

RIGHTS BEHIND BARS

Landmark Judicial Pronouncements and
National Human Rights Commission Guidelines



CHRI

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.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

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Landmark Judicial Pronouncements and
National Human Rights Commission Guidelines



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*For thousands who lived, and
continue to live behind the prison
walls, failed by the justice system...*

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Introduction

The Constitution of India guarantees fundamental human rights to every individual. It further pledges that the state will safeguard these human rights and protect citizens from any arbitrary infringement upon their liberty, security and privacy.

“Imprisonment does not spell farewell to fundamental rights.”¹

The Supreme Court of India has reiterated this principle many a times in the past 30 years. Over the years, the Supreme Court has on many occasions emphasised the role of the judiciary as a “guardian of their sentences.” To support this, the court has laid down a number of guidelines and directives for the state to follow. The National Human Rights Commission (NHRC) has also issued guidelines and written letters to various agencies including the judiciary, the prison department and the state government to ensure that the rights of the prisoners are respected.

The directions of the courts and the guidelines issued by the NHRC are extremely important in the context of prisoners’ rights. Prisons are a state subject and each of the 28 states² and the 7 union territories have their own prison department, their own laws, rules and regulations. Prisons in India continue to be governed by the archaic Prisons Act, 1894, which has been adopted by a huge majority of the states. Those that have enacted their own laws have modelled these closely on this Act.³ This law does not contain any provisions on prisoners’ rights, their rehabilitation, reformation, or for their reintroduction into society on completion of sentence.

This Act clearly codified a colonial policy suspicious of the indigenous population; providing for restricted access and little supervision, and for the imposition of disciplinary punishments at the discretion of prison superintendents including solitary confinement, imposition of chains and whipping and transportation in irons. It is a scandal that a 60 year apathy for reform should see an Act drafted and adopted under a hostile administration, survive and govern the contemporary correctional system.

¹ *Charles Sobraj v Superintendent Central Jail, Tihar, New Delhi* AIR 1978 SC 1514.

² Except Arunachal Pradesh, which does not have any prisons and all its prisoners are housed in the prisons in Assam.

³ West Bengal is the only exception. It is governed by the *West Bengal Correctional Services Act, 1992*.

Given the lack of political will to legislate on prisons in independent India, it is the judicial pronouncements that have realised the constitutional rights of those held in prisons. The judgments of the Supreme Court are binding on all state agencies across the country and bring some kind of uniformity on prisoners' rights in India. An officer who wilfully or inadvertently ignores the Supreme Court directives can be subject to disciplinary action, as well as tried under the relevant provisions of the Indian Penal Code, 1860 and/or under the Contempt of Courts Act, 1971.

There is, however, a huge gap between the constitutional promises as enunciated by the judiciary, and the reality of the lives of prison inmates. About 65 per cent of the prisoners are not convicted of any offence but are just awaiting trial. They may continue to be held in prisons for years. A huge majority of these under-trial prisoners are poor. The system fails them at every turn. They are denied bail for want of monetary security. Trials take years. Often, they have no lawyers, live in pathetic conditions, do not have access to adequate medical care, and are likely to be tortured or exploited. They are not aware of their rights. Often, legal aid lawyers and prison officials are also unaware. This compilation seeks to bring together important judicial pronouncements and NHRC guidelines on prisons and prisoners' rights in a simplified form so that this information is easily accessible to those who are interested.

Disclaimer: While all care has been taken to properly summarise the judgments and the NHRC guidelines/letters, this document should not be used as a substitute for the original. Readers are advised to see the original judgments/guidelines for official use.

Part I

IMPORTANT JUDICIAL PRONOUNCEMENTS ON PRISONS & PRISONERS' RIGHTS

This part brings together important judicial pronouncements on important aspects of prison life including general living conditions, grievance redressal mechanisms, legal aid, release on bail, speedy trial, communication with family and friends, parole procedures, prison labour and wages as well as rights of specific categories of prisoners including under-trials, women, and children who stay in prison with their mothers.



Sentencing, rehabilitation & reformation

MOHD GIASUDDIN v STATE OF ANDHRA PRADESH

AIR 1977 SC 1926

The accused was sentenced to 3 years rigorous imprisonment for an offence of cheating. The appeal raised basic issues regarding the prescription of punishment and prayed for an appellate review to tailor the sentence to fit the gravity of the offence and redemption of the deviant.

The Supreme Court emphasised the importance of reforming the black letter law to fit the modern trends in penology and sentencing procedures. In the present case, considering the personal factors of the accused such as age, social conditions etc., the Court stated that a just reduction in the sentence was justified and reduced his sentence to 18 months.

Supreme Court Observations

“Progressive criminologists across the world will agree that the Gandhian diagnosis of offenders as patients and his conception of prisons as hospitals.....is the key to the pathology of delinquency and the therapeutic role of punishment.”

The current criminal justice system is weakest at the post-conviction stage, thus the Court’s approach must be socially informed and personalised. The Court criticised the approach of the existing Code of Criminal Procedure, 1973 (Cr.P.C.) in as much as it does not afford any importance to the meaningful collection and presentation of the penological facts bearing on the background of the individual, the dimension of damage, the social milieu etc. Modern penology regards crime and criminal as equally material when appropriate sentence is to be imposed. It turns the focus not only on the crime, but also on the criminal and seeks to personalise the punishment so that the reformist component is as much operative as the deterrent element.

The Court also emphasised on Sections 235(2) and 248(2) of the Cr.P.C. which give an opportunity to both parties to bring to the notice of the court, facts and circumstances which will help personalise a sentence from a reformatory angle. A judge must exercise his discretionary power while imposing a sentence, drawing inspiration from the humanitarian spirit of the law to consider the importance of the personality of the offender as well as the features of the crime.

The prison system leaves much to be desired in the sense of humanising and reforming the man we call a criminal. Sentencing is an important stage in the process of administration of justice and thus imposition of appropriate punishment should receive serious attention of the Court.

Supreme Court Directives

- The emphasis while sentencing should be as much on the crime as on the criminal.
- A proper sentence is a composite of many factors, (As per the 47th Report of the Law Commission of India) including the:
 - i. **nature** of the offence,
 - ii. **circumstances** - extenuating or aggravating - of the offence,
 - iii. **prior criminal record**, if any, of the offender,
 - iv. **age** of the offender,
 - v. **professional and social record** of the offender,
 - vi. **background** of the offender with reference to education, home life, sobriety and social adjustment,
 - vii. **emotional and mental condition** of the offender,
 - viii. **prospect for the rehabilitation** of the offender,
 - ix. **possibility of a return** of the offender to **normal life** in the community,

- x. **possibility of treatment** or training of the offender, and
 - xi. **possibility that the sentence may serve as a deterrent** to crime by this offender, or by others and the present community need, if any, for such a deterrent in respect to the particular type of offence involved.
- Hearing as contemplated under Section 235(2) of the Cr.P.C. is not confined merely to hearing oral submissions. It is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence, and if they are contested by other side, to produce evidence for the purpose of establishing the same.
 - In white collar offences, emphasis must be placed on the reparation of the victims as well to commiserate them.
 - Consideration should also be given to achieve the ends of just deserts, deterrence and rehabilitation within the prison campus which leads to reform and reintegration of the prisoner back into the society.



Judicial intervention in prisons

CHARLES SOBRAJ v SUPERINTENDENT CENTRAL JAIL, TIHAR, NEW DELHI

AIR 1978 SC 1514

Charles Sobraj, an inmate at Tihar Jail, complained of barbaric and inhuman treatment meted out to him whilst in custody. These allegations led the Supreme Court to examine the limits and purpose of judicial intervention into prisons.

Supreme Court Observations

“Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner’s prejudice, this Court’s writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law.”

“The criminal judiciary has thus a duty to guardian their sentences and visit prisons when necessary.”

Judicial policing of prison practices is implied in the sentencing power, thus the ‘hands off’ theory is rebuffed and the Court must intervene when the constitutional rights and statutory prescriptions are transgressed to the injury of the prisoner.

The right to life of a person is more than mere animal existence, or vegetable subsistence. Therefore, the worth of the human person and dignity and divinity of every individual inform Articles 19 and 21 of the constitution even in a prison setting. There must be some correlation between deprivation of freedom and the legitimate functions of a correctional system.

Imprisonment does not spell farewell to fundamental rights laid down under part III of the constitution. Prisoners’ retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Therefore, it is a court’s “continuing duty and authority to ensure that the judicial warrant which deprives a person of his life or liberty is not exceeded, subverted or stultified.”

Supreme Court Directives

Although in its final pronouncement the Court dismissed the petition, however the principles that were laid down are still considered as “having laid bare the constitutional dimension and rights available to a person behind stone walls and iron bars.”⁴

⁴ See *Ramamurthy v State of Karnataka* AIR 1997 SC 1739.



Right against solitary confinement & fetters

SUNIL BATRA v DELHI ADMINISTRATION & ORS

AIR 1978 SC 1675

Two petitioners, Sunil Batra and Charles Sobraj, filed writ petitions in the Supreme Court against their traumatic treatment by jail authorities. Batra, facing death sentence, challenged his being subject to solitary confinement without judicial sanction. Sobraj complained against the distressing disablement of prisoners by bar fetters for unlimited durations.

Supreme Court Observations

The “court has a distinctive duty to reform prison practices and to inject constitutional consciousness into the system.” It must not adopt a ‘hands off’ attitude with regard to the problem of prison administration because a convict is in prison under the order and direction of the court.

The Court reiterated the constitutional mandate that no prison law can deny any fundamental right of the prisoner. Disciplinary autonomy in the hands of the jail staff violates human rights and prevents prisoners’ grievances from reaching the judiciary.

The rule of law disallows infliction of supplementary sentences under disguises which defeat the primary purpose of imprisonment. Therefore, infliction of additional torture by forced cellular solitude or iron fetters can be struck down as unreasonable, arbitrary and unconstitutional.

Rehabilitation is a necessary component of incarceration and this philosophy is often forgotten when justifying harsh treatment of prisoners. Consequently, the disciplinary need of keeping apart a prisoner must not involve inclusion of harsh elements of punishment. The Court opined that “liberal paroles, open jails, frequency of familial meetings, location of convicts in jails nearest to their homes tend to release stress, relieve distress and insure security better than flagellation and fetters.”

Supreme Court Directives

- Solitary confinement is the seclusion of a prisoner, from the sight of and communication with other prisoners. It is a severe and separate punishment which can be imposed only by the court.
- Prisoners sentenced to death cannot be kept under solitary confinement. However, their segregation from other prisoners during the normal hours of lockup is legal.
- Such prisoners shall not be denied any of the community amenities including games, newspapers, books, moving around and meeting prisoners and visitors, subject to reasonable regulation of prison management.
- A prisoner shall be considered to be ‘under sentence of death’ only when his appeals to the High Court and the Supreme Court, and mercy petitions to the Governor and the President have been rejected.
- Under-trial prisoners shall be deemed to be in custody but not undergoing punitive imprisonment. They shall be accorded relaxed conditions than convicts.
- Bar fetters shall be shunned as violative of human dignity, within and without prisons. Indiscriminate resort to handcuffs when accused is produced before the court and forcing iron on prison inmates is illegal. It shall be stopped forthwith, save a few exceptions.
- A prisoner shall be restrained only if there is clear and present danger of violence or likely violation of custody.

- The following preconditions should be observed while imposing fetters:
 - i. There is an absolute necessity to use fetters,
 - ii. There exist special reasons as to why no other alternative but fetters can ensure a secure custody,
 - iii. These special reasons must be recorded in detail simultaneously,
 - iv. This record must be documented in both the journal of the superintendent and the history ticket of the prisoner,
 - v. Before the imposition of fetters, natural justice in its minimal form shall be complied with,
 - vi. No fetters shall be kept beyond day time,
 - vii. The fetters shall be removed at the earliest opportunity,
 - viii. There should be a daily review of the absolute need for the fetters, and
 - ix. Any continuance of the fetters beyond a day shall be illegal unless an outside agency like the district magistrate or sessions judge, on materials placed, directs its continuance.
- The discretion of imposing fetters or other iron restraints is subject to quasi judicial oversight, even if imposed for security.
- Legal aid shall be given to prisoners to seek justice from prison authorities and to challenge the decision in court where they are too poor to secure a lawyer on their own.



