

E. GUIDANCE NOTE: REVISED MANDATE FOR UNDER TRIAL REVIEW COMMITTEES & SUGGESTED ACTION

This document puts together the mandate of the UTRCs as has been envisaged by the Supreme Court¹ in an ongoing writ petition titled, 'Re Inhuman conditions in 1382 prisons'². The mandate of the committee has been further expanded by the Supreme Court by virtue of its order dated 5 February 2016 and 06 May 2016. With this document we not only put together all the categories of prisoners that are to be reviewed by the Under trial Review Committees (UTRCs) in their quarterly meetings, but also provide our humble suggestions on what action can be taken or recommended by the UTRC in each of the categories. These are based on our experiences from working closely with the periodic review committees³ in Rajasthan since the last 5 years;⁴ and are also in response to queries that have been raised to us, time and again, by members of some of the UTRCs in West Bengal. The table below lists down the various categories of cases that must be reviewed by every Under trial Review Committee as directed by the Hon'ble Supreme Court.

Original mandate provided on 24 April 2015

Mandate expanded on 05 February 2016

Mandate expanded on 06 May 2016

| S.No. | Category | Process to establish eligibility | Suggested Action |
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| 1 | Undertrials eligible under Section 436A of the Code (Order dated 24 April 2015) | Half period of maximum prescribed imprisonment is calculated from the date of arrest and the maximum prescribed imprisonment provided in the First Schedule of the Code of Criminal Procedure, 1973 (the Code). | Recommend to the concerned court for release on personal bond with or without sureties. |
| 2 | Undertrials released on bail by the Court but have not been able to furnish sureties ⁵ (Order dated 24 April 2015) | This must be confirmed by the concerned court as this information is not provided to the prison. | <ul style="list-style-type: none"> • Direct a panel lawyer to meet the concerned prisoner and after seeking the necessary details to file an application before the concerned court under S.440 of the Code. • In cases where accused is represented by a private lawyer, direct prison authorities to inform the prisoner who can communicate to the lawyer to file for reduction of bail bond under S.440 of the Code. • Direct Probation Officer/ Welfare Officer, if appointed, to get in touch with the family of the accused in order to furnish sureties. • Committee could also recommend release of undertrial on personal bond according to the directions given under Moti Ram & Ors vs State of M.P. [1978 AIR 1594, 1979 SCR (1) 335] |

¹ See order dated 24 April 2015.

² WP (Civil) No. 406/2013.

³ Rajasthan's Periodic Review Committees or *Avadhik Samiksha Samitis* were established as early in 1979, by a government order, mandated to review the cases of undertrials every month.

⁴ For more information on our work on UTRC, please visit the below link: <http://www.humanrightsinitiative.org/content/undertrial-review-committees>.

⁵ By the Supreme Court order dated 07 August 2015, the Secretary of the District Legal Services Authority was added as the fourth member of the Committee and therefore the directions given to the legal services bodies as regards to undertrials who are granted bail but unable to furnish sureties and those accused of compoundable offences form part of the mandate of the UTRC.

