

# MONITORING OF PRISONS: A CONSULTATION

**A REPORT**

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***“The degree of civilization in a society can be judged by entering its prisons.”***

- Fyodor Dostoevsky, Russian novelist (1821 - 1881)

# THE CONTEXT

Prisons across India are governed principally by the century-old Prisons Act of 1894. To complement the central legislation, each state has been empowered by the Indian Constitution<sup>1</sup> to frame rules and regulations for prison administration within its territory. Accordingly, every state in India has its own prison manual for the organisation and management of prisons across the particular state.<sup>2</sup> Prisons in India function within the broad confines of the Constitution, the Prisons Act 1894 and for every state the State Prison Manuals or Prison Rules.<sup>3</sup>

Even with this legal framework prison conditions in India are highly unsatisfactory. Sub-human conditions, overcrowding, dilapidated prison structures, increasing population of under-trial prisoners, lack of sensitivity and attitude of indifference amongst prison functionaries has pushed the prison system into a state of crisis. This deplorable condition has attracted the attention of the Government of India and the State Governments on many occasions and valuable recommendations have been made at both the national and state levels for effecting improvement in prison administration.<sup>4</sup> However, progress in the follow-up action and implementation of recommendations has either been slow or non-existent.

This lack of political will to improve prison conditions leaves prisoners and their families at the mercy of the prison administration operating under colonial statutory rules and provisions. It is for this reason that external scrutiny and oversight of prisons is necessary. One such method to ensure this oversight is the prison visiting system. The concept of *prison visiting system* is found under the Prisons Act itself.<sup>5</sup> Prison visitors are classified as either official or non-official visitors. Apart from these other external visitors can also be appointed by courts and the Human Rights Commissions.

The prison visiting system purports to provide transparency within prisons and bring some degree of accountability to the prison management. The importance of this system was recognised as early as 1920 by the Indian Jails Committee:

*The plan of appointing persons, official and non-official, to serve as visitors to jails seems to us to form a very valuable part of the Indian system of jail administration. In the first place, it insures the existence of a body of free and unbiased observers, whose visits serve as a guarantee to the Government and to the public, that the rules of the Prisons Act and Prison Manuals are duly observed, and that abuses, if they were to spring up, would be speedily brought to light.... In the second place, the existence of non-official visitors is especially valuable 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. **It is of great importance to create such an interest in the public mind and the appointment of non-officials is one of the***

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<sup>1</sup> Prisons are included within the State List in the seventh schedule (Entry 4) of the Constitution of India.

<sup>2</sup> Some states have separate legislations, for eg West Bengal has enacted the West Bengal Correctional Services Act 1992.

<sup>3</sup> However, there are other legislations that govern particular aspects of the system such as the Prisoners Act, 1900; the Identification of Prisoners Act, 1920; the Transfer of Prisoners Act 1950; the Prisoners (Attendance in Courts) Act, 1958; the Code of Criminal Procedure, 1973; the Mental Health Act, 1987; the Protection of Human Rights Act, 1993; the Repatriation of Prisoners Act, 2003; and the Juvenile Justice (Care & Protection) Act, 2000.

<sup>4</sup> Indian Jails Committee 1919-20, the All India Committee of Jail Reforms 1980-83, the National Expert Committee on Women Prisoners 1987, the Committee on Rationalization of the Classification of Prisoners 1997 etc.

<sup>5</sup> Sec 59(25) of the Prisons Act 1894.

**best methods of promoting this end.** (Report of the Indian Jails Committee, 1919-20 – para 511)

Prisons are an important element of the criminal justice system, thus their operation and proper functioning has a great impact on the connotation of rights and justice in a country. A prison visitor is best placed to bring to the notice of the government, the deficiencies of the system at the earliest. It is they who can help the prison administration in securing rights for the neglected mass of human being within prison walls. Thus the institution of prison visitors is desirable and essential for humanisation of the prison atmosphere and ensuring the accountability of prison functionaries.

This report attempts to bring out the trends and challenges that are faced by prison visitors in the state of Andhra Pradesh; however, these visitors do not fall under the category of official or non-official visitors but are secretaries of the District Legal Services Authority (DLSA) who have been directed to visit prisons under an order of the High Court of Andhra Pradesh.

## **FACTS AND FIGURES FOR ANDHRA PRADESH PRISONS**

As Per NCRB Prison Statistics 2006

<b>Total Number of Jails:</b> 141	<b>Percentage of Undertrials by period of detention</b>
<b>Available Capacity:</b> 12416	Less than 3 months 71.7 %
Central Jail 6632	3-6 months 20.2 %
District Jail 1637	6-12 months 6 %
Sub Jail 3304	1-2 years 1.7 %
<b>Actual Inmate Capacity:</b> 15421	2-3 years 0.4 %
Male: 14576	3-5 years 0.1 %
Female: 845	
<b>Occupancy Rate:</b> 124.2	<b>Budget for the year 2006:</b> Rs 9956.9 lakhs
<b>Number of Convicted Prisoners:</b> 5207	<b>Expenditure for the year:</b> Rs7263.8 lakhs
<b>Number of Undertrial Prisoners:</b> 10082	<b>No. of available vehicles to the Prisons:</b> 121
<b>Sanctioned Strength of Prison Staff:</b> 4032	<b>No. of available computers to Prisons:</b> 158
<b>Actual Strength of Prison Staff:</b> 3256	

# THE BACKGROUND, OBJECTIVE AND DESIGN

## The Background

The consultation stems from the order of the AP High Court dated 30<sup>th</sup> October 2007 in Writ Petition No. 13462/06 directing the DLSA secretaries to visit the prisons in their concerned district once in every month. They were further directed to submit a report to the concerned District and Sessions Judge, Inspector General of Prisons and Superintendent of the concerned prison suggesting measures for the improvement in quality of food, health of prisoners and other conditions prevailing in prisons.

The writ petition was initiated in April 2006, by complaint letters which were dropped into the grievance redressal box by prisoners of Kadapa Central Prison. Their grievances were an outcome of a series of events that had occurred in the past few months. In October 2005, 16 prisoners fell seriously ill after consuming putrefied food. Upon complaint by the medical officer, the superintendent instead of taking appropriate action, reprimanded him causing a rift between them. The situation worsened, and in November the District Judge, the Superintendent of Police and the District Collector visited the prison. They interacted with the prisoners in the absence of the prison staff. The prisoners expressed their lack of confidence in the superintendent and also voiced their grievances about the poor quality of food, denial of medical treatment and regular groundless transfer to other distant prisons.

The visiting district judge requested the deputy superintendent to take charge; constituted a committee<sup>6</sup> by randomly selecting three prisoners; and directed the medical officer to monitor the quality of food provided to the prisoners. The prison administration reluctantly complied with the directions, however in December the Medical and Health Department informed the medical officer that he was repatriated. On hearing this, all the prisoners went on hunger strike and had to be taken to outside hospitals when their condition worsened. Upon the assurance of the Joint Collector the prisoners discontinued their strike.

Thereafter the Deputy Inspector General of Prisons visited the prison and dissolved the committee constituted by the District Judge and reappointed three prisoners of his choice to form the Prisoners' Panchayat Board. This clearly indicated that the prison department did not give any credibility to the suggestions or directions given by the District Judge and that there were no means of redressal to prisoners' grievances in the prison. The discontentment among prisoners increased. In the meanwhile, CHRI suggested the District & Sessions Judge to install prisoners' grievance deposit boxes as directed by the Supreme Court<sup>7</sup>. As a result, in April 2006 two prisoners (Manohar Naidu and Sanjeeva Rayudu) dropped complaints into the grievance box and addressed their grievances to Hon'ble Chief Justice. The District Judge collected these complaints and forwarded it to the Chief Justice who treated it as a writ petition.

The High Court asked CHRI to submit an independent expert report on the prevailing prison conditions in the state. The report was presented to the High Court of Andhra

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<sup>6</sup> AP Prison Rule 303 provides for constitution of Prisoners Panchayat Board with the democratically elected prisoners for the purpose for a period of six months. Depending on the total number of prisoners, adequate number of representatives called *Panchas* is to be elected and meet once in 15 days. The Board has the special rights to supervise the rations and kitchen.

<sup>7</sup> Sunil Batra II V/s Delhi Administration (1980) 3 SCC 488.

Pradesh in April 2007. It highlights nine focus areas namely: food; healthcare; prison welfare officers; overcrowding; under-trial prisoners; interviews; parole and furlough; access to information; and human rights violations. Pursuant to the submission of this report, the High Court directed all the secretaries of District Legal Services Authority to visit all prisons in their jurisdiction every month.

## **The Objective & Design**

Greater judicial oversight is an effective tool to improve prison conditions in the state and ensure the observance of prisoners' rights. However, one cannot ignore that there can be resistance by the prison department to close judicial supervision in the absence of an authorised legal status. This was corroborated by Secretaries of the DLSA who attended CHRI's workshop in December 2006. They emphasised that visiting prisons, ensuring standards were complied with, and making recommendations all became more difficult due to lack of mandated authority. Learning from the experience of these visitors, the consultation attempted to discuss the challenges faced by the visitors and thus bring out the best practices for monitoring prisons. In principle, the consultation aimed to forge constructive solutions rather than merely apportion blame. What to see, what to do, how to follow up, whom to address grievances, were some of the key questions upon which the consultation revolved.

As groundwork for the consultation, CHRI conducted a survey to obtain feedback from DLSA secretaries about their visits to the prisons in Andhra Pradesh. This was circulated to all secretaries with the help of State Legal Services Authority (SLSA). The objective was to better understand the key barriers and incentives to extend the practice of judicial oversight of prisons.<sup>8</sup> The survey questionnaire brought out a number of issues such as the frequency of their prison visits, focus areas in prisons, their follow-up actions and their suggestions. The consultation was formulated keeping these observations in mind.

The Consultation was designed as a dialogue among equals and sought to identify areas which require special attention and action; formulate recommendations to support the secretaries; and strengthen the system of judicial supervision of prisons. All the sessions were designed to be an amalgamation of short presentations, interactive discussions and informed interventions.

**Session I** aimed to discuss standards for prison visiting and focused on the best ways to monitor prisons, what kinds of suggestions to be made, to whom and how to get them implemented. **Session II** focused on the rights of undertrials, duties of prison authorities vis-à-vis undertrials and the ways in which a prison visitor can ensure that the rights of undertrials are respected. **Session III** brought out the standards on corporeal rights of prisoners. With **Session IV**, the focus shifted towards juveniles. This session aimed to bring out possible actions to be taken if a prison visitor finds children lodged in prison. **Session V**, which was the last session, was solely interactive. It sought to discuss the problems and challenges that the DLSA secretaries face as prison visitors.

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<sup>8</sup> The questionnaire and analysis is annexed to the report.

# INAUGURAL SESSION:

## Prisoners' Rights & Monitoring of Prisons

The inaugural session set the tone for the consultation by answering the elementary question of prisoner issues, i.e. the need to focus on prisoners' rights? Experts who work for prison reforms often face the question, 'why work on prisons?' Why care for individuals who have wronged the society and thus by virtue of their heinous acts deserve such harsh treatment? Why in a developing country like India, should the state spend on the food, health and hygiene of criminals instead of spending state funds on the welfare of the innocent poor outside prison walls? Majority would argue

*"Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanisation...."*

*Sunil Batra v Delhi Administration  
AIR 1978 SC 1675*

that the rights of the victims are what matter, and no consideration whatsoever must be given to the criminals. That a criminal should be punished in jail and the state is not required to look after him.

The counter argument to these lies in the recognition that imprisonment does not mean that prisoners have become sub-human or less deserving of respect and dignity than anyone else; it merely means that certain limitations can be placed on their liberty. A prisoner must retain all human rights enjoyed by free citizens except for those lost necessarily as an incident of

confinement.<sup>9</sup> Thus prisoners like any other human beings are entitled to be treated in a humane and dignified manner.

### PRISONERS' RIGHT TO DIGNITY

Prisons and prisoners have since time immemorial been an ignored lot. Little if any attention is paid and thus with time they become the 'forgotten souls' who rot in prison for innumerable days, months or even years. Certainly some of these prisoners may have committed serious offences, for which there is no forgiveness. Yet, at the same time, one must realize that they are human beings and imprisonment has already deprived them of a basic fundamental right, i.e. their liberty. It is a well established principle, that the right to life for every individual guarantees a life much more than mere animal existence or vegetable subsistence.<sup>10</sup> Thus, there is no justification for subjecting them to any further restrictions of rights. A prisoner may have committed a heinous offence, but he has already been duly punished and it is not for the prison officials to add to his punishment in any manner.

*"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."*

*--- Article 10(1),  
ICCPR, 1966*

Imprisonment is amongst the severest punishments that can be imposed by any state, thus necessitating utmost care and protection on behalf of the state authorities to safeguard prisoners' human rights. Article 10 of the

<sup>9</sup> Charles Sobraj V. Supt Central Jail, Tihar, New Delhi AIR 1978 SC 1514.

<sup>10</sup> Charles Sobraj v Suptd Central Jail, Tihar, New Delhi AIR 1978 SC 1514.

International Covenant on Civil and Political Rights (ICCPR), 1966 also sets out that all persons deprived of their liberty shall be treated with humanity and respect for their dignity. Thus, the state is under the primary responsibility to ensure the proper and humane conditions of its custodial institutions.

Imprisonment *de facto* leads to restrictions on certain rights and liberties of an individual; however it does not divest him of his right to be treated with dignity and respect. Therefore, rights in custody must be primary and any restrictions ancillary thereof. Arbitrary and unreasonable restrictions defy the spirit of the law of human rights. Maximisation of rights and minimisation of restrictions is the best mode to ensure custodial justice.<sup>11</sup> In the landmark judgment of Sunil Batra (II) v Delhi Administration,<sup>12</sup> Justice Krishna Iyer had observed,

“No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and sentence of the court. All other freedoms belong to him –to read and write, to exercise and recreation, to meditation and chant, to comforts like protection from extreme cold and heat, to freedom from indignities such as compulsory nudity, forced sodomy and other unbearable vulgarity, to movement within the prison campus subject to requirements of discipline and security, to the minimal joys of self expression, to acquire skills and techniques.”

Thus, prisoners by virtue of their human existence are entitled to all fundamental rights except those that have been expressly taken away by reason of their conviction or by order of the court. Prisoners’ rights can be classified into corporeal and legal rights. The corporeal rights are those that relate to the materialistic rights of prisoners such as living conditions, food, health etc, whereas, the legal rights pertain to rights such as the right to legal aid, right of appeal, access of information etc.

## MONITORING OF PRISONS

In her inaugural address Justice Meena Kumari emphasised on the need to monitor prison conditions as a means to protect prisoners’ rights. To highlight the need she asked the delegates to think about the prison conditions that existed during the pre-independence era. The conditions suffice to fill one’s soul with a feeling of sympathy coupled with empathy. She also referred to the various movies that have depicted the deplorable conditions of those times, when there existed no facilities within prisons and cruel, inhuman treatment was meted out to prisoners. A visit to Andaman Cellular Jail substantiates the plight of prisoners of those times. The narration of Veer Savarkar<sup>13</sup> illuminates the torturous treatment meted out to prisoners of those days. When our freedom fighters were put to hard labour, where they had to manually peel coconuts and take out oil from them. Upon failure to extract the prescribed quantity, they were subjected to more labour. The cells in which they were kept were small, dark and damp. The food they were

*“When a person has, committed an offence, the judiciary is there to punish and it is not for the prison authorities to met out treatment that adds to this punishment in any manner.”*

*Justice Meena Kumari*

<sup>11</sup> Dr Murali Karnam, Expert on AP Prisons, Consultant, CHRI

<sup>12</sup> 1980 (3) SCC 488.

<sup>13</sup> Veer Vinayak savarkar was convicted and sent to the Cellular jail on 7th April, 1911 for the assassination of Collector Jackson of Nasik District in the Nasik Conspiracy Case.

served was putrefied, consisting of worms and wild grass. There were no toilets, no lights, and no association with other inmates.<sup>14</sup>

Prison conditions have undergone some change post independence. This has been a result of the two landmark judgments delivered by the Supreme Court in both the Sunil Batra cases.<sup>15</sup> These judgments asserted the fundamental rights of prisoners and guaranteed many facilities and privileges to prisoners that were unheard of during the pre-independence era. As a result prisoners are provided with the basic privileges that ensure their right to life and dignity within prisons across the nation. In addition to the Supreme Court judgments, the Protection of Human Rights Act was also enacted in 1993, which further ensures the human rights of persons in custody.

However, even these directions and guidelines are not followed in majority of prisons across the nation and Andhra Pradesh is no exception. Certainly there has been some improvement<sup>16</sup> but it is minuscule, which necessitates further attention be paid to prisons. This task can be entrusted to an external agency, which can monitor prison conditions. It is for the legal services authority to improve human aspects of prison administration. However, before one sets out on the task to monitor prisons, it is essential for the prison visitors to first gain knowledge of the laws that govern the functioning of the prison system.

## DUTIES OF PRISON VISITORS<sup>17</sup>

The work of the secretaries as prison visitors is very important and is in furtherance of the functioning of the legal services authority. An inclination to serve the public in need of legal assistance, take up their cause and create awareness for state and central enactments is necessary for the performance of their duties. Many a times it happens that in spite of monthly prison visits not much is accomplished, with failure in implementation of their suggestions. Such a situation often leads to frustration and thus lethargy sets in within the system. This may prevent one from further interventions, however one must remember if they stop then who will take up a prisoners cause. Sometimes, prison officials also complain about prison visitors exceeding their powers; however this question does not arise. The mandate to visit is

*“The secretaries have been appointed as overseers, empowered to visit, note down grievances and look into all aspects of prison administration.”*

*Mr Y Reddeppa Reddy*

very vast and thus the prison visitors are not restricted to any particular aspect of prisons, they are equipped to look into all aspects regarding prisons and ensure that no rights are curtailed within the prison walls.

The secretaries must enter prisons with zeal to do something good. Prison visitors must address the problems faced by prisoners, whether convicted or under-trial. It is important to provide a mechanism for prisoners to ventilate their grievances. The DLSA secretaries must try and improve the conditions

within jails with respect to food, water, medicine and environment. This is all within the purview of their powers as prison visitors. Such action will gain the confidence of the oppressed and suppressed, bringing to one moral courage and self satisfaction.

<sup>14</sup> As narrated by Shri Y Reddeppa Reddy; also see for details <<http://www.andamancellularjail.org>> last accessed on 3<sup>rd</sup> February 2009.

<sup>15</sup> Sunil Batra v Delhi Administration 1978 (4) SCC 409 & Sunil Batra II V/s Delhi Administration (1980) 3 SCC 488.

<sup>16</sup> Justice Meena Kumari.

<sup>17</sup> Mr Y Reddeppa Reddy, Member Secretary, SLSA.

The experience of DLSA secretaries is valuable in developing standards for prison visiting. The knowledge that they gain must be utilised in a manner to do something meaningful and set an example for the entire nation to follow. We must work to improve conditions of the imprisoned so that there is no infringement of their fundamental rights within prisons. There is an expedient need to improve prison conditions. However it should be continuous and prolonged process. If one stops in the middle, the whole situation will revert back to its original state.

