Proceedings of

Workshop on DetentioN

National Human Rights Commission

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New Delhi

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Foreword

The hallmark of any civilized society is the way it protects and promotes the rights of persons under detention. The National Human Rights Commission has always held the view that mere imprisonment does not take away the Fundamental Rights of a person. Once a person is held in custody of the State, it has responsibility to ensure basic rights guaranteed to him or her in the Constitution.

Article 21 of the Constitution guarantees protection of life and personal liberty. Article 22 confers rights upon a person who has been arrested. Firstly, he shall not be detained in custody without being informed of the grounds of his arrest. Secondly, he shall have the right to consult and to be represented by a lawyer. Thirdly, he has a right to be produced before the nearest Magistrate within 24 hours of his arrest and fourthly, he is not to be detained in custody beyond the period of 24 hours without the authority of the Court. The Prisons Act 1894 and the Jail Manuals have detailed provisions to deal with various aspects of detention and duties of the officials connected therewith. Writ of Habeas corpus is a guarantee against illegal detention.

The Universal Declaration of Human Rights 1948 and the International Covenant on Civil and Political Rights, 1966 proclaim *inter alia* the right to life and the right to be free from torture, inhuman, degrading treatment or punishment. Article 10 of the International Covenant on Civil and Political Rights stipulates that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'. All Government officials connected with detention need to keep the above-mentioned provisions fully in view while discharging their duties.

The National Human Rights Commission through its Chairman or other Members, Special Rapporteurs and officers of the Commission have

been visiting various places of detention across the country for the study of the living conditions of the inmates, their treatment, reformation or protection. Based on these visits, the Commission has been making detailed recommendations to authorities, which are also monitored on a continuing basis.

Besides redressing individual complaints of rights violations, the Commission has also recommended systemic reforms in the Police, Prisons and other centres of detention. The Commission has laid down stringent reporting requirements for reporting of custodial deaths/ rapes, besides issuing guidelines on arrests, mentally ill persons in prisons, medical examination of prisoners, speedy trial of undertrial prisoners and premature release of prisoners.

To commemorate the 60th Anniversary of UDHR and as a part of "Dignity and Justice for Detainees Week", the Commission has organized a Workshop on Detention in New Delhi on 11-12 October, 2008 with a view to discuss relevant issues with all stakeholders and evolve suitable recommendations to authorities concerned for better protection of human rights of detainees.

Legal luminaries, senior government officials from the Central Government and States, NGOs, senior academics and others participated in the two-day workshop. Based on its deliberations, the Commission has adopted a series of recommendations. The Commission has now decided to bring out the proceedings of the Workshop on Detention with a view to disseminate relevant information widely to all sections of the society to protect and promote dignity and justice for detainees. I hope this publication will prove quite useful for the Government officials, NGOs, human rights activists, academics and the general public.

Justice S. Rajendra Babu

Chairperson

Recommendations of NHRC on Detention

The National Human Rights Commission organized the National Workshop on Detention in New Delhi on 11-12 October 2008 as a part of activities to commemorate the 60th Anniversary of the Universal Declaration of Human Rights, 1948. Based on the deliberations in the Workshop, the following recommendations are made by the Commission.

Detention in prisons and police custody:

1. It is important to understand that a person in custody is under the care of the State and it is the responsibility of the State to ensure protection of his or her basic human rights. It should not be confused as advocacy for rights of criminals and terrorists.

2. The Convention against Torture inter alia seeks to prohibit torture in custody. Though India has signed the Convention against Torture, it has not yet ratified it. The Central Government must take immediate steps in this regard.

3. India may have a low rate of just 32 persons being in jail per every 100,000 population but a high proportion among them are undertrial prisoners languishing in jails. To overcome the situation, speedy trial should be ensured through the following measures :

   (a) Establishment of more courts and filling the vacant posts in judiciary.

   (b) Expedite the process of recording of evidence and examination of the police officers and medical practitioners who are

witnesses in certain cases as transferable nature of their services compounds any delay in this regard.

(c) In addition, provisions for keeping undertrial prisoners and convicts separately should be strictly enforced.

4. Section 436-A of the Cr.P.C provides for the release of a person in custody on personal bond, in case he has been in custody for more than half the period of the sentence he would have undergone in case found guilty. However inspite of this, the number of undertrial prisoners is still very high. Strategies and modalities should be worked out to ensure that the undertrial prisoners get expeditious relief under this provision.

5. As per Section 62(5) of the Representation of People's Act, a person confined in a prison or a lawful custody of the Police except those under preventive detention under any law is not allowed to vote although except for convicts, they are eligible to contest election. The provisions related to right to vote in the Representation of People's Act be suitably amended to ensure this right for undertrial prisoners.

6. There is a need for implementing prison reforms including Model Prison Code. This should inter alia cover vocational training of prisoners and providing them opportunity to work which besides keeping them engaged can also be a source of supplementary earning for them as well as a source of revenue for prison administration.

7. There is a need to pay special attention to orientation and training of prison staff to change their mindset from custodial to correctional approach. More training institutions should be set up for such staff. Mere sensitization of police or prison officials is not enough. The prisoners are equally under stress and therefore sensitization programmes should also focus on prisoners as target group.

8. Suitable strategies and modalities should be worked out for ensuring the protection of rights of children between the age group of 0 to 6 years of mothers in prisons and for implementation of Supreme Court judgment in R.D. Upadhyay vs. State of Andhra Pradesh.

9. In case of deaths in custody, as per the present practice, the Police Administration is required to send the report within 24 hours of its occurrence to NHRC. In accordance with the amendment made to Cr.P.C. (Section 176 (1) of Cr.P.C.) an inquiry by a judicial magistrate is made. There is a need for scrupulous implementation of procedure established under Section 176 (1) of Cr.P.C. In addition, forensic experts and laboratories must be involved as their expertise and scientific manner of investigation can assist in providing accurate and reliable evidence.

10. It was also suggested that the penalty inflicted on a delinquent police official responsible for torture should be in proportion to the degree of torture by such officials rather than a mere reprimand or transfer.

11. Government should take steps to separate the investigation wing from law and order wing, as decided in the case of Prakash Singh vs Union of India (2006 (8) SCC1).

12. The UN Minimum Standard Rules for the Treatment of Prisoners should be enforced and monitored from the Human Rights perspective.

13. There is a need to make the prison more transparent and open to the civil society.

14. All sorts of unlawful detentions should be severely dealt with.

Preventive Detention

15. The difference between "preventive" and "punitive" detention must be clearly understood. Preventive detention is aimed at preventing the possibility of an activity by a person which may be detrimental to public order or national security. Preventive detention should not be resorted as a substitute for the normal procedure established by law. There is a need to sensitize the authorities concerned that it should be resorted to as an exception in rare cases.

16. Certain safeguards are provided under law to the detenue under preventive detention. These include detailed recording of facts leading to satisfaction of authority, conveying the grounds of detention to the detenue, right to make representation to State or Central Govt. or to advisory board etc. These norms for detention should be strictly followed and all authorities should be sensitized about observance of these safeguards. People should also be sensitized about various personal liberties.

17. Preventive detention laws need to keep a balance between human rights of liberty on the one hand and security of the nation or maintenance of public order.

18. In case the detenue is found unlawfully detained, there is a need to have provision for interim relief/ compensation.

Detention in Juvenile Justice Homes

19. UN Minimum Standards for Treatment of Juveniles [Beijing Rules] should be strictly adhered to.

20. All the States must formulate rules under the Juvenile Justice Act, 2006 and constitute necessary institutions as required under the law. Constraints if any in implementing the provisions must be removed either by amendment to the law or by adopting a suitable strategy.

21. Juvenile Justice System should be distinct from criminal justice system in adjudication and terminology.

22. Effective implementation of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, requires need based analysis on part of the State Governments to streamline their approach.

23. Juvenile Justice should move up in the list of priorities for the State Governments to ensure that the financial, administrative and infrastructural needs are met, keeping in view the best interests of the child.

24. The authorities must comprehend the distinction between children in conflict with law and those in need of care and protection. The specific welfare needs of both the categories must be addressed.

25. The adjudicatory bodies (JJB) should ensure that the enquiries are completed within the stipulated time of 4 months as laid down in the Act.

26. Adequate number of qualified and trained personnel should be recruited under the JJ system. In cases of alleged abuse, strict action should be initiated against officers and staff responsible and pending such action, they should be immediately transferred.

27. Rehabilitation and repatriation of the children should be the ultimate aim. Institutional care must include proper educational facilities and vocational training in order to ensure sustainable options for child after he/she is sent back.

28. Health care needs of all the children must be looked after. The specific requirements of children ailing from diseases like HIV, scabies, mental disability must be addressed.

29. Basic standards of hygiene and nutrition should be adhered to in the Juvenile Justice/ observation homes.

30. It must be ensured that regular inspections of the homes be undertaken by the Inspection committees that have been set up under the Act.

Mental Health Issues of Detainees:

31. World over, on an average 32% of all prisoners require psychological help. If one includes substance abuse, the figure goes beyond 60%. Hence there is a need for focused attention on mental health. There is a need for early identification of mental illness among prisoners and for taking consequent steps.

32. There is little documentation of the problems of psychiatrically ill prisoners, problem of escorts for referrals/ discharge, inadequate follow up and care while in custody, no follow-up of psychiatric treatment after discharge from custody. Arrangements be made for periodic visits of Psychiatrists.

33. In view of little formal training of prison staff in mental health, there is a need for corrective measures.

34. Psychiatrist be posted in jail hospitals. If the same is not possible due to shortage of Psychiatrists, arrangements should be made for visits of psychiatrist on periodic basis, atleast once a week.

35. Normally prisoners having mental problems should be kept separately, preferably shifted to mental hospitals. However, due to over all shortage of trained manpower in mental health care both in district hospitals or mental hospitals, this may not become possible. Thus there is a need to augment the Mental Health Care system, both in terms of manpower and infrastructure. Some general recommendations in this regard are as follows:

(a) There is a need to move from custodial care to community mental health care approach and also integrate mental health care with general health care system through District Mental health programme.

(b) The diet scale of persons in mental hospitals needs to be fixed based on ' minimum calorie terms' rather than monetary terms to offset inflation.

(c) Mental health care audit of all institutions of child care may be taken up by NHRC.

(d) There is no formal after care services available. The Ministry of Social Justice and Empowerment may set up facilities for mentally ill who are treated but have nowhere to go.

(e) There is a tendency to leave the mentally ill people in mental hospitals even in cases where the treatment can be done as outpatient. This mindset to treat the mental hospitals as a defacto detention place for mentally ill must change. For this social awareness programmes must be taken up.

(Approved by the Commission in its meeting held on 19 November, 2008)

Inaugural Session

Welcome address by Mr. Justice S. Rajendra Babu, Chairperson, National Human Rights Commission at Workshop on Detention on 11-12 October, 2008 at New Delhi

Baroness Vivien Stern, Shri Soli J. Sorabjee, Members of the NHRC and other distinguished participants. The National Human Rights Commission extends a hearty welcome to all the distinguished panelists and participants to the two day Workshop on Detention. The Commission welcomes the Directors General of Police/Inspectors General of Police from States, Directors General/Inspectors General (Prisons) from States, Nodal Officers on Human Rights, Special Rapporteurs of NHRC, representatives of BRP&D, Juvenile Justice Homes, Police Training Institutes, Forensic Laboratories and others.

The Protection of Human Rights Act, 1993 defines human rights as rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and embodied in the International Conventions and enforceable by Courts in India. In short, all dimensions of human rights mentioned above relate in one form or other to human dignity. The paradox of the 20th century has been that while on the one hand, a plethora of human rights standards and instruments evolved under the United Nations, on the other hand the century was also witness to a large number of violations across Nations and across societies. Today, "dignity and justice for all of us", the theme of the 60th anniversary celebrations of Universal Declaration of Human Rights still eludes us. In particular, dignity and justice for detainees is yet to become reality at the ground level.

Under Section 12(c) of the Protection of Human Rights Act, 1993, the National Human Rights Commission has the statutory responsibility to

visit any jail or other institution where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations to the Government. In pursuance, myself, Members, Special Rapporteurs of the Commission have been visiting various places of detention across the country. Based on these visits, the Commission has made detailed recommendations to authorities, which are also monitored on a continuing basis.

The National Human Rights Commission has taken up inspection of police lock ups, prisons, juvenile homes and mental hospitals and has come across many rights violations. Besides redressing individual complaints of rights violations, the Commission has also recommended systemic reforms in the Police, Prisons and other centres of detention. The Commission has laid down stringent reporting requirements for reporting of custodial deaths and rapes, issued guidelines among others, on arrests, mentally ill persons in prisons, medical examination of prisoners, speedy trial of undertrial prisoners and premature release of prisoners.

The UN Secretary General has launched a year-long campaign to celebrate the 60th Anniversary of the Universal Declaration of Human Rights. The theme of the campaign is 'dignity and justice for all of us'. In this framework, the Office of the High Commissioner for Human Rights [OHCHR] has chosen to pay special attention to the situation of persons deprived of their liberty in prisons and other places of detention.

Several international conventions, guidelines and rules exist to ensure humane treatment for prisoners. The Universal Declaration of Human Rights, 1948 declares that no one will be subjected to arbitrary arrest, detention or exile, besides guaranteeing a right to life and right to be free from torture or cruel, inhumane or degrading treatment or punishment. The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to liberty and security of persons. It further declares

that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of human person. The Human Rights Committee held that this provision supplements the provisions of the ICCPR on torture. For all persons deprived of their liberty, the prohibition of treatment contrary to the provisions of the ICCPR on prohibition of torture is supplemented by the positive requirement of the ICCPR that they will be treated with humanity and with respect for the inherent dignity of the human person. In addition, Code of Conduct for Law Enforcement officials and Standard Minimum Rules for the treatment of prisoners were adopted by the United Nations.

The National Human Rights Commission of India is organizing the Workshop on Detention' on the following issues: (i) Detention in Prisons (ii) Detention in Police Custody, (iii) Preventive Detention, (iv) Juvenile Justice Homes and (v) Mental Health Care. The Workshop seeks to promote effective celebration of the 60th anniversary of the UDHR by **protecting the rights of detainees,** monitoring places of detention centers; improving the knowledge on human rights of prisons' employees and motivating the collaboration and cooperation between NHRC, India and Detention centers.

The objectives of the workshop are:

- to share best practices amongst States/Union Territories
- to identify gaps if any in the implementation of constitutional and statutory safeguards for the protection of rights of detainees and to suggest remedial measures
- to evolve suitable recommendations to all authorities for better protection and promotion of human rights of detainees.

Though Courts in India have been jealously guarding human rights, they have not covered themselves with glory during the emergency period. In 1976, in A.D.M. Jabalpur v Shivakant Shukla, the Supreme Court of India decided that Article 21 was the sole repository of the right to personal liberty and it was neither a common law right, nor a natural law right and furthermore, it was not even a statutory right. It was held that if, by a Presidential order, Article 21 were to be suspended then no one can move the Courts for justiciability of the right conferred in that Article, so long as the Presidential order was subsisting and was in operation. However, due to the forty-fourth Constitutional Amendment in 1978, the fundamental right of personal liberty as guaranteed under Article 21 was put beyond the pale of the Presidential order.

The Juvenile Justice Act, 2000 (amended in 2006) provides for the constitution of Juvenile Justice Boards which shall consist of, among others, a Metropolitan Magistrate or a Judicial Magistrate of the First Class. Further, it provides that no Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare. In practice, States have not been able to make appropriate appointments and constitute these Boards. The Juvenile Justice Act, 2000 which was amended in 2006 provided for the constitution of these Boards in every district as against the earlier requirement of one in a district or a group of districts. Many States have not constituted Juvenile Justice Boards, Welfare Boards in adequate number, as result of which the implementation of the Act has been hampered. The National Human Rights Commission has taken up this issue with all authorities concerned highlighting the urgency.

The stigma attached to mental illness makes it a serious human rights issue. For a mentally ill person, institutionalization can be traumatic as he is removed from family settings and placed in new surroundings and often in the hands of insensitive medical or para-medical personnel. Community-

based mental health care has its own unique value as the encouragement from family and neighbours can often have good impact.

Winston Churchill, as Home Secretary, stated in the House of Commons:

"*The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused and even of the convicted criminals against the State; a constant heart-searching of all charged with the deed of punishment: tireless efforts towards the discovery of regenerative processes; unfailing faith that there is treasure, if you can find it, in the heart of every man. These are the symbols which in the treatment of crime and criminals make and measure the stored-up strength of a nation and are sign and proof of the living virtue in it.*"

Thus, the hallmark of any civilized society is the way it protects and promotes rights of persons under detention. I hope the deliberations of the two day workshop would throw up useful suggestions and recommendations for protection of rights of detainees.

Key note Address by Baroness Vivien Stern, Honorary President, Penal Reforms International, U.K.

Mr Justice S Rajendra Babu, Chairperson of the National Human Rights Commission, Mr Soli Sorabjee, Honourable members of the Human Rights Commission, very distinguished guests, ladies and gentlemen.

It is an enormous privilege for me to be here at the 60th anniversary celebrations of the Universal Declaration on Human Rights, and it is a true privilege to be here as the guest of the National Human Rights Commission of India, one of the leading human rights bodies of the world.

The National Human Rights Commission of India is a very important institution. It is important because of what it has achieved for the people of India. Many oppressed and ill-treated people in India have reason to be thankful for the existence of the Commission and what it has done for them since it was set up in October 1993.

But that is not all it does. The National Human Rights Commission of India is important for another reason. It is important because it represents a commitment by this great country, the largest of the world's democracies, to realise the aspirations of the Universal Declaration of Human Rights which was approved by the United Nations in 1948. And when this commitment is made by India, the world's biggest democracy, it sends out a message to many other countries about what they should do to put the message of that Declaration into practice for their own people.

Those who founded the National Human Rights Commission took a very wise decision. They decreed that the Commission should be chaired by a retiring Chief Justice. So, since its inception the Commission has been

chaired by those who have reached the pinnacle of India's justice system; that is, successive retired Chief Justices of India. And thus it brings together the expertise of Indian jurisprudence which enriches the whole legal world and the claims of human rights for all.

We are celebrating today at this event the adoption by the world community of the Universal Declaration of Human Rights adopted on 10 December 1948, and my remarks in this first session will be of a general nature – more specific material on detention will come later this morning.

In December 1948 I was 9 years old (I have reached the point of knowing there is nothing to be gained in trying to hide my age). I was growing up then in a Europe deeply scarred by the worst human rights abuses the world had ever seen or was going to see in the next 60 years, though some of the events we have witnessed since 1948, in Rwanda, the Balkans or Cambodia for instance, have shown unnerving similarities to the barbarities that Europeans visited on their neighbours and fellow-citizens in the 1930s and 40s.

From those terrible events the human family learnt that we have to try and build a new world order, built on a view derived from all the great religions of the world, a view of the intrinsic worth and dignity of each human being. And I quote from the preamble 'Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.' And we are talking here about each and every human being, whatever and wherever.

And that brings me to the two publications the Human Rights Commission is launching today. That is the significance of the two publications we are launching here today. The one on mental health is most impressive and encouraging. Those who are detained in mental hospitals are at risk of ill-treatment and it is of great importance that they are monitored by a human

rights body. The report also covers the wider question – the right to healthcare is a right guaranteed in the Constitution of India.

The other publication is on displaced people. It is a sign of the strength of the Commission and its analysis of what human rights means that it is doing this work on the rights of people who lose their land and their homes because of a disaster, or because someone will make a lot of money by building on it.

I want to emphasise very strongly how much I appreciate being involved in the launch of these two reports. I will explain why. I have been for the past four years a member of the Parliamentary Joint Committee on Human Rights of the Westminster Parliament in London. It is an unusual committee made up of members of the House of Commons and the House of Lords. I am the only member of it who has no political party. I sit in the House of Lords with the independent peers - Crossbenchers we are called.

The job of the Committee is to consider how the Government is delivering on its human rights obligations in the UK and to report to Parliament thereon. Those who wish to see more respect for human rights in the UK have faced a considerable difficulty in recent years. Through unscrupulous journalism and gutter politics human rights has become a very unpopular idea with the general public. It has become associated with the rights of criminals and terrorists and opposed to the rights of ordinary people. We on the Joint Committee in Parliament have tried hard to make it clear that human rights belong to everyone and are an entitlement of everyone.

To put this idea into practice we extended the remit of the Committee and looked at the way those who provided health services to old people treated them and if they treated them with respect for their dignity. We heard many witnesses and visited several care homes and hospitals. We found a lot of good and some bad. We found bad treatment that involved not

feeding old people in hospital properly so that they suffered malnutrition and dehydration. We found old people enduring lack of privacy in hospital wards where both men and women were placed together. We found some places were using medication to keep old people quiet and even using physical restraints. We found bullying, patronising, attitudes towards older people and these old people were fearful of complaining about what was happening to them.

One of our main recommendations was that the Government and other public bodies should promote actively an understanding of how human rights principles can help transform health and social care services. This report was very well received by the public and the press. It helped to spread that basic understanding that human rights was relevant to ordinary people's lives, to what happened to their own elderly mother for instance who went into hospital. It was relevant to what they had the right to expect if their elderly husband or wife needed to be cared for in a residential home.

We were struggling to say what the Commission's Chairperson the Honourable Justice Babu said in his foreword to the report on displaced persons. He said: "Globally, there is now a shift in thinking regarding the provision of services by the Government to the people. From a welfare or needs-based approach that focused on beneficiaries who need a certain type of response which was decided by administrators, now there is a move towards adopting a rights-based approach where the individuals are not regarded as mere beneficiaries who are at the receiving end of doles, but as bearers of rights who are entitled to these services as a matter of right."

This was our message too.

We followed this report with another on the treatment of adults with learning difficulties where we also found some very bad practice that constituted

an abuse of their human rights. So I appreciate enormously the work that has gone into these two reports and the recommendations they make. They are reminding us that human rights are for all people and they set an ethical standard below which the state must not fall in its treatment of anyone in its sovereign territory.

Unfortunately we are seeing in some countries of the world a weakening of that ethical standard in the face of new threats to security. The Joint Committee on Human Rights has produced fourteen reports on counter terrorism legislation bringing to the attention of Parliament the government's attempt to abandon some of our treasured human rights principles.

You may be surprised to hear that I am only staying here in Delhi for 48 hours. I am returning to London tomorrow night. I would prefer to stay for a few more days to enjoy this beautiful city but I feel I have to return because on Monday in the House of Lords we are having a very important debate and then a vote on a proposal from the Government that in certain circumstances the police should be able to hold people suspected of terrorist offences for up to 42 days before they are charged with any offence.

Many members of the House of Lords will want to speak in this debate. If I get a chance to speak I would want to quote from the words of your former Chairperson Dr Justice A S Anand, words which he said in Geneva in 2003. And I quote 'Everywhere the pervasive threat of terrorism has cast a pall on efforts to promote and protect human rights, for terrorism is deeply hostile to human rights, including the most fundamental of all rights, the right to life itself. The Commission has always held the view that the actions which any State takes to fight and triumph over this evil must themselves fall within the parameters of the Rule of Law and conform to the high standards that we have set for ourselves in our Constitutions, our laws, and in the great human rights treaties adopted since the founding of the United Nations'.

If I cannot use that quote in the House of Lords on Monday I certainly will at a later date. I am sorry to say this but say it I must, my country has let the world down in the way it has approached the threat of terrorist violence and I, and many of my fellow parliamentarians regret it deeply.

In addition to the proposal for 42 day pre-charge detention we have an measure called a control order which allows the Home Secretary to confine a person to his home for most of the hours of the day, for all visitors to be subject to prior approval and operatives from private security companies to have the right to search the house at any time of the day or night. We have a definition of terrorism which defines as terrorism actions of violence to property as well as persons carried out anywhere in the world regardless of the nature of the regime against which they are carried out.

Not so long ago I made a visit to a little country in Asia called Cambodia. There is in Pnomh Penh, the capital of Cambodia, a secondary school called Tuol Sleng but it is not used as such anymore. It is kept as it was in 1978 when the Vietnamese army came into Cambodia and discovered it, a prison and a torture chamber. They found people, left by the fleeing Khmer Rouge who had taken over the country, chained to beds, dead and being eaten by birds. They found torture equipment - a gallows like structure from which prisoners were hanged by their feet with their heads in huge pots of water. When these people had been tortured they were taken to a place outside the city and killed. This place became known as the Killing Fields.

Later when it was all over they built a tall glass tower at the Killing Fields with many storeys, and each storey was packed high with human skulls that had been disinterred from the fields around. You will remember what happened in Cambodia. These people were killed by other Cambodians in pursuit of a mad idea of getting rid of all of a certain sort of people. And we stood there in front of this tower, my husband and myself with a young

Japanese tourist who was also there. We stood in silence, and the tears ran down his face. So we wept with him. There we were, two elderly Europeans and a young man from Japan, weeping for the Cambodians, fellow human beings who had met such a terrible fate.

In a world riven by disagreements - conflicts, civil war - a world of dire poverty alongside obscene affluence, a world where we are using up our natural resources as if our grandchildren will not need water or clean air the Universal Declaration of Human Rights and the international human rights framework to which it has given birth constitute a unifying force for the world. They provide a means of giving a meaning to each and every human life. They provide an ethical basis from which we can judge and hold to account our governments for what they do.

This is the heroic work of the National Human Rights Commission of India and I hope this work continues long into the future. Thank you for inviting me, and thank you for listening.

Curtain Raiser of the Workshop by Secretary General, NHRC at the Workshop on Detention on 11-12 October 2008

The NHRC would like to place on record its sincere thanks to the Office of the United Nations High Commissioner for Human Rights for giving financial assistance for organizing this workshop. The Commission also extended an invitation to UN High Commissioner for Human Rights, Ms. Navi Pillay for participating in this workshop. However, due to her commitments she could not visit India at this juncture. She has sent her best wishes for the success of the workshop.

The panelists for the 4 Sessions which will follow are eminent jurists, academics, senior Government Officials, both serving and retired, and members from NGOs. But for their contribution, this workshop cannot be a success and I owe special thanks to them. Finally, I would like to extend my sincere thanks to all the delegates including representatives of Central and State Governments, Union Territories, State Human Rights Commissions and my colleagues in NHRC who have spared time to participate in this workshop. In the two-day deliberations in the workshop they would be discussing various aspects related to human rights of detainees and will come up with some concrete recommendations for authorities for better protection of human rights of the detainees.

Session - I
Detention in Prison, Police Custody

Opening remarks by Chair in Session on Detention in Prisons, Police Custody - by Justice Shri B.C. Patel, Member, NHRC at the Workshop on Detention on 11 October 2008

Article 3 of the Universal Declaration of Human Rights (UDHR) proclaims that 'Everyone has the right to life, liberty and security of person.' Article 5 of UDHR further says that ' No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Article 9 of UDHR asserts that 'No one shall be subjected to arbitrary arrest, detention or exile.' Article 10 of the International Covenant on Civil and Political Rights stipulates that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

In addition, Code of Conduct for Law Enforcement Officials and United Nations Standard Minimum Rules for Treatment of Prisoners were adopted by the UN. Our own Constitution and laws prohibit torture of persons under detention. The Apex Court in a number of landmark cases has given detailed directions on the humane treatment of detainees. Yet, NHRC continues to receive human rights violations of detainees from various pockets of the country.

In a democracy, the police conduct must conform to the Rule of Law, Constitution and provisions of laws. The National Police Commission and the Law Commission in October, 2000 on the Law of Arrest have both identified indiscriminate arrests as one of the main sources of corruption. According to Third Report of the National Police Commission, nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails. The National Police Commission observed "It is obvious that a major

portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all." Though figures given in the Report of the National Police Commission are more than two decades old, there is no discernible improvement in the situation now.

There is an absolute prohibition of torture under the International Human Rights Law. The Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights categorically assert that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. It is an absolute right and no qualifying restrictions are permitted. Freedom from torture is a non-derogable human right even in times of public emergency which threatens the life of the nation and existence of which is officially proclaimed.

State parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 are required to outlaw torture and are explicitly prohibited from using 'higher orders' or 'exceptional circumstances' as excuses for acts of torture. The scope of the term 'torture' has greatly expanded since the adoption of the Universal Declaration of Human Rights in 1948. In a classic sense, use of 'torture' was understood as a method in the context of interrogation. The following forms of abuse have now been deemed to constitute torture or ill-treatment by international human rights bodies: intimidation, sensory deprivation, conditions of detention, disappearances, forcible house destruction, non-consensual medical or scientific experimentation, corporal punishment, excessive use of force in law enforcement, use of death penalty, racial discrimination, abuses in armed conflict and gender-specific forms of torture or ill-treatment.

In addition to legally binding standards against torture, a number of non-binding standards too have been evolved under the auspices of the United Nations. Though many legally binding and non binding standards have been evolved in this regard yet, torture is systematically practiced in many countries of the world, as has been documented by Amnesty International and other NGOs.

Custodial violence is a calculated assault on human dignity. And "whenever human dignity is wounded," to quote the Supreme Court of India in its judgment of 18 December 1996 in the case of D. K. Basu vs the State of West Bengal, "civilization takes a step backward. The flag of humanity on each occasion must fly half-mast." The National Human Rights Commission remained deeply engaged in efforts to bring to an end the egregious violations of human rights that result in custodial death, rape and torture. The Commission has laid down stringent reporting requirements regarding instances of custodial deaths, rapes and also insisted on videography of postmortem examinations and laid down format of model inquest report.

On the occasion of the 60th anniversary of the Universal Declaration of Human Rights, there is a need to ponder over as to what strategies are required for better protection of rights of detainees. How do we ensure that the protective safeguards in our Constitution, laws and international human rights Conventions to which India is a party are translated into the reality.

Detention in Prison - General Points about 60th Anniversary of UDHR & what it has achieved for people in Detention by Baroness Vivien Stern*

It is a great honour to be here participating in this workshop on human rights and conditions of detention. I shall be sharing this session with some very distinguished contributors and experts and I am honoured to be part of this panel.

I have spent much of my working life trying to improve the treatment of detained people. For 15 years I was involved with Penal Reform International which took the message about conditions of detention all around the world. That worldwide organisation is very fortunate that its current Chairperson is a most eminent Indian scholar, Mrs Rani Shankardass.

It is no surprise that the National Human Rights Commission is considering this topic. The Commission has made an invaluable contribution to overseeing the conditions of detention in India and in particular in seeking redress when there are deaths in custody. This work is well known around the world. Of course it is a key human rights principle that those in the care of the state - and custody is 'care' of the state - must be protected by the state.

We are here because it is the 60th Anniversary of the Universal Declaration of Human Rights. My starting point is that in the past 60 years we have made enormous progress. We should be celebrating success. Let me illustrate this by referring to some events that are known throughout the world. I refer to what happened at Abu Ghraib prison in Iraq.

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* Honorary President, Penal Reforms International, U.K.

I am sure we all remember with horror and disbelief the publication of photographs showing the treatment of Iraqi prisoners by their American jailers. As it all came out we heard of naked prisoners piled on top of each other; a prisoner being led around on a leash like a dog; prisoners being made to wear women's underwear.

An American journalist spent hundreds of hours interviewing the low-level soldiers involved in these events. One of them was talking to the journalist trying to explain to the journalist and to himself how it had happened and how they had taken so many photos of it as if it were something entertaining to show their friends.

This man said 'On the photos it seems like it's actual real torture. The worst thing that was done to the prisoners physically was they had to crawl on the floor, and they were naked. So,' the man said 'it was really, really uncomfortable. I can't call it torture. It was a really, really bad case of humiliation, but that's about it'. Not torture. And we know what happened when the reckoning came. The low-level players went to prison for it, not the leaders and those responsible.

The point I want to highlight that comes from this is the following. When the news of what had been happening in Abu Ghraib prison burst upon the media the whole world knew this was not acceptable. There was total revulsion everywhere. No-one said 'they are only prisoners'. No-one said 'they deserve such treatment'. No-one said 'once they are detained you can do what you like with them.'

Why not?

The answer is because it is now generally accepted that you cannot do what you like with detained people. The American soldier who thought it wasn't torture because they were not giving them electric shocks or pulling out their fingernails was wrong. Torture can also be extreme mental suffering.

It is now agreed that such treatment is unacceptable and that is so because there is a framework about the treatment of detained people that has found a place in the consciousness of the world. It is not necessarily implemented around the world - far from it - but it is accepted as far as I know everywhere. Only a few strange countries like North Korea will admit they do not accept it.

This framework starts with Article 10 of the International Covenant on Civil and Political Rights which says 'All those deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.' And it is echoed in the United Nations Basic Principles for the Treatment of Prisoners, Principle 1, and it is reiterated in the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 1.

It appears in the African Charter on Human and Peoples' Rights, Article 5: 'Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status', and also in the American Convention on Human Rights, Article 5 (2).

I want to say one more word about the soldiers in Abu Ghraib. They too knew it was wrong – they were waiting for their bosses to tell them 'stop this' – but their bosses shut their eyes to it and pretended it was not happening.

And that is one of the reasons why the leadership – the speaking out, the judgements of the Human Rights Commission – are so important. They reinforce the ethical instincts of all those who work in law enforcement and in detaining people. They know when they are being asked to do something wrong. They want the leadership to set a clear line and say 'that line must never be crossed.'

So it is that in the past 60 years, building on the basis of Article 10, there has developed an international framework. The United Nations Standard Minimum Rules for the Treatment of Prisoners cover every aspect of the treatment of those deprived of their liberty. There are instruments covering the treatment of special groups - Women, children, foreign prisoners.

The gist of all these instruments is this – this is what detention should be like, how it should be done:

1. Prisons are civilian institutions to be run by the civil power not the police or the military.

2. Working in a prison is a proper public service, a profession that requires training.

3. The state has a duty of care. There must be no torture. There must be decent living conditions. Healthcare must be provided.

4. There must be no cruel punishments. There must be no fetters.

5. Contact with families must be maintained

6. Prisoners who present a security risk must not be kept in isolation in dark dungeons

7. There must be a system of complaints and redress for wrongs and there must be inspection by an independent body like the Human Rights Commission.

So there are lots of words on paper setting out what must and must not be done. But it is more than just words on paper. In the past 60 years enormous steps have been taken to spread the idea of respect for human dignity in detention. The international courts have issued rulings.

The European Court of Human Rights recently ruled that the UK was in

violation of the European Convention because all convicted prisoners are denied the right to vote. In the view of the Court the right to vote is not automatically lost with imprisonment. It is a right that can be taken away but it must be considered by the Court in each case. The UK Government is going to enormous lengths not to implement the judgement.

The Inter-American Court has issued a judgement against Barbados for keeping its prisoners in a temporary prison, housing them in containers, providing inadequate water and not permitting their families to visit.

And in recent years the world has moved to opening its places of detention to outside inspectors. The European Committee for the Prevention of Torture has the right to visit and report on conditions in any place of detention in the 47 countries in the Council of Europe. Recently this Committee visited the UK and was very critical of the way we deal with people detained by the police under terrorism charges.

And the world reached a culminating point with the coming into force of OPCAT in 2006. OPCAT is the Optional Protocol to the Convention Against Torture. This has established a system of regular visits to places of detention by a sub committee appointed by the UN Committee against Torture, complemented by sustained regular visits conducted by national independent inspection groups.

Today if you visit prisons around the world you will see some terrible things. In Brazil several prisoners are killed every week by prisoners or guards. In Zimbabwe today two prisoners die a week of starvation. But I shall not dwell on the abuses.

All around the world dedicated people, sometimes brave people, are working to create detention conditions that put the Universal Declaration into practice.

Last week I was in Perth, in Australia. A group of very committed people has worked to set up a women's prison that is a model for the world. The women live in small houses, learning to do things for themselves and the priority of all the policies there is to give the women confidence and self-respect.

In India there are the open prisons, where life and long-sentence prisoners can live with their families, which have aroused interest throughout the world.

A prisoner in Indonesia told a journalist "This is not a correctional institute. This is an annihilation center." Blood splotches and used needles are a frequent sight on prison cell floors. Prisoners share needles to inject drugs so the prisoners are at great risk of being infected with HIV/AIDS. In response to this, the Indonesian authorities have introduced new policies, a needle exchange programme and methadone maintenance. They are also reducing the prison population by giving more early release.

Detained people are not the most popular people. Public attitudes to them can be hostile and vindictive. The international human rights framework has set us a high standard for their treatment and we need to try continually to meet it. It is not just for the sake of those who are detained. Far from it. It is also for us when we neglect and ill-treat those whose liberty we have taken away. We lessen our own humanity and we do violence to our own sense of justice.

Let me end by saying this. I have visited prisons in all regions of the world. I have seen many terrible things and some that are inspiring. But I can tell you one thing that is the same everywhere. Prison is not a place for everyone. Prison is for the poor. Prison is for the people at the bottom of society. Prison is for the marginalised and the minorities. Prison is for the unwanted people of any society.

Here in India you have one of the lowest rates of imprisonment in the whole world – 32 prisoners for every 100,000 people. In the US the imprisonment rate is 763 per 100,000, so 24 times what it is in India. The US has 5% of the world's population but 25% of its prisoners. In England the rate is 153, nearly 5 times that of India.

India has done well to use imprisonment sparingly. However there is a danger – as you adopt the economic practices of the neo-liberal nations – that you will also find growing inequality, indeed you are already finding it. In the foreword to the report we launched earlier today your Chairperson Justice S. Rajendra Babu, wrote: "In recent times, our country has been witnessing an ever-widening gulf between individuals who have benefitted from economic growth and the vast group of others who seem to have been left out of the process."

This increases the number of unwanted people. Big companies will come and try and sell you prisons. They will build them and run them and they will tell you it will be very cheap. And then all these unwanted people can be locked away. That is what we are doing in some Western countries now.

It is not the path of human rights. It is a dangerous path to follow. Do not let it happen to this great country.

Prisoners' Rights and the response of Judiciary*

Prof. R. Venkata Rao**

The Theme of the Sixtieth Anniversary of the Universal Declaration of Human Rights is DIGNITY AND JUSTICE FOR ALL OF US.

A lofty theme indeed !

Does the word ALL include ALL of us ? Or does it exclude certain sections like prisoners who have been for quite a long time treated as the forgotten species of humanity ?

This paper will make a judicious examination of the response of the judiciary to ameliorate the living conditions of the prisoners . Are the prisoners persons or non persons ? What do the judicial dicta say in this regard ?

By and large up to 1968 even in the United States Federal Courts had steadfastly and unanimously refused to redress the grievances of inmates in State Penal Institutions.

The reasons could be :

1) It would involve the courts in the "Internal management" of the States' Penal System.

2) It would violate Separation of Powers. Penal institutions are administered under the authority of the Executive branch of the Government and the Judicial branch should not interfere.

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* Gist of the paper presented at the Workshop On Detention organsied by National Human Rights Commission with support from OHCHR on 11-12 October at New Delhi.

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3) Perhaps the other rationalization is the court's lack of expertise in penology.

4) Judicial intervention would subvert prison discipline and undermine the authority of prison officials .

5) Intervention by the Federal court would violate the fundamental principle of federalism.

6) Another less articulated fear was the fear of being deluged with prisoners' complaints which could engage too much judicial time and attention.

7) Complaints by prisoners would be overstated.

This was dubbed as "Hands off" Doctrine by document prepared for the Federal Bureau of Prisons.

In the Post-1968 era the American Courts' activism in the interpretation of the First Amendment's Protection of Free Expression , the Fifth and Fourteenth Amendments' Due Process clause and Eighth Amendment's Prohibition against cruel and unusual punishment enabled the Court to protect prisoners religious observances and access to communications , to place limits on overcrowding and to order changes in the delivery of medical and food services , recreational process and the like. Now every facet of institutional life has been constitutionalised in ways that directly effect prisons and jails in all fifity states. In fact , the extent of involvement of the Federal Judiciary in over-seeing major changes in the nation's jails and prisons is said to be only second in breadth and detail to the Court's earlier role in dismantling segregation in the nation's public schools.

The Indian Experience :

The Post Emergency period has taken rapid strides in claiming prison justice as its own province. Normally in any country any period of the

Supreme Court is referred after the name of the Chief Justice : For Ex-Warren Era or Burger Era in the United States .

But it goes to credit of Justice Krishna Iyer that the period , during which he adorned the Supreme Court of India , is normally referred to as Krishna Iyer Era for his luminous contribution in making the Supreme Court the harbinger of hope for the needy and downtrodden , especially the prisoners.

Here are some of the gems fro Justice Krishna Iyer :

1) The Court is not a distant abstraction omnipotent in the books but an activist institution which is the cynosure of public hope.

2) The parrot cry of discipline will not deter , of security will not scare , of discretion will not dissuade the judicial process.

3) Compassion where ever possible and cruelty where inevitable is to be the law of correctional institutions.

4) The State cannot avoid the constitutional obligation to provide legal aid because of its financial deficiency and that this obligation arises as and when the individual liberty is in peril.

5) To manacle a man is more than to mortify him , it is to dehumanize him and therefore to violate his very personhood.

6) Treatment of prisoners based on their social status is obnoxious to the Constitution.

7) Rights jurisprudence is important but becomes an abstraction in the absence of remedial jurisprudence.

8) Forms were forsaken for the sake of liberty , since liberty was at stake , the letter , that was posted , metamorphosed into Habeas proceedings .

9) Judges are like ombudsmen – to civilse lifestyle in prisons.

10) Legal Aid is the delivery system of social justice.

11) Handcuffing prima facie is inhuman and therefore unreasonable. Absent fair procedure and objective monitoring , to inflict irons is to resort to zoological strategies repugnant to Article 21.

12) Constitutional KARUNA is a component of jail justice.

13) Jurisprudence cannot slumber when the very campuses of punitive witness torture.

14) Law is not a formal label , nor logomachy but a working technique of justice.

15) Human dignity is a dear value of our constitution not to be bartered away for mere apprehensions entertained by jail officials.

Penetrating the hitherto impregnable iron bars and the stone walls of the prisons , the Supreme Court of India through its luminous judgments had brought a new hope and fresh lease of life to the prisoners who otherwise would have been languishing in the sight-proof and sound-proof dungeons. The following is the illustrative list of the Supreme Court's concern for the constitutional rights of the prisoners. In fact courts sit not to supervise prisoners but to enforce the constitutional rights of all persons including prisoners.

1) Prisoners right to Fundamental Rights ..... Prabhakar Pandurang Sangiri.

2) Right to compassionate treatment ..... Sunil Batra

3) Right not to be subject to torture .....Charles Sobhraj

4) Right not to be handcuffed ..... Sunil Batra II

5) Right to Speedy trial ..... Hussianara Khatoon, A.R. Antulay

6) Right to Legal Aid .....M.H. Hoskot

7) Right to Special treatment for ..... Sheela Barse
women and Prisoners

8) Right to be interviewed ..... Prabha Dutt

9) Right to Wages for ..... State of Gujarat v Hon'ble
Prison Labour High Court of Gujarat.

This has been the rich jurisprudence of the rights of prisoners and the Supreme court of India has been acting as the Sentinel on the qui vive .

However , surprisingly the rich prison jurisprudence has become the jurisprudence of the rich with the judgment in the case of Ankul Chandra Pradhan V. Union of India AIR 1997 SC 2814 where the constitutional validity of sub section (5) of the Representation of People's Act , 1951, (which denies the right to vote to a person confined in prison) has been upheld. The impugned section denies the voting rights to undertrials.

It should be noted that the Supreme Court in Kesavananda Bharati has observed that Republican form of government is an example of basic structure. Right to vote is a very important part of taking part in Republican form of Government. Can this be denied on the ground of incarceration or confinement ?The denial of the right to vote a particular group on the ground that they are in prison whereas according the right to persons who have committed the same offence, but are staying out because of their greater access to the judicial process is a travesty of justice.

Are all persons inside the prison criminals ? Is an affluent person , who is charged, but who has been released on bail, to be accorded the preferential treatment ? A poor person who languishes inside jail is being discriminated

from a rich person and thus does poverty eject him out of the democratic process ?

The United Nations Standard Minimum Rules for Treatment of Prisoners (1977) clearly mention that unconvicted persons are presumed to be innocent and they have right to communicate (Rule 84(2)) . The Universal Declaration of Human Rights in Article 21(3) and the International Covenant on the Civil and Political Rights in Article 25 unequivocally state that every citizen shall have the right and opportunity to vote and be elected.

The under-trial can contest but cannot vote. In Indian scenario where prisons have a predominant under-trials a majority of whom come from the poorer sections , depriving them of their right to vote makes it appear as though the marginalized sections have ceased to be of concern. Under-trials are innocent , they are not convicts and they are not criminals. The Supreme Court , which has unequivocally stated in a number of cases that prisoners are also persons , has in Pradhan missed he wood for the forests. The hitherto 'rich' jurisprudence has become 'jurisprudence of the rich' with Pradhan. Let us hope this relapse will only be temporary.

The judicial intervention in prisons and jails can be assessed only if three sets of impacts are exercised ;

i) The impact of the courts on the structure of the correctional institutions

ii) The impact of policies promulgated in the wake of court action ;

iii) The impact of court orders on delivery of service within the institution.

Based on the instances of judicial intervention , one can say the impact of the intervention has been positive.

Rights of Prisoners and response of Judiciary – Emerging Trends

Dr. K. N. Chandrasekharan Pillai*

As early as in 1971, it was perhaps Justice Krishna Iyer for the first time, who spoke of the prisoners' rights in *Rajesh Kaushik* v. *B.L. Vig*[1], Superintendent, Central Jail. He observed thus :

> "The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this judgment viable, free legal services to the prisoner programmes shall be permitted by professional organizations recognized by the courts such as for e.g., Free legal aid (Supreme Court) Society. The District Bar, shall we recommend keep a cell for prisoner relief.[2]"

Later on Justice Iyer developed his thesis as is evident from the following observations :

> "The Jurisdictional reach and range of this court's, writ to hold prison caprice and cruelty in Constitutional leash is incontestable but teasing intrusion into administrative discretion is legal anathema, absent breaches of constitutional rights or prescribed procedures. Prisoners have enforceable liberty ––– may be but not demonetized, and under our basic scheme, prison power must bow before judge power, if fundamental freedoms are in jeopardy[3]."

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1 AIR 1971 SC 1967

2 Ibid at para 16

3 (1978) 4 SCC 494 para 1

It is interesting to see how Justice Iyer makes an entry into the arena where the court had not been claiming entry as of right. He cautiously reasoned that if there is no breach of Constitutional rights, the courts do not have right to enter into prison but if there is violation, they could enter.

