

# IN THE SUPREME COURT OF INDIA

(CIVIL WRIT JURISDICTION)

WRIT PETITION (CIVIL) NO. 406 OF 2013

Titled: In Re-Inhuman Conditions -1382 Prisons

## **Report :**

1. This Public Interest Litigation was registered by this Hon'ble Court on **5.7.2013** upon receipt of a letter from Hon'ble Mr. Justice R.C Lahoti (Former Chief Justice of India) dated 13.6.2013.
2. Since thereafter, this Hon'ble Court has passed several directions with aim of decongesting the jails and also for improving the infrastructure of the jails and living conditions of the inmates.
3. That on **17.1.2013**, Ministry of Home Affairs issued a circular ( **Annexure 'A'** Page No \_\_\_ ) constituting a Under Trial Review Committees(UTRCs) in each district headed by District & Session Judge/District Magistrate

and Superintendent of Police to ensure that Under Trial Prisoners who are entitled to technical bail u/s 436(A) CrPC get the benefit thereof.

4. That on **24.4.2015**, this Hon'ble Court made an observation that there are 2.78 lacs Under Trial Prisoners in the country out of which 67% are UTPs. This Hon'ble Court also issued an order whereby Director, National Legal Services Authority was appointed as Nodal Officer in this matter. The UTRCs constituted by MHA was directed to consider cases even if an Under trial Prisoner has undergone 1/2 of the less graver offence. Other cases to be considered by UTRCs were compoundable Offence, Cases in which UTPs were not able to furnish bonds on account of reason of poverty etc.

Directions were issued to the SLSAs to move application for their release before the concerned court.

5. That on **7.8.2015**, this Hon'ble Court expanded the UTRC by including Secretary of District Legal Services

Authority as Member. Directions were also issued to enhance the number of Legal Aid Lawyers in the jail.

6. On **18.9.2015**, this Hon'ble Court appointed Sh Gaurav Aggarwal as Amicus Curiae. Also clarification was issued that recommendation of a case by UTRC for moving bail application does not mean that such UTP has to be mandatorily granted bail by the court.
  
7. That on **6.5.2016**, this Hon'ble Court issued directions to the UTRCs to cover following additional set of cases:-
  - (i) UTPs become eligible to be released on bail u/s 167(2)(a) (i) & (ii) of the Code read with section 36 A of the Narcotic Drugs and Psychotropic Substances Act, 1985(where persons accused of section 19 or section 24 or section 27 A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days.
  - (ii) UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.
  - (iii) UTPs who are detained under chapter VIII of the CrPC i.e u/s 107,108,109 and 151 of Cr.PC.

- (iv) UTPs who are sick or infirm and require specialized medical treatment
  - (v) Women Offenders.
  - (vi) UTPs who are first time male offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible.
  - (vii) UTPs who are of unsound mind and must be dealt under chapter XXV of the Code;
  - (viii) UTPs who are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case;
8. That on **31.10.2017**, this Hon'ble Court further expanded the UTRC by including Jail Superintendent of Central/District/Sub Jails in the districts of each district. On that day itself, NALSA and Ld. Amicus Curiae were directed to draft a Standard Operating Procedure for smooth functioning of UTRC right from the identification of Under Trials, processing the data, passing of

recommendations, moving of bail applications of the recommended UTPs and the follow up.

NALSA and Ld. Amicus Curiae were also required to attend a meeting convened by Ministry of Home Affairs of Director General (Prisons) of all the States on 16.11.2017.

9. That on **16.11.2017**, the meeting convened in the MHA office, was attended by all the Director General (Prisons) /IG (Prisons). On that day a presentation was given by Sh Gaurav Aggarwal, Ld Amicus Curiae and Sh Surinder S.Rathi, Director, NALSA to the all present. Sh Gaurav Aggarwal shared details of the concerns of this Hon'ble Court and various directions issued in this regard. Sh Surinder S.Rathi, Director, NALSA in his presentation shared the copy of the fresh 'Custody Warrant' designed by Delhi State Legal Services Authority in 2015 aimed that proper update of the details of the offence in which UTP is confined in the jails commensurating to the stage of the trial apart from the need of using technology by installing filters for scanning and filtering the data of UTPs, in terms of the directives issued by this court.

