



*Beyond the Prison Gates:
A Report on Living Conditions in
Tihar Jail*

Peoples Union for Democratic Rights
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Like thousands of other humvatan, fellow nationals, I too experienced state terror and tasted death in jail; it was nothing short of a miracle that I returned from this graveyard after such a long period.

Anjum Zamarud Habib ex-prisoner, Tihar Jail

What do A. Raja, Suresh Kalmadi, Afzal Guru, Kobad Ghandy, Kanimozhi, Madhuri Gupta and Sonu Punjaban have in common? Simply stated, all of them share a common address that reads c/o Tihar Jail.

The Central Prison at Tihar in Delhi has been in the news ever since it became home to those arrested in the 2-G Spectrum and Commonwealth fraud cases, early this year. Housing nearly twice its original capacity, in 9 separate jails, Tihar is one of the most populated prisons in the whole of South Asia. As per the data provided by Jail authorities, Tihar has approximately 11,738 inmates as opposed to its capacity of housing 6,250 persons. 82 percent of Tihar's inmates consist of under-trials, while convicts and detenues make up for the remaining 18 percent. In terms of total share, women prisoners constitute roughly 4 percent while men make up the remaining 96 percent. Jail No.6 in Tihar houses women prisoners. A look at the data provided for this single jail alone shows the number of women under-trial prisoners to be roughly 85 percent of the total. Of this, about 40 percent of women under-trials consist of those who have already been in Tihar well over a year.

Following high profile arrests in the 2-G Spectrum and Commonwealth fraud cases of A. Raja, Kanimozhi, Suresh Kalmadi and others, there have been various reports in the media about the 'special' arrangements being made for these very important inmates at Tihar. Separate cells, access to home cooked food, far more informal setting for meeting visitors than what others have to go through, are just some of the 'special' facilities reportedly being provided to them.

The law is said to allow for such privileges and concessions if claims are found to be genuine. However, the question is that while ordinary people find it so difficult

to demand for basic rights within the prison, how is it that our parliamentarians manage to enjoy special privileges treatment even when jailed.! On July 4, 2011, as reported in the media, Superintendent of Jail No. 4, S.C. Bhardwaj was suspended for entertaining Suresh Kalmadi with tea and biscuits in his office. The very same day two other staff members were also suspended when two highly influential prisoners, Vikas and Vishal Yadav accused in Nitish Katara murder case, were found strolling in the garden well beyond the permitted time.

It is no strange coincidence that the period in question has also witnessed a rise in corruption in Tihar. The Minister of State for Home Affairs Mullanally Ramachandran himself acknowledged and informed the Lok Sabha in August that cases of corruption in Tihar Jail had increased by 100 percent since the last year. According to him at least 12 cases were reported in the first seven months of the year, against last year's figure of 6.

The following is a small report on prison life in Tihar, to bring home facts about a world and its people completely invisible to the outside world. PUDR's repeated request to jail authorities seeking permission to undertake formal visits to the jail was rejected and thus the present report is largely based on published accounts of prison life, court judgements and also some interviews with ex-detainees and families of those visiting the jail for *mulaqat* (visit) on a regular basis.

The Prison Complex

The subject of prison administration in India is technically a 'state' subject, implying that state governments have the power and responsibility to frame their own rules and regulations regarding the administration of prisons in their territorial domain. In the context of Delhi, in both pre and post independence period, it was the State of Punjab that was directly in-charge of jails in Delhi. In 1966, however, these powers were transferred to the Delhi administration. However even then, the rules and regulations of the Punjab Jail manual continued to be in operation till Delhi enacted its own Prison Rules in 1988. With the grant of statehood, Delhi now has

its own Delhi Prisons Act (2000) that formulates rules and regulations regarding administration of jails in Delhi.

The Act (2000) *provides for the detention of prisoners committed to prison custody and for their reformation and rehabilitation with a view to ensuring safe detention and minimum standards of treatment of prisoners consistent with the principles of dignity of individuals.* For administrative purposes it places the responsibility of prison administration on the Inspector-General assisted by special officers such as jail superintendents, medical, law, and welfare officers appointed by the Government. The Act also provides for mandatory separation of prisoners on grounds of sex (male-female), age (21 years and under), offence (civil, criminal, convicted- under-trial) etc. The Delhi Prisons Act (2000) along with the Delhi Prison Rules (1988) regulates the working of Tihar. In situations where the Prison Rules and Act do not provide sufficient details, authorities continue to rely on the Punjab Jail Manual for assistance.

