

Pre-trial Detention and Access to Justice in Orissa



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Pre-trial Detention and Access to Justice in Orissa

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CONTENTS

CHAPTER 1	1
Introduction	
CHAPTER 2	7
History of Prisons in Orissa	
CHAPTER 3	11
Undertrial Prisoners	
CHAPTER 4	20
Preventive Detention	
CHAPTER 5	24
Legal Aid	
CHAPTER 6	29
Court Production & Videoconferencing	
CHAPTER 7	34
Systemic Provisions to Check Prolonged Detention	
CHAPTER 8	39
Prison Visiting System	
CHAPTER 9	43
Grievance Redressal	
CHAPTER 10	45
Conclusion and Recommendations	
ANNEXURES	47
ENDNOTES	61

ABBREVIATIONS

BOV	Board of Visitors
BPR&D	Bureau of Police Research & Development
CrPC	Code of Criminal Procedure
IPC	Indian Penal Code
JMFC	Judicial Magistrate of First Class
NCRB	National Crime Records Bureau
NOV	Non-Official Visitors
PVS	Prison Visiting System
SDJM	Sub-Divisional Judicial Magistrate
SHRC	State Human Rights Commission
SLSA	State Legal Services Authority
OSLSA	Orissa State Legal Services Authority

Disclaimer: This study was conducted in 2009 and is largely an account of the prisoners' stories and the experiences of the prison officers. The data was collected before the commencement of the National Mission for Delivery of Justice and Legal Reform in January 2010.

INTRODUCTION

Under the Seventh Schedule of the Constitution of India, prisons come under the State List. These custodial institutions are governed by the Prisons Act of 1894 and the rules prepared by the state governments and the governments of the union territories. Each state has its own prison manual with detailed rules for administration and management, regulating every aspect of prison life, both for prisoners as well as prison staff.

India has 3,76,396 prisoners in its 1,276 prisons.¹ Of these prisoners, only 31.9 per cent have been proved guilty.² The remaining 68.1 per cent are undertrials, detained but innocent in the eyes of the law. Orissa has the ninth highest prison population in the country with 15,368³ prisoners. The undertrial population towers at 72 per cent⁴ which is higher than the average undertrial population of India.

Undertrial prisoners are accused for offences ranging from petty offences such as ticket-less railway travel to higher gravity offences such as murder. “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.”⁵ They are among the most vulnerable sections in the prisons, whose right to liberty has been curtailed before their conviction.

With imprisonment, a radical transformation comes over a prisoner, which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life.⁶

Most undertrial prisoners are first-time offenders and their initial encounter with the harsh realities of our justice delivery system makes them disconcerted. It leaves an indelible mark not only on the prisoner’s personal and professional life, but also on those dependent on him/her. Since they are oblivious of their fundamental rights, it is the state’s responsibility to ensure that the inmates are made aware of their rights and the process of the delivery of justice.

THE STUDY

The Prison Reforms Programme of Commonwealth Human Rights Initiative (CHRI) has established its presence in various states, such as Andhra Pradesh, Delhi, Karnataka, Rajasthan, Madhya Pradesh and Maharashtra, to name a few. This study is our first intervention in Orissa and hence it is intended to be a focused one.

CHRI commenced this study to assess the implementation of Sections 436 and 436A of the Code of Criminal Procedure (CrPC), 1973 for the release of those undertrial prisoners who have been detained for an undue length of time. The study also aims to examine whether the prisons in Orissa house undertrial prisoners under the Preventive Detention Sections 107, 109 and 110 of the CrPC. It further seeks to identify the existing systemic provisions which, if revived, could facilitate the implementation of the above mentioned CrPC amendments.

The National Crime Records Bureau (NCRB) defines an undertrial prisoner as “a person kept in prison (judicial custody) while the charges against him are being tried”.⁷ It also defines another category – detenues as those “in prison on the orders of competent authority under the relevant preventive detention law”.⁸ For the purposes of this study, undertrial prisoners comprise both these categories and denote all those un-convicted prisoners, who have been detained in prison during the period of investigation, inquiry or trial for the offences they are accused to have committed.

The study was conducted in two phases. In the first phase it focused primarily on those undertrial prisoners who would fall under the purview of Sections 436 and 436A of the CrPC as well as those under the Preventive Sections across two circle jails. On completion of the first phase, we felt the need to expand the scope of the study to include other types of prisons. To substantiate our findings and to be able to generalise it to the rest of the prisons in the state, CHRI designed Phase II of the study. In Phase II, we expanded our study to cover several other districts and obtained data from all categories of prisons, viz. circle jails, district jails, sub-jails, special jails and special sub-jails.

Sample

The first phase of the study was restricted to circle jails as these prisons have a significantly high undertrial population compared to other prisons of the state. The criteria to shortlist the two circle jails during this phase were, prisons with:

- Highest undertrial population;
- Highest prison population;
- Representative undertrial population;
- Undertrial prisoners detained for a long period; and
- Male and female prisoners.

During the pre-assessment phase, the team identified two circle jails with the highest undertrial representation – Berhampur and Choudwar Circle Jails with 377 and 538 undertrial prisoners

respectively. Both prisons have the highest prison population in the state, as shown in Table 1.

Table 1: Prison Capacity & Prison Population in Circle Jails

No.	Name of Prison	Scheduled Population			Present Population				
		M	F	Total	Convict		Undertrial		Total
					M	F	M	F	
1.	Baripada	571	17	588	280	19	268	21(1)	588
2.	Berhampur	700	20	720	221	5	357	20(1)	603
3.	Choudwar	944	20	964	318	7	521	17	863
4.	Sambalpur	451	-	451	214	-	353	-	567

* Data as of 31 July 2009, Orissa Prison Department

* M = Male

* F = Female

Orissa has diverse categories of prisons, which includes circle jails, district jails, sub-jails, special jails, special sub-jails and open jails. Barring open jails,⁹ in Phase II of the study, a conscious effort was made to include prisons belonging to each of the categories found in the state. The team interviewed undertrials in seven prisons, namely, Berhampur Circle Jail, Choudwar Circle Jail, Balasore District Jail, Puri District Jail, Bhubaneswar Special Jail, Bhadrak Special Sub-Jail, and Angul Juvenile Jail, and conducted a comprehensive assessment. The research team interviewed 66 prisoners across these seven prisons to understand their socio-economic profile and their perceptions about detention and access to justice. All were undertrial prisoners who were booked under bailable or non-bailable offences. Preference was given to those who were eligible for release or were under the Preventive Sections; however the sample was not restricted to them, since this exercise was conducted to understand the profile of undertrial prisoners and their interpretations of the state legal aid machinery.

To identify prisoners eligible for release under Sections 436 and 436A, records of undertrials from across ten prisons (in addition to the seven prisons visited) were reviewed.¹⁰ Table 2 lists the 17 prisons which include the above mentioned four circle jails in the state.¹¹

Table 2: Prisons Examined During Phase II of the Study

No.	Name of Prison	Scheduled Population			Present Population					Overcrowding %
		M	F	Total	Convict		Undertrial		Total	
					M	F	M	F		
1.	Baripada	571	17	588	280	19	268	21(1)	588	-
2.	Berhampur	700	20	720	221	5	357	20(1)	603	-
3.	Choudwar	944	20	964	318	7	521	17	863	-
4.	Sambalpur	451	-	451	214	-	353	-	567	25.7
District Jails										
5.	Balasore	427	9	436	72	3(2)	313	14(5)	402	-
6.	Bolangir	337	17	354	164	3	155	5(1)	327	-
7.	Keonjhar	309	8	317	311	9	231	12(3)	563	77.6
8.	Puri	375	10	385	162	10	310	9(5)	491	27.5
Special Jails										
9.	Bhubaneswar	629	14	643	105	6	506	12(3)	629	-
10.	Rourkela	414	16	430	184	2	551	30(2)	767	78.4
Special Sub-Jails										
11.	Bhadrak	161	3	164	86	7(1)	201	22	316	92.7
12.	Bonaigarh	62	5	67	62	1	190	8	261	289.6
Sub-Jails										
13.	Chattarpur	142	7	149	4	-	125	5(2)	134	-
14.	Jajpur	148	7	155	2	-	194	7(3)	203	31.0
15.	Jharsuguda	97	5	102	2	-	218	14	234	129.4
16.	Khurda	210	15	225	6	-	144	8	158	-
17.	Angul	211	6	217	88	-	248	6	342	57.6

* Data as of 31 July 2009, Orissa Prison Department

* M = Male

* F = Female

Method

Phase I of the study commenced with a field inquiry where the researchers visited two prisons with large undertrial populations (Choudwar and Berhampur Circle Jails). Both these jails have a high undertrial population and also house women undertrial prisoners. The team obtained periodic reports – prepared and sent by each prison to the Inspector General (IG) of Prisons (referred to as fortnightly reports henceforth) enlisting undertrial prisoners housed in jails. These reports were examined to identify the prisoners who were eligible for release under Sections 436 and 436A.

Phase II of the field study combined two methods, survey and semi-structured interviews. A comprehensive questionnaire (See Annexures B and C) was administered to the prison staff and as well as the prisoners. Further questions were asked and clarifications sought based on their responses.

Data Collection

A multi-pronged approach was adopted to obtain data. During Phase I the research team, after obtaining the fortnightly reports from the circle jails,¹² visited the prisons in April 2009 to interview the short-listed prisoners. Phase II combined the fortnightly reports and interviews with prisoners and prison staff. The team visited seven prisons¹³ to interview those concerned in August 2009. Latest fortnightly reports were obtained from the IG Prison's office for the 17 prisons. These prisons belonged to different categories and had a comparatively higher population of undertrials. The fortnightly reports available from these prisons were more recent than the others. RTI applications were also sent to the various concerned departments, such as the State Legal Services Authority (SLSA), the State Human Rights Commission (SHRC), Home Department, and the prisons visited to obtain official copies of government orders and circulars.

The data collected by the field researcher was analysed to determine: how many undertrials from our sample group were detained under Sections 107, 109, and 110, and the period for which they languished in prison; how many prisoners were under bailable offences and for how long; and how many of the prisoners were entitled to bail under Section 436A either because they had undergone half the prescribed period or because they had undergone the maximum prescribed punishment. If the data indicated that the prisons housed inmates who were entitled for release, further analysis was done to determine the reason for their unnecessary detentions and non-implementation of the existing provisions for their release.

Limitations

This study is largely an account of the experiences of prison officers and prisoners. CHRI also interviewed SLSA members, but in a limited capacity. There was some difficulty in interpreting the reports that were handwritten. When verified against the prisoners' warrants, some fortnightly reports were discovered to have noted inaccurate sections under which the prisoners were accused. However, it was not possible to check the warrants of all the prisoners listed in the fortnightly reports and hence the team went ahead with an assumption that the data obtained from the prison department was accurate.

Structure of the Report

This report is divided into 10 chapters. Chapter 2 provides an overview of prisons in Orissa, their capacity and the present situation pertaining to overcrowding in the state. Chapter 3 profiles an average undertrial prisoner, alongside identifying undertrial prisoners under bailable and non-bailable offences. While Chapter 3 elaborates on CrPC, 2005 amendments, Chapter 4 reports on those under preventive detention, the practise in Orissa and the laws governing them. Chapter 5 documents the levels of access to justice for prisoners, the statute that ensures free legal aid to all, and the realities on the ground. Chapter 6 assesses the situation of producing prisoners in court in the state. Chapter 7 culls out some of the relevant existing provisions, assesses their current implementation status, and reports why these need to be revived. Chapter 8 and 9 suggest two of the existing provisions, of which, one, the Prison Visiting System is largely defunct, and the second never got implemented. Chapter 10 offers the study's conclusions and presents a set of recommendations for those who are duty-bound to safeguard the rights of prisoners.

HISTORY OF PRISONS IN ORISSA

PRISON TYPES

In the past decade, the number of prisons in Orissa and their capacities have undergone severe transition. While in 1995, there were 68 prisons in the state, the 2007 statistics report a total of 70 prisons with 13 district prisons, 52 sub-jails, one women's jail, one open jail, two special jails and one other jail.¹⁴ Orissa had a borstal school, which was closed in 2006. The prison types reported by NCRB do not correspond to those declared by the state's prison department. It does not have the "circle jails" and "special sub-jails" categories that exist in Orissa. The "special sub-jails" are clubbed together with the list of sub-jails by NCRB. The NCRB prison statistics combine the circle and district jails in the category of district jails in order to have one coherent standard form of reporting across the country. The number of circle jails, district jails, women's jail, special jails, special sub-jails and open jails has remained the same over a decade. There have been new prisons only at the sub-jail level.

The Orissa Prison Manual, 1942 is so outdated that when this manual was prepared there were no central/circle jails. It lists Cuttack, Sambalpur, Puri, Berhampur, Balasore and Koraput as district jails. At present, Cuttack – commonly known as Choudwar – is a circle jail, like Sambalpur and Berhampur. Puri, Balasore and Koraput continue to function as district jails. The manual only classifies jails in the state as district jails – first,¹⁵ second¹⁶ and third¹⁷ class, subsidiary jails, and subsidiary special jails. Akin to NCRB, it does not have the categories of prisons as exists in the state at present.

POPULATION vs. CAPACITY

By conducting a comparative analysis of capacity, population and occupancy rate between 1997 and 2007, it was resolved that overcrowding still remains a concern. Accommodating 7,513 prisoners in 1995, the occupancy rate was at 140.8 per cent. After over a decade, despite the construction of seven new prisons (till 2007) and a 42 per cent increase in the state's prison capacity, the occupancy rate remained at 144.9 per cent in 2007. If the prison capacity increased by 42 per cent, the prison population also increased at around the same rate of 43 per cent in the last decade.¹⁸ In 2007, Orissa had a capacity of 10,603 prisoners in its prisons, which is the twelfth highest in the country. The occupancy rate (see Table 3) has declined from 160.5 per cent in 2005 to 144.9 per cent in 2007, due to the construction of new barracks in its prisons.

Table 3: Comparative Analysis of Orissa Prisons

Year	Capacity	Population	Occupancy Rate	Deaths in Custody	Budget (in Lakhs)
1997	7513	10756	140.8	-	2287.3
1999	7532	12961	172.1	46	2770.8
2001	7542	12637	167.6	39	2882.7
2003	8006	13158	164.4	44	2934.3
2005	9125	14644	160.5	49	3591.2
2007	10603	15368	144.9	-	-

As reported in Prison Statistics India by the National Crime Records Bureau

The issue of overcrowding was a concern till 2008. According to the prison department's statistics of 2008, there were 75 prisons, with 52 sub-jails apart from the other jails. Within the last one year (September 2008-July 2009), the department added six new sub-jails in the state and the total prison capacity increased from 12,479 to 14,886 prisoners. Banapur, Khariar, Kotpad, Narasinghpur, Salepur, and Sohela are the newly constructed sub-jails, each with a capacity of 300 prisoners, including 50 women prisoners in each prison. Orissa records the second highest sub-jails capacity¹⁹ in the country, after Madhya Pradesh. Constructing new prisons is not the only solution. There are other aspects that contribute to overcrowding which have been discussed later in this report.

