



Maharashtra State Human Rights Commission

FACT-FINDING REPORT PROMOTING, MONITORING, AND UPHOLDING HUMAN RIGHTS FOR MARGINALISED SECTIONS OF SOCIETY IN MAHARASHTRA.

2022

In collaboration with



School of Law Rights and Constitutional Governance - TISS, Mumbai

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OF SOCIETY IN MAHARASHTRA.**

2022

**THE MAHARASHTRA STATE HUMAN RIGHTS
COMMISSION, MUMBAI.**



**In collaboration with
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Governance -TISS, Mumbai**



**(Published on the Eve of the 75th Year of UDHR)
Maharashtra State Human Rights Commission**

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We convey our thanks to Shri. M.A. Sayeed, an esteemed Member of the Commission who has not only motivated our students but also envisaged this fieldwork visit and related tasks for the same. He has always supported promoting healthy interactions between TISS and MSHRC in facilitating academic research endeavors toward promoting human rights.

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We express our obligations to Shri. Ravindra Shisve, Special Inspector General of Police and In-Charge Secretary, MSHRC, Shri. Sachin Pandkar, Superintendent of Police, for his steadfast support throughout the fieldwork.

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We express our appreciation to the entire team of MSHRC for their steadfast support and help through all tasks and activities at MSHRC.

We would also extend our special thanks to Professor (Dr.) Arvind Tiwari - Dean, SLRCG, TISS, Mumbai, for granting and inspiring this excellent opportunity of legal intervention as a facet of clinical legal fieldwork. We thank Assistant Professor (Dr.) Devakumar Jacob - Fieldwork Coordinator, SLRCG, TISS, Mumbai, for orienting and supervising the fieldwork activities. We thank Assistant Professor (Dr.) Sonali Kusum - Faculty Supervisor, SLRCG, TISS, Mumbai, for guiding and assisting in undertaking field visits and report writing.

At the outset, we would like to acknowledge the mentorship and inputs given by all the faculty supervisors at SLRCG, TISS, and MSHRC officials.

This report is the culmination of the team efforts by students under the guidance of faculty supervisors for consideration and necessary action.

MSHRC Officials and TISS-LLM Students Team.



Message from the Chairperson, MSHRC.

The Grand 75th commemoration of UDHR and its application across the globe is very significant, especially in India, in particular Maharashtra. Sustainable Development Goal (SDG) 16 stands ‘to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels. Maharashtra State Human Rights Commission (MSHRC) complies with international standards widely known as the Paris Principles. MSHRC addresses inequality and discrimination by receiving and addressing complaints and advising governments on rights-based legal frameworks. MSHRC also serves as the bridge between civil society and the state. They help build the capacity of human rights protectors, prevent human rights violations, and build strategies for the inclusion of marginalized people. MSHRC has extensive collaboration with academia, civil society and media, and other services like-minded institutions for implementing core values of Human Rights.

MSHRC is easily approachable for the public who seek remedies for disputes, those who knock on the door get their entitlements. Technology-enabled complaints system periodical hearings without adjournment and swift justice are the best practices. Women, socially backward and physically challenged are never denied justice. The MSHRC has relentlessly endeavored to fulfil the aspirations of the citizen of Maharashtra in leading a life of dignity and self-respect, over the past two decades. It has steadily worked towards bringing a human rights-based approach to the functioning of the Government at the state level, district level, and even at the remote village level. Commission takes extra to generate human rights awareness and sensitise public servants and civil society to ensure human dignity. MSHRC takes all measures for civil and political rights on one hand and economic, social, and cultural rights on the other.

I appreciate TISS and SLRCG dean, and faculty members for the collaborative endeavour to uphold human rights principles, and, indeed, their active involvement and commitment perceived and resulted in the fact-finding report. Students and faculty members with the support of MSHRC demonstrated the need for human rights for the marginalised people, therefore, visits to Thane Prison, JJ Hospital, vulnerable sections of society, including Sex workers, physically challenged, Government Child Care Institutions, Rehabilitation Centres such as Beggars Home, Seniors Citizens have been conducted to indicate human values to them. As the UDHR urge every citizen to respect and recognise the rights of all human beings, this report emphasis that everyone applies relevant global and national human rights orders to empower these marginalised people. I appreciate the collaborative mission to attain maximum dignity and Humanism.

Hon’ble Justice K. K. Tated (Retd.)
Chairperson of Maharashtra Human Rights Commission, Mumbai.



**Hon'ble Shri. M.A.
Sayeed, Member,
MSHRC, Mumbai.**

I am pleased to share the significance and value of human rights during the 75th year of the adoption of the Universal Declaration of Human Rights. Human

rights have become more recognised and more guaranteed across the State. The promise of the UDHR, of dignity and equality in rights, has been successfully implemented at MSHRC. As society faces challenges exploding inequalities, and climate change the values, and rights enshrined in the UDHR provide guideposts for our collective actions that do not leave anyone behind in accordance with the pledged message “Stand Up for Human Rights”. The Commission continued to intervene in civil and political rights cases based on suo moto consideration of media reports and complaints received. In addition, the Commission continued to address rights relating to health, food, education, and rights of persons belonging to Scheduled Caste and Scheduled Tribe communities, as well as other vulnerable groups, including women, children, the disabled, and the elderly, human rights education, and training and awareness, in fulfillment of its mandate and diverse functions envisaged as per human rights order. Special wishes for disseminating the report for cooperative action.



**Hon'ble Shri. Bhagwant
D. More, Member,
MSHRC, Mumbai.**

MSHRC is a regional tribunal that renders outstanding service in the field of human rights advocacy. In Maharashtra, the efficiency and efficacy of the Commission attain it speaks for passing orders and sending

directives to ensure transformative justice. By and large, it ensures that people's basic necessities are addressed as per the Commission's vision. Human rights safeguard vulnerable groups against abuse. Human rights enable citizens to confront systemic corruption. Human rights promote free speech and expression. In Maharashtra, Mumbai is a financial capital where Human rights consensus people to practice their faith freely. Human rights enable people to obtain justice. Human rights safeguard the environment. MSHRC believes in universal standards and values to ensure the rule of law and it never compromises injustice. The commission is working tirelessly to introduce a human rights-central approach to government at all levels and raises human rights awareness and sensitization among public officials and civil society. Commission conducts training programs for upcoming lawyers abandoned distressed women empowered and societal needs are ensured. On the occasion of International Human Rights Day, this combined effort is highly acknowledged to empower the deserving society.



Message from the Dean, TISS- SLRCG.

World Human Rights Day is observed by the international community every year on 10th December. This year commemorates the 75th year of the United Nations General Assembly's adoption of the United Declaration of Human Rights (UDHR). Also, Azadi Ka Amrit Mahotsav is celebrated this year by the Government of India to commemorate 75 years of independence.

The theme for the 75th year is “Stand-up for Human Rights” The LLM in Access to Justice (A2J) is a distinct and unique practical clinical legal education course that aptly stands for the theme and caters to the needs of service-centric law students. Access to Justice reaching its zenith while rendering quality, timely justice to the needy, this has been rendered in Maharashtra by the human rights commission systematically. TISS-SLRCG successfully produced community-centric lawyers in the tenth batch of LLM in Access to Justice who have had the fortune to have ample field experience through and acquired rare field learning to connect classroom teaching with the grassroots scenario.

TISS-SLRCG students were placed at the Maharashtra State Human Rights Commission (MSHRC) with the prior permission of the Hon’ble Chairperson of MSHRC. These students were assigned various field visits by the Hon’ble Chairperson, Members, and the Registrar of MSHRC and prepared detailed reports under the guidance of the faculty members, SLRCG, and the Registrar of MSHRC. The salient aspect of the fieldwork at the MSHRC was the series of fact findings through field visits undertaken by our students at various social welfare institutions, including some marginalized communities. These field visits aimed to understand the ground realities and functioning of these institutions as per their legal mandate and make suggestions for better protection of the human rights of the communities belonging to the marginalized sections of society.

Finally, the fieldwork at MSHRC has provided a wonderful opportunity for the students and the faculty of SLRCG, TISS, Mumbai to accomplish the vision and mission of the LL.M. program through fact findings and field visit reports under the aegis of the Maharashtra Human Rights Commission. I am delighted to disseminate the outcome of the fieldwork.

**Prof. (Dr.) Arvind Tiwari,
Dean - School of Law, Rights and Constitutional Governance,
Tata Institute of Social Sciences, Mumbai.**



Dr. Devakumar Jacob,
Faculty and Fieldwork
Coordinator, SLRCG
TISS-Mumbai.

At the outset, I appreciate the MSHRC for meritorious service in the field of human rights, indeed, I thank the Hon'ble Justice Shri K.K. Tated, Chairperson for extending an academic

'Knowledge Partnership' for TISS-SLRG for meaningful experiential learning to the LLM students. On eve of Commemorating the 75th Anniversary of the Universal Declaration of Human Rights Day this collaboration brings significant outcomes. MSHRC innovatively organised a series of field tasks, especially in-house internship endeavours, analysing complaints and understanding human rights violations with the support of the legal wing, similarly, they were given ample opportunity to listen and observe court proceedings and hearings which make them understand the importance deliberation of justice to the vulnerable sections of the society. While during the institutional visits for fact-finding our students acquired insightful experience to connect the classroom teaching and testing of those laws and how they have been applied in real scenarios. As a faculty member and as the Fieldwork coordinator, I deem it a rare opportunity, indeed, it is both in-house and outside tasks were enriching and doubled the ability experienceable learning. I am pleased to endorse the field fact-finding report. It is pleasure to be part of the disseminating team.



Dr. Sonali Kusum, Ast.
Professor and Fieldwork
mentor, TISS-SLRG,
Mumbai. It is a matter of great privilege and pride for me on the occasion of Human Rights Day to be part of this fact-finding field visit conducted by the Maharashtra State

Human Rights Commission and the students of TISS-SLRG. As a faculty and fieldwork mentor for the LL.M students placed at MSHRC, I had an excellent opportunity to be part of these visits, namely Thane Central Prison, Kamathipura area of Mumbai, Bhikshakari Swikar Kendra, Phulenagar, Yerwada, Pune (Beggar Home), and Raja Shree Shivrai Pratishthan "Matoshree Vrudhashram" Senior Citizens Home, Pune and observe the ground realities of socio-legal, regulatory provisions and orient the students about the same. I have been part of the preparation and part of the fact-finding field visit report. These fact-finding field visits reports reflect the findings on the human rights assessment of Sex workers, Children, Senior Citizens, Differently-abled, Beggars, and among others in the State of Maharashtra and the appropriate legal recourse for the same. I hope this work brings fruition to the constitutional goals of securing human rights and access to justice for the marginalized sections of society.

Chapter-1

Introduction.

This is a compilation of “Fact Finding Field Visit Reports for Monitoring & Promoting Human Rights for Marginalized Sections of Society in Maharashtra” which is an outcome of a month-long clinical legal fieldwork programme at Maharashtra State Human Rights Commission in October 2022. As a part of the one-year LLM Programme of Masters in Law in Access to Justice at the School of Law, Rights and Constitutional Governance (SLRCG) at the Tata Institute of Social Sciences (TISS), Mumbai. The mandate of this field visit report was set forth under the Memorandum of Understanding between the Maharashtra State Human Rights Commission - MSHRC and the School of Law, Rights and Constitutional Governance, TISS, Mumbai.

The purpose of the fact-finding field visit has been mainly to understand the status of implementation of human rights of marginalized sections of society, including Sex workers, Children, Senior Citizens, the Differently abled, Beggars, and others. The objective is to seek better implementation of various landmark judgments of the Hon’ble Supreme Court, High Courts, Guidelines, directions, schemes, and committee reports of the Government Authorities, Statutory Bodies, and Independent Human Rights Institutions as well as Central and Maharashtra State Human Rights Commission. Hon’ble Chairperson Justice K. K. Tated, Shri, Sayeed, the Member, Dr. Swarupa Dholam, the Registrar- Legal Wing, Nutan Bhosale, Asst Registrar, Dr. Ravindra Shisve, Special IGP and In-Charge Secretary continuously encouraged the students for these visits. The students of TISS-SLRCG successfully completed these field visits under the supervision of Prof. (Dr) Arvind Tiwari Dean, faculty mentors, Dr. Sonali Kusum, Assistant Professor, Dr. Devakumar Jacob, Assistant Professor, TISS, Mumbai

The field visit conducted at Thane Central Prison, Thane brings out the issues related to prison infrastructure, staffing, the living condition of inmates, their health, and the plight of vulnerable inmates (women and children). The Surprise Visit to Jamshedji Jeejeebhoy Hospital (JJ Hospital), Mumbai, demonstrates the issues related to living conditions and facilities of various hostels, especially the 300 Resident Doctor Hostel and hospital buildings of Grant Medical College and JJ Hospital. Additionally, the condition of the structures of the concerned person, especially House surgeons, medical students, staff, caretaker, patients, and their relatives.

The field visit at Child Care Institutions at Ulhasnagar, Thane, presents an overview of the condition of children's homes in terms of infrastructure, staff, and the plight of the male and female children, their health condition, education, and their access to facilities as provided in Juvenile Justice Act, 2015 and Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002.

The field visit at “Raja Shree Shivrai Pratishtan” Matoshree Vrudhashram Senior Citizens Home, Pune reveals the condition of senior citizens in an old age home and their human rights. The legal or statutory compliances under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, and under the Maharashtra State Rules of 2010. The field visit at the

Government Hostel for Physically challenged Boys, Ulhasnagar, Thane describes the availability of requisite child-friendly facilities, infrastructure in these children's homes, and the status of implementation of legal provisions, rehabilitative and welfare schemes guaranteed under the Rights of Persons with Disabilities Act, 2016 and under Maharashtra Physically Handicapped (Viklang) Pension Scheme 2022.

The field visit at Bhikshakeri Swikar Kendra, Phulenagar, Yerwada, Pune (Beggar Home) presents an overview of the living conditions of beggars in the Beggar Home and the implementation of rehabilitative schemes and welfare schemes under the Bombay Prevention of Begging Act, 1959 and the Maharashtra Prevention of Begging Act, 1960. The field visit at the Azad Maidan Police Station, Mumbai, portrayed the working of the Azad Maidan Police Station under the Police Act 1861 and the Bombay Police Act, 1951 as well as overall challenges faced by the police personnel.

The field visit to the Kamathipura area of Mumbai mentions the living conditions of the sex workers of Kamathipura and their assessment of human rights safeguards and implementation of rehabilitative schemes under the Immoral Trafficking (Prevention) Act, 1956.

The constant support of the Maharashtra State Human Rights Commission has been fruitful in organizing the field visits and in facilitating interactions with the above-mentioned stakeholders. The continued guidance and monitoring by faculties of TISS, School of Law Rights, and Constitutional Governance has been very significant in comprehensively bringing out the report.

The fact-finding field visits demonstrate the significant role of MSHRC in promoting and protecting the human rights of vulnerable sections of society and in strengthening the legal compliances by Government Institutions across the State of Maharashtra. This fieldwork through fact-finding field visits brings transformative learning and develops sensitization on the human and legal rights of marginalized sections of society. Indeed, TISS-LLM students acquired vast field experience which will strengthen their careers in the legal profession.

Chapter -2

Correctional Justice Institutions Field Visit to “Thane Madhyavarti Karagruh,” Thane West, Maharashtra.

2.1 Introduction.

"Thane Killa or Hirkot," a fort, once stood where the Thane Central Jail now stands. From 1530 to 1739, the Portuguese governed Thane for more than 200 years. Thane was referred to as "Kasabe De Tana" during this time. The 42-acre Thane fort was built by the Maratha warrior Chimaji Appa on March 19, 1737, and it was eventually taken over by the British in 1774. It was transformed by the British into a jail in 1838 and then into a district jail in 1857. The last individuals who were hanged in the execution yard of the Thane Central Prison were the freedom fighters Krishnaji Karve, Anant Kanhere, and Vinayak Deshpande, who planned and executed the 1910 murder of British officer Arthur Jackson. The total sanctioned capacity of the prison was for 1105 inmates, out of which the prison's capacity to house female inmates was 11.

2.2. Access to Legal Aid.

Legal Aid is recognized as a fundamental right under Art.21 and Art.39A of the Constitution. In the case of *Hussainara Khatoon v. State of Bihar (1979)*, the Court held that if an accused cannot afford legal aid, he has the right to free legal assistance at the expense of the State. Under Section 304 of the *Code of Criminal Procedure, 1973*, it provides free legal aid to the accused at the State's expense in certain cases. In the case of *Suk Das v. UT of Arunachal Pradesh (1986)*, the Hon'ble Supreme Court said that the fundamental right of free legal aid could not be withheld only because the accused refused to apply for the same. During the field visit to the Thane Central Prison, it was found that most inmates lacked awareness of free legal aid. Those inmates who had applied for free legal aid had not been contacted by their lawyers because it was also found that the legal aid lawyers were paid a very meager amount in taking up such pro bono cases. As a result of which, they seldom visit the prison. It was found that there is a long-duration gap in successive court hearings in the majority of Under Trial Prison Inmates (UTPs). The prison inmates are unaware of the legal aid and are illiterate to draft their communications/requests, resulting in a delay in accessing the benefit of legal aid.

2.3. Bail-Related Issues of Inmates.

In the case of *Arnesh Kumar v. State of Bihar*, the Court held that arrests should be an exception in offenses where imprisonment was of less than seven years. It was found that in the Thane Central Prison, many inmates had been waiting for months to get a hearing for their bail. The hearings related to bail are often unattended because there aren't enough prison guards to escort the inmates to Court. It was found that most of the female inmates seemed to lack awareness of the free legal aid scheme available to all and had received no communication related to their bail despite hiring private lawyers. It was also found that some of the inmates had not received a date for their bail hearing in months. Some inmates who have availed of the free legal aid scheme said that there is a huge communication gap between the lawyers and the prison inmates. It was found that one of the female under-trial inmates claimed to spend around eight months in jail on charges of petty theft, without any hearing for bail, among others who had waited for 13 months to get a hearing for bail in court.

2.4. The Infrastructure of Thane Prison.

The Thane prison comprises male and female wards, and the jail has a kitchen, a healthcare center, and a community hall for the inmates. The overall condition of the prison building was substandard if compared to Rules 4 and 7 of the *Maharashtra Prison Manual, 1979*, which mandates frequent repair work inside the prison premises to ensure well-maintained facilities. The jail buildings were in a dilapidated state, and their walls were worn out because of less painting. As a result of which, there is an accumulation of fungus, especially during the monsoon season. Under Rule 3 of the *Maharashtra Prison Manual, 1979* prescribes the Medical Officer to inspect different facilities within the prison premises to ascertain hygiene and ventilation. It was found that the wards and the hospitals were less ventilated. As a result, the inmates had to face many challenges. Due to less space inside the wards, there was an issue of being unhygienic as well as the inmates were facing problems in storing their commodities.

There is a 'Mulakat kaksh' at the prison entrance, where the inmates can meet with their relatives. It was found that there was a long queue of relatives in the 'kaksha' waiting to meet their relatives. The inmates are allowed to meet their relatives only for 10-15 minutes once a week. However, they can send two letters to their relatives once a week. The phone call facility was started during the COVID-19 pandemic because physical meet was not permitted. The prison inmates can make phone calls after getting the number verified by the police, which checks the authenticity of the contact number. However, this facility is not available for high-security inmates due to security-related issues. One female was unable to contact her family because the police verification is a lengthy process and takes a lot of time.

It was also found that the washroom was adjacently attached in the female wards. As such, there was no separate washroom for female inmates or for women whom their children accompanied. It was found that no separate room was dedicated to vocational training (educational and recreational activities) for the children of women inmates. The overall condition of the entire prison infrastructure was substandard, and the above-highlighted issues need to be considered.

2.5. Objective and Mandate.

- ✓ To examine and observe the implementation of laws and guidelines of the Central Government and the Maharashtra State Government in relation to prison inmates, staff, and infrastructure.
- ✓ To facilitate the conduct of the medical camp organized by the civil society organization under the aegis of Maharashtra State Human Right Commission at the Thane Central Prison, Mumbai
- ✓ The mandate of the visit: The mandate of the conducted visit was set forth by the Maharashtra State Human Rights Commission in pursuance of the Memorandum of Understanding with the School of Law, Rights and Constitutional Governance Tata Institute of Social Sciences, Mumbai, in October 2022.

2.6. Conceptual Understanding of Laws and Schemes related to Prison

Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, and Schemes Relating to Rights of Prison inmates

<p align="center">UNITED NATIONS INTERNATIONAL CONVENTIONS</p>	<p align="center">PROVISIONS UNDER THE CONSTITUTION OF INDIA, LEGISLATIONS, MAHARASHTRA GOVERNMENT REGULATIONS, POLICIES, REPORTS, AND JUDGEMENTS</p>	<p align="center">NATIONAL HUMAN RIGHTS COMMISSION RECOMMENDATIONS</p>
<p>Universal Declaration of Human Rights (UDHR), 1948 Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”</p> <p>Article 10: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”</p> <p>Article 26: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.”</p> <p>The International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966</p> <p>Article 3: “The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in</p>	<p><i>The Constitution of India, 1950</i></p> <p>Articles 14, 19, and 21 of the Constitution apply to prison inmates in a similar way they are available to freemen.</p> <p>The right to Free Legal Aid under Article 21 of the <i>Constitution of India</i> includes persons in custody.</p> <p><i>The Prisons Act of 1894</i></p> <p>Section 6.</p> <p>“Officers of prisons. — For every prison, there shall be a superintendent, a Medical Officer (who may also be the Superintendent), a Medical Subordinate, a Jailer, and such other officers as the State Government thinks necessary.”</p> <p>Section 7 of the Act imposes a duty on the Inspector General police to provide for temporary prisons in case the number of prison inmates increases capacity, or there is an outbreak of a pandemic the temporary arrangement shall be made to accommodate the prison inmates.</p> <p>Section 12 of the Act provides for records that need to be kept by the Superintendent, for example, the register of prison inmates admitted and visitors’ books.</p> <p>Section 24</p> <p>The prison inmates have to get checked upon admission for weapons, and medical examination is also covered under this provision.</p> <p>Section 27</p> <p>Under this Section, the provision for separate buildings for prison inmates, men and women, undertrials and convicts, and those in prison for civil offenses are to be kept separate from those</p>	<p>The Commission issued an advisory on 'Human Rights of prison inmates and Police Personnel during COVID-19. The Advisory dealt in detail with the "Role of Prison Administration, advisory on Proper Infrastructure Facilities and Health of prison inmates."</p> <p>National Seminar on Prison Reforms 2014: In this Seminar, NHRC gave recommendations on prison reforms. The recommendations included:</p> <ol style="list-style-type: none"> Changes in <i>The Prisons Act, 1984</i>, as the Act is very "old and archaic." Uniformity in Prison Manuals Adequate funds for the improvement of prisons by State

<p><i>the present Covenant.”</i></p> <p>International Convention for Civil, Political Rights (ICCPR) 1966</p> <p>Article 6: “1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”</p> <p>Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected to medical or scientific experimentation without his free consent.”</p> <p>Article 9: “4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”</p> <p>Article 10: “2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as under trial persons;</p> <p>(b) Accused juvenile persons</p>	<p>for criminal offenses.</p> <p>Chapter IV of the Act provides for food, clothing, and bedding for civil and under trial criminal prison inmates.</p> <p>Chapters VII and VIII provide for the Employment and Health of prison inmates, respectively.</p> <p><i>Maharashtra Prison Manual, 1979</i></p> <p>Chapter V of the manual deals with prison building and sanitary Arrangements and provides the following rules regarding overcrowding in prisons.</p> <p>Rule 12 provides for the area of the prison as the area enclosed within the prison walls shall not be less than 83.61 square meters per head of the total capacity, except where the land is valuable, the minimum area maybe 62.71 square meters per prison inmate.</p> <p>Rule 13 provides for minimum space per prison inmate in sleeping barracks that shall be 3.71 square meters and 15.83 cubic meters, and in hospital wards, 5.58 square meters and 23.75 cubic meters.</p> <p>Rule 14 provides for a Ground Area in the cells that should not be less than 8.92 square meters and a cubic capacity of at least 33.98 cubic meters.</p> <p>Rule 15 provides for ventilation in barracks, wards, and cells as free and thorough ventilation should be secured in barracks, wards, and cells by the provision of large ward doors and windows constructed in opposite walls. The total area of openings shall be at the rate of 1.12 square meters per head of the sanctioned number of prison inmates that the barrack or ward is designated to accommodate, and in case of a cell, that shall be 2.23 square meters.</p> <p>Rue 16 of the manual deals with sleeping birth in barracks as sleeping births of size 1.83 meters x 91.24 centimeters x 45.72 centimeters of masonry or iron birth shall be provided, if practicable. In the case of masonry birth, great care shall be taken to prevent them from being infested with bugs.</p> <p>Rule 17 of the manual provides for the utilization of work sheds as sleeping wards in case of overcrowding in prison, or the Superintendent shall accommodate the excess number of prison inmates in huts or tents and report the same to the Inspector-General.</p>	<p>Governments</p> <p>Recommendations relating to overcrowding, women prison inmates, skill development, healthcare of prison inmates, sanitation, reformation, and rehabilitation were also given by NHRC to the respective Governments.</p> <p>Recommendations to Justice J. S. Verma Committee regarding <i>Criminal Law Amendment Bill 2012, on Code of Criminal Procedure 1973</i>, some recommendations on Judicial and Police reforms were also given by National Human Rights Commission after the case of <i>Mukesh v. State for NCT of Delhi</i></p>
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<p><i>shall be separated from adults and brought as speedily as possible for adjudication.</i></p> <p><i>3. The penitentiary system shall comprise the treatment of prison inmates, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”</i></p> <p>The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979</p> <p>Article 3: “<i>States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.</i>”</p> <p>United Nations Rules for the Treatment of Women prison inmates and Non-custodial Measures for Women Offenders (The Bangkok Rules), 2010</p> <p>Rule 5: “<i>The accommodation of women prison inmates shall have facilities and</i></p>	<p><i>Model Prison Manual, 2016</i></p> <p>Chapter VI deals with the Maintenance of prison inmates</p> <p>Rule 6.02 provides that more protein and minerals be given to pregnant and nursing female prison inmates.</p> <p>Rule 6.41 provides for daily inspection of food by the Superintendent of Police and Chief Medical Officer.</p> <p>Chapter VI deals with the Medical Administration of Prison.</p> <p>Rule 7.01 provides that Medical Officers need to pay attention to the health of the prison inmates as well as the overall hygiene of the prison.</p> <p>Rule 9 of the Prison Manual provides the circumstances in which the children can be permitted to accompany their mothers inside the prison.</p> <p>Chapter XIV deals with the Education of prison inmates.</p> <p>Rules 14.01 to 14.03 provide for the importance of Education for prison inmates.</p> <p>The Nature of the Educational Programme is provided under Rule 14.06</p> <p>Vocational Training and Skill Development Programmes for prison inmates are provided in Chapter XV of the Manual</p> <p>Legal Aid for persons in custody is provided for in the <i>Legal Services Authority Act</i> and is provided in Chapter XVI of the Manual.</p> <p>Rule 16.13 provides for a Legal Aid Clinic in every prison</p> <p>The welfare of prison inmates is dealt with under Chapter XVI of the Manual.</p> <p>Maharashtra Government Regulations</p> <ol style="list-style-type: none"> 1. “Regarding approving revised structural pattern of total 5068 regular posts in the establishment of Prisons.” 2. “To approve the allocation of funds for the work in progress at Yerwada Central Jail 	
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<p><i>materials required to meet women's specific hygiene needs, including sanitary towels, provided free of charge and a regular supply of water to be made available for the personal care of children and women, in particular women involved in cooking and those who are pregnant, breastfeeding or menstruating."</i></p> <p>Rule 8: <i>"The right of women prison inmates to medical confidentiality, including specifically the right not to share information and not to undergo screening in relation to their reproductive health history, shall be respected at all times."</i></p> <p>Rule 9: <i>"If the woman prison inmate is accompanied by a child, that child shall also undergo health screening, preferably by a child health specialist, to determine any treatment and medical needs. Suitable health care, at least equivalent to that in the community, shall be provided."</i></p> <p>Rule 10: <i>"1. Gender-specific health-care services at least equivalent to those available in the community shall be provided to women prison inmates."</i></p> <p>Rule 12: <i>"Individualised, gender-sensitive, trauma-informed and comprehensive mental health care and rehabilitation programs shall be made available for women prison inmates with</i></p>	<p>under the 13th Finance Commissions plan to improve prison security and increase prison facilities."</p> <ol style="list-style-type: none"> 3. "Regarding providing loan facility to prison inmates on a trial basis." 4. "To provide basic facilities for various establishments in the Police and Prisons Department of the Home Department, to implement various other technology related projects including CCTV systems as well as to strengthen the transport system." <p>All-India Committee on Jail Reforms (Mulla Committee), 1980</p> <p>Some of the important recommendations of the Committee were:</p> <ol style="list-style-type: none"> 1. There should be proper food, sanitation, and clothing facilities for prison inmates; An All-India Service specifically for Prisons should be there; 2. Training of staff and different cadres for the staff 3. There should be provisions for after-care, rehabilitation, and probation. 4. The public, as well as the press, should be allowed in prison to see the conditions of the prison 5. Convicts and Undertrials should be kept separately, and the number of Undertrials in prison should not be much 6. Speedy trial for Undertrial prison inmates <p><i>Asma w/o. Adil Chaus v. State of Maharashtra</i> The High Court of Bombay held that <i>"there cannot be disagreement that even the prison inmates have fundamental rights"</i>. Reiterating the Supreme Court Judgement in <i>State of Andhra Pradesh v. Challa Ramakrishna Reddy</i>, the Court held that <i>"the State is required to honor such fundamental rights."</i></p> <p><i>Kantilal Nandlal Jaiswal v. Divisional Commissioner Nagpur and Anr.</i></p> <p>The Bombay High Court held that <i>"There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prison inmates. Being in a civilised society organised with law and a system as such, it is essential to ensure for every citizen a</i></p>	
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<p>mental health-care needs in prison or in non-custodial settings.”</p> <p>Rule 26: “Women prison inmates’ contact with their families, including their children, and their children’s guardians and legal representatives shall be encouraged and facilitated by all reasonable means. Where possible, measures shall be taken to counterbalance disadvantages faced by women detained in institutions located far from their homes.”</p> <p>Rule 36: “Prison authorities shall put in place measures to meet the protection needs of juvenile female prison inmates.”</p> <p>Rule 37: “Juvenile female prison inmates shall have equal access to education and vocational training that are available to juvenile male prison inmates.”</p> <p>United Nations Standard Minimum Rules for the Treatment of prison inmates (the Nelson Mandela Rules), 2015</p> <p>Rule 1: “All prison inmates shall be treated with the respect due to their inherent dignity and value as human beings. No prison inmates shall be subjected to, and all prison inmates shall be protected from, torture and other cruel, inhuman, or degrading treatment or punishment, for which no</p>	<p>reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity.”</p> <p><i>Dr. P. V. Varavara Rao v. National Investigation Agency.</i> The High Court of Bombay “Article 21 of the Constitution of India, which guarantees the right to life and personal liberty, has been interpreted over the years in various judgments of the Hon’ble Supreme Court and High Courts to read rights of prison inmates in the said Article. It has been held that merely because a prison inmate is confined within the four walls of the prison, it cannot be said that he is denuded of the rights guaranteed under Part III of the Constitution of India.”</p> <p><i>Javed Alias Thakeli Alias Chor Ajijkhan Pathan v. Jail Superintendent.</i> The High Court of Gujarat held that “It is expected from the jail authority that as and when any application is received from any prison inmates/convict through jail, the same be forwarded to the High Court, along with necessary remarks, preferably within a period of 48 hours. It is also expected from the High Court Registry that all applications received from the Jail authority are listed on Board preferably within 48 hours from the time of its receipt, and if it is not possible to notify the matter in the Regular Board, then the same be notified in the Per Court Board or Special Board / Separate Board.”</p> <p>Uttarakhand High Court Writ Petition (PIL) No. 136 Of 2020. The High Court of Uttarakhand held that “Generally, the prison inmates should not be transferred far away from their family. For, it is imperative that the familial relationship should continue between the prison inmate and his family despite the fact that the prison inmate is incarcerated. The family relationship is essential not only for the emotional support of the prison inmates but also as a means to reform the prison inmates and to motivate him or her to reform him or herself to the extent that he or she can be brought back into society as a law-abiding citizen,”</p> <p><i>Rakesh v. State of Rajasthan.</i> The High Court of Rajasthan held that “the convicts languishing in jails for prolonged periods unable to avail the facility of parole because of poverty/ illiteracy and other trivial thereby, frustrating the spirit of</p>	
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<p>circumstances whatsoever may be invoked as a justification. The safety and security of prison inmates, staff, service providers, and visitors shall be ensured at all times.”</p> <p>Rule 5: “1. The prison regime should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prison inmates or the respect due to their dignity as human beings.</p> <p>2. Prison administrations shall make all reasonable accommodations and adjustments to ensure that prison inmates with physical, mental, or other disabilities have full and effective access to prison life on an equitable basis.”</p> <p>Rule 15: “The sanitary installations shall be adequate to enable every prison inmate to comply with the needs of nature when necessary and in a clean and decent manner.”</p> <p>Rule 16: “Adequate bathing and shower installations shall be provided so that every prison inmate can, and may be required to, have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.”</p>	<p>the welfare legislation i.e., the Rules of 2021 (previously Rules of 1958)”</p> <p>Narayan Sai v. State of Rajasthan. "Right to health essentially includes the right to be healthy and the right to be medically treated. The right to be medically treated cannot be reduced to a mere formality, and its enforcement has to be solely for the purpose of betterment in the health of the person. The right to choose a medicinal system for treatment is an inseparable part of the fundamental right to medical treatment under Article 21 of the Constitution of India. Prison inmates, be they undertrial or convict, are no exception to this fundamental and constitutional right to choose a system of medicine according to which they would like to be treated.</p> <p>It cannot be permissible for the State to enforce its choice of the medicinal system on any prison inmate, even in a situation where treatment under such a system of medicine as is opted by the prison inmates out of the systems of medicine recognized by the State is not available for any reason which is not attributable to the prison inmates."</p> <p>Jan Adalat v. The State of Maharashtra. The Bombay High Court directed, "The prison inmates should be permitted inland letters and postcards and envelopes subject to the approval of Superintendent. A prison inmate may with the permission of the superintendent, substitute a letter for an interview or vice-versa. Further, the prison inmates should write additional letters for legal purposes, normally at their own expense, and if they do not have enough money, then at government cost. There shall be no limit on the number of incoming letters from prison inmates. There should be a supply of one copy of a newspaper in English or in the regional language or in Hindi shall be supplied at the discretion of the superintendent for certain categories of inmates."</p> <p>In Re-Inhuman Conditions In 1382 Prison</p> <p>"Providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right, and all State Governments should concentrate on making this a reality for all, including prison inmates."</p> <p>Government Guidelines:</p>	
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<p>Rule 22: <i>“1. Every prison inmate shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.”</i></p> <p>Rule 28:</p> <p><i>“In women’s prisons, there shall be special accommodation for all necessary prenatal and postnatal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the prison. If a child is born in prison, this fact shall not be mentioned in the birth certificate.”</i></p>	<p>Government of India Ministry of Home Affairs</p> <p>1. Subject: Management of COVID-19 in Indian Prisons – Guidelines and Protocols which may be followed while dealing with persons arrested, detained, and those in Prisons and Correctional Homes. In the context of prisons and persons arrested by Police in present times, MHA passed Guidelines.</p> <p>2. Subject: Prevention and Control of Covid-19 in Prisons and Correctional Homes - in continuation of Advisories dated March 12, 2020, and May 2, 2020</p> <p>It is of utmost importance to follow a test-track-treat protocol, which includes aggressive testing for early detection of Covid-19 positive cases, timely isolation, and treatment. Regular sanitization, cleaning, and disinfection of wards and common places in jails are to be ensured. Role of National Legal Services Authority in Promoting the Right to Free Legal Aid for Prison Inmates</p> <p>Significant initiatives by National Legal Services Authority (NALSA) for free legal aid for prison inmates are as follows: According to NALSA’s Standard Operating Procedure (SOP) mandate: <i>“From amongst the panel lawyers with DLSA, some lawyers should be earmarked as jail visiting lawyers. The panel lawyers have to strictly compulsory visits to the jails must be made at least twice every week.”</i></p> <p>The SOP also directs that: <i>“The legal aid lawyers who are functioning as panel Para Legal Volunteers (PLVs) regularly interact with the inmates and especially the new inmates, to find out if any lawyer represents them and if not, they should inform the inmate about their right to get a legal aid lawyer.”</i></p> <p>News Articles <i>“As pandemic fades, Maharashtra’s Prisons are once again overcrowded”</i> The Print published this article reporting, <i>“Among the most overcrowded ones are the Arthur Road Central Prison in Mumbai, the Thane Central Prison, and the Yerwada Central Prison in Pune, said an official...The Thane Central Prison has 4,268 inmates against the capacity of 1,105.”</i></p> <p><i>“Thane Central Prison Grossly Overcrowded, ADGP tells HC”</i> The Hindu published this article</p>	
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	<p>reporting, <i>“The submission was made as part of a compliance report filed by Sunil Ramanand, Additional Director General, Prisons (ADGP) and Inspector General of Prisons, on the number of COVID-19 cases in prisons. The report added that Thane central prison is grossly overcrowded, and despite requests to the Thane Collector to open a temporary prison, no action has been taken.”</i></p>	
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2.7.Overcrowding in the Prison.

During the field visit at the Thane Central Prison, it was found that the total sanctioned capacity of the prison was 1105 however, approximately 4500 prison inmates were incarcerated as of 01.10.2022. Thus, the occupancy rate of the prison stood at 399.27%, which is quite alarming. This means that 4 prison inmates are kept in a place meant for one. It was found that, on average, 200 prison inmates were kept together in single-man barracks.

The plight of female inmates was more miserable as compared to the male inmates, as the total sanctioned capacity for female inmates was only 11, whereas the number of incarcerated women was 193. This means that 17 women inmates were residing in the place of 1. It was also found that 8 children were residing with their mothers. There is no separate place was available for the children of these women inmates; they had to live in congested places. The overcrowding compromises the ability of the prison to meet the basic needs of the inmates, like healthcare, hygiene, and food standards. The overcrowding also resulted in extra efforts put in by the inmates who are given the responsibility of preparation of food. They had to wake up at 2 a.m. in order to prepare food for 4500 inmates. It was also found that the inmates face issues while sleeping as the barracks are very congested. Besides these, prison inmates are also deprived of additional facilities like vocational training, educational facilities, rehabilitation programs, etc.

The overcrowding in prisons leads to a number of problems for inmates as well as prison staff. This resulted in the fast spreading of contagious diseases as the problem of skin disease was prevalent among the men and women inmates of Thane Central Prison. The overcrowding is also a burden on the already dilapidated infrastructure of the prison. The problem of overcrowding in prisons continues despite the fact that it has been time and again reiterated by the Supreme Court to decongest prisons. In the case of *Arnesh Kumar v State of Bihar (2014)*, the Hon'ble Supreme Court asked the police not to effect an unnecessary arrest, especially if the alleged offense is punishable with less than seven years of imprisonment. In other cases, the Supreme Court has asked the Chief Justices of High Courts to take *suo motu* writ petitions in case of overcrowding. The Court, through Justices M B Lokur, S Abdul Nazeer, and Deepak Gupta said that prison inmates also have human rights and cannot be kept in jail like "animals".

