

## LANDMARK JUDGEMENTS ABOUT PRISONERS' RIGHTS AND PRISON REFORMS

### **Jagmohan Singh v. State of U.P., AIR 1973 SC 947**

<https://indiankanoon.org/doc/1837051/>

Challenged the constitutional validity of capital punishment in India. The counsel for the appellant in this case put forward three arguments which invalidate section 302 of the IPC. Firstly that execution takes away all the fundamental rights guaranteed under Clauses (a) to (g) of Sub-clause (1) of Article 19 and, therefore the law with regard to capital sentence is unreasonable and not in the interest of the general public. Secondly that the discretion invested in the Judges to impose capital punishment is not based on any standards or policy required by the Legislature for imposing capital punishment in preference to imprisonment for life. Thirdly, he contended, the uncontrolled and unguided discretion in the Judges to impose capital punishment or imprisonment for life is hit by Article 14 of the Constitution because two persons found guilty of murder on similar facts are liable to be treated differently one forfeiting his life and the other suffering merely a sentence of life imprisonment. Lastly it was contended that the provisions of the law do not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital penalty and imprisonment for life. The trial under the Criminal Procedure Code is limited to the question of guilt. In the absence of any procedure established by law in the matter of sentence, the protection given by Article 21 of the Constitution was violated and hence for that reason also the sentence of death is unconstitutional.

After looking into the arguments the five judge bench upheld the constitutionality of death penalty and held that deprivation of life is constitutionally permissible for being recognised as a permissible punishment by the drafters of our Constitution.

### **D.B.M.Patnaik v. State of Andhra Pradesh 1974 AIR 2092**

<https://indiankanoon.org/doc/353351/>

“Convicts are not denuded of all the fundamental rights which they otherwise possess. A compulsion, following upon conviction, to live in a prison house entails by its own force the deprivation of fundamental freedoms like right to move freely throughout the territory of India or the rights to practice a profession... but the other constitutionally guaranteed precious rights under Article 21 are still applicable to the convicts that he shall not be deprived of his life and personal liberty except according to the procedure established by law.”

A Division Bench of the SC decided a series of writ petitions wherein some convicts and under-trials lodged in a jail prayed that the armed police guards posted around the jail should be removed and also that the livewire electrical mechanism fixed on top of the jail wall should be dismantled. The petitioner challenged the same as violative of the 'personal liberty' of the prisoners lodged in that jail. The SC held that as long as the armed police guards do their duty from a reasonable distance and live wire mechanism is not a secret trap as all persons are warned of its existence, the fundamental rights of the inmates of the jail cannot be said to be violated in any manner.

**M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544.**

<https://indiankanoon.org/doc/513169/>

The petitioner sought to appeal against the order of the High Court but he did not receive a copy of the judgment for about three years from the prison authorities. The court found this to be violative of his rights under Articles 21, 22 read with Articles 39-A and 42 of the Constitution. The court laid down the following principles in this regard:

“(1) Courts shall forthwith furnish a free transcript of the judgement when sentencing a person to a prison term.

(2) In the event of any such copy being sent to the jail authorities for delivery to the prisoner by the appellate, revisional or other court, the official concerned shall with quick dispatch get it delivered to the sentenced person and obtained an acknowledgement thereof from him.

(3) Where the prisoner seeks to file an appeal or revision, every facility for the exercise of that right shall be made available by the jail administration.

(4) Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or incommunicado situation, the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so require, assign a competent counsel for the prisoner's defence, provided the party does not object to that lawyer.

(5) The State which prosecuted the person and set in motion the process which deprived him of his liberty shall pay to assigned counsel such sum as the court may equitably fix”.

**Charles Sobaraj v. Supdt Central Jail Tihar, AIR 1978 SC 1514**

<https://indiankanoon.org/doc/1518037/>

The Hon'ble Supreme Court held that imprisonment does not spell farewell to fundamental rights although by a realistic re-appraisal, courts will refuse to recognize the full panoply of Part-III enjoyed by the free citizens. Article 21 read with Article 19 (1) (d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of the matured society. Fair procedure is the soul of Article 21. Reasonableness of the restriction is the essence of Article 19 (5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14. Constitutional karuna is thus injected into incarceration strategy to produce prison justice.