Bar against handcuffing & fetters

PREM SHANKAR SHUKLA v DELHI ADMINISTRATION

AIR 1980 SC 1535

Prem Shankar Shukla - an under-trial prisoner at Tihar Jail - sent a telegram to the Supreme Court that he and some other prisoners were being forcibly handcuffed when they were escorted from prison to the courts. It was contended that routine handcuffing and chaining of prisoners was continuing despite the Supreme Court directive in *Sunil Batra's case*⁵ that fetters/handcuffs should only be used if a person exhibits a credible tendency for violence or escape.

⁵ *Sunil Batra v Delhi Administration* AIR 1978 SC 1675.

Supreme Court Observations

Using handcuffs and fetters [chains] on prisoners violates the guarantee of basic human dignity, which is part of our constitutional culture. This practice does not stand the test of Articles 14 [Equality before law], 19 [Fundamental Freedoms] and 21 [Right to Life and Personal Liberty] of the constitution. To bind a man hand and foot; fetter his limbs with hoops of steel; and shuffle him along in the streets. To stand him for hours in the courts, is to torture him; defile his dignity; vulgarise society; and foul the soul of our constitutional culture.

Strongly denouncing routine handcuffing of prisoners, the Supreme Court stated that to manacle a man is more than to mortify him; it is to dehumanise him; and therefore to violate his very personhood. The Court rejected the argument of the state that handcuffs are necessary to prevent prisoners from escaping. Insurance against escape does not compulsorily require handcuffing. There are other methods whereby an escort can keep safe custody of a detainee [detained person] without the indignity and cruelty implicit in handcuffs and other iron contraptions.

The Supreme Court asserted that even orders from superiors are not a valid justification for handcuffing a person. Constitutional rights cannot be suspended under the garb of following orders issued by a superior officer. There must be reasonable grounds to believe that the prisoner is so dangerous and desperate, that he cannot be kept in control except by handcuffing.

Supreme Court Directives

- Handcuffs are to be used only if a person is:
 - i. involved in serious non-bailable offences,⁶ and/or
 - ii. previously convicted of a crime, and/or
 - iii. of desperate character- violent, disorderly or obstructive, and/or
 - iv. likely to commit suicide, and/or
 - v. likely to attempt escape.
- The reasons why handcuffs have been used must be clearly mentioned in the Daily Diary Report. They must also be shown to the court.
- Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing him from the court to the place of custody.
- The magistrate before whom an arrested person is produced must inquire whether handcuffs or fetters have been used. If the answer is yes, the officer concerned must give an explanation.

⁶ Non-bailable offences are laid out in the First Schedule of the Cr.P.C.



Grievance redressal, judicial supervision of additive punishments, access to jail manual, interview facilities etc.

SUNIL BATRA (II) v DELHI ADMINISTRATION

AIR 1980 SC 1579

This petition originated from a letter by a prisoner, Sunil Batra, complaining of the brutal assault meted out to another prisoner Prem Chand by the head warden of Tihar Jail. The victim had attained serious anal injury due to forced insertion of a stick by the warden on the premise of an unfulfilled demand for money.

Supreme Court Observations

"No iron curtain can be drawn between the prisoner and the constitution."

The Court reaffirmed the importance of judicial oversight of prisons. Quoting from its earlier judgments, it observed that, "The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by prison administration."

It also noted that there was widespread prevalence of legal illiteracy even among lawyers about the rights of prisoners. The Court suggested that in order to make the law accessible to prisoners, large notice boards displaying the rights and responsibilities of prisoners, in the local language, maybe hung up in prominent places within the prison.

Discussing the importance of the institution of the Board of Visitors, the Court stated that judicial members of the Board have special responsibilities and must act as independent overseers of the prison system. The Court quoted the duties and functions of visitors from the relevant manual including:

- i. Inspection of barracks, cells, wards, workshed and other buildings of the jail,
- ii. Inspection of the cooked food,
- iii. Ascertain compliance of set standards for health, hygiene and sanitation,
- iv. Inquire whether any prisoner is illegally detained or detained for an undue length of time while awaiting trial, and
- v. Examine jail registers and records.

Supreme Court Directives

The Court issued the following directives to the state and the prison staff:

- Grievance deposit boxes shall be maintained by or under the orders of the district magistrate and the sessions judge, within 3 months of this judgment.
- These shall be opened as frequently as required and suitable action will be taken on the complaints made.
- District magistrates and sessions judge shall visit prisons in their jurisdiction, give opportunities for ventilating legal grievances, make expeditious enquiries and take suitable remedial action.
- The prison authorities shall not in any manner obstruct or non-cooperate with reception of or enquiry into the complaints by the judicial officers, and if they do, prompt punitive action must follow.
- Judicial appraisal by the sessions judge shall be required to impose any additive punishment including:
 - i. solitary or punitive cell,
 - ii. hard labour,

- iii. dietary change,
- iv. denial of privileges and amenities, and
- v. transfer to other prisons with penal consequences.
- In the case of emergency to take such action, information shall be given to the sessions judge within two days of the action.
- Lawyers will be nominated by the district magistrate, sessions judge, High Court and Supreme Court to make periodical visits and record and report to the concerned court, results which have relevance to legal grievances.
- These lawyers will be given all facilities for interviews, visits and confidential communication with prisoners. This is subject to discipline and security considerations.
- The concerned state shall take steps to prepare and circulate the Prisoners' Handbook in the regional language.
- The state shall take steps to conform with the Standard Minimum Rules for the Treatment of Prisoners 1955 as recommended by the United Nations.
- There is need for reviewing the Prisons Act and overhauling the prison manuals as well as the model manual. The changes must include constitutional values, therapeutic approaches and tension free management.
- Prisoners' rights shall be protected by the court by its writ jurisdiction and contempt power.
- Free legal services to the prisoners shall be promoted by professional organisations recognised by the court.
- The District Bar shall keep a cell for prisoner relief.



Communication with family, lawyers & friends

FRANCIS MULLIN v UNION TERRITORY OF DELHI & ORS

AIR 1981 SC 746a

The petitioner, a British national, filed a petition in the Court challenging the constitutional validity of certain provisions restraining her from having interviews with her lawyer and members of her family.

The petitioner, accused under the Conservation of Foreign Exchange & Prevention of Smuggling Activities Act, 1974, was detained in the Central Jail, Tihar. Whilst under detention, the petitioner had difficulty having interviews with her 5 year old daughter and lawyers. The order of detention under the Act permitted only one interview per month whereas under-trial prisoners are granted the facility of interview with friends and relatives twice a week. The petitioner challenged this discriminatory provision as violative of her rights under the constitution of India.

Supreme Court Observations

Whilst considering the question of 'conditions of detention' the Court stated that it was necessary to make a distinction between 'preventive' and 'punitive' detention. 'Punitive detention' is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while 'preventive detention' is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society.

The Court observed that a person's liberty must be curtailed with caution and must be proportional to necessity. It noted that a prison rule may regulate the right of a detainee to have interview with a legal adviser in a manner which is reasonable, fair and just. However, it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview as that would be violative of Articles 14 and 21 of the constitution.

Supreme Court Directives

- A detainee must be permitted to have at least two interviews in a week with relatives and friends.
- It should be possible for a relative or friend to have interviews with the detainee at any reasonable hour on obtaining permission from the superintendent of the jail. It should not be necessary to seek the permission of the District Magistrate, Delhi, as the latter procedure would be cumbersome and unnecessary from the point of view of security and hence unreasonable.
- No arbitrary or unreasonable rule can be prescribed for regulating interviews of detainees. Therefore the clauses of the detention order regulating the right of the detainees to have interviews with a legal advisor of their choice are unconstitutional and void.



'Visitorial' role of judiciary

RAKESH KAUSHIK v BL VIG, SUPERINTENDENT CENTRAL JAIL, NEW DELHI

AIR 1981 SC 1767

The petitioner complained with facts and figures, that his life in the prison was subjected to intimidation by overbearing 'toughs' inside, and he was forced to be party to misappropriation of jail funds, homosexual and sexual indulgence with the connivance of officials. He also reported of a drug racket being run, and alcoholic and violent misconduct by gangs, and that the whole goal of reformation of sentences was being defeated by this combination of criminal activities.

Supreme Court Observations

The Court expressed concern over the deterioration of conditions in Tihar Jail despite the numerous guidelines on prison reforms issued by it. It noted that such indifference could not deter the writ of the court running into prisons and compelling compliance, however tough the resistance, however high the officials.

The Court directed the state to comply with the action-oriented conclusions given in *Sunil Batra's case*. Some important ones were reiterated including:

- i. the nomination of lawyers by the judiciary to visit prisons as part of the visitorial and supervisory judicial role,
- ii. provision of grievance deposit boxes in every prison,
- iii. periodical prison visits by district magistrates and sessions judges,
- iv. no solitary or punitive cell, no other punishment or denial of privileges without a judicial appraisal by the sessions judge, and
- v. preparation of Prisoners' Handbook in hindi and circulation of copies among prisoners to create awareness.

It emphasised that there can be human rights conscious reform in the prison only when there is transformation in the awareness of the top-brass, introduction of new techniques instilling dignity and mutual respect among prisoners, and curative techniques pervade the staff and inmates.

Supreme Court Directives

The Court directed the district and sessions judge to hold an open enquiry within the jail premises to enquire into the allegations contained in the petition. Certain relevant instructions include:

- He shall ascertain whether the directions given in *Sunil Batra's case* are substantially complied with and where there is default, enquire into the reasons thereof.
- Being a visitor of jail, it is part of his visitorial functions to acquaint himself with the condition of tension, vice and violence and prisoners' grievances.
- The focus of the sessions judge should not be solely upon the warden and warders of the jail but also on the medical officers.
- He will enquire into the above mentioned aspects and suggest remedial action.



General living conditions, overcrowding, communication, open prisons, delay in trial etc.

RAMAMURTHY v STATE OF KARNATAKA

AIR 1997 SC 1739

A prisoner in the Central Jail, Bangalore sent a letter to the Chief Justice of India complaining against the 'non-eatable food', 'mental and physical torture' in prisons, and the denial of rightful wages to the prisoners.

Treating the letter as a writ petition, the Supreme Court passed an order to the District Judge to visit the Central Jail and find out the pattern of payment of wages and the general conditions of the prisoners such as residence, sanitation, food, medicine etc. The District Judge compiled and submitted a thorough report to the Court.

Supreme Court Observations

“A sound prison system is a crying need of our time,” the Supreme Court observed. The Court emphasised that the cases of *Charles Sobraj* and *Sunil Batra*, should be considered as “beacon lights insofar as management of jails and rights of prisoners are concerned.”

Having reviewed the available literature on prisons, the Court observed that there were nine major problems which afflicted the prison system in India and required immediate attention. These were: overcrowding, delay in trial, torture and ill-treatment, neglect of health and hygiene, insubstantial food and inadequate clothing, prison vices, deficiency in communication, streamlining of jail visits; and management of open air prisons.

The Court noted that the production of under-trial prisoners before the court on remand dates is a statutory obligation. Such production gives an opportunity to the prisoner to bring to the notice of the court, if he has faced any ill-treatment or difficulty during the period of remand. Thus the actual production of the prisoner is required to be insured by the trial court before ordering for further remand.

The Court did not issue any directives on the issue of torture and ill-treatment in prisons. However, it stressed the strong need for a new all India jail manual that would serve as a model for the country. This new manual should acknowledge the previous directions and observations that the Court has given on the permissible limits of punishment within prisons.

