

CIRCLE OF JUSTICE: A National Report on Under Trial Review Committees

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For the first time, a national watch reportⁱⁱ on the functioning of Under Trial Review Committees (UTRCs) has been recently published. The report titled, '**Circle of Justice: A National Report on the Under Trial Review Committees**' is a pioneering effort by the Commonwealth Human Rights Initiative (CHRI)ⁱⁱⁱ aimed to check compliance with the directions of the Supreme Court in '*Re-Inhuman Conditions in 1382 Prisons*'^{iv}.

In 2013, based on a letter by the then Chief Justice of India, Justice R.C. Lahoti, the Supreme Court in a case named '*Re-Inhuman Conditions in 1382 Prisons*' has *suo moto* taken up by writ petition the issue of prison conditions and particularly the situation of undertrial prisoners. To date it has passed a series of orders. The Supreme Court in its order, dated 24 April 2015, 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 meets every quarter. UTRC is a district level committee headed by the District & Sessions Judge, with District Magistrate and Superintendent of Police and Secretary, District Legal Services Authority (DLSA) as members. The court relied on the MHA advisory issued on 17 January 2013 for the purpose of implementation of S.436A of the Code of Criminal Procedure, 1973 (the Code).^v 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.

With its insistence on the constitution of UTRCs in each district, regular prison visits, checking length of stay and legal representation of undertrials the Supreme Court has moved the periodic review of undertrials from the realm of uncertainty and discretion to the realm of the mandatory for every state.

The Need for UTRCs: Prisons in India are chronically overcrowded. This needs repair. Sixty-seven percent of the prison population comprises undertrials – those who are awaiting or undergoing trial and not yet proven guilty. Recently released figures^{vi} show India's 1401 jails house 4,19,623 inmates. Average overcrowding stands at 114.4 percent. The 10-year trend from 2006 to 2015 shows an increase of 15 per cent in undertrial population. Hon'ble Justice Madan B. Lokur in '*Re-Inhuman Conditions in 1382 Prisons*' observed, "... the situation continues to be not only tragic but also pathetic.... Learned Amicus has drawn our attention vide his Note dated 20.9.2016 to overcrowding to the extent of 150% or more in jails in Assam (8), Chhattisgarh (17), Jharkhand (3), Karnataka (7), Kerala (21), Madhya Pradesh (5), Maharashtra (16), Rajasthan (21), Uttar Pradesh (47) and Delhi (12)".^{vii}

This tells half the story. Prisoners awaiting trial have to wait longer than they did a decade ago before being released on bail and trials are taking an ever longer time to complete. In 2001, 19 percent spent more than a year in prison awaiting trial, now 25 percent do. One fourth of undertrial prisoners have been inside prison for more than a year. The proportion of prisoners who have spent less than three months in prison has decreased from 40 percent in 2001 to 35 percent in 2015.

CHRI's work on undertrial review committees: The Commonwealth Human Rights Initiative (CHRI) believes that the effective functioning of UTRCs directly impacts the conditions of overcrowding in prisons and complements the role of other oversight bodies. As part of our concern to reduce pre-trial detention and reform of prison oversight mechanisms, we have been monitoring the functioning of a similar mechanism^{viii} in Rajasthan since 2009-10. CHRI, through its watch reports, has been able to demonstrate that in a span of five years with constant monitoring of the judiciary, executive and civil

society, an earlier defunct mechanism in Rajasthan is revived to work efficiently to the cause of access to justice for all. With this background, CHRI sought to intervene in the '*Re-Inhuman Conditions in 1382 Prisons*' case. Instead, the court directed it to assist the *amicus curiae* which led to CHRI's submission on compliance to the court's 24 April 2015 order and recommendations to expand the mandate to cover other statutory eligibilities.

About the report: In keeping with its work of monitoring the nature and effectiveness of India's prison oversight systems, CHRI filed right to information requests in early November 2015 to all State Legal Services Authorities. The report is based on responses from 26 States and Union Territories^x that provided information under the Right to Information Act, 2005. The data collected is for the period May 2015 to October 2015, the first six months since the order dated 24 April 2015. The mandate of the UTRCs has been expanded by the Hon'ble Court in its February 2016 and May 2016 orders to include eleven more categories of prisoners under review. However, this report pertains to the original mandate set out in the 24 April 2015 order.

