

Report on the visit of Sri Damodar Sarangi, Special Rapporteur, East Zone-1, NHRC to Berhampur Circle Jail, Odisha

I visited Berhampur Circle Jail on and from 24.01.2016 to 25.01.2016, to study the living conditions of the inmates, and to verify, if the rights of the prisoners are being properly respected and protected by the jail and other authorities. I interacted extensively with the officers and staff of the jail as well as the prisoners. DIG (Prisons) Berhampur Range, the Superintendent of the Circle Jail, the Jailor, the Prison Welfare Officer and the Prison Medical Officer remained present during my visit and facilitated my interactions with the inmates and assisted me in the scrutiny and collection of relevant documents.

My observations are as follows;

1. Prison Population

The sanctioned capacity of the Circle Jail is 743 (691 male and 52 female prisoners) against which 747 prisoners (715 male and 32 female) were detained in this prison on the date of my visit. 570 of them are UTPs.

A tabular statement showing the break up of convicts and UTPs is reproduced below;

Break up of Convicts

Period of Detention	Male	Female	Total
Simple Imprisonment	06	--	06
R.I. sentenced to less than one year and six month	--	01	01
R.I. sentenced to above 2 years	09	--	09
R.I. sentenced to above 5 years	18	--	18
R.I. sentenced to above 10 years	30	04	34
R.I. for life	103	06	109
Total	166	11	177

Break up of UTPs

Period of Detention	Male	Female	Total
Less than 6 months	273	10	283
6 months to 1 year	86	02	88
1 year to 1½ years	70	03	73
1½ years to 2 years	30	04	34
2 years to 3 years	40	01	41
3 years to 5 years	45	01	46
5 years and above	5	00	5
Total	549	21	570

76% of the prisoners are UTPs, which should be a matter for serious concern. Of the 570 UTPs, 42 are detained for their alleged complicity in cases registered under the NDPS Act and 64 under section 498(A) IPC. A whopping number of 98 UTPs are detained for their alleged involvement in cases registered under the POCSO Act. Between them, UTPs detained for their complicity in offences punishable under 498(A) IPC, POCSO Act and the NDPS Act account for 35% of the total UTP population. While offences punishable under these sections/Acts deserve to be firmly dealt with, the possibility of these laws being abused are also high. The POCSO Act 2012 is hardly four years old. That more than 17% of the UTP population of a circle jail comprises of POCSO accused only, should in itself warrant that the investigation of these cases should invariably be supervised by superior police officers. 90 of the UTPs are detained for more than two years pending trial. Of them 45 are detained for more than 3 years and 5 for more than five years. During my interactions with them many prayed for speedy trial of their cases and for bail in the intervening period.

The Role and Responsibility of the Superintendent and IG Prisons in such cases has been explained in the Odisha Jail Manual 1942, the substance of which is reproduced below.

'The superintendent shall report to the Magistrate all cases of under-trial prisoners admitted under bailable offences, specifying the names of prisoners likely to furnish bail. The superintendent shall also submit to the District Magistrate in Return No. 23, fortnightly reminders regarding all cases in which prisoners have been detained under-trial for more than 14 days. . The IG of Prisons may call for an explanation from the District Magistrate in cases where under-trial prisoners have been detained in hajat for an unusual length of time, and, if the explanation does not seem satisfactory, may bring the case to the notice of the government. Whenever a visitor records the long detention of an under-trial prisoner, a copy of his remarks relating to such matter shall be forwarded to the District Magistrate, and, if the prisoner be under-trial in the court of sessions, a copy shall also be forwarded to the Sessions Judge.'

After the separation of the judiciary, the situation has drastically changed. The task of periodic review of the status of UTPs has completely passed on to the judiciary.

At present, some of the Superintendents are weary of even forwarding the prayers of the UTPs to the concerned Courts for fear that they may be hauled up for interference in the judicial process. There should however be no hesitation on their part to bring hard cases to the notice of the Hon'ble District Judge during the latter's monthly visits to the prison.

18 Prisoners who have been granted bail are still languishing in prison for their failure to provide sureties. A list of these prisoners is reproduced below.

Sl. No.	Name of the UTP	Case No. with U/S	Date of Admission	Name of the Court
1	Prasant Kumar Behera	GR 1284/2015 u/s 380 IPC	18.11.15	SDJM, Berhampur
2	Somanath Sahu	GR 964/2015 u/s 341/323/294/506 IPC	23.09.15	SDJM, Berhampur
3	Allu Raghu	GR 838/2015 u/s 380 IPC	06.08.15	SDJM, Berhampur
4	Amara Behera	2(cc)1319/15 u/s 3(a)RP(UP) Act	20.11.15	SDJM, Berhampur
5	Siba Shankar Sahu	GR 590/2015 u/s 457/380/34 IPC	17.07.15	SDJM, Berhampur
6	Sujana Das @ Behera (female)	GR 1189/2015 u/s 323/324/342/335/506/34 IPC	31.10.15	SDJM, Berhampur
7	Nilanchal Bastia	GR 122/2015 u/s 452/323/294/354(B)/506 IPC	20.09.15	JMFC, Purusottampur
8	Murali Chandra Sahu	GR 158/2009 u/s 279/337/304(A) IPC	13.11.15	JMFC, Hinjilicut
9	R. Bipra	GR 175/2015 u/s 457/380/34 IPC	30.08.15	JMFC, Hinjilicut
10	Nilanchal Dalei	ST 124/2015 u/s 294/385/416 IPC	01.09.15	Dist. & Sessions Judge, Ganjam, Berhampur
11	Vendu Laxmi	ST 228/2014 u/s 341/307/394/120(b) IPC	11.02.14	Asst. Sessions Judge, Chatrapur
12	Hrushikesh Karan	GR 115/2015 u/s 448/341/354(b)/294/323/506 IPC	03.09.15	JMFC, Purusottampur
13	Bhaskar Das	GR 75/2015 u/s 341/323/375/506/34 IPC	14.06.15	JMFC, Purusottampur
14	Dandapani Das	GR 303/2015 u/s 341/323/506 IPC	16.09.15	JMFC, Kodala
15	M. Juria	GR 133/2015 u/s 457/380/34 IPC	14.08.15	JMFC, Patrapur
16	K. Susanta	GR 133/2015 u/s 457/380/34 IPC	14.08.15	JMFC, Patrapur
17	M. Bijendra	GR 133/2015 u/s 457/380/34 IPC	14.08.15	JMFC, Patrapur
18	Laxmi Mallik	GR 06.2016 u/s 47(a)B&O Excise Act	16.01.16	JMFC, Patrapur

The matter may be brought to the notice of the Hon'ble District Judge.

2. Staff: A statement showing the sanctioned and actual staff strength of Berhampur Circle Jail is reproduced below;

Sl. No.	Name of the post	Sanction strength	In Position	Vacant
1	Senior Superintendent	01	01	--
2	Medical Officer	01	01	--
3	Psychiatric	01	A medicine specialist is now posted against the vacancy.	-
4	Jailor	01	01	--

5	Asst. Jailor	04	03	01
6	Sub Asst. Jailor	04	04	--
7	Junior Stenographer	01	--	01
8	Junior Accountant	01	--	01
9	School Teacher	01	01	--
10	Clerk-cum-Typist	01	01	--
11	Asst. Binding Foreman	01	01	--
12	Binder Grade-I	02	01	01
13	Smith Instructor	01	01	--
14	Task Master	01	01	--
15	Tailor Master	01	01	--
16	Pharmacist	01	01	--
17	Male Nursing Orderly	01	01	--
18	Ward Attendant	01	01	--
19	Driver	01	01	--
20	Peon	01	01	--
21	Chief Head Warder	01	--	01
22	Head Warder	05	05	--
23	Male Warder	74	68	06
24	Female Warder	06	06	--
25	Sweeper	08	03	05
26	Prison Welfare Officer (M)	01	01	--
27	Prison Welfare Officer (F)	01	--	01
28	Clerk-cum-Typist	02	02	--
29	Peon	02	02	--
Grand Total		126	109	17

The state government may take immediate action for filling up the vacant posts. There is also a case for augmentation of the sanctioned strength, particularly of the guarding and hospital staff.

3. Accommodation for the prisoners and the jail staff

In all, there are 28 wards for the accommodation of the prisoners. The capacities of these wards are as follows;

Name of the Ward	Scheduled capacity	Name of the Ward	Scheduled capacity
Ward No. 1	42	Ward No. 2	42
Ward No. 3	42	Ward No. 4	42
Ward No. 5	42	Ward No. 6	42
Ward No. 7	34	Ward No. 8	20
Ward No. 9	23	Ward No. 10	18
Ward No. 11	18	Ward No. 12	18
Ward No. 13	18	Ward No. 14	18

Ward No. 15	28	Ward No. 16	28
Ward No. 17	10	Ward No. 18	26
Ward No. 19 (Female Block)	20	Ward No. 20 (Female Block)	20
Ward No. 21	39	Ward No. 22	39
Ward No. 23	51	Ward No. 24	51
Ward No. 25 (Female Block)	12	Female Cell-1	01
Female Cell-2	01	Male Cell (front Cell & Back Cell)	20
Total capacity - 765 Male- 711 & Female - 54			

The superintendent could not provide the measurements of individual wards but claimed that the capacity of each ward has been calculated in the scale of 36 sq. ft. of floor area per prisoner, in conformity with the Odisha Jail Manual now in force. In the Model Prison Manual circulated by the BPR&D, it has been recommended that prisoners should be provided floor area and air space in the scale specified in the following table.

Sleeping Barracks			Cells			Hospitals	
Sq. mtrs of ground areas	Cu. mtrs of lateral ventilation	Sq. mtrs of air space	Sq. mtrs of ground areas	Sq. mtrs of air space	Cu. mtrs of lateral ventilation	Sq. mtrs of ground areas	Sq. mtrs of air space
3.71	15.83	1.12	8.92	33.98	2.23	5.58	23.75

The superintendent should get the wards measured and display the dimensions and capacity of each of the wards on the wall, close to the entry gates to the wards. The state government may consider providing additional floor and air space to the prisoners in furtherance of the above recommendations.

There are 75 quarters for the family accommodation of the guarding and other staff, besides 3 barracks for the guarding staff. The details of the family quarters, their present condition and status of occupation are explained in the following table;

Sl. No.	Specification of Quarters	Details of Quarters					Requirement
		Number	Habitable	Not Habitable	Allotted to Guarding Staff	Allotted to non-guarding staff	
1	D-Type	3	3	--	--	3	4 more D. Type quarters required.
2	E-Type	7	7	--	--	7	10 more. E. Type quarters required
3	F-Type	29	29	--	25	01	30 more. F-Type quarters required.
4	2R-Type	10	7	3	2	5	
5	1R-Type	24	10	14	10	--	--
6	L.S. Type	--	--	--	--	--	--
7	Barrack	3	3	--	3	--	--
8	3R-Type	2	2	--	--	2	--

14 1R quarters require renovation. A proposal for construction of attached septic latrines in 14 1R quarters and the repair of 3 2R quarters has been submitted to the Prisons Directorate on 24.11.2015. Prisons Directorate may process the proposal early.

The surroundings of the quarters were found to be very untidy. Plastic bags and household wastes were found littered all around the quarters, particularly in the open ground between the main jail building and the quarters. The Superintendent may get the area cleaned up with the assistance of the residents. Plantations in the land lying idle, may be taken up by the Superintendent with the assistance of the Forest Department.

There is a barrack outside the jail gate for the accommodation of OSAP (Odisha State Armed Police) constables deployed outside the perimeter walls for the security of the prison. They have not been issued with any cot. The kitchen in the barrack requires renovation. The contingent has not been provided with a cook and have to cook their food themselves. There is no covered bathrooms. The constables bathe on open platforms.

4. Sanitation

Against a sanctioned capacity for 743 prisoners, the prison has 110 day latrines and 51 cage latrines. There is acute water shortage in Berhampur Town in general and the jail premises in particular. The local Municipality supplies water only for two hours a day. This is supplemented by water from 4 wells and 5 deep bore wells. 2 bore wells are lying defunct. Water drawn from all these sources is still inadequate to meet the requirement of the inmates. There is no pipe water supply to the toilets. Prisoners take their bath on open platforms. A proposal for the construction of another clean water UGR of capacity one lakh litre and the sinking of 3 nos. of production wells is pending with the Prison Directorate

According to Orissa Jail Manual water used for drinking and culinary purposes shall be analyzed once every quarter and bacteriological examination shall be done when required. The examination is to be conducted by the officer-in-charge of the Bacteriological and Pathological Laboratory, Cuttack. No such test appears to have been conducted. The superintendent should ensure that samples are periodically sent for required examination and analysis.

Mosquito nets are provided only to those admitted in the hospital and to female prisoners. Some of the wards, including the medical ward have raised platform.

5. Food

The menu of food and beverages served to the prisoners is as follows;

1. Early morning tea
2. Tiffin (Suji upama or Chuda santula & Ghuguni)

3. Midday Meal (Rice, Dal, Curry or Fry)
4. Evening Meal (Rice, Chapati, Dal and Curry)
5. Night food (Biscuit 1 packet)
6. Protein Diet
 - i. Chicken curry in every Wednesday and Sunday
 - ii. Egg (2 nos. in last Sunday of the month)
 - iii. Paneer (every Thursday)

The state govt. has fixed the scale of ration to be issued per prisoner per day for providing the above menu. In a separate order, the state govt. has fixed a price ceiling within which the dietary items have to be procured.

This arrangement could work satisfactorily as long as food prices remain stable during the validity of the rate contract, which is rarely the case.

Earlier, the state government was issuing rice for the inmates at the APL rates i.e. Rs. 9.30 per kg. This facility has been withdrawn w.e.f. November 2015. The ceiling for Diet cost including LP gas, per prisoner per day has been fixed at Rs. 64/-. The Prison Directorate had earlier approved the purchase of dietary items for the year 2015-16 at Rs. 59.75 per prisoner per diem. The market rate of rice is Rs. 23/- Each prisoner is entitled to 600 gm rice per day. This has shot up expenditure on diet per prisoner per day to Rs. 67.97/-. A proposal submitted to the Director of Prisons and Correctional Services for raising the ceiling has been summarily rejected. Meanwhile, the price of *dal* has gone up phenomenally during 2015. All this is likely to affect the quality and quantity of food supplied to the inmates.

The state government must take corrective measures and link the ceiling of expenditure per prisoner per day with the price index. It must be ensured that the scale & quality of dietary items is not affected by fluctuation of prices.

A statement listing the scale of dietary items and the approved price caps for procurement of the same in the year 2015-16, is enclosed at **Annexure 1** to this note.

6. Health Care

There is a 55 bedded Hospital in the Prison. On the date of my visit (24.01.2016), 21 patients were admitted for indoor treatment. The details of patients and their ailments are as follows.

Sl. No.	Name	Age	Convict /UTP	Disease	Date of Adm. Into Hospital	Date of last visit to MKCG & MCH	Remarks
1	Subash Ch. Raula	75 yrs	UTP	T2 DM, Hypertension, CKD	28.11.15	14.01.16	Necessary Investigation done and

2	Sitakanta Das (Chatrapur Sub Jail)	62 yrs	UTP	T2 DM, Ulcer foot	02.10.15	19.01.16	continuing treatment inside jail hospital as per advice of MKGC, MCH, Berhampur
3	Surendra Patra	65 yrs	UTP	T2 Dm, Hypertension	03.12.15	12.10.15	
4	Chakra Patra	70 yrs	UTP	Urinary Incontinence	19.01.16	20.01.16	
5	Santosh Maharana	50 yrs	Con.	Dementia with OCD	28.11.15	10.03.15	Treatment continuing inside jail hospital as per advice of Psychiatry Deppt. of MKGC MCH, Berhampur and medicine specialist deputed to the hospital against the sanctioned post of a psychiatrist.
6	Debi Prasad Behera	28 yrs	Con.	Psychosis	23.05.15	25.09.15	
7	Siba Naik	55 yrs	Con.	Psychosis	27.11.15	23.06.15	
8	Daka Maharana	40 yrs	Con.	Psychosis	28.11.15	15.06.15	
9	Santosh Rout (Bhanjanagar Sub Jail)	40 yrs	Con.	Psychosis	28.11.15	06.12.15	
10	M.Dilasu	30 yrs	UTP	Psychosis	28.10.15	22.12.15	
11	Sankar @ Gandu Behera	28 yrs	UTP	Psychosis	28.10.15	14.11.15	
12	Brundaban Nayak (Bhanjanagar Sub Jail)	35 yrs	UTP	Psychosis	20.11.15	26.12.15	
13	Rabindra Swamy	35 yrs	UTP	Psychosis	04.01.16	09.01.16	
14	Ramesh Choudhury	25 yrs	UTP	Psychosis	28.11.15	20.06.15	
15	Jatu Delly	40 yrs	UTP	Psychosis	18.01.16	23.01.16	
16	Rahashya @ Narottam Sahu	22 yrs	UTP	Psychosis	19.01.16	--	
17	Surendra Nayak (Raygada Sub Jail)	30 yrs	Con.	Psychosis	05.01.16	08.01.16	
18	Bairagi Nayak	35 yrs	UTP	Psychosis	24.01.16	23.01.16	
19	Mangulu Swain (From Digapahandi Sub Jail)	40 yrs	Con.	Pulmonary Tuberculosis (PTB)	25.10.15	28.10.15	
20	Prafulla Mallick	30 yrs	UTP	Pulmonary to Tuberculosis (PTB)	02.10.15	12.12.15	
21	Dandapani Dash (Kodola Sub Jail)	40 yrs	UTP	Pulmonary to Tuberculosis (PTB)	17.09.15	06.12.15	

Of the 21 indoor patients, 13 are mentally ill. It is a pity that the post of Psychiatrist is lying vacant since 2001. In the whole year 2015, 21,426 patients were examined in the outdoor. In an average, 58 patients were examined in the outdoor in a day. During the same period, 181 prisoners were admitted for indoor treatment, 758 were referred to MKCG MCH Berhampur, of whom 44 were admitted in the MCH.

During 2016 (upto 25.01.2016), 1492 patients were examined in the outdoor, In an average, 59 patients were examined in the outdoor per day. During the same

period, 29 prisoners were admitted for indoor treatment, 43 were referred to MKCG MCH Berhampur of whom 02 were admitted in the MCH.

The hospital is severely understaffed. This is a 55 bedded hospital and according to the Model Prison Manual, this hospital is to be treated as an 'A' type hospital with the following sanctioned manpower;

Sl. No.	Officers	Required Manpower
1	Chief Medical Officer (in the rank of Civil Surgeon with postgraduate qualification)	1
2	Assistant Civil Surgeon	7
3	Staff Nurse	3
4	Pharmacist	4
5	Male/Female Nursing Assistant	6
6	Laboratory Technician (to be trained in handling all equipment including ECG, X-ray and portable X-ray machines)	3
7	Psychiatric Counselor	2
8	Junior Assistant	1

The hospital is running with only 2 MOs and one Pharmacist (who is a contractual employee). There is no arrangement in the hospital for rudimentary Pathological tests or X.ray.

It is disturbing to find that this circle jail has no arrangement for pre admission medical examination of prisoners. This is in gross violation of the provisions of Rule 455(a) of The Odisha Jail Manual 1942 and the guidelines issued by the Commission on the subject from time to time. Rule 455(a) of the Jail Manual reads as follows;

"All prisoners shall be seen immediately after admission by the medical subordinate, and if any is found sick or suffering from injuries, wound or other marks of violence, a note of his general condition, prominent symptoms, or in case of injury, the number, situation, size, character and nature of the injury, wounds or bruises shall at once be made in the admission register".

The Medical Officer of the jail hospital pleaded that the format prescribed for such examination speaks of Pathology tests/X-ray for TB/Blood test for Hepatitis/STD including HIV for which no facility is available in the jail hospital. In the circumstances, he is not able to conduct pre admission Medical examination of the prisoners. A copy of the Pro forma is enclosed at **Annexure - 2**, from which it would appear that besides pathological and radiological tests, it provides for physical examination, verification of the history of previous illness and systematic examination of Nervous system/Cardio Vascular system/Respiratory system/Eye, ENT/Abdomen (Gastro Intestinal system (GIT)/Teeth & Gum/Urinary system. There is no justification for dispensing with pre admission medical examination on the plea that test facilities are not

available. If the required facilities are not available in the prison the state govt. may arrange for these tests in the local MCH before admitting the prisoners to the Circle Jail.

The state government have sanctioned the construction of a new 30 bedded hospital at Circle Jail Berhampur under State Plan 2013-14. The Chief Engineer Odisha State Police Housing & Welfare Corporation has informed Addl. DG Prisons that the project could not be taken up due to 'non availability of adequate space inside the circle jail premises'.

He suggested that the hospital may be constructed on prison land, outside the perimeter wall of the circle jail. This would create problems related to security. Accordingly, it has been suggested that the perimeter walls may be extended to surround the new hospital with a walled corridor to join the hospital to the rest of the prison.

