

**Report of Shri Chaman Lal, Special Rapporteur on his visit to Model Central Jail Kanda (Shimla), Sub Jail, Shimla, Sub Jail Bilaspur and Open Air Jail Bilaspur from 21-24 September 2003.**

As directed by the Commission, I visited Model Central Jail Kanda (Shimla), Sub Jail Shimla, Sub Jail Bilaspur and Open Air Jail Bilaspur from 21-24 September 2003 to study the living conditions and assess the human rights situation of the inmates. The visit to these jails was preceded by a discussion with Shri Sohan Lal, Addl. DG (Prisons) Himachal Pradesh on 21 September which proved very helpful in understanding and appreciating the various aspects of organisation, management and administration of jails in Himachal Pradesh. Shri P.C. Sharma, Chief Welfare Officer accompanied me to these jails and provided useful inputs on many issues. Shri H.S. Thakur, ADM Shimla was also present during my visit to Model Central Jail and Sub Jail Shimla.

**MODEL CENTRAL JAIL**

**Profile of the Jail**

Shri Ashok Shandila, Supdt. Jail explained the salient features of the Model Central Jail. The jail building constructed in 1999 has five blocks housing 22 barracks and 8 cells. One block having 3 barracks is exclusively meant for women prisoners. Another with three barracks is kept for juveniles although none are held at present. The jail has an authorised capacity of 308 prisoners with the following break-up:

Male	- 268
Female	- 15

Juvenile	- 15
Better Class prisoners	- 10

The actual strength on the day of the visit (22 Sept. 03) was 148 – 110 convicts and 38 undertrials. 9 convicts were shown on parole. The convicts include 46 lifers. The jail is holding only one female prisoner who is a life convict. There are six foreigners – 3 convicts and 3 Under-trials involved in cases under NDPS Act. The average population of the jail is around 150. As such overcrowding is not a problem in this jail. Under-trials (38) out of a total of 157 constitute 24% of the jail population.

## SANITATION

125 toilets have been provided inside the barracks. 26 toilets provided outside give toilet to prisoner ratio of 1:6 which is an ideal arrangement. 84 Bathrooms have been provided inside the barracks and 19 outside. The standard of sanitation and hygiene is found to be good. However, the current arrangement of engaging a single safai karamchari on part time basis against the sanctioned strength of 4 regular safai karamcharis shows a glaring deficiency in the staffing pattern. The Central Jail Shimla is also having deficiency of the following staff:

1. Deputy Supdt.	- 1
2. Asstt. Supdt.	- 1
3. Head Warder	- 1
4. Warder	- 35
5. Male Social Worker	- 1
6. Female Social Worker	- 1

Considering the Block/Barrack-wise requirement of the Guarding staff, the authorised sanctioned strength of 9 Head Warders and 56 Warders can be considered as just sufficient and can not justifiably allow any vacancies in these ranks. While there is only one vacancy of Head Warder, as many as 35 posts of Warders are lying vacant in a sanctioned strength of 56. Although some Home Guards have been provided, the available staff is inadequate and can not ensure proper security of the complex. The vacant post of the Dy. Supdt. also needs to be filled up to strengthen the supervisory control.

### **WATER SUPPLY**

Supply of water for drinking, bathing and washing purposes is found to be satisfactory. This was confirmed by a number of prisoners, convicts as well as under-trials including the foreign prisoners.

### **KITCHEN**

All cooking is done on Gas. Barring a foreign prisoner, Fredric George Cording Lucy, a UK National undergoing sentence for an offence under NDPS Act, all the prisoners present during visit expressed satisfaction with the scale of ration fixed by the Government. However, some of them complained about insufficient supply of Dal and vegetables and poor preparation of chapatis. Shri P.C. Sharma Chief Welfare Officer was requested to take note of this complaint and initiate immediate measures for its redressal.

## **JAIL HOSPITAL**

Dr. Ravi Kant Dogra, Medical Officer explained the medical facilities available at the Hospital. A separate block has been earmarked for Jail Hospital. The Hospital is presently having one Medical Officer and one Multi-purpose Health Worker (female). Both the sanctioned posts of Dispenser are lying vacant. The Daily OPD average is 25. The hospital has a bed capacity of 8 with an average monthly occupancy of not more than two patients. During the period January to September 2003, only 12 prisoners had to be admitted to hospital.

