Workshop on **Prison Visiting System**

(Community Intervention into Prisons)

March 27, 2005 Indo-American Center for International Studies, Osmania University, Hyderabad.



Organized by

Commonwealth Human Rights Initiative

In Association with Department of Prisons and Correctional Services Government of Andhra Pradesh

Workshop Report from AP

The Commonwealth Human Rights Initiative organized a workshop in Andhra Pradesh in association with the Department of Prisons and Correctional Services in AP, on Prison Visiting System (Community Intervention in Prisons) at the auditorium of Osmania University, Hyderabad, on March 27, 2005.

Ms. Maja Daruwala, Director, CHRI, New Delhi welcomed all the participants on behalf of CHRI. She informed that her organisation is working on three themes:

- i) One is to promote the right to information all across the Commonwealth
- ii) Second is access to justice
- iii) Third is on Prison Visiting System.

The organisation felt that in the above System, Non-Official Visitors (NOVs) could play a significant role in bringing out transparency in the Jail System where the only way the Prisoners can get in touch with Society is through NOVs and make the System a little humane.

Context of the Workshop

In reality, CHRI found out that there are many jails where NOVs are not appointed; and if they are appointed, they do not know they have been appointed and even if they are appointed they do not know their roles. It is under this background, that the workshop is being aimed at to bring about the possible changes in the Prison Visiting System.

Objectives of the Workshop

The basic objective of the work shop is to bring together all the individuals and organizations concerned with conditions of the prisons in AP - prison personnel, non-official visitors, official visitors from the criminal justice system, NGOs, human rights organizations and the media – together and pool their views on the standards prescribed for community participation in prisons and to evaluate the ground realities of their implementation.

Speaking about Prison Visiting System, Sri RK Saxena opined that framers of Rules of Prisons knew that ultimately Prisons are going to be an area of low visibility in administration. Prisons are least exposed to social scrutiny and State Administration; the whole perception of the prison system is being distorted by the society – through electronic and print media. There are certain elements associated with prison system:

- 1. Walls
- 2. Physical Torture
- 3. Discipline as per prescribed Rules

- 4. Distasteful or Monotonous Food
- 5. Restriction on Right to Express
- 6. Restriction on Political Activity
- 7. Restriction on Medical Care
- 8. Conservation of Legal and Residuary Rights
- 9. Restriction against escape and Riots
- 10. Five Star Facility
- 11. Reformative activities
- 12. Life time stigma
- 13. Vindication of Law and Defeat of Criminal
- 14. Temporary incarnation from committing crime
- 15. Restriction on right to movement
- 16. Distancing from family and society

He requested the participants for an interactive session on the above elements – whether which of the above elements are essential ingredients or incidental or unnecessary. He hoped that the session would help in determining whether the present system is right or wrong and will also help in determining the role of NOVs and prison authorities.

Mr. Md. Munawar of Kadapa Central Prison was of the opinion that walls, discipline, security against escape and riots, right to take Initiative (if they are permissible under law), right to express through proper channels are essential. To some extent, restrictions on political activity is necessary and that no restrictions are required on medical care. According to him, five star facilities are not at all advisable and Andhra Pradesh State has recommended abolishing all classes among prisoners. Vindication in any form is not at all advisable. The whole idea of keeping a person behind the bars is for segregation; but it should not be for longer periods. To relieve the person from anguish and agony, family ties should be maintained continuously and interviews will play a very important role. He underlined the importance of Civic society in making the prisoner to lead a meaningful life.

