

PARKED IN LOT

A Consolidated Report on the Correctional Homes
Assam, 2018 INDIA

Authors
Abantee Dutta
Anubhab Atreya
Pushpanjali Medhi

Volume 11 Appendix

Board of Directors

Mr. Justice (Retd) Dhiresh Narayan Choudhury Former Judge, Gauhati High Court

Mr. Justice (Retd) Brojendra Prasad Katakey Former Judge, Gauhati High Court Presently, Chairman, State Police Accountability Commission, Assam

Mr. Nilay Dutta Senior Advocate

Ms. Millie Hazarika Senior Advocate

Mr. Apurba Sharma Senior Advocate; Chairman, Executive Committee, Bar Council of India

Mr. Pradip Bhuyan Industrialist

Dr. Mahfuza Rahman Academic Former Head of Department (Geography) Cotton College, Gauhati

VOLUME-II

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LIST OF PRATIDHWANI'S VISITS TO CORRECTIONAL HOMES 22.10.2017-24.12.2018

SL No	Date	Purpose
1.	22 nd , October,2017	First Visit of the team of Pratidhwani to Morigaon District Jail
		Organisation of a Legal Aid Camp & Awareness Camp in collaboration with the District Legal Services Authority and District Judiciary
2.	28 th October,2017 and 29 th October, 2017	Second visit to Morigaon District Jail for free legal assistance and service to inmates
3.	3 rd November, 2017	Third visit to Morigaon District Jail for free legal assistance and service to inmates
4.	6 th January, 2018	Fourth visit to Morigaon District Jail to render legal aid and assistance to inmates
5.	10 th January, 2018	Fifth visit to Morigaon District Jail to render legal aid and assistance to inmates of jail
6.	12 th January, 2018	Sixth visit to Morigaon District Jail to render legal aid and assistance to inmates of jail
7.	20 th January, 2018	First visit to Guwahati Central Jail to render legal aid and assistance to the inmates of jail
8.	25 th January, 2018	Seventh Visit to Morigaon District Jail to render legal aid and assistance to the inmates of jail
		Went to Morigaon District Court for moving release petition
9.	17 th February, 2018	Eight visit to Morigaon District Jail to render legal aid and assistance to the inmates of jail
10.	25 th February, 2018	First visit to District Jail Mangaldoi
	, 2020	Organisation of Legal Aid & Awareness Camp at District Jail Mangaldoi in collaboration with the District Legal Services Authority and District Judiciary

11.	18 th March, 2018	Ninth visit to Morigaon District Jail
12.	19 th March, 2018	Tenth Visit to Morigaon District Jail
		Went to Morigaon District Court for moving bail petition
13.	7 th April, 2018	Eleventh visit to Morigaon District Jail
	4	Went to Morigaon District Court
14.	7 th April, 2018	Second visit to District Jail, Mangaldoi
		Went to Mangaldoi District Court
15.	20 th , 21 st and 22 nd April,	First Visit to Jorhat Central Jail and Open Air Jail, Jorhat
	2018	Organisation of Legal Aid & Awareness Camp in collaboration with District Judiciary, Jorhat and District Legal Services Authority
16.	30 th April, 2018	First Visit to District Jail, Goalpara and Organisation of Legal Awareness Camp in collaboration with the District Legal Services Authority and District Judiciary
17.	10 th May, 2018	Twelfth visit to Morigaon District Jail
		Went to Morigaon District Court
18.	15 th May, 2018	Third visit to District Jail, Mangaldoi
		Went to Mangaldoi District Court
19.	20 th May, 2018	Second visit to District Jail, Goalpara
20.	23 rd June, 2018	First Visit to Central Jail, Tezpur in collaboration with Tezpur Law College and District Legal Services Authority
21.	19 th August ,2018	Twelfth visit to Morigaon District Jail
22.	25 th and 26 th August,	Second visit to Jorhat Central Jail to render legal aid and
	2018	assistance and collect information on DFN
		Second visit to Open Air Jail, Jorhat for paper research
23.	9 th September, 2018	Third visit to Goalpara District Jail to render legal aid and assistance
24.	13 th October,2018	First visit to District Jail, Kokrajhar
25.	23 rd and 24 th December, 2018	First visit to District Jail, Dhubri

Assam Schedule VII, Form No.127 High Court Criminal Form No.(M) 106.

ORDER SHEET FOR MAGISTRATE ORDERS

DISTRICT: MORIGAON.

IN THE COURT OF B. Khakhlary

Case No. G.R. 1974/2017

-Versus-

	Serial No.	Date	ORDER	Signature
Office of the order of the orde	of Order	20.11.17	Accused Sanju Saha is produced from jail hajot. Seen the report of ossification test sent by Superintendent, Morigaon Civil Hospital. Perused the report. As per the report the age of Sanju Saha is above 12 years but below 14 years. In view of the report Sanju Saha is held to be a child in conflict with law. Let the CCL be produced before the JJB, Morigaon immediately. Send the case record along with all relevant documents and C.D. to JJB, Morigaon, immediately.	udicial Magnatrate, 1st. Class
			Case record is received from the court of Id. JMFe, Morigaon for disposal Sri Sanju Saha as Juvenile hold by Id. JMFe, Morigaon vide onde dated 20.11. 2017. Child in Conflict with Law Sanju Baha has been Broduce before	

Assam Schedule VII, Form No.127 High Court Criminal Form No.(M) 106.

ORDER SHEET FOR MAGISTRATE ORDERS

DISTRICT: MORIGAON.

IN THE COURT OF B. Khakhlary

Case No. G.R. 1608/2017

-Versus-

Serial No. of Order	Date	ORDER	Signature
Moque.	20.11.17	Accused Mujarul Haque @ Mujharaul is produced from jail hajot. Seen the report of ossification test sent by Superintendent, Morigaon Civil Hospital. Perused the report. As per the report the age of Mujarul Haque @ Maujaharul is above 16 years but below 18 years. In view of the report Mujarul Haque @ Mujaharul is held to be a child in conflict with law. Let the CCL be produced before the JJB, Morigaon immediately. Send the case record along with all relevant documents and C.D. to JJB, Morigaon, immediately.	एक रूपया ONE RUPEE

To

The Secretary

District Legal Services Authority, Kamrup

Guwahati-781001

Assam

Dated: Saturday, February 3, 2018

Subject: Request to move the appropriate authority for ascertaining the age of few inmates of Guwahati

Central Jail who prima facie appears to be juveniles

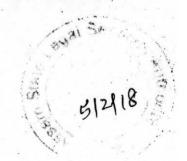
Respected Sir.

It has been a great honour for the team here at Studio Nilima, to work in collaboration with the District Legal Services Authority (hereinafter DLSA), Kamrup. We would like to thank you for facilitating our visit to the Guwahati Central Jail on Saturday, January 20, 2018. It was a great learning experience and the Pratidhwani team stands thus enriched. We are presently preparing and consolidating a report of our visit, which we will surely share with you in the near future.

Sir, during our visit we noticed that some of the inmates of the Guwahati Central Jail appeared to be juveniles within the meaning of the Juvenile Justice (Care and Protection of Children) Act, 2015. We were later informed that they were under the age of 18 and hence juveniles. We would like to extend our hand to help such juveniles and prevent miscarriage of justice in as much as juveniles require special treatment and care and they cannot be equated with other inmates of the correctional home. The Juvenile Justice (Care and Protection of Children) Act, 2015 and the Model Prison Manual, 2016 specifically provides how such juveniles are to be treated

We had come across similar instances during our visit to the Morigaon District Jail where we collaborated with the DLSA, Morigaon to take up such matters. The DLSA, Morigaon under the able guidance of Ms. Ranjita Agarwal, the former Secretary of Morigaon DLSA raised the pleas for juvenility through legal aid counsel in the concerned Courts. The pleas were accepted for inquiry and bone ossification tests were ordered to be done by the concerned Courts in the cases of Sanju Saha, Sanju Basfore and Mujaharul Haque. The test results were positive for two of the inmates namely Sanju Saha and Mujaharul Haque and they were later release from jail. The copy of order for ossification test of Sanju Saha, order bearing Case No.





COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

G.R. 1974/17 and Mujaharul Haque, order bearing Case No. G.R. 1608/17, annexed herewith and marked as Annexure A for your reference and perusal.

We would like to request you to look into the cases of the inmates of the Guwahati Central Jail who had claimed to be juvenile and to take appropriate steps for moving the appropriate Court of Law to ascertain their juvenility. We also assure you to extend all possible service from our side in this regard. The list of the inmates with Case Reference No. is annexed herewith and marked as Annexure B and the inmates whose Case Reference No. we haven't received is annexed herewith and marked as Annexure C for necessary and appropriate actions.

We stand grateful for your kindness and look forward to a valuable partnership with you in the future.

Thanking You,

Sincere Regards,

Abantee Dutta

Co-founder and Director, Studio Nilima

Moante Duta

Pratidhwani, Free Legal Services and Awareness Centre

A Unit of Studio Nilima

Guwahati

Copy Forwarded to:

- 1. The Inspector General of Prisons, Khanapara, Guwahati-781022, Kamrup(M), Assam
- 2. The Member Secretary, Assam State Legal Services Authority

Gauhati High Court, Old Block, 1st Floor

M. G. Road, Pan Bazar

Guwahati-781001, Kamrup(M), Assam

To
The Secretary
District Legal Services Authorities, Kamrup
Guwahati-781001,
Kamrup(M),
Assam
Date: Wednesday, 14 March 2018

Sub: Request to look into the applications dated February 3, 2018 by Studio Nilima: Collaborative Network for Research and Capacity Building.

Respected Sir,

I am writing to you on behalf of Pratidhwani, Free Legal Services and Awareness Centre, a unit of Studio Nilima. In reference to our letters dated February 3, 2018 requesting about the inquiry and bone ossification tests of inmates of Guwahati Central Jail who prima facie appeared to be juvenile, providing legal representation to Bud Bahadur Chetry who is an inmate of the Guwahati Central Jail and for taking necessary and appropriate actions regarding inmates of the Guwahati Central Jail who have been granted bail but not released due to non-furnishing of security, we would like to request you to provide us information regarding the steps and measures taken in the aforesaid matter

It is therefore our humble request to you to look into the aforesaid matters and to take appropriate steps as necessary. We eagerly look forward towards your response and assure you with our assistance and service in this regard. We look forward to a continued and ongoing association with the District Legal Services Authority, Kamrup, the Office of the Inspector General of Prisons, Khanapara and the Assam State Legal Services Authorities in realising our shared vision of bringing lifetime legal assistance to persons in custody.

Thanking you,

Šincere regards, Juri Hazarika

Project Manager

Pratidhwani, Free Legal Service and Awareness Centre

A Unit of Studio Nilima, Guwahati





Copy Forwarded to:

- 1. The Inspector General Prisons, Khanapara Guwahati- 781022 Kamrup(M) Assam
- 2. The Member Secretary
 Assam State Legal Services Authority
 Gauhati High Court
 M.G. Road, Pan Bazar
 Guwahati- 781001
 Kamrup (M)
 Assam

Date: Monday, February 27, 2018

To
The Secretary
District Legal Services Authority, Morigaon
Morigaon- 782105
Assam

Subject: Request for inquiry and bone ossification test of an inmate who claimed and *prima facie* appeared to be a juvenile

Respected Sir,

It has been a great honour for the team here at Studio Nilima, to work in collaboration with the District Legal Services Authority (hereinafter DLSA), Morigaon. We would like to thank you for facilitating our visit to the Morigaon District Jail on Saturday, February 17, 2018. It was a great learning experience and the Pratidhwani team stands thus enriched. We are presently preparing and consolidating a report of our visit, which we will surely share with you in the near future.

Sir, during our visit we came across an inmate of the Morigaon District Jail who claimed and appeared to be underage. We would like to extend our hand to help such juveniles and prevent miscarriage of justice in as much as juveniles require special treatment and care and they cannot be equated with other inmates of the correctional home. The Juvenile Justice Act, 2015 and the Model Prison Manual, 2016 specifically provides for treatment of such juveniles.

We had come across similar instances during our earlier visit to the Morigaon District Jail where we collaborated with the DLSA, Morigaon to take up such matters. The DLSA, Morigaon under the able guidance of Ms. Ranjita Agarwal, the former Member Secretary of Morigaon DLSA appointed pleas for juvenility through legal aid counsel in the concerned Courts. The pleas were accepted for inquiry and bone ossification tests were ordered to be done by the concerned Courts in the cases of Sanju Saha, Sanju Basfore and Mujaharul Haque. The test results were positive for two of the inmates namely Sanju Saha and Mujaharul Haque and they were later release from jail. The copy of order for ossification test of Sanju Saha, order bearing Case No. G.R. 1974/17 and Mujaharul Haque, order bearing Case No. G.R. 1608/17, annexed herewith and marked as Annexure A for your reference and perusal.



We would like to request you to look into the case of the inmate of the Morigaon District Jail namely Dhani Das, booked under Morigaon P.S. Case No. 460/17, under section 380/34 of Indian Penal Code who had claimed to be of 17 years..

We stand grateful for your kindness and look forward to a valuable partnership with you in the future.

Thanking You,

Sincere Regards,

Juri Hazarika Project Manager

Pratidhwani, Free Legal Services and Awareness Centre

A Unit of Studio Nilima

Guwahati

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Ø 2	NAME OF JAIL		REGD.CAPACITY	E		CONVICT		5	UNDERTRIAL	-	DETENU (NSA)	2 4	DETENU - (OTHER THAN NSA)	THAN		CANE	8388	CRIMINAL LUNATIC ACQUITTED ACCUSED)	- Z	CHILDREN OF PRISONE'S AND DFFS	OF	3.	DECLARED FOREIGNER ATIONAL TO BE DEPORTED	38.0		TOTAL		% Jail wise
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7	Central Jail, Texpur	725	77	747	171	3	174 <	581	13	861	0 0	0			0	0 0		1 K)	7	11	EI	230	83	818	288	110	869	93.44
3	Central Jail, Silchar	452	7.7	479	249	2	122	142	11	252	0 0	0 0			0	0 0			0	1	1	66	10	601	589	24	613	127.97
4	Central Jail, Dibrugarh	999	14	089	218	11	229	258	81	276	0 0	0	+		0	0 0		1	0	0	0	. 95	•	8	532	56	561	82.5
2	Central Jail, Jorhat	646	24	029	232	S	237	257	15	272	0 0	0			0	0 0			5	2	7	85	37	177	579	- 65	638	95.22
9	Central Jail, Nagaon	404	20	424	114	3	117	309	56	335	0 0	0			0	0 0			0	2	2	1	36		423	31	454	107.07
1	District Jail, Nalbari	142	13	155	63	5	89	219	15	234	0 0	0			0	0 0			7	3	5				284	23	307	198.08
	District Jail, Barpeta	891	45	213	9†1	7	153	225	16	241	0 0	0			0	0 0			•	3	3				371	97	397	186.38
Y	District Jail, Kokrajhar	225	110	335	74	7	8/	147	13	160	0 0	0 1			0	0 0			9	10	91	9	152	152	227	179	406	121.19
0	District Jail, Dhubri	(818)	9	121	117	7	124	235	13	248	0 0	0			0	0			3	2	w		1		355	77	377	170.58
=	District Jail, Goalpara	335	15	370	98	2	76	66	9	105	0 0	0			0	0 0			0	0	0	234	0	234	428	•	436	117.83
12	District Jail, Mangaldoi	160	12	172	14	-	75	106	2	1111	0 0	0 0			0	0 0		3	7	0	2				182	9	881	109.30
13	District Jail, Hailakandi	\$	4	88	39	1	40	73	3	9/	0 0	0 0			-	0 1			-	0	-				114	4	118	203.44
14	District Jail, Karimganj	173	12	185	69	5	74	136	3	139	0 0	0 (0	0 0			0	-	-	1			205	6	214	115.67
15	Dist. Jail, North Lakhimpur	187	15	202	611	3	122	170	4	174	0 0	0		-	-	1 0			0	0	0				290	7	297	147.02
	District Jail, Sivasagar	370	98	400	150	3	153	219	6	228	0	0 0			0	0			0	-	-				369	13	382	95.5
	District Jail Golaghat	215	33	248	195	13	208	188	10	198	0 0	0			0	0			3	2	S				386	25	411	165.72
18	District Jail Majuli	45	01	55	13	0	15	0	0	0	0 0	0			0	0			0	0	0				15	0	15	77.27
\$	District Jail Abhayapuri	240	10	250	35	0	22	177	∞	185	0	0 0			0	0			0	0	0				232	8	240	96
07	District Jail Diphu.	250	10	760	62	3	65	249	6	258	0	0 0			0	0 0			0	0	9				311	12	323	124.23
17	District Jail Hamren	30	10	40	0	0	0	43	. 7	45	0	0 0		1	0	0 0			0	0	3				43	2	45	112.5
77	Dist. Jail Biswanath Chariali	7.1	11	94	41	0	41	92	4	96	0 0	0 0			0	0 0	_		e	9	0				133	4	137	145.74
23	District Jail Dhemaji	120	10	130	3	1	65	119	3	122	0 0	0 0	_		0	0 0		_	0	1	-				183	v.	881	14461
24	District Jail Morigaon	242	10	252	82	4	96	163	3	901	0 0	0 0			0	0 0		_	1	o					961	7	203	80.55
. 52	District Jail Sonari	40	10	98	30	0	30	Ð	0	0	0 0	0 0		_	0	0 0	_	_	0	c	0				36	0	30	9
56	District Jail Tinsukia	464	25	918	170	1	171	209	4	213	0 0	0 6	_	_	0	0 0			-	-	2				380	9	386	74.80
27	District Jail Sodiya	40	01	950	22	0	22	12	0	1.2	0 0	0 0	_	_	0	0 0		-	0	0	0				75	0	34	89
28	District Jail Udalguri	111	91	127	\$	s	99	128	2	135	2 0	0 2	_		0	0 0		_	-	7	3				176	14	196	149.60
56	Special Jail Nagaon	360	12	372	19	0	61	219	v	224	=	0 0		_	•	0 0			-	0	,				281	5	286	76.88
30	Open Air Jail Jorhat	8	0	100	22	0	22	0	0	0	0 0	0 0	_		0	0 0			0	0	Đ				22	0	22	77
3	Sub Jail Haflong	25	80	33	۲,	0	7	9.	0	8	0	0 0			0	0 0			0	0	0				52	0	52	157.57
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Sd/-, Inspector General of Prisons. Assam Khanapara, Guwahati

TYPED COPY

GOVERNMENT OF ASSAM HOME DEPARTMENT

No. HMB.143/2010/PT-II 194

Dated Dispur, the 6th October, 2015

OFFICE MEMORANDUM

Subject: Remission of Sentences of Life Convicts.

The issue of evolving a uniform policy for granting remission of sentences to life convicts and all other convicts sentenced to imprisonments for more than 14 years in aggregate has been engaging the attention of the Government for quite some time. The power of remission of sentences has been given under the Article 161 of the Constitution and Sections 432, 433 and 433(A) of the Cr.P.C, 1973. The Rule 571 of the 'Assam Jail Manual' hasprovided the guidelines in this regard. In this regard, the Hon'ble Supreme Court after hearing the Criminal Appeal No.490-91 of 2011 ordered on 20th November, 2012 as follows:

"There is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years of imprisonment. The prisoner has no such right. A convict undergoing a life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under section 432 of the Cr.P.C which in turn is subject to the procedural checks in that Section and the substantive check in Section 433A of the Cr.P.C.

The grant of remission is statutory. However, to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These needs to be faithfully enforced.

Remission can be granted under section 432 of the Cr.P.C in the case of a definite term of sentences. The power under this section is available only for granting 'additional' remission, i.e. for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power U/S 432 of Cr.P.C can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

Before actually exercising the power of remission under Section 432 of the Cr.P.C, the appropriate Government must obtain the opinion (with reason) of the presiding judge of the convicting or confirming court. Remission can, therefore, be given only on a case-by-case basis and not in a wholesale manner."

The Hon'ble Gauhati High Court has also suggested that while granting remission in respect of life convicts, factors governing such consideration should be, the age of the convicts, the physical strength of the individual as to assess the danger that an individual is likely to pose in the society in the event of his release. Further, it was also opined that the prisoner who have become frail or suffering from terminal diseases, prima-facie would not pose any threat to the society and therefore such cases should be considered accordingly.

In view of the position stated above the Governor of Assam is pleased to lay down the following policy for consideration of the prayer of life convicts and other convicts sentenced to more than 14 years in aggregate in the State of Assam:

- 1. 'All applications made by a convict or on his behalf for remission of sentence should be submitted to the Superintendent of the Jail. The latter in turn will take steps to forward the same to the Presiding Judge of the convicting or confirming court along with the history ticket, copy of the judgements, descriptive roll, report from the District Magistrate and the Superintendent of Police of the district of the convict's court, report from the District Magistrate and the Superintendent of Police of the district of the convict's court, report of the Medical Board in case of old-infirm and terminally ill convicts for his opinion (with reason) about granting of remission.
- 2. No application shall normally be entertained for remission of life sentence before completion of 14 years of imprisonment including the period of remission earned. But where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted U/S 433 CrPC into one of imprisonment of life, case of such person shall not be considered unless he/she had served at least 14 years of actual imprisonment. However, in exceptional cases where prisoner is more than 80 years in age or infirm/frail or is suffering from terminal diseases, the application may be processed even if he/she has not completed 14 years of imprisonment as stated above.
- 3. In cases where convicting court is a district court, the concerned Superintendent of Jail will obtain opinion/with reasons from the convicting court and submit the proposal of remission to Inspector General of Prisons. In cases where the convicting

- or confirming court is the High Court, the Inspector General of Prisons will obtain opinion/with reasons from the High Court.
- 4. The Presiding Judge of the convicting or confirming court will record his/her opinion/with reasons and return the proposal to the Superintendent of the concerned Jail or Inspector General of Prisons, Assam as the case may be. The Superintendent of the concerned Jail shall submit to the Inspector General of Prisons, Assam all proposals for remissions twice in a year (during the months of July and January).
- 5. Inspector General of Prisons, Assam after the consideration, will submit the proposal of remission to the Government of Assam along with his recommendations.
- 6. The State Government shall examine the proposal received from Inspector General of Prisons along with the opinion of the Presiding Officer of the convicting or confirming court, as the case may be. While taking decision, the State Government shall have regard in respect of the following class of prisoners:
 - (a) Convicts who are older than 75 years, convicts who have become frail and infirm or are suffering from terminal deceases and prima facie would not pose any threat to the society as per finding of the Medical Board.
 - (b) Convicts who have spent their imprisonment with excellent track record of discipline, conduct and hard work.
- 7. Remission of sentences may be granted by the Government of Assam with or without conditions after considering the nature of the crime. While doing so the State Government shall also take into consideration whether remission granted could have adverse effect in the society or shall be detrimental to the interest of the State. The conditions of refuse shall be clearly stated in the order of remission.
- 8. Remission proposals shall be decided on case-by-case merit. No decision in this regard shall be taken on a wholesale manner.
- 9. Proposal of remission rejected by the Government of Assam, after due consideration should not be resubmitted before expiry of 2 years from the date of rejection except where the person is more than 80 years in age or terminally ill.

The above procedure will be subject to order of the Hon'ble Supreme Court dated 23.07.2015 in Writ Petition No. 48/2014.

Sd/-M.G.V.K Bhanu
Addl. Chief Secretary to the Government of Assam
Home & Political Department

No. HMB.143/2010/PT-II 194

Dated Dispur, the 6th October, 2015

Copy to:

- 1. The Director General of Police, Assam for information and necessary action.
- 2. The Registrar, Gauhati High Court, Guwahati
- 3. P.P.S to the Hon'ble Chief Minister, Assam for appraisal of the Hon'ble Chief Minister
- 4. P.S to the Hon'ble Minister, Jails for appraisal of Hon'ble Minister.
- 5. S.O to the Chief Secretary to the Govt. of Assam for appraisal of Chief Secretary.
- 6. P.S to the Addl. Chief Secretary, Home & Political Department for appraisal of Addl. Chief Secretary.
- 7. P.S to the Commissioner & Secretary, Home & Political Department for appraisal.
- 8. The Addl. D.G cum Inspector General of Prisons, Assam, Khanapara, Guwahati-22. He is requested to furnish a copy of this OM to all the Superintendent of Jails of the State and all other concerned for information & necessary action.
- 9. The Secretary/Joint Secretary/Deputy Secretary/Under Secretary, Home & Political Department.
- 10. The Deputy Commissioner/Superintendent of Police (All) for information and necessary action.

By Order etc.,

Sd./-

Joint Secretary to the Govt. of Assam

Home Department



O. HMB.143/2010/PT-II 198

Dated Dispur, the 6th October, 2015

OFFICE MEMORANDUM

Subject: Remission of Sentences of Life Convicts.

The issue of evolving a uniform policy for granting remission of sentences to life convicts and all other convicts sentenced to imprisonments for more than 14 years in aggregate has been engaging the attention of the Govt. for quite sometime. The power of remission of sentences has been given under the Article 161 of the Constitution and Sections 432, 433 and 433 (A) of the Cr. PC, 1973. The Rule 571 of the 'Assam Jail Manual' has provided the guidelines in this regard. In this regard the Hon'ble Supreme Court after hearing the Criminal Appeal No. 490-91 of 2011 ordered on 20th November, 2012 as follows:

"There is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years of imprisonment. The prisoner has no such right. A convict under going life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under section 432 of the Cr. P.C. which in turn is subject to the procedural checks in that Section and the substantive check in Section 433-A of the Cr. PC.

The grant of remission is statutory. However to prevent its arbitrary exercise, the legislature has built in some procedural and substantive checks in the statute. These need to be faithfully enforced.

Remission can be granted under section 432 of the Cr. P.C. In the case of a definite term of sentences. The power under this section is available only for granting "additional" remission, i.e. for a period over and above the remission granted or awarded to a convict under the Jail Manual or other statutory rules. If the term of sentence is indefinite (as in life imprisonment), the power U/S 432 of Cr. P.C. can certainly be exercised but not on the basis that life imprisonment is an arbitrary or notional figure of twenty years of imprisonment.

Before actually exercising the power of remission under Section 432 of the Cr. P.C. the appropriate Government must obtain the opinion (with reason) of the presiding judge of the convicting or confirming court. Remission can, therefore, be given only on a case-by-case basis and not in a wholesale manner."

The Hon'ble Gauhati High Court has also suggested that while granting remission in respect of life convicts factors governing such consideration should be the age of the convicts, the physical strength of the individual so as to assess the danger that an individual is likely to pose in the society in the event of his release. Further, it was also opined that the prisoner who have become frail or suffering from terminal diseases, prima-facie would not pose any threat to the society and therefore such eases should be considered accordingly.

In view of the position stated above the Governor of Assam is pleased to lay down the following policy for consideration of the prayer of life convicts and other convicts sentenced to more than 14 years in aggregate in the state of Assam: -

21416

Contd...

