



**Commonwealth Human Rights Initiative's Submission to the
National Human Rights Commission
Recommendations on the National Seminar on Prison Reforms, 2014**

The Commonwealth Human Rights Initiative is thankful to the National Human Rights Commission for inviting its representatives to attend the two-day National Seminar on Prison Reforms, held on 13-14 November, 2014. We hereby make the following recommendations based on the deliberations made during the Seminar:

1) Establishment of Undertrial Review Committees in all States and Union Territories:

We request the National Human Rights Commission to send a letter to Chief Justices of all High Courts and Prison Departments of all the states and union territories urging them to establish district level Undertrial Review Committees that would cover all the prisons in the state. Since one of the biggest concerns of the Commission has always been to devise ways and means for preventing unnecessary detention, speedy trial, and thereby, reducing overcrowding, undertrial review mechanism is the key to these engraved problems. We draw your attention, in this regard, to the Commission's letter, dated December 22, 1999, sent to Chief Justices of High Courts recommending to adopt and issue necessary directions to Magistrates and Session Judges within their jurisdiction for the speedy trial of cases.

Review Committees have been under discussion since April 1979.¹ Undertrial Review Committee is an inter-agency *oversight mechanism*,

¹ In 1979 a conference of Chief Secretaries, for the first time, recommended constitution of District and State level review committees. Law Commission of India in its 77th report, 'Delay & Arrears in Trial Courts' and 78th report, 'Congestion of Undertrial Prisoners in Jails' recommended creation of review bodies. Since then, the higher judiciary has reiterated the significance of the review committees time and again in various pronouncements - *Supreme Court Legal Aid Committee Vs Union of India (1994)*; *Common Cause Vs Union of India & Others (1996)*. The All India Jail Reforms Committee of (1980-83) has also recommended having an effective mechanism of review of undertrial cases regularly both at the district level

headed by a judicial officer in a district and comprising various duty holders. States where such a mechanism already exists have representatives of district administration, police, prosecution, probation departments, legal services authorities and prison in-charge.

While Andhra Pradesh, Bihar, Chhatisgarh, Gujarat, Himachal, Kerala, Rajasthan and Tamil Nadu) have for sure such a mechanism, a few other states show likelihood of having similar mechanisms.

The mandate of such review committees, where they exist, is very clear – to frequently review the cases of every prisoner awaiting trial and apply appropriate correctives to ensure no undertrial is held for unjustifiably long periods in detention or is simply lost in the files. Attention is given to persons who become eligible to be released on bail, have already served one-half or maximum jail term for their offence, do not have access to counsel, are juveniles, are vulnerable due to mental and physical disability, are accused of serious offences and have been undertrial for a long period of time or have committed such petty offence that there is no need to keep them in judicial custody. The mandate should also include review of the cases of foreign national undertrial prisoners and those charged under preventive detention sections in the Cr.P.C. such as Section 151.

2) Constitution of Board of Visitors in all States and Union Territories:

We would be very appreciative if a letter could be sent to Chief Justices of all High Courts and Prison Departments of all states that the Board of Visitors comprising Official and Non Official Visitors is a statutory necessity laid down in the Prison Act and State Jail Manuals, and must be constituted in every district for every prison. Their reports should be compiled and sent annually to prison headquarters as well as to the state home department. A letter on this from the Commission will hold great value in reminding the states of their statutory mandate.

There are two kinds of visitors, namely official and non-official visitors (NOVs) who are appointed with a primary aim to monitor the correctional work in the prison, with special attention to the degree and quality of training and the effectiveness of infrastructure/facilities in the prison, attending to the quality and quantity of prison diet, water supply, condition of the kitchen and hospital management, medical treatment of the prisoners, hospital management, sanitary

and the State level. The Central government through its prison advisories (May, 2011 and January, 2013) has remained steadfast in their support of oversight mechanism.

arrangements, aspects of vocational trainings and literacy programme etc. They also have the mandate of going into individual or collective grievances of the prisoners, and providing redressal in consultation with the prison authorities.

Though the concept of 'prison visiting system' has been in place since the time the Prison Act came into force in 1894, its dismal functioning can be primarily attributed to:

- The ignorance and uncertainty of visitors about their duties and powers, and initiatives they could take
- Irregular appointment of NOV's and irregular constitution of the Board of Visitors which leads to lack of continuity.
- Lack of periodic training for prison visitors.

Therefore, we request the Commission to reiterate this statutory requirement, the significance of which has also been emphasized by the All India Committee on Jail Reforms 1983, the Model Prison Manual, 2003 as prepared by the Bureau of Police Research & Development and the various Apex Court judgments. ²

3) Separate Detention Centres for Foreign Nationals who have completed their term of sentence

We recommend NHRC to direct State Home Departments and Prison Departments to make immediate provision for appropriate shelter facilities for the released jankhalash prisoners and all other foreign nationals who have completed their sentence and are currently detained in prisons. It is an imperative right and this rehabilitation measure must be ensured so that the above persons are re-united with their respective families and are not compelled to stay in prison while the governmental authorities execute the procedural formalities for their repatriation. The State Governments must take care that, as per the orders of the Hon'ble Supreme Court in the Bhim Singh case³, while these shelters may have restrictions on movement, they must have all facilities of hygiene, water, electricity and in no circumstances be like a jail.

We also request all the Special Rapporteurs of the Commission to specifically look at the condition of foreign national prisoners when they visit prisons and submit periodic reports on their detention, treatment and repatriation status.

² Sunil Batra II vs. Delhi Administration, 1980 AIR 1579; Rakesh Kaushik Vs. BL VIG Superintendent Central Jail, New Delhi, AIR 1981 SC 1767; Sanjay Suri Vs. Delhi Administration, 1988 (Supp.) S.C.C. 169; Ranchod Vs. State of M.P., 1986 16 Reports M.P. 147

³ (Writ Petition (CRL.) NO(s). 310 OF 2005 with W.P (CRL.) NO. 82 of 2010)