By virtue of its location in the national capital, Tihar is one of India's most high profile prisons. Its proximity to the power centre in Delhi places special responsibility on its administration of being impartial and neutral in the execution of its duties. Legally, it is an accepted norm that even where a person is convicted and imprisoned under sentence of court, he/she does not lose fundamental rights belonging to all persons under the Constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration, such as the right to move freely or the right to practice a profession. The United Nations *Standard Minimum Rules for the Treatment of Prisoners* recognizes the rights of prisoners to medical care, education, recreation facilities, in addition to added guarantees of physical protection and security within jail premises.

The prison complex at Tihar is headed by Director General (Prisons), assisted by Deputy Inspector General of Prisons. Each jail within the prison has its own Superintendent. Below the rank of Deputy Superintendent, the system of internal administration is run by Delhi Jail Service staff, which consist of warders and matrons. Like all other jail complexes in the country, the administration follows a system whereby convicted prisoners are given

specific responsibilities for management of day to day activities such as taking roll call, supervising cleanliness inside wards, delegating work to prisoners etc. A system of delegation such as this while on the face of it may seem democratic and participative, in practice leads to the creation of localized centers of power and a system of undesirable hierarchies.

Legally, the Delhi Prisons Act and Rules follows a system of classification of inmates that provides for differential treatment for separate groups of prisoners. These include the broad differentiation between under-trials and convicts, followed by further sub-classification between each of these categories. Those inmates who by 'social status, education or habit of life are accustomed to a superior mode of living' are accorded the status of Class B prisoners while, those not meeting the above criteria are given Class C status. Paragraph 52 of the Delhi Prisons (Admission, Classification, Separation, Remission, Reward and Release of Prisoners) Rules, 1988, for example, codifies the rules for the treatment of 'Better Class' Under-Trial Prisoners, which include 'superior' accommodation, 'special' diet, furniture, books, magazines and newspapers, subject to censorship by the Jail Superintendent and use of light till 10 pm.

Privilege or Right?

'She has been given a separate cell with attached toilet, the cell has television, fans and light. As far as food is concerned she can have south Indian food. This is not a special allowance as such because we give many other jail inmates south Indian food like idli, vada and sambar...'

R.N. Sharma, Deputy Inspector General, Prisons on facilities being provided to Kanimozhi (May 20, 2011 IANS)

In an unequal society such as ours, the justification of special facilities based on class considerations is questionable simply because it goes against the basic tenets of equality enshrined in the Constitution. Privileges based on class, works to disenfranchise a large majority of inmates belonging to the relatively poorer sections from enjoying the same privileges as the rich. Moreover the inclusion of class does not stand justified in the same way as the

separation of prisoners on grounds of sex, age, status of case, nature of crime etc. Inclusion of class seeks to infact legitimise the continuation and perpetuation of the inequities that exist in societies, with regard to entitlements. The fact that the Prison rules allow for certain concessions for inmates belonging to the 'better class', raises questions as to why other inmates who are less-privileged are not provided the same facilities? Who decides upon social status? What are the parameters for assessing a superior mode of living? These are just some of the questions that PUDR would like to raise, given recent cases of politically influential, wealthy inmates receiving privileged treatment not accorded to others.

Rights of Prisoners

The Delhi Prison Act and Rules provide certain important rights to all prisoners. These include access to medical care, right to educational facilities, right to maintain contact with the outside world, recourse to free legal aid, protection against torture, right to lodge complaints against prison officials etc. While all these rights exist on paper, as in the world outside, there is more probability of the rich rather than the poor reaping benefits of these rights. The allocation of separate rooms with furniture, access to home cooked food, personalised one to one meeting with visitors, are just some of the facilities that have been made available to persons like Kanimozhi, Suresh Kalmadi, A Raja and others. These facilities as we are given to understand have been made available by the Tihar administration on specific instructions of the Court. It may be noted that the Prison Rules offer no special privileges to members of Parliament, and therefore these requests as we are given to understand by jail authorities are not unique in any way. These are notionally available to all prisoners living within the enclosed walls of Tihar. In reality however, the story is otherwise.

