

CHRI 2011

UNDERTRIALS

A LONG WAIT TO JUSTICE

A Report on Rajasthan's Periodic Review Committees



If Liberty is Paramount...



Commonwealth Human Rights Initiative

working for the **practical realisation** of *human rights* in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work, and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

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If Liberty is Paramount...

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Special Thanks to Sana Das



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FOREWORD

Freedom, as envisaged in international human rights documents and in the Constitution of India, is of paramount importance to humanity. Correctional principles at work in criminal justice institutions, therefore, demand that custodial establishments, particularly prisons, are not treated as social dustbins where the accused and even the guilty are relegated as material written off from the books of society. Their claim to freedom and restoration to the social milieu continues to be as strong as when they were free people.

This is even more so in case of an accused standing trial because un-convicted accused persons retain, with all legality, the presumption of innocence as a basic prerequisite of fair trial. As a natural corollary to this presumption, it is both necessary and desirable that such un-convicted offenders should not be denied of their right to freedom unless it is unavoidable, indispensable and firmly set within the framework of legitimate restrictions.

One of the tools for monitoring this essential right of undertrial prisoners is to review each case periodically and to ensure that incarceration in that individual instance is lawful, necessary and unavoidable under law and is not a result of oversight, callousness or negligence on the part of any agency of the criminal justice system.

It was with this objective that the Periodic Review System of undertrial prisoners was initiated in the State of Rajasthan almost three decades ago.

The Commonwealth Human Rights Initiative's prison reforms team with Sugandha Shankar as lead researcher made a critical study of the present functioning of the Committees tasked with reviewing the status of undertrial prisoners and its impact on inmates awaiting trial in the recent past. CHRI's dismal findings are documented here.

The study is presented with the intention of assisting all the various organs of the criminal justice system, i.e., the judiciary, jail authorities, the police, social services, official and non-official visitors attached to prisons and the policy executive level charged with ensuring the care of those in custody, to review this procedure in the background of latest changes in law and legal practices in connection with prison inmates to make it more effective and efficacious. The remedies suggested at the end of the study are practical and well within the realm of the possible. Most importantly, the study has the merit of providing model formats to assist in correctives that, if are quickly put into place, will reduce overcrowding in prisons and unfair incarceration and increase speedy case disposal in a very short spell of time.

Radha Kant Saxena

It is high time that the public conscience is awakened and the government as well as the judiciary begins to realise that in the dark cells of our prisons there are a large number of men and women who are waiting patiently, impatiently perhaps, but in vain, for justice – a commodity which is tragically beyond their reach and grasp. Law has become for them an instrument of injustice and they are helpless and despairing victims of the callousness of the legal and judicial system. The time has come when the legal and judicial system has to be revamped and restructured so that such injustices do not occur and disfigure the fair and otherwise luminous face of our nascent democracy.¹

Justice P. N. Bhagwati

¹ *Hussainara Khatoon and Others v. Home Secretary, State of Bihar* AIR 1979 SC 1360.

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INTRODUCTION

UNDERTRIALS – A LONG WAIT TO JUSTICE



This report examines the effectiveness with which one mechanism, Rajasthan's Periodic Review Committee or the *Avadhik Samiksha Samiti*, works to reduce pre-trial detention by reviewing the cases of prisoners awaiting trial.

Under our constitutional scheme, the presumption of innocence is a fundamental right, and liberty, a paramount value. Only the state can deny liberty and this must be for very good reasons, after going through a fair and just procedure mandated by law. The Indian Constitution and its interpretations by the Supreme Court of India afford every guarantee for a fair trial to an accused person.

The norms and law are clear. Before conviction, pre-trial detention must be minimal and justifiable in each individual case otherwise the authorities are in breach of their duties and have impinged on the fundamental rights of the individual awaiting trial. In theory, trials must begin and proceed speedily and the undertrial – as a prisoner in custody whose trial is to begin or is underway is commonly known – must be offered the possibility of bail at the earliest. The familiar dicta “justice delayed is justice denied” and “bail not jail” are often held out as the bulwarks of fair trial, but the profile of the prison population gives it the lie.

The law has several means to ensure that an accused person can be released from jail, pending trial, and also has provisions to ensure that people – especially vulnerable ones like the very poor, disabled, aged, mentally ill, children and women – do not get lost in the system or have to suffer long periods of incarceration while awaiting trial. The grant of bail is one important remedy available to reduce pre-trial detention. As the purpose of detention is to ensure the presence of the person at the time of trial, the bail procedures ensure he will appear at court when required without having to suffer long incarceration before being convicted. Indian courts have reiterated that the grant of bail should be the rule rather than the exception. Because they are considered to be less likely to abscond or interfere with the investigation, bail provisions in non-bailable offences are more liberal if the accused is under sixteen, a woman, sick or infirm.²

² *Handbook of Human Rights and Criminal Justice in India*, by South Asia Human Rights Documentation Centre, Oxford University Press, 2nd edition, 2007, p. 62.

Standards for Pre-Trial Release of Prisoners

POSSIBILITIES OF BAIL FOR AN UNDERTRIAL

The main bail and bonds provisions are provided in Chapter XXXIII of the Criminal Procedure Code (Cr.P.C.).

- ❖ A person accused of a bailable offence has the right to be granted bail. Bail can be granted either by the police or the courts. If the accused is unable to furnish surety within a week of arrest, the person is to be considered “indigent” and should be released on a personal bond without sureties for his appearance³ [Section 436].
- ❖ If a person is accused of a non-bailable offence, he cannot claim the grant of bail as a matter of right. But the law gives special consideration in favour of granting bail where the accused is under sixteen, a woman, sick or infirm, or if the court is satisfied that it is just and proper for any other special reason to give rather than refuse bail [Section 437 (1)]. The Supreme Court has laid down that when applying its discretion in non-bailable matters, the judge must take account of several factors, most particularly, the gravity of the crime, previous convictions, possibility of tampering with evidence or intimidating witnesses, and the risk of flight.
 - ✦ Also, in any case triable by a Magistrate if trial cannot be completed within sixty days after the first date fixed for taking evidence, then if the accused has been in custody during the whole period, he may be released [Section 437 (6)].
 - ✦ If a person accused of a non-bailable offence is in custody after the conclusion of the trial, but before the judgement is delivered, and the court has reasonable grounds to believe that the person is not guilty of the offence, the person should be released on a bond without sureties for his appearance to hear judgement [Section 437 (7)].

Other Circumstances Where Bail Must be Granted

- ❖ The right to be granted bail also exists if the investigation could not be completed or if the chargesheet could not be filed within sixty or ninety days, as the case may be; then even in cases of serious crimes the accused is entitled to be released on bail [Section 167(2)(a)(i) & (ii)].
- ❖ If the person has undergone one-half of the maximum prescribed imprisonment for an offence (other than an offence punishable with death) as an undertrial in custody, he should be released by the court on his personal bond with or without sureties. No person can be detained during the period of investigation, inquiry or trial for more than the maximum period of prescribed imprisonment for an offence [Section 436 A]⁴.
- ❖ The National Human Rights Commission has repeatedly detailed guidance notes regarding the release of undertrials on bail⁵.

³ Codified by Section 436 by the Code of Criminal Procedure Amendment Act, 2005 after the holding in *Moti Ram v State of M.P.* 1979 SCR (1) 335.

⁴ Inserted by the Code of Criminal Procedure Amendment Act, 2005.

⁵ See Annexure D – letter dated 29 April 1999 to all Inspectors General, Prisons, by the Special Rapporteur.

THE PROBLEM

Rajasthan has 118 prisons with a total capacity of 17,796 inmates. The prison population has increased from 5,516 in 1970 to 17,326 in 2010. The prison population mix in the state shows that the number of undertrials vis-à-vis convicts has increased in a period of five years from 2005 to 2010⁶. While the undertrial population has shot up from 7,421 in 2005 to 10,962 in 2010, the number of convicts shows an increase from 5,572 to 6,232 during this five year period. This indicates that the rise in the number of undertrials has been more rapid than the rise in the number of convicts. The most recent statistics of the National Crime Research Bureau puts the total number of cases registered in Rajasthan under the Indian Penal Code and the State Local Laws at 2,10,345. As on 31 December 2010, there were about 17,194 prisoners of which nearly 11,000 were in pre-trial detention.

According to the latest available figures, jails across India house only 32 per cent convicts. The remaining 67 per cent are people awaiting trial⁷. The Rajasthan figures mirror the all-India ones or in other words for every one convicted prisoner there are two awaiting trial. The majority of undertrials in Rajasthan are between eighteen and thirty years. In 2009, the average time spent by an undertrial in jail from the time he is brought into prison and can leave – whether through plea bargaining, or on bail – is 266 days or just under nine months in prison. This average is up by thirty-two days or just over a month from 224 days or seven months in 2005.

A glance at the overall figures shows no problem of overcrowding but inmates are not evenly spread across all facilities. For example, overcrowding at Kota Central Jail stood at around 97 per cent and Jaipur, the capital city, was at about 28 per cent as on 31 December 2010. Down the scale, in district jails and sub-jails matters were much worse. Chittorgarh had 103 per cent overcrowding and Hanumangarh held 90 per cent more prisoners than it should. In Baran, Dungarpur, Sikar, Rajsamand and Bhilwara prisons, overcrowding was at about 40 per cent to 50 per cent⁸.

⁶ Jails in Rajasthan: Detention and Overcrowding, presentation by Mr Omendra Bhardwaj, DG Prisons (Rajasthan) at a workshop for trial advocates on “Rights of the Accused and Effective Representation” organised by CHRI and International Bridges to Justice on 5-6 February 2011.

⁷ National Crime Records Bureau website, Convict population: <http://ncrb.nic.in/>, Table 3.4 as on 17 May 2011.

⁸ Jails in Rajasthan: Detention and Overcrowding, presentation by Mr Omendra Bhardwaj, DG Prisons (Rajasthan) at a workshop for trial advocates on “Rights of the Accused and Effective Representation” organised by CHRI and International Bridges to Justice on 5-6 February 2011.

At the end of 2009, court arrears in Rajasthan in relation to central and state crime law, stood at 4,26,188, which means that 85.2 per cent of cases were pending with only 60,471 trials completed during the year. The causes of long periods spent in pre-trial detention are manifold and manifest. They include unnecessary arrests by the police and neglect by the magistracy to strictly follow procedural safeguards: at production stage, to ensure that the grounds for arrest are at all justifiable; all necessary documentation is correct and complete; and to inform the accused of the right to a lawyer and to appoint one if he has no access to one. Lack of knowledge among lawyers and magistrates regarding the time when bail and release become compulsory, and their refusal to use liberal discretionary powers to grant these, add to the pile up of undertrial prisoners. This is compounded by the difficulties in getting effective representation and the routine manner in which courts return the accused to judicial custody for the maximum permissible period before the next date for appearance – often just to accommodate delays caused by the failure to complete investigations or to file timely chargesheets and often to pander to lawyers’ conveniences, and the dilatory court practices that have become routine.

Perhaps one of the most common yet most dehumanising and illegal practices is the now frequent one of dispensing with the presence of the human prisoner altogether. By law, the undertrial must be brought physically before the magistrate on the dates set for appearance⁹. But increasingly now – on the excuse that there are inadequate escorts or other administrative reasons – the courts willingly dispense with the human being and instead stamp next dates on paper production warrants without ever expecting that the prisoner will be brought before the court as is compulsory in the Cr.P.C. This routine can continue for months at a time even before there is an actual physical production, leave alone an “effective” hearing where the case moves forward even slightly. Even where the prisoner is actually transported to the court premises under police escort on the correct hearing dates it is often the case – unquestioned by defence lawyers or other court officers – that he is kept in the ghastly, unsanitary, court lock-up and never gets to appear before the magistrate in the courtroom at all. Now the paper trail shows that the

⁹ Code of Criminal Procedure, 1973, Section 228 (2): Where the Judge frames any charge...the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

Code of Criminal Procedure, 1973, Section 273: Except as otherwise expressly provided, all evidence taken in the course of the 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 refer *State of Madhya Pradesh v Budhram* 1996 CrLJ 46 (MP).

prisoner has come to court, the case was adjourned to another date, and there was a “production”, when in fact, nothing of the sort has happened.

Other reasons for unreasonably long periods in pre-trial detention range from lack of judges and courts, lack of transportation and police escorts to lack of infrastructure, inadequate court management and soft skills, and an unending mountain of backlog that all contribute to creating ever longer periods of unfair pre-trial detention. Taken together, all this leads to several prejudicial practices that reduce any possibility of fair trial to an abstraction.

This situation raises a question before the two pillars of the state – the judiciary and the executive who are the protectors and defenders of the life and liberty of the people – as to who is to be made responsible for the increasing number of days spent by people behind bars when there are mechanisms available for their release. This report seeks to establish that the regular, coordinated and diligent working of these two pillars of the justice system would assist in enforcing guaranteed fair trial rights of every undertrial. It aims at strengthening the foundation of the criminal justice system by making every public/judicial officer realise his powers and responsibilities to minimise injustice.