Visits of Specialists are arranged from time to time. A team of Dental Doctors had visited the jail in November 2002 and also in August 2003. AIDS Awareness Campaign Team has visited the hospital on 3<sup>rd</sup> June and 1<sup>st</sup> September 2003. A team of Doctors has also come from Indira Gandhi Medical College Shimla on 13 February 2003. Since a platoon of the armed police is stationed at the jail itself, no difficulties are being experienced in escorting the prisoners to outside hospital for consultation or treatment purposes. The hospital has an Ambulance in working order.

Initial medical examination of prisoners on admission is being carried out regularly. Prisoners were found satisfied with health care facilities.

Two prisoners are undergoing treatment for mental illness. One of them is admitted in Mental Hospital Varanasi since 16 March 2003 and the other is being treated in the Jail itself under the observations of the Psychiatrist of the Indira Gandhi Medical College. The X-ray machine of the hospital has

remained unused ever since its installation years back because no Technician has been provided to operate it.

## **DEATH IN JAIL**

As per the statements furnished by the Jail Supdt and the Office of the DG(Prisons) there has been no case of death of a prisoner in this jail since 1.1.2001. However, the records of the Custodial Death Cell of the Commission show that a prisoner named Rakesh Kumar s/o Dulo Ram of Model Central Jail Shimla had died on 7.2.01. Intimation followed by required reports was sent to the Commission by the Jail authorities and the case was closed after examination on 21.11.01. This vital discrepancy needs to be explained.

## **UNDERTRIALS**

The statement of undertrials in jail was scrutinized. Only 4 undertrial prisoners were found to be in prison for the period exceeding one year but less than two years. 7 undertrials are in jail for a period falling between 6 to 12 months. I held a 'Sammelan' of all the undertrials, checked their history-tickets, questioned them about matters relating to their basic needs. It was heartening to note that all of them are attending court regularly and their trials are progressing satisfactorily. Availability of Police escort for production of undertrials to the court is found to be hundred per cent in this jail. Regular visits of the District Judge are ensuring satisfactory progress of the court cases.

## CONVICTS

Convicts numbering 110 are accommodated in a separate block divided into 4 Barracks. I met 57 of them including 21 lifers. They expressed satisfaction with living conditions and treatment by Jail staff. Some of them complained about the system of parole and premature release.

Convict prisoners are granted temporary release on parole and also furlough in accordance with the provisions of the Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968. IG(Prisons) has been delegated the powers of the Government to order temporary release on parole after obtaining recommendations from the DM of the District concerned. Parole can be granted on the following grounds:

- a) A member of the prisoner family has died or is seriously ill. Member here means the husband, wife, son, daughter, father, mother, brother or sister etc.
- b) The marriage of the prisoner's son or daughter is to be celebrated.
- c) For agricultural purposes such as growing, sowing or harvesting on his land.
- d) It is desirable to do for any other sufficient cause.

The period of parole is not to exceed two weeks in respect of grounds specified at (a), four weeks for (b) and six weeks for (c) above. Although the Act does not say so specifically, parole on agricultural ground is being granted for a total period of six weeks on one or two occasions. A number of convicts complained that the earlier interpretation to release convicts on this ground twice a year for a period of six weeks each time was changed by the present

Addl. DG(Prisons) to their dis-advantage. Now eligible prisoners are granted parole for a maximum period of 42 days whether they want to avail it on one or two occasions. In view of my study of the situation in other States, I am inclined to agree with the view-point of the Addl. DG (Prisons). However, since this matter has been taken by some prisoners to Himachal Pradesh High Court, no further comments are necessary.

In addition to parole, IG (Prisons) is empowered to grant furlough for a period of 3 weeks during the first year and two weeks during each successive year thereafter. Furlough can be granted to only those prisoners who have been sentenced to a term of not less than 5 years and only after they have completed a period of good conduct of 3 years earning at least 3 annual good conduct remissions.

The Government of Himachal Pradesh has taken yet another progressive step to delegate to the Jail Supdt. the powers of sending of prisoners under police escort in an emergent case like death or very serious illness of a family member. The Supdt. can send the prisoner for two days after verifying the facts from the local police or any other reliable source when release on parole can not be arranged immediately.

I spoke to all the convicts assembled in the convict block and found that almost 60% of them had availed of parole on one or more occasions. This was also reiterated by the Chief Welfare Officer. Following complaints were heard.

