Report on the
National Consultation on Prison Reform
3-4 April 2010, New Delhi

Organised by
Human Rights Law Network (HRLN)

In collaboration with
Catalyst – Social Development Consultants Pvt. Ltd. (CSDC)
&
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We also express our thanks to Dr. B.V. Trivedi, Dy. Director Bureau of Police Research & Development, who helped us with the compilation of the background material for the Consultation. We also acknowledge the efforts of all Resource Persons who presented papers on Prison Reform and Prisoners’ Rights and helped us with the discussion that followed.

A special word of thanks to Surya Prakash Loonker and Mala Sonkala of Catalyst-Social Development Consultants, who contacted all the organizations and followed up with them.

Above all, a special word of thanks to the entire staff, lawyers and interns of Human Rights Law Network without whose dedication and hard work the Consultation and the Report would never have seen the light of the day.
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I. INTRODUCTION

Background

Jails in India are plagued with myriad problems. Some of these are over-crowding, under-staffing, lack of adequate medical care, physical mistreatment of prisoners resulting in custodial deaths, inadequate conditions for female and juvenile detainees, poor administration, long detention of those awaiting trial and the inability of prisoners to communicate with counsel, administrators and family.

The 2007 Report of the National Crime Records Bureau, Ministry of Home Affairs, reports over-crowding in a large majority of jails, some operating at 200 per cent of their available capacity, with under-trials accounting for two-thirds of prison population.

The maximum over-crowding was recorded in the jails of Uttar Pradesh (201.3 per cent), followed by Chhattisgarh (193.3 per cent), Delhi (185.7 per cent), Gujarat (181.7 per cent), Kerala (179.1 per cent), Jharkhand (167 per cent), Madhya Pradesh (160 per cent), Orissa (144.9 per cent), Lakshadweep (137.5 per cent), Assam (136.9 per cent), Punjab (136 per cent), Bihar (133.9 per cent), A & N Islands (133.7 per cent).

The problem of over-crowding is also prevalent in the case of female prisoners. For the year 2007, the State of Gujarat (220.9 per cent) was reported to have the highest number of female inmates, followed by Uttar Pradesh (164 per cent), Bihar (159.5 per cent), Jharkhand (158.3 per cent), Delhi (121.3 per cent), Jammu & Kashmir (117.1 per cent).

Women, with children, and the mentally ill are among the worst-affected groups. According to available statistics, 1,400 five year old children find themselves in jails along with their mothers.

The absence of adequate medical and psychiatric services contribute to the deplorable conditions. Individuals – with severe mental illnesses, also referred to as “non-criminal lunatics”– are often imprisoned. A lot of mentally ill prisoners are languishing in jails. The rate of suicide is very high, given the backdrop of brutality and violence in Indian jails.

In the 1980s, the All India Commission for Jail Reforms (The “Mulla” Commission) found that the majority of the prison population was from a “rural and agricultural background” and that first-time offenders, involved in “technical or minor violations of law”, accounted for a large number of prisoners. A number of people had been imprisoned for non-payment of fines, or because there was no one to bail them out, even if the bail amount was a paltry Rs. 500, or due to inability to afford good legal representation. As a result, first time offenders, or persons held for petty crimes, spent years, or even decades, in the company of hardened criminals.

A chilling example is that of Machang Lalung, who was released from incarceration at the age of 77 from a prison in the State of Assam after spending more than half a century behind bars awaiting trial.
According to the National Crime Research Bureau (NCRB) report, entitled Crime in India 2002, nearly 220,000 cases took more than 3 years to reach court; 25,600 remained pending for a whole decade before a decision was taken. A staggering number of under-trials were imprisoned for a longer term than the most rigorous sentence would ever have been.

**Legal Scenario**

The prison system in India is still governed by the archaic Prisons Act 1894 and the Prisoners Act 1900. The Prisons Act 1894 provides for corporal punishment in cases where a prison offence has been committed. Acts like “wilful disobedience” of prison regulations, use of threatening or intimidating language, “immoral or indecent” behaviour and “feigning illness” constitute a prison offence under the Act. The Act leaves the awarding of such punishment to the discretion of the Jail Superintendent. However, the Act does not provide much help on how these offences are to be examined and whether “due process” will be followed in such cases.

The Prison Manuals address some of the anomalies existing in the Prison Act 1894. However most of them date from colonial times and have not been updated since then.

The Supreme Court of India, recognizing the problems in the Indian Prison System, has on several occasions ordered the States to reform the Prisons Act 1894, to completely overhaul the various State Prison Manuals and to incorporate case laws regarding prisoners’ rights.

In 1980, an All India Committee on Jail Reforms, headed by Justice A.N. Mulla, was formed to study the issue of treatment of prisoners. The Mulla Commission came out with an exhaustive document on prison reforms, which would help restructure the foundations on which the Indian prison system rested.

In 1996, the National Human Rights Commission suggested a prison reform bill. The draft Bill was circulated to the states in 1998, a few of which came out with new legislation. Rajasthan was one such state, which incorporated a chapter on the Rights and Duties of Prisoners in its Rajasthan Prisons Act 2001. In Madhya Pradesh attempts were made to achieve 100% literacy among prisoners in some select prisons.

In 2005, the Bureau of Police Research and Development engaged prison officials, academics and prison experts in drafting a Model National Prison Manual. Some of the most important recommendations of the manual include the creation of new bodies including a department of prisons and correctional services and a full-time National Commission on prisons; using alternatives to imprisonment; renewing the focus on prisoner rehabilitation; reducing the prison population; and modernizing the prisons themselves. The Manual was shared with the States and various NGOs working in the area of prisons and prisoners’ rights.

However, little has been done thereafter. Further, prison reforms are essentially a State subject; therefore there is no accountability of any kind from the Central Government. Even national agencies – like the National Human Rights Commission or the Bureau of Police Research & Development – cannot ensure the State implementation of policies and schemes listed in the Model Act, or Manual.

**About the Consultation**

In order to address the various issues regarding prisons and prisoners, it was decided to organize a consultation, wherein the various stakeholders – comprising Government officials, Prison officials, civil society organizations working in prisons,
activists, lawyers, journalists and academics – were invited. The Consultation was held with the following objectives:

- Advocacy measures geared towards improving the legal system in India and, prison conditions, reforming prison management, enhancing transparency and accountability and fostering an attitude of cooperation between the various stakeholders.

- Building a network of prison reform activists that will bring in prison officials, lawyers, judges, journalists, academics, and others towards achieving the above-stated objective.

The Consultation saw the participation of over 30 organizations, working on prisons, from all over India. Government officials, Prison officials, activists and lawyers also took part in the heated debates concerning prisons and prisoners. The discussions were wide-ranging and the topics ranged from the inhuman and degrading conditions of the prisons to the apathy of officials, the Governments and the Judiciary. It was felt that the prisoners had been locked behind bars and forgotten by one and all.

The two-day session was divided into plenary and parallel sessions. The plenary session was largely comprised of paper presentations by people with subject-area-expertise. This was followed by parallel sessions where matters were hotly debated and suggestions were offered. These suggestions, or recommendations, were compiled to formulate a Plan of Action for implementation.
II. RECENT TRENDS IN PRISON REFORM IN INDIA

A. The Government Perspective

Dr. B.V. Trivedi  
*Dy. Dir. Research, Bureau of Police Research & Development (BPR&D)*

The Session was opened by Dr. B.V. Trivedi, Deputy Director Research, Bureau of Police Research and Development (BPR&D). Dr. Trivedi spoke of the changing outlook of prisons and prisoners and the role of BPR&D in reforming the prison system.

Speaking on the function of a prison, Dr. Trivedi said that, in ancient times, a prison was considered a house of captives. Prison was for punishment. Now the focus is changing. Prison is no longer about punitive measures alone; it is viewed as a correctional institution for rehabilitation.

The new outlook on prisoners is:

- Criminals are not born criminals, society makes them that way;
- Prisoners are sent to prison not for punishment but for rehabilitation;
- People in prisons are still human beings. They still possess all of the rights they possessed before being imprisoned, except for those taken away by virtue of being imprisoned;
- People should hate the crime, not the criminal.

In the new outlook, the prison management should have the following objectives:

- Maintaining security and discipline;
- Using time spent in prison for reformation and rehabilitation;
- Providing the basic minimum facilities to prisoners to ensure human dignity.

The areas of focus for correctional administration are:

- Improving vocational training facilities in prisons;
- Providing better training and professional skills to prison staff with a view to improving the quality of correctional programs;
- Promoting better prison management skills and dissemination information and valuable experiences to other prisons;
- Providing better housing, kitchen, sanitation, water supply, cultural and educational facilities to prisoners as well as prison staff.

“It has always been a mystery to me how men can feel themselves honoured by the humiliation of their fellow beings.”

–Mahatma Gandhi
Speaking on the present number of inmates in jails, Dr. Trivedi quoted the National Crime Records Bureau (NCRB) figures¹, as follows:

| Total Number of Jails   | 1,276 
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Prison Population</td>
<td>3,76,396</td>
</tr>
<tr>
<td>Authorized Capacity</td>
<td>2,77,304</td>
</tr>
<tr>
<td>Total Number of Convicts</td>
<td>1,20,115 (31.9%)</td>
</tr>
<tr>
<td>Total Number of Under-trials</td>
<td>2,50,727 (66.8%)</td>
</tr>
<tr>
<td>Total Number of Detenues</td>
<td>4,687 (1.2%)</td>
</tr>
<tr>
<td>Other kind of prisoners</td>
<td>867 (0.2%)</td>
</tr>
</tbody>
</table>

**Crime Trends – Prison Population and Crime Rate**

<table>
<thead>
<tr>
<th>Arrests</th>
<th>2006</th>
<th>2007</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of arrests under IPC offences (Indian Penal Code)</td>
<td>18,78,293</td>
<td>27,80,559</td>
</tr>
<tr>
<td>Total number of arrests under SLL offences (Special and Local Laws)</td>
<td>40,87,246</td>
<td>32,24,167</td>
</tr>
<tr>
<td>Total</td>
<td>51,02,460</td>
<td>68,67,805</td>
</tr>
<tr>
<td>The percentage of imprisoned Under-trials to the total arrests</td>
<td>2,50,727 (3.65%)</td>
<td></td>
</tr>
</tbody>
</table>

**Period of Sentence of Under-trial Prisoners as on 1 January 2008**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Period of Sentence</th>
<th>Total</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Upto 3 Months</td>
<td>10,3624</td>
<td>41.3%</td>
</tr>
<tr>
<td>2</td>
<td>3 – 6 Months</td>
<td>52,476</td>
<td>0.9%</td>
</tr>
<tr>
<td>3</td>
<td>6 – 12 Months</td>
<td>43,417</td>
<td>17.3%</td>
</tr>
<tr>
<td>4</td>
<td>1 – 2 Years</td>
<td>28,788</td>
<td>11.5%</td>
</tr>
<tr>
<td>5</td>
<td>2 – 3 Years</td>
<td>13,770</td>
<td>5.5%</td>
</tr>
<tr>
<td>6</td>
<td>3 – 5 Years</td>
<td>6,801</td>
<td>2.7%</td>
</tr>
<tr>
<td>7</td>
<td>Above 5 Years</td>
<td>1,891</td>
<td>0.8%</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>250,727</td>
<td>100%</td>
</tr>
</tbody>
</table>

**Period of Sentence of Convicted Prisoners as on 1 January 2008**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Period of Sentence</th>
<th>Total</th>
<th>%age</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Capital Punishment</td>
<td>308</td>
<td>0.3%</td>
</tr>
<tr>
<td>2</td>
<td>Life Imprisonment</td>
<td>63,828</td>
<td>53.1%</td>
</tr>
<tr>
<td>3</td>
<td>10-13 years</td>
<td>14,433</td>
<td>12.0%</td>
</tr>
<tr>
<td>4</td>
<td>7-9 years</td>
<td>9,679</td>
<td>8.1%</td>
</tr>
</tbody>
</table>

A majority of the people in prisons are under-trials and first-time offenders. Repeat offenders constitute less than 10% of the total number of prisoners. The total number of persons arrested – under IPC, CRPC, local and special laws – account for only 3.65% of the total number of prisoners.

The rate of overcrowding in jails was 35.7%, but it has gone down, over the last few years, because of the modernization schemes introduced by the Central Government. Dr. Trivedi is of the view that there is no data corroboration of the belief that under-trials have been languishing in jails for a long period of time. 41% of under-trials have been in prison for less than 3 months; 62% of under-trials have been in prison for less than 6 months. With regard to sentencing, a majority of the convicted prisoners in India (53%) are there for life.

About the number of women prisoners, he pointed out that only 4.09% of prisoners in India are women. While statistically insignificant, it is still very important, especially because some of them have children. 347 women have a total of 391 children in the prisons of India.
Women Prisoners In India - Classification

<table>
<thead>
<tr>
<th>Total women prisoners</th>
<th>15,401</th>
</tr>
</thead>
<tbody>
<tr>
<td>Percentage of women prisoners</td>
<td>4.09% of total prison population</td>
</tr>
<tr>
<td>Convict prisoners</td>
<td>4,058 (26.3%)</td>
</tr>
<tr>
<td>Under-trial prisoners</td>
<td>11,013 (71.5%)</td>
</tr>
<tr>
<td>Detenues prisoners</td>
<td>270 (1.8%)</td>
</tr>
<tr>
<td>Others</td>
<td>60 (0.4%)</td>
</tr>
<tr>
<td>Total number of women prisoners with children</td>
<td>347</td>
</tr>
<tr>
<td>Total number of children</td>
<td>391</td>
</tr>
</tbody>
</table>

Only 1.42% of the sanctioned staff is from corrections; the number of actual prison staff from the department is even smaller. We place far more emphasis on security and discipline than on corrections and rehabilitation. However, compared to many other countries, the rate of imprisonment in India is very low.

Prison Staff (2007)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Sanctioned strength</td>
<td>64,671</td>
</tr>
<tr>
<td>Actual strength</td>
<td>49,574</td>
</tr>
<tr>
<td>Correctional staff (sanctioned)</td>
<td>1.42%</td>
</tr>
<tr>
<td>Correctional staff (actual)</td>
<td>1.18%</td>
</tr>
<tr>
<td>Prison staff and inmate ratio</td>
<td>1 : 7.6</td>
</tr>
</tbody>
</table>

Dr. Trivedi also stated that most states were in the process of adopting the Model Prison Manual developed by BPR&D. Some states have constituted a Committee to examine it.

The provision of video-conferencing has been introduced to ensure that prisoners can talk to a judge. This facility also helps in countering the problem of transporting prisoners from jails to the Court.

Further, Section 436A had been introduced to the Code of Criminal Procedure 1973 to reduce the period of detention during trial. However, certain conditions and provisos have been added to safeguard public interest. The Section reads as follows:

Where a person has, during the period of investigation inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under the law) undergone detention for a period of extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the court on his personal bond with or without sureties.

Dr. Trivedi also spoke of the system of Plea Bargaining that has been introduced by
the Government of India to reduce the number of pending cases in trial courts and to deal with the problem of overcrowding in prisons. It is expected that this would benefit about 50,000 under-trials as well as fresh cases.

B. The Human Rights Organizations' Perspective

Dr. Maja Daruwala
Founder, Commonwealth Human Rights Initiative (CHRI)

Dr. Maja Daruwala, Founder, Commonwealth Human Rights Initiative (CHRI), began with speaking about prison reform efforts in India. Every institution wants to work together, she said, but the difference in size, pace, relevant government institutions, unevenness in finances, differences in personnel and technical capacities can make long-term work harder, but coordination is still necessary.

Dr. Daruwala spoke of introducing new trends for improving the conditions of prisons and prisoners in India:

1. **Changing Philosophy:** The philosophy of prisons should be to reform and rehabilitate. Unfortunately, this has not really been the case. In India, this Gandhian philosophy does, perhaps, exist in BPRD, NHRC and some NGOs, but does not apply to most of the institutions. It does not exist even in the State Human Rights Commissions, legal aid institutions, judges, social workers, or anyone else working in the system. The quality of these services, as elaborated by Dr. Trivedi, is very nascent in our country.

2. **Alternatives to Imprisonment:** One option is to work on alternatives to prisons. Courts will sometimes bring in compulsory anger-management and counseling strategies. These alternatives are becoming more prevalent because of both the philosophy and the economics of prisons. We need to find more alternatives and disseminate them throughout India.

3. **Accessing Different Levels of Services:** Levels of services across the country are still uneven. Community services from RWA, Public Works Department (PWD), road sweeping etc., are not the same across the country and many can offer resources that others cannot.

4. **Use of Technology:** For people on parole and for first-time offenders, it would be better if, instead of imprisoning them, the State could simply put an ankle tracker on them and provide them with a relative degree of freedom. This would also cost the State far less money to house, feed and care for them. While the state has the technical capability to do this, it does not yet have the system to monitor and ensure that people on GPS software are doing what they are supposed to do.

Dr. Daruwala strongly criticized the system of video conferencing and said that, though it has been introduced for good economic reasons, the State was wedded only to the statistics and not to the conception of civil liberties and judicial fair process. She said that video conferencing is a “second rate justice for second rate people in a third rate system”. Also, it had not been subjected to much critical scrutiny. Raising some pertinent questions, she asked, “Why were there not enough escorts to take
people to court? Why did no one say that one minute before a judge was not enough? Where is the defense lawyer? Has he done his job? Has the public prosecutor done a thorough job? Has the judge been satisfied by the effectiveness of the hearing that the prisoner’s rights are guaranteed?”

She went on to say that the legal aid committee has to ensure that the system works well and that due process is being followed. This cannot be allowed to become a trend; it is just a matter of convenience for the bureaucracy. Today it is the petty offender and soon it will be for white collar or technical crimes and so on and so forth. Soon the cry will be for equal justice.

What needs to be reformed?

Dr. Daruwala listed out some of the issues where reform is needed: 

**Overcrowding:** Dr. Daruwala says that statistics only tell half the story. The specific cases are far greater in number. They do not tell the story of the man whose letters of application are sent from department-to-department and court-to-court. We need to do a thorough review and hold everyone in the system accountable.

**Accountability:** Dr. Daruwala went on to say that an enquiry should be held in the matter of custodial deaths. This puts a check on prison officials. The Government admits that 60% of arrests are unnecessary. Inspite of this, corruption and dishonesty are rampant in Indian prisons.

**Legal Rights of Prisoners:** Dr. Daruwala was of the view that NGOs can play a pivotal role in safeguarding the legal rights of prisoners. She said that justice was needed for the betterment of society. NGOs can demand accountability because we have a rights-based approach to justice in this country. Why is it that a judge automatically remands a defendant for 14 days? And then does it again and again and again? The judge needs to do something when he knows that the system is flawed, that the prosecutor hasn’t read the case, or the police have trumped up the charge.

