

## **Standard Operating System (SOP) for UTRCs.**

### **Definitions:**

- (a) "Jail" means Central Jail/District Jails/Sub Jails.
- (b) "Jail Superintendent" includes Deputy Superintendent
- (c) "UTPs" means Under Trial Prisoners who are in custody at the time of preparation of list and includes inmates who are out on interim bail.
- (d) "UTRC" means Under Trial Review Committee chaired by District & Session Judge consisting of District Magistrate, Superintendent of Police, Secretary, DLSA, and Superintendent of Jail, as members.
- (e) "E-Prison Portal/PMS" means E-Prison Portal developed by NIC under directives of Ministry of Home Affairs and includes stand alone Software developed by States for their Jail.
- (f) " Secretary DLSA" means Secretary of the concerned District Legal Services Authority appointed u/s 9(3) of Legal Services Authorities Act 1987.
- (g) " Bail Applications" Bail applications include bail applications moved u/s 437 CrPC and 439 CrPC apart from other provisions pertaining to technical bail under the CrPC.

## **PART I**

**SOP for UTRCs where jail records are not Digitized and even if digitized no Software Filters have been applied.**

**STEP 1: Collections of Data of UTPs**

The raw data of all the UTPs shall be collected and compiled by Jail Authorities District Wise, at least 15 days prior the scheduled meeting of UTRC. It shall be shared with Secretary DLSA in a Hard Copies or Soft Excel Sheets. The data shall contain all the necessary details like date of arrest, offence under which the UTP is arrested and detained in jail , period already spent by the UTP (excluding the period of interim bail etc.)

**Action:** Jail Superintendents

**Time Frame:** 15 days prior to UTRCs scheduled meeting.

**Step 2: Processing of Data by Secretary, DLSA**

Upon receipt of raw data from the Jail Authorities, Secretary, DLSA shall cross check all the cases individually to identify and segregate the cases of UTPs who are covered under the

following categories prescribed by Law, MHA and by Hon'ble Supreme Court :

- i. UTPs covered u/s 436 A CrPC.
- ii. UTPs who have completed 1/4<sup>th</sup> of the Maximum Sentence as per MHA Circular.
- iii. Cases of UTPs who have completed one half of the sentence in less graver offences,
- iv. UTPs covered u/s 167(5) CrPC,
- v. UTPs who are eligible for release under section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.
- vi. Cases of compoundable and bailable offences etc.
- vii. UTPs who have been granted bail but not released
- viii. UTPs become eligible to be released on bail u/s 167(2)(a) (i) & (ii) of the Code read with section 36 A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27 A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days.
- ix. UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.
- x. UTPs who are detained under chapter VIII of the CrPC i.e u/s 107,108,109 and 151 of Cr.PC.
- xi. UTPs who are sick or infirm and require specialized medical treatment
- xii. UTPs who are first time male offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4<sup>th</sup> of the maximum sentence possible.
- xiii. UTPs who are of unsound mind and must be dealt under chapter XXV of the Code;

➤ The processed data shall be individually endorsed by Secretary, DLSA by adding a column in the Excel Sheet in the Table.

➤ Some DLSAs are also collecting data of UTPS covered under the above categories from the Trial Court as well. This can be continued as it makes it doubly sure that no eligible UTP is left out for getting benefit of directives.

**Action:** Secretary, DLSA

**Note** :- As of now, it is being done by Secretary DLSA but in the long run it shall be done by the Superintendent Jails who can be trained by SLSA/Judicial Academies of the respective State/District in this regard.

**Time Frame**:- This process should be completed at least one week prior to UTRCs scheduled meeting .

**STEP 3 : Processing of identified cases by UTRC**

UTRC will take up all the cases identified by Secretary, DLSA one by one with the assistance of all the Members. They will keep in mind following categories of cases while making recommendations for consideration of Bail Application:

- (i) UTPS involved in multiple cases
  - (ii) UTPs who are already convict in un- related matter
  - (iii) UTPs who do not able to arrange surety bond despite passing of bail order.
  - (iv) UTPs who do not wish to be released despite passing of bail order
  - (v) UTPS who do not wish to be released fearing for their life from other criminals
  - (vi) UTPs who are wanted in other States
- Any other case found fit for specific consideration.

