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4/9/2010

REPORT OF THE SPECIAL RAPPORATEUR, NORTH ZONE-2

BARABANKI DISTRICT JAIL(U.P.)

Dates of Visit: 9-10 June, 2010

1. Introduction:

The Barabanki Jail is a second Class district jail- a class of prisons built to house 301 to 500 prisoners. Convicts sentenced to terms of imprisonment exceeding two years but not exceeding three years are supposed to be confined in such prisons. Prisoners under trial (UTP) from the district of Barabanki are also confined here.

In actual fact, convicts of all descriptions are kept at Barabanki. I found quite a few who had served long sentences and were ready for release. It seems that by an order of the Inspector General of Prisons only those sentenced to more than seven years of imprisonment are transferred to a Central Jail. Even this order is not followed. I found several life-term cases at Barabanki where prisoners had served between 1 and 14 years of their sentences already. Apparently, the department is constrained by a problem of overcrowding in all its jails so that the classification of jails has ceased to have relevance.

2. Capacity and actual Population

2.1. Crowding:

The jail has 20 barracks of almost equal capacity, 18 of which are in use. The sanctioned capacity is stated to be 660. The number of prisoners on the dates of my visit was 1193 or 80% over the capacity. Most of the barracks in use are in fairly good repair but the stated capacity of each barrack seems to be an overestimate. If inmates are provided raised cement platforms or beds to sleep on, and not made to sleep on the floor as they are at present, each barrack will house about 20 and the jail as a whole can not accommodate more than 400. So the actual overcrowding is nearer to 200% over the capacity.

There are separate barracks for women and for males in the age group 18-20 years. These barracks are overcrowded too. In the women's barrack 34 women and 10 children are packed like sardines. The boys barrack has 37 inmates.

2.2 Segregation:

Convicts and UTP are kept together. The Superintendent did not plead lack of space as the reason for this practice. He told me that the practice was adopted for 'administrative convenience'. None of the other officers seemed aware of the fact that the procedure was irregular. The lack of adequate knowledge and training was manifest whenever the officers were asked about the provisions of the law/rules. Indeed, after several requests, no one was able to produce a copy of the U.P. Jail Manual)

The prisoners sleep on the floor with insufficient bedding, inches from each other, in a manner which is not only degrading but also a positive health risk.

3. Basic Entitlements of Prisoners

3.1. Food

The scale of daily rations is as follows:

Two meals consisting of:

1. Flour	: 350 gm (270 gm for UTP)
or	
Rice	: 235 gm (served twice a week)
2. Pulses	: 45 gm (60 gm with rice)
3. Vegetables	: 115 gm
4. Oil	: 7.5 gm
5. Condiments	: about 2 gm
6. Jaggery	: 45 gm

Breakfast consisting of:

1. Porridge (3 days in a week)
2. Boiled gram (2 days in a week)
3. Buns/Baked bread (2 days in a week)

At the time of my visit the day meal was being served. It consisted of 6 chapattis, a ladleful of watery 'chana dal' and a small helping of cooked ripe pumpkins. The quantity of chapattis was adequate but the dal and the cooked vegetable looked inadequate and unappetizing. There has been no effort to check the nutritional value of the food provided. My lay opinion would be that the food served during my visit was deficient in proteins and micro nutrients! The jail boasts of a 25 acre farm on which the prisoners grow vegetables. It is difficult to believe that any part of the vegetables grown finds its way to the prisoners' kitchen in view of the fact that the vegetable chosen

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for the day of my visit was the storable ripe pumpkin and not seasonal, perishable vegetables, growing aplenty in June.

Food is cooked in aluminium utensils. Aluminium containers are used for storing and transporting the cooked food, which is carries to the barracks manually or on handcarts! Plates from which the prisoners eat are made of steel. The kitchen is primitive, the only concession to modernity being the fuel used, which is LPG. (The serving of food is also done in a primitive manner since there is no place to sit and eat at)

Expenditure on food is Rs.26.34 per prisoner per day. No PDS grains are allotted. Wheat is purchased at market price from the Rajya Karmachari Kalyan Nigam (State Employees Welfare Corporation) and other items are purchased from the local market at rates fixed by Senior Marketing Inspector, Barabanki.