PUDR's own investigations into rights of prisoners in Tihar reinforces the dualism that exists regarding the enactment of rights vi-s-vis different categories of prisoners. The Prison Act gives discretionary powers to the prison authorities to place restrictions on enjoyment of certain facilities and amenities by prisoners, for maintaining security and order within the prison. In investigations conducted over a period of six months, PUDR has come across many such restrictions that have been placed

on prisoners without any prior notice, and which strangely are not applicable to the high profile prisoners mentioned above. An office room was furnished with bed, ceiling fan, a television for Kanimozhi even before she was brought into Tihar. The Indian toilet in her cell was done away and a new western style toilet was constructed. In case of Kalmadi, he was often reported to be seen in the office of the Jail Supritendent having tea and accessing computer facilities. A. Raja was allowed to unrestricted access to television, a facility not available to others.

The point being made is that while these arrangements may be perfectly legal, the fact that they are not available to all is a point of concern. For an average prisoner, the stay in Tihar offers little by way of solace. While there have been some news reports of prisoners taking courses offered by IGNOU and finding placements with companies, this is more an exception than the rule. Mental harassment and torture are part of the lived reality that prisoners experience on a daily basis. On 30th May 2011, 7 policemen from Uttarakhand, housed in Tihar Jail for their alleged involvement in the killing of an MBA student in a fake encounter in July 2009, asked a city court for orders to ensure their well-being inside the jail premises and protection while being produced in the court from other inmates (Indian Express, 30 May 2011). A few years back in April 2007, Tihar Jail's Deputy Superintendent K S Meena, Assistant Superintendent Dhananjay Rawat and Chakkar Chief Mange Ram were jailed by a court on the complaint of a 51-year-old convict, Christopher James, who was allegedly beaten up and critically injured by the trio when he tried to expose their extortion-cum-smuggling racket in Jail No. 7 of Tihar Jail on 24 September 2006. He was also deprived of medical attention for two days despite the fact that he was a diabetic (Indian Express, 14 April 2007).

As per the data provided by jail administration at Tihar, majority of prisoners come from the lower strata of the society. Around 77 percent of the prison population, comprises persons earning an annual income of less than Rs.50,000 at the time of their arrest. Prisoners earning upto Rs.1,00,000 constituted around 15 percent while the rest 8 percent were made of those who earned more than a lakh. In terms of educational qualifications, 66 percent of

all prisoners constitute those who are either illiterate, semi-literate and those not having completed matriculation or class X. In the next few pages, we examine some of the most fundamental rights that are available to all prisoners by examining what the Prison Rules and Act have to state and how it works out in practice.

Rights Against Torture or any form of Mental Harassment

Both convicted and under-trial prisoners have certain rights that are fundamental to their existence such as the right to dignity, protection against torture and other inhuman practices. Existing jurisprudence clearly states that all unconvicted prisoners are presumed to be innocent till the time that they are found by the courts to be actually guilty of a crime. As a rule therefore all under-trial prisoners must be kept separately from convicted prisoners, with further requirements of segregation to be maintained on the basis of age and sex. The law also prohibits corporal and all other forms of cruel, inhuman and degrading punishments.

In Tihar however, the way prison administration functions, torture and mental harassment are in-built into the system. For example, while the Prison Act and Rules makes no mention of the specific category of 'high risk' prisoners, the terminology is well in use to describe those on trial or convicted of charges of abetting, planning or participating in terrorist activities, political convictions, or arrested under laws such as the Unlawful Activities Prevention Act (UAPA). These set of so called 'high risk' prisoners inevitably comprise of persons from Jammu and Kashmir, Uttar Pradesh, Bihar and North East India. Majority of them consist of under-trials, but their status as 'high risk' prisoners does not allow them to enjoy the same facilities as the other under trials. For example, there are fewer sports and recreation facilities for high risk prisoners at present.

