265C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-section (1) of section 265B has been filed in such case.

265E. Disposal of the case — Where a satisfactory disposition of the case has been worked out under section 265D, the Court shall dispose of the case in the following manner, namely:

(a) the Court shall award the compensation to the victim in accordance with the disposition under section 265D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Probation of Offenders Act, 1958(20 of 1958) or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment on the accused;

(b) after hearing the parties under clause (a), if the Court is of the view that section 360 or the provisions of the Probation of Offenders Act, 1958(20 of 1958) or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provide the benefit of any such law, as the case may be;

(c) after hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment;

(d) in case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b) or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265F. Judgment of the Court — The Court shall deliver its judgment in terms of section 265E in the open Court and the same shall be signed by the presiding officer of the Court.

265G. Finality of the judgment — The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under Article 136 and writ petition under Articles 226 and 227 of the Constitution) shall lie in any Court against such judgment.

265H. Power of the Court in plea bargaining — A Court shall have, for the purposes of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matters relating to the disposal of a case in such Court under this Code.

265-I. Period of detention undergone by the accused to be set off against the sentence of imprisonment — The provisions of section 428 shall apply, for setting off the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265J. Savings — The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation — For the purposes of this Chapter, the expression “Public Prosecutor” has the meaning assigned to it under clause (u) of section 2 and includes an Assistant Public Prosecutor appointed under section 25.

265K. Statements of accused not to be used — Notwithstanding anything contained in any law for the time being in force, the statements or facts stated by an accused in an application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of this Chapter.

265L. Non-application of the Chapter — Nothing in this Chapter shall apply to any juvenile or child as defined in clause (k) of section 2 of the Juvenile Justice (Care and Protection of Children) Act, 2000(56 of 2000)“.

Endnotes

¹ Also known as remand prisoners or pre-trial detainees. In this paper the term 'under-trial' denotes an un-convicted prisoner i.e. one who has been detained in prison during the period of investigation, inquiry or trial for the offence(s) he is accused to have committed.

² International Centre for Prison Studies (date not specified) *World Prison Brief: pre-trial/remand prisoners*, School of Law, King's College website: http://www.kcl.ac.uk/depsta/law/research/icps/worldbrief/wpb_stats.php?area=all&category=wb_pretrial as on 3 March 2009.

³ National Crime Records Bureau website, Prison Statistics India 2006, Ministry of Home Affairs: <http://ncrb.nic.in/PSI2006/prison2006.htm> as on 14 January 2009.

⁴ *Moti Ram and Ors. V. State of Madhya Pradesh* AIR 1978 SC 1594.

⁵ Law Commission of India (1979) *Seventy-eighth Report on Congestion of Under-trial Prisoners*, Government of India, February, p.2, Government of India.

⁶ Article 9(3), *International Covenant on Civil and Political Rights* 1966.

⁷ Law Commission of India (1979) *Seventy-eighth Report on Congestion of Under-trial Prisoners*, February, Government of India.

⁸ Chief Justice Anand, in a letter dated November 29, 1999. The Chief Justices' conference has repeatedly emphasised the role of jail adalats since 2003.

⁹ An Arrears Committee set up by the Supreme Court in 2006, in its interim report of 6 March 2006, recommended the prioritization of certain cases; the setting up of exclusive courts for certain categories of offences including petty offences, and; more frequent use of *lok* and *jail adalats*. In addition, a national policy on prison reform, being drafted at the time of this study, recommends that special courts should be established in prisons to dispose of under-trial cases.

¹⁰ Delhi is technically not a state but a union territory with a special status and has its own legislative assembly.

¹¹ National Crime Records Bureau (2006), *Prison Statistics India*, Table 3.2, p.36 and Table 2(A), p.15, Ministry of Home Affairs, Government of India.

¹² Delhi has two prisons – Tihar Jail Complex (with 9 jails) and Rohini District prison, whereas Jharkhand has three prisons in Ranchi, Dumka and Hazaribagh.

¹³ National Crime Records Bureau (2006), *Prison Statistics India*, Table 3.2, pp.36 and 15, Ministry of Home Affairs, Government of India.

¹⁴ The prison officials in Karnataka were very cooperative in providing us information on the practice of *jail adalats* and there was no need to make RTI applications.

¹⁵ The Right to Information applications sent to all states sought information pertaining to jail adalats held in the year March 2007 – April 2008. However, for Andhra Pradesh, the information was obtained for the year 2006-2007.