3.2. Water.

There is one bore well (with pump) to every barrack. Depending on the availability of power, it is run for an hour every day. That would give about 900 litres of water for 66 prisoners. There is no overhead storage tank, no treatment of the pumped water and no water-testing. The only storage at ground level is one 'Hauj' per barrack in which a small amount of water is stored for washing of clothes. Prisoners take their bath during the one-hour period that the pump provides running water in. There are, in addition, about 20 hand pumps scattered throughout the jail.

In short, the water supply is woefully inadequate in quantity and lacking in quality)

3.3 Bedding and Clothing

There are no beds or raised platforms to serve as beds. Prisoners as well the children of women prisoners sleep on the floor. Bedding is limited to one blanket. No mattress is provided. Uniforms are provided to convicts. No clothes are provided to UTP.)

3.4. Sanitation

Latrines inside and outside barracks are barely adequate for the estimate of capacity that I have made earlier in this report - 400 prisoners. For three times as many, which is the actual prison population, the latrines are not even remotely adequate. Latrines are sanitary in basic design but without cisterns or other means of flushing. Some have tiled walls; others have plain cemented wall surfaces. (There is no running water)

There are no bathrooms. Prisoners bathe in the open when the water pump is run for an hour every day. No soap or washing powder is provided. Prisoners depend on their visitors for the supply of these items. Those who have no visitors face great difficulty, as they depend on the charity of other prisoners. Convicts, who receive only one visit a month, must find the situation equally tough.

3.5. Medical Care

One of the barracks has been converted into a 20-bedded hospital. Attached to it are three isolation cells, old punishment cells, without a bed or a mattress. Three TB patients are locked up in these cells by way of isolation. (The 'hospital' itself is rather neat, but meant only for men. There is no ward for women. The number of beds is one third of the requirement, worked out on the basis of current population. Medical personnel comprise a full-time doctor, a part-time doctor (both male), two pharmacists and no other staff. Women prisoners and their children are taken out to the local Civil Hospital for treatment. Referral cases go to the Medical University at Lucknow (CSMMU). The doctor suggested that the Ram Manohar Lohia Hospital, which is half the distance in terms of travel time, may also be made a referral hospital for the jail

The daily average of the OPD is 142. The stock of medicines shown to me did not seem adequate for such a large daily number, but the doctor assured me that availability of medicines was not a problem.

There are two mentally ill patients. They are supposed to be 'under observation', a euphemism for lack of proper treatment. I suspect the real reason they are there is because they are not violent and therefore the administration has not been forced to evacuate them to a more appropriate facility.

In spite of the fact that a large number of prisoners are booked/ convicted under the Narcotic Drugs and Psychotropic Substances (NDPS) Act (Barabanki is an opium-growing district), there are no facilities for de-addiction and counselling. (There are no facilities for HIV/AIDS screening. The hospital has its own kitchen and an ambulance)

4. Education, Training, Work Programme and Recreation

4.1. Education

(There are no facilities for education. A post of teacher is sanctioned but remains to be filled. There is no class-room. The jail library consists of a solitary almirah. For all practical purposes the jail has no library.)

4.2. Training

(There are no facilities for vocational training) Only one programme has been conducted in 2010 so far. It was conducted by an NGO and the subject was familiarization with computers. (The jail itself has no industry of any kind) The jail administration has not sought the help of other Govt. departments dealing with vocational training to help conduct vocational training programmes for the inmates. The Art of Living Foundation and the Patanjali Yoga Sansthan have organized one programme each in the jail in the past 12 months.

4.3. Work Programme

There is no work programme for prisoners in the absence of any cottage industry, handloom unit or handicrafts unit in the jail. The only work provided to the prisoners is in the kitchen, in the maintenance of the grounds and on the jail's 25 acre farm. At any time 225 prisoners are engaged in work. Wage rates are as follows:

For trainees – Rs.10 per day

For semi-skilled workers– Rs.13 per day

For skilled workers – Rs.18 per day

Of the average of 225 workers, 216 have been shown as trainees, 9 as semi-skilled workers and 8 as skilled workers. The rationale for 216 trainees in a place which has no training programmes is difficult to understand. It seems that the sanction for wages is received once in a year. All workers are paid wages within the constraint of the funds available. In consequence, the workers are classified as trainees etc. in such a manner that the total demand does not exceed the fund sanctioned by the headquarters. The whole system is arbitrary.

4.4. Recreation

There is television set provided in each barrack. Cultural programmes are limited to national days and important festivals. Annual games are held. For the rest, the prisoners are left to their own devices.

5. Review /Revision of Sentences

For the review of sentences district-level Revising Boards constituted under the provision of Paragraph 233 of the U.P. Jail Manual exist. However, the Board at Barabanki seems to be defunct. The jail authorities were not aware of its existence. No cases have been disposed of or have been under consideration by the Board in recent years.

6. Premature Release of Convicts

6.1 Paragraphs 195, 196 and 197 of the Jail Manual provide for premature release of convicts in case of old age and illness. The case of Noor Mohammad, 87, serving a life sentence, has been recommended by the Superintendent to the District Magistrate of Barabanki under Paragraph 196 for onward transmission to the State Govt. The case is still pending with the D.M.

6.2 Two other cases have been recommended to the D.M. for onward transmission to the State Govt. under Paragraph 198 which provides for premature release after completing 14 years of imprisonment:

- (1). Vijay Kumar Singh
- (2). Naresh Singh

These cases are also pending with the D.M.

7. Parole

(The Jail Manual contains no provisions for parole. From the citizens' charter published by the State Govt. one learns that parole is granted in case of marriages, deaths etc. by the D.M., the Divisional Commissioner and the State Govt.) The D.M. is empowered to grant parole up to one month, which can be extended by the Divisional Commissioner by 16 days. Any parole beyond this period will be granted by the State Govt. The Superintendent of District Jail Barabanki and his officers did not seem to be aware of the provisions for parole. To my written query, the Superintendent returned the following vague and inaccurate reply in writing (translated from Hindi).

“(Prisoners are) released on parole when it is granted by the State Govt. and the Court.”

It is not surprising that (there are no instances of parole having been granted in the past 12 months and possibly for much longer)

8. Probation

Under the U.P. Prisoners' Release on Probation Act, 1938 the State Govt. is empowered to grant probation to convicts for the remainder of any sentence. The two cases mentioned above in Paragraph 6.2 were stated to be cases under this Act. Perhaps Paragraph 198 and the Probation Act are connected in practice.

9. Female Prisoners

(The capacity of the female ward was reported to be 30. However, it cannot accommodate more than 20, if proper beds or raised platforms are provided for sleeping.) It lodges 25 UTP, 9 convicts and 10 children under 6. The overcrowding, objectionable in the best of the circumstances, is absolutely intolerable with small children involved. During my visit, I could see only

two of the ^{ten} children. I was told that the other 8 were with their mothers who were meeting visitors. The Superintendent assured me that the children were properly immunized. He also told me that one of the children is sent to a school outside. The two children I saw looked healthy enough. However, the general conditions being what they are, I doubt very much whether these two children represented the norm. (There are no medical facilities available for women and children. In case of need, they have to be sent outside to the local civil hospital. There is no arrangement for special nutrition, health check-up and pre-school education for children.)

10. Civil Prisoners

There are 2 civil prisoners who are kept with other prisoners in violation of the provisions of the Jail Manual.

11. Escapes

Five prisoners escaped from the custody of the police escort on way to the Court in 2007. In 2008 and 2009, there have been no escapes.

12. Deaths

Deaths during the last three years were reported as follows.

2007 - 05 including 01 suicide

2008 - 04

2009 - 05

(I was informed that magisterial enquiries have been made in every case. Post mortem was done in some cases of which details could not be produced! The Doctor told me that he remembered 03 cases in which one death occurred from heart attack and two deaths occurred as a result of sunstroke. Since convicts serving life terms and long sentences are lodged in this jail, 4 or 5 deaths in a year may not be unusual.

13. UTP and Bail

13.1. The total number of UTP is 907, 25 of whom are women. This works out to 76 per cent of the jail population. Of these, 610 have been in detention for more than 6 months and 349 for more than a year. The break-up of the latter number is as follows:

- 1-2 years: 219
 - 2-3 years: 90
 - 3-5 years: 25
 - Over 5 years: 15
- Total: 349

13.2. It is not possible to comment on the cases of long detention at any length because the jail records do not show anything more than the

sections of law under which trial is on or is contemplated. However, the following observations may be useful to the authorities.

- 13.3 Quite a few cases relate to violations of the NDPS Act. The Superintendent told me that many of the accused were farmers who were unable to deliver their full levy of opium produced under a licence from the government. While the government has to be strict against diversion of the licensed produce to criminals, it is also possible that in a few cases there are genuine reasons for shortfall in performance and in such cases the farmers may be treated leniently.
- 13.4. There are a large number of UTP who are facing charges under section 498 A of the IPC. The general tendency of the complainants in such cases is to name each and every member of the husband's family, with the result that there is no one outside to move for grant of bail. Nearly half the accused are women. Legal aid may be required in such cases.
- 13.5. Though reports about prisoners detained for more than 2 years are sent regularly by the jail authorities to the local judiciary as well as the Prison headquarters, these reports seem to have become part of the rote and do not receive special attention. There are many cases which are covered under section 436A of the Cr. P.C. The following three cases appear to be covered under the second proviso of section 436A:
- 1) Javed s/o Jabir has been detained since 13.8.2004 under sections 147/323.504 of the IPC.
 - 2) Rajesh Lodh s/o Lalji has been detained since 26.2.2004, u/s 186, 332,353.324 of the IPC.
 - 3) Manir s/o Matin has been detained since 25.12.2007 u/s 224 of the IPC.
- 13.6. 5 convicts and 21 UTP have been granted bail but are unable to arrange bail money/security. The names are given in Annexure I.

14. Visitors —

14.1. In the past 12 months there have been 13 visits by the local judicial authorities and 12 by the DIG of Prisons, Gorakhpur and the District Magistrate of Barabanki.

14.2. There is no Board of Visitors.

15. Miscellaneous

15.1. The Jail Manual

I have not been able to lay my hands on the official copy of the UP Jail manual. The copy I have was published by the Hind Publishing House of Allahabad in 2008. If my copy is correct, it has to be said that the manual is overdue for extensive revision. It has a lot of provisions that are dead letter and the judgments of the Supreme Court on prisoner rights as well as the NHRC's advice on the subject have made no impact on it.

15.2. Interview Facilities

UTP are allowed 2 interviews in a week. Convicts are permitted one interview a month and a letter.

15.3. Awareness among Prisoners

The Jail manual makes it mandatory for the officer in charge of a jail to inform UTP of their rights. He is also expected to inform all prisoners about the right to bail and the right to appeal. It can be assumed that under the existing provisions the officer in charge of a jail is also expected to inform prisoners about plea bargaining, the provisions of section 436A of the Cr.P.C. and the human rights of prisoners. To my written query on the subject the Superintendent gave the following written reply (translated from Hindi):

"In 2009 prisoners were told about the above in a Legal Literacy Camp (organized by) the Hon'ble Court."

He could not specify the court that had organized the programme. I have gathered from other sources that such programmes are sometimes organized by the State Legal Services Authority (UPSLSA). The Superintendent and his colleagues were unaware of the responsibility cast on them by the Manual to educate the prisoners. They were also unaware of the activities of the UPSLSA.

15.4. Officers and Staff

There is only one vacancy- the post of Teacher is yet to be filled up as noted earlier. However, there are 15 employees in the rank of prison guards who are described as supernumerary. A cadre review of prison guards appears necessary. The paramedical staff in the hospital is also inadequate.

Dy Jailors have a grievance about the new revised scale of pay. It seems that they have been given a lower scale than officers receiving the comparable

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pre-revised scale of pay in other departments. Pharmacists complain that they do not get a single promotion in their entire careers.

16. SUMMARY OF FINDINGS

16.1. General Observations:

Uttar Pradesh was one of the first States in the country to set up a Prison Reforms Committee in 1949. It was the first to introduce wages for work done by prisoners. It was also the first State to create a cadre of prison officers. Judged against this background, the Barabanki district jail is a positive embarrassment to the administration. In this country poverty of physical infrastructure and resources is not unusual, but there should be a will to do the best one can with the resources available. This will was not in evidence in Barabanki jail. The officers have poor grasp of their responsibilities. They lack the ordinary competence that one would expect of officers. They have no awareness of recent developments in prison administration. The necessary attitudinal changes have not been even contemplated. More than infrastructure and resources we need sustained training and a strong regime of rewards and punishments to induce change and desirable levels of efficiency.

16.2. Physical Infrastructure

The existing physical infrastructure can not support a prison population of more than 400. The critical areas are living space, water supply and the hospital. The population of the prison is not likely to be less than 1000 in the foreseeable future and the government will have to plan for it. A positive aspect of the situation is the availability of land for further construction.

16.3. Prisoners' Rights

The living conditions of the prisoners can only be described as sub-human. They sleep on the floor without a mattress, close together – a few inches separating one from another. They get only about 15 litres of water daily and even that is of doubtful quality. Their food is basic at best and medical facilities are non-existent for the most vulnerable of them – women and children. The jail does not have a proper hospital building. Prisoners are unaware of their rights and the authorities are both unaware and unmindful of them. An average of 142 OPD patients per day in a largely young population is proof of the unhealthy living conditions.

16.4. Economic Status of Prisoners

If we assume that poverty is the principal reason behind inability to secure bail, the UTP population of those detained for one year or more should represent the number of poor prisoners. This number in Barabanki jail stands at 508. Leaving out UTP detained for less than 3 months (i.e. normal period for securing bail), the total population of UTP deprived of bail comes to 610. We can come to a tentative conclusion that 83 per cent of UTP (508 out of 610) are poor while 17 per cent are unable to get bail because of the seriousness of the crime or other circumstances.

16.5. Knowledge and Motivation Levels among Officers

Officers are unfamiliar with the laws and rules governing their functions. They are entirely ignorant about the Human Rights perspective on prisoners' rights. They have not received the required in-service training to keep them updated. They have poor attitudes towards changes in prison administration. Even if the State Government were to devote more resources to prisons, the manpower will let it down. Training, motivation and a strong monitoring system should be priority. The grievances of Dy Jailors and Pharmacists referred to in paragraph 15.4 may be looked into.

16.6. Legal Framework

The Jail Manual, the relevant laws and rules and procedures require a thorough review. The existing Jail Manual is outdated and much of it is dead letter. It does not take account of the pronouncements of the Supreme Court on prisoners' rights or the recommendations of the NHRC. The process of legal reform will be a time-consuming business, so interim arrangements will have to be put in place.

16.7. Supervision and Control

Though the DIG of Poisons as well as local judicial and executive officers have visited the jail regularly enough, real monitoring is lacking. Reports that are submitted are dealt with routinely and corrective action is absent.

16.8. UTP and Bail

It is clear from the figures that a large number of UTP are unable to secure bail on account of poverty. Their cases need to be examined by the State Government and the State Legal Services Authority (UPSLSA) to find ways and means of preventing poverty from becoming a barrier to the realization of human rights.

16.9 Specific Cases

A list of some specific cases mentioned in the body of this report is attached as Annexure I. This list may be considered by the State Government and the UPSLSA for appropriate action.

17. Some Suggestions for Immediate Action

The main areas of action are indicated in paragraph 16. In addition, the following immediate action is recommended:

- a) The water supply is a disgrace. Expert assistance of the government department concerned should be sought for immediate improvements that are possible.
- b) For the present, arrangements may be put in place for a female doctor and a nurse from the civil hospital to visit the women's ward for an hour, thrice a week. One female doctor should be available on call.
- c) The TB patients should be given proper beds and other items of personal use. Their treatment should be monitored properly. The two mentally ill prisoners should be moved to a proper facility for treatment.
- d) The Ram Manohar Lohia hospital, Lucknow may be made a referral hospital for this jail, in addition to the CSMMU.
- e) The departments of the government that ordinarily organize vocational training programmes (e.g. Industry, Rural Development, Handloom, Handicrafts) should be consulted for organizing vocational training for prisoners.
- f) The post of teacher should be filled up and a classroom should be made available.
- g) PDS wheat and rice may be made available to make the existing funds go farther.
- h) The prison library should be stocked properly and should actually run, in stead of being a tokenism.
- i) The Board of Visitors should be constituted.
- j) NGOs should be involved for training and counselling of prisoners on such matters as health and hygiene, drug abuse, life skills, vocational skills etc.
- k) The authorities concerned with the ICDS may be called in to check the weight and nutritional status of the children in the women's ward and to ensure nutrition, immunization and pre-school education for them.
- l) Prison authorities should be made responsible for creating awareness among prisoners about

- Right to Bail, particularly the provisions of Section 436 A of the Code of Criminal Procedure
- Right to Appeal
- Rights of UTP
- Right to Legal Aid
- Plea Bargaining
- Human Rights applicable to prisoners

The Superintendent of a jail must display messages on the above subjects in all the barracks in simple everyday Hindi. Standard messages may be prepared in the office of the IG of Prisons centrally. The UPSLSA may extend such help to the department as may be necessary to implement the awareness programme.

ANNEXURE I

(Showing individual cases requiring the attention of the Government and the UPSLSA)

- A. Recommendation under Paragraph 196 of the Jail Manual in respect of Noor Mohammad, 87, serving a life sentence ----- pending with DM Barabanki.
- B. Recommendations under paragraph 198/ UP Prisoners' Release on Probation Act, 1938 in respect of Vijay Kumar Singh and Naresh Singh, both serving life terms -----pending with DM Barabanki.
- C. Cases of UTP detained for two years or more. The list is available with the prison authorities at Barabanki as well as at HQ.
- D. Cases that may be covered under the second proviso to s. 436A of the Cr.P.C., namely, the following:
- 1) Javed s/o Jabir detained since 13.8.2004 under sections 147/323,504 of the IPC.
 - 2) Rajesh Lodh s/o Lalji detained since 26.2.2004, u/s 186, 332,353,324 of the IPC.
 - 3) Manir s/o Matin detained since 25.12.2007 u/s 224 of the IPC.
- E. Bail for the terminally ill cancer patient, Kesar Mehdi s/o Ehsan Mehdi, a UTP under the NDPS Act.
- F. Convicts granted bail but unable to find bail money/security
- 1) Rajaram s/o Jagat Pal
 - 2) Pratap Lonia s/o Bhedi Lal
 - 3) Mansha Ram s/o Ram Swarup
 - 4) Ghulam Rasool s/o Nabab
 - 5) Baijnath s/o Sevak
- G. UTP granted bail but unable to find bail money/security
- 1) Mahendra Singh s/o Basudev Singh
 - 2) Bablu s/o Sachchidanand
 - 3) Surendra Madesia s/o Ram Asre
 - 4) Abhishek Tiwari s/o Dinesh Kumar Tiwari

- 5) Badri s/o Jagdish
- 6) Ram Vilas s/o Ram Sagar
- 7) Maniram s/o Hesit
- 8) Ram Karan s/o Jagdamba Prasad
- 9) Saktu s/o Shriram
- 10) Bhondi s/o Ahmad Ali
- 11) Pradip Biswas s/o Gokul Chandra Biswas
- 12) Pappu s/o Motilal
- 13) Pankaj Kumar Singh s/o Ran Vijay Singh
- 14) Ram Kumar Raidas s/o Parmeshwar
- 15) Mumtaj s/o Islamuddin
- 16) Harbindar alias Rajbir s/o Dhyan Singh
- 17) Sukhbir Singh s/o Jay Singh
- 18) Ranjit s/o Shiv Kumar
- 19) Uttam Jaiswal s/o Ram Chandra Jaiswal
- 20) Gurpreet alias Deepu s/o Surendar Singh
- 21) Dharmendra Sharma s/o Ramesh Sharma

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