10. Pursuant to the order of this Hon'ble Court dated **31.10.2017**, Member Secretary NALSA convened a meeting on 22.11.2017, with the following Ld. Advocates representing the States :

- (i) Sh. Adarsh Upadhyay, Standing Counsel for the State of UP
- (ii) Mr. Mahaling Malikarjn Pandarge, Standing Counsel for the State of Maharashtra
- (iii) Mr. Anik Kumar Lal, Standing Counsel for the State of Madhya Pradesh.
- (iv) Ms. Sugandha Shankar, Senior Programme Officer, CHRI.

The meeting was also attended by Sh S.S.Rathi, Director, NALSA, Sh Chanderjit Singh, Secretary, New Delhi DLSA, Sh Gaurav Aggarwal, Ld Amicus Curiae and Ms Sughandha Shankar, CHRI.

It was shared that as on date around 700 prisons are using the E Prison Portal designed by NIC. Four other

States namely Haryana, Maharashtra, Goa and Gujarat have also digitized their Prison Management System (PMS) but they are stand alone private Software's and have not yet shared their data with the Central E Prison Portal.

Even out of 700 jails, it was revealed in the meeting called by MHA that some of the Prisons are not regularly updating the data.

It would be pertinent to mention here that in the MHA meeting, Additional Secretary, Home had assured all the States that not only sufficient information technology infrastructure in the form of Software and Hardware would be provided but also suitable man power in the form of Data Entry Operators would also be financed by MHA to all the States. At least to begin with for one year so as to digitized and update the E Prisons court.

11. It would be pertinent to mention here that under project conceived and adopted by DSLSA in the year 2013, all the 11 jails in Delhi were adopted by each

District Legal Service Authority under which weekly visit was paid by the Secretary to each jail in addition to the legal aid counsels. Under this project UTPs/Convicts were trained as PLVs. Under the permission of the then Hon'ble Executive Chairman DSLSA all the Legal Service Authorities in clinics were digitized. The access of E Prisons Portal/PMS was granted to the Legal Services Clinics so that the details of the cases, nature of offences, particulars of court/Police Stations may be ascertained.

12. It is submitted that almost all the jails in India have Legal Services Clinic.
  
13. That on the same lines, Now NALSA is also contemplating a project of not only adoption of all the jails by concerned District Legal Services Authorities for ensuring expeditious and effective legal services to the inmates of the jails as well as Observation Homes for boys and girls but also contemplating to digitized all the Legal Services Clinics functioning under the jails by



providing Desktop Computers, Printers, Scanner/photocopier, related infrastructure items coupled with stationary. It will be followed by getting access to the PMS/E Prison Portal of the jail in the Legal Services Clinics.

14. Thereafter, another meeting was convened by NALSA on **22.11.2017**. All persons principally agreed that in the interest of rights of all the UTPs and convicts, it would be appropriate that Hon'ble Supreme Court may be requested to issue directions to all the States to get their jail records digitized. Also directions may be solicited to the States that they should arrange for centralized compilation of data in the E Prison Portal prepared by NIC.
  
15. An interaction was held by Sh Surinder S. Rathi, Director , NALSA and Sh Sunil Chauhan, Project Officer, NALSA with Ms Jasmine Sharma, Secretary, Supreme Court Legal Services Committee qua issues pertaining to UTPs/Convicts who wish to file SLPs/Criminal Appeal,

was discussed. It was felt that many times on account of non-receipt of hardcopies/ soft scanned copies of the Trial Court Record, Judgment/Order on Sentence, Appellate Court orders, filing of SLP gets delayed. Other problems being faced by UTPs/convicts in accessing the legal services were also discussed.

