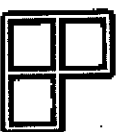




Spot enquiry  
into  
Condition of Vagrant  
Homes,  
West Bengal



## Content

S. No.	Heading	Page no.
1	Introduction	1
2	Gist of the Complaint	1
3	Directions of the Commission	1
4	Issue under reference	2
5	Composition of Investigation Team	2
6	Modalities of Spot Enquiry	2
7	Background of Bengal Vagrancy Act	3
8	Practical Implementation of the Act	4
9	Profile of the Vagrants	5
10	Observations pertaining to Mahalandi Lunatic Vagrant Home, Murshidabad .	6
11	Observations pertaining to Dhakaira Vagrant Home, Kolkatta	16
12	Issue of Deaths at Vagrant Home	19
13	Observations pertaining to SMM Juvenile Home, Liluah	26
14	Observations pertaining to Mental Health and Human Resource Centre, run by SEVEC	28
15	Findings of Enquiry Team	29
16	Human Rights of mentally ill person	32
17	Supreme Court Judgment on human rights of mentally ill person	33
18	Judicial Pronouncement on Anti- Begging Act	34
19	Comparative Analysis of Anti-begging Acts operative in various States	37
20	Need to review Bengal Vagrancy Act, 1943	39
21	Recommendation	42
22	Photographs	45-66
23	Annexure A ( Statements and other documents pertaining to Vagrant Homes)	A-1 to A-340
24	Annexure B ( Report of SSM Juvenile Home, Liluh)	B-1 to B-18
25	Annexure C ( Judicial pronouncement on anti-begging Act)	C-1 to C-11
26	Annexure D ( Mental Health Act, 1987 and other Anti-Begging Acts)	D-1 to D-11
27	Annexure E ( Correspondence with State authorities)	E-1 to E47

## **Executive Summary**

On the directions of the Commission, a spot enquiry was conducted to assess the living conditions of the Vagrant Homes and enquired into the exceptionally high number of deaths reported at these vagrant homes. The team inspected two vagrant homes, one juvenile home and mental health centre run by the NGO named SEVEC on dates from 5<sup>th</sup> to 9<sup>th</sup> August, 2013 in West Bengal.

At Mahalandi Lunatic Vagrant Home (MLVH), the team found the overall living conditions of the vagrant home were highly pathetic and deplorable. There is gross deficiency in terms of clothing, personal hygiene, cleanliness, bedding, toilets, drinking water, utensils etc. Most of inmates at the Home are suffering from psychiatric disorder. There is no proper medical facility for the psychiatric and general treatment of the inmates. Recently, one general physician and one psychiatric doctor are visiting the home on weekly basis. The average expenditure on medicine is as feeble as Rs 1 to Rs. 1.33 per day. The inmates are living in vegetative and Dickensian conditions. There is rampant overcrowding in the home and as a result, inmates are living in pitiable and appalling condition. There is acute shortage of staff as well. Moreover, there is no provision of recreation and rehabilitation at the home.

At Dhakuria Vagrant Home (DVH), more or less similar conditions are prevailing. However, recently, the old structure of DVH has been demolished and new building is under construction. As a result, except 32 inmates which presently stay at Home, rests have been shifted to other Homes. Previously, the condition of the home was the same or even worse. However, two doctors are posted at DVH but there is no provision for psychiatric doctor for mentally ill inmates. One NGO, SEVEC is providing services of psychiatric and psychologist doctor who have adopted few inmates suffering from psychiatric disorder.

90 and 31 deaths were reported in DVH and MLVH respectively in the year 2012. This is quite exceptionally and extra-ordinarily very high by any standard especially when average inmate strength was only 200-250. From the post-mortem reports of death reported in MLVH, 8 deaths were caused on account of malnutrition and anemia. The chief reason for such high number of death was poor medical attention, unhygienic and poor living condition and lack of adequate and nutritious food.

A comparative analysis of three anti-begging Acts vis-à-vis Bengal Vagrancy Act is conducted to highlight the anomalies of the Bengal Vagrancy Act. Judicial pronouncement and human rights of mentally ill person are highlighted to build up the case for reviewing the Bengal Vagrancy Act to make it compatible with the spirit of human rights.

**NATIONAL HUMAN RIGHTS COMMISSION**  
**(Investigation Division)**

\*\*\*\*\*

**Case No 694/25/13/2013**

**1. Preliminary:-**

- |                                              |                                                                                         |
|----------------------------------------------|-----------------------------------------------------------------------------------------|
| (i) Name of the complainant                  | : Tapas Kumar Ray                                                                       |
| (ii) Complaint received in the Commission    | : 04-06-2013                                                                            |
| (iii) Date of commission's directions        | : 6-6-2013                                                                              |
| (iv) File received in the Investigation Div. | : 08-6-2013                                                                             |
| (v) Date of investigation                    | : 05-08-2013 to 09-8-2010                                                               |
| (vi) Places visited                          | : Districts Murshidabad,<br>Hoogly, Howrah and<br>Kolkata, West Bengal.                 |
| <br>                                         |                                                                                         |
| (viii) Investigation Officers                | : Shri S.K Jain, SSP,<br>Shri S.K Bhattacharjee,<br>Shri Dushyant Singh,<br>(Inspector) |

**2. Complaint**

The Commission received an e-mail dated 04.06.2013 from Shri Tapas Kumar Ray highlighting the news published in Ananda Bazar Patrika dated 02-06-2013 alleging 32 death of inmates at Mahalandi Lunatic Vagrant Home, Murshidabad, due to malnutrition, within a period of five month in the year 2012/2013. There are 7 vagrant homes in West Bengal and their living condition is deplorable. It is alleged that these vagrant homes are the dumping grounds of the mentally ill and mentally retarded people. The complainant sought intervention of the Commission in this regard.

**3. Directions of the Commission**

Taking cognizance of the complaint, the Hon'ble Commission vide its proceeding dated 06/06/2013 (O-1) directed the Director General (Investigation) to depute a team of Investigation Division for conducting spot inspection of the vagrant homes and to submit a report.

#### 4. Issues under reference

- a. Whether it is a fact that 32 inmates lodged at Mahalandi Vagrant home had died, within five months in the year 2012-2013. If yes, the reasons behind such deaths.
- b. Whether mentally ill/mentally retarded person are lodged in the vagrant homes?
- c. What are the living conditions of these vagrant homes?
- d. Whether there are proper medical facilities for the treatment of inmates at vagrant homes.
- e. Whether nutritious food in adequate quantity is made available to inmates of vagrant home.

#### 5. Investigation Team

The NHRC team was headed by Sh. S. K. Jain, IPS,<sup>SSP</sup> and comprising of Sh. S.K Bhattacharjee, Section Officer and Sh. <sup>^</sup>Dushyant Singh, Inspector of Investigation Division.

#### 6. Modalities of investigation

- a. Before proceeding to Murshidabad and other areas of West Bengal, the team of NHRC met the complainant at Kolkata Circuit House on 04/08/2013 and discussed the issue in detail.
- b. The team visited Mahalandi Lunatic Vagrant Home, Murshidabad, West Bengal on 5/08/2013 and 06/08/2013 and met the Manager, Asstt. Manager, Accountant, Doctors and other staff besides having interaction with the inmates. The officials of district administration such as ADM, SDM and district social welfare officer were also consulted. On 7<sup>th</sup> and 8<sup>th</sup> August, 2013, the team visited Dhakuria Vagrant Home and Liluah Juvenile Home and met the concerned officials and interacted with inmates. The team also collected data/records pertaining to the enquiry. **The photographs of the vagrant homes and the living conditions of inmates are placed along with the report.**

## 7. Background of Bengal Vagrancy Act, 1943

The Bengal Vagrancy Act, 1943 (hereinafter referred to as 'the Act') was published in Calcutta Gazette on 18<sup>th</sup> February, 1943. The copy of the Act is placed at **Annexure A/Pg-195-222**. The main objectives of the Act are as under:

- i. To check begging in public place.
- ii. To rehabilitate the beggars by providing them vocational training and imparting necessary education so as to enable them to earn livelihood.
- iii. Focus is on the rehabilitation and restoration back to the society.

### Salient features of the Act

- i. The Act defines the vagrant<sup>1</sup> and provide for the mechanism for their apprehension through police, summary trial by Special Magistrate and their detention in **vagrant home**<sup>2</sup> (hereinafter referred to as 'the Home') for rehabilitation.
- ii. The Act is notified and applicable in the geographical jurisdiction of limited places in West Bengal. These places are PS in Howrah, Tollugunge, Behala, Metiaburuz, Dum Dum Police Station, Kolkatta and 24 Parganas (North).
- iii. The Police are provided with carte blanche power to apprehend without any warrant any vagrant asking alms in public place. (Sec. 6)
- iv. The Act provides for summary trial to decide whether the apprehended person is vagrant and needs to be sent to vagrant home. ( Sec. 7)
- v. The Act provides for detention at vagrant home for indefinite period. In the Magistrate 'declaration', no specific time period of detention is prescribed. ( Sec. 7 r/w Sec. 18 of the Act)