¹⁶ Letter from Dr. Adarsh Sein Anand, Chief Justice of India, dated November 29, 1999. (see Annexure A)

¹⁷ See Chapter II (*Jail Adalats in Practice*) of this report for the various definitions of 'petty offences'.

¹⁸ Lok Sabha website, Committee on Empowerment of Women (2001-2002) (Thirteenth Lok Sabha): <http://164.100.24.208/ls/committeeR/Empowerment/3rd/3rd.htm> para. 1.55 as on 5 February 2009.

¹⁹ Circular issued by Allahabad High Court - Circular No. - C.L. No.29/VIIIh-13 dated 16.12.99 and C.L. No.15/IIIh-AdminG dated 30.3.2000.

- ²⁰ Letter issued by High Court of Andhra Pradesh (R.O.C.No: 2312/OP CELL-E/2000) dated 19.7.2000.
- ²¹ Second letter issued by High Court of Andhra Pradesh (R.O.C No: 6494/OP CELL-E/2000) dated 22.1.2001.
- ²² Article 14, *International Covenant on Civil and Political Rights*, 1966.
- ²³ Offences in which the complainant or victim of an offence can drop the charges against the accused.
- ²⁴ National Crime Records Bureau (2006) *Prison Statistics India*, p.iii, Ministry of Home Affairs, Government of India.
- ²⁵ *Ibid*. In some states such as Bihar, the under-trial prisoners' ratio was recorded as high as 84.4 per cent.
- ²⁶ Prisoners whose trial is yet to begin but have been sent to prisons while their cases are being investigated.
- ²⁷ National Crime Records Bureau (2006) *Prison Statistics India*, p.31, Ministry of Home Affairs, Government of India.
- ²⁸ AIR 1977 SC 2477. Also see *Gudikanti Narasihulu vs. Public Prosecutor* AIR 1978 SC 429.
- ²⁹ Section 320 of the Cr.P.C. lists offences that can be compounded with or without the permission of the court.
- ³⁰ *Moti Ram & others vs. State of Madhya Pradesh* AIR 1978 SC 1594.
- ³¹ *Gurbaksh Singh Sibbia vs. State of Punjab* (1980) 3 SCR 383.
- ³² Sen, S. (1999) *Letter to all Inspector General of Prisons of States on speedy trial of undertrial prisoners*, Special Rapporteur, National Human Rights Commission, D.O.No. 11/1/99-PRP & P, 29 April.
- ³³ India Info News website, Arthur Road Jail is Like a Local at Peak Hours: http://news.indiainfo.com/2008/06/25/0806251104_arthur_road_jail_is_like_a_local_during_peak_hour.html as on 27 January 2009.
- ³⁴ *Ibid*.
- ³⁵ Bureau of Police Research & Development (2007) *National Draft Policy on Prison Reforms and Correctional Administration*, p.129, Ministry of Home Affairs, Government of India.
- ³⁶ Law Commission of India (1979) *Seventy-eighth Report on Congestion of Under-trial Prisoners*, Ch.9, Government of India.
- ³⁷ Section 436 of *Code of Criminal Procedure* was amended in 2005 but came into effect in 2006.
- ³⁸ See Section 440[1], *Code of Criminal Procedure*, 1973. This implies that a prisoner charged with stealing Rs. 1,000 cannot be obligated for a bail amount of Rs. 10,000 (See *Moti Ram V. State of Madhya Pradesh* AIR 1978 SC 1594).
- ³⁹ See Section 440[2], *Code of Criminal Procedure*, 1973 allows a prisoner to appeal to High Court or the sessions court.
- ⁴⁰ See Section 437[6], *Code of Criminal Procedure*, 1973. The Magistrate may not release such a person for reasons to be recorded in writing.
- ⁴¹ See Section 167(2) Proviso(a)(ii), *Code of Criminal Procedure*, 1973.
- ⁴² 1980 1 SCC 81.
- ⁴³ 1980 1 SCC 81.
- ⁴⁴ Law Commission of India (1991) *142nd Report on Concessional Treatment for Offenders who on their own Initiative Choose to Plead Guilty Without Bargaining*, p.5, Government of India.
- ⁴⁵ *Ibid*, p.2.
- ⁴⁶ National Crime Records Bureau (2007) "Table 4(B) Disposal of IPC Crime Cases by Courts (Decadal picture)", *Crime Stats in India*, Table 4(B), Ministry of Home Affairs, Government of India.
- ⁴⁷ *Ibid*. Chapter 4 – Delay in disposal of cases by police and courts.

