

# **Workshop on Prisons Reforms in Madhya Pradesh**

By  
Commonwealth Human Rights Initiative, New Delhi  
and  
The Madhya Pradesh Human Rights Commission

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Workshop report by  
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## Preface and Executive Summary

### CHRI and Prison Reforms in Madhya Pradesh –

The Commonwealth Human Rights Initiative's [CHRI], work on prison reforms in Madhya Pradesh [M.P.] has focussed primarily on reinvigorating the moribund prison visiting system as a means by which transparency can be brought about in jail administration. Through the prison visiting system, lay people from the outside community and those who are duty-bound to oversee prisons by virtue of their office can monitor the conditions in an otherwise closed establishment, and make recommendations and suggestions for improvement. In order to make a beginning, CHRI researched and published a focused study on the functioning of the system in seven select jails of M.P. Not surprisingly the research confirmed the dysfunctionality of the system. CHRI, with the Madhya Pradesh Human Rights Commission [MPHRC], then followed up with a state level conference in July 2000. Members of the Commission, Judiciary, Non-Official Visitors [NOVs], prison authorities and NGOs attended the conference. CHRI followed up with training workshops for NOVs in Gwalior, Jabalpur and Ujjain. The objective of these has been to improve reporting by NOVs and encourage both the non-official prison visitors and prison staff to work in tandem. Based on our experiences in these training programmes CHRI has developed a manual for prison visitors, which is in the final stages of editing.

### Objectives of the present workshop –

Building on these efforts to promote openness in prisons the present workshop was intended to broaden interest by bringing together agencies which have a duty to monitor prison conditions and act for the protection of prisoners' rights and the NOVs to one common platform to work out a coordinated strategy to deal with some of the major problems in the prisons of the State by facilitating an understanding of each other's potential and limitations. Along with the NOVs, heads and representatives from the MPHRC, the Prison department, Directorate of Health Services and the State Commission for Women participated.<sup>1</sup>

### Executive Summary –

The workshop opened with the inaugural address of Justice Gulab Gupta who said that “**There has been a lot of improvement in the jails of the state in the past two years** but these have happened only in the bigger jails where there are good officers or which are frequently visited by ministers. One of the biggest improvements has been that in the report brought out by the National Human Rights Commission for last year, out of the 607 custodial deaths reported nationwide, the name of Madhya Pradesh does not figure anywhere for custodial deaths due to violence.”<sup>2</sup> This may partly be because the MPHRC gets all cases of custodial investigated to rule out any violence and medical negligence. In spite of these improvements, there are still a number of problematic issues, which need to be addressed in a humane manner, he said.<sup>3</sup>

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<sup>1</sup> Please see Annexure – I for the detailed agenda.

<sup>2</sup> There has been an appreciable drop in the rate of death of prisoners in the state vis-à-vis the general rate in the state. The figure stands at 2.78 [per thousand prisoners] vis-à-vis 10.4 [per thousand people]. Whereas the respective figures for the years 1997, 98, 99 and 2000 were 4.55 vs. 11.0; 4.30 vs. 11; 3.40 vs. 10.6 and 3.04 vs. 11.2 respectively. Source: Prison Statistics compiled by Mr. A.K. Khare – DIG Prison, M.P. as on 31<sup>st</sup> October 2002.

<sup>3</sup> The problems highlighted by him are re-produced in the next session of the report.

Thereafter, through group discussions among NOVs, prison authorities and institutional representatives, and presentations by their facilitators CHRI was able to bring out a fresh perspective to problems in the prisons of the state as well as the working of the prison visiting system. Presented hereafter is a thematic break-up of the issues that were discussed; the recommendations and suggestions that emerged along with CHRI's statement on the problems and its call for action to various institutions responsible for particular issues of concern.

**The three most encouraging outcomes of the workshop were –**

- The acceptance of the need and potential of the prison visiting system by all the institutions concerned with prisons including prison officers. They all emphasized on the need for greater cooperation between prison visitors and the institutions in developing programmes aimed at alleviating the problems faced by prisoners. Despite continued suspicion and reservations in some pockets both the NOVs and prison staff rose to the occasion and offered their services to resolve some of the problems in prisons.
- The realization to have a constructive and coordinated approach between the prisons department, NOVs and other institutions to achieve the goal of prison reforms in the state
- The unanimous and affirmative response of both the prison officers and NOVs to the CHRI's query on whether it should continue working in the state or leave it. They requested CHRI to continue working in the state, guide both of them and advocate with the government on their behalf.

The recommendations and suggestions presented in this document are a mix of what emerged from a participative, informed and democratic debate between all the stakeholders and those given by expert committees. It is indicative of the common will of the people to usher in reforms for better governance of the prisons in the state. Therefore the government is bound to take them seriously and implement them with due participation of all the stakeholders.

CHRI now requests all the concerned institutions and stakeholders in the state to take note of the suggestions and recommendations and act on implementing them lest the volatile situation in the prisons of the state explodes. It also offers its services in terms of a knowledge base and experience as a facilitator in bringing together different resources groups to resolve problems. Many of the initiatives may not require much of any financial investment as they require simple changes in attitude and priorities. If every concerned institution in the state does its bit in a coordinated way, it would be reflective of the state government's professed commitment to democracy and good governance.

## Chapter – I: HEALTH

Overcrowding, poor sanitation, lack of medical help and poor nutrition create problems of health in prisons, which are far in excess of anything the outside population has to experience. Hepatitis B, Cancer, Jaundice, Paralysis, Heart Attack, Leprosy, Diabetes, Drug Addiction,<sup>4</sup> and Epilepsy are prevalent in the prisons of the state. There are many prisoners suffering from mental illnesses as well and there is no provision for their treatment.<sup>5</sup> Tuberculosis [TB] was the biggest concern among the participants and Justice Gulab Gupta<sup>6</sup> pointed out that –

- Out of the deaths in the prisons of M.P., approximately 40% are due to tuberculosis. There are no separate wards to keep prisoners suffering from TB and even if there is one, it is only for namesake.
- Even with the availability of new drugs and a proposal to train prison officials to administer the drugs under the Direct Observation of Treatment Scheme [DOTS] the biggest problems are the absence of specialist doctors for the correct diagnosis of the symptoms and systematic follow up of the treatment, and inadequate facilities for conducting tests, etc.

**The other such problems in the prisons of the state were as follows –**

- Due to the unavailability of bail and as a result of protracted stay inside the jail, many inmates are succumbing to dreaded diseases.<sup>7</sup>
- There are just 22 doctors for the 29,000 prisoners in the state, mostly in the 8 Central jails and a few in the 21 District jails with almost none in the 79 Sub jails. In the year 2002, the department of health moved to withdraw even these doctors for no reason and without any replacements.<sup>8</sup>
- There are no lady doctors even in the Central jail at Bhopal.
- As the number of prisoners in a particular category of jail is not taken into account when appointing doctors there is a lot of pressure on the few existing doctors.<sup>9</sup>
- The para-medical staff provided to doctors varies from meagre to none. Even in Central jail, Bhopal there are no X-ray machine operators or personnel who can assist with pathological tests inspite of the availability of such facilities.<sup>10</sup>
- The drastic shortage of police escorts required for sending ill prisoners to hospitals outside jails means that timely treatment is a luxury. In the year 2000, as against a demand for 23,954 police personnel for escorting prisoners to courts and hospitals, only 1,371 were provided whereas for the period ending in mid 2002, it was 2,968 personnel as against a requirement of 12,726 escorts.<sup>11</sup>
- Sometimes the police escorts arrive so late that by the time prisoners are taken to the hospital, either the OPD is closed or the specialists would have left for the day.<sup>12</sup>

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<sup>4</sup> For e.g., as on 7<sup>th</sup> October 2002 there were 102 drug addicts in Central jail, Bhopal as against 10 in 2000. Source: Dr. D.K. Verma – Civil Surgeon, Bhopal.

