

2014

# UNDERTRIAL REVIEW MECHANISMS: WEST BENGAL

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**COMMONWEALTH HUMAN RIGHTS INITIATIVE**

Working for the practical realisation of human rights in the countries of the commonwealth.

# UNDERTRIAL REVIEW MECHANISMS: WEST BENGAL

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# Acknowledgement

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# I. INTRODUCTION

## i. CONTEXT AND BACKGROUND

Overcrowding is a major strain on prison resources and infrastructure and thus is one of the main reasons for the abhorrent prison conditions in our country.<sup>1</sup> An analysis of the available data on prisons makes it evident that the root of this severe overcrowding lies in the high percentage of undertrials lodged in prisons across India. In 2013,<sup>2</sup> undertrials constituted 67.6 percent of the total prison population with the period of detention for these prisoners varying from 3 months to more than 5 years. Astonishingly, in 2013 as many as 3047 undertrials were reported to be languishing in jails for 5 years or more in different parts of the country.

Slow progress of court cases and operation of the bail system to the disadvantage of the poor and illiterate prisoner is responsible for the pathetic plight of undertrials who suffer all the hardships of incarceration although their guilt is yet to be established.<sup>3</sup> The fact that courts are already overburdened with pending cases

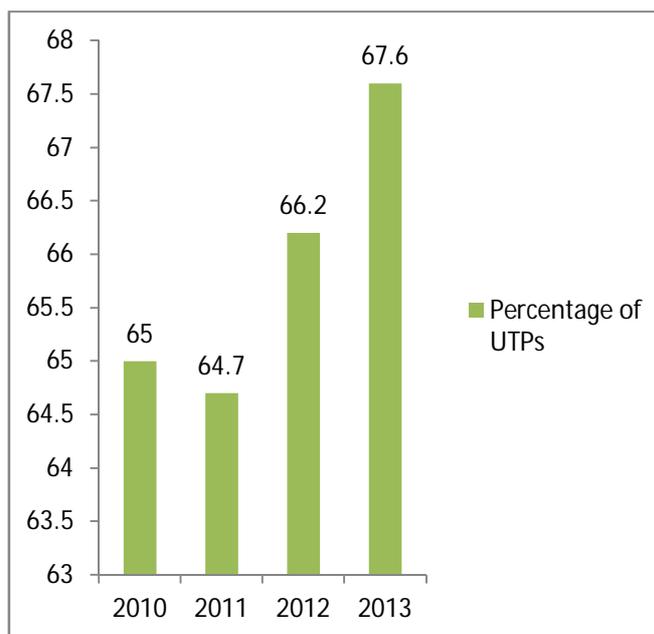


Figure 1. Percentage of UTPs across India in last 4 years

merely adds to the situation. At the end of 2012 almost 2 crore criminal cases were pending in the district and subordinate courts in India.<sup>4</sup> This alone speaks volumes about the inadequacy of the criminal justice system. Among other reasons, this inadequacy can be attributed to unnecessary arrests by the police, neglect by the magistracy to strictly follow procedural safeguards, lack of early access to counsel, lack of infrastructure, inadequate court management.

As is the situation across India, overstays, unnecessary detention and overcrowding are common features in correctional homes in West Bengal. Recent figures show that out of 22496 prisoners detained in correctional homes across the state, 15880 are under-trials i.e. 70% of the prisoner population.<sup>5</sup> The occupancy rate in West Bengal is 100.7% whereas 2017 prisoners were detained in correctional homes for

<sup>1</sup> Monika Saroha, 'Amendments in CrPC', (2006) 2 SCC (Cri) J-9.

<sup>2</sup> Prison Statistics Report 2013, available at <<http://ncrb.nic.in>>.

<sup>3</sup> Dr Justice AS Anand Chairperson NHRC and Former Chief Justice of India in his letter dated 1<sup>st</sup> July 2003 sent to all Chief Justices of High Courts on the plight of undertrial prisoners.

<sup>4</sup> Court News, publication by Supreme Court available at <[http://www.supremecourtindia.nic.in/courtnews/2012\\_issue\\_4.pdf](http://www.supremecourtindia.nic.in/courtnews/2012_issue_4.pdf)>.

<sup>5</sup> As on May 2014, available at <[http://wbcorrectionalservices.gov.in/pdf/population\\_feb.pdf](http://wbcorrectionalservices.gov.in/pdf/population_feb.pdf)>.

more than 1 year. What is even more disturbing is the steep rise in the average period of detention of an undertrial. In 2001, 66.8% UTPs spent less than 3 months as an UTP whereas in 2012 this figure has gone down to 48.9%, indicating a major rise in the average period of detention of UTPs.<sup>6</sup>

**Table 1.1: Duration of completion of trial in 2013: All Courts in West Bengal<sup>7</sup>**

Less Than 6 Months	6-12 Months	1-3 Years	3-5 Years	5-10 Years	Over 10 Years	Total
6899	4118	7812	6524	4330	1713	31396

**Table 1.2: Disposal of Persons Arrested Under IPC Crimes By Courts in West Bengal During 2013<sup>8</sup>**

Total No. Of Persons Under Trial Including Those From Previous Year	Cases Compounded Or Withdrawn	Trial Completed	Trial Remained Pending	No. Of Persons Convicted	Pendency Percentage	Percentage Of Pendency To All India Total
1131322	619	69718	1060985	6076	93.8	7.1

**Table 1.3: Number of Undertrial Prisoners by Period of Detention at the end of 2012 in West Bengal<sup>9</sup>**

Upto 3 Months	3 - 6 Months	6 - 12 Months	1 - 2 Years	2 - 3 Years	3 - 5 Years	Above 5 Years	Total
6830	2421	1899	1354	685	591	197	13977

Over the past couple of years there have been several instances of hunger strikes by prisoners demanding speedy trials. Even though the strikes ended with an assurance from the state government to setup committees to ensure speedy trials, no such mechanisms have been set in place till now. CHRI's discussion with key stakeholders has revealed that there is no mandate either statutory or by government order for the setup of any committee for the review of cases of prisoners. One such proposal for setup of such committees was sent from the Correctional Services Department in 2011<sup>10</sup> for consideration by the state government, unfortunately no action has been taken on it till date. The Ministry of Home Affairs too has stressed upon the importance of formation of such committees<sup>11</sup>, yet no such committees have been established in West Bengal.

<sup>6</sup> See Figure 3.

<sup>7</sup> Crime in India, 2013, Table 4.18 available at <www.ncrb.nic.in>.

<sup>8</sup> Crime in India, 2013, Table 12.13 available at <www.ncrb.nic.in>.

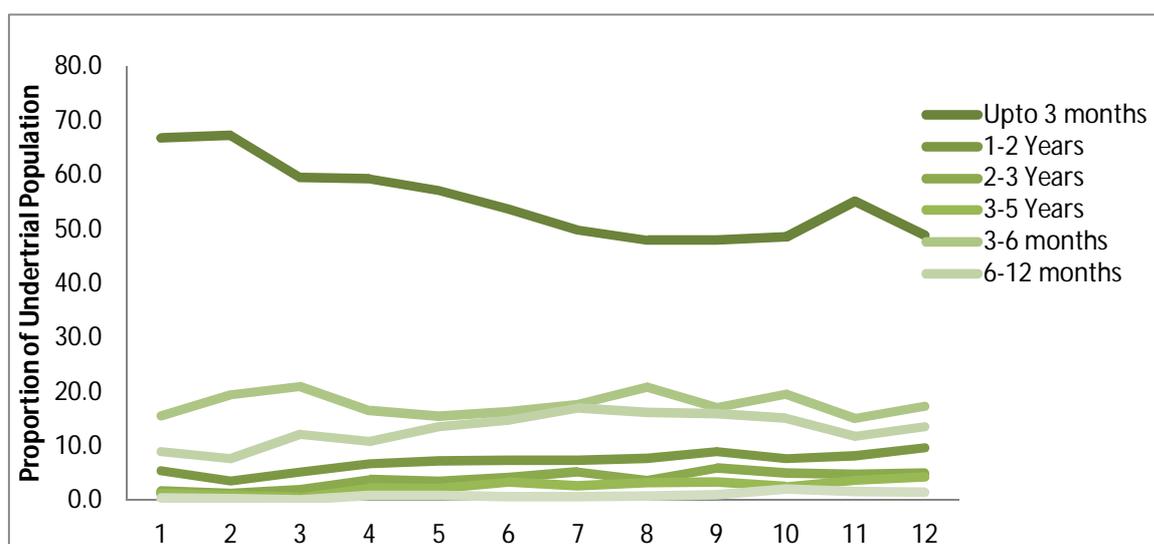
<sup>9</sup> Prison Statistics 2012, Table 6.1, available at <www.ncrb.nic.in>.

