

PRISONERS' RIGHTS – RESPONSE TO COVID-19 PANDEMIC IN NORTHEAST INDIA

DATE: 05.06.2020

TIME: 4 PM - 6 PM



Schedule for the Webinar

Time	Session	Speaker
04:00-4:10	Introduction	Olivia Bang, Adv
04:10-4:25	Recent Supreme Court Directions during Covid-19	Ritu Kumar, Adv.
04:25-4:35	Situation of Foreign Prisoners and Strategic Litigation	Sauradeep Dey, Adv
04:35-4:45	Situation in Assam Prisons & Strategic Litigation	Nandita, Adv
04:45-5:00	Experiences of visit to prisons in NE and main issues	Amrita, CHRI
05:10-5:20	Main Issues in Nagaland Prisons & Strategic Litigation	Koza, Adv
05:20-5:30	Main Issues in Manipur Prisons & Strategic Litigation	Rakesh, Adv
05:30-6:00	Open Discussion	

In the wake of the COVID-19 pandemic, numerous measures have been taken across India by several stakeholders to contain the spread of the disease in the community. A slew of measures have been initiated by the judiciary in relation to prisons with the objective of preventing an outbreak of the disease amongst prisoners. HRLN has played an active role through its participation in the litigation involving prisoners' rights during the pandemic and has to a reasonable extent been successful in contributing to the cause.

A webinar was held on 05-06-2020 from 4pm to 6pm with focus on discussing the developments in the Northeast on prisoners' rights during the pandemic. In addition to being a knowledge-sharing platform, the webinar was also meant to be a training and capacity building exercise to forge a future path for strategic litigation in prison related issues. The webinar was attended by members of HRLN and our networking partners from six Northeastern states, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Sikkim and also there were participants from Delhi.

The welcome note was addressed by Olivia Bang, Director of the Delhi Unit of HRLN. She laid out that there are six main sessions beginning with a session on Supreme Court directions and orders passed during the COVID-19 Pandemic. A session on Foreign Prisoners was also scheduled as the Northeast has in recent times seen many cases of Rohingyas being prosecuted for illegal entry into the country despite the fact that they have been seeking asylum here after fleeing persecution in Myanmar. There are sessions on the situation of prisons in Assam, Manipur and Nagaland and there is also a knowledge-sharing session on the experience of prison visits in Northeast and the main issues identified during such visits.

Recent Supreme Court Directions during Covid-19

Speaker: Ms. Ritu Kumar, Advocate

Ritu began by pointing out that the main issues concerning Indian prisons which have been exposed during the pandemic are overcrowding, lack of health and hygiene, access to medical facilities, restriction on visit to prisons by family and lawyers to meet prisoners, curtailment of normal activities due to lack of staffs and non-operation of NGOs that work with prisoners and

non-functioning of courts severely restricting the availability of legal aid. She shared a PowerPoint Presentation with all participants.

The Supreme Court of India intervened by taking cognizance of the potential for spread of COVID-19 in the prisons of India which were overcrowded and registered a suo motu case in this regard i.e. Suo Motu W.P.(C) No. 1/2020. On 23-03-2020, the Supreme Court passed some directions including the stoppage of physical production of undertrial prisoners in Courts and instead directing the use of video-conference for the same. There was a direction to stop the transfer of prisoners from one prison to another except for decongestion or medical assistance. Sick persons were to be shifted to Medical Institutions without delay. It was directed that prison specific readiness and response plans must be developed in consultation with medical experts.

One significant direction in the 23-03-2020 order was to constitute a High Powered Committee (HPC) in every state/Union Territory which would consist of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) and, (ii) Director General of Prison(s). The Committee was to determine which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate. For instance, the Supreme Court said the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum. The High Powered Committee was also directed to take into account the directions contained in para no.11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273. Further, the Undertrial Review Committee (UTRC) contemplated by this Court in *re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, was also directed to meet every week and take such decision in consultation with the concerned authority as per the said judgment.