1. Prakash Chand s/o Mangat Ram undergoing life imprisonment since 7.2.01 has not been granted parole even once.

2. Ramesh Chand s/o Milkhi Ram has been in prison for over 4 years as a convict in a case u/s 376 IPC. He complained that he has not been granted parole even once.
3. Krishan Kumar s/o Brij Lal and Dewan Chand s/o Arjun Das both lifers and Dev Raj s/o Ject Ram and Raju Bhatia s/o Madan Lal Bhatia convict under NDPS had similar complaint to make.
4. Convict Fredric George Cording Lucy, a UK national is an NDPS convict since September 1999. He complained that his request for release on parole has been rejected on the ground of his being a foreigner. He said that he is a permanent settler of Kullu where his family is staying for the past 25 years. He said he wanted to know the basis of denial of parole to him while the other NDPS convicts are availing of this facility. I discussed this case with Shri Sohan Lal ADG(P) and requested him to look into the matter personally and convey a suitable reply to the prisoner.
5. Ramesh s/o Tulsi Ram, a lifer has completed 15 years and 7 months of actual imprisonment and a total incarceration of 20 years including remission. He wanted to know why his premature release is not being ordered. The Supdt informed that his case was sent to the Government for consideration on 9.6.03. Additional DG (Prisons) was requested to look into it.
6. Ramesh Kumar s/o Baldev Raj was sentenced to 10 years imprisonment under 376 IPC on 25.9.2000. He has completed 3 years and 3 months including the undertrial period. He has availed of parole three times during this period. He requested for transfer to Dharamshala because of the inability of his family to visit him for



interview at Shimla. Addl. DG(Prisons) may consider the case on its merit.

7. Mauji Ram s/o Orku Ram is a lifer who has been in jail since August 91. He is 67 years old and is suffering from Chronic Obstructing Pulmonary Disease (COPD). It appears to be a fit case for consideration of premature release on medical grounds.
8. Raj Kumar s/o Ram Lal has completed 7 years of his 10 years imprisonment under NDPS without being granted parole even once. He belongs to District Haridwar and his request for parole, as per his statement, is rejected on the grounds that he is young and may jump the parole. He has also requested that he is a professional carpenter and his services can be utilised to start vocational training in carpentry in this jail. He can be transferred to Central Jail Nahan where Jail Industry has a carpentry section. Addl. DG (Prisons) is requested to consider and decide on merits.
9. Salim s/o Rasheed Ahmed has completed 9 years of his sentence of 10 years under 376 IPC. He has requested for transfer to Open jail Bilaspur. Although rape convicts under 376 IPC are not eligible, IG (Prisons) Himachal Pradesh has powers to order such transfers in the relaxation of Rule. The prisoner complained that some convicts of his category have been admitted to the open jail in the past. His statement was found to be correct. The visit to the open jail Bilaspur revealed that one lifer convicted for murder with rape was admitted to the open jail in the year 2000. Addl. DG (prisons) may like to look into this case and decide on merit.
10. Lokesh s/o Ram Shankar has been in this jail for 2 ½ years as a convict under 376 IPC without availing of parole even once.

11. Lifer Hardayal s/o Nanku ram has been undergoing life sentence since 1989. He has completed actual imprisonment of 14 years without availing of any parole and has gained remission of about 3 years. He has requested for his premature release. The Supdt. Jail informed that his case was referred to Addl. DG (Prisons).

## **WOMEN JAIL**

Women Jail is functioning from a separate enclosure. Only one female convict undergoing life imprisonment is staying with her child (3 ½ years) who is regularly sent to the Anganwari centre of the adjacent village and is receiving appropriate diet. Female staff of one Head Warder & one Warder is available. To ensure round the clock duty, at least 3 female warders including Head warder is considered the minimum necessary staff. Although the Jail Supdt. is ensuring the supply of sanitary towels to the female convict, the item is yet to be sanctioned on regular basis.

## **JAIL INDUSTRIES**

A statement furnished by the Jail Supdt. shows that only 34 convicts out of a total of 110 were engaged in work on the day of my visit i.e. 22<sup>nd</sup> September 2003. Nine of them are working in kitchen. Sixteen are engaged in repair/renovation work given to a private contractor and three are on maintenance jobs. Only one convict is engaged as a tailor, one as a barber and two as weavers. It is a pity that the weaving section with well developed facilities for making shawls, mats, blankets and bed sheets is currently employing only two prisoners. 8-10 prisoners are also employed by TLG

Spectra Vision Pvt. Ltd. for making of Kero Heaters inside the jail. This work is available for six days a week during the months October – March. The convicts are paid Rs. 65/- per day which means Rs. 5 more than the current rate of the minimum wage.