<sup>10</sup> See Annexure A.

<sup>11</sup> See Annexure B.

From time to time the executive has introduced plans to remedy this situation, yet no radical change has been perceived in this area. On 26<sup>th</sup> January 2010, the Ministry of Law & Justice, Government of India's introduced the 'Mission Mode Programme for Delivery of Justice & Legal Reforms - Undertrial Programme' to reduce 2/3rd of the undertrial cases and to ease congestion in jails by 31st July, 2010<sup>12</sup>. The Supreme Court too has periodically been issuing directions for the release of undertrials<sup>13</sup>, and liberal use of bail provisions<sup>14</sup>.

However this has not led to any major impact upon the percentage of undertrials as is evidenced by prison statistics<sup>15</sup> since 2010. Even though the website of the Ministry of Law & Justice claims that in all, around five lakh undertrial prisoners were released since the Mission Mode Programme was launched in 2010, the prison



**Figure 2. Period of detention in WB from 2001 to 2012**

statistics for 2011 indicated only a 0.3% decline in percentage of UTPs.

Surprisingly, even with efforts on going for criminal justice reforms, in 2012 and 2013 there has been increase in the percentage of UTPs with the value coming to 66.2% & 67.6 % respectively. Further analysis of the statistics also indicate an increase in the period of detention of UTPs pending trial, thus while in 2001 approximately 40.5 % of UTPs spent less than 3 months in prison pending trial, this figure decreased to 37.7 % in 2012.

In the past decade a number of amendments have also been introduced into the Code of Criminal Procedure 1973 (hereinafter referred to as the Code) with an aim to reduce the time stay of undertrials in prison and secure their release. One

<sup>12</sup> Department of Justice, Ministry of Law & Justice Website, available at < <http://doj.gov.in/?q=node/209>>.

<sup>13</sup>; See *Hussainara Khatoun v State of Bihar* AIR 1979 SC 1360, *Common Cause v Union of India etc.* AIR 1997 SC 1539; *Bhim Singh v Union of India & Or*, WP (Crim) 310 of 2005, Order dtd. 5.9.2014.

<sup>14</sup> *Motiram & Ors V. State of Madhya Pradesh* AIR 1978 SC 1594.

<sup>15</sup> See Figure 1.

significant amendment was the insertion of Sec 436A<sup>16</sup> which not only lays down the maximum period of detention for an undertrial and also lays down the right of an undertrial to apply for bail once s/he has served one half of the maximum term of sentence s/he would have served had s/he been convicted. It also lays down the right to be released on bail where an under-trial has completed the maximum term of imprisonment. One other important amendment to the Code was the proviso introduced under Sec 436, which is the provision for taking bail when a person is accused for a bailable offence. This provision makes it mandatory for the court to release such person on bail without surety if s/he cannot provide one within 7 days of his/her arrest. However, even after 8 years of the enactment of these provisions, no substantive change in the percentage of UTPs can be noticed.

In addition to the efforts by the executive, legislature and judiciary, the need for regular oversight of prisoners including review of undertrial cases by judicial officers has been mandated in many Supreme Court judgments. In the case of *Charles Sobraj V Superintendent, Central Jail, Tihar, New Delhi*,<sup>17</sup> the court held that,

*“Judicial policing of prison practices is implied in the sentencing power, thus the ‘hands off’ theory is rebuffed and the Court must intervene when the constitutional rights and statutory prescriptions are transgressed to the injury of the prisoner....The criminal judiciary has thus a duty to guardian their sentences and visit prisons when necessary.”*

In addition to mandating judicial officers to visit prisons, the Supreme Court emphasised the importance of conducting periodic visits by judicial officers in the case of *Sunil Batra (II) V Delhi Administration*,<sup>18</sup> and directed that,

*“District magistrates and sessions judge shall visit prisons in their jurisdiction, give opportunities for ventilating legal grievances, make expeditious enquiries and take suitable remedial action.”*

This mandate was further expounded in the case of *Rakesh Kaushik v BL Vig, Superintendent Central Jail, New Delhi*<sup>19</sup>, wherein the supreme court reiterated its directions given in *the Sunil Batra (II) Case*<sup>20</sup>, and added that lawyers should be nominated by the district magistrate, sessions judge, High Court and Supreme Court to make periodical visits and record and report to the concerned court.

The emphasis by the apex court on regular & periodic visits by judicial officers has been constant. Just recently<sup>21</sup> the Supreme Court being wary of the large undertrial population ordered weekly visits by judicial officers for 2 months in all

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<sup>16</sup> Code of Criminal Procedure (Amendment) Act 2005, Act 25 of 2005, wef June 23, 2006.

<sup>17</sup> AIR 1978 SC 1514.

<sup>18</sup> AIR 1980 SC 1579.

<sup>19</sup> AIR 1981 SC 1767.

<sup>20</sup> Supra.

<sup>21</sup> *Bhim Singh v Union of India & Or*, WP (Crim) 310 of 2005, Order dtd. 5.9.2014.

prisons across India to ensure the implementation of section 436A Cr.P.C. and facilitate release of large number of undertrial prisoners.

Even with so many efforts underway, little if any changes can be seen in the number of undertrial prisoners who undergo prolonged pre-trial detention in violation of their constitutional right to a speedy trial. The Indian judicial system today is indeed struggling to uphold the constitutional promises. Speedy trial, presumption of innocence, due process rights have become a mere farce today. As discussed above, all ad hoc attempts by nation seem to have failed in reducing the number of undertrials in prisons across India.

With every agency of the criminal justice system being overburdened with their own work, all attempts to reduce the number of undertrials, ensure speedy trials and prevent prolonged pre-trial detention are bound to fail if no specific bodies/mechanisms such as the Undertrial Review Committees (URC), which can review cases of under-trial prisoners on a regular basis and recommend for their timely release, are set into place.

## **ii. THE NEED FOR REVIEW COMMITTEES**

The intent of creating URC is to safeguard individual liberty and to guarantee fair trial rights especially to the unrepresented and the unfortunate. The mandate of such review committees is very clear - to frequently review the cases of every prisoner awaiting trial and apply appropriate correctives to ensure no undertrial is held for unjustifiably long periods in detention or is simply lost in the files. Attention is given to persons who become eligible to be released on bail, have already served one-half or maximum jail term for their offence, do not have access to counsel, are vulnerable due to mental and physical disability, are accused of serious offences and have been undertrial for a long period of time or have committed such petty offence that there is no need to keep them in judicial custody.<sup>22</sup>

URCs are an excellent inter-agency coordinating body that allows for all relevant persons to come together to assist the courts to ensure that there is no unjustifiable infringement of the right to liberty to which we are all entitled. In Rajasthan, for instance, the *Avadhik Samiksha Samitis*, as they are commonly known, comprises various duty holders from the government, police, prison and probation department and is headed by the Chief Judicial Magistrate. In Gujarat, in addition to others, Civil Surgeon, District Education Officer, Social Defense Officer and representatives of the Public Works Department and Municipality also form part of what is known as the Core Committee. While in Himachal Pradesh and Kerala, these Committees are headed by a District and Sessions Judge in Andhra

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<sup>22</sup> 'Undertrial and Error', Sugandha Mathur & Madhurima Dhanuka, Governance Now, May 1-15, 2014, pg 48.

Pradesh, Haryana and Chandigarh, absence of a formal review mechanism is compensated by a strong judicial oversight by District Judges.

The concept of URCs is not new, they have been under discussion since April 1979 when a conference of Chief Secretaries, for the first time, recommended constitution of District and State level review committees. Since then, the Central government as well as the higher judiciary have remained steadfast in their support of oversight mechanisms. The All India Jail Reforms Committee of 1980-83, popularly known as the Mulla Committee had also recommended having an effective mechanism of review of the cases of undertrial prisoners regularly both at the district level and the State level.

The recent letter sent by the Home Minister to all state governments to setup state-level multi-disciplinary committees to review cases of undertrials is one of the innumerable efforts made by the central government to give a ray of hope to them.<sup>23</sup> This is the third time since 2011 when the Ministry of Home Affairs has called upon the states to form Undertrial Review Committees (URC) stressing on the need for prison reforms.<sup>24</sup> However, research conducted by CHRI shows that in Rajasthan, Himachal Pradesh and Kerala such committees have been instituted by the Government order; in Odisha and West Bengal their creation is pending at the Home Department; in Karnataka, the prison department awaits action from the High Court; and other states are oblivious to the idea.

### **iii. OBJECTIVES & AIM OF STUDY**

In absence of any formal mechanism for review of cases, one speculates if there are any other informal mechanisms in place. It was often brought to CHRIs notice by Correctional Home officers that in some districts the district judge or the chief judicial magistrate are vigilant and make regular visits to correctional homes. Upon their visits they enquire into cases of undertrial prisoners, and where required intervene on their own account. With the lack of any mandate for such review, it was discovered that there was no documentation in this regard.

