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INSIDE  
KARNATAKA  
PRISONS

VOLUME 1



**CHRI**

Commonwealth Human Rights Initiative  
working for the practical realisation of human rights in  
the countries of the Commonwealth

KARNATAKA STATE LEGAL SERVICES AUTHORITY  
&  
COMMONWEALTH HUMAN RIGHTS INITIATIVE





# **INSIDE KARNATAKA PRISONS**

**A Study Report  
by  
Karnataka State Legal Services Authority  
&  
Commonwealth Human Rights Initiative**

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# ABOUT KARNATAKA STATE LEGAL SERVICES AUTHORITY

Karnataka State Legal Services Authority is a statutory body constituted under Legal Services Authorities Act 1987. Pursuant to the enactment of the Legal Services Authorities Act 1987, the Karnataka State Legal Services Authority Rules 1996 were framed.

The main objective of Karnataka State Legal Services Authority is to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

Thus, creating legal awareness, providing legal aid and services and settlement of disputes through amicable settlement and providing compensation under Victim Compensation Scheme are the main functions of the Authority.

Under the guidance of **Hon'ble Sri. Justice Abhay Shreeniwas Oka**, the then Chief Justice, High Court of Karnataka and Patron-in-Chief, Karnataka State Legal Services Authority, **Hon'ble Sri. Justice Aravind Kumar**, the then Judge, High Court of Karnataka and Executive Chairman, Karnataka State Legal Services Authority, **Hon'ble Sri. Justice Ritu Raj Awasthi**, Chief Justice, High Court of Karnataka and Patron-in-Chief, Karnataka State Legal Services Authority, **Hon'ble Sri. Justice B. Veerappa**, Judge, High Court of Karnataka and Executive Chairman, Karnataka State Legal Services Authority, the Karnataka State Legal Services Authority is imparting legal awareness to the public and also providing legal aid and services to the persons who are entitled as per Section 12 of Legal Services Authorities Act 1987. Karnataka State Legal Services Authority is implementing Schemes formulated by NALSA effectively under the advice of former Judges of Hon'ble High Court who are nominated as the Chairpersons for implementation of various schemes.

Legal Services clinics are established in Central Prison, District Prison and Sub Jails, Panel Advocates and Para Legal Volunteers are deputed to provide Legal Aid / Services to the under trial prisoners and convict prisoners. Convict prisoners who are serving long term sentence have been nominated as Para Legal Volunteers in order to extend effective legal services to the prisoners. Under Trial Review Committee has been formed in all the Districts which is looking after the affairs of Under Trial Prisoners and Convict Prisoners in each District.

Karnataka State Legal Services Authority conducts out-reach activities by responding to the basic needs of the weaker sections of the society. Authority is filing public interest litigations in the interest of the public. Persistent efforts are made to create awareness among the prisoners about their rights. Karnataka State Legal Services Authority has many success stories in protecting the rights of children, women, devadasis, senior citizens, transgenders, victims of crime and disaster. Karnataka State Legal Services Authority is committed to ensure that the benefits mandated by the Constitution reach the citizens.



## Karnataka State Legal Services Authority

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# ABOUT KARNATAKA PRISONS AND CORRECTIONAL SERVICES DEPARTMENT

Prisons and Correctional Services Department in Karnataka is headed by the Director General of Police, Prisons and Correctional Services. The Head Quarter is located in No.4, Seshadri Road, Bengaluru-560 009.

The Director General of Police, Prisons and Correctional Services at the Prison Headquarters is assisted by the Inspector General of Police, Superintendent of Police, Deputy Inspector General of Prisons, Superintendent of Prisons, Accounts Officer, Law Officer, Assistant Executive Engineer, Administrative Officer and other Office Staff at the Head Quarters.

The Director General of Police, Prisons and Correctional Services in the field is assisted by the Deputy Inspector General of Prisons, Northern Range situated at Belagavi and the Deputy Inspector General of Prisons, Southern Range situated at Bengaluru.

In Karnataka, presently there are 8 Central Prisons, 1 Women Central Prison, 1 Open Prison, 21 District Prisons, 17 Taluka Prisons and 3 Revenue Prisons as well as 1 Prison Training Institute. Total number of prisoners in the State is above 15,000. The Central Prisons and the Prison Training Institute are headed by the Chief Superintendent / Superintendent of Central Prisons, the District Prisons and Open Prison are headed by the Assistant Superintendent of Prisons, the Taluka Prisons and the Revenue Prisons are headed by a Jailor rank officer.

Prisoners convicted for 6 months and above are kept in the Central Prisons. Prisoners convicted up to 6 months are kept in the District Prisons while those prisoners convicted up to 15 days are kept in the Taluka / Revenue Prisons. Apart from this, Undertrials are also kept in the Central / District / Taluka / Revenue Prisons.

The Department has initiated major reformatory measures for more than 15,000 prisoners lodged in 51 prisons in the State under 'Navachethana' program. The program aims to reform the prisoners holistically by improving their physical and mental well being as well as their educational and skill levels. The program aims to improve the self esteem of the prisoners and to make them capable of respectable life inside the prison as well as outside the prison after their release.

On 1st November 2021 on Karnataka Rajyotsava Day a massive 'Literacy Program' was launched in all the prisons in the State with the help of 'Mass Education Department' for 7,000 illiterate and semi-literate prisoners.

On 1st December 2021 programs for 'Mental and Physical Well Being' and for 'Skill Development', for the 15,000 prisoners and 3,500 prison staff have been launched in all the 51 prisons in the State. These programs have been launched in co-ordination with the 'Art of Living' and 'Isha Foundation' and in co-ordination with various training providers of the State Skill Development Corporation (KSDC) and National Skill Development Corporation (NSDC).



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# ABOUT COMMONWEALTH HUMAN RIGHTS INITIATIVE (CHRI)

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-governmental, non-profit organisation headquartered in New Delhi, with offices in London, United Kingdom, and Accra, Ghana. Since 1987, it has worked for the practical realization of human rights through strategic advocacy and engagement as well as mobilization around these issues in Commonwealth countries. CHRI's specialisation in the areas of Access to Justice (ATJ) and Access to Information (ATI) are widely known. The ATJ programme has focussed on Police and Prison Reforms, to reduce arbitrariness and ensure transparency while holding duty bearers to account. CHRI looks at policy interventions, including legal remedies, building civil society coalitions and engaging with stakeholders. The ATI looks at Right to Information (RTI) and Freedom of Information laws across geographies, provides specialised advice, sheds light on challenging issues, processes for widespread use of transparency laws and develops capacity. CHRI reviews pressures on freedom of expression and media rights while a focus on Small States seeks to bring civil society voices to bear on the UN Human Rights Council and the Commonwealth Secretariat. A growing area of work is SDG 8.7 where advocacy, research and mobilization is built on tackling Contemporary Forms of Slavery and human trafficking through the Commonwealth 8.7 Network.

CHRI has special consultative status with the UN Economic and Social Council and is accredited to the Commonwealth Secretariat. Recognised for its expertise by governments, oversight bodies and civil society, it is registered as a society in India, a trust in Ghana, and a public charity in the United Kingdom.

Although the Commonwealth, an association of 54 nations, provided member countries the basis of shared common laws, there was little specific focus on human rights issues in member countries. Thus, in 1987, several Commonwealth professional associations founded CHRI.

Through its research, reports, advocacy, engagement, mobilisation and periodic investigations, CHRI draws attention to the progress and setbacks on rights issues. It addresses the Commonwealth Secretariat, the United Nations Human Rights Council members, media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

CHRI's seeks to promote adherence to the Universal Declaration of Human Rights, the Commonwealth Harare Principles and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights.

**International Advisory Commission:** Alison Duxbury, Chairperson. Members: Wajahat Habibullah, James Robbins and Sam Okudzeto.

**Executive Committee (India):** Wajahat Habibullah, Chairperson. Members: B. K. Chandrashekar, Jayanto N. Choudhury, Kishore Bhargava, Maja Daruwala, Nitin Desai, Ashok K. Ganju, Kamal Kumar, Poonam Muttreja and A P Shah.

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Venkatesh Nayak, Director-In-Charge.

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# PREFACE

*Abhay S. Oka*  
Judge



*Supreme Court of India  
Tilak Marg  
New Delhi-110001*

## PREFACE

I must compliment the Karnataka State Legal Services Authority (KSLSA) for conducting a detailed study of the conditions in prisons in the State of Karnataka. KSLSA was assisted by the Commonwealth Human Rights Initiative and the Prisons Department of the Karnataka Government. The study has been conducted in terms of the order passed by the Supreme Court of India in Suo Motu Public Interest Litigation (PIL) titled 'Re-inhuman conditions in 1382 Prisons' (WP(C) 406/2013).

The Legal Services Authorities Act, 1987 was enacted for constituting Legal Service Authorities at various levels with the object of providing free and competent Legal Services to the weaker sections of the Society. The object of providing legal services to the weaker sections of the society is to ensure that opportunities for securing justice are not denied to them by reason of economic or other disabilities. One of the objects of the 1987 Act was to give effect to the obligations of the State Under Article 39A of the Constitution of India.

Under Section 12 of the 1987 Act, prisoners are entitled to legal services. Under the 1987 Act, the concept of legal services is very wide. It is not limited to assisting the prisoners in filing legal proceedings and conducting legal proceedings. Legal services will include extending help to the prisoners for getting the facilities in the prisons to which they are entitled. A prisoner detained in prison is not deprived of all his fundamental rights. A prisoner must be treated as a human being. A prisoner is entitled to reasonable facilities in the prison, including clean and hygienic sanitary facilities, proper food, medical aid, etc. He must get a proper opportunity to meet their family members as provided in the relevant rules. It is, therefore, necessary for KSLSA and District Legal

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*Abhay S. Oka*  
Judge

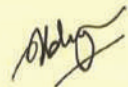


*Supreme Court of India*  
*Tilak Marg*  
*New Delhi-110001*

Service Authorities to ensure that proper facilities are extended to the prisoners. If the prisons lack proper facilities, it is the duty of the Legal Service Authorities to immediately bring the deficiencies to the notice of the State Government and ensure that the Government provides proper facilities in the concerned prisons.

While reading the two volumes of the Report, I found that a very exhaustive study has been conducted. Based on the findings and conclusions in the report, KSLSA will have to take up the issues with the State Government to ensure that necessary remedial and corrective steps are immediately taken in all prisons. My suggestion to KSLSA is to conduct a follow-up study of the prisons after regular intervals. The study conducted after regular intervals will help KSLSA to ascertain whether the State Government has taken any remedial steps.

I must appreciate the efforts put in by KSLSA for conducting the study of prisons. I must also acknowledge the assistance and cooperation rendered by Commonwealth Human Rights Initiative. I hope and trust that the study conducted by KSLSA will be instrumental in bringing about major reforms in the prisons in the State.

  
(ABHAY S. OKA)

**The Secretary,  
Karnataka Legal Services Authority,  
First Floor, Nyaya Degula,  
H. Siddaiah Road,  
Bengaluru – 560 027.**

# MESSAGE

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**Ritu Raj Awasthi**  
Chief Justice



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## MESSAGE

Despite there being comprehensive Acts, Rules, Regulations and manuals dealing with the prisons and prisoners, several hardships and problems are faced by the prisoners. Overcrowded prisons, improper implementation of existing provisions and schemes, lack of basic amenities, unnatural deaths, rivalry and infighting among inmates, inhuman treatment to prisoners, neglect of vulnerable groups such as women prisoners and their infants, young offenders, prisoners with mental ill-health etc., are some of the problems faced. Apart from the above mentioned problems, the prisoners also suffer due to lack of proper medical care, education, legal aid and rehabilitation.

Former Chief Justice of India Hon'ble Shri Justice Ramesh Chandra Lahoti brought some of these problems to the notice of the Hon'ble Apex Court by addressing a letter on 13.06.2013, mainly highlighting on custodial unnatural deaths, overcrowding, inadequate staff and lack of training to staff. The Hon'ble Apex Court took cognizance of the matter and registered a suo-motu Public Interest Litigation numbered as WP (C) No.406 of 2013, under the name 'Re-Inhuman Conditions In 1382 Prisons'. Several directions were issued in the said proceedings as and when required with a view to recognise and implement the human rights of prisoners. In one of several orders passed in the said PIL, a direction was given to conduct an indepth study of the overall conditions in prisons in the States on the lines conducted by the Bihar State Legal Services Authority in Bihar and by the CHRI (Commonwealth Human Rights Initiative) in Rajasthan. It directed

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**Ritu Raj Awasthi**  
Chief Justice



High Court of Karnataka  
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that the study should also include about the facilities available, the performance audit of the prisons as has been done by CAG and also assess the effect and impact of various schemes framed by NALSA relating to prisoners. This order dated 15.09.2017 is reported in (2017) 10 SCC 658. In compliance of this order, the Karnataka State Legal Services Authority (KSLSA) with the assistance and cooperation of Commonwealth Human Rights Initiative (CHRI) and the Karnataka Prisons Department took the initiative and inspected and made an indepth study of 9 Central Prisons, 20 District Prisons, 14 Taluk Prisons, 6 Revenue Prisons and 1 open Prison in the State of Karnataka.

This Report is prepared in two volumes alongwith a separate executive summary giving an overview of the Report. The first volume contains 3 parts. Part 'A' is about the Prisons; Part 'B' is about the Prisoners and Part 'C' is about the Prison Personnel. The second volume contains 5 parts categorised as Part 'A' to 'E'. It contains information about 9 Central Prisons, 20 District Prisons, 14 Taluk Prisons, 6 Revenue Prisons and 1 open Prison.

This report will certainly be a base document for all the stakeholders to address the issues and to bring about substantive changes or reforms in the matter of Prisons in the State of Karnataka.

January 5, 2022

  
(RITU RAJ AWASTHI)  
CHIEF JUSTICE

# FOREWORD

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**JUSTICE B. VEERAPPA,**

Judge,  
High Court Of Karnataka  
Bengaluru-560001



**Date:18.01.2022**



## **: FOREWORD :**

“Every saint has a past, every sinner has a future, and it is the role of law to remind both of this.”

It is necessary that we don't hate criminal, but the Crime. The prison inmate is also entitled to exercise his inherent human rights and all the stakeholders must endeavour to make it available.

The concept of Prison dates back to early civilization itself. Even in mythology, we find that Lord Krishna's parents were detained in a prison as his uncle feared death from the Child born to Devaki and Vasudeva. In Ramayana, we find that Goddess Sita was detained by Ravana in Ashokavana, which was a kind of open air prison. We also find the reference to dark prisons maintained by the kings and rulers in the past. However, by then the prisons were considered as a house of captives with inflicting of barbaric and inhuman punishments on them.

With the advent of democracy, the objective of imprisonment was shifted from sheer deterrent to deterrence and reformation, with the deterrence component being used only in the rarest cases. Today's prisons are designed to offer forced segregation from society so that inmates can rehabilitate themselves and reform themselves to reintegrate into society.

On the judicial side Hon'ble Supreme Court of India and various High Courts have been stressing for methodical prison reforms. In this connection Karnataka State Legal Services Authority (KLSLA) in association with Commonwealth Human Rights Initiative (CHRI) initiated prisons study in Karnataka to examine the overall conditions in prisons in the State and the facilities made available therein.

**JUSTICE B. VEERAPPA,**


Judge,  
High Court Of Karnataka  
Bengaluru-560001



The methodology of the study conducted and the structure of the report has attempted to understand the systemic issues within prisons. The purpose of the report is to identify, implementation of the policy in favour of the prison inmates who cannot easily voice their concerns. To introduce reforms in the prison, one must first acknowledge that the problems exist, and then step back to determine what best needs to be done to improve the system. The study report envisages the key issues, observations and recommendations. The role and responsibilities of various stakeholders are chalked out in detail in the report.

I sincerely wish and hope that on the basis of "Inside Karnataka Prisons", report jointly prepared by KSLSA and CHRI, the stakeholders will take strong action to take forward urgent task of prison reforms in Karnataka.

I congratulate the study team of CHRI as well as the support team of Officers of KSLSA in presenting the comprehensive report.

  
**(Justice B. Veerappa)**

# ACKNOWLEDGEMENTS

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This report was made possible thanks to the help and support of several people. Although it is impossible to refer to them all, we would like to acknowledge some who deserve special mention. CHRI extends its gratitude to the Karnataka State Legal Services Authority (SLSA) for assigning it the in-depth study of prisons in Karnataka. This report and associated research were generously supported by the SLSA.

The report would not have seen the light of the day without constant guidance and the support of **Hon'ble Justice Sri A.S.Bopanna, Hon'ble Justice Sri L Narayana Swamy, Hon'ble Justice Ravi Malimath, & Hon'ble Justice Aravind Kumar** former Executive Chairpersons, KSLSA; **Hon'ble Smt. Justice M G Uma, Hon'ble Sri Justice Hanchate Sanjeevakumar, Smt. Shridevi S Angadi & Sri. G Basavaraja**, former Member Secretaries, KSLSA; **Sri. N S Megharikh**, IPS, the then ADGP, Department of Prisons and Correctional Services, **Ms. Madhurima Dhanuka**, Programme Head, Prison Reforms Programme, CHRI, and **Ms. Sugandha Shankar**, Senior Programme Officer, Prison Reforms Programme, CHRI, who were instrumental in conceptualizing the study.

Special thanks to **Hon'ble Justice B.Veerappa**, Judge High Court of Karnataka and Executive Chairman, KSLSA and **Sri. H Shashidhara Shetty**, Member Secretary of the KSLSA, for their persistent efforts towards finalization of the report. Special thanks to the Chairmen and Secretaries of all the District Legal Services Authorities for providing vital information, for meeting the study team during the visit and for providing valuable feedback on the draft report.

CHRI deeply appreciates the efforts of **Sri. Alok Mohan, IPS**, Director General of Police; **Sri. Anand Reddy**, DIG, and all senior officers of the Department of Prisons and Correctional Services for their endless support in providing valuable feedback and advice through the course of the study. We also express our gratitude to the Chief Superintendents, Superintendents, officers and staff members of all the 51 prisons for providing invaluable information, for taking out time from their busy schedules to assist the study team during the visit, for their generous and heartwarming hospitality and for providing valuable feedback on the draft report.

Our special appreciation goes to the officials and staff of the Karnataka State Legal Services Authority, namely **Sri. Jayaprakash A**, the then Deputy Secretary; **Smt. Kaveri**, Deputy Secretary; **Sri Vignesh Kumar**, Public Relation Officer; **Sri. Amar V L**, the then Assistant Secretary; **Sri Gagan.M.R.**, Assistant Secretary; **Smt G.N.Umadevi**, Assistant Secretary; **Smt. Nandini.C**, Assistant; **Smt. Nalinakshi.H.K**, Junior Assistant; and **Sri Bettaraju.B**, Junior Assistant, for their sincere efforts, unflinching support and efficient coordination from initiation till the finalisation of the study.

Special thanks to **Sri. M S Suresh Babu**, Chief Superintendent, Prison Department, for helping the study team in planning all the phases of prison visits and coordinating with all the prison heads. The prison visits would not have been possible without the commendable efforts of **Sri. Barmma Gowda**, Warder, Prison Department, who drove the study team with characteristic good cheer during many phases of the prison visits. Our deepest gratitude to all the convict paralegal volunteers who assisted the study team in the central prisons.



Special thanks to CHRI colleagues who assisted in countless ways. Foremost, CHRI is thankful to **Ms. Sahana Manjesh** for leading the research and her impeccable commitment in visiting all the 51 prisons in the state; writing the first draft of the report and prison-wise reports; and for patiently and painstakingly working towards finalization of the report. CHRI commends the efforts by **Ms. Sugandha Shankar**, Senior Programme Officer, CHRI, from conceptualizing the research methodology, coordinating with the SLSA and the prison department, designing prison reports and working together with Ms Manjesh in visiting prisons and writing the report. It is also thankful to **Ms. Amrita Paul**, Senior Programme Officer, and **Ms. Kakoli Roy**, Senior Coordinator, for being part of the study team and for their assistance during many prison visits. We appreciate the efforts of **Mr. Deepan Sarkar** for editing the first draft of the report and for his extensive comments which have added value to the report. CHRI is grateful to **Ms. Madhurima Dhanuka**, Programme Head, Prison Reforms Programme, for her vision and laying the foundation of the study in close coordination with the SLSA and the prison department; for her valuable editorial inputs which enriched the report; and for guiding and inspiring the team at every step all the way through. Many thanks to **Mr. Aditya Sharma** for editorial inputs. Special thanks to **Mr. Sanjoy Hazarika**, International Director, CHRI, for input, editorial advice and collegial support throughout the study.

We extend appreciation to our interns – **Mr. Jay Bhaskar Sharma** and **Ms. Nahia Hussain; Ms. Deepa B; Ms. Ishita Chakrabarty;** and **Mr. Abhishrut Singh** who assisted in research, documenting information and interviews and analysis of data, without which this report could not have been completed. Lastly, many thanks to all colleagues of the Prison Reforms Programme for their cooperation and team spirit.

The design of the cover and the layout of both the volumes of the report has been done by **Mr. Gurnam Singh**.

This report would not have been possible without the support of the prisoners of Karnataka. The team learnt most from its interactions in the barracks, and through the interviews conducted in every prison. Their courage and openness is immensely appreciated, and it is to them that this report is dedicated.



# INTRODUCTION

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Prisoners' rights and accountability of prison administration have been the subject matter of a number of proceedings before various High Courts and the Supreme Court of India, in discharging their role as the custodians and interpreters of the Constitution. One of the earliest attempts was made by the Supreme Court in 1966 when Article 21 was interpreted to include a prisoner's right to reading and writing books while incarcerated.<sup>1</sup> Constitutional rights have been invoked several times by aggrieved prisoners and conscientious individuals, which has resulted in continued judicial oversight of prisons.

In Karnataka, the issue of prison reforms came into the limelight more than three decades ago with the ground-breaking case of *Rama Murthy vs. State of Karnataka*.<sup>2</sup> In his letter, dated 12 April 1984, to the then Chief Justice of the Supreme Court, Rama Murthy, a prisoner of central prison Bangalore, highlighted a number of concerns such as denial of rightful wages to prisoners despite doing hard work; inedible food; and mental and physical torture. Relying on the detailed report of the District Judge, the Supreme Court passed a number of directions.

In 2013, former Chief Justice of India R. C. Lahoti, wrote a letter to the then Chief Justice of India inviting his attention to some issues plaguing Indian prisons, and yet again the court undertook a nationwide review of prisoners' situation in the aptly titled writ, 'Reinhuman conditions in 1382 Prisons'.<sup>3</sup> In its order, dated 05 February 2016, the Supreme Court notably remarked:

*"Prison reforms have been the subject matter of discussion and decisions rendered by the Court from time to time over the last 35 years. Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned. Thus, issues relating to prisons in the country and their reform require reconsideration.... It is time for the State to go beyond projections through circulars and advisories and actually come to grips with reality as it exists in a very large number of prisons."*

Among other directions, by the order dated 15 September 2017, the court directed the Legal Services Authorities of every state to undertake a study in their respective state prisons to determine the conditions of prisons and prisoners.<sup>4</sup>

## CONTEXT OF THE STUDY

Pursuant to the abovementioned order, the Karnataka State Legal Services Authority (SLSA)

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1 *State of Maharashtra vs Prabhakar Pandurang Sangzgiri*, 1966 AIR 424, 1966 SCR (1) 702.

2 (1997) S.C.C. (Cri) 386.

3 Writ Petition (Civil) No. 406 of 2013.

4 "The State Legal Services Authorities (SLSAs) should urgently conduct a study on the lines conducted by the Bihar State Legal Services Authority in Bihar and the Commonwealth Human Rights Initiative in Rajasthan in respect of the overall conditions in prisons in the state and the facilities".

initiated an all-prisons study in Karnataka. The study was conducted by the Commonwealth Human Rights Initiative (CHRI) under the aegis of the Karnataka SLSA, in cooperation with the Karnataka Prisons Department.

CHRI's study team covered 51 operational prisons (9 Central, 21 District, 14 Taluk Prisons, 1 Open and 6 Revenue prisons) between January 2019 and June 2019. Nine essential themes were investigated viz., prison administration and infrastructure; prison regime including segregation of prisoners; medical facilities and health; visitation rights and facilities; access to information; access to legal aid in prisons; vocational training and prison labour; prison oversight and; provisions for vulnerable categories of prisoners –including women prisoners and their children, prisoners with mental health concerns and foreign national prisoners.

## STRUCTURE OF THE REPORT

This report is divided into two parts. Volume I, sub-divided under fifteen chapters covering various themes, lays down the:

- ✓ **Standards** – It primarily include the relevant provisions of the **Karnataka Prison Manual 1978, the Karnataka Prisons Act 1963, the Karnataka Prisoners Act 1963, the Karnataka Prison Rules 1974** and the various circulars and government orders issued by the Prison Department. In case, the state-specific standard is not available, the provisions of **Model Prison Manual, 2016**, developed by the Ministry of Home Affairs, Government of India, was referred. Additionally, the international standards provided in the **United Nations Standard Minimum Rules on the Treatment of Prisons (2015)**, also known as 'Nelson Mandela Rules' are mentioned with the aim to strive for the highest standards in prison administration.
- ✓ **Observations and Issues** – This section in every chapter highlights the observations of the study team; provides relevant data from the Prison Statistics India 2018; analyses the information received from prisons; identifies the key issues that need the attention of the functionaries based on the concerns raised during the interaction with prisoners and prison personnel.
- ✓ **Recommendations** – The key issues emphasised in every chapter are myriad and multifaceted. Due to the complex intersectionality involved, these issues need the attention and effective coordination between prisons and the various functionaries of the criminal justice system. Therefore, every chapter, at the end, includes the recommendations for different stakeholders, mainly Prison Department, State Government, State Legal Services Authority, District Legal Services Authorities, High Court, among others.

Volume II provides prison-wise information of each of the 51 prisons visited by the study team. Each prison report includes prison statistics; observations of the study team; information gathered through interactions with prisoners and functionaries; good and bad practices; key issues of concerns and stakeholder-wise recommendations to address the issues of the particular prison.

## METHODOLOGY

The study was based on data collected from both primary and secondary sources, which involved the following techniques:

- I. **Semi-structured interview method**, a tool used in qualitative research methodology wherein the interviewer uses an interview guide, which includes a list of questions,

themes or topics that need to be covered during the course of the interview. This method was used to interview undertrial prisoners, convicts and the prison staff.

- II. **Direct observation**, was used to gather relevant qualitative data on the basis of direct observation of the natural surroundings of the respondent/subject.
- III. **Secondary data review** is a process of data collection from different sources. In order to substantiate the findings and observations, formats were circulated to the prison departments/prisons as well as the legal services authorities for seeking data relevant to the subject matter of the study. For certain data sets, information was sought for the entire year from 1 January to 31 December 2018 and the rest of the information was requested for as on 31 December 2018. Sample proforma shared with each prison can be found at Annexure A to this report.

The study team consisted of members from CHRI who visited every functional prison in Karnataka between January 2019 and June 2019. There were 2-3 members present per visit, with an average of 1 day spent in taluk prisons, 2 days in district prisons and 3-5 days in central prisons.

The study team made an effort to ensure that it received the prison data prior to each visit, so as to be able to verify it during visits. It also enabled the team to identify attention areas for each prison before the visit.

The study team visited every part of the prison, including the office area, kitchen, medical wing, work stations, toilets, male and female barracks. During the barrack visits, the study team interacted with all inmates, in which a basic set of questions were asked, and some specific ones depending on the category or prisoners. A sample of the enquiries made in the barracks can be found at Annexure B to this report.

In the course of these interactions, the study team identified inmates for detailed interviews. The team tried to shortlist prisoners who were either from another state, or without a lawyer, or had no awareness about the case. An average of about 5-10 inmates in taluk prisons, 20-30 inmates in district prisons and 30-50 inmates in central prisons were interviewed. Sample interview sheets for undertrials, convicts, women, young offenders and foreign national prisoners can be found in Annexures C, D, E, F and G respectively to this report. The study team also interacted with prison staff during the prison visits to seek their perspective on prison administration, in addition to conducting detailed interviews with the Jailor/ Superintendent/Chief Superintendent heading the prison.

In addition to prison visits, the study team also visited the Member Secretary (MS) of every District Legal Services Authority (DLSA) (except in districts Shivamogga, Bagalkot, Bijapur, Gadag and Haveri, where the team could not schedule appointments due to transfers or prior work commitments of the respective Member Secretaries). This was an important exercise to determine the functioning of the legal aid panel, jail visiting lawyers and the jail legal aid clinics.

At the end of each prison visit, the study team sent immediate action letters addressed to the concerned prison head and to the concerned MS in order to bring to their attention specific instances of individual cases where the study team felt immediate intervention was necessary.<sup>5</sup> Such instances included enquiry into juvenility, consideration of cases of

5 We received responses on the action taken from the following: Ballari Central Prison, Kalburgi Central Prison, Mysore Central Prison, Haveri district prison, Chamrajnagar district prison, Chikkamagaluru district prison, Chintamani district prison, Davangere district prison, Haveri district prison, Kolar district prison, Mandya district prison, Hadagalli taluk prison, Hospet taluk prison, Aurad taluk prison, Hubballi taluk prison, Humnabad taluk prison, K.R.Nagar taluk prison, Open Air Jail, Gdag DLSA, Hubballi DLSA, Kolar DLSA, Koppal DLSA.

inmates by the UTRC on grounds of young/old age or inability to furnish surety, medical requirements, assistance to file jail appeals, assistance to inform families and consideration for suspension of trial due to unsoundness of mind.

The present report is based on the cumulative data<sup>6</sup>, gathered by the study team through interview schedules with prison inmates, proformas filled in by the respective prison administrations of each prison visited, meetings with the Member Secretaries of DLSAs, officers at the prisons and at the Head Office of the Prison Department and general observations by the study team of conditions inside prisons as well as from interactions with prisoners and prison staff.

### **FINALISATION OF THE REPORT**

The first draft of both volumes of the report were submitted to the SLSA by CHRI in November, 2019. Revised drafts were then shared in January, 2020 and March, 2020, with a request to be shared further with the DLSA Secretaries and prison officers for their feedback and inputs. Based on their responses, which were delayed due to the onset of the pandemic, necessary edits were made to the report.

On 15th March 2021, a meeting of the Committee of the Hon'ble High Court 'to oversee the implementation of the directions given by the Hon'ble Supreme Court of India in W.P. No. 406/2013 dated 15.09.2017', was held under the Chairmanship of the then Executive Chairman of the KSLSA, Hon'ble Shri Justice Aravind Kumar. In the meeting, the report was discussed and it was agreed to develop an action plan, with short-term and long-term interventions based on the recommendations of the study. Unfortunately, the second wave of the pandemic struck soon after, and the finalisation process was further delayed.

It was only in February, 2022, that final feedback was received from the Department of Prisons and Correctional Services, Karnataka, subsequent to which a virtual meeting was organised on 6th March, 2022 for finalisation of the report. The meeting was attended by the Member Secretary, Karnataka SLSA; Director General of Prisons & Correctional Services, Karnataka; officers at the prison head office; Chief Superintendents of all the Central prisons and CHRI representatives. A need to include updates from the last two and half years was emphasised by the prison department, a request which was acceded to by the SLSA and CHRI.

Subsequently, CHRI conducted eight zonal meetings between 14 March and 1 April, 2022, with representatives of the prison department to document the updates and initiatives undertaken.

The prison department also shared four detailed notes with CHRI on various aspects covered by the report. All the information, oral and written, thus received, has been incorporated as follows, at relevant places in both volumes of the report:

- ❖ Volume 1: A summary of the updates is added in the Executive Summary. Additionally, at the end of the chapters, a box titled 'UPDATES AS OF APRIL 2022' has been added.
- ❖ Volume 2: At the end of every prison report, a box titled 'UPDATES AS OF APRIL 2022' has been added.

This updated information provided by the prison department indicates a positive development towards addressing many of the concerns raised by this report. Several of these updates were verified through prison visits conducted by DLSA Secretaries in March-April 2022.

<sup>6</sup> Wherever used, the percentages used in the course of the study are 'valid percentages', which excludes missing data and no responses.

# EXECUTIVE SUMMARY

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This study was commissioned by the Karnataka State Legal Services Authority (SLSA) in compliance with the directions of the Hon'ble Supreme Court, 'Re-inhuman Conditions in 1382 Prisons' (WP 406/2013). The study was designed, collaboratively by the State Legal Services Authority, Department of Prisons and Correctional Services and CHRI. A study team comprising representatives of the Commonwealth Human Rights Initiative (CHRI) visited 51 functional prisons in Karnataka between January and June 2019.

The team attempted to conduct an evidence-based thorough assessment of the standards vis-à-vis the ground situation. It sought to understand the systemic issues within prisons and document the experiences, challenges, ideas and suggestions of prisoners, prison staff and legal aid functionaries.

The purpose of this report is –

- (i) to identify implementation and policy gaps vis-à-vis the existing standards;
- (ii) to voice the concerns of persons behind bars with the aim that future policy is reflective of these concerns;
- (iii) to document the challenges faced by prison personnel;
- (iv) to highlight the good practices that have the potential to be replicated;
- (v) to bring the attention of the High Court, state government, state prisons department, state police department, legal services institutions, State Human Rights Commission and other functionaries of the criminal justice system on systemic issues hindering prison reforms; and
- (vi) to seek coordinated efforts of all stakeholders in addressing these systemic issues to ensure practical realisation of rights.

## TIMELINE

The prison visits were concluded by June 2019, and the draft report was shared with the SLSA and Prison Department in November 2019. However, owing to the first wave of the COVID-19 pandemic, the validation of the report with the prison department and DLSAs could only be completed in 2021. However, the subsequent second wave of the pandemic, delayed the finalisation process further. In March 2022, in a discussion with the prison department, SLSA and CHRI, it was highlighted that several of the findings of the report had already been addressed, and thus it was decided to include these updates at relevant places in this report, including this summary.

## KEY ISSUES

The study proved to be insightful not only in understanding the long-standing structural issues prevalent in the prisons system, but also the underlying sources of several issues.

Broadly, it reflects a less than perfect court system, inadequate prison infrastructure; overworked prison staff, some regressive government policies and overall lack of coordination among the various functionaries.

The key issues, under the various themes, that need the urgent attention are as follows:

## I. PRISON RESOURCES

This chapter covers the physical, financial and human resources available with prisons in Karnataka. The prison occupancy rate in Karnataka, as on 31 December 2018, was 101.7%. It may seem a non-issue at the state-level but the prison-wise occupancies tell a different story. The data provided by the prison department showed that 20 out of 51 prisons were overcrowded. The top three prisons in each of the above categories were – Central Prison Vijayapura (173%), Central Prison Mysuru (149%), Central Prison Kalaburgi (147%); District Prison Gadag (219%), District Prison Chikkaballapura (214%), District Prison Yadgir (183%); Taluka Prison Gokak (175%), Taluka Prison Hubballi (158%), Taluka Prison Shorapur (126%) and Revenue Prison Hukkeri (207%).

**With regards to physical infrastructure, most prisons in the state are old structures. Only 18 of the 51 having been constructed post the year 2000.** Owing to their old designs, most prisons are ill-equipped to accommodate new requirements such as video conferencing systems, legal aid clinics, western toilets for the aged, etc. These old structures are also in dire need of upgrading prison visiting rooms and office areas. They are difficult to maintain in their current form.

Efforts have been made to introduce necessary equipment to make the daily work of prisoners and administration convenient. **In good practice, kitchens of all central and most district prisons in Karnataka have been modernized with steamers, chimneys, mixers, kneaders and refrigerators. Solar energy is also being utilised for electricity in almost all prisons. Introduction of walkie-talkies, installation of CCTVs and various scanners for security purposes have helped prison personnel in their daily duty.** With the higher judiciary's emphasis on video conferencing facilities in recent times, units have been set up in almost all prisons although several technical issues remain to be resolved. Water management systems have been set up in all the central prisons, half of the district prisons, and a third of the taluk prisons.

With respect to financial resources, the Prison Statistics of India 2018 reported that the overall sanctioned budget for the year 2018-19 has increased by 8.3% in comparison to the year 2017-18. Karnataka ranks 16th among all states with 23.6% share of expenses on inmates in their total annual expenditure. The national average for this stands at 33.61%. **Overall, there is no serious crisis of funds for the Prison and Correctional Services Department as a number of projects in the pipeline are being supported by the State Government.** At the prisons level too, financial dealings are being streamlined for effective functioning. **However, the data analysed by the study team shows variances in individual prison budget allocations across the preceding three fiscal years.**

With regard to human resources, while the department suffered from under-staffing at the time of visit by the study team in 2019,<sup>7</sup> this trend has changed over the course of the year with mass recruitment at the Warder and Jailor levels. **In January 2019, the prison department recruited a commendable 1070 number of persons for the post of Warder while 32 persons for the post of Jailors were recruited.**

<sup>7</sup> As per information provided by the department, on 01.12.2019, the staff vacancies amounted to 973 among executive staff, 67 among ministerial staff and 32 among technical staff, in addition to vacancies in deputation posts.



*As of April 2022, the department has undertaken creation of additional prisoner capacity of 5,500 at a cost of Rs. 450 crores with plans to construct some new prisons and renovate the older ones. An additional grant of Rs 7 Crores was provided to the prison department to deal with COVID-19 pandemic. All the prisons in the state have been provided with many safety measures, infrastructural facilities, fire-fighting systems and RO water plants. As an important reform measure, the Karnataka Prisons and Correctional Services Manual, 2021, on the lines of the Model Prison Manual, 2016, was notified by the State Government in February 2022.*

## II. SPECIAL CASE OF REVENUE PRISONS

In addition to central, district and taluk prisons, Karnataka has a special category of prisons known as 'revenue prisons.' These prisons are administered jointly by the revenue department and the prison department. Since the Karnataka Prison Manual and Rules do not govern these prisons, much of the prison oversight mechanisms (in the form of Board of Visitors and Undertrial Review Committees) and resources are unavailable to these prisons, most significantly in the form of separate prison complexes and prison staff (except for the ones in Madhugiri and Sedam). The result is that **revenue prisons do not safeguard basic rights for prisoners. Upon submitting a preliminary report on this state of affairs to the SLSA and the Prison Department, a decision was taken to transfer the inmates from the revenue prisons of Hukkeri, Saundatti, Ranebennur and Kumta to the closest district/central prison.** A more permanent solution to this situation however is still required.

*As of April 2022, only three revenue prisons, Madhugiri, Sedam and Sirsi are operational under the administration of prison staff and the proposal to transfer all revenue prisons to the Department of Prisons and Correctional Services is pending at the State Government.*

## III. PRISON OVERSIGHT MECHANISMS

In this chapter, the functioning of two important prison oversight mechanisms – the Board of Visitors (BoVs) and the Under Trial Review Committee (UTRC) are reviewed. Although the Karnataka Prison Manual provides for periodic functioning of BoVs, the study team learnt that in general, members of the BoV do not make routine visits to the prison, nor are regular meetings held. **In 2018, 12 prisons had one BoV meeting, 13 had more than one BoV meeting and 26 had no meetings at all.** Further, till the government circular dated 10 January, 2018, there was no BoV for taluk prisons in the state. **As of 31 December 2018, only 52% of the prisons had Non-official Visitors (NoVs) appointed to serve in the BoVs, and only one in five prisons in the state had a functional BoV.** In a closed system such as a prison, it is necessary to have regular monitoring to ensure no abuse of rights takes place and to provide a means of redressal .

Undertrial Review Committees (UTRCs), under the directions of the Hon'ble Supreme Court, are established in all districts. On examining whether they are complying with the mandate provided by the Supreme Court and recently reiterated in the form of the National Legal Services Authority's Standard Operating Procedure on the functioning of UTRCs, it was found that **varied practices are adopted by UTRCs across the state in regard to composition, preparation of prisoner's lists and modus operandi.** Streamlining this process could go a long way in ensuring that no one is unnecessarily detained in prisons and fair trial rights are protected. Further, the efficacy of the system

requires some consideration. **Between January and June 2019, of the 1724 cases identified for consideration by the UTRC, only 186 cases were finally referred by the UTRC to the concerned courts, of whom merely six were ultimately released from custody.**

*As of April 2022, the tenure of the last appointed Non-Official Visitors (NOVs) is completed and the proposal to appoint the new NOVs is pending with the State Government. However, the BoV meetings by official visitors are taking place in all prisons regularly. Additionally, Principal District and Sessions Judges, DLSA Secretaries and the Chairpersons and Members of various statutory bodies are regularly visiting prisons. The UTRC meetings are held every week in all districts as per the direction of the Hon'ble Supreme Court in 'Re-Contagion of COVID-19 virus in Prisons' (Suo Motu Writ Petition (C) No. 1/2020), dated March 23, 2020.*

#### IV. PRISON REGIME

In this chapter, the prison routine of inmates in Karnataka's prisons is described. It provides a brief overview of the admission process and what a day in prison entails, from the perspective of inmates as well as administrators.

Admission registers were scrupulously maintained in all the prisons visited by the study team. However, the transition to maintaining online versions of the register via the **ePrison portal has not been smooth, especially since the software is not tailored to the specific needs of the state.** In addition, training of prison staff to use the online platform has not been sufficient. It was also learnt that **not all prisons have the space for a separate admission room, or the necessary medical personnel to administer the NHRC proforma of medical examination upon admission of a new inmate.** Basic personal items are not always provided to inmates at the time of admission, and they are forced to adjust with discarded items, or wait for their families to bring them supplies.

**The prisoners in some district and taluk prisons spend very long hours confined inside lock-ups.** One reason being shortage of prison staff. Since district and taluk prisons do not have work opportunities, or sufficient options for games and recreation, those slots in the daily routine are replaced by lock-up hours. The common means of keeping occupied in prisons is through the television sets in the cells, and board games like carom and chess. With the current recorded increase in staff strength, it is hoped that there will be an imminent reduction in the length of lock-up hours.

*As of April 2022, separate admission rooms are now demarcated in all prisons. Efforts are made in all prisons to segregate young inmates from older prisoners, in separate barracks. Since all prisons now have increased staff, the lock-up hours are not extended and the provisions of the manual are being followed in this regard. In addition to the recreational facilities earlier provided, 'Community Radio' has been established at all the Central Prisons in the State to help prisoners to share their experiences and for providing awareness and entertainment in the prisons in the state.*

#### V. ACCESS TO HEALTH FACILITIES

This chapter is dedicated to the very crucial aspect of health and medical care in prisons. Given that prisons in the state are generally very old structures, sanitation and maintenance is difficult despite best efforts of the staff and inmates. **Barring District**

**Prison Chikkaballapur, there were adequate number of toilets in all Central and District Prisons. The situation in three taluk prisons (Jamkhandi, Chintamani and Hosapete) was, however, appalling with 221, 206 and 138 inmates respectively, having to share one toilet.** As far as the number of inmates per bathroom was concerned, **except for Central Prison Shivamogga and Central Prison Shivamogga Women, no central prison had the adequate ratio as per the Model Prison Manual.** Central Prison Kalaburgi had one bathroom per 47 inmates, while Central Prison Bengaluru had 1 bathroom per 35 prisoners. This ratio ranges from two bathroom for 209 inmates in district prisons, and two bathrooms for 449 inmates in taluk prisons.

Prisons are cleaned by inmates, some of whom volunteer in order to make a meagre earning. Some inmates said that they were forced into this because of caste issues. Running water is not available in a large number of prisons, requiring water to be stored for use. Not having sufficient access to soap is a primary reason for the high rate of skin infections in the state's prisons. Practices vary across prisons regarding the disposal of garbage. While local municipalities come to collect the daily waste in some prisons, some bury their waste, while others burn it.

**About 92% of the prisoners in need of medical attention in Karnataka's prisons are provided treatment in the prison by appointed/ visiting medical officers.** The remaining are referred to district hospitals or to higher medical hospitals in serious cases. Only the central prisons in Shivamogga, Kalaburagi, Belagavi, Vijayapura and Bengaluru have full-fledged hospitals in the prison. All other central prisons and only seven district prisons have a dispensary in the prison complex.<sup>8</sup> Prison Statistics India 2018 reported that in Karnataka there was one medical personnel for every 664 prisoners. If visiting medical officers are taken into account, then **there is about one medical personnel for every 250-300 inmates in 2019.** In addition to shortage in medical infrastructure in prisons, **there is a dearth of regular doctors, specialists, nurses, lab technicians and other orderlies.** Overall, as on 31 December 2018, **54% of the ailing inmates were not taken to hospitals when required as per data furnished by the department.** The problem of acute shortage of medical escorts spikes up to more than 90% in some prisons.<sup>9</sup> **Ambulances are available in less than half the prisons in the state. However, in good practice, the Karnataka prisons have a very robust support system for patients with HIV/AIDS.**

As per data provided by the department, in the year 2018, 34 deaths were reported in the 51 prisons covered by the study team. Of this, 29 deaths were reported to be occurring due to natural causes. In good practice, the judicial magistrate enquiry into all these deaths commenced soon after the death occurred. The mandate of informing the National Human Rights Commission within 24 hours of the incident was complied by all prisons except the Bangalore central prison in which the State Human Rights Commission was informed instead.

*As of April 2022, a sum of Rs 5.55 Crores has been provided to various prisons in the state during 2021-2022 for construction of 60 additional toilets and 322 bathrooms, at par with the standards prescribed in the Model Prison Manual 2016. A proposal to transfer healthcare facilities to the Department of Health and Family is under consideration by the State Government which is aimed at providing adequate access to medical facilities to prisoners in the state.*

8 Bagalkot, Bidar, Chitradurga, Koppal, Madikeri, Raichur and Udupi.

9 Lingsuguru and Hadagalli taluka prisons and Ranebennur revenue prison.

## VI. CONTACT WITH THE OUTSIDE WORLD

This chapter includes the findings vis-à-vis the means available to enable prisoners to remain in touch with family members, discuss case details with lawyers, and to enable connection with society for reintegration when prison term ends. **Only the central prisons and the Mangalore district prison had telephone facilities, and no such facility was found in any of the other district or taluk prisons.** The study team was informed that a plan to introduce phone facilities in these prisons was under active consideration. Another important area for creative solutions is with respect to the visiting/*mulaqaat*/'*beti*'/'entry' system. **The visiting rooms in the state's prisons are in need of expansion and upgrade.** Most were very small spaces with wire meshes, through which very hurried conversations take place between inmates and their family members.

**Another significant area of concern revolves around difficulties that inmates face in trying to establish contact with their lawyers at the High Court and Supreme Court.** The latter often cannot and usually do not make physical visits to interact with imprisoned clients. As per the directives of the Supreme Court in *Imtiyaz Ramzan Khan v. The State Of Maharashtra*,<sup>10</sup> followed by the High Court of Karnataka in the case of *Prem Kumar v. State of Karnataka*,<sup>11</sup> efforts are to be made to ensure that prisoners can speak to their legal aid lawyers through video conferencing. It is hoped that the widespread use of video-conferencing by lawyers for holding consultations and by courts for hearing matters, as a necessary consequence of the COVID-19 pandemic, will further aid the state authorities in implementing this system expeditiously.

It was also learnt that **at the time of admission, many under trial prisoners are unable to inform their family about their whereabouts.** Extending the right to write to family members as provided in the prison manual, as well as the right to make a phone call, can go a long way in ensuring that inmates are not lost in the system. Families and legal aid representatives must be informed about their whereabouts. Further, transfer of convicts to prisons closer to their native towns might be considered as a policy decision to enable their rehabilitation.

*As of April 2022, the 'prison call system' is now also available in district prisons to facilitate prisoners to interact with their family members and legal advisors. Taluk prisons use landlines and CUG (Closed User Group) facilities. All central prisons have upgraded interview rooms with glass partitions and intercom phones on both sides. Sanction to upgrade the interview rooms in other prisons in a phased manner has also been granted. During 2021-22, 'E-mulakat', a video calling system through e-prison software has also been made available to prisoners to communicate with their family members and legal advisors.*

## VII. ACCESS TO LEGAL AID IN PRISONS

This chapter highlights the role played by the legal aid institutions at all levels – NALSA, SLSA and DLSAs – in the lives of prisoners. **In good practice, all prisons in Karnataka have a Jail Legal Aid Clinic, though not all of them have the space for a dedicated room for this purpose.** The study team learnt that mandatory number of visits<sup>12</sup> by the Jail Visiting Lawyers (JVLs) is not followed uniformly across prisons. JVLs tenures of appointment also differ across the state. Legal aid lawyers are either

10 (2018) 9 SCC 160.

11 Order dated 17.11.2018 passed in CRLA 1139/2014.

12 The Jail Visiting Lawyers (JVLs), engaged by the DLSA from among the panel of lawyers, are required to visit the prison at least two days a week as per the NALSA's Standard Operating Procedure for Representation of Persons in Custody 2016, and for at least four days, as per the SLSA's mandate.

appointed in court, or after a letter making a request is given to the JVL. **Interactions with undertrials revealed that by and large, they only receive legal aid after the filing of the chargesheet, and that they are not satisfied with their legal aid lawyers.** Interaction between accused and their legal aid lawyer takes place in court. On the dates they are not produced in court, owing to non-availability of police escorts, the accused does not have information about the progress of their case.

Further, **very few convict para legal volunteers had been appointed in the central prisons. They do not receive remuneration for their services.**

With respect to convicts, **in the year 2018, only 107 jail appeals were filed in the High Court, and three before the Supreme Court.** Legal aid for convicts, especially for filing appeals before the High Court and Supreme Court, is in need of streamlining.

*As of April 2022, all prisons have a Jail Legal Aid Clinic. Jail Visiting Lawyers (JVLs) are appointed in all prisons and paralegal volunteers (PLVs) are additionally appointed in central prisons, who provide all the necessary legal help to the prisoners. The serious concern regarding payment of wages to PLVs is now resolved, though in some prisons they are only paid wages by the prison and not DLSA.*

## VIII. COURT PRODUCTION

Presence of the accused during their court hearings is an essential feature of fair trial. **In 2018, 2,22,002 court productions were ordered by the lower courts in Karnataka, out of which 1,55,434 productions were done, either via physical presence or by video-conferencing. This amounted to 32% non-production in the state, which can go up to more than 60% for some prisons.** The issue of non-production could be one of the contributing factors to the overall pendency of criminal matters in the subordinate judiciary in Karnataka. The pendency has steadily increased from 46.5% in 2015 to 51.7% in 2019, with 73.43% cases (a statistic of concern no doubt) pending for one year or more. In sessions trials, 24% are pending at the stage of charge and 53.8% cases are pending at the stage of evidence/argument/judgment.

One of the ways in which prisons and courts are trying to address the issue of non-production is by introducing video conferencing facilities in prisons and courts. However, there are several loop holes with infrastructure and technology at present as prisoners hardly get to interact with the judge and not all prisons have the technical resources to ensure smooth functioning of VCs. **A more detailed consideration into the concerns in the VC production model with an SOP on how it is to be conducted is required.** The sudden yet widespread adoption of online courts across the country post the COVID-19 outbreak will certainly assist the authorities in streamlining logistical difficulties existing at present.

*In the last two years, 100% video-conferencing facilities have been provided to all the 52 prisons in the state for virtual production of the prisoners before the courts. VC facilities have been adopted extensively during Covid which has replaced physical productions drastically. Almost 85% of prisoners in prisons in Karnataka are presently being produced virtually before the courts.*

## IX. JUDICIAL PRACTICES IMPACTING PRISONERS

Access to justice is an important issue for all prison inmates. Some of the **key issues**

with respect to undertrial prisoners were the mechanical extensions of remand, inadequate number of court translators for prisoners who cannot understand Kannada, persons requiring mental health assessment to determine competence to stand trial or determine the possibility of the defence of insanity, lack of information regarding case status, delay in the framing of charge, and the impossible conditions while granting bail such as requiring 'local' surety and 'double surety'. It was also learnt by the study team that several judicial practices affect convict prisons such as 'set-off' not being granted as a matter of right, multiple sentences not running concurrently where possible, delay in deciding appeals and excessive default sentence in lieu of fine.

*As of April 2022, 70 kiosks are available in 50 prisons for prisoners to access information regarding their cases.*

## X. REHABILITATION AND REINTEGRATION OF PRISONERS

In principle, prisons are meant to serve as spaces that offer opportunities for reform and rehabilitation to a person in conflict with the law. As on 31 December, 2018, only 2.5% of the total prison population in the state were provided educational facilities. Lack of teaching staff is a major concern in the prisons in Karnataka.

Vocational training is mostly available for convict prisoners in central prisons, and a few exceptional district prisons where the superintendents take the initiative. **With respect to prison labour, 55% of the convict population detained in central prisons and the open prison in the state are provided work, amounting to only 14% of the male population in prisons. Out of the total prisoners who were provided work, 90% are men. In district and taluk prisons, kitchen and cleaning work is undertaken by undertrials, although they are not paid wages (except in DJ Haveri and DJ Madikeri which have sought permission to do so). It is of concern that the prisons in the state are unable to provide sufficient employment to those able and willing to work. A significant reason for this is the outdated nature of opportunities available in prisons such as weaving, carpentry, soap making, etc. An assessment of work opportunities needs to be done with a participatory approach seeking convicts' views and accordingly new work opportunities must be introduced based on their interest and rehabilitation needs.** It was also learnt that due to the migration of the payment system from Prisoners' Personal Cash (PPC) account to bank accounts, **several prisoners who had no documents to open a bank account were being unable to secure wages.** This concern needs an immediate remedy.

*Karnataka is among the few States in the country to enact the Prison Development Board Act in October 2021, to improve prisoner's welfare. To address the issues of payment of wages, Jan Dhan accounts have been opened for all convicts in all prisons and a proposal to increase the wages of prisoners is currently pending with the State Government. A set of innovative initiatives for the holistic reformation of the prisoners in all the prisons in the state, have been launched since August 2021 under the flagship programme 'Navchethana'. Under this initiative – (i) more than 2,700 prison officers and 6,900 prisoners in all the prisons in the state have been given training in 'Yoga and Meditation' by the 'Art of Living', and the 'Isha' Foundations; (ii) 20 Psychiatric counselors have been appointed during 2021-22 and deputed to various prisons; (iii) 'Food Safety and Standards Authority of India' (FSSAI) has awarded 4 Star certification to all the kitchens of the 8 Central Prisons; (iv) a massive 'Literacy Program' for about 7,500 illiterate and*

*semi-literate prisoners was launched simultaneously in all the 52 prisons with the help of the 'Mass Education Department' under which educated prisoners undertake literary classes for illiterate prisoners; (v) skill development programs are being organized for all the prisoners with the help of both governmental and non-governmental organizations.*

## **XI. PAROLE, REMISSION AND PREMATURE RELEASE**

**There are several hindrances for a prisoner to secure parole, including the level of corruption involved in securing a no objection from concerned police stations, and the exemption of certain categories of prisoners from being eligible for the same. Parole conditions are sometimes prohibitive for prisoners, especially emergency parole in which the inmate is required to bear the escort expenses.**

Remission is not a right but a benefit, and is thus replete with several discrepancies and possible arbitrariness in its application. **Unless a prisoner applies for earned remission and is in the good books of the prison staff, he/she is not eligible. Further, the records of remission are not open to scrutiny in most prisons.** Enabling an open system and providing more avenues of labour could encourage good behaviour in prison. Remission enables a prisoner to secure early release.

With respect to premature release, the study team learnt that **several convicts are suffering on account of a government order (HD 384 PRA 2015 dated 05.08.2016) that prescribes the conditions which make one eligible to be considered for early release, and also exempts certain categories of prisoners from ever being considered.** Since the purpose of having a remission system and a process for premature release is to give prisoners, who have served long sentences and shown true reformation, a fresh lease of life, such a bar is in direct opposition to the reformatory spirit of prisons. A reconsideration of this government policy is crucial.

Further, the study team has assessed that **the current practice of constitutional courts imposing a full life sentence (without the right to be considered for premature release) following the ruling in *Union of India v. Sriharan*, violates the reformatory spirit of prisons, in addition to being an intrusion on what is essentially, and rightly, meant to be in the domain of the state executive.** The functioning of the Advisory Board, which determines the premature release of convicts, is also in need of more openness in its functioning. **The practice of not considering convicts for premature release, especially those whose appeals are pending in court, results in persons lingering in the system on account of judicial delay and foreclosure of alternate remedies.**

*To streamline the process of consideration of parole applications, a circular was issued by the Department of Prisons and Correctional Services, Karnataka, dated 25 January, 2022, by which the reports of the concerned Commissioners of Police/ Superintendents of Police is now compulsory and the police report must be sent back within 15 days to the concerned Prison Superintendent for sanctioning general or emergency parole by the prison authorities to the eligible prisoners. Regarding premature release, 'Guidelines to consider the cases for premature release of life convicts serving sentence in the prisons of the State' have been issued by the State Government, dated 21 April, 2020.*

## XII. VULNERABLE GROUPS AND MATTERS OF CONCERN

Certain special categories of prisoners for whom incarceration is a second vulnerability include women, young age offenders, transgender prisoners, foreign national prisoners, prisoners from other states, prisoners with mental health concerns and death row prisoners.

**Women Prisoners and Children:** Of the 545 women prisoners in the state, 90% are lodged in small enclosures as part of bigger prisons. As per the data provided, **seven women enclosures were found to be overcrowded.** Of all prisons, Bidar district prison had the highest 300% occupancy. Among the central prisons Mysuru was most overcrowded with 190% occupancy, followed by Bengaluru with 163%, Kalaburgi with 124% and Vijayapura having 105% occupancy.<sup>13</sup> Inability to access facilities and spaces available in the male section, inadequate visitation facilities, absence of dedicated medical professionals, lack of access to education and sustained work, inability to maintain family ties especially with children older than six years, are some of the key issues that needs to be addressed. As on 31 December 2018, 40 children (21 boys and 19 girls) stayed in prisons with their mothers. **Crèche facilities are only available in Central Prison Mysuru, Central Prison Bengaluru where it is run by the primary education department and Central Prison Vijayapura.**

**Young offenders:** This group is **often not segregated in prisons**, since there is not enough space. Only central prisons can afford to rollout special efforts like education and work experience suited for young offenders. This issue requires concerted effort since over half the convict population in Karnataka's prisons fall in the age group of 18-30. **Juveniles who are transferred from remand homes upon attaining the age of 18-21 often find it difficult to adjust to the world of adult prisons.** Juvenility claims, both among the undertrials and convicts, were raised before the study team. The lack of sufficient legal assistance results in such claims seldom being agitated in court.

**Transgender Prisoners: Only four of the prisons visited by the study team had special barracks demarcated for transgender prisoners.** In *NALSA v. Union of India*,<sup>14</sup> the Supreme Court held that the treatment must be appropriate to the needs of transgender persons so as to protect their human rights and dignity. Unfortunately, the vulnerabilities faced by the community continue even within prisons, if not made worse by the situation.

**Prisoners belonging to other state & Foreign National Prisoners:** Karnataka shares its state borders with Maharashtra, Andhra Pradesh, Telangana, Tamil Nadu, Kerala and Goa. Prisons in the border regions have inmates from these neighbouring states. In the bigger cities of the state, migrant workers from other states sometimes find their way to prison. Several foreign national prisoners are imprisoned in Karnataka, and though central prisons have better facilities for them, **there are no specific provisions in regard to their communication with family or access to an alternate diet suitable to their needs. Language is a barrier for inmates from other states, and countries, especially in court proceedings.**

**Prisoners with mental health concerns:** In 2018, there were a total of 369 inmates in the state's prisons undergoing psychiatric treatment and 192 inmates undergoing psychological counselling. **Shortage of mental health professionals and nursing staff in prisons and lack of implementation of the provisions of Chapter XV of the Code of Criminal Procedure are the key issues with regard to prisoners suffering from mental illness.** Two quality state mental health facilities cater to the mental health needs of prisoners in the state – NIMHANS, Bangalore and DIMHANS, Dharwad.

13 Other district prisons where women enclosures were found to be overcrowded were Koppal (150%), Mandya (137.5%) and District Prison Haveri had 100% occupancy.

14 AIR 2014 SC 1863.



However, given the number of prisoners in need of mental health treatment, and the shortage of beds in these and other mental health institutions, prisoners often find themselves at the rotating door between prison and a mental health facility.

**Death row Prisoners:** As of 31 December 2018, there were 25 prisoners on death row in Karnataka.<sup>15</sup> As a good practice, death row inmates in Karnataka are not segregated from other prisoners, unless they are undergoing prison punishment like any other convict. However, **they are not allowed to work or study in the prison, although there is no such bar prescribed in the Karnataka Prison Manual.** Further, persons who were on death row, but who secure commutation from appellate courts, do not have retrospective addition of remission they should be eligible for as life convicts, and consequently have to spend a longer period than other life convicts in custody before being eligible to be considered for premature release.

**Prisoners under Prison Punishment:** The study team also reviewed the conditions of prisoners serving prison punishment in addition to their court imposed sentences for alleged offences within the prison, and the ensuing curtailment of rights. Confinement in *andheri*/command room/single cells is permissible as a disciplinary measure under the prison manual. However, there are strict limits on the duration of such confinement, as well as the necessary safeguards and mandatory privileges during such confinement, which are not often adhered to. Further, **the transfer of prisoners as a means of punishment causes severe anxiety among inmates, who are often sent to prisons far from their hometowns and therefore have fewer opportunities to meet their families for prison visits.** Corporal punishment was also alleged by some of the inmates as a means of punishment resorted to from time to time.

**Prisoners under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act):** The rising number of cases registered under the POCSO Act, on further enquiry by the study team, revealed that while this is an important legislation to counter a very grave crime against children, it is also being grossly misused against teenagers in consensual sexual relationships. In some prisons, close to half the undertrial inmates are booked under this legislation.

*Measures have also been adopted in regard to vulnerable groups. Efforts are made to segregate young offenders, whether undertrials or convicts, in separate barracks in all prisons in order to check harassment by older prisoners. Transgender persons are kept in separate barracks in prisons, in pursuance of the NHRC letter, dated 16 October, 2020, titled, 'Human Rights Advisory for Protection of the Rights of LGBTQI+ communities in context of COVID-19 pandemic' and the subsequent advisory by the Ministry of Home Affairs, dated 10 January, 2022, on 'Treatment and Care of Transgender Persons in Prisons'. E-mulakat facility is particularly of benefit for persons belonging to other states and foreign national prisoners who often find it difficult to communicate with family. Chapter XXVI of the old Karnataka Prison Manual was titled 'Lunatics', which is now replaced with 'Prisoners with Mental Illness' in the revised Karnataka Prisons and Correctional Services Manual, 2021.*

### XIII. POLICE PRACTICES IMPACTING PRISONERS

**An estimated 42.9% of undertrials, 36.4% percent of convicts, 44.8% of females and as high as 82.6% of young offenders interviewed by the study team alleged that they had been subjected to violence in police custody (“worked on”, as it is colloquially known). The study team further examined whether the safeguards in the**

15 Annual Statistics Report 2018, published by Project 39A, NLU-Delhi, available here: <https://static1.squarespace.com/static/5a843a9a9f07f5ccd61685f3/t/5e20bda74c57ec0e60fb7895/1579204014716/2018Statistics.pdf>.

form of production before a magistrate, and medical examination both pre and post admission to prison act as checks on the same. An estimated 62.% of undertrials, 72.7% of convicts, 69.2% of women and 66.7% of the young offenders interviewed by the study team informed us that they had neither volunteered nor were they asked by examining doctors about custodial torture. The NHRC 'proforma for health screening of prisoners on admission to prison' for recording of medical parameters upon admission to the prisons is being followed in central prisons, but is yet to be adopted by all district and taluk prisons.