- ⁴⁸ Frontline website, The Judiciary: Fast Track Courts. Vol. 18(14) July. 07 - 20, 2001: <http://www.hinduonnet.com/fline/fl1814/18140910.htm> as on 7 February 2009.
- ⁴⁹ Law Commission of India (1979) *78th Report on Congestion of Under-trial Prisoners in Jails*, p. 12, Government of India.
- ⁵⁰ Department of Justice website, Statement of Sanctioned Posts and Judges in Position: <http://lawmin.nic.in/lawmintemp/justice/welcome.htm> as on 8 February 2009.
- ⁵¹ Article 2 website, Judicial delays to criminal trials in Delhi: A special report 2008, Vol.7, No.2, June: <http://www.article2.org/pdf/v07n02.pdf> as on 2 March 2009.
- ⁵² *Ibid.*
- ⁵³ Law Commission of India (1979) *78th Report on Congestion of Under-trial Prisoners in Jails*, p.16, Government of India.
- ⁵⁴ Second Administrative Reforms Commission (2007) *Public Order*, Fifth Report, Government of India, June.
- ⁵⁵ National Police Commission (1981), *Sixth Report*, March, Government of India.
- ⁵⁶ Police Act Drafting Committee (2006), *Model Police Act*, Government of India.
- ⁵⁷ The Hindu (internet edition) website, *Many Under-trials Not Being Taken to Court Due to Shortage of Escorts*: <http://www.hindu.com/2007/12/25/stories/2007122551530100.htm> as on 3 February 2009.
- ⁵⁸ The Hindu (internet edition) website, *Videoconferencing Brings Relief to Under-trials*: <http://www.hindu.com/2008/08/04/stories/2008080454260100.htm> as on 7 February 2009.
- ⁵⁹ District Magistrates in their capacity as official visitors have the authority to check if any under-trial prisoner is illegally detained or is detained for an undue length of time.
- ⁶⁰ Since prisons is a state subject, the roles and responsibilities of superintendent might vary from state to state.
- ⁶¹ See Section 839 Tamil Nadu Jail Rules 1983.
- ⁶² No. F. 9/75/87-Home(General)/III Rule 13.
- ⁶³ Rule 22.40, *Model Prison Manual* 2003.
- ⁶⁴ The Model Prison Manual is prepared by the All India Model Prison Manual Committee and approved by the central government in 2004. It is non binding.
- ⁶⁵ Hon'ble Mr. Justice Y.K. Sabharwal, Chief Justice of India (2006) Inaugural address, 9 March at the Chief Justices' Conference, p.3, (9-10 March 2006): http://supremecourtfindia.nic.in/new_links/CJC.pdf as on 3 February 2009.
- ⁶⁶ *Ibid.*
- ⁶⁷ *Ibid*, p.5.
- ⁶⁸ Bureau of Police Research & Development (2007) *National Draft Policy on Prison Reforms and Correctional Administration*, p.256, Ministry of Home Affairs, Government of India.
- ⁶⁹ *Ibid*, p.135.
- ⁷⁰ *Ibid*, p.258.
- ⁷¹ Although the theory behind plea bargaining is reduced sentences in exchange for a guilty plea, there is no study in India that confirms that the sentences are actually reduced. Many lawyers contend that under the new plea bargaining provisions, the accused end up getting higher punishment than they would, upon regular conviction. This is because

the plea bargaining law prescribes the minimum sentence, which might ultimately be higher than the regular judicial practice for the given offence. Similarly, in *jail adalats*, although the accused are mostly convicted for the period of imprisonment already undergone, this period is often more than the regular period of imprisonment for which the accused would have been sentenced. There is a strong need to study these mechanisms from the perspective of sentencing practices, which is beyond the scope of this study.

⁷² Law Commission of India (1991) *142 Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining*, p.31, Government of India.

⁷³ *Ibid*, p.32.

⁷⁴ See sections 265A-265L, *Code of Criminal Procedure*, 1973.

⁷⁵ See note 73.

⁷⁶ Bureau of Police Research & Development (2007) *National Draft Policy on Prison Reforms and Correctional Administration*, p.257, Ministry of Home Affairs, Government of India.

⁷⁷ Law Commission of India (1991) *142 Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without any bargaining*, p.17, Government of India.

⁷⁸ Dr. Justice A.S. Anand (2003) *Letter to all Chief Justices of High Courts on the plight of undertrial prisoners*, July 1, Chairperson National Human Rights Commission, NHRC/CJC/UTP/2003.