Till he took up the issue of treatment of prisoners in jail, it was thought that the judiciary did not have any role to oversee things happening in jail. In *Sunil Batra*[4], Justice Iyer commanded to his aid part IV of the Constitution to reason out that the judiciary has power to oversee the prison arena thus :

> "We cannot do better than say that the directive principles contained in article 42 of the Constitution that "The State shall make provisions for securing x x x x x x just and humane conditions of work may benevolently be extended to living conditions in jail.[5]"

This extension of Part IV of the Constitution to the sites of the prison is, to say the least, revolutionary and courageous.

While speaking about the right of the prisoner, Justice Iyer in *Madhav Hoskot*[6] said :

> "If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right to appeal inclusive of special leave to appeal, for want of legal assistance, there is implicit in the court under article 142 read with article 21 and 39A of the Constitution, power to assign counsel for such impersonate individual for doing complete justice."[7]

4 (1978) 4 SCC 494

5 Ibid at para 73

6 Madhav Hoskot v. State of Maharashtra, (1978) 3 SCC 844

7 Ibid at para 10

It is interesting to see that even while the judge churns out a right, he adds that lawyers are to be reasonably paid. Justice Iyer's extensive scheme for prison reformation as laid out in *Mohd. Gayasuddin* v. *State of A.P.*[8] is an extension what a proactive judge could do for the hapless prison lot. He suggested introduction of transcendental meditation and other yogic exercises to be practiced in the prison.

He specifically directed the govts. to make special provisions for child offenders in the prisons. He reasoned thus :

> "A prisoner insulated from the world becomes bestial and if his family ties are snapped for long became dehumanized. Therefore, we regard it as correctionally desirable that this appellant be granted parole and expect the authorities to give consideration to paroling out periodically prisoners particularly of the present type, for reasonable spells, subject to sufficient safeguards ensuring their proper behaviour outside and prompt return inside".[9]

Justice Iyer's crowning statement for claiming authority to issue directions for prison reform under part IV of the constitution is well known. He said :

> "The law is not abracadabra but at once pragmatic and astute and does not surrender its power before scary exaggeration of security by prison bosses. "Solitary" and "irons" are available to prison technology given to the will except where indifference, incompeteness and unimaginativeness hold prison authorities prisoner. Social justice cannot sleep if the Constitution hands limp where its consumers most need its humanism". [10]

8 (1977) 3 SCC 287

9 Hiralal Malik v. State of Bihar (1977) 4 SCC 45 para 14

10 (1978) 4 SCC 494 para 70

Justice Iyer never approved solitary confinement as a punishment. Indeed, for short periods by way of disciplining, the prisoners it could be resorted to.

The Indian Supreme Court has responded to the spate of jail atrocities by developing what is called compensation in Public law. As a result of the impact of the international covenant on civil and political rights in the context of the Indian Constitution, it was in *Rudal Sah* v. *State of Bihar*[11] that the Supreme Court invoked article 21 to award compensation to a prisoner who came to be confined in an institution despite his acquittal by the court. The court reasoned in this case thus :

> "Art. 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of the court were limited to passing of orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of article 21 secured, is to mulct its violators in the payment of monetary compensation x x x x x The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield."[12]

This reasoning was followed in *Bhim Singh* v. *State of J&K*[13] *Peoples Union of Democratic Rights* v. *Police Commissioner*[14]. The whole scheme was crystallized in *Neelbati Behera* v. *State of Orissa*[15]. It was a case in which the mother of the deceased came to be awarded compensation by the Supreme Court. The complainant's son was arrested by the police on allegation of theft. He was tortured to death and his dead body was kept

11 (1993) 4 SCC 141

12 Ibid at 147-148

13 (1985) 4 SCC 677

14 (1989) 4 SCC 730

15 (1993) 2 SCC 746

on the railway track to give the impression that he died as a result of a railway accident. After several months, the deceased's mother wrote a letter to the Supreme Court alleging police atrocities. The Supreme Court after ascertaining the facts by getting an inquiry conducted by the District Court ordered compensation of Rs.1.5 lakhs to the mother. The Supreme Court reasoned :

> "(A)ward of compensation in a proceeding under article 32 by this court or by the High Court under article 226 of the Constitution is a remedy available in public law, based on strict liability for contravention of fundamental right to which the principle of sovereign immunity does not apply, even though it may be available as a defense in private law in an action based on tort. xxxxxx Enforcement of the Constitutional right and grant of redress embraces award of compensation as part of the legal consequences of its contraventions[16].

Justice Anand in the same case categorically ruled that convicts and prisoners or under trials are not denuded of their fundamental rights under article 21 and it is only such restrictions as permitted by law which can be imposed on the enjoyment of the fundamental rights.

In this context it was interesting to note that the court ordered compensation in the face of a reservation made by the Govt. of India to the effect that it would not be liable to make compensation for atrocities in police custody[16a].

In *Sube Singh* v. *State of Haryana*[17], the court reiterated the principles for awarding compensation as follows :

16 Ibid at 785

16a. See Art. 9(5) of ICC PR. The article reads thus: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

17 (2006) 3 SCC 178

> "Before awarding compensation, the court will have to pose to itself the following questions : a) whether the violation of article 21 is patent and incontrovertible, b) whether the violation is gross and of a magnitude to shock the conscience of the courts, c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible mark or scarce or disability? Where there is no evidence of custodial torture of a person except his own statement, and where such allegation is not supported by any medical report or other corrective evidence or where there are clear indication that the allegations are false or exaggerated fully or in part, the court should not award compensation as a public remedy under article 32 or 226 but relegate the aggrieved party to the traditional remedies by way of appropriate civil or criminal action."[18]

It was a case in which the family of a person wanted by the police came to be tortured and harassed by the police several times. On the initiative of the court inquiries including one by the CBI were conducted. It appears the petitioner could not lead proof of his allegations of torture by the police. In these circumstances, the Supreme Court did not order compensation under the public law but hastened to add that the petitioner could seek compensation under the civil or criminal law.

In short, as on today, our judiciary has already prepared the ground enabling it to oversee as to what is happening in the arena of prison. If there is violation of rights, it indeed looks into it, awards compensation if fully convinced of violation of rights. Indeed, it is a balanced approach and it is hoped that this trend will continue to have its sway.

18 Ibid at para 46

Session - II
Preventive Detention

Opening remarks by Chair - Justice Shri G.P. Mathur, Member, NHRC

The topic for discussion is Preventive Detention and before we deliberate on the subject, we must understand the meaning of the word 'Preventive Detention'. Sub-clauses 4 to 7 of Article 22 of Constitution of India which find place in chapter dealing with Fundamental Rights cast some obligations on the Parliament while enacting a law on Preventive Detention and they also provide certain safeguards to person detained under such a law. Article 246 of Constitution delineates the fields of legislation by the Parliament and the Legislature of a State.

Entry 9 of Union List reads:-

1. Preventive detention for reasons connected with Defence, Foreign Affairs, or the security of India; persons subjected to such detention."

Entry 3 of Concurrent List reads:-

1. "Preventive detention for reasons connected with the security of a State, the maintenance of public order, or the maintenance of supplies and services essential to the community; persons subjected to such detention."

2. Article 366 of the Constitution defines various expressions used therein, but it does not define the expression 'Preventive Detention'. The General Clauses Act which applies for interpretation of the Constitution by virtue of Article 367 also does not define the expression 'Preventive Detention'.

3. We have therefore to fall back on case law for understanding the meaning of the word 'Preventive Detention'. In A.K. Gopalan vs. State (1950 SC 27), Justice Mukherjea said that there is no authoritative definition of the term 'Preventive Detention' in India even though it occurred as a topic of legislation in Government of India Act, 1935 and in the Constitution. The expression has its origin in the language used by Law Lords in England while explaining the nature of detention under Regulation 14(B) made under Defence of Realm Consolidation Act, 1914 passed on the outbreak of First World War. The word 'preventive' is used in contradiction to the word 'punitive'. To quote the words of Lord Finlay in Rex vs. Halliday, (1917 AC 260):-

> "It is not a punitive but a precautionary measure."

Again at the outbreak of the Second World War, the British Parliament enacted a similar enactment, namely, Emergency Powers (Defence) Act, 1939 which authorized making of regulations providing for preventive detention. Regulation 18B made under Section 2(2) of the said Act read as under:-

> "If the Secretary of State has reasonable cause to believe any person to have been or to be of hostile origin or associations or to have been recently concerned in acts prejudicial to the public safety or the defence of the realm or in preparation or instigation of such acts and that by reason thereof, it is necessary to exercise control over him, he may make an order directing that he be detained."

In Liversidge vs. Anderson (1942 AC 206), the House of Lords said :

> "The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated; and

the justification of such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence."

4. The words 'arrest and detention' normally mean arrest and detention upon an accusation of a criminal or quasi-criminal nature.

   In short, 'Preventive Detention' means the detention of a person without trial, the object of preventive detention is to prevent the individual not merely from acting in a particular way, but from achieving a particular object. No offence is proved, nor any charge is formulated; and the justification is suspicion or reasonable probability and not criminal conviction which only can be warranted by legal evidence.

5. Clauses (4) & (5) of Article 22 impose some limitations on the Parliament and Legislature of a State and also provide important safeguards for a person who has been detained under a law made for preventive detention.

   Clause (4) of Article 22 lays down that no law providing for preventive detention shall authorize the detention of a person for a period longer than three months unless an advisory board consisting of persons who are or have been or are qualified to be appointed as judges of a High Court have reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.

   Clause (5) of Article 22 says that when any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

6. The safeguards provided in the Constitution were made more elaborate and exhaustive in the Acts which were enacted by the Parliament or by some of the Legislatures of the States. The three main Acts enacted by the Parliament which are currently in force are:-

(1) National Security Act, 1980 (NSA Act).

(2) Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA).

(3) Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act (PITNDPS Act).

National Security Act, 1980

7.

(i) Sub-section (1) of Section 3 of National Security Act empowers the Central Govt. or the State Govt. to pass an order of detention if it is satisfied with respect to any person that with a view to preventing him from acting in any manner (i) prejudicial to the defence of India, (ii) the relation of India with foreign powers or (iii) the security of India. Under sub-section (2) of section 3, the Central Govt. or the State Govt., can pass an order if it is satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the (i) security of the State or (ii) to the maintenance of public order or (iii) to the maintenance of supplies and services essential to the community. Under sub-section (3) of Section 3, the State Govt. is empowered to authorize the District Magistrate or Commissioner of Police to pass an order of detention as contemplated by sub-section (2) of section 3. However, if the District Magistrate or the Commissioner of Police passes an order of detention, he has to immediately

report the fact to the State Government together with the grounds on which the order has been made and the order passed by such authority shall not remain in force for more than 12 days after making thereof unless in the meantime it has been approved by the State Govt.

(ii) Section 8 of the National Security Act has been enacted in order to comply with the requirement of Clause (5) of Article 22 of the Constitution. It mandates that the authority making the order of detention shall, as soon as may be, but ordinarily not later than 5 days and in exceptional circumstances and for reasons to be recorded in writing, not later than 10 days from the date of detention, communicate to the person concerned the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate govt.

(iii) Sections 9, 10 and 11 of the Act have been enacted in compliance with the requirements of Clause (4) of Article 22 of the Constitution. Section 9 mandates that the State Govt. shall constitute one advisory board consisting of three persons who are or have been, or are qualified to be appointed as judges of a High Court. The Chairman of the board will be a person who is or has been a judge of the High Court. Section 10 mandates that the Government shall within 3 weeks from the date of detention of a person place before the Advisory Board the grounds on which the detention order has been made and the representation if any made by the persons affected by the order.

(iv) Section 11 enjoins the Advisory Board to submit its report to the Government within 7 weeks from the date of detention. The report has to specify whether or not there is sufficient cause for the detention of the person concerned.

(v) Section 12 lays down that where the Advisory Board reports that there is no sufficient cause for detention of a person, the Government shall revoke the order of detention and cause the person concerned to be released forthwith. If in the opinion of the Board, there is sufficient cause for detention, the Government may confirm the detention order.

(vi) Section 14 lays down that both the State Govt. and Central Govt. can revoke the order of detention passed by an officer authorized under sub-section 3 of Section 3. Similarly a detention order passed by the State Govt. can be revoked by the Central Govt.

Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA)

8.

(i) Section 3 of this Act empowers the Central Govt. or the State Govt. or a specially empowered officer of the Central Govt. not below the rank of Joint Secretary or a specially empowered officer of the State Govt. not below the rank of Secretary, if satisfied, with respect to any person that with a view to preventing him from acting and in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from -

(a) smuggling or abetting the smuggling of goods, or,

(b) engaging in transporting or concealing or keeping smuggled goods or dealing in smuggled goods or harbouring persons engaged in smuggling goods, make an order directing that such person be detained.

(ii) Section 8 of the act mandates that the State Govt. and the Central Govt. shall constitute an Advisory Board in compliance

with the mandate of sub-clause (4) of Article 22 of the Constitution. The appropriate Govt. shall make a reference to the Advisory Board within 5 weeks from the date of detention of a person and the Advisory Board is required to submit its report within 11 weeks from the date of detention. If in the opinion of the Advisory Board, there is no sufficient cause for detention of the person concerned, the appropriate Govt. shall revoke the order of detention. However, if the Advisory Board opines that there is sufficient cause for detention, the appropriate Govt. may confirm the detention order. The normal period of detention is one year unless the case is covered by Section 9(2) where the detention order can extend to a period of two years.

(iii) Section 11 of the Act lays down that where an order of detention has been passed by an officer of the State Govt., the State Govt. and Central Govt. both will have power to revoke the same. Similarly where the order has been passed by an officer of central Govt., or the State Govt., the Central Govt. will have the power to revoke the same.

Safeguards by Supreme Court

9. Apart from the constitutional and statutory safeguards, the Supreme Court of India by a catena of decisions has provided some additional safeguards -

(i) Sub-clause (5) of Article 22 requires that the authority making a detention order shall communicate to such persons the grounds on which the order has been made. It has been held in a series of decisions that grounds in Article 22(5) do not mean mere factual inferences but mean factual inferences plus factual material which led to such factual inferences. The grounds must be self-sufficient and self-explanatory. The grounds should

comprise of all the constituent facts and materials and not merely the inferential conclusion. Therefore, copy of documents on which grounds of detention are based have to be supplied to the detenue otherwise the order of detention is liable to be struck down.

Shalini Sony (1981 SC 431)

Ichhu Devi vs. U.O.I. (11980 SC 1983)

Smt. Khatoom vs. UOI (1981 SC 1077)

(ii) The grounds and the material in support of the ground should be communicated in a language with which the detenue is conversant. Where the detenue is not conversant with English, the communication of grounds in English language has been held to be bad.

(iii) Even if the detenue is aware of a document, he has to be supplied a copy of the same as he cannot rely upon his memory while in jail in order to make an effective representation.

Mehrunissa vs. State of Maharashtra (1981 SC 1861)

(iv) The representation made by the detenue should be considered with utmost expediency by the detaining authority namely the State Govt. or the Central Govt. as the case may be. Where the order has been passed by the officer empowered under sub-section (3) of Section 3 of the National Security Act and a representation is made to him, he is under an obligation to consider the same. The delay in consideration of representation renders the continued detention invalid. In some later decisions, Supreme Court has ruled that there can be no fixed time imperative for consideration of the representation but there should be no casualness or lethargy.

(v) If vital and relevant material or vital facts essential to the formation of the subjective satisfaction are kept away from the consideration of the detaining authority, the satisfaction of the detaining authority gets vitiated and the order of detention is bad.

Asha Devi vs. Shivraj (1979 SC 447)

1979 SC 447

1983 SC 541

(vi) Consideration of extraneous material by detaining authority without communicating the same to the detenue vitiates the detention order. [1975 (2) SCC 586].

(vii) Delay in actually arresting the detenue after an order of detention is passed has also been held to be fatal as unreasonable delay in detention would throw considerable doubt on the genuineness of the subjective satisfaction of detaining authority.

Sheikh Nizammudin vs. State of W.B. (1974 SC 2353) (Two and half months)

Suresh Mehto vs. D.M. Bardman (1975 SC 278)

(viii) The period prescribed under NSA & COFEPOSA for making a reference to the Advisory Board which is three weeks under NSA and five weeks under COFEPOSA has been held to be absolutely mandatory and even a delay of one day has been held to be fatal.

(ix) To affect public order, it must affect the community or the public at large. One has to imagine three concentric circles, the largest representing "law and order", the next representing "public order" and the smallest representing "security of State". An

act may affect law and order but not public order. Public order is synonymous with public safety and tranquility: it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.

Dr. Ram Manohar Lohia vs. State of Bihar & Ors (1966 1 SCR 709)

(x) A detenue has no right to appear through a legal practitioner in proceedings before the Advisory Board, the detaining authority or the Government. This bar would also apply to officers of the Government in the concerned department. If the detaining authority or the Government takes the aid of legal practitioner or an advisor before the Advisory Board, the detenue must be allowed the facility of appearing before the Board through a legal practitioner. A detenue can be aided or assisted by a friend who in truth and substance is not a legal practitioner.

A.K. Roy vs. U.O.I. (1982) 1 SCC 271

(xi) An order of detention can be challenged at pre-execution stage but on very limited grounds and they are:-

(i) that the impugned order is not passed under the Act under which it is purported to have been passed.

(ii) that it is sought to be executed against a wrong person,

(iii) that it is passed for a wrong purpose,

(iv) that it is passed on vague, extraneous and irrelevant grounds, or

(v) that the authority which passed it had no authority to do so.

Additional Secretary to Govt. of India vs. Kalka Subhash Kadia (1992 SCC (Crl.) 301

N.K. Bapana vs. U.O.I. [1992 (3) SCC 512]

State of Tamil Nadu vs. P.K. Samsuddin

Subhash Mujimal Gandhi vs. L. Himingliyana

(xii) A note of caution was expressed by Justice Holmes of United States Supreme Court in Schenk vs. U.S. [(919)249 US 47] when he said :-

"When a nation is at war, many things that might be said in peace are such a hindrance to its effort that their utterances will not be endorsed so long as men fight, and court could regard them as protected by any constitutional right".

President Jefferson said:-

"The laws of necessity of self-preservation of saving our country when in danger are of a higher obligation" and that "to lose our country by a scrupulous adherence to written law would be to lose the law itself with life, liberty and property thus sacrificing end to the means".

Solitary grounds sufficient if reasonable inference can be drawn from detenue's past conduct about likelihood of his repeating the prejudicial activity in future.

Ismail Sheikh vs. D.M [1975 SC 168] – Telegraph wire in bullock card.

Madhav Ram vs. State of W.B. [1974 Crl. L.J. 1335] – Electric traction wire.

Md. Sultan vs. Joint Secretary to Govt. of India [1990 SC 2222]

Abdul Sattar vs. U.O.I. [1991 SC 2261]

(xiii) It may be clarified that neither Terrorism and Disruptive Activities (Prevention) Act, 1987 (TADA) nor Prevention of Terrorism Act, 2002 (POTA) contain any provision for preventive detention. These laws were made for punishing a person who commits any act of terrorism.

Some aspects of preventive detention

B. V. Kumar*

Unfortunately, I was entrusted with the task of Prevention of Smuggling, initially in the State of Gujarat, having a coastline of 1663 Kms of and subsequently for the rest of India. This cast an enormous amount of responsibility on my shoulders during a time when the import of Gold, goods of conspicuous consumption and export of Silver, antiquities objects of art were prohibited. Smuggling of Narcotic Drugs and Psychotropic Substances was rampant.

Apart from making some of the largest seizures of such goods, action was also initiated against such anti-national elements by detaining them under the COFEPOSA Act, 1974 and the PIT NDPS Act, 1988. I was therefore compelled to detain maximum number of smugglers and drug traffickers during 1984 to 1987. In one such operation, on one day, we detained 120 top smugglers, heads of syndicates involved in organized economic crime.

Another factor, which weighed very heavily on our minds to resort to such action, was that most of them were part of trans-national Organizations and were involved in operations covering more than one Jurisdiction. This gave them an edge over the Investigating Agencies and they were involved in multiple activities inter-related to smuggling such as, Drug Trafficking, Money Laundering, Organized Crime and involvement with Intelligence Agencies to covertly support internal subversion.

In the ultimate analysis, I found that the remedy does not always lie in Preventive Detention but proper investigation followed by successful

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prosecution. Infact one of the most eminent Criminal Lawyers of our Country mentioned to me that 'who is afraid of Preventive Detention, I will get them released. They are only afraid of prosecution' (Ram Jethmalani). Further, it is also necessary to revise economic and fiscal policies and ensure better and enlightened governance of the Country so that maximum welfare is secured to the maximum number of people.

Preventive Detention is probably justified for security, for the preservation of peace and tranquility as well as against dangers from foreign arms and influence and from dangers of the like kind arising from domestic causes.

What was the scenario, when India attained independence in 1947? The situation is reflected in the contemporary speeches of Pandit Nehru. For example, in the speech delivered from the ramparts of the Red Fort on 15.8.1949, he said, "we must remember the basic facts that we can achieve little unless there is peace in the country, no matter what policy we pursue. There are some mis-guided people who indulge in violence and try to create disorder….. The people have every right to change Laws and even change Government……. But those who choose the path of violence have no faith in democracy. If their way were to prevail, there would be complete chaos in the country and condition of the people would deteriorate even more. All progress will cease and the next few generations would have to carry a heavy burden"…….

Speaking in the Lok Sabha on 15.12.1952, he stated "India is not only a big Country with a good deal of variety; and if one takes to the sword, he will inevitable face with the sword of someone else. The clash between swords degenerate into fruitless violence, and in the process the limited energies of the nation will be dissipated or, at any rate greatly undermined."

It is for this reason that the founding fathers, while framing the Constitution, gave a constitutional status to Prevention Detention, so as to prevent

anti-social and subversive elements from imperiling the welfare of the infant republic and to safeguard the rule of law. At the same time, they took the precaution of providing constitutional safeguards, so that the executive will exercise with great diligence and care, in accordance with law, the extraordinary power to deprive the liberty of an individual.

The Supreme Court by a series of creative pronouncements has built into the vast powers vested in the executive by the preventive detention laws, legal bulwarks, breakwaters and blinkers which have largely humanized the harsh authority over individual liberty, otherwise exercisable arbitrarily by executive fiat [Boothnath vs. State of West Bengal – AIR 1974 (S.C.) 806].

The Supreme Court in many historical pronouncements has not hesitated to uphold personal liberty and human freedom when the procedural safeguards were not respected. It has stood as a bulwark between the State and the Individual in realizing his freedom when it was threatened. Yet, it recognized the need for preventive detention when the security of the state was in peril.

Individual Liberty and Preventive Detention are a contradiction in terms since; they are irreconcilable with each other. It is like an exercise of attempting to reconcile chastity with promiscuity. The Highest might and the highest right cannot be at one and the same time realized. However, it is the delicate balance between the sovereignty of the state and the rule of law, which can be achieved through the constitutional process, guarded and protected, by a vigilant parliament, the courts of law, a responsible press and spirited and enlightened citizens which will ensure the smooth functioning of democracy.

Constitutional Validity:

A Constitution Bench of the Supreme Court upheld the Constitutional

validity of Preventive Detention in the case of Haradhan Saha vs. State of West Bengal – AIR 1974 (S. C.) 2154, in which it was held that Article 22 does not have to meet the requirements of Articles 14, 19 or 21. It was further held that the power of preventive detention is qualitatively different from punitive detention, the former being a precautionary power exercised in reasonable anticipation.

Justification for Preventive Detention :

The activities of Organized Criminal Syndicates and Terrorist Groups constitute "serious threats aimed at destabilizing the security, integrity and economy of India". Such activities should not be construed as "acts merely of ordinary crime or of law and order nature".

It is necessary to understand the attributes of Organized Crime (OC) so that the Investigating Agencies can equip themselves with necessary statutory powers to deal with such Syndicates.

- Organized Crime continues their nefarious activities to maximize returns on their investments, which may be legal or otherwise. In other words, they have a continuing criminal enterprise as distinct from a single criminal act. Continuity in the activity from which these individuals seek to achieve profit, is a primary characteristic of organized crime.

- Organized Crime generally seeks to utilize the ordinary techniques of business to generate exorbitant profits; It is rarely prepared to be satisfied with ordinary profits.

- Greed is one of their attributes. Associated with these characteristics of greed, is the desire, perhaps almost the necessity to grab.

- Corruption is used not only to achieve protection for the enterprise

and continued life style of those who benefit by virtue of its continued operation but also to facilitate its activities.

- Organized Crime will often operate within an essentially criminal milieu and will consequently, in seeking to protect its investments and continued existence, not hesitate to employ the usual devices of the criminal world such as violence and extortion. It will invariably seek to protect itself through the use of, or at least the threat of, violence.

- The most interesting characteristics of organized crime is its structure. Whilst structures, to some degree, vary from organization to organization, most have a clear and strictly enforced hierarchy. This will often be reinforced by family, extended or otherwise, allegiances.

- An important aspect to the traditional pyramid structure is that senior management is effectively removed from the day-to-day operations of the enterprise and, thus, most significantly from a law enforcement perspective, from the prospect of effective police action and control. The top management and their financial and other advisers are so remote that it is not easy for an Investigating Agency to establish a Nexus between the top management and the crime committed. The managers expose themselves to the ordinary risks of criminal enterprise, with the result that the prospect of most of the enforcement agencies is focused at low level of criminal activity.

- Organized Crime insulates their leadership from direct involvement in illegal activities and this is done through an intricate organizational structure.

- Their activities are methodical, systematic, highly disciplined and conducted with great secrecy.

- Organized crime, in order to reduce its risks, to the minimum, diversifies its activities and goes international. Through diversification into apparently legitimate or else high profile activities, the organization is able to develop facilities for dissipating the profits that it is able to generate from relatively high-risk activities.

- The facility that such a structure affords for money laundering, in its various forms, is obvious. By operating in more than a single jurisdiction, the real risk of effective action being taken by a domestic law enforcement agency is substantially reduced. Economic crime is a high reward and very low-risk activity.

- It is also not uncommon to find that most of these crimes are associated with other forms of criminal activity. There is increasing evidence to show that organized criminal syndicates are more and more moving into business activity to get a façade of respectability and use it as a front for their criminal activity. Quite a few of them have international implication and without international cooperation amongst the enforcement agencies, it becomes quite difficult to fight this form of criminal activity.

- Their objective is power - both economic and political. They are not mutually exclusive and may co-exist in Organized Crime.

- A criminal organization strives to acquire respectability for its sheer survival. A stage will reach when the heads of such criminal organizations become so remote from the scene of crime as they try to franchise less important activities. Even if the law enforcement agencies succeed in apprehending any of the persons involved in such operations, it will be impossible for them to reach the real kingpins. Such subordinate and sub serving persons in-charge of these activities are treated as expendable and are replaced as soon as they fall within the dragnet of law enforcement. Having acquired legitimate business, the heads of criminal syndicates conduct their

operations from the cool comfort of the Boardrooms of multi-crore corporations. With their money power, they try to build up lobbies in the law enforcement agencies, bureaucracy and the judiciary and try to subvert the political system to suit their operations. This will result in a subversion of the political system. If this situation is to be avoided, it is necessary to attach the assets of Organized Crime.

The Law of Preventive Detention is meant to detain such persons who are at the senior management level of Organized Crime. It is for this reason Preventive Detention is justified.

An empirical study of the decisions of the Hon'ble Supreme Court in matters relating to Preventive Detention would show that they were upholding Preventive Detention even if the Detention Orders suffered from minor procedural lapses, when the situation in the Country demanded.

In similar matters, the Supreme Court did not hesitate to quash the orders of Preventive Detention issued by the Detaining Authorities to uphold the plea of the Citizens, when it was warranted.

In his characteristic style Justice Krishna Iyer, speaking on behalf of the court, in Sunil Batra's case [1980 Cri. L. J. 1099] observed "the Jurisdictional reach and range of this court's writ to hold prison caprice and cruelty in constitutional leash is incontestable…… thus it is now clear law that a prisoner wears the armor of basic freedom even behind bars; and on breach thereof by lawless Officials, the law will respond to his distress signals through 'writ' aid. The Indian human has a constant companion in the court armed with the constitution."

Session - III
Detention in Juvenille Justice Homes

Detention in Juvenille Justice Homes
Mr. Justice A.K. Sikri*

Juvenile Justice Act, 1986

To provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating thereto, Act of 1986 was enacted.

Juvenile justice (care & protection of children) act, 2000

- Philosophy behind the Act is based on the principle: "Children's Rights and Human Rights"
- Preamble

  The need for new law is necessitated by

  - UN Convention on Rights of the Child
  - UN Standard Minimum Rules for Administration of Juvenile Justice 1985
  - UN Rules for the Protection of Juveniles Deprived of the Liberty, &
  - all the other relevant international instruments
- Every aspect of child development
  - care
  - protection
  - kind of treatment

    to be given to the children has a Human Right reflection.

* Judge, Delhi High Court

- This applies to every kind of child:
    - Rich/Poor
    - Child born with a silver spoon/ a street child
    - Deprived Class
    - Neglected Children
    - Delinquent Juvenile

It is for this reason that our law recognizes that children and adolescence are different from adults and should not be accountable for their violations of the criminal law in the same fashion as adults.

Golden thread running in the entire act:

- The Juveniles in Conflict with Law are *not to be treated as criminals.*
- Even when the police apprehends a child for allegedly committing an offence and – that is the first point of contact between the child and the Juvenile Justice System – *interactions between police and juvenile should promote the well-being of the juvenile and avoid harm to him/her.*

  Police should rather be trained to respond to the special needs of young persons. (Sec. 10 & Sec. 12)
- *Rehabilitation* is the key:
- For this purpose – DURING TRIAL when juvenile is in the Juvenile Justice Home, it is to be ensured that:
    - There is proper supervision
    - There is adequate staff

- Staff is properly trained
- Cordial relation between staff and children.
- Proper segregation of younger juveniles from older ones. [Rule 22 (1)]

- POST TRIAL – in case of conviction not to send the convict to jail for serving any sentence but to take adequate measure as provided under the Act, for his rehabilitation. (Sec. 15)
- Thus, the objective of the Act is **to promote the child's welfare**.
- Thus, focus has to be **to help "wayward youth"** rather than to punish them for offence.
- Therefore, it is the "WELFARE MODEL" which is projected in the statute with emphasis that such **welfare of the children is their "RIGHT".**

The reality

Whether children are given "home-like atmosphere"?

(i) Over crowded observation homes

- In Delhi, 2 observation homes for boys and one for girls. Observation Homes for boys are overcrowded.
- Conditions worse than even Tihar Jail.

(ii) No proper segregation

Older boys running the Observation Home.

(iii) Abuse, exploitation and unruly behaviour of the juveniles

- Numerous instances of physical and sexual abuse of these

children by not only the older boys in the Observation Homes but also by officials in those homes as well as the police officers.

- Juvenile Justice Board in Delhi had to pass orders from time to time for registration of FIR against the police officials and for investigation against the Superintendent of the Observation Homes for Boys for neglecting to protect the juvenile from sexual abuse in the institution.

  In certain cases, the Juvenile Justice Board had to take cognizance against the police as well as the officials of the Observation Homes for physically assaulting the juveniles. Even these orders have not any deterrent effect so far.

(iv) No proper recreation rooms though Rule 5 mandates it

(v) Lack of proper hygiene – No provision for hot water – 80% inmates suffering from skin diseases.

(vi) No regular medical facilities as envisaged in Rule 10 of the Juvenile Justice (Care and Protection of Children) Rules 2002 is provided.

Though Rule 10(2) of the Rules provides that every juvenile on admission in the Observation Home has to be medically examined by the 'Medical officer' within 24 hours and in special cases within 48 hours giving the reasons thereof.

No medical record of the juveniles is kept.

(vii) No proper supervision

As per UN Delegation it is to run like a boarding school. Rule 48 (7) violated.

(viii) No proper food for inmates.

Quantity of food to the juveniles is generally insufficient.

Most of the juveniles in the Observation Homes are between the age group of 16-18 years. There is no evaluation of the diet scale after consulting the dietitian/nutrition expert, keeping in view the age of the juvenile.

(ix) No play ground

As per Rule 9 of the Rules Juvenile Homes are required to provide playground for the juveniles.

There is hardly any open space which can be converted into playground for outdoor games.

(x) No proper vocation training courses

Section 8(a) casts an obligation on the authorities in this behalf.

(xi) Absence of superintendent and welfare officer

Accommodation of Superintendent and staff has to be within the Observation Homes as required vide Rule 48(7).

Purpose of this particular statutory Rule is that the juvenile should remain in the constant supervision, control and care of the responsible official all the time.

In the existing set up, juveniles remain in the care of caretakers in the absence of Superintendent and Welfare Officer.

These caretakers are neither qualified nor responsible under the scheme of the Act.

Because of this there have been many incidents of escape of juveniles from the Observation Homes.

(xii) No special homes

As required under Section 9 of the Act.

- Juveniles who are directed by the Juvenile Justice Board to be send to a special home on being found guilty after inquiry, are kept in the Observation Homes itself along with those juveniles against whom inquiry/trial is pending. These defeats the very purpose of an Observation and a Special Home under the Act.

- While an observation home is meant for temporary reception of the juvenile in conflict with law pending inquiry (Section 8), a special home is meant to house those juveniles for rehabilitation, who have been held guilty for committing serious offences, after the inquiry (Section 9).

- Rehabilitation, treatment and techniques for the juveniles pending inquiry and for the juveniles who have been held guilty after the inquiry are entirely different [see *Sunil Kumar* v. *State*, 1983 Crl. Law Journal 99 (Kerala)].

Pending cases in the high court of delhi

Cases pending in the high court

- WP (Cr.) 210/2004

  Court on its own motion v. *State and Ors.*

- WP(C) No.22932/2004

  Social Jurist v. *Govt. of NCT of Delhi*.

- WP(C) No.2645/2006

  Chetna v. *NCT of Delhi*.

- WP(C) No.8962/2006

  Sandeep Chilana v. UOI & Anr.

- WP(C) No.4161/2008

  Court on its Own Motion v. State.

Measures to be adopted

- Action required for the problems & issues highlighted above.
- In addition, following specific measures are to be adopted:

a Government should set up De-addiction Centres in the Observation Homes on the same lines as they have been set up in Tihar Jail.

b Wherever there is a direction of the Juvenile Justice Board to register FIR against the police officials or officials of the Observation Homes, those officers should be immediately shifted.

c There has to be a provision for housing of the Superintendent and such other staff who are required for the care and supervision of the juveniles in the Observation Homes till such time the staff quarters are constructed.

Superintendent and other staff should be deputed in shifts to attend to the emergencies and needs of the juveniles in the Observation Homes.

d Appointment of a 'Permanent Medical Officer' and 'Para medical staff' to meet the requirement of statutory rules.

There should be a post of Welfare Office and Psychologist created and filled up immediately.

Case history of the juveniles admitted to the Observation Home should be maintained containing his socio-cultural and economic background.

Educational level and vocational aptitude should be assessed and the juveniles should be grouped on the basis of age, physical and mental health.

e The Social Welfare Department should immediately start various types of short-term and job-oriented courses to involve very single juvenile in the Observation Home.

In the aforesaid Writ Petitions the Social Welfare Department had given a suggestion for introducing **'Incentive Scheme'** as per which, rewards may be given to the juveniles, at such rates, as may be fixed by the Management from time to time to encourage study work and good behaviour.

Such Incentive Schemes should start immediately, if not done yet.

f There are many instances of assault of the juveniles by the security guards hired from a private security agency.

There should be a proper study as to whether there should be recruitment of security guards from private agency and if that is indispensable, what are the necessary parameters for the scrutiny of such security guards be laid down.

g Venue of the Juvenile Justice Board be shifted to Prayas Observation Home for Boys at Delhi Gate where younger juveniles are lodged.

It should be ensured that parents and family members of the juveniles lodged in Observation Homes are able to meet them frequently as because of their tender age many of the juveniles feel home sick.

h The State Advisory Board constituted under Section 62 of the Act should conduct regular studies and advice the Government periodically on matters relating to the establishment and maintenance of the homes, mobilization of the resources, provision of facility for education, training and rehabilitation of child in need of care and protection of juvenile in conflict with law.

There should be a mechanism to ensure that such reports containing suggestions given by the Advisory Board on the aforesaid aspects are implemented in the spirit of the Act.

i Provision for adequate probation services.

j Establishment of legal aid centres.

k Steps to involve and encourage the participation of NGOs and community for ultimate rehabilitation of children/juvenile.

l Re. Observation Homes

- Establishment of more Observation Homes with smaller capacity, say about 50, for better management and effective interaction and supervision over the juveniles.
- Inclusion of various types of career oriented services, giving a wider choice to the juveniles.
- Depute regular counselors, other officials having a special knowledge or training in child psychology.
- Establishment of Health Care Centres in these homes with specific focus on HIV/AIDS, Scabies, T.B. and mental health.
- Observation Homes to be the venue of Juvenile Justice Boards

- Observation homes situated at a distance from JJB
- Juveniles brought in Police Van to JJB
- Instances of fights and harassment in the van
- Custody of the juveniles to the Police & confinement in lock up against the provisions of JJA.

Session - IV
Mental Health Issues of Detainees

Mental health care in India: Defining moments

Prof. D.Nagaraja

Director-Vice chancellor

NIMHANS, Bangalore-560029

Mental Illness and Psychiatric Services-1990s

The Problem

- About 200 lakh persons need treatment for serious mental disorder
- About 500 lakh for common mental disorders
- 30-35 lakh persons need hospitalisation at any time for a mental illness

The Services

- About 29,000 beds are available
- There is a huge treatment gap, with 50-90% of people in need not able to access services

Mental Illness and Psychiatric Services

The Problem

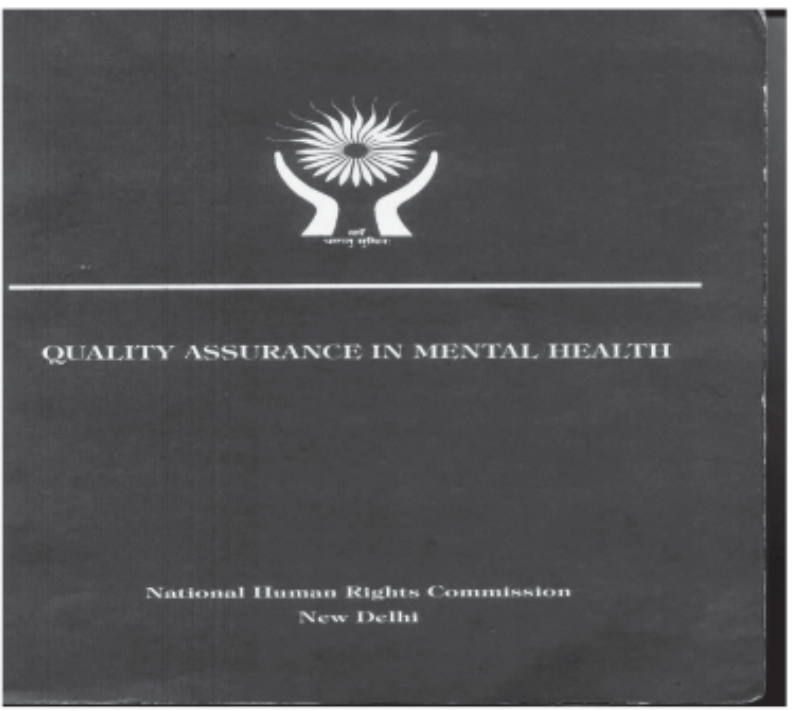
- People affected by mental illness are among the most vulnerable and disadvantaged in the community(Human Rights and Equal opportunity Commission of Australia)

Manpower Resources

- About 3000 psychiatrists
- 800 psychologists and psychiatric social workers
- 1000 trained psychiatric nurses
- About 50 NGOs working in the area of mental health (not including organizations working with children with mental retardation)

Background to the NHRC project on Quality Assurance

- Earlier activities of NIMHANS (especially in training and sensitisation)
- Major area of concern of the commission
- Project headed by Justice Malimath, under the aegis of the National Human Rights Commission
- 10 member team
- Mandate was mental hospitals but the team enlarged the scope to other mental health services



Assessment

- Through written questionnaires
- Through personal visits and discussion
- The focus on interaction and discussion on ways of ensuring minimum standards of care, improving quality and range of services, infrastructure modifications within the resources if possible, developing networks.