**Prison Administration System:** The functioning of the prison administration system still remains a problem. Various committees and panels have been formed, but the problem still persists. The problem is intrinsic to the prison administration system. The Government needs to examine the people who administer prisons. To take an example, no one wants to be the Jail Minister unless they have a vested reason in being so and everybody knows what those reasons are. There is a whole prison visiting system laid down in the law to create a Board which is required to meet a certain number of times a year, inspect a certain number of cases and submit a report to the IG, to the Minister and to the Parliament. But in effect, none of it happens.

**Non-Implementation of Laws:** Expressing her anguish with regard to the non-implementation of laws, Dr. Daruwala said that asking for a new law for Police or Prisons had been a big mistake. Even the Prisons Act of 1894 had a scheme and a logic to it. Today these are just piecemeal regulations by the public and the parliament. The situation would improve dramatically if already-existent current rules and regulations are carefully read and followed and if NGOs work collaboratively in this joint venture. The current impression is that if archaic provisions are upgraded, things will improve. This is not true. The officials don’t even follow the archaic provisions, changing them will do nothing!
C. The National Human Rights Commission's Perspective

Dr. L.D. Mishra  
Special Rapporteur, National Human Rights Commission

Speaking on human rights and custodial justice, Dr. L. D. Mishra, Special Rapporteur, National Human Rights Commission, observed that the twentieth century has been the bloodiest century in the history of the world. The idea that human life is sacrosanct is essential in India and dates back to the Mahabharata and the Ramayana. The lofty concept – ‘to treat all human beings with empathy, sensitivity, compassion’ – has obviously not been followed.

Dr. Mishra was of the view that the Prisons Act of 1894 is useless and needs to be thrown out. So many of its practices have been clearly forbidden by the Supreme Court and yet they still happen. Most of the prisoners are not aware of their rights; most lawyers are not aware of their rights either.

The Model Prison Manual has 17 important guarantees that are essential for safeguarding the rights of the prisoners. These guarantees include:

- Right to a Speedy Trial
- Right to Bail
- Right of Convict to Appeal
- Right to Contact with Outside World
- Institutionalized Mechanism to address Grievances
- Right to Medical Examination
- Right to Living Accommodation
- Right to Food/Nutrition
- Right to Clean Drinking Water
- Right to Environmental Sanitation.
- Right to Personal Hygiene
- Right to Clothing

According to Dr. Mishra, these guarantees are not being provided to prisoners. A major area of concern is that trials do not take place on time. We have a situation of non-attendance of investigating officers and prosecution witnesses, magistrates on leave, lawyers on strike and excessive case adjournments. He says, one solution is to have judges and ministers meet inside the jail. They can handle the entire process in a matter of hours instead of months. But judges are reluctant to do so. Doing this on a regular basis could drastically decrease the number of under-trials in jail and speed up the rate at which cases are dealt with.

There should be a complaint box for addressing prisoner grievances.

He said the basic rights of prisoners – like getting a medical examination, right to food and personal hygiene – are being violated. Most medical officers are unaware of the fact that a basic physical examination, of someone admitted to a prison, should take place. Food must be comprised of carbohydrates, protein, minerals and fat. Basic
nutrition is even more important for children. We need one kitchen for every 250 people. The prisons are smoky. There are no chimneys, exhaust fans, or fireproofing. Mosquitoes are rampant. There is no platform for washing or cutting vegetables and no chapatti-making machines. Chapattis are made on the floor. Prisons need to pay more attention to personal hygiene. They need to have appropriate toilet facilities. Many prisoners lack access to clean water.

Dr. Mishra concluded by saying that to make these changes, political will is essential and it seems that, in India, there is little political will for prison reforms!
III. BEST PRACTICES IN PRISON MANAGEMENT

A. Best Prison Practices– National and International

Dr. Upneet Lalli
*Deputy Director, Institute of Correctional Administration, Chandigarh*

Dr. Upneet Lalli, Deputy Director, Institute of Correctional Administration (ICA), Chandigarh, gave an overview of the situation of prisons in the country and the areas where reforms were most needed. She also spoke about the international practices worthy of emulation and how those could be implemented in the country. However, she also laid stress upon the fact that prison reforms cannot simply be imported from other countries, but must be viable within the context of India. Other countries have different needs, problems, and conditions, which are inapplicable to the Indian context. Hence, it is important to locate prison reforms in the local context.

She said that for practices to be successful, goal oriented and functional in the every-day sense of the term, it is essential to borrow ideas and practices from other prisons. This could lead to a compendium of best practices throughout the whole of India. This happens in some States, but not across India. She stated that most of the best practices, that already exist in India, have been created through partnerships between prison management and groups outside the prisons.

One major problem is that of the lack of objective criteria of prison management. Each stakeholder has a different perception of what constitutes best practices. The result is a plethora of conflicting views and opinions which adds to the already-existent confusion. So the prison administration’s best practices perception differs sharply from what prisoners, or prison boards, or even perhaps the prison staff may choose to think about the matter. Given this context, it would be difficult to arrive at a consensual and collaborative view of prison best practices.

She emphasized on the need of having evidence-based practices in a correctional setting, meaning thereby that there was a need to methodically work on what would constitute the best research practices.

**International Best Practices**

Dr. Lalli gave the following examples of International best practices:

*Tele-Medicine (Technology), U.S.A.*

Tele-medicine is a practice where two health professionals, or a health professional and a patient, are in long-distance communication with each other. This may be helpful in cases where it is difficult to transport prisoners, or in far-away rural...
prisons, or in difficult-to-reach places. Tele-medicine can provide improved security, personal safety, cost savings and access to specialists, which might otherwise be impossible.

● Recycling Programme (Environment), U.S.A
At Department of Justice, Federal Correctional Complex, Coleman, Florida

● Prison Braille Programme (Educational and Vocational), U.S.A

● Community Participation (Rehabilitation), California, U.S.A.

● Prison and Probation Ombudsman (Grievance Redressal), U.K.
A specialized inspection of prisons takes place every year in the UK. A routine Government follow-up takes place every year. This makes for greater accountability and increased system transparency. In India there are NHRC inspections, Court mandated inspections and a variety of other inspections, but there is never any follow-up on these inspections. It is a truism to state that no improvement can be brought about in the absence of a routine follow-up.

● Yellow Ribbon Project (Community Involvement), Singapore
The goal of the yellow ribbon project is to reintegrate and rehabilitate prisoners. It involves prisoners voluntarily giving up all gang associations (including having tattoos removed). Part of the challenge prisoners face after being released is that of the social stigma of having been in prison. Its objectives are:
- Creating awareness of the need to give ex-offenders a second chance;
- Generating acceptance of ex-offenders and their families in the community;
- Inspiring community action to support the rehabilitation and reintegration of ex-offenders.

Best Practices in India
Dr. Lalli listed out the following areas where meaningful best practices can and should be developed:

● Use of Technology in Prisons
  CCTVVs have been installed for maintaining security and prison management in Tihar, Delhi, Tamil Nadu prisons.

● Health and Medical Facilities
  Drug de-addiction Centre – Delhi is a good example;
  VCCTC & Hospice for women and men with HIV – West Bengal;
  Intake Screening Examination – Tamil Nadu.

● Educational and Vocational Training
Introducing the following educational and vocational training courses:
- IGNOU;
- National Open School;
- Computer Centre;
- Engineering, MBA, DCA;
- Carpentry;
- Bakery;
- Pottery;
- Shoe-making;
- Sculpture making;
- Soap and phenyl making.

● **Information Dissemination**

Information dissemination needs to be worked upon in a big way. One of the most basic things that all prisons should have is a website with up-to-date contact information. Yet even a cursory search of prison websites in India reveals that website up-gradation hasn’t taken place.

● **Staff Development**

Staff development is important for prison staff morale as well as for the successful management of prisons. In many cases, it can be as simple as starting a staff newsletter and can be a very effective tool of communication.

● **Health and Medical Facilities**

Some prisons are equipped with nothing better than a weighing machine. As a result, the cause of custodial deaths remains indeterminate, inconclusive and shrouded in ambivalence. It is nearly impossible to tell if the prisoner died due to torture and abuse, lack of food and nutrition, or a prior, undiagnosed and untreated illness. Most prisons have failed to comply with the National Human Rights Commission’s (NHRC) requirements for proper medical care and lack even basic X-ray facilities or the ability to conduct any medical tests.

● **Food**

There are no consistent national standards for food. In many cases, the quality varies widely, along with the amount of food and variety in meals that prisoners are offered. Modernization of kitchens and the use of stainless steel cooking vessels and trolleys, gloves, caps and special dresses while cooking food, etc. help in maintaining hygienic standards.

● **Starting Work Programmes and Shops in and outside Prisons**

Some examples include:
- Petrol Pumps;
- Agriculture;
- Tea Shops;
- Pakoda Shops;
- Shops;
- General Stores;
- Paan Houses;
- Cycle Repair Shops;
- Farming in Sugarcane Research Institute.

● **Rehabilitation Measures**

- Setting up a rehabilitation fund;
- Providing a training kit;
- Wages;
- Housing loan for prisoners.

**Community Involvement**
- NGO participation;
- Games/ Sports;
- Providing Stationery, Computers, Fees;
- Providing Counselors;
- Creative Art/ Cultural Therapy;
- Cultural Activities like Theatre, Music and Dance, Poetry Recitation, Musical Band;
- Religious Programmes like Kirtan, Self-esteem programmes, Cassettes, Gurdwara meetings.

**Women Prisoners – Vocational Training Programmes**
Very few prisons offer activities for women or children. Some prisons administrators have argued that this is because women will fight with each other, but it seems to be that women are more likely to fight with each other when they have nothing to do.

**Children in Prisons**
Children in prison are particularly neglected. They are deprived of all outside experiences. Following the RD Upadhyay judgment, many have been transferred to prisons with crèches, but this only means being moved away from their families.

**Reducing the number of under-trials in Jails**
Following measures can be adopted for reducing the number of under-trials in Jails:
- Jail Adalats;
- Section 436-A;
- Plea Bargaining;
- Special Courts on Monthly Basis;
- Legal Aid Services.

**Open Prisons**
- 27 Open Prisons exist in India as per Prison Statistics 2007.

**Setting up of Grievance Redressal Mechanisms**
B. Examples of Best Practices in India

1. Delhi

a. Delhi Prisons Act, 2000

Mr. Sunil Gupta, Legal Officer, Tihar Jail, gave a presentation on the Delhi Prisons Act 2000, which replaced the Prisons Act 1894 for the Union Territory of Delhi. This Act came into effect in 2002.

He said that the guiding principle for the Delhi Prisons Act was the Supreme Court judgment of Sunil Batra (II) v. Delhi Administration (AIR 1980 SC 1579), which states:

… no prisoner can be personally subjected to deprivations not necessitated by the fact of incarceration and the sentence of the Court. All other freedoms belong to him.

The Act is based on the principle of preserving the “right to life” and that prisoners still have all of their rights, except those taken away by virtue of incarceration.

The Act thus mandates:

- Safe and secure custody of prison inmates;
- Reformation and Rehabilitation of inmates;
- Basic minimum facilities to inmates to maintain their human dignity.

Mr. Gupta explained that the Act primarily aimed at reformation and rehabilitation. It also provides for a Welfare Officer. There was no such provision earlier and the post of the Welfare Officer did not exist under the Prisons Act 1894.

As per the Act, healthcare for prisoners starts at the moment of admission. This has the advantage of discovering health problems proactively and making preventive care easier. It also helps in confirming cases of custodial death and police brutality. Section 24 (2) of the Act states:

24. Prisoners to be examined on Admission

(2) Every criminal prisoner shall also, after admission, be examined on the same day under the general or special orders of the Medical Officer, who shall enter or cause to be entered in a book, to be kept by the Deputy Superintendent, a record of the state of prisoners’ health, and of any wounds or marks on his person, the class of labor he is fit for if sentenced to rigorous imprisonment, and any observations which the Medical Officer thinks fit to add.

He further elaborated that unlike the Prisons Act of 1894, where under-trials are forced to perform manual labor, the Delhi Prison Act, in Section 35 (1), states that labor is entirely voluntary and volitional and cannot be forced upon a criminal, unless manual labor is part of their punishment.

35. Employment of criminal prisoners -

(1) A criminal prisoner desiring to be employed on labour, may be employed with the permission of the Superintendent subject to such restrictions as may be
prescribed in the Act.

Further, the Act in Section 48 (3) allows for punishment only under the order of the Sessions Judge. This is as per the ruling in the case of Sunil Batra.

48. Limitation to Award of punishment under Section 47 -

(3) No punishment shall be imposed without judicial appraisal of Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days of the action.

Section 51 allows for the punishment of under-trials that routinely break prison rules. This is necessary because discipline is a serious issue.

Section 51 states:

51. Procedure on committal of in-house offence -

(1) If any prisoner is guilty of any offence against prison discipline which, by reason of his having frequently committed such offences or otherwise in the opinion of the Superintendent, is not adequately punishable by the infliction of any punishment, which he has power under this Act to award, the Superintendent may forward such prisoner to the Court of Chief Metropolitan Magistrate or of any Metropolitan Magistrate having jurisdiction together with a statement of the circumstance and such Magistrate shall thereupon inquire into and try the charge so brought against the prisoner, and upon conviction may sentence him to imprisonment which may extend to one year, such term to be in addition to any term of which such prisoner was undergoing imprisonment when he committed such offence, or may sentence him to any of the punishments enumerated in Section 47:

Provided that any such case may be transferred for inquiry and trial by the Chief Metropolitan Magistrate to any Metropolitan Magistrate.

The Act also provides for a Grievance Redressal Committee. The Committee is comprised of the Superintendent, Deputy Superintendent, Medical Officer and Welfare Officer. Section 57 provides as follows:

57. Redressal of prisoner grievances -

(1) For the purpose of receiving grievances from the prisoners and for the redressal of any such grievance, a Grievance Redressal Committee may be appointed for each prison with the following functionaries-

(a) Superintendent Chairperson
(b) Deputy Superintendent Member
(c) Medical Officer Member
(d) Welfare Officer Member

Section 60 (1) of the Act also sets up a review mechanism for all under-trial cases in which the accused has been in prison for a year, or has served more than half the sentence.

The Government shall cause to be reviewed the cases of under trial prisoners detained in the prison for more than one year or in case when the detention is more than half of the maximum punishment for the offence provided under the law.

Mr. Gupta stated that, as per this provision, the review of under trials was taken up and in a course of two years, the prison population went down by 3000.
The Delhi Prisons Act, in accordance with the Supreme Court judgments, also includes a provision of providing free legal aid (Section 62). Section 65 says there is a huge difference between protective custody and imprisonment - “no person entitled to protective custody shall be kept in prison”.

Another significant change, introduced by the Delhi Prisons Act, is the emphasis on providing training to staff members (Section 67) and protection for actions taken in good faith (Section 70).

Mr. Gupta commented that the Act provides for what many NGOs and others have been demanding—i.e. to place the burden of releasing under-trials on the Jail Superintendent. This Act also separates women convicted under Immoral Traffic (Prevention) Act from other women. Also prisoners convicted of criminal offences are kept apart from those booked for civil offences. Relatives are now allowed to visit once a week.

b. Delhi Prisons - Tihar Jail

Mr. B.K. Gupta
Director General, Delhi Prisons

Mr. B.K. Gupta, Director General (DG), Delhi Prisons started his presentation by noting that this was the appropriate forum for talking about Prison Reforms. He said that Delhi Prisons are largely open to anyone who wants to come in and do a social audit.

Classification of Prisoners

Talking about the reforms and practices that have been introduced in Tihar, he explained that it is important to classify and segregate prisoners since 78% of them are first-time offenders:

- First time offenders are lodged in model wards and segregated from hardened criminals;
- Separate central prison for female inmates managed exclusively by female staff with a provision of a crèche for children below 6 years of age;
- Separate prisons for adolescent inmates (between 18 to 21 years) and convicts;
- High security wards for inmates involved in multiple heinous offences, terrorist activities and offences against State.

Children of Female Inmates

A crèche has been provided for children who are upto six years of age. In this regard, Supreme Court guidelines – given in R.D. Upadhyay v. State of Rajasthan, AIR 2006 SC 1946 – regarding women and children are being fully and entirely complied with. Children are provided with clothes, diet, medical care and education by the prison department. A child who is above six years of age is admitted to a boarding school outside.

Living Conditions

The following facilities have been provided to improve the living conditions of people in jail:

- Most of the old barracks / cells have been renovated and toilets, with a flush
system, have been provided;

- Recreation rooms, with facilities of indoor games and libraries, have been provided in each jail;
- Adequate number of ceiling and exhaust fans in each barrack / cell to provide good ventilation;
- Cable T.V. and satellite radio installed for wholesome entertainment;
- Prisoner welfare canteen available for daily need items.

He explained that living conditions in Tihar are amongst the best in India. He added that Tihar has been modernized in a big way. There is a new water filtration system in each prison which provides 50,000 litres of safe drinking water per day. The kitchens in Tihar have been recently modernized, allowing inmates to cook their own food in fully hygienic conditions. Some of the facilities that have been introduced in the kitchens include:

- Piped compressed natural gas for all kitchens to augment security and reduce fuel cost;
- Hot food trolleys;
- Wheat grinding machines;
- Atta kneading machines;
- Masala grinding machines;
- Electric chimneys for proper ventilation.

**Visitors’ Chambers**

Visitors’ chambers have also been modernized and are now much more private. Model chambers have been constructed in each jail to facilitate meetings between prisoners and their visitors, with features like echoproof, better visibility, audibility and privacy. Unlike other prisons that have iron grills, Tihar has the latest transparent glass façade and microphone system. This system allows for adequate hearing and privacy while maintaining security.

Mr. Gupta further explained that an inmate phone call system has recently been installed in Tihar jail. The system allows inmates to call two pre-registered phone numbers for up to five minutes per week. This is only available to inmates who have shown good conduct during their incarceration. All inmates, who want to make a call, must first be identified through a biometric scan of their fingerprints. For security purposes, the system records the entire phone call, along with its date and time. However, criminals charged with offences against the State, terrorist activities, MCOCA, NSA, PSA, multiple heinous offences and habitual jail offenders are not allowed to make phone calls from inside the prison.

**Vocational Training and Trades**

Tihar jail factory – weaving, carpentry, chemicals, paper, shoe-making, tailoring, pottery and ceramic – units have an annual turnover of Rs.6.65 crores, while the Tihar Baking Unit manufactures bread, bakery, biscuits, chips, namkeens and cakes with an annual turnover of Rs.1.5 crores.

The Tihar Prison Administration puts much emphasis on vocational training. Every unit or activity that meets the required eligibility criteria has an ISO certification. Wages have gone up over the last few years and are Tihar offers the highest-ever wages, compared to wages offered in other jails, in the country. There is a Computer
Each custodial death results in media accusations of torture, even though most people in prison die of sickness. Most people, that come to prisons, are from the poorest sections of society and have never had access to proper medical care. This lack of previous medical care has often led to the worsening of an already-existent, undiagnosed and untreated illness. One way of dealing with this is to keep stock of the medical records of each person who comes to Tihar. This system has been in operation since 1998. The medical officer knows the history and medical profile of each prison inmate.

