

**“A RESEARCH STUDY ON THE JUVENILE JUSTICE
SYSTEM AND ITS IMPACT ON JUVENILES”**

A Group Report submitted To
Maharashtra State Human Rights Commission
As a part of Winter Internship Programme

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INTRODUCTION:

In layman language, a juvenile is child or a young person who is below the age of eighteen years and is in conflict with law.

According to The Juvenile Justice (Care and Protection of Children) Act, 2015:

Section 2(35) “juvenile” means a child below the age of eighteen years;¹

Section 2(13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;²

Juvenile Justice Act mainly focuses on proper care, protection, development, treatment, and social re-integration of juvenile in difficult circumstances by adopting a child in a friendly approach.

In comparison to adults, children receive less severe punishment for crimes they commit because they frequently lack awareness of the repercussions and lack malicious intent. "Doli incapax," which means "incapable of doing any harm or committing a crime," derived from latin maxim. It is assumed that a child is unable to develop the essential criminal intent to conduct an offence. And if we examine the data, the vast majority of juvenile crimes are perpetrated by kids from disadvantaged neighbourhoods with poor living conditions, toxic environments, a lack of educational opportunities, challenging survival situations, and more.

Unfortunately, the child becomes unknowingly involved in criminal activity and is arrested as a result. From this point, the government and state authorities play a role in the rehabilitation and development of juveniles who are in legal trouble.

One crucial question now emerges:

- Do these kids receive the right care for their development and rehabilitation?
- Whether their fundamental rights are upheld?

Because most of these juveniles are not aware of their fundamental rights, which are frequently abused, protecting children's "Human Rights" in legal disputes is a worrying issue.

¹ Page of 5 Chapter 1 of Juvenile Justice (Care and Protection of Children) Act, 2015

² Page of 3 Chapter 1 of Juvenile Justice (Care and Protection of Children) Act, 2015

OBJECTIVES

- to study the working of the Juvenile Justice System;
- to learn regarding the human rights with respect to juveniles and;
- to analyse the issues related to juvenile system and provide suggestion.

OBSERVATION REPORT ON JUVENILE COURT AND JUVENILE HOME VISIT – DONGRI, MUMBAI

On 24th January, 2023 a visit was organized by The Maharashtra State Human Rights Commission to the Juvenile Court and Juvenile Home - Dongri Mumbai as a part of the internship programme for Study and Research purpose.

In the British era these buildings were used to be jail and after 1927 it functioned as home for the children in conflict with law. It is the Asia's one of the biggest observation homes.

During our visit we met the Probation officer, he explained us about how the children were brought here and provided us with the basic idea about the observation home. He said the capacity of observation home is 250, 150 for boys and 100 for girls.

Also, the child in need of care and protection were relocated to David Sassoon school, Matunga. Children in conflict with law are brought here by police and they are supposed to be brought here with utmost care, police cannot put them in lock-ups or cuff their hands. If one finds such, they can file a complaint.

Once they are brought here their inquiry is made in the PO department by the Probation officer. After some basic explanation we visited the PO Department where the building was not well maintained. Information brochures were less including free legal aid, lawyers contact details and the Inquiry/meeting room were not child friendly.

There were 2 counsellors in the department where they handled the child as per the report allotted to them, even a child can visit voluntarily for counselling. The internal basement stairs were very unclean and accumulated with garbage.

Boys Observation Home :

1. At the boy's Observation home in the entrance daily routine chart was present.
2. P.O. and the other 3 staff members were present at the time of our visit.
3. Other Notices regarding records as well as information was provided.
4. There was a classroom for Study with 2-3 teachers, Computer Lab with one teacher, and skill development education like basic Electrical hardware skills class along with carpentry work was provided.
5. They had an Open Ground for playing various outdoor games.
6. A common kitchen for both girls and boys were provided to them.
7. They had a Clinic in the boy's observation home with one Doctor and other 2-3 helping staff.
8. They had a Common Boy residential room with attached toilets & bathrooms.

Critical Observation/Suggestions:

1. In the observation home carpentry work is dangerous in nature which would affect the children's health.
2. On the ground there was no proper equipment to play outdoor activities. The ground was in a dirty condition at the Section where Outdoor activities equipment are placed.
3. In the common room for all the juveniles, there is no segregation of juvenile offenders & other age children.
4. Toilet and bathroom & other surrounding premises had poor hygiene conditions.
5. CCTV system was in poor condition.
6. Free access to juveniles as well as children in Common Kitchen is dangerous in nature.
7. There is no wheelchair at the juvenile observation home for special children.
8. Lacuna in the execution work as per timetable.
9. Need websites or data base for keeping records of juveniles as well as other children who are observed in various places but have lengthy Documentary processes which not interlink with other Children organizations or other government departments. This would help other victims to find out their missing children.
10. In the Observation home some of the juveniles wore huge ornaments on their neck that would easily harm other children as well.
11. There Observation home does not maintain any kind of discipline for starting good humanitarian behaviour.

GIRL'S OBSERVATION HOME:

- **OBSERVATIONS-**

1. At the entrance we saw few girls carrying big food vessels from the common kitchen door.
2. A common hall was used as mess as well as a dormitory.
3. A pile of beds with their sheets and a small cushion was folded and kept in a store room.
4. They had 5 bathrooms in a row with visible window ducts which was closed with the help of a blue plastic.
5. They were provided with a sanitary vending machine with a sanitary disposal as well.
6. The first floor constituted with two common classrooms where classes were taken as a part of their vocational training.
7. Sewing, Craft, Rangoli, Embroidery, Cooking, Home science was a part of their training.

8. Apart from that they had two black class boards where they were taught with basics of education.
9. A proper uniform with similar hair style was tied up by the girls.
10. Child with disability was given a different colour uniform to wear to get identified easily.
11. For vocational training purpose, they had 9 sewing machines and one cylinder for home science training.
12. The infrastructure was in poor condition as open wires were left and no proper lightings.
13. The money received from vocational training earnings was transferred to the girl's bank accounts with the observation home.
14. They had health camps and were provided with doctors and nurses for health check-ups.
15. In their leisure they were allowed to watch serials.

- CRITICAL OBSERVATIONS/ SUGGESTIONS:

1. The use of common hall for mess and dormitory was unhygienic.
2. The lawn was empty and they had rusted slide which could cause harm to the girls.
3. The big food vessels were carried by the girls which could be dangerous as it was heavy.
4. The food was transferred open from the common kitchen which was not kept clean.
5. They were not provided with proper beds to sleep.
6. The visible window ducts in the bathroom raised a question of privacy and was not properly utilised.
7. As they provided training for home science, only one cylinder for a lot of 33 girls was provided. They had insufficient materials for the training.
8. Open wires raised a question of safety, they must have proper infrastructure as well.
9. The money from girl's bank account which was funded by their own earned money from vocational training was used to buy materials for training purpose.
10. The classrooms had no proper lightings where the girls were taught.
11. Usually a dhobi is provided to wash their cloths, but here the girl's washed their own cloths.
12. They were allowed to watch serials which could affect their mind and get brain washed easily.

CASE LAWS

1. Sheela Barse and Ors. Vs. Union of India (UOI) and Ors.

Citation: (1986)3SCC596, [1986]3SCR443

Facts of the case:

- The petitioner (Sheela Barse) filed a petition in the Court under Article 32 of the Constitution of India asking for:
 - The Production of complete information regarding the children in the jails;
 - The release of children below the age of 16 years who were detained in jails of different states of the country;
 - Direction to State Legal Aid Boards to appoint duty counsel to ensure legal assistance to the children whenever required;
 - Direction to the District Judges to visit the jails and sub-jails in their jurisdiction to ensure that the children are properly looked after;
 - The Information related to the existence of juvenile courts, homes and schools.

Issues:

The only issue raised was regarding the children who were under the age of 16 years were rightly treated by the authorities and looked after adequately in the jails where they were kept.

Decision by the court:

It was held that all the states must had to ensure that the Children's Act should be brought into force as soon as possible.

All the States where the Children's Act already exists must ensure that the same was administered properly.

The Jail Manuals should be strictly complied and every District and Sessions judges must visit the district jail at least once every two months to ensure that everything was up to the code.

The Union Government was supposed to deposit an amount of 10,000/- Rs. within two weeks in the Registrar of the Court, which the petitioner can draw to meet her expenses.

2. Hari Ram V. State of Rajasthan & Ors.

Citation: (2009)13SCC211, [2009]7SCR623

Facts of the case:

- Hari Ram was a minor charged with number of criminal offences.
- The dispute was related to Ram's age at the time of the offence, which determined whether he would be tried as a juvenile or an adult.
- According to the Juvenile Justice Act 1986, a juvenile is a boy under 16 or a girl under 18 and according to the Juvenile Justice (Care and Protection of Children) Act, 2000 a juvenile is a child under 18.
- The High Court did the testimony from Ram's father and the medical reports as well. It concluded that Ram, at the time of the offence was above 16, thereby excluding him from the juvenile justice system.
- Ram appealed that Court had defeated the purpose of the juvenile justice laws. But in the 2000 Act, it had raised the age where a male child in conflict with the law would be treated as a juvenile from 16 to 18 years.

Issues:

Issue was that whether Ram falls within the definition of 'juvenile' under the 1986 Act (under 16) or the 2000 Act (under 18).

The Court found that Ram was under 18 at the time of the offence as well as when the 2000 Act came into force.

Therefore, the provisions of the 2000 Act would apply where he was to be treated as a juvenile.

Decision by the court:

The amendments in the 2000 Act, for all cases which were pending on the date on which the 2000 Act came into force was that a person will be determined to be a juvenile in conflict with the law if they are alleged to have committed an offence when they were under 18 years of age.

Ram, who was over 16 at the time of the offence but under 18 when the 2000 Act came into force, was therefore to be treated as a juvenile and the 2000 Act was applied to his case.

3. Barun Chandra Thakur v. Master Bholu & Ors.

Facts of the case:

- A class 2 student was found murdered with his throat slit inside a washroom of a school in Haryana.
- The CBI agency accused the suspect who turned out to be a class 11 student.
- The age of the suspect was above 16 years which meant this case would see operationalization of section 15 of the Juvenile Justice Act, 2015.
- The JJ Board conducted a preliminary assessment of the juvenile in conflict with the law in order to ascertain whether the said juvenile should be tried as an adult or as a juvenile.

Issues:

Issue was that whether the method of assessment under the section 15 of the act relied heavily on the IQ score given by the psychologist which was good. Whether to depend on such preliminary assessment was the question.

Decision by the Court:

The Board and the Children's Court apparently were of the view that the mental capacity and the ability to understand the consequences of the offence were one and the same.

If the child had the mental capacity to commit the offence, then he automatically had the capacity to understand the consequences of the offence. Thus it considered the opinion, it was the grave error committed by them.

Hence, preliminary assessment can be done to try the juvenile as an adult.

4. Parag Bhati (Juvenile) Legal Guardian- Mother- Rajni Bhati Vs. State of Uttar Pradesh and Ors.

Citation: AIR2016SC2418, (2016)12SCC744

Facts of the case:

- Parag Bhati, the accused got arrested for a crime and was produced before the Juvenile Court, got remanded and was kept in the Juvenile home.
- His father filled an application in Juvenile Justice Board to claim Juvenility by providing various school certificates.
- The board concluded that the accused's date of birth, as recorded in school certificates was doubtful and got referred to the medical board for the determination of his age.
- The Chief Medical Officer determined that the age of the accused was about 19 years. The Board, upon the opinion of the Medical Board, held that the

Appellant was a major and accordingly, transferred the case before the Chief Judicial Magistrate.

Issues:

- Issues were raised that the Board did not give the benefit of one year as provided in Rule 12 of the Rules.
- It was in favour of the Accused on the ground that the Complainant had filed the photocopy of the Panchayat Electoral Roll.
- Because of which, the age had been mentioned as 19 years which was issued much before the date of the incident.
- Therefore, the Board rightly did not give the benefit of one year to the Appellant under the Rules.

Decision by the court:

It was held that the benefit attached to the Juvenile Justice (Care and Protection of Children) Act, 2000 would be applied to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence.

It was regarding his minority where the benefit was the possibilities of two views in regard to the age of the accused who is involved in grave and serious offence which he committed.

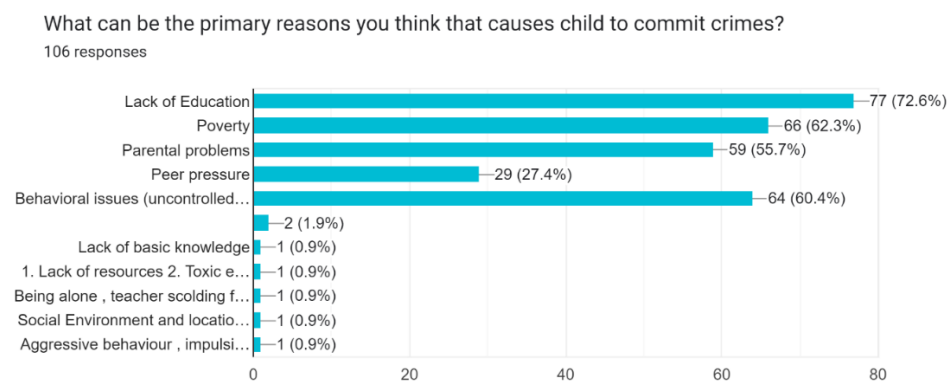
Which gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility where he cannot be allowed to come to his rescue.

DATA ANALYSIS AND INTERPRETATION

METHOD OF DATA COLLECTION

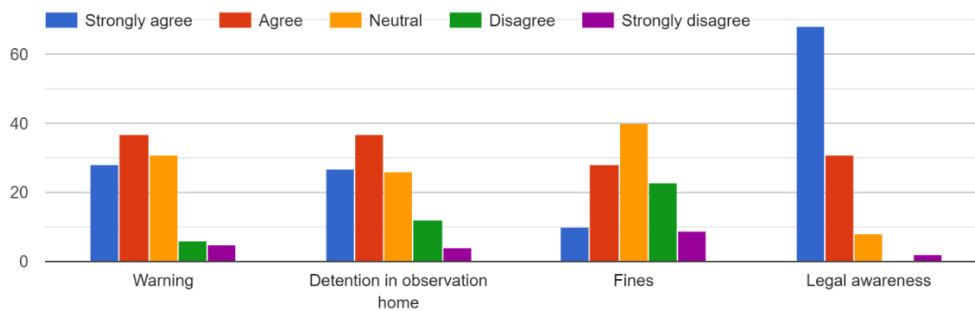
➤ PRIMARY DATA

- A visit was organised by MSHRC to Juvenile Justice Court and Observation Home to see the actual functioning JJB. The primary data were collected by asking certain questions to the observation officials and by personal observation.
- A questionnaire was constructed for the purpose of survey. The sample size was of 100 respondents. The responses were taken through online survey through social networking sites and also, from few offline surveys.



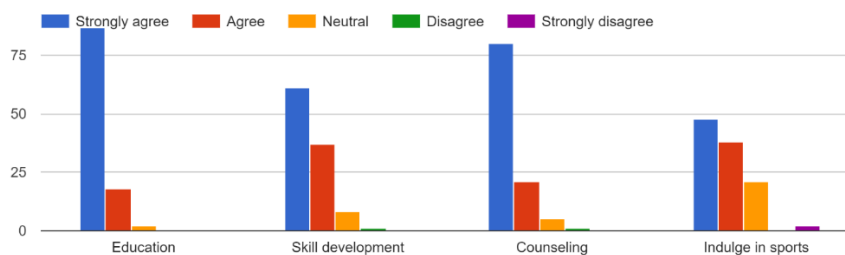
- According to 72.6% respondents, the primary reason behind child committing crime is Lack of education.
- According to 62.3% respondents, the second reason behind child committing crime is Poverty.
- According to 55.7% respondents, the third reason behind child committing crime is Parental Problems.
- According to 27.4% respondents, the fourth reason behind child committing crime is Peer Pressure.
- According to 60.4% respondents, the fifth reason behind child committing crime is Behavioral Issues.

Which of the following do you think will deter children from committing the crimes.



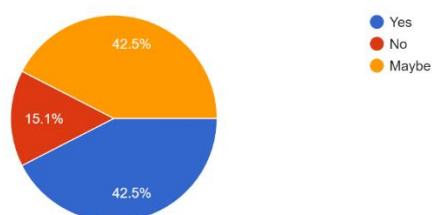
- Majority of people with 68% strongly agree that Legal Awareness will deter children from committing the crime.
- 37% respondent agree that Warning will deter children from committing the crime; 36% respondents agree that Detention in observation home will deter the child from committing the crime; 40% respondents feel neutral, 28% agree, 23% Disagree that fines will deter the children from committing crimes;

Which of the following do you think would aid in rehabilitation of children in conflict with the law.



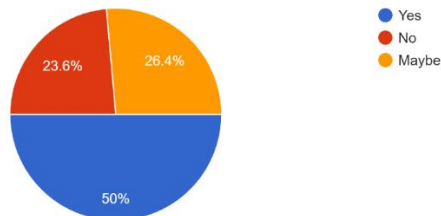
- 87% respondents strongly agree that education would be a proper aid for rehabilitation of child in conflict with law;
- 61% respondents strongly agree and 8% disagree that Skill Development would be one of the aid for rehabilitation of child in conflict with law;
- 80% respondents strongly agree and 1% disagree that Counselling would be one of the aid for rehabilitation of child in conflict with law;

Do you believe that juvenile offenders should be segregated?
106 responses



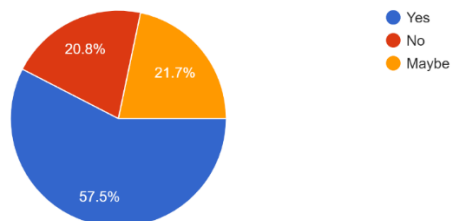
- 42.5% of respondents believe that segregation must be done whereas 15.1% disagree. 42.5% have neutral view.

Do you think the segregation of juvenile offenders must be done on the basis of age?
106 responses



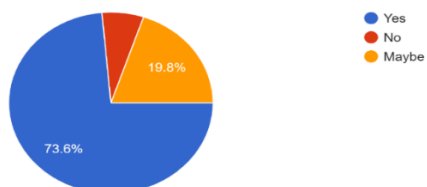
- Majority (50%) thinks that segregation must be done on the basis of age whereas 23.6% disagree.

Do you think the segregation of juvenile offenders must be done on the basis of First time offenders and habitual offenders?
106 responses



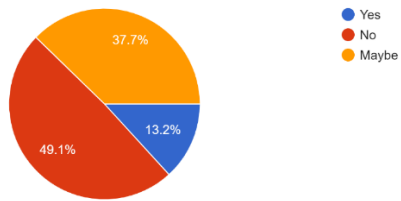
- 57.5% of majority believe that segregation of juvenile offenders must be done on the basis of First Time offenders and Habitual Offenders whereas 20.8% disagree.

Do you think that children below 18 years of age have more chances to correct/improve than adults?
106 responses



- Majority of respondents (73.6%) believes that child below 18 years of age have more chances to improve than adults whereas 6.6% disagree.

Do you think Child in conflict with law shall be tried as an adult?
106 responses



- 49.1% of respondents disagree that child in conflict with law must be treated as an adult whereas 13.2% agree.

**INCIDENT WISE REGISTRATION, DISPOSED AND PENDENCY FOR CASES
REGISTERED DURING THE PERIOD**

FROM 01/01/1993 TO 01/02/2023

STATE MAHARASHTRA

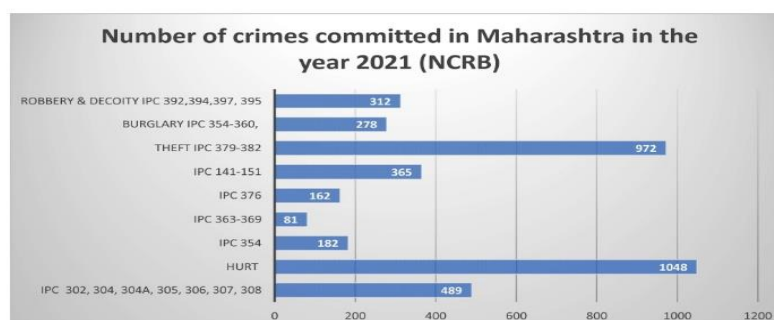
INCIDENT CODE BETWEEN 1800 AND 1809

(DATA AS PER CMS)

INCIDENT CODE (NAME OF INCIDENT)	Registration	DI L	DW D	SHRC	CLOSED	OTHER S	TOTAL DISPUTE D	PENDING
1800 (JUVENILE/BRGGERS HOMES)	30	0	0	0	0	0	0	30
1801 (CUSTODIAL DEATH)	6	0	0	0	0	0	0	6
1806 (EXPLOITATION)	2	0	0	0	0	0	0	2
1807 (IRREGULARITIES)	1	0	0	0	0	0	0	1
1808 (HARASSEMENT/TORTURE BT POLICE)	1	0	0	0	0	0	0	1
TOTAL	40	0	0	0	0	0	0	40

NCRB DATA REPORT,2021

Number of crimes committed in Maharashtra in the year 2021 (NCRB)	Offences affecting the Human Body	Offences affecting the Human Body				Offence against the state	Offences against Property		
	IPC 302, 304, 304A, 305, 306, 307, 308	Hurt	IPC 354	IPC 363-369	IPC 376	IPC 141-151	Theft IPC 379-382	Burglary IPC 354-360,	Robbery & Decoy IPC 392,394,397, 395
	489	1048	182	81	162	365	972	278	312



SUGGESTIONS

1) Child friendly Environment: As mentioned in the JJB act, Chapter III section 7 (1) the Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts³, in Juvenile Justice Act, 2015. The actual condition of the PO department where further inquiry and investigation of children are done was neither child friendly nor in a maintained condition; those rooms were in low light and congested conditions, in which case the children who are brought here may not feel safe and open up for the further procedure. Therefore, it would be suggestable that the infrastructure (inquiry room, court rooms, counselling room, play area, etc) should actually be developed keeping in view of child friendly approach.

2) Segregation: During the visit, we discovered that approximately 10 accused aged 18+ were kept within the same premises who were under the age of 18, at the time of the crime. The reason for them being kept in an observation home is that their proceedings were still ongoing. Keeping 18+ offenders with minors may have a negative influence on minors, including bullying, ragging, and other forms of harassment. To reduce the negative influence, more segregation should be done based on age and first-time & habitual offenders.

3) Maintenance of discipline: Discipline is necessary for a child to grow into a good person, and JJB has established a daily routine for children's rehabilitation and development. However, during our visit, we noticed that children were roaming freely everywhere, including the kitchen, roaming in between classes, wearing big chains, rings, and other ornaments, as well as having improper hair.

4) Safety Measures: As previously stated, many children in the Observation home were wearing big chains, rings, and other accessories. These accessories should not be permitted to be worn inside the observation home because they could risk the lives of other juveniles.