Oversight by judicial magistrates also leaves much to be desired given the extensive prevalence of custodial torture, as well as the practice of first production in the homes of the magistrate as opposed to being produced in court. It was also learnt that even when defence lawyers are informed about custodial torture, they often do not bring it on the court's records. All of these lapses by various functionaries cumulatively provide active and tacit support to the continuing practice of custodial torture.

#### XIV. SPECIAL CASE OF BODY WARRANTS

An order of production in court under s.267(1) of the CrPC is issued when a prisoner is required to be produced before a court during an inquiry, trial or other proceeding either to answer to a charge or for proceedings in that case. This might be necessary when a person is facing an inquiry/trial/proceeding in a case outside the jurisdiction of the prison in which he/she is being detained, in what might be called the 'main case'. If a person is no longer required to be in judicial custody in the main case – upon securing bail, or acquittal - then such an order of production does not require the person to be brought to court from prison. If their detention is necessary in these proceedings, then a legal arrest warrant or a warrant of remand must be secured. The Supreme Court and High Courts have passed directions to the effect that a production warrant is not a warrant of arrest/remand order and cannot be treated as one, as it is in violation of Article 21 of the Constitution of India. Despite this, the study team learnt of the **large-scale misuse of production warrants, or 'body warrants' as they are known in the state.** They are often used to prevent a person who has secured bail in the main case from leaving custody. There is **inconsistent practice on whether a person can be detained merely on a body warrant, or must necessarily be released, with an urgent need to streamline the process and prevent the body warrant from becoming an instrument of prolonged detention.**

*In a landmark order, dated 11.03.2022, by the Hon'ble High Court in the case of M. Shashidhar @ Shashi and Anr. v. State of Karnataka (Cr. Petition No. 1396 of 2022) held that "the temporary transit of accused in pursuance of an order passed under s. 267 CrPC would not authorise jail authorities to detain him in custody". Prompt action by the prison department in issuing a circular in regard to the same was much appreciated whereby officers in-charge of all prisons were directed to release persons who were being detained only on account of a body warrant.*

#### XV. PRISON PERSONNEL AND THEIR CHALLENGES

**Karnataka is presently leading in staff recruitment across the country. An estimated 33% share of women in recent enrolments is a good practice to be replicated in other states.** There are a number of welfare measures adopted by the Karnataka Prison Department in ensuring well-being of prison personnel.

The various issues articulated/emphasised by the prison personnel of different ranks

while interacting with the study team during prison visits across the state include – **high stress levels, lack of an effective grievance redressal mechanism, lack of opportunity to grow in the career, inadequate training opportunities or, in some cases, dire living conditions.** The daily routine of the guarding is highly demanding, requiring them to discharge several different functions. Leaves are not easy to avail owing to the shortage of staff. The Arogya Bhagya Yojana, which is the medical insurance benefit extended to the staff, has several issues of concern that require redress. The policy does not cover hospitals in many cities requiring personnel to travel to other cities to avail medical treatment. Further, it does not cover parents of personnel, which is benefit of immense need. Benefits are provided by the department from time to time, but more concerted efforts can go a long way in ensuring that the morale is high, which is crucial for a job as demanding as this.

*Police Housing Corporation has been requested to construct 300 new staff quarters in different districts in the states, particularly where the quarters are old and in dilapidated condition. For stress management, prison personnel are engaged in yoga classes through Navchethana initiative. Additionally, online training opportunities are regularly provided by various institutions during the pandemic to keep them informed of the latest developments.*

**One may assume that these issues may have been further aggravated due to the pandemic. For information on the response of the Karnataka Department of Prisons and Correctional Services, please see Annexure-I.**

## KEY RECOMMENDATIONS

The findings of the report guide the question ‘what needs to be addressed?’ for which, answers to the question of ‘how should these issues be addressed?’ is of equal significance. The sincere and coordinated effort from all stakeholders – state government, judiciary, police, legal services institutions and various departments (health, education, women and child and social welfare) is absolutely essential in bringing about any substantive change or reform in the world of prisons. It is hoped that this report proves to be a base document for all stake holders to take forward the urgent task of prison reforms.

### STATE GOVERNMENT:

- To ensure that vacancies at all levels are filled in a time-bound manner.
- To increase allocation of financial resources to cater to the ever-increasing need for improved infrastructural facilities and for the various initiatives introduced by the Prison Department to ensure implementation of standards in prisons in Karnataka.
- To create of new posts of such as welfare officers, technical officers and nursing staff and to fill sanctioned posts of medical officers/staff, teachers and the newly created post of legal officers.
- To devise a permanent solution to the crisis of revenue prisons is required in the form of state government notification/circular/order discontinuing the practice of revenue prisons, since this will require inter-departmental restructuring.
- To ensure that Non-Official visitors (NOVs) are duly appointed for all prisons, including women NOVs for women enclosures and that they are trained in collaboration with the Academy of Prisons and Correctional Administration, Vellore.
- To amend the state prison rules to include the constitution and functioning of Board of Visitors (BoVs) for taluk prisons and direct all District Magistrates to constitute BOVs for every prison, including taluk prisons and revenue prisons (if functional).
- To assess the number of police escorts required, over and above the sanctioned posts, and make arrangement for the same to ensure production of undertrials to courts on dates when his/her matter is or is likely to be taken up.
- To develop “a clear policy for skill development programmes and vocational training of prisoners” as provided in the Model Prison Manual 2016 to cater to the needs of prisoners coming from both rural and urban areas that would ensure employment, or self-employment once the inmate is released from prison.
- To review the policy of non-consideration of certain convicts for emergency parole only on grounds of the section/sentence imposed on them and to refrain DAR/CAR the practice of imposing exorbitant cost of escorts.
- To revise the GO No. HD 384 PRA 2015 dated 21.07.2016 in regard to the list of exemptions for consideration for premature release.
- To set up at least one central prison as mental health establishment as mandated under the Mental Healthcare Act, 2017.
- To allocate requisite funds to build new staff quarters in required districts.
- To increase in the salaries of prison staff in order to be brought at par with the salaries of the revenue department.

### PRISON DEPARTMENT:

- To provide a kit with basic amenities including toothpaste, soap and washing powder to all inmates upon admission.
- To segregate inmates below the age of 21 from the older prisoners and to direct all prisons to be compliant to the lock-up hours as per the prison rules.
- To construct more toilets and bathrooms in prisons, where required, in order to reach the desired ratio.

- To upgrade the capacity and modernize the interview rooms, in a phased manner, starting with central prisons.
- To extend phone facilities on priority basis in all district prisons, taluk prisons and revenue prisons (if functional).
- To ensure that a law officer is appointed to every central prison at the earliest.
- To monitor the numbers of non-productions every quarter and report the same on yearly basis to the State Home Department in order to address the issue at the state-level.
- To establish active linkages with the department of Technical Education, Directorate of Industries (including Cottage Industries), Industrial Training Institutes, Polytechnics and Vocational Training Institutions as well as approved NGOs to develop vocational training programmes on a practical and pragmatic basis, consisting of services required by the community.
- To open prisoners' bank accounts and their due wages must be credited at the earliest.
- To streamline the process by which a convict can apply for ordinary and special remission easily and to introduce a system for the convicts to be able to access their history ticket at least at the end of every quarter to take note of the remission earned.
- To direct the Superintendents to identify cases of convicts who are exempted from the benefit of the provisions of premature release and assist them in sending their applications to the Governor or the President as the case may be, under Article 161 and Article 72 of the Constitution, respectively.
- To fix a timeline for when a parole application can be decided by the Head Office of the prison department, by which time a reasoned order of acceptance or rejection must be communicated in writing to the prisoner concerned.
- To designate a senior lady officer at the headquarters to be entrusted with the job of looking after the problems of women prisoners as recommended by the Mulla Committee.
- To ensure that women prisoners are provided with access to prison facilities including visit to the hospital, library and office area, etc. and gainful employment opportunities are provided to them in a sustained manner.
- To ensure that children kept under protective custody in a home of the Department of Social Welfare shall be allowed to meet their mothers at least once a week.
- To engage a part-time lady medical officer of the District Government Hospital to visit the prison women enclosure weekly.
- To ensure that women prisoners are provided free sanitary pads with ready access to sanitary and washing facilities, safe disposal arrangements, as well as provision of hygiene items.
- To direct prisons to segregate inmates between the age group of 18 and 21, with special focus on their education and skill development, as mandated under the Model Prison Manual, 2016.
- To ensure that all prisons have special sections demarcated for transgender persons. In case of paucity of space, for the purpose of lodging a transgender person in men or women section of prison, self-identity of the person must be respected.
- To add a separate provision to make phone facilities free of charge for undertrials belonging to other states. Introduce the system with video conference facilities to ensure periodic communication of foreign national prisoners with their families.
- To coordinate with the Department of Health to extend the district mental health programme to all prisons in their respective districts.
- To allow death row prisoners to work, like any other convict prisoner and consider transferring them to prisons closer to their homes.
- To direct the senior prison officers, mandated to visit prisons in their jurisdiction to monitor the conditions of persons detained in separate confinement.
- To set up a grievance redressal mechanism for prison personnel at the head office with clear timelines for redressal of concerns on priority.

- To enforce weekly off for guarding personnel and to provide at least one long leave in a year to all staff to ensure there is no burn out in the force. The TA, DA and HRA allowances must also be revised.
- To constitute a Staff Welfare Committee and a staff welfare fund at every prison as recommended in the Model Prison Manual, 2016.

#### **STATE POLICE DEPARTMENT:**

- To issue an order directing all Investigation Officers to comply with s.41 B CrPC and inform a relative or a friend of the arrestee at the time of arrest, both in letter and spirit. It might also be useful if a contact number of a relative of the arrested person is recorded in the arrest memo.
- To ensure that the NHRC guidelines on arrest<sup>16</sup> with regards to setting up a complaint redressal mechanism, to promptly investigate complaints of violation of guidelines and to take corrective action, are scrupulously followed.
- To direct all the Superintendent of Police to periodically review the police station reports on rejected parole applications to introduce transparency in the process and to ensure that proper reasons are provided in place of mechanical rejections.
- To direct all police stations to immediately discontinue the practice of use of body warrants as per the directions of the High Court.

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#### **STATE DEPARTMENT OF HEALTH & FAMILY WELFARE**

- To ensure that all the sanctioned posts of Medical Officers and other medical staff are filled in a time-bound manner on priority basis and that all prisons (including district and taluk) have dispensaries.
- To ensure that the NHRC 'proforma for health screening of prisoners on admission to jail' must be filled by medical officers in all prisons and the medical officers either appointed or deputed to prisons and they must be given training in this regard.
- To address the issue of medical escorts in consultation with the DAR/CAR and Superintendents of Police in all districts and ensure that In every Central prison, two police escorts for medical purposes must be stationed at all times to meet any emergency.
- To ensure that an ambulance is functional in every prison.
- To conduct awareness programs on prevention of skin ailments in all prisons.

#### **STATE LEGAL SERVICES AUTHORITIES:**

- To streamline the functioning of Undertrial Review Committees (UTRCs) by – inviting officer in-charge of all the prisons in the district to the UTRC meeting; adopting 'Custody Warrant' format; to look into the issue of, "non production of UTPs before the Remand/Trial Court either in person or via video conferencing facility on account of lack of logistic facilities" as suggested under the NALSA UTRC SOP; and to take special note of POCSO cases and when the statements of the main witnesses have been recorded, consider recommendation for bail.
- The SLSA must conduct a state-level consultation of all DLSAs to understand the vast difference between the number of cases identified and number of cases recommended and ultimately released and address their challenges.
- To direct the DLSAs to streamline the functioning of jail legal aid clinics by setting up suggestion/complaint box in each Legal Service Clinic in the prison as mandated by the NALSA SOP 2016; providing basic law books including copies of the IPC, CrPC, IEA, POCSO Act for use both by the JVLs and inmates; ensuring that the PLVs are regularly paid due remuneration every month following a fixed cycle of payment and pending remuneration as on date, is cleared on priority basis.

- To make it mandatory for legal aid lawyers to meet their clients in prisons regularly.
- To develop a scheme in order to implement the guidelines issued by NALSA in 2019 on 'Early Access to Justice at Pre-Arrest, Arrest and Remand Stage' to implement s.41D of the CrPC with the assistance of the panel lawyers and paralegals, in conjunction with the police department.

#### **DISTRICT LEGAL SERVICES AUTHORITY:**

- To ensure that a jail visiting lawyers must pay attention to the legal aid needs of the foreign national prisoners and women prisoners. They must specifically visit the female barrack and proactively explain them the provisions under which they are detained and address their legal concerns.
- To conduct a detailed survey of prisoners, both undertrials and convicts to find out if anyone was a minor at the time of their offence.
- To direct the jail visiting lawyers to keep a constant watch on newly admitted prisoners to ensure that no person who is below 18 years of age or whose age is disputed is detained in prison.

#### **HIGH COURT LEGAL SERVICES COMMITTEES AT BENGALURU, DHARWAD AND BELAGAVI:**

- To send a letter to all central prisons informing them about the observations in *Prem Kumar v. State of Karnataka*,<sup>17</sup> to ensure that legal aid lawyers speak with their clients through video conferencing.
- To set up a mobile training team for all central prisons and DLSAs to train them in using the online portal set up by the Supreme Court Legal Services Committee (SCLSC) for online filing of petitions to the Supreme Court.

#### **JUVENILE JUSTICE BOARDS:**

- To conduct regular inspection of prisons meant for adults to check if any child is lodged in such prisons and take immediate measures for transfer of such a child to the observation home as mandated under section 8(3)(m) of the Juvenile Justice Act.

#### **STATE COMMISSION FOR WOMEN:**

- To appoint a nodal officer to periodically visit women enclosures, look after the issues concerning women prisoners, their children and facilitate effective after-care services. Efforts also should be made to conduct and promote comprehensive, result-oriented research on the issues faced by women prisoners and their children.

#### **HIGH COURT:**

- to formulate a Standing Operating Procedure for filing of jail appeals at the High Court with clear role of each stakeholder;
- to coordinate with the Supreme Court Legal Services Committee (SCLSC) and develop step-by-step guidelines for each stakeholder, to assist the convicts in filing timely appeals to the Supreme Court.
- To constitute a high-level expert Committee headed by a High Court judge, on an urgent basis, to conduct a state-level assessment of court production via physical productions as well as through videoconferencing facilities.

- To devise a mechanism to ensure that court translators are appointed in cases involving non-Kannada speaking accused and proceedings are explained and documents are provided to them in a language known to them.
- To consider issuing a directive to all sentencing courts such that set-off period served as undertrials in custody is necessarily calculated for all cases in compliance with the mandate of section 428 CrPC.
- To develop an orientation pack for DLSA Secretaries and prison heads containing all relevant legal procedures in regard to foreign nationals, asylum seekers and stateless persons.
- To issue appropriate guidelines to be followed when first production is conducted at the residence of the Magistrate, in order to ensure that existing safeguards such as access to a remand lawyer are protected.
- To direct the prison medical officers to take photographs of all the injuries/ bruises/ cuts on the body of the prisoners as part of the first medical examination to be kept on record.
- To direct all magistrate and sessions courts in the state to clarify that persons cannot be detained merely on a body warrant, and issue practice directives to this effect.
- To review the practice of Advisory Boards not considering convicts for release if their appeals are pending either before the High Court or the Supreme Court, and pass appropriate guidelines to the Prison Department to discontinue the same such that convicts eligible for premature release are considered, without having to withdraw pending appeals.
- To streamline and liberalise bail practices including lowering surety amount for indigent accused, not insist on local sureties where not available, and discontinue the practice of 'double surety'.

#### **SUPREME COURT**

- To consider amending Order XXII Rule 7 of the Supreme Court Rules, with specific reference to jail appeals. The existing provision grants extensive discretion to the Registrar to place records considered 'relevant' before the concerned bench, at the time of admission of an appeal. Since a Jail Appeal is often filed with bare minimal documents, calling for complete records to ensure a fighting chance at the stage of admission of the appeal is a necessary safeguard for indigent prisoners.



**PART - A**  
**THE WORLD OF PRISONS**

# THE WORLD OF PRISONS

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Prison is a state subject in our constitutional framework.<sup>18</sup> This essentially means that every State Government exercises powers over the administration of prisons in their state. In Karnataka, it is the Department of Prisons and Correctional Services, under the State Home Department, which is responsible for the functioning and management of prisons in the state.

At the time of the visits conducted by the study team, the Karnataka Prison Department was headed by the Additional Director General of Police and Inspector General of Prisons, assisted by the Deputy Inspector General of Police (Prisons), Deputy Inspector General of Prisons (Headquarters, North and South) and Gazetted Manager at the Head Quarters. By a notification of the State Government, dated 30 July 2019, the name of the department was changed to the Department of Prisons and Correctional Services and the head of the department was redesignated as the Director General, Prisons and Correctional Services, Karnataka state. It was done in view of the order of the Supreme Court which directed all states to adopt uniformity based on the Model Prison Manual 2016.

A Deputy Inspector General of Police (IPS cadre) in addition to the Deputy Inspector General of Prisons (Headquarters, North and South) has been introduced. All the Central Prisons, District Prisons and Taluk Prisons are being managed by departmental staff. The objectives of the Prison Department are as follows:

1. Hold prisoners (convicts, undertrials, civil prisoners and detenues) in custody securely and safely in prison on conviction or on remand from competent courts till their lawful release.
2. Reform the inmates to become good citizens after their release.
3. Imparting vocational training in various trade crafts to gain skill, to correct, to reform and thereafter rehabilitate them as good citizens.<sup>19</sup>

In addition to the Indian Prisons Act of 1894, the prisons in Karnataka are governed by the Karnataka Prison Manual 1978 (henceforth, 'Karnataka Prison Manual'), the Karnataka Prisons Act 1963, the Karnataka Prisoners Act 1963, the Karnataka Prison Rules 1974 (henceforth, 'Karnataka Prison Rules'), and various circulars and government orders issued by the Prison Department from time to time.<sup>20</sup>

At present, there are six categories of prisons in Karnataka –

- I. Central Prisons, where convicts with a sentence over six months' imprisonment are lodged along with under trial prisoners of the district in which the central prison is located;
- II. District Prisons, located in the district headquarters of each district, where under trial prisoners and convicts with a sentence less than six months imprisonment are lodged;
- III. Taluk Prisons, located in taluk headquarters, where under trials and convicts with a sentence

<sup>18</sup> Entry 4 of List II of the Seventh Schedule to the Constitution of India.

<sup>19</sup> Karnataka Prisons and Correctional Services, Objective, available here: <https://www.karnatakaprison.in/objectives.html>, last visited on 04.02.2021.

<sup>20</sup> At the time of this study, a new and revised version of the Prison Manual, in consonance with the Model Prison Manual of 2016, had been drafted and was under consideration by the prison department.

less than 15 days imprisonment are lodged;

- IV. Open Prisons, where long term convicts with satisfactory prison records are sent and have the freedom to work in and around the prison and return in the evening. There is only one open prison in Karnataka, at Devanahalli;
- V. Women's Prisons, which as the name suggests has only female inmates, including under trials and convicts. This was first set up in Tumakuru and was shifted to Shivamogga in 2019;
- VI. Revenue Prisons, a unique category of prisons, falling under the jurisdiction of the revenue department, with budget allocation from the prison department, where under trial prisoners in the taluk in which the revenue prison is located are lodged.

As of 1 January 2019, there were a total of 51 prisons operational in Karnataka; 45 under the Karnataka Prison Department and 7 Revenue Prison under the Revenue Department, situated across 30 judicial and administrative districts. The 45 prisons under the Prisons Department include 9 central prisons, 21 district prisons, 14 taluk prisons, 1 open prison and 1 Women's prison. As per the Prison Statistics India 2019, as against the capacity of 14,315 there were 14,515 prisoners in Karnataka prisons, with the occupancy rate of 101.4%.<sup>21</sup>

In the following three chapters, the focus is on the structure and resources of prisons in the state of Karnataka. This will include a consideration of prison resources (both physical infrastructure and human resources), the special case of the category of prisons known as revenue prisons, and prison oversight mechanisms.

#### UPDATES AS OF APRIL 2022

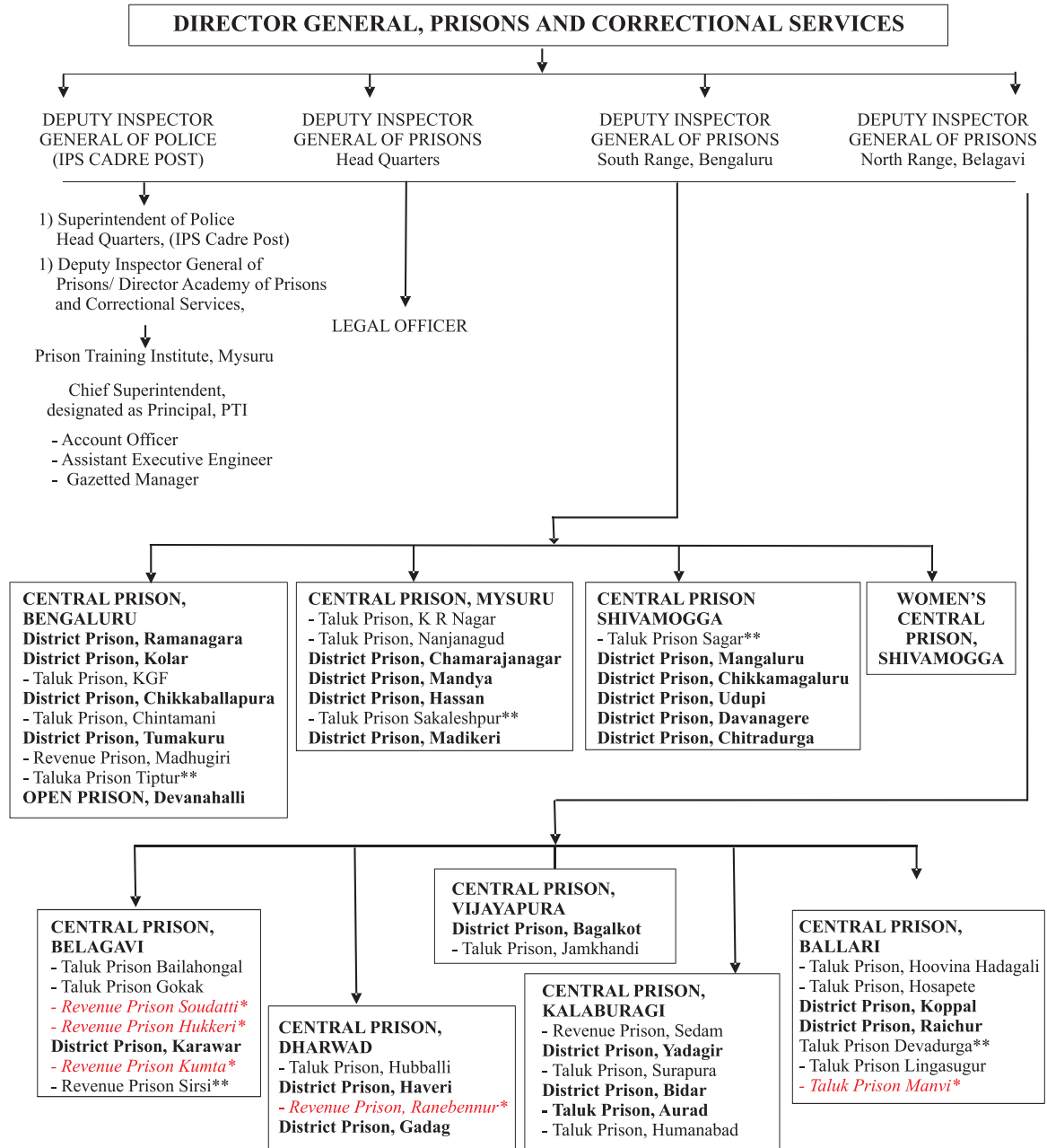
Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services are as follows:

- ✓ During visits by the study team 51 prisons were operational. However, at present, there are 52 prisons of varying categories in the state with about 15,000 prisoners and 3,500 prison officers. The table below provides the names of prisons that were made operational/closed down after the prison visits were completed by the study team:

Prisons that have now become operational	Prisons that have been closed down
Taluk Prison Tiptur	Taluk Prison Manvi
Taluk Prison Sakaleshpur	Revenue Prison Soudatti
Taluk Prison Sagar	Revenue Prison Hukkeri
Taluk Prison Bailahongal	Revenue Prison Kumta
Taluk Prison Devadurga	Revenue Prison Ranebennur
Revenue Prison Sirsi	

- ✓ **New Karnataka Prisons and Correctional Services Manual, 2021:** To streamline the prison administration in the state, Karnataka Prison Manual 1978 has been revised in line with the Model Prison Manual, 2016 of the MHA. The 'Karnataka Prison & Correctional Services Manual-2021' has been approved by the government and notified on 02 February 2022. This revision of the Manual has come almost after 43 years. Karnataka is among the few States in the country to revise their prison manual based on the Model Prison Manual. All efforts have been made to include in the revised 'Manual' the latest directions from the judgements of the Hon'ble Supreme Court of India and the High Court of Karnataka in addition to the directions issued from the Ministry of Home Affairs (MHA), Government of India; National Human Rights Commission (NHRC); State Human Rights Commission (SHRC); Home Department, Government of Karnataka; and other statutory bodies.

# ORGANOGRAM OF THE DEPARTMENT OF PRISONS & CORRECTIONAL SERVICES



\* Prisons that were closed down after the visit of the study team.

\*\* New Prisons that have become operational since the visit by the study team.

# CHAPTER - 1

## PRISON RESOURCES

The subject of prisons often does not find priority from most governments. In this context, allocation of budgets for prisons and the facilities available in prisons are often less than what is necessary or desirable. Despite these constraints, the Prison Department in Karnataka has tried to cope with and utilise the available resources to ensure provision of some of the basic amenities to prisoners. This chapter focusses on issues pertaining to physical infrastructure, financial resources and human resources in Karnataka's prisons.

### I. PHYSICAL RESOURCES

#### STANDARDS

As per Rule 902 of the Karnataka Prison Manual, every prisoner is entitled to 50 square feet of ground space and 700 cubic feet of air space. Each prison has to be constructed and maintained on the basis of certain well-defined norms. The prison structure should be designed to provide all the necessary facilities for prisoners to be treated humanely and subject them to an environment conducive for their reformation.<sup>22</sup> The state government must adequately provide for the diversification of institutional resources to cater to the differential requirements of prisoners for custody and correction.<sup>23</sup>

#### OBSERVATIONS AND ISSUES

- 1) Occupancy in Prisons: The Prison Statistics India 2018 reports that the prison occupancy rate in Karnataka as on 31st December was 101.7, which is slightly less than that of previous years: 106.1% in 2017, 107.9% in 2016, 95.09% in 2015 and 106.3% in 2014. As on 31st May 2019, the occupancy rate in Karnataka's prisons was 109.9% (refer to Chart 1.1 below).<sup>24</sup> These numbers however do not provide an accurate picture of overcrowding in individual prisons. The data provided by the prison department showed that 20 out of 51 prisons were overcrowded. The top three prisons in each of the above categories were – Central Prison Vijayapura (173%), Central Prison Mysuru (149%), Central Prison Kalaburgi (147%); District Prison Gadag (219%), District Prison Chikkaballapura (214%), District Prison Yadgir (183%); Taluka Prison Gokak (175%), Taluka Prison Hubballi (158%), Taluka Prison Shorapur (126%) and Revenue Prison Hukkeri (207%). The team also found that contrary to data, Central Prison Ballari was overcrowded as several portions of the prison, included in the sanctioned capacity, were not in usable condition. Among district prisons, some like Mangaluru, Davanagere and Yadagir are highly overcrowded, while those in Karawar and Chikkamagalur have a low occupancy rate, whereas some others like Chikkaballapur which is highly crowded had doubled its capacity by setting up new barracks at the time of visit by the study team. Revenue prisons by design are overcrowded.

<sup>22</sup> Para 2.01, The Model Prison Manual 2016.

<sup>23</sup> Para 2.03, The Model Prison Manual 2016.

<sup>24</sup> This data excludes CJ Bangalore and revenue prisons.

**Table 1.1: Capacity, Inmate Population and Occupancy Rate of Prisons as on 31 May 2019**

Name and type of prison	Capacity of Prison			Total Prison Population			Occupancy Rate (%)		
	Male	Female	Total	Male	Female	Total	Male	Female	Overall
<b>Central Prisons</b>									
Ballari	717	30	747	578	18	596	80.61	60	79.79
Banglore	3226	100	3326	4696	163	4859	145.57	163	146.09
Belagavi	1085	77	1162	762	34	796	70.23	44.16	68.5
Dharwad	500	175	675	512	33	545	102.4	18.86	80.74
Kalaburgi	515	25	540	764	31	795	148.35	124	147.22
Mysuru	532	30	562	781	57	838	146.8	190	149.11
Shivamogga	500	0	500	411	0	411	82.2	0	82.2
Shivamogga Women	0	100	100	0	54	54	0	54	54
Vijaypur	300	20	320	533	21	554	177.67	105	173.13
<b>District Prisons</b>									
Bagalkot	210	50	260	118	4	122	56.19	8	46.92
Bidar	116	4	120	147	12	159	126.72	300	132.5
Chamarajanagar	95	10	105	116	0	116	122.11	0	110.48
Chikkaballapura	100	0	100	214	0	214	214	0	214
Chikmagalur	200	25	225	190	7	197	95	28	87.56
Chitradurga	275	25	300	140	8	148	50.91	32	49.33
Davanagere	150	0	150	224	0	224	149.33	0	149.33
Gadag	40	8	48	105	0	105	262.5	0	218.75
Hassan	210	9	219	246	3	249	117.14	33.33	113.7
Haveri	100	10	110	169	10	179	169	100	162.73
Karwar	324	62	386	119	3	122	36.73	4.84	31.61
Kolar	70	12	82	141	9	150	201.43	75	182.93
Koppal	100	10	110	166	15	181	166	150	164.55
Madikeri	225	50	275	129	7	136	57.33	14	49.45
Mandya	264	8	272	210	11	221	79.55	137.5	81.25
Mangalore	200	10	210	375	7	382	187.5	70	181.9
Raichur	140	20	160	163	9	172	116.43	45	107.5
Ramanagra	175	25	200	179	0	179	102.29	0	89.5
Tumakuru	300	40	340	263	16	279	87.67	40	82.06
Udupi	100	10	110	108	2	110	108	20	100
Yadgir	60	0	60	110	0	110	183.33	0	183.33
Vijaypur	300	20	320	533	21	554	177.67	105	173.13
<b>Taluk Prisons</b>									
Aurad	80	15	95	11	0	11	13.75	0	11.58
Chintamani	100	25	125	47	5	52	47	20	41.6
Gokak	32	8	40	70	0	70	218.75	0	175
Hadagali	250	25	275	17	0	17	6.8	0	6.18
Hospet	40	8	48	2	0	2	5	0	4.17

Hubbali	97	8	105	166	0	166	171.13	0	158.1
Humnabad	60	0	60	54	0	54	90	0	90
Jamakhandi	175	25	200	75	6	81	42.86	24	40.5
KR Nagar	115	35	150	94	0	94	81.74	0	62.67
Lingasugura	60	0	60	20	0	20	33.33	0	33.33
Manvi	50	0	50	34	0	34	68	0	68
Nanjanagudu	80	0	80	30	0	30	37.5	0	37.5
Shorapur	50	0	50	63	0	63	126	0	126
Special Sub Jail KGF	76	0	76	52	0	52	68.42	0	68.42
<b>Revenue Prisons</b>									
Hukkeri	15	0	15	31	0	31	206.67	0	206.67
Kumta	8	0	8	8	0	8	100	0	100
Madhugiri	74	0	74	47	0	47	63.51	0	63.51
Ranebennur	14	0	14	0	0	0	0	0	0
Saundatti	16	0	16	11	0	11	68.75	0	68.75
Sedam	70	0	70	40	0	40	57.14	0	57.14
Open Air Prison Devanhalli	80	0	80	48	0	48	60.00	0.00	60.00
<b>TOTAL</b>	<b>12371</b>	<b>1094</b>	<b>13465</b>	<b>13589</b>	<b>545</b>	<b>14134</b>	<b>109.85</b>	<b>49.82</b>	<b>104.97</b>

2) **Year of Establishment of Prisons:** In general, prisons in the state are very old, with only 18 prisons being constructed post 2000.<sup>25</sup> Among the central prisons, Central Jail Shivamogga and Womens' Central Jail Shivamogga are the most recently built (in 2018). Four central prisons are nearly 150 years old,<sup>26</sup> and two others were established in the 20th century.<sup>27</sup> Three district prisons were built nearly 50 years ago,<sup>28</sup> and 12 district prisons were established after the year 2004. Between 1900 and 1950, 5 taluk prisons were established,<sup>29</sup> between 1951 and 2000, seven more were added,<sup>30</sup> and after 2000, 3 more taluk prisons have been established.<sup>31</sup> Among the revenue prisons, three revenue prisons were established 100 years ago.<sup>32</sup> The open prison at Devanhalli was opened in 1972.

The result of old structures is that prisons that were never designed for all the recently sanctioned amenities including VC systems, CCTV cameras, legal aid clinics, western toilets, etc., have to cope with these additional demands. Several of the older prisons require re-roofing and re-flooring, in addition to expansion of the visiting room and office areas. The other serious concern with older prisons is the difficulty in maintaining hygiene. For instance, in Bijapur and Belagavi central prisons, the very old building structures have resulted in a massive bed bug infestation which is uncontrollable. The Karnataka Prison Manual stipulates many requirements for upkeep of the prison including annual whitewash,<sup>33</sup> thorough ventilation of the wards with window area being at least 10% of the floor area,<sup>34</sup>

25 Central Prisons – Bengaluru, Shivamogga (both Men and Womens' prisons); District Prisons – Udupi, Mangalore, Madikeri, Chikkaballapura, Tumakuru, Chikkamagalur, Chitradurga, Chamrajnagar, Haveri, Bagalkot, Ramanagara and Koppal; Taluk Prisons – Jamkhandi, Chintamani, and Nanjanagudu.

26 Dharwad (1853-54), Ballari (1884), Vijaynagar (1881), and Mysuru (1862).

27 Kalaburgi and Belagavi.

28 District Prisons Mandya, Yadagir and Gadag.

29 Manvi, Hosapete, Kumta, Madhugiri and special taluk prison KGF.

30 Hubbali, Humanabad, Aurad, Lingasuguru, Hedagali, Shorapur and K.R. Nagar.

31 Nanjanagudu, Chintamani and Jamkhandi.

32 Hukkeri and Ranebennur Revenue Prison and Taluk Prison Sedam.

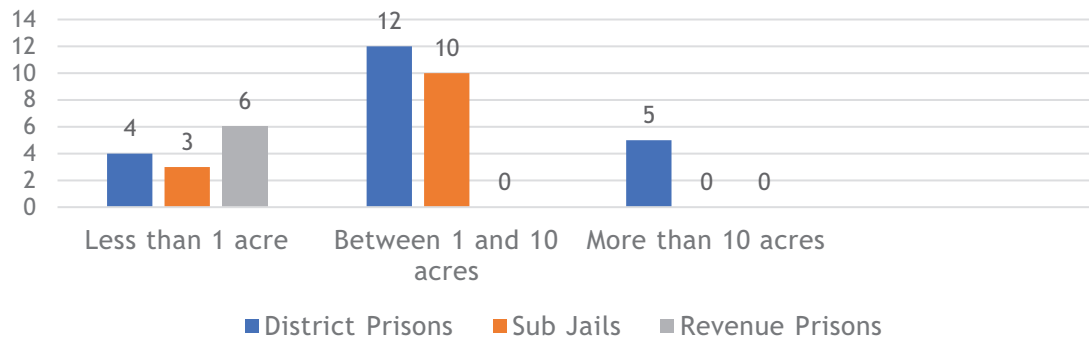
33 Rule 912(iii).

34 Rule 911.

annual cleaning of wells,<sup>35</sup> etc. However, the study team found several prisons that were in need of whitewash, cleaning and proper ventilation.

- 3) **Area of Prisons:** The below chart provides for the number of prisons with less than 1 acre to prisons with more than 10 acres in total area.

**Chart 1.2: Area of Prisons**



- 4) **Solitary cells:** The highest number of solitary cells is in Central Prison Shivamogga (49), which is also peculiar to its design. Among central prisons apart from Shivamogga, 3 prisons have less than 10 solitary barracks,<sup>36</sup> 2 prisons have more than 10 of these barracks,<sup>37</sup> and two do not have any.<sup>38</sup> Among district prisons, 9 prisons<sup>39</sup> have 5 or less solitary barracks; 5 prisons<sup>40</sup> have between 5 and 10 barracks; and 6 prisons<sup>41</sup> do not have any. Chikkamangalur district prison has 20 solitary barracks. Among taluk prisons, only 5 prisons<sup>42</sup> have solitary barracks with the highest number being 5, whereas other taluk prisons do not have any. None of the revenue prisons have any solitary barracks. Out of all the prisons, four have barracks designated for transgender persons.<sup>43</sup>

- 5) **Separate cells for transgender inmates:** Out of the 51 prisons studied, four reported as having barracks designated for transgender persons.<sup>44</sup>

6) **Other Infrastructural Facilities:**

- a. **Kitchen** – Kitchens in all central and most district prisons (i.e., except Gadag, Hassan and Mandya) have been modernized with steamers, chimneys, mixers, kneaders and refrigerators. This has considerably upgraded the infrastructure and has proved useful for cooking and making available large quantities of food at a time in these prisons. The study team found old-style functional kitchens in some taluk prisons including Gokak and Nanjanagudu, however here the need for modernization of kitchen was not expressed by the prison staff due to small prison populations. Kitchens were expected to be functional soon in taluk prisons Jamkhandi and Huvinahadagalli, with directions having already been

35 Rule 927.

36 Central Prison Shivamogga (women), Central Prison Vijaypur and Central Prison Mysuru.

37 Central Prison Kalaburagi and Central Prison Dharwad.

38 Central Prison Bangalore and Central Prison Belagavi.

39 District Prison Udipi, District Prison Mangalore, District Prison Chikkaballapura, District Prison Tumkuru, District Prison Chamarajanagar, District Prison Karawar, District Prison Haveri, District Prison Gadag and District Prison Bagalkot.

40 District Prison Madikeri, District Prison Chitradurgaa, District Prison Raichur, District Prison Ramanagra and District Prison Koppal.

41 District Prison Hassan, District Prison Mandya, District Prison Yadagiri, District Prison Bidar, District Prison Kolar and District Prison Davanagere.

42 Taluk Prisons Hubballi, Aurad(B), Chintamani, Hadagali and Nanjangudu.

43 Central Prison Mysuru, District Prison Madikeri, District Prison Raichur, and three in Taluk Prison Manvi.

44 Central Prison Mysuru, District Prison Madikeri, District Prison Raichur, and three in Taluk Prison Manvi.



issued from the head office to open kitchens for use, given the increasing number of inmates in these prisons. In prisons with small populations (all revenue prisons and taluk prisons such as Manvi, Lingsugur and Hospete), or shortage of space (such as the district prison in Yadgir), the practice is to procure prepared food through vendors.

- b. Water Treatment Plant** – This is one of the basic requirements which is not available in all prisons. While all central prisons have an RO (reverse osmosis) plant installed, 50% of district prisons do not have a water treatment plant and only 33% of the taluk prisons have such a facility. None of the revenue prisons and specials prisons have this facility.

Number of Prisons with water treatment plant/ RO plant for drinking water		
Type of Prison	Yes	No
Central Prisons	9	0
District Prisons	11	10
Taluk Prisons	5	8
Revenue Prisons	0	6
Special Prisons	0	1

- c. Electronic equipment** – Video conference (VC) units have been provided by High Courts as well as the head office of the prison department for all prisons except for revenue prisons. While VC systems are fully functional in all prisons, the proportion of use differs across prisons. Further, technical issues like broadband connectivity were highlighted by the prison authorities. The usage of VC for court production is dealt with in detail in Chapter 8 of the report. Walkie talkies have also been provided across most prisons. In addition to these, some prisons now have metal detectors installed at the entrance.

## II. FINANCIAL RESOURCES

### STANDARDS

The expenditure of the Prisons Department is controlled by the Inspector General, subject to the rules and Orders of the Government. He/she must annually submit to the Government the prescribed budget of charges and receipts in accordance with the General and Special Orders issued by Government from time to time. At the commencement of each Financial Year s/he must distribute the total budget allotment among the several prisons under them. S/he is also authorized to sanction all expenditure within the budget allotment and in exercise of the powers delegated to him/her from time to time by General or Special Orders of Government.<sup>45</sup> At the prison level, under the general direction of Inspector General, the Superintendent exercises control over expenditure of his/her Prison and must exercise the financial power, delegated to him/her by the government from time to time.<sup>46</sup>

In recent times, it has also been a tradition to allocate funds for the construction of new prisons when the state budget is presented before the Legislative Assembly. In the 2019-20 budget, it was declared that there would be new central prisons constructed in Vijayapura (where the existing prison was constructed in 1881) and Bidar (which currently has a district prison), and a sub-jail with a capacity of 200 prisoners at Arasikere. In the 2018-19 budget, funds were sanctioned for the construction of a central prison in Mangaluru, work for which was underway at the time of the visits conducted by the study team. There is on-going repair work in the following

<sup>45</sup> Rule 3, Karnataka Prison Manual.

<sup>46</sup> Rule 57, Karnataka Prison Manual.

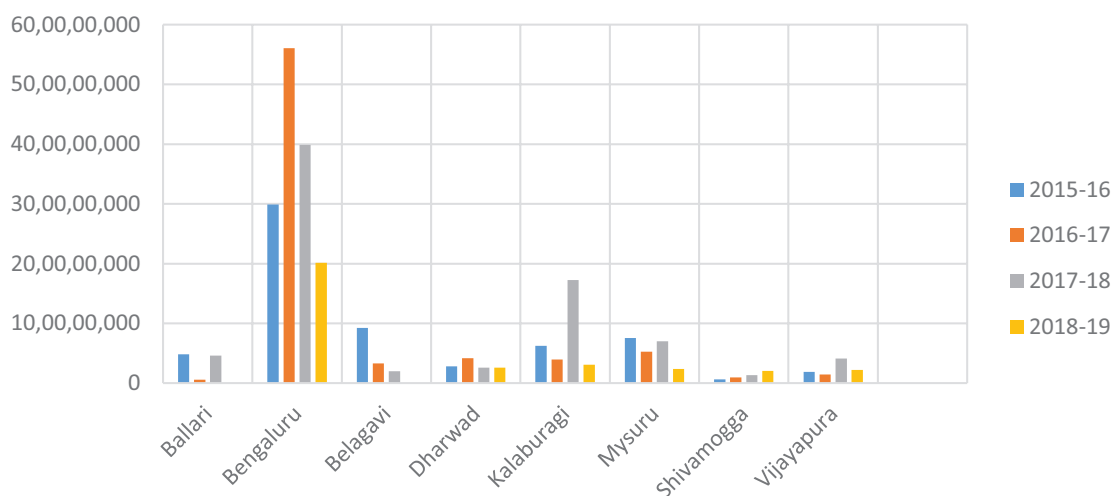
prisons: Haliyala, Kadur, Aland, Bidar, Virajpet, Chikkapballapur, Bangalore, Harappanahalli, Mangaluru. Some of these prisons were temporarily closed for construction work at the time of visit by the study team. Further, the state budget for the fiscal year 2019-20 included funds for maintenance, capital, construction of new prisons, modernization, construction of prison staff quarters, direction and administration, share for APCA (the regional training institute for prison officers of the southern states), prison employees' welfare schemes and prison manufactures.

### OBSERVATIONS AND ISSUES

Central Prison Shivamogga is the only prison showing an upward trend in terms of budget allocation. However, on an overall consideration, Shivamogga has a comparatively lower budget than other prisons. Moreover, one prison is not monopolising the funds, each year the prison receiving the highest budget is different.<sup>47</sup> Among the central prisons in 2015-16, Belagavi got the highest budget (Rs.9.22 crores); in 2016-17, Mysuru got the highest budget (Rs.5.25 crores); in 2017-18, Kalaburagi received the biggest budget amounting to Rs.17.26 crores; and in 2018-19, again Kalaburagi (Rs.3.10 crores). During this period, the highest budget was received by Kalaburagi prison in 2017-18. In 2015-16, most of the central prisons had a surplus. Only Kalaburagi and Ballari prisons were in deficit which was also not substantial as per their overall spending.

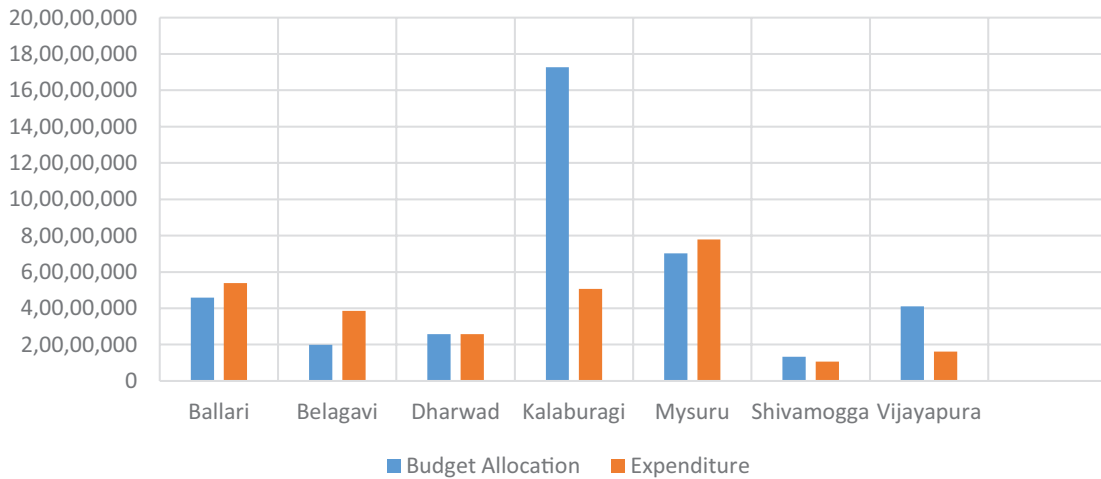
The reason for excluding Bengaluru from the above analysis is evident from the graph below. The graph suggests that the average expenditure of the prison is Rs.20 crores but in year 2017-18, thrice this amount was spent by incurring a deficit. Otherwise, every year its budget has been in surplus.

**Chart 1.3: Budget allocation trend in Central Prisons**



<sup>47</sup> This observation has been made excluding the budget of Central Prison Bangalore because the amount received by it is substantially higher than any other prison. For instance, in 2015-16, it was equal to one-third of total budget allocated to all the prisons cumulatively and half of it in 2016-17.

**Chart 1.4: Budget allocation and expenditure (2017-18)**

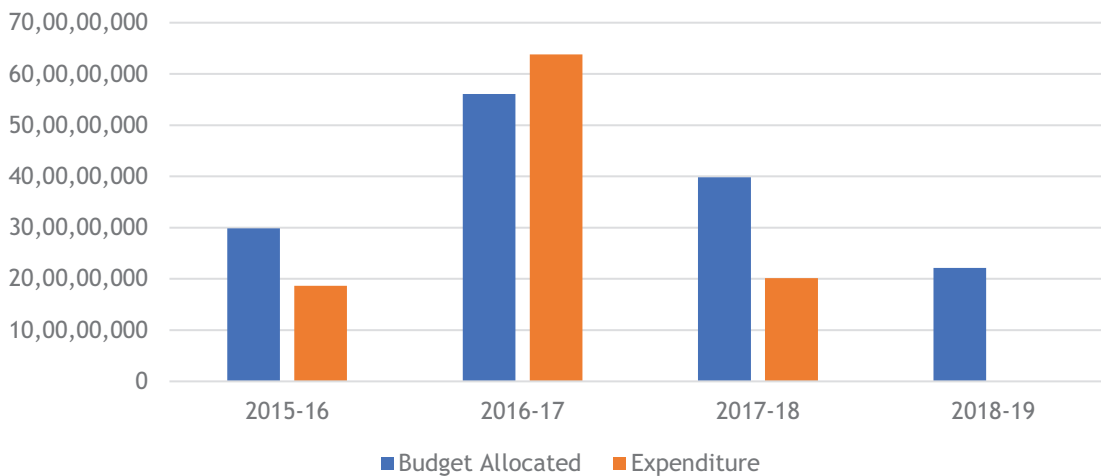


The lowest budget during 2017-18 was received by Central Prison Shivamogga. As per the trend, Shivamogga had more or less equal amount of allocation and expenditure. Kalaburagi was allotted a whopping amount of Rs.17 crores in 2017-18 which covered the deficit that it had for past few years. However, even after increasing the budget of Ballari, its deficit still exists. For Mysuru and Belagavi, both of which have budget deficits, the former had an increase in budget allocation whereas the latter had a reduction.

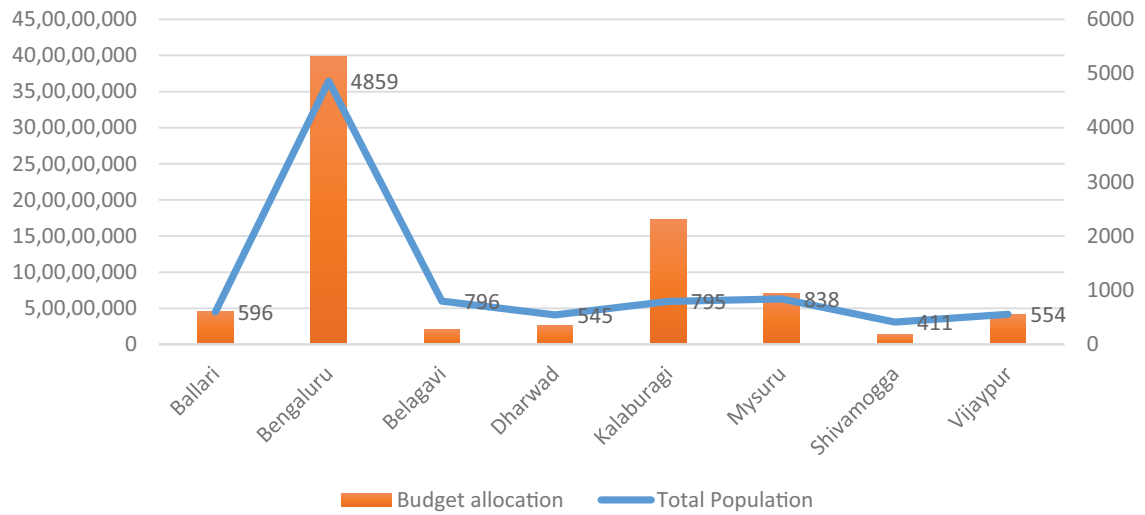
The surplus budget of Central Prison Vijayapura has increased in 2017-18 by 286% increase which does not seem to be necessary since the expenditure of this prison has been much less for the past few years.

Further analysis of the data indicates that for 2018-19, the funding has been substantially cut for all the central prisons with Kalaburagi facing the largest slash. Moreover, Central Prison Ballari and Central Prison Belagavi has not received any budget for the year 2018-19 and all the remaining of the prisons have been on a budget of around Rs.2-3 crores.

**Chart 1.5: Central Prison Bengaluru Budget Allocation and Expenditure**

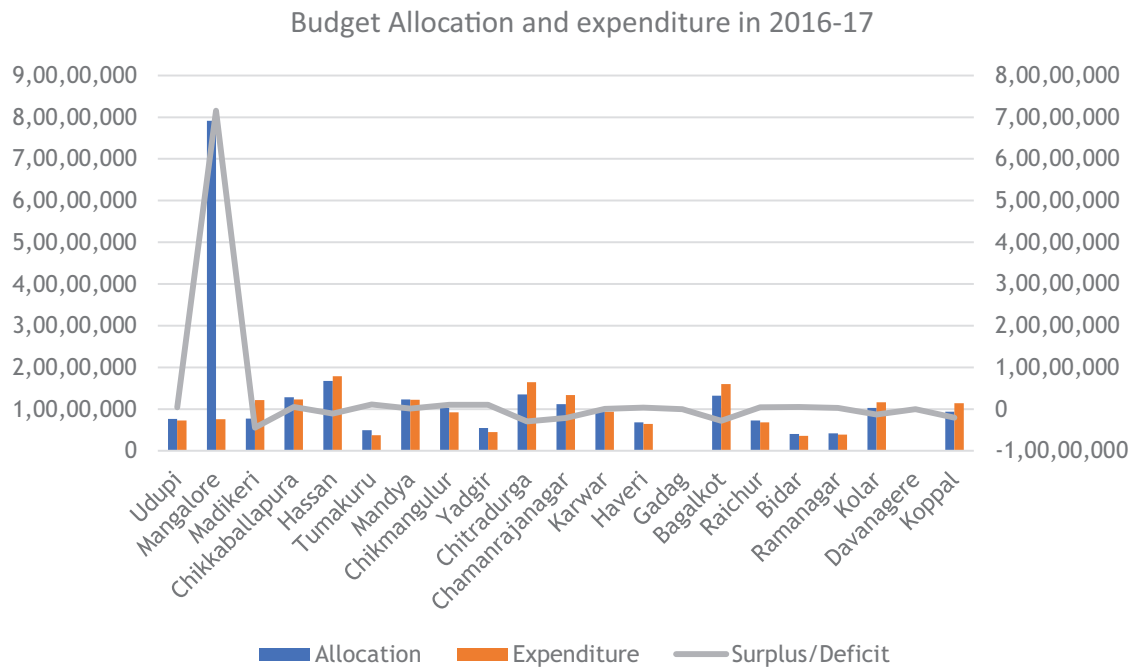


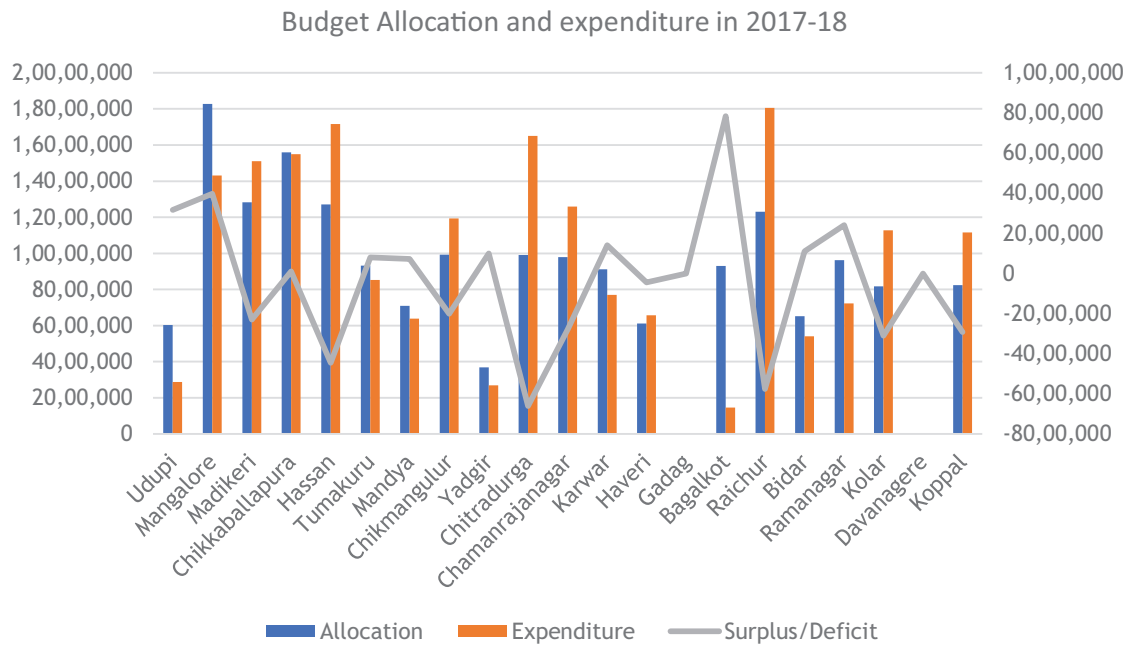
**Chart 1.6: Comparison between budget allocation (2017-18) and total population of Central Prisons**



On the basis of the total population, on an average, the Kalaburagi prison received the highest budget per inmate i.e. Rs. 2,17,182 in 2017-18 which comes out to be Rs.595 per inmate per day. The lowest was received by Belagavi prison, Rs. 25,013 amounting to Rs.68.50 per inmate per day. An average of the budget per inmate in the central prisons comes to Rs. 79,543, with Rs. 218 per inmate per day.

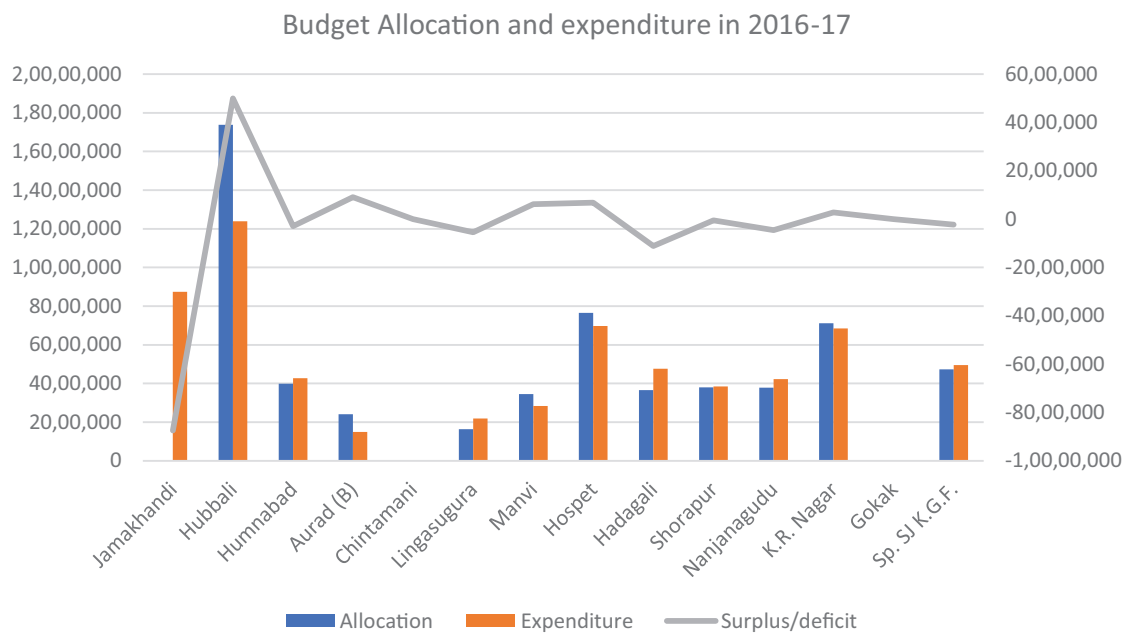
**Chart 1.7: Comparison between budget allocation and total population of District Prisons**

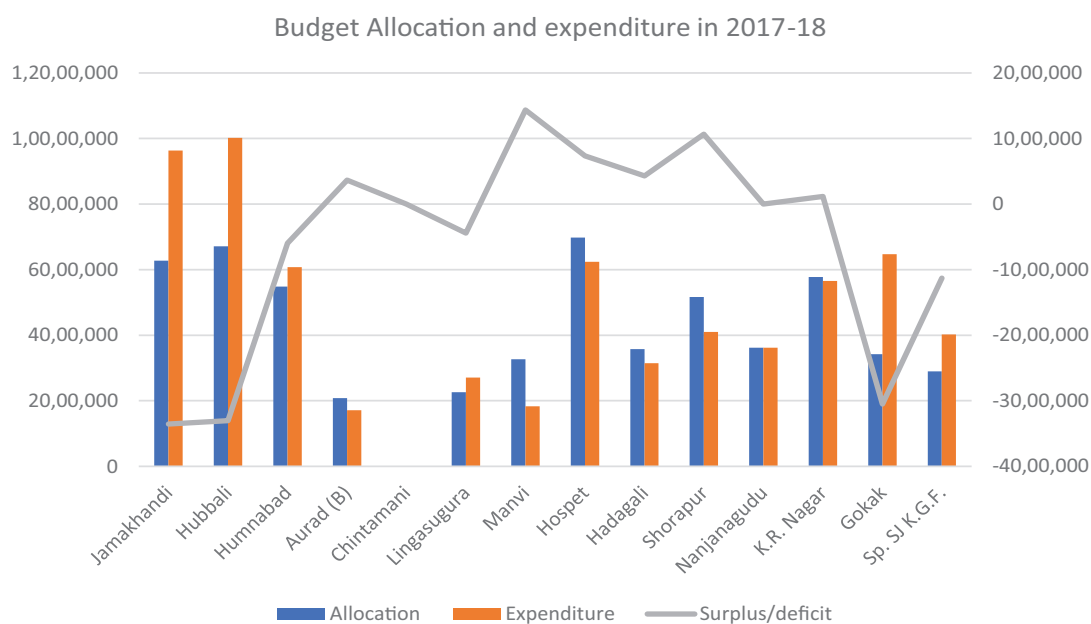




In 2016-17, the cumulative surplus was Rs.6,05,40,960; however, it converted to a deficit of Rs.(-) 78,91,987 the following year. One of the reasons for this is the increase in expenditure incurred by District Prisons Hassan, Chikmangalur, Chitradurga, Raichur and Kolar.

**Chart 1.8: Comparison between budget allocation and total population of Taluka Prisons**





In the year 2016-17, the cumulative deficit was Rs. (-) 39,40,883 which further increased to Rs. (-) 77,29,476 in the year 2017-18. However, a substantial decrease in the deficit can be observed in Jamakhandi from Rs. (-) 4,67,88,738 in 2016-17 to Rs. (-) 33,54,707 in the year 2017-18.

The study team was informed by prison heads that there are no concerns in securing requisite budgets sanctioned from the head office of the department. However, there is scope for higher budget allocation from the state government to the prison department which can go a long way in improving the salaries to staff, and amenities for prisoners. In 2018-19, the state budget estimate for 'Prisons' was Rs.16,147 (in lakhs) as against the total estimated expenditure of Rs.2,18,488 (in crores), a mere 0.074%. As per the Prison Statistics of India 2018, for the year 2018-19, Karnataka spent 18% of the budget allocated on prisoners, a little lower than the national average of 26.1%. Prison-wise break up of sanctioned budget and budget spent for the last four fiscal years is provided in each prison sheet. A good practice is the increased liberty with which heads of prisons can now spend money in emergent situations under certain budget heads without waiting for approval from the head office, for instance - buying medicines for inmates in cases of emergency and purchasing basic office supplies, etc.<sup>48</sup>

### III. HUMAN RESOURCES

#### STANDARDS

Each institution must have personnel commensurate with the requirements of security, discipline and programme emphasis. The personnel strength is to be determined taking hours of duty per day as the basis for each category of staff. The institutional set-up is to be fixed in accordance with the size of the institution, the inmate population, workload and distribution of functions.<sup>49</sup>

The strength of the Warder establishment in each prison is to be determined from time to time by the government.<sup>50</sup> When the Superintendent considers that it is necessary for any reason to entertain more Warders than the sanctioned scale, s/he may appoint certain number of Warders in excess of the sanctioned scale with the prior sanction of the Inspector General of Prisons.<sup>51</sup>

48 GO No.FD 2 TFP 2010 dated 30.04.2010.

49 Para 4.01, Model Prison Manual, 2016.

50 Rule 126, Karnataka Prison Manual.

51 Rule 132, Karnataka Prison Manual.

## OBSERVATIONS AND ISSUES

- 1) **Understaffing in 2018 and early 2019:** The study team travelled between the months of January and June 2019, and had data for the year 2018 for the sanctioned staff and actual staff in every prison. Both in 2018 and the first half of 2019, prisons in the state were understaffed, with sometimes less than half the required staff strength.
- 2) **Recruitment Drive:** Time and again, various courts and organisations have raised concerns over the vast number of unfilled posts in the prison department, which has a direct impact on the quality of work discharged by staff and the quality of life for the prisoners. However, in January 2019, the Karnataka Prison Department recruited a significant number (1070) of persons for the post of Warder, who underwent training for six months, which coincided with the period of visits made by the study team. Further, during this time period, 32 persons were recruited for the post of Jailor. By July 2019, all prisons had been provided additional staff from among the new recruits, bringing staff vacancy to a negligible level in every prison. This is one of the largest number of recruitments conducted at one instance in any state department, and is a significant measure with far reaching consequences on the efficiency of the prison administration.