- All applications made by a convict or on his behalf for remission of sentence should be submitted to the Superintendent of the Jail. The later in turn will take steps to forward the same to the Presiding Judge of the convicting or confirming court along with the history ticket, copy of the judgments, descriptive roll, report from the District Magistrate and the Superintendent of Police of the district of the convict's conduct, report of the Medical Board in case of old-infirm and terminally ill convicts for his opinion (with reason) about granting of remission.
- 2. No application shall normally be entertained for remission of life sentence before completion of 14 years of imprisonment including the period of remission earned. But where a sentence of imprisonment for life is imposed on conviction of a person for an offense for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted U/S 433 Cr. PC into one of imprisonment of life, case of such person shall not be considered unless he/she had served at least 14 years of actual imprisonment. However, in exceptional cases where prisoner is more than 80 years in age or infirm/frail or is suffering from terminal diseases, the application may be processed even if he/she has not completed 14 years of imprisonment as stated above.
- 3. In cases where convicting court is a district court, the concerned Superintendent of Jail will obtain opinion/with reasons from the convicting court and submit the proposal of remission to Inspector General of Prisons. In cases where the convicting or confirming court is the High Court, the Inspector General of Prisons will obtain opinion/ with reasons from the High Court.
- 4. The Presiding Judge of the convicting or confirming court will record his/her opinion/with reasons and return the proposal to the Superintendent of the concerned Jail or Inspector General of Prisons, Assam as the case may be. The Superintendent of the concerned Jail shall-submit to the Inspector General of Prisons, Assam all proposals for remissions twice in a year (during the months of July and January).
- 5. Inspector General of Prisons, Assam after his consideration, will submit the proposal of remission to the Government of Assam along with his recommendations.
- 6. The State Government shall examine the proposal received from Inspector General of Prisons along with the opinion of the Presiding Officer of the convicting or confirming court, as the case may be. While taking decision, the State Government shall have regard in respect of the following class of prisoners:
 - (a) Convicts who are older than 75 years, convicts who have become frail and infirm or are suffering from terminal deceases and prima facie would not pose any threat to the society as per finding of the Medical Board.
 - (b) Convicts who have spent their imprisonment with excellent track record of discipline, conduct and hard work.

kemission of sentences may be granted by the Government of Assam with or without conditions after considering the nature of the crime. While doing so the State Govt. shall also take into consideration whether remission granted could have adverse effect in the society or shall be detrimental to the interest of the State. The conditions of refuse shall be clearly stated in the order of remission.

- 8. Remission proposals shall be decided case-by-case on merit. No decision in this regard shall be taken on a wholesale manner.
- 9. Proposal of remission rejected by the Government of Assam, after due consideration should not be resubmitted before expiry of 2 years from the date of rejection except where the person is more than 80 years in age or terminally ill.

The above procedure will be subject to order of the Hon'ble Supreme Court dated 23 07 2015 in Writ Petition No.48/2014.

Sd/- M.G.V.K Bhanu Addl. Chief Secretary to the Government of Assam Home & Political Department

Memo No. HMB.143/2010/PT-II/194 -A Copy to: - Dated Dispur, the 6th October, 2015

1. The Director General of Police, Assam for information and necessary action.

2. The Registrar, Gauhati High Court, Guwahati.

3. P.P.S. to the Hon'ble Chief Minister, Assam for appraisal of the Hon'ble Chief Minister.

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- 5. S.O. to the Chief Secretary to the Govt. of Assam for appraisal of Chief Secretary.
- 6. P.S. to the Addl. Chief Secretary, Home & Political Department for appraisal of Addl. Chief Secretary.
- 7. P.S. to the Commissioner & Secretary, Home & Political Department for appraisal.
- 8 The Addl. D.G.-cum-Inspector General of Prisons, Assam, Khanapara, Guwahati-22. He is requested to furnish a copy of this OM to all the Superintendent of Jails of the State and all other concerned for information & necessary action.

9. The Secretary/Joint Secretary/Deputy Secretary/Under Secretary, Home & Political Department.

10. The Deputy Commissioner/Superintendent of Police (All) for information & necessary action.

By Order et

Joint Secretary to the Govt. of Assam

Home Department

To Date 21.05.2018

The Public Information Officer Inspector General of Prisons, Assam Dispur, Assam

From

Name of Applicant: Ms Juri Hazarika, Project Manager, Pratidhwani, Free Legal Service and

Awareness Centre, A unit of Studio Nilima

Address: 1A, Damayanti Mansion, Dighalipukhuri East, Guwahati -781001, Assam

Telephone no: +91 8134960253; Email address: info@studionifima.com

Sub: Information under the Right to Information Act, 2005

Sir.

With regard to the subject mentioned herein above, I hereby pray for furnishing the below mentioned information as per as the provisions of the Right to Information Act, 2005

- 1. a. The list of the names of Undertrial Review Committees established in each district of Assam
 - b. The date from which such committee has been functioning.
 - c. The names, address, official contact no and designation of the members of the committee.

If not the reasons thereof.

- 2. Details providing the dates, places of meeting, agenda and minutes of the meetings held by the Under Trial Review Committee of every district in the last five years.
- 3. Details of under trial prisoners in every jail in Assam who are entitled to bail under section 436 A and 167 of Code of Criminal Procedure, 1973
- 4. Whether the Under Trial Prisoners who are entitled to bail under 436 A and 167 of Code of Criminal Procedure, 1973 have been granted bail? If so the number, list of such inmates, and details thereof. If not the reasons thereof.



COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

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I hereby state that the information sought for does not fall within the restrictions contained in Section 8 and Section 9 of the Act and to the best of my knowledge, it pertains to your office.

A fee of Rs 10 has been deposited in Your Office vide IPO No 43F 091240

If any information pertains to any other department please forward the same to the department concerned with the intimation to this end as per mandate of Right to Information Act, 2005.

I am ready to pay the required fees as per mandate of the Acts & Rules. Yours sincerely

Turi Haranta,

Ms. Juri Hazarika Project Manager Pratidhwani, Free Legal Services and Awareness Centre A Unit of Studio Nilima, Guwahati

Place: Guwahati

Date:

SIGNATURE

Turi Harierila

Registration;

GOVT OF ASSAM

No.DJT/48/2018/ 1166 Dated. Tinsukia the 19" have

From: The Superintendent

District Jail, Tinsukia

Smt. Juri Hazarika

Project Manager Pratidhwani Free Legal Services and Awareness Centre

(A unit of Studio Nilima) 1 A Damayanti Mansion

Dighalipukhuri. Fast Guwahati-781001

Sub : RTI reply on Under Trial Review Committee.

Radiogram of Assam Prisons Head Quarter No. PRI.86/2018/13 Dtd: 14/06/2018

Sir.

With reference to the above. I am to furnish below the reply on Under Talak it Committee in respect of District Jail, Tinsukia, as sought for, for information.

(A) The Under Trail Review Committee was reconstituted in Tinsukia on 17709 (2018 a 1867) the letter of Assam Legal Services Authority No. ASLSA.114/2015/4316 dtd: 15-105 1/45 (Order copy enclosed, Annexure-I)

- (B) The first meeting of the Under Trial Review Committee was held on 15 (12 Polyment since then the committee has been functioning.
- (C) The committee was formed with Dist. & Sessions Judge. Tinsukia as Characters Deputy Commissioner, Tinsukia, Superintendent of Police, Tinsukia Secretary as member of the Committee.

Present Chairman and committee members are as follows.

	Sl. No.	Name of the Officer	Designation	Official Phas.
	01.	Sri P.J. Saikia	Dist & Sessions Judge, Linsukia	0374-21412-8
•	02	Sri Oinam Sarankumar Singh	Deputy Commissioner	0374-25515
	03	Sri M.J.D. Mahanta	Superintendent of Police	0374-23.016

1) So far 07 (Seven) No. of UTP Review Committee meeting was held on 1 1 30/03/2016, 30/06/2016, 07/04/2017, 28/07/2017, 06/11/2017 & 09/04/2018 card of the chairmanship of Dist. & Sessions Judge, Tinsukia. (Minutes enclosed, Annexon (41)

2) No UTP is detained in jail who are entitled to bail under section 436 A CrPC However, 14 (Fourteen) No. of UTPs are entitled to bail under section 167 1973. (List Enclosed, Annexure-111)

3) Yes. (Enclosed list in SI. No. 3 is same as SI. No.4) Enclosed: As stated above (in photocopy)-15 (Fifteen) Pages

ours faithfully

Diasukia the 19

Memo No.DJ1-48/2018

Copy to:

The Dy. Inspector General of Prisons (HQ) & SPIO, O/o the Inspector Can Prisons, Assam, Khanapara, Guwahati-22 for favour of kind informed reference to his office radiogram quoted in reference

ORDER

17.09.2015: As per Assam State Legal Services Authority letter No. ASLSA 114/2015/4316 dtd.14.08.2015. The Under Trial Review Commmittee is reconstituted by the following members :

- 1. Smti Malasri Nandi, District & Sessions Judge -cum-Chairman, D.L.S.A., Tinsukia
- 2. Sri Puru Gupta, Deputy Commissioner, Tinsukia
- 3. Sri Mugdhajyoti Dev Mohanta, Superintendent of Police Tinsukia
- 4. Smti Sangeeta Gogoi Bora, Civil Judge-cum- Secretary D. L. S. A., Tinsukia

District & Sessions Judge -cum-Chairman, D.L.S.A., Tinsukia C. J.C . 1. 1. S. A

Ci Jail, Tinsukia

The meeting of the Under Trial Review Committee is held today, i.e. 30th of March, 2016, in the Office Chamber of Hon'ble District & Sessions Judge -cum-Chairman, District Legal Services Authority, Tinsukia at 3:30 p.m in the presence of Smti. Malasri Nandi, District & Sessions Judge, Tinsukia cum Chairman, District Legal Services Authority, Tinsukia, Sri Diganta Saikia, ADC, Tinsukia representing the Deputy Commissioner Tinsukia, Sri Lamhao Dungal, Additional Superintendent of Police, representing the Superintendent of Police, Tinsukia, Smti. Sangeeta Gogoi Borah, Learned Chief Judicial Magistrate, Tinsukia, Sri Dipu Barman, Secretary, District Legal Services Authority, Tinsukia and Sri Naba Jyoti Sarma, Superintendent District Jail, Tinsukia.

This meeting is held keeping in view the Letter No. ASLSA-114/2010/Pt-1/4854 dated, Gauhati the 18th March, 2016, regarding directions passed by Hon'ble Supreme Court in connection with the Under Trial Prisoners and a 'steps taken report' is required to be furnished.

The Learned Chief Judicial Magistrate, Tinsukia and the Superintendent, District jail, Tinsukia have been requested to attend the Meeting considering the subject matter required to be discussed.

The Members have discussed and have resolved to proceed as follows:-

(1) Regarding the first Direction the District Authorities as well as Police Authorities are urged to take urgent steps to proceed with the matter of releasing convicts who have undergone sentences and are entitled to be released because of remission granted to them. The Jail Superintendent has informed that a list of such convicts already forwarded to the concerned Authorities and presently awaiting the reports. The District Authority and Police Authority have stated that due to the ensuing election the steps have not been completed yet but confirmed to take steps on priority basis in the matter, some of the reports already dispatched to the authorities concerned. The issue of evaluation of the convicts entitled to remission also discussed, Sri Lamhao Dungal, Additional Superintendent of Police commented that there is no set procedure for evaluation, which makes the process cumbersome and causing delay. In the matter of release of under-trial prisoners the learned Chief Judicial Magistrate has intimated that appropriate steps are regularly taken to

- monitor the matter of period of detention of under-trial prisoners as per law and they are released as soon as they are entitled to be released.
 - (2) Regarding the second Direction the Under Trial Review Committee discussed the matter of effective implementation of Section 436 of CrPC and 436A of CrPC and it is informed by the Learned Chief Judicial Magistrate that presently there is no under-trial prisoner who is entitled to be released. The Committee also resolved to look into the matter of release of those under-trial prisoners who have not been able to furnish bail bonds even though they have been allowed bail. The Committee resolved to intimate each Court to look into the matter on a priority basis. The Committee also resolved to look into effective implementation of Probation Of Offenders Act, 1958 and the Chairman, District Legal Services Authority, Tinsukia, assured to initiate such actions in all the Courts so that the first time offenders are identified in respective cases and dealt with in accordance of the Probation of Offenders Act so that they can get a fair chance of being restored and rehabilitated in society.
 - (3) Regarding the third Direction the Chairman, District Legal Services Authority, Tinsukia assured that steps shall be taken at the earliest for initiating process for appointment of competent and adequate number of empaneled lawyers to assist the Under Trial Prisoners and convicts in addition to continuing with the current procedure of providing legal aid to the under trial prisoners and convicts and other persons in need of legal aid. The Chairman, District Legal Services Authority, Tinsukia also proposed to take appropriate steps so that the people praying for legal aid are given the best of services, leaving no room for any grievance.
 - (4) Regarding the fourth Direction the Chairman, District Legal Services Authority, Tinsukia, in presence of other members discussed the issue of releasing under trial prisoners in compoundable offences and the possibility of settling compoundable offences at the earliest rather than requiring a trial to take place. The Chairman, District Legal Services Authority, Tinsukia resolved to request all the Courts to look into the matter earnestly with a view to release the under trial prisoners in cases of compoundable offences and laying stress on compounding the matter at Court or through Mediation. The Secretary, District Legal Services Authority, Tinsukia is directed to look into the matter and take effective steps to identify such cases and place it before Courts.

The Under Trial Review Committee also discussed the issue of completion of investigation in cases where accused persons are in Jail at the earliest so that the trial can be commenced on a priority basis.

These being the minutes of the meeting of the Under Trial Review Committee, the Members present today put their signatures thereon:-

 Smti Malasri Nandi
 District & Sessions Judge-cum-Chairman, D.L.S.A., Tinsukia
 2) Sri Digaria Saikia, ADC, representing the Deputy Commissioner Tinsukia

3) Sri Lamhao Dungal,

Addl. Supdt. Of Police, representing the Supdt. Of Police, Tinsukia.

Smti. Sangeeta Gogoi Borah,
 Chief Judicial Magistrate, Tinsukia

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5) Sri Dipu Barman, Secretary,
District Legal Services Authority, Tinsukia.

Secretary,
District Legal Services Authoric
Tinsukia

6) SrigNaban Ayotici Sarma , Superintendent, Oristrict Janii Tinsukta:

Certified to be true cory

Superintendent

Superintendent

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To.

The Secretary

District Legal Services Authority, Kamrup

Guwahati.

Assam

Dated: Saturday, February 3,2018

Sub: Request for providing legal representation to Bud Bahadur Chetry, an inmate of the Guwahati Central Jail under section 12 (g) of The Legal Services Authorities Act, 1987

Respected Sir,

Abantie Duta

It has been a great honour for the team here at Studio Nilima to work in collaboration with the District Legal Services Authority, Kamrup(M). We express our heartfelt gratitude for your continued support in our endeavours of providing access to justice to persons in custody.

Sir, during our visit to the correctional home in Guwahati we got the opportunity to interact with few of the inmates. Amongst them, we came across one inmate, namely Sri Bud Bahadur Chetry (Case Bearing No.- Chandmari P.S.C/No.586/17 u/s-380 IPC) who is an under trial prisoner, informed us of not having any legal representation. He is 18 years of age. Owing to his weak economic background he has been unable to engage or access effect legal representation. He has already served six months and five days in the correctional home.

It is our humble request to you to look into the matter and to provide legal representation to Sri Bud Bahadur Chetry at the earliest in order to satisfy the mandate u/s 12(g) of the Legal Services Authorities Act, 1987. We look forward to a valuable collaboration with the District Legal Services Authority Kamrup(M) in realising our shared vision of enabling effective and timely legal assistance to person in custody.



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COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

Thanking you,

Sincere Regards.

Abantee Dutta

Co-founder and Director

Apantie Date

Studio Nilima

Free Legal Services and Awareness Centre

Guwahati

Copy Forwarded to: -

- 1. Inspector General of Prisons, Khanapara, Guwahati 781022, Kamrup (M), Assam.
- 2. The Member Secretary, Assam State Legal Services Authority Gauhati-High Court, Old Block, 1st Floor

M. G. Road, Pan Bazar

Guwahati- 781001

Kamrup(M)

Assam

To The Secretary District Legal Services Authority, Morigaon Morigaon- 782105 Assam

Date: Monday, February 27, 2018

Respected Sir,

Our organization Studio Nilima, is a not-for-profit organisation based in Guwahati, registered as a Society on 28.06.2016 under the Societies Registration Act XXI of 1860, working in the areas of law, culture, governance and society. The legal aid cell of our organisation, which is known as 'PRATIDHWANI', aims at providing access to justice and free legal assistance to the underprivileged sections of the society. As a part of this initiative we have visited Morigaon District Jail several times since the month of October, 2017 and Guwahati Central Jail in the month of January, 2018. During our visits to the jails we interacted with the inmates and provided legal aid to the inmates free of charge. On their behalf, we have preferred appeals to the Hon'ble Supreme Court and the Hon'ble Gauhati High Court as well as the Courts of Criminal Jurisdiction in Morigaon and have also provided advice and assistance to the inmates of the District Jail Morigaon and Central Jail, Guwahati.

Subject: Request to appoint a Legal Aid Counsel to inmates of the Morigaon District Jail.

In reference to the subject cited above, we would like to inform you that on our recent visit to the Morigaon District Jail on Saturday, February 17, 2018, we interacted with the inmates Joymoti Das and her husband Sujan Das with Case No. 204/17, Jagiroad Police Station, under Section 457/380 of the Indian Penal Code, who told us that she does not have a Legal Aid Counsel (hereinafter LAC) and said that she would be grateful if she was provided with one.

We would request the DLSA, Morigaon to look up into the matter and help Joymoti Das and Sujan Das by providing her with an LAC. We would be obliged if the rightful is done to her.

Thanking you.

Sincere Regards,

Juri Hazarika

Project Manager

Pratidhwani Free Legal Services and Awareness Centre

A Unit of Studio Nilima



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TYPED COPY

To

Dated: 24.12.2014

Respected Legal Aid Centre, District Jail, Dhubri

Sir,

With due respect I beg to state that before eight months ago the Jailor called up an Advocate namely Ejaz Ahmed who was from legal aid centre and assured me to open a bank account in my name/favour.

But he counsel from the legal aid centre had taken (2000/-) rupees two thousand from me. But till date the counsel did not open any bank account in my favour as well as did not file any Application before the Hon'ble Supreme Court.

On 10.08.2018, I filed an application before the Jailor asking for payment of my wages. But till date he has not given any reply/answer.

Since 07.08.2018, I have been on hunger strike. It has been about five months since I have been on hunger strike and refusing/denying to have food supplied/offered by the Jail. I have filed an application to the jail authority informing about my hunger strike. Till date he has not given any reply to my application.

I had informed Hon'ble CJM, ADC etc about my strike but nobody is ready to hear my statement. At present the Doctor is asking me for my bank account number to deposit of Rs. 500/- that is being provided by the State Government on monthly basis to those patients who are suffering and undergoing T.B treatment. But I am not being able to receive that amount.

As per my knowledge, I am entitled to an amount of rupees more than 4 lakhs. Kindly, clarify me the actual amount I am entitled to as per court rule. Till date I have not received a single penny. Therefore, my humble request to you is to kindly help me to prefer an application before the Hon'ble Supreme Court in this regard and furthermore kindly open a bank account in my favour and give a solution to prevent my difficult situation.

Yours faithfully Moinuddin Laskar

To Deputus

Q 4. 12. 2014.

Legal Aid centar. Dut sail shuburi

with due next I beg to state that before wight orents ago the gailer called up an Advocate, namely Erry othered who was from legal aid untre and assured me to open an hank according my name flavour.

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an. 10.8, 2018 I filled om application before the tailor asking for payment of my wages. But till date he has not jimen my deply farmers.

Since 7.8. 2018 I have her on hunger strike . It is her almost fine ments I have her on hunger strike and almost fine ments I have her on hunger strike and refining / derying to have food supplied / affected by the fail authority informing my I have liked an application to the fail authority informing my hunger strike. Till date he has not given my auply to my application.

I informed Horible cTM, ADC. Home ___ aboutstatement.

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As per my knowledge, I am entitled to an amount of an eupeas more than 4 lacs.

Kindly, cleanity me the artual amount Dom intilled to.

Till date I have not received a single perry

Therefor, I hard my humble request to you bindly help me to the application before the Howhle Supreme court in this argued and furthermore kindly open on hund account in my lavour end jul a solution to my difficult situation. your faitefully

Marin uddin hakar.

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The Secretary

The District Legal Services Authority, Kamrup

Guwahati-781001

Dated: Saturday, February 3, 2018

Sub: Request for taking necessary and appropriate actions with regards to inmates in the Guwahati Central Jail who have been granted bail but not released due to non-furnishing of security

Respected Sir,

With reference to the captioned subject, we, the team of Pratidhwani, Free Legal Services and Awareness Centre, a unit of Studio Nilima would like to express our heartfelt gratitude for facilitating the visit of the team to Guwahati Central Jail. The 12 member team of Pratidhwani comprised of Advocates, Law Graduates and Law Students visited the Guwahati Central Jail on Saturday, January 20, 2018. It has been an honour to work in collaboration with you and the team of Pratidhwani has been deeply enriched by the experience.

During our visit to the Guwahati Central Jail, we were informed by the Superintendent of Guwahati Central Jail that there are inmates in the jail who have been granted bail but could not be released for not furnishing security. On communicating with such inmates we found that most of the inmates came from weak economic backgrounds. Most of them were landless and were languishing in the correctional home without the support of their family members. In such circumstances in spite of being granted bail, these inmates continue to be incarcerated in the correctional home. We have annexed a list of such inmates who have been granted bail but could not be released due to non-furnishing of security and marked herewith as Annexure A. It is pertinent to mention here that according to the provisions of the Code of Criminal Procedure, 1973 with regard to bail, an indigent person or a poor person can be discharged on bail on his execution of a bond without sureties for his appearance before the court.



5/2/18

COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

The Hon'ble Supreme Court as well as the Hon'ble Gauhati High Court has time and again reiterated that continued incarceration in correctional home stemming from an inmate's inability to pay bail bonds, amounts to a failure to meet the ends of justice. A compilation of the relevant case laws is annexed herewith and marked as Annexure B for your ready reference and perusal. Further the 268th Report of Law Commission of India provides for recommendations about conditions that may be imposed in Bail stating that a bail condition must not unreasonably violate the rights guaranteed by the Constitution.

In another instance, the team of Pratidhwani during our visit to Morigaon District Jail came across many inmates who were granted bail but could not be released due to their weak economic conditions We, on the behalf of Raju Deka, an inmate of Morigaon District Jail have filed a Criminal Petition numbered as Criminal Petition No 36/2018 for modification of bail order passed by the Morigaon Court in the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court while recognising the principles laid down in the aforesaid cases was pleased to modify the bail amount of Raju Deka. A copy of the judgment is annexed and marked herewith as Annexure C.

It is therefore our humble request to you to look into the aforesaid matters and to take appropriate steps before the appropriate Court of Law Under Section 482 read with 439 (1) (b) of the Code of Criminal Procedure, 1973 for the modifications of the conditions of granting bail to the persons named in Annexure A, so that they do not languish in custody and enjoy the benefit of the orders granting bail. It would be our pleasure to work in collaboration with DLSA, Kamrup and be of any assistance to you in this regard. We look forward to a continued and ongoing association with DLSA, Kamrup in realising our shared vision of bringing lifetime legal assistance to persons in custody.

Thanking you,

Mantie Inta

Abantee Dutta,

Co - Founder and Director, Studio Nilima

Pratidhwani, Free Legal Service and Awareness Centre

A Unit of Studio Nilima, Guwahati

Copy Forwarded to:-

- 1. Inspector General of Prisons, Khanapara, Guwahati 781022, Kamrup (M), Assam.
- 2. The Member Secretary, Assam State Legal Services Authority

Gauhati High Court, Old Block, 1st Floor

M. G. Road, Pan Bazar

Guwahati-781001

Kamrup(M)

Assam

To
The Secretary
The District Legal Services Authority, Darrang
Mangaldoi-784125
Assam
Dated: Tuesday, 13 March 2018

Sub: Request for taking necessary and appropriate actions with regards to inmates in the Mangaldoi District Jail who have been granted bail but not released due to non-furnishing of security.

Respected Sir,

With reference to the captioned subject, we, the team of Pratidhwani, Free Legal Services and Awareness Centre, a unit of Studio Nilima would like to express our heartfelt gratitude for facilitating the visit of the team to Guwahati Central Jail. The team of Pratidhwani comprised of Advocates, Law Graduates and Law Students visited the Mangaldoi District Jail on Saturday, February 25, 2018. It has been an honour to work in collaboration with you and the team of Pratidhwani has been deeply enriched by the experience.

During our visit to the Mangaldai district Jail, we were informed by the inmates in the jail that they have been granted bail but could not be released for not furnishing security. On communicating with such inmates, we found that most of the inmates came from weak economic backgrounds. Most of them were landless and were languishing in the correctional home without the support of their family members. In such circumstances in spite of being granted bail, these inmates continue to be incarcerated in the correctional home. We have annexed a list of such inmates who have been granted bail but could not be released due to non-furnishing of security and marked herewith as Annexure A. It is pertinent to mention here that according to the provisions of the Code of Criminal Procedure, 1973 with regard to bail, an indigent person or a poor person can be discharged on bail on his execution of a bond without sureties for his appearance before the court.

The Hon'ble Supreme Court as well as the Hon'ble Gauhati High Court has time and again reiterated that continued incarceration in correctional home stemming from an inmate's inability to pay bail bonds, amounts to a failure to meet the ends of justice. Further the 268th Report of Law Commission of India provides for recommendations about conditions that may be imposed in Bail stating that a bail condition must not unreasonably violate the rights guaranteed by the Constitution.

In another instance, the team of Pratidhwani during our visit to Morigaon District Jail came across many inmates who were granted bail but could not be released due to their weak economic conditions. We, on the behalf of Sonabanu Begum and Anr. and Md. Haijan Ali, inmates of Morigaon District Jail have filed a Criminal Petition numbered as Criminal Petition No 170/2018 for modification of bail order passed by the Morigaon Court in the Hon'ble Gauhati High Court. The Hon'ble Gauhati High Court while recognising the principles laid down in the aforesaid cases was pleased to modify the bail amount of Sonabanu Begum and Anr. and Md. Haijan Ali. A copy of the judgment is annexed and marked herewith as Annexure B.



COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

C 1 Damayanti Mansion | Satya Bora Lane | Dighalipukhuri East | Guwahati 781001 | Assam | India Phone +91 361 297 0487 | Mobile +91 8134960253 | Email info@studionisma.com | Website studionisma.com We look forward to a continued and ongoing association with DLSA, Darrang in realising our shared vision of bringing lifetime legal assistance to persons in custody. It is therefore our humble request to you to look into the aforesaid matters and if necessary prefer appropriate Criminal Petition for modifications Under Section 482 read with Section 439 (1) (b) of the Code of Criminal Procedure, 1973. It would be our pleasure to work in collaboration with DLSA, Darrang and be of any assistance to you in this regard.