- It was also observed that some of the juveniles were carrying workshop tools outside of the classrooms, raising concerns about the safety of other juveniles. Therefore, while conducting any workshop or vocational training proper supervision should be provided.
- Safety gear should be provided for risky vocational training.
- Another consideration is that the kitchen area should be kept safe and the juveniles should be prohibited from working near the cooking area.
- More number of CCTV cameras must be installed covering almost all area to prevent illegal activities.

5) Upgraded vocational courses: Vocational education and training are critical for rehabilitating and developing the law-abiding child. During our visit, we learned that very few types of courses were provided to those children, such as mechanical work shop, very basic computer operation, and carpentry work. Such courses will not, as such, be really impactful and helpful for all juveniles. More vocational education courses and training should be introduced by focusing the interest of the child; though the tenure of detention of the child may

³ Chapter 3 of Juvenile Justice (Care and Protection of Children) Act, 2015

be for a short period, the utmost work should be done on their mentality and morality, and their interest should be diverted towards education for their further betterment and becoming good citizens of the country.

6) **Improve the hygienic conditions:** 1) As per Rule 61(3)(xvii) of the Model Rules by the Central Government for the Juvenile Justice (Care and Protection of Children) Act, 2015, it is the duty of the person-in-charge of a Child Care Institution to maintain proper hygiene in the home; these rules were not properly implemented.

- As per rule 31(xi), the kitchen area was not in a sanitary and hygienic condition.
- Rule 61 (4) (i): Maintenance of hygiene and sanitation: not well maintained
- Personal hygiene among children was not maintained properly.

7) The court should take a more reformatory approach toward the child in conflict with law than a punitive one. The state should try to create such an environment so that such children can be reintegrated back into society.

ANNEXURE

1. GR no. 20202108131736147630, Aug-2021

As per the above mentioned GR The State government has sanctioned 2 Crores for Children Empowerment activities like access to assistance, entrepreneurship youth assistance, skill development, business training and other related efforts will be made for service and training, medical treatment for major illness of incoming orphans, abandoned children, etc.

Observation:-

- Not seen any activity related to entrepreneurship youth assistance, business training programs.
- Lack of awareness related to emergency medical treatment and other information related to medical facilities.

2. GR no. 202103231642326930, March, 2021

For effective implementation of the Juvenile Justice (Care and Protection of Children) Act, 2015 in state, child fund under Juvenile justice (Care & Protection) Act, 2015 was stated.

Observation:

The rule being implemented by the said system should be used in full capacity and work related to Juvenile Justice Mechanism in the government must be taken care.

Questions asked during the visit.

- What is the arrest procedure for juveniles, and how are they produced before JJB?
- In what ways is counselling of juveniles and children done?
- What are the different measures taken by JJB to provide vocational education and career guidance?
- what if a juvenile doesn't know his age or doesn't have any documents as proof of his age?
- If the juvenile is an orphan and eligible for bail, then who looks after his bail, the surety or the bond?
- Are there any juveniles in the observation home who are eligible for bail but are still here? If so, then what are the reasons?
- Are there any recreational activities for juveniles? If yes, then what are those?
- What is the daily routine of the juvenile in an observation home or special home?
- How is the correctional work done on inappropriate behaviour or drug-addicted juveniles?
- What medical facilities are available on the premises?

- Do you arrange health camps for juvenile?
- How many time the parents of juvenile are allowed to visit?
- Are these juveniles given any rewards?
- Are these juveniles allowed leave of absence?
- Do you provide cloths according to weather? E.g., Sweater, socks etc.
- Do you have special diet for juveniles who are unwell/ sick?
- Are the female juveniles provided with sanitary equipment?
- What are the roles of PO?
- Kind of care & protection by the administration?
- Want to know how they maintain records?
- Are there internal departments related to Juvenile care & protection for various activities?
- Need to know data classification offence wise?

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- <https://gr.maharashtra.gov.in/>

REPORT ON POLICE AND THEIR HUMAN RIGHTS



Place of the visit- Colaba police station, Mumbai. Date- 16th of January 2023. Time- 11am to 2pm.

ACKNOWLEDGEMENTS

We cannot express enough thanks to Maharashtra State Human Rights Commission for their continued support and encouragement: Hon'ble Justice K. K. Tated Sir and all the associated members. We offer our sincere appreciation for the learning opportunities provided to us by this esteemed committee. Our completion of this project could not have been accomplished without the support of persons who knowingly and unknowingly helped us and supported us in various ways. Finally, all your encouragement, support, advice, affable treatment when the times got rough are much appreciated.

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Executive summary

Our research study throws light on the violation of human rights of police like long working hours of the force, man power, equipment requirements etc. and the need of the hour to bring changes so that the delivery of Justice can be made more efficient. To understand the different departments of the police station, nature and responsibilities performed by police officers and issues of human rights faced by them. To get to know different functions of police. See and observe the part of police in society with changing trends of crime.

Introduction

Do police officers have human rights?

Ans: yes.

It is believed that Policing is one of the most difficult careers and people often associate them with being High Handed, Corrupt, Rude, etc. When talking about human rights regarding police the first thing to consider is that the police are acting as state agents and are therefore bound to respect and protect the rights of the common people. Police officers themselves however often raise the question of whether they can carry out their duties and also be a rights bearers.

Police officers are given the same rights and freedom as other common people and are protected by human rights. when doing their jobs. They can refer to their rights mentioned in various international human rights documents, such as the International Covenant on Civil, the European Convention on Human Rights (ECHR) and Political Rights (ICCPR). The same principles apply to the human rights of police officers as they do to human rights in general. Joining a police organization or putting on a uniform does not mean that they must give up their human rights for the sake of that organization's internal rules and regulations.

Lord Cornwallis was the founder of the police force in India. The Indian police force was started in 1861 to prevent and control crime in society. Often Police are in the news for violating the human rights of others which can be seen from the bar chart which was prepared from the data received from the CMS of MSHRC (Annexure 1 and 2).

As they are the first point of contact with the public in the law enforcement hierarchy therefore they are most often at the receiving end.

According to Section 22 of the Indian Police Act, 1861, police are required to be on duty 24 hours. They are working on an average for a minimum of 12 hours a day, with no weekly off, no leaves, no overtime pay and no social life. Being the first line of defense for society, if they are fatigued, overworked and depressed, will lead to a failure of the system.

In Maharashtra there is already a leave policy in place. Every police constable in Maharashtra has a weekly-off unless there is a significant situation like Ganapati celebrations. Since 2016, there has been a provision that if the weekly off gets canceled officially, the same is compensated with one-day additional pay. As per the data presented by the Ministry of Home Affairs - Women only constitute 7.28 per cent of the police force in India. The Maharashtra police department has a minimum strength of nearly 1.95 lakh. It also has fifteen thousand women in the department. Most police stations have only 40 percent of the required staff.

Research methodology

Primary data

Our methodology is based on Primary and secondary data collection mostly through observations, questionnaires and secondary sources. We questioned 10 policemen with the following questionnaire-

Questionnaire

1. What is the difference between a police station and an office?
 - Police station is 24 hrs on but office have fix time 11:00 to 5:00
2. What changes are seen in the police station?
 - CCTV.
 - Maharashtra's female police personnel have been on 8-hour duty shifts since September last year.
 - Mumbai's police's constabulary can shift to a 8 hours duty schedule as against the existing 12-hrs.
3. Administrative system in colaba police station & how many portfolios?
 - 4 PI including 1 PRO and 4 portfolios.
4. How is the investigation process?
 - Capture photographs at that place of crime.
 - Take a help of police dog squad for non bailable crimes like : Trafficking of person Murder,rape and Drugs.
 - Take help from experts.
 - At the crime scene, draw a site map.
 - Checking Footprints and Fingerprints of the culprits.

INTERNATIONAL AND NATIONAL PROVISIONS

INTERNATIONAL PROVISION

CEDAW

Part III (Article 10 to 14) and IV (Article 15 and 16) of the convention discuss about 7 major aspects

- **Right to Education -A10**
- **Right to Employment-A 11**
- **Right to Health Care- A12**
- **Right to Economic and Social Life -A13**
- **Right to Women in Rural Areas -A14**
- **Right to Equality Before Law -A15**
- **Right to Marriage and Family Relations -A16**

FOR OTHER INTERNATIONAL PROVISION : See Annexure : 3

NATIONAL PROVISION

1. Right to life - Article 21
2. Right to a fair trial - Article 21
3. Right to privacy, including data protection - Article 21 of Constitution of India, Statutory provisions contained in Sec. 8(j) of R.T.I. Act, 2005, Information Technology Act, 2000
4. Right of Expression - Article 19
5. Freedom of Assembly and Association - Article 11
6. Freedom from Discrimination - Article 14,15,16,17,18
7. Right to fair and just working conditions - Article 42 of D.P.S.P.
8. Social Security - Article 21

Case laws

V.Shanmugam vs

The Senior Superintendent of Police (C&I)

Puducherry

The brief facts of the case are as follows:

The petitioner was employed as Police Constable in the Puducherry home guards department. He has received several accolades. According to the petitioner, he had earned several enemies in the department including many police officers. When he was under medical leave news articles were published alleging the involvement of the petitioner with an incident which resulted in registration of the FIR. Thereafter, the impugned order came dismissing him from service without any opportunity to him. Aggrieved, the petitioner challenged the dismissal order contending gross-violation of principles of natural justice; that he is not connected with the offenses as alleged in the FIR, he has been falsely implicated at the instance of few police officers; and that the procedures and protection under Puducherry Police Subordinate Services (Discipline and Appeal) Rules, 1968 and Article 311(2) of the Constitution of India, have been violated.

Court Held that -The writ petition is allowed and the impugned order of dismissal passed by the respondent is set aside. The respondent is directed to reinstate the petitioner in service forthwith. However, liberty is granted to the respondent to initiate appropriate proceedings against the petitioner if he is so advised, by granting him due opportunity, by following the procedures.

Conclusion -In this case we can see human rights of police getting violated by other police officials by suspending the petitioner without giving him any opportunity to defend himself.

Link of case law:

<https://indiankanoon.org/doc/78632717/>

Schemes

Name: Maharashtra Govt To Give Ownership Of Houses To Police Personnel For Just Rs 15 Lakh Under BDD Schemes

Date: 31 August 2022

Day: Wednesday

The Maharashtra government has decided to give the ownership of houses to police personnel for Rs 15 lakh under the Bombay Development Directorate (BDD) Chawl redevelopment scheme.

- Under this scheme Maharashtra govt to give ownership of houses to Police Personnel for just Rs 15 Lakh under Bombay Development Directorate chawl redevelopment scheme.
- As per the officials all the police personnel working or retired or the families and legal heirs of the deceased residing in the BDD chawls.
- BDD chawls redevelopment project was launched in 2021.

Observation

secondary data

The police station in which we visited found the following sections and departments.

1. Reception
2. Duty officer: is a person who lodges the FIR and tells the respective officer about the report. He maintains a daily diary. If there's cognizable offense he lodges the FIR [first information report] NCR means [non cognizable report] is filled in a case of non cognizable offense.
3. Investigation Room: is a room where a person whether accused or witness can be detained for some time by the investigation officer for the enquiry.
4. Record Room: all files are maintained here. Among other things, record of offense, details, bail register, FIR recor and other information can be found here.
5. Cyber Crime Department: they were only handling cyber related crimes.
6. Tadipal room - was meant for taking preventive measures before the actual crime happens so that crime doesn't take place.
7. Surveillance room - surveillance was done of various areas under their jurisdiction by installing CCTV cameras at different places.
8. Complaint registering room - for people to come and lodge their complaints.
9. Passport room - for verifying the passports.
10. Despatch room - for getting the acknowledgement on the complaint copy of receipt of complaint by police.

During the visit to the police station we understood the basic structure of the police station.

- Law & order related duties.
- VIP bandobast and VIP security.
- work crime related work.

As per the personal observation we had conversation with the police constable from the police

station and we got to know the problems and challenges faced by them on a daily basis.

- Disorganized functioning of police stations.
- Diversion of manpower on ‘attachments’ and other duties not related to police station functions.
- Court work processes.
- Repetitive demands of information and data from various quarters.

In addition to daily tasks, staff are commonly recalled to duty during their off time to deal with emergencies of law and order, arrangement for VIPs, etc. In police stations everybody is tasked to do everything. The police are overworked because we are not giving attention to the police station or equipping them with resources or concentrating on policing through the police station. Long working hours lead to corruption. Non-critical works are also getting done by police officials who could have been handling investigations. A lot of policemen are engaged in guarding duty of establishments/infrastructures like the residence of MLAs or officers which could have been outsourced to private security agencies. Health & Social Impact of Long working Hours Inadequate infusion of technology and non-availability of technological tools/aids Inadequate manpower There is adverse police to population ratio Due to which there is undue physical strain leading to physical and mental fatigue for personnel. It was also observed that due to long working hours police station staff were not able to attend to their personal or family needs and social life and commitments. Which is taking a toll on the morale, motivation and self-esteem of staff. The overall frustration is manifesting itself in the offensive conduct and behavior with the public by many of them, and which in turn is leading to erosion of the societal image of the police and alienation of the public. It is affecting their work-life balance, morale and motivation and performance. Their overall frustration is resulting in their rude and offensive behavior with the public. Thus many right kinds of individuals avoid coming into the police profession which in turn is affecting the quality of the manpower available for recruitment.

Suggestion

Extra manpower requirements can be reduced with measures like re-engineering of some work processes of police stations, greater infusion of technology in police station work, introduction of other force multiplier mechanisms and outsourcing of some of the non-core policing tasks. Police officials should be paid overtime for the extra hours of work they do. The policing budget and workforce need to increase correspondingly with the increasing population. As in the long run, it will be cheaper and more logical to hire more personnel than to pay so much overtime and medical costs for these police personnel.

- Regulation about the number of working hours has to be put in place and implemented effectively.
- There should be more police hired. infrastructure should be improved and worked on.
- They should be provided with the knowledge of CRPC and IPC.
- Adoption of better techniques.
- Stress management programs in police.
- Health and safety regulations.
- Training programs.
- Promotion programs.

Conclusion

Misunderstanding about the police in the society:

- Enforcing a law is the duty of the police. If anyone has a warrant police have no choice but to arrest the person.
- Police don't like arresting people without a serious crime. Arrest takes a long time between transportation processing and report typing.
- Police don't want to use physical force, physical force incidents are common to get police injured.
- When police show up at any type of dispute, the police officer is responsible for taking charge and restoring order. It may be our home, our property or our business but the police officer in charge until order is restored.
- Police officers are human beings with the same emotions that every other person on the planet has.

Government resolutions

Gr No: 116

Name of the GR: Opening of New Budget Head for training expenditure of officers and staff in the Police Force.

Unique code: 202206031306366929

Date: 03/06/2022

Gist: All the police officers are trained under various services in the Police Training Center. Police who have completed 10 years, 20 years and 30 years of training of at least two weeks. Officers of the rank of Deputy Superintendent of Police and Sub-Inspector of Police are also trained under Special Services fees to Training Centers for training imparted to Officers/Employees. As a separate account head is not available for meeting the cost of training fees at present, the issue of creating a separate account head for the purpose of the said expenditure was under the consideration of the government.

GR

link:

<https://gr.maharashtra.gov.in/Site/Upload/Government%20Resolutions/English/202206031306366929.pdf>

GR No. 190

Name of the GR: Regarding annual medical tests for 2021-22 of the Police officers of Maharashtra Cadre of Indian Police Service.

Unique code: 202203162052366729

date: 16/03/2022

Gist: Medical checkup from hospitals by Maharashtra officers of Indian Police Service officers should first bear the cost of the checkup up and the same would be reimbursed later. Officers must notify their superiors before conducting a statutory check up. B.P.S. Medical examination should be done in the hospital specified in the Revenue Department in which the officer is posted. Officers should conduct medical examinations at hospitals.B.P.O.S. Officers should first

bear the cost of medical examinations themselves and then seek compensation on the sent expenses.B.P.S. The officers should contact the concerned hospital and fix the date of medical examination.

GR

link:

<https://gr.maharashtra.gov.in/Site/Upload/Government%20Resolutions/English/202203162052366729.pdf>

GR No: 315

Name of the GR: Promotion of IPS officers from Assistant Superintendent of Police to Additional Superintendent of Police.

Date: 09/09/2021

Unique code: 202109091829260029

Gist:

Government Order is in accordance with the provisions of Section 22 (N) of the Maharashtra Police Act. The officers of the Indian Police Service are being promoted to the post of Decades after their transfer In consideration of the petitions of senior officers in respect of transfer orders of the General of Police, the above officers are entitled to attend the appointment of an officer for promotion. According to the Order of the Director General of Police, the concerned controlling officer taking into the law and order situation should release the above officer to appear at the place of posting on promotion and then the concerned officer should join the post on promotion and submit the same report to the government.

GR

link:

<https://gr.maharashtra.gov.in/Site/Upload/Government%20Resolutions/English/202109091829260029.pdf>

Bibliography

- [National Requirement of Manpower for 8-Hour Shifts in Police Stations](#)
- [90% of the Police Force in the Country works more than 8 hours a day](#)
- [8-Hour Work Shifts & Overtime Pay? Do Our Police Deserve This?](#)
- <https://www.india.com/maharashtra/maharashtra-government-to-give-ownership-of-houses-to-police-personnel-for-just-rs-15-lakh-under-bdd-scheme-5604050>
- <https://fra.europa.eu/en/publication/2013/fundamental-rights-based-police-training-manual-police-trainers>

Annexure

Annexure 1

MAHARASHTRA STATE HUMAN RIGHTS COUNCIL DATA

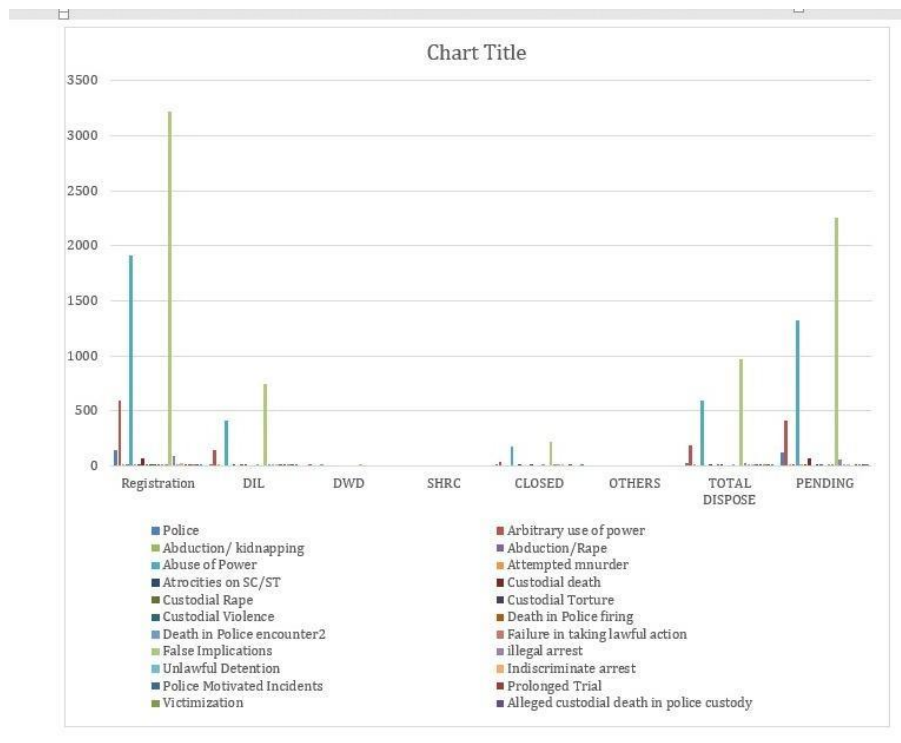
Table

INCIDENT CODE (NAME OF INCIDENT)	REGISTRATION	DIL	DW D	SHR C	CLOSE D	OTHE RS	TOTAL DISPOSE	PENDING
800 (POLICE)	147	15	0	0	7	0	22	125
801 (ARBITRARY USE OF POWER)	597	145	1	0	42	0	188	409
802 (ABDUCTION/KIDNAPPING)	3	1	0	0	0	0	1	2
803 (ABDUCTION/RAPE)	4	0	0	0	0	0	0	4
804 (ABUSE OF POWER)	1916	410	3	0	179	0	592	1324
805 (ATTEMPTED MURDER)	5	0	0	0	0	0	0	5
806 (ATROCITIES ON SC/ST (BY POLICE))	7	2	0	0	2	0	4	3
807 (CUSTODIAL DEATH (Police))	74	0	0	0	0	0	0	74
808 (CUSTODIAL RAPE (Police))	1	1	0	0	0	0	1	0
809 (CUSTODIAL TORTURE)	20	1	0	0	2	0	3	17
810 (CUSTODIAL VIOLENCE)	7	0	0	0	0	0	0	7
811 (DEATH IN POLICE FIRING)	11	2	0	0	1	0	3	8
812 (DEATH IN POLICE ENCOUNTER)	5	0	0	0	0	0	0	5
814 (FAILURE IN TAKING LAWFUL ACTION)	3219	749	2	0	217	0	968	2251
815 (FALSE IMPLICATIONS)	88	20	0	0	5	0	25	63
816 (ILLEGAL ARREST)	18	4	0	0	1	0	5	13

817 (UNLAWFUL DETENTION)	26	4	0	0	4	0	8	18
818 (INDISCRIMINATE ARREST)	1	1	0	0	0	0	1	0
819 (POLICE MOTIVATED INCIDENTS)	5	1	0	0	1	0	2	3
820 (PROLONGED TRIAL)	3	1	0	0	0	0	1	2
821 (VICTIMIZATION)	4	1	0	0	0	0	1	3
822 (ALLEGED CUSTODIAL DEATHS IN POLICE CUSTODY)	15	8	0	0	1	0	9	6
TOTAL	6176	136 6	6	0	462	0	1834	4362

Annexure 2

Graph



Annexure 3

International Provision

Fundamental rights-based police training

Table 6.1: Examples of the human rights of police officers

Right to life Article 2 of the ECHR Article 2 of the Charter of Fundamental Rights of the European Union (EU Charter of Fundamental Rights) Article 6 of the ICCPR	Right to be protected in dangerous situations Equipment, training, professional police operations, allocation of adequate resources, effective investigation when a police officer has died on duty
Right to a fair trial Article 6 of the ECHR Articles 47 and 48 of the EU Charter of Fundamental Rights Articles 14 and 15 of the ICCPR	If a police officer must stand trial in criminal proceedings due to acts performed as an official, all fair trial elements apply (right to be informed of the accusation, right to defence including the right to remain silent, legal assistance, presumption of innocence, review by an independent body)
Right to privacy, including data protection Article 8 of the ECHR Articles 7 and 8 of the EU Charter of Fundamental Rights Article 17 of the ICCPR	To have a reasonable expectation of privacy in the workplace (<i>Halford v. UK</i>). Sensitive issues: workplace surveillance, email and telephone monitoring, drug testing, requirements to submit DNA samples, fingerprints, regulations on appearance
Freedom of expression Article 10 of the ECHR Article 11 of the EU Charter of Fundamental Rights Article 19 of the ICCPR	Political activities of police officers with respect to ensuring political neutrality with the police services, confidentiality of official information
Freedom of assembly and association Article 11 of the ECHR Article 12 of the EU Charter of Fundamental Rights Articles 5 and 6 of the European Social Charter (ESC) Articles 21 and 22 of the ICCPR Article 8 of the ICESCR	Forming police labour organisations. Are police officers allowed to strike?
Freedom from discrimination Article 14 of the ECHR, Articles 20 and 21 of the EU Charter of Fundamental Rights Article 26 of the ESC Articles 2 and 24 of the ICCPR Article 2 (2) of the ICESCR	Discriminatory recruitment procedures, working conditions, promotion practices, equal pay for men and women, dismissal practices, harassment
Right to fair and just working conditions Articles 2, 3 and 4 of the ESC Article 31 of the EU Charter of Fundamental Rights Article 7 of the ICESCR	Reasonable working hours, rest periods, paid holidays, adequate remuneration, health and safety regulations
Social security Articles 8, 12, 27 and 32 of the ESC Article 34 of the EU Charter of Fundamental Rights Articles 9 and 10 of the ICESCR	Pension system, sick leave (especially with respect to on-duty accidents), invalidity insurance, maternity leave, childcare responsibilities

Source: Information in this table is primarily drawn from Council of Europe, European Platform for Policing and Human Rights, Police officers have rights tool, Strasbourg, Council of Europe

PRISON FROM THE PERSPECTIVE OF HUMAN RIGHTS

BY

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ACKNOWLEDGEMENT

Learning and acquiring knowledge has no lead and bounds. It is one resource that never gets exhausted, the more you preach the better it gets and the more it lives down through the ages.

