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‘SOCIAL WORK INTERVENTION IN CRIMINAL JUSTICE’

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SOME LEGAL PROVISIONS FOR PROTECTION OF HUMAN RIGHTS

Upon arrest the accused has certain rights, as laid down under Articles 20-22 of the Constitution, the Code of Criminal Procedure and various judgments of the Supreme Court. All these judgments have been based on the 3 principle fundamental rights along with Article 32, which has led to the innovative and radical class action. Before dealing with the judgments of the Apex Court, it is important to look at the protection accorded under Articles 20 to 22(2):

- No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence (Criminal law to be prospective in application and not retrospective);
- No person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence;
- No person shall be prosecuted and punished for the same offence more than once (Rule of Double Jeopardy);
- No person accused of any offence shall be compelled to be a witness against himself;
- No person shall be deprived of his life or personal liberty except according to procedure established by law;
- No person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such arrest;
- No person who is arrested shall be denied the right to consult and to be defended by, a legal practitioner of his choice;
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

The broad principles of rights of accused persons, which emerges from this whole series of judgments spanning over twenty years is summarised below:

- No arrest can be made because it is lawful for the police officer to do so. The existence of the power of arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lockup of a person can cause incalculable harm to the reputation and self-esteem of the person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against the person. It would be prudent for a police officer in the interest of protection of constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest;
- The police personnel carrying out the arrest and handling the interrogation of the arrest should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register;
- The Police Officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the accused or a respectable person of the locality from where the
arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest;

- A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place, unless the attesting witness of the memo of arrest is himself, such a friend or a relative of the arrestee;

- The time, place of arrest and venue of custody of an accused must be notified by the police where the next friend or relative or the accused lives outside the district or town through the Legal Aid Organisation in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest;

- The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained;

- An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is;

- It shall be the duty of the Magistrate before whom the arrestee is produced to satisfy himself that these requirements have been complied with;

- The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his body, must be recorded at that time. The "Inspection Memo" must be signed by both the arrestee and the police officer effecting the arrest and its copy provided to the arrestee;

- The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well;

- Copies of all the documents including the memo of arrest, referred to above, should be sent to the TehsilaMagistrate for his record;

- The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation;

- A police control room should be provided at all Districts and State Headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

- Failure to comply with the said requirements shall apart from rendering the concerned official liable for departmental action, also render him liable to be punished for contempt of Court and the proceedings for contempt of Court may be instituted in any High Court of the country having jurisdiction over the matter;

- These requirements would apply with equal force to the other governmental agencies also, like Directorate of Revenue Intelligence, Directorate of Enforcement, Coastal Guard, Central Reserve Police Force, Border Security Force, the Central Industrial Force, the State Armed Police, Intelligence agencies like the Intelligence Bureau, R.A.W., Central Bureau of Investigation, CID, Traffic Police, Mounted Police and ITBP

- Using any form of torture for extracting any kind of information would neither be right nor just nor fair and therefore, would be impermissible being offensive under Article 21
Rights of Women Prisoners

1. Female suspects should not be kept in the police lock up in which male suspects are detained. Some police lock ups should be selected in reasonably good localities of the city where only female suspects should be kept and they should be guarded by female constables;

2. The interrogatories of females should be carried out only in the presence of female police officers/constables;

3. A person arrested without a warrant must be immediately informed the grounds of her arrest and in case of every arrest it must be immediately be made known to the arrested person that she is entitled to apply for bail. A pamphlet setting out the legal rights of the arrested person should be forthwith got prepared by the Maharashtra State Board of Legal Aid and Advice and the same is to be printed by the State Government in English, Hindi and in the local language Marathi. The printed copies of such a pamphlet are to be affixed in each cell in every police lock up. Such a pamphlet is to be read out to the arrested persons as soon as she is brought to the police station;

4. On the arrested person being taken to the police lock up, the police are immediately to give intimation of the fact of such arrest to the nearest Legal Aid Committee and such Committee is to take immediate steps to offer legal assistance at State cost to the arrested person;

5. Arrangements are to be made for a Sessions Judge to make surprise visits to police lock ups periodically for providing the arrested persons an opportunity to air their grievances, for ascertaining the conditions in the lock ups, and for finding out whether the provisions of law are being observed and the above directions of the Supreme Court are being carried out. The lapse found in such visits are to be suitably brought to the notice of higher Police officials, to the Home department of the State and if necessary to the Chief Justice of the High Court;

6. Soon after arrest, the Police must obtain from the arrested person the name of any relative or friend whom she would like to be informed about her arrest and the Police should accordingly inform such relative or friend;

7. The Magistrate before whom an arrested person is produced shall inquire whether she has any complaint of torture or maltreatment in police custody and inform her that she has a right under Section 54 of the Cr.P.C to be medically examined.1

Rights against Torture

8. Using any form of torture for extracting any kind of information would neither be right nor just nor fair and therefore, would be impermissible being offensive under Article 21;

9. Some punitive provisions are contained in the Indian Penal Code, which seek to punish violation of right to life. Section 220 provides for punishment to an officer or authority who detains or deprives a person in confinement with a corrupt or malicious motive. Sections 330 and 331 provide for punishment of those who inflict injury or grievances hurt on a person to extort confession or information in regard to commission of an offence. Illustration (a) and (b) to Section 330 make a police officer guilty of torturing a person in order to induce him to confess the commission of a crime or to induce him to point out places where stolen property is deposited. Section 330 therefore, directly makes torture

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1 Sheela Barse vs State of Maharashtra, 1993 Cri.L.J. 642
during interrogation and investigation punishable under the Indian Penal Code. Prosecution of the offender is an obligation of the State in case of every crime;

10. These statutory provisions are inadequate to repair the wrong done to the citizen. The court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public law jurisdiction for the wrong done due to the breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience;

11. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of public servants. Public law proceedings serve a different purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Articles 32 or 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the Courts under the public law jurisdiction for penalising the wrong doer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen;²

12. International Conventions and Covenants ratified by India which elucidate and effectuate the fundamental rights guaranteed by the Constitution of India, can be relied upon by courts in India as facets of those fundamental rights and hence enforceable as such. The conventions ratified by India include the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights, the International Covenant on Rights of a Child (CRC) and the Convention on the Elimination of Discrimination against Women (CEDAW);³

13. The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, ignoring the ground realities, the fact situations and the peculiar circumstances in cases of custodial death and torture, often results in miscarriage of justice and makes the justice delivery system a suspect. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to them if an odd prisoner died in the lock up, because there would hardly be any evidence available to the prosecution to directly implicate them within the torture. The courts are required to have a change in their outlook and attitude, particularly, in cases involving custodial crimes and they should exhibit more sensitivity and adopt a realistic rather than a narrow technical approach, while dealing

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³ People's Union for Civil Liberties vs. Union of India, 1997 (3) SCC 433
with the cases of custodial crimes so that as far as possible within their powers, the guilty should not escape.  

Right to Speedy Trial

14. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances;

15. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how the Supreme Court has understood this right and there is no reason to take a restricted view;

16. The concerns underlying the right to speedy trial from the point of view of the accused are:

a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary and unduly long incarceration prior to his conviction;

b) The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

c) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise;

17. At the same time, one cannot ignore the fact that it is usually the accused that is interested in delaying the proceedings. As is often pointed out, 'delay is a known defence tactic'. Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really works against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in either case, where the right to speedy trial is alleged to have been infringed the first question to be put and answered is- who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceeding or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation;

18. While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on- what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one;

19. Each and every delay does not necessarily prejudice the accused. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of the incarceration of the accused will also be a relevant fact. The prosecution should not be

4 State of Madhya Pradesh vs. Shyamsunder Trivedi, 1995 (4) SCC 262
allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

20. We cannot recognize or give effect to, what is called the 'demand rule'. An accused cannot try himself, the court at the behest of the prosecution tries him. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused;

21. Ultimately, the court has to balance and weigh the several relevant factors- 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case;

22. Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or conviction, as the case may be, shall be quashed. However the nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. in such a case, it is open to the court to make such other appropriate order- including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence whether the trial has concluded- as may be deemed just and equitable in the circumstances of the case;

23. It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;

24. An objection based on the denial of right to speedy trial and for relief on that account, should be first addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.  

25. No length of time is permissible too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors- (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay. However, the fact of delay is dependent on the circumstances of each case because reasons for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court, etc.  

26. The Supreme Court in the Common Cause judgements  issued the following directions to ensure that criminal prosecutions do not separate as engines of oppression:

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

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5 A.R.Antulay vs. R.S.Nayak, 1992(1) SCC 225
6 Kattar Singh vs. State of Punjab, 1994 (3) SCC 569
7 Common Cause vs. Union of India, 1996 SCC (Cn) 589 and 1996 (8) Supreme 302
exceeding three years with or without fine and if trials for such offences are pending of 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 Cr.P.C;

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 trials for such offences are pending of 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 such conditions, if any, as may be found necessary, in the light of Section 437 of the Cr.P.C;

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 less, with or without fine, and if trials for such offences are pending of two years or more and the accused concerned have not been released on bail but are in jail for a period of one year 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 Cr.P.C;

d) The period of pendency of criminal cases shall be calculated from the date the accused are summoned to appear in the court;

e) The trial shall be deemed to have commenced when charges are framed or plea recorded of the accused by the trial court;

f) The above directions set out shall not apply to offences involving corruption, misappropriation of public funds, cheating whether under the IPC, Prevention of Corruption Act or any other statute, smuggling, foreign exchange violation and offences under the Narcotic Drugs and Psychotropic Substances Act, Essential Commodities Act, Food Adulteration Act, Acts dealing with environment or any other economic offences, offences under the Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, offences relating to the Army, Navy and Air Force, offences against public tranquility, offences relating to public servants, offences relating to coins and government stamp, offences relating to elections, offences relating to giving false evidence and offences against public justice and any other type of offences against the State, offences under the taxing enactment, offences of defamation, matrimonial offences, offences under the Negotiable Instruments Act, offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust, offences pertaining to rash and negligent acts, offences affecting the public health, safety, convenience, decency and morals as listed in the IPC or such similar offences which are made punishable under any law for the time being in force.

27. In addition to the aforementioned propositions, the following proposition was laid down in Raj Deo Sharma's cases:

a) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, if the accused has been in jail for a period of not less than one-half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit;

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8 Raj Deo Sharma vs. State of Bihar, 1998 (7) SCC 507 and 1999(7) SCC 602
28. The Common Cause and Rajdeo Sharma decisions have been overturned by a Constitution Bench of the Apex Court in P. Ramchandra Rao vs State of Karnataka only with regards to the directions regarding trial and discharge/acquittal and not regards enlargement of bail. In this judgment the Court held that Antulay's case is still good law and the question of delay has to be decided by the court having regard to the totality of circumstances of an individual case. The test is whether delay is such that it can be called oppressive or unwarranted.

29. Person who has been in custody as an underrtrial prisoner for the period exceeding the maximum sentence imposable by law should be released and the case against him quashed. 10

Legal Aid

30. Free legal service is an unalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal service is therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 from the sage of reason itself. 11

31. When the underrtrial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may be, from the date of arrest, the Magistrate must, before making an order of further remand to judicial custody, point out to the underrtrial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the underrtrial with a view to enabling him to apply for bail in exercise of his right and the Magistrate must take care to see that legal aid is provided. 12

Handcuffing

32. As a rule, handcuffs or other fetters shall not be forced on a prisoner convicted or underrtrial-while lodged in a jail any where in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

33. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or tread out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

34. In all the cases where a person arrested by police is produced before the Magistrate and remand-judicial or non-judicial- is given by the Magistrate, the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

9 (2000) 4 SCC 578
10 Hussainara Khatoon vs. State of Bihar, 1980 (1) SCC 91; Veenas vs. State of Bihar, AIR 1983 SC 339; Ravidas vs. State of Bihar, AIR 1987 SC 1333
11 Hussainara Khatoon vs. State of Bihar, 1980 (1) SCC 98
12 Hussainara Khatoon vs. State of Bihar, 1980 (1) SCC 108
35. When the police arrests a person in execution of a warrant of arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

36. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given in the above paragraphs, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated.

37. All ranks of police and the prison authorities are directed to meticulously obey the above directions. Any violation of any of the directions issued by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law.  

**Prisoners' Rights and Prison Reform**

38. Solitary confinement is not sanctioned though prisoners under sentence of death can be kept separate from the rest of the prison community during hours when prisoners are generally locked in. Such prisoners can be kept under special watch, however conceding to minimum human privacy. However these prisoners shall mean not those sentenced to death by any court but whose mercy petitions the President or the Governor has rejected as the case may be. These prisoners shall not be denied any of the community amenities, including games, newspapers, books, moving around and meeting prisoners and visitors, subject to reasonable regulation of prison management. More importantly, if the prisoner desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends, such facilities shall be liberally granted.

39. Absent provision for independent review of preventive and punitive action, for discipline or security, such action shall be invalid as arbitrary an unfair and unreasonable. The prison officials will then be liable civilly and criminally for harm to the person of the prisoner. The State will urgently set up or strengthen the necessary infrastructure and process in this behalf.

40. Legal aid shall be given to prisoners to seek justice from prison authorities, and if need be, to challenge the decision in court in cases where they are too poor to secure on their own. If lawyer’s services are not given, the decisional process becomes unfair and unreasonable, especially because the rule of law perishes for a disabled prisoner if counsel if unapproachable and beyond purchase. By and large, prisoners are poor, lacking legal literacy, under the trembling control of the jailer, at his mercy as it were, and unable to meet relations or friends to take legal action. Where a remedy is all but dead the right lives only in print. Article 39A is relevant in the context. Article 19 will be violated in such cases, as the process will be unreasonable. Article 21 will be infringed since the procedure is unfair and is arbitrary.

41. The Districts Magistrates should inspect the jails every week and perform the following functions:

a) Inspect the barracks, cells, wards, workshed and other buildings of the jail generally and the cooked food;

b) Ascertain whether considerations such as health, cleanliness and security are attended to, whether proper management and discipline are maintained in every respect, and whether any prisoner is illegally detained or is detained for an undue length of time while awaiting trial;

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13 Citizens for Democracy vs. State of Assam, 1995(3) SCC 743
14 Sunil Batra vs. Delhi Administration, 1978 (4) SCC 494
c) Examine jail registers and records;
d) Hear, attend to all representations and petitions made, by or on behalf of prisoners;
e) Direct, if deemed advisable, that any such representation or petitions be forwarded to the government; and
f) No prisoner shall be punished for any statement made by him to a visitor unless an inquiry made by magistrate results in a finding that it is false.