SEVEN YEARS, SEVEN MONTHS AND NO TRIAL: THE CASE OF BABA KHAN

For seven years and seven months Roy Varghese, alias, Baba Khan lived in Ward No. 10 of the Jaipur Central Jail in Rajasthan waiting for his trial to commence. After several hearings at court through his lawyer and the combined energies of CHRI, a number of concerned citizens and his family for fifteen months, Baba Khan could be discharged into the care of his sister. This was in January 2011. By then Baba Khan had been reconciled to a life of neglect and insanity.

A mentally ill person like Baba Khan should never have been in jail. From the outset, he should have been in a mental institution. The Court released him on bail on the condition that the family ensured his treatment in a secure institution. During his time in jail, owing to lack of qualified medical interventions at appropriate times, he could never stabilise, let alone become better, and his physical health deteriorated to the point of terrible debility and near blindness. In all this time it is not clear whether he had been produced in court more than once.

If the jailors had insisted on not having a prisoner with them who should have been in a mental institution, if the Periodic Review Committee had properly reviewed the long-stay undertrial prisoners, if the jail doctors had brought the matter to the attention of higher authorities, if the court officials had routinely reviewed the dockets under their charge to ascertain the progress of the case, if the magistrates had ensured he had proper representation from a state-appointed attorney, and insisted on the prisoner's regular production or taken forward the special procedures prescribed under Chapter 25¹⁰ of the Cr.P.C., 1973 in a timely manner, it is possible that Baba Khan would have come under special care long before he did. But a broken system ensured that he remained unnoticed and unheeded for all these years.

¹⁰ *Code of Criminal Procedure*, 1973, Chapter 25: Provisions as to accused persons of unsound mind.



Baba Khan on the night of his release from prison on 25 January 2011 with Pujya Pascal (CHRI)

OBJECTIVES AND METHODOLOGY



The study identifies Periodic Review Committees as a significant multiple oversight mechanism in the prison management system to ensure that an undertrial should remain in prison for the barest minimum period. The various actors of the criminal justice system come together through the Periodic Review Committee to check prolonged overstays. The Committee has been empowered by state government orders to meet every month to review the individual detention periods of undertrials and take necessary action towards recommending their release on bail, effective production before the court and ensuring fair and speedy trial. The objectives of CHRI's study were to study the mandate of the Committee and to investigate its actual functioning across 93 prisons in 33 districts of Rajasthan.¹¹

The main methodological tool used for procuring relevant data for the above objectives was the Right to Information.¹² The information request was for documents (i) prepared before the review committee meetings and (ii) prepared after every meeting of the committee from June 2009 to June 2010. The minutes constituted an important part of the information sought which included the number of meetings held, the dates on which they were held, who was present, the extent of the discussions, the numbers of prisoners cases presented for review, their categorization, how many cases were recommended to be expedited. Right to information requests were filed in each of the 33 Central and District Jails in order to obtain the above information. This includes 59 Sub-jails.¹³

The study sought to examine and analyse the actual periodicity, membership and attendance, procedures for case selection, evaluation and action vis-à-vis the mandate of the Periodic Review Committee. The analysis is guided by the requirements of the 2005 Amendment to the Code of Criminal Procedure, progressive judgments on the rights of undertrials and recommendations of the Law Commission of India.

The findings of the study have been compiled into a Report for judicial and prison officials as well as the state government with some procedural and substantive recommendations.

¹¹ This includes 8 Central Jails, 25 District Jails, 59 Sub-jails and a Women Reformatory, Jaipur.

¹² DISCLAIMER: The analysis and conclusions of this study are based on the assumption that the fullest information available with the jail was provided by the prisons, as they are required to do under the Right to Information Act. Where no regular monthly dates appeared or no minutes were provided we have presumed no meetings were held on the assumption that the authorities were fully compliant with the responses to be made under the Right to Information Act, 2005.

¹³ Data received from the jails of Jalore, Udaipur, Jhunjhunu, Sawai Madhopur has not been included in the analysis.

PERIODIC REVIEW COMMITTEES

THEORY AND PRACTICE



To ensure that the situation of every prisoner awaiting trial is frequently reviewed and appropriate correctives applied, in 1979, Rajasthan created a special committee, the *Avadbik Samiksha Samiti* or Periodic Review Committee (the Review Committee). Comprising various duty holders, its purpose was to ensure that no undertrial is held for unjustifiably long periods in detention or simply gets lost in the system for any reason.

THE FORMATION

Review Committees for all jails including Sub-jails were established in 1979 by Order No. F/8/22/Grah-12/kara/79/. This followed almost immediately on the Supreme Court's landmark judgement in the case of *Hussainara Khatoon*,¹⁴ which recognised for the first time the right of speedy trial as being inherent in Article 21 of the Constitution. In November 1978 and February 1979, the 77th and 78th Law Commission of India reports¹⁵ too, recommended measures to decongest prisons and these included the creation of review bodies. The 78th Report on "Congestion of the Undertrial Prisoners in Jails" recommended that: "Trial Magistrates should furnish periodical statements of cases in which the accused are in custody and which are not concluded within the prescribed time. These statements should be scrutinised by the superior courts for such action as may be deemed necessary".¹⁶ The report further recommended that: "an important measure for reducing the burden of undertrial prisoners on jails is to give preference to the disposal of those cases in which the accused are in custody".¹⁷

THE MANDATE¹⁸

Though the executive order creating the Review Committee cites the Chief Judicial Magistrate (CJM) as a "member", in practice he convenes the meetings and acts as the de facto Chair, while the officer in-charge of the district prison, who could be the Superintendent, Jailor or Deputy Jailor, acts as the Member-Secretary to the Review Committee.

¹⁴ AIR 1979 SC 1360.

¹⁵ Law Commission of India, 77th Report, November 1978: "Delay and Arrears in Trial Courts", 78th Report "Congestion of Undertrial Prisoners in Jails".

¹⁶ Law Commission of India, 78th Report, February 1979: "Congestion of Undertrial Prisoners in Jails", p. 15, para 3.9.

¹⁷ Law Commission of India, 78th Report, February 1979: "Congestion of Undertrial Prisoners in Jails", p. 14, para 3.7.

¹⁸ See Annexure A containing the original GO forming the Periodic Review Committees in each district.

Every District Committee comprises:

The Chief Judicial Magistrate	:	Member
A Representative of the District Magistrate	:	Member
A Representative of the Superintendent of Police	:	Member
The District Probation Officer	:	Member
The Officer In-charge, District Prison	:	Member-Secretary

“At these meetings it must review the cases of undertrial prisoners in each Jail and Sub-Jail. It must give advice/recommendations to the respective courts, in order to release the undertrial prisoners who have completed half or more than the maximum prescribed punishment for the offence charged; or are accused of serious offences and have been undertrial for a long period of time; or have committed such petty offences that there is no need to keep them in judicial custody.”¹⁹

This mandate came twenty-six years before the 2005 Amendment to the Cr.P.C. The new amendment, through the inclusion of Section 436A, gave those awaiting trial in jail the statutory right to be bailed out, with or without sureties, if the undertrial had undergone detention for a period extending up to half the maximum period of imprisonment specified under the law for the crime accused. The realisation of the right relies on its effective implementation by the judge who is seized of the case; and in Rajasthan, the information from the Review Committee is a further check to ensure that nothing slips through the cracks. Both the mandate and the amendment seek to institutionalise the effective implementation of legal provisions by taking proactive steps to avoid illegal and prolonged detentions.

THE PROCEDURE AND PERIODICITY²⁰

The Periodic Review Committee meetings are to be held every month.

The process of holding a meeting is governed by rules of practice which appear to require the prison authorities – the Superintendent being the Member-Secretary – to send a letter to the CJM requesting a meeting date. He then fixes that date and sends out notices with time, date and venue to all members. Meetings are generally held within the prison premises. At the conclusion of the meeting, if the

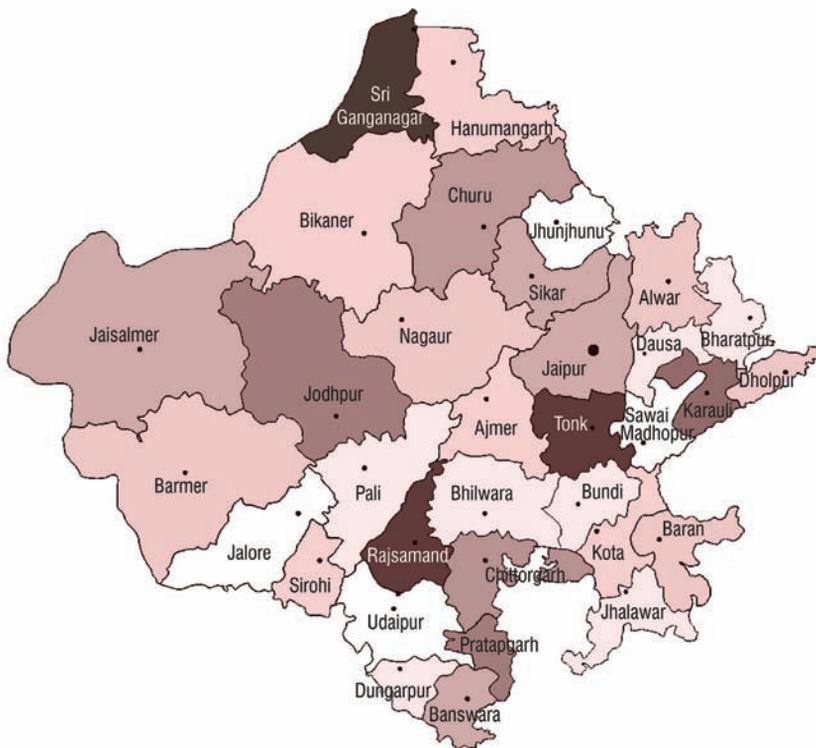
¹⁹ As translated from the Hindi GO No.F/8/22/Grah-12/kara/79/.

²⁰ Refer to Annexures B and C, Meeting Analysis Grid of all Central Jails and District Jails, respectively.

Chairperson is unable to decide a date for the next meeting in the coming month, a letter is sent from the prison to remind him about the same.

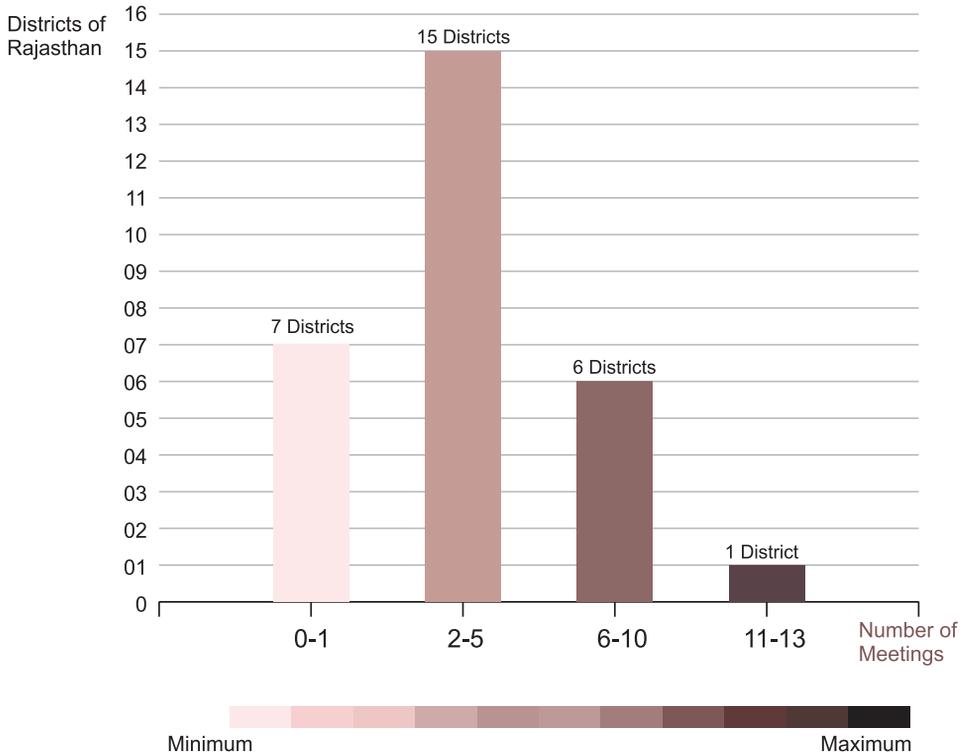
Ideally between the thirteen months from June 2009 to June 2010, thirteen meetings should have taken place in each of the thirty-three districts of Rajasthan. But the data shows that of a possible 429 mandated meetings only 113 were held.²¹

Number of meetings	Names of Districts
no data	Jalore, Udaipur, Jhunjhunu, Sawai Madhopur
1	Bharatpur, Bhilwara, Bundi, Dausa, Dungarpur, Jhalawar, Pali
2	Kota, Bikaner, Ajmer, Hanumangarh, Sirohi
3	Alwar, Dholpur, Baran, Barmer, Nagaur
4	Jaipur, Banswara, Jaisalmer, Sikar
5	Chittorgarh
6	Churu
7	Jodhpur, Pratapgarh
9	Karauli
10	Tonk, Rajsamand
11	Sri Ganganagar



²¹ Author's emphasis

Graph showing Frequency of PRC Meetings in various districts of Rajasthan from June 2009 - June 2010



Not a single district conducted all thirteen meetings. Sri Ganganagar held the maximum number of eleven meetings. Two were missed in December 2009 and March 2010. No reasons were provided for this.

