

No.V-17013/4/98-GPA-IV  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA

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Dated the 21<sup>st</sup> September, 1998

To

The Secretary,  
Home Department,  
All States/UTs.

Subject : Strengthening of Security arrangements in Jails.

Sir,

As you are aware the Central Govt. has from time to time, been interacting with the State Govts. through advisories, conferences and personal discussions, etc., on various aspects of functioning of prison related administration including appropriate security measures in prisons. Information made available to the Ministry during the recent past indicates a certain laxity in the prison security arrangements. Specific instances have come to the notice of this Ministry about prohibited items like weapons, explosives, narcotics and Cellular Phones having been recovered in various Jails of the country, where the militants, extremists and underworld elements have been lodged. In some cases the detainees are also reportedly meeting their associates inside the jails. Further it has come to the notice of this Ministry that journalists of all shades are allowed to interview criminals in jails and in the process glamorize crime and criminals.

2. Needless to say entry of these prohibited items into the jails and the visiting of unauthorized persons in the jail is a matter of grave concern as it facilitates interaction between extremists/ militants/ underworld detainees and their associates. These instances suggest not only negligence on the part of Prison administration, but even smacks of connivance on the part of some jail staff. You may also be aware that the issues relating to smuggling of narcotics, Cellular Phones, explosives and weapons etc. in prisons have been raised in Parliament, Press and other media reports. You would, therefore, agree that the use and availability of such things to prisoners is a matter of serious concern and needs to be kept under constant check by the State Governments.

3. While the Ministry is aware that the State Governments are equally concerned with the issue of use of Mobile Phones, drugs in the jails as well as the availability of explosives/weapons to militants/extremists/underworld detainees etc., and, therefore, should consider immediate gearing up of security and also consider evolving a regular mechanism which may include the following procedure:

(i) Relatives and friends visiting inmates of jail and bringing food and other articles for them are frisked carefully outside and mulaqat/visitors' room ;

(ii) If the food and other items are allowed in jails they should be allowed only in transparent packs. Subsequent surprise checks be also carried out in the jail premises;

(iii) Regular checks may be conducted of all inmates after their return from courts/hospitals;

(iv) Surprise checks of staff members including guards going outside the jail on duty may be conducted by the Duty Officers/Night duty officers and the Superintendents/Dy. Superintendents at odd hours;

(v) Senior officers should be instructed to make a round at least once a week of the jail during night to avoid/detect any untoward incident;

(vi) The entry of staff who are found to be involved in the drug supply, mobile phones etc. to the jail inmates should strictly be banned in the jail premises even after the concerned officers are transferred/suspend or departmental action is being taken;

(vii) Visits of Press/Media persons in jails to meet/interview criminals may be restrained tactfully.

5. The aforesaid measures are only indicative in nature and it would be appreciated if the State Governments could let us know any special measure/mechanism has been introduced in their States so that the same can be circulated to other States for adoption.

Yours faithfully,

Sd/-

(V.K.Malhotra)

Joint Secretary to the Govt. of India

No.V-17013/9/2006-PR  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA  
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Dated the 15<sup>th</sup> May, 2006

To

The Principal Secretary/Secretary Home (in-charge of Prisons,  
All States and Union Territories.

Subject : Facilities to the children of women prisoners – Guidelines issued by  
the Supreme Court – regarding.

Sir/Madam,

I am directed to draw kind attention to the judgment of the Supreme Court dated 13<sup>th</sup> April, 2006 in the case of R.D. Upadhyaya vs State of Andhra Pradesh & Ors (Civil Writ Petition No. 559 of 1994) wherein the Hon'ble Supreme Court has issued guidelines for providing various facilities to the children of women prisoners. A copy of the said judgment of the Supreme Court along with the guidelines issues is enclosed for ready reference. The Supreme Court has given four months time for filing a compliance report stating steps taken in the matter, whereafter the matter shall be listed for directions.

You are requested to take urgent suitable action for implementing the orders of the Supreme Court in your State/UTs. A copy of action taken report filed in the Supreme Court may be immediately made available to this Ministry for information.

Yours faithfully,

Encl: As above.

Sd/-  
(Rita Acharya)  
Deputy Secretary to the Govt. of India  
Tel No. 2309 2933

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
WRIT PETITION (C) NO. 559 OF 1994**

**R.D. Upadhyay**

**.....PETITIONER**

**VERSUS**

**State of A.P. & Ors.**

**.....RESPONDENT**

**[With WP (C)No.133/02, SLP (C) Nos.14303-14305/98, CA No.2468/98, SLP (C) No.\_\_\_\_\_/98 (CC-5347/98) CrI.A.No.69/2000 and WP (C) No.84/98]**

**JUDGEMENT**

**Y.K. Sabharwal, CJI**

Concerned by the plight of the undertrial prisoners languishing in various jails in the country, various directions were issued by this Court from time to time. Presently, we are considering mainly the issue of directions for the development of children who are in jail with their mothers, who are in jail either as undertrial prisoners or convicts. Children, for none of their fault, but per force, have to stay in jail with their mothers. In some cases, it may be because of the tender age of the child, while in other cases, it may be because there is no one at home to look after them or to take care of them in absence of the mother. The jail environment are certainly not congenial for development of the children.

For the care, welfare and development of the children, special and specific provisions have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts which are also significant. The best interest of the child has been regarded as a primary consideration in our Constitution. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. The other provisions of Part III that may be noted are Articles 14, 21 and 23. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 23 prohibits trafficking in human beings and forced labour. We may also note some

provisions of Part IV of the Constitution. Article 39(e) directs the State to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief. Article 45 stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Apart from the aforesaid constitutional provisions, there are wide range of existing laws on the issues concerning children, such as, the Guardians and Wards Act, 1890, Child Marriage Restraint Act, 1929, the Factories Act, 1948, Hindu Adoptions and Maintenance Act, 1956, Probation of Offenders Act, 1958, Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, the Child Labour (Prohibition and Regulation) Act, 1986, Juvenile Justice (Care and Protection of Children) Act, 2000, the Infant Milk Substitutes, Feeding Bottles and Infant Foods, (Regulation of Production, Supply and Distribution) Act, 1992, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Immoral Traffic (Prevention) Act, 1986.

The Juvenile Justice Act, 2000 replaced the Juvenile Justice Act, 1986 to comply with the provisions of the Convention on the rights of the child which has been acceded to by India in 1992.

In addition to above, the national policy for children was adopted on 22nd August, 1974. This policy, inter alia, lays down that State shall provide adequate services for children both before and after birth, and during the growing stages for their full physical, mental and social development. The measures suggested include amongst others a comprehensive health programme, supplementary nutrition for mothers and children, promotion of physical education and recreational activities, special consideration for children of weaker sections and prevention of exploitation of children.

India acceded to the UN Convention on the rights of the child in December 1992 to reiterate its commitment to the cause of the children. The objective of the Convention is to give every child the right to survival and

development in a healthy and congenial environment.

The UN General Assembly Special Session on children held in New York in May 2002 was attended by an Indian delegation led by Minister of Human Resource Development and consisted of Parliamentarians, NGOs and officials. It was a follow up to the world summit held in 1990. The summit adopted the declaration on the survival, protection and development of children and endorsed a plan of action for its implementation.

The Government of India is implementing various schemes and programmes for the benefit of the children. Further, a National Charter for children 2003 has been adopted to reiterate the commitment of the Government to the cause of the children in order to see that no child remains hungry, illiterate or sick. By the said Charter, the Government has affirmed that the best interests of children must be protected through combined action of the State, civil society and families and their obligation in fulfilling children's basic needs. National Charter has been announced with a view to securing for every child inherent right to enjoy happy childhood, to address the root causes that negate the health, growth and development of children and to awake the conscience of the community in the wider societal context to protect children from all forms of abuse, by strengthening the society and the nation. The National Charter provides for survival, life and liberty of all children, promoting high standards of health and nutrition, assailing basic needs and security, play and leisure, early childhood care for survival, growth and development, protection from economic exploitation and all forms of abuse, protection of children in distress for the welfare and providing opportunity for all round development of their personality including expression of creativity etc.

The National Institute of Criminology and Forensic Sciences conducted a research study of children of women prisoners in Indian jails. The salient features of the study brought to the notice of all Governments in February 2002, are:

- (i) The general impression gathered was the most of these children were living in really difficult conditions and suffering from diverse deprivations relating to food, healthcare, accommodation, education, recreation, etc.
- (ii) No appropriate programmes were found to be in place in any jail, for their proper bio-psycho-social development. Their looking after was mostly left to their mothers. No trained staff was found in any jail to take care of these children.
- (iii) It was observed that in many jails, women inmates with children were not given any special or extra meals. In some cases, occasionally, some extra food, mostly in the form of a glass of milk, was available to children. In some jails, separate food was being provided only to grown up children, over the age of five years. But the quality of food would be same as supplied to

adult prisoners.

- (iv) No special consideration was reported to be given to child bearing women inmates, in matters of food or other facilities. The same food and the same facilities were given to all women inmates, irrespective of the fact whether their children were also living with them or not.
- (v) No separate or specialised medical facilities for children were available in jails.
- (vi) Barring a few, most mother prisoners considered that their stay in jails would have a negative impact on the physical as well as mental development of their children.
- (vii) Crowded environment, lack of appropriate food, shelter and above all, deprivation of affection of other members of the family, particularly the father was generally perceived by the mothers as big stumbling blocks for the proper development of their children in the formative years of life.
- (viii) Mother prisoners identified six areas where urgent improvement was necessary for proper upkeep of their children. They related to food, medical facilities, accommodation, education, recreation and separation of their children from habitual offenders.
- (ix) No prison officer was deployed on the exclusive duty of looking after these children or their mothers. They had to perform this duty alongside many other duties including administrative work, discipline maintenance, security-related jobs etc. None of them was reported to have undergone any special training in looking after the children in jails. Some of the important suggestions emanating from the study are :
  - (i) In many States, small children were living in sub-jails which were not at all equipped to keep children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper bio-psycho-social growth of children.
  - (ii) Before sending a woman in stage of pregnancy, to a jail, the concerned authorities must ensure that particular jail has got the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both to the mother and the child.
  - (iii) The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crime

including violent crimes, is certainly harmful for such children in their personality development. Children are, therefore, required to be separated from such an environment on priority basis, in all such jails.

- (iv) A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children to them on regular basis.
- (v) Children of women prisoner should be provided with clothes, bed sheets, etc. in multiple sets. Separate utensils of suitable size and material should also be provided to each mother-prisoner for giving food to her child.
- (vi) Medical care for every child living in a jail has to be fully ensured. Also, in the event of a women prisoner falling ill herself, alternative arrangements for looking after the child should be made by the jail staff.
- (vii) Adequate arrangements should be available in all jails to impart education, both formal and informal, to every child of the women inmates. Diversified recreational programmes/facilities should also be made available to the children of different age groups.
- (viii) A child living in a jail along with her incarcerated mother is not desirable at all. In fact, this should be as only the last resort when all other possibilities of keeping the child under safe custody elsewhere have been tried and have failed. In any case, it should be a continuous endeavour of all the sectors of the criminal justice system that the least number of children are following their mothers to live in jails. The State Governments and Union Territories were requested to consider the aforesaid suggestions for implementation. By filing IA Nos.1 and 7, the attention of this Court has been drawn to the plight of little children on account of the arrest of their mothers for certain criminal offences. I.A. No. 1 was filed by Women's Action Research and Legal Action for Women (WARLAW), through its program coordinator, Ms. Babita Verma stating that more than 70% of the women prisoners are married and have children. At the time of arrest of the women prisoners having children, indiscriminate arrest is not confined only to women/mother prisoners but such arrest is automatically extended to these children who are of tender age and there is no one to look after the child and take care of the child without their mother. Such children are perforce subjected to a kind of arrest for no offence committed by them. Further, the atmosphere in jail is not congenial for a healthy upbringing of such children. There are two non-Governmental

organizations (NGO's), namely Mahila Pratiraksha Mandal and Navjyothi who are counsellors. Adjoining the jail premises at Delhi there is Nari Niketan which is a women's reform home. Some of the children who are detained in jail are sent to Kirti Nagar Children's home for their studies.

The arrangement pertaining to the education and looking after of these children is not adequate. To the best of the information of the applicant, there is no specific provision or regulation in Jail Manual for facilitating the mother prisoners to meet the children. It is for the family protection of these women prisoners including their minor children that the trial period of undertrials shall be minimised and a period of two years shall be fixed. It was suggested that arrest of women suspects be made only by lady police. Such arrests should be sparingly made as it adversely affects innocent children who are taken into custody with their mother. To avoid arrest of innocent children the care and custody of such children may be handed over to voluntary organizations which can assist in the growth of children in a congenial and healthy atmosphere. Periodic meeting rights should be available to the women/mother prisoners in order to mother the healthy upkeep of the children. A letter dated 8th March, 2000 written by a 6 years old girl child, studying in upper KG in a school at Bangalore, to Chief Justice of India enclosing an article 'Dogged by Death in Jail' in a women's magazine dated 20th January, 2000 narrating plight of children in jail with their mothers, was registered as IA No.7. The article, inter alia, notes that the fate of the women undertrials is more pitiable because some of them live with their tiny tots whether born at home or inside the jail and that a visitor to jail is sure to see a series of moving scenes. The order dated 20th March, 2001 notes that the learned Solicitor General shares the concern of the Court regarding the plight of the children in jail and the submission that with a view to frame some guidelines and issue instructions, it would be necessary to first ascertain the number of female prisoners in each of the jails, in each of the States/union Territories, the offences for which they have been arrested; the duration of their detention and whether children with any of those female prisoners are also lodged in jail. The Court directed the States and Union Territories to disclose on affidavit the following :

- (i) The number of female prisoners (undertrial) together with the nature of offence for which they have been detained;
- (ii) Period of their detention;
- (iii) Children, if any, who are with the mothers lodged in the jail;
- (iv) Number of convicted female prisoners and whether any children are also lodged with such convicts in the jails;
- (v) Whether any facilities are available in the jail concerned for taking care of such children and, if so, the type of facilities."

Various State Governments and Union Territories submitted reports which provided detailed answers to the aforesaid questions. The following is a brief conspectus of the reports filed:

In the Andaman & Nicobar Islands, children are allowed to live with their

mothers up to the age of 5 years. A special diet is prescribed for children by the Medical Officer including proper vitamins and minerals. As far as the future of the children is concerned, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Andhra Pradesh, milk is provided to the children every day with a protein diet for elder kids. Special medical facilities are available as prescribed by the Medical Officer. Vaccines like Polio etc are provided at regular intervals. Education is also provided.

In Assam, children are allowed to live with their mothers up to the age of 6 years. Literary training is provided to small children who are lodged with their prisoner mothers. Lady teachers are also present. Instructions have been issued to provide sufficient study material to the children, as also adequate playing material. As for their future, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Bihar, children are allowed to live with their mothers up to the age of 2 years and up to 5 years in special cases where there is no other caretaker for child. Provision is made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of one year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months, and from 18-24 months or as specified by the Medical Officer. Health and clothing facilities are provided by the Government. Toys and other forms of entertainment are also available in some jails.

In Chandigarh, a special diet is provided for. Medical facilities are also present.

In Chhattisgarh, children are allowed to live with their mothers up to the age of 6 years. Normal food and additional milk is provided. Polio drops are provided on pulse polio day. Medical treatment is done by full time and part time doctors present in the jail. Children are sent outside for expert medical treatment and advice if required. NGO's have provided for clothes. Inside the jail, a child education centre is being run so that they develop interest in education and may learn to read and write. TV and fans for the female prisoners and their kids have been provided by some social service organizations, as also sports and recreation material, swings and cycles. Children are taken to public parks and for public functions to get acquainted with the outside world. After the age of six, these children are sent to the local 'children's home', where their primary education starts. Female children are sent to the Rajkumari Children's Home at Jabalpur where there is adequate arrangement of education

In Delhi, children are allowed to live with their mothers up to the age of 6 years. A special diet inclusive of 750 gm milk and one egg each is provided to children in jail. Proper diets and vaccine for popular diseases are

adequately provided for the children. Clothing is also provided for. Children above 4 years are taught to read and write. They are prepared for admission to outside schools. Sponsorships for the funding of the children education is provided for by the CASP (Community Aid Sponsorship Programme). Two NGO's by the name of Mahila Pratikraksha mandal and Navjyoti Delhi Police Foundation run crèches. Picnics are arranged by NGO's to take them to the Zoo and parks and museums to make them familiar with the outside world. Admission of the children above 5 years of age to Government cottage homes and to residential schools is facilitated through NGO's.