The Delhi Prisons (Admission, Classification, Separation of Prisoners) Rules 1988, in Rule 47 states that prisoners will not be required to perform menial duties nor pay for having such duties done for them. These duties must

be discharged by Jail servants who must not be used by prisoners of the B Class as their personal servants. Emancipatory as it may sound, these rules as pointed out by Iftikhar Gilani in his book, *My Days in Prison*, are easily made 'flexible enough to provide comforts for those with money and muscle.' On page 55 of his book, he writes: 'I was free from harassment only inside the barracks. The moment the barracks were unlocked the harassment began in full swing. I was made to clean the general toilets, sweep and mop the floor and the common areas of the ward. The warders and the munshis seemed to have been instructed to inflict as much pain as they could.'

Tihar's reliance on convicted inmates to run day to day affairs also creates its own problems. Within barracks, there is a culture whereby small cliques of prisoners are given the task of maintaining discipline within the cells. These prisoners often resort to corporal punishment, torture and harassment in order to carry out their duties. PUDR met up with a certain ex-prisoner, who showed us cuts and bruises on his body, gashes made by blades and other sharp instruments during his stay in Tihar. These would take place either inside the cell or in the van used to transport them to courts. PUDR was given to understand that it was very difficult for average prisoners to lodge complaints against these non-official custodians of law.

The dignity of prisoners is also often compromised in the way certain basic rights that are guaranteed under prison rules are denied to them. These include aspects such as right to maintain contact with the outside world, right to receive books, letters, right to medical care and such other rights that are fundamental to one's existence. In the next few pages we turn to some such rights to understand how prisoners in Tihar have to struggle to get even the standard minimum set of rights applicable to all prisoners.

Right to Receive Visitors

Inmates of Tihar as per the Prison Manual are allowed to have two interviews per week with a designated place called the 'mulaqat jangla' attached to each jail. As per the information provided on the website of Tihar Jail, each prisoner 'is normally permitted three visitors per interview'. Also, 'during the interview, every prisoner is allowed to

receive vegetarian food, fruits and clothes' (Introduction to Tihar Jail). In addition, each prisoner is allowed to receive coupons at the time of interview for use inside the jail.

Easy as it may sound, the process of *mulaqat* is in reality, very tedious. Interviews conducted with families and persons coming for regular visits revealed the cumbersome nature of the entire process. A booking for a visit has to be made in advance either over phone (28520202) or personally at a special desk at Tihar, between 1- 8p.m each day. The person intending to visit is required to provide an identity proof at both the time of booking and the actual visit to the authorities. Also each visitor is photographed and thumb impressions are taken separately.

Getting an appointment over the phone, especially for those who cannot come personally, is cumbersome. The telephone number provided is constantly engaged, despite the multiple lines provided. Moreover, while the Manual provides upto three visitors, from March 1, 2011, only one visitor per under trial and three per convict are being allowed. For families coming from outside Delhi, such a directive is problematic. Many of the persons whom PUDR interviewed, recounted as to how they now have to make arrangements for an extended stay in the capital, in order to ensure that each one of them has a *mulaqat*.

It is important to note that the Supreme Court of India in the *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi* AIR 1981 SC 746 had stated: 'As part of the right to live with human dignity and therefore, as a necessary component of the right to life, he [a prisoner] would be entitled to have interviews with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld as constitutionally valid under Article 14 and 21, unless it is reasonable, fair and just.'

Since March this year, however there have been other changes that have been made in the rules relating to interviews. Every prisoner now has to submit a list of 8-10 names of persons (relatives/friends) who would be coming for the *mulaqat*. This means, no other person apart from those named can be a *mulaqatee*. Moreover, restrictions

have also been placed on the kinds of articles that can be carried by visitors at the time of mulaqat. While till last year, visitors could carry two varieties of fruits- bananas and apples from January 15, 2011, these too have also been stopped. Also restrictions have been placed on the kind of home cooked food that visitors can carry. No gravy items and dal is allowed to be taken in. There was even a period of 15 days around the first two weeks of April when the prison authorities stopped without any prior intimation or notice, green vegetables from being carried inside. The fact that there is no prior intimation nor any information that is clearly displayed for public notice as to why some items are being stopped or what will be allowed inside the jail, reflects the highly arbitrary and unresponsive character of the jail administration.