Similarly, the Court did not issue any directions on the health and hygiene of prisoners, but it noted that prisoners suffer from a double handicap. First, they do not enjoy the same access to medical expertise that free citizens have. Secondly, because of the conditions of their incarceration, inmates are exposed to more health hazards than free citizens.

Supreme Court Directives

The Supreme Court directed the concerned authorities to take appropriate steps, which included:

General

- Enacting a new Prisons Act to replace the century old Prisons Act, 1894.
- Framing a new All India Jail Manual.

Overcrowding

- Taking appropriate decision on the recommendations that the Law Commission of India made in its 78th Report on the subject of ‘Congestion of under-trial prisoners in jail’ within 6 months of the date of judgment.

- Applying mind to the suggestions of the Mulla Committee relating to streamlining the remission system and premature release (parole), and doing the needful.
- Taking recourse to alternatives to incarceration such as fine, community service and probation.

Delay in Trial

- Considering the feasibility of entrusting the duty of producing under-trial prisoners on remand dates to the prison staff.
- Implementing the directions given in recent judgments of the court requiring the release of under-trial prisoners on bail when a trial is protracted.

Living Conditions in Prisons - Health, Hygiene, Food and Clothing

- Reflecting on the recommendations of the Mulla Committee on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions, and to take appropriate steps.
- Pondering on the need of complaint box in all the jails.
- Inspecting jails after giving a *shortest* notice so as to assure the compliance of rules laid down in the jail manual.

Deficiency in Communication and Jail Visits

- Thinking about liberalisation of communication facilities as there is no reason to deny the facility of communication by post to inmates.
- Taking needful steps for streamlining the jail visits.

Open Air Prisons

- Ruminating on the question of introduction of open prisons at least in all the district headquarters of the country.



Prison labour & wages

STATE OF GUJARAT & ANR v HON'BLE HIGH COURT OF GUJARAT

AIR 1998 SC 3164

Several appeals were filed by some state governments challenging the judgments by their respective High Courts on the issue of prisoners' wages. The state governments were in agreement with the view that the present rates of wages paid to prisoners are too meagre and hence they must be enhanced.

The main question required to be addressed by the Supreme Court was, "[w]hether prisoners, who were required to do labour as part of their punishment should be paid wages for such work at the rates prescribed under minimum wages law."

Supreme Court Observations

Observing that there are four categories of prisoners *viz.* under-trial prisoners, convicted prisoners, those detained as a preventive measure and those undergoing detention for default of payment of fine, the Court stated that only convicted prisoners can be required to do labour in prison. The Court further noted that persons sentenced to simple imprisonment cannot be required to work unless they themselves volunteer to work. Therefore, jail authorities can by law impose hard labour on only those convicted prisoners who are sentenced to rigorous imprisonment.

On the question of quantum of wages, the Court stated that it should be permissible for the government to deduct a reasonable percentage of wages from the minimum wages, for expenses that the state incurs for providing food, clothing and other amenities to prisoners. On the fixation of wages, the Court discussed the Mulla Committee Report quoting that the “[r]ates of wages should be fair and equitable and not merely nominal or paltry. These rates should be standardised so as to achieve a broad uniformity in wage system in all the prisons in each state and union territory.”

Supreme Court Directives

- It is lawful to employ prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.
- Jail officials may permit other prisoners to do any work which they choose to do, provided such prisoners make a request for that purpose.
- The prisoners must be paid equitable wages for the work done by them.
- To determine the quantum of equitable wages payable to prisoners, the state government shall constitute a wage fixation body for making recommendations.
- The concerned state should consider making laws for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence for which the prisoner was convicted.



Parole & furlough

SHARAD KESHAV MEHTA v STATE OF MAHARASHTRA & ORS

MANU/MH/0054/1988 (Criminal WP No 376 of 1987)

The petitioner, Sharad Mehta, was sentenced to life imprisonment for murder in October 1983. In October 1985 he made an application for release on furlough, however the application was rejected. He re-applied for release in March 1986 and April 1986 but was again denied. He challenged the denial of furlough in the Bombay High Court arguing that the denial was in contravention of the rules framed under the Maharashtra Prison Manual.

High Court Observations

Disagreeing with the contentions made by the state government, the Court observed that, "It is not open to the Home Department of the state government to prescribe rules giving facility of release of the prisoner on furlough by one hand and then providing that the prisoner has no legal right to be released on furlough."

The Court also highlighted the difference between parole and furlough. Parole is granted for certain emergency and the release on parole is a discretionary right. However, release on furlough is a substantial right and accrues to a prisoner on compliance with certain requirements. The idea of granting furlough to a prisoner is that the prisoner should have an opportunity to come out and mix with the society and the prisoner should not be continuously kept in jail for a considerable long period.

High Court Directives

- The right to be released on furlough is a substantial and legal right conferred on the prisoner.
- A prisoner can claim as of right to be released on furlough after having complied with the requirements of the rules framed for release of prisoner on furlough.
- The Commissioner of Police must apply his mind to the facts of each case and should not as a formality submit a report denying the substantial and legal right of the prisoner.
- Unless the Commissioner of Police has material from which a reasonable inference can be drawn, the right to release on furlough cannot be deprived by resort to any exceptions to the rule.

MADHUKAR B JAMBHALE v STATE OF MAHARASHTRA & ORS

1987 Mah LJ 68

The petitioner sent a letter to the Bombay High Court complaining about the ill-treatment meted out to him by the prison staff. The Court treated this as an application under Article 226 of the constitution, thus what was initiated as an individual complaint assumed the character of a class action on behalf of all convicts undergoing sentence.

The petition had raised many vital issues regarding the validity of rules framed under the Prisons Act, namely:

- i. The classification of prisoners on the basis of education, higher status, standard of living as violative of Article 14 of the constitution,
- ii. Undue censorship and restrictions on the rights of prisoners to correspond as violative of Articles 19 and 21 of the constitution,
- iii. The double lock up system in some cells of jail amounted to solitary confinement, which is impermissible in law, and
- iv. The grievance procedure prescribed under the various rules is grossly inadequate and does not conform to the guidelines set by the Supreme Court in *Sunil Batra's case*.

High Court Observations

The Court did not deal with the first grievance of the prisoner i.e. discriminatory classification of prisoners, as it had already been abolished.

On the questions of censorship and restrictions on communication of prisoners, the Court observed, "We fail to see why the prisoner should not give vent to his grievances against the prison administration to the outside world through his letter...[when] the prisoner is not prevented from making these grievances in the interviews which are permitted under the rules." The Court further stated that, "By reason of conviction and being lodged in jail, the prisoner does not lose his political right or rights to express the views on political matters..."

The grievance of the petitioner of the double lock up system was held incorrect, therefore no directions were issued. Similarly no directions were issued on the allegations of the petitioner regarding food, ill treatment and torture owing to the inconsistencies present in the statements of the petitioner.

High Court Directives

The Court struck down the rules, which resulted in undue censorship on prisoners' correspondence with the outside world and prohibited the inmates to correspond with inmates of other prisons, as unwarranted, unjust and unreasonable thus violative of the constitution.

On the question of grievance redressal procedures, the Court issued several directions after perusing the draft submitted on behalf of the government for the implementation of directives issued by the Supreme Court in this regard:

- **Grievance Deposit Box:** A sealed grievance deposit box shall be kept at a conspicuous place inside the prison under lock and key, and the key will remain exclusively with the district judge. The Box shall be opened at regular intervals and a detailed record of the complaints shall be maintained by the concerned sessions judge who will investigate such cases and take all appropriate action.
- **Complaint Register:** The district and sessions judge shall maintain a complaint register in prison office which shall contain the complaints found in the grievance deposit box and action taken in respect of such complaints.
- **Visits by District and Sessions Judge/District Magistrate:** They shall personally visit prisons in their jurisdiction and offer effective opportunities for ventilating the legal grievance of the prisoners and shall make expeditious enquiries and take suitable remedial action. They shall also ascertain that the conditions prevailing in prisons conform to the state rules.

- **Visits by Lawyers:** The sessions judge shall nominate lawyers to make separate visits to jails. The lawyers so appointed shall be given access by the prison administration to inspect the prison premises and the record relating to complaints. They will also be permitted to interview and receive confidential communications from the inmates of the prison subject to disciplinary and security conditions. The lawyers shall report to the court, results which have relevance to legal grievances.
- A prisoner shall also be able to send letters or address a petition containing grievances, through the superintendent, to the following authorities:
 - i. Regional Deputy Inspector General of Prisons,
 - ii. The Inspector General of Prisons, Pune,
 - iii. The Secretary, Home Department, Bombay,
 - iv. The Home Minister/Chief Minister, Bombay,
 - v. The District Judge, High Court Judge or Supreme Court Judge,
 - vi. Lawyers nominated by the District Judge or Prison Visitors,
 - vii. Lokpal, Lokayukta, and
 - viii. Secretary, District Legal Committee/Secretary, State Legal Aid Committee.



Classification of prisoners, prison conditions
& facilities etc.

A CONVICT PRISONER IN THE CENTRAL PRISON v STATE OF KERALA

1993 Cri LJ 3242

This petition was filed in the High Court of Kerala by a convict lodged in Thiruvananthapuram Central Jail complaining against the sub-human conditions prevailing in the prison.

He further complained about the:

- i. Connivance of jail officials with certain prisoners due to which some convicts enjoyed liberty to do what they like, making others feel indignant and ignored,
- ii. Association of first time offenders with habitual offenders which was converting them into hard core criminals,
- iii. Presence of homosexuality and other forms of physical assault in prison, and
- iv. Access to money and drugs through silent channels.

High Court Observations

“With imprisonment, a radical transformation comes over a prisoner, which can be described as prisonisation. He loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity and autonomy of personal life.”

The Court observed that while one does not expect life in prison to be the same in the free world, yet the human dignity of the prisoner must be maintained under all circumstances. Imprisonment may strip a person of certain facets of life, but he does not become a non-person and rights that human dignity requires and circumstances justify, must be granted to him.

High Court Directives

- The state shall build sufficient number of prisons to accommodate prisoners. It should also consider the construction of open jails within the state.
- High security prisons shall be built to house the category of prisoners who are considered dangerous.
- The state shall effectively implement segregation, keeping habitual offenders away from freshers, to avoid the possibility of hard core criminals turning jails into schools of crime.
- The state will ensure that short-term appointments of prison staff are not made, and that adequate trained staff is provided in jails, keeping in view needs of security.
- The state will take appropriate action to pay reasonable wages to prisoners, so that, motivation for work is generated.
- The state will consider the possibility of registering societies for managing economic activities in jails on a profitable basis.
- The state may consider the advisability of avoiding short term imprisonment and simple imprisonment, wherever possible. Necessary statutory amendments could be thought of, substituting short term sentences with free work or work with regulated wages.
- The registry shall make appropriate arrangements for providing a meeting place in the premises of the High Courts where prisoners can meet their counsel and give instructions by prior appointment. For this purpose a desk in the Criminal Section can be considered.
- Sufficient provision will be made to segregate civil prisoners and military prisoners, from prisoners convicted of criminal charges.
- Proper arrangements will be made for escort of prisoners from jails to courts and back.
- A rational parole policy must be evolved by the state.
- Blades for shaving, sterilized needles in dispensaries and sufficient fans should be provided. Sanitary napkins which are not included in the clothing supplied to female prisoners, should also be supplied.

- Necessary facilities for the jail staff must be provided as a congenial working environment alone can ensure a contented service.
- Reservation of a nominal percentage of jobs for convict prisoners of good behaviour can be an incentive and it would be consistent with the concept of rehabilitation.
- Educational and recreational facilities, within reasonable limits may be provided in prisons.



