

Commonwealth Human Rights Initiative



MARATHON LEGAL AID CLINIC

IN WOMEN'S REFORMATORY, JODHPUR
A SWADHIKAR INITIATIVE

Prison Reforms Programme | Behind Bars but not Beyond Justice | November 8, 2014

REPORT ON MARATHON LEGAL AID CLINIC

Women's Reformatory, Jodhpur

8th November 2014

Commonwealth Human Rights Initiative (CHRI) through its Legal Aid Clinic in Jodhpur Central Jail called *Swadhikaar*, conducted a Marathon Legal Aid Clinic for the undertrials in the Jodhpur Women's Reformatory on 8th November 2014. All undertrial prisoners were interviewed.

The interview was based on a set questionnaire which inquired into:

- the prisoners' personal details and case details
- the rights of the undertrial and the quality and access to legal representation, if any

This report is based on the data as provided by the interviewees in response to CHRI's questionnaire, and has been corroborated with the official records available with the jail¹. This report can be used as an instrument to ameliorate the Legal Aid program, and also used as a tool to educate lawyers to have better communication with their clients in prison and make them aware of their rights. This is guided by the requirements of the constitutional provisions of Article 21, which guarantees right to a lawyer under protection of life and liberty, and Article 39 A which makes it the duty of the state to provide free legal aid to the indigent, women, socio-economically weaker sections and all unrepresented persons in custody.

During the marathon legal aid clinic exercise, 64 women were interviewed by 5 lawyers supported by CHRI. They were booked under varied charges under the Indian Penal Code. Their responses are analysed by culling out patterns on the basis of demography, occupation, observance of statutory procedure, awareness of the status of one's own case, actively requisitioning that which should be given by right, and inferences drawn from analysis of

¹ Wherever records were maintained by the Reformatory such as the warrants of the undertrials.

variance from responses relating to queries on the relationship with their legal counsels.

Demography

1) Age Groups:

a) The data of the undertrials show that amongst the 64 inmates, 45.4 % fall in the 20-30 year age group, with 15 females in 30 year age group and 15 females falling in the 20 year age group. Of the 20 females in the 40-50 year age group, 11 where in the 40 year age bracket and 9 in 50 year age group. There were 7 inmates in the above 60 years age group. Table below provides the details.

AGE GROUP	NO OF INMATES	% out of 66
Below 20 years	4	6.6
20 years	15	22.7
30 years	15	22.7
40- 50	20	30.3
60 and Above years	7	10.6

Not aware of Age: 6	Client Information: 5	Police Records: 23
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b) Incongruity with the police record- Four inmates gave their age to be under the age of 20 years. They were unable to confirm whether their proper age has been registered in the police records. This is relevant in cases where the inmates contest the age as recoded by the Police, especially so in the case of juveniles. It is to be decided whether such a practice is a conscious lapse on the part of the police authorities.

c) Not aware of their age - 6 undertrials were indeterminate about their age. While this could be due to old age, lack of education could also be a determinate factor.

Education: A substantial number of 47 inmates have given their education background as illiterate. This in a district which has 41.16% rural and 71.26 % urban female literacy rate and an average of 51.8 % female literacy level². Women undertrials constituted 1.01% of a total prison population of 13246³ with the literacy rate for undertrials being 77.1 %, as accounted for by both genders. Among the 64 under-trials, 46 were shown as uneducated and 17 were shown as literate. Among the literates two were shown to be B.A. pass or graduates, 4 were 10th pass, and 6 have studied till 5th standard and above. Even the two undertrials who had studied till graduation did not seem to be aware of their rights to representation or knowledge of the legal process.