**A prison visitor<sup>18</sup> should:**

**Visit regularly:** The process of monitoring prisons should be regular and continuous. To perform their duties with efficacy, prison visitors should visit prisons within their jurisdictions on a regular basis.

**Build confidence:** For better impact, it is important to build confidence among prisoners for prison visitors. They should believe that the prison visitor is a confidential friend with whom they can share their grievances, and who they believe will work to remedy them for their benefit.

**Ensure awareness:** During the term of his imprisonment the prisoner must be treated with the objective of reformation and rehabilitation. To endorse this it is important to ensure the legal awareness of prison officials, so that they face the prisoner with the acumen to help and support them and not reprimand them on every instance.

**Follow-up:** The prison monitor should follow-up on their recommendations and suggestions. They should ensure that incidents and events that occurred in prison are not repeated again. A way to do this maybe to encourage the prison authorities to have face to face talks with other agencies involved in the functioning of prisons.

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<sup>18</sup> The term 'prison visitor' denotes DLSA secretaries who are entrusted the task by the AP High Court order.

## SESSION I & III:

# Prison Conditions: The Problems & the Standards

Monitoring of prisons is an acquired skill and requires the prison visitor to be well informed of the prison system. Common problems within prisons, how to locate their existence, whom to hold responsible, how to remedy the situation are all important issues of which a prison visitor should have complete knowledge of. The standards that govern the rights of prisoners and management of penal institutions can be found under the State prison manuals, Supreme Court judgments, the All India Committee on Jail Reforms 1980-83 (popularly known as the Mulla Committee Report) and the Model Prison Manual 2003 (as prepared by the All Indian Model Prison Manual Committee and approved by the central government in 2004).

Prison conditions in Andhra Pradesh are arguably better than in many other parts of the country, however they are far from perfect and incessant monitoring of prisons is

a must to ensure adherence to standards. In a questionnaire distributed to all delegates a few months before the consultation, overcrowding; health; prison medical officers; sanitation; lack of privacy when attending to nature's call; work to keep prisoners occupied; old dilapidated condition of buildings; and involvement of police as custodians came out as the main issues that need immediate attention.<sup>19</sup>

The first session of the consultation revolved around the problems that prison visitors come across during their prison visits. The session was highly interactive and brought out the major prisoners' rights issues the visitors came across when monitoring prisons. In certain cases probable remedies were also discussed. This session was well complemented by the third session which targeted these problems and discussed the standards to which the conditions should conform in practice. In view of this, both sessions are summed up in this chapter. The key areas that warrant attention of prison visitors and the standards set out are discussed in detail below:-

*“The diagnosis of offenders as patients and conception of prisons as hospitals is the key to the pathology of delinquency and the therapeutic role of punishment.”*  
*Mohd Giassudin v State of AP AIR 1977 SC 1926*

### Problems in a Nutshell:

“There are no ambulances, there is lack of medical equipment; medical officers are unwilling to work in prisons; they often state that prisoners' complaints are not genuine; drugs if supplied are of low quality; at times there is only 1 bottle of insulin amongst 1500 prisoners; the quality of food is low; naxalite prisoners coerce the medical officer and jail staff to give them better food and facilities; With concerted efforts of himself and district judge, he was successful in the installation of a water mineral plant in the jail.”

*-Mr Razak-uz-zama, Secretary DLSA, Warangal*

<sup>19</sup> See Questionnaire Analysis – [See Annexure - \\*](#)

## I. CORPOREAL RIGHTS

The corporeal rights of prisoners include the right to adequate food, health care, sanitation and hygiene, contact with family members, right against arbitrary disciplinary action and rights against discrimination and above all the right to be treated with dignity. However, even though these rights exist on paper, little if any safeguards exist for their proper implementation.

### 1. FOOD & DIET

**Problem:** Discrimination among prisoners with regard to food is prevalent in most prisons. One of the delegates informed that two kinds of food is being prepared in prisons, one for the wealthy and the other for the common prisoner. Moreover, those who assist the prison staff in jail get better treatment and better facilities over other prisoners. Few delegates also expressed their concern on the quality of food. One of them stated the rice as supplied by the Civil Supplies department is of a very poor quality. The general observation of all was that prisoners across the state were unhappy with the quality of food provided to them. Prisoners often complain about the sub-standard food; the bad quality of rice and daily supply of the same cheap vegetables. This is due to the use of open contract for procuring vegetables whereby the contract is awarded to the lowest bidder who chooses to supply the cheapest available vegetables in the market.

**Standards:** The AP prison manual, the Mulla Committee Report and the Model Prison Manual, lay down detailed standards to govern the 'diet' of prisoners and the procurement of food items. The standards condemn the system of purchasing food articles through contract system as well as the system of purchase of cereals, vegetables and pulses at the cheapest rates.<sup>20</sup> As rice is the staple diet within the region the standards provide that the rice used shall not be more than six months old and its weight should be 2 ½ to 3 times its weight in uncooked state.<sup>21</sup> In addition, to facilitate sufficient space in the kitchen standards state that each prison should cater a maximum of 200 prisoners,<sup>22</sup> with the minimum space requirement in the kitchen being 150 sq metres per 100 prisoners.<sup>23</sup> The authority to ensure the standards regarding food lies with the medical officer. He must ensure that the food given is of proper quality and maintain regular records in the prison medical journal.

### 2. CONTACT WITH FAMILY, FRIENDS AND LAWYERS

**Problem:** Delegates informed that prisoners often complain of improper restrictions on visits, ill-treatment with family members and lack of proper facilities for visits. Not only is the procedure to secure interviews prolonged but also discriminatory favouring prisoners who have strong political connections. The interview areas are crowded and prisoners are made to interact with their family members separated by mesh and wires. Neither is there a proper waiting area nor provision for washrooms, due to which people are made to stand out in the open in long queues for hours at a stretch.

**Standards:** The standards lay down guidelines for censorship and restriction on the right of communication with family and friends. According to them there shall be no restriction upon incoming letters for prisoners and the number of letters they can

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<sup>20</sup> Rec 49, 50 Mulla Committee Report.

<sup>21</sup> Rule 395(3) AP Prison Manual; Ch 6.15 Model Prison Manual.

<sup>22</sup> Rec 57 Mulla Committee Report.

<sup>23</sup> Ch 2.15.4 Model Prison Manual.

send at their own cost.<sup>24</sup> Writing material shall be supplied in reasonable quantities to convicts who have permission to write a letter.<sup>25</sup> With regard to communication with lawyers, they must be given all facilities for interviews, visits and confidential communication with prisoners.<sup>26</sup> Suitable waiting rooms must be provided in every prison to enable visitors to await their turn for interviews.<sup>27</sup> The time of interviews should normally not exceed half an hour, but can be extended at the discretion of the Superintendent.<sup>28</sup> A notice of interview hours should be posted outside the prison.<sup>29</sup>

### 3. UNDER-TRIAL PRISONERS

**Problem:** Discriminatory treatment amongst under-trial prisoners came up as a point of concern. During discussion, one of the delegates threw light upon the case of high profile business man, who was being offered privileges and amenities on account of his 'social status'. The special treatment consisted of frequent visits by his family, access to better living conditions in prison etc. Various other problems regarding legal rights of under-trial prisoners were also discussed; they are dealt with in the next chapter.

**Standards:** Under-trial prisoners are endowed special privileges in comparison to convicted prisoners. This flows from the fact that they are yet to be proven guilty and thus must be treated in a liberal manner. Subject to certain restrictions undertrials are permitted food from outside on a day by day basis.<sup>30</sup> They are also permitted to wear clothes as they desire. The procedures with regard to visits by friends and family are also fairly liberalised for under-trial prisoners.<sup>31</sup> Under-trials have the right to have interviews with their lawyers without the presence of any other person.<sup>32</sup> Moreover, they should be provided with reasonable facilities for communication either by interviews or in writing.<sup>33</sup>

On the issue of classification, Rule 730 of the AP Prison Manual permits the classification of under-trial prisoners into special and ordinary class on the basis of a person's status, education and habits of life. However, Rules that create inequality in prisons on the basis of social and financial status have been subject to severe criticism in the past. Justice Krishna Iyer, in *Rakesh Kaushik's case*<sup>34</sup> condemned such a system of classification by stating that, "[T]he human rights of common prisoners are at a discount and, in our Socialist Republic, moneyed 'B' class convicts operate to oppress the humbler inmates. Can there be inequality in prison too on the score of social and financial status? Bank robbers in 'B' class because they are rich by robbery and nameless little man in 'C' class because they are only common Indians." Such a classification also violates Article 14 of the Constitution which guarantees equality before law and equal protection of laws to every human being. Experts and prison reform committees have also recommended that the classification of undertrial prisoners into Class A, B and C on the basis of their socio-economic status should be abolished.<sup>35</sup> However, the A.P. government is yet to accept these recommendations and amend its Prison Rules.

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<sup>24</sup> Rec 97, 98 Mulla Committee Report.

<sup>25</sup> Rule 504 AP Prison Manual

<sup>26</sup> *Sunil Batra (II) (1980) 3 SCC 488*

<sup>27</sup> Ch 8.13 Model Prison Manual, Rec 102 Mulla Committee Report.

<sup>28</sup> Rule 499 AP Prison Manual.

<sup>29</sup> Rule 495 AP Prison Manual.

<sup>30</sup> Rule 733(2) AP Prison Manual; Ch 22.12 Model Prison Manual.

<sup>31</sup> Rule 506 AP Prison Manual.

<sup>32</sup> Sec 40 of the Prisons Act 1894.

<sup>33</sup> Rule 506 AP Prison Manual.

<sup>34</sup> AIR 1981 SC 1767.

<sup>35</sup> See the Report of the All India Committee on Jail Reforms 1983 and the Model Prison Manual 2003.

#### 4. ILL-TREATMENT AT TIME OF ADMISSION

**Problem:** At the time of admission prisoners are often treated in an inhumane and undignified manner. It was informed by Dr Murali Karnam that on the premise of security and noting down identification marks prisoners are made to stand in a queue in a semi naked position for long hours. Other delegates stated that this becomes even more undignified in case of women prisoners. Thus the admission process itself is a cause of humiliation for prisoners. Moreover, proper records at the time of admission detailing the particulars of each prisoner, along with any existing medical ailments should be kept. The delegates informed that unfortunately this was not being done, which at times has led to death of prisoners on account of medical ailments.

**Standards:** Medical screening and record thereof is an important procedure to be followed at the time of admission in prison. Standards entail this duty on the medical officer, who is required to carefully examine each person upon admission to prison. He must then himself record in the appropriate admissions register the age, weight and state of health of prisoner.<sup>36</sup>

#### 5. HEALTHCARE IN PRISONS

**Problem:** All delegates to the consultation agreed that medical facilities are a major area of concern for all prisons. One of major impediment to proper healthcare is the non-appointment of the medical officer. This leads to lack in general healthcare, such as availability of emergency services which at times leads to the death in prisons. Surprisingly, Andhra Pradesh listed 129 deaths over a period of one year in 2003. Of these, Dr Murali Karnam, an expert on prisons in AP, stated that around 50 could have been prevented if proper healthcare had been made available. A delegate, Mr Razak-uz-zama from Warangal had enquired into some of these deaths and looked into the records. According to him it was evident that their condition was bad at the time of admission itself. Thus, had timely proper treatment been rendered, the deaths could have been avoided.

This problem gets aggravated further in the case of sub-jails. Some of the delegates stated that there is noticeable difference between the facilities provided in sub-jails as compared to central jails. Due to this sub-jails also have problems such as lack of personnel, non-availability of medicine, and lack of eagerness in doctors to visit jails on a regular basis, non-availability of ambulance etc.

**Standards:**

*Medical Officers:* Standards provide that there should be atleast two or more medical officers in every central and district prison.<sup>37</sup> These are to be appointed by the government,<sup>38</sup> and where the prison is not located in the district headquarters the district medical officer or the senior medical officer shall be appointed as medical officer of jails.<sup>39</sup> The medical officer must as part of his duty conduct daily visits to prisons and accompany the Inspector General of Prisons and Superintendent during prison visits.<sup>40</sup> The medical officer is also responsible, for the medical care and treatment of inmates; to maintain a health card for every prisoner containing details

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<sup>36</sup> Rule 253 AP Prison Manual, Annexure VII B; Mulla Committee Report; Ch 5.66, 4.07.4 Model Prison Manual.

<sup>37</sup> Rec 121 Mulla Committee Report.

<sup>38</sup> Ch 7.04 Model Prison Manual

<sup>39</sup> Rue 56 AP Prison Manual.

<sup>40</sup> Rule 61, 62, 59 AP Manual.

of condition at time of admission, fortnightly weight, blood counts, details of immunisation and sickness; to inspect the kitchen and general environment; advise the superintendent on the suitability of work allotted to prisoners and; arrange for periodical examination and analysis of water supplied for cleaning and drinking purposes.<sup>41</sup>

*Medical facilities:* All central and district prisons are required to provide hospital accommodation for 5% of the daily average inmate population.<sup>42</sup> It is also necessary to provide each hospital with atleast one ambulance.<sup>43</sup> The stock of drugs and instruments must be checked and a certificate must be furnished by the medical officer through the Superintendent to the Inspector General.<sup>44</sup> The requisite stock of drugs for three months must be stocked in each prison hospital.<sup>45</sup>

Thus, healthcare emerged as one of the serious problems prevalent in prisons. The discussion went on to consider the possible interventions for prison visitors. A delegate opined that a prison visitor may intervene to remedy this problem and write to the district authorities regarding the appointment of doctors, availability of medicines and speeding up of the referral process for ailing prisoners. Other remedial steps that were discussed include medical screening of all prisoners at time of admission; providing of health card to every prisoner; equipping the hospitals with better facilities. It was also suggested that a ward could be reserved in hospitals solely for prisoners. This would facilitate their better treatment. Moreover, to ensure that well qualified doctors are appointed in prisons, it was suggested that the state may consider formulating a rule/provision wherein prison postings are made equivalent to rural postings. This would help eliminate the stigma involved with working in prisons.

### **Success Story: Kadappa Jail**

It was this prison from which the complaints made to the High Court had originated. After the order of the court, the concerned DLSA secretary is visiting the prison every month. This has led to some improvement in prison conditions. During his visit, he found that there was difficulty for ill prisoners to get treated in district hospitals. Upon his query, it was found that prisoners often misuse the privilege to be sent out to district hospitals as a premise to stay out of jail. This had led to the tightening up of procedures and thus had resulted into arbitrary refusal of prisoners being sent to hospital for treatment of their ailments.

The prison visitor intervened, and asked the doctors to cite reasons for referring or refusing prisoners to district hospitals. The doctors have thus been instructed to mention the nature of ailment, the treatment required and in case of refusal, reasons thereof. This step has ensured that procedures are followed in a non-discriminatory and reasonable manner.

## **II. LEGAL RIGHTS**

### **1. ACCESS TO INFORMATION**

<sup>41</sup> Annexure VII B Mulla Committee Report.

<sup>42</sup> Rec 133 Mulla Committee Report, Ch 7.02, Ch 2.16.1 Model Prison Manual

<sup>43</sup> Ch 2.16.1 Model Prison Manual

<sup>44</sup> Rule 68 AP Prison Manual.

<sup>45</sup> Rec 148 Mulla Committee Report.

### (i) Jail Manuals

**Problem:** Prisoners often lack information about the rules that apply to them under the prison manual. This is either due to illiteracy, with more than 50% inmates being illiterate, or due to non-availability of jail manual in the prison library. To add to this plight, some of the delegates informed that most prisons in their jurisdictions did not have a copy of the manual even in the prison administrative office. Due to this, many a time's neither the prison staff nor the prisoners are aware of the legal provisions.

**Standards:** The prison manual as well as some Supreme Court judgments state that prisoners should have easy access to jail manuals. Copies of jail rules should be exhibited in English and local languages in an accessible place.<sup>46</sup> The Supreme Court has also held that prisoners' handbooks should be prepared in Hindi and regional languages by State governments for circulation in prisons.<sup>47</sup> A small booklet in local language containing the information regarding regulations governing treatment of prisoners, disciplinary requirements, authorised methods of receiving information, making complaints and all such other matters as are necessary to enable a prisoner to understand both his rights and obligations should be prepared and given to each prisoner within 24 hours of his admission to prison. In case of illiterate prisoners, the required information should be conveyed orally.<sup>48</sup>

Non-availability of jail manuals emerged as a problem which should be remedied at the earliest. As a possible intervention, Mr Saxena, former IG (Prisons), suggested that the High Court may write a letter to the law secretary of the state for the supply of copies of the jail manuals to all prisons across the state.

### (ii) Status of Pending Cases & Access to Legal Documentation

**Problem:** Majority of the delegates came across instances where the prisoners were keen to know about the status of their pending cases. They complained that neither their lawyers nor the prison staff informed them about the status, thus they were unaware and incapable of knowing the exact status. Another problem for which prisoners often complained was the non-receipt of paper books and other legal documentation. A common problem was the lawyers kept them as lien for their fee. This was true even for cases that were being dealt with by legal aid lawyers. Due to this many prisoners were unable to appeal in the appellate courts within the prescribed time frame, thus divesting them of their legal rights under the statute.

**Standards:** Every prisoner is entitled to effective access to information and all legal provisions regulating condition of detention; to consult or be defended by legal practitioner of his own choice; access to legal agencies like SLSA; to be informed on admission of their legal rights and; to receive all court documents.<sup>49</sup> Moreover, every prisoner at the time of his admission should be apprised of his duties, obligation, rights and privileges as laid down under the Prisons Act and the rules made under it.

*"It is better to adopt short and efficient procedures than resort to lengthy endless measures."*

*Mr RK Saxena,  
former IG  
(Prisons)*

<sup>46</sup> S. 61 Prisons Act 1894.

<sup>47</sup> *Sunil Batra (II)* (1980) 3 SCC 488.

<sup>48</sup> Rec 8.29 Mulla Committee Report.

<sup>49</sup> Annexure IV B Mulla Committee, reiterated by Model Prison Manual.

In the discussion that followed it was informed that the High Court Legal Services Committee was preparing a list for prisoners whose cases are pending. This report was being sent to each prison every month and includes details of the case, status, lawyer and next date of hearing in court. Mr Saxena, former IG(Prisons) suggested the use of internet government portals such as 'nic.in' as an efficient and less-time consuming way to remedy the problem. Since broadband is available in most jails its use can be made available to prisoners for access to the 'nic' database. This database can be regularly updated and provide the requisite information regarding status of pending cases. On this suggestion one delegate intervened and stated that internet access is not available in many jails. For these jails it was concluded that hard copies would be a better option.