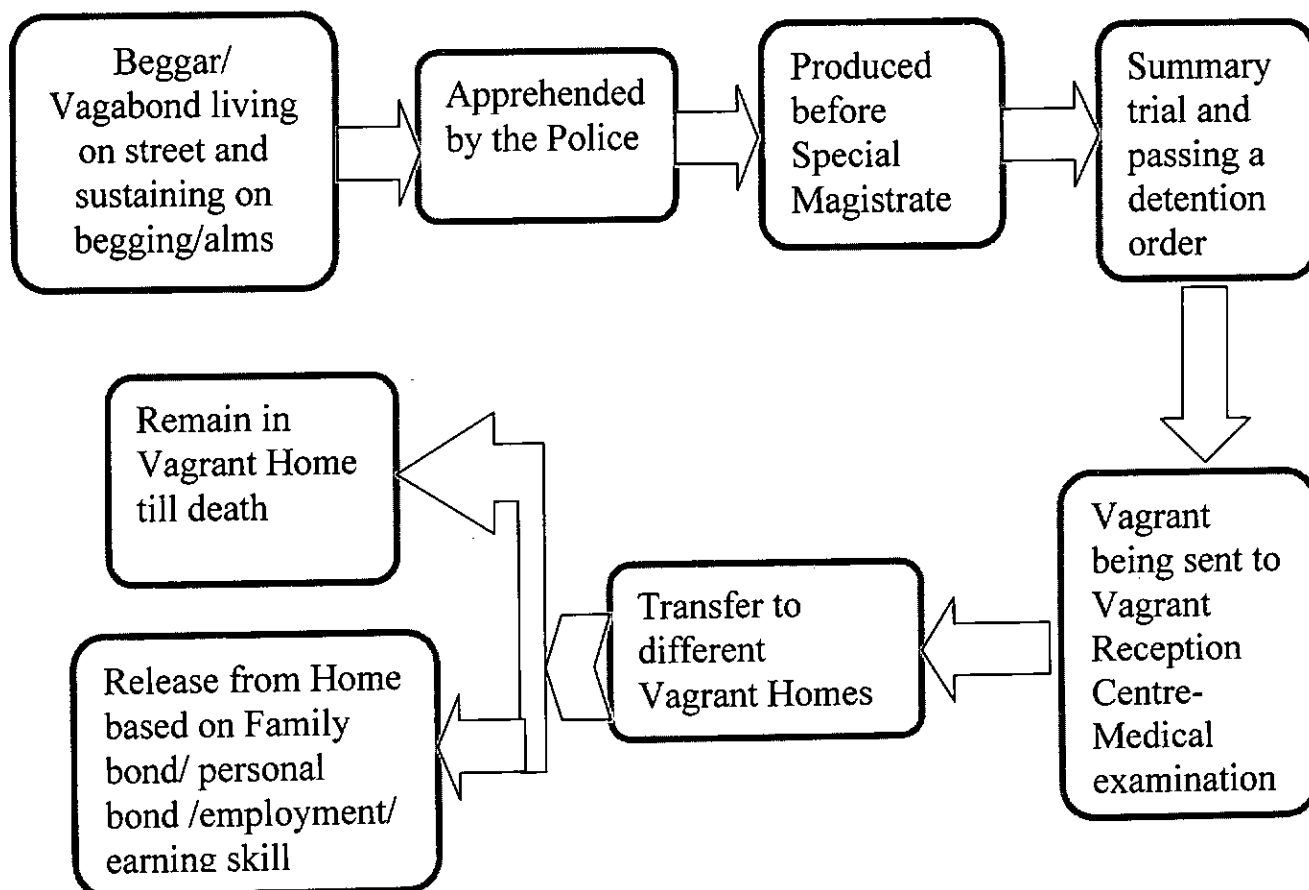
<sup>1</sup> **Definition of Vagrant as per Sec. 2(9) of the Act-** "vagrant" means a person not being of European extraction found asking for alms in any public place, or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose;

<sup>2</sup> **Vagrant Home {Sec. 2(10)}**- "vagrants' home" means an institution provided by the Provincial Government under subsection (1) of section 13 for the **permanent detention of vagrants**.

- vi. It provides for necessary logistics and resources for setting up vagrant home and other necessary facilities such as medical healthcare, vocational training and general education. ( Sec.13)
- vii. The power to release/ discharge from the vagrant home is conferred upon the Controller of Vagrancy, the overall administrator for managing and controlling vagrant homes. (Sec. 18)

The Department of Women and Child Development & Social Welfare (DWCD&SW), the Govt. of West Bengal is the nodal department to look after the affairs pertaining to vagrancy/beggary. The Controller of Vagrancy is administrative head for management and superintendence of vagrant homes. Each Vagrant Home is headed by a Manager, who belongs to ICDS cadre. Managers are assisted by requisite officers and staff. There are 10 Vagrant Homes including reception center in the State of West Bengal with a sanctioned strength of 2375 inmates. (pg-250/Annexure A)

### Pictorial presentation of scheme of the West Bengal Vagrancy Act, 1943



## 8. Practical Implementation of the Act

- i. The police generally apprehend old, mentally ill, infirm, destitute and abandoned persons who could not take care of themselves and are living on the street.
- ii. Most of apprehended vagrants are suffering from mental illness – psychiatric disorder and incapable of even taking basic personal care like eating food/maintaining personal hygiene (toilet, bathing) and wearing clothes.
- iii. Most of them are abandoned/vagabond without any trace of their family who could take back their custody.
- iv. There is provision of summary trial but no legal aid is provided to the vagrant. There is one page pre-printed format on which detention order is passed. (copy of a sample detention order is placed at page- 315/annexure A)

## 9. Profile of the Vagrants lodged in the Vagrancy Home

Following is the profile of vagrants, staying at the Homes based on personal observations during visit to Mahalandi Lunatic Vagrancy Home and Dhakuria Vagrant Home and discussions held with the officials including visiting doctors:

- i. Majority of them are suffering from some kind of psychiatric disorder, having psychological problem to the extent of mental retardation. Approximately 80-90% falls in this category.
- ii. Barring few lucky one, most of them are abandoned by their families and vagrant is not in a position to furnish details about his family in most of the cases.
- iii. There are inmates who are physically disabled – including visually impaired and dumb & deaf.
- iv. More than 50% inmates are in the age bracket of more than 50 years. Thus, they are suffering from old- age- related problems as well. They require geriatric care unit.
- v. Only very few inmates are physically able bodied person.



- vi. All of them fall in the category of 'persons in need of care and protection'. They are basically destitute without having any means of subsistence and compelled to beg in order to meet their both ends.

**10. Observations pertaining to Mahalandi Lunatic Vagrant Home (MLVH), Murshidabad**

The Home for the Lunatic Vagrants, Mahalandi falls within the jurisdiction of the Murshidabad district of West Bengal. This home has two separate wards – one for housing male vagrants and the other for housing the female vagrants. The observations pertaining to MLVH are as under:

**I. Present Land & Building and Layout- Physical Condition**

- a. According to the Shri R.N. Sarkar, ADM, Murshidabad and Shri Arun Kumar Gosh, BDO, Kandi, Mahalandi Lunatic Vagrant Home is spread over in 5.13 acre of land from an initially allotted 67 acres of land by the British Govt. in 1943. There is an encroachment on approximately about 61.5 acres of land out of which paddy is grown by locals in 37.93 acres of land which is still lying with the Refugee Relief and Rehabilitation Department.
- b. Out of the total build up area, there are two main residential blocks one each for male and female vagrants and another residential block for the staff. There is one administrative block and one inspection block inside the gated complex. Both the male and female blocks are separate and have sanctioned capacity of 100 inmates each. The male block started its operation in 1976 while the female block started in 1985.
- c. There is lot of wild growth of vegetation and surrounding of the building is full of litter and garbage. The cleanliness in and around the building has left much to be desired.
- d. Inside the building block, rooms were dirty, full of cob-webs and unbearable stinking foul smell was emitting from the barrack of inmates.
- e. The inspection conducted by ACMOH, Kandi on 24.08.12 and resultant report submitted by SDO, Kandi to DM, Murshidabad

(Pg-293-298/Annexure- A) clearly pointed out need for cleaning the building premises and white washing.

## II. Problem of Overcrowding

- a) There is an acute over-crowding in the male barrack. A total of 128 inmates are housed in 3 barracks having 1000 sq. feet space (500 sq. ft., 400 sq. ft. and 100 sq. ft. approx.). Even availability of 40 sq. ft. – the basic space requirement which is prescribed as per model prison manual of BPR&D is not being followed. The inmates are kept in the room just like a herd of animals. They are forced to sit and sleep in a highly degraded and inhuman manner.
- b) Each dormitory has only one entry and exit point (narrow door) with iron grills placed on the windows. There are 4 to 5 ceiling fans with no provision of drinking water inside the barrack during night. All the 128 male inmates are put into 2/3 dormitories during night. Most of inmates are forced to share their cots with 4 – 5 inmates and many just sit at the window or lie down on the floor through the whole night.
- c) However, the female section is a two-story building and having 95 inmates. So, in female section, relatively, there is no problem of overcrowding.
- d) One new block for female inmates (100) has been sanctioned by the authorities and soil testing of the site has been done by the PWD recently.

## III. Personal Hygiene

- a) There is no provision of issuing tooth-brush/tooth-paste to inmates. As a result, there is general complaint of dental related problems to inmates. (As told by the visiting doctor in the Vagrant Home). Moreover, considering the mental condition of inmates, they need assistance of 'care-giver' to perform cleaning of teeth.
- b) As told by the Assistant Manager of the Home, one barber is visiting the Home once in a week. This itself shows gross inadequacy in maintaining personal hygiene of inmates with regards to their shaves and hair cutting. Due to inadequate visits of barber, shave, nails and hair are not being kept properly and thereby adversely affecting their personal hygiene.

- c) To maintain the personal hygiene, bathing and cleaning is essential. However, this is more observed in breach than in compliance. During inspection conducted on 24.08.2012 by ACMOH, Kandi, it was directed by the SDO/Kandi that *“necessary soap and other items related to maintain hygienic condition of inmates must be procured forthwith. The Manager of the Home should look into the matter”*. (Pg-293-298/Annexure-A).