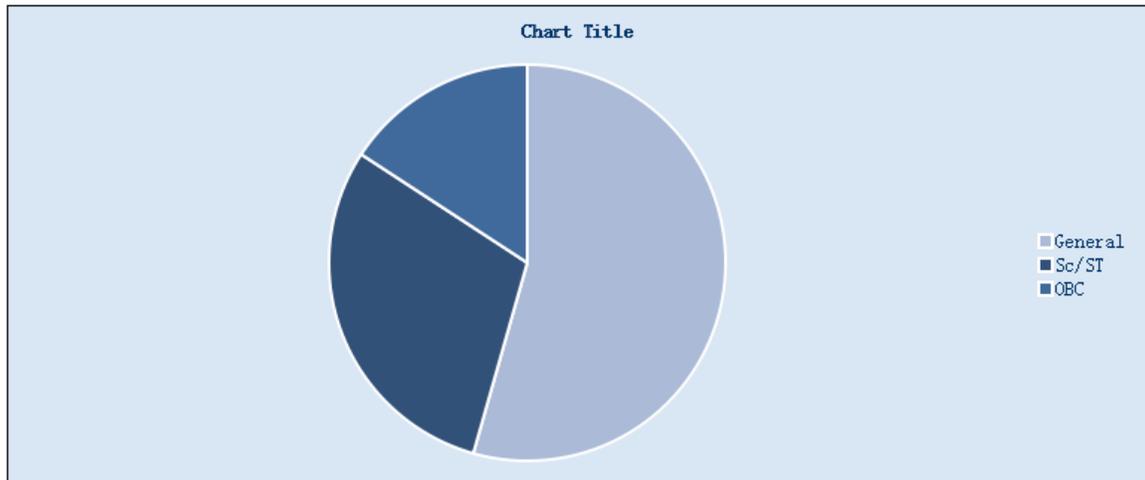
2). Caste Profile: From the information provided, five castes featured more prominently, those being Meghwal (8 undertrials), Choudhary (7 under-trials), Rajput (7 undertrials), Bawari/Baveri (5 undertrials), and lastly Bishnoi (4 undertrials) as depicted in the table below.

Name of Community	No of Inmates	Caste /Class Break- Up
Meghwal	8	Scheduled Caste
Choudhary	7	3 general, 4 OBC category
Rajput	7	6 general, 1 OBC
Bawari	5	Scheduled Caste
Bishnoi	4	General
Muslim	4	OBC
Prajapat	4	General

² Census 2011 available at: http://www.statistics.rajasthan.gov.in/socio_Jhodhpur.aspx

³ Prison Statistics, NCRB 2013. Updated till December 2013.

The SC/ ST/ OBC Slice:



3). Occupation & Income: An inference can be made by analysis of variance for the following on caste basis:

- 1). Meghwal [*income bracket of Rs. 5000-6000*]: A caste tracing roots from Pakistani immigrants, engaged mostly in cultivation and wage labour.
- 2). Choudhary: This caste comprises of both General and OBC caste status. The former is engaged mostly in agricultural cultivation with an income bracket of Rs.15, 000 and upwards, while the latter though in the same occupation has much lower income group of Rs. 3000 - 5000.
- 3). Rajput: same as stated for the Choudhary community.
- 4). Bawari/Baveri [*income group of Rs. 5000- 10,000*]: They are also engaged in farming but are at a lower social strata.
- 5). Bishnoi [*income group is between Rs.8000- 20,000*]: This is a caste known for its practice of worshipping nature and certain animals of cultural significance, however of late increasing

cases of trade of contraband substance have been reported from the region specific to this caste. Undertrials answering to this description have showed their occupation status to be that of a student, housewife or farmer.

Observation of Statutory Procedure

Arrest Procedures: CHRI lawyers checked compliance to arrest procedures – in particular, Section 41B of Cr.P.C.⁴, Section 46 (1) of the Cr. P.C.⁵, Section 167 of the Cr.P.C.

Our study shows that:

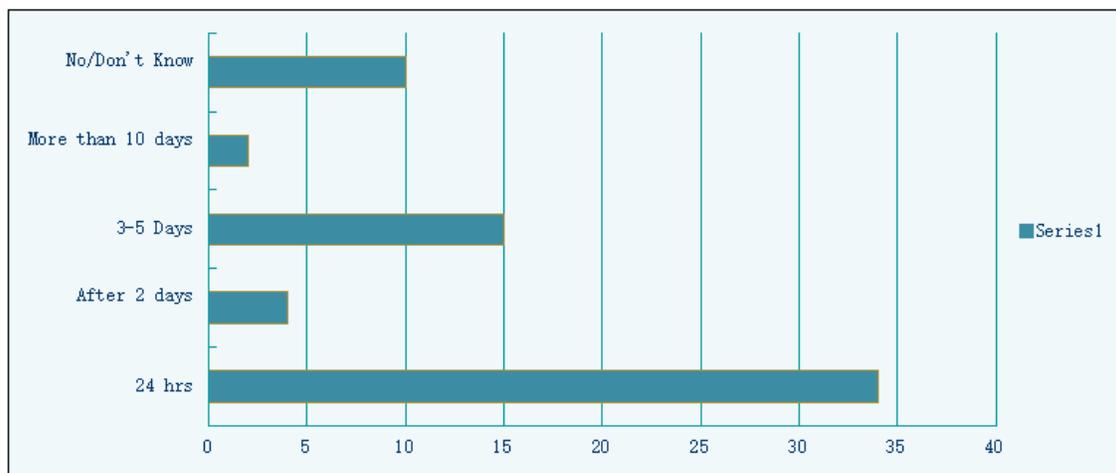
- Though the authorities have complied with Section 41B in most cases, they have not in all. . Among the 64 cases, in 4 cases the family of the arrested woman was not informed, one of which was the case of an undertrial whose family is in Bangladesh.
- Amongst the 42 inmates who replied, 29 undertrials were arrested in the presence of a female police constable and 13 were not. 18 inmates did not remember whether a female police constable was present at the time of arrest or not.