The Division Bench of the High Court of Himachal Pradesh had, in *Gurdev Singh and Others vs. State of Himachal Pradesh and Others* (1992 Cr. Law Journal. 2542) held that prisoners were entitled to minimum wages as prescribed under the Minimum Wages Act 1948 and no deduction is permissible from the wages on account of maintenance of the prisoners in jail. Similar judgements were also delivered by the High Courts of Kerala, Rajasthan and Gujarat around that time. In September 1998, the Supreme Court settled this issue with its landmark judgement given in Criminal appeal No. 308 of 1986 *State of Gujarat vs. Hon'ble High Court of Gujarat* (1998 7SCC 392). The Apex Court clarified that the linking of rates of wages payable to the prisoners with the prevailing commercial wage rate is impractical. Prisoners should be paid fair, adequate and equitable wages in proportion to the skill required for the product/job/service and the satisfactory performance of the prescribed tasks. The judgement says that we are not holding that prisoners on hard-labour are entitled to minimum wages under the Minimum Wages Act "It is imperative that the prisoners should be paid equitable wages for the work done by them. In order to determine the quantum of equitable wages payable to prisoners, the State concerned shall constitute a Wage Fixation Body for making recommendations". Before this, Mulla Committee on Jail Reforms had also recommended that prisoners should be paid equitable wages. The judgement that the Himachal Pradesh Government was paying wages as prescribed under the Minimum Wages Act and "it was not clear if any appeal

against the High Court Judgement had been filed, the State has certainly opposed grant of minimum wages to prisoners in the affidavit filed in pursuance to notices issued by this Court in the present case”.

Although most of the States have, after the settlement of this issue by the Apex Court, revised the wages payable to the prisoners, the Government of H.P. continues to pay wages as per the Minimum Wages Act 1948. In most of the States, the prisoners are paid wages in two scales called semi-skilled and skilled. The average daily wages are found to be 10-16 for semi-skilled and 18-24 for skilled categories in most States. In some States the prevailing minimum wage rates and the cost of food supply to prisoners have been taken into consideration while fixing these States. Although the Supreme Court judgement does not mean that prisoners can not be paid wages as prescribed under the Minimum Wages Act, the financial implications of the practice being followed in Himachal Pradesh need to be appreciated. Because of the constraints of the Budget, a very small number of prisoners can be employed in Jail Industries. In the year 2001-02, the total production was 6,42,142. A sum of Rs. 63,685 was paid as wages which means generation of 895 man-days in a year in terms of the minimum daily wage. In 2002-03, only 1100 man-days were created. These calculations show that available work in the Jail Industry is not enough to employ even 10% of the convicts on daily basis. The existing arrangements for providing vocational training and gainful employment to the prisoners are therefore not at all adequate. This is adversely affecting the rehabilitatory aspect of the prisoners' care.

Three Power-looms purchased about 5 years back have been lying idle for want of the skilled staff to operate them. No wonder, this has attracted

adverse comments from the external audit party of the State.

It is recommended that the attention of the Government of Himachal Pradesh may be drawn to the Supreme Court Judgement referred to above and the practice in other States and the issue of wage rate for prisoners should be reviewed and restructured to ensure that all able-bodied and eligible convicts are provided vocational training and the gainful employment in Jail Industries.

I drew the attention of the Addl. DG (Prisons) to an important aspect of the judgement of the Supreme Court mentioned above which seems to have received no notice in H.P. so far. It relates to the recommendations of the Apex Court to the State Governments to make law for "setting apart of a portion of wages earned by the prisoners to be paid as compensation to deserving victims of the offence the Commission of which entailed the sentence of imprisonment to the prisoner, either directly or through a common fund to be created for this purpose or in any other feasible mode". Some States such as M.P, Bihar and Tamil Nadu have taken initiative in this regard.

A number of prisoners were asked whether they are receiving regular payment for the work done by them. Everyone was found well informed about the wage rate and had a fairly good idea of his earning shown in the relevant register. No one made any complaint about payment.

#### **VISITORS**

District and Session Judge Shimla has visited the jail five times since 1.1.2002. DM Shimla has not made any formal visit during this period. The Board of visitors provided under Rule 37(5) of the Himachal Pradesh Jail Manual is defunct and needs to be revived by appointing the non-official

members. Addl. DG (Prisons) informed that he has already requested the DM to send nomination of suitable persons so that the Board could be constituted.

### **NGOs**

Involvement of the NGO sector in prisoners' welfare activities is almost NIL. Only a religious organisation related to Satya Sai Baba Sect. visits the jail, on every second Saturday to conduct 'Bhajan-Kirtan' and religious discourses.

### **SUB JAIL SHIMLA**

Shri P.C. Sharma, Chief Welfare Officer, Shri H.S. Thakur, ADM Shimla and Shri Kishori Lal, Asstt. Commissioner to D.C. Shimla were present. Shri Kishori Lal is holding the overall charge of the jail in the absence of a regular Supdt. Shri Karam Chand Dogra Dy. Supdt. explained the set up of the Jail and the various aspects of its functioning.