**Sunil Batra- I and II v. Delhi Administration 1978 Cri. LJ 1741 at 1795 SC,1980 Cri. LJ 1099 at 1114**

<https://indiankanoon.org/doc/778810/>

The Supreme Court has directed that the treatment of prisoners must be commensurate with his sentence and satisfy the tests of Articles 14, 19 and 21 of the Constitution. It expanded the scope of the writ of habeas corpus by recognizing the right of a prisoner to invoke the writ against prison excesses inflicted on him or on a co-prisoner. Further, the court gave many directions to improve the prison administration. The Supreme Court has ruled that lawyers nominated by the district Magistrates, session's judges, High Courts and the supreme courts will be given all facilities for interviews. The jail visits and confidential communications with prisoners, subject to discipline and other security considerations. The Supreme Court recognized treatment of prisoners and relate to the provisions of the constitution under Art 14, 19 and 21. The court has given directions to the prison authorities to treat the prisoners with human dignity and judiciary was interfered with the prison administration for the protection of prisoner rights.

“1. We hold that Prem Chand, the prisoner, has been tortured illegally and the Superintendent cannot absolve himself from responsibility even though he may not be directly a party. Lack of vigilance is limited guilt. We do not fix the primary guilt because a criminal case is pending or in the offing. The State shall take action against the investigating police for the apparently collusive dilatoriness and deviousness we have earlier indicated. Policing the police is becoming a new ombudsmanic task of the rule of law. G

2. We direct the Superintendent to ensure that no corporal punishment or personal violence on Prem Chand shall be inflicted. No irons shall be forced on the person of Prem Chand in vindictive spirit. In those rare cases of 'dangerousness' the rule of hearing and reasons set out by this Court in Batra's case and elaborated earlier shall be complied with.

3. Lawyers nominated by the District Magistrate, Sessions Judge, High Court and the Supreme Court will be given all facilities for inter views, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the visitatorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visits and record and report to the concerned court results which have relevance to legal grievances.

4. Within the next three months, Grievance Deposit Boxes shall be maintained by or under the orders of the District Magistrate and the Sessions Judge which will be opened as frequently as is deemed fit and suitable action taken on complaints made. Access to such boxes shall be accorded to all prisoners.

5. District Magistrates and Sessions Judges shall, personally or through surrogates, visit prisons in their jurisdiction and afford effective opportunities for ventilating legal grievances, shall make expeditious enquiries there into and take suitable remedial action. In appropriate cases reports shall be made to the High Court for the latter to initiate, if found necessary, habeas action.

It is significant to note the Tamil Nadu Prison Reforms Commission's observations:

38.16. Grievance Procedure :-This is a very important right of a prisoner which does not appear to have been properly considered. The rules regulating the appointment and duties of non-official visitors and official visitors to the prisons have been in force for a long time and their primary functions is "to visit all parts of the jail and to see all prisoners and to hear and enquire into any complaint that any prisoner may make". In practice, these rules have not been very effective in providing a forum for the prisoners to redress their grievances. There are a few non-official visitors who take up their duties conscientiously and listen to the grievances of the prisoners. But most of them take this appointment solely as a post of honour and are somewhat reluctant to record in the visitors' book any grievance of a prisoner which might cause embarrassment to the prison staff. The judicial officers, viz., the Sessions Judge and the Magistrates who are also ex-officio visitors do not discharge their duties effectively.

We insist that the judicial officers referred to by us shall carry out their duties and responsibilities and serve as an effective grievance Mechanism.

6. No solitary or punitive cell, no hard labour or dietary change as a painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days

of the action. Conclusion What we have stated and directed constitute the mandatory part of the judgment and shall be complied with by the State. But implicit in the discussion and conclusions are certain directives for which we do not fix any specific time limit except to indicate the urgency of their implementation. We may spell out four such quasi-mandates.

1. The State shall take early steps to prepare in Hindi, a Prisoner's Handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletins stating how improvements and rehabilitative programmes are brought into the prison may create a fellowship which will ease tensions. A prisoners' wall paper, which will freely ventilate grievances will also reduce stress. All these are implementary of [s. 61](#) of the Prisons Act.

2. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity community contact and correctional strategies. In this latter aspect, the observations we have made of holistic development of personality shall be kept in view.

3. [The Prisons Act](#) needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.

4. The prisoners' rights shall be protected by the court by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the Court such as for e.g. Free Legal Aid (Supreme Court) Society. The District Bar shall, we re-commend, keep a cell for prisoner relief. In this connection, it is heartening to note that the Delhi University, Faculty of Law, has a scheme of free legal assistance even to prisoners.”

**Prem Shankar Shukla v. Delhi Administration AIR 1980 SC 1535**

<https://indiankanoon.org/doc/853252/>

The majority judgement held that the provisions of Punjab Police Rules, that every undertrial who was accused on non-bailable offence punishable with more than three years jail term would be handcuffed, were violative of Articles 14, 19 and 21 of the Constitution of India. Hence, they were held unconstitutional.