#### IV. Living Condition of Inmates

##### a) Living Environment

No fumigation, fogging or mosquito insect spray is being done in the living area/barrack. The atmosphere inside the barrack was nauseating with unbearable stench foul smell. There is no proper ventilation and lighting inside the barrack. There is lot of dampness inside the barrack.

##### b) Heating Arrangement

There is no arrangement to fight the harshness of winter. Moreover, most of inmates sleep on the floor due to non-availability of beds. On account of their old age coupled with inadequate warm clothing and sleeping on bare floor, they suffered from hypothermia. It may be noted here that inmates due to their mental illness do not have enough mental sense to protect their body with warm clothes and need external heating in the barrack to protect themselves from cold. It is pertinent to point out that as per the deaths reported from Mahalandi Lunatic Vagrancy Home, out of 31 deaths, 15 deaths were occurred in the months of November and December only.

Earlier, there were not enough blankets for the inmates. It was learnt that blankets were provided by the SDO/Kalandi after the inspection was conducted on 24.08.2012.

##### c) Toilets & Bathrooms

In the male section, there are only 10 toilets and 10 bath rooms for 128 inmates. The conditions of toilets are very pathetic. Toilets are dirty, unclean and stinking with foul smell. There is no proper availability of water to clean the toilets. It was found that some of the inmates were taking bath in the open in total naked condition.

##### d) Clothing

It was found that lots of male and female inmates were wandering without clothes or semi-clad in clothes. Further, on being asked, some inmates stated that fresh pair of personal clothes (shirt and half pant) was issued to some of them 2-3 days prior to NHRC visit. Further, it was found that inmates were wearing semi-torn clothes as well.

There is no mechanized laundry to wash their clothes. It is pertinent to note that considering their mental/psychological condition, inmates don't have enough mental caliber to take their personal care. As a result, their clothes get spoiled much earlier than that of a normal person. It is no easy or feasible to wash clothes of so many inmates manually on daily basis. Further, they do not have enough pairs of clothes to change till earlier pair of cloth gets dried.

**e) Bedding**

In the name of bedding for 128 male inmates, there are 30 beds. Rest 98 inmates sleep on the bare floor. There is even no mat to place on the floor.

There is no provision of mattress/mat and bed sheet for bed.

Again, washing and cleaning of blanket is a big problem. It is learnt that since many inmates are mentally retarded, they do not have control on toilet skills. As a result, their blankets get spoiled/become dirty.

**f) Drinking Water**

There is no provision of supplying potable drinking water. The tap water which is used for washing/bathing is also used for drinking by inmates. The source of water is ground-water which is pumped through booster pumps to overhead tanks.

Further, there is acute shortage of water in general as well. Only one tube-well is working out of three. The pump motor is not working and needs to be repaired. But there is problem of availability of funds and bureaucratic delay in getting the proposal sanctioned from the PWD. The DSWO (District Social Welfare Officer), Murshidabad has highlighted this point in his inspection report dated 18.06.2013 (Page-293-298/Annexure-A). *This amply shows how the cleanliness of the Home is being maintained without water.*

## V. Medical Facility

- a) There are 6 Nursing Assistants including two females. Out of them, 1 is working as compounder also. There is no regular or sanctioned post of Medical Officer, Pharmacist or Laboratory Technician though the Home is housing more than 223 inmates. (Pg- 29-30/Annexure-A)
- b) In the name of medical facility, it merely acts as 'first aid treatment' and 'medicine dispensary unit' or referral unit. It does not have any medical equipment or diagnostic equipments whatsoever. It merely has one old bed with old table and chair for visiting doctor.
- c) One RMP Doctor visits the Home on call and gets remuneration of Rs.1500 @ Rs.150/- upto 10 calls per month. (Pg-31/Annexure-A)
- d) The average medical expenditure per month per inmate is as low as Rs. 10 in the year 2013 (upto July). Whereas, medical expenditure per month per inmates is ranging from Rs. 34 to Rs. 59. The details of last 3 years are as under: (Pg-313/Annexure-A)

### Mahalandi Lunatic Vagrancy Home, Murshidabad

Year	No. of Inmates	Total Medical Exp.	Avg. medical exp. Per inmate per month
2009	87	35,324	33.84
2010	84	43060	42.72
2011	125	59095	39.40
2012	199	142010	59.47
2013 ( upto July)	223	27081	10.12

Thus, the very amount spent on medical facility amply reflect the quality of medical care provided to the inmates.

- e) Recently in the year 2013, (in the month of February/March), an arrangement has been made with Primary Health Centre whereby one Medical Officer visits the Home on every Wednesday for one and a half hour.

- f) There is no ambulance or vehicle to take inmates to the hospital in case of any emergency.
- g) In case of exigency, inmate is referred to the District Medical Hospital, Murshidabad. However, conveyance is problem to carry the patient to the Hospital.
- h) Since there is no dedicated ambulance for the inmates, hence, in case of emergency, a taxi is to be called. But, getting a taxi at that place is also major problem.
- i) There is no medical ward/room with bed for attending any emergency call.
- j) Besides mental illness, inmates are suffering from
  - a. Anemia
  - b. Skin related diseases
  - c. Dental problems
  - d. Old age related problems
  - e. TB
- k) There is no isolation ward in the Home.
- l) There is no system of periodic medical checkup of inmates to assess improvement in their physical and mental condition.
- m) There is no proper inmate-wise record to check the progress or deterioration over a period of time.
- n) During one visit, 40-50 patients are being check<sup>ed</sup> up by general physician in his weekly visit.

## VI. Regarding Mental Health

- a) Prior to March/April, 2013, there was no provision of any psychiatric doctor.
- b) Now, one psychiatric doctor from the District Mental Health Hospital, Murshidabad visits the Home once in a week.
- c) There is no provision of psychological counseling.

- d) There is no provision of behavioural/occupational learning therapy for enhancing their basic personal and life skill.
- e) So far, out of 128 male inmates, only 48 males have been checked by psychiatric doctor and rests remain to be checked by the psychiatric doctor. Similarly, out of 75 female inmates, only 43 female inmates have been checked till July 2013.
- f) During discussions with Dr. Manoj Kumar Sen, Psychiatrist, following is learnt about the mental condition of the inmates:
- i. Barring few inmates (learnt that 12 male inmates are comparatively in better mental condition), rests are suffering from some kind of psychiatric disorder.
  - ii. Almost 40-50 inmates are mentally retarded; rests are suffering from schizophrenia, bi-polar disorder, dementia and other psychiatric problem.
  - iii. Entire range of medicine is not available.
  - iv. Only generic and cheap medicines are being provided. Since medicines having higher potency are costly, these medicines are not prescribed.
  - v. Mere psychiatric medicines are not enough for treatment. It needs to be supplemented with psychological counseling, behavioral learning therapy and good living environment surrounding with proper personal care and attention.

## **VII. Recreation and Rehabilitation Programme**

- a) There is no provision or facility for recreation of inmates.
- b) Though the main objective of WB Vagrancy Act, 1943, is to provide some vocational and education training to inmates so as to enable them to earn their livelihood, but there is NIL provision for any kind of rehabilitation and restoration back to the society.
- c) This is amply evident from the fact that in the past three years (from 2010 – till July 2013) against the fresh intake of 189 inmates, only 12 inmates were released. Moreover, 12 inmates were released not

on account of rehabilitation but got released by their family members on family bond. (Pg-312/Annexure-A).

- d) It shows that due to non-rehabilitation programme, inmates have no other option except to remain in the Home till their death.

### VIII. Staff/Manpower

- a) The post of manager has not been filled for the past many years and the present manager, Shri Akbar Ali, ACDPO has additional charge of MLVH apart from his normal charge of BDO, Barwa and additional charge of BDO, Khandi Sub Division. (Pg-1-2/Annexure-A).
- b) There is only one peon, one watchman, one gardener, two cooks and two sweepers for the whole male and female blocks of the Vagrant Home.
- c) There is an acute shortage of manpower/staff in almost every field of the Home. At MLVH, against the sanctioned post of 50, 19 posts are lying vacant. There is no staff for vocational or educational teaching in the Home. (Pg-29-30/Annexure-A).
- d) Further, despite heavy shortage of staff, there is problem of irregular attendance, non-maintenance of duty roster. The DSWO, Murshidabad in his inspection report dated 16.7.2013, highlighted this problem and pointed out that *"staff are attending office in their own way/fashion, seems to be not suitable to the constant need and close care of inmates. As a result, it seems that at night/in the early morning, care is not taken up to the desired level"*. The NHRC team also witnessed the irresponsible behaviour and non-punctuality in reaching the Home. (Pg-293-298/Annexure-A).
- e) To add the woes further, this staffs are basically meant for administration and do not have special aptitude or sensitization training in looking after the mentally ill patients. They are neither skilled nor trained nor have any special trait to discharge the given task.
- f) There is acute shortage of 'care giver' to the inmates as they are not in a position to look after themselves.



- g) There is no system to check whether the required medicine has been taken by the inmates or not. All medicines need to be administered in person every time. Medicines are not issued to them (inmates).