2.8.Hygiene and Sanitation Inside Prison.

During the field visit, it was found that the Thane Central Prison lacked basic facilities related to sanitation and hygiene. Under *Model Prison Manual, 2016* It prescribes that there must be one toilet and one bathing cubicle for every 10 prison inmates. Each male barrack had one toilet for roughly 250 prison inmates. The sharing of the washrooms results in skin disease which is primarily found inside the prison. The clothes have to be brought by the undertrial prison inmates for themselves even though there is a provision under Chapter VI Sec 33 "Supply of clothing and bedding to civil and undertrial criminal prisoners" of the Prison Act, 1894, but due to overcrowding, it was found that there is the shortage of clothes. Thus, the ones who had their blood relatives coming to meet them had a source to get clothing and other necessary items. However, because of Covid-19 a few of them have not been contacted by their families, and there is nobody to provide them with winter clothing. Only the ones who had their blood relatives coming to meet them had a source to get clothing and other necessary items. Though most of the inmates said they were satisfied with the food provided and its hygienic conditions, some female inmates revealed that the food provided in prison lacks hygiene and is insufficient.

- **Medical Facilities and Medical Camp:** A medical camp was organized inside the prison on October 1, 2022, for the health check-up of the prison inmates by the dermatologists in the community hall of the prison. The prison inmates were sitting in the hall. The medical in charge informed the team about the prison's general conditions.
- **Healthcare Centre:** There is a healthcare center inside the prison with 11 sanctioned beds in the In-Patient Department of the health center, out of which only seven are operational. The medical staff inside the prison comprises three male doctors and four male nursing staff. A female visiting doctor visits the prison once weekly, generally on Tuesdays, with two Pharmacists (one male and one female). It was found that there is no separate or special healthcare provision for prison inmates suffering from cancer. The logistical access to the nearby Government hospital is difficult for the prison inmates in emergencies, thus risking the life & health of the prison inmates due to the delay in getting medical aid.
- **Health Issues among Prison Inmates:** One of the significant issues faced by prison inmates is depression and neurological issues. It was found that due to addiction to drugs, prison inmates face depression issues. It was found that almost 145 prison inmates are on record as mentally ill patients, out of which eight males and two females are admitted. It was found that the majority of the prison inmates were currently facing major skin-related issues. It was observed that the primary cause of these skin-related issues was the alleged contamination of water available for drinking & cleaning purposes. It was found that in the female barrack, most female prison inmates had an allergic infection on their skin. Black spots are visible on their skin with continuous irritation and itching, causing pain to the prison inmates. One of the inmates was also suffering from blood pressure and heart disease, and the other inmate informed us that the medicine the doctors gave for skin disease was not working, and the irritation on their skin continued. It was found that the prison inmates were suffering a lot from itching of the skin. One of the main reasons behind skin diseases is overcrowding in prisons. In a single barrack, more than 200 male prison inmates reside; in a single female barrack, about six female prison inmates are in a small space, making it a disease-prone zone. Due to the lack of air, space, and proper ventilation, there are increasing skin-related problems in prison. It was found that a single medicine is given for all ailments.
- It was found that the inmates who had diabetes and were infected with Tuberculosis (TB) were kept in separate wards comprising of 10 TB patients and 2 Multidrug-Resistant Tuberculosis (MDR) patients. The ward building is dilapidated and has not been repaired or painted for a long time. There are about 32 male and six female HIV-positive patients.
- **Availability of Medical Facilities:** It was found that an ECG machine, multipurpose monitor, glucometer, BP machine, X-ray, Oxygen, dental care, and an ambulance was present inside the prison. The prison inmates answered positively about handling the COVID-19 situation inside the prison.
- **Laws relating to the Healthcare of Prison Inmates:** The right to life under Article 21 of the Constitution of India includes the right to health and living with necessities.

In the case of *Maneka Gandhi vs. Union of India*, the Supreme Court held that the right to life includes the right to live with human dignity. The Supreme Court ruled that prison inmates are human and entitled to the right to live in prison. The word right to life has a broad meaning, not mere animal existence. It includes adequate nutrition, clothing, shelter, food, health, etc. Section 39 of the *Prison Act, of 1894* mandates a hospital in prison. According to the *Maharashtra State Prison Manual, 1970*, every hospital should have a Medical Officer.

- **Landmark Judgements:** In the recent case of *Dr. P. Varavara Rao vs National Investigation Agency & State of Maharashtra* (2022), the Bombay High Court upheld the importance of the prison inmates' right to health while considering the bail application. The Court instructed the Inspector General Prisons of Maharashtra to comply with Maharashtra Prison Rules, 1970, for providing adequate medical aid to inmates. In the case of *Re-Inhuman Conditions in 1382 prisons* (2017). In the landmark case of *Parmanand Katara vs. Union of India* 1989, The Supreme Court held that the State has to protect the life of all persons, whether he or she is innocent or criminally liable for punishment, under Article 21 of the Constitution of India.

2.9. Mental Health in Prison

The Mental Healthcare (Rights of Persons with Mental Illness) Rules, 2018, lays down the minimum standards and procedures for mental healthcare services in prisons. These Standards include a screening of prison inmates to test mental health status at the time of entry into prisons, identification, treatment, and follow-up of prison inmates with mental disorders, availability of minimum psychiatric medication, psycho-social interventions, rehabilitation and implementation of the National Mental Health Program in central prisons, among other suggestions. *The Model Prison Manual of 2016*, issued by the Ministry of Home Affairs, provides for installing a psychiatric unit with equipment in prison hospitals. The manual further provides for the post of one psychiatrist for 500 inmates.

It was found that there were 20 prison inmates in the women's ward who were in need of mental healthcare, while the total number of mentally ill inmates found inside the Thane Central Prison was 145. Various prison inmates and prison authorities shared that a psychiatrist visits the prison once a week, on Tuesdays. Depression is extremely common in prison, mostly due to under-trials having almost no contact with their family and no updates regarding their bail status. A female inmate shared that she developed anxiety and hypertension issues due to fights breaking out between inmates in the overcrowded prison. One male inmate who was working as an assistant in the medical center at the prison said that peer counselling services were given by trained inmates, which helped with addiction and substance abuse issues. The COVID pandemic has added to the stress levels of inmates.

In recent years there have been several instances of death by suicide among under-trials at Thane Central Prison. Mental Health issues are severely impacted due to overcrowding at the prison. Such overcrowding interferes with the right to live with dignity and the right to privacy, as guaranteed by *K.S. Puttaswamy v. Union of India*. The Thane Central Prison does not have a separate mental health wing/establishment for the treatment of mentally ill prison inmates, and the same is not in accordance with Sec.106(3) of the *Mental Health Care Act, 2017*. There is no provision to treat or transfer mentally ill prison inmates to a separate psychiatric ward or wing in prison, which does not conform under Sec.103 of the *Act*.

2.10. Dearth of Prison Staff.

There is a need to increase the number of prison staff inside the prison. It was found that the majority of prison inmates could not go to court on every hearing as there was only one guard who was supposed to take them all, and it gets difficult for him to take a lot of inmates at once, which is why some of them have only been to courts one or two times in years. For every 1000 inmates, there was 1 guard; in an ideal situation, the prison staff-inmate ratio should be 1:6. An inadequate number of prison guards is not the only problem the prison is facing. Currently, there are approximately 4500 inmates in prison with only three doctors. There are two pharmacists and one psychologist who visit the prison every Tuesday. It was informed the prison inmates that sometimes it takes 3-4 months to get a regular appointment with a doctor.

According to the data provided by *National Crime Records Bureau*, the statistics of the State of Maharashtra concern against the sanctioned number of staff for Maharashtra is 5068; however, currently, there are 4226 jail staff working. For every correctional staff in Maharashtra, there are 364 inmates. The smaller number of medical staff is another concern with statistics like 504 inmates per medical staff. There are a total of three psychologists for prisons in the State of Maharashtra. The total number of prison inmates in Maharashtra stands at 36, 853 which further substantiates that the number of prison staff is not enough for the efficient working of the prison. The prison being understaffed affects day to day work of the prison, and more than that, it affects the prison inmates. With fewer staff to tend to their needs, the inmates often face delays and difficulties with basic things like visiting the court daily. The sanctioned number of staff needs to be increased, especially medical officers like in-house doctors and psychologists. There is also a need for well-trained medical officers separately to attend to the needs of the children of female inmates.

2.11. Women and Children of Female Inmates.

It was found that the number of female inmates in the Thane prison was about 139 females with 8 children against the sanctioned strength of 11 female inmates. It was found that the male and female prison inmates are kept in separate compounds within the prison premise known as 'male barracks' and 'female barracks, respectively. Female cells seemed dirtier as the toilets were constructed inside each cell, and approximately six women shared them. It was found that the female prison inmates were provided with sanitary napkins. It was informed that the female inmates are given a blanket each, but no additional clothing is provided. However, additional clothes and other utilities can be arranged by the female prison inmates from their relatives who come to meet them during '*mulaqat*'. It was found that some female inmates from other countries could not communicate with their relatives because there is no facility to call on an international number.

Some women inmates also shared that they had minimal contact with their family members and had not been seen or visited by their families in months. It was found that special arrangements were made regarding regular health check-ups, diet, and nutrition for the female inmates who were either pregnant or lactating in accordance with the provisions mentioned in the Model Prison Manual, 2016. It was also found that a gynaecologist visits all the female inmates once a week. It was found that the female inmates engage themselves in sewing work, and if they make something, they are allowed to sell it and get paid in return.

It was found that children were kept inside small barracks along with mothers, but no special

barrack was dedicated to the women inmates whom their children accompanied. They were kept with other inmates inside the same barrack. It was found that the women prison inmates who lived with their children inside the Thane Prison Female Barracks were satisfied with the diet being provided to the children. It was found that there were no welfare measures regarding recreational activities for these children. The children were given workbooks, but no toys were given to the children, and they were taught through the makeshift arrangement in an ill-equipped area inside the barrack. The children were living in complete isolation and had no social interaction except interactions with their mothers and fellow inmates. It was found that the children were taught by two 'Anganwadi' teachers who visited the prison from Monday-Friday for two hours, and the class takes place in the premise of the female barracks, but no separate place was allotted to the children for education. It was found that the women inmates and the children were only given uniforms for the Anganwadi classes. It was found that there were no welfare measures regarding recreational activities for these children.

Several Guidelines related to the children of prison inmates were laid down in the case of *R.D Upadhyay vs. State of Karnataka* to facilitate the holistic development of the children of prison inmates. The judgment directed that "Adequate arrangements should be available in all jails to impart formal and informal education to every child of the women inmates. Diversified recreational programs/facilities should also be made available to children of different age groups."

2.12. Best Practices.

- i. A monthly medical camp is conducted under the aegis of the Maharashtra State Human Rights Commission for the welfare of prison inmates.
- ii. Video conferencing of the court hearings for the prison inmates is facilitated by a well-equipped video conferencing system.
- iii. Collaboration with local Non-Governmental Organisations has been enabled to facilitate access to clean water for the prison inmates
- iv. Prison inmates are adequately remunerated for the products made by them. The prison inmates made and sold face masks during COVID.

2.12. Recommendations. Better Access to Legal Aid.

Legal aid inside the prison must be strengthened through the use of trained paralegals and raising awareness mechanisms about the initiatives by National Legal Services Authority (NALSA) for free legal aid for prison inmates. According to NALSA's Standard Operating Procedure (SOP) mandate, "from amongst the panel lawyers with DLSA, some lawyers should be earmarked as jail visiting lawyers. The panel lawyers have to strictly make compulsory visits to the jails at least twice every week". The SOP also directs that "the legal aid lawyers who are functioning as panel Para Legal Volunteers (PLVs) regularly interact with the inmates and especially the new inmates to find out if any lawyer represents them and if not, they should inform the inmate about their right to get a legal aid lawyer.

There is a need for digitalization and electronic records of the case management or prison population management systems to better identify and manage priority caseloads". In the case of *State of Gujarat vs. Anopbhai Punambhai Bhoi* the Court stated, "the State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services." The High Court of Rajasthan in the PIL held that "the convicts languishing in jails for prolonged periods unable to avail the facility of parole because of poverty/illiteracy and other trivial thereby, frustrating the spirit of the welfare legislation, i.e., the *Rules of 2021*

(previously Rules of 1958)".

2.13. Improvement in Jail Infrastructure.

The prison building and the availability of space inside the wards should be taken into consideration because it impacts the rights of prison inmates. A ward with larger spatial configurations could improve the overall well-being of the prison inmates. Additionally, the gloomy and undersized concrete cells constrain the introduction of rehabilitative ideals and have resulted in negative individual, societal and economic impacts. As Per Rules 4 and 7 of the *Maharashtra Model Prison Manual, 1979* regular maintenance of the prison infrastructure should be done. The NHRC advisory "*Role of Prison Administration, Proper Infrastructure Facilities, and Health of prison inmates*" delineates that infrastructure maintenance and sanitation should be strictly complied with.

2.14. Effective Measures to Check Overcrowding.

Overcrowding inside prison can be limited through the measures of improving inefficiencies in the criminal justice process that contribute to prolonged periods of custody during the pre-trial and trial processes. The criminal justice system needs to improve the efficiency of the criminal justice process, which includes measures to reduce case backlogs and to consider introducing time limits on detention. The necessary steps should be taken for the early release of prison inmates from correctional institutions on account of good behavior. Under Trial Review Committee (UTRC) should be constituted as contemplated by the Hon'ble Supreme Court in the case of *In-Re Human Condition in 1382 Prisons*. The provision parole must be provided to "the convicts languishing in jails for prolonged periods unable to avail the facility of parole because of poverty/ illiteracy and other trivial thereby, frustrating the spirit of the welfare legislation, i.e., *the Rules of 2021 (previously Rules of 1958)*". Additionally, the recommendations of Justice Amitava Roy (Retd) Committee constituted by the Hon'ble Supreme Court of India must be given effect. "Every 30 convicts should have access to at least one lawyer, and fast-track courts should be established to handle only minor offenses that have been outstanding for longer than five years. Additionally, those who have been charged with minor offenses and have been granted bail but cannot secure surety should be released on a Personal Recognizance (PR) Bond".

2.15. Measures to ensure hygiene and sanitation measures.

Under the *Model Prison Manual of 2003*, the provisions for sanitation and hygiene should be maintained. Lack of proper hygiene and sanitation measures reflects poor health and an increase in communicable diseases in prison. In the case of *Narayan Sai v. State of Rajasthan*, it was held that the "right to health essentially includes the right to be healthy and the right to be medically treated. The right to be medically treated cannot be reduced to a mere formality, and its enforcement has to be solely for the purpose of betterment in the health of the person". It is recommended that HIV/STI educational modules and prison-based needle and syringe programs be taught at the prison to uphold proper hygiene and sanitation measures. Instruction on the relationship between basic hygiene and disease transmission amid living in a crowded environment should be made a standard component of detainee education. Under Article 7 of the *International Convention for Civil and Political Rights*, it is mandated that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

2.16. Improvement in Standard of Medical Facilities.

Prison inmates have a need for specialized medical facilities because of the overcrowding in

prisons. The inmates had to suffer from several communicable diseases. In the case of *Prateek Jain vs State of UP* the Allahabad High Court stated that “the authorities are directed to ensure that proper medical facilities are provided to all prison inmates who are imprisoned. The spread of the Covid-19 virus should be controlled in the prisons by regular testing of the inmates” Specialized treatment of dermatological issues is needed due to the lack of hygiene and sanitation standards. There is a need for more visits by medical personnel to the prison. It is further recommended that prison inmates be given their rightful access to medical records and that family members are kept informed of their condition and treatment, in accordance with the Advisory on the Rights of prison inmates and Police Personnel issued by the National Human Rights Commission, India. Medical aid to female inmates should be given due consideration as contemplated under Rule 6 of the Maharashtra Prisons Manual. It deals with medical aid to women prison inmates in front of a lady police official (including cases of pregnancy).

2.17. Increase in Appointment and Training of Prison Staff.

The shortage of manpower in prison affects other aspects like the health, security, and safety of the inmates. In the National Seminar on Prison Reforms, 2014, organized by the National Human Rights Commission, India, a staff-prison inmates’ ratio of 1:6 was suggested. Hence, it is recommended that the existing vacancies be filled and additional staff be sanctioned and appointed in the prison wherever necessary. Additionally, “proper training in the laws and duties of care for prison inmates, the right to health and access to health care in prison as in the community, the ethical duties of staff and health professionals working in prisons, and the ability to deal with health emergencies and administer first aid.”

2.18. Organizing Educational and Recreational activities for children of female inmates:

Children of prison inmates are the innocent victims of the punishment given for a crime not committed by them. Under no circumstances they should be treated as prison inmates. It is recommended that facilities like creche and play schools are created in or near the prison premises for the educational needs of the children with women prison inmates, in line with the recommendations provided in the National Seminar on Prison Reforms, 2014 organized by the National Human Rights Commission, India. Recreational activities like music, arts and crafts, and dance may be conducted for the children of prison inmates. In the case of *R Upadhyay vs. State of AP and Ors. (Civil Writ Petition No. 559 of 1994)*, it was held that “the measures should include, amongst others, a comprehensive health program, supplementary nutrition for mothers and children, promotion of physical education and recreational activities, special consideration for children of weaker sections and prevention of exploitation of children.”

Chapter-3.

Surprise Visit to Public Hospitals – Resident Doctors’ Hostel Field Visit to “Grant Govt Medical College and Sir J.J Group of Hospitals, Mumbai, Maharashtra.

3.1.Introduction.

A team of Maharashtra State Human Rights Commission (MSHRC) Officials and Students of the School of Law, Rights & Constitutional Governance from Tata Institute of Social Sciences) the team visited Grant Medical College, one of the oldest and most prestigious medical colleges in Mumbai, and J. J. Hospital, run by the Maharashtra State Government. Section 29 (c) and section 12 (c) of the *Protection of Human Rights Act, 1993* give power and authority to the MSHRC to visit and inspect the Government institutions for assessing human rights and living conditions. The Grant Government Medical College, Mumbai, is a public medical college affiliated with the Maharashtra University of Health Sciences. Founded in 1845, it is one of South Asia's oldest institutions teaching medicine. Its clinical affiliate is Sir Jamsetjee Jeejeebhoy Group of Hospitals: a conglomerate of four hospitals in South Bombay, including the Sir J. J. Hospital, St George Hospital, Gokuldas Tejpal Hospital, and Cama and Albless Hospital (women and children hospital). The resident doctor lives in fear because the hostel building is on the edge of collapse. On 4th October 2022 at 12.50 pm, our team accessed the premises and found out how 500 resident doctors are living in the hostel with broken beams and staircase, leaking ceilings, cracked tiles on the floor and on the side walls, and uncontrolled fungal growth. Other hostels on the campus also lie in the same dreaded conditions.

3.2.Objectives And Mandates

- ✓ To assess the living conditions and facilities in JJ Hospital’s Resident Doctor's Hostels, especially “300 Resident Doctor Hostel” and Hospital buildings of Grant Medical College, for better compliance of the right to health and right to life of Resident Doctors and Hostel Inmates.
- ✓ To look into infrastructure, health hygiene, living conditions, and staff requirements of JJ Hospital’s Resident Doctor's Hostels, including House Surgeons, Medical Students, Staff, Caretakers, Patient

The mandate of the Visit: The mandate of the conducted visit was set forth by the Maharashtra State Human Rights Commission in pursuance of the Memorandum of Understanding with Tata Institute of Social Sciences, Mumbai, in October 2022.

3.3.Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, and Schemes Relating to Rights of Resident Doctors and Hostel Inmates

UNITED NATIONS INTERNATIONAL CONVENTIONS	PROVISIONS UNDER THE CONSTITUTION OF INDIA, LEGISLATIONS, MAHARASHTRA GOVERNMENT REGULATIONS, POLICIES, REPORTS, AND	ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION
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	JUDGEMENTS	
<p>Universal Declaration of Human Rights (UDHR), 1948:</p> <p>Article 3 Everyone has the right to life, liberty, and security of person.</p> <p>Article 5 No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.</p> <p>Article 25(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, medical care, and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control.</p> <p>International Covenant on Economic Social and Cultural Rights (ICESCR), 1996</p> <p>Article 12</p> <p>(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.</p> <p>(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:</p> <p>(a) The provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the</p>	<p>Constitution of India: Article 21 – The fundamental right to life and personal liberty gives the right to live with adequate basic facilities, a decent environment, and living conditions, dignity, and access to health care.</p> <p>Article 39(e)- It is the duty of the State to make policies for the health and strength of workers, men, and women, as well as children.</p> <p>Article 42-It is the duty of the State to provide just and humane conditions of work. It also provides for maternity leave.</p> <p>Article 43-the State is obliged to provide a decent standard of life in working conditions.</p> <p>Article 47- Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.</p> <p>Article 48A-it is the duty of the state to protect and improve the environmental conditions. <i>The Protection of Human Rights Act, 1993</i> Section 2(d) defines Human rights as "human rights" means the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.²⁰</p> <p>Case Laws:</p> <p><i>Kharak Singh v. State of Uttar Pradesh AIR 1963 SC 1295</i> Supreme Court quoted and held: By the term 'life' as used here, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or the pulling out of an eye, or the</p>	<p>Suo Moto Action:</p> <p>National Human Rights Commission, India, has today taken <i>suo motu</i> cognizance of a series of media reports about the loss of precious human lives in various parts of the country in recent times due to deficiencies and inadequacies in the healthcare system.</p> <p>The Commission has directed that teams comprising doctors on the panel of the Commission along with the officers of the Commission will visit hospitals, primary health centers, and other health facilities in vulnerable States one by one, starting with Bihar, U.P., Haryana, and Punjab to conduct an on-the-spot fact-finding investigation. The teams will also take stock of the ground situation, especially in vulnerable areas with regard to difficulties being faced by the people and shortcomings on the part of the respective State Government/Central agencies. The Commission finally intends to issue suitable guidelines for implementation by the State/Union Ministry of Health and Family Welfare.</p> <p>NHRC Recommendations on Health:</p> <p>The Commission organized a Review Meeting on the recommendations of the Core Group on Health and Public Hearing on March 4, 2006.</p> <p>Review Meeting:</p> <p>The Commission organized a</p>

<p>child;</p> <p>(b) The improvement of all aspects of environmental and industrial hygiene;</p> <p>(c) The prevention, treatment, and control of epidemic, endemic, occupational and other diseases;</p> <p>(d) The creation of conditions that would assure to all medical services and medical attention in the event of sickness</p>	<p>destruction of any other organ of the body through which the soul communicates with the outer world.</p> <p><i>Sunil Batra v. Delhi Administration AIR 1978 SC 1675</i>, the Supreme Court approved the above observations. It held that the 'right to life included the right to lead a healthy life to enjoy all faculties of the human body in their prime conditions. It would even include the right to protect a person's tradition, culture, heritage, and all that gives meaning to a man's life. In addition, it consists of the Right to live and sleep in peace and the Right to repose and health.</p> <p><i>Paschim Bangal Khet Mazdoor vs. State of West Bengal (1996)</i> the supreme court held that it is the primary duty of the Government to secure the welfare of the people, and it is the obligation to provide adequate medical facilities for its people.</p> <p><i>Parmanand Katara Vs. Union of India (1989)</i>, the Supreme Court ruled that every doctor, whether at a government hospital or otherwise, has the professional obligation to extend his services with due expertise for protecting life.</p> <p><i>T. Ramakrishna Rao vs. Chairman, Hyderabad Urban 2001</i> The high court observed that environmental pollution violates article 21.</p> <p><i>Ratlam Municipal Corporation vs. Shri Vardhichand 1980</i> The court held that it is the obligation of the state to provide a decent and healthy standard of living.</p> <p>Maharashtra Government Regulations: GR issued by the Medical Education and Drugs Department on 07-12-2019 for administrative approval to Creation of New Head for the construction of the Hostel and Quarters of Super Speciality Hospital Sir J J Hospital Mumbai.</p> <p>GR issued by the Medical Education and Drugs Department on 19-11-2018 for Administrative Approval Renovation of Ladies Hostels, Doctors Quarters Building at Grant Medical College, Mumbai of Sir J. J. Group of Hospitals, Mumbai.</p> <p>GR issued by the Medical Education and Drugs Department on 18-04-2018 for Administrative Approval to repairs and Renovation of toilet, bathroom, and lift room of I.N.E. Hostel Building at Sir J. J. Group of Hospitals,</p>	<p>"National Review Meeting on Health" on March 6, 2007. A copy of the recommendations of this meeting was also sent to the MCI. As a follow-up, the Commission held a meeting with the Medical Council of India, the Indian Nursing Council, and the Ministry of Health and Family Welfare on August 30, 2007.</p> <p>The Commission recommended that there was a need for the Medical Council of India and the Nursing Council of India to have a relook and work out a methodology to recognize courses for Nursing Practitioners.</p> <p>Advisory related to access to healthcare:</p> <p>Access to free healthcare for COVID-19 patients in public health systems and engaging facilities.</p> <p>Access to healthcare for non-COVID patients.</p> <p>Access to testing for COVID-19.</p> <p>Access to transport for patients.</p> <p>Access to cashless payment for COVID-19 treatment.</p> <p>Advisory related to the observance of the Patients' Rights Charter:</p> <p>Display of Patients' Rights Charter.</p> <p>Ensuring implementation of the Patients' rights charter.</p>
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	<p>Mumbai.</p> <p>Indian Public Health Standards Guidelines 2012</p> <p>Hospital Building– Planning and Layout Hospital Management Policy should emphasize on hospital buildings with earthquake-proof, flood proof and fire-protection features.</p> <p>There shall be the provision of adequate light at night so the hospital is visible from the approach road.</p> <p>The building should be well maintained with no seepage, cracks in the walls, and no broken windows and glass panes. There should be no growth of algae and mosses on walls etc. Hospitals should have anti-skid and non-slippery floors.</p> <p>No water logging and proper sewage management system- There shall be no water logging/marsh in or around the hospital premises. There shall be no open sewage/ditches in the hospital.</p> <p>Checklist-District hospitals would develop and implement checklists for various processes, i.e., Housekeeping Checklist, BMW Checklist, Surgical Safety Checklist, etc. and get the certification.</p> <p>Workload- Quality Assurances in Clinics Workload at OPD shall be studied, and measures shall be taken to reduce the Waiting Time for registration, consultation, Diagnostics, and pharmacy. The punctuality of staff shall be ensured.</p> <p>There shall be a provision of complaints/ suggestion boxes. There shall be a mechanism to redress the complaints. The Hospital shall develop standard operating procedures for OPD management, train the staff and implement it accordingly. Assessment of each patient shall be done in the standard format.</p> <p>To avoid overcrowding, hospitals shall have patient calling systems (manual/Digital).</p> <p>Quality control – Internal Monitoring Management Information System Hospitals should collect data pertaining to the performance of different departments and hospitals as a whole. Internal audits of the services available in the hospital should be done on a regular basis (preferably quarterly).</p> <p>Medical stock- Hospital shall have a standard operating procedure for local purchase, indent management, storage preparation of monthly requirement</p>	<p>National Human Rights Commission (NHRC)</p> <p>Intervention:</p> <p>The intervention by the National Human Rights Commission, NHRC, India, in the case of the death of a pregnant woman due to medical negligence, has resulted in the Government of West Bengal paying Rs. 3,75,000/- as monetary relief to her Next of Kin.</p>
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	<p>plan, and Inventory analysis. Minimum and maximum Stock shall be 0.5 and 1.25 months, respectively. Indent order and receipt of vaccines and logistics should be monthly. Timely receipt of required vaccines and Logistics from the District Stores should be ensured.</p> <p>Provision for building maintenance staff and an office cum store will be provided to handle day-to-day maintenance work.</p> <p>Public Rights in the Hospital-</p> <p>Right to access to all the services provided by the Hospital.</p> <p>Right to Information - including information relating to your treatment.</p> <p>Right to make decisions regarding treatment.</p> <p>Right for privacy and confidentiality.</p> <p>Right to religious and cultural freedom.</p> <p>Right for Safe and Secure Treatment.</p> <p>Right for grievance redressal.</p> <p>Right to Emergency Care.</p>	
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3.3. Inferences, Findings, and Issues.

The JJ Hospital Resident Doctors Hostel, named as “300 Resident Doctors Hostel,” which is a 7-floored Building that houses nearly 550 Resident Doctors as against the official holding capacity of 200. The BMS Hostel of the Govt. Grant Hospital comprises three floors, and each floor consists of 4 rooms. When the MSHRC Fact Finding Team, including TISS LL.M. Students, reached the J.J. Hospital Resident Doctors Hostel named as “300 Resident Doctors Hostel”, the guard restrained the entry of the Team into the Hostel premises despite having the statutory power to inspect under the Protection of Human Rights Act, 1993 (PHRA, 1993). The Hostel Authorities were hesitant with the Team and did not readily assist; instead, they made videos of the Team. When the MSHRC Fact Finding Team, including TISS LL.M students, inquired, the Hostel Authorities replied, "where is the permission letter?" Later, the Maharashtra Association of Resident Doctors (MARD) cooperated with the team and accompanied them in the inspection. On observing and inquiring with the Resident Doctors, the MSHRC Fact Finding Team including TISS LL.M. Students found as following-

3.4. Infrastructure of the JJ Hospital Resident Doctors Hostel:

✓ The MSHRC Team observed that the first three floors were in a much worse condition as compared to the rest. It was observed in the Nursing Hostel by the Team that the plasters and painting of the room’s walls were peeling off. In some places, plasters were falling down, resulting in leakage from the walls.

✓ In the BMS Hostel, it was observed by the MSHRC Team that the Hostel Building’s infrastructure was pitiful as there were a lot of cracks in the building, and the plaster chunks had fallen off in rooms, washrooms, and lobbies.

✓ In the BMS Hostel, the Team further observed that there were clearly visible corroded iron rods, seepage from ceilings, and fungus on walls, with walls collapsing many times at multiple places.

✓ In all 4 Hostels, there is water seepage on the walls and the ceilings. Hence, there are water droplets falling when it rains, making the hostel rooms damp and unhygienic. The residents reported that they usually keep pots to collect water, and they use clothes or paper

to soak the water.

✓ It was observed by the MSHRC Team that there was fungal growth on the walls and the ceilings of all the mentioned Hostel Buildings due to damp and unhygienic conditions, which poses an infection risk to the hostel inmates.

✓ In the 300 Resident Doctors Hostel, it was found that the stairs were under construction with no side railing and iron rods protruding from the walls, which poses risks of accidents due to the gap between the stairs.

✓ In the 300 Resident Doctors Hostel, It was found by the MSHRC Team that there were drinking water facilities in the Hostel which were contaminated due to dust and debris around. The same drinking water was being utilized by the construction workers for the construction work. In the BMS Hostel, it was reported to the MSHRC Team those authorities provided no drinking water facility, and the students have collectively installed water purifiers at their own expense. In the Nursing Hostel, there was no proper drinking water facility, with only a water filter on the 2nd floor of the Hostel.

✓ The Team found that in the 300 Resident Doctors Hospital, the storeroom was converted into a room and given to students to stay in.

✓ It was reported by the Resident Doctors to the MSHRC Fact Finding Team, including TISS LL.M., that there is a rule of a single room for 1 student, but 2 students are allotted per room for 3rd year PG students in the 300 Resident Doctors Hostel.

✓ In the 300 Doctors Resident Hostel, it was observed by the Team that one of the floors, numbered 7th floor, is fully covered with construction material making it difficult to breathe and live due to small dust particles and posing the risk of diseases.

✓ As the JJ Hospital Hostel 300 Resident Doctors voiced, the administration has not vacated rooms of old students. Thus, overcrowding has increased. In the BMS Hostel, it was reported by the Hostel Inmates to the MSHRC Team that every room was overcrowded as it was filled with more students than the official permitted capacity. The BMS Boys Hostel Inmates narrated to the MSHRC Fact Finding Team that a room on the ground floor with a total capacity of 4 students was filled with eight students, and even in the BMS Girl's Hostel, the condition is the same as almost six girls are residing, in a single small spaced room.

3.4.1. Shortage of Beds and Furniture: In the BMS Girls Hostel, it was observed by the MSHRC Team that there are not adequate beds in the small spaced room for the Hostel Inmates. The Hostel Inmates reported to the Team that 2-3 girls had to manage in a single bed, and a few of them were sleeping on the floor.

3.4.2. Condition of Washroom: In the BMS Hostels, it was found by the MSHRC Team that the toilets and the bathrooms were not properly maintained as there was a lack of cleanliness, a lack of water supply, and water clogging with no flush and no geyser. These foul-smelling washrooms and toilets have become a ground for spreading diseases. Their walls and rooftop ceilings are covered with fungus. Even in some areas, there is Black Fungus. The plaster was in bad condition.

3.4.3. Broken Glass Window in the Washrooms: The MSHRC Team observed that the window glasses of the washrooms were absent in many rooms, and they did not even have grills attached to them. Some residents complained about birds entering the bathroom from the window, which causes a nuisance and poses a serious privacy issue for the Hostel Inmates. The Nursing Hostel has only one washroom for the entire floor.

3.4.4. Insufficient Toilet and Bathroom: In BMS Hostels, it was addressed the Hostel

Inmates that are facing a lot of inconveniences and problems as there is only one toilet bathroom for 50 Hostel Inmates.

3.4.5. Health Risk: It was reported by the BMS Hostel inmates that the hostel rooms were not properly maintained as they were infected with termites, and in the past six months, there have been eight dengue cases and a few malaria cases.

3.4.6. Disguised Repair Work: It was found by the MSHRC Fact Finding Team, including TISS LL.M Students, that the renovation and repair work was done only on the exterior part of the building and corridors, and no repair work was undertaken for the student rooms in the 300 Resident Doctors Hostel.

3.4.7. The dearth of Security Staff: It was reported by the BMS Girls Hostel Inmates that there was no security staff appointed for the Girl's Hostel, and this posed a risk to their security and safety. In the BMS Hostels, it was reported to the MSHRC Fact Finding Team by the Hostel Inmates that there were no security guards present with no CCTV Cameras. As a result, there have been instances of theft in the BMS Hostels. The Hostel Inmates informed the Team those five mobile phones had been stolen from a room and also 3-4 lakh rupees of the Hostel Inmates had been stolen from the Hostel in total.

3.4.8. No Option for Relocation: It was found that no alternative was provided for relocation from the 300 Resident Doctors Hostel at the JJ Hospital as the ongoing construction in the hostel premises poses a huge risk to the health of the Hostel Inmates.

3.4.9. Infected Rooms with Rodents and Insects: It was addressed to the MSHRC Team by the Hostel Inmates that the BMS Hostel rooms are infected with rats, termites, fungus, and mosquitoes, which cause nuisance and are potential disease spreaders.

3.4.10. Open Electric Wires: It was found by the MSHRC Fact Finding Team, including TISS LL.M. Students, that there were open electric half-cut wires that were fully worn out, and lying uncovered. The uninsulated wires were hanging from the walls and the ceilings of the 300 Resident Doctors Hostel.

3.4.11. Grievances from the JJ Hospital's Hostel Residents: It was addressed to the MSHRC Team by the Resident doctors that the hostel inmates had done the repair work at their own expense due to the worsen condition in which the room was given to them. There were open concrete patches in corridors with visible inner rusted iron rods. This creates serious living conditions risks for the Hostel Inmates as there is a high probability of collapsing the rods on students.

3.4.12. Lack of Grievance Redressal Mechanism: It was informed the MSHRC Team by some of the Hostel Inmates of the 300 Resident Doctors they have written complaints for 2 yrs. to the Director of Medical Education & Research (DMER), but the rooms were only inspected, and the action has been pending. The JJ Hospital's BMS Hostel Inmates voiced that they have received no reply from the administration for six months against their complaints regarding the toilets' condition.

3.5. Understaffing (Nurses and Helping Staff) in the JJ Hospital:

It has been observed by the MSHRC that there is a shortage of staff in the Hospital. The helping staff of the 5th floor revealed to the team that there is a shortage of the helping staff

as earlier there were 6 to 8 helping staff for each ward, but at present, due to retirement, only 1 or 2 helpers are managing the whole ward as there has been no new recruitment. Now they are overburdened with work. A lady worker who has been working for more than 25 years also informed the Team about low manpower in the Hospital. Their working schedule is from 7 am - 2 pm, 2 pm - 10 pm, and 10 pm - 6 am. It was reported by the Nursing Staff to the Team that there is a disproportionate number of nurses as per the number of patients as, at present, for 22 patients, there is only two nursing staff available which is burdening them with work. In the J.J. Hospital. Their working schedule is 7:30 am - 3 pm, 1 pm - 8 pm, and 8 pm - 8 am. The male nursing staff told the Team that they had no holidays. Even maternity leave is not provided adequately as per the norms. The kitchen staff is not as per the needed capacity, and only a few people work in every kitchen department. They said they have requested to increase the number of staff, but no response is being given, which is overburdening them. The same staff makes the food, the same is cleaning the utensils and kitchen, and the same is distributing the tiffin.

3.6. Poor Infrastructure: It was observed by the MSHRC Team that the condition of the sisters-in-charge room on the 6th floor of the JJ Hospital is bad as there is leakage on the rooftop ceiling. In the male cardiovascular ward, the plaster of the rooftop ceiling was not in good condition resulting in leakage during rain. The washrooms for doctors and patients, including the Children's ward, are not clean and hygienic. The staff addressed to the MSHRC Team that 4 Cardiac female patients were shifted toward 22 due to leakage, but only a single fan over 1 bed in the new accommodation left three patients with no fans. This severely affects the patient's health and living conditions.

3.7. Shortage of Medicine Supply: It was addressed by the Nursing Staff that there is a shortage of medicines available per patient. Mostly, cardiac medicines are not available. Some of the patients in the JJ Hospital reported to the Team that they have to buy the medicines for themselves in some cases, and a maximum of them cannot afford them since these medicines are expensive. Hence, the dependents of the patients have to go outside to arrange the medicines. **Improper Children's Ward** It was observed by the MSHRC Team that the Children's wards lacked a child-friendly environment, as no toys were available for them for exercise and recreation. Only there were some cartoon stickers on the walls. It was observed by the Team that there was a disproportionate number of beds as per the number of patients as a result, some children had to sleep on the floor mattresses. There is an open dustbin with a foul smell of waste flowing out of it. There is a capacity of 40 children, and 46 children are currently admitted. The MSHRC Team observed that the bed size is not compatible with mothers of neonatal, infants, and toddlers.

3.8. Hospital Kitchen: The Team observed that the cooking panel (Tava) on which the chapati is cooked is covered with rust which is against the Food Safety and Standards Authority of India (FSSAI) regulations. There is no ventilation, and not even a single chimney is available, causing the constant build-up of the high volume of heat. Many employees fell sick due to this heat. There is no sufficient place for washing pots. **Impediment in availing Beneficial Government Schemes:** The JJ Hospital Nursing Staff addressed the MSHRC Team that the Cardholders and Below Poverty Line (BPL) patients are being admitted free for treatment.