### **JAIL CAPACITY AND POPULATION**

Sub Jail Shimla has an authorised capacity of 29 – 27 male and 2 female prisoners. The actual strength at the time of visit on 22 September was 45 – 3 convicts and 42 under-trials. The UTs include 3 female prisoners. All the 3 convicts are lifers. The normal strength was reported to fluctuate from 40 to 80 in this jail.

### **SANITATION**

The jail has two barracks and 2 rooms for "Better Class" prisoners. The total of 6 toilets – 2 inside and 4 outside the barracks gives a toilet to prisoner

ratio of 1:6 which is satisfactory. However, it would be desirable to provide at least two more external toilets.

Supply of water for drinking, bathing and washing purposes is satisfactory. So are the cooking arrangements. The standard of sanitation and hygiene appears to be alright.

### **BETTER CLASS PRISONER**

Convict Rajiv Jassi, a Doctor by profession sentenced to life imprisonment for the murder of his wife has been accorded 'B' class status. Rule 499 and 500 of the H.P. Jail Manual provide for the classification of convicted and undertrial prisoners into two classes namely 'Better Class' and "Ordinary Class". The classification is on the basis of the criminal background, nature of offence committed but also on the consideration of "social status like education and habits of life being accustomed to a superior mode of living"

While an undertrial prisoner can be accorded better class status by the Officer In-charge of the Police Station till he is brought before the competent court and by the court thereafter, the convicts are accorded Better Class status by the Government.

It was seen that convict prisoner Dr. Rajiv Jassi was accorded B Class status by the Government on 12.4.02 on the basis of a proposal sent by the Prison Department. A Better Class prisoner enjoys a higher scale of food, clothing and bedding. While the daily expenditure on the diet of the ordinary prisoner is currently Rs. 22.75, a 'Better class' prisoner gets daily diet worth Rs.

30.20. What is more significant is the fact that convict Dr. has been provided a Helper –one of the remaining two convicts who is being paid Rs. 60/- per day (prescribed a minimum wages) for working as what may be described as domestic help to Dr. Jassi.

The Supreme Court had, in Prem Shankar Shukla vs. Delhi Administration (AIR 1980 SC 1535) held that “it is arbitrary and irrational to classify prisoners for the purposes of handcuffing into B Class and Ordinary Class” and added that “economic and social position cannot be the basis for classifying prisoners for purposes of handcuffs or otherwise”. In my opinion, the spirit of the judgement obviously prohibits any system of classification of prisoners which is not based on the scientific consideration of the needs for ‘custody’ and ‘treatment’ of prisoners but follows the criterion of economic and social status. In the Draft Indian Prisons Bill, circulated by the NHRC in 1996, it is stated that the real purpose of classification is to provide for diversification of institutional resources to cater to the differential requirements of prisoners in terms of custody and correction. The factors to be considered may include age, sex, legal status of the prisoner, nature of crime, length of sentence, security requirement, state of health and correctional needs. The old system of classifying prisoners on the basis of their economic and social status is a redundant relic of the past with no justification for its continuance. A number of States have amended their Jail Manuals and deleted this provision. Still a few States including Punjab and H.P. are continuing with this practice. It was learnt from the Office of the Addl. DG (Prisons) that a total <sup>of 49</sup> prisoners are enjoying Better Class status in the State at present. Eight of them are convicts – three sentenced u/s 302, three u/s 304(B) and one each u/s 307 and 376 IPC.



The undertrial is facing prosecution u/s 363, 366-A, 376, 511, 586, 342, 201 and 34 IPC.

While the convict Doctor Jassi is not required to do any hard-work, although life imprisonment is to be treated as rigorous imprisonment, the other two convicts held in this jail are gainfully employed and getting Rs. 60/- per day as wages - one as a Helper to the Doctor prisoner and the other in the Sub Jail kitchen.

### **MEDICAL FACILITIES**

Sub Jail Shimla has no Medical Officer of its own. However, a Lady Doctor from the adjoining PHC acts as a part time M.O. of the Jail. One Dispenser is available for providing immediate medical health to the inmates. Dr. Nitya was present during my visit and I found her fully sensitized about the prisoners' medical needs. She informed that one patient from this jail, an undertrial in a murder case is suffering from mental illness and has been under treatment at Mental Hospital Varanasi since 2.4.03. His file shows that the District Judge has already reminded the hospital more than once about the progress report on his health.