7. Custodial Deaths

Between 2011 and 2014, 11 prisoners have died in custody. The details of these cases are tabulated in a statement enclosed at **Annexure-3**. In most of the cases, the status of magisterial enquiry is not known. The Superintendent submitted that copies of magisterial enquiries are not being automatically provided to the jail administration. Even after repeated queries to the concerned authorities, they remain in the dark regarding the status of the enquiries.

From the statement mentioned above, it would appear that three of the 11 prisoners who died in custody, were below the age of 40 and 5 others were below the age of 45. Some of them like Rama Chandra Panda, Narahari Behera and Satrughna have died within a few months of their admission.

The Superintendent of the Jail submitted that patients from other jails in South Odisha Region are transferred to this jail for their treatment in the local medical college. Most of them were in terminal stage and died during their treatment. Five of these 11 cases are being dealt by the NHRC directly. Of these five cases, one has been closed. The remaining six cases have been endorsed to the OHRC. The status of these cases is not known.

8. Jail Industry

The following manufacturing units are functioning in the prison. In all 42 convicts are working in these units. The unit wise break up is reproduced below;

Sl. No.	Name of the unit	No. of prisoner engaged
1	Weaving unit	18
2	Tailoring unit	7
3	Smithy unit	8
5	Press unit	3
5	Garden unit	6
Total		42

The state govt. has approved the raising of a carpentry unit in the prison which is yet to come up.

Besides, 78 other prisoners are engaged in various works connected with the upkeep of the prison and the prisoners. Their break up is as follows;

Sl. No.	Name of the unit	No. of prisoner engaged
1	General Kitchen	18
2	Sweeping gang	5
3	Wall guard	8
4	Telephone duty	1
5	Barber gang	4
6	Grain cleaning	7
7	Night watchman	17
8	Medical attendant	2
9	Dhobi gang	1
10	Computer Attendant	1
11	Gate & Writer office	7
12	Spl. Road gang	6
13	School watchman	1
Total		78

Thus, in all 120 of the prisoners are engaged in some work/duty in the prison which leaves 57 prisoners sentenced to RI without any work. The Superintendent pleaded that even after lot of persuasions it has not been possible to take work from them. Prisoners are paid Rs. 40/- per day as wages/incentives. In some units, the wage payable is linked to the output of the unit.

Incentives to the laboring prisoners have been paid up to August 2015. Bills from September to December 2015 (amount to Rs. 8,27,012.00) are pending due to lack of fund. Rs. 3, 23,320 /-, is the projected expenditure for the months of January 2016 to March 2016. For the whole financial year 2015-16, Rs. 9,00,000.00 has so far been allotted. For clearing up all the dues for the year 2015-16, an additional allocation of Rs. 6,93,446.00 will be required. The state govt. may release the balance fund early.

Money payable to the prisoners is credited to their Accounts. The pass books remain in the custody of the Superintendent. I interacted with some of the laboring prisoners. They do not know their account balance. The Superintendent must publish the details of wages due and paid, to the prisoners once every month in the notice board. The Passbooks should be returned to the Account holders. The labouring prisoners should be paid wages/incentives @ minimum wage minus expenses incurred on their food and clothing.

9. Recreational Facility

Prisoners' wards are provided with Colour TVs on which Doordarshan programmes are displayed. TV installed in the Dining Hall has cable

connections. There is a demand for extending cable connections to individual wards which may be considered by the jail administration. Facilities for volley ball, carom, chess and ludo are available.

Festivals like Rath Yatra, Dussera, Rakhyabandhan, Sabitri Puja etc. are organized in the jail for the benefits of the inmates.

Yoga and Pranayam classes are organized with the assistance of Art of Living Organization. Meditational programmes are organized with the help of Prajapita Brahma Kumaris Iswariya Viswavidyalaya, Berhampur.

10. Premature Release

16 life convicts held in this jail have completed 14 years of imprisonment. Two of them have completed 20 years of imprisonment. Proposals submitted for their premature release are pending in the Prison Directorate. The State Sentence Review Board has not met for the last two years, notwithstanding the recommendation of the Commission that the State Sentence Review Board should meet at least once in a quarter. The state govt. should ensure that the Sentence Review Board takes up their cases early. Details of the prisoners are as follows;

Sl. No.	Name of the Convict	Sentence undergone including U.T. period		
		Year	Month	Days
1	Bijaya @ Biji Padhi	21	11	29
2	Ganga @ Gangadhar Das	20	01	11
3	Dillip Naik	18	08	17
4	Ijak @ Kalia Mallik	18	02	04
5	Kalu Naik	17	05	21
6	Narasingha Raita	14	01	20
7	Garuda @ Prasanta Karjee	17	02	13
8	Mukunda Naik	16	09	14
9	Radha @ Kartika Dalai	16	06	03
10	Raghava Naik	17	05	25
11	Rankanidhi Dakua	16	10	13
12	Krushna Chandra Sahu	18	01	06
13	Santosh Maharana	15	11	04
14	Bhramar Swain	16	03	08
15	Khadal Biswal	15	08	10
16	Krushna Naik	15	00	00

Five more proposals are pending with the local DMs and SPs for their opinion. Details are as follows;

Sl. No.	Name of the convict	Proposal pending with
01	Biswanath Sabar	Collector & DM, Ganjam, Chatrapur
02	Abhi @ Abhimanyu Naik	Do
03	Ranjit Kumar Patro	Superintendent of Police, Berhampur

04	Kanhu Charan Sahu	Do
05	Musa @ Abhi Pradhan	Superintendent of Police, Ganjam, Chatrapur

DM, Ganjam and the Superintendent of Police Ganjam and Berhampur may be directed to give their opinion early.

12. Appeals

60 appeal petitions are pending in the Hon'ble Odisha High Court. A list of these appeals is enclosed at **Annexure-4**. As would appear from the above list, 13 appeal petitions are pending for more than five years of which 09 petitions are pending for more than a decade.

Such inordinate delays in the disposal of appeals, amounts to denial of justice. It is also shocking to learn that the jail authorities are denying parole & furlough to prisoners on the ground that their appeal petitions are pending with the court.

13. Leave and Parole

One of the measure grievances of the prisoners relates to the denial of parole and furlough in time. The state government appears to be rather tight fisted in the matter of granting parole and furlough to the prisoner. So are the District officers who sit over leave applications for long durations and do not assign reasons for rejections. They also hold on to an erroneous view that during the pendency of appeals prisoners are not eligible to get leave.

I found that in many cases, convict prisoners have been denied parole and furlough without valid reasons and the existing parole and furlough rules have been wrongly interpreted to the detriment of the interest of prisoners. In spite of the clarifications issued by the Hon'ble Supreme Court (discussed in detail in paragraph 14) the jail administration stick to their position that NDPS convicts are not entitled to get any form of leave. For the information of the Hon'ble Commission, I am enclosing herewith a copy each of the following Rules.

- i. Prisoners (Release on Furlough) Odisha Rules 1963, as amended from time to time (last amendment effected in November 2012 (**Annexure - 5**))
- ii. Prisoners (Release on Parole) Odisha Rules 1983 (**Annexure - 6**)

Extracts from Prisoners (Release on Furlough) Odisha Rules 1963 are reproduced below.

- i. A prisoner who is sentenced to imprisonment for a period exceeding one year but not exceeding five years, shall on completion of a period of one year of actual imprisonment from the date of admission into prison or six months from the date of his last return from furlough as the case may be, be eligible for release on furlough for a period of three weeks in a year. The first spell would consist of one week, while the subsequent spell would consist of two weeks.

- ii. A prisoner who is sentenced to imprisonment for a period exceeding five years shall, on completion of a period of two years of actual imprisonment from the date of admission into prison or six months from the date of his last return from furlough as the case may be, be eligible for release on furlough for a period of five weeks in a year. The first spell would consist of two week, while the subsequent spell would consist of three weeks.

The Rules provides that the following types of prisoners can be refused furlough leave;

- i. The prisoners involved in serious violence like assault, outbreak, riot, mutiny or escape and agitating fellow prisoners for indiscipline activities.
- ii. Prisoners convicted for offences like murder & rape, robbery, dacoity, extortion, terrorism, kidnapping, smuggling including narcotic drug peddler or People of Foreign origin.
- iii. Prisoners remaining for failure to give security for maintaining peace and good behavior.
- iv. Prisoners having mental illness, if not certified by the Medical Officer to have recovered at least to the extent that his presence in the Society is not likely to be dangerous.
- v. Prisoners whose work and conduct were not good during last one year.
- vi. Prisoners convicted of an offence against any law relating to matters to which the executive power of the Union Government extends, unless approved by the Union Government.
- vii. Prisoners whose release on furlough is likely to have repercussions elsewhere in the country.

Earlier, the ADG Prisons was granting furlough. From Form No. IV (Application by the convict to the Superintendent of Jail for release on furlough), circulated by the Prison Directorate on 06.12.2012 (copy enclosed at **Annexure-7**), it would appear that the ADG Prisons should still be competent to grant furlough. The jail officers informed that furlough applications are now being sent to the state govt. for sanction.

Extracts from Prisoners (Release on Parole) Odisha Rules 1983 are reproduced below;

The following categories of prisoners are eligible for release on Parole;

- “i. A Prisoner, who is sentenced to more than one year but less than five years and has actually undergone one year’s imprisonment.
- ii. A prisoner, who is sentenced to more than five years and has actually undergone two years of imprisonment.

The following categories of prisoners shall not ordinarily be eligible for release on Parole;

- i. Those convicted of offences under Chapter VI. (Offence against the State) of the Indian Penal Code.
- ii. Dangerous and habitual criminals.
- iii. Such convicts whose presence is considered to be dangerous or prejudicial to public peace and tranquility."

There is a perception that prisoners cannot be granted parole or furlough during the pendency of appeals. This is based on a note issued by the Law Department, sometime in the year 1990, extracts from which as furnished by IG Prisons, are reproduced below;

"Law Department

The Hon'ble High Court in their judgment dated 02.01.1990 in criminal Appeal no. 116 of 85 at B.10-1/C have directed that when the Court of appeal is in session of the case, the executive should not interfere with granting parole. The prisoner applying for parole is to state whether any appeal is pending, if so in which Court.

Therefore when the appeal is pending the appellant/prisoner may pray the Court for release on bail on any valid ground so that he could be released temporarily on bail in exigencies like death, marriage etc.

Sd/-

(S.N. Sahoo)

L.R.-cum-Special_Secretary to Govt."

Home Department

The above position has changed following the issue of order no. 16 dated 15.07.2002 by Hon'ble Justice B. Panigrahi and Hon'ble Justice P.K. Mishra in CrL Appeal no. 137 of 1999 communicated by the superintendent of the High Court of Odisha, which are as under;

"In so far as grant of parole is concerned, it is the duty of the state government to exercise its discretion in allowing a convict to be released on parole or not. For grant of such parole no permission need to be taken from this Court. But however, if the convict is so advised, he can pray for an interim bail before this Court so that necessary orders can be passed."

The matter having been thus settled, there should be no hesitation in granting parole to convicts during the pendency of their Appeals. It appears that the state government have not taken note of the Appellate order, and are still insisting

that those whose appeals are pending in higher courts are not eligible to get parole.

At present, 5 Parole applications and 21 Furlough applications are pending with the district administration for their opinion. Details are follows;

Parole Leave

Sl. No.	Name of the Convict	With whom pending
01	Rajanikanta Panda	Superintendent of Police, Berhampur
02	Raghava Naik	Do
03	Dillip Naik	Do
04	Ijak @ Kalia Mallik	Superintendent of Police, Gajapati
05	Garuda @ Prasanta Karjee	Do

Furlough Leave

Sl. No.	Name of the Convict	With whom pending
01	U. Sarathi	Prisons Directorate, Odisha, Bhubaneswar
02	Biswanath Mallik	Do
03	Sarata Nahak	Do
04	Kailash Jani	Do
05	P. Kameya	Superintendent of Police, Berhampur
06	P. Nokeya	Do
07	P. Sunil Achary	Do
08	U. Papeya	Do
09	P. Ganapati	Do
10	Sisira Panigrahi	Do
11	Siba Parida	Do
12	Sachidananda Gouda	Do
13	Chandramani Naik	Do
14	Bhaskar Swain	Superintendent of Police, Ganjam, Chatrapur
15	Musa @ Abhi Pradhan	Do
16	Bisu Das	Do
17	Basanta Pradhan	Do
18	Prafulla Naik	Collector & DM, Ganjam, Chatrapur
19	Khadal Biswa	Do
20	Radha @ Kartika Dalai	Superintendent of Police, Gajapati
21	Narasingha Ratia	Do

The officers with whom the applications are pending should be asked to dispose of these cases with reasoned orders/ recommendations without further delay.

14. Grievances of the Prisoners

i. UTP Pratap Padhy s/o Kasinath Padhy

Vill- Bijipur, PS- Berhampur Town

Dist- Ganjam

In a written petition, a copy of which is enclosed at **Annexure 8(i)**, the prisoner pleaded that he has been falsely implicated in a murder case registered at Berhampur Town Police Station over the murder of his wife, on his own complaint. The incident took place on 21.08.2014. He was arrested on 18.10.2014 and kept under detention in the local police station till 07.11.2014 when he was remanded to judicial custody. During his unauthorized detention, he was mercilessly tortured at the police station. The Superintendent of Police himself caned him 100 times. The petitioner suspects that one Lili Sahoo is connected with the murder and demands that both he and Lili Sahoo be subjected to polygraph test.

On behalf of the prisoner, his younger brother Prabodh Kumar Padhy had made a representation to the NHRC for intervention. The Commission took cognizance of the matter and had sought a response from the state government. In response the Superintendent of Police, Berhampur submitted a report. This has a reference to the Commission's case No. 4498/18/5/2014/OC dated 19.11.2014. A copy of the enquiry report from the Superintendent of Police is enclosed at **Annexure-8(i).A**.

I went through the petition from Prabodh Kumar Padhy addressed to the Commission and the report of the Superintendent of Police quoted above. While the facts of the case will be verified in course of trial, it is apparent that the SP has chosen to be economical with the truth in regard to the alleged unauthorized detention and torture of Pratap Padhy in the Town PS from 18.10.2014 till 06.11.2014.

In his report, the Superintendent of Police has stated that "During investigation Sri Pratap Padhy was called to police station for interrogation and after interrogation he was let off. While he was at police station for the purpose of interrogation the family members freely met Sri Pratap Padhy and also supplied food". He has not clarified when and for what duration Pratap Padhy was called to the police station for his interrogation prior to his formal arrest on 06.11.2014.

ii. Isac @ Kalia Mallik s/o Hunasa Mallik

Vill- Dengapuchi, PS- Adaba, Dist-Gajapati

He has been sentenced to life imprisonment for murder in SC case no. 16/1998 u/s 302/307 IPC. He has already served 19 years in the prison. Request for premature release. As has already been stated above, a proposal for his release is pending with the Addl. DG Prisons. The Addl. DG may ensure that the proposal is put up to the State Sentence Review Board early. A copy of his written petition is enclosed at **Annexure 8(ii)**.

iii. Bijay @ Biji Padhy s/o Late Dandapani Padhy

Vill- Kodala, Dist-Ganjam

He has been sentenced to life imprisonment for murder in SC case no. 40/1993 u/s 302/307/324/34 IPC. He has spent 23 years in prison. He had moved the Hon'ble High Court for his premature release (Ref. CRL M.P No. 1509 of 2015).

On 13.01.2016, the Hon'ble Court has ruled that the petitioner be permitted to file a fresh application for his release and that the state government should take a decision in the matter within one month from the date of receipt of the said application. The Court had further ordered that the prisoner be released on one month's parole. The prisoner prays for the implementation of the Court's orders. The state government may start implementing the orders of the Hon'ble Court with the release of the prisoner on parole. A copy of his written petition is enclosed at **Annexure 8(iii)**.

iv. Siba Parida s/o Late Gopal Parida

PS- Berhampur Town, Dist-Ganjam

His application for Furlough was referred to the local police for their opinion which is still pending. Requests for expediting the opinion. The Superintendent of the Circle Jail may request SP Berhampur accordingly. His case has already been discussed at paragraph 13 of the report. A copy of his written petition is enclosed at **Annexure 8(iv)**.

v. Hadibandhu Dora s/o B. Dayanidhi Dora

Vill- T. Ranigaon, PS-Purusottampur, Dist- Ganjam

He was working under IRE Ltd. since 1985. His services were regularized w.e.f 01.03.1994. On 31.05.2011, he was arrested in ST case no. 242/13 u/s 302 IPC. He claims to have been falsely implicated in the case. Following his arrest, he was placed under suspension w.e.f. 02.06.2011. He has not received any subsistence allowance during the period of suspension. He was sentenced to life imprisonment on 22.06.2015. Prays for subsistence allowance for the period from 02.06.2011 to 22.06.2015. The Welfare Officer may take up his grievances with IRE Ltd. A copy of his written petition is enclosed at **Annexure 8(v)**.

vi. Bisu Das s/o Akrura Das

He has spent 13 years 11 months in prison. In the year 2004, he had appealed to the Hon'ble High Court against his conviction (CrL A 251/2004). The appeal is

still pending disposal. He is about to complete 14 years imprisonment. Prays for premature release. The Superintendent may initiate a proposal for his premature release if he is otherwise eligible. He should also contact the Registrar Hon'ble High Court requesting him for early disposal of the Appeal. A copy of his written petition is enclosed at **Annexure 8(vi)**.

vii. Sankar Raula s/o Kasinath Raula

Vill- Chandipadar, PS-Berhapur Sadar

Dist-Ganjam

On 31.03.2007, he was sentenced to life imprisonment for murder in SC case no. 288/05 u/s 302 IPC. Prays for 14 days Furlough to visit his sick mother. His prayers should be disposed of on merits. A copy of his written petition is enclosed at **Annexure 8(vii)**.

viii. Sridhara Behera

He and his son Pitamber Behera are detained in this jail since 26.04.2013 in ST case no. 311/13 u/s 302/34 IPC. Pray for expeditious trial. Superintendent may bring his grievances to the notice of the court. A copy of his written petition is enclosed at **Annexure 8(viii)**.

ix. Ramesh Chandra Choudhury

He is detained in this jail since 12.08.2014 for his alleged involvement in ST case no. 21/15 u/s 455/36/506 IPC. He claims to have been falsely implicated by the police. Requests for fair investigation and trial. His petition may be forwarded to the concerned Superintendent of Police for ensuring proper supervision of the case. A copy of his written petition is enclosed at **Annexure 8(ix)**.

x. Artabandhu Sahu and Ramakanta Maharana

Vill- Narendrapur, PS-Chamakhandi

Dist-Ganjam,

They are detained in this jail since 24.09.2015 in GR case no. 976/15 u/s 395 IPC. They claim to have been falsely implicated by the Railway police. Prays for fair investigation. Their petition may be forwarded to the concerned Superintendent of Police for ensuring proper supervision of the case. A copy of their written petition is enclosed at **Annexure 8(x)**.

xi. Prakash Chandra Muduli s/o Dama Muduli

Vill- Rajapur, PS-Chatrapur

Dist-Ganjam

He is detained in this jail as an UTP since 03.07.2012 in ST case no. 255/2013 u/s 366/376(2)/307/34 IPC. Prays for bail/expeditious trial. His prayer for

expeditious trial may be brought to the notice of the court. A copy of his written petition is enclosed at **Annexure 8(xi)**.

xii. Ramesh Gouda, Ratnakar Swain and 26 others

They have all been sentenced to imprisonment for various terms and fine for offences under the NDPS Act. They are working as convict watchmen/prisoners panchayat council members etc and are getting daily wages @ Rs. 40/-. But unlike other convicts they are not being granted remission, parole and furlough. The cause for the refusal of their prayers of remission, parole and furlough emanates from Section 32A of the NDPS Act, which expressly forbids the grant of remission, suspension and commutation of sentences to prisoners convicted under the Act.

Section 32A of the NDPS Act 1985 reads as under;

"32A- No suspension, remission or commutation in any sentence awarded under this Act.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted".

Section 27 of the Act is also reproduced below;

"Punishment for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance.

Any person who contravenes any provision of this Act, or any rule or order made or permit issued there under, possesses in a small quantity, any narcotic drug or psychotropic substance, which is proved to have been intended for his personal consumption and not for sale or distribution, or consumes any narcotic drug or psychotropic substance, shall, notwithstanding anything contained in this Chapter, be punishable:

- where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the Official Gazette, with imprisonment for a term which may extend to one year or with fine or with both; and*
- where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under the previous point, with imprisonment for a term which may extend to six months or with fine or with both.*

For the purposes of this section "small quantity" means such quantity as may be specified by the Central Government by notification in the Official Gazette. If a person is found to be in possession of a small quantity of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person".