But it was reported by the patient's relatives that the patients who were being admitted by cards were facing difficulty in getting discharged due to non-payment of fees by the Government on time. The father of patient X informed the Team that even after having the card, they are not getting the medical benefits of the scheme and are required to go out to take medicines themselves. Satisfactory Hospital Services except for follow-up delays- The Patient's Relatives addressed to the Team that they were satisfied with the JJ Hospital's services.

According to them, the Doctors are available 24/7, taking routine rounds. But in some cases, there is a delay in post-surgery follow-up due to the non-availability of the doctor. On 3 Oct 2022, the Navbharat Times and the Mid-Day mentioned news about the inhumane living conditions of the Resident Doctors at JJ hospital. The MSHRC took Suo Moto cognizance. A team of Maharashtra State Human Rights Commission (MSHRC) Officials and 6 Students of the School of Law, Rights & Constitutional Governance (SLRCG) from Tata Institute of Social Sciences (TISS) made a surprise visit to Grant Medical College on 4th Oct 2022, which is one of the oldest and most prestigious medical colleges in Mumbai and the Maharashtra State Government runs it. After a successful inspection of the JJ premises, A summon notice was served to the dean of JJ hospital, additional chief secretaries of PWD, and the public health department.

3.9. Recommendations: Need to comply with the Maharashtra State Government GRs for Hostel and Hospital development:

- It is recommended that there is a need to ensure compliance with the following Maharashtra Government Regulations, issued by the Medical Education and Drugs Department on infrastructure development & funding for the same.
- Need to implement the Maharashtra State GR issued on 7th December 2019, which provides funds for the Construction of the Hostel and Quarters of the Super Specialty Hospital of JJ Hospital Mumbai. This needs to be implemented as the Hostels infrastructure is in deteriorating condition.
- There is a need to implement the Maharashtra State Government GR issued on 19th Nov. 2018, which provides funds for the Ladies' Hostel, Nursing Hostel, and Doctors Quarters Building in the JJ Hospital premises. It is recommended that this GR needs to be implemented immediately as the existing condition of these hostels is very unhygienic and needs repair and civil work. There were cracks, broken windows, and glass, growing algae and mosses in the Hostel Buildings.
- The Maharashtra State Government GR dated 18th April 2018 provides funds for the repair and renovation of J.J. Hospital's I.N.E. Hostel Buildings toilet, bathroom, and lift room as at present they have water seepage and leakage, fungal infection, peeling of the plasters of walls. The whole infrastructure of the JJ Hospitals Hostels Buildings needs to be renovated immediately due to the premises' damp and wet conditions and the risk of spreading life-threatening diseases to the Hostel Inmates. Hence, all the above three mentioned Maharashtra State Government GR need to be urgently given effect.

3.10. Compliance with the Indian Public Health Standards Guidelines 2012: It is recommended that there is a need to give effect to the Indian Public Health Standards (IPHS) Guidelines for District Hospitals Revised 2012 as these guidelines foster improvement in infrastructure and living conditions in the rooms. It is recommended that there is an urgent need for staff appointments as it was informed that earlier there were 4 to 5 Nursing Staff in the JJ Hospital, but presently only two are working, and the remaining vacant seats are yet to

be filled. The same applies to helping staff, Kitchen staff s appointment needs. There is a need to appoint a security guard in the BMS Hostels immediately. In the Hospital, there is a need to implement Social Security Measures for the Staff of JJ Hospital and JJ Hospital Hostels.It is recommended that there is a need to ensure the availability of an adequate number of medicines and a regular medicine supply. As it has been reported that there is a shortfall of medicines in the JJ Hospital, which is affecting the effective and speedy delivery of treatment.

Chapter-4

Government Funded Children Care Institutions Field Visit to Children's Home, Ulhasnagar, Thane, Maharashtra.

4.1.Introduction.

It is an internationally settled principle that children are a special category of human beings due to their evolving, dependent and vulnerable position. Institutional care refers to the care, protection, rehabilitation, and social reintegration of children in difficult and vulnerable circumstances in an institutional setting under the guidance and supervision of childcare professionals as prescribed under the *Juvenile Justice (Care and Protection of Children) Act, 2015*. The Women and Child Development Department, Government of Maharashtra have taken several initiatives to protect children from or against any perceived or actual danger or risk to their life, personhood, and childhood. The key objective is to reduce their vulnerability and ensure that no child falls out of the social safety net and that those who do, receive necessary care, protection, and support so as to bring them back into the safety net.

Taking this into consideration, the Women and Child Development Department, Government of Maharashtra, have established a network of childcare institutions (CCIs) for children that are found in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, and social re-integration, by adopting a child-friendly approach. The CCIs institutionalize essential services and strengthen structures for emergency outreach, institutional care, family and community-based care, counseling, and support services at the National, Regional, State, And District levels.

4.2.Objective and Mandate.

- To explore the functioning of the Children's Home in Ulhasnagar, understand the needs of the boys living in the children's home, and analyze whether the children's home is equipped to fulfill the mandate of provisions for children in need of care and protection as provided in *Juvenile Justice Act, 2015* and *Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*.
- To look into needs and issues relevant to the children residing in the Children's Home in Ulhasnagar and the associated matter would be the infrastructure, educational, recreational, and medical facilities implemented in the Ulhasnagar Children's Homes for their holistic growth and Development as envisaged by the *Juvenile Justice (Care and Protection) Act, 2015*, *Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002* and *Right of Children to Free and Compulsory Education Act, 2009*.
- The mandate of the Visit: The mandate of the conducted visit was set forth by the Maharashtra State Human Rights Commission in pursuance of the Memorandum of Understanding with the School of Law, Rights, and Constitutional Governance, Tata Institute of Social Sciences.

4.3.Conceptual Understanding of Laws and Schemes Related to Juveniles in Need of Care and Protection.

Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, and Schemes Relating to Juveniles in need of Care and Protection

United Nations International Conventions	Provisions in the Constitution of India, Legislations, Policies, Reports, and Judgments	Role of the National Human Rights Commission
<p>Convention on the Rights of the Child, 1989 Article 3: “It is obligatory upon the States Parties to ensure that the well-being of a child is protected taking into account the best interest of the child.” Article 8: “The States parties have to ensure that the child is only separated from a parent or lawful guardian by the procedure established by law.” Article 12: “The child has the right to participate in making decisions that impact their life.” Article 24: “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health.” Article 28: “States Parties recognize the right of the child to education” Convention on the Elimination of All Forms of Discriminations Against Women (CEDAW), General recommendation No. 36 (2017): Right of girls and women to education</p>	<p>Constitutional Provisions Article 14: Right to Equality Article 15: Prohibition of Discrimination Article 21: Protection of Life and Personal Liberty Article 21A: Right to Education Article 24: Prohibition of Child Labour Article 39(e): “Duty of the State to protect the tender age of children and that they are not forced by economic necessity to enter avocations unsuited to their age or strength” Article 39(f): “Duty of State to protect children against exploitation” Article 45: Duty of State to provide free and compulsory education for all children until they complete the age of fourteen years.</p> <p align="center">Continues below.....</p>	<p>Rule 91(ia) (added in the <i>Juvenile Justice (Care and Protection of Children) Model Amendment Rules, 2022</i>): The provision empowers the National and State Commissions to “inspect the Child Care Institutions, including the Specialized Adoption Agencies and maintain a record of inspections conducted by the authorities”</p> <p>The National Human Rights Commission, NHRC, India has taken Suo motu cognizance of the matter wherein 9 girls from Kerala went missing from a shelter home at Manganam in Kottayam, Kerala.</p> <p>Published a book titled ‘Children in India and their Rights’, authored by Dr. Savitha Bhakhry in which Chapter 4 on page 53 elaborates on the “Role of National Human Rights Commission in Protecting and Promoting Children’s Rights.”</p>
<p>Statutory Provisions: The Juvenile Justice (Care and Protection of Children) Act, 2015 (as amended in 2018) Section 3: General principles to be followed in the administration of the Act. The principle of the best interest of the child is the premise of all other principles mentioned herein.</p>		

Section 11: Role of the person in whose charge the child in conflict with law is placed.
Section 27: Constitution of Child Welfare Committee
Section 30: Functions and responsibilities of Committee.
Section 32: Mandatory reporting regarding a child found separated from the guardian.
Section 40: Restoration of the child in need of care and protection
Section 53: Application of Right of Children to Free and Compulsory Education Act, 2009 in children's home.

Right of Children to Free and Compulsory Education Act, 2009. Section 6 –The duty of appropriate Government and local authority to establish a school, it mandates the Government to establish a school within the areas or limits of a neighborhood wherever such school has not been established, within three years from the commencement of the Act.

Commissions for Protection of Child Rights Act, 2005. Section 13 (i): The commissions have the power to “inspect or cause to be inspected the place of residence or institution meant for children. Maharashtra State Juvenile Justice (Care and Protection of Children) Rules, 2018. Rule 8: The procedure to be followed when a child is produced before the Committee and mandates the entire procedure to be child friendly. Rule 16: Establishment of Children Home for children in need of care and protection in the manner specified under section 34 of the Act. Rule 45: The provision upholds the mandate of the Convention on the Rights of the Child, 1989, regarding the participatory right of children by providing active participation of children in decisions concerning them. Rule 46: Provision for placing complaint boxes in the dormitories. Rule 48: Procedure to be undertaken to ensure the proper treatment of physical and mental health-related issues, respectively. Rule 54: Maintenance of the case file of every child admitted to the institute.

Judgments: Mohini Jain vs. the State of Karnataka, 1992- “The Supreme Court held that the right to education in the constitution is given under A.38, 39 (a, f), 41, 45.” Unni Krishnan vs. State of Andhra Pradesh, 1993- “The Supreme Court held that the right to education exists till 14 years of age in India.” Rajesh Kumar vs. State 2022- “The Delhi High court directed for the proper functioning of childcare institutions.”

Maharashtra Government Resolutions: Government Resolution dated 04.01.2022 - Release of grant to the NGOs who run CCI under the Juvenile Justice (Care and Protection of Children) Act, 2015. Government Resolution dated 23.03.2021 - About Implementation of Juvenile Justice Information System for effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015. Government Resolution dated 22.07.2019 - Constitution of Management Committee for Juvenile Justice Fund as per provisions of Juvenile Justice Act, 2015. Government Resolution dated 28.06.2018 - Changing nomenclature of State Children Fund as per Section 61 of Juvenile Justice (Care and protection of Children) Act 2000 to Juvenile Justice Fund constituted under Section 105 of the Juvenile Justice Act 2015. Government Resolution dated 27.04.2016 - As per the direction of the Supreme Court appointing State Level Social Audit Committee for the Social Audit of Baalgruh, Juvenile Justice Board, Child Welfare Committee, Special Juvenile Police Unit and Special Adoption Agencies

Schemes: Integrated Child Development Scheme (ICDS): “Scheme to provide young children with an integrated package of services such as supplementary nutrition, health care, and pre-school education.” Scheme for Adolescent Girls (SAG): Scheme to enable self-development and empowerment of Adolescent girls and improve their nutrition and health status.

4.4. Inferences, Findings, and Issues.

Three Government facilities under the purview of the Child Welfare Committee were visited for the mandate of this Report. The Government Senior Boys Home, Government Junior Boys Home, and Government Girls Home in Ulhasnagar, Thane. The social profile of the children housed in these three homes includes missing children, abandoned children, children that were physically abused, engaged in child labor, trafficked, and lost their family as they were orphaned or their primary caregivers were imprisoned. The following observations were made on the visit to the three homes:

4.5. Infrastructure.

- **Insanitary Toilets:** The toilets were unhygienic and broken. In the Government Senior Boys home, the doors of 2 toilets and five bathrooms were broken. On inquiring about the same, it was found that the grant for repair work had been approved, but any work done gets ruined by rain. In the Government Junior Boys Home, the toilets and washrooms were distantly located from the hall where the children lived. It would be very inconvenient for a child to use the toilet facilities multiple times a day, specifically during the night. The Government Girls' Home had unsanitary toilets.
- **Insanitary Kitchens:** The kitchen walls were damp and blackened with soot in the Government Senior Boys Home. In the Government Girls Home, the kitchen is made in a makeshift arrangement and is not hygienic.
- **Inadequate furniture and equipment:** In the Government Girls' Home, there were inadequate beds as only 16 beds were available for 26 girls, and the remaining children slept on mattresses. In the Government Senior Boys Home, some of the electrical appliances were not functioning.
- **No electricity:** The Government Girls Home had no electricity for one month on the date of the visit due to the non-availability of funds. The home also did not have an inverter. The Government Girls Home had a makeshift facility for electricity where the electricity in the evening was diverted from the neighbouring Government Boys Home.
- **Lack of Staff:** In all three homes, there was a lack of appointment of staff. Most sanctioned posts were vacant. The essential post of the medical officer was vacant and had to be filled in with voluntary services. The counsellor was also serving as a probation officer in the Junior Boys Home. In the Government Girls Home, there was a lack of cleaning staff.
- **Insufficient Capacity Building:** There is a need for more specialized training in providing childcare and support among the staff. The staff seemed ill-equipped to conduct regular meetings/ phone calls between the children and their families. The Security staff lacked specialized training to deal with children.

4.6. Health and Nutrition.

- **Need to meet Nutritional Needs:** The children at Government Girls Home receive an insufficient diet, lacking in meat, eggs, and vegetables on a regular basis. The children in the Government Junior Boys home and Senior Boys home were given a balanced

diet of dal, rice, roti and vegetables, and eggs on three days a week. The food appeared satisfactory, but the condition of the kitchen where the food was prepared was unhygienic.

- **Lack of health facilities:** The health room in the Government Girls Home lacked basic facilities such as adequate medicines due to the non-availability of funding. All three homes lacked a government-appointed Medical Officer and were dependent on the voluntary services of a medical practitioner. The Government Girls Home lacked a Mental Health Counsellor.
- **Lack of Resources:** The Government Senior Boys Home reading room had mostly pre-primary level books and limited textbooks. The Government Girls Home and the Government Junior Boys Home had no library or separate reading room for children. The children in the Government Girls Home were unable to regularly attend school due to a lack of schools for girls nearby. The girls were taught in batches by a local civil society organization at Home.
- **Need for relevant practical training:** Children at the Government Girls Home received no co-curricular training or formal industrial skill development. They were trained in sewing as part of skill development. The children in Government Senior Boys Home and Government Junior Boys Home received computer classes.
- **Need for more recreational activities:** The annual sports fest on Children's Day had been stopped during the pandemic, as a result of which the prowess of children in sports has been hampered. The children in Government Senior Boys Home and Junior Boys Home receive classes in art and crafts conducted by a local civil society organization. The children in Government Girls Home are shown documentaries once in a while but lack the resources for other recreational activities.

4.7. Miscellaneous: Based on the abovementioned observations and inferences made, the following issues were found: A gap exists in the learning abilities of the children in the CCIs when compared to their peer age group, understandably due to their socio-economic background. There is a need for educators and counselors to teach children the basic concepts before bringing them up to the level of their peer group. In this regard, proactive efforts have been taken by the counsellor and the resource persons from a local NGO serving in the Government Senior Boys Home. The Guidelines framed by NIMHANS in 'Child and Adolescent Mental Health: A Manual for Medical Officers to provide care during and after COVID-19 Pandemic', 2020 are relied upon by the Counsellor.

- **Problems in Tracing of Children among Government Authorities:** From interactions with the staff, it was found that occasionally under the purview of Childline services and the Railway Police, a child is reported as missing/abandoned without sufficient efforts being taken to trace the parents of such children, especially when their families are migrants and do not have a fixed income. Such children are placed in CCIs, and their restoration to their parents may take months due to procedural requirements of the Child Welfare Committee of District Thane, Maharashtra.
- **Need for Staff Appointment:** Most of the Government Sanctioned posts in the three homes were vacant. Ulhasnagar has six CCIs, which are being supported by one

medical practitioner who is offering her services voluntarily. No appointment has been made to fill the post of Medical Officer for the CCIs. The Government Girls' Home did not have a full-time counsellor, and in the Government Junior Boys Home, the role of Probation Officer was also fulfilled by the Counsellor. In the Government Girls Home, the children had to assist the caretaker in cooking and cleaning in the absence of staff.

- **Procedural Delay in Construction Work:** Any construction or repair work in the CCIs requires the grant of approval of the Public Works Department, resulting in procedural delays. The quality of construction is not up to the mark and is easily damaged during the rainy season. Procurement and installation of basic equipment like lights and fans take up months.
- **Lack of vocational and skill training:** the recreational activities are limited to sports and computer education, and no other vocational education is imparted to the students in compliance with the National Education Policy, 2020 (Chapter 16. Reimagining Vocational Education)
- **Inconsistency in Compliance with the *Juvenile Justice (Care and Protection of Children) Act, 2015:*** No separate database is maintained for the individual care plan of children as per the mandate given in Subsection (x) (case management including preparation and follow-up of individual care plan;) of Section 53 (Rehabilitation and reintegration services in institutions registered under this *Act* and management thereof.)

4.7.Recommendations - Need to fill up vacancies under the *Juvenile Justice Rules, 2016-*

It is recommended that there is an urgent need for the appointment of the following mentioned staff in all the 3 above-mentioned homes named as Senior, Junior Boys Homes, and Girls Observation Home. The *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*, suggests a staffing pattern for a CCI with the capacity of 100 children in Rule 26 (Management and Monitoring of Child Care Institutions).

- **General Physician-** As observed during the field visit, there is only 1 General Physician available for around 200 children in all the Child Care Institutions, as it can be clearly seen that there is a disproportionate number of doctors to children ratio. Under Rule 26 suggests one medical officer (physician) on call and one paramedical staff/ staff nurse /nursing orderly to be appointed for a CCI with 100 children. Under Rule 34 mandates a paramedic or a nurse to be available round the clock in all CCIs. Hence, there is an urgent need to appoint a doctor and nursing staff.
- **Probation Officer-** It is recommended that there is a need to appoint a Probation Officer for better day-to-day supervision in Child Care Institutions, especially in Junior Boys' Home as it has been reported by the staff to the Team that 1 person is doing the role of counsellor and probation officer. Under Rule 26 suggests 3 Probation Officers/ Child Welfare Officers/ Social workers (NGOs) for CCI with 100 children, along with 2 Counsellors/ Psychologists/ Mental Health experts.
- **Helping staff in Girls Observation Home-** It is recommended that the cleaning staff need to be appointed as it was observed that the inmates of the Observation Home were doing the task of cleaning the premises of the Home. Rule 26 suggests two housekeeping staff and two helpers for a CCI with 100 children under the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*.

- **Trained Security Staff-** It is recommended that trained security guards need to be appointed in all the 3 Homes for the safety and security of the inmates as per the requirements given under Rules 26 (9), 26(10), 26(11) of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*.
- **Caretaker and Supervisor in the Girl's Home-** It is recommended that a fit caretaker in the Girl's Home is needed as, at present, the caretaker is overburdened with all the work, and also, she is suffering from cancer. There is a need to have a permanent supervisor.
- **Improvement of Mental Health:** There is a need to have an improvement in the mental health facility in all three homes. A permanent counselor needs to be there to keep a check on the mental health conditions of the children, as they are in need of care and protection. Rule 26 of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016* suggests 2 Counsellors/ Psychologists/ Mental Health experts for a CCI with 100 children.

4.8. Need for better coordination of Helplines among the Police, the Childline, and the Government Homes for Children.

It is recommended that in the cases of abandoned and saved trafficked children, better coordination is needed for tracing the parents of children and restoring them to their families. At present, the staff of all the 3 Government Children Homes is overburdened with the work of tracing and restoring children to their families. According to Rule 19(8) and Rule 82 of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*, every child in the juvenile justice system shall have the right to be reunited with his family at the earliest and to be restored to the same socio-economic and cultural status that s/he was in, before coming under the purview of this *Act*, unless such restoration and repatriation is not in his best interest.

- ✓ **Child-Friendly Infrastructure-** It is recommended that the three Government Homes need to have a child-friendly infrastructure by adding bright colors and drawings on the walls. A specific area can be allocated as a play area.
- ✓ **Washrooms and Toilets:** It is recommended that there is an urgent need to repair and renovate the washrooms and toilets of the Senior and Junior Boys Home as the Team observed that they were not in good condition with broken doors, no water connection, and flush facilities. In Junior Boys Home, the toilet and washroom facilities need to be provided adjacent to the hall where the children live as it has been observed by the Team that the toilets and washrooms were surrounded by the wild bushes and they were quite far away from the children rooms, making it difficult for the children. Under Rule 29 of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016* mandates five bathrooms of 25 sq. ft. each for an institution with 50 children.
- ✓ **Room-** There is a need to have a proper ventilation facility in the Girls Home rooms, as the Team observed that the room was full of darkness and dampness due to no electricity. Under Rule 29(9) of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016* mandates adequate lighting, heating and cooling arrangements, ventilation, safe drinking water, clean and accessible gender, and age-appropriate and disabled-friendly toilets, and high walls with barbed wire fencing.
- ✓ **Shortage of Beds-** There is a need to have adequate beds in Girl's Observation Homes and Junior Boys' Home as the Children to Beds ratio is disproportionate in

these homes. Their children were sleeping on the ground. Under Rule 30 stipulates one mattress to be provided to each child at the time of admission and then subsequently one after every year.

- ✓ **Dining-** It is recommended that a proper dining area should be established for the children, as it has been observed by the team that the children have to eat on the ground. Under Rule 29(11)(vii) of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016* stipulate chairs and tables for the study and dining hall in a CCI.

4.9.Regular Vaccination Drive: It is recommended that regular vaccination drives need to be conducted with the maintenance of proper vaccination profiles and medical files for the children living in all 3 Homes. It is recommended that the Homes' authorities should coordinate with the COVID-19 Vaccination Centres to facilitate the vaccination of the Children in Homes at Ulhasnagar.

- **Mandatory Routine Inspection-** It is recommended that regular inspections should be done by the Government Organization like Child Welfare Committee (CWC) according to Section 54 of the *Juvenile Justice (Care and Protection of Children) Act, 2015*, which states that “While inspections are made once in three months, reports are submitted to DCPU and State Government within a week, and actions are taken within a month”. The reports of the inspections of the Child Care Institutions, along with the status regarding children’s physical, mental and emotional needs, should be regularly published in the public domain. There is a need for inspection by the Women and Child Commission, especially in the Girl's Home.
- **Access to School (Right to Education)-** It is recommended for the Girl's Home to provide access to education to the children in need of care and protection living there as the Team observed that the girls living there were not given any educational facilities. It is recommended to provide a private tutor and digital education access. The girls have the fundamental right to Education under the Article 21A of the Indian Constitution, 1950, and a neighborhood school under Section 6 of the *Right of Children to Free and Compulsory Education Act, 2009*, as held by the Honourable Supreme Court in the *Unni Krishnan vs. State of Andhra Pradesh, 1993*.
- **Skill Development and Recreation of Children -** It is recommended that there is a need to have proper computer education, art, and creative activities, sports, and recreational activities for the children, especially in the Girl's Home. Under Rule 37 provides for every CCI to provide gainful vocational training to children, which may include occupational therapy, skill, and interest-based training aimed at suitable placement at the end of the course. The institute imparting vocational training should preferably be government-recognized and provide a certificate at the end of the course. Rule 38 mandates recreational activities, including indoor and outdoor games, yoga and meditation, music, television, picnic and outings, cultural programs, gardening, and library, etc., to be provided at a CCI.

4.10. Need for Government Funds under the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016-*

- It is recommended that proper Government funds need to be allocated in all 3 Homes under Rule 83 of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*. It was reported by the staff to the Team that no grant was given in the Girl's Home. As a result, there was non-payment of the electricity bill, and the children have been living without electricity for the past one month.

- **Timely Family Visits and phone Calls-** It is recommended that the children in need of care and protection should have routine visits by their family members and be given phone-call access to stay connected with their families. As a maximum of the girls contended that they were denied access to get connected with their families. Rule 74 (1) and Rule 74(7) of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*, allow a weekly meeting with relatives and a weekly phone call with the parents/guardian of a child, respectively.
- **The intervention of Women and Child Commission -** It is recommended that there is an urgent need for intervention by the Women and Child Commission in the Homes, especially in the Girls' Homes, to address the grievances of the Children Inmates. Rule 41 of the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016* allows the State Commission for the Protection of Child Rights to be a part of the State and district-level inspection committees.

Chapter-5

Senior Citizen and Old Age Home- Field Visit to “Raja Shree Shivrai Pratishthan Matoshree Vrudhashram”, Pune, Maharashtra.

5.1.Introduction.

The Late Mr. Balasaheb Thackeray proposed that every district in Maharashtra should have an old age home named Matoshree. Accordingly, a social organization named Raja Shri Shivrai Pratishthan started an Old Age Home in the name of “Matoshree” in recognition of the Government of Maharashtra in 1999. It is located in Karve Nagar, on the bank of river Mutha. The State Government of Maharashtra built Matoshree, and the Maharashtra State Government also gave the land in 1999. Presently, there are 23 Matoshree old age homes in Maharashtra.

The process of admission in this old age home is based on two criteria, viz., age limit and sound health. Admission is permitted only for males above 60 years and females above 55 years of age. The admission is granted only to such individuals who are declared physically and mentally fit upon examination by the on-site General Physician who is a Government Registered Medical Practitioner.

5.2.Objectives and Mandate.

- To observe and assess the living conditions of the senior citizens in Senior Citizens' homes.
- To explore the functioning of the Senior Citizens' Home.
- To understand the needs and issues of the staff and inmates inside the Senior Citizens' Home.
- To understand the implementation of rehabilitative and maintenance schemes for the welfare of inmates in the 'Matoshree Old Age,' Pune.
- To observe the infrastructure, medical facilities, and welfare schemes for the fulfillment of the mandate of *the Maintenance and Welfare of Parents and Senior Citizens Act, 2007*, and its *Maharashtra State Rules of 2010*.
- The mandate of the Visit: The field visit was proposed under the mandate set forth by the Maharashtra State Human Rights Commission in pursuance of the Memorandum of Understanding with SLRCG, Tata Institute of Social Sciences, Mumbai in October 2022. The visit objectives were to be looked into and observed by the students under the guidance of Dr. Arvind Tiwari, Dr. Devakumar Jacob, and Dr. Sonali Kusum.

5.3. Conceptual Understanding of Laws and Schemes related to Senior Citizen’s Home

Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, and Schemes Relating to Senior Citizens

UNITED NATIONS INTERNATIONAL CONVENTIONS	PROVISIONS IN THE CONSTITUTION OF INDIA, LEGISLATIONS, MAHARASHTRA GOVERNMENT REGULATIONS, POLICIES, REPORTS, AND JUDGMENTS	NATIONAL HUMAN RIGHTS COMMISSION RECOMMENDATIONS
United Nations Principles	Constitutional Provisions	Publication

<p>for Older Persons:</p> <p>U.N. General Assembly made various international attempts in 1991 to address the concerns of senior citizens. Eighteen principles have been adopted, grouped into five clusters: independence, participation, care, self-fulfillment, and dignity of the older person. The United Nations have also declared the 1st of October the International Day of Older Persons.</p>	<p>Directive Principle of State Policy, Article 41 states that “the state shall, within the limits of its economic capacity and development, make effective provision for old age, sickness and disablement and in other cases of underserved want.”</p> <p>Statutory Provisions:</p> <p>1) <i>Maintenance and Welfare of Parents and Senior Citizens Act, 2007</i></p> <p>Section 4 - Maintenance of parents and senior citizens. - (1) A senior citizen, including a parent who is unable to maintain himself from his own earnings or out of the property owned by him, shall be entitled to make an application under section 5 in case of —</p> <p>(i) parent or grand-parent, against one or more of his children, not being a minor;</p> <p>(ii) childless senior citizen, against such of his relative referred to in clause (g) of section 2.</p> <p>(2) The obligation of children or relatives, as the case may be, to maintain a senior citizen extends to the needs of such citizens so that senior citizens may lead normal life.</p> <p>(3) The obligation of the children to maintain his or her parent extends to the needs of such a parent, either father or mother or both, as the case may be, so that such parent may lead a normal life.</p> <p>(4) Any person being a relative of a senior citizen and having sufficient means shall maintain such senior citizen provided he is in possession of the property of such citizen or he would inherit the property of such senior citizen: Provided that where more than one relative is entitled to inherit the property of a senior citizen, the maintenance shall be payable by a such relative in the proportion in which they would inherit his property.</p>	<p>The National Human Rights Commission (NHRC) published a book titled ‘Rights of Senior Citizens’ with detailed information on Human Rights, Constitutional and Statutory provisions, and various schemes by the Government of India for the welfare and well-being of senior citizens.</p> <p>The NHRC took <i>suo motu</i> cognizance of cases reported in media reports as well as on the basis of complaints received on human rights violations of older persons.</p> <p>i. Fifty Senior Citizens and Widows Denied Minimum Sustenance of Life (Case No. 2479/18/7/2013) - Old age pension of the senior citizens was enhanced. Further efforts were reportedly being made to identify all eligible beneficiaries for sanction of Old Age Pension.</p> <p>ii. Misappropriation of Social Security Pension Amount of 109 Beneficiaries of Ward No. 16 from Hindol Notified Area Council, Dhenkanal (Case No. 2041/18/4/2014) - The Commission observed that the facts of the case made it a criminal offense. The Commission thus directed the District</p>
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	<p>Section 7. Constitution of Maintenance Tribunal. — (1) The State Government shall, within a period of six months from the date of the commencement of this Act, by notification in the Official Gazette, constitute for each Sub-division one or more Tribunals as may be specified in the notification to adjudicate and decide upon the order for maintenance under section 5.</p> <p>Continues below....</p>	<p>Magistrate to lodge an FIR in this regard with the local police so that a criminal case may be registered in the matter and taken up for investigation, and then taken to its logical conclusion.</p>
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9. Order for maintenance. (1) If children or relatives, as the case may be, neglect or refuse to maintain a senior citizen being unable to maintain himself, the Tribunal may, on being satisfied of such neglect or refusal, order such children or relatives to make a monthly allowance at such monthly rate for the maintenance of such senior citizen, as the Tribunal may deem fit and to pay the same to such senior citizen as the Tribunal may, from time to time, direct.

(2) The maximum maintenance allowance which may be ordered by such Tribunal shall be such as may be prescribed by the State Government, which shall not exceed ten thousand rupees per month.

Section 19 - Establishment of old age homes. — (1) The State Government may establish and maintain such a number of old age homes at accessible places as it may deem necessary, in a phased manner, beginning with at least one in each district to accommodate in such homes a minimum of one hundred fifty senior citizens who are indigent. (2) The State Government may prescribe a scheme for the management of old age homes, including the standards and various types of services to be provided by them which are necessary for medical care and means of entertainment to the inhabitants of such homes.

2) *Code of Criminal Procedure, 1973* Section 125(1)(2) requires persons to have sufficient monetary means to take care of their parents if the latter is unable to take care of themselves.

3) *Hindu Adoption and Maintenance Act, 1956*, Section 20(1), i.e., Maintenance of children and aged parents, states that a Hindu is bound, during his or her lifetime, to maintain his or her aged or infirm parents.

Central Government Schemes

1) Scheme for Reverse Mortgage: The Scheme was launched in 2007 by the Ministry of Finance. Under the Scheme, senior citizens can mortgage their property with the Bank, and they can get a maximum loan amount up to 60% of the value of the residential property. The maximum tenure of the mortgage is 15 years, and the minimum is 10 years. Some banks are now also offering a maximum tenure of 20 years. 2) National Social Assistance Programme (NSAP) is a Centrally Sponsored Scheme of the Ministry of Rural Development. NSAP is a social security/social welfare program applicable to old aged, widows, disabled persons, and bereaved families on the death of the primary breadwinner belonging to below-poverty-line households. The Old age pension is provided under Indira Gandhi National Old Age Pension Scheme (IGNOAPS) to persons belonging to below the poverty line (CBPL) households. Central assistance of Rs. 200/-

per month is provided to persons of 60-79 years of age, and Rs. 500/- per month to persons of the age of 80 years or more. The States/UTs implement this Scheme.3) The Department of Social Justice and Empowerment under the Ministry of Social Justice and Empowerment of the Government of India implemented the National Action Plan for Welfare of Senior Citizens (NAPSrC), introduced as an Umbrella Scheme for Senior Citizens.

Government of Maharashtra Provisions:

1) Government Resolution - Grant-in-Aid for the 23 Matoshree old age homes was approved by the Cabinet of the Maharashtra State Government by the Resolution passed on 06-03-2019. This resolution also importantly declared that a nutrition subsidy for the elderly in Matoshree Old Age Home at the rate of ₹ 1500 would be provided per month per inmate.

Judgments:1) The Madras High Court, in its recent order in 2022, has held that “only senior citizens/ parents are entitled to file an appeal against an order passed by the Tribunal under the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*.”

2) Bombay High Court, in its order dated 01.12.2021, has observed that “the Maintenance Tribunal under the *Maintenance and Welfare of Parents and Senior Citizens Act, 2007* can pass an order for removal of a person from senior citizen's property with immediate effect and to check delay in proceedings”.

3) The Bombay High Court, in its order dated 19.01.2022, upheld the right of senior citizen old age women by preventing the economic exploitation of the mother at the hands of her son and daughter-in-law.

4) The Bombay High Court in *Suryakant Kisan Pawar v. Deputy Collector, Mumbai and Anr.* in its order on 18.01.2022, in this case, Bombay High Court referred to the Supreme Court order in *S. Vanitha V. Dy. Commissioner, Bengaluru Urban District and Others* which held that the Supreme Court had clearly recognized that the tribunal under *The Maintenance and Welfare of Parents and Senior Citizens Act, 2007* would have the authority to order an eviction. The SC held that “the Tribunal for Maintenance and Welfare of Parents and Senior Citizens may have the authority to order an eviction if necessary to ensure the protection of the senior citizen.” “Eviction, in other words, would be incidental to the enforcement of the right to maintenance and protection.”

5) Supreme Court, in its order in *Ashish Vinod Dalal & Ors. v. Vinod Ramanlal Dalal & Ors.* this Court considered the scope and ambit of provisions of Sections 4 and 5 of *Maintenance and Welfare of Parents and Senior Citizens Act 2007* to hold “that intention of the legislature in making such provisions in the interest of senior citizens, covers a wide spectrum of the senior citizen's rights, which are fundamental to their very survival and/or livelihood at their old age”.

6) The Supreme Court in *Shweta Shetty Vs. State of Maharashtra & Ors.*, The Supreme Court in *Dattatreya Shivaji Mane V. Lilabai Shivaji Mane & Ors.* also upheld the same.

5.4. Inferences, Findings, and Issues.

Matoshree is located in the heart of the city within the metropolitan area. A big nameplate is at the entrance, which is easily identifiable by anyone. Almost all facilities are available near it, like hospitals, shops, markets, etc. Roadways and other public transport connect it well; almost every establishment is near the main road. There are a total of twenty rooms, and 3-4 persons reside together in each room. The area of each room is almost 12x10 Sq. Rooms are semi-furnished; some rooms have iron beds, and some have wooden beds. There are approximately 80 inmates, the majority being women. There are about 30 men and 50 women. There are about nine units on the premises- a reading room, a library, a temple, a

park, a garden, a theatre, a store room, a kitchen, and a dining hall available. The building is almost two decades old and needs repair and maintenance. The whole premises was slippery due to heavy and continuous rainfall prior to the visit. The growth of moss and algae along the pathway posed a risk for everybody, especially aged people. The supply of hot water for drinking and bathing was also inadequate.

5.5. Issues in Infrastructure:

- **Peeling of Plasters and Seepage of Water:** There is water seepage in the rooms, and the paint is peeling off, so the building needs maintenance. Since the suspension of the grant, there has been no maintenance in the office either. The storeroom also needs maintenance. Due to water seepage and moisture, the food grains get spoiled, posing a health risk to senior citizens.
- **Inadequate Living Space in Rooms:** The living space of the old age home should have a minimum area of bedroom/dormitory 7.5 sq. meters per inmate as prescribed by the Schedule mentioned under *Rule 18 of Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rules, 2010*. It was found that around four people are staying in one room and have no sufficient space to move around in the room.
- **Faulty Electrical Wiring:** The whole electric wiring of the place needed to be replaced and repaired. The electricity meter was in a faulty condition, which led to an increase in the monthly electricity bill. It is crucial to replace the wiring in order to safeguard elderly people from short circuits or electric shock.
- **Drainage Clogging:** There is frequent clogging of the drainage pipes because there has been no drainage cleaning since the suspension of grants. The fumes pose health risks to senior citizens.
- **Absence Of CCTV Surveillance:** There were no CCTVs installed on the premises. This poses a security risk to senior citizens.

5.6. Inmates Capacity.

There was a total of 80 inmates in the Matoshree Vrddhashram as of 18th October 2022. On enquiring, it was brought to the notice that most of the inmates are above the age of 65 years. The process of admission in this Old Age Home is on the basis of two criteria, viz., age limit and sound health. Admission is permitted only for males above 60 years and females above 55 years of age. Admission is granted only to individuals who are declared physically and mentally healthy and fit upon examination by the on-site General Physician. A Government Registered Medical practitioner. Though there is no bar on the admission of inmates on the basis of religion, the majority of them are Hindu by religion. As informed by the staff, there are about 5% of Christians and Muslims each. Though it is not specifically identified, Hindus belonging to all castes and categories are present in this home. Most of the inmates are from a lower-income group. As informed by the authorities, about 25-30% of the inmates belong to those Below Poverty Line (BPL). Only about 5-10% of the inmates get a pension. Amongst the inmates, it was noticed that the majority of them are widows, especially those widows who are forced to leave their families after their husband dies. These women have mostly been housewives all their life. Most of them have no income.

- **Reasons For Joining:** On enquiring with the inmates, it is found that the primary reason for joining the old age home is family disputes. Few have voluntarily joined after the death of a spouse. Few find the company of other fellow senior citizens a solution to their loneliness. We were also informed that most of the inmates have children settled abroad who cannot look after them.
- **Visitors of Inmates:** The inmates are allowed visits from their family and friends every second and fourth Sunday from 4.30 pm to 6.30 pm. They also speak to their families twice or thrice every week. Letters received from family members are also given to the inmates.
- **Social Activities:** The inmates gather together and engage in celebrating festivals of all religions on campus. They also celebrate all National Days of importance. There was a flag-hoisting pole amidst the premises. They also regularly assemble to sing *bhajan*, and *kirtan* in the hall. They practice yoga and exercise in the mornings in the hall.
- **Help And Assistance by NGOs:** A dedicated NGO for elderly care based in Shukrawar Peth, Pune, is actively involved in assisting the inmates of the old age home. There is a dedicated volunteer from the NGO for the old age home, which is available on-campus and on-call weekly for the elderly inmates. The volunteer assists and takes care of a range of needs of the inmates, viz., i. Bank-related work, ii. Help related to Pension (documentation, Govt. office follow-up), iii. Medicines (if required/requested), iv. Utility services like mobile recharge, purchase of things, etc., v. Any other miscellaneous work to aid the inmates.
- **Utilities:** The inmates of the senior citizen's home find difficulty in doing basic chores like recharging their mobile phones, banking, etc.
- **Medicines:** It was reported that medicines given to them are mostly ayurvedic, and rarely any allopathic medicines are being given to senior citizens.
- **Laundry Services:** It was observed that since there is a lack of staff to take care of the inmates, they have to wash their garments themselves. The old age home has a total staff of 12 members. There are around seven male and five female staff members. The staff includes administrative employees, caretakers of the inmates, security guards, and the *safai karamcharis*. The Superintendent is the Officer-in-charge of the premises. The current officer holds a Master of Social Work qualification.
- **Lack Of Specialized Staff:** It was observed that there was no specialized staff. Every staff member was doing every work. There was no proper division of work.
- **Dearth Of Support Staff:** There is a lack of staff in the old age home. It was noticed that the inmates do their own laundry. Having a staff, especially to help the inmates of old age homes with their laundry, would help them greatly.