Legal aid & access to copy of judgment

MH HOSKOT v STATE OF MAHARASHTRA

(1978) 3 SSC 544

The petitioner, a reader at Saurashtra University, convicted for offences of cheating and forgery, filed a special leave petition in the Supreme Court challenging the High Court order enhancing his punishment from one day simple imprisonment to 3 years rigorous imprisonment. In his petition, he also complained of the actions of the jail authorities denying him a copy of the judgment (which he obtained in 1978 i.e. 5 years after the pronouncement of the judgment against him).

Supreme Court Observations

“When only the rich can enjoy the law...and the poor...cannot have it, because its expense puts it beyond their reach, the threat to...free democracy is not imaginary but very real, because, democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in and benefit by its impartiality and fairness.”

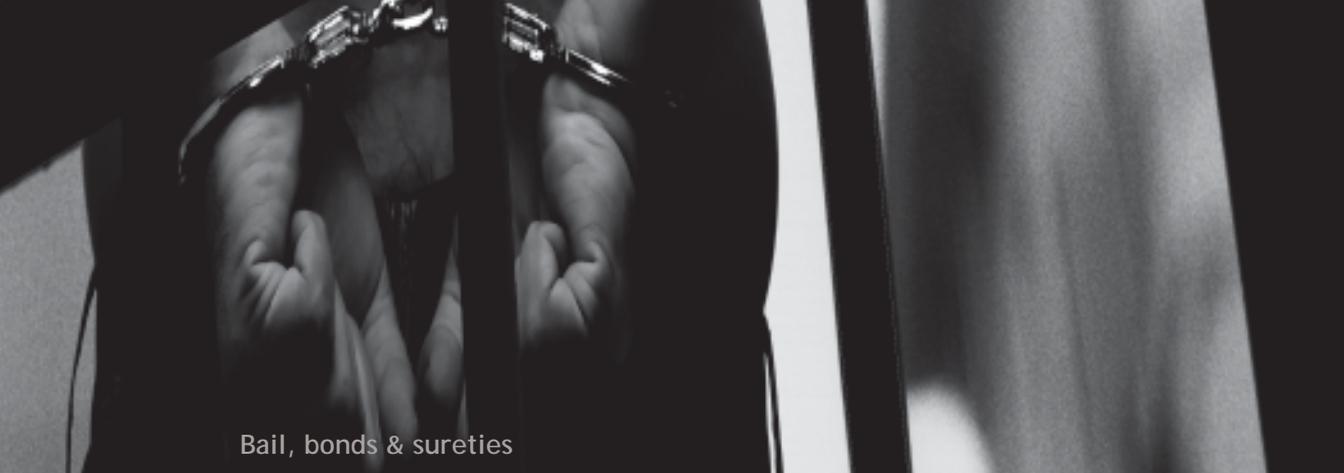
Emphasising upon the importance of rendering legal aid, the Court observed that our laws have laid great emphasis on the procedural and substantive safeguards designed to assure fair trials in which every defendant stands equal before the law. An important ingredient of fair procedure to a prisoner, who has to seek his liberation through the Court process, is lawyer’s services. The Court further observed that the right of appeal for the legal illiterates is nugatory in the absence of any statutory provision for free legal service to a prisoner. This negates the ‘fair legal procedure’ which is implicit in Article 21 of the constitution.

Supreme Court Directives

The Court considered two main aspects of the criminal justice delivery system in India, namely, service of a copy of the judgment to the prisoner in time to file an appeal and the provision of free legal services to a prisoner. The Court issued the following directions:

- Courts shall forthwith furnish a free transcript of the judgment when sentencing a person to prison term.
- In the event of any such copy being sent to the jail authorities for delivery to the prisoner, by the appellate, revisional or other court, the official concerned shall, with quick dispatch, get it delivered to the sentenced and obtain written acknowledgment thereof from him.
- A jailor who withholds the copy of the judgment hinders the court process thus violating Article 21 of the constitution.
- Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the jail administration.
- Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign competent counsel for the prisoner’s defence, provided the party does not object to that lawyer.⁷
- The state - which prosecuted the prisoner and set in motion the process which deprived him of his liberty - shall pay to assigned counsel, such sum as the court may equitably fix.

⁷ *The Legal Services Authorities Act 1987* imbibes the directions of the court. In fact, it entitles all persons in custody to avail free legal services at state cost.



Bail, bonds & sureties

MOTIRAM & ORS v STATE OF MADHYA PRADESH

AIR 1978 SC 1594

Motiram, a mason appealed to the Supreme Court that despite being granted bail by the Court, he was unable to secure his release because the Chief Judicial Magistrate fixed an exorbitant sum of Rs 10,000, as the surety amount. Motiram said that the magistrate rejected the suretyship offered by his brother simply because his brother resided in another district and his assets were located there. Motiram wanted the Supreme Court to either reduce the surety amount or order his release on a personal bond.

The Court had to decide:

- i. Whether a person can be released on bail under the Cr.P.C., 1973 on a personal bond, without having to get other people to stand as surety for him?,
- ii. The criteria for fixing the bail amount, and
- iii. Whether a surety offered by a person can be rejected because he resides in a different district or state or because his property is situated in a different district or state?

Supreme Court Observations

“The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family.”

The Court acknowledged that many poor persons are forced into cellular servitude for little offences because trials never conclude, and bail amounts are fixed beyond their meagre means. The poor are being priced out of their liberty in the justice market. Whenever excessive amounts are fixed as surety for bail, the victims invariably happen to be from disadvantaged sections of society; belonging to linguistic or other minorities; or are from far corners of the country.

There is no sanction in any law to make geographical discriminations such as not accepting sureties from another part of the country or not accepting an affirmation in a language other than the one spoken in the region. India is one and not a conglomeration of districts untouchably apart. A person accused of a crime in a place distant from his native residence cannot be expected to produce sureties who own property in the same district as the trial court. The Supreme Court asserted that provincial or linguistic divergence cannot be allowed to obstruct the course of justice.

The Court further observed that bail provisions contained in the Cr.P.C. must be liberally interpreted in the interest of social justice, individual freedom and indigent persons. It shocks one's conscience to ask a mason to furnish a sum as high as Rs 10,000 for release on bail.

Supreme Court Directives

- An accused person should not be required to produce a surety from the same district especially when he is a native of some other place.
- Bail covers release on one's own bond, with or without sureties.
- Bail should be given liberally to poor people simply on a personal bond, if reasonable conditions are satisfied.
- The bail amount should be fixed keeping in mind the financial condition of the accused.
- When dealing with cases of persons belonging to the weak categories in monetary terms - indigent young persons, infirm individuals or women - courts should be liberal in releasing them on their own recognisance.



Right to speedy trial & release on personal bonds

HUSSAINARA KHATOON & ORS v HOME SECRETARY, BIHAR, PATNA

AIR 1979 SC 1360

In January 1979, the Indian Express listed the names of numerous under-trial prisoners who had been languishing in prison for 5, 7 or 9 years without their trial having even begun. Majority of such under-trial prisoners were accused of offences trivial in nature warranting punishment of only a few years or less.

On a petition, the Supreme Court directed that these under-trial prisoners be released forthwith on personal bonds. Owing to the peculiar facts and circumstances of the case, the personal bonds so made were not to be based on any monetary obligations.

A counter affidavit was also filed by the government bringing to light the plight of many innocent women who were in prison on the premise of 'protective custody' i.e. they were either victims or witnesses, required for the purpose of giving evidence.

Supreme Court Observations

“It is high time that the public conscience is awakened and the government as well as the judiciary begin to realise that in the dark cells of our prisons there are 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.”

Bail System: Criticising the discriminatory nature of the bail system, the Court observed that it is a travesty of justice that many poor accused are forced into long cellular servitude for little offences because the bail procedure is beyond their meagre means. The deprivation of liberty for the reason of financial poverty only was held to be an incongruous element in a society aspiring to fulfil the constitutional promises of social equality and social justice to all its citizens.

The Court questioned the property-oriented approach of the existent bail system, stating that such a system of bails operates very harshly against the poor. The Court asked the Parliament to consider whether instead of risk of financial loss, other relevant considerations such as family ties, roots in the community, job security, membership of stable organisations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation.

Speedy Trial: Remarking on the undue delay in commencement of trials, the Court stated that speedy trial was the essence of criminal justice and thus delay in trial by itself constitutes denial of justice. A reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty.

Supreme Court Directives

- The state government should realise its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases.
- The state government should appoint competent judges for the newly established courts.
- In cases where the police investigation has been delayed by over two years, the final report or charge-sheet must be submitted by the police within a further period of three months. Upon failure to do so, the state government should withdraw such cases.
- All women and children who are in the jails in Bihar under ‘protective custody’, or who are in jail because their presence is required for giving evidence, or who are victims of offence should be released.
- All women and children so released shall be taken forthwith to welfare homes or rescue homes and should be kept there and properly looked after.



Right to legal aid & speedy trial

HUSSAINARA KHATOON & ORS (II) v HOME SECRETARY, BIHAR, PATNA

AIR 1979 SC 1369

In January 1979 a *habeas corpus* was filed in the Supreme Court seeking directions to release a large number of under-trial prisoners languishing in the prisons of Bihar. A number of directions were issued in the matter and this present case came up pursuant to those directions issued by the Court.

In this case, the Court stressed the state's constitutional obligations to assure speedy trial and providing of free legal aid to the accused.

Supreme Court Observations

The Court held that the right to free legal aid is an unalienable element of 'reasonable, fair and just' procedure. Without it, a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice.

The Court also observed that 'speedy trial' is an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 of the constitution. It is the constitutional obligation of the state to devise such procedures as would ensure speedy trial to the accused. The state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that it does not have adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus.

Supreme Court Directives

- The state government should provide under-trial prisoners a lawyer at its own cost for the purpose of making an application for bail.
- The state is under a constitutional mandate to ensure speedy trial.
- The state must take positive action to enforce the fundamental rights of the accused to speedy trial. Such action may include augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial.



Legal aid & production of accused

KHATRI & ORS v STATE OF BIHAR & ORS

AIR 1981 SC 928

This case is in-famous as the *Bhagalpur blinding case*. A number of under-trial prisoners filed a writ in the Supreme Court complaining that after their arrest, they were blinded by police officials whilst under police custody.

The Supreme Court also found during the proceedings of the case that no legal representation was provided to the blinded prisoners because none of them asked for it. The judicial magistrates also did not enquire from the blinded prisoners produced before them whether they wanted legal representation at state cost.

Supreme Court Observations

The Court reiterated its stance in *Hussainara Khatoon's* case, wherein it was held that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and is implicit in Article 21 of the constitution.

The Court further observed that legal aid would become merely a paper promise and would fail its purpose if it were left to a poor ignorant and illiterate accused to ask for free legal services. The magistrate or the sessions judge, before whom the accused appears, is under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he is entitled to obtain free legal services at the cost of the state.

The Court also voiced serious concern over the irregularities in the production of accused before the magistrates. Perusal of the records clearly showed that the prisoners had continued to remain in jail without any remand orders being passed by the judicial magistrates. It observed that the provision inhibiting detention without remand was a very healthy provision and it is necessary that the magistrates try to enforce this requirement. The Court asked the state government to inquire into the irregularities and ensure that in future, the administrators of law are not permitted to commit such violations of the law.

The Court also expressed its unhappiness at the lack of concern shown by the judicial magistrates in not enquiring from the blinded prisoners, when they were first produced before the judicial magistrates and thereafter from time to time for the purpose of remand to how they had received injuries in the eyes. It directed the High Court to look into these matters closely and ensure that such remissness on the part of the judicial officers does not occur in the future.

Supreme Court Directives

- The state is under a constitutional mandate to provide free legal aid to an accused who is unable to secure legal services on account of poverty.
- This obligation to provide free legal services to the indigent accused arises not only on or after the commencement of trial but also when the accused is for the first time produced before the magistrate and when he is remanded from time to time.
- All magistrates and session judges in the country shall inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence, that he is entitled to free legal services at the cost of the state.