The petitioners however claim that the Hon'ble Supreme Court in their judgment in Writ Petition CRL 169/1999 and 243/1999 have ruled that convicts sentence under NDPS Act are at liberty to apply for parole and that section 32A of the NDPS Act should not be a barrier. In support of their claim, they have enclosed a copy of the said orders. Relevant extracts of the order is reproduced below for ready reference;

"Under the circumstances the writ petitions are disposed of by holding that (1) Section 32A does not in any way affect the powers of the authorities to grant parole, (2) It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act, (3) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act as dealt with this judgment".

There is no vice of unconstitutionality in S.32-A insofar as it takes away the powers of the Executive conferred upon it under Ss. 432 and 433 of the Code, to suspend, remit or commute the sentence of a convict under the Act.

S.32-A, insofar as it completely debars the appellate Courts from the power to suspend the sentence awarded to convict under the Act cannot stand the test of constitutionality. Thus, S.32-A insofar as it ousts the jurisdiction of the Court to suspend the sentence awarded to a convict under the Act is unconstitutional.

Parole did not amount to the suspension, remission or commutation of sentences which could be withheld under the garb of S.32-A of the Act. Notwithstanding the provisions of the offending S.32-A, a convict is entitled to parole, subject, however, to the conditions governing the grant of it under the statute, if any, or the Jail Manual or the Government Instructions.'

Their prayer for parole should be considered in the light of the above orders/observations of the Hon'ble Supreme Court. A copy of their written petition is enclosed at **Annexure 8(xii)**.

xiii. Smt. Patta Khandual w/o Mochiram Khandual

Vill- Pakidi, PS-Aska, Dist-Ganjam

She was sentenced to 10 years RI on 25.07.2013 in ST case no. 15/13 u/s 498(A)/304(B)/34 IPC and 4 DP Act. She has already spent five years in custody. Pleads to be innocent. She is unable to stand erect and has lost her sight. She has appealed against the judgment in the Hon'ble High Court in 2013. It is becoming impossible for her to withstand the rigorous of prison life. Prays for premature release. She was placed before the Medical Board on 01.01.2015. Findings of the Board is as follows;

"As per the records, the patient is suffering from postmenopausal osteoporosis, kyphosis & bilateral immature cataract".

The Superintendent of the Circle Jail in forwarding her prayer to the Hon'ble Chief Justice for bail, wrote to the Registrar (Judicial) Hon'ble High Court of Odisha on 01.12.2014, informing him about the state of health of the prisoner as follows;

"Now the old female convict has prayed in her petition for her release on bail considering her old age and incapacitatedness to do her daily routine work inside the jail. In this regard, the Jail Medical Officer of this jail was requested to furnish his report on the Health ground of old female convict. As per the report of jail medical officer the female convict Smt. Patta Khandual is suffering from Geriatric problems and unable to walk properly as well as suffering from chronic low back ache with chronic depression and other general ailments from time to time".

The matter may be followed up with the Registrar. Prima facie, this appears to be a fit case for grant of bail to the convict during the pendency of the Appeal petition. A copy of her written petition is enclosed at **Annexure 8(xiii)**.

xiv. Gouri Shankar Pradhan s/o Kailash Chandra Pradhan

Vill- Chadheiguda, PS-Bariniput, Dist-Koraput

He was sentenced to RI for 11 years and fine Rs. one lakh on 27.11.2013 in GR case no. 4/10(N) u/s 20(b)(ii)(cc) NDPS Act. He has been detained in the circle jail since 22.09.2010. His father has expired. His widow mother and two minor children are living in misery. Requests for parole. As has already been discussed, section 32 A of the NDPS Act does not bar the grant of parole. A copy of his written petition is enclosed at **Annexure 8(xiv)**.

xv. Purna Chandra Panigrahi s/o Late Anand Panigrahi

Vill- Jaypur, PS-Jaypur Town, Dist- Koraput

He too has been sentenced for offences under the NDPS Act registered in the above case. Following his detention in prison his father expired. His mother suffered a paralytic stroke. His home is 400 kms from the circle jail. His family members are finding it difficult to meet him. Unlike, prisoners sentenced for other offences, NDPS convicts are not getting remission and parole. He has submitted in his petition that the Hon'ble Supreme Court has ruled that Section 32A of the NDPS Act does not forbid the authorities from granting parole/furlough to the prisoners convicted under the Act. Prays for one month parole. His prayer should be considered on merit. A copy of his written petition is enclosed at **Annexure 8(xv)**.

xvi. Matia @ Handia @ Susanta Das s/o Ranka Das

Vill- Nimapalli, PS-Chatrapur, Dist-Ganjam

He has been detained in this jail since 16.09.2014 for his alleged complicity in a murder in ST case no. 160/2014 u/s 302/201 IPC. Due to their poor socio economic status his family members are not in a position to fight for his bail.

Requests for bail. The Welfare Officer of the prison may help him in getting Legal Aid from the government. A copy of his written petition is enclosed at **Annexure 8(xvi)**.

xvii. Khadal Biswal s/o Late Mochiram Biswal

Vill- Sialia, PS-Kabisuryanagar, Dist- Ganjam

He was sentenced to life imprisonment on 07.09.2004 in SC case no. 06/2001 u/s 302/34 IPC. He has already spent 17 years in prison. Prays for premature release. His case has already been forwarded to the Prison Directorate with favourable recommendations. A copy of his written petition is enclosed at **Annexure 8(xvii)**.

xviii. Sitakanta Das s/o Late Sridhara Das

He is detained in the circle jail as an UTP for his alleged involvement in GR case no. 206/2008 u/s 328/380/302/109 IPC. He claims to be 82 years old and suffering from Diabetes. He also claims that in accordance with the paragraphs 3.4 & 3.5 of the Commission's Proceedings dated 20th October 1999 in case no. 233/10/97-98 he is entitled to be released as he has completed 5 years in prison and is above 65 years of age. As has been explained in course of this note, this perception is incorrect. The Superintendent may take up his case for bail with the learned district judge. A copy of his written petition is enclosed at **Annexure 8(xviii)**.

xix. Bipin Bihari Behera s/o Kesab Behera

Vill- Ratanpur, PS-Banapur, Dist-Khurda

He is detained in this prison as an UTP since 15.09.2015 in GR case no. 661/15 u/s 395/412/414 IPC. Pleads that he has been falsely implicated in the case. An unknown person had sold a mobile to him for Rs. 500/-. The mobile appears to be part of the stolen property in a dacoity case. His case may be referred to the concerned Superintendent of Police for ensuring proper supervision of the case. A copy of his written petition is enclosed at **Annexure 8(xix)**.

xx. Gandu Behera @ Sankar s/o Late Nath Behera

Vill- Keutasahi, PS-Hinjilikatu, Dist-Ganjam

He is detained in this jail w.e.f. 22.03.2015 in connection with his involvement in ST case no. 69/15 u/s 341/326/307 IPC. His trial is pending in the court of Assistant Sessions Judge, Chatrapur without any progress. Prays for expeditious trial. The Superintendent may refer his grievances to the Learned Court. A copy of his written petition is enclosed at **Annexure 8(xx)**.

xxi. Murali Chandra Sahu s/o Late Gandu Sahu

Vill- Sanasorada, PS-Sorada, Dist-Ganjam

He is detained in this jail since 13.11.2015 as an UTP in GR case no. 158/2009 u/s 279/337/338/304(A) IPC. The offences for which he has been arrested are all bailable. He has been granted bail but is unable to provide sureties.

The Prison Welfare Officer may help him in filing a prayer before the Hon'ble Court for releasing him under the provision of section 436 A of the CrPC, that is on signing a personal bond. A copy of his written petition is enclosed at **Annexure 8(xxi)**.

xxii. Satrugna Dalei and Manoj Kumar Swain

They are detained in this prison since 26.04.2012, pending trial of case no. 15/12 u/s 20(b) NDPS Act. The trial is making little progress due to the non appearance of witnesses. The PWO may verify which of the witness are not appearing and write to the concerned authorities about it. A copy of his written petition is enclosed at **Annexure 8(xxii)**.

xxiii. Binu Kumar s/o Kumaran

Vill- Kanjikuri, PS-Kanjikuri

Dist- Iduki, Kerala

He has been arrested for his involvement in GR case no. 02/2012 u/s 20(b)(I) C/29 NDPS Act and detained in this jail for the last 11 months. Prays for his transfer to any jail in Kerala, his home state. This may not be possible at this stage as he will require to be produced in the local court for trial. His prayer may be brought to the notice of the Learned Court. A copy of his written petition is enclosed at **Annexure 8(xiii)**.

xxiv. Basanta Naik s/o Late Sitapati Naik

Vill- Gangapur, PS-Gangapur

Dist-Ganjam

He has been detained in this jail as an UTP since 08.06.2009 for his involvement in ST case no. 21/13 u/s 147/148/302/326/294/149 IPC. Prays for speedy trial. His prayer may be brought to the notice of the learned court. A copy of his written petition is enclosed at **Annexure 8(xxiv)**.

xxv. Pradeep Panda & Raghunath Sahoo

They are detained in this prison since 04.06.2012 for their involvement in case no. 20/12 u/s 20(b)(ii)(c) NDPS Act. Their trial is dragging on due to the non appearance of witnesses. Requests for speedy trial. Earlier on 06.05.2015, they had applied to the Hon'ble Trial Court with similar request. With their written petition they have enclosed a news clipping dated 23.12.2014 from which it would appear that the Hon'ble Court had issued 'show cause notice' to ASIs of the Excise Department for not showing up in the court. The PWO will verify the

present status of trial. A copy of their written petition is enclosed at **Annexure 8(xxv)**.

xxvi. Biju Isac s/o K.J. Isac, Biju Augustin s/o Augustin and Saijo Saiman s/o Saiman all are village Rajkad, Kerala

They have been sentenced under 20(b)(ii)c NDPS Act to 12 years RI with fine. They have spent 11 months in the circle jail. They come from Kerala. Request for their transfer to a Kerala jail. Their prayer for jail transfer may be sympathetically considered by ADG Prison in consultation with his counterpart in Kerala. A copy of their written petition is enclosed at **Annexure 8(xvi)**.

xxvii. Bijay Padhy s/o Khetrabasi Padhy

Vill- Kespursasan, PS-Gangapur, Dist-Ganjam

He has been detained in this jail since 16.01.2014 in connection with his alleged involvement in ST case no. 80/14 u/s 302/120(B)/114/34 IPC. Claims to have been falsely implicated in the case. Prays for speedy trial. His prayer may be forwarded to the learned court. A copy of his written petition is enclosed at **Annexure 8(xvii)**.

xxviii. Sunil Behera s/o Duryodhan Behera

Rabindra Sethi s/o Krushna Sethi

Sunil Mishra s/o Siba Mishra

Susanta Kumar Sahu s/o Bijay Kumar Sahu

Madhusudan Naik s/o Ghanasyam Naik

Toofan Das s/o Dandapani Das

They are detained in this prison as UTPs since 13.12.2015 in GR case no. 1379/15 u/s 399/407 IPC rw 25(1-B) of Arms Act. From the text of their petition, it seems that they have criminal antecedents and had earlier assured the police administration that they will not commit any crime in future and would like to be join the main stream.

Even so, the police arrested them in cooked up cases. They prayed that the Superintendent of Police Berhampur may be advised for giving them an opportunity to integrate themselves in the main stream. Their prayer may be sent to the concerned Superintendent of Police. A copy of their written petition is enclosed at **Annexure 8(xxxviii)**.

xxix. Tabara Mohammed s/o Late Sarif Mohammed

Vill- Kabisuryanagar, Dist- Ganjam

He is detained in this prison as an UTP w.e.f. 20.09.2014 for his involvement in GR case no. 150/14 u/s 341/342/363/376/506 IPC. He was arrested by the police on 18.09.2014 and tortured for two days before being produced in the

court. As a result of the assault, he sustained fracture on his right thumb and injured his left leg. They threatened him that in case he informs the court regarding his torture, they will ensure that he is sentenced to life imprisonment.

He further claimed that he has been falsely implicated in the case. Pray for fair investigation and speedy trial. He also requests for his transfer to Chatrapur jail. The allegations of wrongful confinement and torture may be forwarded to the Superintendent of Police for verification. A copy of his written petition is enclosed at **Annexure 8(xix)**.

xx. Subash Chandra Raula s/o Late Lingaraj Raula

Vill- Bikrampur, PS-Khalikote, Dist-Ganjam

He is detained in the circle jail since 27.09.2013 for his alleged complicity in GR case no. 418/2011(B) u/s 147/148/120(B)/109/302/149 IPC. He is suffering from high blood pressure and diabetes. Thrice in the past he has availed interim bail. Claims to have been falsely implicated. He further pleads that Dy. SP Chatrapur who had supervised the case has reported that he was not present at the PO. Even so the police submitted charge sheet against him. Prays for bail. With his application he has submitted a Disability Certificate from which it would appear that he is 71 years of age and suffering from permanent visual disability. His grievances may be forwarded to the Superintendent of Police for verification. A copy of his written petition is enclosed at **Annexure 8(xx)**.

xxi. Rajanikant Panda s/o Late Dasarathi Panda

PS-Berhampur, Ganjam

He has been sentenced to life imprisonment in SC case no. 253/01 u/s 302/498(A) IPC. He has already spent 13 years of prison term. Every time he applies for parole/furlough, his application is forwarded to the local police for their views/opinion. The police do not submit their opinion in time. This results in his inability to visit his family at their time of need. Prays for quick disposal of application for parole/furlough. This problem has already been discussed. The Superintendent of the Circle Jail should take up the matter with the Superintendent of Police. A copy of his written petition is enclosed at **Annexure 8(xxi)**

xxii. Anthony Majhi s/o Palchipanchu Majhi

PS-Adaba, Dist- Gajapati

He has been sentenced to 15 years RI for his complicity in GR case no. 2/12 u/s 20(b)(ii) c/29 NDPS Act. Claims to have been falsely implicated. He has appealed against the order (CrlA 494/2014). Prays for speedy hearing of his appeal petition. The Superintendent should periodically (at least once in a quarter) take up such cases with the Registrar of the High Court. A copy of his written petition is enclosed at **Annexure 8(xxii)**.

xxxiii. Sajan Thomas s/o Thomas Mathew

Vill- Nellimattan, Dist-Eranakulam, Kerala

He has been sentenced to 15 years RI for his complicity in GR case no. 2/12 u/s 20(b)(ii) c/29 NDPS Act. Claims to be innocent. Pleads that he was picked up by the police from his house. Nothing incriminating was seized from him. He further claims that the IO Binaya Prakash Minz has admitted in the court that he has been erroneously implicated in the case. Requests for reinvestigation of the case. His prayer may be forwarded to the Superintendent of Police for disposal. A copy of his written petition is enclosed at **Annexure 8(xxxiii)**.

xxxiv. P. Sunil Achary s/o P. Appal Raju Achary

PS- Badabazar, Dist- Ganjam

He has been sentenced to life imprisonment in ST case no. 373/10 u/s 302/34 IPC. He had applied for parole almost a year back. His application was referred to the local police for opinion which is still pending. Prays for early disposal of his leave application. Superintend may take up his case with the Superintendent of Police. A copy of his written petition is enclosed at **Annexure 8(xxxiv)**.

xxxv. Narasingha Raita s/o Sambharu Raita

Vill- Jhalarsing, PS-Ramgiri, Dist- Gajapati

He was sentenced on 13.05.1999 in SC case no. 86/98 u/s 302/34 IPC. He has already spent 18 years in the prison. Prays for premature release. His case has already been forwarded to the Prison Directorate. The state govt. may ensure that the State Sentence Review Board meets at the earliest and takes up his case. A copy of his written petition is enclosed at **Annexure 8(xxxv)**.

xxxvi. Simanchal Naik s/o Russia Naik

PS- Purusottampur, Dist-Ganjam

He was sentenced to RI for life in SC case no. 17/1992 u/s 302/34 IPC. He has already spent 14 years in prison. Prays for Furlough. Prima facie he appears to be eligible for furlough. The Superintendent should consider his case favourably. A copy of his written petition is enclosed at **Annexure 8(xxxvi)**.

xxxvii. Ganga @ Gangadhar Das s/o Late Chaudhury Das

Vill- Balajipalli, PS- Berhampur Sadar

Dist- Ganjam

He has spent long 20 years in prison. Back home, his 80 years old mother is facing considerable difficulty. Prays for premature release. His case has also been forwarded to the Prison Directorate. The state govt. may ensure that the Sentence Review Board meet early and takes a decision on his application. A copy of his written petition is enclosed at **Annexure 8(xxxvii)**.

xxxviii. Bharat Chandra Pradhan s/o Sudarshan Pradhan

Vill- Bariniput, Dist- Koraput

He is detained in this prison since 22.09.2010 in GR case no. 4/10(N) u/s 20(b)(ii) cc NDPS Act. Back home, his old parents are suffering from various ailments. His native place is 400 kms from Berhampur for which his parent are unable to visit him. Prays for parole for arranging the treatment of his parent. He too pleads that the Hon'ble Supreme Court has ruled that Section 32A of the NDPS Act should be no bar for the grant of parole. He should be granted parole if otherwise eligible. A copy of his written petition is enclosed at **Annexure 8(xxxviii)**.

xxix. Krushna Naik s/o Bascha Naik

Vill- Kesariapatna, PS-Soroda, Dist-Ganjam

He was sentenced to RI for life in SC case no. 238/2001 u/s 302 IPC. He has already spent 15 years in the prison. Back home, his 65 year old mother is bedridden. Prays for Furlough leave to arrange for the treatment of his mother. His case has also been forwarded to the Prison Directorate for premature release. The state govt. may ensure that the Sentence Review Board meets early and take a view on all such pending proposals for premature release. Pending disposal of his prayer for premature release, he may be granted furlough leave if otherwise suitable. A copy of his written petition is enclosed at **Annexure 8(xxxix)**.

xl. Ramesh Gouda s/o Late Sava Gouda

PS- Jaypur, Dist - Koraput

He has been sentenced to 11 years RI in GR case no. 04/2010(N) u/s 20(b)(ii)(c) NDPS Act. He has already spent more than 5 years in prison. Prior to his arrest, he had fractured his left arm and underwent a surgery. A steel rod was fixed to bolster his bones. Stitches were opened after 7 months that is on 05.08.2008. He was advised by the doctor that the steel rod should be removed after one/two years. Since his admission in the jail he has been requesting the jail doctor to send him to MKCG MCH or any other hospital outside the prison for removal of the rod. The Superintendent of the Jail hospital Sri Rajendra Sahoo had demanded Rs. 2000/- from him as bribe. He had paid Rs. 1000/- to the doctor. When the doctor did not refer him to outside hospital he brought back the amount from him. Ever since he brought back the bribe money the doctor is harassing him in various ways like referring him to outside hospital, only during public holidays (like cart festival & Dushera). At the outside hospitals, he is being provided primary treatment and advised to come again after the holidays.

Despite repeated request, the jail authorities have not arranged for his treatment. The steel rod continues to be inside his hand causing pain. Prays for proper/early treatment. DIG Berhampur Range may hold an enquiry to verify the

allegation besides ensuring his treatment. A copy of his written petition is enclosed at **Annexure 8(xl)**.

xli. Manoj Kumar Panigrahi s/o Late Purnachandra Panigrahi

PS- Digapahandi, Dist- Ganjam

He has been sentenced under the NDPS Act. Prays for remission, furlough and parole much like prisoners sentenced for other offences. He also pleads that the Supreme Court have already ruled that Section 32A of the NDPS Act would not be a barrier to the grant of parole to prisoners sentenced under the NDPS Act. His prayer can be reexamined in the light of the Supreme Court rulings already discussed in course of this note. A copy of his written petition is enclosed at **Annexure 8(xli)**.

xlii. Uday Shankar Padhy s/o Upendra Padhy

Vill- Gosani Nuagaon, Dist- Ganjam

On 23.07.1999, he was sentenced to RI for life in SC case no. 19/2000 u/s 302/323/34 IPC. He has served 17 years in prison. Since September 2012 he had been staying in the open jail. He along with some other prisoners had gone on hunger strike demanding leave. After their hunger strike, the jail administration started granting them leave as per rules. He too was granted Furlough leave. After availing the leave he returned to the open jail on 09.01.2016. But right from the jail gate he was sent to Special Jail Bhubaneswar. He suspects that he was transferred for participating in the hunger strike. Prays for transfer to the open jail. His prayer may be forwarded to the Addl. DG Prisons for disposal. A copy of his written petition is enclosed at **Annexure 8(xlii)**.

xliii. Sabyasachi Panda s/o Late Ramesh Chandra Panda

Vill- Mayurjhalia, PS- Ranpur

Dist- Nayagarh

In a written petition, he submitted that;

- i. Ever since his arrest he has been kept in solitary/separate confinement without any order from any court to that effect. He further pleaded that solitary confinement, besides violating the rights guaranteed under article 21 & 24 of the constitution, is repugnant to the provisions laid down in the Odisha Jail Manual and the Indian Prison Act.
- ii. Food served to the prisoners is unhygienic.
- iii. The jail doctors are not visiting the solitary ward wherein he has been confined.
- iv. Though he has been confined in judicial custody since 18.07.2014, he has not been informed in which particular cases he has been arrested, despite

applications under the RTI Act submitted to the appropriate authority. This, he pleaded, will delay his trial.

v. While on way to various courts for appearance he is being escorted by the police. No one from the jail administration is accompanying him. The police men on escort duty are not only misbehaving with him but at times threatening to kill him. On many occasions, on the plea of law & order problem, he is not being produced in the court on the dates fixed for his appearance. He had submitted petitions in this regard on various occasions in the past to the Hon'ble SDJM and the OHRC who have taken cognizance in some cases.

vi. The prison welfare fund is not being properly utilized.

vii. The inmates in this jail have no access to Star TV channel whereas the inmates of other prison in the state have access to the same.