42. If the District Magistrate is unable to visit, he should depute a magistrate subordinate to him. The District Magistrate should exercise this function in his capacity as a judicial officer and not an executive head and should meet the prisoners separately if they have any grievance and not in the presence of warders or officials. He must ensure that his inquiry is confidential although subject to natural justice and does not lead to reprisals by jail officials. All orders by him shall be immediately complied with. In the event of non-compliance, he should immediately inform the government about such disobedience and advice the prisoner to forward his complaint to the High Court under Article 226 together with a copy of his own report to help the High Court exercise its habeas corpus power. The Magistrate should keep a grievance box in each ward to which free access shall be afforded to every inmate. It should be kept locked and sealed by him and on his periodical visit, he alone or his surrogate should open the box, find out the grievances, investigate their merits and take remedial action if justified.

43. The Sessions Judge, District Magistrate or their nominees shall hear complaints, examine all documents, take evidence, interview prisoners and check to see if there is deviance, disobedience, delinquency or the like which infringes upon the right of prisoners. They have a duty to hear and bring to notice any complaint or representation made to him by any prisoner. The Sessions Court Judges concerned, under their lock and seal, should keep a requisite number of grievance boxes in the prison and give necessary directions to the Superintendent to see that free access is afforded to put in complaints of encroachments, injuries or torture by any prisoner, where he needs remedial action. Such boxes shall not be tampered with by anyone and shall be opened only under the authority of the Sessions Judge. The Sessions Judge must sensibly exercise the utmost vigilance and authority in this situation since prisoner's personal liberty depends in this undetectable campus upon his awareness, activism, adjudication and enforcement. Constitutional rights shall not be emasculated by the insouciance of judicial officers.

44. The prison authorities shall not in any manner obstruct or non-co-operate with reception or inquiry into the complaints. Otherwise, prompt punitive action must follow. The High Court or the Supreme Court shall be apprised of the grievance so that habeas corpus may issue after due hearing.

45. All visitors shall be afforded every facility for observing the state of the jail and the management thereof, and shall be allowed access under proper regulations, to all parts of the jail and to every prisoner confined therein.

46. All visitors should have the power to call for and inspect any book or other record in the jail unless the Superintendent, for reasons to be recorded in writing, declines on the ground that its production is undesirable. Similarly, every visitor should have the right to see any prisoner and to put any questions to him out of the hearing of any jail officer. There should be one Visitor's Book for both classes of Visitors, their remarks should in both cases be forwarded to the Inspector General who should pass such order as he thinks necessary, and a copy of the Inspector General's order should be sent to the visitor concerned.
47. The treatment of prisoners should emphasize not their exclusion from the community but their continuing part in it. Community agencies should, therefore, be enlisted where possible to assist the staff of the institution in the task of social rehabilitation of the prisoners. There should be in connection with every institution social workers charged with the duty of maintaining and improving all desirable relations of a prisoner with his family and with valuable social agencies. Steps should be taken to safeguard, to the minimum extent compatible with the law and the sentence, the rights relating to civil interests, social security rights and other social benefits of prisoners.

48. Lawyers nominated by the District Magistrate, Sessions Judge High Court and the Supreme Court will be given all facilities for interviews, visits and confidential communication with prisoners subject to discipline and security considerations. This has roots in the visitatorial and supervisory judicial role. The lawyers so designated shall be bound to make periodical visit and record and report to the concerned court results, which have relevance to legal grievances.

49. No solitary or punitive cell, no hard labour or dietary change as painful additive, no other punishment or denial of privileges and amenities, no transfer to other prisons with penal consequences, shall be imposed without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult, such information shall be given within two days of the action.

50. There should be accommodation for proper classification for undertrials, females, habituals, casuals, juveniles, political prisoners, etc.

51. The State shall prepare in Hindi a Prisoner's Handbook and circulate copies to bring legal awareness home to the inmates. Periodical jail bulletin stating how improvements and rehabilitative programmes are brought into the prison may create a fellowship that will ease tensions. A prisoner's wallpaper that will freely ventilate grievances will also reduce stress.

52. The State shall take steps to keep up to the Standard Minimum Rules for Treatment of Prisoners recommended by the United Nations, especially those relating to work and wages, treatment with dignity, community contact and correctional strategies.

53. The Prisons Act needs rehabilitation and the Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff inculcating the constitutional values, therapeutic approaches and tension-free management.

54. The Court shall protect the prisoners' rights by its writ jurisdiction plus contempt power. To make this jurisdiction viable, free legal services to the prisoner programmes shall be promoted by professional organisations recognised by the court. The District Bar shall, keep a cell for prisoner relief.  

55. In State of Gujarat vs. Hon'ble High Court of Gujarat, the Supreme Court concluded that:

a) It is lawful to employ the prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not;

b) it is open to the jail officials to permit other prisoners also to do any work which they choose to do provided such prisoners make a request for that purpose;

c) 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 as early as possible;

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15 Sunil Batra vs. Delhi Administration (II), 1980 (3) SCC 488
16 1998 (7) SCC 392
d) until the State Government takes any decision on such recommendations, every prisoner must be paid for work done by him at such rates or revised rates as the Government concerned fixes in the light of the above recommendations;

e) the State concerned make law for setting apart a portion of the 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;

f) the request of the Government to permit them to deduct the expenses incurred for food and clothes of the prisoners from the minimum wages rates is a reasonable request. There is nothing uncivilised or unsociable in it. But the Government cannot deduct any substantial portion from the wages on that account. The Government can arrive at the reasonable percentage to be deducted from the minimum wages taking into account the average amount which the Government is spending per prisoner for providing food, clothes and other amenities to him.

56. Where there is an undue delay in executing a sentence of death after its confirmation or in disposing of a mercy petition by the President or Governor, it involves a cruel punishment because the mental worry and agony that is caused by the intervening period of suspense is an additional penalty over and above the death penalty which was awarded by the court on trial. In these circumstances, the court would convert the sentence of death into one of life imprisonment, though no period could be set out as a benchmark for the commutation. ¹⁷

Surveillance

57. Police surveillance of suspects is necessary for the detection and prevention of crime and the imposition of the requirements of the principles of natural justice would defeat its very object. However the courts would interfere with this in the following cases:

a) Where the intrusion is so excessive as to seriously encroach upon the freedom of movement of dignity of the individual concerned, in the guise of surveillance.

b) When a person challenges the entry of his name in the Surveillance Register, the Court may call upon the Police to satisfy itself that there are grounds to entertain a reasonable belief that a person was a habitual offender or receiver of stolen property.

c) The Court might also interfere if the Police tap the conversation of innocent citizens, by coercion or unlawful methods. ¹⁸

Preventive Detention

58. Preventive detention laws are permitted by Article 22(3) to (7). The courts are not equipped to deal with cases where the person has not yet committed an offence but is likely to do so and hence the scope for judicial review is limited. The Court could not go into the issue of sufficiency of material to warrant the detention. Article 22(3)(b) prevents a detainee from having a lawyer represent him before the Advisory Board and hence he has no right to legal representation before the Advisory Board nor the right to cross-examine, or to compel the Advisory Board to call for witnesses. The Advisory Board could only see if the detention was proper as on the date of detention and could not go into the question as to whether further detention was necessary. The proceedings before the Advisory Board need not be public. ¹⁹

ⁱ⁹ A.K. Roy vs. Union of India, AIR 1982 SC 710; Hemant vs. State of Maharashtra, AIR 1982 SC 8
59. The order of preventive detention against a person is open to judicial review:

a) if it is inconsistent with Article 14 or 21;  

b) if it violates the detenu’s right of representation under Article 22(5);  

c) where the records disclosed that there was no compliance with the condition precedent that the detaining authority must be satisfied from the materials before him that an order of detention was necessary;  

d) where there were no materials produced before him from which he could form such satisfaction;  

e) where the order is mala fide, i.e., where it was made for a purpose other than that mentioned in the order;  

f) where the order is arbitrary, unfair or discloses non-application of mind, on the part of the detaining authority to the relevant facts;  

g) where there is no reasonable connection between the grounds given to the detenu and the order of detention.  

**Bail**

It is discretionary to release the accused on bail and it is not to be granted as of right. Generally in a non-bailable offence also, bail should be granted by the Magistrate except in the following cases:

a. If there are reasonable grounds for believing that he has been guilty of an offence punishable with death or with life imprisonment;

b. When the accused is arrested for a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been convicted previously on two or more occasions of a non-bailable and cognizable offence.

However even in the above cases the Magistrate may grant bail if the accused is below 16 years of age (under the Juvenile Justice (Care and Protection) Act, 2000, a juvenile offender is one who is below the age of 18 years and directs that bail has to be mandatorily granted except if it is not in the best interest of the juvenile), woman or is sick or infirm. The court can also grant bail if it considers it just and proper for any other special reason. Bail should not be denied only on ground that the accused is to be identified by an witness and hence should remain in custody (Section 437). Bail in a non-bailable offence becomes a right when the police fails to file a chargesheet in case of offence punishable with the maximum imprisonment of less than 10 years within a period of 60 days from the date of the arrest of the accused and in case of offences punishable with not less than 10 years, life imprisonment or death, within a period of 90 days from the date of the arrest of the accused. This right is available to the accused till the period of filing of the chargesheet (Section 167 of the Cr.P.C.).

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22. Pushpadevi vs. Wadhayen, AIR 1987 SC 48  


The court while granting bail in non-bailable cases especially where the trial has not yet commenced takes into account the following considerations:

a. The nature and seriousness of the offence;
b. The character of the evidence, i.e. whether there are reasonable grounds for believing that the accused is guilty of such an offence;
c. Circumstances which are peculiar to the accused, such as age, gender, health, family responsibilities, motive for the commission of the offence and the criminal antecedents of the accused;
d. Reasonable possibility of the presence of the accused not being secured at the time of the trial;
e. Reasonable apprehension of witnesses being tampered with if the accused is released on bail;
f. Frivolity in prosecution and doubt as to the genuineness of the prosecution;
g. The larger interest of the public and the State;
h. Similar other considerations which arise in the case.


The power of granting bail is a matter of judicial discretion and the chief consideration in the exercise of that discretion is the likelihood of the person failing to appear at the trial.

There is no limit to the number of bail applications that a person can make. Rejection of bail once is no bar to subsequent bail application in the same court where the accused can show a change in the circumstances since the previous application that can include factors such as long period of detention, completion of investigation, lack of material against him and others.

**Supreme Court Guidelines on manner of recording the statement of the victim in Rape Cases**

The Supreme Court of India in Delhi Domestic Workers Forum vs Union of India (1995) 1 SCC 14, laid down the following guidelines to assist the victims of rape:

1. The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind counseling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her till the end of the case.

2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at her police station, the guidance and support of a lawyer at this stage would be of great assistance to her.

3. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.

4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose lawyer was unavailable.

5. The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.
6. In all rape trials anonymity of the victim must be maintained, as far as necessary.

7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

8. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of childbirth if this occurred as a result of the rape.

Till such Criminal Injuries Compensation Boards are set up, the trial courts have been empowered to award compensation including interim compensation pending trial to the victims. In Bodhisattwa Gautam vs Subhra Chakraborty (AIR 1996 SC 922) the Supreme Court reiterated these principles and further said that if the court trying an offence of rape has jurisdiction to award compensation at the final stage, there is no reason to deny the court the right to award interim compensation, which should also be provided in the Scheme.
Preliminary Note on the Need for Trained Social Workers in Criminal Justice Administration

The Tata Institute of Social Sciences and other schools of social work education have been in existence for more than 50 years. Our graduates are being regularly employed in a wide range of government and non-governmental organizations. They contribute to the understanding and skills required in developing the welfare sector in terms of direct field services, staff supervision and training, research and documentation, resource mobilization and liaison at various levels.

While the majority of social work graduates are absorbed by community based service organizations both in the urban and rural areas, they are employed in other fields as well such as industry, developmental communication, legal aid, etc...

As regards the government sector, it is significant that in Mumbai city alone trained social workers have been appointed, for example, in:

1. MHADA – Community Development Cell (Slum Board, Urban Renewal Board)
2. Municipal Corporation of Greater Mumbai (Hospitals, Urban Health Centres, Ward Offices, Schools, Urban Basic Services Project, Nehru Rozgar Yojna)
3. Family Courts
4. CIDCO (Rehabilitation and Social Services Department)
5. Integrated Child Development Scheme

Coming to the Criminal Justice System, the objective of reformation and rehabilitation of offenders has been formally recognized in correctional legislation (Probation of Offenders Act, Juvenile Justice Act, Immoral Traffic Prevention Act, Prevention of Begging Act, Borstal Schools Act, Habitual Offenders Act). Posts of probation officer/liaison officer/child welfare officer/prison welfare officer/caseworker have existed in residential institutions and probation departments for adults and juveniles for several years. The probation officer also serves as an officer of the court.

It may also be mentioned here that Bombay Police and Delhi Police have been collaborating with social workers in specialized areas such as drug rehabilitation and women in distress. For example, the Special Cell for Women and Children in Distress attached to the Bombay Police is manned by trained social workers of TISS.

The Department of Criminology and Correctional Administration has received a large number of government personnel deputed for training and orientation from the Judiciary, Prisons, Police, Social Welfare and Probation Departments. Several of our graduates have occupied senior positions in the above departments. Many of those who participated in these courses have felt their approach broadened from a purely punitive to correctional and rehabilitative one.

(A Note submitted by Dr. Sanober Sahni, Ex-Faculty, Department of Criminology & Correctional Administration, TISS in 1992 to the then Director General of Police, Maharashtra)
However, of late it has been noticed that an overall devaluing of the welfare, prevention and rehabilitative function in criminal justice administration has taken place. Likewise the faith of citizens in the CJS has been on the decline. There are, no doubt, several inter-related factors contributing to this situation. It would be inappropriate to discuss them in this note. Nevertheless, from a social work point of view, a few observations may be made:

i. The Welfare Function is not treated as a specific one; it is often combined with penal or custodial functions (e.g. jailor-cum-welfare officer)

ii. There is no clear-cut policy with respect to the creation of welfare posts and promotions.

iii. Trained social workers are not given preference in appointments, and especially those who have specialized in Criminology and Correctional Administration.

iv. Not enough support and resources are made available in order to build faith in citizens and offenders/inmates in the CJS or to encourage welfare and correctional administration.

The effects of the above on this sector are both immediate and long-term, from our experience:

1. Fewer trained and motivated graduated and post-graduates in social work will seek or obtain jobs in the criminal justice administration.

2. Individualized and problem-solving oriented attention will be denied to especially socio-economically vulnerable groups who are today processed by the system in thousands: most of these are ignorant of their rights as citizens, and can obtain practically no legal and social assistance even if involved in very minor cases.

3. Community participation in crime prevention, dispute settlement and rehabilitation will decline. An already overburdened police force might ultimately emerge as the sole agency for handling what in most cases, are essentially psycho-social problems.