This study documents the existing mechanisms for review of cases of under-trial prisoners. In order to determine the existence of any such mechanism meetings with various agencies of the criminal justice system was held. In addition, a telephonic survey was conducted with superintendents of correctional homes of West Bengal and applications under the Right to Information Act 2005 were filed with the Department of Correctional Services and Calcutta High Court.<sup>25</sup>

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<sup>23</sup> May 2011, Ministry of Home Affairs's Advisory, vide No. 17011/2/2010-PR; January 2013, Ministry of Home Affairs's Advisory, vide No. V-13013/70/2012-IS(VI) – See Annexure B.

<sup>24</sup> 'Undertrial and Error', Sugandha Mathur & Madhurima Dhanuka, Governance Now, May 1-15, 2014, pg 48

<sup>25</sup> See Annexure -C for details.

The report will indicate that there exist no such formal mechanisms for review of undertrial cases and will argue that there is indeed a need for setup of such mechanisms. Recommendations are also put forth on how such committees can be setup easily within the state and that they can be instrumental in reduction of undertrial population across the state.

## II. DATA ANALYSIS & EVALUATION

There are 58 Correctional Homes in West Bengal including Central Correctional Homes (6), Sub-Correctional Homes (33), District Correctional Homes (12), Special Correctional Homes (3), Women Correctional Homes (2), Open Air Correctional Home (2).

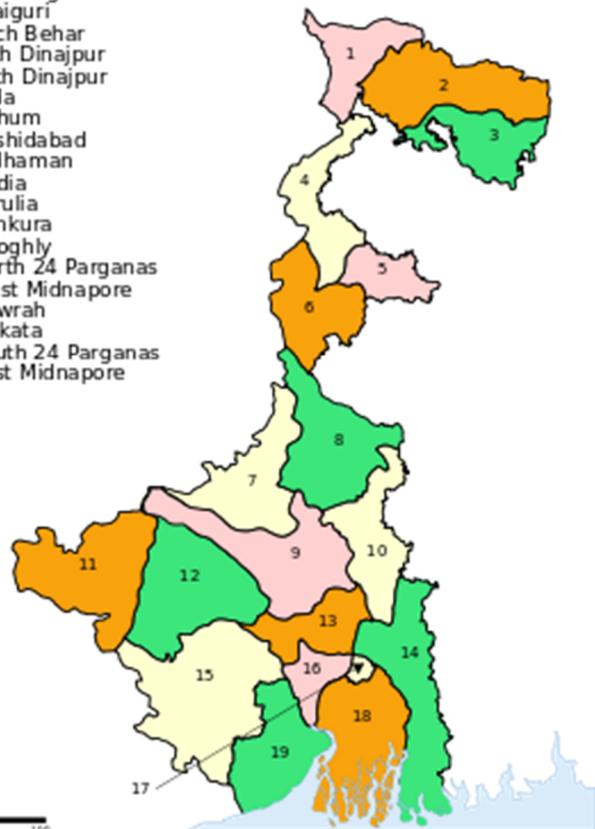
### i. PRESENCE OF MULTI-AGENCY COMMITTEES IN WB

In West Bengal there exist 2 types of multi-agency committees which are functional in most districts. They, however, do not have any mandate to deal with cases of undertrial prisoners. These committees are:-

- a. **District Monitoring Committee** - this comprises the District Judge, District Magistrate and Superintendent of Police. The Chief Medical Officer is also at times present at the meetings. The meetings are to take place once a month. The District Judge heads the committee - the meeting is usually in the DJ's chambers or at times in the DM's office. They discuss judicial administration, police administration, general administration and issues regarding delays in postmortem reports etc (CMOs role). The minutes are circulated to each department however there is no process of submission of any minutes, reports etc to the High Court. Discussions are on administrative issues, and there is no discourse on prisoner related matters.

Districts of West Bengal

1. Darjeeling
2. Jalpaiguri
3. Cooch Behar
4. North Dinajpur
5. South Dinajpur
6. Malda
7. Birbhum
8. Murshidabad
9. Bardhaman
10. Nadia
11. Purulia
12. Bankura
13. Hooghly
14. North 24 Parganas
15. West Midnapore
16. Howrah
17. Kolkata
18. South 24 Parganas
19. East Midnapore



- b. **Administrative Committee** - this comprises the District Magistrate, District Judge, representative from the Public Works Department. The jail superintendent too is present at times - but this is purely to discuss infrastructural issues and again prisons or prisoners are not a subject of discussion here.

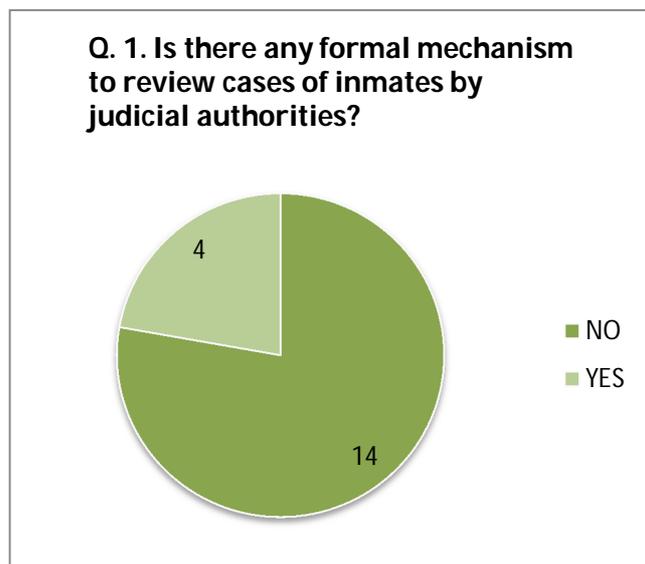
However, the difference in the mandate of the above mentioned committees is not clear, but it is established that neither of the committees conduct any review of

undertrial cases. In addition, the West Bengal Correctional Services Act 1992 mandates the setup of District Advisory Committees (DACs) in each district.<sup>26</sup> This comprises as ex officio members, the District and Sessions Judge; the Superintendent of the district correctional home; the District Medical Officer of Health; the District Probation Officer; the Chief Medical Officer of Health of the District; the Chief Judicial Magistrate of the District; and as non-official members, one serving or retired Headmaster of a High Secondary School nominated by the State Government; five members of the West Bengal- Legislative Assembly from the district nominated by the Government, of whom one shall be a woman and one shall belong to the Opposition in the West Bengal Legislative Assembly; two social workers of the district, of whom one shall be a male and other shall be a female, nominated by the State Government. The District Sessions Judge is to be the ex officio Chairman and the Superintendent of the district correctional home shall be the ex officio Member-Secretary of the District Advisory Board. However, just like the other bodies mentioned above, its functions do not include review of prisoner's cases.

Unfortunately, the reply received from the State Public Information Officer, West Bengal Directorate of Correctional Services, in response to our RTI, confirmed that the DACs have not yet been formed by the state government.

## ii. EXISTENCE OF REVIEW MECHANISMS

Of the 18 officers who provided information through the survey, 14 officers confirmed that there is no formal mechanism setup for the review of undertrial cases. Officers from Balurghat DCH, Midnapore CCH & Hooghly DCH however informed that there have been discussions on setup of a committee comprising the district judge, superintendent of police and superintendent of correctional home, but nothing has materialised as of now. The remaining 4 though initially stated that a formal mechanism exists, but upon further contact they suggested that they were referring to the district monitoring committees.



The response to the RTI application however yielded a response from the West Bengal Directorate of Correctional Services stating that

*“It has been learnt that in a few districts of the state the District Level Undertrial Review Committee headed by District & Sessions Judge has been constituted to review cases of Under-trial Prisoners.....It is learnt that a letter*

<sup>26</sup> Mandated u/s 29(1) West Bengal Correctional Services Act 1992.

was issued by the Hon'ble High Court at Calcutta addressing the Judicial Secretary, Government of West Bengal and informing all District Judges of West Bengal in June 2013 with regard to adopt the views by the Hon'ble High Court in line of Andhra Pradesh as expressed in the direction of the Hon'ble Apex Court in respect of District Level Review Committee."

