

## Foreword

Jails constitute an important component of the justice administration system. The UN standards on the conditions in jails very clearly lay down the rights of the prisoners- be it under trials or convicts. The principles of fair trial also emphasise on the fact that as far as the under trials are concerned, the rule should be bail and not jail. Unfortunately, the condition in India is very pitiable. The most important issue that haunts the jail administration is the issue of overcrowding, and one of the reasons for this is that a large proportion of the jail population consists of undertrials.

Centre for Social Justice (CSJ) has consistently worked on issues that touch the most vulnerable in the social ladder. Undertrials have been one such group with whom CSJ has had a long standing association, either through trainings paralegals in the jails, releasing under trials, conducting legal awareness camps in jail, etc. It took the lead in creating a NGO task force in Gujarat that was concerned with the depleting situations in the Jails in Gujarat. The task force consisted of members from eminent organizations who are committed to social justice work. This NGO task force report on prison reforms in Gujarat state was submitted to Hon'ble Minister for Jail and Rural Housing, Shri Jaspal Singh on 27-07-99. CSJ acted as the secretariat to the task force. The task force tried to contextualise Justice Mulla Committee report on the issue of prison reforms in the context of Gujarat. It gave several recommendations one of which was the concept of "*kayda sahayak*" or **the prison paralegal**. They recommended one life convict as a Kayda Sahayaks for every 75 prisoners. These Kayda Sahayaks can be trained in the basic principles of law, the rights and duties of prisoners, so also the legal procedure necessary to release people on bail. Kayda

Sahayaks can be shown how the various applications for bail, personal bond, and confessions are to be drafted so that they can draft applications on their own.

## **Formation of Prisoners Rights Working Group**

Population of prisoners in our country represents the population of vulnerable group of our country. A need was felt to provide justice to this socially vulnerable group and bring in Human Rights perspective of the targeted group. The accused himself is fighting against the police and prosecuting machinery. The accused clearly needs much more from a society, which perhaps by its own acts of omission and commission has been at least partly, responsible in shaping his destiny. Prisoners' Rights Working Group is presently working in the following areas

- Releasing of the Under trials by way of Bail, Personal Bond and Confession
- Implementation of various Supreme Court Judgments
- Implementation of the recommendations of NGO Task Force
- Providing Legal Aid and advice
- Organizing legal awareness camps
- Promoting stake holders relationship

## **Training of Paralegal (Kayda Sahayaks) in prison**

This concept has basically evolved from the need of the prisoners and the difficulty faced by them in getting the minimum of what they are entitled to get legally. Generally persons coming in jail are those who belong to the vulnerable section of the society. They do not have means to get themselves released for want of money, power, expert advice etc. They cannot hire an advocate for themselves and remain in jail for more time than they are actually required too. This causes the problem of over-crowding. So if persons from with-in the prison are trained to look after the need of the rest of the

population, then this problem can be taken care off.

## **Objectives**

1. Awareness of Law and their Rights,
2. Bring awareness among other prisoners,
3. Developing the skill of filling up bail/bond application forms for themselves and others,
4. To make the role of paralegal (kayda sahayaks) accepted within the prison
5. To perform the role of a prisoner's rights watch agency by establishing a linkage between the working group on prisoner's rights, C.S.J. the prison
6. Empowering the prisoners to challenge the situations of injustice and encroachment of rights inside the prison,
7. Implementation of the recommendations of NGO Task Force on Prison Welfare,
8. Implementation of the recommendations of National Human Rights Commission on Prison Welfare,
9. Monitoring the nexus between the police, judiciary, and the jail.