Introduction

- Total number of facilities visited - 59
- State run mental hospitals - 32
- General Hospital Psychiatry Units -16
- Private Psychiatric treatment centres - 10

Presentation focuses on reports of government mental hospitals (36)

For convenience, hospitals divided as large (500 or more), medium (250- <500), small (<250)

Background of hospitals visited 1996-7

	Since last century	Pre-Independence	Post-Independence	Total
Large	5	3	1	9
Medium	13	2	1	16
Small	1	4	2	7

- Prison like structure and ambience in 20/32 (63%)
- Terms such as 'enclosures', 'warders', 'overseers' still used
- Prison practices like roll call, lining up for handover still continue

Treatment Setting 1996-7

- Predominantly closed wards in 24/32 (75%)
- Predominantly involuntary admissions in 22/32 (69%)
- Cells continue to exist and be used in 14/32 (44%)

- **Comments:**
- ***"Single beds do not have water, light, bed linen or toilets. Food is pushed through the bars. Patients have to urinate and defecate in the cell itself"***
- ***In some hospitals, cells have been closed, converted into single rooms, or family rooms, or facilities like toilet and running water have been provided***

Other Services 1996-7

- Criminal wards present in 24/32 (75%)
- Special child inpatient services in none
- Family treatment services in 2/32 (6%)
- Separate substance abuse services in 5(16%)
- Outpatient services have started in 26/32 (81%) centres and free drugs are provided
- Drugs like clozapine and risperidone are available in at least 5/6 hospitals
- Emergency services are provided in 14 (44%)

Structure and Function 1996-7

- Building maintenance
  - Adequate in 5 (16%)
  - Poor in 19 (59%)
  - Needs improvement in 8 (25%)
- Significant overcrowding - in 11 (34%)
- *In one hospital with a bed strength of 500, 830 patients are housed*

In another with a capacity of 400, 860 patients are kept

Patient care Issues 1996-7

- Poor personal care - seen in 19 (59%)
- Head shaving still occurs as a routine practice in more than 50% of the hospitals
- Uniforms mandatory in 18 (56%)

During one of the visits, a minister announced that patients could wear their own clothes

Toilet

- No toilets in at least 3 hospitals -patients urinate dand defecated into a drain
- Grossly inadequate number of toilets in >75% of hospitals. Toilet : patients varied from 1:25 upto 1:40

In one hospital suicidal patients were kept naked because of fear of self harm if clothes were provided

Patient Care Issues 1996-7

Diet

- Adequate in 20 (63%),
- Poor in 10 (37%)
- Linen/mattress
- Adequate in 15(47%)
- Inadequate in 17 (53%)

Variability in amount sanctioned for diet from Rs 8/day in some hospitals to Rs 20/day in some

Diet varied despite restricted amount sanctioned - initiatives of medical superintendents /dietary departments

In some hospitals, though food is adequate, patients complained that the serving was callous, and all the food dumped together and served

Dinner is served at many places by 6 pm and patients go hungry till the next morning

Environment 1996-7

- **Lighting /electricity problems in 60%**
- **Water inadequate in 70%**
- **Recreation - in some rudimentary form in 75%**
- **Visits by family in less than 1/3**
- ***Large area : often overgrown grass, poorly lit***
- ***Potable water still a problem. In one place patients have to reach out from the cell, and pick up water from a bucket placed outside***
- ***Snakes a problem***
- ***Reports of assault, rape on the campus***

Staff Issues-2 (1996-7)

- Inadequate staff in 22 (69%)
- As many as 120 vacancies in one place
- Apart from Maharashtra, inadequate trained psychiatric nurses
- Few psychologists and Psychiatric Social Workers - existing staff improperly used
- *One hospital with a psychiatrist/ patient ratio of 1:20, attender/patient ratio of 1.3 :1 probably the worst in the country*
- *Some hospitals manned by non psychiatrists*
- *In one medium sized hospital, only 2 psychiatrists, other 5 doctors included 1 radiologist, 1 obstetrician, 1 paediatrician*
- *Postings to Mental Hospital often a punishment posting. Low staff morale and initiative*

Staff Issues -3 (1996-7)

- Class D or Class IV problems — *- Low sensitivity and training, high handedness, no supervision by treatment providers*
- Specialist staff in less than 1/3 of the hospitals — *- Minimal psychosocial intervention (adequate in < 25%), minimal stimulation, contributing to institutionalisation*
- Rehabilitation — *-Some form of rehabilitation in only 25% of institutions*

A decade later: Current status in 2008

- Idea of formal review during NHRC meeting of health secretaries at NIMHANS May 2008
- Review carried out between May and July 2008
- Two questionnaires sent to each hospital (one to document qualitative changes after 1999), second abridged from the earlier survey to document specific changes

Consolidated findings

- From questionnaires
- From presentations of state health secretaries/medical superintendents in the May 2008 workshop
- From the NHRC rapporteurs' reports
- Information for 36 hospitals (MH Mankundu has been closed down)

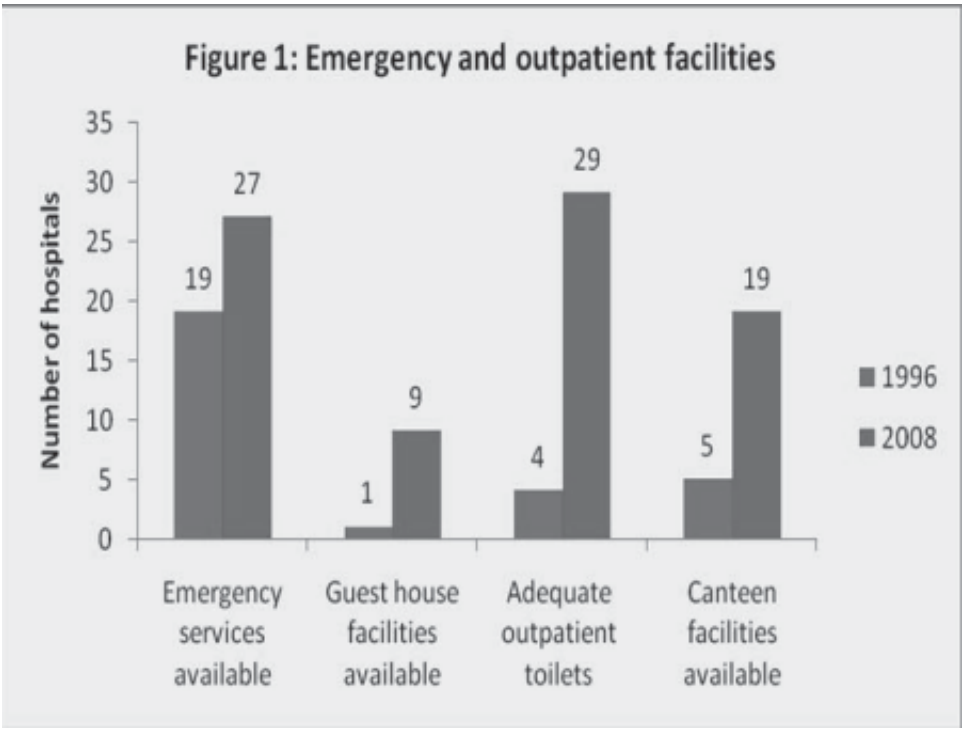
Major + changes - improved infrastructure: GHMC Vishakapatnam

MH Indore, MP – old wards and planned facilities

Infrastructural changes-2008

- Possible from the central grants of upto Rs 3 crore received for modernisation of the hospitals under the 10th 5 year plan

26 hospitals utilised this grant



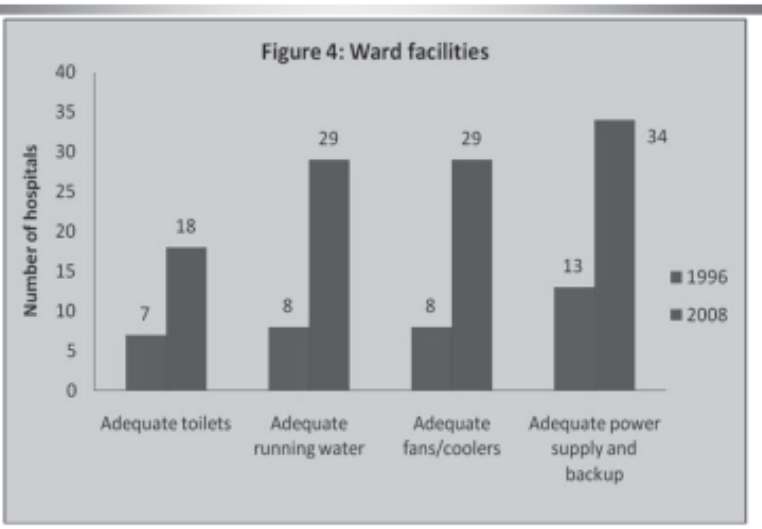
Major changes in outpatient - GMA Gwalior

Downsizing

Hospital	Previousbed capacity	Currentbed capacity
LGB Hospital, Tezpur	500	336
IHBAS, Delhi	400	180 (psychiatry)
IPHB Goa	300	190
GPDH J&K	75	70
RINPAS	600	500
VGMH Amritsar	850	400
PC Jaipur	312	280

More open wards in many hospitals

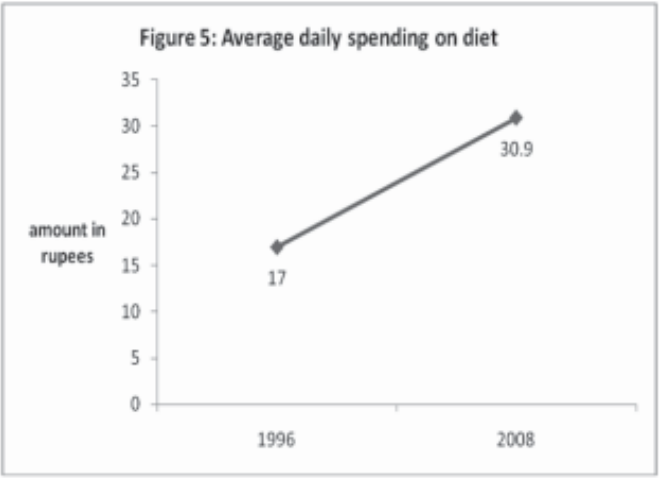
Improved ward facilities



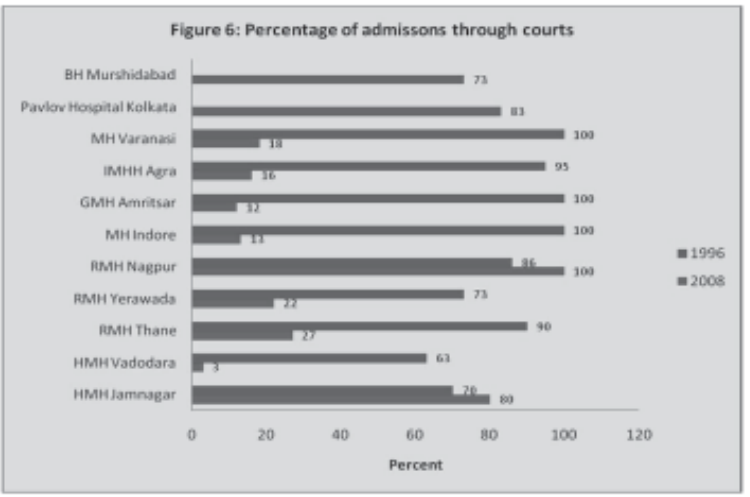
Better dining facility- more dignity to patients

Improved supportive services

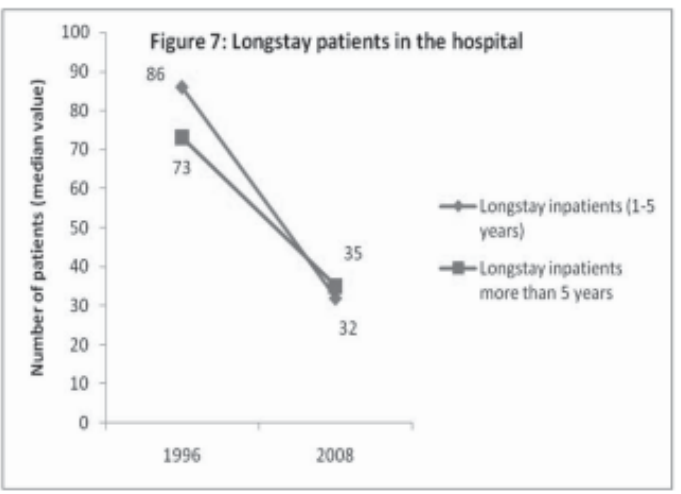
Greater spending on diet



Reduction in admissions through courts except in some hospitals

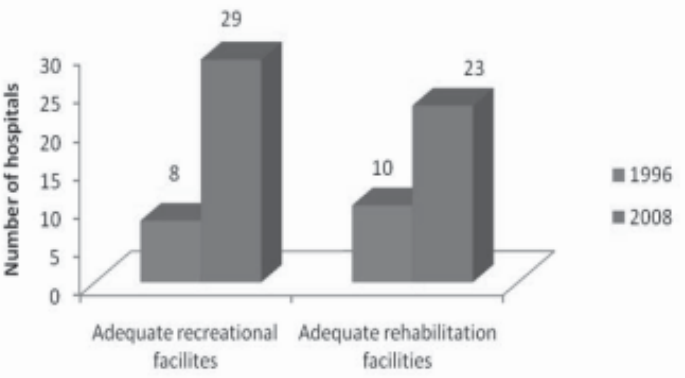


Reduction in longstay patients



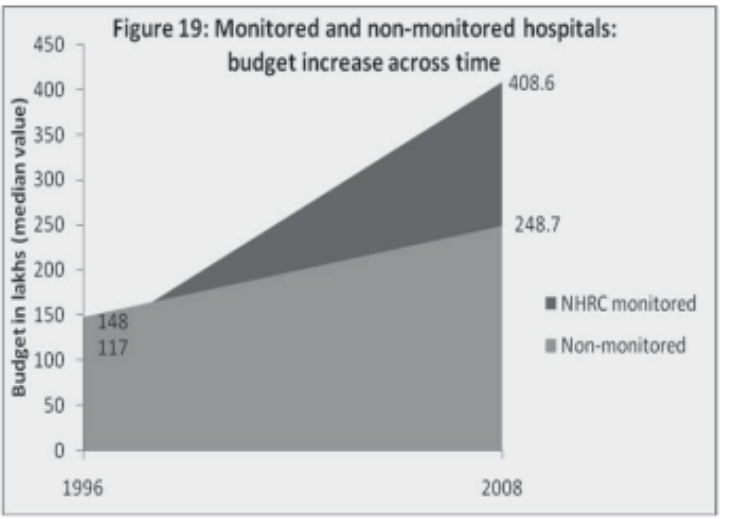
Improved recreational and rehabilitation facilities

Figure 10: Recreation and rehabilitation facilities within the hospital

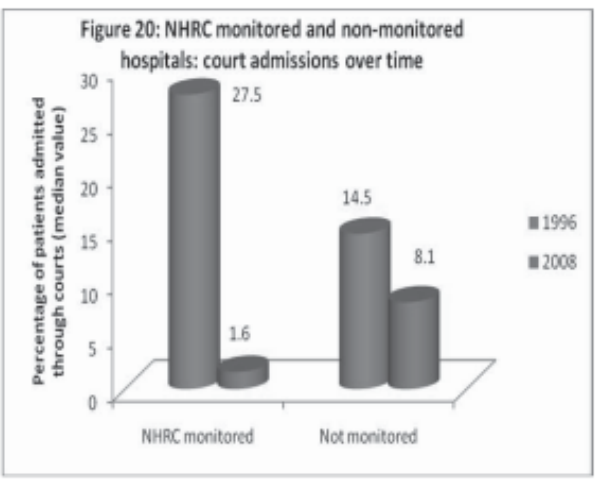


Greater involvement in community mental awareness

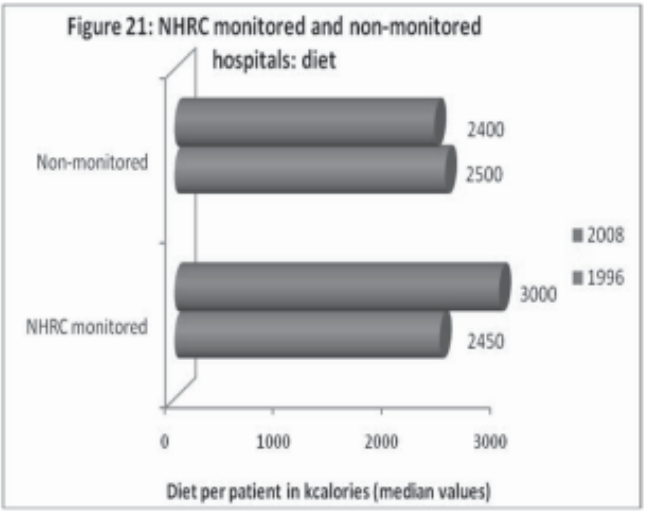
NHRC monitoring impact: better budget provisions



NHRC monitoring impact: greater reductions in admissions through courts



NHRC monitoring impact: improved caloric content of diet



NHRC monitoring impact

Greater improvement in monitored hospitals with respect to:

- **General amenities**
- **Supportive services**
- **Living conditions**

Summary of progress and persisting problems

Areas of positive change	Areas of poor progress
Reduction in court admissions Improved structural facilities Living conditions Diet Recreation and rehabilitation Greater collaboration with NGOs Regular community level activities Improved budgetary allocation	Staff inadequate. Created posts vacant Psychosocial interventions still inadequate Closed wards in many hospitals Lack of post graduate training

Custodial concept must completely change

- Cells in a few hospitals –there are better more humane ways of managing disturbed persons
- Uniforms still mandatory in some hospitals- wards are not custodial settings!
- Terms like inmates, custody still used, sometimes even in judicial pronouncements- this can be corrected through regular sensitisation of judiciary and change of nomenclature in all statutes

New hospitals ….wise or unwise?

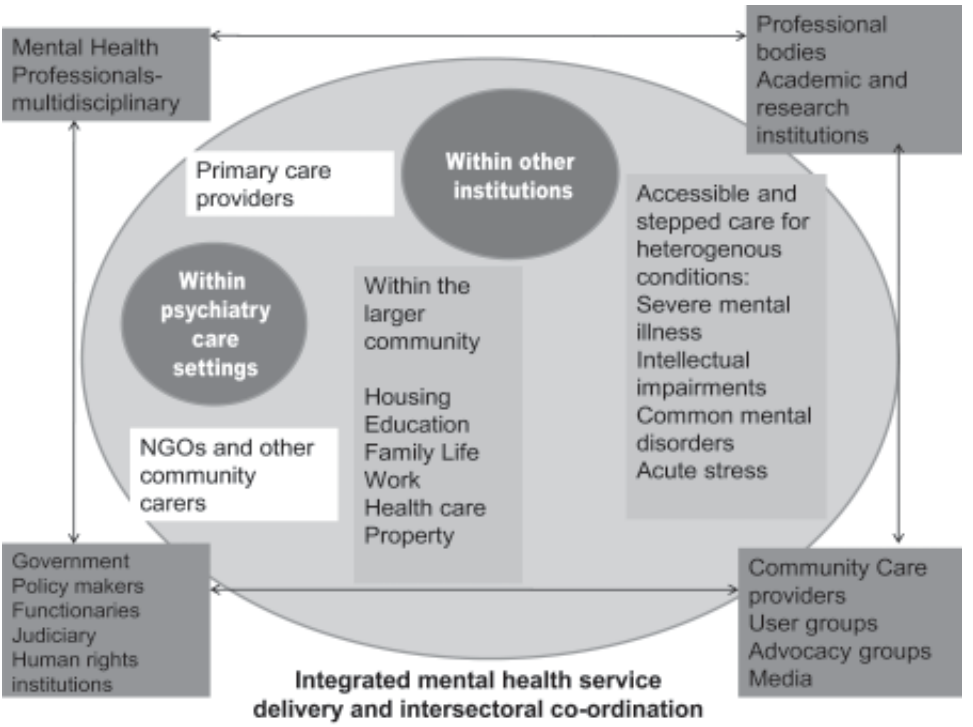
- New hospitals have been started in the states of Bihar, Haryana, Tripura and Himachal Pradesh
- Great care must be taken that these do not become more 'mental hospitals'
- Existing psychiatric hospitals must become higher centres of clinical care, training and research

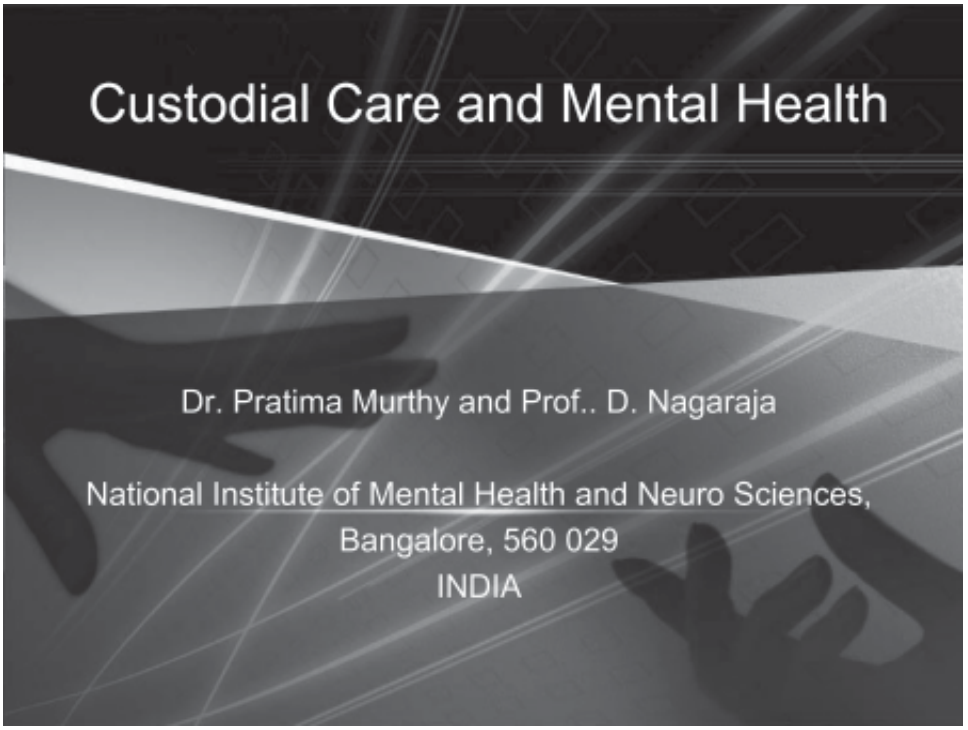
Way forward

- Beyond institutions to the community
  From delayed tertiary care treatment to early diagnosis and intervention
- From serious mental disorders to common mental disorders
- Stepped care to mental health
- From reactive care to proactive efforts – identifying societal and environmental causes of mental distress and addressing them
- From mental illness to positive mental health
- Convergence in many areas related to mental health

The restrategised National Mental Health Programme

- The District Mental Health Program
- Strengthening departments of psychiatry in medical colleges and general hospitals
- Adolescent and school mental health programs
- College mental health programs
- Improving human resources in mental health
- IEC activities
- Public private partnerships
- Research in mental health
- Suicide prevention
- Stress Management




Custodial Care and Mental Health
Dr. Pratima Murthy and Prof.. D. Nagaraja
National Institute of Mental Health and Neuro Sciences,
Bangalore, 560 029
INDIA

Contents

- Introduction
- Extent of the problem
- Challenges
- NIMHANS experiences
- Integration into community services

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Introduction

Many more custodial care systems

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Various Perspectives of Custodial care

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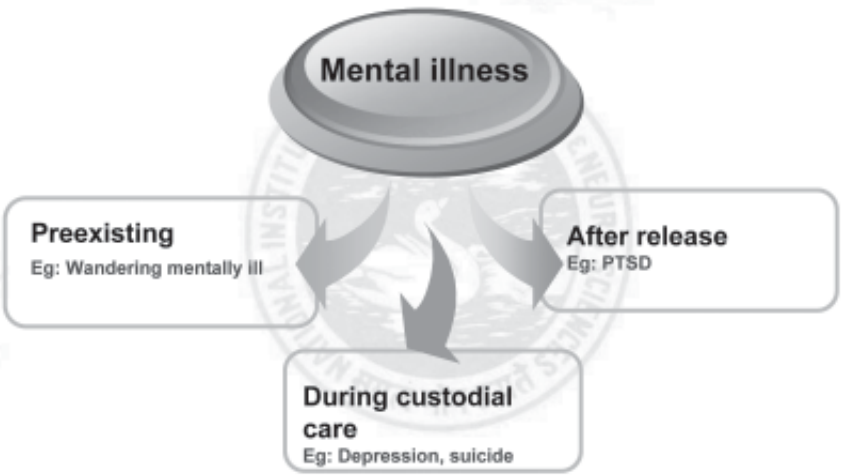
Development of Mental illness



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Health in Custodial Care

Three priority areas for attention of Health care in custodial settings:

1. Communicable diseases (Tuberculosis, HIV)
2. Mental health
3. Drugs/Substance misuse.

(Mental health promotion in prison report. WHO 1998)

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Addressing mental health issues
in prisons
as a model for custodial care

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Extent of the problem in prisons

- The prevalence of mental disorders in the general population in India is approximately 6-7%

(Math et al., 2007).

- The prevalence of severe mental illness in jails and prisons is three to five times higher than that in the community

(Lamb et al., 1998).

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Extent of the problem in prison

On average:

- 32% of all prisoners suffered from a mental disorder excluding substance misuse,
- With the inclusion of substance misusers, rates increased to 63%.

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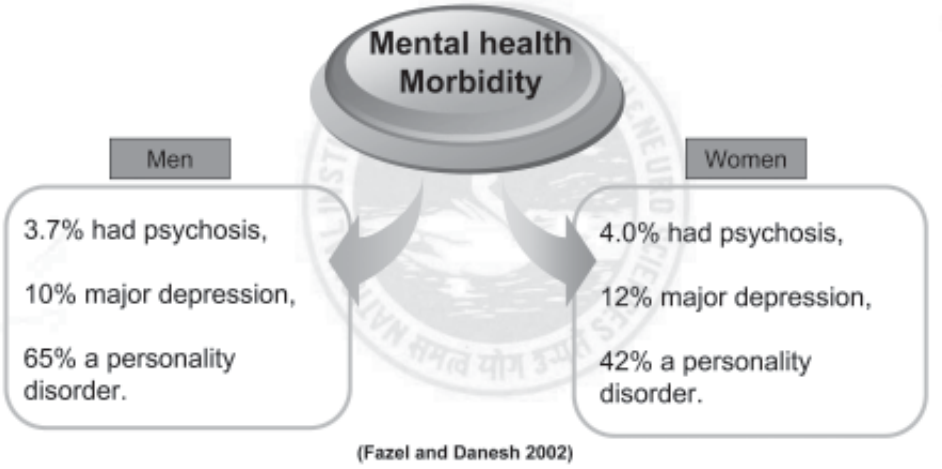
Scope of the problem in prison

A systematic review of 62 studies from 12 countries which included 22790 prisoners



(Fazel and Danesh 2002)

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Symptoms and disorders

Manifestation of symptoms

- Anger
- Sadness
- Violence /Aggression
- Irritability
- Homosexuality
- Agitation
- Strikes
- Suicidal and DSH behaviors

Disorders

- Adjustment disorders
- Depression
- Acute Stress reactions
- DSH/Suicidal attempts
- Somatoform Disorders
- Anxiety Disorders
- Post stress traumatic disorder
- Substance use
- Antisocial personality
- Borderline personality
- Schizophrenia
- Delusional disorders

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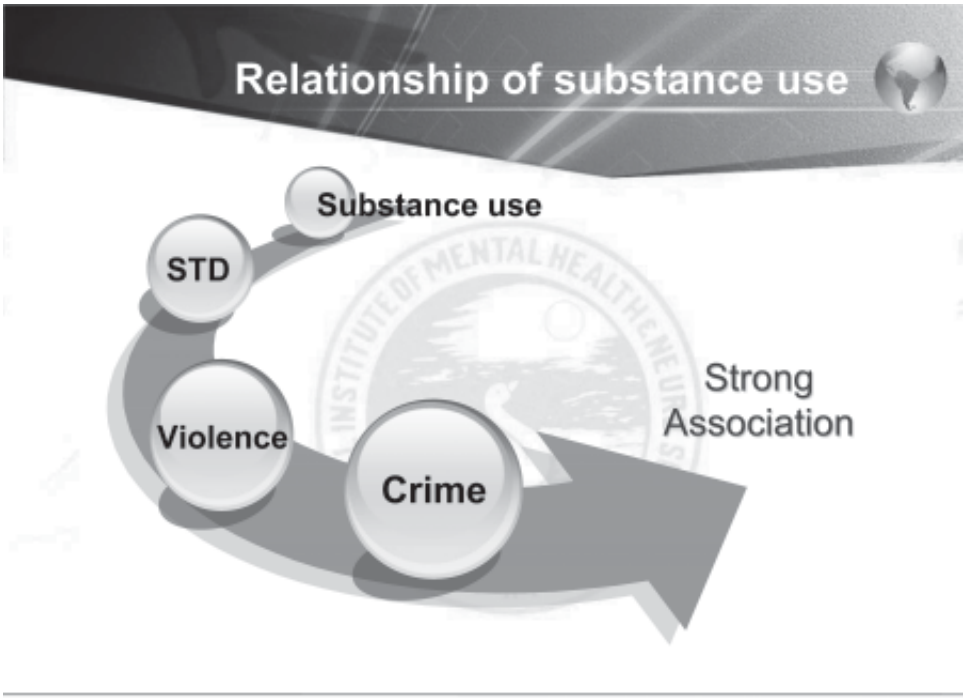

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Comprehensive Custodial Care

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NIMHANS Karnataka Prison initiative

- To assess the mental health morbidity of the inmates of the Central Prison, Bangalore.
- To train all the staff of prisons in Karnataka in the early identification of mental illness, emergency care in crises and referral to treatment.
- Develop minimum guidelines for the mental health care of prisoners.
- Project funded by Karnataka Legal Services Authority

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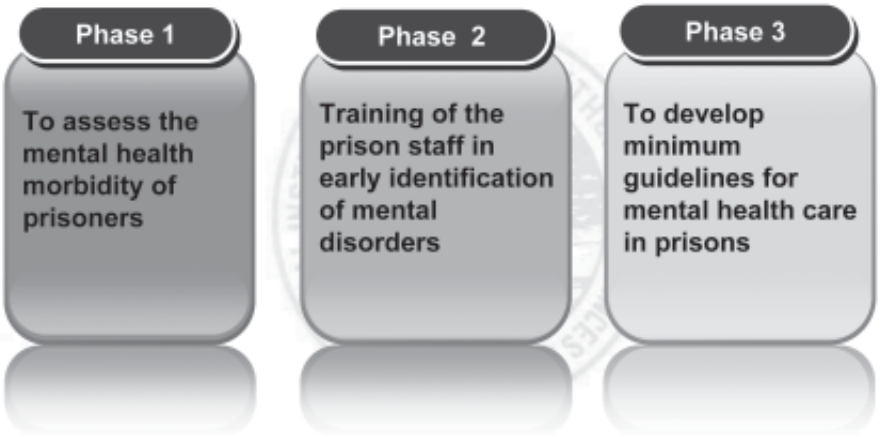
NIMHANS Karnataka Prison initiative



'Mental Health and Substance Use: Assessment and Approach in Prisons'

Prof. D. Nagaraja, NIMHANS

Karnataka Prison Study

- Approximately 5000 inmates of Central Prison Bangalore being assessed using structured instruments.
- Questionnaires include needs assessment and satisfaction, socio-demographic details, assessment of alcohol, tobacco and other drug use lifetime and current, and mental health morbidity
- Focus on 3 groups: freshly admitted undertrials, undertrials in prison for several months, convicts

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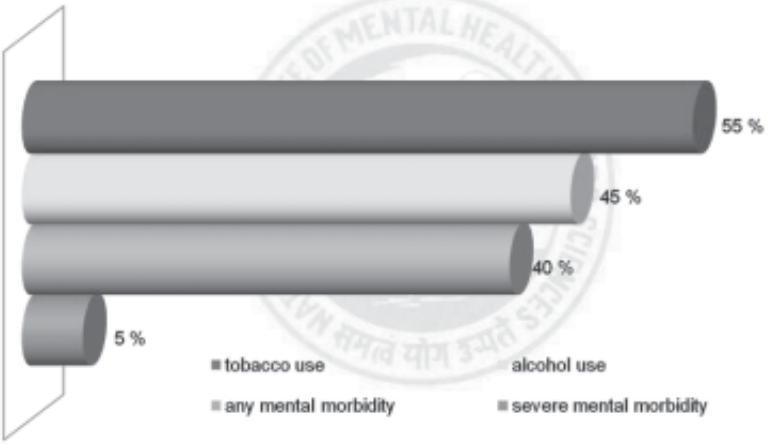
Mental morbidity and substance use in prison



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Psychiatrically ill prisoners: Issues

- Lack of psychiatrists/doctors trained in mental health in prisons
- When referred to hospitals for management:
  - Little documentation of the problems
  - Problem of escorts for referrals/discharge
  - Inadequate follow-up and aftercare while in prison
  - Disappear from psychiatric treatment after discharge from prison
  - No formal assessment of dangerousness/no formal referral to psychiatric services

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Other issues in prison

Prison staff:

- Work in a stressful atmosphere
- Stereotyped nature of work
- Poor working conditions
- Little formal training in handling mental health related issues

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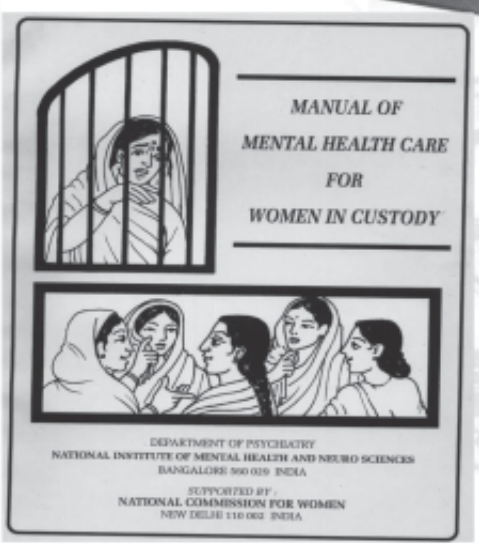
NIMHANS initiative- 1994



- **Nearly two-thirds of women in custody had symptoms of depression**
- **Project sensitized the staff of the prisons from the superintendents to the warders on mental health needs and responses**
- **Trained all persons involved in mental health care issues including prison staff and NGOs concerned**

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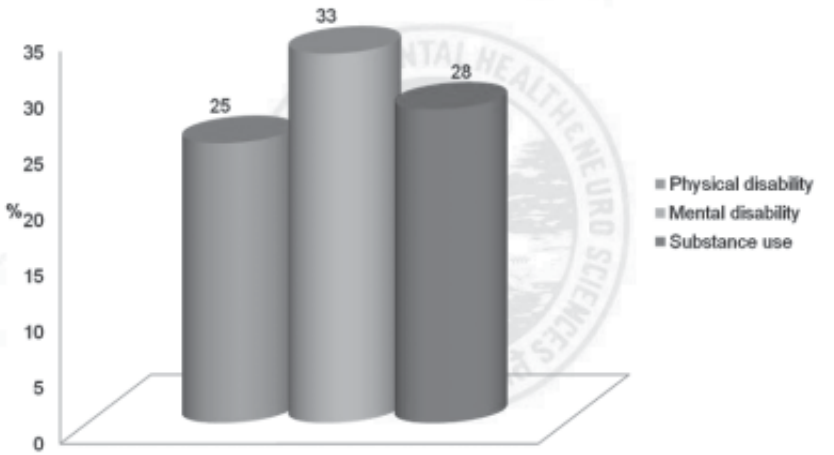
NIMHANS initiative: Psychiatric care in Beggars' homes



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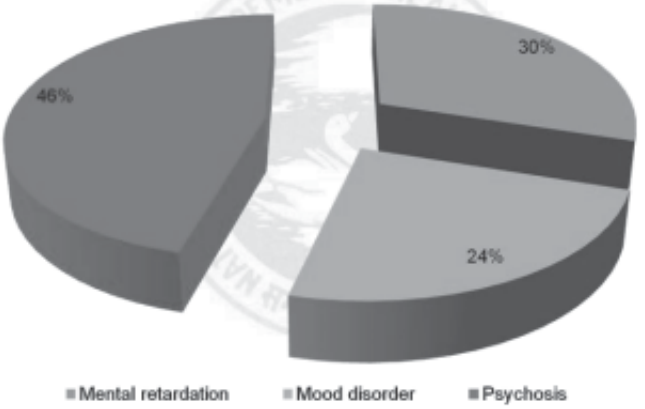
Beggars' Home: break up of mental disability



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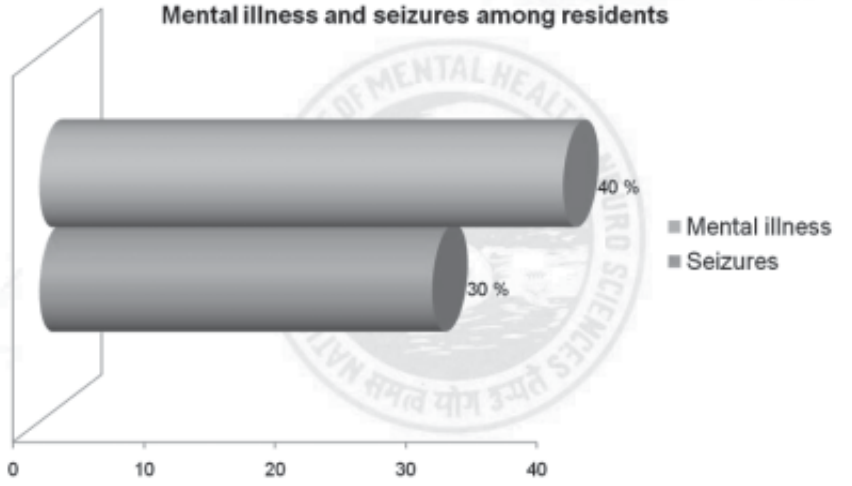
NIMHANS initiative: MR Home



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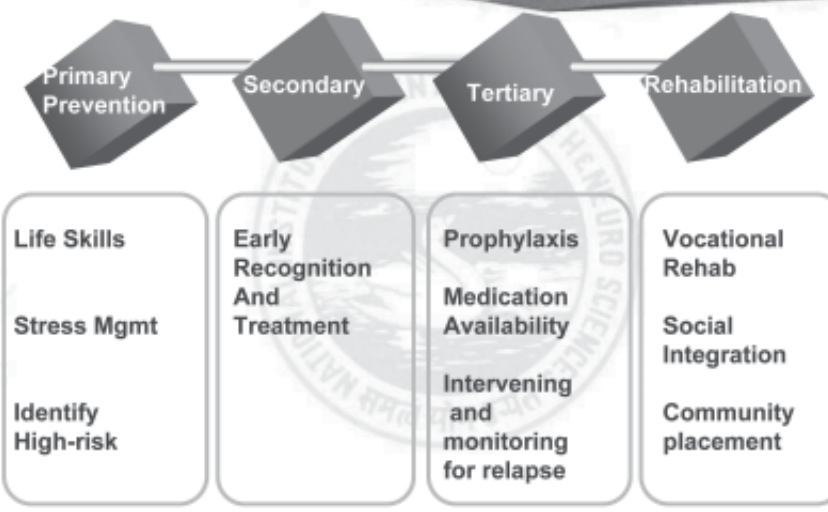
Care in custodial settings: Steps



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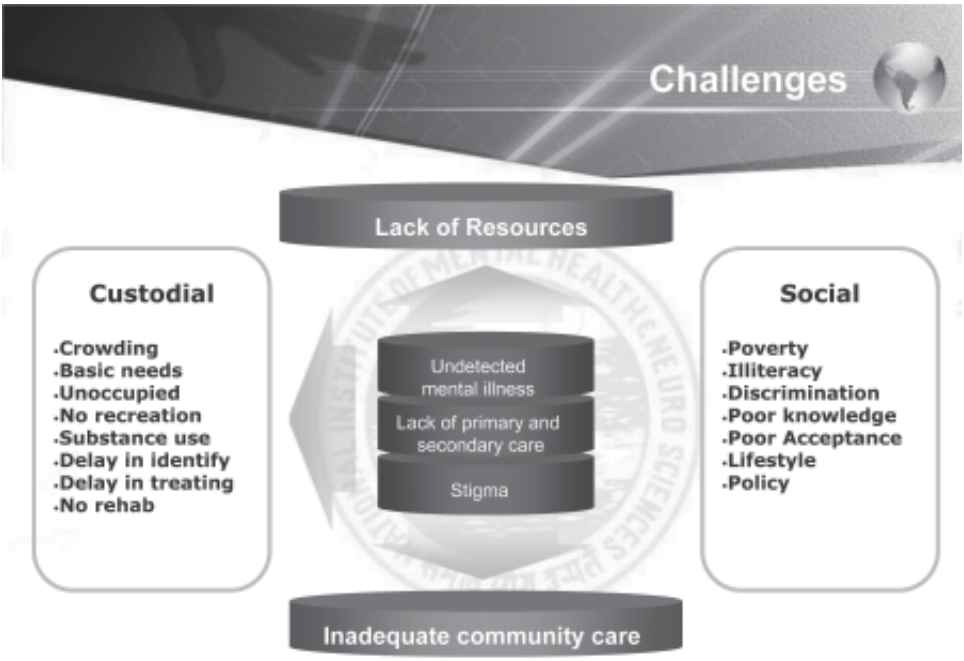
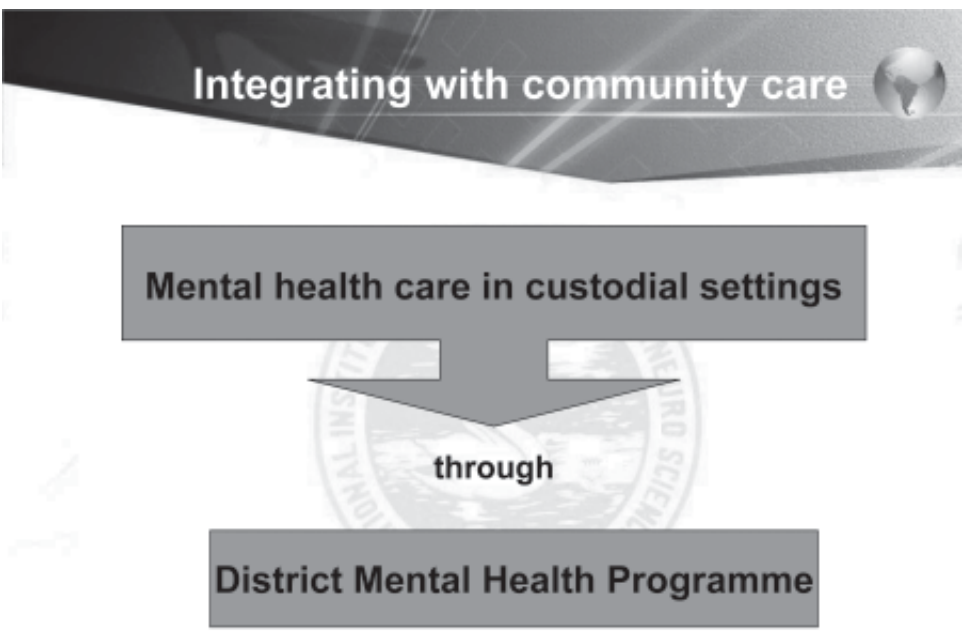


'Better to be bad; than to be labeled mad'

Prof. D. Nagaraja, NIMHANS



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Ten basic principles for 'Mental Health Care Law'

WHO 1996

1. *Promotion of mental health and prevention of mental disorders.*
2. *Access to basic mental health care*
3. *Mental health assessments in accordance with internationally accepted principles.*
4. *Provision of the least restrictive type of mental health care.*
5. *Self-determination.* (Consent is required before any type of interference with a person can occur)

Prof. D. Nagaraja, NIMHANS

Ten basic principles for 'Mental Health Care Law'

WHO 1996

6. *Right to be assisted in the exercise of self-determination.* (During the process of any interventions/interference assistance from a knowledgeable third party of his or her choice)
7. *Availability of review procedures.* (There should be a review procedure available for surrogate decision making)
8. *Automatic Periodical Review Mechanism.* (In the case of a decision affecting integrity and/or liberty there should be an automatic review procedure)
9. *Qualified Decision-Maker* (To act on behalf of mentally ill patients, who are incompetent to give consent for treatment, or any legal procedures including officials (e.g. the magistrate) or surrogates (e.g. spouse, family members and guardian).
10. *Respect of the rule of law.*

Prof. D. Nagaraja, NIMHANS

Conclusions

1. Great need to address mental health in custodial care
2. Focus on developing good systems for identifying and managing mental health problems, steps to prevent mental health problems arising out of custodial care
3. Improve human resources in custodial care centres
4. Have strong affiliation with local psychiatric care hospitals/medical colleges
5. District Mental Health Programme need to be extended to provide care at all these custodial care centres

Prof. D. Nagaraja, NIMHANS

Excerpts from Detention Workshop

(Transcribed from tape)

Session-II: Preventive Detention

1. Shri Soli Sorabjee

Shri Soli Sorabjee, former Attorney General for India, said that preventive detention which means detention without trial is anathema to the rule of law. However it is necessary in certain exceptional situations and can be regarded as a necessary evil. The founding fathers of the Constitution, despite their intense dislike for preventive detention, have provided some essential safeguards in Article 22 of the Constitution. Therefore it is necessary that these essential safeguards are ensured to the detenues. One of the essential safeguards is review by an independent Advisory Board. He stated that the frequent abuse of preventive detention provisions is the tendency to avoid a proper criminal trail and resort to preventive detention as a substitute for an ordinary criminal trial. Such convenient short cuts are impermissible. He said that even if preventive detention is a necessary evil, its effects and rigour can be mitigated. A detenue does not loose basic human rights and his right to be treated with dignity when he or she is in the custody. The courts are not supporters of criminals when illegal preventive detention orders are struck down. They are the protectors of individual liberty, which is a fundamental right of every person. He said that there should not be indefinite detention and the maximum period of detention should not exceed 6 months. Besides the grounds of detention must be very clear and they should have a rational nexus with the purpose of the Act. He said the detaining authorities must be educated about the limits of their powers. A person should not be detained on farfetched apprehension because of a solitary act committed in the recent past. Preventive detention should be in rare cases only when there is a

real danger to public order, security of State or supply of essential commodities. There should be a proper balance between the interest of society and personal liberty. Experience shows that the greatest danger of preventive detention is its use against political dissidents or opponents. He said the real safeguard against abuse of preventive detention lies in a strong Advisory Board and an independent judiciary like ours.

2. Shri Sankar Sen

Shri Sankar Sen stated that preventive detention is as much needed today as it was in 1950. He said before the Constitution came, under the Defence of India Act, 1939 and Bengal Criminal Law Act, 1925, a person was detained for 6 months without informing the grounds of detention. But when Constitution of India was adopted, all the Provincial Acts and other Acts which were inconsistent with the provisions of Constitution were repealed. So the Preventive Detention Act has a history behind its coming which came just after a month of the adoption of Constitution. He observed that there should be a balance between individual interests and state security or interests. The National Security Act, Maintenance of Internal Security Act and Armed Forces Special Powers Act are constitutionally valid because of their necessity for security of State. He stated although preventive detention is the need of the hour but it has to be ensured that it is not misused, abused or used to perpetuate political rivalries. He highlighted its importance for purposes of vigilance but observed that it is essential to evaluate the protections available under Art 22 with respect to how they help the detenue. He also mentioned about the subjective satisfaction philosophy of judges as there is no real objective criterion on what constitutes the subjective satisfaction. He stated that subjective satisfaction should not be used arbitrarily. About the review by an Advisory Board, Shri Sen stated that there should not be a onetime review, but that there should be scope for periodic review. He pointed out that the security of State does not mean that individual liberty can be endangered arbitrarily. He said that the maximum period of detention should be up to 6

months. He also stated that wherever there is evidence of unlawful detention, compensation should be given to the victim. He further said that as per 7th Schedule List III, States pass preventive detention laws for the security of the State. But it should be checked whether such laws conform to the requirements of the Constitution or not. He said that the unnecessary, illegal abuse of power should be checked not only by Judiciary but also by the political leaders of the country.

3. Prof. Ranbir Singh

Prof. Ranbir Singh said, "that our country has passed through three very important phases in the history. During the British rule, India was governed by Britishers and we were governed by '**Rule by Law**', which meant human beings were meant for law and not that law was meant for human beings and in majority of cases since we were colony of the Britishers, most of the laws were repressive and were meant to perpetuate the British rule in India.

The second important phase in the life of the country was after we got freedom and when we had our own Constitution, we also respected '**Rule of Law**' as a guiding principle of judicial justice for India's fundamental freedoms and human rights movement for the people. The Supreme Court for almost 28 years interpreted laws in a very positivistic framework. The '**rule of law**' principle was put to test during Emergency in India and with a initial setback to the '**Rule of Law**' in 'A. D. M. Jabalpur's case', the judiciary again went beyond positive law and interpreted law in the paradigm of higher law, a law higher than positive law and so in Maneka Gandhi's case, interpreted '**the procedure established by law**' as '**due process of law**'. What is more shocking in some situation is that there are still many extra judicial detentions by various law enforcing agencies in the country. This is an issue which should be seriously addressed.

Prof. Ranbir Singh stated, even if a person is legally detained, basic human

rights cannot be denied to him or her. He observed that there is a very important interface between law and justice. As very well said '**if law is not justice and justice is not law, the States are nothing less than robber bands'.** He further said, misuse of power or authority anywhere in any situation is violation of natural justice to every human being which he is entitled to. As Dostovosky rightly puts it '**everyone is responsible to everyone for everything**'. Human beings need to be careful not to misuse the law against human beings in any manner.

4. Shri D. Diptivilasa

It was pointed out that most of the representations received in the Ministry of Home Affairs from the detenues pertain to cases registered under NSA in Uttar Pradesh. Approximately thousand such representations are received in the Government of India and there are cases of representations being accepted in cases where it is found that prevention detention was not warranted. Advisory Board has been constituted in every State which also hears the representations and gives its opinions after providing adequate opportunity to detenues to make a representation. There is no bar on the number of representations that can be made by the detenues, however, these would be justified whenever fresh grounds are quoted by the detenues. There is a need to educate the law enforcement authorities against indiscriminate use of preventive detention under the National Security Act. It was also noted that there are adequate safeguards in the National Security Act such as that the detenues should be provided an opportunity to be heard and make a representation which would be decided within a certain time frame. It is also provided that the grounds of detention are to be recorded in writing. The preventive detention law has been in existence for many decades and it cannot be said that no benefit has accrued from it to the society. Such a law is necessary and has proved the test of time specially in dealing with people involved in organized crime as well as who are intent on disrupting public order.

Session III: Detention in Juvenile Justice Homes

1. Shri P.C. Sharma, Member, NHRC

Member, NHRC, Shri P.C. Sharma said that the Juvenile Justice Act is a benevolent Act and it is not intended to punish children but rather to give care, protection and rehabilitate them. He expressed concern over the living conditions of children in some JJ homes, which he visited, as bad and highly unsatisfactory. He pointed out that enquiry required under JJ Act for administration of justice is not being done. There is utter lack of understanding of legal propositions and poor infrastructure. Children are kept under the same roof as other convicts. Shri Sharma stated that there is shortage of manpower. He observed that when children in JJ homes are to be handed over to their parents, it is found that either the parents are not there to receive them or proper addresses of parents is not available.

