

**No.V-17014/5/2010-PR
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
(CS DIVISION)**

North Block, New Delhi, 13th August, 2010.

To

**The Chief Secretary,
The Principal Secretary (Prisons)/ Principal Secretary (Home-in charge of Prisons),
All State Governments and UT Administrations.**

Subject: Advisory on the policy for the treatment of terminally ill prisoners/inmates (TIPs) - regarding

Sir/Madam,

The Hon'ble High Court of Delhi, taking suo motu cognizance to deal with the issue of terminally sick inmates in the prisons all over India in Writ Petition (Crl) no. 201/2009 (Court on its own motion v/s State NCT of Delhi), has given directions to the Union of India to formulate a concrete policy towards the treatment of terminally ill prisoners languishing in prisons. "Terminal illness" is a medical term to describe an active and progressive illness that cannot be cured or adequately treated and that is reasonably expected to result in the death of the patient. It is also described as a malignant disease for which there is no cure and the prognosis is fatal. As defined by the American Cancer Society, "Terminal illness" is an irreversible illness that, without life-sustaining procedures, will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely. Some examples, among others, of terminal illnesses may include advanced cancer, advanced heart disease, full blown AIDS etc.

2. 'Prisons' is a State subject under Entry-4 (Prison Reformatories, Borstal Institutions and other institutions of like nature) in the State List (List-II) of the Seventh Schedule to the Constitution of India. Therefore, the management and administration of prisons falls in the domain of the State Governments and UT Administrations. Prisons are governed by, inter alia, the Prisons Act, 1894 and Prison Rules, as adopted/ amended by the respective State Governments and UT Administrations from time to time and the Prison Manuals framed by them. It is, therefore, for the State Government/UT Administration concerned to devise appropriate policies and procedures to identify and deal with the special needs of their terminally ill prisoners (TIPs) in a manner that respects their human rights, ensures their dignity as well as takes into account the needs of security and safety of the community. Such policies and procedures should, however, address the special medical care needs/requirements of TIPs, the formulation of clear criterion for their release, parole, furlough etc. on compassionate grounds and facilitate interaction with their families and friends.

3. The Government of India is deeply concerned about the terminally ill prisoners in all the States/ UTs of the country and would, therefore, advise the State Governments and UT Administrations to take the following steps for effective management of terminally ill prisoners within their jurisdiction:-

- I. As a first step, identify all the terminally ill prisoners/inmates (TIPs) in all the prisons of the State/UT. For this purpose a special District level Medical Board and State level

Medical Board with suitable medical experts may be constituted within 30 days. All cases of terminal illness of prisoners/inmates may be examined, identified and certified by the District level Medical Board within the next 60 days subject to any guidelines prescribed by the Medical Council of India (MCI), Ministry of Health and family Welfare and The Health and Family Welfare Department of the State/UT concerned regarding terminal illness and confirmed by the State level Medical Board within say 15 days thereafter.

- II. All patients with terminal illness have special medical needs relating to their disease. Such patients also need special psychological counseling and spiritual support since they face the prospect and trauma of impending death. Such needs are further intensified in the isolated environment of a prison, where the medical and psychological care could be often lacking for TIPs. All such special medical needs of each TIP must also be identified in consultation with the District /State Medical Board. State Governments and UT Administrations are responsible for making available/providing reasonable medical care facilities/aid to the TIPs on a need basis, either in the prison or through a specialty/ super-specialty Government hospital or in the nearest Multi-Specialty Medical Centre, as would be available to a free person outside the prison. All TIPs should be, as far as possible, shifted to a prison in a place where maximum/ best medical care facilities could be made available to them.
- III. TIPs also have special needs in terms of adequate and timely legal representation at various stages of their judicial custody, trial in the Courts and conviction. Many TIPs, especially those in an advanced stage of terminal illness, may have been abandoned by their families or may have family links disrupted due to long sentence or age. Such prisoners must be given access to legal counsel, including free legal aid services, if indigent, during the entire process of criminal justice. Such access to free legal services is vital for defendants with terminal illness, particularly with regard to their rights for non-custodial sanctions and measures such as bail, suspended sentences on compassionate grounds or their right to the requisite medical care in prisons.
- IV. For the purpose of legal recourse, the TIPs may be categorised as persons in judicial custody, under trials and convicts. Taking into account the limited medical care facilities which could be made available in prisons, and also in view of the special needs of TIPs, State Governments and UT Administrations must resort to all possible legal measures to enable TIPs to live the remaining part of their lives with dignity, in peace and in the close vicinity of their family members and close friends. Some of the indicative measures are as follows:
 - a. For all TIPs who are in judicial custody the investigating police officer/ officer in-charge of the case should be advised to make all efforts to complete the investigation of the cases, as far as possible, before the prescribed limit of 90 days.
 - b. The Jail Superintendent/ investigating police officer/ officer in-charge of the case must bring to the notice of the Hon'ble Trial Court the medical condition of the TIP concerned during the process of trial for taking a sympathetic view while considering their requests for bail and expeditious disposal of the case etc so that the Hon'ble Court may pass appropriate orders as deemed fit.
 - c. Cases of such TIPs should also be submitted before the inspecting Judges of District Courts or during visit of judges of Hon'ble Supreme Court/ High Courts so that the Hon'ble Judges may take a view and may consider such cases for a Judicial Review as deemed fit.

