

F. No. VII-11016/20/2016-PR
Government of India
Ministry of Home Affairs
CS Division

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March 1, 2018

To

1. **The Principal Secretary (Home) of all States and UTs**
2. **DG/IG (Prisons) of all States/UTs**

Sub: Recommendations of the Parliamentary Standing Committee on Empowerment of Women on 'Women in Detention and Access to Justice'.

Sir/Madam,

Please refer to the Ministry of Home Affairs letter of even number dated November 7, 2017 on the subject mentioned above vide which recommendations of the Parliamentary Committee were shared with all States/UTs for their information and also for providing their inputs/comments on the report to enable MHA to furnish a report to the Committee.

2. The Parliamentary Committee on Empowerment of Women had selected the subject of 'Women in Detention and Access to Justice' for detailed examination. The Committee interacted with various jail authorities to gain firsthand knowledge of the subject and also undertook study visits. The Committee also took oral evidence from the Ministry of Home Affairs. The Committee prepared a report on 'Women in Detention and Access to Justice' and presented the same to Hon'ble Speaker, Lok Sabha and Hon'ble Chairman, Rajya Sabha on 30th August, 2017.

3. The Committee has made wide ranging observations on various issues such as overcrowding of jails, issue of undertrials, post release integration, gender specific health care needs, security of women prisoners, modernisation of jails, welfare of women prisoners, NGOs working in prisons, gender sensitive prison management, etc.

4. The report of the Committee was forwarded to the Principal Secretary (Home)/Home Secretary of all States and UTs with the request to go through the same and provide their inputs. The intention was to make aware all State/UT Prison authorities about the various aspects dwelt upon in report of the Committee and to enable the States and UTs to make best use of the guidance and recommendations provided in the report. However, very few responses have been received from States/UTs in response to this Ministry's request to provide inputs to enable MHA to provide a consolidated response/ATR to the Committee.

5. The observations/recommendations made by the Committee and the advice/guidance of MHA to States/UTs to address relevant issues are given below:

Committee's observations/recommendations:

- i) Overcrowding in jails result in denial of basic facilities to prisoners besides being instrumental in lack of sanitation, food and health care in jails. This gives rise to spread of diseases particularly skin infections, T.B., AIDS, etc.
- ii) One of the key reasons for overcrowding is the growing number of under-trial prisoners in the country. The Committee has noted that many of them are in jail only because they are not in a position to pay fines imposed on them by courts. The Committee has recommended that urgent steps need to be taken to solve the issue by a variety of measures, and a conscious policy of not overcrowding prisons be evolved by finding alternative methods of dealing with non-criminal offenders and petty criminals.
- iii) The Committee has noted that the National Police Commission have pointed out that 60% of all arrest were either unnecessary or unjustified which has resulted in overcrowding. The Committee has recommended that police force needs to desist from unwarranted arrests.

MHA's suggestions/guidance:

The State Governments & UT Administrations are requested to take note of the guidelines which have been shared with them on earlier occasions and are also available on MHA's website, and make best efforts to reduce undertrial prisoners in their Jails which will help in reducing overcrowding in prisons, which in turn can bring a positive change in Jail administration. The Government of India had also issued an advisory which provides for steps to be taken by States/UTs for providing free legal aid to undertrials, setting up Lok Adalats/ Special courts in prisons for expediting review of cases of undertrials. The State Governments are requested to make best use of these and alleviate the suffering of undertrial prisoners. These advisories are also available on MHA's website. Based on the letters and advisories shared by MHA, the State Government/prison departments are requested to -

- a. prepare compendium of circulars/letters in the local language of the State and disseminate the information to all prison officers in the state to facilitate its implementation by all concerned.
- b. collate relevant prison-wise information on the inflow and outflow of prisoners; prison capacity and other infrastructural requirements, and develop time bound strategies (short term and long term) for each prison to tackle the problem of overcrowding.
- c. organise state level meetings of all Superintendents of Prisons and DLSA Secretaries to address issues concerning legal aid to prisoners and share good practices for better coordination between the two agencies.
- d. provide adequate space and infrastructure for the functioning of legal aid clinics in prison.