## **2. PRE-MATURE RELEASE**

**Problem:** An important problem that emerged from the discussion was regarding pre-mature release of prisoners. Pre-mature release of prisoners can be effected by remission, parole or furlough. Delegates informed that the existing release procedures were very stringent and as a result release is not granted easily. Even though the prison manual clearly enlists when one is entitled to seek parole there was a vast arbitrariness to grant it. A delegate cited an instance regarding remission, wherein there was a government order granting remission to prisoners upon the fulfilment of certain conditions. However, of the 50 prisoners who were recommended by the jail authorities only 35 were considered for release on remission. No reason was assigned for such an action. A report complaining of this was sent to the IG prisons, but till date no response had been received. Thus, gross discrimination is the biggest concern in respect of release of prisoners on parole or furlough.

**Standards:** Under the AP prison manual, a prisoner may be released on furlough when period undergone is 1 year for punishment of one to five years, 2 years for punishment of 5 years or more.<sup>50</sup> However, the period of furlough should not exceed two weeks at a time. In legal terms, parole is to be granted as per section 432 CrPC.

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<sup>50</sup> Rule 967 AP Prison Manual.

## SESSION II:

# Under-trial Prisoners: Problems & Solutions

*"I know not whether Laws be right or whether Laws be wrong; all that we know who live in gaol is that the wall is strong; and that each day is like a year, a year whose days are long."*

---- Oscar Wilde

Under-trial prisoners constitute a significant majority of prisoners across the country. The latest NCRB statistics of 2006 indicate that 65.4 % of the prison population of Andhra Pradesh is under-trial. Regrettably in majority of these cases, detention may be avoidable and unnecessary. Emphasizing upon this the Supreme Court, 30 years ago in the landmark judgment of *Hussainara Khatoon and Ors v. Home Secretary Bihar, Patna*<sup>51</sup> observed that, "It is high time that the public conscience is awakened and the Government as well as the judiciary begin to realize that in the dark cells of our prisons there are large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice – a commodity which is tragically beyond their reach and grasp."

In furtherance of this, the Supreme Court has been devising ways and formulae to secure release of under-trial prisoners by liberalising the process of bail. 'Bail not jail' has been upheld as the basic rule for granting bail.<sup>52</sup> The discriminatory bail system has been criticised by the apex court stating that "it is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meagre means."<sup>53</sup> Thus unwarranted custody in case of avoidable incarceration makes refusal of bail unreasonable and a liberal policy of release sensible and thus favourable.<sup>54</sup>

The central government too recognized the gravity of this situation and amended the provisions of the CrPC to make the process of bail liberalised and secure the release of prisoners who have already undergone one half of their maximum period of punishment prescribed for the offence for which they are charged. The insertion of Section 436A CrPC and amendments to Section 436 CrPC evidence this. However the non-implementation of the legal provisions and disregard to Supreme Court guidelines has resulted in the accumulation of under-trial numbers in prisons across not only Andhra Pradesh but the entire nation as well.

The refusal of bail on one hand and delay trial on the other is clearly unfair, unreasonable and contrary to the constitution.<sup>55</sup> Majority of under-trial prisoners languish in prison either because they have insufficient means to provide surety for their bail or their trial takes years to conclude. The grave consequences of pre-trial detention were highlighted by the Supreme Court in *Moti Ram v State of Madhya Pradesh*.<sup>56</sup> The court observed thus,

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<sup>51</sup> AIR 1979 SC 1360.

<sup>52</sup> *State of Rajasthan v. Balchand* AIR 1977 SC 2477, the court held that, 'The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner.'

<sup>53</sup> *Hussainara Khatoon and ors v. Home Secretary Bihar, Patna* AIR 1979 SC 1360.

<sup>54</sup> *Gudikanti Narsimhulu and Ors v Public Prosecutor, High Court of AP* AIR 1978 SC 429.

<sup>55</sup> *Supreme Court Legal Aid Committee v Union of India* 1994 (3) Crimes 644 (SC).

<sup>56</sup> AIR 1978 SC 1594.

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

An effective criminal justice system is required to ensure that the accused stands trial for the crimes he has committed at the earliest. However a number of factors contribute to the delay in trial. These can be linked to the police, the prosecution, the courts or other agencies.<sup>57</sup> Lack of police escorts, delay in submission of chargesheet, delay in issuing proceedings, delay in conducting trials, non-appearance of the public prosecutor, unexplained extension of date of hearing, under-utilisation of facilities such as video conferencing are some amongst the many reasons for delay within the criminal justice system.

To prevent such a situation to arise, it is necessary to inform the prison authorities of their duties vis-à-vis the under-trial prisoners and it is also important for prison visitors to understand how they can ensure that the rights of under-trial prisoners are respected within the prisons. This session focussed on these problems with an aim to explore the ways in which prison visitors could ensure that the rights of under-trial prisoners were respected. The various problems regarding under-trial prisoners were discussed in this session and solutions were proposed to remedy those problems. In context of Andhra Pradesh prisons the following reasons emerge to the forefront.

## **1. DELAY IN PRODUCTION BEFORE MAGISTRATE**

### **(i) Lack of police escorts**

The role of the police is vital to the criminal justice system. Not only is it the investigative agency which initiates the whole process, but it is also entrusted with the task of escorting under-trial prisoners for production before the courts. Unfortunately escorts are not available, and on account of this an under-trial prisoner is forced to stay for longer periods in jail. Such a situation can not be justified under any circumstance. Preference should always be for the production of under-trials instead of police being pre-occupied in VIP bandobast duties. This problem of non-availability of escorts is further aggravated when the under-trial prisoner is to be produced in a different district or state. This causes inordinate delays in conducting trial or extension of remand period as the case may be, thus slowing down the whole process of criminal justice.

The only possible remedy thought of was to prioritise the duty to provide escorts over other duties; in case of non feasibility video conferencing should be used for extension of remand period.<sup>58</sup> However, video-conferencing also has its own drawbacks and problems. These are discussed in the next section.

### **(ii) Under-utilisation of Video conferencing**

Video conferencing is a medium to produce an accused before a Magistrate electronically. This avoids the need for escorts to take prisoners out of the prison compound and to the court. This allows the Magistrate to order extension of the

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<sup>57</sup> Shri D Subramanyam, Secretary, AP High Court Legal Services Committee.

<sup>58</sup> This has attained the sanction of law as well, with the enforcement of the Criminal Procedure Code (Amendment) Act 2006.

remand period without the physical presence of the accused. However, delegates informed that this facility even where available is not being used in most prisons across the state. No concrete solution was suggested to outcome this problem. However a discussion on the pros and cons of video conferencing took place. Deliberations were made on whether use of video conferencing should be extended to hold trial as well. In favour of this proposition it was argued that the Supreme Court has held that appearance through electronic video linkage was a production 'as good as in person', thus the same method can be used to conduct trials with the presence of the judge, the prosecution and the defence lawyers.<sup>59</sup>

However, Swati disagreed with the suggestion and questioned the fairness of such trial proceedings. It would be difficult to ensure a fair trial for the accused in his absence. Trial proceedings are a complex procedure and require at many occasions the physical presence of the accused at the stage of evidence especially at the time of cross examination. Preparing and representing the defence would be very difficult in such a situation and thus hinder the fair process of justice. Mr Saxena also expressed his concern on the use of electronic media for production of accused before the magistrate. He stated that the sole purpose to produce in person before the magistrate was to ensure that the prisoner had not been ill-treated in prison. The magistrate was responsible to ascertain that there were no marks of torture or cruel treatment on the person of the prisoner, thus acting as an accountability mechanism to ensure proper treatment within prison. His major concern was that the use of electronic media could lead to increase of torture and cruel treatment within prison, with no authority as an oversight mechanism.

## **2. NON-LIBERAL BAIL SYSTEM**

Despite amendments in the CrPC and numerous Supreme Court guidelines the process of granting bail has not yet been liberalised. Even in bailable cases the amount of surety remains very high, and thus the accused remains in jail. This is in contravention of the provisions of section 436 CrPC which now makes it mandatory for the court/ police officer in charge to release on personal bonds, persons accused for a bailable offence, if they are unable to pay their surety within 7 days. Delegates informed that they had been trying to emphasise on a liberalised bail system in subordinate courts. The Supreme Court has on many occasions emphasised that only a 'token amount' should be considered and thus it is important to consider the socio-economic status of the accused before fixing the surety amount.<sup>60</sup> Unfortunately no discernable change could be seen in the grant of bail in AP and courts are still reluctant to grant bail on personal bonds.

It was suggested that it was important to create awareness amongst the relevant authorities about the recent amendments to the CrPC. A delegate suggested that to liberalise bail provisions and implement the Supreme Court guidelines it would be beneficial to circulate a copy of the judgment in *Moti Ram's* case in all courts of the state. A suggestion was also made to train the sub-ordinate judiciary in this regard.

## **3. DELAY IN COURT PROCEEDINGS**

### **(i) Delay in filing charge sheet**

Inordinate delay in proceedings can be attributed to the malfunctioning of the investigative agencies. Majority of accused remain in prison because the police is unable to finish investigation and file the chargesheet in time. These persons are

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<sup>59</sup> Shri D Subramanyam.

<sup>60</sup> Mr Saxena, former IG (Prisons) Rajasthan, Consultant CHRI.

thus forced to remain in custody without the slightest evidence of their guilt. The suggested solution was to effectuate the implementation of provisions of section 167 CrPC. This section lays down the maximum period within which the police investigation must be completed and a chargesheet filed in court. When the investigation is not completed within 90 days or 60 days, as the case may be,<sup>61</sup> it is mandatory upon the magistrate to release the accused on bail, provided he is ready to furnish bail. These are mandatory provisions, which must be adhered to by the concerned authorities i.e. police, magistrates and prison officials.

#### **(ii) Non-appearance of public prosecutors**

Delegates informed that non appearance of public prosecutors was a common incidence in most courts. This leads to extension of date hearings for months at stretch. Thus, delay in issuance of proceedings, delay in conducting trial, and unreasonable extension of date hearings has ridiculed the whole justice delivery system. In many courts of AP, trials are not being conducted for absence of the assistant public prosecutor (APP). A remedy was suggested that the High Court could instruct all trial courts not to delay proceedings because of non-appearance of the APP. The court should merely give a reasonable and fair opportunity for hearing to the state, in absence of which it should continue *ex-parte* and conclude the trial at the earliest.

#### **4. JAIL ADALATS**

The jail adalat system expedites the conviction of under-trial prisoners by a summary disposal of the case lodged against an undertrial prisoner who is willing to forgo his right to contest his case. Thus where a prisoner is accused for a petty offence and he is ready to plead guilty for it, his case is eligible to be disposed of by a jail adalat. Usually the prisoner is convicted and sentenced for the period undergone. One of the delegates informed that jail adalats were not being held on a regular basis in some districts.

There was uncertainty amongst delegates on whether jail adalats were to be held on a regular basis or just occasionally. To ascertain this, the High Court circular was referred. The circular dated 19<sup>th</sup> July 2000, directed all chief judicial magistrates and the chief metropolitan magistrates to “take up the case of those under-trial prisoners who are involved in petty offences and are keen to confess their guilt.”<sup>62</sup> These directions were reiterated by other circulars whereby the ‘unit heads are...instructed to take necessary steps to hold Courts in jails’<sup>63</sup> on a “regular basis”.<sup>64</sup> Thus in purview of these directions it was concluded that it was compulsory to hold jail adalats within all districts regularly.

On the issue of jail adalats, Swati voiced her concern regarding the lack of procedural safeguards in the process. She stated that persuading prisoners to confess without proper counselling of the consequences of such action infringed the fair trial rights of a person. She also added that jail adalats are held in the absence of a lawyer. Thus, there is no one to protect the interests of the accused in the court. Mr Saxena gave an innovative solution to avoid these problems. He advocated the use of the Probation of Offenders Act, which is “a good piece of legislation and makes the process of justice simpler.” The main advantage of the act is that persons who fall within its ambit are not considered as convicts in law. Seeking to promote its use

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<sup>61</sup> 90 days for offences punishable with death, life imprisonment or imprisonment for a term not less than 10 years and 60 days for all other offences.

<sup>62</sup> ROC No. 2312/OP CELL-E/2000.

<sup>63</sup> ROC No. 6496/OP CELL-E/2000.

<sup>64</sup> ROC No. 5642/OP CELL-E/2003.

through jail adalats he stated that the accused, who are first time offenders, would merely appear in the court, be admonished as per the act and thus set free with the promise not to commit any further offence.

#### **5. LACK OF USE OF SECTION 436A CrPC**

Many under-trial prisoners remain in prison for long durations. This period at times exceeds the maximum term of imprisonment they could have been sentenced to had they been convicted. To prevent this, the legislature amended the CrPC in 2006 and inserted section 436A into the code.<sup>65</sup> This section proscribes the detention of an under-trial beyond the maximum period of punishment prescribed for the offence that s/he is alleged to have committed.<sup>66</sup> It further lays down the right of an under-trial to apply for bail once s/he has served one half of the maximum term of imprisonment s/he would have served had s/he been convicted.

However, as this is a fairly recent provision, majority of prison staff, prisoners and courts are unaware of its existence. Thus, it was thought that attention must be paid to implement this provision. A way to ensure this could be if the prison visitors ask the superintendent of each prison to prepare a list on undertrial prisoners. This list shall contain details of the prisoner such as offence charged, date of arrest, duration of custody, maximum period of punishment prescribed. Regular inspection of this list would enable the prison visitor to identify under-trial prisoners who would benefit within the various provisions of CrPC including Section 436A. This process can be termed as 'Spot study of under-trial prisoners.'

#### **Bizarre!!**

In Cherlapally Jail, of the 23,000 productions before magistrates only 28 persons were released on personal bonds.

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<sup>65</sup> the Code of Criminal Procedure (Amendment) Act 2005.

<sup>66</sup> this is not applicable for persons accused of offences punishable with death sentence.

## SESSION IV:

# Juveniles in Prisons: Action to be taken

The juvenile justice system is based on the premise that children and adolescents are vulnerable, dependent and in a critical developmental stage of life. The philosophy that reformation rather than retribution should be the guiding principle for dealing with children in conflict of law is a well established principle.<sup>67</sup> Hunger, poverty, family influences are some of the factors that contribute to a child's unlawful behaviour. The special care and protection of juveniles is necessary to prevent a child to indulge in delinquent behaviour. The Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 mandates that children below the age of 18 years should not be sent to prisons. Yet the Prison Statistics for 2006 show that there were 631 children aged from 16-18 years within prisons.<sup>68</sup>

### STANDARDS: JUVENILES IN CONFLICT OF LAW

Confinement of children in adult jails is neither in the interest of the child or the public, and this practice often leads to depression or mental instability.<sup>69</sup> The rules adopted under the Juvenile Justice Act lay down the principle of safety for juveniles. It states that at all stages of contact with the juvenile, s/he shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the sensitivity of child.<sup>70</sup>

Further, Rule 29 of the United Nations Rules for the Protection of Juveniles deprived of their Liberty ensures that juveniles are detained separately from adults. Section 10 of the Juvenile Justice (Care and Protection of Children) Amendment Act 2006 further states that as soon as a juvenile in conflict with law is apprehended by the police, he shall be placed under the charge of the special juvenile police unit or designated police officer. Within 24 hours he shall be produced before the Juvenile Justice Board. The place of detention for juveniles is defined by section 2 (q) of the act as any place not being a police lockup or jail.

### DETERMINATION OF AGE

It is a common occurrence in India that the age of the juvenile cannot be ascertained by resorting to ordinary means.<sup>71</sup> This makes it difficult for the competent authorities to distinguish a juvenile from an adult. To simplify this, the Juvenile Justice Model Rules lay down the procedure to be followed for determination of age. Under Model Rule 12 the court, board or committee shall decide the age prima facie on the basis of physical appearance. The age determination inquiry shall be further conducted by seeking evidence of the matriculation or equivalent certificates; in the absence whereof; the date of birth certificate from the school first attended; in absence whereof; the birth certificate given by a corporation of a municipal authority or a panchayat. In case the above mentioned certificates are unavailable, then opinion

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<sup>67</sup> Dr P Sukumaran, 'Children in Adult Jails – the need for effective monitoring and action', a short paper circulated in the session.

<sup>68</sup> Total number = 631; Convicted – 64 and Under-trials – 567, Source: National Crime Record Bureau Prison (2006), *Prison Statistics*, Ministry of Home Affairs: <<http://ncrb.nic.in/PSI2006/prison2006.htm>> (accessed on 05 February 2009); however these statistics may have changed with the new amendment in the JJ Act.

<sup>69</sup> Dr P Sukumaran, Deputy Director of Correctional Services & Welfare of Street Children, Hyderabad

<sup>70</sup> Rules under the Juvenile Justice (Care and Protection of Children) Act 2000 (56 of 2000) (as amended by the Amendment Act 33 of 2006), as notified on 26<sup>th</sup> October 2007.

<sup>71</sup> Sometimes the child himself does not know his age and it is difficult to judge his age from appearance etc.

will be sought from a duly constituted Medical Board, which will declare the age of the child. The age thus determined shall be the conclusive proof of the age of the juvenile.<sup>72</sup>

## **STRATEGIES FOR TRANSFER TO JUVENILE FACILITIES**

Often a prison visitor may come across juveniles being lodged in adult prison facilities. In such circumstances the following strategies and procedures may be pursued for the transfer of juveniles from adult jails to juvenile facilities.

1. The prison visitor may make a request to the superintendent of the concerned jail for transfer of such person to juvenile facilities.
2. If there is doubt with regard to age of juvenile, then proceedings under Model Rule 12 for the determination of age may be initiated.
3. Encourage parents/ lawyers to file petitions for transfer on behalf of the juvenile as they are legally entitled to file.
4. Seek the assistance of NGOs working in prisons who may give assistance to parents in filing of such applications
5. Where there are no guardians of the juvenile in conflict of law, child rights advocates may be supported to take up their cause.
6. Where it is felt that police officers are over-estimating age of children a complaint to this effect may be made to IG prisons. In addition to this, action to implement Sec 63(2) of the JJ Act should be taken which requires a police officer, trained in regard to determination of age, to be designated at every police station.
7. Where the magistrate himself has a doubt over the age of juvenile then he may remand such person and call for age determination as per Model Rule 12 of the rules to the Juvenile Justice Act.
8. The NHRC and the SHRC can also be requested to look into this aspect when visiting prisons.
9. The Juvenile Justice Board may also visit jails and take up suo moto action to identify and transfer such juveniles.

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<sup>72</sup> Model Rule 12 (3).

# Session V:

## Monitoring Prisons: The Recommendations

“[An] error which people indulge in is the fear that if gaol (*jail*) conditions are improved people will flock in! This shows a singular ignorance of human nature. No one wants to go to prison however good the prison might be.

To be deprived of liberty and family life and friends and home surroundings is a terrible thing. It is well known that the Indian peasant will prefer to stick to his ancestral soil and starve rather than go elsewhere to better his condition. ***To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible...***”

----- Pandit Jawaharlal Nehru, *India and the World*,  
Prison Land (pp.108-129)

Protection of their human rights is the prerogative of the state which has deprived them of their liberty, and thus the state must be responsible for ensuring basic minimum standards of living to prisoners. Where the state fails or is ignorant, external agencies such as prison visitors should step in to ensure that the rights of prisoners are not flouted and their fundamental human rights given under the constitutional mandate are enforced.