- d. Provisions for non-custodial measures and alternatives to imprisonment could also be pleaded before the Court for TIPs in case they do not pose any risk to the society. Alternatively, such TIPs could be shifted to the open jails as far as possible under a court order.
 - e. To enable TIPs to receive the support of family and friends during the extremely distressing period prior to death, the State Governments and UT Administrations may consider amendments in their Prison Acts/Rules/ Manuals to make special provisions on compassionate grounds for more frequent visits by their family members and friends, their release on parole or other similar provisions for the remaining period of the sentence.
 - f. The State Governments/UT Administrations may also consider release of such prisoners as a part of general amnesty. Provision of special leave may be made applicable to TIPs, as is prescribed in Prison Manuals of the respective States.
 - g. The TIPs and their families should be made aware of the special powers of the President and Governor under Article 72 and 161 of the Constitution of India, respectively, to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State, and in certain cases of the Union, extends and all necessary help must be rendered to enable such TIPs to submit a petition to the President or the Governor, as the case may be.
 - h. Cooperation of community health care services, NGOs and civil society must also be sought and facilitated to ensure proper care of TIPs in the prison and continuity of care following their release from the prison.
 - i. The correctional needs of such prisoners are also different as it is not the social reintegration which is relevant, but there is a need for psycho-spiritual support and adequate human contact to help them maintain their mental balance. TIPs should, therefore, be placed as close to their homes as possible to enable regular visits from their family members and friends.
- V. Foreigner TIPs should be identified separately under each of the categories of judicial custody, undertrials and convicts so as to deal with their cases in a focused and expeditious manner as indicated below:
- a. While all facilities available to Indian TIPs would also be available to Foreigner TIPs, the State Governments and UT Administrations must immediately take up the cases of the convicted foreign TIPs with the Government of India for repatriation to their respective countries as per the provisions of the Repatriation of Prisoners Act 2003 and Repatriation of Prisoners Rule, 2004. Under the Repatriation of Prisoners Act, 2003, bilateral agreements have been signed by Government of India with a number of countries for the repatriation of sentenced persons from India to that country or vice versa and efforts are being made to sign similar agreements with other countries.
 - b. Even if no bilateral agreement exists with a foreign country, the repatriation of a convicted foreign TIP must be taken up immediately by the State Government/ UT Administration concerned through the Ministry of Home Affairs and Ministry of External Affairs, Government of India through diplomatic channels on humanitarian grounds.

- c. The cases of foreign TIPs, who are under judicial custody/ undertrials, should also be taken up with the respective trial Courts on priority on the lines suggested for the similarly placed Indian TIPs. Their cases should be submitted expeditiously to the Hon'ble Courts for Judicial Review and the Hon'ble Courts may like to dispose of such cases as deemed fit.
- VI. The State Governments/UT Administrations are, therefore, advised to amend legislation/ rules and make policies and procedures to provide for community sanctions and measures for TIPs, at all stages of the criminal justice process, to enable them to receive the medical care they need and to die in dignity, surrounded by their family members and friends rather than in the desolate environment of prisons. Such amendment in legislation/ rules/ policies/ procedures should, as a minimum, include clear criteria and procedures relating to:
- a. Identification and certification of TIPs by a competent authority;
 - b. Segregation of such terminally ill prisoners/inmates (TIPs), and assessment of their special medical, psychological, legal and social needs and
 - c. Making reasonable and adequate provisions for such special needs, including special health care facilities within the legal, administrative and financial constraints of the State;
 - d. Transfer of TIPs to prisons with better medical care facilities, Government/ civilian hospitals, open jails etc. on need basis;
 - e. Free legal assistance to TIPs in judicial custody/ undertrials;
 - f. Facilitating/ enabling cooperation of community health care services, NGOs and civil society to ensure proper care in the prisons and continuity of care following release of TIPs.
9. All the State Governments/UT Administrations are requested to take effective measures in this regard. The aforesaid measures are only indicative and the State Governments/UT Administrations may take any additional measures for the terminally ill prisoners/inmates. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to the other State Governments and UT Administrations for consideration/ adoption.
10. The receipt of this letter may kindly be acknowledged.

Yours faithfully,

(Dr. Nirmaljeet Singh Kalsi)
Joint Secretary to the Govt. of India,
New Delhi-110001
Tele No. 23092630