⁴ **Section 41B** of Cr.P.C states that: Every police officer while making an arrest shall:

- a. bear an accurate, visible and clear identification of his name which will facilitate easy identification.
- b. prepare a memorandum of arrest which shall be:-
 - i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made.
 - ii) countersigned by the person arrested; and
- c. inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

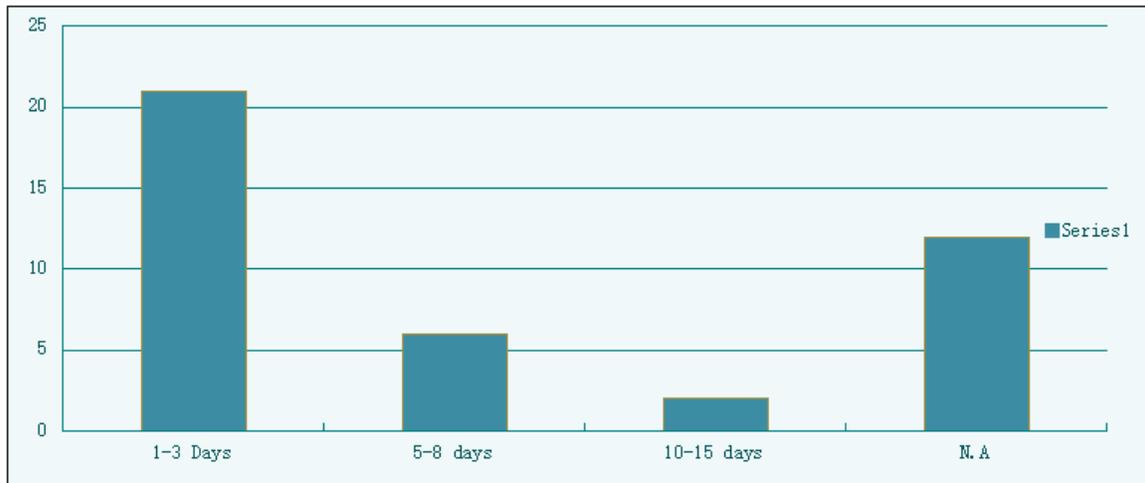
⁵ **Section 46 (1)** states that: Save in exceptional circumstances, no women shall be arrested between sunrise and sunset. If such an exceptional situation arises then the woman police officer shall, by making a written report, obtain the prior permission of the judicial magistrate of the first class and make such an arrest.

- On whether the inmates were produced before the magistrate within 24 hours as per the provision of Section 167 of the Cr.P.C., the following chart on first production shows the data as provided by the interviewee. The procedure, as provided u/s. 167 of Cr.P.C, appeared to have been followed by the police in only 60% of inmate cases where they were brought before the magistrate within 24 hours. The clinic came across 2 cases where custodial violence was reported. First production was delayed by more than 3 days in 20 cases.