As on 01.12.2019, the staff vacancies amounted to 973 among executive staff, 67 among ministerial staff and 32 among technical staff. In the deputation posts, the vacancies amounted to 89 in the medical department, 19 from the department of public education, 39 from group-D employees, 9 from the department of agriculture, 5 from the department of printing press, 1 each from the departments of horticulture and animal husbandry, and none from the departments of police, public works department and prosecution and litigation.

In acknowledgement of the close association between the functioning of the prison department with that of the police department, recently, the post of the Superintendent of IPS (police cadre) was approved, in order to facilitate better coordination between the two departments.<sup>52</sup>

- 3) **Need for creation of New Posts:** Whilst the prison department is taking steps in the right direction insofar as recruiting personnel for filling up current vacancies is concerned, there is a need to create a few posts in the prisons in addition to the existing ones. One of the most important requirements is for a welfare officer, a post that is sanctioned in some other states. A welfare officer performs reformatory and other prisoner welfare-related functions inside the prison, a crucial aspect thereof. Guarding personnel and officers are trained in their respective areas, and are left with neither training nor the time to take up reformatory activities in the prison.

The post of a legal/law officer is also very necessary, especially in central prisons. Whilst officers discharge functions in the judicial section, someone with a legal background could provide much required assistance in the many court and case related work that a prison is engaged in. Vide GO HD 86 PRA 2017 (dated 30.01.2018), the post of a legal officer has been approved, although the same was yet to be implemented at the time of the study team's visits, although the study team was informed that the process of implementation is already underway.

Another post required to be sanctioned is of a technical officer, to assist in taking care of the many gadgets that a prison is now provided with including VC, CCTV, etc.

<sup>52</sup> Vide GO HD 121 PRA 2018 (dated 07.08.2019).

The Prison Statistics India 2018 provides for 20 sanctioned posts of medical officers, out of which only 6 were filled.<sup>53</sup> This essentially means that the post of a medical officer is not sanctioned for every district and taluk prisons. Open Air Prison has a dispensary but no medical officer. Supporting staff for medical units, including nursing orderlies, pharmacists, lab technicians and ward boys are not available at the optimal level in any central prison, and not at all in others prisons. In central prisons, the limited medical staff has to rely heavily on convicts to manage the work load. When the prisoners with mental illness are sent back to prison after their treatment in NIMHANS or DIMHANS, in the absence of any nursing staff, prison authorities face a tough time in ensuring that prescribed medication is taken on time by the prisoners.

## RECOMMENDATIONS

### State Government:

1. To ensure that vacancies at all levels are filled in a time-bound manner. An yearly assessment of vacancies must be done and recruitment must be done regularly to ensure adequate prison personnel at all levels in prisons in Karnataka.
2. Increase allocation of financial resources to cater to the ever-increasing need for infrastructural facilities in all prisons in Karnataka.
3. Create one post of nursing staff in all central prisons, particularly for the care of prisoners with mental illness.

### Prison Department:

1. Submit proposals to the State Government in regard to increasing the sanctioned posts of the prison staff at all levels and for creation of new posts for welfare officers, legal and technical officers, nursing staff, etc.
2. Appoint at least one technical person in all central and district prisons to look after all the equipment in prison – CCTVs, video-conferencing, etc.
3. Draft Cadre and Recruitment Rules to suit the specific needs of the Prison Department.

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<sup>53</sup> Table 11.3, Prison Statistics India 2018.



## UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services are as follows:

- ❖ **Regarding Human Resources:** Understaffing is no longer a pressing concern in the prison department of the state with mass recruitment at the Warder and Jailor levels.
  - ✓ The creation of the post of legal officer for the prison department is welcome and timely, as most prisons have to liaison with courts to create an efficient criminal justice system.
  - ✓ By a government order (vide GO HD 3 PRA 2017, dated 01.08.2019) new posts of 7 chief medical officers, 6 psychiatrists, 20 staff nurse and 20 new posts for psychiatric counsellors have been sanctioned for the state prisons. In addition, 34 paramedical officers from the Health and Family Welfare Department will be on deputation to fill the existing vacancies for medical staff in the prisons, by another GO (HD 19 PRA 2017), dated 25.07.2019.
- ❖ **Regarding Infrastructural Facilities:**
  - ✓ **Improved Prison Capacity:** Prisons in Karnataka though are not over crowded, still as a part of the infrastructural planning and prison reforms in the last two years, State Prisons and Correction Services Department has taken up creation of 35% of additional capacity i.e. accommodation to house 5,500 additional prisoners at a cost of Rs 450 Crores. Four new Central Prisons, each with capacity to house 1,000 prisoners, are presently under construction at Vijayapura, Bidar, Bengaluru and Mangalore at an overall cost of Rs.410 Crores. Similarly construction of additional barracks for 1,500 prisoners is being taken up at Kalaburgi, Ballari, Mysuru, Haveri, Hubballi, Gokak, Udupi and Koppal Prisons premises at a total cost of 40 Crores. These new constructions of the prisons in the state have also been taken with all the facilities, specifications and are aimed towards modernisation of prisons as prescribed in the Model Prison Manual 2016 of the MHA.
  - ✓ **Improved Communication Facilities:** Phone facilities have now been extended to district prisons. Taluk prisons use landlines and CUG (Closed User Group) facilities. Eventually PCOs will be extended to taluk prisons too. All central prisons have upgraded interview rooms with glass partitions and intercom on both sides. Sanction has been given to upgrade the interview rooms at Raichur, Davangere, Mangalore, Chikkaballapur, Mandya, Koppal, Bidar and Yadgir district prisons; Nanjangud, Tiptur, Madhugiri, Devadurga taluk prisons. Interview rooms of other prisons will be upgraded in a phased manner.
  - ✓ **Improved Kitchen Facilities:** Modern kitchens with chimneys, gas connections, kneaders, refrigerators have been set up in all central and most district prisons in the state. In Central prisons, kitchen food is given certification by the Food Safety and Standards Authority of India. It will be sought for other prisons as well in a phased manner.
  - ✓ All the prisons in the state have been provided with the many safety measures, infrastructural facilities, Fire Fighting Systems and RO water plants.
  - ✓ Bed-bug infestation in some prisons is now under check with periodic pest control measures.
  - ✓ The broadband connectivity issues that were highlighted earlier by prison officials in some prisons, have now been resolved.
- ❖ **Regarding Budgets** – The State Government has been responsive to the needs of the prison department. As a result, following steps have been taken:
  - ✓ A sum of Rs 5.55 Crores has been provided to various prisons in the state during

2021-2022 for construction of 60 additional toilets and 322 bathrooms. Karnataka will soon be among the few states in the country to have adequate toilets and bathrooms, at par with the 1:6 and 1:10 standards for toilets and bathrooms respectively, as prescribed in Model Prison Manual, 2016.

- ✓ Funds were also allocated for renovation of floors and roofs of older prisons which have now been renovated.
- ✓ Funds have also been allocated for the renovation of staff quarters for some prisons. New staff quarters will also be built where new prisons are under construction or planned to be constructed.
- ✓ Covid-19 Pandemic has been successfully managed in all the Prisons in the State. An additional grant of Rs 7 Crores was provided to all the prisons in the state to deal with COVID-19. All the prison staff and prisoners were given two doses of vaccination.

❖ **Measures to curb entry of Prohibited Articles in Prisons:**

- ✓ All the Central Prisons and District Prisons in the State have CCTVs for monitoring all the areas inside and outside the prisons. There are more than 1,300 CCTV cameras installed in various prisons in the state. Other modern equipments for search and surveillance in the prison in the state include X-Ray Baggage Scanners, Security Poles, Hand Held Metal Detectors (HHMDs), Door Frame Metal Detectors (DFMDs). However as the problem of prohibited items finding their way inside the prisons continued and therefore during the year 2021-22 in addition to the above equipments, ultra-modern gadget's like 'Non-Linear Junction Detectors' (NLJDs), Mobility Enhanced Spectrum Analyzers (MESAs), Deep Search Metal Detectors (DSMDs) have been provided to the Central Prisons in the state for still more focused search of men and material which go inside and come out of the prison. District Prisons in the state will also be provided with these modern gadget's in the coming future.
- ✓ On the recommendations of the Director General of Police, Prisons and Correctional Services, in a high level review meeting under the chairmanship of Home Minister of Karnataka on 27-01-2022, the Director General and Inspector General of Police reconstituted Prison Specific Committees headed by the jurisdictional Police Commissioners and Superintendents of Police to monitor and review security situation inside and outside the prison premises and to control criminal activities inside the prisons vide his office Order No.CRM-3/03/2022, dated:17/2/2022. The committees have all the stake holders as members and the local Prison Superintendents are the Secretary of these Committees.
- ✓ The Karnataka State Industrial Security Force (KSISF) was earlier deployed only in three of the Central Prisons in the state but since March 2022 has been deployed in all the 09 Central Prisons in the State for security and access control duties. A detailed SOP has been issued on the duties of the KSISF by the Director General of Police, Prisons and Correctional Services to ensure that all the men and material which go inside and come out of the prisons, are thoroughly searched by the KSISF personnel physically and with the latest equipments, to prevent entry of any contraband or prohibited articles into the prisons is prevented.
- ✓ A number of steps have been taken during 2021-22 to amend the Karnataka Prisons Act, 1963 and the Karnataka Prison Rules, 1974 and to make them more deterrent towards prison offences:

- **Amendment to Section-42 of the Karnataka Prisons Act, 1963:** Karnataka Prisons Act, 1963 for the first time is under amendment after its enactment almost 60 years back. The Amendment Bill has been passed by both the houses of legislature during March 2022 session and soon will be a reality. The bill prescribes enhancement of punishment from six months to not less than 3 years but which may extend to 5 years and fine, for introduction or removal of prohibited articles, into or from prisons and communication with prisoners. This is expected to act as a deterrent and prevent the entry of prohibited articles inside the prisons.
- **Amendment to Rule 42 (3) of the Karnataka Prison Rules, 1974:** List of prohibited articles as prison offences were further expanded under the Karnataka Prisons Act, 1963 by including the following:
  - a) Narcotic Drugs and Psychotropic Substances as defined in the Narcotic Drugs and Psychotropic Substances Act, 1985 (Central Act 61 of 1985).
  - b) Mobile Phones and any other electronic device or instrument or articles used for communication purposes.
  - c) Any other article declared to be a prohibited article by an order of the State Government or the Director General of Prisons and Correctional Services.

## CHAPTER - 2

# SPECIAL CASE OF REVENUE PRISONS

In addition to the open prison, taluk prisons, district and central prisons, Karnataka has a special category of prisons known as revenue prisons. Originally, these prisons used to be administered solely by the Revenue Department (unlike other prisons administered by the Prison Department) and were meant to house persons detained exclusively in revenue cases. Currently, inmates lodged in revenue prisons have penal charges against them and over the years, the Prison Department has been gradually taking over revenue prisons, such that whilst some revenue prisons are now directly under their administration, some others remain under the Revenue Department. The more common fate awaiting revenue prisons is, however, gradual closure, with the inmates being transferred to the nearest taluk prison/district prison.

### STANDARDS

One of the primary concerns regarding the administration of revenue prisons is that their legal status is in a state of confusion. The Karnataka Prison Manual does not recognize this category of prisons, and it is therefore possible for them to function without the basic standards prescribed for other prisons. Comparable to Maharashtra, all taluk prisons in that state too come under the revenue department, however their administration is prescribed under the Maharashtra Sub-Jail Manual, 1954. The study team's enquiries with officials at the revenue prisons and the Prison Head Office also revealed that the departments themselves are unable to locate the governing laws which recognize and regulate this category of prisons. The result is that there is no ascertainable legal certainty in the administration and functioning of these prisons.

### OBSERVATIONS AND ISSUES

At the time of visit by the study team, there were six functional revenue prisons: Madhugiri (Tumakuru district), Sedam (Kalaburagi district), Kumta (Karawar district), Ranebennur (Haveri district), Saundatti and Hukkeri (both in Belagavi district).

The revenue prisons in Madhugiri and Sedam are both primarily administered by personnel from the Prison Department. These two prisons also have basic infrastructure in place along the lines of a taluk prison. The revenue prisons at Kumta, Ranebennur, Saundatti and Hukkeri however remain under the administration of the Revenue Department and were in a dismal condition at the time of visit by the study team. These four revenue prisons are headed by the shirastidar of the revenue department, who holds the additional charge of superintendent, while the First Divisional Assistant (FDA)/Second Divisional Assistant (SDA) of the revenue department holds the additional charge of jailor. Personnel from the concerned police stations (where the FIR is lodged) provide guarding services. None of these persons are trained in prison administration, and coupled with the uncertainty about the governing laws, the result is that revenue prisons are some of the most badly administered prisons with gross abuse of prisoners' rights.

The revenue prisons in Kumta, Ranebennur, Saundatti and Hukkeri are all housed within the complex of the revenue office of the concerned taluk. A portion of the revenue office consists of small cells lined next to one another, which forms the prison. There is no separate compound wall or enclosure, with the result that inmates are rarely allowed out of their small cells for security reasons. Except for attending court, and when (if) one is taken to a government hospital for treatment, inmates in revenue prisons are under 24 hour lock-up.

The study team was able to interact with all inmates in these prisons, and found among them several who had spent more than one year, and one inmate in Ranebennur who had spent 4.7 years under such complete lock-up. In addition to this, the cells are poorly lit, rarely cleaned, have bad ventilation and are overcrowded. The study team found that there is no electrical bulb/tubelight inside the cells, or fans. In Hukkeri, inmates had pooled in their own money to fix a fan owing to the extreme heat in this region. Food is supplied and consumed inside the cells, and the only small toilet available inside the cell is used for washing, bathing and cleaning purposes. There is no separate room for visitors, and inmates are required to speak through the bars of their cells, unless permitted to step outside for a short period of time to meet their visitors.

No prison with such inhuman conditions meets the basic requirements of incarceration. CHRI's study of the prisons in Karnataka in 2007-08 had also recommended that immediate action was required to improve the state of revenue prisons in the state.

## RECOMMENDATIONS

### State Government:

1. A permanent solution to the crisis of revenue prisons is required in the form of state government notification/circular/order discontinuing the practice of revenue prisons, since this will require inter-departmental restructuring.

### Prison Department:

1. Periodic follow-up from both the Karnataka State Legal Services Authority and the Head Office of the Prison Department are required to ensure that until such time as all revenue prisons are permanently closed down, inmates sent to any of the existing revenue prisons are transferred to the closest taluk, district or central prison.

### IMPACT

*On 08.07.2019, the study team made a written representation to the then Member Secretary, Karnataka State Legal Services Authority, Sri. Hanchate Sanjeevakumar. In this detailed report, the dire straits of revenue prisons Ranebennur, Kumta, Saundatti and Hukkeri were informed to his office. This representation became the basis for the Member Secretary to correspond with the ADGP of the Karnataka Prison Department, Sri. N.S.Megharikh, regarding the course of action to be taken for the inmates in these prisons. Due to the swift action by both the KLSA and the Karnataka Prison Department, all inmates from these prisons were immediately transferred to the closest district/central prison. Consequently, inmates from Kumta will soon be transferred to the district prison in Karawar, those from Ranebennur to district prison Haveri and inmates from Souadatti and Hukkeri to Central Prison Belagavi. This decision was communicated to the study team on 16.07.2019.*

*The proposal to transfer all revenue prisons to the Department of Prisons and Correctional Services is pending at the State Government. As of March 2022, only three revenue prisons, Madhugiri, Sedam and Sirsi are operational under the administration of prison staff.*

# CHAPTER - 3

## PRISON OVERSIGHT MECHANISMS

The role of the oversight mechanisms in a closed system such as a prison cannot be overestimated. They ensure that there is continuous monitoring of prison conditions and prisoner interests and play a vital role in checking any excesses and abuse of power. In this chapter, the functioning of two important prison oversight mechanisms – the Board of Visitors (BoV) and the Under Trial Review Committee (UTRC) - is reviewed.

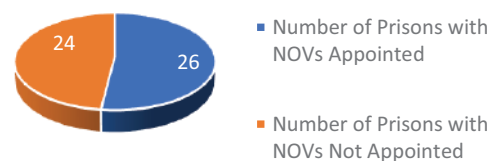
### I. BOARD OF VISITORS

#### STANDARDS

Chapter XXXIII of the Karnataka Prison Manual and Chapter XXV of the Karnataka Prison Rules prescribe that every prison is to have a Board of Visitors (BoV) appointed and provide the way they are to function. The board includes ex-officio visitors,<sup>54</sup> and those appointed as Non-Official Visitors.<sup>55</sup> The BoV is required to meet every quarter, in addition to at least one of the members visiting the prison once a week. The task of the members of the Board of Visitors is to inspect the prison; ascertain health, cleanliness, security and discipline of the inmates; examine the prisoner registers, punishment book and other registers maintained in the prison and significantly, to attend to the grievances of inmates presented to them. This ensures accountability of the prison staff and provides a means for prison related concerns to be addressed by concerned stake holders.

#### OBSERVATIONS AND ISSUES

- 1) **Appointment of Non-official visitors:** Based on the information received from all prisons, as on 31st December 2018, NOVs were only appointed in 52% of prisons. This is a statutory mandate that is not being complied with.



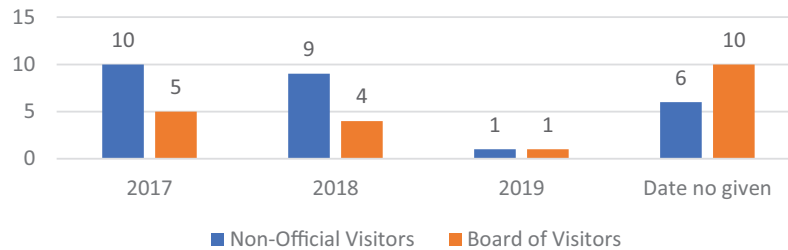
- 2) **Constitution of Board of Visitors (BOVs):** In 2018, BOVs were constituted only in 21 prisons. In reference to the above data, this essentially means that in 5 prisons BOVs were not constituted despite appointment of NOVs.

<sup>54</sup> These include the Deputy Commissioner, Sessions Judge, Inspector General of Police, Deputy Inspector General of Police, Director of Public Instructions, Director of Health and Family Planning Services, Superintendent of Engineering, District Surgeon, Director of Industries and Commerce, Commissioner of Home Affairs and Secretary to Government, Home Department.

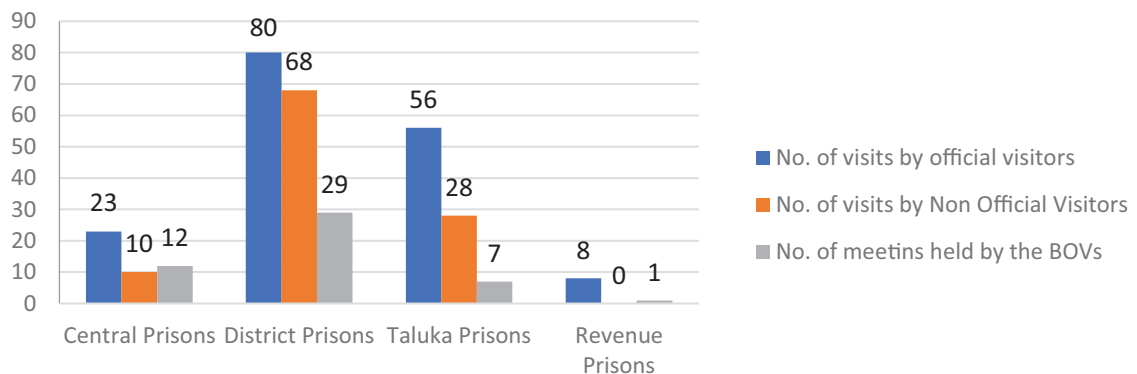
<sup>55</sup> Appointed by the government on the recommendation of the Deputy Commissioner, which include the Mayor of Municipal Corporation/President of Municipality and six persons to be nominated by the government (for a central prison) and president of the Municipality, two members of the Mysore State Legislature and three persons nominated by the state government (for a district prison). One-third of the nominated members are required to be female.



The chart below shows the year of appointment of NOVs and BOVs in prisons visited by the study team.



3) **Number of visits made, and meetings held:** The chart below reveals that among the different categories of prisons, the highest number of visits by official and non-official visitors and the highest number of meetings were made to district prisons. The maximum number of visits by official visitors took place in District Prison Chamarajanagar and Special Sub Jail KGF (23). The maximum number of visits by NOVs were conducted in District Prison Bidar (33).



Even in cases where BoVs have been constituted, the study team learnt that members of the BoV do not make routine visits to the prison, nor are regular meetings being attended by its members. In the year 2018, 12 prisons had one BoV meeting, 13 had more than one BoV meeting and 26 had none. The maximum number of meetings were held by BOVs (3) in Central Prisons Shivamogga and Vijaypur; District Prison Tumakuru, Chikmangalur and Haveri; and taluk prison Shorapur.

The study team was informed that since the state had seen an assembly election year in 2018, and the country was gearing up for national elections during the team's visits, appointment of members to the BoV and elected members of the BoV were both unavailable.

Important to note is the fact that both the Karnataka Prison Manual and Rules provide for the formation and functioning of BoVs for central and district prisons. In a good policy decision, on 10.01.2018, through a circular, it was directed that until further directions, the BoVs that function for the district prisons would also be the ones to visit the taluk prisons.<sup>56</sup> However, this was yet to be fully implemented at the time of visit by the study team. There is no uniform practice for the constitution and functioning of BoVs for taluk prisons. In some taluk prisons like K.R.Nagar, the members of the BoV of the district of Mysuru themselves constitute the BoV for the taluk prison. However, the taluk prisons of Manvi and Lingsugur,

56 HD 138 PRA 2015 (Part-2).

which fall within the district of Raichur, send representatives of the prison to the meetings of the BoV conducted in the district prison in Raichur. In the taluk prison in Jamkhandi, a BoV specially for the prison had been constituted in the year 2017, with ex-officio members from the taluk administrative hierarchy.

## II. UNDERTRIAL REVIEW COMMITTEES

### STANDARDS

UTRC is a district level committee headed by the District and Sessions Judge, with the District Magistrate and Superintendent of Police and Secretary, District Legal Services Authority as members. The Supreme Court vide its order, dated 24 April 2015,<sup>57</sup> directed the National Legal Services Authority (NALSA) along with the Ministry of Home Affairs (MHA) and the State Legal Services Authorities (SLSAs) to ensure that the UTRC is formed in every district of the country and that they meet every quarter. The court relied on the MHA advisory issued on 17 January 2013 for the purpose of implementation of section 436A of the Code of Criminal Procedure, 1973. Additionally, the court mandated these committees to review the cases of undertrials who are unable to furnish surety after being granted bail by the court and of those accused of compoundable offences.

On 06.05.2016, the domain of UTRC was enhanced by inclusion of 14 categories of inmates for consideration of their early release. These are:

1. UTPs falling under section 436A CrPC.
2. UTPs released on bail by the court, but who have not been able to furnish sureties.
3. UTPs accused of compoundable offences.
4. UTPs eligible under section 436 of CrPC.
5. UTPs who may be covered under section 3 of the Probation of Offenders Act, namely accused of committing an offence under sections 379, 380, 381, 404, 420 of the Indian Penal Code, or alleged to have committed an offence entailing not more than 2 years' imprisonment if found guilty.
6. Convicts who have undergone their sentence or are entitled to release because of remission granted to them.
7. UTPs who become eligible to be released on bail under section 167(2)(a)(i) & (ii) of the CrPC, read with section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused under section 19 or section 24 or section 27A or for offences involving commercial quantities of narcotic drugs or psychotropic substances) and where investigation is not completed in 60/90/180 days.
8. UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.
9. UTPs who are detained under Chapter VIII of the CrPC i.e. under sections 107, 108, 109 and 151 of the CrPC.
10. UTPs who are sick or infirm and require specialized medical treatment.
11. UTPs who women offenders.
12. UTPs who are first time offenders between the ages 19 and 21 years and in custody for an offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible.
13. UTPs who are of unsound mind and must be dealt with under Chapter XXV of the CrPC.
14. UTPs eligible for release under section 437(6) of the CrPC, wherein in a case triable by a

<sup>57</sup> Writ Petition (Civil) 406/2013.



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 of evidence in the case.

On 31.10.2017, NALSA was directed to prepare a Standard Operating Procedure (SOP) for the smooth functioning of UTRCs with an aim to ensure that UTPs covered under the 14 categories get benefit without delay. The same was submitted on 4th December 2018 and the court directed the UTRCs to adhere to the SOP. The court further directed that in the first six months of the year 2019, the Under-Trial Review Committees will meet once a month to review the cases of under-trial prisoners and submit a report to the State Legal Services Authority. The reports will then be compiled and forwarded to the National Legal Services Authority (NALSA). This section contains the analysis of the report submitted by the Karnataka SLSA to NALSA for the period January 2019 to June 2019 and the observations made by the study team in regard to the functioning of UTRCs.

## **OBSERVATIONS AND ISSUES**

- 1) **Inclusion of the Superintendent or prison in-charge in the UTRC:** The Supreme Court had directed by order dated 31.10.2017 that the “Superintendent of the concerned district/central/taluk Prison should also be included as a member”. The SOP defines Jail Superintendent to include Deputy Superintendent and Officer In-Charge of Central/ Dist. / Sub/ Women/ Special jails and Borstals. It was however observed by the study team that in many districts the prison in-charge is not called for the meeting. Since the Prison Superintendent is the physical custodian of prisoners, s/he would have additional information about prisoners’ well-being and therefore is able to also inform the UTRC during the review of cases:
  1. if the undertrial is granted bail and can afford lesser surety amount
  2. if the undertrial is sick or infirm or requires specialized medical treatment
  3. if the undertrial is undergoing medical treatment for serious or prolonged illness
  4. if the undertrial needs mental health assessment by the concerned court under the CrPC provisions
  5. if the convict is granted due remission for good conduct and work done
  
- 2) **Preparation of lists of prisoners by the Prison Superintendent:** The SOP mandates the Prison Superintendent to prepare a list of undertrials detained in prison as on dates - 31st March, 30th June, 30th September and 31st December, in the prescribed format. However, the information required to be filled in the following fields of the format are not officially available with the prison:
  - a. Date of Arrest
  - b. Date of First Remand
  - c. Date of filing charge sheet
  - d. Chargesheeted under Section
  - e. UTP represented by Legal Aid/Private Lawyer
  - f. Name of the lawyer with contact details, if available
  - g. Whether bail has been granted to the accused, if so when
  - h. If accused is not released on bail despite grant of bail, reason for the same, if available?

It was noticed in many districts that the DLSA Secretary asks the Prison Superintendent to acquire this information directly from the courts and fill in the details in the list. However,

this is an undesirable and inadvisable practice because the SOP clearly provides that “If any further details are required by the Secretary, DLSA from any court or from the Prison Superintendent or from the police authorities, the same may be ascertained by the Secretary DLSA.” Therefore, the officer in-charge of prison must fill only those columns of the table for which the information is available at the prison. As an alternative, the District and Session Judge may direct all district courts in the jurisdiction to adopt the ‘Custody Warrant’ as suggested in the SOP, as an additional document to move between the court and the prison for ease of information sharing. This good practice is being tried in Koppal district under the order of the Principal District and Sessions Judge.

- 3) **Functioning of UTRCs from January to June 2019:** The following are based on the report submitted by the Karnataka SLSA to the NALSA.
- a. Number of meetings held: The Supreme Court, vide its order dated 04-12-2018, had directed the Under Trial Review Committees to meet once every month from 1st January 2019 to 30th June 2019. Contrary to this, only one meeting of the Under-Trial Review Committee was held in all the districts of Karnataka during the said period.
  - b. Categories of cases reviewed by UTRCs of different districts: Out of the total 14 categories of cases, except for two categories, UTRCs reviewed all the other 12 categories of cases. The cases which were not reviewed by the UTRC were of women prisoners and UTPs who may have been covered under section 3 of the Probation of Offenders Act.
  - c. Number of cases identified, recommended and number of inmates actually released: In total, 1724 number of cases were identified by the DLSA secretaries of the various districts who could be given the benefit of the legal provisions and could have been released. However, only 186 cases were recommended by the UTRCs and merely 6 were released based on the recommendation of the UTRC. No explanations have been provided in the report in this regard, which must be looked into by the SLSA.

*In some district prisons including Chamrajanagar, Karwar, Chitradurga, among others, UTRC meetings are being conducted within the prison premises. This provides both the members of the UTRC and prisoners an opportunity to discover solutions to problems together.*

*In another good practice in the state, for cases under Chapter VIII of the CrPC, detention in prison is by and large discouraged with both prisons and courts usually ensuring that they are released on bonds.*

### **BoV v. UTRC**

*A concern that was expressed by some prison administrators is the overlap of certain functions between the BoV and the UTRC. The main reason being that both are oversight bodies relating to prisons. Some members are common to both these bodies, although they are headed by different persons - the Deputy Commissioner heads the BoV, while the UTRC is headed by the District and Sessions Judge. Each oversight body has a specific function intended to minimise the ills that can develop in an essentially closed prison system. One is intended to concern itself with the legal status of the undertrials, but as yet innocent persons, awaiting trial, while the other is intended to concern itself with the conditions of incarceration. The Board's mandate includes the right to visit prisons as well as "monitoring of the prison and prisoners' conditions; implementation of jail reform; legal, mental health and rehabilitative assistance required to be rendered; staff conduct and difficulties; prison grievance and discipline problems." The UTRC's mandate, on the other hand, is more restricted and therefore intended to be sharply focussed on reviewing cases of prisoners eligible for release under the sections/ categories provided for in the NALSA SOP on the functioning of UTRCs, which is based on the directions of the Supreme Court. Full compliance of the respective mandates by both these mechanisms has the potential to ensure effective realisation of legal rights to every individual behind bars, to keep a check on prolonged detention as well as to assist the prison officers in maintaining the minimum standards in prisons.*

## **RECOMMENDATIONS**

### **State Government:**

1. Ensure that NOVs are duly appointed for all prisons, including taluk prisons and revenue prisons. District Magistrates must be directed to send in their nominations at least one month in advance before the expiry of the tenure of the earlier batch to maintain continuity.
2. Organise training/orientation programmes for Non-Official visitors in collaboration with the Academy of Prisons and Correctional Administration, Vellore.
3. Direct all District Magistrates to constitute BOVs for every prison, including taluk prisons and revenue prisons.
4. The Karnataka Prison Rules must be so amended so as to include the constitution and functioning of BoVs for taluk prisons. Till such time, the BoVs of the concerned districts must discharge this responsibility, as mandated under HD 138 PRA 2015 (Part-2).

### **State Legal Services Authorities:**

1. Direct the UTRCs to ensure their smooth functioning:
  - a) Invite officer in-charge of all the prisons in the district to the UTRC meeting as they are an integral part of the UTRCs.
  - b) The District and Session Judge may direct all district courts in the jurisdiction to adopt the 'Custody Warrant' as suggested under the UTRC SOP.
  - c) UTRCs must include issues specific to the district in which they function, as the SoP is merely directory, with the flexibility to introduce additional heads to recommend for release on bail.
2. The SLSA must conduct a state-level consultation of all DLSAs to understand the vast difference between the number of cases identified and number of cases recommended and ultimately released and address their challenges.

## UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

### ❖ **Regarding Board of Visitors:**

- ✓ Although the Karnataka Prison Manual does not provide for Board of Visitors (BOVs) for taluka prisons, this lacuna has been filled by a government circular dated 10 January, 2018. Under this, the BoV appointed for the Central/District prison will also function as the BoV for the concerned Taluka prisons in the district and Deputy Commissioners are directed to conduct BoV meetings in the taluk prisons as well.
- ✓ As of March 2022, the tenure of the last appointed Non-Official Visitors (NOVs) is completed and the proposal to appoint the new NOVs is pending at the State Government. However, the BoV meetings comprising of official visitors alone are taking place in all prisons regularly.
- ✓ With the COVID-19 pandemic intensity coming down, a letter has been sent to the Deputy Commissioners of all districts, along with the copy of chapter on 'Visitors to Prisons' (from both the old and new manual). They have been advised to conduct prison inspection and the meeting of BoV immediately and thereafter every quarter to ensure effective functioning of the 'Board of Visitors' in their district as stipulated under the Rules.

### ❖ **Regarding Undertrial Review Committees (UTRC) –**

- ✓ The Standard Operating Procedure on the functioning of UTRCs by the National Legal Services Authority was circulated among officer-in-charge of all prisons.
- ✓ UTRC meetings are held every week in all districts as per the direction of the Hon'ble Supreme Court in 'Re-Contagion of COVID-19 virus in Prisons' (Suo Motu Writ Petition (C) No. 1/2020), dated March 23, 2020.

### ❖ **Regular Visits of District Judges and Magistrates to the prisons:**

- ✓ Principal District and Sessions Judges are the Chairperson of the District Legal Services Authority while Senior Civil Judges are the Member Secretaries. Chief Judicial Magistrates and Jurisdictional Magistrates regularly visit the prisons. During their visits, District and Sessions Judges, Chief Judicial Magistrates and the Magistrates enquire into various issues in the prisons from the prisoners as well as from the prison authorities and report their observations for necessary action. The prison authorities immediately take necessary action regarding the observations made in the reports by the Judges.

### ❖ **Visits by the Chairpersons and Members of various Statutory Bodies:**

- ✓ The Chairpersons and Members of the National Commission for Women, State Commission for Women, State Human Rights Commission and others, visit the prisons in the State regularly. During their visits, the conditions and issues in the prisons are enquired into, which are immediately attended and redressed by the prison authorities.

**PART - B**  
**THE WORLD OF PRISONERS**

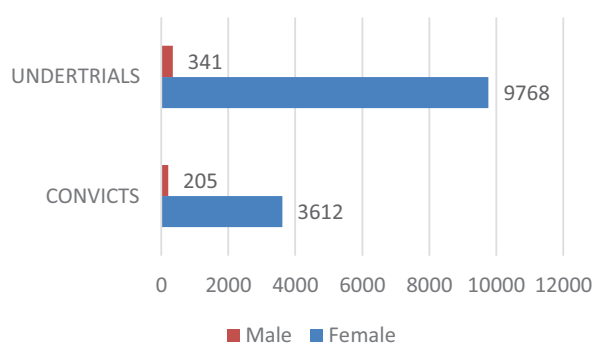
# THE WORLD OF PRISONERS

This section provides general information about persons incarcerated in Karnataka prisons.

## How many persons are incarcerated in Karnataka prisons?

As on 31 December 2018, there were 13,944 prisoners in Karnataka prisons with undertrials constituting the maximum percentage share of 72.5% (10,109), followed by convicts with 27.4% (3,817) share and detenues (12) and other (6) prisoners forming less than 1% of the prison population.<sup>58</sup> Karnataka exceeds the national average percentage share of undertrials, i.e., 69.4%.<sup>59</sup>

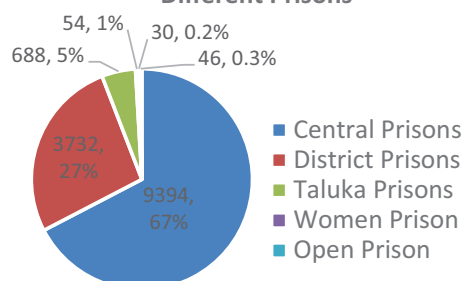
Chart: Category-wise and Gender-wise distribution of prisoners



## Where are prisoners lodged?

The Prison Statistics India 2018 records that out of 13,944 prisoners, 9394 (67%) were lodged in central prisons, 3732 (27%) in district prisons, 688 (5%) in taluka prisons, 54 (0.4%) in one women prison, 30 (0.2%) in one open prison and 46 (0.3%) in special jails<sup>60</sup>.

Chart: Number of Prison Inmates in Different Prisons



58 Table 2.1, Types of Prison Inmates as on 31st December, 2018, Prison Statistics India 2018.

59 Table 2.2, Percentage Share of Different Types of Prison Inmates as on 31st December, 2018.

60 This includes prisoners lodged in Special sub-jails Davangere and KGF.

## Who is incarcerated?

The demography of the persons in Karnataka's prisons - on issues of religion, caste, educational qualifications and economic background - provide interesting insights on who is generally incarcerated. As regards educational profile, as on 31st December 2018, of the total 3817 convicts, 1203 (31.5%) were illiterate, 1220 (32%) had received education below 10th Standard, 1050 (27.5%) were either 10th or 12th Pass. Less than 10% of the convicts were degree-holders, or held a technical degree or a diploma or were post-graduates.

Chart: Education Profile of Convicts

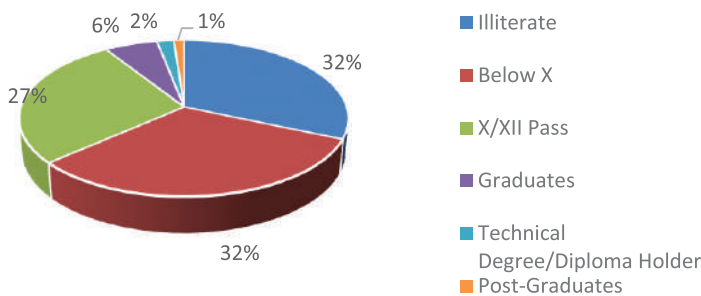
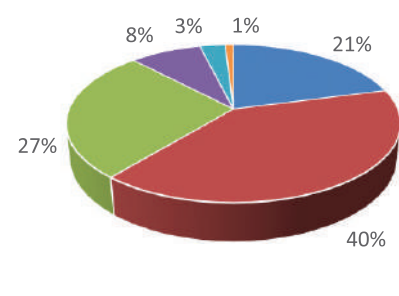


Chart: Education Profile of Undertrials



The educational profile of undertrials was almost the same as that of convicts. In comparison, while the share of illiterates was less among undertrials (2117, 21%) the share of undertrials with education up to 10th standard (4053, 40.09%) and having a graduate degree (834, 8.25%) were more.

The religious profile of prisoners show that while the convicts and undertrials population of Hindus in prisons is lower than the religious share in the country, the population of Muslim and Christian undertrials is higher than the religious share in the country.

Chart: Percentage Share of Religion of Convicts

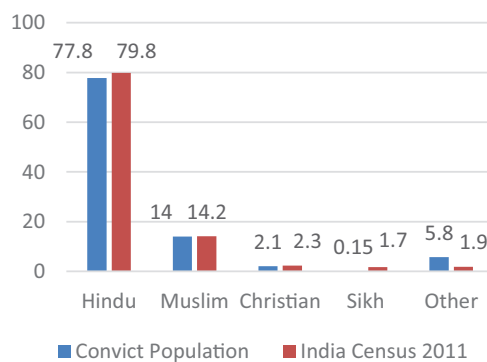
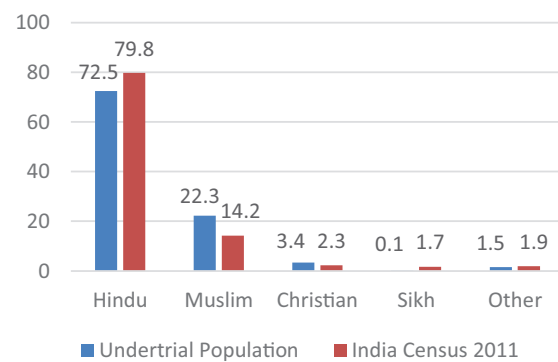
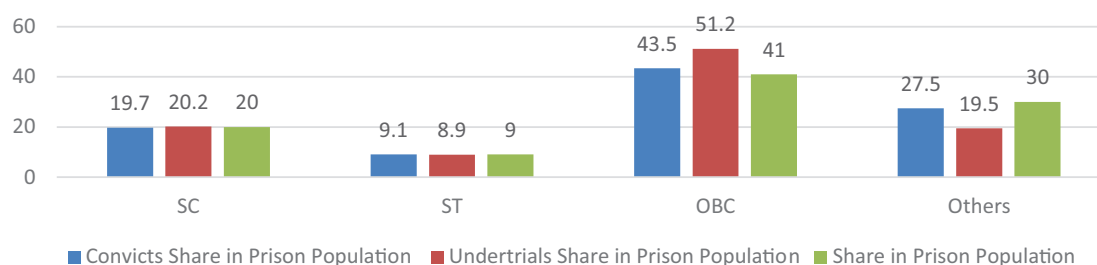


Chart: Percentage Share of Religion of Undertrials



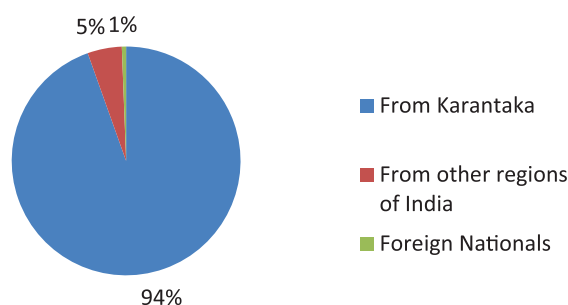
The caste profile of prisoners in Karnataka prisons show that Other Backward Classes (OBC) form the highest share of prisoners among both the convicts and undertrials.

**Chart: Caste Distribution in Karnataka Prisons (%)**

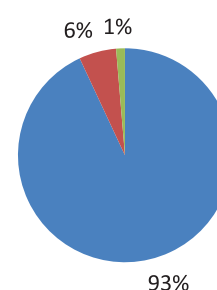


The Prison Statistics India 2018 records that of the total 3817 convicts, 3609 (94.5%) belonged to Karnataka, 185 (4.8%) hailed from other regions of the country, while 23 (0.6%) were foreign nationals. Among 10,109 undertrial prisoners, 9406 (93.04%) belonged to Karnataka, 569 (5.62%) hailed from other regions of the country, while 134 (1.32%) were foreign nationals.

**Chart: Domicile of Convicts**



**Chart: Domicile of Undertrials**



The Prison Statistics India does not record the economic status of the inmates. But it was observed by the study team that the predominant prison population comes from economically vulnerable categories, if not below the poverty line.

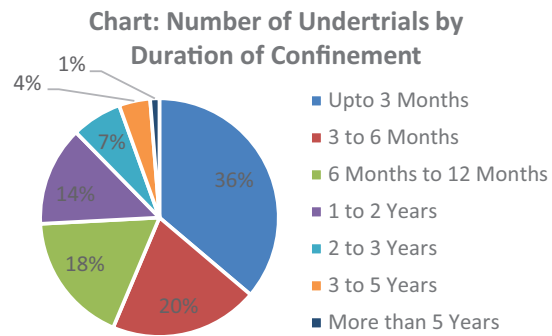
### Prisons and the Criminal Justice System

There are statistics which reflect upon the functioning of other agencies of the criminal justice system, which have a direct or indirect impact on the working of prisons. One such statistic is the number of admissions to prisons. While the prison population on any given day is about 14,000 in Karnataka, PSI 2018 provides that 77,727<sup>61</sup> persons were admitted to the various prisons in the state during 2018. It is directly proportional to number of arrests, more number of arrests mean more admissions to prison, and reflects on the functioning of police. Prisoners are released either on temporary basis (bail/ parole) or permanent basis (on completion of conviction/ on appeal/ on premature release/ acquitted of charges in trial) during the course of sentences and trials. Prisoners may also be transferred from one prison to another due to security reasons, to appear in trial courts, medical treatment, etc. It reflects on the burden on prison staff in terms of prisoner management, records management and overall administration of prisons.

Another set of data which impacts prison administration and reflects on the functioning of judiciary and other functionaries of the system is the period of incarceration of undertrials. The PSI 2018 provides that 74% of the undertrials stay in prison for up to a year. While this is a good sign for a healthy criminal justice system, there is a dire need to focus energies to the rest of the 26% undertrials who could be the victims of systemic neglect.

61 73425 (Males) and 4302 (Female), Table 2.20, Inmates admitted during the Year, Prison Statistics India 2018.





In the chapters to follow, different aspects of the life of a prisoner have been dealt with, based on the observations made by the study team during the course of their visits. These include prison regime; access to health; contact with the outside world; access to legal aid; access to courts; judicial practices impacting prisoners; rehabilitation and reintegration of prisoners; parole, remission and premature release; specific concerns of vulnerable categories of prisoners; police practices that impact prisoners and special case of body warrants.

# CHAPTER - 4

## PRISON REGIME

Prisons are engineered to inculcate and enforce discipline. How the days and nights of prisoners are to be spent are broadly stipulated in the Karnataka Prison Manual. However, if prisons are also meant to enable reform and rehabilitation, reducing prison life to mere discipline is detrimental to that effort.

### I. Admission Process

#### STANDARDS

Chapter XI of the Karnataka Prison Manual pertains to the process of admission of an inmate into a prison. Admission is on the basis of a legal warrant, and upon the satisfaction of the Superintendent of the prison.<sup>62</sup> An admission register is to be maintained with the details of the prisoner, including their name, age, address, identifying features, etc.<sup>63</sup> An inmate is to be checked at the time of admission, and their personal effects are removed from them and kept in custody until the time of their release.<sup>64</sup> A history ticket is also to be maintained for each inmate with details of their case, period of sentence to be served, and with provisions to write remarks and calculate the remission earned by them in prison (in the case of a convict prisoner).<sup>65</sup> Medical examination is also to be conducted at the time of admission of an inmate in order to determine if an inmate is in need of medical attention for HIV/AIDS, TB, pregnancy, etc, and a record of the same is also to be maintained.<sup>66</sup> Further, basic amenities including a bed sheet, plate, tumbler, are to be provided to an inmate upon admission.<sup>67</sup>

Under the Karnataka Prison Manual, categories of prisoners eligible for segregation include juveniles,<sup>68</sup> women,<sup>69</sup> and segregation of under trials from convicts.<sup>70</sup>

#### OBSERVATIONS AND ISSUES

- 1) **Admission registers:** The study team was able to inspect the admission registers in most prisons, and was satisfied with the maintenance of the same, with every prison keeping meticulous records of the details of inmates upon admission. While some prisons have been able to maintain both the physical register as well as a digital version of the same on the ePrisons portal, most are yet to make the transition to the digital version for lack of dedicated personnel to manage the same.

62 Rule 185, Karnataka Prison Manual.

63 Rule 203, Karnataka Prison Manual.

64 Rule 201, Karnataka Prison Manual.

65 Rule 205, Karnataka Prison Manual.

66 Rule 205, Karnataka Prison Manual.

67 Chapter XVIII, Karnataka Prison Manual.

68 Rules 688 and 173(2), Karnataka Prison Manual.

69 Rules 476 and 173(1), Karnataka Prison Manual.

70 Rule 173(4), Karnataka Prison Manual.

*Maintenance of records is taken seriously by prison staff, with a strict routine and adherence to the upkeep of the physical books. Although ePrisons is in the process of being fully complied with, some prisons such as Taluk Prison Madhugiri and Central Prison Vijayapura (Bijapur) have maintained meticulous records both in physical and ePrison formats.*

- 2) **Admission room:** It was also learnt by the study team that earlier, the practice was to take admission of prisoners only in the mornings,<sup>71</sup> but over time prison authorities realised that persons who had been ordered to be transferred to judicial custody had to often wait for long hours to be admitted, and so the process of admission is now taken up even in the evening, after lock-up hours. Not all prisons visited by the study team however have a separate admission room, due to lack of space to demarcate a cell for the purpose of admission. In central prisons however, admission rooms are provided for, and this is where a newly admitted inmate is housed before being assigned to a barrack.
- 3) **Medical examination at the time of admission:** A detailed proforma for a thorough health screening of the person at the time of admission in prisons was recommended by the National Human Rights Commission first in 1999 and then with a revised proforma in 2010, annexed as Annexure H. Though it was issued with concerns of death of prisoners in various prisons due to spread of contagious diseases and with the aim “to find out whether the prisoner is suffering from Tuberculosis, lung disease or HIV, or any other disease”, its purpose is manifold. If a prisoner looks younger than his age, the matter shall be referred back to the concerned court after due medical examination on the determination of his/her age, for further directions, as no juvenile shall be kept in prison and are to be sent instead to institutions created under Juvenile Justice Act.<sup>72</sup> In the case of convicts sentenced to rigorous imprisonment or imprisonment for life, the Medical Officer will enter the class of labour on which he will be employed in the appropriate column of the Convict Register and History Ticket. A corresponding entry will also be made in the History Ticket of the convict.<sup>73</sup> It also helps in the recording of information in case any injuries are seen on the body of the person who alleges to have been subject to violence during police custody. But unfortunately, medical examination upon being admitted to a prison is not always possible in prisons which do not have dedicated medical officers (see details in the Chapter 5 on access to health facilities).
- 4) **Ascertaining status of legal representation of prisoners at the time of admission:** Admission to prison is the next stage, after arrest and first production, where the status of legal representation could be ascertained. The NALSA Standard Operating Procedure (SOP) for Representation of Persons in Custody (2016) mandates both the Jail Visiting Lawyers (JVLs) and convict paralegal volunteers (PLVs) to “regularly interact with the inmates and especially the new inmates to find out if they are represented by any lawyer and if not, they should inform the inmate about their right to get a legal aid lawyer. They should also inform the District Secretary so that a legal aid lawyer can be appointed to represent the inmate in court.” For convict prisoners, it would mean an opportunity to seek legal advice on initiating the process of filing of appeal and prompt access to copy of judgement and documents as required. Based on the interaction with JVLs and PLVs, the study team found that a uniform process of interacting with newly admitted inmates across all prisons does not exist.

71 Rule 185, Karnataka Prison Manual.

72 Para 5.66, Model Prison Manual 2016.

73 Para 5.67, Model Prison Manual 2016.

- 5) **Concern about well-being of children:** One of the concerns of newly admitted women prisoners is to ensure the well-being of their children who are not accompanying them. In a few cases, it was found that the children were left either in the police station or at home without any family support and mothers were unaware of their whereabouts and safety. Out of fear and ignorance, they often do not share their concern with prison authorities, which takes a toll on their mental health.
- 6) **Basic necessities allowed and provided in prison:** Another concern faced by newly admitted inmates is the fight to secure basic amenities such as tooth paste, soap, clothes, etc., since they are often brought to the prison directly from police custody and without having the chance to procure the same before admission into the prison. Although the Karnataka Prison Manual mandates certain prescribed amenities to be provided, ensuring adequate stock of the same is always a challenge, and inmates have to wait for a visit by their family members, or the goodwill of fellow inmates to procure the same.

*In some prisons such as Taluk Prison Aurad, a hygiene kit is provided at the time of admission to the prison, including a tooth brush, mug and bucket. This makes a world of difference to inmates, especially in the initial days when most families/friends are not even aware of their incarceration so as to deliver basic amenities at the prison.*

- 7) **Segregation of inmates:** While the study team observed that men and women are segregated in prisons, segregation of persons under the age of 21 from other inmates is not adhered to, often for want of space. Further, while women are always kept separately from male inmates, there is no segregation of under trial and convict prisoners in the female wards of central prisons.

## II. Dawn to dusk in prison

### STANDARDS

Under the Karnataka Prison Manual, the routine of a prison is provided for in Chapter XIV, 'General Discipline and Daily Routine'. The daily routine is as follows:

5:30 – 5:45 AM	Prayer
5:45 – 6:15 AM	Opening of barracks and cells and counting of prisoners
6:15 – 6:45 AM	Toilet including visit to latrine and washing
6:45 – 7:15 AM	Exercise
7:15 – 7:45 AM	Light meal
7:45 – 8:00 AM	Work allotment and marching to work sheds
8:00 – 11:00 AM	Work
11:00 – 11:30 AM	Bath
11:30 AM – 12 Noon	Morning meal
12 Noon – 12:30 PM	Rest
12:30 – 4:30 PM	Work
4:30 – 4:45 PM	Toilet and wash
4:45 – 5:20 PM	Games, recreational and cultural activities
5:20 – 5:30 PM	Wash
5:30 – 6:00 PM	Evening meal
6:00 – 6:15 PM	Latrine parade

6:15 – 6:45 PM	Search, counting, lock-up
6:45 – 7:45 PM	Reading newspapers, books, indoor games, etc.
7:45 – 9:00 PM	Radio music, group music, spinning, recorded talks on special education, etc.
9:00 – 9:30 PM	Prayers, preparation to go to bed
9:30 PM	To bed

## OBSERVATIONS AND ISSUES

The study team spent at least half a day in taluk prisons, one /two days in district prisons and more than three days in the central prisons. It was observed that the central prisons were able to ensure that the time table as provided in the Karnataka Prison Manual is followed for the most part, other prisons had developed their own routine.

- 1) **Long lock-up hours** – The routine developed by a prison is a function of the number of staff available at any given shift. Since most district and taluk prisons at the time of visit by the study team were operating with grossly inadequate personnel, lock-up hours were very long, with only about an hour in the morning and about two hours in the evening being the general norm of time spent in ‘unlock’. Further, since district and taluk prisons do not have work opportunities, or sufficient options for games and recreation, those slots in the routine are replaced by lock-up hours.
- 2) **Prison Routine from the perspective of the Inmates** – The life of an inmate in a prison is long and tedious, with the hours, days and years slowly moving by. While prisons are meant to be places of reform, the low investment on rehabilitation programmes results in prisoners mostly whiling away time, with little for company but their own selves, and some work if they can manage to secure prison labour.

Upon being unlocked, the most common activity for an inmate, whether an under trial or a convict, is to wash and bathe in the facilities provided outside the cells. This is followed by breakfast, and the time from then until lunch is often free unless an undertrial has a court hearing, or a convict has been allotted work, or if a prisoner is sent to local hospital for consultation/treatment. Prisons which have libraries and subscribe to newspapers provide an option for engagement for inmates who are literate.

An inmate could also consult the medical officer for any ailment, either in the morning or evening depending on the visit by the doctor/ specialist. Lunch is another big marker of the day, with inmates being locked up generally after lunch, when they either rest or watch television and play board games like carom and chess. For convicts, afternoon is a stretch of time available for work. Most prisons have some unlock time in the evenings which is when the jail visiting lawyer visits, allowing inmates an opportunity to seek legal advice.

Visiting hours with family and lawyers is provided for in the morning and the evening, and for inmates who have ties with society, this is an occasion to look forward to. Almost all prisons have some portion of the premises earmarked for prayers, which is another respite available to prisoners. Dinner is provided in the evenings, before the counting and lock-up for the day, which inmates then keep to be had later in the night.

- 3) **Prison Routine from the perspective of the Prison Staff** – The routine for staff is fixed,

with periodic shift changes. The guarding staff is divided into three shifts – unlock to afternoon, afternoon to lock-up and then night duty. The duties of prison staff after unlock and counting includes ensuring an orderly manner of inmates going about their daily tasks, whether it is leisure or work.

Office staff is tasked with ensuring that the admission and release registers are maintained, that undertrials with their court hearings are located and sent on time, ensuring that the court dates are followed up, ensuring that inmates requiring medical attention in hospitals are identified and sent, and to maintain general discipline. Every Monday, the Superintendent of a prison is required to go on a full round of the prisons, and inspect the prison, and listen to prisoner grievances as they may not be able to meet the Superintendent during office hours. The study team observed that this weekly practice is followed in most prisons, and some Superintendents visit the barracks more than once a week.

## **RECOMMENDATIONS**

### **Prison Department:**

1. A kit with basic amenities including toothpaste, soap and washing powder must be provided to an inmate upon admission.
2. As far as possible, prisons should identify and mark a separate room as an admission ward to enable a newly admitted inmate to adjust to prison life.
3. Every prisoner, particularly women prisoners, must be enquired about the age and well-being of children. In case, a prisoner needs any assistance in regard to his/her children, the officer-in-charge of the prison must inform the district Child Welfare Committee to take appropriate steps.
4. Segregation of inmates below the age of 21 from the older prisoners is highly recommended for all prisons.
5. As far as possible, lock-up hours must be reduced in prisons to be compliant with the routine prescribed in Chapter XIV of the Karnataka Prison Manual.
6. Serious efforts are required to ensure that there are productive avenues for inmates to qualitatively spend their time, including work, education opportunities, constructive recreational activities etc., all of which can contribute to their reform and rehabilitation.

### **State Legal Services Authority:**

1. The SLSA must direct all the jail visiting lawyers, convict paralegals or community paralegals attached to the prison, to meet the newly admitted prisoners and inform them about the right to free legal aid. In case a newly admitted person is in need of a legal counsel, the application for legal aid must be immediately made to the DLSA and as soon as the legal aid lawyer is appointed, he/she must be informed the name and contact details of the lawyer so appointed.

### UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

- ✓ ePrisons portal is mandatorily being updated on admission in all prisons. Some technical trainings have been conducted by the NIC.
- ✓ In all prisons, admission rooms are now demarcated due to the pandemic. Separate quarantine prisons were set up during covid at Kalburgi, Bengaluru, Mysuru, Ballari and Vijayapura.
- ✓ Efforts are made in all prisons to segregate young inmates from older prisoners, in separate barracks.
- ✓ 'Community Radio' has been established at all the Central Prisons in the State to help prisoners to share their experiences and for providing awareness and entertainment in the Prisons in the state.
- ✓ Basic necessary items are provided to all newly admitted prisoners now.
- ✓ Since all prisons now have adequate staff, the lock-up hours are not extended and the provisions of the manual are being followed in this regard.

# CHAPTER - 5

## ACCESS TO HEALTHCARE FACILITIES

The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.<sup>74</sup>

Overall about 1,52,000 cases of medical needs are treated, out of which 92% are treated by Medical Officers or in prison hospitals. Since only 8% of inmates are referred to outside district hospitals and higher institutions for treatment, this essentially means that prisons need to be well-equipped to cater to the high demand of medical care. This chapter highlights the issues that need to be addressed.

### A. Sanitation and Hygiene

#### STANDARDS

The Medical Officer is overall in-charge of the sanitation and hygiene in the prison. Rule 76(i) of the Karnataka Prison Manual mandates the Medical Officer to maintain a Register as required under Rule 6 of the Karnataka Prisons Rules 1974 and to enter any defects in cleanliness or sanitation based on which the Superintendent may issue such immediate orders as s/he may deem fit. Further, Rule 70(iii) prescribes that when the Visiting Medical Officer visits the Prison, the Assistant Surgeon of the Prison shall accompany him/her on rounds and take notes of any orders given by the former regarding the sick or the sanitation of the prison.

Rule 917 of the Karnataka Prison Manual provides that the wards shall be thoroughly swept and cleaned daily and the prison area and surroundings shall be kept clean and free from all jungle grass and weeds, accumulation of broken bricks, manufacturing refuse, etc. It further provides that no kitchen refuse shall be permitted to be thrown promiscuously on the ground or rubbish of any kind to accumulate in or near the prison.

#### OBSERVATIONS AND ISSUES

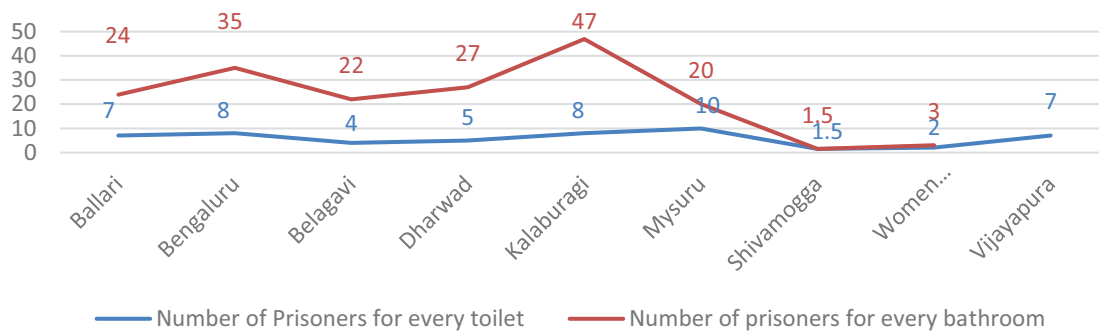
All prisons were found to be fairly clean by the study team with some exceptions. While most of them could be dealt by paying little more attention towards sanitation, few would require structural changes to meet the demands of the present. For example, maintaining cleanliness and hygiene is an everyday challenge for the prison staff of Vijayapura central prison due to the ancient structure of the prison. Similarly, the male section of the Kolar district prison, built in the nineteenth century, is hard to clean.

<sup>74</sup> Rule 24, United Nations Standard Minimum Rules for the Treatment of Prisoners.

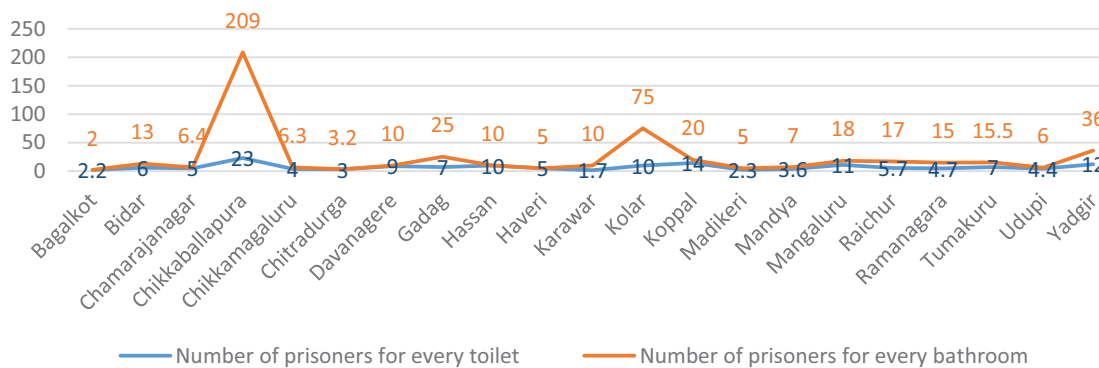


1) **Number of Inmates per toilet and bathroom:** A certain number of toilets are provided inside the barracks for use during lock-up time, while the washing area and additional toilets are provided outside the barracks for all other times. Rule 920 of the Karnataka Prison Manual prescribes 1 latrine unit for 20 prisoners inside the barrack, and 1 unit for 6 prisoners outside the barrack.<sup>75</sup> While no such ratio is provided for number of bathrooms, the Model Prison Manual 2016 provides for in the ratio of 1:10.<sup>76</sup> The tables below show the number of inmates per toilet and per bathroom ratios in different types of prisons:

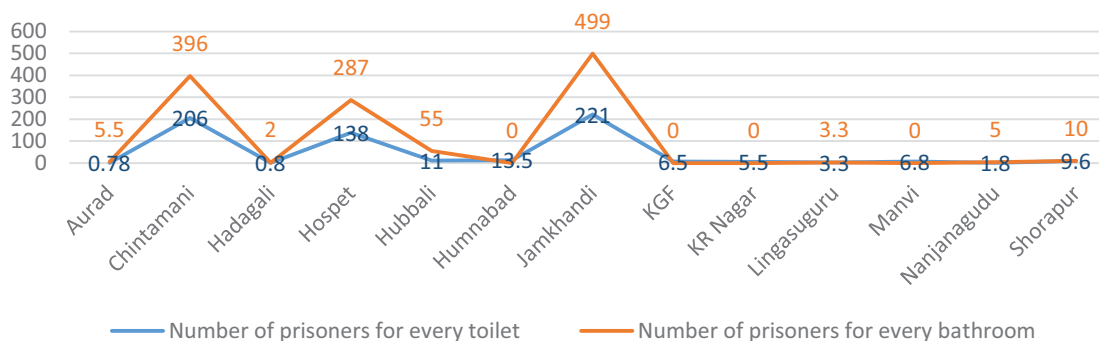
**Chart 5.1 – Total Prisoners per toilets and bathrooms in Central Prisons**



**Chart 5.2 – Total Prisoners per toilets and bathrooms in District Prisons**



**Chart 5.3 – Total Prisoners per toilets and bathrooms in Taluk Prisons**



Based on the above data, except for Chikkaballapur, there are adequate number of toilets<sup>77</sup> in all Central and District Prisons. The situation in three taluk prisons, Jamkhandi, Chintamani and Hosapete is appalling with a total of 221, 206 and 138 inmates respectively, having to share one toilet.