A lot of effort has gone into lowering the mortality rate. From 1994-2007, Tihar averaged 25 custodial deaths a year; 13 deaths in 2008; and 15 deaths in 2009. Prison Authorities feel that every death in prison hurts their reputation. According to Mr. Gupta, this has been controlled by monitoring and keeping a close check on each custodial death. Prisoners, who are sick, are sent to the best possible hospitals. This provides a better quality of life for prisoners and less blame is assigned to the Prison Staff.

Prevention of HIV/AIDS/Drug Use

He emphasized that each Prison Department should have a Drug Treatment Facility, because about 8% of the prisoners are drug users. Tihar currently has a 120-bed de-addiction center. The Medical Staff has created a profile of all drug users that have entered Delhi Prisons since 1998. This includes information about their background, family, education, job etc. most prisoners, with a substance abuse problem, come from the lowest-ever sections of society and have largely been booked for drug-related petty criminal offences. These prisoners are often referred to the Integrated
Counseling and Testing Center so that they can be tested for HIV/AIDS.

Mr. Gupta went on to say that Tihar, in collaboration with UNODC and AIIMS, was the first prison in South Asia to start the Opioid Substitution Treatment (OST). Opioid Substitution Treatment is effective in:

- Reducing illicit drug use;
- Reducing criminality;
- Prevention of HIV infection in drug users who are likely to use infected needles;
- Stabilizing and normalizing the lives of drug users.

**Use of Technology**

The Tihar administration strongly believes in the efficacy of technological innovations. To this end, we have installed 250 CCTV cameras inside Tihar with plans to extend the camera coverage to every barrack inside the prison. There are 7 mobile jammers in and around the complex to block out all cell-phone use. This includes blocking all calls, SMS, picture sending and internet data use. The Prison also keeps a biometric record of its new prisoners on file to use for identification.

**Visitor Management System**

Tihar also has a transparent and elaborate visitor management system. The system has a full record of each visitor along with his/her personal identification. The system allows visitors to tele-book their visit upto 10 days in advance as well as teleconference with their family from 3 different centers--2 in Tihar and 1 in Rohini. This has made the system more transparent and secure.

**Legal Aid**

Mr. Gupta stated that the Delhi Legal Services Authority had established a Centralized legal aid and counselling centre in the Tihar Court Complex. 29 advocates have been deployed for free legal aid to needy inmates. Awareness sessions have been organized in all jails to make inmates aware of plea-bargaining and of special courts that deal with petty offences.

**Video-conferencing**

With regard to video-conferencing Mr. Gupta informed:

- Video-conferencing has been set up between the Tihar/ Rohini jails and the district courts at Tis Hazari, Patiala House, Karkardooma, Dwarka and Rohini;
- Some important trials have been conducted through video-conferencing on the directions of the Hon’ble Supreme Court;
- Judicial remands are being extended through this system;
- Legal aid is provided to convicts through video conferencing;
- This system has strengthened prison security and has saved manpower, equipment and transportation.
2. Goa

Use of Technology (E-Governance)

Mr. Mihir Vardhan
Inspector General Prisons, Goa

Mr. Vardhan, IG Prisons, Goa, made a presentation on the Prison Management System, that he has developed in Goa, known as PRISMS. This provides an example of how technology can be used to help both jail inmates as well as the prison staff and how it can be used to improve the quality of life of the prisoners. The idea is not to control the lives of prisoners, but to empower them.

He explained that the system has a centralized database, a 3-tier web based system with 18 functional modules and 2 Mbps connectivity across all jails / judicial lockups. It covers all processes related to prisoners and can be implemented across all jails and at each level of prison administration.

Mr. Vardhan explained the functions of the following major modules:

- **Probable Data of Release (PDR)**
  The system creates a Probable Data of Release (PDR) which includes information about the prisoner's registration number, nationality, age, photographs, list of visitors, etc. It also includes information about court hearings and generates a court diary, auto-calculation of the sentence period, crime and chargesheet details and calculates remission based on conservancy work. Based on the information, the system sounds an alarm indicating the list of under-trial prisoners detained in prison for longer than the maximum period allowed and generates a report of under-trial cases eligible for appeal of bail under Section 436 A. Mr. Vardhan explained that having a system in place with calculations reduces problems with premature release and illegal detention. One simple way it does this is to reduce the anxiety that prisoners feel about when they will be released, because uncertainty about their release date is huge area of concern. The PDR provides them with a sense of certainty, gives them something to look forward to and builds their confidence in the system.

- **Work and Medical**
  The system also offers a classification of labor and wages. It does an auto contribution of wages in accordance with the rules – 50% victim compensation fund, 15% joint savings account, 15% legal aid and 20% personal expense. Prisoners were never told anything about how much their wages were till PRISMS came into effect. Now prisoners know exactly how much they are earning and where the various deductions are going. The victim compensation fund was funded, but entirely forgotten about. The money was just sitting in a pot. But now the victims can be paid, especially those that are severely hurt.

  The system also keeps an inventory of prisoner ailments. It lists medications to be given to inmates on a specified date. It generates a complete medical history of the inmate. This also helps in determining work allocation.

- **Parole and Furlough Management**
  Mr. Vardhan further described how PRISMS utilizes parole and furlough management. It gives a complete history of all applications/orders rejected/
approved), details about the surety in terms of person and money, list of prisoners expected to surrender after parole/ furlough. All parole and furlough applications had to be dispensed with within 6 or 8 weeks. The system keeps track of all applications, their status and any sureties involved.

- **Touch-screen Kiosk Application**
  There are numerous touch-screen kiosks around the prison for prisoners to use. At these kiosks prisoners can access their PDR, remission earned, prisoner property and cash details, parole/furlough application status, transfer status and under-trial detention alarm. Most prisoners are literate, but those, that are not, can get education classes inside the prison, including how to read and write in English.

- **Prisoners’ Property and Cash (PPC)**
  This system keeps track of prisoners’ personal items, clothing, cash accounts, wages earned, expense limit etc.

- **Victim Information Management**
  Victim Information Management automatically notifies victims of the inmate’s court appearances, release or execution dates. It also provides parole and furlough information.

- **Visitor Info Management**
  The visitor system keeps track of visitors, along with their names, phone numbers, addresses, relationship details, dates of visits, duration of visits and their photographs. The photograph is important because it prevents impersonation and results in greater security.

- **Prisoners’ Transfer Management**
  Deals with applied transfers, handover and acceptance, transfers due to change in status, etc.

- **Prisoners’ Movement Management**
  Keeps track of prisoners in/out of jail.

- **Commissary (Canteen) Management**
  Maintains record for each stock item, tracks purchases and automatically adjusts both the commissary stock records and PPC inmate accounts.

- **Prisoners’ Bail Management**
  Facilitates prevention of release, maintains a record of all prisoners released on bail, surety bond details and return date in case of interim bail.

- **Gate Management**
  Tracks the date, hour and minute of opening each gate of the prison and keeps an account of all the persons entering or leaving the gate at any given time.

- **Escape Management**
  Maintenance of escape register with statement details.

- **Escort Management**
  Does an automated selection of escorts, generates request letters and tracks actual escort details.
Benefits of PRISMS

Talking about the benefits of PRISMS, Mr. Vardhan said that PRISMS provides correct and up-to-date information about each prisoner and the relevant court information. This prevents prisoners from getting lost in a maze of bureaucratic mismanagement. It allows them to walk up to a kiosk and find out all of the pertinent details of their case. It also makes the information more automatic and accurate.

PRISMS has made a big difference in the working quality and life of the prison, both for guards and prisoners. As the project expanded, it began to encompass more and more information and its utility level was enhanced. PRISMS is a comprehensive system and the first of its kind in prison management. It provides a humane approach to prison management and has proved to be a handy tool for everyone. It is also a dynamic system, which allows for greater and more useful interaction between prisoners and officials. PRISMS won the e-governance award last year.
IV. ISSUES OF CONCERN

A. Under-trials In Prisons / Overcrowding

Dr. K. Murali
Consultant, Human Rights Forum

Dr. K. Murali, Consultant on Prison Reforms, raised some pertinent questions on why under-trials are languishing in jails.

Why are under-trials in prison? Under-trials do not really understand their rights, he said. The Government does not understand the economic and social costs of imprisoning these people; they just set aside more money and never solve the underlying issues. He stated that in Jharkhand alone, 82% of the prison population is comprised of under-trials. We say that we have fewer prisoners than Western countries do, but we ignore the fact that we have many more under-trials than they do. The Judiciary has never thought beyond the basic aspects of law. We have never thought of the people who have been put into prisons.

Dalits, he said, make up a high percentage of people in prisons. Why, when they are a minority in the country, are they a majority in the prison? Because they are poor and uneducated, and unable to negotiate with a criminal justice system, which is predisposed against them.

The Center has come up with the new initiative of criminal justice and legal reform. It takes 15 years on average to dispose of one case. By 2030 we want to bring it down to 3 years. The Law Minister, Moily, said he wanted to release most under-trials by July. Is that going to happen? What is the social cost of this whole miscarriage of justice? Why is the accused being made the scapegoat of a dysfunctional criminal justice system?

It is the under-trials who suffer the most and the principle of “innocent until proven guilty” suffers with them, he stated.

There are huge policy level areas we need to change. Prof. Murali listed out the following areas where change was needed:

– Health of prisoners;
– Women prisoners;
– De-criminalization of begging;
– De-penalization of offences;
– Instituting the Mulla Committee Reforms.

Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care.

– Mahatma Gandhi
Parallel Session

The Presentation was followed by a parallel session in which the following issues were discussed:

**Bail**

Bail is not a right. Bail is the judicial discretion of the authorities. It is for the purpose of reducing the jail population, so that can accommodate a greater number of prisoners. The role of the Judiciary is to make people aware of the provision of bail. However, the criminal justice system, and the provision of bail, is deeply flawed

**Sec 436-A**

Under Sec 436-A, a person can be released on bail on completing half the sentence. Under Sec 428 CrPC, the entire period, served as under-trial, can be remitted from the sentence. But if, on the other hand, the maximum imprisonment is that of 3 years and an under-trial spends an extra day, exceeding the term of three years, in jail, there is no compensation for that extra day.

The tribals, in Chattisgarh, do not even have the right to bail as they live in remote forest interiors and are jailed on frivolous, petty grounds. In Dantewada, prisoners are sent to far off jails and jail authorities do not even bother to inform family members about their new location. In Bilaspur, jail authorities leave a lot of their domestic work and household chores to under-trials. The chances of a convict getting arrested again, when released on bail, are very high.

**Bail Amount**

Most recent statistics reveal that over 65% of the prisoners are under-trials and they may continue to be held in overcrowded prisons for years. They are denied bail for want of monetary security and trials take years. Often, the poor have no lawyers, live in pathetic conditions, do not have access to adequate medical care and are likely to be tortured or exploited. The occupancy in prisons exceeds its sanctioned capacity by more than 41.4%. A huge majority of under-trial prisoners are poor. Poor people are not granted bail, because they cannot produce a bond in a week’s time. On the other hand, rich and influential people use power and money to get bail. In certain cases they are admitted to hospitals during their under-trial period. Journalists are often jailed for writing in favor of Naxalites. As per Sections 107-10 of the Criminal Procedure Code, a prohibitive bail amount should be replaced by a token bail amount.

**Role of Judiciary**

Legal aid lawyers and prison officials are often unaware of existent legal standards. The system fails prisoners at every turn and agencies blame each other for non-performance and lack of accountability. Supreme Court Magistrates do not follow clear “bail and not jail” guidelines. Most Magistrates are unaware of the law and often pass incorrect orders, not releasing persons on bail. Unfortunately, no statistical data is available on this. This is a complete failure on the part of the Police and Judiciary.

There must be a clear record of the number of women and children that have been sent to jail and the reasons therein. The Jail Superintendent should inform the Magistrate of an under-trial or convict who can get bail on the basis of good behavior. The Superintendent can also write to the Magistrate informing him of the completion of a prisoner’s period of maximum punishment, so that the person can be released.
But the Superintendent usually never bothers his head about this. There is widespread corruption in the system. Jayalalitha’s trial could not take place because the charges against her were in English. This shows how the rich and influential can manipulate the legal system.

**Role of lawyers and activists**

There is a need for the implementation of existent rules and laws. NGOs and advocates, in Pune, are working to help under-trials write simple applications for bail and get legal aid lawyers. They have also filed RTIs in Pune Prisons. Probation, of Offenders Act, should be implemented more aggressively. It is the duty of lawyers to get this Act implemented. Probation Officers, in Maharashtra, are also assigned the role of Protection Officers. Probation Officers have multiple responsibilities and less facilities. They are also not dedicated enough to their work.

**Suggestions**

1. **Effective Use of Section 436-A and other Provisions of Bail:** Section 436-A says that if a prisoner has already served half of his sentence as an under-trial, he can be released on bail. The existing legal system, which has many provisions of bail, should be made use of;
2. **Problems relating to Surety need to be solved:** This is especially so if the person belongs to another State. Courts should be making use of the Motiram Decision. Bail can also be difficult if family members live far away, especially in states with large rural or tribal populations;
3. **Unnecessary Arrests and Detentions must stop.** Arrests must occur only if there is a strong need for them;
4. Enforcement of current laws should be strengthened;
5. The legal system needs to be strengthened. This will solve the problems regarding bail;
6. The time, for being produced before a Magistrate and the process of granting bail, should be minimized. There needs to be a provision of bail being granted in the police station.

**B. Women/Women with Children in Prisons/Children in Prisons**

**Dr. Sarita Sarangi**  
*Member, Delhi Commission for Protection of Child Rights*

Dr. Sarita Sarangi, Member, Delhi Commission for Protection of Child Rights, made a presentation on women and women with children in prisons. She stated that a person in prison does not lose his identity and selfhood on account of being locked up in a prison, and is therefore entitled to all the human rights within the context of imprisonment. There is no justification in aggravating the suffering already inherent in the process of incarceration. The aim should be that of prisoner rehabilitation.

Citing the Supreme Court ruling – in the case of R.D.
Upadhyay v. State of AP, AIR 2006 SC 1946 – she said that this was the most important case for women and women with children in prison. The Upadhyay judgment contained specific guidelines, based on various committee recommendations, about how children should be cared for in prisons.

Quoting the National Crime Record Bureau data, she said women constitute 4.1%, as compared to 2.6% in 1980, of India’s total prison population (NCRB, 2007). There are, however, only 12 states that have prisons exclusively for women.

There is a need for separate prisons for women. Likewise, under-trials should be kept apart from convicts; adolescents from hardened criminals; first-time offenders from habitual offenders. For women, there should also be an effort to separate prostitutes and procuresses from others.

Various Committees on Jail Prisoners have laid down guidelines from time to time. These include –

- **The Indian Jails Committee (1919-1920)**
  - Separating convicted from non-convicted women prisoners;
  - Female adolescents from older prisoners;
  - Habitual from non-habitual prisoners;
  - Prostitutes and procuresses from others who have hitherto lived a respectable life.

- **All India Committee On Jail Reforms (1980-83) lays emphasis on:**
  - Probation according to the Probation of Offenders Act;
  - Separate institutions exclusively meant for them;
  - Segregation of various categories of prisoners;
  - Liberal exercise of grant of bail;
  - Absence of surety on the basis of personal bonds;
  - Separate ward in hospitals;
  - Jails to be manned by women personnel only;
  - Adequate and proper work and treatment programmes;
  - Premature release;
  - Pre-release preparations;
  - Permitting women’s voluntary organizations into the prison;
  - Allowing contact with family members;
  - Children to be kept in specially organized crèches outside the main prison building

- **Justice Krishna Iyer Committee On Treatment Of Women Prisoners (1986-7)**
  The National Expert Committee on the Treatment of Women Prisoners, under the Chairmanship of Justice Krishna Iyer, had recommended the setting up of:
  - Family Courts;
  - Women’s Courts (for dispensing justice to female prisoners);
  - Nari Bandigiha Adalats to act as Mobile Judicial Camps.
Committee on Rationalization of Classification of Prisoners (1997)

The Committee on Rationalization of Classification of Prisoners (1997) has created a comprehensive set of categories by which prisoners should be segregated. According to the Committee, the broad categories of segregation should be based on:

- Gender;
- Convicts;
- Under-trials;
- Age;
- Nature of crime;
- Previous history;
- Prison term;
- Kind of sentence awarded;
- Nationality.

BPRD’s Model Prison Manual has many provisions relating to women, but few of them have been adopted.

Many of the historical rules on women have to do with their role in society and the family and these need to be thoroughly examined. Women tend to feel the impact of being imprisoned that much more acutely than men do. This is, in part, because of the greater stigma attached to women in prisons and, in part, because of the lack of social support and the psychological stress of being separated from family and children. Prisons can cause major damage and disruption to the lives of vulnerable women and their families. Most of them are in prison for non-violent offences and pose no risk to the public. Therefore, consideration should be given to the development and implementation of non-custodial strategies for women, particularly during pregnancy, or when they have young children. There needs to be an emphasis on non-custodial solutions, especially on probation.

Gender-sensitive legislative frameworks, penal policies and prison rules are necessary to ensure that the needs of women in prisons are addressed in a systematic and sustainable way. Prisons need to be about corrections, reformation and rehabilitation, she stated. The only lasting solution includes the involvement of NGOs and civil society organizations.
Parallel Session

Dr. Sarangi’s presentation was followed by a parallel session in which the issues facing women prisoners, as well as women with children, were discussed.

The following issues were also discussed:

**Condition of Women Prisoners**

Women face lot of difficulties in prisons – from bad infrastructure to overcrowding. Jails are teeming with prisoners. To take an example, over two hundred prisoners have been accommodated where there is capacity of only hundred. Basic facilities – such as electricity, or fans in rooms, or clean bathrooms and toilets – have not been provided. Kota jail has no bathrooms at all. There are no proper medical facilities for women and there are no gynecologists. 60-70% of women need counselling but there are no counselors.

Further, all kinds of convicts are kept together. Women, in tribal areas, face even greater discrimination. They are usually implicated on false charges. At times, police take women family members into custody when male culprits are missing. Families, of women prisoners, have to travel a long distance as they are kept in far away cells; in some jails men and women are kept together like in Chattisgarh, but there are no separate prisons for women. There is only one open-air prison for women in the country in Pune.

**Vocational Training**

Jails do not have many options for the vocational training of women. For example, in Jaipur, inmates have been provided with nothing other than sewing machines. NGOs also face difficulties in generating funds for vocational training and rehabilitation of women prisoners.

**Sexual Harassment of Women in Prisons:** Women also face a lot of sexual harassment, both in prisons and in short-stay homes. NGOs find it very difficult to gain access to victims as they are not allowed to enter prisons.
Children in Prisons

Children, of women prisoners, and juveniles, in conflict with law, are often mistreated in prisons. In Punjab, children, of prisoners, get less than two spoons of milk powder a day. There are no nurseries or playgrounds for children in prison. Children, of prisoners, are allowed to visit their parents in prison but there are no facilities for them.