At the very outset of the consultation there was a consensus among the delegates that to bring out the best practices of monitoring prisons it is important to share, discuss and learn from each others experiences. Moving forth with this in mind, the sessions were interactive and brought out a number of issues and problems prevalent within prisons. Not only did the delegates readily share their difficulties, but a number of suggestions came forth for discussion. The final session formulated and condensed those suggestions into firm resolutions which may be submitted to the competent authorities and used in practice for future monitoring of prison conditions in Andhra Pradesh. The suggestions that emerged from each of the sessions can be summed up as:-

### I. CORPOREAL RIGHTS

#### 1. FOOD & DIET

- ❖ Ensure that medical officer regularly checks food.
- ❖ Ensure the quality of food items purchased from outside.

#### 2. MEDICAL HEALTHCARE

##### (i) Unwillingness/ unavailability of doctors:

- ❖ State must ensure that doctors are appointed.
- ❖ To ensure willingness among doctors State may be requested to make jail postings for doctors equivalent to rural postings.
- ❖ Remuneration of doctors must be rationalised.

##### (ii) Lack of medical equipment

- ❖ Ensure standards regarding medicine are complied with.
- ❖ Ensure ambulances are made available to all jails especially sub jails.

### **3. SANITATION AND HYGIENE**

- ❖ Ensure standards are maintained.
- ❖ Ensure running water supply in prisons.

### **4. CLASSIFICATION OF PRISONERS**

- ❖ Ensure that no discriminatory treatment is given to prisoners on basis of socio-economic status.

### **5. PRE-MATURE RELEASE OF PRISONERS**

- ❖ Ensure that provisions given for remission, parole and furlough are followed.
- ❖ Ensure non-discriminatory system for grant of parole.

### **6. INTERVIEWS WITH FAMILY**

- ❖ Request prison authorities to make proper waiting rooms for prisoners' family.

## **II. LEGAL RIGHTS**

### **7. RIGHT TO INFORMATION**

- ❖ Request state government to make available copies of jail manuals.
- ❖ Request judiciary to maintain a database on 'nic.in' which would contain information on status of cases.

### **8. PRODUCTION BEFORE MAGISTRATE**

- ❖ Prioritise use of escorts for production of accused over other work.
- ❖ Utilization of video conferencing facilities for extension of remand period.
- ❖ Ascertaining safeguards to video-conferencing.

### **9. JAIL ADALATS**

- ❖ As per the circular, ensuring that jail adalats are held regularly in all districts.
- ❖ Ascertaining safeguards to jail adalats such as to ensure counselling of under-trial prisoner before confessing guilt.

### **10. UNDER-TRIAL PRISONERS**

- ❖ Ensure that they are not detained unnecessarily.
- ❖ Propagate a liberal system of grant of bail.
- ❖ Create awareness of existing and amended provisions of the CrPC.

### **11. GRIEVANCE REDRESSAL**

- ❖ Ensure that Grievance Redressal Boxes are established in all prisons.
- ❖ Interact with prisoners during prison visits and given them an opportunity to ventilate their grievances.

## 12. PRISON OFFENCES

- ❖ Ensure that no additive punishment is imposed without the sanction of competent authority.
- ❖ Ensure that principles of natural justice are complied with before imposition of punishment.

## 13. TRANSFER OF JUVENILES OUT OF PRISON

- ❖ Seek assistance of superintendent for transfer to juvenile facilities.
- ❖ Encourage family members or lawyers to file transfer petitions.

## CONCLUSION:

An overwhelming majority of prisoners in India are poor. They have no voice; they can not even cast votes and are totally isolated from the rest of the society and in total control of the jail authorities.

### MONITORING PRISONS: ISSUES TO EXAMINE<sup>73</sup>

<b>MATERIAL CONDITIONS</b> <ul style="list-style-type: none"><li>• FOOD</li><li>• LIGHTING AND VENTILATION</li><li>• PERSONAL HYGIENE</li><li>• SANITARY FACILITIES</li><li>• CLOTHING AND BEDDING</li><li>• OVERCROWDING AND ACCOMODATION</li></ul>	<b>PROTECTION MEASURES</b> <ul style="list-style-type: none"><li>• INSPECTION</li><li>• COMPLAINTS PROCEDURES</li><li>• DISCIPLINARY PROCEDURES</li><li>• REGISTERS OF DETENTION</li><li>• SEPERATION CATEGORIES OF DETAINEES</li></ul>
<b>MEDICAL SERVICES</b> <ul style="list-style-type: none"><li>• ACCESS TO MEDICAL CARE</li><li>• SPECIFIC HEALTH CARE FOR WOMEN &amp; CHILDREN</li><li>• MEDICAL STAFF</li></ul>	<b>REGIMES AND ACTIVITIES</b> <ul style="list-style-type: none"><li>• CONTACTS WITH FAMILY AND FRIENDS</li><li>• CONTACT WITH LAWYERS</li><li>• OUTDOOR EXERCISE</li><li>• EDUCATION</li><li>• LEISURE ACTIVITIES</li><li>• RELIGION</li><li>• WORK</li></ul>
<b>TREATMENT</b> <ul style="list-style-type: none"><li>• TORTURE &amp; ILL-TREATMENT</li><li>• ISOLATION</li><li>• MEANS OF RESTRAINT</li><li>• USE OF FORCE</li></ul>	<b>PRISON STAFF</b> <ul style="list-style-type: none"><li>• GENERALITIES</li><li>• TRAINING OF PERSONNEL</li></ul>

<sup>73</sup> Association for the Prevention of Torture (APT), 'Monitoring Places of Detention – A Practical Guide', available at <[http://www.apr.ch/component?option=com\\_docman/task\\_cat\\_view/gid,58/Itemid,59/lang,en/](http://www.apr.ch/component?option=com_docman/task_cat_view/gid,58/Itemid,59/lang,en/)>.

# AGENDA

**Context and Aim:** The A.P. High Court directed the DLSA secretaries to “visit the prisons in the concerned districts once every month and submit a report to the concerned District & Sessions Judge, Inspector General of Prisons and the Superintendent of the concerned prison suggesting the measures to be taken”. These suggestions are required to be “implemented promptly within four weeks by the Superintendent of the concerned prison”. This interactive session seeks to bring to fore, the positive aspects of prison visiting by the DLSA secretaries, as well as the obstacles faced by the secretaries in performing their duties effectively.

## INAUGURAL SESSION

<b>Welcome Address</b>	<b>10:00 - 10:10</b>	<b>Mr. R.K. Saxena</b>
<b>Opening Address</b>	<b>10:10 - 10:20</b>	<b>Justice D.S.R. Varma</b>
<b>Inaugural Address</b>	<b>10:20 - 10:40</b>	<b>Justice Meena Kumari</b>
<b>An overview of the agenda</b>	<b>10:40 - 10:50</b>	<b>Ms. Swati Mehta</b>
<b>Vote of Thanks</b>	<b>10:50 - 10:55</b>	<b>Sri D. Subramanyam</b>

Tea 10:55 - 11:05

## SESSION I - MONITORING PRISONS: THE MEANS AND THE ENDS

11:05 - 12:00

**In the Chair: Sri Y. Reddeppa Reddy, Member Secretary, AP SLSA**

**Presentation by: Dr. Murali Karnam, CHRI (11:05 - 11:20)**

**Context and Aim:** Monitoring prisons is an acquired skill requiring the visitor to be aware of the common problems of the prisons, how to locate their existence, whom to question and how to do this. This session aims to discuss the best ways to monitor prisons, what kinds of suggestions to make and whom to make these suggestions to for effective implementation. This is an interactive session, which will begin by a short presentation from the speaker who will bring out the important points from his experience in prison visiting as a researcher. The session will then seek inputs/suggestions from the DLSA secretaries who visit the prisons regularly. Their experience will be invaluable in developing standards for prison visiting.

**Discussion: 11:20 - 12:00**

## **SESSION II - MONITORING PRISONS: UNDER-TRIAL PRISONERS**

**12: 00 - 13: 00**

**In the Chair: Sri D. Subramanyam, Secretary, A.P. High Court Committee**

**Presentation by: Mr. R. K. Saxena, CHRI (12:00 - 12:25)**

**Context and Aim:** Under-trial prisoners constitute the largest majority of prisoner across the country. The latest NCRB statistics of 2006 indicate that 65.4% of the prison population in A.P. is under-trial. Many of these under-trial prisoners are entitled to be released under the existing bail provisions but cannot provide surety. Others might be willing to plead guilty but their trials take years. This session seeks to explore the rights of under-trial prisoners, the duties of the prison authorities vis-à-vis the under-trials, and the ways in which the prison visitors can ensure that rights of the under-trials are respected.

**Discussion: 12:25 - 13:00**

**LUNCH: 13:00 - 14:00**

## **SESSION III - MONITORING PRISONS: CORPOREAL RIGHTS**

**14:00 - 15:00**

**In the Chair: One of the participants**

**Presentation by DR. Murali Karnam and R.K. Saxena, CHRI (14:00-14:25)**

**Context and Aim:** Prisoners, whether convicted or not, are entitled to all the fundamental rights except those that have been expressly taken away by virtue of conviction or the order of the court. This session focuses on some of the rights of the prisoners including the right to adequate food, health care, sanitation and hygiene, and contact with family members. The session will cull out the standards laid down in the A.P. Manual, the Apex court judgments and in the BPR&D model manual for discussion.

**Discussion: 14:25 -15:00**

## **SESSION IV - MONITORING PRISONS: JUVENILES**

**15:00 - 16:00**

**In the Chair: Sri R.K. Saxena, Consultant, CHRI**

**Presentation by P. Sukumaran, Dy. Director, Juvenile Welfare (15:00 - 15:20)**

**Context and Aim:** The Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 mandates that children below the age of 18 years should not be sent to prisons. What should prison visitors do when they find children in prisons? What can be done when the age of the child as shown in the prison records is above eighteen but the child appears to be much younger? This session seeks to discuss prison visiting in the context of presence of juveniles within prisons.

**Discussion: 15:20 - 15:50**

TEA 15:50 - 16:00

## **SESSION V - MONITORING PRISONS: PROBLEMS AND SOLUTIONS**

**16:00 - 17:00**

**In the Chair: Sri Y. Reddeppa Reddy, Member Secretary**

**Moderator: Ms. Swati Mehta, Coordinator, CHRI**

**Context and Aim:** This session aims to cover the problems that the prisoners and the prison visitors face. The session will focus on arriving at solutions. For example, if one of the problems is lack of police escorts to take the prisoners to courts, what can the prison visitor do? Who can s/he write to? What alternatives exist to overcome this problem?

**CLOSING - 17.00 - 17.10**

# LIST OF PARTICIPANTS

1. Justice Meena Kumari, High Court of AP & Executive Chair SLSA
2. Y Reddeppa Reddy, Member Secretary, SLSA
3. D Subramanyam, Secretary, HCLSC
4. Sukumaran P, Deputy Director, Juvenile Welfare
5. M Krishnappa, DLSA Adilabad
6. A.Prasad Raju, DLSA Anantapur
7. V.Dattathreya Gowda, DLSA Chittoor
8. B.Shyam Sunder, DLSA Kadapa
9. R.Pundarikakshudu, DLSA East Godavari (Rajahmundry)
10. G.Venkatakrishnaiah, DLSA Guntur
11. M.Srikanthachary, DLSA Karimnagar
12. A.Parthasaradhi, DLSA Khammam
13. K.Gurappa Naidu, DLSA Krishna (Vijaywada)
14. P.Sudhakar, DLSA Kurnool
15. Shaik Peerla Ismail, DLSA Mahabubnagar
16. K.Sanga Reddy, DLSA Medak (Sanga Reddy)
17. Mohd.Bande Ali, DLSA Nalgonda
18. S.M.Ismail, DLSA Nellore
19. M.Rajender, DLSA Nizamabad
20. M.R.Saravana Kumar, DLSA Prakasam (Ongole)
21. A.Venkateswara Reddy, DLSA Ranga Reddy (Hyderabad)
22. M.R.Seshagiri Rao, DLSA Srikakulam
23. D.Dharma Rao, DLSA Visakhapatnam
24. Shaik Razak-uz-Zama, DLSA Warangal
25. H.Chandrasekhar, DLSA West Godavari (Eluru)
26. B.S.Jagjeevan Kumar, DLSA Hyderabad (Nampally)
27. R. K. Saxena, former IG (Prisons), Consultant CHRI
28. Murali Karnam, Consultant CHRI
29. Swati Mehta, Coordinator, Prison Reforms Programme, CHRI
30. Madhurima, Senior Programme Assistant, Prison Reforms Programme CHRI
31. Shishir Singh, Consultant, CHRI
32. Priti Bharadwaj, Project Officer, Prison Reforms Programme, CHRI

# QUESTIONNAIRE ANALYSIS<sup>74</sup>

The Prison Reforms team of the Commonwealth Human Rights Initiative (CHRI) had conducted a survey to obtain feedback from the District Legal Services Authority (DLSA) secretaries about their visits to the prisons in Andhra Pradesh. It was circulated to all the secretaries with the help of State Legal Services Authority (SLSA). The objective was to better understand the key barriers and incentives to broaden the practice of judicial oversight of prisons. The questionnaire was filled out by 20 DLSA Secretaries.

The responses received reflect a wide range of experience, context and approach in monitoring prisons. All this provided us with valuable details about the monitoring process in practice.

While some questions in the questionnaire were objective, there were other subjective questions as well allowing the respondents to provide a considerable amount of detail in their answers. The survey questionnaire was divided into four sections namely: before the visit; during the visit; after the visit; and miscellaneous. The following preliminary analysis also follows the same pattern. The analysis will try to encapsulate the full richness of the detailed responses received from all the respondents.

## Section I: Before A Prison Visit

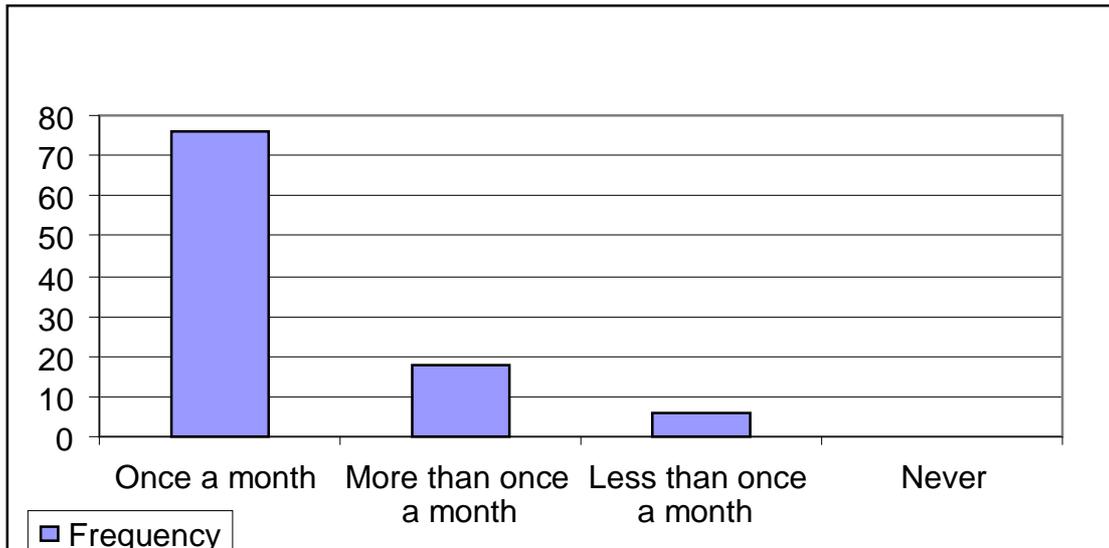
Section I dealt with questions pertaining to the frequency of prison visits and notice and/ or permission sought before making the visit. Of the total 20 respondents, 85 per cent responded to these questions.

The AP High Court in its interim order dated 30 October 2007 (Writ Petition No. 13462/2006) states: "The Secretary to District Legal Services Authority (DLSA) of every district shall visit the prisons in the concerned district periodically once in every month".

Following the orders of the High Court, majority (76 per cent) of the DLSA secretaries have been visiting the prisons in their jurisdiction once every month. 6 per cent have visited less than a month and 18 per cent have visited more than once a month. Three respondents were irregular in visiting prisons due to budget constraints, unavailability of vehicle, and/ or situational problems. All the DLSA secretaries had visited every prison in their district in the last one year.

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<sup>74</sup> Priti Bharadwaj, Project Officer, Prison Reforms Programme, CHRI.



**Graph:** Frequency of Prison Visits by DLSA Secretaries

61 per cent DLSA secretaries visit prisons when they have the time, while some (11 per cent) of them visit on occasions after receiving a complaint and another 29 per cent visit during holidays. When asked if they intimated the prison authorities about their visit, 76 per cent confirmed that they do not give prior notice of their visit. 24 per cent give prior notice but only sometimes. Of the 17 respondents, 11 (71 per cent) thought it was necessary to get permission from District & Sessions Judge before visiting prisons in their district while 3 respondents did not think that a prior permission was needed.<sup>75</sup>

## Section II: During A Prison Visit

The second section of the questionnaire enquired about the inspection regime of prisons adopted by DLSA secretaries. It addressed issues pertaining to nature of inspection, non-production of under-trial prisoners, facilities for prisoners in accordance with standards, human rights violations, prisoners' complaints, and grievance redressal mechanisms.

### Nature of Inspection

We asked the respondents about how in-depth their inspection is. Of those who responded, 88 per cent conduct a general tour of the prison (6 per cent do not conduct a general tour) and 80 per cent inspect specific premises which includes punishment cells, hospitals, residential accommodation, bathrooms and lavatories. (7 per cent does not inspect specific premises at all.) Kitchen and food, proper management, and discipline of prisoners is inspected regularly by 94 per cent and only sometimes by one respondent. All (17) secretaries inspect barracks, cells, wards, worksheds and other buildings of the prison along with ensuring cleanliness, health and security.

<sup>75</sup> The High Court orders DLSA secretaries to visit prisons once a month and does not require them to seek permission from District & Sessions Judge prior to their visit.

There seems to be roughly an equal divide among those who check registers of convicted and under-trial prisoners and those who do not. When it comes to consulting registers like entry/ release; medical; registers of incidents; use of force; registers concerning activities, work, education and punishments, 10 secretaries confirmed that they do browse through these registers. However, we received contradictory responses when we tried to obtain information about those who examine punishment book and other prison registers. The results were completely different. 11 secretaries (65 per cent) confirmed that they do not inspect these registers and the rest do inspect. Therefore, it is difficult to derive anything from this particular response. Majority of the respondents identified that prisoners' might not be open in voicing their complaints and problems in front of their custodians. Hence, 82 per cent secretaries talk to prisoners in the absence of prison officials and 15 respondents feel that the prisoners talk to them very freely. One respondent accepted that prisoners do not talk to him freely.