Thanking you, Sincere Regards

Juri Hazarika, Project Manager

Pratidhwani, Free Legal Service and Awareness Centre

A Unit of Studio Nilima,

Guwahati

Copy Forwarded to:-

- The District and Sessions Judge Darrang Assam
- The Member Secretary, Assam State Legal Services Authority Gauhati High Court, New Block, 1st Floor M. G. Road, Pan Bazar Guwahati- 781001 Kamrup(M) Assam

IN THE SUPREME COURT OF INDIA ORIGINAL CIVIL JURISDICTION I.A. NO. OF 2018

IN

WRIT PETITION (CIVIL) NO. 406 OF 2013

IN THE MATTER OF

Re-Inhuman Conditions in 1382 Prisons

AND

IN THE MATTER OF:

Studio Nilima
Collaborative Network for Research and Capacity Building
Through Abantee Dutta, Co-founder and Director
C-I, Damayanti Mansion Satyanath Bora Lane
Dighalipukhuri East, Dist. – Kam (M)
Guwahati – 781001

...APPLICANT

I.A. No. of 2018

APPLICATION FOR DIRECTION

PAPER BOOK

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ADVOCATE FOR THE APPLICANT: V. SHYAMOHAN

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IN THE SUPREME COURT OF INDIA ORIGINAL CIVIL JURISDICTION I.A. NO. OF 2018 IN WRIT PETITION (CIVIL) NO. 406 OF 2013

IN THE MATTER OF

Re-Inhuman Conditions in 1382 Prisons

AND

IN THE MATTER OF:

Studio Nilima
Collaborative Network for Research and Capacity Building
Through Abantee Dutta, Co-founder and Director
C-I, Damayanti Mansion Satyanath Bora Lane
Dighalipukhuri East, Dist. – Kam (M)
Guwahati – 781001

...APPLICANT

APPLICATION FOR DIRECTIONS

TO,
THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUDGES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF THE APPLICANT HEREIN

MOST RESPECTFULLY SHOWETH:

- 1. That the Applicant is a registered society based in Guwahati, Assam working in the areas of law, governance, policy, culture. The society is a collective effort of researchers, academicians, social scientists and legal practitioners which aims at initiating dialogue on contemporary social and political concerns arising in North East India.
- 2. That the Governing Council of the Applicant includes Justice (Retd.) Dhiresh Narayan Choudhury, Former Judge, Gauhati High Court; Justice (Retd) Brojendra Prasad Katakey, Former Judge, Gauhati High Court; Mr. Nilay Dutta, Senior Advocate, Gauhati High Court; Ms. Millie Hazarika, Senior Advocate, Gauhati High Court; Mr. Apurba Sharma, Senior Advocate, Gauhati High Court and Chairman, Executive Committee, Bar Council of India, Mr.

Pradip Bhuyan, Industrialist, Guwahati and Ms. Mahfuza Rehman, Academic, Former Head of Department (Geography), Cotton College, Gauhati. A copy of the Memorandum of Association and Articles of Association of the Applicant is annexed hereto and marked as Annexure A-1 [Pg No. 45-66].

- 3. The Applicant conducts a free legal awareness and services campaign, 'Pratidhwani (the Echo)' to increase access to justice for vulnerable and marginalized communities of the region by conducting visits to the correctional homes of the State in collaboration with the State Legal Services Authority and the law students of the region. The Applicant has visited six correctional homes across the state. These include the Guwahati Central Jail, Tezpur Central Jail, Jorhat Central Jail, Morigaon District Jail, Mangaldai District Jail and Goalpara District Jail. It has been found that while some of them like Central Jail, Jorhat have demonstrable test practices, most of the jails reflect the same issues like overcrowding, poor infrastructure, understaffing, access to justice, etc which are characteristic of correctional homes across India.
- That the present application concerns the illegal and arbitrary 4. detention of individuals in various district jails of Assam due to failure on the part of the authorities to specify clarity in the rules and regulations which would be applicable on persons falling under the category of declared foreign nationals (hereinafter referred as "DFNs"]. The said DFNs are presently under detention along with those who are convicted foreign nationals. DFNs refer to the segment of people who have been detected as Foreigners by an opinion of the Foreigner's Tribun under the Foreigners (Tribunals) Order, 1964 (hereinafter referred to as the "1964. Order"). It is pertinent to mention that although this segment of declared foreign nationals is a heterogeneous group of people disparate in nationality, ethnicity, linguistic or religious practices, and while the vast majority of them are alleged to be nationals of Bangladesh, there are others who have been declared to be citizens of Afghanistan and Pakistan respectively. Furthermore, by illegally detaining these people without proper sanctions and detention

centers, the authorities have grossly confused the procedure involved in handling DFNs and convicted foreign nationals, who are foreigners who have been imprisoned through the normal criminal justice process for committing specific offences whether under immigration laws (e.g Foreigner's Act and the Passport Act) or other statutes like the Indian Penal Code. It is also the case of the Applicant that most of the convicted foreign nationals have completed their sentences after being convicted by the courts and are being indefinitely detained pending deportation to their country of origin with no proper arrangements. Further, by illegally detaining these individuals without proper sanctions and detention centers, the authorities have grossly abused their powers and have acted malafidely.

- 5. It is submitted that the rights under Article 21 of the Constitution extend to all persons, irrespective of whether they are citizens of India or not. In Railway Board v. Chandrima Das, (2000) 2 SCC 465 this Hon'ble Court has held that:
 - "28. The fundamental rights are available to all the "citizens" of the country but a few of them are also available to "persons". ... Article 14, which guarantees equality before law or the equal protection of laws within the territory of India, is applicable to "person" which would also include the "citizen" of the country and "non-citizen"
 - 32. The word "LIFE" has also been used prominently in the Universal Declaration of Human Rights, 1948. (See Article 3 quoted above.) The fundamental rights under the Constitution are almost in consonance with the rights contained in the Universal Declaration of Human Rights as also the Declaration and the Covenants of Economic, Social and Cultural Rights, to which India is a party-having ratified them, as set out by this Court in Kubic Darusz v. Union of India. That being so, since "LIFE" is also recognised as a basic human right in the Universal Declaration of Human Rights, 1948, it has to have the same meaning and interpretation as has been placed on that word by this Court in its various decisions relating to Article 21 of the Constitution. The meaning of the word "life" cannot be narrowed down. According to the tenor of the language used in Article 21, it will be available not only to every citizen of this country, but also to a "person" who may not be a citizen of the country.
 - 34. On this principle, even those who are not citizens of this country and come here merely as tourists or in any other capacity will be entitled to the protection of their lives in accordance with the constitutional provisions. They also have a right to "life" in this country. Thus, they also have the right to live, so long as they are here, with human dignity. Just as the State is under an obligation to protect the life of every citizen in this country, so also the State is under an obligation to protect the life of the persons who are not citizens..."
- It is submitted that the Notification No.PLB.149/2008/88 dated 17.06.2009 issued by the Home and Political Department, Government of Assam, Notification No.PLB.149/2008/50 dated

01.12.2009 issued by the Home and Political Department, Government of Assam, Notification No.PLB.121/2015/44 dated 24.09.2014 issued by the Home and Political Department, Government of Assam and /or any other notification issued by the Home and Political Department, Government of Assam notifying the correctional homes of Central Jail, Tezpur, Jorhat, Dibrugarh and Silchar and the District Jails of Goalpara, Kokrajhar as detention centers for declared foreign nationals deserve to be set aside and quashed as being unconstitutional, arbitrary, grossly illegal, and ambiguous. A true copy of the Notification No.PLB.149/2008/88 dated 17.06.2009 issued by the Home and Political Department, Government of Assam is annexed hereto and marked Annexure A-2 (Pg No. 67-68), copy of the Notification No. PLB 149/2008/50 dated 01.12.2009 issued by Home and Political Department, Government of Assam, the Government of Assam is annexed hereto and marked as Annexure A-3 (Pg No. -69-) and copy of the Notification No. PLB.121/2015/44, dated, 24.09.2015 issued by Home and Political Department, Government of Assam is annexed hereto and marked as Annexure A-4 (Pg No. -70-).

That according to the Fortnightly Prison Population Report dated 7. 15.05.2018 published by the Department of Home and Political, Government of Assam, there are a total of 986 DFNs lodged in the six-notified detention centres/correctional homes in Assam. As on 30.04.2018 records of the District Jail, Goalpara reveal that out of the total number of DFNs detained, 50 were convicted foreign nationals of which 49 were nationals of Bangladesh. More importantly travel permits for 33 such DFNs have already been issued for a period of three months by the Office of the Assistant High Commissioner, Bangladesh Assistant High Commission, Guwahati. However, as informed by the Jail Administration, their deportation to Bangladesh remains subject to an approval from the Ministry of External Affairs, Government of India, which is pending. A true copy of a travel permit issued by the Assistant High Commissioner, Bangladesh dated 07.05.2018 is annexed hereto and marked as Annexure A-5 [Pg No. -71-]. A true copy of the Fortnightly Prison Population Report dated 15.5.2018 is annexed hereto and marked as Annexure A-6 [Pg No.-72-]

8. That the Applicant has visited the three notified detention centers in Assam namely the Central Jail (Tezpur), Central Jail (Jorhat) and District Jail, Goalpara. The details of the DFN's currently lodged in these centers are as follows:

Detention Center	Date of Visit	Total No. of DFNs 119 277	
Central Jail, Jorhat	21.04.2018		
Central Jail, Tezpur	22.06.2018		
District Jail, Goalpara	30.04.2018	182	

Of the rest Central Jail (Silchar) houses 109 DFNs, out of whom 99 are male and 10 are female. Central Jail (Dibrugarh) houses 56 DFNs, all male, and 152, all female DFNs are detained in District Jail, Kokrajhar.

- 9. That amongst the above mentioned group of convicted declared nationals, a group of around 18 belong to the Rohingya Muslim community from Myanmar who were convicted for illegal entry and stay in India and were sentenced to undergo imprisonment for six months. Even though the said members have completed their sentence, they were not released from detention which compelled them to approach the Hon'ble High Court of Guahati in the form of a Writ Petition being WP(C) Number 2745/2014. One of the principle grounds taken by these members before the Hon'ble High Court was that despite being victims of communal violence and ethnic clashes, due to their continued detention regardless of them having carried out their sentence, they have not been able to make a representation before the United Nations Human Rights Commission (hereinafter referred to as the "UNHRC") for conferring them with the status of refugee.
- 10. That the Hon'ble High Court of Guahati after having heard the community passed a detailed order on 04.01.2017. It was duly

6

recorded by the court that no decision had been taken by the Government of India regarding interim arrangement for lodging of the DFNs prior to their deportation and that the existing camps may be wholly inadequate to deal with the increasing number of detainees. It was thereafter directed by the court that responsibility of deciding the status of these individuals was vested with the Central Government, regard being made to whether they were allowed to stay in India by granting them refugee status through correspondence with the UNHRC, provided that if for this purpose their physical presence was required, then the Central Government shall do the needful to lodge the individuals in New Delhi. However, the Hon'ble High Court further stated that if the Central Government was of the opinion that these detainees were admittedly foreign nationals and should be deported from India, then subsequent steps must be taken within a period of three months. Thus, the Rohingya detainees have been awaiting a decision from the Government of India on their status as a refugee or a foreigner for more than 18 months, and consequently a Contempt Petition (Cont. Case Number 449/2017) has been filed in the Gauhati High Court for non-compliance of the order dated 04.01.2017 in which notice was issued on 29.01.2018. On 28.03.2018, the court asked the Ministry of External Affairs, Government of India to pursue the matter with the Myanmar embassy in order to expedite the deportation process. Thereafter, on 02.05.2018 it was stated before the Hon'ble Court by the central government that Myanmar Embassy is yet to respond to the proposal of the Indian Government regarding deportation of the 18 Rohingya muslims: A true copy of the Order dated 04.01.2017 is annexed hereto as Annexure A-7 (Pg No. 73-76) . A true copy of orders dated 29.01.2018, 28.03.2018 and 02.05.2018 in Cont. Case Number 449/2017 is annexed hereto as Annexure A-8 (colly) (Pg No. 77-83).

LEGISLATIVE HISTORY CONCERNING DECLARED FOREIGN NATIONALS IN ASSAM

11. The relevant statutes that govern the identification, detection, detection and deportation of foreigners in Assam are the

Foreigner's Act, 1946 read with the 1964 Order, the, Citizenship Act, 1955, Passport (Entry into India) Act, 1920, the Immigrants (Expulsion from Assam) Act, 1950 and the Passport Act, 1967.

- 12. That as per Section 1(b) of the Citizenship Act 1955, "illegal migrant" is a foreigner who has entered into India without a valid passport or other travel documents or any other document or came to India with a valid passport or other travel documents and such other documents, but stayed beyond the permitted period of time. Vide Section 6A(1)(e) of the Citizenship Act, 1955, a person shall be deemed to be a foreigner on the date on which a Tribunal constituted under the 1964 order submits its opinion to the effect that he is a foreigner to the officer or authority concerned.
- 13. At the commencement of the Constitution of India, Article 5 stated that every person who has his domicile in the territory of India and who was either born in the territory of India; or either of whose parents were born in the territory of India; or who has been ordinarily resident in the territory of India for not less than 5 years immediately preceding such commencement shall be a citizen of India. As an exception, Article 6, which is important for the determination of some of the questions arising in the instant Application, states as follows:

"Rights of citizenship of certain persons who have migrated to India from Pakistan. -Notwithstanding anything in Article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if

- (a) he or either of his parents or any of his grand-parents was born in India as defined in the Government of Lidia Act, 1935 (as originally enacted); and
- (b) (i) in the case where such person has so migrated before the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or (ii) in the case where such person has so migrated on or after the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of this Constitution in the form and manner prescribed by that Government: Provided that no person shall be so registered unless he has been resident in the territory of India or at least six months immediately preceding the date of his application."

- 14. Section 3(2)(e) of the Foreigners Act, 1946 (hereinafter referred as 'Act') provides powers to the Central Government to make orders qua foreigners as enumerated below:
 - "2. Power to make orders.—
 - (2) In particular and without prejudice to the generality of the foregoing power, orders made under this section may provide that the foreigner—
 - (d) shall remove himself to, and remain in, such area in 1 [India] as maybe prescribed;
 - (e) shall comply with such conditions as may be prescribed or specified—
 - (i) requiring him to reside in a particular place;
 - (ii) imposing any restrictions on his movements;"
- 15. On 23.09.1964 in exercise of the powers conferred under section 3, the Central government published the Foreigners (Tribunal) Order, 1964 (hereinafter referred as '1964 Order'). Under the 1964 Order, a Tribunal has been constituted to provide an opinion to the effect whether the person is a foreigner or not. The 1964 Order has been subsequently amended in the year 2012, with respect to procedure for disposal of question the following amendments have been made and incorporated:
 - "3. Procedure for disposal of questions
 - (1) The Tribunal shall serve on the person to whom the question relates a show cause notice with a copy of the main grounds on which he or she is alleged to be a foreigner. This notice should be served as expeditiously as possible, and in any case, not later than ten days of the receipt of the reference of such question by the Central Government of any competent authority.
 - (2) The Tribunal shall give him or her a reasonable opportunity to show cause by filing a representation. Endinarily, not more then ten days' time from the date of service of the notice as a foresaid should be given to file such a representation.
 - (3) The Tribunal shall give him or her a reasonable opportunity to produce evidence in support of his or her case. Ordinarily, not more than ten days' time should be given to produce such evidence."

A copy of the 1964 Order along with the amendment is annexed hereto as Annexure A-9 (Pg No. 84-87)

16. It is necessary to mention here that under the scheme of the Act read with the 1964 Order the Foreigner's Tribunal constituted thereunder, on a reference made to it, is required to <u>only give an</u> opinion whether the concerned individual is or is not a foreigner. Therefore, on this basis alone it is apparent that the role of the tribunal is restricted to providing an opinion and the same is not final or conclusive. The relevant clause is reproduced herein below:

"(9) After the case has been heard, the Tribunal shall submit its opinion as soon thereafter as may be practicable, to the officer or the authority specified in this behalf in the order of reference. Every case should be disposed of within a period of 60 days after the receipt of the reference from the competent authority."

- 17. That Assam has always been a receiving economy of migrants, starting from the colonial rule. But the recent crisis emanating from migration is the result of prolonged migration pre and post partition and the consequences of demographic change due to the migration of erstwhile East Bengali Hindus and Muslims that continued even after partition. Post-Independence migrants from East Pakistan or Bangladesh came to be categorized as irregular migrants who are undocumented or illegal migrants who came to India or to Assam in search of better livelihood opportunities or they can be categorised as forced migrants. As per Article 6 (supra) the date of 19.07.1948, therefore, became the baseline for such persons as were referred to in Article 6 for being citizens of India.
 - 18. The Immigrants (Expulsion from Assam) Act, 1950 was enacted to protect the indigenous inhabitants of Assam. The statement of objects and reasons of this Act states that "during the last few months a serious situation had arisen from the immigration of a very large number of East Bengal residents into Assam. Such large migration is disturbing the economy of the province, besides giving rise to a serious law and order problem. The bill seeks to confer necessary powers on the Central Government to deal with the situation." In pursuance of this object, Sections 2 and 4 state as follows:

""2. Power to order expulsion of certain immigrants.
If the Central Government is of opinion that any person or class of persons, having been ordinarily resident in any place outside India, has or have, whether before or after the commencement of this Act,

come into Assam and that the stay of such person or class of persons in Assam is detrimental to the interests of the general public of India or of any section thereof or of any Scheduled Tribe in Assam, the Central Government may be order—

(a) direct such person or class of persons to remove himself or themselves from India or Assam within such time and by such route as may be specified in the order; and

(b) give such further directions in regard to his or their removal from India or Assam as it may consider necessary or expedient;

Provided that nothing in this section shall apply to any person who on account of civil disturbances or the fear of such disturbances in any area now forming part of Pakistan has been displaced from or has left his place of residence in such area and who has been subsequently residing in Assam.

4. Power to give effect orders, etc.-

Any authority empowered by or in pursuance of the provisions of this Act to exercise any power may, in addition to any other action expressly provided for in this Act, take or cause to be taken such steps, and use or cause to be used such force, as may in its opinion be reasonably necessary for the effective exercise of such power."

Furthermore, it be noted here that on account of Section 4 of the Illegal Migrants (Determination by Tribunal) Act, 1983, (hereinafter referred to as IMDT Act'), the Immigrants (Expulsion from Assam) Act, 1950 was superseded and the provisions of the said Act ceased to apply to the State of Assam. This Hon'ble Court in the year 2005, in Sarbananda Sonowal v. Union of India, reported in (2005) 5 SCC 665, struck down the IMDT Act and the Rules as being wholly unconstitutional as they clearly negated the constitutional mandate contained in Article 355 of the Constitution of India. It also at para 83 revived the application of Immigrants (Expulsion from Assam) Act, 1950 along with the Passport (Entry into India) Act, 1920; the Foreigners Act, 1946 and the Passport Act, 1967 to the State of Assam. The directions issued by the Hon'ble Court are reproduced hereinbelow:

" 84. In view of the discussion made above, the writ petition succeeds and is allowed with the following directions:

(1) The provisions of the Illegal Migrants (Determination by Tribunals) Act, 1983 and the Illegal Migrants (Determination by Tribunals) Rules, 1984 are declared to be ultra vires the Constitution of India and are struck down;

(2) The Tribunals and the Appellate Tribunals constituted under the Illegal Migrants (Determination by <u>Tribunals</u>) Act, 1983 shall cease to function;

(3) All cases pending before the Tribunals under the Illegal Migrants (Determination by Tribunals) Act, 1983 shall stand transferred to the Tribunals constituted under the Foreigners (Tribunals) Order, 1964 and shall be decided in the manner provided in the Foreigners

Act, the Rules made thereunder and the procedure prescribed under the Foreigners (Tribunals) Order, 1964.

(4) It will be open to the authorities to initiate fresh proceedings under the <u>Foreigners Act</u> against all such persons whose cases were not referred to the Tribunals by the competent authority whether on account of the recommendation of the Screening Committee or any other reason whatsoever.

(5) All appeals pending before the Appellate Tribunal shall be

deemed to have abated.

(6) The respondents are directed to constitute sufficient number of Tribunals under the Foreigners (Tribunals) Order, 1964 to effectively deal with cases of foreigners, who have illegally come from Bangladesh or are illegally residing in Assam."

- That as a result of the ruling the application of the above-19. mentioned proviso to Section 2 of the Immigrants (Expulsion from Assam) Act, 1950 was also revived. It was during the census of 1951 that a National Register of Citizens was prepared under a directive of the Ministry of Home Affairs containing information village-wise of each and every person enumerated therein. Details such as the number and names of persons, the houses or holdings belonging to them, father's name or husband's name, nationality, age, the means of livelihood were all indicated therein.
- That between 1948-71 there were large scale migrations from East 20. Pakistan in the State of Assam. As a result of subsequent representations, made by All Assam Students Union and others, Parliament enacted the IMDT Act applicable only to Assam. The IMDT proved to be inconclusive due to the continuous influx of illegal migrants from the neighboring countries. Seeing the continuous influx despite legislation being in place the civilian population started the Assam Movement (1979-85) or Asom Andolan with an objective to seek expulsion of undocumented migrants. The said movement was the culmination of civilian opposition against the rise in the number of voter in the electoral rolls. The All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) spearheaded the movement. The leaders stated that the movement was against undocumented immigrants, and demanded their expulsion. The Assam Agitation
- That the said movement culminated in the Assam Accord on 21. 15.07.1985 between the AASU, AAGSP and the Central and the State Governments, pursuant to which, that Section 6A was

inserted in the Citizenship Act in 1985. The Statement of Objects and Reasons of the Act specifically states that it is legislation required to give effect to the Assam Accord. It needs to be mentioned that section 6A is presently under challenge before the Supreme Court (i.e. Assam Sanmilita Mahasangha v. Union of India WP(C) No. 562 of 2012, Assam Public Works v. Union of India WP(C) No. 274/2009 and All Assam Ahom Association v. Union of India, WP(C) No. 562 of 2012).

- 22. Thereafter, on 08.11.1998 the then Governor of Assam submitted an extensive report to the then President of India on the continued grave threat posed by the influx of people from Bangladesh to Assam. In this backdrop writ petition was filed in year 2000 assailing the constitutional validity of the IMDT Act and the rules framed thereunder.
- 23. That on 14th July, 2004, in response to an unstarred question pertaining to deportation of illegal Bangladeshi migrants, the Minister of State, Home Affairs, submitted a statement to Parliament indicating therein that the estimated number of illegal Bangladeshi immigrants into India as on 31st December, 2001 was 1.20 crores, out of which 50 lakhs were in Assam.
- That in Sarbananda Sonowal v. Union of India reported in (2005) 5 24. SCC 665 (supra), this Hon'ble Court referred to the Assam Accord and to the huge influx of illegal migrants into the State of Assam and came to the conclusion that the said Act and the rules made thereunder operated in the reverse direction i.e. instead of seeing that illegal migrants are deported, it did the opposite by placing the burden of proof on the State to prove that a person happens to be an illegal migrant. It went on to hold that Article 355 of the Constitution of India had been violated, in as much as the Union had failed to protect the State of Assam against the external aggression and internal disturbance caused by the huge influx of illegal migrants from Bangladesh to Assam and went on to hold the 1983 Act to be violative of Article 14 as well. In as much as this Act was struck down, the Immigrants (Expulsion from Assam) Act, 1950 together with the Foreigners Act, 1946 and the Foreigners

Tribunal Order, 1964 would therefore become applicable to detect illegal migrants who were then to be departed.

25. That given the magnitude of the problem, a Foreigners (Tribunals for Assam) Order of 2006 was promulgated by the Central Government. Through the said order the Central Government amended the 1964 Order principally making the same inapplicable to the State of Assam. The said action of the government was struck down in Sarbananda Sonowal (II) v. Union of India reported in (2007) 1 SCC 174, being found to be unreasonable and arbitrary and which, instead of expeditiously discovering illegal migrants and deporting them, again did the opposite.

PRESENT RECULATORY LOOPHOLES I TADING TO AMBIGUOUS STATE OF AFFAIRS CONCERNING DFNs

- 26. In Assam, the identification and detection of foreigners is the responsibility of the Assam Police Border Organisation. However, the jurisdiction of the Assam Police Border Organisation in foreigner detection and its power to issue notices and make referrals to the Foreigner's Tribunals does not have any strict statutory basis.
- 27. The Foreigner's Tribunal in Assam was set up in the year 1962 under the erstwhile Prevention of Infiltration of Pakistani Scheme. The scheme inter alia provided the procedure for detection and issuance of Quit India notices. A copy of the erstwhile Prevention of Infiltration of Pakistani Scheme issued by the Intelligence bureau is annexed hereto as Annexure A-10. [Pg No. 88-98].
- 28. Drawing from the provisions of the above mentioned scheme, and seeing the burgeoning influx in the number of DFN's who go untraced and undetected, the state government as an interim arrangement on 17.06.2009 issued a notification in order to impose restrictions in the movement and also to make necessary arrangements vis-à-vis residing the DFNs as well as to facilitate their deportation. As per the notification, the Governor of Assam ordered that the movement of persons who are detected as

foreigners by the Foreigners Tribunal shall be restricted and they shall be required to reside in the Detention Centers set up by the State Government immediately after they are held to be foreigners and till the time they are deported. Secondly, the state police officer has been entrusted with the process of detection and deportation of foreigners. It is submitted that the said notification failed to provide the exact modalities as well as a) the procedure for detecting and notifying the DFN's; b) the detention centers wherein the DFN's shall be kept till they are deported; c) issuing specific time lines in which the order task can be undertaken in order to expedite the process.

- 29. As the above mentioned notification did not provide for the exact modalities of the notified detention centers, subsequent notifications were issued notifying the prisons in question as temporary notified detention centers. It is submitted that the said task was undertaken by the state government without any exposition as to the rationale of having a detention centre to provide basic amenities to DFNs in the first place.
- 30. On 01.12.2009 another notification was issued by the state government notifying the District Jail, Goalpara as a separate Detention Centre on a temporary basis till further detention centers are established.
- 31. Thereafter, on 24.09.2015 another notification was issued wherein the state government notified that Central Jails of Jorhat, Dibrugarh and Tezpur will serve as Detention Centres. Central Jail, Dibrugarh would accommodate only male inmates whereas Central Jails of Jorhat and Tezpur would accommodate both male and female inmates. The notified detention centres are located across six districts; while Jorhat and Dibrugarh are in the upper reaches of Assam, Silchar is in the Barak Valley. Kokrajhar on the other hand is a town in the Bodoland Territorial Area Districts. Goalpara is in the south-western part of the state bordering the boundary between Assam and Meghalaya. Importantly, it is adjacent to the international boundary between India and Bangladesh. It is pertinent to mention that while a proposal for the

setting up of a separate detention centre has been initiated in Dakurbhita area of Goalpara district for the declared foreigner nationals, no construction has begun as yet even though land has been allotted for the same.

- 32. That the practical implication of these notifications is that DFNs are being currently accommodated in prisons along with inmates (undertrials as well as convicts), the said DFNs are exposed to the prison environment in its entirety and for all effective purposes are being treated as inmates. Due to the detention centers being scattered across the state location also has ramifications on the detainees as for example the notified detention centre in Central Jail, Dibrugarh only contains male detainees and the one in Kokrajhar houses only female detainees. Therefore, in cases of family units who have been detained, separation becomes inevitable.
- 33. The manner in which the notifications have restricted the DFNs in the correctional homes is not in harmony with the provisions of the Assam Jail Manual itself. The Government of Assam through the above-mentioned notifications has failed to specify rules or regulations which would be applicable to the DFNs currently under detention. As a result, the authorities have been compelled to apply selectively, the provisions of the constituent statutes and regulations of the Assam Jail Manual on the DFNs, which are prescribed for the undertrial prisoners and convicts. The interactions of the Applicant with the jail administration have revealed that the dietary allowance given to detainees DFNs is the same as earmarked for 'non-labouring prisoners and undertrials' under Rule 368, Chapter XXI of the Rules for Superintendence and Management of Jails in the State of Assam, which is a constituent of the Assam Jail Manual. However unlike other inmates, including convicted inmates, the DFNs are not entitled to parole/leaves. Further DFNs are not even allowed to communicate with their family members. The absence of a substantive law to regulate the lives of DFNs in incarceration amounts to violation of substantive due process guaranteed under Article 21 of the Constitution of India

- 34. The present conditions of all the 986 declared foreign nationals are also in direct violation of international standards for detention of illegal migrants which require that such migrants should be held in facilities which are separated from the general prison population.
- 35. That under Section 3 of the Foreigners Act, 1946 which confers power upon the Central Government and under Section 12 of the said act the power to make orders under Section 3 of the Act may be delegated to a subordinate authority subject to such conditions as may be contained in the authorization. Section 12 further authorizes the authority empowered under the Act to further delegate powers to any such authority subordinate to it. Thus effectively, vide Section 12 the State Government is empowered to further delegate the function to any authority subordinate to it, in writing. However, it is submitted that that an order under Section 3 passed by any authority subordinate to the State Government without proving the State Government's notification of delegating its authority to such subordinate authority is completely arbitrary, invalid and dehors the provisions of the act.
- 36. That the above delegation of the authority must be specific and express. In the state of Assam the procedure that is followed for detecting foreigners is also fraught with procedural lapses. The Assam Border Police, which is known as the second line of defence in checking foreign infiltration is also responsible for detecting foreign infiltrators. If it suspects that a person is a foreigner, then the Assam Border Police serves him notice to appear before it and prove his or her citizenship, by producing requisite documents in reasonable time. If the Assam Border police are not satisfied with the documents then it registers a reference case against that person to be tried by the Foreigners Tribunal established by the 1964 Order. The said exercise undertaken by the police and state government in general, without express delegation goes completely against the intention of section 3 read with section 12.