Suggestions

For Women in Prisons

i. Jail authorities should comply with the Judgments laid down for children and women;

ii. Minimum standards should be maintained for women prisoners;

iii. Pregnant women should be given special care. Prisons should have gynecologists;

iv. Vocational training programmes should be introduced in jails;

v. The period of stay of women in remand homes should be reduced;

vi. More open-air prisons should be created, along the lines of the one in Pune.

vii. Jails should be placed under the Social Welfare Department.

For Children in Prisons

viii. Balwadis and crèches should be set up outside jail premises and should also include children from outside prisons, so that children have a greater scope of interaction with others;

ix. After attaining 6 years of age, children of prisoners should be sent to boarding schools;

x. For children, born in prisons, the birth certificate should not mention the name of the prison on where the child was born. This will prevent the child from being discriminated against;

xi. Separate sections, inside prisons, should be created for children to play in and recreational facilities should be provided;

xii. A network needs to be established for children from different states and SC judgment should be followed to send such children to their states;

xiii. (Integrated Child Development Scheme) ICDS centers should be created inside prisons, such as in West Bengal jails;

xiv. Education system, for the children of women prisoners, should be set up.
C. Minorities in Prison

Parallel Session

Participants discussed the rights of minorities other disadvantaged groups like those of Muslims, Dalits, Tribals, children, persons with mental illness and persons with physical disabilities.

Tribals and Dalits

Prisoners, belonging to these groups, are usually poor. In Chattisgarh, the Government is exploiting the rights of tribals to favor corporates, whose sole agenda is to get rid of tribals and encourage mining. This has led to the creation of the Salwa Judum (militia) which works to expel villagers. If these innocent people refuse to cooperate they are tortured even more and are booked for diverse offences. Jagdalpur prison is the biggest prison and is replete with illiterate and poor tribals who are not guilty of criminality. Prisoners are sent secretly to different prisons around the State and it becomes difficult for family members to trace them. In Orissa, tribals are arrested under preventive sections. The State does not provide legal aid to these persons and they keep languishing in jails for years on end. Dalits also face similar disadvantages as they are poor and illiterate. Once in jail, they are in constant fear of being arrested again.

Religious Minorities

Muslims constitute a big majority in jails. They are easy targets and are often booked for false offences. They are also discriminated against in jails. Muslim and Christian religious groups find it very difficult to enter prisons; religious groups, working for Hindus, are allowed easy access.

Refugees

Refugees face a language barrier, which makes it difficult for them to communicate. African and Bangladeshi prisoners languish in prisons because they are generally poor and do not understand the local language. It is only persons, from developing or underdeveloped nations, that are in prisons as their countries lack resources.
Rich countries, on the other hand, make sure that their nationals are not in jails. Refugees, in India, face severe difficulties in getting legal aid because of their refugee status. Economic migrants are arrested more than once for the same offence. They can be deported but it is very difficult to deport refugees from conflict zones. A refugee cannot be deported to his country of origin as it constitutes a human rights violation. Repatriation can by an option in cases where the conflict or unrest is settled in the country of origin. A refugee cannot be deported to his country of origin even if he has violated the provisions of the Foreigners Act. Deportation should be resorted to only when an accused has violated the Foreigners Act.

**Persons with Mental Illness**

The mentally ill are often put into prisons as they do not have many options available. It is believed that they are being taken care of. They are mostly abandoned by their families and do not have recourse to legal services. They also face the stigma of being in prison. There is no medical aid available for such prisoners. Often jail authorities write “mental” on the certificate, which, in turn, has further repercussions.

Adverse circumstances, mental torture, segregation and abuse can exacerbate mental illness. This is more so in the case of first-time offenders. These first-time offenders are often kept with hardened criminals who subject them to trauma and abuse. These people are in urgent need of counseling services. However, there are no full-time counselors. Even NGOs find it difficult to access prisons. These prisoners should be shifted to hospitals or other facilities where they can receive proper care and treatment.

**Children and Senior Citizens**

There are significant issues of children being mistreated in State-run homes. Some consider children to be better off on the streets than in these homes. There are recommendations being made in Kerala to move senior citizens to old-age homes.

**Suggestions**

The Group came out with the following suggestions:

i. Groups, working in prisons, have to highlight problems faced by minorities and other disadvantaged groups;

ii. Free legal aid should be provided to all victimized minorities;

iii. United protests, by the civil liberties movement, against the victimization of minority groups;

iv. Intervention by NGOs for safeguarding the rights of minorities. For example, disability organizations should actively campaign for braille services for blind, hearing aides for the hearing impaired and medication for the mentally ill;

v. Elderly prisoners be transferred to old age homes;

vi. Children, below 18 years of age, should be kept in juvenile homes. Young adults should be kept apart from hardened criminals;

vii. Appropriate aid to refugees – e.g., interpreters for Bangladeshi or African immigrants, legal aid services – should be provided.
D. Torture and Abuse

Mr. Kirity Roy
Masum

Mr. Kirity Roy, from Masum, spoke strongly against the use of torture in prisons. He stated prison reform means that people should be treated as human beings.

Most torture cases are summarily dismissed and all charges, against the police, are routinely dropped. The D. K. Basu ruling has been largely ignored, as, in most cases there is no memo of arrest issued at the time of arrest.

Referring to a case where five people died of thirst, not a single official was so much as suspended, even though Section 176A says that all custodial deaths need to be investigated. In another case, people were charged money, they couldn’t pay, for water and as a result they died.

In another case, a sick person, who was considered a Maoist and was falsely implicated, died in the hospital. Even though his death was caused by trauma, mishandling and the negligence of doctors, the State claimed that it was a natural death.

Strongly condemning State practices, Mr. Roy stated that his organization was not given access to prisons because they work on the issue of torture and custodial violence. Had they been working on the issue of health, or any other issue, they would have easily got access.

Parallel Session

This was followed by a discussion in the parallel session.

Forms of Torture

In both police and judicial custody there is rampant torture. The Judiciary is primarily responsible for this as inmates are put into judicial custody without a trial. Also, there is more physical abuse in police custody than there is in jails. Further, lawyers don’t raise the plea of torture in court.

Torture starts the moment a victim enters the jail. For example, in Kolkata jail prisoners have to sit on their knees for a long time till each head is counted.

Another form of torture is that jails are so overcrowded that sometimes inmates have to sleep in shifts. Further, prisoners are made to work under harsh conditions. There is no privacy in jails. There are common bathrooms. The food in jails is unhealthy and is prepared in unhygienic conditions. In some jails, kitchens are in the open.

Most prisons have an inherently casteist attitude. This places vulnerable groups at an even greater disadvantage. There is a presence of social hierarchy in prison – caste, etc. in addition to the seriousness of the offence.

Torture of Women

Women are physically abused in jails. Male jailors often abuse women inmates. There are no women and children cells in jails. Women do not have access to proper bathrooms. In some jails there are open bathrooms.
Arrest
The 11-point D.K. Basu guidelines are not being followed. Arrest, without warrant, is very high. There is a denial of rights right from the time of arrest. Not a single arrest has been made according to and in compliance with the 11-point D.K. Basu guidelines. Handcuffing is rampant.

Suggestions
The following suggestions were made:

i. Implementation of D.K Basu Guidelines;

ii. A prisoner must be subjected to a medical examination within 48 hours of arrest in all jails across the country. There should be more doctors in prisons;

iii. There should be no video-conferencing in jails as it cannot be relied upon. The prisoner should be produced physically in front of the Magistrate. This should be made compulsory;

iv. Data collection, through fact finding and surveys, should be conducted in jails throughout the country;

v. The Chief Justice of India should be informed of cases of torture and abuse;

vi. Total abolition of solitary confinement;

vii. There should be a network of lawyers, activists, journalists and students;

viii. Punishment, awarded by the Superintendent, should be prohibited;

ix. There should be a complete prohibition of torture. Torture should not be allowed under any circumstances.
V. IMPROVING THE CONDITIONS OF PRISONERS AND THE PRISON SYSTEM

A. Role of Judiciary

Colin Gonsalves
Senior Advocate and Founder Director, HRLN

Mr. Colin Gonsalves, Senior Advocate and Founder Director, HRLN observed that prisoners’ rights are in a perilous phase because the Government has adopted a largely uncaring position over the last decade. It seems that no one in the Judiciary cares about prisoners any more. Most judges feel that prisoners are subhuman people who deserve to be imprisoned.

In Jharkhand, the Government was going to release 7 lakh tribals, most of whom had been arrested for petty crimes like those of stealing wood from a forest. If 7 lakh people have been arrested for petty crimes in Jharkhand alone, there must be millions of people in a similar situation across the country.

Law Minister Moily recently announced a scheme to release a large number of under-trials, but no one has seen it happen yet. No one knows how it will happen, or if it will ever happen at all. Some people have argued that poor people want to be in prison, that in prison they would at least get food and shelter. Even if, in the rare cases where this is true, it shows what is wrong with our society today, he remarked.

Mr. Gonsalves, speaking on the role of the Judiciary in improving the conditions of prisons and prisoners in India, spoke about some of the landmark judgments of the High Courts and Supreme Court where the courts have upheld and protected the rights of prisoners.

Arrest and Detention

In the case of State of Punjab and Others vs. Jogender Singh and others ((1990) 2 SCC 661) he said, the Government does not have to arrest each person who does not have employment and shelter. There are hundreds and thousands of people who are arrested on suspicion and shaken down for money.

In the D. K Basu v. State of West Bengal (1997) AIR 610, the issues of detention and arrest were put to careful scrutiny. The Supreme Court investigated various aspects of the abuse of police power, such as arbitrary arrest, illegal detention and custodial violence and death. However, Supreme Court rules and guidelines have been replaced by Section 41 (1), which subverts the D.K. Basu case in its entirety.

In Amrika Singh v. State of Punjab and Others (2000 Cri. L. J. 4305), the Punjab and Haryana High Court said that sessions judges should make sure people are not being illegally detained without being produced before the concerned Magistrate. The
judgment also states that a person be told why he has been arrested immediately after the arrest has taken place.

**Handcuffing**

In Premshankar Shukla v. Delhi Administration (1980 Cri. JL 930), the Court said handcuffing should happen only with good reason.

Nilabati Behera (1993) 2 SCC 746 created the compensation principle and in many cases, especially habeas corpus cases, the issue of compensation comes up. But this is a short-term measure. It does help present-day victims does not address the larger question accountability and of what would happen to disadvantaged groups in the times to come.

**Bail and Remand**

Moti Ram and Others v. State of Madhya Pradesh ((1978) 4 SCC 47) said that sureties given for bail do not need to be given in the same state.

Hussainara Khatoon 1979 SCR (3) 532 was a landmark case which established the principle of bail not jail. It set up criteria of whether a person has roots in the community or is considered a flight risk.

The recently amended Section 436-A of the CrPC says that if someone has been in jail for a period extending upto one-half of the maximum period of imprisonment, specified for that offence under law, he would be considered indigent and released on personal bond. Largely speaking, the Supreme Court today is taking the view that once one-third of the sentence has been completed, the process of release would be initiated.

**Legal Aid**

Khatri and Others v. State of Bihar and Others, 1981 SCC (1) 627 established that the constitutional mandates of legal aid means meaningful legal aid from the point of arrest by an experienced lawyer. Maharashtra now has a scheme where the police must inform the legal aid board of each arrest that is made. Legal aid is provided from the time of the arrest.

In Sham Kant v. State of Maharashtra, 1994 Cr. LJ 250 case the Supreme Court said that judges need not stress upon the matter of evidence in police brutality cases. the slightest hint of brutality or custodial violence should be dealt with as harshly as possible.

One problem with legal aid is that lawyers are not paid adequately enough in the matter. If legal aid is to be made meaningful, lawyers must be paid at par with the public prosecutor. The courts still have tremendous power however to do good work if they wish to do it.

In Shabnam Minwalla v. State of Maharashtra and Others (W.P. No. 8 of 1994 with W.P. No 1103 of 1994), the Bombay High Court realized that a large number of people were in jail for bailable offences and they had been in jail for longer than the maximum sentence. The Court, in this case, felt it was duty bound to investigate the issue. The Court was then provided with a list of computerized records which showed the exact duration of stay of each under-trial. Following this, a single Court order released 300 people from prison.

In Common Cause 1996 SCC (4) 33 and Common Cause II, 1996 SCC (6) 775 the Supreme Court said that the State is required to release a defendant after a certain, specific number of years have elapsed. However, much also depends on the crime committed. This however was largely overturned in Rajdeo Sharma v. State of Bihar,
1999 SCC (7) 604. The case set aside the time limit specificity for trials and said that one formula could not be made applicable to all cases.

Ramamurthy v State of Karnataka AIR 1997 SC 1739 said that bail and parole could well be pressed into use as an alternative to jail.

**Women with Children**

R D Upadhyay AIR 2006 SC 1946 said that ideally, unless circumstances dictate otherwise, women with children should not go to prison. (2002). It also stated that these children should not be treated as under-trials. These children are entitled to food, shelter, medical care, clothing, educational and recreational facilities. It also laid out detailed guidelines for the medical care and facilities that pregnant women should receive in jail.

In the Children’s AIDS Society case, which I am bringing in today, there are many people here who can help. This Society has house-mothers looking after juveniles. The house-mothers were paid Rs. 300 per month in 1999-2000. They were given a small place to stay in and some food. They gave us a lot of the information and we managed to get them paid a minimum wage, which was finally upheld in the Supreme Court.

**Mentally ill Prisoners**

As shown in the Asha Kiran case, not much has been done for mentally ill prisoners. Their families have also not much to offer support to them.

**HIV Prisoners**

The overcrowding, in one open prison at Port Blair, was 300%. Prisoners were sleeping in shifts. Adult prisoners and little children were bunched together indiscriminately. There were no schools for children. HIV prisoners died in prison. The food was rotten. The Supreme Court assigned the task of extensive report-making to a district judge. He recommended the construction of new facilities, suggested that children be kept apart from adults and medical officers be made to make a daily routine visit. He also recommended a more humane treatment of HIV prisoners (*Kranti v. Union of India*).

**Death Sentence**

Bachan Singh Vs. State of Punjab (1980 2 SCC 604) established that the death sentence is only for heinous crimes; the State must first provide evidence to support the view that the person is incapable of being reformed. This second clause is particularly important, because the vast majority of India’s criminals are first-time offenders, which makes it particularly hard to prove that there is no scope of improvement or reform in their case.

**Jail Visits**

Jail visits are very important because they serve to humanize the entire process. Further, jail visits, from the press, help establish facts, allow for greater accountability etc. While various visitation rights have been guaranteed by the courts in theory, the clause remains inapplicable in practice. Prison officials have a lot of power over whom the prisoners can or cannot see. Also, prison guards are often allowed to be in the same room the entire time.

**Minimum Wages to Prisoners**

Prison wages have long been an issue for prisoners. Prisons have often tried to deduct expenses from prisoner wages. As a result, most prisoners do not make more than a few rupees for a day’s labor. At one point, the deduction of wages was disallowed.
and prisons were made to pay the basic, minimum wage. This, unfortunately, is no longer the case.

Giasuddin (1977 SCC (3) 287) and Rajgopal’s (1994 SCC (6) 632) case(s) laid emphasis upon the fair payment of wages.

The Supreme Court has, over the last couple of years, lost interest in the issue of prisoners’ rights. High Courts have done better work in the matter.

**Public Interest Litigations (PILs)**

Public Interest Litigations (PILs) are a powerful way to change the system, especially if the judge is sensitive and responsive to social issues. The fate of these PILs hinges upon the presiding judge. HRLN takes up a lot of cases and helps prisoners free of cost and offers guidance, counseling and legal advice.

It is very easy to draft a PIL. There was a case we filed in the Andaman Islands. The PIL was only 5 pages long. There is no need to file a 150-page long PIL. A basic and essential factual description of the matter suffices. The PIL was just a factual description of what you see. HRLN also helps lawyers write PILs.

It is also possible to work directly with prisons and to change policies from the inside. That can be successful, but it depends on the cooperation of prison officials. Your access can be revoked if you file a PIL. The goal is to clear a large number of people from prisons. In some cases prison officials can help, but in most cases PILs are a more effective tool to enable the release of prisoners.

Prison access can be gained through either the Prison Superintendent or by the Administrative Judge of the Sessions Court, who is in charge of prisons. If he does not allow access, the Administrative Judge of the High Court can be approached.

On some occasions, judges ask for the guarantee of a large sum of money before hearing PILs. Mr. Gonsalves suggested that when a judge does this, the petitioners must point out that they are poor people and that they are working free of cost with no personal stakes in the matter. They have filed this case to bring before the Court the injustice that is taking place and they are merely doing their duty as conscious, socially responsible citizens. Petitioners can well argue their own case. He stated that the lawyers and petitioners, arguing the PILs, should be polite, but they shouldn’t let the judges browbeat them. Lawyers should present the facts of the case and should make sure the judge records the lawyer’s submission, as the judge is duty-bound to record the lawyer’s submission. If the judge dismisses the case, the lawyer can then file an appeal in the Supreme Court. Petitioners or lawyers, arguing the PILs, should not make the mistake of withdrawing the case for not making the required payment. It is only when judges find that the lawyers are standing up to them that the system will begin to change.

Mr. Gonsalves assured participants of HRLN’s full support. The cost of a PIL is very low. It ranges between Rs. 100-150. In the Supreme Court, it is Rs 200, apart from the cost of typing. In many cases, filing a PIL can be very inexpensive if you can get a free-of-cost lawyer. Some of the finest PIL cases were not lawyer argued, he said.

The Sheela Barse PIL is case in point. You do not really need a lawyer as such. However, you do need to know about preceding cases so that you are familiar with the case law. The most important thing is to describe the facts of the situation. In fact, in many cases, it is better to argue your own case because you are better informed and more passionate about it. You need a 60% success rate in the High
Court and 90% in the Supreme Court for an 80% overall success rate.

What do you do when the judge doesn’t know the law? The law is important and preceding cases matter tremendously. For each section, in HRLN’s Prisoners’ Rights Book, there are key judgments and many lawyers have simply handed the book to the judge.

### B. Providing Legal Aid to Prisoners

**Ravindra Vaidya**

*Project Director, VARHAD*

Mr. Ravindra Vaidya of VARHAD, an NGO which provides legal aid services in Maharashtra, speaking on the concept of legal aid system in India, explained that the State was required to come up with a legal aid system in response to Article 39A of the Constitution of India.

He said that, though legal aid was an important tool for the needy the quality of legal aid services were far from adequate. Mr. Vaidya stated that he had collected data from legal aid services in the Vidarbha region to get a better idea about legal aid services in India. There are many cases where an advocate has been appointed but the advocate never meets the prisoner, never responds to the application, never files an appeal and never does anything to help these people. In many districts, only two to four thousand rupees are spent on legal aid in a year. This meant that virtually no legal aid is on offer.