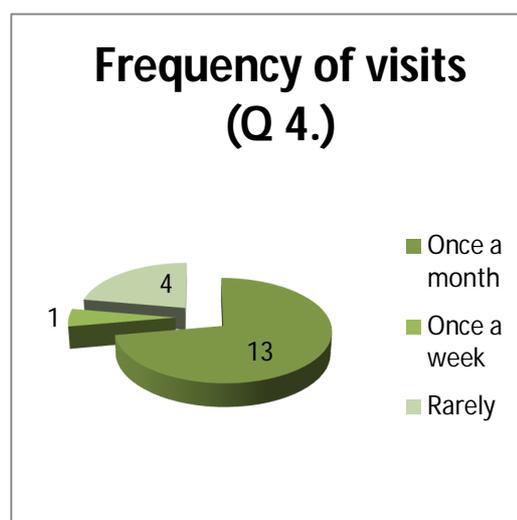
On receipt of this information efforts were made to get hold of a copy of the letter issued by the Calcutta High Court. However, a meeting with the Chief Justice, Calcutta High Court; Registrar General, Calcutta High Court and Chief of Correctional Homes, West Bengal yielded no results, with the former denying any such letter having been sent from the High Court and the latter stating that no such order could be found. We also did not receive any response to the RTI application sent to the Calcutta High Court. Also on further query with correctional home officers it was learnt that they confused periodic review committees with District Monitoring Committees (DMC). They also confirmed that the DMC meetings would discuss on physical conditions of correctional homes but not review cases of under-trial prisoners.

### iii. VISITS BY JUDICIAL OFFICERS

Information obtained from the survey suggested that visits by judicial officers were made at all 18 correctional homes. Majority of visits were made by chief judicial magistrates. This was further affirmed by the 39 responses received to the RTI application, which indicates that visits are made by judicial officers on a regular basis.

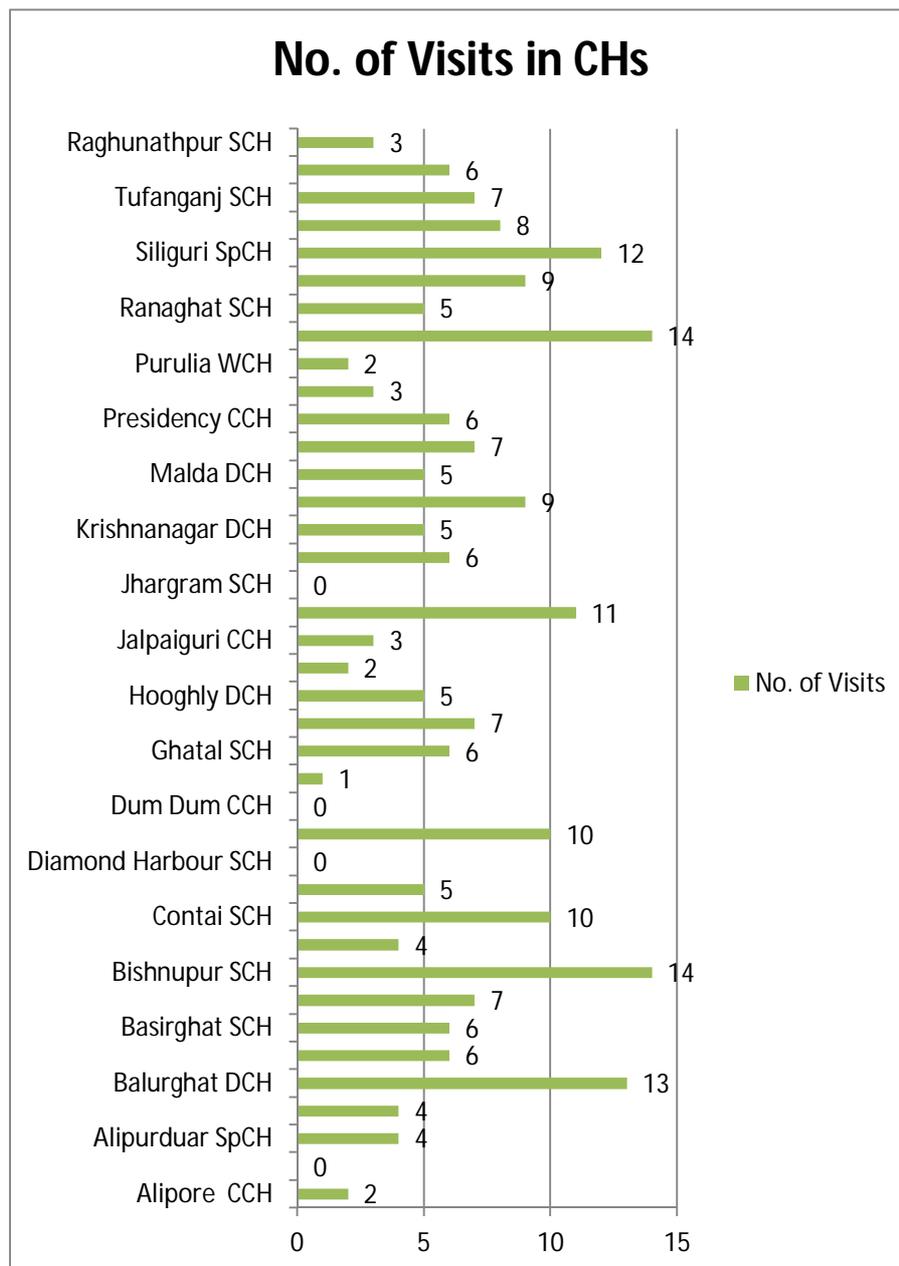
**Designation:** The survey suggests that in the 18 CHs the District and Sessions Judge, the Chief Judicial Magistrate, members of the District Legal Services Authority conduct visits on a regular basis. This was evidenced by the RTI responses which state that of the 227 visits made, 20 correctional homes were visited by the District & Sessions Judge, 4 CHs by the Additional District & Sessions Judge, 18 CHs by the Chief Judicial Magistrate, 19 CHs by the Assistant Chief Judicial Magistrate, member of District Legal Services Authority visited 6 CHs and a retired judge visited 1 CH.

**Frequency:** The survey suggested that in 13 correctional homes visits were conducted at least once a month, in 1 correctional home visits were conducted every week while in 4 correctional homes visits were rarely ever made. The RTI responses from the 39 CHs confirm this and show that 227 visits<sup>27</sup> were made within the period of 1 January 2014 to 30 June 2014.

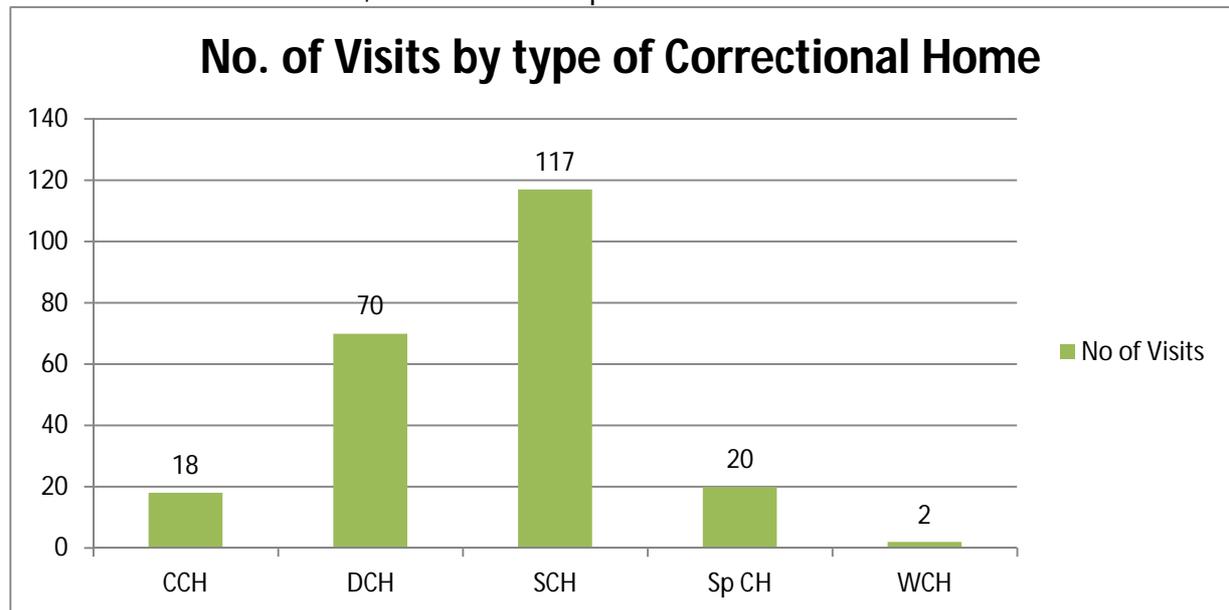


<sup>27</sup> Alipore Women Correctional Home responded that occasional visits are made by judicial officers, that value is excluded from the total number of visits.

Thus, on average judicial officers' conduct atleast 1 visit in each correctional home across West Bengal. However the frequency of visits varies across CHs. Whereas 14 visits, being the maximum number of visits, were made to Bishnupur SCH & Raiganj DCH, no visits were reportedly made in 3 correctional homes (Dum Dum CCH, Jhargram SCH and Diamond Harbour SCH).