2. Shri Amod Kanth

Shri Amod Kanth said that juveniles at JJ homes can not be transformed by police but only through a social work organisation. According to him the biggest problem of the juvenile justice system is that it is seen from the criminal justice point of view whereas CrPC ceased to be a part of the Juvenile Justice Act after its enactment. Further, he added that a child who is a subject matter of JJ Act can not be a subject matter of the criminal justice system. A child cannot be arrested but can be taken into custody and the term apprehension is used in place of arrest. He further went on to say that the basic principles are very important for juvenile care, only when there is suspicion that the child will suffer from any sort of danger that he should not be released otherwise it is a matter of right. Also when a child is taken into protective custody then immediately the parents and the Probation Officer need to be informed. What normally happens is that when a child is arrested the police does not like to declare a person to be a child. He also highlighted the importance of social reintegration and rehabilitation to avoid detention. Finally he stated that the budget allocated

for 33 million juveniles is only 0.035 of the total budget. The words detention and arrest are not correct words, so 'protective custody' should be used.

3. Prof. B.B. Pande

Prof. B.B Pande said that police should not be brought in the matters of juveniles until and unless it is so required and the role of the police should be minimised. He said that the child should not be produced before the Child Welfare Committee rather the Committee should visit the child. He said that there is a bundle of contradictions in the Juvenile Justice Law of our country: first, at one point of time we want the law to be applicable to all children who need care and protection, but at the same time there is no adequate arrangement for them. He said the process of apprehension, custodialization and rehabilitation needs to be different and it should be a measure of last resort. He said a juvenile should be taken into custody only when he commits any offence punishable with more than 7 years of imprisonment and in other cases he should not be apprehended directly. He said that the police should gather social information about the child, find facts and inform the parents and Juvenile Justice Board without apprehending the child. He said that even after institutionalisation or detention, it has to be a care custody leading to their ultimate rehabilitation. He suggested that separate offices and institutions as per normative provisions should be constituted within one year. He said that deployed people should be trained and educated for the task of ultimate rehabilitation of children. He said that such a custodial condition should be created that can keep the best interests of children in mind, like food, health, clothing, basic needs etc. He said that child's individuality and dignity needs to be respected.

4. Prof. M.P. Singh

Prof M. P Singh said that the Constitution has bestowed special attention to the child. He said that the Fundamental Rights and Directive Principles of State Policy have special provisions for children's rights. He pointed

out that since 1994, every child has a fundamental right to get free and compulsory education up to 14 years. But children in our country are misused and abused in defiance of the provisions of law. He said that efforts should be taken for realization of the expectations of our constitutional makers.

Session IV: Mental Health Care

1. Justice Shri S. Rajendra Babu, Chairperson, NHRC

The Chairperson, NHRC said that health is not merely absence of disease but the state of complete physical, mental and social well being. He said that the law should protect the society from various manifestations of mental illnesses and must discuss about the proper care and protection of persons with mental disabilities.

2. Dr. (Smt) Shyama Chona

Dr. (Smt) Shyama Chona said that around 300 million people suffer from mental disabilities and 75% people are from developing countries where the services are inadequate. She pointed out that mentally ill persons are unable to access drugs. She observed that all the problems of such persons need a human rights approach and they that should not to be dumped in mental hospitals. Rather, they should be integrated in the society as they are part of it. Dr. Shyama Chona observed that the key component in mental health care is creation of awareness about the silent epidemics of mental disorder and human rights violations. She suggested that doctors and nurses should be trained to identify mental disorders at an early stage in the community. She said that cost effective strategies must be developed and public expenditure on health must be increased. She pointed out other methods of treatment like yoga etc should be utilised for speedy recovery. Dr. Chona stated that the society must respect persons with mental Disabilities and give them security and dignity.

3. Dr. Jagdish Kaur

It may be noted that patients in mental hospitals are not detainees. They are admitted in mental hospitals for treatment. Mental illness is like any other illness. The concept of family wards is now being promoted, where the family members are allowed to stay with the mentally ill during the period of admission in the mental health institution/hospital. Only violent patients are kept in separate wards, and they cannot be considered as detainees in any case. There is also a huge treatment gap for mental illnesses, acute shortage of trained manpower, especially the psychiatrists, clinical psychologists, psychiatric social workers, psychiatric nurses etc. and in rural areas there are no psychiatrists at all.

Because of the prevalence of communicable diseases in our country, and focus on maternal and child health, focus is directed on these areas. As a result, mental health care does not find priority and is neglected. National Mental Health Programme was initiated in 1982 but there were not much funds available for awareness generation and advocacy. During the 9th Five Year Plan, the District Mental Health Programme was started in order to provide psychiatric care at district level, in which emphasis was given to community mental health care. Institutional mental health care is not being promoted under the programme. During the 10th Plan, Rs. 139 crore was sanctioned for schemes such as modernization of mental health institutions, upgradation of departments of psychiatry in the medical colleges and District Mental Health Programme (DMHP).

In the 11th Plan, District Mental Health Programme is being revised to include the components of suicide prevention, school mental health, college counselling, and work place stress management in DMHP. Also there is a plan to create centres of excellence in mental health care in the country and measures to improve the availability of trained and qualified manpower in mental health in the country. A sum of Rs.1000 crore has been sanctioned for its implementation out of which Rs.400 crore has been earmarked for manpower development.

Annexure - I
Programme Schedule

National Human Rights Commission Workshop on Detention at Commission room, 3rd floor, Federation House, FICCI, Tansen Marg, New Delhi 11 – 12 October 2008

DAY-I, 11th October, 2008 (Saturday)

Inaugural Session

10.00 a.m. **Arrival of Chief Guest**

Lighting of Lamp

Welcome Address and aim of the Workshop

- Justice Shri S. Rajendra Babu, Chairperson, NHRC
- Address by Mr.Soli Sorabjee, Senior Advocate.

Key Note address: Detention and Human Rights

by Chief Guest – Baroness Vivien Stern, Honorary President,

Penal Reforms International, U.K.

Release of NHRC publications by the Chief Guest:

1. Mental Health & Human Rights.
2. Recommendations on Relief & Rehabilitation of Displaced Persons.

Vote of thanks by Shri A. K. Jain, Secretary General, NHRC

11.10 - 01.15 p.m. **Session-I**

ISSUE- DETENTION IN PRISONS, POLICE CUSTODY

Chair: Justice Shri B. C. Patel, Member, NHRC

Panelists:

1. Baroness Vivien Stern, Honorary President, Penal Reforms International, U.K.

(Detention in Prison - General Points about 60th Anniversary of UDHR & what it has achieved for people in Detention)

2. Prof. Venkata Rao, Dean, Faculty of Law, Andhra University, A.P.

(Rights of prisoners & response of Judiciary- Emerging Trends)

3. Prof. K.N. Chandrashekharan Pillai, Director, Indian Law Institute, New Delhi

Discussion

02.15 – 4.15 p.m. **Session-II**

PREVENTIVE DETENTION

Chair: Justice Shri G.P. Mathur, Member, NHRC

Panelists:

1. Shri Soli J. Sorabjee, Senior Advocate, Supreme Court of India

2. Shri D. Diptivilasa, Joint Secretary, Internal Security, Ministry Home Affairs

3. Dr. B. V. Kumar, Former Member, Central Board of Excise & Customs

4. Shri Sankar Sen, Former DG (I), NHRC Institute of Social Sciences

5. Prof. Ranbir Singh, Vice-Chancellor, National Law School, Delhi.

Discussion

4.30 - 6.00 p.m. **Session - III**

ISSUE – DETENTION IN JJ HOMES

Chair: Shri P. C. Sharma, Member, NHRC

Panelists:

1. Justice Shri A.K. Sikri, Judge, High Court of Delhi

2. Shri Amod Kanth, Chairperson, Delhi Commission for Protection of Child Rights

3. Prof. B.B. Pande, National Law School of India University, Bangalore.

4. Prof. M. P. Singh, Vice Chancellor, West Bengal, National University of Juridical Sciences, Kolkata.

Discussion

DAY-II, 12th October, 2008 (Sunday)

10.00 - 11.30 p.m. **Session-IV**

ISSUE – MENTAL HEALTH CARE

Chair: Justice S. Rajendra Babu, Chairperson, NHRC

Panelists:

1. Dr. D. Nagaraja, Director, NIMHANS, Bangalore
2. Dr. Pratima Murthy, NIMHANS
3. Dr. Jagdish Kaur, CMO (Mental Health), Ministry of Health and Family Welfare, Govt. of India
4. Dr.(Smt.) Shyama Chona, Principal, DPS, R.K. Puram.

11.45 -12.45 p.m. **Presentation of draft recommendations by Joint Secretary, NHRC**

12.45 - 1.30 p.m. **Wrap-up Session**

1.30 - 1.35 p.m. **Vote of Thanks by Joint Secretary, NHRC**

Annexure- II
List of Participants of the Workshop

List of Participants of the Workshop

1. **Shri R.P. Sharma**
   IGP, GC & HR
   Govt. of Karnataka
   Bangalore

2. **Shri G.S. Grewal**
   Special Secretary (Home) & Justice
   Govt. of Punjab
   Civil Secretariat
   Chandigarh

3. **Shri Sanjay Rana**
   Secretary (Home)
   Govt. of Andhra Pradesh
   Hyderabad

4. **Dr. Jagdish Kaur**
   Chief Medical Officer
   Ministry of Health
   New Delhi

5. **Dr. Shyama Chona**
   Principal, DPS
   R.K. Puram
   New Delhi

6. **Dr. Pratima Murthy**
   NIMHANS
   Bangalore
   Karnataka

7. **Mr. Gerry Pinto**
   Advisor
   BUTTERFILES
   CL-4, Green Park
   New Delhi

8. **Shri Amod Kanth**
   Chairman
   Delhi Commission for Child Rights

9. **Justice Shri A.K. Sikri**
   Judge
   High Court of Delhi
   New Delhi

10. **Shri Abani Kumar Sahu**
    Advocate
    Supreme Court of India
    New Delhi

11. **Shri Shams Uddeen. AK**
    Green Institute for F&D
    No. 5, (FF), Gautam Nagar
    New Delhi-1100029

12. **Shri G.S. Patnaik**
    Pr. Secretary (Home)
    NCT, Delhi

13. **Shri N.P.S. Parihar**
Joint Director
Social Justice Rewa
Madhya Pradesh

14. **Shri A. Nataraj**
DGP (Prisons)
Govt. of Tamil Nadu

15. **Dr. L. Mishra**
Special Rapporteur, NHRC

16. **Shri Sankar Sen**
Institute of Social Science
New Delhi

17. **Ms. Kanchan Chowdhary**
Special Rapporteur, NHRC

18. **Dr. John V. George**
DGP, Prison Department
Govt. of Haryana
Chandigarh

19. **Shri Rupinderjeet Singh**
Addl. Director
Social Security Women & Child Development Dept.
Room No. 102,103, Sector-34 –A,
Punjab, Chandigarh

20. **Shri A.K. Panda**
DIG (Prisons)
Meerut
Uttar Pradesh

21. **Shri Diptivilasa**
Joint Secretary (Internal Security)
Ministry of Home Affairs
North Block, New Delhi

22. **Ms. Asha Das**
Special Rapporteur, NHRC

23. **Shri R.S. Vijay Vargiya**
Addl. I.G. (Prisons)
Head Quarter, Bhopal
Madhya Pradesh

24. **Mrs. Sunila Basant**
Special Rapporteur, NHRC

25. **Prof Ranbir Singh**
Vice Chancellor,
National Law school, Delhi

26. **Suman Manjari**
SSP
Haryana, HPA Madhuban
Karnal, Haryana

27. **Dr. V.K. Goyal**
Director
Forensic Science Laboratory
Govt. of NCT of Delhi
Madhuvan Chowk, Sector 14
Rohini, New Delhi-85

28. **Shri Loknath Prehera**
IG, HQ
Police Head Quarters
Trivandrum, Kerala

29. **Prof. M.P. Singh**
Vice Chancellor
West Bengal National University
Kolkata, West Bengal

30. **Binobala Nongmeikapam**
Child Welfare Officer
Dept. of Wocial Welfare
Govt. of Manipur, Near 2nd M.R. Gate
Imphal, Manipur

31. **Konsam Saroja**
Dept. of Wocial Welfare
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Imphal, Manipur

32. **Dr. Sarita Swamy**
Member
Child Welfare Committee
Mayur Vihar, Phase-I, Nursery School, East Delhi
& Director, SEWAK (NGO)

33. **Dr. Jayadev Sarangi**
Prison Expert
UNODC, Chandragupta Marg
Chanakyapuri, New Delhi-21

34. **Shri S.A. Awacochi**
Director (SW)
NCT, Delhi

35. **Dr. D. Nagaraja**
Director
NIMHANS

36. **Shri Vivek Gogia**
DIG,
Govt. of Punjab,
Chandigarh.

37. **Shri K.S. Rana**
ADGP,
Govt. of Himachal Pradesh,
L&O Shimala.

38. **Baroness Vivien Stern,**
Penal Reform Informational
U.K.

39. **Shri R.P. Upadhyaya**
Addl. CP/Vigilance,
Delhi Police,
New Delhi

40. **Shri R.S. Yadav (IPS)**
Goa Police,
Goa.

41. **Shri Soli Sorabjee,**
Sr. Advocate,
A-128, Neeti Bagh,
New Delhi.

42. **Shri Deshraj Meena, IPS,**
ADG, Orissa.

43. **Dr. J.K. Agrawal,**
Director,
State Forensic Science Laboratory,
Sagar, M.P.

44. **Dr. K.N. Chandrasekharan Pillai**
Director Indian Law Institute Bhagwandas Raod,
New Delhi-1.

45. **Dr. Mira Shiva**
Coordinator,
Institute for Health Equity & Society,
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46. **Dr. Rukmani Krishnamurthy,**
Director,
Directorate of Forensic Science Labs.,
Govt. of Maharashtra Kalina,
Vidyanagri, Mumbai-400098.

47. **Shri S.S. Kapur,**
DIG/SCB,
PHQ, Sector-6,
Panchkula (Haryana).

48. **Shri V.K. Panwar, IPS,**
Addl. DGP AJK
PHQ M.P., Bhopal.

49. **Shri Sanjay Goel,**
Collector-DIV,
UT of Daman & Diu.

50. **Shri Panchi Gopal Dutta**
Secretary, Law & Jail, ASN (Admn.)
Secretariat, Port Blair-744101.

51. **Dr. Prateep V. Philip, IPS**
Govt. of Tamil Nadu

52. **Shri Rizwan Ahmad, IPS,**
Addl. Director General of Police,
Human Rights, U.P.,
Lucknow.

53. **Shri Nisar Ahmed, IPS,**
SP CID CB (HR),
Rajasthan, Jaipur.

54. **Shri B.V. Kumar,**
103, 17 'C' Main Road,
5th Block, Korangala Bangalore-560095

55. **Shri R.L. Sood, IPS,**
DIG (Prisons)H.P.,
Shimla-171009.

56. **Shri Ram Lakhan Prasad, IPS,**
I.G. of Police Human Rights,
Jhankhand Ranchi.

57. **Shri Vivek Dube,**
Addl. D.G.P., O/o DGP, AP,
Lakdi-ka-pul,
Hyderabad (AP)-500 004

58. **Shri Chander Shekhar, IPS,**
ADGP I.V.C. & Human Rights Punjab.

59. **Shri Roop Kumar Arora,**
AIG Prisons DGP (Prisions)
Punjab, Chandigarh.

60. **Len. L. Doungel, IPS,**
DIGP (CID), Nagaland Police Hqrs.,
P.R. Hill,
Kohima, Nagaland.

61. **Shri F.P. Holoni,**
Director, Social & Defence
Govt. of Gujarat Block No.16,
Ground Floor, Dejivraj Mehata Bhawan,
Gandhinagar-3802010, Gujarat.

62. **Prof. B.B. Pande,**
NHRC Chair Professor, 34, Shankar Nagar,
Lucknow-226020.

63. **Ms. Rewati Charan Patel (IPS),**
IG AJK/HRC, Chhatisgahr Police,
Chhatisgarh, Raipur

64. **Shri B.D. Sharma, IPS,**
IG of Correctional Series,
E-Block, Writers Buidings,
Kolkota, West Bengal.

65. **Shri Rajan Priyadarshee, IPS,**
Addl. DGP & IG Prisons,
Gujarat State, Ahmedabad.

66. **Prof. R. Venkatrao**
Professor, Dean Faculty of Law,
Andhra University, Bishakhapatnam

67. **Shri R.K. Bhargava, Spl. Rapporteur, NHRC**
Central Zone, New Delhi.

68. **Shri Damodar Sarangi, Spl. Rapporteur, NHRC**
New Delhi

69. **Mrs. Naseem Khan,**
Joint Director, Social Justice, Indore, M.P.

70. **Shri Jatinder Gupta,**
Deputy Secretary,
Social welfare Deptt. J&K Srinagar.

Background Papers for the Workshop

Introduction

Arrest involves restriction of liberty of a person arrested. Nevertheless, the Constitution of India as well as International Human Rights law recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Article 21 of the Constitution of India asserts that 'No person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 Clause (1) and (2) confer four rights upon a person who has been arrested. Firstly, he shall not be detained in custody without being informed of the grounds of his arrest. Secondly, he shall have the right to consult and to be represented by a lawyer. Thirdly, he has a right to be produced before the nearest Magistrate within 24 hours of his arrest and fourthly, he is not to be detained in custody beyond the period of 24 hours without the authority of the Court.

Article 3 of the Universal Declaration of Human Rights (UDHR) proclaims that 'Everyone has the right to life, liberty and security of person.' Article 5 of UDHR further says that ' No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Article 9 of UDHR asserts that 'No one shall be subjected to arbitrary arrest, detention or exile.' Article 10 of the International Covenant on Civil and Political Rights stipulates that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

The National Human Rights Commission has always held the view that mere imprisonment does not take away the Fundamental Rights of a

person, and especially once in the custody, the person becomes the responsibility of the State and the State is bound to ensure that the basis rights guaranteed to him in the Constitution.

Under Section 12(c) of the Protection of Human Rights Act, 1993, the National Human Rights Commission has the statutory responsibility to "visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government." In pursuance, the Chairperson, Members, Special Rapporteurs and officers of the Commission have been visiting various places of detention across the country. Based on these visits, the Commission has made detailed recommendations to authorities, which are also monitored on a continuing basis.

The National Human Rights Commission has taken up inspection of police lock ups, prisons, juvenile homes and mental hospitals and has come across many rights violations. Besides redressing individual complaints of rights violations, the Commission has also recommended systemic reforms in Police, Prisons and other centres of detention. The Commission has laid down stringent reporting requirements for reporting of custodial deaths/ rapes, issued guidelines on arrests, mentally ill persons in prisons, medical examination of prisoners, speedy trial of undertrial prisoners, premature release of prisoners.

The UN Secretary General has launched a year-long campaign to celebrate the 60th Anniversary of the Universal Declaration of Human Rights. The theme of the campaign is 'dignity and justice for all of us'. In this framework, the Office of the High Commissioner for Human Rights [OHCHR] has chosen to pay special attention to the situation of persons deprived of their liberty in prisons and other places of detention.

The Office of United Nations High Commissioner for Human Rights has designed the week of 6-12 October, 2008 as Dignity and Justice for Detainees Week. Accordingly, the National Human Rights Commission of India is organizing the Workshop on Detention' on the following issues: (i) Detention in Prisons (ii) Detention in Police Custody, (iii) Preventive Detention, (iv) Juvenile Justice Homes and (v) Mental Hospitals. The Workshop seeks to promote protection of the rights of detainees.

The objectives of the workshop are:

- to share best practices amongst States/Union Territories
- to identify gaps if any in the implementation of constitutional and statutory safeguards for the protection of rights of detainees and to suggest remedial measures
- to evolve suitable recommendations to all authorities for better protection and promotion of human rights of detainees

UN High Commissioner's Statement while launching Dignity and Justice for Detainees Week

When launching the Dignity and Justice for Detainees Week initiative, the High Commissioner for Human Rights Navi Pillay called on national human rights institutions, non-governmental organizations, the media and other partners worldwide to pay special attention to the rights of people who are deprived of their liberty in prisons and other places of detention.

"There are problems relating to detention in almost all countries, both in the North and in the South, in the developed world and the developing world," said the High Commissioner in a press conference to launch the initiative.

The initiative aims to make the public aware that detainees do not forego their human rights while in detention, to help national authorities to improve respect for detainees' rights, and to raise the international profile of issues related to the rights of detainees.

"The nature of the problems can vary enormously. It may centre around a particular piece of legislation that seeks to short-circuit due process, or omits essential safeguards, or it may manifest itself in widespread, open-ended detention of people for political or other reasons which, under international law, should not be considered as crimes," the High Commissioner said.

The High Commissioner underlined that her office is constantly engaged in the battle against impunity. "We are not against prisons and detention

centres per se – but they should be reserved for those who really deserve to be there according to the extensive, detailed and fundamentally sound international standards governing criminal justice," she said.

During this week, all partners are encouraged to adopt a wide perspective on detention in order to address the plight of especially vulnerable groups. They should look, in particular, at the situation of women and girls, children, people with disabilities, and migrants (including refugees and asylum seekers) deprived of their liberty.

OHCHR is also funding projects by a number of national human rights institutions to raise the issue of detainees' rights. They include workshops on the rights of detainees, human rights training for prison wardens, and publicity campaigns to enhance awareness of the Universal Declaration of Human Rights among detainees, law enforcement and judicial officers, and the general public.

While the Dignity and Justice for Detainees Week will serve to draw the spotlight onto detention, sustained improvements in the conditions of detainees will require action before the week begins and after it.

"We would like people to focus on the issue longer term, since many of the problems we are focusing on are systemic, and it will take time and sustained effort to bring about major improvements," said the High Commissioner.

Statement by 13 UN experts on global detention initiative

6 October 2008

Thirteen independent experts of the UN Human Rights Council issued the following statement at the start of Dignity and Justice for Detainees Week – a global initiative launched by the High Commissioner for Human Rights – which takes place from 6-12 October 2008:

GENEVA – "We strongly support the High Commissioner's initiative on improving respect for the human rights of detainees. As mandate holders of the Special Procedures of the Human Rights Council, we visit places of detention in many countries and receive information from all around the world. A serious problem we encounter is that often there are no proper records of those deprived of liberty, or, worse, they are held in places of detention that are not officially recognized. It is also of great concern that many people should not be deprived of their liberty at all, since their detention is arbitrary. Others are being detained solely on the basis of administrative orders unrelated to the criminal justice system, for example irregular migrants. Deprivation of liberty as such, whether lawful or not, makes persons extremely vulnerable to a broad range of human rights violations.

Often detention places undue restrictions on detainees including regarding access to health care and on their rights to food, education, privacy, family life and to participate in the political life of their country. Worse, in many cases, overcrowding, the lack of air and daylight and poor hygienic standards in detention literally make detainees ill as such conditions are conducive to the spread of disease.

Persons deprived of their liberty run an increased risk of being subjected to torture and ill-treatment, and in some extreme cases, to enforced disappearance. The range of forms of violence we have witnessed in detention facilities is wide and includes beatings and electroshocks to various parts of the body, threats, stress positions, burning, putting needles under fingernails, shooting, water boarding and sexual violence. Unfortunately this is by no means an exhaustive list, and new methods keep being invented.

All too often we have seen that discrimination existing in societies at large is exacerbated when people are deprived of their liberty. Even when policies and practices aim to treat everyone equally, they often overlook the particular needs of women, minors, non-citizens, the sick and the disabled. Poor detainees suffer disproportionally from overcrowding and their access to healthcare and food is often reduced to a minimum. Those detained far from home suffer the most for lack of family support. Members of vulnerable groups or women run an increased risk of falling victims to sexual violence and slavery-like practices within places of detention, frequently with the tacit approval of, or directly committed by, State officials. Too often detention serves as a means of punishment without educational opportunities, thus further marginalising detainees rather than helping them to prepare for release.

Since violations of detainees' rights by definition take place behind closed doors and, in many places, no effective channels exist to denounce them, injustice done to detainees all too often remains unknown of and unaccounted for.

On the occasion of the week on "Dignity and Justice for Detainees", we call on all States to do their utmost to ensure that detainees, as all other human beings, are treated with respect and dignity. We also appeal to States to provide for effective complaints and monitoring mechanisms in places of detention, including efficient avenues to challenge the legality of

detention and access to legal counsel, with a view to making human rights a reality for them.

Signatories:

Mr. Philip Alston, Special Rapporteur on extrajudicial, summary or arbitrary executions;

Mr. Jorge Bustamante, Special Rapporteur on the human rights of migrants;

Ms Manuela Carmena Castrillo, Chairperson-Rapporteur of the Working Group on Arbitrary Detention of the Human Rights Council;

Mr. Santiago Corcuera Cabezut, Chairperson of the Working Group on Enforced or Involuntary Disappearances;

Mr. Olivier de Schutter, Special Rapporteur on the right to food;

Mr. Leandro Despouy, Special Rapporteur on the independence of judges and lawyers;

Ms. Yakin Ertürk, Special Rapporteur on violence against women, its causes and consequences;

Mr. Anand Grover, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health;

Mr. Vernor Muñoz, Special Rapporteur on the right to education;

Mr Manfred Nowak, Special Rapporteur on torture and cruel, inhuman and degrading treatment or punishment;

Mr. Martin Scheinin, Special Rapporteur on the promotion and protection of human rights while countering terrorism;

Ms. Magdalena Sepulveda, Independent Expert on the question of human rights and extreme poverty;

Ms. Gulnara Shahinian, Special Rapporteur on Contemporary forms of slavery, its causes and consequences.

Detention

Detention following arrest is - at least in the eyes of the public - the single defining 'police action'. The ability to lawfully arrest and detain a person is provided in law because it is critical to the justice process. However, because of the drastic consequences for the liberty of the individual, arrest and detention are also an area where there is scope for infringement of basic rights. These usually relate not to the fact of arrest and detention itself, but to the manner in which the arrest and detention are carried out: someone subject to lawful reasons for detention has not thereby lost his right to be treated humanely, with minimal force, and with full information about his situation.

Before we continue further, it is important to provide basic definitions of arrest and detention. The following definitions have been drawn from the United Nations-devised Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Although they may differ from country to country, these definitions may enable understanding of the basic rights during the legal processes that are followed in the course of law enforcement.

'Arrest'

'Arrest' means the act of apprehending a person for the alleged commission of an offence or by the action of a lawful authority. Arrest is a lawful method to secure the attendance of a suspected criminal at his or her trial.

'Detention'

'Detained person' means any person deprived of personal liberty except as a result of conviction for an offence. 'Detention' means the condition of detained persons as defined.

'Imprisonment'

"Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence. Imprisonment means condition of imprisoned person as defined.

Thus, detention is the most basic deprivation of a person's freedom. Detention is a limitation of a person's liberty by the exercise of control (police or judicial) over their movements. Persons can be detained for short or long periods, depending on domestic legislation. In all these instances they have basic human rights that one should respect and protect.

We can not ignore the fact that all persons who are deprived of their liberty are vulnerable to mistreatment, especially women and children.

Detention is broadly of two type:-

1) Detention in Police custody

Detention in police custody is followed by lawful arrest of a person, (though it is a fact that in many cases, people are simply kept under detention without any arrest or any notice or any other lawful provisions). Persons detained in police custody are not yet convicted of any crime. They are to be presumed innocent until proven guilty in a competent court of law. Therefore, the conduct towards detained persons should always be in strict compliance with the law. Detained persons should always be treated humanely and with due respect.

2) Detention in judicial custody

Detention in judicial custody is followed once an arrested person is produced before Court after arrested and sent to jail. Those who are in judicial custody may be convicted who have been awarded punishment after lawful trial or they may be UTP's (Under Trail Prisoners) who are at

trial stage. It is again reiterated that merely sending to prison does not prove guilt of some one hence UTP's are assumed to be innocent till they are convicted. However irrespective of UTP or convict, those who are in judicial custody also have some rights which one has to protect they being human in nature, and being in the custody of state.

Hon'ble SC in D.K. Basu v /s state of W. Bengal observed that–

"Right to life is one of the basic Human rights. It is guaranteed to every person by Art. 21 of the constitution and not even state has the authority to violate that right. A prisoner be a convict or under trial detenue, does not cease to be a human being. Even when lodged in jail, he continue to enjoy all his human fundamental rights including right to life guaranteed in the Constitution, On being convicted of crime and deprived of their personal liberty in accordance with procedure established by law, prisoner still retains the residue of Constitutional rights."

There is however one more form of detention which unfortunately is widely prevalent as a practice and is accepted by all ranks in the hierarchy of police i.e. illegal detention. It is unfortunate that in spite of powerful and sufficient laws in the hands of police, they still resort the old practice of picking up suspects, detaining them for days and days till they are not convinced of the role of suspect in that particular crime. These detainees are most vulnerable as there is no record of their presence in police custody, hence there is hardly any accountability. Though there are provision like 160CrPC which empowers police officer to call any person for interrogation/ enquiry merely on suspicion and such person can be called to PS after sending a summon and by making an entry in appropriate records in this regard, however in practice hardly any notice is given or record is maintained and in some cases if it is found to the last day of the detention when police being convinced of innocence at least at that moment allow the suspect to go.

Rights of a person in custody:-

Constitutional Rights

Article 14, 19, 21 and 22 of the constitution of India protects the rights of those under detention.

Article 21 ensures that no one will be deprived of his /her life and liberty except according to the procedure adopted by law. Art 22(2) of constitution provides that once detained, detainee must be produced before nearest magistrate within 24 hours excluding journey time and in no circumstances an accused can be kept in detention in police custody for more then 15 days on the whole as per section of 167 Cr.PC.

Article 22 (b) provides that no person arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice.

Even at the time of interrogation an accused has right to have his lawyer by his side and to keep silence to the question which may expose him to criminal charges.

Safeguards in Cr.P.C

The worst form of human rights violation in detention is the torture mainly for confession, for extracting information or for recovery. There are provisions in Cr.P.C. which deals with such human rights violations. These are section 161 and 162, 163 Cr.P.C. which are aimed at protecting the rights of person under detention from the torture.

Apex Courts Guidelines

There are large number of cases where the issue of arrest and detention has been discussed again and again in Apex Court. It is not possible to highlight each and every case here. However some landmark Judgements have been enumerated below, which became guideline for practical purpose:-

The issue of rights of person in detention has been dealt by the Hon'ble SC at length in Joginder kumar v/s state of U.P. and others. Joginder Kumar was a young person who after completing his law enrolled himself as an advocate. One day he was called by SSP Gaziabad in his office for making some enquiries in some case. The petitioner on 7/1/1994 along with his brothers appeared before SSP wherein he was detained and relatives were informed that he would be free by evening after making some enquiries. However when petitioner did not turn back till 9/1/94 and no satisfactory reply was given about petitioner and his whereabouts were not informed by police, the brothers of petitioner moved to SC. There the Court found that the victim was detained illegally for five days by police. There the court found violation of Art 21 and 22(1) of constitution and while delivering judgement the court issued directions that:-

i) An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take interest in his welfare told as far as is practical that he has been arrested and where he has been detained.

ii) The police officer shall inform the arrested person when he is brought to police station of this right.

iii) An entry shall be required to be made in the Diary as to who was informed of the arrest. This protection from powers must be held to flow from Art 21 and Art. 22 (10) and enforced strictly.

iv) It shall be duty of Magistrate before whom the arrested person is produced to satisfy himself that these requirements have been complied with.

In D.K. Basu v/s state of W. Bengal the issue of arrest and detention was again taken up in detail and Apex court came up with exhaustive guidelines with regards to arrest and detention. The guideline code process for arrest as well as the treatment of accused after arrest i.e. in detention phase so that the fundamental rights of a person even in custody can be protected.

In Sube singh v/s state of Haryana court stressed on the documentation of each arrest and detention, on entries in appropriate records as well as the computerisation of all records to avoid any manipulation in the records

In Charles Shobraj v/s D.Supt Central Jail, Tihar It was observed that:-

"true conferred with the cruel condition of confinement the court has an expanded role. True, the right to life is more than mere existence, or vegetable subsistence. True the worth of human person and dignity and divinity of every individual inform Art. 19 and 21 even in prison setting. True constitutional provisions and municipal laws must be interpreted in the light of the normative laws of the nation wherever possible and a prisoner does not forfeit his part III rights".

In brief some of the rights enjoyed by a person in detention can be coded as follow:-

Right to be informed of the reasons for being detained

- Every detained person has the right to be informed promptly of the reasons for detention. This should be done as soon as reasonably possible under the circumstances. If it can be done immediately, then it should be.

Right to liberty and presumption of innocence

- Everyone has the right to liberty and security of the person. No one shall be deprived of his or her liberty except on such grounds and in accordance with such procedures as are established by law.
- Everyone charged with a penal offence has the right to be presumed innocent until proven guilty in a fair trial.
- Every detained person has the right to be treated humanely, with dignity and respect.

Custody as an exception to the norm

- Detention in custody pending trial shall be the exception rather than the rule.

Access to justice

- The right to have the lawfulness of detention challenged in a court of law and to be released if successful. This can happen, for example, when the detained person applies for bail.
- Decisions about the duration and legality of detention should be made by a judicial or equivalent authority.
- Anyone who is arrested has the right to trial within a reasonable time, or to release.
- A detained person shall have the right to defend himself or herself, or to be legally represented.
- All detained persons shall have access to a lawyer or other legal representative, and the opportunity to communicate with that representative.
- The right to appear before a judicial authority, and to have the legality of the detention reviewed.
- No one shall take advantage of the situation of a detained person to compel him or her to confess, or to otherwise incriminate himself/herself or another person.
- The right to be free from all forms of violence from either public or private sources.
- The right not to be subjected to torture or to other cruel, inhuman or degrading Treatment or punishment, or to any form of violence or threats.

- Persons should only be detained in officially recognised places of detention.
- Detainees shall be kept in as humane facilities as are possible, designed to preserve health, and shall be provided with adequate food, water, shelter, clothing, medical services, exercise and items of personal hygiene.
- Untried prisoners shall, except in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment.
- The right to contact with the outside world.
- The right to visits from family members, and to communicate privately and in person with a legal representative. The right to inform the families and legal representatives of full information about detention. An untried prisoner shall be immediately allowed to inform his family of his detention, and shall be given all reasonable facilities for communicating with his or her family and friends.
- Untried prisoners might for example be allowed to have their food procured at their own expense from outside, and to wear their own clothing if it is clean and suitable.
- Untried prisoners shall generally be allowed to procure at their own expense books, newspapers and writing materials.
- Untried prisoners may be offered the opportunity to work, but shall not be required to work.
- The right of detainees to have religious and moral beliefs must be respected.
- Persons arrested or detained without charge shall be accorded the same protections and facilities as pre-trial prisoners.

NHRC is deeply concerned about the rights of those who are in detention since Commission strongly believes that merely imprisonment does not takes away the Fundamental rights of a person and specially once in the custody, the person becomes the responsibility of the state and state is bound to ensure that the basic rights guaranteed to him in the constitution should be protected even in the custody. Moreover majority of those in custody are either detenue or under-trials so they are assumed to be innocent as their guilt is not proved, there fore it becomes more important to take care of those rights. Hence protection of rights of those in detention is at priority for Commission as most of them are either treated with neglect or hatred since they are accused of doing wrong in society. They hardly have any support from society and in many cases even from their own family.

They are highly venerable specially women and children and their fate lies at the mercy of authority detaining them.

Hence NHRC continuously monitors that the constitutional and legal safeguard provided in constitution and delivered again and again by apex court and law of land should be adhered by the enforcement agencies. NHRC does this by giving instructions and guidelines from time to time pertaining to human rights of those in detention, entertaining complaints and making enquiries, visits to places of detention through team of IOs and Special Rapportears by calling reports on any issue of human rights importance pertaining to those in detention.

Monitoring of detention in Police Custody

Once in police custody the suspect is placed in side lock up till he is sent to judicial custody. Therefore the condition of lock up, the attitude of police officers towards suspect in police stations and safety of suspect in lock up is prime area of concerned. Lock up should be a place of detention and not of torture. It should be clean, hygienic and with basic facilities like

clean toilets, drinking water and ventilation. There should be separate lockups for male and female. The police station should have well documented records of those who are detained inside lock up with details like when they were arrested and placed inside lock up and for what offence. To have monitoring over the lock ups in police stations NHRC issued a letter to all Chief Secretaries/Administrator of all states/ UTS wherein they were asked to co-operate the officers of NHRC during their visit to police lock ups.

Keeping in view the fact that in order to get the matter solved or as a short cut to investigation, many officers adopt torture as a tool and those who are in detention hardly have courage to raise their voice, they being in captivity and inaccessible. Therefore Commission while formulating guidelines for arrest also took care of this aspect and instructed all the States that:-

(i) The person under arrest must be produced before the appropriate court within 24 hours of the arrest (Sections 56 and 57 Cr.P.C.).

(ii) The person arrested should be permitted to meet his lawyer at any time during the interrogation.

(iii) The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation.

(iv) The methods of interrogation must be consistent with the recognised right to life, dignity and liberty and right against torture and degrading treatment.

However major challenge is to deal with the cases of illegal detention as, detainees in illegal detention are most susceptible to police excess as there is no records of they being in the custody of police hence there is

hardly any accountability of the police. To check this, on one hand NHRC is trying to sensitise police officers through training programmes, seminars, conferences, instructions and guidelines conveyed to States while on other hand enquirying into the matters of detention wherever any complaint is received and recommending strict action, both criminal and departmental wherever such complaints are found true, besides giving interim relief to the victim. The reporting of death, rape in custody within 24 hrs of incident to the commission, the mandatory PMR along with video recording, compulsory MER etc are the direction issued by commission to all state in the interest of protection of those who dies in police custody to know whether death was natural or not.

The recent amendment in Section 176 of Cr.P.C. wherein all deaths/rapes etc. in police custody which were earlier enquired by executive magistrate will be enquired by judicial magistrate was a step welcomed by NHRC as a move towards preventing Human Rights violation in custody.

However illegal detention is still a big challenge and menace of the problem can be imagined from the fact that majority of complaints received in commission mainly complain about picking up and illegal detention of victim. Commission feels that until and unless the respect for Human Right is inculcated in the police personnel at induction level, they by themselves won't respect them and till the senior officer's does not start disapproving it and take action against those found guilty the problem may not be solved. Training division is continuously engaged in the HR sensitisation while PRP&P and training Division are also engaged in preparation of Training manuals for training in human rights of all rank officers. Commission also carried out a two day seminar on Custodial Justice where the treatment of suspects in detention and protection of Human rights of those in detention were major issues for discussions.

Protection of Human rights in judicial custody

Unlike police lock up which are still accessible both by the relatives of the suspects as well as to the media, (once arrested and placed behind the bar, the HR of the suspect are still protected due to proper records being maintained), the jails are inaccessible, with an iron curtains and hence what is going behind the four wall hardly comes to the lime-light. Even the outside world is also hardly concerned or sympathetic for the well being of those in prison because of social stigma and attitude that all those inside jail are bad people and a threat to society. Confined inside jail they are on the mercy of jail officials for food, shelter, daily needs, meeting their near dear ones during Mulakats, access to information, medical assistance etc. They are even not in position to complain about their Human right violations either by the co-prisoners or jail officials as again they have to live with same fallow prisoners under control of same jail authority.

During one of the visit to the jail in Assam the Commission came across a person named Lalang Machang who was found in the judicial custody for almost 52 yrs for a simple offence of hurt case. He appeared to be forgotten by the police, Courts as well as the prison itself. So much was the impact on the mind of this person that he lost the sense of time feeling of happiness and sadness. In fact he lost his life for all practical purpose. Though commission besides asking for his immediate release ordered compensation also but no money could compensate the years of his life which were taken away from him for no fault of him. Surprisingly on further enquiry it was found that he as not an exception and there were other people who were languishing in jail since more then 30yrs etc.

Realising that this cant be an exception and hence there may be more people like him in other jail of various state, the Commission took up this issue with other state also for release of such FORGOTTEN SOUL.

Commission is appraised of the vulnerability of prisoner and also the fact

that prisons are not free from aberration of corruption, groupism , Mafia, violence by fallow prisoners or some times by jail officials for extortion, or to teach a lesson or as punishment, hence commission has issued instruction that all report within judicial custody must be reported to the commission within 24 hr of the incident followed by PMR , Video recording of PMR, MER etc so no death should go unreported and unexplained. All these reports are scrutinised by the officer in commission and wherever any foul play or medical negligence is established the commission not only recommend for strict action against guilty official but also compensation of the NOK of the victim.

In past commission has come across cases where prisoner was either killed or was forced to commit suicide.

One such case investigated by the Investigation Division of commission was pertaining to death of UTP Kuldeep lodged in District Jail Agra who committed suicide as he could not tolerate his beating by some jail officials in front of fellow prisoners on a false allegation.

Overcrowding in jails is the most challenging issue as there are many problems related with living condition which are direct fallout of over crowding. NHRC's visit to Gopalganj District jail in Bihar was shocking experience for the visiting team. No one could believe that even after the 59 yrs of independence in a district jail which happens to be the district of CM of that state for past 14 yrs, more then 500 prisoners were kept inside a jail of capacity of ———. In the name of jail there was boundary wall of approximately 8 mtrs height, small two hall of capacity of hardly 150, prisoners, and rest of the prisoners were simply accommodated in open space of under sky, where they have to survive irrespective of heavy rain, chilling winter or hot painful summers. Even the plastic tarpaulin sheets to cover was also not provided by the jail administration and they were arranged by prisoners themselves, Where prisoners were sleeping in shift

and one has to buy space (seat) from some leader of the prisoner (Seatdar) who used to be senior prisoner. Those who were poor had to sleep at place where all dirt and sewer water was accumulated. Different groups on the basis of caste were formed, catered by prison officials of same caste. The corruption was rampant. Medicines, blankets, food were mostly purchased on paper, no records were maintained and even the visits of senior officers, which as per record was regular could not notice the plight of prisoners. The fact finding report on the condition of Gopalganj District Jail was taken seriously by the Hon'ble Commission and same was discussed with senior officers during Camp Commission at Patna in May, 2007. It was Commission's assertion and continuous monitoring that the prisoners were finally shifted to new jail.

The death in Tihar Jail in summer of 2007 was seriously taken up by NHRC and a team of NHRC visited all the jails in Tihar Complex to know the reasons for sudden spat in number of deaths and also the living condition of prisoners inside jail. The team found that living condition in Tihar Jail, which is considered as Model Jail was pathetic. Barrack were stinking with no ventilation, cells were suffocated, water was insufficient, hospitals were not well equipped with medicines, supporting staff. There were 9 X-ray machines, but only one operator to deal with them. Atrocities on prisoners by some fellow prisoners as well as victimisation on false complaints of prisoner in the name of punishment etc were alleged by many inmates. The team found that insensitivity and negative attitude of prison official and medical negligence of medical officials in jail costed 3 lives. It was also revealed that the violence with prisoner, even if they left marks were often concealed by jail authorities. Commission also found tat there were cases where prisoner at the time of entering in jail or inside jail sustain grievous injuries but there was hardly any record of it. Observation of NHRC was placed before Hon'ble Delhi High Court. Copy of report was also sent to Delhi govt for compliance. On direction of HC, team again visited Tihar jails and it was found there was satisfactory

improvement not only in the living conditions of the prisoner with respect to fresh air, fan, cleanliness of toilets, sufficient availability of drinking and potable water, food, and medical facilities but also the problem of overcrowding which reduced considerably after court's order to release those on 107/151, the adoption of plea bargaining and restrain on the tendency of police officer to book people in 107/151 without proper justification.

Medical negligence is one aspect which is again a major concern for the commission. It is fact that even Jail staff including medical staff lack, the positive attitude towards prisoner and they also treat them as dirt or scum of society who do not deserve any sympathy. As mentioned earlier, Commission has directed states to report all the deaths in custody to Commission within 24 hrs. Accordingly Commission is receiving information. After scrutiny of deaths in judicial custody, Commission found that about 70% of deaths in jails were due to infectious diseases, especially tuberculosis. Commission found that health screening at the time of entry in majority of cases was a routine procedure and an eye wash and hardly there were any periodical medical examination. In most of the cases reported, the prisoner at the time of entry had very good health but in no period of time he died of TB (within a year or two). Therefore commission directed all State Govt. and authority in charge of prison administration to immediately take up and ensure the medical examination of all prisoners and to ensure timely and effective treatment. Commission even circulated a proforma for health screening of prison on admission to jail. To further ensure that medical negligence should not contribute to death Commission has constituted penal of Doctors from various streams of medicine and forensic science who analyse the cases of suspected medical negligence in Custody.

Diet of the prisoner was again one area where Commission found that in some states diet money per prisoner was sufficient, but in many states it

was insufficient. The intervention of Commission resulted in increase in the diet money of prisoners in many jails of various States.

Mere thought of being inside jail may bring shivers in the bones of a common man and if one day some person found himself there in isolation, away from normal life, it becomes difficult to cope up with it. Though most of the prisoners with passage of time get adjusted but there are some who are mentally challenged or other who starts loosing mental balance inside jail because they are not able to cope up. Such mentally challenged or unbalanced prisoners need special care and treatment and they cannot be kept with ordinary prisoner as it may be risky for them as well as for others. Therefore NHRC, being concerned about rights of mentally challenged prisoners; issued direction to all state that mentally challenged prisoners will be kept in mental hospital under surveillance and care. Further it was also directed that in mental hospital they will not be chained.

Corruption, extortion and sexual exploitation are some of the human rights violation which is often alleged by the NOK of victim who dies in custody. There are serious offences but worst part is that these allegations hardly comes when a person is alive as he/she does not have courage to open mouth against those on whose mercy he/she is living. During visits to jails allegation of corruption in allotment of barracks, allotment of work etc. often alleged by inmates in Mulakat and there issues are again and again brought before the concerned Jail Administration but the Commission feels that still there is lot of scope for improvement. As a step in this regard, in order to improve administration the Commission directed all the States/UTs to fix tenure of DG/IG Prison.

We all know that of the entire prisoner lodged in jail more than 60 % are UTPs who are innocent in the eyes of law, however they have to languish in jails for years and years, some time for more than the period they would have spent as punishment for the offence they committed. The Commission

feel that the Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the constitution. Most of the time, it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy for seeking a bail and its grant by the court. Commission believes that Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right to freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.

Therefore Commission advised all states and UT's, to prescribe the total period of imprisonment to be undergone including remissions, subject to minimum of 14 years of actual imprisonment before the convict prisoner is released. The Commission is of the view that total period of incarceration including remissions in such cases should ordinarily not exceed 20 years. (Detailed guideline given in NHRC handbook).