Giving an example, he said that there are only 5 advocates working on legal aid in Gurgaon and not a single case took place in 2008. In Ankola district, the legal aid committee had 47 cases at hand but handled only 14 cases of legal aid. Lawyers are paid just Rs. 100 per appearance for up to a maximum of six appearances.

The problem is that, in most cases, the Court just appoints an advocate who happens to be in Court for another matter and takes the matter up because his own case is coming up before the same judge later on in the day. In many cases, the advocate does not even know who the client is, or vice versa. He further says that most of the people, needing legal aid, are poor; most are from Scheduled Castes or Scheduled Tribes and they are not criminals. The Court would probably acquit them, except that the trial does not ever take place. All they need is help in getting bail. These people are amongst the most disadvantaged and marginal groups in the country. He requested advocates to take up legal aid cases, because the people that need legal aid are too poor to be able to pay a fee.

Lack of legal aid is a structural problem and it plays an important role in solving many other prison and societal problems. Legal aid acts as a check on torture, helps hold prison officials accountable, reduces the number of under-trials by facilitating bail and helps juveniles get appropriate treatment instead of spending years in jail with hardened criminals.
Chetna Birje, an Advocate with HRLN, Bombay spoke of the issues and problems that she had experienced while providing legal aid services to prisoners in the state of Maharashtra. We intervene at various stages, she said. We link-up with organizations for providing legal aid work. We also work on rehabilitation of prisoners. The problem faced is that of bail amount. Funds have been raised to help prisoners get bail. This is one way of helping. NGOs face difficulties in entering the prison because of the threat of terrorism. Jail authorities have to take a decision on whether or not to grant permission. We also work on custodial torture and violence. We investigate all such cases that come to our notice. We also meet the families and file writ petitions. We filed a writ petition in Aurangabad.

Legal aid is very essential. A lot of lawyers don’t work on such issues. Every prisoner is given a lawyer on entering the jail. These people just put a thumb impression and accept whichever lawyer they get. But we specifically tell our inmates to look for a good lawyer and be selective and discerning in the matter.

Magistrates and jail authorities refer cases to us. We have a meeting once a month with jail prisoners. Even though jail superintendents have different expectations, there is scope for a consensual decision on the best options and course of action to be taken. We work on rehabilitation and see there is no duplication of cases. If a lady is coming out and she needs a shelter home, then we contact the organization to provide them with shelter.

I also work on Dalit rights, and towards the implementation of Scheduled Caste/Scheduled Tribe Prevention of Atrocities Act. We intervene in many cases to get the victim grievances redressed, especially in rape cases. It is important to help women prisoners and their right to health. There are no psychologists or psychiatrists available to deal with mental health cases, even though the prison manual says that this should not be the case. Sometimes psychologists come from other organizations. But that should not be the case. Psychologist should be part of the staff. There are also a lot of issues with regard to the reproductive rights of women that need to be consistently worked on.

Parallel Session

In the parallel session on legal aid, participants discussed the problems faced by under-trials and prisoners in getting legal aid services. The following issues were discussed:

**Difficulty in Accessing Relevant Documents:** The difficulty, which most prisoners face, is that their papers are often kept with the Court, which makes it difficult for them to file anything. Prisoners have to pay a fee to the Court for getting their documents. NGOs are unable to help in such cases as the Court does not provide any information to NGOs or to non-lawyers. In many cases, the prisoners are not even aware of who their lawyer is or what is happening in the case.
**Role of Judges and Lawyers:** There is widespread corruption in the system. Judges are hugely over-worked and they accept bribes. Lawyers seem least interested in working with legal aid committees in States as well as in Districts. Also no effort has been made to expedite cases.

**Legal Aid for Illegal Immigrants/Foreigners:** Illegal immigrants/foreigners in prisons face severe difficulties due to communication problems. Bangladeshis, to take an example, need to be identified by the Bangladesh High Commission. They are kept in prison till their identity and residential address is confirmed. Illegal entrants are punished and the only penalty for them is that of deportation.

**Legal Aid Inside Jails:** There are legal aid cells inside jails which are meant to provide legal aid for any kind of case. They can also file civil suits. Every prison has a legal aid officer, who has to help prisoners find lawyers. This, however, is not happening. The gap between legal aid cells and prisoners needs to be bridged. This can be done by minimizing the need of lawyers in the process. NGOs and activists, working in prisons, have tried reducing the pressure on legal aid lawyers by preparing keeping stock of the case laws of convicts and helping the lawyers.

**Difficulties in getting Legal Aid:** There is need for a greater sense of accountability from those responsible for providing legal aid. In one such case, an NGO conducted legal aid training directly for prisoners because the prison legal aid officer was not an active participant. Some prisoners do not accept legal aid because of the incompetence of legal aid lawyers. NGOs, in the past, have filed petitions on behalf of the prisoners who did not have lawyers.

**Suggestions**

i. **Increasing awareness** among prisoners about the existence and availability of legal aid. Based on experiences at Yervada Jail, life convicts can be trained as paralegals to provide legal aid to other prisoners;

ii. **Providing training to legal aid lawyers** including providing regular and up-to-date information on cases. Other aspects include improving legal aid emoluments and providing full-time lawyers on functionally autonomous legal aid panels;

iii. **Working with law students** to encourage them to volunteer in prisons and work with prisoners. This helps alleviate some of the problems with the prison system, and sensitizes them to the difficulties prisoners face;

iv. **Providing training to judges** about legal aid schemes and prisoners’ rights. Judges should have better prison monitoring systems and a system of routine prison visits.

v. **Providing training to jail authorities** on prisoners’ rights and best practices in prison reforms for prisoners and under-trials;

vi. **Increasing coordination and communication** between social workers, NGOs, lawyers, legal aid panels, sociologists and prison officials;

vii. **Organizing Lok Adalats in prison.** There is a scheme in the Prison Manual, which remains unimplemented;

viii. **Increasing the access and opportunities** that prisoners have to consult their lawyers;

ix. **Reducing fraud committed by lawyers** by helping prisoners report those lawyers to the bar and have their license taken away;
x. **Utilizing plea-bargaining** while simultaneously making sure that the police and public prosecutors do not abuse it to put innocent people in jail.

## C. Reform and Rehabilitation

### Johnson J. Edayaranmula

*Director, ADIC-India*

Mr. Johnson Edayaranmula, Director, ADIC India, said that reform and rehabilitation are, perhaps, the most successful harm-reduction strategies. By rehabilitating one person, we can prevent another 25 people from choosing the path of crime. In the correctional administration scenario, reform and rehabilitation is of the utmost importance, he said.

However, in the present day context, “rehabilitation is a no man’s agenda”. Mr. Edayaranmula, talking about the attitude of prison authorities towards rehabilitation, stated that each entity, in the prison process, has its own reasons for discarding rehabilitation. The police are more concerned with enforcing law and order; the judiciary with guilt and evidence; the policy makers with putting anti-societies behind bars; the society with wanting protection from criminals; the prison staff with wanting more funds; the social workers with the exasperation that comes with failure; and the prisoner with the whole process of reform and rehabilitation that is, contrary to its declared intention in the matter, geared towards making him feel like an outcast.

Mr. Edayaranmula described his AIDC India experience where a single study, among 284 under-trial prisoners in a Trivandrum sub-jail, took a long time and numerous permissions. Given the difficulty in obtaining permission for a single study in one sub-jail, it is not surprising that not much is known about India’s prison system, he surmised.

The ADIC, as a project, started in 1990 when it was decided to work towards the rehabilitation of a high-risk population as part of its substance abuse strategy. They approached prison authorities and, after consistent efforts, the Government of Kerala approved the ADIC request to start a small center within a prison. As a result,

- A separate independent cell was allocated within the prison;
- Complete furniture was supplied from the prisons department manufactory;
- Participation of the Social Welfare and Health Departments;
- Mobilization of the services of doctors, social workers counselors and yoga therapists;
- Began with free medicines from pharmaceutical firms and samples from doctors, but later got a direct supply from the Health Department;
- Organized orientation program for prison staff and authorities;
- Established ‘Navjyoti Counselling and De-addiction Centre’ – the first ever prison centre of its kind in India.

The goal of the project was to raise awareness about substance abuse issues, he explained. The primary method used was that of intervention, both with groups and with individuals. The program was used to gather information about prison
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experiences and the prison process. ADIC found out that 65% of the prisoners were first-time offenders and 35% of them were habitual offenders who came from economically backward conditions. It was recognized that many of the people in prison had come from street life or juvenile / delinquent homes.

Mr. Edayaranmula said that the project had been successful because it was an innovative, low-cost first-of-its-kind project, which took place inside the prison. It had an 80-85% success rate among first-time offenders and a 12-15% success rate among habitual offenders. It led to a more cordial and healthy atmosphere inside the prison premises and greater cooperation between the various government departments involved in prisons, criminal enforcement and health and welfare. This, in turn, led to a new set of strategies on how to approach issues of alcohol and substance abuse outside of prisons and in schools, universities and communities.

The project did however have some failures, he recounted. The inability to segregate prisoners on the basis of age and seriousness of criminal offence did have some negative consequences. The limited available resources also led to overcrowding, which in turn led to some psychological issues. The jail staff is pretty much lacking in motivation. The negative attitude of society in branding prisoners as hard-core criminals defeats the very purpose of rehabilitation.

Mr. Edayaranmula stated that, despite the difficulties, the ADIC accepted the challenge and their programs were extended to other prisons. ADIC Intervention Project was started in Central Prison, Trivandrum in 2008 with a full-time professional staff and 12 doctors, of whom 10 were deputed, from the Govt. Homoeopathic Medical College Trivandrum, twice a week. An integrated project, with the support of the Prison Department, is in progress covering a broad spectrum of activities, which include:

- Counseling, medical services / camps;
- Awareness & motivational programs;
- Formal & informal education;
- Vocational training in various disciplines;
- Recreational activities & public programs;
- Reformation & rehabilitation opportunities.

He stressed that it was important to change the negative attitudes of policy-makers, the concerned authorities and the community towards prisoners. He concluded with the following recommendations:

- Correctional administration should be given due priority in the Government agenda;
- The infrastructure facilities, basic amenities and staff strength should be increased;
- The post of a counselor-cum-social worker should be created in all the prisons;
- Legal aid and NGO participation should be encouraged;
- Networking among NGOs in the field should be strengthened.

Parallel Session

In the parallel session on reform and rehabilitation, participants discussed the role of the Judiciary in the reform and rehabilitation of prisoners.
Opinion was divided on the matter. One group of people believed that rehabilitation takes place after release, while reformation takes place within the prison. It was felt that rehabilitation was the right of an individual, while reformation was inconsistent with an individual’s basic rights. The other group believed that both go hand-in-hand and the process has to start in prison. It remains to be seen whether one can be achieved without the other.

It was further discussed that the State most clearly feels an obligation to reform and rehabilitate children, but no such provision exists for adults.

Suggestions

The group made the following suggestions:

i. **Full information must be given to prisoners:** The counseling process cannot begin unless immediate needs – like contacting the family, knowledge and progress about the prisoners’ case, etc. – are dealt with;

ii. **Need for counseling:** Provides an opportunity for prisoners to become sensitized and understand what they did wrong and why they are in prison;

iii. **Vocational training:** Prison department should link up with IITs, Polytechnic Colleges, etc. for providing vocational training;

iv. **Role of NGOs:** NGOs should collaborate with the Government as well as with all other organizations;

v. **Role of jail superintendent:** Superintendents should network with shelter homes;

vi. **Measurement of reformation:** Psychometric test facilities should be made available in prisons;

vii. **Mentorship programs:** Mentorship programs should be introduced either through the Welfare Officer, or prison officials, or NGOs.

viii. **Separate Cadre in Criminology:** People, governing prisons, should be from a social work background with some knowledge of criminology. There should be a separate reformatory centre managed by social workers, psychiatrists, doctors, etc.

**D. Visitation Rights**

**Parallel Session**

The session was facilitated by members of the Prison Ministry India. The group discussed issues faced by visitors in jails and what needs to be done.

**Problem of Corruption:** Paying of bribes and prevalence of corruption is common in jails all over the country. This makes it difficult for those who are poor. The money paid by visitors (charges) goes to the Prison Welfare Fund, which is also corrupt. As most of the family members of the prisoners
are not so affluent and work during the week, therefore it makes it difficult for them to visit.

Visiting Hours and Facilities: A married couple, in jail, is allowed to meet once a week. Children can also meet their parents. Inside jails, during visiting hours, it is difficult to meet relatives or family as there is a lot of noise and everyone is shouting in a common room. Tamil Nadu has started video-conferencing facility to interact with far-away relatives. A comparison was drawn, from the prisons of USA, where the convict is allowed to meet the visitor in the same room under surveillance of the jail authority.

Difficult access to NGOs and lawyers: Non-government organizations and advocates have problems in accessing prisoners. They do not get permission to meet the prisoners for legal aid. The jail authorities fear publicity and hence are strict with organizations and visitors. There is widespread use of drugs, money and mobile phones inside jails. The issue of security is a matter to reckon with.

Minority religious groups face problems in accessing jails: Religious groups, such as Christian organizations, have problems in accessing jails to cater to the spiritual/religious needs of the prisoners. Rights of minorities are violated. Inmates are not allowed to practice the religion of their choice. Religious groups are not allowed to visit for recreational activities either.

Suggestions
The group made the following suggestions:

i. **No fee should be charged for families visiting prisons:** Currently families have to pay the police to see their family. This practice should be immediately stopped;

ii. **Weekend visiting rights:** Some people can only come during the weekend because they work, so prisons need to allow visits on Sundays and on public holidays;
iii. **More access of prisons to NGOs:** Some prisons are denying entry to all NGOs. Prisons should allow all humanitarian groups access and should cite specific reasons for barring entry to them;

iv. **Prisons need to be updated with modern facilities:** Prisons in India are slowly being modernized with facilities like those of videoconferencing. Such facilities would make it easier for prisoners to keep in touch with families and reduce the crowds of visitors coming in to prisons;

v. **Reduce corruption in the prison visiting system:** There is need to reduce corruption of the prison visiting system and make it easier for family members, with difficult schedules or from distant locations, to stay in touch;

vi. **Use of RTI:** It is difficult to get information regarding jail authorities. RTI should be used more often and more effectively;

vii. **Religious groups to get easy access in prisons:** Hindu groups or organizations have no trouble getting access to prisons, but Christian groups face difficulties in doing so. Prison officials should have the same criteria for all NGOs, regardless of religious affiliation.

**E. Medical Aid in Jails**

**Parallel Session**

**Medical Aid**

Every institute, according to the United Nations Standard Minimum Rules for the Treatment of Prisoners, should have at least one psychiatrist. Also a sick person, who requires special treatment, should be transferred to a specialized institution or civil hospital. Where hospital facilities are provided in an institution, they should be well equipped for the treatment of sick persons.

For women prisoners there should be gynaecologists. Pregnant women, or women with infants, should be given proper medical care and diet. Regular health check-ups need to be conducted. Children, of women prisoners, should also be given proper
health facilities and their nutrition should be taken care of.
There is need of doctors who must come on regular visits. For mentally ill persons, as well as other persons – especially first time offenders, women prisoners and victims of torture and abuse – counselors should be available on a regular basis.

**HIV in Prisons**

A large number of HIV cases are being reported from jails. Most people do not even know the difference between HIV and AIDS; the symptoms of the ailment; and how it spreads. Many of the problems can be solved by simple education.
A major problem is that of accessibility to treatment. It is difficult to identify HIV in prisons. Many prisoners are uncomfortable discussing HIV/AIDS, hence the need for counseling. Treatment is often unavailable for positive prisoners.

**Suggestions**

i. Prisons should have doctors for inmates;

ii. Gynaecologists should be appointed for women prisoners;

iii. Each prison should have counseling services for inmates on a regular basis;

iv. Health needs of women prisoners, pregnant women, lactating mothers and children of women prisoners should be given priority to;

v. Mentally ill persons should not be kept in prisons but should be transferred to hospitals or homes and should receive proper care and treatment;

vi. Victims of torture and abuse should receive counseling services and medical services on priority basis;

**For HIV-affected Persons**

vii. There should be mandatory HIV test, with or without consent, in prisons;

viii. Lawyers need to file PILs for the availability of HIV treatment in prisons;

ix. A counselor should be appointed by the Government to discuss their issues;

x. Condoms should be made available for MSM in prisons;

xi. There should be full-time Integrated Counseling Testing Centers in prisons for under-trials and convicts;

xii. NGOs should set up Link ART centers in prisons;

xiii. Legal rights, of HIV positive prisoners, should be campaigned;

xiv. Street plays should be used to spread awareness and also involve more discussion.
F. Prison Wages/Prison Conditions and Infrastructure/Facilities

Parallel Session

This session included issues such as those of prison wages, infrastructure, facilities and condition of prisoners.

Conditions of Prisons: The prison atmosphere should be conducive to reform and rehabilitation. Since all kinds of prisoners are put together, it makes correction difficult. Therefore, it is important that habitual offenders be segregated from others. It was further essential that prisoners be made to work, or else the entire purpose of keeping prisoners in jail is defeated. Therapists and counselors should also be pressed into service.

Prisoners’ Wages: Differ throughout the country. Whereas in Tamil Nadu, prisoners get Rs.60 per day, in Delhi’s Tihar jail it varies from skilled workers getting Rs.52 per day to unskilled workers getting Rs.40 per day. On the other hand, in Rajasthan and Arunachal Pradesh, wages are as low as Rs.10 or Rs.15 per day.

Kerala’s Calicut jail is renowned for offering full wages. In Tamil Nadu, 20% of wages are deducted for rehabilitation of victims, while 30% wages are deducted for prison administration. It was discussed that prisoners’ societies be created to encourage rehabilitation.

Need for Education: 80% of prisoners in the Kolkata jail have not studied beyond the 8th standard, hence a large number of prisoners are illiterate. On the other hand, the example of Nalini and Murugan, Rajiv Gandhi’s assassins, was cited. They actually completed their higher education in jail. 80% of the prisoners are between 18 and 35 years of age, amongst whom many are child laborers. Hence there is need to provide them with basic education. It was suggested that they be encouraged to learn the English language. Writing, music, art and other sports activities should also be encouraged.

Prison Staff: No policy change should be made without the assistance of the prison staff. Therefore attention should be paid to the welfare of the prison staff. There is
a close connection between staff welfare and safety and prisoner welfare and safety. Budget should be allocated by the Government for prison staff. They should also be given a weekly off. Mr. K.V. Reddy, President of All India Prisons Association, stated that there was a need to have more career opportunities and more uniformity with regard to the rankings of prison officers. There should be separate structures between prisons officers. Salaries should be attractive. Every prison officer should be well trained. He also stated that the Mullah Committee Reforms be adopted.