5.7. Food for Inmates.

Food is prepared in a campus kitchen and brought from outside sources by the management. A total of 4 meals are given to the inmates, viz. Breakfast, Lunch, Evening tea and snacks, and Dinner. The estimated cost incurred per day is ₹ 230-250 per inmate for all the meals. There is no separate preparation of meals for diabetics or BP patients. However, it was

informed that the food generally contains fewer spices and less oil and is diabetic-friendly. On the day of the visit which was around the Hindu festival of Diwali, it was also noticed that the inmates were being distributed sweets. Once or twice a week, food is also brought for inmates from people outside (or NGOs) as a charity, donation, or gesture of goodwill.

5.8. Medical Care and Services.

The old age home is visited by a Doctor (General Physician - Government registered medical practitioner) on Monday and Friday of every week. The counsellor visits every Monday and Thursday. Patients are examined for overall physical health. Follow-ups are conducted for patients with comorbidities.

- **Inadequate Funding:**The Maharashtra State Government declared the Matoshree old age homes as 'non-grantable' from the financial year. 2001-02. The last grant was allocated in the financial year 2001-2002, the regular budget was suspended, and the Ministry of Social Justice and Welfare Department also suspended funding after the financial year 2014-15. After that, no funds were allocated to Matoshree old age home. Presently, this organization is running mostly on donations and loans, and the Raja Shri Shivrai Pratishtan bears all expenses.
- **Need To Make Admission Inclusive:**There is a need to make admission of senior citizens more inclusive by the old age home to admit those elderly in need of care and shelter.
- **Need For Counselling and Elderly Care:**There is no mental health counseling being provided to the inmates. Neither a psychiatrist/psychologist visits the home nor any provision of mental healthcare if needed by any inmate. It was reported by the inmates that even though the admission process strictly allows only mentally and physically senior citizens in the old age home, there were a few who did not fall under this category. It was reported that senior citizens with mental health issues were being allowed admission by paying extra money to their families. There is a requirement for assistance for these inmates.
- **Lack of Allopathic Medicines:**Mainly Ayurvedic medicines are being prescribed to the inmates. They are rarely administered allopathic medicines.
- **Need for Emotional Well-Being for The Elderly:**The majority of the inmates seek emotional well-being, which is a vital necessity for any elderly. There is no facility for seeking therapy, and no activity is conducted to promote and aid emotional well-being.
- **Need for an Increase in the Number of Family Contacts and Visits:**It was observed that even the inmates who were below the age criteria were also granted admission after paying extra money. The families were unwilling to take care of them.
- **Admitting Terminal Illness Cases:**It was also observed that there were also cases of inmates with terminal illnesses who were left in this Senior Citizens' Home until their death.
- **Need for Assistance with Documentation in Hospitals:**Senior citizens needing any major life-saving surgery are admitted to Government hospitals only after producing

an Income Certificate issued by the Tehsildar. The issuance of this certificate is a time-consuming process, and the delay increases the health risk of the patients where many times, the surgery is postponed or canceled. Even Charitable and Private hospitals demand an income certificate and other documents before hospital admission. Further, after the submission of documents, the quotation (surgery and treatment) from the hospital is given only a day in advance before the scheduled medical procedure. This causes great inconvenience in getting approvals and arranging funds from the Government authorities, therefore, delaying the patients from getting medical help on time.

- **Higher Incidence of Women Inmates than Men Inmates in the Old Age Home:**

The urban lifestyle, mainly the small size of homes and lack of spaces or separate rooms, and lack of privacy in metro cities is one of the common reasons found among old age home inmates. The absence of private daycare at cheaper rates than the absence of Government sponsored day-care centers for old age or senior citizens and the absence of attendants or support, or staff is another common concern or reason as reported by the staff and the inmates of this old age home, particularly male inmates for their stay at old age home. Most inmates are Hindu by religion. There is only 2 percent of Muslims, Parsis, and Christians. Among these inmates, female inmates are more in number than their male counterparts in the old age home. This supports the general premise that women's lifespan is longer than men. Most of these women inmates are widows.

- **Common Reasons for the Increase in the Number of Women Inmates:** It was observed that most elderly widowed women faced eviction from their husband's homes after the death of their husbands. The other reason, as reported by the inmates and the staff, was disagreement with their daughters-in-law and sons, which led to the older women staying at this old age home. Most of these women inmates have rightful claims any rights under The *Maintenance and Welfare of Parents and Senior Citizens Act, 2007*, to institute a suit to challenge the eviction and claim their ownership and share in family land or property, but mostly these women do not want to fight a case against their children or grandchildren.

- **The Plight of Elderly Women:** The literacy level among older women inmates is significantly less; most are primary school educated, and a few are school dropouts. Most old-age women inmates can barely do their signatures. A few of them use thumb impressions for banking and documentation procedures.

- **Lack of Pension Holders:** Primarily, most old-age women inmates have been housewives. They were neither employed nor had worked anywhere. There is a need for staff to monitor the status of documentation of such women who are in a position to avail pension of their husband but owing to their limitations of health, mobility, and literacy. They are not able to avail of such a pension. Most women inmates are unaware of documentation procedures and unfamiliar with operating their bank accounts. Most women inmates depend on NGO volunteers or staff to seek assistance in managing their bank accounts.

- **Assistance by NGOs:** The NGO staff helps old-age women by availing their husbands' pensions. Only 5 percent of the total inmates get a pension. Of these, only 2 percent of women inmates get their husband's pensions. Most old-age home inmates are very poor or just above the poverty line. On a voluntary basis, one or two NGOs

send their staff to assist these inmates in meeting their financial needs or making purchases for them, such as sim card recharging or buying medicines.

5.8. Recommendations.

- ✓ **Need for Timely Compliance with the Government Resolutions:** The Maharashtra State Government should immediately check compliance with the GR dated 06-03-2019 and take the necessary steps to disburse funds to the old age homes, provide nutrition subsidies to the inmates, and appointment of appropriate sanctioned staff. The Maharashtra State Government may conduct timely infrastructural and financial audits of the old age homes to facilitate regular and approved a disbursement of funds with checks on utilization.
- ✓ **Need to Implement Central and State Legislations and Rules:** The State Government should appoint a Special Committee headed by the Minister of Social Justice and Special Assistance Department along with officers from the Government machinery to implement the recommendations and guidelines under the schemes of the Central Government. This Committee will be responsible for all the Matoshree Old Age Homes across Maharashtra. The Committee shall ensure compliance with State Legislations, Government Resolutions, financial fulfillment, and operational accountability of the old age homes. The Charitable Commissioner is directed to issue a circular to the Charitable hospitals located in the city to authorize and facilitate admission of old age or senior citizens to be admitted in hospital beds. It is found that there are difficulties in securing admission or getting beds for senior citizens despite being a charitable hospital and having reservations for senior citizens. It is suggested that the hospitals, particularly charitable hospitals, must provide a circular in a conspicuous place in the hospital which declares reservations for senior citizens, the possible costs, and the documentation required. The State Government may facilitate a single window redressal mechanism for the resolution of the issues of the old age homes that will act as a direct route between the home and the concerned Government department.
- ✓ **Need to Improve Civil Works:** The infrastructure of the building needs urgent reworking. The building is 20 years old, and the last grant was allocated in 2001. The building needs maintenance and painting. There is a seepage of water that needs to be corrected and fixed. The building in its storage room has water seepage leading to the wastage of grains, and also, in the senior citizens' room, there is water seepage in the walls leading to dampness in the wall. The electric wiring is also about two decades old, leading to the faulty meter reading, causing a high rise in electricity bills. The drainage lines need reconstruction as underlying bricks are coming out, and the drainage needs complete reconstruction and rebuilding. There is a requirement to fix solar water heaters in the building to meet the needs of senior citizens. The waterproofing of buildings needs to be done, especially in the rooms of senior citizens. There is a need to set up LED TVs in their rooms or within their premises, as the building has separate rooms/halls for recreation, but it is suggested that having a TV in their rooms will help.
- ✓ **Need for Increase in The Number of Staff:** Staff may be appointed under specialized duties and responsibilities in terms of infrastructure, healthcare, elderly care, housekeeping, food and nutrition, hygiene, and sanitation. The day-to-day attendants and domestic staff should be appointed for the old age homes.
- ✓ **Need to Cover Inmates Under Various State and Central Government Schemes:**

There is a need to include the senior citizens under the Maharashtra Government *Sanjay Gandhi Niradhar Yojana* to provide for their miscellaneous expenses such as telephone bills, buying medicines, buying clothes, and other daily needs. All State Government pension schemes for the poor or below the poverty line or old age women and male old age pensioners scheme should be implemented in old age homes. The Maharashtra Old Age Pension Scheme allows the State Government to provide Rs. 600/- per month to senior citizens.

- ✓ The Indira Gandhi National Old Age Pension Scheme (IGNOAPS) is an ambitious pension scheme that is run by the corresponding State Government and the Central Government. The National Old Age Pension Scheme Maharashtra is run by the Social Justice and Special Assistance (SJSA) department. Under this National Old Age Pension Scheme in Maharashtra, old aged persons of 65 years & above belonging to Below Poverty Line (BPL) Families are eligible. The beneficiaries under this scheme receive Rs. 200/- from Govt. of India & Rs. 400/- from Govt. of Maharashtra under the *Shravanbal Seva Rajya Nivrutti Vetan Yojana*. The beneficiary receives a sum of Rs. 600/- per month. The Indira Gandhi National Old Age Pension Scheme beneficiaries in Maharashtra get Rs. 600/- per month. Under the *Shravan Bal Seva Rajya Nivrutti Vetan Yojna*, the State Government aims to provide monthly pensions to destitute aged persons above 65 years.
- ✓ **Need for Visits by District Legal Services Authority:** The State Government Legal Services Authority (LSA) staff should do the survey and monitor and screen documentation of their documents and see the eligibility of such old age males and females, which will help them avail of pension and process and submit to concerned banks or Government for the same. Need to direct the Legal Services Authorities (LSA) to organize legal literacy and awareness sessions on the rights of senior citizens by their paralegal volunteers. LSA should provide legal aid and assistance free of cost to support senior citizens in making wills, affidavits, and sending notices, among other legal documentation.
- ✓ **Need to Implement Statutes and Acts:** There is a need to give effective implementation to provide maintenance and basic amenities and physical needs by children, including unmarried, married, sons, and daughters of senior citizens to senior citizens under Sections 5 and 23 of the *Maintenance and Welfare of Parents Senior Citizens Act, 2007*. The Legal Services Authorities should be directed to provide assistance in securing the implementation of such provisions.
- ✓ **Need to Organise Free Medical Camps:** The Maharashtra State Government Directorate of Health services should be directed to conduct free-of-cost eye and hearing test campaigns and ensure the distribution of the same among old-age inmates. The old age home may appoint a dedicated female doctor to attend to the female inmates. For physical healthcare, the old age home, on the recommendation of the onsite doctor, may arrange regular/monthly/weekly visits of specialized doctors, viz. Ophthalmologists, Orthopaedic surgeons, gynaecologists, etc., tend to the specific needs of the inmates.
- ✓ **Documentation of Income Certificate:** For treatment, there are problems in getting an income certificate from Tehsildar. In some cases, hospitals give quotations the day before surgery. Under such circumstances, it is suggested that hospitals, particularly charitable hospitals, must provide the details of the cost of treatment in advance.

- ✓ **Need for Appointment of Family Counsellors:** There is a need for individual counsellors as well as family counsellors for senior citizens so that they can have better relationships and correspondence with their family members. For mental healthcare, the old age home may arrange regular weekly visits by a psychiatrist for mental aid, a psychologist for mental well-being, and a therapist for the emotional well-being of the inmates.

- ✓ **Need for Support Devices and Care:** Increase in the distribution of Walking Sticks, Walkers, eye drops, spectacles, and hearing aids among senior citizens. Increase in day-care for senior citizens as the day-care allows the family members to maintain their daily routine and work-life balance as in metro cities, members are off to work during the day, and also the onus on the young members to take care of them during the day is eased. Their daily needs are taken care of during the day, and the family members take care of them only for limited hours. A joint body may be formed within the old age home composed of inmates elected by all inmates for representation and members of the management. This body may undertake coordinated work methods to address the inmates' issues, develop the campus's quality of life, and implement government schemes, directions, and guidelines. The old age home may conduct social activities and programs in collaboration with NGOs by inviting college students to promote elderly care and inculcate values among the youth for the caretaking of their parents. Home or Door Step Banking should be implemented in old age homes for senior citizens. Both Government Banks, SBI, and Private Banks as Axis Bank have initiated such schemes.

Chapter-6.

Differently abled Children and Government's Differently abled Boys Home - Field visit to "Shaskiya Apang Mulanche Balgruh (Varishth)", Ulhasnagar Thane, Maharashtra.

6.1. Introduction.

As per the census of 2011, overall, 2.21% of the total population of India suffers from one or the other kind of disability. The *Rights of Persons with Disabilities Act, 2016, Act No. 49 of 2016 (PwD Act)*, was enacted in accordance with the *United Nations Convention on the Rights of Persons with Disabilities, 2006 (UNCRPD)*. The Convention was ratified by India on 01.10.2007, and it laid down the following guiding principles:

- "Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- Non-discrimination
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity
- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities."

The Government of India took almost a decade to implement the Convention, and the PwD Act came into force on 19.04.2017. It replaced the *Persons with Disabilities Act of 1995* to be in line with Convention on *Right to Persons with Disabilities, 2006*. Under Section 2 (s) of the *Act*, a person with disabilities is defined as "a person with long-term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others." It is generally found that even after the enactment of the *PwD Act* in India, persons with disabilities face difficulties in their daily lives. The general infrastructure is not disabled-friendly. They face challenges like the non-availability of ramps for people with locomotor disabilities, lack of sign boards in Braille, or inaccessible public places, among others. It is believed that children with disabilities are more vulnerable to issues or problems in learning, education, schooling, and day-to-day activities.

This report covers the issues related to attaining rights of the specially-abled under the Act in two contexts. The first context is that of a pilot study conducted at a Diwali Meet organized by the Mumbai-based Human Rights Charitable Trust working towards the welfare of the specially-abled, wherein the Maharashtra State Human Rights Commission, along with a team of fifteen LL.M. students from Tata Institute of Social Sciences Access to Justice Program had been invited. The pilot study consists of interviews of Persons with Disabilities ("PwD") who attended the Meet.

The second context is that of a field visit to the Government Hostel for Physically Challenged Boys situated in Ulhasnagar, Thane. The Registrar of Maharashtra State Human Rights Commission with a team of three LL.M. students from Tata Institute of Social Sciences Access to Justice Program and a specially-abled pro bono legal intern of the Commission, went to Government Hostel for Physically Challenged Boys situated in Ulhasnagar, Thane

(Maharashtra) to examine the condition of the Hostel and to understand the problems, if any, of its residents. The observations of the team and their suggestions, along with the Legal Provisions and Schemes of the Government for specially-abled persons, will be the main focus of this report. This report will also feature key information about the Hostel, like details about the infrastructure, staff, and residents of the hostel.

6.2. Objectives And Mandate.

- To explore the availability of facilities guaranteed to PwD under the Act.
- To study the implementation of the Act with respect to both institutionalized and non-institutionalized PwD.
- To check the availability of rehabilitative and welfare schemes for PwD.
- To observe and infer the plight - living conditions of the PwD as per the Rights of Persons with Disabilities Act, 2016.
- The mandate of the Visit: The mandate of this fact-finding field visit was set forth by the Maharashtra State Human Rights Commission under the Protection of Human Rights Act, 1993, and Maharashtra State Human Rights Commission (Procedure) Regulations, 2011, in pursuance of the Memorandum of Understanding with the School of Law, Rights, and Constitutional Governance, Tata Institute of Social Sciences, Mumbai in October 2022.

6.3. Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, And Schemes Relating to The Rights of Persons with Disabilities.

UNITED NATIONS INTERNATIONAL CONVENTIONS	PROVISIONS UNDER THE CONSTITUTION OF INDIA, LEGISLATIONS, MAHARASHTRA GOVERNMENT REGULATIONS, POLICIES, REPORTS, AND JUDGEMENTS	ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION
<p>Declaration on the Rights of Disabled Persons, 1975 gave a basic framework regarding the rights of persons with disabilities that the Member States of the United Nations could refer to for protecting those rights</p> <p>World Programme of Action Concerning Disabled Persons, 1982The purpose behind this Programme is to promote measures for the prevention of disabilities, ensuring equal participation and equality in</p>	<p>1. Constitution of India, 1950</p> <p>Article 14 Equality before Law places a constitutional obligation on the State to make special laws to accommodate the special needs of persons with disabilities</p> <p>Article 21. Protection of Life and Personal Liberty protects the right to live with human dignity. Therefore, it is imperative for the state to make laws that prohibit discrimination against specially-abled persons.</p>	<p>1. Human Rights Advisory on Rights of Persons with Disability in Context of Covid-19, 2020 National Human Rights Commission (NHRC) issued an advisory to Central and State Governments to protect the rights of persons with disabilities from the impact of Covid-19. The advisory covered various aspects, for example, a) Implementation of the guidelines issued by the Department of</p>

<p>general for persons with disabilities.</p> <p>Standard Rules on the Equalization of Opportunities for Persons with Disabilities, 1993 These Rules were introduced to ensure that persons with disabilities enjoy equal rights as others. Some of the Rules are as follows:</p> <p>Rule 1 deals with raising awareness about persons with disabilities in light of their rights, needs, potential, and contribution.</p> <p>Rules 2 and 3 deal with Medical Care and Rehabilitation, respectively. Rule 5 deals with Accessibility, while Rule 6 deals with the Education of persons with disabilities.</p> <p>Rule 7 deals with Employment and Rule 11 covers the recreational and sports opportunities for persons with disabilities. Convention on the Rights of Persons with Disabilities, 2006 (CRPD) The Preamble of the Convention gives a descriptive background for the need for the Convention.</p> <p>Article 1 of the Convention describes the Purpose of the Convention, which is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.” Article 3 and</p>	<p>Article 41, Right to work, to education and to public assistance in certain cases, states that “the State shall make effective provisions for securing the right to work, education, and to public assistance in cases of unemployment, old age, sickness, and disablement, within the limits of its economic capacity and development.” The subject of ‘relief of the disabled and unemployable’ is specified in the state list of the Seventh Schedule of the Constitution</p> <p style="text-align: center;"><i>2. The Rights of Persons with Disabilities Act, 2016</i></p> <p>Under Section 2 (r) of the <i>Act</i>, a person with benchmark disability is defined as “a person with not less than forty percent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has been defined in measurable terms, as certified by the certifying authority.”</p> <p>The Chapter II of the <i>Act</i> provides for a Rights-based perspective for PwD as Equality and Non-discrimination under Section 3,</p> <p>Protection from cruelty, inhuman treatment, abuse, violence, and exploitation under Sections 6 and 7,</p>	<p>Empowerment of Persons with Disabilities (DEPwD); b) Access to Healthcare and Livelihood; National Human Rights Commission also issued some of the best practices of some of the States when it came to rights of persons with disabilities and Covid - 19.</p> <p>2. <i>Advisory on Identification, Treatment, Rehabilitation, and Elimination of Discrimination of Persons affected by Leprosy, 2022</i> The National Human Rights Commission issued an advisory on different aspects of persons affected by leprosy. Advisory in terms of early detection of cases of leprosy, treatment, rehabilitation of persons affected by leprosy, and elimination of discrimination and social integration were issued to ensure that the living conditions of these persons are improved</p>
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<p>Article 4 talk about the General Principles and General Obligations, respectively, of the Convention.</p>	<p>Continues below....</p>	
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The reproductive rights of disabled persons are mentioned under Section 10, and Section 12 talks about Access to Justice for persons with disabilities. Under Section 12, the *PwD Act* makes it a mandatory provision for Governments to ensure that all public documents are accessible for persons with disabilities. It also provides that institutions of the Legal Services Authority shall make sure that access to any schemes, programs, facilities, or services offered by them are equally available to disabled persons. Under Section 17, the *PwD Act* provides for specific measures to ensure that inclusive education is provided for all children with disabilities.

Chapter IV of the Act deals with provisions relating to skill development and employment of persons with disabilities, while Chapter VI deals with Special Provisions for Persons with Benchmark Disabilities. This Chapter includes provisions relating to free education for children with benchmark disabilities up to the age of 18 years, reservation in educational institutions and schemes, and development programs, among other things.

Under Sections 55 of the *Rights of Persons with Disabilities Act, 2016*, the act provides grants to registered institutions for persons with disabilities. Under Section 58, The *Act* provides for the procedure for getting a disability certificate. The provisions under Chapter XI provide for the establishment of a Central and State Advisory Board on Disability for specific policies, programs, legislations, and projects for persons with disabilities are under the Act, along with the provisions for the Chief Commissioners and Commissioners for protecting the rights of persons with disabilities are affected.

The Act under Section 84 provides for the setting up of Special Courts for persons with disabilities and offenses against persons with disabilities with a penalty are dealt with in Chapters XIII and XVI of the Act, respectively. The Act under Chapter XVI provides for punishment for offenses against a person with a disability ranging from imprisonment for a term not less than 6 months but which may extend to 5 years and with a fine.

Landmark Decisions: In *Deaf Employees Welfare Association v. Union of India* the Supreme Court of India directed the Central Government to grant transport allowance to speech and hearing-impaired persons at par with blind and orthopedically impaired Government employees. In *Government of India v. Ravi Prakash Gupta*, the Supreme Court reconsidered and rejected the proposition of the State Government that identification of jobs was a prerequisite for reservation and appointment of PwD under S.33 of the *Act*. In *Syed Bashir-ud-Din Qadri v. Nazir Ahmed Shah*, The Supreme Court upheld the right to remain employed of a disabled person as long as the disability did not impede the person from discharging his duties efficiently. In *Suchita Srivastava v. Chandigarh Administration*, The Supreme Court held that “While a guardian can make decisions on behalf of a ‘mentally ill person as per Section 3(4)(a) of the *MTP Act*, the same cannot be done on behalf of a person who is in a condition of ‘mental retardation.’ In *Lalit & Others v. Government of NCT & others*, the Court held that the right to shelter and decent living is an inalienable aspect of the right to education, and when the State controls the administration of an educational institution catering to the needs of the disabled, it has to account for the ‘cascading effect’ of the numerous disadvantages that

such students face.

In *MSRTC v. The Member*, the Bombay High Court held that an employee who has acquired disabilities during the service could not be removed from the service on the ground of unfitness and the employer is under an obligation to accommodate him on the supernumerary post till the suitable post is available or till he attains the age of superannuation. In *Rashtriya Apang Vikas Mahasangh v. State of Maharashtra*, the Bombay High Court directed the State Government to take steps towards sensitization of Government officials and increase awareness of the legal rights of the disabled community.

Maharashtra Government Resolutions: The Social Justice and Special Assistance Department, Government of Maharashtra, has released several Government Resolutions on the Rights of the Disabled

- Government Resolution dated 02.12.2015 - Give compassion in aided of non-aided school for the person with disability and workshop
- Government Resolution dated 30.10.2015 - Change in name- Maharashtra State Finance and Development Corporation for persons with a disability instead of Maharashtra State Handicapped Finance and Development Corporation
- Government Resolution dated 19.08.2000 - Commissionerate for PwD set up under Section 60 of the *Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act 1995*.
- Government Resolution dated 27.07.2004 - reservation for physically handicapped in various posts of Group A and Group D under the Public Health Department, in accordance with *Persons with Disabilities (Equal Opportunities, Full Participation, and Protection of Rights Act, 1995*
- Government Resolution dated 31.03.2022 - Special campaign by the district administration for issuing online disability certificates and Unique Identity Card (UDID) to PwD through the computer system
- Government Resolution Dated 23.04.2022 - New Seventh Pay Commission for Disability School, Workshop, Mentally Disordered children's home in Teachers and Other Staff
- Government Resolution dated 16.01.2020 - State Advisory Board on Disability to be constituted under Section 66 of the *Rights of Persons with Disabilities Act, 2016*
- Government Resolution dated 09.01.2020 - Release of relevant certificates of students who have entered on the basis of disability certificate
- Government Resolution dated 30.07.2019 - Regarding the appointment of Grievance Redressal Officer under Rule 23 of the *Disability Rights Act, 2016*
- Government Resolution dated 03.11.2018 - Constituting Research Committee to research on Disability under the *Rights of Persons with Disabilities Act, 2016*.

3. Government Policies And Schemes

There are a large number of schemes run by the Central as well as State Government for the welfare of the PwDs. some of them are mentioned here:

Central Government: i. Accessible India Campaign (Creation of Accessible Environment for PwDs) - Department of Persons with Disabilities, Ministry of Social Justice and Empowerment A nationwide flagship campaign for achieving universal accessibility that will enable persons with disabilities to gain access to equal opportunity and live independently and participate fully in all aspects of life in an inclusive society. The campaign targets enhancing the accessibility of the built environment, transport system, and Information & communication ecosystem.

ii. Unique Disability ID (UDID): The Government of India, through the Department of Empowerment of Persons with Disabilities, Ministry of Social Justice and Empowerment, has initiated the UDID project to create a national-level integrated database for PwDs and to issue a Unique Disability Identity Card to each person with disabilities. The project aims to streamline the tracking of the physical and financial progress of beneficiaries at all levels of the hierarchy of implementation - Village, Block, District, State, and National levels.

Maharashtra State Government: i. Maharashtra Physically Handicapped (Viklang) Pension Scheme 2022. This scheme combines the Indira Gandhi National Disability Pension Scheme and the Sanjay Gandhi Niradhar Anudan Yojana. Disabled persons in the age group of 18 to 65 years and having 80% disability are eligible under this scheme. The beneficiary is entitled to get Rs. 200 per month under the Indira Gandhi National Disability Pension Scheme (IGDPS). Moreover, the disabled person with more than 80% disability will also get Rs. 400 per month under the state-sponsored Sanjay Gandhi Niradhar Anudan Yojana. ii. Sanjay Gandhi Niradhar Anudan Yojana. The benefits provided under this scheme, Rs. 600 per month, are given to a single beneficiary and Rs. 900 per month if there are two or more beneficiaries in the family. Special Education and Vocational Training through Government Institutions. The child with a disability has access to free education in an appropriate environment till he/she attains the age of eighteen years & above 18 years of vocational training given to special children. Free facilities of food, shelter, clothing and education are provided in these institutions. iii. Non-Governmental Aided Organizations (Special Schools and Vocational Training Centres) for the Disabled.

The beneficiaries covered under this scheme are Visually Impaired, Hearing Impaired, Orthopedically Handicapped, and Mentally Retarded persons. The benefits provided under this Act - a child with a disability has access to free education in an appropriate environment till he/she attains the age of eighteen years. Above 18 years of vocational training is given to disabled children. Also, free facilities of, food, shelter, and education are provided in residential institutions.

Maharashtra State Handicapped Finance and Development Corporation. i. Term Loan (Small and Medium Scale Businesses). Under this scheme the Maharashtra State Corporation with a joint initiative of the National Handicapped Finance and Development Corporation provides a Term Loan for a period of 5 years up to Rs. 5 lakhs. The rate of interest up to Rs. 50,000 is 5% p.a. and above Rs. 50,000 is 6% p.a. for the person desirous of having their own business. There is a concession of 1% for women and 0.5% for persons from blind, marginalized, and downtrodden categories in interest rate.

The eligibility under this scheme is that the person should be at least 40% disabled and should be a resident of Maharashtra for 15 years. The age of the person should be between 18 to 60 years. The

person should not be liable to any bank or other financial institution and should have knowledge or experience of the proposed business plan.ii. Education Loan. Under this scheme, the Maharashtra State Corporation, with a joint initiative of the National Handicapped Finance and Development Corporation, provides an education loan of up to Rs.10 lakh(domestic) and Rs. 20 lakhs (abroad) against an annual interest rate of 4% (3.5% in case of woman beneficiary) to encourage self-learning among the PwDs for a period of 7 years. The eligibility criteria for this scheme are that the person should be at least 40% disabled and should be a resident of Maharashtra for 15 years. The age of the person should be between 18 to 60 years.iii. Micro Credit Finance. Under this scheme, the State corporation, with a joint initiative of the National Handicapped Finance and Development Corporation, provides loan amounts to male and female beneficiaries through NGOs or Self-Help Groups up to Rs. 5 lakhs.

6.4. Pilot Study - Diwali Sneh Milan Event.

The report on the specially-abled began with a pilot study during a Diwali Sneh-Milan organized by a civil society organization based in Bombay, a charitable trust, where the Honourable Governor of Maharashtra and the Maharashtra State Human Rights Commission were invited. The team mostly interacted with adults in the age group of 25 - 45 years, with the exception of a 13-year-old boy with autism and blindness whose mother gave responses on his behalf. The team first interacted with two men from Navi Mumbai who were present at the event. Both were unemployed on the date of the event. One of them, S, has studied and passed class 10. He was aware of the facilities available to the specially-abled such as free bus pass, train pass, airplane pass, and social security scheme provided by the Bombay Metropolitan Corporation. He was employed in a temporary post as an assistant at a library but was fired from his job during the Covid 19 - lockdown. He had secured this job through his contacts, on his own. He has not received any training on the job or any skill development training. He highlighted the need for more donors for the causes of the specially-abled and more employment opportunities. He shared that there were very few employment opportunities for the disabled, despite having proper educational qualifications.

A person Y, also from Navi Mumbai, is associated with the Charitable Trust. He was fired from his previous job at a pharmaceutical company, where he worked in the packaging department. He had secured that job on a friend's recommendation. Y has been dependent on donations for the last two years. He was not aware of any skill development program for the disabled. He faced difficulty in commuting and shared that most co-passengers do not help out a disabled person during boarding or alighting from a train or bus. He was satisfied with the medical facilities available to the specially-abled. He shared that the especially abled were issued Identity (ID) Cards through which they could receive treatment on priority at hospitals. A person S, from Nerul, has studied till class 12th. He was employed on a regular basis till 2015 when he lost a leg in a road accident. He has been unemployed since. He wears a prosthetic leg for which he has to bear the medical expenses himself. He said that he was unable to register for any skill development program since he was 43 years old, and all training programs do not enrol anyone above the age of 30 years.

NS a 13-year-old is blind and autistic. He is enrolled in a blind school and hence is unable to cater to his special needs related to autism. Therefore, he has not progressed in his studies, unlike his classmates at school. The teachers at the school are not equipped to deal with children having multiple disabilities. The toilets at the school are accessible, and one attendant is allowed with the student in the school. NS is accompanied by his mother to his school. The school has sufficient books in braille. NS's mother is a single parent and does not

have the resources to put him in therapy. The Government hospitals where he could get the requisite treatment are far away from his home, and his mother faces difficulty in carrying him and commuting long distances with him alone since he is also prone to fits. NS's monthly expenses on medicines amount to Rs. 3,000/-. While his mother has registered with a local charitable trust, she receives no monetary help and is occasionally given rations and gifts such as books, uniforms, sweets, etc.

M, from Kalyan, shared that preferential treatment for the differently-abled in hospitals and awareness with respect to facilities was less in places outside Mumbai. A man, who lost his vision in an accident, said that for the first four years since his accident, he was in mental trauma, which restricted him from gaining awareness of his rights as a disabled person. He highlighted the lack of counseling services and contact points at Government hospitals that would direct a differently abled person toward the necessary documentation and other procedures. He shared that those authorities needed to be more sensitive towards persons with disabilities.

6.5. Government Hostel for Physically Challenged Boys, Ulhasnagar, Thane.

Infrastructure: The premises of the Hostel were spread out over approximately 31,368 sq. ft. and there were ten rooms in the hostel. Since the current number of residents is only seven, only one room was used for their accommodation. The rooms were not properly ventilated for natural light and air. There was one bathroom in the hostel building and around eleven others on the premises, which were a bit far from the rooms. The hostel has an electricity connection. There was a kitchen and staff quarters. As the building is old, issues like seepage of water in the rooms where the children reside were common. The infrastructure is enormous, but during COVID-19, when one of the boys got infected with the virus, he was shifted to another nearby Government Hostel, which was a general Covid Centre in that area. A separate room for the children for isolation in the hostel itself would have been more helpful and convenient for these children with disabilities.

Residents: The total sanctioned capacity of the hostel as of 18.10.2022 could accommodate a hundred boys. The actual housing capacity of the hostel was forty residents. There were, in total, seven residents in the hostel as of 18.10.2022, out of whom six boys, aged between 6-18 years, were mentally disabled, and one was a physically disabled boy aged seventeen years.

Staffing: There are fifteen posts in the hostel, out of which only four are filled, and the rest are vacant. The posts of Probation Officer, Junior Caregiver, and Sweeper were the only ones not vacant. The important positions like Counsellor, Director, Clerk, and attendants were vacant. There is one doctor who visits the hostel regularly, but she provides her services voluntarily to not just the physically disabled hostel residents but also six other such Government Hostels in the vicinity. There is a cook and a rickshaw driver who takes the mentally disabled kids to school daily.

Services: One lady cook came to prepare food three times a day. The residents of the hostel were satisfied with the quality of the food. The boys were provided with two soaps every fifteen days, one for bathing and one for washing clothes. There was one washing machine in the hostel for washing the clothes of the residents. The staff helped in cleaning the clothes of mentally disabled boys while the one who was physically disabled did his own chores.

Recreational Facility: An appropriate facility is needed for the children's recreational activities. The mentally disabled children were given drawing books, and one boy with a physical disability was given a chessboard.

Education of the Children: One boy is admitted to a nearby Government boys' school and is studying in 10th standard. He goes to school on his own. There is no transport facility given to him, and no one accompanied him to school. The other six mentally disabled kids are sent to a nearby Special Government School for mentally retarded children. They go there by auto rickshaw provided by the hostel. No one accompanies them to their school. However, one of the hostel staff informed them that they visit the school once a day to see the children.

Grievances By Residents: There is a need for additional classes to develop skills like learning English and computers. It was reported that the hostel staff was very reluctant to hear the grievances of the residents.

6.6. Major Findings, Inferences, and Issues.

- ✓ Regarding the infrastructure of the premises, it was observed that the walls were not painted for many years. Some repair work was inevitable but was not done. One of the residents said that the roof of the room leaked during the rain. There was enough space for the kids to play, but the staff quarters looked more furnished than the rooms for specially-abled kids. An air-conditioned outlet was seen in one of the staff rooms. On enquiring about the same, no proper response from the staff was received. It was found that the mentally disabled kids spent most of their time in the hostel itself, and they were not taken to any other places for picnics and other such activities after the outbreak of COVID.
- ✓ It was observed that a hostel facility, especially for persons with physical disabilities, was not disabled-friendly. There was only one bathroom which was on the premises, and the others were quite far. Except for one entrance which had a ramp for wheelchairs, no other rooms or bathrooms were constructed to accommodate a physically disabled person who might use wheelchairs for his day-to-day activities.
- ✓ The physically disabled boy suffered from a kind of locomotor disability, dwarfism. He was very reluctant to answer some of the questions of the team relating to the behavior of staff and what he did after coming back from school. Most of the questions were answered with "I do not know." When it was inquired about whether he was aware of different schemes of the Government for physically disabled persons, he replied negatively. He was not aware of his disability certificate or the process to obtain it. It was informed that the teachers in his school never told him about any of the schemes either.
- ✓ **Poor Infrastructure of the Hostel Premise:** It was observed that the infrastructure of the hostel was not in good condition. There was the problem of water seeping from the roofs of the rooms, which posed a risk to the health and life of the children. No CCTV cameras could be seen in the hostel. The hostel was found inaccessible for the PwD as there was only one ramp in the hostel premises. There was only one washroom near the children's room, and the rest of them were a little far away from the room; therefore, those were less accessible for the children.

- ✓ **Understaffing in the Hostel:** It was found that there was a shortage of staff in the hostel. Out of fifteen sanctioned posts, appointments were made only for four posts.
- ✓ **Lack of Medical Facilities, Medical officers, and Counsellor in the Hostel:** It was found that though the hostel was accommodating six mentally retarded children there was no medical officer appointed in the hostel. Further, there was no counselor in the hostel. It was also found that the medicines in the hostel were being provided by a non-governmental organization for the past two years. It was found that during the Covid-19 pandemic, one of the residents who contracted covid was shifted to the nearby covid center.

6.7. Lack of Skill Development and Recreational Facility in the Hostel: It was observed that besides sending the children to school, there was a need of other skill development or recreational facility for the children. Residents reported that they wanted to learn computer skills and English-speaking skills but were afraid of saying it to the staff.

- ❖ **Lack of Awareness about Legal Rights and Government Schemes:** It was observed that the residents of the hostel and the participants of the pilot study were unaware of the legal rights guaranteed to them under the laws. Also, there are so many schemes under the Central as well as by the State Government, but a very smaller number of persons are aware of these schemes.
- ❖ **Lack of Services for Curing Mental Trauma at Government Hospitals:** It was observed that the persons who get physically disabled by accident or some other reason undergo severe mental trauma, but the hospital where they were treated does not provide them with adequate post-treatment mental health care services which could help them to recover from the trauma. It results in the loss of their time and makes them more vulnerable to uncertainties.
- ❖ **Discrimination at Work Place and Public Places:** It was also found that persons with disabilities face discrimination in public places and workplaces. During the pandemic, they were the first to lose their jobs at the hands of their employer due to their disability.
- ❖ **The apathy of Government Officials;** It was also found that when differently-abled persons approach the officials to get their certificates or register themselves under schemes, they face apathy from the officials. It was also found that most of the persons were unaware of the employment exchange facility provided by the Government and those who were registered with it were not getting any help.

6.8. Recommendations.

These are some of the measures in order to protect the human rights and legal rights of PwD and disabled home residents. These measures may be referred to by the Maharashtra Human Rights Commission subject to their discretion for necessary actions. Following are some recommendations:

- ✓ **Need to notify the Maharashtra State Government Rules under the *RPwD Act, 2016*:** The State of Maharashtra has not notified the rules under *RPwD Act, 2016*. The Act under Section 102 stipulates the notification of Rules within six months from the commencement of the *Act*.

