

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

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

North Block, New Delhi

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

To

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

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

**Subject: Overcrowding in prisons- regarding**

Sir,

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

## **NATIONAL SCENARIO**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The receipt of this letter may please be acknowledged.

Yours faithfully

Sd/-

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