

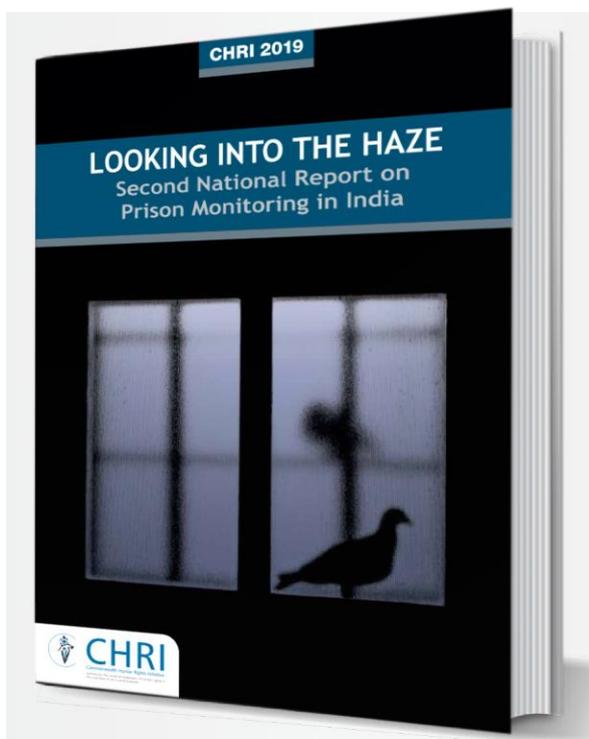
LOOKING INTO THE HAZE

SECOND NATIONAL REPORT ON PRISON MONITORING IN INDIA

ABOUT THE REPORT

*"The plan of appointing persons, official and non-official, to serve as visitors to jails seems to us to form a very valuable part of the Indian system of jail administration. In the first place, it insures the existence of a body of free and unbiased observers, whose visits serve as a guarantee to the Government and to the public, that the rules of the Prisons Act and Prisons Manuals are duly observed . . . the existence of non-official visitors is especially valuable as supplying a training ground where members of the public can obtain an insight into jail problems and learn to take an interest in prisons and prisoners."*¹

Cardew Committee Report (1919-20)



The earliest law on prisons in India, the Prisons Act of 1894 recognised the concept of external monitoring of prisons and provided for the states to frame rules for prison visitors. Consequently, the states framed rules for prison visitors which mandated appointment of official and non-official visitors and constitution of a Board of Visitors (BOVs) for the prisons in states.

A Board of Visitors (BOV) includes official and non-official visitors who regularly visit prisons and hold meetings to address the issues of prisons and prisoners. Official visitors include judicial officers, district magistrate, medical officers, welfare officer, etc. and Non-Official Visitors (NOVs) are public spirited individuals having interest in prisons who are appointed as independent visitors to a prison. The isolation of prisons make them opaque and NOVs can keep elements of transparency in their functioning.

The existing rules in different states with slight variations mention the number of visitors to be appointed, their functions and minimum frequency of meetings and visits. Prison visitors have an indispensable role of monitoring prison conditions, checking compliance with legal mandates and ensuring prisoners'

¹ Chapter XVIII – Visitors, Report of the Indian Jails Committee, 1919-20, Para 511 at pg. 259. Available at: <http://pcs.mp.gov.in/sites/default/files/Report%20of%20the%20Indian%20Jail%20Committee%2C%201919-1920.pdf>

rights. The appointed visitors can also assist the prison administration in the smooth management of jails.

CHRI's first national report on prison monitoring – Looking into the Haze 2016, which analysed data as of 12 November 2014, found that not even 1% of the prisons were monitored in full compliance of the law. This report is the second watch report on the functioning of BOVs as on 1 June 2018. It provides an analysis and evaluation of data received from 29 states for 491 prisons in response to applications filed to prison headquarters across India under the Right to Information Act, 2005. The report evidences state wise status of prison monitoring based on the performance of certain indicators which is evaluated against the statutory mandate in that state. *These indicators are, number of prisons with a Board of Visitors, non-official visitors appointed and number of meetings and visits they held. It also presents a comparative analysis of the implementation status in 2015 and 2018.*

KEY FINDINGS

1. Only 119 prisons, which is 24.2% of the 491 prisons that provided information, have a Board of Visitors.
2. The Board of Visitors of only 37 prisons fulfil the mandated composition (number of official and non-official visitors) as provided in the respective state rules.
3. Against the total mandate of 502 BOV meetings in 119 jails which have BOVs, only 100 meetings were held. On a national level, there was only 19.9% compliance of BOV meetings. (The mandate was calculated from the date of constitution of the BOV and 1st June 2018 as per the mandated number of meeting required in the respective state rules.)
4. Only 257 prisons or 52.3% of the 491 prisons which provided information, have Non-Official Visitors (NOVs) appointed.
5. The mandated numeric composition of NOVs was followed in 223 prisons out of 257 prisons with NOVs. The mandated numeric composition is based on the type of jail. In most of the states, as per the rules, there should be six NOVs in central jails, three in district jail and two in sub-jails.
6. At the national level the NOV visit performance was only 10.6% of the total: in 257 prisons with 892 NOVs appointed, there should have been a total of 2766 NOV visits. However, only 293 visits took place. The total mandate is

calculated from the respective dates of appointment to 1 June 2018 as per the mandated number of NOV visits laid out in the respective state rules.