<sup>5</sup> In fact, some time ago, the government transferred 52 mentally ill prisoners in western M.P. to the Central jail at Jabalpur without any logic and without providing the doctors, personnel and wherewithal to treat such prisoners.

<sup>6</sup> The then Chairperson of the Madhya Pradesh Human Rights Commission.

<sup>7</sup> Mr. Satyabhanu Chauhan – NOV to Sheopur Sub jail.

<sup>8</sup> Mr. A.K. Rawat – DIG Prison, M.P.

<sup>9</sup> Dr. D.K. Verma. He was sent as the representative of the Directorate of Health Services, M.P. He also reported that inspite of improved pay scales since 1997, doctors are not preferring to take up government jobs which is leading to an all round shortage of doctors.

<sup>10</sup> Dr. Verma.

<sup>11</sup> Dr. Verma.

<sup>12</sup> Dr. Verma.

- The jail wards in district hospitals have only four beds allocated for prisoners and hence it is difficult to refer cases outside even when required.<sup>13</sup>
- Since the jail wards are located in a corner of the hospital, the doctors on round do not attend to prisoners properly.<sup>14</sup>
- In most jails, proper ambulances are not available to transport prisoners to hospitals in situations of emergency.<sup>15</sup>

**Prison doctors and Civil Surgeons came in for very strong condemnation.** It was pointed out that doctors in some of the jails do not attend to the ailing prisoners even when they are called to do so and they do not conduct the prescribed medical examinations fully and properly. Most of them are constantly trying to get themselves transferred out of the jail.<sup>16</sup> Justice Gupta pointed out that they prescribe medicines without a proper diagnosis and merely on the basis of the symptoms described by their assistant/ convict officer or even the sweeper. He then narrated the following story of utmost callousness and culpability –

In one of his prison visits, he randomly picked up the name of a prisoner from the medical register and asked the prison doctor about the disease of that prisoner. The doctor checked up the medicine he had prescribed and told him that it might be some skin infection. Since the doctor did not appear confident, he called the prisoner and found that there was a big cauliflower like growth between his toes. It became clear then and there itself that the doctor had prescribed the skin ointment without even seeing, examining and checking whether the growth was cancerous or not!

**The following suggestions emerged to resolve some of the problems –**

- NOVs should get associated with the local district hospitals from where the Revised National Tuberculosis Control Programme is being administered and act as a bridge to provide free services and medicines in their prisons.<sup>17</sup>
- Jailors may be trained to act as providers of anti-tubercular medicines under the DOT scheme.<sup>18</sup>
- Interested women prisoners may be trained as midwives, which would not only enable them to assist doctors in prisons but also assist them to be independent upon release and contribute to filling up the acute shortage of trained midwives in villages and hospitals.<sup>19</sup>
- Similarly male prisoners may also be trained as paramedics who could provide and administer preliminary first aid till the arrival of the doctor in situations of emergency. This would also help the prison staff in spreading awareness of basic personnel hygiene amongst prisoners.
- Till the time doctors are appointed in adequate strength, the prison staff should approach philanthropic private practitioners to intervene in improving the health situation in prisons. Local Lions Club, Rotary Club, etc. may also be roped in for this purpose.<sup>20</sup>
- The government should consider linking all the major prisons in the state with the medical colleges using video linkage to provide the services of specialists in the medical colleges to ailing prisoners.

<sup>13</sup> Dr. Verma.

<sup>14</sup> Many NOVs reported this.

<sup>15</sup> NOVs to Central Jail, Jabalpur.

<sup>16</sup> Many NOVs and Mrs. Kaiser Zaman – Member, State Commission for Women.

<sup>17</sup> Dr. Verma.

<sup>18</sup> Dr. Verma.

<sup>19</sup> Dr. Verma.

<sup>20</sup> Justice Gupta. Mrs. Shakuntala Chauhan – NOV to Shahjapur District jail who being associated with the local Lions club, took up this suggestion and promised to mobilise more doctors to the jail.

This would also avoid the cost of taking prisoners out repeatedly and returning empty handed. Once the matter has been correctly diagnosed, the remaining steps can be taken including admission in a hospital outside the jail.<sup>21</sup>

- All ill and infirm prisoners who reach the age of 65 years and fulfil other relevant conditions should be released the day they attain that age rather than waiting for special occasions such as Republic day, Independence day etc.<sup>22</sup>

In the end,

- Justice Gulab Gupta and Dr. D.K. Verma promised to persuade the government to send teams of specialists consisting of a Dental Surgeon, a lady Doctor, a TB specialist, etc. atleast twice a month to visit prisons.
- Saeed Ahmed Suroor promised to continue to work for the release of ill and infirm prisoners the day they turn 65.

In addition to the suggestions and recommendations given by the participants, CHRI on behalf of the prisoners, the prison staff and the NOVs, requests the government of M.P. –

- To initiate the process of getting released on bail, prisoners suffering from terminal diseases and those involved in bailable offences. In the absence of sureties, they should be released on personal bond, if they have a settled social life, permanent abode, long roots in the society and are unlikely to run away or cause fresh trouble.<sup>23</sup>
- To take similar initiatives to get released even those prisoners who are involved in non-bailable offences but are suffering from terminal or severely contagious diseases should also be released.<sup>24</sup>
- To initiate necessary steps under Section 440[1]&[2] of the CrPC to get the exorbitantly high bail amount of ill prisoners reduced if they were fixed without any reasonable link to the nature of the offence or the capacity of the prisoner to be able to pay it.
- To respect its obligations under Article 47 read with Article 21 of the Constitution of India and Rules 22 – 26 of the United Nations Standard Minimum Rules for Treatment of Prisoners, 1957 by appointing qualified and sufficiently experienced doctors [including lady doctors] in adequate numbers to all the jails in the state or to make such other viable and long term arrangements as deemed/ found to be fit, for the proper examination-on-admission, diagnosis, classification and treatment of prisoners in the state.
- To examine the information management system developed by Dr. Shrinath Singh of Sub jail, Mandla for adoption with necessary modification, if any, in the other jails of the state.
- Not to transfer doctors from the prisons without timely and proper replacements.
- To start the process of either recruiting para-medical staff, male and female compounders and lab assistants with immediate effect or to consult experts about the prospect of training specially identified prisoners to fill in the gap till recruitments are completed.
- To review and take steps to improve the standards of health care in all the jails of the state in accordance with the prescribed standards, nature of prison population, endemic health problems and requirements of individual prisons.
- To consider the proposal of linking courts and jails through video linkage to reduce the burden on the overworked and understaffed police department. The remaining police personnel can then be diverted to providing adequate escort services for taking ill prisoners to hospitals.

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<sup>21</sup> Justice Gupta.

<sup>22</sup> Mr. Saeed Ahmed Suroor – NOV to Central jail, Bhopal.

<sup>23</sup> *Moti Ram vs. State of Madhya Pradesh* (1978) 4 SCC 47.

<sup>24</sup> In accordance with the criteria laid down in *Rao Harnarain Singh vs. State* AIR 1958 Punj 123.

- To consider linking up all the major jails in the state with experts at the various hospitals through video conferencing.
- To increase the number of beds reserved for prisoners in district hospitals and post a batch of adequately armed guards to be permanently posted at such hospitals on a rotation basis.
- Provide sufficiently equipped ambulances to big jails or provide more such other vehicles, which can also be used as an ambulance in times of an emergency.

Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality as is afforded to those who are not imprisoned or detained.<sup>25</sup>

Hence the Directorate of Health Services should ensure that Civil Surgeons visit the jails under their jurisdiction every month and review the health situation with the prison staff, NOVs and police, and take appropriate action to prevent avoidable mishaps and improve the health and hygiene levels in the jails. Improvement in the general hygiene would automatically arrest the spread of many diseases in the prison.

In the end CHRI requests the government of M.P. to consider implementing the recommendations given by the All India Committee on Jail Reforms [popularly known as the Mulla committee] for improving the medical and psychiatric services in prisons.<sup>26</sup>

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<sup>25</sup> *Principle 1 of the United Nations Principles of Medical Health relevant to the Role of Health Personnel, particularly Physicians, the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1982.*

<sup>26</sup> Chapter 7: Medical and Psychiatric Services in Report of the All India Committee on Jail Reforms, Volume I at pages 82 – 96, Ministry of Home Affairs, Government of India.

## Chapter – II: OVERCROWDING, INFRASTRUCTURAL PROBLEMS and PRISON MANAGEMENT.

Most of the Indian prisons are overcrowded and it has been repeatedly pointed out that overcrowding and understaffing throws all rehabilitative and correctional goals out of gear. Prisoners cannot be segregated for - treatment, development of training and rehabilitative programmes based on homogenization and prevention of spread of diseases and illicit drugs or contamination of first time offenders by hard-core criminals. Overcrowding, infrastructural problems and prison management are all interlinked. The following highlights emerged from the workshop –

### Overcrowding –

- As against a sanctioned capacity of 17,047, prisons in the state are holding upto 29,189 prisoners.<sup>27</sup>
- Even after bifurcation into Madhya Pradesh and Chattisgarh in November 2000, by October 2002 the prison population of Madhya Pradesh shot up from 17,000 to 29,000 – the same figure that existed at the time of bifurcation.
- The projection for 2006-2007 calculates that whereas the capacity of jails in the state is expected to increase upto 18,877, the prison population will shoot upto 38,654 leading to 200% occupancy.<sup>28</sup>
- Certain prisons are already overcrowded by three times the sanctioned capacity.<sup>29</sup>

If the reasons for such an explosive growth are not identified and fixed immediately, the system will collapse in the absence of sufficient manpower to deal with the problem and the financial crisis being faced by the state.

### Infrastructural problems and Prison Management –

- Additional barracks have not been constructed in proportion to the number of prisoners.<sup>30</sup>
- Inadequate and ill maintained toilets and drainage lines are creating health hazards in many jails.
- Out of the 32 new jails constructed with limited amount of money from the Finance Commission, only 3 were opened as on 7<sup>th</sup> October 2002 with plans to open 6 more in the same year. But they are not going to lessen overcrowding. The doors, windows and locks of the remaining un-opened jails are being stolen in the absence of staff.<sup>31</sup>
- Prison factories and work-sheds are being closed down to make space for lodging excess prisoners. This combined with the shortage of raw material and absence of profitable markets for products made in jails, is making it difficult to not only extract work from prisoners sentenced to rigorous imprisonment but also in paying them the standard wages.<sup>32</sup>
- Proportionate number of prison staff has not been appointed to manage the prisons, leading to indiscipline and violence. Being outnumbered by prisoners, they face threats to their lives.<sup>33</sup>
- Posts becoming vacant due to retirements and promotions are not getting filled up in the face of a bar on recruitments.<sup>34</sup>

<sup>27</sup> As on 31<sup>st</sup> October 2002.

<sup>28</sup> Source: Prison Statistics compiled by Mr A.K. Khare – DIG Prisons, M.P. as on October 31<sup>st</sup> 2002.

<sup>29</sup> For example, the Central Prison at Ujjain lodges approximately 1670 prisoners as against its maximum capacity for 500 prisoners. Source: Prison Statistics by Mr. Khare.

<sup>30</sup> Mr. A.K. Rawat.

<sup>31</sup> Justice Gupta.

<sup>32</sup> Mr. Rawat.

<sup>33</sup> Justice Gupta.

<sup>34</sup> Mr. Rawat.

- In most of the Sub jails, it is the Sub Divisional Magistrate who is given the additional charge of the Superintendent of the jail and due to shortage of time it is difficult for him to monitor the institution.<sup>35</sup>

Mr. Satyabhanu Chauhan raised a peculiar problem. He said that Sheopur faces a severe shortage of water and that for the past two years the NOVs have been trying to get funds for installation of pumps and pipes to provide adequate water to the Sheopur Sub jail. Even though provision is made in the annual budget of Madhya Pradesh, by the time it goes to the Treasury wing of the government, unnecessary objections are raised which delays the project to the next year. In spite of approaching the Chief Minister and his assurances the situation continues to be very grim.

**The participants were unanimous in their suggestions, that –**

- The State Government should give due consideration to build multi-bunk beds in order to reduce the problem of sleeping space.<sup>36</sup> The scheme should also provide for proper exhaust and ventilating mechanisms to prevent the spread of respiratory diseases in overcrowded situations.
- The newly constructed jails must be opened with provision for basic necessities and adequate staff to ease the load on existing jails.
- Consideration must be given to adding new barracks to existing jails, than building new jails in far-off places with no access to basic necessities such as electricity and water.<sup>37</sup>
- Water harvesting mechanisms should be tried out and installed in all jails to deal with shortage of water.

Mr. Saeed Ahmed Suroor promised to continue with his efforts to find employment for the prisoners who get released from the prison after receiving training in computers, screen printing, etc.

Mr. Hitesh Thakur offered to work in coordination with the Superintendent and the DM, and mobilise public cooperation, to create a 'Prisoners' Relief Fund' to meet the emergent financial needs of the prison for which no immediate budgetary allocation is available.

In the light of Rs.155.14 Crores being sanctioned to the government of M.P. by the Ministry of Home Affairs in November 2002, CHRI looks forward to its proper utilization for increasing the capacity of jails, repairing accessories such as drainage pipes and toilets, etc. CHRI also strongly urges the government to revert the charge of the Sub jails being given to SDMs. Let experienced and meritorious prison staff be promoted/ given the charge.

But it would like to point out that building more prisons and perpetually recruiting more staff would be unrealistic and will never be the answer till the basic reasons concerning crime and the attitude towards dealing with prevention of crime and treatment of offenders change. Experts and leading prison reforms committees have come to the conclusion that –

- Imprisonment destroys people's lives; creates social outcasts and leaves them as misfits.
- Imprisonment does not guarantee a reduction in the crime rate either.
- It helps in the promotion of a first time offender into a professional and hardened criminal.
- Despite the heavy financial costs<sup>38</sup> involved in imprisoning people, it fails to reform and rehabilitate criminals.

<sup>35</sup> Mr. Hitesh Thakur, Advocate and NOV to District jail, Dhar.

<sup>36</sup> Justice Gupta.

<sup>37</sup> Mr. Rawat.

<sup>38</sup> The prison budget sanctioned for the year 2000 was Rs.804.639 Crores! Source: *Prison Statistics 2000*, National Crime Records Bureau, Ministry of Home Affairs, Government of India.