With the construction of new jails, the overall prison population (see Annexure A) is under the sanctioned capacity and hence there is no overcrowding in these prisons. However, intervening at the micro level, analysing overcrowding in each of the prison types, the picture is significantly different.

Table 4: Prison Occupancy Index

Index	Occupancy Range (%)	No. of Prisons	% of total Prisons	Names
Highly Overcrowded	Above 300	9	11	Bonaigarh, Athagarh, Narasinghpur, Karanjia, Dasapalla, Kamakhyanagar, Nawapara, Baramba, R-Udayagiri,
Moderately Overcrowded	200-299	5	6	Dharamgarh, Kendrapara, Ranapur, Suruda, Banki,
Overcrowded	100-199	28	34	Baripada, Sambalpur, Boudh, Rairakhol, Bhawanipatna, Keonjhar, Bhanjanagar, Koraput, Phulbani, Rourkela, Pallahara, Rairangpur, Sundargarh, Bhadrak, Puri, Paralakhemundi, Kuchida, Khandapara, Athamalik, Champua, Patnagarh, Aska, Jharsuguda, Padampur, Talcher, Open Air Jail, Jeypore, Nari Bandi Niketan,
High Occupancy	88-99	9	11	Choudwar, Umerkote, Hindol, Bolangir, Dhenkanal, Anandpur, Bhubaneswar, Balliguda, Balasore
Moderate Occupancy	50-79	12	15	Berhampur, Udala, Titilagarh, Deogarh, Malkanagiri, G-Udayagiri, Jajpur Road, Jagatsinghpur, Gunupur, Baragarh, Angul, Khariar
Low Occupancy	Less than 49	19	23	Banapur, Sonapur, Barbil, Digapahandi, Bisam Cuttack, Rayagada, Chattarpur, Nimapara, Nayagarh, Narasinghpur, Nabarangpur, Kujanga, Kotpad, Kodala, Salepur, Khurda, Jajpur, Sohela, Nilagiri

While 48 per cent²⁰ of prisons are still overcrowded, 23 per cent are virtually empty with less than 50 per cent occupancy.²¹ The various prison types and the degree of overcrowding is as follows:

- Circle Jails (4): Slightly overcrowded, particularly Sambalpur and Baripada;
- District Jails (9): Six district prisons out of nine are overcrowded;
- Special Jails (2): One special jail is overcrowded at 117 per cent;
- Special Sub-Jails (6): Five of the six special sub-jails are overcrowded; Deogarh Special Sub-Jail accommodates prisoners well under its capacity;
- Sub-Jails (57): There is a mix of occupancy rates in sub-jails; the six new sub-jails are on the lower occupancy range;
- Women's Jail (1) and Open Jail (1): Both the Women's Jail and Open Jail are equally overcrowded.

According to the Prison Statistics, 2007, all the prison types are overcrowded except for the Women's Prison and the Open Jail. Even though the number of district jails in the state remains constant, their capacity (which includes circle jails) has increased from 3,978 to 5,475 in the past 12 years, which is a 38 per cent increase. The maximum overcrowding is in Angul Juvenile Jail,²² which has a capacity of 97 prisoners and the prison records confirm the increase in capacity to 217. Therefore, overcrowding remains a major issue in the district and sub-jails.

Overcrowding is largely a product of the high undertrial population in jails. This is nothing new and has been a norm since the 1970s. There is a gradual shift in the convict to undertrial prisoner proportion in Orissa, from 25:75 in 1995 to 30:70 in 2007.²³ The undertrial prisoner population has significantly increased in these 12 years by 40 per cent. The Seventh Finance Commission in 1978 studied the proportion of undertrials to the total jail population in various states and found this category of prisoners to be very high in several states, including Orissa.²⁴ Even the All India Committee on Jail Reforms (commonly known as the Mulla Committee) documented the overcrowding issue as "acute" in 1978, with the undertrial population at a high of 64 per cent of the total prison population.²⁵ The situation has not improved since. The following chapter looks into this issue more closely.

UNDERTRIAL PRISONERS

Undertrial prisoners continue to be detained in prisons for long periods of time.²⁶ This was a concern in the 1980s when the Mulla Committee suggested a review be conducted on an all-India basis to investigate the implementation of the provisions of the CrPC to ensure timely release of undertrial prisoners.²⁷ It still remains a major concern today and has led to several other problems in the prison system, such as overcrowding, deteriorating living conditions, lack of resources, poor prison management, overburdened prison staff, etc.

UNDERTRIAL PRISONERS' PROFILE

To understand an average prisoner awaiting trial who is more likely to continue to remain in prison, the research team interviewed 66 undertrial prisoners – 47 male and 19 female inmates across seven prisons.²⁸ The prisoners' ages ranged from the youngest at 20, to the oldest at 90 years. Except for five prisoners, all of them were admitted to prison either on the same day or the next day after their arrest. Two prisoners from Choudwar Circle Jail and three from Bhubaneswar Special Jail were kept in police custody for three to four days, which is a breach of Section 151(2) of the CrPC.

Given below is a summary of our findings. The summary is indicative of the socio-economic profile of the prisoners and highlights aspects of their lives, such as education and occupation that form key determinants in their approach to seeking justice.

■ Detention Period

The prisoners who were interviewed by the research team were imprisoned for a minimum of one month to a maximum of six years, with an overall average stay of 14 months. Of those interviewed, 33 per cent had stayed in prison for more than a year. Berhampur, Choudwar and Bhubaneswar jails had prisoners who had stayed for a longer duration compared to those in the other four prisons. The average period of detention for Berhampur, Bhubaneswar and Choudwar Jails were 24, 22 and 19 months respectively. While in Berhampur, 70 per cent of the prisoners interviewed had stayed for longer than a year, in Choudwar 54 per cent, and in Bhubaneswar Special Jail 50 per cent had stayed for more than a year. Puri had a better detention record with five of the nine prisoners having stayed for a month in the prison. (See Annexure E for a detailed analysis of the detention period of those interviewed across the seven prisons.) Table 5 shows the distribution of prisoners and the period for which they were detained.

Table 5: Undertrial Profile Based on Period of Detention

Period	No. of Undertrials	Per Cent
Upto 3 Months	23	36
3-6 Months	11	17
6-12 Months	9	14
1-2 Years	8	13
2-3 Years	6	9
3-5 Years	6	9
Over 5 Years	1	2
Total	64	-

■ Education

In terms of the level of education of these undertrial prisoners, 10 per cent had attended primary school, 18 per cent secondary school, 6 per cent higher secondary school and 9 per cent were exposed to some degree of college level education, either a bachelor or diploma course.²⁹ The majority (55 per cent) of the prisoners interviewed were illiterate without any formal education. They were the ones who were the most ignorant and anxious about their cases.

■ Family Income

When inquiring about the total monthly family income, information for five prisoners was not available. The monthly family income was grouped as follows:

- Less than Rs. 500;
- Rs. 500-1,000;
- Rs. 1,000-2,000;
- Rs. 2,000-5,000;
- Rs. 5,000-10,000; and
- Over Rs. 10,000.

The majority of prisoners (69 per cent) had a monthly family income ranging between Rs. 1,000 and Rs. 5,000. Three prisoners fell under the lowest income bracket, of which the minimum was Rs. 50 and maximum was Rs. 500 per month. A female prisoner aged 55, who earned her living by

selling dried fish, had the lowest monthly earning of Rs. 50 among those interviewed. Her family comprises one son who is mentally unstable. Due to her incarceration, he was left on his own to wander around the village asking for food. She had a daughter who died in 2008.

While 9 per cent (six) of the prisoners had a family income of Rs. 500-1,000, another 9 per cent had an income in the range of Rs. 5,000-10,000. Only four prisoners (6 per cent) had a total family income of over Rs. 10,000. It can be concluded that this was a very small representative undertrial population, since they were not selected on the basis of their economic status. These were random selections.

■ Occupation

Those prisoners (five) who had some education at the bachelor's level or had completed a diploma course were occupationally better placed than the others. They started an independent garment store or art company, or were working as salesmen. The other prisoners were more involved in labour-intensive work ranging from cultivating other people's land, daily wage labourers, rickshaw pullers, watchmen, masons, some making incense sticks or selling dried fish, picking flowers or selling *prasad* at the temple. But most of the prisoners had an agricultural background, were rickshaw pullers or daily wagers on the look out for work every day. Among the female prisoners, four were involved in some form of work such as making incense sticks, flower picking and selling, and selling dried fish. The other female prisoners were dependent on their husbands or sons.

UNDERSTANDING OF BAIL PROVISIONS

A significant number of prisoners (30 per cent) were not aware if a bail application had been filed on their behalf or not. Only 37 per cent of those interviewed had filed bail applications and another 27 per cent had not.

After reviewing the profile of the prisoners we interviewed, it was evident that the majority were illiterate and “[came] from poorer and underprivileged sections of society with rural and agricultural backgrounds”.³⁰ Given this, every effort should be made to “nourish and safeguard the constitutional goal of equal justice for all to the extent possible”.³¹

Undertrial prisoners, for the purpose of this study were classified as those charged under:

1. Bailable offences;
2. Non-bailable offences; or
3. Preventive Detention Sections. (see Chapter IV on Preventive Detention).

UNDERTRIAL PRISONERS UNDER BAILABLE SECTIONS

The CrPC does not define the term “bail”, although offences in the First Schedule are classified as “bailable” and “non-bailable”. The former is a less serious offence and any person accused of committing these is entitled to be released on bail as soon as s/he is willing to furnish bail.³² Many poor people are detained in prison for alleged involvement in bailable offences primarily because they are unable to furnish a surety. This is a serious concern, because in such cases bail is a matter of right, and people end up spending long periods in detention simply because they are poor. This has been recognised repeatedly by the Apex Court and several committee reports, but nothing has been put into practice.

The bail system causes discrimination against the poor since the poor would not be able to furnish bail on account of their poverty while the wealthier persons otherwise similarly situated would be able to secure their freedom because they can afford to furnish bail. This discrimination arises even if the amount of the bail fixed by the Magistrate is not high, for a large majority of those who are brought before the Courts in criminal cases are so poor that they would find it difficult to furnish bail even in a small amount.³³

The Law Commission in its seventy-seventh and seventy-eighth reports recommended simplification of bail procedures, which was reiterated by the Mulla Committee in 1983 and the Supreme Court in 1997.³⁴ The Committee also highlighted that “bail should be granted to the accused as a matter of right unless proved by the prosecution that his being at large might endanger the security of society.”³⁵ The Supreme Court in *Ramamurthy vs. State of Karnataka*³⁶ stated that appropriate decisions be made on the recommendations of the Law Commission Report within six months of the date of judgement. However, nothing has been done yet. The Apex Court in *Motiram & Ors vs. State of Madhya Pradesh* observed that bail provisions contained in the CrPC must be liberally interpreted in the interest of social justice, individual freedom and indigent persons.

In the light of these suggestions, Section 436 of the CrPC which deals with the right to bail in bailable offences was amended in 2005.³⁷ It mandates the police or the court to release an indigent person on personal bond without asking for any surety.³⁸ The amendment allows an indigent person to execute a bond that s/he shall appear before the court and stand trial. The Section states that the court shall consider any person who is unable to furnish bail within seven days from the date of her/his arrest as indigent.³⁹ Therefore, a person accused of a bailable offence can be detained in prison for a maximum period of seven days. This was a major concern earlier when the bail

system caused discrimination against the poor since they were unable to furnish a surety on account of their poverty and remained in prison for undue lengths of time. This was raised by the Apex Court on several occasions, including in a case by Justice P. N. Bhagwati in *Hussainara Khatoon & Ors vs. Home Secretary, Bihar, Patna*⁴⁰ while raising the inherent weaknesses of the monetary-based bail system being “extremely unsatisfactory” requiring “drastic change”. He stated: “It is virtually impossible to translate the risk of non-appearance by the accused into precise monetary terms.” This amendment if implemented would ensure that those under bailable offences and from under-privileged backgrounds would not be discriminated against. Despite sounding fair, the bail provisions and their implementation is highly discriminatory.

UNDERTRIAL PRISONERS UNDER NON-BAILABLE SECTIONS

When accused of committing a non-bailable offence, a person can only be released on bail by the court if it is satisfied that the person shall attend the court to stand trial; will not tamper with evidence or influence witnesses or obstruct police investigation in any manner; and will not commit any other offence or hinder the interest of justice.⁴¹

The Mulla Committee, in 1983, recommended the amendment of the CrPC:

So as to provide that as soon as an undertrial prisoner completes the period of detention equal to half of the maximum sentence awardable to him on conviction, he is released immediately and unconditionally; and such undertrial should, for all purposes in law, be treated as having been discharged by the court of law.⁴²

To secure the fundamental right to personal liberty of those accused of non-bailable offences, such an amendment to the CrPC would have been absolute and a judicious one. Even though the 2005 amendment of the CrPC was compromised, it was formulated with the same spirit. It promised some respite to undertrial prisoners detained under non-bailable offences who completed half the maximum punishable sentence. Section 436A of the CrPC,⁴³ applicable to undertrial prisoners charged for non-bailable offences, lays down the right of an undertrial prisoner to be considered for release on bail once s/he has served one half of the maximum term of the sentence s/he would have served had s/he been convicted. Secondly, it lays down the maximum period that any undertrial prisoner can be detained. It elucidates that in no case can an undertrial be detained beyond the maximum period prescribed for the offence that s/he is alleged to have committed. This provision is not applicable to persons who are accused of an offence which attracts the death sentence as one of the punishments. On a bail application filed under this Section, the court shall hear the public prosecutor and may order the:

1. Release of such person on a personal bond with or without surety; Release of such person on bail instead of personal bond; or
2. Continued detention of such person.⁴⁴

To let more undertrials fall under the purview of this amendment, the First Schedule of the CrPC should be amended to make more non-bailable offences as bailable. For instance, even the Seventy-Eighth Report of the Law Commission recommended that “offences under the law other than the Indian Penal Code (IPC) punishable with three years of imprisonment should be made bailable with the exception of offences under the Official Secrets Act, 1923.”⁴⁵

PROLONGED DETENTION

Many undertrial prisoners are detained in prisons for a long time, and in some cases the period of detention exceeds the maximum period of imprisonment prescribed for the offence. Often this occurs because the police do not complete the investigation and file the charge sheet in time. This is a very serious concern because such people remain in prisons without any inkling of a police case against them.

Table 6 depicts a comparative analysis of the period of detention of undertrial prisoners from 1995-2007 as reported by the National Crime Records Bureau. The table shows that since 2001 there has been a gradual increase in the number of prisoners who have been detained for over five years.