37. Furthermore, the Assam Police refers to the Prevention of Infiltration of Foreigners Scheme to issue the above mentioned notices on the proceedee, it is not known whether apart from the said scheme there is any other statutory force based on which such notices are being issued and the said scheme by itself cannot be treated as delegation of powers under section 12 of the Foreigners Act. Therefore, the actions of the border police in this regard are non-est in law and lack jurisdiction. It is also submitted that subsequent referrals on the basis of these notifications will also be bad in law and ex-facie illegal.

ISSUE OF ILLEGAL DETENTIONS AND INADEQUATE LEGAL REPRESENTATIONS OF DFNs

38. That the international standards for detention of foreigners/asylum-seekers for immigration related reasons specify that such detention must not be within the prison facilities or jails. Guideline 8, Para (iii) of the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (hereinafter, referred to as UNHCR Guidelines) states that

'The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population.'

39. That the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment which was adopted by General Assembly resolution 43/173 of 9 December, 1988 states in Principle 8:

"Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons."

A true copy of the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention is annexed hereto and marked as Annexure A-11 [Pg No.99-160]. A true copy of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the General Assembly

resolution 43/173 of 9 December, 1988 is annexed hereto and marked as Annexure A-12.[Pg No.161-167].

- 40. In India the Prisons Act, 1894 which is part of the Assam Jail Manual defines 'prisons' in Section 3 as:
 - "3. Definitions: In this Act-
 - (1) "prison" mean any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include-
 - (a) any place for the confinement of prisoners who are exclusively in the custody of the police
 - (b) any place specially appointed by the State Government under S.541 of the Code of Criminal Procedure
 - (c) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;"
- 41. The said enactment also defines three classes of prisoners under Section 3; which are criminal prisoner, convicted criminal prisoner and civil prisoner. The dichotomy in the case of the DFNs is that while they do not qualify as any of the three classes of prisoners specified under the Act, they have been detained in a facility, which qualifies the definition of prison under Section 3.
- That as per the phrasing of Section 6A of the Citizenship Act, 1955 42. a person is detected to be a foreigner on opinion of the Tribunal. However, as per informal sources it has been brought to the notice of the Applicant that orders are being routinely passed by the Tribunals 'declaring' such individuals as foreigners without application of mind and without conducting any investigations and detections. From the objective of the Foreigner's Act, it is clear that it is an Act to confer upon the Central Government or the State Government, as the case may be, certain powers in respect of foreigners. It can therefore be inferred that a reference to the Central Government becomes necessary before the opinion of the Foreigner's Tribunal can be treated as final. In the absence of this component, the present process becomes patently illegal. Guahati High Court has consistently held and emphasized that the opinion rendered by the Tribunal is not in the nature of a declaration, however the state government has refused to take this fact into

account and in turn has declared all such individuals as foreigners under the Act.

- 43. Further, there is qualitative difference between those who are foreigners' as opposed to the 'detected foreigners', as the person against whom the Tribunal has rendered an opinion has both; a) an options of appeal and b) order of the State Government subsequent to the opinion. In such a scenario a DFN cannot be conclusively treated as a foreigner for the purpose of section 3 of the Foreigners Act, 1946.
- 44. That the legal validity of the procedure of detention of the foreigners itself seems to be vague and ambiguous as the Foreigner's Tribunal only render a non-conclusive opinion. In the case of Maneka Gandhi v. Union of India, reported in AIR 1978 SC 597, it has been held that law cannot prescribe some semblance of procedure, however, arbitrary or fanciful, to deprive a person of his personal liberty. The procedure cannot be arbitrary, unfair or reasonable. In treating the opinion as a declaration and thereby considering it to make an order under Section 3 of the Foreigners Act, 1946 is arbitrary and unreasonable and thus violate of Article 21 of the Constitution of India. One of the primary grounds for illegal detention is where the detention is without any authority of law. As has been laid down under Article 21 of the Constitution of India, liberty can be curtailed only in accordance with the procedure established by law, it is undoubted that some law of the land must authorise detention, otherwise the same would ex-facie be illegal. In the case of the DFNs, it is not clear on which basis detention is carried out merely on the basis of an opinion of the Tribunal.
- 45. In Ram Narayan Singh vs. The State of Delhi and Ors reported in 1953 S.C.R. 852, the Hon'ble Supreme Court observed that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observed the forms and rules of the law. It was a case in which a Writ of Habeas Corpus was filed on the ground that the remand of the detenu was bad. The Court

allowed the Writ of Habeas Corpus and directed release of the detenus. It is no doubt true that the Court will not normally interfere with the day-to-day operations of the State during investigation, but improper remands and unnecessary detention in jails ought not to be countenanced on the grounds of alleged discipline and security.

- 46. That records have revealed three differing sets of procedures which are being adopted by the detaining authorities for handing over custody of the declared foreigner national subject to a finding/opinion of the Foreigners Tribunal. These are:
 - a) In several cases, proceedees with opinions from the Foreigne's Tribunals against the have been summoned to the office of the Deputy Commissioner of the concerned district and detained.
 - b) In certain other cases, the Superintendent of Police (Border) of the concerned district has taken proceedees into custody ostensibly under the provisions of the Foreigners Act, 1946 read with the 1964 Order.
 - In another set of cases, the Foreigner's Tribunal itself has
 directed remand of the proceedee into custody.

Therefore different procedures of detention are being followed in the notified detention centres in the absence of a valid specified procedure in accordance with the law stipulated for the DFNs. The same deserves to be struck down on the principle ground that it is violative of Articles 14 and 21 of the Constitution of India.

47. That the right to fair trial has been interpreted to be one of the implicit rights contained within the Right to Life as enshrined under the Constitution of India. As a minimum, the right to fair trial therefore inter alia includes the right to be heard by a competent, independent and impartial authority, the right to be heard within a reasonable time, right to counsel, etc. In accordance with the underlying principles of the right to fair trial, clause 3 of the 1964 Order makes it incumbent on the Foreigners Tribunal, on receiving a reference, to serve on the person to whom the question relates (hereinafter referred to as the proceedee), a

copy of the main grounds on which he is alleged to be a foreigner and give him a reasonable opportunity of making a representation and producing evidence in support of his claim.

- 48. It is submitted that no such notices clarifying the grounds, which form the basis of the reference, are being communicated to the DFNs. The notices, which are routinely being served on such proceedees, merely stipulate the date and time of appearance before such Tribunals along with written objections and trustworthy documents. A true typed copy of one such notice issued by the Foreigners Tribunal, Bongaigaon, Borpara, Ward No. 5 dated 12.12.2014 is annexed hereto as Annexure A-13 [Pg No. 168-].
- 49. Most DFNs are unable to engage private lawyers and challenge the validity of the illegal and vague notices being received by them. The procedural lapses therefore go unnoticed and unchallenged, effectively denying the DFNs their basic and fundamental right to fair trial. Even for those minimal number of the detainees who have engaged private lawyers, they do so at the cost of heavy financial loss and insolvency. The communication with counsel is extremely limited due to various reasons like lack of comprehension of the judicial process and the fact that often lawyers based in Guwahati are contact. Through relatives.
- 50. That the issue is compounded by the fact that Section 12 of the Legal Services Authority Act, 1987 which outlines the criteria for providing legal services does not enlist the category of DFNs. Section 12 is produced hereinbelow:

"S.12 of the Legal Services Authority Act, 1987 provides:

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is-

(a) a member of a Scheduled Caste or Scheduled Tribe;

(b) a victim of trafficking in human beings or beggar as referred to in Art.23 of the Constitution;

(c) a women or a child;

(d) a person with disability as de fined in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996)

(e) a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic, violence, caste atrocity, flood, drought, earthquake or industrial disaster; or

(f) an industrial workman; or

(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or

[(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court."

- 51. That according to the authorities vested with the responsibility of implementing the scheme of legal aid under the said act, the above provision therefore limits the jurisdiction of the District Legal Services Authority from providing legal aid to DFNs. In certain instances, members of the District Legal Services Authority have themselves expressed their helplessness at the condition of the DFNs and have made verbal representations before the Assam State Legal Services Authorities seeking guidelines and directions for providing legal services to such detainees.
- 52. It is however important to mention that the foreign nationals detained in the correctional homes include a significant number of women and children who are covered under Section 12(c) of the said Act and therefore the interpretation given by the Legal Service Authorities in the State of Assam is not consistent with the provision of the Act and has therefore resulted in denying effective free legal services to a huge proportion of the DFNs. It is therefore humbly submitted that this Hon'ble Court be pleased to issue a specific direction to the Legal Services Authorities of the State of Assam to carry out their mandatory duties under Section 12(c) of the said Act.
- 53. Moreover, free legal aid is a guaranteed fundamental right under Article 21 of the Constitution of India, which is available to any person, including a non-citizen, and evidently therefore the interpretation sought to be given by the regal Service Authority in the State of Assam is in clear violation of Article 21 of the

Constitution of India. This Hon'ble Court in State of Maharashtra v. Pragaji Vashi reported in AIR 1996 SC 1 held that:

"The right to free legal aid and speedy trial are guaranteed fundamental rights under Article 21 of the Constitution. The Preamble to the Constitution of India assures 'justice, social, economic and political'. Article 39A of the Constitution provides 'equal justice' and 'free legal aid'. The State shall secure that the operation of the legal system promotes justice. It means justice according to law"

- 54. The lack of legal aid among the declared foreign nationals is violative of Article 21 of the Constitution of India.
- It is submitted that the Applicant has perused the records of 55. various writ petitions filed before the Guahati High Court. It is found from a mere perusal that the defense of the DFN's has been seriously compromised in a lot of cases because of ignorance and/ or negligence of the counsels appearing for the defense in the Tribunals for which the detainees have been highly prejudiced. The Applicant has received further allegations that in spite of having received substantial payments, counsels, in a number of cases, have failed to paper at the time of hearing or have not exhibited. proper documents which were made available to such lawyer on behalf of the detainees. From the records of such proceedings, a trend has developed whereby the defense lawyers have simply exhibited certain documents and have failed to produce witnesses from the native villages who could have deposed as regards the citizenship claims of such detainees. It is submitted that on the basis of such inadequate defense, it was incumbent on the various Foreigners Tribunals to ensure a fair trial and direct the compliance of an adequate legal representation for the detainee. Under the stringent provisions of the Act the burden of proof is on the alleged proceedee and it is therefore required under Article 21 of the Constitution of India to ensure effective legal representation to the proceedee by the Tribunals, which has not been made effective in the State of Assam.
 - 56. That the case of one Kaibut Ali, who has been detained in Jorhat, for the past 16 months, is instructive in this context. It was informed to the Applicant that no notice was served to him from the Foreigner's Tribunal. Even though his wife, Maharjaan Begum,

often visits him in the camp, things in his family have not been easy which consists of his widowed mother and five children. Kaibut has no knowledge of whether his name has been included in the National Register of Citizens (NRC) and claims that he has also voted in the elections post 2001. Despite owning some land in Barpathar, Ali's family is financially struggling as the cost of this litigation has gone up to Rs. 76,000. Regardless of all the expenses paid for legal representation, Ali was not completely aware regarding which stage his trial at the Jorhat Foreigner's Tribunal was and had no knowledge of his next date for hearing. In another instance, Md. Asadullah, who is presently lodged in the Jorhat Detention Centre claims that when his case was in trial at the Foreigner's Tribunal in Golaghat, his case had continued for five years. But when the case was shifted to Jorhat, he had appeared twice on summoned dates and even then, the order declaring him as a foreign national was passed ex parte. While, the law mandates that the procedure of the reference case is to be concluded within 60 days under Section 3(14) of the 1964 Order, in the Applicant's observations from the narrative within the notified detention centres, it is apparent that this procedure is not being precisely adhered to. Thus, the detainee's right to be heard by a competent, independent and impartial authority, within a reasonable time has been violated.

57. In another case one Subhas Chandra Roy, 57 years, was first served a notice from the Foreigners Tribunal, Nalbari but he alleged that this case was on trial before he was served the notice. According to the notices served, Roy would appear on dates fixed. He alleges that the Magistrates were never present to hear his case, he was told that he'll be served another notice when from the court but that notice was never served. A year later he was asked to submit certain documents by the tribunal which include: LP school certificate from 1969, SEBA HSLC certificate from 1977, Gauhati University under-graduate course registration Certificate, his PRC, Father's NRC from 1951, SC certificate from 1977. A notice did arrive from Tamulpur but that was past the last date that was mentioned on the notice to appear before the tribunal. Later, he alleged, the case was argued ex parte. Since then he is in

detention and has not been able to afford any lawyer to take up his matter. He alleges that his case is not being taken up by the statutory Legal Service Authorities.

- 58. The right to have access to legal representation is also concordant with international standards of detention as for example the UNHCR Guidelines on Detention which in Guideline 7, paragraph 47 (ii) provides that free legal assistance should be provided where it is also available to nationals similarly situated, and should be available as soon as possible after arrest or detention to help the detainee understand his/her rights. The UNHCR Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum-Seekers and Alternatives to Detention contend that detention must be a measure of last resort. It must be shown in the light of the present circumstances of the persons concerned that there were not less invasive or coercive means of achieving the same ends. In Guideline 4.3, para 39, several measures have been provided which may serve as alternatives to detention. These include registration/deposition of documents, designated residence, community release/supervision, reporting conditions, electronic tagging and home curfew. It also stipulates that the principle of minimum intervention must be the guiding principle for States in designing alternatives to detention.
 - 59. However, in the case of the declared foreign nationals and the convicted foreign nationals in Assam, it is quite clear that alternatives to detention have never been considered substantially in practice. While the scope of the Guidelines in para 4 limits its ambit to detention of asylum-seekers, refugees and other persons seeking international protection on immigration related grounds, it also provides that many of the standards laid down in the report which are applicable mutatis mutandis to persons found not to be in need of international protection or other migrants.
 - 60. That the ex-parte orders passed by the tribunals violate one of the cardinal principles, i.e., audi alteram partem. When a person's citizenship is in question, it threatens the very legality on the basis of which his entire family claims rights. Thus, the procedure where

the citizenship of a person is tested, should be such that it gives the person a fair opportunity to prove his case. Instead of that the procedure is such that it violates the principles of fair trial and thus is ultra-vires to the Constitution of India.

ISSUE OF DOCUMENTS AND INDEFINITE PERIOD OF INCARCERATION

- That the average years of incarceration for the detainees in the 61. notified detention centre is 8 years and 6 years at Central Jail, Tezpur and Central Jail, Jorhat respectively. It can be easily surmised that a large cross-section of these detainees have been denied the right to fair and speedy trial and are still languishing in the notified detention centres. It is also pertinent to mention that the multiplicity of documents, which are necessary to prove citizenship under the current legal framework, creates further confusion among detainees. For example, a large number of detainees are under the impression that the printed slip containing the NRC Legacy data code is definitive as proof of citizenship. This is compounded by the fact that the districts like Dhubri, Morigaon, Goalpara, etc which are the home districts of a large number of the detainees display relatively low literacy rates in contrast to very high rates of population growth.
- 62. In another instance, one Rina Mondal, aged 38 years, detained presently in Central Jail Jorhat, informed the Applicant that it was her mother who was declared a foreigner in 2003 because of certain ambiguity related to her name as recorded in the school register. Mondal was of the view that the case was dismissed because no notification was issued after her mother's death. Mondal's family was originally from Tinsukia and she was married into another family and shifted to a town called Doomdooma within Tinsukia. She was declared D-voter as a result of the case against her mother and was asked to submit the latter's death certificate by the police officials in Doomdooma. On the day that she submitted the certificate Mondal was escorted from the police station to the Deputy Commissioner's office and then to jail. Mondal adds that she was not even allowed to go to her residence

to let her husband know about the case. The manner in which Mondal, in the instant case, was confined and detained clearly violated the rights guaranteed to her under the guidelines laid down in the case of D.K. Basu v. State of West Bengal reported in AIR 1997 SC 610, which stipulates that 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, is entitled to have one friend or relative or other person known to him or having interest in his welfare be informed, as soon as practicable, that he has been arrested and is being detained at a particular place. The arrested person or detainee is also entitled of being made aware of this right to have someone informed of his arrest or detention. This requirement as a right of the arrested person or detainee was also discussed in an earlier case of Joginder Kumar v. State of U.P. reported in (1994) 4 SCC 260.

- 63. The confusion with respect to the documents is exacerbated by the fact that there has been substantial litigation in this area. The prime example of this situation is the issue with regard to the validity of the certificate issued by the Gram Panchayat Secretary. A Division Bench of this Hon'ble Court in Rupajan Begum v. Union of India. C.A. No. 20858 of 2017 dated 05.12.2017 held that the certificate issued by the Gram Panchayat Secretary is not a proof of citizenship even though it can be used as a 'supporting document' for claims of inclusion in the National Register of Citizens. Often such decisions passed by the Hon'ble Supreme Court and Hon'ble Gauhati High Court do not percolate down clearly to the grassroots.
- 64. Reference in this regard may also be made to the UNHCR Guidelines specifically Guideline 6 which establishes that indefinite detention is arbitrary. This has been considered as a principle of international human rights law. The guidelines provide that detention should not be for any longer than necessary, and to guard against this arbitrariness, definite maximum periods of detention must be set in the national legislations, without which detention can become prolonged and in some cases indefinite.

- One of the primary concerns for the DFNs in the notified detention centres of Assam is that there is virtually no statutory yardstick by which they can gauge the period of time they would remain incarcerated. The Applicants have learnt that in Goalpara Detention Centre 33 persons, who are DFNs and are currently lodged in Goalpara District Jail cum Detention Centre, have been issued travel permits by the Assistant High Commissioner of Bangladesh vide letter No.GT/022/18/002, dated 08.05.2018. The travel permits have a validity period of 3 months but in order to deport these people from the Detention Centres, a permit is needed from the Home Ministry which normally takes a long time to get issued thus furthering the detention of the DFNs.
- The Supreme Court has held in the Sunil Batra v. Delhi 66. Administration reported in (1978) 4 SCC 494 that constitutionally viewed, punitive deprivation of personal freedom must be goal oriented and humanely restorative apart from being deterrent. In the case of Phul Singh v. State of Uttar Pradesh reported in (1979) 4 SCC 413, the Hon'ble Supreme Court held that reformation and reintegration are the primary objectives of punitive imprisonment. Thus, continuous imprisonment is neither the vision nor the objective behind imprisonment. As per the Applicant's investigations, there are families in the detention centre in Central Jail who have been detained for the past ten years or more. The purpose behind the establishment of the Detention Centres, as mentioned in the 1964 Order, is to detain them until they are deported to their country of origin. But Government of Bangladesh has time and again made it clear that they are not going to accept persons declared as DFNs by the Foreigners Tribunals. According to the Government of Bangladesh, the DFNs still claim that they are Indian Citizens. In such circumstances, the DFNs seem to be caught in a loop between the Indian and Bangladesh Governments. While the Indian Government claims that they are of nationals of Bangladesh, the Government of Bangladesh is not ready to accept the same. As a result, they remain detained indefinitely.
- 67. Reference in this regard may be made to the case of one the case of Sambhu Ali alias Zahangir Alem who came into India through

- An important facet of the deportation issue is the case of the 69. convicted foreign nationals who are also facing indefinite incarceration. However, since they have claimed themselves to be foreign nationals in the course of their trial through the ordinary criminal system, the Government of the People's Republic of Bangladesh accepts these persons after checking the authenticity of their claims of being Bangladeshi Nationals. Once the scrutiny is complete, the Government of Bangladesh issues them visas and travel permits. The case of Muslim Rohingyas, who are also detained in the detention centres, also deserves to be considered. As has been mentioned earlier, there are 18 Rohingya Muslim. refugees from Myanmar in the Central Jail, Tezpur. However, their legal status remains unclear and therefore they continue to face indefinite detention. The impugned notifications of Government of Assam mandate that the notified Detention Centres are to keep the foreigners immediately on declaration as such foreigners by the Foreigners Tribunals till such persons are deported to their place of origin. It is submitted that since there is no time frame, these declared foreigners, are resigned to incarceration for an indefinite period of time.
- The case of Md. Ayash is a pertinent example of the Rohingya 70. perspective of the indefinite detention issue. Md. Ayash, detained in Central Jail, Tezpur, is a Rohingya Muslim and had entered India through Manipur and claims that he was on his way to the refugee camp of the UNHCR in Delhi. He left Rakhine in Myanmar along with his family after the violence of 2013. 18 other Rohingya Muslims are also detained here in the jail even the abovementioned decision of the Hon'ble Gauhati High Court in W.P(C) 2745/2014 delivered on 04.01.2017, that mandates their transfer to the refugee camp in Delhi. He mentions that there are close to 40,000 people in these camps but the 18 are confined within this jail due to an order of the Assam Government even after they have been provided asylum by UNHCR in Delhi. He points out that they have preferred a contempt petition (449/2017-18) against the noncompliance of the High Court order:

71. Thus, in consideration of the above-mentioned facts, it is apparent that the DFNs in the notified detention centres of Assam face indefinite incarceration, which is not just bad in law but also demeans the objectives and purpose behind incarceration as envisaged by the law in India.

DETENTION IN SEPARATE DETENTION CENTRES AND SEPARATION OF FAMILY UNITS

- That one of the resultant condition of the DFNs in the 72. notified detention centres of Assam is that of separation of families. During visits made to the centers, the Applicant has personally interacted with several detainees who have been separated from their families. The problem is caused by the separation of families either due to detention in separate detention centres or children living outside the detention centre, the same has also been noted in the Report authored by Mr. Harsh Mander in his erstwhile capacity as Special Monitor for the National Human Rights Commission (hereinafter referred to as NHRC). The Report has documented several cases including the case of Subhas Chandra Roy (supra) who has also been documented by the Applicant According to the report, he made a written representation to the NHRC stating his grievances, however, no action has been forthcoming as yet. That it is not within the knowledge of the Applicant whether the said report dated 23.06.2018 has been accepted by the NHRC. A copy of the Report dated 23.06.2018 on NHRC Mission to Assam's Detention Centres from 22-24.01.2018 is annexed hereto as Annexure A-14. [Pg No. 169-205].
- 73. That the primary reason for the separation of families is that all members of a family may not be declared as foreigners by the Tribunals simultaneously. Often a mother may be a declared foreigner consigned to a detention centre while her husband and children (above the age of 6 years) may be leading normal lives. Further, only children up to the age of 6 years can be admitted to the prison under Rule 882 of the Rules for Superintendence and Management of Jails in the State of Assam if they cannot be placed with relations or otherwise properly provided for. The Rules also

places the onus upon the District Magistrate for making alternative arrangements once the child attains 6 years and cannot stay within the prison any longer. The provisions of the Assam Jail Manual are applied upon the declared foreign nationals becoming another source for the separation of family units.

- An example of such a case is of Harila Khatun lodged at the detention centre in Central Jail, Tezpur. She stated that she travelled from Bihar with her husband. Despite having all the necessary documents like Ration Card, ID Card, Aadhaar Card (all of which she had submitted to her lawyer), she has been declared a D-voter by the Election Commission of India. She mentions that her husband and her parents have no issues with their documents and only she has a case against her. Apparently, her house was burnt down in an accident and because she had been declared a D-voter she could not claim anything from the state. Her family is still in Satiya (Sootea) and it was the Foreigners Tribunal in Satiya (Sootea) that declared her a Foreign National. Records suggest that no appeal has been preferred before the High Court. Be it noted here that the notified detention centre in Central Jail, Dibrugarh accommodates only male inmates whereas Central Jails of Jorhat and Tezpur would accommodate both male and female inmates. In such a case, male and female members of the same family may be assigned to different detention centres.
- 75. That by Notification No. MU/NRC/HC-FT/537/2018/15 dated 02.05.2018 in furtherance of the decision of Hon'ble Gauhati High Court in W.P(C) No. 360 and No.1610 of 2017, the state government directed the Superintendent Police (Border) to make references of brothers, sisters and other family members of Declared Foreigners to the Foreigner's Tribunals. Their names are not to be included in the NRC until finalization of such references: This notification was recently challenged before the Hon'ble Gauhati High Court in Azizul Haque v. Union of India in WP (C) 3432/2018. The Hon'ble Gauhati High Court vide its Judgment dated held that there was no error or infirmity with the notification. However, judgement dated 02.05.2017 passed in W.P(C) No. 360 and No.1610 of 2017 from which Notification No.

MU/NRC/HCFT/ 537/2018/15 draws reference is presently under challenge before the Hon'ble Supreme Court in Assam Sanmilita Mahasangha v. Union of India, WP (C) No. 562 of 2012.

- 76. That one of the ramifications of the detention conditions of the DFNs is their children cannot remain in the detention centre beyond the age of 6 years according to the provisions of the Assam Jail Manual. This has unwelcomed manifestations in the growth and development of the child whose education may be impeded due to the lack of proper guidance from parents. Secondly, once a child is separated from the parents there is increased scope for exposure to criminality which might potentially result in delinquency. In cases where the sole breadwinner of the family, in most cases the father of the child is himself lodged in the detention centre thereby bringing financial uncertainty on the child's future have encountered several cases where children requiring care and guidance have to forgo such rights due to their parents being detained in correctional homes. One such example is the case of Rabiya Begum, who has been detained at the Central Jail at Jorhat for the past three years. In her family, it was only her ailing husband Sunti Ali, who is also detained in Jorhat, and Rabiya who were declared as foreign nationals. Her three sons Sajikul Ali (age 18), Asikul Ali (13 years) and Sobikul Ali (11 years) live in Golaghat without the supervision of any other adult. Out of her three children, only one is a major and they have been living in Golaghat, separated from their parents, without any care being given to them. While giving her representation, Rabiya broke down in tears as she stated that her children's education had come to a grinding halt due to her detention.
 - 77. That Rabiya's case is not an isolated incident and similar instances can be found in all the detention centres. Jarina Begum, another DFN in Jorhat, has been detained in the jail for the past two years. Her son (6 years) is disabled and was entirely under her care till she was arrested. Her daughter, Marjina Begum, for whose education Jarina has worked hard is now a graduate but cannot look for a job as Marjina has to look after her brother. Chand Mohan Goswami, detained in Goalpara, had moved to Howli,

Barpeta from Guwahati, where he once owned a shop, after his wife's death along with his two minor daughters where he worked as a daily wage labourer. Goswami has not seen his daughters and has no knowledge of their whereabouts since the time of his arrest. Expressing his fear for their safety, Goswami hopes for the day when he will be allowed to leave the detention centre so that he can track down his daughters.