Six to ten meetings were held in six districts (21 per cent): Churu (six), Jodhpur (seven), Pratapgarh (seven), Karauli (nine), Tonk and Rajsamand (ten). Two to five meetings were held in fifteen districts, that is, in about 52 per cent of the districts. Chittorgarh held five meetings. Jaipur, Banswara, Jaisalmer, Sikar held four. Alwar, Dholpur, Baran, Barmer, Nagaur held three and Kota, Bikaner, Ajmer, Hanumangarh, Sirohi held just two meetings. A startling seven districts or 24 per cent of the total – Bharatpur, Bhilwara, Bundi, Dausa, Dungarpur and Pali – held only one Review Committee meeting throughout the year.

Five districts – Sikar, Hanumangarh, Nagaur, Jaipur and Pratapgarh – maintained more detailed records of their meetings while the records of the other twenty-four districts are incomplete, as illustrated below:

Ajmer	Provides nothing more than the three dates on which meetings were held
Bhilwara	Provides only one date on which the meeting was held and no other information
Dausa	Mentions only the month when the meeting was held; the reason for not providing the actual date is that the minutes were not received from the CJM's office
Dungarpur	Mentions only the month when the meeting was held
Jhalawar	Provides only one date when the meeting was held and no other information
Pali	Provides only one date when the meeting was held and no other information; the data states that in spite of many reminders by IG Prisons and the Jailor meetings were not held by the CJM

Reasons for Not Holding Meetings²²

Twenty-three out of thirty-three districts, or 79 per cent, provided no reasons on their records for not holding meetings. Where reasons were given, the majority stated that the CJM could not decide on a date. Illustratively, in three districts, Jaipur, Kota and Alwar, the CJM could not decide the date for the next meeting even after reminders were sent by the prison staff. Chittorgarh mentions that meetings could not be held due to the CJM's busy schedule. In Sikar, the cause for missing one meeting is attributed to the CJM being on leave but no reasons are given for the other nine meetings not held.

Another frequently cited reason for not holding meetings is "busy schedule". It is unclear from this whose busy schedule prevented the meeting. One record, at Nagaur relies on the vague but valuable catchall phrase, "administrative reasons" for not holding the mandated meetings. Whatever the reasons may be, it is clear that lack of adherence to the mandate prejudices the undertrial and leaves prisons overcrowded. The fact that no reasons are even offered for not holding meetings in four-fifths of the prisons indicates the casualness with which they are viewed, the comfortable knowledge within the duty bearers that no consequences will

²² CHRI did not ask why meetings were not held and this section analyses the reasons as provided to us.

flow for dereliction of duty and that administrative or personal convenience can override the primary constitutional right to liberty of the undertrials.

Why Meetings Did Not Take Place	No. of Districts	Percentage (%)
CJM could not decide on meeting dates (Jaipur, Kota, Alwar)	3	10
Meetings not held due to busy schedule (Chittorgarh)	1	3.4
CJM on leave (Sikar)	1	3.4
Administrative reasons (Nagaur)	1	3.4
No reason specified	23	79
Total	29	

MEMBERS OF THE PERIODIC REVIEW COMMITTEE & THEIR DUTIES

The Chief Judicial Magistrate

Every person in custody has been sent there under an order of the court. While the prison administration has immediate physical custody of his person, an undertrial's rights are primarily the concern of the court. This includes the overseeing judge and the defence and prosecution lawyers, who are officers of the court in service of justice before they are in service of their clients. All the courts within the CJM's jurisdiction are under his supervision. His presence on the Review Committee allows him to assess the proceedings of each case. Through this process, he can identify over-long incarceration of an undertrial and also maintain a check on the functioning of courts under him – where the delays lie, how quickly cases are disposed and identify causes why prisoners are not let out on bail.

Representative of the District Magistrate

The District Magistrate (DM) is the administrative head of the district and the entire administration of the district works directly or indirectly under his supervision and control. In relation to prisons, the DM discharges his powers and duties as provided by the Rajasthan Prison Rules, 1951. Rules 24 to 37, Section IV, Part-8 of the Rajasthan Manual empower the DM in several ways,

to administer, control and supervise the prisons in his district. He acts as the ex-officio visitor of the Central Prisons in his district. He is also responsible for making regular visits to the prison to check on disposal of cases, including undue detention of undertrials or the custody of young offenders for long periods. He is empowered to issue orders to ensure the effective working of the prison administration.

Representative of the Superintendent of Police

The Superintendent of Police (SP) is the policing head of the district and is mainly responsible for the maintenance of law and order. Apart from his main policing functions, an important task is to ensure the availability of police escorts or “chalani guards” as they are commonly known, to ensure that every undertrial reaches court in a timely manner on the date specified by the court warrant that asks for his appearance. The need to produce the accused before the court on each date requires coordination with the prison authorities and a police presence at the Review Committee is intended to facilitate this.

District Probation Officer

The objective of having the District Probation Officer on the Committee was to provide support to those petty offenders who had completed a considerable amount of their time in prison as undertrials and could receive the benefit of the Probation of Offenders Act, 1958. This provides for the release of offenders on probation or after due admonition. The main purpose of the Act is: “to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of the jail.”²³ The Act directly corresponds to the duty of the court to provide benefit to the offenders under the provisions in the Cr.P.C.²⁴

Officer In-charge of the Prison

“..the Superintendent shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control.”²⁵

²³ *Daulat Ram v. State of Haryana* AIR 1972 SC 2334. Refer Annexure E for the judgement. This judgement upholds Sections 3, 4 and 6 of the Probation of Offenders Act, 1958.

²⁴ Code of Criminal Procedure, 1973, Section 360: Order to release on probation of good conduct or after admonition; and Section 361: Special reasons to be recorded in certain cases.

²⁵ Rule-56, Rajasthan Prison Rules, 1951.

The Superintendent and his team of officers are the caretakers of the prison and its inmates. The jail official's presence is crucial in conducting the Review Committee meetings as all the undertrials in the prison are committed to his custody. His presence is required to attest to the conduct and behaviour of the undertrial, to indicate whether or not he poses a threat to the outside world, which is important while assessing cases of granting bail or release on probation. He is the first contact point for an inmate who helps him in redressing his grievances. That is why the task of preparing the lists of prisoners to be examined by the Review Committee rests on his shoulders. It is his responsibility to ensure that the names of all eligible persons are presented in their proper categories for evaluation before the Committee and this makes him a key member of the Periodic Review Committee.

Attendance

Out of a total of 113 Review Committee meetings all five members were present only for thirty-three. Besides the Chairperson and Member-Secretary who had inevitably to be present if the meeting was to take place at all, the most frequent attendance was by the police department followed by the probation service. The lowest attendance was from the District Magistrates' office.

The Government Order forming the Review Committee requires it to comprise people who are directly or indirectly related to the enforcement of the right to legal or fair trial of the undertrial. Ideally, all five members should be present in every meeting, but the records indicate that often members were not present. No information about the presence or absence of members were provided by five districts - Ajmer, Bhilwara, Dungarpur, Jhalawar and Pali.

Chief Judicial Magistrate

As seen above, if the CJM is on leave or has a busy schedule or cannot decide the date for the meeting, the meeting is not held. Since a CJM's presence as Chair is indispensable to conduct the Periodic Review Committee meeting, CJMs were always present for all the meetings held.

Officer In-charge, Prison

The presence of the Superintendent, Deputy Superintendent or Jailor is also crucial at the Review Committee meetings. He is the person who knows the details of the prison and its inmates through his team. Most importantly, he knows if there are any prisoners who need lawyers, whose families do not know

they are in prison, whose chargesheets have not been filed within the prescribed limits, who fall within the ambit of special provisions such as Sections 436, 436A of the Cr.P.C. Also, it is the officer in-charge who has to present the cases that qualify for review, as the lists of the undertrials are prepared in his name. Since the meetings are generally held in the premises of the prison, the data indicates that the officer in-charge of the jail was present for all the meetings. In Karauli and Sirohi, even the officers in-charge of the Sub-jails were present at the Review Committee meetings.

The District Magistrate

The District Magistrate/Collector or his representative attended all meetings in only seven jails. But in Jaipur, Bikaner, Bharatpur, Banswara, Bundi and Dausa neither the Collector nor his representative were present at even one meeting. Karauli's Executive Magistrate only attended one meeting, and though they were held every month in Ganganagar, the Executive Magistrate was present for only six. Similarly in Tonk and Churu, the Magistrate attended only half the meetings despite the fact that they were held irregularly. Even where the meetings were infrequently held, as in Alwar, Dholpur, Sirohi, Jaisalmer and Pratapgarh, the Magistrate turned up just once.

Representative of the Superintendent of Police

As seen above, the presence of the SP's representative in the Committee is vital to ensure effective production of undertrials at court. In Jaipur, the SP's representatives from all four zones – North, South, East and West – were present at the meetings. In Kota, a representative of the SP, Rural, was also present for the two meetings that were held.

District Probation Officer

The Probation Service is represented by officers of various designations in the Review Committee meetings across Rajasthan. In some districts, the District Probation Officer while in others, the Assistant Director, Probation was an attendee. In Rajsamand both the District Probation Officer and the Assistant Director, Probation, were present in eight out of ten meetings. In Sirohi, the Assistant Director, Social Justice Department was present at two of the three meetings held.

Members	Present in All	Absent in All	Absent in Some
Representative of the District Magistrate	Kota, Baran, Barmer, Jodhpur, Chittorgarh, Nagaur, Hanumangarh	Jaipur, Bikaner, Bharatpur, Banswara, Bundi, Dausa	Alwar (1/3) Dholpur (1/3) Sirohi (1/3) Jaisalmer (1/4) Pratapgarh (1/7) Churu (3/6) Rajsamand (4/10) Tonk (5/10) Sri Ganganagar (6/11) Karauli (8/9)
Representative of the Superintendent of Police	Kota, Bharatpur, Alwar, Baran, Barmer, Bundi, Chittorgarh, Dausa, Hanumangarh, Jaisalmer, Nagaur, Rajsamand, Sikar, Sirohi	Banswara	Bikaner (1/2) Pratapgarh (1/7) Tonk (1/10) Jodhpur (2/8) Churu (2/6) Dholpur (2/3) Sri Ganganagar (3/11) Karauli (3/9)
District Probation Officer	Kota, Bharatpur, Dholpur, Baran, Chittorgarh, Nagaur, Sirohi	Bikaner, Banswara, Sri Ganganagar, Bundi, Dausa, Jaisalmer	Jaipur (1/4) Alwar (1/3) Barmer (1/3) Hanumangarh (1/2) Churu (2/6) Rajsamand (2/10) Jodhpur (3/7) Sikar (3/4) Pratapgarh (4/7) Karauli (8/10)

Some prisons records show other persons such as the Finance Officer, Tehsildar and a Junior Accountant/Clerk as present, but the minutes do not indicate whether they attended as members or as invitees for a special purpose.

THE PROFORMAS²⁶

Before each meeting, the prison authorities are expected to prepare a list of undertrials according to four separate proforma. Every proforma provides for the name of the Jail or Sub-jail, date of review and the total number of undertrials

²⁶ See Annexure F for the current set of proformas used by prison authorities to prepare the lists of undertrials.

written on top. This gives the cumulative picture. The proforma relate to the individual in custody.

- ♦ **Proforma A:** Lists prisoners standing trial in cases punishable with *death, imprisonment for life or imprisonment for a term of not less than ten years*, who have *completed ninety days under custody* but whose investigations have not been concluded [**Section 167(2)(a)(i), Cr.P.C.**]. If no chargesheet has been filed within ninety days of the prisoner being arrested he has an automatic right to be released on bail provided he can furnish it.
- ♦ **Proforma B:** Lists prisoners standing trial in cases punishable with *a term of imprisonment less than ten years*, who have *completed sixty days* under custody but whose investigations have not been concluded [**Section 167(2)(ii), Cr.P.C.**]. If no chargesheet has been filed within sixty days of the prisoner being arrested he has an automatic right to be released on bail provided he can furnish it.
- ♦ **Proforma C:** Lists “prisoners who are under detention for a period *more than the maximum term of sentence*²⁷ awardable to them in the case in which they are standing trial” [**Section 428, Cr.P.C.**]. The wording of this proforma, set against the section mentioned, appears to suggest that a convicted prisoner whose trial has lasted longer than any possible maximum sentence should be reviewed and released immediately. This is because Section 428 of the Cr.P.C. states that the time spent in custody must be set off against the period of the sentence. Illustratively, if a person is sentenced to three years imprisonment at the end of a trial that has lasted two years six months his case should be under review so as to ensure that the benefit of the offset is not lost. In the unlikely event that a trial has taken two years but the sentence awarded is eighteen months then the Review Board is in a position to remedy the matter and release the prisoner with immediate effect. That would explain the logic of this proforma and the Section it relates to.

However, all the proformas are intended to cover only undertrials. Though the mandate created as long ago as 1979 does take account of the need to review and recommend release of undertrials who have completed half or more than the maximum prescribed punishment for the offence charged, there is no proforma to reflect prisoners in this new statutory category provisioned by Section 436A of the Cr.P.C. introduced in 2005.²⁸ In this case the person *must* be released on personal bond with or without sureties.