Table 6: Period of Detention of Undertrial Prisoners in Orissa (1995-2007)

Period of Detention of Undertrials	1995	1999	2001	2003	2005	2007
Upto 3 Months	0	1911	3965	2949	4562	5304
3-6 Months	5054	4297	2239	1763	2253	2205
6-12 Months	1404	1814	1483	1124	1563	1782
1-2 Years	930	1232	1073	2977	1253	1049
2-3 Years	311	556	530	403	380	427
3-5 Years	204	216	295	193	203	205
Over 5 Years	0	61	31	35	33	48
Total	7903	10087	9616	9444	10247	11020

Choudwar Circle Jail and Bhubaneswar Special Jail have the maximum representation of undertrial prisoners. In Bhubaneswar Special Jail, 20 per cent of the total undertrial population have stayed in jail for over one year and in Choudwar Circle Jail, the figure is 18 per cent. (see Annexure E and the section above – Undertrial Prisoner Profile – Detention Period.) According to NCRB statistics, in 2007, there were 48 prisoners who had stayed in prison for over five years.

With an extremely low conviction rate of 15.8 per cent for IPC cases, it is very likely that a striking proportion of undertrial prisoners are released as innocent.⁴⁶ “It would indeed be a travesty of justice to keep in jail for a period of five to six years for an offence which is ultimately found not to have been committed by him. Can the Courts ever compensate him for the incarceration which is found to be unjustified?”⁴⁷

Section 167 of the CrPC lays down the maximum period within which the police investigation must be completed and a charge sheet filed before the court. This period is 90 days for offences punishable with death, life imprisonment or imprisonment for a term of not less than ten years, and 60 days for all other offences. The law provides that if an investigation is not completed within the stipulated period, the accused should be released on bail, provided he is prepared to furnish bail, thus highlighting the need for prompt investigation. This provision shields the accused from suffering incarceration on account of the inability of the investigating agency to wind up its investigation in time. Of the total 79,867 cases pending investigation by the police at the beginning of 2008, 33.9 per cent were still pending at the end of that year.⁴⁸

GROUND REALITIES

The amended provisions⁴⁹ have been used sparingly. Some of the reasons for this are: lack of clear procedural steps; no clear accountability for its non-implementation; and lack of awareness among the prisoners and those who are in direct contact with them. There has not been any effort to educate the concerned departments or the prisoners about such provisions. Proper review of the cases should be done promptly to identify those eligible under Sections 436 and 436A. A Patna High Court Bench diligently clarified the role of each department in the implementation of Section 436A. The bench took *suo moto* cognisance and initiated a public interest litigation based on a newspaper report published in *The Times of India* on 26 June 2006.⁵⁰ The following directions were given:

- 1) The primary role to inform the prisoners of the availability of benefits under this Section lies with the superintendent;

- 2) The IG of Prisons should be responsible for monitoring and keeping a check on the actions being taken;
- 3) The Member Secretary of the District Legal Services Authority (DLSA) should provide free legal aid to those who qualify; and
- 4) A committee comprising the District Magistrate, Jail Superintendent and the Public Prosecutor should periodically assess cases and report to court.

During the interviews with the prison officers, the team inquired if they had received any circular from the IG Prisons directing that a system be established to monitor prisoners eligible for bail under Sections 436 and 436A. While Angul, Bhadrak, Balasore, Berhampur and Choudwar denied receiving such a circular, Bhubaneswar and Puri jails acknowledged receiving it. Interestingly, none of the prisons were able to provide us with a copy of the circular. While the Bhubaneswar Special Jail Officer knew partially about these Sections, none of the other prisons were aware of these provisions. It is unfair to expect the naïve prisoners to be aware of these amendments, when their custodians are ignorant about the provisions. If a prisoner is aware about it, s/he can directly contact the Superintendent or the IG of Prisons, tell his lawyer to file a fresh bail application, or if he does not have a lawyer get a free legal aid lawyer to apply for bail under the amended provisions.

CHRI assessed the situation of those prisoners under bailable offences across the seven prisons the team visited and the 17 prisons from which the team obtained fortnightly reports. There were 229 prisoners across those 17 prisons that were charged under bailable offences and were eligible under Section 436 of the CrPC (see Table 7). Twenty-three prisoners were eligible to be considered for bail under Section 436A after having completed half their maximum sentence. There were five prisoners in Berhampur Circle Jail who had completed their maximum punishable sentence had they been convicted – they were eligible to be released under Section 436A.

Table 7: List of Prisons and Undertrial Prisoners Eligible for Release under Sections 436 & 436A

No.	Prison	436	436A: Half Term	436A: Max Term	Total
1.	Berhampur Circle Jail	9	7	5	21
2.	Choudwar Circle Jail	20	3	-	23
3.	Baripada Circle Jail	23	-	-	23
4.	Sambalpur Circle Jail	5	-	-	5
5.	Balasore District Jail	22	-	-	22
6.	Bolangir District Jail	13	2	-	15
7.	Keonjhar District Jail	20	-	-	20
8.	Puri District Jail	11	-	-	11
9.	Angul Juvenile Jail	16	-	-	16
10.	Bhubaneswar Special Jail	28	6	-	34
11.	Rourkela Special Jail	12	-	-	12
12.	Chattarpur Sub-Jail	5	1	-	6
13.	Jharsuguda Sub-Jail	17	2	-	19
14.	Khurda Sub-Jail	10	-	-	10
15.	Bhadrak Special Sub-Jail	7	-	-	7
16.	Bonaigarh Special Sub-Jail	8	-	-	8
17.	Jajpur Sub-Jail	3	2	-	5
	Total	229	23	5	257

(Note: Calculations for the half term and maximum term for offences where the sub-section was missing, were done by using the sub-section with the least maximum sentence. Some of the Acts which did not have sub-sections mentioned were: NDPS 20, NDPS 21, Arms Act 25 and 27, WLP 51, Explosives Act 9B, Explosives Substance Act, Bihar & Orissa Excise Act 47. The calculations were done keeping 30 September as the cut off date. The above data was obtained from fortnightly reports obtained from the prison headquarter.)

PREVENTIVE DETENTION

Preventive detention is initiated by the police, then carried out by the Executive Magistrate, and finally sealed by the prison authorities where the person in question is left and forgotten. It is a precautionary measure which empowers the police to take steps before the commission of a crime.

The framers of the Preventive Sections of the law (Sections 107, 109 and 110 of the CrPC) were well intentioned, keeping in mind the urgency of potential situations whereby an individual's acts might be detrimental to society. However, the way it is enforced is violative of the fundamental rights of an individual and is discriminatory towards the poor and underprivileged in our society.

Once arrested by the police under Section 151 of the CrPC, the concerned person is produced before an Executive Magistrate for appropriate orders. Under these Preventive Sections (Sections 107, 109 and 110 of CrPC), if the Executive Magistrate feels that there are "sufficient grounds" that the person was "likely to disturb public tranquillity" by committing an unlawful act, s/he may order the person to execute a bond with or

Saleema Khatun (name changed): 40 years recorded in the fortnightly report. No one knows how old she is and neither does she. All she remembers is the pain of being separated from her husband and her child. She does not remember where her house is, but pleads with the woman welfare officer to let her return to her family. Saleema was picked up by the police from near her house and was arrested under Section 109 of the CrPC on 4 March 2009. There are no known faces around her to guide her home. She is psychologically disturbed, and every time she tries to recall her address she has something new in her mind. The next time she is produced before the ADCP cum Executive Magistrate, it will not be any different from the several times she has been produced earlier. She would have been released after three months of her stay had she remembered her address. The police officer who arrested her should note how he has disrupted one more life among others by arresting someone without any particular threat to the "peace and tranquillity of society".

without sureties. However, the terms "sufficient grounds", "breach of peace" are loosely framed and open to various interpretations and misuse.

It is the poor, illiterate and the homeless who are often assumed to be the ones likely to indulge in some form of unlawful act and breach the public peace. It is they who continuously fall into the ambit of this provision. Ordinarily, these are daily wagers who come from neighbouring states in

search of work to support themselves and their families. Hence, it gets difficult for them to arrange the high surety amount ordered by the Executive Magistrate, or to seek help from their relatives. Being a daily wagger earning Rs. 1,500 a month or even less, and not having a consistent source of income, it becomes very difficult for them to arrange the surety amount, even if it is a small one. Despite being innocent and probably a law-abiding citizen, the person is detained for being unable to execute the bond or provide the high surety amount.⁵¹ Since they come from neighbouring states they leave their families at home to earn a living. Often they are even unable to inform their relatives of their imprisonment and are left to the mercies of the prison authorities.

SAFEGUARDS

These provisions have been heavily exploited by the police and used “as a matter of routine to swell figures of apprehension by police stations.”⁵² It is imperative that strict guidelines be framed to prevent the police from randomly arresting people without providing any reasons to the arrestee. The Mulla Committee as early as in 1983, identified loopholes in these sections and recommended that: “Preventive Sections of the Code of Criminal Procedure, specially Section 109 should be reviewed and amended suitably to restrict their use only in very genuine cases.”⁵³

A bench of the Delhi High Court identified preventive detention as one of the concerns for the increased undertrial population in Central Jail, Tihar and after calling for an inquiry report, issued several directives on 18 June 2007. For those detained under Sections 107 of the CrPC read with Section 151 of the CrPC the Court directed:

- a. *All inmates lodged under these Sections due to non-furnishing a surety bond to be released on furnishing a personal bond in the sum of Rs. 2,000.*
- b. *The bond would be furnished to the satisfaction of the Superintendent, Central Jail, Tihar.*
- c. *The personal bond should contain an undertaking that after their release they should report to the local police station within the jurisdiction where proceedings were registered. This should be done twice daily at 10 am and 6 pm. They should mark their attendance on a register maintained in each police station and available with the duty officer in charge.*⁵⁴

It is important to devise a system of judicial oversight on the decisions of the Executive Magistrates. One way could be to mandate each prison superintendent to send a monthly report to the concerned district judge mentioning the number of prisoners under these Preventive Sections and the period for which they have been in custody. Secondly, these cases could be reported to the District Committee⁵⁵ during their coordination meetings. Since the Superintendent of Police is also a

member of the District Committee, it would be beneficial to sensitise him on the misuse of these sections, its contribution in overcrowding prisons and in targeting the poor as “potential criminals”.

However, to safeguard the rights of those detained under these Preventive Sections, Article 22 of the Indian Constitution provides certain clauses that need to be satisfied before detaining a person for a period longer than three months. This has restricted the use of these Sections to detain people for more than three months. However, people are still picked up by the police, arrested and kept away from their family, work and daily lives for three months and more.

Angul Jail's fortnightly report recorded two detenués in December 2008. The research team anticipated the release of these detenués during the visit in August 2009, but was appalled to learn that one of them continued to be detained even after seven months.

The research team, on inquiring about this, discovered that several people who were picked up under these Sections were merely present at the wrong place at the wrong time. They were either loitering around the railway platform or on the streets, oblivious to the fact that it was a crime to be on the streets at that hour. The research team calculated the number of undertrial prisoners under the Preventive Sections of the CrPC by reviewing the fortnightly reports obtained from these prisons. Rourkela had the largest number (33) of detenués.⁵⁷ Choudwar had the second largest number – 26 in June 2009 and 29 in July 2009. Bhubaneswar reported 12 detenués in July 2009, whereas Berhampur had one. The number of detenués in a prison also depends on other factors, such as elections, festivals, etc. During these occasions the police make indiscriminate arrests to demonstrate that law and order is being seriously taken care of.

Table 8: Detention Period for Detenues in Orissa

Prison	No. of Detenues	Maximum Detention Period (Days)	Minimum Detention Period (Days)	Average Detention Period (Days)
Baripada	4	30	6	18
Berhampur	1	133	133	133
Choudwar	29	294	0 ^μ	67
Sambalpur	10	105	19	56
Balasore	8	159	6	35
Angul	2	0 ^μ	0 ^μ	0 ^μ
Jharsuguda	2	157	104	131
Khurda	4	114	32	59
Bhubaneswar	12	49	0 ^μ	25
Rourkela	33	16	0 ^μ	5
Bolangir	-	-	-	-
Puri	-	-	-	-
Keonjhar	-	-	-	-
Chattarpur	0	NA	NA	NA
Bhadrak	-	-	-	-
Jajpur	-	-	-	-
Bonaigarh	-	-	-	-

* The detention period is calculated by using the fortnightly report date as the cut-off date. For example, if a prisoner's date of admission was 1 June 2009 in Baripada Circle Jail, and the Baripada fortnightly report mentioning the prisoner's details was dated 30 June 2009, the detention period calculated is one month. However, it is very likely that it could be more but not less than the statistics mentioned in the table above.

^μ The prisoner was admitted on the same day that the fortnightly report was prepared, which in the case of Rourkela Special Jail was 31 July 2009 and Angul Juvenile Jail was 31 December 2008. However, when the research team visited Angul Jail in August 2009, one of the prisoners continued to remain in the prison.

NA Not Applicable

Those that have crossed the maximum of three months detention period are marked in **RED**.

There were no prisoners detained under the Preventive Sections in Bolangir, Puri, Keonjhar, Chattarpur, Bhadrak, Jajpur, and Bonaigarh during the period when the fortnightly reports were obtained. Berhampur, Choudwar, Sambalpur, Balasore, Jharsuguda, and Khurda had prisoners who were detained for undue lengths of time.

LEGAL AID

The Supreme Court in *Sukh Das & Anr vs. the Union Territory of Arunachal Pradesh*⁵⁸ held that free legal aid was essential for reasonable, just and fair procedure and was therefore a fundamental right of the accused. The state set up the State Legal Services Authorities (SLSA) under the Legal Services Authority Act, 1987 to ensure that every citizen, irrespective of their economic background gets a fair opportunity to prove their innocence and contest their case. The SLSA was mandated to provide free legal aid to all those who wanted legal help, but some criteria were set in order to identify those who really needed it.

*Democracy's very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.*⁵⁹

Free legal aid is the fundamental right of a person accused of an offence and this right is implicit in the requirement of the “reasonable, fair and just” procedure prescribed by Article 21 of the Constitution. This right cannot be denied to anyone on account of the fact that s/he has failed to apply for it.⁶⁰ Often there is no one to help or guide prison inmates on legal matters affecting their cases in courts. Access to justice, just like human rights, should be independent of an individual’s economic, educational or social standing. Despite several efforts of the Indian judiciary, this remains a distant dream. Providing equal opportunity for justice for all is the fundamental duty of the state. The Supreme Court stated that an essential requirement of justice is that every accused be defended by a lawyer.⁶¹

To ensure access to justice for all irrespective of their social or economic status, the Legal Services Authority Act, 1987 mandates every state government to constitute a body. The Orissa State Legal Services Authority (OSLSA) is a statutory body constituted under Chapter III, Section 6 of The Legal Services Authority Act, 1987. OSLSA has 30 District Legal Services Authorities (DLSA), one for each district and 72 Taluka Legal Services Committees (TLSC) functioning under it.⁶² OSLSA has eight official members and five nominated ones.