A copy of the petition is enclosed at **Annexure-8(xliii)** to this report.

It is true that the Supreme Court has ruled that solitary confinement amounts to denial of the Right to Freedom. The Hon'ble Court have also clarified that "section 73 and 74 of the IPC leave no room for doubt that solitary confinement is by itself a substantive punishment which can be imposed by a court of law. **It cannot be left to the whim and caprice of the prison authority'**

Extracts from the Code are reproduced below.

"73. Solitary confinement — Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year; a time not exceeding three months if the term of imprisonment shall exceed one year.

74. Limit of solitary confinement — In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods".

The Superintendent claimed that the petitioner had moved the court against his solitary confinement and that the court has rejected his plea.

"29. Solitary confinement.— No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate."

30. Prisoners under sentence of death.— (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed, by day and by night, under the charge of a guard.

The petitioner is an UTP. Solitary Confinement being a substantive punishment, it is doubtful if an UTP can be subjected to such confinement, that too for indefinite period. The Hon'ble Commission may take a view in the matter

In the intervening period the superintendent may strictly abide by the conditions laid down in section 29 of the Prison Act and section 74 of the IPC , to ensure the security and well being of the petitioner.

The jail authorities have placed a guard at his cell round the clock. The Superintendent should ensure that he is visited by the Medical Officer and in his absence a paramedical staff every day. He should also be informed in which all cases he has been detained in jail custody. He also has a right to be produced before the magistrate every fortnight during the pendency of investigation. In case it is not possible to produce him in court due to security reasons his appearance should be ensured through video conferencing.

His complaint that on way to courts and back, no jail official is accompanying him, it may be said that this has now become a practice all over the country. There could be some doubt regarding the legal validity of this practice. It may be argued that the accused in such cases are being placed in police custody for the duration of the journey, without an order to that effect by the magistrate. This is a broad issue which may be addressed at the Commission's level. Allegations regarding threats and abuses from the members of the escort party the same may be brought to the notice of the superintendent of police.

xliv. Chandrakant Bhargav Gole s/o Late Bhargav Ramachandra Gole

He is the Managing Director of M/s. Shree Ramkrishna Electro Controls Ltd., Laxmi Govind Sadan, Behind Bank of Baroda Colony, Bamanwada, Vile Parle (E), Mumbai- 400 099. In his written petition, he pleads that he had issued 12% redeemable cumulative preference shares to the investors after following all the rules and regulations as per the Company's Act 1956.

The complainant Laxmi Charan Das s/o Late Binayak Das, At- Bhabani Nagar, 3rd Lane, Gate Bazar, PS- Berhampur Town, Dist- Ganjam (Odisha) filed

complaint case no. ICC 142/2011 for bouncing of cheque no. 285571 dated 18.04.2011 for Rs. 50,000/- which he had forcibly taken (by his agent) from the company's registered office at Mumbai without surrendering the original share certificate. In this case, he has been convicted on 26.11.2014.

The same complainant Mr. Laxmi Charan Das again filed another case no. 495/2013 which was for the same amount of Rs. 50,000/- by giving reference of original share certificate which he did not surrender before depositing the cheque which was forcibly taken by his agent. This case was also filed in Hon'ble SDJM Court, Berhampur, Ganjam which was converted to GR 1687/2013 on 07.12.2013.

While filing ICC 495/2013, he made many fake and baseless allegations which are completely false and due to this false case, he is languishing in jail custody without trial and without getting any charge sheet for the last two years along with his co-accused Sri Suresh Padhi.

He pleads that he has been subjected to double jeopardy and his fundamental right guaranteed in article 20(2) of the constitution of India has been violated.

Prays for his release and the release of his co-accused from prison and the initiation of Criminal Prosecution against the complainant for implicating him in false cases. A copy of his written petition is enclosed at **Annexure 8(xdiv)**.

xlv. Grievances of Convict Prisoners S. Karupaiamma w/o Late Suba Karupiya, Annakodi @ Sarasu Pachhiamma and B. Panchavaranam w/o Late B. Pandian, all of Madurai District, Tamilnadu

They were sentenced to 10 years RI with fine in an NDPS case. They have already spent 4 years in jail. All of them hail from Tamilnadu and do not understand either Hindi or Odia. The jail officers and staff do not understand Tamil. These prisoners had prayed for transfer to Special Prison for women, Puzhal in Tamilnadu. The Superintendent of the Circle Jail had written to the Commissioner of Police, Madurai requesting for 'nativity certificate' of the above prisoners for initiating a proposal for their transfer.

The Addl. DG of Police and Inspector General of Police Tamilnadu has also written to the Commissioner for verification of their address. Addl. DG Prisons may pursue their case for jail transfer in consultation with his Tamilnadu counterpart.

xlvi. Simalu Pradhan

She was sentenced on 29.01.2005 in SC case no. 42/04 u/s 302/307 IPC. Prays for premature release.

xlvii. Susuma Sahu

She was sentenced on 21.08.2006 in ST case no. 76/04 u/s 302 IPC. Prays for premature release.

xlvi. Damayanti Sahoo

She is a disabled person and a spinster. Prays for bail.

xlix. Shatilata Pradhan

She was sentenced on 18.05.2007 in SC case no. 15/85 u/s 302/34 IPC. She has already spent 10 years in prison. Her parents who were also sentenced have died in custody. Prays for premature release.

There is an impression that female prisoners undergoing life imprisonment are entitled to be released after serving 10 years of imprisonment. The above female prisoners (sl. No. xlvi, xlvii, xlvi and xlix) believe that they are eligible for premature release in accordance with the provisions of paragraph 3.3 of Annexure A of the Commissions proceedings dated 20th October 1999 in case no. 233/10/97-98. Relevant extracts of the proceedings are reproduced below;

"The following category of inmates shall be eligible to be considered for premature release by the State Sentence Review Board.

- i. Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the post provisions of Section 433A, CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment, i.e. without remissions.*
- ii. All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission and after completion of 10 years actual imprisonment, i.e. without remissions.*
- iii. All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment inclusive of remission and after completion of 7 years actual imprisonment, i.e. without remissions.*
- iv. Convicted prisoners undergoing the sentence of life imprisonment on attaining the age of 65 years provided he or she has served at least 7 years of imprisonment including the remissions.*
- v. The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, TB, AIDS, irreversible kidney failure, cardio-respiratory disease, leprosy and any other infectious disease, etc. as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions."*

All the above petitioners were convicted for murder one of the punishments for which is death. As such, the provisions of 433A CrPC should apply to them. They have to serve at least 14 years actual imprisonment before their release.

The grievance of the prisoners could be broadly classified as follows.

- i. False Implication in crimes they have not committed
- ii. Denial of Furlough/Parole.
- iii. Denial of Parole, Furlough and Remission to prisoners sentenced for offences punishable under the NDPS Act.
- iv. Delay of trial and disposal of appeals.
- v. Prayers for transfer to jails nearer home.
- vi. Inadequacies of available Legal Aids.
- vii. Inadequate water supply.
- viii. Denial of special food for those admitted in hospital and those suffering from serious ailments like diabetes, chronic gastritis, kidney problems and hypertension.
- ix. Inadequate medical facilities available in the jail hospital.
- x. Reluctance of the jail administration to notify the courts regarding serious ailments of the prisoners.

15. Representation by the Jail Staff

a. DEO, Sri Sapan Naik

He has been working as a Data Entry Operator on daily wages basis since 01.09.2009 that is for more than 6 years. He is yet to be regularized in service. He belongs to the SC communities. With Rs. 240/- which he gets his wages per day, he has to support himself, his parents and younger sister. Prays for regularization. His prayer deserves to be sympathetically considered by the state government.

b. Officers of the Circle Jail, Berhampur

In a written petition, they pleaded that while Jail Warders are paid one month's salary to compensate them for performing duties on govt. holidays the jail officials i.e. Pharmacists, Sub Asst. Jailor, Asst. Jailor, Jailor and the Superintendent are being deprived of such benefits. Pray for the extension of the benefit to them.

c. Smt. Mirabai Sahu

Contractual Pharmacist

Sub Jail, Patrapur

She is now working in the circle jail on deputation from Patrapur Sub-jail. She has already completed more than 7 years of service. Prays for regularization of service. Her prayer deserves to be sympathetically considered by the state government.

d. Sub Asst. Jailors of the Prison

In a written petition, they pleaded that their rank is equivalent to that of ASIs of Police. The grade of pay of ASIs has since been enhanced to Rs. 2800/- per month where as the grade pay of Sub Asst. Jailors continue to be Rs. 2400/- per month. Prays for equalization of their grade pay with that of ASIs.

e. Md. Tameemur Reheman, President

All Odisha Jail Employees Association, Bhubaneswar

He submitted a written representation to the effect that;

i. From the time of pre independence till 1974, the pay of jail warders was equal to that of police constables.

ii. The grade pay of constables and equivalent rank was enhanced from Rs. 1900/- to Rs. 2000/- w.e.f. 30.03.2014 and that of Havildars and equivalent rank from Rs. 2200/- to Rs. 2400/- w.e.f. 01.04.2010.

iii. On 02.07.2010, the state govt. constituted a high level committee headed by the Chief Secretary to consider the grievances of the Odisha Police Association. The committee after 'detail deliberations' revised the grade pay of ASIs/Havildar major and equivalent ranks from Rs. 2400/- to Rs. 2800/-.

iv. Following the enhancement of grade pay of police personnel, the All Odisha Jail Employees Association met the Chief Minister with identical demands.

v. The Hon'ble Chief Minister directed the Chief Secretary to refer their grievances to the Pay Anomaly Committee of the Finance Department.

vi. The Anomaly Committee after examining the matter observed as follows;

"Employees in the prison department have demanded various posts in police. It has been mentioned that upto third pay commission the posts in the prisons department and police department had similar pay scales and in some cases the pay scale in prison department are higher but since then the parity has been disturbed because of unilateral up-gradation of various posts in police and that the parity needs to be restored. It is seen that the functions of police are distinct from the prison staff. The police are basically concerned with maintaining law and order whereas the prison staff are involved in reformation and detention of convicts, under trials and other persons sent to judicial custody. Hence, no comparison can be drawn between various posts in the two cadres. Accordingly only the corresponding revised running pay bands and grade pay shall be extended to the various posts in the prison department".

This effectively ended the parity of pay and allowances of the guarding staff with police personnel equivalent rank.

A comparative analysis of the pay and grade pay of the police and jail staff is reproduced below;

Police	Jail
Constable/lady constable Grade pay – Rs. 2000/-	Warder male/female Grade pay – 1800/-
Havildar Grade pay – 2400/-	Head Warders/Reserve Havildar Grade pay – 1900/-
Havildar Majors ASI Grade pay 2800/-	Chief Head Warder Grade pay – 2000/-

Mr. Reheman argued that the duties and responsibilities of the jail guards are in no way less significant than those of the police personnel of equivalent rank and requested that the state govt. may be directed to address to their grievances.

The Commission may consider bringing their grievances to the notice of the state govt. for sympathetic consideration.

16. Miscellaneous

i. Prem Choudhury s/o Jayanti Choudhury and Dhoba @ Laxman Choudhury is detained in this jail since 14.09.2015 along with his parents who were arrested in G.R. case no. 989/2015 u/s 302/201/120 (B)/34 IPC. Prem's parent had submitted a prayer to the learned SDJM for handing over the boy to CWC Ganjam as he has already reached 7 years of age and does not qualify to be further detained in the prison.

On 24.12.2015, the learned SDJM had in consideration of the prayer had ordered inter alia as follows. *"Perused the case records, it is found that the male child namely Prem Choudhury who is aged about 7 years of age is now inside the jail custody with his parents who were remanded to jail custody on 14.09.2015 in GR case no. 989/15 . Keeping in view the Rule 881 of the Orissa Jail Manual and the overall Welfare of the child the prayer of the Senior Superintendent, Circle Jail, Berhampur is allowed and he is directed to hand over the male child namely Prem Choudhury to a Government Organization in or near Berhampur through the Child Welfare Committee, Ganjam, Berhampur for his proper rehabilitation, care and protection and he should also take all necessary steps in that regard. The Senior Superintendent, Circle Jail, Berhampur is also directed to intimate this court about whole process of handing over the child to any organization in or near Berhampur through the child Welfare Committee Ganjam, Berhampur and report compliance to this office at earliest. Send an extract copy of this order to the Senior Superintendent, Circle Jail, Berhampur for information and necessary action".*

The Superintendent has written to the Chairman CWC Ganjam, accordingly. The child may be handed out to the CWC for his protection and care at the earliest.

ii. One Sri Biki Das s/o Late Babula Das At/Po- Station Road, Chatrapur, PS-Chatrapur, Dist- Ganjam is detained in this prison with effect from 14.09.2015 for his alleged complicity in a murder case registered under GR case no. 989/2015 u/s 302/201/120(B0/34 IPC. He claims to be 16 years of age, though

the police has shown him to be as 19 years of age. He appears to be below 18. The Superintendent has brought the matter to the notice of the learned SDJM. Action for verification of his age should be initiated, so that he could be transferred to Berhampur Observation Home for Boys, should he be found below 18 years.

iii. UTP Anil Jena s/o Subash Jena
Vill- Bomkei, PS-Jarada
Dist- Ganjam

He is detained in this prison from 17.11.2015 following his arrest in GR case no. 203/2015 u/s 457/380 IPC. He too claims to be 16 years of age. In the police report, his age has been shown to be 20 years. His petition was forwarded to the learned JMFC for appropriate orders. The Court on 11.12.2015 passed the following orders;

"On perusal of case records and the forwarding report it is found that accused has stated his age as 20 years himself before police and thus court on later on taking plea of minor age. So the UTP Anil Jena as here by directed to submit documentary evidence in his support of such claim of minor age."

The petitioner brought his grievance to the Hon'ble District and Sessions Judge, Ganjam during his visit to the prison on 28.12.2015, after which the Superintendent again wrote to the learned JMFC who issued the following orders on 20.01.2016;

"It is further directed to the Superintendent of Circle Jail Berhampur to segregate the UTP Anil Jena from the adult UTPs of Circle Jail Berhampur and keep him in separate cell as there is dispute regarding age of UTP Anil Jena and the same is pending for enquiry".

I met the prisoner. He looks no more than 14. He is scared to live in isolation in a separate cell and pleads to be shifted to a general ward.

17. Visit & Inspection

Board of visitors has not been constituted.

The following officers/ authorities visited the prison in the recent past.

Learned District Judge visited the jail on 31.08.2015. His visit notes have been received.

Addl. DG Prisons had last inspected this jail on 29.11.2015. His remarks are awaited. Addl. IG Prisons Odisha visited the jail on 20.11.2015. His visit notes have also not been received.

Learned District Judge, the District Magistrate and the SP paid a joint visit on 28.12.2015.

· Their visit note has been received. The state government should constitute a Board of visitors for the circle jail at their earliest.

18. Recommendations

I have already given my recommendations for the improvement of the living conditions of the prisoners and the protection of their human rights in course of my notes. Some of the important recommendations are summarized below.

i. The capacity of the prisoners' wards has been calculated by the jail administration in the scale of 36 sq. ft. for prisoner. Ideally, (According to the Model Prison Manual) 40 sq. ft. of floor area should be available to each prisoner. Some of the wards have raised platforms. As provided in the Odisha Jail Manual 1942, all the prisoners should be provided with cots/raised platforms to avoid body contacts between them. The windows should be wire meshed to prevent entry of mosquito. All prisoners should be issued mosquito nets.

ii. The sanctioned strength of the guarding staff is utterly inadequate in comparison with the number of prisoners. The guarding staff/prisoner ratio is very low. During my interactions with the staff, many complained that they have to work for long hours (up to 13 hours in a day) due to paucity of manpower. The least the state government could do is to fill up the existing vacancies. As recommended in Chapter 6 of the Model Prison Manual formulated by the BPRD there has to be one guarding staff for every six prisoners. This prison has a sanctioned capacity for 743 prisoners including 52 female prisoners. Ideally, the number of the guarding staff should be 124. As against that the total sanctioned strength of the guarding staff (including Head Warder and Chief Head Warder) is only 96. Of these posts, 09 are lying vacant. The State Government may consider augmenting the guarding staff as also other staff of the prison.

iii. Water supply is inadequate and does not fully meet the requirement of the inmates. There is no pipe water supply to the toilets. Prisoners take their bath on open platforms. A proposal for the construction of another clean water UGR of capacity one lakh litre and the sinking of 3 nos. of production wells is pending with the Prison Directorate which may be expedited. Water filters should be issued to each of the wards.

iv. The wages/incentives paid to labouring prisoners are low and should be enhanced to the level of minimum wage for skilled/semi skilled workers minus expenditure on food and clothing. Pass books of the prisoners (in which transactions relating to the deposit of wages and withdrawals are reflected), presently retained by the Superintendent, should be returned to the Acct Holders.

v. The post of the Psychiatrist should be filled up immediately by posting a trained psychiatrist to the jail hospital.

- vi. In view of the rulings of the Hon'ble Supreme Court, convictions under the NDPS Act should not automatically disqualify the prisoners from being released on parole.
- vii. Pendency of Appeals in higher courts is no ground for rejecting applications for parole & furlough. Appellants should be granted furlough and parole, if otherwise eligible.
- viii. The state government should be liberal in granting furlough and parole. The district officers may be advised to give their opinion on the prisoner's petitions at their earliest. In case of rejections, speaking orders should be issued explaining the grounds. ADG Prisons should be authorized to grant furlough at his level.
- ix. 76% of the prisoners are UTPs. This is not a happy situation. Speedy trial, liberal grant of bail during the pendency of trial, should improve the situation. It is also painful to find that 18 prisoners, who have been granted bail, are still languishing in prison for their inability to produce sureties. Some of them are wanted in bailable cases and should get the benefit of Section 436 A of the CrPC. As recommended in Chapter 22.49 of the Model Prison Manual, when an under trial prisoner is seriously ill, the Superintendent shall send a report, along with a medical report, to the court concerned in order that if the law permits and the court thinks fit, the prisoner may be released on bail.
- x. There is a strong case for equalizing the pay and allowance of the guarding staff with those paid to members of the police force of equivalent rank.
- xi. The hospital of the Circle jail serves as a platform for sick inmates of 24 jails located within Berhampur Circle spread over Ganjam, Puri, Phulbani, Nayagarh & khurda districts, who require treatment at the Maharaja Krishna Chadra Gajapati Medical College.
The facilities available in the jail hospital for treatment during the waiting period are inadequate. The proposed 30 bedded hospital should be constructed at the earliest and provided with adequate staff and equipments. Pre Admission Medical Examination of prisoners should be introduced immediately.
- xii. The state govt. may consider sanctioning adequate manpower for the DIG's office to strengthen the Supervision Mechanisms. At present, the DIG's office located next to the prison is running without any supporting staff. The jail administration did sanction a contractual steno for his office. But the post is lying vacant for the last 11 months.
- xiii. The jail administration should open a permanent register to record all custodial deaths and the status of enquires thereof. The register should be inspected by the visiting officers to verify, if any such enquiry is pending unnecessarily.

DAMODAR SARANGI



From
Damodar Sarangi
Special Rapporteur,
NHRC, East Zone - 1

Aurobindo Villa
Ananta Vihar
Plot No. 217/4
Pokhariput
Bhubaneswar - 751020

DS/ Spl. Rptr. / NHRC - 01/03-16 Dated - 11.03.2016

To
The Secretary General
National Human Rights Commission
Manav Adhikar Bhawan, Block-C
GPO Complex, INA
New Delhi - 110 023

I visited Berhampur Circle Jail on and from 24.01.2016 to 25.01.2016, to study the living conditions of the inmates and to verify, if the rights of the prisoners are being properly respected and protected by the jail and other authorities.

My visit notes are sent herewith which may be placed before the Commission, for such further action/directions, as may be considered fit and proper.

Damodar Sarangi

Post copy with Annexure follows.