Ritu then pointed out the directions passed in the same matter by the Supreme Court in its order dated 07-04-2020 wherein it directed the Union of India to ensure that all the prisoners who have been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. For this purpose, the Union of India may issue appropriate directions under

the Disaster Management Act, 2005 or any other law for the time being in force. The States/Union Territories were also directed to ensure through Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of lockdown.

With regard to foreign detainees, Ritu informed that on 13-04-2020, the Supreme Court passed a significant order whereby it relaxed the conditions for release of declared foreigners from detention centres. It ordered that those persons who had spent more than two years in detention centres could be released from detention centres if they furnish surety of Rs. 5000 of two Indian citizens. Certain other conditions as prescribed in an earlier order dated 10-05-2019 would also apply. The impact of this order would be largely felt on the detention centres in Assam which hold almost all the foreign detainees in the country.

Ritu then referred to an order dated 03-04-2020 passed in *Suo Motu WP(C) 4/2020* regarding preventing any spread of COVID-19 in Children Protection Homes. In this order, the Supreme Court directed that in case of children alleged to be in conflict with law and residing in Observation Homes, the Juvenile Justice Board shall consider taking steps to release all children on bail unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.

Ritu then expressed the importance of certain directions passed by the Supreme Court in *Re: Inhuman Conditions in 1382 Prisons, (2016) 14 SCC 815, (2016) 3 SCC 700* which mandated release of 14 categories of prisoners:

- Persons imprisoned for offences which carry a maximum punishment of 2 years;
- Persons detained under Chapter VIII of the Criminal Procedure Code i.e. Under Sections 107, 108, 109 and 151 of Cr.P.C.;
- First time male offenders between the ages 19 and 21 who are in under trial custody for offences punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
- Become sick or infirm and require specialized medical treatment (S.437, Cr.P.C.);

- Women offenders (S.437 of the Code);
- Are of unsound mind and must be dealt under Chapter XXV of the Code;
- Are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days;
- Persons eligible to be released on bail under S.167(2)(a)(i)&(ii) of Cr.PC read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;

Two categories of convicts were also recommended for release:

- Convicts who fall under Ss. 3 and 4 of the Probation of Offenders Act;
- Convicts who have undergone the sentence and are recommended for release, or have been granted remission.

Ritu ended her session by pointing out the actions that can be taken up which are:

- Write to HPCs/ UTRCs to release these 12 categories of UTPs not just on interim bail but on regular bail (NFPR recommendations);
- File petitions in the High Courts to implement the earlier orders of the SC in Re-inhuman conditions in prisons to release these 14 categories of prisoners on regular bail/remission; and
- File petitions/ bail applications for converting interim bails into regular bails.

Situation of Foreign Prisoners and Strategic Litigation

Speaker: Sauradeep Dey, Advocate

Foreigners who illegally enter into Indian territory are usually booked under Section 14 of the Foreigners Act, 1946 and also under the Passport Act, 1950. In recent years, the Northeastern states have had an upsurge of cases where Rohingya migrants from Myanmar are being held and

booked under the aforesaid laws. A critical aspect in the case of Rohingyas is that they come to India seeking asylum after fleeing persecution in their home country.

Although India does not have a law specifically to deal with refugees, a Standard Operating Procedure (SOP) has been circulated by the Ministry of Home Affairs for dealing with people who claim to be refugees. This SOP prescribes a deviation from the usual prosecution of illegal migrants. The SOP was issued on 29-12-2011 and has to be followed by all concerned agencies while dealing with foreign nationals who claim to be refugees. Sauradeep shared his screen with the participants in order to take them through the contents of the SOP.