In the Seventh All India Meet of the State Legal Services Authorities held in Bangalore on 28 March 2009, it was recognised that the Orissa SLSA had failed to appoint full-time Secretaries for its DLSAs as resolved in the Sixth All India Meet in 2007. Section 6, Sub-Section 4 of the OSLSA Rules requires the Member Secretary of SLSA to be a full-time employee for a term of

three years. Andhra Pradesh, Chhattisgarh and Jharkhand were the only states where the Hon'ble Executive Chairperson of the SLSA had successfully appointed full-time Secretaries at the district level.⁶³ A Member Secretary is duty bound to appoint lawyers on the legal aid panel and provide legal aid to those who qualify. The Bihar High Court also notified the role of the Member Secretary to monitor the progress of cases of undertrial prisoners eligible under Sections 436 and 436A, under the guidance of the Hon'ble Executive Chairman.⁶⁴ It is imperative that the Member Secretary be a full-time appointee to fulfil his responsibilities.

FUNCTIONS

The state government in consultation with the Chief Justice of the High Court is bestowed with the power to make rules to carry out the provisions of the State Legal Services Act, 1987.⁶⁵ The rules lay down the powers and functions, the members and their roles, the strategies to provide legal aid to the marginalised sections of society, and other rules to implement the Act. To accomplish its objective of equal provision of legal aid services, OSLSA focuses on four areas viz. legal aid, lok adalats, spreading legal awareness and mediation.

DATA COLLECTION

Statistics were collected to obtain information on:

- Legal aid cells in prisons;
- Legal aid camps;
- Prisoners who opted for free legal aid;
- Prisoners' satisfaction or dissatisfaction with their lawyers; and
- The process used to provide legal aid.

LEGAL AID CELLS & LEGAL AWARENESS CAMPS

Among the seven jails visited, none had a legal aid cell to provide assistance to the prisoners. In 2008, three women prisoners and one male prisoner opted for legal aid in Ganjam District.⁶⁶ SLSA had organised legal awareness camps in two prisons, once in Angul Juvenile Jail in February 2009 and once in Puri District Jail during the last three years. In the recent past, SLSA has not actively organised camps to educate the prisoners on their legal rights.

PRISONERS WITHOUT LEGAL REPRESENTATION

SLSA is mandated to provide free legal aid to all who cannot afford it and ensure that every prisoner has legal representation. This requires coordination between the prisons and SLSA. There is a disconnect between the two agencies. Nineteen per cent of the prisoners interviewed did not have a lawyer. One prisoner in Puri, four in Choudwar, two in Bhubaneswar, five in Balasore, two in Angul and three in Berhampur did not have either a private or a legal aid lawyer to represent them.⁶⁷ One of the prisoners in Bhubaneswar has been in prison since 11 February 2007 and has not been represented by a lawyer. Another prisoner in Bhubaneswar, who was admitted in March 2008, still does not have a lawyer.

The Supreme Court in *Khatri & Ors vs. State of Bihar & Ors*⁶⁸ directed all magistrates and sessions judges to inform every accused who appeared before them without legal representation on account of their economic status about their eligibility to free legal services. When a prisoner in Bhubaneswar Special Jail who has been in prison since 2007 and was without a lawyer for the past seven months, informed the magistrate about the lack of legal representation, the Magistrate curtly responded, “I can’t do anything. Did you ask me before committing the crime?” The Magistrate is under an obligation to inform the accused of this right and inquire whether he wishes to be represented at the state’s cost. In *Sukh Das vs. Arunachal Pradesh*, the Apex Court held that failure to provide free legal aid to the accused at the state’s cost, unless refused by the accused, would vitiate the trial. This right cannot be denied to him on the ground that the accused failed to apply for free legal aid.

LEGAL AID LAWYERS vs. PRIVATE LAWYERS

Very few prisoners opt for legal aid. Most of them prefer to get private lawyers, even though a majority of the prisoners interviewed were equally dissatisfied with them. Of the 51 prisoners interviewed who had a lawyer, only six⁶⁹ opted for a legal aid lawyer, 40 opted for private lawyers and six did not know if their lawyers were private or legal aid lawyers. In Balasore, the Jailor informed us that approximately 15 prisoners file a petition for legal aid annually. In Angul, during the period the research team visited, there were no prisoners who had legal aid lawyers. In 2009, the Puri Welfare Officer informed us that eight prisoners had requested for legal aid counsels and all were assigned legal aid lawyers.

As mentioned above, OSLSA is a body constituted by the government to ensure access to justice for all. Nonetheless, some lawyers, knowing the naïve nature of prisoners, exploit their ignorance. One prisoner confirmed having given money to a legal aid lawyer⁷⁰ to furnish bail. Lawyers promise prisoners that if they give them money, they would be out on bail soon. Among these lawyers, one

of them took Rs. 1,800 from a prisoner to apply for bail. After taking the money he just met her twice in one and a half years, and the last time he met her he again asked for an additional sum of Rs. 3,000 to convince the witnesses to drop out. We were informed that the lawyer does not come to court regularly and is most uncooperative. Such lawyers should be closely monitored and strict action taken against them for deceiving innocent prisoners.

LAWYER VISITS

Even among the prisoners who had a lawyer (both legal aid and private), 23 per cent⁷¹ had met them only once. Most lawyers do not come to prison to meet their clients. There is one lawyer in Balasore District Jail who visits prisoners in jail. However, the Balasore prison officers do not encourage lawyers to visit prisoners in jail. There have been instances where private lawyers have created considerable commotion in the prison, seeking prospective clients and bargaining for their consultation fees. Hence, the prison authorities had to stop them from entering the prison. In other prisons – Berhampur, Choudwar, Puri, Bhadrak, Bhubaneswar and Angul – no lawyer comes to the prison.

Of the six prisoners being represented by legal aid lawyers, three meet their lawyers only in court. None of these lawyers visit their clients in the prison. The prisoner in Angul and two others in Choudwar met their lawyers only once. One of the prisoners in Choudwar requested the Magistrate for representation by a legal aid lawyer. The lawyer attended just one date and has not appeared again during the past eight months. When asked if the prisoners were satisfied with their lawyers, those with legal aid lawyers reported that they were unhappy and admitted that their lawyers did not provide them with sufficient information about their cases. Sixty-seven per cent⁷² of prisoners who had legal aid lawyers were not aware of the status of their case. They were not informed by their lawyers.

PROCEDURE TO OBTAIN LEGAL AID

Ganjam District has a panel of 25 legal aid counsels. These are also formed at the taluka level. Each panel has one permanent counsel committed to cases pertaining to bail. The Registrar-cum-Secretary of DLSA Ganjam confirmed that to ensure competent lawyers on the panel, they appoint only those with at least five years of practice as an advocate in a court.

Legal aid lawyers are not appointed for individual prisons. It is usually the Welfare Officer who intimates the DLSA or the High Court Legal Services Authority or the concerned court that a

prisoner is seeking legal aid.⁷³ In all the prisons visited, except Bhubaneswar Special Jail, the DLSA or the High Court Legal Services Authority does not inform the prison authorities after the legal aid lawyers have been assigned to the prisoner. It is usually the Welfare Officer who checks – after 10-15 days – to determine the details of lawyers appointed to each prisoner. In Bhubaneswar, the DLSA informs the Superintendent about the lawyers assigned from the legal aid panel. In Puri District Jail, this process takes about a month, and the court does not assign a legal aid counsel unless the charge sheet is prepared. This is a practice which, besides brushing aside the directions of the Apex Court, violates the constitutional guarantees of an undertrial prisoner. The Supreme Court has asserted that the state's obligation to provide free legal aid was “not only on or after the commencement of the trial but also when the accused is produced for the first time before the magistrate and when he is remanded from time to time”.⁷⁴

CONCERNS

The panel of legal aid counsels is appointed each year by the Member Secretary of SLSA. On the completion of a civil suit the lawyer gets Rs. 750; for a criminal case he gets Rs. 450 and Rs. 1050 for an appeal case. In order to get this meagre amount, the lawyer has to prove that s/he has attended at least five dates. Most of the legal aid lawyers are not motivated to work *pro bono* owing to the low remunerations provided in the SLSA Act.

SLSA can play a crucial role in identifying prisoners who are eligible to be released under Sections 436 and 436A of the CrPC. Several times the communication gap between the legal services authorities and the needy inmates renders the system ineffective. The communication and coordination processes between SLSA, the courts, prisoners, and the prison authorities need to be smoothened. In 1999, the National Human Rights Commission issued a letter to all the Inspector Generals of Prisons reiterating the directions of the Supreme Court in *Common Cause vs. Union of India*,⁷⁵ emphasising the need for a high degree of coordination between the prison, judiciary, police, and the state legal services authorities.⁷⁶

It gave directions to all the IG of Prisons to initiate the process of granting bail to those eligible, by contacting the Registrar of the Court and the State Legal Services Committee. A system should be established by SLSA at the district and taluka level to examine the quality of legal aid; monitor the lawyers and the cases taken up by them, and assess their performance. This would make the lawyers accountable to the prisoners and do justice to the cases they take up.

COURT PRODUCTION & VIDEOCONFERENCING

The Supreme Court in *Hussainara Khatoon and Others (1) vs. Home Secretary, State of Bihar*, found that: “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.”⁷⁸ The Indian courts have an enormous backlog of cases and the Orissa courts are rife with them. The pendency of IPC cases in Orissa courts at the end of 2008 peaked at 91.1 per cent.⁷⁹ “The reasons that can be attributed for this colossal arrears are: large number of vacancies for the position of judicial officers; the inability/failure of the police to complete the investigation on a timely basis; and lack of police escort to produce the accused in court.”⁸⁰

With the right to liberty curtailed, it becomes the duty of the custodian to ensure that prisoners are produced effectively and on a timely basis before the Magistrate on their court dates. Escort problems persist not only to extend remand dates of prisoners, but even after the commencement of a trial, which causes further delays.

K.F. Rustamji, Member of National Police Commission believes, “hundreds of them are dumb, simple persons, caught in the web of the law, unable to comprehend as to what has happened, what the charge against them is, or why they have been sent to jail. These are the people without a calendar or a clock, only a date in a court diary, extended from hearing to hearing.”⁷⁷

ESCORT FOR PRODUCTION IN COURT

During discussions with the prison officers and the prisoners, our research team found that Berhampur Circle Jail, Bhubaneswar Special Jail, Bhadrak Special Sub-Jail and Angul Juvenile Jail do not have an escort problem to produce undertrial prisoners in court. In Berhampur Circle Jail, one prisoner said that there was an escort problem during the elections, due to which he had to miss two court dates, but otherwise it was not a problem. Angul does not have an escort problem to produce undertrials in court, though it is a problem to take prisoners to the government hospital. In Bhadrak, the escort problem is limited to getting female escorts for women prisoners.

Inadequate escorts to take prisoners to court were a concern in Bhubaneswar Circle Jail some time ago. A prisoner stayed in prison for nine months without being produced in court. He wrote to the Magistrate drawing the court’s attention to this problem. The case was taken up and such a situation has not recurred. Some precautions need to be taken in Bhubaneswar Circle Jail to prevent the

proliferation of such a problem. It is important to note that this jail produces 15 prisoners in court and 30 others through video linkage.

Choudwar reported an acute escort problem, with one head constable and two constables transferring 12 prisoners to court, and on their return from court they guard about 32 prisoners, which can pose a grave security threat. In Choudwar, prisoners reported that preferential treatment was given to some prisoners who were regularly produced in court, while others suffered. Puri also has a problem in arranging for the right number of escorts for prisoners. However, the prisoners here were more concerned about a different issue. Some of them, even though they were taken to court, were not being produced before the Magistrate. For instance, in Puri a prisoner confirmed that for two months he was not taken to court at all, and for the next four to five months, when he was escorted to court, he remained confined to the bus and was not produced before the Magistrate. Most prisoners interviewed stated that they were regularly produced in court, though, some of them did complain about not being brought before the Magistrate.

PRODUCTION BEFORE A MAGISTRATE

It is very disheartening to observe the justice delivery system work against prisoners at every stage in their struggle to prove their innocence. Even their basic rights cannot be presumed to function as mandated. If prisoners are produced by the police escorts regularly, there are still other challenges that they have to confront – the Magistrate being present in court and being produced before him. The Orissa Jail Manual, 1942 empowers the IG of Prisons to call for an explanation from the District Magistrate in those cases where the undertrial prisoners have been detained in the *hajat*⁸¹ for an unusual length of time.⁸²

Prisoners in Balasore have on several occasions been escorted to court, yet remained in the *hajat* the entire day without being produced before the Magistrate. They were produced before the Magistrate only 43 per cent of the times that they went to court. The prisoners were kept in the bus, stationed at the *hajat* or the magistrate was not present. Berhampur, Bhubaneswar, Puri also had similar problems. However the problem was particularly appalling in Balasore. Even though Orissa prisons have better escort facilities compared to several other states, the prisoners still struggle to get their voices heard.

Videoconferencing

The 2009 Orissa Amendment to the Code of Criminal Procedure circulated by the Governor of Orissa to the prison department sanctions the “Magistrate to extend further detention in the judicial custody on production of the accused either in person or through the medium of electronic video linkage”.⁸³

Before we delve deeper into the nature of videoconferencing in Orissa prisons, it is important to know why such a system was set up in the courts. It was introduced to address the following concerns:

- Saving on resources – human power and monetary;
- Extending remand period was anticipated as being easier through videoconferencing;
- Undertrial can talk freely with the presiding judge;
- Use of human power in production of those undertrials whose trial has commenced; and
- Use of technology to modernise the prison system.⁸⁴

In Orissa, undertrial prisoners are produced through video linkages in two prisons, viz. Choudwar Circle Jail and Bhubaneswar Special Jail. Videoconferencing is used to extend the remand periods of undertrial prisoners. In Bhubaneswar Special Jail, it is connected to two SDJM courts and one JMFC court. However, the different criteria for the production of prisoners through videoconferencing or physically at the court are unclear, as some are produced only through videoconferencing, some are sent to court, and some are produced through both means. The prisoners who were produced through videoconference complained of losing contact with their lawyers, since the courts were the only places where they could meet them. Throughout the prisons surveyed, lawyers do not come to prison (see Chapter 5: Legal Aid). The court is the only place where they meet their lawyers and their family members. This opportunity of getting out of the confined walls and bars of the prison should not be taken away from them. Prisoners in prisons that have video linkages to the courts were more dissatisfied with their lawyers and had fewer opportunities to meet them. Consequently, such prisoners were less informed and less aware about the status of their cases.

By introducing this additional, artificial component between prisoners and the court, we are moving them one step away from a fair and just process to obtain justice. Especially in the context of Orissa, where escort is not a major problem, it is an unnecessary addition to the justice delivery system. It is the prisoner's fundamental right to have legal representation for a fair and just trial. If videoconferencing prevents them from meeting their lawyers, it violates their right to access to justice. Videoconferencing is a patch-up remedy propagated by the prison, police and judiciary to shirk their responsibilities and make scapegoats out of poor prisoners who are unable to afford expensive private lawyers.

Forgotten Behind Bars

Ranjan Biswal was arrested on 4 August 2008 and admitted to Choudwar Circle Jail on 8 August 2008 on charges of theft. A sales agent working for a local company that sells turmeric products, Ranjan studied till Class 10, and has a family of five – Ranjan, his parents and two brothers, one younger and one older. His father is a clerk in the High Court. Ranjan has two cases against him, but is not convicted in any of these offences. Both cases concern car thefts and he was on bail for one of them, when he got arrested for the theft of a second car.

