

**Minutes of the meeting of NHRC Core Group on Criminal Justice Reforms held
on 10th March 2023 at Manav Adhikar Bhawan, NHRC, New Delhi**

A Core Group on Criminal Justice Reforms was held under the Chairmanship of Shri Rajiv Jain, Hon'ble Member, on 10th March 2023 in Room No. 508. The list of participants is **annexed**.

2. **Shri Devendra Kumar Nim, NHRC Joint Secretary**, welcomed the Chair, senior officers of the Commission, NHRC Core Group Members, ex-officio members and the special invitees and highlighted the relevance of the agenda for the meeting, i.e. "Strengthening Prison Monitoring Mechanism" and "Background and Agenda points for the proposed National Seminar on Prison Reforms 2023". Apart from sharing the crucial recommendations in the first Core Group meeting on Criminal Justice System, he also highlighted how the experts had expressed serious concerns over the slow pace of reforms in the Criminal Justice System. He pressed on the need for a holistic approach to protecting the prisoners' rights. He flagged the issue of rampant corruption in prison settings, which directly affects the human rights of the prisoners. He added that the time-to-time guidelines issued by the Hon'ble Supreme Court regarding the prisoners should be implemented by all the State Governments and UTs so that the prisoners' rights are promoted and protected.

3. **Shri Devendra Kumar Singh, NHRC Secretary General**, in his welcome address, highlighted that various issues in the criminal justice system, including police, prosecution, judicial or prisons, must be taken seriously. He stated that the Commission receives multiple complaints related to police and prisons. The Commission has been actively seeking Action Taken Reports from various Central and State governments regarding the same, but to dismay, most reports are still awaited. He also highlighted the role of NHRC Special Rapporteurs, who, among various other duties also visit various prisons and report to the Commission. Secretary General also highlighted the other visits the Commission undertakes to prisons and legal services authorities. He felt the need to publicize the products made by various prisons on a large scale. He also focused on the need for financial independence and better up-skilling opportunities for prisoners to smoothen their repatriation to society.

4. **Shri Rajiv Jain, Hon'ble NHRC Member**, welcomed the participants and appreciated their presence. He requested the participants to suggest ideas on all pillars of the Criminal Justice System, as Police, Prosecution, Judiciary, and Prisons require greater focus and are part of the more significant human rights violation issues. He highlighted the recent Supreme Court judgment delivered by hon'ble judges Sanjay Kishan Kaul; J., Abhay S. Oka; J. SMWP (Criminal) NO. 4/2021; 31-01-2023. This has seven directions to avoid delay in releasing prisoners after getting bail. He also highlighted the MoU between NHRC, National Law University Delhi, Tihar Prisons and Delhi State Legal Services Authority, wherein law students would help draft the bail modifications under the guidance of DLSA.

5. **Shri Sanjay Beniwal, DG Prisons, Tihar**, said that the issue of corruption in prisons needs to be condemned. He highlighted the various provisions in the State Prison Manual, which talks about tackling the issue of corruption. He also spoke about the Committee formed by the Supreme Court on Prison Reforms, chaired by former apex court judge Justice Amitava Roy, to examine the various problems plaguing prisons in the country, from overcrowding to lack of legal advice to convicts to issues of remission and parole. Focusing on overcrowding, he highlighted how there is a fight even for the necessities due to this rampant issue. He said prisoners should not languish in jails due to administrative matters. Focusing on a specific case study he noted, he said how a poor man was awarded bail but on a bail amount of Rs. 15,000, which made him think about how a poor man, who is unemployed and has no sources of income, would pay such a big amount.

6. Further, he highlighted the effective functioning of the Under Trial Review Board Committee in Tihar, wherein they are releasing at least 240 inmates per day. He also highlighted how the bank accounts and Jandhan Suvidha accounts, linked through Aadhar, can be an alternative to the surety and requested the Commission to recommend to the government to provide access to the account details of the inmates so that issue of non-availability of surety can be sorted out. He also highlighted Tihar Jail's efforts in providing opportunities for financial independence and the range of different products being produced in the Tihar Complex.