Our journey as interns which started with the aim to learn the practical aspect of human rights, ended as a memorable experience. The preparation of the presentation of this humble work encompasses the immense support from many people.

We would like to devote our sincere gratitude to Maharashtra State Human Rights Commission for this once in a lifetime opportunity to associate us with them through this Winter-Internship Program. We would like to express our heartfelt honour and gratefulness to Justice K. K. Tated Sir for their support and encouragement.

Last but not the least, we convey our profound appreciation to all the people who knowingly or unknowingly supported us in our journey.

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EXECUTIVE SUMMARY

The main aim to visit Aadhar-Wadi prison situated at Kalyan was to overlook the human rights conditions and to examine various issues with respect to the recreational activities carried out at the prison for the reformation and rehabilitation of the prisoners. At the prison we certainly witnessed overcrowding, no legal desk facilities were acknowledged, no provisions for counseling and advising, and apparently no means of any standing medical assistance available to the prisoners. On making due requests, the interns were allowed very limited access to a few barracks and library. The visit was unwelcomed for the interns, and on the contrary we were restrained to carry out thorough examination and research of the conditions of the prison as we perceived hopelessness among the prisoners and experienced negativity amongst the prison staff. The clear observation was that the prison staff not only withstood the reformatory theory, but also embraced the deterrent theory by their behaviors and actions. This became conclusive when we witnessed bodily injuring hard leather belts (instruments of punishment) that were hanging in every corner of the prison. The prisoners were allowed to share their experience in the prison which was done in the presence of the jail superintendent, wherein the undertrial prisoners spoke with us. There, we learned that communication with family was not established for the foreigner prisoners and also that one of the convicts was in a civil outfit, which is not in compliance with the prison manual. Neither any recreational activities were carried out for the male inmates to give them hope towards their fruitful future, nor any upskilling program to make them responsible, aware and law-abiding citizens of the country. Evidently there were no efforts taken towards the reformation and rehabilitation of the inmates.

The tagline of Maharashtra Prison Department is 'Reformation and Rehabilitation' which is indeed very appreciative. But this tagline seemed to be taken as mere words and its purpose was in void execution. We could not

witness any recreational activity held for the male prisoners, including sports activities, spiritual activities or exercises. The female inmates were given options for few recreational activities held by the NGOs, such as jewelry making, parlor courses, embroidery, bags making, and stitching. We were bystander to one of the female foreign national inmates, who teaches yoga and foreign languages to the female prisoners, enlightening others with knowledge she has. One issue that struck us was that the NGOs were utilizing free labour by getting the help from the female inmates, thereby it is necessary that the prisoners should get the fair wages for their work. With all these notations the authorities can help the prison to improve their living conditions, bring positive changes in the behaviors of prison staff and encourage the jail officials to embrace reformatory theory for the betterment of prisoners as well as the society.

ABSTRACT

‘Hate the crime and not the criminal’

-Mahatma Gandhi

Every nation in the modern world has penal system and different forms of imprisonment, and over many decades, its use has been rapidly increasing. In India, prisons function as a very large social organisation. Prisons are an integral part of the greater criminal justice system and provide a crucial service in enforcing the rule of law and, in turn, preserving law and order, peace, and calm in the society. The objectives of imprisonment, on the other hand, have come a long way resulting into confinement, deterrence, penance, correction, reformation, and rehabilitation. The report aims to examine the approach of human rights towards the Indian prison system. The aim of this

research is to examine the legal and human rights of prisoners in India. The research covers statistical data, observation, suggestion, statutory provisions, government regulations, case laws with reference to the observations, recommendations and case studies. Furthermore, though they are restricted, the rights that Prisoners are granted under Articles 14, 19, and 21 are not passive and will be challenging to human rights in the event of a difficult circumstance. The report research is intended to study the conditions of prisoners as one of the growing need for effective human rights mechanism for the purpose of reformation and rehabilitation, and it has added fuel to the already burning issue of prison reforms. This study further analyses the prison reforms, conditions of prisons, current status of prisoners, recent trends in prison structures and judicial trends related to prisoners. The report research is focused towards Adhar-Wadi Jail, Kalyan exclusively and narrows down towards the human rights perspective of the prison. This study emphasizes the most important factors that affect the administration of efficient treatment to a range of populations within the prison system, however it is by no means exhaustive. The report contains many different aspects violating the basic human rights of a prisoner in the prison, and these aspect are usually neglected or ignored by the higher authorities. Therefore, this report showcases the comprehensible issues occurring in a prison system, thereby trying to bring a change to the system with the help of human rights as a shield.

The researcher has mainly referred to the secondary sources available in the form of websites as well as the case studies done on field.

AGENDA

The purpose of this prison report is to research and analyses the prison conditions with reference to human rights spectacle. The agendas behind working on the given report is listed below,

1. To advocate awareness about basic human rights of all the individuals, including prisoners. The prisoners are also entitled to certain rights, which if

contravened may directly violate their fundamental rights. Hence, the report is a clear analyses of observations eye witnessed at the prison premises.

2. To promote human rights for all without any discrimination of race, religion, caste, sex, gender, or language. This step is very important to bring accountability of responsibility who tend to violate human rights and to ensure that the basic rights of citizens are respected.
3. To study and research the conditions of prisoners, their rights and its exploitations and to safeguard their fundamental virtues.
4. To bring a clear picture regarding the observations of the life inside prison and certain conditions in which the prisoners survive and to provide appropriate suggestions to combat the violation of the prisoners' rights.
5. To bring to the notice of the Human Rights Commission and the National Legal Services Authority, the adverse effects of the prison conditions on the life of prisoners where their basic human rights are neglected, in order to take appropriate steps and contribute towards prison reformation and rehabilitation.
6. The report aims to make people more conscious of prisoner's human rights in order to make them better equipped to stand up for the basic rights of prisoners.
7. To spread knowledge of the means that exists today which are of utmost importance to protect and promote fundamental rights and freedom.
8. To develop positive changes that may help to build better living conditions for the prisoners of all genders.

STATISTICS

The below data was collected at Aadhar-Wadi, Kalyan jail during our field visit on 17th January, 2023:

Serial no.	Prisoners Type	Male	Female	Prisoner composition
1	Undertrial Prisoners	1056	74	1130
2	302	651	50	701
3	Simple punishment	9	-	9
4	Forced labour	13	-	13
5	Under foreign jurisdiction	1	9	10
6	Convicted	3	-	3
7	NDPS	24	1	25
8	Organized crime	124	3	127
9	Laal patti (escaped)	7	-	7
10	Total	1888	137	2025
11	Maximum Limit of prisoner	505	35	540

OBSERVATIONS

Our observations are based on our visit to the Aadhar-wadi jail, Kalyan on 17th January, 2023. The observations hereby are listed below –

1. The MSHRC interns were not handled with co-operation.
2. The prison visit access was restricted, perhaps not permitting the interns beyond a particular area.
3. The deterrent instruments of punishment were hanging at each corner of the prison.

4. Kiosk machines were installed in the prison area, but they were found to be in deserted and unused conditions.
5. Prisons appeared to be overcrowded, which may lead to unsatisfactory living conditions.
6. Legal Aid Clinic desks, which according to the Jail Superintendent were working and present around every group of barracks, remained undetected. The impact of providing legal aid was not assessed.
7. Recreational and rehabilitation activities for male inmates are not encouraged.
8. Explicit negative approach of the prison staff towards the inmates (undertrials and convicted) was clear and obvious.
9. The convicted inmates were found without their jail uniforms.
10. Shortage of manpower in prison premises was noticeable. The staff with respect to the population of inmates are very less.
11. The prisoners lacked easy access to justice and legal support. Many prisoners complained about non-production before courts, delay in receiving judgements, inadequate legal support, and improper communication with their legal representatives.
12. Foreigner inmates complained regarding no means of communication with their family.
13. Ration inspection is done in jail by the Bhaji Committee as per the jail superintendent.
14. Sports activities and other sport facilities are not provided to the prisoners.
15. During the CCTV room visit, only one camera was found working. No other premises were under surveillance.
16. General health camps, skin diseases camp, and other medical camps are arranged at frequent intervals in prison. But no standing medical facilities, nurses or any medical desk can be observed inside the premises.
17. Women inmates are provided with different recreational activities with the help of different NGOs. Activities like stitching, jewelry making, bag

making, greeting card making, embroidery and parlor courses are taught to them. Apart from Prayaas, NGOs that are not registered and having no government authorisation were allowed inside the jail premises.

18. Women inmates were taught reformatory and recreational activities like yoga and foreign languages. Foreigner inmates are the ones teaching the fellow inmates languages like English and Spanish.
19. Kitchen area was made available for the visit of interns. Male prisoners were observed to be cooking as per their shifts. The kitchen was unhygienic and dirty.
20. Only one teacher for all the prisoners is appointed at the jail. The teacher, alias 'Guruji' also handles the library along with teaching.
21. Beautiful wall paintings by the inmates were seen across the prison premises.
22. If the prisoners require anything extra, other than the regular food provided by the prison canteen, they are provided with the facilities to purchase the given need from the canteen for an extra cost amounting not more than rupees 6000/- per month.

CASE STUDIES

SUBJECT 1: The Jail Superintendent were the first person to interact with us in the prison. He has given us some incitement in jail, which were not very affirmative and opposing the reformatory theory. He told us about the prisoners. He started the opening words with a humble greeting to us and told us that the environment of the prison is very negative. Prisoners over here are very aggressive. As per his experience the prisoners don't take any interest in recreational activities and that they don't have any responsibility towards their family members. He told us people have more sympathy for prisoners than for prisoner keepers. He told us when the person is inducted in jail his weight is less as compared to when he leaves the jail. The Superintendent introduced us to jail with not a positive mindset. He justified his saying by some stories

or experiences like people have violently agitated for bail in prison and prisoners blackmail them that they will prosecute them in court if they don't listen to the demands of prisoners. He said that crime is increasing because of legal aid given to prisoners. He said they pretend to be ill and demand for medicine, but when the medicine is given they throw the medicine.

SUBJECT 2: The first inmate the interns got to interact with was an undertrial. He was accused and sent to prison two months ago. He voluntarily helped with the canteen work in the prison premises. He did not further share any more information with us.

SUBJECT 3: The second inmate, a 24 year old undertrial who was charged under Section 302 of Indian Penal Code, 1860. He was in jail since four years as his trial was still pending before the court of law. He shared that his advocate has filed bail plea before high Court. He worked at tea stall in prison. He told his family visits once a week and that he wants to continue his study after getting release from jail. When he was asked for his feedback, he told that everyone's case should get speedy disposal.

SUBJECT 4: The third inmate we interacted with was a 55 year old convicted IPS officer who was inside the prison for last fourteen years, wherein his trial lasted for 10+ years. He was accused under Narcotic Drugs and Psychotropic Substances Act, 1985. He further showcased the challenges one has to face inside the prison, like production in court, law and order situation, stress on resources, mental health issues, manpower constrain, no response from lawyers and no video conferencing. He shared that his appeal is lying before High Court at present. His plan after his release is to stay with his family, expects acquittal and to get back his job. He helps in the office and administrative work at the prison. When asked for feedback, he said that the lawyers need to be more active.

SUBJECT 5: The fourth person we got to interact was the teacher cum librarian of the prison who is known as 'Guruji'. He showed us the library.

He shared the way they teach all the prisoners in here. He also informed that prisoners can continue their further studies and get enrolled under Yashwantrao Chavan University. Presently there are 9 prisoners pursuing BA and in first and second year of their course.

SUBJECT 6: The fourth inmate we interacted was 32 years old female foreign prisoner originated from Venezuela, South America. She was accused under Narcotic Drugs and Psychotropic Substances Act, 1985. The inmate was in jail since four years and 2 months. She informed that she still has no possession of her chargesheet. She also said that she has no means of communication with her family at all. She teaches yoga and foreign languages to the female inmates in prison. In her duration in prison, she has learnt to speak and write hindi and marathi. She said that she has nothing to complaint about and had grievances against the judicial treatment.

WAY FORWARD

Mindset

As per ‘Model Prison Manual, 2016’, under the right to human dignity clause mentioned at page no. 16, states the way prisoners should be treated with integrity and that they have immunity from repression and personal abuse.

‘Model Prison Manual, 2016’ mentions at page no. 21, point 14 that the prisoners shall be characterized by firm and positive discipline along with maintenance of their human rights.

Legal aid

1. Section 12(g) of Legal Services Authorities Act, 1987 states the criteria for giving legal services under the act includes a person in custody.
2. The NALSA campaign brochure on ‘Accessing justice to convicts in prisons through legal services’, has given a detailed insight about the objectives and operational framework designed to provide legal assistance to the convicts.

3. The NALSA also has its Standard Operating Procedure (SOP) for Undertrial review committees in order to keep a check and curb inhumane conditions in prisons.
4. The NALSA has its Standard Operating Procedure (SOP) on access to legal aid services to prisoners and functioning of the Prison Legal Aids Clinic, 2022 to ensure the equal opportunity of legal aid services to all the underprivileged prisoners.
5. In *Sheela Barse v. State of Maharashtra*, AIR 1983 SC 378, (MANU/SC/0382/1983), the Supreme Court ruled that the poor and marginalised people who are detained should be given legal representation under Article 14, 19, and 39-A of the Constitution. The Supreme Court also directed inspectors of jails to establish a legal aid organisation at the High Court and District Court levels.
6. In *Hussainara Khatoon v. State of Bihar*, AIR 1979 SC 1360, (MANU/SC/0119/1979), a shocking scenario in regard to administration of justice came forward wherein a large number of prisoners were behind bars for years awaiting their trials in the court of law.

Food

- a. As per 'Maharashtra Prison Manual, 2016', under Chapter 14 - staff functions mentioned on page no. 191, states the inspector general should inspect that the prisoners should be provided with quality food and water by the prison staff which is sufficient for them to survive.
- b. The Maharashtra Prison Manual, under Chapter 24 – diet for prisoners mentioned on page no. 361 states that the diet for prisoners and that all the foodstuffs obtained and stored are inspected so as to be fit for human consumption.
- c. The Government Resolution (GR) - 7036/2 dated 04th August 1930 directs that prisoners should be provided with freshly prepared quality food at least twice a day. (GR-1)

d. As per the GR dated 19 June 2019 the Committee shall be formed consisting of dietitian from the district president's hospital, social workers men and women who shall conduct unannounced inspections to check whether the quality of food served to the prisoners is proper or not. (GR-2)

Further, in the case of *Rama Murthy v. State of Karnataka*, the Supreme Court has identified the problem of insubstantial food available in the prisons and that there is a need for immediate attention to this issue.

Health and sanitation

Improvisation is needed all over in this sector and the problems are to be considered & looked into and have to be resolved as soon as possible.

The statistical data is a pan India based report, so the state of Maharashtra also contributes to the same. There is a real need to focus on the betterment of the prisoner's mental health.

Modernization and technical improvisation

As per the NCRB report¹ (pg. 270) out of the total 1319 jails in India nearly 1102 jails were equipped with video conferencing of which only 48 prisons were in Maharashtra as on 31st December 2021.

Recreational Facility

1. Undertrials are in large number, so the prison authority has a liability to provide them some skills and vocational training. So, till they get Bail or are acquitted they can learn something through such programmes and keep themselves busy.
2. Program like PARIVARTAN, which is milestone that was created in the Tihar Jail, which took place in the last week of September, 2022; in collaboration with Indian Oil Corporation (IOC). It was specifically a Sports meet of the Prison. Such activities should be promoted on a large scale in every prison.

¹ https://ncrb.gov.in/sites/default/files/PSI-2021/PSI_2021_as_on_31-12-2021.pdf

3. Jails must meet the guidelines given in the CHAPTER-15 of the Model Prison Manual, 2016.

Overcrowding

There are efforts made to overcome the overcrowding on various case law and committees but it was not appropriately served, among various such efforts the case of *Arnesh Kumar vs State of Bihar* (2014²) the court tried to resolve the issue of overcrowding by directing the police personnel not to arrest the accused in which the punishment is less than seven years. Justice Amitava Roy (retd.) Committee has laid down certain recommendation to solve the problem of overcrowding among which the key highlight was to establish the special court to fast track the trial of petty offenses which are pending for several years, furthermore it tries to ease the bail procedure for incapable prisoner, by releasing them on mere Personal Recognizance (PR) bond, it also prescribe to avoid Adjournment for fast tracking the trial, insist and emphasize for speedy trial. The unawareness about section 436A of the code of criminal procedure which itself tries to reduce overcrowding is sadly not being utilized at its full potential for the benefits of prisoners. However, according to NCRB data there is no one eligible for the release under section 436A and no one being released under this section for the year 2021. Parole and furlough can also play a role for curbing the issue to an extent but the grant of parole and furlough is very slow to fast track the process, the has government as passed resolution named as COT 0914/ PRA. NO./171/14.³

² https://main.sci.gov.in/php/case_status/case_status_process.php?d_no=34178&d_yr=2013

³ <https://gr.maharashtra.gov.in/Site/Upload/Government%20Resolutions/English/201403061103184729.pdf>

5. MAHARASHTRA STATE HUMAN RIGHTS COMMISSION DATA

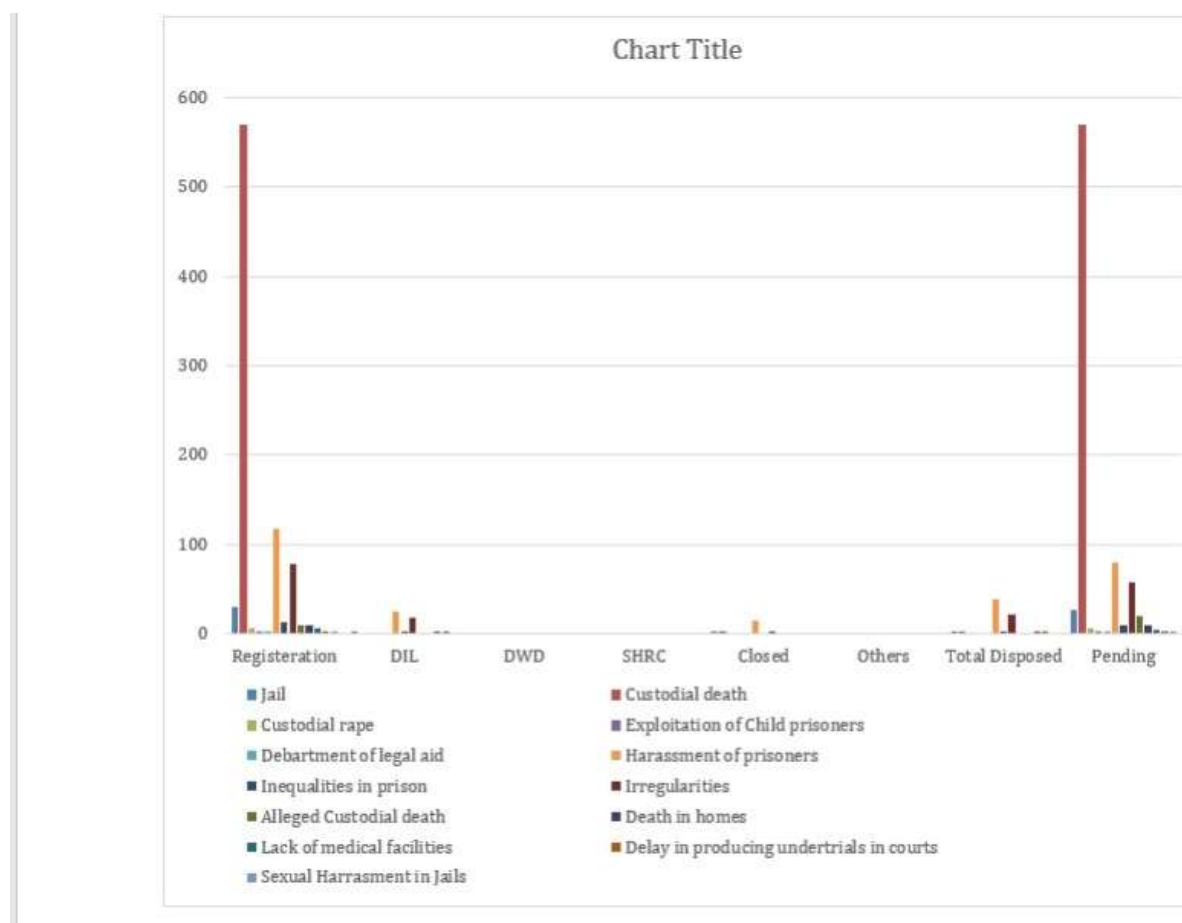
INCIDENT WISE REGISTRATION, DISPOSED AND PENDENCY FOR CASES
REGISTERED DURING THE PERIOD

FROM 01/01/1993 TO 01/02/2023
STATE MAHARASHTRA
INCIDENT CODE BETWEEN 300 AND 318

(DATA as per CMS)

INCIDENT CODE (NAME OF INCIDENT)	REGIST RATION	DIL	DWD	SHRC	CLOSED	OTHERS	TOTAL DISPOSE	PENDING
300 (JAIL)	29	1	0	0	1	0	2	27
301 (CUSTODIAL DEATH (Judicial))	571	0	0	0	1	0	1	570
302 (CUSTODIAL RAPE (Judicial))	5	0	0	0	0	0	0	5
303 (EXPLOITATION OF CHILD PRISONERS)	1	0	0	0	0	0	0	1
304 (DEBARMENT OF LEGAL AID)	2	0	0	0	0	0	0	2
305 (HARASSMENT OF PRISONERS)	118	24	0	0	15	0	39	79
306 (INEQUALITIES IN PRISON)	12	3	0	0	0	0	3	9

307 (IRREGULARITIES IN JAIL)	78	18	0	0	3	0	21	57
309 (ALLEGED CUSTODIAL DEATHS IN JUDICIAL CUSTODY)	20	0	0	0	0	0	0	20
310 (DEATH IN HOMES)	9	0	0	0	0	0	0	9
312 (LACK OF MEDICAL FACILITIES)	5	1	0	0	0	0	1	4
315 (DELAY IN PRODUCING UNDERTRIALS IN COURT)	3	1	0	0	0	0	1	2
316 (SEXUAL HARRASSMENT IN JAILS)	1	0	0	0	0	0	0	1
TOTAL	854	48	0	0	20	0	68	786



SUGGESTION

To deal with overcrowding of inmates, prison infrastructure facilities should be upgraded. If not done so, it'll contribute to the poor condition of prisons. Hence the admission of inmates beyond the maximum capacity should be strictly prevented. Access to justice is a basic right of all the prisoners. Hence, Legal Service Authorities need to be on their toes for actively tracking the progress of each case along with its speedy disposal. A system for monitoring and tracking of cases should be prisoner friendly, to ensure him the knowledge of the status of his pending cases. There is a need to upgrade for providing vocational training courses & different recreational activities to the inmates (without being gender biased). Government should sanction certain training programmes and certificate courses for the skill development of the prisoners under its surveillance. And make it mandatory for the prisoners to opt them by their choice. The kiosk machine and video-conferencing facility should be utilized and made available to all the prisoners. They should get an access to banking facility within the prison so as to deposit their wages in their own bank account. The jail library needs to be reformed and maintained by giving an access to and availability of books on variety of subjects.