## **Role of the paralegal (Kayda Sahayaks) in the prison**

1. Awareness generation among the prisoners regarding their rights and laws of their welfare,
2. Aiding the writing of applications for Bail, Confession, Personal Bond and the like,
3. Keep a watch on the implementation of the Jail Manual Rules,

4. Referral of legal & human rights violation incidents to working group on prisoner's rights or C.S.J.

**Contents of the training programme:**

. Training material for the same was prepared. The contents of the material are:

1. Knowledge of the legal words widely used
2. Basic understanding of the provisions of free legal aid
3. Understanding the whole process- from arrest to conviction
4. Court structure
5. The Bombay Prohibition Act- Sec. 66 and 85
6. The Bombay Police Act- Sec. 122, 124, 135, 110
7. Prison Act- Provisions relating to Furlough and parole
8. Provisions relating to Petitions and Appeals
9. Jail offences and jail punishments
10. Knowledge of bailable and non-bailable offences
11. Various Supreme Court decisions
12. Drafting – Confession application, Personal bond application, Application of bringing the case on board, Furlough and Parole application.

**Number of Kayda Sahayaks trained in various jails of Gujarat (2004-05)**

Sr. No.	Name of the Jail	No. of persons trained
1.	Baroda Central Jail	16
2.	Surat District Jail	07
3.	Jamnagar District Jail	04
4.	Nadiad District Jail	04
5.	Junagadh District Jail	09
6.	Sabarmati Central Jail	16
7.	Bhavnagar District Jail	03
8.	Rajkot District Jail**	-
9.	Himmatnagar Sub Jail	03
10.	Bharuch Sub Jail	10
	<b>TOTAL</b>	<b>72</b>

## **Experiences of an existing programme run in the Jails in Gujarat regarding release of undertrial prisoners**

C.S.J. was given permission to start work in jails to facilitate the release of the undertrial prisoners accused of bailable offences. We realised that the main reason people remain behind the bars is their inability to procure a surety or bail. Since most of the people are poor, they cannot produce bail. We introduced the concept of personal bond as per the guidelines of Supreme Court. Initially, the lower judiciary resisted the effort strongly but today the concept is well accepted. In many cases, the judges themselves ask the lawyer to file a personal bond application for poor accused.

The jail staff has also been sensitised about the issue and possible remedies. For instance in our interaction with the Baroda Jail superintendent, we were told that they on their own identify prisoners who have over stayed in the prison and bring it to the notice of the committee which visits the jail every month to look at the issue of over-crowding.

The table showing the details of prisoners released in the year 2005-2006:

<b>Unit</b>	<b>Visit to prison</b>	<b>No. Of Prisoners released</b>
Amreli	01	00
Palanpur	14	45
Khedbrahma	14	12
Modasa	32	20
Bharuch	08	06
Vyara	05	07
Dang	35	41
Surat	16	50
Baroda	20	141
Jamnagar	20	29
Bhavnagar	24	157
Nadiad	17	15
Ahmedabad	26	398
<b>Total</b>	<b>232</b>	<b>921</b>

## **Anatomy of an intervention targeted at prisoner's rights:**

A possible plan on the prisoner's rights that respond to the issue holistically could be as under:

### **1. Supporting a network of lawyers who will be sensitized and trained to work on the rights of undertrial prisoners:**

The major problem faced by the poor undertrial prisoners is that they don't have access to lawyers. With the result, many of them, who can be easily let out on bail are faced with a situation where they are behind the bars for long durations. It is important to have lawyers who will be sensitive to this fact and give them free legal aid.

### **2. State level seminar with key actors from the police, judiciary and the prison to raise awareness on the issue and to initiate collaborative efforts to reduce the problem of over-crowding.**

While there is a need to work at the local level in terms of getting the prisoner released on a day to day basis, there is a tremendous scope for advocacy on improving the system of prison as an institution. As far as the prisoners rights are concerned, the police, the jail administration as well as the judiciary are closely linked. Non availability of a police escort may result in a situation where the prisoner may not be produced before the court. Similarly, many a times, court orders of bail may not get signed on time and delay the release. There fore it is important to bring the three key stake holders and bring them on the same platform. The proposed seminar will be organised with the following objectives

- Create a platform where the three stake holders can interact with each

other and come up with practical solutions to counter the problem of jail over crowding

- Raise awareness about the issue of overcrowding and the rights of prisoners
- Visibilise the role of a paralegal within the prison.