7. As an alternative to reduce corruption, Shri Beniwal made two suggestions. To minimize the incoming contraband into the prison, which is phones and tobacco, he suggested that, first, more legal phones should be available on the prison campus.

Currently, only two phones for average thousand inmates are available, which curtails the contact of the prisoners with their families, which leads to the demand for phones and hence the smuggling of mobile phones. Secondly, he said that the problem of smoking should be seen as a health issue rather than a security issue. People who have a habit of smoking often find it difficult to quit. Hence, necessary legal measures are to be deliberated so that the menace of addiction can be fought, also leading to lessening corruption in prisons. He said that the need of the hour is an overall re-thinking of the attitude.

8. Focusing on the utmost need for an Aftercare mechanism, Shri Beniwal suggested that attention should also be diverted towards repatriating prisoners into society. He highlighted that despite the prisoners being trained; the need for a Police Clearance Certificate while applying for a job is secondary victimization. He suggested that the behaviour and participation of the individual while being imprisoned should be noted by the Judge and reflected in the bail record to give some hope. He said how gainful employment is a direct solution towards recidivism. He said the need to focus on the psychological and emotional well-being of the prisoners is also needed. He also highlighted how the data management is still manual, which requires a dedicated workforce, and Real-Time Data should be digitalized so that the issue of release post bail can also be sorted out.

9. **Justice Shri B.K. Mishra, NHRC Core Group Member**, said that while his appointment in the Odisha State Human Rights Commission, he had noted various issues in the prisons and out of many, one of concern was the poor medical facilities and sanitation conditions in the prisons. He also highlighted a large number of undertrials still languishing in prisons. He pointed out the lack of awareness among prison staff that leads to the violation of rights. He also highlighted the need to devise better witness protection programs so that witness doesn't turn hostile. He attributed poverty being one of the reasons witnesses turn hostile. He highlighted the dearth of vacancies in the criminal justice system, even to the extent that the night patrolling in many States has been reduced. All of these result in an increasing crime rate. He concluded by saying that for the police to be effective, they should be visible.

10. **Madhurima Dhanuka, Program Head, Commonwealth Human Rights Initiative** made a presentation on Prison Oversight Mechanism. At the start, she highlighted the issues in prisons ranging from lack of basic amenities, custodial

violence, deaths, inadequate prison staff, the lack of training, and overcrowding to the existence and dependence on the old age Prison Acts and Manuals. She then focused on the legal provisions regarding the set-up, composition, mandate and functioning of the Board of Visitors and the internal mechanism. The hurdles, as raised by CHRI, in the effective functioning of the BOVs are as under:

- a. There is no single authority to oversee compliance by the States
- b. Delay in appointment of the Non-Official Visitors
- c. Inadequate provisions of training for prison visitors
- d. No proper procedure for prison inspection, reporting and further follow-up is developed
- e. Limited availability of the data on Prison Inspection

The remedies to the above hurdles, as proposed by CHRI, are as under:

- a. A nodal point may be set up to oversee the compliance by States in setting up the BOVs
- b. The MHA Advisory on the appointment of BOVs can be expedited to avoid unnecessary delay in the appointment of BOVs
- c. Preparing training modules for prison visits by the BOVs
- d. NHRC may prepare specialized formats for each prison visitor and may develop a Standard Operating Procedure for the conduct of prison inspections
- e. A net portal may also be created where the prison departments will upload the inspection visit reports for further deliberations and action

11. **Shri Rishi Kumar Shukla, NHRC Core Group Member**, reiterated the famous quote by Justice Shri Krishna Iyer, "*Bail not Jail*". He was concerned about the criminal justice system's poor and slow-paced reforms. Although India is one of the countries with a low rate of imprisonment, a lot needs to be done regarding prison reforms in the country. He focused on long-term investments being the goal and said that the "*one shoe fits all*" attitude would lead us nowhere. Highlighting the demotivation among the prison staff, he suggested that all the vacancies be filled urgently with regular training and inspection for a better Criminal Justice System.