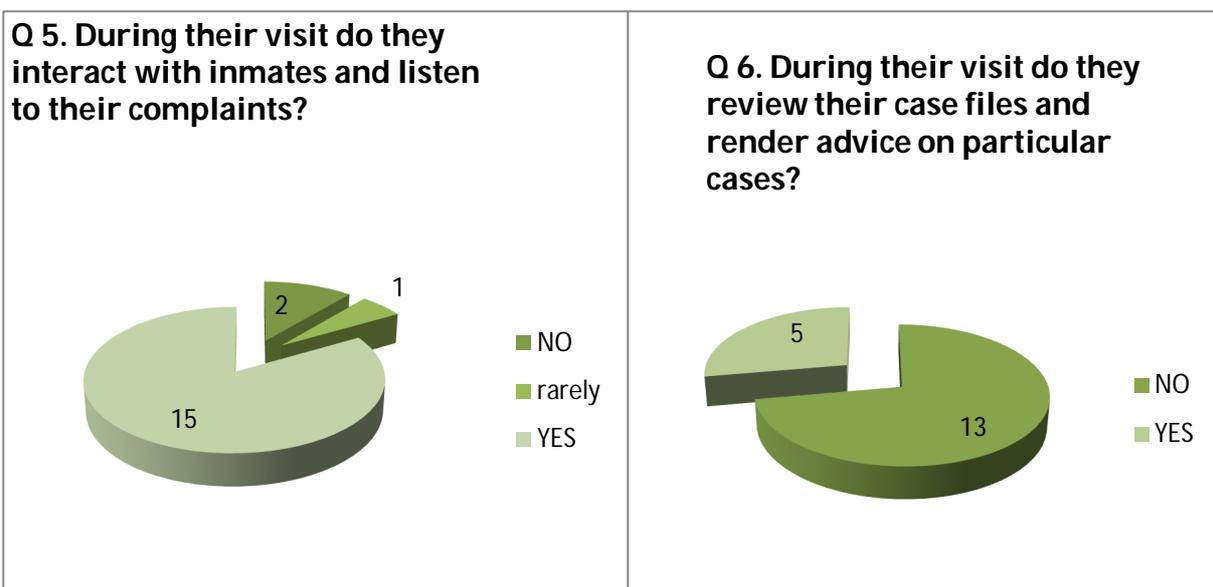


**Visits by type of correctional homes:** In terms of visits by type of CH, the RTI responses state that only 18 visits were made in six months to the 5 CCHs, amongst which no visits were made to Dum Dum CCH, 70 visits were made to the 11 DCHs, 117 visits to the 18 SCHs, 20 visits to 3 special CHs and 2 visits to the 2 WCHs.

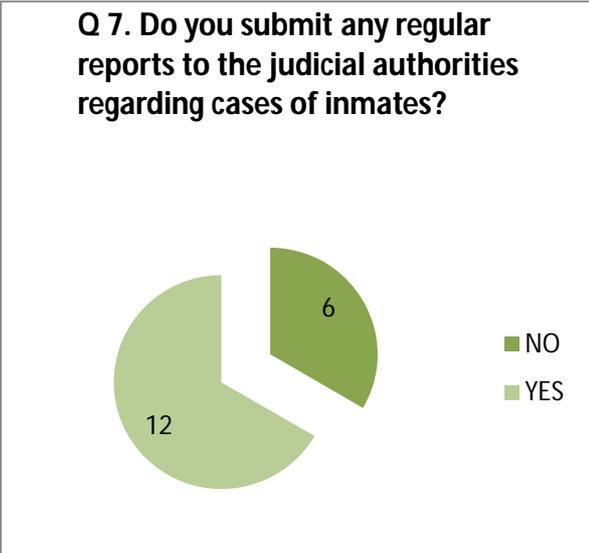


**Purpose:** The survey suggests that during the visits judicial officers discuss about the living/physical conditions within the correctional home and not about cases of undertrial prisoners. Only in Raiganj DCH the officer responded that the judicial officer reviews petty cases in addition to discussing the physical condition of the correctional home. In Midnapore CCH, it was stated they submit a list of undertrial prisoners who have been detained for than 3 months, but the judicial officer does not peruse that or seek any further information in that regard.

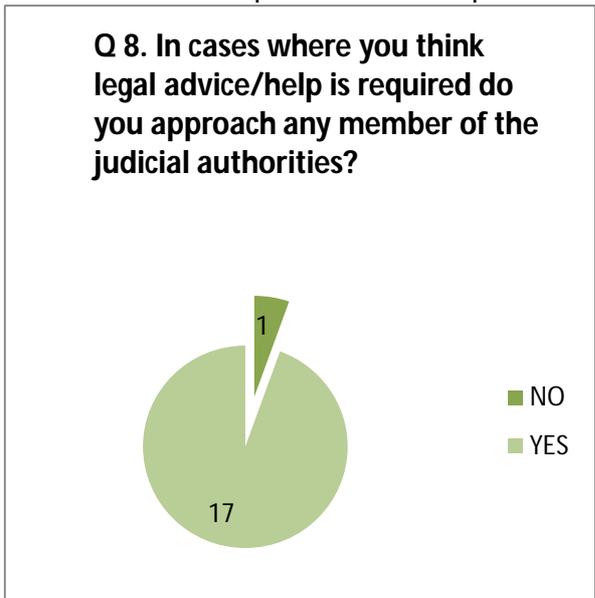
**Interaction with inmates:** The survey indicates that judicial officers interacted with inmates and listened to their complaints in 15 CHs. However, in response the query on whether judicial officers review casefiles of inmates or render advice in particular cases, 13 responded in negative, while 5 stated that it is done.



**Reporting by CH officers:** In the 17 correctional homes covered in the survey, CH officers informed that they discuss important/urgent cases with judicial officers. 12 out of 18 officers also stated that they provide regular reports to the judicial authorities regarding cases of inmates, however on further query there were discrepancies on this response. Majority of officers stated that they write to the concerned courts, whereas some stated that they inform the legal aid lawyers or a member of the District Legal Services Authority or they discuss the cases with the Chief Judicial Magistrate (CJM).



**Response by judicial officers:** The survey suggests that in most of the CHs when CH officers complain about important/urgent cases of prisoners, judicial officers



are not too supportive and rarely take action in such cases. While most of them responded that the judicial officers did not provide any feedback to the officers, some of them outright stated that they took no action and were not supportive at all and tried to be evasive of such cases altogether. Only officers from Bankura, Contai, Jamtara, Midnapore and Raiganj said that they were supportive and took action on cases that were intimated to them by the correctional home officers. In Behrampore, the officer stated that though the judicial officers were supportive, no effective action was taken.

**iv. NEED FOR REVIEW COMMITTEES**

An analysis of the data clearly indicates that while judicial officers visit correctional homes atleast once every month, no emphasis is placed on review of undertrial cases and most visits are routine in nature. As part of the survey the CH officers were asked as to whether they thought that a mechanism for review of undertrial cases on a regular basis should be established in the state. The answer to this question was a unanimous yes. All 18 officers opined that such a mechanism should be established and would be a useful tool for reducing the undertrial population in correctional homes and ensuring rights of prisoners are not violated.

### III. SUMMARY & RECOMMENDATIONS

Overstays, unnecessary detention and overcrowding are common features in correctional homes in West Bengal just like any other Indian prison. Even though mechanisms at the district level for periodic review of the cases of undertrials have been recommended by various Jail Reform Committees, NHRC, MHA, yet in West Bengal there is no formal review mechanism.

Even though the study indicates that in some districts vigilance by judicial officers is noteworthy, the efforts made by the few proactive judicial and correctional home officers are pointless without any formal process of review of undertrial cases being setup.

This study strongly suggests that there is a dire need for the institutionalisation and setup of a mechanism to review cases of undertrial prisoners. The statistics for the past many years show a discouraging rise in percentage of UTPs as well as the average detention period of an undertrial.

One can argue that with all agencies of the criminal justice system overburdened already, setup of a committee might be a futile and tedious process; however one can avoid this by not getting trapped into the never ending abyss of constituting another committee, but by merely modifying the mandate of the already existing multi agency committees such as the **District Monitoring Committee** or by assigning the task of reviewing undertrial cases to the **judicial officers** who, as is evidence by this study, are conducting regular visits of correctional homes across the state.