Ranjan has a private lawyer, like several others in Choudwar Circle Jail who have lost trust in the government's legal aid system. His lawyer never visits him in prison and does not provide him with sufficient information; hence Ranjan is unhappy with him. He was last produced in court in January 2009. He has been produced in court four to five times since he was admitted to prison. There have been occasions when he had a court date, but owing to escort problems he was not taken there. He adds that there is preferential treatment afforded to escort some prisoners. He was also produced before the Magistrate through videoconferencing, but claims that "when produced physically before the court the Magistrate listened to me and paid more attention". The only means of meeting his lawyer was when he was physically produced in court. Since the last two productions were through videoconferencing, he has not met his lawyer for a long time.

The Judicial Magistrate of First Class (JMFC) asked Ranjan his name, father's name and the name of his village. That was all he could hear during the conference, he could not hear what the witness said or what the advocate, who was standing beside the judge along with the witness, said. "During the videoconferencing the Magistrate just asked my name and my father's name, that is all," says Ranjan. The JMFC was not audible to the research team either. All Ranjan could understand was that the witness did not identify him. He stood in front of the camera quietly, nervous and tense, looking down, trying not to offend the Magistrate by making eye contact, though looking up once in a while to ensure that the process was still ongoing. He would check if the Magistrate asked him something and if the connection was still established. He looked as confused as us bystanders. The JMFC was busy looking down at the pile of papers on his desk. Later, the research team asked Ranjan if he understood what went on, but all he understood was that the witness had not

identified him. It was not his advocate who was standing next to the judge. He does not know what has happened to his lawyer, since he does not come to the prison, and since video production he has not been in touch with his lawyer. We noticed that it was the same advocate who was there for the two previous cases, and continued with Ranjan's case as well. The video linkage got disconnected once in between due to some technical problem and the technical support person kept dialling to reconnect. Once connected, the JMFC asked the next prisoner to be produced and that's when he realised his much awaited "court date" was over, without any results and with greater confusion.

SYSTEMIC PROVISIONS TO CHECK PROLONGED DETENTION

CHRI identified Sections 436 and 436A of the CrPC as the main provisions which might impact the undertrial population, if implemented appropriately. This study was conducted to assess the implementation of these two specific provisions in Orissa, alongside identifying and recommending the revival of the existing standards which might enable the sustainable execution of the same. Some mechanisms that were identified to prevent prolonged detention of undertrial prisoners and check the implementation of CrPC provisions are:

1. The reporting system;
2. Judicial supervision;
3. Prison record management;
4. Prison visiting system (see Chapter 8: Prison Visiting System); and
5. Legal aid cells (see Chapter 5: Legal Aid).

REPORTING SYSTEM

There are some very progressive provisions in the archaic Jail Manual which even though framed in 1942, if implemented, can avoid the unnecessary detention of undertrial prisoners. Most of these provisions have become non-operational over the years, due to which there are several reports of undertrial prisoners spending a lifetime in prison.

Standard

The Orissa Jail Manual, 1942 requires the Superintendent to report to the Magistrate all cases of undertrial prisoners admitted for bailable offences, specifying the names of those prisoners likely to furnish bail. The Superintendent shall also submit to the District Magistrate in Return No. 23, fortnightly reminders regarding all undertrial prisoners who have been detained for over 14 days.⁸⁵ As a result of this provision, prison officers interviewed by the research team, generally refer to these reports as “fortnightly” despite submitting it on a monthly basis.

Reporting to the IG of Prison

The prisons visited, file reports to the IG of Prisons on a regular basis, except Angul that sent its last report on 31 December 2008.⁸⁶ These reports comprise a list of all the undertrial prisoners detained, with their name, gender, case no., court where the case is ongoing, offences they are accused of, date of admission, sections they are accused under, whether charge sheeted or not, and the last and next dates for production in court. Still, some headings vary from one prison to another.

Reporting to Other Agencies

The system of reporting to various agencies was established to increase transparency and to have better coordination between the concerned criminal justice agencies. All prisons have a system whereby a copy of the monthly report that goes to the IG of Prisons is also sent to various agencies. However, this has been discontinued in Puri District Jail and Angul Juvenile Jail. While Puri Jail sends monthly reports to the IG of Prison's office, Angul has stopped this practice for some time.⁸⁷ Table 9 depicts the agencies to which periodic reports are sent regularly, along with those that have not been receiving them. The Bhadrak Special Sub-Jail does not send its reports to the police authorities like the other prisons do. Prisons such as Berhampur, Choudwar, Balasore and Bhubaneswar report regularly to either the Commissioner of Police or the Superintendent of Police. This assists the police department in allotting the appropriate number of guards to escort prisoners to court.

Table 9: Monthly Reporting System Across Seven Prisons in Orissa

No.	Reports sent to	Berhampur	Choudwar	Balasore	Puri	Angul	Bhadrak	Bhubaneswar
1.	IG Prisons & DCS Orissa	✓	✓	✓	✓	Irregular	✓	✓
2.	Director of Public Prosecution	✓	✓	✓	-	-	✓	✓
3.	District Magistrate & Collector	✓	-	✓	-	-	✓	✓
4.	Commissioner of Police	-	✓	-	-	-	-	✓
5.	Superintendent of Police	✓	-	✓	-	-	-	-
6.	District & Sessions Judge	✓	✓	✓	-	-	-	✓
7.	Additional District & Sessions Judge	-	-	✓	-	-	✓	-
8.	Additional Sessions Judge	-	✓	-	-	-	-	-
9.	Chief Judicial Magistrate	✓	-	✓	-	-	✓	✓
10.	Sub-Divisional Judicial Magistrate	✓	✓	✓	-	-	✓	✓
11.	Judicial Magistrate of 1st Class	-	-	✓	-	-	✓	-

✓ denotes: reports sent to the following agencies.

It was observed that the prisons which maintain computerised records send the reports regularly to the agencies, whereas those that maintain them manually have discontinued the practice.

The reporting system is inconsistent across prisons. It is essential that a uniform system be adopted to allow comparison and easy assessment across prisons. For instance, Bhadrak and Choudwar reports do not contain information on whether prisoners have been charge sheeted or not, although the other five⁸⁸ prisons do. The fortnightly report can be altered to include two more columns: the date when the undertrial prisoner will complete half the maximum sentence and the maximum sentence for the offence he is charged under. This would facilitate easy identification of eligible prisoners and result in their timely release.

JUDICIAL SUPERVISION

*The Court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by prison administration.*⁸⁹

District and sessions judges function as ex-officio visitors to jails in their jurisdiction.⁹⁰ It is their highest responsibility to ensure the minimum constitutional guarantees to those housed under judicial custody.

District Judges

The Supreme Court of India in *Sunil Batra (II) vs. Delhi Administration*⁹¹ directed the District Magistrates and sessions judges to visit prisons in their jurisdiction, give the prisoners an opportunity to express their grievances, make expeditious enquiries and take suitable remedial actions. The Apex Court and the High Courts⁹² have on several occasions, stated the significance of judicial oversight of prisons. The Orissa High Court initiated this practice in 1986⁹³ and reminded the district and sessions judges in 2006⁹⁴ and 2008⁹⁵ (see Annexure F) to make monthly visits, and at times surprise visits, to review the condition in the prisons. Fortunately, this has been actively pursued in Orissa compared to some other states.

The district and sessions judge visits the Choudwar Circle Jail, Berhampur Circle Jail, Bhadrak Special Sub-Jail, Bhubaneswar Special Sub-Jail, and Angul Juvenile Jail on a monthly basis. In Choudwar the district and sessions judge also provides legal education to the prisoners about amended provisions. However, they do not inspect registers of undertrial prisoners or give suggestions about the high undertrial population or overcrowding.

District Review Committee

The National Human Rights Commission in 1999 issued a letter to the Chief Justices of High Courts, culling out the Supreme Court's directions for them to comply with.⁹⁶ Among these directions was the guideline to form district-level review committees to meet every three months and review the cases of undertrial prisoners who are detained for over six months. These meetings were to be presided over by the district and sessions judge. This trickled down to the state level when the Orissa High Court in 2000 directed all the district and sessions judges to form a District Committee comprising the district judge, District Magistrate cum Collector and the Superintendent of Police to review the basic conditions prevailing in the prisons⁹⁷ (see Annexure G).

The practice of monitoring and inspections by the District Committee is of utmost importance. However in the prisons we assessed, the visits were pre-planned and the prison officers had prior intimation of the date of the next visit of the District Committee. The District Committee visited Berhampur, Puri, Bhubaneswar and Angul quarterly, while it visited Bhadrak Jail monthly. There was an annual visit recorded in Balasore District Jail.⁹⁸ The Committee should make surprise visits in order to report matters accurately. The manual provides that there shall not be a fixed day of the week for these visits, but the visitors should be free to visit on any working day.⁹⁹

In Orissa, unlike other states, the practice of judicial supervision is regular as reported by the prison officers. It could be improved if during their visits, the district and sessions judge and the District Committee educate the prisoners about relevant provisions, record their comments and concerns in the visitors' book, inspect the undertrial registers, and examine their detention period. Since this system is already operational across prisons in Orissa, it could be a great tool in sensitising the judiciary and simultaneously ensuring prisoners' rights.

PRISON RECORD MANAGEMENT

With overcrowded prisons and understaffed jails come several inadequacies, including an overburdened and de-motivated prison staff. As reported by the NCRB in 2007, the strength of prison staff in India was 76.7 per cent of the sanctioned strength of 64,671.¹⁰⁰ In Orissa, 285 prison officers' posts at different ranks are vacant.¹⁰¹

Managing prisons is not an easy task. A significant part of the duties of the warders and jailors are administrative involving filing and recordkeeping, be it about the prisoners or supplies for the kitchen. The Orissa Jail Manual lists 46 types of registers and 12 other books that need to be maintained.¹⁰² Several of these registers store redundant information. Data management and storage in most prisons across the country is still done in the most antiquated manner. The major time of a prison officer is spent in manually filling the various registers, books and preparing sundry reports.

To ease the prison staff's burden and manage prisons efficiently, it is necessary that adequate technology is employed to automate some of the basic processes in the prison system and computerisation is the need of the hour. It would ease a great deal of work and make procedures more manageable and organised. Some states such as Delhi, Goa, Maharashtra, Tamil Nadu and West Bengal have installed prison management systems. Orissa is also in the process of having software installed by the National Informatics Centre (NIC). The Tamil Nadu "Information System on Prisoners" (ISP), developed by NIC covers functions such as maintaining records of admissions, production of remand/undertrial prisoners in courts, maintenance of history tickets for convict prisoners, remission and release dates, calculation of convict prisoners, detention of detenues and civil prisoners, disposal of prisoners and lockup calculation. A complete package can easily simplify recordkeeping related to prisoners, legal aid, escorts, production in court, parole, remission, interviews with families and lawyers, health care, inventory, and civil society involvement.

Given the present scenario of overcrowding, managing fortnightly reports is a tiresome job. Many prisons are unable to send the report on schedule because it takes considerable time to prepare. In some prisons, such as Angul Juvenile Jail, Rourkela Special Jail, Jharsuguda Sub-Jail, and Bonaigarh Special Sub-Jail the fortnightly reports are handwritten. It is an extremely tedious process and is also difficult to read when submitted. In other jails such as Khurda Sub-Jail, Keonjhar District Jail, and Bolangir District Jail, reports are typed. All these are very obsolete means of data management. Basic computerisation needs to be introduced to generate the various functional reports at the click of a button. The team found many errors while comparing the fortnightly reports to the warrants. This can be avoided if the process is automated.

Further, the reports may have all the data, but it is very difficult to extract meaningful information from them. The reports are sent to the IG of Prisons as a practice, but are never inspected. If the system is automated, customised reports can be generated culling out the desired information.

It would also be beneficial to prepare right to information responses – a task the officers often complain about.

Computerisation would help divert the excessive human resources from such work to other meaningful tasks. It would also ease the process of identifying undertrial prisoners eligible for release. Automation can be done in phases, giving priority to the more overcrowded prisons.

PRISON VISITING SYSTEM

Anticipating the closed nature of prisons prone to inhuman and cruel conditions unknown to people outside, the need for an oversight body was recognised as early as 1894. The Prisons Act of 1894, under Section 59(25) empowers the state governments to make rules “for the appointment and guidance of visitors of prisons”. Each state’s prison manual clearly defines the rules for the appointment and functioning of official visitors, non-official visitors, and the board of visitors.¹⁰³

STANDARDS

Though largely defunct, if revived, the Prison Visiting System (PVS) can be a strong mechanism to monitor violations in these low-visibility areas. The PVS has always been promoted by various prison reform committees including the Indian Jail Committee (1919-20) and the All India Committee on Jail Reforms (1980-83).

The Orissa Prison Manual, 1942 enlists the duties of a prison visitor. A prison visitor, if working judiciously, can play a vital role in safeguarding the rights of detainees. The visitor, being an outsider should adopt an unbiased and non-judgemental outlook towards prisoners. It is the visitor’s duty to satisfy himself that the laws, rules and orders regulating the management of prisons and prisoners are duly carried out. The visitor’s duties also include hearing prisoners’ complaints during their visits.¹⁰⁴ A prison visitor has the authority to inspect registers and books and record the detention of an undertrial prisoner, which is forwarded to the District Magistrate or the sessions judge.¹⁰⁵

APPOINTMENT OF NON-OFFICIAL VISITORS

While in other states the appointment of non-official visitors (NOVs) is the responsibility of the state government, in Orissa the Revenue Commissioner with the recommendation of the District Magistrate is authorised to appoint six non-official visitors for every central prison and five for each district jail.¹⁰⁶

CRITERIA FOR APPOINTMENT

Chapter IV of the Orissa Jail Manual, 1942 lays out the rules for the appointment of official and non-official visitors to the prisons in the state. However, it fails to identify the potential of this provision in curbing malpractices within the confines of the walls.

The Indian Jail Committee (1919-20) for the first time clearly stated:

*The person selected for the position of a non-official visitor of a jail should be chosen on the ground of definite qualifications, such as an interest in prison matters or other social work, or ability and willingness to assist in finding work for prisoners on release....Selection should not be made solely on the ground of social position, wealth or political influence, but on the basis of special fitness.*¹⁰⁷

The legislators emulated this provision in Chapter XV of the Maharashtra Prison Manual, 1979 and emphasised the qualifications needed by a non-official visitor.

*The appointment of non-official visitors (other than the members of the Maharashtra Legislature) shall, subject to the provisions of the sub-rule (4), be made by the State Government from amongst persons who in its opinion, are interested in the administration of prisons and are likely to take interest in the prisoners and their welfare both while they are in prison and after their release.*¹⁰⁸

Unlike the Maharashtra Prison Manual, 1979, the Orissa Manual does not frame clear guidelines for the appointment of non-official visitors. Since non-official visitors can play a crucial role in making prisons transparent, it is essential that like Maharashtra, the other states also have distinct qualifications and criteria for their appointment, apart from the single criteria of some of them being members of the legislative assembly.