**AR Antulay v. RS Nayak, AIR 1984 SC 1630**

<https://indiankanoon.org/doc/1353689/>

The Hon'ble Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix any time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The court held that the right to speedy trial flowing from Article 21, is available to accused at all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial. The court further said that the accused cannot be denied the right of speedy trial merely on the ground that he had failed to demand a speedy trial. The time limit has to be decided by balancing the attendant circumstances and relevant factors, including the nature of offence, number of accused and witness, the workload of the court, etc. The court comes to conclusion in the interest of natural justice that when the right to speedy trial of an accused has been infringed the charges of the conviction shall be quashed.

**Sukdas v. Arunachal Pradesh, AIR 1986 SC 991**

<https://indiankanoon.org/doc/765136/>

The Supreme Court held that a free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.

**State of M.P. v Shyamsundar Trivedi 1995**

<https://indiankanoon.org/doc/838507/>

Held that Convicts are not by mere reason of the conviction denuded of all the fundamental rights which they otherwise possess.

**State of Andhra Pradesh v. ChallaRamkrishna Reddy, AIR 2000 SC 2083**

<https://indiankanoon.org/doc/731194/>

The Supreme Court held that right to life is one of the basic human rights, guaranteed to every person by Article 21 and not even the State has authority to violate it. A prisoner does not cease to be a human being even when lodged in jail; he continues to enjoy all his fundamental rights including the right to life.

**Selvi Vs State of Karnataka Criminal Appeal 1267 of 2004; 2010(7) SCC 263**

<https://indiankanoon.org/doc/338008/>

The case was about NARCO analysis, brain mapping, polygraph test. It was held that it can be used in investigation procedure - but cannot be admitted in court. The same was held to be in violation of Right to Privacy – found within right of personal liberty within Art. 21 (Now affirmed by the Puttaswamy judgment)

- NARCO analysis, brain-mapping and polygraph tests w/o consent - violation of your right to privacy NARCO analysis, brain-mapping and polygraph tests - without consent - mental duress (may not be physical duress - but mental compulsion to be a witness against yourself) - S. 20(3), Evidence Act.
- Due process - accuracy of the test is under debate - in a polygraph test, you are interpreting physiological responses to mean something it might not mean - fear, anxiety, etc. may be recorded as false answers - a consolidated false memory may be formed NARCO analysis, brain-mapping and polygraph tests – with consent - you can admit it - it is not binding evidence - it can be used to corroborate Voluntarily taking these tests - the results are admissible only to the extent of S. 27, Evidence Act.

“The National Human Rights Commission had published ‘Guidelines for the Administration of Polygraph Test (Lie Detector Test) on an Accused’ in 2000. These guidelines should be strictly adhered to and similar safeguards should be adopted for conducting the ‘Narcoanalysis technique’ and the ‘Brain Electrical Activation Profile’ test. The text of these guidelines has been reproduced below:

- (i) No Lie Detector Tests should be administered except on the basis of consent of the accused. An option should be given to the accused whether he wishes to avail such test.
- (ii) If the accused volunteers for a Lie Detector Test, he should be given access to a lawyer and the physical, emotional and legal implication of such a test should be explained to him by the police and his lawyer.
- (iii) The consent should be recorded before a Judicial Magistrate.
- (iv) During the hearing before the Magistrate, the person alleged to have agreed should be duly represented by a lawyer.
- (v) At the hearing, the person in question should also be told in clear terms that the statement that is made shall not be a ‘confessional’ statement to the Magistrate but will have the status of a statement made to the police.

(vi) The Magistrate shall consider all factors relating to the detention including the length of detention and the nature of the interrogation.

(vii) The actual recording of the Lie Detector Test shall be done by an independent agency (such as a hospital) and conducted in the presence of a lawyer.

(viii) A full medical and factual narration of the manner of the information received must be taken on record.”

## **ORGANIZATION REPORTS**

### **HRLN**

- <https://hrln.org/wp-content/uploads/2017/09/Prisoners-Rights-4th-edition-Vol-II-compressed.pdf> A report on prisoners’ rights, including speedy and fair trials, good jail conditions, etc.
- <https://hrln.org/wp-content/uploads/2017/09/Prisoners-Right-Handbook-Final-Hindi.pdf> A report on prisoners’ rights, including speedy and fair trials, good jail conditions, etc., in Hindi.
- <https://hrln.org/wp-content/uploads/2017/09/Prisoners-Rights-volume-II-December-2011.pdf> A report on prisoners’ rights, including compensation, juvenile prisoner rights, etc.

### **CHRI**

- <http://www.humanrightsinitiative.org/publication/beyond-prison-walls-conversation-on-prisoners-rights> This report documents the one-day seminar 'Beyond Prison Walls: Conversation on Prisoner’s Rights ' organised by Tihar prisons in collaboration with Bureau of Police Research and Development (BPR&D), Commonwealth Human Rights Initiative (CHRI) and Delhi School of Social Work (DSSW), on 23 September 2017. It was the first of a kind event, where the prisoners were part of the seminar. While it gave them the opportunity to raise their concerns freely before various actors of the criminal justice system, it also provided a platform to prison staff and other functionaries to talk of everyday challenges and how they cope.