The concern of NHRC about the welfare of prisoners can be realised from the fact that it was NHRC who came out with the proposed Draft bill on Prison in 1996. The same was circulated to states for their comments. Though the comments were hardly received from all states however the same proposed bill became basis of many state jail manuals as well as the BPR&D manual on prison.

Preventive detention

The word "preventive" is used in contradiction to the word "punitive". What needs to be understood is that it is not punitive but preventive measure. While the objective of punitive detention is to punish a person for what he has already done, the objective of preventive detention is not to punish a person for having done something but to intercept him before he does it and to prevent him from doing it.

A. National Legal and Administrative Framework

I. Constitution

One. The Fundamental Rights.

The Indian Constitution, guarantees a range of Fundamental Rights, provides which for the rights of the person detained under the law of preventive detention and also the procedure to be followed after making such arrest.

Article 22 clauses (4) to (7) provides for the following procedure to be followed in cases of arrest made under preventive detention laws:

a. Clause (4) provides that no law providing for preventive detention shall authorize the detention of a person for a longer period than *"two months".* The detention of a person for a longer period than two months (the period was reduced from 3 months to 2 by the 44th Amendment Act, 1978) can only be made after the opinion of the Advisory Board.

b. Clause (2) gives two rights to the detenue:

   i) The authority making the order of detention must "as soon as

may be" to communicate to the detained person the grounds of his detention, i.e., the grounds that led to the subjective satisfaction of the detaining authority, and

ii) To give the detenue "the earliest opportunity" of making a representation against the order of detention, i.e., to be furnished with sufficient particulars to enable him to make a representation.

"Communicate" is a strong word. It requires that sufficient knowledge of the basic facts constituting the grounds should be imparted effectively and fully to the detenue in *writing in the language* which he understands, so as to unable him to make purposeful and effective representation. For instance, if the grounds are only verbally explained to the detenue and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in Article 22(5) is infringed[1].

Justice Patanjali Shastri in *AK Gopalan v State of Madras*[2], while explaining the necessity of this provision said;" The sinister looking feature, so strangely out of place in democratic Constitution, which invests personal liability with the sacrosanctity of a fundamental right, and so incompatible with the promises of its preamble, is doubtless designed to prevent the abuse of freedom by anti social and subversive elements which might imperil the national welfare of the infant republic".

Two. Entry 9 of List I- Union List.

Preventive detention for reasons connected with Defense, Foreign Affairs, or the security of India; persons subjected to such detention.

1 Kubic Darusz v Union of India, (1990) 1 SCC 568.
2 AIR 1950 SC 27.

- The National Security Act, 1980
- The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974

II. Statutory Provisions

Historical Development of Preventive Detention Laws in India

The first Preventive Detention Act was enacted on 26th February 1950. The object of the Act was to provide for detention with a view to preventing any person from acting in a manner prejudicial to the defense of India, the relation of India with foreign powers, the Security of India or a State or the maintenance of public order, the maintenance of the supplies and services essential to the community.

The Act was purely temporary measure and was revived in the form of Maintenance of Internal Security Act, 1971, (MISA). This Act continued to be in operation until the Government headed by Mr. Charan Singh again revived the Preventive Detention Law in the form of Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act. Its object was to prevent black-marketing, hoarding of essential commodities.

Again in, 1980 the President issued the National Security Ordinance providing for preventive detention of persons responsible for communal and caste riots and other activities prejudicial to the country's security.

The National Security Act, 1980

The Act provides for detention up to a maximum period of 12 months but does not bar the detenue from challenging his detention in a court of law on grounds, amongst others, of infringement of his fundamental rights.

The detenue will be conveyed the grounds of the detention within 10 days of his detention. He shall have rights to represent to the Advisory Board against his detention.

The NSA was amended in 1984 to make it more effective. The Amended Act 1984 separates each of the grounds for detention and allows further detention of a person whose earlier detention had either expired or had been removed.

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974.

The preamble to the Act provides the objective as, "An Act to provide for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith".

The power of making detention orders is vested on the Central or State Government. Section 3 of the Act reads, "Power to make orders detaining certain persons – (1) The Central Government or the State Government or any officer of the Central Government, not below the rank of a Joint Secretary to that Government, specially empowered for the purposes of this section by that Government, or any officer of the State Government, not below the rank of a Secretary to that Government, specially empowered for the purposes of this section by that Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from –

(i) smuggling goods, or

(ii) abetting the smuggling of goods, or

(iii) engaging in transporting or concealing or keeping smuggled goods, or

(iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or

(v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods,

It is necessary so to do, make an order directing that such person be detained :

[(Note:- Added by Act No.46 of 1988, S.15 (w.e.f. 4-7-1988) Provided that no order of detention shall be made on any of the grounds specified in this sub-section on which an order of detention may be made under section 3 of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 or under section 3 of the Jammu and Kashmir Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Ordinance, 1988]. (J&K Ordinance, 1 of 1988).

(2) When any order of detention is made by a State Government or by an officer empowered by a State Government, the State Government shall, within ten days, forward to the Central Government a report in respect of the order.

(3) For the purposes of clause (5) of article 22 of the Constitution, the communication to a person detained in pursuance of a detention order of the grounds on which the order has been made shall be made as soon as may be after the detention, but ordinarily not later than five days, and in exceptional circumstances and for reasons to be recorded in writing, not later than fifteen days, from the date of detention.

B. Judicial Interpretations

The courts in India and especially the Supreme Court, has always cherished the noble idea of natural justice and the dignity of an individual. It is evident that at times the power vested at the hands of executive may be misused. The courts being aware of this situation has time and again pronounced various judgments relating to the implementation of the laws concerning preventive detention and the procedure to be followed in such cases. Some of the important aspects explained by the court can be analyzed and studied as under:

I. Subjective satisfaction - Validity of

a. It is well settled that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get initiated if material or vital facts which would have a bearing on the issue and would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. [Varinder Singh Batra v.Union of India & Ors., (1993) 3 Crimes 637 (Delhi)]. R / t: Ashadevi v.Shivraj & Anr., AIR 1979 Sc 447. R/t. Ayya alias Ayub v.State of U.P & Anr., (1989) 1 Crimes 8 (S.C.).

b. If a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind, which in turn, vitiates the detention. [ibid].

c. There would be vitiation of the detention order on grounds of non-application of mind if a piece of evidence which was relevant though not binding, had not been considered at all. [ibid].

d. If an important document on which reliance has been placed by the detaining authority and it has not been supplied to the detenue

it is sufficient to vitiate the order of detention. [Mohammed Salim / Khatri v.Union of India & Anr., (1993) 3 Crimes 867 (Delhi)].

e. It is the duty of the sponsoring authority to collect all the relevant material and place it before the detaining authority. The requisite subjective satisfaction the formation of which is a condition precedent to passing of a detention order will get vitiated if material or vital facts which would have bearing on the issue and weighted the satisfaction of the detaining authority one way or the other and influenced his mind are either withheld or suppressed by the sponsoring authority or ignored and not considered by the detaining authority before issuing the detention order. [ibid] R/t. Dharamdas Shamlal Agarwal v.Police Commissioner & Anr., AIR 1989 SC 1282 as also Madan Gopal alias Madan Bhaiya v.Union of India & Ors. (1993) 49 Delhi Law Times 174.

f. Every failure to furnish copy of a document to which reference is made in the grounds of detention under section 3(1) of COFEPOSA is not an infringement of article 22(5) of the Constitution fatal to the order of detention. It is only failure of furnish copies of such documents as were relied upon by the detaining authority, making it difficult for the detenue to make an effective representation that amounts to a violation of fundamental rights guaranteed by article 22(5).[abid] R/t Mst. L.M.S. Ummu Saleema v.B.B. Gujaral & Anr., AIR 1981 SC 1191.

g. When the non-supply of copies of relevant documents has prevented the detenu from making an effect and purposeful representation, it results in violation of article 22(5) of the Constitution of India read with section 3(3) of the COFEPOSA. [ibid].

h. Documents cannot be said irrelevant when they have been mentioned in the detention order and reliance has been placed upon them. [ibid].

II. Grounds - Communication of

a. Since the order is based on grounds to be served on the detenue, the order of detention could be passed only if the grounds are in existence and are prepared contemporaneously, otherwise the order of detention becomes purely illusory. [Pakhar Singh v.Union of India & Anr., (1993) 3 Crimes 765 (P & H) R/t. Krishna Murari Aggarwal v.Union of India, AIR 1975 SC 1877.

b. It is the duty of the detaining authority to satisfy the court about the existence of the material and that he has not acted in a mechanical or cavalier manner while exercising the power. The detaining authority owes a duty to the detenue as well as to the Court. An obligation of the detaining authority is to satisfy the Court that he has acted in accordance with law. [abid] R/t. Mohiuddin Tayab Sony v.State of Maharashtra & Anr., 1980 Crl. LJ. 1040 (Bom.) D.B.

c. It is well settled that judicial scrutiny cannot be shut out merely on the ipsedixit of the detaining authority [Ibid].

d. The grounds of detention must be communicated in the language understood by the detenue. [In re: Smt. B.Ramprannamma, 1993 FAJ 485 (Cal Circuit Bench at Port Blair) D.B.]

e. Article 22(5) of the Constitution requires that the grounds of detention must be communicated to the detenue. “Communicate” is a strong word. It requires that sufficient knowledge of the basic-facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he understands, so as to enable him to make a purposeful and effective representation. If the grounds are only verbally explained to the detenue and nothing in writing is left with him in a language which he understands, then that purpose is not served, and the constitutional mandate in article 22(5) is infringed. This follows

from the decisions in Harikisan v. State of Maharashtra, AIR 1962 SC 911, and Hadibandhu Das v.District Magistrate, Cuttack and Ors., AIR 1969 SC 43.

f. In the case of Smt. Raziya Umar Bakshi v.Union of India and Ors., AIR 1980 SC 1751, it was held by the Supreme Court that the service of the ground of detention on the detenue is a very precious constitutional right and where the grounds are couched in a language which is not known to the detenu, unless the contents of the grounds are fully explained and translated to the detenu, it will tantamount to not serving the grounds of detention to the detenue and would thus vitiate the detention ex-facie. In case where the detaining authority is satisfied that the grounds are couched in a language which is not known to the detenue, it must see to it that the grounds are explained to the detenu, a translated script is given to him and the grounds bear some sort of a certificate to show that the grounds have been explained to the detenue in the language which he understands. A bare statement at the stage when Habeas Corpus petition is filed in the Court by the detaining authority that these formalities were observed would be of no consequence particularly when it is not supported by any document or by any affidavit of the person who had done the job of explaining or translation.

g. In the case of Mr. Kubic Dariusz v. Union of India and other, AIR 1990 SC 605, the Supreme Court observed that 'it is settled law that the communication of the grounds which is required by the earlier part of clause (5) of article 22 is for the purpose of enabling the detenu to make a representation, the right to which is guaranteed by the latter part of the clause'. A communication in this context, must, therefore, mean imparting to the detenue sufficient and effective knowledge of the facts and circumstances on which the order of detention is passed, that is, of the prejudicial acts which

the authorities attribute to him. Such a communication would be there when it is made in a language understood by the detenue.

III. Execution - Prior to

a. It is well settled that the High Courts have the powers to entertain and examine the grievances against the detention order prior to its execution. [Pakhar Singh v. Union of India & Anr., (1993) 3 Crimes 765 (P & H). R/t. Addl. Secretary to the Government of India & Ors. V.Smt. Alka Subhash Gadia & Anr., 1992 SCC (Crl.) 301.

b. The grounds on which the courts have interfered with them at the pre-execution stage are necessarily very limited in scope and number, viz., where the courts are prima facie satisfied (i) that the impugned order is not passed under the Act under which it is purported to have been passed, (ii) that it is sought to be executed against a wrong person, (iii) that it is passed for a wrong purpose, (iv) that it is passed on vague, extraneous and irrelevant grounds, or (v) that the authority which passed it has no authority to do so.

c. It is well settled in our Constitution framework that the power of directing preventive detention given to the appropriate authorities must be exercised in exceptional cases as contemplated by the various provisions of the different statutes dealing with preventive detention and should be used with great deal of circumspection. There must be awareness of the facts necessitating preventive custody of a person for social defence. If a man is in custody and there is no imminent possibility of his being released, the power of preventive detention should not be exercised. [Ibrahim Umarbhaya v. State of Gujarat & Ors., (1993) 3 Crimes 730 (Guj.) D.B.] R/t. Rameshwar Shaw v. District Magistrate, AIR 1964 SC 334.

IV. Pre-execution stage - Challenge at

Detention order under the Act cannot be challenged at pre-execution stage merely on the ground that there was delay in its execution. [Inderjit Singh Chani v. Union of India & Anr., (1994) 1 Crimes 539 (Delhi)].

V. Delay - Effect of

Long and undue delay in passing the detention order snaps the nexus between the activity alleged and the activity sought to be curbed and shows that the detention order was passed mechanically without application of mind.

When the detention order has been passed after a long delay and the service was also effected after delay the detention order is liable to be quashed. [Daljit Singh Sandhu v. Union of India & Ors., (1993) 3 Crimes 629 (Delhi)].

No doubt it is true that if the detaining authority shows that there is a reasonable nexus between the prejudicial activity and the purpose of detention, the delay in passing the detention order has to be overlooked. [ibid].

The delay in passing the detention order, if not adequately explained, vitiates the same. [ibid].

Indeed more delay in passing a detention order is not conclusive. The authorities concerned must have due regard to the object with which the order is passed. Inordinate delay in passing of a detention order will raise genuine doubt about the satisfaction of the Detaining Authority.

The test as to whether the detention order should be quashed on the ground of delay is not a rigid or mechanical test by merely counting the number of days or months; the court should examine whether the Detaining

Authority has satisfactorily explained the delay. [Gurvinder Singh v. Under-Secretary, Home, Government of Punjab, (1993) 3 Crimes 760 (P & H) R/t. Lakshman Khatik v. State of W.B., AIR 1974 SC 1264 as also T.A. Abdul Rehman v. State of Kerala, (1989) 2 All India Criminal Law Reporter 294 (S.C.)].

The detenue had been evading execution of the detention order hardly gives credit to the authorities incharge of enforcing the orders of detention. In case where the authorities are guilty of inaction after passing of the order, a reasonable conclusion has to be drawn that the detention order has lost nexus with the prejudicial activities. [ibid].

C. International Legal Framework

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

These principles apply for the protection of all persons under any form of detention or imprisonment.

The Principles defines detained person as: "Detained person" means any person deprived of personal liberty except as a result of conviction for an offence. Further, "Detention" means the condition of detained persons as defined above."

The Principles can be summed as:

i) All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person (Principle 1).

ii) Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose (Principle 2).

iii) There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent (Principle 3).

iv) Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority (Principle 4).

v) No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment (Principle 6).

vi) 1. There shall be duly recorded:

(a) The reasons for the arrest;

(b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;

(c) The identity of the law enforcement officials concerned;

(d) Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

References:

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2. PM Bakshi; " The Constitution of India", 5th Edition (2003), Universal Law Publishing Co. Pvt. Ltd.

Juvenile justice

Introduction

The term 'Juvenile' is derived from the Latin word 'juvenis' meaning 'young'. The concept of rights of the 'young' or children's rights is a fairly recent development, which surfaced during the early part of the 20th Century. Children are now looked upon as right's holders and not as mere extensions or dependents of adults. However, as children are different from adults, the protection of their rights must be different from that of adults.

I. Legal Framework (National)

a) Constitutional Provisions

India's independence ushered in a new era for children. The Constitution of India adopted on the 26th of January, 1950, brought in a fairly comprehensive understanding of child rights in the country. It recognized the rights of children as citizens and contained provisions concerning liberty, development, non-discrimination and the need for ensuring free and compulsory education and prohibition of hazardous employment, thereby ensuring the survival, development and protection of its children. These are included in Part III and IV of the Constitution, pertaining to Fundamental Rights and Directive Principles of State Policy.

Fundamental Rights
Article 14: … shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
Article 15: … shall not discriminate against any citizen… (3) Nothing in this article shall prevent the State from making special provision for women and children. (4) Nothing … shall prevent the State from making

any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 17: "Untouchability" is abolished and its practice in any form is forbidden. …

Article 19: (1) All citizens shall have the right – (a) to freedom of speech and expression; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India.

Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 A: … shall provide free and compulsory education to all children of the age of six to fourteen years…

Article 23: Traffic in human beings and *begar* and other similar forms of forced labour are prohibited…

Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

b) Laws/ legislations

The Juvenile Justice System in India, as we see it today, is a relic of the British rule, although considerably modified, keeping pace with the changing times and social conditions. To deal effectively with the problems of neglected children and children in conflict with law, the Juvenile Justice Act, 1986 was enacted, repealing the then Children's Act of 1960.

Directive Principles of State Policy

Article 39: … (e) … the tender age of children are not abused… and not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood… protected against exploitation and against moral and material abandonment…

Article 45 … provide early childhood care and education for all children until they complete the age of six years.

Article 46: … shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes,…

Article 47: … raising of the level of nutrition and the standard of living of its people and the improvement of public health…

Article 51: … The State shall endeavour to – … (c) foster respect for International law and treaty obligations …

Article 51A: … (k) … parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

The 1986 legislation can be proclaimed as the first all-India child welfare enactment seeking to promote 'the best interests of the juveniles' by incorporating into its fold not only some of the major provisions and clauses of the Indian constitution and National Policy Resolution for Children but also universally agreed principles and standards for the protection of juveniles such as the United Nations Declaration of the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (commonly known as Beijing Rules). The ratification of the Convention on the Rights of the Child (1989) by the Government of India in the year 1992 and the changing social attitudes towards criminality by children reflected in the judgements of the Supreme Court and the need for more child- friendly juvenile justice system led to the passage of the Juvenile Justice (Care and Protection of Children) Act 2000 and its subsequent Amendment in 2006. These legislations cater to the needs of children in conflict with law and also expand its mandate to children in need of care and protection by catering to their development needs and adopting a child friendly approach in the adjudication and disposition of matters in the best interest of the children.

II. International

At the International level, as mentioned earlier, significant initiatives were taken to uphold the rights of children and more specifically of 'juveniles' – children in conflict with law. These are reflected not only in the Convention of Rights of Child, article 40 of which focuses on Juvenile Justice, recognizing "*the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society* " but also in the Beijing Rules and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh guidelines), adopted and proclaimed by the General Assembly resolution 45/112 of 14 December 1990). Another significant initiative worthy of mention here, was the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (adopted by the General Assembly resolution 45/113 of 14 December 1990)

Role played by NHRC

Despite the existence of these provisions (at the national and international level) the misery of children still prevails and the National Human Rights Commission is deeply pained by it. The Commission in 1996 wrote to all Chief Secretaries/Administrators of all the States/Union Territories on the reporting of deaths/rapes in Juvenile/Children's Homes within 24 hours, followed by a reminder in 2002. In the year 2007, the Commission organized a National Conference on the Juvenile Justice System in India (February 3rd -4th). The major recommendations (Annexure C) that emanated out of the 2 day conference were circulated to all the stakeholders.

This apart the Law Division of the Commission has been dealing with cases of violations concerning the juveniles and the Research Division has been collating information about the status of implementation of the Juvenile Justice Act in all States and Union Territories. For the latter purpose, it has also devised a reporting format/questionnaire to seek the information regarding the implementation of the various provisions of the Juvenile Justice (care and protection of children) Amendment Act, 2006.

The Commission closely monitors the status of implementation of these legislations through visits of its Members and Special Rapporteurs to the Observation/Children's/Shelter Homes, in various States, to gauge the condition of children residing there, and accordingly gives directions to the respective States to strictly adhere to the law, in case any discrepancy is spotted.

Key areas of concern/discussion

In the process of monitoring the recommendations, the Commission has observed that many States have a long way to go in fully complying with the Act. This could be due to inherent difficulties in the law that may have led to the delay, for instance Section 4(2) of the Act under which there is a provision that "the board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class…". Due to paucity of personnel, constituting a judicial bench is difficult. As a result of this, many children are languishing for years together since their cases are lying pending, surpassing the stipulated time frame of 4 months, as under the Act. {Section 14 (1)}

As per the Action Taken Reports received from the various States/U.T's it has been observed that the constitution of Juvenile Justice Boards/Children Home's etc, has been below the recommended number, leading to over crowding and inability to provide basic facilities of education, recreation, care and protection to all.

Many States are unable to comprehend the distinction between children in conflict with law and those in need of care and protection and thus they are made to reside under one roof.

These problems seem to have surfaced for many States, but only a few could find a way around it. For instance, some States have established Juvenile Justice Board/ Observation Homes etc, to cater to a cluster of districts depending upon the quantum of cases. This has been possible only after adopting a need based analysis to streamline its approach.

The Commission is relentlessly monitoring the status of implementation of the Act to ensure that it is implemented in both letter and spirit.

Mental Health Issues of Detainees[3]

Introduction

A person with a mental illness is entitled to be treated with dignity just as any other human being. A person does not become a non person merely on account of mental illness.

I. Domestic legal provisions on mental health:

A. Constitutional Provisions:-

A mentally ill person's human rights flow from the Fundamental Right to life guaranteed to every person under Article 21 of the Constitution which includes:

- Right to living accommodation, food, potable water, education, health, medical treatment, decent livelihood, income, a clean and congenial existence
- Right to privacy, speedy trial (if involved in any criminal offence), information and means of communication.

B. Mental Health Act, 1987

At the national level the old Lunacy Acts of 1912 and 1977 have been repealed and replaced by the Mental Health Act, 1987. The Statement of Objects and Reasons of the Mental Health Act, 1987 asserts that **"**The attitude of the society towards persons afflicted with mental illness has changed considerably and it is now realised that no stigma should be

3. Based on NHRC publications on 'Quality Assurance in Mental Health' and 'Human Rights and Mental Health care: an Introduction' by Dr. Lakshmidhar Mishra in the book on'Mental Healthcare and Human Rights' edited by Dr. D. Nagaraja and Pratima Murthy.

attached to such illness as it is curable, particularly, when diagnosed at an early stage. Thus the mentally ill persons are to be treated like any other sick persons and the environment around them should be made as normal as possible."

Objectives

- To regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons who do not have sufficient understanding to seek treatment on a voluntary basis, and to protect the rights of such persons while being detained;
- To protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;
- To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;
- To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;
- To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;
- To provide for the establishment of Central Authority and State Authorities for Mental Health Services;
- To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;
- To provide for legal aid to mentally ill persons at State expense in certain cases.

Chapter IV of the Mental Health Act deals with admission and detection in psychiatric hospital or psychiatric nursing home. Besides admission on voluntary basis, it also covers admission of mentally ill persons under certain special circumstances. There are detailed provisions regarding admission and detention of certain mentally ill persons relating to admission as in-patient after inquisition [Section 26], admission and detention of mentally ill prisoner [Section 27], detention of alleged mentally ill person pending report by medical officer [Section 28] and Detention of mentally ill person pending his removal to psychiatric hospital or psychiatric nursing home [Section 29] [relevant provisions of the Mental Health Act, 1987 are annexed]. Chapter VIII of the Mental Health Act has provisions for the protection of human rights of mentally ill persons:

1. "No mentally ill person shall be subjected during treatment to any indignity (whether physical or mental) or cruelty.

2. No mentally ill person under treatment shall be used for purposes of research, unless -

    i. such research is of direct benefit to him for purposes of diagnosis or treatment, or

    ii. Such person, being a voluntary patient, has given his consent in writing or where such person (whether or not a voluntary patient) is incompetent, by reason of minority or otherwise, to give valid consent, the guardian or other person competent to give consent on his behalf, has given his consent in writing, for such research.

3. Subject to any rules made in this behalf under Sec.94 for the purpose of preventing vexatious or defamatory communications or communications prejudicial to the treatment of mentally ill persons, no letters or other communications sent by or to mentally ill persons under treatment shall be intercepted, detained or destroyed. " [Section 81 of the Mental Health Act, 1987]"

C. The Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995

The Persons with Disabilities [Equal Opportunities, Protection of Rights and Full Participation] Act, 1995 also defines disability to include, among others, mental illness. The Persons with Disabilities Act, 1995 spells out responsibilities of the Government at all levels including establishments under its control. It lays down specific measures for the development of services and programmes for equalizing opportunities for the enjoyment of right to education, work, housing, mobility and public assistance in case of severe disability and unemployment. To execute the mandated responsibilities, a Central Co-ordination Committee and State Co-ordination Committees representing major development ministries, Members of Parliament and disability NGOs and having a woman with disability as a member have been envisaged in a multi-sectoral model. Furthermore, the institution of Chief Commissioner in the Centre and Commissioner for Persons with Disabilities in States has been proposed. Their mandate is to redress individual grievances, provide safeguards to the rights of persons with disabilities, monitor implementation of disability related laws, rules and regulations, and oversee utilization of budget allocated on disability. These quasi-judicial bodies are vested with the powers of a civil court.

D. Other Laws:

Other than Muslim law, all personal laws disqualify a mentally ill person from getting married. If solemnized the marriage of a person so afflicted is either void or voidable. Moreover mental illness is not only a disqualification for marriage but also a ground for judicial separation and divorce. The ground is available under all personal laws except Christian Law. Laws which permit divorce/ judicial separation on grounds of unsoundness of mind predominantly emphasize on the incurable nature of illness or such manifestation of the illness that the petitioner cannot reasonably be expected to live with the respondent.

Section 11 of the Indian Contract Act, 1872 states that the contracting person should be of sound mind and Section 12 holds that a person is of sound mind if at the time of making the contract he is capable of understanding it and forming a rational judgement. The rigour of principle of positive capacity is to a great extent offset by the fact that the law presumes all persons to be of sound mind and the burden of proving unsoundness of mind is on the person who alleges it.

Persons of unsound mind cannot acquire property through executory contract. A person of unsound mind can also be a legatee under a will, though neither probate nor letters of administration can be obtained by him.

E. Supreme Court on Right to speedy trial of mentally ill under trial prisoners and human rights for persons with mental illness

In Hussainara Khatoon (No.1) vs. Home Secretary, Bihar, it was held by the apex Court that "*right to a speedy trial, a fundamental right, is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution*". Speedy trial is the essence of criminal justice. These principles were reiterated in Abdul Rehman Antulay vs. R.S. Nayak in which detailed guidelines for speedy trial of an accused were laid down even though no time limit was fixed for trial of offences.

These notwithstanding, a number of cases have come to light where mentally ill persons who have been facing trial for an offence have been undergoing incarceration for long periods till their plight and predicament surfaced through public interest litigations and much needed relief was provided by the apex Court.

In the case of Chandan Kumar Bhanik vs. State of West Bengal (1988) the apex Court observed: "*Management of an institution like the mental*

hospital requires flow of human love and affection, understanding and consideration for mentally ill persons; these aspects are far more important than a routinized, stereotyped and bureaucratic approach to mental health issues".

In the case of Sheela Barse vs. Union of India and others, the apex Court observed as under:

- Admission of non criminal mentally ill persons in jails is illegal and unconstitutional;
- All mentally ill persons kept in various central, district and sub jails must be medically examined immediately after admission;
- Specialized psychiatric help must be made available to all inmates who have been lodged in various jails/sub jails;
- Each and every patient must receive review or revaluation of developing mental problems;
- A mental health team comprising of clinical psychologists, psychiatric nurses and psychiatric social workers must be in place in every mental health hospital.

In the judgment of the apex Court in Rakesh Ch. Narayan vs. State of Bihar certain cardinal principles were laid down by the apex Court. These are:

- Right of a mentally ill person to food, water, personal hygiene, sanitation and recreation is an extension of the right to life as in Article 21 of the Constitution;
- Quality norms and standards in mental health are non-negotiable;
- Treatment, teaching, training and research must be integrated to produce the desired results;

- Obligation of the State in providing undiluted care and attention to mentally ill persons is fundamental to recognition of their human right and is irreversible.

II. International Treaties, Declarations and Guidelines

All International Human Rights Conventions and standards proclaim that Human Rights belong to all persons, which includes persons with mental illnesses, regardless of any distinctions. In particular, the following instruments are of particular relevance:

- The Universal Declaration of Human Rights, 1948
- The International Covenant on Economic, Social and Cultural Rights (ICESCR),1966
- The Declaration on the Rights of Disabled Persons, 1975
- UN Principles for the protection of persons with mental illness and improvement of mental health care, 1991 (MI Principles)
- The WHO Technical Standards (Mental Health Care Law: Ten Basic Principles and Guidelines for the Promotion of Human Rights of Persons with Mental Disorders), 1996
- The UN Convention on the Rights of Persons with Disabilities, 2006

The UN Principles for the Protection of persons with mental illness and the improvement of mental health care (1991) recognize the enjoyment of the highest attainable standard of physical and mental health as the right of every human being.

In 1996, WHO developed the *Mental Health Care Law: Ten Basic Principles* as a further interpretation of the MI Principles and as a guide

to assist countries in developing mental health laws. The WHO also developed *Guidelines for the Promotion of Human Rights of Persons with Mental Disorders*, which is a tool to help understand and interpret the aforementioned UN principles 1991 (known as MI Principles) and evaluate human rights conditions in institutions.

A. Mental Health Care Law: Ten Basic Principles

The principles with respect to the treatment of persons with mental illness are as follows:

- The aim of psychiatry is to treat mental illness and promote health to the best of his or her (*psychiatrist's*) ability, consistent with accepted scientific knowledge and ethical principles.

Ten Basic Principles
• Promotion of mental health and prevention of mental disorders
• Access to basic mental health care
• Mental health assessments in accordance with internationally accepted principles
• Provision of least restrictive type of mental health care
• Self-determination
• Right to be assisted in the exercise of self-determination
• Availability of review procedure
• Automatic periodic review mechanism
• Qualified decision-maker (acting in official capacity or surrogate)
• Respect of the rule of law

- Every psychiatrist should offer to the patient the best available therapy to his knowledge and if accepted must treat him or her with the solicitude and respect due to the dignity of all human beings;

- The psychiatrist aspires for a therapeutic relationship that is founded on mutual agreement. At its optimum it requires trust, confidentiality, cooperation and mutual responsibility;

- The psychiatrist should inform the patient of the nature of the condition, therapeutic procedure including possible alternatives and of the possible outcome;

- No procedure shall be performed nor treatment given against or independent of a patient's own will, unless because of mental illness, the patient cannot form a judgment as to what is in his or her best interest and without which treatment serious impairment is likely to occur to the health of the patient or others;

- As soon as the conditions for compulsory treatment no longer apply, the psychiatrist should release the patient from compulsory nature of the treatment and if further therapy is necessary should obtain voluntary consent;

- The value of positive mental health for every human being and the rights of all persons with mental disorders and with disabilities as full citizens of their countries should be recognised ;

- All recipients of mental health services, regardless of age, gender, ethnic group or disorder must be treated in the same manner as other citizens in need of health care and their basic human rights and freedoms should be respected;

- The World Medical Association and its member associations have always sought to advance the cause of human rights for all people and have frequently taken actions endeavouring to alleviate violations of human rights;

- Members of the medical profession are often amongst the first to become aware of violations of human rights;

- Medical associations have an essential role to play in calling attention to such violations in their countries.

B. UN Convention on the Rights of Persons with Disabilities, 2006:

The UN Convention on the Rights of the Persons with Disabilities (2006) marks a "paradigm shift" in attitudes and approaches to persons with disabilities. It takes to a new height the movement from viewing persons with disabilities as "objects" of charity, medical treatment and social protection towards viewing persons with disabilities as "subjects" with rights, who are capable of claiming those rights and making decisions for their lives based on their free, and informed consent as well as being active members of society. It has proposed a comprehensive definition of persons with disabilities as 'all those who have long-term physical, mental, intellectual and sensory impairments (Article 1). The Convention calls upon nations to take specific actions to protect the rights of people with mental disability.

III. Interventions of National Human Rights Commission of India on mental health and human rights

NHRC has been deeply concerned about the conditions prevailing in the mental hospitals all over the country. Many of them function as custodial rather than therapeutic institutions. In addition, there are problems of overcrowding, lack of basic amenities and poor medical facilities.

A. Intervention with regard to mentally ill persons held in Prisons

In 1996, the Commission learnt that mental ill persons were sometimes being held in prisons. In addition, prisoners with mental illnesses were being treated just as any other prisoners, with no effort being made to deal with their distinct problems. The Chairperson of the Commission,

therefore, addressed a letter to all Chief Ministers on 11 September 1996, pointing out the Mental Health Act, 1987 which has entered into force on 1 April 1993 did not permit the mentally ill person to be put into prison. The letter cautioned that, should the Commission find, in the course of its visits to jails, that mentally ill persons were still being held in them, it would recommend the payment of compensation to those so detained and to their families and would recover that amount from the delinquent public officer.

In consequence of that letter, many mentally persons, who were being held in prisons, have now been transferred to institutions where they can be given psychiatric help. In this connection, the Commission strongly recommended that Rule 82(1) of the United Nations Standard Minimum Rules for Treatment of Prisoners be followed. This requires that "Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible." Further, Rule 82(4) requires that "the medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment." The directions issued by the Commission through a letter addressed by the Chairperson to the Chief Ministers of all the States/UTs on 11 September 1996 were reiterated on 7 February 2000 and the Criminal Justice Cell has been monitoring compliance.

B. NHRC's Project on Quality Assurance on Mental Health Care

In W.P. (Criminal) No. 1900/81 Dr. Upendra Buxi vs. State of U.P. and others the apex Court requested the NHRC to be involved in the supervision of mental health hospitals at Agra, Ranchi and Gwalior. The Commission on its part conceptualized and translated to action a Project on Quality Assurance in Mental Health Care in the country with Justice Shri V.S. Malimath, ex-Member, NHRC as Project Director and Dr. S.M.

Channabasavanna, former Director and Vice Chancellor, National Institute of Mental Health and Neuro Sciences (NIMHANS) as the Principal Investigator along with a team of specialists as investigators. 'Quality Assurance in Mental Health' emerged as the end product of this marathon action research project with the following outputs:

- Existing status of mental health hospitals, failings and inadequacies;
- Comprehensive recommendations to achieve the object of ensuring quality mental health care in the country.

The NIMHANS team took enormous pains to visit and intensively review the functioning of 37 mental health hospitals all over the country. The review ended with a series of recommendations including steps to improve physical facilities, treatment and care of patients, occupational therapy as a tool of rehabilitation, training and research and community outreach programmes.

Recommendations

- *Immediate abolition of cell admissions;*
- *Gradual conversion of closed wards into open wards;*
- *Construction of new wards of shorter capacity (not more than 20) for use as open wards;*
- *Streamlining admission and discharge procedure in accordance with provisions of Mental Health Act, 1987;*
- *Upgradation of investigation facilities;*
- *Inservice training of all staff members;*
- *Providing each patient a cot, mattress, pillow, bed sheet and adequate clothing for change;*
- *Improving supply of water and electricity;*

- *Ensuring supply of nutritive food of 3000 kilo calories per day to each patient;*
- *Developing occupational therapy facilities;*
- *Improving recreational facilities;*
- *Developing rehabilitation facilities including day care centres.*

Since June 1999, when the 'Quality Assurance in Mental Health' report was released, the Chairperson, Member in charge of mental health and other Members as also Special Rapporteurs have been regularly inspecting and reviewing the activities of all the 37 mental health hospitals including GMA, Gwalior, IMHH, Agra and RINPAS, Ranchi. A number of qualitative changes and improvements in the overall work environment, management and quality of treatment in these hospitals have taken place as a result of these visits, inspections and reviews. The human rights dimension of mental health has occupied the pride of place in all these visits, reviews and inspections.

C. Mentally ill persons held in faith-based institutions

In August 1998, the Commission had received a petition alleging that mentally ill persons were being kept in chains and confined in a restricted space in the Sultan Alayudeen Dargah at Goripalayam near Madurai. The Commission had sought a report from the District Collector of the area. The Collector in turn had confirmed that about 92 mentally ill patients were staying at the Dargah, brought in by their relatives with faith in the curative powers of the Dargah. The Collector had, however, denied any mistreatment of the patients.

The Commission got the case investigated in February 1999 by the then Director General (Investigation) of the Commission. According to his report, 500 patients/devotees were staying inside the campus of the Dargah. 75% of them were Hindus and the rest were Muslims. About 100

patients were found to be in chains. The patients were kept in thatched sheds and in verandahs. The report highlighted that similar places/Dargahs also existed in other areas of Tamil Nadu where mentally ill patients were chained and kept in the hope of a faith-based cure.

On considering these reports, the Commission directed the State Government of Tamil Nadu to get the entire matter examined by a body of experts. The report of the group of experts, however, stated that the complaint was exaggerated and added that there was no evidence of torture or compulsion by the Dargah authorities. The inmates had expressed satisfaction and faith in the cure of their mental illness, even though some of them had been kept in chains.

The Commission was dissatisfied with this approach to the issue. It decided, instead, to have the matter examined in greater detail by a Committee headed by the eminent psychiatrist Dr. K.S. Mani of Bangalore. The Committee recommended that:

- Patients cannot and should not be treated as cattle. Responsibility for admission and discharge must be in the hands of a qualified psychiatrist and cannot be left to the Dargah.
- There should be strict supervision of drug intake by the patients.
- Institutionalisation should be only for brief periods at a time and facilities should be ensured for rehabilitation programmes with emphasis on adequate social inputs from family members.
- Family members should not be allowed to leave patients in the Dargah and to walk away; instead family members should be educated in respect of the nature of the mental illness.
- Living conditions in the Dargahs should be vastly improved.

- There should be facilities for early diagnosis and regular treatment of mental illnesses in these areas of the State.

On 3 January 2001, the Commission considered and accepted the report of the Committee and directed the Government of Tamil Nadu to implement the recommendations forthwith and send its compliance report at the earliest. In the light of the Erawadi tragedy in Tamil Nadu, the Commission asked all States to certify that there are no mentally ill persons held in chains in either Government or Private Institutions.

D. Guidelines on mentally ill persons held in Prisons

The Commission recently intervened in the case of Shri Charanjit Singh, a seventy year old person, who was in detention for nearly 20 long years as an undertrial prisoner because he was mentally ill and his physical and mental condition did not allow him to defend himself at the trial. As a result, his trial could not proceed further. He was even abandoned by his own relatives. The Commission moved a Criminal Writ Petition (Cr.W.P. No. 1278/04) for quashing criminal proceedings against him and suggested a set of guidelines to deal with cases of undertrial prisoners in similar conditions. The Delhi High Court by its order dated 4th March 2005 allowed the Writ Petition and quashed the proceedings. It also asked the Government of National Capital Territory of Delhi to evolve an appropriate scheme based on the guidelines suggested by the NHRC. The court in its order also incorporated the recommendations made by the NHRC regarding dealing with the cases of those who are mentally ill and in jail. Some of the suggestions being:

1. Psychological or psychiatric counselling should be provided to prisoners for early detection and to prevent mental illness.

2. Central and District jails should have facilities for preliminary treatment of mental disorder. All jails should be formally affiliated to a mental hospital.

3. Services of a qualified psychiatrist in every central and district prison who should be assisted by a psychologist and a psychiatric social worker.

4. Not a single mentally ill individual who is not accused of committing a crime should be kept in or sent to prison. Such an individual should be taken for observation to the nearest psychiatric centre or Primary Health Centre.

5. If an undertrial or a convict undergoing sentence becomes mentally ill while in prison, the State must provide adequate medical support.

6. When a convict has been admitted to a hospital for psychiatric care, upon completion of the period of his prison sentence, his status in all records of the prison and hospital should be recorded as that of a free person and he should continue to receive treatment as a free person.

7. Mentally ill undertrials should be sent to the nearest prison having the services of a psychiatric and attached to a hospital, they should be hospitalized as necessary. Each such undertrial should be attended to by a psychiatrist who will send a periodic report to the Judge/Magistrate through the Superintendent of the prison regarding the condition of the individual and his fitness to stand trial.

8. All those in jail with mental illness and under observation of a psychiatrist should be kept in one barrack.

9. If a mentally ill person, after standing trial following recovery from the mental illness is declared guilty of the crime, he should undergo his term in the prison. Such prisoners, after recovery should not be kept in the prison hospital but should remain in the association barracks with the normal inmates.

10. The State has a responsibility for the mental and physical health of those it imprisons.

11. To prevent people from becoming mentally ill after entering jail, each jail and detention centre should ensure that it provides –

    i) a conducive environment with physical and mental activities for prisoners that reduce stress and depression;

    ii) a humane staff that is not unduly harsh;

    iii) effective grievance redressal mechanisms;

    iv) encouragement to receive visitors and maintain correspondence;

    v) overseeing bodies should have members from civil society to ensure the absence of corruption and abuse of power in jails.

The Delhi High Court has also directed the Delhi Judicial Academy to include a short-term capsule course to sensitize judicial officers likely to deal with mental health cases and to orient such officers to the Mental Health Act, 1987. These short-term courses could be institutionalized and provided to each batch.

The Punjab and Haryana High Court has accepted in toto NHRC's recommendations for mentally challenged prisoners languishing in the jails of the two states. The decision came, while hearing the case of one Jai Singh, a mentally challenged person, who had died in prison after spending almost 30 years there as an undertrial.

E. Positive outcomes of Commission's interventions

Since the remit of the Supreme Court was received by the Commission, successive Chairpersons have personally monitored the implementation of the Supreme Court's directives. As occasion provided, both they and

various Members of the Commission visited these institutions. The Commission is pleased to note that the admission and discharge procedure in these institutions has been streamlined and brought in consonance with the provisions of the Mental Health Act, 1987. The incidence of involuntary admission has registered an appreciable decline. Diagnostic and therapeutic facilities have been upgraded and their impact is visible in the rate and speed of recovery of patients. The living conditions of patients, the quality of food and the administration of drugs have improved in all of the three institutions. Satisfactory arrangements for occupational therapy have also been developed at RINPAS, where a number of patients, both male and female, are receiving training and also earning through the application of their skills in trades such as weaving, carpentry, tailoring, basket making, paper work etc.

A significant feature of the improvement in the functioning of these institutions has been the establishment of Half-way Homes for the cured patients before they are finally discharged. The Chairperson visited the Gwalior Mansik Arogyashala on 2 November 2001 to inaugurate the Half-way Home for female patients and laid the foundation stone of the new OPD building of the institution. A special drive is underway to restore a number of cured patients to their respective families, who had earlier been reluctant to take them back. Significant results have been achieved, especially by Ranchi Institute. The Chairperson visited the Ranchi Institute and was impressed by the overall progress made after the intervention of the Commission.

The Commission is proposing to publish the report on Mental Health Care and Human Rights on 12th October 2008 which is the Foundation Day of the NHRC. This publication represents a timely review of developments in mental health care in India since the initial involvement of the NHRC through the 1999 Quality Assurance in Mental Health Report.

IV. Issues for Discussion:

The theme of the 60th anniversary celebrations of Universal Declaration of Human Rights is "dignity and justice for all of us" which includes rights of persons with mental illnesses. How do we ensure that protective provisions in the Constitution, Mental Health Act, 1987 and International Human Rights Conventions to which India is a party are translated into action at the ground level for persons with mental illnesses? What are the gaps in the implementation of the Mental Health Act, 1987 at the ground level? How do we ensure minimum standards of care from the human rights perspective are maintained in the mental health institutions? How do we ensure that National Human Rights Commission's recommendations in this regard are observed and implemented across the country in all mental hospitals? What strategies could be adopted to further protect and promote the rights of persons with mental illnesses?

Annexure - 1

Note on the human rights issues of prisoners

Under Section 12(c) of the Protection of Human Rights Act, 1993, the Commission visits to tile State Government, irrespective of any other law, .any jail or any other institution under the control of the State Government, where persons are detained or lodged for purpose of treatment, reformation or protection to study the living conditions of the inmates and make recommendation thereon. The issue of Custodial Justice has been continuous concern to the Commission ever since its inception. Through the reports of the Special Rapporteurs, who visit jails, health issues of inmates etc. are brought to the notice of the Commission.

All the reports of the Special Rapporteurs on the jail visits by Hon'ble Member or Special Rapporteurs are being placed before the Commission from time to time and forward to the authorities concerned with appropriate recommendations, which are being monitored on, continuing basis. The main observation and suggestions include:

- The NHRC noticed alarmingly high overcrowding in most of the jails visited;
- Health cover needs to be upgraded by providing full time doctors in all District jails and ensuring presence of a qualified Pharmacist at each Subjail;
- The systems of parole and pre-mature release of lifers need to be rationalized in accordance with the directions of the Supreme Court and guidelines issued by the NHRC;

- The system of free legal aid to the poor prisoners needs a through scrutiny and evaluation as a number of prisoners were found deprived of the basic right;

- Vocational training facilities and works programme at the Women Jail are utterly inadequate. There is need for greater involvement of NGOs in education, recreation and welfare of prisoners;

- Poor living conditions for women prisoners, with hardly any medical facilities is also a matter of concern;

- High mortality rate of prisoners in Jails is also a cause of concern;

- A number of instances of non-compliance with the Commission's instructions regarding the death of prisoners were detected; and

- The arrangement of supply of food through private contractors at the judicial Lock-ups calls for a review .

Improving working and living conditions in jails has been a major concern of the Commission since its inception in fulfillment of its obligation. The Commission had issued guidelines on following issues for the protection of human rights of the prisoners:

1. Guidelines for Protection of Human Rights of Persons with Mental illness facing trial

2. Recommendations of the two-day Seminar on Custodial Justice held on 30-31 March, 2006 at New Delhi

3. Premature Release of the Prisoners Undergoing· Sentence of Life Imprisonment-Eligibility Criteria for, Constitution of Sentence Review Boards and Procedure to be followed

Sensitization of Jail Staff

The sensitization programme for Jail Superintendents, Jailors and officers

of the Correctional Services introduced in 2000 - 2001 continued during the period 2006-07. One-day workshop was held at Kolkata (West Bengal) on 5 June 2006. The workshop was conducted by the Chief Coordinator, Custodial Justice Cell in collaboration with Inspector General (IG) Prisons of the State. The workshop was attended by Superintendents of 15 out of the total 18 Correctional Homes of the State.

The programme of the workshop was carefully designed to explain to the Jail officials the compatibility of the basic human rights of prisoners with requirements of security and discipline. The participants were also apprised of the various initiatives taken by the Commission to improve jail conditions in the country. One session was exclusively devoted to discussing the prison infrastructure of the State concerned, which helped in identifying the areas of possible improvement. The workshop concluded with an interactive session in which the participants were encouraged to express freely their views about problems and difficulties related to their working and living conditions. This helped in resolving doubts and misgivings troubling many of them about the role of the Commission and constitutional obligation of Jail staff to protect and uphold the right of prisoners.