⁷⁹ Letter dated 29 November 1999 by Chief Justice Anand addressing all Chief Justices of High Courts; Circular issued by Allahabad High Court - Circular No. - C.L. No.29/IIIh-13 dated 16.12.99 and C.L. No.15/IIIh-AdminG dated 30.3.2000; and Letter issued by High Court of Andhra Pradesh (R.O.C.No: 2312/OP CELL-E/2000 dated 19.7.2000).

⁸⁰ This is the procedure in Lucknow District Jail. (see Annexure E)

⁸¹ During a field visit, a Magistrate informed us that delay in filing the charge-sheet was common and without it, they could do nothing.

⁸² The prisoners in Lucknow District Jail fill in application to be considered for *jail adalat* which is forwarded to the Chief Judicial Magistrate (CJM). The CJM obtains the file of these prisoners from the concerned courts.

⁸³ The amount of Rs. 2000 is relevant because, it is only when the value of the property is below Rs. 2000 that the offence can be compounded under section 321, Cr.PC. This cut off figure may be relevant in deciding whether the offence of theft is petty or not.

⁸⁴ The Jailors Group – I, Jailor Group – II, and *Subedars* (jail guards) belong to Maharashtra Jail Service (Class III and IV) Executive Branch. See *Maharashtra Jail Manual*, 1979. Chapter VII Staff Recruitment, p.84.

⁸⁵ JT 1996(4) SC 701.

⁸⁶ 92(2001)DLT196.

⁸⁷ Except Madhya Pradesh and Rajasthan, where jail adalats are not being held.

⁸⁸ Chief Judicial Magistrate (CJM)/ Chief Metropolitan Magistrate (CMM) or the Judicial Magistrate of First Class (JMFC)/ Metropolitan Magistrate (MM).

⁸⁹ Black's Law Dictionary (1998) 6th Edition defines a summary proceeding as a "proceeding by which a controversy is settled, case disposed of, or trial conducted, in a prompt and simple manner, . . . , without presentation or indictment,

or in other respects, out of the regular course of the common law. In procedure, proceedings are said to be summary when they are short and simple in comparison with regular proceedings.

⁹⁰ See Section 265A (1), *Code of Criminal Procedure*, 1973.

⁹¹ See Section 265A (2), *Code of Criminal Procedure*, 1973 The Central Government has by S.O.104(E) dated 11 July 2006 determined which offences shall fall under this sub-section. The list of 19 statutory laws include offences against women, children, and scheduled castes and tribes.

⁹² Summary trial procedure for offence punishable with imprisonment up to two years.

⁹³ See the previous section for a discussion on the meeting. Also see section 265C and 265D, *Code of Criminal Procedure*, 1973.

⁹⁴ We had sent RTI applications seeking information confirming this information, however the received data is inappropriate and does not mention the other charges against a prisoner for which he might be kept in prison.

⁹⁵ Except in Tihar jail complex, where a designated legal aid counsel is present for all the accused during *jail adalat*. However, evidence seems to indicate that the counsel is more interested in the success of the *jail adalat* procedure which has the backing of the judiciary and the legal services authority, rather than in protecting the interest of the accused.

⁹⁶ Law Commission of India (1991) *142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without bargaining*, p. 17, Government of India.

⁹⁷ Lucknow District Prison Superintendent informed us that of the prisoners applications forwarded to their respective court only 20 per cent are processed and heard in jail adalats. The rest 80 per cent have to reapply.

⁹⁸ See Chapter II of this report (the section on sentencing).

⁹⁹ As cited by the Law Commission of India (1991) *142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without bargaining*, p.16, Government of India.

¹⁰⁰ Bureau of Police Research & Development (2007) *National Draft Policy on Prison Reforms and Correctional Administration*, Ministry of Home Affairs, p.112, Government of India.

¹⁰¹ Law Commission of India (1991) *142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without bargaining*, p. 20, Government of India.

¹⁰² Law Commission of India (1991) *142nd Report on Concessional Treatment for Offenders who on their own initiative choose to plead guilty without bargaining*, p.18, Government of India.

¹⁰³ See Section 3, *Probation of Offenders Act* 1958.

¹⁰⁴ See Section 4, *Probation of Offenders Act* 1958.

¹⁰⁵ See Section 12, *Probation of Offenders Act* 1958.

¹⁰⁶ This is a procedure for summary disposal and seems to be incorrectly mentioned as an offence.

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

Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

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

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

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



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