²⁷ Author's emphasis.

²⁸ Code of Criminal Procedure, 1973, Section 436A. Maximum period for which an undertrial prisoner can be

- ♦ **Proforma D:** Lists *non-criminal lunatics* confined in prison for observation for more than thirty days [Section 16 and 23, the Indian Lunacy Act, 1912]. The proforma allows the Review Committee to keep a check on the period for which a person, alleged to be a lunatic, is sent to prison by the Magistrate while awaiting a medical certificate from the Medical Officer. This should not exceed thirty days. The proforma also relates to a person who is to be shifted to an asylum under the order of the Magistrate.

Though the mandate of the Review Committee mentions two other categories that must be kept under observation, there is no specific proforma that separates these cases. These include those charged with serious offences, who have been undertrials for a long period of time or those who have committed such petty offences that there is no need to keep them in judicial custody. It is unclear how these groups are dealt with.

THE LISTS

The review of prisoners' situation can only be as good as the lists placed before the Committee. In none of the prisons were the lists prepared according to the proforma provided. Awareness of these lists and their significance was low amongst the staff and the members of the Committees. There is also no common practice among prisons as to how cases are categorised in a list: whether in alphabetic order; by type of case; length of stay in prison; by wards/barracks; or by urgency. Therefore it is difficult to assess the quality of the review process or the real benefit it brings to the undertrials for whom the process was created.

Prison staff prepares lists of prisoners who qualify under any one of the proforma mentioned above.

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.

Each proforma at minimum must provide:

- Name and Father's name
- Date of arrest
- Case No. and Section under which confined
- Name of the court where trial is pending
- Total period in custody
- Date on which the court requested passing orders for release on bail
- Date of order of release on bail
- Remarks

From just this information it is possible for the Committee to know how long an undertrial has been incarcerated, in which court his case is posted and whether he, in fact, qualifies for release on bail or any other relief mentioned at law.

These lists are prepared by the convicts, supervised by junior staff, and signed by the Superintendent who has overall responsibility of the undertrials. This procedure assumes a level of legal knowledge amongst long-term prisoners who are habituated to the legal process through their own misfortunes and time spent in jail. It also assumes an understanding of their own situation amongst inmates who can then challenge, say, non-inclusion in a list. While there is indeed a working knowledge of the law as it applies to them amongst the long-term convicts, almost all undertrials are uncertain of what they are charged with and definitely completely ignorant of their rights to bail or conditional release.²⁹ This means that if they are inadvertently or deliberately left out of a review list they would not know it or if they did, there is very little they could do about it in the absence of quality controls or transparency within the prisons.

Only Jaipur provided proforma attached to the minutes. No other minutes evidence knowledge of the proforma, except in Kota, where some awareness can be discerned from a mention in the minutes that no prisoner falls under any of the proforma. While Jaipur prison attached all four proforma to the information provided, the actual lists were not prepared according to the format. Jaipur Central Prison uniformly divided the list of undertrials into those who could be sentenced for up to three years, ten years and more than ten years, seemingly following a

²⁹ In November 2010, CHRI interviewed 345 undertrials at Alwar District Jail to assess the state of legal aid in the district and their legal awareness of bail, legal aid, plea bargaining. Of these, 29 per cent were unaware of the possibility of bail and 53 per cent did not know about free legal aid.

method categorised by the maximum sentence that could be awarded. The Mahila Sudhar Grah (the women's prison), Jaipur also followed the same method. No lists were provided for Sub-jails in Kotputli and Sambharlekh which are in the same district. In the minutes of all nine meetings of Karauli District Jail, mention is made that not a single case was found where chargesheets were not filed within sixty or ninety days. This shows that reference was made to Proforma A and B,³⁰ though nothing is mentioned about them and no list is provided according to them.

The lists do not indicate whether only a select few, whose cases needed review in accordance to the law, were put forward or the entire undertrial population of the prison.

Six prisons (Ajmer, Bhilwara, Dausa, Dungarpur, Jhalawar and Pali) attached no lists to their minutes. As against the average undertrial population in a particular prison and the average numbers put up for review, half the prisons routinely included almost the entire undertrial population. Eight prisons (Ajmer, Bharatpur, Churu, Dausa, Dungarpur, Jhalawar, Karauli and Kota) did not provide any figures for the cases put up for review, but the minutes for Churu and Karauli mention a few cases that were recommended to be expedited. When viewed against the undertrial population in seven prisons (Alwar, Banswara, Bhilwara, Hanumangarh, Jaipur, Sikar and Tonk) the fewer undertrials presented before the Review Committee seem to indicate that there was a selection process. But as there is no discernable organisation of the lists and the proformas were not followed it is difficult to understand the basis on which reviews were carried out. The usually high proportion of people sent up for review in most prisons points to two possibilities: either there has been little application of mind in preparing the lists; or all the undertrials were correctly listed and therefore, they are all overstays qualifying for review. It is impossible to judge what the true picture is in the above mentioned seven prisons under the present method of preparing the lists.

Number of Cases Reviewed

In relation to numbers, jail recordkeeping varied considerably. Thirteen prisons—Bundi (1), Pali (1), Bikaner (2), Hanumangarh (2), Sirohi (2), Alwar (3), Dholpur (3), Baran (3), Nagaur (3), Banswara (4), Chittorgarh (5), Tonk (10) and Rajsamand (10) – gave the complete list of prisoners at every meeting held, for review in every prison in the district.

³⁰ Refer 'The Proformas' p. 20 above.

Jaipur (all four incomplete), Jodhpur (four out of seven complete), Sri Ganganagar (four out of eleven complete), Barmer (one out of three complete), Jaisalmer (three out of four complete) and Pratapgarh (six out of seven complete) provided partial or incomplete information. At times the records omitted the lists for Sub-jails, at times for main prisons, and at other times, the records were unevenly maintained from meeting to meeting in the same jail. Ten prisons did not provide any information about the total number of cases whose evaluations were carried out. These are Bhilwara (1), Bharatpur (1), Jhalawar (1), Dungarpur (1), Dausa (1), Ajmer (2), Kota (2), Sikar (4), Churu (6) and Karauli (9).

The minutes state that these cases are “put up for review”. But the large numbers of individuals routinely listed for review begs the question about the quality of consideration to each case. For instance in Jodhpur, on an average over 4 meetings 361 prisoners were sent up for review. In Chittorgarh, one meeting alone lists 481 prisoners.

The minutes do not indicate the length of each meeting. However, most mention that they commence at 3 p.m., presumably after lunch at the end of a court day. Assuming generously that a meeting lasts for four hours from 3 p.m. to 7 p.m. and must review between 39 (Barmer) and 481 (Chittorgarh) cases, the time to consider each individual’s status would average from just over six minutes to 30 seconds to decide whether a person can be released from confinement or his case be taken up as a matter of urgency.

It is clear that case by case evaluations are not possible and may not even be necessary because most of the undertrials may not fit into any of the given categories mentioned in the proforma. But in the absence of proper categorisation it is impossible to know who should be prioritised. The minutes occasionally single out a particular case to be expedited. This indicates that there is a method by which a selected few cases are brought to the notice of the Committee. But no method of how these decisions are arrived at are recorded, and nor are the reasons for these decisions mentioned.

Often the lists of subsequent meetings show the names of the same people appearing repeatedly for review and there is no way to check if any action was taken on previous decisions.

If lists were carefully prepared with priority cases put forward according to the proforma there is a better chance for the Review Committee being able to fulfil its purpose.³¹

³¹ Author’s emphasis.

That there is little insistence on obedience to instructions or follow-up, is clear from some cases where orders were given to expedite a case but the prisoners names continue to appear in lists for several later meetings. Also, no action taken report is provided by the respective courts which would inform the Review Committee about the case-wise progress that is made after a resolution is passed by the Review Committee to expedite a particular case or to expedite the load of pending cases.

For example, in the March 2010 meeting in Jaipur, the records mention that the Review Committee decided to send directives to the concerned courts for five prisoners. The records do not indicate what the directions were. It is uncertain if the direction was to expedite the case or release the prisoner or something else. But later records mention the same prisoners' cases as continuing to require review. This creates an assumption that no action was taken, and if taken, no reasons were put forward for their continued presence in jail.

Again, by way of example, in Jaipur, review meetings for 2010 were held only in March, May and August. In each of the minutes, the names of ten undertrial prisoners appear for review because they have already been in jail for over three years while awaiting trial. The meeting in March 2010 was the first that was held after October 2009. The March records indicate that except for Baba Khan, a mentally ill prisoner, none of the other nine cases were reviewed. In May, two of the ten cases, one of which was Baba Khan, were reviewed. In August, the list of prisoners put up for review again repeated the names of the ten who were up for review in March. As no action taken report is provided it is impossible to understand what steps were taken in regard to prisoners who were clearly incarcerated for a long time without any progress being made in their legal issues.

In March, May and August, the Review Committee were also presented with a list of about forty undertrials with almost the same names recurring every time. These were entitled "Petty Offences" but have punishments of more than three years. Out of these forty cases, the minutes indicate an individual review of one case in March and eight in May. The fate of the others and the criteria for choosing those they did are not provided.

*The minutes do not record whether a case by case consideration is given during the review or whether it is a court by court consideration.*³² If the lists were limited to those who properly needed consideration, it follows that individual cases could in fact be carefully reviewed with full application of mind, and reasons for

³² Author's emphasis.

the Committee's orders written up in full. Equally, the committee could follow up on the action taken in future meetings. Careful review would also disclose patterns of delay and prolonged detention, which could then be remedied when brought to the attention of supervisory authorities within the executive, the prison system and the courts. But there is no indication in the minutes except in one isolated case in the Jodhpur Committee meeting (held on 30 September 2009), which mentions that: "the undertrials whose cases were reviewed in the last meeting have been released before this meeting." This indicates that some attention is paid to follow up, which if routinely performed, would lead to systematic changes being institutionalised.

THE MINUTES

The minutes of Review Committees can, over time, provide evidence of patterns that repeat themselves in relation to pre-trial detention, based on which systemic cures can be introduced. However, since meetings were held only sporadically, minutes were also unevenly spaced. Equally, there was no set format or practice to record minutes and their quality varied from prison to prison.

In some districts the minutes were detailed while in others minimal information was provided. For example, the minutes for Sri Ganganagar, Dholpur, Banswara and Sirohi districts run into several pages. Cases were reviewed in detail under the heading of the courts where they were being tried. Illustratively, under the heading of Judicial Magistrate, First Class No. 1, cases were examined and recommendations for release on bail and to expedite them were made. In Ganganagar, the record indicates that a prisoner was brought before the Committee and could explain why he could not provide surety. Successive orders indicate that every meeting brought some relief to a few prisoners.

In the Committee meetings at Churu, the focus was on the delay in filing chargesheets and undertrials' inability to furnish surety. On the other hand, the minutes of the meetings at Jaisalmer, Alwar and Rajsamand had general comments such as: "no undertrial is illegally detained"; "no undertrial is detained for petty offences"; or simply "the cases of the said undertrials should be expedited". Even where there are specific recommendations to expedite the trials of the reviewed undertrials, most often no specific reasons for doing so were given and the basis of the recommendations remains unclear.

Some of the common features that are typically present in the minutes of almost all the districts are:

- Time, date and place of the meeting
- Attendance of the members of the Review Committee
- Directives by the Review Committee

The minutes also provide some inkling of what members view as their mandate. The directives and concerns discussed can be roughly divided into four categories: matters that relate strictly to mandate; administrative issues; welfare issues; and miscellaneous.

❖ **Mandated Issues**

- Write letters to the concerned Sub-Divisional Magistrate, Additional District Magistrate and all the courts to release those undertrials on personal bonds whose cases are recommended for quick disposal by the Review Committee (Jaipur);
- On finding the list incomplete, issue orders to submit details of age, maximum imprisonment and a separate presentation for each undertrial (Jodhpur);
- Order medical examinations by the Medical Board, for an undertrial whose age is in doubt, to determine it (Jodhpur);
- Order the Member-Secretary to submit the medical reports of the undertrials duly signed by the doctor (Jodhpur);
- Direct the Superintendent to expedite framing of charges in some cases (Bikaner, Churu);
- Order the deportation of a Sri Lankan national found in judicial custody since 26 February 2008, who was earlier incarcerated in Bikaner from 31 December 2007 (Churu);
- Order the release of undertrials on bail, if evidence is not taken up within sixty days of trial [Section 436 (7), Cr.P.C.], (Sri Ganganagar); and
- Order action to be taken for nine undertrials who were not produced in courts between 15 January 2009 and 16 September 2009. The number

of times they were not produced varies from seven to twenty-seven owing to which charges could not be framed, mainly because of shortage of staff (Sirohi).

These indicate specific orders and directions found in the minutes. But the minutes also contain discussions and general remarks related to the legal mandate, as illustrated below:

- Expediting trials of those who are convicts but wanted in other cases and those who were transferred from other prisons (Kota);
- Information on legal aid provided to the inmates and information about the last legal aid camp held in the prison (Kota);
- Discussion on amending rules relating to the transfer of juveniles who attained the age of majority from a Juvenile Care Centre/Borstal (Baran);
- Comment that there is not a single case where a chargesheet was not filed within sixty or ninety days, as applicable (Karauli, Sikar);
- Comment that there was not a single undertrial who was detained illegally and also that there was no case where bail was not asked for under Section 167 of the Cr.P.C., which is a provision of statutory bail (Rajsamand); and
- Mention of two undertrials who were eligible for bail but had not applied (Sirohi).