4. The training presently given in the few institutions or departments of Criminology/Correctional/Criminal Justice Administration in the country will be rendered futile when graduates remain unemployed, or if employed, find they are unable to practice what they have been taught. This is a self-contradictory position, considering that the government itself is funding such institutions. The overall and long-term development of the field will be substantially affected. In fact, a sort of vacuum already exists, according to us, when there is not enough field experience to analyze.

Thus while even more developed countries do not claim that corrections or social work intervention in criminal justice has been a runaway success, there are enough
programmes at least to keep the discussion alive, and to stimulate productive research which would help to evaluate and guide policy.

Field projects of the Department of Criminology and Correctional Administration

In this connection, the Department has been consistently exploring avenues of collaboration between the social work profession and the criminal justice administration. Our experience shows there is a definite need for trained social workers at the interface between the administration and the citizenry, such as at police stations, prisons and courts. Here, complainants, victims, offenders, family members of persons processed, etc. come in contact with the system. At all these points, the presence of trained social workers would lend a human touch, give necessary information, guidance and support, reduce exploitation by unscrupulous elements, liaise between the citizen and the system, reduce caseload through diversion, and through all this, contribute to the image and efficiency of the system.

Our experiments with the adult CJS began with the placement of senior students of the department at Mumbai Central Prison for fieldwork. Five years of this experience led to a full-time project (PRAYAS) providing legal aid and rehabilitation services to prisoners and released prisoners, with fairly encouraging results. In the meanwhile, student fieldwork had moved into police stations and recently, the Esplanade Court complex. Three years of student fieldwork at police station has now resulted in PRAYAS appointing two full-time social workers at Deonar Police Station. Next year, we may thinking of appointing a full-time social worker (again based on student field work of successive years) at the Esplanade Court complex.

The role of the trained social worker in prison, police station or court as envisaged by us is based on the work that we have been doing there. Our suggestions are, therefore, based on field realities.

1. Role of Social Workers at Police Station

A primary objective of work would be trying to help out citizens who approach the police station to obtain the assistance required, or to refer them to other appropriate agencies. Vulnerable groups would be of special concern for the social worker. These include children, women, and young male adults in the age group of 16 to 23 years, senior citizens and psychologically and emotionally disturbed persons. The nature of work involved would be limited to grievance redressal, problem solving and rehabilitation.

Social workers could also assist the social investigation of minor offenders and arrests on suspicion, with a view to reducing the caseload and preventing innocent persons from being criminalized.

Police personnel requiring assistance for themselves or their families could also be helped by the social workers.
Lastly, community, neighborhood or family disputes could be an area of joint intervention by police and social workers. Social workers could also be of help to the police during crisis situations like floods or riots.

We expect that the presence of social workers at the police station will be an asset to the police department. It may reduce caseload by the solving of disputes before they turn into recognizable cases, prevent minor offenders from continuing in crime by combining surveillance with social support, and improve police work image amongst members of the public. However, both the police and the social workers remain within the framework of their respective roles and function with mutual respect for one another.

2. Role of Social Workers in Prison

An imprisoned person (whether undertrial or convict) needs help of various kinds. Certain services are due to him, as a human being, as a citizen of a civilized society, as well as an offender entitled to correctional treatment and rehabilitative services. Inside prison, the social worker acts a liaison between the prisoner, his family and the system. He pays home visits, arranges or provides for legal aid and advice, helps the prisoner put forward his/her problem before the prison authorities or the court, counsels or assists the individual in personal matters. The social worker also tries to resist, by positive influences, the criminalizing effects of the prison social environment.

As regards rehabilitation, the social worker has a very specific role to play. He interacts with the prisoner to be released, his family and the police, to make an objective assessment regarding the chances of rehabilitation in a particular case, through skilled counseling and avoidance of deviant behavior. The social worker also tries to gain the cooperation of the police in not arresting his/her client on suspicion during the ups and downs involved in re-integration.

3. Role of Social Workers in Court

The presence of a social worker in courts would be of use to the judiciary, as well as citizens (for various purposes). Exploitation by tout’s and unscrupulous elements can be limited by a social worker through dissemination of proper information and guidance. He or she can collaborate with the existing legal aid machinery, and refer deserving cases. A social worker can also function as an officer of the court by providing information pertaining to the psycho-social aspects of a case before the magistrate.

Some Specific Suggestions

1. In the light of role of the social worker placed at police station, prison and court described above, it is clear that we are suggesting the creation of such posts within the C.I.S.

2. Only trained social workers should be appointed for this purpose, preferably trained in Criminology and Correctional Administration.
3. To begin with, social workers could be appointed on an experimental basis in only Mumbai City.

4. TISS could participate in staff training and evaluation of the proposed scheme. Constant inputs (through research/training/development/monitoring/evaluation) will enable the scheme to remain dynamic and sensitive to changing needs.

5. The scheme could be a collaborative effort of the three concerned departments: Police, Prison and Law and Judiciary. This would also facilitate inter-departmental coordination on certain common concerns.

6. The details of the scheme could be discussed once the government accepts the proposal in principle, and recognizes the need for appointment of trained social workers in the C.J.S.
SOCIAL WORK INTERVENTION IN CRIMINAL JUSTICE:
THE PRAYAŠ EXPERIENCE

Introduction

The social work profession in our country emerged and grew out of the changing needs of our society in the post independence era. India had adopted a democratic, socialist and ‘welfarist’ structure of the State, whereby development and welfare of the people, especially of the weaker and vulnerable sections were the keystones to progress. While development was to come through economic and social progress, welfare was to be achieved through protection and care of vulnerable sections. A plethora of welfare legislation was passed and a subsequent institutionalization of those sections living on the social fringes took place. These developments led to the need for a care-giving profession. The social welfare departments required trained human resources, as did the voluntary sector which had taken roots in society.

The groups that seemed to fall in the ‘welfare’ bracket consisted of destitute and or so-called delinquent women, children and deviant groups such as beggars, mentally disturbed, prostitutes and the like – anyone who could be bracketed as vulnerable to neglect or moral danger. Some of these groups were seen to be in need of care and services also because of the threat they posed to social order. The social work profession emerged in response to these realities. The colleges of social work set up during that period were to produce the trained personnel for this social revolution that India was in the midst of.

The Tata Institute of Social Sciences was a pioneer in this movement of professionalising social work in our country. The Department of Criminology and Correctional Administration (CCA) of the Institute was a direct response to the need for creating this resource. Till the late seventies, this Department admitted government-deputed candidates for training in social work, who after completion of their training, went back to their parent departments for taking on the responsibilities assigned to them. The bulk of these students came from social welfare, prison and police departments across the country.

By the late seventies and early eighties, the emphasis on social welfare had ebbed and the government’s focus had shifted to poverty alleviation as the main plank of development. The resources and focus had moved to urban and rural development schemes with education and economic development being seen as tools for the upliftment of weaker sections. Somewhere along the way, persons with a social stigma and living on the social fringes did not remain a priority. For this group, the state seemed to have lost faith on institutional treatment and rehabilitation as a method of social re-integration. The welfare sector, instead of becoming a means of reaching out to stigmatized groups and being included in the development process, was left to fend for itself and justify its existence through the increasingly small populations it was now reaching out to.

One of the outcomes of the above process was that investments in the welfare sector by the government reduced considerably in terms of institutional set ups, manpower, training, and service delivery. This had a direct impact on the number of students deputed by the government to TISS (in particular to the CCA Department) for training. Another impact that this process had was the complete demoralization of the welfare sector and a loss of faith in its institutions and mechanisms. Welfare got reduced to running a few institutions for women and children in need of care and protection, in moral danger or seen as threat to social order. The field of criminology and corrections became limited to intervention in these institutions for women and children in terms of field work, research and policy inputs. Since the sector itself was shrinking, and corrections continued to see itself as intrinsically linked to this sector, its scope also began to shrink. Very few jobs for trained social workers were being created and consequently, the meaning of imparting training for these jobs was losing its significance. Fresh graduates began to be trained for jobs which were non-existent in the field. This led to frustration and loss of valuable human investment through training.

The Context

The field was waking to newer realities. Large-scale urbanization had led to an increasing crime rate. Migration was placing a strain on already inadequate urban infrastructures, leading to a different range of social problems. Youth unrest gave birth to newer crimes such as gang related violence and terrorism. Prostitution moved out of the brothels onto the streets. Drugs, liquor, begging and child labour involved trafficking and exploitation levels hitherto unseen.

The emerging trend of crime and deviance created an unprecedented strain on the criminal justice system. The backlog of cases in courts had reached unmanageable levels and the police and prison departments seemed to be perennially understaffed. The situation of under trial prisoners and short-termers became the new realities to reckon with. Conviction rates were abysmally low and the prison system was not geared to deal with unsentenced populations. The human rights movement took note of these realities and a series of journalistic exposes, public interest litigations and landmark judgments by the judiciary drew the attention of the State and society to this situation.

However, social work intervention continued to remain outside the purview of all these developments. Correctional work continued to see its relevance in the context of convicted and long-term populations in prisons. It was in this background that the Department of CCA at TISS began exploring the scope for social work intervention with under trial and short-term populations in prisons through its student fieldwork.

The Initial Phase

From 1985 to 1989, senior students of the Department (M.A. in Social Work with specialization in CCA) were placed for their fieldwork in the Women’s and Young Male Adult sections of the Mumbai Central Prison (MCP) with the permission of the I.G.
Prisons, Maharashtra. The I.G. suggested to the faculty initiating this project to start work at Yerawada Central Prison in Pune, which housed a large number of convicts and long-termers instead of at MCP, which housed mainly an under trial population. It was felt that under trials are 'here today, gone tomorrow' and the scope for social work or correctional intervention was very limited with them. The same faculty reported the first batch of female students placed in the Women’s Section at MCP being at a loss in terms of how to intervene, at the end of their first semester. However, the work gradually took shape with each batch of students adding a new dimension and expanding the possible areas of intervention.

By 1989, the scope for a full time project with under trial populations in the two sections of the prison seemed a distinct possibility. Prayas took shape when the I.G. Prisons gave permission to start a fulltime social work project at MCP. The project was then entitled “Social Work with Under Trial Prisoners at Mumbai Central Prison”. Within a year of fulltime intervention, the need for expanding the scope of the project to police stations was felt and two students were placed at Malanga Police Station to explore this possibility. Students of the Department did significant work during the Mumbai riots, acting as a liaison between the police and the riot affected people. Subsequently, social workers were placed at Deonar Police Station to work with vulnerable sections that approach the police with their socio-legal problems. A similar effort was also initiated in the Metropolitan courts and by 1993, Prayas: Social Work in Criminal Justice, had taken shape.

Growth of the Project

The Project is now based in five prisons, two police stations, one court cluster, legal aid system, two homes for rescued women and minors (from prostitution), and also does aftercare work with youth and women getting out of or vulnerable to crime or prostitution, through its community based contact-cum-rehabilitation centers in Mumbai, Thane and Bharuch districts in Maharashtra and Gujarat.

Alongside reaching out to affected groups, the project has tried to make significant inroads into carrying out field-based research, policy interventions and promoting developments in the field. It has interacted with a wide range of government officials, NGOs, academics, citizen groups and individuals in an attempt to open up the field and establish the rationale for social work intervention in criminal justice (along the lines of social workers employed in schools, hospitals, industry, family courts and juvenile justice systems) and a rehabilitation policy for vulnerable groups in criminal justice.

Learnings from the Project

The project has been a rich learning experience for those of us involved in it. Some of these are being presented for further discussion:
1. The need and scope for social work intervention with under trials and short termers - The focus of earlier and current intervention with these populations has largely remained limited to human rights protection and custodial justice. Prayers has tried to go beyond these into seeing them as persons in need of psycho-social and rehabilitative interventions. Just because a person's guilt in committing a crime has not yet been proved or the period of imprisonment is insignificantly small, does not necessarily imply that he or she is not living a crime prone or marginalized lifestyle, and does not need inputs. Our experience shows that many such persons require sustained intervention even after their release and face similar stigma and isolation similar to that faced by convicts and long-termers.

2. The invisibility of children of prisoners who suffer social isolation and physical and/or emotional deprivation - The importance of a structure and a policy to take care of the needs of this group has become clear, a fact borne out by the recent judgment of the Supreme Court in the R.D. Upadhyay vs State of Andhra Pradesh and Others (in which the Court has taken on record the publication of Prayar on Children of Prisoners).

3. The lack or inadequacy of aftercare services for persons in crime or prostitution - Most existing rehabilitation schemes focus mainly on needs of convicted populations and over emphasise economic assistance. Factors like the need for shelter, a pro-social agent, a mechanism to strengthen relationships in the family that may be strained, liaising with the police - to avoid rearrests on mere suspicion, lifestyle leading to addictions, and low self esteem, have demonstrated the depths into which this area of work needs to be gone into - both in terms of research and policy.

4. The need for coordination between the various wings of the CIS and the government departments responsible for administration of criminal justice at the state and national levels - There needs to be a concerted effort towards pooling of minds and resources to deal with some of the vexed issues in justice delivery. There exists a piecemeal approach to deal with problems like overcrowding in prisons, delay in trials, problem of police escorts, legal aid etc. Basic issues like the powers of arrest, bail procedures, probation, summary trials, and alternatives to imprisonment need to be developed.

5. The need for a cadre of trained social workers in criminal justice viz. at police stations, prisons, courts and institutions for women and children - In a democratic set up governed by rule of law, social workers can act as informed citizens to help access rights and to reach out to those in need within criminal justice. It is imperative that these services are not provided by NGOs alone but are part of the statutory services funded by the state.

6. The role of colleges of social work and departments of criminology towards fostering developments in criminal justice and corrections - Students and faculty from social work and criminology streams could play a significant role in opening up of systems and creating a lobby towards penal reform.
The Way Forward...

The synergy created through the work of Prayas will run out of steam if partnerships are not forged and a movement is not created to take this work forward. As mentioned earlier, our nation witnessed a very solid process of institution building in the post independence era, which received a severe setback from the pressures of a changing society, and gave way to the method of finding individual solutions. Instead of redesigning systems to deal with these emerging inadequacies, there has been a tendency to tinker with them. The over dependence on the NGO sector to solve problems of society is an outcome of this process.

There is a need to revive some of these institutions or build new institutions to sustain the development process. Social work and social science institutions and forums could play a significant role to aid this process. People and institutions with a sense of history and a hope for the future are required. Forums like the Association of Schools of Social Work in India and the Indian Society of Criminology could play a stellar role to promote developments in the field of criminal justice. Collaboration between field staff, researchers, academics, policy makers and funding bodies will sustain a movement towards change and progress. Efforts like Prayas are too small in comparison to the largeness and complexity of the problem at hand. This paper is an appeal to interested individuals and bodies to join in this effort.
Social Work at the Police Stations: Towards a Gender Sensitised Response to Vulnerable Groups in Criminal Justice

Prayas is a field action project of the Tata Institute of Social Sciences attempting to demonstrate, since February, 1990 the need for social work intervention in the criminal justice system. It is based in Mumbai, with sub-units in Thane and Bharuch districts of Maharashtra and Gujarat.