Mr. Chandrasekhar, Superintendent of Central Prison, Cherlapally, Hyderabad opined that many prisoners can be kept under Open Prisons and AP also have plans to have more Open Prisons. Speaking on Physical torture, he informed that in 99% cases, physical torture is not resorted to. On discipline, he said that progress can only be possible through it; of course prisoners can express their views before higher authorities and before NOVs. He said that the prisoners could vote if a booth is established in Prison. Certain medical restrictions are necessary, as prisoners would like to avail corporate medical facilities even for smaller medical ailments. Reformative activities have to be encouraged as only 20% of activities are concentrated on reformative activities and this ratio needs to be changed. He opined that social stigma on prisoners has come down drastically – 4 to 5% in case of male prisoners and 30 to 40% in case of female prisoners. He was of the view that separate jails should be there for undertrials. Undertrials in Cherlapally are expressing anguish as to why high security is given to them. It is seen that out of 1600 prisoners, 1500 are UTs and only 100 are high security prisoners and 1500 prisoners are suffering because of 100 high security prisoners.

Intervening on the above subject, Mr. M.R. Ahmad said that what is necessary or otherwise to prisoners can be better understood if we go through Supreme Court orders from time to time. Supreme Court says that a person is sent to Jail as a punishment and not for the punishment. He continues to be a human being in the prison and his human dignity should be protected. The prisoner enjoys all constitutional rights except certain temporary restrictions. He looses certain rights like right to movement and right to profession. Using vulgar language, treating him in an inhuman manner, making him stay in inhuman conditions are violative of his\her human rights. Any activity which violates his human rights are prohibited and prison officers should understand that any other restrictions beyond these amounts to second or another punishment for which he is not entitled to.

Ms. Maja Daruwala has asked for a discussion on what we can do in the present situation to preserve human rights within the constraints/limitations of rules and regulations, budget and administration.

Dr. Sampath, a Non-official visitor from Warangal has emphasised that prisoners should lead a meaningful life from medical point of view also. He felt that Supreme Court orders needed to be implemented. He emphasised that now we should learn to build bridges between inside and outside of the prison walls.

Continuing the debate on essentials, incidentals and unnecessary elements, Mr. RK Saxena said that what is essential need to be utilised. For instance, discipline as per prescribed rules is needed. What are incidentals needs to be minimised. Closed walls need to be minimised, as they will cause more harm to the society than to the prisoner. For instance, a prisoner released after 10 continuous long years looses the basic link with the society and family and may loose his family members, parents, land, profession, property. There are several cases where the prisoners have come back to jail after their release saying that they have nothing to bank upon. When NOVs can contribute something on open walls, they are not obliging the prisoners but they are obliging/helping the society at large. For example, in Rajasthan, there are ten open jails where prisoners can stay with their families – they are half way away from jail and home. Unnecessary Elements like Physical Torture can be totally abandoned.

Prison needs a boundary but it need not be a wall. Discipline does not require torture but it does require strictness. Food does not have to be monotonous or distasteful. Freedom of expressions need not be curtailed but controlled and restricted in such manner that it does not disrupt the functions of the prison. Health care standards need to be high and loss of liberty incidental to the sentence awarded by judicial process should be the only punishment. Abolition of classes among prisoners is vital and this is under consideration in Andhra Pradesh. Elements of reformation and rehabilitation of offenders must be incorporated in law and there should be great efforts to ensure that family ties are maintained. Here the civil society must play a vital role.

The right to take initiative is restricted only to the extent essential to smooth functioning of the prison. Experiments of open prison shows boundaries need not be walls. Fetters and handcuffs are not absolutely necessary inside the prison. Discipline is very necessary to manage so many people. Quality of food is linked to the health of the prisoners. Monotonous food for a long time means ill health in the end. This needs urgent change.

Remand prisoners do not have right to vote. This must be changed, as the accused are by law eligible to contest elections from the prison and be members of elected legislative bodies. There is too much emphasis on the social stigma attached to incarceration, but families accept most of the prisoners. Women prisoners are still stigmatized and this needs special attention of all concerned so that it does not come in the way of their social and economic rehabilitation after their release from the prison.

A certain standard of health care must be provided but if there is a choice of private medical care, then it can be allowed through a panel of doctors approved by the prison.

There are a lot of restrictions within a prison today because of the mix of ordinary prisoners and high security offenders. It would be more efficacious to keep all high security prisoners in one place.