Committees like 'Prisoner's Welfare Committee' and 'Complaint Management Committee' should be made pro-active, these could help to maintain peace and order inside the prison and to enhance their welfare. Prisoners tend to go through mental distress and agony, which may lead them to either become a hardened criminal or may never be able to overcome their depression. So, the government should compel the prisons, to provide proper and effective counseling sessions as well as psychiatric treatments to the prisoners, by keeping the process rehabilitation in mind. The prisons should have a proper mini jail hospital, inside the prison premises for the health care

of its inmates. Every time a patient falls ill, he/she has to be taken out of the prison campus for the treatment purposes, for which police escort is not ordinarily available. Functional hospitals should be set up in the jail campus, along with adequate diagnostic facilities. Psychiatrists, dermatologists, dentists, gynecologists, and other medical experts should be made available at the prison for routine medical checkups. Prison reforms are required to ensure that all the prisoners are not treated as criminals. As per the legal theory, an accused is considered to be innocent until proven guilty. The jail authorities however had a very negative approach towards the prisoners, which endangers the rehabilitative and reformatory motto of the prison. Law students and para-legal volunteers can be attached with the legal services authorities when the practicing advocates are busy or not available.

Human Rights Commission are yet to unveil many unknown facts regarding the prison conditions and prisoners lives therein. Therefore, the participation of the Human Rights Commission in the rehabilitation and reformation process should be extended. NGOs must be recognised and empaneled by the IG office, so as to avoid bogus NGOs from utilizing free labor. Women inmates should be introduced to computer courses, language courses, and other technical courses like repairing and maintenance of machines, etc. The ration of the inmates and the staff of the prison should also be maintained to an extent that they are not left without food or other supplies.

**Report On The New Children Home And Additional
Children Home Sion Trombay Road, Mankhurd,
Mumbai 400088.**

Organise by,

MAHARASHTRA STATE HUMAN RIGHT COMMISSION

Date of visit: 23rd January



Prepared by,

DHANSHREE PATIL

SUSHANT KASHID

OMKAR KAKADE

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ACKNOWLEDGEMENT

Learning and acquiring knowledge has no lead and bounds. It is one resource that never gets exhausted, the more you preach the better it gets and the more it lives down through the ages.

Our journey as interns which started with the aim to learn the practical aspect of human rights, ended as a memorable experience. The preparation of the presentation of this humble work encompasses the immense support from many people.

We would like to devote our sincere gratitude to Maharashtra State Human Rights Council for this once in a lifetime opportunity to associate us with them through this Winter-Internship Programme. We would like to express our heartfelt honour and gratefulness to ____ for their support and encouragement. We express our deep and sincere thanks to for Justice K.K Tated Maharashtra state human right commission. A providing us with her valuable guidance, affable treatment, and abunding support at all stages.

Last but not the least, we convey our profound appreciation to all the people who knowingly or unknowingly supported us in our journey.

EXECUTIVE SUMMARY

The summary of the children's home mankhurd visit and experiencing real working of children's home also environment of structure daily routing of children's and realized that both children's home additional as well as new how their life different from other children's who have their home. And without home, without parents they lived there life so happy in their world its very heart touching experience for us.

There was a joy on children's face but there was also a lot of sadness that we experienced, so we tried our best to feel them happy, we also appreciate them for drawings they did.

Here we discuss about our group children visited to Mankhurd children's home which organise by Maharashtra State Human Right Commission during winter internship program on the date of 23rd January. In that new children's home and another one is additional children's home both children's home report done by our team. Their structure of working facilities and make some observation and suggestion everything is mentation in this report. We discuss in details acts of children's government schemes for children's and government resolution also added in this report. We also make google form for this research for general survey and includes some pictures of children's home

This study is based on the primary data questionnaire prepared during survey visit The Home has facilities for boys and girls in the age group of 6 to 12 years.also include all primary level data about institute.

INTRODUCTION

We went visited to mankhurd child home on 23rd January 2023, which is organised by Maharashtra state Human Right Commission during our winter internship program, Maharashtra state Human Right Commission registrar ma'am guide us for the same. During our winter program we are visited so many places like kulaba police station visit, kalyan Adhar wadi jail visit, vist to Tata institute of social science NGO prayas, Children's home visit, juvenile justice borad Dongri, Vatsalya old age home etc.

In that our team children prepared report on chembur children's aid society under New children's home and additional childre'n home Mankhurd. We learned a lot of things during internship program. Dr. Bindu variath taken lecturer on child and Human Rights it was also knowledgeable so I think we should stand up for children's rights and fight for them

In our country there are social activities is going on through NGO's for socialism but then also there are major issues is there and in that children's issues is increasing day by day so for these purpose all the NGO'S is taking initiatives. So all these things the human rights is also participating in these matters, so human rights and children is connected when there is violation is happening with children's

❖ Definition

Child welfare society: child welfare, services and institutions concerned with the physical, social, and psychological, well being of children, particularly children suffering from the effects of poverty or lacking normal parental care and supervision

Children aid society: Children aid society provide child protection services and are governed by the child, youth, family services at 2017 ,(CYFSA). Children's aid society are responsible for investigation reports of abuse or neglect of children under 18 and where necessary

Children's home: as an institution that houses children whose parents are deceased. It is also defined as a public institution created to provide care for children without parents, abandoned and destitute. It is a public institution created to provide care for protection for children without parents.

Child Welfare Committee : is an autonomous institution in India formed under the Juvenile Justice Act, 2015 to handle and resolve complaints relating to children who are either abandoned, orphaned, voluntarily given away by parents, or lost and who are in need of care on issues relating to growth, protection, treatment, development, and rehabilitation, and includes provision of requirements for their basic needs and protection. Such children are

taken into care by a Child Welfare Committee, and the Juvenile Justice Act recommends that each district should have a minimum of one such Committee.

I think we should stand up for children's rights and fight for them. Their rights also matters most we should protect them and understand them not every child is not beggar the situation forced them to do so. **"All human beings are born free and equal in dignity and rights"**

OBJECTIVE AND SCOPE OF THE STUDY

The primary objective of the study is this research is assess the situation of the children in Mankhurd Children Home, their structure information the good and bad things and the problems faced by children's during the visiting everything is describe as under, education facilities staff information rehabilitation for children and other information in detail Tried to provide in simple manner.

- To know the children's home is there any child right is violated or not and what is they really did for child need care and protection as per JJ Act 2015.
- To know the structure who really working in children's home.
- To understand child behaviour in children's home.
- To know which facilities they provides for children's in the age between 6 to 12 in the both home new children's home and additional children's home as well.
- To know are their organization run as per JJ Act 2015 or The children's Act 1960.
- To know which kind of education they received whether it is proper or not
- What measures taken by them for child food and health.
- Which program they organise for children's development and awareness about annual sports and festival.

RESEARCH METHODOLOGY

The relevant information of research is totally base on observational and primary data which is collected by the group in that we includes following points:

1. Observation based on research conducted and their suggestion of New children's home and another one is Additional children's home.
2. Also we prepared Questionnaire based on information give by children's home superintendent Trupti Jadhav
3. Includes Questionnaire Data of Google form survey conducted by us includes pie charts.

4. various Schemes provide by government for children's protection who is a victims of Rape and Acid Attacks (Women and Children) are brought out from the psychological shock that they suffer. It is also equally important to provide them Shelter, Financial Assistance, Medical and Legal Aid and Counselling Services.
5. Also includes MSHRC how many complaint filed related for children's from 01/01/1993 to to 01/02/2023 all data

DATA ANALYSIS AND INTERPRETATION



Mankhurd New children's home and Additional children's home under children Aid society

History :

In the year 1921, the Government of Bombay expressed in the Legislative Council, its resolve to bring in a Children's Act. Three years later {1924} the Bombay Children's Act was passed. Eventually, in November, 1926, Sir Earnest Hotson, the then Home Member, Government of Bombay convened a conference of Social Workers, which led to the formation of the Children's Aid Society on March 1927. His Excellency Sir Leslie Wilson was the President and the Hon'ble Mr. E. B. Hotson C. S. I., I. C. S. was the Chairman and the Committee consisted of eminent persons of the time.

First of May is an important day for all those who are associated with the work of children as on that day in the year 1927 did the Remand Home machinery begin to turn at Umerkhadi with M. K. Davis Secretary and Superintendent and Hon'ble P. L. Thacker as the Senior Magistrate of the newly established Juvenile Court.

In 1939 children aid society establish for children education and their well being in 1960 New children's home establish for those child who are homeless, missing, single

parent and labour child under age between 6 to 12 years under child care and protection. In 1974 additional children's home establish for girls child separately before additional children's home establish boys and girls child living jointly after 1974 it will be separated.

❖ **Questionnaire based on information give by children's home superintendent Trupti Jadhav**

1. what was daily schedule for children's

Ans: In morning 7.30am to 8.30am breakfast after that 9am to 9.30am prayer and yoga class is there after that regular class of studies conducted by teachers then 12pm to 1pm launch time then 2pm to 4pm art and craft class conducted and then 4pm to 6pm play time for children's like playing cricket and other games also watching tv set etc. then 7 to 8 dinner and then sleeping time this is daily schedule for children's.

2. what kind of activities are implemented under this children's home ?

Ans: Annual sports day for 3 days, Annual picnic organised at water park, monthly festivals like Jayanti, in january makarsantrat festival organised by NGO' in children's home, also annual function conducted in that dance and other activities performed by children's

3. what kind of child admitted here and who will admit those child ?

Ans: Children's admitted here who are homeless, those child whose parents are unfit for them, or single parents child, missing child, and child who are labour under age 6 to 12 those children's are to be admitted here. Admission done by NGO or POLICE. If they find such child in above category.

4. Before admission what procedure will do by NGO or POLICE?

Ans: firstly their medical examination will done by police or NGO's then that child produced before child welfare committee

5. After admission what procedure will do by child welfare committee?

Ans: If any child find out as a homeless or their parents are unfit for them such child produced before child welfare committee by NGO's or by police. Firstly they record that child statement in that they ask few questions belonging to which part of country, their address, parent information, and basic information. basically child not aware about because their age ratio is between 6 to 12 and they belonging almost backward class they don't even answer such question it was out of their mentality.

and give them proper counselling for that counsellor are there.

6. Are you aware if any child abused under POCSO CASE and admitted here?

Ans: No, it's a task for us to find out such child under pocso because they even know what happen with them so that child not openly say anything without help of counsellor. Counsellor role is important in such cases. In same cases that child open up in so long period after 1or 2 month or more then that but its chances are very less.

	नविन बालगृह		अतिरिक्त बालगृह	
	मुले	मुली	मुले	मुली
जर	२६	—	२९	६५
गवर	—	—	—	—
हॉ.	००	—	००	००
बाले	००	—	—	००
एकूण	२६	—	२९	६५

दिनांक 20/07/2023
शुक्रवार

अध्यक्ष: मा. श्री. देवेन्द्र फडणवीस
गृह मंत्री महाराष्ट्र राज्य
उपाध्यक्ष: मा. श्री. संगलप्रभात लोढा
महिला व बाल विकास मंत्री, म. रा.
कार्यकारी अध्यक्ष:
मुख्य अधिकारी: मा. श्री. बापुराव भवाने
अधिक्षक: मा. श्रीम. तृप्ती जाधव-संकपाळ

7. Today's date how many children's are there in children's home?

Ans: In New Children Home there are 36 male child and additional children's home there are 29 girl child are there asper today's date. The number of children is always increasing or decreasing not constant.

8. If any child openly speak about what was happening with them under pocso what major will taken by child welfare department in such cases?

Ans: If any child openly speak about what was happening with them then legally FIR reported against accuse person in nearest police station.

9. How long are children's rehabilitation under in children's home?

Ans: Basically as per Act 1st order is about 15 days and 45 days but some cases it will be extended more then 6 month also its totally depending upon child welfare committee. Whenever child parent traced then custody of such child take over to that parent. or in case

of any special child it will be extended. Because that child mentally unstable and not even properly answers the questions as well if any child belonging to other state that time also period is extended request is made before child welfare committee that matter child welfare officer coordinate. Education rehabilitation also done and send back to state this will also done by committee.

10. Mostly child belonging to which country and state? What to do for those?

Ans: Mostly child belonging to Bangladesh, Nepal, and other part of country in India like south side, UP, Bihar, Jharkhand, kerala, tamilnadu etc. Child welfare committed make report a such countries police station and also inform their parents.

11. What kind of children's kept under child home?

Ans: The missing children, run away children victim children, child beggars, rescued child laborers etc. are produced before the Child Welfare Committee as the 'children in need of care and protection'. The cases are assigned to Probation Officers for investigation and further follow-up.

12. Probation officer work?

Ans: The techniques of case work are applied by Probation Officers to build self-confidence of children, encouragement, reassurance, emotional support and reality orientation etc.

13. If any child find out homeless what should do? Is there any helpline number?

Ans: Yes, there is helpline number which is given by the government of Maharashtra state which is **child helpline No.1098** or also you can go to local police station to file a compliant report in case.

14. Which Medical facilities provide for those child? Or in case of any medical emergency what will do?

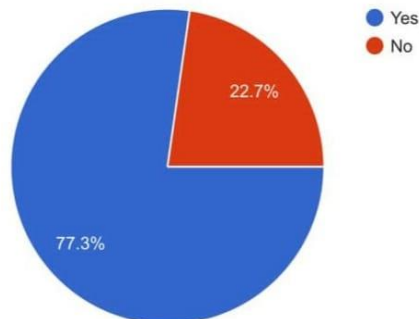
Ans: only 1 sister is here and visiting doctor only for 1 hrs visiting daily. In case of any medical emergency child shifted into any government hospital like JJ, and KEM etc.

➤ Questionnaire Data (Google form survey)

The questionnaire prepared are based on the our team observation in children's home and make a google form based on that observation and conduct survey with the help of google form.

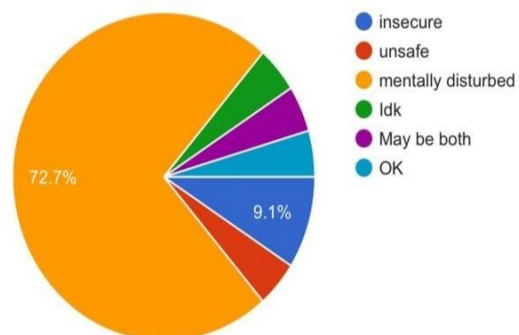
Have you ever visited any children's home?

22 responses



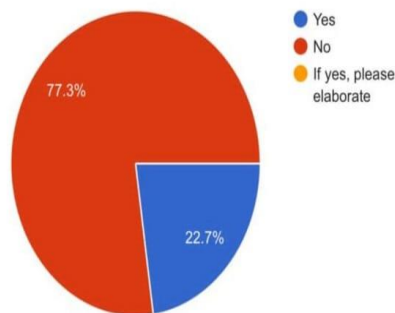
What do you think about the girls who are under POCSO case and under the age of 12 years, and living in children's home?

22 responses



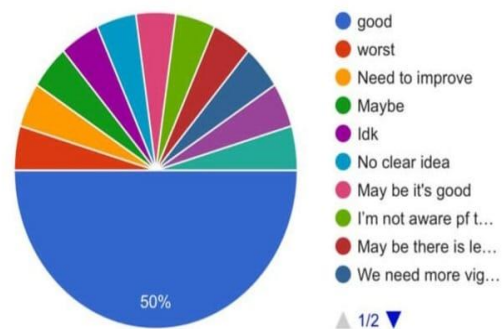
Do you think the children are forced to work in children's home?

22 responses



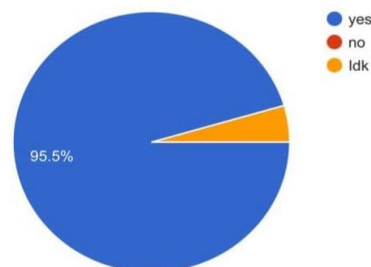
What do you think about the counselling process done by children's home?

22 responses



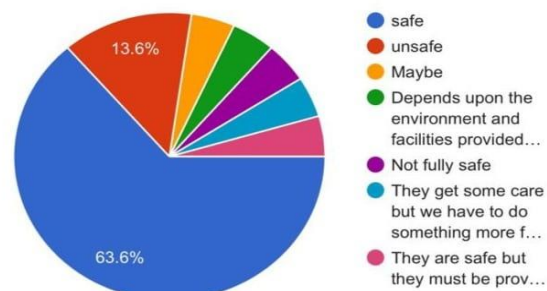
what do you think about the adoption process, should be implemented in children's home?

22 responses



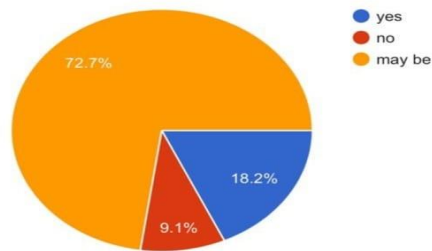
what do you think about the children living in children's home?

22 responses



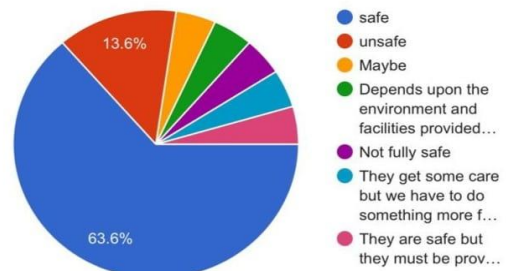
Does the career of the children is affected of the children who are in children's home.

22 responses



what do you think about the children living in children's home?

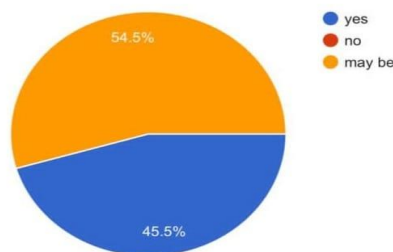
22 responses



Copy

What do you think about the children living in the children's home, do they improvise by rehab programmes?

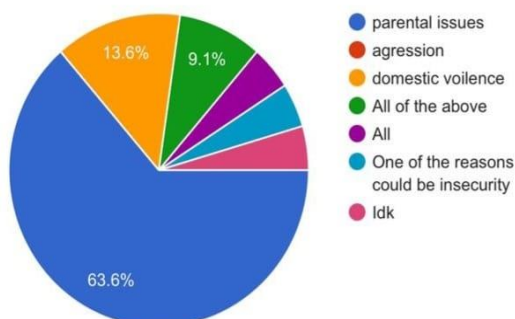
22 responses



Copy

What do you think that what is the reason that children feel unsafe at their home?

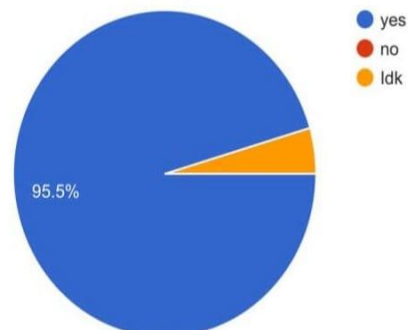
22 responses



Copy

what do you think about the adoption process, should be implemented in children's home?