12. **Shri B.T. Kaul, NHRC Core Group Member**, said how the visits by judicial officers to the prisons while in power can be a common way of strengthening the prison monitoring mechanism. He also needed to train Prosecution, apart from training the Judiciary. He highlighted the importance of Judicial Academies and their role in training various stakeholders in the Criminal Justice System. He also felt the need for a common interaction program with all the stakeholders in the Criminal Justice System for better-coordinated efforts. He also highlighted the need for better sensitization and capacity-building programs. Pointing out various Supreme Court judgments, he highlighted how these could be sensitive approaches to dealing with the issues in the Criminal Justice System.

13. **Shri Neeraj Sinha, ADG, BPRD**, highlighted how the BPRD is mindful of the adage of state of governance of the Criminal Justice System in the country. He highlighted the 50 documents the BPRD has prepared concerning prison reforms and training prison officials in various capacities. He also highlighted the multiple studies commissioned by BPRD focusing on Criminal Justice System. He suggested that the NHRC may build capacity by creating online modules for police officers in various capacities and for prison officials through e-ustaad. Training Division at the BPRD has developed "e-Ustad", the e-Learning portal for uploading multiple training materials and best practices available at BPR&D as well as to be collected from other training institutions/various resources. This arrangement will compensate, to some extent, for the deficiencies in the infrastructure/training capacity of the Indian Police.

14. **Ms. Anupama Chandra Nilenkar, Director (I&CA), BPRD**, followed up on what ADG, BPRD, Mr. Sinha said in the meeting. She said that a proper need analysis was conducted, in consultation with various stakeholders, before curating the educational modules. She also highlighted the handbook prepared by the BPRD for the Non-Official Visits. She then focused on the need for alternative forms of imprisonment. She said the Probation of Offenders Act, Section 360 of the CrPC, and community services could all be alternatives to detention.

15. **Smt. Meeran Chaddha Borwankar, NHRC Core Group Member** said that although we always talk about the problems, we should also think about achievable solutions. She noted that the Board of Visitors must be necessarily constituted. She added that it is a blatant violation of the human rights of prisoners if there is no mechanism for monitoring the prisons. She highlighted the issue of corruption being

rampant in the prison setting. She also felt the need to introduce more prison telephone facilities to curtail corruption. She also supported the statement from the BPRD officials that imprisonment should be one of the last resorts. Alternatives such as community sentencing should be exercised.

16. **Prof. Vijayaraghavan, NHRC Core Group Member** said that the lack of coordination among various stakeholders in the Criminal Justice System is a concern. Success can only percolate if different departments such as the Legal Services Authority, the Prisons, Judiciary, Women and Child Development, Health, Education, and others function hand in hand. He cited a State Level Committee in Maharashtra, based on which committees at both state and district levels may be constituted to create space for independent dialogues. He pressed hard to implement the Probation of Offenders' Act, 1958. He also expressed concerns about the vacant positions of Probation and Prison Welfare Officers in many States. Considering the role and importance of a social worker as a counsellor, aftercare expert, and people who can visit homes, relatives and children of prisoners, he suggested that dedicated social workers can bring a positive change in the prison setting. Citing Section 3 of the Probation of Offenders Act, 1958, he indicated that the admonition should be extended to all cases where the sentence is equal to or less than three years, which will act as a bridge in getting the under-trial prisoners released on bail.

17. **Sugandha Shankar, Senior Programme Officer, Commonwealth Human Rights Initiative, CHRI** said that focusing on both the entry and exit points in a prison setting is equally important. The prisoners should be aware of their rights; accordingly, books or pamphlets should be made available on entry. Regarding the need for Aftercare, she supported the need for Probation Officers in prison. She said implementing the Probation of Offenders' Act, 1958 is also very important. Pointing to the fact that there is no proper mandate to coordinate among the various stakeholders, a single mandate must be created. She also said that the high levels of demotivation among the prison staff are due to their being understaffed and overworked; accordingly, filling vacancies is one viable solution. She also said that the sanctioned post might not actually cater to the required strength, so there should be regular recruitment. The Hon'ble Supreme Court has been issuing various judgments related to prison reforms, and hence, a compendium of such reviews' and guidelines by multiple ministries should be made.