**Suggestions**

1. Vocational Training and Recreational facilities should be provided;
2. More work opportunities should be created;
3. Prisoners’ societies should be created for ensuring effective rehabilitation;
4. A model curriculum should be prepared for training prison staff based on value education They can also be given correctional trainings;
5. Corrections need to be considered as part of the law. The law should be amended to include rehabilitation as mandatory;
6. Private sector work in prisons, for better wages and relevant skills (PPP) work, can help rehabilitate prisoners. Eight hours of task-oriented work should be ensured;
7. Infrastructure can be improved by involving more NGOs;
8. There is a need for more probation officers;
9. There should be a budget, allocated by the Government, for prisons with more facilities for prisoners and staff families;
10. Weekly off to jail staff should be provided;
11. There should not be more than 10 hours duty schedule for prison staff and the staff strength should be enhanced;
12. There should be regulated phone facilities;
13. A complete ban on smoking should be imposed;
14. Upgradation and renovation of more than twenty-year-old prisons should take place. More open-air jails are needed. Prisons should be built on the outskirts of the city to deal with issues of space and raise revenues.
G. ROLE OF MEDIA

The three journalists, who had dared to highlight the plight of the people, recounted their stories at length. They said that the media played an important role, as it ensured greater prison accountability. However, it is very difficult for the media to get access to prisons. Even if they do get access, the prisoners are much too scared to talk about their actual plight. However, it is important that every custodial death, torture, or abuse be highlighted by the media. They also spoke about the role of International agencies, like Amnesty International, which can gain entry into prisons and ensure that prisons are more accountable.

Mr. B.V. Seetaram is the publisher of Karavali, a Kannada newspaper, which was started in Mangalore 18 years ago and had won the transparency award last year. The newspaper tries to reach out to tribals, dalits and the disenfranchised. Mr. Seetaram explained that, due to this, he has been the target of the police and of some political parties. He and his wife were booked for sedition. They were ultimately acquitted by the High Court and the Supreme Court because it was an illegal detention, he said.

Recounting his prison experiences, he said that the prison authorities, on the instruction of the Ministry, put him into solitary confinement, with a poisonous creature, hoping that it would kill him. This was only stopped when he went on a fast unto death and there was a huge outcry.

Mr. Seetaram said that civil society must play a stronger role in prison reforms by constantly bringing up such issues, finding solutions and holding the Government and prison system accountable. The media has to play a role in this and social audits cannot take place happen without press and civil society involvement. The focus of civil society should be to introduce prison reforms so that prisoners are not or stigmatized or discriminated against.

Prisons, in Karnataka, are torture chambers like in most states. Overcrowding is a major issue, prisoners practically sleeping on top of each other. The conditions of the Karnataka prisoners are absolutely appalling. There was poor sanitation, no bathing facilities and no fans. Malaria is rampant and most of the prison population falls prey to the illness. Prison officials routinely assault prisoners, but blame it on other prisoners. Karnataka has a lot of prisoners who are divided on communal grounds and this creates further problems. Custodial deaths have in fact occurred, despite what the police say.
Mr. Iftikhar Gilani, the Bureau Chief of the Kashmir Times, has found himself in prison on innumerable occasions for the news articles he has written. Most recently, he was arrested under the Official Secrets Act and put in Tihar jail for 8 months. He outlined five prison rules that help contribute to the degrading environment, which he described as “horrible, where the worst kind of treatment is meted out to the prisoners”. Rules which the prisoners have to follow are:

Prisoners can’t use cups, they have to make do with steel glasses. There have been instances of corporal punishment for using a tea cup;

Prisoners cannot sit on chairs, they can only occasionally sit on stools;

Prisoners must walk at the sides of the hallway and there is a punishment for walking in the middle;

Salute the jail authorities/ address them as Sir/ should not look officials in the eye;

When the authorities summon someone, they have to walk barefoot, take off the shoes outside the room.

Jailers actively pursue a policy of dividing prisoners against each other and preventing them from learning about their rights and this includes disallowing access to the prison manual. Often prison officials treat prisoners as sub-humans and subject them to cruel and inhuman punishments. Jails cannot be changed in part, they must be changed top down. Speaking about his Tihar jail experience, he said, “what they call a model prison is a horrible travesty of justice”.

Mr. Maqbool Sahil, Editor, Pukaar Weekly, recounting his experiences, said he had been in prison for 14 months in 4 different prisons in Kashmir. He was detained under the Public Safety Act. A person, detained under this Act, can be sent to any other prison in India. He spent his 14 months 300 km away from his family, who were never told what prison he was in or when, if at all, they could visit him. Upon entering jail, he was forcibly shaved and handed over to a life convict who told him what to do. He underwent extreme suffering in prison and was brutally mistreated. There were virtually no hygiene standards and no clothing. He had no toilet facilities and instead had to use a tin box. There were no fans, despite the summer heat.

Jails should not be under the Home Ministry, he said. They should be under the Social Welfare Department. This would lead to a more humane treatment of prisoners and more effective rehabilitation. As long as prisons are under the Home Ministry, all attempts at reform are a waste. The reforms, that everyone speaks about, are mostly on the surface. Behavior, of officials, gets better when there is an inspection. The moment they leave, everything goes back to what it originally was.
The media, or so participants said, has an ambivalent role to play. It does ensure greater accountability, but misreporting can do more harm than good.

Many media outlets also just report what the State or the police tells them and then make their own assumptions about who did what and what.

Prisoners need access to the Judiciary as well as to the Press. These aspects, of prisons and criminal justice, cannot change unless pressure is put, and pressure will not be put until the media starts being fair, telling the truth and holding the Government accountable. The police often turns a blind eye.

**Suggestions**

- Under-trials/convicts should have access to the media, newspapers and TV;
- More information on how to deal with the media. There is the case of how a newspaper stalled the release of persons for four years. Each time the Government was close to doing the same, they were responsible for creating negative publicity;
- Also the issue of unnecessary criticism of the police which is counterproductive in the long run. Innocent persons are hounded to create the impression that the police is working, e.g. media-inspired widespread arrests in Hyderabad following bomb blasts;
- Media must play a stronger role in prison reforms by constantly bringing up the issues of prisoners and their conditions. Each incident, of custodial death or torture, must be highlighted to ensure accountability in prisons;
- The Media must play a more constructive role in finding a solution and holding the Government and prison system accountable;
- The focus of the media should be on prison reforms so that the person in prison is not demonized or stigmatized;
- Jails should be under the Social Welfare Department and not under the Home Ministry. This would lead to a more humane treatment of prisoners and more effective rehabilitation;
- Prisoners should have access to books, visitors and should be able to interact with NGOs, media, etc;
- The visits of international NGOs, like Amnesty International, should be encouraged and such visits should happen on a regular basis. The reports of these NGOs should be made public.
H. Introducing transparency in the prison system through Social Audits / Data Collection / Computerization / RTI Act

Prof. Arvind Tiwari
TISS, Mumbai

Prof. Arvind Tiwari of TISS, Mumbai, explained the meaning and purpose of a social audit and how it can help in bringing transparency to the prison system. The social audit movement started when prison workers began asking for basic, minimum wages. Social audits began acquiring greater significance after the 73rd and 74th amendments to the Constitution. There are many schemes for helping the poor people and most prisoners are voiceless and powerless. The social audit system can ensure scheme implementation.

What is a Social Audit, especially in the context of the Prison System?

A social audit is an audit by the Law Minister and the people. The CAG does a financial audit; a social audit is done by the people and focuses on the social and human aspects of the system. All departments are supposed to have an internal audit, but in some departments the matter has been pending for over 35 years. Not all aspects of prisons need to necessarily be part of the social audit, but it is essential that cases, with national security or confidentiality aspects, be included. However, these cases only comprise 10% of the total number of cases.

What is the Job of Prisons?

Custody is the primary job of prisons, but that should include reform and rehabilitation. The question of prisoner rehabilitation is hinged upon how well-trained the prison staff is. The first round of modernization was worth 1,800 crores and BPRD has recommended 4,000 crores for the second round.

Is There a Mechanism that ensures Greater Transparency in Jails?

Some mechanisms exist where the public-prisons interface can help. There is a lot of literature, from groups like CHRI, on prison accountability and transparency. Some delays have happened and internal checks and balances have not been in place because of the lack of Central Government funding. The complaints, sent to NHRC and state HRCs, are usually along the lines of living space, hygiene, health care etc.

Stakeholders in the Prison System

The stakeholders, in the prison system, are the prisoners, prison staff, government departments and the community at large. We need all of these stakeholders in order to have a successful social audit.

Issues on which a Social Audit can be done:

- Living space;
- Hygiene;
- Health-Custodial deaths;
- Parole;
- Custodial violence;
- Stronger vocational training and fairer prison wages;
• Holding prison staff accountable;
• Rehabilitation and welfare after release.

Parallel Session

Networking / Computerization in Prisons is necessary and is inevitable. It may well be expensive, but the present system needs to be replaced. It was suggested that the PRISMS module be used in Goa prisons. It is possible to computerize information of all prisoners, starting with new people. There should also be proactive disclosure about computerization.

Social Audit in Prisons: There is lot of confusion about what social audit is. There is no clear definition of the matter. A paper, or sample audit, would be a good place to start. Social audits could be combined with the existing prison visiting system.

RTI Act

RTI Act needs to be made use of more often. The RTI movement has also done a wonderful job of speeding-up the Government progress and ensuring greater accountability.

Videoconferencing is advocated only by the judicial and prison systems. It violates Article 167 of the CrPC as magistrates cannot see the actual condition of the prisoners. The connections are often bad and prisoners are unable to fully express their concerns and there is no clarity.

Suggestions

• A PIL should be filed against videoconferencing as it violates Sec 167 of Cr PC;
• Provisions should be made for making jails computer savvy and information should be available to the people;
• NGOs should be encouraged to conduct social audits on the condition of prisons;
• NGOs, civil society should ask for information under the RTI Act;
• NGOs, like CHRI, should publish literature and train other NGOs on how to conduct social audits;
• Information, of all prisoners, should be made available on the prison website.
VI. PLAN OF ACTION

During the two-day consultation, several issues were raised by participants. It was agreed that an organizational network – including activists, lawyers, academics, NGOs, Government officials, media spokespersons and prison officials – would be formed to ensure the implementation and follow-up of the issues identified below:

1. Filing Public Interest Litigations (PILs)

Several issues were discussed during the meeting. It was opined most prison reforms have not yet been implemented. Therefore the need to file PILs in High Courts and the Supreme Court. The following PIL issues have been identified:

   a. Implementation of the Mulla Committee Report, the Kapoor Committee Report and the Malimath Committee Report;
   b. Implementation of schemes and the Model Prison Manual by State Governments;
   c. Uniformity of jail manual and jail laws;
   d. Implementation of Probation of Offenders Act, 1958;
   e. Implementation of Borstal Schools Act, 1928;
   f. Implementation of the Food and Nutrition Board, Ministry of Family and Health Ministry Recommendations on providing nutritional food in all prisons, including special diets for sick, etc;
   g. Abolition of death penalty;
h. Abolition of solitary confinement, torture, abuse;
i. De-criminalization of begging;
j. Release of under-trials who have already completed half the maximum sentence period, if convicted;
k. Release of under-trials who have been in prison for a period equivalent to the maximum period of conviction;
l. Release of persons in prison for petty offences;
n. Release of Minorities;
o. Release of persons with mental illness. People, with mental illness, should not be kept in prisons. They should be sent to homes or released on humanitarian grounds. They should be provided with psycho-social and counselling services;
p. Release of women and children;
q. Improvement of women’s prisons:
i. Health;
ii. Sexual harassment;
iii. Female staffing;
iv. Separate open prisons;
v. Privacy;
vi. Provision for crèche for children;
vii. Pregnant women’s health care;
q. Effective use of Section 436-A and other provisions of bail:
i. Bail to first-time offenders;
ii. Bail on personal bond and surety, implementation of section 436 proviso (indigent) and Supreme Court judgments on the issue;
iii. Minimizing the time for being produced before the Magistrate and process of grant of bail. Provision of bail being granted in the Police Station.

2. Providing legal aid in jails

The persons in jail are largely from the poor strata of society and are usually illiterate. They cannot afford to hire a lawyer nor can they approach lawyers. In this context, it is important that legal aid is provided to them in jails. For providing effective legal aid services the following measures need to be adopted:

a. Jail visits by lawyers;
b. Legal aid must be provided from the point of arrest of the person;
c. Organizing Lok Adalats in prisons;
d. Utilizing plea-bargaining, while making sure that the police and public prosecutors do not abuse this provision to put innocent people in jail;
e. Allowing a greater scope for prisoner-lawyer interaction. The NGOs, that have access to jails, can act as an intermediary/ facilitator in this prisoner-lawyer interaction. They can find and refer cases to concerned lawyer groups and also follow-up on them;
f. Prisoners should be made aware of the existence and availability of legal aid
services. NGOs can help in raising awareness among prisoners;
g. There should be full-time lawyers on functionally autonomous legal aid panels. Legal aid emoluments should be enhanced for better services;
h. Law students should be encouraged to do voluntary work with prisoners;
i. Reducing fraud by helping prisoners report dishonest lawyers to the bar and having their license taken away.

3. Organizing Training and Sensitization Programmes

Training and sensitization programmes should be organized in collaboration with lawyer groups and NGOs. HRLN / CHRI publications can be used for these programmes.

For Legal Aid Lawyers

a. Providing training to legal aid lawyers, including providing regular and up-to-date information on cases;
b. Based on experiences at Yervada Jail, life convicts can be trained as paralegals to provide legal aid to other prisoners;
c. NGOs can also be trained as paralegals.

For Jail Authorities

d. Providing training to jail authorities on the prisoner rights, and best practices in prison reforms, for prisoners and under-trials.

For Police Officials/Prison Officials/Magistrates

e. In many instances, police officials, prison officials and even magistrates are not aware of the laws and judgments. Sensitization and training programmes can help raise awareness.

For Judges

f. Providing training to judges about legal aid schemes and prisoner rights. Judges should insist on having better prison monitoring systems and should visit jails regularly.

4. Establishing a Network of various groups including NGOs, Lawyers, Prison Officials, Legal aid Panels, Social Workers, etc.

There is a need for increasing coordination and communication between NGOs, social workers, lawyers, legal aid panels, sociologists and prison officials. This will ensure better implementation of laws and schemes, improved prison conditions and greater accountability:

a. NGOs and lawyers go to prisons for different reasons. However, they can also work collaboratively. To take an example, an NGO, that helps facilitate training programmes for prisoners, can refer a prisoner, who needs legal assistance, to an organization like HRLN;
b. NGOs, visiting the prisons, should publish fact-finding reports periodically. This will help in sharing experiences with different groups;
c. Lawyer groups should compile and publish High Court and Supreme Court judgments and orders.

5. Adopting Measures for Reforming the Prison Management System
a. Adoption of Model Prison Manual 2003 developed by BPR&D;
b. Adoption of Prison Management Bill developed by Ministry of Home Affairs (MHA). Prisons, being a state subject, states have a liability to develop their own prison management laws and policies. The laws and policies should be in consonance with those developed by the MHA and BPR&D;
c. Officials, from the police department, should not be appointed as prison authorities because jail custody would then cease to be judicial custody. There should be proper training of staff in prisons;
d. Establishment of inter-departmental committee/advisory committee in prisons to ensure proper implementation of laws and schemes.

6. Changing Focus towards Reform and Rehabilitation of Prisoners

a. The purpose of incarceration should be that of reform and rehabilitation;
b. Only 1.42% of the prison staff is correctional staff while the rest is custodial. This should change because the focus is on rehabilitation and not on punitive measures;
c. People, governing prisons, should be from social worker backgrounds with some knowledge of criminology;
d. Prisons should be placed under the jurisdiction of the Ministry of Social Justice and Empowerment. Prisons should not be under the purview of the Ministry of Home Affairs any more;
e. Hardened criminals should be kept apart from first-time offenders;
f. For first-time offenders, separate centres should be established by social workers, psychiatrists, doctors, etc;
g. Prisoners should be kept informed of the status of their case. They should be allowed to keep in touch with their family;
h. Proper counseling services should be provided to prisoners. Work therapy programmes should be introduced;
i. Vocational training services – through linking up with NGOs, IITs, Polytechnic Colleges – should be made mandatory;
j. Recreational programmes should be provided;
k. Psychometric test facilities should be made available in prisons;
l. Mentorship programmes should be introduced through Welfare Officers, prison officials, or NGOs;
m. Grant-in-aid schemes should be introduced for discharged prisoners.

7. Providing Educational Facilities for Prisoners

a. Prisoners should be encouraged to enrol in open-universities/distance education centres;
b. Examination centres should be set up in jails;
c. Books and reading material should be made available to prisoners. Libraries should also be established and new books should be procured every year;
d. Prisoners should be provided with fee exemption facilities for enrolling in courses at universities, colleges and schools. The Prison Welfare Fund must be pressed into use for the purpose.
8. Introducing Non-discriminatory Provisions for Minority Groups in Prisons

Population of minority groups is highest in jails. These include religious minorities, dalits, tribals, illegal immigrants, refugees, persons with disabilities, etc. These people are mostly illiterate and poor, they also face communication barriers, and hence languish in jails for years. This requires special attention and adequate legal aid provisions for these groups. These include:

a. Providing proper legal aid services including services of translators.

b. Providing sign language interpreters for persons with hearing disabilities, counselling services for persons with mental illness.

c. Providing access to religious groups for addressing the needs of religious minorities.

d. Putting adequate measures in place to ensure that minority groups are not subjected to torture and abuse.

9. Introducing effective provisions for women and children

a. Ensuring effective implementation of R. D. Upadhyaya judgment.

b. Lactating mothers in prison should be given special care. The baby and the mother should be given adequate and nutritional food. Children below the age of 6 living with their mothers in prison, must be provided with services of crèche, playground facilities, adequate opportunities for interaction with the outside world.

c. There should be a proper system for primary education for children in prisons.

10. Providing Proper Medical Facilities in Jails

a. Medical officers should be appointed in every prison;

b. Prisons require specialized doctors. For women, special provisions should be made for gynecologists;

c. Persons - with HIV/AIDS (PLHA), communicable diseases, tuberculosis, malnutrition - should be given proper medical care and attention;

d. Psycho-social and counseling services should be provided to first-time offenders, victims of torture and abuse and mentally ill prisoners.

11. Introducing Transparency and Accountability in Prison Management

a. Ensure proper implementation of RTI Act;

b. Ensure proactive disclosure of information;

Computerization of Prisons

c. Setting up prison websites which would include annual reports of data on prisoners;

d. Maintaining proper registers with date of admission, details of prisoners;

e. Weekly reports of jails should be placed on prison websites;

Social Audit

f. Social Audit and evaluation of prison system should be done by NGOs working in prisons;
Media

g. Media should play a constructive role in highlighting the situation of prisoners and holding the Government and Prison System accountable;
h. Media should also highlight the incidence of torture, abuse, etc. in prisons;

Prison Visits

i. The Prison visiting system needs to be overhauled with regular board meetings. Reports, of the Inspector General, should be provided on a regular basis;
j. NGOs should be allowed to be part of the reporting system;
k. International NGOs, like Amnesty International, should be encouraged to visit prisons on a regular basis. The reports of these NGOs should be made public;
l. Judges should visit jails. They should also encourage holding of Lok Adalats in jails to ensure transparency;

Videoconferencing

m. Is video conferencing beneficial to prisoners or does it hinder due process? This should be examined carefully.