Sometimes prison authorities provided the Committee with additional and useful information such as: the number of undertrials charged under the Narcotics and Drugs and Psychotropic Substances Act; the number of women undertrials; and the number of convicts (Chittorgarh, Pratapgarh, Karauli, Churu); the capacity vis-à-vis the actual population in the district prison and its sub-jails (Chittorgarh); and data about the sanctioned staff vis-à-vis the actual staff and vacancies (Chittorgarh). In one case, a letter issued to the office of the Director General, Prisons to transfer an undertrial to another prison for using abusive language (Churu) was appended.

❖ **Administrative Issues**

The Review Committee often gave administrative directions or made suggestions to improve their own work. For instance:

- Meetings were sought to be regularised to the second or third week of every month (Jodhpur, Nagaur).
- Reminders to attend meetings were sent to the Superintendent of Police to send his representative (Jodhpur).
- Instructions were given to send the list of undertrials one day in advance of the meetings and inform of absences in advance (Jodhpur).
- Review of cases was done court-wise. A suggestion to mention the FIR (first information report) number, case reference number and sections charged under, alongside undertrials' names is a clear indication that neither the Review Committee nor prison authorities were relying on the proformas to base their work (Sri Ganganagar, Churu).
- A comment mentioned that work was affected due to a strike by lawyers, indicating that it was taken for granted that the courts therefore need not be in session and that prisoners must absorb the extended time in custody because of this (Banswara).
- Mention was made that names of undertrials whose warrants were charged with multiple offences and had warrants in other cases should also be included. It was further suggested that the list of female prisoners be prepared separately by the prison staff (Nagaur).
- A suggestion was made to incorporate three new fields in the format of the list of undertrials presented before them for review: Whether chargesheet is filed (Yes/No); whether bail had been applied for (Yes/No); whether bail was granted (Yes/No) (Hanumangarh).

❖ Welfare Issues

*The mandate makes it extremely clear that the purpose for which these Committees are formed is directly linked to ensuring legal rights to the undertrial.*³³ Though the Review Committee's mandate is silent on reviewing welfare issues, the records show that providing adequate water supply, timely medical treatment and education to the inmates were also discussed. However, for the most part the minutes seem to indicate that these were brought up as exhortations for general improvement, as part of an unstructured discussion. Illustratively, a

³³ Author's emphasis.

suggestion was made for a separate prison for female offenders and an undertrial was shifted to a separate cell but no reason was provided (Churu). Only a few cases are on record that require the jail authorities to pursue improvements in water supply or hold discussions with the local authority. The extent to which these suggestions were followed or whether any action was taken on these could not be assessed because nowhere were there any follow-up reports.

The deviation from expected norms by the Review Committees, and the lack of accountability indicate confusion about their mandate, witnessed in their trespassing on the Board of Visitors' mandate. Like the Review Committee, the Board of Visitors is one of the several oversight bodies relating to prisons. It comprises several official functionaries, some of whom overlap with those in the Review Committee, and lay persons appointed by the executive from amongst the local population, who are known as non-official visitors.

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."³⁴ The Periodic Review Committee's mandate, on the other hand, is more restricted and therefore intended to be sharply focussed on reviewing the rights of prisoners under the sections provided for in the Proformas.

Each oversight body has a specific function intended to minimise the ills that can develop in an essentially closed arena of the criminal justice system. One is intended to concern itself with the legal status of the accused, but as yet innocent persons, awaiting trial, while the other is intended to concern itself with the conditions of incarceration.

Given that since 2009 non-official visitors were not appointed till 2011 and the Boards of Visitors meet perhaps even more infrequently than the Review Committees, the question of roles and responsibilities may be academic but the prejudice to the prison population is very real.

³⁴ *Report of the National Expert Committee on Women Prisoners (1987)*, Department of Women and Child Development, Ministry of Human Resource Development, Government of India, New Delhi, p. 252.

CONCLUSION

IF LIBERTY IS PARAMOUNT...



An undertrial prisoner is an accused who is assumed to be innocent till proven guilty. He is in custody only to ensure that he appears at court as required or is available to answer questions during investigations. There is no other reason for him to be in prison. At all times while his physical custody is in the hands of prison authorities his physical and legal well-being is in the judiciary's hands. His lawyer, if he has one, is there to assist him in his defence to the best of his ability and to represent him before the court. But that does not diminish the court's responsibility towards the undertrial prisoner. The court has the primary responsibility.

Yet, "It is a matter of common experience that in many cases where the persons are accused of minor offences punishable not more than three years or even less with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression... Even in case of offences punishable for seven years or less with or without fine the prosecutions are kept pending for years and years together in criminal courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to poorer sections of the society who are unable to afford competent legal advice. Instances have also come before courts where the accused, who are in jail, are not brought to the court on every date of hearing and for that reason also the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution."³⁵

The Periodic Review Committee is a specific mechanism that allows for all relevant persons to come together to assist the courts to ensure that there is no unjustifiable infringement of the right to liberty to which we are all entitled. To ensure there is no infringement quite independently of the judges' role at the Periodic Review Committee, every High Court Judge has a supervisory role over all the districts in the state and the judiciary itself has guidelines and internal directions that oblige it to pay close attention to ensuring that there are no prisoner overstays and all prisoners' rights are effectuated.

Review Committees have been in existence continuously since 1979 and are indeed an excellent coordinating and oversight machinery helpful primarily to the judiciary. The report reveals that in the absence of any accountability or superior oversight, the present functioning of the Periodic Review Committees fail their

³⁵ *Common Cause, A Registered Society through its Director v. Union of India and Others* 1996 AIR 1619.

mandate to the peril and prejudice of the undertrial. Their indifferent and sporadic functioning indicates an urgent need for strong supervision.

Liberty is of paramount value and all agencies of the criminal justice system should come together and work harmoniously to ensure the effective realisation of legal rights to every individual behind bars and to keep a check on prolonged detention and overstay. This can only be done when every actor of the justice system is made accountable with checks and balances by other actors, provided all of them recognise their powers and responsibilities in respect to an individual in conflict with law.



RECOMMENDATIONS

For the Periodic Review Committee to work effectively, CHRI recommends:

a) Statutory Recognition to the Periodic Review Committee

- ✦ Periodic Review Committees must be introduced as a “Part” in the Rajasthan Prisons Rules, 1951. It must lay down the organisational structure and functions of the Committee, as mandated in the Government Order, clearly defining the role of each member. Making explicit statutory provisions for Periodic Review Committees in the Prison Rules would make all the functionaries of the system more accountable and efficient towards easing the problem of pre-trial detention.

b) Conduct of Meetings and Attendance

- ✦ To ensure proper preparation and maximum attendance dates must be pre-set at the start of the year or at least six months in advance, keeping in mind court dates that will allow the Chief Magistrate to attend without fail.

c) The Lists and Proforma

- ✦ Jail authorities must prepare jail-wise lists of qualifying prisoners to be reviewed strictly in accordance with the proformas, with the most urgent cases prioritised to the top of the lists.³⁶ This will remove the possibility of arbitrariness in the inclusion of names.
- ✦ Two additional proformas must be created to serve: those charged with serious offences who have been undertrials for a long period; and those who have committed such petty offences that there is no need to keep them in judicial custody. Though the Periodic Review Committee’s mandate mentions that these prisoners need to be reviewed there is at present no proforma for them. (Refer Annexure G)
- ✦ Section 436A of the Cr.P.C. was introduced in 2005. There is no proforma for it at present. A proforma must be introduced to cover the cases of undertrials who have undergone half or more of the maximum term they could possibly serve if found guilty of the offence. In such cases the person must be released on personal bond, with or without sureties.
- ✦ There should be a proforma especially for any undertrial whose age is contested. Such cases must be kept under constant review and the minutes of each meeting must indicate the status of the matter. The review of such

³⁶ Sections 167, 436, 436A and 437 of the Code of Criminal Procedure Code, 1973.

individual must be accorded the highest priority and removal from prison must be immediate in accordance with the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000.

- ✦ There should be a separate proforma indicating the condition of mentally ill prisoners. At present, they have a proforma specifying the names of non-criminal lunatics only. (Refer Annexure G)
- ✦ Under each list, based on a particular proforma, the cases should be categorised court-wise so that those belonging to a particular court are reviewed together. It will help the Chief Judicial Magistrate to monitor the working of each Judicial Magistrate of the district.
- ✦ As suggested by the Committee at Hanumangarh, three new fields in the format of the lists of undertrials must be incorporated for review:
 - Whether chargesheet is filed (Yes/No)
 - Whether bail had been applied for (Yes/No)
 - Whether bail was granted (Yes/No).
- ✦ The list of prisoners under review during a month must be put up as a public notice in the prison before the meeting and be available for prisoners and their representative to view.
- ✦ Undertrials should be informed and must appear in person. The outcome of the review must be shared with the undertrial concerned. If so requested, opportunities to appear in person and provide details of his/her own situation should be afforded to individual prisoners. This will facilitate disclosure of personal obstacles in obtaining bail.³⁷

d) Minutes of Meetings

- ✦ Minutes must be detailed and complete, and all Review Committees must follow a style guide in this regard. A suggested style guide³⁸ to prepare minutes is appended as a guideline.
- ✦ Minutes must in particular indicate which individual prisoners have been reviewed and record in detail the recommendations sent to the court in relation to each prisoner. Where the review of a prisoner on the list has not been possible, future review opportunities must be provided.

³⁷ Illustratively, in Sri Ganganagar where an undertrial was called before the Committee it was discovered that because he had old and infirm parents no one was in a position to furnish bail for him.

³⁸ See Annexure H: CHRI's Model Style Sheet for Minutes of Periodic Review Committee Meetings.

If lists of prisoners are made according to the proformas and placed in their respective categories there will be little opportunity for missing out some or being inattentive to others.

- ✦ Minutes must indicate the action taken on each case reviewed and indicate whether prisoners have been released or cases expedited as a result of earlier recommendations made by the Committee.
- ✦ Minutes of every meeting must be sent in a timely fashion to all concerned magistrates/judges of the district so that they can act on cases which have come up for review. The minutes must also be sent to the High Court Judge overseeing that district along with any comments from the CJM as necessary.

e) **Realistic Case Review**

- ✦ To be effective for the purpose it was formed, the number of cases presented to the Committee must be realistic. The sittings must be aimed at ensuring the legal rights of the undertrials and not at the convenience of the administration or the establishment. The emphasis of the Review Committee should not be to cover the maximum cases at a meeting, but to effectively review cases qualitatively, touching all important aspects of each case to ensure that injustice is not perpetuated. Correctives must be immediate and not dependent on long drawn out procedures.

f) **Right to Information**

- ✦ In order to obtain the information for this report from all the prisons CHRI applied under Section 6 of the Right to Information Act, 2005. However, we are of the view that the proceedings of the Review Committee and its records fall under Section 4. They should be proactively put in the public domain and should not have to be sought. Since interested parties would include inmates, their lawyers, family members and NGOs, it should be available at the jail to the inmates and to all concerned parties. This is not the case at present and we recommend that it be amended.

g) **Oversight and Supervision**

- ✦ Delays and lack of action taken on recommendations or repeated appearances of names of prisoners qualifying for review must be brought to the attention of the concerned court by the CJM and an explanation sought.

- ✦ Include in the performance evaluation of the Chairs of the Review Committees, their regularity in chairing them.
- ✦ Include in the performance evaluation of Judicial Magistrates the heed each court has paid to expedite the cases of overstays statutorily entitled to be released on bail.

h) Use of Technology

- ✦ Better record management with the help of enhanced computerisation is essential. A standard computerised data management system could maintain records of the prisoners in all prisons and highlight incongruencies that can automatically be sent to the oversight committees for action.

Evaluation of Period of Detention (EPoD)

The “Evaluation of Period of Detention for Undertrial Prisoners’ (EPoD) is a computer software attempting to effectuate the implementation of bail provisions under Sections 436 and 436A of the Cr.P.C., resulting in the release of undertrial prisoners who are detained unnecessarily. EPoD was developed as a set of analytical instructions which evaluate the period of detention for each undertrial prisoner. The user has to input basic data such as name, father’s name, address, case reference number, date of admission in prison, name of prison and the offences with which he has been charged. Once the data is entered, EPoD will automatically evaluate the information and alert the user regarding:

- Whatever the offences charged with are bailable/non-bailable;
- Date of completion of half the maximum prescribed punishment for the offence;
- Date of completion of maximum period of prescribed punishment; and
- Whether the person has already been imprisoned for a period in excess of half or the maximum period of prescribed punishment, and thus eligible to apply for bail under Sections 436 and 436A of the Cr.P.C.