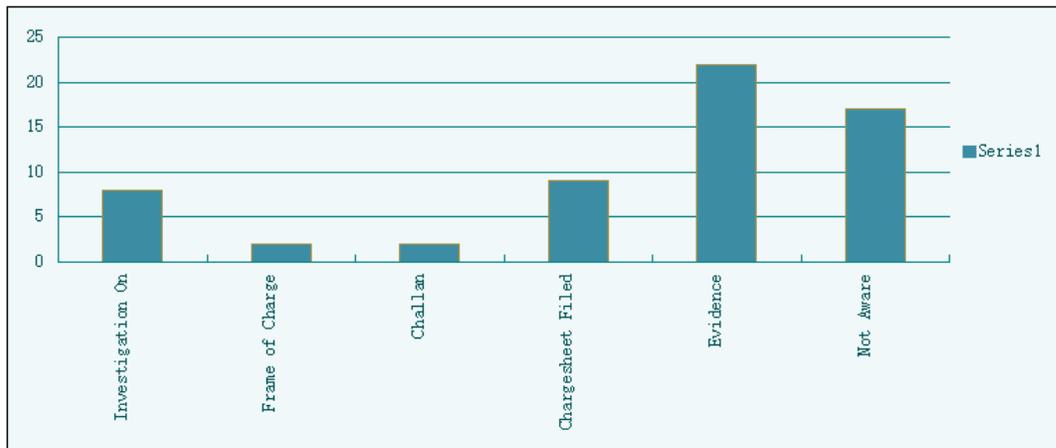


Remand to Police Custody: Under Section 167 of the Cr.P.C.⁶ remand to police custody cannot exceed the duration of 15 days as per section 167 (2) of Cr.P.C. While there was compliance to the law, in more than 8 cases duration of remand was more than 5 days to the maximum.

⁶ Section 167 of the Cr. P .C states: “Where investigation cannot be completed in 24 hours, and if the officer so finds grounds to reasonably believe that the accusation or information is well-founded then the officer can with the sanction of a judicial magistrate detain such a person in police custody”.

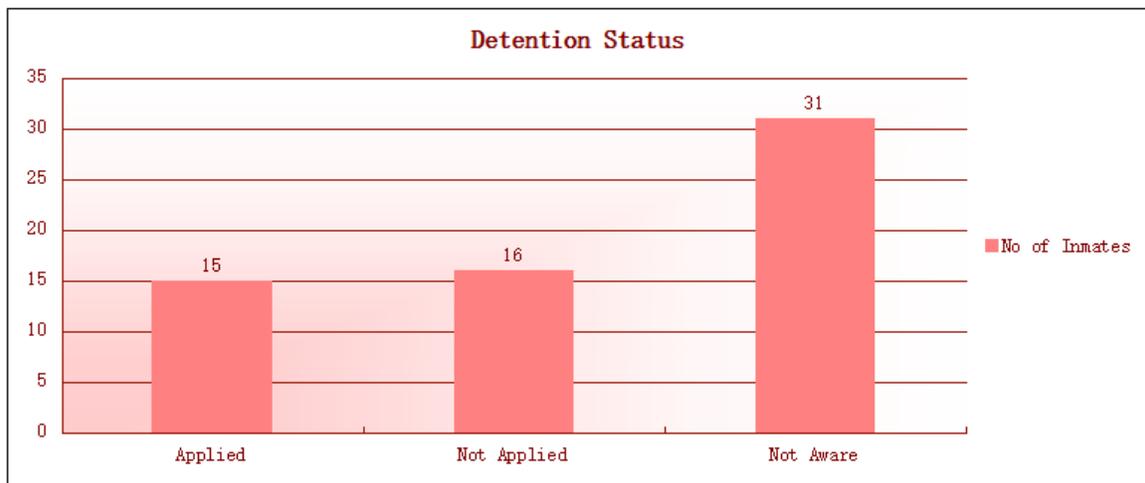


Stage of Case: When asked at what stage is their case, 26% replied that they did not know, that their family knew about the case detail. The response given by the undertrials to the question as to her awareness of the legal process or the status of her case, is reflective of their lack of awareness of the law or basic procedures in their case. It is the duty of the legal counsel to brief his client, to communicate and keep them informed of every development in their case. The reason for this lapse on part of the lawyer must be inquired into.



Detention Status: The question posed to the undertrials was whether subsequent to their detention, had they applied for bail, and at what stage was that bail application (pending, rejected or on appeal to higher court). Where 57 undertrials affirmed having retained a legal counsel, it is abysmal that 16 inmates have not applied for bail at all, and 31 inmates are not

aware at all of the status of bail, whether bail application has been moved at all or not. Only two under-trials have stated that they have chosen to appeal to a higher court for the bail application. Amongst the 16 undertrials who stated that they have not applied for bail, have private lawyers appointed by their family. This nullifies the assumption that people who have not moved application for bail would naturally be indigent and without the aid of a lawyer. It speaks of utter negligence on the part of their lawyers as to why they did not apply for bail for their clients, no matter what stage the cases were in, particularly considering their very young age. The inmates whose responses are accounted herein were mostly in 20 year age group.