Prayas has been working towards the rehabilitation of the persons coming out of crime and prostitution. Workers are based in the various sub-systems of the criminal justice system, such as police stations, courts, prisons and rescue homes, with the aim of carrying out social work intervention within the system. This project started with one full time social worker in Mumbai Central Prison, in the young male section and has grown into a team of thirty social workers, vocational instructors, creche workers and researchers.

While working in the prison, one of the issues that came to light through our work, was the criminalization of first and young offenders in prison, due to the presence of habituals and criminal gangs. This issue of criminalisation of young and first-time offenders, we felt, had to be tackled at a stage earlier than prison i.e. at the arrest stage, when he/she was in police custody. Our entry into police station started as a result of this realisation. Since 1992, Prayas has worked at several police stations in Mumbai like Matunga, Deonar, Shivaji Nagar, Chembur, Mahim, and Nagpada and presently, at C.S.T. Railway Police Station. At each police station, full-time and trained social workers have handled various categories of vulnerable groups to provide them relief, support and welfare services.

The role of the social worker at the police station includes liaising with the police, clients and the community (particularly in relation to vulnerable groups like children, women, youth and emotionally and psychologically disturbed persons) towards grievance redressal, information about community resources, counseling regarding available options and help required towards rehabilitation.

Prayas has obtained the experience of working with citizens coming to the police station for the resolution of marital, family and neighborhood disputes, furthermore cases of missing persons, mentally disturbed cases, missing persons, victims of crimes against women and first-timers in the police lock-up. Yet another focus of work in the police station has been the counseling of minor girls and women rescued from brothels. The work in police station has also addressed persons who on leaving home, become vulnerable to anti-social forces and also victims of violent crimes. Presently this work is being carried out at C.S.T. Railway Police Station with women in prostitution and minors and women vulnerable to trafficking.

(2002, Unpublished)
Description of Work

Most of the cases that come to the police station need psycho-social input apart from the legal intervention by the police. These cases family disputes, marital conflicts, property disputes, employer-employee disputes, neighbourhood disputes (sometimes even over seemingly petty issues like water, garbage, etc.). There are also cases such as runaways from homes, elopement of minor girls with minor or major boys, alcohol or drug addiction, mentally disturbed, missing persons, harassment of senior citizens, etc.

These cases have turned into legal disputes or criminal matters because of lack of timely and proper intervention by the social agencies such as family, community, religious or social groups. Sometimes they reach the police station, as the above agencies have been ineffective in handling the problem. However, once they reach the police station, the police handle the problem through the use of legal powers at their disposal such as registering a non-cognisable (N.C.) complaint or a criminal case, arresting the offender/s concerned or unofficial use of authority such as trying to ‘settle’ the matter, use of threats or physical abuse.

Such an action may lead to the problem being brought under control, cooling of tempers, bringing down the tension levels and even solving the problem temporarily. But since the root cause is not addressed, the problem may erupt again after some time or it may assume a more serious or violent nature. It is here that the services of a professionally trained social worker (at the police station), comes into the picture.

It must be pointed out here that the social worker may not be effective in all cases if he/she tries to intervene before the police has intervened, particularly cases of violent nature.

The social worker first listens to the problems presented by the person and depending on his need, renders a service. It may be in the form of proper guidance about his rights as a citizen vis a vis the police, information about welfare agencies, referral to collateral agencies, counselling, dispute resolution, etc.

Impact of Work

Prayas now has close to twelve years experience of intervening in cases reaching the police station. Our work is recognized by the police as well as by the public. Wherever it has worked, the police have acknowledged that the roles of police and social worker are different, a mutually supportive and yet non-interfering relationship that is sought to be maintained with senior inspector and station house staff.

1. There is a visible difference in the outward behaviour of the police towards the citizens approaching the police station. This change is particularly visible towards persons such as alcoholics, mentally disturbed, ‘regular’ complainants e.g. women who regularly come to the police station complaining about the ill treatment meted out by their husbands/ in-laws and later withdraw their complaints after some action is taken by the police.
2. There are many sensitive officers who feel greatly encouraged, motivated and ‘helped’ by the presence of the social worker. They refer cases, ask for information about services and work in coordination with the social worker. As a result, people get heard and get better relief and services.

3. There is an increased awareness amongst members of the public about how to access the police station and use its services. Some officers inform the complainants about their rights either orally or by pointing to the board in the station house that informs citizens about their rights. The social workers’ presence encourages citizens to speak more clearly and with greater self-confidence. The social workers on their part encourage the complainant to speak about his problems without fear but politely.

4. Before registering the N.C. complaint, the duty officer may refer a case to the social worker or the latter may request the officer to be allowed to intervene in the matter. The social worker would first listen to the complainant’s story. Then, he would inform the client about the services that the social worker could offer and leave the option of whether to register a N.C. complaint or not to him/her. It has been observed that some of these persons decide not to register the N.C. in the end.

5. Sometimes, the complainant or the duty officer might interpret a situation requiring a N.C. complaint, but the social worker might feel that the case needs to be registered as a cognizable offence. In such situations, the worker has brought it to the notice of the senior officers of the police station for them to take suitable steps. As a result, some of these cases have later been registered as a cognizable offence.

6. It has been observed that community based organisations, (mahila mandals, youth groups, etc.) feel more comfortable approaching the social workers rather than the police with regard to cases they have taken up e.g. harassment of women, recovery of streedhan, eve-teasing, exploitation by employer, child abuse, etc. The social worker refers these cases to the duty officer and requests him to take appropriate action in the matter. The presence of the social workers has helped bridge the gap between police and these organisations.

7. The police staff and social workers at the police station interact with each other on a continuous basis. They not only discuss their work and cases with each other, but also their views, values, ethics, principles, etc. In the long run, this seems to have an effect on each other. We have found some officers or constables becoming ‘softer’. Their language has undergone a change and use of force has got reduced, at least in the presence of the social workers. Many cases, which they would not have earlier entertained (as they felt that these were not within the ambit of their work) are now being referred to the social workers and sometimes even directly being handled by them.

The social workers on their part are able to empathise with the situation of the police - their problems, working and living conditions, nature of work, etc. The social workers
have learnt positive use of authority and have understood the role of the police in taking prompt and effective action when a situation requires it.

Organizing sensitization programmes for the police personnel on various issues such as gender, human rights, child rights, communal harmony, police-public relationship, etc. has become part of police training and development exercises. There is an ‘overload’ of training and an ‘over-sensitised’ police force with not enough back-up in terms of infrastructure and manpower to handle problems of these groups coming to the police station. What is required to back up these programmes is qualified staff in the police station to work on issues such as problems of women, children and other vulnerable sections of society. The presence of social workers trained and paid to work on these problems would add to the effectiveness of police action and provide greater benefit to the citizen approaching the police station.

The police station is for citizens, today, the last resort for all problems, they come when all other options have failed and expect an immediate resolution. The police are unable to refuse cases, as it has not been specified what kind of cases should not be dealt by them, except on the basis of geographical jurisdiction. The police usually try to intervene in all cases, by either registering criminal complaints, or N.C. complaints, imposing fines, detaining the person, counseling, or by dealing sternly/firmly with the persons concerned, etc.

In our view, it is not the fault of the police that they handle cases requiring psycho-social inputs through the use of force. They are not trained to deal with the cases of civil nature, socio-legal dimensions or non-cognizable cases. On the other hand, social workers have that knowledge and training of how to deal the above-mentioned cases. They have the requisite counseling skills and knowledge about welfare and community resources to lead to better resolution of such problems. They can follow up on cases, pay home visits, and refer to collateral agencies wherever required.

It has been the experience of Prayas that placement of trained social workers in the police station, who handle cases requiring psycho-social intervention, can lead to a more sensitized police force and greater relief and support to the citizenry approaching the police. Therefore Prayas suggests the creation of a cadre of social workers in the criminal justice system working in collaboration with the criminal justice administration. A proposal to this effect was submitted to the Director General of Police, Maharashtra by TISS in 1992. The D.G.P. set up a Police-TISS Committee in response to this proposal, which submitted its report to the Home Department in 1993, recommending the creation of such a cadre of social workers. The report has not seen the light of the day since.
Counselling and Guidance

Most under trials in prison live in a state of tension and uncertainty. The large majority of them are arrested for petty and less serious offences such as theft, assault, possession of a knife, loitering in suspicious circumstances, ticketless traveling, etc. In most of these cases bail has already been granted and the only reason these persons remain inside are poverty and lack of family support. The second category of offences for which the under trial is in are the more serious charges such as robbery, dacoity, rape, kidnapping, causing grievous hurt, attempt to murder, murder, etc. The third category of offences is those arrested under the organized crime category such as the NDPS Act (drug dealing charges), MCOCA, MPDA, POTA, Customs Act, etc.

The first category are the most vulnerable as they usually come from the lower socio-economic strata, have poor family supports or are migrants to the city and could be homeless, may into addictive behaviour, do not have access to legal aid, and are the easiest prey for the habitual group to lure them into a life of crime. The second category could be a mix of those who have a history of crime behind them and those who could be termed as ‘situational’ criminals. They could be coming from better family backgrounds but links with the family may have been broken because of their criminal past. The third category consists of those who have moved up the crime ladder and may be committed to it.

Counselling and guidance provided by the social worker could be of use to all three categories. In the first category, the social worker provides legal guidance, emotional support, and acts as a link between the person and the outside world. He often ‘coaches’ the client to present his situation before the judge and the prison authorities, helps him identify with his work life, encourages him to think of pro-social options in life and informs him about the services available in the community, based on the basic problems identified with regard to life outside prison such as lack of shelter, employable skill, addiction, problems in the family situation and his image in the area.

With the second category, counseling involves doing a joint review of past life experiences, identification of skills, realisation of reasons why family relationships have broken down, working out a post-release plan and providing an assurance of support after release, in case the person wants to re-think his lifestyle.

In case of the third category, counseling may come into play only if the person has a strong desire to get out of crime, which should be amply demonstrated by his behaviour changes and involvement in positive activities inside prison. When a person from this category approaches the social worker, it usually after careful thought and with a specific request, such as seeking the assistance of the worker in improving his relationship with the family or the police.

(Excerpts from the paper by Vijay Raghavan on social work intervention in prisons to be published in the proposed publication on field action projects of TISS)
In general, the very presence of the social worker in prison on a regular basis opens up an option for the prisoner – someone to discuss his dilemmas and struggles, someone whom he can trust and who inspires confidence. It is very important from this point of view that the social worker comes across as open-minded, transparent, honest, clear-headed, and empathetic. Winning the trust and respect of the client group is half the battle won in the fight against crime. The social significance of the social worker’s presence in prison cannot be lost. It is a message to the law violator that he is not a person to be shunned and that society wants to reclaim him.

The topics around which discussions usually take place in prison are individual problems related to imprisonment, problems vis-à-vis family and its relationships, loss of social contact, feelings of loneliness and abandonment, loss of a sense of self, anger, hurt, revenge, depression, devil may care attitude, worries about children, or spouse/parents, uncertainty about the case proceedings and what the future holds. The social worker has to be a good listener, discuss and offer options, keep issues alive till they reach some logical conclusion, try not to impose his/her views on the client and help the person to arrive at his/her own decisions. The outcome of this process should be an enhanced self-image, an increased sense of responsibility in the person and a feeling that support is available if needed. A thin line has to be maintained whereby the client feels a real sense of support and yet at the same time knows that it is his battle against life.

Legal Support

This is one of the most important areas of work inside prison, especially in the context of work with under trials. Every prisoner one meets in prison has some legal query or the other that needs to be addressed. Family-related and legal problems constitute the bulk of or the “bread and butter” of the caseload of a social worker in prison. They range from the understanding the section under which a person has been arrested to asking for a lawyer to fight his/her case in court. The range of tasks involved may include:

- Explaining the sections and the case details
- Reading out the chargesheet, the bail order or the judgement copy and explaining the same in simple language
- Writing applications to the judge relating to bail, reduction of bail, release on personal bond, release on probation or parole, pleading guilty, asking for a lawyer from the legal aid panel, return of personal property or cash from police custody, health problems, situation of children left outside, apprehension of property or house being encroached upon, torture by police, etc.
- Liaising with the lawyer appointed by the person to enquire about the progress in the case
- Follow-up of the case in court, including attending the court date for moral or legal support
- Help with getting copies of the chargesheet, case papers, bail order or judgement copy
• Finding out and informing about the next date in court from the lawyer, court or the prison authorities
• Liaising with the prison or police authorities to arrange for police escort for attendance on court or taking to hospital
• Appointing a lawyer from the legal aid panel or a private lawyer, and follow-up
• Helping the family with legal matters such as procedure for arranging for bail, status of the case, informing them about the next date in court with a request to ask them to come to court, etc.

This role can also be fulfilled by a para-legal worker, or by the appointment of a legal aid worker to the project. Experience has shown that it may be better to relieve the social worker from the role of providing legal support, as it becomes difficult in the long-run to combine the two roles. The pressure from the client group on addressing legal problems can be so overwhelming that it may reduce the social worker to providing only legal services.

In this connection, it also possible to tie up with senior students of law through law colleges to visit prison regularly and help out with the above mentioned tasks. Prayas has a tie-up with the Government Law College in Mumbai towards this end.

Contact with Family

The entire population can be divided into two groups – those with family support and those without. Any person with family support stands a better chance of getting competent legal counsel, the required emotional support, ensuring the care and protection of his/her children, getting out on bail and post-release support towards re-integration. It has been observed that those with good family support do not require the assistance of the social worker beyond specific requests such as passing on information about bail or next date in court, asking them to come for ‘mulakat’ in prison or in court, enquiring about children, etc. Such persons seldom come for help after their release, and if they do, it is again for specific purposes such as liaison with police to avoid re-arrest on suspicion (due to past criminal record), legal guidance, information about training opportunities, etc.

As opposed to this, those with weak family support, tend to depend on the social worker for a range of services. The social worker in such cases has to liaise between the client and his/her family for issues such as:

• Informing the family about the arrest, case details and bail procedure
• Liaising between the family and the lawyer
• Helping the family appoint a lawyer
• Helping the family with the bail procedure
• Providing emergency assistance to the family such as provision of rations (in case of the prisoner being the bread-winner of the family), assistance for medical treatment, paying house-rent, electricity bill, assistance for house repairs, traveling allowance to visit the prisoner in prison or in court, etc.
• Helping children with educational or nutritional support, and institutionalisation of children (if necessary)

Through the regular contact and assistance provided to the family, the social worker tries to make an assessment of the willingness of at least member in the family to accept and maintain ties with the prisoner and the ability of this member to support with post-release needs such as shelter, subsistence and emotional support. The worker also tries to assess the capacity of the family to help out with the process of re-integration, such as whether the family’s position in the community is stable, whether it has a social network capable of resisting the stigma attached to the client’s imprisonment and whether it has the resources to assist the process of re-integration through absorption in the job-market, arranging a match, etc.