KNOW-HOW

The Orissa Jail Manual does not require non-official visitors to be provided with a list of duties at the time of appointment. It is assumed that the visitors would know what to inspect, when to inspect and the limitations of the role assigned to them, without informing them about it. For instance, the Maharashtra rules require every visitor to be provided with a copy of the rules when they are appointed.¹⁰⁹ This clarifies their roles and they are better prepared before their visit to the prison. The Mulla Committee recommended that “revision of jail manuals of states and union territories should be given top priority”. Recommendations made by the committee and the Model Prison Manual may form the basis of such revision.¹¹⁰

PRACTICE

The prison visiting system in Orissa is largely dysfunctional. As the special officer from the IG of Prison's Office informed the research team, most of the prisons do not have appointed non-official visitors. Of the prisons where there have been appointments, most of the non-official visitors are political appointees instead of being members of the community who are likely to take an interest in the welfare of prisons and prisoners. They are unaware of the roles and responsibilities of a visitor. For instance, the Choudwar Circle Jail had six non-official visitors appointed for a two-year term from May 2008 to May 2010. Four of them were members of the legislative assembly, while two were members of parliament.¹¹¹ And the Balasore District Jail had two members of the legislative assembly.

The Orissa Jail Manual, 1942 mandates the appointment of two women visitors for each central jail and one for each district jail in prisons that house women prisoners.¹¹² All the prisons visited by the research team house women prisoners. Of the six NOVs appointed to Choudwar Circle Jail, two were women and Bhadrak Special Sub-Jail had one woman visitor of the five appointed. Balasore District Jail also had one woman NOV.

Of the seven prisons visited, no NOVs are appointed for Berhampur Circle Jail and Puri District Jail. Despite being a Circle Jail, Berhampur has not had any NOVs for the past four years. The superintendent of Puri Jail has not been successful in getting the NOVs appointed, in spite of several reminders to the District Collector. Even though NOVs were appointed to five prisons,¹¹³ in Bhubaneswar Special Jail the NOVs had stopped visiting. In the other four jails the visitors attended irregularly. Of the five NOVs appointed to Bhadrak Special Sub-Jail, only one visited in June 2008, shortly after her appointment. However, she did not record her comments in the visitors' register. The last comment in the non-official visitors' register was dated 19 January 2005. According to the rules, the appointment of such NOVs should be cancelled.

Rule 44 of the manual requires that a non-official visitor who expects to be absent for a period of more than six months, should give prior intimation to the District Magistrate, and aid in the appointment of a substitute. If the visitor fails to do so, s/he shall be regarded as having vacated the office on the expiry of three months from the date of her/his departure.¹¹⁴

Those NOVs who visit the jail do talk to undertrial prisoners and ask them if they have any grievances, but none of them inspect the registers maintained for undertrial prisoners. All of them are concerned about the food, health and the sanitation conditions in the jail, but not about the larger issues such as prolonged detention, release of undertrials or overcrowding.

The Board of Visitors comprising three members, both non-official and official visitors are expected to meet quarterly. Since most of the visitors are not appointed, these quarterly meetings are not held. The District Magistrate, who is also the Chairperson of the Board of Visitors, is responsible for scheduling the roster of weekly visits by the visitors (both official and non-official) to give each visitor their due turn.¹¹⁵

When compared to the working of the District Committee, it can be said that the Board of Visitors are lagging far behind. The practice of holding District Committee Meetings quarterly is more frequently undertaken, and the district judge who is the Chairperson of the District Review Committee visits the prisons on a monthly basis (see Chapter 7: Systemic Provisions for more details about the District Review Committee). We were told that the district judge visited prisons in Angul, Berhampur and Bhubaneswar regularly. However, the visits by the District Committee were irregular, ranging from monthly to once a year.

COMMUNITY PARTICIPATION

Another channel to ensure a transparent and accountable prison system is to open these prisons by permitting community involvement in them. This is not an alternative to PVS, but it can be a complementary system. Though the security of a prison cannot be compromised, some civil society groups could be involved in the various aspects of a detainee's life. Allowing non-profit organisations to work in prisons will also help prisoners to reintegrate into society on their release. In the Seventh All India Meet of the State Legal Services Authorities, it was resolved that the state authorities should take concerted steps to identify and accredit certain NGOs in their respective states. The state authorities may consider the past activities/performances of NGOs in the legal aid field before accrediting them.¹¹⁶

Bhubaneswar Special Jail, being located in the state capital is the only prison which has the presence of a considerable number of community-based organisations. While Balasore District Jail has four NGOs,¹¹⁷ all engaged at the moral and spiritual level with the prisoners, Bhubaneswar has a broader range of civil society participation. The ten NGOs¹¹⁸ working in Bhubaneswar Special Jail look into the physical, psychological and spiritual well-being of the prisoners alongside providing educational and vocational facilities. Angul Juvenile Jail also has moral and spiritual interest organisations.¹¹⁹ Despite there being several organisations working in prisons, there is a dearth of diversity in the areas that the community-based organisations are involved. The Prison Department needs to accredit NGOs working in various fields including, legal aid, skills training, education, counselling, etc.

GRIEVANCE REDRESSAL

Prisoners are bestowed with certain rights by the Constitution of India. No iron curtain can be drawn between the prisoner and the Constitution.¹²⁰ It is the responsibility of the prison staff that prisoners' are made aware of these rights. The Supreme Court in *Sunil Batra (II) vs. Delhi Administration* stated that the rights of prisoners should be published in handbooks in their vernacular languages. This has not yet been implemented. Prisoners should be made aware of their rights.

Chapter XIX of the Orissa Jail Manual, 1942 enlists 59 types of behaviour by prisoners as prison offences, ranging from "singing, loud laughing, and loud talking at any time" to "disobeying any lawful order of the officer of the prison". The list is all-inclusive, and accounts for any and every action of a prisoner. However, there is no rule in the state manual which protects a prisoner's rights against arbitrary punishment. Along with these offences, the chapter also lists the corresponding 11 minor, and 10 major punishments. Among these punishments, penal diet, whipping and the use of fetters and handcuffs have still not been deleted, as was directed by the Supreme Court in various pronouncements.¹²¹ Evidently, this chapter ensures that such a disciplinary system for the prisoners is fair, corrective and reinforces their accountability. But there is no separate chapter mentioning a similar system for the prison staff.

Similarly, there is a need for a robust parallel disciplinary system that reinstates the legal responsibility of the prison staff, and protects the rights of the prisoners from its custodians. The first step towards achieving this would be to have an easily accessible grievance redressal mechanism for the prisoners and making them aware of such mechanisms.

The manual mentions five provisions that are difficult to trace, as they are scattered under different chapter heads.¹²² These five provisions merely mention that the complaints of prisoners should be heard by the Superintendent and prison visitors, and "if real it may be redressed, and that no cause for discontent may be allowed to remain".¹²³ It does not mention the various possible violations that take place in prisons, and the actions that should be taken against the officers in question.

Besides, if prisoners have complaints regarding the Superintendent of the prison, they would ideally prefer to rely on a fair and transparent system, whereby they would be confident that the complaint would be heard and acted on, and that they would not have to bear any adverse consequences of making the complaints.

Filing grievances can have a long-term impact on the justice system and help other prisoners undergoing similar conditions in prisons across the country to showcase the internal institutional accountability status, and build systems to prevent injustice and human rights violations. This happened when conscious and aware prisoners such as Sunil Batra and Charles Sobraj wrote letters voicing their grievances to the judiciary.

To establish such mechanisms whereby prisoners can trust the correctional system, the Supreme Court in *Sunil Batra (II) vs. Delhi Administration*¹²⁴ issued clear directives to the Prisons Department to install grievance deposit boxes under the supervision of the District Magistrate and the sessions judge. This was done to give the prisoners an opportunity to voice their concerns or problems. The Court directed that these boxes be installed within three months of the judgement. The boxes were to be opened frequently and the District Magistrate and sessions judge were directed to address the legal grievances of the prisoners.

Despite such landmark judgements, which if implemented can alter the fate of many Indian prisons and prisoners, nothing has changed! In Orissa, of the seven prisons we visited, only Berhampur Circle Jail had a grievance box which was kept with the Welfare Officer near his desk. It was inaccessible to the prisoners, and hence hardly any prisoner put in his complaint. In Choudwar Circle Jail, the research team was informed that there used to be a grievance box, but there were too many complaints and it also included random letters from prisoners, and hence the practice was stopped. The prisoners also communicated their grievances to the prison Welfare Officer, who would discuss them with the prison administration.

There should be a well-established internal and external grievance redressal system to ensure that prisoners are protected while in detention.

CONCLUSION AND RECOMMENDATIONS

India's criminal justice system's ideological tenets need overhauling. The same system has been in practice for several decades now, most of which was established in the colonial era. Several committees and reports have recognised the need for a reformatory correctional system rather than the retributive one that exists today. But these have remained on paper and no action has been taken. Some states have initiated the transition to correctional homes, while several others are lagging behind.

However, there are some progressive provisions in these antiquated statutes such as the prison visiting system and the reporting system that ensure transparency and accountability in the functioning of prisons. These should be revived and implemented in a continuous manner.

Coordination between the various agencies is crucial and the answer to several problems. Most of the difficulties faced by the prisoners and the prison staff today are a result of the lack of sensitisation and coordination between the prison department, the judiciary, the law fraternity, the state legal services authority, the police department and civil society. Bernard Shaw once suggested that every judge and magistrate, as well as prison official should spend some time in prison, living like ordinary prisoners.¹²⁵

Written in prison by Jawaharlal Nehru in September 1935.

First published in the *Modern Review*, Calcutta.

This report is an attempt at depicting a clear and unbiased picture of the prisons in Orissa and prisoners' access to justice as viewed from outside. The study was not carried out to point a finger at any particular department; nor to provide patchwork recommendations. Instead, this report highlights certain issues that surfaced during the study to inform the concerned departments. This would perhaps equip the officials to review the system and maintain checks and balances, which if implemented, can provide long-term respite to all those concerned with the functioning and administration of prisons.

RECOMMENDATIONS

Prison Department

1. Inform the prison superintendents about new amendments. Apart from sending circulars, periodic training sessions and workshops could be organised to make the prison staff aware of new provisions. This could also be done in collaboration with appropriate civil society groups.
2. Get prison departments' websites operational and put all annual reports on the website, which would also provide data on matters that people inquire about.
3. Automate the prison system so that data which is often erroneous becomes more reliable and accurate. That is the only way to ensure authenticity.
4. Revive the existing mechanisms for coordination between the various agencies.

State Legal Services Authority

1. Appoint full-time secretaries for all DLSAs in the state as decided in the Sixth All India Meet of SLSAs.
2. Appoint experienced legal aid panellists so as to ensure equality in access of justice and equality in the competence of lawyers.
3. Accredite NGOs and collaborate with similarly oriented ones, to encourage them.

Judiciary

1. Continue judicial supervision, but with the sensitisation of district and sessions judges.
2. Review cases of preventive detainees and undertrial prisoners to put a complete stop to unnecessary detention.
3. Visit prisons often and also make surprise visits. Give written recommendations, check if they have been complied with and if complaints are rectified.

ANNEXURES

ANNEXURE A

Scheduled Accommodation & Population of Orissa as on 31 August 2009 (Source: Prisons Department)

ANNEXURE B

Questionnaire for Prison Officers

ANNEXURE C

Questionnaire for Undertrial Prisoners

ANNEXURE D

Orissa Prison Statistics, 1995-2007

ANNEXURE E

Analysis of the Period of Detention of Interviewed Prisoners

ANNEXURE F

Circular from the Orissa High Court to the District Judges to Visit Prisons Regularly

ANNEXURE G

Circular from the District & Sessions Judge, Phulbani to hold District Committee Meetings

ANNEXURE A

Scheduled Accommodation & Population of Orissa as on 31 August 2009

(Source: Prisons Department)

No.	Type	Jail	Scheduled Accommodation			Convicts			Undertrials			Population	Occupancy (Per cent)
			M	F	Total	M	F	Total	M	F	Total		
1.	Circle Jail	Baripada	571	17	588	280	19	299	290	19	309	608	103.4
2.		Berhampur	700	20	720	221	5	226	325	15	340	566	78.6
3.		Choudwar	944	20	964	318	7	325	541	11	552	877	91.0
4.		Sambalpur	451	0	451	214	0	214	348	0	348	562	124.6
5.	District Jail	Balasore	427	9	436	72	3	75	333	15	348	423	97.0
6.		Bhawanipatna	338	17	355	221	3	224	165	2	167	391	110.1
7.		Bolangir	337	17	354	164	3	167	140	1	141	308	87.0
8.		Dhenkanal	258	6	264	132	5	137	93	3	96	233	88.3
9.		Keonjhar	309	8	317	311	9	320	211	18	229	549	173.2
10.		Koraput	642	15	657	494	12	506	196	5	201	707	107.6
11.		Phulbani	115	17	132	84	4	88	80	3	83	171	129.5
12.		Puri	375	10	385	162	10	172	314	7	321	493	128.1
13.		Sundargarh	226	10	236	159	4	163	211	7	218	381	161.4
14.	Special Jail	Bhubaneswar	629	14	643	105	6	111	511	14	525	636	98.9
15.		Rourkela	414	16	430	184	2	186	303	15	318	504	117.2
16.	Special Sub-Jail	Bhadrak	161	3	164	86	7	93	189	15	204	297	181.1
17.		Bhanjanagar	176	6	182	66	5	71	196	14	210	281	154.4
18.		Bonaigarh	62	5	67	62	1	63	169	6	175	238	355.2
19.		Boudh	121	5	126	109	0	109	82	0	82	191	151.6
20.		Deogarh	111	16	127	28	0	28	62	4	66	94	74.0
21.		Talcher	139	10	149	52	3	55	115	6	121	176	118.1
22.	Sub - Jail	Anandpur	72	5	77	9	0	9	50	3	53	62	80.5
23.		Aska	127	6	133	1	0	1	251	8	259	260	195.5
24.		Athagarh	22	5	27	0	0	0	121	5	126	126	466.7
25.		Athamalik	72	5	77	0	0	0	78	6	84	84	109.1
26.		Balliguda	80	5	85	0	0	0	68	2	70	70	82.4