22 responses



❖ Scheme provide by government for child

1. Manodhairya Scheme for rape victims, children who are victims of sexual offence and Acid attack victims (women and children)

- It is of utmost importance to ensure the victims of Rape and Acid Attacks (Women and Children) are brought out from the psychological shock that they suffer. It is also equally important to provide them Shelter, Financial Assistance, Medical and Legal Aid and Counselling Services.
- As per the directions of the Hon. Bombay High Court, the State has now revised the Financial Norms and Revised Manodhairya Scheme has been launched
- Govt. of Maharashtra has been implementing Manodhairya Scheme for rehabilitation of victims of Rape and Acid Attacks (women and children) by providing them Financial Assistance
- With this in mind, the WCD Dept. is implementing Manodhairya Scheme in the State. Financial Assistance of Rs.1 Lakhs and in special cases Rs. 10 Lakhs. is provided to the victims. Based on the requirement, Rehabilitation of victims and their dependents by way of shelter, counselling, medical and legal support, Education and Vocational Education is carried out.
- **Single Window System:** Complete process starting from accepting the forms to providing financial assistance have been handed over to District Level/ State Level Legal Services Authority
- Inclusion of minor Girls under ITPA Act: The revised Act also covers Minor Girls rescued under The Immoral Traffic (Prevention) Act, 1956

2. Manjhi kanya bhagyashree scheme

- From 1st August 2017, WCD Dept. Govt. of Maharashtra has started implementation of First-of-its-Kind scheme “**Majhi Kanya Bhagyashree**”.
- Under this scheme, Govt. shall provide Financial Assistance as follows:

- **One Girl Child:** Rs.50,000 for a period of 18 years
- **Two Girl Children:** Rs. 25,000 each on the name of both the Girls
- Benefits applicable only to the Families having monthly income upto 7.5 Lakhs and only after submission of **Family Planning Certificate**
- The families can withdraw accumulated interest after every six years.
- Funds worth Rs. 20 Crores (FY 2017-18) and Rs. 14 Crores (FY 2018-19) have been distributed for creation of Fixed Deposits

3. Integrated child development service (ICDS)

- CDS is one of the flagship initiatives of Govt. of India that is being implemented in the state by WCD Dept.
- ICDS seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education.
- Health and Nutrition needs of a child cannot be addressed in isolation from those of his or her mother and therefore the programme also extends to adolescent girls, pregnant women and nursing mothers.
- ICDS programme seeks to provide all basic essential services to children and mothers in an integrated manner right in their villages or wards. Gradually, the scheme has been expanded to urban slums and to rural and tribal blocks.
- There are total 553 ICDS projects operations in the State of which, 364 projects are in Rural Areas, 85 projects are in Tribal Areas and 104 projects are in Urban Slum Areas.
- Some of the key service being provided to the beneficiaries under this scheme are:
 - Supplementary Nutrition

- Immunization
- Healthcare Checkup
- Referral Health Services
- Non Formal Pre-School Education
- Nutrition and Health Education

4. Beti bachao beti padhao scheme

- With a core objective of increasing the Child Sex ratio in the State, the WCD Department has started implementation of Beti Bachao and Beti Padhao Scheme of the Central Govt. in 10 Districts i.e. Beed, Jalgaon, Ahmednagar, Buldhana, Aurangabad, Washim, Kolhapur, Osmanabad, Sangli and Jalna.
- The overarching goals of this scheme are to:
 - Prevent Gender biased sex selective elimination
 - Ensure survival & protection of the girl child
 - Ensure education & participation of the girl child
- Since 15th June 2016, additional six districts Hingoli, Solapur, Pune , Parbhani , Nashik , Latur were also added into the scheme
- The G.R. Dated **6th August 2018** issued for implementation of said scheme in remaining 19 districts
- Maharashtra State is the only State in the country where it's two districts Jalgaon & Osmanabad were felicitated with special award by Hon'ble Minister WCD, GOI, on National Girl Child Day, 24th January 2017. This districts were recognized for contribution "effective community engagement, enforcement of the Pre-Conception and Pre-Natal Diagnostic Techniques Act and enabling girl child education

➤ LIST OF ACTS & LAWS FOR CHILD PROTECTION

- 1) Protection of Children from Sexual Offences Act, 2012
- 2) Children's homes Act 1960
- 3) Bonded Labour System (Abolition) Act, 1976
- 4) Children (Pledging of Labor) Act, 1933
- 5) Child Labor (Prohibition and Regulation) Rules, 1988
- 6) Child Labor (Prohibition and Regulation) Act, 1986
- 7) Commissions for Protection of Child Rights Rule, 2006
- 8) Commissions for Protection of Child Rights (Amendment) Act, 2006
- 9) Commissions for Protection of Child Rights Act, 2006
- 10) Convention on the Rights of Children CRC
Factories Act, 1948
- 11) Guardians and Wards Act, 1890
- 12) Hindu Minority Guardians Act, 1956
- 13) Immoral Traffic (Prevention) Act, 1956
- 14) Infant Milk Substitutes Feeding Bottles and Infant (regulation of
Production, Supply and Distribution) Amendment Act, 2003
- 15) Juvenile Justice (Care and Protection of Children) Act, 2015
- 16) Prohibition of Child Marriage Act, 2006
- 17) Right of Children to Free and Compulsory Education Act, 2009
- 18) Young Persons (Harmful Publication) Act, 1956
- 19) The Rights of Persons with Disabilities Bill, 2016

❖ Case law

Children Home Case

Bombay High Court

Balvikas Sansthachalak Va . VS The State Of Maharashtra And ... on 29 June, 2018

Bench: R.M. Borde

❖ Fact of the case

1.The petitioner-a non-government organization dealing with care and protection of children, challenges the circular of Commissioner of Women and Child Development, Maharashtra State, Pune 01.06.2016 as illegal, arbitrary, without authority of law and violative of Articles 15, 21, 39, 39-A, 45, 47 and 51-A(k) of the Constitution of India and the Juvenile Justice Act, 2015 and seeks quashing of the same.

2. By the impugned circular, respondent No. 2 has communicated to all Child Welfare Committees in short certain guidelines regarding admission of juveniles in need of care and protection and directions for preventing misuse of the said provision by children having one or two parents capable of taking care of the children. The grievance of the petitioner is based on the interpretation of said circular Parbhani, whereby the admissions of juveniles having one or two parents have been cancelled with direction to deliver custody of such children/juveniles to their parents and producing only orphans for admissions.

3. There is no debate that, as per article 39 of the Constitution, the State is bound to take steps for giving opportunities and facilities to develop children of tender age belonging to weaker section in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation, moral and material abandonment. It is common knowledge that, children having no parents have no means of livelihood and are always likely to be exploited or abused.

4. It is immaterial whether the child is orphan or child is having one or two parents. The children having one or two parents if neglected, exploited or abused either by the parents or by somebody else, they are also entitled to the protection under Juvenile Justice Act.

5. Section 31 of the Juvenile Justice Act requires that, any child in need of care and protection shall be produced before the Committee by various authorities named therein. Section 35 authorizes parents or guardian, who for physical, emotional or social 7 WP11205.2016 factors beyond their control, wishes to surrender their child, shall produce the child before the Committee. Sub-rule (3) of Section 35 provides for period of two months to the parents for reconsideration of their decision. Section 36 authorizes CWC to hold inquiry and thereafter pass order to send children to Children's Home or a fit facility or fit person. Section 37 provides for various orders which should be passed by the CWC and Section 37(1)(b) authorizes CWC to restore the child to parents or guardian or family with or without supervision of. CWC

6. On considering all these provisions, it is abundantly clear that the consideration for providing care and protection in the Children's Home or by any other mode is the requirement of care and protection of the child.

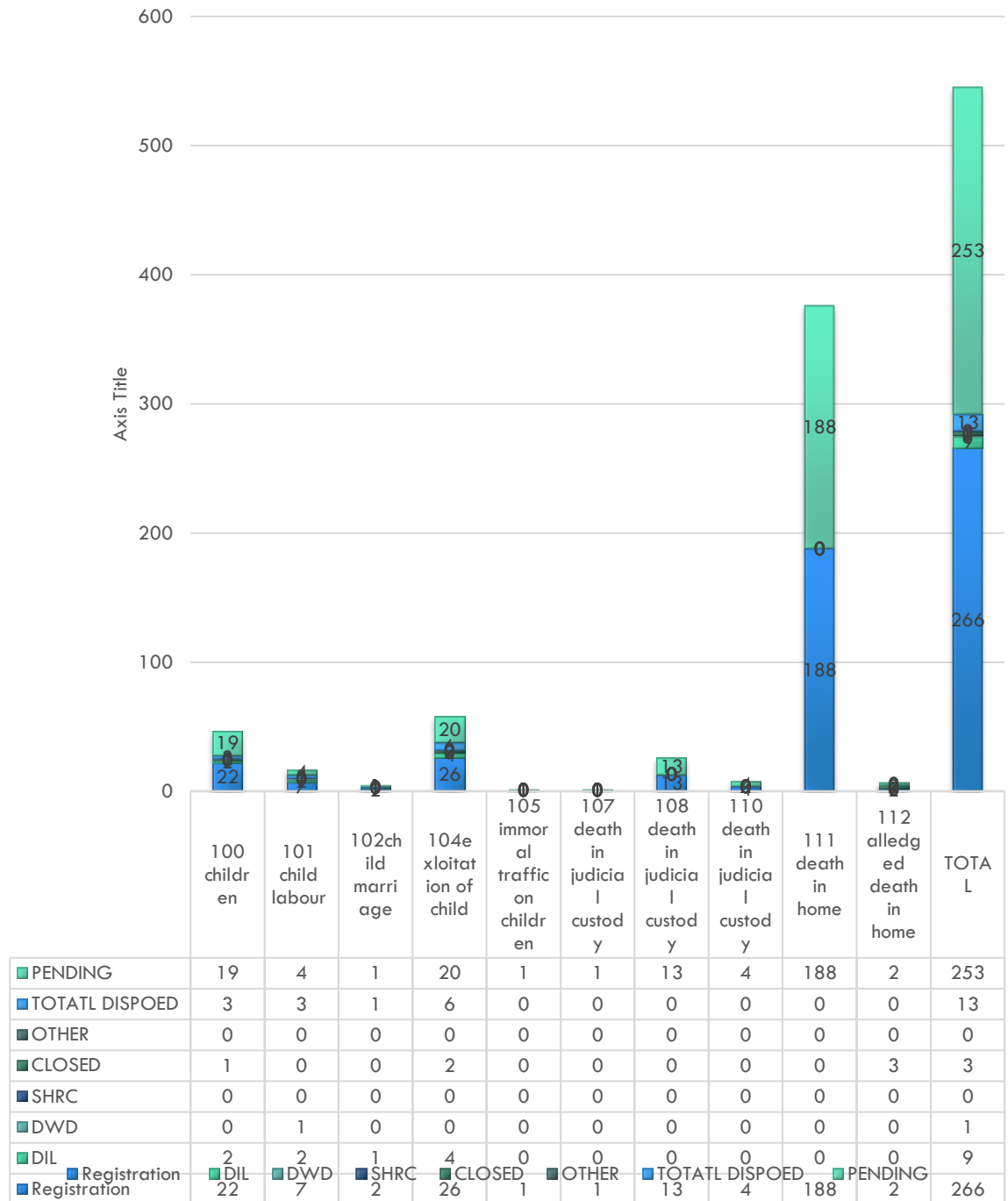
7. It is immaterial whether the child is orphan or child is having one or two parents. The children having one or two parents if neglected, exploited or abused either by the parents or by somebody else, they are also entitled to the protection under Juvenile Justice Act.

8. On overall consideration of the circular dt. 01.06.2016, we find that, there was no intention to direct the CWCs that they should not admit the children having one or two parents in any case. The circular will have to be read as a whole and one or two sentences cannot be torn out of the context.

❖ **Conclusion:**

The students who are not in need of care and protection cannot be admitted in Children's Home only for the convenience of the parents. It is seen that, many children are admitted in the Children's Home only for the sake of saving money for their residence and education even when their parents were not unfit. If the parents are unfit to take care of their children and the children are covered by any provisions of Juvenile Justice Act, then only such children can be admitted in the Children's Home.

NO. OF COMPLAINT RELATED TO CHILDREN'S FILED IN MSHRC AND THIER TYPES FROM 01/01/1993 TO 01/02/2023



On the above bar chart clearly shown that in MSHRC how many complaint are filed from 01/01/1993 to 01/02/2023 all data like REGISTRATION, DIL, DWD, SHRC, CLOSED, OTHER, TOTAL DISPOSED PENDING etc.

OBSERVATION

Our group children visited to Mankhurd children's home which is organised by Maharashtra State Human Right Commission during winter internship program. In that new children's home and another one is additional children's home both children's home report done by our team. Their structure of working facilities and make some observation follow as under

1. In children's home there is a capacity of 250 children's in that home out of which 150 for boys and 100 for girls is available. In that home the children's get basic education like how to talk, how to behave like that way basically they are giving basic learning manners to that children's.
2. In that children's home there is one superintendent to control all there area. In food department the children's get various menu for each day's .
3. For security purposes they provide security system in the homes. The children's which are in that children's home is have there days schedule which they have to follow.
4. In children's home they have the children's who are in the age between 6-12 years. And if any child is bring it in that children's home and they don't know the age of that child so they get there age verification through the teeth of that child and after that they decided there age as per there research.1
5. In there day to day schedule the children have firstly 7.00 am they all wake up after that they have there prayer time after there bathing then there they have there lunch and then they have there classes as per there interest upto 4 pm & then they have playing time in these time they can play cricket football . & As per these they all sleep at 9 pm . There is one doctor who is taking there check once in a week and if there is any emergency situation then that child is shifted to JJ hospital these processes is normally doing in that home.
6. In the process of address put in birth certificate so they don't have there address so in these case they put only that city & state name For example Mumbai, Maharashtra like that way they put.
7. In these children's home the children's came from various states like Bangladesh, Kerala, Up etc. So these children's home is getting funds from various NGO's like Prayaas of Tata institute, they have fund from government by passing GR (Government Resolutions). In these home disabled children's is also there. For children's they have 20 beds available in home They have separate section for washroom for girls and boys.
8. For the classes in that children's home they have teachers for that. for the classes teachers teaches in three languages Marathi, Hindi, English except urdu because all teachers belonging to Maharashtra so that teaching languages is religious.
9. The child also doing tailoring, drawing art and craft class for girls and boys both.
10. There is one child over there which is victim as in pocso case if it is pocso case it will be happen with the girl then child welfare department take cognize, to fill FIR with that same person.
11. New children's home which is establish for male child they have seating arrangement like banches in class room
But in Additional children home which is establish for girl child under age of 6 to 12 they don't provide a sitting banches that girl child only seating on a Carpe

SUGGESTION OR RECOMMENDATION

The suggestion is based on our teams observation while visiting to mankhurd children's home under children's Aid society.

1. There are only one superintendent to control boys and girls child section so our team suggestion is for new children's home need of 1 extra superintendent as per JJ Act 2015
2. As per new amendment of baal nyay adhiniyan draft rule 2018 there is lot of staff recruitment mentioned but in ground level the procedure is still pending. The organization is still run as per the children's Act 1960 so they should recruit a staff
3. Also there is medical facilities not provide as per Act like only 1 visiting doctor visit on daily basis for 1 hours In Act there a 1 doctor should always be present and working.as per my observation so they want 1 doctor for both children's home.
4. Clinical psychiatric is also not there in that matter tiss or other ngos help them. To provide Clinical psychiatric they need Clinical psychiatric.
5. Grahapal is there in both new and additional children's home but as per Act its divided into 3 shifts its also have to improve government should provide more staff or recruit it
6. Male child they have seating arrangement like benches in classroom but girl child there is no provision of benches in additional childre'n home so they don't treated equally. Also provide benches in additional home.
7. for the well being of the childrens. So the food is provided to the children is okay but the hygienic should be followed while making the food.
8. In sleeping section they have 20 beds for the children so in that also some of them is not in proper condition so that should be considered. In the home they have gardens but they are in poor in condition means not cleaned, extra roots of trees which may harms to the children & all dust is there
9. In these home security system is putted but out of all some of them are not in working condition.. While providing the food they should be considered the nutrition portion in that.

CONCLUSION

So normally when we talk about childrens there are common crime is happening with childrens like murder, attempt to commit murder, infanticide, rape, unnatural offence, assault on women (girl child) with intend to outrage her modesty, kidnapping and abduction, Buying and selling of minors for prostitution etc . And the crime rate is day by day is increasing.

many children are admitted in the Children's Home only for the sake of saving money for their residence and education even when their parents were not unfit.If the parents are unfit to take care of their children and the children are covered by any provisions of Juvenile Justice Act, So as our topic is children's we get the opportunity to visit in children's welfare society. In there we get observed about children like there education facilities, there food nutrition, there security system, etc. So all these things there should be some pros and cons is there. So next we get experienced knowledge from the lecturers so from that we get into about violation of children rights like Right to privacy, Right to family environment, Right to education, Right to freedom of thought, consciousness and religion etc.

So as our topic is children's we get the opportunity to visit in children's welfare society. In there we get observed about children like there education facilities, there food nutrition, there security system, etc. So all these things there should be some pros and cons is there. So next we get experienced knowledge from the lecturers so from that we get into about violation of children rights like Right to privacy, Right to family environment, Right to education, Right to freedom of thought, consciousness and religion etc.

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2. <https://www.casmumbai.in/cas-mumbai-branches/the-chembur-children's-home-mankhurd>
3. <https://www.humandignity.foundation/wp-content/uploads/2018/11/Situation-India.pdf>

Annexture

The government resolution is related to Administration approval for 24 Construction and Repairing works of The Childrens Aid Society, Mumbai

दि चिल्ड्रेन्स एड सोसायटी, मुंबई या संस्थेच्या मानखुर्द येथील स्थापत्यविषयक दुरुस्तीच्या २४ कामांना प्रशासकीय मान्यता देणेबाबत.

महाराष्ट्र शासन
महिला व बाल विकास विभाग
शासन निर्णय क्रमांक: चिएसो-२०२३/प्र.क्र.१२/का-८
नवीन प्रशासन भवन, ३ रा मजला,
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय, मुंबई - ४०० ०३२.
दिनांक- १९ जानेवारी, २०२३.

वाचा :-

१. वित्त विभागाचा शासन निर्णय क्र-विअप्र-२०१३/प्र.क्र.३०/२०१३/विनिमय भाग-२, दि.२०/९/२०१९
२. सार्वजनिक बांधकाम विभागाचा शासन परिपत्रक क्र-संकीर्ण-२०१९/प्र.क्र.१०/इमा-२, दि.२५/९/२०१९
३. मुख्य अभियंता, मध्य मुंबई, सार्वजनिक बांधकाम विभाग, फोर्ट, मुंबई यांचे पत्र जा.क्र.का.अ./मुअ(मुं)/का-२/४४०६/२०२२ दि.२२/१२/२०२२
४. आयुक्त, महिला व बाल विकास आयुक्तालय, पुणे यांचे पत्र क्र.मबाविआ/बांधकाम/का-१०/२०२२-२३/६९ दि.४/१/२०२३

प्रस्तावना

दि चिल्ड्रेन्स एड सोसायटी, मुंबई या संस्थेच्या मानखुर्द येथील आवारामध्ये निवासी तथा खुल्या परिसरात मंदबुद्धी बालगृह, नवीन बालगृह, अतिरिक्त बालगृह, प्राथमिक शाळा, बालकल्याण नगरी अशा निवासी संस्था बाल न्याय (मुलांची काळजी व संरक्षण) अधिनियम, २०१५ अंतर्गत कार्यान्वित असून सदर संस्थांची दुरुस्ती करणे अत्यंत आवश्यक आहे. सदर आवारामधील स्थापत्य विषयक दुरुस्तीबाबच्या मुख्य अभियंता यांनी तयार केलेली २४ कामांची अंदाजपत्रके वाचा क्र. ४ वरील पत्रान्वये प्रशासकीय मान्यतेसाठी सादर केली आहेत. वित्त विभागाच्या वाचा क्र. १ वरील शासन निर्णयान्वये प्रशासकीय विभागांना दिलेल्या अधिकारानुसार सदर २४ कामांच्या अंदाजपत्रकांना प्रशासकीय मान्यता देण्याची बाब शासन विचाराधीन होती.

शासन निर्णय :-

दि चिल्ड्रेन्स एड सोसायटी, मुंबई या संस्थेच्या मानखुर्द येथील मंदबुद्धी बालगृह, नवीन बालगृह, अतिरिक्त बालगृह, प्राथमिक शाळा, बालकल्याण नगरी यांच्या आवारातील स्थापत्य विषयक दुरुस्तीबाबच्या आणि सन २०२२-२३ च्या राज्य दरसूचीनुसार तयार करण्यात आलेले एकूण रु.५,६९,१२,६६९/- (रुपये पाच कोटी एकसष्ट लक्ष बारा हजार सहाशे एकोणसत्तर फक्त)

शासन निर्णय क्रमांक: विएसो-२०२२/प्र.क्र.१२/का-८

इतक्या रक्कमेच्या पुढील २४ स्थापत्य विषयक दुरुस्तीबाबच्या तातडीच्या कामांच्या अंदाजपत्रकास या शासन निर्णयान्वये प्रशासकीय मान्यता देण्यात येत आहे.

अ.क्र.	कामाचे स्वरूप	रक्कम (रुपये)
१	MOW to Chembur children home Repairs to Ration Barracks flooring and door, windows	१३,६७,८९४
२	MOW to Chembur children home Children aid society at Mankhurd , Renovation of Barrack No ३५/६५	२३,४२,८१०
३	MOW to special observation home Girls Barracks in front yard the Building providing and Laying Shahabad flooring at children Aid Society at Mankhurd	३६,६०,१८०
४	MOW to Providing and fixing MS Grill and mosquito net at special observation Home children Aid Society at Mankhurd	१०,४०,३३५
५	MOW to MDC home Boys building children Aid Society at Mankhurd Repairs to plaster and Painting	५,८६,४२५
६	MOW to Chembur children Home Renovation of Barrack children Aid Society at Mankhurd.	२१,९६,७३५
७	MOW to Chembur Home Barrack No ३९, २५. Renovation of Roof at Mankhurd.	१३,४८,९८७
८	MOW to Chembur children Home Boys Barrack No २७, २८ Renovation of Roof at Mankhurd.	१५,२७,५१५
९	MOW to Jain Hospital Building, Providing and Laying Soling, PCC, Flooring, doors and windows Plaster and Painting at mankhurd	३८,९२,७८५
१०	Mow to Repair to overhead water tank plaster and painting Balkalyan nagari at Mankhurd.	१३,०२,५४२
११	MOW to Balkalyan Nagari kitchen, Ration, Medical, Dining Barracks, Renovation of Flooring Plaster and painting Doors and windows at Mankhurd	३९,४१,४०५
१२	MOW to Chembur children Home staff Barrack, Repairs to flooring and kitchen otta of children Aid society at Mankhurd	९२,२१,७१२

अ.क्र.	कामाचे स्वरूप	रक्कम (रुपये)
१३	MOW to Special Observation Home, Ration Barrack Of increasing the height and platform at Mankhurd.	₹ ५,०४,६१३
१४	MOW to Primari school plaster and painting, flooring at children Aid society Mankhurd	₹ १३,२०,८२६
१५	MOW to Renovation of doors and windows, plaster and painting secondary school Children aid society at Mankhurd	₹ १४,९७,८२८
१६	MOW to Chembur children Home staff Barrack, Providing and fixing false ceiling at children Aid Society Mankhurd.	₹ ६१,८५,४८५
१७	MOW to Special Observation Home Girls Barrack, Repairs to toilet Block at children Aid Society at Mankhurd.	₹ १७,५०,९८१
१८	MOW to Construction of Septic Tank, Superintendent Bungalow, Chembur children home at Mankhurd.	₹ ८,००,६१६
१९	MOW to Special Observation Home, Providing and fixing structural steel water tank stand at Mankhurd.	₹ ४,३०,९९७
२०	Chembur Children Home Renovation of office Barrack flooring and false ceiling at Mankhurd	₹ २०,३१,१९१
२१	MOW to Renovation of Roof Special Observation Boy's and Girl's Toilet block at children aid society at Mankhurd.	₹ १५,३६,८४९
२२	Mow to Providing and laying trimix concrete road MDDC Home premises at children aid society at Mankhurd.	₹ २१,०८,०४९
२३	MOW to Balkalyan Nagari Renovation of Toilet Block	₹ १६,२०,५९५
२४	MOW to ITI Building at Mankhurd Construction of toilet block, Internal road rolling shutter, sliding windows and chequered Tiles.	₹ ३८,९२,३१४
एकूण		₹ ५,६१,०९,६६९

२. सदर शासन निर्णय वित्त विभागाचा शासन निर्णय क्र. विअप्र-२०१३/प्र.क्र.३०/२०१३/विनिमय भाग-२, दि.२०/९/२०१९ व वित्तीय अधिकार नियम पुस्तिका, १९७८, भाग-पहिला, उपविभाग-५, अनुक्रमांक ३ व महाराष्ट्र सार्वजनिक बांधकाम नियम पुस्तिकेतील परिच्छेद क्र. १३४ अन्वये प्रशासकीय विभागास असलेल्या अधिकारानुसार निर्गमित करण्यात येत आहे.