## IX. Non Maintenance of Proper records

- a) It was found that records were neither properly maintained nor updated. As per DSWO Inspection Report, *“cash book is found to be not written, not checked and not signed by Asstt. Manager and Manager from February 13 to 12/06/2013”*. (Pg-293-298/Annexure-A).
- b) Similarly, due to non-maintenance of proper records, Manager of the MLVH failed to provide us the requisite information. The register containing the details of death was opened freshly (since year 2011 onward) and contained incomplete.
- c) There is one LDC cum Store Keeper, Shri Mintu Manna and one orderly Shri Nirupam Chaki who maintain all the records of the Vagrant Home. There is a computer in the office without any operator. The records of the medical room are maintained by a male nurse. Despite previous intimation of NHRC visit, the team found the maintenance of records highly unsatisfactory

## X. Food and Kitchen

- a) Separate kitchen, headed by cook Shri Manoranjan Dass and Smt. Malti Dass respectively, is being maintained in male and female block. The meals are prepared with the help of inmates and distributed to them in an unorganized manner without taking care of special requirements of malnourished inmate. The overall hygiene and maintenance of kitchen was highly deplorable. A diet of Rs. 42/- per day per inmate is sanctioned. (Pg-1-2/Annexure-A).
- b) There is only one cook and one helper for male section and similarly one lady cook and one lady helper for female section. As a result, the help of inmates are invariably taken in preparation of food. The present strength of cook is highly inadequate to cook food for 223 inmates in both the shift (day and night).
- c) The food is cooked on charcoal based tandoor. The overall hygiene and cleanliness is not upto the mark.

- d) The store room for storing dry ration is also found to be messy and unclean.
- e) There is no provision of any dining table, etc. The food is distributed directly from the food vessel/container to their plates.
- f) At the time of serving food, no attention is paid to ensure that hands of inmates are washed or not. Invariably, inmates are eating food through dirty hand resulting in indigestion and stomach related problems.
- g) There is no check to see whether food is being taken and eaten by all inmates. Sometimes due to poor appetite or mental condition, some inmates do not eat, resulting in malnutrition.
- h) Despite the fact that there are lots of medically sick inmates, including diabetic patient, there is no provision of any special diet for them. All are provided the same diet irrespective of age and requirement.
- i) There is no consultation from nutritionist while preparing the diet chart.
- j) There is no provision of any testing of the food. It depends on the cook to test it before serving.

## **XI. Utensils**

- a) It is found that old aluminum plates and glasses are being used to serve food to inmates. Being aluminum utensil, it is difficult to wash and clean them. Further, utensils are cleaned by inmates themselves.
- b) The utensils are in very bad, dirty and unhygienic condition.
- c) There is no proper system for cleaning the utensils by using some disinfectant/utensil washing powder to maintain hygiene.

## **XII. No independent and external oversight**

It is found that there is no board of visitor or external inspection to monitor the working of the Home. As a result, it is functioning in

isolation without external or independent scrutiny by NGOs/social works/District Administration (Pg-1-2/Annexure-A).

### XIII. Internal Inspection

Internal inspection is few and far between. On being asked, the manager could not furnish any previous inspection report. That amply shows poor supervision and control over the functioning of the Home.

#### 11. Observations pertaining to Dhakuria Vagrant Home, Kolkatta

Dhakuria Vagrant Home is basically serving twin purposes. It is also a reception centre for new vagrants and new vagrants are initially reported here. The Court of Special Magistrate is also set up here. After medical health screening, vagrants are transferred to other vagrant homes. Besides reception centre, a full-fledged vagrant home is also running here. The observations pertaining to Dhakuria Vagrant Home are as under:

##### a) Physical condition of the Home

Presently, the Home was under construction and a new dormitory for vagrants has been sanctioned after demise of 90 inmates last year (year 2012). The old hall and other attachments have been demolished and two new structures are under construction.

The existing office building is a three storied structure having 5000 sq. ft of dormitory, 1000 sq. ft of hospital dormitory and 800 sq.ft of T.B dormitory. All the inmates have been transferred to other Vagrant Homes except 32 male vagrants who are staying at administrative block. The present temporary accommodation is in the administrative block consist of rooms at the 2<sup>nd</sup> floor with 12 toilets, drinking water and kitchen.

##### b) Living condition of inmates

- i. There are 4 rooms at the 2<sup>nd</sup> floor of main administrative building of the Vagrant Home. Since only 32 male vagrants are kept and most of them are not lunatic, hence the living condition, hygiene, cleanliness and working of the Home relatively better than that of MLVH. However, here also, there is no provision of bedding. Inmates are sleeping on floor. The surroundings of the home are quite dirty and

messy. There is huge garbage center just adjacent to the building of Home. Due to construction activities as well, overall conditions of sanitation and cleanliness is not good.

**ii. Food and Kitchen**

There is no cook working at this vagrant home for preparation of food. The food is being prepared by the inmates themselves. It is learnt that the inmates are now being hired as casual labour for cooking of food. (Pg-277/Annexure-A).

**iii. Heating arrangement during winter**

There is no provision of heating arrangement for inmates during winter season.

**iv. Drinking Water**

There is no proper provision of potable drinking water for inmates.

**c) Medical facility**

There are two medical officers namely Dr. Tridip Sarkar and Dr. Amitab Mondal who are permanently posted at Vagrant Home since last 10 years. Moreover, Dr. Shyamal Chakaraborty, psychiatric and Dr. Pratibha Sengupta, psychologist from SEVEC (NGO) also visit the Home regularly for psychiatric help. Proper record is being maintained for medicines, durables, dietary supplement etc.

However, there is no psychiatric doctor from government side to look after the inmates. It is pertinent to note there that despite issuance of an order for Secretary of Public Health and Family Welfare for one psychiatric doctor on visiting basis (Pg-303/Annexure-A), no doctor from government hospital is presently visiting the Home for psychiatric treatment.

A pittance amount is spent on medical care of the inmates (Pg-268-275/Annexure-A). A table showing yearly and monthly expenditure on medical head is as under:

**Dhakuria Vagrancy Home, Kolkatta**

Year	No. of Inmates	Total Medical Exp.	Avg. medical exp. per inmate per month
2010-11	177	84038	39.57
2011-12	220	108171	40.97
2012-13	220	55165	20.90

As per the information supplied by the Manager, Dhakuria Vagrant Home (Pg-268-275/Annexure-A), on an average only Rs. 40 per inmate per month is spent on medicine. That means only Rs 1.33 per day per inmate is spent on medical treatment in terms of medicine. However, this monthly average sharply declined in the year 2013 and came to Rs. 21 per month per inmate.

**d) Staff Strength**

Shri Monobendra Patra is working as a full time manager since December 2010. The staff strength of Dhakuria Vagrant Home is as (Pg-31-32/Annexure-A).

S No	Centre	Sanctioned Strength	Present Strength	Vacant Post
1.	Receiving Centre	34	25	09
2.	New Vagrant Home	22	12	10
3.	6 <sup>th</sup> Unit Office	05	02	03
	Total	61	39	22

Thus, more than 33% post are lying vacant. Due to this acute and unsustainable level of staff shortage, the requisite services are lacking. Despite various correspondences by the Manager with the higher authorities, these vacancies are still not filled up. Like Mahalundi Lunatic Vagrant Home, there is no special training or capacity building of these staff in care-giving or management of such destitute people. Most of these are LDC/UDC/clerks who know only administrative jobs. Thus, the required aptitude of care and compassion is lacking.

**e) Maintenance of Records**

Maintenance of records is relatively satisfactory as compared to Mahalundi Lunatic Vagrant Home but not good. This is evident as due to heavy intake of vagrant in the year 2012, the monthly report which is to be submitted to Controller of Vagrancy has been discontinued. Furthermore, doctors also discontinued preparation of their monthly statement. This shows that due to inadequate staffing situation, requisite records and reports are not being prepared.

**f) Overcrowding**

Presently, because of demolition of old structure and construction of new building, all inmates have been transferred to other Homes. Hence, no overcrowding is seen in the Home as only 32 inmates are staying in the Home. However, last year, there was rampant overcrowding because there was only one dormitory type hall in which more than 200 inmates were accommodated. The Manager had pointed out the deplorable conditions of the Home and requested for non-admission of new intake citing the problem of overcrowding (Pg-308-309/Annexure-A).

**g) Recreation and Rehabilitation mechanism**

One tailoring unit is functional at the Home for imparting vocational training to inmates. 26 inmates are attending the tailoring section.

Mrs. Madhuri Roychoudhry, in-charge of 6<sup>th</sup> Unit and tailoring wing stated that one Somnath Sarkar, whose father was Post Master General of West Bengal was a vagrant of Dhakuria who was rehabilitated but later on, again became vagrant after death of his father. Another vagrant, Somnath Aich s/o Sunil Baran Aich R/o 115 Garfa Middle Road, Kolkata is residing here for the past 13 years. His family denied accepting him back due to family succession feud. Another Bangladeshi national Pradeep Sarkar, a poet and singer is languishing in vagrant home due to non acceptance of family members. It is found that present tailoring unit is too little in the name of vocational and rehabilitation.

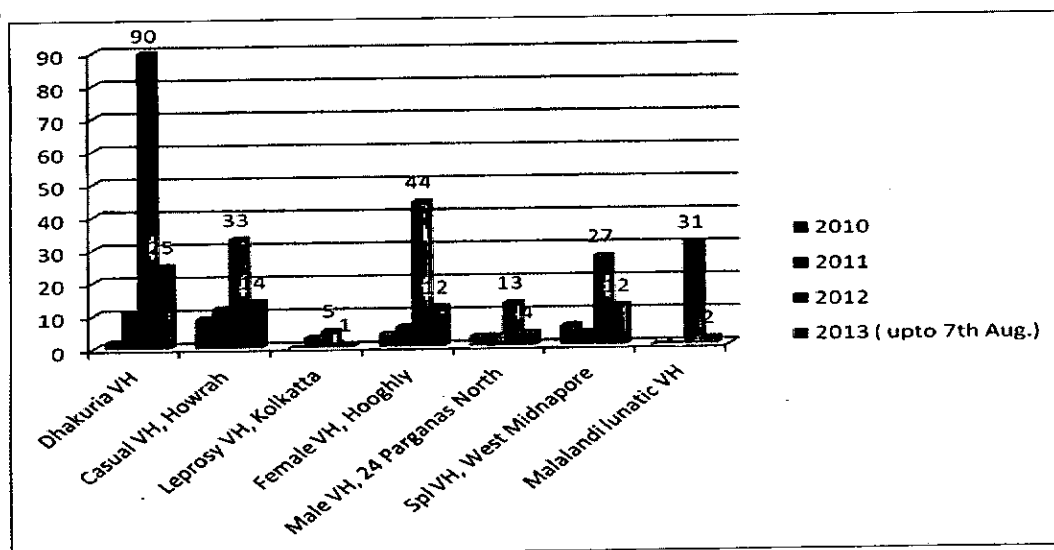
There is nothing in the name of recreation facility. There is no collaboration with NGO for the purpose of any recreational activities such as music, yoga, art, painting etc.