The primary purpose of review committees is to ensure that no under-trial is held for unjustifiably long periods in detention or simply gets lost in the system without being given a chance to knock on the doors of justice. Members of the review committee can meet every month to review the individual cases of prisoners and take necessary action towards recommending their release on bail, effective production before the court, appointment of legal aid lawyers, or take any other action as required. The following recommendations are made for the effective functioning and setup of review committees in West Bengal:-

1. The Committee can review the cases of prisoners in each correctional home within their jurisdiction which require immediate attention. The Superintendent/controller of correctional homes falling within their jurisdiction may be included as members of the committee along with a representative of the district legal services authority.
2. In order to do this in a systemic manner, prior to every meeting the Superintendent/Welfare Officer of the concerned correctional home can prepare the lists of such prisoners<sup>28</sup>.
3. The Committee may examine all the cases of persons detained beyond three months, especially the following categories of undertrials who:-

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<sup>28</sup> See Annexure D.

- i. become eligible to be released on bail under Section 167(2)(a)(i) of the Code where investigation is not completed in 90 days;
  - ii. become eligible to be released on bail under Section 167(2)(a)(ii) of the Code where investigation is not completed in 60 days;
  - iii. become eligible to be released on bail under Section 167(2) read with Section 36A of The Narcotic Drugs and Psychotropic Substances Act, 1985, where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity and have completed 180 days in custody and chargesheet has not been filed in the case;
  - iv. are declared indigent and become eligible to be released on personal bond under Section 436 of the Code;
  - v. are detained exceeding half or maximum period of prescribed imprisonment and become eligible to be released under Section 436A of the Code;
  - vi. have been released on bail by the Court but have not been able to furnish sureties;
  - vii. are charged with offences triable by Sessions Courts and are detained for more than 1.5 years;
  - viii. are petty offenders, those who are accused of or charged of offences for which the prescribed imprisonment is up to 2 years;
  - ix. are juvenile or are in the age-group of 18-21 years as they might actually be juvenile;
  - x. are of unsound mind and must dealt under Chapter XXV of the Code, in particular,
    - a. List of mentally ill prisoners whose trial has been suspended and their family members are willing to take them in their care and release on bail u/s 330 Cr.P.C.
    - b. List of mentally ill prisoners whose trials have been suspended for more than six month on account of their incapacity to stand trial.
  - xi. are sick or infirm;
  - xii. do not have a lawyer and are eligible for legal aid;
  - xiii. are detained under Chapter VII of the Code under Sections 107, 108, 109 and 151 as preventive detention cases;
  - xiv. are women offenders; and
  - xv. have not been physically produced for the last two consecutive hearings due to lack of police escorts.
  - xvi. who wish to take guilty plea or are eligible for plea bargaining and probation of offenders act.
4. The District & Sessions Judge or head of such committee may fix a day of the month to be assured of regularity of meeting. For example, every second Saturday of the month. A letter in this regard can be sent from the office of District & Sessions Judge to all the members of the Committee to ensure regularity and attendance.

5. The District & Sessions Judge or head of such committee may direct the respective correctional homes of their district, through a letter, to prepare the list of undertrials as given in point 3 above<sup>29</sup>.
6. The District & Sessions Judge or head of such committee may direct the respective correctional homes to provide a separate report regarding production of undertrials for every month<sup>30</sup> to ensure that all prisoners have been duly produced in their respective courts.
7. The Committee may call an undertrial and give him/her a hearing during a review meeting, when required.
8. The Committee may use a standardised format for recording minutes of the meeting<sup>31</sup>.
9. The minutes of the meeting may be prepared by the Welfare Officer/Superintendent of correctional home within 4 working days from the day of the meeting to all the respective courts for desired action. The minutes are to be sent to all the members of the Committee, ADG Correctional Services, Member Secretary, SLSA.
10. The District & Sessions Judge or head of such committee may direct all the district courts to send Action Taken Report on the reviewed cases back to the committee before the next meeting.
11. In case, the Action Taken Report does not reach the Committee before the next meeting, The District & Sessions Judge or head of such committee may seek an explanation from the particular court/s.
12. Based on the Action Taken Reports from the various courts, before commencing it's work at the next month's meeting, the Committee may ensure that the cases of undertrials which were discussed during the last meeting are either released from the correctional home or they are informed of any progress made in their cases or they are given an opportunity to appear before the Committee in case of any bottleneck in their case.
13. If the District & Sessions Judge or head of such committee is unable to convene the meeting of the Committee for any unavoidable circumstances, then another officer may be assigned the responsibility and s/he must convene the meeting. In no case the Committee meeting should be delayed or not convened.

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<sup>29</sup> See sample format for preparing list – Annexure D - Part I.

<sup>30</sup> See Sample format – Annexure D - Part II.

<sup>31</sup> See sample format – Annexure E.

## **ANNEXURE A**

**Government of West Bengal**

**Directorate of Correctional Services**

**Sub: Formation of Under Trial Review Committee in every District.**

The Hon'ble Supreme Court of India issued elaborate directions to all the District & Session Judges of Andhra Pradesh on May 1<sup>st</sup>, 1986 in Writ Petition (C) No. 1128 of 1986 (Common Cause -Vs- Union of India & Others) regarding release of under trials languishing in jails for long periods. The extract of the directions of the Supreme Court are reproduced hereunder for ready reference:

“..... 2. The District Level Review Committees for Under Trial prisoners should meet, without fail, at least once in every 3 months and review the cases of all prisoners who are in Judicial Custody for periods of six months or more. These meetings should invariably be presided over by the Principal District & Sessions Judge himself.....”

In the lines of the directions of Hon'ble Supreme Court of India, the National Human Rights Commission issued a letter in December 1999 to Chief Justice of High Courts to adopt and issue necessary directions to Magistrates and Session Judges within their jurisdiction for the speedy trial of cases. This would ensure prevention of unnecessary restriction on the liberty of the under-privileged and poor under trial prisoners. The letter culled out the gist of many Supreme Court judgements.

In the light of aforesaid directions an advisory has recently been issued by the Ministry of Home Affairs, Govt of India vide No. 17011/2/2010-PR Dtd. May 9, 2011 for formation of Under Trial Review Committee in every District with the District & Sessions Judge as the Chairman and Superintendent of Police and Superintendent of Prison as members to review the cases of under trial prisoners every three months, of those lodged for more than 3 months. However, such committee is yet to be formulated in the State of West Bengal. The MHA seeks information time to time whether the advisory in respect of formation of Under Trial Review Committee in every district have been adopted.

Under the above circumstances the Government in Department of Correctional Administration is requested to kindly take up the matter with the Judicial Department for formation of Under Trial Review Committee in district level to comply with the directives.

**No. 2718/IG/11 Dated. 07.12.11**

**Addl. Chief Secretary,**

Home & Deptt of Correctional Administration

Government of West Bengal

**IG of Correctional Services**

**West Bengal**

## **ANNEXURE B**

**No. V-13013/70/2012-IS(VI)**  
**Government of India**  
**Ministry of Home Affairs**  
**(CS Division)**

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5<sup>th</sup> Floor, NDCC-II Building  
Jai Singh Road, New Delhi  
the 17<sup>th</sup> January 2013

To

**The Home Secretaries**  
of all States/UTs

**Sub: Use of Section 436A of the Cr.P.C to reduce overcrowding of prisons.**

Sir/Ma'am,

The State Governments and Union Territories have been requested to adopt various measures related to reduction in overcrowding an advisory dated 9<sup>th</sup> May 2011<sup>1</sup> of the Ministry of Home Affairs. One of the initiatives taken by the Government of India has been the amendment of section 436 in the Cr.P.C. through the Criminal Procedure Code Amendment Act 2005 and the insertion of a new section 436A. The section 436A is reproduced below:

***“436A. Maximum period for which an undertrial prisoner can be detained – Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:***

*Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:*

*Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*

*Explanation. – In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded”.*

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<sup>1</sup> <http://mha.nic.in/pdfs/PrisonAdvisories-1011.pdf>

Thus u/s 436A an under trial prisoner (UTP) has the right to seek bail on serving more than one half of the maximum possible sentence on their personal bond. No person can be detained in prison as an undertrial for a period exceeding the maximum possible sentence. This provision is, however, not applicable for those who are charged with offences punishable with the death sentence.

Although the percentage overcrowding in jails is steadily going down but even now in our prisons 67% of the inmates are undertrials as per 2011 data collected by NCRB.

Invariably it has been found that only the poor and indigent who have not been able to put up the surety are those who have continued to languish as under-trials for very long periods and that too for minor offences. The lack of adequate legal aid and a general lack of awareness about rights of arrestees are principal reasons for the continued detention of individuals accused of bailable offences, where bail is a matter of right and where an order of detention is supposed to be an aberration. Thus a disproportionate amount of our prison-space and resources for prison maintenance are being invested on UTPs which is not sustainable.