In Goa, the report states that dietary facilities for children are provided by the Government. The Medical Officer of the primary Health Centre, Candolim visits prisoners and children twice a week. If required, they are sent for better treatment to Government Hospitals.

In Gujarat, a special diet and special medical facilities as prescribed by the Medical Officer are available for children. Cradle facilities are provided for infants.

In Haryana, a standard diet of rice, flour, milk and dal is provided with a special diet provided on the advice of Medical Officer. Health issues are looked after as per the advice of Medical Officer. Regular literacy classes are taken by two lady teachers on deputation from the State Education Dept. at Borstal Jail, Hissar. Books and toys are provided.

In Himachal Pradesh, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. Children under the age of 1 year are provided with milk, sugar and salt. Provision is also made for ration for children from 12-18 months and from 18-24 months. Extras may be ordered by the Medical Officer. Female prisoners and their children are in a separate ward, with its own toilets. This ensures that there is no mixing between the children and the male prisoners.

In Jammu & Kashmir, a special diet is available, as prescribed by the Medical Officer. Supplements are also provided to breast feeding mothers. In Jharkhand, children are allowed to live with their mothers up to the age of 5 years. Provisions are made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of 1 year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. Health and clothing are taken care of by the Jail superintendent. Toys and items of entertainment have been provided in some jails.

In Karnataka, children are allowed to live with their mothers up to the age of 6 years. Education is looked after for by various NGO's. When the children are to leave the jail, they are handed over to the relatives or to some trustworthy person, Agency or school.

In Kerala, a special diet and medical facilities are made available as

prescribed by the Medical Officer. Special clothing can also be so prescribed.

In Lakshadweep, it was reported that there is no undertrial prisoner lodged in jail along with her child and, therefore, need for making arrangements for children along with mothers is not felt necessary.

In Madhya Pradesh, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. There is provision for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of 1 year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. For children who are leaving the jail, in consultation with the District Magistrate the children are handed over to the relatives or to some trustworthy person as selected by the District Magistrate himself.

In Maharashtra, children are allowed to live with their mothers up to the age of 4 years. They are to be weaned away from their mothers between the ages of 3 to 4 years. A special diet is prescribed under the Maharashtra Prison Rules. Changes can be recommended by the Medical Officer. Specific amounts of jail-made carbolic soap and coconut oil are to be provided for by the authorities. Garments are to be provided as per the Maharashtra Prisons Rules. Two coloured cotton frocks, undergarments and chaddies per child have been prescribed per year. A nursery school is conducted by 'Sathi', an NGO in the female jail on a regular basis. Primary education is provided for by 'Prayas', a voluntary organization in Mumbai Central Prisons. A small nursery with cradles and other reasonable equipments is provided in each women's ward. Toys are also provided for by the authorities. On leaving the jail, children are handed over to the nearest relative, in whose absence to the officer-in-charge of the nearest Government remand home, or institution set up for the care of the destitute children under the Bombay Children Act, 1948.

In Manipur, provision is made for special ration above and beyond the normal labouring ration for nursing mother and for supplementary cow's milk for children under the age of one year not receiving sufficient milk from the mother. Provision is also made for ration for children from 12-18 months and from 18-24 months. The Superintendent is entrusted with the responsibility of providing clothing for children who are allowed to reside with their mothers.

In Meghalaya, children are allowed to live with their mothers up to the age of 6 years. All aspects of the children's welfare are taken care of according to the Rules under the State Jail Manual.

In Mizoram, children are allowed to live with their mothers up to the age of 6 years. A special diet is prescribed under the Rules of the Jail Manual. However, no proper facilities for education or recreation exist.

In Nagaland, the provisions of the Assam Jail Manual have been adopted vis-a-vis facilities for women and for children living with their mothers.

In Orissa, children are allowed to live with their mothers up to the age of 4 years or in special cases up to 6 years by the approval of the Superintendent. A special diet is available, as prescribed by the Medical Officer. Children are provided with suitable clothing. On leaving the jail, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Pondicherry, a special diet is available as prescribed by the Medical Officer. Play things, toys etc. are provided to the children at Government cost or through NGOs.

In Punjab, children under the age of one year are provided with milk and sugar. Provision is also made for ration for children from 12-18 months and from 18-24 months. Extra diet is available on the advice of the Medical Officer. There is a play way nursery and one aaya or attendant who looks after the children from time to time.

In Rajasthan, a special diet is available under the rules of the Jail Manual. Special medical facilities are also provided for as prescribed in the manual. Clothing and toys are provided for by NGOs.

In Tamil Nadu, children are allowed to live with their mothers up to the age of 6 years. A special diet and special clothing are available as prescribed by the Medical Officer. Children under 3 years of age are treated in the crèche and those upto the age of 6 years are treated in the nursery. Oil, soap and hot water are available for children. On leaving the jail, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Tripura, the diet of children is as per the instructions of the Medical Officer. Medical care and nursing facilities are available. Mothers accompanied by children are kept separately.

In Uttar Pradesh, children are allowed to live with their mothers up to the age of 6 years. A special diet is available under the Rules of the Jail Manual. On leaving prison, in consultation with the District Magistrate, the children are handed over to the relatives or to some trustworthy person, as selected by the District Magistrate himself.

In Uttaranchal, food is provided as under the Rules of the Jail manual. Education provided for by the Government, which also makes arrangement for extra-curricular activities such as sports.

In West Bengal, normal facilities are available and in addition to that Inner Wheel club also runs a Homeopathic clinic for children. A non-formal school is run by an NGO for rendering elementary education to the children.

From the various affidavits submitted, it seems that there were 6496 undertrial women with 1053 children and 1873 convicted women with 206

children.

On 23rd January, 2002, it was noted that three matters were required to be dealt with by the Court: (1) Creation of sufficient number of subordinate courts as well as providing adequate infrastructure and filling up of the existing vacancies; (2) necessary direction with regard to dealing with the children of women undertrial prisoners/women convicts inside jail; and (3) arrangement required to be made for mentally unsound people who are either undertrial prisoners or have been convicted. It was then directed that the question of dealing with the children of women undertrial prisoners and women convicts be taken up first. That is how we have taken up this issue for consideration, perused various reports, heard Mr. Ranjit Kumar, Senior Counsel, who assisted this Court as Amicus Curiae, Mr. Sanjay Parikh and other learned counsel appearing for Union of India and State Governments. We place on record our appreciation for the able assistance rendered by learned Amicus and other learned counsel.

It may be noted that on 29th August, 2002, a field action project prepared by the Tata Institute of Social Science on situation of children of prisoners was placed before this Court. Responses thereto have been filed by the Union of India as well as the State Governments.

The report puts forward five grounds that form the basis for the suggestion to provide facilities for minors accompanying their mothers in the prison :

- a) The prison environment is not conducive to the normal growth and development of children;
- b) Many children are born in prison and have never experienced a normal family life, sometimes till the age permitted to stay inside (four to five years);
- c) Socialization patters get severely affected due to their stay in prison. Their only image of male authority figures is that of police and prison officials. They are unaware of the concept of a home, as we know it. Boys may sometimes be found talking in the female gender, having grown up only among women confined in the female ward. Unusual sights, like animals on the road (seen on the way to Court with the mother) are frightening.
- d) Children get transferred with their mothers from one prison to another, frequently (due to overcrowding), thus unsettling them; and
- e) Such children sometimes display violent and aggressive, or alternatively, withdrawn behavior in prison.

Specific suggestions have been put forward vis-à-vis children once they reach the confines of the prison. The minimum is the existence of a Balwadi for such children, and a crèche for those under the age of two. The Balwadi should be manned by a trained Balwadi teacher and should have the facilities of a visiting psychiatrist and pediatrician. A full-time nurse could also be made available. Immunization should take place on a regular basis. If the child is sick and needs to be taken outside the prison, the mother should be allowed

to accompany the child. The Balwadi would provide free space, toys and games for children. It can also organize programmes on mother and child care, hygiene and family life for mothers. It has also been suggested that these facilities should be located outside, but attached to the prison. This would combat the negative psychological impact of the prison environment and expose the children to 'normal' figures not found in the women's barracks. It is also suggested that specialized clothing including winter-wear and bedding including plastic sheets should be provided to children. Concerns have also been raised regarding the issuance of a birth certificate that mentions the prison as the place of birth of a child born in prison. It is suggested that child's residence should be mentioned as the place of birth and not the prison.

Emphasis has been placed on the diet of such children. It recommends that a special diet be prescribed, as per the norms suggested by a nutrition or child development expert body such as the National Institute of Public Cooperation and Child Development. The diet should be standardized according to the age of the child and not prescribed as uniform irrespective of the age of the child. The special needs of the child should be kept in mind, for instance, milk needs to be kept fresh which will not be the case if it is handed out only once in the morning. Toned milk may be required or boiled water may need to be provided. For satisfying these needs and providing a satisfactory diet may even require the creation of a separate kitchen unit for children.

Several suggestions have been made vis-à-vis the judiciary, legal aid authorities, the Department of Women and Child Development/Welfare and the Juvenile Justice Administration (under the Juvenile Justice Act) and the Probation Department in relation to the welfare measures that can be taken for children of undertrial and incarcerated prisoners, both living within and outside the jail premises.

The Union of India, in its affidavit, has pointed out that it has taken several measures for the benefit of children in general, including children of women prisoners in this larger group. These measures include 'Sarva Shiksha Yojna', Reproductive and Child Health Programme, and Integrated Child Development Projects and passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 for the welfare of children in general.

Union of India also pointed out that the Swadhar scheme has been launched by the Department of Woman and Child Development with the objective of providing for the primary needs of shelter, food, clothing, care, emotional support and counselling to the women convicts and their children, when these women are released from jail and do not have any family support, among other groups of disadvantaged women.

Reference has already been made to the report of the National Institute of Criminology and Forensic Sciences which was forwarded to various States and Union Territories in 2002.

Union of India also brought to the notice of the Court that a Jail Manual

Bill ("The Prison Management Bill, 1998") had been prepared which, inter alia, deals with the plight of women prisoners, under Chapters XIV and XVI. This Bill was prepared with the laudable aim of bringing uniformity to jail management across the country. It is important to note that Chapter II of the Bill delineates various rights and duties of prisoners. The rights include the right to live with human dignity; adequate diet, health and medical care, clean hygienic living conditions and proper clothing; the right to communication which includes contact with family members and other persons; and the right to access to a court of law and fair and speedy justice. Clearly, the rights of children of women prisoners living in jail are broader than this categorization, since the children are not prisoners as such but are merely victims of unfortunate circumstances. It is also important to note that Section 33 of the Bill mandates the provision of a Fair Price Shop in all prisons accommodating more than 200 prisoners. This shop should also offer essential items for children of prisoners. In addition, Section 60 (1)(d) provides for temporary or special leave being granted to a prisoner who shows sufficient cause to the State Government or the concerned authority. This can be utilized to grant parole to pregnant women. It may also be noted that Chapter IV of the Bill relates to release and after care and Chapter XVI deals with special categories of prisoners. Both these chapters have a special significance when considering the rights of Children of Women prisoners.

The Union of India noted that the "National Expert Committee on Women Prisoners", headed by Justice V.R. Krishnaiyer, framed a draft Model Prison Manual. Chapter XXIII of this manual makes special provision for children of women prisoners. This manual was circulated to the States and Union Territories for incorporation into the existing jail manuals. It is significant to note that this committee has made important suggestions regarding the rights of women prisoners who are pregnant, as also regarding child birth in prison. It has also made suggestions regarding the age up to which children of women prisoners can reside in prison, their welfare through a crèche and nursery, provision of adequate clothes suiting the climatic conditions, regular medical examination, education and recreation, nutrition for children and pregnant and nursing mothers.

Various provisions of the Constitution and statutes have been noticed earlier which cast an obligation on the State to look after the welfare of children and provide for social, educational and cultural development of the child with its dignity intact and protected from any kind of exploitation. Children are to be given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity. We have also noted U.N. conventions to which India is a signatory on the Rights of the Child.

This Court has, in several cases, accepted International Conventions as enforceable when these Conventions elucidate and effectuate the fundamental rights under the Constitution. They have also been read as part of domestic law, as long as there is no inconsistency between the Convention and domestic law (See *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241]). In *Sheela Barse v. Secretary, Children's Aid Society* [(1987) 3 SCC 50] which dealt with the working of an Observation Home that was maintained and

managed by the Children's Aid Society, Bombay, it was said:

"5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realized. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognized. India as a party to these International Charters having ratified the Declaration, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way. The Children's Act, 1948 has made elaborate provisions to cover this and if these provisions are properly translated into action and the authorities created under the Act become cognizant of their role, duties and obligation in the performance of the statutory mechanism created under the Act and they are properly motivated to meet the situations that arise in handling the problems, the situation would certainly be very much eased."

True, several legislative and policy measures, as aforementioned, have been taken over the years in furtherance of the rights of the child. We may again refer to the Juvenile Justice Act which provides for the care and rehabilitation of neglected and delinquent children, under specially constituted Juvenile welfare boards/courts. It provides for institutionalization of such children, if necessary. Juvenile children's homes have been set up both by the State as well as by NGO's to house such children. In some states, Social Welfare and Women and Child Development/Welfare Departments have specific schemes for welfare and financial assistance to released prisoners, dependants of prisoners and families of released prisoners. Some States have appointed Prison Welfare Officers to look after the problems of prisoners and their families. In some other States, Probation Officers are performing this task, apart from their role under the P.O. Act, 1958.

However, on the basis of various affidavits submitted by various State Governments and Union Territories, as well as the Union of India, it becomes apparent that children of women prisoners who are living in jail require additional protection. In many respects, they suffer the consequences of neglect. While some States have taken certain positive measures to look after the interests of these children, but a lot more is required to be done in the States and Union Territories for looking after the interest of the children. It is in this light that it becomes necessary to issue directions so as to ensure that the minimum standards are met by all States and Union Territories vis-à-vis the children of women prisoners living in prison.

In light of various reports referred to above, affidavits of various State Governments, Union Territories, Union of India and submissions made, we issue the following guidelines:

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
2. Pregnancy:
  - a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.
  - b. When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.
  - c. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.
3. Child birth in prison:
  - a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.
  - b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.
  - c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.
4. Female prisoners and their children:
  - a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.
  - b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six

years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

- c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.
  - d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.
  - e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.
5. Food, clothing, medical care and shelter:
- a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.
  - b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.
  - c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.
  - d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.
  - e. Clean drinking water must be provided to the children. This water must be periodically checked.
  - f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.
  - g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

- h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.
  - i. Children of prisoners shall have the right of visitation.
  - j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.
6. Education and recreation for children of female prisoners:
- a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.
  - b. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.
7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.
8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.
9. Diet:
- Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Pediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition

and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally." It is noted that since an average Indian mother produces approximately 600-800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians - A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets - 45, 60-120 and 150-210 grams respectively; Pulses - 15, 30 and 45 grams respectively; Milk - 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers - 50, 50 and 100 grams respectively; Green Leafy Vegetables - 25, 50 and 50 grams respectively; Other Vegetables - 25, 50 and 50 grams respectively; Fruits - 100 grams; Sugar - 25, 25 and 30 grams respectively; and Fats/Oils (Visible) - 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/ chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.
11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.
12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.
13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.
14. Copy of the judgment shall be sent to Union of India, all State Governments/Union Territories, High Courts.
15. Compliance report stating steps taken by Union of India, State Governments, Union territories and State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.

In view of above, Writ Petition (Civil) No.133 of 2002 is disposed of.

.....CJI  
[Y.K. Sabharwal]

.....J.  
[C.K. Thakker]

.....J.  
[P.K. Balasubramanyam]

New Delhi  
April 13, 2006

No.V-17013/17/2006-PR  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA  
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Dated the 14<sup>th</sup> August, 2006

To

The Principal Secretary/Secretary Home( In-charge of Prisons)  
All States and Union Territories.