- ✓ **Need for Awareness Generation:** Under Section 39 of the *RPwD Act, 2016*, it is the duty of the Government, in consultation with the Chief Commissioner, to conduct, support, encourage or promote awareness campaigns and sensitization programs to ensure the rights of persons with disabilities under the act. There are multiple Government Schemes, as mentioned above, like the Maharashtra Term Loan Scheme, which are available for persons with disabilities, but it fails to reach these people due to the lack of awareness. There are also various rights available to children with benchmark disabilities, like free education till the age of eighteen years, but children have no knowledge about it. Awareness can be spread through various means like educational institutions, posters in public places, and information in public offices in disabled-friendly manners (for example, in Braille).
- ✓ **Early Prevention:** The State Government can work towards providing the necessary care for pregnant women and children in their early childhood. In rural areas especially, the community workers, Asha workers, and paramedical staff should be trained to work as transdisciplinary workers so that they can conduct community awareness programs and make the people understand the role of early intervention and train mothers, caregivers of divyang children for home-based therapy.
- ✓ **Need to Improve Infrastructure as Accessible for PwD:** Under Section 44 of the *RPwD Act, 2016*, observance of the accessibility norms is mandatory to get permission to construct any building. The time limit for making infrastructure and premises accessible is provided under Section 45 of the *RPwD Act, 2016*. The Hostel for Physically Disabled Boys was not disabled-friendly. Constructing one ramp in a public office of four floors is not sufficient for persons with disabilities. One of the major problems that PwD goes through is the availability of resources but the inaccessibility of the same. From boarding a train to getting in an auto, disabled people have to struggle in their daily commute. Introducing more disabled-friendly equipment and technologies and providing them to people with less or no costs, constructing ramps in every public place, and providing public information in Braille and audio formats are just some of the measures that can be taken up.
- ✓ **Conducting Surveys and Response Collection:** Under Section 25 of the *PwD Act, 2016* it is the duty of the appropriate Government and Local Authorities to undertake surveys. Annual or five-year surveys can be done by the Chief Commissioner as appointed under the Act. These surveys will be done to see:
 - Whether the schemes of the State Government implemented or not?
 - Whether public places and Government Institutions made disabled-friendly or not?
 - Are there any issues PwD is facing even after the implementation of the *Act*?
 - What are the needs of disabled people according to the changing situations of society?
 - Whether persons with disabilities face any discrimination because of their disability?
 - What is the level of awareness among people about the rights of PwD?
 - Making the authorities answerable will ensure that the provisions of the *Act* are implemented to their fullest, and any violation of their rights will have consequences.

- ✓ **Need to Simplify Certificate Procedures:** The current process of getting a disability certificate is very cumbersome and lengthy. Persons with disabilities often have to spend a whole day in the hospital to get a certificate, and they still have to return empty-handed a lot of times. In Maharashtra, the process of certification is done on one day of the week, and there is not enough time to get the whole process done. The number of days should be increased, and the process of getting a certificate should be made easier so that they do not suffer more.
- ✓ **Need for Compulsory Training of State Officials:** Under Section 47 of the *RPwD Act, 2016*, a provision for Human Resource Development has been made that mandates training on disability rights in all courses. All the staff at the government offices dealing with persons with disabilities should be trained compulsorily. There should be sensitization drives in all the departments so that all the members are aware of the difficulties faced by the PwDs and what are the rights available to them. The order in this direction has already been issued by the Hon'ble Bombay High Court while hearing a writ petition filed by the All-India Handicapped Development Foundation.
- ✓ **Functional Special Courts:** Persons with disabilities face serious violations of their rights. In order to ensure the speedy trial of their cases, Section 84 of the *RPwD Act, 2016* provides for Special Courts in each district, but there are few districts where these courts are established. This needs to be strengthened.
- ✓ **Need for One Stop Information and Counselling Centre:** It is suggested following the interactions with the participants of the Diwali Sneh Milan event that there should be one Government-initiated single booth at hospitals that can provide uniform and comprehensive information about the certification process and the procedures to avail it along with beneficial schemes related to the same.
- ✓ **Need for Government-Funded Schools to Cater to the Needs of Children with Multiple Disabilities.** It is suggested following the interaction with participants of the event that there should be Government-funded schools to educate children with multiple disabilities as it was found that there were children who were blind and autistic, and they were admitted to a special school for blind children, but such children were unable to learn due to their multiple disabilities.

Chapter-7.

Beggars' Rehabilitation Centre Field Visit to "Bhikshkari Swikar Kendra, Phulenagar, Yerwada, Pune, Maharashtra.

7.1. Introduction.

The 'Bhikshkari Swikar Kendra' is located on the outskirts of Pune city at Phulenagar, near Yerwada. The building was built in 1985. The 'Bhikshkari Swikar Kendra' is spread across about 6 acres. This Beggars' Home is predominantly a beggar receiving and rehabilitation center. *Section 13 of the Bombay Prevention of Begging Act, 1959* provides for the provisions of Receiving Centres or Certified Institutions. The Chief Commissioner may provide and maintain one or more Certified Institutions at such a place or places as he thinks fit and may certify any institution to be a Certified Institution under *The Maharashtra Prevention of Begging Act 1959*. Any such Certified Institution may include provision for teaching agricultural, industrial, and other pursuits and for general education and medical care of the inmate. Every such receiving center shall be under the charge of a superintendent. It receives funds from the Department of Women and Child Development, Government of Maharashtra. There are two sign board displays and two major gates. There is one female security guard. The premises has a reception office which is also their main administrative office. There is one supervisor who is on the additional charge, and he is actually a District-level Probationary Officer appointed under the *Probation of Offenders Act, of 1958*. There is a Probation Officer and a Medical Officer. The Medical Officer also performs administrative duties. The Beggar's home has a sanctioned capacity of 100 male inmates and 15 female inmates. At the time of the visit, there were 30 inmates, out of which there were 29 males and one female inmate.

7.2. Objectives and Mandate.

- To explore the functioning of the Beggar's Home.
- To understand the needs of the staff and inmates inside the Beggar's Home and implementation of rehabilitative schemes for the welfare of inmates in the 'Bhikshkari Swikar Kendra, 'Pune.
- To look into the infrastructure, medical facilities, and welfare schemes to fulfill the mandate of the *Maharashtra Prevention of Begging Act, 1960*.
- The mandate of the Visit: The mandate of the conducted visit was set forth by the Maharashtra State Human Rights Commission in pursuance of the Memorandum of Understanding with the School of Law, Rights and Constitutional Governance Tata Institute of Social Sciences, Mumbai, in October 2022.

7.3. Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, and Schemes Relating to Beggars.

UNITED NATIONS INTERNATIONAL CONVENTIONS	PROVISIONS UNDER THE CONSTITUTION OF INDIA, LEGISLATIONS, MAHARASHTRA GOVERNMENT REGULATIONS, POLICIES, REPORTS, AND JUDGEMENTS	NATIONAL HUMAN RIGHTS COMMISSION RECOMMENDATIONS
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<p><i>Universal Declaration on Human Rights (UDHR)</i></p> <p><i>Article 3:</i> “Everyone has the right to life, liberty, and security.”</p> <p><i>Article 25.1:</i> “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.”</p> <p><i>International Covenant on Economic, Social, and Cultural Rights (CESCR)</i></p> <p>Article 1.1 states that “everybody has the right of self-determination and freely pursue their economic, social and cultural development.”</p> <p>Article 11.1 states that “it is the obligation of the States Parties to recognize the right of everyone to an adequate standard of living for himself and his family, and to the continuous improvement of living conditions.”</p> <p>Office of the High Commissioner for Human Rights Guiding Principles on Extreme Poverty and Human Rights <i>Principles 66(c) and 66(d)</i> recommend “repealing and reforming any law or sanction that criminalizes procedures that require the payment of disproportionate fines</p>	<p>Constitutional Provisions</p> <p><i>Article 14</i> - Right to equality. “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”</p> <p><i>Article 19(1)(a)</i> - Freedom of speech and expression. “All citizens shall have the right to freedom of speech and expression.”</p> <p><i>Article 21 Right to life.</i> “No person shall be deprived of his life or personal liberty except according to procedure established by law.”</p> <p><i>Article 46-</i> “Duty of State to promote the economic interests of the weaker sections of the society and to protect them from social injustices and other forms of exploitations”</p> <p>Statutory Provisions. <i>Maharashtra Prevention of the Begging Act, 1960 (Amended 1976)</i> “The preamble of the Act states that it is an Act to consolidate and amend the law relating to beggars for the purpose of making uniform and better provision for the prevention of begging in the State of Bombay and for matters connected therewith.” <i>Section 2:</i> The definition of begging. <i>Section 4:</i> “Power to arrest without a warrant any person who is found begging.” <i>Section 13:</i> Establishment of Beggar’s Home. <i>Section 17(2):</i> Inspection by Probation Officer. <i>Section 26:</i> “Provision related to beggars having the unsound mind or a leper.” <i>Section 27:</i> Procedure in case of escape.</p> <p><i>Bombay Prevention of Begging Act 1959.</i> “The preamble of the act states that it is an <i>Act</i> to consolidate and amend the law relating to beggars for</p>	<p>Published a book titled ‘The Human Right to Adequate Housing and Land.’</p> <p>The book authored by Miloon Kothari, Sabrina Karmali & Shivani Chaudhry, on page 53, states that “<i>the Bombay Prevention of Begging Act, 1959</i> aims to push groups that have already endured severe historic marginalization further to the periphery of society.”</p>
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<p>by persons living in poverty, especially those related to begging.”</p>	<p>the purpose of making uniform and better provisions for the prevention of begging in the State of Bombay and for matters connected therewith.”</p> <p><i>The Persons in Destitution (Protection, Care, and Rehabilitation) Model Bill, 2016.</i> “The preamble of the Bill states that its aim is to provide for the protection, care, support, training, and other services to all persons in destitution and for establishing agencies to further the objectives identified in this Act.”</p> <p><i>Abolition of Begging and Rehabilitation of Beggars Bill, 2018.</i> “The preamble of the Bill states that it aims to provide for the abolition of begging and rehabilitation of beggars and for matters connected therewith or incidental thereto.”</p> <p>Judgments. <i>Harsh Mander & Anr. vs UOI & Ors.</i> The Delhi High Court “decriminalized beggary by striking down Delhi Prevention of Begging Rules, 1960, formulated under the <i>Bombay Prevention of Begging Act, 1959</i> as unconstitutional.”</p> <p><i>Suhail Rashid Bhat vs. State of Jammu & Kashmir and Ors.</i> “The Jammu and Kashmir High Court struck down the <i>J&K Prevention of Beggary Act, 1960</i> and <i>J&K Prevention of Beggary Rules, 1964</i> held them as “unconstitutional” and “disproportionate infringement of the right to a meaningful life, dignity, privacy, and liberty guaranteed under Article 21”.</p>	
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7.4. Inferences, Findings, and Issues.

- ✓ **Condition of Infrastructure:** It was found that the premises have about Seven units- Administrative office, Entrance and security rooms, two dormitories, a store room, a temple surrounded by a garden, a kitchen, a granary, and a dispensary. There were three toilets next to the store room at the entrance of the Beggar’s home. The premises had wheelchair-accessible ramps. It was observed that the administrative office was

housed in a reception where all the records were kept and also had the office of the superintendent. The store room contained bristles of brooms and adhesives. It was observed that there were no CCTVs on the premises. The superintendent informed that eight CCTVs were sanctioned after it was requested by the authorities. It was further found that the water supply, though sufficient, is not for twenty-four hours. The water is available from 2 pm in the afternoon and lasts till the next day. The water is stored in elevated tanks. It was observed that two barracks, one male and one female, are on the premises. They have an attached bath and toilet. There was a television in the male barrack. There were only folded mattresses and no beds. The floors were clean and looked freshly mopped. The female barrack is being renovated and therefore is not suitable for living purposes. Thus, the sole female inmate had been shifted to another building within the premises as a temporary means of accommodation. It was found that the previous inmates built the temple. The inmates also did gardening. The kitchen and granary building were clean and hygienic. Some inmates were also being taught cooking as a skill training for rehabilitation.

- ✓ **Broken Ceilings:** It was observed that the building of the Beggar's Home is very old and it has not been provided any maintenance for several years. The building's main administrative office ceiling was broken, and water seepage was visible. The administrative building was in need of maintenance and repair. There were stains of water seeping on the ceilings and walls.
- ✓ **Dark And Damp Barracks:** It was found that the barracks were damp and dark, with inadequate ventilation. The walls of the barracks also had algae growth in some places. The mattresses and bed sheets had a foul smell and required laundering.
- ✓ **Insufficient Washrooms:** It was observed that the number of toilets and bathing cubicles was insufficient vis-a-vis the sanctioned capacity of 100 male inmates and 15 female inmates. The toilets did not have commodes installed. The washrooms were not disabled-friendly.
- ✓ **Insufficient Electronic Gadgets:** It was found that there were insufficient electronic devices. There were no CCTV Cameras anywhere in the *Bhikshekari Swikar Kendra*, which posed a security threat to the staff and the inmates living on the premises. It was informed by the supervisor that though there are funds, but the administrative process is delayed due to insufficient staff, and paperwork is delayed, which is taking its due course. It was informed that the supervisor took charge in the recent past, and he has been on deputation as an additional charge while attending his duties as Probation Officer at the District Office. It was observed that there were only two computers available in the office. It was informed by the supervisor that these two computers were installed in the recent past due to the proactive efforts of the supervisor.

7.5. Staff Pattern

S No.	Job Title	Number of Staff Members Recruited	Any Additional Duty
1.	Superintendent	1	The person recruited as the Superintendent is

			serving in the position as an additional charge. He is actually appointed as a Probation Officer under <i>the Probation of Offenders Act of 1958</i> .
2.	Probation Officers	2	Not Applicable
3.	Medical Officer	1	Not Applicable
4.	Clerks	3	The Clerks were appointed on some other profiles as well by the Commissioner's order. The absence of clerical staff from the institute hampers the discharge of their duties, and the Superintendent and the Probation Officer must also look into the clerical duties.
5.	Nurse	1	Not Applicable
6.	Caretakers	10	Although there are ten caretakers, most of these caretakers were given additional duties in other Government institutes. In case any inmate has to be taken outside the premises of the Beggar's Home for a medical emergency, the requirement of more caretakers. is felt as the role of the caretakers is crucial for the management of the Beggar's Home.
7.	Helpers	2	Not Applicable
8.	Sweepers	2	Not Applicable
9.	Cooks	2	Not Applicable
10.	Instructors	2	It was observed that the number of instructors was less for fulfilling the objective sought by <i>The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016</i> .

- ✓ **Understaffing and lack of permanent sanctioned staff:**It was observed that the 'Bhikshkari Swikar Kendra,' Pune, is grossly understaffed as most of the staff members are serving additional charge or are deployed in other profiles under the Commissioner's order which hampers the functioning of the Beggar's Home. The Superintendent informed that most of the sanctioned positions were either vacant or filled by staff on an additional charge. It is pertinent to note that under *Section 12(2) of The Maharashtra Prevention of Begging Act 1960 (Amended up to 1976)*, there is a provision for the mandatory post of Superintendent for the supervision of the Beggar's Home.
- ✓ **No Permanent Superintendent:**It was observed that the person recruited as the Superintendent of 'Bhikshkari Swikar Kendra,' Pune, is serving in this position as an additional charge. He is actually appointed as a Probation Officer under the *Probation*

of Offenders Act of 1958. He is performing the onerous dual duties of Superintendent at Kendra and also as a probation officer. Hence, he has to manage his regular and additional charges simultaneously.

- ✓ **Appointment of Clerks on Some Other Profiles:** It was found that the clerks of 'Bhikshkari swikar kendra', Pune are appointed on some other profiles as well by the Commissioner's order. The absence of clerical staff from the institute affects their overall efficiency, and the Superintendent, along with the Probation Officers, have to also look into the clerical duties.
- ✓ **Caretakers On Additional Charges:** It was observed that there are ten caretakers, but most of these caretakers were functioning on Government interim working arrangements. These Caretakers were posted here on paper, but in actuality, they were working on deputation in other Government charges. Their salary is drawn from the funds of Bhikshkari Swikar Kendra or Beggars Home. They were given additional duties in other Government institutes. The caretaker has to work in three shifts 6 to 2 pm, 2 to 10 pm, and then 10 pm to 6 am. In case any inmate has to be supervised on a daily basis or has to be taken outside the premises of the Beggar's Home for a medical emergency, the requirement for more caretakers is felt as the role of the caretakers is crucial for the management of the Beggar's Home.
- ✓ **Less Number of Skill Training Instructors:** It was also observed that the number of instructors was less for fulfilling the objective sought by *The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016*.
- ✓ **Vacant post of Security Personnel:** It was found that the position of Security Staff is vacant. It was informed by the supervisor that the Security officer is going to be recruited in near future as the supervisor is initiating the process on the same.
- ✓ **Vacancy in Permanent Staff Position:** It was observed that there is generally a dearth of Government sanctioned permanent positions as most of these staff, as presently functioning, are performing duties on deputation, as an additional charge. This adversely affects overall efficiency. It was found that the shortage of permanent positions is prevalent in all beggars' homes across Maharashtra. The staff contended that "nearly 75% of positions and staff are on deputation or additional charge and Permanent Staff with specific and designated charge is required to fill for the same.
- ✓ **No Counsellor in Kendra:** It was found that there are no counsellors appointed at the Kendra despite most of the inmates in Kendra being around 65 – 70 years old who are victims of trauma and are not in a condition to speak or communicate, move around freely and even seek medical or any other help or assistance. The medical officer informed that mental health issues, including psychiatric problems, affected inmates' day-to-day routine, and they needed psychiatric assistance.
- ✓ **Driver is Appointed, but no Vehicle is Available at the Kendra:** It was found that there was no vehicle or ambulance for Kendra. This is crucial for the inmates to be taken to a doctor or hospital. The Kendra has to depend on the outside vehicle, which may take time or, in other words, delay in providing medical aid. The Kendra staff has to face problems at odd hours, especially at night time, in procuring vehicles from outside. The staff informed that in one instance, the staff had been compelled to take a

sick old age inmate who was nearly aged 70 years old and in critical condition in an auto-rickshaw due to the non-availability of any vehicles. It was observed that most of these beggars in the Beggar's Home are within the age group of 65 – 70 years, during which medical aid and hospital care /support is crucial and required at all or any time of the day. There is no vehicle for managing the administrative and office-related travel and work for the staff. It was observed that although the Government appoints a driver on paper posted at the Kendra but due to the non-availability of vehicles, the driver works in another Government Department. However, it was found that the driver's salary is disbursed from the funds from the Government allocated for Kendra.

- ✓ **Infrequent Capacity Building Exercises:**It was observed that the staff is already overburdened with administrative tasks, and the staff requires more capacity-building training to ensure the effective implementation of the guidelines emphasizing the implementation of rehabilitative measures in Beggar's Home laid down by various judgments. Whereas such training should ideally happen every 3-4 months, the general frequency of such training was noticed to be once in 3-4 years. Notably, the last capacity-building training recollected by the Probation Officer was conducted in collaboration with the Tata Institute of Social Sciences, Mumbai. It was observed that the supervisor needed updated information on the *Bombay Prevention of Begging Act, 1959*. On the provisions related to the power of the Superintendent to release inmates on short term on good behavior under *Section 22 of Bombay Prevention of Begging Act, 1959*.
- ✓ **No Advisory Committee:**It was informed that there is no advisory committee appointed by the State Government as suggested by Section 15 of the *Maharashtra Prevention of Begging Act, 1960 (Amended 1976)*. It is pertinent to note that “the role of such an advisory committee is essential in order to implement the welfare guidelines laid down by the aforementioned judgments of the Bombay High Court and other High Courts. The Advisory Committee constituting maximum of 21 members, is tasked to suggest ways in order to improve the functioning of the Beggar's Home.

7.6. Condition of Health Care Facilities:

It was observed that there is a dispensary in the Beggar's Home, located on the right side of the entrance. It was found that the dispensary was well-maintained and clean. It was found that there was one medical officer and two nurses as the medical staff. The medical staff informed that the covid vaccination of inmates was examined by a vaccine center in Pune as there was no camp for vaccination installed in the beggar's home. It was observed that the inmates have common age-related diseases, hypertension, skin related diseases. It was observed that at the time of the visit, no patients were admitted to the dispensary, and no cases of death were registered in 2021-2022.



Conversation with officials of Bhikshakari Swikar Kendra, Yerwada, Pune; on 19.10.2022

- ✓ **Inadequate Emergency Services:**It was reported that the ambulance service from 108 toll-free numbers has not been responsive. It was informed that neither an ambulance nor any other vehicle is available in emergency services. However, it was informed that a driver is available, but due to the unavailability of any vehicle, the driver works at another Government department. It was observed that in cases of an emergency, the medical staff arranged private vehicles/local road transport in an emergency condition to carry the patients to the hospital. It is pertinent to note that taking senior citizens in the age group of 65- 70 years in an auto without medical support as available in an ambulance (like an oxygen cylinder) affects the health of such inmates.
- ✓ **Lack of In-House Hospital / Lack of Bed:**It was observed that there were no beds in the dispensary, and the staff used a bench as a bed. It is pertinent to note that this is a blatant violation of the right to health of inmates.
- ✓ **Medicine Supply is Due:**It was informed that the medicine stock or supply at the dispensary is due, and the bill for the same is outstanding. It was noticed that this is a very alarming issue considering the age group of inmates are mostly above 65- 70 years and considering the potential health issues of such age groups.
- ✓ **Physical and Psychological Health Issues:**It was informed that most of the inmates have been destitute, living on the streets or in very unhygienic and unsanitary conditions. Consequently, most of the inmates are exposed to a series of health problems such as skin issues, malnourishment, eyesight issues, and hearing issues. Some of the major issues are sugar and blood pressure-related ailments. It was found that many inmates in the age bracket of 65 – years and above face mental health issues. It was also informed that the inmates are also used to substance abuse and

alcoholism. It was found that no counsellor nor psychiatric services are available; hence, mental health issues are problematic.

- ✓ **Shortage of De-addiction Camps for Alcohol, Tobacco/Drugs in Kendra:**It was found that most of the inmates indulged in some form of substance abuse. The Medical Officer informed alcoholism was a serious, prevalent issue among these inmates. It was found that the inmates were used to the consumption of cheap local liquors and in consequence, faced health problems. It was reported that many inmates show withdrawal symptoms and need de-addiction and counselor's assistance at daily, frequent, or regular intervals. It was informed that there had been very few such camps by the government or by civil society organizations. It ought to be more frequent and periodical in protecting the health of all inmates at the beggar home.

7.7. Rehabilitation.

- ✓ **Lack of training in modern skills:**It was observed that the skills taught at the Beggar's home were not enough to enhance the employability of the inmates as they were being given sessions on rudimentary skills like broom making and rope making. It was reported that one broom was priced at Rs. 60/-. It was observed that the inmates could be given training in modern skills like repairing electronic devices, skills relevant to small-scale industries, and basic education that can help them in gaining employment when they move out of the Beggar's Home.
- ✓ **Inadequate Instructors:**It was informed that the Beggar's home has a sanctioned capacity of 100 male and 15 female inmates, but only two posts for the instructors. It was also observed that there are no external organizations or NGOs involved in the rehabilitation process presently. Thus, it is not possible to ensure quality skill-building programs in the Beggar's Home as envisaged by *Beggar-free Maharashtra and The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016*.
- ✓ **No Institutional System of Monitoring/ Reporting /Tracking post Release from Beggars Home:**It was observed that no mechanism exists to ascertain how many inmates pursued the taught skills when they moved out of the Beggar's home, as their subsequent whereabouts are unknown. The staff mentioned that most of them may go back to the act of begging, which defeats the overall objective of the *Maharashtra Prevention of Begging Act, 1960*, welfare schemes for Beggars, and judgments mentioned above of the Supreme Court and Bombay High Court.



Training for livelihood at Bhikshakari Swikar Kendra, Yerwada, Pune; on 19.10.2022

✓ **Ambiguity In the Definition Of ‘beggars’ In Various State Legislation:**

It was observed that the definition of ‘begging’ under section 2 of the *Bombay Prevention of Begging Act, 1959* is quite ambiguous and results in causing vulnerable sections of the society to be declared as ‘beggars. The current definition brings within its ambit people who are homeless, trying to meet their ends by singing, dancing, or performing any art. In the case of *Harsh Mander & Anr. vs UOI & Ors.*, the Delhi High Court “decriminalized beggary by striking down Delhi Prevention of Begging Rules, 1960, formulated under the *Bombay Prevention of Begging Act, 1959* as unconstitutional.” In another case of Jammu and Kashmir High Court, *Suhail Rashid Bhat vs. State of Jammu & Kashmir and Ors* , the Court struck down certain provisions of the *J&K Prevention of Beggary Act, 1960*, and *J&K Prevention of Beggary Rules, 1964*, held them as “unconstitutional” and “disproportionate infringement of the right to a meaningful life, dignity, privacy, and liberty guaranteed under Article 21.”

7.8. Best Practices.

1. It was informed that Aadhar Cards are created for inmates through referral by the Superintendent and Staff of Kendra of inmates to Aadhar Kendra for the creation of Government Identity Cards.
2. It was stated that improvement in the infrastructure through Civil work with the Public Work Department had been initiated for improving the infrastructure of Kendra / Beggar’s Home to suit the needs of old age or senior citizens who are living in the same.
3. It was observed that Kendra / Beggar's Home toilets had been repaired with better tiles, doors, and ceilings. The anti-skid tiles were used throughout the Kendra / Beggars Home. Ramps were provided within the Kendra / Beggars Home.
4. It was found that the kitchen was clean, and utensils were all clean and kept under cover. Kitchen Garden is managed by the Kendra / Beggars Home staff and inmates.

5. It was informed that three respective Government Departments undertake regular visits and monitoring: Commissionerate, Divisional, and District levels.
 6. It was observed that the behavior and attitude of the supervisor and all staff were very receptive, welcoming, and cooperative. The supervisor shared contact details for any requisite correspondence as well. The Supervisor and staff team assist these inmates with good behavior on their personal request to get employment in offices.
 7. It was informed that the two new building proposals were put forth by the Supervisor to the Public Work Department for inmates with the capacity of 100 males, and 200 females, respectively. CCTV Cameras and more electronic gadgets such as Computers are being made available by the proactive efforts of the Supervisor and his team of Staff.
- ✓ **Testimony and Success Story:** The inmate informed that she was arrested while she was on her way to purchase some medicines for her grandson. However, the Medical Officer informed us that the Police picked her up from a traffic signal as she was soliciting alms in public. She was more than 60 years old. The inmate was getting released in another two days from the date of our visit on 19.10.2022.

7.9. Recommendations:

- ✓ **Infrastructure:** It is recommended that the building of 'Bhikshekari swikar kendra', Pune needs improvement in civil work. The walls need to be repainted, and the ceilings require repair work. There is a need to increase the number of bathing cubicles and toilets. The premise needs to be made disabled-friendly. The premise needs to be equipped with laundry services as the older inmates need assistance in laundry services.
- ✓ **Staff:** It is recommended that permanent appointments be made for various positions in 'Bhikshekari swikar kendra', Pune so that the staff can perform the requisite duties adequately without being overburdened by the additional duties. It was found that there is a driver appointed by the Government at the Kendra, but due to the non-availability of vehicles, the driver works in another Government Department. Thus, provisions for vehicles and ambulances should be made exclusively for Kendra. There is an urgent need for an appointment in the following positions exclusively and specifically for 'Bhikshekari swikar kendra', Pune:
- a) Permanent Superintendent
 - b) Permanent Caretakers in an adequate number
 - c) Security Personnel in an adequate number
 - d) Accounting Staff
 - e) Counsellors should be appointed in accordance with section 18 of the *Mental Healthcare Act, 2017*.
 - f) Advisory Committee as specified under Section 15, *Maharashtra Prevention of Begging Act, 1960*.
- ✓ It was found that the Supervisor was not informed about the supervisors' relevant powers and functions as provided under *the Bombay Prevention of Begging Act, 1959*, the power of the Superintendent to release short-term inmates on good behaviours as section 22 of *Maharashtra Prevention of Begging Act, 1960*. It is suggested that the staff undergo frequent capacity-building training in light of various welfare guidelines provided in *The Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016*.

- ✓ **Health Care Facilities:**It is suggested that proper stock of medicines should be maintained as most of the inmates are above 65- 70 years of age and can develop health issues. It is also suggested that the Kendra should be equipped with proper medical equipment and ambulance as most of the inmates had been living on the streets or in extremely unhygienic and unsanitary conditions. Thus, most of them have developed a series of health problems such as skin, malnourishment, eyesight, and hearing issues. Some of the major issues are also sugar, and blood pressure-related ailments. The inmates should be provided regular mental health counselling, as most of the inmates. Appointing services for the laundry would greatly help maintain the barracks' cleanliness and hygiene.
- ✓ **Rehabilitation and Reintegration with Society:**It is recommended that the inmates should be given training in skills that can potentially get them employment once they move out of the Beggar's Home, like repairing of electronic devices, skills relevant for small-scale industries, and basic education that can help them in gaining employment when they move out of the Beggar's Home. NGOs and civil societies should be encouraged to participate more in skill-building exercises with the inmates.Success stories of the rehabilitated inmates should be displayed in a visible spot in the Beggar's Home in order to motivate the other inmates to pursue the journey of rehabilitation and skill building. It is also suggested that tracking mechanisms should be established to gauge the effectiveness of the rehabilitative schemes functional in the Beggar's Home. Proper maintenance of data and documentation of the inmates should be done in order to track them post their release. The State should provide the inmates with hand-holding after their release so that they can reintegrate with society by taking up dignified jobs.
- ✓ **Need to make a Uniform Beggar Legislation:** It is recommended that the definition and treatment of beggars should be made uniform across all the State Government Legislations pertaining to begging. The different ways of dealing with beggars in different States violate their right to life under Article 21, as observed by Delhi High Court in *Harsh Mander & Anr. Vs UOI & Ors.* and Jammu and Kashmir High Court in *Suhail Rashid Bhat vs. State of Jammu & Kashmir and Ors.*

Chapter-8.

Criminal Justice System and Law Enforcement Agency Field visit to “Azad Maidan Police Station, CSMT, Mumbai, Maharashtra.

8.1.Introduction.

India, with an area of 32,87,782 sq. km and a population of 1.21 billion, is a union of 28 States and eight union territories. The powers and responsibilities of the Union and States are demarcated in the Constitution of India. Under Article 246 of the Constitution describes three lists of subjects given in the Seventh Schedule of the Constitution.

- List 1: Union List – includes subjects in respect of which the Parliament has the sole power to make laws.
- List 2: State List – includes subjects in respect of which the State legislature has exclusive powers to make laws.
- List 3: Concurrent List – consisting of subjects on which both the Parliament and the State Legislatures have concurrent powers to make laws.

Article 246 of the *Constitution of India* places the police, public order, courts, prisons, reformatories, and other allied institutions in the State List. The Police is a state subject, and its organization and working are governed by rules and regulations framed by the State Governments. These rules and regulations are outlined in the Police Manuals of the state police forces. Each State/Union Territory has its separate police force.

The structure and working of the Maharashtra State Police Forces are governed by the *Police Act of 1861 (5 of 1861)* and the *Bombay Police Act of 1951*. The term police have been derived from the Latin word ‘*politia*’, which means the condition of a State, preserving order and regulation of law in the society. It broadly refers to the purposeful maintenance of public order and the protection of persons and property from the commission of unlawful acts toward them. The Oxford dictionary defines Police as “the civil force charged with keeping order, civil administration of the city or town and public order” according to the *Royal Commission on the Police Powers and Procedures 1929*, a policeman is a person paid to perform, as a matter of duty, acts which, if he were so minded, he might have done voluntarily. The term police refer to the executive civil force of a state entrusted with the duty of maintaining public order and enforcing regulations to prevent crime.

The science of policing involves preserving law and order in an always-evolving society. It is crucial to understand how it changed over the course of history and how it came to take on its current form. Prior to that, it would be more pertinent to examine the causes and circumstances that led to the current police system, as well as its structure and roles. The upkeep of Law and Order and the prevention and detection of crime are the responsibilities of the police in India. In the past, the sole purpose of police work was to deter crimes against people and property and to punish offenders. Still, as society has developed, new forms of crime—both covertly violent and overtly criminal have emerged, posing new challenges to the police. The police are one of the State machineries to maintain peace and tranquillity. The responsibility to maintain law and order lies with the State Government. Therefore, it is necessary to have a well-maintained police force at the state level. Azad Maidan Police Station: The Azad Maidan Police Station in Mumbai, Maharashtra, was constructed in 1916. It was earlier named as Esplanade Police Station by the Britishers.

8.2.Objectives and Mandate.

- ✓ To explore the working of the Azad Maidan Police Station and to understand the challenges of police personnel.
- ✓ To look into the compliance of various guidelines given by the Supreme Court of India and other High courts of India.
- ✓ The mandate of the Visit: The mandate of the conducted visit was set forth by the Maharashtra State Human Rights Commission under the Protection of Human Rights Act, 1993, Maharashtra State Human Rights Regulation 2011, and further under terms of a Memorandum of Understanding with Tata Institute of Social Sciences, Mumbai in October 2022.

8.3. Conceptual Understanding of Laws and Schemes related to Police Officials

The Police Act of 1861: The Ministry of Home Affairs, Government of India, established a Committee of Experts under the chairmanship of Dr. Soli J. Sorabjee, a former Attorney General, to draft a new *Police Act* to address policing issues and to satisfy the democratic aspirations of the populace”.

The specialty is in the Preamble to the new *Act* that “the police have a paramount obligation and duty to function according to the requirements of the Constitution, law, and the democratic aspirations of the people” and that it must “be professional and service-oriented, free from extraneous influences while remaining accountable to the people.”

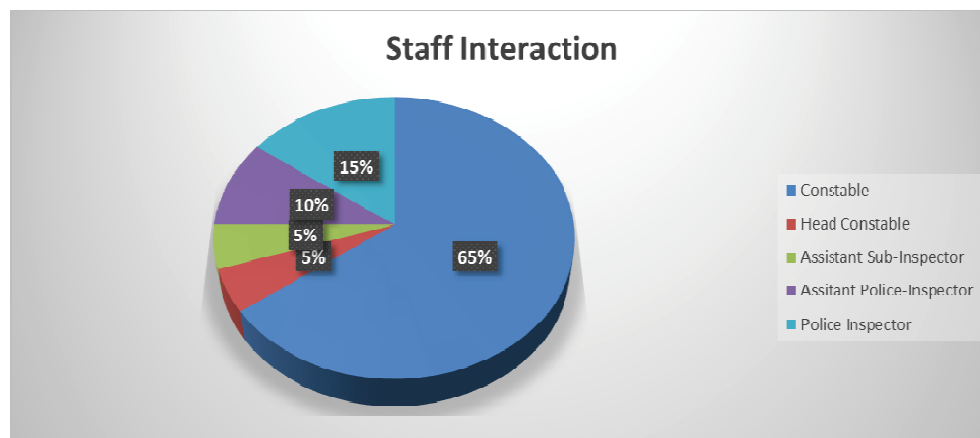


Diagram 1 :Statistics of Staff interaction held on September 21, 2022, at Azad Maidan Police Station

The Act’s Chapter IV discusses the roles, responsibilities, and authority of the police. The overall transition from Power and Authority to Role and Functions, Duties, Social Responsibilities, and Emergency Duties in this Chapter describes the obligation of police officials. Under Section 44 of the *Police Act, of 1861* the police have a responsibility to the public, the underprivileged, and the weaker sections of society. It is the responsibility of every police officer to direct and assist members of the public, especially the weak and physically challenged, the impoverished and illiterate, and children who are lost or stranded in public locations.

The Bombay Police Act 1951: An Act to consolidate and amend the law for the regulation of

the Police Force in the State of Bombay.

The Model Police Act, 2006: The Model Police Act of 2006’s primary goal was to oversee and evaluate police officer performance. It was created to promote political neutrality among the officers and provide a mechanism for complaints to be filed against those who fail to perform their duties as police officers.

The Act outlines several positions and obligations that everyone must uphold, including Army soldiers and those in the village and urban areas. The Act also outlines the control, care, and development of these police officers and their training. The Act also covers the offenses and penalties that apply to these police officers in a separate section. In addition, the preamble of the Act outlines a broad range of duties that police officers must perform, including defending human, civil, political, cultural, social, and political rights, as well as protecting society’s most vulnerable groups.

8.4. Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, And Schemes Relating to Police Officials

UNITED NATIONS INTERNATIONAL CONVENTIONS	PROVISIONS UNDER THE CONSTITUTION OF INDIA, LEGISLATIONS, MAHARASHTRA GOVERNMENT REGULATIONS, POLICIES, REPORTS, AND JUDGEMENTS	NATIONAL HUMAN RIGHTS COMMISSION RECOMMENDATIONS
<p><i>Code of Conduct for Law Enforcement Officials, 1979</i></p> <p><i>Article 1</i> “Law enforcement officials shall at all times fulfill the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.”</p> <p><i>Article 2</i> “In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”</p> <p><i>Article 3</i> “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”</p>	<p><i>The Constitution of India, 1950</i></p> <p><i>Article 32(2):</i> “The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.”</p> <p><i>Article 142 (1):</i> “The Supreme Court, in the exercise of its jurisdiction, may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until</p>	<p>Guidelines For Police Personnel on Various Human Rights published by National Human Rights Commission on December 10, 2010.</p> <p>“Various Guidelines have been published by NHRC with respect to Arrest, Detention, Protection of Women, Protection of Children, Protection of the rights of SCs/STs, Protection of the Rights of Senior Citizens, Protection of the Rights of Minorities, Forced/Bonded Labour, and Policing and Encounters Terrorism and Policing.”</p>

Article 5 “No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.”

Article 6:” Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”

Article 8: “Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them”.

provision in that behalf is so made, in such manner as the President may by order¹ prescribe”.

Statutory Provisions

Protection of Human Rights Act, 1993: “Basis for the constitution of NHRC for better protection of human rights.”

The Police Act, 1861: “To re-organize the police and to make it a more efficient instrument for the prevention and detection of crime.”

The Bombay Police Act, 1951: “To amalgamate the District and Greater Bombay Police Forces [and the Police Forces of the Saurashtra, Kutch, and Hyderabad areas, and the Vidarbha regions], of the State of Bombay into one common Police Force and to introduce uniform methods regarding the working and control of the said Force throughout the State; to consolidate and amend the law relating to the regulation of the said Force and the exercise of powers and performance of functions by the State Government and by the members of the said Force for the maintenance of public order.”

*The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013:*Section. 4 “Constitution of Internal Complaints Committee — (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee.” An internal Complaints committee is formed to report the complaints of sexual harassment; therefore, it was observed that there is a ‘Vishakha Committee’ in the aforementioned Police Station.*Criminal Law (Amendment) Act, 2013:* “To Amend the *Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872* and the *Protection of Children from Sexual Offences Act, 2012*, to amend the laws regarding the role of the police investigation in offenses against women.

Maharashtra State Government Regulations:

- 1.The *Bombay Police Manual, 1959 Volume I-* “Regulates the police administration.”
- 2.The Provision of Residence under the *Bombay Police Manual 1959-Volume II-* “Regulates the finance, supplies and office procedure police administration.”
- 3.The *Bombay Police Manual, 1959- Volume III-* “Regulates the Powers and Duties of police.”
- 4.Government of Maharashtra Home Department *Government Resolution No.: PCA- 1013/CR-*

109 /Pol-3: Constitution of Police Complaints Authorities.

Policies and Reports: Royal Commission on the Police Powers and Procedures 1929: Definition. - Policeman is a person paid to perform, as a matter of duty, acts which, if he were so minded, he might have done voluntarily. The term police today is designated to the executive civil force of a state which is entrusted with the duty of maintaining public order and enforcing regulations for the prevention and detention of crime.

