

Rajasthan HC shows the way in reducing unnecessary

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detention:

State-level consultation held on use of POA and PRC

Commonwealth Human Rights Initiative welcomes the leadership shown by the Rajasthan High Court in the implementation of non-penal measures enabled through the Probation of Offender's Act (POA), 1958, and the Periodic Review Committee (PRC) for undertrials. During a recently concluded state-level consultation for all Chief Judicial Magistrates (CJMs) in Jaipur on September 1 the Hon'ble Chief Justice of the state Mr. Amitava Roy and Hon'ble Justice R.S. Chauhan emphasised the need to make the prison the last resort for offenders who are young, first time offenders, or are charged with minor offences or are unnecessarily remanded to custody. The consultation was organised by CHRI and the Social Justice & Empowerment (SJE) Department with the facilitation of the High Court of Rajasthan for the benefit of the Chief Judicial Magistrates who are the convenors of the *Avadhik Samiksha Samiti* (PRCs as known in Rajasthan) formed in 1979 by a government order to look into the effective implementation of bail and fair trial provisions, on the one hand, and non-custodial release measures under the POA, on the other.

The consultation also emphasised the need for inter-agency coordination between the SJE Department, the State Legal Services Authority, the Prison Department, the Police, Prosecution and the Judiciary. Both the Hon'ble Chief Justice and Hon'ble Justice R.S. Chauhan emphasised the strong role that the State Legal Services Authorities could play in strengthening the Periodic Review Committees and in assisting the courts with a Panel of Probation Officers for all courts, simultaneously meeting the demands of law, the rights of those in judicial custody and the state problems of overcrowding.

In India, in spite of the shift in penal philosophy from deterrence to reformation with the passing of the Probation of the Offenders Act by the Indian Legislature in 1958, and executive and judicial pronouncements on need for periodic judicial review and release of those unnecessarily detained for long periods, large numbers of young, first time and petty offenders continue to form the main bulk of overcrowding figures in prison population. The Ministry of Home Affairs has from time to time issued circulars to the Prison Department that insist on release measures to address the problem of large undertrial population in prisons. The effective use of probation and bail can prevent the unending wait of many offenders who could otherwise avail the benefits of non-custodial treatment that are derived from the constitutional safeguards of liberty. The Rajasthan High Court firmly avowed the role of judges in dispensing justice impartially, substantively and fearlessly, for those who are placed in their care and custody. As was noted by Hon'ble Justice Chauhan, it is law and not the whims of society that should dictate judicial practice.

Justice delayed is justice denied

For every single convict there are two under trials in the prisons of Rajasthan, the number of which stands at 13, 421 according to the latest statistics made available by the Prison Department. CHRI Director, Maja Daruwala said that the significance of this consultation is to be affirmed by the participation of the Hon'ble Chief Justice himself and called upon the Chief Judicial Magistrates to protect the principles of justice and to say a vehement NO to unnecessary detention in their own districts.

Probation offers an alternative to imprisonment, and is considered the most viable sentencing option for juveniles, young offenders, first time and petty offenders. The purpose of probation is to reform the offender by means that are alternative to punishment such as admonition, constructive treatment, conditions of good conduct, and supervision rather than punishment and incarceration, by which, offenders, instead of being sent to jail, are put under the care of a Probation Officer by the Court, thus saving them from stigma and influence of hardened criminals. The Justice Mulla Committee Report on Prison Reforms had already emphasised the importance of community-based alternatives to imprisonment for offenders convicted for relatively minor offences.

The PRC, comprising of the CJM as its Convenor and four other members representing the District Magistrate, the Superintendent of Police, the District Probation Officer, and the Jail Superintendent, assures that undertrial groups in each prison are placed under periodic judicial attention so that no one slips through the cracks of the criminal justice system and is unnecessarily detained thereby.

CHRI presented the findings of its study based on Right to Information queries on the functioning of *Avadhik Samiksha Samitis* in Rajasthan before the Rajasthan judiciary during the consultation. It drew attention to the several problem areas that require addressing for the proper functioning of the review mechanisms in order to provide justice to offenders who are eligible under their mandate: 1. The committee does not meet regularly. 2. Proformas are not followed by the prison authorities in preparing list of cases. 3. Case review process is unrealistic - on an average, 340 (Central Jail) to 177 (District Jails) cases are reviewed in single meeting; 4. No set format or practice prevails to record minutes and quality varied from prison to prison 5. No Action-taken Report is provided by the respective courts to inform the Samiti about the case-wise progress made.

During the consultation, Honorable Justice R.S. Chauhan recommended to the SJE Department that one of the solutions towards effective implementation of Probation of Offenders Act in Rajasthan was to deploy more probation officers. There are only 53 probation officers available and there are districts that are large and still have only one probation officer for whom case supervision would be immensely tasking. He also insisted upon both the Commissioner of the SJE Dept., Mr. Ajitabh Sharma, and the State Legal Services Authority to increase the numbers via volunteers from respectable sections in the local community such as teachers and social workers and to develop a framework for community service that could be effectively monitored. He took serious cognizance of problems presented by Dr. Vijay Raghavan, Tata Institute of Social Sciences, Mumbai and Mr. R.K. Saxena, Retd. IG Prisons, such as of gender bias that resulted in women being excluded from the benefits of Probation of Offenders Act, or the need for attention to young and adult offenders for release on probation just as juveniles were already being well attended to by the judiciary under the Juvenile Justice Act, and the need for regular inter-departmental dialogue between judiciary and probation officers of the state to ensure the full use of their mutual powers and duties under the Act.

The consultation laid special emphasis on the confidential pre-sentence report of the probation officer to be sought by the magistrate. Hon'ble Justice Chauhan recommended that the magistrate could ask for it even before conviction to help him weigh his decision on the sentence and possibility of probation based release. Correspondingly, the PO's report must be timely, reliable, detailed and unbiased because it is to affect the life of a young person. The Judicial Academy, Hon'ble Justice Chauhan said, must be guided to train judicial officers on the provisions and importance of the Probation of Offenders Act, especially, the new District Judges being appointed.

As regards the PRC, the judiciary deliberated on the suggestions made by the D.G., Prisons, Rajasthan. The D.G., Mr. Omendra Bharadwaj, emphasized that the prisons must focus on developing and using the proformas for vulnerable prison populations like remand prisoners detained for longer than 4 months, young offenders within the age group of 18-21 years, petty offenders, and elderly and mentally ill undertrials, overstays, and follow through with compliance towards release. The PRCs must create their own guidelines to ensure the mandate of the Committees must also expand to take into account Cr.P.C. amendments and scrutiny over the use of preventive detention laws.

The Hon'ble Chief Justice announced the need for higher level district and state level committees with the involvement of District Judges to have some kind of monitoring of how the judges themselves implement the POA and use it to benefit the state as well as to monitor the judges' performance regarding convening of the PRCs and their disposal of bail pending and other vulnerable cases pertaining not only to the magistrate courts but also cases in the session courts. The district level committees would be in a network with the state level committee. He asked for bail releases to be stepped up through the PRCs, and also advised the judges to identify target cases befitting probation, to keep a daily time slot to attend to these cases, and to use their discretion in fearlessly implementing the POA without being constrained by the availability of POs.

That justice should not only be done but also be seen to be done was the firm affirmation of the Rajasthan judiciary and all participants in the state level consultation. CHRI looks forward to the Rajasthan High Court implementing its path-breaking recommendations and solutions for alternatives to imprisonment in the same leadership spirit that they have been proposed such that they stand out as demonstrative examples for other states.

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