**Subject : Tightening of security measures in jails**

Sir/Madam,

As you are aware the Central Govt. has from time to time, been advising the State Governments on strengthening the security arrangements in jails. In this connection, attention is invited to this Ministry's letter No.V-17013/4/98-GPA-IV dated 21.9.1998 on the above mentioned subject, a copy of which is enclosed for ready reference.

2. Some instances in the recent past have come to the notice of the Central Government in which the prisoners were found in possession of prohibited items like weapons, explosives, cellular phones, narcotics etc. Further there were reports of some criminals and terrorists meeting their associates inside the jails. This shows that there is certain degree of laxity in the security arrangements in jails. You would appreciate that carrying/possession of prohibited items like mobile phones, weapons, drugs etc. is a potential security hazard.

3. It is, therefore, requested that the State Governments may take immediate adequate measures for tightening security and to ensure that prisoners are not in possession of prohibited items like mobile phones, weapons etc. The State Governments while evolving a fool proof mechanism for tightening security may consider including the following matters:-

- (i) Relatives and friends visiting inmates may be frisked carefully outside the mulaqat/visitors' room ;
- (ii) If the food and other items are permitted in jails for any specified categories of prisoners they should be allowed to be carried only in transparent packs. Subsequently, surprise checks may also be carried out in the jail premises;
- (iii) Regular checks may be conducted of all inmates after their return from courts/hospitals;
- (iv) The setting up of video conferencing facilities with courts could to a great extent help in this endeavour;

- (v) Surprise checks of staff members including guards on duty outside the jail may be made by concerned prison officials at odd hours;
- (vi) Senior officers should also be instructed to visit jails once or twice a week during the night without prior intimation to avoid/detect any untoward incident;
- (vii) Strict departmental action may be taken against those prison personnel, who are found to be involved in the supply of drugs, mobile phones or any other item which is banned in the jail premises: and
- (viii) Visits of Press/Media persons in jails to meet/interview criminals may be tactfully restrained.

5. The aforesaid measures are only indicative in nature and not exhaustive. The State Governments are requested to indicate by 31.8.2006 the measures taken by them for tightening security in jails.

Encl : As above.

Yours faithfully,

Sd/-  
(A.K.Srivastava)  
Joint Secretary to the Govt. of India

No.V-17013/24/2007-PR  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA

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Dated the 29<sup>th</sup> November, 2007

To

The Director General of Police,  
All States and Union Territories.

Subject: Sensitization to Prison inmates on HIV / AIDS – regarding.

As you are aware, prisons have a number of characteristics, which are conducive to the spread of Sexually Transmitted Infections (STIs) and HIV infections. The prevalence of HIV within prisons is usually several times than that in outside world. It happens due to low awareness levels on STDs, HIV/AIDS, lack of access to preventive practices, over crowding, poor sanitary conditions, close physical proximity on the inmates, loneliness, lack of social control, lack of entertainment, being away from the family for a longer time leading to homosexuality. The prison population is inherently dynamic with releases, admissions and transfer occurring regularly. The vulnerability of the population can be prevented through awareness.

In view of the above it is requested that all prison inmates be provided access to primary prevention services. It is also requested that counseling and testing services be set up with the support of State Aids Control Societies (SACS) in major prisons like central jails and condoms may be distributed among the inmates. The prison personnel could also be trained and sensitization workshops on the prevention and control of HIV/AIDS among prison personnel and among the inmates could be held with the help of the State Aids Control Societies.

The above measures will help in bringing about a behaviour change among prison inmates, in detecting HIV infected inmates who could in turn be given care and treatment.

Yours faithfully,  
Sd/-  
(Rita Acharya)  
Director (CS-II)

No.V-17014/4/2007-PR  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA

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Dated the 13<sup>th</sup> December, 2007

To

The Principal Secretary/  
Secretary In-charge of Prisons  
Of all States and Union Territories.

Subject: Detention of mentally ill undertrial prisoners – Guidelines issued by  
the Supreme Court – regarding.

I am directed to draw your kind attention to the judgment of the Supreme Court dated 2<sup>nd</sup> November, 2007 in the case of Shri Machal Lalung, Criminal Writ Petition No.296 of 2005 and Criminal Writ Petition No.18 of 2006 wherein the Hon'ble Supreme Court had issued guidelines regarding detention and treatment to be given to the mentally ill undertrial prisoners in various psychiatric Hospitals/Nursing Homes. A copy of the said judgment of the Supreme Court along with the directions issued is enclosed for your ready reference. The Supreme Court has given three month's time for filing a compliance report indicating the steps taken in the matter, whereafter the matter shall be listed for directions.

You are requested to take urgent suitable action for implementing the orders of the Supreme Court in your State/UT. A copy of the Action Taken Report filed in the Supreme Court may also kindly be made available to this Ministry for information.

Encl : As above.

Yours faithfully,

Sd/-  
(Rita Acharya)  
Director (CS-II)  
Tel: 2309 2933

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

WRIT PETITION (CRL.) No(s), 296 OF 2005

RE: ILLEGAL DETENTION OF MACHAL LALUNG

WITH

WRIT PETITION (CRL.) NO 18 OF 2006

RE: NEWS ITEM "38 YRS. IN JAIL WITHOUT TRIAL" PUBLISHED IN HINDUSTAN TIMES DT. 8.2.2006.

Versus

UNION OF INDIA ..... Respondent  
(With appln. For directions and office report)

Date: 24/10/2007 These Petitions were called on for hearing today.

CORAM:

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE R.V. RAVEENDRAN  
HON'BLE MR. JUSTICE DALVEER BHANDARI

For Petitioner (s) Mr. P.K. Goswami, Sr.Adv. (A.c.)  
Mr. Rajiv Mehta, Adv.  
Mr. A. Henry, Adv.  
Mr. B. Aggrawal, Adv.

Mr. Vijay Hansaria, Sr.Adv. (A.c.)  
Ms. Sneha Kalita, Adv.  
Mr. P.I. Jose, Adv.

For Respondent (s)  
State of Assam: Mr. K.K. Venugopal, Sr.Adv.  
Mr. Ng. J.R. Luwang, Adv.  
Mr. Riku Sharma, Adv.

UPON hearing counsel the Court made the following

ORDER

A news item was published on 14<sup>th</sup> October, 2005 in the Indian Express, New Delhi stating that one Machal Lalung, a resident of Assam continued to languish as

an undertrial prisoner in a psychiatric hospital for a period of 38 years even after he was declared fit by the Hospital in 1967. This news item was brought to the notice of this Court and a series of orders were passed. The said Machal Lalung was directed to be released from the psychiatric hospital. The High Courts' Registries were required to collect and furnish the particulars of undertrial prisoners lodged in mental asylums. The reports received from the High Courts show that there are several other cases where mentally ill persons who have allegedly committed various offences are kept as undertrial prisoners in various psychiatric hospitals/nursing homes in various States. It appears that there are no periodic reports from these hospitals as to whether these mentally ill persons are fit enough to face trial for the offences for which they had been charged and the respective courts are also not keeping track of the cases and there has been no regular posting of the cases for long periods. Consequently, several mentally ill undertrial prisoners have remained in the psychiatric hospitals for long periods.

2. In one case in Kerala, an undertrial prisoner has been in psychiatric hospital for 38 years. In another case in Uttar Pradesh, an undertrial prisoner has been in psychiatric hospital for more than 34 years, though the maximum punishment for the offence alleged against him is seven years. There are several undertrial prisoners who have been in psychiatric hospitals for more than 15 years. Whether these persons have been subjected to periodic medical check-up is not known. The nature of their ailments are also not very clear. In some cases, it has been vaguely stated that they suffer from 'mental abnormality'. Many of these undertrial prisoners have been charged with offences of trifle nature, for which maximum sentence prescribed is hardly six months. We find that in many of these cases, the undertrial prisoners have been confined to a psychiatric hospital for more than the period of maximum sentence. It is clear that in such cases, the trial courts have not considered whether the undertrial prisoners could be released pending investigation or trial under Section 330(1) of the Code of Criminal Procedure (for short, the Code). It is also possible that no friend or relative of the prisoner came forward with sufficient security and seek release under the said provision.

3. There are also several cases where the undertrial prisoners have been charged for offence under Section 302 IPC. In such cases also, it appears that there is no periodic medical check-up, nor periodic consideration by the court as to whether they would be in a position to face trial.

4. Chapter XXV of the Code deals with the accused persons of unsound mind. Section 328 prescribes the procedure in case of accused being a mentally ill person. When a Magistrate has reason to believe that an accused against whom an enquiry is being held, is of unsound mind, he shall inquire into the fact of such unsoundness of mind and shall cause such person to be examined by the civil surgeon of the district or such other medical officer as the State Government may direct, and thereupon shall examine such surgeon or other officers as a witness and shall reduce the examination to writing, and pending such examination and inquiry, if the Magistrate is of the opinion that the accused is of unsound mind, he shall record a finding to that effect and shall postpone further proceedings in the case. Section 329 provides that if at the trial of any person, it appears to the Magistrate or Court that the person tried is of unsound mind, the Magistrate or Court shall in the first instance, try the fact of such unsoundness and incapacity, and if satisfied on such

evidence that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall record a finding to that effect and shall postpone further proceedings in the case.

4.1 Section 330 of the Code provides for the release of the mentally ill person pending investigation or trial. The said section is extracted below:

- 1) Whenever a person is found, under Section 328 or 329, to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, whether the case is one in which bail may be taken or not, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance, when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.
- 2) If the case is one in which, in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court, as the case may be, shall order the accused to be detained in safe custody in such place and manner as he or it may think fit, and shall report the action taken to the State Government:

Provided that no order for the detention of the accused in a lunatic asylum be made otherwise than in accordance with such rules as the State Government may have made under the Indian Lunacy Act, 1912 (4 of 1912).

Section 331 provides for resumption of inquiry or trial when the person concerned cases to be of unsound mind.

4.2 Section 337 of the Code describes the procedure where a prisoner of unsound mind is reported capable of making his defence. It provides that if the Inspector General of Prisons (in case where prisoner is in jail) or two visitors of an asylum (where the prisoner is in a lunatic asylum) certify that the prisoner is capable of making his defence such certificate shall be received as evidence and the Court/Magistrate will deal with such persons as provided under Section 332 by proceedings with the inquiry or trial. Section 338 provides the procedure where a person of unsound mind detained, is declared fit to be released. The said Section provides that if a person of unsound mind is detained under the provisions of sub-section (2) of Section 330 and the Inspector General or visitors certify that, in his or their judgment, he may be released without danger of his doing injury to himself or any other person, the State Government may order him to be released, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not already been sent to such an asylum, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers. Sub-section (2) of Section 338 provides that such Commission shall make a formal inquiry into the state of mind of such person, take such evidence as is necessary, and shall report to the State Government, which may order his release or his detention as it thinks fit.

4.3 Section 339 of the Code provides for delivery of the person of unsound mind to the care of relative or friend and is extracted below:

- (1) Whenever any relative or friend of any person detained under the provisions of section 330 or section 335 desires that he shall be delivered to his care and custody, the State Government may, upon the application of such relative or friend and on his giving security to the satisfaction of such State Government, that the person delivered shall –
  - (a) be properly taken care of and prevented from doing injury to himself or to any other person;
  - (b) be produced for the inspection of such officer, and at such times and places, as the State Government may direct;
  - (c) in the case of a person detained under sub-section (2) of Section 330, order such person to be delivered to such relative or friend.

(2) If the person so delivered is accused of any offence, the trial of which has been postponed by reason of his being of unsound mind and incapable of making his defence, and the inspecting officer referred to in clause (b) of sub-section (1), certifies at any time to the Magistrate or Court that such person is capable of making his defence, such Magistrate or Court shall call upon the relative or friend to whom such accused was delivered to produce him before the Magistrate or Court, and, upon such production the Magistrate or Court shall proceed in accordance with the provisions of Section 332, and the certificate of the inspecting officer shall be receivable as evidence.

5. Section 30 of the Prisoners Act, 1900 provides how prisoners of unsound mind are to be dealt with. Sub-sections (1), (2) and (3) of Section 30 are extracted below:-

“ 30: Lunatic prisoners how to be dealt with -

- (1) Where it appears to the State Government that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the State Government may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the State there to be kept and treated as the State Government directs during the remainder of the term for which he has been ordered or sentenced to be detained or imprisoned or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.
- (2) Where it appears to the State Government that the prisoner has become of sound mind, the State Government shall, by a warrant

directed to the person having charge of the prisoner, if still liable to be kept in custody, remand him to the prison from which he was removed, or to another prison within the State or if the prisoner is no longer liable to be kept in custody, order him to be discharged.

- (3) The provisions of Section 9 of the Lunatic Asylums Act, 1858 shall apply to every person confined in a lunatic asylum under sub-section (1), after the expiration of the term of which he was ordered or sentenced to be detained or imprisoned and the time during which a prisoner is confined in a lunatic asylum under that sub-section shall be reckoned as part of the term of detention or imprisonment which he may have been tried or sentenced by the court to undergo.

[Note: Section 9 of Lunatic Asylum Act, 1958 (now repealed) referred to in sub-section (3) provided that it shall be lawful for three of the visitors of any asylum, of whom one shall be medical officer, to order the discharge of any person detained in such asylum; and when such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer. The said Section corresponds to Section 40 of the Mental Health Act, 1987]

While Section 330 of the Code deals with accused of unsound mind in custody pending investigation or trial, Section 30 of Prisoners Act deals with convicted persons in jail, who become mentally unsound.

6 We may also refer to the relevant provisions of the Mental Health Act, 1987 (for short the 'Act') which repealed the Indian Lunacy Act, 1912.

6.1 Section 27 of the Act provides that an order under Section 30 of the Prisoners Act, 1900 or an order under Section 330 of the Code directing the reception of a mentally ill prisoner into any psychiatric hospital/nursing home shall be sufficient authority for the admission of such person in such hospital/nursing home.

6.2 Section 37 requires the concerned government to appoint not less than five visitors to each psychiatric hospital/nursing home. Section 38 provides for monthly inspection by the visitors and authorizes them to make remarks in regard to the management and condition of the psychiatric hospital/nursing home and of the in-patient thereof. Section 39 of the Act provides that where any person is detained under Section 330 of the Code, Inspector General of Prisons (where such person is detained in a jail), and all or any three of the visitors (where such person is detained in a psychiatric hospital/nursing home), shall once in every three months visit such person at the place where he is detained in order to assess the state of mind of such person and make a report thereon to the authority under whose order such person is no detained. Sub-section (2) authorizes the State Government to empower any of its officers to discharge the functions of the Inspector-General of Prisons under Section 39(1). Sub-section (3) provides that the medical officer in charge of a psychiatric hospital/nursing home where any person is detained under the provisions of Section 330 shall once in six months, make a special report regarding the mental and physical conditions of such persons, to the authority under whose order such person

is detained. Sub-section (4) provides that every person who is detained in jail under Section 330 of the Code, shall be visited at least once in every three months by a psychiatrist or where a psychiatrist is not available, by a medical officer empowered by the State Government, and such psychiatrist/medical officer shall make a special report regarding the mental and physical conditions of such persons to the authority under whose order such person is detained.

6.3 Part II of Chapter V of the Act deals with discharge. Section 40 of the Act empowers the medical officer in charge of a psychiatric hospital/nursing home to discharge any mentally ill prisoner, on recommendation of two medical practitioners one of whom shall preferably be a psychiatrist in the manner provided in Section 30 of Prisoners Act, 1900 or in any other relevant law.

7 From the reports filed by the Registries of various High Courts it is evident that the monthly, quarterly and half-yearly inspection/examination are not regularly being carried out as required under Sections 38 and 39 of the Act and the magistrates/courts authorizing the prisoners to be detained are not receiving the quarterly/half-yearly reports under sub-sections (1), (3) and (4) of Section 39. It is unfortunate that the provisions of Sections 38 and 39 of the Act are not being implemented effectively.