<sup>75</sup> The Model Prison Manual recommends 1 unit for 10 prisoners inside the barrack and the 1 unit for 6 inmates outside the barrack.

<sup>76</sup> Para 2.11.1 – Every prison will provide covered cubicles for bathing, at the rate of one for every 10 prisoner, with proper arrangements to ensure privacy.

<sup>77</sup> This analysis do not distinguish between 'inside the barrack' and 'outside the barrack' ratio.

As regards the number of inmates per bathroom, except for Shivamogga Central Jail and Shivamogga Womens' Central Jail, no central prison have the adequate ratio as per the Model Prison Manual with Kalaburagi having 1 bathroom per 47 inmates and Bengaluru having 1 bathroom per 35 prisoners. This ratio ranges from 2 to 209 inmates in district prisons and 2 to 449 inmates in taluk prisons. 10 district prisons and four taluk prisons do not have the required number of bathrooms. It seems to show that in Chikaballapur 209 inmates and in Jamkhandi 499 inmates are sharing one bathroom. However, in reality it means that they are sharing an open common platform, with or without cubicles, which acts as the bathing space in such old prisons which were constructed when there was no concept of separate bathrooms.

*In the newly constructed Shimoga Central Prison, a few western style toilets have also been constructed, meant for use by the aged and differently-abled prisoners.*

- 2) **Cleaning of wards, cells and toilets:** Under Rule 922 of the Karnataka Prison Manual, toilets and urinals shall be thoroughly cleansed during morning and evening and if necessary in the middle of the day. There is no provision of employment of sweepers to maintain cleanliness in prisons. However, convicts are appointed as sweepers under 'sanitation and hygiene' essential service unit as provided for in Rule 391 of the Karnataka Prison Manual. Rule 252 of the Karnataka Prison Manual provides that the sweepers shall thoroughly sweep and clean every part, all cobwebs, dust and dirt of every description being carefully removed from the roofing corners and elsewhere.

In district prisons, where there are no convicts, it is the responsibility of the undertrials to keep their surroundings clean. Rule 710 provides that no under trial prisoner shall be required to do labour. But under trial prisoners shall be required to keep their yards, wards, cells and bedding clean but shall not be compelled to perform duties of a regarding nature. In general, most prison toilets, especially in the older prisons, do not have taps requiring inmates to collect and store water in open tanks or buckets inside the rooms.

The study team found while interacting with inmates that sometimes persons belonging to lower castes are engaged with the duty of cleaning toilets by other inmates who pay them a small sum of money for their services. This is like an internal arrangement among inmates and shows that the caste structure in society is replicated inside prison.

- 3) **Availability of cleaning supplies:** For keeping the barracks, cells and toilets clean, in all prisons cleaning supplies like brooms, phenyl, etc. are being provided to inmates periodically, even though there is no specific provision in the Karnataka Prison Manual in this regard. This is a good practice which must find mention in any amendment to the Karnataka Prison Manual or Rules.

While inmates are to be provided with soap for washing clothes, soap for bathing and toothpowder are provided once a month,<sup>78</sup> in several prisons, inmates are not being provided with supplies regularly, and this contributes to the raging issue of skin infections and dental hygiene concerns. Rule 356 of the Manual requires that prison clothing and bedding be properly stored and cleaned before issue/reuse; despite this the study team found that in some prisons used clothing being given to new inmates upon admission, without being cleaned.

- 4) **Drainage and disposal of garbage:** Rule 917(iii) of the Karnataka Prison Manual provides that the area and surrounding ground shall be thoroughly drained by either shallow or sub

<sup>78</sup> Government Order dated 05.09.2007, as described here: <https://www.karnatakaprison.in/prisonstatisticsenglish.html>. The Model Prison Manual provides for washing powder and soap for cleaning clothes in Rule 6.57.

soil drains to ensure the dryness of prison area and to prevent the accumulation of water near the prison. As regards drainage, it is the responsibility of the Medical Officer to bring to notice any defect in the drainage within or about the prison and his not doing so will be considered proof of his being satisfied with it. If anything that might injuriously affect the health of the prison occurs or is about to occur in its neighbourhood, it shall be reported to the Inspector General.<sup>79</sup> Despite these provisions, several prisons had open drainage within the prison complex which could lead to accumulation of water and spread of water-borne diseases thereby.

The study team learnt that there is varied practice across prisons regarding the disposal of garbage. While some prisons have the local municipalities come to collect their daily waste, some bury their waste, while others burn them. The practice of burning garbage must be discouraged by laying down provisions for disposal of garbage in the new rules.

## **B. Medical Facilities**

### **STANDARDS**

Medical Administration is one of the most important matters affecting jail management.<sup>80</sup> As regards appointment of prison medical officer, Rule 66 of the Karnataka Prison Manual provides that under Section 4 of the Prison Act in each Central Prison and District Prison Class I and Borstal School, Dharwar, a Member of Medical Department of the rank of Assistant Surgeon Grade II shall be appointed as Medical Officer. Rule 69 of the Karnataka Prison Manual provides that the Medical Officer of Taluka Government Hospital in which a Taluka Sub-Jail or Special Sub-Jail is situated shall be the Medical Officer of the Taluka Sub-Jail and Special Sub-Jail. He shall visit the Sub-Jail at least twice a week or oftener in case of emergency and attend to sick prisoners. Rules 80 and 81 provide that the compounders and male nurses are deputed from the Department of Health and Family Planning Services and their duties shall include to help the Medical Officer in the maintenance of the health of the Staff and prisoners by compounding and distributing medicines and attending to sick, weighing prisoners, performing clerical and other works entrusted to them by the Medical Officer in maintaining order and discipline in the hospital.

The general duties of a Medical Officer are stated under Rules 73 and 79 of the Karnataka Prison Manual as follows:

- a) to attend to the health and cleanliness of the prisoners, the treatment of the sick and the hygiene of the prison especially as regards diet, raw and cooked. He shall attend to the fortnightly weighing of prisoners and all other matters connected directly or indirectly with the health of the staff and the inmates of the jail;
- b) to examine all newly admitted prisoners and to record in the admission registers and history tickets the particulars as regards health, labour and the like;
- c) to attend to all prisoners who complain or appear to be ill and have them removed to hospital for examination as each case may require;
- d) to inspect the convalescent gang and any prisoner kept under observation every morning;
- e) to ensure that order, cleanliness and discipline are maintained in the hospital and its enclosure, and that the compounder and attendants perform their duties properly;
- f) to bring to the notice of the Superintendent any female whom he may suspect to be pregnant;

<sup>79</sup> Rule 919, Karnataka Prison Manual.

<sup>80</sup> Rule 828, Karnataka Prison Manual.

- g) to bring promptly to the notice of the Superintendent any case of suspected cholera or other contagious or infectious disease that may appear amongst the staff or the inmates of the jail;
- h) to examine the wells and other sources of water supply to bring to notice any defects with regard to its quantity or quality, to examine all tanks and vessels daily in which water is stored or conveyed and to send samples for analysis;
- i) to inspect at least once a week the surroundings of the jail and especially the place and the manner in which filth and the like are trenched or otherwise disposed of;
- j) to attend to the ventilation with due regard to the season, of the hospitals, sleeping wards and workshops and to satisfy himself that the prisoners are not unnecessarily exposed to drought or to rain;
- k) The Medical Officer shall inspect the ration articles including vegetable etc. daily and inspect the cooked food and shall see that the same is good and fit for consumption. He shall record a note to that effect in his journal daily.

Further, Chapter XLV of the Karnataka Prison Manual provides for detailed provisions in regard to 'Medical Administration and Hospital Management'.

## OBSERVATIONS AND ISSUES

- 1) **Prison Hospitals and Medical Staff:** An area of immense concern in the prisons in the state is the lack of basic medical facilities. Only 5 central prisons have the facility of a hospital inside the prison. These are Central Prison Shivamogga, Central Prison Kalaburagi, Central Prison Belagavi, Central Prison Vijayapura and Central Prison Bengaluru. Central Prison Belagavi, Central Prison Kalaburagi and Central Prison Shivamogga has 20-25 beds and Central Prison Vijayapura have 6 beds in their prison hospitals. All other central prisons and 7 district prisons have a dispensary in the prison complex<sup>81</sup> with medical officers, many of whom are retired government doctors appointed on contract basis.<sup>82</sup> Except for District Prison Mangaluru, all district prisons and taluk prisons have a room used as a dispensary or a common room shared for other purposes. In Mangaluru, the small common area at the entrance of the wards is used as a dispensary with no examination bed or proper infrastructure. Of these 6 central prisons have pathology labs and 3 have x-ray machines. Only 3 of the 21 district prisons have medical officers,<sup>83</sup> all of whom are employed on contract basis.

The post of a medical officer was not found to be sanctioned in every district and taluk prison, a serious dearth of these officers being a great strain on the other prison staff. None of the taluk prisons or revenue prisons has either Medical Officers or dispensaries, while the Open Air Prison has a dispensary but no medical officer. Most prisons rely on government hospital doctors who make regular visits to the prison (weekly at best, once in 3 months at worst). As per Prison Statistics 2018, there was one medical personnel for every 664 prisoners in 2018.<sup>84</sup> If visiting Medical Officers are counted, then there is about one medical personnel for every 250-300 inmates in 2019.

There are however some encouraging practices in the state. The Karnataka State Aids Prevention Society, a government concern, and several NGOs have made a concerted effort

81 Bagalkot District Prison, Bidar District Prison, Chitradurga District Prison, Koppal District Prison, Madikeri District Prison, Raichur District Prison and Udupi District Prison.

82 3 Medical Officers in Bangalore Central Prison, one of the 2 Medical Officers in Kalburgi Central Prison, the Medical Officer in Shimoga Central Prison (who also works in the Womens' Central Prison) and the Medical Officer in Ballari Central Prison are the only ones who are deputed from the health department on a permanent basis.

83 Bidar District Prison, Mangalore District Prison and Raichur District Prison – of these, Mangalore District Prison did not have a separate dispensary for the Medical Officer to conduct his examinations.

84 Table 11.2, Prison Statistics India 2018.

to spread HIV/AIDS awareness and provide free treatment to prison inmates in need of antiretroviral treatment. Further, in several districts, district mental health teams (under the district mental health programme) have started engaging with prison inmates to provide both psychiatric and counselling support. Regular check-ups for TB, optical concerns and blood sugar are now being conducted. Children born to female inmates are provided early vaccination without exception.

***In taluk prison K.R. Nagar, the jailor ensures that prisoners are taken in batches to the government hospital in order to get regular medical check-ups.***

- 4) **Need for Specialists:** The common ailments found in prisons include skin infections, mental health concerns, breathing problems, poor eyesight, among others. Specialists, especially psychiatrists, dermatologists and gynaecologists are in dire need in prisons, many of which have frequent medical camps to cater to these specific needs. Gynaecologists make weekly visits only in Central Prison Mysuru and Central Prison Kalaburagi; Psychologists are available in Central Prison Bengaluru and District Prison Mangaluru, Psychiatrists visit Central Prison Shivamogga, Central Prison Kalaburagi, Central Prison Mysuru, Central Prison Belagavi, District Prison Mangaluru and District Prison Bidar on weekly basis and in Central Prison Belagavi once every month.
- 5) **Need for nursing and other medical staff:** Supporting staff for medical units, including nursing orderlies, pharmacists, lab technicians and ward boys are not available at the optimal level in any central prison, and not at all in others prisons. In central prisons, the limited medical staff has to rely heavily on convicts to manage the work load. As against the sanctioned posts of 17 pharmacists, 7 lab technicians and 8 other medical staff including nursing staff, only 8, 4 and 3 are present, respectively.<sup>85</sup> Medical histories and medical details at the time of admission into the prison are recorded in ePrisons in all central prisons. The absence of medical staff in district and taluk prisons has the consequence of the medical examination at the time of admission, as mandated by the NHRC, not being conducted.

Following the directions in the order dated 15.09.2017 passed by the Hon'ble Supreme Court in WP No.406 of 2013, new medical posts have been created across prisons, including chief medical officers, psychiatrists and staff nurse.<sup>86</sup> More specifically, the following posts have been created for medical and paramedical officers in the district and central prisons of the state: 7 chief medical officers, 6 psychiatrists and 20 staff nurse.<sup>87</sup> In addition to this, the same government order directs that 34 paramedical officers from the Health and Family Welfare Department will be on deputation to fill the existing vacancies for medical staff in the prisons.<sup>88</sup> A welcome initiative is the creation of 20 new posts for psychiatric counsellors in the state's prisons.<sup>89</sup>

***Sanction of new posts for medical officers, nursing staff, paramedical officers and mental health professionals is a necessary and welcome move.***

- 6) **Shortage of Medical Escorts:** An issue of grave concern is the dearth of medical escorts - personnel from the City Armed Reserve (CAR)/District Armed Reserve (DAR)/police station - who escort sick inmates to a hospital outside the prison, and provide guarding

<sup>85</sup> Table 11.3, Prison Statistics India 2018.

<sup>86</sup> Letters E-4/CR-04/2016-17, dated 02.12.2016, 22.07.2017, 27.09.2017, 08.01.2018, 11.01.2019.

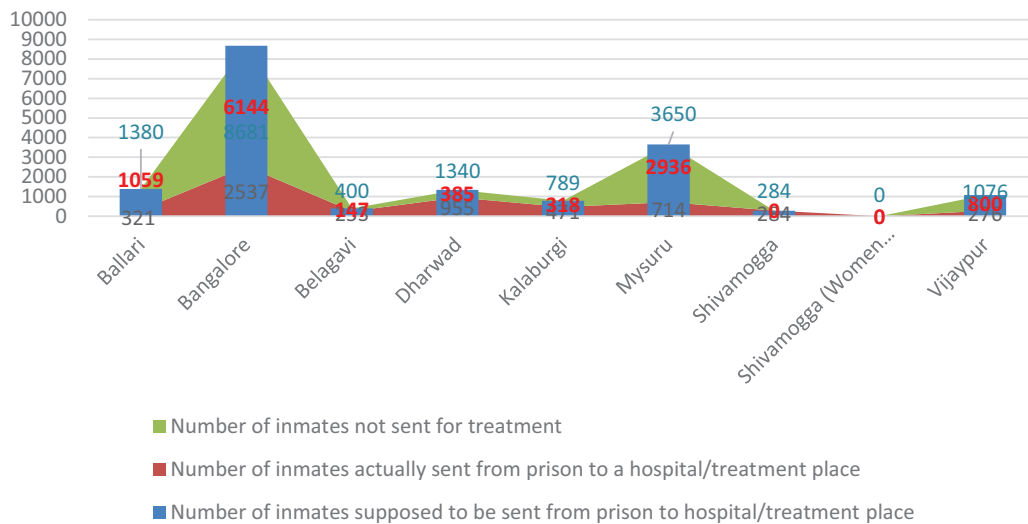
<sup>87</sup> Vide GO HD 3 PRA 2017 (dated 01.08.2019).

<sup>88</sup> Vide GO HD 3 PRA 2017 (dated 01.08.2019).

<sup>89</sup> Vide GO HD 19 PRA 2017 (dated 25.07.2019).

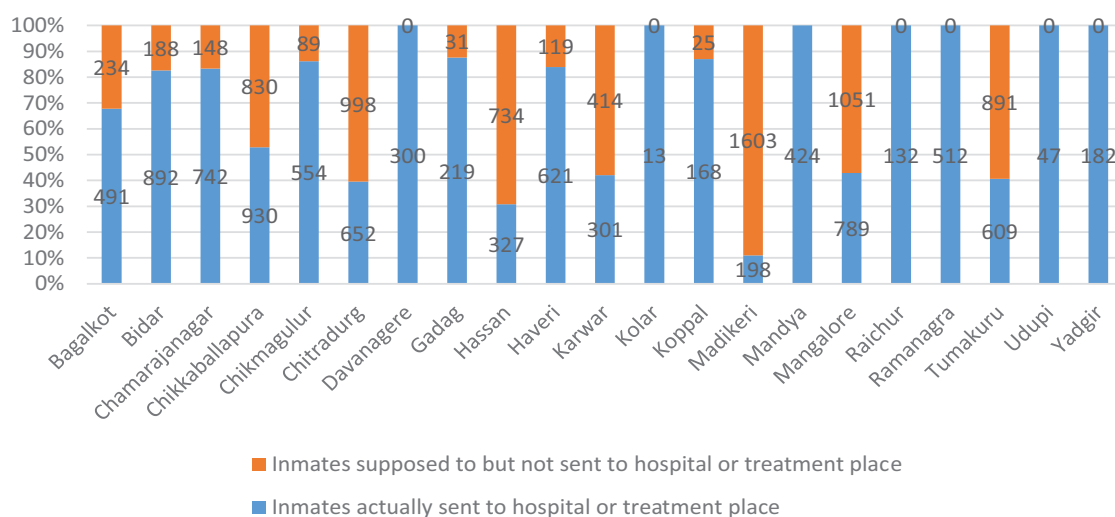
duties in case they are admitted in the prison ward of the hospital. When an inmate is referred to a hospital by a doctor visiting the prison, it is often after several requests that personnel are provided for their escort to hospital, and often times on Sundays and public holidays (days when the government hospitals are not fully staffed). As a result, in cases of emergencies, prison personnel are forced to fulfil the role of medical escorts. The charts below show prison-type wise status of prisoners who were referred to outside hospitals and higher institutions.

**Chart 5.4: Number of prisoners sent/not sent through Medical Escorts in Central Prisons**



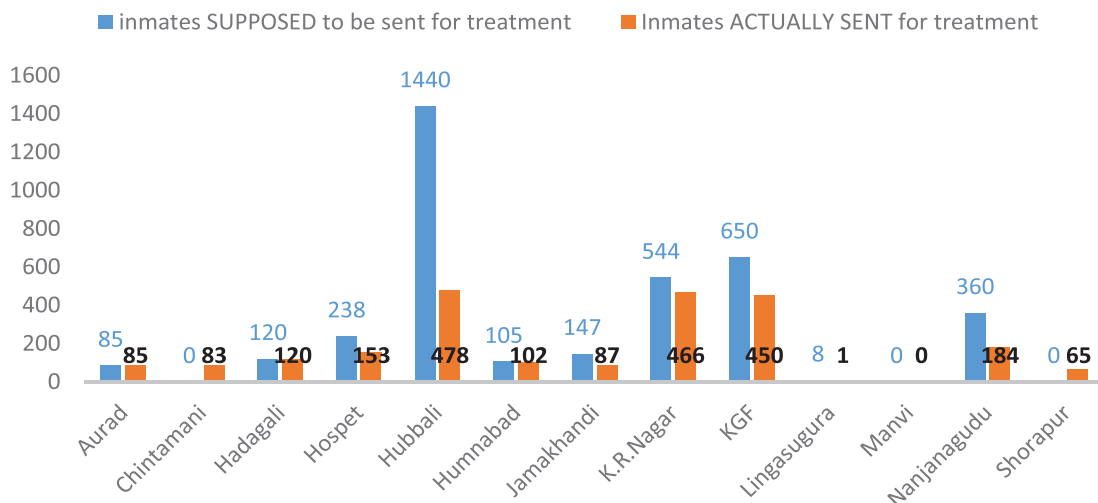
In 2018 out of a total of 17600 prisoners who were supposed to be sent to a hospital or any other treatment place, only 5811 were actually sent, which is mere 33.01% of the total number. Apart from the death of escorts which is a general problem, special problems add to this problem as in the case of the women's prison in Shivamogga. Since there are few women in the force, escorting female prisoners to medical care is especially onerous and logistically difficult to ensure.

**Chart 5.5: Number of prisoners sent/not sent through Medical Escorts in District Prisons**



Out of 21 district prisons: in 6 prisons all the inmates that were required to be sent for treatment were sent; in 6 prisons more than 50% of prisoners required to be sent were not sent; in 8 prisons at least more than 10% prisoners required to be sent for treatment were not sent; the information about 1 prison is not provided.

**Chart 5.6: Number of prisoners sent/not sent through Medical Escorts in Taluk Prisons**



The situation in taluk prisons is no different, on an average 40% of the prisoners supposed to be sent for treatment were not sent. No proper data was provided for Chintamani and Shorapur.

- 7) **Availability of Ambulances:** 20 prisons do not have an ambulance for use, and in some prisons, ambulances in existence are old and in need of replacement. Ambulance is not available in District Prison Yadagir, District Prison Gadag, District Prison Ramanagra and District Prison Koppal. Among taluk prisons, it is only available at Jamkhandi, Hubballi and Chintamani. None of the revenue prisons have any ambulance facility. Most taluk prisons do not have four wheelers, therefore making the escort of inmates in emergency situations a cause of concern.

## C. Deaths in Prisons

### STANDARDS

Deaths in prisons have been the subject of judicial scrutiny for a long time in India, with two necessary steps to be taken, now institutionalized. The first is for a magisterial enquiry under section 176 of the CrPC and the second is for information of the death to be communicated to the National Human Rights Commission, which then determines if it is a fit case for compensation to be awarded to the family of the deceased inmate. In addition to these, the Karnataka Prison Manual in Chapter XXXV provides for measures to be taken by prison staff to avert prison deaths, over and above the responsibilities of the Prison Superintendent and Medical Officer in the eventuality of a death.

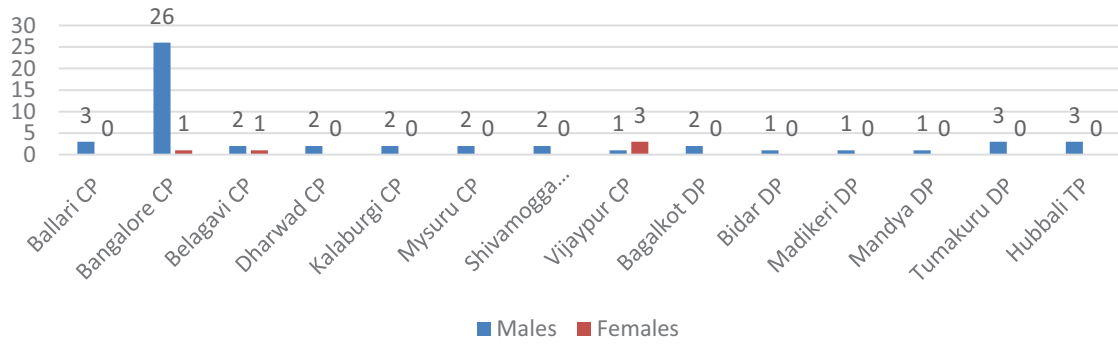
### OBSERVATIONS & ISSUES:

In 2017, Karnataka reported 78 deaths in prison.<sup>90</sup> As per the data of the NHRC, in 2017-18 there were 11 deaths reported, and in 2016-17, it was 6. Natural causes and suicides are the two main causes for deaths in prisons.

In the year 2018, 34 deaths were reported in the 51 prisons covered by the study team, refer Chart 5.4 below. Though 29 of these deaths were provided as 'natural deaths', the judicial magistrate's enquiry is pending in 11 cases. 5 cases of suicide were reported, one each in Central Prison Ballari, Central Prison Kalaburagi, District Prison Davangere, District Prison Karawar and District Prison Udupi.

<sup>90</sup> Table 8.1 Prison Statistics India 2017.

**Chart 5.7: Sex-wise distribution of number of natural deaths in prisons**



NHRC vide its letter (no. 66/SG/NHRC/93) dated 14 December 1993 clearly directed reporting a custodial death to the Secretary General, NHRC, within 24 hours of its occurrence. It was later clarified by NHRC, by its letter (no.- F. No. 40/3/95-LD) dated 21 June, 1995, that custodial deaths as referred to in its letter dated 14 December 1993 include deaths not only in the police custody but also in judicial custody. As regards this mandate, NHRC was duly informed by all prisons on the same day as when death took place in the prison.

Procedure with regard to inquiry into the cause of death is clearly and categorically provided in section 176 of the CrPC. With the only exception of a death in District Prison Mandya where the magisterial enquiry was initiated after 6 months from the date of the incidence of death, in all other cases, enquiry commenced either on the same day or the next day. As on 31st December 2018, three enquiries were pending each in cases of deaths in District Prison Tumakuru, Taluk Prison Hubballi, two each in Central Prison Shivamogga and Central Prison Belagavi and one enquiry of death was pending in Central Prison Kalaburagi.

Improving medical facilities for prisons, with an emphasis on mental health, will go a long way in reducing the number of prison deaths. The issue of deaths in prisons is currently being looked into by the Karnataka High Court in WP (Civil) No.51738/2017 (emanating from the directions of the Supreme Court in WP (Civil) No.406/2013).

***Enquiries into deaths in the prison are initiated promptly in Karnataka's prisons.***

## RECOMMENDATIONS

### State Government:

1. With regard to the issue of shortage of police escorts for medical purposes, a circular/order, in consultation with the prison department and the police department, must be issued to ensure timely medical treatment of prisoners. It must ensure adequate number of police escorts and clearly define the role of police functionaries (DAR/CAR and Superintendents of Police) and the necessary coordination required at the district level between the prison officials and police officials.
2. Ensure that adequate number of ambulances are provided for every prison.
3. Ensure that all the sanctioned posts of Medical Officers and other medical staff are filled in a time-bound manner on priority basis.

### Health & Family Welfare Department:

1. Ensure that all prisons (including district and taluk) have dispensaries, if not full-fledged



hospital wings, in keeping with the spirit of the provisions of the Model Prison Manual, 2016.

2. Make an informed and realistic assessment of the required number of sanctioned posts of medical staff, based on a consultation with heads of the prisons, and submit the proposal to the State Government in order to increase the sanctioned posts.
3. Ensure that the NHRC 'pro forma for health screening of prisoners on admission to jail' must be filled by medical officers in all prisons and the medical officers either appointed or deputed to prisons must be given training in this regard.
4. Awareness programs in regard to skin ailments and their prevention must be conducted in all prisons. Collaborations with local private hospitals and medical colleges must be explored in this regard.

#### **Prison Department:**

1. Construct more toilets and bathrooms in prisons, where required, in order to reach the desired ratio.

#### **State Judicial Academy:**

1. A training module for judicial magistrates must be prepared comprising legal provisions, all the guidelines, notifications and recommendations issued by the National Human Rights Commission on the subject of deaths in judicial custody. It must be ensured that such focused training programs must be conducted regularly for judicial magistrates.

#### **State Police Department:**

1. The issue of medical escorts is of grave concern and must be addressed at the district level with the DAR/CAR and Superintendents of Police in all districts.
2. In every Central prison, two police escorts for medical purposes must be stationed at all times to meet any emergency.

#### **UPDATES AS OF APRIL 2022**

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

##### **❖ Regarding Sanitation and Hygiene:**

- ✓ A sum of Rs 5.55 Crores has been provided to various prisons in the state during 2021-2022 for construction of 60 additional toilets and 322 bathrooms. Karnataka will soon be among the few states in the country to have adequate toilets and bathrooms, at par with the 1:6 and 1:10 standards for toilets and bathrooms respectively, as prescribed in Model Prison Manual, 2016.
- ✓ Prisons which had open drains are now covered as part of the Covid measures.
- ✓ Prisons which had the practice of burning garbage have now discarded it and garbage is now collected by municipalities in all prisons.

##### **❖ Regarding Medical Facilities:**

- ✓ A proposal to transfer healthcare facilities to the Department of Health and Family is under consideration by the State Government. Once implemented, it would ensure adequate access to medical facilities by prisoners
- ✓ The NHRC's proforma for the first health screening of newly admitted prisoners is being used now by prisons. A copy of the same was shared by the study team as part of the 'immediate action letters' sent to prisons, where the gap was observed. In many taluk and district prisons where there are no full-time medical officers, the proforma is filled within one to two weeks, depending on the periodicity of visits by the visiting doctor.

# CHAPTER - 6

## CONTACT WITH THE OUTSIDE WORLD

### A. Communication with Family and Friends

#### STANDARDS

Right to communication is a recognized fundamental right of a prisoner, most recently endorsed in the Model Prison Manual, 2016. The Karnataka Prison Manual provides for facilities for seeing and communicating with relatives and friends in regard to prisoners who are – (i) newly admitted; (ii) committed to the prison in default of payment of fine or failure to furnish security; (iii) sentenced to death; and (iv) sentenced to imprisonment for life.<sup>91</sup> It also provides for different scenarios when a prisoner is transferred from one prison to another,<sup>92</sup> or to sign a power of attorney.<sup>93</sup> It provides for meetings with relatives, friends and legal advisers for up to 45 minutes per meeting,<sup>94</sup> once a fortnight for convicts and once a week for under trials.<sup>95</sup> The Karnataka Prison Manual also empowers the Superintendents to disallow any interview to which a prisoner would ordinarily be entitled to under these rules if in his opinion it is expedient in public interest to do so but in every such case, he shall record reasons for such refusal in his diary.<sup>96</sup>

Regarding the place of interview, the Karnataka Prison Manual provides that every interview shall take place in a special part of the prison provided for the purpose, if possible at or near the main gate. If a prisoner is seriously ill, the Superintendent may permit the interview to take place in the hospital. A condemned prisoner shall ordinarily be interviewed in his cell. The Superintendent may for special reasons to be recorded in writing permit an interview to take place in any part of the prison.<sup>97</sup> The number of persons permitted to be present at an interview shall not ordinarily exceed four but in the case of near relatives of a prisoner, may be extended to six persons viz., husband, wife, father, mother, children, brothers and sisters.<sup>98</sup>

***In district prisons such as Karwar, the Superintendent makes a note of prisoners who have not been able to inform their family members about their custody during his weekly round, and assists them in doing so.***

91 Rule 584, Karnataka Prison Manual.

92 Rule 585, Karnataka Prison Manual.

93 Rule 586, Karnataka Prison Manual.

94 Rule 601, Karnataka Prison Manual.

95 Rule 592 (iv), Karnataka Prison Manual.

96 Rule 588 (ii), Karnataka Prison Manual.

97 Rule 599, Karnataka Prison Manual.

98 Rule 603, Karnataka Prison Manual. Children below 3 years are excluded from the number.

## OBSERVATIONS AND ISSUES

There were a number of issues that need to be addressed in regard to communication with family:

- 1) **Place of Interview:** The interview room or 'entry' or 'beti' room for inmates to speak to their visitors in general consists of a thick wire mesh separating prisoners from visitor, and in some prisons sitting benches are provided. Most of the visiting rooms are however very small, and in need of expansion and upgrade. Please see the concerned section under Chapter 1 on 'Infrastructural Facilities'. In the Shivamogga Central Prison, established most recently in 2018, the visiting area consists of a glass partition with intercom phones to facilitate conversations.

The Karnataka Prison Manual provides that interviews with female prisoners shall if practicable, take place in the female enclosure.<sup>99</sup> However, most of the prisons with women enclosures do not have a separate interview room and they talk through the mesh of the main gate of the women enclosure with no privacy.

Special meetings in person are also allowed, in good practice, in several prisons. There is also a good practice of allowing a weekly meeting between inmates in the male and female sections under special circumstances.<sup>100</sup> This is mainly for family members who are detained in same prison. However, due to lack of any guidelines in this regard, discretion of the Superintendent at times becomes arbitrary.

- 2) **Interview experience:** The Karnataka Prison Manual provides that in case the friends or relations interviewing a prisoner wish to make over any articles or cash for the use of the prisoner either in prison or on release, they shall deposit them at the main gate with the permission of the officer supervising the interview. Any article or cash so deposited shall be brought to the notice of the Superintendent for his orders. The introduction of any articles or cash into prison except in accordance with this rule or with written sanction of the Superintendent is prohibited and declared to be an offence under section 45 of the Prisons Act, 1963.<sup>101</sup> Many prisoners in almost all prisons complained to the study team of harassment by the prison staff before the interview. The demand of money/gratification to allow articles is common, which makes it a harrowing experience for the family members of inmates. The problem is not just limited to staff but convicts who are in-charge of interview rooms are also involved in such malpractices in central prisons. One of the study team members witnessed it at Bengaluru Central prison when after the visiting hours, three convicts were found counting a bundle of cash each.

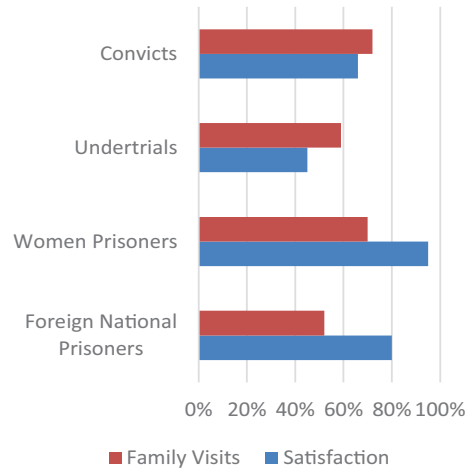
Further, there is a need to be more liberal with family members who come from far off places, since they often do not have the means and resources to make arrangements to stay overnight. At times they are refused meeting because it is not a visiting day or the in-charge is busy. However, in some prisons, Superintendents make exceptions in some cases when they are met with genuine requests.

99 Rule 599(i), Karnataka Prison Manual.

100 Rule 595, Karnataka Prison Manual.

101 Rule 606, Karnataka Prison Manual.

**Chart 6.1: Percentage of family visits and satisfaction among prisoners**



The graph here depicts mulaqaat/beti trends observed in the prisons of Karnataka. 72% of the convicts interviewed by the study team had mulaqaat/beti, of whom about 66% expressed satisfaction in the process. Among women prisoners interviewed by the study team, 70% had visits by family and 95% of them found it satisfying. Of the undertrial prisoners interviewed by the study team, 59% had family visits, and less than majority expressed satisfaction. Among the foreign national prisoners interviewed by the study team, only 52% had family visits.

- 3) **Access to paper and pen for letter-writing:** Inmates have the right to write 2 to 4 letters a month (half of which are at government cost), depending on the class of prisoner.<sup>102</sup> Further, an inmate is entitled to write to his family informing them of his incarceration at the time of admission in prison (once or twice or often).<sup>103</sup> It is provided in the Karnataka Prison Manual that writing materials shall be supplied in reasonable quantities to any prisoner who has permission to write, at Government cost.<sup>104</sup> However, in several prisons, the study team learnt that access to paper and pen is often difficult.
- 4) **Phone facilities:** With the proliferation of phones, the primary means of communication is no longer through letters. To this end, all central prisons (except for Women’s Central Prison Shivamogga) and the district prison in Mangaluru (which amounts to 10 of the 51 prisons at the time of the study) have been provided with phone facilities.

Inmates are typically allowed two calls per week, for up to 7-11 minutes per call, to two to three designated numbers, upon purchasing a call card (for Rs.60/Rs.100 per month). The calculation of call per minute indicates that the cost is highest in Central Prison Shivamogga, about Rs. 7 per minute and lowest in Central Prison Ballari with Rs. 1 per minute. However, inmates with no source of money (a sizeable portion of the prison population in fact) are unable to use this facility. In today’s time of the possibility of free calling through technology, this cost must be minimised and standardised. One of the requests repeatedly made to the study team in all the district prisons, taluk prisons and revenue prisons is for provision of phone facilities as it is often time consuming and expensive for their families to make regular prison visits, and especially to maintain contact with their lawyers regarding the progress of their case (the practice of lawyers visiting prisons to meet their clients is unfortunately largely absent in the prisons in the state). To this end, the study team was informed by the Prison Department that by the end of 2019, all district prisons would have been provided

102 Rule 592 (i), (ii) and (iii), Karnataka Prison Manual.

103 Rule 584(i), Karnataka Prison Manual.

104 Rule 608, Karnataka Prison Manual.

with phone facilities. Further, the Open Air Jail also did not have phone facilities at the time of the study team's visit. Given that inmates in this prison come from very far away places, providing calling facilities here is crucial to enable rehabilitation.

- 5) **Informing family members about detention:** The study team met several newly admitted inmates who had been unable to inform their families about their incarceration, a right that accrues to them at the time of arrest. Since the Karnataka Prison Manual provides for regular letters at government cost, including letters at the time of admission to prison, the same right can be extended to the use of telephone facilities. One of the common requests in the immediate action letters made by the study team to prisons after the visit was to facilitate inmates to inform their families about their incarceration, as this had not happened at the time of arrest.<sup>105</sup>
- 6) **Transfer of prisoners to maintain contact with family:** While the Karnataka Prison Manual provides for transfer of prisoners to other prisons on punishment, there is no provision to transfer them on humanitarian grounds, in the interest of their rehabilitation or to be nearer to his/her home district.<sup>106</sup> A number of convicts, though transferred to other prisons on punishment or on administrative grounds, raised the issue that there is no prescribed reasonable period for which they can be transferred. They have been transferred, away from their families, for years together and there has been no respite despite many written applications.

## B. Communication with Lawyer

### STANDARDS

The Karnataka Prison Manual provides that unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restriction for interviewing or otherwise communicating either orally or in writing with the relatives, friends and legal advisers. Any bona-fide confidential, written communication, prepared by the, unconvicted criminal prisoner as instructed by his legal advisor may be delivered personally to such legal advisor without being previously examined by the Superintendent.<sup>107</sup>

While the Karnataka Prison Manual provides for communication of undertrials and civil prisoners with their legal advisers, no such provision is provided for convicts who struggle with any information on the status of their appeal. The Supreme Court in *Imtiyaz Ramzan Khan v. The State of Maharashtra*<sup>108</sup> observed that, “very often we see that the learned Advocates who appear in matters entrusted by the Supreme Court Legal Services Committee, do not have the advantage of having had a dialogue with either the accused or those who are in the know of the details about the case. This at times seriously hampers the efforts on part of the learned Advocates. All such attempts to facilitate dialogue between the counsel and his client would further the cause of justice and make legal aid meaningful. We, therefore, direct all Legal Services Authorities/Committees in every State to extend similar such facility in every criminal case wherever the accused is lodged in prison. They shall extend the facility of video conferencing between the counsel on one hand and the accused or anybody in the know of the matter on the other, so that the cause of justice is well served.”

<sup>105</sup> All central prisons; district prisons Ramnagar, Davangere, Udupi, Chikkamagalur, Mangalore, Madikeri, Hassan, Bagalkot, among others; taluk prisons Lingasugur, Gokak, Jamkhandi, among others.

<sup>106</sup> Para 9.01, Model Prison Manual, 2016.

<sup>107</sup> Rule 589, Karnataka Prison Manual.

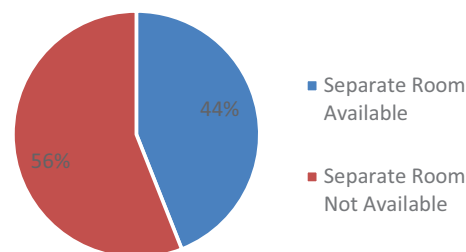
<sup>108</sup> (2018) 9 SCC 160.

In *Prem Kumar v. State of Karnataka*,<sup>109</sup> directions were sought from the Karnataka High Court to ensure time bound compliance of directions given by the Supreme Court. It was submitted that in cases where legal aid is given to accused, it is difficult for the advocates rendering legal aid to contact the accused who are languishing in prison and take suitable instructions. “The accused should also be aware that their case is posted before the court and they should be in a position to contact their lawyers. There is already a video conferencing facility to enable the advocates to contact the accused undergoing sentence in the prison. Karnataka State Legal Services Authority and the High Court Legal Services Committee are hereby directed to instruct the Jail Superintendents that necessary arrangements be made to enable the accused to contact the advocates who have been engaged by Legal Aid Committee. The Prison Superintendent should also bring to the notice of the accused when their respective cases are or likely to be posted before the court so that the accused can give suitable instructions to their advocates through video conference before their cases are argued. The Registry may take suitable steps for notifying the Prison Superintendents about listing of cases in which legal aid is given for final hearing”.

## OBSERVATIONS AND ISSUES

- 1) **Availability of separate room for lawyer-client meeting:** 28 out of 49 prisons, do not have separate rooms for lawyer-client interviews. The office space in District Prison Madikeri; library area in District Prison Tumakuru; and in Taluka Prison Madhugiri staff room is used for meeting with lawyer with the Karnataka Prison Manual providing for this privileged communication to be within sight but out of earshot.<sup>110</sup> Among those prisons having this facility, District Prison Koppal additionally has separate rooms for male and female interviews.

**Chart 6.2: Availability of separate room for lawyer-client meeting**



*Almost half the prisons in the state have separate rooms/spaces for lawyer-client meetings, which enables privileged conversation.*

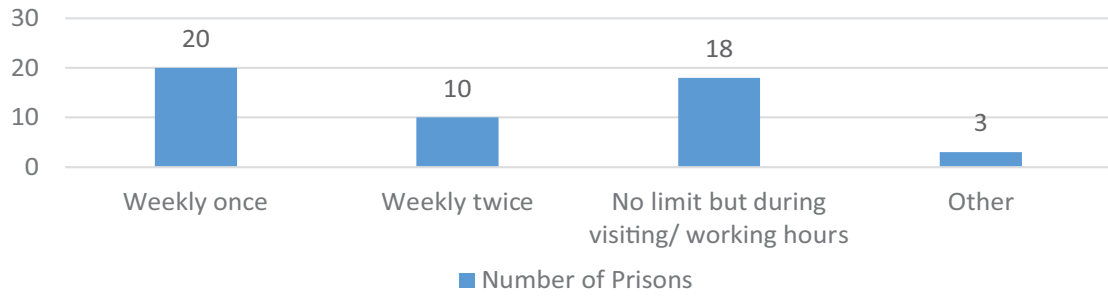
- 2) **Number of Visits permitted to lawyers:** 20% prisons allow lawyer meetings twice a week and 39% of the prisons allow lawyers to meet with their clients once in a week. A good practice followed by 37% of the prisons is that they do not put any limit on the number of lawyer interactions.<sup>111</sup>

<sup>109</sup> Order dated 17 November 2018 passed in CRL.A 1139/2014.

<sup>110</sup> Rule 588(i), Karnataka Prison Manual.

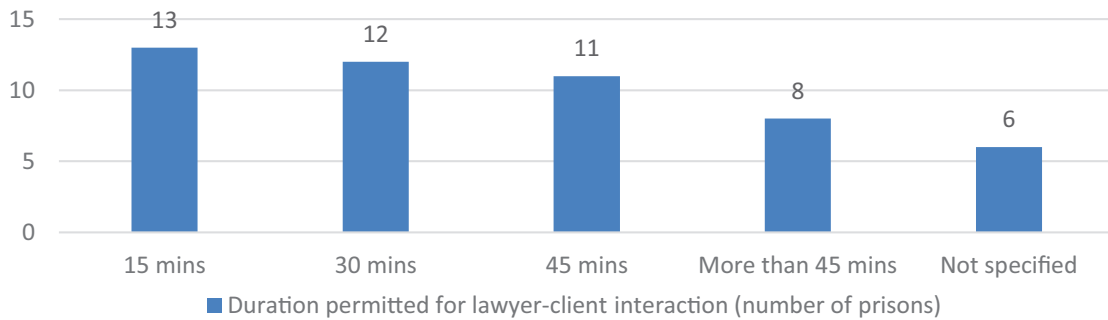
<sup>111</sup> District Prison Ramnagara provided vague response.

**Chart 6.3: Number of Visits allowed to lawyers by various prisons**



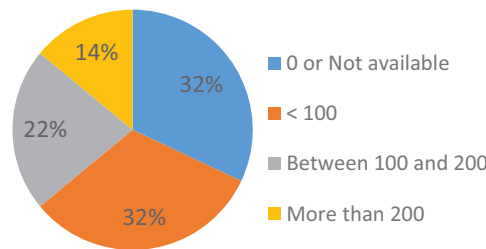
3) **Duration of interaction permitted for lawyer-client interaction:** The interaction ranged between 15 min to no specified time limit with majority of the prisons permitting only 15 minutes of interaction.

**Chart 6.4: Duration of lawyer-client meeting allowed by various prisons**



4) **Number of Visits made by lawyers:** According to information received by various prisons, about one-third of the prisons did not record number of visits by lawyers. The highest number of visits by lawyers (5832) were made in Central Prison Bengaluru, followed by Central Prison Belagavi with 2150 visits.

**Chart 6.5: Total number of visits by lawyers in a year in various prisons**



**RECOMMENDATIONS**

**Prison Department:**

1. Upgrade the capacity and modernize the interview rooms, in a phased manner, starting with central prisons.
2. Issue directions to all the prison heads for stricter vigilance to monitor the visiting procedures and address malpractices. Surprise and unannounced checks by the Superintendent and direct interaction with family members of inmates periodically would help them understand the gravity of issues in order to address them effectively.
3. Phone facilities must be extended on priority basis in all district prisons, taluk prisons and revenue prisons.

4. Ensure that sheets of paper and pens in requisite quantities are kept in the library for common use for communication purposes.
5. Ensure that minimal restrictions are placed on lawyer-client interactions and efforts must be made to provide a separate room for such interaction so that the statutorily recognised principle of lawyer-client privilege and confidentiality is maintained (keeping in mind that the State is the opponent and ought not to be privy to the details of the discussions between the inmate and his or her lawyer).

#### **State Legal Services Authority**

1. Pursuant to the observations in *Imtiyaz Ramzan Khan v. The State of Maharashtra and Prem Kumar v. State of Karnataka*,<sup>112</sup> direct the DLSAs functionaries to coordinate with the prison authorities to ensure that necessary arrangements be made to enable the convicts to contact the advocates who have been engaged by Legal Aid Committee of the High Court or the Supreme Court.

#### **UPDATES AS OF APRIL 2022**

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

##### **❖ Regarding Sanitation and Hygiene:**

- ✓ The 'prison call system' has now been extended to district prisons to facilitate prisoners to interact with their family members and legal advisors. Taluk prisons use landlines and CUG (Closed User Group) facilities. Eventually PCOs will be extended to taluk prisons too. During the pandemic, officer in-charge of all prisons were directed, vide letter No.: J2/SCWPN0.1/2020, dated 21 April, 2020, to ensure that prisoners are able to use the 'Prison Call System' liberally to talk to their families and lawyers. In case of any constraints, all the government phones including P&T lines which are in the prisons shall also be allowed to be used by the prisoners for making calls to their families and lawyers. There is also a discussion regarding doing away with calling cards altogether and making the calls free of charge for the prisoners in future.
- ✓ All central prisons have **upgraded interview rooms** with glass partitions and intercom phones on both sides. Sanction has been given to upgrade the interview rooms at Raichur, Davangere, Mangalore, Chikkaballapur, Mandya, Koppal, Bidar and Yadgir district prisons; Nanjangud, Tiptur, Madhugiri, Devadurga taluk prisons. Interview rooms of other prisons will be upgraded in a phased manner.
- ✓ During 2021-22, 'E-mulakat', a video calling system through e-prison software has also been made available to prisoners to communicate with their family members and legal advisors. The equipment used for video-conferencing with the courts, after the court hours and on holidays, is used for e-mulakat in all the prisons in the state, bringing great convenience to the family and friends of the prisoners as they need not travel now all the way to the prisons. These innovative measures have also ensured optimum use of resources by the prisons in the state. The facility is also extended to and particularly useful for foreign national prisoners and prisoners belonging to other states. For this, a landline number, whatsapp number as well as an email are widely publicised by the prisons in the community and among the prisoners. Relatives/ friends can book a slot for e-mulakat by sharing the details of the prisoner with whom they wish to speak and the date and time for the interview will be fixed. Through this, an effort is made to curb corrupt practices during 'beti' or family visits.
- ✓ **Separate room for lawyer-client meeting** is also demarcated in prisons, where possible.

<sup>112</sup> Order dated 17.11.2018 passed in CRL.A 1139/2014.



# CHAPTER - 7

## ACCESS TO LEGAL AID IN PRISONS

Right to effective legal representation is one of the crucial fair trial rights. As per the Mandela Rules, “prisoners should have access to effective legal aid.”<sup>113</sup> The practical realisation of the right of prisoners to access legal aid in prisons is directly proportional to the coordination between the legal services institutions,<sup>114</sup> and the Jail Legal Aid Clinic.<sup>115</sup> Therefore, a harmonious and symbiotic relationship between the prison administration and legal services institutions is vital in order to enable access to justice for all. In this chapter, the functioning of Jail Legal Aid Clinics and access to legal aid lawyers by both under trial and convict prisoners in Karnataka’s prisons has been documented.

### STANDARDS

The right to legal aid emanates from Articles 22 and 39A of the Constitution of India. Every “person in custody” is entitled for legal aid.<sup>116</sup> In 2016, the National Legal Services Authority (NALSA) framed the Standard Operating Procedure (SOP) for Representation of Persons in Custody to streamline the functioning of Jail Legal Aid Clinics. In light of the standards laid down by the SOP and the observations of the study team, following observations were made.

### A. Jail Legal Aid Clinics – Infrastructure and Resources

#### OBSERVATIONS AND ISSUES

- 1) **Setting up of Jail Legal Aid Clinics (JLAC):** All prisons, visited by the study team, had a functional JLAC. The NALSA SOP provides that, “work of the Legal Service Clinics in the prisons should be streamlined with clearly demarcated space for such clinics. Requisite infrastructure should be made available, if need be as per the Regulations in this regard for the efficient functioning of such clinics.” As regards separate space for JLAC, a proper room was found to have been allotted in most central prisons, in district prisons Bidar, Chikkamagaluru, Gadag, Haveri, Karawar, Koppal, Mandya, Raichur, Ramanagara, among others and taluk prison Gokak. In some prisons, one room was shared for JLAC and other work. For example, in district prisons Tumakuru, Hassan and Davanagere, and taluk prison K.R. Nagar, the library was used as JLAC in the evening, whereas in district prison Udupi the dispensary and JLAC are in the same room and in district prison Bagalkot the VC

113 Rule 61(3).

114 Legal Services Institutions means the Supreme Court Legal Services Committee, State Legal Services Authorities (SLSAs), the High Court Legal Services Committee, District Legal Services Authorities (DLSAs) and Taluk Legal Services Committees or sub-divisional legal services committees, as the case may be.

115 In March 2015, the Minister of Law and Justice at the 12th All India Meet of State Legal Services Authorities discussed the need to constitute legal aid clinics in prisons to provide necessary legal aid to undertrials. Pursuant to this meeting, NALSA wrote a letter (vide No. L/47/2014-NALSA) dated 21 May 2015 to all the member secretaries of the state legal services authorities seeking the setup of legal services clinics in all the prisons in their respective states.

116 Section 12(g) of the Legal Services Authority Act, 1987.

systems and the JLAC are in the same room. In some district prisons like Hubballi and taluk prisons like Jamkhandi the multi-purpose room is used for JLAC.

The location of the JLAC is also important for ease of access for prisoners. While in most prisons the JLAC is located in the open area of the prison, in central prisons Bengaluru and Bellary, and district prisons Koppal the JLAC was set up as part of the office building which does not allow for free access by prisoners. A significant reason for this may be that most prison buildings are very old, and do not have the space or infrastructural facilities for a separate room that can be converted into a JLAC. In these prisons, inmates are informed through a public announcement system, or in person, about the arrival of the JVLs. In response to the basic enquiries in the barracks, and the interviews conducted with inmates, the study team found that most of the prisoners are aware about the legal aid clinics.

2) **Infrastructural facilities:** Every JLAC in the central or district prison is provided with a table, few chairs, a steel cupboard and a computer by the District Legal Services Authority, which are being used by the jail visiting lawyers and convict paralegals for day-to-day functioning of the clinic. Computers have been provided to enable the jail visiting lawyer to find out the case status from court websites, and inform inmates about the same. They are set up in all central prisons and district prisons Karawar, Kolar, Mandya, Raichur, Tumakuru, Gadag among others. In district prisons Chitradurgaa and Davanagere and others, computer systems were about to be set up at the time of visit by the study team. In some prisons, the computer is not set up for lack of space, while in some although a computer is set up, the legal aid lawyers are not comfortable to use them. In that case, jail visiting lawyers use their mobile phones to check case status and keep the prisoners informed.

3) **Appointment of Legal Aid Providers:**

a) **Jail Visiting Lawyers** – The NALSA SOP mandates that, “from amongst the panel lawyers, some lawyers should be earmarked as jail visiting lawyers. Visits to the prisons must be made at least twice every week.”<sup>117</sup> Every district and taluk prison has one or more jail visiting lawyers while central prisons have four. The frequency of visits by the JVLs varies from once a week to four times a week. There is no uniformity in their tenure. While in Belagavi JVLs are appointed for a term of one year, in Mangaluru, JVLs are appointed on rotational basis for one month each. It was learnt during the interactions with the DLSA secretaries that the practice of rotation is to prevent a jail visiting lawyer from establishing ties and soliciting clients. In Bijapur, there is no fixed tenure at all, a JVL could be appointed for one to three months.

One of the concerns about JVLs for undertrials is that if the JVL does not practice in the district/taluk where their case is pending, then they do not have the opportunity to find out the status of their cases. In central prisons, the concern with JVLs is that they are not always aware about the status of the appeals filed by convicts in the High Court or the Supreme Court. The study team met several jail visiting lawyers in the course of the study, many of whom felt contented about working in prisons and helping prisoners. However, they raised concerns about low prison visiting charges and delayed payments.

b) **Convict Paralegals (PLVs)** – As per the NALSA SOP, “sufficient number of PLVs, from amongst the convicts serving long sentences should be identified and they should be trained suitably”. DLSAs of districts where central prisons are located, have appointed

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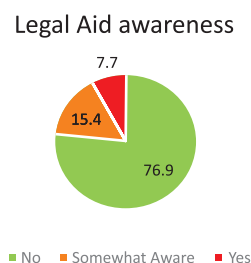
117 In the prisons in Karnataka, jail visiting lawyers are required to visit the prison four times a week.

two to three convicts as PLVs in all such prisons.<sup>118</sup> All PLVs were also provided one to two days of training by the DLSA. The study team met several such convict PLVs who provided invaluable assistance in identifying the key issues and even suggesting solutions given their insights, perspective and understanding of the functioning of the prison system. Unfortunately, not one of them has been paid the remuneration due to them for their services, thereby causing potential demotivation to work amongst the PLVs.

## B. Access to Legal Aid by Undertrials

### OBSERVATIONS AND ISSUES

**Chart 7.1: Status of Legal Aid Awareness**



Among the undertrials interviewed by the study team, 77% of them had no awareness of legal aid processes.

**1) Appointment of lawyer:** The study team’s interactions with undertrials revealed that finding and appointing a lawyer is a difficult process unless there is someone to do this on one’s behalf outside prison. The practice of seeking and appointing a legal aid lawyer is generally done in court, when the presiding judge enquires from an accused if he/she is in need of a lawyer, and appoints a lawyer from the panel of legal aid lawyers.<sup>119</sup> The second, less prevalent, method is to make a request to the jail visiting lawyer, who then forwards the said request to the DLSA to appoint a lawyer. Based on interactions with the prisoners, the study team too made requests to concerned DLSAs for appointment of lawyers for inmates in several prisons.<sup>120</sup>

The NALSA SOP mandates both the JVLs and convict PLVs to “regularly interact with the inmates and especially the new inmates to find out if they are represented by any lawyer and if not, they should inform the inmate about their right to get a legal aid lawyer. They should also inform the District Secretary so that a legal aid lawyer can be appointed to represent the inmate in court.”

In keeping with this objective, the Karnataka State Legal Services Authority notified that JVLs must visit the prison at least four times a week, between 2 and 6 PM on each of these visits.<sup>121</sup> Despite regular visits by JVLs in all prisons, 17.6% of the under trials interviewed by the study team and 19.2% of young age offenders interviewed were found without a lawyer, which was brought to the notice of the concerned DLSA. During the interviews some undertrials shared the reasons for not having legal representation – either a new entrant refuses to have legal aid counsel at first production as she/he is unclear whom to engage or an undertrial earlier had a private lawyer and for paucity of money decides to engage with a legal aid lawyer during the course of trial.

A few cases were also found where a legal aid lawyer was engaged and the undertrial was dissatisfied by his/her services. In some cases, it was alleged that legal aid lawyers demanded money, even though they are required to provide free service. Such cases were also brought to the notice of the DLSA by the study team for conducting enquiry.

118 The district prison in Haveri is the only district prison in which an undertrial inmate has been appointed as a PLV.

119 It was mandated by the Supreme Court in *Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1.

120 DLSAs Bagalkot, Bellari, Bangalore, Belgaum, Bidar, Bijapur, Chikkamagaluru, Hassan, Kalburgi, Koppal, Mangalore, Mysore, Tumkur, Udipi, Yadgir.

121 No. 13/Panel Advocates/2018, letter dated 13.06.2019.

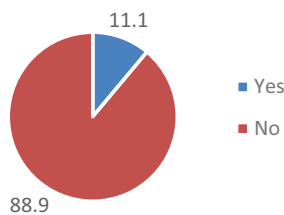
- 2) **Lack of Communication between the panel lawyer and the undertrials:** As per the NALSA SOP, “the panel lawyer who is appointed to represent a person in custody in the court should interact with the person in custody to have a better understanding of the case in hand.” The study team found that undertrials only get to meet with their lawyers when taken to court for hearing. This chance is also often taken from them when they are either produced through video-conferencing or not produced at all for shortage of police escorts. Very rarely does a panel lawyer visit his/her client in prison. Due to acute shortage of police escorts in all districts and no established practice of lawyers regularly meeting or interacting with their clients in prisons and inadequate or no phone facilities being available in all prisons, the JVLs and PLVs addresses a number of consequential queries raised by undertrials on daily basis, such as:

*“What is the status of my case?”*  
*“What is the status of my bail application?”*  
*“I am booked in a POCSO case. What are the chances of getting bail?”*  
*“I have many body warrants against me but I’m not being taken for trials in other districts, for how long will I be detained?”*  
*“Can someone help in procuring my school certificate for age proof?”*

### C. Access to Legal Aid by Convicts

#### OBSERVATIONS AND ISSUES

**Chart 7.2: Share of Prisoners aware about Legal Process**



Among the convicts interviewed by the study team, 89% did not know about the legal processes involved at various stages of trial and the safeguards available to them by law.

1) **Very few jail appeals filed:** In the year 2018, only 107 jail appeals were filed in the High Court, and 3 before the Supreme Court. This possibly indicates that legal aid for convicts, especially for filing appeals before the High Court and Supreme Court, is in need of streamlining. Jail appeals or ‘dharma appeals’ as they are called in the state are appeals filed by the prison on behalf of inmates seeking legal aid.

- 2) **Lack of clarity on process of filing of jail appeals in the Supreme Court:** There is lack of clarity in terms of where, how and whom to apply to for filing appeals. From conversations with DLSA member secretaries, and prison officers in charge of judicial functions in prisons, it was learnt that sometimes applications are sent either to the Supreme Court Legal Services Committee (SCLSC) directly, or to the Registrar, Supreme Court of India.
- a) **When an SLP is filed through the Registrar, Supreme Court:** Order XXII, Rule 7(1) of the Supreme Court Rules, 2013, provides that, “if the petitioner is in jail and is not represented by an advocate-on-record, he may present his petition for special leave to appeal together with the certified copy of the Judgment and any written argument which he may desire to advance to the officer-in charge of the jail, who shall forthwith forward the

same to the Registrar of this Court. Upon receipt of the said petition, the Registrar of the Court shall, whenever necessary call, from the proper officer of the Court or the Tribunal appealed from, the relevant documents for determination of the petition for special leave to appeal.” As a result, at the time of admission in the Supreme Court, neither the legal aid advocate nor the court is seized of documents beyond the High Court judgment and a very bare minimum appeal petition. The absence of the mandatory requirement for calling complete lower court records on the very first date of hearing, only delays the process and at times proves fatal during admission in the appellate court.

**b) When jail appeal is filed through the Supreme Court Legal Services Committee:** In 2015 the Secretary, Supreme Court Legal Services Committee and Additional Registrar, Supreme Court of India issued a letter stating that “...all matters that are required to be filed before the Supreme Court be processed and prepared by the High Court Legal Services Committee (HCLSC), including translation of documents.”<sup>122</sup> It further directed the SLSAs to direct all Prison Superintendents of the states to transmit cases to the SCLSC of those inmates seeking legal aid at the Supreme Court through the HCLSC. However, this procedure was not followed in any district/prison. In some districts, the District and State Legal Services Authority too have been involved in facilitating the process of filing of appeals.

- 3) Incomplete court records available with inmate seeking to file jail appeal:** Filing of an appeal necessitates procuring relevant documents including certified copy of judgment, affidavits, vakalatnama, detention certificates, case documents, etc. A common cause of concern that the study team learnt while interacting with convicts is that they do not have copies of their judgments (the free court copy under s.363 CrPC is often retained by the lawyer), which results in their inability to file jail appeals. Several convicts have a tough time arranging for it.<sup>123</sup> There is no clarity on who should be responsible to procure the documents. The appellant him/herself, being in custody, might not be able to procure them on his/her own.
- 4) Expenses involved in procuring court documents:** Another issue is with respect to costs of affidavits and other documents. Regulation 13 of the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, provides that, “in the case of appeal or revision, the Legal Services Institution may bear the expenses for obtaining certified copies of the judgment and case records.” However, prison authorities or convicts are often asked to provide certified copies of orders or other documents even when they have no means to do the same.

*In Dharwad Central Prison, before the filing of dharma appeals, legal aid lawyers have been directed to meet prisoners on behalf of whom the appeal is being filed in order to seek instructions.*

- 5) Communication gap between convict and the appeal lawyer:** While a letter of appointment of a legal aid lawyer along with the case number is sent to the convict, there is often little or no update provided to the convict on the status of the hearing, or an opportunity given to communicate with the lawyer. If a case has not yet been filed due to delay or defects, the convict is seldom aware of the same. The study team came across grievances to this effect in several central prisons.<sup>124</sup> Convicts have no means of being regularly informed of the progress of their appeals since they are not present for the hearing, and more importantly,

<sup>122</sup> Letter No. F – 191/Circular/SCLSC/2015 Dated. 15.04.2015.

<sup>123</sup> The study team was informed of this concern by convicts in central prisons Bangalore, Belgaum, Dharwad and Kalaburgi.

<sup>124</sup> Bangalore, Ballari, Belgaum, Bijapur, Kalburgi and Shimoga.

there is little to no communication between lawyers and inmates.<sup>125</sup> The Supreme Court ruling in *Imtiyaz Ramzan Khan v. State of Maharashtra*,<sup>126</sup> recognizing the directions of the Supreme Court Legal Services Committee, and the subsequent Bengaluru High Court ruling following this in *Prem Kumar v. State of Karnataka*,<sup>127</sup> mandate consultation between legal aid lawyers and their clients in prison through video conferencing/phones. If implemented in letter and spirit, this practice can go a long way in ensuring effective communication between the lawyer and inmate.