States/UTs may hence consider taking the following actions:

1. Constitute a Review Committee in every district with the District Judge as Chairman, and the District Magistrate and District SP as members to meet every three months and review the cases.
2. Jail Superintendent should conduct a survey of all cases where the UTPs have completed more than one-fourth of the maximum sentence. He should prepare a survey list and send the same to the District Legal Service Authority (DLSA) as well as the UT Review Committee.
3. Prison authorities may educate undertrial prisoners on their rights to bail.
4. Provide legal aid - may be provided through empanelled lawyers of DLSA to cases presented for release on bail and reduction of bail amount.
5. The list should be made available to the non-official visitors as well as District Magistrates/Judges who conduct periodic inspections of the jails.
6. Home Department may also develop management information system to ascertain the progress made jail-wise in this regard.

Action taken to implement the suggestions in all the jails may kindly be intimated within one month. The receipt of this letter may please be acknowledged.

Yours sincerely

Sd/-

**(S. Suresh Kumar)**

Joint Secretary to the Govt. of India

Tel: 23438100

Email: [jscs@nic.in](mailto:jscs@nic.in)

## **ANNEXURE C**

### METHODOLOGY

In order to document the existing formal and informal mechanism of under-trial review, meetings were held with key stakeholders. Based on the information received from these meetings, a telephonic survey (hereinafter referred to as the survey) was conducted with superintendents of correctional homes in the period of March-June 2014. The questions for the survey were informed by consultations with correctional home officers. The questionnaire for survey contained 12 questions pertaining to visits by judicial officers, their interactions with prisoners, regularity of visits and review of undertrial cases.

In response to our questions, superintendents/controllers from 18 correctional homes provided information. Of these 18, information was obtained for all 6 central correctional homes, both women correctional homes, 8 District Correctional Homes and 2 Subsidiary correctional homes. Out of 58 Correctional Homes where the survey was conducted, officers of 18 Correctional Homes provided us with the required information.

#### **The Questionnaire**

- 1. *Is there any formal mechanism to review cases of inmates by judicial authorities?***
- 2. *Does any member of the judiciary visit the correctional home?***
- 3. *If yes, the designation of the person.***
- 4. *If yes, how often do they visit?***
- 5. *During their visit do they interact with inmates and listen to their complaints?***
- 6. *During their visit do they review their case files and render advice on particular cases?***
- 7. *Do you submit any regular reports to the judicial authorities regarding cases of inmates?***
- 8. *In cases where you think legal advice/help is required do you approach any member of the judicial authorities?***
- 9. *If yes, whom?***
- 10. *If yes, are they supportive of your query or dismissive?***
- 11. *Do you think such a mechanism should be established?***
- 12. *Any further suggestions for setup of a formal mechanism for review of cases of inmates.***

The data received from the 18 correctional homes affirmed that though there did not appear to be any formal mechanism in place for review of cases of undertrials, judicial visits were being made in majority of correctional homes. To substantiate this information and acquire documentary evidence as to regularity of judicial visits an application under the Right to Information Act, 2005 (RTIA) was filed on 24.6.2014 with the Directorate of Correctional Services, West Bengal.

In addition to the information received from the survey, the study also documents information obtained from the responses to the application filed under the RTIA with the

#### **The application to the Directorate of Correctional Services**

- 1) *Whether the District Advisory Committees as mandated under Section 29 of the West Bengal Correctional Services Act 1992 has been setup in all districts***
  - a. *If yes, then number of meetings held by the committee between the period 1 January 2014-1 June 2014.***
  - b. *Whether these committees review cases of undertrial prisoners?***
- 2) *Whether the District & Sessions Judge or any other judicial officer visits correctional homes on a regular basis***
  - a. *If yes, then number of such visits made between the period 1 January 2014 – 1 June 2014***
- 3) *Whether there is any formal mechanism/body/committee which undertakes regular review of undertrial cases in the state.***

Directorate of Correctional Services, West Bengal of 39 Correctional Homes. Out of a total of 57 correctional homes in West Bengal, information from 39 correctional homes was received. No response was received from 1 Central Correctional Homes, 1 District Correctional Home, 1 open correctional home and 15 Subsidiary correctional homes.

They provided data on the number of visits made by judicial officers in correctional homes for the period of 1 January 2014 to 30 June 2014. In response to the question on details of visits by judicial officers it was noted that on certain dates two or three judicial officers had conducted visits. For the purpose of the study, visits made on the same date have been treated as one visit.

A similar application under the right to information act was also filed with the Calcutta High Court, seeking information on the mandate for judicial visits in correctional homes. However even after 5 months no response was received from the Calcutta High Court apart from a short response received on 31 July 2014 that more time is required to provide a reply to the application.

#### **The application to the Calcutta High Court**

- i. Whether there is any order/circular/directives mandating judicial officers to visit correctional homes in the state of West Bengal on a regular basis. If yes, copy and particulars of such document.*
- ii. If yes, then the number of visits made by judicial officers in correctional homes in the period 1 January 2014-1 June 2014*
- iii. If yes, then format in which visits are so recorded*
- iv. If yes, then whether the judicial officers review cases of undertrial prisoners in such visits*
- v. If yes, then whether any prisoners were released on basis of such review*

**ANNEXURE D (PART - I)**

**PROFORMAS**

**Name of Correctional Home**

**Date of Review**

**Total No. of U.T.**

**Prisoners**

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**Proforma – 1**

List of prisoners standing trial in cases punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, who have completed 90 days under custody but in whose case investigations have not concluded

**[Related Section 167 (2) (a) (i) Cr.P.C.]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Whether bail granted & could not furnish surety	Remarks
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**Proforma – 2**

List of prisoners standing trial in cases punishable with a term of less than 10 years, who have completed 60 days under custody but in whose case investigations have not concluded

**[Related Section 167 (2) (a) (ii) Cr.P.C.]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Whether bail granted & could not furnish surety	Remarks
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**Proforma – 3**

List of Undertrials who are accused of a bailable offence and are declared indigent due to inability to furnish sureties for a week

**[Related Section 436 Cr. P. C.]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Remarks
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#### Proforma – 4

List of Undertrials who have completed half or more than the maximum prescribed term of punishment

**[Related Section 436A Cr. P. C.]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Whether bail granted & could not furnish surety	Remarks
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#### Proforma – 5

List of Undertrials who are charged with offences punishable with death or life imprisonment and their trial is continuing over one and a half years

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention during trial	Whether first time offender/ Repeat Offender	Whether bail granted & could not furnish surety	Remarks
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#### Proforma – 6

List of Petty Offenders who are charged with offences punishable with imprisonment up to two years

**[Related S.3, The Probation of Offenders Act, 1958]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Remarks Eg. Whether Probation Officer met accused
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#### Proforma – 7

List of Undertrials who are accused of a non-bailable offence but are under sixteen years of age or woman or sick or infirm

**[Related S. 437 Cr. P. C.]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Remarks
------------------------	----------------	------------------------------	-------------------------------------	------------------------------------	------------------------------	----------------------------------------------	---------

### Proforma – 8

List of Undertrials who are in the age-group of 18-21 years / whose age is contested / Juveniles

**[Related to Juvenile Justice (Care and Protection of Children Act), 2000]**

Name and Father's Name	Age	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Remarks Eg. Details of age proof documents
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### Proforma – 9

List of Undertrials who are mentally ill/persons of unsound mind

**[Related S. 328 to S.339 Cr. P. C.]**

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Kind of Illness & Treatment given	Remarks
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### Proforma – 10

List of Undertrials who are in need of legal aid

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Whether first time offender/ Repeat Offender	Remarks Eg. Socio-economic information
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### Proforma – 11

List of Undertrials who are accused/charged under preventive detention cases u/s 107, 108, 109, 151, Code of Criminal Procedure, 1973

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Number of times persons detained under the same offence	Remarks
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### Performa – 12

List of Undertrials who wish to take guilty plea or are eligible for plea bargaining/ probation of offenders act.

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which standing trial	Term of maximum sentence awardable	Total period under detention	Number of times persons detained under the same offence	Remarks
------------------------	----------------	------------------------------	-------------------------------------	------------------------------------	------------------------------	---------------------------------------------------------	---------

**ANNEXURE D - (PART II)**

Status Report for the Month of \_\_\_\_\_ on Production of the  
Accused

<b>Total Number of Undertrials ordered to be produced in Court</b>	<b>Actual Number of Undertrials taken to Court</b>	<b>Total Number of Police Escorts requisitioned by Prison</b>	<b>Actual Number of Police Escorts reported to the Prison</b>

## ANNEXURE E

### Model Style Sheet to record the minutes of the Periodic Review Committee Meeting

#### PART I: ADMINISTRATIVE

- **Date**
- **Time from.....am/pm to.....am/pm**
- **Venue**
- **Members Present:**

Example Table 1.1

<b><i>Name of the Member</i></b>	<b><i>Designation</i></b>	<b><i>Duty-holder under PRC</i></b>
<i>Name</i>		

- **Members absent:**

Example Table 1.2

<b><i>Name of the Member</i></b>	<b><i>Designation</i></b>	<b><i>Duty-holder under PRC</i></b>	<b><i>Reasons for non attendance*</i></b>
<i>Name</i>			
<i>Name</i>			

\*Explanation: The minutes must indicate if members came for part of the meeting and reasons for non attendance.