Report on the visit of Sri Damodar Sarangi, Special Rapporteur, East Zone-1, NHRC to Berhampur Circle Jail, Odisha

I visited Berhampur Circle Jail on and from 24.01.2016 to 25.01.2016, to study the living conditions of the inmates, and to verify, if the rights of the prisoners are being properly respected and protected by the jail and other authorities. I interacted extensively with the officers and staff of the jail as well as the prisoners. DIG (Prisons) Berhampur Range, the Superintendent of the Circle Jail, the Jailor, the Prison Welfare Officer and the Prison Medical Officer remained present during my visit and facilitated my interactions with the inmates and assisted me in the scrutiny and collection of relevant documents.

My observations are as follows;

1. Prison Population

The sanctioned capacity of the Circle Jail is 743 (691 male and 52 female prisoners) against which 747 prisoners (715 male and 32 female) were detained in this prison on the date of my visit. 570 of them are UTPs.

A tabular statement showing the break up of convicts and UTPs is reproduced below;

Break up of Convicts

Period of Detention	Male	Female	Total
Simple Imprisonment	06	--	06
R.I. sentenced to less than one year and six month	--	01	01
R.I. sentenced to above 2 years	09	--	09
R.I. sentenced to above 5 years	18	--	18
R.I. sentenced to above 10 years	30	04	34
R.I. for life	103	06	109
Total	166	11	177

Break up of UTPs

Period of Detention	Male	Female	Total
Less than 6 months	273	10	283
6 months to 1 year	86	02	88
1 year to 1½ years	70	03	73
1½ years to 2 years	30	04	34
2 years to 3 years	40	01	41
3 years to 5 years	45	01	46
5 years and above	5	00	5
Total	549	21	570

76% of the prisoners are UTPs, which should be a matter for serious concern. Of the 570 UTPs, 42 are detained for their alleged complicity in cases registered under the NDPS Act and 64 under section 498(A) IPC. A whopping number of 98 UTPs are detained for their alleged involvement in cases registered under the POCSO Act. Between them, UTPs detained for their complicity in offences punishable under 498(A) IPC, POCSO Act and the NDPS Act account for 35% of the total UTP population. While offences punishable under these sections/Acts deserve to be firmly dealt with, the possibility of these laws being abused are also high. The POCSO Act 2012 is hardly four years old. That more than 17% of the UTP population of a circle jail comprises of POCSO accused only, should in itself warrant that the investigation of these cases should invariably be supervised by superior police officers. 90 of the UTPs are detained for more than two years pending trial. Of them 45 are detained for more than 3 years and 5 for more than five years. During my interactions with them many prayed for speedy trial of their cases and for bail in the intervening period.

The Role and Responsibility of the Superintendent and IG Prisons in such cases has been explained in the Odisha Jail Manual 1942, the substance of which is reproduced below.

'The superintendent shall report to the Magistrate all cases of under-trial prisoners admitted under bailable offences, specifying the names of prisoners likely to furnish bail. The superintendent shall also submit to the District Magistrate in Return No. 23, fortnightly reminders regarding all cases in which prisoners have been detained under-trial for more than 14 days. . The IG of Prisons may call for an explanation from the District Magistrate in cases where under-trial prisoners have been detained in hajat for an unusual length of time, and, if the explanation does not seem satisfactory, may bring the case to the notice of the government. Whenever a visitor records the long detention of an under-trial prisoner, a copy of his remarks relating to such matter shall be forwarded to the District Magistrate, and, if the prisoner be under-trial in the court of sessions, a copy shall also be forwarded to the Sessions Judge.'

After the separation of the judiciary, the situation has drastically changed. The task of periodic review of the status of UTPs has completely passed on to the judiciary.

At present, some of the Superintendents are weary of even forwarding the prayers of the UTPs to the concerned Courts for fear that they may be hauled up for interference in the judicial process. There should however be no hesitation on their part to bring hard cases to the notice of the Hon'ble District Judge during the latter's monthly visits to the prison.

18 Prisoners who have been granted bail are still languishing in prison for their failure to provide sureties. A list of these prisoners is reproduced below.

Sl. No.	Name of the UTP	Case No. with U/S	Date of Admission	Name of the Court
1	Prasant Kumar Behera	GR 1284/2015 u/s 380 IPC	18.11.15	SDJM, Berhampur
2	Somanath Sahu	GR 964/2015 u/s 341/323/294/506 IPC	23.09.15	SDJM, Berhampur
3	Allu Raghu	GR 838/2015 u/s 380 IPC	06.08.15	SDJM, Berhampur
4	Amara Behera	2(cc)1319/15 u/s 3(a)RP(UP) Act	20.11.15	SDJM, Berhampur
5	Siba Shankar Sahu	GR 590/2015 u/s 457/380/34 IPC	17.07.15	SDJM, Berhampur
6	Sujana Das @ Behera (female)	GR 1189/2015 u/s 323/324/342/335/506/34 IPC	31.10.15	SDJM, Berhampur
7	Nilanchal Bastia	GR 122/2015 u/s 452/323/294/354(B)/506 IPC	20.09.15	JMFC, Purusottampur
8	Murali Chandra Sahu	GR 158/2009 u/s 279/337/304(A) IPC	13.11.15	JMFC, Hinjilicut
9	R. Bipra	GR 175/2015 u/s 457/380/34 IPC	30.08.15	JMFC, Hinjilicut
10	Nilanchal Dalei	ST 124/2015 u/s 294/385/416 IPC	01.09.15	Dist. & Sessions Judge, Ganjam, Berhampur
11	Vendu Laxmi	ST 228/2014 u/s 341/307/394/120(b) IPC	11.02.14	Asst. Sessions Judge, Chatrapur
12	Hrushikesh Karan	GR 115/2015 u/s 448/341/354(b)/294/323/506 IPC	03.09.15	JMFC, Purusottampur
13	Bhaskar Das	GR 75/2015 u/s 341/323/375/506/34 IPC	14.06.15	JMFC, Purusottampur
14	Dandapani Das	GR 303/2015 u/s 341/323/506 IPC	16.09.15	JMFC, Kodala
15	M. Juria	GR 133/2015 u/s 457/380/34 IPC	14.08.15	JMFC, Patrapur
16	K. Susanta	GR 133/2015 u/s 457/380/34 IPC	14.08.15	JMFC, Patrapur
17	M. Bijendra	GR 133/2015 u/s 457/380/34 IPC	14.08.15	JMFC, Patrapur
18	Laxmi Mallik	GR 06.2016 u/s 47(a)B&O Excise Act	16.01.16	JMFC, Patrapur

The matter may be brought to the notice of the Hon'ble District Judge.

2. Staff: A statement showing the sanctioned and actual staff strength of Berhampur Circle Jail is reproduced below;

Sl. No.	Name of the post	Sanction strength	In Position	Vacant
1	Senior Superintendent	01	01	--
2	Medical Officer	01	01	--
3	Psychiatric	01	A medicine specialist is now posted against the vacancy.	-
4	Jailor	01	01	--

5	Asst. Jailor	04	03	01
6	Sub Asst. Jailor	04	04	--
7	Junior Stenographer	01	--	01
8	Junior Accountant	01	--	01
9	School Teacher	01	01	--
10	Clerk-cum-Typist	01	01	--
11	Asst. Binding Foreman	01	01	--
12	Binder Grade-I	02	01	01
13	Smith Instructor	01	01	--
14	Task Master	01	01	--
15	Tailor Master	01	01	--
16	Pharmacist	01	01	--
17	Male Nursing Orderly	01	01	--
18	Ward Attendant	01	01	--
19	Driver	01	01	--
20	Peon	01	01	--
21	Chief Head Warder	01	--	01
22	Head Warder	05	05	--
23	Male Warder	74	68	06
24	Female Warder	06	06	--
25	Sweeper	08	03	05
26	Prison Welfare Officer (M)	01	01	--
27	Prison Welfare Officer (F)	01	--	01
28	Clerk-cum-Typist	02	02	--
29	Peon	02	02	--
Grand Total		126	109	17

The state government may take immediate action for filling up the vacant posts. There is also a case for augmentation of the sanctioned strength, particularly of the guarding and hospital staff.

3. Accommodation for the prisoners and the jail staff

In all, there are 28 wards for the accommodation of the prisoners. The capacities of these wards are as follows;

Name of the Ward	Scheduled capacity	Name of the Ward	Scheduled capacity
Ward No. 1	42	Ward No. 2	42
Ward No. 3	42	Ward No. 4	42
Ward No. 5	42	Ward No. 6	42
Ward No. 7	34	Ward No. 8	20
Ward No. 9	23	Ward No. 10	18
Ward No. 11	18	Ward No. 12	18
Ward No. 13	18	Ward No. 14	18

Ward No. 15	28	Ward No. 16	28
Ward No. 17	10	Ward No. 18	26
Ward No. 19 (Female Block)	20	Ward No. 20 (Female Block)	20
Ward No. 21	39	Ward No. 22	39
Ward No. 23	51	Ward No. 24	51
Ward No. 25 (Female Block)	12	Female Cell-1	01
Female Cell-2	01	Male Cell (front Cell & Back Cell)	20
Total capacity - 765 Male- 711 & Female - 54			

The superintendent could not provide the measurements of individual wards but claimed that the capacity of each ward has been calculated in the scale of 36 sq. ft. of floor area per prisoner, in conformity with the Odisha Jail Manual now in force. In the Model Prison Manual circulated by the BPR&D, it has been recommended that prisoners should be provided floor area and air space in the scale specified in the following table.

Sleeping Barracks			Cells			Hospitals	
Sq. mtrs of ground areas	Cu. mtrs of lateral ventilation	Sq. mtrs of air space	Sq. mtrs of ground areas	Sq. mtrs of air space	Cu. mtrs of lateral ventilation	Sq. mtrs of ground areas	Sq. mtrs of air space
3.71	15.83	1.12	8.92	33.98	2.23	5.58	23.75

The superintendent should get the wards measured and display the dimensions and capacity of each of the wards on the wall, close to the entry gates to the wards. The state government may consider providing additional floor and air space to the prisoners in furtherance of the above recommendations.

There are 75 quarters for the family accommodation of the guarding and other staff, besides 3 barracks for the guarding staff. The details of the family quarters, their present condition and status of occupation are explained in the following table;

Sl. No.	Specification of Quarters	Details of Quarters					Requirement
		Number	Habitable	Not Habitable	Allotted to Guarding Staff	Allotted to non-guarding staff	
1	D-Type	3	3	--	--	3	4 more D. Type quarters required.
2	E-Type	7	7	--	--	7	10 more. E. Type quarters required
3	F-Type	29	29	--	25	01	30 more. F-Type quarters required.
4	2R-Type	10	7	3	2	5	
5	1R-Type	24	10	14	10	--	--
6	L.S. Type	--	--	--	--	--	--
7	Barrack	3	3	--	3	--	--
8	3R-Type	2	2	--	--	2	--

14 1R quarters require renovation. A proposal for construction of attached septic latrines in 14 1R quarters and the repair of 3 2R quarters has been submitted to the Prisons Directorate on 24.11.2015. Prisons Directorate may process the proposal early.

The surroundings of the quarters were found to be very untidy. Plastic bags and household wastes were found littered all around the quarters, particularly in the open ground between the main jail building and the quarters. The Superintendent may get the area cleaned up with the assistance of the residents. Plantations in the land lying idle, may be taken up by the Superintendent with the assistance of the Forest Department.

There is a barrack outside the jail gate for the accommodation of OSAP (Odisha State Armed Police) constables deployed outside the perimeter walls for the security of the prison. They have not been issued with any cot. The kitchen in the barrack requires renovation. The contingent has not been provided with a cook and have to cook their food themselves. There is no covered bathrooms. The constables bathe on open platforms.

4. Sanitation

Against a sanctioned capacity for 743 prisoners, the prison has 110 day latrines and 51 cage latrines. There is acute water shortage in Berhampur Town in general and the jail premises in particular. The local Municipality supplies water only for two hours a day. This is supplemented by water from 4 wells and 5 deep bore wells. 2 bore wells are lying defunct. Water drawn from all these sources is still inadequate to meet the requirement of the inmates. There is no pipe water supply to the toilets. Prisoners take their bath on open platforms. A proposal for the construction of another clean water UGR of capacity one lakh litre and the sinking of 3 nos. of production wells is pending with the Prison Directorate

According to Orissa Jail Manual water used for drinking and culinary purposes shall be analyzed once every quarter and bacteriological examination shall be done when required. The examination is to be conducted by the officer-in-charge of the Bacteriological and Pathological Laboratory, Cuttack. No such test appears to have been conducted. The superintendent should ensure that samples are periodically sent for required examination and analysis.

Mosquito nets are provided only to those admitted in the hospital and to female prisoners. Some of the wards, including the medical ward have raised platform.

5. Food

The menu of food and beverages served to the prisoners is as follows;

1. Early morning tea
2. Tiffin (Suji upama or Chuda santula & Ghuguni)

3. Midday Meal (Rice, Dal, Curry or Fry)
4. Evening Meal (Rice, Chapati, Dal and Curry)
5. Night food (Biscuit 1 packet)
6. Protein Diet
 - i. Chicken curry in every Wednesday and Sunday
 - ii. Egg (2 nos. in last Sunday of the month)
 - iii. Paneer (every Thursday)

The state govt. has fixed the scale of ration to be issued per prisoner per day for providing the above menu. In a separate order, the state govt. has fixed a price ceiling within which the dietary items have to be procured.

This arrangement could work satisfactorily as long as food prices remain stable during the validity of the rate contract, which is rarely the case.

Earlier, the state government was issuing rice for the inmates at the APL rates i.e. Rs. 9.30 per kg. This facility has been withdrawn w.e.f. November 2015. The ceiling for Diet cost including LP gas, per prisoner per day has been fixed at Rs. 64/-. The Prison Directorate had earlier approved the purchase of dietary items for the year 2015-16 at Rs. 59.75 per prisoner per diem. The market rate of rice is Rs. 23/-..Each prisoner is entitled to 600 gm rice per day. This has shot up expenditure on diet per prisoner per day to Rs. 67.97/-. A proposal submitted to the Director of Prisons and Correctional Services for raising the ceiling has been summarily rejected. Meanwhile, the price of *dal* has gone up phenomenally during 2015. All this is likely to affect the quality and quantity of food supplied to the inmates.

The state government must take corrective measures and link the ceiling of expenditure per prisoner per day with the price index. It must be ensured that the scale & quality of dietary items is not affected by fluctuation of prices.

A statement listing the scale of dietary items and the approved price caps for procurement of the same in the year 2015-16, is enclosed at **Annexure 1** to this note.

6. Health Care

There is a 55 bedded Hospital in the Prison. On the date of my visit (24.01.2016), 21 patients were admitted for indoor treatment. The details of patients and their ailments are as follows.

Sl. No.	Name	Age	Convict /UTP	Disease	Date of Adm. Into Hospital	Date of last visit to MKCG & MCH	Remarks
1	Subash Ch. Raula	75 yrs	UTP	T2 DM, Hypertension, CKD	28.11.15	14.01.16	Necessary Investigation done and

2	Sitakanta Das (Chatrapur Sub Jail)	62 yrs	UTP	T2 DM, Ulcer foot	02.10.15	19.01.16	continuing treatment inside jail hospital as per advice of MKGC, MCH, Berhampur
3	Surendra Patra	65 yrs	UTP	T2 Dm, Hypertension	03.12.15	12.10.15	
4	Chakra Patra	70 yrs	UTP	Urinary Incontinence	19.01.16	20.01.16	
5	Santosh Maharana	50 yrs	Con.	Dementia with OCD	28.11.15	10.03.15	
6	Debi Prasad Behera	28 yrs	Con.	Psychosis	23.05.15	25.09.15	Treatment continuing inside jail hospital as per advice of Psychiatry Deppt. of MKGC MCH, Berhampur and medicine specialist deputed to the hospital against the sanctioned post of a psychiatrist.
7	Siba Naik	55 yrs	Con.	Psychosis	27.11.15	23.06.15	
8	Daka Maharana	40 yrs	Con.	Psychosis	28.11.15	15.06.15	
9	Santosh Rout (Bhanjanagar Sub Jail)	40 yrs	Con.	Psychosis	28.11.15	06.12.15	
10	M.Dilasu	30 yrs	UTP	Psychosis	28.10.15	22.12.15	
11	Sankar @ Gandu Behera	28 yrs	UTP	Psychosis	28.10.15	14.11.15	
12	Brundaban Nayak (Bhanjanagar Sub Jail)	35 yrs	UTP	Psychosis	20.11.15	26.12.15	
13	Rabindra Swamy	35 yrs	UTP	Psychosis	04.01.16	09.01.16	
14	Ramesh Choudhury	25 yrs	UTP	Psychosis	28.11.15	20.06.15	
15	Jatu Delly	40 yrs	UTP	Psychosis	18.01.16	23.01.16	
16	Rahashya @ Narottam Sahu	22 yrs	UTP	Psychosis	19.01.16	--	
17	Surendra Nayak (Raygada Sub Jail)	30 yrs	Con.	Psychosis	05.01.16	08.01.16	
18	Bairagi Nayak	35 yrs	UTP	Psychosis	24.01.16	23.01.16	
19	Mangulu Swain (From Digapahandi Sub Jail)	40 yrs	Con.	Pulmonary Tuberculosis (PTB)	25.10.15	28.10.15	They have become sputum negative after end of IP medicine. They now continuing RNTCP medicine.
20	Prafulla Mallick	30 yrs	UTP	Pulmonary to Tuberculosis (PTB)	02.10.15	12.12.15	
21	Dandapani Dash (Kodola Sub Jail)	40 yrs	UTP	Pulmonary to Tuberculosis (PTB)	17.09.15	06.12.15	

Of the 21 indoor patients, 13 are mentally ill. It is a pity that the post of Psychiatrist is lying vacant since 2001. In the whole year 2015, 21,426 patients were examined in the outdoor. In an average, 58 patients were examined in the outdoor in a day. During the same period, 181 prisoners were admitted for indoor treatment, 758 were referred to MKCG MCH Berhampur, of whom 44 were admitted in the MCH.

During 2016 (upto 25.01.2016), 1492 patients were examined in the outdoor, In an average, 59 patients were examined in the outdoor per day. During the same

period, 29 prisoners were admitted for indoor treatment, 43 were referred to MKCG MCH Berhampur of whom 02 were admitted in the MCH.

The hospital is severely understaffed. This is a 55 bedded hospital and according to the Model Prison Manual, this hospital is to be treated as an 'A' type hospital with the following sanctioned manpower;

Sl. No.	Officers	Required Manpower
1	Chief Medical Officer (in the rank of Civil Surgeon with postgraduate qualification)	1
2	Assistant Civil Surgeon	7
3	Staff Nurse	3
4	Pharmacist	4
5	Male/Female Nursing Assistant	6
6	Laboratory Technician (to be trained in handling all equipment including ECG, X-ray and portable X-ray machines)	3
7	Psychiatric Counselor	2
8	Junior Assistant	1

The hospital is running with only 2 MOs and one Pharmacist (who is a contractual employee). There is no arrangement in the hospital for rudimentary Pathological tests or X.ray.

It is disturbing to find that this circle jail has no arrangement for pre admission medical examination of prisoners. This is in gross violation of the provisions of Rule 455(a) of The Odisha Jail Manual 1942 and the guidelines issued by the Commission on the subject from time to time. Rule 455(a) of the Jail Manual reads as follows;

"All prisoners shall be seen immediately after admission by the medical subordinate, and if any is found sick or suffering from injuries, wound or other marks of violence, a note of his general condition, prominent symptoms, or in case of injury, the number, situation, size, character and nature of the injury, wounds or bruises shall at once be made in the admission register".

The Medical Officer of the jail hospital pleaded that the format prescribed for such examination speaks of Pathology tests/X-ray for TB/Blood test for Hepatitis/STD including HIV for which no facility is available in the jail hospital. In the circumstances, he is not able to conduct pre admission Medical examination of the prisoners. A copy of the Pro forma is enclosed at **Annexure - 2**, from which it would appear that besides pathological and radiological tests, it provides for physical examination, verification of the history of previous illness and systematic examination of Nervous system/Cardio Vascular system/Respiratory system/Eye, ENT/Abdomen (Gastro Intestinal system (GIT)/Teeth & Gum/Urinary system. There is no justification for dispensing with pre admission medical examination on the plea that test facilities are not

available. If the required facilities are not available in the prison the state govt. may arrange for these tests in the local MCH before admitting the prisoners to the Circle Jail.

The state government have sanctioned the construction of a new 30 bedded hospital at Circle Jail Berhampur under State Plan 2013-14. The Chief Engineer Odisha State Police Housing & Welfare Corporation has informed Addl. DG Prisons that the project could not be taken up due to 'non availability of adequate space inside the circle jail premises'.

He suggested that the hospital may be constructed on prison land, outside the perimeter wall of the circle jail. This would create problems related to security. Accordingly, it has been suggested that the perimeter walls may be extended to surround the new hospital with a walled corridor to join the hospital to the rest of the prison.

