



**Commonwealth Human Rights Initiative**



October 4, 2016

## **Revisiting Reforms Through Under Trial Review Committees**

*"Prison reforms have been the subject matter of discussion and decisions rendered by this Court from time to time ...Unfortunately, it seems that the views of this Court over the 50 years (since Prabhakar Pandurang Sangzgiri in 1966) have continuously fallen on deaf ears and the situation does not seem to be changing even now. Unless due importance is given to the fundamental rights and human rights of the people, the right to life and the right to live with dignity under Article 21 of the Constitution will have no meaning."*

**- Excerpt from Supreme Court orders in 'Re-Inhuman Conditions in 1382 Prisons'**

Dear friends,

Since 2000, two-third of India's total prison population has been undertrial prisoners. This has led to overcrowding and violations of basic rights of prisoners. On 13 June, 2013, a letter by Hon'ble Justice R.C. Lahoti, former Chief Justice of India to the then Chief Justice of India highlighted systemic problems of overcrowding, unnatural deaths of prisoners, gross inadequacy and training of staff. This letter was taken up as a writ petition by the Supreme Court titled, 'Re-Inhuman Conditions in 1382 Prisons'.

A significant direction from the Supreme Court pertains to setting up an Under Trial Review Committees (UTRCs) in every district of the country to solve these problems. For this, the Court relied on the [Ministry of Home Affairs' advisory of 2013](#).

The Commonwealth Human Rights Initiative (CHRI) has been assisting the Amicus Curiae (literally, 'friend of the court' who is an impartial adviser to a court of law in a particular case) on how to improve the current situation and is monitoring the implementation of directions of the Supreme Court in the present matter. CHRI's report on the functioning of UTRCs in West Bengal, '*Undertrial Review Committees: Set up & Functioning in West Bengal*' can be found [here](#). CHRI has also collated data using the Right to Information Act to track how UTRCs across India function and implement these directives.

Even though it has been more than a year since the Supreme Court directed the setup of UTRCs, knowledge and compliance of these directives is thin on the ground. In order to better understand UTRCs, some basic questions are answered below.

## ❖ **FORMATION, POWER AND DUTIES OF UTRCs**

### **1) What were the directions of the Supreme Court with regard to the formation and mandate of UTRCs?**

In its order dated 24 April, 2015, the Supreme Court directed the Member Secretary of the National Legal Services Authority (NALSA), in coordination with the State Legal Services Authority (SLSA) and the Ministry of Home Affairs to “urgently ensure that Under Trial Review Committees are established in every district, within one month.” Under this order UTRCs have been mandated to act as an oversight body entrusted to ensure periodic review of the cases of prisoners, check prolonged overstays and guarantee fair trial rights.

### **2) What is the composition of UTRCs and how often must they meet?**

The District & Sessions Judge as Chairperson, the District Magistrate, the District Superintendent of Police and the Secretary of the District Legal Services Authority have been directed to be members of UTRCs. The UTRCs are to meet on a quarterly basis.

### **3) What are the various categories of cases that UTRCs must review?**

The initial orders of the Court gave a mandate to review limited kinds of cases. CHRI was a catalyst in advocating with the Amicus to expand the categories of cases for review by UTRCs.

As per its order dated [24 April, 2015](#), [05 February, 2016](#) and [06 May, 2016](#), the following categories of cases must be reviewed by UTRCs:

1. Undertrials eligible under section 436A of the Code of Criminal Procedure 1973 (the Code)
2. Undertrials who have been granted bail and are unable to furnish surety
3. Undertrials who are accused of compoundable offences
4. Undertrials eligible under S.436 of the Code
5. Persons eligible under Probation of Offenders Act 1958
6. Convicts who have undergone their sentence or are entitled to release because of remission granted to them
7. Undertrials eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the Code or under Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and where investigation is not completed in 60/90/180 days
8. Undertrials imprisoned for offences with maximum punishment for 2 years
9. Persons detained under Chapter VIII of the Code i.e. under Sections 107, 108, 109 and 151 of the Code

10. Undertrials who are sick or infirm and require specialized medical treatment
11. Undertrial women offenders
12. First time male offenders between ages 19-21 who are in undertrial custody for offences punishable with less than 7 years and have completed 1/4 of the maximum sentence
13. Undertrials of unsound mind
14. Undertrials eligible for release under S.437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case

#### 4) What are the roles of the National Legal Services Authority (NALSA) & State Legal Services Authorities (SLSA) in ensuring compliance of the Supreme Court directives?