- That the Central Jail, Jorhat, in their reply to an RTI filed by the 78. Applicant, dated 05.07.2018, stated that 3 male and 2 female children of the DFNs are residing within the detention centre of the jail with their mothers in the female ward. These children are all below the age of 6 years. As per the procedure indicated in the reply dated 06.07.2018 once a minor cross the threshold age, they are handed over to the family members of the child (if they are willing to adopt the child). In case there are no family members available to undertake the custody of the child, he/she is handed over to the Children Home. This procedure is only followed after necessary orders are received from the appropriate authority. However, since all the children of the Declared Foreign Nationals are under the age of 6, the Jorhat Central Jail authorities have not employed this procedure yet. Furthermore, the information regarding the number of Children Homes that are attached to the detention centres and the conditions of such Children Homes is currently unavailable. Hence, the practicability of this procedure is still ambiguous. A copy of the RTI reply dated 06.07.2018 is annexed hereto as Annexure A-15. [Pg No. -206-].
 - 79. That the problem is compounded manifold in the case of the Rohingya children who do not have guardians outside the detention centre who could provide for them. The socio-political and economic circumstances of their detention may also contribute to exposure to potential criminality or radicalisation. It is therefore imperative that this situation is handled seriously.
 - 80. These instances indicate that the violation of the rights of these children under the Rights of Children to Free and Compulsory Education Act, 2009. They do not receive the protection and care of

their families during these formative years either. Most of these children are not under any system of foster care or supervision, thereby increasing the risk of exposure to delinquency. The Convention on the Rights of the Child, (CRC) 1989, which was acceded to by India on 11.12.1991 postulates that every child, regardless of its nationality, immigration status or statelessness shall be treated by the State Parties within whose jurisdiction the child resides without any discrimination.

- Furthermore, the convention also mandates the protection of the 81. best interests of the child while providing the child its right to life, survival and development. The child's right to family unity has also been recognized in Article 5, 8 and 16 of the Convention on the Rights of the Child which has been ratified by India. Article 9 of the Convention also recognizes the child's right not to be separated. from their parents against their will. Article 20(1) of the Convention also provides that a child who is temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the state. As there exist no framework for the prison staff regarding the administration of these DFN, there also exists no specialised framework or regulations for the treatment of minor children whose parents are declared foreigners. The report submitted by Office of the United Nations: High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration addresses this vacuum. In its finding, the OHCHR asserts that a well-defined perspective into the special needs and vulnerabilities of children are often overlooked when policies are formulated to regulation national migration and the attached legislations, due to the assumption, that these policies operate under, that all or most migrants are adults.
 - 82. That the Committee on the Rights of the Child, established under the United Nations Convention on the Rights of the Child to regulate and monitor its implementation, in its General Comment No. 6 on the "Treatment of unaccompanied and separated children

outside their country of origin" provides for a comprehensive direction to the Party States and other stakeholders, including assigning a guardian or a legal representation to such children, and such assigned guardian much be well equipped to safeguard the best interests of the child.

That in the recent judgment passed by the United States District 83. Court in the Southern District of California, in the case of Ms. L.; et al v. U.S. Immigration and Customs Enforcement ("ICE"), Case No.: '18cv0428 DMS (MDD); this issue of children being separated and detained from their parents was discussed extensively. The Court addressed the concern that detention of an alien child and separation of families poses a serious risk to the child's welfare. Asserting that the State acting within its powers to detain individuals lawfully and apprehending those who illegally enter the country are well within its administrative powers, the Court declared that in spite of these powers, the right to family integrity is still mandatory for the detainees. The fact that no due procedure had been applied in the context of this case to (a) track the children after they had been separated from their families, (b) establish communication between the separated parents and their children, (c) reuniting the parents and children after they had served their criminal sentence, was condemned by the Court as a 'startling reality'. In our observations, in the detention centres of Assam, there are several instances similar to the situation of separation of families at the US border.

ISSUES OF ILLEGALLY DETAINING MENTALLY DISABLED DFNs

84. That there are various provisions under the Prisoners Act, 1900 and the Assam Prisons Act, 2013 which provide for the treatment and removal of mentally ill prisoners to mental asylums in the State. In Sheela Barse v. State of Maharashtra, reported in (1987) 3 SCC 373 wherein the Hon'ble SC stated that people suffering from mental health issues should be taken proper care of and should be subjected to adequate treatment and if required sent to mental health hospitals. Copy of the relevant extracts of the Prisoners Act,

1900 and the Assam Prisons Act, 2013 are annexed hereto and marked as Annexure A-16. [Pg No. 207-209].

- 85. That during the visits, as noted above, the condition of mentally ill inmates was found to be poor, in general, in various correctional homes of Assam. To that effect, a Public Interest Litigation titled Studio Nilima: Collaborative Network for Research & Capacity Building v. State of Assam numbered as PIL 55 of 2017 has been preferred before the Hon'ble Gauhati High Court. The affidavit filed by the Government of Assam dated 09.02.2018 in the said PIL demonstrates that a large section of people with mental health problems are incarcerated in the prisons.
- That the relation between prison environment and the debilitating 86. effect it has on the mind is well documented. The nature of their detention and the lack of any trained medical/clinical expertise is a fertile ground for mental illness among the DFNs of the notified detention centres. Absence of trained in-house counsellors and psychiatrists attached to the jails is a perennial feature across all the centres that have been visited. This is a contravention of the directions issued in the judgement dated 15.09.2017 in Re-Inhuman Conditions in 1382 Prisons by the Honble Supreme Court. In point 5 of para 57, the Court directs State Governments to appoint counsellors and support persons for counselling prisoners. A copy of the judgement dated dated 15.09.2017 in Re-Inhuman Conditions in 1382 Prisons, WP(C) No. WP (C) 406 of 2013 by the Hon'ble Supreme Court annexed hereto and marked as Annexure A-17. [Pg No.210-251]
- 87. That in the case of DFNs, none of the above-mentioned rules and regulations are followed. Since they are neither treated as convicts or under trial prisoners and since these are no other guidelines made available for their detention period. This has serious paralyzing effect on the mental health of such declared foreign nationals, particularly women detainees. This fact has also been emphasised in Mr. Mander's Report (supra) to the NHRC. Records officially attained from the Jail Authorities indicate the number of mentally ill detainees undergoing treatment at Lokapriya Gopinath

Bordoloi Regional Institute of Mental Health, Tezpur to be 58 as on 31.05.2018. A copy of the record of the number of mentally ill detainees undergoing treatment at Lokapriya GopinathBordoloi Regional Institute of Mental Health, Tezpur is annexed hereto and marked as Annexure A-18. [Pg No.-252-].

88. That during the Applicant's visit to Tezpur Detention Centre the Applicant came across a woman detainee, among several other cases, who is suffering from serious mental disability, which according to other inmates was developed in course of her indefinite incarceration. It is submitted that separation of family members, no knowledge about their whereabouts often leads to irreparable mental damage. On the contrary, because of the lack of a legal regime to regulate the DFN's, they are not provided the facilities which other mentally ill prisoners are provided according to the laws, rules and regulations. Continued incarceration of the mentally ill inmates in the correctional homes and lack of proper medical care and attention have greesly affected the mental conditions of such persons and if immediate steps in terms with the rules are not taken the same would exacerbate the situation.

FINANCIAL & INFRASTRUCTURAL CONSTRAINTS ON JAIL ADMINISTRATION.

- 89. That the impugned notifications which provide for detention of DFNs and its subsequent notifications, have cast an additional burden on the prison authorities. It is essential to note that this state of affairs leads to the existing resources, from funds to infrastructure, being split among the inmates and the DFNs. In the absence of any extra funds from the Government of India, the prison authorities are placed in a difficult position of fending for hundreds of additional detainees with the same resources. This has direct ramifications on both infrastructural conditions and human rights of the DFNs as well as other inmates.
- 90. To cite one example, both the notified detention centres in Tezpur and Goalpara have no segregation between detainees of the detention centre and the inmates of the correctional homes for lack

of space. For much the same reasons, common areas are shared between detainees and inmates across all the detention centres we visited. To that effect, the Applicant have been informed that the Central Jail, Tezpur has preferred a representation to the Assam State Legal Services Authority. The corollary to this situation is that the effect of this funds crunch with respect to infrastructure and general amenities are felt by the inmates and the DFNs in the notified detention centres. Funds are allocated by the Home Department, Government of Assam for the administration of jails in Assam. The Inspector General of Prisons, Assam, which receives the actual allocation, then disburses it to the individual jails. A copy of minutes of the Under Trial Review Committee, Sonitpur, Tezpur obtained through RTI held on 25.02.2016 and similar resolution passed on 29.09.2016 is annexed hereto and marked as Annexure A-19. [Pg No. 253-257].

According to the Audit Report on Social, General and Economic (Non- PSUs) Sectors for the year caded 31.03.2016 of the Comptroller and Auditor General of India, in the period from 2011-12 to 2015-16, the total provision of funds for the administration of jails was Rs. 322.54 crore 47 In the visits, most Superintendents and Jailors have pointed to the lack of funds being disbursed to the jails. However, in spite of these contentions, the savings from the allocation amounted to Rs. 49.15 crores. All the notified detention centres that have been visited by the team have complained about the long-drawn process for allocation of funds for infrastructure improvement both for the inmates and the jail authorities. This situation also percolates to the condition of the DFNs who are lodged in the same detention centres. Taking into consideration the current state of the Dins where they do not have access to any means of self-sufficiency, the Government of India is duty bound to provide certain minimum standard of living to the foreign nationals, so that their right to live with dignity under Article 21 of the Constitution of India is not violated.

- 92. That as is evident from the above submissions, India has no specific bilateral agreement with Bangladesh on the issue of illegal migrants or deportation till date. In such a case, the detention of the DFNs, who are allegedly Bangladesh nationals, is almost indefinite as the deportation process becomes extremely long drawn. This also implies that the stay of the DFNs in the notified detention centres is inevitable in the absence of alternative arrangements. Such a situation naturally presents conditions of human rights violations. The overburdened jail administration is also placed at a precarious position due to lack of state funds, facilities and regulations to deal with this sudden responsibility of accommodating a class of people who are neither convicts nor undertrial prisoners.
- 93. That the State of Assam is placed at a critical juncture with the final draft of the National Register of Citizens due on 30.07.2018. It is definite that lakhs of persons who and applied for inclusion of names in the NRC would be delisted in the final draft NRC. Such persons will be required to file their claims before the Foreigners Tribunal and on disposal of such claims and/or objections; the final NRC is scheduled to be released in December 2018. This opens up the prospect of lakhs of persons who would be required to be detained as DFNs, who in absence of appropriate detention centres, would be detained in various notified detention centres within the State of Assam. Hence the problems highlighted hereinabove, will increase manifold and therefore a huge human rights crisis is imminent. This is because the total capacity of all the correctional homes in Assam amounts to a meager 8888 according to the website of the Inspector General of Prisons, Assam. On the other hand, the separate detention facility that has been proposed in the Dakurbhita area of Goalpara district is envisaged as a 3000-seater facility. All of these facilities put together would not be able to accommodate even a tiny fraction of the projected number of detected foreigners if the Government of Assam follows the present stance with respect to detention as reflected in its notification. Moreover, accommodation of the DFNs in correctional homes itself would amount to illegal detention in violation of Article 21 of the Constitution of India.

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- 94. As has been noted earlier, the indefinite incarceration of the foreigners through a process which has several legal lacunae is a violation of the procedural due process guaranteed to persons under Article 21 of the Constitution of India. The detention of DFNs in notified detention centres, some of which are already suffering from perennial overcrowding is a violation of human rights. It is also a fact that such detention leads to an environment within the correctional homes, which have the potential to fuel communal tensions due to the existing socio-political realities. In the closed environs of a correctional home where most of the DFNs feel aggrieved and frustrated, volatile situations may quickly escalate into law and order situation which the under staffed authorities would find difficult to handle.
- 95. In fact, there is ample evidence that this frustration is already at boiling point. On 13-14.11.2017, 150 convicted foreign nationals at the detention centre in District Jail, Goalpara went on an indefinite hunger strike demanding that their requests for deportation be urgently processed. In March, 2018, the DFNs in the detention centre at Goalpara also staged an indefinite hunger strike with a slew of demands which included transfer to their native district so that their families do not have to travel extremely long distances.
- 96. That the Applicant is left with no other remedy than to approach this Hon'ble court seeking necessary directions to the state government regarding conditions of the DFNs.
- 97. That this application is bona fide and made in the interest of justice.

PRAYER

In view of the above, it is most respectfully prayed that this court:

a) Set aside and quash Notification. No.PLB.149/2008/88 dated 17.06.2009 issued by the Home and Political Department, Government of Assam, Notification No.PLB.121/2015/44 dated 24.09.2015 issued by the Home and Political Department,

Government of Assam, Notification No.PLB.149/2008/50 dated 01.12.2009 issued by the Home and Political Department, Government of Assam and /or any other notification issued by the Home and Political Department, Government of Assam notifying the correctional homes of Central Jail, Tezpur, Jorhat, Dibrugarh and Silchar and the District Jails of Goalpara, Kokrajhar as detention centres for declared foreign nationals;

- b) Direct the State Government of Assam as well as Central Government to take immediate steps to expedite the process of deportation of the DFNs situated in the notified detention centers;
- c) Direct the State Government of Assam that pending the deportation of the Declared Foreign Nationals, they should be housed in facilities which are separate from the general prison population;
- d) Direct the State Government of Assam that pending the deportation of the Declared Foreign Nationals, they should be provided basic amenities in accordance with their rights under Article 21 of the Constitution of India, including, but not limited to, adequate dietary allowance, entitlement to parole/leaves, entitlement to communicate with their family members, etc.;
- e) Declare that the continued indefinite incarceration of declared foreign nationals in the correctional homes of Assam namely the Central Jails of Tezpur, Jorhat, Dibrugarh and Silchar and the District Jails of Goalpara and Kokrajhar is unconstitutional and invalid;
- f) Direct the Central Government and the Government of Assam to provide living conditions to the declared foreign nationals in accordance with their rights under Article 21 of the Constitution of India and also in accordance with the International Conventions particularly Convention on the Rights of the Child, 1989, UNHCR Guidelines on the Applicable Criteria and Standards Relating to the Detention of Asylum Seekers and Alternatives to Detention, the Body of Principles for the Protection of all Persons under any Form

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of Detention or Imprisonment adopted by General Assembly Resolution 43/173 dated 9.12.1988, and other internationally accepted principles;

- g) Direct the Central Government and the State Government of Assam to frame appropriate guidelines for providing free legal services to the declared foreign nationals;
- h) Direct that declared foreign nationals shall be entitled to legal services under Section 12 of the Legal Services Authority Act, 1987;
- i) Direct the constitution of a High Powered Committee comprising of retired Judges of the Hon'ble Supreme Court of India for monitoring the detection, detention and deportation of the declared foreign nationals in the State of Assam in accordance with Article 21 of the Constitution of India; and
- j) Direct the Central Government and the Government of Assam to make adequate and specific allotment of funds for the accommodation of the declared foreign nationals in humane conditions; and
- k) Pass any such further and other order that this Hon'ble Court may deem it fit in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

Filed by:-

(V. SHYAMOHAN)
Advocate for the Applicant

Dated:- 31.07.2018 Place: New Delhi

IN THE SUPREME COURT OF INDIA ORIGINAL CIVIL JURISDICTION I.A. NO. OF 2018

WIT PETITION (CIVIL) NO. 406 OF 2013

IN THE MATTER OF

Re-Inhuman Conditions in 1382 Prisons

AND

IN THE MATTER OF:

Studio Nilima
Collaborative Network for Research and Capacity Building
Through Abantee Dutta, Co-Founder and Director
C-I, Damayanti Mansion Satyanath Bora Lane
Dighalipukhuri East, Dist. – Kam (M)
Guwahati – 781001, Assam
...APPLICANT/INTERVENER

AFFIDAVIT

- I, Abantee Dutta, d/o Niley Dutta aged about 38 years, R/o C 1, Damayanti Mansion, Satya Bora Lane, Dighalipukhuri East, Guwahati 781001, Assam India, do hereby solemnly state and affirm as follows:
- I say that I am the Co-founder and Director of the Applicant/Intervener, in the above mentioned Writ Petition and as such, I am fully conversant with the facts, proceedings and circumstances of the case and hence competent to swear this affidavit.
- I say that I have read and understood the contents of the accompanying application and state that the facts stated therein are true to my knowledge and belief.
- 3) I say that the Annexures filed along with the accompanying application are true copies of their respective originals and formed part of the record of the case.
- I say that the averments of fact stated herein above are true to my knowledge and records, no part of it is false and nothing material has been concealed therefrom.

VERIFICATION:

I, the deponent above named, do hereby verify and state that the contents of the above affidavit are true and correct to the best of my knowledge and belief, no part of its is false and nothing material has been concealed therefrom.

Verified on this 27 day of July

, 2018 at New Della

SIL

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

(CIVIL EXTRA ORDINARY JURISDICTION)

W.P. (C) (Suo Moto) No.8/2018

IN THE MATTER OF:-

.....Petitioner. -VERSUS-

The State of Assam & Ors.
.....Respondents.
-AND-

IN THE MATTER OF:-

An affidavit-in-opposition filed on behalf of the Respondent No.1 in W.P. (C) (Suo Moto) No.8/2018.

(AN AFFIDAVIT-IN OPPOSITION)

- I, Shri Monoranjan Ranjan Dutta, S/o Mathura Nath Dutta, aged about 57 years, presently residing in Guwahati in the District of Kamrup (M), Assam, do hereby solemnly affirm and declare as follows:-
- 1. That, at present I have been discharging my duty as Secretary to the Govt. of Assam, Home Department, Dispur, Guwahati-6 and having been authorized to take step and file this affidavit on his behalf, I am competent to

Monorougan Dutta

swear this affidavit. A copy of the PIL petition has been furnished to me. I have also gone through the same and understood the contents thereof.

- 2. That save and except those statements made in the PIL petition which are specifically admitted herein below, the rests are not being admitted should be treated to have been denied hereto. The deponent also does not admit anything which is contrary to and inconsistent with the records of the case.
- 3. That the deponent begs to state that the prisons population as on 31.05,2018, in the Jails of Assam is 10149 against registered capacity of 8888, including Declared Foreign Nationals (DFNs) and Children of DFNs and prisoners, which exceeds the registered capacity by 1261 i.e. altogether the overcrowding in the prisons of Assam is to the extent of 114.2%. There is overcrowding beyond 150 & in 9 (Nine) jails namely District Jails Nalbari (194.19%), Barpeta(175.58%), Dhubri (201.72%), Lakhimpur (177.82%)Hailakandi North Golaghat (161.29%), (160.39%),**Biswanath** Chariali (154.25%), Dhemaji(153.07%) and Udalguri (150.39%).

A copy of the prisons populated as on 31.05.2018 has been enclosed at **Annexure** —**A.**

4. That the deponent states that the mitigate the problem of overcrowding in the Jails of Assam, construction of Additional Barracks have already been completed in the District Jails of Sivasagar and Abhayapuri, and the 1st phase of construction of new Jail at District Jail, Hailakandi has already been completed and 2nd phase will be taken up this year i.e., 2018-19. In addition to the above, to increase the registered capacity in 18 Jails additional barracks are to be constructed which are in various stages of progress, as follows:

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- 1) For **District Jail Nalbari**, Administrative Approval has been accorded from Home & Political Department vide HMB.287/2018/10 dated 16.07.2018 for construction of additional 2 (Two) storied RCC Barrack for 120 inmates .
- 2) For **District Jail Barpeta**, the estimate for construction of additional 2 (Two) storied RCC Barrack for 200 inmates has been received from the Public Works Department (P.W.D) and the same is under process in Home & Political Department.
- Approval has been accorded from Home & Political Department vide HMB.315/2007/104 dated 24.07.2018 for construction of additional 2(Two) storied RCC Barrack for 100 inmates.
- 4) For **District Jail Golaghat**, Administrative Approval has been accorded from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 200 inmates and accordingly, the Public Works Department (PWD) has issued work order on 26.06.2018.
- Approval has been accorded from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 100 inmates. Accordingly, the Public Works Department (PWD) has issued work order on 23.02.2018.
- been accorded from Home & Political Department No.HMB.441/2017/10 dated 25.10.2017 for construction of additional Assam Type Barrack for 50 inmates and the Public Works Department (PWD) has informed that necessary action will be taken up very shortly.

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- 7) For **District Jail Udalguri**, Administrative Approval has been accorded from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 120 inmates vide letter No.HMB.250/2017/54 dated 02.08.2017 and accordingly, the Public Works Department (PWD) has started the construction of additional barrack.
- 8) For **District Jail, Kokrajhar**, Administrative Approval has been accorded from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 150 inmates. Accordingly, the Public Works Department has issued work order on 02.11.2017.
- 9) For **District Jail Goalpara**, Administrative Approval has been accorded from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 100 inmates. Accordingly, the Public Works Department has issued the work order.
- 10) For **Central Jail Silchar**, Administrative Approval has been accorded from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 150 inmates. Formal work order under process by Public Works Department.
- been received from Home & Political Department for construction of additional 2 (Two) storied RCC Barrack for 100 inmates vide letter No.HMB.350/2016/27 dated 26.07.2017 which is expected to be started very soon.
- 12) For **District Jail Sonari**, Administrative Approval has been accorded from Home & Political Department for construction of double storied RCC Barrack for 100 inmates vide letter No.HMB.249/2017/19 dated 31.07.2017 and the concerned

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authority of the Public Works Department (PWD) has informed that the work of construction of the additional

13) For District Jail Tinsukia, Administrative Approval has been

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- 15)For **District Jail, Hamren** Administrative Approval has been accorded from Home & Political Department vide HMB.229/2018/47 dated 06.07.2018 for construction of additional Assam Type Barrack for 50 inmates.
- 16) For Sub-Jail Haflong, the administrative approval for construction of prisoners double storied RCC barrack for 50 inmates has been accorded from Home & Political Department. Accordingly, the Public Works Department has issued the work order on 14.05.2018.
- 17) For **Central Jail, Tezpur,** Administrative Approval has been accorded from Home & Political Department vide HMB.307/2018/9 dated 24.07.2018 for constructing an additional female ward for 50 inmates.
 - 18)For Central Jail, Jorhat Administrative Approval has been accorded from Home & Political Department for construction of additional Assam type female ward for 50 inmates vide HMB.280/2018/11 dated 09.07.2018.
- 5. That on successful completion of the above proposed works, an additional capacity for 1890 inmates will be created in the Jails of Assam, taking the

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registered capacity of the Jails from present 8888 (Eight Thousand Eight Hundred Eighty Eight) to 10778 (Ten Thousand Seven Hundred Seventy-Eight) which will help to control the present situation of overcrowding in the Jails of Assam.

In addition to the above, a total of **301** life convicts have been released from the Jails of Assam till date. This will help to considerably reduce the problem of overcrowding in the Jails. Also, more such proposals for remission are being taken up with the Government for placing in the next meeting of the High Level Review Board. It is expected that the release of such eligible convicts will help to further reduce the problem of overcrowding in the Jails of Assam. Also, the Under Trial Review Committee has been constituted in all districts and they are regularly meeting to review the cases of Under Trial prisoners in their respective jails and grant bail to those who are eligible.

- Assam has notified Detention Centres in 6 (Six) Jails of the State for detention of Declared Foreign Nationals (DFNs) and as on 31.05.2018, there are 1042 numbers of Declared Foreign Nationals, which includes 1011 DFNs and their 31 children, lodged in the 6(six) detention centers in Central Jails, Tezpur, Silchar, Dibrugarh and Jorhat and District Jails, Kokrajhar and Goalpara. The Central Government has sanctioned a separate detention Centre which will be located at Matia, Goalpara, with a capacity of 3000.
- 7. That the deponent respectfully begs to submit that in view of the above facts and circumstances the instant PIL petition is devoid of any merit and hence the same is liable to be dismissed.
- 8. That the statement made in this affidavit and in paragraphsare true to my knowledge and those made in paragraphs......being matter of records are true to my information derived therefrom which I believe to be true and the rests are my humble submission made before this Hon'ble Court.

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On Oath — "I swear that this my declaration is true, that it conceals nothing and that on part of it is false, so help me God".

And I put my hands to this affidavit on this the 4th day of August, 2018 at Guwahati.

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ANNEXURE-A

GOVT. OF ASSAM OFFICE OF THE SUPERINTENDENT OF DISTRICT JAIL:: GOALPARA

No. GLPJ. 54/2018/ 1966

Dated Goalpara the 20th June/2018.

From

: The Superintendent District Jail, Goalpara

: Smti Juri Hazarika

Project Manager, PRATIDHWANI

Damayanti Mansion Dighali pukhuri East Guwahati,

PIN----781001, Assam.

Subject

: Information under RTHAct relating to UTP Review committee

Madam,

With reference to the above I have the honour to submit herewith the required information in respect of District Jail Goalpara (as per available records in this Office) as follows:-1(A) Under Trial Review Committee Goalpara

- (B) Under Trial Review Committee Goalpara functioning w.e.f. 30/8/13
- (C) Members of the UTP Review Committee
 - (i) District Judge---- Chairman-----94351-08798
 - (ii) District Magistrate—Member-----7002717801 (Addl.D.M)
 - (iii) Superintendent of Police—Mertiber-----94350-49599
 - (iv) Superintendent of District Jail Goalpara—Member-----98641-91718
- (2) Photocopies of minutes (as available in Office Record) enclosed herewith of UTP Review Committee Meeting held on 30/08/2013, 09/12/2013, 25/05/2014, 10/09/2014, 06/01/2015, 25/05/2015, 19/11/2015, **29/02/2016**, **03/07/2016**, 19/11/2016, 18/02/2017, **20/05/2017**, 19/08/2017, 20/11/2017, 20/02/2018. 24/05/2018 respectively.
- (3) Nil.
- (4) Nil.

Enclose: - As stated above.

Yours faithfully

Dated Goalpara the 20th June/2018.

Memo No.GLPJ.50/2018/ 1966 Copy forwarded to the I.G. of Prisons, Assam, Assam Prisons H.Q. Khanapara, Ghty-22 for favour of kind information.

> Superintendent District Jail Goalpara

Minutes of the meeting of Review Committee of U.T.P. held in the office chamber of Superintendent, District Jail, Goalpara on 30.08.2013 at 4.00.p.m. In the presence of the following Ld members.

0



- District & Sessions Judge, Goalpara.
- 2) Deputy Commissioner, Goalpara.
- 3) Superintendent of police, Goalpara.

At the start of this meeting, the Jail authority, Goalpara has placed before the committee; the staff position and prisioners is population as on 30/8/2013; upon perusal of the same, it appears that the jail is overcrowded.

There are 85 nos of doubtful Foreign Nationals lodged in the jail which is also designated as detention camp for such nationals by the deptt. concerned. Apart from that, there are in all 92 nos of convicts of both the categories. In view of the same, after serious deliberation, the Ld Members of this committee have suggested for trans-locating them to other jails in the State so as to lessen the strength of inmates for smooth functioning of the jail.

Furthermore, from the list of under trial prisoners' placed before this committee during deliberation, it is found that not a single case can be taken up for consideration for release of U.T.P. s in terms of S.436A of Cr. P.C.

Thus, this committee in its first sitting today have not found any case fit for review.

Sd-District & sessions Judge, Goalpara

Memo No. DJG/ BOGS-G7

Dated Goalpara the 2nd Septenber, 2013

Copy for information and necessary action forwarded to:-

1. The District Magistrate, Goalpara.

2. The Superintendant of Police, Goalpara.

3. The Superintendant of District Jail, Goalpara.

By Order

Sheristader
O/o District & Sessions Judge,

Goalpara.



REVIEW COMMITTEE OF U.T.P s

Minutes of the meeting of Review Committee of U.T.P held in the office Chamber of Superintendent, District Jail, Goalpara on 09-12-2013 at 3.00 p.m. in the presence of the following Ld members.