## **CONDITIONS AND REQUIREMENT OF REFORM**

### **ARTICLES**

- 2015: “No curbs, let prisons be an open book affair”. September 3: <https://www.deccanherald.com/content/498765/no-curbs-let-prisons-open.html> A critique of the government’s order to restrict access of media persons to prisons post the documentary ‘India’s Daughter’.
- <https://www.frontline.in/static/html/fl2126/stories/20041231003511100.htm> Talks of issues with prison conditions. Points out overcrowding, low morale of prison officials leading to corruption in prisoner management, and poorly designed programmes to transform prisoner thinking on crime and deviance as three areas that should be given immediate attention, and suggests reforms.
- 2016: “Why We All Need a Reminder about Prisoners’ Rights” dated September 27: [http://thewire.in/68621/why-we-all-need-a-reminder-about-prisoners-rights/\(link is external\)](http://thewire.in/68621/why-we-all-need-a-reminder-about-prisoners-rights/(link-is-external)) Discusses the abysmal conditions of prisons that contribute largely to numerous deaths in prisons every year.

#### CASES

##### **Hiralal Mallick v. State of Bihar, 1977 Cri. LJ 1921 at 1927 (SC)**

<https://indiankanoon.org/doc/576286/>

To reduce mental tensions among the prisoners, the prison authorities should provide for vital links between the prisoner and his family by periodically granting parole. However, the granting of parole for reasonable spells is subject to sufficient safeguards ensuring their proper behaviour outside and prompt return inside.

##### **Dharambir v. State of UP, AIR 1979 SC 1595**

<https://indiankanoon.org/doc/108844/>

The court held that when prisoners are made to work, a small amount by way of wages could be paid and should be paid so that the healing effect on their mind is fully felt. Moreover, proper utilisation of service of prisoners in some meaningful employment, whether as cultivators or as craftsmen or even in creative labour will be good from society’s angle, as it would not be the burden on the public exchequer and the tension within.

##### **Kishor Singh v State of Rajasthan, AIR 1981 SC 625**

<https://indiankanoon.org/doc/1308143/>

Solitary confinement disguised as “keeping in separate cell” and imposition of fetters are not to be resorted to save in the rarest of the rare cases and with strict adherence to the procedural safeguards contained in the decision of the Supreme Court relating to the punishment of the prisoners.

### **Rama Murthy v State of Karnataka 1996**

<https://indiankanoon.org/doc/748775/>

The Supreme Court identified nine issues concerning prisons, such as overcrowding, trials being delayed, the torture and ill-treatment of prisoners, neglect of health and hygiene, insubstantial food and inadequate clothing.

“The literature on prison justice and prison reform shows that there are nine major problems which afflict the system and which need immediate attention. These are : (1) overcrowding; (2) delay in trial ; (3) torture and ill- treatment; (4) neglect of health and hygiene; (5) insubstantial food and inadequate clothing ; (6) prison vices; (7) deficiency in communication; (8) streamlining o jail visits; and (9) management of open air prisons.

We propose to take each of the problems separately and express our view as to what could reasonably be done and should be done to take care of the same.”

“We have travelled a long path. before we end our journey, it would be useful to recapitulate the directions we have given on the way t various authorities. These are: (1) To take appropriate decision on the recommendations of the Law Commission of India made in its 78th Report on the subject of `Congestion of undertrial prisoners in jail' as contained in Chapter 9. (Para 20A).

(2) To apply mind to the suggestions of the Mulla Committee as contained in Chapter 20 of Volume I of its Report relating to streamlining the remission system and premature release (parole), and then to do the needful. (Para 23). (3) To consider the question of entrusting the duty of producing UTPs on remand dates to the prison staff. (Para P7).

(4) To deliberate about enacting of new Prison Act to replace century old Indian Prison At, 1894. (Para 31). We understand that the National Human Rights Commission has prepared on outline of an All-India statute, which may replace the old act; and some discussions at a national level conference also took place in 1995. we are of the view that all the States must try to amend their own enactments, if any, in harmony with the all India thinking in this regard.

(5) To examine the question of framing of a model new All India Jail Manual as indicated in para 31.

(6) To reflect on the recommendations of Mulla Committee made in Chapter 29 on the subject of giving proper medical facilities and maintaining appropriate hygienic conditions and to take needed steps. (Paras 35 and 36). (7) To ponder about the need of complaint box in all the jails. (Para 37).

(8) To think about introduction of liberalisation of communication facilities. (Para 40).