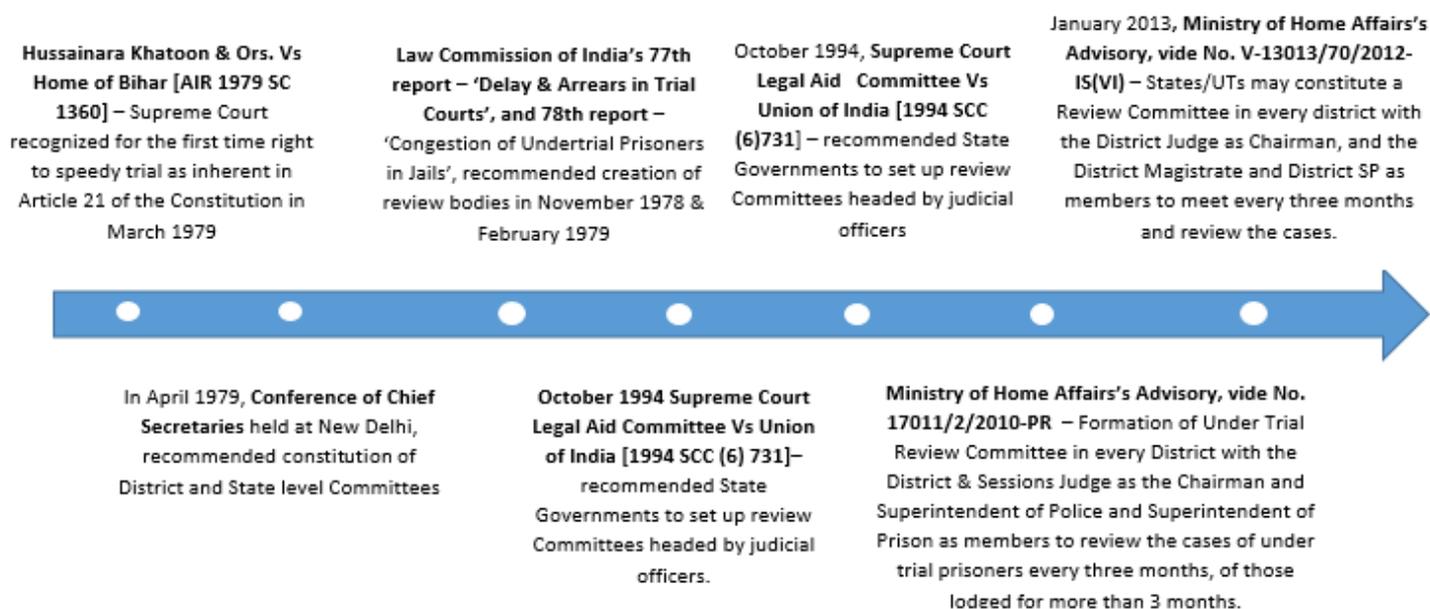
Ever since the first directives were issued in the case, NALSA has been entrusted the responsibility to ensure compliance of the directives through the SLSAs and panel lawyers appointed by them. The SLSAs were directed to:

- Instruct their panel lawyers to urgently meet prisoners who have been granted bail but are unable to provide surety
- Discuss the case with them and move appropriate applications before the appropriate court for release of such persons unless they are required in custody for some other purposes
- Urgently take up cases of prisoners charged with compoundable offences through panel lawyers. Wherever the offences can be compounded, the panel lawyers are directed to take immediate steps to compound the cases and wherever the offences cannot be compounded, efforts should be made to expedite the disposal of those cases or at least efforts should be made to have the persons in custody released at the earliest.

### ❖ HISTORY OF UTRCs IN INDIA

#### 5) How did the concept originate?

UTRCs were conceptualised through executive and judicial initiatives:



**6) Are there any technical tools that can help easily identify eligible prisoners and track progress in every case to ensure their release?**

Yes. CHRI has designed Evaluation of Prisoner Information & Cases (EPIC), which is a simple analytical tool which assists in computing the eligibility of undertrial prisoners for release and evaluates whether cases fall under compoundable or non-compoundable cases, petty offences, plea bargaining. A detailed note can be found [here](#).

If this were to be integrated into the E-Prisons Suite, the management information system for prisons developed by the National Informatics Centre, it would act as an early detection system for any unnecessary detention without excessively burdening prison staff. However, at present, nearly half of the total number of prisons do not have any of the prison management software or if they do, they do not have basic infrastructure and personnel to effectively use it to their advantage. Such prisons can currently take the assistance of EPIC which is available with CHRI at no cost and requires only one person to feed in basic information of undertrials.