The high cost is worth paying it if it protects the society from serious violent crimes, murder, rape and robbery, from organised crime and large-scale corruption. It is no doubt true that some of the prisoners have committed crimes, which affect the very stability of the society, and they need to be segregated from the rest of the society. But holistic measures, which go beyond our traditional approaches, are required for dealing with serious crimes. Some of them have been found successful too. For example, in Cali, Colombia, in 1992, the local authorities started a programme of violence reduction, based on the principle that 'Prevention should take precedence over Repression.' The working conditions of police were improved. A public education campaign against violence and in favour of peaceful reconciliation of disputes was launched. Resources were put into improving services in the poorer parts of the city and into improving education and employment prospects for young people attracted to joining criminal gangs. The carrying of handguns was restricted and ban on the sale of alcohol was introduced at high-risk occasions. In 1995 the murder rate began to decline.<sup>39</sup>

In addition to the above CHRI strongly recommends that the government must consider alternatives to imprisonment such as –

1. Verbal sanctions, such as admonition, reprimand and warning.
2. Conditional discharge.
3. Economic sanctions and monetary penalties, such as fines and day-fines.
4. Confiscation or an expropriation order.
5. **Restitution to the victim or a compensation order.**
6. Suspended or deferred sentence.
7. Release on Probation under judicial supervision.
8. **A Community service order.**
9. Referral to an attendance centre.
10. House arrest.
11. Some combination of the measures listed above.<sup>40</sup>

The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of the society and the interests of the victim, who should be consulted whenever appropriate. Such schemes will succeed only with the active cooperation of the police, higher judiciary and the community outside.

**Community Service** has succeeded very well even in a developing country like Zimbabwe<sup>41</sup> and even Andhra Pradesh has amended the IPC to include it as one of the sentencing options. The Law Ministry of the government of M.P. may like to look at the blue print suggested in the **United Nations Standard Minimum Rules for Non-Custodial Measures** [also known as the Tokyo Rules], 1990.<sup>42</sup>

Hence CHRI recommends that the state government should immediately call for a meeting between the prisons, police and judicial departments to uncover the actual reasons behind the sudden and explosive growth in the prison population in M.P. and discuss the United Nations Standard Minimum Rules for Non-Custodial Measures to develop both corrective and preventive methods for dealing with crime and treatment of offenders in a holistic way.

<sup>39</sup> World Bank, *World Development Report* [1997], at page 44. Quoted in Vivien Stern, *Alternatives to Prison in Developing Countries* [1999], at page 10.

<sup>40</sup> Please refer to the **United Nations Standard Minimum Rules for Non-Custodial Measures** [The Tokyo Rules], for further details. Website address: [http://www.unhchr.ch/html/menu3/b/h\\_comp46.htm](http://www.unhchr.ch/html/menu3/b/h_comp46.htm)

<sup>41</sup> Vivien Stern, *Alternatives to Prison in Developing Countries*, [1999] International Centre for Prison Studies, King's College and the Penal Reform International, London.

<sup>42</sup> Website address: [http://www.unhchr.ch/html/menu3/b/h\\_comp46.htm](http://www.unhchr.ch/html/menu3/b/h_comp46.htm)

### **Chapter – III: DELAYED TRIALS, ACCESS TO JUSTICE and LEGAL AID**

Time and again the Supreme Court of India has clarified that speedy trial is a fundamental right of the citizens and that the government should take steps that would give the direction about access to justice through legal aid in Article 39A read with Article 21 of the Constitution of India, a practical meaning to the teeming millions. But the situation in the field is still much to far away from the expectations of the founding fathers of the Constitution. The problems in the jails of M.P. are categorized as below –

#### **Undertrial prisoners –**

- There are many undertrial prisoners whose cases have not progressed beyond the different stages of trial for the past 3-6 years. The number of undertrial prisoners who have been languishing in the prisons for 2, 3 and more than 3 years are – 1478, 384 and 159 respectively.<sup>43</sup>
- Nothing happens even after sending monthly reports to the District and Sessions judges about the number of such prisoners.<sup>44</sup>
- The order<sup>45</sup> of Dr. Justice A.S. Anand<sup>46</sup> on holding regular Special Courts in jails for undertrial prisoners involved in petty offences and willing to confess to their guilt, is not being implemented in most jails.
- Adequate number of police escorts are not made available for producing prisoners in courts on their due dates, thereby delaying their cases further.

#### **Legal aid –**

- No lawyers from the District Legal Services Authority visit the jail.
- They do not go to the courts with adequate preparation.<sup>47</sup>
- Mostly brief-less and inexperienced lawyers get themselves empanelled with the authority and if somebody tries to approach and apprise such lawyers of their duty, they get unduly offended and drop the cases.<sup>48</sup>
- The monthly allowance of Rs 250-300 is not sufficient for them to get the paper work done.

#### **Miscellaneous –**

- Many prisoners detained under sections 109, 110 and 151<sup>49</sup> of the Code of Criminal Procedure [CrPC] languish for months on end without any charges being formalized against them. The police usually pick them up “because the number of cases had to be brought up to the specified figure.”<sup>50</sup>
- The authorities refuse to release them without bail whereas the standing law on Section 110 says that you cannot ask for bail from such persons, only the history ticket is required.<sup>51</sup>
- At times the District Magistrates [DMs] and Superintendents of Police [SPs] advice against the release of prisoners due to lack of sureties or for the fear of them causing law and order problems. But often it is the inability of or refusal by the relatives of such prisoners to satisfy the illegal demands of the police constable sent to verify antecedents, which lead to adverse reports. This

<sup>43</sup> Prison Statistics by Mr. Khare.

<sup>44</sup> Mr. B.L. Kori – Superintendent, Central jail, Indore.

<sup>45</sup> In a letter dated 19<sup>th</sup> November 1999 addressed to all the Chief Justices of states.

<sup>46</sup> Former Chief Justice of India and present Chairperson of the National Human Rights Commission of India.

<sup>47</sup> Most of the NOVs and prison superintendents reported this.

<sup>48</sup> Ms. Miriam Thomas – Advocate, Mandla.

<sup>49</sup> Section 109 – Security of good behaviour from suspected persons, Section 110 – Security for good behaviour from habitual offenders, Section 151 – Arrest to prevent the commission of cognizable offences.

<sup>50</sup> This was mentioned by no less than one of the most respected stalwarts of the Indian Police – Mr. K.F. Rustomji. Source: *The Undertrials of India*, Tour Note No. 15 by Shri K.F. Rustomji – Member, National Police Commission.

<sup>51</sup> Mr. Abdul Hamid Khan, Advocate – NOV to Central jail, Bhopal and Justice Gupta.

holds generally true even when a prisoner applies for temporary leave to attend to funerals and marriages in the family.