Workshop for the sensitization of Prison Officers and NHRC Nominees on the Board of Visitors for jails in Maharashtra

A two-day workshop, first of its kind on Prison Visiting System in Maharashtra, was held at Jail Officers Training College, Yervada, and Pune from· 21 to 22 August 2006. The workshop was jointly organised by Tata Institute of Social Sciences (TISS), Mumbai and NHRC. Superintendents of Central Prisons numbering eight and DIG Prisons numbering four were invited. Dr Arvind Tiwari, Reader, Department of Criminology and Correctional Administrations (TISS) and Mr. Chaman Lal, Special Rapporteur, NHRC conducted the workshop.

The workshop was inaugurated by Dr. Justice A.S. Anand, Chairperson, NHRC. Mr R.K. Bhargava, Secretary General, NHRC was also present at the inaugural session. The workshop was attended by 15 NHRC nominees and 13 Jail officials. Mr. Radhakant Saxena, retired IG Prison, Rajasthan and Dr. Murali Karnam both Consultants, CHRI were associated as resource persons. Two NGOs namely PRAYAS and VARHAD also took part in the workshop. The subjects discussed at the workshop included illustrations on various Human Rights violations that took place in prisons. A critical overview of the efficacy of the Prison Visiting System was undertaken and explained to nominees who shared their views and expressed their difficulties and problems.

The workshop aims to:

1) equip the participants with standards, norms and best practices regarding Prison Visiting System.

2) expose them to the Role of Human Rights Commission, Higher Judiciary and voluntary organizations in protection of the rights of prisoners; and

3) provide a forum for them to interact with diverse stakeholders in the field of prison administration for chalki.ng out a plan of action for effective Prison Visiting System in Maharashtra State.

A plan of action to operationalize the prison visiting system prepared on the basis of the deliberation at the workshop was brought out at the end of two day meet. The following recommendations that emerged out after the detailed deliberation in the workshop are as under:

1) Copy of Government Order issued by Home Department, Government of Maharashtra regarding nomination of NHRC visitors in the Board of Visitors in Maharashtra Prisons to be sent by the Jail Superintendent to the concerned NHRC nominee

immediately and he should fix up a meeting with the nominee at the earliest.

2) A copy of prison manual to be given to the visitors.

3) Capacity Building Workshop for NHRC nominees shall be organized" by the jail department to orient prison visitors about the functioning of prisons, administrative hierarchy of Jail Department and redressal mechanisms available for the prison inmates etc.

4) The NHRC will· provide a copy of the compilation of supreme Court's Judgements on prisoners' rights to all the nominees.

5) The Jail department will provide copies of important judgements on prisoners rights and prison reforms delivered by Bombay High Court to all the nominees.

6) Visitors must visit the jail quarterly and try to activate the Board of Visitors if they· are defunct. They shall write D.O. letters to the concerned collectors for constitution of the Board holding the meetings of the Board regularly.

7) A checklist for visitors will be prepared by TISS to facilitate nominees regarding the important issues pertaining to rights of prisoners to enable them to focus their attention towards important. issues to be covered during their visits to the prisons.

8) The visitors must record their remarks in the Jail Register (No. 14) and Superintendent will forward a copy of the same to Regional DIG (Prisons) for his perusal and further action. However, if visitor feels that some issue is so important that should be brought to the attention of IG Prisons, a copy of the same may be forwarded to him/her for necessary action.

9) The NHRC nominees shall take note on various issues relating to Prisons Rights and Prison Reforms elaborated in the Jail Manual. They may also take up any issue which is not mentioned in the Manual, if it is very important for the protection of rights of the prisoners.

10) Action shall be taken by the Superintendent on the remarks recorded by the NHRC nominee and the same may be informed to him before he/she makes next visit to the jail. The Action Take Report (A TR) shall be sent to the NHRC nominee within two months.

11) Nominees should be the role model and motivators to influence prisoners and prison administrators for better performance.

12) Students of Law Colleges shall be involved to provide legal aid, identification of undertrial prisoners who are languishing in prisons for longer duration, and their release according to the procedures laid down in law. They shall also refer these cases to the District Legal Services Authority for further necessary action.

13) Visitors should be paid conveyance allowance as per Rule 12 of Maharashtra Visitors of Prison Rule, 1962.

Medical examination of prisoners on admission

The Commission continued to compile and analyse the data received on the medical examination of prisoners on bi-annual basis. During the period 2006-07, the data received for the period 1 January to 30 June 2004 and 1 July to 31 December 2004 were analysed. The salient features of the analysis for the period 1 July to 31 December 2004 are given in the succeeding paragraphs:

Analysis of reports on Medical Examination of prisoners for the period 1 July to 31 December 2004

The average proportion of prisoners subjected to medical examination comes to around 95%. It is 100% for Bihar, Goa, Haryana, J&K, Maharashtra, Meghalaya, Mizoram, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Andaman and Nicobar, Chandigarh, Delhi and Pondicherry.

On al/India basis, Scabies (8.53%) is found to be most prevalent disease followed by Gastro-enteritis (7.76%), and skin disease (5.68°;;''). Scabies is a prominent disease among prisoners in Bihar (23.2%), Maharashtra (21.3%), Meghalaya (20.3%), Tripura (12.4%) and Jammu & Kashmir (12.0%). Gastroenteritis is prominent in Tripura (41.9%), Meghalaya (25.7%), J&K (23.2%), Mizoram and AandNicobar (18.7%) each. Skin diseases are prominent with the prisoners of Gujarat (20.8%), Andaman and Nicobar (17.0%), Mizorarn (16.7%) and Meghalaya (13.5%). With a view to dealing with these diseases afflicting the jail population, both preventive and corrective steps need to be taken. Among the preventive steps, the most important are promoting, improving and sustaining hygiene in jails, improving the system of storage and distribution of potable water to all' inmates according to a scale and preventing water and air pollution. The common diseases in jails are Gastro-enteritis, Scabies and Skin. This shows the need for giving more attention to quality of drinking water, sanitation and hygiene in jails.

Annexure - 2

Recommendations of the two-day Seminar on Custodial Justice held on 30-31 March, 2006 at Vigyan Bhawan, New Delhi

The primary responsibility of the police is to protect life, liberty' and property of citizens. Criminal Justice System is to ensure protection of these rights. When an individual is in custody, it means that he is in the custody of the State and, therefore, to ensure that his human rights are protected, is the direct concern and responsibility of the State. The individuals are kept in custody in police station, in judicial custody in jail, juvenile homes and mental homes. The National Human Rights Commission (NHRC), in collaboration with Penal Reform and Justice Administration (PRAJA), organized a two-day Seminar on Custodial Justice on March 30-31, 2006, at Vigyan Bhawan, New Delhi. The main objective of the Seminar was to highlight the fact that Custodial Torture is preventable and that it is the responsibility of the State to protect the rights of people in custody.

The main recommendations that emanated from the aforesaid Seminar after the deliberations can be placed under two heads, one relating to Police set up and the other relating to Prisons:

Police Set-up

- The violations in police custody are reported during investigations, resulting in deaths and physical torture.
- NHRC, as a monitoring body over deaths and violence in police custody, has emphasized scientific, professional and humane approach towards persons detained for investigations.

- NHRC recommends that the investigations need to be carried out expeditiously and in a given time frame. The guidelines for arrest, set out in the D. K. Basu vs. West Bengal case by the Supreme Court have emphasized time and again for compliance from appropriate state authorities. Besides, it has urged upon senior leadership to involve themselves in the task of investigations and custodial management of the detainees. Full use of scientific techniques and forensic science should be made to obviate resorting to physical torture during interrogations. Training in interrogating skills is sine quo non of all investigations by the police.

- On analyzing statistics, it has been revealed that the Crime against minorities, children and women, need special, attention and speedy disposal. Hence, there is need to monitor these cases every fortnight.

- There should be zero tolerance for any violation of human rights in custody. In cases where misconduct or guilt of police personnel is established, it should be ensured that the penalties imposed should be commensurate with the misconduct/guilt.

- There is a strong need to bifurcate the police personnel into two separate wings: one relating to investigation and the other for law and order duties. Accordingly, the personnel should be trained to specialize in investigation procedures. This will definitely help in speedy disposal of the cases.

- To imbibe above practices, training is to be taken as a continuous process of learning and to be used with the purpose of changing the attitudes and mindset of the police personnel.

Prisons

- NHRC recommends an urgent review of the UTP's not only for setting free the prisoners who have undergone their terms of imprisonment, but also for decongesting the prisons in addition to the following steps:

  A. Working out a system of holding of regular special courts in the prisons for early disposal of cases.

  B. The Judicial officers have to be exhorted to consider bail petitions carefully, obviating any possibility of torture in custody. Similarly, ensuring a speedy trial should be the main thrust of all judicial functions, including summoning and examination of witnesses. The investigating agency should make special efforts to provide legal aid wherever necessary.

  C. The visit to the prison by District Magistrate, SSP and Judicial officers should be not merely a routine exercise; and they should record efforts made for speedy disposal of cases. Innovative methods, like release of Under Trial Prisoners on bonds, if the prisoners have completed one half or two thirds of their punishment period, should be adopted.

- For the convicted persons, the Reformation-correction and Rehabilitation should be worked out with the development departments, to expose them to the skills, which will find them better employment opportunities, once they are outside the custody. There have been good examples tried out in different parts of the country and there is a need to encourage this. In specific kind of cases where reformation is the main motive, the State Government should be urged to have special provisions to impart skills, which will enable better rehabilitation opportunities.

- The prison conditions should be made more humane for the women, the aged and mentally ill prisoners.

- Regular check ups and special provision for the mentally ill prisoners has been taking a back seat in the arrangements made in the jails so far. NHRC would like to draw the attention of the State Governments to ensure that the mentally ill prisoners are kept separately and necessary medical treatment is provided to them.

Annexure - 3

National conference on juvenile justice system in india (3 - 4 february 2007)

Major Recommendations

A two-day National Conference on Juvenile Justice System in India was organised by the Commission on 3rd and 4th of February 2007 at the Indian Institute of Public Administration, New Delhi. The main objectives of the Conference were (i) to analyze the existing situation of children in especially difficult circumstances; (ii) to analyze the existing status of juvenile justice in India with regard to human rights standards; (iii) to critically appraise the emerging issues in juvenile justice system and suggest alternate measures in terms of investigation, adjudication, disposition, care, treatment and rehabilitation; and (iv) to develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare and development of children in need of care and protection or those in conflict with law.

The two-day Conference deliberated on four major themes having a direct bearing on the functioning of the juvenile justice system in the country in four Plenary Sessions. These were as follows:

1. Situational Analysis of Children

   (i) Existing Situation of Children in Especially Difficult Circumstances

   (ii) Existing Status of Juvenile Justice and Human Rights Standards

2. Emerging Issues in Juvenile Justice System

   (i) Evolving Best Practices for Protection of Children.

   (ii) Strengthening Mandatory Statutory Mechanisms at the Pre-Adjudicatory Stages.

   (iii) Evolving and Strengthening Non-Institutional Services for 'Children in Need of Care and Protection' & 'Children in Conflict with Law'

3. Children in Conflict with Law: Adjudication and Dispositional Alternatives - A Critical Analysis

   (i) Key Operational Concerns with Specific Recommendations for Improvement

   (ii) Issues Concerning Delay in Adjudication and Shortfalls in Dispositional Alternatives

4. Community Based Models for Care and Protection of Children Case Presentations

   (i) Socio-Legal Information Centre's Initiatives in the Area of Juvenile Justice

   (ii) Bal Sakha's Initiatives in the Area of Juvenile Justice

Plenary Session V was devoted to Preparation of an Action Plan for bringing about improvement in the functioning of the juvenile justice system in the country wherein the delegates focused on four broad topics as follows:

1. Due Process Guarantees and Legal Aid/Support to Children in Conflict with Law

2. Formulation of a Monitoring System for the Administration of Juvenile Justice

3. Developing Appropriate Linkages Between the Juvenile Justice System, NGOs, Corporate Sector and the Civil Society for Rehabilitation and Reintegration of 'Children in Conflict with Law' and 'Children in Need of Care and Protection

4. Developing Appropriate Strategies and Structures for Wide Range of Dispositional Alternatives for 'Children in Conflict with Law' and 'Children in Need of Care and Protection'

Based on the deliberations held in all the Plenary Sessions, the following recommendations and suggestions were made by the delegates of the National Conference:

1. There is a need to strictly enforce the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 and its subsequent amendment carried out in 2006.

2. There is a need to ensure that appropriate adjudicatory bodies (Juvenile Justice Board/Child Welfare Committees) are constituted in each and every district of all the States/Union Territories within the stipulated time frame prescribed in the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Since the 2006 Amendment Act was notified on 22 August, 2006, it would imply that the entire adjudicatory structure has to be in place by 21 August, 2007. This needs to be monitored vigorously by the NHRC.

3. The adjudicatory bodies should also ensure that enquiries regarding juveniles in conflict with law and children in need of care and protection are completed within the required time frame as prescribed in the Act. The Conference perceived that the Juvenile Justice Boards across the country should protect 'the best interest of the juveniles' and in no way function as a criminal court. Similarly, the Child Welfare Committees should ensure protecting 'the best interest of children'. It was opined that a direction/ guideline regarding this could be sent by the NHRC to all concerned.

4. Section 62 A of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, mandates constitution of a Child Protection Unit in each State/Union Territory, and such Units for every District, consisting of officers and other employees appointed by the. concerned State Government/Union Territory Administration with a view to ensure the implementation of the said Act, including the establishment and maintenance of Homes, notification of competent authorities in relation to these children and their rehabilitation and coordination with various official and non-official agencies concerned. However, since no time frame has been mentioned in the Amended Act, 2006 for constitution of these Child Protection Units across the country, the participants felt that the NHRC should take-up the responsibility of monit~ring the implementation of this clause in the Act.

5. Similarly, there is a need to bring about improvement in the standard of services of the existing homes/institutions by the State Governments/Union Territory Administrations.

6. Taking into consideration the fact that amendments to the Juvenile Justice (Care and Protection of Children) Act 2000 were brought in the year 2006 and there were still many State Governments/ Union Territories that had till date not framed Rules under the principal Juvenile Justice Act, 2000; the NHRC should give a direction to all the States/Union Territories to expeditiously frame the required Rules so that the best interests of concerned juveniles/ children is taken care of.

7. No juvenile or a child under any circumstances is to be lodged in a jail. Further, it is to be ensured that in every police station at least one police officer is designated as the 'Juvenile or the Child Welfare Officer' and is imparted appropriate training and orientation to deal with juveniles or children. Not only this, the designated police officer or the Special Juvenile Police Unit is to report immediately to the

Board/Committee as well as inform the probation officer and parents/guardian of the juvenile/ child who is placed under their charge.

8. The delegates opined that NHRC should take the lead in directing the Juvenile Justice Boards of all States/Union Territories to review all pending cases of juveniles in conflict with law who till date were found to be languishing in Observation Homes and correspondingly pass appropriate orders in the interest of such juveniles.

9. Since majority of the juveniles in conflict with law and children in need of care and protection were from the poor sections of the society, the participants were of the view that the family support system of this 'at risk' population needs to be strengthened. This task, they felt, could best be accomplished with the coordination of the Government/corporate sector/NGO/Community support system. Besides, emphasis is to be laid on other 'preventive aspects' as well, such as, ensuring that every child from this population goes to school. This apart, the infrastructure of these schools also needs to be strengthened so that each of these schools could in itself function as Child Protection Centres.

10. The delegates of the Conference opined that there is need to define the concept of 'community service' as given in the Act. Besides, there is need to evolve minimum standard(s) of services for various community services for juveniles/children.

11. The delegates felt that there is need to ensure free legal aid and advice to juveniles in conflict with law as well as children in need of care and protection. Not only this, these children need to be given a patient hearing in all legal proceedings against them by taking into account their dignity and best interest.

    It was suggested that the Legal Services Authority Act, 1987 has made it obligatory for the State to provide legal services to a child.

As such, the State/District Legal Services Authority should take appropriate steps in rendering legal aid services to children. However, the NGOs already involved in this field should continue to render their services.

12. The delegates opined that the number of homes/institutions, catering to the needs of juveniles in conflict with law and children in need of care and protection across the country, had no co-relation whatsoever in terms of the budget allocated to them and the number of beneficiaries. Besides, the amount spent on their education, vocational training, recreation and health was negligible. The need of the hour, therefore, is to increase the budgetary allocations proportionately as well as bring convergence of resources.

13. The Conference recommended that adequate importance should be given to the overall role of probation in the juvenile justice system. This is because probation plays a significant role in the treatment and rehabilitation of juveniles. In fact, it was reiterated that probation could be used as an effective alternative method rather than sentencing or institutionalizing the juvenile.

14. It was recommended that to check violations and delay in adjudication, the District Legal Services Authority should be involved and immediately informed about the arrest of a juvenile. Further, there was need to create a Special Unit of Probation Officers to assist the Juvenile Justice Board. Besides, there should be effective networking between District Probation Officers throughout the country.

15. It was strongly recommended that the formal age enquiry should be dispensed with where a person apparently is a juvenile.

16. The delegates recommended that variety of dispositional alternatives as suggested in the 2000 and the amended Juvenile

Justice Act, 2006 should be effectively executed as it would ensure better care and rehabilitation.

17. There is a need to evolve an effective child tracking system that should be web-enabled so that information could be exchanged between all those working for the best interest of juveniles/ children.

18. There is a need to build-up/strengthen the capacities of various categories of professionals/ personnel responsible for the implementation of the juvenile justice system in the country in conformity with the new trends in the field. Accordingly, there is need to develop specialized training modules for different categories of professionals/personnel involved in the implementation of the juvenile justice system. All concerned must be given specialized knowledge about the philosophy of juvenile justice and scheme of the Juvenile Justice (Care and Protection of Children) Act under which they operate. Likewise, they need to be imparted knowledge about international human rights standards and instruments relating to administration of juvenile justice.

19. Simultaneously, there is a need to develop standardized study material in consultation with experts. This material should encompass international/national instruments/laws/rules on juvenile justice, judicial decisions, case studies, good practices in juvenile justice and the like. These steps would enable the concerned officers/personnel to discharge their duties effectively under the required Act.

20. It Was suggested that there is need to evolve Practice Directions for conducting proceedings related to juveniles/children keeping in view various provisions of the Constitution, JJA and other laws.

21. It was also recommended that there is a need to prepare Bench Books/Manuals/Hand books containing guidelines about:

- Process of Institutionalization.
- Role of professionals/ other cadres involved in the juvenile justice system.
- Child as a witness.
- Case Management of juvenile before trial.
- Case Management of juvenile during trial.
- Child as a victim/ plaintiff.
- Child as an accused.
- Release, rehabilitation and reintegration.
- Role of Advisory Boards/visitors
- Community Based Practices, etc.

Annexure - 4

Relevant extract from the Mental Health Act, 1987

Chapter IV Admission And Detention In Psychiatric Hospital Or Psychiatric Nursing Home

PART I

Admission on Voluntary Basis

Request by major for admission as voluntary patient

Any persons (not being a minor), who considers himself to be a mentally ill person and desires to be admitted to any psychiatric nursing home for treatment, may request the medical officer in charge for being admitted as a voluntary patient.

Request by guardian for admission of a ward

Where the guardian of a minor considers such minor to be a mentally ill person and desires to admit such minor in any psychiatric hospital or psychiatric nursing home for treatment, he may request the medical officer-in-charge for admitting such minor as a voluntary patient,

Admission of, and regulation with respect to, voluntary patient

- On receipt of a request under Sec.I5 or Sec.I6, the medical officer-in-charge shall make such inquiry as he may deem fit within a period not exceeding twenty- four hours and if satisfied that the applicant

or, as the case may be, the minor requires treatment as in - patients in the psychiatric hospital or psychiatric nursing home, he may admit therein such application or, as the case may be, minor as a voluntary patient.

- Every voluntary patient admitted to a psychiatric hospital or psychiatric nursing home shall be bound to abide by such regulations as may be made by the medical officer - in -charge or the licensee of the psychiatric hospital or psychiatric nursing home.

This section deals with the matter relating to admission of, and regulation with respect to voluntary patients.

Discharge of voluntary patients

- The medical officer-in-charge of a psychiatric hospital or psychiatric nursing home shall, on a request made in that behalf -

  a. by any voluntary patient; and

  b. by the guardian of the patient, if he is a minor voluntary patient, discharge, subject to the provisions of sub-section (3) and within twenty-four hours of the receipt of such request, the patient from the psychiatric hospital or psychiatric nursing home.

- Where a minor voluntary patient who is admitted as an in- patient in any psychiatric hospital or psychiatric nursing home attains majority, the medical officer-in-charge of such hospital or nursing home, shall, as soon as may be, intimate the patient that he has attained majority and that unless a request for his continuance as an in-patient is made by him within a period of one month of such intimation, he shall be discharged, and if, before the expiry of the said period, no request is made to the medical officer-in-charge

for his continuance as an in-patient, he shall, subject to the provisions of sub-section (3), be discharged on the expiry of the said period.

- Notwithstanding anything contained in sub-section (1) or sub-section (2) where the medical officer-incharge of a psychiatric hospital or psychiatric nursing home is satisfied that the discharge of a voluntary patient under sub-section (1) or sub-section (2) will not be in the interest of such voluntary patient, he shall, within seventy-two hours of the receipt of a request under sub-section (1), or, if no request under sub-section (2) has been made by the voluntary patient before the expiry of the period mentioned in that sub-section within seventy-two hours of such expiry constitute a Board consisting of two medical officers and seek its opinion as to whether such voluntary patient needs further treatment and if the Board is of the opinion that such voluntary patient needs further treatment in the psychiatric hospital or psychiatric nursing home the medical officer shall not discharge the voluntary patient, but continue his treatment for a period not exceeding ninety days at a time.

PART II

Admission Under Special Circumstances

Admission of mentally ill persons under certain special circumstances

Any mentally ill person who does not, or is unable to, express his willingness for admission as a voluntary patient, may be admitted· and kept as an in-patient in a psychiatric nursing hospital or psychiatric nursing home on an application made in that respect by a relative or a friend of the mentally ill person if the medical officers-in-charge is satisfied that in the interest of the mentally ill person it is necessary so to do:

PART III

Reception Orders

Application for reception order

- An application for a reception order may be made by -

  a. the medical officer-in-charge of a psychiatric hospital or psychiatric nursing home, or

  b. by the husband, wife or any other relative of the mentally ill person.

- Where a medical officer-in-charge of a psychiatric hospital or psychiatric nursing home in which a mentally ill person is undergoing treatment under a temporary treatment order is satisfied that -

  a. the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the psychiatric hospital or as the case may be, psychiatric nursing home is required to be continued for more than six months, or

  b. It is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that such person shall be detained in a psychiatric hospital or psychiatric nursing home.

  He may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situated, for the detention of such mentally ill-persons under a reception order in such psychiatric hospital or psychiatric nursing home, as the case may be.

- Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no

husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for the detention of the alleged mentally ill-person under a reception order in a psychiatric hospital or psychiatric nursing home.

- Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.

- No person -

  i. who is a minor, or

  ii. who, within fourteen days before the date of the application, has not seen the alleged mentally ill person, shall make an application under this section.

- Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application had been made for inquiry into the mental condition of the alleged mentally ill person and shall be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government.

Form and contents of medical certificates

Every medical certificate referred to in sub-section (6) of Sec. 20 shall contain a statement -

- that each of the medical practitioners referred to in that sub-section

has independently examined the alleged mentally ill person and has formed his opinion on the basis of his own observations and from the particulars communicated to him;

- that in the opinion of each such medical practitioner the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a psychiatric hospital or psychiatric nursing home and that such detention is necessary in the interests of the health and personal safety of that person or for the protection of others.

Procedure upon application for reception order

- on receipt of an application under sub-section (2) of Sec. 20, the Magistrate may make a reception order, if he is satisfied that -
  - the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment; or
  - it is necessary in the interests of the mental and personal safety of the mentally ill person or for the protection of others that he should be so detained, and a temporary treatment order would not be adequate in the circumstances of the case and it is necessary to make a reception order.
- on receipt of an application under sub-section of Section.20, the Magistrate shall consider the statements made in the application and the evidence of mental illness as disclosed by the medical certificates.
- If the Magistrate considers that there are sufficient grounds for proceeding further, he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is not necessary or expedient to do so.

- If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill-person as he thinks fit.

- The notice of the date fixed under sub-section (4) shall be given to the applicant and to any other person to whom, in the opinion of the Magistrate such notice shall be given.

- If the Magistrate fixes a date under sub-section (4) for further consideration of the application, he may make such order as he thinks fit, for the proper care and custody of the alleged mentally ill person pending disposal of the application.

- on the date fixed under sub-section (4), or on such further date as may be fixed by the Magistrate, he shall proceed to consider the application in camera, in the presence of the applicant:

    i. the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);

    ii. the person who may be appointed by the alleged mentally ill person to represent him; and

    iii. Such other person as the Magistrate thinks fit, and if the magistrate is satisfied that the alleged mentally ill person, in relation to whom the application is made, is so mentally ill that in the interests of the health and personal safety of that person or for the protection of others it is necessary to detail him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not so satisfied, he shall dismiss the application and any such order may provide for the payment of the costs of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.

- If any application is dismissed under sub-section(7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant.

Powers and duties of police officers in respect of certain mentally ill persons

- Every officer in charge of a police station -

  i. may take or cause to be taken into protection any person found wandering at large within the limits of his station whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself, and

  ii. shall take or cause to be taken into protection any person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.

- No person taken into protection under sub-section (1) shall be detained by the police without being informed, as soon as may be, of the grounds for taking him into such protection, or where, in the opinion of the officer taking the person into protection, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.
- Every person who is taken into protection and detained under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of taking him into such protection excluding the time necessary for the journey from the place where he was taken into such protection of the Court of the Magistrate and shall not be detained beyond the said period without the authority of the Magistrate.

Procedure on production of mentally ill person

- If a person is produced before the Magistrate under sub-section (3) of Sec.23, and if in his opinion, there are sufficient grounds for

proceeding further, the Magistrate shall examaine the person to assess his capacity to understand.

a. Cause him to be examined by a medical officer, and
b. Make such inquiries in relation to such persons as he may deem necessary)'.

- After the completion of the proceeding under sub-section (1), the Magistrate may pass a reception order authorising the detention of the said person as an in-patient in a psychiatric hospital or psychiatric nursing home -

  - if the medical officer certifies such a person to be a mentally ill person, and
  - if the Magistrate is satisfied that the said person is a mentally ill person and that in the interest of the health and personal safety of that person or for the protection of others, it is necessary to pass such order.

Provided that if any relative or friend of the mentally ill person desires that the mentally ill person be sent to any particular licensed psychiatric hospital or licensed psychiatric nursing home for treatment therein and undertakes in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally ill person into that hospital or nursing home and detention therein;

Provided further that if any relative or friend of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from doing any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to the care of such relative or friend.

Order in case of mentally ill person cruelly treated or not under proper care and control

- Every officer in charge ofa police station is mentally ill and is not under proper care.and control, or is mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.
- Any private person who has reason to believe that any person is mentally ill and is not under proper care and control" or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.
- If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-t~eated or neglected by any relative or other person having the charge of such mentally· ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.
- If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.
- If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any

action that may be taken under sub-section (4), proceed in the manner provided in Sec.24 as if such person had been produced before him under sub-section (3) of Sec. 23.

C - Further provisions regarding admission and detention of certain mentally ill persons.

Admission as in-patient after inquisition

If any District Court holding an inquisition under Chapter VI regarding any person who is found to be mentally ill is of opinion that it is necessary so to do in the interests of such person, it may by order, direct that such person shall be admitted and kept as an in-patient in a psychiatric hospital or psychiatric nursing home and every such order may be varied from time to time or revoked by the District court.

Admission and detention of mentally ill prisoner

An order under Sec. 30 of the Prisoners Act, 1900 (3 of 1900) or under Sec. 144 of the Air Force Act, 111950 (45 of 1950), or under Sec. 145 of the Army Act 1950 (46 of 1950), or under Sec. 143 or Sec. 144 of the Navy Act, 1957 (62 of 1957), or under Sec. 330 or Sec. 335 of the Code of Criminal Procedure 1973 (2 of 1974), directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or, as the case may be, such nursing home or any other psychiatric hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein.

Detention of alleged mentally ill person pending report by medical officer

- When any person alleged to be a mentally ill person appears or is brought before a Magistrate under Sec. 23 or Sec. 25, the

Magistrate may, by order in writing, authorise the detention of the alleged mentally ill person under proper medical custody in an observation ward of a general hospital or general nursing home or psychiatric hospital of psychiatric nursing home or in any other suitable place for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to. determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under Cl. (a) of sub-section (2) of Sec.24.

- The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding 10 day at a time as he may deem necessary:

Provided that no person shall be authorised to be detained under this sub-section for a continuous period exceeding thirty days in the aggregate.

Detention of mentally ill person pending his removal to psychiatric hospital or psychiatric nursing home

Whenever any reception order is made by a Magistrate under Sec. 22, Sec. 234 or Sec. 25, he may by reasons to be recorded in writing, direct that he mentally ill person in respect of whom the order is made may be detained for such period not exceeding thirty days in such place as he may deem appropriate. Pending the removal of such person to a psychiatric hospital or psychiatric nursing home.

D - Miscellaneous provision in relation to orders under this chapter.

Time and manner of medical examination of mentally ill person

Where any other order under this Chapter is required to be made on the

basis of a medical certificate, such order shall not be made unless the person who has signed the medical certificate, or where such order is required to be made on the basis of two medical certificates, the signatory of the respective certificates, has certified that he has personally examined the alleged mentally ill person -

- in the case of an order made on an application, not earlier than ten clear days immediately before the date on which such application is made; and

- in any other case, not earlier than ten clear days immediately before the date of such order;

Provided that where a reception order is required to be made on the basis of two medical certificates such order shall not be made unless the certificates show that the signatory of each certificate examined the alleged mentally ill person independently of the signatory of the other certificate.

Authority for reception order

A reception order made under this Chapter shall be sufficient authority -

- for the applicant or any person authorised by him, or

- in the case of a reception order made otherwise than on an application, for the person authorised so to do by the authority making this order.

To take the mentally ill person to the place mentioned in such order or for his admission and treatment as an in-patient in the psychiatric hospital or psychiatric nursing home specified in the order or, as the case may be, for his admission and detention, therein or in any psychiatric hospital or psychiatric nursing home to which he may be removed in accordance with the provisions of this Act, and the medical officer-in-charge shall be bound to comply with such order:

Provided that in any case where the medical officer-in-charge finds

accommodation in the psychiatric hospital or psychiatric nursing home inadequate he shall, after according admission, intimate that fact to the Magistrate or the District Court which passed the order and thereupon the Magistrate or the District Court, as the case may be, shall pass such order as he or it may deem fit:

Provided further that every reception order shall cease to have effect

- on the expiry of thirty days from the date on which it was made, unless within that period, the mentally ill person has been admitted to the place mentioned therein, and

- on the discharge, in accordance with the provisions of this Act, of the mentally ill person.

Copy of reception order to be sent to medical officer-in-charge

Every Magistrate or District Court making a reception order shall forthwith send a certified copy thereof together with copies of the requisite medical certificates and the statement of particulars to the medical officer in charge of the psychiatric hospital or psychiatric nursing home to which the mentally ill person is to be admitted.

Restriction as to psychiatric hospitals and psychiatric nursing homes into which reception order may direct admission

No Magistrate or District Court shall pass a reception order for the admission as an in-patient to, or for the detention of any mentally ill person, as an in-patient to, or for the detention of any mentally ill person, in any psychiatric hospital or psychiatric nursing home outside the State in which the Magistrate or the District Court exercises jurisdiction:

Provided that an order for admission or detention into or in a psychiatric hospital or psychiatric nursing home situated in any other State may be

passed if the State Government has by general or special order and after obtaining the consent of the Government of such other State, authorised the Magistrate or the District Court in that behalf.

Amendment of order or document

If, after the admission of any mentally ill person to any psychiatric hospital or psychiatric nursing home under a reception order, it appears that the order under which he was admitted or detained or any of the documents on the basis of which such order was made defective or incorrect, the same may, at any time thereafter be amended with the permission of the Magistrate or the District Court, by the person or persons who signed the same and upon such amendment being made, the order shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended, or, as the case be, the documents upon which it was made had been originally furn!shed, also amended.

Power to appoint substitute for person upon whose application reception order has been made

- Subject to the provisions of this section the Magistrate may, by order in writing (hereinafter referred to the orders of substitution), transfer the duties and responsibilities under this Act, of the person on whose application a reception order was made, to any other person who is willing to undertake the same and such other person shall thereupon be deemed for the purposes of this Act to be the person on whose application the reception order was made and all references in this Act to the latter person shall be construed accordingly:

  Provided that no such Qrder of substitution shall absolve the person upon whose application the reception order was made or, if he is dead, his legal representatives, from any liability incurred before the date of the order of substitution.

- Before making any order of substitution, the Magistrate shall send a notice to the person on whose application the reception order. was made if he is alive, and to any relative of the mentally ill person who, in the opinion of the Magistrate, shall have notice.

- The notice under sub-section (2) shall specify the name of the person in whose favour it is proposed to make the order of substitution and the date (which shall be not less than twenty days from the date of issue of the notice) on which objections, if any, to the making of such order shall be considered.

- On the date specified under sub-section (3), or on any subsequent date to which the proceedings may be adjourned, the Magistrate shall consider any objection made by any person to whom notice was sent or by any other relative of the mentally ill person, and shall receive all such evidence as may be produced by or on behalf of any such person or relative and after making such inquiry as the Magistrate may deem fit make or refrain from making the order of substitution:

  Provided that, if the person on whose application the reception order was made is dead and any other person is willing and is, in the opinion of the Magistrate, fit to undertake the duties and responsibilities under this Act of the former person, the Magistrate shall, subject to the provisions contained in the proviso to sub-section (1), make an order to that effect.

- In making any substitution order under this section, the Magistrate shall give preference to the person who is the nearest relative of the mentally ill person, unless, for reasons *to* be recorded in writing the Magistrate considers that giving such preference will not be in the interests of the mentally ill person.

- The Magistrate may make such order for the payment of the costs

of an inquiry under this section by any person or from out of the estate of the mentally ill person as he thinks fit.

- Any notice under sub-section (2) may be sent by post to the last known address of the person for whom it is intended.

Officers competent to exercise powers and discharge function of Magistrate under certain sections

In any area where a Commissioner of Police has been appointed, all the powers and functions· of the Magistrate under Secs. 23,24,25 and 28 may be exercised or discharged by the Commissioner of Police and all the functions of an officer-in-charge of a police station under this Act may be discharged by any police officer not below the rank of an Inspector.

Some Important Instructions/Guidelines
Issued by the National Human Rights Commission

On custodial deaths/rapes

Reporting of custodial deaths/rapes

Letter to all Chief Secretaries on the reporting of custodial deaths within 24 hours.

No. 66/SG/NHRC/93

National Human Rights Commission
Sardar Patel Bhavan
New Delhi

14 December, 1993

From: **R.V. Pillai**
Secretary General

To: Chief Secretaries of all States
and Union Territories

Sir/Madam,

The National Human Rights Commission at its meeting held on the 6th instant discussed the problems of custodial deaths and custodial rapes. In view of the rising number of incidents and reported attempts to suppress or present a different picture of these incidents with the lapse of time, the Commission has taken a view that a direction should be issued forthwith to the District Magistrates and Superintendents of Police of every district 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. Failure to report promptly would give rise to presumption that there was an attempt to suppress the incident.

2. It is accordingly requested that the District Magistrates/Superintendents of Police may be given suitable instructions in this regard so as to ensure prompt communication of incidents of custodial deaths/custodial rapes to the undersigned.

Yours faithfully,

Sd/-

(R.V. Pillai)

Letter to all Chief Secretaries clarifying that not only deaths in police custody but also deaths in judicial custody be reported.

R. V. Pillai
Secretary General

F.No. 40/3/95-LD
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

June 21, 1995

To

Chief Secretaries of all States and
Union Territories

Sir/Madam,

Vide letter No.66/SG/NHRC/93 dt. December 14, 1993, you were requested to give suitable instructions to DMs/SPs to ensure prompt communication of incidents of custodial deaths/custodial rapes.

2. A perusal of the reports received from DMs/SPs in pursuance of the above mentioned communication reveals that reports are received in the Commission from some of the States, only on deaths in police custody. The objective of the Commission is to collect information in respect of custodial deaths in police as well as judicial custody. May I, therefore, request you to have instructions sent to all concerned to see that deaths in judicial custody are also reported to the Commission within the time frame indicated in my letter of December 14, 1993 ?

Yours faithfully,

Sd/-

(R. V. Pillai)

Post-mortem examination in cases of deaths in custody

Letter to Chief Ministers of States on the video filming of post-mortem examinations in cases of custodial deaths.

Justice Ranganath Misra
Chairperson

August 10,1995

My dear Chief Minister,

The National Human Rights Commission soon after its constitution in October, 1993, called upon the law and order agencies at the district level throughout the country to report matters relating to custodial death and custodial rape within 24 hours of occurrence. Since then ordinarily reports of such incidents have been coming to the Commission through the official district agencies. The Commission is deeply disturbed over the rising incidents of death in police lock-up and jails. Scrutiny of the reports in respect of all these custodial deaths by the Commission very often shows that the post-mortem in many cases has not been done properly. Usually the reports are drawn up casually and do not at all help in the forming of an opinion as to the cause of death. The Commission has formed an impression that a systematic attempt is being made to suppress the truth and the report is merely the police version of the incident.

The post-mortem report was intended to be the most valuable record and considerable importance was being placed on this document in drawing conclusions about the death.

The Commission is of a prima-facie view that the local doctor succumbs to police pressure which leads to distortion of the facts. The Commission would like that all post-mortem examinations done in respect of deaths in police custody and in jails should be video-filmed and cassettes be sent to the Commission along with the post-mortem report. The Commission is alive to the fact that the process of video-filming will involve extra cost but you would agree that human life is more valuable than the cost of video-filming and such occasions should be very limited.

We would be happy if you would be good enough to immediately sensitise the higher officials in your state police to introduce video-filming of post mortem examination with effect from 1st October, 1995.

We look forward for your response within three weeks.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

To
Chief Ministers of all States, Pondicherry & the National Capital Territory of Delhi/ Governors of those States under the President's rule.

Letter to Chief Ministers/Administrators of all States/Union Territores with a request to adopt the Model Autopsy form and the additional procedure for inquest.

Justice M.N. Venkatachaliah
Chairperson
(Former Chief Justice of India)

No. NHRC/ID/PM/96/57

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

March 27, 1997

Dear

May I invite your kind attention to a matter which NHRC considers of some moment in its steps to deal with custodial deaths? The Commission on the 14th December, 1993 had issued a general circular requiring all the District Magistrates and the Superintendents of Police to report to the Commission, incidents relating to custodial deaths and rapes within 24 hours of their occurrence. A number of instances have come to the Commission's notice where the post-mortem reports appear to be doctored due to influence/pressure to protect the interest of the police/jail officials. In some cases it was found that the post-mortem examination was not carried out properly and in others, inordinate delays in their writing or collecting. As there is hardly any outside independent evidence in cases of custodial violence, the fate of the cases would depend entirely on the observations recorded and the opinion given by the doctor in the post-mortem report. If post-mortem examination is not thoroughly done or manipulated to suit vested interests, then the offender cannot be brought to book and this would result in travesty of justice and serious violation of human rights in custody would go on with impunity.

With a view to preventing such frauds, the Commission recommended to all the States to video-film the post-mortem examination and send the cassettes to the Commission.

It was felt that the Autopsy Report forms now in use in the various States, are not comprehensive and, therefore, do not serve the purpose and also give scope for doubt and manipulation. The Commission, therefore, decided to revise the autopsy-form to plug the loopholes and to make it more incisive and purposeful.

The Commission, after ascertaining the views of the States and discussing with the experts in the field and taking into consideration, though not entirely adopting, the U.N. Model Autopsy protocol, has prepared a Model Autopsy form enclosed as Annexure-I.

In this connection, it was felt that some incidental improvements are also called for in regard to the conduct of inquests. For proper assessment of “Time since death”

or 'the time of death', determination of temperature changes and development of Rigor Mortis at the time of first examination at the scene is essential. This can conveniently be done by following some easily understandable and implementable procedure. The procedure to be followed by those in charge of inquest, is indicated in Annexure-II to this letter. This is a small but important addition to the inquest procedure.

The Commission recommends your Government to prescribe the Model Autopsy Form (Annexure-I) and the additional procedure for inquest as indicated in Annexure-II, to be followed in your State with immediate effect.

I shall look forward to your kind and favourable response.

Yours sincerely,

Sd/-

(M.N. Venkatachaliah)

To

Chief Ministers/Administrators of all States/Union Territories.

ANNEXURE-I

MODEL POST-MORTEM REPORT FORM

(Read carefully the instructions at Appendix 'A')

NAME OF INSTITUTION _____

Post Mortem Report No. _____ Date _____

Conducted by Dr. _____

Date & Time of receipt of the body
and Inquest papers for Autopsy _____

Date & Time of commencement of Autopsy _____

Time of completion of Autopsy_____

Date & Time of examination of the dead body
at Inquest (as per Inquest Report) _____

Name & Address of the person _____
video recording the Autopsy _____

Note: The tape should be duly sealed, signed and dated and sent to the National Human Rights Commission, Sardar Patel Bhawan, Sansad Marg, New Delhi.

_____

CASE PARTICULARS

1. (a) Name of deceased and as entered in the Jail or Police record_____
   (b) S/O, D/O, W/O _____
   (c) Address : _____

2. Age (Approx) :_____ yrs; Sex : Male/Female

3. Body brought by (Name and rank of Police officials)
   (i) _____
   (ii) _____
   of Police Station _____

4. Identified by (Names & addresses of relatives/persons acquainted)

(i) _____

(ii) _____

IF HOSPITAL DEAD BODIES - (particulars as per hospital records)

Date & Time of Admission in Hospital _____

Date & Time of Death in Hospital _____

Central Registration No. of Hospital _____

SCHEDULE OF OBSERVATIONS

(A) GENERAL

(l) Height _____ cms. (2) Weight _____ Kgs.

(3) Physique - (a) lean/ medium / obese

(b) Well built/average built/poor built/emaciated

(4) Identification features (if body is unidentified)

(i) _____

(ii) _____

(iii) Finger prints be taken on seperate sheet and attached by the doctor.

(5) Description of clothes worn - important features:

(6) Post-mortem Changes :

(a) As seen during inquest

- Whether rigor mortis present _____
- Temperature (Rectal) _____
- Others _____

(b) As seen at Autopsy -

(7) (a) External general appearance -

(b) State of eyes

(c) Natural orifices

(B) EXTERNAL INJURIES:

(Mention Type, Shape, Length x Breadth & Depth of each injury and its relation to important body landmark. Indicate which injuries are fresh and which are old and their duration.)

Instructions :-

(i) Injuries be given serial number and mark similarly on the diagrams attached. (ii) In stab injuries, mention angles, margins and direction inside body. (iii) In fire arm injuries, mention about effects of fire also.

C) INTERNAL EXAMINATION

1. HEAD

(a) Scalp findings

(b) Skull (Describe fractures here & show them on body diagram enclosed)

(c) Meninges, meningeal spaces & Cerebral vessels
(Hemorrhage & its locations, abnormal smell etc. be noted)

(d) Brain findings & Wt. (Wt. _____ gms.)

(e) Orbital, nasal & aural cavities - findings.

2. NECK

- Mouth, Tongue & Pharynx
- Larynx & Vocal cords
- Condition of neck tissues
- Thyroid & other cartilage conditions
- Trachea

3. CHEST

- Ribs and Chest wall
- Oesophagus
- Trachea & Bronchial Tree

- Pleural Cavities - R -
- L -

Lungs findings & Wt. - Rt. _____ gms. & Lt. _____ gms.

- Pericardial Sac

- Heart findings & Wt. _____ .

- Large blood vessels

4. Abdomen

- Condition of abdominal wall

- Peritoneum & Peritoneal cavity

- Stomach (wall condition, contents & smell) (Weight _____ gms.)

- Small intestines including appendix

- Large intestines & Mesentric vessels

- Liver including
  gall bladder (wt. _____ gms)

- Spleen (wt. _____ gms.)

- Pancreas

- Kidneys finding & Wt. - Rt. _____ gms. & Lt. _____ gms.

- Bladder & urethra

- Pelvic cavity tissues

- Pelvic Bones

- Genital organs (Note the condition of vagina, scrotum, presence of foreign body, presence of foetus, semen or any other fluid, and contusion, abrasion in and around genital organs).

5. SPINAL COLUMN & SPINAL CORD (To be opened where indicated)

OPINION

i) Probable time since death (keep all factors including observations at inquest)

ii) Cause & manner of death- The cause of death to the best of my knowledge and belief is :-

(a) Immediate cause -

(b) Due to -

(c) Which of the injuries are ante-mortem/post-mortem and duration if ante-mortem ?