❖ **MONITORING THE REVIEW COMMITTEES**

**7) How is NALSA monitoring the functioning of UTRCs?**

Pursuant to directions of the Supreme Court between April and September 2015, NALSA has sent letters and sought reports to monitor compliance in the states and union territories. So far, NALSA has monitored the functioning of UTRCs and submitted compliance reports dated 5.8.2015, 19.9.2015, 14.10.2015 and finally on 5.2.2016.

NALSA's reports to the Court indicate that despite its five reminders many districts did not constitute UTRCs and hold their first meeting on the due date specified by the court, i.e., 30th June, 2015. Several UTRCs gave singular focus to cases of undertrials under S.436A of the Code neglecting reviews of cases of compoundable offences and cases of undertrials granted bail and unable to furnish surety. Many failed to show actual releases against the recommendations made by the UTRCs.

**8) Why does CHRI monitor the review committees for undertrials?**

CHRI believes Under Trial Review Committees are the primary detection mechanism to identify and prevent unnecessary detention. Using its past relevant experience of monitoring the performance of Rajasthan's Periodic Review Committees (PRCs) through Right to Information requests since 2009-10 (please find CHRI's [first](#), [second](#) and [third](#) watch reports on the Rajasthan PRCs). CHRI has been overseeing the regular functioning of UTRCs mainly by

filing of RTI requests, surveys in prisons/correctional homes, and checking compliance reports which positively affects the review of detention.

## 9) What has CHRI done to monitor and assist the functioning of UTRCs in the states and nationally?

In West Bengal, CHRI conducted a survey in 2015 in all 58 correctional homes to check compliance with Supreme Court directives on UTRCs as specified in *Re-Inhuman Conditions in 1382 Prisons* as well as the court's directives in *Bhim Singh v Union of India*. The report found that UTRCs were formed only in 11 correctional homes and many eligible for release were identified but not released. The report aimed to assist those engaged with the setup and functioning of the committees to review its shortcomings to make them more effective and ensure widest possible coverage of all categories of prisoners. Please find the report [here](#).

Based on the experience of working on review committees in Rajasthan and West Bengal, CHRI compiled a responsibility note for stakeholders with the aim to assist UTRCs in fulfilling their mandate to the fullest. Please find the document [here](#).

**CHRI's national report on the UTRCs has been completed and submitted to the Supreme Court. It is an RTI-based report with information received from the SLISA of 26 states and union territories. This report will be launched in October. More on the country-wide status of the UTRCs – their shortcomings as well as good practices – will be published in our next edition of Jail Mail.**

### ❖ WHAT YOU CAN DO

**If you are a District & Sessions Judge**, please take note of the [expanded mandate](#) and we urge you to hold the UTRC meeting every quarter.

**If you are the Secretary of a District Legal Services Authority**, we request you to follow up on the recommended cases every month as regards the action taken by panel lawyers even though the UTRC meeting takes place every quarter and ensure that no one is detained without effective legal representation.

**If you are a District Magistrate**, we request you to particularly pay attention to the cases of persons who are detained under Chapter VIII of the Code i.e. under Sections 107, 108, 109 and 151 of the Code and use your powers under S.123 of the Code to ensure that no one is unnecessarily detained.

**If you are a Superintendent of Police**, we request you to ensure completion of investigation within the statutory limit under S.167 of the Code and timely filing of chargesheet.

**If you are a legal aid lawyer** please consult your DLSA to co-operate and assist in identifying unnecessarily detained persons in prisons of your district.

**If you are a Non-Official Visitor** please check the UTRC functioning in the prison you visit. As per [MHA 2013 advisory](#) you can ask for a copy of the minutes of the UTRC meetings. You can follow-up on its recommendations and keep the UTRC informed.

**As a Civil Society Organisation or individual**, file RTIs to your local DLSA or SLSA to find out the status of UTRC meetings. Ask the prison department and the SLSA of your state to proactively disclose the details of UTRC meetings on their website. Find the list of email addresses of prison departments and the SLSAs [here](#).

Write to us at [chriprisonsprog@gmail.com](mailto:chriprisonsprog@gmail.com) with your comments and suggestions. You could leave us an email if you wish to subscribe to these updates.

Best Regards,

Sana Das  
Coordinator, Prison Reforms Programme

## Behind Bars, Not Beyond Justice

### PRISON NEWS



#### A life of death in Punjab's jails every day

*Maja Daruwala & Mrinal Sharma, The Tribune*

With little medical care, no inspections, information clampdown, the most prisoner complaints, it is no surprise that Punjab's prisons record the second highest number of suicides.

#### Take effective steps to reduce cases, overcrowding in jails

*Madhurima Dhanuka, Deccan Herald*

Anil, Asif, Barun and Pal were arrested from a local diner as illegal immigrants even though they had documents proving their nationality. They were taken to the court but couldn't be produced before the magistrate due to paucity of time and thus were sent to prison.