(9) To take needful steps for streamlining of jail visits as indicated in para 42.

(10) To ruminate on the question of introduction of open air prisons at least in the District Headquarters of the country. (Para 48).”

**D.K. Basu v. State of W.B., (1997) 1 SCC 416.**

<https://indiankanoon.org/doc/501198/>

Considering the importance of the issue raised by DK Basu through a letter and being concerned by frequent complaints regarding custodial violence and deaths in police lock-up, the Supreme Court has treated this letter as a writ petition and a notice was issued on 9th February, 1987 to the State regarding the issue. The Supreme Court held the principles that - (i) Article 21 of the constitution could not be denied to convicts, undertrial, detenues and other prisoners in custody, except according to the procedure established by law. (ii) Any form of torture or cruel, inhuman or degrading treatment falls within ambit of Article 21, whether it occurs during investigation or otherwise. “Monetary or pecuniary remedy is an appropriate and indeed effective and sometimes the only suitable remedy for redressal for established infringement of the fundamental right to life of citizen by the public servants and the State vicariously liable for their act. The claim of citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall the right to be indemnified by the wrongdoer”.

“We therefore, consider it appropriate to issue the following requirements to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures :

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The

particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest a such memo shall be attested by atleast one witness. who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest. (3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. (4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of he next friend of the person who has been informed of the arrest an the names and particulars of the police officials in whose custody the arrestee is. (7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned Stare or Union Territory. Director, Health Services should prepare such a penal for all Tehsils and Districts as well. (9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaga Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation. (11) A police control room should be provided at all district and

state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.”

**RasikbhaiRamsing Rana v. State of Gujarat, (DB) 1997 Cr LR (Guj) 442**

<https://indiankanoon.org/doc/1492567/>

The Gujarat High Court directed the jail authorities to take proper care of ailing convicts. The petitioners convicted in the Central Prison, Vadodara suffering from serious ailments were deprived of proper and immediate medical treatment for want of jail escorts required to carry them to hospital. The Gujarat High Court expressed shock and called I.G. Prison and Addl. Chief Secretary and they both acted with promptness and issued with necessary directions in this regard and held that negligent Officers were to be held personally liable.

**R.D. Upadhyay v. State of A.P and Ors.AIR 2006 SC 1946**

<https://indiankanoon.org/doc/1258611/>

The Hon'ble Supreme Court directed that before sending a pregnant woman to a jail, the concern authorities must ensure that jail in question has the basic minimum facilities for delivery of child as well as for providing pre-natal and post-natal care for both, the mother and the child. As far as possible and provided the woman prisoner has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases causality constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

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

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.
2. Pregnancy:

a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both, the mother and the child.

b. When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

c. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

### 3. Child birth in prison:

a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children: a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution

outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter: a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.

b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

e. Clean drinking water must be provided to the children. This water must be periodically checked.

f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

i. Children of prisoners shall have the right of visitation.

j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

b. There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

9. Diet :

Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the

baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally." It is noted that since an average Indian mother produces approximately 600-800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians - A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets 45, 60-120 and 150-210 grams respectively; Pulses 15, 30 and 45 grams respectively; Milk 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers 50, 50 and 100 grams respectively; Green Leafy Vegetables 25, 50 and 50 grams respectively; Other Vegetables 25, 50 and 50 grams respectively; Fruits 100 grams; Sugar 25, 25 and 30 grams respectively; and Fats/Oils (Visible) 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/ chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.

12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

14. Copy of the judgment shall be sent to Union of India, all State Governments/Union Territories, High Courts.

15. Compliance report stating steps taken by Union of India, State Governments, Union territories and State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.”

**Re Inhuman Conditions in 1382 Prisons AIR 2016 SC 993, 2016 (2) SCALE 185**

<http://judis.nic.in/supremecourt/imgs1.aspx?filename=43347>

The petition in this case was brought before the court under Art. 32 of the Constitution. It was based on a letter written by former CJI Lahoti to the current CJI based on the disturbing conditions in 1382 prisons as covered by Dainik Bhaskar. The Court issued the following guidelines:

1. “The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
2. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.
3. The Member Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial

prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.

4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of the prison and prisoners.
7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.
8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.”

The Bench also directed Ministry of Women and Child Development, to prepare a Manual like ‘Prison Manual’ which will take into consideration the living conditions and other issues pertaining to juveniles who are in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.

#### **ORGANIZATION REPORTS**

##### **HRLN**

- <https://hrln.org/wp-content/uploads/2018/03/National-Cons-Report.pdf> A report on the 3rd National Consultation on Prisoners’ Rights, Legal Aid and Prison Reform, which was organized from 19th–20th March in Tata Institute of Social Sciences, Mumbai.