12. Visitation Rights

Families

a. Visits, by family members, should be allowed on priority basis. No fee should be charged from families visiting prisons. Some people can come only on weekends, so prisons should allow visitors in on Sundays and public holidays;

Humanitarian Groups

b. Prisons should allow access to all humanitarian groups, including NGOs, human rights groups, lawyers, etc. If the groups are denied access, the reasons should be specified;

Religious Groups

c. Religious groups should not be denied access as they cater to the needs of minorities in prisons.

13. Building an E-network of various Stakeholders

An E-network, of various stakeholders, should be built. Through the network, groups can share their experiences, case studies, reports, publications, laws, judgments.
VII. LIST OF PARTICIPANTS

NATIONAL CONSULTATION ON PRISON REFORM

3rd-4th April 2010
Venue: Seminar Hall 1, 1st Floor, Vishwa Yuvak Kendra, Circular Road, Chanakypuri, New Delhi

Organised by:
Human Rights Law Network (HRLN)
In collaboration with
Catalyst – Social Development Consultants Pvt. Ltd. (CSDC)

PARTICIPANT LIST

<table>
<thead>
<tr>
<th>Sl.</th>
<th>NAME</th>
<th>ORGANIZATION</th>
<th>ADDRESS</th>
<th>E-MAIL</th>
<th>PHONE NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Sr. Inigo</td>
<td>Prison Ministry India</td>
<td>Sanghamitra Apt, Flat No: B-502, Plot No: 20, Sector-4, New Delhi-110075</td>
<td><a href="mailto:inigossa@gmail.com">inigossa@gmail.com</a></td>
<td>(O)-011-25096753 (M)-9599328461</td>
</tr>
<tr>
<td>2</td>
<td>Sr. Archangel S.A.B.S.</td>
<td>Prison Ministry India</td>
<td>Adoration Convent, D-1/70, Janakpuri, New Delhi-110058</td>
<td></td>
<td>(O)-28521787 (M)-9968562448</td>
</tr>
<tr>
<td>3</td>
<td>Fr. Joseph Kavalakkat</td>
<td>Prison Ministry India</td>
<td>Northern Regional Co-ordinator, 190 C.A.G.I., Vikaspuri, New Delhi-110018</td>
<td></td>
<td>(O)-25571044 (M)-9818194640</td>
</tr>
<tr>
<td>4</td>
<td>Siddhartha</td>
<td>Aids awareness Group (AAG)</td>
<td>119-D, Humayun Pur, (G.F.), Safdarjang Enclave, New Delhi-110029</td>
<td><a href="mailto:India.aag@gmail.com">India.aag@gmail.com</a></td>
<td>(O)-011-26187953 (M)-9818138477</td>
</tr>
<tr>
<td>5</td>
<td>Madhur Madhav Sharma</td>
<td>Divya Jyoti Jagrati Sansthan</td>
<td>Plot No-3, Pocket OCF, Parwana Road, Pritampura Ext., New Delhi</td>
<td><a href="mailto:madhurmadhav1974@gmail.com">madhurmadhav1974@gmail.com</a></td>
<td>(M)-9811296616</td>
</tr>
<tr>
<td>6</td>
<td>Sudeep Sehgal</td>
<td>Divya Jyoti Jagrati Sansthan</td>
<td>5C/22, IIrd Floor, New Rohtak Road, Karol Bagh, New Delhi-110005</td>
<td><a href="mailto:sehgal.sudeep@gmail.com">sehgal.sudeep@gmail.com</a></td>
<td>(M)-9971911777</td>
</tr>
<tr>
<td>7</td>
<td>Vikram Bhandari</td>
<td>Manavadhikar Parisad</td>
<td>O-30, IInd Floor, sринiwas puri, New Delhi-110065</td>
<td><a href="mailto:vikramb47@gmail.com">vikramb47@gmail.com</a></td>
<td>(O)-011-263115603 (M)-9811244014</td>
</tr>
<tr>
<td>8</td>
<td>Ms. Aparna</td>
<td>ICWA</td>
<td>Sapru House, Barakhamba Road, New Delhi-110001</td>
<td><a href="mailto:aparna_vikram@yahoo.co.in">aparna_vikram@yahoo.co.in</a></td>
<td>(M)-9560473195</td>
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<td>No.</td>
<td>Name</td>
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<tr>
<td>9</td>
<td>Dr. Saurabh</td>
<td>ICWA, Sapru House, Barakhamba Road, New Delhi-110001</td>
<td><a href="mailto:saurabh_jnu@yahoo.co.in">saurabh_jnu@yahoo.co.in</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Dr. S.K. Bajpai</td>
<td>Pt. G.B. Pant Institute of Studies in Rural Development (PISRSD)</td>
<td><a href="mailto:pisd_22@rediffmail.com">pisd_22@rediffmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Rohit Tripathy</td>
<td>B-47, Defence Colony, New Delhi-110024</td>
<td><a href="mailto:trips.rohit@gmail.com">trips.rohit@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Piyali Acharya</td>
<td>Partners in Development Initiatives, T6, 1st Floor, Green Park Extention, New Delhi-110016</td>
<td><a href="mailto:piyaliacharya@gmail.com">piyaliacharya@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>Mala Sonkala</td>
<td>CSDC, A-8, Mandakini Enclave, Alaknanda, New Delhi-110016</td>
<td><a href="mailto:mala@catalystindia.in">mala@catalystindia.in</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>S.P. Loonker</td>
<td>CSDC, A-8, Mandakini Enclave, Alaknanda, New Delhi-110019</td>
<td><a href="mailto:sploonker@gmail.com">sploonker@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Jagdish Prasad</td>
<td>CSDC, A-8, Mandakini Enclave, Alaknanda, New Delhi</td>
<td><a href="mailto:jagdishsewa@gmail.com">jagdishsewa@gmail.com</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Currun Singh</td>
<td>CHRI, B-117, Sarvodaya Enclave, II nd Floor, New Delhi-110017</td>
<td><a href="mailto:currun@humanrightsinitiative.org">currun@humanrightsinitiative.org</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Maja Daruwalla</td>
<td>CHRI, B-117, Sarvodaya Enclave, II nd Floor, New Delhi-110016</td>
<td><a href="mailto:mohan@humanrightsinitiative.org">mohan@humanrightsinitiative.org</a></td>
<td></td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Toshi Parwal</td>
<td>CHRI, B-117, Sarvodaya Enclave, II nd Floor, New Delhi-110016</td>
<td><a href="mailto:toshismiles@gmail.com">toshismiles@gmail.com</a></td>
<td></td>
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<tr>
<td>19</td>
<td>Paiker Nasir</td>
<td>CHRI, B-117, Sarvodaya Enclave, II nd Floor, New Delhi-110016</td>
<td><a href="mailto:paiker@humanrightsinitiatives.com">paiker@humanrightsinitiatives.com</a></td>
<td></td>
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</tr>
<tr>
<td>20</td>
<td>Priti Bharadwaj</td>
<td>CHRI, B-117, Sarvodaya Enclave, II nd Floor, New Delhi-110016</td>
<td><a href="mailto:pbharadwaj@gmail.com">pbharadwaj@gmail.com</a></td>
<td></td>
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</tr>
<tr>
<td>21</td>
<td>Seema Malhotra</td>
<td>Scope Plus, B-73, IIrd Flor, Soami Nagar, New Delhi-110017</td>
<td><a href="mailto:scopeplus@gmail.com">scopeplus@gmail.com</a></td>
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<tr>
<td>22</td>
<td>Anita R. Dhingra</td>
<td>Scope Plus, F-168 E, 1st Floor, Rajouri Garden, New Delhi-27</td>
<td><a href="mailto:anitaaplishdhingra@live.in">anitaaplishdhingra@live.in</a></td>
<td></td>
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<tr>
<td>23</td>
<td>Lakshmidhar Mishra</td>
<td>National Human Rights Commission, Faridkot House, Copernicus Marg, New Delhi-110001</td>
<td><a href="mailto:nhrc_cjc@indiatimes.com">nhrc_cjc@indiatimes.com</a></td>
<td></td>
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<tr>
<td>24</td>
<td>Braham Parkash</td>
<td>Delhi Prisons, Central Jail Tihar, New Delhi-110064</td>
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<td>25</td>
<td>Dr. B.V. Trivedi</td>
<td>B.P.R &amp; D, Block-II, IIrd Floor, C.G.O. Complex, Lodhi Road, New Delhi-110003</td>
<td><a href="mailto:drbu_trivedi@rediffmail.com">drbu_trivedi@rediffmail.com</a></td>
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<th>No.</th>
<th>Name</th>
<th>Organization/Address</th>
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<tbody>
<tr>
<td>26</td>
<td>Francis Gonsalves</td>
<td>Vidyajyoti College, 23, Raj Niwas Marg, New Delhi-110054</td>
<td><a href="mailto:fragons@gmail.com">fragons@gmail.com</a> (O)-23943556,</td>
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<td>(M)-9868964049</td>
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<tr>
<td>27</td>
<td>Caesar Faroz</td>
<td>Vidyajyoti College, 23, Raj Niwas Marg, New Delhi-110054</td>
<td><a href="mailto:caesarfaroz@gmail.com">caesarfaroz@gmail.com</a> 011-23945860</td>
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<tr>
<td>28</td>
<td>Santosh Vas</td>
<td>Vidyajyoti College, 23, Raj Niwas Marg, New Delhi-110054</td>
<td><a href="mailto:santoshv3@gmail.com">santoshv3@gmail.com</a> (O)-011-23945860</td>
</tr>
<tr>
<td>29</td>
<td>Honey Aggarwal</td>
<td>National Institute of Criminology &amp; Forensic Science, 5725, Street No-6, Subhash</td>
<td><a href="mailto:honeyaggarwalal07@gmail.com">honeyaggarwalal07@gmail.com</a> (O)-011-</td>
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<td>Mohalla*2, Gandhi Nagar, New Delhi-110031</td>
<td>22467112 (M)-9868203816</td>
</tr>
<tr>
<td>30</td>
<td>Megha Shree</td>
<td>(Student) National Institute of Criminology &amp; Forensic Science, c-6/295, Yamuna</td>
<td><a href="mailto:mishri_18@yahoo.com">mishri_18@yahoo.com</a> mishri.18@gmail.</td>
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<td>Vihar, New Delhi-110053</td>
<td>com (M)-9968813550</td>
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<tr>
<td>31</td>
<td>Sr. Sumajose S.D.</td>
<td>Sisters of the Destitute, Jeevandhara Mariamnagar, Ghaziabad, U.P.</td>
<td><a href="mailto:sumajosesd@gmail.com">sumajosesd@gmail.com</a> (O)-0121-2870700</td>
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<td>(M)-9958304051</td>
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<td>32</td>
<td>Sr. Doris S.D.</td>
<td>Sisters of the Destitute, S.D. Convent, Jeevandhara Mariamnagar, Ghaziabad, U.P.</td>
<td><a href="mailto:srdorissd@yahoo.co.in">srdorissd@yahoo.co.in</a> (O)-0120-2871825</td>
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<td>(M)-09818956246</td>
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<td>33</td>
<td>Nagdu Pandey</td>
<td>U.P. Jails Association, Jila Karagar Devaria, U.P., Lucknow</td>
<td>(M)-9450537112</td>
</tr>
<tr>
<td>34</td>
<td>Rajendra Attl</td>
<td>Manavadhikar Parishad, Prikritikunj Sharanpur, U.P.</td>
<td><a href="mailto:shuklapk@hotmail.com">shuklapk@hotmail.com</a> (O)-252326</td>
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<td>(M)-9450920444</td>
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<tr>
<td>35</td>
<td>P.K. Shukla</td>
<td>Jail Department, Supdt. Jail, Lakhimpur, U.P.</td>
<td>(O)-079-27475815</td>
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<td></td>
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<td>(M)-9879095339</td>
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<tr>
<td>36</td>
<td>Asif M. Shaikh</td>
<td>HRLN, Gujar, Janhet, B/5,Sushil Nagar Society, Drive in Road, Ahmedabad, Gujar</td>
<td><a href="mailto:ciss@sify.com">ciss@sify.com</a> (M)-9638454172</td>
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<td>37</td>
<td>Shamshad Pathan</td>
<td>HRLN, Gujar, Janhet, B/5,Sushil Nagar Society, Drive in Road, Ahmedabad, Gujar</td>
<td>(O)-079-27475815</td>
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<td>-382480</td>
<td>(M)-9727166289</td>
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<tr>
<td>38</td>
<td>Sr. Fulmani L.D.</td>
<td>Prison Ministry India (GUJ), Gulabmala Convention Swastik Char Rasta, Navrangpura,</td>
<td>(O)-2065-2350286</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ahmedabad, Gujar-380009</td>
<td>(M)-09825706833</td>
</tr>
<tr>
<td>39</td>
<td>Jagdish Limbachia</td>
<td>Baroda Citizens Council, Co-operative House, N R Manisha Chowkapi, Old Padra Road,</td>
<td><a href="mailto:jforjagdish@yahoo.co.in">jforjagdish@yahoo.co.in</a> (O)-0674-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Vadodara, Gujar-390015</td>
<td>23100007 (M)- 9438532438</td>
</tr>
<tr>
<td>40</td>
<td>Rabi Narayan Mohantay</td>
<td>HRLN, Orissa, 403, B block, Rasmi Vihar Apartment, Cuttak Road, Bhubaneswar, Orissa</td>
<td><a href="mailto:tapan_rabi@yahoo.co.in">tapan_rabi@yahoo.co.in</a> (O)-0674-23</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>100007 (M)- 9438532438</td>
</tr>
<tr>
<td>41</td>
<td>Biswaranjan Behera</td>
<td>Society for Developmental Action (SODA), Vill. Indapahi, Post: Laxmiposi, Dist: Mayo-</td>
<td><a href="mailto:sodabpd@gmail.com">sodabpd@gmail.com</a> biswab@gmail.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>urbhani-757107</td>
<td>com (O)-06792-329211 (M)-9437136450</td>
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<th>No.</th>
<th>Name</th>
<th>Organization/Address</th>
<th>Contact Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>Jatinder Kumar Kambij</td>
<td>HRLN, Chandigarh; 2439, Sector-37, Chandigarh</td>
<td><a href="mailto:jatinder.K.kambuj2007@gmail.com">jatinder.K.kambuj2007@gmail.com</a>; (O)-0172-4603177 (M)-9463961870</td>
</tr>
<tr>
<td>43</td>
<td>Kishore Narayan</td>
<td>HRLN, Chhattisgarh; Mangal Bhavan, First Floor, Vyapar Vihar, bilaspur, Chhattisgarh</td>
<td><a href="mailto:kishorenarayan.advocate@gmail.com">kishorenarayan.advocate@gmail.com</a>; (O)-8085069661</td>
</tr>
<tr>
<td>44</td>
<td>Jatinder Kumar Kambij</td>
<td>HRLN, Chandigarh; 2439, Sector-37, Chandigarh</td>
<td><a href="mailto:jatinder.K.kambuj2007@gmail.com">jatinder.K.kambuj2007@gmail.com</a>; (O)-0172-4603177 (M)-9463961870</td>
</tr>
<tr>
<td>45</td>
<td>Kishore Narayan</td>
<td>HRLN, Chhattisgarh; Mangal Bhavan, First Floor, Vyapar Vihar, bilaspur, Chhattisgarh</td>
<td><a href="mailto:kishorenarayan.advocate@gmail.com">kishorenarayan.advocate@gmail.com</a>; (O)-8085069661</td>
</tr>
<tr>
<td>46</td>
<td>Felix Barros</td>
<td>Prison Ministry India (GOA); Caritas Goa, Institute Piedade, Panaji, Goa, 403601</td>
<td><a href="mailto:felixbarros1944@hotmail.com">felixbarros1944@hotmail.com</a>; (O)-0832-2701888 (M)9326121754</td>
</tr>
<tr>
<td>47</td>
<td>Revati Mujumdar</td>
<td>Goa Electronics limited; Patto Plaza, sharma Shakti Bhavan, Panaji, Goa, 403601</td>
<td><a href="mailto:revati@goaelectronics.co.in">revati@goaelectronics.co.in</a>; (O)-0832-2427220 (M)-9225905920</td>
</tr>
<tr>
<td>48</td>
<td>Ms. Aloka Mitra</td>
<td>Womans Interlink Foundation (WIF); 2A Ballygunj Place East Kolkata, West Bengal-700019</td>
<td><a href="mailto:wif@vsnl.com">wif@vsnl.com</a>, <a href="mailto:alokamitra25@gmail.com">alokamitra25@gmail.com</a>; (O)-24605508 (M)-9830019812</td>
</tr>
<tr>
<td>49</td>
<td>Brinda Mozumder</td>
<td>Vivek Chetana; 2/3, D Keyatala Road, Kolkata, West Bengal-700029</td>
<td><a href="mailto:brindamozumder@yahoo.com">brindamozumder@yahoo.com</a>; (O)-26426964 (M)-9818230284</td>
</tr>
<tr>
<td>50</td>
<td>Fr. N.T. Scaria</td>
<td>Don Bosco Prison Ministry; Boalia Danga Berhampore West Bengal</td>
<td><a href="mailto:scarial@bsnl.in">scarial@bsnl.in</a>; (O) 03482-255556 (M)-09434394141</td>
</tr>
<tr>
<td>51</td>
<td>Chanchal Mukhopadhayay</td>
<td>ABAYAB2005; FB-4, 412, Rajdanga Main Road, Kasba, Kolkata, West Bengal, 700107</td>
<td><a href="mailto:chanchalabayab@yahoo.com">chanchalabayab@yahoo.com</a>; (O)-033-40630056 (M)-9831745442</td>
</tr>
<tr>
<td>52</td>
<td>Pratik Tiwari</td>
<td>HRLN Mumbai; 4th Floor, 409, Prospect Chamber Fort, Mumbai, Maharashtra-400001</td>
<td><a href="mailto:Protektiwari05@gmail.com">Protektiwari05@gmail.com</a>; (O)-022024467 (M)-09373613270</td>
</tr>
<tr>
<td>53</td>
<td>Chetna Madhukar Birje</td>
<td>HRLN Mumbai; 4th Floor, 409, Prospect Chamber Fort, Mumbai, Maharashtra-400001</td>
<td><a href="mailto:Chetnaleol@gmail.com">Chetnaleol@gmail.com</a>; (O)-022024467 (M)-09820022614</td>
</tr>
<tr>
<td>54</td>
<td>Adv. Rama Sarode</td>
<td>Sahyog Trust; 302, Anil CHS Opp Kamala Nehru Park Off. Bhandarkar Road, Pune, Maharashtra-411004</td>
<td><a href="mailto:ramasarode@gmail.com">ramasarode@gmail.com</a>; (O)-020-25667555 (M)-9822532137</td>
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<td>55</td>
<td>Asim Sarode</td>
<td>Sahyog Trust; 302, Anil CHS Opp Kamala Nehru Park Off. Bhandarkar Road, Pune, Maharashtra-411004</td>
<td><a href="mailto:asimsarode@rediffmail.com">asimsarode@rediffmail.com</a>; (O)-020-25667555 (M)-9850821117</td>
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<td>Adv. Smika Singalkar</td>
<td>Sahyog Trust</td>
<td>D 3/3, Lad Apts Dharanampeth, N.A. Road, Nagpur, Maharashtra-400010</td>
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<td>57</td>
<td>Naresh Kolhe</td>
<td>HRLN Nagpur</td>
<td>51-B, Mata Mandir Road, Gokulpeth Nagpur, Maharashtra</td>
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<td>Dhananjay Ramkrishna Nand Patel</td>
<td>Sahara Aids Control Society</td>
<td>C/o Kamlesh Misalkar, Vidarbha Hsg Society Bajoria Nagar, Plot no-180, Yeotmal, Maharashtra-445001</td>
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<td>Adv. Roshni Wadone</td>
<td>Sahara Aids Control Society</td>
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<td>Prison Ministry India, Bombay Unit</td>
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<td>Varhad</td>
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<td>Yashoda Nagar no-1, Post Rukimini Nagar, Amravati, maharashtra-444606</td>
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<tr>
<td>67</td>
<td>Bimal Chandra Dey</td>
<td>Sahara Charitable Society</td>
<td>4/2, Assisi Nagar Govandi Mumbai, Maharashtra-400446</td>
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</tr>
<tr>
<td>68</td>
<td>Johnson J. Edayaramnula</td>
<td>ADIC India</td>
<td>National office TC 3/98, Pattom Post, Trivandrum, Kerala -695004</td>
</tr>
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<tr>
<td>69</td>
<td>Fr. Sebastian Theckanath</td>
<td>Jesus fraternity (Ministry for prisoners)</td>
<td>State Office p.o.c.Palarivattam Ernakulam, Cochin, Kerala-682025</td>
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<td>A.N. Meenakshree</td>
<td>Imayam Social Welfare Association</td>
<td>No-3, Anna Nagar, 1st Street, Ganapathy Coimbatore, Tamil Nadu-641006</td>
</tr>
<tr>
<td>71</td>
<td>A. Jesu Raja</td>
<td>Prison Ministry India, Tamil Nadu</td>
<td>Pastoral centre 25, Rosary Church Road Santhome Mylapore, Chennai, Tamil Nadu-600004</td>
</tr>
<tr>
<td>72</td>
<td>K. Baskar</td>
<td>Prison Ministry India, Tamil Nadu</td>
<td>Pastoral centre 25, Rosary Church Road Santhome Mylapore, Chennai, Tamil Nadu-600004</td>
</tr>
<tr>
<td>73</td>
<td>Fr. M. Vincent Xavier</td>
<td>Prison Ministry India, Tamil Nadu</td>
<td>Pastoral centre 25, Rosary Church Road Santhome Mylapore, Chennai, Tamil Nadu-600004</td>
</tr>
<tr>
<td>74</td>
<td>T. Alfred Kumar</td>
<td>Prison Ministry India, Tamil Nadu</td>
<td>Pastoral centre 25, Rosary Church Road Santhome Mylapore, Chennai, Tamil Nadu-600004</td>
</tr>
<tr>
<td>75</td>
<td>N.R. Parameswari</td>
<td>Shruti Akshay Trust</td>
<td>753, Asanoor, Sathamangalam Erude Distr. Tamil Nadu-641007</td>
</tr>
<tr>
<td>76</td>
<td>Mr. Arjunan</td>
<td>Bishop appasamy College of Arts &amp; Science</td>
<td>129, Race Course Road, Coimbatore, Tamil Nadu-641018</td>
</tr>
<tr>
<td>77</td>
<td>Sr. Margaret Daisy</td>
<td>Prison Ministry Tamil Nadu Unit</td>
<td>Bon Secours Convent St. Theresa School Campus, Pallawaram, Chennai, Tamil Nadu-600043</td>
</tr>
<tr>
<td>78</td>
<td>Beatrice Vanaja</td>
<td>New Life</td>
<td>No: 7, 3rd Cross, 5th Main Road, Srinivasanagar, Land Mark:Next to Bishop Heber College, Puthur, Trichirappalli Tamil Nadu-620017</td>
</tr>
<tr>
<td>79</td>
<td>Radha Kant Saxena</td>
<td>CHRI &amp; PUCR</td>
<td>P-27, Madhuvan West-Il, tank Road, Jaipur, Rajasthan-302015</td>
</tr>
<tr>
<td>80</td>
<td>Dr. Anupma Kaushik</td>
<td>Banasthali University</td>
<td>612, Ramkrishna Awas, Banasthali University, Banasthali, Rajasthan-304022</td>
</tr>
<tr>
<td></td>
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<td>Organization/Position</td>
<td>Address</td>
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<td>81</td>
<td>Shikha Anand</td>
<td>Banasthali University</td>
<td>612, Ramkrishna Awas, Banasthali University, Banasthali, Rajasthan-304022</td>
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<tr>
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<td>Sandeep Gupta</td>
<td>Legal Help Line Society</td>
<td>799, Barkat Nagar, Jaipur, Rajasthan</td>
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<td>83</td>
<td>Shashi Bhushan Gupta</td>
<td>Legal Help Line Society</td>
<td>799, Barkat Nagar, Jaipur, Rajasthan</td>
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<tr>
<td>84</td>
<td>Gaurav Kumbhkar</td>
<td>Sudhaar Social Work In Prison</td>
<td>HIG 4/11, MPSRTC Building Complex, Bhopal, Madhya Pradesh</td>
</tr>
<tr>
<td>86</td>
<td>Devendra Singh</td>
<td>HRLN Bhopal</td>
<td>E3/212, Arera Colony, Bhopal, Madhya Pradesh - 462021</td>
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<tr>
<td>87</td>
<td>Mohsin Ali Khan</td>
<td>HRLN Bhopal</td>
<td>E3/212, Arera Colony, Bhopal, Madhya Pradesh - 462021</td>
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<tr>
<td>88</td>
<td>Dr. K. Murali</td>
<td>Human Rights Forum</td>
<td>P-1, Rathnamdhi Towers, Snehapur Colony, Nacharam, Hyderabad, Andhra Pradesh -500076</td>
</tr>
<tr>
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<td>K.V. Reddy</td>
<td>Prisons</td>
<td>2-2-1146/7/9/A, New Nallakunta, Hyderabad, Andhra Pradesh – 500044</td>
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<td>Prison</td>
<td>Special Prison for Women, Rajamundry, Andhra Pradesh</td>
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<tr>
<td>91</td>
<td>Kavita Sharma</td>
<td>Pragati Prerna Samiti</td>
<td>Opp Shilla Temple Haridawar Road Mohkampur, P.o. Nawada Dehradun, uttrakhand- 248005</td>
</tr>
<tr>
<td>92</td>
<td>Susai Raj S.J.</td>
<td>Prison Ministry of India Patna</td>
<td>Provisional residence St. Xaviers Gandhi Maidan, west Marg Patna, Bihar- 800001</td>
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<tr>
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<td>Sr. Joel</td>
<td>Prison Ministry Holy Cross Organisation</td>
<td>Sevakendra Kurji Sadaquat Ashram P.O. Patna, Bihar – 800010</td>
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<td>Ashok Priyadarshi</td>
<td>Advocate</td>
<td>Amerag west Boring Canal Road (Near Icici Bank)</td>
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<td>95</td>
<td>Miriam Beringhmeier</td>
<td>HRLN Kolkata</td>
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<td>96</td>
<td>Prof. Arvind Tiwari</td>
<td>Tata Institute of Social Sciences</td>
<td>Deonar, Mumbai&lt;br&gt;<a href="mailto:Tiwari_a@tiss.edu">Tiwari_a@tiss.edu</a>&lt;br&gt;(O)-022-25565331&lt;br&gt;(M)-09833732592</td>
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<td>97</td>
<td>Manpreet Kaur</td>
<td></td>
<td>305, Ghuman Nagar, Sirhind road, Patiala, Punjab&lt;br&gt;<a href="mailto:appleman-preetkaur@yahoo.com">appleman-preetkaur@yahoo.com</a>&lt;br&gt;(M)-9814591062</td>
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<td>98</td>
<td>Bijaya Chanda</td>
<td>Masum</td>
<td>26, Guietendal Lane, Howrah, West Bengal-711101&lt;br&gt;<a href="mailto:contactbijaya@gmail.com">contactbijaya@gmail.com</a>&lt;br&gt;(O)-03326404520&lt;br&gt;(M)-09433335206</td>
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<td>99</td>
<td>Kirti Roy</td>
<td>Masum</td>
<td>26, Guietendal Lane, Howrah, West Bengal, 711101&lt;br&gt;<a href="mailto:masumindia@gmail.com">masumindia@gmail.com</a>&lt;br&gt;(O)-033-26404520&lt;br&gt;(M)-9903099699</td>
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<td>Alok Chakraborty</td>
<td>Masum</td>
<td>26, Guietendal Lane, Howrah, West Bengal, 711101&lt;br&gt;<a href="mailto:masumindia@gmail.com">masumindia@gmail.com</a>&lt;br&gt;(O)-26404118&lt;br&gt;(M)-9007201279</td>
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<td>101</td>
<td>Jagat Jyoti Roy Chowdhary</td>
<td>Masum</td>
<td>26, Guietendal Lane, Howrah&lt;br&gt;<a href="mailto:masumindia@gmail.com">masumindia@gmail.com</a>&lt;br&gt;(O)-03326404520&lt;br&gt;(M)-09831725141</td>
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<td>102</td>
<td>Bimalab Mukherjee</td>
<td>Masum</td>
<td>26, Guietendal Lane, Howrah&lt;br&gt;<a href="mailto:masumindia@gmail.com">masumindia@gmail.com</a>&lt;br&gt;(O)-09903099688</td>
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<td>103</td>
<td>Lakhbir Singh Brar (Dy Supdt. Jail)</td>
<td>Haryana Prisons</td>
<td>03-04 Bays Building Sector-14 Haryana&lt;br&gt;<a href="mailto:Lakhbir.haryana-prisons@gmail.com">Lakhbir.haryana-prisons@gmail.com</a>&lt;br&gt;(O)-0172 2585721&lt;br&gt;(M)-9814586716</td>
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<td>Pushkar Raj</td>
<td>PUCL</td>
<td>270, Patparganj, Mayur Vihar Delhi-91&lt;br&gt;<a href="mailto:raajpushkar@gmail.com">raajpushkar@gmail.com</a>&lt;br&gt;(M)-9810656100</td>
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<td>Kamlesh Jain</td>
<td>Adv., Delhi</td>
<td>25, Supreme Enclave, Mayur Vihar Phase- II Delhi-91&lt;br&gt;(M)-9810614544</td>
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<tr>
<td>106</td>
<td>Dr. Sarita Sarangi</td>
<td>Delhi Commission on Protection on Child Rights (DCPCR)</td>
<td>5th Floor ISBT Kashmiri Gate Delhi&lt;br&gt;<a href="mailto:saritasarangi@hotmail.com">saritasarangi@hotmail.com</a>&lt;br&gt;(O)-01124502648&lt;br&gt;(M)-9868268991</td>
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<td>107</td>
<td>Prof. Upneet Lalli</td>
<td>Institute of Correctional Administration</td>
<td>Hostel No. 3 Sector -26 Chandigarh&lt;br&gt;<a href="mailto:ulalli@hotmail.com">ulalli@hotmail.com</a>&lt;br&gt;(O)-0172-2790055/58</td>
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<td>108</td>
<td>Seema</td>
<td>Delhi Prisons</td>
<td>C-21, Tihar Jail Staff Quarter, New Delhi-64&lt;br&gt;011-25820001</td>
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<td>109</td>
<td>B.P. Pandey</td>
<td>Jail Department Uttarkhand</td>
<td>Supdt. Distt Jail Dehradun, Uttarkhand&lt;br&gt;<a href="mailto:bprakashsept59@gmail.com">bprakashsept59@gmail.com</a>&lt;br&gt;(O)-0135-2771488&lt;br&gt;(M)-9412054393</td>
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<td>B.K. Gupta</td>
<td>Delhi Prison</td>
<td>C-21, Tihar Jail Staff Quarter New Delhi-64&lt;br&gt;(O)-011-28520001</td>
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</table>
VIII. CONTACT LIST OF HRLN

