LET THE OUTSIDE IN

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PRISON VISITING SYSTEM

Key to open up a closed world

Letting the outside in is particularly essential in closed institutions like prisons where agents of the State have complete control over the lives of those who have lost their liberty. The Prison Visiting System comprising official and civilian visitors is the oversight mechanism that lets the outside in. It is the key to check on oppression and violation by authority and a means to ensure there is some independent scrutiny of the conditions of those whose access to the world of assistance available to the free is stringently controlled. Recommended in the Reform Committee of 1836, the system was incorporated into the Prisons Act in 1894. All states, under Section 59(25), are required to lay down rules for appointment and guidance of visitors to prisons in their respective prison manuals. Hence today every state has, with some variation, incorporates the Prison Visiting System comprising a Board of Visitors.
Board of Visitors

Official Visitor
Persons who become visitors to a prison by the virtue of the government office they hold at that point in time are called Official Visitors. These government offices have a stake in the management of prison and treatment of prisoner such as the judiciary, police, department of public health, social welfare, education, employment, industries, factories, agriculture.

Non-Official Visitor (NOV)
Lay people from the local society who have an interest in the welfare of prisoners and administration of prison are appointed as NOVs. Ideally, they should be doctors, psychiatrists, psychologists, lawyers, members of the Bar, journalists, social workers, members of the Red Cross, retired government officers and retired judges so that they can assist the prisoner and prison administration effectively.

Ex-Officio Non-Official Visitor
Persons who are elected by the voters as their representatives or members of autonomous statutory bodies which are created to protect the rights of vulnerable groups are called Ex-Officio Non-Official Visitors. Such persons may be the ministers, members of legislative assembly, parliament, nagar panchayats and municipalities, heads and members of Human Rights Commission and Women Commission, Minority Commission etc.

About CHRI & Prison Reform Programme
The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organization headquartered in India. Its objectives are to promote the practical realization of human rights in the Commonwealth. In addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice.

The Prison Reforms Programme of CHRI is more than 15 years old. The programme focuses on improving prison monitoring through the strengthening of undertrial review mechanisms and prison visiting system nationally, and ensuring early safeguards against unnecessary pre-trial detentions, specifically in Rajasthan and West Bengal. The programme also advocates for timely repatriation of foreign national prisoners and immediate release of asylum seekers. Evidence-based research, advocacy, capacity-building of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme.
**International Standards**

   - The primary instrument on penal reform seeks inspection of prisons in Rule 83, 84 and 85. It seeks a two-fold system of internal and external inspection to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that rights of prisoners are protected. It hands over the authority to the inspectors to freely choose which prisons to visit and make unannounced visits at their own initiative. It calls for qualified and competent inspectors and a balanced gender representation. Every visit must be followed by a written report and seek implementation.

2. **United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (Bangkok Rules)**
   - A supplementing instrument focusing on treatment of women prisoners calls for inspection under Rule 25. It calls for independent and competent authorities to investigate any claims of abuse by women prisoners and seeks the inclusion of women in monitoring and visiting boards. Further, it prioritizes the principle of confidentiality and urges protection measures to be put in place in case retaliation by authorities.

3. **The United Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)**
   - The central instrument on prohibition and prevention of torture by States recognizes the importance of monitoring places of detention in Article 17. It calls for an independent Committee consisting of experts to monitor the places of detention and seek reports on the compliance of the Convention. The Committee is created to act as a preventive measure against both physical and mental torture. India signed the UNCAT on 14th October 1997, however it has steered clear from ratification till date. Being a signatory does not bind India to accept the convention. However, it is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. This can only be achieved by strengthening the existing institutions.

**FUNCTIONS**

- **1. Inspection of prisons**
- **2. Observation of prison life**
- **3. Documentation of observations**
- **4. Prevention of any violation**
- **5. Improvement of prison conditions**
- **6. Redressal of prisoners complaints**

**KEY INSTRUMENTS**

1. **The Constitution of India, 1951**
2. **The Prisons Act, 1894**
3. **The Prisoners (Attendance in Courts) Act, 1955**
4. **The Repatriation of Prisoners Act, 2003**
5. **The Legal Service Authorities Act, 1987**
6. **The Transfer of Prisoners Act, 1950**
7. **The Mental Health Act, 1987**
8. **The Protection of Human Rights Act, 1993**
10. **State Jail Manuals**
Timeline of Events

1836
First Reform Committee
- Recommended periodic inspections of the jails to ensure no epidemic spreads and prisoners are properly vaccinated.

Cardew Committee
- Emphasized the existence of non-official visitors as supplying a training ground where members of the public can obtain an insight into jail problems and learn to take an interest in prisons and prisoners.

1919
Sunita Batra vs Delhi Administration
- Emphasized on vesting visitatorial powers to people from varied social backgrounds and judicial officers to ensure an instant administrative grievance remedial mechanism to protect the rights of prisoners.

1980
Mulia Committee
- Included prison welfare and care, jail administration into the purview and duties of visitors and also emphasized on gender balance of the Board of Visitors.

1983
Sheela Barse & Anr vs Union of India & Ors
- Held that the purpose of appointing visitors is to ensure that the provisions in the Manual are strictly complied as far as the convicts and the under-trials prisoners detained in jail are concerned.

1986
Rama Murthy v. State of Karnataka
- Advised the visitors that inspections must be made on the shortest notice so that the reality becomes known. Fair inquiry into the complaints must be called and full assurance must be made to the prisoner that he/she would suffer any evil consequence for lodging a complaint.

1999
Rasikbhai Ramsingh Rana vs. State of Gujarat
- Terminated Board of Visitors a “practicable formula bearing in mind the humanitarian approach”, “an effective administrative solution” and something further concrete in the nature of a permanent workable arrangement...to constantly monitor the unfolding effective implementation of the arrangements”.