## RECOMMENDATIONS

### Supreme Court:

1. A more rigorous system of placing complete lower court records on the very first date of hearing, including their translations, must be set in place, whether the jail petitions are filed through the legal services committees or through the registry. Consider amending Order XXII Rule 7(1) of the Supreme Court Rules in this regard to make it mandatory for the Registrar to call complete set of records from the lower court and High Court, as the case may be.

### High Court:

1. Direct the HCLSC to formulate a Standing Operating Procedure for filing of jail appeals at the High Court with clear role of each stakeholder. Assistance must be sought from the DLSA's panel lawyers and paralegals to procure relevant documents on time. The SOP must be disseminated to all stakeholders and regular follow up must be done by the respective HCLSC to ensure compliance.
2. Direct the HCLSC to coordinate with the Supreme Court Legal Services Committee (SCLSC) and develop step-by-step guidelines for each stakeholder, to ensure that all relevant documents are made available in a time-bound manner to assist the convicts in filing timely appeals to the Supreme Court.
3. Direct all subordinate courts to supply a copy of the judgment to the accused, additionally a copy must also be provided to the prison where the convict is detained to assist in judicial steps to be undertaken both by the convict and the prison administration.
4. Pursuant to the observations in *Prem Kumar v. State of Karnataka*,<sup>128</sup> direct the HCLSCs to make it mandatory for legal aid lawyers to speak with their clients through video-conferencing at different stages – (i) when the case is assigned; (ii) before every hearing at the High Court; and (iii) after every hearing at the High Court. Also, direct them to maintain a record of the same.

### High Court Legal Services Committees at Bengaluru, Dharwad and Belagavi:

1. To send a letter to all central prisons informing them about the observations in *Prem Kumar v. State of Karnataka*,<sup>129</sup> to ensure that legal aid lawyers speak with their clients through video conferencing.
2. To direct all DLSAs where central prisons are located to conduct legal awareness program for convicts in prisons in their respective jurisdictions and to maintain a record at every prison on the details of the video-conferencing calls made every month.

<sup>125</sup> Rule 584 of the Karnataka Prison Manual provides – (i) Every newly admitted prisoner shall-be allowed reasonable facilities for seeing or communicating with his relatives, friends or legal advisers with a view to preparing of an Appeal or Revision or Procuring bail or Payment of fine etc. He shall also be allowed to have interview with or write letters to relatives, friends or legal advisers once or twice or often if, the Superintendent considers it necessary to enable him to arrange for the management of his property or other family affairs.

<sup>126</sup> (2018) 9 SCC 160.

<sup>127</sup> Order dated 17.11.2018 passed in CRL.A 1139/2014.

<sup>128</sup> Order dated 17.11.2018 passed in CRL.A 1139/2014.

<sup>129</sup> Supra.

3. To appoint dedicated personnel at the HCLSC office to coordinate with all central prisons in their respective jurisdictions and regularly set up video-conferencing calls between the panel lawyers and their clients.
4. To set up a mobile training team for all central prisons and DLSAs to train them in using the online portal set up by the Supreme Court Legal Services Committee (SCLSC) for online filing of petitions to the Supreme Court.

**State Legal Services Authority:**

1. To specify the minimum tenure for the period of appointment of Jail Visiting Lawyers (JVLs).
2. To adopt standardised duty notes as per NALSA's Handbook of Formats<sup>130</sup> for Jail Visiting Lawyers (JVLs) and Convict PLVs and share with all DLSAs to be given to JVLs & PLVs at the time of their appointment so that they have clear understanding of their role.
3. To direct the DLSAs to streamline the functioning of jail legal aid clinics and direct them to:
  - a) Appoint one or two community PLVs to every district prison and taluk prison and ask them to visit the prison at least twice a week to assist the Jail Visiting Lawyers (JVLs) in the functioning of the Jail Legal Aid Clinic (JLAC).
  - b) Maintain two registers<sup>131</sup> in the clinic– i) Legal Aid Clinic Work Register, ii) Attendance Register, and provide sufficient stationary to maintain proper records in the jail legal aid clinic.
  - c) Ensure that computers provided to the JLAC are installed and in use by the JVLs. The records to be maintained in (2) above can also be required to be maintained electronically. To this end, short orientation programmes can be organised to familiarise JVLs to use computers for checking case status online, perform online legal research, draft legal documents and maintain electronic records of their work.
  - d) Set up Suggestion/complaint box in each Legal Service Clinic in the jail as mandated by the NALSA SOP 2016. It should be opened once every week in the presence of the panel lawyer and the Jail Superintendent.
  - e) Provide basic law books including copies of the IPC, CrPC, IEA, POCSO Act for use both by the JVLs and inmates.
  - f) Ensure that inmates in need of legal assistance are not missed by directing the JVLs to speak with the new entrants. PLVs either convict or community can also ensure that new inmates are brought to the clinic.
  - g) Regularly monitor the registers maintained at the jail legal aid clinic.
  - h) Regularly monitor the work of legal aid providers through periodic reports of JVLs, convict PLVs and Community PLVs.
  - i) Ensure that the PLVs are regularly paid due remuneration every month following a fixed cycle of payment and pending remuneration as on date, is cleared on priority basis.
4. To make it mandatory for legal aid lawyers to meet their clients in prisons/ courtroom regularly. The DLSAs/TLSCs may provide vehicles to ferry lawyers from the court complex to the prison once in a day so as to ensure that panel lawyers may meet their clients in prison. This may be most relevant for places where the distance between the court and prison is considerable.<sup>132</sup>

<sup>130</sup> NALSA Handbook of Formats, available here: <https://nalsa.gov.in/library/handbook>, last visited on 5.02.2021.

<sup>131</sup> *Ibid.*

<sup>132</sup> Sikkim SLSA recognising this issued a letter (Reference No. 7/SLSA/194), dated 19-Jul-06, directing the panel lawyers to visit the prisons and that the Legal Aid Institutions would reimburse the taxi fare. It also mentioned that the prison authorities will maintain a register to record visits.

**Prison Department:**

1. To ensure that the JLAC is positioned, as far as possible, in the common area in the prison and in a separate room such that inmates are free to visit it, and JVLs are free to make maximum use of the resources provided.
2. To ensure that a legal officer is appointed to every central prison at the earliest in order to ensure, among other duties, to be the contact person in the prison who can coordinate with the HCLSC and SCLSC to enable video conferencing between inmates and their legal aid lawyers. In the absence of a legal officer, any prison staff who is comfortable in Hindi/English might be appointed for the same, so as to enable communication with the SCLSC.

**UPDATES AS OF APRIL 2022**

**Efforts by the SLSA** – Despite the above concerns recognised by the study team, it must also be noted that the Karnataka State Legal Services Authority has undertaken several measures to ensure a robust legal aid system:

- ✓ Panel lawyer selections take place once every three years with criteria for selection stipulated according to the nature of the case assigned.
- ✓ Training and refresher courses are organised periodically for panel lawyers and paralegal volunteers.
- ✓ All prisons have a Jail Legal Aid Clinic. Jail Visiting Lawyers (JVLs) are appointed in all prisons and paralegal volunteers (PLVs) are additionally appointed in central prisons, who provide all the necessary legal help to the prisoners.
- ✓ The serious concern regarding payment of wages to PLVs is now resolved, though in some prisons they are only paid wages by the prison and not DLSA.
- ✓ Some prisons such as Belgaum and Mysore have female jail visiting lawyers who make special visits to the female barracks.
- ✓ Convicts are informed about the status of their appeals by the prison authorities.



# CHAPTER - 8

## COURT PRODUCTION

Attending a court hearing affords an under trial prisoner the opportunity to determine the stage of their trial, gauge the course of the trial, and also a chance to speak with their lawyers and family. An indispensable element of a reasonable, fair and just trial (which is a fundamental right conferred by Article 21 of the Constitution of India) is the opportunity for the accused to be able to answer every charge made against them. This is why the law insists that the accused has the right to be personally present (or be represented by their lawyer) on all occasions so that they know what is said against them and who says it, so that they can challenge it and mount the best possible defence that they can.<sup>133</sup>

### STANDARDS

The above principles find clear expression in section 273 of the CrPC which reads as follows: “except as otherwise expressly provided, all evidence taken in the course of trial or other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.” Also, Rule 703 of the Karnataka Prison Manual provides that, “in Session Case as soon as the date is fixed for the production of the prisoner, it shall be endorsed on the warrant, as well as on the prisoner’s ticket and the prisoner shall be informed of the date fixed, so that he may make arrangements necessary for the conduct of his defence”. The same is also guaranteed under Article 14(3)(d) of the International Covenant on Civil and Political Rights (ICCPR) requiring every individual charged with a crime to have the right to be tried in his presence.

It is the responsibility of the district police to ensure that undertrials, detained in any prison in the district, are produced in court on their due date. Rule 723 of the Karnataka Prison Manual clearly provides that, “the duty of ascertaining the time at which a prisoner committed to the Sessions is to be produced before the Sessions Court and of providing the necessary escort for this purpose rests with Police.” The responsibility of the prison officer extends to coordinating with the concerned police officer – “the Superintendent is responsible for the production in Court at the appointed time of a prisoner who is committed to Sessions or is remanded pending a Magisterial inquiry or trial and shall make suitable arrangements with the Police for providing the necessary escort.”

### OBSERVATIONS AND ISSUES

The study team concurs with the NALSA SOP for Representation of Persons in Custody which provides that, “In several districts across the country, the persons in custody are not produced before the courts for days together. This happens even at the stage where the charge sheet has still not been filed. There are many cases where the accused was produced before the court after arrest and was remanded to custody but thereafter was not produced on several dates meant for remand. The reasons given for the same are generally non availability of sufficient number of

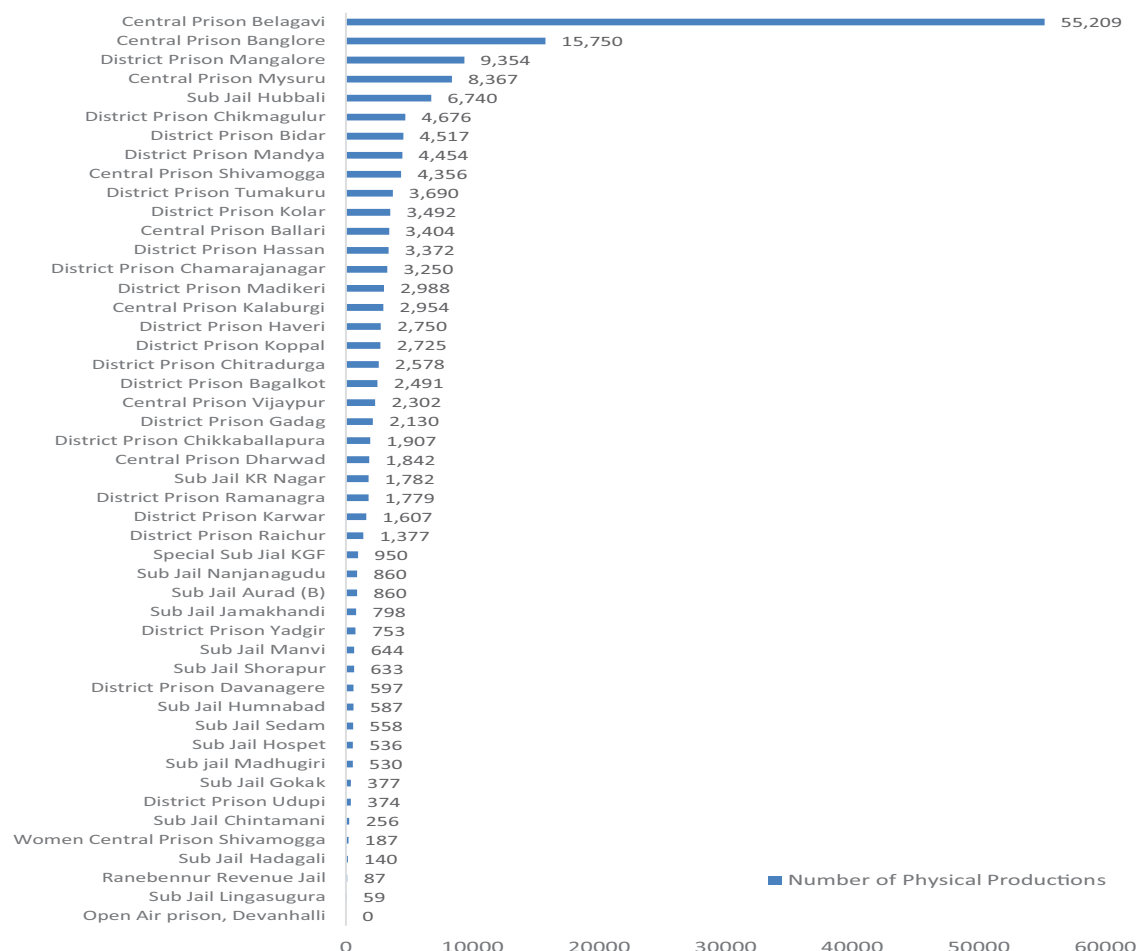
<sup>133</sup> CHRI Fair Trial Manual 2019, para 4.7.1. Page 99, can be accessed at <https://www.humanrightsinitiative.org/download/1595051095Fair%20Trial%20Manual%202019.pdf>

armoured vehicles and of personnel to produce the persons in custody before the courts and that at times the accused are required to be produced in other courts. This is contrary to the mandate of CrPC and also violates the basic rights of the persons in custody as enshrined in the Constitution and enunciated by the Hon'ble Apex Court in several landmark cases and most importantly is an impediment to their liberty. Due to non-production of the persons in custody before the courts at regular intervals, the courts are unable to consider whether the persons in custody are facing any problems. Legal representation to them cannot also be ensured in such circumstances.”

1) **Production through Police Escorts:** In district prisons and central prisons, court production is managed by a wing of the police department called the District Armed Reserve or DAR. In cities with a police commissionerate system - Bengaluru, Mysuru, Mangaluru and Hubballi-Dharwad - this function is fulfilled by what is called the City Armed Reserve or CAR, also under the police department. For taluk prisons, and in districts with few personnel in the DAR/CAR, assistance is sought from police personnel from the concerned police station (the station in which the FIR is lodged) for the purpose of production in courts. Production of prisoners in court is not the only task of the DAR/CAR, who are routinely required to provide bandobast duty and services during civic emergencies. Further, these forces are highly understaffed and in need of urgent recruitment. The study team was informed that previously the state government tried to make this a dedicated service for just providing court escorts, but this arrangement did not last for long.

Majority of the court productions were ordered to be done physically in 2018. The chart below shows the number physical productions that took place in Karnataka during 2018. The administrative undertrial section of the prisons must be provided with the requisite number of staff to deal with such high number of productions in the year.

**Chart 8.1: Number of Physical Productions in Courts**



- 2) **Court production only for important hearings:** Upon framing of charges and the commencement of trial, very often inmates are not taken to court on a priority basis, unless it is specified by the court that his/her presence is necessary due to the examination of material witnesses. In several prisons, the study team inspected the requisitions sent by the prison authorities to the concerned DAR/CAR, with a list of persons requiring court escorts. Sometimes, prisons specifically highlight names that must be given priority over others due to a crucial hearing - the best they can do in an otherwise complicated situation.

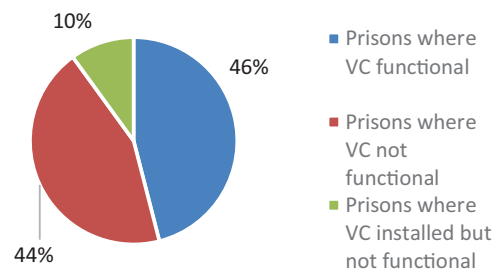
*In the district prison in Chitradurga, a novel idea has been crafted by the DLSA and the prison authorities together, in which every court in the district has been asked to provide dates to prisoners on a specific day of the week, such that on that day of the week, the DAR van will be required to go to only that particular taluk thereby minimising the chances of inmates missing their court dates.*

- 3) **Production through Video Conferencing (VC):**

A technological solution that courts and the government have been vehemently pushing is production of accused through video conferencing (VC).

**Chart 8.2: Availability of Video Conferencing facility in Prisons**

As per the data provided, video conferencing is functional in 25 prisons, these include all the 9 Central Prisons, 15 out of 21 district prisons and 1 taluk prison. In district prisons Bidar, Chikkaballapur, Udupi and taluk prisons Hubballi and KGF, though installed, VC units are not functional due to technical issues.



Central prisons are regularly producing inmates for court hearings through video conferencing. In most district prisons it is mostly used for production in cases of 'out-courts' (courts in districts other than the one in which imprisoned), while it is still in the process of being set up in taluk prisons. Votaries of video conferencing argue that except at the time of framing of charges, and at the time of recording of the statement under section 313 of the CrPC, the physical presence of an accused in court is dispensable. And so, for all other stages of the trial, production of inmates through video conferencing is being adopted, with every prison being sent VC units by the High Court to enable this - 4 to central prisons, 2 to district prisons, and 1 to taluk prisons.

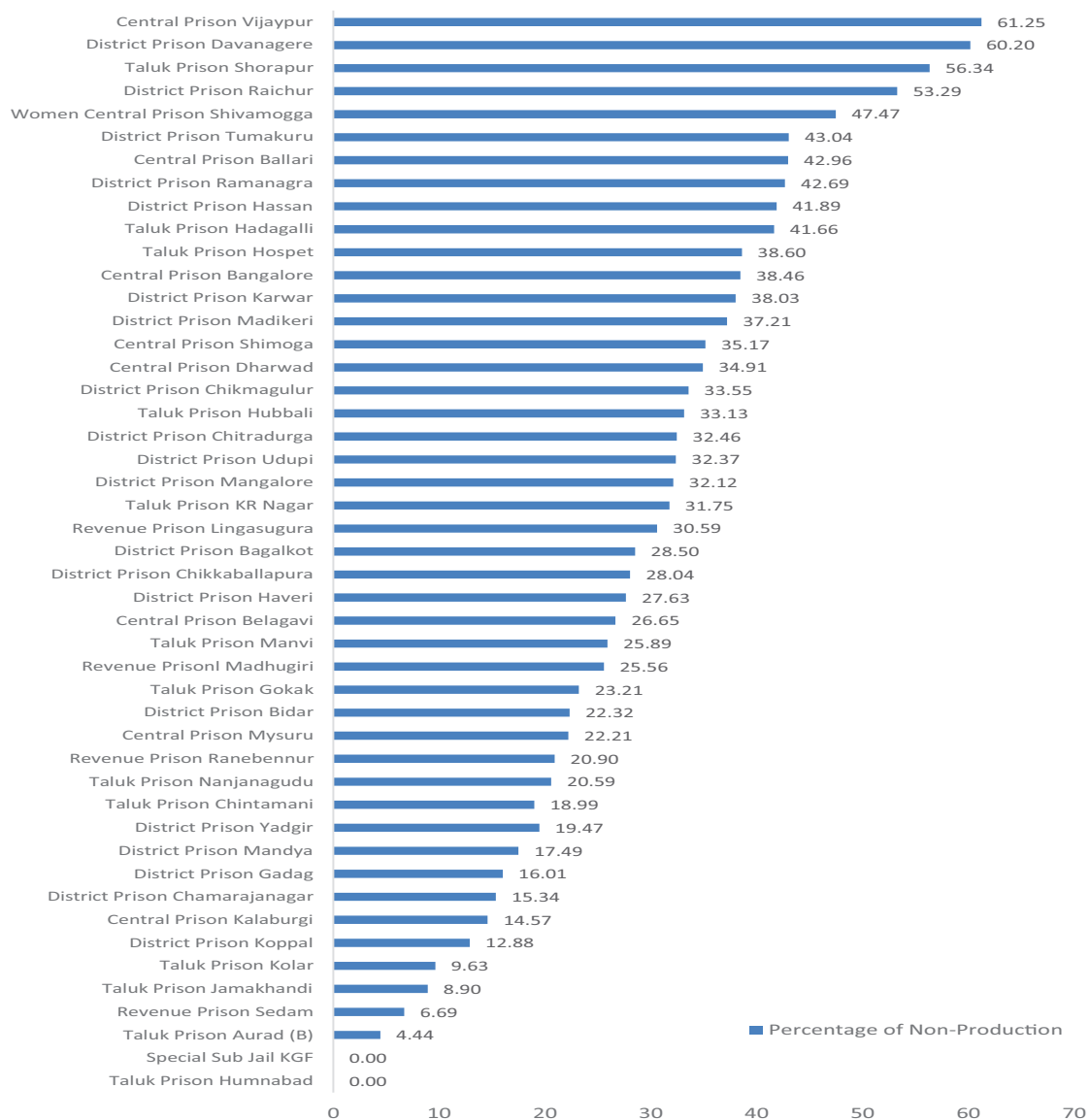
- 4) **Non-Production of undertrials:**

While visiting prisons, the study team enquired in every undertrial barrack if there are persons who missed more than three consecutive hearings at the court and the list was found to be very long. This data means two things - (a) accused are missing remand hearings and (b) the trial is proceeding in the absence of the accused.

The issue of non-production could be one of the contributing factors to the overall pendency of criminal matters in the subordinate judiciary in Karnataka. The pendency has steadily increased from 46.5% in 2015,<sup>134</sup> to 51.7% in 2019,<sup>135</sup> with 38.4% cases pending for more than ten years as on 30th June 2019. In sessions trials, 24% are pending at the Charge stage and 53.8% cases are pending at the evidence/argument/judgment stage. This requires serious consideration by the High Court and the State Government.

- a) **Non-Production at the state level:** In 2018, 2,22,002 court productions were ordered by the lower courts in Karnataka, out of which 1,55,434 productions were done, either through physical presence or by video conferencing, amounting to non-production of the accused in 30% of the cases in the state.<sup>136</sup> The graph below shows percentage of non-production in descending order in the state prisons.<sup>137</sup>

**Chart 8.3: Status of Non-Production in the State (in %)**



134 Supreme Court Annual Publication, Indian Judiciary - Annual Report 2015-16, Page 204 available here: <https://main.sci.gov.in/pdf/AnnualReports/annualreport2015-16.pdf>.

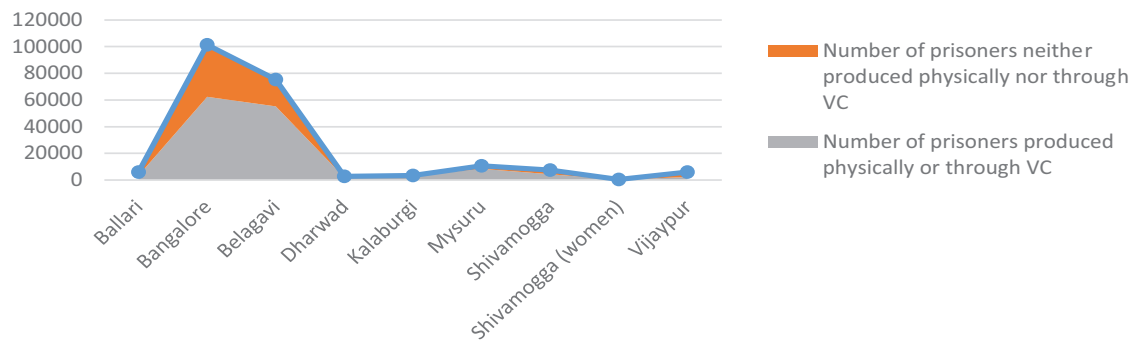
135 Supreme Court Annual Report 2018-2019, Page 246 available here: [https://main.sci.gov.in/pdf/AnnualReports/Supreme\\_High\\_Court\\_AR\\_English\\_2018-19.pdf](https://main.sci.gov.in/pdf/AnnualReports/Supreme_High_Court_AR_English_2018-19.pdf).

136 This data is as per the information provided by each prison. District Prison Chintamani and Revenue Prison Hukkeri have been excluded due to inconsistency of data.

137 This chart excludes Revenue Prisons Saundatti, Hukkeri and Kumta from where actual numbers could not be determined from prison records. Open Air Prison is also not included as no undertrial inmates are lodged here.

- b) **Non-Production in Central Prisons:** The highest number of court productions in 2018 was recorded in Bengaluru. On an average, 5200 productions are ordered by courts in a year in districts where central prisons are located. Belagavi alone had to cater to 75,270 warrants from district courts. Among the central prisons, non-production was highest in Vijayapura amounting to 61%, followed by Womens' Central Prison Shivamogga (47%); Ballari(43%); Shivamogga (35%); Bengaluru (38%), Dharwad (35%); Belagavi (27%); Mysuru (22%) and Kalaburgi (14.5%).

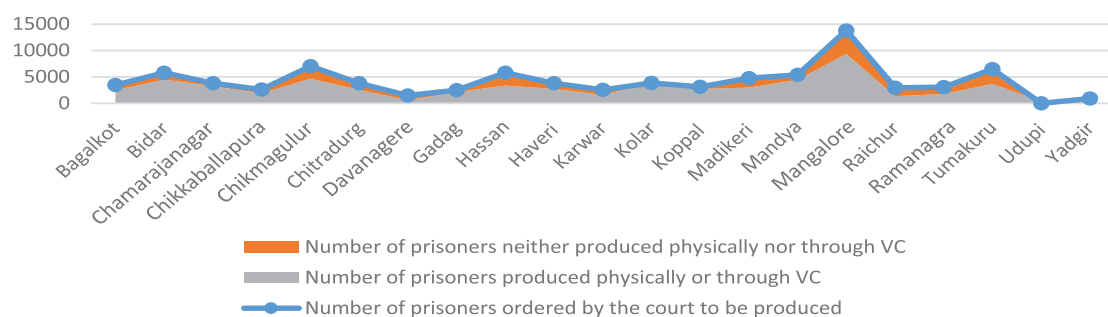
**Chart: 8.4: Status of Non-Production in Central Prisons**



Name of Prisons	Number of prisoners ordered by the court to be produced	Number of prisoners produced physically or through VC	Number of prisoners neither produced physically nor through VC
Ballari	5968	3404	2564
Bangalore	101355	62369	38986
Belagavi	75270	55209	20061
Dharwad	2830	1842	988
Kalaburagi	3458	2954	504
Mysuru	10756	8367	2389
Shivamogga	7535	4356	2650
Shivamogga (women)	356	187	169
Vijaypur	5940	2302	3638
TOTAL	213468	140990	72478

- c) **Non-Production in District Prisons:** The highest number of court productions among district prisons was ordered in Mangaluru, i.e., 1,3781 as compared to an average of 3,700 productions in a year for other district prisons. The top five districts with highest number of non-production of undertrials are – Davanagere (60%), Raichur (53%), Tumakuru Ramanagara (43%) and Hassan (42%).

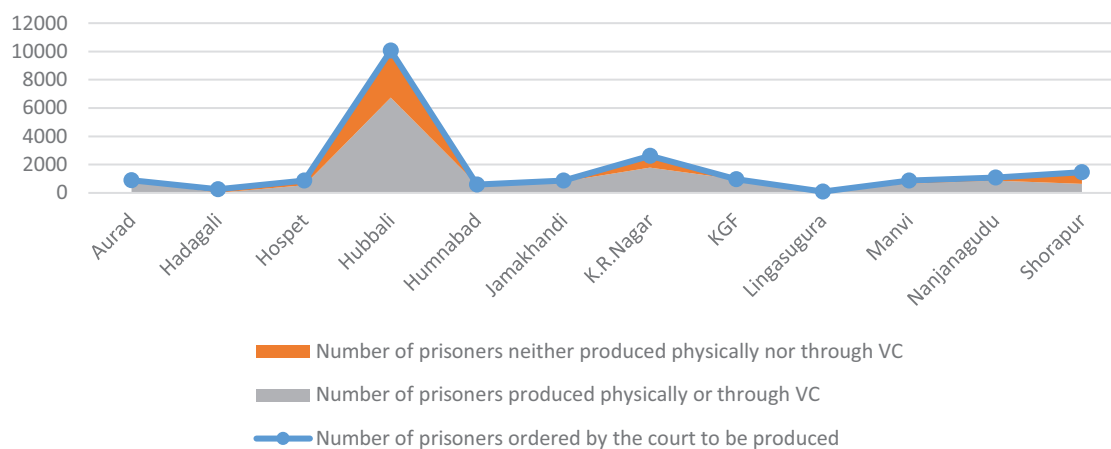
**Chart 8.5: Status of Non-Production in District Prisons**



Name of Prisons	Number of prisoners ordered by the court to be produced	Number of prisoners produced physically or through VC	Number of prisoners neither produced physically nor through VC
Bagalkot	3484	2491	993
Bidar	5815	4517	1298
Chamarajanagar	3839	3250	589
Chikkaballapura	2650	1907	743
Chikmagalur	7037	4676	2361
Chitradurg	3817	2578	1239
Davanagere	1500	597	903
Gadag	2536	2130	406
Hassan	5803	3372	2431
Haveri	3800	2750	1050
Karwar	2593	1607	986
Kolar	3864	3492	372
Koppal	3128	2725	403
Madikeri	4759	2988	1771
Mandya	5398	4454	944
Mangalore	13781	9354	4427
Raichur	2948	1377	1571
Ramanagra	3104	1779	1325
Tumakuru	6478	3690	2788
Udupi	553	374	179
Yadgir	935	753	182
TOTAL	87269	61233	26589

d) **Non-Production in Taluk Prisons:** Among the taluk prisons, the highest number of productions was ordered in Hubballi, i.e., 10,080 as compared to 950 average number of productions for other taluk prisons. Hadagali was an exception with 100% non-production, followed by Shorapur (56%), Hosapete (39%), Hubballi (33%) and Manvi (26%).

**Chart 8.6: Status of Non-Production in Taluk Prisons**



Name of Prisons	Number of prisoners ordered by the court to be produced	Number of prisoners produced physically or through VC	Number of prisoners neither produced physically nor through VC
Aurad	900	860	40
Hadagali	240	140	100
Hospet	873	536	337
Hubbali	10080	6740	3340
Humnabad	587	587	0
Jamakhandi	876	798	78
K.R.Nagar	2611	1782	829
KGF	950	950	0
Lingasugura	85	59	26
Manvi	869	644	225
Nanjanagudu	1083	860	223
Shorapur	1450	633	817
TOTAL	20604	14449	6155

- e) **Non-Production in Revenue Prisons:** The highest court productions among revenue prisons were ordered in Madhugiri, followed by Sedam and Ranebennur. In Hukkeri, Kumta and Saundatti, actual numbers of prisoners requiring escorts could not be determined as no records for the same were maintained (a systemic issue with some revenue prisons). In all revenue prisons, escorts for court production are sent from the concerned police stations, and not from the DAR.

Name of Prisons	Number of prisoners ordered by the court to be produced	Number of prisoners produced physically or through VC	Number of prisoners neither produced physically nor through VC
Hukkeri	Not Available	Not Available	Not Available
Kumta	Not Available	Not Available	Not Available
Madhugiri	712	530	182
Ranebennur	110	87	23
Saundatti	Not Available	Not Available	Not Available
Sedam	598	558	40
TOTAL	1463	1131	332

### Video Conferencing – Standard vs Practice

While the CrPC expressly recognizes the production of accused under proviso (b) to section 167(2), either physically or through video linkage during the remand period (except first production upon arrest, and every subsequent production from police custody, which must be done physically), no such amendment has been made to section 273 of the CrPC permitting the recording of evidence through video-conferencing. The Supreme Court's decision in *State of Maharashtra v. Praful Desai* accepted evidence recorded through video conferencing under s. 273 CrPC,<sup>138</sup> and various High Courts have followed suit.<sup>139</sup> However, the circumstances in which the Supreme Court reached this conclusion were that of a foreign medical expert who could not travel to India for his evidence to be recorded, thereby making evidence through video conferencing a suitable alternative. The amendments to the CrPC, permitting video conferencing as an alternative to physical production in certain instances, were enacted after this judgment. Significantly, s.273 of the CrPC remained untouched. Further, s.275 was amended to include recording of evidence by audio-video means in the case of warrant cases triable by magistrates, while no such amendments were made in the case of recording of evidence under s.274 or s.276 of the CrPC. It is therefore highly necessary to determine the legality and contours of permitting the recording of evidence through video conferencing as this can have serious repercussions on due process rights of an accused.

At the outset, it seems a practical solution in the light of shortage of escorts and incidents of violence taking place during the commute from prison to courts. It is definitely helpful and convenient for courts which are overburdened, police which is unable to provide enough escorts to ferry prisoners and prison staff whose work gets limited to merely sending the warrant to the court on the said hearing. However, it defies the principles of fair trial which entitles certain rights to the accused. The experience of inmates who are produced through video-conferencing should warn and inform the unbridled faith in video conferencing.

On the one hand, there were undertrials, who have multiple cases pending in different districts, and sometimes states, who were able to at least see the judge through VC on the due dates of production and if given a chance able to communicate as well. However, when produced through VC, an inmate is often only told the next date, and does not witness the actual court proceedings in their case. Further, there is no opportunity for an inmate to speak directly with his/her lawyer. This situation results in an inmate being unable to instruct his/her lawyer during the course of the trial, especially during key stages such as the cross-examination of prosecution witnesses. Further, there is negligible practice of the judge enquiring about the well-being of the inmate. If an under trial prisoner has certain requests to make to the court in the course of their incarceration such as for medical treatment, or requesting privileges in prison such as prayer mats, it is not possible in the current video linkage set up.

Often these concerns are rejected as teething problems which will be resolved in time. These problems however violate fair trial rights.

- 5) **Trial Proceedings through VC:** Despite this legal ambiguity, in all central prisons, trials are also being conducted through video-linkage. Among the district prisons, VC is being used for trial proceedings in 10 out of 14 prisons.<sup>140</sup> Every single day of detention must be justified by effective and meaningful judicial oversight. The design and purpose of a trial is to ensure that an accused has the equity of arms to set up a full and proper defence.

<sup>138</sup> (2003) 4 SCC 601.

<sup>139</sup> *State of Maharashtra v. Chandrabhan Sudam Sanap* (Bombay High Court decided on 20 December 2018); *Shahrukh Khan Abdul Rauf Khan v. State of Gujarat* (Gujarat HC, decided on 11 July 2014).

<sup>140</sup> Madikeri, Hassan, Tumkur, Mandya, Chikmagalur, Chitradurga, Haveri, Raichur, Ramnagar and Davangere.



Replacing physical court production with virtual production is not a solution to the ailing system of court escorts, but an even more depersonalised system that reduces the accused to a mute spectator in an overwhelming system.

However, given that video conferencing is a reality that must be contended with, it is necessary to bolster the existing set up to ensure that there is minimal violation of fair trial rights. While the High Courts in Delhi,<sup>141</sup> Maharashtra,<sup>142</sup> Andhra Pradesh and Telangana,<sup>143</sup> etc., had laid down guidelines to be followed at the time of producing accused through video conferencing, the Karnataka High Court was yet to do so at the time of the study. The study team learnt that efforts were underway to draft rules/SOPs for the use of video conferencing in trials, but were yet to be formalised and adopted. The use of videoconferencing in courts during the Covid-19 pandemic accelerated this process as the Supreme Court recommended the adoption of the Model Videoconferencing Rules for Courts, 2020 formulated by a sub-committee of the E-Committee.<sup>144</sup>

## RECOMMENDATIONS

### High Court:

1. Direct the district-level Undertrial Review Committees (UTRC) to also look into the issue of, “non production of UTPs before the Remand/Trial Court either in person or via video conferencing facility on account of lack of logistic facilities” as suggested in the NALSA SOP for Undertrial Review Committees. UTRC, headed by the District and Sessions Judge, is the appropriate forum to discuss this issue as the committee also has Superintendent of Police and officer in-charge of prisons as its members.
2. Constitute a high-level expert Committee headed by a High Court judge, on an urgent basis, comprising of the following members to do a state-level assessment of court production via physical productions as well as through videoconferencing facilities. The assessment should be conducted in a time-bound manner:
  - a) two judicial officers (Registrar cum Central Project Coordinator, High Court and one senior district judicial officer);
  - b) two prison officers (one senior officer stationed at headquarters and one Superintendent of prison);
  - c) a criminal lawyer practicing in the District Courts for more than 10 years;
  - d) a police officer (stationed at headquarters);
  - e) representative of the state National Informatics Centre or any other organization mandated to provide infrastructural and technical support; and
  - f) an academician of repute or senior member of a reputed civil society organization.

### The terms of reference for the committee may include the following: –

- i. conduct state-wide inspections of video conferencing facilities in use to check if they are operating in full working order at both the site of the court and in prison premises;
- ii. assess the prison-wise and district-wise required strength of police escorts and accordingly recommend increase in sanctioned strength. A detailed action plan must be developed

141 Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites, issued by the Delhi High Court in 2016.

142 Laid down in *Rajendra S. Bidkar v. State of Maharashtra and Ors.*, Criminal Writ (PIL) No.386 of 2004.

143 Guidelines for the Conduct of Court Proceedings between Courts and Remote Sites, issued by the High Court at Hyderabad for Telangana and Andhra Pradesh in 2017.

144 Available here: <https://cdnbbsr.s3waas.gov.in/s388ef51f0bf911e452e8dbb1d807a81ab/uploads/2020/08/2020082629.pdf>, last visited on 05.02.2021.

as there is also a need to bridge the gap between the required strength and the current strength by devising solutions such as engaging with personnel from other police forces or creating a separate cadre for escorting purpose.<sup>145</sup> The action plan must be implemented in phases in a time-bound manner to ensure a comprehensive solution to this systemic problem of non-production of undertrials.

- iii. examine the extent of violations of fair trial rights of accused persons flowing from the use of video conferencing, and develop safeguards<sup>146</sup>;
- iv. modify the Model Videoconferencing Rules for Courts, 2020 to suit the needs of the state's criminal courts. Given that video-conferencing is the reality of criminal proceedings today, there is a need for a very robust set of guidelines that guarantee fair trial safeguards for the accused.

**State Legal Services Authority:**

1. Direct the jail legal aid clinic functionaries to keep a constant watch on the number of non-productions as per the relevant provisions of the NALSA SOP 2016, as reiterated below and report the same to the UTRC every quarter –

“11) The PLVs and the Jail visiting lawyers should also keep track of non-production of any inmate in the court as per the date given or of the cases where no next date is available and inform the Secretary, District Legal Services Authority.

12) If it comes to the notice of the District Secretary that for certain reasons, the persons in custody are not produced before the court on a particular day, he should bring the same to the notice of the concerned Chief Judicial Magistrate or the Chief Metropolitan Magistrate who may take appropriate action and for the time being may designate a Magistrate to go to the prisons for doing the remand work for that day.

13) The matter of making available requisite armoured vehicles and personnel for taking the persons in custody to the courts for production should be taken up with the appropriate government.”

**Prison Department:**

1. Monitor the numbers of non-productions every quarter and report the same on yearly basis to the State Home Department in order to address the issue at the state-level. For this, all prisons should be directed to maintain a record of non-production, when inmates are neither produced physically nor through VC and submit the same to the head office at the end of every quarter.
2. Augment the staff strength, particularly of the administrative undertrial section of the prisons where the highest number of court productions are ordered by courts throughout the year.

**State Government:**

1. Assess the number of police escorts required, over and above the sanctioned posts, and make arrangement for the same to ensure production of undertrials to courts on dates when his/her matter is or is likely to be taken up.

<sup>145</sup> Bombay high court suggests setting up police team to escort prisoners to court, March 2014 available here: <https://www.dnaindia.com/mumbai/report-bombay-high-court-suggests-setting-up-police-team-to-escort-prisoners-to-court-1967412>.

<sup>146</sup> CHRI's Draft Note on Videoconferencing Safeguards, available here: <https://www.humanrightsinitiative.org/download/Chri's%20Draft%20Note%20on%20VC%20Safeguards.pdf>.

### UPDATES AS OF APRIL 2022

**Efforts by the SLSA** – Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services as on March 2022:

In the last two years, 100% video-conferencing facilities have been provided to all the 52 prisons in the state for virtual production of the prisoners before the courts. VC facilities have been adopted extensively during Covid which has replaced physical productions drastically. Almost 85% of prisoners in prisons in Karnataka are presently being produced virtually before the courts. Mainly for all proceedings, including recording of statements under S.313, evidence, chargesheet – courts are using VC as far as possible. This has ensured productions of prisoners before the courts on the due dates and speedy trials of their cases. Saving to the police department from the virtual production of prisoners in the state is estimated to be upwards of Rs 50 Crores per annum. There are also more technical persons and connectivity issues have been resolved.

# CHAPTER - 9

## JUDICIAL PRACTICES IMPACTING PRISONERS

Effective access to court is one of the integral components of the right to fair trial, as guaranteed under Article 21 of the Constitution of India, absence or delay of which has a direct impact on the procedure established by law to protect the interests of justice and fairness. It encompasses the right to be tried without undue delay, right to be present at one's hearing, right to be notified of charges and the right to free assistance of an interpreter, whenever necessary, amongst others. This chapter puts forth the concerns found by the study team regarding non-realisation of some of the aforesaid rights for both undertrials and convicts.

### A. CONCERNS FOR UNDERTRIALS

- 1) **Court Translators:** Karnataka is home to large numbers of people from other states who reach the state in search of work and livelihood. Such people are rarely conversant in the vernacular, spoken and written. In the event of such persons being subjected to any legal proceeding, especially before a subordinate court, access to court translators and translated documents is essential. Unfortunately, the inadequacy of such access is a cause of concern for every such inmate. Through interactions with undertrials from other states, it was learnt that it is hard for them to follow court proceedings in Kannada and they can barely understand or follow the case against them and the ensuing legal proceedings. The language barrier also jeopardises the cause of justice for indigent non-Kannada speaking inmates who, while communicating with their local lawyers who are conversant in the vernacular only, generally remain in the dark as to what transpired in court.

Under section 251 of the CrPC, the charge against an accused in a summons trial is to be explained to him/her, and similarly under section 240 CrPC in a warrant case and under section 228 of the CrPC in a sessions' trial. Further, under section 279 of the CrPC, evidence recorded in a trial is to be explained to the accused in a language known to him/her if such evidence is recorded in a language not understood by him/her. When a person is being prosecuted and his/her individual liberty is at stake, it is the bounden duty of the Magistrate to explain everything in the language understood by the accused, so that he/she can raise pleas and give proper and appropriate instructions to their counsel.<sup>147</sup>

In addition, s.318 of the CrPC recognises that there may be categories of persons who "cannot be made to understand the proceedings". However, in such cases the provision allows the judge to proceed with the trial even if the accused cannot understand the proceedings, but, if such proceedings result in conviction, the judge must forward the proceedings to the High Court along with a report of the circumstances of the case, and the High Court will then pass such order as it thinks fit.

<sup>147</sup> *K.M. Subramani v State of AP* 2003 CriLJ 3526, para. 8.

Similar to the rights conferred by municipal law, Article 14(3)(f) of the ICCPR mandates that a defendant in a criminal proceeding is entitled to “the free assistance of an interpreter if he cannot understand or speak the language used in court”.<sup>148</sup>

These provisions are intended to “safeguard” interests of the accused and the denial of the right to an interpreter amounts to miscarriage of justice.

- 2) **Mechanical Extension of Remand:** The study team found that mechanical extension of remand due to non-production of accused on due dates has become routine. The Supreme Court and many High Courts have deprecated this illegal practice. In *Elumalai v. State of Tamil Nadu*,<sup>149</sup> the Madras High Court held that under no circumstance can a Magistrate order the detention of any person in remand or extend such detention without the production of the accused before him in violation of the provisions of the Code of Criminal Procedure, viz., proviso (b) to s.167(2),<sup>150</sup> whatever may be the reason stated by the authorities. The prison authorities should not keep any person without orders of remand from the concerned Judicial Magistrates even for a day beyond the period of detention already ordered. It also laid down that the Courts should not mechanically pass orders of remand without verifying the entries in the diaries and satisfying themselves about the real necessity for granting the remand or extension of remand. It was found by the study team that effort is still made by the prison and escorts to ensure that inmates are produced for their remand hearings, despite which due to the aforementioned problems, inmates miss their remand hearings. And in such situations, mechanical extension of remand is resorted to.
- 3) **Issues concerning bail and sureties:**
  - a) Bail granted, but unable to furnish surety: The study team met several inmates who have been unable to seek release from prison despite being granted bail, on account of being unable to furnish surety.<sup>151</sup> Although courts routinely hold that poverty must not come in the way of one’s ability to seek release from prison, surety is generally sought in the form of unencumbered property, which is not easily accessible for a majority of the indigent prison population. Granting of bail under such conditions is tantamount to not granting bail at all.
  - b) Demand for ‘local’ surety: For inmates who hail from other districts, states or countries, the demand for ‘local surety’ makes it difficult to find acceptable surety, despite courts holding that there should be no insistence on local surety.<sup>152</sup>
  - c) Demand for ‘double’ surety: In some prisons, such as the District Prison Haveri for instance, the study team met inmates who were unable to seek release as they had been granted bail on the condition of providing more than one surety. When it is hard enough to find one surety, obtaining ‘double’ surety is an insurmountable challenge and perhaps an impossible feat.
- 4) **Delay in framing charges:** In some districts,<sup>153</sup> the study team found that charges were being framed sometimes about 2-4 years after the filing of charge sheet. While this may be for multiple reasons, such delay must not operate to the prejudice of the inmate, who must be considered for enlargement on bail in the meantime.

148 ICCPR, Article 14(3)(f), 16 December 1966, G.A. Res. 2200A (XXI).

149 1983 LW (Cri)121 (at High Court of Madras).

150 With the amendment to this section, production can be either in person or through video linkage.

151 There were at least a handful of inmates with this concern in every prison.

152 *Moti Ram v. State of Madhya Pradesh*, 1978 AIR 1594.

153 Hassan, Mysore, Udupi, Belgaum, Bijapur, Chikkamagaluru, Dharwad, Koppal and Shimoga.

- 5) **Persons with mental health concerns:** The study team met one or more inmates in almost every prison who were in need of a mental health assessment either to determine their fitness to stand trial, or to be considered for the purpose of pleading the defense of insanity. Courts must be extra cautious in such cases. Often, the court is not even aware of the condition as this issue is not raised by the defence counsel or brought to the attention of the court. However, in good practice, prisons in Karnataka forward medical documents to the concerned courts, including documents regarding mental health treatments, and the same must therefore be duly considered by courts in order to take appropriate steps. More details on issues of mental health concerns among prison inmates are provided in Chapter 11.
- 6) **Persons with physical ailments/concerns:** While access to medical facilities in prisons requires concerted and coordinated efforts, it is also possible for courts to reduce the strain on the prison medical system by granting bail to persons with severe physical illnesses. Further, persons who are differently abled must be considered for release on bail as prisons are not equipped to attend to their special needs.
- 7) **Access to Information about One's Trial:** What transpires in court during hearing on days when the inmate is absent is often not intimated to the inmates by their lawyer, since it is not practice for them to visit their clients after every date of hearing. Also, since phone facilities are only available in central prisons, conversations through a phone call are also not possible. What an inmate does find out is the next date of hearing, written in the warrant. Personnel from the prison collect the warrant from the court at the end of the day and inform the inmate about the next date. However, if the hearing is in an 'out-court' (courts outside the district in which incarcerated), then it takes time for information regarding the next date to be communicated by the court to the prison, and thereafter the inmate. 35.7% of under trials interviewed by the study team were unaware about the status of their cases. Further, among the same under trials interviewed, 46.2% interacted with their lawyers themselves (mostly in court during the trial), 38.5% had family members who would interact with lawyers, while about 15.4% had no means of interacting with their lawyers. To this end, it was found that kiosks are being installed in all prisons, sent by the High Court, to enable inmates to follow court dates with the help of their case number.

## B. CONCERNS FOR CONVICTS

In addition to the peculiar concerns of convicts detailed in other chapters of this report, there are some problems relating to court practices and realities, which are enumerated in this section.

- a) **Set-off not granted as a matter of right:** A significant concern among the convicts of the state is that time served as under trial prisoners is not set-off against the sentence of conviction, as mandated under section 428 CrPC.<sup>154</sup> This results in prison administrators having to write to the concerned courts to seek clarification regarding the exact term of sentence to be served by convicts. While interacting with some member secretaries of DLSAs, the study team learnt that there exists misinformation that set-off cannot be granted if the sentence is for life, despite the provision clearly making s.428 applicable to lifers, and the same being affirmed by the Supreme Court.<sup>155</sup> The study team wrote to several DLSAs requesting their assistance in securing modifications in judgments

<sup>154</sup> S.428, CrPC: Period of detention undergone by the accused to be set off against the sentence of imprisonment – Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him. Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section.

<sup>155</sup> *Bhagirath v. Delhi Administration*, 1985 AIR 1050; 1985 SCR (3) 743.

where set-off has not been granted.<sup>156</sup>

- b) **Sentences do not run concurrently:** The study team met a few inmates, particularly in Bangalore Central Prison, who have multiple sentences, which have not been made to run concurrently. While it is not a matter of right for multiple sentences to run concurrently, the Supreme Court has held that it can be considered in the totality of circumstances.<sup>157</sup> However, since information of different sentences are rarely communicated to the lawyer and/or judge, sentences are not made to run concurrently even in cases which merit such a consideration, leading to long periods of incarceration.
- c) **Delay in appeals being heard and decided:** 12,617 criminal appeals were pending in the High Court of Karnataka as on 30th June, 2018.<sup>158</sup> 80% of the convicts interviewed by the study team had their appeals pending before either a bench of the High Court of Karnataka (Bengaluru, Gulbarga and Dharwad) or in the Supreme Court.
- d) **Excessive default sentence in lieu of fine:** In some central prisons, such as the Mysore Central Prison, the study team met indigent inmates who had finished serving their sentence of imprisonment but were unable to secure release due to their inability to pay fine. The default sentence in lieu of payment of fine sometimes ran into several years, and at other times were calculated separately for different offences resulting in very long periods of incarceration, sometimes as long as 8 years. Although the Supreme Court has held that in default sentences cannot run concurrently, this view must be reconsidered in applicable cases taking into account the nature of offence, economic status of the accused and behaviour in prison.

## RECOMMENDATIONS

### High Court:

#### • Court Translators

1. Devise a mechanism to ensure that court translators are appointed in cases involving non-Kannada speaking accused and proceedings are explained and documents are provided to them in a language known to them. Accordingly, appropriate directions may be given to all judicial officers in the state.
2. Consider issuing a directive to all sentencing courts such that set-off of period served as under trials in custody is necessarily calculated for all cases in compliance with the mandate of section 428 CrPC.
3. Consider issuing a directive requiring all sentencing courts to consider previous sentences, and order that they run concurrently, wherever deemed fit and proper by the court.

#### • Bail and Sureties

1. The Hon'ble Court may consider issuing the following directions to the district courts in regard to bail:
  - a) Amount of surety must not be fixed in such a manner as to effectively amount to not granting bail, when indigent accused are in question.
  - b) There should be no insistence on local surety for inmates who belong to other districts/states/countries.
  - c) In cases where a person is unable to furnish surety in the form of unencumbered property, cash surety must be considered by courts as a viable alternative.

<sup>156</sup> Dharwad, Bangalore, Belgaum and Bijapur.

<sup>157</sup> *Mohd. Akhtar Hussain v. Assistant Collector of Customs*, 1988 AIR 2143.

<sup>158</sup> Indian Judiciary, Annual Report 2017-18 by the Supreme Court of India.

- d) The practice of requiring “double surety” must be discontinued.
- e) Framing of charges must take place immediately after filing of chargesheet. If there is inordinate delay in framing charges, then such persons must be released on bail. The district Undertrial Review Committees may be directed to review such cases where charges are not framed after three months of filing of chargesheet.

**State Legal Services Authority:**

**• Court Translators**

1. Direct all DLSAs to monitor the cases of non-Kannada speaking persons closely through the jail visiting lawyers to ensure that court translators are appointed at all times and undertrials are informed about the status and progress made in their cases.

**• Bail and Sureties**

1. Direct the JVLs to identify the following categories of persons and inform the DLSA Secretary before every UTRC meeting:
  - a) Undertrials who have been granted bail but are unable to secure bail due to lack of surety;
  - b) Undertrials who appear to have mental health concerns so that the concerned court could be informed to determine their mental health needs and the proceedings under Chapter XXV of the CrPC could be initiated;
  - c) Undertrials who are seriously ill or are differently abled so that the concerned court may be informed.

**• Set-off:**

1. Determine cases where convicts have not been avail of set-off periods against their period of sentence and seek modifications of the sentence to this end.

**Prison Department:**

**• Court Translators**

- 1) Direct all prisons to forward the list of new admissions who are non-Kannada speaking persons to the DLSA Secretary at the end of every week as a matter of course and practice.



### UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

- ✓ 70 kiosks are set up in all prisons, except in Taluk Prison Bailahongal & Open Prison Devanahalli, (see details below) for prisoners to access information about the next date of hearing and other case details. Prison authorities also help inform prisoners about the same.

<b>Name &amp; Type of Prison</b>	<b>Number of Kiosks</b>
Central Prison Bangalore	06
Central Prison Mysuru Central Prison Belagavi	04 each
Central Prison Kalaburgi Central Prison Dharwad	03 each
Central Prison Ballari Central Prison Shivamogga Central Prison Vijaypura Women Central Prison Shivamogga District Prison Mangalore	02 each
All 20 District Prisons 17 Taluk Prisons All 3 Revenue Prisons	01 each

- ✓ **Convicts are informed about the status of their appeals by the prison authorities.**

## CHAPTER - 10

# REHABILITATION AND REINTEGRATION OF PRISONERS

It is the responsibility of the States to devise and develop mechanisms for rehabilitation of released convicts.<sup>159</sup> From the time of a prisoner's admission into prison, consideration should be given to his/her post-release needs and s/he should be encouraged and assisted to maintain or establish such relations (with persons or agencies outside the institution) as may promote the best interests of her/his family and his/her own social rehabilitation.<sup>160</sup> In Karnataka, convicts with sentence of imprisonment over 6 months are lodged in one of the nine central prisons in the state. Rule 202 of the Karnataka Prison Manual provides that every newly admitted prisoner should be explained by the prison staff, among other things, the necessity of utilising the period of his prison life in preparing himself for rehabilitation after his release. Constituting 29% of the total prison population, issues concerning convicts form an integral part of prison administration. As per the Prison Statistics India 2018, 324 convicts were rehabilitated and financial assistance was provided on release to 57 convicts during 2018 in Karnataka.

### A. EDUCATION AND SKILL DEVELOPMENT FACILITIES

#### STANDARDS

Education is one of the most potent avenues of reform and rehabilitation within the confines of a prison. Rule 284 of the Karnataka Prison Manual provides for a literacy drive in prison. It mentions that the state of education of every convict shall be ascertained on admission and recorded in the admission register and history ticket.<sup>161</sup>

The Model Prison Manual, 2016 recognizes three categories for literacy/education in a prison – (i) beginners and illiterate inmates, (ii) intermediaries and (iii) advanced learners. In this regard, Rule 284 of the Karnataka Prison Manual provides that prisoners who desire education beyond the elementary stage shall be given the necessary books and available assistance. Every convict under the age of 50 years shall be liable to undergo instructions in reading, writing and arithmetic up to the lower primary standard unless he has been declared as mentally or physically unfit by the doctor.<sup>162</sup> Rule 481 of the Karnataka Prison Manual provides that regular adult education class should be conducted for the benefit of illiterate women prisoners and

<sup>159</sup> Para 22.09, Model Prison Manual, 2016.

<sup>160</sup> Para 22.13, Model Prison Manual, 2016.

<sup>161</sup> It must contain details regarding the standard up to which he has read and the languages he can read write with examinations passed.

<sup>162</sup> A progress chart in the prescribed form shall be maintained for every convict receiving instruction and the result of such instruction shall be recorded in the History Ticket at the time of transfer or release. At the end of each education project inmates should be given tests and examination which should be organised in consultation with the Education Department. Inmates who have successfully passed these tests and examinations should be awarded certificates on behalf of the Education Department.

expenditure on text books and writing materials should be met out of canteen funds.

Rule 284 further provides that convicts who are well read may be appointed by the Superintendent as convict teachers. They shall work under the guidance of a paid teachers or prison officer. Literate convicts and prisoners undergoing instructions may be providing with lighting facilities up to 9.30 pm to enable them to read books or receive instructions. It further provides for District Education Officers to inspect the prison schools in their circles and furnish reports of their inspection to the Superintendent for their remarks and further submission to the Inspector General.

## OBSERVATIONS AND ISSUES

- 1) **Number of Prisoners provided Education:** As per chart below, only 2.5% of prison population are provided with education in Karnataka prisons, as on 31st December 2018. Among them 58% are undertrials (refer Chart 9.3 below).

**Chart 10.1 – Number of Prisoners given Education, Vocational Training and Work**



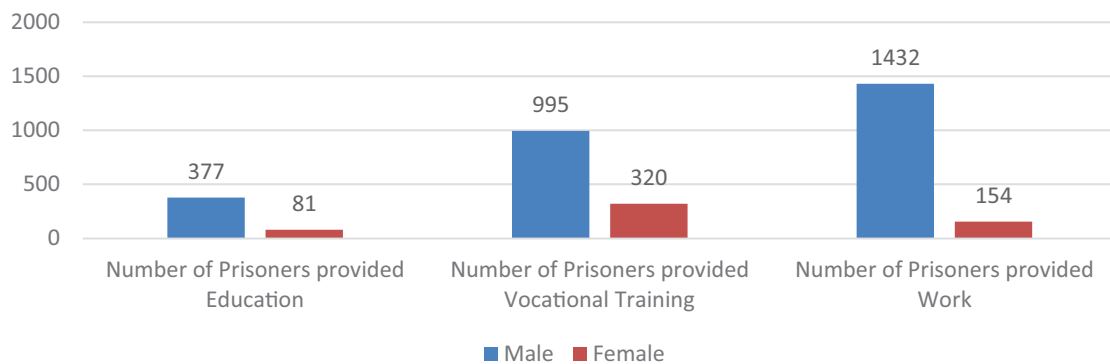
Only 4<sup>163</sup> out of 21 district prisons are active in providing formal education to the prisoners with Chikkamagluru District Prison leading the way. While majority are undertrials who are availing educational facilities, as per information provided by District Prison Raichur, undertrials do not opt for education due to their legal status. However, as per the data received on period of detention, 1430 undertrials were detained in Karnataka prisons for more than a year, which is a reasonable period to begin or continue their education. No convict is pursuing education in open prisons.

Overall, the male-female ratio is nearly 5:1 in regard to education as per the chart below.<sup>164</sup> When compared with their respective populations, merely 4.2% male prisoners and 21% of women prisoners have undertaken education.

<sup>163</sup> District Prison Chikmagalur, Chitradurga, Haveri and Bagalkot.

<sup>164</sup> Bellary and Dharwad central prisons did not provide segregated figures for men and women prisoners. In the chart, for these two prisons, total number of prisoners providing education was segregated based on the Men:Women ratio as existed for other prisons, which was 11:1.

**Chart 10.2 – Number of Men and Women Prisoners undertaking education, vocational training and work**



One of the popular courses opted by inmates who were unable to complete their schooling before entering prison, is the Bachelor Preparatory Program (BPP). A promising number of inmates in the Womens’ Central prison in Shivamogga and Ballari Central Prison have opted for this course in the recent past. The BPP is a bridge course which qualifies inmates to take up an undergraduate program through IGNOU upon successful completion.

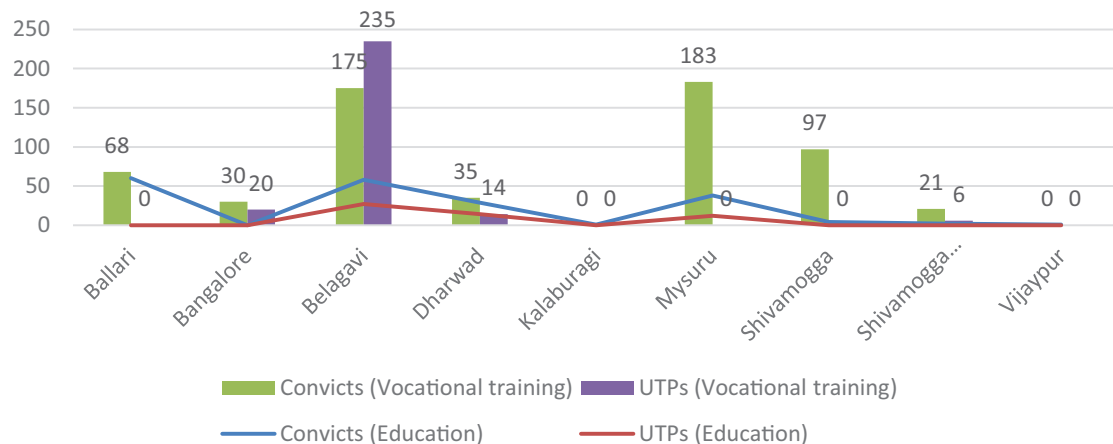
The opportunity to register for correspondence courses for higher education through the Indira Gandhi National Open University (IGNOU), Karnataka State Open University (KSOU) and Kuvempu University (in Shivamogga) is available to inmates only in the central prisons. Ballari Central Prison has a study centre in the prison affiliated to IGNOU while Shivamogga Central Prison has a study centre affiliated to the Kuvempu University. The central prisons in Kalburgi and Dharwad have not had many inmates taking up correspondence courses over the years. Mysuru, Belagavi and Bengaluru central prisons have inmates taking up courses on a regular basis. Prison education is a key area requiring closer attention by prison authorities.

- 2) **Availability of Teachers:** With regard to providing elementary education, while some prisons have teachers from the education department appointed to the prison on deputation, some prisons are without teachers. Until a few years ago, most prisons used to be supplied with books from the Adult Education Department, a practice that seems to have been gradually discontinued. They helped inmates who have not had the opportunity to gain literacy, pick up basic reading and writing skills.
- 3) **Number of Prisoners provided Vocational Training:** As provided in the Model Prison Manual 2016, “vocational training programmes should be designed to suit the needs of prisoners sentenced to short, medium and long term imprisonment.” However, the current set up is not able to cater to the needs of even long term convicts. As per Chart 9.3 below, except for Vijaypur, all central prisons and the open prison provide vocational training for convicts. Only four central prisons<sup>165</sup> and six district prisons<sup>166</sup> provided vocational training for undertrials. Belagavi Central Prison is an exception where more undertrials are engaged in vocational training than convicts.

165 Central Prison Belagavi, Dharwad, Bangalore and Women central prison Shivamogga.

166 District Prison Chikmangalur, Chitradurga, Chamarajanagara, Bagalkot, Bidar and Koppal.

**Chart 10.3 – Number of Convicts and Undertrials undergoing education or vocational training in Central Prisons**



It is interesting to note that while only 10% of the men prisoners were engaged, 70% of women prisoners were engaged in vocational training. “Interactions with inmates and officials revealed however that this involvement is not sustained throughout the year”. For women prisoners, five Central prisons provided vocational training with Women Central Prison Shivamogga, Belagavi and Dharwad engaging both convicts and undertrials and Ballari and Mysuru only engaging the convicts. Chikmagluru District Prison provided vocational training to 90 women prisoners, the highest in the state. Many local organisations are also conducting workshop and trainings in different prisons. As per Prison Statistics India 2018, only 24 NGOs work in prisons, one of the lowest among big states.