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| 3 | <p>Undertrials accused of compoundable offences⁶ (Order dated 24 April 2015)</p> | <ul style="list-style-type: none"> • The two lists of offences, corresponding sections and the person by whom offence may be compounded are provided under S.320 of the Code.⁷ • The offences mentioned in sub-section (1) can be compounded without the permission of the Court whereas the offences mentioned in sub-section (2) can be compounded only with the permission of the Court. | <ul style="list-style-type: none"> • Direct the concerned court to make efforts to compound the cases. • Concerned Court to direct the prosecution to consider the compounding of offence in consultation with the victim. • Direct a panel lawyer to visit the accused in prison and explain the provisions of S.320 of the Code. If accused is not represented, direct a panel lawyer to file an application before the concerned court. In cases where accused is represented by a private lawyer, after being informed of the provisions by a panel lawyer, the prisoner can communicate to the lawyer to file the application in his behalf. • Offence must be compounded according to the provisions of S.320 of the Code. |
| 4 | <p>Undertrials eligible under Section 436 of the Code (Order dated 05 February 2016)</p> | <ul style="list-style-type: none"> • S.436 deals with cases of bailable offences • Whether an offence is bailable or non-bailable is provided in the First Schedule of the Code • The 2005 amendments to the Code provides that the person be considered indigent if he/she is unable to provide surety within seven days from the date of his/her arrest. | <ul style="list-style-type: none"> • Direct a panel lawyer to file an application for release on personal bond without sureties as soon as the person completes seven days in judicial custody. • If seven days have already been over, then recommend the concerned court to release on personal bond as per S. 436 of the Code. |
| 5 | <p>Implementation of Probation of Offenders Act, 1958 (Order dated 05 February 2016)</p> | <ul style="list-style-type: none"> • The benefit of S.3 could only be given to first time petty offenders convicted of offences punishable with not more than two years of imprisonment whereas S.4 could be applied, to all offenders, including repeat offenders⁸, who are found guilty of committing any offence other than punishable with death or life imprisonment. • The benefit of S.3 could be given to any person who is found guilty of committing offence punishable under any of the sections mentioned herein: <ul style="list-style-type: none"> o Section 379, 380, 381, 404, 420 of the IPC. o Any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law • Court have the power to release any offender on probation of good conduct under Section 4 if: <ul style="list-style-type: none"> o A person is found guilty of committing any offence other than punishable with death or life imprisonment o Court is of opinion that having regard to the circumstances of the case including the nature of the offence and the character of the offence, it is expedient to release him on probation of good conduct. | <p>Recommend to the concerned court that if the person is found guilty in the course of trial, benefit of S.3 or S.4 of the Probation of Offenders Act, 1958, could be given to the accused.</p> |

⁶ By the Supreme Court order dated 07 August 2015, the Secretary of the District Legal Services Authority was added as the fourth member of the Committee and therefore the directions given to the legal services bodies as regards to undertrials who are granted bail but unable to furnish sureties and those accused of compoundable offences form part of the mandate of the UTRC.

⁷ While identifying eligible cases, please take note of state amendments.

⁸ In **Kuldip Singh alias Pappi Singh alias Pappa v. State of Punjab, 1984 (1) Crimes 140 (P&H)**, it was provided that there is no bar in releasing a person on probation even if he had been convicted previously.

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| 6 | <p>Convicts who have undergone their sentence or are entitled to release because of remission granted to them (Order dated 05 February 2016)</p> | <p>State rules contain provisions on premature release/shortening of sentence</p> | <p>Direct the Superintendent of Prison to send the names of eligible convicts to the State Board, established for the purpose, as soon as they become eligible under the state rules.</p> |
| 7 | <p>Undertrials eligible to be released on bail under Section 167(2)(a) (i)&(ii) of the Code – a. where investigation is not completed in 90 days; b. where investigation is not completed in 60 days; c. where investigation is not completed in 180 days [S.167 read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity)] (Order dated 06 May 2016)</p> | <ul style="list-style-type: none"> • 60/90/180 days, calculated from the date of first remand and depends on maximum prescribed imprisonment in the First Schedule of the Code. • This must be confirmed by the concerned court as the date of first remand is not provided to the prison. | <ul style="list-style-type: none"> • Recommend to the concerned court to release on bail or personal bond. • In case the presiding officer does not have requisite jurisdiction, UTRC must recommend that a prisoner petition for bail be filed in the appropriate court on next date of hearing of accused person. |
| 8 | <p>Undertrials imprisoned for offences which carry a maximum punishment of 2 years (Order dated 06 May 2016)</p> | <p>Please refer to Annexure A which contains the list of IPC offences with the maximum imprisonment of 2 years.</p> | <ul style="list-style-type: none"> • Recommend to the concerned court that if the person is found guilty in the course of trial, benefit of S.3 or S.4 of the Probation of Offenders Act, 1958, could be given to the accused. • Except for 11 offences (Ss. 153AA, 170, 229A, 241, 254, 267, 274, 295, 353, 354, 354-A, IPC) mentioned in the list, all other offences are bailable. Therefore, Committee must recommend the release of eligible persons under S.436 of the CrPC. • For under trials found eligible under the abovementioned 11 offences, Committee could recommend their release on personal bond under the direction given under Moti Ram & Ors vs State of M.P. [1978 AIR 1594, 1979 SCR (1) 335] |
| 9 | <p>Persons detained under Chapter VIII of the Code, i.e. under Sections 107, 108, 109 and 151 of the Code (Order dated 06 May 2016)</p> | <p>Sections are mentioned on the warrant of the court and Committee must seek this information from the prison authorities before the meeting.</p> | <ul style="list-style-type: none"> • Recommend to the District Magistrate to take action according to S.123 of the Code. S.123 empowers the District Magistrate, in the case of an order passed by an Executive Magistrate under Section 117, or the Chief Judicial Magistrate, in any other case either, to release/discharge such persons with or without conditions or to make an order reducing the amount of the security or the number of sureties or the time for which security has been required. • It should be clear that these provisions are preventive and not punitive in nature. |