### **PAROLE**

All the convicted prisoners have been availing of parole facilities. Dr. Jassi has, during the last one year, availed of two parole of 28 days each.

### **STAFF**

Although only one post of Assistant Supdt. Jail is vacant in the sanctioned staff, the available manpower is not sufficient. Only two Head

Warders and 14 Warders are sanctioned for this Sub Jail which requires at least 5 Guards in every shift of eight hours. Position of Female Warders is still worse. Since female inmates are kept here and they are required to be guarded by female staff only, the sanctioned strength of only one female Warder cannot be taken as a satisfactory arrangement. The Dy. Supdt. informed that when this Lady goes on leave, a daily wager has to be arranged for guarding the female prisoners. The Sub Jail is authorised only one Safai Karamchari and the post is lying vacant. A part time Safai Karamchari has been engaged. It can not be considered a satisfactory arrangement.

### **DEATH IN JAIL**

The statement of the Dy. Supdt that there has been no death in this jail during the last 3 years was found to be incorrect. Perusal of relevant records revealed that a convict prisoner Shankar Das s/o Ram Kishan had died on 2.8.02. Intimation was sent to NHRC on 3.10.02. Thereafter the post-mortem report and the Magisterial inquiry reports were also sent and the case was closed by the Commission on 19.6.03. Despite clear instructions from the Commission that intimation of death in police or jail should be sent within 24 hours of its occurrence, more than two months were taken by the District Administration to send this information to the Commission. There is need for reiteration of the Commission's instructions for DMs & SPs issued in 1993.

### **UNDERTRIALS**

The cases of under trials were reviewed individually by making all the 37 UTs line up and show their history tickets. The number of undertrials who have been jailed for six months or more is 16. However, only 7 of them belong to 1 to 2 years category. The history-tickets revealed that all of them are being

produced before the Court regularly and their trials, as per their own statements, are progressing satisfactorily.

**VISITORS**

There have been 5 visits of the Judicial authorities to this jail during the last one year (1.9.02 to 31.8.03). It is obvious that the District Judge is reviewing the position of Under-trials periodically and ensuring timely disposal of cases.

**BOARD OF VISITORS**

It is defunct. Additional DG (Prisons) is getting it revived.

**SUB JAIL BILASPUR**

Shri Baldev Raj Kakkar, Dy. Supdt. is holding charge of Sub Jail Bilaspur as well as the Open Jail located in the same campus. The Sub Jail is functioning as Distt. Jail for Bilaspur. The jail building is more than 100 years old and needs constant repairs. It has an authorised capacity of 52 – 47 male and 5 female inmates. The actual strength on the day of the visit (23 September) was 34 including one female under-trial. The average strength of this sub jail since 2000 has been around 45. The jail is holding only one convict and 33 under-trials. The jail is functioning from one barrack divided into four sections and three separate cells.

A total of 10 toilets have been provided – 7 inside and 3 outside the barracks.

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22

Standard of sanitation and hygiene is satisfactory despite the fact that only a part time Safai Karamchari is available for four hours a day. The sole sanctioned post of safai karamchari needs to be filled up on regular basis. Supply of water for drinking, bathing and washing purposes is satisfactory although the jail is facing the common problem of shortage of supply of water in summer months.

## **STAFF**

Authorisation of 2 Head Warders and 20 Warders is not sufficient to meet the minimum security requirements. Vacancy of 8 Warders is causing operational difficulties although 5 Home Guards have been provided against this deficiency. The jail must have its sanctioned strength of 20 Warders in order to ensure proper security. There is only one post of female Warder to guard the female prisoners with no authorisation of female Head Warder. When the female Warder is absent on leave, a daily-wager has to be arranged in her place. It is a highly unsatisfactory arrangement. It was learnt that similar situation obtains at Sub Jails Solan, Hamirpur, Shimla, Kullu, Mandi and Una which are functioning as District Jails awaiting their upgradation.

Jail Supdt. Special Jail Bilaspur is also acting as the Incharge of Open Jail Bilaspur. Although the authorisation shows a post of Supdt., the present incumbent Baldev Raj Kakkar is discharging these responsibilities while holding the rank of Dy. Supdt. For ensuring a proper supervisory control, a regular Jail Supdt. needs to be posted at this place.

## HOSPITAL

The Sub Jail has been provided a Medical Officer and a Dispenser. The hospital attends only out-door patients and daily average OPD is nine. It has no beds and prisoners requiring hospitalisation are sent to the District Hospital. Since the hospital has to provide medical cover to the Open jail also, the existing facilities are considered inadequate.