### **Under-trial Prisoners**

Section 167 of the Code of Criminal Procedure states the procedure when investigation cannot be completed in 24 hours. It requires that under-trial prisoners should be produced before a magistrate every 15 days.

Not all the respondents check if there are prisoners detained illegally for undue length of time. The 63 per cent (10 respondents) who check this do so by interacting with prisoners; enquiring with prison superintendent; checking remand report/warrants, admission register and prisoner identity slip; creating awareness among prisoners; and obtaining the list of remand prisoners and forwarding their petition to the concerned court with the permission of Chairman, DLSA. Though 71 per cent respondents do not check if the list of under-trial prisoners is being forwarded to District & Sessions Judge.

To ensure that under-trial prisoners are produced before a magistrate every 15 days DLSA secretaries inform the DSP/ SHO and jail authorities; forward their petition to concerned court; forward the list to DLSA; and/ or conduct legal literacy camps to inform prisoners about their rights. While two respondents have not come across any such cases and two others do not consider this to be under the purview of their work.

### **Complaints by Prisoners**

All the secretaries confirmed that they attend to representations and petitions made by or on behalf of the prisoners. 64 per cent respondents confirmed that complaints are genuine and not vexatious and filed by hardened criminals.

When asked about the complaints of prisoners the secretaries enumerated a list of complaints - ranging from the time of their arrest, to their trial period and during their imprisonment.

The complaints are listed below:

Police:

- Copy of First Information Report (FIR) not provided to prisoners;
- Confined in police lock-up for more than 24 hours;
- Torture and pressure by police to confess;

- Non-filing or delay in filing of charge-sheet by police (common complaint); and
- Falsely implicated

Courts:

- Trial courts not giving set off with regard to remand period;
- Copy of judgement not provided to prisoners;
- Lack of information about the status of case appealed in the High Court;
- Delay in trial and disposal of cases;
- Non-production of prisoners before magistrates due to video linkages (It was also recorded by a respondent that magistrates fail to appear during video conference);
- Non production in court due to lack of escort;
- Not trying all charges at one trial by concerned court;
- Adjournment beyond 15 days; and
- Request to grant parole.

Bail:

- Rejection of bail application;
- Inability to produce surety or heavy surety amount (common complaint);
- In jail for months and should be released on personal bond (common complaint); and
- Lack of legal aid.

Miscellaneous:

- Handcuffing of prisoners;
- Discrimination in the provision of facilities. Naxalite or maoist prisoners are more privileged;
- Inappropriate quality of food;
- Contaminated drinking water; and
- No television or books available for prisoners to keep them occupied.

### **Grievance Redressal Mechanism**

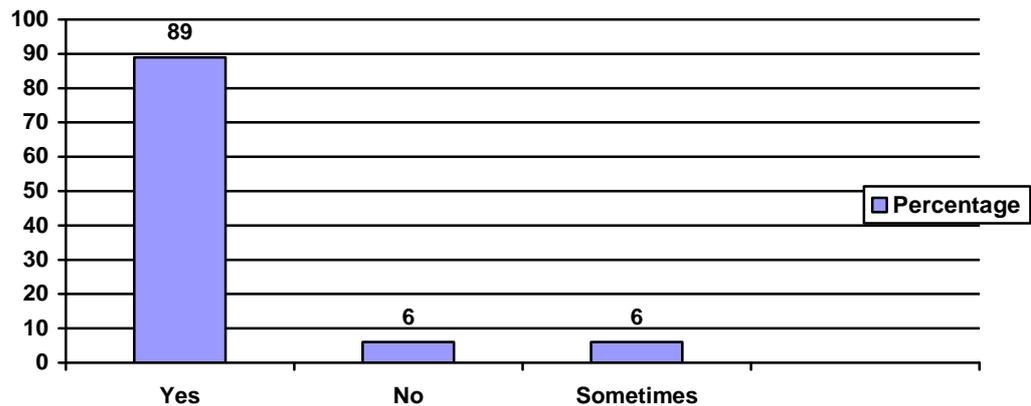
The Supreme Court in *Sunil Batra II v. Delhi Administration*<sup>76</sup> directed the State and prison staff to install grievance deposit boxes which will be maintained by or under the orders of the District Magistrate and Sessions Judge. It asserts "District and Sessions Judge shall visit prisons in their jurisdiction, give opportunities for ventilating legal grievances, make expeditious enquiries and take suitable remedial action."

To ensure a fair procedure is undertaken while addressing grievances of prisoners, In February 2006, CHRI suggested the District & Sessions Judge to ensure that the grievance boxes were installed in AP Prisons.

To check the status of implementation of this order we asked DLSA secretaries if they had see grievance deposit boxes in the prisons they visit. Majority (90 per cent) of them have come across grievance deposit boxes in all the prisons they visited, however one respondent informed that they haven't.

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<sup>76</sup> See *Sunil Batra II v. Delhi Administration*, (1980) 3 SCC 488.



**Graph:** Percentage of DLSA Secretaries who found Grievance Deposit Boxes in all prisons within their districts

The grievance boxes are opened by (no. of respondents):

- DLSA secretaries
  - During each visit (9 respondents)
  - Once a month (6)
  - Once every fortnight (2)
  - Every week (3)
- Chairman Mandal Legal Services Committee (MLSC) twice a month (2)
- Officials of MLSC (3)
- Concerned Judicial Magistrate of First Class (JMFC) (1)
- Magistrate in sub-jails (2)
- Senior assistant

When asked about the mechanisms available for prisoners to redress their discontentment or grievances, the respondents mentioned:

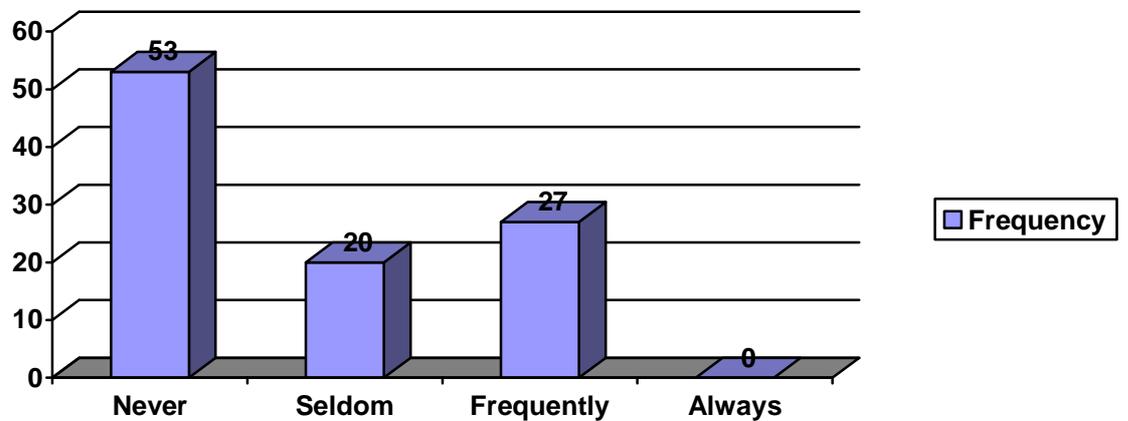
- Grievance boxes (12 respondents)
- Visit by DLSA Secretaries (8)
- Write to DLSA (using postcards) (3)
- Grievance routed through prison officials (3)
- In court (2)
- Video-conferencing (1)
- Legal aid clinics (1)
- Legal volunteers (1)
- Legal Services Authority (1)
- Trained convict prisoners (1)
- Legal aid committee (1)

The responses mentioned above are not mutually exclusive.

### **Human rights violations**

Majority (10) of respondents do consider prison conditions to be horrendous and in need of immediate change. They suggest that overcrowding; health; prison medical officers; sanitation; lack of privacy when attending to nature's call; work to keep prisoners occupied; old dilapidated condition of buildings; and involvement of police as custodians are among the main issues that needs immediate attention.

Two respondents were of the opinion that the conditions have improved and it is not as horrendous as it is portrayed.



**Graph:** Frequency of matters pertaining to human rights violations before the DLSA Secretaries

There was an equal divide among respondents who have matters pertaining to human rights violations come before them during their visit. While nine respondents say that they have never confronted human rights violations in the prison, five (29 per cent) confirm of having frequently come across such violations. The nature of human rights violations that they have come across in the prison includes:

- Prisoners confined in police custody for days without producing them before magistrate
- Torture in police lock-up;
- Quality and quantity of food provided to prisoners not in compliance with the standards;
- No prison medical officer and lack of appropriate medical facility;
- Prolonged detention without providing bail to those who are unable to furnish surety;
- Dilapidated state of building;
- Use of filthy abusive language;
- Overcrowding; and
- Ill-treating prisoners.

The DLSA secretaries confirmed that they had never faced any kind of resistance from prison officials during their visit.

### Section III: After a Prison Visit

After a prison visit, prison visitors need to write elaborate notes about their observations in the visitors' book, give suggestions to the prison officials, ask for compliance reports and ensure receiving the compliance reports. In this section of the questionnaire, we asked ten questions to our respondents focusing on the procedures and practices adopted after completing their visit. Most of the questions asked in this section were subjective and hence we received in-depth responses which are not mutually exclusive.

## **Notes in Visitors' Book**

67 per cent makes notes in the visitors' book regularly, 17 per cent writes irregularly and another 17 per cent does not make any notes. While making notes in the visitors' book, the DLSA secretaries pay most attention to the following (no. of respondents):

- Food, health and hygiene (10);
- Provision of legal aid (4);
- Cleanliness (3);
- Observations made during the visit (2);
- General prison conditions (2);
- Production of prisoners before court (2);
- Holding of jail adalats (1);
- Treatment of prisoners by prison staff (1);
- Prisoners safety within the jail (1);
- Complaints by prisoners (1);

## **Oral vs. Written Suggestions**

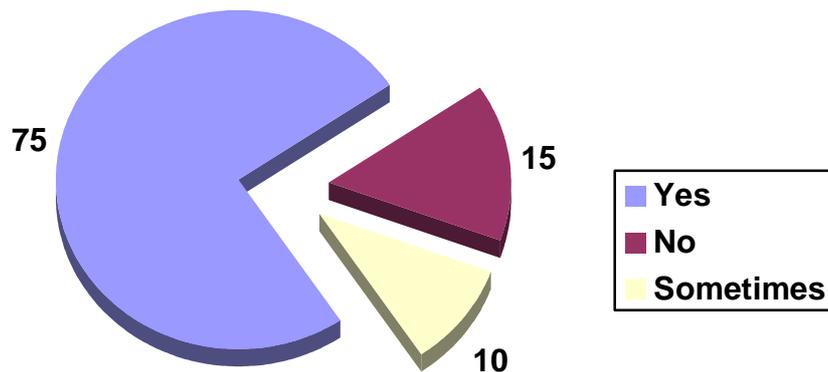
The DLSA secretaries (8) were of the opinion that written suggestions are more effective than oral suggestions as local authorities interfere if no written suggestion is given. There were some (3) responses that oral suggestions can be given for petty matters however, for major concerns such as grievances forwarded to Inspector General of Prisons, lack of cleanliness in the prison, and health and food concerns written suggestion was the more favourable way to get the suggestions implemented. 93 per cent secretaries check if the suggestions made are being implemented or not.

## **Compliance Reports**

75 per cent (15) respondents ask and 15 per cent do not ask for compliance reports after they make suggestions to the prison authorities. Of 15 respondents who ask for compliance reports only 38 per cent get these reports and 44 per cent get these reports sometimes.

In case the DLSA secretaries do not receive compliance reports, some of them send reminders to prison superintendent and DG & IG Prisons. If even after these reminders they do not get any response, they inform the AP State Legal Services Authority (SLSA).

Among the respondents, 56 per cent write to the district officials of various departments on matters concerning them (other than prison superintendent), and another 17 per cent writes at times but not regularly.



**Pie Chart:** The percentage of DLSA Secretaries who ask for compliance reports from the prison department.

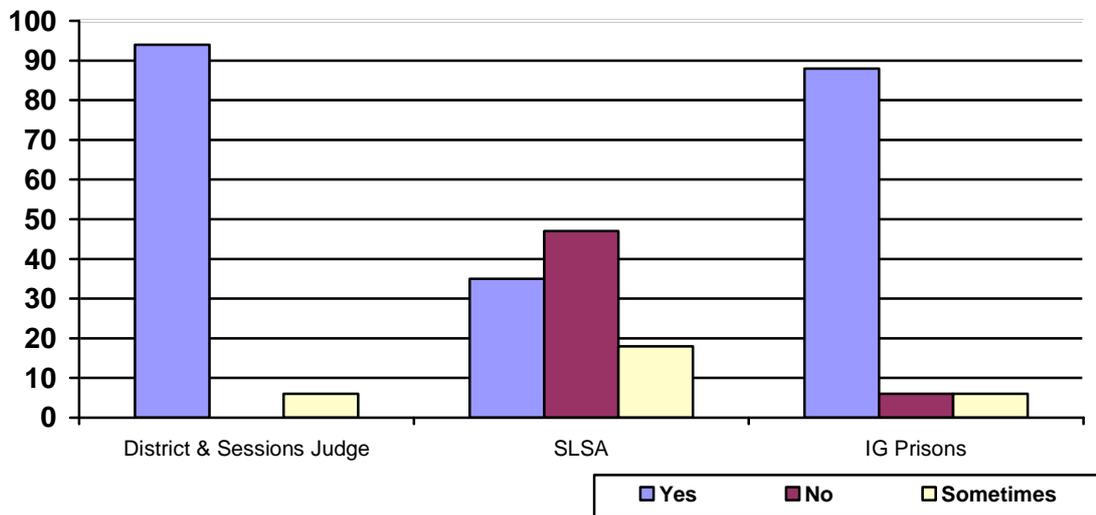
DLSA secretaries were also asked about the steps they take in case their suggestions and recommendations to the prison authorities are not implemented. Some recorded that in case of non-compliance they have complained and placed their notes before the District and Sessions Judge, Chairman of DLSA or the High Court.

Apart from the four respondents who mentioned that no concrete results have taken place despite the suggestions made by them, there were some who enumerated the impact of their suggestions. The following concrete positive results emerged due to the recommendations made by secretaries:

- Better provision of escort to produce prisoners in court
- Medical facilities:
  - Various medical instruments (X-Ray machines etc.) installed in central jail; and
  - Appointment of doctors.
- Prison condition:
  - Tenders called for construction of additional accommodation in sub-jail;
  - Minor repairs in sub-jails;
  - Construction commenced in central prison, installation of a double gate in sub-jail and renovation of sub-jail;
  - Drainage system pipe repaired;
  - Food suggestions - green leafy vegetables included in prisoners' diet;
  - Remove unnecessary clothes hanging for security concerns;
  - Provision of television sets in barracks; and
  - Better water facility provided by prison staff in association with NGOs.

## Reporting by DLSA Secretaries

Majority (97 per cent) of the respondents send reports of their visit to the District and Sessions Judge and the IG Prisons. 47 per cent do not send reports to the SLSA.



**Graph:** Percentage of DLSA Secretaries sending reports to SLSA, District & Sessions Judge and IG Prisons

## Section IV: Miscellaneous

Section IV as the name suggests covered all aspects of prison visiting and monitoring not included in the other three sections. The questionnaire explored areas which would better equip DLSA secretaries to conduct these visits and make suitable recommendations to the prison authorities. It also tried to understand the nature of hindrances and assistance that they would like to have in order to better perform their duties.

Eight secretaries recorded that they do not face any obstacles in doing their duties as a visitor. Some confirmed that absence of superintendent, transportation problems and too many expectations from DLSA secretaries surely posed as a hindrance in their duty.

Six per cent respondents said they were not interested in obtaining information on international standards for monitoring prison conditions. While 82 per cent want to get information on international standards for monitoring prison conditions, all of the secretaries want to receive information on apex court judgments, prisoners' rights and prison rules and regulations.

Majority of them think that all categories of prisoners deserve rights, whether they are under-trial or convicts. (6 per cent were undecided.) Majority of them strongly agree or agree that it is fair to expect the state to spend money on improving conditions of prisons. Only one person said it is unfair to expect this from the state.

When in doubt while implementing High Court order the respondents seek suggestions from Chairman DLSA (6); District and Sessions Judge (6); SLSA (3); superiors in general (2); advocates in Hyderabad (1); and/or IG prisons (1).

Secretaries of the DLSA mostly do not need any kind of encouragement to perform their duty as a prison visitor. The present AP High Court order is enough. However, some of them mentioned that it would be conducive if more authority was awarded to the secretaries. This could include authority to hold jail adalats, some of the delegation powers of the Chief Judicial Magistrate (CJM), and strict guidelines to all concerned to act on and comply with the recommendations made by secretaries.

Lastly, the questionnaire tried to capture some of the areas that the secretaries thought needed immediate attention. The following list enumerates the response of the secretaries:

- Video conferencing: (We got both kinds of responses - supporting the mechanism of videoconferencing as well as some who were rejecting it.)
  - Video-conference is not a good option, as prisoners have complained that often the magistrates are absent during the conference and it is held by clerks. Prisoners do not get a chance to voice their problems to the magistrate; and
  - Video-conference should be set up.
- Police involvement:
  - File charge-sheets within prescribed time period
  - Prisoners complain that even after arrest, police show the prisoner as absconding for other cases and once acquitted in one case, he is arrested for other cases later
- Legal Aid
  - Remuneration paid to legal aid counsels should be improved to encourage good advocates as defence counsel; and
  - Speedy disposal of under-trial prisoners.
- Activities concerning well-being of prisoners:
  - Meditation by NGOs;
  - Reform in the conduct of prisoners; and
  - Work for prisoners.
- Education:
  - Educational programmes for prisoners by NGOs; and
  - Lack of awareness among prisoners about health and personal hygiene.
- Prison conditions:
  - Overcrowding;
  - Prisoners' diet as prescribed by standards;
  - Access to better medical facilities; and
  - Old dilapidated state of prison building.

# QUESTIONNAIRE FOR DLSA SECRETARIES

Date: \_\_\_\_\_

Name (optional): \_\_\_\_\_

Contact No. (optional): \_\_\_\_\_

District (optional): \_\_\_\_\_

No. of Prisons (optional): \_\_\_\_\_

## BEFORE THE VISIT

1. How often do you visit the prison?

- |                                                      |                                                 |
|------------------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> Never                       | <input type="checkbox"/> Once a month           |
| <input type="checkbox"/> More than once in a month   | <input type="checkbox"/> Less than once a month |
| <input type="checkbox"/> Other, please specify _____ |                                                 |

2. During the past one year, how many times did you visit the prison?  
(please state the exact number of visits)

- a. Central jails \_\_\_\_\_  
b. District jails \_\_\_\_\_  
c. Sub-jails \_\_\_\_\_

If you failed to make the prescribed number of visits, please give reasons/  
obstacles why you were not able to meet the standard

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Have you visited every prison in your district?