Judgments: *Shri Dilip K. Basu V. State of West Bengal & Ors. AIR 1997 SC 610*: The Hon'ble Supreme Court, in this case, laid down the enforcement guidelines that the guidelines must receive maximum publicity in the print or other electronic media. It should also be prominently displayed on the notice board, in more than one language, in every police station. *Paramvir Singh Saini Vs. Baljit Singh (2021) 1 SCC 184*: The Supreme Court asked all states and Union Territories to ensure that closed-circuit television, or CCTV cameras, with night vision and audio recording, are installed in every police station in the country. *Prakash Singh & Ors vs. Union Of India And Ors. (2008) SCC 1*: The Hon'ble Supreme Court of India in Prakash Singh

8.4.1. Findings, Inferences, and Issues

Status of Infrastructure: Washroom, Restroom, and Locker room (Makhana), The Azad Maidan Police station was divided into four beats, namely: - a) Law & Order b) Economic Offences Wing c) Detection Centre d) Cyber Security Wing. Each and every beat was allocated a specific area which had the facility of a washroom, restroom, and locker room, 'Malkhana'. Out of the total 20 responses in terms of 'Washroom,' it was found that 16 responded as 'Good' while three as 'Average' and one responded as 'Poor.' In the case of the restroom, four responded as 'Good' while 16 responded as 'Average.' As it was found that in the case of locker room 'Malkhana,' 5 responded as 'Good,' 12 responded as 'Average,' and three responded as 'Poor.' However, during the course of the police station visit, it was found that the sanitation level of infrastructure facilities is not the same at every wing. Additionally, it was observed during the interview that some of the washrooms had to be maintained by the police personnel themselves. In contrast, few of the police personnel responded that it is taken care of by the State Government.

Infrastructure	Good	Average	Poor
Washroom	16	3	1
Restroom	4	16	0
Malkhana	5	12	3

Issues with Washroom, Restroom, Malkhana:

- Foul Smell- Few of the washrooms had a foul smell because of the irregular cleaning schedule.
- Dark and Dumpiness- Due to poor light and ventilation inside the locker room and washroom, the walls were damp, and moles were present.
- Insufficient washrooms- Considering the composition of the police station, which housed 270 police personnel, the number of washrooms was less.

- Congested Malkhana- The Malkhana was congested, and there was insufficient space to put new things inside the room.

Residence: Out of the total 20 responses in terms of ‘Residence,’ it was found that six responded as ‘Good’ while 12 as ‘Average’ and two responded as ‘Poor.’

Infrastructure	Good	Average	Poor
Residence	6	12	2

Additionally, it was found during the interview that residence is allotted in the police campus only to the police officers who hold the post of Sub-Inspector or above.

The rest of the police personnel's Government residence is allotted at far-off places like Karjat, Thane, and the Mumbra region of Mumbai.

Residence: - There is no proper residence, and the number of Government police residences is very less as compared to the number of police official. Mumbai Police claims to have 26,000 housing units for a workforce of 42,000. Around 19,000 are occupied, and the rest are under repairs. So acute is the crisis that more than half the workforce has to find their own means of accommodation, which is often in distant suburbs due to their inability to pay high rent. Even among the ones with official quarters, barely 35% are satisfied.

Under Rule 76 of the Provision of Residence Under *the Bombay Police Manual 1959* Volume II: *Approved type designs of buildings: The following type designs have been approved by Government.*

Type of Designs	Authority
Quarters for Policemen	G. R., P. W. D. No. BPD-1631, dated 22-11-1952.
Quarters for Policemen in Bombay City	G. R., P. W. D. No. 7488/36 dated 26-4-1946.
Quarters for Inspectors of Police	G. R., P. W. D. No. 8643/36-W, dated 30-10-1950 read with Government Memo. P.W.D.No. BPD-1657-W dated 29-4-1957.
Quarters for Sub-Inspectors of Police	G. R., P. W. D. No. BP-D-2151, dated 2-3-1954.
Police Station building and quarters-for Bombay City	G.R., P. W. D. No. 9639/ officers in 36-W, dated 1-10-1956.
A Police Office and lock-up	G.R., P.W.D. No., C.W. 2244 of 25-8-1908; I.G.P.'s No.1420-C, dated 29-1-1909 and G. O., P. W. D. No. C. W. 6717 of 14-1-1919.

Source: https://www.mahapolice.gov.in/uploads/acts_rules/MumbaiPoliceManualPartII.pdf

8.5. Inferences and Issues: Poor Government Residence- The quality of the Government residence allotted to the police officers who are below the rank of S.I is not good. The houses have a poor quality of walls due to which in the rainy season rainwater percolates in their house. Long Distance- The residence which is allotted to the lower rank police officials are far off from the police station they are posted. As a result, they had to travel a lot of distance in, which took a lot of time in the journey. During the pandemic- Since the majority of the police constable’s Government residences were far off from the Azad maidan police station.

Thus, they had a lot of problems while commuting from their residence to the police station because as such. There was a suspension of local trains and other transportation.

8.6. Working hours of Police During the Pandemic: Out of the total 20 responses in terms of ‘Working hours,’ it was found that all of them responded that during the pandemic, they had to work more than 12 hours. It was also found that they had to also take care of additional duties even during the time of pandemic. It was also found that during the pandemic, police officers had to also spread awareness among the common masses about masks and maintain proper distancing in vehicles. A huge responsibility was there during the lockdown. The police officer had to see no people were wandering on the streets. Apart from that, the police officers had to fulfill the additional duties of taking care of Azad maidan ‘bandobast’ and ‘Nakabandi.’ However, apart from this, whenever there is a visit of a V.I.P these police officials had to take proper management of the entire schedule and traffic.

8.7. Before and After the Pandemic:

8 hours	More than 8 hours
16	4

Out of the total 20 responses in terms of ‘Working hours’ before and after the pandemic it was found that 16 of them responded that they had to work for 8 hours. In contrast, 4 of the police officials responded that usually, due to the workload, they had to work for 8 to 10 hours.

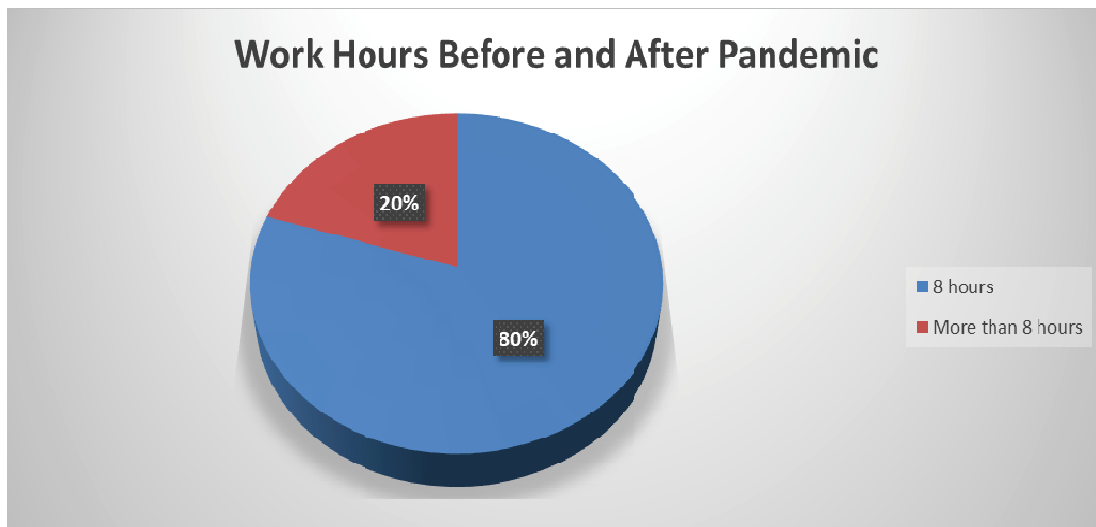


Diagram 2 : statistics of working hours of police pre and post pandemic

In terms of additional duties, it was found that as such, there is no change before and after the pandemic. The police officers had to take care of the additional duties.

During the interview, it was found that the police officers had to fulfill the additional duties of taking care of Azad maidan ‘bandobast’ and ‘Nakabandi’. However, apart from this whenever there is a visit of a V.I.P these police officials had to take proper management of the entire schedule and traffic.

- Working hours: During the pandemic working hours of the police was very long as a result, their social well-being was affected a lot. Long hours of continuous work without any rest affected their physical and mental health.
- Additional Duties- Since Azad Maidan is adjacent to the police station, it is an everyday fixed additional duty for all of the police officials. It was found that every day two to three rallies took place in the Azad Maidan as a result, a number of police officers had to be there and take care of the ‘bandobast.’
- Azad Maidan- Due to the presence of Azad Maidan, a lot of issues are there. ‘Police Officials’ had to be there apart from their administrative work at the maidan to maintain the status quo. On a daily basis, some of police officials are allotted to take care of law and order. During the protests, additional police officers are brought from the main headquarter.

Legislative Framework for Additional Duties of Police While Managing Frequent Protest in Azad Maidan. According to *The Police Act of 1861*. Under Section 15: “*Quartering of additional police in disturbed or dangerous districts*:- (1) It shall be lawful for the State Government, by proclamation, to be notified in the Official Gazette, and in such other manner as the State Government shall direct, to declare that any area subject to its authority has been found to be in a disturbed or dangerous state, or that, from the conduct of the inhabitants of such area or of any class or section of them, it is expedient to increase the number of police”. (2) It shall, thereupon, be lawful for the Inspector-General of Police, or other officer authorized by the State Government in this behalf, with the sanction of the State Government, to employ any police force in addition to the ordinary fixed complement, to be quartered in the area specified in the such proclamation as aforesaid. (3) Subject to the provisions of sub-section (5) of this section, the cost of such additional police force shall be borne by the inhabitants of such area described in the proclamation.

Under Section 17: *Special police-officers*: - When it shall appear that any unlawful assembly and in cases of similar mis happenings an, ordinarily police officers may be appointed as special police-officers as per the discretion of the magistrate. Under Section 23: *Duties of police-officers*: - It shall be the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offenses and public nuisances, etc. In the case of *Shakti Vahini vs State of Madhya Pradesh*, the Court held that “*certain preventive, remedial punitive measures have to be taken by the police according to the situation for which training must be duly provided.*” Under Section 31: *Police to keep order on public roads, etc.* Model of Smart Police Station: Under the *Smart Policing Guidelines, 2014* the idea was envisioned, articulated, and introduced at the Conference of DGPs of State and Central Police Organizations, held in Guwahati, in the year 2014. It envisaged systemic changes to transform the Indian Police to be: Strict and Sensitive, Modern and Mobile, Alert and Accountable, Reliable and Responsive, Techno-savvy and Trained (SMART). The strategy combined the development of physical infrastructure, technology adoption, a focus on critical soft skills and attitudes, as well as a deep commitment to the values of professional excellence and service to the people, considered essential to take the Indian Police to the next level.

Shri Dilip K. Basu V. State Of West Bengal & Ors. The Hon’ble Supreme Court laid down the enforcement guidelines that the guidelines must receive maximum publicity in print or other electronic media. It should also be prominently displayed on the notice board, in more than one language, in every police station. It was observed that there was no board delineating the *D.K Basu* guidelines in the police station. Out of the 20 responses that have been

collected, it was found that few of the police officers knew about such guidelines, while the majority of the police officers were ignorant of any such guidelines.

Knowledge of D.K Basu Guidelines	Yes	No
	14	6

Table 1

8.8 Equipment.

- ✓ Although ‘Police’ and ‘Public Order are State subjects, the Government of India has taken a number of initiatives in the last three years to encourage the use of technology to optimize the functioning of State police. (Annexure B)
- ✓ Under the scheme of Modernisation of Police Force (MPF), States have been provided central assistance for acquiring advanced weaponry such as AK-47 and INSAS Rifles, police equipment such as CCTV surveillance systems, modern communication equipment, and state-of-the-art equipment for State Intelligence Branches and State Forensic Science Laboratories.
- ✓ Under the Crime and Criminals Tracking Network and Systems (CCTNS) project under the Ministry of Home Affairs in 2009, the processes of crime registration, investigation, prosecution, etc., in the police station are being computerized. The various benefits of CCTNS are now available to State Police Forces. The Digital Police Portal, launched by the Government of India on 21.08.2017, provides a facility to police officers for the purpose of investigation, policymaking, data analytics, and research through the national database of criminal records.
- ✓ With the help of I.T. equipment it is easier for the police officer to effectively manage the data at the police station since a lot of documents are misplaced or are destroyed because of natural disasters or due to other reasons.
- ✓ It was found that all the police officials had positively responded in terms of I.T. equipment present at the police station. However, few of them had responded that considering the total strength of the police station, there is a requirement of more I.T. equipment.

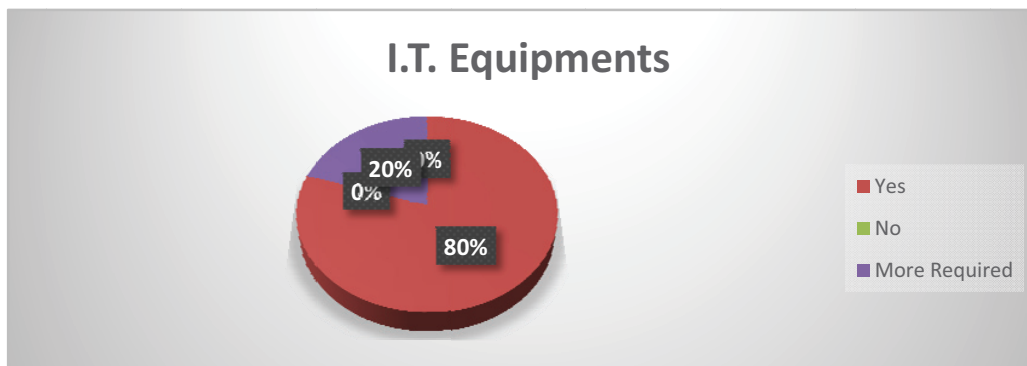


Diagram 3 : Status of CCTVs Camera Installation.

- ✓ *In Paramvir Singh Saini V. Baljit Singh* The Supreme Court directed all states and Union Territories to ensure that closed-circuit television, or CCTV cameras, with night vision and audio recording, are installed in every police station in the country. Under the advisory pertaining to the use of technology for special police

functioning under, the Ministry of Home Affairs, on January 3, 2018, advised all the police stations for the installation of CCTVs (Annexure C). It was found that CCTV cameras were properly mounted in the police station at the entrance to each and every beat. Additionally, it was found that the 1 Tera Byte hard drive was used for storing data for two weeks, or 15 days thereafter, and the previous data was rewritten.



Diagram 4

8.9 Setting up of Police Complaint Authority in Maharashtra: In 2014, Maharashtra created Police Complaints Authorities (PCAs). In Maharashtra, there is one PCA at the state level and six at the divisional level. They are set up at various levels. In operation as of March 2019 are only the divisional-level PCAs in Pune and Nashik and the state-level PCA in Mumbai. Within the division Level2in Nashik, Pune, Aurangabad, Nagpur, Amravati, and Konkan

Nagpur Division	Nashik Division	Pune Division	Aurangabad Division	Amravati Division	Konkan Division
Nagpur Chandrapur Wardha Bhandara Gondia Gadchrioli	Nashik, Dhule Jalgaon ,Ahmednagar Nandurbar	Pune Satara Sangli Solapur Kolhapur	Aurangabad Jalna Latur Nanded Osmanabad Parbhani Hingoli Beed	Amravati Akola Washim Buldhana Yavatmal	Mumbai Mumbai Suburban Palghar Raigad Thane Ratnagiri Sindhudurg

The Hon'ble Supreme Court of India in *Prakash Singh & Ors vs. Union of India And Ors* has issued directions under Article 32 read with Article 142 of the *Constitution of India* for the Constitution of State Police Complaints Authority and District Police Complaints Authorities. In pursuance of the judgment of the Hon'ble Supreme Court of India and till appropriate changes are made in the *Maharashtra Police Act, 1951* and /or other relevant rules on the lines of the Supreme Court directions, the Government of Maharashtra issued *Government Resolution No.: PCA-1013/CR- 109 /Pol-3* (Annexure D). Simultaneously with due

consideration to the Hon'ble Supreme Court's order dated 22/09/2006, the Government of Maharashtra reconstitutes the State and District Level Police Complaints Authorities.

8.10. Status of constituting Committee Against Sexual Harassment : Under Sec 4 of the *Sexual Harassment of Women at the Workplace Act, 2013*,“(1) Every employer of a workplaceshall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee.” It was found that a ‘*Vishakha Committee*’ is there in the Azad Maidan Police Station where the police official could lodge complaints against other police officials in cases of sexual harassment. It was found that 17 police officials responded that there is a Vishakha committee in the police station, while 3 of the police officials had no clue regarding the existence of any such committee.

Vishakha Committee	Not aware
17	3

Table 2

- Lack of awareness- Due to the lack of awareness among the police official as there was no display board of *D.K. Basu* guidelines in the police station.
- Lack of Maintenance of electronic gadgets- Since electrical equipment requires timely and effective maintenance services, but in the police station, there is as such no mechanism through which there could be proper maintenance at regular intervals.

8.11. Need for Training of Police Officers: The Training Division of the Bureau of Police Research & Development provides thorough in-service training for law enforcement officers across the nation on topics common to police training nationwide. Additionally, it organizes the training that foreign security organizations provide to Indian police officers both domestically and abroad. The BPR&D promotes the training of foreign police personnel in India in coordination with the Ministry of External Affairs (MEA).

The *Bombay Police Manual 1959* Volume-I outlined the guidelines for police training, including varied training for different positions and specialized training for special police officers. Along with the M.S. Gore Committee on Police Training in 1971 and the National Police Commission, which between 1977 and 1981, suggested eight recommendations outlining extensive changes to the way the police are presently specialized. The Ministry of Home Affairs established the Padmanabhaiah Committee in 2003 to look into the demands of policing in the new millennium. The Malimath Committee on Reforms of the Indian Criminal Justice System in India.

8.12. The Criminal Amendment Act, 2013: It was found that 20 of them said ‘Yes’ regarding whether a female police official is accompanied during recording the statement of a woman when she is a victim/offender as delineated under the *Criminal Amendment Act, 2013*.



Diagram 5

8.13. Frequency of Training: It was found that 20 police officials responded positively about attending the training program at the time of joining the police force. However, after that, there is very less frequency of training sessions. Few of the police officers had responded whenever as such, there are new roles and responsibilities, and then a training program is conducted.

Lack of Regular Training: - Due to the lack of proper training, the police officers were unable to perform to fulfill the statutory duties under contemporary legislation.

8.14. Additional Issues and Challenges: Lack of Human Resource: - Due to the lack of police officials in a number of additional duties such as ‘Bandobast’, Nakabandi’, V.I.P protocols, and above all, maintaining law and order at Azad Maidan becomes a bit challenging. Azad Maidan: - Due to the adjacent Azad Maidan daily, some police officials are allotted to take care of law and order. During the protests, an additional police official is also brought from the main headquarter.

Residence: - There is less number of Government police residences for police officials. Mumbai Police claims to have 26,000 housing units for a workforce of 42,000. “Around 19,000 are occupied, and the rest under repairs. So acute is the crisis that more than half the workforce has to find their own means of accommodation, which is often in distant suburbs due to their inability to pay high rent. Even among the ones with official quarters, barely 35% are satisfied”.

8.15. An Overview of Policing issues

Police Station Infrastructure	There were few washrooms, and the Government police residencies could be improved.
Working hours of Police	The working hours of police officer were found to be on duty every time.

Model of Smart Police Station	The Azad Maidan Police Station does have elements of Smart Policing; however, it could be improved a lot.
Police Training	Police official training must be conducted at regular intervals.
Issues & Challenges	There must be a dedicated body set up at the police station that could resolve or advocate for the issues and challenges faced by the Police official.

8.16. Recommendations.

- ✓ **Need for staff appointment:** The Azad Maidan Police Station needs to increase the number of police officials to reduce the burden on the stationed police officials so that they can perform the requisite duties adequately. Additional duties were allotted to them in various public places and on various occasions, such as managing public order at Azad Maidan, and managing heavy crowds during festivals and community programs.
- ✓ **Increase frequency for training and capacity building:** Training of the police officer at the Azad Maidan police station should be conducted in light of the various reports given under the MS Gore Committee Report, Musahari Committee Report, and various parliamentary Standing Committee Reports. The police need to be trained in Cyber technologies and Cyber Forensics. The National Digital Crime Resource and Training Centre (NDCRTC) is a specialized center functioning under the IT wing of Sardar Vallabhbhai Patel (SVP) National Police Academy with the objective of Capacity Building of Law Enforcement Agencies in Cyber Crime Investigation. This Centre is involved in giving training to officers from State Police, Central Police Organization (CPOs), other Law Enforcement Agencies (LEAs) of the Central Government, Digital Forensic Experts of CFSL and State FSL, Judges, and Prosecutors.
- ✓ **Exclusive appointments of the female police personnel:** It is recommended to appoint more female police officers to address crime against women and children. There are a number of legislations in which women police officials have been given the responsibility to take into consideration the complaints filed under the *Protection of Children from Sexual Offences (POCSO) Act, 2012*, and *Juvenile Justice (Care and Protection of Children) Act, 2015*. “The Bombay High court also directed that a special court under the *Protection of Children from Sexual Offences (POCSO) Act* should expeditiously decide on a petition filed by a woman seeking registration of an FIR. Right or wrong, once it is brought to notice that a cognizable offense has been committed, it is the duty of the police to register an FIR. Thereafter, if there is no evidence, then an appropriate report can be filed”. The Bombay High Court directs Bombay Police to ensure witness protection and free protection to survivors and witnesses of crimes in Maharashtra. The Bombay HC order dated April 2022 raised concerns over life threats to survivors and witnesses in cases of sexual assault. The Bombay High Court directs police to ensure that no children are harmed during the celebration of communal festivals and to ensure the protection of the rights of children and directs the police that a “fine balance” needs to be maintained between

such practices and ensuring the safety of all participants.

- ✓ **Improvement in Infrastructure of the police station:** There should be a dedicated building for the Police Station as currently, the Police Station functions in the Esplanade (Killa) Court Complex and the present structure is very old, and the infrastructure is in poor condition to ensure a healthy environment for the police, so that they can dispense their duties efficiently.
- ✓ **Need for frequent psychological counseling:** Police personnel should be given regular counseling to maintain their psychological well-being to perform their duties more efficiently.
- ✓ **Digitalization of Police station and record keeping:** The police station should be provided with more IT equipment, such as computers, printers, scanners, etc. to meet the requirements of the new digital India, to tackle cybercrimes, and to store records and reports in online databases with mass storage to enable them to store huge amounts of data online which requires no physical space.
- ✓ **Better access to the washroom during patrolling issues:** One of the major concerns is the non-availability of washrooms during patrolling, which is faced by police personnel, especially female police personnel.
- ✓ **Implementation of Central Government and Maharashtra State Government reports: -**
- ✓ There should be the proper implementation of various recommendations of various committees reports as well as the judgments of various courts, and awareness should be spread regarding the same in the general public and the police personnel.
- ✓ **Need to improve police housing infrastructure:** The police personnel shall be provided with proper accommodation nearby the police station to reduce the traveling time to increase their quality of life, consequently resulting in their efficiency in dispensing duties.

Chapter- 9.

Kamathipura Visit (Human Rights Issues of Sex Workers) Field Visit to “Street Number 12 and 13 of Kamathipura, Mumbai Maharashtra.

9.1. Introduction.

The Joint United Nations Programme on HIV/AIDS (UNAIDS) and The World Health Organisation define sex workers as “female, male and transgender adults aged over 18 years who sell consensual sexual services in return for cash or payment in kind, and who may sell sex formally or informally, regularly or occasionally.” “The term sex worker refers to people of all genders who sell sexual services consensually. It is also important to note that the definition of sex work relates only to those over 18 years.” The National AIDS Control Organisation (NACO) of the Ministry of Health and Family Welfare, Government of India, estimates that there are over 8.68 lakh female sex workers in the country and 62,137 Hijra/transgender persons in 17 states, of which 62% are engaged in sex work. In the heart of Mumbai city, there is a place named Kamathipura, which has one of the largest numbers of sex workers living in the same region. Streets crisscross the Kamathipura upon streets of brothel houses. It is reported that more than 2500 women are working as sex workers here either by choice, as a victim of offenses, or for socially and economically compelling reasons. Kamathipura, including streets 12 and 13, has an old, densely-populated, extremely congested, socially and economically diverse, inner-city, largely working-class neighborhood located in Mumbai. It owes its name to the *Kamathis*, the lower caste, Telugu-speaking migrant laborers who originated from the southern Andhra region and came to Bombay in the late 1700s.

Human Trafficking for the Purpose of Sexual Exploitation for Prostitution-2019 National Crime Records Bureau (NCRB)

Area	Child Male	Child Female	Adult Male	Adult Female	Rescued Male	Rescued Female
Maharashtra	0	53	0	893	0	946
29 States	3	295	6	1761	9	2056
Union Territories	3	302	6	1769	9	2071

According to the 2020 NCRB Report, Maharashtra has the highest number of women missing, with more than 88 daily (a total of 32,283 missing all over India). Maharashtra and Telangana top the chart with the highest number of human trafficking cases. Though, there has been a decline in trafficking cases in Maharashtra from 282 cases (in 2019) to 184 cases in (2020).

**Kamathipura, Mumbai, Maharashtra
21st October 2022**



9.2. Objective and Mandate:

- ✓ To explore and study the living conditions of the Sex Workers of Kamathipura.
- ✓ To understand the human rights issues persisting in the lives of Sex Workers of Kamathipura.
- ✓ To oversee the implementation of rehabilitative schemes for the welfare of Sex Workers of Kamathipura, Mumbai.
- ✓ To oversee the implementation of *The Immoral Trafficking (Prevention) Act of 1956*.
- ✓ The mandate of the Visit: The mandate of the conducted field visit was set forth by the Maharashtra State Human Rights Commission in pursuance of the Memorandum of Understanding with SLRCG, Tata Institute of Social Sciences, Mumbai, in October 2022.

9.3. Conceptual Understanding of the Rights of Sex Workers.

Conceptual Understanding of International Conventions, Legislations, Judgements, Maharashtra Government Regulations, and Schemes Relating to the Rights of Sex Workers

UNITED NATIONS INTERNATIONAL CONVENTIONS	PROVISION IN THE CONSTITUTION OF INDIA, LEGISLATION, POLICIES, REPORTS, AND JUDGEMENTS	NATIONAL HUMAN RIGHTS COMMISSION RECOMMENDATIONS
I- International Human Rights Law Specifically Prohibits The Exploitation Of The	Under Article 21 - Every person has the right to life and personal liberty. In <i>Kharak Singh v. State of Uttar Pradesh AIR 1963 SC 1295</i> , the Supreme Court	NHRC Advisory on Sex Workers Under Human Rights Advisory on Rights of Women in the context

<p>Prostitution of Others, Including Pimping, Procuring, and the Running of A Brothel:</p> <ul style="list-style-type: none"> • International Human Rights Law Prohibits all forms of Exploitation of the Prostitution of others <p>Under Article 6 Convention on the Elimination of All Forms of Discrimination against Women- CEDAW</p> <p>The Preamble of the UN 1949 Convention states that prostitution and trafficking in persons are “incompatible with the Dignity and worth of the Human Person.”</p> <p>Article 1 The “exploitation of the prostitution of others” includes pimping, procuring, and running of a brothel.</p> <p>Under Articles 2(d) and 2(f)-State Obligations Under United Nation Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (1979) Respect, Protect, Promote and Fulfill.</p>	<p>quoted and held: “By the term ‘life’ as used here, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision prohibits the mutilation of the body by amputation of an armoured leg or the pulling out of an eye, or destroying any other organ of the body through which the soul communicates with the outer world.”</p> <p>“The sex workers in Kamathipura are Human Beings and have the basic right to life, dignity, and self-respect.”</p> <p>Statutory Regulation - Immoral Traffic Prevention Act:</p> <p>Under Section 2(f): definition of prostitution. Section 2 (b) definition of girls and women.</p> <p>Some Important Provisions of The Immoral Traffic (Prevention) Act and Landmark Judgment:</p> <p><i>Petitioner VS The State of Maharashtra (Through Inspector In charge of Malad Police Station) 2020-</i> Under Section 17 of The <i>PITA Act 1956</i>. The court held that the detention could not be continued. <i>Buddhadev Karmaskar vs. State of West Bengal 2020</i> - The Supreme Court, while performing Judicial Activism, observed that- <i>Under Article 21</i> “The Sex Workers also have a right to live with dignity. <i>Geeta Kanchha Tamang vs. State of Maharashtra 2009-</i> Under Article 23 of the Constitution of India, Trafficking in persons is prohibited. <i>Kumari Sangeeta vs. State of Delhi, 1996</i> - The Delhi High court held that prosecution per se is not illegal. Only the sexual exploitation and abuse of sex workers are prohibited under the act. <i>Manoj Kumar Shaw vs. The State of West Bengal 2019-</i> The Calcutta High Court held that the sex workers should not be arrested rather, they should be treated as the victims of the crime.</p> <p>Government Resolutions - Prevention of Atrocities on Women Cell</p>	<p>of Covid 19</p> <ol style="list-style-type: none"> I. State Governments may provide assistance and relief to sex workers, especially lactating mothers, as has been done by the Government of Maharashtra vide its Government Resolution dated 23rd July 2020. II. Sex workers may be recognized as informal workers and be registered so that they are able to get worker benefits. III. Temporary documents may be issued that enable sex workers to access welfare measures such as The Public Distribution System (PDS), as many do not possess ration cards or other citizenry documents. IV. Migrant sex workers may be included in schemes and benefits for migrant workers. V. Recognize that sex workers in non-traditional living arrangements are prone to domestic violence from partners and family members. Encourage Protection Officers to act on reports of violence against women.
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	<p>(PAW)(Government of Maharashtra, 1995). Anti-Human Trafficking (AHTUs)(Government of Maharashtra, 2008).Assistance Given to Sex Workers And Their Children During the Covid-19 Pandemic. Schemes of the Government of India and Maharashtra - Ujjwala Scheme (2016): Mumbai District AIDS Control Society (MDACS). Manodhairya Scheme for Rape victims, Children who are victims of Sexual Offences, and Acid Attack Victims (Women and Children). Savitribai Phule Multipurpose Women's Centre for Victims of Atrocities. Women State Homes for Destitute Women, Teenage Mothers, and Women who are victims of atrocities. Welfare Scheme for Devadasis.</p>	<p>VI. Ensure access to free testing and treatment for COVID-19 and also provide soaps, sanitizers, and appropriate masks to all sex workers at different localities.</p> <p>VII. Ensure access to healthcare services, especially for the prevention of HIV and other sexually transmitted infections and their treatment.</p>
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The sources of information and field observation for this report are: The sex workers of kamathipura

9.4.Inferences, Findings and Issues- Socio-Demographic Inferences.

The Sex Workers represent a diverse socio-demographic profile that is reflected in their age, literacy level, domicile, language domicile, and language. The age of Sex Workers ranges from 25 to 45 years. Most of them are either illiterate or school dropouts. It was found that a large number of Sex Workers are either separated or abandoned by their partner or are widowed. Most sex workers (around 85 to 90 percent) in Kamathipura street no. 12, 13 are married and resort to sex work either to support their children's education, marriage, buying land, or home. Some Sex workers resorted to sex work due to domestic abuse by their husbands and their in-laws, demands of dowry from them, or due to their husband's illicit relationships with other women, sex workers resort to sex work. It was observed that less than 5 percent of sex workers are unmarried in Kamathipura (streets 12 and 13). The number of years them being engaged in sex work ranges from 0.5 years to 10 years. The salient aspect of Kamathipura is that the women do not go outside to render their services and only provide the services within or inside their small houses. These sex workers have no Social Security Schemes and Benefits to Protect and Provide for them in their Old Age. One of the Sex Workers, aged 21 years old, had left her home in Delhi and lived in Kamathipura as she was content with her work.

It was observed that all the workers are in contact with their family members as they visit their families, villages, and towns once a year as they visit their family, villages, and the town once a year. Most of sex workers send money to their homes for their children's education. The Kamathipura appears to be like a melting pot of cultures and religions, with women from different parts of the country assimilating into one social category and identity. Almost all sex workers are below the poverty line with a regular monthly income of Rs. 3000 per month. It was found that most of the Sex Workers had their Ration and Aadhar cards with them, which could be original or fake. There is a lack of verified, authentic Government data on the same. Around ten percent of sex workers have issues with citizenship and Valid Government Identity Cards as they are not from West Bengal but infiltrated from Bangladesh to West Bengal and moved to Mumbai.

It was informed that there are a greater number of middle-aged older sex workers living in the area, as the younger sex workers either got rehabilitated. They have taken up other occupations, or they have moved out of Kamathipura and bought or rented houses in cleaner and more developed parts of the city. Some of these women have moved to other districts of the State of Maharashtra to render sex work. There was no minor found among sex workers in Kamathipura. It was reported that, at present, sex work in the city is not just confined to Kamathipura. Much of it is happening online or in different locations, with increased risk of their exploitation.

9.5. Reasons for Joining the Profession



Photo reference: A worker disclosing her reasons for working in Kamathipura while the other cooks their meal in a makeshift kitchen

It was informed by the Nagpada Police Station that trafficking is lesser in number presently. Various Non-Governmental Organizations are working in Kamathipura to facilitate support for Sex Workers. The police officials informed that they have their own informants at work in Kamathipura to alert them regarding any incidents of trafficking or middlemen involvement or violation of *The Immoral Traffic (Prevention) Act, 1956*. According to one of the sex workers “three women around the age of 46, 50 and 55 years who were trafficked and brought to Kamathipura. These women stated that they were brought to the place against their will. One of them stated that she, a native of Gujarat, was sold by her suitor in Delhi, from where she ran and landed in Bombay, due to lack of financial aid and being unable to contact her family as she was ostracized, she had no option but to join this work in Kamathipura”. Here, in Bombay, she had three children (at present well-employed) with one of her customers who still visit her, and they share an emotional bond.

One of the women sex workers stated that she was brought from Karnataka by one of her acquaintances to Bombay and stranded in the city, later being trafficked to one of the houses in the area. Here, a man supported her and promised to marry her, with whom she has three children, who grew up in the streets of Kamathipura with the help of NGOs and are now employed, yet the man never married her. Similar is the story of another Sex Worker who was sold and trafficked, but presently she lives in rented accommodation with her husband. Her children are also well-employed and moved out of Kamathipura. These are cases where the sex workers were forced into the profession and faced a lot of oppression and exploitation during their lifetime in the hands of *sethanis* and middlemen. Despite all these hardships, these women have made Kamathipura and its streets their home. Though their children live elsewhere, these sex workers continue to live here in Kamathipura.

There were no cases of generational work observed. It was found that the younger sex workers chose to live and work in Kamathipura as they were satisfied with their work. It was

observed that the socio-economic factors and inability to provide for livelihood for themselves and their family or inability to find opportunities where they could earn better income or work in a better occupation are one of the primary causes for women entering into Sex Work. Most sex workers stated that they came to Mumbai for the first time to look for jobs like domestic maids, like cooking, child care, and laundry, among others. But the payment was not adequate neither job certainty nor any security of employment; hence resorted to sex work. Further, the Police Officers informed that Sex Workers are accustomed to Sex work, they do not wish to change their profession nor they wish to undergo any further training or vocational course. They don't wish to leave Mumbai permanently; they want to be accepted as a class of professional workers with better wages or payments. They want to avail more benefits out of health schemes and social security safeguards for themselves and their children.

9.6. Infrastructure of Kamathipura Streets:



Photo reference: The dilapidated condition of houses in kamathipura.

It was found that the entire area is deteriorating in terms of water, sanitation, housing, and open spaces. It was observed that the houses where the sex workers lived dire need reconstruction and renovation. It was reported that things seemed to have changed as a result of initiatives taken by the Government, Human Rights Commission, Non-Governmental Organizations, laws, and policing. It was found that a single room was occupied by five women, with poor ventilation, no windows, and only one door. It was observed in street 13 women were seen cooking their lunch in a makeshift kitchen on the street itself, which was the best they could do with the space they had. It was observed that the water supply was erratic, with no availability and access to purified water, thus increasing the risk of waterborne diseases. It was observed that the streets of Kamathipura had no traffic during the daytime since it is an area avoided by people due to the social stigma, but the same streets come alive when the working hours of Sex workers begin from evening onwards till midnight.

It is found that women have become accustomed to living in congested spaces. Around 3 to 5 Sex Workers share one room and also one toilet. In some cases, the house/rooms were compartmentalized into pods or railway births, like the setup of single occupancy to provide privacy. It is pertinent to note that a lot of these Sex Workers are diagnosed with communicable diseases or even sexually transmitted diseases. There are multiple foundations and Non-Governmental Organizations working in the area solely to provide healthcare and medical treatment free of cost to the workers and also provide shelter and treatment to the workers who have been so diagnosed, but until then, they are always at risk of spreading it to other workers living in the same room or house.

It was informed by the officials at Nagpada Police Station and also informed by the sex workers themselves that there no longer exists a system of brothel managers (madams). As they call it 'gharwali', who earlier not only hired Sex Workers but also kept their income and forced the women to have intercourse with men without their choice. These managers were penalized according to The *Immoral Traffic (Prevention) Act, of 1956*. Presently, the workers' pay house rent to the owners/landlords directly.

9.7. Initiatives to Improve the Infrastructure and dwelling places of Kamathipura:

The locals, especially the Kamathipura landlords, have been resistant from time to time against the derogatory labeling and renewal efforts. The state government, via the Maharashtra Housing and Area Development Authority (MHADA) and the Mumbai Repair and Reconstruction Board (MBRB) conducted comprehensive door-to-door surveys, including brothels and shops, to propose a large-scale renewal project. Even the World Bank was involved in this effort. However, later, it pulled out from financing the project (on December 8, 1998), citing the risks involved in getting consensus from the tenants and disagreement by landlords over the project. Since then, private developers have come out with fancy, large-scale redevelopment plans and a radical proposal to rename the neighborhoods, thereby erasing its "stigma" of being largely dominated by sex workers. There is no clarity over how much the sale component and profit margin would be for private developers, and distrust against private developers who left projects and residents abruptly, citing financial strains, languishing in faraway transit camps. In the year 2014, the Kamathi



landlords came together to form a welfare association with the intent to redevelop the neighborhood themselves with the help of the Government of Maharashtra. There are inhabitants who are involved in businesses of either textile dyeing, metal works, or even have stores of their own, who are trying hard to erase the stigma that comes with the place. The inhabitants of Kamathipura have wanted a redevelopment of the area, and even the Sex Workers want better living conditions and access to a better quality of life. Both demand the same things, yet their intentions are different.

The shop owners informed it regarding their perspective on redevelopment and improvement of the area, but they feel that their individual voices cannot bring the change that they want with the objective of better housing and better lives for their children. It was observed that the son of the shopkeeper was unwilling to answer questions about his life there, which stems from the fact that they have been frustrated with the stigma and the identity the place comes with. On the other hand, the Sex Workers also demand their right to life and livelihood in Kamathipura itself. They don't want relocation, but improvement of the area, regarding amenities, infrastructure, and housing. They seem to be content with their life in the current condition since they anticipate that there can be no improvement for them and fear that improvement comes with a cost of loss of livelihood. They choose to retain their status quo.