The purpose of the software would be best fulfilled if it is used by the prison departments across all states in India. It can be installed either in the prison directorate or where computers are available, within the prison premises. The data can be entered when the prisoner is admitted to the prison. EPoD will calculate on a daily basis to report those prisoners who are detained unnecessarily and are eligible to apply for bail under Sections 436 and 436A of the Cr.P.C. Once the prisoner’s eligibility to apply for bail is confirmed through EPoD, the Superintendent should place those cases for review before the Committee.

i) Recommendations of the All India Jail Reforms Committee

The All India Jail Reforms Committee of 1980-83, popularly known as the Mulla Committee, under the chair of Justice A. N. Mulla, has also recommended making the State and the various actors of criminal justice system accountable to keep a constant check on pre-trial detention in the light of statutory safeguards. Some of the important recommendations regarding the review of undertrials' cases are as follows:

1. Undertrial prisoners continue to be detained in prisons for long periods. A review on an all India basis should be undertaken to find out whether the provisions of the Code of Criminal Procedure in this regard have been fully implemented.
2. (a) An effective mechanism of review of the cases of undertrial prisoners regularly both at the district level and the State level should be evolved.
(b) The Code of Criminal Procedure should be suitably amended to provide that as soon as an undertrial prisoner completes the period of detention equal to half of the maximum sentence awardable to him on conviction, he should be released immediately and unconditionally.
3. Prison superintendent should take a monthly review of children confined in prison and send a report to the appropriate authorities for necessary action.
4. Each State/ Union Territory should formulate a set of guidelines to be uniformly applied to govern the working of Review Board. At the end of every six months the Review Board should examine the case of every young offender and determine his suitability for release on licence.
5. The District Magistrate should constitute a committee to review the position of undertrial prisoners in each sub-jail under his jurisdiction. The Inspector General of Prisons should review the situation of undertrials in sub-jails with State Home Secretary once in every three months.

j) Recommendations of the 177th Law Commission Report

The 177th Report of the Law Commission submitted to the government on the law relating to arrests, stated that the best way to reduce the number of undertrial prisoners is to regulate arrests. In order to ensure that the basic human rights and fair trial guarantees of an accused are not violated and

justice be delivered within reasonable time, the Periodic Review Committee must incorporate into their goals and mandate the recommendations made by the 177th Law Commission Report.

The Commission suggested three major changes to be brought about in the Criminal Procedure Code:

1. No person shall be arrested for offences that are at present categorised as bailable and non-cognizable. For offences under the category of non-cognizable offences no arrest shall be made by the police and no court shall issue an arrest warrant.
2. In respect of offences treated as bailable and cognizable, no arrests shall be made but an “appearance notice” shall be served on the accused directing him to appear at the police station or before the Magistrate as and when required.
3. Offences punishable with seven years of imprisonment and treated at present as non-bailable and cognizable would be treated as bailable and cognizable offences.

The Law Commission’s recommendations need speedy implementation together with the other above mentioned measures to build popular confidence in the law enforcement system as being capable of creating harmony in society.³⁹

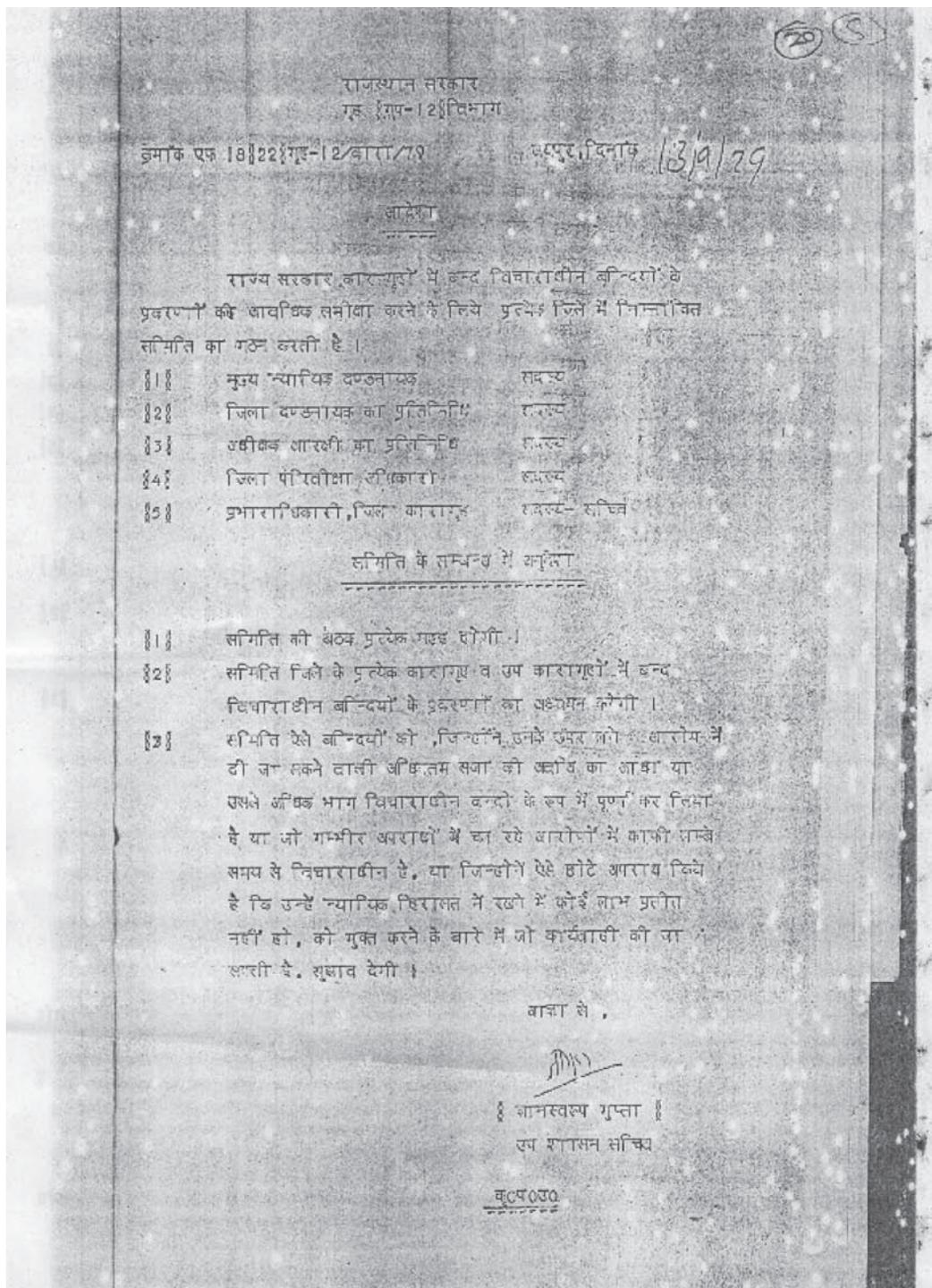
³⁹ “Some Recommendations from the Law Commission of India on Arrest and Detention” by Dr P. J. Alexander, former Director General of Police, Kerala, India.

ANNEXURES



Annexure A

The Government Order No. F/8/22/Grah-12/kara/79 that formed the Periodic Review Committee



Annexure B

Meeting Analysis Grid of the Central Jails, Rajasthan

The data included in the study is for 29 districts as the replies of Sawai Madhopur, Jalore, Jhunjhunu, and Udaipur⁴⁰ were too tardy to be included.

Name of Prison (Central Jail)	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10
Jaipur	N	Y	N	N	Y	N	N	N	N	Y	N	Y	N
Jodhpur	N	Y	Y	Y	Y	N	Y	Y	N	Y	N	N	N
Kota	Y	N	N	Y	N	N	N	N	N	N	N	N	N
Udaipur													
Bikaner	N	N	Y	N	Y	N	N	N	N	N	N	N	N
Ajmer	N	N	N	N	Y	N	N	N	N	N	N	N	Y
Sri Ganganagar	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	Y	Y
Bharatpur	N	N	N	Y	N	N	N	N	N	N	N	N	N

 - Meeting Held

 - Meeting Not Held

⁴⁰ Sawai Madhopur – 8 months to reply; Jalore – 4 months to reply; Jhunjhunu – 8 months to reply; Udaipur – postal delay, prevented CHRI from including the data from these prisons in our study.

Annexure C

Meeting Analysis Grid of all the District Jails, Rajasthan based on CHRI findings

Name of Prison (District Jail)	Jun 09	Jul 09	Aug 09	Sep 09	Oct 09	Nov 09	Dec 09	Jan 10	Feb 10	Mar 10	Apr 10	May 10	Jun 10
Alwar	Y	Y	N	N	N	N	N	Y	N	Y	N	N	N
Dholpur	N	N	N	N	N	N	Y	N	Y	N	N	Y	N
Tonk	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N
Banswara	Y	Y	Y	Y	N	N	N	N	N	N	N	N	N
Baran	N	N	N	Y	N	N	N	N	N	Y	N	N	Y
Barmer	N	N	Y	N	N	N	N	N	N	Y	N	N	Y
Bhilwara	N	N	N	N	N	N	Y	N	N	N	N	N	N
Bundi	N	N	N	N	N	N	N	N	N	N	N	Y	N
Chittorgarh	N	N	Y	N	N	Y	N	Y	N	Y	N	N	Y
Churu	N	N	Y	N	N	Y	N	N	Y	Y	Y	N	Y
Dausa	N	N	N	N	Y	N	N	N	N	N	N	N	N
Dungarpur	N	N	N	N	N	Y	N	N	N	N	N	N	N
Sawai Madhopur													
Hanumangarh	N	N	N	N	N	N	Y	N	N	Y	N	N	N
Jaisalmer	N	Y	N	N	N	Y	N	N	N	Y	N	N	Y
Jalore													
Jhalawar	N	Y	N	N	N	N	N	N	N	N	N	N	N
Jhunjhunu													
Karauli	Y	Y	Y	N	Y	Y	N	Y	Y	Y	N	Y	N
Nagaur	Y	N	Y	N	N	N	N	N	N	Y	N	N	N
Pali	N	N	N	N	N	N	Y	N	N	N	N	N	N
Pratapgarh	Y	N	N	Y	N	Y	Y	N	Y	Y	N	N	Y
Rajsamand	Y	Y	Y	N	Y	Y	N	N	Y	Y	Y	Y	Y
Sikar	Y	N	Y	N	Y	N	Y	N	N	N	N	N	N
Sirohi	N	N	Y	N	N	N	N	Y	N	N	N	N	N



- Meeting Held



- Meeting Not Held

Annexure D

Letter of the Special Rapporteur of the National Human Rights Commission to IG of Prisons

Sankar Sen	D.O.No. 11/1/99-PRP & P
Special Rapporteur	National Human Rights Commission

29.04.1999

Dear

The problems of Undertrial prisoners have now assumed an alarming dimension. Almost 80% of prisoners in Indian jails are Undertrials. The majority of Undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background. The Supreme Court in a memorable judgement - *Common Cause (a registered society) Vs. Union of India 1996* - has given the following directions regarding the release of Undertrials on bail.

- a. Undertrials accused of an offence punishable with imprisonment up to three years and who have been in jail for a period of six months or more and where the trial has been pending for atleast a year, shall be released on bail.
- b. Undertrials accused of an offence punishable with imprisonment up to five years and who have been in jail for a period of six months or more, and where the trial has been pending for at least two years, shall be released on bail.
- c. Undertrials accused of offences punishable with imprisonment for seven years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.
- d. The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than two years.
- e. Where an offence compoundable with the permission of the court has been pending for more than two years, the court shall after hearing public prosecutor discharge or acquit the accused.
- f. Where non-cognizable and bailable offence has been pending for more than two years, without trial being commenced the court shall discharge the accused.
- g. Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.
- h. Where the offence is punishable with imprisonment up to one year and the trial has not commenced within a year, the accused shall be discharged.
- i. Where an offence punishable with an imprisonment up to three years and has been pending for more than two years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

However, the directions of the court shall not apply to cases of offences involving

(a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food

Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility, (g) offences relating to public servants, (h) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499 IPC.

The Supreme Court has given further directions that the criminal courts shall try the offences mentioned in para above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

These directions of the Supreme Court aim at streamlining the process of grant of bail to the Undertrials and make it time-efficient. The judgement, however, does not provide for suo-moto grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the court for grant of bail. There is also no mechanism in the courts to automatically dispose off suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoners in time. You are requested to meet the Registrar of the High Court, State Legal Aid Authorities and take measures for release of Undertrial prisoners in consonance with the Judgement of the Apex Court. Release of Undertrial prisoners will lessen the congestion in jail and help more efficient prison management. The process thus needs the high degree of coordination between the judiciary, the police and the prison administration which unfortunately is now lacking.

The majority of Undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background.

Yours sincerely,

Sd/-

(Sankar Sen)

To

All Inspectors General of Prison

Annexure E

IN THE SUPREME COURT OF INDIA

Decided On: 11.08.1972

Appellants: Daulat Ram

Vs.

Respondent: The State of Haryana

Hon'ble Judges: H. R. Khanna, I. D. Dua and J. M. Shelat, JJ.