16. Thereafter, another meeting was held on **30.11.2017** with Director General (Prisons), Tihar and other officials. It was attended by 2 Secretaries namely Sh Dhirender Rana and Sh Jagmohan Singh of DLSA under DSLSA , apart from jail visiting counsel Sh Puneet Garg and Arguing counsel Sh Harsh Parabhakar, Delhi High Court Legal Services Committee. NIC team officials had also participated.

17. In the light of discussion, following SOP is suggested:

### **Standard Operating System (SOP) for UTRCs.**

**Definitions:**

- (a) "Jail" means Central Jail/District Jails/Sub Jails.
- (b) "Jail Superintendent" includes Deputy Superintendent
- (c) "UTPs" means Under Trial Prisoners who are in custody at the time of preparation of list and includes inmates who are out on interim bail.
- (d) "UTRC" means Under Trial Review Committee chaired by District & Session Judge consisting of District Magistrate, Superintendent of Police, Secretary, DLSA, and Superintendent of Jail, as members.
- (e) "E-Prison Portal/PMS" means E-Prison Portal developed by NIC under directives of Ministry of Home Affairs and includes stand alone Software developed by States for their Jail.
- (f) " Secretary DLSA" means Secretary of the concerned District Legal Services Authority appointed u/s 9(3) of Legal Services Authorities Act 1987.
- (g) " Bail Applications" Bail applications include bail applications moved u/s 437 CrPC and 439 CrPC apart from other provisions pertaining to technical bail under the CrPC.

**PART I**

**SOP for UTRCs where jail records are not Digitized and even if digitized no Software Filters have been applied.**

**STEP 1: Collections of Data of UTPs**

The raw data of all the UTPs shall be collected and compiled by Jail Authorities District Wise, at least 15 days prior the scheduled meeting of UTRC. It shall be shared with Secretary DLSA in a Hard Copies or Soft Excel Sheets. The data shall contain all the necessary details like date of arrest, offence under which the UTP is arrested and detained in jail , period already spent by the UTP (excluding the period of interim bail etc.)

**Action:** Jail Superintendents

**Time Frame:** 15 days prior to UTRCs scheduled meeting.

## **Step 2: Processing of Data by Secretary, DLSA**

Upon receipt of raw data from the Jail Authorities, Secretary, DLSA shall cross check all the cases individually to identify and segregate the cases of UTPs who are covered under the following categories prescribed by Law, MHA and by Hon'ble Supreme Court :

- i. UTPs covered u/s 436 A CrPC.
- ii. UTPs who have completed 1/4<sup>th</sup> of the Maximum Sentence as per MHA Circular.
- iii. Cases of UTPs who have completed one half of the sentence in less graver offences,
- iv. UTPs covered u/s 167(5) CrPC,

- v. UTPs who are eligible for release under section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.
- vi. Cases of compoundable and bailable offences etc.
- vii. UTPs who have been granted bail but not released
- viii. UTPs become eligible to be released on bail u/s 167(2)(a) (i) & (ii) of the Code read with section 36 A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27 A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days.
- ix. UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.
- x. UTPs who are detained under chapter VIII of the CrPC i.e u/s 107,108,109 and 151 of Cr.PC.
- xi. UTPs who are sick or infirm and require specialized medical treatment
- xii. UTPs who are first time male offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible.
- xiii. UTPs who are of unsound mind and must be dealt under chapter XXV of the Code;

➤ The processed data shall be individually endorsed by Secretary, DLSA by adding a column in the Excel Sheet in the Table.

➤ Some DLSAs are also collecting data of UTPS covered under the above categories from the Trial Court as well. This can be continued as it makes it doubly sure that no eligible UTP is left out for getting benefit of directives.

**Action:** Secretary, DLSA

**Note** :- As of now, it is being done by Secretary DLSA but in the long run it shall be done by the Superintendent Jails who can be trained by SLSA/Judicial Academies of the respective State/District in this regard.