9.8. Arrangement of Services in Kamathipura.

The system of 'gharwalis' has long gone. The sex workers no longer have to share their earnings, rather, they just pay the house rent. It was informed that most sex workers pay rent daily as per Rs. Fifty per client or monthly as Rs. 3000 to one lady owner. Though middlemen continue to remain, but as police officials state that they conduct a raid and arrest anyone found involved in the contravention of the provisions of *The Immoral Traffic Prevention Act of 1956*. The workers get their own customers under their own terms. There were middle-aged erstwhile sex workers who were still in the profession but mainly looked after the houses for a salary of Rs. 2000 a month as they had nowhere to go. They also look after the safety and security of the younger sex workers and their children. Thus, the area has a cliquish bond with a strong community identity.

It was observed that in this profession after one crosses the age of 40 years, one becomes incapable of generating income for themselves. What is more disheartening is that this is when the overall reproductive health of sex workers starts deteriorating. The lack of coverage of sex workers under any Government Schemes makes their life difficult. They rely on the assistance given by the foundations and NGOs in the area who are working for the welfare of the sex workers. There are individuals who have taken up the duty of maintaining order in the streets of Kamathipura. With the aid provided by the NGO, they were able to get educated and then make a living for themselves. The NGO dissolves any disputes arising among them. It was reported that the workers of the area, by and large, are not associated with any illegal, anti-social elements.

It was reported by one of the sex workers that male sex workers don't live in the area of Kamathipura but come when the working hours of sex workers begin. As the custom goes to wait for their customers on the streets, and so do the transgender sex workers, but they do not enter the streets where the female workers reside or interfere with their work. Neither do the female workers interfere in their work or get involved in any skirmishes with them. This creates a free workspace for all, regardless of whether they belong to the area. It is found that the pay or income they receive is very meager due to lack of any regulation, or rather the fact that the work is still not considered as an occupation or job and not legalized, makes the sex workers work for meager pay. This was further worsened during the period of demonetization and during the coronavirus pandemic. When the sex workers couldn't earn enough money to provide food for themselves, let alone vaccination, preventive care, covid treatment, and medication. The State Human Rights Commission and other NGOs provided them with support and amenities.

9.9. Health.

It was informed by the Police Officers of Nagpada Police Station that sex workers are more prone to getting communicable diseases and sexually transmitted diseases like HIV AIDS. It was also reported that 2 out of 5 sex workers are usually affected with HIV. It was informed that almost all sex workers are in the habit of drugs and alcohol consumption which makes them emotionally unstable and poses a greater risk to their health.

There have been several NGOs working in the area of Kamathipura since 1997. They are specially working for health-related issues of the sex workers and their children. They provide condoms to the sex workers. Mostly all sex workers agreed that using a condom is essential for safety. Almost all sex workers have access to medical facilities and hospitals. They also visit JJ Hospital in Sandhurst for regular checkups. It was informed that one lady

who seemed to be very ill was found lying beside the road. The people informed them that she had been missing for seven months and returned the day prior to the visit (20th October 2022) and informed everyone that she had gone home.

During COVID-19, the sex workers in Kamathipura were greatly affected by COVID-19 as their main source of earnings stopped. During this time, the Nagpada Police officers informed that they continuously worked for the well-being of the workers as they regularly distributed food packets and daily necessities to them. Various NGOs also supported them and distributed medicines and food items. All sex workers are double vaccinated. Most sex workers, almost 90 percent, mentioned that they have regular medical checkups at Government and Private Hospitals and even by NALCO-based NGOs. Most sex workers mentioned that they had completed the full vaccine for Covid. Most sex workers went back home during Covid.

9.10. Children of the Sex Workers.

The Supreme Court held in *R.D. Upadhyay vs. State of A.P. & Orson 13 April 2006* that no child of a sex worker should be separated from the mother on the ground of the type of profession she is involved in. One of the NGOs provides education classes to the children of sex workers. There are regular computer classes given to them for 1 hour from 6 in the evening. As of 21.10.2022, there are 18 children learning in the NGO. One sex worker who has been in this profession for four years has a 13-year-old child living in her village and says, "*bachhe palne me dikkat hoti hai*" (difficulty in raising children). Another sex worker who has been in this profession for 15 years has two children in her village. It was informed by a 45-year-old aged sex worker that she has two children, a 20-year-old son, working as cab driver in Mumbai, and another daughter in school. It was informed that another 40-year-old sex worker has an 18-year-old son. One of the NGOs is working towards rehabilitating and improving the conditions of sex workers and their children. This NGO is supported by the grown-up children of sex workers. They informed that while the sex workers are working, the children are kept in a different building.

9.11. Police Interface.

According to section 13 of *The Immoral Trafficking Prevention Act, 1956*, it is mandatory to have a special police officer for each area, who shall have a minimum rank of Inspector of Police. In the Kamathipura area, the Assistant Commissioner of Police (ACP) of Nagpada police station is appointed as the Special Police Officer. The power of a special police officer is delegated to the Senior Inspector of the police station under section 13(3) of *The Immoral Trafficking Prevention Act, 1956*.

Under section 4 of *The Immoral Trafficking Prevention Act of 1956* provides for the punishment of the person who is living on the earnings of the sex worker. To ensure this no middle person takes the earnings of the sex workers, regular raids are conducted by police officers. The Superintendent of Police of the Nagpada Police Station informed the team that they have conducted four raids since January 2022 in Kamathipura to oversee the living conditions of the sex workers and their children so as to ensure that their earnings are not unreasonably abused by the middlemen. They also have key informants there to ensure the human rights of the sex workers are not violated, and they keep updated the police officers regarding the ongoing conditions of the sex workers.

Under Section 13 (3) of *The Immoral Trafficking Prevention Act, 1956* requires a non-

advisory body to get advice related to this Act. This non-advisory body consists of a maximum of 5 leading social welfare workers.

It was reported by the Superintendent of Police of the Nagpada Police Station that in recent times there had been a negligible number of trafficking cases related to prostitution in Kamathipura compared to earlier times when there was a huge number of minor girls being trafficked for this purpose. It was reported by the Superintendent of Police of the Nagpada Police Station that they see “2 or 3 cases of trafficking and abduction in this area.” A 45-year-old sex worker informed that after she got married at 13 years old, she was sold in Kamathipura at such an early age. It was informed by the police officers that there is an increase in child labor cases as there is child trafficking in areas of Visai, Virar, Nalasopara, Mira Road where children from Bihar, West Bengal are trafficked for work in Jari, Purse, Bags, and Handicrafts making units.

It was informed by almost all the sex workers that they are aware that Nagpada Police is working for their welfare and protection. It was informed by a 30-year-old sex worker that they get police support. It was inferred that sex workers generally don't resort to the police for any assistance. Some Police officials informed at Nagpada station that sex workers are subjected to raids in Kamathipura for drugs for checking minors, and for arresting middlemen under *The Immoral Trafficking Prevention Act, 1956* for renting and living off earnings of Sex workers, but they never arrest sex workers. The Police at Nagpada station informed that sex workers approach them very rarely, 3 to 4 times in a year, in such cases when their live-in partners are perpetrating domestic violence on them, or taking away their children, or taking off their money. Otherwise, sex workers never approach the police.

The police officers informed that the sex workers are generally charged under the *Narcotics Drugs, And Psychotropic Substances Act, 1985 (NDPS ACT)*, as the sex workers are in the habit of consuming the drugs. The Senior Inspector cited one recent example where they caught a Bangladeshi transgender sex worker who had forged documents like an Aadhar card, Pan card, and Passport. There is a proposition about the increasing number of prison inmates in Byculla prison charged under *The Immoral Trafficking Prevention Act of 1956*.

On inquiring about the types of complaint cases filed by the sex workers in the police station, it was informed that some cases are filed concerning payment disputes with the customers. It was informed by the Superintendent of Police of Nagpada police station to the team that the sex workers face more personal issues and bring complaints on that only, for example, abuse and harassment by family members. The police officers informed that in a year they receive more than 40 to 50 cases per year relating to abuse, beating, and grievous hurt of the sex workers under sections 323 (Punishment for Voluntarily causing Hurt), 504 (Intentional insult with intent to provoke breach of peace) of the *Indian Penal Code, 1860*. There are few custody-related cases of children. It was informed by the Superintendent of Police that “when there is any child from the sex worker and customer relationship, the customer takes away the child from the woman.” There was mention of a recent case where the partner of the sex worker has, without the consent of the mother, taken away the custody of the child from the sex worker, later the police officers returned the child to its mother when she approached the NGO and the Child Welfare Committee.

9.12. Substance Abuse Among Sex Workers.

The Superintendent of police at Nagpada Police Station informed about the rampant alcoholism and drug abuse in the area. This has considerably increased over the years. It is

not just the customers who come intoxicated, but the sex workers, too have taken to certain forms of illegal narcotics and hallucinogens. The issue of alcoholism is not new to the area and still continues. However, substance abuse shows increased consumption, one such psychotropic drug being widely used is ganja, weed, 3,4-methylenedioxy-methamphetamine (MDMA), and diacetyl-morphine due to easy availability. Though such cases come to the police, they are very few in number. The use of such drugs has been strictly prohibited and penalized in *The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 (NDPS Act 2001)*.

On observation, it was evident that there was an alcohol store at the entrance of the area with many customers lined up. The women had packets of chewable tobacco and *pan masala* stacked with them. The sex workers were constantly consuming the same in groups. When asked about it, one 45-year-old woman (worker) unfolded her tale of how her customers would come intoxicated and abuse and beat her, she retaliated back then. These were incidents when she was young and when she was just brought to Kamathipura.

It was observed that there had been increased consumption of cheap drugs and their abuse, though the sex workers did not reveal the source of the drug supply. There seems to be scope for drug peddling and smuggling nexus among sex workers in Kamathipura. This has not only increased the risk of abuse by customers on to the sex workers when inebriated but has made the workers incapable of defending themselves when they are intoxicated. This situation could worsen if a sex worker gets addicted to certain drugs. Since the income barely meets the needs, they often resort to chemically produced drugs, which are cheaper but equally toxic and lethal. This further strain the lives of children whose mothers' become addicts. It forces them to fend for themselves (adding to their problem) and increases the risk of exposing underaged children to narcotics.

The issue of access and consumption of illegal drugs and even manufacturing of them in houses of Kamathipura is found to be a prevalent practice. The police are empowered under *The Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001*, to carry out raids to stop and restrict such houses and areas without a warrant the Act further provides for the creation of special courts to hear cases on this issue for a speedy trial. Law enforcement agencies are making an effort to implement the *Act*. There is Narcotics Control Bureau which checks drug abuse. The NGOs have been working to crack down on the nexus and to conduct drug de-addiction programs. There are many rehabilitation centers in the area, but they barely have sex workers who need assistance.

9.13. Working of Non-Governmental Organizations to Support Sex Workers During Covid-19

- ✓ **A Shelter Home** based in Mumbai is a Government Children's Home those shelters over 200 children – these include children in need of care and protection as they are rescued from situations of human trafficking, domestic violence, child labor, child sexual abuse, etc., as well as children in conflict with the law.
- ✓ **Life-Skill Sessions:** During the pandemic, fun games & activities for 20 children and nine online life-skills training sessions were conducted each from August 2020-March 2021. For children who were completely housebound by the pandemic, these sessions were a source of relief, comfort, and joy for sex workers children.
- ✓ **First-aid workshop:** At this shelter home, volunteers from a college conducted a

virtual first-aid workshop for the children's home, teaching them the basics of first-aid such as wound management, burns response, etc.

- ✓ **Resource Building:** The NGO, in partnership with an MNC, 50-inch LED TV, a laptop, and two storage cupboards were donated to this Home to aid the children in educational activities. Additionally, donated over 104 Books and Stationery, including story books, picture books & moral stories, in English, Hindi & Marathi. Some Civil Society Organization based out of Bombay has worked to fulfil the needs of the vulnerable and marginalized in Mumbai over the last 25+ years. One of their core tasks is to reintegrate nearly 800 such calls were made to reintegrate sex workers and ex-prison inmates with alternate livelihoods. During the early days of the pandemic, it was observed that these communities of sex workers and ex-prison inmates faced a lack of reliable information about the pandemic and its safety measures.
- ✓ These Civil Society Organizations worked to free victims from commercial sexual exploitation since 1993, till date rescuing over 6700 girls. The NGO currently operates four shelter homes in Delhi, Mumbai, Boisar & Pune. These Civil Society Organizations work for a world free of exploitation, where women can live confident lives with a clear sense of positive identity and self-worth. Their home for survivors of trafficking in Thane, Mumbai, provides women with livelihood skills, vocational training, and education opportunities.
- ✓ Another NGO works to protect potential and actual women and child victims of human trafficking. It caters to children of sex workers and girls who are victims of violence and abuse.
- ✓ The NGOs mostly support rehabilitation, health-medical aid, and education of their children, which was provided by NGOs and classes run by such NGOs. As one sex worker stated that children still have difficulties adjusting to the government school. Therefore, tuition classes provided by organizations and foundations help in coping up with their studies. A worker who has been suffering from chronic asthma for the past three years informed the team that the medication prescribed by the hospitals is expensive. Therefore, these NGOs look after her medical expenses. Many classes and rehabilitation camps function in the area, teaching professional skills to the workers and rehabilitating them. Some have left the profession of sex work and landed themselves other occupations through rehabilitation programs run by these NGOs. More than 15 foundations are working in the area, all in tandem to help the sex workers look after their physical and mental health, education, and overall well-being and improvement.

9.14. Common Grievances of Sex Workers.

- ✓ **Low earning-** Most sex workers are informed that their income is very minimal as, in some cases, they get merely 50 to 100 Rs. for one client which is for a duration of almost 15 to 30 mins. Most sex workers earn around 5000- 8000/ Rs. per month and sometimes even 3000/- Rs. only per month. Their poverty and disadvantaged socio-economic background compelled them to enter sex work. Their present state of earnings is minimal, and they feel exploited compared to any other form of an unorganized class of profession.
- ✓ **Problems in Rent payment-** As the sex workers live on very low earnings, they are

unable to pay rent for the premises in which they live in Kamathipura. This issue is faced by almost everyone there. One lady told the team that the room rent is Rs. 7000 per month, which is paid by 3 to 4 sex workers living there. Also, the rent is preferably paid daily, which poses a burden on them.

- ✓ **Insufficient space-** They live in small compartments with no ventilation and windows in the streets of Kamathipura, which might sometimes be suffocating for them to live.
- ✓ **Poor infrastructural facilities-** It was observed that there are no proper drinking water facilities, and water is stored in large drums, which they use for every purpose.
- ✓ **Lack of Awareness of Governmental Schemes for sex workers-** The sex workers in Kamathipura are generally unaware of the government schemes available, depriving them of their fundamental right to life.
- ✓ **No Bank account-** It was found that some of the sex workers don't have bank accounts. That means they are not aware of the banking services. They are not getting the benefit of the Pradhan Mantri Jan Dhan Yojana. In the absence of a bank account. Also, due to no bank account, there is no saving of the earnings for future or emergencies.
- ✓ **Separation from their Children-** Mostly, all sex workers are compelled to separate their children from them. Their children live in their native village as the sex Workers face a lot of issues while raising the children there.
- ✓ **Senior Citizen Sex worker issue-** there is no facility or scheme available for senior citizen Sex Workers for rehabilitation, and no Social Security measures preventing them from returning to this profession in the form of a middle person.

9.15. Recommendations.

- ✓ **Legal Recognition of Sex Workers as Profession:**The Supreme Court of India, in the landmark judgment of *Budhadev Karmaskar vs State of West Bengal* observed that “sex work is a profession” like any other, “Sex workers are entitled to equal protection of the law. Sex work or prostitution is not illegal in India.”
- ✓ **Scope to Include Sex Work and prostitution under the category of Unorganized Worker, according to the definition given under the Unorganised Workers’ Social Security Act, 2008**The Act defines an unorganized worker “as a home-based worker, self-employed worker or a wage worker in the unorganized sector”, this definition is broad and inclusive, and this has to enable the scope to include sex workers in the same.

9.16. Right to Dignity & Right to Equal Protection of Law for Sex Workers as Professional Services.

The sex workers are equally entitled to a life of dignity as guaranteed under *Article 21 of the Indian Constitution*. The term to be used for their services should be levelled as “profession,” and they should be termed as Sex workers. The name-calling and the stigma associated with Sex Workers should not be used. It is significant to note that there is a draft Private member Bill namely *The Sex Workers (Rehabilitation and Social Security) Bill, 2015*, to provide for the rehabilitation and social security of sex workers.

This Bill defines the term sex worker and provides a right-based perspective for sex workers, which may help enumerate the rights of sex workers in the near future. However, this bill is awaiting legislative approval and enforcement. The Bill defines 'rehabilitation' refers to a

process aimed at enabling sex workers to attain and maintain maximum independence, full physical, sensory, intellectual, psychiatric, social and vocational ability, inclusion and participation in all aspects of life; The Bill defines 'sex worker' means a female, male, and transgender adult or young person, generally over the age of eighteen years, who receive money or goods in exchange for sexual services, either regularly or occasionally; The Bill defines 'services' means services provided by members of any profession or trade or by any Government, local authority, or establishment and includes services relating to banking and finance, education, health, insurance, rehabilitation, entertainment, recreation and hospitality, transport or travel, and telecommunications.

9.17. Protection of Sex Workers from Police Procedures & Arrest:In the Supreme Court judgment of *Budhadev Karmaskar vs State of West Bengal*, the SC maintained that "Sex workers are entitled to equal protection of the law. Criminal law must apply equally in all cases on the basis of 'age' and 'consent.' When the sex worker is an adult and is participating with consent, the police must refrain from interfering or taking any criminal action". It is strongly suggested that sex workers should not be arrested nor subject to brutal treatment by police.

It is emphasized that only certain aspects of sex work as provided under the *PITA Act* are only punishable as soliciting, exploitation, and renting out of the property for sex work are all punishable as per the *Indian Penal Code (IPC)* and *The Immoral Trafficking Prevention Act (PITA)(1965)*. In case of police raids, the pimping, exploitation of minor girls, renting out of the property for sex work, and living off the earnings of income of Sex Workers are only to be punished as provided under the relevant provisions of as below:

Under Section 3. Punishment for keeping a brothel or allowing premises to be used as a brothel.

Under Section 4. Punishment for living on the earnings of prostitution.

Under Section 5. Procuring, inducing or taking a person for the sake of prostitution.

Under Section 6. Detaining a person on premises where prostitution is carried on.

Under Section 7. Prostitution in or in the vicinity of public places.

Under Section 8. Seducing or soliciting for the purpose of prostitution.

Under Section 9. Seduction of a person in custody.

9.18. Sensitization & Training to Police on recent Judicial Developments on Sex Workers:

In the SC judgment of *Budhadev Karmaskar vs. State Of West Bengal*, The SC directed that the police and other law enforcement agencies should be sensitized to the rights of sex workers who also enjoy all basic human rights and other rights guaranteed in the Constitution to all citizens. The Police should be made aware that sex work is not illegal in India. Rather the Police should be made aware that sex work is a profession in India and that sex workers are entitled to legal and constitutional rights, human rights as any other class of professionals. The sex workers have the right to register complaints and all other rights as any other citizen of India. Police can only arrest under the above-mentioned provision of *The Immoral Trafficking Prevention Act (PITA) (1965)* and the *Indian Penal Code (1860)*.

9.19. Strict & Full Effective Implementation of The Immoral Trafficking Prevention Act (PITA)(1965)to Establish Special Courts, Special Police Officers and Advisory body:It was found by the observation that there is no special Police Officer, nor was there any information with the Police nor with Sex workers on the existence of the Advisory Board, nor

was there any Special Court. The pertinent provisions of *The Immoral Trafficking Prevention Act (PITA)* Section 22, 22A, 22 AA Power to establish Special Courts, to establish one or more courts of Judicial Magistrates of the first class or Metropolitan Magistrates for the trial of such offenses by Central and State Government for the purpose of providing for speedy trial of offenses under this Act.

Section 13. *A special police officer and advisory body.* “There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offenses under this Act in that area. (2) The special police officer shall not be below the rank of an Inspector of Police.

9.20. Compulsory Monthly Health check-up for Sexually Transmittable Diseases (STD) & Record Keeping: In this profession, it is suggested to introduce the mandate of regular health check-up campaigns. As there is a risk of spreading communicable diseases among them. The Nagpada police station Superintendent of police also agreed with this suggestion. He suggested having at least “one check-up once a month.” As he informed that “out of five, generally three are found HIV positive when there is any medical check-up.” As the customers are generally from the unorganized labour class so there is a great risk of sexually transmitted disease like HIV. Though they use condoms but still, regular check-up is mandatory to keep a check on their health conditions and record keeping on these.

9.21. Organizing Awareness Campaign for Sexually transmitted disease & De-Addiction Campaign: It is observed that alcohol, and drugs consumption is common among them. It was informed by Nagpada Police that they receive daily cases related to *Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act)*. It may be directed to the Ministry of Health and Family Welfare and Directorate of Health, Maharashtra State Government, to conduct these camps periodically and maintain record keeping on the same. Direction to the Ministry of Health and Family Welfare and Directorate of Health, Maharashtra State Government to direct NALCO to conduct these camps periodically and maintain record keeping on the same.

- ✓ **Camps on the following:** Alcohol De-Addiction. Drugs De-Addiction. Tobacco De-Addiction. De-Addiction for any other substance abuse.
- ✓ **Civil society organizations** registered and funded by Maharashtra State Government working on similar issues should be directed to conduct camps on these periodically and to maintain record keeping on the same.

9.22. Need for Housing Infrastructure & Coverage under Pradhan Mantri Awas Yojana (PMAY) (first launched on 25th June 2015): The sex workers live in slum-type lanes in small compartments with little or nil ventilation. These houses are makeshift arrangements and not pukka homes. Sex workers should be provided housing facilities by Government. These houses do not even have basic facilities like clean drinking water and hygienic toilet facilities.

It is suggested that the Government initiated a scheme by Ministry: Ministry of Housing and Urban Poverty, namely “Pradhan Mantri Awas Yojana (PMAY) launched in 2015. It is an initiative by the Government of India in which affordable housing will be provided to the urban poor with a target of building two crore (20 million) affordable houses by 31 March 2022.

9.23. Rehabilitation & Social Security Cover, Shelter Under Protection Home for

Senior Citizen Sex Workers:It is suggested to have some rehabilitation schemes for senior citizen sex workers so that they can get out of this whole profession as many of them want. Social security measures for such sex workers should be provided. Under the Constitution of India, “*Directive Principles of State Policy* provides that Right to public assistance in certain cases- under *Article 41 of the Indian Constitution* says that the State has a duty to provide employment, education and to provide help to those who are unemployed, and those who can’t take care of themselves like old age people.

9.24. Implement provisions of Protective Homes under the *Immoral Trafficking Prevention Act, 1956* for senior citizen Sex Workers:At present, there is only one shelter home in *Matunga* for the rehabilitation of victims who are rescued under the *Immoral Trafficking Prevention Act, 1956 (PITA)*. There is a need to have more such homes so that more and more victims can be rehabilitated.It is suggested that senior citizen Sex Workers should be provided protective homes under the provision of the *PITA Act*. The “protective home” means an institution, by whatever name called (being an institution established or licensed as such under section 21), in which 3 [persons], who are in need of care and protection, may be kept under this *Act*.

9.25. Provide Living Wage for Sex Workers Under Directive Principles of State Policy, Indian Constitution, Recent Labour Code under *Wage Code*:It is suggested that the “living wage for workers” should be provided as per the *DPSP Indian Constitution- “Article 43* refers to the living wages for the workers, which means that the state has a responsibility to make a provision regarding the wages of the worker and wages should be as such that he can maintain all the basic necessities like clothes, food, shelter.Under *The Wage Code*, there is a provision for minimum wage fixation and payment by the Appropriate Government under Sections 5, and 6 for sex workers. One of the blatant violations of the right to life of sex workers was found to be the barely minimal amount of money paid to sex workers as petty as ranging from Rs 50 – Rs300 for the time duration of half hour to an hour by each customer, further from this amount the sum of money is paid to the women’s whose house accommodation is used which is around 50 Rs per customer. A certain sum of money is given out to middlemen. Besides, it was found that some sex workers mentioned some customers do not pay the amount as agreed upon, leading to disagreements.Almost around 20 sex workers in Kamthipura road no 12, 13 conveyed they earn barely the same amount from each customer; however, they said they are paid around 5-6 thousand in some cases 8 thousand monthly, depending on the inflow of customers. This shows their dire income levels, which need improvement.

9.26. Coverage of Social Security for Sex Workers as an Unorganized Worker Category under *The Code on Social Security, 2020*: It is suggested that social security measures, including health care, and income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, and maternity, should be provided to sex workers as any other class of unorganized profession. It is suggested that "social security" as defined under *The Code on Social Security, 2020* should be defined as “Social Security means the measures of protection afforded to employees, unorganized workers, gig workers, and platform workers to ensure access to *health care and to provide income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity* or loss of a breadwinner by means of rights conferred on them and schemes framed, under this Code.”

9.27. Direction to Municipalities,Legal Services Authorities (LSA) Facilitating Government Identity Documents – Linking of Government Welfare Schemes:It was

found that some sex workers have forged documents like Aadhar cards, passports, and pan cards etc. A survey needs to be conducted by the Government Municipal authorities to prevent misuse of these documents. It is suggested that the Legal Services Authorities should be directed to send their para legal volunteers to provide Identity Cards. It is recommended that the Municipal Authorities conduct Aadhar Camps or refer them to Aadhar Kendras or nearby Banks for the same. This is important as most of the Government services including *Pradhan Mantri Garib Kalyan Yojna(2022)*, including free distribution of food grains, and ration supply, are linked to the Aadhar Cards.

9.28. Rehabilitation Schemes for Sex Workers by Central and the State Governments:In the Supreme Court of India, namely *Budhadev Karmaskar vs State Of West Bengalon 2nd August 2011* , SC directed that the “Central and the State Governments through *Social Welfare Boards* should prepare *schemes for rehabilitation* all over the country for physically and sexually abused women commonly known as Sex Workers as we are of the view that the Sex Workers also have a right to live with dignity under *Article 21 of the Constitution of India* since they are also human beings and their problems also need to be addressed.

9.29. Vocational Training and skill development: As per the guidelines in *Budhadev Karmaskar vs. State of West Bengal 2010*, more awareness needs to be spread to them regarding the importance of learning new skills and vocational training as Beautician Courses. Also, proper schemes need to be formed to provide them with such skills so that they become able to have an alternate source of earning and independence. It is suggested that sex workers should be brought under the ambit of Women Training under the Ministry of Skill Development & Entrepreneurship takes care of providing skill training to women in the country which aims at stimulating employment opportunities among women of various socio-economic levels and different age groups. It is suggested that sex workers should be covered under the *Women's Vocational Training Programme (WVTP)* was designed and launched in the year 1977 to mainstream women into economic activities. Women's Vocational Training Programme promotes Vocational Training for women for wage-employment in the industry as instructors and also promotes their self-employment.

The Program offers:

1. Industrial skill training under Craftsmen Training Scheme (CTS)
2. Instructor skill training under Craft Instructors Training Scheme (CITS)
3. Demand-driven Short-term courses
4. Special programs for training the Instructors of ITIs
5. Tailor-made courses as per the industry's demand

Further, there are National Skill Training Institutes (erstwhile National/Regional Vocational Training Institutes) for Women under Women Training, DGTThe vocational training to women, Directorate General of Training, Ministry of Skill Development & Entrepreneurship was implemented through a network of 11 institutes – One National Vocational Training Institute (NVTI) at Noida (1977) and ten Regional Vocational Training Institutes (RVTIs) at Mumbai (1977), Bengaluru (1977), Thiruvananthapuram (1983), Kolkata (1986), Tura (1986), Panipat (1986), Allahabad (1991), Indore (1992), Vadodara (1993), and Jaipur (1994). The names of these women's Institutes have been changed to “National Skill Training Institutes for Women” (NSTIs for Women). These are functioning directly under the control of the Central Government. The Skill Training is provided through CTS (Craftsmen Training Scheme) and CITS (Craftsmen Instructor Training Scheme) courses under Vocational Training Programmes

9.30. Facilitate Mudra Loan Yogna, Stree Shakti Yojanavia Banks for Sex Workers to support the livelihood:After successfully completing the Vocational taring, the sex workers may be facilitated with financial loans for women entrepreneurs initiated by the Government of India to support their livelihood as follows:

- Mudra Loan for Women
- Annapurna Scheme
- Stree Shakti Yojana
- Dena Shakti Scheme
- Bhartiya Mahila Bank Business Loan
- Mahila Udyam Nidhi Yojana
- Orient Mahila Vikas Yojana Scheme
- Central Kalyani Scheme
- Udyogini Scheme

9.31. Access to Counsellors “Mental Health ProfessionalUnder the Mental Health Act 2017, Apart from regular health check-ups, there is also a need to have regular counselling sessions to check their mental health. The children living there must also have access to counsellors. It is suggested to provide for sex workers under *the Mental Health Act 2017*, providing for a “mental health professional” as a psychiatrist, a professional registered with the concerned State Authority under the *Act 2017*

9.32. Education for Children of sex workers under the Right to Education RTE Act 2005: It is found that around 20 sex workers, following interaction with them it was informed that they live their children at their paternal home, stating that they are mostly engaged in domestic work here in Mumbai city, they visit home once a year and send money to them for children's education. Many of the sex worker's children study in private English education in their city of residence. The sex workers and the police did not confirm the fact of the existence of any night school or any Brostal homes in this vicinity.

There are several around 10 NGOs that provide some education to children just to support their literacy at present in Kamathipura. But there is no concept of neighborhood Schools nor any reservation benefit for admission under the *Right to Education (RTE) Act* for the children of sex workers. It is suggested to give effect to the relevant provision of the *Right to Education Act* on the same and also to set evening Schools and Brostal Homes by the State Government of Maharashtra for the children of sex workers in Kamathipura area.

9.33. Children welfare schemes and access to education- The children of the sex workers need to have access to education. They must benefit from the *Right to Education Act of 2010* and all other schemes such as Midday meals for children. Proper nutrition must be given to them at an early age. It is suggested *a separate fund* needs to be created by the Government for a better life for the children. As the children can't stay with their mothers during their work hours, special homes need to be made for them.

- ✓ **State Women's Commission to function as Grievance redressal cell for sex workers** - There must be a unit dedicated to sex workers where the sex workers can freely tell their issues. *The State Women's Commission*, set up under the *National Women's Commission Act 1993*, is, directed to conduct periodical visits and inspections on their living, health, and working conditions. Sex workers should be made aware of their right to approach the same.

- ✓ **Rehabilitation for senior citizens-** It is suggested that to have some rehabilitation schemes for senior citizen sex workers so that they can get out of this whole profession as many of them want.
- ✓ **Checking the validity of Government documents-** It was found that some sex workers are having forged documents like Aadhar card, passport, pan card etc. To prevent misuse of these documents, a survey needs to be conducted by the government authorities.
- ✓ **More Shelter and Rehabilitation Homes-** Currently, there is only one shelter home in *Matunga* for rehabilitating rescued victims under the *Immoral Trafficking Prevention Act, 1956 (PITA)*. There is a need to have more such homes so that more and more victims can be rehabilitated.
- ✓ **Unorganized Class of Profession-** the sex workers voluntarily pursuing their profession must be considered informal workers to benefit from the government schemes.

9.34. Overview and Legal Obligations.

States are under an obligation to take all appropriate measures to eliminate discrimination against women in “other areas of economic and social life” under Article 13 of CEDAW. Thus, Article 13 safeguards rights that are relevant in the economic and social fields, even if they are not explicitly mentioned. Under Article 13, the State parties are under an obligation to take measures to guarantee women the right to family benefits; the right to bank loans, mortgages, and other forms of financial credit; as well as the right to participate in recreational activities, sports and all aspects of cultural life. Moreover, States must put in place measures to ensure availability and access to adequate housing and other social benefits for women sex workers, including reviewing its laws and policy measures that provide remedies for women sex workers who are discriminated against in this context. Further, State should adopt measures to promote women’s sex worker's access to development and micro-credit opportunities in the event they wish to participate in such projects.

One of the central objectives of the Framework (CEDAW) is to encourage the documentation and analysis of a diversity of sexual lives by sex worker projects, networks, and NGOs. Advocates play a key role in analyzing specific situations to identify and document evidence of these connections. Advocates can take up the issues of Sex Workers and, with the help of networks, and NGOs can identify gaps between legal doctrine and law enforcement, between policy and reality, and become further involved in the process of legal and policy reform, including on new aspects or issues and can challenge the issue before the concerned authorities. The aim of this Smart Guide has been to integrate the United Nations Convention on Elimination of Discrimination against Women (UNCEDAW) based advocacy into their sex workers’ rights activism. Women's sex workers deserve the protections offered by UNCEDAW. It must be stated that India has ratified CEDAW under *article 1 of the Indian constitution* under the *Directive Principle of State Policy Provisions*.

Chapter -10.

Conclusion.

Conclusion.

“Hate the crime and not the criminal” as aptly said by Mahatma Gandhi. Further, Nelson Rolihlahla Mandela Loudly said after being released from long incarceration-“It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but by its lowest ones”. All men are created equal and gifted by their creator with some fundamental rights. These are the rights primarily the right to life and liberty, but if a person violates societal ethics, these rights are revoked with appropriate consequences. After a long struggle, society acknowledged that prisoners have rights that should be respected. Prison systems around the globe continue to face fundamental challenges that undermine the ultimate purpose of incarceration as a sentence, namely, to protect society from crime and to prevent recidivism by supporting rehabilitation and preparing prisoners for their social reintegration upon release. Overincarceration, poor conditions, and the serious neglect of prison services are causing prisons to be a weak link in criminal justice systems and a low priority in reform efforts. The consequences for public safety, health, and human rights, as well as the financial and socioeconomic costs resulting from these deficiencies, are immense. The primary goal of prisons is to reintegrate convicts back into society. Evidence-based reports, public litigation even the Commission of inquiry suggested transforming the life of the prisoners.

There is a pressing need for an Inmates Grievance Committee in every jail to actively function and which shall be monitored by the human rights commission for timely action and solution. It ought to be contained chosen detainees to address the organization without dread of backlash, concerning complaints, and all the while causing advancement of other methodologies for prisoners’ cooperation in the task and basic leadership procedure of the correctional facility. A model new All India Jail Manual ought to be encircled by the bearing of the Supreme Court. Appropriate revision ought to be made in the Criminal Procedure Code to change the safeguard technique in order for the greatest detainees could be discharged on safeguard. It is the major standard of common equity that a guilty party is esteemed honest except if his blame is demonstrated. Consequently, an unconvinced wrongdoer ought not to be sent to jail for bailable offenses a guilty party ought to never be sent to imprisonment.

Sex workers face discrimination and stigma, which undermines their ability to ensure their physical well-being. They may not want to identify their occupation when seeking medical care at government or private clinics since they have been mistreated, discriminated against, and victimized in the past. They are condemned, not diagnosed and checked as expected, forced to take HIV testing, misled about services at private emergency clinics, or denied services entirely.

Sex workers have been denied a sanitary workplace with standard job protective requirements. This comprises medical and social benefits, rules for security, as well as legal rights and remedies. Labour laws must be expanded to encompass not only sex workers in rehabilitation institutions but all individuals who lack access to legal remedies. Caring for the elderly qualifies as one of the most elemental roles a society must be held accountable for. While most developed countries have legislation and schemes in place to ensure that no

senior citizens are deprived of their rights, a large part of the population of countries such as ours remains unaware of them owing to low literacy rates. While some of the most basic laws include the elder law and the Maintenance and Welfare of Parents and Senior Citizens Act, there are other sections of the Indian constitution that safeguard the rights and interests of the elderly. Senior citizens need almost continual healthcare and they shall be provided with maximum supportive facilities to live the rest of their life happily. When it comes to childcare institutions, providing children with various enabling facilities as per the Child Rights Convention and national legal framework so that they would become responsible citizens in the future.

The compliance and effective enforcement of the Human Rights of the marginalized has been one of the most significant thresholds of a civilized society. In line with it, this fact-finding visits reports cull out the major issues and challenges in the implementation of legal, and human rights, of the marginalized sections of society.

The report submits progressive and necessary socio-legal recommendations to promote and uphold the better protection of human rights. Some of the major issues commonly found in the reports are the need for the improvement of infrastructure quality and their regular maintenance and repair. There is a need for digitization, and electronic record-keeping needs to be addressed. Additionally, the understaffing issue needs to be considered, particularly regarding the permanent and sanctioned posts in most of the institutions mentioned above. Another commonly prevalent issue is the need for improving the standards of health and hygiene and related medical facilities along with the overall living and working conditions of these Government institutions. Additionally, there must be overall strict compliance towards implementation of Maharashtra State guidelines, Reports, Circulars, and Advisory issued by the Maharashtra State towards better protection of human rights of the marginalized sections of the society. In pursuance of this, the fact-finding field visits report submits a series of socio-legal recommendations to consider for better protection of human rights at the above-mentioned Government institutions. These findings alert everyone that society considerably failed to adhere to basic duty and humanism. Therefore, the collective duty of all citizens empowers these vulnerable sections. Let us “Stand up for Human Rights”.

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Addendum:

1. Structured Interview Guide-Children Care Institutions Field Visit.

- **Infrastructure**
 1. Is the infrastructure of the children's home appropriate in accordance with the provision mentioned under Section 16 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 2. What is the condition of the building? How many dormitories are there, and what is the capacity?
 3. What is the condition of the washrooms? How many washrooms are there?
 4. What are the availability of water and electric supply in the home?
 5. Is there a play area for the children? Is the premise child friendly?
 6. Is there a clean drinking water facility?
 7. Whether clothes, toiletries, and daily needs essentials are provided to children?
 8. What is the condition of the kitchen?

- **Population-**
 1. What is the intake capacity at the Children's home? How many children are currently living there?
 2. How many children are there in one room?

- **Children- Case History and Social Profile**
 1. What is the age group of the children in the childcare institution?
 2. What is the social, economic, and educational background, family background, residence, and domicile of the inmates of juvenile homes?
 3. What is the total number of juvenile inmates from Maharashtra, outside of Maharashtra, or any foreign nationals?
 4. Could the parents/guardians of the Children living at the Child care institution be traced? How many children in the last three years have been restored back to their parents/guardians? How many children at present are up for adoption in the childcare institution?
 5. Does the Children's home have any children who were transferred there from jail? If yes, under what circumstances were they transferred to the home?

- **Legal Aid**
 1. Are the children living in the Children's home provided with legal aid services in compliance with S.8(3)(c) of the *Juvenile Justice Act of 2015*? How often are these children contacted by their legal aid lawyers?
 2. Do the juvenile home inmates/staff feel the need for legal aid and assurance and any requisite support from the Human Rights Commission?
 3. Has the staff ever approached MSHRC or any other State Human Rights Commission and State Legal Services Authority to take up the issues of juveniles? Have the staff approached NGO civil society?
 4. What is the total number of juveniles in Maharashtra State?
 5. What are the major criminal charges leveled against the juveniles? How many juveniles are charged with rape, murder, dacoity, and offenses above seven years of imprisonment? How many juveniles are charged for pick-pocketing and theft?
 6. How many cases of physical violence or sexual violence, or sodomy have been reported from Juvenile homes?