३. सदर बाबीवर होणारा खर्च मागणी क्र. एक्स-३, ०२, समाज कल्याण, १०२, बाल कल्याण ४२३५ सामाजिक सुरक्षा व कल्याण यावरील भांडवली खर्च (००)(०१) मोठी बांधकामे कार्यक्रम, ५३, मोठी बांधकामे (४२३५-०२०६) या लेखाशिर्षातर्गत व इतर खर्च (००)(०२)आस्थापना खर्च कार्यक्रम ६३, आंतरलेखा हस्तांतरणे (४२३५-०२१५) व (००)(०३)हत्यारे व संयंत्रे कार्यक्रम ६३, आंतरलेखा हस्तांतरणे (४२३५-०२२४) या लेखाशिर्षातर्गत अर्थसंकल्पीत करण्यात आलेल्या तरतूदीतून भागविण्यात यावा.

४. सदर शासन निर्णय महाराष्ट्र शासनाच्या www.maharashtra.gov.in या संकेतस्थळावर उपलब्ध करण्यात आला असून त्याचा सांकेतांक २०२३०११८१५२७०१७५३० असा आहे. हा शासन निर्णय डिजीटल स्वाक्षरीने साक्षांकित करुन काढण्यात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

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DEORAO SARDAR

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(सुनिल सरदार)

अवर सचिव, महाराष्ट्र शासन

प्रत,

१. मा.राज्यपाल यांचे सचिव, राजभवन, मुंबई,
२. मा.मुख्यमंत्री यांचे प्रधान सचिव, मंत्रालय, मुंबई,
३. मा.अध्यक्ष/उपाध्यक्ष/ सदस्य, विधानसभा/ विधानपरिषद, विधानमंडळ, मुंबई,
४. मा.विरोधी पक्षनेता, विधानसभा/ विधानपरिषद, महाराष्ट्र राज्य, मुंबई,
५. मा.मंत्री, महिला व बाल विकास यांची खाजगी सचिव, मंत्रालय, मुंबई,
६. मा.मुख्य सचिव, महाराष्ट्र राज्य यांचे उपसचिव, मंत्रालय, मुंबई,
७. प्रधान सचिव, महिला व बाल विकास विभाग, मंत्रालय, मुंबई,
८. प्रधान सचिव (व्यय), वित्त विभाग, मंत्रालय, मुंबई,
९. आयुक्त, महिला व बाल विकास आयुक्तालय, पुणे,
१०. महालेखापाल- महाराष्ट्र-१/२ (लेखा व अनुज्ञेयता), मुंबई / नागपूर,
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१३. उपायुक्त (बाल विकास), महिला व बाल विकास आयुक्तालय, पुणे,
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१५. जिल्हा महिला व बाल विकास अधिकारी, मुंबई व मुंबई उपनगर,
१६. मुख्याधिकारी, दि चिल्ड्रेन्स एंड सोसायटी, मुंबई,
१७. निवड नस्ती, का-०८.

Rights of Disabled in Maharashtra

Maharashtra State Human Rights Commission, Mumbai

Mansi Joshi, Moreshwar Hasbe and Pradnya Dhumkekar

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INTRODUCTION

Difference between Impairment, Disability and Handicap by World Health Organization

The World Health Organization (WHO) in 1976, provided a three- fold definition of impairment, disability and handicap explaining that

- a. an ‘Impairment’ is any loss or abnormality of psychological, physiological or anatomical structure of a function,
- b. a ‘Disability’ is any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being,
- c. a ‘Handicap’ is a disadvantage for a given individual, resulting from an impairment or a disability, that prevents the fulfilment of a role that is considered normal (depending on age, sex, social and cultural factors) for that individual.

The WHO redefined the relationship between impairment, disability and handicap establishing that

- a. ‘Impairment’ refers to organ- level functions or structures,
- b. ‘Disability’ refers to a person- level limitations in physical and psycho- cognitive activities, and
- c. ‘Handicap’ to social abilities or relation between individual and society.

Disability Laws in India

1. The Rehabilitation Council of India, 1992
2. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999
3. Rights of Persons with Disabilities Act, 2016 (RPWD)
4. The Mental Health Care Act, 2017

STATISTICAL DATA

A. Registration and Disposal of Cases as per the CMS Data of the Maharashtra State Human Rights Commission, Mumbai

Name of the Incident	Registration	DIL	DWD	SH RC	Close d	OTHE RS	Total Disposed	Pending
Health	27	5	0	0	4	0	9	18
Exploitation of Mentally Retarded Persons	7	3	0	0	0	0	3	4
Public Health Hazards	153	27	0	0	8	0	35	118
Total	187	35	0	0	12	0	47	140

Table 1.6: Data as per CMS, MSHRC, Mumbai

(From 1.1.1993 to 1.02.2023)

State of Maharashtra

Statement 3.16.1.: Statistical Profile of Persons with Disability: Maharashtra

(all figures are given in %)

	Rural			Urban			Rural + Urban		
	Male	Female	Person	Male	Female	Person	Male	Female	Person
Person with Any type of disability	3.0	2.1	2.5	1.9	1.7	1.8	2.5	2.0	2.2
Person with Locomotor Disability	1.9	1.3	1.6	1.2	1.2	1.2	1.6	1.3	1.5
Person with Visual Disability	0.3	0.3	0.3	0.1	0.2	0.1	0.2	0.2	0.2
Person with Hearing Disability	0.3	0.3	0.3	0.2	0.2	0.2	0.3	0.2	0.3
Person with Speech and Language Disability	0.3	0.2	0.2	0.2	0.1	0.2	0.2	0.2	0.2
Person with Mental Retardation/Intellectual Disability	0.2	0.2	0.2	0.2	0.1	0.1	0.2	0.2	0.2
Person with Mental Illness	0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Person with Other type of Disability	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Person having disability since birth	30.0	32.4	31.0	25.7	21.0	23.6	28.7	28.4	28.5
Person with disability who are living alone	2.1	6.4	3.8	3.4	5.3	4.3	2.5	6.1	4.0
Persons with disability having certificate of disability	31.4	24.7	28.7	31.2	18.9	25.6	31.3	22.7	27.6
Literacy rate of persons of age 7 years and above with disability	68.3	41.2	57.3	80.1	61.3	71.5	71.9	48.3	61.9
Persons of age 15 years and above with disability having highest level of completed education secondary and above	27.0	9.7	20.0	45.5	27.8	37.3	32.7	16.3	25.7

Source: NSS Report No. 583: Persons with Disabilities in India

Policy Framework and Schemes framed by the Government of Maharashtra

The Ministry of Social Justice and Empowerment is entrusted with the welfare, empowerment of Persons with Disabilities in India. In May, 2012 the **Persons with Disabilities (Divyangjan)(DEPwD)**, a nodal department under the **Ministry of Social Justice and Empowerment** was established. Two departments were created under the Ministry of Social Justice and Empowerment vide Government Notification dated 12th May 2012, namely:

A. Department of Social Justice and Empowerment (Samajik Nyaya and Adhikarita Vibhag)

B. Department of Disability Affairs (Nishaktata Karya Vibhag) renamed as Department of Empowerment of Persons with Disabilities (Divyangjan)

As per the Government Resolution No. Shakani 2022/P.No. 5/- 18 (R&C) dated 15th December, 2022, a separate department is created for Persons with Disabilities in Maharashtra called ‘**Persons with Disabilities Welfare Department**’ in Maharashtra, being a first State in India.

A. Schemes and Ongoing Campaigns for Disabled Persons in Maharashtra under the Department of Social Justice and Special Assistance Department, Government of Maharashtra

Name of the Scheme	Beneficiaries Category	Category of Scheme
Special Education and Vocational	Visually Impaired,	Education and

Training through Government Institutions	Hearing Impaired, Orthopedically Handicapped	Vocational Training
Non- Governmental Aided Organisation (Special Schools and Vocational Training Centre) for Disable	Visually Impaired, Hearing Impaired, Orthopedically Handicapped, Mentally Retarded	Education and Vocational Training
The Scheme of State Award for Disabled	Visually Handicapped, Low Vision, Hearing Impaired, Mentally Retarded, Orthopedically Handicapped	Social Incentive
Financial Assistance for Aids and Appliances for Disabled Persons	Visually Handicapped, Low Vision, Hearing Impaired, Mentally Retarded, Orthopedically Handicapped	Special Assistance
Financial Assistance to Self-Employment for Trained Disabled Persons	Visually Handicapped, Low Vision, Hearing Impaired, Mentally Retarded, Orthopedically Handicapped	Self- Employment

Financial Assistance to Disabled for Self- Employment	Visually Handicapped, Low Vision, Hearing Impaired, Mentally Retarded, Orthopedically Handicapped	Self- Employment
Merit Awards	Visually Handicapped, Low Vision, Hearing Impaired, Orthopedically Handicapped	Education
Homes for Intellectually Impaired Persons	Mentally Retarded Children in need of Care and Protection	Care and Protection, Education Training
Grant in Aid to Old Age Home GR. No. 1062- 44945/N Dated 20/02/1961	General	Special Assistance
Matrimonial Incentives	Visually Handicapped, Low Vision, Hearing Impaired, Mentally Retarded, Orthopedically Handicapped	Social Incentive

Important Government Resolutions

GR No.	Purpose
Divyang- 2021/Q.No. 54/V.K. 2	According to the RPwD, 2016, the disabled beneficiaries of total 21 categories of disabilities are admissible for availing the schemes, concessions, benefits, grants or other similar benefits of the state and similar systems.
Apag- 1001/61/P.No. 36/2002/16A	Introduction of 'Indira Gandhi National Disability Pension Scheme' for Below Poverty Line for Disabled Widow aged 18 to 79 with more than 80% disability with one child (Rs. 1100) and with two children (Rs. 1200).
Divyang- 2021/P.No. 75/Corporations	Providing free shop on Green Powered Eco- Friendly Mobile Vehicle for disabled persons to become self- reliant.
Divyang 2019/P.No. 251/D.D. 2	The Quota of Reservation for disabled is 3% for the Government Jobs in the State of Maharashtra with upper limit of 45 years.

Observation

1. The actual number of the Persons with Disabilities in India is not reflected in the statistics provided by the Census conducted in 2011. The figures estimated in our country differs from the figures estimated globally.
2. Enough number of Acts, Regulations, Rules, Schemes and Policies are on the paper but implementation of these Schemes and Policies are lacking.
3. Most of the places including the courts, public offices, buildings, and railway stations in Maharashtra are not disabled friendly, despite the 'Accessible India Campaign'. At times, basic facilities like lifts are not to be found in these places.

4. Lack of awareness with respect to Laws, Welfare Schemes, and Policies available to the Persons with Disabilities in Maharashtra.
5. Lack of awareness of issues, and challenges faced by the Persons with Disabilities and biological and social aspect of disability to the mainstream.
6. Lack of good and accessible medical facilities especially in rural areas resulting in medical complications for both the pregnant mother and the unborn child.
7. Lack of care given to the pregnant mothers during pregnancy by the family members resulting in disability of born child.
8. The Quota of Reservation for Persons with Disabilities is only from 3% to 4% in Government Jobs and 3% to 5% in Higher Educational Institutions.

Suggestions

1. The Government of Maharashtra should take necessary steps to implement the Acts, Rules, Regulations, Schemes and Policies available to the Persons with Disabilities in Maharashtra.
2. The Government of Maharashtra should draft certain Guidelines and implement them to mandatorily create accessible platform to the Persons with Disabilities whether in Railway Stations or in Courts including every public places.
3. The Government of Maharashtra should draft a Compendium of all the Schemes and Policies available to the Persons with Disabilities in Maharashtra for their ready reference in English, as well as in Marathi.
4. The District Legal Services Authorities, Mumbai and the Maharashtra State Human Rights Commission, Mumbai should endeavour to spread legal awareness to the Persons with Disabilities through campaigns and publications on the websites such as Guidelines, Laws and Schemes. Lack of

awareness results in non- reporting of Cases in the Commission and the Courts.

5. The Hospitals aided by the Government as well as the Private Clinics should sensitize the public with respect to the medical care taken during the pregnancy for the betterment of the unborn child and the pregnant mother.
6. The Government of Maharashtra should ensure to develop the medical facilities in the Hospitals as per the requirement. Basic facilities and amenities such as ambulance should be provided to every citizen irrespective of the geographical area i.e., rural area.
7. The Quota of Reservation for Persons with Disabilities in Government Jobs and Higher Educational Institutions should be increased by providing them the equal and fair opportunities irrespective of their disability.

ACKNOWLEDGEMENT

We would like to express our gratitude and appreciation to the Chairperson, Justice K.K. Tated (Retd.) of the Maharashtra State Human Rights Commission, Mumbai who gave us the opportunity to work on this report. We would also like to acknowledge the role of Prof. Vaishali Kolhe, TISS to guide us by providing the required resources with respect to this report. We would like to thank all the officials, and the administrative staffs of the Commission for their constant support and guidance.

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RIGHTS OF SENIOR CITIZENS

Maharashtra State Human Rights Commission,
Mumbai

By

Pratik Rane

Rehan Khan

Rohan Sharma

ACKNOWLEDGEMENT

We would like to thank the Chairperson of the Maharashtra State Human Rights Commission, Mumbai, Justice K. K. Tated (Retd.) for providing us with this great opportunity to work with the government officials and that too on the important subject of human rights.

We would like to work with the Maharashtra State Human Rights Commission in the future and this experience would without a doubt help us in our future endeavours as well.

We would also like to express our sincere gratitude towards the Maharashtra State Human Rights Commission, Mumbai for this opportunity to associate us with them through this Winter-Internship Programme.

We would also like to thank all the supportive staffs and administration who helped us during our unforgettable journey.

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KEYNOTES AND DEFINITIONS

The following are the definitions according to section 2 of Welfare and Maintenance of Parents and Senior Citizens Act, 2007-

- “Maintenance” includes provisions for food, clothing, residence and medical attendance and treatment
- “Parent” means father or mother whether biological, adoptive or step father or step mother, as the case may be, whether or not the father or the mother is a senior citizen;
- “Property” means property of any kind, whether movable or immovable, ancestral or self- acquired, tangible or intangible and includes rights or interests in such property
- “Relative” means any legal heir of the childless senior citizen who is not a minor and is in possession of or would inherit his property after his death;
- “Senior- citizen” means any person being a citizen of India, who has attained the age of sixty years or above;

INTRODUCTION

Human Rights are for everyone, irrespective to their age. The elderly are perceived as vulnerable because biological, psychological and social ageing result to the ageing person to frailty, infirmity, and in many cases dependency, marginalising the older person from the rest of the population in need of special protection and rights. Although implementation of legislation, policies, and a package of integrated programmes and projects to fulfil the needs of senior citizens had helped them to uplift their status, more needs to be done to the increase of the reach of laws in a more useful manner.

This study was started with the view of bringing positive legislative changes with respect to the protection of the human rights of the elderly. The research and study were conducted by a group of interns at the Maharashtra State Human Rights Commission, Mumbai committed to the cause and pains of elderly. The research was designed to assess the need for additional and comprehensive set of rights for the elderly as such it identifies four main challenges older persons are facing in terms

of human rights as, loneliness, economic instability, discrimination, abuse and abandonment by their loved ones/relatives as well as the lack of specific measures and services. This report moreover focuses on several key areas for responses to the challenges as strengthening the national protection regime, elimination of financial exploitation and establishing adequate care facilities and participation in political life. The report concludes with the list of the possible alterations that can be brought about to initiate the desirable changes. The suggestions and recommendations put forward can form a response that validates the importance of our elderly population and the part they will play in securing a sustainable future. A commitment to research is required to inform and guide a caring society as its aim to cope with the challenges of the older persons of the society.

OBJECTIVES

The objective of this research is to assess the ever-changing needs of senior citizens, current status of support mechanism available for them and future challenges through an in-depth qualitative study.

- To explore and understand the human rights of the elderly people of the society, the following are a set of specific objectives that have been framed to undertake research on the conditions of the older persons in the study area:
- To assess the ground reality of the old age homes and the staff concerned with them and whether the schemes are really benefitting to the senior citizens.
- To assess the awareness level about the schemes / provisions related to older persons in the society
- To review changing needs & rights of older people
- To advocate / recommend ground realities and some key findings to policy makers, planners and decision\ makers so that result oriented elderly friendly policies could be formulated / implemented in the country

GOVERNMENT RESOLUTIONS

- **GR- BCH-2018/Sr.no.79/Education-2**

On 1st March, 2016 the Committee has been formed for increasing of food grant from 900 to 1500 and it has come into force from 1st February, 2019. The Committee is to be headed by the Chief Secretary of the Department of Social Justice.

- **GR- Senior Citizen-2016/Sr. no. 18/SMS**

There are 31 Matoshri Old Age Homes in Maharashtra. In which 8 out of 31 are closed. The Government had granted 50 lakh Rs. And 5 acres of free land in the year 1999. Where every old person residing would have to pay 500 Rs. Annually if his income is above 12000 Rs. The Government is recruiting new employees for the Old Age Homes. 14 employees per old age home for a total of 23 Old Age Homes, which include 1 Superintendent, 1 Doctor or Medical Officer, 1 Nurse, 1 Junior Clerk, 1 Supervisor, 2 Chefs, 2 Helpers, 1 Peon, 1 Watchman, and for the payment of these employees and amount of 2,15,28,000 Rs. would be spent annually. 1500 Rs. would be spent per senior citizen who will reside in the Old Age Homes, so the total amount granted by the provision is 4,14,00,000 Rs. So, the total amount that spent by this provision would amount to a total of 6,29,28,000 Rs.

- **GR- Senior Citizen-2016/Sr. no. 79/SMS**

According to the Senior Citizens Welfare Rule of 2010, State Council for older persons should be formed. on 26th May, 2019 the State Council for older persons has to be formed under the Chairmanship of Minister of Social Justice which will be comprised of 5 people including the Chairman, Upper Chief Secretary of Social Justice Department, a Senior Citizen Activist and Expert, a well-known Senior Citizen, Commissioner of Social Welfare Department (Pune) who will be the Secretary of the Council. The tenure of the above personnel will be for a period of 1 year. They should meet every 6 months.

- **GR- VSO-2018/Sr. no. 62/VSO**

According to the above GR, there are two schemes provided by the Centre and the State that work in collaboration together, Indira Gandhi Senior Citizen Scheme and the Shravanbal Scheme are the names of the scheme respectively. The schemes are applicable to senior citizens who are in the ambit of the age group of 65 to 79 years and below the poverty line. These citizens will get a monthly amount of Rs. 1000, with 200Rs. From the centre and 800 Rs. and from the state

respectively. The senior citizens who are above 80 years of age will get 500Rs. From the State as well as the Centre for a total of Rs. 1000.

RELEVANT ACTS AND SECTIONS

- **The Maintenance and Welfare of Parents and Senior Citizens Act, 2007**
 - i. **Section 14. Award of interest where any claim is allowed**—Where any Tribunal makes an order for maintenance made under this Act, such Tribunal may direct that in addition to the amount of maintenance, simple interest shall also be paid at such rate and from such date not earlier than the date of making the application as may be determined by the Tribunal which shall not be less than five per cent. and not more than eighteen per cent.: Provided that where any application for maintenance under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) is pending before a Court at the commencement of this Act, then the Court shall allow the withdrawal of such application on the request of the parent and such parent shall be entitled to file an application for maintenance before the Tribunal.
 - ii. **Section 17. Right to legal representation.**—Notwithstanding anything contained in any law, no party to a proceeding before a Tribunal or Appellate Tribunal shall be represented by a legal practitioner
 - iii. **Section 20. Medical support for senior citizens.**—The State Government shall ensure that,— (i) the Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens as far as possible; (ii) separate queues be arranged for senior citizens; (iii) facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens; (iv) research activities for chronic elderly diseases and ageing expanded; (v) there are earmarked facilities for geriatric patients in every district hospital dully headed by a medical officer with experience in geriatric care
 - iv. **Section 23. Transfer of property to be void in certain circumstances.**—(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that the transferee shall provide the basic amenities and basic physical

needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal. (2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right. (3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

- **The Code of Criminal Procedure, 1973**

- i. **Section 125. Order for maintenance of wives, children and parents.**

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct: Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means.

CASE LAW

***Sudesh Chhikara vs Ramti Devi | CA 174 of 2021| 6 Dec 2022 |
Division bench of Sanjay Kishan Kaul and Abhay S. Oka JJ***

The Apex Court has held that section 23 of Senior Citizen Act will be applicable only if the transfer of property by senior citizen was subject to condition of providing the basic amenities and basic physical needs of him/her.

In the above case a petition was filed by a senior citizen woman under section 23 of the maintenance and welfare of parents and senior citizen act, 2007. Alleging that her son and daughters were not maintaining her and therefore the release deed executed by her in favour of her two daughters has to be declared void. The maintenance tribunal allowed the petition and declared the release deed null and void. The Punjab and Haryana Court upheld the order.

The benches of Justice Sanjay Kishan Kaul and Justices Abhay S. Oka referred to section 23 and noted that for attracting Sub-Section 1 of section 23, The following 2 conditions must be fulfilled:

1. The transfer must have been made subject to the condition that the transferee shall provide the basic amenities and basic physical needs to the transferor
2. The transferee refuses or fails to provide such amenities and physical needs to the transferor.

The court observed:

“If both the aforesaid conditions are satisfied, by a legal fiction, the transfer shall be deemed to have been made by fraud or coercion or undue influence. Such a transfer then becomes voidable at the instance of transferor and the maintenance tribunal gets jurisdiction to declare the transfer as void. When a senior citizen parts with his or her property by executing a gift or a release or otherwise in favour of his/her near and dear ones, a condition of looking after senior citizens is not necessarily attached to it. On the contrary, very often, such transfers are made out of love and affection without any expectation in return. Therefore, when it is alleged that the conditions mentioned in sub-section 1 of section 23 are attached to a transfer, existence of such conditions must be established before a tribunal.”