## B. PRISON LABOUR AND WAGES

### STANDARDS

Chapter XX of the Karnataka Prison Manual deals with ‘Prison Labour and Prison Industries’. Under Rule 328, a Discharged Prisoner Aid Society is provided for, in order to assist prisoners find work post release, a positive effort towards rehabilitating prisoners post incarceration. Rule 387 provides that, “punitive, repressive and afflictive work in any form should not be given to prisoners. Work should not become drudgery and a meaningless activity. Work and training programme should be treated as means for their vocational training and social adjustment and thus help in their ultimate rehabilitation in the free community.” Prison labour is a means of ensuring that an inmate is engaged in productive activities in furtherance of his/her reformation. Having work in prison has two fundamentally crucial immediate effects, in addition to the long term goals of reformation and skill development – it enables a convict to productively and constructively spend his/her time in prison without having to constantly worry about the state of their family outside prison and it also ensures that some money is available in the form of wages.<sup>167</sup>

Rule 10 of the Karnataka Prison Manual provides that it is one of the duties of the Inspector

<sup>167</sup> Rule 388 - Institutional programme should aim at:

- 1) Imparting discipline in work
- 2) Developing right attitude towards dignity of work, social purpose and utility of work
- 3) Promoting mental development, and wellbeing of mind, through intelligent manual labour
- 4) Developing capacity for sustained hard work, building up good habits, concentration regularity and exactness in work.
- 5) Fostering feeling of group effort, spirit of fellowship and cooperative way of living
- 6) Keeping inmates usefully employed in meaningful and productive work thus preventing idleness and indiscipline.
- 7) Awakenning the feeling of self-confidence and self-reliance in the inmates
- 8) Good training and preparing the inmates for achieving social adjustment by creating a sense of economic security.

General during the inspection of the prison that “he shall examine whether sufficient labour is available for prisoner sentenced to rigorous imprisonment, whether adequate tasks have been exacted, sufficiently for clothing and bedding, progress under the remission rules, examine prisoners under irons, and verify awards of punishment under the rules.” Rule 391 provides for the scope of employment – “for purposes of employment work and training of inmates the following avenues should be kept in view – a) essential service unit;<sup>168</sup> b) maintenance unit;<sup>169</sup> c) small industries; d) cottage and village industries; e) mechanized industries; f) handicrafts and g) farming.” Additionally it provides for inmate service unit.<sup>170</sup>

Wages are crucial to a convict; to be able to afford basic prison services such as phone call facility, and canteen facility, and also to have money to provide to the family when they visit. While Rule 396 of the Karnataka Prison Manual mentions that, “prisoners have no right to wages”, the Model Prison Manual 2016 provides that, “Wages should be fair and equitable and not merely nominal and paltry. These rates should be standardised keeping in view the minimum wages given as notified by the government from time to time.” And that the same “should be reviewed every three years and revised whenever necessary.”

Whilst wages are paid for work done over 8 hours a day, wages for some work are paid on the basis of the quantity of work done – eg. length of cloth spun, number of shirts stitched, etc. Earlier, the practice was for wages of inmates to be credited to their Prisoners’ Personal Cash (PPC) account. However, the current practice is to require every inmate to open a bank account, and the wages will be credited to it.

## OBSERVATIONS AND ISSUES

55% of the convict population detained in central prisons and the open prison in the state, are provided work, amounting to only 14% of the male population in prisons. Out of the total prisoners who were provided work, 90% are men (refer Chart 10.2 above). In district prisons, under-trials are engaged in kitchen and other essential services in prisons since no convicts are detained for long term basis. However, not a single district prison provided information on such number of under-trials. This essentially means that they are not paid wages despite working as required under the provisions of the Model Prison Manual 2016.<sup>171</sup> Some district prisons had got special permission to make such payments including Haveri and Madikeri.

Every central prison has a different approach to labour, with some being more productive than others. In terms of skill development, labour avenues are currently predominantly available only for convicts in central prisons, although some district prisons also make attempts through workshops in motor rewinding, mobile phone repairs, beautician courses, etc., such as the ones in Haveri, Koppal, Chikkamagalur, Chamarajanagar and Bagalkot. There are various opportunities for work available in the state’s central prisons, including prison maintenance and upkeep, kitchen work, office work, handloom and power loom, tailoring, laundry, metal work, furniture making, bakery, etc. Other than the factories set up by the prisons, convicts are also engaged as out gangs in agricultural work and cattle sheds in most central prisons. Work has also been provided by a few private organizations, for example, Cycle Agarbatti is employing inmates, both convicts and undertrials, in a few prisons including Central Prison Mysuru, taluk prison Nanjanagudu, etc., for packing agarbattis.

168 Under essential service unit may be included the following categories: Sanitation and hygiene service; Culinary service; Water supply; Stores service; Laundry service; Barbering; Plumbing and lighting service.

169 Under maintenance unit may be included the following categories: Building, quarters, premises; Electric installation; Plan and equipment; Transport; Roads, playground, tanks; Wells water channel bunds; Miscellaneous repairs and service jobs.

170 Under inmate service unit may be categorized the following items of work – Distribution and serving of food; Service to sick in hospitals; Writing letters, application; Assisting in training games educational and recreational activities; Person factories workshops and agriculture; Night patrolling inside barrack; Preventing indiscipline.

171 Para 15.17, “the under-trial prisoners employed in the prison industry, or agriculture, should be given fair and equitable remuneration on the same scale as prescribed for convicts. They should also be given labouring diet and other facilities”.

Out of all Central prisons the most productive prison in terms of options for work and output was found in Central Prison Belagavi. On the other hand, work opportunities were found least in Central Prison Dharwad where work had been suspended for a few years and is now slowly being restarted, and Central Prison Shivamogga which is a very new prison and is setting in place work opportunities. The Women's Central Prison used to be a productive prison when it was in Tumakuru, especially with its bakery items. However, having recently been shifted to Shivamogga, work opportunities are yet to be developed. The Open Prison in Devanahalli provides inmates the opportunity to engage in agriculture and animal rearing.

Central Prison	Work opportunity available
Mysuru	Handloom weaving, carpentry, tailoring, soap and phenyl making, bakery, coir work, agarbatti packaging, embroidery and soft toys. In addition to this, prison maintenance work is available in the form of maintaining cleanliness and hygiene in the prison, kitchen work, laundry, assisting in medical care.
Bengaluru	Power loom weaving, tailoring, carpentry, metal work and welding, printing, agriculture, kitchen work, library and office maintenance, canteen maintenance, electrical work, dying, soap and phenyl making, bakery, laundry and ironing, medical care and maintaining cleanliness and hygiene in the prison. Some inmates are also employed by contractors who are involved in construction work in the prison.
Belagavi	Power loom weaving, handloom weaving, carpet weaving, blanket making, warping, tailoring, carpentry, hair cutting, agriculture, kitchen work, library and office maintenance, canteen maintenance, cattle rearing, electrical work, dying, soap and phenyl making, bakery, laundry, bag making, electrical work, medical care and maintaining cleanliness and hygiene in the prison.
Dharwad	Hand loom weaving, warping, tailoring, carpentry, agriculture, cattle rearing, prison maintenance in the form of maintaining cleanliness and hygiene in the prison, kitchen work, assisting in medical care, office assistance.
Shivamogga	Prison cleanliness and kitchen work, assisting the medical officer, agarbatti packing.
Bijapur	Power loom weaving, pit loom weaving, warping, tailoring, agriculture, prison maintenance in the form of maintaining cleanliness and hygiene in the prison, kitchen work, laundry, assisting in medical care, office assistance.
Ballari	Power loom weaving, warping, tailoring, prison maintenance in the form of maintaining cleanliness and hygiene in the prison, kitchen work, laundry, assisting in medical care, office assistance.

#### Some pertinent issues are:

- 1) The study team learnt that there are several inmates willing to engage in productive labour but are unable to do so due to lack of options. This is especially true of female convicts who are not allowed to participate in the labour opportunities available in the main prison block, and do not have sustained opportunities for the same within the female barrack.<sup>172</sup>
- 2) Another concern is that though a number of convicts have enrolled voluntarily on paper, there are not enough options available to convicts for them to be able to choose to do work that is interesting and meaningful, leading to a sense of disinterest.

<sup>172</sup> Rule 411 of the Karnataka Prison Manual provides that female prisoners shall ordinarily be employed in cooking grain cleaning or in the preparation of articles of food such as pounding husk or sifting grains. They may also be employed for file board or envelope making, tailoring and weaving. The task fixed on any female shall not exceed three fourths of the task for hard labour prescribed for adult male convict.

- 3) The Model Prison Manual 2016 provides that, “qualified technical personnel should be appointed in adequate numbers in every production unit and for every programme of vocational training. Such personnel could be posted in the prison on a transfer-cum-deputation basis from the Industrial Training Institutes of the State.” The study team met persons appointed in this capacity only in Belagavi and Dharwad Central Prisons.
- 4) In most central prisons many convicts were found to be working as sweepers and hospital attendants without any payment of wages. In Bijapur, a hospital attendant has been working for more than three years as “trainee”. The prison staff cited Rule 409(iii) of the Karnataka Prison Manual as a reason, which provides that, “prison servants like cooks, sweeper, hospital attendants etc. shall ordinarily not exceed 10 percent of the prison population except with the Inspector General’s sanction.”
- 5) Minimum daily wages have recently been increased to Rs. 250 for highly skilled work, Rs. 225 for skilled work, Rs. 200 for semi-skilled work and Rs. 175 for unskilled work.<sup>173</sup> However, these are much below the least of the minimum wages per day prescribed by the Karnataka Government, as shown below:<sup>174</sup>

Worker	Zone-I	Zone-II	Zone-III	Zone-IV
Highly Skilled	593.21	564.96	538.06	512.44
Skilled	539.28	513.60	489.14	465.85
Semi-Skilled	490.25	466.91	444.68	423.50
Unskilled	445.69	458.20	437.99	418.74

- 6) Maintenance cost being deducted from wages. A flat slab of Rs.100/day is deducted from all categories of workers towards food, clothing and other expenses.<sup>175</sup> As per the current rate of wages, it amounts to 40%, 44.4%, 50% and 57% deduction from the wages of highly skilled, skilled and semi-skilled workers respectively. It should not amount to more than 50% for any category of worker.<sup>176</sup>
- 7) The process of opening bank accounts has unfortunately remained largely incomplete in all central prisons for about 2-3 years. The local State Bank of India (SBI) branch is seeking only Aadhar cards to open an account and not every inmate has an Aadhar card, or more crucially is being unable to recover their Aadhar details on the basis of their biometric details. This is an unfortunate eventuality, despite the Supreme Court having ruled that Aadhar is not mandatory for opening bank accounts.<sup>177</sup> Also, this practice is in violation of the RBI guidelines for Small Saving Account.<sup>178</sup> This results in convicts being neither able

173 GO No.HD 226 PRA 2017 dated 04.04.2018.

174 Notification No. KAE 20 LMW 2017, dated 30-12-2017

175 GO No.HD 226 PRA 2017 dated 04.04.2018.

176 In *K.R. Raja vs The State of Tamil Nadu* 2019 SCC OnLine Mad 28655, the Madurai Bench of the Madras High Court has concluded that, “the prisoners in Tamil Nadu are not paid the wages as prescribed in the Minimum Wages Act. Therefore, making a substantial deduction from the wages prescribed under the Prison Rules runs counter to the directions laid down by the Hon’ble Supreme Court in the decision reported in (1998) 7 SCC 392 (*State of Gujarat and another vs. Hon’ble High Court of Gujarat*). It violates Article 23 of the Constitution of India, besides being unreasonable. We therefore hold that Rule 481 of Tamil Nadu Prison Rules, 1983 is unconstitutional to the extent it provides for deduction of 50% of the wages from the prisoners. It is open to the Government to provide for a lesser and reasonable percentage of deduction which would be in accord with the law laid down by the Hon’ble Supreme Court in the aforesaid decision.

177 *K.Puttuswamy (Aadhaar-5f) v. Union of India* (2019) 1 SCC 1

178 RBI/ 2008-2009/72DBOD.AML. BC. No. 12 /14 .01.001/2008-09 provides that, “it has been observed that a large number of persons, especially, those belonging to low income group both in urban and rural areas are not able to produce such documents to satisfy the bank about their identity and address. This would lead to their inability to access the banking services and result in their financial exclusion. Accordingly, the KYC procedure also provides for opening accounts for those persons who intend to keep balances not exceeding Rupees Fifty Thousand (Rs. 50,000/-) in all their accounts taken together and the total credit in all the accounts taken together is not expected to exceed Rupees One Lakh (Rs. 1,00,000/-) in a year. In such cases, if a person who wants to open an account and is not able to produce documents mentioned in Annex I of this master circular, banks should open an account for him, subject to: Introduction from another account holder who has been subjected to full KYC procedure. The introducer’s account with the bank should be at least six months old and should show satisfactory transactions. Photograph of the customer who proposes to open the account and also his address need to be certified by the introducer, or any other evidence as to the identity and address of the customer to the satisfaction of the bank.”



to avail phone and canteen facilities nor support their families, through the wages earned.

## RECOMMENDATIONS

### State Government:

- **Education:**

1. Ensure that there is adequate teaching staff in all the prisons.
2. Ensure that prison libraries are well stocked with books and periodicals, and establish libraries in prisons without them.

- **Prison Labour and Wages:**

1. Develop “a clear policy for skill development programmes and vocational training of prisoners” as provided in the Model Prison Manual 2016.<sup>179</sup> It provides that, “The employment and production policy in prison should be designed to cater to the needs of prisoners coming from both rural and urban areas. The emphasis should be on the kinds of skills and jobs that would ensure employment, or self-employment once the inmate is released from prison.”<sup>180</sup>
2. Set up a “Board of Skill Development Programme and Vocational Training”, under the chairmanship of Inspector General of Prisons, at the Prison Headquarters and vested with full fiscal and administrative powers, as provided under the Model Prison Manual 2016.<sup>181</sup> During the study team’s interaction with the prison officers, it was learnt that such an initiative is already underway.
3. Incorporate prisoners as a category eligible for benefits under the Karnataka Skill Development Policy 2019-20.<sup>182</sup>

### Prison Department:

- **Prison Labour and Wages:** This area is much neglected and requires urgent attention of the head office. The provisions of the Model Prison Manual 2016 must be considered to be implemented in all Central Prisons, namely the following

1. Wherever possible in larger prisons, an Industrial Training Institute should be established and where it is not possible to establish one, the help of local Industrial Training Institutes could be obtained in training the prisoners. [15.08 (ii)]
2. Active linkages should be established with the department of Technical Education, Directorate of Industries (including Cottage Industries), Industrial Training Institutes, Polytechnics and Vocational Training Institutions as well as approved NGOs to develop vocational training programmes on a practical and pragmatic basis. (15.11)
3. On the completion of vocational training courses, inmates should be examined by the Department of Technical Education of the State/Union Territory concerned and on passing the examination they should be awarded a regular Certificate/ Diploma by that department. (15.12)
4. Prison industries should be organised on business-cum-commercial basis. Preference to prison products, while purchasing articles for office use, should be given by the various government departments. (15.25)
5. Prison skill development programmes should consist of services required by the community such as construction work, masonry, carpentry, plumbing, electric fitting, tailoring,

<sup>179</sup> Para 15.02.

<sup>180</sup> Para 15.03.

<sup>181</sup> Para 15.04.

<sup>182</sup> Available here: <https://www.kaushalkar.com/wp-content/uploads/2020/07/Final-DRAFT-SKILL-POLICY-2019-20.pdf>, last visited on 05.02.2021.

fabrication of ready-made garments, leather work, driving, prison servicing, agriculture, horticulture, dairy, poultry, floriculture, maintenance of diesel engines, maintenance of electric pumps, tractor repairing, automobile servicing and repairing, cane work, basket making, pottery, book binding, typing, computer-operating, handicrafts, stenography, cloth printing, embroidery, hosiery, bakery, namkeen making, paper making, printing, tailoring, weaving, soap making, candle making, toy making, sewing machine repair, food processing, etc. (15.27)

6. The organisation of accounts and inventory should be modernised on business lines. (15.35)
7. Catalogues of standardised products of prison industries should be prepared for securing orders from the market for various production units. (15.37)
8. Technical supervision should be improved and a system of quality control introduced at every stage of production, so that market competitiveness can be maintained. (15.38)
9. Showrooms should be opened outside the prison gates, and at other places, for promoting sale of products of prison industry. A brochure should also be kept in which information is provided to the public about the products being sold along with their rates. (15.40)
10. The targets of production for each unit for the ensuing year should be fixed in accordance with the employable inmate population and production potential of the unit. These targets should be communicated to the respective institutions in advance. The unit's production, according to the target, should be reviewed on a monthly basis. (15.42)
11. With a small women prisoner population, special focus on sustained and remunerative work for female inmates must be introduced, to start with, in all central prisons and in a phased manner to all district prisons.
12. Prisoners' bank accounts must be opened and with their due wages being credited at the earliest. For this, all Superintendents must be directed to prepare the list of convicts who are unable to procure their Aadhar card and submit to the head office. The head office must send a letter to the SBI Karnataka Zonal Office, with a copy to the SBI head office, Mumbai, to sort the issue in regard to the RBI guidelines on Small Saving Accounts.

#### UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

- ❖ Karnataka is among the few States in the country to enact the **Prison Development Board Act** in October 2021, to improve prisoner's welfare.
- ❖ To address the issues of payment of wages, Jan Dhan accounts have been opened for all convicts in all prisons. Additionally, undertrials working as kitchen staff in district and taluk prisons are also paid wages now. A proposal to increase the wages of prisoners is currently pending with the State Government for which a meeting with the Labour Department is due. Multiple communications have been sent by the Department of Prisons and Correctional Services including to the Chief Secretary of the Karnataka Government and Labour Department for the Constitution of a wage revision board.
- ❖ As an extraordinary initiative towards COVID-19 management, more than 12 lakh masks were manufactured by the Prison inmates in the last two years. These masks are utilized not only by the Prison Department but also by the other State Government Departments.
- ❖ **Launching of 'Navchethana' Program:** With the intensity of Covid-19 pandemic coming down and 100% vaccination of the prisoners and prison staff in the state, a set of innovative initiatives for the holistic reformation of the prisoners in all the prisons

in the state, named 'Navachethana' has been launched since August 2021. These measures also include sensitization and re-training of all the prison officers and staff in the state and are expected to transform the prisons in the state in an unparalleled way. Reformatory measures under 'Navchethana', aim for improving the physical and mental well-being as well as educational and skill levels of the prisoners. These measures also strive to enhance the self-esteem and productivity of the prisoners and are designed to bring a more positive atmosphere in the prisons in the state. These innovative measures have been formulated after a detailed and focused study and have been made system driven. These new initiatives under 'Navchethana' are definitely expected to bring a new meaning to the prison reforms in Karnataka and can be replicated in prisons in other states also. Various reformatory measures taken under 'Navchethana' in the state are as follows:

a) **Reformatory Measures for the Physical and Mental Development of the Prisoners and Prison Staff:** The following measures were inaugurated by the Hon'ble Home Minister of Karnataka Sri. Araga Jnanendra in the presence of Dr Alok Mohan, IPS, Director General of Police, Prisons and Correctional Services on 26th August 2021 at the Central Prison Bangalore:

- Health Screening: Dental, Eye, HIV, Heart check-ups
- Health Awareness Program: Tobacco, Cancer, HIV, Drugs etc.
- Maintenance of Hygiene and supply of Nutrition food in the prisons
- Counseling & Psychotherapies
- Mental health programs: Peer-support for mentally-ill patients
- Yoga & Meditation

Some of the highlights are provided below:

- ✓ Under 'Navchethana' initiative more than 2,700 prison officers and 6,900 prisoners in all the prisons in the state have already been given training in 'Yoga and Meditation' by the 'Art of Living', and the 'Isha' Foundations. While 'Isha Foundation' has taken up responsibility for 14 of the prisons in the state, 'Art of Living Foundation' is associated with the remaining 38 of the prisons in the state. These advanced yoga programs are further being taken up for all the remaining prison officers and prisoners in the state. Help of other NGOs and organizations is also being taken to achieve this goal of holistic physical and mental development of the prisons.
- ✓ Towards counseling and psychotherapies of the prisoners, 20 Psychiatric counselors have been appointed during 2021-22 and deputed to various prisons in the state. To further empower these Psychiatric Counselors, a special two weeks prison specific training program is being provided to them at the NIMHANS, Bengaluru from the 28th March to 8th of April 2022. 8 other prison staff who have 'Master in Social Work' degrees are also being trained in counseling and psychotherapies of the prisoners at the NIMHANS along with these 20 Psychiatric Counselors. After the NIMHANS training, these 20 Psychiatric counselors and 8 of the prison staff are going to work as the 'Master Trainers' and are further going to train all the prison staff in the state on counseling & psychotherapies of the prisoners. Further with the help of NIMHANS, 38 prisoners have already been trained during 2021 as 'Master Trainers' for the 'Peer-support for mentally-ill patients' initiative for the mental health programs in the state prisons.
- ✓ In the last two years, there has also been serious attention given to maintenance of hygiene and improving the quality of food in all the Prisons in the state. In a landmark achievement, 'Food Safety and Standards Authority of India'

(FSSAI) has awarded 4 Star certification to all the kitchens of the 8 Central Prisons in the State. Bangalore Central Prison was awarded with the prestigious 'Eat Right Campus' certificate with a 4 star rating by the 'fssai' in July 2021. In terms of hygiene and food quality, now Bangalore Central Prison stands at par with the 'Unilever' and 'Wipro' campuses in Bangalore who have similar certification from the 'fssai'. Other 7 Central Prisons in the state have also achieved certifications from the 'fssai' on hygiene and food quality in January 2022. Efforts are also being put to achieve 'fssai' certifications for the kitchens in the District Prisons in the state.

- b) **Reformative measures for the Educational Development of the Prisoners:** In the Karnataka state prisons, out of 15,000 prisoners, almost 50% i.e. about 7,500 are either illiterate or semi-literate. On the 1st November 2021, a massive 'Literacy Program' for all the 7,500 illiterate and semi-literate prisoners in the state was launched simultaneously in all the 52 prisons in the state with the help of the 'Mass Education Department' of the state government. This is one of the largest literacy programs ever attempted in the prisons in the state and shall make the prisons in the state as the largest learning places.

Uniqueness of the present literacy program is that the educated prisoners in the prisons are the 'resource persons' for giving literary classes and for making the illiterate prisoners literate. 'Mass Education Department' has been giving training to these educated prisoners for this purpose. It is being ensured with the help of the 'Mass Education Department' that even after release, prisoners can continue with their literacy programs outside the prisons with the help of local centers of the 'Mass Education Department'.

For further educational developments of the prisoners, 'National Institute of Open Schooling' and other 'Open Universities' are being involved. The National Institute of Open Schooling is planning to conduct 8th and 10th level examinations in the prisons in the state in April 2022.

- c) **Reformative Measures for the Skill Development of the Prisoners:** Under 'Navachethana', as an initiative on prisoner's rehabilitation, skill development programs are being organized for all the prisoners in the state prisons with the help of both governmental and non-governmental organizations. Emphasis is on identification of such skill development and vocational training for the prisoners, that they are able to get local employment once released from the prisons.

25 sectors/trades like Electrician, Carpentry, Gardener, Tailoring, IT, Apparels, Hospitality, Capital Goods etc. have been identified for this purpose. 2,600 prisoners have already been provided vocational and skill training in the state till 31st March 2022. An ITI is also being established at Bangalore Central Prison during 2022-23 for achieving better skill development for the prisoners.

Skill development and vocational training programs were earlier being conducted only in the Central Prisons in the state. Efforts are now on also to introduce some of the skill development programs for the under trials in the district prisons in the state. Skill development and vocational training programs already identified and agencies undertaking them under 'Navchethana' initiative are as follows:

- 1) *Through 'Sri Sri Rural Development Program Trust', Art of Living Organization, Bangalore:* Electrician, Carpentry, Sanitary pad making, Beautician Course, Yoga & Meditation, Education, Health & Hygiene, Tailoring etc.
- 2) *Through SAN-IT Solutions Pvt. Ltd., Bangalore:* IT-ITES Domestic data entry operator, Self-employed tailor-Hand embroidery, Metal arc welder, Housekeeping, room attendant work etc.
- 3) *Through Mindtree Foundation, Bangalore:* FM Radio in all central prisons-

Technical & Training Support. Mindtree Remote Data Entry Center- Training & Job Cr.

- 4) *Through Rudset Institute Central Secretariat, Ujire:* Photography and videography; General EDP, Refrigeration and air conditioning; Dairy farming and vermi-composting; Pappad, pickle and masala powder making; Installation and service of CCTV camera, security alarm and smoke detector; Embroidery and fabric painting; Paper cover, envelope and file making; Electrical motor rewinding and pump set repair service; Beauty parlor management, Ladies tailor, Sanitary-Pad Making; Welding and fabrication; Plumbing and sanitary works; Barber course etc.

# CHAPTER - 11

## PAROLE, REMISSION AND PREMATURE RELEASE

Prisons have several incentives, and measures, to ensure that once a convict has started serving his/her sentence, they maintain ties with the society outside prison and that they conduct themselves in a manner that can make them eligible for a sentence review. This chapter explains such measures – parole, remission and premature release – and the issues and concerns surrounding them.

### A. PAROLE

#### STANDARDS

Parole is a short period of time granted to a prisoner, in the form of a holiday from prison, where they can go home before returning to finish their sentence (in fact, in Karnataka, parole is called ‘raja’ which translates to holiday in Kannada). As per the Karnataka Prison Manual, the objectives of releasing a prisoner on parole and furlough are: (i) To enable the inmate to maintain contact with his family and deal with family matters; (ii) To save the inmate from the evil effects of continuous prison life; (iii) To enable the inmate to maintain and develop his self-confidence; and (iv) To enable the inmate to maintain constructive hope and active interest in life.<sup>183</sup>

Parole is of two kinds – (a) ordinary parole and (b) emergency parole. Ordinary parole is granted for up to 3 months in order to maintain ties with the family and take care of personal business/property.<sup>184</sup> Emergency parole as the name suggests is to cater to unplanned events such as death/ serious illness/ marriage of a family member, and is for a period of only 15 days.

Rule 191 of the Karnataka Prison Rules, Chapter XXIV and latest GOs<sup>185</sup> govern the eligibility of convicts, conditions for applying and grant of parole. A convict applies for parole through the Superintendent<sup>186</sup>, who then forwards this to the concerned Executive Magistrate and the

183 Rule 634, Karnataka Prison Manual.

184 Rule 650 of the Karnataka Prison Manual provides that, “Release of a ‘prisoner on parole shall be initially for a period not exceeding 30 days (thirty days) which may be extended by such period not exceeding 30 days at a time as the State Government/Inspector General deem fit, provided that the total period of release at a stretch shall not exceed 90 days. The period spent under parole will not count as a part of sentence.”

185 Notification No. HD/10/PRA/99 dated 20th February 2004 and Notification No. HD 168 PRA 2006.

186 Rule 638 of the Karnataka Prison Manual – (a) The Superintendent shall examine the case of each prisoner who is eligible for furlough leave, to find out whether the prisoner is fit for being released on leave taking the following points into consideration – (1) Conduct; (2) Work; (3) Progress achieved in various spheres; (4) Efforts for self-improvement; (5) Attitude towards family and community. (6) The manner in which previous period of leave on parole and furlough was utilised. (b) Prisoners whose conduct has been found to be unsatisfactory or prisoners who are punished for prison offences shall be considered as unfit for being released on leave. In such cases the Superintendent shall order the postponement of furlough for three months for reconsideration of their cases.

police station to seek a report on whether there would be any objection to the convict being released on parole. If no adverse report is received from the Executive Magistrate within 15 days, it is presumed that the concerned police or the Taluk Executive Magistrate have nothing adverse against the prisoner who has applied for parole. The Superintendent then forwards the application to the IG for his/her approval. It is clearly provided that the expenses of the journey to and fro shall be borne by the prisoner concerned.

## OBSERVATIONS AND ISSUES

Though the GOs of 2004 and 2006 lay down the procedure clearly, there were a number of issues noted by the study team during the interaction with convicts in different central prisons:

- 1) It was learnt by the study team that unless there are strong ties outside, with family/friends willing to run around from pillar to post to get approval from the concerned police station (which often involves bribe), and/or Superintendent of Police (SP), one does not get a favourable report. It was complained that in many police stations rejection has become mechanical and routine. At the same time, the team was also informed that efforts have been made by the head office to seek reasons for rejection of parole request from the concerned SP.
- 2) A convict has to execute a bond with one satisfactory surety for a sum of Rupees one thousand in cash and give an undertaking of his return on due date.<sup>187</sup> A number of convicts were found to be so poor that they could not even pay the cash amount and hence unable to go on parole.
- 3) Further, the discretionary parole recognised under Rule 191(2)(d) of the Karnataka Prison Rules, granted by the prison authorities, is only exercised after one successful parole return upon being passed by the concerned police station – a rule of prudence adopted by the prison department, and not a practice backed by any order/rule. Unfortunately, following the case before the High Court in Criminal Petition No.1359/2014 on the issue of parole escape, authorities are less likely to grant parole, a policy that is bound to affect the morale of inmates and is in opposition to the purpose of such a practice in the first place. Even when an inmate has returned upon successful completion of parole, the discretionary power under Rule 191(2)(d) is used very sparingly in most central prisons, and not at all in some central prisons such as Ballari.
- 4) In certain categories of offences, emergency parole is only granted with escorts. As per Rule 191(3)(g) of the Karnataka Prison Rules, 1974, expenses to and fro during the grant of emergency parole is to be borne by the prisoner, and it is only in the exceptional circumstances mentioned in Rule 191(3)(a) that the prisoner may be released with 'adequate escort'. In such cases, convicts alleged that they are asked to bear the expenses of the escorts, often up to the tune of Rs.1,50,000/- which is impossible for most inmates to bear. The escorts are usually sent from the District Armed Reserve (DAR) or City Armed Reserve (CAR). It is unclear on what basis do they raise an invoice for the expenses of the escorts. Another area of concern is that convicts who are not considered for early release on account of their sections/sentence, are also not eligible for emergency parole, regardless of their conduct in prison, or the nature of emergency.
- 5) A number of convicts were also found unaware or unclear about the provisions of parole and their eligibility.

<sup>187</sup> Amendment to Rule 191(2)(c) of the Karnataka Prison Rules by GO No.HD 168 PRA 2006; earlier the surety sum required was Rs.3000, which has been reduced with the intent of aiding prisoners seek parole.

## B. REMISSION

### STANDARDS

Remission system means the system of regulating award of marks to a prisoner and the consequential shortening of sentence without changing its character.<sup>188</sup> These marks are in the form of days granted to a prisoner, which is added to the actual time spent by him/her in prison (called the sukka period in the Karnataka prisons), to calculate the time considered as spent in prison. So for instance, if a person has spent 10 years in prison, but has earned a total of 365 days in remission, then he/she is considered to have spent 11 years in prison. Remission is one of the important means by which an inmate is encouraged and rewarded for good behavior, and for acts of reformation/rehabilitation undertaken while in prison. But it is not a matter of right for any prisoner.<sup>189</sup> There are three kinds of remission – (a) ordinary remission, (b) special remission and (c) remission by the state government. The Karnataka Prison Manual, in Chapter XII, sets down the conditions to be fulfilled for an inmate to earn remission.

Ordinary remission is granted for good behavior, prison work and undertaking literacy classes. Special remission is granted for special services, achievement or conduct of an inmate while in prison.<sup>190</sup> Ordinary remission is granted by the Superintendent of the prison, while special remission can be granted by both the superintendent of the prison and the Inspector General. Remission is also granted by the state government in exercise of its powers recognized under section 432 of the CrPC,<sup>191</sup> – it is in fact this power that is exercised when a convict is recommended by the Advisory Board for early release from prison.

A convict can earn remission in a year as per Rule 216 of the Karnataka Prison Manual:

Remission granted for	Work	Good Behaviour	Literacy Classes/ Other achievement
Ordinary Remission	3 days for industry work per month/ 8 days for convict night watchman per month/ 7 days for conservancy work (cooks and other prison service) per month + 15 days per year for not committing prison offence	3 days per month	30 days per year

<sup>188</sup> Rule 215(a), Karnataka Prison Manual.

<sup>189</sup> Rule 215(c), Karnataka Prison Manual.

<sup>190</sup> Rule 220 of the Karnataka Prison Manual provides, “220. (1) Special remission may be granted on a very selective basis to deserving prisoners whether entitled to ordinary, remission or not, for special services, achievement or conduct, as shown below:-  
(i) Saving the life of a government employee or prison visitor or inmate; (ii) Protecting a government employee or visitor or inmate from attack; (iii) Preventing or assisting in prevention of escape of a prisoner or apprehending a prisoner attempting to escape or intimating attempted escape of a prisoner to prison authorities; (iv) Assisting prison officers in emergencies such as fire, outbreak of riot, strike etc.; (v) Assisting in preventing or detecting serious breach of prison discipline; (vi) Successfully teaching handicraft or imparting education; (vii) Special excellence or appreciable out turn of work of good quality; (viii) Outstanding contribution or performance in cultural and other activities. Further, Rule 362 provides for grant of special remission for economy in wearing clothing

<sup>191</sup> Rule 223, State Remission – State remission is granted by the state Government unconditionally under section 432 CrPC and this cannot under any circumstances be forfeited.



Special Remission (by Superintendent)	30 days per year
Special Remission (by Inspector General)	60 days per year 20 days per six months for conservancy work (cooks and other prison service)

## OBSERVATIONS AND ISSUES

- 1) Remission (whether ordinary or special) is only provided once an inmate applies for the same, which is not easy for those who do not normally visit the office of the Superintendent and/or are unable to read and write, and more importantly there is no prescribed method either in the Karnataka Prison Manual or the Karnataka Prison Rules for this process.
- 2) With regard to the calculation of remission, explanation to Rule 227 of the Karnataka Prison Manual provides that, “ordinary remission shall not be granted for broken periods of a calendar month.” Further Rule 228 provides, “a prisoner who is unable to labour through causes beyond his control of reason of being at court in transit from one prison to another, in hospital, including mental hospital, on the invalid gang shall be granted ordinary remission under the above rules, on the scale earned by him during the previous month if his conduct prior to and during the period in question has been such as to deserve such grant if the period does not exceed one month”.<sup>192</sup> This is clearly not complied with in all central prisons. If any convict has missed even a single day of work due to any reason, no remission is granted for the whole month.
- 3) Remission earned by an inmate is not ordinarily shown to them as a matter of practice. This results in inmates being unable to review and monitor the remission earned by them on account of their labour and good conduct. When they enquire the same at the Convicts Section in office, they are often returned with no response or asked to enquire some other day. This lack of transparency between the inmates and prison authorities often result in animosity against the prison staff.
- 4) Another concern among convicts was delay in grant of special remission from the head office. Though it is not a matter of right, a time frame would help the convicts keep a track of yearly earned remission.

## C. PREMATURE RELEASE

### STANDARDS

Under section 63 (2)(e) of the Karnataka Prisons Act and Chapter XLIV of the Karnataka Prison Manual, an Advisory Board under the Chairmanship of Deputy Commissioner and members as District and Session Judge; Superintendent of Police; District Surgeon; three Local Non-Officials and the Superintendent of Central Prison/District Prison as Secretary, is established in each Central Prison and District Prison Class I by the State Government. It is mandated to meet at least twice every year during the months of January and July “to review sentences of all

<sup>192</sup> If the period exceeds one month, he will get remission for conduct only. (a) Provided that if his absence from work is due to his own misconduct in jail, no remission shall be awarded for the period of absence. (b) Provided also, that if he is in hospital or in valid gang no remission shall be granted unless the medical officer certifies that the prisoner’s absence from labour is due to the causes beyond his control and is in no way caused by any action of the prisoner himself taken with a view to escaping work or to get into or to remain in hospital.

convicted Criminals.”<sup>193</sup>

As per the Government Order (GO)<sup>194</sup>, guidelines for the release of life convicts (except for the categories exempted from consideration) are as follow:

- 1) Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment, i.e., without remissions.
- 2) All other convicted male prisoners not covered by section 433A CrPC undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission but only after completion of 10 years of actual imprisonment, i.e., without remissions.
- 3) Female prisoners not covered by section 433A CrPC undergoing the sentence of life imprisonment would be so entitled to be considered for premature release after they have served at least 10 years of imprisonment inclusive of remission but only after completion of 7 years of actual imprisonment, i.e., without remissions.
- 4) Male prisoner undergoing life sentence who has attained the age of 65 years and has served actual imprisonment of 12 years, i.e., with remission but only after 9 years of actual imprisonment without remission (not applicable to those covered by section 433A CrPC).
- 5) Female prisoner undergoing life sentence who has attained the age of 60 years and has served actual imprisonment of 9 years i.e., with remission but only after 7 years of actual imprisonment without remission (not applicable to those covered by 433A CrPC).

The recommended cases are then submitted to the Inspector General of Prisons together with all the records for obtaining orders of Government.<sup>195</sup>

## OBSERVATIONS AND ISSUES

- 1) **Exemption for certain categories of cases:** One of the major concerns that the study team found while interacting with convicts is that there are certain categories of convicts who are not being considered for early release on account of the same government order (HD 384 PRA 2015 dated 05.08.2016). It was passed by the state government based on the discussions of the Life Convicts Release Committee after the Supreme Court’s decision in *Union of India v. Sriharan* (“Sriharan”).<sup>196</sup> The Supreme Court decision has restrained the State Government to exercise the power of remission or commutation of sentence of convicts in the following cases:
  - i. Where life sentence has been awarded specifying that -
    - a) the convict shall undergo life sentence till the end of his life without remission or commutation;
    - b) the convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or like.
  - ii. where no application for remission or commutation was preferred, or considered suo motu by the concerned State Governments/authorities.
  - iii. where the investigation was conducted by any Central Investigating Agency like the Central Bureau of Investigation.

<sup>193</sup> Rules 816 to 822 lays down the eligibility of convicts to be considered by the Advisory Board and the procedure of review and recommendation for release.

<sup>194</sup> HD 384 PRA 2015 dated 05.08.2016.

<sup>195</sup> Rule 821(iii).

<sup>196</sup> (2016) 7 SCC 1.

- iv. where the life sentence is under any central law or under Section 376 of the Indian Penal Code, 1860 or any other similar offence.

However, the state government has added certain other categories of cases including dacoity, robbery, smuggling, drug trafficking, rape, molestation/assault and categories of offenders including foreign nationals, out of state inmates, gangsters and contract killers. By creating these additional categories, the process of consideration for a convict is foreclosed, thereby militating against the foundation of the prison system as a place of reformation. In fact, this government order disincentivises an inmate from undertaking any acts of reformation in prison. Further, in a system which is not infallible, persons convicted for life should have the opportunity to have their sentences reviewed on account of their conduct in prison, an opportunity this government order truncates.

This government order further does not specify the sections in the criminal law which are exempted, leaving the prison authorities with the difficult task of determining whether a convict would be covered under these exemption sections or not, often erring on the side of caution to over exclude convicts for consideration for premature release.

- 2) **Cases of 'life until death':** Another category not considered for early release are prisoners sentenced to 'life until death'/'life until the end of natural life' or 'still life' as this category of sentence is considered. This is in direct contravention to the position of law laid down by the Supreme Court in *Gopal Vinayak Godse v. State of Maharashtra*<sup>197</sup> and *Maru Ram v. Union of India*,<sup>198</sup> consistently upheld in the years thereafter, and most recently again clarified in *Sriharan*. This line of cases has established the principle of law that a sentence of 'imprisonment for life', as defined in section 53 of the Indian Penal Code, necessarily means the full life of a person, no matter what the nomenclature used – life until death/ full life/ life till the end of natural life/ etc. However, this does not exclude the right for being considered for remission and release unless, either a High Court/Supreme Court has specifically stated that the person will 'undergo life sentence till the end of his life without remission or commutation'. The non-consideration of persons with such sentences for remission and premature release is in contravention of existing law.
- 3) **Cases of Modified Sentence:** When section 433-A of the CrPC was introduced, stipulating that a person spend at least 14 years in prison when sentenced to life, the Mulla Committee on Prison Reforms expressed its concern that longer life sentences are not an effective solution to reduction of crime, or reformation of criminals. The current penological trend unfortunately has turned towards longer sentences. *Sriharan's* endorsement of a 'modified sentence', i.e., a sentence of life without ever being eligible for remission, or for a fixed period such as 30 or 40 years, is a decision that has been passed oblivious to the reality of prison life. The efforts of rehabilitation undertaken by an inmate while in prison are best determined by the state government in consultation with prison authorities, which is evident a few years into incarceration; the court at the time of sentencing has little evidence to be able to make this determination. This is a clear instance of the judiciary overstepping on the executive's domain, a reservation voiced in the minority opinion in *Sriharan*.

In fact, such a sentence gives little reason for a life convict to make any efforts at reformation as they are aware that they will never be considered for premature release. The study team met a few inmates who had been sentenced to life without remission, numbers which will only increase in the years to come. Having interacted with life convicts who go through their time in prison reflecting on their actions, making efforts to reform themselves and

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197 1961 AIR 600.

198 AIR 1980 SC 2147.

turn over new leaves, the study team learnt that the effect of a decision like this is real and regressive. A reconsideration of the decision in *Sriharanis* warranted.

- 4) **District Court grant of modified sentence:** While interviewing convicts it was found that in some districts, the district court is granting modified sentences of say, 20 years. This is in clear violation of the directions laid down in *Sriharan's* case. It provides, "the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convicts life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court."
- 5) **Functioning of Advisory Boards:** As per the information provided to the study team, there was an average of about 1 or 2 meetings of the Advisory Board in every central prison. In the same year, of the 113 inmates recommended by the Advisory Boards for early release, 84 were actually released by the state government. Mainly, there are two concerns with the working of Advisory Boards. First, the convicts whose cases are pending in appeal at the High Court or the Supreme Court are not sent for consideration to the Advisory Board. This has developed as a matter of practice and does not find mention in the rules. This discourages the convicts to not file appeals considering that it takes long for appeals to be decided. Second, there are currently no rules on when the Advisory Board can reconsider an application rejected by them. Judicially, a decision by an Advisory Board can only be challenged on grounds of gross arbitrariness. Rule 821(ii) of the Karnataka Prison Manual provides, "if the Advisory Board after consideration decides not to recommend a case for premature release and the same is postponed for review, the Board should issue orders giving definite period when the case is to be placed before the Committee for reconsideration. The period so postponed should not exceed one year."

While state remission is considered, and convicts are released, on two occasions in the year – January 26 and August 15 – in 2018, the state government did not release in January, and instead, convicts were released on 2nd October on the occasion of the 150th birth anniversary of Mahatma Gandhi.

## RECOMMENDATIONS

### State Government:

#### • Parole:

1. Review the policy of non-consideration of certain convicts for emergency parole only on grounds of the section/sentence imposed on them. The Model Prison Manual, 2016 provides that, "the provisions relating to release of the prisoner on parole and furlough should be liberalised to help a prisoner maintain a harmonious relationship with his family and the society and to be of good conduct during the period of incarceration."<sup>199</sup>
2. Refrain the practice of imposing exorbitant cost of escorts to ensure that prisoners' ability to attend funerals of family members is not prevented; at the least the cost should be reduced to an amount commensurate to the capacity of an inmate to pay.
3. Direct all the Superintendent of Police to periodically review the police station reports on rejected parole applications to introduce transparency in the process and to ensure that proper reasons are provided in place of mechanical rejections.
4. Ensure that adequate rules and guidelines are framed for the functioning of Advisory Boards to ensure that the process of consideration by them is open and fair.

<sup>199</sup> Para 19.01.

## • Premature Release

- 1) Revise the GO No.HD 384 PRA 2015 dated 21.07.2016 in regard to the list of exemptions:
  - a) For exemption (i),<sup>200</sup> GO must be revised to include that unless the sentence of imprisonment for life has specifically excluded remission for life, and the sentence is passed by either a High Court or the Supreme Court, all convicts are to be treated as persons sentenced to life imprisonment regardless of whether the sentence is to be until death, or end of natural life, or use any other similar nomenclature.
  - b) For exemptions (iv) and (v),<sup>201</sup> GO must be revised as per the Model Prison Manual 2016, which provides for the eligibility for, “prisoners convicted of offences such as rape, dacoity, terrorist crimes, kidnapping, kidnapping for ransom, crime against women and children, smuggling (including those convicted under NDPS Act), Prevention of Corruption Act, Immoral Traffic Prevention Act, offences against State, and undergoing life imprisonment, after completion of 14 years of sentence inclusive of remission.”<sup>202</sup>
  - c) To add a provision in the GO as per the Model Prison Manual 2016, “old and infirm offenders of 65 years of age on the day of the commission of offence, sentenced to life imprisonment on completion of 10 years of sentence or 75 years of age including remission, whichever is earlier subject to the condition that they shall not be actually released unless they have undergone at least five years of imprisonment including remission.”

## Prison Department

### • Remission System

- 1) Translate the updated rules relating to appeals, offences and punishments, remission of sentence and rules under which early or premature release of prisoners in Kannada and direct all Superintendents to display them on the wall of each barrack as provided under Rule 213 of the Karnataka Prison Manual.
- 2) Direct all Superintendents to ensure that the officer in charge of the barrack shall fully explain the rules to every illiterate prisoner<sup>203</sup> and the provisions of remission rules are understood by the prisoner during the weekly parade<sup>204</sup>.
- 3) Introduce a system for the convicts to be able to access their history ticket at least at the end of every quarter to take note of the remission earned. This is suggested in the light of the provision of the Model Prison Manual<sup>205</sup> 2016 and Rules 204 and 231 of the Karnataka Prison Manual<sup>206</sup> mention that earned remission, ordinary and special, must be entered and the progressive totals noted monthly or periodically in the history ticket of the prisoner.
- 4) Streamline the process by which a convict can apply for ordinary and special remission, where persons who are trained/conversant with the process of remission are designated to be approached by convicts who can apply through them. Necessary provisions such as

200 However, above guidelines shall not apply to the following categories of prisoners, namely – i) Where life sentence has been awarded specifying that: (a) the convict shall undergo life sentence till the end of his life without remission or commutation; (b) the convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or like.

201 iv) The prisoners convicted for two or more murder cases, Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity; v) Prisoners convicted for Dacoity, Robbery with murder, rape or molestation/ assault.

202 Para 20.08.

203 Rule 213, Kanataka Prison Manual.

204 Rule 28(c), Kanataka Prison Manual.

205 Model Prison Manual 2016 provides that, “At the end of each quarter, prisoners should be informed about the remission they have earned during the quarter and also the total of their remission” (Para 18.28).

206 Rule 204 (iii) - Remission shall be entered and the progressive totals noted monthly or periodically as the case may be against each award (in the history ticket). Rule 231. Record of special remission – An award of special remission shall be entered on the history ticket of the prisoner as soon as possible after it is made and the reasons for the award shall be recorded.

paper, printer, etc., can be provided and a specific period of time demarcated periodically to ensure that every convict has a fair opportunity to apply for remission.

- 5) Make an officer in-charge at the head office to compile prison-wise applications for special remission and develop a time frame for deciding the applications.

#### • **Premature Release**

- 1) Maintain a computerised record of all the prisoners serving sentence in the prisons, for a follow up of their cases, is extremely desirable in every prison as well as at the Prisons Headquarters and at the Home or Prison Department of the State Government as suggested by the Model Prison Manual 2016.<sup>207</sup>
- 2) Direct the Superintendents to review the cases of convicts, once in every quarter, to identify cases of convicts who are exempted from the benefit of the provisions of premature release and assist them in sending their applications to the Governor or the President as the case may be, under Article 161 and Article 72 of the Constitution, respectively.

#### • **Parole**

1. Direct all Chief Superintendents of Central Prisons to use Rule 191(2)(d) of the Karnataka Prison Rules in the intended spirit – when a Superintendent is convinced of the good conduct of an inmate.
2. Fix a timeline for when a parole application can be decided by the Head Office of the prison department, by which time a reasoned order of acceptance or rejection must be communicated in writing to the prisoner concerned.

#### **High Court and Supreme Court**

- 1) Review the practice of Advisory Boards not considering convicts for release if their appeals are pending either before the High Court or the Supreme Court, and pass appropriate guidelines to the Prison Department to discontinue the same such that convicts eligible for premature release are considered, without having to withdraw pending appeals.
- 2) Issue a direction to the sessions courts informing them that the power to impose a sentence as per the decision in *Sriharan v. UOI* is not available with them.

#### **UPDATES AS OF APRIL 2022**

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

- ❖ **Regarding Parole:** In pursuance of the direction of the Hon'ble Karnataka High Court in Crl. A. No. 639/2015, an amendment was notified by the State Government, vide No. HD 115 PRA 2021, dated 04 January, 2022, whereby Rule 191(2)(d) of the Karnataka Prison Rules, 1974, was substituted, which earlier authorised the officer in-charge of the prison to grant parole to eligible prisoners even in the absence of the police report. Consequently, a circular was also issued by the Department of Prisons and Correctional Services, No. J3/CR-01/2021, dated 25 January, 2022. It provides that for sanctioning of the general parole by the prison authorities to the eligible prisoners, the reports of the concerned Commissioners of Police/ Superintendents of Police is now compulsory and the police report must be sent back within 15 days to the concerned Prison Superintendent. With respect to emergency parole also, paroles henceforth shall be sanctioned by the Prison Superintendents invariably based upon police reports. It also suggested to all the Commissioners of Police/ Superintendents of Police to put a mechanism within their Commissionerate/ Districts to deal with the general/ emergency parole

applications coming from Prison Superintendents on priority and ensure sending of police reports to the concerned Prison Superintendent within the stipulated time.

- ❖ **Regarding Remission:** Remission earned by prisoners is updated periodically, in history tickets as well as in ePrisons. Efforts are also made to make prisoners aware about the parole and remission procedures.
- ❖ **Regarding Premature Release:** 'Guidelines to consider the cases for premature release of life convicts serving sentence in the prisons of the State' have been issued by the State Government, vide Government Order No. HD 119 PRA 2018, Bengaluru, dated 21 April, 2020. It is comparatively more liberal than the earlier GO.

## CHAPTER - 12

# VULNERABLE GROUPS AND MATTERS OF CONCERN

### A. WOMEN PRISONERS AND CHILDREN

Historically, prisons and their regimes have been designed and developed to incarcerate male prisoners. Overall, women prisoners constitute 4.1% of the total prison population in the country.<sup>208</sup> It resonates in Karnataka, where women form about 4.15% percent of the total prison population in the state with 383 female inmates as of 31st December 2018. Children are allowed to be in prison with their mothers until the age of six. As on 31st December 2018, 40 children were lodged in various prisons with their mothers in Karnataka.

#### STANDARDS

Even for a much small sub-population, there is a need to cater to the specific characteristics and needs of imprisoned women. This was recognised by the Supreme Court in 2006 when detailed guidelines were issued for women prisoners and children.<sup>209</sup> Further, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, popularly known as the Bangkok Rules, were adopted by the international community in December 2010. Chapter XXV, Rules 476 to 491 of the Karnataka Prison Manual contain provisions in regard to women prisoners. Often, standards seem adequate on paper, but their realisation on the ground is always a challenge. This is particularly so with regard to women prisoners as observed by the study team.

#### OBSERVATIONS AND ISSUES

During the visit of the study team, there was only one all-women central prison at Shivamoga and 31 prisons have separate women enclosures in Karnataka. Except for Central Prison Shivamoga, all the other eight central prisons house women prisoners. Out of the 21 district prisons, women enclosures are established in 16 prisons.<sup>210</sup> Among the taluk prisons, women enclosures are present in Chintamani, Hubballi, Hosapete and K.R. Nagara. Though there is capacity to detain women prisoners in district prisons Chikkamagalur and Chamaraajanagar and taluk prisons Hosapete and K.R. Nagar, no women prisoner was detained as on 31st December 2018.

The National Legal Services Authority (NALSA) launched a 10-day campaign with the objective of enhancing legal services to women prisoners and their accompanying children in jail. The responsibility of conducting the campaign was given to the State Legal Services Authorities

<sup>208</sup> Table 3.1 – Types of Indian Prison Inmates (Sex-wise) as on 31st December, 2016.

<sup>209</sup> *R.D. Upadhyayv. State of A.P* (AIR 2006 SC 1946).

<sup>210</sup> Bagalkot, Bidar, Chamrajanagar, Chikmaglore, Chitradurgaa, Hassan, Haveri, Karawar, Kolar, Koppal, Madikeri, Mandya, Mangalore, Raichur, Tumkur and Udupi.



(SLSA), and was to be held in conjunction with various departments including the Department Prisons, Health, Education and Women and Children and NGOs. The main objective of this campaign was on empowering women inmates by creating awareness about their rights and the services of the Legal Services Institutions. It was to address various issues including legal needs, health rights, education, vocational training and recreational facilities for women inmates and their dependent children.

In Karnataka, the Hon'ble Executive Chairperson of the Karnataka State Legal Services Authority (KSLSA) directed that the campaign be held between 21st June, 2018 and 30th June, 2018. The process began with the identification of panel advocates and they were sensitised about the legal rights and duties of women held in custody. Following this, the advocates and NGOs identified were informed of their role in the campaign. The KSLSA also worked with the Health Department to conduct health check-ups and awareness programmes during this period. The campaign also arranged for counselling sessions by psychiatrists. The Women and Child Development helped the women by apprising the women of the various educational facilities for them and their children.

The national figure for the number of women prisoners given legal aid during the campaign was 2942, 94 (3.2%) of these were from Karnataka. The KSLSA started the process to file appeals in 47 cases of conviction, whereas 623 such cases were identified across the country. With 141 awareness camps conducted by the KSLSA, it had the 6th highest number of awareness camps held inside jails. Further, 18 women inmates were selected for training as Para Legal Volunteers (PLVs) from across Karnataka. Across the country, 5089 women prisoners were connected to vocational training or educational courses. Of these 222 were women inmates in Karnataka.

However, the women inmates in Karnataka seemed to have fared relatively much better than the ones in other states with regard to health and well-being. During the campaign, 987 medical camps were held across India, 33 of which were in Karnataka. A total of 488 women and 15 children in Karnataka prisons benefitted from medical aid. Only 17 women inmates in Karnataka prisons were identified as suffering from mental illness/depression, against a total of 641 cases identified across the country. While a total of 2522 women prisoners were diagnosed for suffering from medical ailments, only 51 of these were from Karnataka. 33 children were living with their mothers in jails in Karnataka. Only one child was identified as suffering from an illness, as opposed to 71 children identified across India. Two women inmates were found to be pregnant and the DLSAs ensured that they were being provided healthy food and regular medical assistance. Lady gynaecologists attended to women prisoners who required pre and post-natal care.

While the above information was from the report of the NALSA and KSLSA, the study team observed the following issues during the prison visits in the state:

- 1) **Overcrowding in Women Enclosures:** Overall, against the capacity of 1094, as on 31st December 2018, 545 women prisoners were detained across the prisons. As per the data provided, seven women enclosures were found to be overcrowded with more than 150% - District Prison Bidar (300%), Central Prison Mysuru (190%), Central Prisons Bangalore (163%), District Prison Koppal (150%).<sup>211</sup>
- 2) **Infrastructure of Women Enclosures:** The enclosures for women prisoners should have all the requisite facilities with reference to their special needs such as segregation, security, pregnancy, child birth and family care, health care and rehabilitation, etc. Such enclosures

<sup>211</sup> More than 100 occupancy was found in Central Prisons Kalaburgi (124%), Vijayapura (105%) and District Prison Mandya (137.5%).

should be, to the extent possible, independent in terms of infrastructural set-up.<sup>212</sup> Except for the infrastructure of the Womens' Central Prison at Shivamogga, no women enclosure of other central prisons was found to be adequate. The size of women enclosures is often restricted to barracks and a small open area. Women prisoners have no access to the playground, library or open area/vegetable garden/agricultural area which are part of the male section. Further, separate visiting rooms are not available for female inmates in most prisons, such that interviews with family members and lawyers often happen through the bars of the cell. None of the women enclosures in central prisons have a separate video-conferencing room or phone booths.

*In Chikkamagalur district prison, female prisoners are brought to the library in the main section of the prison once a week, along with prison staff, to allow them to pick the books and periodicals they wish to read.*

Only in Central Prison Bengaluru and Central Prison Mysuru there was a separate dispensary in the women enclosure. In all other women enclosures, no separate room is designated for medical purpose. Central Prison Bengaluru is the only prison that provides canteen facilities to women prisoners. A trolley with all items displayed is taken to the women enclosure periodically and they can buy items of their choice. In other central or district prisons, no such facility is provided. Rule 485 of the Karnataka Prison Manual provides that, "cooked food shall be brought to the female enclosure by convict cook accompanied by a Warder and placed outside the enclosure gate from where it shall be taken inside by the female Waders or female prisoners." This has been followed in all prisons with enclosures for women. However, in central prisons where children are in high numbers, some arrangement with regard to heating of milk and facility of fridge could be provided inside the barracks. In the Women's Central Prison Shivamoga, it is convenient as the kitchen is easily accessible.

As regards number of toilets and bathrooms, as per the Model Prison Manual 2016, it should be at the rate of one for every ten prisoner.<sup>213</sup> It was complied with in all prisons except Central Prison Mysuru, District Prison Karawar and District Prison Kolar.

- 3) **Segregation of Women Prisoners:** Under section 26 of the Karnataka Prisons Act, 1963, in prisons where both men and women prisoners are confined, "women prisoners shall be confined in a separate building or separate building or separate part of the same building so as to prevent their seeing or conversing or having any connection with men prisoners." This has been followed diligently. However, further segregation of under-trials with convicts; or habitual offenders with first-time offenders; or young offenders with adult offenders, as provided in the Model Prison Manual, 2016, does not appear to have been implemented due to constraints of space. In most district prisons, women population is so small that it would not be practical to segregate them in this manner. But in Central prisons such efforts could be initiated.
- 4) **Medical facilities for Women Prisoners and their children:** Part-time lady medical officers of the District Government Hospital shall be engaged for medical examination of female prisoners on admission. Only lady doctors shall look after the medical care of women prisoners during their stay in prison.<sup>214</sup> However, this was only found in Central Prison Mysuru and Central Prison Kalburgi where gynaecologists visit weekly. In other prisons,

<sup>212</sup> Chapter XXVI Women Prisoners, Model Prison Manual, 2016.

<sup>213</sup> Paras 2.10.1 and 2.11.1, Model Prison Manual, 2016.

<sup>214</sup> Para 26.25, Model Prison Manual, 2016.

the same Medical Officer treats women prisoners as well. This, at times, restricts women from sharing their problems with the male doctors. Only in Central Prison Bengaluru, a female nurse is available all day long. Also, none of the central prisons had a separate ward for women in prison hospitals.

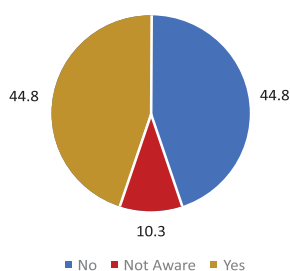
With regard to pregnant women, gynaecological examination of the female prisoner shall be performed in the District Government Hospital. Proper pre-natal and ante-natal care shall be provided to the prisoner as per the advice of qualified medical officer.<sup>215</sup> Based on the interaction with women prisoners, it was found that the guidelines laid down by the Supreme Court in *R.D. Upadhyay* judgement are being followed in this regard.

It was further directed in *R.D. Upadhaya* that, “Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records.” To this end, the study team found that all children in prisons are given vaccination in the closest government public health centre regularly.

Women specific medical camps, for example, for breast cancer awareness, are not being conducted in a uniform way in all women enclosures.

About 44% of the women inmates interviewed by the study team claimed that special medical camps were held in the prison while 44% said that no such camps were organised. Remaining claimed they were not aware of any camps.

**Chart 12.1 – Women specific medical camps**



- 5) **Diet and clothing:** State/UT Government shall lay down dietary scales for women prisoners keeping in view their calorie requirements as per medical norms. The diet shall be in accordance with the prevailing dietary preferences and tastes of the local area in which the prison is located.<sup>216</sup> The clothing requirements provided above may be prescribed by each State in accordance with the prevailing climate and cultural norms. Adequate warm clothing, according to local conditions and change of seasons, shall also be provided.<sup>217</sup> Further, following the directions in *R.D. Upadhaya*, the Karnataka state government by GO No. HD 158 PRA 2006 amended Rule 488 of the Karnataka Prison Manual with respect to the diet and clothing provided to children in prisons. Detailed charts with dietary needs of infants based on their age is provided for, including milk, vegetables, ghee, sugar, fruit, meat, eggs, etc. There is also a chart of clothes and other needs to be provided for children including nappies, bed sheets, woollens, baby powder, tooth brush, and toys. Further, lactating mothers are also allowed additional sets of clothes.

215 Para 26.28, Model Prison Manual, 2016.

216 Para 26.57, Model Prison Manual, 2016.

217 Para 26.64, Model Prison Manual, 2016.

- 6) **Work and Rehabilitation:** The work and treatment programmes for female inmates should be devised giving due consideration to their special needs. Female prisoners should be granted equal access to work, vocational training and education as male prisoners.<sup>218</sup> As far as possible women prisoners shall be imparted training suited to their aptitude and background, making them economically self-reliant. The selection of vocational programmes shall be made in accordance with the marketability and profitability of the product, enhancing the prisoner's ability to earn their livelihood after release.<sup>219</sup> The study team found that this area requires urgent attention of the authorities. Limited work opportunities are available only in central prison enclosures as the factory area is in the male section. These include tailoring, bakery, beautician courses, artificial jewellery making, tanjore painting, agarbatti packing, weaving, mat and paper bag making and toy making. Vocational training courses are often provided by various organizations for women prisoners, which however rarely convert to a sustained means of earning wages. Further, there is no provision to transfer a women prisoner to the open prison.
- 7) **Education and Crèche facilities for children:** Under GO No. HD 158 PRA 2006 (dated 24/08/2006), a crèche facility for children below the age of three, and a nursery for those between the ages of three and six is to be provided, outside the prison where possible. Crèche facilities are only available in Central Prison Mysuru, Central Prison Bengaluru where it is run by the primary education department and Central Prison Vijayapura. In the event the prison administration considers it difficult to run a crèche, arrangements should be made to send the children to a privately run crèche under proper security. The transportation charges involved in the process and crèche fee ought to be borne by the prison administration.<sup>220</sup> No such facility is provided in other prisons.

Education for children in prisons is a cause for concern since not all prisons have teachers, and further, even when they are appointed, if they are male, they are not allowed into the female barrack where the children are lodged. While in Central Prison Belagavi a teacher is appointed by the prison, in Central Prison Kalburgi education to children are provided with the help of an NGO. No such arrangement is made for any women enclosures in district and taluk prisons.

- 8) **Contact with children after attaining six years:** The government order also prescribes that upon reaching the age of six, the female inmate can choose the surrogate to whom custody of the child is to be handed over, and if not, the prison facilitates sending the child to an approved institution/home run by the Social Welfare Department which is required to bring the child for visits once a week. For women whose children are outside prison, sustaining contact with them is often difficult unless there are family members who bring their children bring them for regular visits, or if the government homes in which they are sheltered do so. With little to no access to gainful employment in prisons, inmates with no means of income cannot afford to make phone calls.

218 Para 26.03, Model Prison Manual, 2016.

219 Para 26.105, Model Prison Manual, 2016.

220 Para 26.39, Model Prison Manual, 2016.

- *Children of prisoners in Kalburgi Central Prison have the option of joining the hostel and education facilities provided by the NGO So Care India, which works out of Bangalore and Kalburgi. This initiative is slowly being extended to other central prisons in the state as well.*
- *Directions in R.D.Upadhyay have been incorporated into the prison manual.*

- 9) **Special needs of women prisoners:** Women may have specific needs at different times. One of the most crucial is the availability of sanitary pads. Model Prison Manual 2016 provides that, “Sterilised sanitary pads should be issued to women prisoners as per their requirements.” During the prisoner interviews, it was learnt by the study team that the standard practice is to give one packet a month to every woman in need of sanitary napkins. About half of them even informed the study team that they could ask for more than that if required. However, from a few of the interviews it was learnt that cloth was used in place of sanitary napkins.