**12. Issue of Death in the Home**

As per the information submitted by the Controller of Vagrancy (Pg-252/Annexure-A) and Dhakuria Vagrant Home (Pg-10-12/Annexure-A), the deaths occurred across all the vagrant homes are exceptionally very high in the year 2012. Followings are the data pertaining to deaths reported at various vagrant homes:

Vagrancy Home	Year			
	2010	2011	2012	2013 ( upto 7th Aug.)
Dhakuria VH	2	11	90	25
Casual VH, Howrah	9	12	33	14
Leprosy VH, Kolkatta	0	3	5	1
Female VH, Hooghly	4	6	44	12
Male VH, 24 Parganas North	3	3	13	4
Spl VH, West Midnapore	6	4	27	12
Malalandi lunatic VH	0	0	31	2

The year wise deaths reported in vagrant homes are plotted on graph as under:



Thus, as it is evident from the data as well from the graph that there was sharp rise in deaths at vagrant homes in the year 2012. Reasons for such exceptional rise in death for two homes namely Mahalandi Lunatic Vagrant Home and Dhakuria Vagrant Home are explained as below.

#### I. Reason for deaths in Mahalandi Lunatic Vagrant Home

- a) As per the information furnished by the Manager of Mahalandi Lunatic Vagrant Home, a total of 31 deaths were reported in the year 2012 alone. The deaths reported during last 4 years are as under: (Pg-310-312/Annexure-A).

### Mahalandi Lunatic Vagrancy Home Murshidabad

Year	Inmate in the beginning of the year	Inmates at the end of the year	Average inmates during year (rounded off)	No. of deaths	Death Rate*
2010	86	84	85	0	0.00
2011	84	125	105	0	0.00
2012	125	199	162	31	19135.80
2013 (upto July)	199	223	211	2	947.87

\*Death rate- death reported/average inmate X 100000

b) From the analysis of deaths reported at MLVH, following points may be perused:

**i. Time period of Death**

To check whether deaths occurred uniformly during throughout year or there is a particular time period within which majority of deaths were reported, death are tabulated in quarterly time period:

S.No	Time Period	No of Death	Percentage
1	January to March	2	6.5
2	April to June	1	3.2
3	July to September	11	35.5
4	October to December	17	54.8
Total		31	100

It shows that maximum concentration of death is in the time period from October to December (54.8% of total deaths reported in this period). If data is further analyzed, then it is revealed that 15 deaths were reported in the month of November/December alone. That shows that due to inadequate protection against winter, majority of inmates died in winter period. During informal discussion, this fact was admitted by the Home authorities and visiting doctor.



## ii. Age wise analysis

Sl. No.	Age Group	No. of Death
1	<30	-
2	>30-40	4
3	>40-50	6
4	>50-60	7
5	>60	12
6	Age not mention	2
<b>Total</b>		<b>31</b>

Majority of inmate (male & female) who reportedly died falls in the category of having age of 50 and more (19 no). That amply shows that physical and medical care is lacking in the Home, that why they succumbed to the diseases.

## iii. Cause of death as per PMR

From the PMR, the followings are the causes of death:

- 8 deaths were caused due to serious malnourishment, weakness, severe anemia.
- 15 deaths were caused by due to cardio-respiratory failure.
- In the rest 5 cases, deaths occurred due to lung disease, organ failure, and septicemia whereas in 3 cases, cause of death is yet to be ascertained.

**Thus, the allegations of occurrence of death due to malnutrition are well substantiated as 8 deaths have been attributed due to severe malnutrition according to PMR.**

## iv. Period of Detention/Stay at Home

Some of inmates stayed at the Home for a quite a long period. For instance:

S.No.	Name	Date of Entry	Date of Death	Period of Stay at Home
1.	Om Prakash	25.09.97	24.1.2012	>15 years
2.	Tarini Bhai	20.07.79	16.6.2012	>33 years
3	Debi Prasad	01.06.82	09.08.2012	>20 years
4.	Rangi Lal	25.08.82	10.8.2012	>20 years
5.	Bhola Mondal	11.05.1984	23.08.2012	>18 years
6.	Tapan Das	25.09.1997	22.09.2012	>15 years
7.	Malati Bala	11.07.98	26.10.2012	>14years
8.	Sipahai Hazan	15.09.76	02.11.2012	>36 years
9.	Usha Malick	11.07.1998	06.11.2012	>14 years
10.	Haru	06.06.1987	14.11.2012	>15 years
11.	Katoo	30.3.89	06.12.2012	>13 years
12.	Khanta Moni	17.8.85	25.12.2012	>27 years
13.	Not Known (Deaf & Dumb)	11.07.98	27.12.2012	>14 years

Besides this, 13 inmates who were admitted in the year 2012 also died in the same year (year 2012) itself.

#### v. Relationship between number of fresh intake and deaths

There is direct and positive correlation between number of additional intake and the rise in number of deaths. It is learnt that after October, 2011, on the insistence of Kolkatta Police, Special Magistrate Court was being held every week to decide the cases of vagrant. As a result, every week, Kolkatta Police apprehended several vagrants and produced them before the Special Magistrate who in turn issued order for sending them to Vagrant Home. As a result, there was sudden inflow of fresh inmates in the Home. But Vagrant Homes were not in a position to accept them and 'take care' of them. In the year 2012 alone, 110 new inmates were admitted at Mahalandi Lunatic Vagrancy Home. This shows that due to poor infrastructural and manpower arrangement, they could not take care of additional inmates, resulting in exceptional and inordinate rise in number of deaths in year 2012. As a result, since May 2013, the Court of Special Magistrate is held in abeyance.

## II. Reasons for deaths in Dhakuria Vagrant Home

The deaths reported during last four years in the Dhakuria Vagrant Home are as under: (Pg-10-12 and Pg-276-277/Annexure-A).

### Dhakuria Vagrancy Home Kolkatta

Year	Inmate in the beginning of the year	Inmates at the end of the year	Average inmates during year (rounded off)	No. of deaths	Death Rate*
2010	163	191	177	3	1694.92
2011	191	248	220	12	5466.97
2012	248	192	220	90	40909.00
2013 (upto July)	192	32	112	25	22321.43

\*Death rate- death reported/average inmate X 100000

As per the information furnished by the Manager of Dhakuria Vagrancy Home, a total of 90 deaths were reported in the year 2012 alone (Pg-11-12/Annexure- A). From the analysis of deaths reported at Dhakuria Vagrancy Home (DVH), following points may be perused:

#### i. Time period of Death

To check, whether the deaths occurred uniformly during the year or there is a particular time period within which majority of deaths were reported, death are tabulated in quarterly time period:-

S.No	Time Period	No of Deaths	Percentage
1	Jan to March 2012	21	23
2	April to June 2012	26	29
3	July to September 2012	22	24
4	October to December 2012	21	23
	Total	90	100

The period wise analysis shows that the deaths were reported almost uniformly in each quarter throughout the year 2012. But

maximum concentration of death was in the time period from April to June 2012 in which 26 deaths were reported. That shows that due to inadequate protection against summer, and drinking water, majority of inmates died in summer period.

## ii. Age wise analysis

Sl. No.	Age Group	No. of Death
1	<30	6
2	>30-40	15
3	>40-50	22
4	>50-60	20
5	>60	27
<b>Total</b>		<b>90</b>

Majority of inmate (male & female) that died in the year 2012 falls in the age bracket of more than 60 year age (27 no). That amply shows that physical & medical care is lacking in the Home, that why they succumb to the diseases. Furthermore, around 23.3% deaths were of young inmates who are less than 40 years of age.

## iii. **Report of Dr. Trideb sarkar and Dr. Amitabh Mondal, Medical Officers of Receiving Centre, Dhakuria ((Pg-25-28/Annexure- A)**

The Medical Officer, posted at DVH, while elaborating the causes behind such exceptionally high number of deaths reported in the Home, attributed the reasons as under:

### a) **Poor living and hygienic condition**

- The dormitory of the home was not properly ventilated, thereby cutting the flow of sunlight and fresh air.
- Normal capacity of the dormitory was 90-100 inmates only. There were only 8 toilets.

### b) **High number of intake beyond the carrying capacity of the Home, resulting in poor care**

A total of 923 vagrants (739 males and 184 females) were admitted in the receiving centre of Dhakuria in the period from 8<sup>th</sup> June 2011 to 27<sup>th</sup> June 2012.

- c) Most of the vagrants picked up by the police from the streets were victims of mental illness and poor immunity, hygiene and health.
- d) The rapid influx of vagrants in a limited space developed into a severe 'Indoor Pollution' mechanism triggering many diseases such as T.B, GI problems and various skin infections.
- e) The nasty atmosphere created a sudden outbreak of cholera in the months of September to October 2012, resulting in maximum number of deaths.
- f) Being mentally ill, most of them cannot expel sputum, giving –ve AFB results. According to WHO, the DOT regime is started in +ve cases only.
- g) Mal-absorption Syndrome & Anorxia-Nervosa are common among the inmates inculcating into loss of appetite and creating chronic malnourishment.
- h) The diet money of Rs 1200/- per inmate per month is insufficient to cater to special protein diet for the inmates.
- i) Shortage of staff also leads to fall in care and support of the inmates.