- STAFF-
 1. How many staff are there in the institution?
 2. What is the ratio of staff to children?
 3. What is the rank of the staff?
 4. Are there trained staff in the institution?

- HEALTH AND MEDICAL FACILITIES-
 1. Does the children's home have adequate medical facilities (medicines and first aid) as prescribed in section 47 of the *Rules*?
 2. Whether the children have access to Mental Healthcare? Is there any Resident Counsellor/ independent counselor/child psychologist in the Child Care Institution available? If yes, then what is the visiting schedule?
 3. What is the total number of juveniles with disabilities or mental health problems?
 4. What are the major physical and psychological health problems faced by juveniles in Juvenile homes?
 5. Has there been any case of death or suicide of juveniles reported from the juvenile home?

- EDUCATION-
 1. For children between the age of six to fourteen years living at the Child care institution, is any assistance provided for birth registration or obtaining proof of identity in compliance with provisions of the *Right of Children to Free and Compulsory Education Act, 2009*?
 2. What are the recreational activities taken up at the childcare institution? Do the children play any sports/take part in cultural activities?
 3. What are the facilities available with respect to skill training and educational services at the Child care institution?
 4. Are any individual care plans developed for the child as per Section 16 of the *Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 5. Whether vocational training is given to children?
 6. What is the nature of schooling provided to children?

- NUTRITION-
 1. Whether the children get proper diet and nutrition as prescribed under Section 48 of the rules?

- SECURITY
 1. Has there been any case of escape in the past three years? What is the procedure followed in case of any escape from the Children's home? Is the procedure followed in consonance with Section 59 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 2. Has a child ever failed to return to the childcare institution from a leave of absence?
 3. When was the last inspection visit conducted by the JJB at the Children's home?
 4. How many security guards are there in the Child Care Institution? Is there a female security guard? Are there any reserve security personnel for emergencies?

5. How many CCTVs are there? Do children have the right to privacy and confidentiality?
 6. How often are the juveniles allowed to contact or visit or meet through online video conferencing with family?
- SUBSTANCE ABUSE-
 1. Is there any special provision for children addicted to substance abuse? Are the directions laid down under Section 49 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*, followed in the children's home?
 2. Are there any problems with drugs or substance abuse reported from Juvenile homes?
 - GRIEVANCE MECHANISM
 1. Does the Children's Home have the Complaint Box as prescribed under Section 45 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*? What is the frequency of opening the complaint box, and who opens it?
 2. What are the major grievances of the juvenile inmates and problems faced by staff in JJ homes, and what are their suggestions to improve the same?
 - REHABILITATION
 1. What steps are taken for the rehabilitation and social integration of the Children in conflict with the law living in the Child care institution?
 - COMMITTEE -
 - 1) How many members and of what rank are there in the CWC? What are the qualifications of the members in light of Section 13 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*? How many personnel are there in the children's home? Are they fulfilling their duties mentioned under Chapter XIV of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 - 2) How many times a week does the Committee hold its sitting as per Section 7 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 - 3) Are the children's case files adequately prepared and maintained according to the mandate of Section 54 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 - 4) Does the Children's home have a decision-making committee comprising children as prescribed under Section 46 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*?
 - 5) In what circumstances was the child produced before the committee? Was the procedure prescribed under Section 8 of *The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002*, followed while admitting the child to the Children's Home?

1. Senior Citizen and Old Age Home- Field Visit. Semi-Structured Interview Guide - Senior Citizen Home Visit

For inmates

1. What is the reason for your admission to an old age home & how did you learn about it?
2. Do you communicate with your family, friends, or relatives? If yes, then how often?
3. How is the indoor & outdoor infrastructure of the premises?
4. How is the quality, quantity & frequency of the food provided?
5. Are you provided with separate food in the case as prescribed by the doctor? (Example - food with less or no salt for BP, sugar or carbohydrate content for Diabetics, etc.)
6. What is the process of getting medical care when requested? How much time does it take?
7. Is there any counseling/consultation by a Govt. registered psychiatrist for mental health well-being & issues?
8. Are there any social activities/events being conducted by the old age home for the emotional well-being of the inmates?
9. What issues do you face related to food, electricity, health, infrastructure, staff, etc.?
10. Do you receive any money or financial assistance from your family, friends, or relatives?
11. What are your suggestions/complaints/shortfalls to the Government regarding the existing provisions in the old age homes & their facilities?
12. What are the major grievances of the inmates, and what are their suggestions to improve the same?
13. Do you need legal aid, assurance, and any requisite support from the Human Rights Commission?

For STAFF

1. What are the count of inmates (male & female), number of rooms, and number of inmates in each room?
2. What is the count of the staff (male & female)? Is it adequate or understaffed?
3. What are the following details and backgrounds of their senior citizens?
 - a. social (caste and religion)
 - b. economic (earlier profession)
 - c. educational profile (educational degree or literate or illiterate)
4. What is the educational qualification & professional experience of the staff? Are they trained in Elderly Care?
5. What are the duty hours of the staff? What are the responsibilities of each staff member?
6. Are there any timely infrastructural audits conducted by the concerned Govt. authority?
7. Is the Govt. aid disbursed regularly & received on time?
8. What are the criteria for admission to the old age home?
9. How are the medicines & other old age-related necessities provided?
10. Are there any health checkup camps conducted regularly?
11. Are there any facilities for the mental healthcare of the inmates?
12. Are there any social activities/events being undertaken as per Govt. guidelines or initiated by the old age home for the emotional well-being of the inmates?
13. What are your suggestions/complaints/shortfalls to the Government regarding the existing provisions in the old age homes & their facilities?
14. What is the frequency of inviting applications for old age homes from indigent senior citizens every year as prescribed under Rule 18(1)(B)(a) of *Maharashtra Maintenance and Welfare of*

Parents and Senior Citizens Rule, 2010?

15. Has there been an admission of any illiterate or very infirm senior citizen after the District Magistrate or other competent authority designated by the District Magistrate was satisfied that the senior citizen was not in a position to make a form application, as given under Rule 18(1)(B)(iv) of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*?
16. Whether there is the availability of an adequate number of application forms for maintenance in offices of common contact for citizens like Panchayats, Post Offices, Block Development Offices, Tehsil Offices, Collectorates, Police Stations, etc., as given under Rule 19(2)(ix) of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*?
17. How is the Management Committee prescribed under Rule 18(1)(D) of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*, constituted, and are the inmates suitably represented on the Committee?
18. During the Covid-19 pandemic, was it ensured by the District Magistrate that the senior citizens were provided with timely assistance and relief as prescribed under Rule 19(2)(vi) of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*?
19. Is the dedicated helpline for senior citizens established and functioning as mentioned under Rule 19(2)(x) of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*? Has it provided any temporary relief to any senior citizen in this home?
20. Whether the living space of the old age home has a minimum area of bedroom/dormitory of 7.5 sq. meters per inmate as prescribed by the Schedule mentioned under Rule 18 of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*?
21. Are the following facilities provided as prescribed under the Schedule for physical facilities for old age homes given under Rule 18 of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*?
 - (i) separate residential area for men and women
 - (ii) adequate water for drinking and ancillary purposes
 - (iii) electricity, fans, heating arrangement
 - (iv) kitchen, dining hall
 - (v) adequate number of toilets and baths, including toilets suitable for disabled persons
 - (vi) recreation facilities, television, newspaper, books and
 - (vii) first aid, sick bay, primary health care facilities
22. Are the following facilities in tune with the operational standards provided under the Schedule of *Maharashtra Maintenance and Welfare of Parents and Senior Citizens Rule, 2010*?
 - (i) nutritious and wholesome diet
 - (ii) adequate clothing and linen
 - (iii) arrangements for sanitation, hygiene, watch, and ward/security
 - (iv) arrangements with the nearest Government Hospital for emergency medical care and with the nearest Police Station for security requirements
 - (v) health insurance
23. What are the significant grievances and issues of the staff, and what are their suggestions to improve the same?
24. Have you ever approached MSHRC or any other State Human Rights Commission and State Legal Services Authority to take up the issues of Senior Citizens?

2. Differently abled Children and Government's Differently abled Boys Home - Field visit

Disabilities Covered in the Right to Persons with Disability Act, 2016

1. Physical Disability
 - a) Locomotor Disability
 1. Leprosy Cured Person
 2. Cerebral Palsy
 3. Dwarfism
 4. Muscular Dystrophy
 5. Acid Attack Victims
 - b) Visual Impairment
 1. Blindness
 2. Low Vision
 - c) Hearing Impairment
 1. Deaf
 2. Hard of Hearing
 - d) Speech and Language Disability
 2. Intellectual Disability
 - a) Specific Learning Disabilities
 - b) Autism Spectrum Disorder
 3. Mental Behaviour (Mental Illness)
 4. Disability caused due to-
 - a) Chronic Neurological Conditions such as
 1. Multiple Sclerosis
 2. Parkinson's Disease
 - b) Blood Disorder-
 1. Haemophilia
 2. Thalassaemia
 3. Sickle Cell Disease
 5. Multiple Disabilities

Semi-structured Interview Guide on *The Rights of Persons with Disabilities Act, 2016*

FOR ADULTS

1. Do you know that in case there is a threat of violence, you have the following rights?
 - a) Protective custody if they want
 - b) Maintenance
 - c) Free legal aid
 - d) Right to file a complaint to the State Commissioner of Persons with Disabilities
2. Do you feel the need for legal aid and assurance in any requisite support from the Human Rights Commission? Have the staff and inmates of PwD homes ever approached MSHRC or any other legal services institutions to take up the issues of PwD?
3. Where do you work? Is your workplace specially-abled friendly?
4. How do you travel to work? Do you get any assistance during traveling? [S.41]
5. Do you get priority treatment in hospitals? [S. 25 (c)]

6. Do you have access to treatment in private hospitals? [S.25(b)]
7. Have you faced discrimination in your workplace because of your disability?
8. Are you aware of the matrimonial incentives scheme by the Government of Maharashtra?
9. Do you get any pensions? If not, are you aware of the Indira Gandhi National Disability Pension Scheme?
10. Are you aware of any skill development or vocational training programs for you? What is the criteria/age limit to apply?
11. Do you know about employment exchange offices?
12. In Government Establishments, there should be one grievance redressal officer, especially for PwDs. Do you know about them?

FOR CHILDREN

13. Do the children get transport facilities for educational institutions, and are the attendants allowed to go to educational institutions for the children who have high support needs? [S 16 (viii)]
14. Are the teachers well trained for specially-abled children? When a child has more than one disability, for example, blind with autism or blind and deaf, are there trained teachers to deal with such cases in schools?
15. Every child with a benchmark disability has the right to free education till they are 18 years old, in a neighborhood school, special school, or in any school of their choice. Are you aware of this?
16. Are you aware of the Pre-Matric and Post-Matric Scholarship for Disabled Scheme by the Government of Maharashtra?
17. Are the toilets at school disabled-friendly? Are any attendants to help in the washroom?
18. Are there audiobooks and braille available in the library and classrooms?
19. What is the nature of schooling provided to the children?
20. Are the children of PwD admitted in neighboring Government schools under the *RTE Act*?

FOR BOTH

21. What problems did you face during COVID-19? With respect to healthcare and education?
22. If it is okay with you, can you please tell us your religion, educational background, and marital status? (as applicable)
23. How many family members are there in your family? How did you learn about this place?
24. What problems do you face that has not been addressed by the Government and what would you like to suggest for the same?
25. What are the major forms of disability observed among male/female/children?
26. What are the major grievances (residents/staff)?
27. What is the percentage of disabilities among males/females/children)?
28. What is the age group of male/female/children PwD living in the home?

FOR STAFFS

29. What is the Sanctioned capacity of the home? [Male / Female/ Children]
30. What is the number of persons residing in the home? [Male / Female/ Children]
31. How many rooms are there? What are their living arrangements?
32. What kind of special infrastructure is there to facilitate the residents?

33. What is the total number of staff? What is the ratio of residents to staff? What is the rank of such staff?
34. Have they received training and sensitizing programs so that they can cater to the needs of the residents?
35. What problems do they face while attending the specially-abled?
36. Is there any record of the number of persons having different disabilities? What is their socio-economic and educational background?

SCHEMES AND BENEFITS

37. Are you aware of any Schemes of the Government for disabled people? Was there any awareness program through which you learned about those schemes?
38. What procedure did you follow to avail benefits under any scheme?
39. What problems do you face while availing of these benefits? What is the attitude of Government Officials?

AT INSTITUTIONAL LEVEL

40. What is the arrangement for the health of residents in the home?
41. What is the arrangement for the education/skill development of residents in the home?
42. What is the mechanism of grievance redressal of residence in the home?
43. What is the source of funds for meeting the expenses of the institution? Is there any annual Maharashtra State Government funding available to such Persons with disabilities homes (PwD)?
44. Are the funds enough?
45. Are there any sponsors available for the education or treatment of children?
46. Knowledge about employment exchange
47. How the residents have come to this place
48. Any abuse, physical, mental, sexual, faced by the residents
49. Any case of death (suspicious/suicide) in the last two years
50. Kitchen and food quality

3. Beggars' Rehabilitation Centre Field Visit

Semi-structured Interview Guide for Beggars' Home Visit (19.10.2022)

1. What is the total number of Males and Females are in Beggars' Homes as of 19 October 2022? Do they live together, or is there a separate facility for them? How many dependent persons are accompanying the parents in Beggar's Home in light of the provision of Section 9 of the *Maharashtra Prevention of Begging Act*? How many children aged less than five years are present in the Beggar's Home? How many beggars are below the poverty line? How many women beggars have children living with them? What is the total number of senior citizens above 60 years (both male & female) in beggar's homes? What is the total number of transgenders in Beggars' homes? Are there any foreign national inmates in Beggars' Home? If yes, then how many? Male/Female
2. Are there any child beggars in the Beggar's home? If yes, why were they not referred to a "children's court," where they are dealt with in accordance with the provisions of the Children Act of 1960 as described by Section 5(9) of the *Maharashtra Prevention of Begging Act, 1959*?
3. How many differently-abled persons are detained inside a beggar's home? For how long have they been detained in the light of Section 10 of the *Maharashtra Prevention of Begging Act, 1959*?
4. How many persons detained in a beggar's home receive maintenance from the parents as provided under Section 8 of the *Maharashtra Prevention of Begging Act, 1959*?
5. Is there any advisory committee constituted in accordance with Section 15 of the Maharashtra Prevention of Begging Act, 1959?
6. How many inspections have been made by the Chief Inspecting Officer or Probation Officer in the year 2021-2022 as mentioned under Section 17(2) of the *Maharashtra Prevention of Begging Act, 1959*?
7. How often are probationary officers contacting the family members of beggars? Is there any scope for the reunion of beggars with their family members? Please specify if there is any case where a beggar got in contact with his/her family by any means.
8. What are the major physical and psychological health problems faced by Male & Female Senior Citizens, Children Beggars in Beggars' homes?
9. Are there any beggars of unsound mind or a leper detained in the Beggar's home? If yes, have the provision under Section 26 of the *Maharashtra Prevention of Begging Act, 1959*, complied with?
10. How many arrests have been made in Anti-begging laws in 2022? How many beggars have been apprehended under Sections 5 and 6 of the *Maharashtra Prevention of Begging Act, 1959*?
11. In which court (and before Magistrate of which rank) are the beggars from this Beggar's Home produced? Is there a specific Beggars Court set up in Maharashtra in accordance with the provision of 'any other Court exercising criminal jurisdiction in the area as established under Section 3, *Maharashtra Prevention of Begging Act, 1959*?
12. What is the total number of staff in the Beggars' Home appointed by the Government for the supervision work, and what is their rank? What kind of skill training is provided in the beggar's home to equip them to look after their needs? What kind of capacity-building exercise is conducted to train the relevant authorities, like the chief inspector appointed under Section 17(1) or superintendent of the certified institutes established under Section 12(2), *Maharashtra Prevention of Begging Act, 1959*, in order to conduct rehabilitative programs? Is there any skill training being provided at

present?

13. In what circumstances were the beggars admitted to the beggar's home? Did the court, as defined under Section 2(v), consider factors mentioned under Section 5(6) of the *Maharashtra Prevention of Begging Act, 1959*?
14. What kind of work under Section 19 of the *Maharashtra Prevention of Begging Act, 1960*, do beggars work in the beggar's homes?
15. Has there been any incident of violence in the home in the last 1 year? Has there been any consequent disciplinary imprisonment as mentioned under Section 20 of the *Maharashtra Prevention of Begging Act, 1960*?
16. Have any deaths been reported from the Beggars' Home in the last 1 year?
17. How many persons have been absent from a Certified Institution by permission or by license provided by order of the Superintendent under Section 22 of the *Maharashtra Prevention of Begging Act, 1960*? What are the criteria for the release? Have there been any unconditional releases in 2022 in accordance with Section 24 of the *Maharashtra Prevention of Begging Act, 1960*?
18. Have there been any escape cases in 2022? Was the person dealt with in accordance with Section 27 of the *Maharashtra Prevention of Begging Act, 1960*?
19. Are any organizations presently working for the rehabilitation of beggars as defined under Section 2(7) of *The Persons in Destitution (Protection, Care & Rehabilitation) Model Bill, 2016*?
20. Is there any unit constituted at present like that of the 'Outreach and Mobilisation Unit' constituted proposed under Section 5 of *The Persons in Destitution (Protection, Care & Rehabilitation) Model Bill, 2016*?
21. Are any welfare programs functional as envisaged by Section 7 of *The Persons in Destitution (Protection, Care & Rehabilitation) Model Bill, 2016*?
22. What kind of skill development training is being planned to be provided to the persons engaged in begging so as to ensure their reintegration into mainstream society to lead a life with dignity and self-confidence under the SMILE-75 scheme?
23. How many beggars are indulging in substance abuse? If yes, are there any linkages for the requisite treatment as proposed under Section 7 of the *Persons in Destitution (Protection, Care & Rehabilitation) Model Bill, 2016*?
24. Are there any specific facilities for women beggars in a beggar's home? What kinds of aid are provided by the State and the Central Government?
25. Is the Maharashtra legal service authority involved in providing legal aid to Beggars detained in the Beggar's home?
26. How many beggars have Government identity cards (Aadhar / Ration or any other)? How many don't you have? What are the kinds of documents required for identification? (Identification, under the SMILE scheme.) What problems do beggars have to face due to the non-availability of basic identification documents? (Like Aadhar Card, e.g.)
27. What is the present domicile or residential background of beggars in Beggar's Home? What is the total number of beggars outside Maharashtra found living in Beggar's Homes?
28. What are the sociological backgrounds of the beggars present in this beggar's home?
29. Was the open feeding center set up by the (Bombay/Nagpur) Municipal Corporation during the Covid-19 pandemic to provide free cooked food for the persons engaged in beggary and vagrants, as proposed by the Ministry of Social Justice & Empowerment dated 15th April 2020?
30. Whether the comprehensive scheme proposed by the Ministry of Social Justice & Empowerment dated 15th April 2020 for rehabilitation of persons engaged in the act

of begging covering identification, rehabilitation, provision of medical facilities, counseling, education, and skill development was implemented by the Maharashtra Government?

31. What are the arrangements relating to food, accommodation, security, and hygiene in beggars' homes?
32. Is the infrastructure of the beggar home established under section 13(1) of the *Maharashtra Prevention of Begging Act, 1960*, sufficient to fulfill the mandate of the SMILE-75 schemes and rehabilitation proposed under Section 7 of *The Persons in Destitution (Protection, Care & Rehabilitation) Model Bill, 2016*? Is water supply and electricity adequately provided to these homes? Is the Infrastructure in the beggars' home suitable for the specially-abled?
33. What are the other measures being followed for the effective rehabilitation of beggars at Beggars' Home? How many beggars have been rehabilitated till October 2022, and where?
34. Is this Beggar's home a part of the SMILE-75 initiative of the Central Government? If yes, what is the quantum of the funds allocated and the plan proposed for rehabilitation?
35. How much funds does Beggars' home receive from the Maharashtra Government or any other organization?
36. What has been the impact of Covid-19 on beggars in beggars' Homes?
37. What is the Power of the Police in regulating Beggars' Homes?
38. Which type of court generally grants bail to beggars? What is the nature and amount of Bail bonds on which beggars get released?
39. What is the process of admission and release of beggars at Beggars' Home? What documents are required to be submitted at the time of admission or entry and also at the time of release from the Beggars' home?
40. What is the social background of the Beggars? (Caste/Religion) What are the educational profiles of the Beggars In Beggars Home (literate/Illiterate)? If any.
41. How did they get into the practice of beggary? Observation or confessions, if any?
42. Is Indira Awaas Yojana applicable? Are these beggars covered under Government Welfare Schemes?
43. Is the skill training provided to beggars provided under MGNREGAt?
44. Have you ever approached MSHRC or any other State Human Rights Commission and State Legal Services Authority to take up the issues of Beggars? (For Staff)
45. What are the inmates' major grievances, and what are their suggestions to improve the same?
(Same question for Staff also)

**4. Law Enforcement Agency Field visit
Police Station Field Work Interview Guide**

Azad Maidan Police Station

Respondent's Profile	
Name of the Police Official	
Designation	
Education	
Gender	
Date of interview	
Police Station	
District	
State	
Working on this designation since	
Working since (number of years) – overall work experience	

1. What is the composition of the police officers working in this police station?
2. Please provide us with a brief overview of your role in the police station.
3. Whether D.K Basu guidelines board was there in the police station?
4. Whether the police station is equipped with I.T equipment (desktop, printer, scanner, etc.)?
5. How is the infrastructure of the police station (washroom, restroom, locker room, etc.)?
6. What types of cases are mostly registered in the police station?
7. What are your usual working hours/duty hours at the police station?
8. What are the arrangement for residence, lodging, and food for the police officers of the police station?
9. Whether CCTVs cameras are installed so far in the police station as per the guidelines of the Supreme court in '*Param Bir Singh Vs. Baljit Singh*'?
10. Whether female police officials collect information in cases highlighted as per the *Criminal Amendment Act, 2013*?
11. What were the challenges and problems faced during Covid-19?
12. What type of additional duties needs to be discharged by you in the police station?
13. Whether training had been given to you regarding additional duties?
14. What is the frequency of training, and in how many trainings have you participated?
15. What do you understand by the Police Complaint Authority?
16. What are the issues and challenges do you face while performing your police service?
17. How do you manage frequent protests in Azad Maidan?

5. Kamathipura Visit (Human Rights Issues of Sex Workers) Field Visit

Interview Guide

● Social Profile

1. What is the total no of sex workers who are trafficked and brought here at Kamathipura? When and how did these sex workers come to this service?
2. What is the age group? What are the minimum and maximum age brackets?
3. What is the social (religion, caste), educational (educational degree, literacy level, school dropout), income level (above or below the poverty line), domicile, or residence of Maharashtra or outside of Maharashtra of inmates of Kamathipura?
4. What is the total no. of Sex workers below the poverty line?
5. How many sex workers are registered under National Aids Control Organisation (NACO)?
6. What is the total no. of sex workers having an Aadhaar /Ration Card or any other Govt Identity Card?
7. What is the total no. of sex workers not having an Aadhaar /Ration Card or any other Govt Identity Card?
8. Are they aware of their basic rights?

● Population

1. What is the total no of sex workers present in Kamathipura? (Demography of the area). What is the total accommodating capacity of the premises?
2. Is there any record of no. of sex workers maintained by the Department of Women & Child or Social Justice Ministry Maharashtra Government?
3. Do sex workers only acquire the area?
4. Who are the other residents of the area? What are other businesses running in the area? Do they have the same stigma towards prostitution as others who don't live there?
5. What is their life and perspective on prostitution? (Whether they want to change the area or relocate the brothels elsewhere and if they want to relocate themselves?)
6. Whether the sex workers in Kamathipura have the freedom to move out of the premises?
7. How do the customers and landowners treat them?

● Infrastructure

1. How is the infrastructure of the building in Kamathipura? (The rooms and houses/brothels from inside observation of size, ventilation, bathrooms available, the capacity of the rooms and the actual occupancy, condition of the room including bedding condition, etc., and the hygiene). How is the environment they're in, Kamathipura?
2. Who manages the brothels in Kamathipura?
3. Do sex workers pay the rent on the premises?
4. Do sex workers face the threat of redevelopment, eviction, demolition, or relocation issues from the Municipal Corporation?
 - Have there been any instances of such forced relocation?
 - Where are the workers relocated to? Does it affect their work?
 - Is there any alternative work available in the relocated area? How do they carry on their livelihood there?

(to observe the real effect of redevelopment, relocation, and gentrification)
5. For whom are the redevelopment/development projects actually for?

6. What is the role and assistance provided by BMC?
7. Since running the brothels are illegal, what are the problems faced due to it, and how does it impact the infrastructure and maintenance of the area?

- **Sex Worker's Children**

1. What is the total no of sex workers living with their children? What is the age of such children?
2. Do such children visit neighborhood schools under the Right to Education Act? (Government or Private)
What is the total no. of school/evening school-going children?
3. Do such children have birth certificates? Do such children have vaccination certificates both at birth and covid vaccination certificates? Do such children visit neighborhood schools under the Right to Education Act?
4. What are the future prospects of the children? What options do they have to change their condition/social mobility? (Discrimination faced)
5. Whether the children get fair treatment in schools and society?
6. Are there cases of juvenile delinquency in the area? (Association of children with gangs).
7. Is there a system of generational prostitution? Are children being forced to stay and work in the area and business?
8. Is the nutrition and food nursing mothers under *Poshan Abhiyan, national food security act*, available to children? What is the nutrition level of children?
9. What is the mental state of the children living in Kamathipura?
10. Where do children reside while their mother works?
11. Whether the children are aware of their mother's occupation? And how do they usually react when later revealed to them?

- **Health**

1. What is the total no. of Sex workers who are affected by HIV or any STDs?
2. What are the major physical and mental health problems faced by sex workers?
3. What is the Maharashtra State Government Health Schemes which cover Sex workers' treatment free of cost? Do they benefit from such schemes?
4. Are these sex workers able to visit any Govt hospital for a free medical checkup?
5. What is the condition of pregnant workers? Has any special aid or grant available on child childbirth, postpartum health care, or nursing been given?
6. What is the total no. of sex workers who have undergone abortions?
7. What is the total no. of sex workers receiving free dry ration under the Maharashtra State Govt Scheme?
8. What is the total no of sex workers who have undergone abortions? *(This observation needs to be made in accordance with the Medical Termination of Pregnancy Act, Maternity Benefits Act, 1964, PC & PNMT Act 1994. Whether the laws apply here? If not, why and what suggestions to be given)*

(Observation on the medical infrastructure, washrooms, pharmacy, hospital accessibility, doctors available, number of workers with communicable diseases, STDs, and prolonged illnesses)

- **Covid 19**

1. What are the issues faced by sex workers in the past two years due to COVID?
2. How many sex workers got infected with COVID? Whether anyone died? Whether they avail of the medical facilities required at that time?

3. How was the health of the children during COVID-19? Whether they get the testing facility?
4. How many workers have received COVID vaccination?
5. What is the impact of the lockdown on the livelihood of sex workers? What was the mechanism adopted to mitigate the losses?
6. What has been the impact of the pandemic on the children's access to education, have there been any cases where a child [or even a major] was forced to enter prostitution due to lack of resources and leave their studies?
7. Since there was no specific scheme for sex workers by the government under disaster management for covid, what was the approach of the NGOs, Ministry of child and women development?

- **Substance Abuse**

1. Whether there is any access to illegal drugs. (Cases of addiction). Whether laws against drugs and narcotics are applicable here, and are they followed?
2. Does the government agency or NGOs keep track of such Acts?
3. What are the Rehabilitation programs for addicts?
4. Have there been cases of narcotized forced sexual intercourse and work? Do such cases reach the police, and do they take action against it?
5. What is the total number of sex workers with substance or drug abuse or narcotics?

- **Police Interface**

1. Do sex workers face any problems or harassment from the police?
2. What is the role of the police in assisting sex workers? Does it enquire whether a worker is working in compulsion or trafficked, and what action does it take? What recourse is available?
3. Does the police protect the workers against instances of violence, internal and external?
4. What is the total no. of sex workers who faced custodial torture, rape, or death?
5. What is the name of the nearest police station near Kamathipura? Have any sex workers lodged any FIR against their customers or for any other reason?
6. Has any sex worker approached Maharashtra State Women's/Human Rights Commission?
7. Are there special police officers and Trafficking police officers appointed under *PITA*?
8. Is there any Advisory Committee constituted by the Maharashtra Government under *PITA*?
9. How many sex workers have been released on Bail Bonds? What is the amount of security for a personal bail bond?
10. How many Sex Workers are released on probation?

- **Criminal Record-**

1. What is the no. of workers against whom there are criminal records?
2. Are there any cases pending before any court of law of any degree?
3. What are the general offenses under which they are charged? are they being charged for prostitution / or illegal activities associated with it, like human trafficking [punishable under the *Immoral Trafficking (Prevention Act 1956)* [[since *PITA*, *IPC* does not criminalize it]
4. Whether proper procedure followed while taking cognizance by the police? [whether *Criminal Or Civil Procedure Code, Evidence Act* followed or not]

5. what is the total number of sex workers who are charged or detained under *PITA*? What are the charges leveled against the same? Are they charged as the main accused or as a conspirator?

- **Governmental Policy, Resolutions, and Its Application**

1. Whether the sex workers are getting benefits of schemes like Ujjawala Schemes, National Schemes for Rehabilitation of Sex Schemes, Kishore Shakti Yojana, etc., for the prevention of Trafficking and Rescue, Rehabilitation, Re-Integration, and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation?
2. What are the role of the Maharashtra State Human Rights Commission and Maharashtra State Legal Services Authority in providing welfare services or social welfare social security schemes? Whether the schemes are implemented?
3. Whether the government ID cards made available to sex workers?
4. What are the difficulties faced by sex workers in availing the benefits of Government schemes?
5. Whether Is there any data maintained regarding the no. of workers rehabilitated and updated on their post-rehabilitation condition?
6. No law makes prostitution legal, nor does it make it a crime but have these laws been interpreted by authorities to create fear amongst the workers to suppress them/their voices of demands and thereby create a dissociation of the workers towards the Indian legal system and towards the government in general?
7. Are there any legal aid societies or any mechanism which appraises the habitants of Kamathipura about their rights and remedies and also regarding the interpretation of laws available?
8. Has the legislation been successful in fulfilling the aim that they were aimed for? Or has it resulted in increasing chaos [for instance, the interpretation of amended section 370 Indian Penal Code?
9. Whether the sex workers in Kamathipura get the benefit of the Pradhan Mantri Jan Dhan Yojana?
10. Are they aware of schemes like Ujjwala Yojna? Have they benefited from it? What does the scheme entail, and has it been implemented in the area?
11. Implementation of *Nari Adalats*, *Mission Vatsalya*, *Beti Padhao Beti Bachao* scheme and its benefits to daughters to sex workers.

- **Rehabilitation**

1. Are there shelter homes or protective homes created by the Maharashtra Government under *PITA*?
2. What is the role of NGO Civil Society in providing aid assistance to Sex Workers?
3. Kishor Shakti Yojna and other rehabilitation schemes and their success in the area. Mission shakti ('sambhal' and 'samrathya')

- **Work And Economic Condition Related**

1. What is the total no of sex workers who are working out of choice and the total no of sex workers out of compulsion?
2. What is the role of NGO Civil Society in providing aid assistance to Sex Workers?
3. Is there any union or collective on lines of trade union for sex workers on lines of Supreme Court judgment?
4. What was the effect of demonetization on work and associated problems? What methods are adopted to overcome such issues? Whether any aid is given by the state/commission or NGOs.
5. Have there been any cases of sexual exploitation (in violation of *PITAAAct*)?

- **Grievance**

1. What are the general grievances and needs of Sex workers, and what are their suggestions to improve the same?
 - **Extra**
1. What has been the impact of media and popular culture [including movies and novels which have romanticized the work and life of sex workers] on the work and life of the workers?
2. There have been multiple research and articles on the same, and they have been able to voice the problems of the workers and the parlous nature in which prostitution in India works.
3. Is the legalization of prostitution the best possible remedy for sex workers?
4. Can the sex workers, too can, get benefits of governmental schemes and benefits like any other commercial work? [for instance, Pradhan Mantri Jan Dhan Yojna]
5. What has been the role of the Maharashtra state Human Rights Commission in addressing the issues of sex workers? Since it cannot punish the miscreants of trafficking and sexual exploitation, what action can it take?
6. How many cases of human rights violations come to the commission? Awareness among the workers about the commission and making it accessible.
7. The commission and its works with various NGOs on human rights awareness [*The Protection of Human Rights Act 1993 (with amendment Act 2006)*], encourage the involvement of non-government organizations and individuals for expansion work in the field of human rights awareness and perform any other functions that may be considered necessary for the promotion of human rights].

Lists of Landmark Judgement and Case laws.

1. Arnesh Kumar v. State of Bihar. (2014) 8 SCC 273
2. Budhadev Karmaskar vs State of West Bengal. (2011) 10 S.C.R. 577
3. Deaf Employees Welfare Association v. Union of India, decided on 12.12.2013 by Supreme Court of India
4. Dr. P. Varavara Rao vs National Investigation Agency & State of Maharashtra, decided on 10.08.2022 by Supreme Court of India.
5. Harsh Mander & Anr. vs UOI & Ors. 1979 AIR 1369
6. Hussainara Khatoon v. State of Bihar. (2017) 10 SCC 1
7. K.S. Puttaswamy v. Union of India. (2017) 10 SCC 1
8. Kharak Singh v. State of Uttar Pradesh. 1963 AIR 1295
9. Maneka Gandhi vs. Union of India. AIR 1978 SC 597
10. Parmanand Katara Vs. Union of India. 1989 AIR 2039
11. Paschim Bangal Khet Mazdoor vs. State of West Bengal. 1996 AIR SC 2426
12. Prateek Jain vs State of UP decided on 25.05.2021 by Supreme Court of India
13. R Upadhyay vs. State of AP and Ors. AIR 1999 SC 2183
14. Ratlam Municipal Corporation vs. Shri Vardhichand. 1980 AIR 1622
15. S. Vanitha V. Dy. Commissioner, Bengaluru Urban District and Others decided on 15.12.2022 by Supreme Court of India
16. Shri Dilip K. Basu V. State of West Bengal & Ors. decided on 24.07.2015 by Supreme Court of India
17. State of Gujarat vs. Anopbhai Punambhai Bhoi. decided on 16.07.2021 by Supreme Court of India
18. Suhail Rashid Bhat vs. State of Jammu & Kashmir and Ors. decided on 25.10.2019 by Supreme Court of India
19. Suk Das v. UT of Arunachal Pradesh. 1986 AIR 991
20. Sunil Batra v. Delhi Administration. 1980 AIR 1579
21. Suryakant Kisan Pawar v. Deputy Collector, Mumbai and Anr. decided on 18.01.2022 by Supreme Court of India
22. Unni Krishnan vs. State of Andhra Pradesh. 1993 AIR 2178

List of Acronyms.

1. ADGP: Additional Director General of Police.
2. BMS: Batchelor of Medical Sciences.
3. CCI: Child Care Institution.
4. CCTV: closed-circuit television.
5. CEDAW: Convention on the Elimination of All Forms of Discrimination against Women.
6. CERD: Convention of Elimination of Racial Discrimination.
7. CRC: Child Rights Commission.
8. DLSA; District Legal Services Authority.
9. DMER: Director of Medical Education & Research.
10. ICCPR: International Convention for Civil, Political Rights.
11. ICDS: Integrated Child Development Scheme.
12. ICESCR: International Covenant on Economic, Social, and Cultural Rights.
13. IGNOAPS: Indira Gandhi National Old Age Pension Scheme.
14. MARD: Maharashtra Association of Resident Doctors.
15. MSHRC: Maharashtra state Human rights Commission.
16. NALSA: National Legal Services Authority.
17. NCRB: National Crime Record Bureau.
18. OPD: Out Patient Department.
19. PLV: Panel Para Legal Volunteers.
20. PCA: Police Complaints Authority.
21. PHRA: Protection of Human Rights Act.
22. PWD: People with Disability.
23. SOP: Standard operating procedure.
24. TISS: Tata Institute of Social Sciences.
25. UDHR: Universal Declaration of Human Rights.
26. UN: United Nation.
27. UNCRPD: United Nations Convention on the Rights of Persons with Disabilities.
28. UTRC: Under Trial Review Committee.

Photo Images Taken During the Visit



**Correctional Justice Institutions Field Visit to
“Thane Madhyavarti Karagruh,” Thane West,
Maharashtra.**



**Bhikshekari Swikar Kendar, Yerwada, Pune,
Maharashtra 19th October 2022**



**Kamathipura, Mumbai, Maharashtra 21st October
2022**



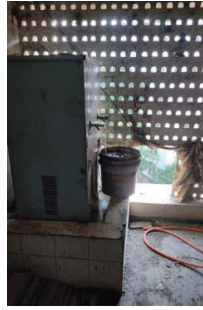
**Nagpada Police Station, Mumbai, Maharashtra
21st October 2022**



**Child Care
Institutions, Ulhasnagar, Thane, Maharashtra 18th
October 22 Photo By Anubha Mishra**



**Shaskiya Apang Mulanche Balgruh
(Varishth), Ulhasnagar, Thane, Maharashtra 18th
October 2022**



Photograph by Nehal Sarkate; Venue: J. J. Hospital
Mumbai Date of Visit 04.10.2022.



Government Funded Children Care Institutions
Field Visit to “Children’s Home, Ulhasnagar,
Thane, Maharashtra.



Image while interacting with children of Children’s
Home, Ulhasnagar, on the day of visit on
18.10.2022.



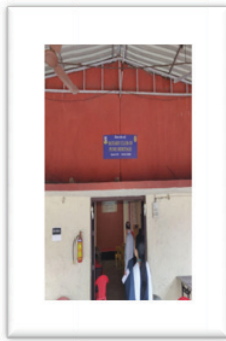
Image while interacting with officials of
Children’s Home, Ulhasnagar on the day of visit
on 18.10.2022



Senior Citizen and Old Age Home- Field Visit to
“Raja Shree
ShivraiPratisthanMatoshreeVrudhashram”, Pune,
Maharashtra.



MatoshreeVrudhashram, Karve Road.



Residency building premises



MatoshreeVrudhashram, Pune, Maharashtra 18th October 2022

MatoshreeVrudhashram, Karve Road, Pune, Maharashtra 18th October 2022



Interaction with boy from Children's Home pursuing his SSC examination



Beggars' Rehabilitation Centre Field Visit to "Bhikshakari Swikar Kendra, Phulenagar, Yerwada, Pune, Maharashtra



Photograph showing the statistics of the BhikshekariSwikar Kendra, Yerwada, Pune on 19.10.2022



Image of interviewing inmate of BhikshekariSwikar Kendra, Yerwada, Pune on 19.10.2022



Kamathipura, Mumbai, Maharashtra 21st October 2022



Street number 12, Kamathipura, Mumbai, Maharashtra 21st October 2022



Kamathipura, Mumbai, Maharashtra, 21st October 2022



Photograph of a Compartmentalised room, Kamathipura, Mumbai, Maharashtra 21st October 2022



**MSHRC- Chairperson and Officials with TISS-SLRG
Dean, Faculty Members, and Students.**



**THE MAHARASHTRA STATE HUMAN RIGHTS
COMMISSION, MUMBAI.**

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