- Yes  No

4. You make visits:

- |                                                           |                                                           |
|-----------------------------------------------------------|-----------------------------------------------------------|
| <input type="checkbox"/> When you have the time           | <input type="checkbox"/> When you receive a complaint     |
| <input type="checkbox"/> When jail authorities invite you | <input type="checkbox"/> On holidays and celebration days |

5. Do you give prior notice to the prison authorities before visiting the prison?

- Yes  No  Sometimes

6. Do you seek the permission of the District and Sessions Judge before visiting the prison?  
 Yes                       No                       Sometimes

**DURING THE VISIT**

7. Do you conduct a general tour or inspect specific premises within the prison like punishment cells, hospitals, residential accommodation, bathrooms and lavatories?

General tour

- Yes                       No                       Sometimes

Inspect specific premises

- Yes                       No                       Sometimes

8. During your visit

a. Do you inspect the barracks, cells, wards, worksheds and other buildings of the prison?

- Yes                       No                       Sometimes

b. Do you inspect the kitchen and the food provided to prisoners?

- Yes                       No                       Sometimes

c. Do you ascertain whether consideration of health, cleanliness and security are attended?

- Yes                       No                       Sometimes

d. Do you ascertain whether proper management and discipline are maintained in every respect?

- Yes                       No                       Sometimes

e. Do you ascertain whether any person is illegally detained or is detained for undue length of time in the prison while awaiting trial?

- Yes                       No                       Sometimes

If yes, how?

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f. Do you hear and attend to all representations and petitions made by or on behalf of prisoners?

- Yes                       No

9. Do you also consult registers like entry/release; medical; registers of incidents, use of force; registers concerning activities, work, education, punishments?

Yes                       No

a. Do you examine the registers of convicted and undertrial prisoners?

Yes                       No

b. Do you examine the punishment book and other prison registers?

Yes                       No

10. Do you make enquiries with prisoners in the absence of prison officials?

Yes                       No                       Sometimes

11. Do the prisoners

- Come freely and talk to you
- Come only sometimes, but not always
- Never feel free to come to you and say anything

12. Most complaints of ill-treatment are vexatious and are filed by hardened criminals to make the life of the prison staff difficult.

Yes                       No

13. What steps, if any, do you take to ensure that under-trial prisoners are produced before a magistrate every 15 days?

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14. Do you check with the prison officials if they send a list of all under-trial prisoners to the District and Sessions Judge on a monthly basis?

Yes                       No

15. How often do matters pertaining to human rights violations in prisons come before you when on a visit?

Never     Seldom     Frequently     Always

If, you do encounter such violations, please list the three most common ones that you have come across

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16. Please enumerate the five most common complaints that you come across

- a. \_\_\_\_\_
- b. \_\_\_\_\_

- c. \_\_\_\_\_
- d. \_\_\_\_\_
- e. \_\_\_\_\_

17. What are the mechanisms available to the prisoners to redress their grievances?  
Are they working in practice?

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18. Have you come across grievances deposit boxes in all the prisons that you visit

- Yes                       No                       Sometimes

If yes, how often is the grievance box opened and by whom?

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If not, what, if any, steps have you taken to remedy the problem

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19. Prison conditions are often described as horrendous and in need of immediate change. Is this criticism justified? Give reasons.

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20. Have you faced any kind of resistance or obstruction from the prison officials?

- Yes                       No                       Sometimes

**AFTER THE VISIT**

21. After your visit, do you write notes in and sign the visitors' book to record your visit?

- Yes                       No                       Sometimes

22. What matters do you pay most attention to when making your notes in the visitors' book?

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23. Do you send reports of your visits to any of the following authorities?

- a. State Legal Services Authority  
 Yes       No       Sometimes
- b. District and Sessions Judge  
 Yes       No       Sometimes
- c. IG Prisons  
 Yes       No       Sometimes

24. Do you ask for compliance reports from the prison department after you have made suggestions?

Yes     No     Sometimes

- a. If yes, do you get the compliance reports from them?  
 Yes       No       Sometimes

- b. If no, then what measures have you taken to ensure that you get compliance report from them?

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25. Do you review the implementation of earlier suggestions with prison superintendent before starting your next visit?

Yes     No     Sometimes

26. What steps, if any, do you take when you have difference of opinion with prison superintendent on any matter concerning prison condition or on the way your suggestions are implemented?

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27. Have you ever complained to the District and Sessions Judge or the High Court about the non-compliance with your suggestions and recommendations by prison authorities?

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28. In your opinion, does giving oral instructions produce the same result as giving written suggestions? Please elaborate.

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29. Do you also write to the district officials of various departments on matters concerning them (other than prison superintendent), when required?

Yes  No  Sometimes

30. Are there any concrete positive results following the recommendations you have made? Please elaborate

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### MISCELLANEOUS

31. If given a choice, what is the one condition faced by prisoners or a category of prisoners that you would change? Please specify with reasons.

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32. Please list the obstacles or hindrances that you faced in doing your duties as a visitor?

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33. According to you, what steps can be taken to encourage the Secretaries of the District Legal Services Authority to visit prisons regularly?

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34. Where do you seek suggestions from if you have any doubts while implementing the High Court order?

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35. Please specify the kind of information or assistance that you would like to have in order to better perform your duties

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36. Would you like to receive information on

- a. apex court judgements on prisoners rights  
Yes  No  May be
- b. international standards in monitoring prison conditions  
Yes  No  May be
- c. prisoners rights  
Yes  No  May be
- d. prison rules and regulations  
Yes  No  May be

37. Do you think that all categories of prisoners deserve rights, whether they are convicted or under trials and irrespective of the gravity of the offence

Yes  No  Cannot say

If no, which categories would you exclude and why?

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38. It is not fair to expect the state to spend money on better quality of shelter, hygiene, food and medical care of prisoners when it is unable to provide the same for other citizens.

Strongly agree  Agree  Undecided  Strongly Disagree  Disagree

39. What in your opinion should be the focus of a prison reform programme?

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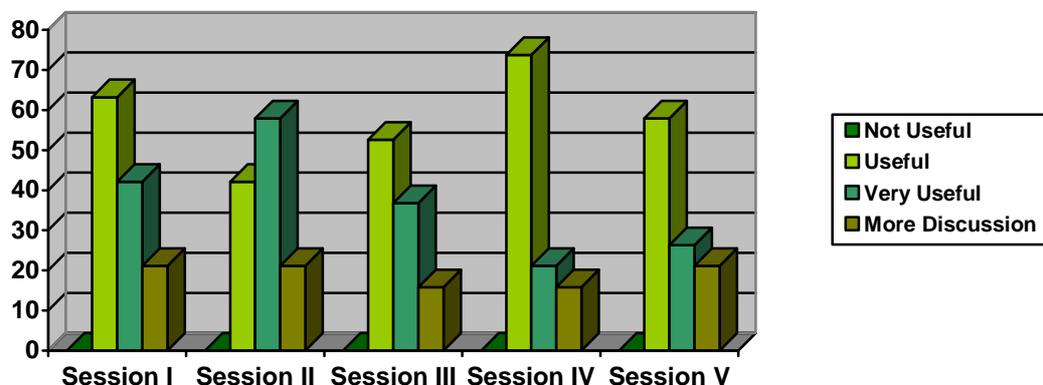
# EVALUATION FORM ANALYSIS<sup>77</sup>

Commonwealth Human Rights Initiative (CHRI) in collaboration with AP State Legal Services Authority had organised a consultation: *Monitoring of Prisons* in Hyderabad, Andhra Pradesh on 17 January 2009. The consultation was attended by all DLSA Secretaries mandated to visit and monitor prisons by the AP High Court. The A.P. High Court directed the DLSA secretaries to “visit the prisons in the concerned districts once every month and submit a report to the concerned District & Sessions Judge, Inspector General of Prisons and the Superintendent of the concerned prison suggesting the measures to be taken”. The consultation aimed to bring to fore, the positive aspects of prison visiting by the DLSA secretaries, as well as the obstacles faced by the secretaries in performing their duties effectively.

Apart from the inaugural session the consultation was divided into five sessions. All the sessions had a small introductory presentation followed by discussion. After the consultation we asked the DLSA Secretaries to assess the conference based on five point criteria namely: Agenda; Material; Workshop Venue; Discussion; and Outcomes. The evaluation forms were filled out by 19 participants.

## A. AGENDA

We asked the participants to rate the session’s usefulness and if any session required further discussion. The five sessions were: The Means and The Ends; Under-trial Prisoners; Corporeal Rights; Juveniles; and Problems and Solutions. No participant felt that the sessions were not useful. Chart 1 comprehensively records the participants’ ratings for each session. Session IV on juveniles was rated as useful by 74 per cent participants. 58 per cent considered session on under-trial prisoners as very useful. When asked which session according to them required further discussion, 21 per cent participants voted for the sessions on The Means and The Ends; Under-trial Prisoners; and the last session on Problems and Solutions.



<sup>77</sup> Priti Bharadwaj, Project Officer, Prison Reforms Programme, CHRI.

**CHART 1: Usefulness of the various Sessions**

Of the 19 participants 6 (32 per cent) liked all the presentations and discussions. Majority rated the presentation on (26 per cent) under-trial prisoners and the discussion on (21 per cent) problems & solutions as the most useful. 3 participants were in favour of the presentation on juveniles. 11 per cent (2 participants) rated the presentations in Session I: The Means and The Ends and Session III: Corporeal Rights as useful.

**B. MATERIAL**

We asked the participants if the provided background material was not useful; useful; or valuable. Except one participant who did not find the material useful, 8 Secretaries (42 per cent) found the material useful and the rest 9 (47 per cent) considered it to be valuable. 32 per cent participants considered the AP Behind the Doors publication and all the material covered in the consultation handbook as useful. Some (5 per cent) of the participants specifically liked the compilation of standards, judgements and the paper *Innocent Till Proven Guilty*. 27 per cent found the entire handbook relevant and useful.

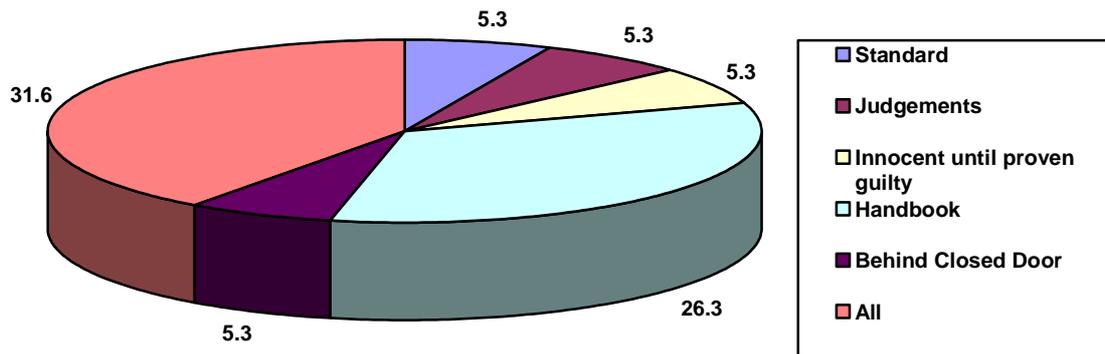


Chart 2: Relevance and usefulness of the background material

**C. WORKSHOP VENUE**

All the participants liked the consultation venue. 58 per cent Secretaries rated it as excellent.

**D. DISCUSSION**

Each session had a short introductory presentation followed by discussion. 32 per cent participants felt that the time for discussion was inadequate, while the rest 58 per cent felt that the time allotted for discussion was adequate. Two participants were not comfortable with the seating arrangement. All participants felt that their point of view was considered and taken into account during the sessions. 74 per cent (14 participants) gave additional suggestions to improve the way the consultation was organised. Majority of the (5) participants recommended to include prison officials in such consultations as they would also benefit from such interaction. Sending material in advance; organising such

workshops at the regional level; involving DLSA Chairman; and allotting more time for discussion are among the other suggestions made by the secretaries.

## **E. OUTCOME**

This section tries to assess if the overall objectives of the consultation were achieved. The consultation was organised to provide a forum to the DLSA secretaries to discuss obstacles and challenges and evolve better ways to monitor prisons.

All participants agreed that they were able to avail the opportunity to discuss and understand the importance of the High Court direction. They consider this direction an important step towards improving and monitoring prison conditions. It gives the secretaries the authority to visit prisons, identify the deficiencies and make appropriate suggestions. The discussion was very educative and gave them an insight to evolve better ways to monitor prisons. One participant specifically liked the discussion on aspects to be considered during a jail visit. Another participant suggested that the discussion would have been more meaningful if IG Prisons was also invited.

The consultation also gave them an opportunity to increase and/or refresh their knowledge about the existing rules relating to prison conditions and prisoners' rights. All of the participants who responded agreed that the consultation was very successful in refreshing and providing additional knowledge about evolving better means to monitor prison conditions.

14 participants who responded to this section mentioned that they all had gained something new from this consultation. Most of them considered sharing information with other secretaries as the most meaningful aspect of the discussion. They also learnt about making notes in the visitors' book during their visit; the medical facilities that prisoners' are entitled to; judgements; prison rules and regulations; and violations pertaining to access of prisoners with the outside world. The participants felt that the information provided better equips them to advocate for prisoners' rights and ways to improve prison conditions. They also learnt about compliance reports on the recommendations made by them during their visits.

The participants felt that CHRI could support DLSA secretaries by:

- Coordinating with prison officials and Ministry of Home Affairs;
- Organising more workshops and consultations like this with concerned authorities; and
- Providing research material related to prison manuals, judgements, standards and international best practices.

They expressed that this consultation provided them with a platform to exchange views and information about prisoners to better understand management of prisons.

All the 16 participants who responded felt that this workshop encouraged them by reaffirming the importance of their work and creating an impetus for proactive action when monitoring prisons.

# JUDGING PRISON CONDITIONS: A COMPILATION OF STANDARDS

Prisons conditions in Andhra Pradesh are better than in many other parts of the country, and the AP judiciary has had an important role to play in this. Indeed, in the year 2006, the AP High Court treated complaints of some prisoners from the Kadapa Central prison as a writ petition and directed the secretaries of the District Legal Services Authority to periodically monitor and report on the prison conditions in the state. This put in place an important oversight mechanism that continues to contribute to improved prison conditions in the state. However, this does not imply that the prison conditions in the state are perfect or even anywhere near that state. Given the closed nature of prisons and the scope of abuse of power by the prison department, incessant monitoring of prison conditions is a must.

This paper aims to assist the prison monitors by providing the gist of the existing and proposed standards against which to judge the prison conditions. The eight issues that are highlighted through this paper are just a few of the many other areas of concern within the existing prison regime. CHRI has chosen these issues to reflect the major concerns often expressed by the complainant prisoners. These are the very issues that we brought to the attention of the Hon'ble High Court of AP: Food; healthcare in Prisons; overcrowding; under-trial prisoners; contact with family members and lawyers; parole and furlough; access to information for prisoners; and prison discipline and grievance redressal mechanisms.

In compiling the standards, the paper looks at the existing legal position as provided under the *AP Prisons Rules 1979* (also known as the AP Prison Manual) as well the standards recommended by the *All India Committee on Jail Reforms 1980-83* (popularly known as the *Mulla Committee*) and the *Model Prison Manual 2003* (as prepared by the *All India Model Prison Manual Committee* and approved by the central government in 2004). Where the Prison Rules are silent or have been declared unconstitutional, standards are culled out from other laws or the Supreme Court judgments.

## **I. Food**

### **Issue of concern**

Prisoners across the state are unhappy with the quality of food provided to them. They complain that it is sub-standard: the quality of the rice is very bad and some vegetables are supplied several times a week. The latter happens primarily because of the use of open contract for procuring vegetables whereby the contract is awarded to the lowest bidder who chooses to supply the cheapest available vegetable in the market.

### **Existing standards: A. P. Prison Manual 1979**

- No rice less than six months old shall be issued for cooking. Cooked rice in dry and loose form should not weigh less than two and half times to the uncooked rice. (Rule 395(3))
- It is the duty of prison Medical Officers to ensure the quality and quantity of food supplied everyday and recommend appropriate food to sick prisoners. (Rules 394, 395, 404 and 405)
- All food shall be properly cooked and reach the prisoners in full quantity. The cooked food must be inspected and weight be checked by the Superintendent and Medical Officer at least once a week, and the result be noted in their journals. (Rule 405)
- Subject to certain conditions, under-trial prisoners are allowed food from outside on a day by day basis (Rule 733(2)).

### **Proposed standards: Mulla Committee Report 1983**

- The system of purchasing food articles through contract system should be discontinued. Also the system of purchasing cereals and pulses of the cheapest rate wherever in vogue should be discontinued. (Rec 49, 50)
- There should be provisions of different diets for non-laboring and laboring prisoners, nursing women and children accompanying women prisoners. Also a provision for special diet on religious festivals and national days. (Rec 51, 52 and 56)
- Norms of prison diet should be laid down in terms of calorific and nutritious value, quality and quantity. In order to break the monotony of diet, menus should be prepared in advance and under the guidance of nutrition experts. (Rec 53, 60)
- Each prison kitchen should cater a maximum of 200 prisoners, and should be supervised by prison officials, who have been given special training in dietary and management of kitchens. (Rec 57, 62)
- Prisoners shall be given food as is normally eaten in the region. (Rec 65)

### **Proposed standards: Model Prison Manual 2003**

- While prescribing the scales of diet for prisoners due consideration is to be given to the classified needs, habits and modes of living of the prisoners and the climatic conditions of the place. (Ch. 6.05)
- Variety in diet may be introduced by the Superintendent and he may also lay down a menu for different days of the week. (Ch. 6.09)
- In particular on rice, it is stated that the rice should be separated from husk, dust, or other particles, before issuing for cooking. The quality and seasoning of rice should be such that weight of the cooked rice is to be

about **3 times its weight** in uncooked state. This should be frequently tested by weighing. (Ch. 6.15)

- The minimum space requirement in the kitchen will be **150 sq. mtrs per 100 prisoners**. It will facilitate sufficient space for storage of provision articles, vegetables, dressing and cutting food, containers and cooking utensils etc. (Ch. 2.15.4)
- Subject to certain conditions, under-trial prisoners are allowed food from outside on a day by day basis. (Ch. 22.12)

## II. Healthcare in Prisons

### Issue of concern

Often, Medical Officers are not appointed. There is a lack of general health care, and availability of emergency services sometimes leading to deaths in prisons. Under-trial prisoners and convicts suffering from serious mental disorders are found in state prisons without adequate facilities to help them.