At the end of this exercise the participants in the workshop accepted on the following guiding principles of what is essential, incidental and unnecessary in the management of prisons:

- Protect Human Dignity the offender does not become sub-human, sending the offender to prison is punishment and he is sent not for punishment;
- All the human rights except contained due to incarceration should be ensured. Prison rules and environment must be guided by these principles. Anything that violates these principles is not acceptable.
- Prison administration and non-official visitors and legal aid system must ensure that present system conforms to these principles.
- A better prison obliges not the prisoner but society which can hope for a reformed non-criminal individual integrating back into society.
- The implication of these discussions is that these standards require Non-official visitors, prison visiting authorities to critically examine their role and prison environment against these standards and work proactively towards realizing them.

Prisoners' Rights and Philosophy of Punishment

Mr. Balagopal, a human rights activist, and lawyer from Hyderabad spoke at length on the philosophy of punishment.

- The real problem of prisoners is not lack of rights but lack of remedies. There is no regular and routine accountability in this area.
- There is no coding of prisoners rights though the administration of prisons is codified.

- After our constitution mandated for socio, economic justice, this like all other laws should have been revised.
- Letters to the High Courts and Supreme Court is an exceptional remedy brought about by public interest litigations in case of prisoners of exceptional standing. Prison administrators cannot go through all the verdicts; therefore what is needed is a simple law.
- The existing law nowhere laid down the objectives of punishment. After independence the Supreme Court tried to uphold the rights of prisoners but shied away from defining the objectives of punishment. There is no debate about it in the country.
- Therefore common prejudices inform the functioning of prison administration. At least in the absence of philosophy of punishment the Supreme Court said that the needs of society to control crime are met by physical incarceration.
- This means life in prison must be as close to the life outside as possible subject to the needs of prison management.
- But in many prisons prisoners has to walk into prison in underwear. Entry is accompanied by humiliation in order to ensure he is broken and not allowed to keep his dignity.

Finally he concluded that

• Non-Official Visitor system is vital as a link to outside society and they can bring out information and assist the prison administration with remedies.

Representatives of prison department argued

- That prison administration is very complex and they are expected to deal with dangerous criminals and they handle five to ten incidents of indiscipline everyday.
- They are hard pressed for time and overcrowding is not a problem they created. They have no control over admissions.
- They argued that there are checks and balances within the prison.
- They cautioned that unsubstantiated criticism and unhealthy generalizations will force prison authorities to withdraw from their welfare activities and this would be detrimental to the cause of reformation.

In response to the prison authorities, one non-official visitor, Mr. Nayan Kumar, from Hyderabad opined

- That prison would surely become a better place if the provisions of existing prison manual were implemented strictly and in their true spirit.
- Some of the participants felt that there is need to engage with the prison authorities on the due process of law in the punishments for infraction of rules and regulations by the prisoners.

Some of the advocates narrated their experiences of visiting the prison. Mr. D. Suresh Kumar, an advocate from Hyderabad said

- That advocates are asked to produce their identity cards and *vakalatnama* to meet the undertrial prisoners.
- Only Naxalite prisoners get the private interviews with their lawyers and all others have to meet their lawyers through the wired mesh system.
- Section 40 of the Prisons Act gives advocates the right of private interview.
- The duration of the interviews are not allowed more than 15 minutes.
- More over the advocates can meet their clients only on Saturday and Sundays.
 This was brought to the notice of higher authorities of the prison department but of no use.

Discussion:

In response to the above questions, Mr. M.R. Ahmed responded

- That the prison manual requires the advocates to show the identity cards and produce evidence that he represents the UT.
- Every day 400 visitors visit the prison and all their demands have to be accommodated.
- Therefore the duration of interviews were reduced. Interviews can be allowed on Saturdays but not on Sundays, as that would mean more burdens on the prison authorities.

