

14. All sorts of unlawful detentions should be severely dealt with.

PREVENTIVE DETENTION

15. The difference between "preventive" and "punitive" detention must be clearly understood. Preventive detention is aimed at preventing the possibility of an activity by a person which may be detrimental to public order or national security. Preventive detention should not be resorted to as a substitute for the normal procedure established by law. There is a need to sensitize the authorities concerned that it should be resorted to as an exception in rare cases.
16. Certain safeguards are provided under law to the detainee under preventive detention. These include detailed recording of facts leading to satisfaction of authority, conveying the grounds of detention to the detainee, right to make representation to State or Central Govt. or to advisory board etc. These norms for detention should be strictly followed and all authorities should be sensitized about observance of these safeguards. People should also be sensitized about various personal liberties.
17. Preventive detention laws need to keep a balance between human rights of liberty on the one hand and security of the nation or maintenance of public order.
18. In case the detainee is found unlawfully detained, there is a need to have provision for interim relief/compensation.

DETENTION IN JUVENILE JUSTICE HOMES

19. UN Minimum Standards for Treatment of Juveniles [Beijing Rules] should be strictly adhered to.
20. All the States must formulate rules under the Juvenile Justice Act, 2006 and constitute necessary institutions as required under the law. Constraints if any in implementing the provisions must be removed either by amendment to the law or by adopting a suitable strategy.
21. Juvenile Justice System should be distinct from criminal justice system in adjudication and terminology.
22. Effective implementation of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, requires need based analysis on part of the State Governments to streamline their approach.

23. Juvenile Justice should move up in the list of priorities for the State Governments to ensure that the financial, administrative and infrastructural needs are met, keeping in view the best interests of the child.
24. The authorities must comprehend the distinction between children in conflict with law and those in need of care and protection. The specific welfare needs of both the categories must be addressed.
25. The adjudicatory bodies (JJB) should ensure that the enquiries are completed within the stipulated time of 4 months as laid down in the Act.
26. Adequate number of qualified and trained personnel should be recruited under the JJ system. In cases of alleged abuse, strict action should be initiated against officers and staff responsible and pending such action, they should be immediately transferred.
27. Rehabilitation and repatriation of the children should be the ultimate aim. Institutional care must include proper educational facilities and vocational training in order to ensure sustainable options for child after he/she is sent back.
28. Health care needs of all the children must be looked after. The specific requirements of children ailing from diseases like HIV, scabies, mental disability must be addressed.
29. Basic standards of hygiene and nutrition should be adhered to in the Juvenile Justice/ observation homes.
30. It must be ensured that regular inspections of the homes be undertaken by the Inspection committees that have been set up under the Act.

Mental Health Issues of Detainees:

31. World over, on an average 32% of all prisoners require psychological help. If one includes substance abuse, the figure goes beyond 60%. Hence there is a need for focused attention on mental health. There is a need for early identification of mental illness among prisoners and for taking consequent steps.
32. There is little documentation of the problems of psychiatrically ill prisoners, problem of escorts for referrals/ discharge, inadequate follow up and care while in custody, no follow-up of psychiatric treatment after discharge from custody. Arrangements be made for periodic visits of Psychiatrists.
33. In view of little formal training of prison staff in mental health, there is a need for corrective measures.

34. Psychiatrist be posted in jail hospitals. If the same is not possible due to shortage of Psychiatrists, arrangements should be made for visits of psychiatrist on periodic basis, atleast once a week.
35. Normally prisoners having mental problems should be kept separately, preferably shifted to mental hospitals. However, due to over all shortage of trained manpower in mental health care both in district hospitals or mental hospitals, this may not become possible. Thus there is a need to augment the Mental Health Care system, both in terms of manpower and infrastructure. Some general recommendations in this regard are as follows:
 - (a) There is a need to move from custodial care to community mental health care approach and also integrate mental health care with general health care system through District Mental health programme.
 - (b) The diet scale of persons in mental hospitals needs to be fixed based on 'minimum calorie terms' rather than monetary terms to offset inflation.
 - (c) Mental health care audit of all institutions of child care may be taken up by NHRC.
 - (d) There is no formal after care services available. The Ministry of Social Justice and Empowerment may set up facilities for mentally ill who are treated but have nowhere to go.
 - (e) There is a tendency to leave the mentally ill people in mental hospitals even in cases where the treatment can be done as outpatient. This mindset to treat the mental hospitals as a defacto detention place for mentally ill must change. For this social awareness programmes must be taken up.