No.	Type	Jail	Scheduled Accomodation			Convicts			Undertrials			Population	Occupancy (Per cent)
			M	F	Total	M	F	Total	M	F	Total		
27.	Sub - Jail	Banapur	250	50	300	0	0	0	84	0	84	84	28.0
28.		Banki	15	2	17	0	0	0	31	3	34	34	200.0
29.		Baragarh	56	5	61	7	1	8	27	2	29	37	60.7
30.		Baramba	23	4	27	0	0	0	123	3	126	126	466.7
31.		Barbil	250	50	300	0	0	0	37	6	43	43	14.3
32.		Bisam Cuttack	250	50	300	0	0	0	72	3	75	75	25.0
33.		Champua	37	5	42	1	0	1	0	0	71	72	171.4
34.		Chattarpur	142	7	149	4	0	4	22	0	22	26	17.4
35.		Dasapalla	21	9	30	2	0	2	93	1	94	96	320.0
36.		Dharamgarh	56	6	62	5	0	5	165	3	168	173	279.0
37.		Digapahandi	250	50	300	0	0	0	15	1	16	16	5.3
38.		G-Udayagiri	75	5	80	0	0	0	50	0	50	50	62.5
39.		Gunupur	50	2	52	1	0	1	32	1	33	34	65.4
40.		Hindol	77	6	83	0	0	0	68	2	70	70	84.3
41.		Jagatsinghpur	49	6	55	3	0	3	22	4	26	29	52.7
42.		Jajpur	148	7	155	2	0	2	6	0	6	8	5.2
43.		Jajpur Road	250	50	300	9	0	9	141	7	148	157	52.3
44.		Jeypore	132	4	136	2	0	2	188	9	197	199	146.3
45.		Jharsuguda	97	5	102	2	0	2	99	7	106	108	105.9
46.		Kamakhyanagar	16	4	20	0	0	0	97	2	104	104	520.0
47.		Karanja	34	5	39	2	0	2	272	12	274	276	707.7
48.		Kendrapara	29	5	34	0	0	0	56	2	68	68	200.0
49.		Khandapara	41	5	46	3	0	3	74	4	76	79	171.7
50.		Khariar	250	50	300	0	0	0	218	17	222	222	74.0
51.		Khurda	210	15	225	6	0	6	8	0	25	31	13.8
52.		Kodala	42	7	49	1	0	1	0	0	0	1	2.0
53.	Kotpad	250	50	300	0	0	0	137	5	142	142	47.3	
54.	Kuchida	96	4	100	2	0	2	94	4	98	100	100.0	
55.	Kujanga	26	15	41	0	0	0	0	0	0	0	0.0	
56.	Malkanagiri	85	4	89	0	0	0	67	3	70	70	78.7	

No.	Type	Jail	Scheduled Accomodation			Convicts			Undertrials			Population	Occupancy (Per cent)	
			M	F	Total	M	F	Total	M	F	Total			
57.	Sub - Jail	Nabarangpur	104	2	106	2	0	2	32	3	35	37	34.9	
58.		Narasinghpur	250	50	300	27	0	27	80	4	84	111	37.0	
59.		Nawapara	20	6	26	9	0	9	80	2	82	91	350.0	
60.		Nayagarh	180	60	240	8	0	8	0	6	6	14	5.8	
61.		Nilagiri	35	2	37	0	0	0	0	0	0	0	0.0	
62.		Nimapara	240	60	300	21	0	21	71	5	76	97	32.3	
63.		Padampur	100	5	105	7	0	7	118	6	124	131	124.8	
64.		Pallahara	35	4	39	0	0	0	53	7	60	60	153.8	
65.		Paralakhemundi	57	4	61	2	0	2	60	0	60	62	101.6	
66.		Patnagarh	71	5	76	6	1	7	75	0	75	82	107.9	
67.		Rairakhhol	22	4	26	1	0	1	24	1	25	26	100.0	
68.		Rairangpur	94	5	99	1	0	1	123	1	124	125	126.3	
69.		Ranapur	18	4	22	0	0	0	59	3	62	62	281.8	
70.		Rayagada	102	5	107	1	0	1	19	2	21	22	20.6	
71.		R-Udayagiri	25	5	30	0	0	0	125	7	132	132	440.0	
72.		Salepur	250	50	300	5	0	5	15	1	16	21	7.0	
73.		Sohela	240	60	300	25	0	25	110	1	111	136	45.3	
74.		Sonepur	97	8	105	0	0	0	26	0	26	26	24.8	
75.		Suruda	27	6	33	0	0	0	63	4	67	67	203.0	
76.		Titilagarh	41	12	53	5	0	5	20	2	22	27	50.9	
77.		Udala	54	15	69	1	0	1	47	2	49	50	72.5	
78.		Umerkote	80	10	90	0	0	0	68	5	73	73	81.1	
79.		Angul Juvenile Jail	211	6	217	88	0	88	75	3	78	166	76.5	
80.		Nari Bandi Niketan Sambalpur	0	55	55	0	8	8	61	4	65	73	132.7	
81.		Biju Pattnayak Open Air Ashram, Jamujhari	150	0	150	85	0	85	102	3	105	190	126.7	
			TOTAL	13689	1197	14886	3880	118	3998	9246	377	9701	13699	92.0

Highlighted prisons are the new additions to the prisons in the state

ANNEXURE B

Questionnaire for Prison Officers

(For prison officials or taken from the prison records)

1. Name of Prison: _____

2. Name of Prison Officer: _____

3. Designation: _____

4. Total Prison Population: _____

5. Prison Capacity: _____

a. Males: _____

b. Females: _____

6. Undertrial Prisoner Population: _____

7. How many have remained in custody for:

< 1 month _____ 1-2 years _____

1-3 months _____ 2-3 years _____

3-6 months _____ 3-5 years _____

6-12 months _____ > 5 years _____

8. How many undertrial prisoners are detained under Sections 107-110 of the CrPC?

9. How many under Section 107-110 of the CrPC have remained in custody for:

< 1 month _____ 1-2 years _____

1-3 months _____ 2-3 years _____

3-6 months _____ 3-5 years _____

6-12 months _____ > 5 years _____

10. Is there any system of sending periodic reports on the number of undertrial prisoners to the IG of Prisons?

Yes No

a) If yes, what is the reporting period?

Monthly Quarterly
 Biannually Annually
 Other (please specify) _____

11. Is there any system of sending periodic reports on the number of undertrial prisoners to the District and Sessions Judge?

Yes No

a) If yes, what is the reporting period?

Monthly Quarterly
 Biannually Annually
 Other (please specify) _____

12. Is there any system/circular for monitoring whether any prisoners are eligible for bail under Sections 436 and 436A?

Yes No

a) If yes, please specify:

13. Do the prison visitors (official and unofficial) inspect the undertrial register regularly?

Yes No

a) If yes, how often do they visit?

Monthly Quarterly
 Biannually Annually
 Other (please specify) _____

b) Do they talk to the undertrial prisoners?

Yes No

c) Do they give any suggestions to ensure that the undertrial prisoner population is reduced?

Yes No

d) If yes, please specify with examples

e) Have any such suggestions been implemented?

14. Are there legal aid lawyers for this prison?

15. How many legal aid lawyers are appointed for this prison?

16. How often do these lawyers visit?

17. Are the undertrial prisoners produced in court regularly?

Yes No

a) If yes, how often are they produced?

b) If no, what are the obstacles?

ANNEXURE C

Questionnaire for Undertrial Prisoners Circle Jail, Jharsuguda Special Jail Individual Interview

No.	01
1	Name of the jail: _____
2	Name of the UTP _____
3	Age _____
4	Gender _____
5	Father's name _____
6	Date of arrest _____
7	Date of admission to judicial custody _____
8	Case Reference No. _____
9	Belongs to SC/ST/OBC/Other _____
10	Education _____
11	Family income at present (per month) _____
12	Occupation _____
13	How many cases are filed against the interviewee? _____
14	Whether convicted of any offence at present _____
15	All the offences with which charged _____
16	Type of offence _____
17	Offence 1 _____
18	Offence 2 _____
19	Offence 3 _____
20	Offence 4 _____

- 21 Offence 5 _____
- 22 Offence 6 _____
- 23 Whether bail applied for _____
- 24 If yes, in what Court's Magistrate? Sessions
 High Court
 Supreme Court
- 25 Reasons for denial _____
- 26 Whether interviewee has a lawyer Yes
 No
 Don't know
- 27 If yes, private or legal aid? Yes
 No
 Don't know
- 28 If legal aid, any money paid to lawyer? Yes, but don't know for what
 No
- 29 If yes, for what purposes? Fees
 Photocopying and printing
 To take out copies of orders
 To pay the public prosecutor
 To pay the judge
 Other, please specify: _____
- 30 What is the stage of the case? Committal
 Framing of charges
 Evidence
 Judgement
 Sentencing
- 31 When was the last production? _____
- 32 Number of productions in court _____
- 33 Whether non-production because of lack of escort _____

- 34 How often does the interviewee meet the lawyer? _____
- 35 Last meeting with the lawyer _____
- 36 Where does the interviewee usually meet the lawyer? _____
- 37 Does the lawyer ever visit the interviewee in prison? Yes
 No
 Don't know
- 38 Does the lawyer provide sufficient information about the case to the interviewee? Yes
 No
 Don't know
- 39 Is the interviewee happy with the lawyer? Yes
 No
- 40 Half period (in years) _____
- 41 Date of half period _____
- 42 Maximum of period completed _____
- 43 Total detention period (in years) _____
- 44 Personal views of the interviewee on cases charged with, family problems or anything else _____
- 45 Family contact details _____

ANNEXURE D

Orissa Prison Statistics, 1995-2007

(Source: Prisons Statistics, National Crime Records Bureau)

Year		District Jails	Sub-Jails	Women's Jails	Borstal	Open Jail	Special Jail	Others	Total	Overcrowding
1995	No.	13	51	1	1	-	2	-	68	-
	Capacity	3978	2870	55	97	-	513	-	7513	-
	Convicts	2187	247	12	27	-	171	-	2644 (25%)	-
	Undertrials	3245	3672	2	188	0	796	-	7903 (74.7%)	-
	Total	-	-	-	-	-	-	-	10547	40.3%
1997-98	No.	13	51	1	1	-	2	-	68	-
	Capacity	3997	2870	55	97	-	513	-	7513	-
	Convicts	2242	285	38	40	-	185	-	2790 (21.5%)	-
	Undertrials	3885	4872	8	203	-	1119	-	10087 (77.8%)	-
	Total	-	-	-	-	-	-	-	12877	71.3%
2001	No.	13	52	1	1	1	2	-	70	-
	Capacity	4236	3005	55	97	100	513	-	8006	-
	Convicts	2886	406	9	72	50	257	-	3680 (28%)	-
	Undertrials	3633	4733	5	163	0	910	-	9444 (71.8%)	-
	Total	-	-	-	-	-	-	-	13124	63.9%
2004	No.	13	52	1	1	1	2	-	70	-
	Capacity	4236	3005	55	97	100	513	-	9125	-
	Convicts	3302	585	12	93	68	305	-	4365 (29.8%)	-
	Undertrials	3865	5233	9	164	-	976	-	10247 (70%)	-
	Total	-	-	-	-	-	-	-	14612	60.1%
2007	No.	13	52	1	-	1	2	1	70	-
	Capacity	5475	3803	55	-	100	1073	97	10603	-
	Convicts	3323	526	14	-	59	329	94	4345 (28.3%)	-
	Undertrials	4206	5599	14	-	0	1011	190	11020 (71.7%)	-
	Total	7532	6125	28	-	59	1340	284	15365	44.9%

* Year in which the statistics were recorded; not the year when the report was published.

* An analysis of the Prison Statistics reports published by NCRB from 1998-2007.

ANNEXURE E

Analysis of the Period of Detention of Interviewed Prisoners

Prison	Average Detention (months)	Minimum Detention (months)	Maximum Detention (months)	Detained for Over a Year (%)
Berhampur	24.1	7	47	70
Bhubaneswar	22	3	73	50
Choudwar	19	3	53	54
Puri	7	1	48	11
Bhadrak	6	1	11	0
Angul	6	1	10	11
Balasore	4	2	11	0

* Sorted from highest average detention period to lowest detention period.

ANNEXURE F

Circular from the Orissa High Court to the District Judges to Visit Prisons Regularly

ANNEXURE - V.

ORISSA HIGH COURT: CUTTACK

No. 174(14)/Dt. 8.11.2008
XLIX-D-2/2008

From,

Sri K.N. Panigrahy,
Registrar (I & E)
Orissa High Court, Cuttack

To,

The District & Sessions Judge, *Phulbani*
(All)

Sub.: Visit of jails by the District & Sessions Judges once in every month and at times surprise visit also be made by them to find out the conditions of jails and of the inmates.

Sir,

I am directed to say that in the meeting of the District Judges and C.J.Ms. with Hon'ble the Chief Justice and other Hon'ble Judges of this Court held on 13th May, 2007 under Item No. 9(a), the matter of conditions in jail was discussed and it was disclosed that although instructions have been issued by this Court in Circular Letter No. 10896 dt. 8.10.86 and Circular Letter No. 2348 dt. 10.3.2006 from time to time, but periodicity of jail visit has not been strictly maintained. The jail visit reports submitted by the District Judges and the Members of the District Committee consisting of the District Judge, the District Magistrate-cum-Collector and the Superintendent of Police disclosed that overcrowding in jail is the main problem in all over the State, besides that absence of Medical Officers, Pharmacist, technicians, Probation Officers and scarcity of water are the other problems.

Therefore, it was resolved under Item No. 9(a) of the aforesaid proceedings of the meeting that "the District Judges should make visit to the jails one in every month and at times make surprise visit to find out the conditions of jails and of the inmates. The Govt. should be moved to issue necessary instructions to the jail authorities to permit the District Judges to make surprise visits".

The Court, on careful consideration of the matter have been pleased to concur with the resolution passed under Item No. 9(a) of the aforesaid proceedings of the meeting and to direct that the same be implemented soon.

I am therefore, directed to request you to strictly follow the above instruction of the Court henceforth.

Yours faithfully,

[Signature]
REGISTRAR (I & E)

ANNEXURE G

Circular from the District & Sessions Judge, Phulbani to hold District Committee Meetings

ANNEXURE V.

OFFICE OF THE DISTRICT & SESSIONS JUDGE,
PHULBANI.

Dated the _____ th day of July, 2007.

From

Sri Raghunir Dash, LL.B.,
District & Sessions Judge,
Phulbani.

To

1. The District Magistrate cum-Collector,
Kandhamal.
2. The Superintendent of Police,
Kandhamal.

Subject

Proposal for jail visit by the District
Committee of Kandhamal District.

Sir,

I would like to say that as per L.No.2348
dated-10.3.2004 of the Hon'ble High Court of Orissa, the
District & Sessions Judge of a district is to form a
District Committee constituting the District Judge,
District Magistrate cum-Collector and the Superintendent
of Police of the concerned district to review the basic
minimum standard of health, hygienic and institutional
treatment for the prisoners in the jail within the
District, accordingly I would like to propose the
District Committee to visit different jails within
Kandhamal District during 3rd quarter of 2007 as per
the scheduled programme given below and request to
make yourself available for the said purpose.

Yours faithfully,

[Signature]
20/7/07
Dist. & Sessions Judge,
Phulbani.

Enclosure.

Name of the Jail

Date & time of
proposed visit.

District Jail, Phulbani	:-	1.9.2007 at 11.30 A.M.
Sub-Jail, Balliguda	:-	12.9.2007 at 3 P.M.
Sub-Jail, G. Wangarai	:-	22.9.2007 at 3 P.M.