- 1. District and Sessions Judge, Goalpara.
- 2. Deputy Commissioner, Goalpara.
- 3. Superintendent of Police, Goalpara.

With the beginning of the meeting, the Jail authority has placed before the committee staff position and prisoners population as on 09-12-2013 upon perusal, it appears that the Jail is under staffs and there is urgent need for increasing number of Staff; it is further noted that the Jail Hospital is run not a full time Doctor, the Doctor now rendering service within the Jail premises is in deputation. This Jail single handily accommodate prisoners of to Districts. Keeping in view the ever-increasing number of prisoners if requires the service of two full-time Doctors one staff nurse to take care of medical aspects of female in male.

In this review committee meeting all the Ld members unanimously resolve to authorities the Superintendent of District Jail, Goalpara to move the concerned head office department for appointment of two full time Doctors and one staff Nurse. So that the prisoners get proper Medical attention.

Further more, for the list of under trail prisoners placed before this committee during deliberation, it is found that not a single case is fit to be taken-up for consideration for release of U.T.P.s in terms of S-436 A Cr. P.C.

District and Sessions Judge,
Goalpara.

Memo No. DJG/ 9703-05 Dated Goalpara the 11 th December, 2013

Copy for information and necessary action to-

1. The District Magistrate, Goalpara.

The Superintendent of Police, Goalpara.

The Superintendent District Jail, Goalpara.

By Order

Sheristader

O/o District and Sessions Judge.

Goalpara.

20 S. W.

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF U.T.P.S HELD ON 25.5.2014 AT 10-00 A.M. IN THE OFFICE CHAMBER SUPDT. OF DISTRICT JAIL, GOALPARA IN THE PRESENCE OF THE FOLLOWING LEARNED MEMBERS:

PRESENT:

- Sri M. Ahmed,
 District & Sessions Judge
- 2) **5%:AZ**. Hazarika, A.D.C., Goalpara.
- 3) Sri D. Nath, D.S.P., Goalpara

RESOLUTIONS

With the beginning of this meeting, the jail authority, Goalpara has placed before the committee the staff position and prisoners' population as on this date. Upon perusal of the same, it appears that the jail is under staffed and there is urgent need for increasing number of staff.

The learned members of this committee has deliberated upon the earlier resolution so taken on two different dates i.e. 30.8.2013 and 9 12 2013. It was suggested by the learned Members of that committee on 30.8.2013 for translocating the doubtful foreign nationals that overcrowded the jail premises to some other jails of the state so that it may lessen the strength of jail inmates for smooth functioning of the jail. It has not been done so far. This committee again has taken a resolution so that the jail authority may approach the appropriate forum for translocating them at the earliest to lessen the burden of inmates of this jail.

In the Review Committee Meeting, meld on 9.12.2013, it was noted by the Members that the jail hospital is run not by a full time doctor. The doctor, rendering services within the jail premises is on deputation. It is further noted that this jail is single-handly operated accommodating prisoners of two districts and, keeping in view of such over increasing number of prisoners, it requires service of two full time doctors, one staff nurse to take care of medical aspects of female inmates as well as other inmates of the jail. It was, accordingly, resolved authorizing the Supdt., District Jail, Goalpara to move the concerned Head of the Department for appointment of two full time doctors and one staff nurse so that the prisone's can get proper medical attention. It is noted by this meeting that that resolution has remained unheeded and no action has yet been taken by the concerned authority. The learned Members resolves to take the matter with the concerned authority so that appointment of two full-fledged doctors and one staff nurse can be expedited

Further more, from the list of the under-trial prisoners, placed before this committee today during deliberation, it is found that not a single case is fit to be taken up for consideration for release of UTPs in terms of Section 436(1) Cr.P.C. This committee meeting ends with a direction to the rail authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of Section 436(1) of Cr.P.C. to provide relief to the deserving inmates.

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MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF U.T.P.S. HELD ON 10.9.2014 AT 3-30 P.M., IN THE OFFICE CHAMBER OF DISTRICT JAIL, GOALFARA IN PRESENCE OF THE FOLLOWING MEMBERS.

PRESENT

- Sri M. Ahmed, District & Sessions Judge, Goalpera.
- 2) Sri P. Saikia, Deputy Commissioner, Goalpara.
- Sri N. Gogoi, Supdt.of Police, Goalpara.

RESOLUTIONS

Review committee meeting was held in the jail premises of the District Jail. Goalpara and, in this meeting, all the members remained present including the officials of the Jail Authority and the Jail Authority has placed in the meeting a printed list of the inmates who have been detained in jail as UTP₅. We have gone through the said list and have found that not a single case is found fit to be considered for release of UTPs in terms of Section 436(A) Cr.P.C. As such, this committee meeting ends with a direct on to the Jail Authority to convene such meeting after expiry of three months such that new cases can be taken up for consideration in the light of the said Section to provide relief to the deserving inmates.

ے ہو۔ District & Sessions Judge Goalpara

Memo No. DJG/

6775-77

Dated Goalpara the 12 in September, 2014.

Copy forwarded for information and necessary action to:-

- 1. The District Magistrate, Goalpara.
- 2. The Superintendent of Police Goalpara.
- 8. The Superintendent District Jail, Goalpara

By Order

O/O District and Sessions Judge

Goalpara

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MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF U.T.P.S HELD ON 6.1.2015 AT 3-30 P.M., IN THE OFFICE CHAMBER OF DISTRICT JAIL, GOALPARA IN PRESENCE OF THE FOLLOWING MEMBERS.

PRESENT:

- 1) District & Sessions Judge, Goalpara.
- 2) Deputy Commissioner, Goalpara.
- 3) Supdt.of Police, Goalpara.

RESOLUTIONS

Review committee meeting was held in the jail premises of the District Jail, Goalpara and, in this meeting, all the members remained present including the officials of the Jail Authority and the Jail Authority has placed in the meeting a printed list of the inmates who have been detained in jail as UTP. We have gone through the said list and have found that not a single case is found fit to be considered for release of UTPs in terms of Section 436(A) Cr.P.C. As such this committee meeting ends with a direction to the Jail Authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said Section to provide relief to the deserving inmates.

(M. Ahmed) Chairman, Review Committee -cum-District & Sessions Judge vioalpara

Memo No.D.J.G/ 210-12

Dated Goalpara the og th year 2015.

Copy forwarded for information and necessary action to:-

1. The District Magistrate, Goalpara.

2. The Superintendent of Police, Goalpara

3. The Superintendent District Jail, Goalpara.

Chairmen
Review Committe-cum-District & sessions Judge
Goalpara

(6)

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING REGARDING RELEASE OF U.T.P.S IN TERMS OF SEC. 436(_), HELD ON 25.5.2015, AT 4-00 P.M. IN THE OFFICE CHAMBER OF SUPDT. OF DISTRICT JAIL, GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS.

MEMBERS PRESENT

- 1) District & Sessions Jude, Goalpara.
- 2) Deputy Commissioner, Goalpara.
- 3) Superintendent of Police, Goalpara.

RESOLUTION

Review committee meeting is held toda?, at about 4-00 p.m., in the jail premises of the District Jail, Goalpara and, in this meeting, all the members remained present including the officials of the Jail Authority and the Jail Authority has placed in the meeting a list of inmates who have been detained in jail as UTPs. We have gone through the said list and have found that not a single case is found fit to be considered for release of UTPs in terms of Section 436(A) Cr.P.C. As such, this committee meeting ends with a direction to the Jail Authority to convene such meeting after expiry of three menths so that new cases can be taken up for consideration in the light of the scid Section to provide relief to the deserving inmates.

(M. Ahmed)

Chairman, Review Committee -cum- Eistrict & Sessions Judge, Goalpara

Memo No.D.J.G / 3470-72 Dated Goalpara the of th June 2015.

Copy forwarded for information and necessary action to:-

1. The District Magistrate, Goalpara.

2. The Superintendent of Police, Goalpara

3. The Superintendent District Jail, Goalpara.

Chairmen
Review Committe-cum-District & sessions Judge

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(F)

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF UTPS HELD ON 19-11-2015 IN THE OFFICE CHAMBER OF SUPDT. OF DISTRICT JAIL GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS:

PRESENT

Shri P. Buragohain, A.J.S.
 District & Sessions Judge, Goalpara.

2) Shri N. Gogoi, I.P.S. Supdt. of Police, Goalpara.

 Shri M. Saikia, ACS Addl. Deputy Commissioner, Goalpara.

RESOLUTION.

With the beginning of this meeting the Jail authority, Goalpara has placed the staff position and prisons population before the committee as on 19-11-2015. Upon perusal the same it appears that the Jail is over crowded and there is urgent need to reduce the over crowding of prisons population by re-allocating the DFNs to newly declared detention Centre Tezpur, Jorhat & Dibrugarh, so that it may lessen the strength of Jail inmates for smooth functioning of the Jail.

The learned members remain present including the officials of the Jail authority and the authority has also placed a list of UTPs who have been detained in the Jail as on 19-11-2015. We have gone through the said list and found that not a single case is found fit to be considered for release of UTPs in terms of sec. 436(A) Cr.P.C. As such the committee ends with a direction to the Jail authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

Further it is intimated the members that 33 Nos. of UTPs are provided with free legal aid for the financial year 2015-16 till date i.e. on 19-11-2015.

The committee is also resolved resolution to provide free legal aid to all the deserving inmates by the legal aid lawyers who have entrusted for the purpose.

The meeting ended with vote of thanks from the chair.

(P. Buragohain)
Chairman, UTPs Review Committee,
Cum
District & Sessions Judge, Goalpara.

Memo No.D.J.G/ 6593-96

Dated, Goalpara the

November, 2015

Copy forwarded to:-

- The Joint Secretary to the Govt. of India, Ministry of Home Affairs (C.S. Division) 5th
 Floor, NDCC-II Building Jai Singh Road, New Delhi for favour of information.
- 2) The District Magistrate, Goalpara for information.
- 3) The Superintendent of Police, Goalpara for information.
- The Superintendent of District Jail, Goalpara for information and necessary action.

(P. Buragohain) Chairman, UTPs Review Committee, Cum

District & Sessions Judge, Goalpara.

John of

(8)

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF UTPS HELD ON 29-02-2016 IN THE OFFICE CHAMBER OF SUPDT. OF DISTRICT JAIL, GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS-

PRESENT

- 1) Shri P. Buragohain, A.J.S. District & Sessions Judge, Goalpara.
- 2) Shri N. Gogoi, I.P.S. Supdt. of Police, Goalpara.
- 3) MS Banti Talukder, ACS Asstt. Commissioner, Goalpara.

RESOLUTION.

Today Review Committee meeting is held in the Jail premises of the District Jail, Goalpara. At the beginning of this meeting the Jail authority, Goalpara has placed the staffs position and prison's population before the committee as on 29-02-2016 and it appears that in the Detention Centre Cum-District Jail, Goalpara, presently 190 Nos. of Declared Foreign Nationals are lodged in the District Jail, Goalpara. It is observed that some of the DFNs are in need of Legal Aid, as such the Ld. Members of the committee suggested the Jail authority to send petition to their respective District Legal Services Authority where the cases were disposed off as well as are pending for disposal.

The Jail authority has also placed a list of UTPs who have been detained in the Jail as on 29-02-2016. We have gone through the said list and found that not a single case is found fit to be considered for release of UTPs in terms of Sec. 436(A) Cr.P.C. As such the committee ends with a direction to the Jail authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

The meeting ended with vote of thanks from the chair.

(P. Buragohain)

Chairman, UTPs Review Committee, Cum District & Sessions Judge, Goalpara.

Memo No.D.J.G/ 1048-51 Dated, Goalpara the 2 March, 2016.

Copy forwarded to:-

- The Joint Secretary to the Govt. of India, Ministry of Home Affairs (C.S. Division) 5th. Floor, NDCC-II Building Jai Singh Road, New Delhi for favour of information.
- 2) The District Magistrate, Goalpara for information.
- 3) The Superintendent of Police, Goalpara for information.

The Superintendent of District Jail, Goalpara for information and necessary action.

(P. Buragohain)
Chairman, UTPs Review Committee,
Cum
District & Sessions Judge, Goalpara.

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF UTPS HELLION 03-07-2016 IN THE OFFICE CHAMBER OF SUPDT. OF DISTRICT JAIL GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS:

· PRESENT

1) Shri P. Buragohain, A.J.S. District & Sessions Judge, Goalpara.

2) Shri A.N. Hazarika, ACS Addl. Deputy Commissioner, Goalpara.

Md. Anowar Hussain, APS
 Dy. Superintendent of Police(B), Goalpara.

RESOLUTION

Review Committee meeting has been held in the Jail premise of District Jail, Goalapara on 03-07-2016 and in this meeting all the members remained present including the Officials of the Jail authority. The Jail authority has placed in the meeting a printed list of the immates who have been detained in Jail as Under Trial Prisoners. We have gone through the said list and have found that not a single case is fit to be considered for release of UTPs in terms of sec. 4 (A) Cr.P.C. As such the committee ends with a direction to the Jail authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

Further it is intimated the members that the District Legal Services Authority, Goalpara will be provided fund for infusion to the needy UTPs/Convicts as per prescription prescribed by the

The meeting ended with vote of thank from the chair.

(P. Buragohain)
Chairman, UTPs Review Committee,
Cum
District & Sessions Judge, Goalgara.

Memo No.D.J.G/

Dated, Goalpara the 4th July, 2016.

Copy forwarded to:-

- 1) The Joint Secretary to the Govt. of India, Ministry of Home Affairs (C.S. Livision) 5th. Floor, NDCC-II Building Jai Singh Road, New Delhi for favour of information.
- 2) The District Magistrate, Goalpara for information.
- 3) The Superintendent of Police, Goalpara for information.
- The Superintendent of District Jail, Goalpara for information and necessity action.

(P. Buragoham) Chairman, UTPs Review Commissiee, Cum

District & Sessions Judge, Goali ara

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF CITY TELD ON 10-11-16 IN THE OFFICE CHAMBER OF SUPERINTENDENT OF DISTRICT JAIL GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS:

PRESENT

- 1) Shri P. Buragohain, A.J.S. District & Sessions Judge. Goalpara.
- 2) Md. Faruk Alom. Deputy Commissioner I/C. Goalpara
- 3) Shri A. Basumatary Addl. Supdt. of Police (HO). Goalpara

RESOLUTION

Review committee has been held in the Jail premises of District Jail. Goalpara on 19-11-16 with the beginning of this meeting the Jail authority. Goalpara has placed the staff position and prisons population as on 19-11-16 before the committee.

We have gone through the said list and have found that not a single case is found fit to be considered for release of UTPs in terms of section 436 (A) Cr P./

As such, this committee meeting ends with a direction to the Jail, Authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

The meeting ended with vote of thanks from the chair.

Sd1-(P. Bur. Johain)

Chairman, UTPs I wiew Committee,

Cur

District & Session Judge. Goalpara

Memo No. D.J.G/ 7143-46

Dated Goalpara the 2 November/2016

Copy forwarded to :-

1) The Joint Secretary to Govt. of India. Ministry of Home Affairs (C.S. Division) 5th Floor, NDCC-II Building Jai Sing Road. New Delhi for favour of information.

The District Magistrate. Goalpara for information.

The Superintendent of Police. Goalpara for information.

The Superintendent of District Jail. Goalpara for information and necessary action.

(P. Buras shain)

Chairman, UTPs Leview Committee,

Cum

District & Sessio Judge, Goalpara

TO THE OWNER

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF UTPS HELD ON **19**-02-201**7** IN THE OFFICE CHAMBER OF SUPDT. OF DISTRICT JAIL GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS.



PRESENT

- Shri P. Buragohain, A.J.S. District & Sessions Judge, Goalpara.
- 2) Shri J.V.N. Subramanam, I.P.S. District Magistrate, Goalpara.
- Shri A. Sinha, A.P.S. Supdt. of Police, Goalpara.
- Shri B.K. Goswami, ACS Addl. Depuity Commissioner cum Election Officer, Goalpara.

RESOLUTION

Review Committee meeting was held in the Jail premises of the District Jail, Goalpara At the beginning of this meeting the Jail authority, Goalpara has placed the staff position and prisons population before the committee as on 18-02-2017 and it appears that in the Detention Centre Cum- District Jail, Goalpara 215 Nos. of Declared Foreign Nationals are lodged as the District Jail, Goalpara is also declared detention centre. It is to be mentioned that out of 215 nos. D.F.Ns detained in the detention centre, Goalpara, 08 (eight) nos. are allowed to be shifted to detention centre, Jorhat while another 98 (eight) are to be shifted to detention centre, Dibrugarh.

The Jail authority has also placed a list of UTPs who have been detained in the Jail as on 18-02-2017. We have gone through the said list and found that not a single case is found fit to be considered for release of UTPs in terms of sec. 436(A) Cr.P.C. But one UTP of Chirang Court viz Lakhiram Kisko has been detained for more than 5 (five) years i.e. from 22-09-11 in connection with Sessions C/No. 42(S)/15, U/S 395/397 I.P.C. Moreover, one another UTP viz Rohit Marak has a case pending in the Hon'ble Court of Addi. D.M. (Judicial), North Garo Hills, Meghalaya along with two other cases of Goalpara Judicial Court.

The committee ends with a direction to the Jail authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

The meeting ended with vote of thanks from the chair.

Sal (P. Buragohain)

Chairman, UTPs Review Committee, Cum District & Sessions Judge, Goalpara.

Memo No.D.J.G/ 739-42 Dated Goalpara the 27 Feb/17 Copy forwarded to:

- 1) The Joint Secretary to the Govt. of India, Ministry of Home Affairs (C.S. Division) 5th Floor, NDCC-II Building Jai Singh Road, New Delhi for favour of information.
- 2) The District Magistrate, Goalpara for favour of information.
- 3) The Superintendent of Police, Goalpara for information.
- 4) The Superintendent of District Jail, Goalpara for information and necessary action.

Da/

(P. Buragohain)
Chairman, UTPs Review Committee,
Cum
District & Sessions Judge, Goalpara.

6-7/2/17

Asser,



MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEI LING OF UTPS HELD ON 20-05-17 IN THE OFFICE CHAMBER OF SUPDT. OF DISTRICT JAIL GUALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS

PRESENT

- 1) Shri P. Buragohain, A.J.S. District & Sessions Judge, Goalpara.
- 2) Md. Omar Sharif, ACS Addl. Deputy Commissioner, Goalpara
- Sri Dilip Kr. Baruah, APS
 Dy. Superintendent of Police (H.Q.), Goalpara

RESOLUTION

Review Committee meeting has been held in the Jail premises of District Jail, Goalapara on 20-05-17 and in this meeting all the members remained posent including the Officials of the Jail authority. The Jail authority has placed in the meeting a printed list of the inmates who have been detained in Jail as Under Trial Prisoners. We have gone through the said list and have found that not a single case is fit to be considered for release of UTPs in terms of sec. 436(A) Cr.P.C. As such the committee ends with a direction to the Jail authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

The mater of shifting of UTPs namely Praneswar Khaklary @ Prosad Khaklary and Nazrul Ali from this Jail was discussed in the meeting. Apprehended UTP—Praneswar Khaklary @ Prosad Khaklary and Nazrul Ali were arrested by Rangjuli P.S. and Matia P.S. respectively and sent to this Jail by the Addl. District Magistrate. Goalpara on 01-03-17 and 06-05-17 respectively. UTP Praneswar Khaklary @ Prosad Khaklary has case pending in the Hon ble Spl. Judicial Magistrate—Assam, Ghty (G.R. C/No. 2389/02) and that of UTP Nazrul Ali in the Hon ble Court of Sub-Divisional Jaccial Magistrate, Rangia, Kamrup (G.R. C/No. 165/09). Several correspondences were made from District—11. Goalpara authority for the production of the said UTPs. But the same has yet to be possible. Besides, our more UTP by name Nayan Kr. Barman was released on bail on 28-04-17 in connection with Sessions C. No. 134/16 and has no case pending in Goalpara Court. But has been detained since then in connection with Sarthebari P.S. C/No. 231/14 pending in the Hon ble Court of Judicial Magistrate. Jet Class. Barpeta. W.T. Messages were sent from Goalpara Jail authority. But yet to come any reply.

Eurther it is intimated the members that the District Legal Services Authority, Goalpara will be provided fund for infusion to the needy UTPs/Convicts as per prescription prescribed by the Doctor.

The meeting ended with vote of thanks from the chair.

SACT P. B magohain)
Chairman, UTFs Review Committee
Cum
District & Sessions Judge, Goalpara.

Memo No.D.I.G. 2000 - 2003

Dated. Goalpara the 7 20th May/2017

Constionwarded to:-

- The Joint Secretary to the Govt, of India, Ministry of Home Affairs (C.S. Division) 5" Floor, NDCC-II Building Jai Singh Road, New Delhi for favour of information.
- 2) The District Magistrate. Goalpara for information.
- The Superintendent of Police. Goalpara for information.
- The Superintendent of District Jail. Goalpara for information and necessary action.

(P. Buragohain) Chairman, UTPs Review Committee, Cum District & Sessions (Idge, Goalpara. (\$23/8/17

(13)

MINUTES OF THE QUARTERLY REVIEW COMMITTEE MEETING OF UTPS HELD ON 19-08-17 IN THE OFFICE CHAMBER OF SUPERINTENDENT OF DISTRICT JAIL GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS:

PRESENT

- Shri P. Buragohain, A.J.S.
 District & Sessions Judge, Goalpara.
- Md. Nur Hussain, Addl. Deputy Commissioner. Goalpara
- 3) Shri A. Basumatary Addl. Supdt. of Police (HQ), Goalpara

RESOLUTION

Review committee has been held in the Jail premises of District Jail, Goalpara on 19-08-17 with the beginning of this meeting the Jail authority, Goalpara has placed the staff position and prisons population as on 19-08-17 (Morning) before the committee.

We have gone through the said list and have found that not a single case is found fit to be considered for release of UTPs in terms of section 436 (A) Cr P.C.

It comes to the notice of the committee that UTPs Jiban Newar, Narendra Marak, Rahul Hussain, Haidor Ali, Shahjahan Ali, Bolodev Hazowary, Lachit Basumatary and Abhijit Basumatary have completed statuary period but no charge sheet has been filed. Therefore, the committee requests the Aleka Magistrates to belease the above mentioned UTPs with sureties or without sureties.

The committee decides to request the Inspector General of Prisons, Assam, Khanapara. Ghty-22 to provide a spacious vehicle to this Jail to be used as Ambulance to bring the sick inmates to Civil Hospital, Goalpara or to G.M.C.H, Ghty or to any other referral hospital.

The committee meeting ends with a direction to the Jail, Authority to convene such meeting after expiry of three months so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

The meeting ended with vote of thanks from the chair.

Sd1-

(P. Buragohain) Chairman

UTPs Review Committee

Cum

District & Sessions Judge, Goalpara

Memo No. D.J.G/ 3589 - 92 Dated Goalpara the 21st Aug /2015

Copy forwarded to :-

- 1) The Joint Secretary to Govt. of India, Ministry of Home Affairs (C.S. Division) 5th Floor, NDCC-II Building Jai Sing Road, New Delhi for favour of information.
- 2) The District Magistrate, Goalpara for information.
- 3) The Superintendent of Police, Goalpara for information.
- A) The Superintendent of District Jail, Goalpara for information and necessary action.

(P. Buragohain)
Chairman
UTPs Review Committee
Cum
District & Sessions Judge, Goalpara

22/18/19

13/12/13

(14)

MINUTES OF THE QUATERLY REVIEW COMMITTEE MEETING OF UTPS HELD ON 20-11-17 IN THE OFFICE CHAMBER OF SUPERINTENDENT OF DISTRICT JAIL, GOALPARA IN PRESENCE OF THE FOLLOWING LEARNED MEMBERS:

- 1. Sri P. Buragohain A.J.S District & Sessions Judge, Goalpara.
- 2. Sri Satya Jyoti Baruah A.C.S Addl. Deputy Commissioner. Goalpara.
- 3. Sri A. Basumatary A.P.S Addl. Superintendent of police, Goalpara.
- 4. Smti. Banti Talukdar A.C.S. I/C Superintendent of District Jail. Goalpara.

RESOLUTION

Today, the Review Committee meeting is held in the premises of District Jail, Goalpara at 4 pm. The Committee after reviewing the list of inmates of District Jail, Goalpara, presented by the Jail Authority, could not find a single case fit to be considered for release of UTPs as per the provisions of Sec. 436 (A) of Cr P.C. The Committee further noticed that, presently there are 242 Nos. of Declared Foreign Nationals in the Detention Center Cum District Jail, Goalpara.

eight) Nos. of Bangladeshi Nationals including one Pakistani and one Myanmar national are resorted to hunger strike w.e.f 13-11-17 demanding their early deportation to their native Country. They also complained that they have been detained in the Detention Center even after completion of their connection period. It is also informed that during hunger strike necessary arrangement of maintenance of low & order & security including Medical check -up were made by the District Administration in cooperation with jail authority and Police Administration, Goalpara and after a amicable settlement with Declared Foreign Nationals, they have withdrawn their hunger strike on 14-11-17.

In this regard the Committee decided to request the Government of Assam to take necessary steps for early deportation of DFNs to their native Countries.

The Committee has also decided to request the Joint Director of Health Service, Goalpara to depute one Medicine specialist from Civil Hospital, Goalpara for health Check- up of inmates at least twice in a week.

The Committee meeting ends with a direction to the Jail Authority to convene such meeting after expiry of three months, so that new cases can be taken up for consideration in the light of the said section to provide relief to the deserving inmates.

The meeting ended with vote of thanks from the Chair person.

Chairman, UTPs Review Committee
Cum

District & Sessions Judge, Goalpara

Memo No. DJG/ 5024 - 28 Copy forwarded to :- Dated Goalpara the 13th December,2017.

- 1. The Joint Secretary to the Govt. of India, Ministry of Home Affairs (C.S. Division) 5th Floor, NDCC-II Building Jail Singh Road, New Delhi for favour of information.
- 2. The Secretary to the Govt. of Assam, Home Department, Dispur, Guwahati 6.
- 3. The District Magistrate, Goalpara for information.
- 4. The Superintendent of Police, Goalpara for information.
- The Superintendent of District Jail, Goalpara for information and necessary action.

Chairman, UTPs Review Committee

Cum

District & Sessions Judge, Goalpara

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MINUTES OF MEETING OF THE REVIEW COMMITTEE FOR UTP HELD ON 28.02.2018.

Today a meeting of Review Committee for Under Trial Review Committee (UTP) was held in the District Jail, Goalpara at 3.30 P.M. In pursuance to the letter letter No. ASLSA-114/2010/Pt-1/960 dated 26.04.2017 of Assam State Legal Services Authority and NALSA letter No. F. No. L/10/2015 dated 14.05.2016. In the meeting various subject related to Under Trial Review Prisoner's (UTP) of the Goalpara were discussed as mentioned in the above referred letter.

- 1) In the meeting no beneficiary found u/s- 436A of Cr. P.C..
- 2) No UTP is found in Jail, under compoundable nature.
- 3) No UTP is found who are first time male offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of the imprisonment and have suffered at least 1/4th of the maximum sentence possible.
- 4) No UTP found u/s 107,108,109,151 of Cr. P.C.
- 5) 5 Nos. of UTPs are found who have been granted bail, but not released for lack of suitable bailor and the list has been furnished to the Hon'ble Deputy Commissioner, Goalpara to communicate with the family members of the said UTPs.
- 6) Mr. Ranjit Ch. Baisya, Superintendent of District Jail, Goalpara has submitted the list of all UTPs and the committee has also gone through the list of UTPs prepared by the Jail Authority showing the date of admission as well as period of detention for invoking the provisions u/s 437 (6) of Cr. P.C. As compulsory bail to the UTP in case the trial by Magistrate is not complete within six months from the date of commencement of the trial; but no such case has been detected.