**Time Frame**:- This process should be completed at least one week prior to UTRCs scheduled meeting .

### **STEP 3 : Processing of identified cases by UTRC**

UTRC will take up all the cases identified by Secretary, DLSA one by one with the assistance of all the Members. They will keep in mind following categories of cases while making recommendations for consideration of Bail Application:

- (i) UTPS involved in multiple cases
- (ii) UTPs who are already convict in un- related matter
- (iii) UTPs who do not able to arrange surety bond despite passing of bail order.
- (iv) UTPs who do not wish to be released despite passing of bail order
- (v) UTPS who do not wish to be released fearing for their life from other criminals
- (vi) UTPs who are wanted in other States

Any other case found fit for specific consideration.

The UTRC shall then prepare a Lists of UTPs “ Recommended for filing of Bail Application”. Such list shall preferably have specific endorsement or remark whether UTP is represented by Private Advocate or Legal Aid Advocate.

Preparation of list with the specific remark whether he/she is represented by private counsel or legal service advocate.

**Action** : UTRC

**Time Frame**: Once in 3 months with an advice to process identified cases in one sitting of the scheduled date of meeting.

**STEP 4: Moving of Bail Application in Recommended Cases.**

Moving of Bail applications:- The Bail Applications shall be moved preferably within three days in legal aid cases. In case where UTPs are represented by Private Advocates, intimation of recommendation shall be sent to concerned Trial Courts who in turn shall inform the UTP and their advocate qua recommendation for moving the Bail Application.

**STEP 5: Follow Up of Bail Application moved.**

In case bail application is dismissed, reason thereof. In case bail application is allowed, whether UTP has furnished bail bond. In case no bail bond is furnished, reasons thereof and follow up action for reduction of surety amount or for moving of bail application for release of inmate on personal bond.

**Follow up:** Follow up shall be done by Secretary, DLSA with the help of Remand Lawyer attached with all the Criminal Courts.

Follow up Report shall be compiled for perusal and consideration by the UTRC in the subsequent quarterly meeting.

## **Part II :**

### **SOP for UTRC where Jails are Digitized and have Software**

#### **Filters :**

- This suggestive SOP may not be applicable to any of jail. However, this would be applicable to all jails who have not only digitized their record but have also applied software filter to their E-Prison Portal/Stand Alone, in terms of directions issued by Hon'ble Supreme Court as detailed Supra.
- Under this SOP, The Step 1 of proposed SOP qua collection of Data of UTPs by Jail, Step 2 :Processing of



Data by Secretary, DLSA and Step 3 : Processing identified cases by UTRC shall be merged into one.

Once the jail record is fully digitized and filters are put in place, Login ID and Passwords can be granted to each UTRC in the District whereby they can themselves perused the segregated list of UTPs covered under directions issued by Hon'ble Supreme Court, in real time.

### **Step 1 : Processing of Identified cases by UTRC**

UTRC will login into the E-Prisons Portal/PMS and access the list of UTPs identified by the Software Filters, for their district.

### **STEP 2: Processing of identified cases by UTRC**

UTRC will take up all the cases identified by Secretary, DLSA one by one with the assistance of all the Members. They will keep in mind following categories of cases while making recommendations for consideration of Bail Application:

- (i) UTPS involved in multiple cases

(ii) UTPs who are already convict in un-related matter

(iii) UTPs who do not able to arrange surety bond despite passing of bail order.

(iv) UTPs who do not wish to be released despite passing of bail order

(v) UTPs who do not wish to be released fearing for their life from other criminals

(vi) UTPs who are wanted in other States

Any other case found fit for specific consideration.

The UTRC shall then prepare a Lists of UTPs "Recommended for filing of Bail Application". Such list shall preferably have specific endorsement or remark whether UTP is represented by Private Advocate or Legal Aid Advocate. \_

Preparation of list with the specific remark whether he/she is represented by private counsel or legal service advocate.