Right to Wholesome and Nutritious Food

The Delhi Prisons (Transfer of Prisoner, Labour and Jail Industry, Food, Clothings and Sanitation) Rules, 1988 in paragraph 73 mentions the food for prisoners, other than those sick in hospital. These consist of:

1. Early morning meal – half the cereals, half the oil, half the dal, half the vegetables and tea,
2. Mid-day meal – parched or boiled gram and tea,
3. Evening meal –the remainder of the cereals, dal, oil and vegetables.

However, it is to be noted that there is no mention of fruits in the diet provided. And with the restrictions placed on fruits and other items, this we feel is a serious lapse. Whereas earlier, a prisoner would have access to fruits provided by family and friends at the time of the *mulaqat*, restrictions placed now force prisoners to purchase fruits and such other items from canteens located within the jail. The move to place restrictions on certain items does not mean that they will not be made available. Rather, prisoners are now free to purchase them as per their requirements. There is a growing move within Tihar to privatise the sale of food and other items within the jail. The feedback regarding this is nowhere positive. The prices of commodities is hiked up and very often the fruits on offer are not of very good quality. The practice of purchasing things from canteens is also regressive in the sense that

those who cannot afford to purchase, have to learn to make do without them. This has serious repercussions for women who have small infants with them in the jail. Apart from the basic minimum, all other food items needed for their children have to be bought at the canteen or the store within the jail.

The Black Economy Within

Since cash and valuables are not permitted inside the prisons, purchases inside the jail are made using coupons. At the time of mulaqat, relatives are allowed to give an inmate coupons worth 500 rupees. The coupons, in various denominations, allow the inmates to buy essential items such as tea, soap and buckets. The ban on currency notes has given rise to assort of black market inside the jail. If someone manages to smuggle a 500 rupee note, referred to as a gandhi, he can buy coupons worth 750 rupees. But the rate changes from day to day depending upon the number of 500-rupee notes in circulation on that day.

The gandhis are put to a variety of uses. They can grease palms and procure prohibited items like tobacco, drugs and alcohol, among other things. Tobacco is a contraband item in the jail; so smuggling cigarettes and pouches of tobacco is most lucrative. A pouch of tobacco costing twenty rupees in the market can sell for up to 400 rupees. A single bidi costs thirty rupees inside Tihar

Ifitkhar Gilani , *My Days in Prison*

PUDR actually came across several instances where prisoners engage in doing small jobs for other prisoners in return for coupons. An ex-women prisoner interviewed by PUDR related as to how she would barter and even sell some items sent in by her family to other prisoners, in order to earn some extra money/coupons to buy milk for her child who was staying with her in jail.

The Delhi Prison Act (2000) and Rules actually say very little about what exactly is to be provided for prisoners as food. In fact the Punjab Jail Manual has a more elaborate description of the food that is to be made available to all prisoners. As per Section XI, of the Prison Manual, under-

trial prisoners shall be provided a diet as per the following scale:

Diet scale for Under-Trial Prisoners					
Twice a week	Twice a week	Thrice a week	Four times a week	Thrice a week	Daily
Wheat	Barley or Jowar	Bajra or Makki	Dal, Urad, Mung	Dal, Urad, Mung	Salt, Condiments, Firewood, Vegetables Oil

It also makes a mention of the sort of vegetables to be made available according to season, which include; cabbage, carrot, cauliflower, kohlrabi, onion, parsnip, spinach, turnip, radish, red sag, French bean, sword bean, cucumber, pumpkin, squash, sweet potato, bottle egg plant, country pumpkin and karela among others. Interestingly, the Punjab Jail Manual, provides for exceptions. In Note 3 of Segment XI it states that *'if an under-trial prisoner belongs to such a class of life that the ordinary jail diet is reasonably distasteful to him, or, in any case, if the Medical Officer considers it necessary, arrangements shall be made for the supply to him, in the former case at his own expense and in the latter at the public cost of articles of extra diet.'*

The Punjab Jail Manual also gives under-trial prisoners confined in judicial lock-ups the right to supplement their requirements in the matter of food by receiving articles from their relatives or friends at the time of interview, such as *ghee, gur, shakkar*, sugar, fruits, sweets, cooked eggs, mustard oil, almonds lemons, *galgals*, mangoes, onions, pickles and chutney and *amla*.