ANDAMAN AND NICOBAR ISLAND
Adv. Bhuneshwuri Devi
AB# 31, Aberdeen Bazaar, Babu Lane,
Port Blair, South Andaman-744101
Tel: 03192-23075, 9434284803
E-mail: portblair@hrln.org

ANDHRA PRADESH
Adv. M.A. Shakeel
H.NO. 21-7-761, Opp: High court
post office, Ghansi Bazar, Hyderabad
Tel: 91-040-24573094, 9849729258
E-mail: hrlnap@yahoo.co.in

ARUNACHAL PRADESH
Adv. Sunil Mow
Quarter No -7, Type IV,
Raj Niwas Area, Itanagar
Tel: 9436050907, 9436040383
E-mail: arunachal@hrln.org

ASSAM
Adv. Debasmita Ghosh
Lamb Road, Ambari Guwahati–1
Tel: 03592-284351, 9864080358
E-mail: sikkim@hrln.org

BIHAR
Adv. Vikas Pankaj
B-25, Road No.–4, Magistrate colony,
Ashiyana Nagar, Patna-25
Tel: 0612-2580348
Email: hrlnbihar@gmail.com

CHHATTISGARH
Adv. Alban Toppo
Tel: 9977897237

DELHI
Adv. Anant Asthana
576, Masjid Road, Jangpura,
New Delhi-110 014
Tel: 91-11-24374501, 24376922
Fax: +91-11-24374502,
Combat Law +91-11-65908842
E-mail: contact@hrln.org

GOA
Adv. Carina Fernandes
H.No. 598, 2nd Floor, Plot C-9,
Road lane 6, La campala Colony,
Miramar, Panjim-403001
Tel: 0832-2464898
E-mail: margao@hrln.org

GUJARAT
Adv. Shamshad Pathan
B/5, Sushil Nagar Society, Nr. Octroi
Naka, Opp. Mahatma Gandhi Labour
Institute, Ahmedabad-380052
Tel: 079–27475815

HIMACHAL PRADESH
1) SHIMLA
Adv. Anand Sharma
Vimal Sadan, Near Cooperative Bank,
Shimla-171002
Tel: 91-0177-2624629
E-mail: shimla@hrln.org
2) DHARAMSHALA
Adv. Jitender Rana
C/o Laxmi Chand Sharma Village
Lower Barol, Post Office Dari, Tehsil
Dharamsila, District Kangra-176215
Tel: 01892-223417, 9418041894
E-mail: shimla@hrln.org

J & K
Adv. Syed Faisal Qadri
B.D.House, Kursoo, Rajbagh
Srinagar, Jammu and Kashmir
Tel: 09419018022
E-mail: srinagar@hrln.org

JHARKHAND
Adv. Yogendra Prasad
MIG-MF-64, Harmu Housing Colony,
Near Sahjanand Chowk, Harmu,
Ranchi, Jharkhand- 834012
Tel: 0651-2341740, 9431975792
E-mail: ranchi@hrln.org

KARNATAKA
Adv. Sheela Ramanathan
No.20, Park Road, Tasker Town
Shivaji Nagar Bangalore-560051
Tel: 080-65624757, 9845573153
E-mail: hrln_blr@hotmail.com

KERALA
1) KOCHI
Adv. Sandhya Raju
58/340, Manavalan Apartments,
Amulya Street, Kochi-18
Tel: 0484-2390680, 9847032397
E-mail: kochi@hrln.org

2) THIRUVANANTHAPURAM
Adv. Sandhya Siwakami
T.C. 25/2952, Old GPO
Building, Ambujailasom Road
Thiruvananthapuram-695001 Kerala
Tel: 0471-2460652, 94470 36686
E-mail: trivandrum@hrln.org

MADHYA PRADESH
Adv. Subhra Pachouri
E-3/212, Arera Colony, Bhopal-16
Tel: 0755-4202514, 9009106297
E-mail: bhopal@hrln.org

MAHARASHTRA
1) MUMBAI
Adv. Chetna Birje
409, Prospect Chambers,
D.N. Road, Fort, Mumbai-400001
Tel: 022-2202467/68
E-mail: admin.mumbai@hrln.org

2) NAGPUR
Adv. Achchelal Chauhan
51-B Mata Mandir Road,
Alliance Church Building,
Gokulpeth, Nagpur-440 010.
Tel: 0712 2543273
E-mail: hrlnnagpur@gmail.com

MANIPUR
Adv. Meihoubam Rakesh
KVIC Building, 2nd Floor, Opposite
Videocon HousePaona Bazar,
Imphal, Manipur–795001
Tel: 0385-2442165, 9436021438
E-mail: Manipur@hrln.org

NAGALAND
Doma Building,Walford Road,
Burma Camp, Dimapur-97112
Nagaland
E-mail: hrln.ngl@gmail.com

ORISSA
Adv. Shashi Prabha
403-B, Rashmi Vihar Apartment,
Cuttack Road, Budheswari Colony,
Bhubaneswar –751006, Orissa
Tel: 0674-2310007, 9437330808
E-mail: bhubaneswar@hrln.org
PUNJAB, HARYANA, CHANDIGARH
Adv. Veena Sharma
2439 Sector; 37-C Chandigarh, Punjab
Tel: 0172-460317
E-mail: chandigarh@hrln.org

SIKKIM
Adv. Doma Bhutia
2nd floor, Above Mahesh SaloonSatey Bazaar, Upper Sichey Area, Gangtok-737101
Tel: 03592-284351, 94343 82200
E-mail: sikkim@hrln.org

TAMIL NADU
Adv. K. Topaz
319/155, 2nd Floor Linghi Chetty Street, Georgetown, Parry’s
Chennai-600001
Tel: 044-42061867, 9841996106
E-mail: chennai@hrln.org

UTTARAKHAND
Adv. P.C. Tewari
Ishwari Bhawan Ranidhara Road
West Pokharkhali, Almora-263601
Tel: 9412092159
E-mail: almora@hrln.org

UTTAR PRADESH
Adv. K.K. Roy
105, Ashok Nagar,
Allahabad-211 001
Tel: 0532-2623983, 2421893
E-mail: allahabad@hrln.org

WEST BENGAL
Tel: Debashish Banerjee
3, Parbati Chakraborty lane,Flat-1A,
Kolkata-700026
Tel:91-33-24546828, 32967154
E-mail: kolkata@hrln.org