Although there is one leprosy patient. Medical Officer. Dr. Kishore Pandey feels that segregation is not required because the person concerned has been successfully treated. One prisoner (Beli Ram )is receiving out-door treatment for mental illness at Indira Gandhi Medical College Shimla where he is taken once every month.

## UNDERTRIALS

I met all the UTs. numbering 33, checked their history-tickets and questioned them about progress of their trials. Only two of them have been in jail for more than one year.

- ❖ Manoj Kumar and Parvez Khan are in this jail since 28.2.02. Although their case u/s 302/201 IPC was committed to session on 1.2.03, the charges are yet to be framed.
- ❖ Sanjeev Kumar is an undertrial in a case u/s 376/452/506/34 IPC. He was admitted to this jail on 10.4.02. His case has also been committed to the sessions but the charges are not yet framed.

The Sub Jail has been provided three B&W TVs. Two are installed in the Barracks and one in one of the three Cells. At least 2 more TVs should be

issued to provide this essential recreational facility in all the four sections into which the Barrack has been partitioned.

Complaints were heard about poor quality of chapatis, non-availability of barber services, non-issue of the 'Datun' as an authorised item of issue. One could clearly notice a communication gap between the jail staff and the Supdt.

## **CONVICTS**

The jail is holding only one convict who is not eligible for transfer to Open Jail. He is given work in the kitchen and is paid only half the daily wage.

## **VISITORS**

District and Session Judge Bilaspur has made as many as 10 visits since 1st January 2002. He has been issuing regular inspection notes which were found to be very comprehensive. However, the undertrials in this Sub jail did complain about delay in the commencement of their trials. DM Bilaspur has also visited the jail twice during this period.

## **OPEN AIR JAIL, BILASPUR**

Open Air Jail, Bilaspur was established in 1960 on the pattern of the Sampurnanand, Model Air Open Jail, Lucknow. It has an authorized capacity of 80. Prisoners are accommodated outside the Sub Jail premises but within the outer walls of the jail. Their barracks are not locked and they are free to move within the campus. The concept of the Open Air Jail does not seem to have been realized fully.

Superintendent, Sub-Jail, Baldev Raj Kakkar is also responsible for the administration of the Open Air Jail which is currently holding only 32 inmates.

goldsmith shop. Although all of them are earning more than the prescribed minimum wages, the administration does not seem to have done much to discharge its obligations of providing useful skills and gainful employment, as is the standard practice at Open Jails in most States.

The interaction with the inmates revealed that all of them have been availing of parole. One of them has been on parole for a total of 837 days in 33 times. Another for 696 days in 32 times and the yet another for other 605 days in 30 times. Still, some of the inmates were highly critical of the annual ceiling of 42 days imposed on parole and requested for restoration of the earlier practice when a prisoner could go on parole for agricultural purposes 2/3 times in a year and for six weeks every time. They also wanted the restriction of Sec.433A Cr.PC to be waived in respect of the inmates of the open jail. I am pained to remark that I found most of them cynical and totally ungrateful demanding all sorts of concessions simply because they have been considered fit to live in the Open Jail. They want that admission to the open jail should entitle them to be considered eligible for pre-mature release in relaxation of the rules. They did not seem to care much for the enhanced rate of remission (one day for each day of stay in open jail) they were earning.

I could not help feeling that the selection of prisoners for admission to the open air jail is not being made with due seriousness and the procedure needs to be streamlined. The Jail Superintendents of various jails are supposed to recommend eligible prisoners to the DM concerned and the Addl. DG (Prisons) makes the final selection on the basis of the report of the DM which also includes recommendations of the SP of the district. As regards lifers, only those who have undergone at least 8 years of sentence including remissions are

The average strength during the years 1998-99 to 2002-03 is found to be 37 only. The Superintendent informed that the average in 1980s was less than 20.

The Open Jail is running much below its authorized capacity. The annual average intake since 1995 has been just 4. Only 2 prisoners were admitted in 2001, none in 2002 and 4 in 2003. Although the Jail is meant for all the districts of Himachal Pradesh, it hardly receives any convicts from the Central Jail, Nahan and the Central Jail, Shimla. Bilaspur and Una districts have contributed 6 inmates each followed by Kangra (5) and Kulu (4).

3 convicts were reported to be on parole during the time of my visit. 25 of the 29 inmates of Open Jail are lifers. I interacted with them and found them, by and large, satisfied with their living conditions.

Availability of 8 toilets for these prisoners gives a very satisfactory toilet to prisoners ratio of 1:4. Supply of water for drinking, bathing and washing purposes is satisfactory. 2 black and white portable T.Vs have been provided. One had gone defective long back and needs replacement.