Subject: Criminal

Catch Words Mentioned IN Acts/Rules/Orders:

CONSTITUTION OF INDIA - Article 136;

INDIAN PENAL CODE (45 of 1860) - Section 34,279,280,281,282,283,284,285,286,287,288,289,290, 291,292,293,294,295,296,297,298,299,300,301,302,303,304,305,306,307,308,309,310,311,312,313, 314,315,316,317,318,319,320,321,322,323,324,325,326,327,328,329,330,331,332,333,334,335,336, 337,338,339,340,341,342,343,344,345,346,347,348,349,350,351,352,353,354,355,356,357,358,359, 360,361,362,363,364,365,366,367,368,369,370,371,372,373,374,375,376,377,378,379,380,381,404, 420;

PROBATION OF OFFENDERS ACT, 1958 (20 OF 1958). - Section 3,4,6,11

Citing Reference:

Case Note:

Criminal - probation - Section 6 of Probation of Offenders Act, 1958 - applicability of Section 6 in question - offenders below 21 years of age on date of offence- Section 6 prohibits young offenders to be sent to jail for commission of less serious offences to prevent their exposure to dreaded criminals as jail inmates - Section 6 be applicable - Court Ordered to release accused

JUDGEMENT

Dua, J.

1. This is an appeal special by leave under Article 136 of the Constitution. But the special leave granted by this Court was limited to the question of the applicability of the Probation of Offenders Act, 20 of 1958 (hereinafter called the Act).
2. According to the prosecution case, on December 20, 1968 at about 4 p.m. Smt. Sardaro, along with her mother-in-law Smt. Sarbati had gone to their gitwar for taking fuel. Smt. Surti, wife of Net Ram and mother of the appellant Daulat Ram, came out of her residential house and went to her gitwar through Smt. Sardaro's gitwar. Smt. Sardaro prohibit Surti to pass through the former's gitwar. Surti abused Sardaro. Thereupon Net Ram and his son Daulat Ram, appellant, armed with lathis rushed to their gitwar hurling abuses and raising lalkaras "marlo marlo" Surti caught hold of Sardaro. Net Ram gave a lathi blow on her head which hit her cheek below her left eye. Net Ram and Daulat Ram are then alleged to have caused further injuries to Sardaro. Net Ram and Daulat Ram were both convicted under Sections 325/34 and 323/34, IPC and sentenced to rigorous imprisonment for two years and three months respectively. They were also directed to pay a fine of Rs. 250/- each under the first count. On appeal to the Punjab and Haryana High Court it was found that Net Ram had eight injuries on his person and Daulat Ram four. The conviction of both of them was upheld but the sentences of imprisonment under Sections 325/34 were reduced. The amount of fine was also reduced to Rs. 100 each.

3. This Court declined to grant special leave to Net Ram but to Daulat Ram, as already observed special leave was granted limited only to the extent of the applicability of the Act.
4. Now it is submitted that Daulat Ram was born on March 2, 1949. He was convicted by the learned additional Sessions Judge, Gurgaon on February 20, 1970. The date of the occurrence was December 20, 1968. It is clear that on the date of his conviction the appellant was less than twenty one years old. Section 3 of the Act deals with persons found guilty of offences punishable under Sections 279 to 381, 404 and 420 IPC or punishable with imprisonment for not more than two years and when no previous conviction is proved. Section 4 of the Act provides :-

Power of Court to release certain offenders on probation of good conduct:

- (1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the Court may direct and in the meantime to keep the peace and be of good behavior :

Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place or abode or regular occupation in the place over which the Court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

- (2) Before making any order under Sub-section (1), the Court shall taking into consideration the report, if any, of the probation officer concerned in relation to the case.
- (3) When an order under Sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is Expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.
- (4) The Court making a supervision order Sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties to observe the conditions specified in such order and such additional conditions with respect to residence, Abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.
- (5) The Court making a supervision order under Sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish the copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

Section 6 of the Act with which we are directly concerned lays down :-

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 reason for doing so.

- (2) For the purpose of satisfying itself whether it would not be desirable to deal under Section 3 or Section 4 with an offender referred to in Sub-section (1) the Court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental conditions of the offender.
5. It is obvious that Section 6 places restrictions on the Court's power to sentence a person under twenty-one years of age for the commission of offences mentioned therein unless the Court is satisfied that it is not desirable to deal with the offender under Sections 3 and 4 of the Act. The Court is also required to record reasons for passing sentence of imprisonment on such offender. Section 11 of the Act empowers the Courts of Appeal and Revision also to make order under the Act. In *Ramji Misser v. The State of Bihar* (1963) Supp. 2 SCR 745, this Court laid down:
- (1) the age referred to in Section 6(1) of the Act is that when the court is dealing with the offender, that being the point of time when the Court has to choose between the two alternatives, whether to sentence the offender to imprisonment or to apply to him the provisions of Section 6(1) of the Act.
 - (2) the Courts mentioned in Section 11 are empowered to exercise the Jurisdiction conferred on Courts not only under Section 3 and 4 and the consequential provisions but also under Section 6.
 - (3) the power conferred on Appellate or other Courts by Section 11(1) of the Act is of the same nature and character and subject to the same criteria and limitations as that conferred on the Courts under Sub-sections 3 and 4.
 - (4) the provisions of Section 6(1) restrict the absolute and unfettered discretion implied by the word "may" in Section 11(1) and the entirety of Section 6(1) applies to guide or condition the jurisdiction of the High Court under Section 11(1): and
 - (5) the crucial date for reckoning the age where an Appellate Court modifies the judgement of the trial judge when Section 6 becomes applicable to a person only on the decisions of an Appellate or a Revisional Court, is that upon which the trial Court had to deal with the offender.
6. In *Rattan Lal v. The State of Punjab* AIR 1955 SC 444 this Court observed that Section 11(1) of the Act is the provision that directly applies to the case whereunder an order may be made by any Court empowered to try and sentence the offender to imprisonment and also by the High Court or any other Court when the case comes before it on appeal or in revision. That Sub-Section ex facie does not circumscribe jurisdiction of an Appellate Court to make an order under the Act only in a case where the trial Court could have made that order. The phraseology used therein is wide enough to enable the appellate Court or the High Court, when the case comes before it, to make such an order it having been purposely comprehensive for implementing a social reform. That was a case like the one before us from Gurgaon District. This Court, after setting aside the order of the High Court, remanded the case back to the Sessions Court for making an order under Section 6 of the Act. In *Isher Das v. The State of Punjab* AIR 1972 SC 1295 the accused who was tried under the Prevention of Food Adulteration Act was given by the trial Magistrate the benefit of the Act & was directed to furnish bond under Section 4 thereof. The High Court, however, on its own motion altered the sentence passed by the trial Magistrate and instead imposed a sentence of simple imprisonment

for a period of six months and a fine of Rs. 1,000/-. This Court on appeal set aside the order of the High Court and restored that of the trial Magistrate observing that the High Court had failed to consider the provisions of the Act particularly the mandatory nature of Section 6. The accused in the reported case was less than 20 years of age. In *Satyabhan Kishore v. The State of Bihar* AIR 1972 SC 1555 it was observed that Section 6 of the Act lays down an injunction not to impose a sentence of imprisonment upon subscribed years of age found guilty of an offence punishable with imprisonment but not with imprisonment for life, unless for reasons to be recorded by it, the Court finds it undesirable to proceed with him under Section 3 or Section 4. It was added that whenever Section 6 is applicable the Supreme Court can either apply it on its own or direct the High Court to do so.

7. In *Abdul Cayum v. The State of Bihar* AIR 1972 SC 214, 1972 SCR(2)381 this Court observed that the provisions of the Act have to be viewed in the light of the laudable reformatory object which the legislature was seeking to achieve by enacting it. In that case, after allowing the appeal, this Court directed the offender to be released under Section 4 of the Act on his entering into a bond with his father as a surety to appear and receive sentence by the trial Court whenever called upon to do so within a period of one year and during that time to keep the place and be of good behavior. The trial Court was directed to take a bond from the appellant and a surety bond from the appellant's father. In *Ram Singh v. The State of Haryana* Cr. A. No. 223 of 1967 decided on 26th March, 1970 this Court did not consider it proper to entertain under Article 136 of the Constitution the plea for invoking the Act in the absence of report from the Probation Officer and other relevant material regarding the character etc., of the offender.
8. Now the object of Section 6 of the Act, broadly speaking, is to see that young offenders are not sent to jail for the commission of less serious offences mentioned therein because of grave risk to their attitude to life to which they are likely to be exposed as a result of their close association with the hardened and habitual criminals who may happen to be the inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly do them harm than good, and for that reason it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. It is for this reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6. This mandate is inspired by the desire to keep the young delinquent away from the possibility of association or close contact with hardened criminals and their evil influence. This Section, therefore, deserves to be liberally construed so that its operation may be effective and beneficial to the young offenders who are prone more easily to be led astray by the influence of bad company.
9. In the case in hand, keeping in view the nature and the attending circumstances of the offence and the age of the appellant Daulat Ram we consider it proper to give him the benefit of the Act. On behalf of the respondents it was not controverted that this Court can make an order under the Act on the existing materials on the record without remitting the case to the trial Court and without seeking any further information. Accordingly, affirming his conviction, we set aside the sentence of imprisonment and direct that he be released on entering into a bond with one surety in the sum of Rs. 500/- each, to appear in the Court of the trial Magistrate and receive the sentence affirmed by the High Court, whenever called upon to do so by the trial Magistrate within a period of one year and during that period to keep the peace and be of good behaviour. The trial Magistrate is directed to take the necessary bond from the appellant and the necessary surety bond from a surety to his (the trial Magistrate's) satisfaction. The appellant's bail bond will endure till the time these directions are carried out, after which it will be deemed to be cancelled.

Annexure F

PROFORMAS Proforma A

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of prisoners standing trial in cases punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, who have completed 90 days under custody but in whose case investigations have not concluded

Related Section 167(2)(a)(i) Cr.P.C.

1	2	3	4	5	6	7	8
Name and Father's Name	Date of Arrest	Case No. & Section under which Confined	Name of the Court where Trial is Pending	Total Period of Custody	Date on Which Court Requested for Passing Orders of Release on Bail	Date of Order of Release on Bail	Remarks

Proforma B

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of prisoners standing trial in cases punishable with a term of less than 10 years, who have completed 60 days under custody but in whose case investigations have not concluded

Related Section 167(2)(a)(ii) Cr.P.C.

1	2	3	4	5	6	7	8
Name and Father's Name	Date of Arrest	Case No. & Section under which Confined	Name of the Court where Trial is Pending	Total Period of Custody	Date on which Court Requested for Passing orders of Release on Bail	Date of Order of Release on Bail	Remarks

Proforma C

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of undertrial prisoners who are under detention for a period more than the maximum term of sentence awardable to them in case in which they are standing trial

Related Section 428 Cr.P.C.

1	2	3	4	5	6	7	8
Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which Standing Trial	Term of Maximum Sentence Awardable	Total Period under Detention during Investigation and Trial	Date on which Court Informed	Remarks

Proforma D

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of non-criminal lunatics confined in prison for observation for more than 30 days

Related Section 16 & 23 of the Indian Lunacy Act, 1912

1	2	3	4	5	6
Name and Father's Name	Section & Act under which Confined	Name of the Court or Magistrate Authorising Detention	Date of Entry into Prison	Total Period Passed in Detention	Remarks

Annexure G

CHRI's Suggested Additional Proformas

Suggested proformas for reviewing certain prisoners mentioned in the 1979 mandate of the Periodic Review Committee [Proformas a), b) & c)] and others who are considered vulnerable [Proformas d) & e)]

a) For Undertrials who are charged with offences punishable with death or life imprisonment whose trial is continuing over two years

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of Undertrial prisoners who are charged with serious offences

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which Standing Trial	Term of Maximum Sentence Awardable	Total Period under Detention during Trial	Date on which Bail was Rejected by Court	Remarks

b) For Petty Offenders who are charged with offences punishable with imprisonment up to two years

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of Petty Offenders

(Related S.3, The Probation of Offenders Act, 1958)

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which Standing Trial	Term of Maximum Sentence Awardable	Total Period under Detention	Remarks

c) For Undertrials who have completed half or more than the maximum term of the prescribed punishment

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of Undertrials who have completed half or more than the maximum prescribed term of punishment

(Related Section 436A Cr. P. C.)

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which Standing Trial	Term of Maximum Sentence Awardable	Total Period under Detention	Remarks

d) For Undertrials whose age is contested / Juveniles

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of Undertrials whose age is contested / Juveniles

[Related to Juvenile Justice (Care and Protection of Children Act), 2000]

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which Standing Trial	Term of Maximum Sentence Awardable	Total Period under Detention	Remarks

e) For Mentally Ill Undertrials

Name of Jail/Sub-jail _____ Date of Review _____ Total No. of U.T. Prisoners _____

List of Undertrials whose are mentally ill

[Related S. 328 to S.339 Cr. P. C.]

Name and Father's Name	Date of Arrest	Case No. & Name of the Court	Sections under which Standing Trial	Term of Maximum Sentence Awardable	Total Period under Detention	Remarks

Annexure H

CHRI's Model Style Sheet for Minutes of the Periodic Review Committee Meeting

PART 1: ADMINISTRATIVE

- Date
- Time from.....am/pm to.....am/pm
- Venue
- Members Present:

Sample Table 1.1

Name of the Member	Designation	Duty-holder under PRC	Time/Duration of Participation
Name	CJM	Chairperson	3:00 p.m. to 6:00 p.m.
Name	Superintendent	Member-Secretary	3:00 p.m. to 6:00 p.m.
Name	DSP	Representative of Superintendent of Police	3:00 p.m. to 5:00 p.m.