- Due to the clause of minimum mandatory punishment and lack of legal incentives for good behaviour, prisoners convicted under the NDPS Act refuse to work or maintain discipline and create problems for the prison staff.<sup>52</sup>

**The following suggestions emerged –**

- All the participants strongly urged that the order of Dr. Justice A.S. Anand on special courts inside jails be implemented quickly.
- There is a mandatory provision in the jail manuals that all jail superintendents should send regular statements to the courts giving the number of non-criminal lunatics; those put in jail for observation; undertrials having crossed more than 90 days without any charge sheet being filed, those who have spent more than half of the maximum punishment that may be awarded on conviction, etc. A conscientious implementation of this provision would lead to a reduction in the excess population.<sup>53</sup>
- One way of dealing with people detained for unduly long periods under sections 109 and 110 of the CrPc may be the creation of a provision which gives powers to the Executive Magistrates to release such prisoners.<sup>54</sup>
- The police and the SDMs need to function in accordance with the strict law on detention under Section 151 of CrPc, to ensure that no inmate is detained illegally, or for unduly long periods of time without any charge or proper proceedings.<sup>55</sup>
- There was a unanimous resolution that, it is absolutely essential for the DMs and SPs to corroborate police verification reports with the behaviour of the person inside the jail before deciding on their applications for release on probation, parole, etc.
- Along with the DM and the SP, the Superintendent of the jail should also be given the authority to release a prisoner temporarily for a few days to attend to exigencies in the family.
- Prisoners initially convicted under the NDPS Act, but having reformed themselves should also be given the equal opportunity to avail of the normal benefits/ incentives for good behaviour given to other prisoners such as remission, parole, etc.<sup>56</sup>

Interestingly, Mr. Satyabhanu Chauhan wanted to know whether disciplinary action including cancellation of license could be taken against legal aid lawyers who do not visit the prisoners regularly; go unprepared to the courts or ask for illegal gratification from the prisoners. Mrs. Maja Daruwala [Director, CHRI] pointed out that such an initiation was certainly possible since legal aid lawyers are also bound by conduct rules framed by the Bar Council which is the disciplinary body. Unless and until such lawyers take up the cases actively, discharge their duties ethically and cooperate with the jail authorities and NOVAs, delay in trials and overcrowding cannot be prevented.

Some of the participants offered and promised to do the following –

- Ms. Miriam Thomas promised to try to get bail for poor prisoners and work with judicial authorities to start Jail Adalats.

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<sup>52</sup> Mr. Saeed Ahmed Suroor.

<sup>53</sup> Mr R.K. Saxena – Consultant for CHRI. Retired IG Prison and Vice President of PUCL, Rajasthan.

<sup>54</sup> Mr. Abdul Hamid Khan.

<sup>55</sup> Justice Gupta.

<sup>56</sup> Mr. Saeed Ahmed Suroor.

- Mr. Hitesh Thakur promised to continue to provide legal aid to prisoners in District jail, Dhar.
- Mr. Saeed Ahmed Suroor informed the audience that recently, the prison superintendent, the jail minister and some of the NOV's pooled their resources together and collected Rs. 52,000/- to help poor prisoners who were not in a position to arrange for sureties. He offered to continue with this effort.

#### **Plea to the Chief Justice of Madhya Pradesh –**

- CHRI requests the Chief Justice of the state of Madhya Pradesh to please do the needful to assess the need for and feasibility of starting Special Courts in jails for prisoners involved in petty offences and are willing to confess, on the pattern suggested by the former Chief Justice of India and the present Chairperson of the National Human Rights Commission.
- It also requests the Chief Justice to ask the District and Sessions judges to visit prisons coming under their jurisdiction atleast once in a month [preferably over the weekend] in accordance with the directions given by the Honorable Supreme Court of India at para 78[5], [4] and [3] in *Sunil Batra II vs. Union of India*<sup>57</sup> and letter<sup>58</sup> written by the then Chairperson of the National Human Rights Commission to all the Chief Justices of all High Courts and review the cases of undertrial prisoners whose cases have been delayed beyond all limits.

In the end CHRI requests the state government to consider the introduction of video linkage between courts and prisons using the Integrated Services Digital Technology to deal with the shortage of police personnel for escorting prisoners to courts. The scheme has been found to be extremely cost effective for remand prisoners.

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<sup>57</sup> (1980) 3 SCC 488, at page 521.

<sup>58</sup> By Justice J.S. Verma, dated 1<sup>st</sup> January 2000.

## Chapter – IV: WOMEN PRISONERS and THEIR CHILDREN

Though women prisoners constitute only about 3.01% of the total prison population in India but they face some of the most aggravated forms of deprivation, violations and disabilities. Most of these women are found to be unfortunate victims of circumstances. It has been repeatedly pointed out by expert committees<sup>59</sup> that the psychological stress caused by separation from children, the unhelpful attitude of close relations, uncertainty about the future are all factors which make their life miserable in jail. Similarly children of prisoners inside the jail are perhaps the most vulnerable alongside mentally ill prisoners. They grow up in an atmosphere of violent and abusive language, lack of proper nutrition medical care and educational opportunities. A prison can never be the place for an innocent child during its formative years.

In this background, problems faced by women prisoners in M.P. and their children inside the jail were discussed and a number of suggestions emerged. The active participation of the State Commission for Women was quite welcome. Justice Gupta and Mrs. Kaiser Zaman<sup>60</sup> made it quite clear that not just women but men must also be equally concerned about the plight of women and work towards alleviating their problems. Following problems were listed as the major ones faced by women prisoners in M.P. –

- There is a constant delay in their cases in courts.<sup>61</sup>
- Women lodged in far away jails suffer a lot in the absence of a women's jail or separate ward in a jail near their native place.<sup>62</sup>
- There are no lady doctors in any of the jails in the state.
- Nobody comes forward to receive released women prisoners even if a notification is sent to their homes.<sup>63</sup>
- Women prisoners are required by law to wear a white sari that is usually worn by widows and this creates problems for women prisoners. The fabric is very coarse and causes much discomfort during summer.

Mrs. Kaiser Zaman said that ***she saw a lot of scope for prison visitors to help the Commission to help women prisoners who are rendered destitute after their release.*** The other recommendations and suggestions given by her on behalf of the Commission and other participants were as follows:

- All women prisoners whose conduct has been according to the rules of the jail manual and who have completed five years of imprisonment should be released on probation. Ill and infirm women prisoners over the age of 60 should also be released.
- Feasibility of organizing *Special Jail Adalats* for women prisoners must be explored. [CHRI and the State Commission for Women agreed to jointly explore this option.]
- Lady doctors should be posted on a compulsory basis to jails lodging women prisoners for a minimum prescribed period.
- There should be a lady social worker or Advocate in the State Probation Board.

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<sup>59</sup> Mulla Committee in its 13<sup>th</sup> chapter – *Women Prisoners*; the National Expert Committee on Women Prisoners [1987] and the 3<sup>rd</sup> report of the Parliamentary Committee on Empowerment of Women titled – *Women in Detention* [August 2001].

<sup>60</sup> Member, State Commission for Women.

<sup>61</sup> Mrs. Zaman.

<sup>62</sup> Mr. Rajendra Yadav – NOV to Sub jail, Morena.

<sup>63</sup> Dr. Lalji Mishra – Superintendent, Central jail, Jabalpur.

- The government should provide adequate pension for women prisoners rendered destitute after their release, till their rehabilitation.
- The government should create Short-Stay-Homes in every district and subdivision for destitute women prisoners and their children. For e.g., in Rajasthan, the Department of Social Welfare and Rajasthan University Women's Association have helped in setting up shelter homes known as *Mahila Ashray Griha* for destitute, abandoned or orphaned women.<sup>64</sup>
- Women prisoners would stand benefit from being taught profit oriented trades such as that of a beautician, computer job work, secretarial practices, etc. than low profit yielding trades such as doll making. They should also be provided financial help from cooperative schemes and be made aware of micro credit and self help schemes being run by various NGOs.
- Apart from government agencies, even private enterprises and schools should be encouraged to buy and promote products made by these inmates.
- Their wages for prison labour should be increased to Rs.20/- from the existing Rs.10/- per day to have any meaningful saving at the time of their release.