The Delhi Prison Act and Rules are silent on the sort of vegetables and fruits that are to be provided to prisoners. There is no list provided of the vegetables that visitors may carry, as a result much depends on the whims and fancies of those officers deputed at the checking counters of what may eventually be allowed or not. PUDR noticed that visitors often coming from far off places and unaware of rules would

have to forgo the cooked food brought by them, even if it was vegetarian, on the plea that these were not allowed. As a quid pro quo, such visitors are then forced to buy muffins, biscuits and savoury items at the Tihar Shop/Haats so that they are spared the embarrassment of going in for the *mulaqat* empty-handed.

Right to Medical Care

The right to medical care is one of the most fundamental of all rights granted to each and every prisoner. The Delhi Prison Act (2000) in Chapter VIII provides for a dispensary/hospital in all the jails and access to such facilities for all prisoners 'without delay' and at the earliest. Besides, doctors and paramedics, a large number of NGOs also work alongside, providing specialized care and services to prisoners concerned. In situations where the Medical Officer recommends specialized treatment and care, the Deen Dayal Upadhyaya Hospital located in Hari Nagar serves as the first point of contact.

In the absence of an opportunity to visit Tihar, our observations on this point are restricted to media reportings of specific cases that have come up in the context of Tihar. As recently as May 14, 2011, the Delhi High court ordered a sum of Rs. 10 lakhs as compensation to the wife of the 'biscuit tycoon', Rajan Pillai who died in Tihar jail in July 1995, because of lack of proper medical care. As per an affidavit filed in the Delhi High Court in the case, Tihar administration admitted to the fact that out of the total sanctioned strength of 110 doctors and paramedics, there were a shortage of staff, with 32 vacancies yet to be filled. The court ordered the Tihar jail authorities to take corrective measure to improve the minimum standard of treatment and care for its inmates. Holding the state liable for lapses which led to his death, the Court stated: 'there is both a constitutional and a legal obligation of the state, in terms of Article 21 (right to life) of the Constitution, to protect the life and liberty of every inmate of a prison....The non-availability of specialist doctors on call coupled with the inability to promptly refer Rajan Pillai for treatment to a hospital nearby, the failure to have a properly equipped ambulance, the failure of the doctors to correctly diagnose the problem and treat it, were the factors that cumulatively caused the death of Rajan Pillai.'

In another case in June this year, the Delhi High Court once again reprimanded Tihar administration stating that deaths in Tihar jail was not an 'uncommon phenomenon.'

Awarding a compensation of Rs 6.54 lakh to the family members of Vinod Kumar who died in 2007, the Court observed it to be ‘a clear case of violation of his fundamental right under Article 21 of the Constitution.’ Earlier this year, in another case on 28 January 2011, on the recommendation of the National Human Rights Commission, the Delhi Government was made to pay Rs. 1 lakh as compensation to the next of kin of Alka, an inmate who was imprisoned in Jail No. 6, and subsequently committed suicide inside the jail premises on October 23, 2007. At the time of admission to the jail, Alka was found sick with low blood pressure and high grade fever. It was also reported that she had given birth to a baby 27 days before. She was referred directly to the Deen Dayal Upadhyay Hospital, and thereafter her treatment continued through the jail dispensary under observation of DDU hospital. On the day she attempted suicide she was brought by her co-inmates to the dispensary in jail no 6, from where she was referred to DDU hospital, where she was declared brought dead. On consideration of various reports, NHRC differed from the observation of the enquiry magistrate in the matter to the extent that the detaining authority had not taken adequate precaution to prevent the prisoner from doing any harm to herself. It said that for breach of its duty to take care of a prisoner, the Government of NCT, Delhi must bear the liability and recommended Rs. 1 lakh as compensation.