### **3. Partnering with other organisations to improve the prison conditions**

Efforts to collaborate with other organisation working on health, education etc. to help improve the prison conditions must be made.

### **4. District level meetings of the judiciary, legal services authority, jail and the police**

In continuation with the State level seminar, efforts will be made to have similar interactions with the key stake holders at the local level. These interactions will be focused on moving towards the following:

- Setting up the system of mobile courts in the jails
- Activating the district legal services authority to provide free legal aid
- Acceptance of the concept of personal bond at the lower judiciary

### **5. Strengthening the kayda sahayak**

The method of training a life convict who is accredited by the NHRC or SLSA shall be continued and where ever there is a loss of a trained kayda sahayak due to his release or other reasons, a substitute shall be placed.

## **Recent Developments**

A recent order of the Supreme Court of India in [\*Bhim Singh v. Union of India\*](#) offers a useful opportunity for CSJ's intervention in jails of the states that we are

currently working in. The order directs that proceedings under section 436A of the Code of Criminal Procedure, 1973 (Cr.P.C.) be initiated in every jail across the country for releasing undertrials who have served their term under that section. This is extremely significant from a human rights framework in the particular context of personal liberty and rights of an accused person under Article 21.

A brief overview of section 436A will be useful in providing some background. The section was inserted into the Cr. P.C. in 2005 with the objective of ensuring that undertrial prisoners were not indeterminately detained in jail due to slow progress of their cases. The relevant portion reads as follows:

*“Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties...*

(...)

*Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum*

*period of imprisonment provided for the said offence under that law.”* [emphasis supplied]

Section 436A deals only with undertrial prisoners, and there are only two requirements to be satisfied for its operation: first, the prisoner has to be under trial for an offence other than one attracting a sentence of death; and secondly, the prisoner should have remained in detention for a period amounting to half of the maximum sentence of imprisonment specified under the law. Once these conditions are satisfied, the Court is mandated to release the prisoner on personal bond, with or without sureties. The second proviso to the section further states that no person, under any circumstances, can be detained for a period longer than the maximum period of imprisonment provided for the offence under trial. Literally interpreted, this would mean that a prisoner would have to be automatically released upon serving out the duration of the maximum sentence for the offence under trial, even if the trial is incomplete. However, in practice, undertrials continue to languish in jail in the absence of legal representation and an effective system for communication of information between prisons and courts.

The Court’s order directs every Sessions Judge, Chief Metropolitan Magistrate and jurisdictional Magistrate to hold a weekly sitting *in every jail*, beginning October 1, 2014, identify undertrial prisoners satisfying the requirements of section 436A, and pass orders *in jail itself*

*for their immediate release.* This will inevitably require provision for legal aid to these undertrials, particularly those who are indigent or illiterate. Given that CSJ's lawyers are on the panels of the legal services authorities in several of the districts that we work in, there is a significant scope for intervention in terms of providing legal aid to the undertrials whose cases are going to be taken up as directed by the Supreme Court.

### **New possibilities in the existing intervention**

The impact of the Supreme Court's order on undertrials is likely to be extremely significant and provides greater impetus for an intervention by CSJ. The intervention can encompass the following aspects:

1. In the districts where CSJ has a direct presence, we can be directly involved in providing legal aid and assisting the court in the implementation of the entire programme to ensure that the Court's order results in all eligible undertrials availing the remedy under section 436A.
2. Collating information about the number of undertrials in each jail eligible for release under section 436A, through RTI or other means.
3. While the court has devised its own reporting mechanism through the Registry of the High Court, the proceedings of each hearing can be independently documented by CSJ and presented as a (shadow) report from the perspective of social action

lawyers. This report besides presenting an independent perspective of the proceedings would also be a useful empirical resource for future policy and academic research in this field.

4. In this regard, it would also be useful to identify other organisations working in the field and coordinate with them to make this a collective effort, particularly in districts where CSJ does not have a direct presence. Such organisations would include Lawyers Collective, Alternative Law Forum, SICHREM, Jagdalpur Legal Aid Group, etc.