(d) Manner of causation of injuries

(e) Whether injuries (individually or collectively) are sufficient to cause death in ordinary course of nature or not ?

iii) Any other

SPECIMENS COLLECTED & HANDED OVER (Please tick)

a) Viscera (Stomach with contents, small intestine with contents, sample of liver, kidney (one half of each), spleen, sample of blood on gauze piece (dried), any other viscera, preservative used)

b) Clothes

c) Photographs (Video cassettes in case of custody deaths), finger prints etc)

d) Foreign body (like bullet, ligature etc.)

e) Sample of preservative in cases of posioning.

f) Sample of seal

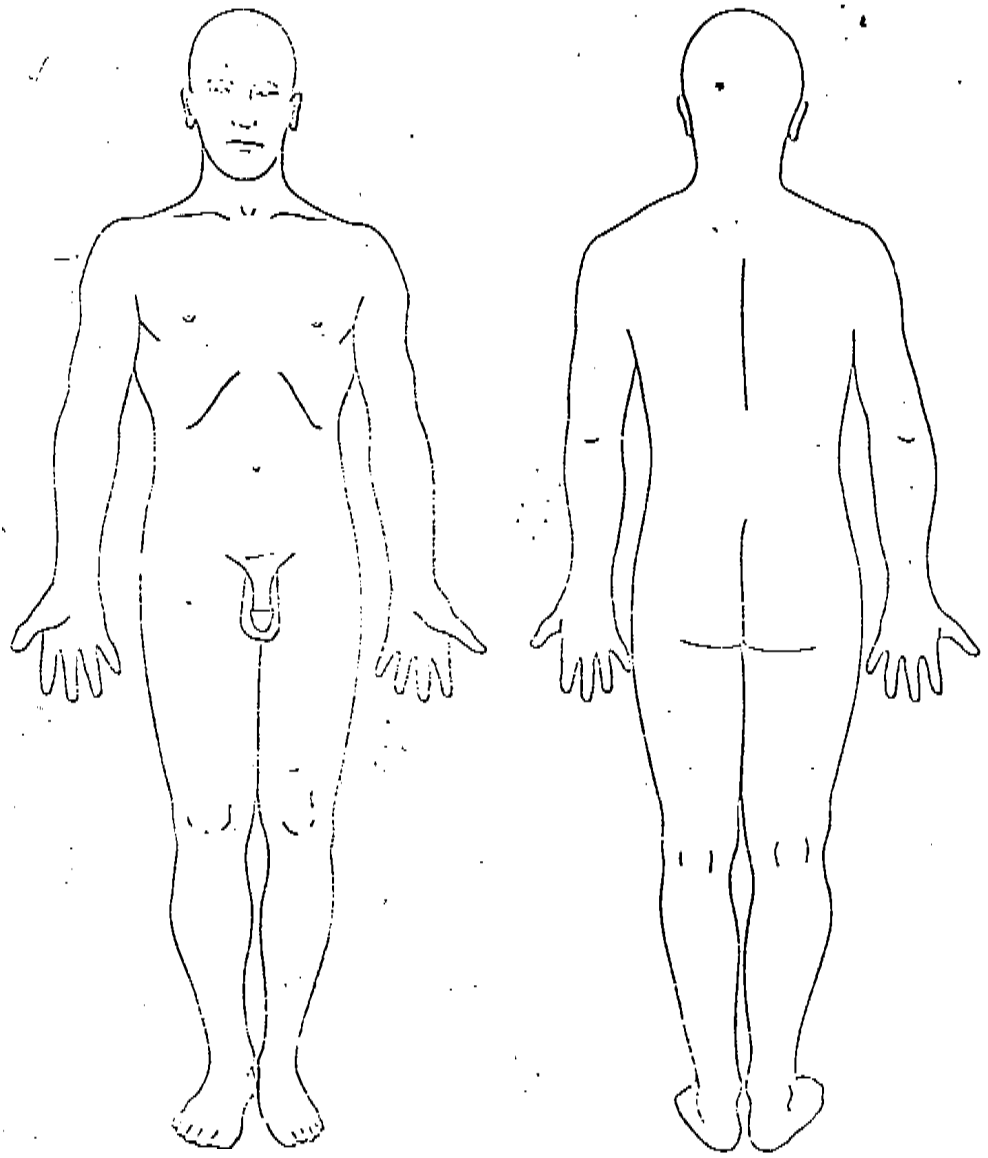
g) Inquest papers (mention total number & initial them)

h) Slides from vagina, semen or any other material

PM report in original, ____inquest papers, dead body, clothings and other articles (mention there) duly sealed (Nos. ___) handed over to police official _____ No. _____ of PS _____ whose signatures are herewith.

Signature : _____
Name of Medical Officer _____
(in block letters) _____
Designation _____
SEAL

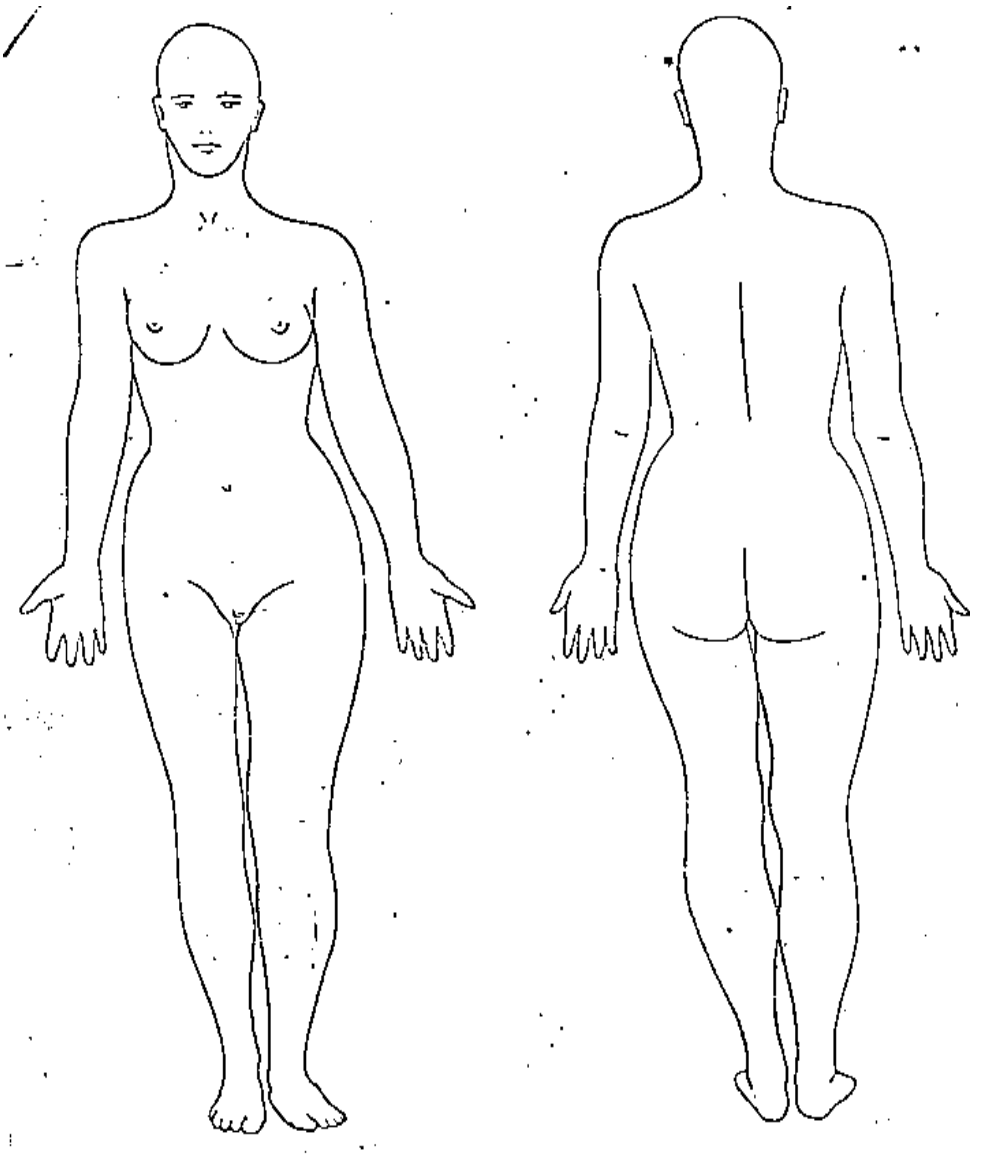
Full Body: Male-Anterior and Posterior Views (Ventral and Dorsal)



Name _____ Case No._____

Date _____

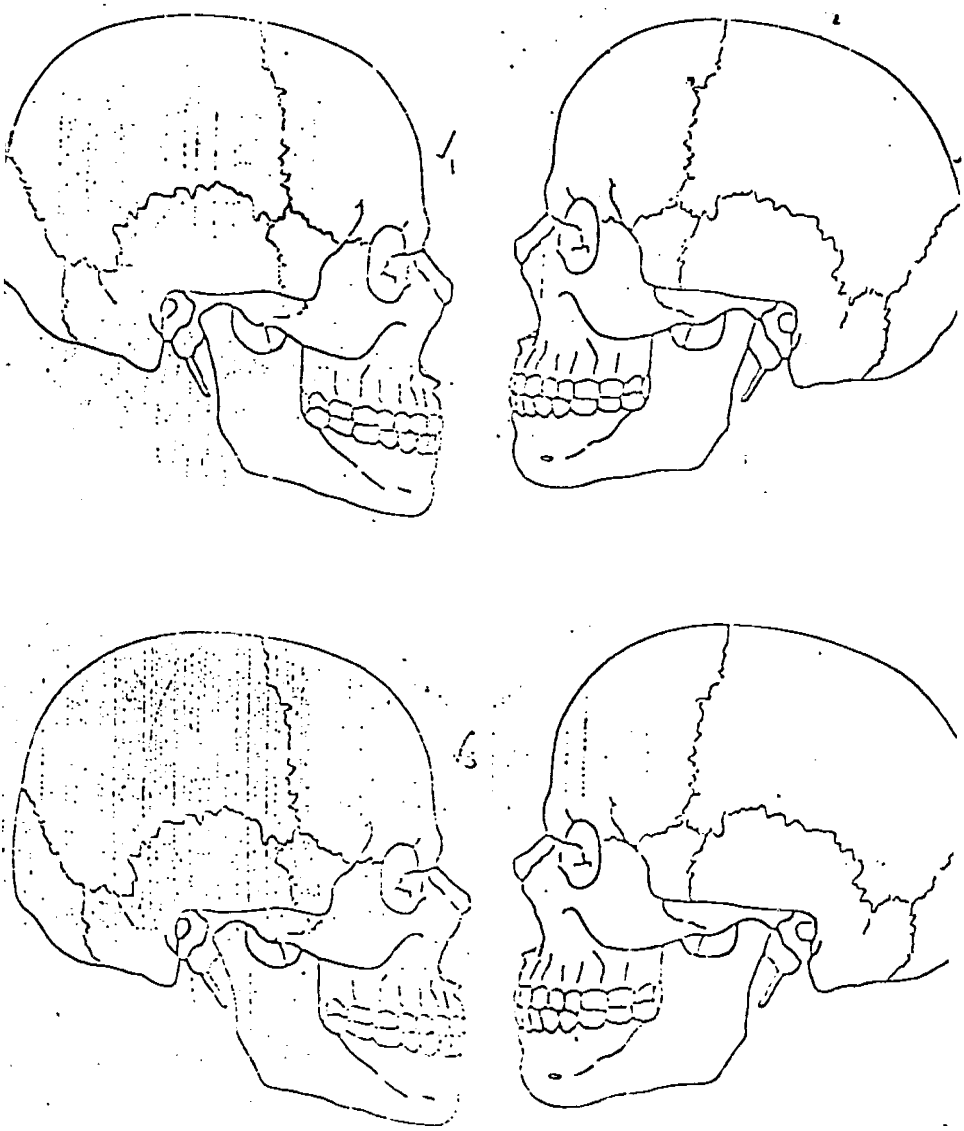
Full Body: Female-Anterior and Posterior Views

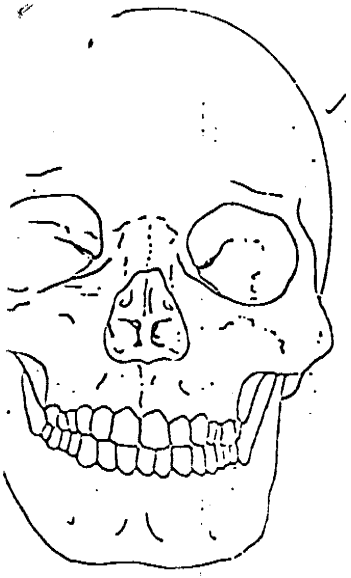


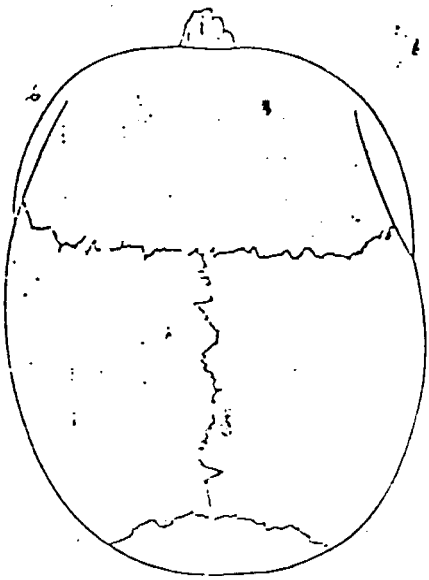
Name _____ Case No. _____

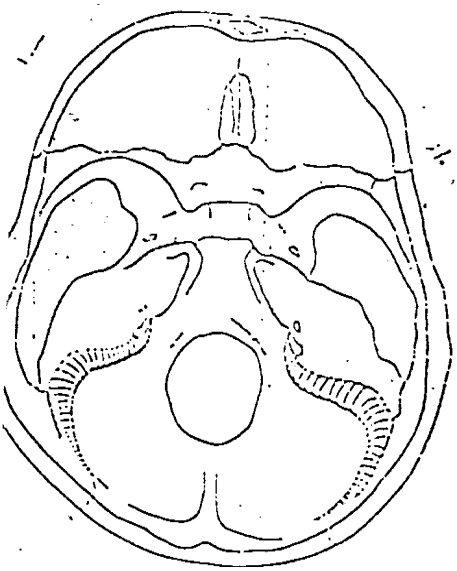
Date _____

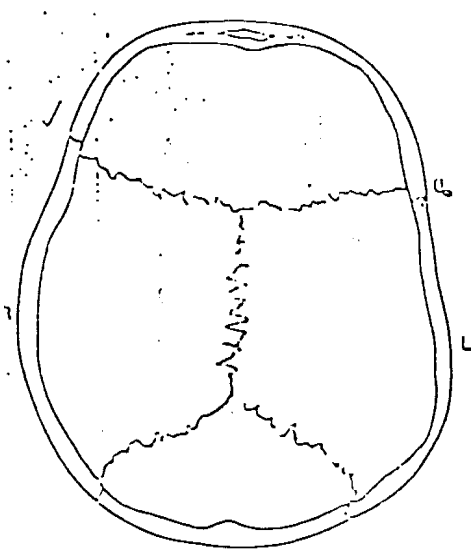
Head - Surface and Skeletal Anatomy : Lateral view











Inner View of Skull

Instructions to be Followed Carefully for Detention or Torture.

	Torture technique	Physical findings
Beating		
1.	General	Scars, Bruises, Lacerations. Multiple fractures at different stages of healing, especially in unusual locations, which have not been medically treated.
2.	To the soles of the feet, or fractures of the bones of the feet.	Haemorrhage in the soft tissues of the soles of the feet and ankles. Aseptic necrosis.
3.	With the palms on both ears simultaneously.	Ruptured or scarred tympanic membranes. Injuries to external ear.
4	On the abdomen, while lying on a table with the upper half of the body unsupported ("operating table").	Bruises on the abdomen. Back injuries. Ruptured abdominal viscera.
5	To the head.	Cerebral cortical atrophy, Scars, Skull fractures, Bruises, Haematomas.
Suspension		
6.	By the wrists.	Bruises or scars about the wrists. Joint injuries.
7.	By the arms or neck.	Bruises or scars at the site of binding. Prominent lividity in the lower extremities.
8.	By the ankles.	Bruises or scars about the ankles. Joint injuries.
9.	Head down, from a horizontal pole placed under the knees with the wrists bound to the "Jack".	Bruises or scars on the anterior forearms and backs of the knees. Marks on wrists and ankles.

	Torture technique	Physical findings
Near Suffocation.		
10.	Forced immersion of head in often contaminated “wet submarine”.	Faecal material or other debris in the mouth, pharynx, trachea, esophagus or lungs, Intrathoracic petechiae, Intra-thoracic petechiae.
11.	Tying of a plastic bag over the head (“dry submarine”).	Intro-thoracic petechiae.
Sexual abuse.		
12	Sexual abuse	Sexually transmitted diseases, pregnancy, injuries to breasts, external genitalia, vagina, anus or rectum.
Forced posture		
13	Prolonged standing.	Dependent edema, Petechiae in extremities.
14.	Forced straddling of a bar (“saw horse”).	Perineal or scrotal haematomas.
Electric shock		
15	Cattle prod.	Burns: appearance depends on the age of the injury. Immediately: red spots, vesicles, and/or black exudate. Within a few weeks: circular, reddish, macular scars. At several months: small, white, reddish or brown spots resembling telangiectasias.
16	Wires connected to a source of electricity.	
17.	Heated metal skewer inserted into the anus.	Peri-anal or rectal burns.
Miscellaneous		
18	Dehydration	Vitreous humor electrolyte abnormalities.
19	Animal bites (spiders, insects, rats, mice, dogs)	Bite marks.

Annexure II

Additional Inquest Procedure

In order to help in proper assessment of 'Time Since Death', determination of temperature changes and development of Rigor Mortis at the time of first examination at the scene is essential. This can be attained in the present system of inquest by examining the dead body at the scene scientifically for these two parameters either by a medical officer or a trained Police officer.

Essential requirement for determining Temperature Changes & Rigor Mortis:

The procedure is simple and can be learnt by any police officer if he is trained properly at the Police Training institution by a medical officer. This procedure includes:

(i) Taking of 'Rectal Temperature' at the first examination of the body at the scene itself while conducting the inquest. A simple Rectal Thermometre can be inserted in the anus of the dead body. After waiting for 3 to 5 minutes temperature should be read. The temperature so read should be mentioned in the inquest report as also the time of its recording.

(ii) Similarly for determining 'Rigor Mortis', i.e., stiffening of the muscles, the Police officer should bend the limbs and see whether there is any stifness in them. The observations abut stifness be mentioned as also the time in the inquest report. These observations would be helpful to the doctors conducting post-mortem examination.

Letter to all Home Secretaries regarding the revised instructions to be followed while sending post-mortem reports in cases of custodial deaths

N. Gopalaswami, IAS
Secretary General

D.O. No. 40/1/1999-2000-CD (NRR)
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

January 3, 2001

Dear

As you are aware, the Commission had issued general instructions in 1993 that intimation be given to the Commission of any custodial death within 24 hours of its occurrence. These intimations are to be followed with the post-mortem reports, Magisterial Inquest Report/Videography report of the post-mortem etc. However, it is found that there is a considerable delay in sending the post-mortem report along with the videography and the Magisterial Inquest Report.

This causes delay in the Commission in processing the cases of custodial deaths and the awarding of interim relief wherever *prima facie* there is reason to conclude that the custodial death was a result of custodial violence. In order to streamline the procedure, the following instructions are issued:

1.1 The post-mortem report along with the videograph and the Magisterial Enquiry report must be sent within 2 months of the incident.

1.2 The post-mortem reports have to be sent in the new proforma which was circulated vide letter No. NHRC/ID/PM/96/57 dated 27.03.1997. All concerned authorities may be instructed to use the new proforma. A copy of the new proforma* is enclosed for ready reference.

2. In every case of custodial death, Magisterial Enquiry has also to be done as directed by the Commission. It should be ensured that the Magisterial Enquiry is completed as soon as possible but in such a way that within 2 months deadline mentioned in Para 1.1 the Magisterial Enquiry report is also made available.

3. In some cases of custodial death, after post-mortem the viscera is sent for examination and viscera report is called for. However, the viscera report takes some time in coming and therefore, this is to clarify that the post mortem report and other documents should be sent to the Commission without waiting for the viscera report. The viscera report should be sent subsequently as soon as it is received.

Instructions may kindly be issued to all concerned authorities to adhere to the above guidelines.

Thanking you and with Season's Greetings,

Yours sincerely,

Sd/-

(N. Gopalaswami)

To

All Home Secretaries

Letter to Chief Ministers/Administrators of all States/Union Territories communicating the modified instructions regarding videography of post-mortem examinations in respect of deaths in jail

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

D.O. No. 3/2/99-PRP&P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

21st December, 2001

Dear

May I invite your kind attention to the communication dated 10th August, 1995 addressed to you by my predecessor Justice Ranganath Misra regarding videography of post-mortem examinations in respect of cases of deaths in police custody and in jails. I am happy to find a significant impact of the observance of these instructions on the general level of custodial violence in the country.

An analysis of the cases of custodial death reported to the Commission during the last five years by various States has highlighted the need for re-examination of the instructions on videography in cases of death in jails from the aspect of their utility and the practical difficulties pointed out by some of the jail authorities. A scrutiny of the reports has revealed that, while death in police custody is very often a result of custodial violence, majority of deaths reported from jails are due to illness aggravated by negligence in giving proper treatment. Although the Commission views the post-mortem examination as essential even in such cases, it feels, the requirement of videography of the examination can be relaxed to some extent.

The Commission has, therefore, decided to modify its earlier instructions. The instructions regarding videography of post-mortem examinations in respect of deaths in police custody will remain in force as before. The requirement of videography of post-mortem examinations in respect of deaths in jail will be applicable only in the following cases:-

(i) Where the preliminary inquest by the Magistrate has raised suspicion of some foul play.

(ii) Where any complaint alleging foul play has been made to the concerned authorities or there is any suspicion of foul play.

It is requested that these instructions may be passed on to all concerned for future action.

With regards,

Yours sincerely,
Sd/-
(J.S. Verma)

To

Chief Ministers/Administrators of all States/Union Territories.

On visits to police lock-ups & guidelines on arrest and polygraph tests

Visit of NHRC's officers to police lock-ups

Letter to Chief Secretaries/Administrators of all States/Union Territories on the Visit of NHRC's Officers to Police Lock-ups.

R.V. Pillai
Secretary General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
Sardar Patel Bhavan, Sansad Marg,
New Delhi-110001.

DO No.15(13)/97-Coord

1 August, 1997

Dear Shri

Officers of the National Human Rights Commission visit various States in pursuance of the directions issued by the Commission on a variety of items of work which come within its statutory responsibilities.

2. In the context of reports received by the Commission on the condition of police lock-ups in various States, the Commission has decided that the State Governments may be requested to permit officers of the NHRC to visit the police lock-ups also during their visits to States.

3. Accordingly, I am to request you to issue necessary instructions to enable officers of the NHRC visiting your State to undertake visits to police lock-ups as well.

4. A line in confirmation of the instructions issued will be greatly appreciated.

With regards,

Yours sincerely,

Sd/

(R.V. Pillai)

To

All Chief Secretaries/Administrators of States & UTs.

No. 7/11/99-PRP&P

D.R. Karthikeyan
Director General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

22nd November, 1999

To

The Chief Secretaries of all States/Union Territories

Sir,

After due consideration of all the aspects involved, the National Human Rights Commission has adopted certain guidelines regarding "arrests".

A note containing these guidelines approved by the Commission is enclosed herewith. The Commission requests all the State Governments to translate these guidelines into their respective regional language and make them available to all Police Officers and in all Police Stations.

Senior officers visiting Police Stations may ensure the availability of such guidelines with respective police officers and the Police Stations and ensure their compliance.

Yours faithfully,

Sd/-

(D. R. Karthikeyan)

Copy to:

1. Home Secretaries of all States/Union Territories

2. Directors General of Police of all States

Encl: As stated

NHRC GUIDELINES REGARDING ARREST

Need for Guidelines

Arrest involves restriction of liberty of a person arrested and therefore, infringes the basic human rights of liberty. Nevertheless the Constitution of India as well as International human rights law recognise the power of the State to arrest any person as a part of its primary role of maintaining law and order. The Constitution requires a just, fair and reasonable procedure established by law under which alone such deprivation of liberty is permissible.

Although Article 22(1) of the Constitution provides that every person placed under arrest shall be informed as soon as may be the ground of arrest and shall not be denied the right to consult and be defended by a lawyer of his choice and S.50 of the Code of Criminal Procedure, 1973 (Cr. PC) requires a police officer arresting any person to " forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest". in actual practice these requirements are observed more in the breach.

Likewise, the requirement of production of the arrested person before the court promptly which is mandated both under the Constitution [Article22(2)] and the Cr. PC (Section 57] is also not adhered to strictly.

A large number of complaints pertaining to Human Rights violations are in the area of abuse of police powers, particularly those of arrest and detention. It has, therefore, become necessary, with a view to narrowing the gap between law and practice, to prescribe guidelines regarding arrest even while at the same time not unduly curtailing the power of the police to effectively maintain and enforce law and order and proper investigation.

PRE-ARREST

- The power to arrest without a warrant should be exercised only after a reasonable satisfaction is reached, after some investigation, as to the genuineness and bonafides of a complaint and a reasonable belief as to both the person's complicity as well as the need to effect arrest. [Joginder Kumar's case-(1994) 4 SCC 260).

- Arrest cannot be justified merely on the existence of power, as a matter of law, to arrest without a warrant in a cognizable case.

- After Joginder Kumar's pronouncement of the Supreme Court the question

whether the power of arrest has been exercised reasonably or not is clearly a justiciable one.

- Arrest in cognizable cases may be considered justified in one or other of the following circumstances:

(i) The case involves a grave offence like murder, dacoity, robbery, rape etc. and it is necessary to arrest the suspect to prevent him from escaping or evading the process of law.

(ii) The suspect is given to violent behaviour and is likely to commit further offences.

(iii) The suspect requires to be prevented from destroying evidence or interfering with witnesses or warning other suspects who have not yet been arrested.

(iv) The suspect is a habitual offender who, unless arrested, is likely to commit similar or further offences. [3rd Report of National Police Commission]

- Except in heinous offences, as mentioned above, an arrest must be avoided if a police officer issues notice to the person to attend the police station and not leave the station without permission. (see Joginder Kumar's case (1994) SCC 260).

- The power to arrest must be avoided where the offences are bailable unless there is a strong apprehension of the suspect absconding .

- Police officers carrying out an arrest or interrogation should bear clear identification and name tags with designations. The particulars of police personnel carrying out the arrest or interrogation should be recorded contemporaneously, in a register kept at the police station.

ARREST

- As a rule use of force should be avoided while effecting arrest. However, in case of forcible resistance to arrest, minimum force to overcome such resistance may be used. However, care must be taken to ensure that injuries to the person being arrested, visible or otherwise, is avoided.

- The dignity of the person being arrested should be protected. Public display or parading of the person arrested should not be permitted at any cost.

- Searches of the person arrested must be done with due respect to the dignity of the person, without force or aggression and with care for the person's right to privacy. Searches of women should only be made by other women with strict regard to decency. (S.51(2) Cr.PC.)

- The use of handcuffs or leg chains should be avoided and if at all, it should be resorted to strictly in accordance with the law repeatedly explained and mandated in judgement of the Supreme Court in Prem Shanker Shukla v. Delhi Adminstration [(1980) 3 SCC 526] and Citizen for Democracy v. State of Assam [(1995) 3 SCC 743].

- As far as is practicable women police officers should be associated where the person or persons being arrested are women. The arrest of women between sunset and sunrise should be avoided.

- Where children or juveniles are sought to be arrested, no force or beatings should be administered under any circumstances. Police Officers, may for this purpose, associate respectable citizens so that the children or juveniles are not terrorised and minimal coercion is used.

- Where the arrest is without a warrant, the person arrested has to be immediately informed of the grounds of arrest in a language which he or she understands. Again, for this purpose, the police, if necessary may take the help of respectable citizens. These grounds must have already been recorded in writing in police records. The person arrested should be shown the written reasons as well and also given a copy on demand. (S.50(1) Cr.PC.)

- The arrested person can, on a request made by him or her, demand that a friend, relative or other person known to him be informed of the fact of his arrest and the place of his detention. The police should record in a register the name of the person so informed. [Joginder Kumar's case (supra)].

- If a person is arrested for a bailable offence, the police officer should inform him of his entilement to be released on bail so that he may arrange for sureties. (S.50(2) Cr.PC.)

- Apart from informing the person arrested of the above rights, the police should also inform him of his right to consult and be defended by a lawyer of his choice. He should also be informed that he is entitled to free legal aid at state expense [D.K. Basu's case (1997) 1 SCC].

- When the person arrested is brought to the police station, he should, if he makes a request in this regard, be given prompt medical assistance. He must be informed of this right. Where the police officer finds that the arrested person is in a condition where he is unable to make such request but is in need of medical help, he should promptly arrange for the same. This must also be recorded contemporaneously in a register. The female requesting for medical help should be examined only by a female registered medical practitioner. (S.53 Cr.PC.)

- Information regarding the arrest and the place of detention should be commu-

nicated by the police officer effecting the arrest without any delay to the police Control Room and District / State Headquarters. There must be a monitoring mechanism working round the clock.

- As soon as the person is arrested, police officer effecting the arrest shall make a mention of the existence or non-existence of any injury(s) on the person of the arrestee in the register of arrest. If any injuries are found on the person of the arrestee, full description and other particulars as to the manner in which the injuries were caused should be mentioned in the register, which entry shall also be signed by the police officer and the arrestee. At the time of release of the arrestee, a certificate to the above effect under the signature of the police officer shall be issued to the arrestee.

- If the arrestee has been remanded to police custody under the orders of the court, the arrestee should be subjected to medical examination by a trained Medical Officer every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. At the time of his release from the police custody, the arrestee shall be got medically examined and a certificate shall be issued to him stating therein the factual position of the existence or nonexistence of any injuries on his person.

POST ARREST

- The person under arrest must be produced before the appropriate court within 24 hours of the arrest (Ss 56 and 57 Cr.PC).

- The person arrested should be permitted to meet his lawyer at any time during the interrogation.

- The interrogation should be conducted in a clearly identifiable place, which has been notified for this purpose by the Government. The place must be accessible and the relatives or friend of the person arrested must be informed of the place of interrogation taking place.

- The methods of interrogation must be consistent with the recognised rights to life, dignity and liberty and right against torture and degrading treatment.

ENFORCEMENT OF GUIDELINES

1. The guidelines must be translated in as many languages as possible and distributed to every police station. It must also be incorporated in a handbook which should be given to every policeman.

2. Guidelines must receive maximum publicity in the print or other electronic media.

It should also be prominently displayed on notice board, in more than one language, in every police station.

3. The police must set up a complaint redressal mechanism, which will promptly investigate complaints of violation of guidelines and take corrective action.

4 The notice board which displays guidelines must also indicate the location of the complaints redressal mechanism and how that body can be approached.

5. NGOs and public institutions including courts, hospitals, universities etc., must be involved in the dissemination of these guidelines to ensure the widest possible reach.

6. The functioning of the complaint redressal mechanism must be transparent and its reports accessible.

7. Prompt action must be taken against errant police officers for violation of the guidelines. This should not be limited to departmental enquiries but also set in motion the criminal justice mechanism.

8. Sensitisation and training of police officers is essential for effective implementation of the guidelines.

●●●

Letter to Chief Secretaries of all States on arrests of farmers to recover arrears of land revenue.

N. Gopalaswami IAS
Secretary General

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

November 21, 2000

Dear

I am sending herewith the Commission's Proceedings in two cases decided by the Commission recently, which were concerned with the arrest and detention in jail of farmers in the payment of land revenue. As has been brought out clearly in the decision it seems that many revenue authorities are not aware of the fact that the Supreme Court in a case decided in 1980 has held that such arrests and detention are flagrantly violative of Article 21 unless there was proof of willful failure to pay on the part of the farmers. The proceedings of the Commission in two cases reported from Uttar Pradesh are attached herewith for information. It is requested that this may be brought to the notice of all revenue authorities in your State.

Yours sincerely,

Sd/-

(N. Gopalaswami)

Shri B.N. Tewari,
Chief Secretary,
Government of Uttar Pradesh,
Lucknow.

For information and necessary action to all Chief Secretaries

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN
NEW DELHI

Name of the complainant : Shri Sharda Belvi

Case No. : 19265/96-97 (24/7786/96-LD)

Date : 21 August, 2000

Coram : Justice Shri J.S. Verma, Chairperson

PROCEEDINGS

The Commission became seized of this case on receipt of a complaint from a certain Shri Sharda Belvi, Convenor Rashtriya Sanyojak Sangha Samity, District Jalaun thereby forwarding copy of a Hindi weekly 'Vichar Soochak' containing a press report under the caption "Bemousmi Raag Vasooli Ka", alleging the arrest and detention of several farmers in the make shift jails purportedly with a view to effect recovery of the arrears of land revenue from them. It was also alleged that the detained farmers were not being properly fed and they were given diet @ 50 paisa per person per day.

The Commission issued notice to the District Magistrate Jalaun and called for a report in the matter. The District Magistrate, it appears got the matter inquired into through the Sub Divisional District Magistrate, Kalpi and based on the same has reported that in the month of March, 1997, the District Administration had taken up a special drive for recovery of the land revenue from the defaulter farmers. In order to effect the recovery, the defaulter farmers must have been arrested pursuant to warrants of arrest issued against them after following the due procedure of law and they were detained in the civil lock-up of the Tehsil. The family members/relatives of the detained farmers were making arrangement for their food etc. and those farmers who did not get such a facility were provided food etc. by the State Administration. The District Magistrate, however, denied any incident of burning of crops by the farmers due to scarcity of water/irrigation facilities.

The Commission has given its anxious consideration to the facts and circumstances of the case which reveal insensitivity of the concerned authorities as well as their utter ignorance of the law laid down by the Supreme Court long back for such situations. The decision of the Supreme Court in Jolly George Varghese v. The Bank of Cochin, AIR l980 S.C.470, lays down the law for dealing with defaulters who fail to repay the loan and their liability of imprisonment as a mode to enforce the contractual

liability. After construing the provisions in Section 51 and Order 21 Rule 37, Civil Procedure Code in the context of Article 11 of the ICCPR, it was held by Justice Krishna Iyer:

> "To recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness....."
>
> That judgment proceeds further to say as under:
>
> "The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past, or alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging, on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and strained circumstances will play prominently."
>
> (emphasis supplied)

It is, therefore, clear that unless the conclusion is reached after a fair inquiry that the default in the discharge of the contractual liability to repay the loan has some element of bad faith verging on disowning of the obligation, mere default to repay is not enough to detain the defaulter. In the present case no attempt was made to address the real issue and reach such a satisfaction. No such inquiry was held by the Tehsildar or any other authority. The jurisdictional fact of the default resulting from omission verging on dishonest disowning of the obligation was absent without which the power to detain could not be invoked.

For the above reasons, the Commission is of the view that the detention of several farmers for a period of about a fortnight and that too without providing them adequate and proper food was unjustified. The State was under an obligation to make arrangement for their proper feeding during the period of their detention and the authorities could not abdicate this obligation merely on the ground that relatives/friends of some of the detenues were making arrangement for their food. The diet money @ 50 paisa per person must have been fixed several decades back and cannot be said sufficient to meet the cost of even one square meal what to talk of two square meals a day.

The Commission accordingly makes the following recommendations to the State Government of UP through its Chief Secretary:

(i) to pay Rs.10,000/- by way of 'immediate interim relief' to each of the persons detained in the Tehsil make shift jail during the period of March, 1997.

(ii) to frame guidelines in consonance with the aforesaid Supreme Court judgment for the use of the concerned authorities charged with the responsibility of making recoveries of land revenue etc.

(iii) to revise the existing norms of diet money for the civil prisoners in the State if the same are inadequate to meet the cost of diet of the inmate.

The compliance report shall be had within six weeks.

Sd/-
(Justice J.S. Verma)
Chairperson

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAWAN
NEW DELHI

Name of the complainant	:	Shri Sharda Belvi
Case No.	:	6299124198-99/ACD
Date	:	12 July, 2000

CORAM: Justice Shri J.S. Verma, Chairperson

PROCEEDINGS

This case was registered on the complaint of a Social activist, Shri Sharda Belvi who annexed to the complaint a news item published in the Hindi Daily 'Amar Ujala' of 3 June, 1998. According to the news report one Parmai, aged 75 years, r/o village Taharpura, Police Station Konch in District Orai (Jalaun) in Uttar Pradesh died in custody of starvation and thirst being detained as a defaulter of land revenue amounting to Rs. 4000/- only. He is alleged to have been arrested by the Tehsildar, Virendra Gupta and other employees of the Tehsil on 23 May, 1998 and kept in the lock-up of the Tehsil where he died of thirst for want of drinking water on 1/2 June, 1998. The post-mortem did not reveal any external or internal injuries. No specific cause of death has been indicated.

In response to the notice issued by the Commission, the District Magistrate, Jalaun admitted the arrest of deceased Parmai on 23 May 1998 for default in payment of a loan of the Land Development Bank which was to be recovered as land revenue by detaining him in the Tehsil lock-up. It is admitted that the arrest and detention in Tehsil lock-up was only because of the default in payment of the bank loan which was recoverable as land revenue. The District Magistrate denied the lack of drinking water facility in the lock-up but added that provision for the food of the defaulters kept in the lock-up is to be made by the family members of the defaulter and in case the family members do not provide food, the same is arranged by the Land Development Bank at a cost of 50 paise per meal to be added to the amount due from the defaulter. The allegation that the lock-up measuring 8' x 16' had housed 11 other such defaulters has not been denied. It has been stated that the family of the deceased has been paid Rs. 5000/- as compensation. There is denial of the violation of human rights in any manner.

The Director General (Investigation) was required to investigate and report. The report of the ADIG has been endorsed by the DG (I) recommending award of Rs.1 lakh

by way of compensation as "immediate interim relief" and the conditions in which the loan defaulters are kept in custody has been depreciated.

The facts of this case are startling and reveal insensitivity of all the authorities concerned as well as their utter ignorance of the law laid down by the Supreme Court long back for such situations. The decision of the Supreme Court in Jolly George Varghese v. The Bank of Cochin, AIR 1980 S.C. 470, lays down the law for dealing with defaulters who fail to repay the loan and their liability for imprisonment as a mode to enforce the contractual liability. After construing the provisions in Section 51 and Order 21 Rule 37, Civil Procedure Code in the context of Article 11 of the ICCPR it was held by Justice Krishna Iyer that:

> 'to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness . . . . . .
>
> That judgment proceeds further to say as under:
>
> 'The simple default to discharge is not enough. There must be some element of bad faith beyond mere in difference to pay, some deliberate or recusant disposition in the past, or alternatively, current means to pay the decree or a substantial part of it. The provision emphasizes the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and strained circumstances will play prominently.'
>
> (emphasis supplied)

It is, therefore, clear that unless the conclusion is reached after a fair inquiry that the default in the discharge of the contractual liability to repay the loan has some element of bad faith verging on disowning of the obligation, mere default to repay is not enough to detain the defaulter. In the present case no attempt was made to address the real issue and reach such a satisfaction. No such inquiry was held by the Tehsildar or any other authority. The jurisdictional fact of the default resulting from omission verging on dishonest disowning of the obligation was absent without which the power to detain could not be invoked. For this reason alone the detention of Parmai (the deceased) was illegal and his tragic death during the detention makes it worse for the detaining authority.

The liability of the State of Uttar Pradesh for the act of the Tehsildar and other

officials purporting to act in their official capacity for recovery of a bank loan as arrears of land revenue cannot be disputed on the admitted facts alone. The payment of a mere Rs.5000/- on the death of Parmai to his family members was a mere pittance and does not absolve the State Government from making adequate recompense to the next of kin of the deceased. The Commission therefore, directs payment of Rs.1 lakh as '"immediate interim relief" to the next of kin of deceased Parmai by the Government of Uttar Pradesh within four weeks. The Commission also recommends to the State Government that all the Revenue Officers in the State be apprised of the above Supreme Court decision laying down the law on the point requiring strict compliance thereof in all such cases. Compliance report be submitted in six weeks.

The case is closed with the above direction.

Sd/-
(Justice J.S. Verma)
Chairperson

No. 117/8/97-98
National Human Rights Commission
(Law Division-III)

S. K. Srivastava
Assistant Registrar (Law)

Sardar Patel Bhavan,
Sansad Marg,
New Delhi -110 001.

11, January, 2000

To
Chief Secretaries of States /Union Territories.

Sub: Guidelines Relating to Administration of Polygraph Test (Lie Detector Test).

Sir,

I am directed to state that the Commission in its proceeding on 12.11.1999 has considered the Guidelines relating to Administration of Polygraph Test (Lie Detector Test) on an accused and directed that:

> "The Commission adopted the Guidelines and decided that It should be circulated to all concerned authorities for being followed scrupulously."

Accordingly, a copy of the above Guidelines is forwarded herewith.

You are, therefore, requested to follow the said guidelines and acknowledge the same.

Yours faithfully,

Sd/-

Assistant Registrar (Law)

Encl: As above.

GUIDELINES RELATING TO ADMINISTRATION OF POLYGRAPH TEST (LIE DETECTOR TEST) ON AN ACCUSED

The Commission has received complaints pertaining to the conduct of Polygraph Test (Lie Detector Test) said to be administered under coercion and without informed consent. The tests were conducted after the accused was allegedly administered a certain drug. As the existing police practice in invoking Lie Detector Test is not regulated by any 'Law' or subjected to any guidelines, it could tend to become an instrument to compel the accused to be a witness against himself violating the constitutional immunity from testimonial compulsion.

These matters concerning invasion of privacy have received anxious consideration from the Courts (see Gomathi Vs. Vijayaraghavan (1995) Cr. L.J. 81 (Mad); Tushaar Roy Vs. Sukla Roy (1993) Cr. L.J. 1959 (Cal); Sadashiv Vs. Nandini (1995) Cr. L.J. 4090). A suggestion for legislative intervention was also made, in so far as matrimonial disputes were concerned. American Courts have taken the view that such tests are routinely a part of everyday life and upheld their consistence with due process (See Breithbaupht Vs. Abram (1957) 352 US 432). To hold that because the privilege against testimonial compulsion "protects only against extracting from the person's own lips" (See Blackford Vs. US (1958) 247 F (20) 745), the life and liberty provisions are not attracted may not be wholly satisfactory. In India's context the immunity from invasiveness (as aspect of Art. 21) and from self-incrimination (Art. 20 (3)) must be read together. The general executive power cannot intrude on either constitutional rights and liberty or, for that matter any rights of a person (See Ram Jawayya Kapur (1955) 2 SCR 225). In the absence of a specific 'law', any intrusion into fundamental rights must be struck down as constitutionally invidious (See Ram Jawayya Kapur (1955) 2 SCR 225; Kharak Singh (1964) 1 SCR 332 at pp. 350; Bennett Coleman (1972) 2 SCR 288 at pr. 26-7; Thakur Bharat Singh (1967) 2 SCR 454 at pp. 459-62; Bishamber Dayal (1982) 1 SCC 39 at pr. 20-27; Naraindass (1974) 3 SCR at pp. 636-8; Satwant (1967) 3 SCR 525). The lie detector test is much too invasive to admit of the argument that the authority for Lie Detector Tests comes from the General power to interrogate and answer questions or make statements (Ss 160-167 Cr. P.C.). However, in India we must proceed on the assumption of constitutional invasiveness and evidentiary impermissiveness to take the view that such holding of tests is a prerogative of the individual not an empowerment of the police. In as much as this invasive test is not authorised by law, it must perforce be regarded as illegal and unconstitutional unless it is voluntarily undertaken under non-coercive circumstances. If the police action of conducting a lie detector test is not authorised by law and impermissible, the only basis on which it could be justified is, it is volunteered. There is a distinction between: (a) volunteering, and (b) being asked to volunteer. This distinction is of some significance in the light of the statutory and constitutional protections available to any person. There is a vast difference between a person saying, ''I wish to take a lie detector test because I wish to clear my name", and a person is told by the police, "If you want to clear your name,

take a lie detector test". A still worse situation would be where the police say, “Take a lie detector test, and we will let you go”. In the first example, the person voluntarily wants to take the test. It would still have to be examined whether such volunteering was under coercive circumstances or not. In the second and third examples, the police implicitly (in the second example) and explicitly (in the third example) link up the taking of the lie detector test to allowing the accused to go free.

The extent and nature of the ‘self-incrimination’ is wide enough to cover the kinds of statements that were sought to be induced. In M.P. Sharma AIR 1954 SC 300, the Supreme Court included within the protection of the self-incrimination rule all positive volitional acts which furnish evidence. This by itself would have made all or any interrogation impossible. The test - as stated in Kathi Kalu Oghad (AIR 1961 SC 1808)- retains the requirement of personal volition and states that ‘self-incrimination’ must mean conveying information based upon the personal knowledge of the person giving information’. By either test, the information sought to be elicited in a Lie Detector Test is information in the personal knowledge of the accused.

The Commission, after bestowing its careful consideration on this matter of great importance, lays down the following guidelines relating to the administration of Lie Detector Tests:

(i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.

(ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.

(iii) The consent should be recorded before a Judicial Magistrate.

(iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.

(v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a ‘confessional’ statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done in an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of manner of the information received must be taken on record.

Letter to Chief Ministers/Administrators of all States/Union Territories on mentally ill persons languishing in prisons.

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

11, September, 1996

My Dear,

It has come to the notice of the Commission that several mentally ill persons, as defined in Section 2(1) of the Mental Health Act, 1997, have been languishing in normal jails and are being treated at par with prisoners. The Commission has also come across cases where such detention is not for any definite period.

The Lunacy Act, 1912 and the Lunacy Act, 1977 have been repealed by the Mental Health Act which has come into force with effect from 1.4.1993.

The Mental Health Act dose not permit the mentally ill persons to be put into prison. The Patna High Court has last week directed the State of Bihar to transfer mentally ill persons languishing in the jails to the mental asylum at Ranchi.

While drawing your attention to the legal position and order of the Patna High Court, we would like to advise that no mentally ill person should be permitted to be continued in any jail after 31 October, 1998, and would therefore, request you to issue necessary instructions to the Inspector General of Prisons to enforce it.

After 1st November, 1996, the Commission would start inspecting as many jails as possible to find out if any mentally ill person is detained in such jails and invariably in every such case, it 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. A copy of this letter may be widely circulated to the Inspector General of Prisons, Superintendents of every jail and members of the jail staff and other district level officers.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

To

All the Chief Ministers/Administrators of States/UTs.

Letter to Chief Ministers/Administrators of all States/Union Territories reiterating the instructions of the Commission to safeguard the rights of mentally ill persons languishing in prisons

Justice J.S. Verma
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

7 February, 2000

Dear

The National Human Rights Commission is receiving distressing reports from different States regarding the sad plight of mentally ill persons languishing in prisons without proper care and attention. They are being treated like any other prisoner. Recently, an officer of the Commission visited a Central Prison in a North-Eastern State and found to his horror that as many as 44 mentally deranged persons were lodged in the prison. They were not receiving proper psychiatric treatment and attention.