8 As there are large number of mentally ill under-trial prisoners in various psychiatric hospitals/nursing homes, we consider it just and proper to issue some general directions to avoid such mentally ill persons languishing in psychiatric hospitals for long periods:

- (i) Whenever a person of unsound mind is ordered to be detained in any psychiatric hospital/nursing home under Section 330(2) of the Code, the reports contemplated under Section 39 shall be submitted to the concerned Court/Magistrate periodically. The Court/Magistrate shall also call for such reports if they are not received in time. When the reports are received, the Court/Magistrate shall consider the reports and pass appropriate orders wherever necessary. In regard to prisoners covered by sub-section (1) of Section 30 of the Prisoners Act, 1900, the procedure prescribed by sub-sections (2) and (3) of that Section read with Section 40 of the Mental Health Act, 1987 shall be followed.
- (ii) Wherever any undertrial prisoner is in jail for more than the maximum period of imprisonment prescribed for the offence for which he is charged (other than those charged for offences for which life imprisonment or death is the punishment), the Magistrate/Court shall treat the case as closed and report the matter to the medical officer in charge of the psychiatric hospital, so that the Medical Officer incharge of the hospital can consider his discharge as per Section 40 of the Act.
- (iii) In cases where, the under trial prisoners (who are not being charged with offence for which the punishment is imprisonment for life or death penalty), their cases may be considered for release in accordance with

sub-section (1) of Section 330 of the Code, if they have completed five or more years as inpatients.

- (iv) As regards the undertrial prisoners who have been charged with grave offences for which life imprisonment or death penalty is the punishment, such persons shall be subjected to examination periodically as provided in sub-sections (1), (3) and (4) of Section 39 of the Act and the officers named therein (visitors, medical officer in charge of the hospital and the examining medical officer respectively) should send the reports to the court as to whether the under trial prisoner is fit enough to face the trial to defend the charge. The Sessions Courts where the cases are pending should also seek periodic reports from such hospitals and every such case shall be given a hearing atleast once in three months. The Sessions Judge shall commence the trial of such cases as soon as it is found that such mentally ill person has been found fit to face trial.

9 Copy of this order is directed to be sent to the Registrars General of various High Courts and the Chief Secretaries of the State Governments/Union Territories to take necessary steps and follow up action, and submit report to this Court as to the steps taken in pursuance of this order.

10 The matters are adjourned by three months.

(N.Annapurna)  
Court Master

(Vijay Aggarwal)  
Court Master

F.N.17013/13/2009-PR  
Government of India  
Ministry of Home Affairs

New Delhi, the 23<sup>rd</sup> March 2009

To

Principal Secretary (Prisons)/ Principal Secretary (Home-in charge of prisons)  
All State/ Union Territories

Sir

Subject: Ban of smoking etc in prison premises –advisory-  
regarding

As you are aware the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 was enacted in Parliament in May 2003 mainly with a view to discourage the consumption of cigarettes and other tobacco products. This Act is applicable to the entire country. The statutory provisions relating to prohibition of smoking in public places such as work places, hotels, restaurants, discos, bars and pubs, have been further strengthened with effect from 2<sup>nd</sup> October 2008. However, the above laws do not appear to cover prisons as they would not fall within the category of public place.

The smoking is not a constitutional right whereas breathing fresh air, free from toxins, is a fundamental right guaranteed under the Constitution. The sale/ consumption of tobacco products in the prison premises is a public health hazard, especially to the vast majority of non-smokers as passive smoking is equally harmful. Since Indian jails are overcrowded, the non-smoker prisoners are very much prone to the ill effects of the smoking. It is, therefore, desirable that the jail authorities may explore the possibility of declaring the jails tobacco free/ smoke free as also prevent the sale of tobacco products in the prison premises by invoking suitable legislation or making suitable provision in their jail manuals. This will not only protect the health of prison inmates but also remove corruption in prison.

Yours faithfully

Sd/-  
(Neeraj Kansal)  
Director (CS)

**No.17014/3/2009-PR**  
**Government of India/Bharat Sarkar**  
**Ministry of Home Affairs/Grih Mantralaya**

New Delhi the 16<sup>th</sup> July, 2009.

To

The Principal Secretary (Jail) / Secretary (Home) (In-charge of Prisons)  
- All State Governments / UTs

**Subject: Transfer of prisoner from one jail to another- advisory-**

Sir/Madam

I am directed to draw your kind attention to the judgment of the Hon'ble High Court of Delhi dated 29.9.2008 in the case of Jaswant Singh vs State of NCT Delhi (Criminal appeal no. 257/2004) wherein the Hon'ble High Court has directed to devise a foolproof system in connection with transfer of convicts/ accused person from one jail to another jail.

In the instant case, a prisoner was convicted and sentenced for 4 years and 7 years rigorous imprisonment to run concurrently. The said prisoner was transferred from Tihar Jail, New Delhi to the District Jail Ghaziabad (U.P.). The said prisoner has, however, filed an appeal against the said transfer. When the matter came up for hearing, it was revealed that the said prisoner has been prematurely released by the jail authorities of Ghaziabad. The High Court of Delhi took serious view of this premature release and directed for an inquiry in the matter. The inquiry report conducted by the Registrar (vigilance) has, however, found that some officials of Tihar jail and District Jail Ghaziabad have aided and abetted the premature release of the said convict. The Hon'ble High Court while forwarding a copy of inquiry report to the Director General (Prisons), Delhi for taking appropriate action against the erring officials, has directed that a foolproof system be devised by all the States/ UTs so that such lapses do not occur in future while transferring convicts/ accused persons from one jail to other jail.

Keeping in view the aforesaid direction of the Hon'ble High Court of Delhi, you are requested to take necessary action keeping in view the provisions of Model Prison Manual circulated by the Government of India to all the States/ UTs in which specific procedure has been laid down for transfer of prisoner from one jail to other or transfer of prisoner belonging to other States.

Yours faithfully

Sd/-  
(Neeraj Kansal)  
Director (CS)  
Tel: 23092933

**No.17014/3/2009-PR**  
**Government of India/Bharat Sarkar**  
**Ministry of Home Affairs/Grih Mantralaya**

North Block, New Delhi dated the 17<sup>th</sup> of July 2009.

To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs

DGs/ IGs incharge of prisons- All State Governments / UTs.

**Subject: Prison Administration- regarding**

Sir,

As you are aware '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. The Prisons are governed by, inter alia, The Prisons Act, 1894 and the Prison Manuals/ Rules/ Regulations framed by the respective State Governments from time to time.

2. The Indian prison system has been under the close scrutiny of judiciary / District Magistrates who have been given a responsibility to closely monitor the administration and management of prisons under their jurisdiction and to inspect the same periodically. The Central Government has, from time to time, been interacting with the State Governments through advisories, conferences and meetings etc on various aspects of prison administration including appropriate security measures in prisons.

3. As you are aware, various Committees, Commissions and Working Groups had been constituted in the past by the Government of India to study and make suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conducive to the reformation and rehabilitation of prisoners. Some of the important committees are as under:

- All India Jail Manual Committee (1957),
- Working Group on Prisons (1972),
- All India Prison Reforms Committee (1980-83) known as Mulla Committee,
- All India Group on Prison Administration, Security and Discipline known as R.K. Kapoor Committee (1986) and
- National Expert Committee on Women Prisoners known as Justice Krishna Iyer Committee (1987) etc.

These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel. Some of the important recommendations are annexed as Annexure-I. Since most of the recommendations of these committees pertained to the State Governments/UT Administrations, these were forwarded to the State Governments by the Ministry of Home Affairs for taking appropriate action. In 2001, the Ministry of Home Affairs through BPR&D also circulated a detailed questionnaire relating to actionable recommendations of these committees.

### **Model Prison Manual**

4. Keeping in view the directions given by the Hon'ble Supreme Court in the case of Ramamurthy vs State of Karnataka (1996) and also taking into account the recommendations of various committees regarding the need for bringing uniformity in laws relating to prisons, Government of India constituted All India Model Prison Manual Committee headed by Director General of BPR&D to prepare a Model Prison Manual for the Superintendence and Management of Prisons in India. The "**Model Prison Manual**" so prepared was circulated to all the State Governments/ UT Administrations in December 2003 for adoption for effective and efficient superintendence and management of prisons. This manual is an exhaustive document and has been prepared after wide consultations with the State Governments. It is, however, learnt that only a few States have so far adopted the model prison manual in its true spirit. The Parliamentary sub-committee on modernization of prisons has recently visited many states and has shown their disappointment on the poor adoption of the Model Prison Manual by the State Governments. They have asked the Government of India to take initiative for ensuring that the State Governments adopt the Model Prison Manual. You are accordingly once again advised to go through the Model Prison Manual and consider its adoption as per the requirements and suitability to the State.

### **Court Judgments**

5. From time to time various High Courts and Supreme Court have given wide ranging judgments on conditions of prisoners, prisons and the rights of prisoners. Some of these path-breaking judgments/ rulings are important for the rank and file of prison officials/ State Governments. A compilation of such judgments was brought out by the BPR&D in 2000 in which an attempt was made to identify and document some latest rulings/ judgments of the Supreme Court/ High Courts relating to the area of prison administration. The same was thereafter revised and updated in 2007. This compilation is also available at the BPR&D website (**[www.bprd.gov.in](http://www.bprd.gov.in)**). The same was also circulated to all the State Governments /UT Administrations to make this document more user friendly, important operational points of these rulings/ judgments were culled out and compiled. Some of the important judgments are annexed as Annexure-II.

6. In order to comply with and give effect to the important directions of the Hon'ble Supreme Court/High Courts, the Government of India has

- i) Introduced section 436A in Cr.PC to liberalize the bail conditions;
- ii) Introduced section 265A in Cr.PC for plea bargaining;
- iii) Initiated the Scheme for Prison Modernization in 2002 in order to reduce overcrowding, improve hygiene conditions as also provide better facilities to prisoners and prison personnel.

7. Government of India has prepared a Draft Policy Paper on Prisons with the approval of the Home Minister in order to broadly address the agreed upon objectives in incarceration and the measures to be implemented by the various State/UT Governments. The policy objectives as well as the measures required to be taken by the State /UT Governments are annexed as Annexure-III.

8. The Sub Committee of the Department Related Parliamentary Standing Committee of the Ministry of Home Affairs presented to the Rajya Sabha on 26.02.2009 in their report of Modernization of Prison Scheme has also made certain observations, on which action needs to be taken. The report has already been circulated to all States for their comments and necessary action. Some of the important observations are annexed as Annexure-IV.

9. The National Human Rights Commission has also been issuing suitable instructions from time to time to all the States/ UTs against the violation of human rights in prisons and take suitable steps in this regard.

10. For the strengthening of security arrangements in jails, the Government of India has also been advising the State Governments vide advisories dated 21.9.1998 and 17.8.2006 for taking adequate and effective measures for tightening security and to ensure that prisoners are not in possession of prohibited items like mobile phones, weapons etc. The State Governments are requested to take appropriate measures in the light of the aforesaid advisories.

11. Recently in the case of Jaswant Singh v/s State (Criminal Appeal No. 257/2004), the Hon'ble Delhi High Court vide its order dated 30.9.2008 has directed to issue instructions for devising a foolproof system to avoid any lapse while transferring convicts/ accused persons from one jail to another. In the instant case, the prisoner had been released pre-maturely by the jail officials on being transferred from one jail to another.

12. As for the human resources who are actually going to man these prisons , it is recommended that the State shall consider:

- Establishing well equipped training infrastructure in the state, with adequate skilled and well qualified instructional staff, to cater to the normal needs of basic and in-service training for the prison staff in different discipline.
- Availing slots for in-service training being offered in ICA, Chandigarh, NICFS, New Delhi, RICA, Vellore and other institutes sponsored by BPR&D/MHA.

- Deputing prison officials for training in specialized institutes in India and abroad in consultation with BPR&D and MHA.
  - Creating adequate posts for prison staff as per norms in different categories commensurate with operational needs of safe custody, reformation, rehabilitation, health care, legal assistance etc.
  - Filling up all the vacancies, presently running up to 17.58% (2006) within time bound frame and ensure proper cadre management through timely trainings, promotions recruitments etc.
  - Acknowledging the role of good work done by prison officers/ officials individually or in a team by way of a suitable reward schemes.
  - Rewarding those prison staff during whose tenure the prison shows remarkable improvement in term of elimination of or significant reduction, in the incidence of unnatural deaths, indiscipline by prisoners; number of prisoners pursuing educational and vocational programmes, implementation of Section 436-A and 265-A to 265-L CrPC, 1973 etc.
  - Nominating deserving prison officers for the award of Correctional Service Medals on the occasion of Independence/Republic Day and presenting the recipients such medals in ceremonial functions like State Day, Independence Day/Republic Day etc.
13. All the State Governments/ UT administrations are requested to take effective measures in the light of the recommendations made by the various committees/ court judgments, the Model Prison Manual and advisories issued by the Government of India from time to time for the effective and smooth functioning of the prisons.
14. The receipt of this letter may please be acknowledged.

Yours faithfully,

Sd/-

**(Nirmaljeet Singh Kalsi)**

Joint Secretary (CS)

Telefax:011-23092630

## **ANNEXURE-I**

### **All India Committee on Jail Reforms [Mulla Committee - 1980-1983]**

The Committee under the Chairmanship of Justice Anand Narain Mulla submitted its Report in 1983 in which it had made 658 recommendations, majority (90%) of which pertained to the State Governments. The Committee examined all aspects of prison administration and made wide-ranging recommendations, touching upon legislative, operational, security aspects besides matters like classification of prisoners, living conditions in prisons, medical and psychiatric services, treatment programmes, vocational training for prison inmates, problems relating to undertrials/unconvicted prisoners, problems of women prisoners etc. The report laid emphasis on the management of prisons to be entrusted to a cadre of professionals.

### **Kapoor Group's Report**

In July, 1986, the Government of India set up a Special Group with Shri R. K. Kapoor, as Chairman to examine and review various aspects of administration and management of prisons, especially in the context of security and discipline in prisons and suggest measures for their improvement. The Group recommended better communication systems, watch towers, wire fencing, raising of height of perimeter walls, metal detectors, dog squads etc. Close Circuit Televisions (CCTVs) were also recommended for monitoring activities along the perimeter wall, roof tops and main gate area etc.

### **National Expert Committee on Women Prisoners**

The National Expert Committee on Women Prisoners headed by Justice Krishna Iyer was constituted in 1986. The Committee appraised the situation of women in jails and made various recommendations. Some of the important recommendations include:

- a) Women prisoners should be informed of their rights under the law.
- b) Only the women constables should conduct searches on women prisoners.
- c) Medical check ups of women prisoners or undertrials, should be done by women doctors as soon as they are admitted to a prison.
- d) Women prisoners should be allowed to contact their families and communicate with their lawyers, women social workers, and voluntary organisations.
- e) Women prisoners should be allowed to keep their children with them.
- f) Voluntary organisations of women should be encouraged to be associated with women prisoners.

- g) Separate jails should be provided for women. prisoners
- h) Special prosecution officers should be available to present the case of women prisoners.