Some of the participants made the following offers and commitments –

- Mr. Alta Prasad Gupta<sup>65</sup> offered to exercise his influence as the President of the local business community with both the business community and social welfare organisations to build a ward for women prisoners in Sub jail, Morena for prisoners lodged in Central jail, Gwalior.
- Mrs. Neera Jaiswal<sup>66</sup> promised to make arrangements for lady doctors to visit the women's ward in Central jail, Jabalpur.
- Mrs. Pushpa Sharma<sup>67</sup> promised to work towards opening small-scale industries for women prisoners in District jail, Dhar.
- Mr. P.D. Somkunwar<sup>68</sup> offered to do the needful with the prison department and make available about ½ an acre of unused prison land for the construction of a short stay home for women prisoners rendered destitute after their release.
- Dr. Lalji Mishra<sup>69</sup> also offered to do the same and provide about 5 acres of land if a responsible organisation or individual came forward to construct and maintain the short stay home.

The session ended on a note from the Mrs. Zaman that the government cannot take up the argument of economic hardships where social rights are involved. It may better reduce the pay and perks of officers like her but should not come in the way of reforms.

## CHILDREN of PRISONERS

The question of the appropriate course of action for children lodged in prisons along with their mothers was indeed of grave concern to all the participants. The M.P. Prison Manual permits children to stay with their mothers till they attain the age of four years. Some participants believed that the age limit was too low for children who had nowhere to go and hence called for an extension. However, the question that arose was whether the atmosphere in the prison was conducive for the child's formative

<sup>64</sup> Mr R.K Saxena.

<sup>65</sup> NOV to Sub jail, Morena.

<sup>66</sup> NOV to Central jail, Jabalpur.

<sup>67</sup> NOV to District jail, Dhar.

<sup>68</sup> Superintendent – Central jail, Bhopal.

<sup>69</sup> Superintendent – Central jail, Jabalpur.

years.<sup>70</sup> In the light of these observations some suggestions and alternatives that emerged were as follows:

- As per the provisions of the Juvenile Justice [Care and Protection of Children] Act 2000, children of prisoners may be seen as neglected and hence requiring care and protection.<sup>71</sup> Therefore they may be sent to the Juvenile Homes which are functioning well.<sup>72</sup> It was suggested that the Department of Women and Child Development and the Juvenile Welfare Boards be contacted for this purpose. However one must also keep in mind the fact that many of these homes do not function well.<sup>73</sup>
- They may also be sent to special schools such as the *SOS Children's Village* in Bhopal where they would be given the opportunity to undertake periodic visits to their parents lodged in prisons.<sup>74</sup>
- Such children could be placed in foster care.

For e.g., Mrs. Vimla Parochi [NOV to Borstal school, Narsingpur] reported that some of the children in the Borstal School have been adopted by foster mothers who are providing for their education as well.

- In Central jail, Gwalior, tutors brought in by the NOVs are teaching children. The NOVs have also mobilized dresses, slates, pencils, biscuits, etc. for them.<sup>75</sup> It was suggested that such initiatives could also be taken in other jails.

Whatever is the option, the best interests of the child and need for non-custodial/ non-institutional forms of treatment should be the ultimate touchstone.

Mrs. Neera Jaiswal also offered to approach Dr. Preeti Singhai, a child specialist to visit the jail whenever a child falls ill in Central jail, Jabalpur.

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<sup>70</sup> Mrs. Zaman and Mrs. Maja Daruwala.

<sup>71</sup> Dr. Uday Pratap Singh – Assistant Professor, National Law Institute University, Bhopal.

<sup>72</sup> Justice Gupta pointed out that the Juvenile Home at Jabalpur was functioning well.

<sup>73</sup> Mrs. Daruwala.

<sup>74</sup> Mrs. Zaman.

<sup>75</sup> Mr. Anil Gupta – NOV to Central Jail, Gwalior.

## Chapter – V: PRISON VISITING SYSTEM

The importance of the prison visiting system lies in the fact that there needs to be some form of social involvement and transparency in a closed institution like prison where nobody knows what is going on. It is a kind of social audit.<sup>76</sup> Almost all civilized countries whose principles of governance and administration are based on dignity, respect for human rights and concern against illegal victimization, provide for such a system and even good prison officers appreciate its scope and need. There are many countries where the prison administration and the visitors work in tandem keeping in mind each other's mandate, limitations and potential.

In all its previous training programmes for NOVs, CHRI attempted to help both parties understand each other's mandate, limitations and potentials and facilitate the opening of a channel of communication. It impressed upon the staff to see the resource potential in the NOVs and apprised the latter with the genuine difficulties and shortcomings faced by the former in managing prisons. But through its continued interaction with both visitors and prison officers CHRI got to know of brewing tensions and suspicion about each other. While some of the complaints about each other were true CHRI also found some of the NOVs to be at fault. It got an impression that majority of the staff perceived the system as an intrusion into their domain and authority and hence would prefer to see it wither away.

Therefore with a view to break this impasse, make both parties see reason and open avenues for mobilizing resources for reforms and ushering in transparency, sought the services of Mr. R.K. Saxena who facilitated a group discussion between prison staff while another group discussion was facilitated by good NOVs identified by CHRI. This chapter is divided into problems faced by prison visitors and staff from each other and the suggestions and consensual plan of action that emerged after a raging debate.

### 1. Problems faced by prison visitors:

Following problems were faced by prison visitors some of which were common to almost all of them –

- Jail officials try to put restrictions on the number of visits that can be made by the visitors. At times the visitors are threatened against regular visits.<sup>77</sup>
- Prisoners who report any malafide practice or ill treatment to the visitors have to incur the wrath of the prison staff and convict officers who are hand-in-glove with the staff. This inhibits them from future interactions.
- The visitors' active participation, often results in complaints being sent to the prison headquarters alleging interference with the authority of the prison officials or in their day-to-day working.
- Jail authorities never invite visitors for any important meeting that takes place in the jail.
- The NOVs are usually not considered to be worthwhile by any of the important official visitors and they often do not want to interact with them in any way.<sup>78</sup> And the absence of the Board of Visitors leaves no formal platform of interaction between the two.<sup>79</sup>
- They are unable to approach the District and Sessions judge particularly the latter on matters concerning delay in trial of undertrial prisoners due to the constant fear of the threat of 'Contempt of Court' being used against them even on genuine issues like delayed trials.<sup>80</sup>

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<sup>76</sup> Mr. R.K. Saxena.

<sup>77</sup> Mr. Rajendra Yadav and many other NOVs.

<sup>78</sup> Mr. Satyabhanu Chauhan.

<sup>79</sup> Except in the Satna Central jail Boards of Visitors were not constituted for any of the jails in the state.

<sup>80</sup> Mr. Satyabhanu Chauhan.

Even the prison officials were unanimous about the omnipresent threat of Contempt of Court while sending reports to the courts on delay in the cases of undertrial prisoners.

- No acknowledgement is received either from the state government or the prisons department for the problems that are pointed out in the visitors' notebook.
- There is almost no co-operation from any governmental institution concerned with prisons.
- No response is received from institutions like the human rights commission on reports and complaints sent by visitors about prisoners.
- Since the visitors have only recommendatory powers, they find themselves limited in the scope of work they can do. One of the issues that arose was that of prison personnel staying on at a particular jail for more than the stipulated period of 3 years, often leading to a nefarious relationship with the inmates, corruption and other illegal activities. The visitors strongly expressed their discontent and helplessness in such situations.