**Action** : UTRC

**Time Frame**: Once in 3 months with an advice to process identified cases in one sitting of the scheduled date of meeting.

### **STEP 3: Follow Up**

- Post considering each individual case, UTRC will have the facility to add its recommendations online into the inventory to filter cases qua its recommendations for filing of bail applications before the court concerned. This will automatically upload the E-Prison Portal qua recommendations of the court and will become a permanent record with the Jail Authorities.
  
- The Bail Applications shall be moved preferably within three days in legal aid cases. In case where UTPs are represented by Private Advocates, intimation of recommendation shall be sent to concern Trial Courts who in turn shall inform the UTP and their advocate qua recommendation for moving the Bail Application.
  
- In case bail application is dismissed, reason thereof. In case bail application is allowed, whether UTP has furnished bail bond. In case no bail bond is furnished, reasons thereof and follow up action for reduction of surety amount or

for moving of bail application for release of inmate on personal bond.

- Secretary, DLSA would update the fate of such applications on the E-Prisons Portal in the aforesaid inventory for perusal of UTRC.

## **Suggestion by NALSA**

### **Suggestions NO.1 : Usage of modified ' Custody Warrant'**

- As detailed in para no. 9 of this Report, in the year 2015, DSLSA designed new Custody Warrant, annexed as **Annexure ' B ' ( Page No\_\_\_\_\_)**. The reason behind drafting of new Remand Paper is that as on day the Prison Data is maintained only on the basis of case details received by the Jail Authorities from the First Remand Paper which is based solely on FIR. This data is amenable to change at different stages i.e filing of Chargesheet, framing of Charge and then passing of final Judgement.

This will also carry the particulars of the Legal Aid Counsel/Private Counsel representing the UTPs at different stages.

Adoption of this modified ' Custody Warrant' is also necessary for the Software Filters to work properly. Since, unless the specific offence in which UTP is kept in

detention is regularly updated, even if installing filtration may not give correct data. For example, an accused arrested u/S 302 IPC may be chargesheeted u/S 304 IPC

**NALSA Suggestion No.2: Casting Duty on the Remand Court/Trial Court to safeguard the rights of the UTPs to be considered for bail.**

- It is submitted saying that every inmate who is inside jail as UTP is so detained by the Prison Authorities only under direction of Court of Criminal Judicature i.e Ld MM/Sessions. In view of this, every such court is also duty bound by under the Law and the Constitution to safeguard the Fundamental Right to Life enshrined under article 21 of the Constitution. All such inmates also have a right to speedy trial as well as all the benefits guaranteed not only by the Constitution but also by benevolent statutory provisions like Section 436-A CrPC, Section 167(5) CrPC, Section 437(6) CrPC and like. Accordingly the first duty to uphold these statutory rights to seek technical bail is on the concerned Ld Trial/Remand Judge.

- Hence, NALSA suggests that by slight re-alignment and course correction, menace of UTPs not getting the benefits of technical Bails can be tackled. As of now, only custody detention order/directive which criminal court is passing /issuing to the Superintendent Jail is reproduced as Follows:

“Prototype of Custody Warrant Currently under use”

- It is suggested by the NALSA that a simple improvement in the above one line order/directive can change whole scenario in such a way that not a single UTPs would miss the attention of the Court qua his/her right to seeks/apply

for technical Bail either under Section 436-A CrPC or under other technical directive issued by this Hon'ble Court.