### 13. Observation pertaining to SMM home, Liluah, Howrah (Annexure-B)

SMM Home, Liluah is a juvenile observation home and transit accommodation for victims of immoral trafficking. This home is administrated by the Department of Social Welfare. This Home was established for girls and women in 1961. The sanctioned strength for children home is 100, for observation home – 50, for special home – 25, for after care home – 175 and rescue home – 80. Different categories of inmates have been lodged in separate dormitories having independent drinking water, toilets and kitchen. The Halls are big having proper ventilation, cleanliness, space and security. Other observations are as under:

- a) The overall living conditions of the inmates were found to be much better as compared to vagrant home. The overall environment was hygienic, congenial and caring.

- b) There are two medical officers and adequate para- medical staff along-with equipped medicine at the home. The overall medical care facility was satisfactory though the sitting arrangement for doctors needs to be improved.
- c) **Staff Strength:** As per the manager of the Home there is a general shortage of staff in the various faculties of the home. Some NGOs have been roped in to fill up the shortfall.
- d) **Maintenance of Records:** A brochure given by the Manager speaks volume of the upkeep and working of the home.
- e) **Food/cooking:** Separate kitchen are maintained in each blocks having proper diet chart and time table for serving food. The quality of food was good and prepared according to the diet chart.
- f) **Overcrowding:** There is not much problem of overcrowding in the home as the premise is open and spacious.
- g) **Heating arrangement during winter:** There is no heating arrangement for either male or female inmates during the chilling winter season.

#### **Problem areas:**

Though overall functioning and environment found to be satisfactory in Liluah Home for juvenile but there are some areas which need due attention. These are as under:

##### **a) Problem of mental ill inmate**

It is learnt that there are around 25 mentally ill inmates who are languishing in the home. There is no facility of psychiatric doctor for their treatment. They should be shifted to some mental health centre for proper treatment.

##### **b) Need for proper psychological counseling**

There are quite a good number of victims of sexual abuse and immoral trafficking who are staying at this home. Since they had undergone traumatic and painful experience in their life, there should be regular and personalized psychological counseling for overcoming the shock and ordeal. Since, they are in tender age, this counseling can greatly help in healing their mental trauma.

**c) Issue of deportation**

It is learnt that quite a good number of Bangladeshi inmates are also lodged in the home. Despite their release order, the deportation procedure taking inordinate long time and as a result, they are forced to stay in confinement.

**d) Low diet money**

It is learnt that only Rs. 27 per day per inmate is the budget for diet which is grossly inadequate and insufficient to provide nutritious food in sufficient quantity to the juvenile inmates. Some of the inmates also complained about insufficient quantity of food. The diet amount should be revised suitably.

**14. Observation pertaining to Mental Health and Human Rights Resource Centre, Thakurpukur, Kolkata (Sevac)**

The NHRC team also visited one mental health center maintained and operated by one NGO named SEVAC. Sevac has been working for the cause of the mentally ill since 1988. More than 121 patients have been brought under treatment purview. A new building is also under construction and presently 65 inmates (25 male + 40 females) were housed in the main building. The rooms are quite spacious having proper ventilation, cleanliness, and security. Being ~~institute is~~ run by an NGO, the component of personal care, compassion and care-giving was evident in their approach. Furthermore, emphasis was on their recreation and creative engagement of inmates. The inmates were quite healthy and in good condition.

- a) **Living condition of inmates:** The overall living conditions of the inmates were found to be much better as compared to vagrant home. The overall environment was hygienic, congenial and caring.
- b) **Staff Strength:** As per the manager of the centre, there is adequate strength of officials and medical staff for the round the clock care and support to the inmates.
- c) **Maintenance of Records:** Dr. Pratibha Sengupta has herself maintained proper record of individual inmates along-with their treatment and counseling dates. The general, medical,

rehabilitation centre and kitchen stores have proper stock registers and maintained proper records.

- d) **Food/cooking:** Separate kitchen are maintained in each blocks having proper diet chart and time table for serving food. The quality of food was good and prepared according to the diet chart. The kitchen was temporary, constructed in an open space and hence, hygienic conditions were not so good due to washing of utensil nearby.

## 15. Findings of NHRC Team

- i. Mostly, mentally-ill, mentally-retarded, old, infirm and destitute are booked by the police and 'declared' vagrant by the Magistrate. With no focus on any rehabilitation and proper medical or psychiatric / psychological treatment, vagrant remains at the Home till his/her death. There are several cases in which vagrant are staying at the Home even for more than 20 years.
- ii. Mentally ill/retarded vagrants are lodged in almost all the vagrants' homes. This is not only a violation of various provision of the Mental Health Act, 1987, but also a violation of various Supreme Court Judgments and gross violation of Human Rights.
- iii. As per the Bengal Vagrancy Act, 1943, there is delectation of detention is for indefinite period. Once a person is declared as vagrant and sent to vagrant home, unless he/she is released by the Controller of Vagrancy as per the provision prescribed u/s 18 of the Act, he/she remained at the vagrant home. In other words, vagrants, once detained/lodged at the Home, are condemned forever within the confinement of the Home for life. They are incarcerated summarily without being committed any crime and without any specific time period. Once an inmate is entered into vagrant home, he/she is almost permanent inmate till she/he dies. Only handful of inmates get released from vagrant home, that too only those whose family members could be traced and opted for their custody.
- iv. Since majority of vagrants are suffering from mental illness, having some physical or mental disability and living a destitute life without any family support, they are not in a position to know the consequences or nature of their activity. The begging is out of



compulsion or necessity for survival rather than out of deliberate choice.

- v. The physical condition of the Homes is pathetic, deplorable, appalling unconducive for human survival. Inmates are forced to live in sub-human and Dickensian like conditions at the Home
- vi. The personal hygiene of the inmates lodged at the vagrant home is pitiably poor. Most of them used to wear dirty and torn uniforms, while a few of them were stark naked.
- vii. Proper clothing and bedding is not made available to the inmates. Most of the inmates sleep on the floor without any mat or mattress. Similarly, even personal clothing is not made available to them on time. During inspection at Mahalandi Lunatic Vagrant Home, it is learnt from some of the inmates that clothing (shirt and half pant) was given to them just 3 days prior to NHRC inspection. Similarly, mattresses were provided to them 2-3 days back.
- viii. The condition of the dormitories, kitchen, toilets and the surroundings of the home is pitiably unhygienic, dilapidated, deplorable and uncongenial.
- ix. The process of cooking and serving of food was unspeakably unhygienic. The human touch in the process of cooking and serving food in these homes was absolutely missing.
- x. There is no proper provision for safe drinking water to inmates. The fact is evident from the very fact that in 2012, at Dhukaria Home, quite a substantial number of inmates (around 26 inmates) got died due to cholera.
- xi. All the homes suffer from overcrowding.
- xii. At the time of entry into the vagrant home, there is no comprehensive medical check-up. Only visual inspection is done by Medical Officer. No diagnostic testing such as blood test/X-ray/urine test, etc. is being conducted to assess their present physical and mental health condition.
- xiii. Despite the fact that most of the inmates are suffering some mental illness, there is no system of assessing their mental and

- psychological condition by a psychiatric doctor at the time of admission to vagrant home.
- xiv. Most of the inmates of both the male and female wards were chronic mental patients and the absence of human care and psychiatric treatment reduced their living condition to vegetative and sub-human state. At Dhakuria Vagrant Home, there is no facility of psychiatric doctor, even on visiting basis.
  - xv. On an average Rs. 1-1.50 per day per inmate is the amount that is incurred on providing medicine to the inmate. The present level of expenditure is woefully inadequate and insufficient. Moreover, there is no provision of ambulance for emergency evacuation or referral to district hospital.
  - xvi. There is no proper medical facility available at vagrant homes. Only primitive and basic medical facility is available. There is no regular medical doctor (except at Dhakuria) and provision of bed to treat inmates.
  - xvii. Going by age profile of inmates, most of them fall in 50-60 years age bracket. Therefore, besides having other mental and physical problem, they are also suffering from old age related diseases. But there is no geriatric related doctor to look into such problems.
  - xviii. There is no facility of psychological counseling to inmates though most of them are suffering from psychological disorder. However, at Dhakuria Vagrant Home, psychologists from an NGO (SEVAC) make visit for psychological counseling but they look after designated number of inmates only.
  - xix. There is an acute shortage of skilled staff in all homes.
  - xx. There is gross lack of 'care giver' to the inmates. In Mahalandi Lunatic Vagrant Home, since most of the inmates (female and male) are having psychiatric problem, they could not take care of themselves even for basic things like toilet, personal hygiene, eating, wearing of clothes, etc. They need personal 'care giver' who can take care of their basic needs and attend them.
  - xxi. The present ratio of attendant to inmates is 21:1 (at MLVH) which is too impractical. Moreover, they have no aptitude or any

specialized training in care-giving and counseling which is required to perform such task.

- xxii. There is no recreational facility for inmates to keep them engaged in some productive activities. No collaboration is made with NGOs to provide useful recreation to inmates.
- xxiii. There is practically NIL or negligible rehabilitation facility at vagrant homes. There is minimal vocational or life skill training for their restoration or rehabilitation back to society.

## 17. Rights of Mentally ill person<sup>1</sup>

A mentally ill person is neither a non-human nor a half human; he/she is as much a complete human being and is entitled to the same inalienable human rights as available to other normal human beings. He/she is entitled to be treated with dignity, decency and equality as any other human being and cannot and should not be discriminated against. He also has a right to rehabilitation and re-integration with family, community and mainstream society. Furthermore, since a mentally ill person is unable to fend for himself/herself, having regressed into that state of body and mind where he/she has lost the insight into the essence of human existence, he/she is in need of social defence.

A person with mental illness is entitled to treatment with the same dignity and decency as any other human being. A mentally ill person does not become a non person merely on account of certain disabilities. His human rights flow from the fundamental right to life as in Article 21 of the Constitution which includes:

- Right to living, accommodation, food, potable water, education, health, medical treatment, decent livelihood, income, a clean and congenial existence
- Right to privacy, speedy trial (if involved in any criminal offence), information and means of communication.

Availability, accessibility, acceptability and quality are the core obligations and elements of the right to health. A mentally ill person is in need of special care and attention both at home and in the hospital for the simple reason that he/she is unable to fend for himself/herself.

<sup>1</sup> Mental Health Care and Human Rights; Published by NHRC and National Institute of Mental Health and Neuro Science, Bangalore (edition 2008)

No mental ill person or their caregivers should be subjected to any abuse or offensive treatment or treatment at borders on cruelty or torture; instead they should be treated with utmost civility, courtesy and consideration.

Once a decision is taken that a patient requires inpatient care, certain other rights accrue to the admitted person such as:

- Right to wholesome, sumptuous and nutritive food according to certain prescribed scales;
- Right to potable water;
- Right to environmental sanitation including clean toilets;
- Right to personal hygiene;
- Right to books, journals, periodicals and newspapers in their language;
- Right to recreation (television in the room, dance, drama, music, other cultural activities, games and sports)

Right to personal hygiene includes providing adequate toilets facilities, adequate laundry facilities with mechanization, clean and hygienic kitchens.

## 18. Supreme Court and Human Rights for persons with mental illness

In various judgments, the Hon'ble Court dwelt upon the rights of mentally ill person. Following are some of the landmark judgments highlighting the rights of mentally ill persons:

In the case of **Chandan Kumar Bhanik vs. State of West Bengal** (1988) the apex Court observed:

*“Management of an institution like the mental hospital requires flow of human love and affection, understanding and consideration for mentally ill persons; these aspects are far more important than a routinized, stereotyped and bureaucratic approach to mental health issues”.*

The Apex Court in the judgment in **Rakesh Ch. Narayan vs. State of Bihar** laid down certain cardinal principles pertaining to treatment and rights of mentally ill persons. These are:

- ❑ Right of a mentally ill person to food, water, personal hygiene, sanitation and recreation is an extension of the right to life as in Article 21 of the Constitution;
- ❑ Quality norms and standards in mental health are non-negotiable;
- ❑ Treatment, teaching, training and research must be integrated to produce the desired results;
- ❑ Obligation of the State in providing undiluted care and attention to mentally ill persons is fundamental to the recognition of their human right and is irreversible.

### 19. Judicial Interpretation and Pronouncement on anti-begging Acts (Annexure- C)

Various High Courts have examined the provisions of the anti-begging Acts and essence of their landmark judgments are as under:

- I. **Ram Lakhan vs State** on 5 December, 2006  
Delhi High Court  
Citations: 137 (2007) DLT 173

The Hon'ble High Court of Delhi while interpretating the Bombay Prevention of Begging Act, 1959 laid down the followings:

- a) Beggars are classified based on their needs and conditions. According to the Court, beggars can be classified into four categories. Firstly, it may be that he is down-right lazy and doesn't want to work. Secondly, he may be an alcoholic or a drug-addict in the hunt for financing his next drink or dose. Thirdly, he may be at the exploitative mercy of a ring leader of a beggary "gang". And, fourthly, there is also the probability that he may be starving, homeless and helpless.
- b) Although, apparently, the said Act does not distinguish between the four different kinds of "beggars" mentioned above, but the Court is of the view that there is enough scope in the provisions of the said Act to treat them differently as, indeed, they should be. Professional beggars who find it easier to beg than to work may be appropriately dealt with by passing orders under Section 5(5) of the said Act for their detention in Certified Institutions.
- c) But, beggar falling in second category should be treated differently. His problem is not really a problem of "begging"

but a problem of addiction. The solution lies in attempting to de-addict him and help in ridding himself of the malady. Then there is the third category of 'beggars' who are exploited and forced into begging by other ring leaders. A different approach is required here. The person found "begging" need not and ought not to be detained in a Certified Institution. Because, his act of solicitation was not voluntary but, under duress, the result of exploitation at the hands of others. The ring leaders need to be rounded up and penalised under Section 11 of the said Act and these "beggars" need to be released from their exploitative clutches.

- d) Regarding fourth category of "beggars" as mentioned above, Hon'ble Court observed that they are persons who are driven to beg for alms and food as they are starving or their families are in hunger. They beg to survive; to remain alive. For any civilized society to have persons belonging to this category is a disgrace and a failure of the State. To subject them to further ignominy and deprivation by ordering their detention in a Certified Institution is nothing short of de-humanising them. It is here that Courts must step in and recognize the defense of necessity.
- e) The Hon'ble Court invoked the **doctrine of necessity**. According to the Court, like the other defenses of self-defense and duress, this is also a defense against culpability and punishment. **Where the "beggar" takes to begging compelled by poverty and hunger, he would be entitled to invoke the defense of necessity. The defense of necessity involves the element of involuntariness or lack of legitimate choices. It is the absence of legal alternatives that provides the defense of duress or necessity.** ( Paragraph 7)
- f) The Hon'ble Court has laid down the conditions and procedures to be followed while deciding the case under this Act. According to the Hon'ble Court, the trial court must proceed in the following manner:

"(1) First of all, it must satisfy itself that such person was, in fact, found begging. For this purpose, the court must carefully scrutinize the evidence produced before it. It does not matter that the inquiry is a summary one. The court must be "satisfied" that the person was found begging. The evidence must be clear and unimpeachable. If there is any doubt or the prosecution

requires the court to draw upon many inferences then the court must not record that the person before it was found begging. Consequently, the court, in such a situation, cannot also record a finding that the person is a beggar.

(2) Where the court is satisfied that the person before it was found begging and therefore it is compelled to record a finding that he is a beggar, the court "may" (and not "shall") order his detention in a certified Institution.

a) **However, where the person has a defense of duress or necessity, the person ought not to be detained. As pointed out above, whether the specific defense of duress or necessity is taken by the beggar or not, it is an obligation on the Court to satisfy itself that the person did not have such a defense.**

b) And, where it appears to the court that the person was found begging because of his addiction to drinks or drugs, not much purpose would be served by sending him to a certified Institution which does not provide for detoxification or de-addiction. The burgeoning problem of drug addiction and alcohol dependence coupled with the problem of begging is a complex one. Here begging is only a symptom of the malady of addiction. Taking action on begging while ignoring the problem of addiction is much the same as prescribing a pain-killer for the pain and ignoring the treatment of the disease which is the underlying cause for the pain. So, in such cases the court, after due admonition ought to release the beggar on a condition that he shall go in for detoxification or de-addiction at an accredited institution. A bond to this effect may be taken by the Court in the manner provided in the proviso to Section 5(5) of the said Act.

c) In all other cases, after the court records a finding that a person is a beggar, the court can order detention of such a person in a certified Institution. But, here too, the court must first explore the possibility of applying the principle of admonition as given in the proviso to Section 5(5) itself"

(Paragraph 12, emphasis added)

Thus, in the above-said case, beggars are classified according to their needs and conditions. The Court is not in favour of sending those beggars to certified institutions who are forced to beg just to survive. The Court invoked the doctrine of necessity to defense to their culpability under the begging Act.

**II. Mousham vs State on 18 October, 2012**  
Delhi High Court  
(CRL. REV. P. NO. 466/2012)

In the aforesaid case, the question of fair trial and providing free legal aid to the accused beggar was raised before the Hon'ble Court. According to the petitioner, any conviction without providing due legal aid at the expenses of the State is unsustainable. The Court upheld the rights of the accused for free legal aid and held that it is the Court's duty to inform the unrepresented accused that he could get legal aid at State cost even if the accused does not request for legal aid and the conviction of any accused without representation by a lawyer amounts to violation of his fundamental right under Article 21 and his trial has to be held to be vitiated on account of a fatal constitutional infirmity.

**19. Comparative analysis of anti- beggary statutes enacted by different States<sup>1</sup>**

The West Bengal Vagrancy Act, 1943 needs to be examined, appraised and evaluated in comparison with other similar statutes enacted by different States to check the problem of begging in public place. In India, almost 18 states including NCT of Delhi has enacted or adopted some statute to deal with the issue of begging in public place. An endeavour is made herewith to make a comparative analysis between the West Bengal Vagrancy Act, 1943 and the TN Prevention of Begging Act, 1945, the Bombay Prevention of Begging Act, the Karnataka Prohibition of Begging Act, 1975. The salient characteristics of these laws are as under:

- i. All anti-begging laws define the 'begging' on similar terms including the West Bengal Vagrancy Act wherein meaning of

<sup>1</sup> Three Anti-beggary Act namely TN Prevention of Begging Act, the Bombay Prevention of Begging Act and the Karnataka Prohibition of Begging Act are attached at Annexure- D



- 'vagrant' is equivalent to 'beggar' asking for begging or alms in public place.
- ii. All anti-begging laws provides for the special home or relief centre for detention of beggars and other necessary infrastructure and support system including medical health care for their rehabilitation.
  - iii. It empowers police to arrest such beggars without warrant and provides for summary trial.