The SOP says that whenever a FRO/FRRO comes across foreign nationals who claim to be refugees, the SOP has to be followed. Some of the important provisions are:

- (i) The version of the foreign national making such claim has to be carefully examined and details of the reasons for leaving such foreign country and the manner in which entry into India was made has to be elicited from the foreigner.
- (ii) The documents available with the foreigner, issued by anybody in India or abroad has to be considered. If in case a prima facie is justified, the matter has to be recommended to the Ministry of Home Affairs (MHA) for grant of Long Term Visa (LTV). The general perceived condition of the people of the community to which the foreigner belongs has to be also taken into consideration. Sauradeep here emphasised on the importance of documents issued by the UNHCR which readily recognizes Rohingyas as asylum seekers in India.
- (iii) The MHA has to thereafter consider all inputs including the report of the FRO/FRRO and inputs of the Ministry of External Affairs and arrive at a date of issue of the LTV.
- (iv) Such an LTV has to be renewed every year upto a maximum period of five years at the FRO/FRRO level based on an assessment of the conduct of the foreigner and security implications.
- (v) For renewal for the sixth year, the FRO/FRRO has to furnish a proposal to MHA with its views for a decision.

- (vi) During the period of stay in India, the foreigner to whom LTV has been issued can take up any employment in the private sector or undertake studies in any academic institution.
- (vii) The foreigner is not to be treated as an illegal migrant for the purposes of the Citizenship Act, 1955.
- (viii) Economic immigrants who have arrived in India in search of economic opportunities without any fear of persecution will not be eligible for LTV. They can be prosecuted under the Foreigners Act.
- (ix) In case a foreigner claiming to be a refugee is not fit for grant of LTV, he/she may be confined to a detention centre and steps may be initiated for deportation of the foreigner through diplomatic channels.
- (x) In case diplomatic channels do not yield concrete results within six months, the foreigner to whom LTV was not granted shall be released from detention centre subject to collection of biometric details, with conditions of local surety, good behavior and monthly police reporting as an interim measure till issue of travel documents and deportation.

Thereby, Sauradeep pointed out that the SOP is a very important document for dealing with cases of Rohingyas and whenever any member comes across the prosecution of any Rohingya who is seeking asylum in India, the High Court may be moved seeking a direction to comply with the said SOP.

Situation in Assam Prisons & Strategic Litigation

Speaker: Nandita Deka, Advocate

Assam has 31 jails which includes 6 Central Jails, 22 District Jails, 1 Special Jail, 1 Open-air Jail and 1 sub-jail. The total capacity of these jails is 8938. After the order of the Supreme Court of India constituting High Powered Committees to consider release of convicted prisoners on parole and undertrial prisoners facing charges of committing offences punishable with imprisonment upto seven years, Gauhati High Court also passed a direction to release prisoners within a week.

Following such directions, 3577 prisoners have been released. These numbers include the release of 3161 undertrial prisoners on bail, 101 convicts on annual leave and 15 persons on parole. As per information provided by the Inspector General of Prisons on 17-05-2020, there are 8510 prisoners in the jails of Assam. Considering these numbers, it is found that there has not been a vast difference in actual number of prisoners in jails as a similar number of persons have also been imprisoned during this period.

Furthermore, a Suo Motu case has also been registered in the Gauhati High Court which concerns providing compensation to families in case of deaths inside prisons. In another Suo Motu Case viz. Suo Motu PIL No. 8/2018 concerning jails of Assam, Arunachal Pradesh, Nagaland and Mizoram, orders have been passed directing the States to furnish a detailed report on the sanctioned capacity of all jails and the actual number of prisoners in these jails, whether any vocational training, handloom, handicraft or other such activities have been provided in the jails, the number of overcrowded jails, whether access to hospitals, clinics and medical facilities are provided in accordance with Model Prison Rules, 2016, and to what extent Model Prison Manual, 2016, has been adopted and implemented in each of the jails and whether ideal conditions have been provided for meeting of prisoners with their family members and advocates. An order was passed in this PIL with an observation that once the reports have been received from each of the states, the High Court will constitute a Commission consisting of members from the society and members of the bar to visit the jails and to verify whether the information received was actually correct or not. It can be contemplated whether we can file an I.A. in this petition or file a separate writ petition itself which may be tagged with this case.