The stronger the integration between the family and the client and between the family and the community, the better are the chances of rehabilitation. A weak or conflict-ridden family relationship compounded by a weak or unstable family position in the area would consequently weaken the chances of rehabilitation. The demands on the social worker and the agency would increase in direct proportion to the family situation being discussed here.

Liaising with the Criminal Justice Administration

One of the important roles that the social worker has to play vis-à-vis the under trial prisoner is that of a liaison between the prisoner and the various wings of the criminal justice system viz. the prison staff, the police, the judge, probation officer, medical authorities and the lawyer concerned in the case. The focus of this liaison work is to present the problems the prisoner may be facing while in custody. A list of such issues and problems is given below:

a. Liaison with prison staff –

• Health problems and medical treatment/follow-up
• Forwarding applications to court
• Arrangement of police escort for court date or to take to hospital for treatment
• Special mulakat with minor children within the prison premises
• Age verification test in case of minor (under 18 years) under trial being in prison due to wrong age mentioned by police
• Bringing children below five years inside prison if mother (women prisoner) wants, due to lack of support outside
• Arrangement for admission of minor children (above five years) left outside to children’s institutions due to lack of support outside
• Arrangement for admission to shelter home after release in of woman prisoner without family support
• Arranging for psychiatric evaluation of the prisoner in case of suspected mental disturbance, depression, repeated anger outbursts, etc. for treatment purposes
b. Liaison with police -

- Arrangement of police escort for court date or for being taken to hospital
- Getting a copy of the chargesheet
- Return of personal property recovered from the under trial prisoner at the time of arrest (cash, jewellery, etc.)
- Escorting minor children of woman prisoner (below five years) for admission to prison, at the request of the mother
- Admitting minor children (above five years) to an institution under the JJ Act, at the request of the mother
- Sealing of house or property at the request of the prisoner, due to fear of encroachment

c. Liaison with health authorities -

- Getting birth certificate if the child is born in prison (without prison being mentioned as the address of the mother)
- Follow-up of treatment given by hospital
- Getting a psychiatric evaluation done in case of suspected mental disturbance, depression, repeated anger outbursts, etc. and follow-up with the medical officer concerned
- Recommending special diet in case of pregnant or nursing mothers or any prisoner showing signs of physical weakness

d. Liaison with the judiciary -

- Health problems and medical treatment
- Forwarding applications and follow-up of the same with the clerical staff in court or with the judge concerned
- Age verification test in case of minor (under 18 years) under trial being in prison due to wrong age mentioned by police
- Bringing children below five years inside prison if mother (women prisoner) wants, due to lack of support outside
- Arrangement for admission of minor children (above five years) left outside to children’s institutions due to lack of supports outside
- Arranging for psychiatric evaluation of the prisoner in case of suspected mental disturbance, depression, repeated anger outbursts, etc. for treatment purposes
- Getting a copy of the chargesheet
- Return of personal property recovered from the under trial prisoner at the time of arrest (cash, jewellery, etc.)
- Sealing of house or property at the request of the prisoner, due to fear of encroachment
- Bringing psycho-social facts of a case to the notice of the judge from the point of view of rehabilitation
- Release on personal bond or probation (under the Probation of Offenders Act)
Liaison with the lawyer -

- Information about the progress in the case
- Bringing relevant psycho-social facts in the case to the notice of the court
- Release on personal bond or probation in view of the socio-economic status and psycho-social facts in the case
- Medical treatment and/or arranging for psychiatric evaluation of the prisoner
- Bringing children below five years inside prison if mother (women prisoner) wants, due to lack of supports outside
- Arrangement for admission of minor children (above five years) left outside to children’s institutions due to lack of supports outside
- Getting a copy of the chargesheet/case papers/bail order/judgement copy
- Return of personal property recovered from the under trial prisoner at the time of arrest (cash, jewellery, etc.)
- Sealing of house or property at the request of the prisoner, due to fear of encroachment

Liaison with the probation officer -

- Bringing relevant psycho-social facts in the case for consideration of release on probation under the P.O. Act
- Arrangement for admission of minor children (above five years) left outside to children’s institutions due to lack of supports outside
- Referral to shelter home after release in case of lack of family support
- Financial assistance after release under the government scheme for assistance to released prisoners
- Seeking cooperation of the police to avoid re-arrest (after release) based on suspicion due to past criminal record
- Assistance in job placement

As one may observe, many of the tasks pertaining to liaising with the different wings of the administration are repetitive. This is indicative of the fact that the administration of justice involves the coordination of several authorities, and sometimes follow-up with some or all of the authorities concerned may have to done in order to get the desired results. This becomes difficult for a prisoner to do by himself, especially in the absence of family and/or legal support. The presence of a social worker is extremely useful in this process. He puts his mobility, flexibility and communication skills to use towards the best interests of the client group he serves.

Arranging Educational, vocational and recreational activities in prison

The social worker’s role and functions may include arranging for educational, vocational and recreational activities inside prison. The objective behind this is to create a positive environment inside which is supportive to rehabilitation and re-integration of the prisoner after release. The prison environment has a ‘criminalising’ influence on the minds of
myths or formulae learnt from habituals and prison staff about how the system functions, rather than trying to understand how the system should actually function and what are the legal rights enshrined in the law.

Lack of understanding of the law and the importance of documents in an information age can have a debilitating effect on the life of a person already living life on the borders of illegal existence. The social worker has to really struggle against this attitude and be conscious that the dependence on untrustworthy elements does not now get transferred to dependence on him. He has to make concerted efforts to get the prisoner to take responsibility for his life, by starting with his case papers.

Efforts should gradually be made to check with the prisoner and make him/her aware about importance of having in one’s possession basic documents such as birth certificate, caste certificate, ration card, bank account, school leaving certificate, etc. The endeavour should be to create a consciousness in the person about his status as a citizen and creation of documentation towards that end. This will also be of help when it comes to establishing his credibility with the police and other authorities after his release from prison. This process should then be continued by arranging for information about government schemes for training, loans for self-employment.

Pre-release preparation

One of the prime objectives behind custodialisation is a planned “return to society”, whereby a planned attempt has been made to resocialise and re-educate the person, helpful towards re-integration. Towards this objective, custodial programmes emphasize on re-training and education, acquisition of vocational skills, counseling, improving ties with the family and the community and linking up with an aftercare programme.

Elementary structures to implement this objective are present in the system in some States, in the form of literacy programmes, entry of open schooling and university system into the prison, vocational training and work programmes, presence of liaison, welfare and probation officers and post-release aftercare programmes (aftercare homes, financial assistance for released prisoners and aftercare officers). However, there is no uniformity among the States in these structures, and in the absence of an aftercare policy at the National or State level, these structures have remained at the basic level at which they were established in the post-independence phase.

Further, there has been a systematic erosion of these structures in the last twenty years. The Gore Committee Report on Aftercare Programmes (commissioned by the Central Social Welfare Board in 1952), which carried out a thorough review of existing structures and programmes in the country and suggested several long-term measures to improve them and lay down policy guidelines with regard the same, has all but gathered dust in the libraries of Universities and Government Departments.

The Gore Committee had suggested a comprehensive after-care policy for all categories of institutionalized populations and socially disabled or vulnerable groups in society viz.
first-time and young offenders. It creates feelings of despair and fatalism, and one has often found prisoners falling prey to depression, emotional disturbance, anger outbreaks and violent behaviour, especially when family and community ties are weakened. In the absence of a positive environment and supports, they can be easily influenced by the ‘habitual and hardened’ elements in prison, and pulled into a life of crime.

It is in this context that activities have an important role to play. The social worker can liaise with the resources outside and the prison authorities to bring these resources inside for the benefit and welfare of the prison population. Organizations and institutions (both government and voluntary) providing non-formal education, recreation, library facilities, vocational training courses, etc. can be brought inside to reach out to custodialised populations. Prayas has successfully organized activities inside prison with the help of government agencies such as the Khadi and Village Industries Commission, Jan Shikshan Sansthan and the Brihanmumbai Municipal Corporation (under the Swarna Jayanti Shahari Rozgar Yojana). It has also organized educational and vocational activities with the help of NGOs such as Project Mainstream, Camlin India Ltd. and Pratham.

These activities have helped in raising the activity level of the prisoner, especially the under trial, who spends most of his time idling away. It has also helped Prayas in establishing a positive relationship with the prisoner, which is helpful to rehabilitation and in identification of talent and skill in the prisoner. We have also appointed activity and literacy teachers who conduct recreational-cum-literacy classes with prisoners on a regular basis. Activities such as painting, writing, craft-work, theatre, music and dance can have a cathartic and therapeutic effect on the prisoner and help him develop a positive self-image. It also helps in reconnecting with the social milieu through an art or creative form. Agencies which specialize in art or music therapy or theatre workshops, personality development could be invited and assisted to work inside prison towards this end.

Information on citizenship rights and government schemes

It is crucial from the point of view of re-integration that prisoners and other socially stigmatized groups in society are made conscious about their citizenship status and provided with at least the information to access such rights. This is important from the point of view of their rights as citizens of this country, but from the socially significant point of re-connecting with society. In the movement away from crime or deviant lifestyle, the person has to be moved from ‘client’ to ‘citizen’ status. The social worker can be that crucial link in this movement process.

The effort could start with motivating him/her to keep his case papers carefully – chargesheet, bail order, judgement copy or any other legal document served to him in the past. One often encounters a careless attitude in the prisoner and a ‘handing over’ tendency with regard to legal documents. It is part of the tendency of abdicating responsibility for self and dependency on others – family, lawyer, friends, habitual elements, etc. One has found copies of the chargesheet or the judgement copy being used as fuel to prepare illegally tea inside the barrack! There is greater trust on prison lore and
prisoners, inmates of children’s and women’s institutions, patients of mental health institutions and physically and mentally challenged. It had called for a re-alignment and rationalization of existing services and a uniform structure to cater to the after-care needs of these groups. The findings and recommendations of this report are relevant even today.

Sadly, what exists today in the name of after-care is a piecemeal approach, ad hoc measures and structures and a continual watering down of programmes. The entire responsibility of after-care and rehabilitation has been quietly on from the State to efforts by the NGO sector, and that too, without any clear-cut policy and resource allocation system on the issue. In this given situation, it is now the responsibility of those working in this field, both in government and in the NGO sector to join hands and revive and re-invent the system, simply because the need is far greater today than ever before.

Having understood this reality, Prayas has been making continuous efforts to work on the issue of rehabilitation with a two-fold objective – identify the aftercare needs of institutionalised groups and design a programme based on these needs, and through its work, create a case for renewed emphasis and investment on this issue by the State and civil society. The stepping stone to any aftercare programme in this context is the work that has to be done in the pre-release phase.

Any pre-release programme has to be founded on two pillars – work with the individual and work with the family and the community. Work with the individual is usually focused around re-education and capacity building. This includes counseling and guidance, arranging educational and/or recreational activities, identifying talents and skills useful to rehabilitation, strengthening links with the family and the community and planning for the post-release phase. Through all these activities, an attempt is made to build a relationship of trust and honesty with the client. The worker may have to make positive use of his authority, vested in him by virtue of being associated with the criminal justice system, and create by his knowledge, skills and the social sensitivity he possesses.

This use of authority is directed towards arriving at a bargain between the client and that part of society, with which he is in conflict. For example, the client may have a conflicting relationship with the father, which led to his foray into a criminal lifestyle. The existence of that conflict will come in the way of rehabilitation in the post-release phase. The worker will have to identify the issues that are coming in the way and find a way whereby the client is ready to renegotiate his relationships in the family. In this renegotiation process, the worker may have to point out behaviour traits or habits in the client which are coming in the way of a negotiated settlement, and use his authority (which the client now accepts) in a positive manner to get him to reflect. His intervention in the case should lead to an improved self-image in the client and yet a realistic assessment of the situation he finds himself in.

Pre-release preparation will also involve discussion and planning for the immediate future with regard to shelter, subsistence, livelihood and dealing with resistance within the family and the community in a pro-social manner. He/she will have to prepared with
the issue of facing social stigma and isolation for a fairly long period in the process of re-integration. The presence of the social worker and the assurance of his backing throughout the process, is very important, especially if the family supports are weak.

Concrete assistance in the form of traveling expenses on release from prison, arrangement of temporary shelter (if required), financial assistance and support for medical treatment, subsistence, guidance and sponsorship for vocational training, assistance in job placement and negotiating with the local police to prevent police action or arrests on suspicion (due to past criminal record) are important areas of intervention about which discussion and assurances may have to be given, depending on the needs emerging through the discussions in the pre-release preparation.
IV. CHILDREN OF PRISONERS

We are also working with children of prisoners left outside. The need for this was felt during our home-visits. Educational need to the children is one of the problems to be tackled while handling the client's case. Thus, we get applications from the prisoners requesting for either shelter or educational support for their children in institutions, or with some relatives, etc. Their requests are in regard to admission into educational institutions, financial help for continuing the education of their children.

In the year 2004-05, we received more than 100 applications requesting support for education. But after a proper assessment, help has been extended either through educational sponsorship for the children, or partial help or a one-time help as per the financial condition of the family. Many older children have to take up employment so as to lend a helping hand to the family's financial problems, thereby forcing them to drop out of school. So provision of a positive environment to the children of prisoners for continuation of education and to prevent them from dropping out from school due to imprisonment of their parents is our main objective.

After paying a home-visit and conducting the necessary enquiries an assessment is made as to which type of help needs to be extended to children completing the age of 5 years and who have to be taken out of prison. If the children, except for some financial help required for the academic costs of the child, then we give an educational sponsorship. This is mainly given in kind in the form of school fees, provision of uniforms, bags, textbooks, notebooks, and other required materials. Thereafter, a close follow-up is kept with the family and about the children's progress by regular home-visits and enquiries.

Later, in regard to the shelter issue of the children, Welfare Committees for admission into children institutions whereby their shelter and education is taken care of. We try to put the children into the institutions where there are especially good educational facilities within the institution or they are sent outside the institutions to good schools. Here, we face lot of problems in trying to convince the Child Welfare Committee or the institutions to admit these children. In a few institutions, due to reservations, admission is refused. It is

(VARHAD, Biannual Report, 2003-05)
difficult to get admission for children in many government-aided institutions due to reservation to particular categories. At times, we also admit some children to residential institutions directly and pay for their expenses.