The inmates of the Open Air Jail are served food from the Sub-jail's kitchen itself. Three inmates of the Open Air Jail have been employed in the kitchen as cooks and are paid the prescribed minimum wages.

The Open Air Jail has neither an agricultural farm nor any jail industry for providing gainful employment to the inmates. The inmates leave the prison in the morning for all sorts of work in Bilaspur town. 3 of them sell vegetables, one works as a mechanic in a electronic repair shop, one as a typist in the court premises and one gives tuition to school children in neighbourhood. One runs a



27

eligible for consideration. Age limit of 21 to 50 is also prescribed. Convicts sentenced for dacoity, rape, escape and other serious jail offences are not eligible. However, the IG (Prisons) has powers to relax these rules in favour of suitable persons for reasons to be recorded by him in writing. In my opinion, a better way for making selections would be by constituting a committee with the Chief Welfare Officer, and the Jail Superintendent and DM as the members. I was informed that selections were earlier made in a somewhat similar manner. Addl. DG (Prisons) is advised to examine this suggestion and see how the existing facility is fully used for the intended purpose. It is also necessary that facilities for work are developed to engage the inmates of the open jail instead of asking them to fend for themselves in the local market.

### **PREMATURE RELEASE**

The issue of premature release was discussed with the Addl. DG (Prisons). It is heartening to note that the powers of premature release of prisoners are being exercised sparingly and with due-thought and caution in Himachal Pradesh. As per a statement received from the Addl. D.G. (Prisons), only one lifer was released in 2001 and 2 in 2003 u/s 432 Cr.PC. by complying with the provisions of Sec. 433A Cr.PC. No life convicts was released under Article 161 of the Constitution in 2001-02. In 2003, one lifer was released on 16 August under Article 161 of the Constitution.

The policy regarding the premature release of prisoners in H.P. was notified in August 1983. Prisoners sentenced to life imprisonment on or after 18 December 1978 are considered for premature release u/s 432 Cr.PC only after they have undergone the mandatory 14 years actual imprisonment. The

life convicts whose death sentence was commuted on mercy petition are required to serve at least 20 years substantive imprisonment excluding remission before they could be considered for premature release. However, those, whose conduct in jail is found to be good throughout, may be considered when they have completed 14 years actual and 20 years including remission. Discretion is open to misuse. I informed the Addl. DG (Prisons) that the NHRC has recently issued revised guidelines on the subject.

One of the inmates Padam Nag s/o Nathuram (above 60 years in age) is suffering from heart ailment and is reported to be seriously ill and on deathbed. He has undergone only 8 years and 29 days of actual incarceration. Although he has not completed the minimum mandatory actual imprisonment of 14 years, he deserves consideration for premature release in view of terminal illness.

## **CONCLUSION**

Visit to one Central Jail, two Sub Jails and one Open Air Jail of Himachal Pradesh has given me a reasonably good idea of the strengths and weaknesses of the Jail management and administration in H.P. Jail population, only 3% in excess of the authorised capacity, is manageable in comparison with situation in other States. Concerns and problems of undertrials are receiving due attention from judicial authorities. Production rate of undertrials before the Court is almost cent percent and their cases are seen to be progressing satisfactorily. Parole is granted liberally and most of the convicts are keeping contact with their families. Powers of premature release are being exercised with due thoughts and cautions.

In my opinion, the most negative aspect of jail administration in Himachal Pradesh is the continuation of the anachronistic system of classification of prisoners on the basis of their social and economic status and habits of life. There are a few more weaknesses which deserve urgent attention from the Government. Position of staff is unsatisfactory at most places. Actual availability of the Guarding staff is much below the actual requirements in all the jails especially the Sub Jails. Housing facilities for the staff need improvement. Medical facilities are found inadequate especially at the Sub Jails. The problems of women prisoners requiring special attention in accordance with the recommendations of Justice V.R. Krishna Iyer report have not received much attention. Work facilities for the convicts, an essential component of reform and rehabilitation programme, are inadequate with the result that a very small percentage of prisoners is receiving this benefit. It is clearly seen that the existing infrastructure and facilities are not being utilised to full capacity. Although a Chief Welfare Officer has been posted in the office of the Addl. DG (Prisons), he has no Field Officers and is therefore not in a position to make any significant contribution towards welfare of the prisoner. Involvement of the NGO sector which alone can ensure proper integration of the prisoners with society after their release is almost totally missing.



10.10.03

(Chaman Lal)  
Special Rapporteur