7. Custodial Deaths

Between 2011 and 2014, 11 prisoners have died in custody. The details of these cases are tabulated in a statement enclosed at **Annexure-3**. In most of the cases, the status of magisterial enquiry is not known. The Superintendent submitted that copies of magisterial enquiries are not being automatically provided to the jail administration. Even after repeated queries to the concerned authorities, they remain in the dark regarding the status of the enquiries.

From the statement mentioned above, it would appear that three of the 11 prisoners who died in custody, were below the age of 40 and 5 others were below the age of 45. Some of them like Rama Chandra Panda, Narahari Behera and Satrugna have died within a few months of their admission.

The Superintendent of the Jail submitted that patients from other jails in South Odisha Region are transferred to this jail for their treatment in the local medical college. Most of them were in terminal stage and died during their treatment. Five of these 11 cases are being dealt by the NHRC directly. Of these five cases, one has been closed. The remaining six cases have been endorsed to the OHRC. The status of these cases is not known.

8. Jail Industry

The following manufacturing units are functioning in the prison. In all 42 convicts are working in these units. The unit wise break up is reproduced below;

Sl. No.	Name of the unit	No. of prisoner engaged
1	Weaving unit	18
2	Tailoring unit	7
3	Smithy unit	8
5	Press unit	3
5	Garden unit	6
Total		42

The state govt. has approved the raising of a carpentry unit in the prison which is yet to come up.

Besides, 78 other prisoners are engaged in various works connected with the upkeep of the prison and the prisoners. Their break up is as follows;

Sl. No.	Name of the unit	No. of prisoner engaged
1	General Kitchen	18
2	Sweeping gang	5
3	Wall guard	8
4	Telephone duty	1
5	Barber gang	4
6	Grain cleaning	7
7	Night watchman	17
8	Medical attendant	2
9	Dhobi gang	1
10	Computer Attendant	1
11	Gate & Writer office	7
12	Spl. Road gang	6
13	School watchman	1
Total		78

Thus, in all 120 of the prisoners are engaged in some work/duty in the prison which leaves 57 prisoners sentenced to RI without any work. The Superintendent pleaded that even after lot of persuasions it has not been possible to take work from them. Prisoners are paid Rs. 40/- per day as wages/incentives. In some units, the wage payable is linked to the output of the unit.

Incentives to the laboring prisoners have been paid up to August 2015. Bills from September to December 2015 (amount to Rs. 8,27,012.00) are pending due to lack of fund. Rs. 3, 23,320 /-, is the projected expenditure for the months of January 2016 to March 2016. For the whole financial year 2015-16, Rs. 9,00,000.00 has so far been allotted. For clearing up all the dues for the year 2015-16, an additional allocation of Rs. 6,93,446.00 will be required. The state govt. may release the balance fund early.

Money payable to the prisoners is credited to their Accounts. The pass books remain in the custody of the Superintendent. I interacted with some of the laboring prisoners. They do not know their account balance. The Superintendent must publish the details of wages due and paid, to the prisoners once every month in the notice board. The Passbooks should be returned to the Account holders. The labouring prisoners should be paid wages/incentives @ minimum wage minus expenses incurred on their food and clothing.

9. Recreational Facility

Prisoners' wards are provided with Colour TVs on which Doordarshan programmes are displayed. TV installed in the Dining Hall has cable

connections. There is a demand for extending cable connections to individual wards which may be considered by the jail administration. Facilities for volley ball, carom, chess and ludo are available.

Festivals like Rath Yatra, Dussera, Rakhyabandhan, Sabitri Puja etc. are organized in the jail for the benefits of the inmates.

Yoga and Pranayam classes are organized with the assistance of Art of Living Organization. Meditational programmes are organized with the help of Prajapita Brahma Kumaris Iswariya Viswavidyalaya, Berhampur.

10. Premature Release

16 life convicts held in this jail have completed 14 years of imprisonment. Two of them have completed 20 years of imprisonment. Proposals submitted for their premature release are pending in the Prison Directorate. The State Sentence Review Board has not met for the last two years, notwithstanding the recommendation of the Commission that the State Sentence Review Board should meet at least once in a quarter. The state govt. should ensure that the Sentence Review Board takes up their cases early. Details of the prisoners are as follows;

Sl. No.	Name of the Convict	Sentence undergone including U.T. period		
		Year	Month	Days
1	Bijaya @ Biji Padhi	21	11	29
2	Ganga @ Gangadhar Das	20	01	11
3	Dillip Naik	18	08	17
4	Ijak @ Kalia Mallik	18	02	04
5	Kalu Naik	17	05	21
6	Narasingha Raita	14	01	20
7	Garuda @ Prasanta Karjee	17	02	13
8	Mukunda Naik	16	09	14
9	Radha @ Kartika Dalai	16	06	03
10	Raghava Naik	17	05	25
11	Rankanidhi Dakua	16	10	13
12	Krushna Chandra Sahu	18	01	06
13	Santosh Maharana	15	11	04
14	Bhramar Swain	16	03	08
15	Khadal Biswal	15	08	10
16	Krushna Naik	15	00	00

Five more proposals are pending with the local DMs and SPs for their opinion. Details are as follows;

Sl. No.	Name of the convict	Proposal pending with
01	Biswanath Sabar	Collector & DM, Ganjam, Chatrapur
02	Abhi @ Abhimanyu Naik	Do
03	Ranjit Kumar Patro	Superintendent of Police, Berhampur

04	Kanhu Charan Sahu	Do
05	Musa @ Abhi Pradhan	Superintendent of Police, Ganjam, Chatrapur

DM, Ganjam and the Superintendent of Police Ganjam and Berhampur may be directed to give their opinion early.

12. Appeals

60 appeal petitions are pending in the Hon'ble Odisha High Court. A list of these appeals is enclosed at **Annexure-4**. As would appear from the above list, 13 appeal petitions are pending for more than five years of which 09 petitions are pending for more than a decade.

Such inordinate delays in the disposal of appeals, amounts to denial of justice. It is also shocking to learn that the jail authorities are denying parole & furlough to prisoners on the ground that their appeal petitions are pending with the court.

13. Leave and Parole

One of the measure grievances of the prisoners relates to the denial of parole and furlough in time. The state government appears to be rather tight fisted in the matter of granting parole and furlough to the prisoner. So are the District officers who sit over leave applications for long durations and do not assign reasons for rejections. They also hold on to an erroneous view that during the pendency of appeals prisoners are not eligible to get leave.

I found that in many cases, convict prisoners have been denied parole and furlough without valid reasons and the existing parole and furlough rules have been wrongly interpreted to the detriment of the interest of prisoners. In spite of the clarifications issued by the Hon'ble Supreme Court (discussed in detail in paragraph 14) the jail administration stick to their position that NDPS convicts are not entitled to get any form of leave. For the information of the Hon'ble Commission, I am enclosing herewith a copy each of the following Rules.

i. Prisoners (Release on Furlough) Odisha Rules 1963, as amended from time to time (last amendment effected in November 2012 (**Annexure - 5**))

ii. Prisoners (Release on Parole) Odisha Rules 1983 (**Annexure - 6**)

Extracts from Prisoners (Release on Furlough) Odisha Rules 1963 are reproduced below.

i. A prisoner who is sentenced to imprisonment for a period exceeding one year but not exceeding five years, shall on completion of a period of one year of actual imprisonment from the date of admission into prison or six months from the date of his last return from furlough as the case may be, be eligible for release on furlough for a period of three weeks in a year. The first spell would consist of one week, while the subsequent spell would consist of two weeks.

ii. A prisoner who is sentenced to imprisonment for a period exceeding five years shall, on completion of a period of two years of actual imprisonment from the date of admission into prison or six months from the date of his last return from furlough as the case may be, be eligible for release on furlough for a period of five weeks in a year. The first spell would consist of two week, while the subsequent spell would consist of three weeks.

The Rules provides that the following types of prisoners can be refused furlough leave;

i. The prisoners involved in serious violence like assault, outbreak, riot, mutiny or escape and agitating fellow prisoners for indiscipline activities.

ii. Prisoners convicted for offences like murder & rape, robbery, dacoity, extortion, terrorism, kidnapping, smuggling including narcotic drug peddler or People of Foreign origin.

iii. Prisoners remaining for failure to give security for maintaining peace and good behavior.

iv. Prisoners having mental illness, if not certified by the Medical Officer to have recovered at least to the extent that his presence in the Society is not likely to be dangerous.

v. Prisoners whose work and conduct were not good during last one year.

vi. Prisoners convicted of an offence against any law relating to matters to which the executive power of the Union Government extends, unless approved by the Union Government.

vii. Prisoners whose release on furlough is likely to have repercussions elsewhere in the country.

Earlier, the ADG Prisons was granting furlough. From Form No. IV (Application by the convict to the Superintendent of Jail for release on furlough), circulated by the Prison Directorate on 06.12.2012 (copy enclosed at **Annexure-7**), it would appear that the ADG Prisons should still be competent to grant furlough. The jail officers informed that furlough applications are now being sent to the state govt. for sanction.

Extracts from Prisoners (Release on Parole) Odisha Rules 1983 are reproduced below;

The following categories of prisoners are eligible for release on Parole;

"i. A Prisoner, who is sentenced to more than one year but less than five years and has actually undergone one year's imprisonment.

ii. A prisoner, who is sentenced to more than five years and has actually undergone two years of imprisonment.

The following categories of prisoners shall not ordinarily be eligible for release on Parole;

- i. Those convicted of offences under Chapter VI. (Offence against the State) of the Indian Penal Code.
- ii. Dangerous and habitual criminals.
- iii. Such convicts whose presence is considered to be dangerous or prejudicial to public peace and tranquility."

There is a perception that prisoners cannot be granted parole or furlough during the pendency of appeals. This is based on a note issued by the Law Department, sometime in the year 1990, extracts from which as furnished by IG Prisons, are reproduced below;

"Law Department

The Hon'ble High Court in their judgment dated 02.01.1990 in criminal Appeal no. 116 of 85 at B.10-1/C have directed that when the Court of appeal is in session of the case, the executive should not interfere with granting parole. The prisoner applying for parole is to state whether any appeal is pending, if so in which Court.

Therefore when the appeal is pending the appellant/prisoner may pray the Court for release on bail on any valid ground so that he could be released temporarily on bail in exigencies like death, marriage etc.

Sd/-

(S.N. Sahoo)

L.R.-cum-Special_Secretary to Govt."

Home Department

The above position has changed following the issue of order no. 16 dated 15.07.2002 by Hon'ble Justice B. Panigrahi and Hon'ble Justice P.K. Mishra in CrL Appeal no. 137 of 1999 communicated by the superintendent of the High Court of Odisha, which are as under;

"In so far as grant of parole is concerned, it is the duty of the state government to exercise its discretion in allowing a convict to be released on parole or not. For grant of such parole no permission need to be taken from this Court. But however, if the convict is so advised, he can pray for an interim bail before this Court so that necessary orders can be passed."

The matter having been thus settled, there should be no hesitation in granting parole to convicts during the pendency of their Appeals. It appears that the state government have not taken note of the Appellate order, and are still insisting

that those whose appeals are pending in higher courts are not eligible to get parole.

At present, 5 Parole applications and 21 Furlough applications are pending with the district administration for their opinion. Details are follows;

Parole Leave

Sl. No.	Name of the Convict	With whom pending
01	Rajanikanta Panda	Superintendent of Police, Berhampur
02	Raghaba Naik	Do
03	Dillip Naik	Do
04	Ijak @ Kalia Mallik	Superintendent of Police, Gajapati
05	Garuda @ Prasanta Karjee	Do

Furlough Leave

Sl. No.	Name of the Convict	With whom pending
01	U. Sarathi	Prisons Directorate, Odisha, Bhubaneswar
02	Biswanath Mallik	Do
03	Sarata Nahak	Do
04	Kailash Jani	Do
05	P. Kameya	Superintendent of Police, Berhampur
06	P. Nokeya	Do
07	P. Sunil Achary	Do
08	U. Papeya	Do
09	P. Ganapati	Do
10	Sisira Panigrahi	Do
11	Siba Parida	Do
12	Sachidananda Gouda	Do
13	Chandramani Naik	Do
14	Bhaskar Swain	Superintendent of Police, Ganjam, Chatrapur
15	Musa @ Abhi Pradhan	Do
16	Bisu Das	Do
17	Basanta Pradhan	Do
18	Prafulla Naik	Collector & DM, Ganjam, Chatrapur
19	Khadal Biswa	Do
20	Radha @ Kartika Dalai	Superintendent of Police, Gajapati
21	Narasingha Ratia	Do

The officers with whom the applications are pending should be asked to dispose of these cases with reasoned orders/ recommendations without further delay.

14. Grievances of the Prisoners

i. UTP Pratap Padhy s/o Kasinath Padhy

Vill- Bijipur, PS- Berhampur Town

Dist- Ganjam

In a written petition, a copy of which is enclosed at **Annexure 8(i)**, the prisoner pleaded that he has been falsely implicated in a murder case registered at Berhampur Town Police Station over the murder of his wife, on his own complaint. The incident took place on 21.08.2014. He was arrested on 18.10.2014 and kept under detention in the local police station till 07.11.2014 when he was remanded to judicial custody. During his unauthorized detention, he was mercilessly tortured at the police station. The Superintendent of Police himself caned him 100 times. The petitioner suspects that one Lili Sahoo is connected with the murder and demands that both he and Lili Sahoo be subjected to polygraph test.

On behalf of the prisoner, his younger brother Prabodh Kumar Padhy had made a representation to the NHRC for intervention. The Commission took cognizance of the matter and had sought a response from the state government. In response the Superintendent of Police, Berhampur submitted a report. This has a reference to the Commission's case No. 4498/18/5/2014/OC dated 19.11.2014. A copy of the enquiry report from the Superintendent of Police is enclosed at **Annexure-8(i).A**.

I went through the petition from Prabodh Kumar Padhy addressed to the Commission and the report of the Superintendent of Police quoted above. While the facts of the case will be verified in course of trial, it is apparent that the SP has chosen to be economical with the truth in regard to the alleged unauthorized detention and torture of Pratap Padhy in the Town PS from 18.10.2014 till 06.11.2014.

In his report, the Superintendent of Police has stated that "During investigation Sri Pratap Padhy was called to police station for interrogation and after interrogation he was let off. While he was at police station for the purpose of interrogation the family members freely met Sri Pratap Padhy and also supplied food". He has not clarified when and for what duration Pratap Padhy was called to the police station for his interrogation prior to his formal arrest on 06.11.2014.

ii. Isac @ Kalia Mallik s/o Hunasa Mallik

Vill- Dengapuchi, PS- Adaba, Dist-Gajapati

He has been sentenced to life imprisonment for murder in SC case no. 16/1998 u/s 302/307 IPC. He has already served 19 years in the prison. Request for premature release. As has already been stated above, a proposal for his release is pending with the Addl. DG Prisons. The Addl. DG may ensure that the proposal is put up to the State Sentence Review Board early. A copy of his written petition is enclosed at **Annexure 8(ii)**.

iii. Bijay @ Biji Padhy s/o Late Dandapani Padhy

Vill- Kodala, Dist-Ganjam

He has been sentenced to life imprisonment for murder in SC case no. 40/1993 u/s 302/307/324/34 IPC. He has spent 23 years in prison. He had moved the Hon'ble High Court for his premature release (Ref. CRL M.P No. 1509 of 2015).

On 13.01.2016, the Hon'ble Court has ruled that the petitioner be permitted to file a fresh application for his release and that the state government should take a decision in the matter within one month from the date of receipt of the said application. The Court had further ordered that the prisoner be released on one month's parole. The prisoner prays for the implementation of the Court's orders. The state government may start implementing the orders of the Hon'ble Court with the release of the prisoner on parole. A copy of his written petition is enclosed at **Annexure 8(iii)**.

iv. Siba Parida s/o Late Gopal Parida

PS- Berhampur Town, Dist-Ganjam

His application for Furlough was referred to the local police for their opinion which is still pending. Requests for expediting the opinion. The Superintendent of the Circle Jail may request SP Berhampur accordingly. His case has already been discussed at paragraph 13 of the report. A copy of his written petition is enclosed at **Annexure 8(iv)**.

v. Hadibandhu Dora s/o B. Dayanidhi Dora

Vill- T. Ranigaon, PS-Purusottampur, Dist- Ganjam

He was working under IRE Ltd. since 1985. His services were regularized w.e.f 01.03.1994. On 31.05.2011, he was arrested in ST case no. 242/13 u/s 302 IPC. He claims to have been falsely implicated in the case. Following his arrest, he was placed under suspension w.e.f. 02.06.2011. He has not received any subsistence allowance during the period of suspension. He was sentenced to life imprisonment on 22.06.2015. Prays for subsistence allowance for the period from 02.06.2011 to 22.06.2015. The Welfare Officer may take up his grievances with IRE Ltd. A copy of his written petition is enclosed at **Annexure 8(v)**.

vi. Bisu Das s/o Akrura Das

He has spent 13 years 11 months in prison. In the year 2004, he had appealed to the Hon'ble High Court against his conviction (CrL A 251/2004). The appeal is

still pending disposal. He is about to complete 14 years imprisonment. Prays for premature release. The Superintendent may initiate a proposal for his premature release if he is otherwise eligible. He should also contact the Registrar Hon'ble High Court requesting him for early disposal of the Appeal. A copy of his written petition is enclosed at **Annexure 8(vi)**.

vii. Sankar Raula s/o Kasinath Raula

Vill- Chandipadar, PS-Berhapur Sadar

Dist-Ganjam

On 31.03.2007, he was sentenced to life imprisonment for murder in SC case no. 288/05 u/s 302 IPC. Prays for 14 days Furlough to visit his sick mother. His prayers should be disposed of on merits. A copy of his written petition is enclosed at **Annexure 8(vii)**.

viii. Sridhara Behera

He and his son Pitamber Behera are detained in this jail since 26.04.2013 in ST case no. 311/13 u/s 302/34 IPC. Pray for expeditious trial. Superintendent may bring his grievances to the notice of the court. A copy of his written petition is enclosed at **Annexure 8(viii)**.

ix. Ramesh Chandra Choudhury

He is detained in this jail since 12.08.2014 for his alleged involvement in ST case no. 21/15 u/s 455/36/506 IPC. He claims to have been falsely implicated by the police. Requests for fair investigation and trial. His petition may be forwarded to the concerned Superintendent of Police for ensuring proper supervision of the case. A copy of his written petition is enclosed at **Annexure 8(ix)**.

x. Artabandhu Sahu and Ramakanta Maharana

Vill- Narendrapur, PS-Chamakhandi

Dist-Ganjam,

They are detained in this jail since 24.09.2015 in GR case no. 976/15 u/s 395 IPC. They claim to have been falsely implicated by the Railway police. Prays for fair investigation. Their petition may be forwarded to the concerned Superintendent of Police for ensuring proper supervision of the case. A copy of their written petition is enclosed at **Annexure 8(x)**.

xi. Prakash Chandra Muduli s/o Dama Muduli

Vill- Rajapur, PS-Chatrapur

Dist-Ganjam

He is detained in this jail as an UTP since 03.07.2012 in ST case no. 255/2013 u/s 366/376(2)/307/34 IPC. Prays for bail/expeditious trial. His prayer for

expeditious trial may be brought to the notice of the court. A copy of his written petition is enclosed at **Annexure 8(xi)**.

xii. Ramesh Gouda, Ratnakar Swain and 26 others

They have all been sentenced to imprisonment for various terms and fine for offences under the NDPS Act. They are working as convict watchmen/prisoners panchayat council members etc and are getting daily wages @ Rs. 40/-. But unlike other convicts they are not being granted remission, parole and furlough. The cause for the refusal of their prayers of remission, parole and furlough emanates from Section 32A of the NDPS Act, which expressly forbids the grant of remission, suspension and commutation of sentences to prisoners convicted under the Act.

Section 32A of the NDPS Act 1985 reads as under;

"32A- No suspension, remission or commutation in any sentence awarded under this Act.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted".

Section 27 of the Act is also reproduced below;

"Punishment for illegal possession in small quantity for personal consumption of any narcotic drug or psychotropic substance or consumption of such drug or substance.

Any person who contravenes any provision of this Act, or any rule or order made or permit issued there under, possesses in a small quantity, any narcotic drug or psychotropic substance, which is proved to have been intended for his personal consumption and not for sale or distribution, or consumes any narcotic drug or psychotropic substance, shall, notwithstanding anything contained in this Chapter, be punishable:

- where the narcotic drug or psychotropic substance possessed or consumed is cocaine, morphine, diacetyl-morphine or any other narcotic drug or any psychotropic substance as may be specified in this behalf by the Central Government, by notification in the Official Gazette, with imprisonment for a term which may extend to one year or with fine or with both; and*
- where the narcotic drug or psychotropic substance possessed or consumed is other than those specified in or under the previous point, with imprisonment for a term which may extend to six months or with fine or with both.*

For the purposes of this section "small quantity" means such quantity as may be specified by the Central Government by notification in the Official Gazette. If a person is found to be in possession of a small quantity of a narcotic drug or psychotropic substance, the burden of proving that it was intended for the personal consumption of such person and not for sale or distribution, shall lie on such person".