They had to stay for 14 more days till their next production, before they could be set free even as Asif's seven-year old daughter awaited her father's presence as she gave her final exam. Their story is not unique, nor is it unusual. Their story is routine, wrong and unjust



#### यूपी की इस जेल में कैदियों पर होती है जुल्म की इंतेहा!

*Aaj Tak*

आज तक' आपको देश की एक ऐसी जेल के खौफनाक सच से रूबरू कराने जा रहा है-ब-, जहां कैदियों पर होने वाले अत्याचार की ये दास्तान सुनकर आपके रोंगटे खड़े हो जाएंगेजी हां ., ग्रेटर नोएडा के कासना में स्थित जेल में जो कुछ भी हो रहा है, वो ना सिर्फ जेल मैनुअल की धज्जियां उड़ा रहा है, बल्कि ये भी बता रहा है कि सिस्टम में भ्रष्टाचार कितनी गहराई तक जड़े जमाए हुए है.

#### Why parole should not be banned

*The Hindu*

The Maharashtra government's decision to ban the granting of parole to prisoners convicted of rape and murder is a highly myopic decision. In the wake the absconding of Sajjad Mogul, convicted in the murder of lawyer Pallavi Purkayastha, after having been granted parole, public perception seems to be that granting parole to prisoners is an act of leniency which should not apply to hardened offenders.



## Remanded and Forgotten: The fate of South Africa's prisoners who have not yet been tried

*Daily Maverick*

Remand detainees are people who have been arrested, have been refused or cannot afford bail, and are awaiting the start or completion of their trial. South Africa currently has 41,717 people in remand, making up nearly one third of the country's total prison population, according to the Department of Correctional Services' (DCS) 2014/2015 Annual Report. By MARCHE ARENDS for Wits Justice Project.



## Six of eight legal aid offices to shut

*Radionz*

The Ministry of Justice is to close six of its eight legal aid offices around the country. The announcement comes after a long-serving judge, Sir Ron Young, criticised legal aid funding cuts and a drop in the number of lawyers wanting to work in the area.



## Over 2,000 prisoners on death row in Nigeria

*Today*

No fewer than 2,000 inmates in Nigerian prisons are said to be on death row while an alarming 75 per cent are on awaiting trial.

The total prison population in Nigeria is over 68,000 comprising – 17,686 convicts (4,080 lifers; 2,000 condemned convicts) and over 40,000 Awaiting Trial Persons.

## Hunger Strikes, Marches & Work Stoppages: Unprecedented National Prison Strike Enters Third Week

*Democracy Now*

The largest prison work strike in U.S. history has entered its third week. Organizers report that as of last week at least 20 prisons in 11 states continued to protest, including in Alabama, California, Florida, Indiana, Louisiana, Michigan, New York, Ohio, South Carolina and Washington. The Incarcerated Workers Organizing Committee says at one point about 20,000 prisoners were on strike. With protest has come punishment. Several facilities have been put on lockdown, with prisoners kept in their cells and denied phone access both before and during the strike. Organizers have also been put in solitary confinement.

**About Jail Mail**

*Jail Mail* is a regular series of Prison Reform Updates from CHRI for readers interested in the rights of prisoners and the reform of prisons as a matter of public concern. The engagement of civil society in the management and monitoring of prisons and the rights of prisoners is vital to the transparency of this traditionally closed institution and to ensure the practical realisation of the rights of those behind bars. *Jail Mail* invites discussion between civil society members and those entrusted to oversee and manage prisons.

Evidence-based research and watch reports of CHRI's Prison Reforms Programme, interviews with critical stakeholders, topical issues and developments concerning the liberty of prisoners, and health of prisons in India and around the world will form the sources of *Jail Mail*. Its periodicity will depend on the urgency of issues and the interest they generate.

**About CHRI and the Prison Reforms Programme**

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. CHRI was founded in 1987 by Commonwealth professional associations; it is headquartered in New Delhi, India since 1993, and has offices in Accra, Ghana and London, UK.

The Prison Reforms Programme of CHRI is more than 15 years old. The programme focuses on improving prison monitoring through the strengthening of undertrial review mechanisms and prison visiting system nationally, and ensuring early safeguards against unnecessary pre-trial detentions, specifically in Rajasthan and West Bengal. The programme also advocates for timely repatriation of foreign national prisoners and immediate release of asylum seekers. Evidence-based research, advocacy, capacity-building of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme.

Leave us an email at [chriprisonsprog@gmail.com](mailto:chriprisonsprog@gmail.com) if you wish to subscribe to these updates.

You could also write to us with your comments and suggestions.

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