In shivamogga women’s prison, a good practice was seen where a lactating mother, who was an undertrial, with a year old child was provided with a thick mattress. Similar arrangements were not found in other prisons for with such young children.

Another common cause of concern for women inmates, is that they are unaware of the offence for which they are detained and status of their cases since they often rely on male family members to engage and speak with their lawyers, and most jail visiting lawyers do not make a special visit to the female barrack, unless specifically appointed for that purpose. It is crucial to provide them basic legal counselling at the time of admission.

## RECOMMENDATIONS

### State Government:

1. Ensure that a woman non-official visitor is appointed in all districts where prisons have women enclosures as mandated under Rule 187(3)(c) of the Karnataka Prison Rules.

### Prison Department:

- 1) Designate a senior lady officer at the headquarters to be entrusted with the job of looking after the problems of women prisoners as recommended by the Mulla Committee.<sup>221</sup>
- 2) Ensure that access to prison facilities including visit to the hospital, library and office area, etc., must be provided at regular intervals, if not on daily basis, with adequate staff, so that women are not cut off even within the limited world of prisons.
- 3) Engage with part-time lady medical officers of the District Government Hospital to visit the prison women enclosure weekly. This is particularly required for pregnant women, lactating mothers or women undergoing menopause or other hormonal changes. In all women enclosures, a female nurse must be appointed to be present on daily basis.
- 4) Adopt a more comprehensive health screening format keeping in mind the specific needs of women prisoners. The health screening of women prisoners shall include comprehensive screening to determine primary healthcare needs, and also shall determine: (a) The presence of sexually transmitted diseases or blood-borne diseases; and, depending on risk factors, women prisoners may also be offered testing for HIV, with pre- and post-test counselling; (b) Mental health-care needs, including post-traumatic stress disorder and risk of suicide and self-harm; (c) The reproductive health history of the woman prisoner, including

<sup>221</sup> Para 13.11.14.

current or recent pregnancies, childbirth and any related reproductive health issues; (d) The existence of drug dependency; (e) Sexual abuse and other forms of violence that may have been suffered prior to admission.<sup>222</sup> If the woman prisoner is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs.<sup>223</sup>

- 5) Collaborate with District Hospital and organise women specific medical camps as provided under the Bangkok rules – Women prisoners shall receive education and information about preventive health-care measures, including on HIV, sexually transmitted diseases and other blood-borne diseases, as well as gender-specific health conditions.<sup>224</sup> Preventive health-care measures of particular relevance to women, such as Papanicolaou tests and screening for breast and gynaecological cancer, shall be offered to women prisoners on an equal basis with women of the same age in the community.
- 6) In prisons where women prisoners have children, provide for a mini-kitchen with a small burner where milk could be heated or additional food could be cooked by mothers for their children and a small fridge for storing food items.
- 7) Ensure that children kept under protective custody in a home of the Department of Social Welfare shall be allowed to meet their mothers at least once a week. The Director, Social Welfare Department should ensure that such children are brought to the prison on the dates fixed for this purpose by the Superintendent of Prison.<sup>225</sup>
- 8) Adequate attention must be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners should be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.<sup>226</sup>
- 9) Counselling by psychologists and psychiatrists must be provided for inmates, particularly for women who live away from their children and other dependents and may suffer mental breakdowns. Prompt remedial action to be taken by prison authorities to provide necessary care/treatment/health to women prisoners who have developed mental health concerns while languishing in the prisons.<sup>227</sup> Individualized, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programmes shall be made available for women prisoners with mental health-care needs in prison.<sup>228</sup> In terms of general requirements and standards, the provisions of the Model Prison Manual may also be looked at.
- 10) Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels/pads, are of particular importance. These should be available to women under conditions in which they do not need to be embarrassed asking for them.<sup>229</sup> The accommodation of women prisoners should have facilities and materials required to meet women's specific hygiene needs, including

222 Rule 6, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).

223 Rule 9, Bangkok Rules.

224 Rule 17.

225 Para 26.36, Model Prison Manual, 2016. Rule 28 of the Bangkok rules also provide, "Visits involving children shall take place in an environment that is conducive to a positive visiting experience, including with regard to staff attitudes, and shall allow open contact between mother and child. Visits involving extended contact with children should be encouraged, where possible."

226 Rule 2(1), Bangkok Rules; National Expert Committee on Women Prisoners (Justice Krishna Iyer Committee, 1987) also pointed out that, "Lack of psychiatric attention was a serious shortfall and affected the well-being of female prisoners. Recommended special arrangements to be made."

227 Report by the Parliamentary Committee on Empowerment Of Women: Women In Detention (2001-2002: Thirteenth Lok Sabha).

228 Rule 12, Bangkok Rules.

229 Rule 5, Rules of General Application, Bangkok Rules.

sanitary towels provided free of charge.<sup>230</sup>

- 11) Adopt gainful employment opportunities for female inmates in a sustained manner. Women prisoners should have access to a balanced and comprehensive programme of activities which take account of gender-appropriate needs.<sup>231</sup>
- 12) Prison authorities should utilize options such as home leave, open prisons, halfway houses and community-based programmes and services to the maximum possible extent for women prisoners, to ease their transition from prison to liberty, to reduce stigma and to re-establish their contact with their families at the earliest possible stage.
- 13) Develop a mechanism to dry clothes in prisons catering to the hygienic requirements of women prisoners.

#### **District Legal Services Authority**

- 1) Ensure that jail visiting lawyers specifically visit the female barrack and proactively explain the provisions under which they are detained and address their legal concerns.
- 2) Undertake child visitation as a matter of special interest by the DLSA with respect to female inmates.

#### **State Commission for Women**

- 1) Appoint a nodal officer who can periodically visit women enclosures, look after the issues concerning women prisoners, their children and facilitate effective after-care services.
- 2) Efforts should be made to organize and promote comprehensive, result-oriented research on the offences committed by women, the reasons that trigger women's confrontation with the criminal justice system, the impact of secondary criminalization and imprisonment on women, the characteristics of women offenders, as well as programmes designed to reduce reoffending by women, as a basis for effective planning, programme development and policy formulation to respond to the social reintegration needs of women offenders.<sup>232</sup>
- 3) Efforts should be made to organize and promote research on the number of children affected by their mothers' confrontation with the criminal justice system, and imprisonment in particular, and the impact of this on the children, in order to contribute to policy formulation and programme development, taking into account the best interests of the children.<sup>233</sup>

## **B. YOUNG OFFENDERS**

### **STANDARDS**

The Juvenile Justice (Care and Protection of Children) Act, 2015, defines "child" as a person who has not completed eighteen years of age.<sup>234</sup> The definition provided in the Karnataka Prison Manual, on the other hand, is inconsistent with this. According to the Karnataka Prison Manual, "Child" means a person under the age of 16 years and when used with reference to a child sent, to a certified school, applying to that child during the whole period of his detention, notwithstanding that the child might have attained the age of sixteen years. The Karnataka Prison Manual further defines a youthful offender as "any child who has been found to have committed an offence".

The Juvenile Justice (Care and Protection of Children) Act, 2015 clearly provides that "in no

<sup>230</sup> Rule 5, Bangkok Rules.

<sup>231</sup> Rule 42, Bangkok Rules.

<sup>232</sup> Rule 67, Bangkok Rules.

<sup>233</sup> Rule 68, Bangkok Rules.

<sup>234</sup> Section 2(12).

case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a prison.”<sup>235</sup> If arrested when under the age 18, a child in conflict with the law cannot be sent to a prison until attaining the age of 21, even if accused/convicted for a heinous offence.<sup>236</sup>

While the Karnataka Prison Manual defines ‘adolescent offender’ as a person who is 16 years old and more but less than 23 years, the Model Prison Manual, 2016, defines ‘young offender’ as any prisoner who has attained the age of 18 years and has not attained the age of 21 years.<sup>237</sup> In light of the provisions of the Probation of Offenders Act 1958,<sup>238</sup> the definition of the Model Prison Manual 2016 is more appropriate and is referred to in this chapter for young offenders.

***Bangalore Central Prison has a separate barrack demarcated for young age offenders, where there is a daily routine with studies, music, games, etc.***

## OBSERVATIONS AND ISSUES

- 1) **Presence of alleged Juveniles in Adult Prisons:** In the course of the visits, the study team met at least 15 inmates – both among under trials and convicts – who claimed that they were either less than 18 years of age or whose age was disputed at the time of commission of the offence. While those accused of heinous crimes post the amendment to the Juvenile Justice (Care and Protection of Children) Act 2015 are treated as majors upon attaining 16 years of age, there were still some inmates who were accused of minor offences. In any event, under section 12 of the Act, a juvenile in conflict with the law has a statutory right to bail, save in exceptional circumstances, regardless of the gravity of offence.

Out of the inmates interviewed, there were also a handful of convicts who claimed that they were minors at the time of the offence and have spent several years in prison. There are some who have agitated the issue of their juvenility in courts, while there were a few who had never raised this issue. One of the common concerns for the latter category was that they themselves were unaware of their age at the time of arrest, or were not asked to provide any age related documents either by the arresting authority or judges in the course of their trial. Since the age on the warrant is recorded to be above 16 or 18 years, as the case may be, trial is proceeding on the assumption of their majority. This particularly needs attention as Karnataka’s 50.7% of convicts are in the age group of 18-30 years, this is the highest after Mizoram (57.9%) and Nagaland (54.8%). In order to verify and determine whether these inmates were juveniles at the time of institution of the proceedings against them, directions are sought from the competent court to ascertain age through documentary evidence or by conducting radiological examination or ossification tests as provided in the Juvenile Justice (Care and Protection of Children) Act 2015 and the rules thereunder.

- 2) **Transfer of juveniles to prison:** The study team found some inmates who had been sent from remand homes to prison upon attaining the age of 18. This is illegal as section 19(3) of the Juvenile Justice (Care and Protection of Children) Act 2015 provides that, “The Children’s Court shall ensure that the child who is found to be in conflict with law is sent to a

<sup>235</sup> Section 10(1) proviso.

<sup>236</sup> S.19(3) of the Juvenile Justice (Care and Protection of Children) Act 2015 specifies that a Children’s Court should send a child in conflict with law to a ‘Place of Safety’ until attaining the age of 21, and s.2(46) of the said Act specifically excludes prison in the definition of a ‘Place of Safety’.

<sup>237</sup> Chapter 1, Definitions, (33).

<sup>238</sup> Section 6. Restrictions on imprisonment of offenders under twenty-one years of age.—(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.



place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail.” Section 20 lays down the procedure before the person is transferred from the place of safety to prison.<sup>239</sup> These inmates expressed that they were better off in remand homes since they had access to a planned and meaningful day with education and computer training, and were also among friends. In prison, inmates between the ages of 18 and 21, were alleged to have been subject to a degree of harassment by the older inmates.

- 4) **No provision if a juvenile is wrongfully sent to prison:** The Karnataka Prison Manual, unlike the Model Prison Manual 2016<sup>240</sup> prescribes no procedure in case a juvenile is wrongfully sent to judicial custody owing to police malpractice of recording the age above 18 years without verifying any relevant document and the judiciary failing to check the same.
- 5) **No segregation of young offenders:** Section 26 of the Karnataka Prisons Act, 1963, provides that in a prison where men prisoners under the age of twenty-one years are confined means should be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not. Rule 689(ii) of the Karnataka Prison Manual provides that in Prisons where there are no adequate means of separating youthful prisoners who have attained puberty from those who have not, they shall during the day be kept under the eye of a Prison Officer who, shall see that no familiarity or communication takes place between the two classes. At night they shall be locked up separately. Except for the Bengaluru Central Prison, no other prison segregates young offenders from the rest of the prison population, although it is mandated under Rule 687 of the Karnataka Prison Manual following, in turn relying on section 26(2) of the Karnataka Prisons Act.
- 6) **Lack of standards on special needs of young offenders:** One entire chapter is dedicated on the special needs and rehabilitation of young offenders in the Model Prison Manual, 2016. However, except for some basic provisions on segregation, no such standards form part of the Karnataka Prison Manual.

The study team interviewed about 31 young age offenders. Of them, 70.8% were aware about their young age, and only 11.1% had undergone a bone ossification test. In about 91.3% of these cases, the prison authorities were not aware about the young age of the offenders.

## RECOMMENDATIONS

### High Court:

1. Seek information from lower courts on the number of prisoners released under the provisions of the Probation of Offenders Act, 1958, in the last 5 years and direct all district courts to ensure effective implementation of the Probation of Offenders Act, 1958, in the state.

<sup>239</sup> S. 20(1) - When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children’s Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration. (2) After the completion of the procedure specified under sub-section (1), the Children’s Court may— (i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay; (ii) decide that the child shall complete the remainder of his term in a jail: Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

<sup>240</sup> Para 5.66 – If a prisoner looks younger than his age, the matter shall be referred back to the court concerned after the due medical examination on the determination of his/her age for further directions, as no juvenile shall be kept in prison in any case and they are sent to the juvenile institution laid down in the Juvenile Justice Act.

2. Direct the State Judicial Academy to develop a module for effective implementation of the Probation of Offenders Act, 1958, to be incorporated in the induction and refresher courses of the judicial officers.

**State Government:**

- 1) Amend the Karnataka Prison Manual to be consistent with the Juvenile Justice (Care and Protection of Children) Act, 2015.
- 2) Pass an order/notification provisions on the procedure to be followed by prison authorities in case a person who appears to be a juvenile is sent to prison for admission. The same must be included in the new prison rules.
- 3) Draft a detailed chapter in regard to the special needs and rehabilitation of young offenders in the light of the Model Prison Manual, 2016, to be included in the new prison rules.
- 4) Direct remand homes in the state to not transfer juveniles in conflict with the law to prisons until they attain the age of 21. This too can only take place after compliance with s.20 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

**Juvenile Justice Boards:**

- 1) Conduct regular inspection of prisons meant for adults to check if any child is lodged in such prisons and take immediate measures for transfer of such a child to the observation home as mandated under section 8(3)(m) of the Juvenile Justice Act.

**District Legal Services Authority:**

- 1) Conduct a detailed survey of prisoners, both undertrials and convicts to find out if anyone was a minor at the time of their offence.<sup>241</sup> In case of an undertrial, in the absence of any age proof, the case must be put before the UTRC in order to recommend the concerned court to determine the age of the person as per the provisions of the Juvenile Justice Act, 2015. In case of convicts, assist them in securing legal relief in pending appeals, or through fresh writs as the case may be.
- 2) Direct the jail visiting lawyers to keep a constant watch on newly admitted prisoners to ensure that no person who is below 18 years of age or whose age is disputed is detained in prison.

**Prison Department:**

- 1) Direct prisons to segregate inmates between the age group of 18 and 21, with special focus on their education and skill development, as mandated under the Model Prison Manual, 2016.
- 2) Direct prisons to maintain prisoner-type wise data periodically on the number of young offenders detained in prisons, who are in the age group of 18 to 21 years.

## **C. TRANSGENDER PERSONS**

### **STANDARDS**

The decision of the Supreme Court in *NALSA v. Union of India*,<sup>242</sup> recognised transgender persons as a third gender. It was held by the court that treatment must be appropriate to the

<sup>241</sup> A similar exercise was conducted in Uttar Pradesh, which resulted in several juveniles being identified and assisted. The High Court of Allahabad in the case of *Sister Sheela v. State of Uttar Pradesh and Ors.*, CrI. (PIL) Misc. W.P. No. 855 of 2012, had directed that suo motu action under s.7A of the Juvenile Justice (Care and Protection of Children) Act 2000 (as it then was) ought to be taken, which was implemented by the State Legal Services Authority.

<sup>242</sup> AIR 2014 SC 1863.

needs of transgender persons so as to protecting their human rights and dignity. The spirit of this decision is yet to percolate into actionable policy in prisons. The Transgender Persons (Protection of Rights) Act, 2019 has many shortcomings, one of which is the absence of any special safeguards in case of imprisonment of a transgender person.

## OBSERVATIONS AND ISSUES

The study team met persons from the transgender community in only one prison – Mysore Central Prison. Here, they were kept in a separate cell, in the female barracks. As per information provided in the proformas, in four of Karnataka's prisons,<sup>243</sup> authorities had demarcated a special cell/barrack for transgender persons. Transgender persons as a community face several vulnerabilities, including prosecution and arrest with little legal or family support. These vulnerabilities continue, if not made worse, in prison.

## RECOMMENDATIONS

### Prisons department:

1. Ensuring that all prisons have special sections demarcated for transgender persons. In case of paucity of space, for the purpose of lodging a transgender person in men or women section of prison, self-identity of the person must be respected.
2. Ensure that transgender inmates do not face harassment from other inmates in the prison, and developing strategies for the same.
3. Conduct sensitisation programmes for prison officers to understand special circumstances and needs of transgender persons.

## D. PRISONERS BELONGING TO OTHER STATE

### STANDARDS

The Karnataka Prison Manual contains provisions in regard to convicts who are not native to Karnataka. Rule 581 provides that such prisoners may be transferred to his state of origin, either to the prison in the district to which he belongs or to the prison nearest to his native place, if his 'un-expired portion of sentence is not less than three months at the time of his transfer'. There are no specific provisions for undertrials belonging to other states in regard to contact with family.

### OBSERVATIONS AND ISSUES

The prisons in border districts of the state have inmates from the neighbouring states of Maharashtra, Andhra Pradesh, Telangana, Tamil Nadu, Kerala and Goa, while prisons in big cities in the state have inmates from far flung states who have moved to Karnataka in search of work.

- 1) **Provision in regard to convicts needs amendment:** For convicts, there is a general desire to be transferred to prisons in their home states. The study team learnt that prison administration assists some inmates in being transferred to their state of origin, a right recognised in Rule 581 of the Karnataka Prison Manual. However, other than the minimum period of sentence to be completed, there is another eligibility criteria that the appeal must be disposed of or the appeal time must have expired. This restricts the convicts to be transferred and stay closer to their families. This is an unnecessary requirement as there is

<sup>243</sup> Mysore Central Prison, Madikeri District Prison, Raichur District Prison and Manavi Taluk Prison.

no provision for physical production of the convict on appeal at High Court (unless it is for a confirmation of death sentence) or Supreme Court. Such criteria are also not provided by the Model Prison Manual, 2016.<sup>244</sup>

- 2) **Problems faced by undertrials of other states:** For under trial prisoners, the common concern is of being unable to follow court proceedings in Kannada. This issue has been dealt with in detail in Chapter 8 on access to courts. Another serious concern for some undertrials is the inability to inform their family about their detention, a right which accrues at arrest. The study team met a few undertrials who had last spoken to their family members before their arrest and it ranged from days to months and in some cases, more than a year. This is in clear violation of section 41B(c) of the CrPC which provides that it is the duty of the officer making arrest to 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. Further, Rule 1327 (2) of the Karnataka Police Manual provides that at the time of arrest, “all property found on their persons, except the necessary wearing apparel, shall be sent to the Magistrate with Form No. 131... The list of the property, omitting the wearing apparel retained by the prisoner<sup>245</sup>, shall be entered in the Prisoner’s Search Register (Form 132), which shall be signed by the senior Police officer, the station writer and the prisoner.”

This essentially means that mobile phones of all persons arrested by police are seized, most of the time as evidence in the case. In such a situation the person does not even have access to the contact number of any relative or a friend to be able to inform them about his/her detention and whereabouts. For those who remember the contact number or have it written elsewhere other than the mobile, prison authorities make efforts to contact their family. There is no mandate for the prison officer to ensure this but it is done in almost all prisons on humanitarian grounds.

- 3) **Restricted communication with families:** For both undertrials and convicts, there is the common concern of being unable to be in regular touch with their families as prisons are too far for them to visit. They are also unable to avail any phone and canteen facilities as they do not have access to any money. For undertrials, it is more crucial since the courts insist on local sureties and it is difficult for persons from other states to secure bail. It has become an unwarranted practice of courts. Even if granted bail, some were found unable to furnish sureties since they are not in contact with their families. The directions passed by the Supreme Court in the remarkable case of *Motiram v. State of Madhya Pradesh* are yet to become a reality.<sup>246</sup>

244 Transfer of prisoners convicted by civil courts of competent jurisdiction on reciprocal basis.

9.08 Every prisoner convicted by a civil court of competent jurisdiction in a State, other than that of his/her origin, may be transferred to his State of origin, if his unexpired portion of sentence is at least three months at the time of his transfer. He would be moved either to a prison in the district to which he belongs or to a prisoner nearest to his native place. In the case of any such prisoner to be transferred to his native State, the Superintendent of Police and the Probation/ Welfare/ Rehabilitation Officer of that district of the state shall confirm the fact that the prisoner is native of that district of the state.

9.09 In the case of any such prisoner to be transferred to another State, the Superintendent of the prison, where the prisoner is confined, shall obtain from the prisoner a written declaration giving details of his address as also addresses of his relatives in his State of origin and send a nominal roll to the Inspector General of Prisons of that State. The Inspector General shall also ascertain the name of the prison, in the State of origin to which the prisoner has to be transferred from the Inspector General of that State and then issue orders for the transfer of the prisoner.

Explanation: (i) Due consideration shall be given to the wishes of a prisoner regarding transfer to his home State, unless there are adequate reasons against it - for instance, his being out of mind or obstreperous or an aged parent wishing to be able to see his children during the last days.

Explanation: (ii) The transferring State shall bear the cost of transfer of the prisoner. The cost of maintenance of the prisoner shall be borne by the State of his origin from the date he is received.

Explanation: (iii) The prisoners’ property and wages earned by him in the prison till the date of his transfer shall be sent, along with the prisoner, to the prison to which he is transferred.

245 It is strange that the Karnataka police manual uses the term ‘prisoner’ for a person who is arrested by the police alleged to have committed an offence.

246 1978 AIR 1594.

## RECOMMENDATIONS

### High Court:

- 1) Issue an order directing the district courts not to insist on local sureties and to follow the directions of *Motiram v. State of Madhya Pradesh*, “The Magistrate must abandon the antiquated concept under which pre-trial release could be ordered only against monetary bail. If a Magistrate is satisfied after making an enquiry into the condition and background of the accused that the accused has his roots in the community and is not likely to abscond, he can safely release the accused on order to appear or on his own recognizance.”<sup>247</sup>

### Prison Department:

- 1) Devise a mechanism in order to cull out the contact number of the family member or friend of inmate from the mobile number seized by the police at the time of arrest.
- 2) Direct the prison heads to enquire from every person sent to judicial custody at the time of admission on whether the family or any friend has been informed about the detention. In case, the person denies or is unaware, efforts must be made to inform the family either through phone, a postcard/letter or requesting the concerned police station of the district where the family of the person is residing.
- 3) Add a separate provision to make phone facilities free of charge for undertrials belonging to other states. The frequency of calls may be reduced but the opportunity to be able to periodically contact the family must continue. This would definitely improve the mental health of many such inmates.
- 4) Initiate an awareness drive in all central prisons for convicts who belong to other states in regard to eligibility under Rule 581 and those who fulfill the eligibility and wishes to be transferred to their home state be assisted in the process.

### Police Department:

- 1) Issue an order directing all Investigation Officers to comply with s.41B CrPC and inform a relative or a friend of the arrestee at the time of arrest, both in letter and spirit. It might also be useful if a contact number of a relative of the arrested person is recorded in the arrest memo.

## E. FOREIGN NATIONAL PRISONERS

### STANDARDS

While the Karnataka Prison Manual does not provide any specific provisions in regard to the treatment of foreign national prisoners (FNPs), the police manual provides detailed instructions on the procedure of arrest of a foreign national. As per rule 911, when a foreign national is arrested, it is possible that the foreign consular mission in India may wish to assist the nationals of their countries in regard to their defence before a Court of Law/or take such other action as they may deem appropriate in accordance with diplomatic practice and therefore the arrested foreigner should be specifically asked (a) whether he would like his embassy to be intimated about his arrest, and (b) whether he would like to be visited by any official of the embassy. If he replies to any of these two queries or to both these queries, the reply should be conveyed along with the details of his arrest to the Ministry of External Affairs within 48 hours directly through quickest means by Fax or T.P.<sup>248</sup> It further reiterates the provisions of the UN Convention on

<sup>247</sup> 1978 AIR 1594.

<sup>248</sup> Message addressed to Joint Secretary CPV (Chief of Passport and Visas), Ministry of External Affairs, New Delhi, with a copy marked to Home Secretary to Government of Karnataka and State Registration Officer, Bangalore.

Consular Relations 1963, popularly known as the Vienna Convention that a consular officer of a foreign diplomatic mission is free to communicate with his nationals and has a right of consular access i.e., to visit his national in prison, custody or detention if the foreign national under arrest does not expressly oppose such a visit.

## OBSERVATIONS AND ISSUES

When a foreign national is arrested and detained in any prison in the state, information of the same is sent to the Head Office of the Prisons Department which in turn informs the home department and the channel with the concerned embassy is subsequently established through the Ministry of External Affairs. The number of persons repatriated from the Karnataka prisons in the year 2018 was 60. The study team interviewed 31 inmates who were from other countries including Bangladesh, Nepal, Pakistan, Tanzania, Nigeria, Columbia and Iran. Their period of detention ranges from two months to six years. They have some specific needs which must be addressed<sup>249</sup>:

- 1) **Establish ties with family:** For these inmates, in addition to language being a barrier, establishing ties with their families is a challenge. For many, family in the home country is contacted by a friend as long as he/she visits prison. For many, even that is a far cry. They are not sure if their family has been informed of their detention. There is no provision in the Karnataka Prison Manual in regard to allowing them to make phone calls or use video-conferencing facility for such communication as has been introduced in many other states.
- 2) **Specific dietary requirement:** Food is the crucial aspect which directly impacts the overall well-being of the person. There is a need to recognize that foreign national prisoners have different food habits than Indian inmates. With no contact with family and no financial support, it difficult for them to arrange food for them and therefore some provisions must be made.
- 3) **Lack of awareness regarding legal framework:** Contact with the embassy is necessary both in order to communicate with the family and to identify and hire an advocate to represent them in court. Due to lack of communication with embassy, many foreign national prisoners were found to be unaware about the legal procedures and had questions regarding access to their passport or travel documents seized by police, what can the embassy do for the case, whether they can be transferred to their home country and so on. It is important for the District Legal Services Authority to provide them legal advice and address their legal needs.

## RECOMMENDATIONS

### Prison Department:

- 1) Introduce the system to ensure periodic communication of foreign national prisoners with their families.<sup>250</sup>
- 2) Introduce provisions in the new rules to ensure:
  - a) prompt and effective communication with the concerned embassy/ high commission/ consular representative through appropriate channels and facilitate meeting with them when requested.

<sup>249</sup> Strangers to Justice: A report on foreigners in Indian prisons, available here: <https://www.humanrightsinitiative.org/download/1547551168Strangers%20to%20Justice%20FNP.pdf>.

<sup>250</sup> Delhi Prison Department, by a circular dated 27.01.2017, initiated telephonic facilities for foreign national convicts at the cost of the prisoner. The Prison Department of Himachal Pradesh devised an application called 'Jailvaarta' which facilitates Video Conferencing for FNPs. In West Bengal, the prison department has formalized the application process for use of VC by prisoners through inclusion in the e-prisons suite. The Kerala Prisons & Correctional Services (Management) Act, 2014, provides that, "Foreign Prisoners may be permitted to use internet facilities at their own cost for legal assistance and also to contact their Embassies in India." [Rule 828(1)(v)].

- b) additional food to be provided as per the food habits and dietary requirements of foreign national prisoners as recommended by the Ministry of Women and Child Development, Government of India's report, "Women in Prisons – India".<sup>251</sup>

**State Legal Services Authority:**

- 1) Develop an orientation pack for DLSA Secretaries and prison heads containing all relevant legal procedures in regard to foreign nationals, asylum seekers and stateless persons.
- 2) Direct the Jail Visiting Lawyers to pay attention to the legal aid needs of the foreign national prisoners and must report immediately to the DLSA Member Secretary.
- 3) Direct the DLSA Member Secretaries to regularly meet with the foreign national prisoners during their monthly visit to prison and address their concerns.

## **F. PRISONERS WITH MENTAL HEALTH CONCERNS**

### **STANDARDS**

Chapter XXVI of the Karnataka Prison Manual deals with the provision of 'Lunatics'. These provisions must be revised in the light of the Chapter XXV of the CrPC and the Mental Healthcare Act, 2017.

Under the recently notified Mental Healthcare Act 2017, prisoners with mental health concerns have been recognised as a special category of persons. Section 2(w) defines "prisoner with mental illness" as a person with mental illness who is an under-trial or convicted of an offence and detained in a prison. According to section 103(1) of the Act, where there is no provision for a psychiatric ward in the medical wing, the prisoner may be transferred to a mental health establishment with prior permission of the Mental Health Review Board. The Act mandates the State Government to setup mental health establishment<sup>252</sup> in the medical wing of at least one prison in the State and prisoners with mental illness may ordinarily be referred to and cared for in the said mental health establishment.<sup>253</sup> It also mandates the State Government, at the minimum, to train all medical officers in the prisons to provide basic and emergency mental healthcare.<sup>254</sup>

It further provides that the medical officer in-charge of the prison wherein any prisoner with mental illness is detained, shall once in every six months, make a special report regarding the mental and physical condition of such person to the authority under whose order such person is detained. Even if no such prisoner is detained, the medical officer of a prison shall send a quarterly report to the concerned Mental Health Review Board certifying the same.<sup>255</sup> It is mandatory for the Board to visit and inspect prisons and seek clarifications from the medical officer in-charge of health services.<sup>256</sup> The members may ask the medical officer as to why the

251 5.13.5 Foreign prisoners may also be provided with added food provisions to meet their dietary requirements. The report was published in June 2018.

252 S.2(p) "mental health establishment" means any health establishment, including Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homoeopathy establishment, by whatever name called, either wholly or partly, meant for the care of persons with mental illness, established, owned, controlled or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person, where persons with mental illness are admitted and reside at, or kept in, for care, treatment, convalescence and rehabilitation, either temporarily or otherwise; and includes any general hospital or general nursing home established or maintained by the appropriate Government, local authority, trust, whether private or public, corporation, co-operative society, organisation or any other entity or person; but does not include a family residential place where a person with mental illness resides with his relatives or friends.

253 S.103(6) of the Mental Healthcare Act, 2017.

254 S.31(2) of the Mental Healthcare Act, 2017.

255 S.103(3) of the Mental Healthcare Act, 2017.

256 S.82(1)(f) of the Mental Healthcare Act, 2017.

prisoner with mental illness, if any, has been kept in the prison and not transferred for treatment to a mental health establishment.<sup>257</sup>

## OBSERVATIONS AND ISSUES

In 2018, there were a total of 369 inmates in the state's prisons undergoing psychiatric treatment and 192 inmates undergoing psychological counselling. Extreme cases of mental illness are detected and treated in prisons. In cases where inmates require treatment in a mental health establishment, they are transferred to NIMHANS, Bengaluru or DIMHANS, Dharwad. In a month, on an average, follow-up of about 30-35 prison patients and 100-120 safe custody files are conducted. About 15-20 new prison patients are referred to the unit for evaluation and two-three patients, in a month, come with a reception order for admission. In the inpatient setting, about three-four prison patients are referred to the unit in a month for opinion on fitness to stand trial and two-three patients from workplace for opinion on fitness to work. Referrals from other units with diverse issues such as patient being a victim of domestic/ sexual abuse, violation of patients' rights, marriage being affected due to illness, etc. are also received. Plans are underway to develop the unit into a full-fledged service and start dedicated Forensic Psychiatry OPD.<sup>258</sup> The experience of inmates who have been to these establishments was expressed as being satisfactory by those the study team interacted with. A Legal Aid Clinic is established, in collaboration with the Karnataka State Legal Services in 2011, at NIMHANS, Bengaluru, to provide legal services free of cost to persons with mental health concerns.

- 1) **Limited facilities for treatment and care of prisoners with mental illness:** Under the provisos to section 103 of the Mental Healthcare Act, prisoners with mental health concerns ought to be transferred to a mental health establishment if the prison does not have a medical wing with a designated psychiatric ward. Since most district and taluk prisons do not have hospital wings in the first place, prisoners in these prisons are required to be sent to mental health establishments. However, as the numbers of such persons is higher than the space available in mental health establishments, prisoners with mental health concerns are generally provided treatment for a few months in a mental health establishment and sent back to prison when their condition stabilises. Prison environment is not conducive to a person with mental health concerns, resulting in a period of relapse when they may need to be sent back to a mental health establishment.
- 2) **Unfit to stand trial:** As per the data provided by all the prisons, only 2 inmates were technically unfit to stand trial on account of their mental health condition as of 31st December 2018. However, the study team found several more such inmates who might require an assessment under Chapter XXV of the CrPC to determine whether they are indeed fit to stand trial. For inmates who had been declared unfit to stand trial, and were still in prison as under trials for over 3 years arrangements are made to transfer their custody to family members, or to a mental health establishment.<sup>259</sup> Detection of a person whose trial is to be suspended is unfortunately generally when there is an extreme case of mental illness, requiring the prison to seek an order from the concerned court to transfer them to a mental health establishment. Apart from extreme instances of mental illnesses, prisons also house inmates with a range of mental health concerns, including depression and insomnia.
- 3) **Shortage of mental health experts and nursing staff in prisons:** In the year 2018, all

<sup>257</sup> S.103(4) of the Mental Healthcare Act, 2017.

<sup>258</sup> Page 70, NIMHANS Annual Report 2016-17.

<sup>259</sup> In the case of *Machal Lalung* (2007) 15 SCC 18, the Supreme Court had ordered that there be periodic review of under trial prisoners with mental health concerns to ensure that they do not languish in prisons for an ordinate period with neither their trial proceeding, nor their release from prison forthcoming.



central prisons had psychiatrists visiting the prison regularly, and 10 district prisons had regular visits by psychologists. Five central prisons and 6 district prisons are regularly visited by psychologists. When the prisoners with mental illness are sent back to prison after their treatment in NIMHANS or DIMHANS, in the absence of any nursing staff, prison authorities face a tough time in ensuring that prescribed medication is taken on time by the prisoners. In most of the central prisons, it is supervised by pharmacists or lab technicians with the help of trained In recent times, the district mental health teams in a few districts have started visiting prisons under the District Mental Health Programme, which might benefit in the overall mental well-being of prisoners. These teams have psychiatrists, psychologists and social workers who together provide holistic services for persons requiring mental health assistance.

- 4) **Access to Legal Aid by prisoners with mental health concerns:** A Legal Aid Clinic is established, in collaboration with the Karnataka State Legal Services in 2011, at the National Institute of Mental Health and Neuro-sciences (NIMHANS), Bengaluru, to provide legal services free of cost to persons with mental illness. The clinic is held two days a week, on Tuesdays and Fridays (from 3.00 pm to 5.00 pm). Persons with disabilities can assert their rights using such clinics in matters such as disability certification, employment and pension. They can also defend their rights regarding admission to mental hospitals, human rights violation, treatment, property issues and marital issues. Additionally, these kinds of services could help in making patients aware of their rights and equip them to avail the benefits of the different social welfare activities sponsored by the State and Central Government. Women can also seek help in issues such as sexual violence, domestic violence, property related issues, etc. Two advocates appointed by Karnataka State Legal Services Authority, liaising with teams from the Departments of Psychiatry and PSW, have been helping the patients in getting free legal advice, support and adjudication. In the year 2016-17, a total of 306 patients/families availed the services offered by the clinic.<sup>260</sup> This information must be widely disseminated among prisoners and prison authorities as neither of them seemed to be aware about such a legal aid clinic at NIMHANS.

## RECOMMENDATIONS

### State Government:

- 1) Set up at least one central prison as mental health establishments as mandated under the Mental Healthcare Act, 2017. Since Karnataka is a big state, it is suggested to set up such establishment in at least two central prisons, preferably Bengaluru and Dharwad as they also have the support of NIMHANS and DIMHANS, respectively.
- 2) Create one post of nursing staff in all central prisons, particularly for the care of prisoners with mental illness.
- 3) Train all medical officers in the prisons to provide basic and emergency mental healthcare as mandated under the Mental Healthcare Act, 2017.

### Prison Department:

- 1) Direct all prisons to have an arrangement with the district hospital to have a visiting psychiatrist, if not a permanent psychiatrist, with at least one visit per fortnight.
- 2) Coordinate with the Department of Health to extend the district mental health programme to all prisons in their respective districts.
- 3) Seek quarterly/bi-annual report from all medical officers of the prisons regarding the mental and physical condition of prisoners with mental illness submitted to the authority under

<sup>260</sup> Page 70 of the NIMHANS, Annual Report 2016-17.

whose order such person is detained, as required under the Mental Healthcare Act 2017. This mandate must be given teeth at the earliest to ensure, as far as possible, that prisoners with mental health concerns are sent to appropriate mental health establishments and not detained in prisons.

## G. DEATH ROW PRISONERS

### STANDARDS

Chapter XLII (Rules 758 to 798) of the Karnataka Prison Manual provides for rules in regard to prisoners sentenced to death. They relate to their search and confinement, medical examination, calculation of their sentence, diet and exercise, interview facilities, appeal and mercy petitions, transfer and special case of female death row prisoners. Additionally, Rule 584(iii) provides that every prisoner sentenced to death shall be allowed such interview and communications with his relatives, friends and legal advisers as the Superintendent thinks reasonable. In such cases the District Magistrate of the District to which the convict belongs may, when desired by the convict, be requested by the Superintendent to communicate to a friend or relative of the convict he desires for an interview.

Rule 758 of the Karnataka Prison Manual provides for confinement of a death row prisoner in a cell apart from other convicts upon arrival in the prison and Rule 761 provides for confinement of a death row prisoner in a 'condemned cell' thereafter. Rule 764 provides that nobody except the superintendent of the prison and the medical officer can approach the condemned cell of a death row prisoner. But following directions of the Supreme Court in *Shatrughan Chauhan v. Union of India*,<sup>261</sup> which in turn was reiterating the earlier decision in *Sunil Batra v. Delhi Administration*,<sup>262</sup> none of them are segregated from other convicts, unless they are punished within the prison. Rules 773-775 provide for the Superintendent to inform a death row prisoner of the confirmation of their sentence by the High Court or the Supreme Court and also to inform them of their right to appeal within the statutory period for the same. Rules 777-778 provide for the Superintendent assisting the death row prisoners in the filing of a mercy petition before the Governor/President seeking a pardon on the sentence of death.

### OBSERVATIONS AND ISSUES

Though Rule 4(2) of the Karnataka Prison Manual provides that prisoners sentenced to death can be detained in any Central prison, in practice they are all housed in the Central Prison of Belagavi in Karnataka.

- 1) **No segregation:** In a good practice, death row inmates in Karnataka are not segregated from other prisoners, unless they are imposed segregation as a prison punishment like any other convict.
- 2) **Bar on education:** There is no bar in the Karnataka Prison Manual or the Rules that prevents death row prisoners from pursuing education facilities available in the prison. However, since the death row prisoners used to be kept segregated until 2014, there was a de facto prohibition from pursuing education courses in the prison, which remains to this day.

<sup>261</sup> 2014 3 SCC 1.

<sup>262</sup> In *Sunil Batra v. Delhi Administration* (1978 AIR 1675, 1979 SCR (1) 392), the Supreme Court expressly held that death row convicts cannot be segregated and that, "there is no warrant for an implicit belief that every prisoner under sentence of death is necessarily violent or dangerous which requires his segregation. Further, prisoners 'under sentence of death' shall not be denied any of the community amenities including games, newspapers, books, moving around and meeting prisoners and visitors, subject to reasonable regulation of prison management."

- 3) **No work opportunities:** Death row prisoners are not allowed to work in the prison, although there is no such bar prescribed in the Karnataka Prison Manual.
- 4) **Remission Rules:** Until a person on death row is commuted to a sentence of life imprisonment, they are not eligible for remission of 3 days per month like other inmates for the time spent in prison, in addition to not having had the chance of earning work based remission. Further, a person commuted to a sentence of life after being on death row is considered for early release after spending 14 years sukka, unlike other life term convicts are considered after spending about 11.5 years sukka. Once a person has been commuted to a sentence of life, they are the same as any other life convict, with no basis for this differential treatment.

## RECOMMENDATIONS

### Prison Department:

- 1) Death row prisoners must be allowed to work, like any other convict prisoner.
- 2) In case there is a bar on pursuing education opportunities available in the prison, the same must be lifted.
- 3) Death row prisoners commuted to a sentence of life must be eligible for remission like any other life convict, providing the same retrospectively for the period spent in prison prior to the commutation, and must also be considered for release at the same time as other life convicts.
- 4) Rules 758, 761 and 764 of the Karnataka Prison Manual must be struck down for violating the law set down in *Sunil Batra v. Delhi Administration*.
- 5) Consider transferring death row prisoners to prisons closer to their homes, as this may enable them to maintain ties with family and friends.

## H. PRISONERS UNDER PRISON PUNISHMENT

### STANDARDS

Rule 109 of the Karnataka Prison Manual provides that, “No Prison Officer shall, in any circumstances punish any prisoner except under the Superintendent’s order or threaten any prisoner with punishment or use violent, abusive or insulting language to any prisoner. All conduct intended merely to irritate or annoy any prisoner shall be avoided”.

Chapter XIII of the Karnataka Prison Manual prescribes the various offences and punishments in the prison, ranging from the loss of privileges, transfer to separate confinement. Under Rule 239 in this chapter, there is to be a process of enquiry conducted by the superintendent when there is an allegation against an inmate, before deciding the appropriate punishment to be imposed.

### OBSERVATIONS AND ISSUES

All prisons have single cells/andheri cells/command cells where inmates are kept in separate confinement, for disciplinary reasons. These single cells are self-contained with washing areas inside the cells themselves.

- 1) **Period of confinement for punishment:** A prisoner can be kept in separate confinement for up to 1 month at a time on the orders of the Superintendent of the prison, and for a

period of up to 3 months at a time under the sanction of the Inspector General.<sup>263</sup> During this period inmates are required to be visited by a medical officer daily, have the right to step out of the cell for half an hour a day for exercise and the right to continue to work, in addition to the right to clean their beddings under the sun, meet visitors, read books, etc. All these safeguards are in order to ensure that the prison within the prison, as these cells are, do not become spaces where prisoners' rights are suspended. The study team met inmates in separate cells in all the prisons visited. More often than not, being put inside a cell as punishment entails 24 hour lock-up, and entails loss of all privileges in the prison.

- 2) **Corporal Punishment:** In addition to separate confinement, one of the common manners of prison punishment is corporal punishment. The study team specifically asked inmates if they have faced punishment in prison, the response to which revealed that while one does not generally get into trouble if they are in the good books of the prison staff, any opposition in the prison, prisoners alleged, is met with corporal punishment, if not separate confinement, in order to secure submission and compliance by inmates.
- 3) **Fetters as one of the punishments:** Rule 240 of the Karnataka Prison Manual continues to empower Superintendents to impose fetters as a mode of punishment. In *Sunil Batra*, the Supreme Court on the necessity for prison reform and revision of Prison Manuals held that, "fetters, especially bar fetters, shall be shunned as violative of human dignity, within and without prisons."
- 4) **Transfer of inmates:** Another common form of punishment used to maintain prison discipline is to transfer inmates from one prison to another, in what is known as a punishment transfer. Such a transfer is recorded in their nominal roll, and becomes a record of the inmate's prison conduct. The primary aim of transfers is to make it difficult for an inmate to be in contact with their family. While Ballari Central Prison used to be the prison for habitual prisoners, presently, there is no such distinction among central prisons. Interaction with transferred inmates in various prisons revealed that it is not often the case that their families or lawyers are informed of their transfer, as provided under Rule 585 of the Karnataka Prison Manual. Further, the rules do not provide for any reasonable period for which the person can be transferred. For undertrials, it means missing court dates due to shortage of police escorts to take them to other districts. For convicts, it means loss of rehabilitation opportunities, being away from family for so long.

## RECOMMENDATIONS

### Prison Department:

- 1) Direct the senior prison officers, mandated to visit prisons in their jurisdiction to monitor the conditions of persons detained in separate confinement and to ensure that segregation must be exercised within the confines of Rule 240 (VI) of the Karnataka Prison Manual.
- 2) Monitoring of prison punishments must also be an integral duty of members of the Board of Visitors, especially the Principal District and Sessions Judge and the DLSA Secretary,<sup>264</sup> to ensure that there are no excesses. Records of proceedings undertaken before the imposition of punishment must be inspected.
- 3) Set up a mechanism to reconsider the transfer of prisoners to the original prison, at least bi-annually and direct officer in-charge of all prisons to prepare a list of transferred convicts along with the duration of transfer and send to prison head office by 30th June and 31st December of every year. The head office must consider their re-transfer to the original

<sup>263</sup> Rule 240(VI), Karnataka Prison Manual.

<sup>264</sup> In *Sunil Batra*, it was held that the discretion to impose 'irons' is subject to quasi-judicial oversight, even if purportedly imposed for reasons of security.

prison to ensure that opportunities for rehabilitation and reintegration are restored. All convicts who are not transferred back must be informed of the reasons in writing.

- 4) Direct officer in-charge of all prisons to allow the prisoners before they are transferred from one prison to another to inform their families and lawyers regarding their transfer.

## **I. PRISONERS UNDER THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO Act)**

### **STANDARDS**

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012, which came into force with effect from 14th November, 2012. The POCSO Act is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and death. In the case of *In re: Alarming Rise in the Number of Reported Child Rape Incidents*,<sup>265</sup> the Supreme Court laid down a few guidelines for the prosecution of POCSO cases. These include that in districts having more than 100 cases under the POCSO Act, an exclusive/ designated special Court should be set up to try only these cases, to be funded and set up by the central government. It was also indicated by the Supreme Court that there must be priority for POCSO cases in forensic laboratories, since much of the delay in such cases is due to the long period awaiting forensic reports. More recently, in a direction dated 08.01.2020 in the same case, the Supreme Court further directed that there must be appointment of special public prosecutors to try only cases under the POCSO Act.

### **OBSERVATIONS AND ISSUES**

In the course of the visits, the study team interviewed about 70 inmates, both undertrials and convicts, who have cases registered against them under the Protection of Children from Sexual Offences Act 2012. There were several more that the study team interacted with during the course of the study. Several of these inmates were very young, and had a very different story to tell. While a legislation of this nature is essential to respond to instances of child sexual abuse, its misuse is resulting in the wrong category of people being affected. Prisons like Kolar, Davanagere, Chitradurgaa had 40-50% of the undertrials detained under POCSO Act.

There are many cases of young romance, in which the girl is just below 18 years of age while the boy is a few years older, and they are in an intimate relationship. Sometimes they are ready to be married and sometimes they are in fact married with a child. The recent amendment has resulted in the increase in age of consent for a girl from 16 to 18. Since a relationship with a woman below 18 is now statutory rape, cases are being filed against the young man if the family of the girl is opposed to this relationship, or if the doctor who examines a pregnant girl below the age of 18 reports to the police.

In the absence of any judicial discretion in the statute, and on account of the increased age of consent, the number of cases registered under the POCSO Act has increased, but the effectiveness of the stringent measures is lost in translation. The Madras High Court recently observed similar

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<sup>265</sup> Suo Motu Writ Petition (Criminal) NO. 1/2019.

trends in the state of Tamil Nadu and has recommended that the law be revisited.<sup>266</sup>

## RECOMMENDATIONS

### Central Government:

1. Consider amendment to the POCSO Act, with increase in the age of consent for girls and discretion to judges in deciding the punishment to be imposed is necessary, while ensuring that the law remains victim friendly and effective.

### High Court:

- 1) Direct the UTRCs to take special note of POCSO cases and when the statements of the main witnesses have been recorded, consider recommendation for bail.

### State Legal Services Authority:

- 1) Direct all DLSAs to engage in awareness programmes among the youth, in schools and colleges, to disseminate basic information about the POCSO Act and consequences in this demographic.
- 2) Ensure that the directions of the Supreme Court in the case of *In re: Alarming Rise in the Number of Reported Child Rape Incidents* are complied with.
- 3) Conduct a specific study on cases under the POCSO Act to determine how to ensure that the genuine cases are conducted fairly and quickly, and that for the cases filed in misuse of the law, provisions for bail are available. Workshops and trainings for sessions judges who hear these cases is also required.

## J. PRISONERS DETAINED FOR ONLINE CONTENT AND HATE SPEECH

There is a growing number of instances in which persons who post content online, sometimes not even at their own behest, have been publicly harassed for their thoughts and in the context of mounting pressure even arrested by the police. The study team met under trials in at least three prisons, who had been booked under various sections of the Indian Penal Code ranging from sedition under section 124A carrying a maximum sentence of life to section 295A of the for outraging religious beliefs with a maximum sentence of 3 years, in addition to sections under the Information Technology Act of 2000. In recent times, instances of police picking up persons on the basis of content posted online on groups like Facebook, or messages on Whatsapp, and courts ordering their remand, has met with censure from the Supreme Court for being excessive.<sup>267</sup> There must be some oversight over the continued detention of such persons.

<sup>266</sup> *Sabari v. Inspector General of Police and others*, Cri.Appeal 490 of 2015 (decided on 26 April 2019).

<sup>267</sup> *Jagisha Arora v. State of Uttar Pradesh*, in WP (Cri) No.164/2019, order of the Supreme Court dated 11/06/2019.

### UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services:

- ❖ **Regarding Women Prisoners and Children:**
  - ✓ In pursuance of the directions of the Hon'ble High Court in writ petition 8908 of 2020, creche facilities are functional in all central and district prisons.
  - ✓ Prisons where either the female enclosures exist but have not been operational or where space permits, women enclosures would be open soon, for example in K.R.Nagar, Chamrajnagar, Nanjangud, Tiptur, Lingsugur and Madhugiri, etc.
  - ✓ Additional toilets and bathrooms will also be constructed for women prison and enclosures at par with the standards prescribed in the Model Prison Manual, 2016.
- ❖ **Regarding Young Offenders:** Efforts are made to segregate young offenders, whether undertrials or convicts, in separate barracks in all prisons in order to check harassment by older prisoners.
- ❖ **Regarding Transgender Persons:** In pursuance of the NHRC letter, dated 16 October, 2020, titled, 'Human Rights Advisory for Protection of the Rights of Transgender and Intersex persons in Prison' and the subsequent advisory by the Ministry of Home Affairs, dated 10 January, 2022, on 'Treatment and Care of Transgender Persons in Prisons', transgender persons are kept in separate barracks in prisons.
- ❖ **Regarding Prisoners belonging to other states and Foreign National Prisoners:** *E-mulakat* facility initiated by the Department of Prisons and Correctional Services is particularly of benefit for persons belonging to other states and foreign national prisoners who often find it difficult to communicate with family. The concerned embassy/ high commission/ consulate are also contacted by the prison authorities, in case of foreign national prisoners, to ensure access to consulate services.
- ❖ **Regarding Prisoners with Mental Health Concerns:** Chapter XXVI of the old Karnataka Prison Manual was titled 'Lunatics', which is now replaced with 'Prisoners with Mental Illness' in the revised Karnataka Prisons and Correctional Services Manual, 2021.

## CHAPTER - 13

# POLICE PRACTICES IMPACTING PRISONERS

Fake encounters; illegal, unjustified and unwarranted arrests; eliciting confession by way of custodial violence; these among other issues vis-à-vis police excesses have been subject matters of consideration by Indian lawmakers, courts and civil society.<sup>268</sup> Despite constitutional and legal safeguards to prevent and check torture of accused, the practice remains prevalent in India, and Karnataka is no exception. This chapter highlights the lapses not only in the police department where practices of custodial violence originate, but also the lapses on the part of judicial magistrates as courts of first production and medical officers who discharge the function of oversight mechanisms to counter and check the practice of custodial torture.

### STANDARDS

Custodial violence and abuse of police power is not peculiar to India, and has, for long, been a matter of concern to the international community. The Universal Declaration of Human Rights, 1948, which marked the emergence of worldwide trends to protect and guarantee certain basic human rights, stipulates in Article 5 that, “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Despite nations committing to this pledge, torture continues unabated.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), 1987 calls on State parties to take effective measures to prevent torture, particularly by enacting domestic legislation that makes all acts of torture offences in criminal law, including complicity and participation in an act of torture, and codifying the matching punishments and needed remedies.<sup>269</sup> While India signed UNCAT in 14th October 1997, it is yet to ratify it by passing a robust domestic anti-torture law. The Prevention of Torture Bill, 2010 was drafted to this effect, but civil society intervention revealed it to be non-compliant with the UNCAT. At the Rajya Sabha, the Bill was referred to a Select Committee for reconsideration, but the bill eventually lapsed with the dissolution of the 15th Lok Sabha.<sup>270</sup> The Law Commission of India has recommended that the process be revisited, in

268 Para 5.1, Chapter – V, Judicial Response to Custodial Deaths & Violence, Report No. 273 of the Law Commission of India on Implementation of ‘United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment’ through Legislation.

269 The United Nations Convention against Torture and other Cruel, In-Human or Degrading Treatment or Punishment (UNCAT) defines “torture” as: “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” Article 2 of UNCAT establishes the absolute prohibition of torture by laying down that no “exceptional UNCAT establishes the absolute prohibition of torture by laying down that no “exceptional circumstances whatsoever” can be invoked as a justification of torture. It also states that “an order from a superior officer or a public authority may not be invoked as a justification of torture”.

270 Bill No. 58 of 2010.



addition to making several observations on the prevalence of police torture.<sup>271</sup>

Under Articles 20, 21 and 22 of the Constitution of India, the right against self-incrimination, the protection of life and liberty and the protection of basic minimum rights of an arrested person at the time of arrest and detention have been enshrined. The CrPC and Indian Evidence Act together provide for safeguards against custodial torture. Further reinforcing constitutional rights, the CrPC obligates the production of an accused before a magistrate within 24 hours of arrest,<sup>272</sup> medical examination upon arrest,<sup>273</sup> the right to inform a family member of one's arrest,<sup>274</sup> the right to legal counsel at the time of arrest,<sup>275</sup> among several other safeguards. Further, under section 24 of the Indian Evidence Act, a confession by an accused person is made irrelevant if it is found that it was caused by "any inducement, threat, or promise". A unique feature of Indian criminal law and one that is geared entirely to prevent torture by the police are the provisions of the Indian Evidence Act that hold confessional statements by accused made before police officers impermissible as evidence, with the effect that a confession made to police cannot even be brought on record by the prosecution.<sup>276</sup> However, facts discovered in consequence of information received from an accused while in police custody are admissible,<sup>277</sup> as also the conduct of an accused.<sup>278</sup> The IPC penalizes some actions which amount to custodial crimes by public servants and are used to prosecute "torture", sufficing for the time being in the absence of a holistic legal definition of torture as set out in Article 1 of UNCAT.<sup>279</sup>

In addition to the constitutional and legal safeguards, the Indian courts have time and again deplored the existence of police custodial torture, one of the most significant being the Supreme Court decision in *D.K. Basu v. State of West Bengal*,<sup>280</sup> where the court reiterated the principled opposition to custodial torture, laying down legal safeguards, and also approving of the practice of courts providing compensation to victims of custodial torture.<sup>281</sup> The Court clearly specified that, "failure to comply with the requirements hereinabove mentioned shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court...having territorial jurisdiction over the matter. The requirements, referred to above flow from Articles 21 and 22 (1) of the Constitution and need to be strictly followed."

## OBSERVATIONS AND ISSUES

Since the study team did not interview all prisoners and the sample size was chosen at random, the exact percentage of persons who may have been subjected to custodial violence at the time of arrest cannot be established. However, 42.9% of under trials, 36.4% percent of convicts, 44.8% of females and a whopping 82.6% of young offenders interviewed by the study team alleged that they had been subjected to violence ("worked on", as it is colloquially known) by the police at the time of arrest. If true, this would be as much a reflection on the state of the monitoring roles given to the judiciary and medical establishment, as it is of the state of the police.

271 Report No. 273 of the Law Commission of India on Implementation of 'United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment through Legislation'.

272 Ss.57 and 167(1), CrPC.

273 s.54, CrPC.

274 s.41B, CrPC.

275 s.41D, CrPC.

276 Sections 25 and 26, Indian Evidence Act.

277 Section 27, Indian Evidence Act.

278 Section 8, Indian Evidence Act.

279 These offences include causing hurt or grievous hurt to extract confessions, wrongful confinement and assault to extract confessions, criminal intimidation, and sexual violence by public servants under sections 166, 330, 331, 348, 357, 376(2), 376C, 503, 506 of the Indian Penal Code.

280 (1997) 1 SCC 416.

281 AIR 1997 SC 610.

Conversations regarding police torture with judicial and prison officials in the course of the study often ended in them expressing tacit approval of such practices as they believe the police are left with no alternative in the investigation of crimes.

Common methods of custodial violence alleged included tying of persons to a table, or suspending them from the roof before beating them (“Bombay cutting”); use of “rollers” on the thigh which commonly results in bone fractures; use of chilli powder on the eye; depriving food or water for days on end, deprivation of sleep and other humiliating acts. An alarming police practice was observed by the study team in the Central Prison of Kalburgi. When the study team visited the admission room in this prison, they came across an inmate who had his leg in a cast. Upon enquiring, he alleged that after being arrested and taken into police custody, his hands and legs were tied, and he was shot on his thigh by a police officer in close range with a gun. The study team learnt that this was not a one off incident, as there were at least about 10-11 such individuals with a similar experience. These methods are adopted until such time a “confession” is procured. A number of tactics to mentally harass the accused like threatening to harm family members, entrapping them in a fake case, getting blank papers signed, police swaying on the side of the party who is ready to pay higher amount, etc., were also found to be common.

Below are other issues of concerns that reinforce police impunity through possible neglect of oversight duties by the judiciary and medical experts –

- 1) **Medical Examination during police custody:** Section 54(1) of the CrPC mandates that when a person is arrested, h/she shall be examined by a medical officer, while s.54(2) requires that when such an examination is made, a record must be prepared mentioning therein any injuries or marks of violence upon the person arrested, along with an approximate time when such injuries were inflicted. A copy of this medical report is to be provided to the arrested person or a person nominated by them. As per the directions of the Supreme Court in *D.K. Basu vs State of West Bengal*,<sup>282</sup> an arrestee should, where s/he so requests, be examined at the time of his/her arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The “Inspection Memo” must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee. Further, the guidelines under *D.K. Basu* also requires that an arrestee should be subjected to medical examination by a trained doctor every 48 hours during his/her detention in custody, by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all taluks and districts. The purpose of producing the medical form is to ensure that an independent medical expert assesses the well-being of an arrestee in order to assist the Magistrate at the time of first production.

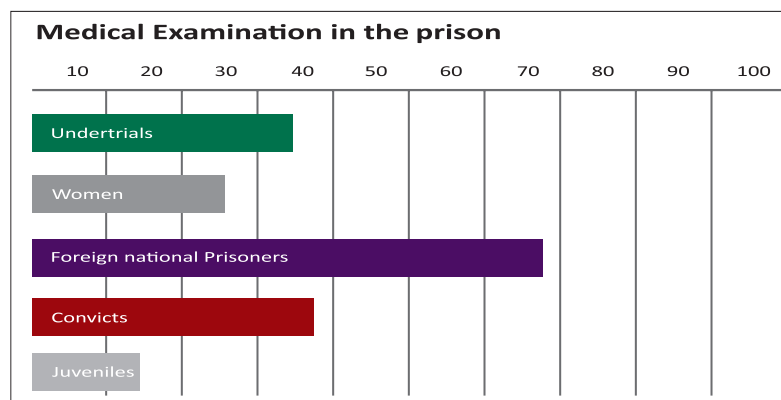
One of the questions asked by the study team during the interviews was whether there had been a medical examination upon arrest. This was answered in the affirmative by 88.2% of the undertrials, 44.4% of convicts, 96% of females and 48% of juveniles. However, the percentage of those who were asked as to whether they had suffered custodial torture during this examination is much less - 62.% of under trials, 72.7% of convicts, 69.2% of women and 66.7% of the young offenders interviewed by the study team informed us that they had neither volunteered nor were they asked by examining doctors about custodial torture.

It appears from the interaction with prisoners, that medical examination subsequent to arrest is more or less a mechanical exercise in which medical officers apparently act in connivance with police officers, leaving much of the actual injuries inflicted on them unrecorded, in violation of s.54(2) of the CrPC. An arrestee is taken to the local district hospital and the doctor checks the weight and blood pressure and signs off the important

282 (1997) 1 SCC 416.

medical record without any due diligence. Specific enquiries regarding whether there was police custodial torture are not made. Moreover, the examination is conducted in the presence of the policeman/woman, which does not allow the arrestee to communicate freely with the doctor, in fear of further torture. Upon medical examination, the arrested person goes back into police custody, thereby creating and sustaining apprehension. A crucial check in law has therefore been reduced to a mechanical practice.

- 2) **Production at Magistrate’s residence:** A common narrative discovered across the state is the practice of arrested persons being produced in the homes of magistrates after court hours, as opposed to being produced in court. The seeming prevalence of this as a regular practice gives rise to a host of concerns. As the timing of first production flows from the time of arrest, there may be irregularities in arrest practices if arrests are habitually being done, or being shown to be done, at times that coincide with first production falling outside court hours. Key safeguards available at the time of first production can be compromised when production takes place after court hours. This is borne out by the lived experiences of prisoners. For instance, there is no access to a remand lawyer when an accused is presented at the Magistrate’s residence. Further, several interviewed prisoners alleged that they were made to sit in a police vehicle outside the Magistrate’s residence and were not physically produced before the Magistrate as mandated under proviso(b) to s.167(2) of the CrPC, and thereby in violation of this key procedural right towards guaranteeing effective production. Some barely got a chance to meet the remand judge, let alone speak with him/her or be represented by a lawyer. This also means they were denied the possibility to complain of, or even disclose, if they had been subjected to torture or ill treatment in police custody. Additionally, at first production, the Magistrate is supposed to satisfy him/herself about the necessity of police remand. These practices impede this vital judicial function. Taken all together, these result in failure of judicial oversight on custodial torture.
  
- 3) **Lack of documentation by Prison Medical Officers:** The NHRC ‘proforma for health screening of prisoners on admission to prison’ for recording of medical parameters upon admission to the prisons is being followed in central prisons, but is yet to be adopted by all district and taluk prisons.<sup>283</sup> Even in the pro form as maintained in central prisons, there is no exhaustive documentation of injuries seen on the body of persons at the time of admission. Some medical officers justified this by explaining that they only record such injuries when volunteered by the inmate. On the other hand, some of the inmates shared that they never mentioned their horrifying experiences with the medical officer in prison as they were threatened by the police against disclosing the same. Further, some of them could not tell the difference between prison staff and police men as they wear the same khaki uniform, and were hence scared to talk about their experiences in police lock-ups. The following graph shows the percentage of persons interviewed by the study team who had not had a medical examination in the prison at the time of admission:



283 Issued by the NHRC on 17th May 2010.

All central prisons, and most district prisons, have an admission room where new inmates spend a few days before being assigned a barrack. The study team visited admission rooms in prisons which have them, and often met inmates here who were recovering from the physical injuries inflicted on them during police custody. Sometimes, where the injuries were extreme, such inmates were treated in the hospital section of the prison where available. Medical officers of the prisons are often required to provide pain relief treatment to newly admitted prison inmates. It is only in extremely precarious situations - when a person is battling for life - that a prison refuses to take admission of a person.