Follow-up:

Mr. Saxena opined

- That prison is not like any other institution and prison officials cannot say that we cannot work on Sundays.
- Junior staff can be deputed as skeleton on Sundays and for that there must be a request from legal aid advocates and private advocates.
- Vakalatnama is not necessary to meet his client by the lawyers. Prison officers can send the name of the advocate to the concerned UT to ask if the prisoner wants this advocate or not and if he says he wants, this advocate can be allowed.

At this juncture the Chief Metropolitan Magistrate of Hyderabad, Mr. Rajinder responded saying

- That the whole system forgot about the prisoners. Except some the human rights activists, no official visitor is visiting the prison. Every prison is overcrowded.
- The under trial prisoners are totally under the control of courts. Courts have a responsibility to rectify the situation. Supreme Court asked the lower judiciary to visit the prisons twice every month.

Then the senior civil judge, T. Venkateswar Reddy informed the participants

• That the District Legal Aid Authority of Hyderabad district appointed 267 lawyers last year in the magistrates' courts for bails, defense and appeals.

In response the problems raised by the magistrates, the DIG of Prisons, Mr. M.R. Ahmed said

• That the prisoners lack awareness about the right to legal aid and even when we request them they do not inform us.

Mr. Murali, of CHRI concluded the pre lunch session by saying

• That in every prison he visited there are 10 to 20 UTs without legal aid. He found out that they are not aware of existence of such a system. It is important to recognize the problem first and we can find a solution to it.

Follow-up:

Prison officials and Legal Aid Services Authority should work together to improve the system of free legal aid services to the prisoners.

After Lunch Session:

Mr. Sunil Kumar, the Superintendent of Visakapatnam Central Prison said the material provided by the organizers is useful. He said that

- We must recognize that changes have been made and new prisons are under construction, which will accommodate the existing 10% of overcrowding.
- He countered the argument that prisoners do not know their rights and felt that Naxalites are spreading awareness among the prisoners and that is creating problems for authorities.
- Any small incident creates a problem and small incidents are blown out of proportion.

After his presentation many prison superintendents also expressed their opinion and they all felt

- That nothing they do will satisfy prisoners as they are psychologically conditioned to dislike food.
- There is a tendency for all to talk about jail authorities and how it is responsible for prison conditions.
- That NGO as NOVs do not show any interest in the prison work and consider their position as status symbol but tried to interfere and find fault rather than cooperating with officials taking responsibilities.

Mr. Saxena advised the officials

• That prison officials have authority to tell the NOVs not to interfere, where it is not necessary.

One of the Non-official visitors, Mr. Srihari Raju from Visakapatnam said

- That there is clear demarcation between prisoners and officials. Both have professional hazards.
- The commonest problems complained of are food and health cares. But the gap between the officials and prisoners is such that these small problems are not solved easily.

Ms. M. Vanaja of HRLN, Hyderabad felt

• That jail authorities want to interact with NGOs on a charity basis but rights based accountability wants transparency.

Follow-up:

Ms. Maja Daruwala, the Director of CHRI said

- That the NOVs can be liaisons between officials and prisoners, between market and prisons, between civil society and prisons.
- For instance they can take college students to the jail on the occasion of Raksha Bandan and develop interest among them about the prison and improving its conditions.

In the next presentation by Mr. Timma Reddy, the ex-chairperson of the Prison Manual Review Committee, AP said that his committee proposed changes to the future manual to bring prison administration into contemporary standards. The Salient features of recommendations of Prison Manual Review Committee as follows:

- It proposed the change in the dietary system.
- It provided for psychologists, psychiatrist and social workers to be recruited for the department.
- It proposed semi-open prisons and open work camps to engage prisoners in the nation building activities.
- The complaint boxes as a grievance redressal mechanism need to be installed.
- It proposed for coordination between prison authorities, district judges and police officials.
- It also suggested decentralization of powers and budgetary powers.
- It proposed that the categories of prisoners into A, B and C to be abolished.