7. 20.9% of the total 892 NOVs appointed in 257 prisons all over the country are women.
8. Andaman & Nicobar Islands, Chhattisgarh, Goa, Karnataka, Sikkim and Tripura are the only six states & UTs which have a BOV for all prisons. Only five states – Chandigarh, Chhattisgarh, Goa, Sikkim and Tripura have NOVs appointed for all prisons.
9. Seven states and UTs – Daman & Diu, Haryana, Himachal Pradesh, Jharkhand, Kerala, Lakshadweep and Puducherry do not have any prison visitors according to the responses from them. None of their jails, for which information was received have either a BOV or an NOV.
10. West Bengal, Tripura, Sikkim, Rajasthan, Nagaland, Mizoram, Karnataka, Goa, Chhattisgarh, Chandigarh and Andhra Pradesh are 11 states with 50% or more overall prison monitoring performance against the respective mandates. We have calculated the performance only for the prisons for which information was received.

KEY RECOMMENDATIONS

1. BOVs must be constituted for the prisons in all districts of the states within seven days of appointment of the NOVs, with the District Magistrate as the chairperson.
2. NOVs must be appointed for a minimum tenure of one year to ensure continuity.
3. BOVs must meet on a regular interval, preferably once in every quarter, on the prison premises. There must be a specified quorum to validate a BOV meeting and minutes of all meetings must be documented.
4. There must be equal representation of men and women in the appointment of visitors. Women visitors must be appointed for each and every jail, in particular for women jails and women enclosures in jails.
5. The NOVs must record their remarks of visits in detail or in a format prescribed by concerned authorities.

6. The home departments of the state should ensure that all official and non-official visitors receive training and orientation on rules and mandates after their appointment. The visitors should be provided a guidebook and any other material to assist them in carrying out the functions of prison visitors.
7. The state home department must appoint visitors for all places of lawful physical confinement such as detention centres, places where prisoners with mental illness are kept, juvenile homes, youth reformatories, etc. even if these are not mentioned in the prison manual.
8. The BOVs should ensure biannual joint prison inspections. The chairperson should also prepare a roster for monthly NOV prison visits on a rotational basis.
9. A robust reporting mechanism to be included in the rules to gauge the performance of a visitor and ensure time-bound action by government.
10. A prison wise list of NOVs, roster of the BOV's joint inspection, NOV visits and minutes of BOV meetings must be proactively disclosed on the prison department's website. The information for particular prisons should be displayed on bulletin boards of the respective prisons.

The report can be downloaded at

<https://humanrightsinitiative.org/download/Looking%20into%20the%20Haze%20Ind%20Edition%20Dec%202019.pdf>

To request a hard copy email us at chripisonsprog@gmail.com

CHRI PROGRAMMES

CHRI seeks to hold the Commonwealth and its member countries to high of human rights, transparent democracies and Sustainable Development Goals (SDGs). CHRI specifically works on strategic initiatives and advocacy on human rights, Access to Justice and Access to Information. Its research, publications, workshops, analysis, mobilisation, dissemination and advocacy, informs the following principal programmes:

1. Access to Justice (ATJ)

***Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as enforcers of a regime. CHRI's programme in India and South Asia aims at mobilising public support for police reforms and works to strengthen civil society engagement on the issues. In Tanzania and Ghana, CHRI examines police accountability and its connect to citizenry.

***Prison Reforms:** CHRI's work in prisons looks at increasing transparency of a traditionally closed system and exposing malpractices. Apart from highlighting systematic failures that result in overcrowding and unacceptably long pre-trial detention and prison overstays, it engages in interventions and advocacy for legal aid. Changes in these areas can spark improvements in the administration of prisons and conditions of justice.

2. Access to Information

***Right to Information:** CHRI's expertise on the promotion of Access to Information is widely acknowledged. It encourages countries to pass and implement effective Right to Information (RTI) laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh, Ghana and Kenya. In Ghana, CHRI as the Secretariat for the RTI civil society coalition, mobilised the efforts to pass the law; success came in 2019 after a long struggle. CHRI regularly critiques new legislation and intervene to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. It has experience of working in hostile environments as well as culturally varied jurisdictions, enabling CHRI bring valuable insights into countries seeking to evolve new RTI laws.

***South Asia Media Defenders Network (SAMDEN):** CHRI has developed a regional network of media professionals to address the issue of increasing attacks on media workers and pressure on freedom of speech and expression in South Asia. This network, the South Asia Media Defenders Network (SAMDEN) recognises that such freedoms are indivisible and know no political boundaries. Anchored by a core group of media professionals who have experienced discrimination and intimidation, SAMDEN has developed approaches to highlight pressures on media, issues of shrinking media space and press freedom. It is also working to mobilise media so that strength grows through collaboration and numbers. A key area of synergy lies in linking SAMDEN with RTI movements and activists.

3. International Advocacy and Programming

Through its flagship Report, Easier Said Than Done, CHRI monitors the compliance of Commonwealth member states with human rights obligations. It advocates around human rights challenges and strategically engages with regional and international bodies including the UNHRC, Commonwealth Secretariat, Commonwealth Ministerial Action Group and the African Commission for Human and People's Rights. Ongoing strategic initiatives include advocating for SDG 16 goals, SDG 8.7, monitoring and holding the Commonwealth members to account and the Universal Periodic Review. We advocate and mobilise for the protection of human rights defenders and civil society spaces.

4. SDG 8.7: Contemporary Forms of Slavery

Since 2016, CHRI has pressed the Commonwealth to commit itself towards achieving the United Nations Sustainable Development Goal (SDG) Target 8.7, to 'take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.' In July 2019 CHRI launched the Commonwealth 8.7 Network, which facilitates partnerships between grassroots NGOs that share a common vision to eradicate contemporary forms of slavery in Commonwealth countries. With a membership of approximately 60 NGOs from all five regions, the network serves as a knowledge-sharing platform for country-specific and thematic issues and good practice, and to strengthen collective advocacy.

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