Findings & Recommendations at a Glance: Broadly, the report aims to evaluate the extent to which UTRCs are proving to be effective mechanisms in safeguarding the right to liberty of an individual behind bars. The report reveals that though there is some compliance it is patchy and partial and the impact is uncertain. Most importantly, it is not clear if the purpose – no one must be detained for more than the period required by law – is being achieved. While the report highlights some good practices prevalent in many districts which could be replicated in other places, it also points out implementation gaps observed during the analysis of the minutes of the meetings.

The findings show that only 149 districts out of 357 districts which responded held meetings within three months and therefore 60 percent of the districts did not comply with the mandate of holding quarterly meetings. Only 54 districts reviewed all the three categories of undertrial cases. This essentially means that 85 percent did not follow the full mandate as directed by the Supreme Court.

UTRCs in 16 states recommended 2112 cases for release which led to the release of 515 undertrials. This report finds the follow-up action by the UTRCs to track the implementation of their own recommendations of release to be weak. Therefore, it becomes difficult to assess the number of beneficiaries and the impact of the functioning of UTRCs leaving the circle of justice incomplete. Overall, the top five performing states are Goa, Tripura, Rajasthan, Telangana and Himachal Pradesh. Among the union territories, Dadra & Nagar Haveli and Chandigarh top the charts.

Nevertheless, it is a good beginning. There is hope that these shortcomings are temporary and sustained attention from the court, legal aid bodies and the civil society will increase compliance. At the same time, there is more that could be done and CHRI's report provides detailed recommendations to realise the full potential of this powerful multi-agency mechanism –

- Since every case would require a follow up unique to the circumstances of the case, period of detention, and offence allegedly committed, the follow up of recommended cases should be prompt. The quarterly UTRC meetings should be supplemented with monthly 'tracking meetings' of the DLSA with the panel lawyers to track the status of the directions/recommendations given.
- Based on the good practice of reviewing additional categories of cases by the various UTRCs it is recommended that the mandate must include the following cases of undertrials who –
 - a) do not have a lawyer and are eligible for legal aid - this is mainly because Secretary, DLSA is the member of the UTRC and coordination between the DLSA and the prison is much needed to provide legal aid at the earliest to the accused;

- b) have not been physically produced for the last two consecutive hearings due to lack of police escorts; and
 - c) are charged with offences punishable with death sentence, and thus are beyond the purview of section S.436A CrPC. Review be directed to ensure that their trials are also complete within a reasonable period. The UTRC be directed to look into the reasons for delay in trial beyond a reasonable period and recommend for prompt disposal of their cases.
- A plan of action must be created for lawyers with specific timelines for mandatory visit to prisons, communication with the undertrials and applying strategies for different kinds of cases to try for release.
 - The SLSAs must develop reporting and monitoring guidelines and formats for DLSAs in order to assess the effectiveness of the functioning of UTRC in every district.

CHRI has suggested formats for preparation of lists, recording minutes and quarterly reporting.

This report is presented to all stakeholders with the aim that progressive steps taken by the Hon'ble Court should be realised to their fullest potential. The major challenge is to embed the practice of accountability, to ensure that undertrials are not deprived of their rights, jails get less crowded and the situation improves incrementally.

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ⁱⁱ This article is an extract from the 'Circle of Justice: A National Report on the Under Trial Review Committees'. For the electronic version of the full report, please visit [here](#).

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

^{iv} Writ Petition (Civil) 406/2013.

^v S.436A – Maximum period for which an under trial prisoner can be detained.

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation – In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

^{vi} National Crime Records Bureau's Prison Statistics India 2015.

^{vii} An extract from the Supreme Court order dated 3 October 2016 in W.P. (Civil) No. 406 of 2013 titled '*Re-Inhuman Conditions prevailing in 1382 Prisons in India*'.

^{viii} Rajasthan's Periodic Review Committees or *Avadhik Samiksha Samitis* were established in every district in 1979 by a government order mandated to review the cases of undertrials to check unnecessary detention. For further details see – '[ROAD TO RELEASE: Third Watch Report on Rajasthan's Periodic Review Committees](#)'

^{ix} Andaman & Nicobar Islands, Bihar, Chandigarh, Chhattisgarh, Dadra & Nagar Haveli, Daman & Diu, Delhi, Goa, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Meghalaya, Mizoram, Odisha, Puducherry, Punjab, Rajasthan, Sikkim, Tamil Nadu, Telangana, Tripura, Uttar Pradesh & West Bengal.