Death in judicial custody represents the most extreme and definitive of all violations of the right to life. However lesser violations with regard to medical care that have a direct bearing on the health and well being of prisoners are accorded less importance and more or less taken for granted. Given the high occupancy rate, overcrowding, lack of ventilation, humidity etc., fever and tuberculosis are common problems. In this context, the recommendations made in the Report of the Commission of Inquiry headed by Justice Leila Seth, are relevant. These include suggestions like prisoner’s access to fresh air, allowing them to remain unlocked for the maximum period possible, the provision of primary health care on a 24 hour basis, supplemented by visiting specialists for all emergency consultation outside normal attendance etc. In this regard, it is also pertinent

Deaths in Judicial Custody (Natural and Unnatural)		
Years	Delhi	India
2000-2001	28	910
2001-2002	27	1140
2002-2003	30	1157
2003-2004	22	1300
2004-2005	27	1357
2005-2006	29	1591
2006-2007	25	1477
2007-2008	33	1789
Total	221	10,721
Source: Judgement given in the Rajan Pillai case by the High Court of Delhi (2011)		

to reiterate the observation made by the Supreme Court in the *Rama Murthy v. State of Karnataka* (1997) case –‘Society has an obligation towards prisoners’ health for two reasons. First, the prisoners do not enjoy the access to medical expertise that free citizens have. Their incarceration places limitations on such access; no physician of choice, no second opinions, and few if any specialists. Secondly, because of the conditions on their incarceration, inmates are exposed to more health hazards than free citizens. Prisoners therefore, suffer from a double handicap.’

Enjoyment of Other Related Rights

The right to speedy trial, the right to pursue vocational and educational opportunities, right to recreational

Some of the Recommendations Made by Mulla Committee Regarding Prison Reforms (1983)

- The Subject of prisons and allied institutions should be included in the Concurrent List of the Seventh Schedule of the Constitution of India.
- The Indian Penal Code should be suitably in the light of the contemporary ideology of reformation and rehabilitation of offenders, e.g., it may provide alternatives to prison sentences and eliminate distinction between simple and rigorous imprisonment.
- Adequate and nutritious diet should be given to nursing women and to children accompanying women prisoners.
- Norms of prison diet should be laid down in terms of calorific and nutritional value, quality and quantity. Adequate checks should be provide to ensure that prisoner get diet as per rules.
- The scale of interview for convicted and under-trial prisoners should be liberalized.
- Facilities for interviews of prisoners should be humanized and conditions procedure governing grant of interviews rationalized.
- Classification of prisoners A,B,C, or I, II, III classes on the basis of their social, economic and educational backgrounds should be abolished.
- The institution of convict officers discharging supervisory and disciplinary duties at present should be abolished in a phased manner.
- Rationalized wage system should be introduced in prisons and allied institutions of every State/Union Territory.

facilities, right to receive minimum wages for work undertaken etc. constitute some of the other important rights. PUDR would like to focus on some specific cases to illustrate how the enjoyment of these rights is not uniform for different groups of prisoners. For example, while there is a system of open school and university learning within the prison, access to these facilities are restricted for a large majority. For example, recently when Tihar administration announced job placements for inmates, it was surprising that out of the 42 inmates who applied, there were no women applicants for job interviews. Exposure to educational facilities, libraries is not uniform, and as PUDR found out, men prisoners are provided more access to vocational courses such as computer literacy than women inmates. The division of labour is very much along the predictable lines of gendered roles and responsibilities. For example, women inmates are taught embroidery, stitching, painting crèche training etc., while men have a more varied exposure. Related to this, is the right to have access to reading materials, books, magazines and other recreational facilities. The Prison Act leaves it to the discretion of the Superintendent to allow books/ magazines etc being made available to prisoners. This also includes access provided to prisoners to visit libraries within the jail.

Another important right that is denied actively to all prisoners is the right to receive wages as per the minimum wages rules for labour undertaken inside the jail. Tihar has several small units or factories as they call them, that are involved in manufacturing products and artefacts for use in jail and sale outside. These include, the prison bakery, candle-making unit, stitching, carpentry, nursery etc. Now as per information provided on the Tihar website, wages paid to prisoners for prison labour have been increased from Rs. 10 , Rs. 12 and Rs. 15 to Rs. 40, Rs. 44 and Rs. 52 per day for unskilled, semi-skilled and skilled categories of labour respectively. These rates in general are much below the standard minimum wages announced by both the Central and the Delhi Governments concerned. The minimum wages for bakery, confectionary, food preservation, pottery, printing and construction work in Delhi is Rs. 247 for unskilled, semi-skilled Rs. 273 and skilled Rs.301.