SOME OF THE IMPORTANT DIRECTIONS OF COURTS REGARDING PRISONS AND PRISONERS

1. The Hon'ble Supreme Court has formulated guidelines for providing various facilities to the children living with their mothers in the prisons. The Supreme Court has directed the State Governments to follow these guidelines which include providing the children with a healthy and clean environment, nutritious diet, good medical care, adequate clothing, educational and recreational facilities. Children below three years are required to be kept in a crèche and those between 3-6 years in a nursery. The State Legal Service authorities are also required to periodically inspect prisons to monitor that the directions given by the Supreme Court are followed in letter and spirit. An advisory was also issued by the Government of India on 15.5.2006 to all the States/ UTs to take urgent action for implementing the orders of the Supreme Court. A compilation, namely, Prisons and Law in India was also prepared by BPR&D in 2007 and circulated to all State/UTs to apprise them of the legal position in this regard. (***R.D. Upadhyaya vs State of Andhra Pradesh (1994)***)
2. The Hon'ble Supreme Court has ruled on many issues such as (a) removing overcrowding in jails (b) streamlining the remission system and premature release (c) framing of a Model All India Jail Manual (d) providing proper medical facilities and maintaining appropriate hygienic conditions (e) introduction of open air prisons (f) need of complaint box in jails, etc. (***Rama Murthy vs State of Karnataka (1997)***)
3. **Classification** of the prisoners and their placement in different prisons by the prison administration is a relevant **policy** decision. The discretion and power to interfere by the courts in such matters does exist yet it should be used very **sparingly**. (***State of Maharashtra Vs Sayyed Noor Hasan Gulam Hussain (1995 Cr. L. J. 765) SC***)
4. A prisoner continues to have his **constitutional rights** during his incarceration period except to the extent he has been **deprived** of it in accordance with law. The **loss of life** of a prisoner in the jail through killing by a co-prisoner entitles his legal heirs to **compensation** even if the U.P. Jail Manual has no provision to this effect. (***Kewal Pati (Smt.) Vs State of U.P. (1995 3SCC 660)***)
5. **Safety and Security of the Prisoner**

- i.* It is the **bounden duty** of the jail authorities to protect the life of an under trial prisoner lodged in the jail.
- ii.* **Failure** of the state to ensure safety and security of the prisoner indisputably warrants **repair of damage** caused to the victim or to the heir of the victim by the acts of omission or commission of its officers by the state. (*Nilabati Behera Vs State of Orissa (1993 2SCC 746)*)
- iii.* The principle of **sovereign immunity** is not available to the state in cases of contravention of fundamental rights of the citizens by its officers. (*State of M.P. Vs Shyam Sundar Trivedi (1995 4SCC 262)*).

#### 6. Transfer, Video Conferencing, visitation etc.

- i.* **Transfer to a distant prison**, where visits of Society of Friends or relations may be snapped etc, may be punitive in effect and every such affliction or abridgement is an infraction of liberty or life in its wider sense and cannot be sustained unless requirement of **Article 21** of our Constitution are satisfied. (*S. Balamuragan Vs LG Prisons, Madras (1996 Cr LJ. 1779)*)
- ii.* **Right of visitation** of a prisoner is **not absolute**. It is subject to restrictions laid down in Bihar State Jail Manual. The Right of a prisoner under **Article 21** of the Constitution to be lodged in a jail and general prohibition against his **transfer to a distantly located jail** in the state or out of the state is **not absolute**. It is also subject to the amenability of the prisoner to the maintenance of **jail discipline**. (*Kalyan Chandra Sarkar, Petitioner Vs Rajesh Ranjan alias Pappu Yadav and another, Respondents 2005 CrL. L.J. 944 SCC*)
- iii.* However, under certain circumstances **transfer** of a prisoner to a **distant prison** may be justified in the larger interest of maintaining **discipline** in the prisons. (*S. Balamuragan Vs LG Prisons, Madras (1996 Cr LJ. 1779)*)
- iv.* Keeping in view the grossly indisciplined and unlawful conduct of the prisoner even his physical presence in a criminal trial can be dispensed with by directing use of **video conferencing facility** to the extent felt justified by the trial court. (*Kalyan Chandra Sarkar, Petitioner Vs Rajesh Ranjan alias Pappu Yadav and another, Respondents 2005 CrL. L.J. 944 SCC*)

- 7. The term **“evidence to be taken in the presence of accused---**“used in Sec.273 of the CrPC, 1973, includes not only the actual physical presence of the witness but also his **constructive presence** before the accused. Recreation of evidence through **video conferencing** facility is covered under the scope of

constructive presence. (*State of Maharashtra, Vs. Dr. Praful B. Desai, Criminal Appeal No. 476 of 2003 with Crl. Appeal No. 477 of 2003 AIR 2003, SC, 2053*).

8. (i) Remission schemes introduced by the Government under Sections 432 and 433 of CrPC, 1973, are primarily introduced to ensure prison discipline and good behaviour by the prisoners and are not meant to upset the sentences. (*State of Punjab Vs Joginder Singh (1990 2SCC 661)*).

(ii) Prisoners are not entitled to release u/s 433 CrPC, 1973, as a matter of right. It is entirely the discretion of the Government to release the prisoners prematurely. (*P.V. Bhaktavatchalam Vs State of Tamil Nadu (1991 Cr. L.J. 1870)*)

9. **Labour and Wages etc.**

- i. It is **lawful** to employ the prisoners sentenced to rigorous imprisonment to do **hard labour** whether he consents to do it or not.
- ii. It is imperative that the prisoners should be paid **equitable wages** for the work done by them.
- iii. **In** order to determine the quantum of equitable wages payable to prisoners, the State concerned shall constitute a **wage-fixation body** for making recommendations.
- iv. We direct each State to do so as early as possible.
- v. Until the State Government takes any decision on such recommendations, every prisoner must be paid wages for the work done by him at such rates or revised rates as the Government concerned fixes in the light of the observations made above.
- vi. For this purpose, we direct all the State Governments to fix the rate of such **interim wages** within six weeks from today and report to this Court of compliance of this direction.
- vii. We recommend to the State concerned to make law for setting apart a portion of the wages earned by the prisoners to be paid as compensation to deserving victims of the offence, the commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode. (*State of Gujarat Vs Hon'ble High Court of Gujarat (1998, 7 SCC 392)*)

10. Following time bound directions issued for compliance within a period of **four months** from the date of issue with further directions to file compliance report as to the steps taken by the individual states etc.
- (i) A **child** shall not be treated as an **under trial/convict** while in the prison with his/her mother.
  - (ii) A **pregnant woman**, if required to be lodged in a jail, shall be accommodated in a jail which has minimum **facilities for child delivery** as well as for providing prenatal and post natal care for both, the mother and the child.
    - (iii) (a) As far as possible and provided she (pregnant woman) has a suitable option, arrangement for **temporary release/parole** (or suspended sentence in case of minor and casual offender) should be made to enable **delivery outside the jail**.
      - (b) **Births in prison**, while being registered in the local birth registration office, shall mention the address as the locality and **prison shall not be mentioned** and recorded in the **certificate of birth** that is issued.
  - (iv) A female prisoner to be allowed to keep her **child** with her till the age of **six years**. Thereafter, the child to be handed over to a suitable **surrogate** as per the wishes of female prisoner or shall be sent to a suitable institution run by the Social Welfare Department.
  - (v) (a) Children in jail shall be provided with **adequate clothing** suiting the local climatic requirement.
    - (b) **Dietary** scale laid down and **separate food** shall be provided to the children keeping in view their growth needs.
    - (c) Separate utensils, clean drinking water, vaccination, **medicare**, clean and hygienic sleeping facilities etc shall be provided for children and their prisoner mother.
  - (vi) Proper educational and recreational opportunities, **crèche** and **nursery** shall be provided in the jail.
  - (vii) **Jail Manuals** of the states shall be suitably amended to conform to the aforesaid directions.
  - (viii) **State Legal Service Authorities** to inspect jails in order to monitor compliance with these directions.

- (ix) Courts shall give **priority** to the cases of women prisoners accompanied by children to ensure expeditions disposal of cases pending against them.

***(R.D. Upadhyay Vs State of Andhra Pradesh & Ors. (Writ Petition Civil 559 of 1994)***

- 11.** Where the under trial has been in jail for **longer** period than the **maximum term** he would have been sentenced to, if convicted, his detention in jail is violation of **Article 21** and, therefore, he has to be released forthwith. ***(State of AP Vs Challa Ramkrishna Reddy (A./:R, 2000 S.G. 2083).***
- 12.** Government should examine the question of framing of a **model new All India Jail Manual**. ***(Rama Murthy Vs State of Karnataka (1997 2SCC 642).***
- 13. Disposal of cases of Undertrials-** the SC directed the quashing of all proceedings against persons accused of offences under the Motor Vehicles Act where the proceedings were initiated more than one year ago and are still pending; unconditional release of accused wherever maximum sentence under the law is maximum of six months; unconditional release wherever the accused is in prison for more than 3 years and the maximum punishment is not more than 7 years ***(common cause vs. Union Of India (AIR1996 SC 1620))***

**PAPER ON PRISON POLICY**

**OBJECTIVES BEHIND INCARCERATION-**

- (a) Nobody is born as a criminal; it is the circumstances, societal constraints, inherited environment and at times accidents, which makes him a criminal. So, it is a societal concern and there needs to be total overhaul in our strategy in dealing with the prisoners. The mantra of the day should be “Reclaiming of these offenders rather than Punishment”.
- (b) Prisons shall endeavor to reform, reclaim, re-assimilate and rehabilitate the offender in the social milieu by providing appropriate correctional treatment.
- (c) The resources’ constraints with the state governments limit the scope of expansion in prison capacity beyond some reasonably manageable level. This logically brings us to the subject of thinking of ‘alternatives to imprisonment’ in our sentencing policy.
- (d) The atmosphere of prisons should be surcharged with positive values and the inmates should be exposed to a wholesome environment with appropriate opportunities to reform themselves.
- (e) The State recognizes that a prisoner loses his right to liberty but still maintains his right to be treated as a human being and as person. His human dignity shall be maintained and all basic amenities should be made available to him. Whereas his movement is restricted, he has freedom of life and all other fundamental rights as laid down in the Constitution of India.
- (f) The endeavor shall be to hit the root cause of the crime, i.e. poverty, unemployment, lack of education and employability skills rather than imparting of punishment only. Therefore, the focus shall be on correctional administration and imparting of values, education, vocational skills & training to help them live with honour by having gainful employment and rehabilitation on release.
- (g) The young children, especially of the women convicts, shall be treated with dignity and all the facilities for their proper upbringing & education shall be made available to them by the State.
- (h) Effort should be to reform the criminal minds rather than punishing them alone. This could be achieved by involving the criminal minds and keeping them busy in education, work, physical exercises and instilling good values through counseling, meditation, yoga etc.

- (i) The number of under trials and convicts shall be kept at minimum by recourse to a number of legal measures such as fast track courts, Lok adalats and even through appropriate judicial interventions.
- (j) The prisons shall be modernized and technologically upgraded so as to make them safer, more secure, efficient, livable and transparent in their functioning.
- (k) impetus needs to be given to the concept of OPEN prisons which supposedly provide a much more humane treatment to the inmates for their transformation and correction

## **MEASURES TO BE IMPLEMENTED BY THE STATE GOVERNMENTS/UT ADMINISTRATIONS FOR ACHIEVING THE OBJECTIVES LAID OUT**

### **1. Infrastructure & Physical Conditions of Prisons**

- 1.1. Remove overcrowding in prisons by creating additional capacity taking into account the existing overcrowding as well as future requirements. A fifty years vision must be kept in mind while constructing new prisons.
- 1.2. Provide infrastructure as per normative standards for human living in consonance with human dignity. All prisons to be constructed and maintained on the basis of certain well defined universally accepted norms & standards. the states to build new prisons on the concept of **model prisons**, be it the Central Prison, District Prison or even Sub-Prisons where some basic international norms and standards are to be followed
- 1.3. All accommodation provided for the use of prisoners and, in particular, all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.
- 1.4. Proper water and sanitation system should be in place in every prison. A norm should be adopted to construct flush latrines and bathrooms for the prison inmates which shall enable them to comply with the calls of nature in due privacy when necessary and in a clean and decent manner.
- 1.5. Every prisoner shall be provided at the usual hours with food of nutritional value, adequate for health and strength, of wholesome quality and well prepared and served
- 1.6. Prisons will ensure separation of different categories of prisoners like Women, Young Offenders, first time offenders, Under-Trials, Convicts, Civil Prisoners, detenus, High security prisoners etc. Such a segregation of prisoners shall be done in a rational and scientific manner. This shall facilitate their appropriate treatment with a view to their social rehabilitation

as also control unnecessary & undesirable influences. Young offenders and the mentally sick shall not be detained in prisons as far as possible.

## **2. Legal Policy Framework**

- 2.1 Inadequacies of the legal provisions in the context of modern day prison management philosophy need to be removed. Decriminalization of petty offences is the need of the hour to decongest the overcrowded prisons and apply the limited resources of Criminal Justice System to more serious offences and offenders.
- 2.2 An immediate review of legal provisions to expand the list of compoundable offences. Parole, remission and other options of pre-mature release also need to be expanded.

## **3. Custodial Management**

- 3.1 The primary responsibility of the prison is to ensure safe and secure custody of the inmates. The custody shall be, depending on the offence of the prisoner, in an open prison, normal prison or even a high security prison. The Government shall encourage a system of graded custody of prisoners to ensure smooth rehabilitation.
- 3.2 Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well ordered community life, with due regard to the maintenance of the rights of prisoners.
- 3.3 The overall objective of reforms and rehabilitation has to be pursued within the framework of custody.

## **4. Rights and duties of Prisoners**

- 4.1 Prisons will ensure that prisoners retain all their rights as human beings within the limitations of confinement/ imprisonment. Right to non-deprivation of fundamental rights guaranteed by the Constitution of India will be ensured except in accordance with law prescribing conditions of confinement.
- 4.2 Right to integrity of the body; immunity from use of repression and personal abuse, whether by custodial staff or by fellow prisoners.
- 4.3 Right to integrity of the mind; immunity from aggression by staff or by fellow prisoners.
- 4.4 Right to fulfillment of basic human needs such as adequate diet, medical care & treatment, access to adequate clean drinking water, access to clean and hygienic conditions of living, accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.

- 4.5 It shall also correspondingly be the duty of every prisoner to obey lawful orders, rules & regulations and instructions issued by the competent prison authorities and to respect the dignity and the right to life of every inmate, prison staff and functionary and to abstain from hurting the religious feelings, beliefs and faiths of other persons.

## **5. Contact with Outside world**

- 5.1 Every prisoner shall be allowed reasonable facilities for seeing or communicating with, his/ her family members, relatives, friends and legal advisers for family affairs/ legal help with adequate safe guards including reasonable facilitation for foreign nationals to communicate with their diplomatic and consular representative.

## **6. Women Prisoners**

- 6.1 Separate prisons for women offenders wherever feasible. At other places the women prisoners shall be kept in a strictly secluded female enclosures/ wards.
- 6.2 There shall be special accommodation for all necessary pre-natal and post natal care and treatment. Expectant Women or Women with Infants should have a system of parole to deliver the baby outside the prison and thereafter to bring up their infant in normal society upto certain age.
- 6.3 All women prisoners, and their children living with them in prison, should be provided the basic facilities to keeping in view the guidelines framed by the Supreme Court in case of R.D. Upadhyaya vs State of Andhra Pradesh & others.
- 6.4 Educational and crèche facilities should be provided to the children living with their mothers in prison
- 6.5 There should be better visiting area for women inmates to meet their children. No meeting behind bars for women and their Children.

## **7. Medical Facilities in Prisons**

- 7.1 At every institution (Prison), there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The doctors shall be regularly trained with regard to the specific requirements of prisons like, HIV issues, homo sexuality issues, drug addiction etc..
- 7.2 The Central prison should have a proper hospital/ dispensary with a well equipped Laboratory with testing facilities and adequate availability of medicines depending on prison population. There should be a proper

medical examination and a subsequent yearly medically examination of the inmates and their proper medical record maintained.

7.3 Diet menu should be drawn by Dietician keeping in view the demographic composition of prison population.

## **8. Management & Administration of Prison**

- 8.1 There is a need to make effective use of the technological advancements including Information & Communication Technology in the management of Prisons for effective and transparent administration. Modern electronic security gadgets be promoted in every prison
- 8.2 Video conferencing should be introduced in every central prison and district prison which can be used for extension of remand and even for trial purposes.
- 8.3 There shall be an active Grievance redressal system in every prison which will provide every inmate the legitimate opportunity to voice his grievances.