May I invite your attention to the fact that the Mental Health Act, 1987 which came into force with effect from 1.4.1993, does not permit lodging of mentally ill persons in prisons. This is a very insensitive manner of dealing with them. They are meant to be kept in mental asylums and provided proper treatment. Indeed, detention of mentally ill persons in jail amounts to an egregious violation of human rights. The State Governments cannot escape their obligation to provide proper psychiatric treatment to the mentally ill. Further, it has been brought to my notice that a number of non-criminal lunatics are also being kept in jails in violation of existing Prison Rules.

Earlier, my predecessor had in his letter dated 11 September 1996, clearly said that if the Commission's officers during jail inspections detect presence of mentally sick persons in jails, the Commission would award compensation to them or to members of their families and further direct the State Government to recover the amount of compensation from the jail officers responsible for this lapse. I deem it necessary to redeem this instruction of the Commission to safeguard the rights of the unfortunate and hapless mentally ill persons now lodged in jails.

I request you to issue clear directions to the Inspector General of Prisons to ensure that mentally ill persons are not kept in jail under any circumstances. Moreover, the State Government must make proper arrangements for their treatment in approved mental institutions and not treat them as unwanted human beings.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

All Chief Ministers/Administrators of States/UTs.

Fixation of tenure of IG prisons for effective prison adminstration

Letter to Chief Ministers/Administrators of all states/Union Territories on the fixed tenure for Inspector General of Prisons

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

September 25, 1996

My Dear

One of the important functions of the National Human Rights Commission, as provided under Section 12(C) of the Protection of Human Rights Act, 1993, is to "visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". The Commission has visited a number of prisons all over the country and also inquired into a large number of complaints alleging violation of human rights received from the prisoners in several jails. The Commission feels that there is a crying need for revamping the prison administration of the country and bring about systemic reforms. In this connection, I would like to draw your attention towards my letter No.NHRC/Prisons/96/2 dated 29.8.96 sent to you wherein I enclosed a copy of the Prison Bill prepared by us and sought your co-operation for the enactment of a new Prison Act to replace the century old Prison Act of 1894.

I would also like to draw your attention to another matter of importance concerning prison administration. We find that in most of the States, the post of Inspector General of Prisons is filled up by officers either from the Indian Administrative Service or Indian Police Service. The usual tenure of the officer is very brief, and most of them look upon their posting as Inspector General of Prisons as an inconvenient one and look ahead for an early transfer to other posts in the main line of administration. The result is frequent transfer of officers appointed as Inspectors General of Prisons. Sometimes the post is also left vacant for a long time. For qualitative improvement of prison administration in the country, we feel that the selection of officers to head the prison administration deserves to be done carefully. An officer of proven integrity and merit-simultaneously disciplined and yet humane - may be selected for the post and should be continued in the post for a certain period time -say about three years - with a view to imparting continuity and dynamism to the prison administration. This will provide efficient and capable leadership for the prison service and help in improving prison administration in the country.

We look forward for your favourable response.

With regards,

Yours sincerely,

Sd/-
Ranganath Misra

To
Chief Ministers /Administrators of all States/UTs

Letter to Chief Ministers / Administrators of all States / Union Territories reiterating fixation of tenure for Inspector General of Prisons

Justice J.S. Verma
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

December 21st, 1999

Dear

One of the important functions of the National Human Rights Commission as provided under Section 12 of the Protection of Human Rights Act, 1993 is to "visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". The Commission during the last 5 years undertook visits to a large number of prisons all over the country, enquired into numerous complaints regarding violation of human rights from prisoners and highlighted the need for prison reforms in its orders and reports. The Commission strongly feels that there is an urgent need for systemic reforms in prisons.

In this connection, I intend to draw your attention to another matter of importance concerning prison administration. The post of the Inspector General of Prisons, who heads the prison administration in the State is, now filled up by officers either from the Indian Administrative Service or the Indian Police Service. However, the Commission is pained to observe that usual tenure of the officers is too brief and most of them view the posting as I.G. Prisons as an inconvenient loop-line job and look ahead for suitable posts in the mainstream of general administration. The upshot is that Inspector General of Prisons do not continue in this post for a fixed period and become birds of passage. Sometimes the post remains vacant for a long time. Such a situation, you will agree with me, is not conducive to efficient prison administration.

In order to bring about a qualitative improvement in the prison administration, the Commission is of the view that the selection of officers for the posts of Inspectors General of Prisons be done carefully. An officer of proven integrity and competence with faith in human rights culture may be selected for the post and he may be allowed to continue in the post for a minimum period of about three years. This will impart continuity and dynamism and will also provide efficiency and credible leadership to the prison administration.

Earlier my predecessor had written to you vide letter no. NHRC Prison/SP-II/96 dated 25 September 1996 on this subject. However, I felt that I should write to you again and re-emphasise the need for a fixed tenure of Inspector General of Prisons after careful

Letter to all Chief Secretaries /Administrators/IG (Prisons) of States Union Territories regarding Prisoners Health Care-periodical medical examination of undertrials/convicted prisoners in the Jail.

Lakshmi Singh
Joint Secretary

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

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

Dear

Subject: - Prisoners' health care-periodical medical examination of undertrials/ convicted prisoners in various jails in the country.

The Commission has taken note of the disturbing trends in the spread of contagious diseases in the prisons. One of the sample-studies conducted by the Commission indicated that nearly seventy-nine percent of deaths in judicial custody (other than those attributable to custodial violence) were as a result of infection of Tuberculosis. These statistics may not be of universal validity, yet what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to the prisoners the tubercular infection had gone beyond the point of return for the prisoners. The over-crowding in the jails has been an aggravating factor in the spread of contagion.

One of the remedial measures is to ensure that all the prison inmates have periodic medical check-up particularly for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by enlisting the services of voluntary organizations and professional guilds such as the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates; and where health problems are detected to afford timely and effective medical treatment.

Kindly find enclosed proceedings of the meeting of the Commission held on 22.1.99 which also include a proforma for health screening of prisoners on admission to jail. The Commission accordingly requires that all State Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the attached proforma. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

With regards,

Yours sincerely,
Sd/-
(Lakshmi Singh)

To

Chief Secretaries Administrators/IG Prisnors of all States/UTs

NATIONAL HUMAN RIGHTS COMMISSION
SARDAR PATEL BHAVAN
NEW DELHI
****

PROCEEDINGS

The Commission considered the problem of periodic medical examination of the undertrial and convicted prisoners in various jails in the counry, particularly in view of the disturbing trends in the spread of contagious diseases in the prisons. Particularly, alarming are incidents of Tuberculosis. Indeed, one of the sample studies conducted by the Commision indicated that nearly seventy-nine percent of deaths in judicial custody (otherwise than those attributable to custodial violence) were as a result of infection of Tuberculosis. Though these statistics may not be of universal validity, what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to them, the illness had gone beyond the point of return for the prisoner. The prison rules require medical examination of the prison inmates upon or immediately after admission. It is a distressing situation that conduct of such initial medical examination is more an exception than the normal.

The problem of spreading of contagious diseases is aggravated by the well known and what now seems almost an irremediable situation, of enormous overcrowding in prisons. One of the remedial measures is to ensure that all the prison inmates have periodic medical check-up for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by entrusting the services of voluntary organisations and the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates and where health problems are detected affording timely and effective treatment. This is in view of the seriousness of the situation of infectious diseases and the gravity of the problem of cross-infection which has the prospect that persons upon being held innocent at the end of the day or after serving the sentence may find themselves in a worse position health-wise than when they entered the prison, particularly with the added danger of affliction of drug - resistant infections. The Commission justifiably places serious store by the need for and importance of such initial medical examination of all the prison inmates in the various prisons in the States.

The Commission accordingly requires that all States Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the proforma at Appendix-I annexed hereto. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

Shri Sankar Sen, Special Rapporteur and Chief Coordinator of Custodial Justice Programme of the Commission shall be required to monitor these efforts of the State Governments and to assist and guide the prison administrators of the States in this behalf. Shri Sankar Sen will also keep the Commission apprised of the progress achieved by monthly reports submitted to the Commission.

These proceedings shall immediately be communicated by the Secretary General to all the Chief Secretaries and Inspector Generals of Prisons in the States. The office shall also forward copies to all the Superintendents of Jails in the country.

Sd/-
(Justice M.N. Venkatachaliah)
Chairperson

Sd/-
(Justice Shri V.S. Malimath)
Member

Sd/-
(Sri Sudarshan Agarwal)
Member

Sd/-
(Sri Virendra Dayal)
Member

January 22, 1999

PROFORMA FOR HEALTH SCREENING OF PRISONERS ON ADMISSION TO JAIL

Case No.....
Name ..... Age ..... Sex..... Thumb impression .....
Father's/Husband's Name.....Occupation .....
Date & Time of admission in the prison.....
Identification marks.....

Previous History of illness

Are you suffering from any disease? Yes/No

If so, the name of the disease :

Are you now taking medicines for the same?

Are you suffering from cough that has lasted for 3 weeks or more Yes/No

History of drug abuse, if any:

Any information the prisoner may volunteer:

Physical examination:

Height.... cms. weight..... kg Last menstruation period .....

1. Paller : YES/NO 2. Lymph Mode enlargement: YES/NO

3. Clubbing: YES/NO 4. Cyanosis: YES/NO

5. Icterus: YES/NO 6. Injury, if any.....

4. Blood test for Hepatitis/STD including HIV, (with the informed consent of the prisoner whenever required by law)

5. Any other .....

Systemic Examination

1. Nervous System

2. Cardio Vascular System

3. Respiratory System

4. Eye, ENT

5. Castro Intestinal system abdomen

6. Teeth & Gum

7. Urinal System

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment of the disease from which he/she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

Medical officer

Letter to all Inspector General of Prisnors of States on speedy trial of undertrial prisnors

Sankar Sen
SPECIAL RAPPORTEUR

D.O.No. 11/1/99-PRP & P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

29.04. 1999

Dear

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

(a) Undertrials accused of an offence punishable with imprisonment upto three years and who have been in jail for a period of 6 months or more and where the trial has been pending for atleast a year, shall be released on bail.

(b) Undertrials accused of an offence punishable with imprisonment upto 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for atleast two years, shall be released on bail.

(c) Undertrials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.

(d) The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.

(e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.

(f) Where non-congnizable and bailable offence has been pending for more than 2 years, without trial being commenced the court shall discharge the accused.

(g) Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.

(h) Where the offence is punishable with imprisonment upto one year and the trial has not commenced within a year, the accused shall be discharged.

(i) Where an offence punishable with an imprisonment upto 3 years and has been pending for more than 2 years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

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

(a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against Public tranquility and (g) offences relating to public servants, (h) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499 IPC.

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

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

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

• • • • • • • • •

Yours sincerely,

Sd/-

(Sankar Sen)

To

All Inspectors General of Prisons.

Letter to Chief Justices of High Courts on undertrial prisoners.

Dr. Justice K. Ramaswamy **National Human Rights Commission**
Member

December 22, 1999

Dear Brother Chief Justice,

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constitution. In Kartar Singh's case (Constitutionality of TADA Act case), J.T. 1992(2) SC 423, the Supreme Court held that speedy trial is a component of personal liberty. The procedural law - if the trial is not conducted expeditiously, becomes void, violating Article 21 as was held in Hussain Ara's four cases in 1979. In Antulay's case, l992(1) SCC 215, a constitution bench directed completion of the trial within two years in cases relating to offences punishable upto 7 years, and for beyond seven years, within a period of three years. If 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. That view was reiterated per majority even in the recent judgement of the Supreme Court in Raj Dev Sharma II versus Bihar, 1999 (7) SCC 604 by a three-Judge bench.

In Common Cause case, 1996 (2) SCC 775 - in D.O. Sharma I's case—it was held that the time taken by the courts on account of their inability to carry on the day-to-day trial due to pressure of work, will be excluded from the dead-line of two years and three years, respectively, imposed in the aforesaid cases. In the latest Raj Dev Sharma's case 1999 (7) SCC 604 majority reiterated the above view.

In Common Cause II case, 1996 (4) SCC 33, the Supreme Court directed release of the undertrial prisoners, subject to certain conditions mentioned therein. The principle laid down in Common Cause case is not self-executory. It needs monitoring, guidance and direction to the learned Magistrates in charge of dispensation of criminal justice system at the lower level, before whom the undertrial prisoners are produced for extension of the period of remand. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.

In this background, may I seek your indulgence to consider the above perspectives and to set in motion appropriate directions to the Magistracy to follow up and implement the law laid down by the Supreme Court in the Common Cause II case? For your ready reference, the principles laid therein are deduced as set guidelines are enclosed

herewith. I had a discussion with the Hon'ble Chief Justice of Andhra Pradesh High Court, who was gracious enough to have them examined in consultation with brother Judges and necessary directions issued to all the Magistrates and Sessions Judges to follow up the directions and ensure prevention of unnecessary restriction of liberty of the under-privileged and poor undertrial prisoners. I would request you to kindly consider for adoption and necessary directions issued to the Magistrates and Sessions Judges within your jurisdiction to follow up and ensure enjoyment of liberty and freedom of movement by poor undertrial prisoners.

With regards,

Yours sincerely,

Sd/-

(Dr. Justice K. Ramaswamy)

To

Chief Justices of all High Courts

Draft Circular Memorandum to be Issued by the High Court of Andhra Pradesh to All the District and Sessions Judges

All the District and Sessions Judges of Andhra Pradesh, are aware of the directions of the Supreme Court of India issued on May 1st, 1986 in Writ Petition (C) No. 1128 of 1986 (Common Cause Vs. Union of India and Others) wherein elaborate directions were given regarding release of undertrials languishing in Jails for long periods.

The directions of the Supreme Court are reproduced hereunder for ready reference:

"(a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding three years with or without fine and if trials for such offences are pending for one year or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code (Cr.PC).

(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 (Cr.PC).

(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 (Cr.PC).

It is noticed that the various remanding Courts in Andhra Pradesh are routinely extending the periods of remand of prisoners without verifying whether any of them fall

under any of the 3 categories mentioned by the Supreme Court supra.

It is also noticed that the District Level Review Committees for Under Trial prisoners constituted with the concurrence of the High Court by the Government of Andhra Pradesh vide G.O. Ms. 356 dated 14.7.1980 of Home (Prisons.13) Department have not been regularly meeting in all the Districts. Even if they do meet they are not examining whether the cases being reviewed fall under any of the 3 categories mentioned by the Supreme Court of India.

In order to ensure that the directions of the Supreme Court of India are scrupulously complied with, and Under Trial Prisoners do not languish in Jails for long periods, the following instructions are issued for immediate implementation:

1. All Courts, whether Judicial Magistrates of First Class or Special Courts, before extending the period of remand of any prisoners, should ascertain the period of remand already undergone by the prisoner and examine whether he is entitled to be released on bail as per the directions/ not able to furnish surety/security. They may be released on personal bonds to ensure their attendance on the dates of hearing.

2. The District Level Review Committees for Under Trial Prisoners should meet, without fail, atleast once in every 3 months and review the cases of all prisoners who are in Judicial Custody for periods of six months or more. These meetings should invariably be presided over by the Principal District & Sessions Judge himself.

3. As and when a case falling under any of the 3 categories mentioned by the Supreme Court is noticed, either while extending the period of remand of the U.T. prisoner or during the meeting of the District Level Review Committees, the concerned Court should, suo moto, “release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Code of Criminal Procedure”.

Letter to all Chief Justices of High Courts on the plight of undertrial prisoners

Dr. Justice A.S. Anand
Chairperson
(Former Chief Justice of India)

NHRC/CJC/UTP/2003
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

1st July, 2003

Dear Chief Justice,

I am writing to you on a matter, which has been a source of concern to you as well as to myself—the plight of under-trial prisoners.

While as Chief Justice of India, I had written to the Chief Justices of all the High Courts on 29th November, 1999 about the plight of under-trial prisoners languishing in jails, even in cases involving petty and bailable offences merely for the reason that they were not in a position to furnish bail bonds to get released on bail. I had suggested that every Chief Metropolitan Magistrate or the Chief Judicial Magistrate of the area in which a District jail falls, may hold its court once or twice in a month in jail, depending on the work load, to take up the cases of those under-trial prisoners who were involved in petty offences and or were keen to confess their offences. I had tried to monitor the progress of action initiated by most of you on my suggestion and pursued the matter further vide my letters dated 14th April, 2000 and 11th January, 2001.

I wish to continue my efforts in regard to under-trial prisoners in my capacity as the Chairperson of the NHRC which has been considering human rights of prisoners as an area of special concern ever since its establishment in 1993.

Visiting jails to study the living conditions of prisoners is one of the mandatory functions of the Commission as spelt out in Section 12 (c) of the Protection of Human Rights Act, 1993. Visits to jails in various States by the Members and senior officers of the Commission especially the Special Rapporteurs bring out a very dismal picture of prison life in our country. The Commission has observed that in most States jails are overcrowded, standard of sanitation and hygiene is poor, medical facilities are inadequate and the overall atmosphere is depressingly sad. Overcrowding which throws every system and facility out of gear, is found to be the root-cause of the deplorable living conditions in our jails. It constitutes a glaring violation of the basic human right to life which means life with dignity.

For the past two years, the Commission has been conducting bi-annual analysis of prison population by obtaining data of prison population from all the States/Union

Territories as of 30 June and 31 December of every year. I thought, I should share with you an important feature of the analysis of prison population as of 30 June, 2002 conducted recently. The analysis reveals that:

i) Prison population of the entire country was 3,04,813 against the built-in capacity of 2,32,412. It shows an overcrowding of 31.2% for the country as a whole. However, in some States/UTs such as Delhi, Jharkhand, Chhatisgarh, Gujarat, Haryana and Bihar, prison population is 2 to 3 times of the total capacity of all the jails.

ii) Under-trial constitute about 75% of the prison population in the country as a whole. The proportion of under-trials to the total prison population is 80% or more in 7 States and one UT. It is 100% in the Union Territory of Dadar and Nagar Haveli.

iii) State/UT-wise position of jail population, degree of overcrowding and percentage of under-trials is given in the Annexure attached to this letter.

The Commission finds that despite several pronouncements of the Hon'ble Supreme Court of India and certain High Courts on the subject, under-trials are languishing in jails in large numbers all over the country. Slow progress of cases in Courts and the operation of the system of bail to the disadvantage of the poor and the illiterate prisoners is responsible for the pathetic plight of these "forgotten souls" who continue to suffer all the hardships of incarceration although their guilt is yet to be established. It is the overwhelming congestion of under-trials in jails which is making 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.

I am sure you appreciate and share the Commission's concern for human rights of the prisoners. In my opinion, the following measures may be found useful in reducing the congestion of under-trials in the prisons of your State:

(i) Regular holding of special courts in jails and its monitoring by the Chief Justice/senior Judge of the High Court.

(ii) Monthly review of the cases of under-trials in the light of the Supreme Court's judgement in Common Cause vs. Union of India [1996(4) SCC 33 and 1996 (6) SCC 775)]. In this judgement, the Supreme Court has issued clear directions for (a) release on bail and (b) discharge of certain categories of under-trials specified in the judgement.

(iii) Release of under-trials on Personal Bonds: A number of under-trials are found to be languishing in jails even after being granted bail simply because

they are unable to raise sureties. Cases of such under-trials can be reviewed after 6-8 weeks to consider their suitability for release on personal bonds, especially in cases when they are first offenders and punishment is also less than 2/3 years.

(iv) Visit of District and Sessions Judge to Jail: The Jail Manuals of all the States contain provisions for periodical visit of the District and Sessions Judge as an ex-officio visitor to jails falling within their jurisdiction. Besides ensuring an overall improvement in management and administration of the Prison, such visits can help in identifying the cases of long-staying under-trials, which need urgent and special attention. The Commission has observed a mark improvement in the situation in the States where this obligation is being discharged seriously and sincerely by the subordinate judiciary. It would be useful to issue directions for such visits by all the ex-officio visitors to jails falling in their jurisdictions.

May I also request you to keep us informed at the NHRC about the Action Taken so that we are in a position to circulate the same to other States with a view to bring about uniformity as well as intensity.

I shall feel privileged to receive any suggestions from you to deal with the problems of under-trial prisoners.

With warm regards,

Yours sincerely,

Sd/-

(A.S. Anand)

To

All Chief Justices of High Courts.

ANNEXURE

CUSTODIAL JUSTICE CELL
PRISON STATISTICS AS ON 30-6-02

S. No.	STATES	Jails Capacity	% Overcrowding, (-) means idle capacity	% UTs.
1.	ANDHRA PRADESH	10794	20.51	67.07
2.	ARUNACHAL (No Jail)			
3.	ASSAM	6193	11.64	64.15
4.	BIHAR	21759	73.78	86.27
5.	CHHATTISGARH	4438	110.16	52.42
6.	GOA	294	39.46	60.49
7.	GUJARAT	5418	100.22	73.7
8.	HARYANA	5567	99.95	68.6
9.	HIMACHAL PRADESH	868	0.92	54.45
10.	JAMMU & KASHMIR	3100	-58.55	91.67
11.	JHARKHAND	5788	164.86	83.26
12.	KARNATAKA	9191	11.37	79.34
13.	KERALA	5904	-9.4	68.52
14.	MADHYA PRADESH	16239	65.87	56.94
15.	MAHARASHTRA	19004	16.62	69.65
16.	MANIPUR	1170	-66.07	92.19
17.	MEGHALAYA	500	-2.6	94.66
18.	MIZORAM	1012	0.89	79.14
19.	NAGALAND	1160	-47.24	89.87
20.	ORISSA	7542	53.78	75.03
21.	PUNJAB	10854	16.97	68.24
22.	RAJASTHAN	15707	-22.67	63.84
23.	SIKKIM	100	72	51.16
24.	TAMIL NADU	19240	-55.62	36.16
25.	TRIPURA	744	34.81	57.93
26.	UTTAR PRADESH	32380	69.84	87.37
27.	UTTARANCHAL	2433	0.82	79.13
28.	WEST BENGAL	19666	-25.88	79.42
	Total States	227065	28.74	73.94
	Union Territories			
29.	ANDAMAN & NICOBAR	229	3.49	24.05
30.	CHANDIGARH	1000	-57.3	74.24
31.	DADAR & NAGAR HAVELI	40	-22.5	100
32.	DAMAN & DIU	120	-57.5	68.63
33.	DELHI	3637	217.4	78.52
34.	LAKSHADWEEP	16	-100	
35.	PONDICHERRY	305	-7.21	55.48
	TOTAL UTs	5347	135.14	76.84
	All India	232412	31.19	74.06

Letter to all Chief Justices of High Courts on the undertrial prisoners and their Human Rights

Justice S. Rajendra Babu
Chairperson
(Former Chief Justice of India)

D.O.No.4/6/2005-PRP&P
राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

25th October, 2007

My Dear Chief Justice,

One of the important functions of National Human Rights Commission, as provided under Section 12(c) of the Protection of Human Rights Act, 1993, is to "visit any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". Members and Special Rapporteur of the Commission have visited a number of prisons all over the country and their observations/suggestions were conveyed to the State Government for implementation. The compiled statistics on jail population in the country, received from States/UTs is enclosed for reference. The statistics reveal that there is all round increase in the percentage of under-trial prisoners (UTPs). The increase in the number of UTPs could be either due to increase in crimes under various heads or indiscriminate or injudicious arrests in connection with the registered crimes.

The problems of UTPs have now assumed an alarming dimension. Almost 70% of prisoners in Indian jails are undertrials. The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society.

The various State Prison Manuals contained provisions for District and Sessions Judges to function as ex-officio visitors to jails within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. Many of them who have committed petty offences are languishing in jails, because their cases are not being decided early for reasons which it is not necessary to reiterate. The District Judges during their visits can look into the problem and ensure their speedy trial. The Supreme Court in its several judgements has drawn attention to this fact and to the attendant problems in prison administration arising thereof. The Supreme Court has also emphasised the need for urgent steps to reduce their numbers by expeditious trial and thereby making speedy justice a facet of Article 21 of the Constitution a reality.

The Supreme Court in a memorable judgement- Common Cause (a registered society) Vs. Union of India 1996 has given the following directions regarding the release of UTPs on bail.

(a) Undertrials accused of an offence punishable with imprisonment upto three years and who have been in jail for a period of 6 months or more and where the trial has been pending for atleast a year, shall be released on bail.

(b) Undertrials accused of an offence punishable with imprisonment upto 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for atleast two years, shall be released on bail.

(c) Undertrials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.
(d) The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.
(e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.
(f) Where non-congnizable and bailable offence has been pending for more than 2 years, without trial being commenced the court shall discharge the accused.
(g) Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.
(h) Where the offence is punishable with imprisonment upto one year and the trial has not commenced within a year, the accused shall be discharged.
(i) Where an offence punishable with an imprisonment upto 3 years and has been pending for more than 2 years, the criminal courts shall discharge or acquit the accused as the case may be and close the case.

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

(a) corruption, misappropriation of public funds, cheating, Whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute,
(b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985,
(c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences,
(d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987,
(e) offences relating to the Army, Navy and Air Force,
(f) offences against Public tranquility,
(g) offences relating to public servants,
(h) offences relating to elections,
(j) offences relating to giving false evidence and offences against public justice,
(k) any other type of offences against the State,
(l) offences under the taxing enactments and
(m) offences of defamation as defined in Section 499 IPC. The Supreme Court has given further directions that the criminal courts shall try the offences mentioned in para above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

These directions of the Supreme Court aim at streamlining the process of grant of bail to the undertrials and make it time- efficient. The judgement, however, does not provide for suo-moto grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the court for grant of bail. There is also no mechanism in the courts to automatically dispose off suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoners in time.

UTPs can be released in consonance with the Judgement of the apex court. Release of UTPs will lessen the congestion in jail and help more efficient prison management. This process thus needs the high degree of coordination between the judiciary, the police and the prison administration, which unfortunately is now lacking.

There is need to organize training and orientation course for the magistrates to emphasize the point that in remand proceedings before them to authorize detention of an arrestee, is not a routine matter but a serious exercise affecting the liberty of the accused. Magistrates need to be sensitized that while considering remand application they are expected to go through the FIR and police case diaries to ascertain whether or not there are prima-facie reasons for authorizing 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.

You may consider giving appropriate instructions to all the District & Sessions Judges to take necessary steps to resolve the acute problem, which has the impact of violating a human right which is given the status of constitutional guarantee. I would be grateful for your response in this matter.

With regards,

Yours Sincerely,

Sd/-

(S. Rajendra Babu)

To

Chief Justices of all High Courts

Letter to all the Chief Secretaries/Administrators of all States/Union Territories regarding the proceedure/ guidelines on the pre-mature release of prisoners

BY SPEED POST/REGD. POST

No. 233/10/97-98
NATIONAL HUMAN RIGHTS COMMISSION
(Law Division)

Dated : 8.11.99

To
Chief Secretaries of all States/Administrators of UTs

Subject: Procedure/Guidelines on Premature release of Prisoners

Reference: Commission's letter of even number dt. 10.8.99

Sir,

I am directed to forward herewith a copy of the Commission's proceedings dated 20.10.99 alongwith Annexure for compliance by the State Government.

2. It is requested that an Action Taken Report in this matter may please be submitted by 24.12.1999 positively for placing the same before the Commission.

Yours faithfully,

Sd/-

Jt. Registrar (Law)

Encl.: As above

National Human Rights Commission
Sardar Patel Bhawan
New Delhi

Name of the Complainant : Shri K.N. Shashidharan

Case No. : 233/10/97-98

Date : 20th October, 1999

CORAM

Justice Shri M.N. Venkatachaliah, Chairperson
Dr. Justice K Ramaswamy, Member
Shri Sudarshan Agarwal, Member
Shri Virendra Dayal, Member

PROCEEDINGS

The Commission examined the vexed question of disparities and differing standards applied by the various States in considering the cases of prisoners serving custodial sentences for premature release. The exercise is outside the powers of the Commission and rests with the Constitutional functionaries under Articles 72 and 161 relating to the powers of the President and Governors. The matter is confined to the statutory powers of the State to grant remissions of and premature releases. By its earlier proceedings dated 20th July, 1999, the Commission recorded:

> "In order to ensure that, as far as possible, a greater uniformity of standards is established and achieved the Commission has evolved certain broad criteria after taking into account the practices and procedures existing in various States. This has been done on the basis of recommendations of a Committee consisting of Shri Sankar Sen (Special Rapporteur and the Chief
>
> Coordinator of the 'Custodial Justice Programme) Shri D.R. Karthikeyan, Director General (I) and Shri R.C. Jain, Registrar General of NHRC.
>
> The Commission desires that the guidelines may be circulated to all the State Governments to elicit their views and responses in regard thereto. Letters shall accordingly be addressed to the Chief Secretaries of all State Governments to have the matter considered and their views and suggestions, if any, forwarded to the Commission on or before 30th September, l999. On receipt of the same, the matter may be brought up again.

The guidelines may also be forwarded to the National Law School of India University, Bangalore for their opinion by the same date".

Some of the States and Union Territories which have responded are:

1. Lakshadweep
2. Delhi
3. Madhya Pradesh
4. Daman & Diu
5. Dadra & Nagar Haveli
6. Orissa
7. Meghalaya
8. Uttar Pradesh (Interim report)

Other States and Union Territories have not responded despite lapse of sufficient time. The National Law School of India University has also not offered its opinion.

The Commission has considered the matter and has evolved the guidelines (Annexure 'A') in the light of the suggestions received from the States.

These guidelines shall be implemented by the States and wherever the existing provisions of the rules are inconsistent with any of the aforesaid guidelines the State Government shall make appropriate modifications in the rules and implement the guidelines so that there is uniformity in this regard throughout the country. A report shall be had within six weeks.

Sd/-
(Justice K. Ramaswamy)
Member

Sd/-
(Sudarshan Agarwal)
Member

Sd/-
(Virendra Dayal)
Member

ANNEXURE- 'A'

Premature Release of the Prisoners Undergoing Sentence of Life Imprisonment-Eligibility Criteria for, Constitution of Sentence Review Boards and Procedure to be Followed

The Commission has been receiving complaints from and on behalf of convicts undergoing life imprisonment about the non-consideration of their cases for premature release even after they have undergone long periods of sentence ranging from 10 to 20 years with or without remissions. Pursuant to the information received and closer study of the issues involved in this important issue impinging upon the human rights of a large number of convicts undergoing life imprisonment in the prisons throughout the length and breadth of the country, the Commission is surprised to note that although the said power of premature release is to be exercised by the State Government under the Provisions of Section 432 of the Code of Criminal Procedure, 1973, the procedure and practice followed by the State Governments to exercise the said power is not uniform.

Some of the States like Madhya Pradesh, Punjab and UP have incorporated the procedure in their special laws while others incorporated the same in their rules or jail manuals. The system provided for, differed from State to State so far as the eligibility criteria of the persons eligible for consideration for premature release, the composition of the Sentence Review Boards and the guidelines governing the question of premature release but the Commission has been informed that more often this system/procedure provided for was not being followed meticulously so much so that the Sentence Review Boards have not been meeting at regular intervals for long periods.

Several instances have come to the notice of the Commission where certain inmates were not released nor their cases considered even after they had undergone the imprisonment for over 20 years. The Commission has, therefore, shown its concern and is of the view that it is high time that a uniform system of premature release of the prisoners is evolved for adoption by the State Governments.

In its proceedings dated 4th March, 1999 in case No. 233/10/97-98 and other linked cases, the Commission requested Shri R.C. Jain, Registrar General, Shri D.R. Karthikeyan, Director General (I) and Shri Sankar Sen (Special Rapporteur and the Chief Coordinator of the 'Custodial Justice Porgramme') to meet and evolve a set of recommendations for bringing uniformity to the procedure in all the States to follow. The Commission advised that while formulating the recommendations the Committee may have particular regard to the need not only to the constitution of the Review Boards, their proper composition but also to the question of ensuring promptitude of their meetings so that the unfortunate situation of the Boards, even where they exist but do not meet for a long time is avoided.

Accordingly, Committee has deliberated over the issue, considered the relevant law on the subject and the information received from most of the States as to the system of premature release being followed by them. The Committee in its endeavour to propose the uniform recommendations, also considered it proper to refer to the report and recommendations of the All India Committee on Jail Reforms 1980-83 constituted by Justice A.N. Mulla. The Committee makes the following observations & recommendations:

1. The relevant provisions in regard to the suspension and remission of sentence is contained in Section 432 of the Criminal Procedure which reads as follows:

"Power to suspend or remit sentences-

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government it may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and death with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and —

(a) Where such petition is made by the person sentenced it is presented through the officer in charge of the jail; or

(b) Where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposed any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government means-

(a) In cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government

(b) In other cases, the Government of the State within which the offender is sentenced or the said order is passed".

1.1 The above power of remission of sentences under Section 432 is circumsized by the provisions of 433A which reads as under:

"Restriction on powers of remission or commutation in certain cases— Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

2. COMPOSITION OF THE STATE SENTENCE REVIEW BOARDS

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:

1.	Minister incharge, Jail Department / Principal Secretary, Home; Principal Secretary incharge of Jail Affairs/ Law & Order	-	Chairman
2.	Judicial Secretary/ Legal Remembrancer	-	Member
3.	A District & Session Judge nominated by the High Court	-	Member

4.	Chief Probation Officer	-	Member
5.	A senior police officer nominated by the DG of Police not below the rank of IG of Police	-	Member
6	Inspector General of Prisons	-	Member-Secretary

The recommendation of the Sentence Review Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any Member to attend the Board meeting. The meeting of the Board shall not however be held, if the Coram is less than 4 Members including the Chairman.

2.2. *PERIODICITY OF THE BOARD'S MEETINGS*

The State Sentence Review Board shall meet at least once in a quarter at the State Headquarters on date to be notified to Members at least ten days in advance with complete agenda papers.

However, it shall be open to the Chairperson of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

3. ELIGIBILITY FOR PREMATURE RELEASE

The following category of inmates shall be eligible to be considered for premature release by the State Sentence review Boards:

3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the post provisions of Section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions.

3.2 All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission and after completion of 10 years actual imprisonment i.e. without remissions.

3.3 All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served atleast 10 years of imprisonment inclusive of remissions and after completion of 7 years actual imprisonment i.e. without remissions.

3.4 Convicted prisoners undergoing the sentence of life imprisonment on attaining

the age of 65 years provided he or she has served atleast 7 years of imprisonment including the remissions.

3.5 The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, T.B., AIDS, irreversible kidney failure, cardio respiratory disease, leprosy and any other infectious disease etc. as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions.

4. INABILITY FOR PREMATURE RELEASE

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release:

4.1 Prisoners convicted of the offences such as rape, dacoity, terrorist crimes etc.

4.2 Prisoners who have been convicted for organised murders in a premeditated manner and in an organised manner.

4.3 Professional murderers who have been found guilty of murder by hiring them.

4.4 Convicts who commit murder while involved in smuggling operations or having committed the murder of public servants on duty:

5. PROCEDURE FOR PROCESSING OF THE CASES FOR CONSIDERATION OF THE REVIEW BOARD

5.1 Every Superintendent of Central District Jail who has prisoner(s) undergoing sentence of imprisonment for life 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 in that behalf.

5.2 The Superintendent of Jail shall prepare a comprehensive note in each case giving out the family and societal background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also reflect fully about the conduct and behaviour of the prisoner in the jail during the period of his incarceration, behaviour/conduct during the period he was released on probation leave, change in his behavioural pattern and the jail offences, if any, committed by him and punishment awarded to him for such offence(s). A report shall also be made about his physical/mental health or any serious ailment with which the prisoner is suffering entitling his case special consideration for his premature release. The note shall contain recommendation of the jail

Superintendent whether he favours for the premature release of the prisoner or not and in either case it shall be supported by adequate reasons.

5.3 The Superintendent of Jail shall make reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the commission of the offence, for which he was convicted and sentenced, or where he is likely to resettle after his release from the jail. However, in case the place where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed the offence, a reference shall also be made to the Superintendent of Police of the district in which the offence was committed. In either case, he shall forward a copy of the note prepared by him to enable the Superintendent of Police to express his views in regard to the desirability of the premature release of the prisoner.

5.4 On receipt of the reference, the concerned Superintendent of Police shall cause an inquiry to be made in the matter through senior police officer of appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the Superintendent of Police shall not act mechanically and oppose the premature release of the prisoner on untenable and hypothetical grounds/apprehensions. In case the Superintendent of Police is not in favour of the premature release of the prisoner he shall justify the same with cogent reasons and material. He shall return the reference to the Superintendent of the concerned jail not later than 30 days from the receipt of the reference.

5.5 The Superintendent of Jail shall also make a reference to the Chief Probation Officer of the State and shall forward to him a copy of his note. On receipt of the reference, the Chief Probation Officer shall either hold or cause to be held an inquiry through a Probation Officer in regard to the desirability of premature release of the prisoner having regard to his family and social background, his acceptability by his family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act mechanically and recommend each and every case for premature release. In either case he should justify his recommendation by reasons/ material. The Chief Probation Officer shall furnish his report /recommendations to the Superintendent of Jail not later than 30 days from the receipt of the reference.

5.6 On receipt of the report /recommendations of the Superintendent of Police and Chief Probation Officer 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 shall make his own recommendations with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the Government of the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in the matter of premature release of prisoners.

6. PROCEDURE AND GUIDELINES FOR THE REVIEW BOARD:

6.1 The Inspector General of Prisons shall convene a meeting of the Sentence Review Board on a date and time at the State Headquarters, an advance notice of which shall be given to the Chairman and Members of the Board at least ten days in advance of the scheduled meeting and it shall accompany the complete agenda papers i.e. the note of the Superintendent of Jail, recommendations of Superintendent of Police, Chief Probation Officer and that of the Inspector General of Prisons alongwith the copies of documents, if any.

6.2 A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting, it shall be chaired 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 Sentence Review Board. The Board shall consider the case and take a view. As far as practicable, the Sentence Revising Board shall endeavour to make unanimous recommendation. However, in case of a dissent the majority view shall prevail and will be deemed to be decision of the Board.

6.3 While considering the case of premature release of a particular prisoner the Board shall keep in view the 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. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommended his release on certain farfetched and hypothetical premises. The Board shall take into account the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again.

6.4 Rejection of the case of a prisoner for premature release on one or more occasion by the Sentence Review Board will not be a bar for reconsideration of his case. However, the consideration of the case of a convict already rejected shall be done only after the expiry of a period of one year from the date of last consideration of his case.

6.5 The recommendations of the Sentence Review Board shall be placed before the competent authority without delay for consideration. The competent authority may either accept the recommendations of the Sentence Review Board or reject the same on the grounds to be stated or may ask the Sentence Review 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.

7. MONITORING OF CASES THROUGH THE OFFICE OF CHIEF CO-ORDINATOR OF CUSTODIAL JUSTICE PROGRAMME, NHRC

The Committee considers that while computerized records of all the prisoners serving life sentence in the prisons of the country for a follow up their cases by the NHRC is extremely desirable, it does not presently seem to be feasible. Such a monitoring could only be possible, with necessary infrastructural and manpower support.

PROCEDURE/ GUIDELINES ON PREMATURE RELEASE OF PRISONERS

The Commission vide its Letter No. 233/10/97-98(FC) dated 26.9.2003 issued a circular containing procedure/ guidelines on premature release of prisoners to all the Chief Secretaries/ Administrators of the States/ UTs.

All the States/ UTs were requested to review the existing practice and procedure governing premature release of life convicts and bring it in conformity with the guidelines issued by the Commission.

By Speed Post

Case No.233/10/97-98(FC)
NATIONAL HUMAN RIGHTS COMMISSION
(LAW DIVISION – IV)
>|<

M.L. ANEJA
JOINT REGISTRAR(LAW)
Tel. No.011 336 1764
Fax No.011 336 6537

Sardar Patel Bhavan
Sansad Marg, New Delhi

Dated the September 26, 2003

To

All the Chief Secretaries/Administrators of States/UTs

Sub : Procedure/Guidelines on premature release of prisoners.

Ref. : Commission's letter of even number dated 8.11.99

Sir,

The National Human Rights Commission has received a number of representations pointing out that the State Governments are applying differing standards in the matter of premature release of prisoners undergoing life imprisonment. After examining the vexed question of disparities and differing standards applied by the various States in considering the cases of prisoners serving life imprisonment for premature release under the provisions of section 432, 433 and 433 A of Cr.P.C., the Commission had issued broad

guidelines vide it's letter of even number dated 8.11.1999 for the purpose of ensuring uniformity in the matter. After considering the response received from a number of States/UTs, the Commission vide their letter of even number dated 4 April 2003 put these guidelines on hold for the time being pending re-examination of the entire issue. The Commission has now decided to modify paras 3 & 4 of its guidelines issued vide its letter of even number dated 8.11.99. Para 3 as modified is as follows:

3. Eligibility for premature release

3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.PC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions. It is, however, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like;

a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 year's incarceration;
b) the possibility of reclaiming the convict as a useful member of the society; and
c) Socio-economic condition of the convict's family.

With a view to bring about uniformity, the State/UT Governments are, therefore, advised to prescribe the total period of imprisonment to be undergone including remissions, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. The Commission is of the view that total period of incarceration including remissions in such cases should ordinarily not exceed 20 years.

Section 433A was enacted to deny premature release before completion of 14 years of actual incarceration to such convicts as stand convicted of a capital offence. The Commission is of the view that within this category a reasonable classification can be made on the basis of the magnitude, brutality and gravity of the offence for which the convict was sentenced to life imprisonment. Certain

categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in this connection by way of illustration and are not to be taken as an exhaustive list of such categories:

a) Convicts who have been imprisoned for life for murder in heinous cases such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty.

b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.

c) Convicts whose death sentence has been commuted to life imprisonment.

3.2 All other convicted male prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission but only after completion of 10 years actual imprisonment i.e. without remissions.

3.3 The female prisoners not covered by section 433A Cr.PC undergoing the sentence of life imprisonment 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.

3.4 Cases of premature release of persons undergoing life imprisonment before completion of 14 years of actual imprisonment on grounds of terminal illness or old age etc. can be dealt with under the provisions of Art. 161 of the Constitution and old paras 3.4 and 3.5 are therefore redundant and are omitted.

4. Inability for Premature Release

Deleted in view of new para 3.

All the States/UTs are requested to review their existing practice and procedure governing premature release of life convicts and bring it in conformity with the guidelines issued by the Commission.

Yours faithfully,

Sd/-

Joint Registrar(Law)

Other instructions/guidelines pertaining to human rights in prisons

Letter to the Chief Justices of all High Courts with regard to Human Rights in Prisons

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
सरदार पटेल भवन, संसद मार्ग, नई दिल्ली-110001 भारत
Sardar Patel Bhawan, Sansad Marg, New Delhi-110001 INDIA

January 1, 2000

Dear Chief Justice,

As you are aware, one of the important functions entrusted to the National Human Rights Commission under the Protection of Human Rights Act, 1993, is to visit the prisons, study the conditions of the prison inmates and suggest remedial measures. During the last five years the Members of the Commission and its senior officers have visited prisons in various parts of the country and have been appalled by the spectacle of overcrowding, insanitary conditions and mismanagement of prison administration. The problem is further compounded by lack of sensitivity on the part of the prison staff to the basic human rights of the prisoners.

The State Prison Manuals contain provisions for District and Sessions Judges to function as ex-officio visitors to jails within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. The prisoners are in judicial custody and hence it is incumbent upon the Sessions Judges to monitor their living conditions and ensure that humane conditions prevail within the prison walls also. Justice Krishna Iyer has aptly remarked that the prison gates are not an iron curtain between the prisoner and human rights. In addition, the Supreme Court specifically directed that the District and sessions Judges must visit prisons for this purpose and consider this part of duty as an essential function attached to their office. They should make expeditious enquiries into the grievances of the prisoners and take suitable corrective measures.

During visits to various district prisons, the Commission ha been informed that the Sessions Judges are not regular in visiting prisons and the District Committee headed by Sessions Judge / District Magistrate and comprised of senior Superintendent of Police is not meeting at regular intervals to review the conditions of the prisoners.

Indeed in most of the jails, there is a predominance of under trials. Many of them who have committed petty offences are languishing in jails, because their cases are not being decided early for reasons which it is not necessary to reiterate. The District Judges during their visits can look into the problem and ensure their speedy trial. The Supreme Court in its several judgements has drawn attention to this fact and to the

attendant problems in prison administration arising therefrom. The Supreme Court has also emphasised the need for urgent steps to reduce their numbers by expeditious trial and thereby making speedy justice a facet of Article 21 of the Constitution a reality.

You may consider giving appropriate instructions to the District & Sessions Judges to take necessary steps to resolve the acute problem which has the impact of violating a human right which is given the status of constitutional guarantee.

I would be grateful for your response in this matter.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Justices of all High Courts

Letter to Chief Secretaries/Administrations of all States/Union Territories regarding Guidelines on supply of reading material to prisoners

No. 68/5/97-98
National Human Rights Commission
(Law Division - V)

E.I. Malekar
Asstt. Registrar (Law)

March 1, 2000

To

Chief Secretaries/ Administrators
of all States /UTs.

Subject : Complaint from Shri Y.P. Chibbar.

Sir,

The case above mentioned was placed before the Commission on 28.2.2000 whereupon it has directed as under.

"The guidelines are approved. They be sent to Chief Secretary of all States/Union Territories for being circulated to all concerned persons in their respective jurisdictions for compliance on the question of supply/availability of reading material to the prisoners. Compliance report be sent within eight weeks."

I am, therefore, to foreward herewith a copy of the Commission's guidelines and to request you to submit the compliance report in the matter by 24.4.2000, positively for placing it before the Commission.

Encl: As stated (in two pages)

Your faithfully,

Sd/-

Asstt. Registrar (Law)

Guidelines on Supply of reading material to prisoners

The Commission has been seized with the question of the nature and extent of reading materials to which prisoners should have access. Having carefully considered this matter, the Commission would like to lay down the following guidelines on this subject:

i) As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

ii) In the light of the foregoing, all prisoners should have access to such reading materials are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.

(iii) Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.

(iv) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.

(v) Prisoners should, in addition, generally be permitted to receive reading material from outside, provided such material is reasonable in quantity and is 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, to the maximum extent possible, take into account the individual needs of the prisoner.

vi) In assessing the content of reading materials the Superintendent of the Jail should be guided by law; he should not exercise his discretion arbitrarily.

The Commission recommends that the above -stated guidelines be used by the competent authorities, in all States and Union Territories, to modify the existing rules and practices prevailing in prisons wherever they might be at variance with these guidelines.

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