- 4) **Failure of defense lawyers to appraise courts of custodial torture:** Defence lawyers, who are to be the first line of defence for their clients, have the professional responsibility of informing concerned courts about the coercive actions suffered by their clients, as this will enable them to get it on record and mount a challenge to the evidence collected by the police in this manner. However, several prisoners who alleged police torture informed the study team that this was not a practice adopted by their lawyers. In fact, the study team was informed by inmates that they are discouraged by their lawyers to speak up before the magistrate of such experiences for fear of affecting the case, thereby perpetuating the judicially deprecated practice of custodial torture.

The cumulative effect of the above factors on the criminal justice system is that police torture ends up being legitimised in fact despite being illegal in law.

## **RECOMMENDATIONS**

### **State Legal Services Authority:**

1. With a view to bring in transparency, the presence of the counsel of the arrestee at some point of time during the interrogation may deter the police from using third degree methods during interrogation. In order to provide for early access of legal services and to implement s.41D of the CrPC, the National Legal Services Authority issued guidelines in 2019 on 'Early Access to Justice at Pre-Arrest, Arrest and Remand Stage'. It would be ideal for the Karnataka SLSA to develop a scheme in order to implement the guidelines issued by NALSA with the assistance of the panel lawyers and paralegals, in conjunction with the police department.
2. Conduct regular workshops with judicial officers from the district courts, police personnel, government medical officers, and legal aid lawyers, to increase sensitisation on issues of custodial violence, and to secure compliance with existing constitutional and legal mandates on the same.

### **High Court:**

1. Issue appropriate guidelines to be followed when first production is conducted at the residence of the Magistrate, in order to ensure that existing safeguards such as access to a remand lawyer are protected.
2. Direct the Principal Session Judge or any judicial officer nominated in this regard to make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and for ascertaining the conditions in the police lock up, whether the requisite facilities are being provided, whether the provisions of law are being observed. If it is found that there are any lapses on the part of the police authorities, the judicial officer must bring them to the notice of the Commissioner of Police/ Superintendent of Police and if necessary to the notice of the Home Department. The judicial officer must also draw the attention of the Chief Justice of the High Court to such lapses through their reports. A format of the report may be developed by the High Court for

circulation to all district courts.<sup>284</sup>

3. Direct the State Judicial Academy to develop a module particularly on the role of judicial officers in respect to first production and pre-trial, to be incorporated in the induction and specialised courses.
4. Direct the prison medical officers to take photographs of all the injuries/ bruises/ cuts on the body of the prisoners as part of the first medical examination to be kept on record.
5. Direct the Bar Council to organise trainings for defense lawyers on the ways in which to litigate and bring to the notice of the court issues of torture.

**Prison Department:**

1. The NHRC 'pro forma for health screening of prisoners on admission to jail' must be filled by medical officers in all prisons. Adopting the NHRC proforma in prisons will ensure proper documentation of injuries on the body of person being admitted to prison. It would assist the concerned court in the event of such incidents of custodial violence are alleged during the trial. Most importantly, if the record of such injuries is maintained diligently, it is beneficial for the prison staff to refute any allegation of violence against them. It would also assist the legal counsel of the accused to challenge evidence procured during police custody.
2. The medical officers either appointed or deputed to prisons must be given training to ensure that they understand the purpose of various procedures that they mandated to fulfil as part of their duties and are able to serve most effectively.

**Police Department:**

1. The National Human Rights Commission (NHRC), through its letter dated No. 7/11/99-PRP&P, issued guidelines regarding arrest. According to them, the police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action. The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.
2. NHRC Guidelines further provide that prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.
3. Further, interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and relatives or friends of the person arrested must be informed of the place of interrogation. This must be informed to the relative/family member of the arrestee when they are informed about the arrest as mandated to be done for recording information on arrest memo.
4. Attention is also required to be paid to properly develop a professional work culture, training and sensitisation of the police force consistent with basic human values. The training methodology of the police evidently requires some degree of restructuring. The police force needs to be sensitised to discharge its professional duties qua an accused without compromising with the basic human values and the constitutional/fundamental/statutory rights of the accused. Efforts must be made to change the attitude and approach of the police personal handling investigations so that they do not sacrifice basic human rights during interrogation and do not resort to questionable forms or methods of interrogation impermissible in law.

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284 *Sheela Barse v. State of Maharashtra*, 1983 AIR 378, 1983 SCR (2) 337.

## CHAPTER - 14

# SPECIAL CASE OF BODY WARRANTS

A conundrum that the study team encountered during the prison visits is that of 'body warrants'. In the course of interacting with prisoners, the study team enquired about those who had spent longer than 3 years as undertrials, those who missed court production on 3 consecutive dates, and those who had more than one case in which they were facing trial. A peculiar problem encountered while gathering this data was that the prisoners who answered in the affirmative to all these questions were often the same set of persons, and upon further enquiry it was discovered that these persons were fighting what is called a 'body warrant'.

A term not defined in the CrPC, 'body warrant' is essentially a court order requiring the attendance of a prisoner in court either to answer to a charge or to be examined as a witness, under s.267(1) of the CrPC. It is merely a direction for production in court and is not tantamount to a remand warrant/warrant of arrest which permits a person's legal detention. However, despite a body warrant not being a legitimate instrument of judicial custody, it has de facto become one.

### STANDARDS

An order of production in court under s.267(1) of the CrPC is issued when a prisoner is required to be produced before a court during an inquiry, trial or other proceeding either to answer to a charge or for proceedings in that case. This might be necessary when a person is facing an inquiry/trial/proceeding in a case outside the jurisdiction of the prison in which he/she is being detained, in what might be called the 'main case'.

The necessary pre-conditions then for such an order to be passed under this section is that an accused must already be in legal custody in a case, and that there must be another legal proceeding in which he/she is required to be present. If a person is no longer required to be in judicial custody in the main case – upon securing bail, or acquittal - then such an order of production does not require the person to be brought to court from prison. And if their detention is necessary in these proceedings, then a legal arrest warrant or a warrant of remand must be secured. The Supreme Court and High Courts have passed directions to the effect that a body warrant is not a warrant of arrest/remand order and cannot be treated as one, as it is in violation of Article 21 of the Constitution of India.<sup>285</sup> In *CBI v. Kenche Mahesh Kumar*,<sup>286</sup> the Karnataka High Court held that:

*"It is by now well settled that the body warrant/production warrant cannot be equated to the warrant of arrest. The order issuing the body warrant/production warrant cannot be construed to be an authorization for detaining the person. Body warrant would be issued only for the purpose of*

<sup>285</sup> *Ram Dass Ram v. State of Bihar*, AIR 1987 SC 1333; *K.S.Muthuramalingam v. State of Tamil Nadu*, 2010 4 MLJ CrI 161; *K.Somshekar v. State of Karnataka* (decided by the Karnataka High Court on 26 December 2014 in WP No.230 of 2014); *Arun Krishna Sail v. State of Karnataka* (decided by the Karnataka High Court on 26 December 2014 in WP No.243 of 2014); *Gaurav Goel v. State of Karnataka* (decided by the Karnataka High Court on 23 June 2015 in WP No.83 of 2015).

<sup>286</sup> Decided by the Karnataka High Court on 21 July 2015 in Criminal Petition 1697 of 2014.

*securing the person who is already detained in custody in another case. The body warrant cannot mean that the same shall be an authorization to curtail the liberty of a person and to keep him in custody till the date on which the production is ordered for. If the prisoner who is already detained in 'A' case gets an order of bail and complies with all the conditions of the bail order, he shall have to be released pursuant to such bail order, even if the body warrant is issued to the said prisoner in another case i.e., 'B' case in the meanwhile. The Prison Authorities in such case cannot treat the body warrant in 'B' case as an authorization to detain the prisoner till he is produced before the 'B' Court."*

Further, under s.267(2) of the CrPC, there is an additional level of scrutiny by the CJM, in the event of an order under s.267(1) being passed by a Magistrate of the second class, indicating the seriousness with which this judicial exercised is to be undertaken.

## **OBSERVATIONS AND ISSUES**

- 1) **Excessive use of body warrants:** When a person is arrested and sent to prison for judicial custody, body warrants are placed on him/her in one or more cases by the police who seek such orders from the concerned court in these cases. Since an accused need not be present before a magistrate at the time of passing an order under s.267 of the CrPC, such orders are prayed for and granted without having to put the accused person to notice. In case an accused procures bail in the main case (that is the case in which they have been arrested and have a remand warrant for), then pending a body warrant, they are not released from prison, with the body warrant acting as a remand warrant, in clear violation of the law laid down in *CBI v. Kenche Mahesh Kumar*, and other cases. This has become an effective manner employed by the police to entangle an accused in a web of cases, who then has to fight out each of these body warrant cases to secure release from prison.

Sometimes a body warrant is strategically delivered just before a bail order reaches the prison to ensure that the inmate is not released from judicial custody. The study team learnt that securing bail is often news that is received with apprehension by inmates, as they fear they may suddenly be blindsided by a body warrant that can prevent their release from prison.

Often, these body warrant cases are from districts other than the one in which the main case is pending, and for which court production is difficult given the concerns with court escorts previously discussed. It is a common practice to include the names of unrelated persons from several different districts, making it near impossible for such a case to proceed quickly, as all accused are rarely present together in court. Yet another practice is to add the name of an accused for production in cases that have not been solved, and to seek their attendance in that case through a body warrant. If there are even a few such cases, a person can in effect remain in detention for over 2-3 years even after securing bail.

In most of these body warrant cases, the prisoners are unaware of the details of the case since they are rarely produced in court in these matters, and the only document available with the prison staff is the body warrant itself, and not the FIR/charge sheet. For many to be able to afford a lawyer and the bail amount in a single case is challenging, fighting multiple cases in different jurisdictions is a herculean task, leaving these body warrant cases to linger without facing a legal challenge from the accused.

The study team met inmates across the state with body warrants in their name, sometimes in as many as 30 cases. The study team also learnt that placing so many body warrants on a person is also a means of classifying an arrested person as a 'habitual offender', and disqualifies them from being considered for bail, or being recommended for bail by the

UTRC. And so for prisoners with no means of hiring lawyers who can fight all these different body warrants in the respective courts, or challenge them in the High Court, the only option is to remain in custody and hope for these cases to inch towards completion.

- 2) **Inconsistent practice among prison officers:** The study team learnt that there is in fact much confusion, and differences of opinion, as to the course of action to be adopted when an inmate only has a body warrant and no remand warrant. While some prison officers prefer to write to the concerned court/s from which the body warrant/s have been issued to seek further directions, some others release the inmates as there is no valid document directing their incarceration. Given that body warrants are court orders, prison officers are often averse to releasing a prisoner, erring on the side of caution.

It is also, as discovered by the study team, a means of the prison department not overstepping the police department's designs, when they decide to seek a body warrant in other cases. One of the prison officers that the study team interacted with informed us that he has an ongoing inquiry against him as he had retained a person in custody on the basis of a body warrant. But such instances are few and far between with most inmates with body warrants not having the means to challenge the body warrant against them.

- 3) **Inconsistent court directions:** Unfortunately, there seems to be no clarity in practice from the trial courts either. Some courts do not respond to the request for directions from prisons, while some others 'extend' the body warrant, some convert the body warrant to a remand warrant, and some order that the inmate be released.

Often, magistrates are not aware of the fact that the body warrant is in a case in which a person has not been formally arrested, resulting in a mechanical extension of production date when a prisoner is not brought before them. They may also not be aware of the fact that the prisoner has secured bail in the main matter, as the prisoner or a lawyer on their behalf is rarely present before the court. Even when produced, since a prisoner is unaware of the particulars of the case in which a body warrant is placed they are unable to explain to the magistrate that their continued detention under the body warrant is illegal. The current state of confusion requires serious consideration to enable streamlining in the form of judicial orders, clarifications and/or practice directives.

- 4) **Instrument of prolonged detention:** Despite the law being clear with respect to body warrants not amounting to a legal order of detention, the current confused practice ensures that it continues to be used as an instrument to mire a person in several cases, making it difficult for them to seek release despite getting bail in the main case. Further, in several body warrant cases, an inmate is rarely produced in court as such an appearance is not considered to be important and is not prioritised given the shortage of court escorts, keeping the case lingering without any clarity as to the charges in those cases, or the course of action to be taken. Since the body warrant is not a remand warrant, relief under s.167(2) of the CrPC is not attracted, even when the body warrant is pending over several months, sometimes years, without even as much as a charge sheet.

## RECOMMENDATIONS

### High Court:

1. As this practice clearly violates Article 21 of the Constitution, the High Court must direct all magistrate and sessions courts in the state to clarify that persons cannot be detained merely on a body warrant, and issue practice directives to this effect. These directives must also instruct the subordinate courts which receive information about body warrants from



prisons seeking directions must immediately order release of the prisoner. They must also determine the status of a person whose production is being secured through a body warrant in order to ensure that it is not being used as an instrument of prolonged detention.

2. Appropriate directions must also be passed by the High Court to all district courts to determine whether the accused is represented by a lawyer. If not, a legal aid lawyer must be immediately appointed and directed to communicate with the accused wherever s/he is detained. The accused must be informed about the same.
3. Issue appropriate directions to the Police department to immediately discontinue the practice of use of body warrants.
4. Issue appropriate directions to the Prison Department taking cognizance of this practice and directing its officers to follow a standardised procedure to enable expeditious discontinuation of the practice.

**Police Department:**

1. Direct all police stations to immediately discontinue the practice of use of body warrants as per the directions of the High Court.

**Prison Department:**

1. To issue appropriate orders to prison officers as per the directions of the High Court in this regard.

**UPDATES AS OF APRIL 2022**

More recently the Karnataka High Court, vide order dated 11.03.2022 in the case of M. Shashidhar @ Shashi and Anr. v. State of Karnataka (Cr.Petition No. 1396 of 2022) has reiterated the position of law that s. 267 of the CrPC does not give power to detain a person in custody. This case was initiated by two persons who were not released from prison despite having got an order of bail in their 'main' case, on the ground that there was a body warrant pending against them. The High Court relying on Gaurav Goel v. State of Karnataka (ILR 2015 KAR 4675) and Ram Dass v. State of Bihar (1987 Suppl(1) SCC 143) held that "the temporary transit of accused in pursuance of an order passed under s. 267 CrPC would not authorise jail authorities to detain him in custody". During the course of the hearings of this case, and as a result of it, the Department of Correctional Services also issued Circular No. 12/CR-05/2022 dated 11.03.2022 whereby officers in-charge of all prisons were directed to release persons who were being detained only on account of a body warrant, and to further report compliance with these directions. This prompt action was commended by the High Court. Compliance with this circular can go a long way in resolving the issue of prolonged detention in the guise of body warrants.

**PART - C**  
**THE WORLD OF PRISON**  
**PERSONNEL**

## CHAPTER - 15

# PRISON PERSONNEL AND THEIR CHALLENGES

In order to ensure a constructive interaction between prison staff and the inmates it is necessary that the former are contented with their service conditions and are socially recognised for their services.<sup>287</sup> Constructive action of building up welfare programmes (for prison personnel) will go a long way not only in raising the morale of the prison personnel but also in strengthening the ties between them and the government.<sup>288</sup>

### STANDARDS

Under Rule 10 of the Karnataka Prison Manual, the Inspector General or head of the prison department is duty-bound to “examine whether the Prison Staff is adequate and whether discipline amongst the staff has been properly maintained.” The Deputy Inspector General of Prisons (DIG) is mandated to ensure accountability of the prison personnel by conducting “spot inquiry in case of accidental and unnatural death of prisoners in prisons or any serious injury to prisoners endangering their life or any but break of violence, or neglect of duty by the Prison staff and also to find out whether there is any negligence on the part of the Superintendent in performing his functions as Supervisory Officer of the Prison and furnish his findings to Government through the Inspector General of Prisons”.

Accountability of prison personnel and their welfare are sides of the same coin. There are a number of welfare measures adopted by the Karnataka Prison Department in ensuring well-being of prison personnel.

Personnel matters, staff welfare and staff discipline, allocation of duties to personnel under his control, safety of the prison personnel, protection of human dignity, rights and providing decent work conditions, acquainting institutional personnel with current policies of correctional administration and the role they have to play in a welfare state; organizing personnel training programmes at the institutional level – these are the duties of the officer in-charge of the prison, as prescribed in the Model Prison Manual, 2016.<sup>289</sup>

Rule 36 provides that the Superintendent “shall inspect the quarters of the subordinate staff once a month”. The Chief Warder / Head Warder shall assist the Chief Jailor with regard to allotment handling over and taking over of staff quarters. He shall be in-charge of maintenance of quarters, sanitary conditions, and water facility of staff quarters.<sup>290</sup>

287 Para 24.25, Chapter XXIV Development of Prison Personnel, All India Jail Reforms Committee (the Mulla Committee), 1980-83 (Volume – II).

288 Para 24.34.

289 Para 4.08, Chapter IV, Institutional Personnel.

290 Rule 127(ii), Karnataka Prison Manual.

Under Rule 73 of the Karnataka Prison Manual, the Medical Officer of the prison is responsible not only for the health of the inmates but also of the staff members. Medical Examination of the Members of the staff may be provided at least once a year regularly. Where Medical Officer of the prison is not available, medical examination may be arranged by the Superintendent with the local Medical Officer. Reports of such medical examination be kept in the office of the Superintendent. All Officers and their families residing in prison quarters shall be vaccinated.<sup>291</sup>

Whenever there is surplus vegetables in the prison garden after meeting the needs of prisoners, it shall be put up for sale to the prison staff and the public at a reasonable rates to be fixed by the Superintendent. The money thus realised shall be credited to Government.<sup>292</sup>

## OBSERVATIONS AND ISSUES

The study team interviewed officer in-charge of all 51 operational prisons and interacted with staff at all levels, including women officers and staff, during the visits. The medical officers along with pharmacists and lab technicians, where available; teachers and trainers for vocational training and education were also interviewed.

- 1) **Work Conditions:** Prison staff is one of the most overworked yet neglected wings of the state. For guarding purposes, the day for warders and head warders is divided in eight hours of three shifts. But it is quite strenuous as it requires prolonged standing. Those assigned the wards duty do sometimes sit during the working hours but those assigned the outside gate or main wall duty are required to stand throughout 8 hours of their shift.

The guarding staff is eligible for a day's leave in a week, but more often than not, this cannot be availed since there is dearth of personnel. With the new recruitment drive, there is a possibility of weekly offs to be implemented. Prison officers are worst off in regard to weekly offs as their presence may be required any time of the day.

Most personnel are posted in areas far from their hometowns, and annual leaves are hard to get approved. This results in staff being unable to meet their family over long periods of time.

Not all prisons have changing rooms and rest rooms for prison staff, especially for night shifts, who have to make do with make shift arrangements. The provision of well-equipped toilets for prison officers and staff, especially for women, in some prisons was not found, owing to old infrastructure of buildings.

Staff is also required to discharge multiple functions in addition to guarding duties, including providing medical escorts, ensuring the general mental well-being of prisoners, maintaining judicial records and following up on court cases, etc. Almost all the personnel expressed high levels of stress due to the closed work environment and the arduous tasks. Burnout can be devastating not only for the staff member but also for the co-workers, inmates, rehabilitation programmes and the correctional organisation itself. This chapter provides insights into the prison staff – the roles they play, their work environment, the stressors that are around them and what can be done to reduce such stress.

A 2011 study by National Institute of Mental Health and Neurosciences (NIMHANS), Bengaluru,<sup>293</sup> explains this well – “*Role Conflict*’ of the correctional officers arises when they

291 Rule 865 and 866, Karnataka Prison Manual.

292 Rule 977, Karnataka Prison Manual.

293 Chapter 13, Mental health needs of prison staff, Minds Imprisoned: Mental Health Care in Prisons, 2011.

*have to engage in custodial responsibilities (maintaining security, such as preventing escapes and inmate fights) as well as engage in prisoners' treatment functions (helping in rehabilitation of prisoners). 'Role ambiguity' may be created by supervisors who expect officers to –go by the rules– and at the same time insist that officers must be flexible and use judgement in their interactions with inmates. Such role conflict and ambiguity arises in the prison environment because of dichotomous perception of their role as custodial versus curative, punishment versus rehabilitative, administrative versus treatment, segregation versus inclusion and human rights versus duties. In addition, legislations, judiciary case rulings, human rights laws and department rules. The strict hierarchy inside the organisation and security issues inside and outside the prison further complicates the issue.”* The study team endorses the findings of the NIMHANS study which provides that following are the impact of stress on prison staff –

- a. Medical problems such as headache, hypertension, back ache, etc.
- b. Mental illness such as depression, alcohol, anxiety, etc.
- c. Burnout and absenteeism
- d. Family discord
- e. Poor quality of life
- f. Suicide and deliberate self-harm
- g. Effect on the prisoners' rehabilitation programme
- h. Human rights violations of prisoners
- i. Prison staff in the state is not allowed to form unions and associations, which could help them in making collective requests. Cadre and Recruitment Rules specific to the prison department also need to be amended.

- 2) **Salaries:** The salaries paid to the prison staff in the state is not at par with those provided even in the neighbouring states. At the time of visit by the study team, even when compared with other services in the state, the prison department was not paid on par. However, this has changed with a new circular which provides for prison personnel being paid at par with the police personnel in the state.<sup>294</sup> There is a dichotomy when the salary of the prison in-charge of the central/ district/ taluk prison is compared with that of the revenue prison since they fall under the purview of the district administration.

Allowances in the form of TA/DA are insufficient to cover expenses, especially when posted to different prisons on outstation duty (OD).

- 3) **Promotions:** At the start of the study, the team met several personnel whose promotions had been put on hold on account of the stay imposed by the Supreme Court in the *B.K. Pavitra v. Union of India* case, in which the state policy of reservation in promotion to persons belonging to SC/ST categories was in question.<sup>295</sup> However, with the decision in the case being delivered on 10 May 2019, the freeze on promotions ended, with the court ruling that the state government had collected adequate information to introduce the Reservation Act of 2018 for reservations in promotion in government services. As the study came to a close, pending promotions were being approved by the head office of the Prison Department. However, this will not be without its own share of complications to be resolved.
- 4) **Living Quarters:** Living quarters in the prisons are in need of urgent attention. The biggest concern is that there are not enough of them in every prison to cater to the number of staff posted in that prison. The housing rent allowance (HRA) provided is in need of revision,

<sup>294</sup> GO No. AE 12 SRF 2019 dated 04.10.2019.

<sup>295</sup> Civil Appeal No. 2368 of 2011.

with current rates being insufficient. Further, the condition of existing staff quarters in many districts is deplorable, with urgent need for repair and renovation. Prisons are often located in the outskirts of the city and consequently, living quarters for the staff are far away from basic amenities. This often leads to prison staff not able to stay with their families.

The conditions of staff quarters in Mangaluru were below the minimum basic standards of living with some quarters without the main door, extremely old and unhygienic toilets, broken roofs and no facility for portable drinking water.

Construction and repair of housing quarters is overseen by the Public Works Department, which is often overburdened with other work. Vide GO No.HD 11 PRI 2019 (dated 14.03.2019), work can now also be overseen by the Karnataka State Police Housing and Infrastructure Development Corporation Limited.

- 5) **Benefits:** One of the benefits provided to prison personnel is health insurance through the 'Arogya Bhagya Yojana', which has been set up in the form of a trust.<sup>296</sup> Coverage under this scheme is for the personnel themselves and their dependents. Though it includes treatment of children, it does not include treatment for parents. A common concern that the study team learnt is that there are very few hospitals which accept insurance through this scheme, limiting the hospitals in which benefits can be claimed, especially in the smaller districts of the state. Another concern is that in hospitals where the scheme is acceptable, if there is any outstanding payment on the part of the government, the benefits under the scheme cannot be claimed. The prison staff shared with the study team that there are considerable delays by the head office in clearance of the bills.

A good initiative by the prison department is that since July 2018, every personnel gets an annual amount of Rs.1000 for a medical check-up.<sup>297</sup> A compensation scheme for personnel who either die or suffer disabilities in the line of duty is a welcome policy.<sup>298</sup>

On-duty staff is being provided with tea (twice) and a meal. Also, free monthly ration to Jailor and below ranks are provided in the form of cash. Uniform and washing allowance have been enhanced from January 2019.

As regards the family front, prison personnel are provided with leave travel concession to travel to their home town/village. Sibbandhi Kalyana Nidhi (SBN) policy provides for financial assistance to the children of the prison personnel who have secured merit at the school/college/university levels and those who pursue higher education.

Awards for deserving personnel, handed by the chief minister, are announced regularly. In 2016, the government issued a circular to award prison staff for exceptional service, with a cash prize.<sup>299</sup> Such measures improve morale among the staff.

- ***Prison staff that works during the night shift are provided dinner in prison.***
- ***Rewards for prison personnel for good service improve morale.***

296 Karnataka Prisons Health Welfare Trust 2004, Arogya Bhagya Yojana Bye-Laws.

297 Vide GO No. HD 43 PRI 2018 (dated 05/07/2018).

298 Vide GO No. HD 85 PRA 2016 (dated 08/11/2017).

299 Vide GO No. HD 58 PRA 2016.

## RECOMMENDATIONS

### State Government:

- 1) Requisite funds must be allocated to build new staff quarters in many districts.
- 2) Increase in the salaries of prison staff must be brought at par with the salaries of the revenue department.

### Prison Department:

1. A chapter on the welfare of prison personnel must be added in the new draft rules.
2. A grievance redressal mechanism for prison personnel with officer in-charge at the head office and clear timelines for redressal of concerns must be initiated on priority.
- 3) The staff-needs assessment of the head office must be conducted in order to ensure that that sufficient number of staff is appointed at the head office to deal with all administrative issues in a timely manner.
- 4) With the new recruitments in place, weekly off for guarding personnel must be recognized and enforced to ensure there is no burn out in the force. Further, at least one long leave in a year must be provided to all staff.
- 5) The TA, DA and HRA allowances must be revised.
- 6) Arogya Bhagya Yojana must be expanded to more hospitals, in more cities. Expansion of the same to include dependant parents of the personnel also to be considered.
- 7) Expansion and renovation of staff living quarters in some districts must be initiated on priority.
- 8) Amend Cadre and Recruitment Rules for the prison department.
- 9) The annual health check-up must include mental health assessment as well.
- 10) There must be provision for providing a chair to guarding staff during their shifts.
- 11) Given the many responsibilities on their shoulders, and the possibility of burn out, continuous training programmes and sufficient and periodic leave are crucial to ensure their physical and mental well-being.
- 12) Permit prison staff to form associations/unions to discuss and present collective requests and concerns.
- 13) A Staff Welfare Committee and a staff welfare fund at every prison must be constituted as recommended in the Model Prison Manual, 2016.

### UPDATES AS OF APRIL 2022

Initiatives introduced in the last two years, as provided by the Department of Prisons and Correctional Services as on March 2022:

- ❖ As an important initiative, the government has ordered for granting Rs. 30 lakh ex-gratia to the officers and staff of Prisons and Correctional Services on par with the Police Department.
- ❖ The government has also issued orders for granting Rs. 1000/- for annual medical examination of prison personnel on par with the Police Department.
- ❖ The DIGs North and South periodically visit prisons in their jurisdiction. As a result, grievances of prison staff are regularly being redressed.
- ❖ For stress management, prison personnel are engaged in yoga classes through Navchethana initiative.
- ❖ Online training opportunities during the pandemic by Central Academy of Police Training (CAPT) Bhopal, Academy of Prisons and Correctional Administration, Vellore, etc. are regularly provided to keep them informed of the latest developments.
- ❖ Police Housing Corporation has been requested to construct 300 new staff quarters in different districts in the states, particularly where the quarters are old and in dilapidated condition.

# ANNEXURE A – PRISON PROFORMA

## I: PRISON INFRASTRUCTURE

### A. General Information (as on 31st December 2018):

Sl. No.	Name & type of prison	Year of Establishment	Total Area	Total Capacity	Total Population	Total Number of Barracks			Total Number of Solitary Cells
						Male Barracks	Female Barracks	Transgender Barracks	

### B. Prison-Wise Infrastructural Facilities (as on 31st December 2018):

Sl. No.	Name & type of prison	Total Number of fans		Total Number of Tube-lights/ bulbs		Total Number of Toilets		Total Number of Bath Rooms		Total number of water tanks		Whether prison has a water treatment plant/ RO plant for portable drinking water? (YES/ NO)	Whether Library available in prison? (YES/NO)
		Male section	Female section	Male section	Female section	Male section	Female section	Male section	Female section	Male section	Female section		

## II: PRISON OCCUPANCY

### A. Prison-Wise Information on Prison Population (as on 31st December 2018)

Sl. No.	Name & type of prison	Capacity of Prison		Total Prison Population		Number of Undertrials		Number of Convicts		Number of Detenues		Number of Civil Prisoners		Number prisoners awaiting release/ repatriation		Total Sleeping area in prison (in square metres)		Occupancy Rate
		Male section	Female section	M	F	M	F	M	F	M	F	M	F	M	F	M	F	

### B. Period of Detention of Inmates (Period: 1st January 2018 - 31st December 2018)

Period of Detention	Undertrials	Convicts	Detenues	Others
0-3 months				
3-6 months				
6 months- 1 year				
1 year - 3 years				
3 years- 5 years				
5 years and above				
Total				



**C. Information on Inflow and Outflow of Undertrials (Period: 1st January 2018 - 31st December 2018)**

Sl. No.	Name & type of prison	Number of Undertrials admitted during the year	Number of Undertrials convicted during the year	Number of Undertrials released on bail during the year	Number of Undertrials acquitted during the year	Number of Undertrials died during the year

**D. Prison-Wise Information on Inflow and Outflow of Convicts (Period: 1st January 2018 - 31st December 2018)**

Sl. No.	Name & type of prison	Number of convicts admitted during the year	Number of convicts released				Number of convicts died during the year	Number of convicts in prison beyond completion of their sentence, and reasons thereof
			On completion of sentence/ acquittal on appeal during the year	On parole/ furlough during the year	On suspension of sentence/bail from appellate courts during the year	Prematurely by State Government upon recommendation by Advisory Board during the year		

### III: PRISON STAFF STRENGTH

**A. Please provide the structural tree and hierarchy in the prison administration as on 31st December 2018.**

**B. Prison-Wise and Group-wise Information on Prison Personnel Strength (As on 31st December, 2018)**

Sl. No.	Name & type of prison	Sanctioned strength								Working strength									
		Group A		Group B		Group C		Group D		Group A		Group B		Group C		Group D			
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F		

**C. Prison-Wise Details of Officers and Staff (As on 31st December, 2018)**

Sl. No.	Name & type of prison	Sanctioned strength		Actual Number of Officers		Sanctioned Strength						Number of Staff							
						Chief Warder		Head Warder		Warder		Chief Warder		Head Warder		Warder			
		Male	Female	M	F	M	F	M	F	M	F	M	F	M	F	M	F		

## IV: WOMEN INMATES AND THEIR CHILDREN

### A. Prison Wise Information of Women Inmates and Their Children (Period: 1st January 2018 - 31st December 2018)

Sl. No.	Name & type of prison	Capacity of female enclosure		Total Number of Women Inmates		Number of Foreign National Women Inmates		Number of Children in Prison		Whether Balwadi/ Crèche facilities available inside	If yes, who runs Balwadi/ Crèche	Whether children provided education	If yes, who provides education
		UTP	Convict	UTP	Convict	UTP	Convict	Male	Female				

## V: MEDICAL TREATMENT TO INMATES

### A. Prison Wise Information on The Medical Facilities Available (Period: 1st January 2018 - 31st December 2018)

Sl. No.	Name & type of prison	Name of Medical Officer & Date of appointment & Visiting time	Specify Whether there is a Hospital Inside the Prison or Not	Capacity of the Hospital	Appointment of Doctors				In case there is no full time Medical Officer, who undertakes daily check-up of prisoners? Name, qualification and no. of times they visit jail	Whether an Ambulance available at the Prison	No. of other specialised medical professionals appointed - dentists, cardiac specialists etc.
					Number of General Physicians	Number of Gynecologists	Number of Psychiatrists	Number of Psychologists			

### B. Prison-Wise Information on Medical Facilities Available (Period: 1st January 2018- 31st December 2018)

Sl. No.	Name & type of prison	Whether pathology lab available for conducting basic diagnostic tests inside prison	Details of tests that can be conducted - eg. X-ray, HIV, Dengue, Malaria, etc.	Whether lab technicians available (YES/NO)	If yes to the previous question, number of lab technicians available	Whether medical dispensary available in prison

### C. Prison-Wise Information on Medical Treatments (Period: 1st January 2018- 31st December 2018)

Sl. No.	Name & type of prison	Medical Treatment (Inside Prisons)		Whether lab technicians available (YES/NO) If yes to the previous question, number of lab technicians available	
		Total number of prisoners provided medical assistance in the prison	Total Number of prisoners admitted to hospital inside prison	Total number of prisoners referred to hospital outside the prison	Name of the Hospital outside prison referred to

**D. Prison-Wise Information on treatment of mentally ill prisoners (Period: 1st January 2018- 31st December 2018)**

Sl. No.	Name & type of prison	Number of Inmates given Psychological Counseling but not psychiatric treatment		Number of Inmates given Psychiatric Treatment		Whether a full-time Psychologist appointed in prison? (YES/ NO)	If NO, number of visits by an external Psychologist per week	Whether a full-time Psychiatrist appointed in prison? (YES/ NO)	If NO, number of visits by an external Psychiatrist per week	Number of Inmates transferred to mental health establishment	Number of Undertrials whose trials are suspended because they are unfit to stand trial	
		M	F	M	F						M	F

**E. Prison-Wise Information on Period of Detention of Mentally Ill Prisoners**

Sl. No.	Name & type of prison	0-3 months			3-6 months			6 months- 1 year			1 year - 3 years			3 years- 5 years			5 years and above		
		UTP	Conv ict	Dete nue	UTP	Conv ict	Dete nue	UTP	Conv ict	Dete nue	UTP	Conv ict	Dete nue	UTP	Conv ict	Dete nue	UTP	Conv ict	Dete nue

## VI: VOCATIONAL TRAINING & AFTER RELEASE CARE

**A. Prison-Wise Information on vocational training & education of inmates (Period: 1st January 2018 - 31st December 2018)**

Sl. No.	Name & type of prison	Number of Inmates enrolled in formal education programs				Number of Inmates enrolled in formal education programs				Number of Convicts currently working		Wages for Skilled Work	Wages for Semi-Skilled Work	Wages for Unskilled Work	Types of vocational training provided
		Convict		UTP		Convict		UTP		Male	Female				
		M	F	M	F	Male	Female	Male	Female						

## VII: COMMUNICATION WITH OUTSIDE WORLD

**A. Prison wise information on the process of mulaqat and other means of communication with the family (PERIOD - 1st January 2018- 31st December 2018)**

Sl. No.	Name & type of prison	Days of the week when Mulaqat is allowed	Timings of Mulaqat for each day	Periodicity of Mulaqat		Whether telephone facility available for both men & women inmates	Whether telephone facility available for both Undertrial & Convict	If Yes, periodicity for availing facility		If yes, duration of one phone call	If Yes, charges per call charged to an inmate	Whether any special facilities available for foreign national prisoners to contact their family? If so, please specify.
				UTP	Conv ict			UTP	Conv ict			

**B. Prison-wise information on lawyer-client interaction inside prisons (Period: 1st January 2018 - 31st December 2018)**

Sl. No.	Name & type of prison	Number of visits per week permitted to lawyers	Whether separate room for lawyer-client meeting available in prison? (YES/NO)	Duration permitted for lawyer-client interaction	Total number of visits by lawyers

## VIII: OVERSIGHT MECHANISMS

**A. Prison-wise information on constitution & functioning of Board of Visitors (Period: 1st January 2018 - 31st December 2018)**

Sl. No.	Name & type of Prison	Current status of Appointment and Constitution			Meeting and Visits		
		Whether NOVs currently appointed with the date of appointment	Total Number of NOVs appointed	Whether BOVs currently constituted with the date of constitution	No. of Visits by Official Visitors	No. of Visits by Non-Official Visitors	No. of meetings held by the BOVs

**B. Prison-wise information on constitution & functioning of Advisory Boards (Period: 1st January 2018 - 31st December 2018)**

S. No.	Name & type of Prison	Whether Advisory Board constituted for the district?	Number of meetings of Advisory Board held during the period	Number of persons recommended for release to the State Government	Number of persons released by the State Government

## IX: FOREIGN NATIONALS

**A. Prison-Wise Information on Foreign National Prisoners, Consular Access and Repatriation (Period: 1st January 2018 - 31st December 2018)**

Sl. No.	Name & type of prison	Total number of Foreign Nationals (As on 31st December 2018)				Number of Foreign Nationals provided consular access				Total number of foreign national prisoners who have contact with their family	Total number of Foreign nationals repatriated
		UTP	Convict	Detenue	Completed Sentence	UTP	Convict	Detenue	Completed Sentence		

## X: POLICE ESCORTS & VIDEO-CONFERENCING

### A. Prison-Wise Information on Court Productions and Availability of Police Escorts for Court Production and Medical Purposes (Period: 1st January 2018 - 31st December 2018)

S. No.	Name & type of prison	Name of district	Number of prisoners ordered by the court to be produced in various courts	Number of prisoners actually sent from prison to various courts	Number of prisoners not produced either physically or through video conferencing	Average number of police escorts provided on a daily-basis for production purposes	Number of inmates who were supposed to be sent from prison to a hospital/treatment place	Number of inmates who were actually sent from prison to a hospital/treatment place	Average number of police escorts provided on a daily-basis for medical purposes

### B. Prison-Wise Information on Video-Conferencing (Period: 1st January 2018 - 31st December 2018)

S. No.	Name & type of Prison	Name of district	Whether video conferencing facility functional in the prison	Number of units/computers set up for video-conferencing purposes	Total number of prisoners ordered by the court to be produced by video conferencing	Total number of productions which took place through video-conferencing for remand purposes	Total number of productions which took place through video-conferencing for trial purposes	Whether video conferencing facility used for any other purpose (please specify)

## XI: DEATHS IN PRISONS

### A. Prison-Wise Causes of Death in Prison (Period: 1st January 2018 - 31st December 2018)

Causes of Death	Male		Female	
	Undertrials	Convicts	Undertrials	Convicts
Natural Deaths				
Suicide				
Execution				
Deaths due to Assault by Outside Elements				
Murder by Inmates				
Deaths due To Firing				
Deaths due to Negligence / Excess by Jail Personnel Others				

### B. Prison-Wise and Prisoner-Wise Information on Deaths in Prisons (Period: 1st January 2018 - 31st December 2018)

Sl. No.	Name & type of Prison	Name of the Deceased	Legal Status of Deceased (Please mention whether Undertrial/ Convict/ Detenue/ Civil/ Other)	Date of Death	Date of informing NHRC about the death	Date of Initiation of Judicial Enquiry u/S.176, CrPC	Date of Post mortem	Whether Judicial Enquiry u/S.176, CrPC, Pending or Complete	If Complete, cause of death reported in judicial enquiry	Whether death was Natural or Unnatural

## XII: CONVICTS AND APPEALS

### A. Prison wise information on Appeals Filed for Convicts (Period: 1st January 2018 - 31st December 2018)

No. of Jail Appeals filed in High Court	No. of Jail Appeals filed in Supreme Court	No. of visits by representative from HCLSC	No. of visits by representatives from SCLSC	No. of video conferencing sessions conducted between HCLSC/SCLSC lawyer and prison inmate?

## XIII: BUDGET ALLOCATION

### A. Prison-Wise Budget Allocation and Expenditure

Sl. No.	Name & type of prison	Budget Allocation				Expenditure		
		2015-2016	2016-2017	2017-2018	2018-2019	2015-2016	2016-2017	2017-2018

### B. Please provide prison-wise annual financial statements for the financial years 2015-16, 2016-17 and 2017-18.

## XIV: PRESENCE OF NGOs

### A. NGOs Associated

Sl. No.	Name & type of prison	Name of the NGOs Working in the Prison as on 31 December 2018 and brief line on activities conducted	Name of the NGOs that were associated with prisons prior to 2015

# ANNEXURE – B

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## Enquiries made in the barracks

### *General questions:*

1. Whether there was anyone without legal representation?
2. Whether those with legal aid lawyers have been able to communicate with their lawyers?
3. Whether there was anyone who had been unable to inform their family members about their incarceration?
4. Whether there was anyone who has no visits from family or friends?
5. Whether there was anyone suffering from a major medical ailment, and was in need of attention?
6. How many were from another state?
7. How many from another country?

### *Specific questions to undertrial prisoners:*

1. How many had legal aid lawyers?
2. How many had missed more than 3 consecutive trial dates for lack of escorts?
3. Whether there was anyone in whose trial witness examination had not begun?
4. How many had been granted bail but had been unable to furnish surety?
5. If anyone was less than 18 years old at the time of arrest?
6. How many had spent more than 2 years in prison as undertrials?
7. How many have more than one body warrant, in addition to the case in which they are under arrest?
8. How many were facing charges under the POCSO Act?

### *Specific questions to convict prisoners:*

1. How many had their appeals pending in the High Court for over 5 years?
2. How many had their appeals pending in the Supreme Court for over 5 years?
3. How many had filed jail appeals through legal aid lawyers?
4. How many had been unable to establish contact with their legal aid lawyers?
5. How many had been unable to secure parole even once since the time of their conviction?
6. How many had been unable to secure prison labour and/or wages?
7. How many had not been given set-off in their final sentence for the period of time served as under trials?
8. How many had been unable to secure remission during their time as convicts?
9. If anyone was less than 18 years of age at the time of the offence?
10. How many had suffered prison punishment, including transfers?

# ANNEXURE – C

## Under-trial Prisoners Interview Guide

*Name of the Interviewer:*

*Name of the Prison:*

*Date:*

1.	Name of the inmate	
2.	Father's/Husband's Name	
3.	Date of Birth (Age/FIR)	
4.	Belongs to (name of the District and State)	
5.	Education & occupation	
6.	Caste & Religion	
7.	Date of Arrest	
8.	Offences charged under (sections and relevant Act)	
9.	Police Station	
10.	Court (first production/sentencing court)	
11.	Date/Day of first production	
12.	Days in police custody (including remand)	
13.	Custodial torture (details)	
14.	Date of admission to the prison	
15.	Medico-Legal Examination at Civil Hospital? Details	
16.	Medical examination at the prison (within how many days)?	
17.	Whether custodial violence was enquired by/informed to the examining doctor?	
18.	Any illness (before and after entering the prison)	
19.	Lawyer (no lawyer/private lawyer/legal aid lawyer) & details	
20.	Whether interacting with lawyer/family interacting with lawyer?	
21.	Legal aid awareness (at the time of admission/after admission)	
22.	Mulaqaat (duration, problems, satisfaction)	
23.	Whether any medical camps conducted in prison?	
24.	Whether using PCO/canteen facilities & issues with the same? (including source of money)	
25.	Quality of food, drinking water & bathing water?	
26.	Information on prison staff & Superintendent?	
27.	Incidents of in-fighting and solitary cells?	

### *Specific questions:*

1.	Time spent in jail	
2.	Whether court production takes place? (physical/VC)	
3.	Number of times produced/experience of VC/physical production	
4.	Awareness of the case status	
5.	Whether applied for bail?	
6.	Whether family informed of judicial custody?	
7.	Admission procedure (search and materials provided)	
8.	Comments & any other information	



# ANNEXURE – D

## Convict Prisoners Interview Guide

*Name of the Interviewer:*

*Name of the Prison:*

*Date:*

1.	Name of the inmate	
2.	Father's/Husband's Name	
3.	Date of Birth (Age/FIR)	
4.	Belongs to (name of the District and State)	
5.	Education & occupation	
6.	Caste & Religion	
7.	Date of Arrest	
8.	Offences charged under (sections and relevant Act)	
9.	Police Station	
10.	Court (first production/sentencing court)	
11.	Date/Day of first production	
12.	Days in police custody (including remand)	
13.	Custodial torture (details)	
14.	Date of admission to the prison	
15.	Medico-Legal Examination at Civil Hospital? Details	
16.	Medical examination at the prison (within how many days)?	
17.	Whether custodial violence was enquired by/informed to the examining doctor?	
18.	Any illness (before and after entering the prison)	
19.	Lawyer (no lawyer/private lawyer/legal aid lawyer) & details	
20.	Whether interacting with lawyer/family interacting with lawyer?	
21.	Legal aid awareness (at the time of admission/after admission)	
22.	Mulaqaat (duration, problems, satisfaction)	
23.	Whether any medical camps conducted in prison?	
24.	Whether using PCO/canteen facilities & issues with the same? (including source of money)	
25.	Quality of food, drinking water & bathing water?	
26.	Information on prison staff & Superintendent?	
27.	Incidents of in-fighting and solitary cells?	

### *Specific questions:*

1.	Time spent in jail	
2.	Conviction date	
3.	Punishment (jail term/fines)	
4.	Whether appeal filed or not? (HC/SC) status	
5.	Whether applied for bail?	
6.	Whether applied for parole? How many times?	
7.	Whether remission granted?	
8.	Occupation in prison? Wages and working hours?	
9.	Whether bank account opened?	
10.	Whether undertaken any vocational courses inside the prison? Details	
11.	Comments & any other information	

# ANNEXURE – E

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## Women Prisoners Interview Guide

*Name of the Interviewer:*

*Name of the Prison:*

*Date:*

1.	Name of the inmate	
2.	Father's/Husband's Name	
3.	Date of Birth (Age/FIR)	
4.	Belongs to (name of the District and State)	
5.	Education & occupation	
6.	Caste & Religion	
7.	Date of Arrest	
8.	Offences charged under (sections and relevant Act)	
9.	Police Station	
10.	Court (first production/sentencing court)	
11.	Date/Day of first production	
12.	Days in police custody (including remand)	
13.	Custodial torture (details)	
14.	Date of admission to the prison	
15.	Medico-Legal Examination at Civil Hospital? Details	
16.	Medical examination at the prison (within how many days)?	
17.	Whether custodial violence was enquired by/informed to the examining doctor?	
18.	Any illness (before and after entering the prison)	
19.	Lawyer (no lawyer/private lawyer/legal aid lawyer) & details	
20.	Whether interacting with lawyer/family interacting with lawyer?	
21.	Legal aid awareness (at the time of admission/after admission)	
22.	Mulaqaat (duration, problems, satisfaction)	
23.	Whether any medical camps conducted in prison?	
24.	Whether using PCO/canteen facilities & issues with the same? (including source of money)	
25.	Quality of food, drinking water & bathing water?	
26.	Information on prison staff & Superintendent?	
27.	Incidents of in-fighting and solitary cells?	

***Specific questions:***

1.	Time spent in jail	
2.	Whether Court Production happening? (Physical/VC)	
3.	Number of times produced/experience of VC/Physical production	
4.	Awareness of the case status	
5.	Whether applied for Bail?	
6.	If Convict, Date of conviction, Punishment/fine?	
7.	If Convict, whether appeal filed or not?	
7.	Whether family informed of Judicial Custody?	
8.	Admission Procedure (Search and Materials provided)	
9.	If convict, work in prison, wages, working hours, and Bank Account?	
10.	Whether sanitary napkins provided? (frequency, quantity?) (Whether being charged for the same)	
11.	Presence of lady doctor? (frequency of visit, gynecologist available or not?)	
12.	Whether any women specific medical camps are conducted in prison?	
13.	Separate diet for pregnant or ill women?	
14.	Separate diet/additional items for children?	
15.	Comments & any other information	

# ANNEXURE – F

## Young Offenders Interview Guide

*Name of the Interviewer:*

*Name of the Prison:*

*Date:*

1.	Name of the inmate	
2.	Father's/Husband's Name	
3.	Date of Birth (Age/FIR)	
4.	Belongs to (name of the District and State)	
5.	Education & occupation	
6.	Caste & Religion	
7.	Date of Arrest	
8.	Offences charged under (sections and relevant Act)	
9.	Police Station	
10.	Court (first production/sentencing court)	
11.	Date/Day of first production	
12.	Days in police custody (including remand)	
13.	Custodial torture (details)	
14.	Date of admission to the prison	
15.	Medico-Legal Examination at Civil Hospital? Details	
16.	Medical examination at the prison (within how many days)?	
17.	Whether custodial violence was enquired by/informed to the examining doctor?	
18.	Any illness (before and after entering the prison)	
19.	Lawyer (no lawyer/private lawyer/legal aid lawyer) & details	
20.	Whether interacting with lawyer/family interacting with lawyer?	
21.	Legal aid awareness (at the time of admission/after admission)	
22.	Mulaqaat (duration, problems, satisfaction)	
23.	Whether any medical camps conducted in prison?	
24.	Whether using PCO/canteen facilities & issues with the same? (including source of money)	
25.	Quality of food, drinking water & bathing water?	
26.	Information on prison staff & Superintendent?	
27.	Incidents of in-fighting and solitary cells?	

### *Specific questions:*

1.	Time spent in jail	
2.	Age at the time of offence?	
3.	Any documents to confirm age?	
4.	Awareness about being a juvenile?	
5.	Was this factor mentioned to the judge? Action taken by the court?	
6.	Ossification test done?	
7.	Place of confinement? Separate barrack or not?	
8.	Whether jail authorities aware of juvenility? If yes, action taken?	
9.	Work inside the prison?	
10.	Comments & any other information	

# ANNEXURE – G

## Foreign National Prisoners Interview Guide

*Name of the Interviewer:*

*Name of the Prison:*

*Date:*

1.	Name of the inmate	
2.	Father's/Husband's Name	
3.	Date of Birth (Age/FIR)	
4.	Belongs to (name of the District and State)	
5.	Education & occupation	
6.	Caste & Religion	
7.	Date of Arrest	
8.	Offences charged under (sections and relevant Act)	
9.	Police Station	
10.	Court (first production/sentencing court)	
11.	Date/Day of first production	
12.	Days in police custody (including remand)	
13.	Custodial torture (details)	
14.	Date of admission to the prison	
15.	Medico-Legal Examination at Civil Hospital? Details	
16.	Medical examination at the prison (within how many days)?	
17.	Whether custodial violence was enquired by/informed to the examining doctor?	
18.	Any illness (before and after entering the prison)	
19.	Lawyer (no lawyer/private lawyer/legal aid lawyer) & details	
20.	Whether interacting with lawyer/family interacting with lawyer?	
21.	Legal aid awareness (at the time of admission/after admission)	
22.	Mulaqaat (duration, problems, satisfaction)	
23.	Whether any medical camps conducted in prison?	
24.	Whether using PCO/canteen facilities & issues with the same? (including source of money)	
25.	Quality of food, drinking water & bathing water?	
26.	Information on prison staff & Superintendent?	
27.	Incidents of in-fighting and solitary cells?	

### *Specific questions:*

1.	Time spent in jail	
2.	Contact with respective embassy/ Whether embassy informed or not?	
3.	Possession of legitimate travel documents/ID?	
4.	Contact with family?	
5.	Any special measures (communication, diet etc.)	
6.	Is there any language barrier?	
7.	Place of confinement? Separate barrack or not?	
8.	Is there any kind of discrimination by virtue of being a foreign national prisoner?	
9.	Comments & any other information	

# ANNEXURE – H

## NHRC's Proforma for First Medical Examination of Prisoners

के.एस. मणि  
सचिव  
K.S. MONEY  
Secretary General



राष्ट्रीय मानव अधिकार आयोग  
फरीदकोट हाऊस, कोपर्निकस मार्ग  
नई दिल्ली- 110 001 भारत  
National Human Rights Commission  
Faridkot House, Copernicus Marg,  
New Delhi - 110 001 INDIA

D.O. No. 4/7/2010-PRP&P

17<sup>th</sup> May, 2010

Dear Mr. Prasad,

Please refer to the Commission's letter No. 4/3/99-PRP&P dated 11.02.1999 regarding medical examination of prison inmates.

Concerned with death of prisoners in various jails due to spread of contagious diseases like Tuberculosis, the Commission had vide letter dated 11.02.1999, referred to above, advocated their medical examination at the time of entry to the jail as well as periodically thereafter as per proforma enclosed as Appendix-I. This was intended to facilitate provision of timely and effective medical treatment to the prisoners with medical problems.

It has been observed that a large number of prisoners die of Tuberculosis in the jail and HIV patients are quite vulnerable to Tuberculosis. It is, therefore, imperative that thorough medical examination should be conducted of all the prisoners at the time of their admission in jail in order to find out whether the prisoner is suffering from Tuberculosis, lung disease or HIV, or any other disease.

Keeping these considerations in mind, the Commission has made some modifications to the proforma earlier prescribed for the medical examination incorporating tests for Tuberculosis. The revised proforma is enclosed as Appendix-II.

You are requested to circulate the revised proforma to all the prison administrators in your State/ UT in order to ensure that medical examinations of all the prison inmates is carried out in accordance with the revised proforma, at the time of their entry into prison and at regular intervals.

With regards,  
^

Yours sincerely,

  
( K S Money )

Shri S V Prasad,  
Chief Secretary,  
Government of Andhra Pradesh, and  
Secretariat,  
Hyderabad-500 022.

*all other chief secretaries  
Administrators of the State/UTs as per list attach*

18 MAY 2010

**PROFORMA FOR HEALTH SCREENING OF PRISONERS  
ON ADMISSION TO JAIL**

Case No. ....

Name .....Age.....Sex.....Thumb impression.....

Father's/ Husband's Name.....Occupation.....

Date and time of admission in the prison.....

Identification marks.....

1. Previous History of illness:

(a) Are you suffering from any disease if so, the name of the disease: Yes/No

(b) Are you now taking medicines for the same? Yes/No

(c) Are you suffering from cough that has lasted for 3 weeks or more? Yes/No

2. History of drug abuse, if any:

Any information the prisoner may volunteer:

3. Physical Examination:

Height.....cms Weight.....Kg. Last menstrual period.....

(a) Pallor: Yes/No (b) Lymph Node enlargement: Yes/No

(c) Clubbing: Yes/ No (d) Cyanosis : Yes/ No

(e) Icterus : Yes/ No (f) Injury, if any.....

4. Pathological Tests/ X-ray for TB

5. Blood test for Hepatitis/ STD including HIV (with the informed consent of the prisoner whenever required by Law).

6. Any other.....

7. Systemic Examination

(i) Nervous system

(ii) Cardio Vascular System

(iii) Respiratory system

(iv) Eye, ENT

(v) Abdomen (Gastro Intestinal System (GIT) and other organs)

(vi) Teeth and gum

(vii) Urinary system.

P.T.O.

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment.

Date of commencement of medical investigation.....

Date of completion of medical investigation.....

Signature and Seal of Medical Officer



# ANNEXURE – I

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## Note on Successful Handling of COVID-19 Pandemic in the Prisons in Karnataka as provided by the Department of Prisons and Correctional Services

COVID-19 pandemic has been successfully handled in the prisons in Karnataka State since its onset in March 2020. From the very beginning, all preventive and precautionary measures have been taken proactively in all the prisons in the state to contain spread of COVID-19 pandemic.

On a proactive note by the Karnataka State Prisons, even before the government made formal announcements on COVID-19 precautions, a detailed circular on 04.03.2020 was issued by the Director General of Police, Prisons and Correctional Services directing all the Prison Superintendents in the state to take precautionary measures to contain spread of COVID-19 pandemic in prisons in the state.

These measures included creation of isolation wards, quarantine of new prisoners, screening of prisoners for cough, cold or fever or any other symptom of COVID-19. Directions were also issued for ensuring availability of medical assistance, screening of staff and other service providers for cough, cold or fever or any other symptom of COVID-19 at the entry points in the prisons. Directions were also issued for ensuring sanitization and cleanliness of the prison campus, availability of face masks, suspension of entry of visitors to prisons and stoppage of other group activities, providing awareness and training to the prisoners and prison staff on transmission of COVID-19 among others.

As per the directions of the Hon'ble Supreme Court of India in Suo Motu Writ Petition (CIVIL) NO.1/2020, IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS, Order dated: 23.03.2020, a 'State Level Monitoring Team' was setup on 24-03-2020 under the Chairmanship of the Director General of Police, Prisons and Correctional Services, Karnataka State to monitor the COVID-19 situation in the prisons in the state. In addition COVID-19 'Special Response Teams' comprising of the Prison Superintendents, other Prison officers and Medical Officers were constituted for each of the Prisons in the State to deal with prison specific response for preventing and containing spread of COVID-19 pandemic in the prisons in the state. Similarly 'Nodal Medical Institutions' were identified for each of the prisons in the State for treatment of prisoners in case of COVID-19 infection.

Similarly as per directions of the Hon'ble Supreme Court of India dated: 23.03.2020, a 'High Powered Committee' for the state was constituted on 26.03.2020, headed by the Chairman of the 'Karnataka State Legal Services Authority', with the Principal Secretary, Home and the Director General of Police, Prisons and correctional services as members, to determine the class of prisoners who can be released on parole or on interim bail for decongesting the prisons, in view of COVID-19 pandemic.

'High Powered Committee' (HPC) in its meetings held on 26.03.2020, 27.03.2020 and 30.03.2020 decided to release the under-trial prisoners on interim bail and the convict prisoners on parole

to decongest the prisons in the state and for preventing the spread of COVID-19. HPC laid down specific criteria for release of under-trial prisoners on bail and convict prisoners on parole. Accordingly, the 'District Legal Committees' identified and released 790 eligible under-trial prisoners on interim bail and the 408 eligible convict prisoners on parole. Facility of e-filing was provided to the prisoners to file bail applications from the prisons.

For maintaining social distance in the Prisons, additional capacity to house 1,465 prisoners was created in various prisons by putting unused spaces to use. Due to this innovative exercise, the occupancy percentage of the prisons which on 23.03.2020 was 110% came down to 95.1% on 19.04.2020. To further decongest the overcrowded prisons, 962 prisoners were temporarily shifted from the overcrowded prisons to other prisons where space was available.

In order to educate and make prisoners aware on preventive measures on COVID-19, 'Public Address Systems' were installed in all the prisons in the State. All the Prison Superintendents were directed to follow all the guidelines and protocols for management of COVID-19 in the Prisons in the State.

Government of Karnataka sanctioned a budget of ₹2.00 Crores for 2020-2021 and ₹5.00 Crores for 2021-22 for containment measures of COVID-19 in the Prisons in the State. Using this additional fund, COVID-19 Safety and Medical equipments including PPE Kits, Infrared Thermometers, Pulse Oximeters, Oxygen Concentrators, Oxygen Cylinders, Oxygenated Beds, Nebulizers, Hand Gloves, Disinfectant Tunnels, Sanitizers, Sodium Hypochlorite Solution, Sprayers, Face Masks, Face Shields, Head Visors etc. were purchased.

As visitors to the prisons were not allowed and hence to overcome the inconvenience of the prisoners for meeting their family members, friends and relatives, liberal use of the Prison Call System by the prisoners was allowed. 'e-mulakat' was also started in the Prisons in the State from December 2020. Since then 26,172 prisoners have availed 'e-mulakat' facility which facilitates 'virtual meeting' of the prisoner with their family members, friends and relatives.

All the Prison Superintendents in the State were also directed to get COVID-19 test conducted when the prisoners returns to the prison after being produced before the Court. Based on Ministry of Home Affairs (MHA), New Delhi guidelines dated: 20.04.2021, all the Prison Superintendents in the State were directed to follow test-track-treat protocol, which includes aggressive testing for early detection of COVID-19 positive cases, timely isolation and treatment.

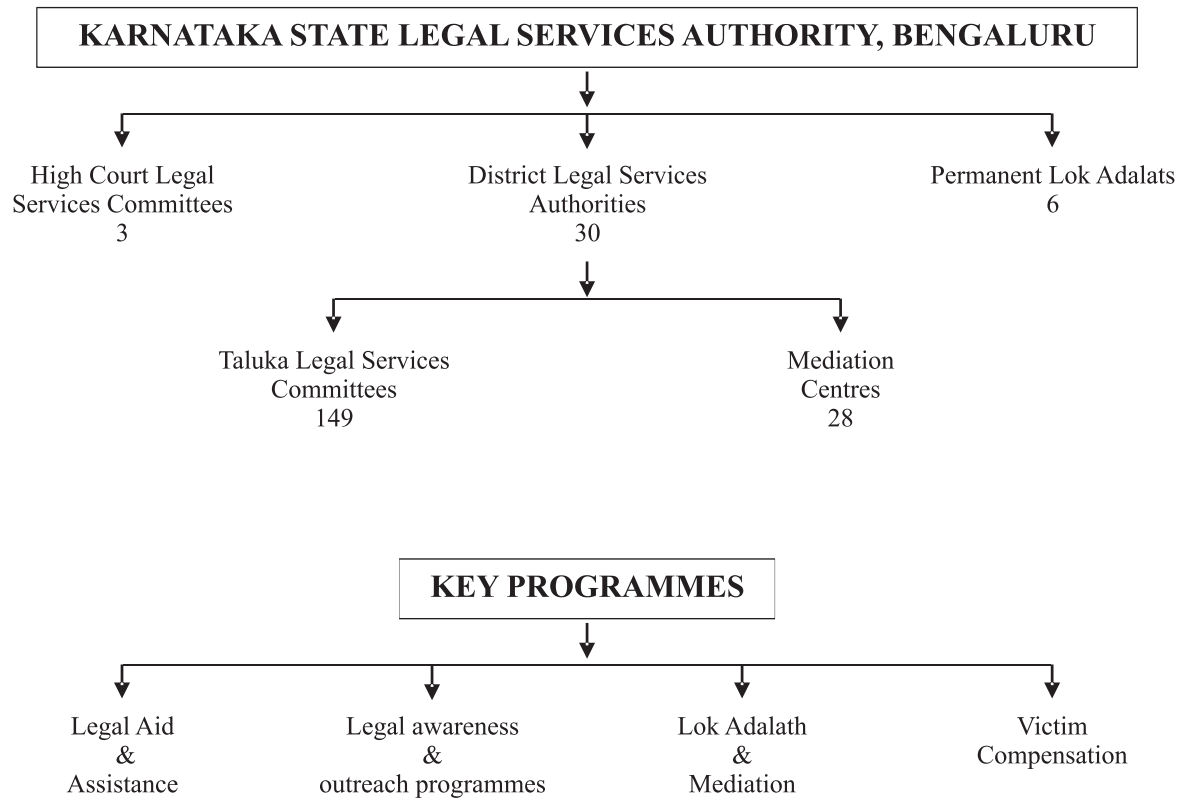
At the same time, on priority basis, all the prisoners and the prison staff in consultation with State Health Authorities were vaccinated for COVID-19 by setting up special vaccination camps in prison complexes. 100% vaccination for both prisoners and prison staff were achieved. This is how prisons in Karnataka successfully contained spread of COVID-19.

# CONTACT DETAILS OF DISTRICT LEGAL SERVICES AUTHORITIES IN KARNATAKA

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# KARNATAKA SLSA Programs





# CHRI Programmes

CHRI seeks to hold the Commonwealth and its member countries to high standards of human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

## 1. Access to Justice (ATJ)

**Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

**Prison Reforms:** CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstay, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

## 2. Access to Information

\* **Right to Information:** CHRI's expertise on the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised the efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, enabling CHRI bring valuable insights into countries seeking to evolve new RTI laws.

\* **Freedom of Expression and Opinion -- South Asia Media Defenders Network (SAMDEN):** CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with RTI movements and activists.

## 3. International Advocacy and Programming

Through its flagship Report, *Easier Said Than Done*, CHRI monitors the compliance of Commonwealth member states with human rights obligations. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7 (see below), monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

## 4. SDG 8.7: Contemporary Forms of Slavery

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.' In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practices, and to strengthen collective advocacy.



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