The UTRC shall then prepare a Lists of UTPs “ Recommended for filing of Bail Application”. Such list shall preferably have specific endorsement or remark whether UTP is represented by Private Advocate or Legal Aid Advocate.

Preparation of list with the specific remark whether he/she is represented by private counsel or legal service advocate.

**Action:** UTRC

**Time Frame:** Once in 3 months with an advice to process identified cases in one sitting of the scheduled date of meeting.

**STEP 4: Moving of Bail Application in Recommended Cases.**

Moving of Bail applications:- The Bail Applications shall be moved preferably within three days in legal aid cases. In case where UTPs are represented by Private Advocates, intimation of recommendation shall be sent to concerned Trial Courts who in turn shall inform the UTP and their advocate qua recommendation for moving the Bail Application.

**STEP 5: Follow Up of Bail Application moved.**

In case bail application is dismissed, reason thereof. In case bail application is allowed, whether UTP has furnished bail bond. In case no bail bond is furnished, reasons thereof and follow up action for reduction of surety amount or for moving of bail application for release of inmate on personal bond.

**Follow up:** Follow up shall be done by Secretary, DLSA with the help of Remand Lawyer attached with all the Criminal Courts.

Follow up Report shall be compiled for perusal and consideration by the UTRC in the subsequent quarterly meeting.

## **Part II :**

### **SOP for UTRC where Jails are Digitized and have Software**

#### **Filters :**

- This suggestive SOP may not be applicable to any of jail. However, this would be applicable to all jails who have not only digitized their record but have also applied software filter to their E-Prison Portal/Stand Alone, in terms of directions issued by Hon'ble Supreme Court as detailed Supra.
- Under this SOP, The Step 1 of proposed SOP qua collection of Data of UTPs by Jail, Step 2 :Processing of

Data by Secretary, DLSA and Step 3 : Processing identified cases by UTRC shall be merged into one.

Once the jail record is fully digitized and filters are put in place, Login ID and Passwords can be granted to each UTRC in the District whereby they can themselves perused the segregated list of UTPs covered under directions issued by Hon'ble Supreme Court, in real time.

### **Step 1: Processing of Identified cases by UTRC**

UTRC will login into the E-Prisons Portal/PMS and access the list of UTPs identified by the Software Filters, for their district.

### **STEP 2: Processing of identified cases by UTRC**

UTRC will take up all the cases identified by Secretary, DLSA one by one with the assistance of all the Members. They will keep in mind following categories of cases while making recommendations for consideration of Bail Application:

- (i) UTPS involved in multiple cases
- (ii) UTPs who are already convict in un- related matter
- (iii) UTPs who do not able to arrange surety bond despite passing of bail order.

- (iv) UTPs who do not wish to be released despite passing of bail order
  - (v) UTPs who do not wish to be released fearing for their life from other criminals
  - (vi) UTPs who are wanted in other States
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The UTRC shall then prepare a Lists of UTPs "Recommended for filing of Bail Application". Such list shall preferably have specific endorsement or remark whether UTP is represented by Private Advocate or Legal Aid Advocate.

Preparation of list with the specific remark whether he/she is represented by private counsel or legal service advocate.

**Action** : UTRC

**Time Frame**: Once in 3 months with an advice to process identified cases in one sitting of the scheduled date of meeting.

### **STEP 3: Follow Up**

- Post considering each individual case, UTRC will have the facility to add its recommendations online into the inventory to filter cases qua its recommendations for filing

of bail applications before the court concerned. This will automatically upload the E-Prison Portal qua recommendations of the court and will become a permanent record with the Jail Authorities.

- The Bail Applications shall be moved preferably within three days in legal aid cases. In case where UTPs are represented by Private Advocates, intimation of recommendation shall be sent to concern Trial Courts who in turn shall inform the UTP and their advocate qua recommendation for moving the Bail Application.
- In case bail application is dismissed, reason thereof. In case bail application is allowed, whether UTP has furnished bail bond. In case no bail bond is furnished, reasons thereof and follow up action for reduction of surety amount or for moving of bail application for release of inmate on personal bond.
- Secretary, DLSA would update the fate of such applications on the E-Prisons Portal in the aforesaid inventory for perusal of UTRC.