To address the issue of overcrowding in jails, Ministry of Home Affairs has undertaken various initiatives. Through Cr PC Amendment Act 2005, Section 436A

was inserted in Cr PC. Under Section 436A, an undertrial has the right to seek bail on serving more than one half of the maximum possible sentence on personal bond. MHA had issued an advisory to all States and UTs to constitute Review Committees in every District and review cases of undertrials and educate them about their rights to bail etc. This was followed by another advisory in which directions of the Supreme Court were shared with States and they were requested to prepare lists of undertrial prisoners for review under Section 436-A and put in place a permanent mechanism for providing relief to undertrial prisoners in the form of Under Trial Review Committees. Another letter was sent to all States and UTs in March 2017 requesting them to take necessary action to review the cases of undertrial prisoners in a time bound manner. The Government of India has also introduced the concept of plea bargaining through Section 265-A of Cr.PC that will help address the issue of undertrials. The State Governments are advised to:

- a. fill up the vacant posts of probation officers on an urgent basis and seek information, every quarter, from judicial department on use of Probation of Offenders Act & Cr PC provisions on Plea Bargaining.
- b. compile reports on cases reviewed, releases recommended and actual releases effectuated by Under Trial Review Committees.
- c. in order to check arbitrary arrests, ask the state police department to instruct all police stations to comply with pre-arrest and arrest procedures as provided in the amended Sections 41A, 41B, 41C and 41D of the Code of Criminal Procedure 1973 and also ask the state police academies to train police officers on these procedures.

Committee's observations/recommendations:

iv) The Committee has noted that Jail Adalats should be regularly held in various jails effectively and time bound strategies need to be evolved to tackle the problem of overcrowding.

MHA's suggestions/guidance:

This needs no reiteration that Jail adalats need to be regularly held so that the cases can be disposed of in a time bound manner. The State Governments are advised to seek information from prisons on the point whether jail adalats are being conducted in prisons. Assistance of State Legal Services Authority may also be taken by the States to address the issue.

Committee's observations/recommendations:

v) The Committee has noted that lack of proper training and internalization of values of the police force results in irresponsible behaviour on the part of the police personnel creating a serious compromise upon the rights of women in detention and access to justice.

vi) The Committee is of the view that women have to undergo emotional and psychological trauma which is more pronounced than that encountered by the male prisoners and there is an urgent need to cater to this concern. Therefore focused

intervention by counselors, psychiatrists, welfare officers and others to allay the mental anxieties of women prisoners is the need of the hour.

vii) The Committee has noted that integrity, self-control, self-awareness, empathy, compassion, tolerance and conscientiousness are the central values required for sensitive handling of the prisoners. Hence the jail staff should be provided with special training. Accountability and probity in jail administration must be strictly enforced and prison staff should be suitably trained by holding trainings and workshops.

viii) The Committee has noted that better skills should be imparted to prison officials so that they are able to deal effectively with the physical and psychological challenges being faced by prisoners. They need to be exposed to training which aims primarily at sensitization, emotional intelligence, positive attitude towards the prison inmates and practice self control so that the correctional philosophy of prison administration translates into action.

MHA's suggestions/guidance:

Officers dealing with Jail Administration and those who handle women prisoners should be provided suitable intelligence training and Specific Attitudinal change training for developing positive attitude towards women prisoners to meet their specific needs. The prison department may:

- a) ensure that all new recruits are provided induction training prior to being assigned to any prison.
- b) train prison staff in identifying the vulnerable categories inside prisons, like juveniles or whose age is disputed, mentally ill, prone to commit suicide, terminally ill, elderly, etc., and bring them to the attention of appropriate authority.
- c) conduct training courses for prison officers to bring attitudinal changes towards dealing with women prisoners.
- d) trainings may also include suicide prevention modules covered by the NHRC's 2014 report 'Suicides in Prisons'. It is reiterated that the training aspect of prison officials to enable and equip them to deal with the psychological challenges faced by prisoners may be looked into by the States very closely and suitable modules of trainings which can help the prison officers and officials in developing positive attitude and can provide emotional intelligence to them to handle the prison inmates may be developed and training imparted to them regularly. This may be done on a regular basis and should be monitored at the highest level in the States/Prison headquarters.

Committee's observations/recommendations:

ix) Better surveillance and supervision through CCTV cameras may be encouraged to ensure effective prison management and inspection of Police Stations by superior officers.

MHA's suggestions/ guidance :

Use of CCTV cameras for better surveillance and supervision is an essential and progressive step which States need to make best use of and bring a positive change in the safety & security of prison inmates.

The State Governments are requested to:

- a) set up CCTV cameras at all appropriate places in prisons.
- b) formulate policy where cameras should or should not be installed keeping into consideration the privacy and safety of prisoners.

Committee's observations/recommendations:

- x) There should be a greater interface with Civil Rights activists and their access to people in custody must be facilitated.
- xi) The Committee has recommended that there should be regular visit of jails by NGOs and greater access and open communication with the prisoners be provided in the context of financial assistance, rehabilitation, legal aid etc.