The health and hygiene in all jails can also be raised through a case because many jails are lacking in this aspect. There is an absence of counseling facilities. RTIs were filed in 31 prisons and reply was received from 22 of them wherein it was found that a significant number of prisoners had committed suicide. So this aspect of health and hygiene including mental health can be looked into.

Experiences of visit to prisons in NE and main issues

Speaker: Amrita Paul, Senior Programme Officer, CHRI

Amrita began by stating that a lot of unnecessary arrests happen despite the judgement passed long ago by the Supreme Court in Arnesh Kumar. The judgement's implementation continues to have major gaps. Amrita, who shared that she works for access to justice for persons who are in custody, also said that she has visited prisons in West Bengal, Karnataka, Kerala and Rajasthan and has heard accounts from her colleagues about prisons in Haryana and Punjab. She expected the situation of prisons in the Northeastern states would be different and after her visit to some of these prisons in 2019, she found that barring Assam, the other states' prisons do not face the problem of overcrowding. It may be because there are systems in place in the Northeast which have been able to control unnecessary arrests.

From the lens of legal aid to persons in custody, the poor prisoner is not aware of his/her legal rights. This is one area where we have failed. Despite the existence of the law on right to information being in existence for almost 15 years now, that minimum access to information is still absent. People are still unaware that they have a right to legal aid and the right to get a lawyer to represent them. The quality of legal aid becomes a secondary question in such a circumstance. During her visits to prisons in Assam, Mizoram, Manipur and Tripura, she found that the knowledge amongst prisoners about the right to access justice at public cost is absent even though the same has been held to be a guaranteed right by various decisions of the Supreme Court. The legal services authorities are existing from a far away island from the persons in custody who are one of their eligible categories of entitled beneficiaries. This bridge needs to be bridged by communication and information exchange.

These issues have been reflected in the conversations and annual reports of NALSA. They are also now speaking about quality of legal aid which is correct because lawyering does not stop at just being present in Court on a particular date but lawyering also needs to be measured on some parameters.

With the pandemic, the access to prisons is completely gone. One of the problems flagged by lawyers is the reduced communication with their clients to get the information which is vital for effective representation. The northeast is also marred with network issues and physical constraints because places are extremely far. For example, in Manipur the jails are in Imphal but the courts are in all districts and these would naturally affect communication between the prisoner and his lawyer.

Regarding the working of UTRCs and HPCs, the concept of UTRCs was in existence well before it was given its present recognition by the Supreme Court. The problem with UTRCs is having an operating procedure which too the Supreme Court ended up drafting and finally the NALSA came up with an SOP on it. The problem here pertains to the regularity of the Committee's sittings, the manner of creating the list of people who are eligible for release, who creates the list of persons and whether there is a follow up on implementation of the recommended list of persons eligible for release. But in reality, the process of release takes a lot of time. As regards the HPCs, India is probably the only country in the world to come up with a system to release prisoners when the Supreme Court took up a Suo Motu petition and directed constitution of High Powered Committees. In USA, there are hundreds or thousands of cases being registered everyday; Iran opened up all its prisons after the COVID-19 outbreak; Britain continues to face the virus within its walls and so does many other European nations.

It comes to the heart of the question that the prisons do not really have to be congested just because the authority to do so is available. Accused persons can be kept outside and only after the trial is completed and such person is sentenced, they can be imprisoned.

WHO Guidelines

Speaker: Archana Rupwate, Advocate

In a petition before the Bombay High Court, the WHO guidelines have been used as a ground for release of prisoners. Even in the Northeast, although overcrowding may not be a problem but health and hygiene surely is. As per the WHO Guidelines, social distancing has to be maintained

in prisons and every prisoner should get enough space to maintain at least six feet distance from others. On this ground, petitions can be filed in the respective High Courts for release of prisoners for ensuring such social distancing norms in the prisons and not just overcrowding therein.