## **9. Correctional Administration**

- 9.1 Correctional work shall aim at bridging the gulf between the offender and the mainstream society.
- 9.2 The aim of various correctional programs in prisons should be to channelise prisoner's energies into constructive and creative pursuits, instilling in them a sense of confidence, developing amongst them social responsibility and consciousness, fostering amongst them habits and attitudes necessary for adjusting in the community, creating amongst them an awareness of futility of leading a criminal life and uplifting them morally, mentally and socially.
- 9.3 Meditational therapies and practices like Yoga, Vipasana and Art of Living etc. shall be promoted to erase the memory of past bad experiences among prisoners.
- 9.4 We should use the physical strength of these inmates for developmental work, games and other physical activities as much as possible;
- 9.5 Recreational and cultural activities shall be provided in all prisons for the benefit of the mental and the physical health of the prisoners
- 9.6 After care institutions shall be established within the framework of the Government or by co-opting private bodies/NGOs with a view to secure rehabilitation of released prisoners

## **10. Education, Vocational Training and Work Programmes**

- 10.1 The range of reformative and rehabilitative programmes should aim at raising the educational and vocational skill levels; The skills imparted should improve the employability of the prisoner to prepare them for employment or self-employment after release;
- 10.2 The welfare schemes being run by the various developmental and welfare departments of the state could pick up beneficiaries from the prisons inmates as well.
- 10.3 A Government supported prison industry policy is required to ensure effective learning, channelizing the physical & mental energies of inmates and thus making them good & responsible citizens.
- 10.4 A system of payment of appropriate wages for the work done shall be established which shall be reviewed periodically.
- 10.5 While organizing work programmes and production policy for planned employment of inmates, the factors like mental and physical health, requirements of security, custody and discipline, age, length of sentence, inmate's skills and abilities and also potential for acquiring new skills, urban /rural background etc. should be taken into consideration
- 10.6 The vocational training and work programmes may be out sourced to the credible training institutions of repute and help from NGOs may also be sought for the same with adequate safe guards.
- 10.7 Encourage inmates to join correspondence courses from National Open Universities/ Institutes.
- 10.8 The interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from any industry in the prisons.

## **11. Welfare of Prisoners**

- 11.1 The starting point of all welfare programmes shall be the initial classification of the prisoner and the study of individual inmates.
- 11.2 The welfare programme shall include periodical review of progress and re-classification of prisoners, review of sentence and pre-mature release, planning for release, pre-release preparation and after care.
- 11.3 Different national events & festivals like Independence day, Republic day etc. as also sports day and cultural festivals shall be organized in the prisons so as to inculcate the feelings of brotherhood and patriotism amongst the prisoners.

11.4 Active public participation in treatment of offenders shall be encouraged

## **12. Prison Staff**

- 12.1 The functioning of prisons up to expected level of operational efficiency and efficacy depends upon the quality of prison staff available. Service conditions of prison personnel shall be such as to secure and retain the best suited and qualified persons both for custodial as well as correctional administration.
- 12.2 Prison campus should cater to the housing needs of the staff as well as community centre to cater to the needs of staff and their children in order to ensure their stay within the prison premises. Recreational facilities to staff be provided within prison campus
- 12.3 After entering on duty and during their career, the personnel shall improve their knowledge and professional capacity through regular in-service training, both at the national and international level with focus on physical training, correctional & custodial administration, Gender sensitization etc.
- 12.4 The State Government should provide basic training to the prison officials at the entry level itself and thereafter they should be encouraged to attend refresher courses meant for them and are conducted by various training academy of the State Governments.
- 12.5 At the national level under the Ministry of Home Affairs following institutes contribute in a significant way to provide advanced specialized in-service training for the prison personnel at the regular level:-
- (i) Bureau of Police Research & Development, New Delhi
  - (ii) LNJN National Institute of Criminology and Forensic Science, New Delhi
  - (iii) Institute of Correctional Administration, Chandigarh.
  - (iv) Regional Institute of Correctional Administration, Vellore.

## **13. Legal Aid Facility**

- 13.1 For the purpose of his defence, an under-trial prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence. Legal Aid Cell in each prison shall be maintained to help in processing the legal aid applications.
- 13.2 For this purpose even NGOs and Law students could be encouraged to contact the prisoners and their families on a regular basis to fulfill the requirements of approaching the court.

13.3 Lok Adalats/ special courts should be held in each prisons to expedite disposal of cases.

**14. Encouraging Alternatives to Imprisonment**

14.1 In order to de-congest prisons, the alternatives to imprisonment shall be explored by proper amendments in the various statutes. 'Probation' and 'Parole' system which provide alternatives to the imprisonment at conviction and post conviction stage do not seem to have been practiced to exploit their full potential which needs to be explored.

14.2 Community Service, forfeiture of property, payment of compensation to victims, public censure etc should be introduced as an alternative for offences under small cases such as Excise Act and minor theft cases and other minor offences.

## ANNEXURE-IV

### Important Observations made by the Sub Committee of the Department Related Parliamentary Standing Committee of the Ministry of Home Affairs

1. Necessary steps may be taken to reduce overcrowding in jail.
2. The State Governments should take the initiative to ensure that the provisions of the Model Prison Manual are complied with.
3. The young offenders/under trials need to be kept separately as when they are kept with other hardened criminals, they often commit more serious crimes after release from Jails.
4. The State Governments shall effectively invoke Sections 436A, 436(i) and 265 to 265 L of the Cr.PC, 1973 with the objective to reduce the overcrowding and languishing of undertrials in jails. All the concerned authorities may use these legal provisions which would help in reducing the burden on the prison infrastructure.
5. The Model Prison Manual shall be implemented by the State Governments so as to maintain uniformity in the prison administration throughout the country which will go a long way in effecting prison reforms.
6. The States should have atleast one prison exclusively for women depending upon the average number of women prisoners in the respective State.
7. The States should create infrastructural facilities like crèches for the accompanying children of women prisoners, hygienic living conditions and provision of separate kitchen for women prisoners.
8. The existing medical facilities in the prisons should be overhauled and one police escort party should always be provided to accompany a prisoner requiring emergency medical attention.
9. The old system of shaving should be dispensed with and each prisoner should be provided a separate disposable razor to check the spread of HIV/AIDS among the prisoners.
10. Steps should be taken to make the procedure of visits to jail inmates transparent in all the prisons of the country and there should be a mechanism to get the feedback from the relatives of the inmates. The modern visitors' chamber should be constructed in place of ramshackled ones in which there would be transparent glass façade and intercom facilities so that the prisoners' visitors can talk while looking at each other.
11. The telephone facility should be provided in some selected prisons of the country on a trial basis. The inmates could use this facility in the presence of a jail staff. The telephonic conversation could also be taped which would help in tracking the connections of the hardened criminals.

12. Prison workshops need to be urgently modernized and they should function like small modern industrial units with latest equipments.
13. The daily wages of the convicted prisoners working in the prison workshops need to be increased. Simultaneously, these prisoners should also be given the option of working extra hours to earn more money. The undertrials should be given an opportunity to work in the prison workshop, if they willingly agree to do so.
14. There should be an effort to achieve total literacy among prisoners across the country. There should be facility of correspondence courses in vocational disciplines in the prisons and degrees/diplomas should be awarded to the prisoners after successful completion of their course so that they could lead a normal life in the mainstream of society, after their release.
15. The Government may consider opening of ITI-like institutions within the jail premises to impart industrial training in various disciplines to the inmates, which would go a long way in rehabilitating them after their release. In this context, the State authorities can also consider converting existing prison workshops into ITIs.
16. Every State Government should introduce "Mobile Petition Box" for prisoners to give suggestions and complaints.
17. The existing vacancies of prison staff must be filled up expeditiously and new posts for which proposals have already been sent, be created at the earliest. Further, the State Governments should post young and dynamic officers as Jail Superintendents for effective and meaningful management of Jails.
18. Every State should have such open jails where the prisoners having good conduct and who have spent considerable years of their sentence, could be sent.
19. The power of giving character certificate be entrusted to the respective Jail Superintendents as they are the authorities who had been closely watching the activities of the inmates for a long time.
20. Necessary steps should be taken by each of the State Governments to prevent supply of drug in jail.
21. Our mindset towards prisoners should undergo a change so that a prison truly reflects the spirit of correction and reformation by treating the inmates as human beings.

No.V-17013/17/2009-PR  
GOVERNMENT OF INDIA/BHARAT SARKAR  
MINISTRY OF HOME AFFAIRS/GRINH MANTRALAYA

-----  
Dated the 16<sup>th</sup> October, 2009

To

The Principal Secretary/  
Secretary Home (in-charge of Prisons),  
All States and Union Territories.

**Subject : Improving of security measures in jails to avoid the incident of jail breaking.**

Sir/Madam,

As you are aware the Central Govt. has been advising from time to time to the State Governments on strengthening the security measures in jails to avoid the incident of jail breaking in past some occurrence of jail breaking has come to notice of the Central Government. This occurs only due to laxity in security measures in Jails.

2. Recently, an incident of serious jail break took place in Distt. Jail Shillong, Meghalaya on 31<sup>st</sup> May, 2009 wherein a group of 7 under-trial prisoners escaped from the jail. This incident could happen only due to extreme security lapses and indiscipline atmosphere in the jail. During the enquiry, many lapses were found. The provision of jails manuals were not being followed properly. The Superintendent of jail did not visit the jail on the date of the incident. There was extremely lax atmosphere and prisoners who had access to money were using it to purchase food, cigarettes, liquor etc; through wardens who were obliging them for financial considerations. Gadgets like DFMD, telephones etc. were nor functioning. There was no alarm to be sounded when the jail break occurred. There was gross indiscipline among the wardens and no action was taken to rectify the situation.

3. While the Ministry is aware that the State Governments are concerned with the aforesaid issues and would be adopting all possible security measures in their respective States, it is reiterated that the provisions of the Jail Manual may be followed strictly. State Governments may take necessary action for adopting foolproof measure in their respective States to avoid any incident of jail breaking.

Yours faithfully,

Sd/-

**(Nirmaljeet Singh Kalsi)**

Joint Secretary to the Govt. of India

F.N.17013/13/2010-PR  
Government of India  
Ministry of Home Affairs

New Delhi, the 25th May 2010

To

Principal Secretary (Prisons)/ Principal Secretary (Home-in charge of prisons)  
All State/ Union Territories

Sir

**Subject: Smuggling of drugs into prisons- regarding**

Drug abuse is a social evil. It destroys not only vitals of the society but also adversely affects the economic growth of the country.

2. Prisons though are one of the most secured premises, but even they have been hit by this menace. Many a times the drug traffickers manage to smuggle drugs in the prison premises. Drug addiction amongst people breeds crime and these criminals come back to prison and expand the market for drugs within the prison premises. Drug addicts often resort to crime to get money required to sustain their habit. The relationship between drug and crime is now too well known and drug addicts are likely to commit more offences every year. Thus drug addition is not only a problem in itself but is also a precursor for increase in crime rate in the society. Hence drug addiction among prison population, needs to be tackled effectively. This would need, not only the treatment of such prisoners who are drug addicts, but also by way of curbing/ eliminating the sale of drugs in the prison premises.

3. In order to address this issue, following steps are suggested:

- (1) Prison staff need to be sensitized about the drug related issues and its implications;
- (2) Prison staff need to be trained in detecting and apprehending drugs;
- (3) Wherever necessary, prisons are to be equipped with sniffer dogs to check the visitors and packages for drugs;
- (4) All addicts within the prison shall be registered and compulsorily sent for drug de-addiction.

(5) Every new entrant into the prison be tested for addiction and if need be sent for de-addiction.

The aforesaid steps are only indicative and not exhaustive.

4. All the State Governments/ UT administration are requested to take effective measures in the light of the recommendations made by the various committees/court judgments, the Model Prison Manual and advisories issued by the Government of India from time to time for the effective and smooth functioning of the prisons.

5. The receipt of this letter may please be acknowledged.

Yours faithfully

Sd/-

**(Dr. Nirmaljeet Singh Kalsi)**

Joint Secretary to the Govt. of India

Tel: 23092630

**MOST IMMEDIATE**

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

-----  
North Block, New Delhi, 13<sup>th</sup> 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 illness 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 Pension 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 ground 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 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 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 rights to the requisite medical care in prisons.
- (iv) For the purpose of legal recourse, the TIPs may be categorized 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 policy 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. Provisions 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 balances. 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. Facilities /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,  
Sd/-  
(Dr. Nirmaljeet Singh Kalsi)  
Joint Secretary to the Govt. of India  
Tele. No. 23092630

**No.17011/2/2010-PR**  
**Government of India/Bharat Sarkar**  
**Ministry of Home Affairs/Grih Mantralaya**

North Block, New Delhi

Dated the 8th November 2010.

To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs

DGs/ IGs incharge of prisons- All State Governments / UTs.

**Subject: Best Prison Practice- regarding**

Sir,

As you are aware, an all India conference of Correctional of Correctional Administrators was held in New Delhi on 8<sup>th</sup>-9<sup>th</sup> September 2010. One of the agenda of the conference for discussion was the Best Prison Practices being adopted all over India. During the conference, an attempt has been made to identify the best practices in different prisons of the country. It is very essential to share this knowledge in order to bring about improvements in the system. Various State Governments/ UT Administrations have, accordingly, disseminated their knowledge towards the best prison practices being followed in their respective States/ UTs.

It was found that best practices in prisons exist in a number of areas broadly relate to security, use of technology, staff development, prison management, women prisoners, correctional programmes, and community participation and reintegration of offenders. These are given under the following heads:

- (a) **Prison Security** covering technology use. **CCTV Surveillance** System in Delhi Prisons which has a control room set up in the Prison Headquarter. 258 C.C.T.Vs cameras installed in Tihar and Rohini Jail complex. The controlling officers of the Central Surveillance Unit are working in three shifts of eight hours duration. West Bengal, Chhattisgarh, Karnataka, Tamil Nadu, Andhra Pradesh and Bihar also have CCTVs systems.
- (b) Hand-held metal detectors, X-Ray Baggage Scanners, Multi zonal door frame metal detectors, laminated photo identity card for Prisoners in Thane, Maharashtra, breathing analyzers, mobile jammers system, public address system and staff training on prison security were other good practices.

Three tier security, quick reaction teams and Model Test Identification Parade Room at Tihar, and Tamil Nadu which has an Intelligence-cum-Vigilance wing.

- (c) **High security wards** and prison architecture were found in Tamil Nadu to be a good practice. The Puzhal Prison complex with the high security block has been specially designed as being self-sufficient unit with a three gate system.
- (d) **Use of Technology in Prisons – Biometric identification system** to store photographs and biometric finger prints of all inmates was found in Tihar Jail, and is a good practice that has been picked up by Jharkhand as well.
- (e) **Video-Conferencing** system for production of undertrials in courts was originally started in Andhra Pradesh in 2001. It is now in use in Maharashtra, Tamil Nadu, Karnataka, Gujarat, West Bengal, Jharkhand, New Delhi and some more States and is a best practice as it prevents untoward incidents like escape and reduces expenditure on police escorts and vehicles. It also ensures the production of undertrials. Conducting of trials through video linkage is also being seriously thought and possibilities explored. The court has allowed it in a few cases.
- (f) **Prison information system or prison management system**, a software to record and keep all prisoner information and prison movement activities in Goa, Tihar, Delhi and Tamil Nadu.
- (g) **Visitor Management system** in Tihar, Delhi Prisons. This software has been developed to register the visits of friends and relatives in advance. This good practice has been picked up by Jharkhand as well.
- (h) **Information Dissemination and Websites. Newsletters** / magazines publications by New Delhi, Andhra Pradesh, West Bengal, Tamil Nadu, Karnataka, Madhya Pradesh. In other places like Amritsar and Chandigarh, this is not a regular feature. Websites of Prison Departments of 18 States were found. Tamil Nadu has a very detailed Website that covers information under R.T.I. Act. So does the Puducherry prison. Tihar prisons cover a complete list of appellate authorities under the RTI Act.