OBSERVATIONS

1. The Head Office of the Vatsalya Trust (Old Age Home) is located in Kanjurmarg, Mumbai. The premises consists of a 3-storey building in which the 1st floor is for the Senior Citizens and the above floors are for the Orphan Female Children. The Vatsalya Trust was established in 2000.
2. There was a Project Officer working from Mahila and Baal Vikas Kalyan Samiti.
3. The capacity of the home is for 16 persons and currently there are only 4 females staying there. 12 people were staying there including males before Covid-19.
4. A fee of Rs.6000 is collected per month by the residents as rent for food and accommodation and a 30,000 Rs. Deposit is collected from each resident on admission for medical emergencies. Only physically fit senior citizens who can take care of themselves are permitted to stay there. They don't have the manpower to cater to the needs of dependent old individuals.
5. They avoid admitting old people whose relatives decide to leave the country and admit them here.
6. An undertaking is taken by 2 people who are relatives of the senior citizen. These two people are the first point of contact in case of demise of the senior citizen.
7. There was a Ganpati Temple, where rituals are followed by old peoples every evening, people from outside are also a part of these rituals.
8. The recreational facilities for the senior citizens are library and a television. One of the residents over there was also a Librarian.
9. Pure vegetarian food is provided thrice a day. The menu changes every 15 days. The time for breakfast is from 8:30 to 9:00, followed by lunch time from 12:00 to 2:00 further followed by dinner time from 7 to 9. The residents are allowed to have non-veg food outside the premises.
10. There is no medical team or residential medical staff, the home has a tie-up with a nearby doctor and a hospital for medical emergencies.
11. A Nurse Staff/ Co-ordinator is there but she has not taken up any nursing course. Facilities such as First Aid remains the question.

12. The space for a lift is constructed inside the building since 2000, but a lift is yet to be installed over there. They have had a permission from the PWD but still it has not been installed.
13. The Staff had stated that, “people with families cut ties with them slowly after admitting them to the old age home”.
14. They avoid taking grants from the Government because of the stringent rules and regulations by the Government.
15. The staff is blamed if any unfortunate event takes place with the residents during medical treatment or emergencies. There are no such insurance facilities. The staff has no security when the relatives blame them or harass them if any unfortunate loss has occurred during the medical emergencies.
16. Most of the people come to the old age home of their own free will and for peace of mind. They also like to spend time with other old people within the premises. A room is to be shared by two people of the same gender, this promotes comradery and helps them build a bond among themselves.
17. The residents meet their families occasionally and some of them also go to their family homes during festive times.
18. The residents can go out after making entries of such. They have to be back by 10 pm.
19. The girls who lived upstairs in the orphanage also help the residents of the old age home. The bonding between the girls and the residents was strong. They were like family to each other.
20. Interactive sessions are taken up with colleges and students meet the residents.
21. The problems and reasons of the admission to the old age home vary from person to person.
22. The police here are co-operative with the institution.
23. The staff had also stated that it is not feasible to take care of the residents for an amount of Rs. 6000.

SUGGESTIONS

The following are the recommendations/suggestions formed by us based on the observations and research on the current situation of the old age community as a whole:

1. Dedicated help lines (Phone/ e-mail/ portal/ local) for senior citizens should be launched for extending advisory services/

grievance redressal/ counselling/ for various issues i.e., financial, legal, medical social, safety & security

2. Government must set up a State Commission for the Aged, on the lines of State Commission for Women to protect rights and interests of older people.
3. Self-Employment Scheme for Old People must be launched to offer gainful engagement opportunities to retired older persons
4. All bedridden / disabled / critically ill older persons should be registered and doorstep medical assistance services should be ensured for them at local level
5. There is a need of widespread awareness of the existing Senior Citizen Schemes provided by the Government as a number of people do not have knowledge about such existing schemes.
6. Legal Aid Services should also be made available to the senior citizens as not all such citizens can afford a lawyer at times, when their relatives or loved ones abandon them.
7. These Citizens should be respected and taken care of as they spend their lives in earning livelihoods for their families, and even serving the nation. They are left out as most of the people have a view that they are an unwanted responsibility.
8. The Vatsalya Trust that we had visited was an ideal example of co-dependency. They had an orphanage at the second floor and an old age home at the first floor. The girls had bonded with the senior citizens residing there and would also help them. This altogether made them feel like family, so the government should also take examples of such models.
9. The home could not maintain the residents in the amount of 6000 Rs. each.
10. Hospitals should have emergency facilities dedicated to senior citizens.



HUMAN RIGHTS IN TRIBAL LIVES

A study of human rights of
tribal and indigenous
people in India

"For us Adivasis, the forest
is sacrosanct. It is where we
are born and nurtured, and
our culture and identity are
shaped. The Adivasis are
connected to the forest with
an umbilical cord."

- Dayamani Barla

ACKNOWLEDGMENTS

At first, we would like to share our sincere appreciation and thanks to Maharashtra State Human Rights Commission for giving us this opportunity through Winter Internship Programme 2022.

We thank our Honorable Chairperson Justice K K Tated (Retd.) for his continuous guidance and exceptional support throughout our research study, this wouldn't have been possible without him. We are also thankful to Dr Vaishali Patil for her insightful comments and guidance through this research study.

Last but not least, thanks to the members and all the personnel of Maharashtra State Human Rights Commission for encouraging and guiding us and fellow interns for their moral support throughout this journey.

It was one of the most challenging, yet gratifying experiences in our lives and education career. The generosity and expertise of one and all have improved this study in innumerable ways.

Sincerely,

Ms. Shalaka Shinde

Ms. Pallavi Kanade

Ms. Arifa Tadvi

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EXECUTIVE SUMMARY

In this submission to the Maharashtra State Human Rights Commission¹, provides an overview of Human Rights of Tribals in Maharashtra; important legal provisions to safeguard their rights; information on housing and land rights, education rights, and atrocities faced by schedule tribes, the key challenges, and few recommendations for realization of these rights.

The Scheduled Tribes in the Indian Constitution form an integral part of the socio-economic and cultural fabric of the country. They are excluded and marginalized by mainstream society. They face discrimination and stigma. Tribal cultures provide a wealth of ethnographic detail about their cultural practices, beliefs, and behaviours.

As a result, these tribal communities continue to face stigmatization by state authorities, which not only results in violations of their human rights to adequate housing, land, food, water, sanitation, education, health and livelihood, but also denies them the affirmative action clause guaranteed by the Indian Constitution.

The specifically listed tribes experience more or less the same thing. Marginalization and alienation have led to fragmentation of tribal economies and societies.

The report is based specially on secondary data on Tribals with respect to their education, land rights and forest rights, as well as physical and sexual abuse and atrocities of schedule tribe in Maharashtra. The available resources are in forms of laws, government resolutions, reports, case studies, articles, visit reports etc.

The primary data was generated in the following manner-

In order to understand the ground reality of tribes we had the honour to learn the insights from our guest lecturer Dr. Vaishali Patil who is founder of Ankur Trust. She is a renowned grassroot social activist working from the last 25 years in Raigad district with Katkaries of Pen block.

Telephonic interview with one of the PhD students from TISS who is working towards development and welfare of Tribal Migrants.

¹ MSHRC <https://www.mshrc.gov.in/>

INTRODUCTION

In India, there are 705 ethnic groups officially recognized as "Scheduled Tribes". In central India, the Scheduled Tribes are usually referred to as Adivasis, which literally means Indigenous Peoples. India has one of the largest and diverse tribal populations in the world. According to ministry of tribal affairs annual report 2021-22² total population of schedule tribes in India is 104545716 (approximately 10Cr) 9.4% population of India out of which Maharashtra is having 10510213 (approximately 1CR) 10.1% tribes in overall population of Maharashtra

Article 366 (25) of the Constitution of India defined scheduled tribes as “such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this constitution”.

Certain tribes have been characterized as Particularly Vulnerable Tribal Groups² (PVTGs) (earlier known as Primitive Tribal Groups) on the basis of their “greater vulnerability” even among the tribal groups.

The PVTGs currently include 75 tribal groups, who have been identified as such on the basis of the following criteria:

- 1) Forest dependent livelihoods,
- 2) Pre agricultural level of existence,
- 3) Stagnant or declining population,
- 4) Low literacy rates and
- 5) A subsistence-based economy

²Census 2011

³PVTG <https://tribal.nic.in/ST/StatewisePvTGsList.pdf>

LEGAL LANDSCAPE

- The Constitution of India provides special protection to Scheduled Tribes and specifically includes those tribes or tribal communities that are notified under Article 342 (Article 366 (25), Constitution of India: “Scheduled Tribes” means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under article 342 to be Scheduled Tribes for the purposes of this Constitution.”)
- The Fifth and Sixth Schedules of the Constitution lay down provisions for the administration, including land governance and regulation of customary tenure practices, of tribal-dominated areas in the country.
- The Sixth Schedule applies to protection of tribal lands in northeast India, specifically the states of Assam, Meghalaya, Tripura, and Mizoram. (Article 244 (2), Constitution of India: “The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.”)
- It provides tribal communities with relative autonomy in land management and management. It empowers the district council, an elected body, to make laws relating to the allocation, use, or division of land for agriculture, grazing, residence, other non-agricultural purposes, or any other purpose that may further the interests of the inhabitants of the village or town. (3 (a), Sixth Schedule, Constitution of India.)
- The District Council also has the authority to make laws for the management of any forest other than a reserved forest, regulating forms of agriculture such as shifting cultivation, inheritance of property, and regulating social customs.
- The Fifth Schedule is applicable to Scheduled Tribes and the administration of Scheduled Areas, other than those where the Sixth Schedule applies. (Article 244 (1), Constitution of India: “The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.”)
- “It authorizes the governor of an Indian state to regulate or prohibit the transfer of land belonging to Scheduled Tribes to non-tribals, and also to regulate the allotment of land to members of Scheduled Tribes in Scheduled Areas”.

- Although the Schedules provide autonomy to tribal communities in land governance, they also inadvertently protect customary tenure practices, some of which are not favourable to women, leaving little scope for the recognition and protection of women's land rights under traditional systems of inheritance and land transfer.

Judicial Decision

Samatha v. State of Andhra Pradesh (1997)⁴

Facts: This case concerns the leasing of tribal lands for mining and industrial purposes. The State of Andhra Pradesh granted leases to several non-tribal persons to mine tribal lands. Samatha, a group representing the rights of affected tribal persons, filed a petition in the High Court of Andhra Pradesh arguing that the granting of leases to tribal lands to non-tribal persons for mining purposes violated the Andhra Pradesh Scheduled Areas Land Transfer Regulation (1959) and the Forest Conservation Act (1980).

Judgment: The Supreme Court of India held that government, tribal, and forested lands in the scheduled areas cannot be leased to non-tribal persons or private companies for mining purposes. The Supreme Court reasoned that all land in the scheduled areas, regardless of title, cannot be leased out because of the importance of agriculture as the source of livelihood for tribal persons. Paragraph 5(2) of the Fifth Schedule of the Indian Constitution preserved these lands to protect tribal persons' economic empowerment, economic justice, social status, and dignity. The transfer of lands in the scheduled areas can be allowed only for peace and good governance of the land.

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006⁵

(⁴AIR 1997 SC 3297)

⁵FRA Act, Rules <https://tribal.nic.in/downloads/FRA/FRAActnRulesBook.pdf>

- Forest Rights Act recognizes the rights of Scheduled Tribes and other traditional forest people who have lived in forests for generations and provides a framework for documenting their rights to forest lands. The law recognizes the historical injustice suffered by Indian tribal and other forest-dwelling communities, which are vital to the survival and sustainability of forest ecosystems, many of which have been displaced and forced to resettle due to encroachment by state development.
- Section 3 of Forest Right Act states forest rights of individual and community which vest in Scheduled Tribes and traditional forest-dwellers. These includes rights of ownership, holding and occupation of land for livelihood, access to biodiversity, intellectual property, traditional knowledge, management and protection of forest resources, and community rights over natural resources.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013⁶

The right to fair compensation and transparency in land acquisition act governs the process of land acquisition in India, enumerates special provisions for the acquisition of land belonging to Scheduled Tribes.

The act provides that land acquisition does take place it shall be done only as a demonstrable last resort.

In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas.

The right to fair compensation and transparency in land acquisition act also lays down provisions for the adequate rehabilitation and resettlement of Scheduled Tribe families who are displaced by land acquisition, and to ensure the preservation of their livelihoods and cultural identity.

⁶The Right to Fair Compensation and Transparency in Land acquisition, rehabilitation and resettlement act, 2013 <https://legislative.gov.in/sites/default/files/A2013-30.pdf>

THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989⁷

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

The Act criminalizes unlawful occupation or management of land owned, held, or assigned by members of a schedule tribe; unlawful dispossession of land or housing from members of a merged tribe, or interference with the exercise of their rights, including forest rights; and coercion or causing designated tribes to members leave their place of residence.

⁷The SC and ST Act, 1989 <https://tribal.nic.in/actRules/preventionofAtrcities.pdf>

MAJOR CHALLENGES- EDUCATION

EDUCATIONAL SCHEMES FOR TRIBALS: - Various Educational Schemes for Tribal students have been started by the Ministry of Tribal Affairs for the educational development of the tribals in India.

- i. The Pre-Matric Scholarship
 - ii. The Post-Matric Scholarship Scheme
 - iii. National Overseas Scholarship Scheme
 - iv. National Scholarship Scheme (Top Class) For Higher Education of ST Students
- (Ministry of Tribal Affair)

Establishment of Ashram Schools - The Aashram School Establishment Program in Tribal Sub-Program Areas is a centrally funded program for the establishment of all Aashram Schools for girls and boys in specific areas (socially and economically strong affected areas). The states concerned are responsible for the operation and maintenance of these schools.

The Department of Tribal Development, Government of Maharashtra provides financial support to 528 government schools and 556 subsidized boarding schools in the hilly and remote areas of the state. These ongoing NGOs receive 100% government subsidies in terms of teaching and non-teaching staff salaries and allowances and living expenses. The government provides financial assistance of up to Rs 1200 per student studying in these schools. Expenditure on books, stationery, furniture and emergencies is also counted by the state. For school uniform, utensils, bed-sheets and other necessities etc. Government is providing financial aid to the tribal students learning in Tribal Ashram Schools.

Observation

Aashram Schools for Tribal

The statistic given by Salunke Committee Report, 2016 showed, out of 1077 total deaths 584 were boys whereas, 493 were girls. ("Evaluation Study of Grant-in-Aid for

Voluntary Agencies running Ashram Schools in Maharashtra”:
PricewaterhouseCoopers Private Limited Pg no-120-121)

To investigate the reasons behind these deaths, State Legislature and Public Interest Litigation (PIL) of High Court of Bombay formed a committee headed by Dr Salunke. A primary task of the committee was to analyse the deaths of tribal children in Maharashtra's 'Ashram shala'.

The report mentions that due to poor construction quality and lack of maintenance, the site's infrastructure has caused serious problems: poor sanitation and water supply maintenance, overcrowded dormitories, lack of composite walls, lack of bulbs and tube lighting, lack of cribs and, daily bathing. Insufficient water sources caused children to swim in nearby waters and accidents occurred. Lack of sanitation and substandard food quality affect children's health problems.

Studies have shown that these services either do not reach students, or the students who receive them are of poor quality. This means that there is a lack of on-site monitoring and evaluation mechanisms for children's rights denied.

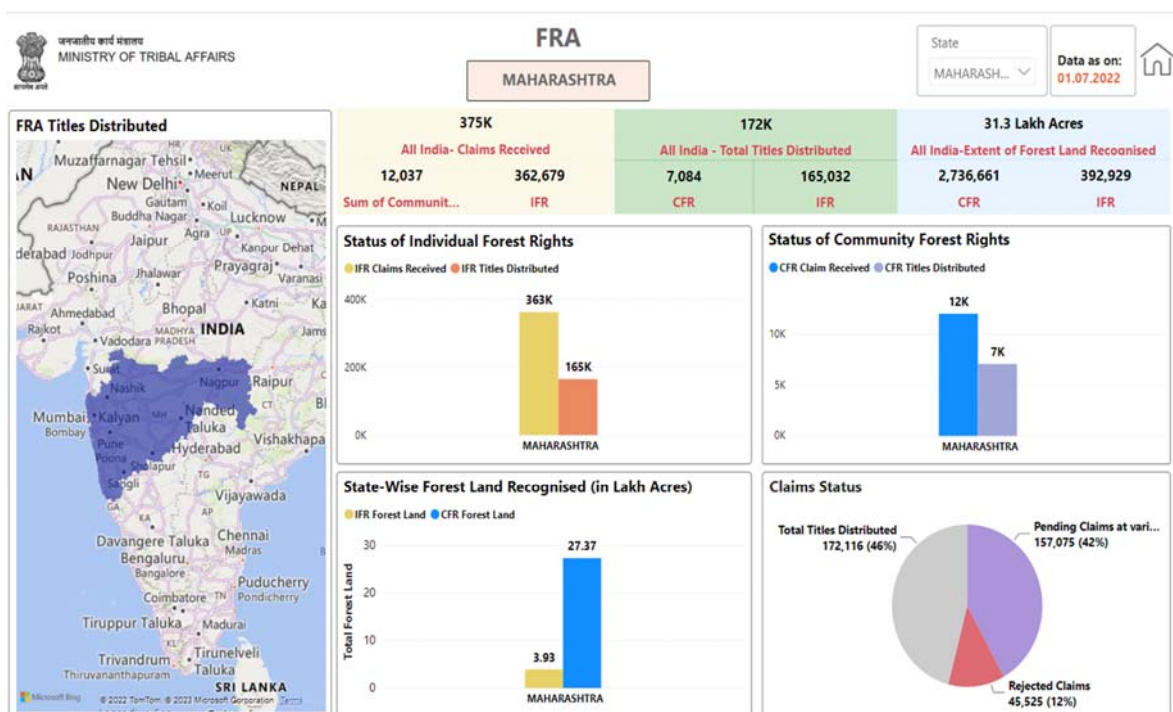
Many remote schools do not have internet facilities.

There is no sense of security, especially the girls in the Aashram School.

LAND DISPLACEMENT

- Since the FRA came into force, the Ministry of Environment, Forests and Climate Change has attempted to revoke the extended rights through various notices and orders. For example, in 2013, linear projects such as road and bridge construction no longer required Gram Sabha approval. In 2018-2019, the department also removed the requirement to comply with the FRA in the first phase of ensuring "essential" deforestation. So, the Gram Sabha's approval can be sought later in the final stage of approval, which is practically irrelevant as at this point the project has already made significant progress. In some cases, the ministry has also approved the conversion of forest lands to mining activities despite strong opposition from the tribals in the area.

- Organizations working for the well-being of Schedule tribes have reported numerous cases of compromised legal processes. Local officials, including district collectors, have resorted to practices such as falsifying signatures and falsifying consent documents. In some cases, Gram Sabha resolutions were passed in the face of strong opposition to mining proposals, but those proposals were approved after false approvals were recorded. Reports have also emerged that meetings with Gram Sabhas to obtain their consent are often held in the presence of armed police, in direct violation of the principle of free will.



Ministry of Tribal Affairs: FRA titled distributed till 01/07/2022

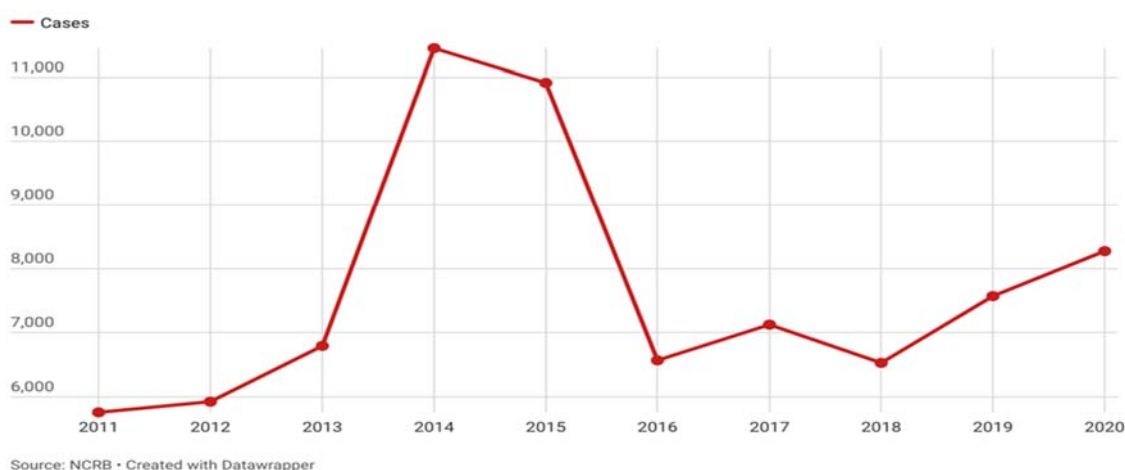
ATROCITIES

In India, the term “atrocities” is often used to describe crimes committed against SCs and STs. This refers to any crime committed against SCs and STs by persons who are not SCs or STs under the Indian Penal Code, 1860. It is not necessary to have a motive for racial discrimination in order to commit such an offence.

The National Crime Records Bureau [NCRB] reports show that in the past ten years (2011-20), 76,899 crimes have been reported to have been committed against STs. As shown in Figure 1, such crimes have been rising at an alarming scale. In 2011, there were 5,756 such crimes reported, and by 2020, the figure reached 8,272. These are, it must be kept in mind, just the registered cases of violence; the unregistered cases are bound to be much more than what data shows.

Rising anti-Tribal violence in India: 2011-20

Data shows atrocities against STs have risen 2% in ten years.



The NCRB³ data only show violence against the ST; there are also "denotified tribes" not included in the NCRB data set. Violence against nomadic tribes is also a concern. The Free Press reported that in May 2019, women belonging to sectarian tribes testified that they were tortured and raped on an almost daily basis. Designated tribes have no plans, so they lack legal protection, making them even more vulnerable.

The situation of indigenous women and girls in India remains of great concern as many of their rights appear to be denied. Collective and individual rights are violated in private and public spaces. Sexual violence, human trafficking, killing/stigmatization, militarization or state violence, and the impact of development-related displacement remain important issues. Cases of Rape against Schedule Tribe women stood at 15%

³ NCRB Vol II 2021 https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%202.pdf

(1324 cases) of the total cases reported. Cases of Rape, attempt to rape, Assault on women to outrage her modesty, and kidnapping cumulatively stood at 26.8% (2364 cases).

There are many factors involved in this violence. One factor is that perpetrators are easily acquitted in most cases. Between 2009 and 2018, the conviction rate for crimes against Adivasi under the Scheme and Incorporated Tribes (Prevention of Atrocities) Act was 22.8%, although such cases increased by 575.33% during this period. This has also led to a loss of confidence by schedule tribes in legal mechanisms.

Another indicator is the allocation of resources based on caste. In India, upper castes have greater influence over material resources, while Adivasis and Dalits lack power over resources, making them vulnerable to economic and social exclusion. A World Bank report shows almost 43.8 per cent of the ST population in India lived below the poverty line as of 2004-05. It also shows that adivasis constituted 25 percent of the poorest decile of India's population in 2004-05, in spite of constituting eight per cent of the total population. In comparison to the 1980s and 2004-05, the Adivasis lag behind by twenty years when it comes to development ratio. The poor socio-economic indicators of the STs means that they are systematically subject to a continuous cycle of violence.