NGOs, lawyers, activists, academicians, working with prisoners on various aspects, gathered, discussed and shared their experiences in the prisons. The aim of these consultations has been to identify plaguing problems and ambiguities in prisons, and come up with solutions to address these concerns. This Consultation focused on building and strengthening the legal aid system, ensuring an effective monitoring mechanism and building partnerships and a network of prison reform activists.

- <https://hrln.org/wp-content/uploads/2018/03/bihar-prison-report.pdf> A report on the study of the conditions of 58 prisons in Bihar, taken up at the behest of a former SC judge.
- <https://hrln.org/wp-content/uploads/2018/08/2nd-national-cons-report.compressed.pdf> A report that documents the proceedings of the National Consultation organized by HRLN in April 2013. Civil rights organizations, legal aid authorities, lawyers and activists, as well as officials from Tihar Jail participated.

## **CHRI**

- <http://www.humanrightsinitiative.org/publication/hope-behind-bars-status-report-on-legal-aid-for-persons-in-custody> This National Legal Aid Report has been prepared based on responses received from Right to Information Applications from 24 states and 5 union territories. The report is divided into two volumes. Volume I comprises the standards, national findings on the implementation of the schemes, recommendations for key stakeholders and replicable formats of recording, reporting and monitoring mechanisms. Volume II looks at the functioning of legal aid delivery at the state level. This volume has state summary sheets for 29 states and seven union territories. Each state summary includes three components: a) a snapshot of the criminal justice delivery system in the state; b) a snapshot of the response to our legal aid RTI and the key findings; and c) detailed findings on the implementation of legal aid delivery in the state.
- <http://www.humanrightsinitiative.org/publication/report-on-proceedings-welfare-behind-bars-recent-developments> The Prison Reforms Programme of Commonwealth Human Rights Initiative (CHRI) organised a one-day workshop on 'Welfare Behind Bars: Recent Developments'. The workshop brought together 27 Welfare Officers, Controllers, Assistant Controllers and Superintendents appointed to the various Central & District Correctional Homes in West Bengal. The workshop was designed to encourage prison officers to share the barriers experienced while working to ensure

access to legal aid services, the quality of legal aid services delivered, working of the Undertrial Review Committee's (UTRCs) and dealing with vulnerable categories of prisoners in Correctional Homes.

- <http://www.humanrightsinitiative.org/publication/prison-legal-aid-clinics-in-west-bengal-bringing-justice-closer> NALSA Standard Operating Procedures for Representation of Persons in Custody 2016 mandates setup of Prison Legal Aid Clinics in prisons across India. This study documents the functioning of the prison legal aid clinics in a few correctional homes in West Bengal. It highlights the lacuna that exists on the ground, and puts forth a recommendatory model which would ensure both uniformity and efficacy in the functioning of these clinics.
- <http://www.humanrightsinitiative.org/publication/report-step-inside-an-indian-prison> A report on a CHRI initiative- CHRI in collaboration with West Bengal Judicial Academy & the Regional Institute of Correctional Administration, Kolkata, organised Prison Visits '*Step Inside an Indian Prison*' for District Judges [Entry Level] and Civil Judges (Junior Division) on 7<sup>th</sup> and 10<sup>th</sup> July 2017 to Dum Dum Central Correctional Home, Kolkata. It was the first time in West Bengal that judicial officers were taken to prisons as part of their training. The visits aimed to sensitise judicial officers on the nuances of prison system and give them an insight into prisoner's lives. The Supreme Court has time and again re-affirmed the importance of prison visits by official and non-official visitors in guarding the rights of prisoners. The interaction intended to bridge the gap between the two very important stakeholders of the Criminal Justice System i.e. the accused and judiciary.
- <http://www.humanrightsinitiative.org/publication/chris-submission-to-ncrb-on-prison-statistics-india> A submission made by CHRI to the National Crime Records Bureau (Ministry of Home Affairs, Government of India) in March 2017 on improving quality of data published in the annual series *Prison Statistics India* report. The submission provides specific recommendations on existing data sets that require clarification and further detailing, as well as suggests new data sets that can be introduced to the annual report to widen the scope of the statistics presented and provide a better understanding of how prisons operate in India.
- <http://www.humanrightsinitiative.org/publication/looking-into-the-haze-a-study-on-prison-monitoring-in-india-2016> Report on prison monitoring in India- The penal system

in India is a closed institution that discourages independent monitoring leading to widespread abuse of legal and human rights among the jailed. Effective monitoring by qualified and sensitive independent monitors would stop mental and physical torture of prisoners. It will come as a shock to most readers that independent monitors regularly inspect less than one percent of prisons in India.