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| 10 | Undertrials who are sick or infirm and require specialized medical treatment (Order dated 06 May 2016) | These cases could only be identified with the help of the prison authorities who must keep a watch on undertrials who are diagnosed with long or terminal illness or any disability at the time of admission or later. Committee must seek this information from the prison authorities before the meeting. | Seek report from medical board and recommend to the concerned court under S.437 of the Code which provides for a special consideration in granting bail for undertrials who are sick or infirm. |
| 11 | Undertrial women offenders (Order dated 06 May 2016) | <ul style="list-style-type: none"> As there are separate reformatories/jails in some districts or separate wards within the prison premises, cases of women offenders must be considered by the Committee of that particular district. Prison authorities must apprise the Committee members about specific cases that may merit consideration by the Committee. | <ul style="list-style-type: none"> Recommend to the concerned court to consider the case as per S.437 of the Code which provides for a special consideration for women undertrials in cases as deem fit by the Committee. While considering cases the Committee may also take into account the directions given under R. D. Upadhyay vs State of A.P. & Ors. (AIR 2006 SC 1946). |
| 12 | Undertrials , first time male offenders between the ages 19 and 21 who are in undertrial custody for offences punishable with less than 7 years of imprisonment and have completed atleast 1/4th of the maximum sentence possible (Order dated 06 May 2016) | <ul style="list-style-type: none"> This is a special category which though does not find mention specifically under the Code or any other law but helps in keeping a check on unnecessary detention of young offenders. A separate list of such offenders must be sought by the Committee from the prison authorities before the meeting. | <ul style="list-style-type: none"> Recommend to the concerned court that if the person is found guilty in the course of trial, benefit of S.3 or S.4 of the Probation of Offenders Act, 1958, could be given to the accused. |
| 13 | Undertrials of unsound mind (Order dated 06 May 2016) | <p>Committee must seek from the prison authorities the following before the meeting –</p> <ol style="list-style-type: none"> List of mentally ill prisoners whose trial has been suspended and their family members are willing to take them in their care List of mentally ill prisoners whose trials have been suspended for more than six month on account of their incapacity to stand trial | <ul style="list-style-type: none"> Persons of unsound mind must be dealt under Chapter XXV (25) of the Code. Recommend to the concerned court to release on bail mentally ill prisoners whose trial has been suspended and their family members are willing to take them in their care under S.330 of the Code. Recommend to the concerned court to take appropriate action as per section 328, 329 & 330 of the Code for mentally ill prisoners whose trials have been suspended for more than six month on account of their incapacity to stand trial. In some cases the whereabouts of family are unknown. In such cases Committee must seek help from prison authorities/welfare officers in identifying the family of a mentally ill person. |
| 14 | Undertrials eligible for release under S.437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case (Order dated 06 May 2016) | <ul style="list-style-type: none"> The first date fixed for taking evidence must be sought by all the Magistrate courts as the same is not provided to the prison. Then, the calculation of sixty days must be done, taking one date of the month of the meeting as the basis. | Recommend to the concerned court to release the accused on bail under S.437(6) of the Code. |