The petitioners however claim that the Hon'ble Supreme Court in their judgment in Writ Petition CRL 169/1999 and 243/1999 have ruled that convicts sentence under NDPS Act are at liberty to apply for parole and that section 32A of the NDPS Act should not be a barrier. In support of their claim, they have enclosed a copy of the said orders. Relevant extracts of the order is reproduced below for ready reference;

"Under the circumstances the writ petitions are disposed of by holding that (1) Section 32A does not in any way affect the powers of the authorities to grant parole, (2) It is unconstitutional to the extent it takes away the right of the court to suspend the sentence of a convict under the Act, (3) Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act as dealt with this judgment".

There is no vice of unconstitutionality in S.32-A insofar as it takes away the powers of the Executive conferred upon it under Ss.432 and 433 of the Code, to suspend, remit or commute the sentence of a convict under the Act.

S.32-A, insofar as it completely debars the appellate Courts from the power to suspend the sentence awarded to convict under the Act cannot stand the test of constitutionality. Thus, S.32-A insofar as it ousts the jurisdiction of the Court to suspend the sentence awarded to a convict under the Act is unconstitutional.

Parole did not amount to the suspension, remission or commutation of sentences which could be withheld under the garb of S.32-A of the Act. Notwithstanding the provisions of the offending S.32-A, a convict is entitled to parole, subject, however, to the conditions governing the grant of it under the statute, if any, or the Jail Manual or the Government Instructions.'

Their prayer for parole should be considered in the light of the above orders/observations of the Hon'ble Supreme Court. A copy of their written petition is enclosed at **Annexure 8(xii)**.

xiii. Smt. Patta Khandual w/o Mochiram Khandual

Vill- Pakidi, PS-Aska, Dist-Ganjam

She was sentenced to 10 years RI on 25.07.2013 in ST case no. 15/13 u/s 498(A)/304(B)/34 IPC and 4 DP Act. She has already spent five years in custody. Pleads to be innocent. She is unable to stand erect and has lost her sight. She has appealed against the judgment in the Hon'ble High Court in 2013. It is becoming impossible for her to withstand the rigorous of prison life. Prays for premature release. She was placed before the Medical Board on 01.01.2015. Findings of the Board is as follows;

"As per the records, the patient is suffering from postmenopausal osteoporosis, kyphosis & bilateral immature cataract".

The Superintendent of the Circle Jail in forwarding her prayer to the Hon'ble Chief Justice for bail, wrote to the Registrar (Judicial) Hon'ble High Court of Odisha on 01.12.2014, informing him about the state of health of the prisoner as follows;

"Now the old female convict has prayed in her petition for her release on bail considering her old age and incapacitatedness to do her daily routine work inside the jail. In this regard, the Jail Medical Officer of this jail was requested to furnish his report on the Health ground of old female convict. As per the report of jail medical officer the female convict Smt. Patta Khandual is suffering from Geriatric problems and unable to walk properly as well as suffering from chronic low back ache with chronic depression and other general ailments from time to time".

The matter may be followed up with the Registrar. Prima facie, this appears to be a fit case for grant of bail to the convict during the pendency of the Appeal petition. A copy of her written petition is enclosed at **Annexure 8(xiii)**.

xiv. Gouri Shankar Pradhan s/o Kailash Chandra Pradhan

Vill- Chadheiguda, PS-Bariniput, Dist-Koraput

He was sentenced to RI for 11 years and fine Rs. one lakh on 27.11.2013 in GR case no. 4/10(N) u/s 20(b)(ii)(cc) NDPS Act. He has been detained in the circle jail since 22.09.2010. His father has expired. His widow mother and two minor children are living in misery. Requests for parole. As has already been discussed, section 32 A of the NDPS Act does not bar the grant of parole. A copy of his written petition is enclosed at **Annexure 8(xiv)**.

xv. Purna Chandra Panigrahi s/o Late Anand Panigrahi

Vill- Jaypur, PS-Jaypur Town, Dist- Koraput

He too has been sentenced for offences under the NDPS Act registered in the above case. Following his detention in prison his father expired. His mother suffered a paralytic stroke. His home is 400 kms from the circle jail. His family members are finding it difficult to meet him. Unlike, prisoners sentenced for other offences, NDPS convicts are not getting remission and parole. He has submitted in his petition that the Hon'ble Supreme Court has ruled that Section 32A of the NDPS Act does not forbid the authorities from granting parole/furlough to the prisoners convicted under the Act. Prays for one month parole. His prayer should be considered on merit. A copy of his written petition is enclosed at **Annexure 8(xv)**.

xvi. Matia @ Handia @ Susanta Das s/o Ranka Das

Vill- Nimapalli, PS-Chatrapur, Dist-Ganjam

He has been detained in this jail since 16.09.2014 for his alleged complicity in a murder in ST case no. 160/2014 u/s 302/201 IPC. Due to their poor socio economic status his family members are not in a position to fight for his bail.

Requests for bail. The Welfare Officer of the prison may help him in getting Legal Aid from the government. A copy of his written petition is enclosed at **Annexure 8(xvi)**.

xvii. Khadal Biswal s/o Late Mochiram Biswal

Vill- Sialia, PS-Kabisuryanagar, Dist- Ganjam

He was sentenced to life imprisonment on 07.09.2004 in SC case no. 06/2001 u/s 302/34 IPC. He has already spent 17 years in prison. Prays for premature release. His case has already been forwarded to the Prison Directorate with favourable recommendations. A copy of his written petition is enclosed at **Annexure 8(xvii)**.

xviii. Sitakanta Das s/o Late Sridhara Das

He is detained in the circle jail as an UTP for his alleged involvement in GR case no. 206/2008 u/s 328/380/302/109 IPC. He claims to be 82 years old and suffering from Diabetes. He also claims that in accordance with the paragraphs 3.4 & 3.5 of the Commission's Proceedings dated 20th October 1999 in case no. 233/10/97-98 he is entitled to be released as he has completed 5 years in prison and is above 65 years of age. As has been explained in course of this note, this perception is incorrect. The Superintendent may take up his case for bail with the learned district judge. A copy of his written petition is enclosed at **Annexure 8(xviii)**.

xix. Bipin Bihari Behera s/o Kesab Behera

Vill- Ratanpur, PS-Banapur, Dist-Khurda

He is detained in this prison as an UTP since 15.09.2015 in GR case no. 661/15 u/s 395/412/414 IPC. Pleads that he has been falsely implicated in the case. An unknown person had sold a mobile to him for Rs. 500/-. The mobile appears to be part of the stolen property in a dacoity case. His case may be referred to the concerned Superintendent of Police for ensuring proper supervision of the case. A copy of his written petition is enclosed at **Annexure 8(xix)**.

xx. Gandu Behera @ Sankar s/o Late Nath Behera

Vill- Keutasahi, PS-Hinjilikatu, Dist-Ganjam

He is detained in this jail w.e.f. 22.03.2015 in connection with his involvement in ST case no. 69/15 u/s 341/326/307 IPC. His trial is pending in the court of Assistant Sessions Judge, Chatrapur without any progress. Prays for expeditious trial. The Superintendent may refer his grievances to the Learned Court. A copy of his written petition is enclosed at **Annexure 8(xx)**.

xxi. Murali Chandra Sahu s/o Late Gandu Sahu

Vill- Sanasorada, PS-Sorada, Dist-Ganjam

He is detained in this jail since 13.11.2015 as an UTP in GR case no. 158/2009 u/s 279/337/338/304(A) IPC. The offences for which he has been arrested are all bailable. He has been granted bail but is unable to provide sureties.

The Prison Welfare Officer may help him in filing a prayer before the Hon'ble Court for releasing him under the provision of section 436 A of the CrPC, that is on signing a personal bond. A copy of his written petition is enclosed at **Annexure 8(xxi)**.

xxii. Satrugna Dalei and Manoj Kumar Swain

They are detained in this prison since 26.04.2012, pending trial of case no. 15/12 u/s 20(b) NDPS Act. The trial is making little progress due to the non appearance of witnesses. The PWO may verify which of the witness are not appearing and write to the concerned authorities about it. A copy of his written petition is enclosed at **Annexure 8(xxii)**.

xxiii. Binu Kumar s/o Kumaran

Vill- Kanjikuri, PS-Kanjikuri

Dist- Iduki, Kerala

He has been arrested for his involvement in GR case no. 02/2012 u/s 20(b)(I) C/29 NDPS Act and detained in this jail for the last 11 months. Prays for his transfer to any jail in Kerala, his home state. This may not be possible at this stage as he will require to be produced in the local court for trial. His prayer may be brought to the notice of the Learned Court. A copy of his written petition is enclosed at **Annexure 8(xiii)**.

xxiv. Basanta Naik s/o Late Sitapati Naik

Vill- Gangapur, PS-Gangapur

Dist-Ganjam

He has been detained in this jail as an UTP since 08.06.2009 for his involvement in ST case no. 21/13 u/s 147/148/302/326/294/149 IPC. Prays for speedy trial. His prayer may be brought to the notice of the learned court. A copy of his written petition is enclosed at **Annexure 8(xxiv)**.

xxv. Pradeep Panda & Raghunath Sahoo

They are detained in this prison since 04.06.2012 for their involvement in case no. 20/12 u/s 20(b)(ii)(c) NDPS Act. Their trial is dragging on due to the non appearance of witnesses. Requests for speedy trial. Earlier on 06.05.2015, they had applied to the Hon'ble Trial Court with similar request. With their written petition they have enclosed a news clipping dated 23.12.2014 from which it would appear that the Hon'ble Court had issued 'show cause notice' to ASIs of the Excise Department for not showing up in the court. The PWO will verify the

present status of trial. A copy of their written petition is enclosed at **Annexure 8(xxv)**.

xxvi. Biju Isac s/o K.J. Isac, Biju Augustin s/o Augustin and Saijo Saiman s/o Saiman all are village Rajkad, Kerala

They have been sentenced under 20(b)(ii)c NDPS Act to 12 years RI with fine. They have spent 11 months in the circle jail. They come from Kerala. Request for their transfer to a Kerala jail. Their prayer for jail transfer may be sympathetically considered by ADG Prison in consultation with his counterpart in Kerala. A copy of their written petition is enclosed at **Annexure 8(xxvi)**.

xxvii. Bijay Padhy s/o Khetrabasi Padhy

Vill- Kespursasan, PS-Gangapur, Dist-Ganjam

He has been detained in this jail since 16.01.2014 in connection with his alleged involvement in ST case no. 80/14 u/s 302/120(B)/114/34 IPC. Claims to have been falsely implicated in the case. Prays for speedy trial. His prayer may be forwarded to the learned court. A copy of his written petition is enclosed at **Annexure 8(xxvii)**.

xxviii. Sunil Behera s/o Duryodhan Behera

Rabindra Sethi s/o Krushna Sethi

Sunil Mishra s/o Siba Mishra

Susanta Kumar Sahu s/o Bijay Kumar Sahu

Madhusudan Naik s/o Ghanasyam Naik

Toofan Das s/o Dandapani Das

They are detained in this prison as UTPs since 13.12.2015 in GR case no. 1379/15 u/s 399/407 IPC rw 25(1-B) of Arms Act. From the text of their petition, it seems that they have criminal antecedents and had earlier assured the police administration that they will not commit any crime in future and would like to be join the main stream.

Even so, the police arrested them in cooked up cases. They prayed that the Superintendent of Police Berhampur may be advised for giving them an opportunity to integrate themselves in the main stream. Their prayer may be sent to the concerned Superintendent of Police. A copy of their written petition is enclosed at **Annexure 8(xxviii)**.

xxix. Tabara Mohammed s/o Late Sarif Mohammed

Vill- Kabisuryanagar, Dist- Ganjam

He is detained in this prison as an UTP w.e.f. 20.09.2014 for his involvement in GR case no. 150/14 u/s 341/342/363/376/506 IPC. He was arrested by the police on 18.09.2014 and tortured for two days before being produced in the

court. As a result of the assault, he sustained fracture on his right thumb and injured his left leg. They threatened him that in case he informs the court regarding his torture, they will ensure that he is sentenced to life imprisonment.

He further claimed that he has been falsely implicated in the case. Pray for fair investigation and speedy trial. He also requests for his transfer to Chatrapur jail. The allegations of wrongful confinement and torture may be forwarded to the Superintendent of Police for verification. A copy of his written petition is enclosed at **Annexure 8(xix)**.

xxk. Subash Chandra Raula s/o Late Lingaraj Raula

Vill- Bikrampur, PS-Khalikote, Dist-Ganjam

He is detained in the circle jail since 27.09.2013 for his alleged complicity in GR case no. 418/2011(B) u/s 147/148/120(B)/109/302/149 IPC. He is suffering from high blood pressure and diabetes. Thrice in the past he has availed interim bail. Claims to have been falsely implicated. He further pleads that Dy. SP Chatrapur who had supervised the case has reported that he was not present at the PO. Even so the police submitted charge sheet against him. Prays for bail. With his application he has submitted a Disability Certificate from which it would appear that he is 71 years of age and suffering from permanent visual disability. His grievances may be forwarded to the Superintendent of Police for verification. A copy of his written petition is enclosed at **Annexure 8(xxk)**.

xxxi. Rajanikant Panda s/o Late Dasarathi Panda

PS-Berhampur, Ganjam

He has been sentenced to life imprisonment in SC case no. 253/01 u/s 302/498(A) IPC. He has already spent 13 years of prison term. Every time he applies for parole/furlough, his application is forwarded to the local police for their views/opinion. The police do not submit their opinion in time. This results in his inability to visit his family at their time of need. Prays for quick disposal of application for parole/furlough. This problem has already been discussed. The Superintendent of the Circle Jail should take up the matter with the Superintendent of Police. A copy of his written petition is enclosed at **Annexure 8(xxxi)**

xxxii. Anthony Majhi s/o Palchipanchu Majhi

PS-Adaba, Dist- Gajapati

He has been sentenced to 15 years RI for his complicity in GR case no. 2/12 u/s 20(b)(ii) c/29 NDPS Act. Claims to have been falsely implicated. He has appealed against the order (CrIA 494/2014). Prays for speedy hearing of his appeal petition. The Superintendent should periodically (at least once in a quarter) take up such cases with the Registrar of the High Court. A copy of his written petition is enclosed at **Annexure 8(xxxii)**.

xxxiii. Sajan Thomas s/o Thomas Mathew

Vill- Nellimattan, Dist-Eranakulam, Kerala

He has been sentenced to 15 years RI for his complicity in GR case no. 2/12 u/s 20(b)(ii) c/29 NDPS Act. Claims to be innocent. Pleads that he was picked up by the police from his house. Nothing incriminating was seized from him. He further claims that the IO Binaya Prakash Minz has admitted in the court that he has been erroneously implicated in the case. Requests for reinvestigation of the case. His prayer may be forwarded to the Superintendent of Police for disposal. A copy of his written petition is enclosed at **Annexure 8(xxxiii)**.

xxxiv. P. Sunil Achary s/o P. Appal Raju Achary

PS- Badabazar, Dist- Ganjam

He has been sentenced to life imprisonment in ST case no. 373/10 u/s 302/34 IPC. He had applied for parole almost a year back. His application was referred to the local police for opinion which is still pending. Prays for early disposal of his leave application. Superintend may take up his case with the Superintendent of Police. A copy of his written petition is enclosed at **Annexure 8(xxxiv)**.

xxxv. Narasingha Raita s/o Sambharu Raita

Vill- Jhalarsing, PS-Ramgiri, Dist- Gajapati

He was sentenced on 13.05.1999 in SC case no. 86/98 u/s 302/34 IPC. He has already spent 18 years in the prison. Prays for premature release. His case has already been forwarded to the Prison Directorate. The state govt. may ensure that the State Sentence Review Board meets at the earliest and takes up his case. A copy of his written petition is enclosed at **Annexure 8(xxxv)**.

xxxvi. Simanchal Naik s/o Russia Naik

PS- Purusottampur, Dist-Ganjam

He was sentenced to RI for life in SC case no. 17/1992 u/s 302/34 IPC. He has already spent 14 years in prison. Prays for Furlough. Prima facie he appears to be eligible for furlough. The Superintendent should consider his case favourably. A copy of his written petition is enclosed at **Annexure 8(xxxvi)**.

xxxvii. Ganga @ Gangadhar Das s/o Late Chaudhury Das

Vill- Balajipalli, PS- Berhampur Sadar

Dist- Ganjam

He has spent long 20 years in prison. Back home, his 80 years old mother is facing considerable difficulty. Prays for premature release. His case has also been forwarded to the Prison Directorate. The state govt. may ensure that the Sentence Review Board meet early and takes a decision on his application. A copy of his written petition is enclosed at **Annexure 8(xxxvii)**.

xxxviii. Bharat Chandra Pradhan s/o Sudarshan Pradhan

Vill- Bariniput, Dist- Koraput

He is detained in this prison since 22.09.2010 in GR case no. 4/10(N) u/s 20(b)(ii) cc NDPS Act. Back home, his old parents are suffering from various ailments. His native place is 400 kms from Berhampur for which his parent are unable to visit him. Prays for parole for arranging the treatment of his parent. He too pleads that the Hon'ble Supreme Court has ruled that Section 32A of the NDPS Act should be no bar for the grant of parole. He should be granted parole if otherwise eligible. A copy of his written petition is enclosed at **Annexure 8(xxxviii)**.

xxix. Krushna Naik s/o Bascha Naik

Vill- Kesariapatna, PS-Soroda, Dist-Ganjam

He was sentenced to RI for life in SC case no. 238/2001 u/s 302 IPC. He has already spent 15 years in the prison. Back home, his 65 year old mother is bedridden. Prays for Furlough leave to arrange for the treatment of his mother. His case has also been forwarded to the Prison Directorate for premature release. The state govt. may ensure that the Sentence Review Board meets early and take a view on all such pending proposals for premature release. Pending disposal of his prayer for premature release, he may be granted furlough leave if otherwise suitable. A copy of his written petition is enclosed at **Annexure 8(xxxix)**.

xl. Ramesh Gouda s/o Late Sava Gouda

PS- Jaypur, Dist - Koraput

He has been sentenced to 11 years RI in GR case no. 04/2010(N) u/s 20(b)(ii)(c) NDPS Act. He has already spent more than 5 years in prison. Prior to his arrest, he had fractured his left arm and underwent a surgery. A steel rod was fixed to bolster his bones. Stitches were opened after 7 months that is on 05.08.2008. He was advised by the doctor that the steel rod should be removed after one/two years. Since his admission in the jail he has been requesting the jail doctor to send him to MKCG MCH or any other hospital outside the prison for removal of the rod. The Superintendent of the Jail hospital Sri Rajendra Sahoo had demanded Rs. 2000/- from him as bribe. He had paid Rs. 1000/- to the doctor. When the doctor did not refer him to outside hospital he brought back the amount from him. Ever since he brought back the bribe money the doctor is harassing him in various ways like referring him to outside hospital, only during public holidays (like cart festival & Dusshera). At the outside hospitals, he is being provided primary treatment and advised to come again after the holidays.

Despite repeated request, the jail authorities have not arranged for his treatment. The steel rod continues to be inside his hand causing pain. Prays for proper/early treatment. DIG Berhampur Range may hold an enquiry to verify the

allegation besides ensuring his treatment. A copy of his written petition is enclosed at **Annexure 8(xl)**.

xli. Manoj Kumar Panigrahi s/o Late Purnachandra Panigrahi

PS- Digapahandi, Dist- Ganjam

He has been sentenced under the NDPS Act. Prays for remission, furlough and parole much like prisoners sentenced for other offences. He also pleads that the Supreme Court have already ruled that Section 32A of the NDPS Act would not be a barrier to the grant of parole to prisoners sentenced under the NDPS Act. His prayer can be reexamined in the light of the Supreme Court rulings already discussed in course of this note. A copy of his written petition is enclosed at **Annexure 8(xli)**.

xlii. Uday Shankar Padhy s/o Upendra Padhy

Vill- Gosani Nuagaon, Dist- Ganjam

On 23.07.1999, he was sentenced to RI for life in SC case no. 19/2000 u/s 302/323/34 IPC. He has served 17 years in prison. Since September 2012 he had been staying in the open jail. He along with some other prisoners had gone on hunger strike demanding leave. After their hunger strike, the jail administration started granting them leave as per rules. He too was granted Furlough leave. After availing the leave he returned to the open jail on 09.01.2016. But right from the jail gate he was sent to Special Jail Bhubaneswar. He suspects that he was transferred for participating in the hunger strike. Prays for transfer to the open jail. His prayer may be forwarded to the Addl. DG Prisons for disposal. A copy of his written petition is enclosed at **Annexure 8(xlii)**.

xliii. Sabyasachi Panda s/o Late Ramesh Chandra Panda

Vill- Mayurjhalia, PS- Ranpur

Dist- Nayagarh

In a written petition, he submitted that;

- i. Ever since his arrest he has been kept in solitary/separate confinement without any order from any court to that effect. He further pleaded that solitary confinement, besides violating the rights guaranteed under article 21 & 24 of the constitution, is repugnant to the provisions laid down in the Odisha Jail Manual and the Indian Prison Act.
- ii. Food served to the prisoners is unhygienic.
- iii. The jail doctors are not visiting the solitary ward wherein he has been confined.
- iv. Though he has been confined in judicial custody since 18.07.2014, he has not been informed in which particular cases he has been arrested, despite

* applications under the RTI Act submitted to the appropriate authority. This, he pleaded, will delay his trial.

v. While on way to various courts for appearance he is being escorted by the police. No one from the jail administration is accompanying him. The police men on escort duty are not only misbehaving with him but at times threatening to kill him. On many occasions, on the plea of law & order problem, he is not being produced in the court on the dates fixed for his appearance. He had submitted petitions in this regard on various occasions in the past to the Hon'ble SDJM and the OHRC who have taken cognizance in some cases.

vi. The prison welfare fund is not being properly utilized.

vii. The inmates in this jail have no access to Star TV channel whereas the inmates of other prison in the state have access to the same.