## 2. Problems faced by prison officers:

On the other hand the most prominent problems faced by prison officers in dealing with non-official visitors were summarised by Mr. B.L. Kori<sup>81</sup>:

- NOVs come with an attitude as if they can rule the prison and put unlawful pressure on the Superintendent. Mr. Kori quoted an interaction he had with an NOV who was recently appointed. The NOV told him, *'I gave up my claim to become the Chairman of the Municipal Council because I was told that by becoming a jail visitor, the whole jail would be under your control and direction. But here I am told that even to visit the jail, I need to follow rules.'*
- They often turn up outside the time prescribed for their visits or during lunch hours. On being disallowed to enter, they would feel unduly insulted.
- NOVs are at times found to have leaked sensitive information to the media which had the potential of affecting the security of the prison.
- Visitors bring other individuals who as per rules cannot be permitted to visit the prison and demand their entry into the prison. For e.g., there was an instance when a member of the legislative assembly came with a battery of press photographers and demanded that they be allowed to cover his visit to the prison for being publication in the newspapers.
- NOVs often abuse the trust vested in them particularly when they come with a list of their relatives, acquaintances or political workers many of who are involved in heinous crimes like murder, dacoity and drug trafficking. Such NOVs are never bothered about the welfare of other prisoners. This sends wrong signals to other prisoners about the moral credibility and impartiality of the visitors.

On realizing the sense of isolation faced by NOVs, the Chairperson of the Madhya Pradesh Human Rights Commission promised to take action if Non-official Visitors were stopped from doing their duty by unscrupulous prison staff. He also exhorted the visitors to strive for reforms in prisons to the best of their ability in order also to retain their credibility as public servants in the form of political workers. Mrs. Daruwala encouraged them to form a loose network of their own to approach the concerned authorities and collectively advocate for further reforms. The discussion and suggestions that emerged on the other issues are as follows –

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<sup>81</sup> Superintendent – Central jail, Indore.

### **A. Board of Visitors:**

According to Rule 815[3] of the M.P. prison manual it is mandatory for the Commissioner of each Division to constitute the Board of Visitors [BOVs] for each jail in the division where NOVs have been appointed. The Boards consist of the DM and the SDM as the Chair in Central and District jails, and Su jails respectively along with one other official visitor and two NOVs. Among other things, the Boards are supposed to meet every three months and visit the jail jointly. This provides an opportunity for the NOVs to voice their concerns about the jails, submit suggestions and help in implementing and monitoring agreed action plans.

Dr. Purshottam Patel<sup>82</sup> shared his experiences of getting the Board constituted for Central jail, Satna. Though he did not get any co-operation from the Superintendent of the Central Jail, he persisted and approached the Commissioner for Revenue, Rewa thrice after which the Board was constituted. The board has met twice since then, he reported. *But the rest of the NOVs coming from all over the state reported that Boards of Visitors have not been constituted in any of the other prisons.* The matter was settled with the suggestion that the Home Secretary of the State should be requested to write to all the Commissioners in the State to constitute Boards of Visitors.<sup>83</sup>

Dr. Patel offered to work towards the creation of an association of NOVs to the Central jail, Satna and Maihar and Naugod Sub jails and work out a plan of action with the prison staff for the welfare of prisoners.

### **B. Acknowledgement of visitors' Notes and feedback system:**

Mrs. Daruwala made it emphatically clear that a feedback mechanism is absolutely essential whereby the visitors are made aware of the action taken on their recommendations in order to motivate them further. Otherwise frustration and feelings of uselessness creep in and the visitors would not care to visit regularly discharge their duty with enthusiasm. The following recommendations and agreements emerged –

- There should atleast be a verbal intimation to the visitors of the action taken by the prison department on the suggestions provided by them in the course of their visits to the jails.<sup>84</sup>

Mr. A.K. Rawat – DIG, Prisons agreed with this suggestion insofar as the recommendations and suggestions are constructive and can be implemented practically.

- The prison department / headquarters should send a copy of the report concerning action taken, or orders to the prison visitor also while sending it to the concerned prison superintendent.<sup>85</sup>
- The prison department should regularly post the number and kind of recommendations given by the visitors on its website including the action taken on them and reasons for not taking action, if any. These will be helpful for other civil society institutions such as Universities, Research Institutions and NGOs to follow up and advocate for reforms.<sup>86</sup>
- The visitors should themselves advocate with the jail minister to create an in-built system that would peruse the number of recommendations given by them and monitor the status of their implementation.<sup>87</sup>

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<sup>82</sup> NOV to Central jail, Satna.

<sup>83</sup> Mr R.K. Saxena.

<sup>84</sup> All the visitors and Mrs. Maja Daruwala.

<sup>85</sup> Dr. Lalji Mishra.

<sup>86</sup> Dr. Uday Pratap Singh.

<sup>87</sup> Majority of the prison officers.

### C. Going to the media:

The prison visiting system is a mechanism to ensure transparency in the prison institution and it is the responsibility of the visitors to ensure it in the most appropriate manner. Media is one of the tools to ensure good governance and democracy and accelerate the pace of reforms.

Justice Gupta clarified that no provision in the manual can override the visitors' Fundamental Right to 'Freedom of Speech and Expression' under Article 19[1][a] of the Constitution of India. Particularly where there is grave wrongdoing on which no action is ever taken. Mrs. Daruwala added that wrongdoing should not hide and unjustifiable delay in improvement is also wrong.

In the end it was concluded that the visitors might creatively use the media as an important tool in the process of ushering in reforms. Justice Gupta encouraged the visitors to send copies of their reports and recommendations to the MPHRC and the State Commission for Women. But he and Mrs. Daruwala cautioned them to be judicious and not to use it for self-publicity or in a manner that jeopardises the security of the prison. Such an attempt would reduce the credibility of the visitor in the eyes of the prisoners and staff and negate all the good work done till that date.

### D. Prison officers' perspective of the potential and scope of prison visitors:

*Surprisingly*, in the group discussion with prison officers they felt that *the role of the visitors in improving the prisons was indispensable and their response was not to close down the institution but to try and make it more useful and effective*. Among other things, it was strongly suggested that NOVs should liaise between prison officers and other institutions dealing with prisons. For e.g., in releasing prisoners on probation and parole, it has been found that in spite of all the mandatory conditions being fulfilled, DMs and/ or the SP arbitrarily advice against their release without verifying the behaviour of the prisoner inside the jail. If the prison officers try to apprise such officers of the background of the case, they are suspected of collusion and ulterior motives. NOVs can take up such cases and follow up with the officials mentioned above and brief them properly. The suggestions given by the staff to improve the system concerned mainly with the **Criteria for Selecting NOVs**, the **Appointment Process** and **Monitoring their Performance** –

- There should be a minimum qualification for being appointed as prison visitors given that there is a prescribed educational qualification even for the recruitment of a soldier. Visitors should be literate enough to be able to write notes and reports.
- They should have some background in social service. Visitors could be lawyers, doctors, professors, etc. who can leave an impact on the jail authorities with their integrity and moral authority.
- Though there are no rules against visitors from political backgrounds, prison should not be considered as the dumping ground for those who could not be adjusted elsewhere.
- There should be a Board of Selection for appointing the NOVs which should give a public notification inviting applicants with suitable knowledge, experience and willingness.
- The consent of all prospective visitors should be taken before they are finally nominated. Nobody should be appointed by force or without consent.
- Each person should be informed individually along with a copy of the relevant provisions from the jail manual outlining the duties and powers of the visitors.
- Visitors, who have been appointed for the first time, should attend a training programme atleast for five days within the first month of their appointment.
- They should have atleast two joint meetings in a year with the Jail Minister and prison officials.
- The performance of NOVs should be reviewed annually and deserving NOVs can be given due recognition in the form of a certificate or award on occasions such as 15<sup>th</sup> August or 26<sup>th</sup> January.
- They should also be given some form of monetary support either per visit or once in a year to cover their actual traveling expenses to jails and postage charges for sending reports.