- (i) **Citizen's charter** has been put on the websites of Karnataka, Madhya Pradesh, Tihar and Andhra Pradesh.
- (j) **Staff Development and welfare** – Tamil Nadu has nominated the maximum number of officers for the **President's Correctional Service Medals** for Distinguished Services, Meritorious Services, and Gallantry. Apart from this, the State has also instituted State Level Awards for commendable performance. These include the Chief Minister's Prison Service Medal for gallantry and a medal for outstanding devotion to duty. Karnataka has introduced a comprehensive **medical insurance scheme** for the staff and their family. Prison **Staff Welfare Fund** exists in Tihar and Karnataka. Andhra Pradesh conducts an annual retreat, a meeting with the prison officers to review an introspect for better administration.
- (k) **Managerial Practices, Participative Management** in Tihar. Prisoners' Panchayat though found to be existing in almost all States has different levels of effectiveness. Mahapanchayat is organized once a year in Tihar.
- (l) **The Prisoners Contact with the outside world** – Tele-booking at Tihar, booking through e-mails was started at Central Jail, Amritsar but discontinued after sometime. ISO Certified Visiting system of Tihar prison. Model Interview halls at Tihar.
- (m) **Telephone facilities** at Bangalore Central Prison. Prisoners public call booths have been set up in the prison complex with prisoners being provided with BSNL calling calls purchased from their own money. To streamline visits an alphabet mulaquat system at Haryana has been started.
- (n) **Grievance Redressal System.** Complaint boxes exist in all prisons but their usage depends on the faith prisoners have with their grievances being properly redressed. Tamil Nadu has a Chief Minister Grievance day meeting wherein petitions are received and specific periods have been mentioned for senior officers to conduct grievance day for disposing of grievances at the earliest.
- (o) **Liberalised Parole** - The Government of Madhya Pradesh has started a system of liberalised parole wherein the duration of parole has been increased from 21 days to 60 days, to be split into four quarters equally. This was done to facilitate prisoners in attending to agricultural needs to earn for their dependants. *The surety, once furnished by the prisoner, was made*

*acceptable to the Jail Department for all future paroles till withdrawn by the maker.* All convicts, having spent 6 months in prison, were declared eligible for parole. Refusals or delays, beyond 90 days of parole by the District Magistrate have been made appealable before the DG Prisons. A provision of a second appeal to the State Government has also been made.

- (p) **Modernization of Kitchen.** Model Jail, Chandigarh and Tihar, New Delhi. Variety of food in Tamil Nadu, Karnataka West Bengal. Food outsourcing at Karnataka. Healthy Food at Prison canteens in Gujarat, Patna and Bangalore.
- (q) **Best practices exist in the areas of Making the best use of Prisons** – Some Unique work programmes including **Prison Shops outside** the prison (at Gujarat, Chhattisgarh, Lucknow). Other Innovative work Programmes include petrol pump at Central Jail, Raipur and Dal Bhati restaurant in Central Jail, Raipur. In other Activities – Education. Religious, Meditational and Spiritual Programmes and Recreational Activities / Sports Activities, Community Involvement. Creative Arts / Cultural Therapy was found as a best practice in West Bengal. Prison industry – the highest average production per prisoner was found in Maharashtra. Highest earning per inmate was reported from Gujarat.
- (r) **Solar Energy in Prisons:** Prisoners of Central Jail, Bhopal have fabricated hot water solar plant with a capacity of 2500 liters per day. A Solar Geyser of 200 LPD capacity has also been fabricated. The hot water is being used for cooking. It saves Rs 36,000/- per month as fuel cost in Bhopal Jail. Approximate cost of 2500 liter plant is Rs. 2,00,000/- and that of 200 LPD Solar Geyser is Rs 20,000/-. The technology adopted by the Central Jail Bhopal can be replicated by various State Governments.

## **MAJOR CORRECTIONAL INITIATIVES IN INDIAN PRISONS**

A number of correctional activities have also been started in different prisons in the country in association with NGOs and other State agencies. Some of the notable correctional programmes being run in Indian prisons are enumerated as under:-

### **Educational Programmes**

More than three-fourth of the prison population in Indian Prisons is below high class while the remaining prison population has comparatively better educational qualifications. The less literate prisoners are not only given basic education but they

are also encouraged to upgrade their vocational qualifications. Formal education programmes are offered to the prisoners with the help of National Open School, Indira Gandhi National Open University, State Open Universities, Distance Education Boards and technical courses in collaboration with the Technical Training Institute of various states.

The Government is giving training to educated prisoners to enable them to teach less educated and illiterate prisoners. Special attention is given to illiterate inmate so that he may be able to read and write his name within a week time. Advance educational avenues are available to prisoner so that if they want to pursue higher studies they may do so through open universities/ technical institution. Special attention is given for the prisoner appearing for various competitive examinations. Examination fee and course fee are borne by the Prison administration in case of poor prisoners.

The IGNOU Study Centres are running inside some of the jails which is providing higher education to the inmates as well as to the prison staff in different academic as well as professional Courses.

**A convocation for prisoners was held at the Palayamkottai jail in Tamilnadu wherein 17 prisoners got post graduate degrees.**

In one of the jails, i.e. Central Prison, Tiruchy, Tamilnadu, **a programme for cent percent literacy under the Sarva Shiksha Abhiyan (SSA)** was started in January, 2009 for the inmates.

During the year 2007, a total of 29107 prisoners were imparted elementary education and 60029 prisoners benefited by the adult education programmes in prisons. It is encouraging to note that 2564 prisoners had undergone higher education and 2778 prisoners completed Computer courses during their period of incarceration in prisons.

### **Stress Relieving Programmes**

The prisoners are regularly sensitized on health issues like HIV and Drugs. A number of programmes of spiritual/moral education are also run in most prisons with the active help of the community and NGOs. Classes of

- Yoga and Meditation courses for the Prisoners with the help of NGO's, Charitable Trust, Religious leaders and Institutions.
- Moral lectures / Religious discourses conducted by spiritual leaders of various organizations.
- Art of Living Courses
- Pranic Healing courses

- vipasana,  
are being organized in Indian prisons to reduce stress in prisoners.

### **Cultural Programmes:**

The prisoners also actively take part in cultural and sports programmes in the prisons.

- ✎ All important festivals irrespective of caste, creed and religion like Dussehra, X-mas, Id-ul-Fiter, Ratha Yatra, Raksha Bandhan etc. are being celebrated by the prison inmates in the jails.
- ✎ National days like Independence Day, Republic Day and Gandhi Jayanti are being celebrated by the inmates of all jails.
- ✎ Sports meets, Quizzes, Essay & Song competitions and other cultural programmes are being organized among the inmates.
- ✎ T.V. sets have been provided to the prisoners for their awareness on daily news events, entertainment, knowledge enhancement and momentary engagement.
- ✎ Drama, Sangeet Samaroha, Melody Programme, Dance, Palls song and Bhajan Samaroh etc. are also being organized among the inmates of different jails.

### **Skill Building Programmes**

The incarceration of sentenced person in prison not only lead to his stigmatization but also causes his social disorientation owing to his having remained practically cut-off from social intercourse with the rest of the society. Loss of job, if employed, and loss of means of livelihood are also one of the prime ill consequences of the incarceration. Hence, the most important single factor which can facilitate his reintegration with the society and prevent his relapse into the crime after release is the economic rehabilitation.

Training of prisoners in various vocational skills in the Prison has received a lot of importance in almost all the States/UTs. These training programmes provide opportunities for the prisons inmates to engage themselves in fruitful pursuits during the term of their sentence in prisons. Training for prison inmates not only affords value for one's work but also makes the prisoners learn skills which would enable them to follow a vocation after their release from the prison. The training facilities available in Indian prisons depend on the local conditions. Availability of raw material, local market needs, demands and marketing of finished products mainly decide the vocational training facilities available in any prison premises.

- Vocational training programmes are being run in conventional trade like,
- carpentry

- blacksmithy
- tailoring
- plumbing
- bakery
- foot wear making
- leather goods
- latest avocation like Data Entry Operations
- typing
- desktop printing
- electrician,
- beauty parlour
- soft toy making
- wheel chair refurbishing
- yoga teaching
- telephone repair & maintenance etc.

All these vocational training programmes enhances employability potential of the prisoners after their release and help in their rehabilitation.

The training of prison inmates in vocational trades has led to the production of articles which have good market value, resulting in gainful productivity of the prison inmates. The gainful work done by the prison inmates not only provides a corrective approach to the psyche of the offender but also goes a long way in developing in them a responsive and respectful attitude towards the society. The prisoners not only develop self confidence and self esteem out of the valuable labour put in by them but these activities also lead them towards earning a honorable livelihood after release from the prison. Vocational training is, therefore imparted, in such trades as shall fetch employment to the prisoners easily after their release from the prisons. Industrial Training Institutes (ITI) have been opened at Central Prisons, Jaipur and Ajmer by Department of Technical Education. One year and two year Diploma courses in Fitter v& house wiring, Carpentry, Cutting & sewing, Fitter and Diesel mechanic are being run for inmates.

Some of the items being produced in the prisoners run industry/workshops are given below:-

- (i) Agricultural produce in prison farms,
- (ii) Furniture in carpentry workshops,
- (iii) Furniture and handicrafts making in woodwork workshops,
- (iv) Readymade garments producing in tailoring sections,
- (v) Furniture and handicrafts making in black smithy workshops,
- (vi) Clothes, rugs, towels etc in weaving sections,
- (vii) Soap, phenyl and detergents,

- (viii) Handloom products,
- (ix) Confectionary items in bakeries,
- (x) Shoes and leather goods in leather workshops.
- (xi) Stationery and paper products etc.

### **Agriculture, Horticulture and Medicine Plant cultivation**

Cultivation is done in the jails at Keonjhar, Bolangiri and Bhanjanagar. The inmates are learning new type of skills and ability in trades like Agricultural farming, vegetables and Horticulture. These have been taken up in many jails across the country, some of them being Bhawanipatna, Choudwar, Bhubaneswar, Puri, Koraput, Bolangiri, Keonjhar and Biju Patnaik Open Air Ashram, Jamujhari etc.

Medicinal plant cultivation is taken up in a 40 acre land at Biju Patnaik Open Air Ashram, Jamujhari. Besides, Jatropha has been planted for production of Bio-diesel Plant. Tissues culture programme has been taken up extensively in many jails and banana has been made a profitable source. Ready-to-eat food packets are also prepared by women prisoners in Bhubaneswar Special Jail in collaboration with W.& C.D. Deptt. and ICDS Organization.

### **Female Prisoners And Welfare Of Their Children**

Female prisoners are allowed to keep their children with them in the jail upto six years of age. The children lodged in prisons are provided with clothes, diet, bed, medical care and education by the Prison Department and the help of NGOs is also taken. The children are also taken to the picnic outside at regular intervals.

In many jails, there is a separate Crèche and a Nursery run in association with the NGO. There are adequate recreational and educational facilities for the children including a toy garden. Every possible step is taken for all-round development of children. The Prison department in association with NGOs ensures the complete education of the child no matter whether the mother is in jail or released. There are trained workers and nursery education is provided to them in the crèche. When the child attained the 6 years of age, the child is admitted in a boarding school with assistance from NGOs after the consent of the mother.

In some of the prisons, marriage ceremonies are arranged and solemnized by the jail staff in association with the NGOs. In some cases, the prisoner have shown desire to marry with the victim. Such marriages have been encouraged and solemnized in prisons.

## **NGO'S In Reformation And Rehabilitation**

Community participation in the Jail correctional programmes is a trend setter for the Jails worldwide. In jails community participation is achieved through NGO's whereby many of the reformation and rehabilitation activities are conducted in jail in addition to own efforts of prison administration. NGO's have been providing various kind of services like providing community aids and sponsorship for the children of prisoners for their education, providing educational aids in prison and outside, facilitating in getting admitted in hostel for the children who are above six years of age.

The Prison Department in association with NGOs, ensures the complete education of the children of inmates, no matter whether the mother is in jail or released. The further education is given to the child only when the mother agrees for the same

## **Women Prisons/ special initiatives**

Exclusive women prisons have been set up in certain states for security and earlier rehabilitation of women. In the State of Tamilnadu, these prisons are exclusively administered also by women.

Different marriage ceremonies were arranged and solemnized by the jail staff in association with the NGOs. In tribal - dominated societies like Orissa, females under the statutory age of 16, co-habit with young men of their choice, which technically falls under the mischief of section 376 IPC.

## **Open Jails**

Open jails/ open camps or wall-less prisons are a result of scientific pre-meditation and these can be considered as useful "missing link" of correctional process. The primary motive is to fill the gap between incarceration and responsibilities of a free society. In Rajasthan, prisoners are allowed to stay with their family in these open camps. There are 29 open jails in India of which 13 are in Rajasthan.

The only Open Air Jail in Orissa is now renamed as "Biju Pattanaik Open Air Ashram". Various activities relating to agriculture, horticulture and cottage industries are going on this Open Air Ashram. Apart from this aromatic & medicinal plants are also cultivated here.

All the State Governments/ UT administrations are advised to adopt the best prison practices being followed by various State Governments which will not only

improve the management of prison system in a better way but also will go a long way in reformation of prison inmates.

The receipt of this letter may please be acknowledged.

Yours faithfully

Sd/-

**(Neeraj Kansal)**

Director (CS)

Telefax: 23092933

**F.N. 16014/4/2005-PR**  
**Government of India/ Bharat Sarkar**  
**Ministry of Home Affairs/ Grih Mantralaya**  
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**New Delhi, the 18<sup>th</sup> February, 2011**

**To**

**The Principal Secretary (Prison/ Home in charge of prison)**  
**All States/ UTs**

**Subject: Advisory for appointment and working of Non-Official  
Visitors for Prisons.**

Sir/ Madam,

As you are aware that a transparent, open and accessible prison system is likely to be accountable and successful in maintaining human rights standards. Prison visiting system is a system to bring more transparency and accountability. It has two types of visitors namely Official Visitors (OVs) and Non-official Visitors (NOVs). The prison visiting system relating to Non-official Visitors needs to be streamlined. Since prison administration is under increasing public scrutiny and the role of civil society is important, it is essential that only enlightened & concerned citizens be appointed as Non-official Visitors.

2. Non-Official Visitors may be appointed for all prisons without delay. The system of appointment should be transparent and democratic with prescribed criteria. The members who are selected as NOVs should have knowledge and/ or expertise in areas such as prison reforms, legal rights, counseling, social work, criminology, adult education, vocational training courses for adult populations, diet and nutrition, child care, music, yoga etc. Minimum number of NOVs to each category of prisons must be clearly mandated. NOV system must become operational on a regular and stable basis. Women visitors may also be appointed as Non-official Visitors to look into the issues of women prisoners. The State Human Rights Commission suggestions on appointment of Non-Official Visitors should be taken into consideration by the State Government.

3. The terms of reference for the panel of NOVs should include monitoring of prison conditions, implementation of prison reforms, legal, mental and rehabilitative assistance, prisoners' grievance and staff problems.

4. The number of visits made and the quality of service rendered must be the criteria for re-appointment or termination of the services of NOVs. The NOVs

appointed to each jail may also be paid reasonable honorarium to cover their incidental expenses on transport, stationery, etc.

5. To coordinate between the Official Visitors and Non-official Visitors, there is provision in the Jail Manuals for establishment of a Board of Visitors to be constituted by the Deputy Commissioner / District Magistrates for each jail. The meeting of the Board of Visitors should be held once in a quarter. The Deputy Commissioners/ District Magistrates should be impressed on the need for paying special attention in constituting the Board of Visitors and to ensure that the meeting of the Board is held regularly. At the first meeting, roster of visits should be prepared for the next 12 months which permits a monthly visit to each jail by a visitor either official or non official. In addition every NOV may also visit the prison once in a month at a time outside the prescribed roster.

6. The non-official visitors appointed by the Government have to discharge their duties within the parameters of the functions of the Board of Visitors, which are (a) to visit the prisons regularly, (b) to help the administration in correctional matters, and (c) to attend to the requests and complaints of the prisoners pertaining to their care and welfare. After completion of the visit, the visitor should enter his remarks in the Visitor's Book, as required by Rules and advise the Superintendent to take such remedial measures as are required with utmost expedition.

7. Guidelines for Interviewers and Non-Official Visitors as have been prepared by the Bureau of Police Research and Development/ MHA, should be supplied to the Superintendent of each Jail. He/she should give a copy of these guidelines and also a copy of the Chapter in the Prison Manual covering visitors' duties to the Non-Official Visitors at the time of their appointment.

8. On the appointment of Non-Official Visitors, they must be sensitized and trained about their duties, role and responsibilities. Sensitization and training programmes must be organized for Non-Official Visitors by the prison headquarters in association with the Training Institutes like ICA, Chandigarh, TISS Mumbai, APCA Vellore, RICA West Bengal and RICAs in other States. A workshop of NOV's from across the State should be organized once a year by the State prison training institute for sharing their experiences/ learning and documentation of good practices models.