MHA's suggestions/guidance:

States should make efforts to implement the recommendations of the Committee for interface with Civil Rights activists and their access to people in custody as per the provisions of law. A system can be evolved where different NGOs with relevant expertise can work in tandem with prison authorities for the betterment of prison inmates. The prison departments are requested to:

- a) Collate information on civil society organisations working on various aspects of prisons in State, including but not restricted to (a) rehabilitation of prisoners post release, (b) skill building, (c) legal assistance and awareness, (d) spiritual needs, (e) providing medical assistance, (f) drug de-addiction, and (g) any other assistance.
- b) Form a Core Group of NGOs - 'Sahayaks' /Prison Advisory Board to render assistance on various aspects of prisons, which may also include members of Board of Visitors.
- c) Make efforts to ensure that assistance is provided by the Core Group to all prisons in the State.

Committee's observations/recommendations:

xii) In most of the jails, necessary skill building programmes are organized for women prisoners in order to help them for brighter future after release. While appreciating the efforts of various prison departments in terms of skill development of women prisoners, the Committee has reminded that the task would only be complete with prudent strategies to deal with post-release stigmatization, victimization and abandonment by families of women prisoners as they constitute one of the gravest challenges in access to justice by women.

xiii) There is a need to evolve prudent strategies to deal with post-release stigmatization, victimization and abandonment by families of women prisoners. Skill

development of these inmates and employment opportunities post release leading to their integration with the society is therefore very essential.

MHA's suggestions/guidance:

Suitable opportunities for development of skills of women prisoners and employment opportunities post-release leading to their integration with the society may be seriously looked into by the State Governments and prison authorities. The States/ prison departments are advised to:

- a) coordinate with the Department of Skill Development in the States/UTs and explore suitable opportunities for development of skills of women prisoners and employment opportunities post-release leading to their integration with the society.
- b) set up a Placement Cell in the Prison HQs for facilitating post release employment of prisoners.
- c) conduct audits on their existing schemes for vocational training and rehabilitation to gauge their effectiveness in skill development and impact on employment opportunities post release.

Committee's observations/recommendations:

xiv) On the issue of focused care for women prisoners, the Committee noted that there is a shortage of women officials in the management of prisons which has various implications like women officials in prisons not having full access to their leave, backup duties and shift duties leading to an adverse impact in management of women inmates. There is therefore an urgent need to fill up vacancies in prisons across the country in a time bound manner. Special recruitment drives need to be initiated to fill up the vacancies of prison officials.

MHA's suggestions/guidance:

Vacancies in prisons across the country need to be filled up in a time bound manner to ensure focused intervention by counselors, psychiatrists, welfare officers and others to allay anxieties of women prisoners and ensure a more gender sensitive prison management. Shortage of manpower and its adverse impact upon prison management does not require reiteration as this is a crucial aspect. Special recruitment drives need to be initiated to fill up the vacant posts of prison officials. The State Governments/prison departments are advised to:

- a) make an assessment of the required strength of all categories of staff at all levels according to standards prescribed in the Model Prison Manual, 2016 and conduct special recruitment drives to fill up vacancies
- b) in addition to appointment of adequate number of psychiatrists, counselors and other doctors, avenues to liaise with state medical colleges/ universities' psychology department/ psychiatry institutes for daily visits to prisons to supplement/assist the work of doctors, psychiatrists, counselors may also be explored.

Committee's observations/recommendations:

xv) There is a need for improvement of health care facilities in jails in view of shortage of Doctors, para-medical staff and equipments. There is also a need to provide better health services to women inmates and cater to the healthcare needs of women prisoners. The shortage of health care officials must be filled up urgently.

MHA's suggestions/guidance:

States should make efforts to ensure that basic facilities such as sanitation, food and healthcare are provided to prisoners. This can be ensured by regular oversight over prisons by internal inspections by prison authorities and external inspections by Board of Visitors, Human Rights Commissions, Legal Aid Authorities and Judicial officers. MHA had issued an advisory on 'Appointment and Functioning of Non-Official Visitors' to all State Home Departments in July 2011. The State Governments/prison departments may:

- a) issue directions regarding the criteria of appointment, training and functioning of Non-Official Visitors based on the above mentioned advisory.
- b) ensure that Board of Visitors has been constituted for each prison, as also directed by the Hon'ble Supreme Court of India, in Inhuman Condition in 1382 Prisons and MHA's advisory.
- c) formulate mechanisms to conduct regular internal inspections of prisons.

Committee's observations/recommendations :

xvi) The Committee has noted that the Ministry of Home Affairs had circulated the Model Prison Manual to all States and UTs in 2016. The compliance of the Model Prison Manual by States is very essential.

MHA's suggestions/guidance:

Model Prison Manual 2016 was forwarded by the Ministry of Home Affairs to all States and Union Territories in May 2016. The Prison Manual has a dedicated chapter on various aspects of prison administration, including chapter on 'Undertrial Prisoners', which provides guidance on the facilities to be provided to undertrials viz. legal defence, interview with lawyers, signing of Vakalatnama, application to Courts for legal aid at Government cost etc. The State Governments are advised to make use of the guidance provided in the Model Prison Manual and adopt the same in State Jail Manuals to provide better care and facilities to prison inmates which can go a long way in their rehabilitation and correctional administration. All States are required to review their jail manual and adopt the guidance provided in the Model Prison Manual 2016. A report may be provided to MHA in this matter.