Another issue is in regard to placement of the children as per the district jurisdiction. This prison is a Central Prison where convicts from 4 adjoining districts beside Amravati are kept - i.e. Yavatmal, Washim, Akola, and Buldhana. For the convenience of regular meetings with their imprisoned parents, we try to place the children in institutions in Amravati itself. There are children who have no close family members outside prison and such parents insist on admitting their children into institutions in Amravati district only. Convincing the Committee members as well as the institutional authorities in this regard at times becomes difficult. In the year 2005, we have admitted 11 and 2 children into an institution in Yavatmal and Washim respectively. Here, for the convenience of keeping a follow-up with these cases, we have appointed 2 social work students as volunteers to assist us in this regard.

It has been observed that the children face a lot of adjustment problems during the initial days of their stay in the institutions. Adjustment is easier for the children who are young of age and have been with their mothers in prison for some time, than with those who are of adolescent age and have been at home until they were institutionalized. This is due to the negligence of the child on the part of the one parent (be it mother or father) who is handling the family’s situation alone, or the relatives in whose care the children were. Due to the arrest of the parent/s, the family’s lifestyle gets disturbed whereby there is no control over the children following an irregular schedule. So it becomes difficult for such children to adjust to the routine schedule of the institution, who have become accustomed to the freedom when at home. We cannot expect good academic performance from these children. But since one of our objectives is to prevent the children from getting onto the wrong path through our help for shelter, education, it is thus achieved to a certain extent. Provision of a good social environment and contact with the appropriate persons helps in bringing about a change in the personality of the children.

During our first year of work with the children, we would get in writing from the parent/s in the prison permitting us to take the temporary custody of the child for his
placement in an institution. In certain cases, there would be an urgent need to take custody of the children. And time would go in collection of the required documents for the child's admission into the institution or school, conducting an enquiry of the case, putting up the case before the Child Welfare Committee for orders of admission into the institution. Thus, the question of temporary shelter would arise before us, whereby this was handled by keeping the children in the homes of staff members. Having stayed in a favorable and different environment from their family atmosphere, the children either refused to stay thereafter in the institutions or faced adjustment problems and tried to run away from the institutions. On having observed this, we now try to initially complete the required procedures and then call the families with the children on either the day of admission into institution/school or on the day when they need to be produced before the Child Welfare Committee.

In regard to tackling problems of children while in the institutions, a follow-up is kept through our worker's weekly visits to meet them, providing them with the necessities like soap, toothpaste, clothes, educational equipment, etc. These visits assist the children in viewing the workers as a caring person, voicing out their feelings before the worker, being counseled by the worker, thus ultimately helping the child adjust to the new institutional environment. Gradually, these visits are reduced from weekly to fortnightly visits to monthly visits as per the adjustment progress of the child. At the most, it takes three months in all for this process of helping the children settle in the institutions.

One of the reasons for the adjustment problems of the children is the branding of these children by the institutional staff as "an offender's child". This mentally affects adolescent children than the younger ones. Here, we find an important need for the sensitization of the institutional authorities or respective persons who come in association with the children during their stay in the institutions. There is a need to view these children as different from the other children coming from normal families. For e.g. a child going to visit the parent in the prison during his school hours or without informing the institutional authorities is considered as running away from the institution. And on the return of the child, he/she is punished as per their regular and general procedure. Little thought is given to the emotional feelings of the child who has had a disturbed family background and has been away from the parent for quite a long time.
We also arrange the children’s meeting with their parents on regular activity on humanitarian grounds. At a time, about 3-15 children are taken together from the institutions to the prison. The relationship developed by the organization with the prison staff and the services extended to the prisoners has helped in any ways. One of the advantages of this is that the children are permitted to meet their parent/s directly inside the prison, rather than the usual meeting room where the prisoners meet their families, relatives, and friends behind a barred door. The children are allowed to freely be with the parent/s for about 20-30 minutes after which they are taken back to the institution by our staff. This meeting of the children and the parent/s is an emotional scene to watch within the prison premises.

**CASES-1**

Soni, aged 7 years is presently admitted into a residential school. For continuous three years, she has secured 1st rank at her academic level. Soni was one of our first balwadi students when she was 4 years of age. She along with her two younger siblings had come into the prison when their mother was arrested due to the death of their paternal aunt. In the same case, her aged maternal grandparents, maternal aunt and her four children were also arrested.

There were total 12 children in the prison at that time, out of which 10 would be attending our Balwadi. These children had to initially trained in regard to the basic upkeep of their clothes, eating habits, sitting in the class, cleanliness, etc. Close supervision due to the less number of children and individual attention being given by the teacher to the children helped in a good moldings of their personality.

When Soni was 5 years of age we had to shift her from the prison as per the rules. And due to no family member or relative to take custody or care of her, we had to admit her into a residential school, where her needs of shelter and education were taken care of. Her adjustment and growth in this institution was quite positive which reflected through the good academic performance for continuous three years.
CASE-2

Rahul, 14 years whose father is serving life sentence in the Amravati Central Prison for murder of his sister-in-law since last 5 years. After conviction of his father their family support collapsed. They have only 3 acres of land, which is not cultivated since his imprisonment. Rahul's mother was looking after the children and his 75 year-old grandmother, as there is no male member in the family. At that time Rahul was studying in 6th standards in the village school. Because of this development he drop out from the school along with his school going sister. His mother was working in others' farm for the livelihood of the family. Thereafter his mother died in an incidence in the village. Now the family did not had any support for livelihood.

Now the children were without support and the only elder member in the family is their grandmother aged about 75 years who needs support for her. The children including Rahul lived on support from villagers in kind of food grain and cooked food. Education is far away for them as two-time meal is their immediate concern. We admitted Rahul in residential school in Chikhaldara and his sister in an institution in Chandurabazar.

The boy had adjustment problem in the institution because of his hot-tempered nature. Therefore he was branded as children of murderer by institution staff. He was upset because of environment in the institution and treatment of the staff. His academic performance was also declining in the first year. Therefore we had decided to shift the boy in other institution where he will have positive environment. Now he is admitted in a school in Amravati city and made arrangement for hostel. There is improvement in his behavior and academic performance.

**Number of children admitted into residential schools/institutions**

*(district-wise distribution)*

<table>
<thead>
<tr>
<th>District</th>
<th>Girl</th>
<th>Boys</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amravati</td>
<td>14</td>
<td>17</td>
<td>31</td>
</tr>
<tr>
<td>Yeotmal</td>
<td>5</td>
<td>3</td>
<td>8</td>
</tr>
<tr>
<td>Washim</td>
<td>3</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Akola</td>
<td>8</td>
<td>2</td>
<td>10</td>
</tr>
<tr>
<td>Buldhana</td>
<td>1</td>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td>31</td>
<td>28</td>
<td>59</td>
</tr>
</tbody>
</table>
In accordance with the legislation passed in Parliament, called the National legal Services Authority Act, the Government of Maharashtra has passed a legislation called the Maharashtra Legal Services Authority Act. The main feature of this act is that the administration and implementation of the legal aid services has passed on from the executive to the judiciary. A sitting judge of the High Court is the Chairperson of the Authority and the Chief Justice is its Patron-In-Chief. Every district has a District Legal Services Authority headed by the District and Sessions Judge. Mumbai has been divided in Greater Mumbai and Mumbai Suburban Legal Services Authority. Principal Judge of the City Civil and Sessions Court is the Chairperson of the former and Principal Judge of the Family Court is the Chairperson of the latter.

The Committee of the Authority is supposed to incorporate social workers, legal luminaries, women representatives and persons with a distinguished record in the field of legal aid as nominated members. An elaborate staffing structure has been provided under the rules of the Act to implement legal aid services. Lawyers are supposed to be appointed under the legal aid panel, who would take up cases referred to them by the authority. The District Authority is supposed to visit prisons to spread awareness about legal aid services and identify cases deserving legal aid. The minimum qualification for a lawyer to represent an accused is five years of experience. The magistrates/judges hearing cases in courts are also supposed to refer cases to the legal aid panel. An under trial can apply for legal aid to this panel if he/she so desires. There is an income clause to be eligible for legal aid.

Apart from this, there is another legislation passed by Maharashtra called the Maharashtra Visits to Children’s Homes, Police-Ups and Prisons Rules, under which the state is supposed to appoint duty counsels who would visit these places on a regular basis to give legal guidance and write applications for those in need of help. The duty counsels would be lawyers with five years (desirable) experience and would be paid an honourarium for their services. They would also refer cases to the legal aid board, if they feel so.

As far as implementation of these legislations are concerned, there is a lot left to be desired. Provision of legal aid to under trial prisoners at the lower courts (metropolitan magistrates’ courts), where the majority of cases come up, is inadequate. Magistrates are too overloaded with cases to ensure that every prisoner has the services of a lawyer. Prisoners are reluctant to avail of the services of a lawyer from the legal aid panel, as they do not trust their competence. There are complaints of these lawyers demanding money from their clients, apart from the honourarium they get from the state. The honourarium given by the state is too meagre for any lawyer to do his work with sincerity. The amount given is Rs.600/- per trial (irrespective of the number of hearings).
We gather that the situation is far better in the sessions courts. The judges are more alert about ensuring that all accused persons are legally represented. The honourarium paid to the lawyers is more, and there are fewer complaints against them.

The Legal Services Authority has appointed duty counsels in some prisons, under the Maharashtra Visits to Children’s Homes, Police-Ups and Prisons Rules. We have not seen/are not aware of any duty counsels having been appointed for police lock-ups and children’s homes. The duty counsels are paid a very small honourarium for their visits. As a result, their visits are few and far between.

There is an Inter-Departmental Committee chaired by the Principal Secretary, Department of Law and Judiciary, set up under the orders of the Mumbai High Court (through a suo moto writ petition in 1994), to look into the problems of under trial prisoners and released prisoners in Maharashtra. Prayas, a project of the Tata Institute of Social Sciences, Mumbai, is an invitee member of this Committee. The Committee has representatives from the police, prisons, women and child development, health and education departments as its other members.

This Committee was set up to solve problems of inter-departmental coordination for the welfare of under trial, convicted and released prisoners. It is supposed to meet once in three months to resolve on-going issues like non-provision of timely police escorts, legal aid, over-crowding of prisons, health-related problems of prisoners, implementation of the Probation of Offenders’ Act, vocational training, rehabilitation of released prisoners, etc. The Committee is barely meeting twice a year. Decisions taken in the Committee meetings are rarely followed up.

In an effort to decentralise the functioning of the IDC, it has been proposed to form district level IDCs. To begin with, the Mumbai IDC has been set up and is chaired by the Chief Metropolitan Magistrate. Three meetings have been held so far, but the progress has slowed down since the last six months.

One of the positive outcomes of the IDC, has been the decision to allow students of the Government Law College to visit the Mumbai Central Prison to give legal guidance to prisoners and write application on their behalf to the courts. The project is two years old and is coordinated by Prayas, in collaboration with the Prison Department.

Some Suggestions:

1. The minimum qualification for lawyer to represent the legal aid panel should be decreased from the present five to three (or two) years. Thus, more lawyers will come forward, who need the money and the experience to take up trial matters.
2. The motivation to help the poor and the needy should be checked at the time of empanelling lawyers.
3. The honourarium should be increased to Rs. 1000/- per case for trial and Rs. 500/- for bail matters in the metropolitan courts. In the sessions courts, the honourarium should be increased to Rs. 2000/- per case for bail and Rs. 3000/- per case for trial matters.
4. Publicity about the legal aid services should be made through posters and awareness camps in the police stations, prisons and courts. T.V. spots about legal aid services should also be carried out.

5. Social workers/NGOs help should be enlisted by the Legal Services Authority to identify cases deserving legal aid and guidance.

6. Duty counsels should be social workers with para-legal training rather than lawyers (as lawyers do not have the time to do such work).

7. Duty Counsels should be appointed in the courts to guide litigants about court procedures and give legal guidance to complainants and accused persons or their families. The Counsels should sit in a prominent place in the court premises on a daily basis for a fixed number of hours (say 11.00 a.m. to 3.00 p.m.).

8. Payment of honourarium to lawyers should be made at their door step within a fixed time frame (say within one month of the trial or bail matter getting over).
Introduction:

The Prison Legal Aid Project which is related to social work in criminal justice was started by Government Law College in 1999-2000 in association with an NGO called Prayas. Since its inception has been providing legal aid to under trial prisoners.

Inauguration & Chief Metropolitan Magistrates:

Several legal luminaries have lent us their August presence and moral support beginning with Hon’ble Chief Metropolitan Magistrate Shri P.M. Bansod who inaugurated the project at Government Law College. Hon’ble Chief Metropolitan Magistrates like Mr. Vijay Kamble at the Byculla Jail, Swati Sathe at the Byculla Jail, R.D. Gate at the Arthur Road Jail are been a great help to us and even Kishore Mahene who was previously the Chief Metropolitan Magistrates at the Arthur Road Jail.

Jail Visits:

The program initially started with students going to the Arthur Prison Jail but now is has been extended to the Byculla Prison also. The visits to both the prisons were designed in a unique manner. The students from the final years of the 5 year course and the 3 years course along with the student coordinators go to the prisons on Monday, Wednesday and Saturdays.

For these visit the students of the final year assemble in college and they are given a form which help them not to miss details like the criminal numbers, name of the Police Station where the prisoners are taken into custody, when were they apprehended, when is their next date of hearing their address if any, whether they can pay the bail amount, etc. are all taken into account by the students by talking to the prisoners. Also the students take down the under trial’s version of the story but they are strictly advised not to take cases where the under trial already has a lawyer and even those offense which are of serious nature like rape and murder. However there have been instances where the young Turks of our college assume that they are the prosecutors and start cross-questioning the under trial prisoner on various moral and factual grounds, which is again a strict NO.

The students have to then refer to the Judicial Record Department and verify the records, which includes checking whether the sections are correctly given by

(Govt. Law College, Legal Aid Committee, Summer, 2004-05)
the under trial prisoner as mentioned in the Judicial Record Book, court details and other aspects of the case which the prisoner could have missed while talking to the student.

When the students are back they are made to write the bail applications which are of different types:

- Application for release on cash bail.
- Application for release on PR Bond.
- Application for reduction of bail amount.
- Application for Deportation.
- Application for speedy trial.
- Application for getting a copy of Charge Sheet.
- Application for a lawyer from the Legal Aid Panel of the Court.

After writing the bail application the students it over to the co-ordinators who further forwards it to the prison authorities with the next batch of students.