- Members absent:

Sample Table 1.2

Name of the Member	Designation	Duty-holder under PRC	Reasons for Non-attendance
Name	ADM	Member	Sick leave [see attached letter of regret]
Name	DPO	Member	Reason not known

PART 2: REVIEW OF CASES

- Total number of cases put up for review under each proforma (See Table 2.1)
- Total number of cases put up for review court-wise under each proforma (See Table 2.2)
- Urgent cases, not falling under any of the proformas, such as petty cases, mentally ill prisoners, juveniles or whose age is disputed
- Total number of cases reviewed at the meeting (See Table 2.2)

Sample Table 2.1 – Total Number of Cases for Review

Proformas	Total no. of Cases Put up for Review
A	28
B	16
C	5
D	1
Total	50

Example: Table 2.2 – Total Number of Cases by Court and Per Proforma

S. No.	Name of the Court	Number of Cases as per Proformas	Total Number of Cases Put up for Review	Actual Cases Reviewed
1	ADJ (name of the place)	Proforma A – 6	12	5
2	ADJ (name of the place)	Proforma A – 4	8	4
3	Judicial Magistrate No. 1	Proforma A – 8	15	11
4	Judicial Magistrate No. 2	Proforma A – 10	15	6
	Total		50	26

PART III: RECORD OF INDIVIDUAL REVIEW OF CASES

Explanation: Minutes must indicate to whom the direction is given in each case – Officer In Charge of Prison/ Court/ Police/ Doctor/ Other.

- Individual review of cases falling under Proforma A [Cases under S. 167(2)(a)(i) Cr. P. C. where no chargesheet has been filed within 90 days]

Sample Table 3.1

Name of Undertrial & Case Details	Ram Singh s/o Hari Singh, case no. 34/2011, is in judicial custody since 20.04.11, and is eligible for release under S. 167(2)(a)(i) on 18.07.11
Total Number of Production Warrants Issued	1/2/3/4/5/6...
Total Number of Times the Prisoner Has Not Been Produced on Due Dates	1/2/3/4...
Reasons for Non-Production	Shortage of police escorts/sickness/other
Whether the Prisoner Made a Written or Personal Representation to Committee	Yes/No
Directions to Prison	Ram Singh should be sent to the Court at the earliest with immediate effect/no later than ___/within the next 24 hours/on the next working day and to forward Ram Singh's letter to the Court to consider his release on bail.
Recommendation to Court	Consider release on bail with immediate effect/no later than ___/ within the next 24 hours/on the next working day.
Comments/ Discussion Notes	

- Individual review of cases falling under Proforma B [Cases under S. 167 (2)(a)(ii) Cr. P. C. where no chargesheet has been filed within 60 days]

Sample Table 3.2

Name of Undertrial & Case Details	
Total Number of Production Warrants Issued	
Total Number of Times the Prisoner Has Not Been Produced on Due Dates	
Reasons for Non-Production	
Whether the Prisoner Made a Written or Personal Representation to Committee	
Directions to Prison	
Recommendation to Court	
Comments/ Discussion Notes	

- Individual review of cases falling under Proforma C (Cases under S.428 Cr. P. C. – Period of detention undergone by the accused to be set off against the sentence of imprisonment)

Sample Table 3.3

Name of Undertrial & Case Details	
Total Number of Production Warrants Issued	
Total Number of Times the Prisoner Has Not Been Produced on Due Dates	
Reasons for Non-Production	

Whether the Prisoner made a Written or Personal Representation to Committee	
Directions to Prison	
Recommendation to Court	
Comments/ Discussion Notes	

- Individual review of cases falling under Proforma D (Cases under S. 16 & 23 of Indian Lunacy Act, 1912 related to non-criminal lunatics):

Sample Table 3.4

Name of Undertrial & Case Details	
Total Number of Production Warrants Issued	
Total Number of Times the Prisoner Has Not Been Produced on Due Dates	
Reasons for Non-Production	
Whether the Prisoner Made a Written or Personal Representation to Committee	
Directions to Prison	
Recommendation to Court	
Comments/ Discussion Notes	

PART IV: OTHER LEGAL ISSUES

Explanation: Minutes must indicate to whom the direction is given in each case – Officer In Charge of Prison/ Court/ Police/ Doctor/ Other.

- **Prisoners without lawyers**
Explanation: Information to be provided for each month.

Sample Table 4.1

Name of Prisoner without Lawyer	
Date of Entry in Prison	
Directions	
Comments/ Discussion Notes	

- **Cases of non-availability of police escorts**
Explanation: Information to be provided for each month.

Sample Table 4.2

Total Number of Production Warrants Issued by Month	
Total Number of Prisoners Not Sent for Production by Month	
Comments/ Discussion Notes	
Individual Cases of Non-Production More than Twice	- Name of the prisoner - Total number of times the prisoner has not been produced on due dates

- **Reviewing the status of mentally ill prisoners**

Explanation: Information to be provided for each case and for each month.

Sample Table 4.3

Comment	
Date of Entry in Prison	
Dates of Doctor's Visits	
Kind of Medication Provided/ Details of Treatment	
Directions	

- **Reviewing the status of juveniles/whose age is contested**

Explanation: Information to be provided for each case and for each month.

Sample Table 4.4

Comment	
Date of Entry in Prison	
Status of the Ossification Test	- Report Received - Awaiting Report - Test Not Done
Reasons for Continued Presence in Prison	
Directions	
Comments/ Discussion Notes	

PART V: ACTION-TAKEN REPORTS

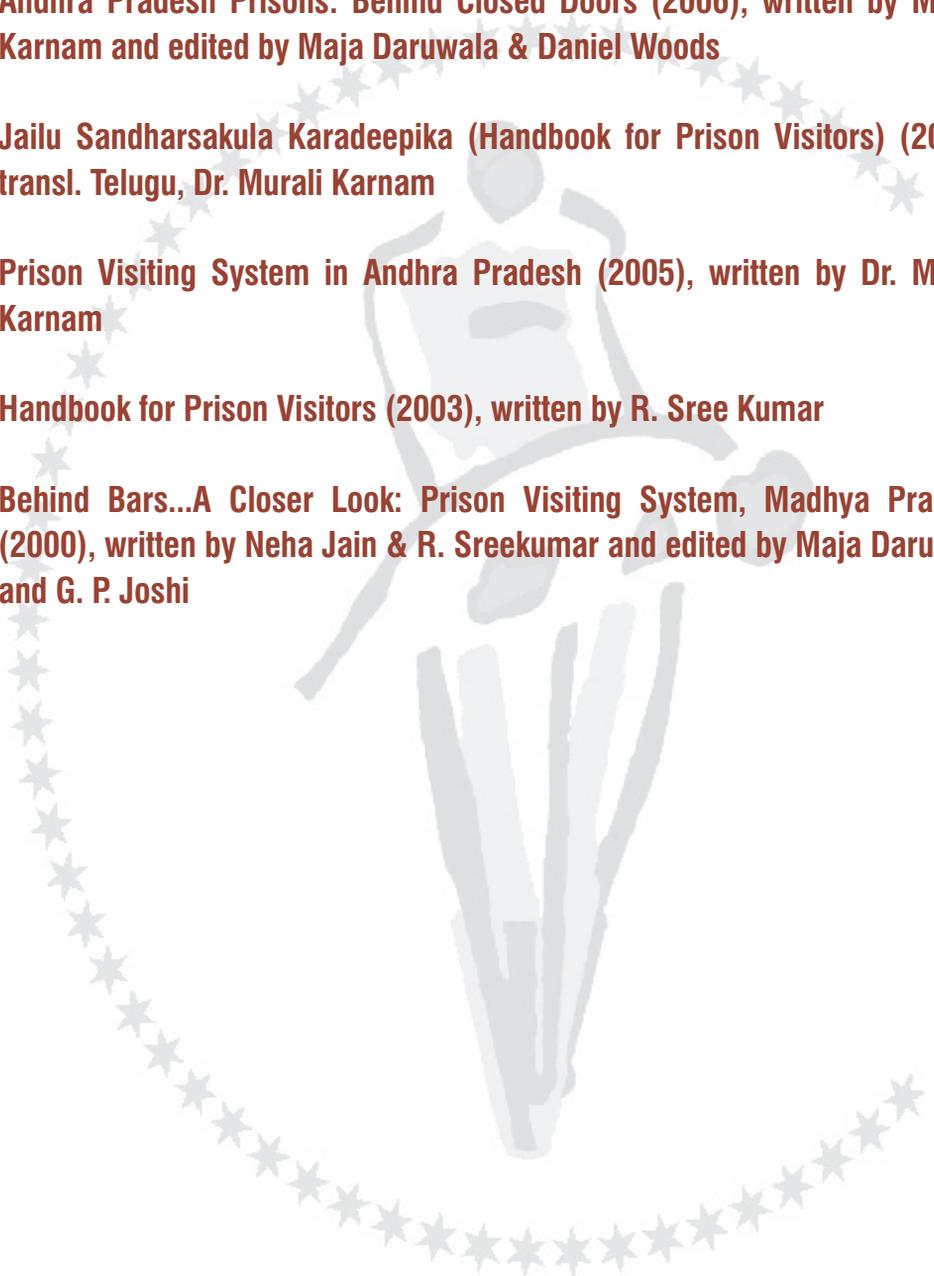
Explanation: The minutes of every Review Committee meeting must record details of follow-up in individual cases.

Sample Table 5.1

Name of Prisoner	Name of Court	Issue/Action Taken	Reasons for Non-Compliance/Action Not Being Taken
Sunita Singh w/o Rup Singh	Judicial Magistrate No. 1	Non-production of accused	Shortage of police escorts/ prisoner's sickness/ court on leave

CHRI Publications on Prison Reforms

-  **Salakhon mein Bandiyon ke Adhikar – Mahatvapurna Nyayik Faisle evam Rashtriya Manav Adhikar Aayog ke Disha Nirdesh (2011) translation Hindi, Rights Behind Bars - Landmark Judicial Pronouncements and National Human Rights Commission Guidelines, Anshuman Saxena and Sunita Thakur**
-  **Jail Adhikariyon ke Kartavya (Duties of Prison Officials) (2011)**
-  **Pre-trial Detention and Access to Justice in Orissa (2010), written by Priti Bharadwaj and Edited by Pujya Pascal**
-  **Conditions of Detention in the Prisons of Karnataka (2010), written by Murali Karnam and Edited by Maja Daruwala & Pujya Pascal**
-  **Standards Behind Bars - Rajasthan (2010)**
-  **Standards Behind Bars - West Bengal (2010)**
-  **Standards Behind Bars - Orissa (2010)**
-  **Standards Behind Bars - Maharashtra (2010)**
-  **Monitoring Prisons - A Visitor's Guide (2010), revised & written by Madhurima and edited by Pujya Pascal**
-  **Maharashtra's Abandoned Prisons - A Study of Sub-Jails (2010), written by Swati Mehta and researched by Ravindra Vaidya, Kirti Bhowate, Rasika Ramteke & Lokesh Meshram**
-  **Liberty at the Cost of Innocence: A Report on Jail Adalats in India (2009), written by Priti Bhardwaj and edited by Swati Mehta**
-  **Rights Behind Bars - Landmark Judicial Pronouncements and National Human Rights Commission Guidelines (2009), researched & written by Madhurima and edited by Swati Mehta**

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- **Community Participation in Prisons - A Civil Society Perspective (2008), Edited by Priti Bharadwaj and foreword by Maja Daruwala**
 - **Andhra Pradesh Prisons: Behind Closed Doors (2006), written by Murali Karnam and edited by Maja Daruwala & Daniel Woods**
 - **Jailu Sandharsakula Karadeepika (Handbook for Prison Visitors) (2005), transl. Telugu, Dr. Murali Karnam**
 - **Prison Visiting System in Andhra Pradesh (2005), written by Dr. Murali Karnam**
 - **Handbook for Prison Visitors (2003), written by R. Sree Kumar**
 - **Behind Bars...A Closer Look: Prison Visiting System, Madhya Pradesh (2000), written by Neha Jain & R. Sreekumar and edited by Maja Daruwala and G. P. Joshi**

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Strategic Initiatives: CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN, and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

Access to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation and assists partners with implementation of good practice. It works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interferences.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is aimed at highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. CHRI believes that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

Periodic Review Committee or the *Avadhik Samiksha Samiti*, as it is commonly known in Rajasthan, is part of the Multiple Oversight Mechanisms to keep the trial status of a large number of prisoners awaiting the finalisation of their trials under constant review.

With this report, CHRI inaugurates the publication series "If Liberty is Paramount..." committed to unveil the numerous difficulties prisoners encounter in accessing justice. This report raises a question, if liberty is paramount, then why are myriad irregularities evidenced in the working of these Committees in all districts of Rajasthan?

The report is based on the analysis of the information acquired by Right to Information requests filed in thirty-three Central and District Jails of Rajasthan which includes fifty-nine Sub-jails. It examines how they function across different jails and the extent to which they actually comply with the mandate given to them in the government's order.

This report highlights the crucial need for the effective working of the Review Committees so that the criminal justice system indeed privileges the value of liberty being paramount.



Commonwealth Human Rights Initiative

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