18. **Mr. Jayanto Narayan Choudhury, NHRC Special Monitor on Criminal Justice System**, said there is a need for better database management of the e-data. Although the Hon'ble Supreme Court has been issuing judgments and guidelines, it is also essential that relevant ones are followed in letter and spirit. He also said that the problem of overcrowding in prison is also an issue of concern. He also suggested that the best practices across prisons in the country should be documented.

19. **Mr. Niraj Kumar Gayagi, Joint Secretary, Ministry of Law & Justice**, informed about the National Webinar on Rights of Undertrial Prisoners in India on 30th January 2023 by the Department of Justice. He said that identifying prisoners eligible for bail and inmates who cannot pay the surety or bail amount should be identified, and a database of such prisoners should be created.

20. **Mr. Manoj Yadava, NHRC Director General (Investigation)**, said that one of the issues, which are neglected, is the rights of elderly prisoners. He cited an academic study which revealed that most of the deaths in judicial custody happen within two years of imprisonment. He suggested the need for geriatric wards in prison settings.

21. **Mr. Surajit Dey, NHRC Registrar (Law)**, also pointed out the problem of increasing imprisonment and overcrowding. He said that the concept of Plea Bargaining should also be explored. He also suggested that Section 265E of the CrPC should also be explored as alternatives to imprisonment. He also said that Arnesh Kumar Judgment should also be followed in the right earnest. He said that Remission of sentences should also be focused on.

22. The meeting ended with a vote of thanks by Mr. Sudesh Kumar, NHRC Senior Research Officer.

Based on the deliberations and discussions, the following recommendations have emanated from the meeting:

1. Unfilled vacancies in the prison settings (specially Prison Welfare Officer, Probation Officers, Psychologists) to be filled;
2. Sufficient facilities for legal phone calls in the prison should be increased;
3. The problem of addiction among prisoners should be seen as a health issue rather than a security issue;

4. Proper psychological facilities for emotional well-being of the prisoners should be made;
5. Provisions to provide Psychological First Aid to be made in the prisons;
6. BPRD Compendium of NGOs working in prisons to be updated to pave way forward for Aftercare services;
7. Facilities for up-skilling, vocational guidance and means for financial independence to be explored;
8. A nodal point may be set up to oversee the compliance by States in setting up the Board of Visitors, BOV;
9. A net portal may also be created where the prison departments will upload the BOV inspection visit reports for further deliberations and action, and
10. Training of the individuals posted in prison who make entries of information in the e-prison portal

List of participants

1. Mr. Rajiv Jain, Member, NHRC
2. Mr. Devendra Kumar Singh, Secretary General, NHRC
3. Mr. Manoj Yadava, DG (I), NHRC
4. Mr. Surajit Dey, Registrar (L), NHRC
5. Mr. Devendra Kumar Nim, Joint Secretary, NHRC
6. Mr. Sanjay Beniwal, DG Prisons, Tihar Prisons
7. Mr. Justice B.K. Mishra, NHRC Core Group Member
8. Mr. Rishi Kumar Shukla, NHRC Core Group Member
9. Mr. B.T. Kaul, NHRC Core Group Member
10. Mrs. Meeran Chaddha Borwankar, NHRC Core Group Member
11. Prof. Vijayaraghavan, NHRC Core Group Member
12. Mr. Jayanto Narayan Choudhury, NHRC Special Monitor on Criminal Justice System
13. Mr. Neeraj Sinha, ADG, Bureau of Police Research and Development
14. Mr. Niraj Kumar Gayagi, Joint Secretary, Ministry of Law & Justice
15. Ms. Madhurima Dhanuka, Program Head, Commonwealth Human Rights Initiative
16. Ms. Anupama Chandra Nilenkar, Director (I&CA), Bureau of Police Research and Development
17. Ms. Sugandha Shankar, Senior Programme Officer, Commonwealth Human Rights Initiative
18. Mr. Sudesh Kumar, NHRC, Senior Research Officer
19. Sajith, NHRC Junior Research Consultant