### 1. Appointment and duties of Medical Officers

#### ***Existing standards: A. P. Prison Manual 1979***

- The District Medical Officer or the Senior Medical Officer of the station if the prison is not located in the district headquarters shall be appointed the Medical Officer for jails. (Rule 56)
- The Medical Officer shall accompany the Inspector General of Prisons during his inspection of the jail. (Rule 59)
- The Medical Officer is required to conduct daily visits to the jail and to be present at the time of Superintendent's weekly visits. (Rule 61, 62)

#### ***Proposed standards: Mulla Committee Report 1983***

- Every central and district prison should have 2 or more Medical Officers. Such Medical Officers, each serving a term of 3 to 5 years, should be deputed from State Medical Service to Prisons. (Rec 121, 123)
- All central prisons with prisoner population of more than 1000 prisoners should have 3 medical officers. A full-time or part-time lady medical officer should be appointed in accordance with the number of women prisoners. (Rec 123, 124)
- Adequate incentives should be provided to medical officers, psychiatrists and para-medical personnel deputed to prisons. (Rec 130)
- A Medical Officer has the following duties:
  - a) Be responsible for the **medical care** and treatment of all inmates of the Prison.
  - b) **Take rounds of the prison premises** with the Superintendent once a week
  - c) **Maintain a health card** for every prisoner containing details on:-
    - i. Condition of the prisoner on admission
    - ii. fortnightly weight
    - iii. blood counts once in 6 months
    - iv. details of immunisation and sickness
  - d) **Inspect the kitchen** and environs and advise on improvement where necessary
  - e) Advise Superintendent on **suitability of work** allotted to the prisoners with reference to their physical and mental health
  - f) Arrange for **periodical examination** and analysis of the **water supplied** for drinking and cleaning purposes (Annexure VII B)

#### ***Proposed standards: Model Prison Manual 2003***

- Institutional Staff shall comprise medical personnel including medical officers, psychiatrist, nursing staff, pharmacist (Ch. 4.03.2)

- The Government shall appoint a Chief Medical Officer/ Medical Officer (in-charge) for every prison. (Ch. 7.04)
- The medical personnel are directly responsible for every matter connected with the health of the prisoners, their treatment when sick, and the sanitation and hygiene of the prison. (Ch.7.09 )
- Medical personnel are to provide both preventive and curative services. (Ch. 4.07.4)
- The Medical Officer has to give careful attention not only to the treatment of sick prisoners but also to every matter connected with the health of prisoners and over all hygiene of the prison. Nothing will count more to the credit of the Medical Officers of prisons than their success in maintaining best health standards in the prisons under their charge. (Ch. 7.01)

## **2. Medical Facilities in Central and Sub Jails**

### ***Existing standards: A. P. Prison Manual 1979***

- A prison hospital shall be provided in every hospital (section 39, Prisons Act 1894)
- The stock of drugs and instruments shall be checked and a certificate as prescribed in the Manual shall be furnished by the Medical Officer through the Superintendent to the Inspector General. This is to reach by the 10<sup>th</sup> of April every year. (Rule 68)
- The minimum floor area and cubic space requirement for each patient in hospital is 5.57 square meters and 23.79 cubic meters. (Rule 654)

### ***Proposed standards: Mulla Committee Report 1983***

- All central and district prisons should provide hospital accommodation for 5 % of daily average inmate population. (Rec 133)
- Each State should have a fully equipped prison hospital manned by specialists for the treatment of prisoners requiring specialized treatment from all over the state. (Rec 136)
- Required supply of drugs for three months should be stocked in the prison hospital. (Rec 148)
- Proper medical facilities should be provided in sub-jails as well. (Rec 146, 511)

### ***Proposed standards: Model Prison Manual 2003***

- One ambulance should be provided to each prison. (Ch. 7.03)
- ***Hospital accommodation should be provided on the scale of 5% of the daily average of the inmate population in all Central and District Prisons. (Ch. 7.02, 2.16.1)***
- ***The prison hospitals may be divided into Types 'A' and 'B'. Big hospitals, with 50 beds and above shall be called 'A' type hospitals. Other hospitals, with less than 50 beds, shall be called 'B' type hospitals. The staff for the two types of hospital shall be:***

	Officers	'A' Type	'B' Type
1	Chief Medical Officer (in the rank of Civil Surgeon with Post Graduate Qualification)	1	1

2	Assistant Civil Surgeons	7	4
3	Staff Nurses	6	3
4	Pharmacists	4	2
5	Male/Female Nursing assistants	6	3
6	Laboratory Technicians (to be trained in handling all equipments including E.C.G., X-ray and portable X-ray machines)	3	1
7	Psychiatric Counsellors	2	1
8	Junior Assistant	1	1

### **3. Medical Screening on Admission to Prison**

#### ***Existing standards: A. P. Prison Manual 1979***

- The Medical Officer shall carefully examine the person and shall himself record in the appropriate admissions registers in Forms 5,6 and 7, his weight, age and state of health. (Rule 253)

#### ***Proposed standards: Mulla Committee Report 1983***

- A Medical Officer is required to maintain a health card containing notes on the conditions of the prisoner on admission for each prisoner. (Annexure VII B of the report)

#### ***Proposed standards: Model Prison Manual 2003***

- The Medical Officer will carefully examine the prisoner and will himself record in the proforma (Appendix -1 of the Model Manual) for health screening on admission. (Ch. 5.66, 4.07.4)

### **4. Mentally ill prisoners**

#### ***Existing standards: A. P. Prison Manual 1979***

- The provisions of the AP prison manual are archaic and need to be brought in sync with the Mental Health Act 1987 and the relevant court judgments
- No mentally ill person can be detained in prisons merely because of their illness. (*Sheela Barse v. Union of India* (1993)4 SCC 24 and NHRC "Letter to all Chief Ministers/Administrators of all the States/Union Territories on mentally ill persons languishing in prisons dated 11 September 1996)
- A mentally person detained in a prison under the orders of a court (as an under trial or a convict) can be transferred to a mental health facility by the state government. (section 30 Prisoners Act and section 27 Mental Health Act 1987)

#### ***Proposed standards: Mulla Committee Report 1983***

- Every Central and District Prison should have services of a qualified psychiatrist, who should be assisted by a psychologist and psychiatric social worker. (Rec 125)
- Adequate incentives should be provided to medical officers, psychiatrists and para medical personnel deputed to prisons. (Rec 130)



***Proposed standards: Model Prison Manual 2003***

- Women who are found insane and mentally ill shall not be detained in prison. Arrangements shall be made for the removal to mental homes/institutions of mentally ill prisoners who happen to be admitted in prisons. (Ch. 24.124)

### III. Overcrowding

#### Issue of concern

Severe overcrowding leads to dilapidated living conditions. Prisoners are denied adequate space, water, hygiene and appropriate clothing.

#### ***Existing standards: A. P. Prison Manual 1979***

- The number of cubic and superficial space and the number of prisoners it can accommodate shall be recorded at the door of every ward. (Rule 651)
- Every prisoner in a ward shall be allowed not less than 4.65 square meters of ground space and 19.82 meters of breathing space. The height of the walls of a ward should not be less than 3.96 square meters and in calculating allowance of cubic area per man, no account shall be taken of any air space above 3.96 meters. (Rule 652)
- Cells should have a ground area of not less than 8.92 square meters and a cubic capacity of 33.98 cubic meters. (Rule 653)
- Flush out system latrines are to be provided in all Central Prisons and wherever possible in all District Jails. (Rule 670)
- Latrine accommodation shall be provided at the rate of one seat for every six prisoners. (Rule 670)
- There should be an arrangement of adequate supply of water in every prison. The daily requirement of an individual is 136.38 litres.
- Every convict under sentence of rigorous imprisonment or of imprisonment of life shall be required to wear jail clothing. And is also to be provided with jail bedding. A prisoner of any other class shall be supplied with bedding and clothing if he so requires. (Rule 412)

#### ***Proposed standards: Mulla Committee Report 1983***

- All old prison buildings having outlived their utility should be demolished. (Rec 31)
- There should be 4 types of living accommodation, barracks (for not more than 20 prisoners), dormitory (for not more than 4 to 6 prisoners), single seated accommodation and cells for segregation. (Rec 36)
- All cells are to be fitted with flush type latrines. (Rec 37) The ratio of latrines to prisoners should be 1:6. (Rec 73) and the system of open basket type latrines should be discontinued. (Rec 74)
- Every prison must provide cubicles for bathing at the rate of 1 for 10 prisoners, with proper arrangements to secure privacy (Rec 78)
- Properly equipped laundries for periodic washing, disinfection and fumigation of clothing and bedding should be set up at each central and district prison. (Rec 80)
- Clothing and bedding supplied to prisoners should be adequate. (Rec 83, 88)

#### ***Proposed standards: Model Prison Manual 2003***

- There should be 3 types of living accommodation, viz. barracks (for not more than 20 prisoners), single rooms and cells for segregation. (Ch. 2.08)

- The minimum accommodation capacity of dormitories/barracks, cells cottages, and hospitals per-prisoner will ordinarily be according to the following scale (Ch. 2.09):

SLEEPING BARRACKS			CELLS			HOSPITALS	
Sq. mtrs of ground areas	Cu mtrs of air space	Sq. mtrs of lateral ventilation	Sq. mtrs of ground areas	Cu mtrs of air space	Sq. mtrs of lateral ventilation	Sq. mtrs of ground area	Cu mtrs of air space
3.71	15.83	1.12	8.92	33.98	2.23	5.58	23.75

- Near the door of every ward, the size of the room and the number of prisoners it is capable of accommodating, shall be recorded on a plaque embedded in the outer wall of the ward and no ward shall accommodate prisoners beyond its prescribed capacity. (Ch. 6.64)
- Each barrack used for sleeping will have sufficient number of attached WCs, urinals and wash places. The ratio of such WCs will be **one unit per 10 prisoners**. The ratio of the WCs which can be used during day time will be **one unit per 6 prisoners**. (Ch. 2.13.1)
- Every prison will provide covered cubicles for bathing, at the rate of **one for every 10 prisoner**, with proper arrangements to ensure privacy. (Ch. 2.14.1)
- Taking into consideration that the daily requirement of water of an individual is about **135 ltrs.**, there will be an arrangement for the adequate supply of water in every prison. (Ch. 2.14.2)
- Areas where prisoners work will have a minimum space of **500 cubic feet per prisoner** in structures that will be constructed as workshops or factory buildings. (Ch. 2.17)
- Every prisoner shall be required to wash their clothing once a week for which they shall be supplied in case of male half a bar of washing soap weighing approximately 500 g. each per month and 50 gms of washing powder every week for washing their clothes and in case of female prisoners a bar of washing soap weighing approximately 1Kg. each per month and 50 gms. of washing powder per week. (Ch. 6.57)

## IV. Under-trial Prisoners

### Issue of concern

65.4% of the total prisoners in Andhra Pradesh are under-trial prisoners. Many of them are in prisons either because they do not have lawyers or because they are poor and are unable to produce surety for their bail.

### 1. Legal Aid

**Existing standards: A. P. Prison Manual 1979, Constitution and Legal Services Authority Act 1987**

- The AP manual does not make any mention of the availability of legal aid to under-trial prisoners.
- Article 39A of the Constitution of India enjoins the state to provide free legal aid, by suitable legislation.
- The Legal Services Authority Act 1987 (which came into force in 1995) gives a statutory base to legal aid programmes across the country.

**Proposed standards: Mulla Committee Report 1983**

- Rights of Under-trials including facilities of access to legal material, legal counsel and legal aid should be protected. (Rec 349)

**Proposed standards: Model Prison Manual 2003**

- The facilities that should be extended to all UT prisoners include legal defence, interview with lawyers, application to courts for legal aid at government cost as per provisions of law, and application to Legal Aid Societies for free legal aid. (Ch. 22.10)

### 2. Video Conferencing

**Existing standards: A. P. Prison Manual 1979 and the Code of Criminal Procedure, 1973**

- The manual does not deal with video-conferencing and states that the Superintendent is responsible for the production of a remanded prisoner in Court. (Rule 741)
- The duty of providing escorts to under-trial prisoners for production before the competent court rests with the police. (Rule no 741)
- The latest amendment to the Code of Criminal Procedure (as passed by both the Houses in December 2008 but awaiting President's assent) allows the Magistrates to extend remand of the prisoner upon production through electronic video linkage. (S. 16 of *The Code of Criminal Procedure (Amendment) Bill 2006* amends proviso (b) of S. 167(2) Cr.P.C.)

**Proposed standards: Mulla Committee Report 1983**

- All under-trial prisoners should be effectively produced before the presiding magistrates on the dates of hearing. (Rec 350)

- Therefore in case of lack of resources to provide escorts for under-trial prisoners, video conferencing should be used as an effective alternative for hearing and not merely for extension of dates.

***Proposed standards: Model Prison Manual 2003***

- An under-trial prisoner shall be produced before the court, on the due date of hearing, in person. However, for extension of detention in custody, the prisoner may be produced before the court either in person or through electronic media like, video-linkage. (Ch. 22.21)

**Note:** Although video-conferencing is promoted as an answer to the problem of escorts, there is always a danger that the rights of the accused are jeopardised because of lack of legal representation in such cases. The danger of remands being extended routinely becomes all the more pronounced when under-trial prisoners are produced by electronic means in the absence of their lawyers. This also removes the thin line between under-trial prisoners and convicts in the sense that the former at least get to come out of the prison every fifteen days.

**3. Jail Adalats**

Jail adalats are courts held within the jail premises to deal with “petty” offences in cases where the accused is willing to plead guilty. Usually, the prisoner is convicted and sentenced for the period undergone.

***Existing standards: A. P. Prison Manual 1979 and High Court circular***

- The AP prison manual does not mention anything about the jail adalats.
- The circular of High Court of Andhra Pradesh dated 19-7-2000 directs all the chief judicial magistrates and the chief metropolitan magistrates to “take up the case of those Under Trial Prisoners who are involved in petty offences and are keen to confess their guilt” (ROC.NO.2312/OP CELL-E/2000). These directions were reiterated by other High Court circulars whereby the “Unit Heads are...instructed to take necessary steps to hold Courts in Jails” (ROC.NO.6496/ OP CELL-E/2000) “on a regular basis” (ROC.NO.5642/OP CELL-E/2003).

***Proposed standards: Mulla Committee Report 1983 and Model Prison Manual 2003***

- Neither the Mulla Committee report nor the Model Prison Manual deal with jail adalats. This is primarily because the term ‘jail adalat’ is not a statutory one. The term merely refers to the summary disposal, in hearings held within prisons, of those cases in which the accused prisoner is ready to plead guilty.

**Note:** Although seen as an effective mechanism to reduce overcrowding in prisons, the use of jail adalats should be just and judicious. The Law Commission in its 142<sup>nd</sup> report correctly recognized the fact that the 95 per cent acquittal rate in criminal trials meant that an accused going to trial with counsel would generally expect acquittal. ‘...rich, influential and well informed-accused [those able to afford counsel] would seldom undertake the risk of

social and personal consequences of a confession'. Without adequate counsel, 'it is eventually the poor who may come forward to making confessions and suffer the conviction'. The inducement of an early release is enough for a poor person to falsely plead guilty. This does not serve the cause of justice. It is imperative that the accused are properly counselled about the implications of their decision to plead guilty. However, this practice is never followed in reality. The accused plead guilty without any counselling and in the absence of lawyers who can protect their rights.

#### **4. Unnecessary Detention**

Many under-trials remain in prison either because the bail amount is set too high or they cannot produce a surety. Supreme Court has long observed that it is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meager means (*Hussainara Khatoon And Ors V Home Secretary, State Of Bihar, Patna AIR 1979 SC 1360*).

#### ***Existing standards: A. P. Prison Manual 1979, the Supreme Court and the Code of Criminal Procedure***

- Whenever under-trials are **unduly detained** it is for the Superintendent to address the District Magistrate or Sessions Judge concerned regarding the speedy disposal of their cases or for exercising their powers of releasing them on bail. (Rule 743 AP prison manual)
- Prisoners whose cases are being enquired into by a Magistrate shall be brought before the Magistrate at least once in 15 days for the purpose of remand. Upon expiry of each period of remand the prisoner should again be placed before the Magistrate. (Rule 749 AP prison manual)
- Section 436A of the Cr.P.C. provides the maximum period for which an under-trial prisoner can be detained. The section provides that an under-trial is entitled to bail where s/he has undergone detention for a period upto one-half of the maximum period of imprisonment specified for that offence. In any case, an under-trial cannot be detained for more than the maximum period of imprisonment provided for the said offence.
- Section 167, Cr.P.C. provides that a person is entitled to bail if the charge-sheet is not filed within the time prescribed under that section (maximum period is 90 days).
- Supreme Court has laid down that the courts must abandon the antiquated concept under which pretrial release can be ordered only against bail with sureties. In majority of cases considerations like family ties and relationship, roots in the community, employment status etc. should be taken into account while releasing a person on personal bond (*Hussainara Khatoon And Ors V Home Secretary, State Of Bihar, Patna AIR 1979 SC 1360*).

#### ***Proposed standards: Mulla Committee Report 1983***

- A statutory Committee at the district level comprising the district judge, district magistrate, district superintendent of police, public prosecutor and the prison superintendent shall visit the district/central prison in the district at least once every month. (Rec 12.17.21)

- The district Committee shall meet every under-trial prisoner present on the day that it visits the prison. It shall hold a meeting to review the cases of all under-trial prisoners and see that no under-trial prisoner is un-necessarily detained in the prison. (Rec 12.17.21)
- A statutory Committee at the state level comprising a judge of the High Court, the Home secretary/secretary dealing with prisons in the secretariat, the inspector general of police, director of prosecution, and the inspector general of prisons should meet every three months to review the position of under-trial prisoners in the state. (Rec 12.17.21)
- The state Committee should also sort out the problems of coordination among various departments resulting into delay in trials. (Rec 12.17.21)
- The Cr.P.C. should be amended to provide for the immediate and unconditional release of an under-trial prisoner as soon as s/he completes half the period of the maximum awardable sentence upon conviction in detention. This should be the function of the district Committee and such under-trials prisoners should be treated as having been discharged by the court of law. (Rec 12.17.21)
- With respect to sub-jails, the district magistrate should constitute a committee comprising local police, judiciary, prosecution, district administration and the prison department at a fairly high level. (Rec 18.9.28)
- The Committee should visit the sub-jail once a month to ascertain that no person is being detained unnecessarily. (Rec 18.9.28)
- The member secretary of the committee should submit a list of under-trials in the sub-jail and a report of the deliberations of committee to the district judge and send copies to the Inspector General of Prisons, the district magistrate and the superintendent of police. The IG Prisons should review the situation with the Home Secretary once in every three months. (Rec 18.9.28)

***Proposed standards: Model Prison Manual 2003***

The Model Prison Manual does not deal with the issue of bail or unnecessary detention.

## V. Contact with Family and Lawyers

### Issue of concern

Prisoners complain about the restrictions on visits, improper treatment with family members, lack of proper facilities for visits and for waiting.