- <http://www.humanrightsinitiative.org/publication/chri-launches-two-reports-on-alarming-conditions-in-indian-prisons> Reports launched by CHRI that spotlight the dismal conditions in India's prisons. These reports underline how a lack of review has led to alarming conditions in jails—with a huge under-trial population of which a majority is poor.

- <http://www.humanrightsinitiative.org/publication/a-chri-breakdown-and-commentary-on-national-prison-statistics> The National Crime Records Bureau (NCRB) has released its annual report on conditions in the country's prisons. The Commonwealth Human Rights Initiative broke down figures of the NCRB backed up by commentary.

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[http://humanrightsinitiative.org/publications/prisons/conditions\\_of\\_detention\\_in\\_the\\_prisons\\_of\\_karnataka.pdf](http://humanrightsinitiative.org/publications/prisons/conditions_of_detention_in_the_prisons_of_karnataka.pdf) The CHRI team familiarised itself with the basic features of different categories of prisons and jails in Karnataka and tried to study every segment in order to arrive at a comprehensive picture of their functioning.

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[http://www.humanrightsinitiative.org/publications/prisons/ap\\_prison\\_behind\\_closed\\_door.pdf](http://www.humanrightsinitiative.org/publications/prisons/ap_prison_behind_closed_door.pdf) CHRI undertook a study on the existing system of prison visiting in the state. The study primarily focused on the functioning of nonofficial visitors but did not exclude the concerns associated with it.

## **PUCL**

- <http://www.pucl.org/Topics/Prisons/2007/sakchi.html> A team of the Jharkhand PUCL visited the Sakchi jail, East Singhbhum, Jharkhand. It created a report of the pathetic and highly condemnable conditions and sent it to the NHRC.

## UNDERTRIALS

### ARTICLES

- 2016: Conditions of Undertrials in India, *Economic and Political Weekly*, Vol. 51, no.13, 26 March.  
[https://www.epw.in/system/files/pdf/2016\\_51/13/Condition\\_of\\_Undertrials\\_in\\_India\\_0.pdf](https://www.epw.in/system/files/pdf/2016_51/13/Condition_of_Undertrials_in_India_0.pdf)A large number of the poor, the Dalits and people from the minority communities are languishing in jail as undertrials because of a property-based bail system and a poor legal aid mechanism. This article suggests ways in which both these tools could be strengthened for speedy dispensation of justice.
- 2006 Institutional Apathy towards Undertrial Prisoners, *Economic and Political Weekly*, 16 September.  
<https://www.jstor.org/stable/pdf/4418697.pdf?refreqid=excelsior%3A921e4d293e45d89c52f275fa6884f008>A study of prison conditions in Andhra Pradesh undertaken by the Commonwealth Human Rights Initiative reveals the denial of legal assistance to prisoners which has ultimately led to overcrowding, unacceptable overstretching of facilities and consequent terrible conditions.

### CASES

#### **Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1360**

<https://indiankanoon.org/doc/1373215/>

It was noticed by Joint Selection Committee that in many cases the accused persons were kept in prisons for a very long period as undertrial prisoners and in some cases the period spent in jail by undertrial prisoners far exceeded the sentence of imprisonment ultimately awarded. So, large numbers of prisoners, in the overcrowded jails of the country, were undertrial prisoners. In the landmark and eye-opener judgement the Hon'ble Supreme Court has held that if the Government fails to conduct a trial within reasonable time, it violates the guarantee of the life and personal liberty enshrined in Article 21. A PIL was filed in the form of habeas corpus writ in the interest of undertrial prisoners, who were languishing in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that "right to speedy trial" is a fundamental right implicit and guarantee of "life and personal liberty" enshrined in Article 21 of the Constitution. Speedy trial is an essence of criminal justice. Justice Bhagwati held that unlike the American Constitution speedy trial is not specially enumerated as a fundamental right, but it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi's case. No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, fair and

just. The court ordered to conduct survey, which found that 21,000 undertrial prisoners were languishing in the prisons, who had spent the period of the maximum period of their alleged offence, under which they were accused. For this reason the court ordered the Bihar Government to release undertrial prisoners on their personal bond. By virtue of this order 18,000 undertrial prisoners were released solely from the State of Bihar in 1981.

## **ORGANIZATION REPORTS**

### **CHRI**

- <http://www.humanrightsinitiative.org/publication/circle-of-justice-a-national-report-on-under-trial-review-committees> This report throws light on the plight of undertrials in India. Undertrials make up an astounding 67 percent of India's prison population. These are men and women who have been incarcerated and have yet to be tried in a court of law for crimes they allegedly committed. The report is based on solid field research and is backed up by extensive use of the Right to Information law.