2010
Master Jithu vs State of Tamil Nadu
- Held that the power of Chief Judicial Magistrates and Sessions Judges to make surprise visits must be used to ensure that juveniles are not being kept with adult accused persons.

2011
- Guidelines on appointment and working of Non-Official Visitors for Prisons.
### POWERS, DUTIES AND ACTION TO BE TAKEN

#### NON-OFFICIAL VISITORS

**Pre Visit**
- Identify the functional roles and their responsibilities
- Make available information on prison demographics, capacity, overcrowding, language speakers, known issues, recent incidents, media reports
- Contact the following NGOs:
  - Knowledge of legal framework, in particular the state rules, notifications and MVA advisories and guidelines
  - Prepare a checklist or questionnaire
  - Gather the contact details of important and relevant authorities and NGOs working within the welfare of prisoners

**During Visit**
- Make a joint visit with fellow visitors
- Introduce yourself to jail staff and prisoners
- Explain objectives of monitoring work
- Explain the limitations of monitoring work
- Request updated information on prison demographics, capacity, overcrowding
- Seek the opinion of the staff on conditions of detention, problems faced and observed and solutions in mind
- Collect information on sources of information such as registers, visitors’ book, jail staff, electricity use and standard operating procedure, working staff etc.
- Observe the architecture and layout of the prison
- Locate all the cells, bars, meeting rooms, gardens, kitchen, factory, courtyards, hospital and bathrooms
- Record visits of inmates related to medical services, food and water supply, vaccinations

**Post Visit**
- Record the summary of the visits observed along with possible solutions

#### PUBLIC VISITORS

**Pre Visit**
- Collect all available information on prison demographics, capacity, overcrowding, language, known issues, recent incidents, media reports
- Contact the following NGOs:
  - Knowledge of legal framework, in particular the state rules, notifications and MVA advisories and guidelines
  - Prepare a checklist or questionnaire
  - Gather the contact details of important and relevant authorities and NGOs working within the welfare of prisoners

**During Visit**
- Make a joint visit with fellow visitors
- Introduce yourself to jail staff and prisoners
- Explain objectives of monitoring work
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- Request updated information on prison demographics, capacity, overcrowding
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### STATE HUMAN RIGHTS INSTITUTIONS

**Pre Visit**
- Locate and study past inspection reports by human rights institutions such as Human Rights Commission, Women Commission, Minority Commission, Computer and Auditor General and non-governmental institutions to flag out issues of concern
- Call for and study the past budget allocations to the issues of concerns and its utilization by the prison department
- Draw out a list of Supreme Court and relevant High Court judgments related to issues on prison reform and study the specific directions
- Study the background of the working staff and vacancies

**During Visit**
- Make an unannounced visit to observe the prison on-site and not to let its staff
- Introduce yourself to the prisoners with a focus on independence and confidence building
- Examine visitors book and flag out the issues of concerns
- Interview with the prisoners to understand any abuses made by the jail staff by way of punishment, solitary confinement, prolonged work hours, use of restraint and force or by fellow prisoners by way of physical or sexual abuse
- Comprehend the testimony by speaking with other prisoners even out of hearing of other officers, if required
- Present the summary of the jail staff and if possible hold on-site inspection

**Post Visit**
- Divide issues on the basis of what requires preventive and reactive investigation
- Field constructive dialogues with the authorities on the issues that require preventive investigation
- Reference the issues to the authors on the issues that require reactive investigation
- Examine a Magistrate’s Investigative Report (MIR) if any on the issue concerned
- Increase coordination amongst various governmental stakeholders to prevent violations
- Send opportunities to check action taken and compliance

### MAGISTRATES & JUDGES

**Pre Visit**
- Study judicial procedures on issues on prison reform
- Study information on history of maltreatment of prisoners, foreign nationals and women, bullying allegations

**During Visit**
- Make unannounced visits to observe the prison on-site and not to let its staff
- Study the past inspection reports of the visitors
- Prioritize complaints of corruption, assaults, inhumane treatment, unnecessary detention, death in custody, applications of bails, parole and remission especially by petty and pre-sentence prisoners
- Assess the quality of legal representation
- Interact with criminal officers and parole officers for obtaining a balanced view on prisoner treatment
- Examine the Uniforms Register/Complaint Box
- Seek the response and action taken from the jail staff on those grievances
- Scrutinize registers for obtaining an objective view on the facts
- Examine the minutes of the meetings held in prison by Boards, Committees etc.
- Conduct the jail staff on the Compliance of any recommendations by those Boards, Committees etc.
- Hand hearings, examination and review submissions from both the prison and staff
- Resolve issues by mediation and remedial action in case of failure resort to external intervention

### OFFICIAL VISITORS

**Pre Visit**
- Review existing prisoner requests and complaint mechanisms
- Learn about the importance of internal and external inspections
- Study the disciplinary actions made to the areas that correspond to or directly to your office
- Prepare a check list for assessing the quality and maintenance of the services and products related to your office

**During Visit**
- Focus on areas that correspond to or directly relate to your office
- Provide technical advice to the jail staff to efficient discharge of their duties
- Conduct a quality assessment of the services provided by the jail staff to the prisoners
- Examine the registers and records pertaining to the services and products related to your office
- Record your observations and recommend solutions in the Visitors Book

**Post Visit**
- Identify and analyze any challenges and obstacles in the discharge of duties by the jail staff
- Prepare a strategy document taking into consideration short term and long term goals and targets
- Follow-up consistently to ensure achievement of targets
- Engage with civil society actors to ensure compliance, monitoring and obtaining third party perspectives
- Encourage SSE for jail staff by building their capacities related to your area of professional expertise