The meeting concluded with thanks all the present members.

(2)

Sl. No.	*	Signature	
1	Chairman, D.L.S.A., Goalpara.	Son	Chairman
2	i/c Deputy Commissioner, Goalpara.	De 12/19	Member
3	i/c Superintendent of Police, Goalpara.	A. B. 2418	Member
4	Secretary, D.L.S.A, Goalpara.	Ranghas Agamian	Member
5	Superintendent of District Jail, Goalpara.	Brat 2/2	Member

UTP Review & 1916/18

(16)

OFFICE OF THE DISTRICT & SESSIONS JUDGE-CUM-CHAIRMAN,

DISTRICT LEGAL SERVICES AUTHORITY......GOALPARA.

NO. DLSAG/ 13 38 - 1340/Dated Goalpara the 1919 June, 2018.

From: i/c District & Sessions Judge-Cum-Chairman,

District Legal Services Authority, Goalpara.

To

- 1. The Deputy Commissioner, Goalpara.
- 2. The Superintendent of Police Goalpara,
- 3. The Superintendent of District Jail, Goalpara.

Sub. Forwarding.

Ref. Minutes of meeting of the Under Trial Review Committee dated 24.05.2018. Sir.

I am forwarding herewith a copy of above referred Minutes of meeting of the Under Trial Review Committee dated 24.05.2018 for your kind information and necessary action.

Enclosed as above.

Yours faithfully,

£.

i/c District & Sessions Judge-Cum-Chairman,
District Legal Services Authority, Goalpara.

(1)

MINUTES OF MEETING OF THE REVIEW COMMITTEE FOR UTP HELD ON 24.05.2018.

Today a meeting of Review Committee for Under Trial Review Committee (UTP) was held in the District Jail, Goalpara at 3.30 P.M. In pursuance to the letter No. ASLSA-114/2010/Pt-I/960 dated 26.04.2017 of Assam State Legal Services Authority and NALSA letter No. F. No. L/10/2015 dated 14.05.2016. In the meeting various subject related to Under Trial Review Prisoner's (UTP) of the Goalpara are discussed as mentioned in the above referred letter.

- 1) In the meeting no beneficiary found u/s- 436A of Cr. P.C..
- 2) No UTP is found in Jail, under compoundable nature crimes.
- 3) No UTP is found who are first time male offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of the imprisonment and have suffered at least 1/4th of the maximum sentence possible.
 - 4) No UTP found u/s 107,108,109,151 of Cr. P.C.
- 5) 01 No. of UTPs are found who have been granted bail, but could not be released due to lack of suitable bailors and the list has been furnished to the Hon'ble Deputy Commissioner, Goalpara to communicate with the family members of the said UTPs.
- 6) Mr. Ranjit Ch. Baisya, Superintendent of District Jail, Goalpara has submitted the list of all UTPs and the committee has also gone through the list of UTPs prepared by the Jail Authority showing the date of admission as well as period of detention for invoking the provisions u/s 437 (6) of Cr. P.C. As compulsory bail to the UTP in case the trial by Magistrate is not complete within six months from the date of commencement of the trial; but no such case has been detected.

The meeting concluded with thanks all the present members.

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i/c District & Sessions Judge-Cum-Chairman, District Legal Services Authority, Goalpara.

S1 No.	Correctional Home	Male DFNs	Female DFNs	Total	Overcrowding Percentage
1.	Central Jail, Jorhat	86	38	124	95.37
2.	Central Jail, Tezpur	246	87	333	98.39
3.	Central Jail, Dibrugarh	56	0	56	84.85
4.	Central Jail, Silchar	99	9	108	134.44
5.	District Jail, Kokrajhar	0	153	153	121.19
6.	District Jail, Goalpara	237	0	237	118.10

Table: Indicating the rate of overcrowding in the notified detention centres of Assam based on data provided by the Inspector General of Prisons, Assam

Date: Thursday, April 11,2018

To The Inspector General of Prisons Khanapara Guwahati-781002 Assam

Sub: Prayer for approval of the translated handbook for prisoners

Respected Sir,

We, at Pratidhawni, the Free Legal Service and Awarenesps Centre of Studio Nilima, Collaborative Network for Research and Capacity Building is a registered non-profit organisation based in Guwahati, Assam. Pratidhwani (The Echo) is envisioned as a pilot project of the Free Legal Awareness and Services campaign of Studio Nilima. By situating itself in the correctional homes of the State, Pratidhwani strives to provide both advice and assistance and facilitate effective legal services for an inmate. Pratidhwani aims to build a bridge between the inmates in need of legal support and practicing lawyers through a medium of paralegals and volunteers. The project will firstly provide the necessary legal knowledge to the inmates and secondly provide a mechanism for the inmates to get their legal issues addressed by professionals, when necessary.

We at Studio Nilima, had the privilege with your kind co-operation to visit various jails such as Morigaon District Jail, Guwahati Central Jail, Mangaldoi District Jail for providing free legal services and legal awareness to the inmates of the jails. We are extremely grateful to the Office of the Inspector General of Prisons, respective District Legal Services Authorities and the Jail Authorities of the jails for providing their utmost co-operation to the members of Studio Nilima. We propose to continue our efforts and seek your further guidance in this regard.

We want to circulate a translated handbook comprising provisions of the Model Prison Manual 2016 and Assam Jail Manual in order to provide information regarding certain provisions. We therefore request you to approve the same and help us in continuing our endeavours in the coming days.





COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

We look forward towards realising our shared vision of providing effective legal service to persons in custody under your able guidance and co-operation.

Thanking you.

Sincere Regards,

Juri Hazarika

Project Manager

Pratidhwani Free Legal Services and Awareness Centre

A Unit of Studio Nilima

GOVERNMENT OF ASSAM ASSAM PRISON HEADQUARTERS KHANAPARA, GUWAHATI

No.PRI.88/2018/2

Dated Guwahati the 27th April, 2018

From:

Inspector General of Prisons, Assam

Khanapara, Guwahati.

To

The Project Manager,

Pratidhwani Free Legal Services and Awareness Centre,

A Unit of Studio Nilima, Damayanti Mansion,

Satya Bora Lane, Dighalipukhuri East,

Guwahati-781001.

Sub

Translated handbook for prisoners.

Ref

Letter No.Nil dated 11-04-2018.

Sir / Madam,

In inviting a reference to the subject cited above, I am to say that Model Prison Manual, 2016 and Assam Jail Manual are Government documents and no persons / organizations are allowed to print / copy or translate these documents. Further, it is also informed that the provision of the Jail Manual which are essential for the inmates are explained to them by the Jail authority at the time of their admission into the Jail.

However, it will be highly appreciable if your organization take efforts to provide legal assistance to those prisoners, particularly the undertrials, who are unable to avail legal help to prosecute their cases in the Court due to their financial hardship.

Yours faithfully,

Inspector General of Prisons, Assam Khanapara, Guwahati 0/0

Date: Monday, May15th 2018

To The Inspector General of Prisons Khanapara Guwahati- 781002 Assam

Subject: Translated handbook of Jail Manuals for being made available to the prisoners in Assam Jail

Ref: Your Letter no PRI.88/2018/2 dated 27.4.2018

Dear Sir,

We, thank you for your reply to our letter dated 11.4.2018 regarding the translated handbook. With your kind co-operation, our team have had the privilege to visit various jails such as Morigaon District Jail, Guwahati Central Jail, Mangaldoi District Jail, Jorhat Central Jail, Jorhat Open Jail and Goalpara District Jail, for providing free legal services and legal awareness to the inmates of the jails. We are immensely grateful to the Office of the Inspector General of Prisons and the Jail Administrations for the kind co-operation in this regard and hope to receive the same support in future as well.

We have noted your contention that the Model Prison Manual 2016 and the Assam Jail Manual being government documents are not allowed to be printed/ copied or translated by any person or organization. In connection to that, we would like to state certain directions passed by the Supreme Court of India in a catena of cases, which will throw further light on the matter.

The Hon'ble Supreme Court of India in "Sunil Batra II v. Delhi Administration, [(1980) 3 SCC 488]" has mentioned in paragraph 39 of the judgement passed in 20 December, 1979 that "Law in the books and in the courts is





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COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING

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of no help unless it reaches the prisoner in understanciable language and available form. We, therefore, draw the attention of the State to the need to get ready a prisoners' handbook in the regional language and make them freely available to the inmates. To know the law is the first steps to be free from fear of unlaw." In the same judgement in paragraph 43 it is mentioned that "large notice boards displaying the rights and responsibilities of prisoners may be hung up in prominent places within the prison in the language of the people."

Similarly, it has been mentioned in the paragraph 30 of judgement passed on 15/09/2017 in the case "In Re: Inhuman Conditions in 1382 Prisons, 2017(11)SCALE 493" that a handbook should be made available to the prisoner in the local language that the prisoner understands and that the contents of the handbook should be explained to the prisoners in the event the prisoner is found to be illiterate. It further states that "in the absence of a prisoner having any knowledge about his or her rights, a grievance redressal mechanism is quite meaningless."

Also, "Inacio Manuel Miranda and State. MANU/MH/0543/1988", the court stated in paragraph 5 of the judgement "It is not enough that the law is enacted, Rules are framed and Orders are issued, but they should be also available to the person concerned, if required." It further stated that "It will be most unfair to punish a prisoner for breach of a rule or a condition which he has no knowledge and no facilities are also available for acquiring such knowledge. Therefore, the minimum which is expected of the Government is to make copies of compilation and to make them available in the libraries of the jails. Therefore, we direct the State Government to prepare copies of the compilation and make them available in the libraries of the Jail and sub-jails." According to the above mentioned mandates a handbook compiling laws regarding prisons must be made available to the prisoners in the language understandable to them.

In relation to your contention regarding printing and copying of Government documents, we would like to bring to your notice that the GLR Publishing House Guwahati have been regularly printing and circulating the Assam Jail Manual in



English and which is being purchased by the Government of Assam. Also, the Acts and Rules contained in the Assam Jail Manual are available online in English in the website of Assam Prison Headquarters; the softcopy of the Assam Jail Manual is available in the website of Public Library of India. Softcopy of the Model Prison Manual, 2016 is also available online in English on the website of Ministry of Home Affairs. These soft copies are easily accessible, downloadable and printable. In the Digital India as being developed under the leadership of our esteemed Prime Minister, Shri Narendr Bhai Modi, the contention raised in your letter is not only archaic but also contrary to the principles of transparency in public actions as is directed by the Hon'ble Supreme Court as well as the Government of India and the Gauhati High Court.

Section 3 of the Assam Official Language Act, 1960 provides that "..., Assamese shall be used for all or any of the official purposes of the State of Assam". It further adds that, "(a)all Ordinances promulgated under Art.213 of the Constitution of India; (b)all Acts passed by the State Legislature; (c)all bills to be introduced or amendments thereto to be moved in the State of Legislature; and (d)all Orders, Regulations, Rules and Bye-laws issued by the State Government under the Constitution of India or any law made by Parliament or the Legislature of the State, shall be published in the official Gazette in the Assamese language".

Accordingly, the government needs to comply with the above mentioned provision and take necessary action to make translated handbooks easily accessible in prison libraries. During our visits to the various Jails, we did not find any material to show that the mandatory directions of the Hon'ble Supreme Court of India and Section 3 of the Assam Official Language Act, 1996 have been carried out in the prisons in Assam. In the matter of the Jail Manuals in question no translated copies of the aforesaid manuals have been noted by us to be made available to the prisoners in the form of handbook in the local language.

We therefore see no reason why the handbook prepared by our team should not be used by the Government of Assam as an alternative, subject to re verification by your office as to their contents. More so, when the same would be available to the



Government at our cost and without any financial commitment on the part of the Government of Assam.

We hope you will reconsider your opinion taking into account the mandates passed by the Supreme Court of India and other provisions mentioned above, and grant us the permission to distribute the translated handbook prepared by the Pratidhwani team, in prison libraries, subject to verification of contents thereon. It would also serve our shared vision of providing effective legal service by facilitating awareness amongst prisoners. We have marked a copy of this letter to the Assam State legal Services Authority, Gauhati High Court for their information and appropriate necessary action as the Authority may deem fit.

Thanking You,

Sincere Regards

Senior Advocate &

President, STUDIO NILIMA

And

Director, Pratidhwani Free Legal Services and Awareness Centre A Unit of Studio Nilima

C.C to:-

The Secretary, Assam State Legal Services Authority (For Information and necessary action, we enclose the correspondence herein above)

(Nilay Dutta)

Senior Advocate &

President, STUDIO NILIMA

And

Director, Pratidhwani Free Legal Services and Awareness Centre A Unit of Studio Nilima

GOVERNMENT OF ASSAM ASSAM PRISON HEADQUARTERS KHANAPARA, GUWAHATI

No.PRI.88/2018/2

Dated Guwahati the 27th April, 2018

From:

Inspector General of Prisons, Assam

Khanapara, Guwahati.

To

The Project Manager,

Pratidhwani Free Legal Services and Awareness Centre,

A Unit of Studio Nilima, Damayanti Mansion,

Satya Bora Lane, Dighalipukhuri East,

Guwahati-781001.

Sub

Translated handbook for prisoners.

Ref

Letter No.Nil dated 11-04-2018.

Sir / Madam,

In inviting a reference to the subject cited above, I am to say that Model Prison Manual, 2016 and Assam Jail Manual are Government documents and no persons / organizations are allowed to print / copy or translate these documents. Further, it is also informed that the provision of the Jail Manual which are essential for the inmates are explained to them by the Jail authority at the time of their admission into the Jail.

However, it will be highly appreciable if your organization take efforts to provide legal assistance to those prisoners, particularly the undertrials, who are unable to avail legal help to prosecute their cases in the Court due to their financial hardship.

Yours faithfully,

Inspector General of Prisons, Assam Khanapara, Guwahati

GOVT. OF ASSAM ASSAM PRISON HEADQUARTERS, KHANAPARA, GUWAHATI

No. PRI.88/2018/4

Dated Guwahati, the 22nd May, 2018

From:

Shri Ranjan Sharma, ACS

Inspector General of Prisons, Assam

Khanapara, Guwahati

То

Shri Nilay Dutta Senior Advocate &

President, STUDIO NILIMA

And

Director, Pratidhwani Free Legal Services and Awareness Centre

A Unit of Studio Nilima, Damayanti Mansion,

Satya Bora Lane, Dighalipukhuri East,

Guwahati- 781001

Sub

Translated handbook of Jail Manuals for being made available to the

prisoners in Assam Jail

Dear Sir.

Kindly refer to your letter dated 15.3.2018 on the above subject.

We have reviewed the above matter in the light of your letter. There can be no two opinions about the need to make available to the jail inmates a small handbook in vernacular summarizing such of the provisions of Jail Manual as concern them in particular with regard to their rights and entitlements. As regards distribution of the proposed handbook "Apuni janene?" among the inmates of our jails, it appears that its contents are wholly drawn from the Model Prison Manual, 2016. In this regard I would like to state that the Model Manual being a document prepared and suggested by the Government of India for adoption by the individual States with such modifications as considered appropriate by them, its provisions as such are not applicable until so adopted and incorporated in the State Jail Manuals. In this context I would also like to inform you that in case of Assam, the old Prisons Act, 1894 has meanwhile been replaced by the Assam Prisons Act, 2013 and the work on formulation of the new Rules of Assam Jail

Manual under the new Act has just been initiated by a Committee appointed by the Government. The Committee has also been mandated to adopt in the process the provisions of the Govt. of India's Model Prison Manual, 2016, in so far as they are consistent with the aforesaid Act and with such modifications as are considered necessary to suit the local conditions, and also giving due regard to the existing provisions of the Assam Jail Manual to the extent of their consistency with the aforesaid Act. You will, therefore, appreciate that distribution of the proposed handbook based on the Model Prison Manual, 2016 may only create confusion among the Jail inmates as to their actual entitlements as per extant rules and orders.

On enquiry, I have come to know that a booklet titled "Karabaseer hatputhi" was brought out by this Directorate in 1990 for distribution among the jail inmates. Unfortunately, the initiative was not followed up in subsequent times and by now the booklet has become scarce. However, a copy of the booklet could be traced in this office and I find that it delineates the entitlements of the jail inmates as regards their food, clothing and bedding, interview and communication, medical aid, remission of sentence, work and wage, etc. as per relevant rules of the Assam Jail Manual and orders issued till then. I feel that this booklet needs revision and updation with some additions and alteration including correction, and some additional aspects like legal aid, parole and furlough, release of life convicts, etc. are also to be covered. We propose to initiate the work so that a new version of the booklet can be brought out for the benefit of the jail inmates of different categories, based on the Assam Prisons Act, 2013 and the existing rules of the Assam Jail Manual, which by virtue of Section 92 (2) of the Act continue to have effect to the extent of their consistency with the said Act and until superseded by the new set of rules to be made under the Act.

With best regards,

Yours sincerely,

(Ranjan Sharma) Inspector General of Prisons, Assam Khanapara, Guwahati Memo No: PRI.88/2018/4-A

Dated Guwahati, the 22nd May,2018

Copy to:

The Secretary, Assam State Legal Services Authority, Gauhati High Court, Guwahati-1, for kind information, with reference to letter dated 15.3.2018 from Shri Nilay Dutta, Senior Advocate & President, STUDIO NILIMA, on the above noted subject.

(Ranjan Sharma) Inspector General of Prisons, Assam Khanapara, Guwahati

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

ORDER

Madan B. Lokur, J.

- 1. Prison reforms have been the subject matter of discussion and decisions rendered by this Court from time to time over the last 35 years. Unfortunately, even though Article 21 of the Constitution requires a life of dignity for all persons, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their reform.
- 2. As far back as in 1980, this Court had occasion to deal with the rights of prisoners in **Sunil Batra (II) v. Delhi Administration.** In that decision, this Court gave a very obvious answer to the question whether prisoners are persons and whether they are entitled to fundamental rights while in custody, although there may be a shrinkage in the fundamental rights. This is what

^{1 (1980) 3} SCC 488

this Court had to say in this regard:

"Are prisoners persons? Yes, of course. To answer in the negative is to convict the nation and the Constitution of dehumanization 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 *Batra case*, this Court has rejected the hands-off doctrine and it has been ruled that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration.

3. A little later in the aforesaid decision, this Court pointed out the double handicap that prisoners face; the first being that most prisoners belong to the weaker sections of society and the second being that since they are confined in a walled-off world their voices are inaudible. This is what this Court had to say in this regard:

"Prisoners are peculiarly and doubly handicapped. For one thing, most prisoners belong to the weaker segment, in poverty, literacy, social station and the like. Secondly, the prison house is a walled-off world which is incommunicado for the human world, with the result that the bonded inmates are invisible, their voices inaudible, their injustices unheeded. So 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."

- 4. In Rama Murthy v. State of Karnataka³ this Court identified as many as nine issues facing prisons and needing reforms. They are:
 - (i) over-crowding;

^{2 (1978) 4} SCC 494

^{3 (1997) 2} SCC 642

- (ii) Delay in trial;
- (iii) Torture and ill-treatment;
- (iv) Neglect of health and hygiene;
- (v) Insubstantial food and inadequate clothing;
- (vi) Prison vices;
- (vii) Deficiency in communication;
- (viii) Streamlining of jail visits;
- (ix) Management of open air prisons.

This Court expressed the view that these major problems need immediate attention. Unfortunately, we are still struggling with a resolution of at least some of these problems.

5. In **T. K. Gopal v. State of Karnataka**⁴ this Court advocated a therapeutic approach in dealing with the criminal tendencies of prisoners. It was pointed out that there could be several factors that lead a prisoner to commit a crime but nevertheless a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was pointed out that it is this philosophy that has persuaded this Court in a series of decisions to project the need for prison reforms. This is what this Court had to say:

"The therapeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including

^{4 (2000) 6} SCC 168

family problems. We are not concerned with those factors as therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, maybe a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that this Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy."

6. In this background, a letter on 13th June, 2013 addressed by Justice R.C. Lahoti, a former Chief Justice of India to Hon'ble the Chief Justice of India relating to conditions in prisons is rather disturbing. Justice R.C. Lahoti invited attention to the inhuman conditions prevailing in 1382 prisons in India as reflected in a Graphic Story appearing in Dainik Bhaskar (National Edition) on 24th March, 2013. A photocopy of the Graphic Story was attached to the letter.

Justice R.C. Lahoti pointed out that the story highlights:

- (i) Overcrowding of prisons;
- (ii) Unnatural death of prisoners;
- (iii) Gross inadequacy of staff and
- (iv) Available staff being untrained or inadequately trained.

- 7. Justice R.C. Lahoti also pointed out that the State cannot disown its liability to the life and safety of a prisoner once in custody and that there were hardly any schemes for reformation for first time offenders and prisoners in their youth and to save them from coming into contact with hardened prisoners.
- 8. Justice R.C. Lahoti ended the letter by submitting that the Graphic Story raised an issue that needed to be taken note of and dealt with in public interest by this Court and that he was inviting the attention of this Court in his capacity as a citizen of the country. We may say that Justice R.C. Lahoti has brought an important issue to the forefront, dispelling the view:

"Judges rarely express concern for the inhumane treatment that the person being sentenced is likely to face from fellow prisoners and prison officials, or that time in prison provides poor preparation for a productive life afterwards. Courts rarely consider tragic personal pasts that may be partly responsible for criminal behavior, or how the communities and families of a defendant will suffer during and long after his imprisonment."⁵

- 9. By an order dated 5th July, 2013 the letter was registered as a public interest writ petition and the Registry of this Court was directed to take steps to issue notice to the appropriate authorities after obtaining a list from the office of the learned Attorney General.
- 10. In reply to the notice issued by this Court, several States and Union Territories gave their response either in the form of

⁵ Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Discourse by Eva S. Nilsen, Boston University School of Law Working Paper Series, Public Law & Legal Theory Working Paper No. 07-33

communications addressed to the Registry of this Court or in the form of affidavits. It is not necessary for us to detail each of the responses. Suffice it to say that on the four issues raised by Justice R.C. Lahoti there is general consensus that the prisons (both Central and District) are over-crowded, some unnatural deaths have taken place in some prisons, there is generally a shortage of staff and it is not as if all of them are adequately and suitably trained to handle issues relating to the management of prisons and prisoners and finally that steps have been taken for the reformation and rehabilitation of prisoners. However, a closer scrutiny of the responses received indicates that by and large the taken steps are facile and lack adequate sincerity in implementation.

11. In view of the above, the Social Justice Bench of this Court passed an order on 13th March, 2015 requiring the Union of India to furnish certain information primarily relating to the more serious issue of over-crowding in prisons and improving the living conditions of prisoners. The order passed by the Social Justice Bench on 13th March, 2015 reads as follows:-

"We have heard learned Additional Solicitor General and would like information on the following issues:

(i) The utilization of the grant of Rs.609 crores under the 13th Finance Commission for the improvement of

- conditions in prisons.
- (ii) The grant to the States in respect of the prisons under the 14th Finance Commission.
- (iii) Steps taken and being taken by the Central Government as well as by the State Governments for effective implementation of Section 436A of the Code of Criminal Procedure, 1973.
- (iv) Steps taken and being taken by the Central Government and the State Governments for effective implementation of the Explanation to Section 436 of the Code of Criminal Procedure, 1973 and the number of persons in custody due to their inability to provide adequate security/surety for their release on bail.
- (v) The number of persons in custody who have committed compoundable offences and are languishing in custody.
- (vi) Steps taken for the effective implementation of the Repatriation of Prisoners Act, 2003.

We expect all the State Governments to fully cooperate with the Central Government in this regard since the matter involves Article 21 of the Constitution and to furnish necessary information within three weeks.

List the matter on 24th April, 2015."

- 12. In compliance with the aforesaid order, the Union of India through the Ministry of Home Affairs filed a detailed affidavit dated 23rd April, 2015. It was stated in the affidavit that all States and Union Territories were asked to provide the information as required by this Court but in spite of reminders and meetings, the information had not been received from the State of Uttarakhand and the Union Territories of Dadra & Nagar Haveli, Daman & Diu and Lakshadweep.
- 13. It was stated that one of the problems faced in aggregating the information that had been received was that management

information systems were not in place in a comprehensive manner. To remedy this situation an e-prisons application was being designed so that all essential data could be centrally aggregated. It was stated in the affidavit that a draft project report was being prepared through a project management consultancy so that an e-prisons application could be rolled out with integrated information in all States and Union Territories comprehensively for better monitoring of the status of prisoners, particularly undertrial prisoners.

- 14. In response to the first issue, it was pointed out in the affidavit in the form of a tabular statement that funds were made available under the 13th Finance Commission for the improvement of conditions in prisons in respect of several States. We are surprised that no grant was allotted in as many as 19 States and in the States where grants were allotted, the utilization was less than 100%, except in the State of Tripura.
- 15. With regard to the grant under the 14th Finance Commission, it was stated that the 14th Finance Commission had reported that the States have the appropriate fiscal space to provide for the additional expenditure needs as per their requirements. The 14th Finance Commission did not make any specific fund allocation in favour of the Central Government but the States had projected

their demands individually and the tabular statement in that regard is annexed to the affidavit. As far as the Union Territories are concerned, apart from Delhi and Puducherry none of the Union Territories had projected any demand.

16. regard to the third issue regarding implementation of Section 436A of the Code of Criminal Procedure, (for short the Cr.P.C.), the affidavit stated that an advisory had been issued by the Ministry of Home Affairs of the Government of India on 17th January, 2013 to all the States and Union Territories to implement the provisions of Section 436A of the Cr.P.C. to reduce overcrowding in prisons. Among the measures suggested in this regard by the Ministry of Home Affairs was the constitution of a Review Committee in every district with the District Judge in the Chair with the District Magistrate and the Superintendent of Police as Members to meet every three months and review the cases of undertrial prisoners. The Jail Superintendents were also required to conduct a survey of all cases where undertrial prisoners have completed more than one fourth of the maximum sentence and send a report in this regard to the District Legal Services Committee constituted under The Legal Services Authorities Act, 1987 as well as to the Review Committee. It was also suggested that the prison authorities should educate undertrials of their right

to bail and the District Legal Services Committee should provide legal aid through empanelled lawyers to the undertrial prisoners for their release on bail or for the reduction of the bail amount. The Home Department of the States was also requested to develop a management information system to ascertain the jail-wise progress in this regard.

- 17. The aforesaid advisory dated 17th January, 2013 was followed up through a letter of the Union Home Minister to the Chief Ministers/Lieutenant Governors on 3rd September, 2014. It was pointed out in the letter that as per the statistics provided by the National Crime Records Bureau (NCRB) as on 31st December, 2013 the number of undertrial prisoners was 67.6% of the entire prison population and that the percentage was unacceptably high. In this context it was suggested that the provisions of Section 436 of the Cr.P.C. as well as Section 436A of the Cr.P.C. had to be made use of. It was also suggested that steps be taken to utilize the provisions of plea bargaining, the establishment of fast track courts, holding of Lok Adalats and ensuring adequate means for the production of the accused before the Court directly or through video conferencing.
- 18. Yet another letter was sent to the Director General of Prisons of all States/Union Territories on 22nd September, 2014 by the

Ministry of Home Affairs drawing attention to the directions of this Court in **Bhim Singh v. Union of India** dated 5th September, 2014⁶ relating to Section 436A of the Cr.P.C. and to take necessary steps to comply with the orders passed by this Court.