Lawyer-Client Relationship

The right to be provided with and to communicate with a legal counsel is crucial to ensure fair trial has been followed. The right to fair trial has been interpreted to be one of the implicit rights contained within the right to life under Article 21 of the Constitution of India. An individual's right to legal counsel begins 48 hours after arrest and detention. Aid and advice of a legal counsel is necessary to prepare defence and decide further course of action.

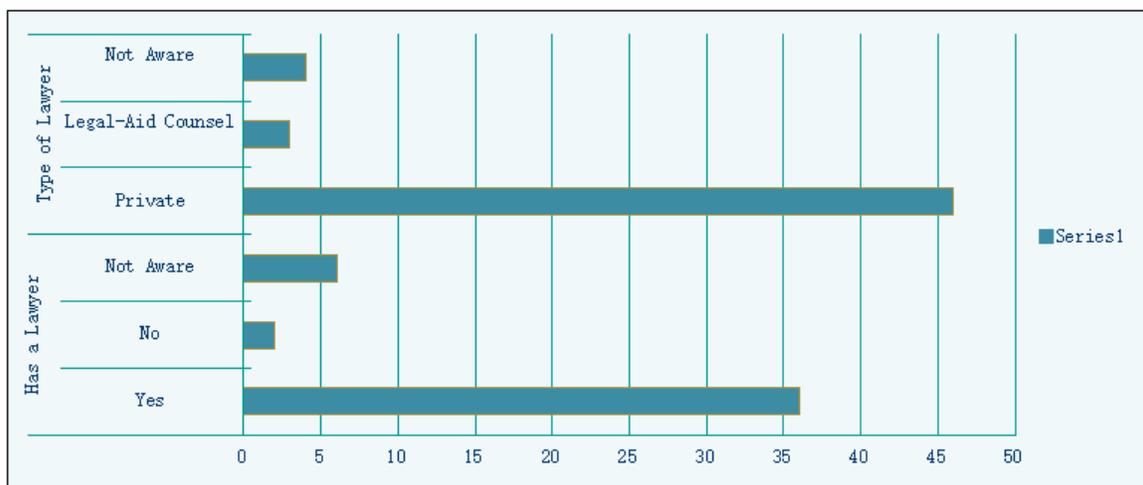
Status of Representation: Of the 67 under-trials, 57 prisoners have affirmed appointing a legal counsel. Three inmates have responded in the negative, 6 are not aware and 5 gave no response at all.

On the question on the type of lawyer they had engaged to represent them, 57 prisoners stated

that they had engaged a private lawyer and 2 had sought a legal-aid counsel and 13 were not aware or not able to provide relevant information to this question.

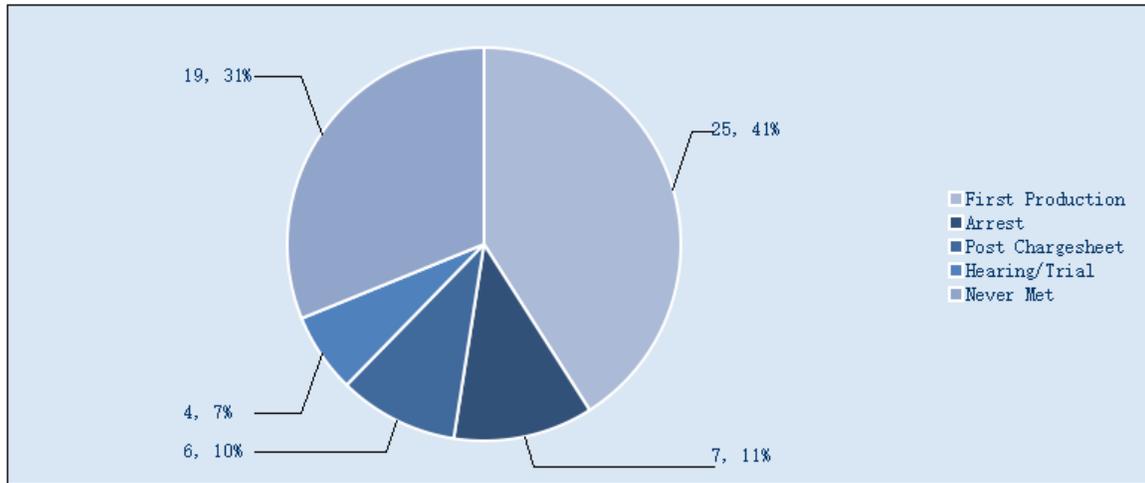
It is curious that in spite of 57 prisoners admitting that they have legal counsels representing them, and 53 affirming that they were privately engaged, close to 30 undertrials were not able to provide the name or contact information of their legal counsel. Most of them stated that the appointment was made by their family or husband and that they have not directly met the legal counsel.