(i) **Mentioning date of arrest of the UTP in every such order with real time spent till jail counts viz.**

- **Accused was arrested on\_\_\_\_ and is in custody since\_\_\_\_, \_\_\_\_\_ Years, \_\_\_\_\_Months\_\_\_\_Days**

(ii) Addition of expression of satisfaction by remanding Ld Criminal Court Judge that inmate is not covered under any of the criteria warranting consideration of Technical Bail viz

**I am satisfied that Accused is not covered under Section 436(A) CrPC or any of the 12 criteria laid by Hon'ble Supreme Court in WP (C) 406/2013 Re-Inhuman Conditions in 1382 Prisons.**



“ Prototype of Suggested individual Custody Order”

- Once the above template is put into practise coupled with the cross checking/ Data filtration by Softwares to be installed in E Prisons Portal/PMS at the Jail level, the burden of exercise being carried out through UTRC would be significantly reduced.
- This would also ensure that concerned Trial Courts assisted by their own continuous collection of period of detention added by Software Filters, whose access would also be provided to each Criminal Courts qua inmates, with highlighters would prompt the Trial Courts to require the Legal Aid Counsel/Private Counsel to move a technical bail application without even waiting for recommendation from UTRC.

**Suggestion No.3: Inclusion of Chief Public Prosecutor in UTRC.**

- During the discussion with various stake holders it was felt by NALSA, that as a Prosecuting Agency, State is represented in each criminal court i.e MMs/Sessions through a Public Prosecutor. As and when any Bail Application is moved by the UTPs either on merits or on technical grounds, as a matter of routine, they are opposed by Public Prosecutors/Additional Public prosecutors/Asstt Public prosecutors representing State in the Court. Hence, inclusion of Chief Public Prosecutor of the District in the UTRC would go a long way in making it holistic. More so, the Directorate of Prosecution being the sole prosecuting agency, if included would be the only component of the UTRC, who would be physically present in the Court when the Bail Applications of the recommended cases would be heard. They can also be instrumental in the follow up of the Bail Application.

**Suggestion No.4: Expanding the mandates of UTRC**

- NALSA believes that in addition the mandate of UTRC as notified by Ministry of Home affairs and compliance of

directions issued by this Hon'ble Court, it is evident from the name itself that it is an Under Trial Review Committee, which can also be requested to individually look into the specific cases so as to ascertain why a particular criminal trial is not getting concluded in reasonable time and is getting dragged. Such a review of individual cases can go a long way in identifying the broad reasons which plague the criminal courts and results in the delay of trials. This would also help reduce to ratios of 70% inmates in Jails as UTPs upon 30% as Convicts.

➤ The UTRC assisted by Chief Public Prosecutor would be able to identify specific reasons which end up in delay of particular case. Apart from identifying bottle necks in the Criminal Justice System of a particular district, the indicative reasons which can be looked into and addressed by such a high powered committee would include the following:

- i. Non filing of FSL/CFSL report in time.
- ii. Failure of police to trace, serve and produce the witnesses
- iii. Effect service on Public witnesses/eye witnesses
- iv. Delay caused in frequent transfer of investigation related witnesses like police officials, documents.

- v. Tracing and producing expert witnesses like medial and forensic witnesses etc.
- vi. Seeking Cooperation from the Bar and the Private Counsel of UTPs.
- vii. Availability of effective and efficient Free Legal Services.
- viii. Rational distribution of criminal cases in different courts within district
- ix. Paucity of staff like Ahlmad or stenographer for the criminal court
- x. IT Infrastructural need like, Desktop, printer, nicnet, stationary etc.
- xi. Delay caused by lack of efficiency in administrative set up like Copying Agency, Facilitation Centre, Record Room( in case of fetching of old file ) etc.
- xii. Non availability of dedicated PPs in each criminal court.
- xiii. Non availability of reliving PP in case regular PP is in leave
- xiv. Non usage of ADR methods apart of usage of Plea Bargaining for quick adjudication
- xv. Identification of cases for Holding of Lok Adalts in the jail
- xvi. Suggest segregation of trial in case one or more co-accused are absconding.
- xvii. Suggestions, inputs and interventions in such cases leading to delay by UTRC can be a game changer and learning out of such suggestions can help in policy making and would ensure speedy justice in criminal judicature.

Submitted for Kind Consideration

(Alok Agarwal )  
Member-Secretary

NEW DELHI

Dated: