V. Human Rights In Prisons

Letter to Chief Ministers/Administrators of all States/Union Territories on mentally ill persons languishing in prisons.

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

11, September, 1996

My Dear Chief Minister,

It has come to the notice of the Commission that several mentally ill persons, as defined in Section 2(1) of the Mental Health Act, 1997, have been languishing in normal jails and are being treated at par with prisoners. The Commission has also come across cases where such detention is not for any definite period.

The Lunacy Act, 1912 and the Lunacy Act, 1977 have been repealed by the Mental Health Act which has come into force with effect from 1.4.1993.

The Mental Health Act dose not permit the mentally ill persons to be put into prison. The Patna High Court has last week directed the State of Bihar to transfer mentally ill persons languishing in the jails to the mental asylum at Ranchi.

While drawing your attention to the legal position and order of the Patna High Court, we would like to advise that no mentally ill person should be permitted to be continued in any jail after 31 October, 1998, and would therefore, request you to issue necessary instructions to the Inspector General of Prisons to enforce it.

After 1st November, 1996, the Commission would start inspecting as many jails as possible to find out if any mentally ill person is detained in such jails and invariably in every such case, it would award compensation to the mentally ill persons or members of the family and would require the State Government to recover the amount of such fine from the delinquent public officer. A copy of this letter may be widely circulated to the Inspector General of Prisons, Superintendents of every jail and members of the jail staff and other district level officers.

With regards,

Yours sincerely,

Sd/-

(Ranganath Misra)

To

All the Chief Ministers/Administrators of States/UTs.

Justice Ranganath Misra
Chairperson

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

September 25, 1996

My Dear

One of the important functions of the National Human Rights Commission, as provided under Section 12(C) of the Protection of Human Rights Act, 1993, is to "visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon". The Commission has visited a number of prisons all over the country and also inquired into a large number of complaints alleging violation of human rights received from the prisoners in several jails. The Commission feels that there is a crying need for revamping the prison administration of the country and bring about systemic reforms. In this connection, I would like to draw your attention towards my letter No.NHRC/Prisons/96/2 dated 29.8.96 sent to you wherein I enclosed a copy of the Prison Bill prepared by us and sought your co-operation for the enactment of a new Prison Act to replace the century old Prison Act of 1894.

I would also like to draw your attention to another matter of importance concerning prison administration. We find that in most of the States, the post of Inspector General of Prisons is filled up by officers either from the Indian Administrative Service or Indian Police Service. The usual tenure of the officer is very brief, and most of them look upon their posting as Inspector General of Prisons as an inconvenient one and look ahead for an early transfer to other posts in the main line of administration. The result is frequent transfer of officers appointed as Inspectors General of Prisons. Sometimes the post is also left vacant for a long time. For qualitative improvement of prison administration in the country, we feel that the selection of officers to head the prison administration deserves to be done carefully. An officer of proven integrity and merit-simultaneously disciplined and yet humane - may be selected for the post and should be continued in the post for a certain period time -say about three years - with a view to imparting continuity and dynamism to the prison administration. This will provide efficient and capable leadership for the prison service and help in improving prison administration in the country.

We look forward for your favourable response.

With regards,

Yours sincerely,

Sd/-
Ranganath Misra

To

Chief Ministers of all States/UTs

Letter to all IG (Prisons)/Chief Secretaries of States/Administrators of Union Territories regarding Prisoners Health Care-periodical medical examination of undertrials/convicted prisoners in the Jail.

Lakshmi Singh
Joint Secretary

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

D.O.No.4/3/99-PRP & P
11 February, 1999

Dear

Subject: - Prisoners' health care-periodical medical examination of undertrials/ convicted prisoners in various jails in the country.

The Commission has taken note of the disturbing trends in the spread of contagious diseases in the prisons. One of the sample-studies conducted by the Commission indicated that nearly seventy-nine percent of deaths in judicial custody (other than those attributable to custodial violence) were as a result of infection of Tuberculosis. These statistics may not be of universal validity, yet what was poignant and pathetic was that in many cases, even at the very first medical attention afforded to the prisoners the tubercular infection had gone beyond the point of return for the prisoners. The over-crowding in the jails has been an aggravating factor in the spread of contagion.

One of the remedial measures is to ensure that all the prison inmates have periodic medical check-up particularly for their susceptibilities to infectious diseases and the first step in that direction would necessarily be the initial medical examination of all the prison inmates either by the prison and Government doctors and in the case of paucity or inadequacy of such services, by enlisting the services of voluntary organizations and professional guilds such as the Indian Medical Association. Whatever be the sources from which such medical help is drawn, it is imperative that the State Governments and the authorities incharge of prison administration in the States should immediately take-up and ensure the medical examination of all the prison inmates; and where health problems are detected to afford timely and effective medical treatment.

Kindly find enclosed proceedings of the meeting of the Commission held on 22.1.99 which also include a proforma for health screening of prisoners on admission to jail. The Commission accordingly requires that all State Governments and prison administrators should ensure medical examination of all the prison inmates in accordance with the attached proforma. The Commission further requires that such medical examination shall be taken-up forthwith and monthly reports of the progress be communicated to the Commission.

With regards,

Yours sincerely,
Sd/-
(Lakshmi Singh)

To

Chief Secretaries of all Sates/UTs.

PROFORMA FOR HEALTH SCREENING OF PRISONERS ON ADMISSION TO JAIL

Case No.....
Name ..... Age ..... Sex..... Thumb impression .....
Father's/Husband's Name.....Occupation .....
Date & Time of admission in the prison.....
Identification marks.....

Previous History of illness

Are you suffering from any disease? Yes/No

If so, the name of the disease :

Are you now taking medicines for the same?

Are you suffering from cough that has lasted for 3 weeks or more Yes/No

History of drug abuse, if any:

Any information the prisoner may volunteer:

Physical examination:

Height.... cms. weight..... kg Last menstruation period .....

1. Paller : YES/NO 2. Lymph Mode enlargement: YES/NO

3. Clubbing: YES/NO 4. Cyanosis: YES/NO

5. Icterus: YES/NO 6. Injury, if any.....

4. Blood test for Hepatitis/STD including HIV, (with the informed consent of the prisoner whenever required by law)

5. Any other .....

Systemic Examination

1. Nervous System

2. Cardio Vascular System

3. Respiratory System

4. Eye, ENT

5. Castro Intestinal system abdomen

6. Teeth & Gum

7. Urinal System

The medical examination and investigations were conducted with the consent of the prisoner after explaining to him/her that it was necessary for diagnosis and treatment of the disease from which he/she may be suffering.

Date of commencement of medical investigation

Date of completion of medical investigation

Medical officer

Letter to all the Chief Secretaries/Administrators of Union Territories regarding the proceedure/ guidelines on the pre-mature release of prisoners.

BY SPEED POST/REGD. POST

No. 233/10/97-98
NATIONAL HUMAN RIGHTS COMMISSION
(Law Division)

Dated : 8.11.99

To

Chief Secretaries of all States/Administrators of UTs

Subject: Procedure/Guidelines on Premature release of Prisoners

Reference: Commission's letter of even number dt. 10.8.99

Sir,

I am directed to forward herewith a copy of the Commission's proceedings dated 20.10.99 alongwith Annexure for compliance by the State Government.

2. It is requested that an Action Taken Report in this matter may please be submitted by 24.12.1999 positively for placing the same before the Commission.

Yours faithfully,

Sd/-

Jt. Registrar (Law)

Encl.: As above

National Human Rights Commission
Sardar Patel Bhawan
New Delhi

Name of the Complainant : Shri K.N. Shashidharan

Case No. : 233/10/97-98

Date : 20th October, 1999

CORAM

Justice Shri M.N. Venkatachaliah, Chairperson
Dr. Justice K Ramaswamy, Member
Shri Sudarshan Agarwal, Member
Shri Virendra Dayal, Member

PROCEEDINGS

The Commission examined the vexed question of disparities and differing standards applied by the various States in considering the cases of prisoners serving custodial sentences for premature release. The exercise is outside the powers of the Commission and rests with the Constitutional functionaries under Articles 72 and 161 relating to the powers of the President and Governors. The matter is confined to the statutory powers of the State to grant remissions of and premature releases. By its earlier proceedings dated 20th July, 1999, the Commission recorded:

> "In order to ensure that, as far as possible, a greater uniformity of standards is established and achieved the Commission has evolved certain broad criteria after taking into account the practices and procedures existing in various States. This has been done on the basis of recommendations of a Committee consisting of Shri Sankar Sen (Special Rapporteur and the Chief
>
> Coordinator of the 'Custodial Justice Programme) Shri D.R. Karthikeyan, Director General (I) and Shri R.C. Jain, Registrar General of NHRC.
>
> The Commission desires that the guidelines may be circulated to all the State Governments to elicit their views and responses in regard thereto. Letters shall accordingly be addressed to the Chief Secretaries of all State Governments to have the matter considered and their views and suggestions, if any, forwarded to the Commission on or before 30th September, l999. On receipt of the same, the matter may be brought up again.

The guidelines may also be forwarded to the National Law School of India University, Bangalore for their opinion by the same date".

Some of the States and Union Territories which have responded are:

1. Lakshadweep
2. Delhi
3. Madhya Pradesh
4. Daman & Diu
5. Dadra & Nagar Haveli
6. Orissa
7. Meghalaya
8. Uttar Pradesh (Interim report)

Other States and Union Territories have not responded despite lapse of sufficient time. The National Law School of India University has also not offered its opinion.

The Commission has considered the matter and has evolved the guidelines (Annexure 'A') in the light of the suggestions received from the States.

These guidelines shall be implemented by the States and wherever the existing provisions of the rules are inconsistent with any of the aforesaid guidelines the State Government shall make appropriate modifications in the rules and implement the guidelines so that there is uniformity in this regard throughout the country. A report shall be had within six weeks.

Sd/-
(Justice K. Ramaswamy)
Member

Sd/-
(Sudarshan Agarwal)
Member

Sd/-
(Virendra Dayal)
Member

ANNEXURE- 'A'

Premature Release of the Prisoners Undergoing Sentence of Life Imprisonment-Eligibility Criteria for, Constitution of Sentence Review Boards and Procedure to be Followed

The Commission has been receiving complaints from and on behalf of convicts undergoing life imprisonment about the non-consideration of their cases for premature release even after they have undergone long periods of sentence ranging from 10 to 20 years with or without remissions. Pursuant to the information received and closer study of the issues involved in this important issue impinging upon the human rights of a large number of convicts undergoing life imprisonment in the prisons throughout the length and breadth of the country, the Commission is surprised to note that although the said power of premature release is to be exercised by the State Government under the Provisions of Section 432 of the Code of Criminal Procedure, 1973, the procedure and practice followed by the State Governments to exercise the said power is not uniform.

Some of the States like Madhya Pradesh, Punjab and UP have incorporated the procedure in their special laws while others incorporated the same in their rules or jail manuals. The system provided for, differed from State to State so far as the eligibility criteria of the persons eligible for consideration for premature release, the composition of the Sentence Review Boards and the guidelines governing the question of premature release but the Commission has been informed that more often this system/procedure provided for was not being followed meticulously so much so that the Sentence Review Boards have not been meeting at regular intervals for long periods.

Several instances have come to the notice of the Commission where certain inmates were not released nor their cases considered even after they had undergone the imprisonment for over 20 years. The Commission has, therefore, shown its concern and is of the view that it is high time that a uniform system of premature release of the prisoners is evolved for adoption by the State Governments.

In its proceedings dated 4th March, 1999 in case No. 233/10/97-98 and other linked cases, the Commission requested Shri R.C. Jain, Registrar General, Shri D.R. Karthikeyan, Director General (I) and Shri Sankar Sen (Special Rapporteur and the Chief Coordinator of the 'Custodial Justice Porgramme') to meet and evolve a set of recommendations for bringing uniformity to the procedure in all the States to follow. The Commission advised that while formulating the recommendations the Committee may have particular regard to the need not only to the constitution of the Review Boards, their proper composition but also to the question of ensuring promptitude of their meetings so that the unfortunate situation of the Boards, even where they exist but do not meet for a long time is avoided.

Accordingly, Committee has deliberated over the issue, considered the relevant law on the subject and the information received from most of the States as to the system of premature release being followed by them. The Committee in its endeavour to propose the uniform recommendations, also considered it proper to refer to the report and recommendations of the All India Committee on Jail Reforms 1980-83 constituted by Justice A.N. Mulla. The Committee makes the following observations & recommendations:

1. The relevant provisions in regard to the suspension and remission of sentence is contained in Section 432 of the Criminal Procedure which reads as follows:

"Power to suspend or remit sentences-

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government it may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and death with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and —

(a) Where such petition is made by the person sentenced it is presented through the officer in charge of the jail; or

(b) Where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law which restricts the liberty of any person or imposed any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government means-

(a) In cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government

(b) In other cases, the Government of the State within which the offender is sentenced or the said order is passed".

1.1 The above power of remission of sentences under Section 432 is circumsized by the provisions of 433A which reads as under:

"Restriction on powers of remission or commutation in certain cases— Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

2. COMPOSITION OF THE STATE SENTENCE REVIEW BOARDS

Each State shall constitute a Review Board for the review of sentence awarded to a prisoner and for recommending his premature release in appropriate cases. The Review Board shall be a permanent body having the following constitution:

1.	Minister incharge, Jail Department / Principal Secretary, Home; Principal Secretary incharge of Jail Affairs/ Law & Order	-	Chairman
2.	Judicial Secretary/ Legal Remembrancer	-	Member
3.	A District & Session Judge nominated by the High Court	-	Member

4.	Chief Probation Officer	-	Member
5.	A senior police officer nominated by the DG of Police not below the rank of IG of Police	-	Member
6	Inspector General of Prisons	-	Member-Secretary

The recommendation of the Sentence Review Board shall not be invalid merely by reason of any vacancy in the Board or the inability of any Member to attend the Board meeting. The meeting of the Board shall not however be held, if the Coram is less than 4 Members including the Chairman.

2.2. *PERIODICITY OF THE BOARD'S MEETINGS*

The State Sentence Review Board shall meet at least once in a quarter at the State Headquarters on date to be notified to Members at least ten days in advance with complete agenda papers.

However, it shall be open to the Chairperson of the Board to convene a meeting of the Board more frequently as may be deemed necessary.

3. ELIGIBILITY FOR PREMATURE RELEASE

The following category of inmates shall be eligible to be considered for premature release by the State Sentence review Boards:

3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the post provisions of Section 433A CrPC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions.

3.2 All other convicted male prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission and after completion of 10 years actual imprisonment i.e. without remissions.

3.3 All other convicted female prisoners undergoing the sentence of life imprisonment shall be considered for premature release after they have served atleast 10 years of imprisonment inclusive of remissions and after completion of 7 years actual imprisonment i.e. without remissions.

3.4 Convicted prisoners undergoing the sentence of life imprisonment on attaining

the age of 65 years provided he or she has served atleast 7 years of imprisonment including the remissions.

3.5 The convicted prisoners undergoing the sentence of imprisonment for life and who are suffering from terminal diseases like cancer, T.B., AIDS, irreversible kidney failure, cardio respiratory disease, leprosy and any other infectious disease etc. as certified by a Board of Doctors on completion of 5 years of actual sentence or 7 years of sentence including remissions.

4. INABILITY FOR PREMATURE RELEASE

The following category of convicted prisoners undergoing life sentence may not be considered eligible for premature release:

4.1 Prisoners convicted of the offences such as rape, dacoity, terrorist crimes etc.

4.2 Prisoners who have been convicted for organised murders in a premeditated manner and in an organised manner.

4.3 Professional murderers who have been found guilty of murder by hiring them.

4.4 Convicts who commit murder while involved in smuggling operations or having committed the murder of public servants on duty:

5. PROCEDURE FOR PROCESSING OF THE CASES FOR CONSIDERATION OF THE REVIEW BOARD

5.1 Every Superintendent of Central District Jail who has prisoner(s) undergoing sentence of imprisonment for life shall initiate the case of the prisoner at least 3 months in advance of the date when the prisoner would become eligible for consideration of premature release as per the criteria laid down by the State Government in that behalf.

5.2 The Superintendent of Jail shall prepare a comprehensive note in each case giving out the family and societal background of the prisoner, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also reflect fully about the conduct and behaviour of the prisoner in the jail during the period of his incarceration, behaviour/conduct during the period he was released on probation leave, change in his behavioural pattern and the jail offences, if any, committed by him and punishment awarded to him for such offence(s). A report shall also be made about his physical/mental health or any serious ailment with which the prisoner is suffering entitling his case special consideration for his premature release. The note shall contain recommendation of the jail

Superintendent whether he favours for the premature release of the prisoner or not and in either case it shall be supported by adequate reasons.

5.3 The Superintendent of Jail shall make reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the commission of the offence, for which he was convicted and sentenced, or where he is likely to resettle after his release from the jail. However, in case the place where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed the offence, a reference shall also be made to the Superintendent of Police of the district in which the offence was committed. In either case, he shall forward a copy of the note prepared by him to enable the Superintendent of Police to express his views in regard to the desirability of the premature release of the prisoner.

5.4 On receipt of the reference, the concerned Superintendent of Police shall cause an inquiry to be made in the matter through senior police officer of appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the Superintendent of Police shall not act mechanically and oppose the premature release of the prisoner on untenable and hypothetical grounds/apprehensions. In case the Superintendent of Police is not in favour of the premature release of the prisoner he shall justify the same with cogent reasons and material. He shall return the reference to the Superintendent of the concerned jail not later than 30 days from the receipt of the reference.

5.5 The Superintendent of Jail shall also make a reference to the Chief Probation Officer of the State and shall forward to him a copy of his note. On receipt of the reference, the Chief Probation Officer shall either hold or cause to be held an inquiry through a Probation Officer in regard to the desirability of premature release of the prisoner having regard to his family and social background, his acceptability by his family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act mechanically and recommend each and every case for premature release. In either case he should justify his recommendation by reasons/ material. The Chief Probation Officer shall furnish his report /recommendations to the Superintendent of Jail not later than 30 days from the receipt of the reference.

5.6 On receipt of the report /recommendations of the Superintendent of Police and Chief Probation Officer the Superintendent of Jail shall put up the case to the Inspector General of Prisons at least one month in advance of the proposed meeting of the Sentence Review Board. The Inspector General of Prisons shall examine the case bearing in mind the report /recommendations of the Superintendent of Jail, Superintendent of Police and the Chief

Probation Officer and shall make his own recommendations with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the Government of the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in the matter of premature release of prisoners.

6. PROCEDURE AND GUIDELINES FOR THE REVIEW BOARD:

6.1 The Inspector General of Prisons shall convene a meeting of the Sentence Review Board on a date and time at the State Headquarters, an advance notice of which shall be given to the Chairman and Members of the Board at least ten days in advance of the scheduled meeting and it shall accompany the complete agenda papers i.e. the note of the Superintendent of Jail, recommendations of Superintendent of Police, Chief Probation Officer and that of the Inspector General of Prisons alongwith the copies of documents, if any.

6.2 A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting, it shall be chaired by the Judicial Secretary-cum-Legal Remembrancer. The Member Secretary (Inspector General of Prisons) shall present the case of each prisoner under consideration before the Sentence Review Board. The Board shall consider the case and take a view. As far as practicable, the Sentence Revising Board shall endeavour to make unanimous recommendation. However, in case of a dissent the majority view shall prevail and will be deemed to be decision of the Board.

6.3 While considering the case of premature release of a particular prisoner the Board shall keep in view the general principles of amnesty/remission of the sentences as laid down by the State Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police has not recommended his release on certain farfetched and hypothetical premises. The Board shall take into account the circumstances in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again.

6.4 Rejection of the case of a prisoner for premature release on one or more occasion by the Sentence Review Board will not be a bar for reconsideration of his case. However, the consideration of the case of a convict already rejected shall be done only after the expiry of a period of one year from the date of last consideration of his case.

6.5 The recommendations of the Sentence Review Board shall be placed before the competent authority without delay for consideration. The competent authority may either accept the recommendations of the Sentence Review Board or reject the same on the grounds to be stated or may ask the Sentence Review Board to reconsider a particular case. The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered to grant remission and order his premature release, the prisoner shall be released forthwith with or without conditions.

7. MONITORING OF CASES THROUGH THE OFFICE OF CHIEF CO-ORDINATOR OF CUSTODIAL JUSTICE PROGRAMME, NHRC

The Committee considers that while computerized records of all the prisoners serving life sentence in the prisons of the country for a follow up their cases by the NHRC is extremely desirable, it does not presently seem to be feasible. Such a monitoring could only be possible, with necessary infrastructural and manpower support.

Letter to Chief Justices of High Courts on undertrial prisoners.

Dr. Justice K. Ramaswamy **National Human Rights Commission**
Member

December 22, 1999

Dear Brother Chief Justice,

Right to speedy trial is a facet of fair procedure guaranteed in Article 21 of the Constitution. In Kartar Singh's case (Constitutionality of TADA Act case), J.T. 1992(2) SC 423, the Supreme Court held that speedy trial is a component of personal liberty. The procedural law - if the trial is not conducted expeditiously, becomes void, violating Article 21 as was held in Hussain Ara's four cases in 1979. In Antulay's case, l992(1) SCC 215, a constitution bench directed completion of the trial within two years in cases relating to offences punishable upto 7 years, and for beyond seven years, within a period of three years. If the prosecution fails to produce evidence before the expiry of the outer limit, the prosecution case stands closed and the court shall proceed to the next stage of the trial and dispose it of in accordance with law. That view was reiterated per majority even in the recent judgement of the Supreme Court in Raj Dev Sharma II versus Bihar, 1999 (7) SCC 604 by a three-Judge bench.

In Common Cause case, 1996 (2) SCC 775 - in D.O. Sharma I's case—it was held that the time taken by the courts on account of their inability to carry on the day-to-day trial due to pressure of work, will be excluded from the dead-line of two years and three years, respectively, imposed in the aforesaid cases. In the latest Raj Dev Sharma's case 1999 (7) SCC 604 majority reiterated the above view.

In Common Cause II case, 1996 (4) SCC 33, the Supreme Court directed release of the undertrial prisoners, subject to certain conditions mentioned therein. The principle laid down in Common Cause case is not self-executory. It needs monitoring, guidance and direction to the learned Magistrates in charge of dispensation of criminal justice system at the lower level, before whom the undertrial prisoners are produced for extension of the period of remand. It is common knowledge that it is the poor, the disadvantaged and the neglected segments of the society who are unable to either furnish the bonds for release or are not aware of the provisions to avail of judicial remedy of seeking a bail and its grant by the court. Needless or prolonged detention not only violates the right to liberty guaranteed to every citizen, but also amounts to blatant denial of human right of freedom of movement to these vulnerable segments of the society who need the protection, care and consideration of law and criminal justice dispensation system.

In this background, may I seek your indulgence to consider the above perspectives and to set in motion appropriate directions to the Magistracy to follow up and implement the law laid down by the Supreme Court in the Common Cause II case? For your ready reference, the principles laid therein are deduced as set guidelines are enclosed

herewith. I had a discussion with the Hon'ble Chief Justice of Andhra Pradesh High Court, who was gracious enough to have them examined in consultation with brother Judges and necessary directions issued to all the Magistrates and Sessions Judges to follow up the directions and ensure prevention of unnecessary restriction of liberty of the under-privileged and poor undertrial prisoners. I would request you to kindly consider for adoption and necessary directions issued to the Magistrates and Sessions Judges within your jurisdiction to follow up and ensure enjoyment of liberty and freedom of movement by poor undertrial prisoners.

With regards,

Yours sincerely,

Sd/-

(Dr. Justice K. Ramaswamy)

To

Chief Justices of all High Courts

Draft Circular Memorandum to be Issued by the High Court of Andhra Pradesh to All the District and Sessions Judges

All the District and Sessions Judges of Andhra Pradesh, are aware of the directions of the Supreme Court of India issued on May 1st, 1986 in Writ Petition (C) No. 1128 of 1986 (Common Cause Vs. Union of India and Others) wherein elaborate directions were given regarding release of undertrials languishing in Jails for long periods.

The directions of the Supreme Court are reproduced hereunder for ready reference:

"(a) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding three years with or without fine and if trials for such offences are pending for one year or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Criminal Procedure Code (Cr.PC).

(b) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding five years, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 (Cr.PC).

(c) Where the offences under IPC or any other law for the time being in force for which the accused are charged before any criminal court are punishable with seven years or Iess, with or without fine, and if the trials for such offences are pending for two years or more and the accused concerned have not been released on bail but are in jail for a period of six months or more, the criminal court concerned shall release the accused on bail or on personal bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 (Cr.PC).

It is noticed that the various remanding Courts in Andhra Pradesh are routinely extending the periods of remand of prisoners without verifying whether any of them fall

under any of the 3 categories mentioned by the Supreme Court supra.

It is also noticed that the District Level Review Committees for Under Trial prisoners constituted with the concurrence of the High Court by the Government of Andhra Pradesh vide G.O. Ms. 356 dated 14.7.1980 of Home (Prisons.13) Department have not been regularly meeting in all the Districts. Even if they do meet they are not examining whether the cases being reviewed fall under any of the 3 categories mentioned by the Supreme Court of India.

In order to ensure that the directions of the Supreme Court of India are scrupulously complied with, and Under Trial Prisoners do not languish in Jails for long periods, the following instructions are issued for immediate implementation:

1. All Courts, whether Judicial Magistrates of First Class or Special Courts, before extending the period of remand of any prisoners, should ascertain the period of remand already undergone by the prisoner and examine whether he is entitled to be released on bail as per the directions/ not able to furnish surety/security. They may be released on personal bonds to ensure their attendance on the dates of hearing.

2. The District Level Review Committees for Under Trial Prisoners should meet, without fail, atleast once in every 3 months and review the cases of all prisoners who are in Judicial Custody for periods of six months or more. These meetings should invariably be presided over by the Principal District & Sessions Judge himself.

3. As and when a case falling under any of the 3 categories mentioned by the Supreme Court is noticed, either while extending the period of remand of the U.T. prisoner or during the meeting of the District Level Review Committees, the concerned Court should, suo moto, “release the accused on bail or on personal bond to be executed by the accused and subject to such conditions, if any, as may be found necessary, in the light of Section 437 of the Code of Criminal Procedure”.

Sankar Sen
SPECIAL RAPPORTEUR

D.O.No. 11/1/99-PRP & P

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

29.04. 1999

Dear

The problems of undertrial prisoners has now assumed an alarming dimension. Almost 80% of prisoners in Indian jails are undertrials. The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background. The Supreme Court in a memorable judgement- Common Cause (a registered society) Vs. Union of India 1996 has given the following directions regarding the release of undertrials on bail.

(a) Undertrials accused of an offence punishable with imprisonment upto three years and who have been in jail for a period of 6 months or more and where the trial has been pending for atleast a year, shall be released on bail.

(b) Undertrials accused of an offence punishable with imprisonment upto 5 years and who have been in jail for a period of 6 months or more, and where the trial has been pending for atleast two years, shall be released on bail.

(c) Undertrials accused of offences punishable with imprisonment for 7 years or less and who have been in jail for a period of one year and where the trial has been pending for two years shall be released on bail.

(d) The accused shall be discharged where the criminal proceedings relating to traffic offence have been pending against them for more than 2 years.

(e) Where an offence compoundable with the permission of the court has been pending for more than 2 years, the court shall after hearing public prosecutor discharge or acquit the accused.

(f) Where non-congnizable and bailable offence has been pending for more than 2 years, without trial being commenced the court shall discharge the accused.

(g) Where the accused is discharged of an offence punishable with the fine only and not of recurring nature and the trial has not commenced within a year, the accused shall be discharged.

(h) Where the offence is punishable with imprisonment upto one year and the trial has not commenced within a year, the accused shall be discharged.

(i) Where an offence punishable with an imprisonment upto 3 years and has been pending for more than 2 years the criminal courts shall discharge or acquit the accused as the case may be and close the case.

However, the directions of the court shall not apply to cases of offences involving

(a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act, 1947 or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985, (c) Essential Commodities Act, 1955, Food Adulteration Act, Acts dealing with environment or any other economic offences, (d) offences under the Arms Act, 1959, Explosive Substances Act, 1908, Terrorists and Disruptive Activities Act, 1987, (e) offences relating to the Army, Navy and Air Force, (f) offences against Public tranquility and (g) offences relating to public servants, (h) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice, (k) any other type of offences against the State, (l) offences under the taxing enactments and (m) offences of defamation as defined in Section 499 IPC.

The Supreme Court has given further directions that the criminal courts shall try the offences mentioned in para above on a priority basis. The High Courts are requested to issue necessary directions in this behalf to all the criminal courts under their control and supervision.

These directions of the Supreme Court aim at streamlining the process of grant of bail to the undertrials and make it time- efficient. The judgement, however, does not provide for suo-moto grant of bail to the petitioners by the trial court. This implies that an application would have to be made to move the court for grant of bail. There is also no mechanism in the courts to automatically dispose off suitable cases. They are dependent upon filing of bail petitions and more important on the production of prisoners in time. Your are requested to meet the Registrar of the High Court, State Legal Aid Authorities and take measures for release of undertrial prisoners in consonance with the Judgement of the apex court. Release of undertrial prisoners will lessen the congestion in jail and help more efficient prison management. The process thus needs the high degree of coordination between the judiciary, the police and the prison administration which unfortunately is now lacking.

The majority of undertrial prisoners are people coming from poorer and underprivileged sections of the society with rural and agricultural background.

• • • • • • • • •

Yours sincerely,

Sd/-

(Sankar Sen)

To

All Inspectors General of Prisons.

Letter to the Chief Justices of all High Courts with regard to Human Rights in Prisons

Justice J.S. Verma
Chairperson
(Former Chief Justice of India)

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission
सरदार पटेल भवन, संसद मार्ग, नई दिल्ली-110001 भारत
Sardar Patel Bhawan, Sansad Marg, New Delhi-110001 INDIA

January 1, 2000

Dear Chief Justice,

As you are aware, one of the important functions entrusted to the National Human Rights Commission under the Protection of Human Rights Act, 1993, is to visit the prisons, study the conditions of the prison inmates and suggest remedial measures. During the last five years the Members of the Commission and its senior officers have visited prisons in various parts of the country and have been appalled by the spectacle of overcrowding, insanitary conditions and mismanagement of prison administration. The problem is further compounded by lack of sensitivity on the part of the prison staff to the basic human rights of the prisoners.

The State Prison Manuals contain provisions for District and Sessions Judges to function as ex-officio visitors to jails within their jurisdiction so as to ensure that prison inmates are not denied certain basic minimum standards of health, hygiene and institutional treatment. The prisoners are in judicial custody and hence it is incumbent upon the Sessions Judges to monitor their living conditions and ensure that humane conditions prevail within the prison walls also. Justice Krishna Iyer has aptly remarked that the prison gates are not an iron curtain between the prisoner and human rights. In addition, the Supreme Court specifically directed that the District and sessions Judges must visit prisons for this purpose and consider this part of duty as an essential function attached to their office. They should make expeditious enquiries into the grievances of the prisoners and take suitable corrective measures.

During visits to various district prisons, the Commission ha been informed that the Sessions Judges are not regular in visiting prisons and the District Committee headed by Sessions Judge / District Magistrate and comprised of senior Superintendent of Police is not meeting at regular intervals to review the conditions of the prisoners.

Indeed in most of the jails, there is a predominance of under trials. Many of them who have committed petty offences are languishing in jails, because their cases are not being decided early for reasons which it is not necessary to reiterate. The District Judges during their visits can look into the problem and ensure their speedy trial. The Supreme Court in its several judgements has drawn attention to this fact and to the

attendant problems in prison administration arising therefrom. The Supreme Court has also emphasised the need for urgent steps to reduce their numbers by expeditious trial and thereby making speedy justice a facet of Article 21 of the Constitution a reality.

You may consider giving appropriate instructions to the District & Sessions Judges to take necessary steps to resolve the acute problem which has the impact of violating a human right which is given the status of constitutional guarantee.

I would be grateful for your response in this matter.

With regards,

Yours sincerely,

Sd/-

(J.S. Verma)

To

Chief Justices of all High Courts

Guidelines on supply of reading material to prisoners

No. 68/5/97-98
National Human Rights Commission
(Law Division - V)

E.I. Malekar
Asstt. Registrar (Law)

March 1, 2000

To

Chief Secretaries/ Administrators
of all States /UTs.

Subject : Complaint from Shri Y.P. Chibbar.

Sir,

The case above mentioned was placed before the Commission on 28.2.2000 whereupon it has directed as under.

"The guidelines are approved. They be sent to Chief Secretary of all States/Union Territories for being circulated to all concerned persons in their respective jurisdictions for compliance on the question of supply/availability of reading material to the prisoners. Compliance report be sent within eight weeks."

I am, therefore, to foreward herewith a copy of the Commission's guidelines and to request you to submit the compliance report in the matter by 24.4.2000, positively for placing it before the Commission.

Encl: As stated (in two pages)

Your faithfully,

Sd/-

Asstt. Registrar (Law)

Guidelines on Supply of reading material to prisoners

The Commission has been seized with the question of the nature and extent of reading materials to which prisoners should have access. Having carefully considered this matter, the Commission would like to lay down the following guidelines on this subject:

i) As prisoners have a right to a life with dignity even while in custody, they should be assisted to improve and nurture their skills with a view to promoting their rehabilitation in society and becoming productive citizens. Any restrictions imposed on a prisoner in respect of reading materials must therefore be reasonable.

ii) In the light of the foregoing, all prisoners should have access to such reading materials are essential for their recreation or the nurturing of their skills and personality, including their capacity to pursue their education while in prison.

(iii) Every prison should, accordingly, have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books and prisoners should be encouraged to make full use of it. The materials in the library should be commensurate with the size and nature of the prison population.

(iv) Further, diversified programmes should be organized by the prison authorities for different groups of inmates, special attention being paid to the development of suitable recreational and educational materials for women prisoners or for those who may be young or illiterate. The educational and cultural background of the inmates should also be kept in mind while developing such programmes.

(v) Prisoners should, in addition, generally be permitted to receive reading material from outside, provided such material is reasonable in quantity and is not prohibited for reasons of being obscene or tending to create a security risk. Quotas should not be set arbitrarily for reading materials. The quantity and nature of reading material provided to a prisoner should, to the maximum extent possible, take into account the individual needs of the prisoner.

vi) In assessing the content of reading materials the Superintendent of the Jail should be guided by law; he should not exercise his discretion arbitrarily.

The Commission recommends that the above -stated guidelines be used by the competent authorities, in all States and Union Territories, to modify the existing rules and practices prevailing in prisons wherever they might be at variance with these guidelines.