Graph: Representation by a Legal Counsel



First Access to Lawyer: In our study around 25 inmates stated that the first time they had access or met their lawyer was at the first production, while 19 replied that they have never met their lawyer. With numerous cases where the first time they met/ directly communicated with their lawyer was in the later stages of their case. For example, after challan was issued, second production, and some as late as trial (3).

Graph: First Access to Lawyer



On the question whether they were satisfied with their relationship with the lawyer, 14 under-trials said yes and 13 said no, rest not being able to provide a relevant answer.

Note: When asked whether they wanted to request for a legal aid counsel, most inmates had replied in negative. Similarly, in the section for comments, some inmates, incredulously, have asked to check upon the status of her case, and inquire about the state of the bail application so as to *meet* her family and lawyer.

These findings question the legal procedure, how justice is to be achieved when the client has no opportunity to communicate with a lawyer, express her grievance. How truly is the lawyer representing a client if he does not communicate with his client, does not make his client aware of their rights, empower the client with his/her knowledge to be alert of any procedural lapses. Being sent to jail curbs liberty but does not debar a person from other rights, especially to access the law. It is the duty of the lawyer to make aware his client of his/her rights in jail. For example, the right of a woman undertrial to demand for extra supplements and diet for any infant present with her in the jail. In the typical case of Gaju Devi, aged 21 years, who had a child with her during her time in jail, the mother was denied health supplements while the child was given an extra litre of milk per day.

Common Grievances of most of the Women Undertrials:

1) When inquired about the number of times the particular inmates were remanded in judicial custody and period of remand for each times, 14 inmates stated that they have not been taken for the court productions on time. Often the reason given for this was lack of available police guards to escort the undertrials, the current practice being to produce the warrant for examination before the court, rather than the undertrial.

2) In spite of legal provisions which provide undertrials the right to representation, aid and advice by a legal counsel, there is lack of communication between them. The lawyer does not meet the client/undertrials in jail, instead meets the family which in turn communicates with her. The marathon legal aid clinic came across several instances where the undertrial did not even have contact information of the lawyers and where they met the lawyer only during production before the Court.

The role of lawyer- client relationship is to secure justice has been reinforced. The assumptions with regard to privately appointed counsel and a legal aid lawyer seem largely to be misplaced. Having a private lawyer alone does not ensure fair trial, it still depends on the rest of the actors involved in this legal procedure to come through with their actions.

Conclusion

From the recent jail visit it has become apparent that the situation of undertrials has become worrisome to say the least, at administrative level and at the procedural level. It would not be an overstatement to emphasize the role of the arresting police officer and the Investigating Officer in using their arresting powers and custody seeking powers in cases of 'reasonable suspicion'. Arresting without ensuring that procedural safeguards are followed as established by section 41 of Cr.P.C. can leave the procedure open to abuse and vile prosecution. There should

be greater utilization of section 41A of Cr.P.C.⁷ Thus arrest ought to be deferred till proper inquiry is done and veracity of the complaint is established.

The poor lawyer-client relationship between women undertrials and their counsels needs to be addressed. Be the reason procedural difficulties, timidity to access jails, converse with women prisoners, lack of social awareness or sheer negligence of the rights of the less powerful, this deprivation is entirely prejudicial to the rights of women in custody. It seriously undermines the agency of the women to manage and be in charge of their own affairs. The right to consult a lawyer is a constitutional right secured to all citizen under article 21, and a fundamental duty of the state to ensure legal aid is provided to the needy. Women prisoners cannot be kept on the blind side of the law.

⁷ Section 41A Cr.P.C. says: "Notice of appearance before police officer"- whereby the police officer may in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received or a reasonable suspicion exist that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. Where such notice is complied with, such a person shall not be arrested in respect of the offence, unless for the reasons to be recorded the police officer is of the opinion that he ought to be arrested.

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth associations founded CHRI because they felt that while the member countries had both a common set of values and legal principles from which to work and a forum within which to promote human rights, there was relatively little focus on human rights issues. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.