(Approved by the Commission in its meeting held on 19 November 2008)



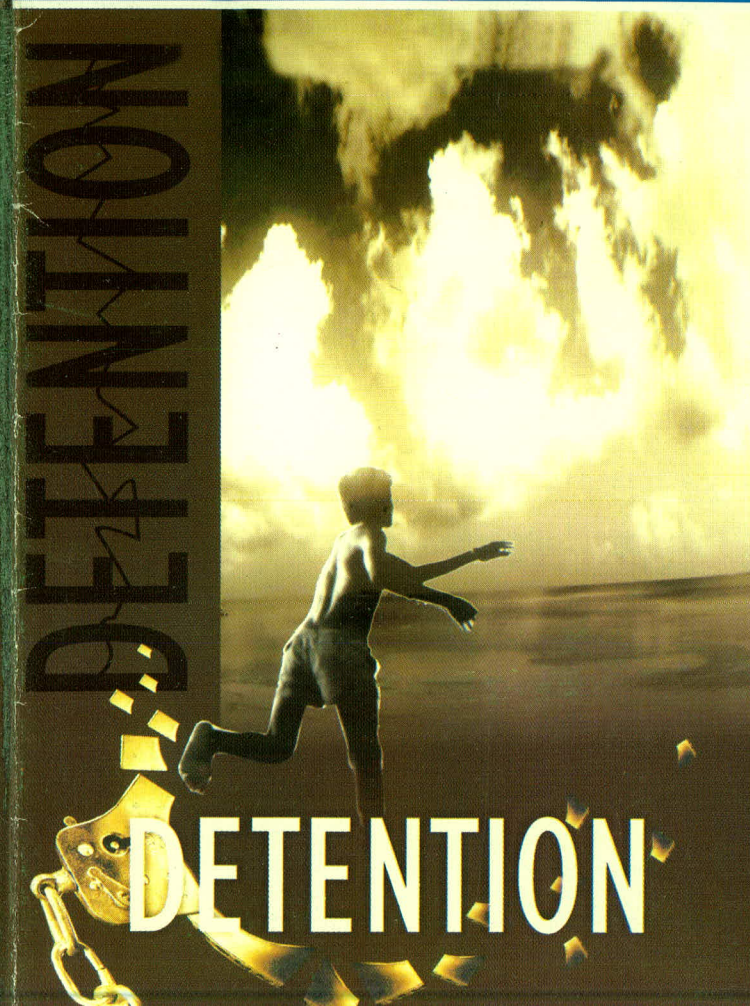
National Human Rights Commission

Faridkot House, Copernicus Marg, New Delhi-110 001, India
Tel. : 91-11-23384863

E-mail : covdnhrc.nic.in, Website : www.nhrc.nic.in



RECOMMENDATIONS OF NATIONAL HUMAN RIGHTS COMMISSION ON



RECOMMENDATIONS OF NHRC ON DETENTION

I. Introduction:

Arrest involves restriction of liberty of a person arrested. Nevertheless, the Constitution of India as well as International Human Rights law recognizes the power of the State to arrest any person as a part of its primary role of maintaining law and order and national security.

Article 21 of the Constitution of India asserts that 'No person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 Clause (1) and (2) confer four rights upon a person who has been arrested. Firstly, he shall not be detained in custody without being informed of the grounds of his arrest. Secondly, he shall have the right to consult and to be represented by a lawyer. Thirdly, he has a right to be produced before the nearest Magistrate within 24 hours of his arrest and fourthly, he is not to be detained in custody beyond the period of 24 hours without the authority of the Court.

Article 3 of the Universal Declaration of Human Rights (UDHR) proclaims that 'Everyone has the right to life, liberty and security of person.' Article 5 of UDHR further says that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.' Article 9 of UDHR asserts that 'No one shall be subjected to arbitrary arrest, detention or exile.' Article 10 of the International Covenant on Civil and Political Rights stipulates that 'All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'

The National Human Rights Commission has always held the view that mere imprisonment does not take away the Fundamental Rights of a person, and especially once in the custody, the person becomes the responsibility of the State and the State is bound to ensure that the basic rights guaranteed to him in the Constitution are protected.

Under Section 12(c) of the Protection of Human Rights Act, 1993, the National Human Rights Commission has the statutory responsibility to "visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations thereon to the Government." In pursuance of this mandate, the Chairperson, Members, Special Rapporteurs and officers of the Commission have

been visiting various places of detention across the country. Based on these visits, the Commission has made detailed recommendations to authorities, which are also monitored periodically.

Besides redressing individual complaints of rights violations, the Commission has also recommended systemic reforms. The Commission has laid down stringent reporting requirements for reporting of custodial deaths/ rapes, issued guidelines on arrests, mentally ill persons in prisons, medical examination of prisoners, speedy trial of undertrial prisoners, premature release of prisoners.

The UN Secretary General launched a year-long campaign to commemorate the 60th Anniversary of the Universal Declaration of Human Rights on 10 December 2007. The theme of the campaign is 'dignity and justice for all of us'. In this framework, the Office of the High Commissioner for Human Rights [OHCHR] has chosen to pay special attention to the situation of persons deprived of their liberty in prisons and other places of detention.