The state of rehabilitation of Prisoners: Mr. M.R. Ahmed, the DIG of Prisons, expressed his opinion on the state of rehabilitation of prisoners at present.

- 60% of the released prisoners go back to agriculture and most of them are wasting their time in the prisons sweeping and picking grass.
- The Discharged Prisoners Aid Societies disappeared long back.
- A district level probation authority with District Collector as chairperson has gone into hibernation.

• At present prisoners are trained in big power looms and carpentry but no instruments are supplied at the time of discharge as was done in the erstwhile Madras Presidency.

What NOVs must look into when they visit prisons? There are 25 points that a prison visitor must pay attention to.

- If non-official visitor well looks into all these points, his\her visit must last at least 2 to 4 hours.
- Periodicity comes from the Board of Visitor's roster.
- In addition in AP, NOVs can visit prisons on any day during working hours.
- The officials should convene a meeting of official visitors and non-official visitors and they should not be seen as interference but as someone to help the prison administration.

Maladies of prisons are created not only by prison authorities but also by the advocates, factories department, public works department and many others who have their specified duties but do not do them. Here non-official visitors can be bridge between municipal authorities and prison officials, between Rotarians and humanitarian societies and prison department.

Non-Official visitors can see whether

- ✓ Legal aid is effectively available
- ✓ Doctors regularly visit the prisons
- ✓ Are there alternative arrangements in case of absence of duty doctor
- ✓ Occasional medical camps are organized
- ✓ Industrial training instructors regularly visit the prison and be in touch with industry department.

Follow-up:

The Non-official visitors can demand that

- ✓ Board of Visitors are constituted
- ✓ Number of BOV meetings should be organized
- ✓ Action Taken reports are submitted.
- ✓ Roster for Prison visitors are prepared.
- ✓ Appoint new non-official visitors in place of those who stopped visiting regularly.

Conclusion:

The director of CHRI, Ms. Maja Daruwala concluded the after noon session by saying that the purpose of this workshop is to assist the prison department in improving the prison conditions by reviving the dysfunctional Prison Visiting System and by improving the knowledge of non-official visitors. Non-official visitors are expected to act as bridge between various departments and the prison department. They should also act as bridge between prisoners and their families and society. This workshop is also meant to drive

home the fact that the treatment of prisoners should depend on rights approach but not on charity. A good prison administration should demand the convening of board of visitors meet to assist the administration to improve the prison conditions.

Valedictory Session:

K. G. Kannabiran, the national president of Peoples Union of Civil Liberties gave the valedictory lecture at the end of workshop. He used to visit every prison in the state at his own expense. He also experienced the hospitality of the state.

How similar is the outside world to the inside world! More people and fewer jobs and more prisoners and less chapathis. How things are linked to each other. Prisoners are looked down upon, but there is no justification. They have produced best literature and best jurisprudence. They are not second rate people yet they are treated as non-persons. Inside the prison he is not just a person, but also a citizen. A citizen in jail means we have a duty to towards him. You may not like the person in custody but you have duty to hear him.

Today prison authorities realized that the person in custody has rights. This was not the case 25 years ago. Jail jurisdiction came out of emergency of 1975. Power is not accountable to any one. But authority is exercised with the support of rules and regulations. Those are not days where you can speak of any jail or any prisoner. Entire authority is subject to rules and regulations.

There will not be radical changes in the system without public pressure being put from outside. You cannot do this through conducted visits in jails. There has to be sea change in jails to view prisoner as a citizen. The fight has to go on. Focus your attention on issue-by-issue and gather together to ensure what is the basic minimum that must be complied with.

When a person exceeds his parole, his remission is cut by one week or one year. Prisoner does not know. He raised this question once before a judge. Any remission cut is imposing internal punishment that requires you to listen to an explanation. The change that occurred in these 25 years is that prison officials think that they owe an explanation when some one questions them.

List of Participants in the workshop:

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