207
9.8.07

ENDNOTES

- ¹ National Crime Records Bureau (2007), *Prison Statistics India*, p.(i), Ministry of Home Affairs, Government of India.
- ² Ibid.
- ³ Ibid., p. 17, Chart 2.1.
- ⁴ Ibid., p. 36, Table 3.2.
- ⁵ Commonwealth Human Rights Initiative (2009), *Liberty at the Cost of Innocence: A Report on the Jail Adalats in India*, p. 15.
- ⁶ *A Convict Prisoner in the Central Prison vs. State of Kerala*, 1993 Cri LJ 3242.
- ⁷ National Crime Records Bureau (2007), *Prison Statistics, India*, Glossary, Ministry of Home Affairs, Government of India.
- ⁸ Ibid.
- ⁹ The open jail in Orissa houses only male convicts.
- ¹⁰ A total of 17 fortnightly reports were obtained from the IG Prisons Office.
- ¹¹ See Annexure A for a comparison with the other prisons of the state.
- ¹² Berhampur and Choudwar Circle Jail.
- ¹³ Berhampur Circle Jail, Choudwar Circle Jail, Balasore District Jail, Puri District Jail, Bhubaneswar Special Jail, Bhadrak Special Sub-Jail, and Angul Juvenile Jail.
- ¹⁴ National Crime Records Bureau (2007) *Prison Statistics, India*, (Table 1.2) p. 10, Ministry of Home Affairs, Government of India.
- ¹⁵ Containing not less than 300 prisoners; See Rule 4, Orissa Jail Manual, 1942.
- ¹⁶ Containing less than 300 and not less than 150 prisoners; See Rule 4, Orissa Prison Manual, 1942.
- ¹⁷ Containing less than 150 prisoners; See Rule 4, Orissa Jail Manual, 1942.
- ¹⁸ NCRB Prison Statistics. In the 1998 Prison Statistics, prison capacity was 7, 513, which was 10, 603 in 2007. This is a 41 per cent increase in the capacity. Similarly, comparing the prison population of 10, 756 in 1995 to 15, 368 in 2007, is a 43 per cent increase.
- ¹⁹ See NCRB (2007), *Prisons Statistics India*, Chart 1.9, p.8. Sub-Jails in Orissa have a capacity to accommodate 3, 803 prisoners.
- ²⁰ This includes the three indices – overcrowded, moderately overcrowded and highly overcrowded.
- ²¹ See Annexure A.
- ²² Angul Juvenile Jail is not a juvenile jail, but a sub-jail. It was a juvenile jail earlier.
- ²³ Report in the National Crime Records Bureau (NCRB), Prison Statistics year 1998 to year 2009. There is a lag of two years in the statistics reported by them. The 1995 statistics were reported in June 1998 and similarly the 2007 statistics were reported in their latest publication in July 2009.
- ²⁴ Report of the All India Committee on Prison Reforms, 1980-83, Chapter XII, p. 170, Ministry of Home Affairs, Government of India. (Seventh Finance Commission Report, 1978, p. 103, Chapter 10, Para 39).
- ²⁵ Ibid., p. 172.
- ²⁶ As many as 1, 891 undertrials in India have stayed in a prison for more than five years. See the National Crime Records Bureau (2007), *Prison Statistics India*, p. (ii).
- ²⁷ See the Report of the All India Committee on Prison Reforms, 1980-83, p. 42, Ministry of Home Affairs, Government of India.
- ²⁸ Angul Juvenile Jail, Balasore District Jail, Berhampur Circle Jail, Bhadrak Special Sub-Jail, Bhubaneswar Special Jail, Choudwar Circle Jail, and Puri District Jail.
- ²⁹ Primary school is calculated as education up to Class VI, secondary is till Class X and higher secondary comprise Classes XI and XII.
- ³⁰ Letter from National Human Rights Commission, D.O.No. 11/1/99-PRP&P, dated 29 April 1999.
- ³¹ Letter by Chief Justice A. S. Anand to all Chief Justices of High Courts, dated 29 November 1999.
- ³² Section 436 of the CrPC.
- ³³ Report of the Legal Aid Committee appointed by the Government of Gujarat in 1971 (headed by Justice P.N. Bhagwati), p. 185.
- ³⁴ *Ramamurthy vs. State of Karnataka*, AIR 1997 SC 1739.
- ³⁵ See Report of the All India Committee on Prison Reforms, 1980-83, p. 174, Recommendation No. 12.17.5., Ministry of Home Affairs, Government of India.
- ³⁶ AIR 1997 SC 1739.
- ³⁷ The Code of Criminal Procedure (Amendment) Act, 2005, Act 25 of 2005, w.e.f. 23 June 2006.
- ³⁸ Proviso to Section 436 of the CrPC.
- ³⁹ Explanation to the proviso to Section 436 of the CrPC.
- ⁴⁰ AIR 1979 SC 1360.

- ⁴¹ *State of Rajasthan v Balchand*, AIR 1977 SC 2477 where it was 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”. Also see *Gudikanti Narasimhulu and Ors. vs. Public Prosecutor, High Court of Andhra Pradesh*, AIR 1978 SC 429.
- ⁴² See the Report of the All India Committee on Jail Reforms, 1980-83, p. 42. Ministry of Home Affairs, Government of India.
- ⁴³ This Section was inserted in the CrPC by the Code of Criminal Procedure (Amendment) Act, 2005 vide Act 25 of 2005, w.e.f. 23 June 2006.
- ⁴⁴ In cases pertaining to (2) and (3) the court is required to record reasons in writing.
- ⁴⁵ See the Seventy-Eighth Report of the Law Commission on Congestion of Undertrial Prisoners in Jails.
- ⁴⁶ Orissa recorded a 15.8 conviction rate in 2008 for IPC crimes. *Crime in India (2008)*, Table 4.10, p. 358, Ministry of Home Affairs, Government of India.
- ⁴⁷ *Kashmira Singh vs. the State of Punjab*, 1977 4 SCC 291.
- ⁴⁸ Orissa has a charge-sheeting rate of 86.7 per cent. See *Crime Statistics in India (2008)*, Table 4.2, p. 346.
- ⁴⁹ Section 436 and 436A of the Code of Criminal Procedure, 1973. These Sections were amended by the Code of Criminal Procedure (Amendment) Act, 2005 vide Act 25 of 2005, w.e.f. 23 June 2006.
- ⁵⁰ In the matter of News Reports Published in The Times of India Dated 26 June 2006 vs. *State of Bihar & Ors* CWJS No. 7363 of 2006.
- ⁵¹ Section 122, Code of Criminal Procedure.
- ⁵² Recommendation 12.14, 1980-83, Report of the All India Committee on Jail Reforms, p. 174, Ministry of Home Affairs, Government of India.
- ⁵³ Recommendation 4.34.21, 1980-83, Report of the All India Committee on Jail Reforms, Ministry of Home Affairs, Government of India.
- ⁵⁴ Court on its own motion Regarding Various Irregularities at Central Jail, Tihar. CrI MA No. 7030/2007 & CrI Ref 1/2007.
- ⁵⁵ See Chapter 7 on Systemic Provisions for more information on the District Committee.
- ⁵⁶ The team could not interview him as he had been taken to court.
- ⁵⁷ Prisoners under Preventive Sections 107, 109, and 110 of the CrPC.
- ⁵⁸ *Sukh Das & Anr vs. the Union Territory of Arunachal Pradesh*, 1986 AIR 991, 1986 SCR (1) 590.
- ⁵⁹ *MH Hoskot vs. State of Maharashtra*, (1978) 3 SSC 544.
- ⁶⁰ *Suk Das vs. Arunachal Pradesh*.
- ⁶¹ *Sheela Barse vs. State of Maharashtra*, AIR 1983 SC 378.
- ⁶² Orissa State Legal Services Authority website, <http://oslsa.in/> as on 28 April 2010.
- ⁶³ http://legalservices.maharashtra.gov.in/Links/nalsa_meet_resol_action/agenda.pdf The Seventh All India Meet of The State Legal Services Authorities, Bangalore, as on 31 May 2010.
- ⁶⁴ In *The Matter of News Reports Published in The Times of India Dated 26 June 2006 vs. State of Bihar & Ors*, CWJC No. 7363 of 2006.
- ⁶⁵ Section 28, State Legal Services Act, 1987.
- ⁶⁶ As per information by the Registrar-cum-Secretary of the Ganjam District Legal Services Committee.
- ⁶⁷ Information about four prisoners is not known: one prisoner from Balasore District Jail and three from Berhampur Circle Jail. Twelve prisoners did not have a lawyer.
- ⁶⁸ AIR 1981 SC 928.
- ⁶⁹ One in Angul Jail, two in Berhampur, two in Choudwar and one in Puri.
- ⁷⁰ In Berhampur Circle Jail.
- ⁷¹ Eleven prisoners of the 47 who responded had met the lawyer only once across the seven prisons visited.
- ⁷² Four of the six prisoners with legal aid lawyer did not know the status of their cases.
- ⁷³ In Balasore, Berhampur, Bhubaneswar and Puri it is the Welfare Officer, whereas in Angul it is the Jailor who informs the DLSA Secretary of the prisoners interested in getting legal aid. In Balasore the Welfare Officer informs the Superintendent and the Superintendent contacts the DLSA.
- ⁷⁴ *Khatri & Ors vs. State of Bihar & Ors*, AIR 1981 SC 928.
- ⁷⁵ (1996) 4 SCC 33.
- ⁷⁶ D.O.No. 11/1/99-PRP & P, dated 29 April 1999.
- ⁷⁷ K.F. Rustamji, Member of National Police Commission, in 1978.
- ⁷⁸ 1980 1 SCC 81.
- ⁷⁹ National Crime Records Bureau (2008), *Crimes Statistics in India*, Table 4.10, p. 378, Ministry of Home Affairs, Government of India.
- ⁸⁰ Commonwealth Human Rights Initiative (2009), *Liberty at the Cost of Innocence: A Report on the Jail Adalats in India*, p. 27.
- ⁸¹ The waiting room attached to the court where prisoners await their turn to be produced before the Magistrate.

- 82 Rule 841, the Orissa Jail Manual, 1942.
- 83 Orissa Ordinance No. 2 of 2009, The Code of Criminal Procedure (Orissa Amendment) Ordinance, 2009 circulated by the Governor of Orissa on 26 February 2009.
- 84 Raghavan, Vijay (2007) "Production of Undertrial Prisoners through Videoconferencing System" e-Government: <http://www.egovonline.net/articles-list/45-cover-story/4096-production-of-under-trial-prisoners-through-the-video-conferencing-system.html> as on 15 August 2010.
- 85 Rule 841, p. 340, Orissa Jail Manual (1942).
- 86 As reported on 20 August 2009.
- 87 The last report sent to the IG of Prison's office by Angul Juvenile Jail was dated December 2008.
- 88 Berhampur Circle Jail, Balasore District Jail, Puri District Jail, Bhubaneswar Special Jail and Angul Juvenile Jail.
- 89 *Sunil Batra (II) vs. Delhi Administration*, AIR 1980 SC 1579.
- 90 Rule 41, Orissa Jail Manual, 1942.
- 91 AIR 1980 SC 1579.
- 92 *Madhukar B. Jambhale vs. State of Maharashtra & Ors*, 1987 Mah LJ 68.
- 93 Circular Letter No. 10896 dated 8 October 1986.
- 94 Circular Letter No. 2348 dated 10 March 2006.
- 95 Circular Letter No. 174(14)/XLIX-D-2/2008 dated 8 January 2008.
- 96 Letter dated 22 December 1999.
- 97 L.No. 2348 dated 10 March 2000.
- 98 While in Balasore District Jail the Jailor informed us about the annual visits of the District Committee, in Bhadrak Special Sub-Jail it was the Superintendent who confirmed the monthly visits of the committee.
- 99 Rule 45, Orissa Jail Manual, 1942.
- 100 National Crime Records Bureau (2007), *Prison Statistics India, 2007*, p. 139, Ministry of Home Affairs, Government of India.
- 101 Ibid.
- 102 Orissa Jail Manual, 1942, Chapter XLII, Rule p. 532.
- 103 For more information, see *Monitoring Prisons: A Visitor's Guide*.
- 104 Rule 47(ii), Orissa Jail Manual, 1942.
- 105 Rule 48, Orissa Jail Manual, 1942.
- 106 Rule 42, Orissa Jail Manual, 1942.
- 107 Report by the All India Jail Committee (1919-1920) – 515.
- 108 Chapter XV, Section I, Rule 6(i), Maharashtra Prison Manual, 1979.
- 109 Rule 9, Section I, Chapter XV, Maharashtra Prison Manual, 1979.
- 110 Rec 4.36.6, 1980-83, The Report of the All India Committee on Prison Reforms. Ministry of Home Affairs, Government of India.
- 111 "The list of non-official visitors to Choudwar Circle Jail is given below", Government Letter No: JLS/IP-45/2007-2289265, Period from 6 May 2008 to 5 May 2010.
- 112 Rule 42, Orissa Jail Manual, 1942.
- 113 Bhubaneswar Special Jail, Angul Juvenile Jail, Balasore District Jail, Bhadrak District Jail, and Choudwar Circle Jail.
- 114 Rule 44, Orissa Jail Manual, 1942.
- 115 Rule 45, Orissa Jail Manual, 1942.
- 116 The Seventh All India Meet of the State Legal Services Authorities, Bangalore. http://legalservices.maharashtra.gov.in/Links/nalsa_meet_resol_action/agenda.pdf as on 31 May 2010.
- 117 Chinmaya Mission, Prison Ministry India, Brahmakumari, and Rama Krishna Mission.
- 118 The following ten NGOs work in Bhubaneswar Special Jail: Institute for Community Development and Social Welfare (ICDSW), Lion's Club, Prison Ministry India, Rotary Club, Ishwariya Brahmakumari, Madhurmoyi Adarsh Sikhya Niketan, John Augustus, State Resource Centre for Adult Education, Satya Sai Seva Samiti, ISCKON.
- 119 Prajapati Brahmakumari, Rotary Club, Lion's Club and Marwari Yuva Manch.
- 120 *Sunil Batra(II) vs. Delhi Administration*, AIR 1980 SC 1579.
- 121 *Sunil Batra(II) vs. Delhi Administration*, AIR 1980 SC 1579. *Prem Shankar Shukla vs. Delhi Administration*, AIR 1980 SC 1535.
- 122 Rule 592, 151, 47(ii), 588(8) and 1004, Orissa Jail Manual, 1942.
- 123 Rule 151, Orissa Jail Manual, 1942.
- 124 AIR 1980 SC 1579.
- 125 Written in prison by Jawaharlal Nehru in September 1935. First published in the Modern Review, Calcutta.

CHRI PROGRAMMES

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

Strategic Initiatives

CHRI makes regular submissions to official Commonwealth bodies and member governments. CHRI periodically 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 ensures that human rights issues are in the public consciousness.

Access to Information

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

Access to Justice

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizen's 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 interferences.

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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