Main Issues in Manipur Prisons & Strategic Litigation

Speaker: Meihoubam Rakesh, Advocate

In Manipur, there are two jails. One of them is for males and the other for females. The Central Jail in Imphal is exclusively for women and has a capacity of 250. The Sajiwa Central Jail in Manipur has a capacity of 845. There are some sub-jails as well. There are also sub-jails at Churachandpur, Senapati, Chandel and Jiribam but these sub-jails have been non-functional for a long time. In 2013, a PIL was filed and in that matter, the High Court had asked for revival of these sub-jails. But the State Government failed to do so and therefore another PIL was filed in 2018 for expediting the process of reviving these sub-jails which is still pending before the Court. In 2018, two Suo Motu PILs were taken up by the High Court following a Supreme Court order. One PIL is for overcrowding and the other is regarding shortage of staff. In the latter case, the State Government has responded by stating that the number of sanctioned posts in all jails of Manipur is 574 but existing number of staffs is 373. The process of recruiting rest of the staffs is ongoing and with this observation, the PIL was disposed of.

After outbreak of COVID-19 and passing of the Supreme Court order, a High Powered Committee was constituted in the state and through their deliberations, at first 64 prisoners were released and thereafter another 88 prisoners were released, totaling 152 prisoners. Also, a Teachers' Training Academy was converted into a quarantine centre for keeping all arrested prisoners for 14 days after their arrest before being shifted to a jail.

Also, overcrowding is not a problem in the jails of Manipur but occasionally there have been instances of custodial violence and also fights have broken out between inmates. In 2016, one

inmate was killed in a fight with another inmate. In that regard, a writ petition was filed claiming compensation for the deceased's family and that matter is still pending.

Another important issue is that the condition of lock-ups in the police stations is pathetic. As per the direction of Manipur Human Rights Commission, a visit to lock-ups was undertaken by HRLN and a report was submitted to the Commission. Following this, the Commissioner recommended to the State Government to improve the condition of the lock-ups. Accordingly, improvements were carried out in the lock-ups.

Non-production of undertrial prisoners before Courts citing shortage of vehicles, security personnel, etc. is another problem and the situation has only deteriorated during the pandemic.

Since Manipur shares its boundary with Myanmar, there are a number of Rohingya refugees who have been arrested in the state. They have been assisted by HRLN for their release on bail and they have also been assisted in procuring refugee cards from UNHCR. Jail visits are conducted to process the applications on their behalf to the UNHCR. Assistance is also provided for renewal of these cards. In 2019, three minors who were kept in Observation Homes were released with the help of HRLN. Then, as these minors had to travel to Delhi, HRLN helped them in procuring flight tickets and arranged their travel without identity cards by speaking to the concerned officials.

Main Issues in Nagaland Prisons & Strategic Litigation

Speaker: Neiteo Koza, Advocate

Koza said that Nagaland has one Central jail and ten district jails. She shared that she had visited all the jails in 2018 when she was an empanelled lawyer of the State Legal Services Authority and also its Project Coordinator. One of the main issues that need to be focused presently is the infrastructure of the jails. The jail in Kohima is located in the vicinity of the main town. On certain occasions, on the arrest of rape accused and the likes, there have been public uprisings in

the form of volatile protests and the jail was attacked raising the question of security of the jail itself.

Another area of concern is the quality of medical services provided to prisoners which is quite poor. Vocational training is also not being provided in the prisons which means the prisoners are not being rehabilitated. Koza cited the example of a young man who was arrested on accusation of committing a petty theft and when he was released he did not have any place to go as he was an orphan. He went and stayed in a village where he was arrested again after a month for a more serious offence. He served a sentence of three years' imprisonment but after his release he continued committing serious crimes like robbery and rape for which he was imprisoned again. It shows the impact of lack of reformation and rehabilitation programmes.

CONCLUSION:

Ritu concluded by saying that we must look forward to filing more petitions on the rights of prisoners and also find suitable petitioners for public interest litigations on this issue. She said that the present time appears to be a good time to visit prisons as officials too may cooperate in the present circumstances which would help our research and drafting. Olivia added that our future meetings could be more training intensive which would give us direction to file more cases in our states on prisoners' rights.

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