#### PART II: NUMBER OF CASES TO BE REVIEWED

- **Total number of cases put up for review under each proforma** (See Table 2.1)
- **Total number of cases put up for review court-wise under each proforma** (See Table 2.2)
- **Total number of cases reviewed at the meeting** (See Table 2.2)

Example: Table 2.1 – Total number of cases for review

<b><i>Proformas</i></b>	<b><i>Total no. of cases put up for review</i></b>
<i>A</i>	<i>28</i>
<i>B</i>	<i>16</i>

C	5
D	1
Total	50

Example: Table 2.2 – Total number of cases by Court and per proforma

S. No.	Name of the Court	Number of cases as per proformas	Total number of cases put up for review	Actual cases reviewed
1	ADJ (name of the place)	Proforma A – 6 Proforma B – 4 Proforma C – 2 Proforma D – nil	12	5
2	ADJ (name of the place)	Proforma A – 4 Proforma B – 4 Proforma C – nil Proforma D – nil	8	4
3	Judicial Magistrate No. 1	Proforma A – 8 Proforma B – 6 Proforma C – 1 Proforma D – nil	15	11
4	Judicial Magistrate No. 2	Proforma A – 10 Proforma B – 2 Proforma C – 2 Proforma D – 1	15	6
	Total		50	26

### PART III: RECORD OF INDIVIDUAL REVIEW OF CASES

Explanation: Minutes must indicate to whom the direction is given in each case – Officer in-charge of prison/ Court/ Police/ Doctor/ Other

- **Individual review of cases falling under Proforma 1 [Cases under S. 167(2)(a)(i) Cr. P. C. where no chargesheet has been filed within 90 days]**

Example Table 3.1

<b>Name of Undertrial &amp; Case Details</b>	<i>E.g. Ram Singh s/o Hari Singh, case no. 34/2011, is in judicial custody since 20.04.11, and is eligible for release under S. 167(2)(a)(i) on 18.07.11</i>
<b>Total number of production warrants issued</b>	<i>E.g. 6</i>
<b>Total number of times the prisoner has not been produced on due dates</b>	<i>E.g. 4</i>
<b>Reasons for non-production</b>	<i>E.g. Shortage of police escorts/sickness/other</i>

<b>Whether the prisoner made a written or personal representation to Committee</b>	Yes/No
<b>Directions to prison</b>	<i>E.g. Ram Singh should be sent to the Court at the earliest with immediate effect/no later than___/within the next 24 hours/on the next working day and to forward Ram Singh's letter to the Court to consider his release on bail.</i>
<b>Recommendation to Court</b>	<i>Consider release on bail with immediate effect/no later than___/within the next 24 hours/on the next working day.</i>
<b>Comments/ Discussion notes</b>	

- **Individual review of cases falling under Proforma 2 [Cases under S. 167 (2)(a)(ii) Cr. P. C. where no chargesheet has been filed within 60 days]:**

Example Table 3.2

<b>Name of Undertrial &amp; Case Details</b>	
<b>Total number of production warrants issued</b>	
<b>Total number of times the prisoner has not been produced on due dates</b>	
<b>Reasons for non-production</b>	
<b>Whether the prisoner made a written or personal representation to Committee</b>	
<b>Directions to prison</b>	
<b>Recommendation to Court</b>	
<b>Comments/ Discussion notes</b>	

**NOTE: The same format for recording the individual review of cases must be done for cases falling under Proformas 3, 4, 5, 6 and 7.**

- **Individual review of cases falling under Proforma 8 (Cases of juveniles/whose age is contested):**

Example Table 3.3

<b>Comment</b>	
<b>Date of entry in prison</b>	
<b>Status of the ossification test</b>	- <b>Report Received</b> - <b>Awaiting Report</b> - <b>Test Not Done</b>
<b>Reasons for continued presence</b>	

<b><i>in prison</i></b>	
<b><i>Directions</i></b>	
<b><i>Comments/ Discussion notes</i></b>	

- **Individual review of cases falling under Proforma 9** (Cases of Undertrials whose are mentally ill/persons of unsound mind):

Example Table 3.4

<b><i>Name of Undertrial &amp; Case Details</i></b>	
<b><i>Date of entry in prison</i></b>	
<b><i>Dates of Doctor's visits</i></b>	
<b><i>Kind of Illness detected</i></b>	
<b><i>Kind of medication provided/ Details of treatment</i></b>	
<b><i>Total number of production warrants issued</i></b>	
<b><i>Total number of times the prisoner has not been produced on due dates</i></b>	
<b><i>Directions to Prison</i></b>	
<b><i>Recommendation to Court</i></b>	
<b><i>Comments/ Discussion notes</i></b>	

- **Individual review of cases falling under Proforma 10** (Cases of undertrials who are in need of legal aid)

Example Table 3.5

<b><i>Name of Prisoner without lawyer</i></b>	
<b><i>Date of entry in prison</i></b>	
<b><i>Directions</i></b>	
<b><i>Comments/ Discussion notes</i></b>	

- **Individual review of cases falling under Proforma 11** (Cases of Undertrials who are accused/charged under preventive detention cases u/s 107, 108, 109, 151 of the Code)

Example 3.6

<b><i>Name of Undertrial &amp; Case Details</i></b>	
<b><i>Total number of production warrants issued</i></b>	

<b>Total number of times the prisoner has not been produced on due dates</b>	
<b>Reasons for non-production</b>	
<b>Whether the prisoner made a written or personal representation to Committee</b>	
<b>Directions to prison</b>	
<b>Recommendation to Court</b>	
<b>Comments/ Discussion notes</b>	

#### PART IV: CASES OF NON-AVAILABILITY OF POLICE ESCORTS

Explanation: Information to be provided for each month.

Example Table 4.1

<b>Individual cases of non-production more than twice</b>	<b>- Name of the Prisoner - Total number of times the prisoner has not been produced on due dates</b>
<b>Comments/ Discussion notes</b>	

#### PART V: ACTION-TAKEN REPORTS

Explanation: Every Court who are sent a copy of the minutes of the Review Committee meeting for taking action regarding undertrial cases, must send a report back to the Committee for further steps in the following format:

Action Taken Report for the month of \_\_\_\_\_

Name of the Court \_\_\_\_\_

Date of submission of the Report \_\_\_\_\_

<b>Name of Prisoner</b>	<b>Case Details – Case Number, Sections accused/charged of &amp; Stage of case</b>	<b>Directions from the Committee</b>	<b>Whether Action Taken by the Court</b>	
			<b>If Yes, Summary of the Order</b>	<b>If No, Reason for non-compliance</b>
Ram Singh s/o Shyam Singh	24/2011 – Ram Singh is charged under S.379 of the Code and his trial is at the evidence stage.	Since Ram Singh has been in custody for more than 1.5 years, he is eligible to be released on bail under S.436A of the Code	Ram Singh was released on bail and furnished a surety of Rs. 2000.	N.A.
Kunwar Lal	142/2013 –	Since Kunwar Lal		Kunwar Lal

<i>s/o Jyoti Lal</i>	<i>Kunwar Lal is accused under Section 323 and he has been remanded once to judicial custody as he was unable to furnish surety and has been in prison for more than 12 days.</i>	<i>is accused of a bailable offence, he should be released on personal bond under Section 436 of the Code.</i>		<i>was not produced on the due date for lack of police escorts. Requesting prison to send the person to the Court at the earliest.</i>
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Every minute of the Review Committee meetings must record details of follow-up in individual cases reviewed in the last meeting and should prescribe further steps for action to the appropriate authority.

Example Table 5.1

<b><i>Name of Prisoner</i></b>	<b><i>Name of Court</i></b>	<b><i>Directions to Court/Prison/Police/ Probation Department/District Magistrate/Legal Services Authority/ Prosecution for further action in cases of non-compliance</i></b>

## About CHRI



*" The degree of civilization in a society can be judged by entering its prisons"*  
*Fyodor Dostoevsky, 1821-1881*

**The Prison Reform Programme** of Commonwealth Human Rights Initiative (CHRI) is focused on increasing transparency of a traditionally closed system. The programme aims to improve prison conditions, reform prison management, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system. Over the years, we have worked in different parts of the country including Andhra Pradesh, Chhattisgarh, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, and West Bengal. A major area of our work 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.

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

CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member-state governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

CHRI is based in New Delhi, India and has offices in London, UK and Accra, Ghana.

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