Delay in trial - directions for release
on bail

SUPREME COURT LEGAL AID COMMITTEE v UNION OF INDIA & ORS

1994(3) Crimes 644 (SC)

The Supreme Court Legal Aid Committee filed a writ petition complaining against the excessive delay in the disposal of cases registered under the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act). It prayed that all under-trial prisoners who were in jail for the commission of any offence under the Act for a period exceeding 2 years on account of the delay in the disposal of their case should be released from jail declaring their further detention to be illegal and void.

Supreme Court Observations

“[T]o refuse bail on the one hand and to delay trial of cases on the other is clearly unfair and unreasonable and contrary to...the Act,...the Code and...the Constitution.”

The Court observed that in cases under the NDPS Act, a certain amount of deprivation of liberty could not be avoided. However, if the period of deprivation pending trial becomes unduly long, the fairness assured by Article 21 receives a jolt. Therefore, for all accused persons who have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation would be violative of the right to liberty enshrined in the constitution.

Supreme Court Directives

The Court issued the following direction pertaining to the release of under-trial prisoners accused under the Act:

Term of punishment	Period undergone	Action to be taken
5 yrs or less and fine	Not less than half the punishment	<ul style="list-style-type: none"> • Shall be released on bail • Where the maximum fine is prescribed, the bail amount shall be 50 per cent of the said amount with two sureties for the said amount • Where the maximum fine is not prescribed, the bail amount shall be to the satisfaction of the judge with two sureties for like amount.
Exceeding 5 yrs and fine	Not less than half the punishment	<ul style="list-style-type: none"> • Shall be released on bail on the term set out above, but in no case shall the bail amount be less than Rs. 50,000 with two sureties for like amount.
Min. 10 yrs of imprisonment and a fine of Rs. 1 lakh	Not less than five years	<ul style="list-style-type: none"> • Shall be released on bail, provided he furnishes bail in the sum of Rs. 1,00,000 with two sureties for like amount.

- Any accused charged of an offence under Sections 31 and 31A of the Act shall not be entitled to bail under this order.
- Under-trial prisoners released under these directives are subject to a number of conditions including depositing their passport with the concerned judge, presenting themselves before the relevant police station once a month, and not leaving the area without the permission of the concerned judge etc.
- The cases of those under-trial prisoners who are not entitled to be released will be accorded priority by the special court.



Delay in trial - directions for release
on bail

COMMON CAUSE, A REGISTERED SOCIETY THROUGH ITS DIRECTOR v UNION OF INDIA & ORS

(1996) 4 SCC 33

Common Cause, a society espousing public causes, filed a writ petition in the Supreme Court seeking directions with respect to a large number of trials that were pending in the criminal courts all over India.

Supreme Court Observations

Accepting the suggestions made in the petition, the Court stated that the pendency of criminal proceedings for long periods was operating as an engine of oppression. In majority of such cases, the accused who belong to the poorer sections of the society are languishing in prisons primarily because they are unable to afford competent legal advice. Furthermore, many under-trials are not brought to the court on every date of hearing resulting in several adjournments and unnecessary delays. The Court issued directives to protect and effectuate the fundamental right to life and personal liberty of the citizens.

Supreme Court Directives

The Supreme Court issued the following directions to secure the release of a number of under-trial prisoners languishing in prisons on account of delay in the commencement, proceeding or completion of trial:

Offence punishable with imprisonment of (with or without fine)	Trial pending for	Accused not on bail and in jail for	Direction
3 yrs or less	1 yr or more	6 months or more	Release on bail or personal bond
5 yrs or less	2 yrs or more	6 months or more	Release on bail or personal bond
7 yrs or less	2 yrs or more	1 yr or more	Release on bail or personal bond
Traffic offences	2 yrs or more due to non-serving of summons or any other reason		Discharge the accused and close the case
Offences compoundable with the permission of the court	Trial yet to commence		After hearing both parties discharge or acquit the accused and close the case
Non-cognizable and bailable offences	2 yrs or more and trial yet to commence		Discharge or acquit the accused and close the case
Offences punishable with fine and not of recurring nature	1 yr or more and trial yet to commence		Discharge or acquit the accused and close the case

Offence punishable with imprisonment of (with or without fine)	Trial pending for	Accused not on bail and in jail for	Direction
Upto 1 yr	1 yr or more, trial yet to commence		Discharge or acquit the accused and close the case
Upto 3 yrs	2 yrs or more, trial yet to commence		Discharge or acquit the accused and close the case

- These directions shall not apply to a range of offences including those that involve corruption, cheating, smuggling, Food Adulteration Act, NDPS Act or for offences against the state or those relating to the armed forces, public servants etc.⁸
- These directions are applicable to both pending and newly instituted cases.

⁸ For the complete list, kindly refer to the text of the judgment itself.



Implementation of Section 436A Cr.P.C.

IN THE MATTER OF NEWS REPORTS PUBLISHED IN THE TIMES OF INDIA DATED 26 JUNE 2006 v STATE OF BIHAR & ORS

CWJC No 7363 of 2006

A bench of the Patna High Court *suo moto* initiated a public interest litigation for the efficient and effective enforcement and implementation of the amended provision of Section 436A Cr.P.C. This Section proscribes detention of an under-trial beyond the maximum period of imprisonment prescribed for the offence with which he has been charged. It also entitles an under-trial to be released on bail once he undergoes half the period of prescribed punishment for that offence.⁹

⁹ See Section 436A Cr.P.C. for further details.

High Court Observations

Pursuant to the directions issued by the High Court, the government filed an affidavit stating that 247 under-trial prisoners were entitled to bail under Section 436A Cr.P.C. In its interim order, the Court issued directions for the constitution of a jail cell for districts and sub-divisions which would have a free hand in evolving procedure to regularly monitor such cases of under-trial prisoners.

The jail superintendent has been given the primary duty to inform the accused person of the availability of the benefit under Section 436A to him. The task of monitoring the process rests with the Inspector General of Prisons. The role of the Legal Services Authority has also been emphasised for providing requisite free legal aid to the under-trial prisoners.

High Court Directives

- With regard to the 247 under-trial prisoners, the respective jail superintendents were directed to bring to the notice of each prisoner, by writing and orally, that he is entitled to the benefit of the provision of Section 436A Cr.P.C.
- The notice should further mention that they are entitled to apply for bail and entitled for their production at the concerned court at the earliest.
- The jail superintendent shall also furnish a statement of such persons, the follow up actions taken by him and the number of inmates of the jail who have availed the benefit and those who have not yet availed, by informing the Inspector General of Prisons.
- The Inspector General of Prisons is directed to maintain such up-to-date records in his office, which is also to be made available on the website.
- The Inspector General of Prisons is responsible for monitoring the actions taken and subsequent follow up actions to be taken for prisoners to avail the benefit of Section 436A regularly.
- The jail superintendent must furnish such periodical statements and status reports in respect of each accused person who is qualified and entitled to avail the benefit of Section 436A of the Code with his affidavit before the registry of the High Court on every quarter beginning from January 2007.
- The Member Secretary of the Bihar State Legal Services Authority is directed through the District Legal Services Authority and Sub Division Legal Services Committee, to provide free legal aid to the qualified under-trial prisoners. He shall also monitor the progress under the guidance of the Hon'ble Executive Chairman.
- A Committee shall be constituted to monitor the actions taken and which shall periodically report to the court. The Committee shall comprise of the:
 - i. District Magistrate,
 - ii. Jail Superintendent, and
 - iii. Public Prosecutor.



Release of under-trial prisoners

COURT ON ITS OWN MOTION IN RE: REGARDING VARIOUS IRREGULARITIES AT CENTRAL JAIL, TIHAR

CrI MA No 7030/2007 & CrI Ref 1/2007

A bench of the High Court of Delhi took notice of the problem of overcrowding in Central Jail, Tihar. An inquiry report was called for, which brought out many issues of concern regarding prison conditions. Acting upon this report, the Court issued a number of directives¹⁰ for the reduction of number of inmates.

¹⁰ The Court issued directions to the concerned authorities vide orders dated 18 June 2007 & 22 August 2007.

High Court Observations

The High Court expressed concern about the huge number of under-trials prisoners and the problem of overcrowding at Central Jail, Tihar. It observed that if the number of inmates is reduced, many of the problems at the jail would get rectified on their own as a consequential measure. The effect of excess number of inmates not only enhances the need for space, but necessities like water etc. get strained as well.

Emphasising the large under-trial population i.e. 65 per cent of the total prison population, the Court expressed concern over the incarceration of those who had been admitted to bail but were unable to furnish surety.

High Court Directives Dated 18 June 2007

The Court issued the following directions with regard to persons incarcerated due to proceedings initiated under Section 107 read with Section 151 Cr.P.C.:

- All inmates lodged under these sections due to non-furnishing a surety bond would be released on furnishing a personal bond in sum of Rs. 2000.
- The bond would be furnished to the satisfaction of the Superintendent Central Jail, Tihar.
- The personal bond should contain an undertaking in the terms given below.
- The inmates so released should:
 - i. report to the local police station within the jurisdiction where proceedings were registered. This should be done daily, twice at 10.00 AM and 6.00 PM, and
 - ii. mark their attendance on a register maintained in each police station and available with the duty officer incharge.

High Court Directives Dated 22 August 2007

The Court issued the following directions with regard to release of under-trial prisoners from Central Jail, Tihar:

- Those under-trial prisoners who have been admitted to bail but have been unable to furnish sureties for more than 2 months, shall be released on their furnishing personal bond to the satisfaction of the trial court.
- As regards the 20 under-trials, who are reported terminally ill and suffering from 'incurable disease', the jail authority shall consider their case for early release on humanitarian grounds.
- In case of under-trial prisoners who are from states other than Delhi, local surety shall not be insisted upon while granting bail. It shall be sufficient to verify the identities and actual places of residence outside Delhi of the under-trials and their sureties to release them on personal bonds, with or without sureties, as the case may be.

- In case of under-trial prisoners who are senior citizens, the courts should take up their cases on day to day basis as far as possible, if they are not found fit to be admitted to bail.
- Those cases where the maximum prescribed punishment for the offence committed is upto 7 years shall be put up by the jail authorities before the visiting judge every 3 months for review and release on bail.
- The jail authorities shall sensitise and inform all jail inmates of the provision of 'plea bargain' and also benefits thereof.
- The jail authorities shall also take special care to place these cases before the special court/judge who visits the jail every month.



Women prisoners & legal aid

SHEELA BARSE v STATE OF MAHARASHTRA

AIR 1983 SC 378

Sheela Barse, a journalist and activist for prisoners' rights, wrote to the Supreme Court saying that of the 15 women prisoners interviewed by her in Bombay Central Jail, five admitted that they had been assaulted in police lock-up. Given the seriousness of the allegations, the Court admitted a writ petition on the basis of the letter and asked the College of Social Work, Bombay to visit the Central Jail to find out whether the allegations were true. The College submitted a detailed report which, in addition to admitting that excesses against women were taking place, pointed out that the arrangements for providing legal assistance to prisoners were inadequate.

Supreme Court Observations

Failure to provide legal assistance to the poor and impoverished persons violates constitutional guarantees. Article 39A of the constitution casts a duty on the state to secure the operation of a legal system that promotes justice on the basis of equal opportunity. The right to legal aid is also a fundamental right under Articles 14 and 21 of the constitution.

The Court expressed serious concern about the plight of prisoners who are unable to afford legal counsel to defend themselves. It observed that the lack of access to a lawyer was responsible for individual rights against harassment and torture not being enforced. Stressing the urgent need to provide legal aid not only to women prisoners but to all prisoners whether they were under-trials or were serving sentences, the Court said that an essential requirement of justice is that every accused person should be defended by a lawyer. Denial of adequate legal representation is likely to result in injustice, and every act of injustice corrodes the foundations of democracy and rule of law.

Expressing serious concern about the safety and security of women in police lock-up, the Supreme Court directed that a woman judge should be appointed to carry out surprise visits to police stations to see that all legal safeguards are being enforced.