Important Judgments Related to the Rights of Prisoners

On Rights and Dignity of Prisoners

The prisoner or detenu has all the fundamental rights and other legal rights available to a free person, save those which are incapable of enjoyment by reason of incarcerationThe right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. The magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. ...Therefore, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruelty, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of Article 14 and 21(*Francis Coralie Mullin vs The Administrator, Union*) 1981

On Categorisation of 'Better Class' Prisoners

Economic and social importance cannot be the basis for classifying prisoners for purposes of handcuffs or otherwise, a rich criminal or under-trial is in no way different from a poor or pariah convict or under trial in the matter of security risk. An affluent in custody may be as dangerous or desperate as an indigent, if not more. He may be more prone to be rescued than an ordinary person. Therefore, it is arbitrary and irrational to classify

prisoners for purposes of handcuffs, into 'B' class and ordinary class (*Prem Shankar Shukla vs Delhi Administration*) 1980

On the Right to Receive Visitors

Considered from the point of view also of the right to personal liberty enshrined in Article 21, the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression "personal liberty" occurring in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which "have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19". Therefore, personal liberty would include the right to socialise with members of the family and friends subject, of course, to any valid prison regulations and under Articles 14 and 21, such prison regulations must be reasonable and non-arbitrary. If any prison regulation or procedure laid down by it regulating the right to have interviews with members of the family and friends is arbitrary or unreasonable, it would be liable to be struck down as invalid as being violative of Articles 14 and 21 (*Francis Coralie Mullin vs The Administrator, Union*) 1981

Conclusion

There are a few points that PUDR would like to draw attention to through this report. The almost close and non-transparent manner in which the jail administration goes about its work, the low-levels of accountability that it is expected to subject itself to, are serious and disturbing points of concern. Behind the high walls, what goes on inside the prison complex, is seldom brought forward or presented for public review. While there exists an officially appointed body of Visitors, who are periodically required to submit reports on jail conditions, these reports are directly submitted to the Government and are not readily disseminated or made available to the public.

This apparent lack of accountability reinforces administrative high-handedness, which can take on very extreme forms. For example, the meals served in Tihar are 'strictly vegetarian.' However, there is no written explanation of why this is so. Non-vegetarianism we are given to understand gives rise to 'animal' instincts, and since the prison is also a reform house, vegetarianism indirectly helps inmates acquire suitable virtues that stress on non-violence and peace. Recently the High Court of Mumbai in a judgement delivered in July 2011 questioned this logic of imposing vegetarianism in jails and ordered the Mumbai jail administration to provide non-vegetarian items at least twice a week to its inmates. Interestingly in case of Tihar, spiritualism also provides exclusive rights of access and entry to religious organizations, a right that is explicitly denied to civil liberties and democratic rights organizations such as PUDR.

In this context, PUDR would like to conclude by reiterating the following points of concern. First, the very fact that a person is imprisoned does not mean that he / she ceases to be a 'person.' The increasing restrictions on the rights of prisoners being placed in Tihar with respect to receiving visitors, access to medical care, etc. goes against the accepted norms and practices governing prison life. Second, any prison regulation or restriction or punishment which is sought to be imposed in addition to those resulting from the sentence of court, must still be tested by the procedural safeguards under Article 21 which involves

The United Nations Standard Minimum Rules for the Treatment of Prisoners

Prisoners Under Arrest or Awaiting Trial

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners," hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

88. (1) An untried prisoner shall be allowed to wear his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from that supplied to convicted prisoners.

90. An untried prisoner shall be allowed to procure at his own expense or at the expense of a third party such books, newspapers, writing materials and other means of occupation as are compatible with the interests of the administration of justice and the security and good order of the institution.

92. An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them, subject only to restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.

'fairness' and 'natural justice.' (D. D. Basu, *Commentary on the Constitution of India*, Vol. 3., p.3205) Third, the privileges accorded to 'better class' prisoners leads to the perpetuation of class divisions within the prison administration, and goes against the very spirit of equality as enshrined in the Constitution.

PUDR's other reports on Tihar

- 1) 'Death in Tihar: A Report' (1989)
- 2) 'Deaths in Tihar: A Report on Invisible Lives' (1994)
- 3) 'Of Police and Prison, A Death Via Two Custodies' 1995
- 4) 'Behind High Walls: Custodial Death in Tihar Jail' (1996)

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