## **RELEASE**

### **ARTICLES**

- 2015: Equality before Law <http://www.frontierweekly.com/archive/vol-number/vol/vol-47-2014-15/47-30/47-30-Equality%20before%20Law.html> Speaks of the inequality in prison and prisoners' rights and perks caused by the class divide. This is in particular context of a furlough that Sanjay Dutt received while other less privileged prisoners languish.
- 2004 Andhra Pradesh: Premature Release of Prisoners, *Economic and Political Weekly*, 25 September- 1 October <https://www.jstor.org/stable/pdf/4415583.pdf?refreqid=excelsior%3A02ffc2aeba9e7ce941b5d71fcd0bfe27> The release of over 1,000 prisoners in Andhra Pradesh, including those serving life sentences, has generated considerable controversy as well as allegations of political favouritism. The premature release of prisoners has been subject to political and bureaucratic influences, and corruption irrespective of the party in power, although a prisoners' movement has reduced to some extent the arbitrariness of the procedure. The present controversy may well give the government an opportunity to roll back some of the results of the struggles by prisoners

## INADEQUACY OF THE SYSTEM

### ARTICLES

- <https://www.telegraphindia.com/opinion/government-officials-have-abdicated-their-responsibility-to-ensure-prisoners-rights/cid/1676496>Speaks of the apathy of the government with respect to prison conditions, forcing the court to step in.

### ORGANIZATION REPORTS

#### PUCL

- <http://www.pucl.org/Topics/Prisons/2004/sakchi.htm>An account detailing how jail officials would accept bribes to allow people to visit their relatives in jail.

## CUSTODIAL VIOLENCE

### ARTICLES

- 2009 Deaths in Prisons in Andhra Pradesh, *Economic and Political Weekly*, 14 March <https://www.jstor.org/stable/pdf/40278607.pdf?refreqid=excelsior%3A763467027895c0aed35574c94fe9f0d3>A perusal of the state of prisoners incarcerated in Andhra Pradesh reveals a tragic story of denial of treatment to prisoners who are ailing and a rise in deaths of those in custody. This is indicative of the utter callousness of the prison authorities.
- 2016: “Custodial violence: How police underplay their actions” March 14 <https://www.deccanherald.com/content/534310/custodial-violence-police-underplay-their.html>Bemoans the lack of accountability of the police to custodial violence and death. Identifies that state machinery and administrative shields protect the guilty policemen and help them underplay the import of their actions.
- 2015: Policing as an instrument to achieve social equality ideals June 11 <https://www.deccanherald.com/content/482747/policing-instrument-achieve-social-equality.html>Points out the overlap between custodial violence and the victim belonging to marginalized sections of society.

### CASES

#### **Sheela Barse vs. State of Maharashtra AIR 1983 SC 378**

<https://indiankanoon.org/doc/174498/>

The Supreme Court on a complaint of custodial violence to women prisoners in jail directed that those helpless victims of prison injustice should be provided legal assistance at the State's cost and protected against torture and maltreatment.

“We would therefore direct the Inspector General of Prisons in Maharashtra to issue a circular to all Superintendents of Police in Maharashtra requiring them-

(1) to send a list of all under-trial prisoners to the Legal Aid Committee of the district in which the jail is situate giving particulars of the date of entry of the under-trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners and female prisoners.

(2) to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under [section 41](#) of the Code of Criminal Procedure who have been in jail beyond a period of 15 days.

(3) to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance.

(4) to furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required by them in regard to the prisoners in jail.

(5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them aud avail of their counselling services; and (6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of and jail official.”

“We propose to give the following directions as a result of meaningful and constructive debate in court in regard to various aspects of the question argued before us.

(i) We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where

female suspects are kept and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects.

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(ii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid & Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the language of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps far the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock ups at the districts head quarters shall be carried out by the Sessions Judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly

(vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or maltreatment in police custody and inform him that he has right under [section 54](#) of the Code of Criminal Procedure 1973 to be medically examined. We are aware that [section 54](#) of the Code of Criminal Procedure 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or mal-treatment in police custody. We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill- treatment.”

### **Raghubir Singh v. State of Bihar (1986) 4 SCC 481**

<https://indiankanoon.org/doc/906106/>

The Supreme Court expressed its anguish over police torture by upholding the life sentence awarded to a police officer responsible for the death of a suspect due to torture in a police lock – up.

### **ORGANIZATION REPORTS**

#### **HRLN**

- <https://hrln.org/wp-content/uploads/2018/03/State-terrorism.pdf> Torture, extra-judicial killings and forced disappearances are a daily reality in India. This report covers a wide range of situations in which officials of the State – the police, the armed forces, security and paramilitary forces, the railway police force and Forest Department officials – use violence and often deadly measures to intimidate and punish citizens for a range of actual or perceived transgressions, crimes and beliefs.