While provisions of the Indian Constitution and statutes are in place to protect the rights of tribal members, a lack of awareness and resources is an obstacle to justice.

Understand the demographics of the case, i.e., the crisis area where the case originated, and work with local police departments to develop a custom plan.

Government agencies, NGOs and individuals should work to create legal awareness in tribal villages by organizing cultural programs and engaging residents.

Raise awareness of current conduct and consequences of breaking the law. This will make them aware of their rights. Provide legal education to primary school children and encourage children to study for a better future. Hire teachers for tribal-dominated hamlets.

Open legal aid clinics in the jurisdiction to hear and record their concerns and resolve them.

RECOMMENDATION

Children should be educated about their rights and how to exercise them. With Tribal Development Department, children should be educated and guided to take appropriate action in situations of physical and sexual abuse through the involvement of community members.

Each inmate shall be provided with a separate bed and closet as managed by student needs. Separate toilets for men and women, each room has a communal dining room with tables, chairs and fans. In most public and private schools, students currently sleep on the floor, which has resulted in snake bites, scorpion bites, and more.

The students attending the schools shall be educated not just in regular subjects but also about water, forests and land. They shall introduce to all the herbs found in the forest as well as edible tubers. They shall be informed about their uses and consumption.

For tribes, land is about survival, preservation of culture and identity. The state has attempted to address land-related issues through land laws; however, they have failed to address major issues. Land reform was defeated in various ways, e.g. by concealing actual leases, registering land under Benami's name, evictions, etc. All these issues must be addressed by the government and authorities

Agriculture/horticulture should be prioritized in tribal development efforts to achieve the desired shift.

Government should provide agricultural land for livelihood of landless tribes and marginal workers

- **Necessity of Legal Awareness**

Below laid out table give a reference to the number cases received by Maharashtra State Human Rights Commission 2019 to 2023. It is clearly depicted that the awareness about rights within the community is a hindrance due to illiteracy, unawareness and seclusion. The number of crimes and the number being reported is contrary.

Government shall conduct training programs for awareness by undertaking various modes of programmes and activities.

Individual and NGOs who have a mutual understanding with community should be given the job of spreading the knowledge of their rights.

REGISTRATION, DISPOSED AND PENDENCY FOR CASES REGISTERED DURING THE PERIOD FROM 01/01/2019 to 01/02/2023 STATE MAHARSHTRA INCIDENT CODE BETWEEN 700 AND 704 (Data as per CMS)								
<i>Incident Code (Name of Incident)</i>	Registrat ion	DIL	DWD	SHRC	Closed	Others	Total Disposed	Pending
700 (Minorities/SC/S T)	27	6	0	0	1	0	7	20
701 (Discrimination against Minorities)	14	0	0	0	0	0	0	14
704 (Victimization)	6	0	0	0	1	0	1	5
<i>Total</i>	47	6	0	0	2	0	8	39

**REGISTRATION, DISPOSED AND PENDENCY FOR CASES REGISTERED
DURING THE PERIOD FROM**

01/01/2019 to 01/02/2023

STATE MAHARASHTRA

INCIDENT CODE BETWEEN 1900 AND 1904

(Data as per CMS)

Incident Code (Name of Incident)	Registration	DIL	DWD	SHRC	Closed	Others	Total Disposed	Pending
1900 (SC/ST/OBC)	4	1	0	0	0	0	1	3
1901 (Atrocities on SC/ST/OBC)	7	1	0	0	0	0	1	6
1902 (Discrimination of SC/ST/OBC)	3	0	0	0	0	0	0	3
1904 (Victimisation)	1	0	0	0	0	0	0	1
Total	15	2	0	0	0	0	2	13

- Healthcare for Tribals**

Providing primary health care and wellness centre in the community, with the support of Gram Sabha and key community influencers and making 24*7 accommodation facilities for the medical professionals.

Similar to Legal literacy, healthcare literacy is a necessity in the area. Health literacy drive for continuous health education of women, men, youth and children is a cost-effective intervention. Strategies may include mass communication like wall paintings, posters, etc.

CONCLUSION

Scheduled tribes are the victims of so-called development in the state of Maharashtra. Scheduled tribe society is dynamic in nature. They are close to the environment and natural resources. In the era of globalisation, liberalization and privatization tribal societies are struggling to sustain. They are not the skilled labourers but they are absorbed in the industries specifically small scale as daily wage labours. There is no fixed wage for them. Sometimes they are given vocational training but the wage they get is not sufficient for their sustenance. Very often tribes get displaced due to developmental projects. These situation further results in fracturing tribal society

By regulating land merely as a market commodity, the state has consistently ignored the deeply symbiotic relationship between tribal communities and their land. Since they do not have legal title to the land they live on, they do not have the opportunity to invest in their land and earn income. They cannot apply for loans from public banks or have access to electricity, water, irrigation or road connections. As shown in, in several states, most tribal land title applications were denied.

Maharashtra appears to have made considerable progress with respect to issues such as literacy, with literacy levels for the state as a whole, as well as for tribal populations of the state being higher than the respective national averages. (Census 2011)

Also of particular concern is the failure of the Government of India to ratify international conventions and protocols on the rights of indigenous peoples, preventing them from seeking protection under international law. (India has not ratified the International Labour Organization (ILO) Convention No. 169 on Indigenous and Tribal Peoples, 1989 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), 2007). The Indian government's attempts to restrict the rights of the indigenous population bear clear parallels to aggressive colonization.

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**MAHARASHTRA STATE HUMAN
RIGHTS COMMISSION**

**RESEARCH REPORT ON
HUMAN RIGHTS OF LGBTQAI+**

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INTRODUCTION

The LGBTQIA+ is an acronym which stands for Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual, and Other. The people who belong to LGBTQIA community are mainly classified into two categories which are one is natural, i.e. by birth and another is after attaining puberty.

It has been 74 years to our country's Independence, but still the LGBTQIA+ community is struggling for their basic rights and the societal acceptance. The problems related to the LGBTQIA+ community were not sorted even after the Independence.

On 6th September 2018 Hon'ble, Supreme Court of India has legalized the consensual sexual intercourse between same sex people.

Even after the Court has approved the “unnatural offence” but still there are many other issues which are highly exploiting the basic Human Rights of LGBTQIA+ community, like they are not getting the acceptance by society, unemployment is the biggest issue, poverty, lack of education, no family support, etc.

The Indian Penal Code was in provision for past 163 years, even though making the provision unconstitutional by Supreme Court of India could not change the mindset of the society, which still thinks that the homosexuality is a sin, or few people treat it as a mental disorder.

The thought related to consensual sexual performance between persons of different sex or same sex marriages has been changing very slowly in our society.

PROBLEMS FACED BY LGBTQAI+ COMMUNITY

The LGBTQAI+ individuals deal with the significant problems like unemployment, poverty, lack of family support, access to health care, prejudice, violence, etc.

Some of the problems of the community are mentioned below: -

- Lack of family support
- Earlier school dropout
- Lack of employment opportunities
- Lack of acceptance among society
- Psychological problems
- Problems of homophobia
- Poor economic conditions
- Victims of hatred and criminal violence
- Drug addiction
- Legal injustice
- Problem of criminalization
- Barriers to care and protection

These were some of the common and most major problems which the community is facing and dealing with.

As we say every problem has a solution here are some solutions discussed further.

SOLUTIONS TO THE PROBLEMS FACED BY THE COMMUNITY: -

The major problem is the mentality of the society which needs to change their mindset towards the community and to accept them in the way they are, and not to discriminate them.

1. School teachers and educational programs are the crucial sites where the problems of the community need to be addressed, to promote health among the LGBTQAI community youth schools can implement following practices which will encourage the youth in positive manner.
 - Prohibit bullying, hatred and violence against all students, and encourage respect among all the students.
 - Encourage student leaders, and student organized school clubs to promote a safe welcoming and acceptance environment. For e.g. Gay-straight alliances, clubs which are school clubs open to youth of all sexual orientation.
 - To create safe spaces such as counselors designated classrooms, offices, where LGBTQAI+ youth can receive youth support and can open up with their issues in the institution.
 - Encourage school staff to publicize the training on how to create supportive school environment for all students regardless of their sexual orientation and gender identity.
 - Ensure that educational materials include information regarding HIV's, STD's, pregnancy prevention information which is relevant to the LGBTQAI+ youth.

- Facilitate access to community-based people who provide the HIV/STD testing to LGBTQAI+ youth, who provides counseling to them and have expertise in it.
2. Consider LGBTQAI+ issues as a central theme in all aspects.
 3. Legal funds need to be created that can raise a public interest litigation on LGBTQAI+ issues.
 4. Media needs to be more aware on opening up the issues faced by the community in the society in order to create awareness in the society about the problems.
 5. State government as well as central government should develop initiatives to support the employers in making workplace and work culture more inclusive and supportive towards the LGBTQAI+ community.
 6. Health professionals need to be trained regarding the issues of the LGBTQAI+ community, to increase their understanding for the LGBTQAI+ community identity as a potential risk factor for self-harm suicidal behavior and depression. Respective authorities should take care that all the health, mental health, and social care services are provided in a way that it is easily accessible to the community.
 7. Police force needs to be more sensitive towards the LGBTQAI+ matters, and also on the general principals of the fundamental human rights.
 8. The language which stigmatizes the community should be avoided.

OBSERVATIONS

LGBTQAI+ is the major burning issue these days, but still there are not enough remedies for their problems. As we have met a resource person from Humsafar Organization named Tinesh Chopde and Ms. Nilopher it was a great opportunity to interact with them and to know about the issues and problems regarding the Community.

- The session made us understand the requirements that the community wants, and the major requirement was “The societal acceptance”, since there are many Amendments and Acts for the LGBTQAI+ but still there is a social stigma regarding them.
- Many people who are coming forward for the community but still we do not have any strict acts, rules for the offences relating to the community. As a progressive society and a developing nation, India is still lacking behind to give basic rights to their citizens belonging to the country.
- Another problem which we have come across is Unemployment, like no corporate nor Government jobs are ready to hire the people belonging from the community, which leads to poverty, and forces them to do low dignity works or in illegal works like sex works, prostitution, begging’s, etc.
- Even if we talk about the educational sector, a lot of people belonging to the community are suffering humiliation, insult, assault, misbehavior, torture, towards them which leads them towards quitting the education, not everyone but some of them stand strong towards their situation and complete the education.
- The family i.e. The Biological Family of the person belonging to the community, face major harassments by parents and family members itself, they are forced to hide their identity in the society, they are grounded, as

soon as the child reaches the adolescence age i.e. 11 to 16 years of age the child starts developing towards its body, its biological identity, gender identity, and it's the major age where there are a lot of hormonal changes where a child is going through, where they need mental support, emotional support by their parents, family members, friends, and if the child recognizes themselves as a person from LGBTQAI+ community, suddenly everything changes.

- This is the main reason either the child leaves the house, and chooses “A Family of Choice”, where they can actually be themselves, after leaving the house there are a lot of problems which they face in the “main stream” society like abuse, exploitation, homelessness, etc. or they can come across any NGO, where they can find a shelter, and can start a new life which is quite difficult in practical life.
- Medical facilities, medical needs are the needs which cannot be denied to anyone in any case. But the issue regarding the LGBTQAI+ community is that the Doctors are only not aware about the medical problems faced by the people. Nor even the syllabus of the medical education does not have any information regarding their problems.
- Many a times the community people are engaged in sexual work, prostitutions, etc where they get infected with the sexual diseases like HIV, STD's, etc which are life threatening. There are no proper mechanisms for them.
- This community is facing one of the biggest challenges which is “Change in Laws”, as there is no inclusiveness of the community in laws such as Rape laws, where it includes only “FEMALES”, and there are many people from the community especially the transgender who are facing sexual exploitation where they can't even file a complaint against it as no law includes “The

Community”, which should be included while making the laws, which will reduce their exploitation in some extent.

- Even if they dare to file a complaint against some offence they are treated very badly by the authorities.
- Misconceptions about the community are another challenge which they are facing. Biological identity, Sexual orientation, and gender identity these things differ from each other. People consider transgender to HIJRA, as the HIJRA is a totally different community, and has different rules beyond the LGBTQAI+ community.
- It is not necessary that every transgender person is HIJRA, but if a transgender person accepts the ideology and he/she takes “diksha” from their “guru”, then they can be considered as HIJRA.
- Mostly these people are taken for granted in society, and forces them to believe that they are “second class citizens”, which is not anywhere mentioned in any of the laws in India. But still due to social stigma they are treated in a bad way.

To find a permanent solution on this issue we need to work on all the measures that are bothering them, since from family to society.

AWARENESS

Awareness is the only tool to deal with the LGBTQAI+ rights, the awareness regarding LGBTQAI+ should be started since from the grass root level, the mindset of the society needs to be changed in order to treat everyone equally, and no one should be denied of justice, equality, and opportunity.

Here are some ways of awareness that are mandatory to be implemented

- ❖ Awareness campaigns regarding LGBTQAI+ should be started in schools itself, so that since from early age the students can understand, what is LGBTQAI+ ? what problems do they face? etc.
- ❖ Teachers should be trained that how to deal with the students who are from LGBTQAI+ community.
- ❖ Social media is another way to create awareness and reach out to a lot of people in a short period of time. Many write-ups, videos, podcast, etc. can be produced in order to create awareness for the community.
- ❖ Doctors, should also be trained about the community and its issues in order to aware the people.
- ❖ Government should take initiatives regarding the awareness about the community.
- ❖ Social programs should be conducted for the people so that they won't feel neglected from the "main stream" of the society.
- ❖ Police personnel's should be made more sensitized towards the LGBTQAI+ community.

WELFARE SCHEMES

The Ministry of Social Justice and Empowerment has formulated a national level umbrella scheme namely “SMILE – *“SUPPORT OF MARGINALISED INDIVIDUALS FOR LIVLIHOOD AND ENTERPRISE”*” which includes two sub-schemes - ‘**Comprehensive Rehabilitation for Welfare of Transgender Persons**’ and ‘**Comprehensive Rehabilitation of persons engaged in the act of Begging**’.

Union Minister for Social Justice and Empowerment Virendra Kumar on Saturday launched a scheme called 'SMILE: Support for Marginalized Individuals for Livelihood and Enterprise' for the welfare of members of the transgender community and beggars. The ministry has allocated Rs. 365 Crore for the scheme from 2021-22 to 2025-26. The ministry has allocated Rs. 365 Crore for the scheme from 2021-22 to 2025-26.

FASCILITIES UNDER SCHEME

1. **TG CERTIFICATE AND ID CARD:** A transgender person can apply for certificate and identity card from across the country. The Transgender certificate & identity card are nationally recognized and provided by the Ministry of Social Justice & Empowerment. The certificate is a mandatory document to avail the welfare measures being provided under the SMILE scheme.
2. **SCHOLARSHIPS:** The Ministry of Social Justice & Empowerment is providing scholarships studies in India to Transgender students studying in classes IX and above to provide financial assistance to the Transgender students studying in classes IX and X, and at post matriculation or post-secondary stage and beyond that till post-graduation to reduce the incidence

of drop-out and aid the transition from the elementary to the secondary stage. Four Scholarship categories are available:

- Scholarships for secondary school (9th & 10th) Transgender students.
- Scholarships for senior secondary (11th & 12th) education.
- Scholarships for students (Undergraduate/Diploma).
- Scholarships for students (post-graduation).

3. **SKILL TRAINING:** There are two types of skill development training programs that are provided:

- Short Term Training Programmed (200 hours to 600 hours and up to 6 months).
- Long Term Training programs (5 months and above and usually up-to 1 year) (up to 1000 hours).

4. **COMPOSITE MEDICAL HEALTH:** The objective of the scheme is to provide health Insurance coverage to all Transgender persons living in India to improve their health condition through proper treatment including sex re-assignment surgeries as well as medical support. The scheme would cover all Transgender persons not receiving such benefits from other center/state sponsored schemes.

5. **GARIMA GREH: SHELTER HOMES:** The main aim of Garima Greh is to provide shelter to Destitute & abandoned Transgender persons with basic amenities like shelter, food, medical care and recreational facilities. Besides that, it will provide support for the capacity-building/skill development of Transgender persons.

GOVERNMENT RESOLUTIONS RELATED TO TRANSGENDER:

1. On 8th June, 2020 Maharashtra Government passed a resolution to establish a Welfare Board for protection for rights and welfare of Transgender. This welfare board is established at State Level under Social Justice and Special Help Department. Hon'ble Minister Social Justice and Special Help Department Is Chairperson of The Board and Secretary of The Department Is Vice-Chairperson of The Board.

This GR is ratified by Hon'ble Minister Social Justice. The GR is available on www.maharashtra.gov.in this website.

The unique code of the GR is 202006081614472622.

2. It is necessary that all the complaints of the transgender must be solved at District Level. For this purpose, the permission was granted, to form Complaint Resolving Committee at District Level. This district level committee consists of eleven members. Collector is a Chairperson of the Committee while Additional Superintendent of District Police is Vice-Chairperson of the Committee and Additional Commissioner of Social Welfare, Is Secretary of Committee.

The committee work for following purposes:

1. To take action on complaints.
2. To resolve the complaints in reasonable time period.

3. As per complaints if it is necessary then, for the protection of transgender rights and their welfare, committee can give suggestions to board.
4. Committee must study the problems faced by transgender and give their report to government.

This GR is available on website: www.maharashtra.gov.in

The unique code of this GR is 2020010261559578722.

3. On date 27/08/2021 state election commission Maharashtra has passes and order which says:
 1. All transgender must have the right to self-perceived gender identity for the purpose of contesting elections to a local body,
 2. The said contesting person should have been using the same chosen gender for all other purposes.
 3. The said contesting person shall give an affidavit declaring that the person is using the same chosen gender for all other purposes and shall not switch over that gender driven by opportunism, except after following due process as provided in transgender persons (Protection of Rights) Act, 2019.

This order is available on following link:<https://mahasec.maharashtra.gov.in/Upload/PDF/transgender%20order%20in%20English.pdf>

CASE LAWS

1. NAZ FOUNDATION VS NCT DELHI

Sec. 377 of IPC talks about unnatural offences which includes carnal intercourse against the order of nature

The NAZ foundation trust has filed a case in Delhi high court for legalization of homosexual intercourse between consenting adults. NAZ foundation has been working with transgender community to spread awareness about health issues and HIV-AIDS. But the problem is that people use to think that they are promoting the homosexual culture. Therefore, they were facing evens pressure from police authorities and society the spread of AIDS is use in LGBTQ community. So NAZ foundation challenged the constitutionality of Sec 377 of IPC.

JUDGMENT:

Naz Foundation v. Govt. of NCT of Delhi is a landmark Indian case decided by a two-judge bench of the Delhi High Court, which held that treating consensual homosexual sex between adults as a crime is a violation of fundamental rights protected by India's Constitution. The verdict resulted in the decriminalization of homosexual acts involving consenting adults throughout India.

CITATION:

NAZ foundation vs Government of NCT Delhi 160 Delhi Law times 277.

2. SURESH KUMAR KOUSHAL AND ANR. VS NAZ FOUNDATION AND ORS. 2013

FACTS:

This case is appealed from NAZ foundation vs Govt. of NCT of Delhi by High Court of Delhi. The case is led by division bench of two judges namely G.S. Sanghvi and S.J. Mukhopadhyay

JUDGMENT:

On 11th December, 2013, the Supreme court of India set aside the 2009 judgment given by the Delhi High Court stating that judicial intervention was not required in this issue. This in effect recriminalized sexual intercourse against the order of nature.

In view of the above discussion, we hold that Section 377 IPC does not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of the High court is legally unsustainable.

CITATION:

Civil appeal no. 10972 of 2013.

3. NAVTEJ SINGH JOHAR VS UNION OF INDIA

FACTS:

On 27 April 2016, five people filed a new writ petition in the Supreme Court challenging the constitutionality of Sec 377 of Indian Penal Code. The petitioners claimed that the issues which they raised in their petition were varied and diverse from those raised in the pending curative petition in the

2013 KOUSHAL VS NAZ case, in which the Supreme Court had upheld the constitutionality of Section 377.

The petitioners were dancer, journalist Sunil NAVTEJ SINGH JOHAR, chef Ritu Dalmia hoteliers Aman Nath and Keshav Suri, and businesswoman Ayesha Kapur. This case was the first instance wherein the petitioners argued that they had all been directly aggrieved because of Section 377, alleging it to be a direct violation of fundamental rights.

JUDGMENT:

On 6 September 2018, the court delivered its unanimous verdict, declaring portions of the law relating to consensual sexual acts between adults unconstitutional.

However, other portions of Section 377 relating to sex with minors, non-consensual sexual acts, and bestiality remain in force.

The court found that the criminalization of sexual acts between consenting adults violated the right to equality guaranteed by the constitution of India.

the court ruled that LGBTQ people in India are entitled to all constitutional rights, including the liberties protected by the constitution of India. "History owes an apology to the members of this community and their families, for the delay in providing redressal for the ignominy and ostracism that they have suffered through the centuries. The members of this community were compelled to live a life full of fear of reprisal and persecution. This was on account of the ignorance of the majority to recognize that homosexuality is a completely natural condition, part of a range of human sexuality." said Hon Justice Indu Malhotra.

CITATION:

Navetej singh johar vs Union of India AIR 2018 SC 4321.

SUGGESTIONS

The following are the suggestions formed by us based on the observations and research on the current situation of the LGBTQ community as a whole.

1. Dedicate Help lines (Phone / e-mail / portal / local) for LGBTQAI+ persons should be launched for extending advisory services / counseling / for various issues i.e. financial, legal, medical social, safety & security.
2. Government must set up State Commission for the LGBTQAI+ , on the lines of State Commission for Women to protect rights and interests of LGBTQAI+ community.
3. Self-Employment Scheme for Transgender persons must be launched to offer them employment.
4. There is a need of widespread awareness of the existing LGBTQAI+ community schemes provided by the government as a number of people do not have knowledge about such existing schemes.
5. Legal aid services should also be made available to the Transgender persons as not all such citizens can afford a lawyer at times, when their relatives or loved ones abandon them.
6. Financial Institutions must provide loan for LGBTQ community so that they can start their own business.
7. Need to amend land laws so that LGBTQ can purchase the immovable property, till then government should allocate them a temporary camps.
8. The Government should build shelter Homes for LGBTQ children who are separated from their house.

CONCLUSION

Even though the progress in terms of LGBTQAI+ rights has been made and the attitude towards the LGBTQAI+ people have been changed in past few years, the implications of the anti-community prejudice and discrimination remains serious.

It is critical that the attitude towards the community is still same even after so many amendments and laws introduced for the community. Still, they are not included in the “main stream” society and neglected in every circumstance.

Not only the Government policies are going to change the situation of the community, but it also requires changing the mentality of the society towards them and people like us should take initial steps to include them with us in social gatherings, public places, etc.

The situation can only be changed with co-operations by both i.e. The Government and The Society.

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Observations, problems collected from the Resource person from Humsafar Trust, Mr. Tinesh Chopde, Ms. Nilopher.