- 19. In a similar vein, yet another advisory was issued by the Government of India on 27th September, 2014. It was averred in the affidavit that as a result of these advisories and communications, some undertrial prisoners have been released in implementation of the provisions of Section 436A of the Cr.P.C.
- 20. With regard to the fourth issue concerning the effective implementation of Section 436 of the Cr.P.C., the affidavit stated that an advisory was issued way back on 9th May, 2011 in which it was pointed out, *inter alia*, that prison overcrowding compels prisoners to be kept under conditions that are unacceptable in light of the United Nations Standard Minimum Rules for Treatment of Offenders to which India is the signatory. It was pointed that as per the statistics prepared by the NCRB as on 31st December, 2008 prisons in India are overcrowded to the extent of 129%. The advisory highlighted some measures taken by some of the States to reduce the number of undertrial prisoners, including their release under the provisions of the Probation of Offenders Act, 1958 and encouraging NGOs in association with District Legal Services

⁶ MANU/SC/0786/2014

Committees to arrange legal aid for unrepresented undertrial prisoners as well as to implement the guidelines issued by the Bombay High Court in *Rajendra Bidkar v. State of Maharashtra*, CWP No. 386 of 2004 (unreported decision).

- 21. With regard to the fifth issue relating to the number of persons who have been languishing in jails in compoundable offences, a chart was annexed to the affidavit which indicated, by and large, that quite a few States had taken no effective steps in this regard particularly Andhra Pradesh, Assam, Chhattisgarh, Haryana, Kerala, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Telangana, Tripura and Uttar Pradesh. The reason why many undertrial prisoners had not been released was their inability to provide security and surety for their release. The steps taken to have these prisoners released from custody were not indicated in the affidavit.
- 22. With regard to the effective implementation of the Repatriation of Prisoners Act, 2003 it was stated that agreements on transfer of sentenced persons have been bilaterally signed with 25 countries but the agreements are operational after ratification by both sides only with respect to 18 countries. In addition, transfer arrangements have been made with 19 countries under the Inter-American Convention on Serving Criminal Sentences Abroad

thereby making the total number of countries with which transfer arrangements have been made for prisoners to 37 countries.

23. Keeping in view the affidavit dated 23rd April, 2015 filed by the Ministry of Home Affairs and the somewhat lukewarm response of the States and Union Territories, the Social Justice Bench passed the following directions on 24th April, 2015:

"We have perused the affidavit filed by the Ministry of Home Affairs on 23rd April, 2015 and have heard learned counsel.

The admitted position is 67% of all the prisoners in jails are under trial prisoners. This is an extremely high percentage and the number of such prisoners is said to be about 2,78,000 as on 31st December, 2013.

Keeping this in mind and the various suggestions that have been made in the affidavit, we are of the view that the following directions need to be issued:

- 1. A Prisoners Management System (a sort of Management Information System) has been in use in Tihar Jail for quite some time, as stated in the affidavit. The Ministry of Home Affairs should carefully study this application software and get back to us on the next date of hearing with any suggestions or modifications in this regard, so that the software can be improved and then deployed in other jails all over the country, if necessary.
- 2. We would like the assistance of the National Legal Services Authority (NALSA) in this matter of crucial importance concerning prisoners in the country. We direct the Member Secretary of NALSA to appoint a senior judicial officer as the nodal officer to assist us and deal with the issues that have arisen in this case.
- For the purpose of implementation of Section 436A of the Code of Criminal Procedure, 1973 (for short "the Code"), the Ministry of Home Affairs has issued an Advisory on 17th January, 2013. One of the

requirements of the Advisory is that an Under Trial Review Committee should be set up in every district. The composition of the Under Trial Review Committee is the District Judge, as Chairperson, the District Magistrate and the District Superintendent of Police as members.

The Member Secretary of NALSA will, in coordination with the State Legal Services Authority and the Ministry of Home Affairs, urgently ensure that such an Under Trial Review Committee is established in every District, within one month. The next meeting of each such Committee should be held on or about 30th June, 2015.

- In the meeting to be held on or about 30th June, 2015, the Under Trial Review Committee should consider the cases of all under trial prisoners who are entitled to the benefit of Section 436A of the Code. The Ministry of Home Affairs has indicated that in case of multiple offences having different periods of incarceration, a prisoner should be released after half the period of incarceration is undergone for the offence with the greater punishment. In our opinion, while this may be the requirement of Section 436A of the Code, it will be appropriate if in a case of multiple offences, a review is conducted after half the sentence of the lesser offence is completed by the under trial prisoner. It is not necessary or compulsory that an under trial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.
 - 5. The Bureau of Police Research and Development had circulated a Model Prison Manual in 2003, as stated in the affidavit. About 12 years have gone by and since then there has been a huge change in circumstances and availability of technology. We direct the Ministry of Home Affairs to ensure that the Bureau of Police Research and Development undertakes a review of the Model Prison Manual within a period of three months. We are told that a review has already commenced. We expect it to be completed within three months.

- 6. The Member Secretary of NALSA should issue directions to the State Legal Services Authorities to urgently take up cases of prisoners who are unable to furnish bail and are still in custody for that reason. From the figures that have been annexed to the affidavit filed by the Ministry, we find that there are a large number of such prisoners who are continuing in custody only because of their poverty. This is certainly not the spirit of the law and poverty cannot be a ground for incarcerating a person. As per the figures provided by the Ministry of Home Affairs, in the State of Uttar Pradesh, there are as many as 530 such persons. The State Legal Services Authorities should instruct the panel lawyers to urgently meet such prisoners, discuss the case with them and move appropriate applications before the appropriate court for release of such persons unless they are required in custody for some other purposes.
- 7. There are a large number of compoundable offences for which persons are in custody. No attempt seems to have been made to compound those offences and instead the alleged offender has been incarcerated. The State Legal Services Authorities are directed, through the Member Secretary of NALSA to urgently take up the issue with the panel lawyers so that wherever the offences can be compounded, immediate steps should be taken and wherever the offences cannot be compounded, efforts should be made to expedite the disposal of those cases or at least efforts should be made to have the persons in custody released therefrom at the earliest.

A copy of this order be given immediately to the Member Secretary, NALSA for compliance.

List the matter on 7th August, 2015 for further directions and updating the progress made.

For the present, the presence of learned counsel for the States and Union Territories is not necessary. Accordingly, their presence is dispensed with."

24. The order dated 24th April, 2015 made a pointed reference to

the extremely high percentage of undertrial prisoners and the total number of prisoners as on 31st December, 2013.

- 25. Reference was also made to the fact that the Bureau of Police Research and Development had circulated a Model Prison Manual in 2003 but since about 12 years had gone by, the Ministry of Home Affairs was directed to ensure that the Bureau of Police Research and Development undertakes a regiew of the Model Prison Manual within a period of three months.
- 26. Directions were also issued for the assistance of the National Legal Services Authority (NALSA) to assist the Social Justice Bench and deal with the issues that had arisen in the case.
- 27. A direction was also issued to ensure that the Under Trial Review Committee is established within one month in all districts and the next meeting of that Committee in each district should be held on or about 30th June, 2015. NALSA was required to take up the issue of undertrial prisoners particularly in the State of Uttar Pradesh where as many as 530 persons were in custody only because of their poverty.
- 28. Pursuant to the aforesaid order and directions, NALSA filed a compliance report on 4th August, 2015 in which it was stated that steps have been taken to ensure that Under Trial Review Committees are set up in every district and the State Legal Services

Authorities had also been asked to take up the cases of prisoners who were unable to furnish bail bonds and to move appropriate applications on their behalf.

- 29. The compliance report stated that with regard to the Prisoners Management System, the Ministry of Home Affairs had already appointed a project management consultant to prepare a detailed project report for the e-Prisons project. It was stated that there were four prison software applications that had been developed by (i) National Informatics Centre (ii) Goa Electronic Ltd. (iii) Gujarat Government through TCS and (iv) Phoenix for Prison Management System in Haryana. The various applications would be evaluated and discussed in a conference of the Director General (Prisons)/Inspector General (Prisons) to be held on 20th August, 2015.
- 30. The compliance report also indicated a break-up of the meetings of the Under Trial Review Committees that had been set up in the various States and that reports of the meeting that were directed to be held on or about 30th June, 2015 were still awaited from a few States and Union Territories.
- 31. As regards the Model Prison Manual it was submitted that a draft had been prepared and was circulated for comments and a further meeting was scheduled to be held in August, 2015 to

finalize the draft.

- 32. With regard to the cases of undertrial prisoners who were unable to furnish bail bonds it was stated that as many as 3470 such persons were in custody due to their inability to furnish bail bonds and a maximum number of such undertrial prisoners were in the State of Maharashtra, that is, 797 undertrial prisoners. It was stated that as many as 3278 undertrial prisoners were those who were involved in compoundable offences and efforts were being made to expedite the disposal of their cases.
- 33. Keeping in view the compliance report as well as some of the gaps that appeared necessary to be filled up, the Social Justice Bench passed an order dated 7th August, 2015 requiring, *inter alia*, the Under Trial Review Committee to include the Secretary of the District Legal Services Committee as one of the members of the Review Committee. The Ministry of Home Affairs was directed to issue an appropriate order in this regard.
- 34. With regard to the Model Prison Manual, it was suggested to the learned Additional Solicitor General appearing on behalf of the Union of India that the composition of the Committee looking into the Model Prison Manual should be a multi-disciplinary body involving members from civil society and NGOs as well as other experts. It was also directed that the Model Prison Manual should

look into providing a crèche for the children of prisoners.

35. With regard to the large number of undertrial prisoners in the State of Maharashtra, it was directed that the matter should be reviewed and an adequate number of legal aid lawyers may be appointed so that necessary steps could be taken with regard to the release of undertrial prisoners in accordance with law, particularly those who had been granted bail but were unable to furnish the bail bond due to their poverty.

The order dated 7th August, 2015 reads as follows:-

"We have gone through the compliance report filed on behalf of NALSA and we appreciate the work done by NALSA within the time frame prescribed.

We find from the report that the *Under Trial Review Committees* have been established in large number of districts but they have not been established in all the districts across the country. Mr. Rajesh Kumar Goel, Director, NALSA - the nodal officer will look into the matter and ensure that, wherever necessary, the Under Trial Review Committee should be established and should meet regularly.

We are told that the Under Trial Review Committee consists of the District Judge, the Superintendent of Police and the District Magistrate. Since the issues pertaining to under trial prisoners are also of great concern of the District Legal Services Authorities, we direct that the Under Trial Review committee should also have the Secretary of the District Legal Services Authority as one of the members of the Committee. The Ministry of Home Affairs will issue a necessary order in this regard to the Superintendent of Police to associate the Secretary of the District Legal Services Authority in such meetings.

It is stated that so far as a software for the prisoners is concerned, the Ministry of Home Affairs has appointed a Project Management Consultant and at present there are four kinds of software in existence in the country with regard to prison management. It is stated that a meeting will be held on 20th August, 2015 with the Director General (Prisons)/Inspector General (Prisons) to evaluate the existing application software.

We expect an early decision in the matter and early implementation of the decision that is taken.

It is stated that a *Model Prison Manual* is being looked into since the earlier Manual was of considerable vintage. We are told that a meeting is likely to be held towards the end of this month to finalize the Model Prison Manual.

Learned ASG is unable to inform us about the composition of the Committee that is looking into the Model Prison Manual. We have suggested to him (and this suggestion has been accepted) that a multi-disciplinary body including members from Civil Society, NGOs concerned with under trial prisoners as also experts from some other disciplines, including academia and whose assistance would be necessary, should also be associated in drafting the comprehensive Model Prison Manual.

To the extent possible, the Model Prison Manual should be finalized at the earliest and preferably within a month or two, but after having extensive and intensive consultations with a multi-disciplinary body as above.

In the Model Prison Manual, the Ministry of Home Affairs should also look into the possibility of having a creche for the children of prisoners, particularly women prisoners as it exists in Tihar Jail.

We find that the number of under trial prisoners in the State of Maharashtra is extremely large and we also think that there are not adequate number of legal aid lawyers to look into the grievances of under trial prisoner. Mr. Rajesh Kumar Goel, Director, NALSA says on behalf of NALSA that necessary steps will be taken to appoint adequate number

of legal aid lawyers so that necessary steps can be taken with regard to the release of under trial prisoners in accordance with law including those who have been granted bail but are unable to furnish the bail bond.

List the matter on 18th September, 2015."

- 36. When the matter was taken up by the Social Justice Bench on 18th September, 2015, Mr. Gaurav Agrawal, Advocate was appointed as *Amicus Curiae* to assist the Social Justice Bench.
- 37. On that date, the learned Additional Solicitor General informed the Social Justice Bench that the Ministry of Home Affairs had duly written to the Directors General of all the States and Union Territories to ensure that the Secretary of the District Legal Services Committee is included as a member in the Under Trial Review Committee. The learned Additional Solicitor General also informed that the Model Prison Manual was likely to be made available sometime in the middle of December, 2015.
- 38. It was pointed out on behalf of NALSA by Mr. Rajesh Kumar Goel that some clarity was required with respect to paragraph 4 of the order dated 24th April, 2015. In view of this request, it was clarified that there is no mandate that a person who has completed half the period of sentence, in the case of multiple offences, should be released. This was entirely for the Under Trial Review Committee to decide and there was no direction given for release in this regard.

- 39. With regard to the large number of undertrial prisoners in Maharashtra who were entitled to bail, it was submitted that out of 797 such undertrial prisoners nearly 503 had been released and that steps were being taken with regard to the remaining undertrial prisoners.
- 40. The order passed by the Social Justice Bench on 18th September, 2015 reads as follows:-

"This petition pertains to what has been described as inhuman conditions in 1382 prisons across the country.

On our request, Mr. Gaurav Agrawal, Advocate has agreed to assist us in the matter as Amicus Curiae since the complaint was received by Post. The Registry should give a copy each of all the documents in this matter to Mr. Gaurav Agrawal.

Learned Additional Solicitor General has drawn our attention to the order dated 7th August, 2015 and in compliance thereof he has stated that the Ministry of Home Affairs has written to the Directors General of all the States/Union Territories on 14th August, 2015 to ensure that the Secretary of the District Legal Services Committee is included as a member in the Under Trial Review Committee. A similar letter was written by NALSA on 11th August, 2015. NALSA should follow up on this and ensure that it is effectively represented in the Under Trial Review Committee.

It is not yet clear whether the Under Trial Review Committee has been set up in every District. Learned Additional Solicitor General and Mr. Rajesh Kumar Goel, Director, NALSA will look into this and let us know the progress on the next date of hearing.

As far as the software for *Prison Management* is concerned, it is stated by the learned Additional Solicitor General that all the Directors General of Police have been asked to intimate

which of the four available software is acceptable to them. He further states that the software will be integrated on the cloud so that all information can be made available regardless of which software is being utilized. He expects the needful to be done within a period of about two months.

We expect the Directors General of Police in every State/Union Territory to respond expeditiously to any request made by the Ministry of Home Affairs in this regard.

With regard to the *Model Prison Manual* of 2003, it is stated by the learned Additional Solicitor General that meetings have been held in this regard and it is expected that the Model Prison Manual will be made available by sometime in the middle of December, 2015. He states that people from academia as well as NGOs are associated in the project. It is expected that the Prison Manual will also take care of establishing a creche in respect of women prisoners who have children.

With regard to the release of under trial prisoners, particularly in the States of Uttar Pradesh and Maharashtra, as mentioned in our order dated 24th April, 2015, learned Additional Solicitor General says that at the present moment he does not have any instructions in this regard, but the Ministry of Home Affairs will write to the State Governments/Union Territories to take urgent steps in terms of our orders.

Mr. Rajesh Kumar Goel, Director, NALSA says that legal aid lawyers have been instructed to take steps for the possible release of under trial prisoners in accordance with law.

Mr. Rajesh Kumar Goel has also drawn our attention to paragraph 4 of the order dated 24th April, 2015. We make it clear that there is no mandate that a person who has completed half the period of his sentence, in the case of multiple offences, should be released. This is entirely for the Under Trial Review Committee and the competent authority to decide and there is absolutely no direction given by this Court for release of such under trials. Their case will have to be considered by the Under Trial Review Committee and the competent authority in accordance with law.

Mr. Rajesh Kumar Goel, Director, NALSA says that steps are being taken to appoint an adequate number of panel lawyers.

With reference to the release of under trial prisoners, he says that in the State of Maharashtra, as per the information available, 797 under trial prisoners were entitled to bail and with the efforts of the State Legal Services Authority, nearly 503 have since been released. Steps are being taken with regard to the remaining under trial prisoners.

Mr. Rajesh Kumar Goel, Director, NALSA says that the Member Secretaries of the State Legal Services Authority will be advised to compile relevant information with regard to the cases of compoundable offences pending in the States so that they can also be disposed of at the earliest. We expect the States of Uttar Pradesh and Maharashtra to expeditiously respond to the letter written by NALSA since the maximum number of cases pertaining to compoundable offences are pending in these States.

List the matter on 16th October, 2015."

- 41. Pursuant to the aforesaid order, NALSA filed another compliance report dated 14th October, 2015 in which it was stated that an Under Trial Review Committee had been set up in every district. However, the annexure to the compliance report indicated that no information was available from the State of Jammu & Kashmir and in some States particularly Gujarat and Uttar Pradesh and the Union Territory of Andaman & Nicobar Islands, the Secretary of the District Legal Services Committee was not made a member of the Review Committee.
- 42. It was also stated that the State Legal Services Authority had been requested to appoint an adequate number of panel lawyers

and to instruct them to take steps for the early release of undertrial prisoners.

- 43. When the matter was taken up on 16th October, 2015 the Social Justice Bench expressed its distress that only three States had responded to the information sought by the Ministry of Home Affairs with regard to holding the quarterly meeting of the Under Trial Review Committee on or before 30th September, 2015. Learned counsel appearing for the Union of India stated that the matter would be taken up with all the State Governments with due seriousness and it would be ensured that such meetings are held regularly. It was also stated that the latest status report would be filed in the second week of January, 2016.
- 44. Learned *amicus curiae* informed the Social Justice Bench that the Under Trial Review Committee had been set up in every district and a representative of the District Legal Services Committee was included in the said Committee.

The order dated 16th October, 2015 reads as follows:-

"It is very disconcerting to hear from learned counsel for the Union of India that there is no information available except from three States with regard to the release of under trial prisoners.

A meeting of the Under Trial Review Committee was supposed to be held on or before 30th September, 2015, but only three States have responded to the information sought by the Ministry of Home Affairs, Government of India. Learned counsel for the Union of India says that the matter will now be taken up very seriously with all the State Governments and the Union Territories and it will be ensured that the meetings are regularly held in terms of the Advisories given by the Ministry of Home Affairs at least once in every three months.

Learned counsel for the Union of India also says that the latest status report will be filed in the second week of January, 2016.

In the meanwhile, learned amicus curiae informs us that the Under Trial Review Committee has been set up in every District and a representative of the District Legal Services Authority has been included in all the Under Trial Review Committees and, therefore, to this extent the order dated 18th September, 2015 has been complied with.

List the matter on 29th January, 2016. We make it clear that learned counsel for the Union of India should be fully briefed in all aspects of the case."

- 45. In compliance with the order passed on 16th October, 2015 an affidavit dated 22nd January, 2016 was filed by the Ministry of Home Affairs in which it was stated that a detailed evaluation of the software for the e-Prisons Project had been completed and guidelines had also been circulated to all the States for their proposals and for exercising their option for selecting the appropriate software.
- 46. It was stated in the affidavit that a provision for funds had been made for the application software from the Crime and Criminal Tracking Network & System (CCTNS) project and an amount of Rs.227.01 crores had been approved for the

implementation of the e-Prisons Project. It was stated that the e-Prisons proposals had been received from seven States and other States/Union Territories had been asked to expedite their proposal for evaluation by the Ministry of Home Affairs.

- 47. With regard to the Model Prison Manual, it was stated that the revised Model Prison Manual had been approved by the competent authority and it was circulated to all States and Union Territories. The revised manual also included a provision for a suitable crèche for the children of women inmates in the prison.
- 48. With regard to the quarterly meetings of the Under Trial Review Committee, the affidavit disclosed the dates on which such Committees had met but on a perusal of the chart annexed to the affidavit there is a clear indication that not every such Committee met on a quarterly basis. This is most unfortunate.
- 49. With regard to the undertrial prisoners who could be considered for release under the provisions of Section 436A of the Cr.P.C., some progress had been made except in the States of Assam, Bihar, Chhattisgarh, Goa, Karnataka, Meghalaya, West Bengal, and the Union Territories of Dadra & Nagar Haveli and Lakshadweep. It was stated in the affidavit that notwithstanding the lack of detailed information it did appear that due to the institutionalization of the exercise, the number of undertrial

prisoners eligible for release under Section 436A of the Cr.P.C. had been considerably reduced in some States.

In the hearing that took place on 29th January, 2016 it was 50. pointed out that considerable progress had been made inasmuch as the Model Prison Manual had been finalized and perhaps circulated to all the States and Union Territories; Under Trial Review Committees had been set up in every district but unfortunately many of such Committees were not meeting on a regular basis every quarter; the application software for prison management had more or less been identified but a final decision was required to be taken in this regard; steps were required to be taken for the release of undertrial prisoners particularly in the State of Uttar Pradesh and the State of Maharashtra and wherever necessary, the number of panel lawyers associated with the State Legal Services Authority/District Legal Services Committee were required to be increased to meet the requirement of early release of undertrial prisoners and prisoners who remain in custody due to their poverty and inability to furnish bail bonds. In addition, it was pointed out that steps should be taken to ensure that wherever persons are in custody under offences that are compoundable, steps should be taken to compound the offences so that overcrowding in jails is reduced.

51. Has anything changed on the ground? The prison statistics available as on 31st December, 2014 from the website of the NCRB⁷ indicate that as far as overcrowding is concerned, there is no perceptible change and in fact the problem of overcrowding has perhaps been accentuated with the passage of time. The figures in this regard are as follows:

	Central Jails	District Jails
Capacity	1,52,312	1,35,439
Actual	1,84,386	1,79,695
%	121.1%	132.7%
Undertrials	95,519 (51.8%)	1,43,138 (79.7%)

- 52. The maximum overcrowding is in the jail in the Union Territory of Dadra & Nagar Haveli (331.7%) followed by Chhattisgarh (258.9%) and then Delhi (221.6%).
- 53. It is clear that in spite of several orders passed by this Court from time to time in various petitions, for one reason or another, the issue of overcrowding in jails continues to persist and apart from anything else, appears to have persuaded Justice R.C Lahoti to address a letter of the Chief Justice of India on this specific issue of overcrowding in prisons.
- 54. We cannot forget that the International Covenant on Civil and Political Rights, to which India is a signatory, provides in Article 10 that: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the

⁷ http://ncrb.nic.in

human person." Similarly, Article 5 of the Universal Declaration of Human Rights (UDHR) provides: "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment." With reference to the UDHR and the necessity of treating prisoners with dignity and as human beings, Vivien Stern (now Baroness Stern) says in A Sin Against the Future: Imprisonment in the World as follows:

"Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a state treats people, whoever they are. No one should fall below it." 8

55. In a similar vein, it has been said, with a view to transform prisons and prison culture:

"Treating prisoners not as objects, but as the human beings they are, no matter how despicable their prior actions, will demonstrate an unflagging commitment to human dignity. It is that commitment to human dignity that will, in the end, be the essential underpinning of any endeavor to transform prison cultures."

56. The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity.

^{*} Vivien Stern, A Sin Against the Future: Imprisonment in the World 192 (1998).

^{*} The Mess We're In: Five Steps Towards the Transformation of Prison Cultures by Lynn S. Branham, Indiana Law Review, Vol. 44, p. 703, 2011

To give effect to this, some positive directions need to be issued by this Court and these are as follows:

- 1. The Under Trial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31st March, 2016. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
- 2. The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

- 3. The Member Secretary of the State Legal Services
 Authority of every State will ensure, in coordination with
 the Secretary of the District Legal Services Committee in
 every district, that an adequate number of competent
 lawyers are empanelled to assist undertrial prisoners and
 convicts, particularly the poor and indigent, and that legal
 aid for the poor does not become poor legal aid.
- 4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.
- 5. The Director General of Police/Inspector General of Police in-charge of prisons should ensure that there is proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation etc.
- 6. The Ministry of Home Affairs will ensure that the Management Information System is in place at the earliest in all the Central and District Jails as well as jails for women so that there is better and effective management of

the prison and prisoners.

- 7. The Ministry of Home Affairs will conduct an annual review of the implementation of the Model Prison Manual 2016 for which considerable efforts have been made not only by senior officers of the Ministry of Home Affairs but also persons from civil society. The Model Prison Manual 2016 should not be reduced to yet another document that might be reviewed only decades later, if at all. The annual review will also take into consideration the need, if any, of making changes therein.
- 8. The Under Trial Review Committee will also look into the issues raised in the Model Prison Manual 2016 including regular jail visits as suggested in the said Manual.

We direct accordingly.

57. A word about the Model Prison Manual is necessary. It is a detailed document consisting of as many as 32 chapters that deal with a variety of issues including custodial management, medical care, education of prisoners, vocational training and skill development programmes, legal aid, welfare of prisoners, after care and rehabilitation, Board of Visitors, prison computerization and so on and so forth. It is a composite document that needs to be implemented with due seriousness and dispatch.

58. Taking a cue from the efforts of the Ministry of Home Affairs

in preparing the Model Prison Manual, it appears advisable and

necessary to ensure that a similar manual is prepared in respect of

juveniles who are in custody either in Observation Homes or

Special Homes or Places of Safety in terms of the Juvenile Justice

(Care and Protection of Children) Act, 2015.

59. Accordingly, we issue notice to the Secretary, Ministry of

Women and Child Development, Government of India, returnable

on 14th March, 2016. The purpose of issuance of notice to the said

Ministry is to require a manual to be prepared by the said Ministry

that will take into consideration the living conditions and other

issues pertaining to juveniles who are in Observation Homes or

Special Homes or Places of Safety in terms of the Juvenile Justice

(Care and Protection of Children) Act, 2015.

60. The remaining issues raised before us particularly those

relating to unnatural deaths in jails, inadequacy of staff and

training of staff will be considered on the next date of hearing.

(Madan B. Lokur)

.....J (R.K. Agrawal)

New Delhi; February 5, 2016 ITEM NO.1B (for orders)

COURT NO.8

SECTION PIL (W)

SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

Date: 05/02/2016 This petition was called on for pronouncement of order today.

For Petitioner(s)

By Post

Mr. Gaurav Agrawal, Adv. (A.C.)

For Respondent(s)

Ms. Sushma Suri, AOR

Hon'ble Mr. Justice Madan B. Lokur pronounced the order of the Bench comprising His Lordship and Hon'ble Mr. Justice R.K. Agrawal with the following observations:

- "59. Accordingly, we issue notice to the Secretary, Ministry of Women and Child Development, Government of India, returnable on 14th March, 2016. The purpose of issuance of notice to the said Ministry is to require a manual to be prepared by the said Ministry that will take into consideration the living conditions and other issues pertaining to juveniles who are in Observation Homes or Special Homes or Places of Safety in terms of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- 60. The remaining issues raised before us particularly those relating to unnatural deaths in

jails, inadequacy of staff and training of staff will be considered on the next date of hearing."

(SANJAY KUMAR-I) (JASWINDER KAUR)
AR-CUM-PS COURT MASTER
(Signed "Reportable" order is placed on the file)



COLLABORATIVE NETWORK FOR RESEARCH AND CAPACITY BUILDING



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Studio Nilima is a not for profit research collective based in Guwahati. It seeks to be at the forefront of engaging and initiating dialogues on the contemporary public policy concerns of the northeast of India. It brings together lawmakers, thinkers, learners, policy makers, academicians and practitioners from across the arts to unfold new ways of learning, thinking, research and practice.