However, the significant variation or distinction between the West Bengal Vagrancy Act and other anti- begging laws are as under:

### **I. Quantum of Punishment- types and period of detention**

- i. Other laws provides for graded period of detention with lighter period of detention for first time offender including admonition or release on personal bond.
- ii. The statute provides for definite period of detention. For the first time offender, it could be in between 1 to 3 years. Section 9 of the TN Prevention of Begging Act, Section 12 of the Karnataka Prohibition of Begging Act and Section 5(5) of the Bombay Prevention of Begging Act are analogous in prescribing period of detention.
- iii. Whereas, under the West Bengal Vagrancy Act, there is no such provision. It provides only one type of punishment, which is ordering declaration for indefinite period of detention. (Section 7 read with Sec. 18 of the Act)

### **II. Treatment of lunatic or mentally ill person**

- i. Other Acts specifically provide that lunatic or mentally ill person should be removed from the home and sent to mental hospital for treatment. However, in case of West Bengal Vagrancy Act, there is no such provision. Section 23(3) of the TN Prevention of Begging Act, Section 14 of the Karnataka Prohibition of Begging Act and Section 26 of the Bombay Prevention of Begging Act are analogous in sending mentally ill person to mental health centre.

## 20 Need to Review the West Bengal Vagrancy Act 1943 – Limitation of the Act

The Act was enacted in the year 1943, during pre-Independence period. The Act was enacted with a background to check the influx of famine victims to Calcutta. The Act attempted to address the socio-economic problems of 'beggary' prevailing during that contemporary period of time. But over a period of time, much social nucleus has been changed. The implementation of the Act at ground level since last 70 years amply reflects the shortcomings and limitations. The details are as under:

### I. In conflict with Human Rights of mentally ill person

- i. Detaining the mentally ill person under confinement without adequate and proper psychiatric and medical care is gross violation of their human rights. The Vagrant Homes are not equipped at all to deal with cases of mentally ill inmates. They are not having any facility of psychiatric doctor, psychological counselor and other related therapies for treatment and rehabilitation of the mentally ill persons.
- ii. Other anti-begging laws, being operational in other States, specifically provides for transfer of mentally ill inmate to mental health center instead of detention at special home/beggar home.
- iii. Majority of the person booked by the police are mentally ill, mentally retarded, old and infirm destitute. With no focus on any rehabilitation and proper medical or psychiatric/psychological treatment, vagrant remains at the Home till his/her death. There are several cases in which vagrant are staying at the Home even for more than 20 years.

### II. In conflict with Judicial Interpretation

- i. Since majority of them are suffering from mental illness, having some physical or mental disability and living a destitute life without any family support, they are not in a position to know the consequences or nature of their activity. The begging is out of compulsion or necessity for survival rather than out of deliberate choice. The Delhi High Court in **Ram Lakhan V. State** observed that like the other defenses of self-defense and

duress, this is also a defense against culpability and punishment. Where the "beggar" takes to begging compelled by poverty and hunger, he would be entitled to invoke the defense of necessity. The defense of necessity involves the element of involuntariness or lack of legitimate choices. It is the absence of legal alternatives that provides the defense of duress or necessity (Paragraph 7). This Act needs to be reviewed in view of the judicial interpretation that bars culpability of begging out of necessity.

### **III. In conflict with provisions of the Mental Health Act, 1987**

- i. Under the Mental Health Act, 1987, there are exclusive and special provisions pertaining to the mentally ill persons who are not under proper care and control (Sec. 25 of the Act). As per Sec. 25 of the Mental Health Act, 1987, the Magistrate, based on medical report/certificate and other enquiry, passed an order authorizing the detention of mentally ill person who is not under proper care and control as an in-patient in a psychiatric hospital or nursing home (Sec.23). Even under Mental Health Act, the police officer is entitled to bring this fact before the Magistrate and produce such mentally ill person to the Magistrate for further decision. But the provisions under the WB Vagrancy Act, which empower detention of even mentally-ill person at vagrant home where there is no proper facility and provision for psychiatric treatment directly, are in conflict with the provisions prescribed under the Mental Health Act, 1987. In the light of provisions under the Mental Health Act, 1987, the position of mentally ill vagrant detained under the WB Vagrancy Act should be re-examined.

### **IV. Punitive in nature**

- i. Though non-penal in nature, but its implication are much rigorous and worse than penal enactment. Vagrant is ordered to be detained at the Home through summarily trial without providing due legal aid without ascribing any reason for arriving at that conclusion. There is no one to defend him/her.
- ii. The main approach of the Act is to use Vagrant Homes as some sort of 'Detention Centers'. Section 15(2) and Section 15(3) of the Act provides for punishment of vagrants who disobey the rules of management and discipline. This overall

tone and tenor of the Act is punitive in nature rather than that of compassion, consideration, treatment and rehabilitation.

- iii. Without adequate facility and having no focus on rehabilitation and re-integration back to the community, it is punitive in nature.
- iv. To add to further woes, Section 22 of the Act prescribes penal provision in case any vagrant escapes from the custody of the Home or leaves without permission of the Manger. That practically means that they are imprisoned within the four-wall of the Home and cannot come out of it. To prevent any escape (willful or accidental), inmates are locked inside the barrack from 6 PM to 6 AM. That means, 'de-facto' they are being treated as 'prisoners' rather than 'destitute in need of care and protection'.

#### **V. Provision of indefinite detention and extremely tough conditions for release**

- i. If Section 13(1) and Sections 17 and 18 of the Act are read together, then the main reason and objective of the Act is to equip the vagrant with some kind of vocational /income-generating skill so as to ensure that he/she does not resort back to begging. As per Section 18 of the Act, vagrant so detained or lodged at the Vagrant Home, may be discharged if:-
  - Some employment has been obtained for such vagrant.
  - Vagrant has possessed sufficient income to enable him to support himself without resorting to vagrancy.
  - When vagrant's relative or well-wisher undertakes a bond to look after and maintain him and not allow him to beg again.

Thus, once entered into the Home, vagrant can come out of the Home only on satisfying the condition laid down under Section 18 of the Act.

- ii. Therefore, unless and until some vocational and capacity building training is not imparted to enable them to earn their livelihood, vagrant cannot come out of the Home. Further, since very few vagrants have link to their family members, thus the chances of releasing them on family bond is also not very bright. The very

fact that in the last three year, only 12 inmates were released out of MLVH speaks volume for itself.

- iii. Once a person is detained as 'vagrant' by the Special Magistrate, it tantamount to nothing less than life imprisonment to the vagrant. The 'declaration' of the Magistrate u/s Section 7 is valid till vagrant is discharged by the Controller of Vagrancy u/s 18 of the Act. Thus, the 'declaration' of the Magistrate is valid without any time limit. This is gross contradiction to provisions envisaged in other anti-begging laws which provides for definite period of detention and graded period of detention.

## 21. Recommendations

### I. Improving basic infrastructural and logistic

There is urgent need to substantially improve the infrastructural requirements of the Home especially in the following area:-

- Beds and bedding and clothing
- Vehicle including ambulance
- Utensils for inmates
- Proper maintenance of the building including construction and proper maintenance/cleanliness of toilets, fumigation and spray to control communicable and skin related diseases.
- Adequate protective measures need to be adopted during winter season.

### II. Review of the Bengal Vagrancy Act, 1943

The mandate and scope of the Bengal Vagrancy Act, 1943 may be reviewed with regard to declaration and detention of mentally ill person as 'vagrant' at Vagrant Homes. This is not in spirit with provisions of the Mental Health Act, 1987.

### III. Identification, Screening and classification of Vagrant

There should be different category of Homes to deal with vagrant having different needs and requirement. For instance, vagrants can be classified into various categories such as old and infirm person, person with disabilities, and physically able-bodied vagrant. There should be different facility, infrastructure and rehabilitation programme for each category of vagrant. Treating

each vagrant irrespective of his/her needs/requirement is unfair. The Hon'ble High Court of Delhi in **Ram Lakhan V. State of NCT Delhi** (137 (2007) DLT 173) has classified beggars into four categories according to their condition and requirement.

#### **IV. Medical Health Facility**

- a) Considering the physical and mental health condition of inmates, there should be permanent medical doctors, duly assisted by nursing attendants and other para-medical staff. The scale of medical doctors and other staff should be based on standards adopted in hospital/nursing homes.
- b) Since each Home on an average is housing more than 200 inmates, proper medical infrastructure including beds for in-patient care, testing and diagnostic facilities and other equipment should be made available.
- c) Specialist Doctors from various disciplines such as dermatologist, dentist, geriatric, etc. should be on the panel of the Home and should visit the Home on fortnightly basis.

#### **V. Referring mentally ill inmates to Mental Health Hospital**

Mentally ill inmate/vagrant should be referred to Mental Health Hospital for proper treatment.

#### **VI. Human Resource Development**

- a) All the vacant posts should be filled on priority basis.
- b) Manager of the Home should be full time officer. He should not be given additional post/charge.
- c) Proper training and skill development is needed for the staff.
- d) Counselor should be appointed or hired.
- e) Need more 'Caregiver' to look after the personal requirements of inmates especially the old and infirm inmates who could not take care of themselves.

#### **VII. Rehabilitation Measures**

- a) There should be proper recreation and rehabilitation facility for rejuvenation and productive engagement of inmates. This will help them in recovering from psychological distress.

Collaboration should be made with NGOs for rendering various recreation and rehabilitation services to inmates.

- b) Need to improve educational and vocational training facility to augment the chances of their re-integration and rehabilitation back to society. For this, collaboration could be made with NGOs who could employ them, help in further employment, sell their products and self help groups could be formed for economic sustainability and social protection.
- c) Psychological Clinical Counselor should be engaged to ensure the occupational behavioral learning therapy to the inmates. This could help them substantially in taking personal care and revealing their identity and location of family.

### **VIII. External Oversight Mechanism**

A Board of Visitor consisting of eminent social workers/civil society member/NGOs working in this field and officials of district administration should be constituted for regular and independent monitoring of the Home.