Supreme Court Directives

- Female suspects must be kept in separate lock-ups under the supervision of female constables.
- Interrogation of females must be carried out in the presence of female police officers.
- A person arrested without a warrant must be immediately informed about the grounds of arrest and the right to obtain bail.
- As soon as an arrest is made, the police should obtain from the arrested person, the name of a relative or friend whom she would like to be informed about the arrest. The relative or friend must then be informed by the police.
- The police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up.
- The Legal Aid Committee should take immediate steps to provide legal assistance to the arrested person at state cost, provided such person is willing to accept legal assistance.
- The magistrate before whom an arrested person is produced shall inquire from the arrested person whether she has any complaint regarding torture or maltreatment in police custody. The magistrate shall also inform such person of her right to be medically examined.



Women prisoners & their children

RD UPADHYAY v STATE OF ANDHRA PRADESH & ORS

AIR 2006 SC 1946

The Court in the instant petition considered the issue of development of children who are in jail with their mothers.

The substance of the petition comprised the following issues:¹¹

- i. The prison environment is not conducive to the normal growth and development of children,
- ii. Many children are born in prison and have never experienced a normal family life,
- iii. Socialisation patterns get severely affected due to their stay in prison. Children are unaware of the concept of home and their only image of male authority is that of police and prison officials,
- iv. Children get transferred with their mothers from one prison to another, frequently (due to overcrowding), thus unsettling them, and
- v. Such children sometimes display violent, aggressive, or alternatively, withdrawn behaviour in prison.

¹¹ The Court took these from a field action project prepared by the Tata Institute of Social Sciences on the situation of children of prisoners.

Supreme Court Observations

The best interests of the child have been regarded as a primary consideration in the constitution, and thus specific provisions have been made for the care, welfare and development of the children. In addition to the wide range of existing laws on issues concerning children, the Court also emphasised the importance of the principles contained under the National Charter for Children 2003.¹²

Supreme Court Directives

The Court issued the following guidelines for the union government, state governments, union territories and State Legal Services Authority and directed them to submit a compliance report in 4 months:

- A child shall not be treated as an under-trial/convict while in jail with his mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
- Women prisoners with children should not be kept in sub-jails, which are not equipped to keep small children.
- The stay of children in crowded barracks amidst women convicts, under-trials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.
- Jail manual and/or other relevant rules, regulations, instructions etc. shall be suitably amended within three months so as to comply with the directions issued.
- The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mothers are complied with in letter and spirit.
- The courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

Pregnancy

- Before sending a pregnant woman to jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery, as well as for providing adequate pre-natal and post-natal care for both, the mother and the child.
- When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady medical officer shall report the fact to the superintendent.
- As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government

¹² NO. F. 6-15/98-CW, 9 February 2004, the Government of India, Ministry of Human Resource Development, Department of Women and Child Development, New Delhi.

Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on.

- After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.
- Gynaecological examination of female prisoners shall be performed in the District Government Hospital.
- Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

Child Birth in Prison

- As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.
- Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.
- As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

Female Prisoners and their Children

- Female prisoners shall be allowed to keep their children with them in jail till they attain the age of 6 years.
- Upon reaching the age of 6 years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Department of Social Welfare.
- As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to physical distance.
- Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.
- Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Department of Social Welfare, shall ensure that such children are brought to the prison for this purpose on the date fixed by the superintendent of prisons.

Food, Clothing, Medical Care and Shelter

- Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the state/union territory government shall lay down the scales.

- State/union territory governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
- A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.
- Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
- Clean drinking water must be provided to the children. This water must be periodically checked.
- Children shall be regularly examined by the lady medical officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records.
- Extra clothing, diet and so on may also be provided on the recommendation of the medical officer.
- In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.
- Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
- Children of prisoners shall have the right of visitation.
- The prison superintendent shall be empowered, in special cases and where circumstances warrant, to admit children of women prisoners to prison without court orders provided such children are below 6 years of age.

Education and Recreation for Children of Female Prisoners

- Children of female prisoners living in the jails shall be given proper education and recreational opportunities.
- There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. This facility will also be extended to children of warders and other female prison staff.
- Children below 3 years of age shall be allowed in the crèche and those between 3 and 6 years shall be looked after in the nursery.

Diet

- The child should be provided at least 600 ml of undiluted fresh milk over 24 hours if the breast milk is not available.
- The food groups given below should be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

Age of Child	6-12 months	1-3 yrs	4-6 yrs
Cereals and Millets	45 gm	60-120 gm	150-210 gm
Pulses	15 gm	30 gm	45 gm
Milk	500 ml	500 ml	500 ml
Roots and Tubers	50 gm	50 gm	100 gm
Green Leafy Vegetables	25 gm	50 gm	50 gm
Other Vegetables	25 gm	50 gm	50 gm
Fruits	100 gm	100 gm	100 gm
Sugar	25 gm	25 gm	30 gm
Fats/Oils (Visible)	10 gm	20 gm	25 gm

NB: One portion of pulse may be exchanged with one portion (50 gm) of egg/meat/chicken/fish.

Part II

THE NATIONAL HUMAN RIGHTS COMMISSION'S GUIDELINES/LETTERS ON PRISONS & PRISONERS' RIGHTS

The National Human Rights Commission has a statutory¹³ duty to visit prisons or other institutions where persons are detained or lodged for purposes of treatment, reformation or protection. The Commission is entitled to study the living conditions of the inmates and make recommendations to the state government. The Commission has issued guidelines, recommendations and letters on various issues pertaining to prisoners' rights. This part contains a summary of the guidelines issued by the Commission on mentally ill persons in prisons, supply of reading material to prisoners and their premature release. In addition to these guidelines, the Commission has, from time to time, written letters to the Chief Ministers, Chief Secretaries and the Chief Justices of states. These cover issues ranging from deaths/rapes in judicial custody, the fixation of tenure of Inspector General of Prisons, medical examination of prisoners, to the plight of under-trial prisoners.

¹³ Section 12(c) of the *Protection of Human Rights Act, 1993*.



GUIDELINES FOR PREMATURE RELEASE OF PRISONERS UNDERGOING SENTENCE OF LIFE IMPRISONMENT

The National Human Rights Commission received a number of complaints about the non-consideration of the case of premature release of convicts undergoing life imprisonment even where they had undergone long periods of sentences ranging from 10 to 20 years, with or without remission. Upon inquiry of these complaints the Commission found that the procedure and practice followed by state governments was not uniform.

The Commission opined that it was time that a uniform system of premature release of prisoners is evolved for the adoption of state governments. With this in mind the following recommendations/guidelines were formulated.¹⁴ These give particular regard to the need for the constitution of the Review Boards and also to ensure promptitude of their meetings.

¹⁴ Evolved by the Commission on 20.10.1999 and issued through letter of 'even number' dated 8 November 1999.

NHRC Guidelines

- The law pertaining to premature release is found under Section 432 Cr.P.C. For prisoners undergoing sentence for life, this is further circumscribed by provisions of Section 433A Cr.P.C.

State Sentence Review Board

Composition

- Each state shall constitute a Review Board for the review of sentence awarded to a prisoner and for recommending his premature release in appropriate cases.
- The Review Board shall be a permanent body having the following constitution:
 - ▶ Minister incharge, Jail Department/Principle Secretary, Home; Principle Secretary incharge of Jail Affairs/Law & order Chairman
 - ▶ Judicial Secretary/Legal Remembrancer Member
 - ▶ A District & Sessions Judge nominated by the High Court Member
 - ▶ Chief Probation Officer Member
 - ▶ A senior police officer nominated by the Director General of Police not below the rank of Inspector General of Police Member
 - ▶ Inspector General of Prisons Member-Secretary
- The meeting of Board shall not be held if the Coram is less than 4 members including the Chairman.

Periodicity of the Board's Meetings

- The Review Board shall meet at least once in a quarter at the State Headquarters.
- It is open to the Chairperson of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

Eligibility for Premature Release¹⁵

- Every convicted prisoner whether male or female undergoing life imprisonment and covered by Section 433A Cr.P.C. shall be eligible to be considered for premature release immediately after serving a sentence of 14 years actual imprisonment i.e. without remission.
- Completion of 14 years in prison by itself does not entitle a convict to automatic release from the prison.

¹⁵ The Commission modified para 3 & 4 of the issued guidelines vide Letter No. 233/10/97-98 (FC) dated 26 September 2003. Para 3 containing eligibility for premature release was modified. In view of these changes para 4 (Ineligibility for Premature Release) was deleted.

- The Review Board shall have the discretion to release a convict considering the circumstances in which the crime was committed and other relevant factors such as:
 - ▶ whether the convict has lost his potential for committing crime, considering his overall conduct in jail during the 14 years of incarceration,
 - ▶ the possibility of reclaiming the convict as a useful member of the society, and
 - ▶ socio-economic condition of the convict's family
- The state/union territory governments are advised to prescribe the total period of imprisonment to be undergone including remissions.
- The total period of incarceration inclusive of remission should not exceed 20 years.
- For prisoners convicted for capital offences, a reasonable classification should be made on the basis of magnitude, brutality and gravity of the offence. Based on this, they should be entitled to be considered for premature release after undergoing imprisonment for a period of 20 or 25 years inclusive of remission.
- Convicted male prisoners sentenced to life imprisonment but beyond the purview of section 433A Cr.P.C. would be entitled to be considered for premature release after they have served at least 14 years of imprisonment inclusive of remissions, but only after completion of 7 years actual imprisonment i.e. without remissions.
- Convict female prisoners sentenced to life imprisonment but beyond the purview of section 433A Cr.P.C. would be entitled to be considered for premature release after they have served at least 10 years of imprisonment inclusive of remissions, but only after completion of 7 years actual imprisonment i.e. without remissions.
- Premature release of persons undergoing a sentence of life imprisonment, before 14 years of actual imprisonment, should be considered on grounds of terminal illness or old age etc. This can be done under the provisions of Article 161 of the constitution.

Procedure for Processing Cases for Consideration by the Board

- The superintendent of jail shall initiate the case of the prisoner at least 3 months in advance of the date when the prisoner would become eligible for consideration of premature release as per the criteria laid down by the state government on that behalf.
- The superintendent of jail shall prepare a comprehensive note in each case comprising:
 - ▶ the family and societal background of the prisoner,
 - ▶ offence for which he was convicted and sentenced,
 - ▶ circumstances under which the offence was committed,
 - ▶ conduct and behaviour of the prisoner in jail during the period of incarceration,
 - ▶ behaviour/conduct during the period he was released on probation leave,

- ▶ jail offences, if any, committed by him and punishment awarded to him for such offence(s), and
- ▶ physical/mental health or any serious ailment with which the prisoner is suffering, entitling his case special consideration for premature release.
- The note shall also contain the recommendation of the jail superintendent whether he favours premature release of the prisoner or not and in either case it shall be supported by adequate reasons.

Reference to Superintendent of Police

- The superintendent of jail shall make reference to the superintendent of police of the district where the prisoner was ordinarily residing or where he is likely to resettle after release from jail, or both where places are different.
- The jail superintendent shall forward the note prepared to enable the police superintendent to express his views.
- On receipt of the reference, the concerned superintendent of police shall cause an inquiry to be made through senior police officer of appropriate rank and based on his own assessment shall make his recommendations.
- He shall not act mechanically and base his denial on untenable and hypothetical grounds. He shall justify his opposition for release with cogent reasons and material.
- He shall return the reference to the superintendent of the concerned jail within 30 days of the receipt of the reference.

Reference to Chief Probation Officer

- The superintendent of jail shall make reference to the Chief Probation Officer (CPO) of the state and shall forward him a copy of his note.
- The CPO shall either hold or cause an inquiry through a probation officer having regard to:
 - ▶ family and social background of the accused,
 - ▶ acceptability by his family members and the society, and
 - ▶ prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen.
- The CPO shall not act mechanically, and justify his recommendations by reasons/material.
- The CPO shall furnish his report/recommendation to the superintendent of jail not later than 30 days from the receipt of the reference.