**Final Evaluation:**

Over the years the committee has processed over 2000 applications with a high success rate. Our efforts are rewarded when the prisoners queue up in an eager anticipation for the students to write their bail.
PRISON VISIT PROJECT

The project involves jail visits by students of the final year i.e. Third year of the Three year's course and Fifth year of the Five year course to Arthur Road and Byculla prisons accompanied by our student coordinators. These student coordinators are members of the Legal Aid Committee and are students of the college who volunteer to work for the committee. The student coordinators are selected on the basis of their social service experience. Primarily their job is to take the final year students to the prison and coordinate the entire project with the Prison authorities and Prayas. The final year students interview those under-trials who cannot afford lawyers for themselves and prepare bail applications for them. The various types of bail applications that are made by the students include Application for release on Cash Bail, Application for release on Personal Bond, Application for reduction in Cash Bail and Application for Deportation along with application for speedy trial. The Final year students prepare these applications with the assistance of a college professor after their visit to the prison is over. The students have to write three handwritten bail applications of which one copy is kept in the college and the remaining two are sent to the concerned prison. This preparation of Bail application is a part of the practical training for the final year students.

The visits to the prison take place thrice a week, that is on Monday, Wednesday and Friday in coordination with the NGO 'Prayas'. The Prayas representatives are present during our jail visits and assist students of our college while the inmate is being interviewed. These representatives being social workers help acquaint us with the problems faced by the under-trials and in association with the prison authorities help us in getting the necessary details required for the bail application. These necessary details include the court details and the offences under which the under-trials are charged which are obtained from the judicial records department in the prison itself. Thus twice every week ten final year students and four student coordinators visit the Arthur Road and Byculla Prisons.

From the year of 1999-2005 more than one thousand two hundred students have visited both the prisons, which is also an encouraging statistic for the Legal Aid Committee.

The Committee is also proud of the fact that the Chief Metropolitan Magistrate has passed a circular to all other Magistrates that any handwritten bail applications they receive are to be given due attention, and the Interdepartmental Committee set by the High Court order in WP 08/1994 has stated that this project is going really well and it can be replicated all over the state. This is indicative of the fact that our effort along with the Prisons Department and NGO Prayas has been a success and
with dedication and persistence every institution can make a difference to the system in this country and help it grow healthier.

We have also been able to start the follow up process in order to find the outcome of this project by recording the success thereof keeping a track of how many under trials actually get bail because of our efforts. We have made a small beginning by maintaining a register at both the prisons and with the assistance of the Prison authorities, we can now find out how many bail applications are accepted. We have also started court visits to the Esplanade Court to follow up with prisoners whom we have interviewed.

Thus with the sixth year of this project coming to an end, the committee that had started with a humble beginning of just two coordinators in the committee has now grown to over fifty student members today. The Prisons Legal Aid Committee has thus come a long way and has done an outstanding work in its area. However this success could not have been possible without the active co-operation of the prison authorities, especially Superintendent of Prisons, Mrs. Swati Sathe and Superintendent of Prisons Mr. Kamble who has always been cooperative and supportive and the members of the NGO Prayas who were always there when we needed them. We would also like to thank Prof. Gafoor for his endless support in helping the students in making their applications.
RAILWAY PROJECT

The Committee also organized a seminar on Alternative Punishment for Ticket less traveling. This seminar was held on 9th November 2002 in Government Law College. 9th of November being the most apt day for the inaugural as it is the National Legal Aid services day. Adv. Shakuntala Paranjipe inaugurated the project. The other dignitaries that were present during the function were Superintendent of Prisons Mrs. Swati Sathe, Principal of GLC Mrs. Parimala Rao, Chairman of the Committee Mrs. Chuganee and Director of the NGO Prayas, Mr. Vijay Raghavan. The seminar was conducted because of the information that was gathered by our coordinators that there were several people caught for Ticket less traveling who were earlier kept in Arthur Road Prison and were later shifted to Byculla prison. On further research it was discovered that these inmates were caught for Ticket less traveling because they were unable to pay their train fare, which at times was as low as five rupees. However the fine imposed on them ranged from Rs 500 to Rs 1000 which they were unable to pay. We also found out that on an average such an inmates spends about a month in the jail during which the state has to spend around Rs 60 on them everyday for their various basic needs such as food clothing etc. these costs does make up about Rs. 1800 per inmate. Thus these inmates were a burden on the State's economy. Many of these inmates are from far away places in the country and have no permanent address in Mumbai. They are thus not in a position to get released on Personal Bond and they cannot pay for their cash bail especially when they are not in a position to pay for their tickets. Thus these inmates end up languishing in jail for a longer period than required. This also contributed to the problem of overcrowding in both the Prisons. The capacity of Arthur Road Prison is 800 but the actual number of inmates is more than 2800. The situation in Byculla Jail is similar the capacity of inmates is supposed to be around 300 but actual number of inmates is more than 500. the resources and basic facilities thus available to the inmates is far less than required, and these basic facilities include their daily meals too. In view of this the Prisons Legal Aid Committee had organized a seminar on Alternative Punishment for Ticket less Travelers so that alternative modes of punishment can be explored and consequently the Prison authorities would be in a position to tackle the problem of overcrowding of prisons. The presentation of the research paper was preceded by thorough research by the students of the Government Law College who visited and interacted with Prison authorities as well as the Railway authorities (which included Railway Magistrate and Chief Ticket Inspector in Mumbai.)

The seminar included presentation of Research Papers that elucidated the existing Indian laws on the subject along with the statistical data collected from the Railways. There was also a presentation of practices followed in foreign countries

(Govt. Law College, Legal Aid Committee, Souvenir 15 2004-05)
as far as alternative punishment was concerned. The seminar included presentation of Research Papers that elucidated the existing Indian laws on the subject along with the statistical data collected from the Railways. There was also a presentation of practices followed in foreign countries as far as alternative punishment was concerned. It was interesting to note that in several foreign countries the practice of community service was followed for example in Zimbabwe community service has been used very successfully. Whereas in China the practice was that people caught for such offences were sent to factories where they would learn various skills for example clock making which would increase the Chinese production output, moreover the prisoners were accepted back in the society as they had an avenue for working in the society with honor and dignity.
Total Number of Jails : 1,119
- Central Jails : 98
- District Jails : 266
- Sub Jails : 671
- Women Jails : 13
- Other Jails : 71

Total Capacity of Jails : 2,29,713
- Central Jails : 1,03,830 (45.2%)
- District Jails : 76,440 (33.2%)
- Sub Jails : 34,536 (15.0%)
- Women Jails : 1,985 (1.0%)
- Other Jails : 12,922 (5.6%)

Total Number of Inmates : 3,13,635
- Male : 3,02,541 (96.5%)
- Female : 11,094 (3.5%)

**Convicts : 75,663 (24.1% of total inmates)**
- Male : 97.1% of total convicts
- Female : 2.9% of total convicts

**Undertrials : 2,20,817 (70.5% of total inmates)**
- Male : 96.7% of total undertrials
- Female : 3.3% of total undertrials

**Detenues : 3,510 (1.1% of total inmates)**
- Male : 97.1% of total detenues
- Female : 2.9% of total detenues

**Others : 13,645 (4.3% of total inmates)**
- Male : 96.7% of total others
- Female : 3.3% of total others

- The highest number of inmates 53,296 (51,966 male : 1,330, female) were reported from Uttar Pradesh (17%) followed by Bihar 35,907 (35,036 male : 871 female) at the end of the year 2001.

- Maximum number of 12,195 (11,933 male : 262 female) Convicts (16.1%) were reported from Madhya Pradesh followed by Maharashtra 6,712 (6,433 male : 279 female) at the end of the year 2001.

- The highest number of Graduate and Post Graduate Convicts were reported from Bihar (705) and Madhya Pradesh (93) respectively at the end of the year 2001.

- Murder alone accounted for 53.4% of the total Convicts. The highest number of 7,802 Murder Convicts were reported from Madhya Pradesh (19.3% of total convicts) followed by Maharashtra (9% of total convicts) at the end of the year 2001.

- 42,142 Convicts were undergoing sentences for Life Imprisonment accounting for 55.7% of total convicts in the country at the end of the year 2001.

- 1264 Undertrials (0.6% of total undertrials) were detained in jails for more than 5 years at the end of the year 2001.

- 9,264 inmates were habitual offenders which accounted for 3.1% of total inmates at the end of the year 2001.

- The highest earning by inmates trained in various vocational programmes was reported from Maharashtra (Rs.1269.70 lakhs) followed by Tamil Nadu (Rs.547.50 lakhs) during the year 2001.

- The highest earning per inmate was reported from Gujarat (Rs.5779.40) followed by Maharashtra (Rs.5636.30) as against All-India average of Rs.1290.60 during the year 2001.

- Out of the total 44,682 staff manning jails in the country, 2311 (i.e. 5.1%) were women at the end of the year 2001.

- The highest expenditure per inmate was reported from Nagaland (Rs.27,067.70) as against All-India average of Rs.8598.20 during the year 2001-02.
PERSPECTIVE

Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care.

- Mahatma Gandhi

Imprisonment as a mode of dealing with offenders has been in vogue since time immemorial. Though the foundations of the contemporary prison administration in India were laid during the British period, the system has drastically changed over the years, especially since the dawn of Independence. Apart from the native genius which finds its expression in the Fundamental Rights and Directive Principles of State Policy enshrined in the Constitution of India, new ideas and correctional practices in various countries have considerably influenced the texture of prison reforms in the country.

India shares a universally held view that sentence of imprisonment would be justifiable only if it ultimately leads to the protection of society against crime. Such a goal could be achieved only if incarceration motivates and prepares the offender for a law-abiding and self-supporting life after his release. It further accepts that, as imprisonment deprives the offender of his liberty and self-determination, the prison system should not be allowed to aggravate the suffering already inherent in the process of incarceration. Thus, while certain categories of offenders, who endanger public safety, have to be segregated from the social mainstream by way of imprisonment, all possible efforts have to be made to ensure that they come out of prisons as better individuals than what they were at the time of their admission thereto.

OBJECTIVE OF PRISONS

As early as in the year 1920, the Indian Jails Committee had unequivocally declared that the reformation and rehabilitation of offenders was the ultimate objective of prison administration. This declaration subsequently found its echo in the proceedings of various Prison Reforms Committees appointed by the Central and State Governments of the international influences. The United Nations Standard Minimum Rules for the Treatment of Prisoners, formulated in 1955, provides the basic framework for such a goal. The international Covenant on Civil and Political Rights, propounded by United Nations in 1977, to which India is a party, has clearly brought out that the penitentiary system shall comprise treatment of prisoners the essential
aim of which shall be their reformation and social rehabilitation. It is, however, seen that whereas India is second to none in terms of an enlightened thinking with regard to the purpose and objective of imprisonment, the gap between proclaimed principles and actual practices appears to have been widening in recent years.

HUMAN RIGHTS ISSUES

Never before in its history, prison administration in India was subjected to such a critical review by the higher judiciary as in the last few decades. Discarding its erstwhile “hands off” doctrine towards prisons, the Supreme Court of India came strongly in favour of judicial scrutiny and intervention whenever the rights of prisoners in detention or custody were found to have been infringed upon. In Sunil Batra v. Delhi Administration and Others (1978), Mr. Justice V. R. Krishna Iyer pronounced: “prisoners have enforceable liberties, devalued may be but not dehumanised; and under our basic scheme, Prison Power must bow before Judge Power, if fundamental freedoms are in jeopardy”. Again in Sunil Batra v. Delhi Administration (1979), the Court asked and affirmed: “Are prisoners’ persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanisation and to repudiate the world-legal order, which now recognises rights of prisoners in the International Covenant on Prisoners’ Rights to which our country has signed assent”.

In a number of judgements on various aspects of prison administration, the Supreme Court of India has laid down three broad principles

(i) A person in prison does not become a non-person.

(ii) A person in prison is entitled to all human rights within the limitations of imprisonment.

(iii) There is no justification in aggravating the suffering already inherent in the process of incarceration.

Obviously, these principles have serious implications for prison administration. They not only call for a thorough restructuring of the prison system in terms of the humanisation of prison conditions, minimum standards for institutional care, reorientation of prison staff, reorganisation of prison programmes and rationalisation of prisons rules and regulations. From this viewpoint, among the various directives issued by the Supreme Court of India, in Sunil Batra v. Delhi Administration (1979), the following deserve a special mention:
"It is imperative, as implicit in article 21, that life or liberty shall not be kept in suspended animation or congealed into animal existence without the freshening flow of fair procedure. Fair procedure in dealing with the prisoners calls for another dimension of access of law-provision, within the easy reach of the law which limits liberty to persons who are prevented from moving out of prison gates”.

“No prisoner can be personally subjected to deprivation not necessitated by the fact of incarceration and the sentence of court. All other freedoms belong to him – to read and write, exercise and recreation, meditation and chant, creative comforts like protection from extreme cold and heat, freedom from indignities like compulsory nudity, forced sodomy and other unbearable vulgarity, movement within the prison campus subject to requirements of discipline and security, the minimum joys of self-expression, to acquire skills and techniques and all other fundamental rights tailored to the limitations of imprisonment”.

“Inflictions may take protean forms, apart from physical assaults, pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometime transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgement is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21. There must be a corrective legal procedure fair and reasonable and effective. Such infraction will be arbitrary, under Article 14, if it is dependent on unguided discretion; unreasonable, under Article 19 if it is irremediable and unappealable; and unfair under Article 21 if it violates natural justice....”

"The prison authority has duty to give effect to the court sentence. To give effect to the sentence means that it is illegal to exceed it and so it follows that prison official who goes beyond mere imprisonment or deprivation of locomotion and assaults or otherwise compels the doing of things not covered by the sentence acts in violation of Article 19. Punishments of rigorous imprisonment oblige the inmates to do hard labour, not harsh labour. ‘Hard labour in section 53, Prisons Act to receive a humane
meaning. So a vindictive officer victimising a prisoner by forcing on him particularly harsh and degrading jobs, violates the law’s mandate. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs”.

“The Prisons Act needs rehabilitation and Prison Manual total overhaul, even the Model Manual being out of focus with healing goals. A correctional-cum-orientation course is necessitous for the prison staff in calculating the correctional values; therapeutic approaches and tension-free management”.

RIGHTS AND DUTIES OF PRISONERS

It is, therefore, high time that in the light of the observations made by the Supreme Court of India, the rights and duties of prisoners are clearly spelt out. In this respect, the All India Committee on Jail Reforms, 1980-83 has suggested as under:

RIGHTS OF PRISONERS:

(A) Right to Human Dignity
   (i) Right to be treated as a human being and as a person; this right has been stressed and recommended by the Supreme Court of India which has categorically declared that prisoners shall not be treated as non-persons;
   (ii) Right to integrity of the body; immunity from use of repression and personal abuse, whether by custodial staff or by prisoners;
   (iii) Right to integrity of the mind; immunity from aggression whether by staff or by prisoners;
   (iv) Right to non-deprivation of fundamental rights guaranteed by the Constitution of India, except in accordance with law prescribing conditions of confinement.