#### **Existing standards: A. P. Prison Manual 1979**

- A newly convicted prisoner shall be provided reasonable facilities for interviews with his relatives, friends or legal advisors with a view to the preparation of appeal or to procuring bail. Writing letters to his relatives, friends or legal advisors, once or twice or often if the Superintendent considers it necessary. (Rule 489)
- A notice of interview hours, as fixed by the Superintendent, shall be posted outside the prison. (Rule 495)
- The time allowed for the interview shall not ordinarily exceed half an hour, but can be extended at the discretion of the Superintendent. (Rule 499)
- Writing materials including service post cards and service postage stamps shall be supplied in reasonable quantities to any convict who has permission to write a letter. (Rule 504)
- Unconvicted criminal prisoners and civil prisoners shall be provided reasonable facilities for interviewing or otherwise communicating either orally or in writing with their relatives, friends and legal advisers. (Rule 506)

#### **Proposed standards: Mulla Committee Report 1983**

- Guidelines for the censorship of letters should be formulated so that censorship of letters is done on the basis of human consideration. (Rec 100)
- There should be no limit on incoming letters for prisoners (Rec 97) and there should be no restriction on the number of letters prisoners may send at their own cost. (Rec 98)
- All illiterate or semi literate prisoners should be provided help in writing letters. (Rec 99)
- The scale of interviews for convicted and under-trial prisoners should be liberalised. (Rec 101)
- Facilities of interviews of prisoners should be humanised and the conditions/ procedure governing grant of interviews should be rationalised. (Rec 102)
- There should be no restriction on the number of interviews sought by the under-trial prisoners for the sake of legal assistance. Interviews with family members and friends should, however, be restricted to two per week. (Rec. 12.17.16)

#### **Proposed standards: Model Prison Manual 2003**

- The number of letters a prisoner can write in a month shall be fixed by the Government under the rules. (Ch. 8.01) However, there shall be no limit on the number of incoming letters to a prisoner. (Ch. 8.29.2)
- Every prisoner shall be allowed to have interviews with his/her family members, relatives, friends and legal advisers once in a fortnight. (However, the number of persons who may interview a prisoner at one time shall ordinarily be limited to three). (Ch. 8.01 and 8.03)

- Suitable waiting rooms may be provided in every prison to enable visitors to await their turn for interview. (Ch. 8.13)
- The maximum duration of the interview shall be half an hour, which can be further extended by the Superintendent of Prisons at his discretion. (Ch. 8.26)
- A prisoner may be allowed the use of telephones on payment, to contact his family and lawyers, from time to time, wherever such facility is available but only at the discretion of the Superintendent of Prison. (Ch. 8.38)

## VI. Parole and Furlough

### Issue of concern

Gross discrimination in the grant of parole

#### **Existing standards: A. P. Prison Manual 1979**

- Rule 967 provides for release of convicted prisoners on **furlough**/ leave:
  - (a) A prisoner may be released on furlough as per the following scheme:-

Term of Imprisonment	Period of Imprisonment Undergone
1 - 5 years	Actual 1 year
5 years and more	Actual 2 years
Above 1 year and confined in Prisoners Open Air Work Camp	Actual 1 year in the Camp

- (b) The period of furlough shall not exceed two weeks at a time.
- (c) The cost of the journey is to be borne by prisoners themselves.

- Rule 974 provides for the grant of **parole**/ emergency leave in accordance to the provisions under Section 432 Cr.P.C.:
  - The Government may order parole in case of serious illness, death, or marriage of any member of the family or near relative or for any other sufficient cause.
  - There is no bar for the grant of parole to prisoners during the pendency of their appeals.
  - The period under parole is not to count as part of the sentence.
  - The petition is to be presented to the Superintendent who shall then, after verifying the details, send it to the Government and Inspector General.
  - An application can also be made directly to the Government by the relatives or friends of a prisoner.
  - The period of release on parole shall not ordinarily exceed two weeks.
  - Parole shall only be granted after the first 6 months from the date of admission into prison or 6 months from the date of his surrender back to prison after availing parole.

#### **Proposed standards: Mulla Committee Report 1983**

- Rules for eligibility of convicted prisoners for being released on leave and special leave should be reviewed, rationalized and liberalized. (Rec 554)
- The Inspector General of Prisons should be the authority competent for grant of release. (Rec 555)

#### **Proposed standards: Model Prison Manual 2003**

- The provisions for grant of leave should be liberalized to help a prisoner maintain a harmonious relationship with his family. The privilege of leave should, of course, be allowed to selective prisoners on the basis of well-defined norms of eligibility and propriety. (Ch. 17.01)
- Head of the Prisons Department/Inspector General of Prisons will be the competent authority for granting release on leave. (Ch. 17.10)

## VII. Access to Information for Prisoners

### Issue of concern

Prisoners often lack information about the rules that apply to them under the Prison Manual. Manuals, even where they are provided to the prisoners, are in English and vernacular translations are often not available.

#### **Existing standards: A. P. Prison Manual 1979, Prison Act and the Supreme Court**

- Copies of jail rules should be exhibited in English and local languages in an accessible place (Section 61 of Prison Act 1894)
- Prisoner's handbooks should be prepared in Hindi and regional languages by state governments for circulation in prisons (*Sunil Batra (II) v. Delhi Administration* (1980) 3 SCC 488; also see *Rakesh Kaushik v. B.L. Vig, Superintendent Central Jail, New Delhi and Anr.* AIR 1981 SC 1767)
- The *Rights to Information Act 2005* does not discriminate between prisoners and ordinary citizens. All prisoners are entitled under the Act to seek appropriate information. Indeed the prison authority is under a duty to proactively disclose relevant information to the prisoners and the public (Section 4).
- The Superintendent shall, on the application of a prisoner who desires to appeal, address the Court on his behalf for the necessary copy of judgement appealed. (Rule 509, Prison Manual)

#### **Proposed standards: Mulla Committee Report 1983**

- The prisoners' are entitled to their right to:
  - effective access to information and all legal provisions regulating conditions of detentions;
  - consult or to be defended by legal practitioner of his/ her choice;
  - access agencies such as SLSA;
  - be informed on admission about their legal rights; and
  - receive all court documents. (Annexure IVB)
- Every prisoner at the time of his admission should be apprised of his duties, obligations, rights and privileges as laid down in the Prisons Act and the rules made under it. A small booklet in local language containing information regarding regulations governing treatment of prisoners, disciplinary requirements, authorised methods of receiving information, making complaints and all such other matters as are necessary to enable a prisoner to understand both his rights and obligations should be prepared and given to each prisoner within 24 hours of his admission to prison. In case of illiterate prisoners, the required information should be conveyed to them orally. (Rec 8.29)

#### **Proposed standards: Model Prison Manual 2003**

- The Model Prison Manual replicates the recommendations of the Mulla Committee on prisoners' right to access to law. (Perspective: Model Prison Manual)
- Pamphlets should be printed containing the rights, duties, entitlement, discipline and daily routine of a prisoner so that he may follow the 'dos' and 'don'ts' and maintain discipline during his confinement. It should be kept in the library for issuance to a prisoner who can read. Illiterate prisoners should be made to understand the contents of the literature by the prison staff or by some literate prisoners. (Ch. 15.05, 15.06)

## VIII. Discipline and Grievance Redressal Mechanism

### Issue of concern

Prisoners are completely dependent on their custodians to meet their basic needs. Due to the closed nature of prisons, it becomes difficult to monitor violation of prisoners' rights. The atmosphere within the prisons discourages the prisoners from voicing their grievances and complaints against the prison authorities. AP has a significantly better grievance redressal mechanism for prisoners' especially after the establishment of complaint boxes in every prison.

The AP Manual enlists 55 different types of behaviour as prison offences, incriminating almost every sort of behaviour including singing, loud laughing and loud talking at any time. (Rule 304) Neither the AP prison manual, nor the Mulla Committee Report or the Model Prison Manual classify the prison offences as 'minor' or 'major', however all classify the punishments as such. To ensure correlation between the award of a punishment and the seriousness of the offence, the manual should itself set out classification of prison offences in to 'serious and minor offences'.

### 1. Prison Offences and Punishment

#### ***Existing standards: A. P. Prison Manual 1979***

- It shall be the discretion of the Superintendent to determine, with respect to any act which constitute both a prison offence and an offence under the IPC, whether he will use his powers of punishment or move the Magistrate possessing the jurisdiction to enquire into it. (Rule 307)
- No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. (Rule 308)
- The superintendent shall conduct a thorough examination of the case, conducted either in the Superintendent's office or in a separate room called orderly room. Every precaution should be taken to ensure that the enquiry is conducted in an orderly manner. Superintendent may order to record statements in case of serious violations, if not then he should record the salient facts of the case in the orderly room register. The officer who had conducted the preliminary investigation should present his report and witness, if any. The report should be in a language that is understood by the accused or common to the locality. (Rule 308)
- Every prison punishment shall be recorded in the punishment register and also in the prisoners' history book. (Rule 317)
- The AP Manual also imposes penal diet as a form of punishment. (Rule 312) The Supreme Court has held that "no solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, an account of emergency is difficult such information shall be given within two days of the action" (*Sunil Batra* AIR 1980 SC 1579).

#### ***Proposed standards: Mulla Committee Report 1983***

- The powers of the superintendent of a prison regarding use of preventive measures for reasons of safe custody should be clearly laid down. In case such preventive measures are necessary beyond the powers vested in the superintendent, he should seek prior approval of the District Judge or the Chief Judicial Magistrate having visitorial powers. (Rec 8.18)
- Fetters and handcuffs should not be imposed on under-trial prisoners except when they have a credible tendency to violence or escape. (Rec 8.19)
- Disciplinary problems in prisons should be tackled with fairness, politeness and firmness. Prison discipline should be based on rewards and positive incentives rather than on the fear of punishment. (Rec 8.34.20)
- Some of the existing prison punishments (imposition of fetters and handcuffs, cellular confinement, separate confinement beyond 30 days, penal diet and whipping) should be abolished and new ones introduced. (Rec 8.26)
- The existing practice of dealing with complaints against prisoners in a summary manner by the superintendent should be stopped. (Rec 8.34.24)
- The inmate should be given a written statement of allegations against him. He should be given an opportunity to put up his defence in person or in writing. (Rec 8.34.24)
- The order inflicting punishment should contain reasons therefore and a copy of the same should be given to the inmate under proper receipt. (Rec 8.34.24)
- The inmate should be allowed the right to prefer an appeal to the Inspector General (IG) of Prisons against major punishments. The appeal should be submitted within three days of the date of order to the superintendent who should immediately forward to the IG of Prisons. The IG of Prisons should decide the appeal within 15 days of its filing. (Rec 8.34.24)
- In case an appeal is filed within the stipulated period the punishment awarded should remain suspended till the disposal of the appeal. (Rec 8.34.24)
- There should be a section defining the offences that may be committed by prison personnel, procedure for dealing with them and appropriate penalties for the same. (Annexure IVB)

***Proposed standards: Model Prison Manual 2003***

- The Manual enlists 45 acts as prison offences. The list of punishments are same as those recommended by Mulla Committee. (Ch.19.09)
- The minor punishments range from 'a formal warning' to 'fatigue drill/work for a period not exceeding one hour a day up to seven days subject to the prisoner's physical fitness being certified by the Medical Officer'. The major punishments range from 'loss of privileges of the prisoner from one month to three months' to 'solitary confinement to a maximum of 30 days'. (Ch 19.11)

**2. Prisoners' Right Against Arbitrary Prison Punishment**

***Existing standards: A. P. Prison Manual 1979***

- The AP Prison Manual does not address the issue of arbitrary prison punishment.

***Proposed standards: Mulla Committee Report 1983***

- To avoid exploitation of prisoners', rights of prisoners needs to be laid down in the national prison legislation. Prisoners have the following rights: (Annexure IVB)
  - Right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;

- Right to communicate with the prison administration, appropriate Government and judicial authorities, for redressal of violation of any or all prisoners' rights and for redressal of grievances
- Right to entitlement in case of disciplinary violation (i) to have precise information as to the nature of violation of Prisons Act and Rules (ii) to be heard in defence, (iii) to communication of the decision of disciplinary proceedings, and (iv) to appeal as provided in rules made under the Act.

***Proposed standards: Model Prison Manual 2003***

- The Model Prison Manual takes the same stand as the Mulla Committee in ensuring that the rights of prisoners' against arbitrary prison punishment are not infringed upon. (Perspective: Model Prison Manual)
- In respect of offence committed by the prisoners which are punishable both under the existing criminal laws or jail offences, it should be the discretion of the Superintendent either to use his own powers of punishments or to prosecute the offender before a court of law. (Ch. 19.13)

**3. Grievance Redressal Mechanism**

***Existing standards: A. P. Prison Manual 1979***

- The Superintendent shall hear and inquire into any complaints that the prisoner may wish to make. It is his duty to listen to complaints and petitions of prisoners and to afford prisoners reasonable facilities for making such representations. (Rule 45)
- There is no provision mentioned in the AP Manual that allows the prisoner to directly complain to higher authorities.

***Proposed standards: Mulla Committee Report 1983***

- Letters addressed by prisoners to the Government, judiciary, IG of Prisons or high functionaries should be forwarded to them immediately without being censored and dated receipt should be given to the prisoner. The receiving authority should acknowledge letters immediately and look promptly into them. (Rec 8.34.27)
- The District Judge should visit each prison in his jurisdiction once a month and give opportunity to all the prisoners to put up their grievances or requests, if they so desire, in the absence of prison officers. This should be statutory function of the District Judge. (Rec 8.34.24)
- Each prison should have a complaint box fixed at a prominent place within the reach of inmates. The key to the lock of the box should remain with the District Judge who should open it at the time of his monthly visit to the jail and take necessary action. The directives issued by the higher judiciary in this regard should be kept in view by the prison administration. (Rec 8.34.24)
- The Board of Visitors should be activated. The visitors should receive and enquire into prisoners' complaints and grievances and send their suggestions to appropriate authorities. (Rec 8.34.24)

***Proposed standards: Model Prison Manual 2003***

- The Model Prison Manual proposes the same standards for grievance redressal as the Mulla Committee. (Ch. 19.16)

- An active Grievance Redressal System (G.R.S) should be established in every prison. (Ch. 19.16)
- The key to the lock of the complaint boxes installed in prisons should remain with the Deputy Superintendent, who shall unlock the box twice a week on days fixed and approved by the Superintendent. (Ch. 19.16)
- The Superintendent should preside over a permanent committee of G.R.S, comprising of himself, the Deputy Superintendent (the senior most Deputy Superintendent in case more than one are posted in the prison), the medical officer and the welfare officer. If the prison happens to have a female enclosure then one lady officer not below the rank of Deputy Superintendent shall be included in the committee. (Ch. 19.16)
- The Committee shall meet at least twice a week to look into all the complaints. Complaints to the higher authorities shall be forwarded to them with comments of the Superintendent without delay. (Ch. 19.16)

# Commonwealth Human Rights Initiative (CHRI)

## A short introduction

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights across the Commonwealth. Full information can be found at: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

**HISTORY:** CHRI was founded in 1987 by Commonwealth profession associations - doctors, journalists, lawyers, legal educators and joined later by parliamentarians, broadcasters, publishers and trades unions, - as they felt that while 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 little focus on human rights issues. CHRI shifted its Head Quarters to New Delhi, India in 1993 and established its Africa office in Accra in 2001.

**OBJECTIVES:** 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 in-country laws and policies that support human rights in member states.

**OFFICES:** CHRI has a family of offices - Headquarters in New Delhi, India; an Africa Office in Accra, Ghana; and a Liaison Office in London -, which jointly implement our programme activities.

**GOVERNANCE:** CHRI has an international Advisory Commission made up of eminent people from across the Commonwealth. It sets the policy directions for all the offices. The London, Ghana and headquarters at Delhi have their own governing bodies that oversee the day-to-day implementation of program directions. For cohesion and harmonization the Chairs of all the executive committees also sit on the International Advisory Commission. The Executive Director is the CEO in charge of all the offices and programs.

**PROGRAMME AREAS:** CHRI focuses on ensuring greater accountability and transparency of governments and greater participation of people in decision making as a means of redressing some of the power imbalances that perpetuate the violation of human rights. CHRI places particular emphasis on the democratic principles of accountability and participation and has developed a strong focus on *Access to Justice and Access to Information*. CHRI's efforts are focused on systemic reform and human rights education, while also acting as a catalyst for action. In-country activities are complemented by a broader Human Rights Advocacy programme, which researches and highlights human rights violations and makes recommendations to governments and the Commonwealth.

**Access to Justice:** It is the prime responsibility of the state to assure its citizens access to justice and the justice system must work if the state is not to be completely undermined. CHRI's Access to Justice programme particularly focuses on: police reform; prison reform and judicial education.

**Police Reform:** the main cause of inefficient and ineffective policing is the lack of accountability, often caused by lack of proper supervision and control. Our reform agenda focuses on these root causes to attack systemic ills. In South Asia and Africa, our activities include: conducting and publishing research, running workshops on opportunities for reform, catalysing activist groups, engaging in policy advocacy, preparing submissions and working with the media. In 2005 CHRI published a report on police accountability good and bad practice in the Commonwealth.

**Prison Reform:** This work is focused on increasing transparency and scrutiny by reviving the statutory system of prison visitors that monitor conditions: food, medical facilities, discipline and staff behaviour. CHRI has reported on prison conditions in several states in India.

**Judicial Education:** CHRI facilitates judicial exchanges focusing on access to justice for the most vulnerable. Participating judges get a rare opportunity to hear from activists and experts, focus on pressing issues specific to their region and familiarise themselves with recent legal and procedural, as well as social and scientific, developments relevant to their judicial work.

**Access to Information:** CHRI promotes people's right to access information as a key measure underpinning robust democracy, rapid development, good governance and the effective realisation of human rights. Openness increaseJs accountability and transparency, promotes consultation, allows informed choices and reduces corruption. At the heart of the programmes (right to information and constitutionalism) is the belief that legislation must reflect people's needs and citizens must feel they own the laws that govern them.

Activities include extensive research and publications, engaging policy-makers, analysing draft Freedom of Information bills, creating alliances with other organisations to advocate for legislation, and auditing the implementation of legislation. CHRI is committed to facilitating citizen involvement and has collaborated to create a large network of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of local representatives.

**Reports to the Commonwealth Heads of Government:** Every two years CHRI makes a report on an issue of current human rights concern to the Commonwealth Heads of Government. The report is published in time for their biennial meeting. The reports are intended as advocacy documents aimed at officials and active civil society groups. They are designed to indicate, the manifestation of the problem under consideration, measure government compliance and practice against international and national standards and obligations, and indicate good practice in Commonwealth jurisdictions of which civil society and officials should take note. The report also makes recommendations which CHRI monitors in future years. Since 2000 CHRI has made reports that: recommended a rights based approach to poverty, promote the need for Commonwealth countries to adopt free access to information regimes, and most recently examined good and bad police accountability practices across the association and made strong recommendations pushing to bring about reform that can further safety and security and democratic policing governed solely by rule of law considerations.

**Advocacy and networking:** In the past 10 years in the course of developing its reports, and providing consistent technical assistance to governments, civil society actors and individuals CHRI has built up a large network of human rights activists across the Commonwealth. CHRI provides daily input to these groups and convenes their electronic network, the Commonwealth Human Rights Network. Every two years subject to funds the group meets just prior to the CHOGM makes its statements to the heads of government and follows through with advocacy with governments in the interim periods between Heads of Government Meetings.

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**Registration and Income Tax Exemption Details:**

FCRA Registration No. 231 650671  
Registration No. S-24565 under Societies  
Registration Act  
Registration No. D.I.T. (Exemption)/94-95/C-  
390/94/417 U/S 80-G