Inspector General of Prisons

- On receipt of the report of the superintendent of police and CPO, the superintendent of jail shall put up the case to the Inspector General of Prisons at least one month in advance of the proposed meeting of the Sentence Review Board.
- The Inspector General of Prisons shall examine the case, bearing in mind the report/recommendations of the superintendent of jail, superintendent of police and the chief probation officer, and make his own recommendations.

- Due regard should be placed to the various norms laid down and guidelines given by the Supreme Court and various High Courts in the matter of premature release of prisoners.

Procedure and Guidelines for the Review Board

- The Inspector General of Prisons shall convene a meeting of the Sentence Review Board at the State headquarters.
- An advance notice shall be given to the Chairman and members of the Board at least 10 days in advance and it shall accompany the complete agenda papers i.e. recommendations of the superintendent of jail, superintendent of police, chief probation officer and that of the Inspector General of Prisons along with documents (if any).
- A meeting shall ordinarily be chaired by the chairman and in his absence, by the judicial secretary cum legal remembrancer.
- The member secretary (Inspector General of Prisons) shall present the case of each prisoner under consideration before the Board.
- The Board shall consider the case and take a view. As far as possible, it should be unanimous. In case of dissent, the majority view shall prevail and will be deemed to be the decision of the Board.
- While taking the decision, the Board shall consider the:
 - ▶ welfare of the prisoner and the society at large,
 - ▶ circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or any other offence again, and
 - ▶ general principles of amnesty/remission of the sentences as laid down by the state government or by courts, as also the earlier precedents in the matter.
- Rejection of the case by the Board will not be a bar for reconsideration of his case. However, such case shall be reconsidered only after the expiry of a period of 1 year from the date of last consideration.
- The recommendations of the Board shall be placed before the competent authority without delay for consideration.
- The competent authority may either accept the recommendations of the Board or reject the same on grounds to be stated, or may ask the Board to reconsider a particular case.
- The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered to grant remission and order his premature release, the prisoner shall be released forthwith, with or without conditions.



GUIDELINES ON SUPPLY OF READING MATERIAL TO PRISONERS

Prisoners have a right to dignity. To promote their rehabilitation in the society, prisoners should be assisted to improve and nurture their skills. The National Human Rights Commission deliberated upon the nature and extent of reading materials to which prisoners should have access. It laid down the following guidelines to be used by competent authorities in all the states and the union territories.

NHRC Guidelines¹⁶

- Any restrictions imposed on a prisoner with respect to reading materials must be reasonable.
- All prisoners should have access to such reading materials as are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.
- Every prison should have a library for use by all categories of prisoners.
- The library should be adequately stocked with both recreational and instructional books and prisoners should be encouraged to make use of them.
- The materials in the library should be commensurate with the size and nature of the prison population.
- Diversified programmes should be organised by prison authorities for different group of inmates. The educational and cultural background should be kept in mind when developing such programmes.
- Special attention should be paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate.
- Prisoners should generally be permitted to receive reading material from outside. Such material should be reasonable in quantity and not prohibited for reasons of being obscene or tending to create a security risk.
- Quotas should not be set arbitrarily for reading materials.
- The quantity and nature of reading material provided to a prisoner should take into account his individual needs.
- In assessing the content of reading material, the superintendent of the jail should be guided by law, and not exercise his discretion in an arbitrary manner.

¹⁶ Approved by the NHRC on 28 February 2000 and sent to the chief secretary of all states/union territories for circulation to all concerned person on 1 March 2000.



GUIDELINES ON MENTALLY ILL PERSONS DETAINED IN PRISONS

All persons suffering from mental illness are entitled to be treated with dignity just as any other human being. The Statement of Objects and Reasons of the Mental Health Act, 1987 asserts that mental illness is no longer seen as a social stigma, and mentally ill persons must be treated like any other sick person. In 1982, the Supreme Court observed that there must be adequate number of institutions for looking after the mentally sick. It further stated that the practice of sending persons of unsound mind to the jail for safe custody is not a healthy or desirable practice.¹⁷

With this context in mind, and concerned about the increasing number of sane prisoners becoming mentally ill after being sent to jail, the National Human Rights Commission made the following recommendations.¹⁸

¹⁷ *Veena Sethi v State of Bihar* (1982) 2 SCC 583.

¹⁸ These guidelines were submitted to the Hon'ble High Court of Delhi in *NHRC & Ors v State & Ors* WP (Crl) No 1278/04.

NHRC Guidelines

- In order to prevent or to ensure early detection of mental illness, all prisoners should be provided psychiatric and psychological counselling.
- For this purpose, collaborations should be made with local psychiatric, medical institutions and non-governmental organisations.
- All jails should be formally affiliated to a mental hospital.
- Central and district jails should have facilities for preliminary treatment of mental disorder. Sub-jails should take inmates with mental illness to psychiatric facilities.
- Every central and district jail should have services of a qualified psychiatrist who would be assisted by a psychologist and a social worker trained in psychiatry.
- Mentally ill persons, who are not accused of a criminal offence, should not be kept or sent to prison. They should be taken for observation to the nearest psychiatric centre, or if that is not available to the Primary Health Centre.
- All those kept in prison with mental illness and under observation of psychiatrist should be kept in one barrack.
- Preventive legal aid is required to check the abuse of law and dumping of the mentally ill in prisons. It is necessary to ensure that no mentally ill person is unrepresented in court.

Prevention of Mental Illness within Prisons

- The state has a responsibility for the mental and physical health of the incarcerated. To prevent people from becoming mentally ill after being sent to prison, each jail and detention centre should ensure that it provides the following facilities:
 - ▶ An open environment, lawns, kitchen gardens and flower gardens.
 - ▶ Daily programmes for prisoners that reduce stress and depression including organised sport and meditation.
 - ▶ A humane staff that is not harsh:
 - Officers of the institution should not use force except in self-defence or attempted escape,
 - Force if used, should not be more than is strictly necessary. The concerned officers must report the incident immediately to the director of the institution,
 - Prison officers should be given special physical training to enable them to restrain aggressive prisoners, and
 - Prison staff in direct contact with prisoners should not be armed (except in special circumstances).
 - ▶ There should be effective grievance redressal mechanisms.
 - ▶ At the time of admission, every prisoner should be provided with written information (orally if the prisoner is illiterate) about the:
 - regulations governing the treatment of prisoners in his category,
 - disciplinary requirements of the institution,

- authorised methods of seeking information and making complaints, and
- all other matters to enable him understand both his rights and his obligations.
- ▶ Visitors and correspondence with family and friends should be encouraged.
- ▶ There must be oversight bodies including members of the civil society to ensure the absence of corruption and abuse of power.

Under-trials/Convicts who become Mentally Ill in Prison

- The state has an affirmative responsibility towards an under-trial or a convict who becomes mentally ill while in prison.
- The state must provide adequate medical support.
- Appropriate facilities should be provided in state assisted hospitals for under-trials who become mentally ill in prison.
- In case such places are not available, the state must pay for the same medical care in a private hospital.
- Care should be provided until the recovery of the under-trial/convict.
- On completion of the period of sentence for a convict prisoner admitted to hospital for psychiatric care, his status in all records of prison and hospital should be recorded as a free person. He shall continue to receive treatment as a free person.

Mentally Ill Under-trials

- Mentally ill under-trials should be sent to the nearest prison having services of a psychiatric attached to a hospital.
- Each under-trial should be attended to by a psychiatrist who will send a periodic report to the judge/magistrate through the superintendent of the prisons regarding the condition of the individual and his fitness to stand trial.
- When the under-trial recovers from mental illness, the psychiatrist should certify him as 'fit to stand trial'.
- If the trial is suspended even for one day due to mental illness, a report should be sent to the relevant district and sessions judge as well as the magistrate on a quarterly basis i.e. every 3 months.
- As soon as it comes to the notice of the trial court that an under-trial is mentally ill and cannot understand the proceedings against him, the court must follow the procedure under Chapter XXV of the Cr.P.C.

Letters on Deaths/Rapes in Judicial Custody

Reporting of Custodial Death/Rape

In 1993,¹⁹ the Commission held a meeting to discuss the increasing instances of custodial deaths and custodial rapes. Pursuant to this, the Commission issued a letter to all chief secretaries across the country. The letter suggested that the district magistrates and superintendents of police be given instructions that they should report to the Secretary General of the Commission about such incidents within 24 hours of occurrence or of these officers having come to know about such incidents. Any failure to report promptly would give rise to the presumption that there was an attempt to suppress the incident.

In 1995,²⁰ the Commission issued a clarificatory letter as its previous letter did not mention deaths/rapes occurring in judicial custody. This letter asked the chief secretaries to issue instructions to the concerned authorities to report all deaths/rapes in judicial custody to the Commission in the time frame indicated in its previous letter.

Video Filming of Postmortem Examination in Case of Custodial Deaths

In 1995,²¹ the Commission noted with concern the increasing incidents of death in police lock-up and jails. Scrutiny of reports showed that in majority of the cases, post mortems had not been done properly. These reports were casually drawn up and did not help in forming an opinion on the cause of death. This gave the impression that a systematic attempt was being made to suppress the truth. Stressing upon the value of post-mortem reports, the Commission issued a letter to chief ministers/administrators of all states/union territories, asking them to sensitise the higher officials in the state police to introduce video-filming of post mortem examination. These video cassettes should then be sent to the Commission along with the post-mortem report. Duly accepting the cost implications involved, the Commission stated that "human life is more valuable than the cost of video filming."

In 2001,²² the Commission found that there was considerable delay in sending the post-mortem report along with videography and the

¹⁹ Letter No. 66/SG/NHRC/93, dated 14 December 1993.

²⁰ F No. 40/3/95-LD, dated 21 June 1995.

²¹ Letter dated 10 August 1995.

²² D.O. No. 40/1/1999-2000-CD (NRR) dated 3 January 2001.

magisterial inquest report. This in turn caused delay in the processing of custodial death cases and awarding interim relief by the Commission. To streamline the procedure, the Commission issued another letter to all Home Secretaries revising the instructions given in its earlier letter. The letter contained the following instructions:

- The post mortem report along with the videograph and the magisterial inquiry report must be sent within 2 months of the incident,
- The post mortem reports have to be sent in the new proforma i.e. the Model Autopsy Form,²³
- The magisterial inquiry must be done and completed within the stipulated period of 2 months,
- The post mortem report and other documents should be sent to the Commission without waiting for the viscera report. However, the viscera report should be sent subsequently as soon as it is received.

In latter part of 2001,²⁴ the Commission issued a further letter to chief ministers/administrators of all states/union territories modifying the instructions pertaining to deaths in judicial custody. This was done with regard to certain practical difficulties pointed out by jail authorities. Given that the majority of deaths in jails are due to illness aggravated by negligence in giving proper treatment, the Commission felt that in such a situation the videography of post-mortem could be relaxed to a certain extent. However this did not negate the importance of post-mortem examinations.

According to the letter, the requirement of videography of post-mortem examinations in respect of deaths in jail is applicable only in cases where:

- The preliminary inquest by the magistrate has raised suspicion of some foul play, and
- Any complaint alleging foul play has been made to the concerned authorities or there is any suspicion of foul play.

Adoption of Model Autopsy Form and Additional Procedure for Inquest

In 1997,²⁵ the Commission noted with concern that the autopsy forms in use in various states were not comprehensive and gave scope for doubt and manipulation. The Commission decided to revise the forms to remove the loopholes and make the autopsy forms more incisive and purposeful. To implement their use, the Commission sent a letter to chief ministers/administrators of all states/union territories asking them to adopt the model autopsy form and additional procedure for inquest.

²³ NHRC/ID/PM/96/57 dated 27 March 1997 (See Annexure I of this letter).

²⁴ D.O. No. 3/2/99-PRP&P dated 21 December 2001.