9. The DG /IG (Prisons) should obtain for six-monthly reports from the prison superintendents about the regularity of visits and the nature of work done by NOV's. The Board of Visitors should submit quarterly reports to the State Government under intimation to the State Human Rights Commission. Prison authorities must provide action taken reports to the Board of Visitors and the concerned State Human Rights Commission. This mechanism will ensure accountability of not only the visitors but

also the prison administration and help in bringing improvements in the prison administration.

The receipt of the same may kindly be acknowledged.

Yours faithfully

Sd/-

(K.K. Pathak)

Joint Secretary to the Government of India

Tel: 23092630

Fax: 23092675

**No.17011/2/2010-PR**

**Government of India/Bharat Sarkar  
Ministry of Home Affairs/Grih Mantralaya**

North Block, New Delhi

Dated the 9<sup>th</sup> May 2011

To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs

DGs/ IGs incharge of prisons- All State Governments / UTs.

**Subject: Overcrowding in prisons- regarding**

Sir,

Overcrowding in prison is one of the most challenging problems faced by Criminal Justice Systems worldwide. Prison overcrowding is more often a consequence of the way in which criminal justice is administered than a result of rising crime rates. The over-use of pre-trial detention, along with strict sentencing practices, are two main contributory factors. Overcrowding undermines the ability of prison systems to meet the basic needs of prisoners, such as healthcare, food, and accommodation. This also endangers the basic rights of prisoners, including the right to have adequate standards of living and the right to the highest attainable standards of physical and mental health. Prison overcrowding brings in its wake a host of serious problems to prison administration. It not only create security problem but also causes severe strain on the essential services, results in serious health hazards and disrupts penal reformation and rehabilitation programme. In an overcrowded prison segregation of hardened criminals and their separation from mild offenders become impossible. Prison overcrowding compels prisoners to be kept under conditions unacceptable to the United Nations Standard Minimum Rules for treatment of offenders to which India is a signatory.

## **NATIONAL SCENARIO**

2. The problem of overcrowding in prisons in India has been in existence since long. However, it is not uniform in all prisons of India. The District Prisons are more overcrowded than the other Prisons. As per the statistics published by the National Crime Record Bureau, as on 31.12.2008, there were 384753 prisoners in various prisons of the country against its total authorized capacity of 297777 prisoners. Out of this, the number of undertrial prisoners was 257928 which constitute 67% of the total prison population. The prison in India is overcrowded to the extent of 129%. While in some States, there was no overcrowding, the jails of some States are still heavily overcrowded.

3. In order to address the aforesaid issue, an all India Conference of Correctional Administrators was held in New Delhi on 8<sup>th</sup>-9<sup>th</sup> September 2010. One of the agenda for discussion was the issue of "Overcrowding- Reducing the number of undertrials" and it was strongly felt that the States need to take measures to reduce overcrowding in prisons. Some of the initiatives taken by the Central and some State Govts are also highlighted below.

## **INITIATIVES TAKEN BY THE GOVERNMENT OF INDIA**

4. Although Prisons is a State subject, for reducing number of undertrials, the Government of India has taken various administrative and legislative measures. Some of the measures taken are illustrated below:

- (a) Establishment of **Fast Track Courts (FTCs)** for expeditious disposal of long pending cases in the Sessions Courts. The FTCs were established to expeditiously dispose of long pending cases in the Sessions Courts and long pending cases of undertrial prisoners. The Government accorded approval for the setting up of 1562 FTCs upto 31.3.2010. FTCs were created exclusively to deal with cases

involving senior citizens, abuse of women and the disabled to expedite the disposal of session trial cases.

- (b) To reduce the delay in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trial prisoners, the concept of **plea-bargaining** was introduced in the Code of Criminal Procedure 1973 by way of Criminal Law (Amendment) Act 2005.
- (c) Launch of **National Mission for Justice Delivery and Legal Reforms**. Under the Mission, the Hon'ble Chief Justices of High Courts have been requested to reduce the number of undertrial prisoners by two-thirds during the period January-July 2010.
- (d) **Amendment in section 436 and insertion of a new section viz 436A in the Criminal Procedure Code**. Under Section 436, a person accused of a bailable offence can be detained in prison for a maximum period of 7 days and also a person who is unable to furnish bail within 7 days could be released on personal bond without surety. Under section 436A, an undertrial has a right to seek bail on serving one half of the maximum possible sentence. No one can be detained in prison for a period exceeding maximum possible sentence. This provision is, however, not applicable for those who are charged with offences punishable with death sentence.
- (e) Under section 167 of Cr.P.C. the maximum period for completing police investigations and filing charge sheet (for offence punishable with 10 years or more or death) is 90 days, whereas for all other offences, the period is 60 days. The undertrial prisoner is entitled to seek release on bail, if investigation is not completed within the stipulated period.
- (f) Creation of additional capacity of prisons through the Scheme of Modernisation of Prisons. Under the scheme, the Government of India has provided financial assistance of Rs 1800 crores to the States/UTs for construction of new jails, construction of additional

barracks, repair/renovation of existing jails, construction of staff quarters and improvement of water and sanitation in jails.

- (g) The Government of India has provided an amount of Rs 5000 crore as grant for the period 2010-11 to 2014-15 for bringing about improvement in administration of justice. Out of this, Rs 100 crore has been earmarked for Lok Adalats and Rs 200 crore for providing legal aid.
- (h) Thereafter Finance Commission has recommended a total amount of Rs. 609 crore for construction and upgradation of prisons for the States of Andhra Pradesh (Rs. 90 crore), Arunachal Pradesh (Rs. 10 crore), Chhattisgarh (Rs. 150 crore), Kerala (Rs. 154 crore), Maharashtra (Rs. 60 crore), Mizoram (Rs. 30 crore), Orissa (Rs. 100 crore) and Tripura (Rs. 15 crore).

### **STEPS TAKEN BY VARIOUS STATE GOVERNMENTS**

5. During the conference, the States/UTs have also highlighted various measures taken by them in order to reduce overcrowding in prisons. Some of these, as detailed below, are definitely worth considering by the other States /UTs as these shall go a long way in bringing about reduction in number of undertrials:

- (a) Use of plea bargaining methods.
- (b) Holding of Lok Adalats
- (c) Implementation of section 436 and 436 A of Cr.P.C.
- (d) Regular visits of High Court judges/ Secretary, District Legal Services Authority to district prisons .
- (e) Regular monthly coordination meetings between the District Judge, Superintendent of Police, Prosecution and Superintendent of Prisons wherein pending cases of undertrials are discussed for expediting disposal.

- (f) Preparation of list of undertrial prisoners and the status of the cases court-wise and prison-wise. Identical cases in which the undertrial prisoners can be released, can be pursued vigorously both legal aid and prison authorities.
- (g) Those cases of undertrial where the maximum punishment prescribed for the offence committed is upto seven years are put up by the jail authorities before the visiting judge every three months for review of their cases for release on bail.
- (h) Formation of Undertrial Review Committee in every District with the District Session Judge as the Chairman and Superintendent of Police and Superintendent of Prison as members to review the cases of undertrial every three months, of those lodged for more than 3 months.
- (i) Engaging competent legal counsels for indigent undertrial prisoners
- (j) Requesting court for reductions of surety amount where the amount is beyond means of the undertrial prisoners.
- (k) Taking up cases of seriously sick prisoners with the trial courts for their release on bail, as per law.
- (l) Providing legal aid through the Legal Aid Cell and use of video conferencing facilities by which the advocates of different District and High Courts can have interaction with the prisoners in jails to facilitate provision of legal aid.
- (m) In the case of undertrial from other States, local surety is not insisted upon and it shall be sufficient on verification of the identities and actual places of residence of the undertrials outside the State and their sureties to release them on personal bonds, or with or without sureties, as the case may be.
- (n) Release of undertrial under section 4(3) of Probation of Offenders Act.

- (o) Probation officers contacts families of the undertrial prisoners in cases where bail has been granted but not availed due to various reasons by arranging bailers to expedite release of undertrials.

### **ACTION REQUIRED TO BE TAKEN BY STATE GOVERNMENTS**

6. Apart from implementing the various measures taken by the Government of India for reduction of undertrials as mentioned above, the States/UTs are advised to consider the best practices being followed in this regard by various States/ UTs towards reduction of undertrial prisoners. The States/UTs are also advised to explore alternatives to imprisonment. Instead of sentencing offenders to prison, alternative sentencing should be made by way of imposing fine, community sentencing. The Government of Andhra Pradesh has recently introduced 'Community Service of Offenders Act, 2010' which is a new initiative in Penal Reforms. The said Act provides for imposition of 'Community Service' instead of sentence of imprisonment on offenders in certain cases. The Act applies only to offenders found guilty of minor offences in which imprisonment of not more than one year is envisaged. The States/UTs are advised to carry out suitable legislation for providing alternatives to imprisonment. Apart from above, the States/UTs may also consider taking following actions:

- (a) A survey of all such cases covered under section 436 and 436A may be carried out every six months by the prison authorities and presented before the magistrate/ judges concerned in each district, by sending such lists to the District Legal Services Authorities (SLSAs).
- (b) With regard to the provision of legal aid for release on bail, reduction of bail amount etc, the State Legal Service Authority (SLSAs) should direct the (DSLAs) in the state to arrange for lawyers for the unrepresented undertrial prisoners through their legal aid panels.

- (c) Fee to lawyers in the legal aid panel may be enhanced so as to attract services of better quality of legal aid lawyers.
- (d) Greater use of Probation of Offenders Act, 1958 by the judiciary, as a means to decongest prisons by releasing young, first time and less serious offenders on probation.
- (e) NGOs should be encouraged to do legal guidance work and link up with DLSAs to arrange legal aid for unrepresented undertrial prisoners. The SLSAs may organize para- legal training of such NGOs in the State in collaboration with academic institutions.
- (f) implementation of guidelines issued by the Mumbai High Court in Rajendra Bidkar vs State of Maharashtra & Ors (CWO no. 386 of 2004) with regard to production of undertrial prisoners through the video conferencing facility.

7. All the State/UTs are advised to consider adopting these practices for efficient and effective management of prisons, as also to reduce overcrowding in prisons and to ensure reformation & rehabilitation of prison inmates in the true spirit of correctional administration.

The receipt of this letter may please be acknowledged.

Yours faithfully

Sd/-

**[Dr (Smt.) Praveen Kumari Singh]**  
Director (SR)  
Telefax: 23092161

**No.V-17013/01/2011-PR**  
**Government of India/Bharat Sarkar**  
**Ministry of Home Affairs/Grih Mantralaya**

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North Block, New Delhi  
Dated the 15<sup>th</sup> June 2011

To

**The Principal Secretary (Prison)/  
Secretary (Home) (In-charge of Prisons) of  
All State Governments / UTs  
DGs/IGs incharge of prisons of All State Governments/UTs.**

**Sub: Advisory regarding guidelines for educational programme for prison inmates.**

Sir/Madam,

Various Committees on Prison Reforms in their reports, have emphasized the need for providing various vocational and educational programmes to prison inmates for their social rehabilitation and also to enable them to earn their livelihood after their release from the prisons. The Model Prison Manual prepared by the Government of India and circulated to all States/ UTs in 2003 had also made provisions for providing education and vocational training and work programmes for prisoners. **The Parliamentary Standing Committee on Modernisation of Prisons in its 142<sup>nd</sup> report submitted in 2009 has also made recommendations that there should be an effort to achieve total literacy among prisoners across the country. It has, therefore, recommended that there should be facility of correspondence courses in vocational disciplines in the prisons and degrees/diplomas should be awarded to the prisoners after successful completion of their course so that they could lead a normal life in the mainstream of society, after their release. The Committee had also desired that the Government may consider opening of ITI-like institutions within the jail premises to impart industrial training in various disciplines to the inmates, which would go a long way in rehabilitating them after their release. In this context, the State authorities can also consider converting existing prison workshops into ITIs.**

2. Keeping in view the above recommendations and also taking forward the correctional philosophy, Ministry of Home Affairs held consultations with Indira Gandhi National Open University (IGNOU) to discuss modalities for providing educational programmes for prison inmates throughout the country. IGNOU has informed that it has around 52 Study Centres in jails with an enrolment of approximately 1500. Some of the sectors in which IGNOU can offer its programmes are Agriculture, Insurance, Business Process Outsourcing, Computer and Information Sciences, Security, Tourism, Retail etc.

3. IGNOU is keen to take further this initiative to a large number of prisons throughout the country and enhancing the enrolment. She stated that the response from some of Regional Directors of IGNOU indicates that while there is an initial enthusiasm when meeting the authorities, frequent changes/transfer of officers poses a problem. At some locations these Regional Directors have also found it difficult due to delay in grant of permission by the jail authorities.

4. It is suggested that for better implementation and coordination, the DG/IG (Prison) may be appointed as a State nodal officer for interaction with IGNOU and identifying the institutes for introducing the programme. The States are also requested to consider following:

- (a) Conducting orientation programmes for jail inmates with a view to motivate them to get enrolled in the IGNOU programmes;
- (b) To establish the special study centres in prisons. The Regional centres will provide academic counseling and other support to these.
- (c) Organizing workshops to popularize the programmes of IGNOU and widely publicizing the same with the help of concerned Regional Centres.
- (d) To liaise with concerned Regional Centres for help and support.

5. To this end, the IGNOU has provided an MoU which they have already signed with some of the States including Tihar Jail, Delhi. A copy of the draft MoU is enclosed for guidance.

The receipt of the same may kindly be acknowledged.

Yours faithfully,

Sd/-  
**(Neeraj Kansal)**  
Director (CS)  
Telefax: 011-23092933

**Encl:** As above

**INDIRA GANDHI NATIONAL OPEN UNIVERSITY**  
**Regional Services Division**  
**Memorandum of Understanding**

*For Special Study Centre (Prisons)*

Signed between Indira Gandhi National Open University, hereinafter referred to as 'IGNOU', and Head of the Host Institution, (Please mention full name and address of the Institution)  
.....

Please mention the category for which Special Study Centre (Prisons) is sought.....

**1. The Host Institution will**

- Appoint the Jail Superintendent or any other employee nominated by the appropriate authority as the Centre Coordinator.
- Identify inmates as Counsellors/mentors for the various programmes.
- Obtain necessary approvals/permissions if external Counsellors are to conduct contact sessions.
- Give 1 or 2 rooms with a space of approximately 500-800 sq. ft. for exclusive use of IGNOU for the office of Coordinator, Special Study Centre (Prisons).
- Let a signboard of IGNOU Study Centre be installed prominently at a proper place.
- Make halls/rooms available for holding counselling, practicals and term-end examinations.
- Extend library, computer and Laboratory facilities etc. as per the requirements of the programmes being offered.
- Adhere to the registration, examination and other academic schedules of the University.

**2. IGNOU will**

- Provide the required Self-instructional and Audio-Video materials pertaining to the programme(s) being offered.
- Consider providing the Study centre additional facilities like a Computer, a TV set and Dish antenna to watch IGNOU educational programmes, if there are more than 150 learners at any such centre.
- Not charge any tuition fee/other expenses from enrolled inmates of the host institution.
- Assist the Coordinator, if necessary, in the process of admissions/examinations.
- Meet the expenditure of remuneration to the Coordinator at Rs. 3000/- p.m.
- Provide recurring expenditure towards stationary, postal and photocopying as per

actuals.

- Pay the Counsellors (Inmates or external) as per IGNOU norms and also defray the expenditure towards assignment/project evaluation.
- Conduct examinations in the jail, make visits during exams and make payments for the conduct of examination.
- In cities where IGNOU has a Regional Centre; the Special Study Centre (Prisons) will be attached to it for administrative purposes and at other locations to the nearest Regular Study Centre.
- Have the right to shift or close the Special Study Centre (Prisons) if it finds that support services are not being provided, as per the requirements of the university.

Accepted and Signed  
On behalf of the Host  
Institution/Organization

Name -

Designation-

Seal -

On behalf of IGNOU Regional Director  
Regional Centre

Name -

Designation-

Seal