They also requested the NOVs –

- Not to scold prison personnel in front of the prisoners. They may discuss the matter in detail with the superintendent or write a separate note in the visitors' notebook.
- Not to make any undue publicity of their appointment for extraneous reasons and ulterior motives.
- Not to take a confrontational approach about prisoners and staff without seeing their coordination. They may point things out where the administration is not according to the prescribed rules.
- Not to make a mountain out of minor things such as an occasional variation in the quantity of spices added to the cooked food items. They should focus their attention on major issues of concern for prisoners such as delay in trial, probation, parole, sanitary conditions, basic amenities, etc.

The Deputy Inspector General of Prisons Mr. A.K. Rawat pointed out that –

The attitude of pointing out only the shortcomings and dumping all responsibilities on the prison staff is not going to help in resolving the situation. Let nobody be under a wrong impression that the jail administration is not interested in improving the conditions. We certainly are, and make submissions to the government on a daily basis. When the government claims insufficient money to start bigger and more important projects, you can very well imagine the place of priority for jails. Prison officers are under lot of pressure and face many problems due to non-cooperation from a number of outside agencies and departments on which the jail department is dependent for managing its prisons. NOVs should cooperate with the jail authorities and use their influence with the other departments to resolve the problems.

Justice Gupta also acknowledged the difficulties faced by the prison staff and said that we should not begin with the presumption that there would be no cooperation from the side of the prison staff. It is not as if butchers have been appointed to beat and kill people. Why should we always presume that they are demons? It is very difficult to be in the midst of criminals. Only if people stop criticizing them without any that there shall be any improvement.

So far as the remaining issues are concerned **CHRI clarifies that –**

- The NOVs should follow the rules and regulations laid down in the jail manual while visiting prisons including the time of visit and should not invite others to visit prisons without the permission of the superintendent or jailor-in-charge.
- They should not vitiate the trust vested in them by engaging in illegitimate, immoral practices inside and outside the jail in connection with their work as visitors. They should be concerned with all prisoners alike and not take sides with unscrupulous prisoners.
- The NOVs should explore and understand the genuine problems faced by the prison staff in managing hardcore criminals and administering huge prisons on meagre resources.
- Under the existing M.P. jail manual, prison officers cannot prevent the NOVs from visiting more than once.
- The malpractice of threatening NOVs with a credible background and genuine intentions who visit regularly and take an active interest should stop immediately in the absence of which doubts may creep as to the fairness of the administration inside the particular jail.
- The practice of harassing and beating prisoners who report bona fide complaints to the NOVs should stop immediately. The prison authorities stand to gain much better rewards by ensuring fairness and transparency in all matters concerning the management of prisoners and administration of the prison.

- Complaints can be sent to the prison headquarters for the removal of a NOV only if he or she –
  - Does not visit for more than six months;
  - Is arrested and lodged in the same jail on a criminal charge;
  - Abuses guards, matrons, subordinate officers;
  - Has a relative inside the jail at the time of his or her appointment or thereafter;
  - Demands bribe for not levelling baseless allegations against the prison staff
  - Or for any other act of commission or omission of extreme moral turpitude.
- Jail authorities should invite the NOVs to all meetings concerned with the welfare of the prisoners or which involves the participation of other public functionaries and representatives.

CHRI also requests all other ex-officio visitors to prisons to give audience to credible NOVs with good intentions and genuine complaints, suggestions, etc. It would help the official visitors who in the face of immense work pressure are not able to visit prisons under their jurisdiction regularly. Good NOVs can act as the eyes and ears of official visitors. They are appointed under a statutory law and when properly guided have immense potential in helping the official visitors to improve one of the most neglected institutions in the society. Examples are plenty even in Madhya Pradesh of the achievements in prison reforms where the official, non-official visitors and prison authorities have cooperated. Their importance and potential has been very well recognised by the National Human Rights Commission, the All India Committee on Jail Reforms [1980-83] and the United Nations Standard Minimum Rules for Treatment of Prisoners [1955].

## Acknowledgments

CHRI wishes to thank the following people for their cooperation, guidance, support and services rendered in making this workshop a success –

1. Justice Gulab Gupta – The then Chairperson of the MPHRC
2. Mr. Subroto Banerjee – Principal Secretary to the government of M.P., on Prisons
3. Mr. Anand Kumar – The then Director General of Prisons, M.P.
4. Mr. A.K. Rawat – DIG Prison, M.P. Prison department
5. Mr. A.K. Khare – DIG Prison, M.P. Prison department
6. Mr. R.S. Vijayvargia – Senior Law Officer, M.P. Prison department
7. Mr. R.K. Saxena – Former IG Prisons of Rajasthan and Consultant for CHRI
8. Dr. Lalji Mishra – Superintendent, Central jail, Jabalpur
9. Mr. Manish Syal – NOV to Central jail, Gwalior
10. Mr. Ratnesh Sahai – Manager, Hotel Palash, Bhopal
11. Mr. Anil Namdeo – Student, National Law Institute University, Bhopal
12. Mr. Arindam Ghose – “ ”
13. Mr. Ashwin Prabhu – “ ”
14. Ms. Debashri Sarkar – “ ”
15. Ms. Kanchan – “ ”
16. Ms. Sarika Prakash – “ ”

**Annexure-1**

**Workshop on  
Prison Reforms in Madhya Pradesh  
October 7, 2002**

Venue: Conference Hall, Hotel Palash, T.T. Nagar, Bhopal

**Agenda**

**Registration: 09:00-09:30 am.**

**Session –I**

**Chairperson: Mrs. Maja Daruwala, Director CHRI**

	<b>Speakers</b>	<b>Time</b>
• Welcome Address	Mrs. Maja Daruwala	09:30-09:40
• Inaugural Address	Justice Gulab Gupta	09:40-09:50
• Problems in Prisons in Madhya Pradesh.	Group discussions between prison visitors and prison officers Facilitators for CHRI	09:50-10:20
• Summarized presentation of points emerging out of group discussion.		10:20-11:00
Tea Break		11:00-11:15

**Session – II**

**Chairperson: Justice Gulab Gupta, Chairperson MPHRC**

**Co- Chair: Mrs. Maja Daruwala, Director CHRI**

	<b>Speakers</b>	<b>Time</b>
• Setting the context	Chairperson	11:15-11:25
• Problems faced by Non-Official Visitors in their day to day working	Group discussion between visitors and facilitators	11:25-12:10
• Problems faced by Prison Officers in the context of the prison visiting system	Group discussion between officers and facilitators	11.25-12.10
• Summarized presentation of points emerging out of group discussions	Facilitators for CHRI	12:10-12:30
Lunch Break		12:30-13:15

**Session – III****Chairperson: Mrs. Maja Daruwala**

	<b>Speakers</b>	<b>Time</b>
<ul style="list-style-type: none"> <li>• Exploring initiatives for reform –               <ol style="list-style-type: none"> <li>1. State Commission for Women</li> <li>2. Madhya Pradesh State Legal Services Authority</li> <li>3. Department of Health</li> <li>4. Madhya Pradesh Human Rights Commission.</li> </ol> </li> </ul>	Responses of institutional heads and representatives to earlier presentations (15 minutes each)	13:15- 14:30
<ul style="list-style-type: none"> <li>• Discussion</li> </ul>		14:30-15:30
Tea Break		15:30-15:45

**Session – IV****Chairperson: Justice Gulab Gupta****Co-Chairperson: Mrs. Maja Daruwala**

	<b>Speakers</b>	<b>Time</b>
Action Plan & Follow-up	CHRI Staff, Institutional participants and participants	15:45-16:30
Vote of thanks	CHRI & MPHRC	16:30-16:45

**Annexure –2**  
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