²⁵ No. NHRC/ID/PM/96/57 dated 27 March 1997 (See Annexure I & II of this letter).

This form was prepared by the Commission after ascertaining the views of the state governments, discussing the experts in the field and taking into consideration the United Nations Model Autopsy Protocol. The additional procedure for inquest was essential for the proper assessment of time of death, through determination of temperature changes and development of rigour mortis at the time of first examination at the scene. It was suggested that this can be attained in the present system of inquest by examining the dead body for these two parameters either by a medical officer or a trained police officer.

Letters for the Fixation of Tenure of Inspector General of Prisons

In 1996,²⁶ the Commission issued a letter to chief ministers/administrators of all states/ union territories for the fixation of tenure of the Inspector General of Prisons. During its prison visits, the Commission found that in most of the states, the post of the Inspector General of Prisons was filled up by officers either from the Indian Administrative Service or Indian Police Service. The tenure of the officer was brief, as majority of officers looked upon it as a post of inconvenience and sought early transfers to other mainstream posts of administration. This resulted in frequent transfers, leaving the post vacant for long periods. To remedy this, and for qualitative improvement of prison administration system in India, the Commission recommended that an officer of proven integrity and merit be selected for the post. He should continue in the post for a period of 3 years with a view to impart continuity and dynamism to the prison administration.

In 1999,²⁷ the Commission issued another letter to chief ministers/administrators of all states/union territories reiterating the instructions given in its previous letter.

Letters on Mentally Ill Persons in Prisons

In 1996,²⁸ it came to the notice of the Commission that several mentally ill persons, as defined in section 2(l) of the Mental Health Act, 1987,²⁹ were in jails and were being treated at par with ordinary prisoners. Elucidating the legal position under the Act, the Commission issued a letter to chief ministers/administrators of all states/union territories.

²⁶ Dated 25 September 1996.

²⁷ Dated 29 April 1999.

²⁸ Dated 11 September 1996.

²⁹ Section 2(l): "Mentally ill person" means a person who is in need of treatment by reason of any mental disorder other than mental retardation."

The letter clarified that the Mental Health Act had come into force with effect from 1 April 1993 and did not permit the mentally ill persons to be put in prison. It also mentioned a judgment of the Patna High Court, directing the state of Bihar to transfer mentally ill persons in jails to the mental asylum at Ranchi. Drawing attention to the provisions under the Act and the order of the High Court, the Commission advised that no mentally ill person should be permitted to continue in jail after 31 October 1996. The letter asked the chief ministers/administrators to issue necessary instructions to the Inspector General of Prisons to enforce the same.

The letter also stated that after 1 November 1996, the Commission would start inspecting as many jails as possible and find out if any mentally ill person is detained in jails. If any such person were found, the Commission would award compensation to the mentally ill persons or members of the family and would require the state government to recover the amount of such fine from the delinquent public officer. The Commission asked a copy of the letter to be circulated widely to the Inspector General of Prisons, superintendents of every jail, members of the jail staff and other district level officers.

In 2000,³⁰ the Commission issued another letter reiterating the instructions given in its previous letter. The letter mentioned that a member of the Commission had found that 44 mentally ill persons were lodged in a central prison of a north-eastern state. The letter further stated that the detention of mentally ill persons in jail amounts to an egregious violation of human rights. Reiterating the instructions regarding compensation, as mentioned in its previous letter, the Commission requested the chief ministers/administrators to issue clear directions to the Inspector General of Prisons to ensure that mentally ill persons were not kept in jail under any circumstances. It also asked the state governments to make proper arrangements for the treatment of mentally ill persons in approved mental institutions.

Letter Regarding Periodical Medical Examination of Prisoners

In 1999,³¹ the Commission, concerned about the increasing instances of spread of contagious diseases in the prisons, issued a letter to all chief secretaries/administrators of all states/union territories regarding prisoners' health care. In a sample study conducted by the Commission it was noticed that 79 per cent of deaths in judicial custody were a result

³⁰ Dated 7 February 2000.

³¹ D.O. No. 4/3/99 - PRP & P, dated 11 February 1999.

of infection of *Tuberculosis*. The letter suggested the following remedial measures to be followed:

- Initial medical examination of all prison inmates by prison or government doctors,
- Where there is inadequacy of such services, the services of voluntary organisations and professional guilds such as the Indian Medical Association should be taken,
- Periodic medical check-up for all prison inmates, particularly for their susceptibilities to infectious diseases,
- Where health problems are detected, the prison administration should afford timely and effective medical treatment,
- The proforma for health screening of prisoner on admission to jail should be followed,³² and
- Such medical examination should be taken up forthwith by all state governments and prison administrators, and monthly reports of the progress be communicated to the Commission.

Letters on Under-trial Prisoners

*"The majority of under-trial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background."*³³

Release of Under-trial Prisoners

In 1999,³⁴ the Commission issued a letter to all Inspector General of Prisons on speedy trial of under-trial prisoners. The letter reiterated the Supreme Court directions in *Common Cause v Union of India*³⁵ regarding release of under-trial prisoners. The letter explained that the judgment did not provide for *suo moto* grant of bail to the petitioners by the trial court. Thus applications have to be made to move the court for grant of bail, as there is no mechanism in the courts to automatically dispose off suitable cases. It opined that the process needs a high degree of coordination between the judiciary, the police and the prison administration. The Commission through the letter asked the Inspector General of Prisons to meet the Registrar of the High Court, State Legal Aid Authorities and take measures for the release of under-trial prisoners in consonance with the judgments of the Supreme Court.

³² The proforma was circulated along with the letter.

³³ D.O. No. 11/1/99-PRP & P, dated 29 April 1999.

³⁴ D.O. No. 11/1/99-PRP & P, dated 29 April 1999.

³⁵ (1996) 4 SCC 33.

Speedy Trial of Cases

In 1999,³⁶ the Commission issued a letter to Chief Justices of High Courts to adopt and issue necessary directions to magistrates and sessions judges within their jurisdiction for the speedy trial of cases. This would ensure prevention of unnecessary restriction on the liberty of the under-privileged and poor under-trial prisoners. The letter culled out the gist of many Supreme Court judgments that observed and directed the following:

- Speedy trial is a component of personal liberty,
- For offences punishable with a term of imprisonment upto 7 years, the trial must be completed within 2 years,
- For offences punishable with a term of imprisonment more than 7 years, the trial must be completed in 3 years,
- Where the prosecution fails to produce evidence before the expiry of the outer limit, the prosecution case stands closed and the court shall proceed to the next stage of the trial and dispose it of in accordance with law, and
- The time taken by the courts on account of their inability to carry on day-to-day trial due to pressure of work will be excluded from the deadline of 2 years and 3 years respectively.

Prolonged detention violates the right to liberty guaranteed to every citizen. This amounts to a blatant denial of freedom of movement to the vulnerable segments of the society who need the protection, care and consideration of the law and the criminal justice dispensation system. To ensure that the directions of the Supreme Court are complied with, following instructions should be considered for adoption and issued to all concerned authorities:³⁷

- All courts, whether judicial magistrates or special courts, before extending the period of remand of prisoners, should ascertain whether he is entitled to be released on bail as per the directions of the Supreme Court. If they are not able to furnish surety/security, they may be released on personal bonds to ensure their attendance on the dates of hearing.
- The District Level Review Committee for under-trial prisoners should meet without fail, at least once in every 3 months and review the cases of all prisoners who are in judicial custody for periods of 6 months or more. These meetings should be presided over by the principal district & sessions judge himself.
- When any case falls within the categories mentioned in the Supreme Court judgements, the concerned court should, *suo moto*, "release the accused on bail or on personal bond to be executed by the accused

³⁶ Letter dated 22 December 1999.

³⁷ These guidelines/directions were prepared after consultation with the Chief Justice & other judges of the High Court of Andhra Pradesh.

and subject to such conditions, if any, as may be found necessary, in light of Section 437 Cr.P.C.

Release on Personal Bonds, Holding of Courts in Jail & Visits by Ex-Officio Visitors

In 2003,³⁸ Dr. Justice A.S. Anand, the then Chairperson of the Commission wrote a letter to all Chief Justices of High Courts on the plight of under-trial prisoners. This letter was in consonance with a previous letter written by him in 1999 as the Chief Justice of India. The letter had suggested that every Chief Metropolitan Magistrate or Chief Judicial Magistrate of the area in which a district jail falls may hold court once or twice in a month in jail. These courts were to take up cases of those under-trial prisoners who were involved in petty offences and were keen to confess their offences.

The letter further stated that overcrowding was the root cause of the deplorable living conditions in jails across India. Overcrowding has made it difficult for the prison administration to ensure that the basic minimum needs of the prisoners such as accommodation, sanitation and hygiene, water and food, clothing and bedding, and medical facilities are satisfied.

Concerned about the human rights of prisoners, the Commission suggested the following measures for the reduction of congestion of under-trials in prisons:

- Regular holding of special courts in jails and its monitoring by the Chief Justice/senior judge of the High Court.
- Monthly review of the cases of under-trials in light of the Supreme Court judgments, where clear instructions have been issued for:
 - ▶ release of under-trials on bail, and
 - ▶ discharge of certain categories of under-trials specified in the judgment.
- Release of under-trials on personal bonds, especially in cases where they are first time offenders and punishment is less than 2-3 years,
- Cases of under-trials who stay in prison due to their inability to raise sureties should be reviewed after 6-8 weeks to consider suitability for release on personal bonds.
- Visit of district and sessions judge, as ex-officio visitors of jails falling within their jurisdiction. The jail manuals for states contain provisions for their periodical visits to jails. The Commission has observed a marked difference in the situation in states where this obligation is being discharged seriously and sincerely by the subordinate judiciary. Accordingly, directions should be issued for

³⁸ NHRC/CJC/UTP/2003, dated 1 July 2003.

such visits by all the *ex-officio* visitors to jails falling in their jurisdiction. The visitors should not only ensure the overall improvement in management and administration of the prison, but also identify the cases of long-staying under-trials and bring it to the attention of concerned authorities.

Training of Magistrates and Remand Proceedings

In 2007,³⁹ a letter was issued to all Chief Justices of the High Courts reiterating and emphasising the instructions mentioned in the Commission's previous letters on under-trial prisoners. The letter emphasised the Supreme Court directives in the *Common Cause* case, the importance of *ex-officio* visitors, the need for speedy and expeditious trial and the need for coordination between the judiciary, the police and the prison administration.

The letter also stressed the need to organise training and orientation courses for magistrates with regard to remand proceedings. The Commission suggested the following points to be emphasised:

- In remand proceedings, authorising detention of an arrestee was not a routine matter. It was a serious exercise affecting the liberty of the accused.
- While considering remand application, they should go through the FIR and police case diaries to ascertain whether or not there are prima-facie reasons for authorising further detention of the arrestee.
- While determining the amount of bail to be furnished by the arrestee, the courts should take into consideration socio-economic background of the accused and fix the amount for bail in such a manner that it is not unrealistic.

³⁹ D.O. No. 4/6/2005-PRP & P, dated 25 October 2007.

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. Accordingly, in addition to a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy:

CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

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. CHRI 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 interference.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major area is focused on 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. We believe 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.

The Constitution of India guarantees fundamental human rights to all. It also pledges that the state will safeguard human rights and will protect citizens from any arbitrary infringement upon their liberty, security and privacy. The Indian judiciary has been at the forefront in recognising and emphasising that imprisonment does not spell farewell to these freedoms and rights. There is, however, a huge gap between the constitutional promises as enunciated by the judiciary and the reality of the lives of prison inmates. Often, they have no lawyers; live in pathetic unhygienic conditions; do not have access to adequate medical care; and are likely to be tortured or exploited. They are not aware of their rights. Often, legal aid lawyers and prison officials are also unaware. This compilation seeks to bring together important judicial pronouncements and National Human Rights Commission's guidelines on prisons and prisoners' rights in a simplified form so that this information is easily accessible to those who are interested.



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