The Office of United Nations High Commissioner for Human Rights has designated the week of 6-12 October, 2008 as Dignity and Justice for Detainees Week. Accordingly, the National Human Rights Commission of India organised a Workshop on Detention' on 11-12 October 2008 at New Delhi. The objectives of the workshop were:

- to share best practices amongst States/Union Territories
- to identify gaps if any in the implementation of constitutional and statutory safeguards for the protection of rights of detainees and to suggest remedial measures
- to evolve suitable recommendations to all authorities for better protection and promotion of human rights of detainees.

II. Workshop on Detention:

The workshop was divided into four thematic sessions covering detention in prisons & police custody, preventive detention, detention in juvenile justice homes and mental health issues of detainees. It was inaugurated by Baroness Vivien Stern, Hony. President, Penal Reforms International, United Kingdom. The former Attorney General of India, Mr. Soli Sorabjee was the Guest of Honour at the Inaugural Session. The panelists for the workshop were eminent legal luminaries, academics, senior government officials, experts in the field of detention, mental health, juvenile justice system and NGOs.

The participants of the workshop included Directors General of Police, Directors General or Inspectors General of Prisons, Nodal Officers on Human Rights from States,

Directors of Police Training Institutes, Secretaries of Welfare Departments from various States, Forensic Science Laboratories, Senior Central/State Government representatives, Special Rapporteurs of NHRC and representatives of selected NGOs.

III. RECOMMENDATIONS

In the two-day workshop on Detention, a range of issues were discussed including the responsibilities of the State Governments to ensure basic human rights of the detainees in police custody and in prisons etc.

DETENTION IN PRISONS AND POLICE CUSTODY:

1. It is important to understand that a person in custody is under the care of the State and it is the responsibility of the State to ensure protection of his or her basic human rights. It should not be confused as advocacy for rights of criminals and terrorists.
2. The Convention against Torture inter alia seeks to prohibit torture in custody. Though India has signed the Convention against Torture, it has not yet ratified it. The Central Government must take immediate steps in this regard.
3. India may have a low rate of just 32 persons being in jail per every 100,000 population but a high proportion among them are undertrial prisoners languishing in jails. To overcome the situation, speedy trial should be ensured through the following measures:
 - a) Establishment of more courts and filling the vacant posts in judiciary.
 - b) Expedite the process of recording of evidence and examination of the police officers and medical practitioners who are witnesses in certain cases as transferable nature of their services compounds any delay in this regard.
 - c) In addition, provisions for keeping undertrial prisoners and convicts separately should be strictly enforced.
4. Section 436-A of the Cr.PC provides for the release of a person in custody on personal bond, in case he has been in custody for more than half the period of the sentence he would have undergone in case found guilty. However in spite of this, the number of undertrial prisoners is still very high. Strategies and modalities should be worked out to ensure that the undertrial prisoners get expeditious relief under this provision.
5. As per Section 62(5) of the Representation of People's Act, a person confined in a prison or a lawful custody of the Police except those under preventive detention

under any law is not allowed to vote although except for convicts, they are eligible to contest election. The provisions related to right to vote in the Representation of People's Act be suitably amended to ensure this right for undertrial prisoners.

6. There is a need for implementing prison reforms including Model Prison Code. This should inter alia cover vocational training of prisoners and providing them opportunity to work which besides keeping them engaged can also be a source of supplementary earning for them as well as a source of revenue for prison administration.
7. There is a need to pay special attention to orientation and training of prison staff to change their mindset from custodial to correctional approach. More training institutions should be set up for such staff. Mere sensitization of police or prison officials is not enough. The prisoners are equally under stress and therefore sensitization programmes should also focus on prisoners as target group.
8. Suitable strategies and modalities should be worked out for ensuring the protection of rights of children between the age group of 0 to 6 years of mothers in prisons and for implementation of Supreme Court judgment in R.D. Upadhyay vs. State of Andhra Pradesh.
9. In case of deaths in custody, as per the present practice, the Police Administration is required to send the report within 24 hours of its occurrence to NHRC. In accordance with the amendment made to Cr.P.C. (Section 176 (1) of Cr.P.C.) an inquiry by a judicial magistrate is made. There is a need for scrupulous implementation of procedure established under Section 176 (1) of Cr.P.C. In addition, forensic experts and laboratories must be involved as their expertise and scientific manner of investigation can assist in providing accurate and reliable evidence.
10. It was also suggested that the penalty inflicted on a delinquent police official responsible for torture should be in proportion to the degree of torture by such officials rather than a mere reprimand or transfer.
11. Government should take steps to separate the investigation wing from law and order wing, as decided in the case of Prakash Singh vs Union of India (2006 (8) SCC1).
12. The UN Minimum Standard Rules for the Treatment of Prisoners should be enforced and monitored from the Human Rights perspective.
13. There is a need to make the prison more transparent and open to the civil society.