(B) Right to Basic Minimum Needs
   Right to fulfillment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic
conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.

(C) **Right to Communication**

(i) Right to communication with the outside world;

(ii) Right to periodic interviews; and

(iii) Right to receive information about the outside world through communication media.

(D) **Right to Access to Law**

(i) Right to effective access to information and all legal provisions regulating conditions of detention;

(ii) Right to consult or to be defended by a legal practitioner of prisoner's choice;

(iii) Right to access to agencies, such as State Legal Aid Boards or similar organisations providing legal services;

(iv) Right to be informed on admission about legal rights to appeal, revision, review either in respect of conviction or sentence;

(v) Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;

(vi) Right to effective presentation of individual complaints and grievances during confinement in prison to the appropriate authorities;

(vii) Right to communicate with the prison administration, appropriate Government and judicial authorities, as the case may be, for redressal of violation of any or all of prisoners' rights and for redressal of grievances.

(E) **Right against Arbitrary Prison Punishment**

Right to entitlement in case of disciplinary violation (i) to have precise information as to the nature of violation of Prisons Act and Rules, (ii) to be heard in defence, (iii) to communicate of the decision of disciplinary proceedings,
and (iv) to appeal as provided in rules
made under the Act.

(F) **Right to Meaningful and Gainful Employment**

(i) **Right to meaningful and gainful employment**

**Note 1:** No prisoner shall be required to
perform 'begar' and other similar forms
of forced labour which is prohibited as a
fundamental right against exploitation
under Article 23 of the Constitution.

**Note 2:** Undertrial prisoners volunteering to do
work may be given suitable work
wherever practicable. Such prisoners
should be paid wages as per rules.

**Note 3:** No prisoner shall be put to domestic
work with any official in the prison
administration. Such work shall not be
considered as meaningful or gainful,
even if some monetary compensation is
offered.

**Note 4:** Prisoners shall, in no case, be put to any
work which is under the management,
control, supervision or direction of any
private entrepreneur working for profit
of his organisation. This will not apply
to open prisons and camps.

(ii) **Right to get wages for the work done in prison.**

(G) **Right to be released on the due date.**

**DUTIES OF PRISONERS:**
It shall be the duty of each prisoner —

(a) to obey all lawful orders and instructions issued by
   the competent prison authorities;
(b) to abide by all prison rules and regulations and
   perform obligations imposed by these rules and
   regulations;
(c) to maintain the prescribed standards of cleanliness
   and hygiene;
(d) to respect the dignity and the right to live of every
   inmate, prison staff and functionary;
(e) to abstain from hurting religious feelings, beliefs and faiths of other persons;

(f) to use Government property with care and not to damage or destroy the same negligently or wilfully;

(g) to help prison officials in the performance of their duties at all times and maintain discipline and order;

(h) to preserve and promote congenial correctional environment in the prison.

UNIFORMITY IN LAW

More recently, in Ramamurthy v. State of Karnataka (1996), the Supreme Court of India has strongly brought out the need for bringing in a basic uniformity in laws and regulations governing prisons in the country. The apex Court has specifically directed the authorities to deliberate about enacting of new Prison Act to replace the century old Prisons Act, 1894 and to examine the question of framing of a new model All India Jail Manual.

The question of enacting a central law to replace the Prisons Act, 1894, and other laws on prisons so as to bring it in tune with modern criminological and penological thinking needs to be considered afresh. As ‘Prisons’ come within the purview of State Governments, the All India Committee on Jail Reforms, 1980-83, had recommended that the subject of prisons and allied institutions should be included in the Concurrent List of the Seventh Schedule of the Constitution of India so that the Central Government can take steps to enact a law to be uniformly applicable all over the country. The committee seems to have missed the point that India is already a signatory to the International Covenant on Civil and Political Rights which under Article 10 mandates the State signing this Covenant to ensure that the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Therefore, there is a widespread opinion, that the Government of India is well within its competence to initiate action towards the formulation of a central law under Article 253 of the Constitution of India and related entries in the Concurrent List of its Seventh Schedule. Side by side, it is necessary that, as directed by the Supreme Court of India, a new Model Prison Manual is drafted to pave the way for evolving a national consensus to enact a uniform law.
THE NEED FOR A NATIONAL POLICY ON PRISONS
In preparing this manual, the present Committee has also kept in view the draft of the proposed national policy on prisons as suggested by All India Committee on Jail Reforms 1980-83, which in brief are:

GOALS AND OBJECTIVES
(i) Prisons in the country shall endeavour to reform and reassimilate offenders in the social milieu by giving them appropriate correctional treatment.

MODALITIES
(i) Incorporation of the principles of management of prisons and treatment of offenders in the Directive Principles of the State Policy embodied in Part IV of the Constitution of India;
(ii) Inclusion of the subject of prisons and allied institutions in the Concurrent List of the Seventh Schedule to the Constitution of India; and
(iii) Enactment of uniform and comprehensive legislation embodying modern principles and procedures regarding reformation and rehabilitation of offenders.
(iv) There shall be in each State and Union Territory a Department of Prisons and Correctional Services dealing with adult and young offenders - their institutional care, treatment, aftercare, probation and other non-institutional services.
(v) The State shall endeavour to evolve proper mechanism to ensure that no undertrial prisoner is unnecessarily detained. This shall be achieved by speeding up trials, simplification of bail procedures and periodic and periodic review of cases of undertrial prisoners. Undertrial prisoners shall, as far as possible, be confined in separate institutions.
(vi) Since it is recognized that imprisonment is not always the best way to meet the objectives of punishments the government shall endeavour to provide in law new alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc., in addition to the ones already existing and shall specially ensure that the Probation of Offenders Act, 1958 is effectively implemented throughout the country.
(vii) Living conditions in every prison and allied institution meant for the custody, care, treatment and rehabilitation of offenders shall be compatible with human dignity in all aspects such as accommodation, hygiene, sanitation, food,
clothing, medical facilities, etc. all factors responsible for vitiating the atmosphere of these institutions shall be identified and dealt with effectively.

(viii) In consonance with goals and objectives of prisons, the State shall provide appropriate facilities and professional personnel for the classification of prisoners on a scientific basis. Diversified institutions shall be provided for the segregation of different categories of inmates for proper treatment.

(ix) The State shall endeavour to develop the field of criminology and penology and promote research on the typology of crime in the context of emerging patterns of crime in the country. This will help in proper classification of offenders and in devising appropriate treatment for them.

(x) A system of graded custody ranging from special security institutions to open institutions shall be provided to offer proper opportunities for the reformation of offenders according to the progress made by them.

(xi) Programmes for the treatment of offenders shall be individualized and shall aim at providing them with opportunities for diversified education, development of work habits and skills, change in attitude, modification of behaviour and implantation of social and moral values.

(xii) The State shall endeavour to develop vocational training and work programmes in prisons for all inmates eligible to work. The aim of such training and work programmes shall be to equip inmates with better skills and work habits for their rehabilitation.

(xiii) Payment of fair wages and other incentives shall be associated with work programmes to encourage inmate participation in such programmes. The incentives of leave, remission and premature release to convicts shall also be utilized for improvement of their behaviour, strengthening of family ties and their early return to society.

(xiv) Custody being the basic function of prisons, appropriate security arrangements shall be made in accordance with the need for graded custody in different types of institutions. The management of prisons shall be characterized by firm and positive discipline, with due regard, however, to the maintenance of human rights of prisoners. The State recognizes that a prisoner loses his right to liberty but maintains his residuary rights. It shall be the endeavour of the State to protect these residuary rights of the prisoners.
The State shall provide free legal aid to all needy prisoners.

Prisons are not the places for confinement of children. Children (under 18 years of age) shall in no case be sent to prisons. All children confined in prisons at present shall be transferred forthwith to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation. Benefit of non-institutional facilities shall, whenever possible, be extended to such children.

Young offenders (between 18 to 21 years) shall not be confined in prisons meant for adult offenders. There shall be separate institutions for them where, in view of their young and impressionable age, they shall be given treatment and training suited to their special needs of rehabilitation.

Women offenders shall, as far as possible, be confined in separate institutions specially meant for them. Wherever such arrangements are not possible they shall be kept in separate annexes of prisons with proper arrangements. The staff for these institutions and annexes shall comprise of women employees only. Women prisoners shall be protected against all exploitation. Work and treatment programmes shall be devised for them in consonance with their special needs.

Mentally ill prisoners shall not be confined in prisons. Proper arrangements shall be made for the care and treatment of mentally ill prisoners.

Persons courting arrest during non-violent socio-political economic agitation for declared public cause shall not be confined in prisons along with other prisoners. Separate prison camps with proper and adequate facilities shall be provided for such non-violent agitators.

Most of the persons sentenced to life imprisonment at present have to undergo at least 14 years of actual imprisonment. Prolonged incarceration has a degenerating effect on such persons and is not necessary either from the point of view of individual's reformation or from that of the protection of society. The term of sentence for life in such cases shall be made flexible in terms of actual confinement so that such a person may not have necessarily to spend 14 years in prison and may be released when his incarceration is no longer necessary.

Prison services shall be developed as a professional career service. The State shall endeavour to develop a well-
organized prison cadre based on appropriate job requirements, sound training and proper promotional avenues. The efficient functioning of prisons depends undoubtedly upon the personal qualities, educational qualifications, professional competence and character of prison personnel. The status, emoluments and other service conditions of prison personnel should be commensurate with their job requirements and responsibilities. An all India service namely the Indian Prisons and Correctional Service shall be constituted to induct better qualified and talented persons at higher echelons. Proper training for prison personnel shall be developed at the national, regional and State levels.

(xxiii) The State shall endeavour to secure and encourage voluntary participation of the community in prison programmes and in non-institutional treatment of offenders on an extensive and systematic basis. Such participation is necessary in view of the objective of ultimate rehabilitation of the offenders in the community. The government shall open avenues for such participation and shall extend financial and other assistance to voluntary organisations and individuals willing to extend help to prisoners and ex-prisoners.

(xxiv) Prisons are hitherto a closed world. It is necessary to open them to some kind of positive and constructive public discernment. Selected eminent public-men shall be authorised to visit prisons and give independent report on them to appropriate authorities.

(xxv) In order to provide a forum in the community for continuous thinking on problems of prisons, for promoting professional knowledge and for generating public interest in the reformation of offender, it is necessary that a professional non-official registered body is established at the national level. It may have its branches in the States and Union Territories. The Government of India, the State Governments and the Union Territory Administrations shall encourage setting up of such a body and its branches, and shall provide necessary financial and other assistance for their proper functioning.

(xxvi) Probation, aftercare, rehabilitation and follow-up of offenders shall form an integral part of the functions of the Department of Prisons and Correctional Services.
(xxvii) The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated.

(xxviii) The governments at the Centre and in the States / Union Territories shall endeavour to provide adequate resources for the development of prisons and other allied services.

(xxix) Government recognizes that the process of reformation and rehabilitation of offenders is an integral part of the total process of social reconstruction, and, therefore, the development of prisons shall find a place in the national development plans.

(XXX) In view of the importance of uniform development of prisons in the country the Government of India has to play an effective role in this field. For this purpose the Central Government shall set up a high status National Commission on Prisons on a permanent basis. This shall be a specialized body to advise the Government of India, the State Governments and the Union Territory Administrations on all matters relating to prisons and allied services. Adequate funds shall be placed at the disposal of this Commission for enabling it to play an effective role in the development of prisons and other welfare programmes. The Commission shall prepare an annual national report on the administration of prisons and allied services, which shall be placed before the Parliament for discussion.

(XXXI) As prisons form part of the criminal justice system and the functioning of other branches of the system - the police, the prosecution and the judiciary have a bearing on the working of prisons, it is necessary to effect proper coordination among these branches. The government shall ensure such coordination at various levels.

(XXXII) The State shall promote research in the correctional field to make prison programmes more effective.

The draft of the proposed National Policy on Prisons, quoted above, would require some changes in view of the developments that have taken place in the intervening period. For instance, the present committee is of the opinion that the enactment of a uniform and comprehensive legislation on prisons would be possible within the existing provisions of the Constitution of India, as India is a party to the International Covenant on Civil and Political Rights. The question of
inducting alternatives to imprisonment such as community service, forfeiture of property, payment of compensation to victims, public censure, etc involves certain amendments in the substantive law. The enactment of the Juvenile Justice (care and protection of children) Act, 2000 has raised the upper age limit of children to be kept away from prisons upto the 18 years in case of boys as well, so as to bring parity with girls. The suggestion for making sentence for life, even for those covered under section 433-A, flexible in terms of actual confinement also requires amendment of the Code of Criminal Procedure. Similarly, the issues relating to the establishment of an All India Service, namely the Indian Prisons and Correctional Service, bringing Probation, Aftercare, Rehabilitation and follow-up of offenders within the functions of the Department of Prisons and Correctional Services and the setting-up of a high level National Commission on Prisons on a permanent basis require a thorough review of the existing policy.

**SCOPE OF THE MODEL PRISON MANUAL**

For developing prison system in the country as an effective instrument for the reformation and rehabilitation of offenders, the draft Model Prison Manual aims at:

(i) Bringing in basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners all over the country;

(ii) Laying down the framework for both sound custody and treatment of prisoners;

(iii) Rationalisation of prison practices to cater effectively to various categories of prisoners;

(iv) Spelling out minimum standards of institutional services for the care, protection, treatment, education, training and resocialisation of incarcerated offenders;

(v) Evolving such procedures for the protection of human rights for prisoners as they are entitled to within the limitations imposed by the process of incarceration.

(vi) Individualisation of institutional treatment of prisoners in keeping with their personal characteristics, behavioural patterns and correctional requirements;

(vii) Providing a scientific basis for the treatment of special categories of prisoners such as women, adolescents and high security prisoners;

(viii) Outlining an organisation of the Department of Prisons and Correctional Services which is conducive to its declared
(xxvii) The development of prisons shall be planned in a systematic manner keeping in view the objectives and goals to be achieved. The progress of the implementation of such plans shall be continuously monitored and periodically evaluated.

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objective and to delineating the duties and functions of the staff at various levels

(ix) Developing coordination between the Department of Prisons and Correctional Services and other components of the criminal justice system;

(x) Ensuring availability of the necessary service inputs from other public departments in an efficient functioning of prisons;

(xi) Forging constructive linkages between prison programmes and community-based welfare institutions in achieving the objective of the reformation and rehabilitation of prisoners;

(xii) Leaving flexibility in the suggested provisions so as to allow for adaptation to local conditions without undermining uniformity in rights and duties of prisoners.

In recent years steps have been taken by some State Governments to up-date their existing Prison Manuals and usher in prison reforms. But prison reforms is a continuous process and the present draft seeks to provide a framework for such reforms with respect to treatment of prisoners of all categories and improved living and working conditions for the prison personnel.