A copy of the petition is enclosed at **Annexure-8(xliii)** to this report.

It is true that the Supreme Court has ruled that solitary confinement amounts to denial of the Right to Freedom. The Hon'ble Court have also clarified that "section 73 and 74 of the IPC leave no room for doubt that solitary confinement is by itself a substantive punishment which can be imposed by a court of law. **It cannot be left to the whim and caprice of the prison authority'**

Extracts from the Code are reproduced below.

"73. Solitary confinement — Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year; a time not exceeding three months if the term of imprisonment shall exceed one year.

74. Limit of solitary confinement — In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods".

The Superintendent claimed that the petitioner had moved the court against his solitary confinement and that the court has rejected his plea.

"29. Solitary confinement.— No cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate."

30. Prisoners under sentence of death.— (1) Every prisoner under sentence of death shall, immediately on his arrival in the prison after sentence, be searched by, or by order of, the Jailer and all articles shall be taken from him which the Jailer deems it dangerous or inexpedient to leave in his possession.

(2) Every such prisoner shall be confined in a cell apart from all other prisoners, and shall be placed, by day and by night, under the charge of a guard.

The petitioner is an UTP. Solitary Confinement being a substantive punishment, it is doubtful if an UTP can be subjected to such confinement, that too for indefinite period. The Hon'ble Commission may take a view in the matter

In the intervening period the superintendent may strictly abide by the conditions laid down in section 29 of the Prison Act and section 74 of the IPC , to ensure the security and well being of the petitioner.

The jail authorities have placed a guard at his cell round the clock. The Superintendent should ensure that he is visited by the Medical Officer and in his absence a paramedical staff every day. He should also be informed in which all cases he has been detained in jail custody. He also has a right to be produced before the magistrate every fortnight during the pendency of investigation. In case it is not possible to produce him in court due to security reasons his appearance should be ensured through video conferencing.

His complaint that on way to courts and back, no jail official is accompanying him, it may be said that this has now become a practice all over the country. There could be some doubt regarding the legal validity of this practice. It may be argued that the accused in such cases are being placed in police custody for the duration of the journey, without an order to that effect by the magistrate. This is a broad issue which may be addressed at the Commission's level. Allegations regarding threats and abuses from the members of the escort party the same may be brought to the notice of the superintendent of police.

xliv. Chandrakant Bhargav Gole s/o Late Bhargav Ramachandra Gole

He is the Managing Director of M/s. Shree Ramkrishna Electro Controls Ltd., Laxmi Govind Sadan, Behind Bank of Baroda Colony, Bamanwada, Vile Parle (E), Mumbai- 400 099. In his written petition, he pleads that he had issued 12% redeemable cumulative preference shares to the investors after following all the rules and regulations as per the Company's Act 1956.

The complainant Laxmi Charan Das s/o Late Binayak Das, At- Bhabani Nagar, 3rd Lane, Gate Bazar, PS- Berhampur Town, Dist- Ganjam (Odisha) filed

complaint case no. ICC 142/2011 for bouncing of cheque no. 285571 dated 18.04.2011 for Rs. 50,000/- which he had forcibly taken (by his agent) from the company's registered office at Mumbai without surrendering the original share certificate. In this case, he has been convicted on 26.11.2014.

The same complainant Mr. Laxmi Charan Das again filed another case no. 495/2013 which was for the same amount of Rs. 50,000/- by giving reference of original share certificate which he did not surrender before depositing the cheque which was forcibly taken by his agent. This case was also filed in Hon'ble SDJM Court, Berhampur, Ganjam which was converted to GR 1687/2013 on 07.12.2013.

While filing ICC 495/2013, he made many fake and baseless allegations which are completely false and due to this false case, he is languishing in jail custody without trial and without getting any charge sheet for the last two years along with his co-accused Sri Suresh Padhi.

He pleads that he has been subjected to double jeopardy and his fundamental right guaranteed in article 20(2) of the constitution of India has been violated.

Prays for his release and the release of his co-accused from prison and the initiation of Criminal Prosecution against the complainant for implicating him in false cases. A copy of his written petition is enclosed at **Annexure 8(xliv)**.

xlv. Grievances of Convict Prisoners S. Karupaiamma w/o Late Suba Karupiya, Annakodi @ Sarasu Pachhiamma and B. Panchavararam w/o Late B. Pandian, all of Madurai District, Tamilnadu

They were sentenced to 10 years RI with fine in an NDPS case. They have already spent 4 years in jail. All of them hail from Tamilnadu and do not understand either Hindi or Odia. The jail officers and staff do not understand Tamil. These prisoners had prayed for transfer to Special Prison for women, Puzhal in Tamilnadu. The Superintendent of the Circle Jail had written to the Commissioner of Police, Madurai requesting for 'nativity certificate' of the above prisoners for initiating a proposal for their transfer.

The Addl. DG of Police and Inspector General of Police Tamilnadu has also written to the Commissioner for verification of their address. Addl. DG Prisons may pursue their case for jail transfer in consultation with his Tamilnadu counterpart.

xlvi. Simalu Pradhan

She was sentenced on 29.01.2005 in SC case no. 42/04 u/s 302/307 IPC. Prays for premature release.

xlvii. Susuma Sahu

She was sentenced on 21.08.2006 in ST case no. 76/04 u/s 302 IPC. Prays for premature release.

xlvi. Damayanti Sahoo

She is a disabled person and a spinster. Prays for bail.

xlix. Shatilata Pradhan

She was sentenced on 18.05.2007 in SC case no. 15/85 u/s 302/34 IPC. She has already spent 10 years in prison. Her parents who were also sentenced have died in custody. Prays for premature release.

There is an impression that female prisoners undergoing life imprisonment are entitled to be released after serving 10 years of imprisonment. The above female prisoners (sl. No. xlvi, xlvii, xlvi and xlix) believe that they are eligible for premature release in accordance with the provisions of paragraph 3.3 of Annexure A of the Commissions proceedings dated 20th October 1999 in case no. 233/10/97-98. Relevant extracts of the proceedings are reproduced below;

"The following category of inmates shall be eligible to be considered for premature release by the State Sentence Review Board.

- i. Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the post provisions of Section 433A, CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment, i.e. without remissions.*
- ii. All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission and after completion of 10 years actual imprisonment, i.e. without remissions.*
- iii. All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 10 years of imprisonment inclusive of remission and after completion of 7 years actual imprisonment, i.e. without remissions.*
- iv. Convicted prisoners undergoing the sentence of life imprisonment on attaining the age of 65 years provided he or she has served at least 7 years of imprisonment including the remissions.*
- v. The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, TB, AIDS, irreversible kidney failure, cardio-respiratory disease, leprosy and any other infectious disease, etc. as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions."*

All the above petitioners were convicted for murder one of the punishments for which is death. As such, the provisions of 433A CrPC should apply to them. They have to serve at least 14 years actual imprisonment before their release.

The grievance of the prisoners could be broadly classified as follows.

- i. False Implication in crimes they have not committed
- ii. Denial of Furlough/Parole.
- iii. Denial of Parole, Furlough and Remission to prisoners sentenced for offences punishable under the NDPS Act.
- iv. Delay of trial and disposal of appeals.
- v. Prayers for transfer to jails nearer home.
- vi. Inadequacies of available Legal Aids.
- vii. Inadequate water supply.
- viii. Denial of special food for those admitted in hospital and those suffering from serious ailments like diabetes, chronic gastritis, kidney problems and hypertension.
- ix. Inadequate medical facilities available in the jail hospital.
- x. Reluctance of the jail administration to notify the courts regarding serious ailments of the prisoners.

15. Representation by the Jail Staff

a. DEO, Sri Sapan Naik

He has been working as a Data Entry Operator on daily wages basis since 01.09.2009 that is for more than 6 years. He is yet to be regularized in service. He belongs to the SC communities. With Rs. 240/- which he gets his wages per day, he has to support himself, his parents and younger sister. Prays for regularization. His prayer deserves to be sympathetically considered by the state government.

b. Officers of the Circle Jail, Berhampur

In a written petition, they pleaded that while Jail Warders are paid one month's salary to compensate them for performing duties on govt. holidays the jail officials i.e. Pharmacists, Sub Asst. Jailor, Asst. Jailor, Jailor and the Superintendent are being deprived of such benefits. Pray for the extension of the benefit to them.

c. Smt. Mirabai Sahu

Contractual Pharmacist

Sub Jail, Patrapur

She is now working in the circle jail on deputation from Patrapur Sub-jail. She has already completed more than 7 years of service. Prays for regularization of service. Her prayer deserves to be sympathetically considered by the state government.

d. Sub Asst. Jailors of the Prison

In a written petition, they pleaded that their rank is equivalent to that of ASIs of Police. The grade of pay of ASIs has since been enhanced to Rs. 2800/- per month whereas the grade pay of Sub Asst. Jailors continue to be Rs. 2400/- per month. Prays for equalization of their grade pay with that of ASIs.

e. Md. Tameemur Reheman, President

All Odisha Jail Employees Association, Bhubaneswar

He submitted a written representation to the effect that;

- i. From the time of pre independence till 1974, the pay of jail warders was equal to that of police constables.
- ii. The grade pay of constables and equivalent rank was enhanced from Rs. 1900/- to Rs. 2000/- w.e.f. 30.03.2014 and that of Havildars and equivalent rank from Rs. 2200/- to Rs. 2400/- w.e.f. 01.04.2010.
- iii. On 02.07.2010, the state govt. constituted a high level committee headed by the Chief Secretary to consider the grievances of the Odisha Police Association. The committee after 'detail deliberations' revised the grade pay of ASIs/Havildar major and equivalent ranks from Rs. 2400/- to Rs. 2800/-.
- iv. Following the enhancement of grade pay of police personnel, the All Odisha Jail Employees Association met the Chief Minister with identical demands.
- v. The Hon'ble Chief Minister directed the Chief Secretary to refer their grievances to the Pay Anomaly Committee of the Finance Department.
- vi. The Anomaly Committee after examining the matter observed as follows;
"Employees in the prison department have demanded various posts in police. It has been mentioned that upto third pay commission the posts in the prisons department and police department had similar pay scales and in some cases the pay scale in prison department are higher but since then the parity has been disturbed because of unilateral up-gradation of various posts in police and that the parity needs to be restored. It is seen that the functions of police are distinct from the prison staff. The police are basically concerned with maintaining law and order whereas the prison staff are involved in reformation and detention of convicts, under trials and other persons sent to judicial custody. Hence, no comparison can be drawn between various posts in the two cadres. Accordingly only the corresponding revised running pay bands and grade pay shall be extended to the various posts in the prison department".

This effectively ended the parity of pay and allowances of the guarding staff with police personnel equivalent rank.

A comparative analysis of the pay and grade pay of the police and jail staff is reproduced below;

Police	Jail
Constable/lady constable Grade pay – Rs. 2000/-	Warder male/female Grade pay – 1800/-
Havildar Grade pay – 2400/-	Head Warders/Reserve Havildar Grade pay – 1900/-
Havildar Majors ASI Grade pay 2800/-	Chief Head Warder Grade pay – 2000/-

Mr. Reheman argued that the duties and responsibilities of the jail guards are in no way less significant than those of the police personnel of equivalent rank and requested that the state govt. may be directed to address to their grievances.

The Commission may consider bringing their grievances to the notice of the state govt. for sympathetic consideration.

16. Miscellaneous

i. Prem Choudhury s/o Jayanti Choudhury and Dhoba @ Laxman Choudhury is detained in this jail since 14.09.2015 along with his parents who were arrested in G.R. case no. 989/2015 u/s 302/201/120 (B)/34 IPC. Prem's parent had submitted a prayer to the learned SDJM for handing over the boy to CWC Ganjam as he has already reached 7 years of age and does not qualify to be further detained in the prison.

On 24.12.2015, the learned SDJM had in consideration of the prayer had ordered inter alia as follows. *"Perused the case records, it is found that the male child namely Prem Choudhury who is aged about 7 years of age is now inside the jail custody with his parents who were remanded to jail custody on 14.09.2015 in GR case no. 989/15 . Keeping in view the Rule 881 of the Orissa Jail Manual and the overall Welfare of the child the prayer of the Senior Superintendent, Circle Jail, Berhampur is allowed and he is directed to hand over the male child namely Prem Choudhury to a Government Organization in or near Berhampur through the Child Welfare Committee, Ganjam, Berhampur for his proper rehabilitation, care and protection and he should also take all necessary steps in that regard. The Senior Superintendent, Circle Jail, Berhampur is also directed to intimate this court about whole process of handing over the child to any organization in or near Berhampur through the child Welfare Committee Ganjam, Berhampur and report compliance to this office at earliest. Send an extract copy of this order to the Senior Superintendent, Circle Jail, Berhampur for information and necessary action".*

The Superintendent has written to the Chairman CWC Ganjam, accordingly. The child may be handed out to the CWC for his protection and care at the earliest.

ii. One Sri Biki Das s/o Late Babula Das At/Po- Station Road, Chatrapur, PS- Chatrapur, Dist- Ganjam is detained in this prison with effect from 14.09.2015 for his alleged complicity in a murder case registered under GR case no. 989/2015 u/s 302/201/120(B0/34 IPC. He claims to be 16 years of age, though

the police has shown him to be as 19 years of age. He appears to be below 18. The Superintendent has brought the matter to the notice of the learned SDJM. Action for verification of his age should be initiated, so that he could be transferred to Berhampur Observation Home for Boys, should he be found below 18 years.

iii. UTP Anil Jena s/o Subash Jena
Vill- Bomkei, PS-Jarada
Dist- Ganjam

He is detained in this prison from 17.11.2015 following his arrest in GR case no. 203/2015 u/s 457/380 IPC. He too claims to be 16 years of age. In the police report, his age has been shown to be 20 years. His petition was forwarded to the learned JMFC for appropriate orders. The Court on 11.12.2015 passed the following orders;

"On perusal of case records and the forwarding report it is found that accused has stated his age as 20 years himself before police and thus court on later on taking plea of minor age. So the UTP Anil Jena as here by directed to submit documentary evidence in his support of such claim of minor age."

The petitioner brought his grievance to the Hon'ble District and Sessions Judge, Ganjam during his visit to the prison on 28.12.2015, after which the Superintendent again wrote to the learned JMFC who issued the following orders on 20.01.2016;

"It is further directed to the Superintendent of Circle Jail Berhampur to segregate the UTP Anil Jena from the adult UTPs of Circle Jail Berhampur and keep him in separate cell as there is dispute regarding age of UTP Anil Jena and the same is pending for enquiry".

I met the prisoner. He looks no more than 14. He is scared to live in isolation in a separate cell and pleads to be shifted to a general ward.

17. Visit & Inspection

Board of visitors has not been constituted.

The following officers/ authorities visited the prison in the recent past.

Learned District Judge visited the jail on 31.08.2015. His visit notes have been received.

Addl. DG Prisons had last inspected this jail on 29.11.2015. His remarks are awaited. Addl. IG Prisons Odisha visited the jail on 20.11.2015. His visit notes have also not been received.

Learned District Judge, the District Magistrate and the SP paid a joint visit on 28.12.2015.

Their visit note has been received. The state government should constitute a Board of visitors for the circle jail at their earliest.

18. Recommendations

I have already given my recommendations for the improvement of the living conditions of the prisoners and the protection of their human rights in course of my notes. Some of the important recommendations are summarized below.

i. The capacity of the prisoners' wards has been calculated by the jail administration in the scale of 36 sq. ft. for prisoner. Ideally, (According to the Model Prison Manual) 40 sq. ft. of floor area should be available to each prisoner. Some of the wards have raised platforms. As provided in the Odisha Jail Manual 1942, all the prisoners should be provided with cots/raised platforms to avoid body contacts between them. The windows should be wire meshed to prevent entry of mosquito. All prisoners should be issued mosquito nets.

ii. The sanctioned strength of the guarding staff is utterly inadequate in comparison with the number of prisoners. The guarding staff/prisoner ratio is very low. During my interactions with the staff, many complained that they have to work for long hours (up to 13 hours in a day) due to paucity of manpower. The least the state government could do is to fill up the existing vacancies. As recommended in Chapter 6 of the Model Prison Manual formulated by the BPRD there has to be one guarding staff for every six prisoners. This prison has a sanctioned capacity for 743 prisoners including 52 female prisoners. Ideally, the number of the guarding staff should be 124. As against that the total sanctioned strength of the guarding staff (including Head Warder and Chief Head Warder) is only 96. Of these posts, 09 are lying vacant. The State Government may consider augmenting the guarding staff as also other staff of the prison.

iii. Water supply is inadequate and does not fully meet the requirement of the inmates. There is no pipe water supply to the toilets. Prisoners take their bath on open platforms. A proposal for the construction of another clean water UGR of capacity one lakh litre and the sinking of 3 nos. of production wells is pending with the Prison Directorate which may be expedited. Water filters should be issued to each of the wards.

iv. The wages/incentives paid to labouring prisoners are low and should be enhanced to the level of minimum wage for skilled/semi skilled workers minus expenditure on food and clothing. Pass books of the prisoners (in which transactions relating to the deposit of wages and withdrawals are reflected), presently retained by the Superintendent, should be returned to the Acct Holders.

v. The post of the Psychiatrist should be filled up immediately by posting a trained psychiatrist to the jail hospital.

- vi. In view of the rulings of the Hon'ble Supreme Court, convictions under the NDPS Act should not automatically disqualify the prisoners from being released on parole.
- vii. Pendency of Appeals in higher courts is no ground for rejecting applications for parole & furlough. Appellants should be granted furlough and parole, if otherwise eligible.
- viii. The state government should be liberal in granting furlough and parole. The district officers may be advised to give their opinion on the prisoner's petitions at their earliest. In case of rejections, speaking orders should be issued explaining the grounds. ADG Prisons should be authorized to grant furlough at his level.
- ix. 76% of the prisoners are UTPs. This is not a happy situation. Speedy trial, liberal grant of bail during the pendency of trial, should improve the situation. It is also painful to find that 18 prisoners, who have been granted bail, are still languishing in prison for their inability to produce sureties. Some of them are wanted in bailable cases and should get the benefit of Section 436 A of the CrPC. As recommended in Chapter 22.49 of the Model Prison Manual, when an under trial prisoner is seriously ill, the Superintendent shall send a report, along with a medical report, to the court concerned in order that if the law permits and the court thinks fit, the prisoner may be released on bail.
- x. There is a strong case for equalizing the pay and allowance of the guarding staff with those paid to members of the police force of equivalent rank.
- xi. The hospital of the Circle jail serves as a platform for sick inmates of 24 jails located within Berhampur Circle spread over Ganjam, Puri, Phulbani, Nayagarh & khurda districts, who require treatment at the Maharaja Krishna Chadra Gajapati Medical College.
- The facilities available in the jail hospital for treatment during the waiting period are inadequate. The proposed 30 bedded hospital should be constructed at the earliest and provided with adequate staff and equipments. Pre Admission Medical Examination of prisoners should be introduced immediately.
- xii. The state govt. may consider sanctioning adequate manpower for the DIG's office to strengthen the Supervision Mechanisms. At present, the DIG's office located next to the prison is running without any supporting staff. The jail administration did sanction a contractual steno for his office. But the post is lying vacant for the last 11 months.
- xiii. The jail administration should open a permanent register to record all custodial deaths and the status of enquires thereof. The register should be inspected by the visiting officers to verify, if any such enquiry is pending unnecessarily.

DAMODAR SARANGI