Committee's observations/recommendations :

xvii) The Committee has noted that foreign women prisoners face problems of language, culture, lack of awareness of rules and laws. Therefore, religious, dietary, spiritual needs of a foreign prisoner must be addressed by prison authorities. Special cells/officials for dealing with foreign nationals in various custodial situations may be

created so that foreigners in India do not face any hassle in dealing with law enforcement agencies on account of language, cultural, attitudinal and behavioral gaps.

MHA's suggestions/guidance:

State Governments/Prison authorities need to inform about the Transfer of Sentenced Persons Agreement to foreign prisoners to facilitate them to seek transfer to their country to serve the remainder of their sentence. If there is a TSP agreement between India and prisoner's native country, he/she can be transferred to his/her country of nationality if the conditions of the agreement are fulfilled. Prison department may circulate list of countries where such TSP agreement exists to all prisons and evolve a mechanism to inform foreign prisoners upon admission as to whether a Transfer of Sentenced Persons Agreement exists with the prisoners' native country, and the process of application and other requirements to effectuate such transfer. Special attention may be provided by the States to the recommendations made by the Parliamentary Committee on addressing the special needs of foreign prison inmates and suitable facilities according to their needs may be provided as per the provisions of law.

A portal has to be maintained where all information relating to foreign nationals in Indian prisons should be updated on a real time basis. Besides this, there has to be special cells/officials dealing with foreign nationals in India. The State Governments/prison departments may:

- a) establish special cells or appoint nodal officers to deal with foreign national prisoners.
- b) ensure that consular representatives are informed immediately regarding the detention of a foreign national in prison and facilitate consular access.

Committee's observations/recommendations :

xviii) The Committee has noted that reforms in prison law as per local condition of states need to be taken and digital governance of prisons across every prison in the country needs to be taken up in a proactive manner.

xix) The Committee further observed that the growing clamor for protection of human rights, ensuring accountability and transparency in view of the RTI Act, 2005 must be seen as a window of opportunity for ensuring a humane prison management system for all convicts.

MHA's suggestions/guidance:

The State Government & Prison Departments should make efforts to ensure accountability and transparency in Prison administration in order to ensure a humane prison management system for all. The State Government/prison department may:

- a) upload and regularly update all existing prison acts, prison rules, circulars, notifications, tenders, orders on their website.
- b) publish best practices and successful initiatives taken by prison department for welfare of prisoners.

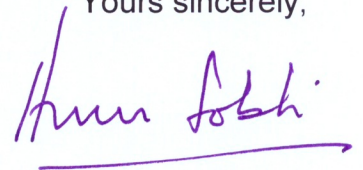
- c) make efforts to provide basic information to the families of prisoners in vernacular languages on their website.

6. The Ministry of Home Affairs had recently convened a meeting of DG/IG Prisons of all States and UTs on 19.11.2017 and also on 13.2.2018 where various issues involving prisons & prison condition were discussed. During the meeting held on 13.2.2018, the issue of open prisons and providing the facility of video chat to prison inmates was also discussed. A copy each of the Model Prison Manual and compilation of various advisories issued by MHA on prison administration from time to time was also provided to the participating DG/IG Prisons. The meeting was also attended by NALSA representative & NIC representative. The States were asked to make efforts to implement the progressive idea of open prisons in their States and also implement the centrally supported e-prisons project, which aims at digitization of prison data and integrating it with Interoperable Criminal Justice System. The Ministry of Home Affairs shall be providing financial as well as technical support to States and UTs in implementation of e-prisons project.

7. Some time back, MHA had also shared the Nelson Mandela Rules - United Nations Standard Minimum Rules for treatment of prisoners as also the guidelines prepared by the international Committee of Red Cross on investigating deaths in custody on December 8, 2017 with the Chief Secretaries and DG/IG Prisons of all States with the request to make best use of these documents and follow the guidance and advice provided therein. The State Governments/prison departments may have the Nelson Mandela Rules translated in local languages, prepare a brief note on the same, and disseminate it to all the prison officials in their State to ensure that these rules are followed in letter and spirit by the prison officers and officials in dealing with prison inmates.

8. You are requested to take urgent suitable action to comply with the recommendations of the Committee on Empowerment of Women in your State/UT and also seek guidance and advice from the various guidelines on prison administration issued by MHA from time and time and the documents shared by MHA, as mentioned in the preceding paragraphs, and make best endeavor to implement the same in your jurisdiction, which will go a long way in improving the well being of prison inmates.

Yours sincerely,



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