## **Suggestion by NALSA**

### **Suggestions NO.1 : Usage of modified ' CustodyWarrant'**

- As detailed in para no. 9 of this Report, in the year 2015, DSLSA designed new Custody Warrant, annexed as **Annexure ' B '** ( Page No\_\_\_\_\_). The reason behind drafting of new Remand Paper is that as on day the Prison Data is maintained only on the basis of case details received by the Jail Authorities from the First Remand Paper which is based solely on FIR. This data is amenable to change at different stages i.e filing of Chargesheet, framing of Charge and then passing of final Judgement.

This will also carry the particulars of the Legal Aid Counsel/Private Counsel representing the UTPs at different stages.

Adoption of this modified ' Custody Warrant' is also necessary for the Software Filters to work properly. Since, unless the specific offence in which UTP is kept in detention is regularly updated, even if installing filtration

may not give correct data. For example, an accused arrested u/S 302 IPC may be chargesheeted u/S 304 IPC

**NALSA Suggestion No.2: Casting Duty on the Remand Court/Trial Court to safeguard the rights of the UTPs to be considered for bail.**

- It is submitted saying that every inmate who is inside jail as UTP is so detained by the Prison Authorities only under direction of Court of Criminal Judicature i.e Ld MM/Sessions. In view of this, every such court is also duty bound by under the Law and the Constitution to safeguard the Fundamental Right to Life enshrined under article 21 of the Constitution. All such inmates also have a right to speedy trial as well as all the benefits guaranteed not only by the Constitution but also by benevolent statutory provisions like Section 436-A CrPC, Section 167(5) CrPC, Section 437(6) CrPC and like. Accordingly the first duty to uphold these statutory rights to seek technical bail is on the concerned Ld Trial/Remand Judge.
- Hence, NALSA suggests that by slight re-alignment and course correction, menace of UTPs not getting the benefits

of technical Bails can be tackled. As of now, only custody detention order/directive which criminal court is passing /issuing to the Superintendent Jail is reproduced as Follows:

STATE VS _____
FIR No. _____
P.S _____
U/S _____
Superintendent Jail is directed to produce the Accused on date _____
Date _____
MM or ASJ ( Court Stamp)
Room No. _____
District _____
Rubber Stamp

“Prototype of Custody Warrant Currently under use”

- It is suggested by the NALSA that a simple improvement in the above one line order/directive can change whole scenario in such a way that not a single UTPs would miss the attention of the Court qua his/her right to seeks/apply for technical Bail either under Section 436-A CrPC or

under other technical directive issued by this Hon'ble Court.

(i) **Mentioning date of arrest of the UTP in every such order with real time spent till jail counts viz.**

- **Accused was arrested on\_\_\_\_ and is in custody since\_\_\_\_, \_\_\_\_ Years, \_\_\_\_Months\_\_Days**

(ii) Addition of expression of satisfaction by remanding Ld Criminal Court Judge that inmate is not covered under any of the criteria warranting consideration of Technical Bail viz

**I am satisfied that Accused is not covered under Section 436(A) CrPC or any of the 12 criteria laid by Hon'ble Supreme Court in WP (C) 406/2013 Re-Inhuman Conditions in 1382 Prisons.**

STATE VS _____
FIR No. _____
P.S _____
U/S _____
(i) Accused arrested on _____ and is in custody in this case since ____ years, ____months__ days.
(ii) I am satisfied that Accused is not covered under Section 436(A) CrPC or any of the 12 criteria laid by Hon'ble Supreme Court in WP (C ) 406/2013 Re-Inhuman Conditions in 1382 Prisons.
(iii) Superintendent Jail is directed to produce the Accused on date_____
Date _____
MM or ASJ ( Court Stamp) Room No. _____ District _____
Rubber Stamp

“ Prototype of Suggested individual Custody Order”

- Once the above template is put into practise coupled with the cross checking/ Data filtration by Softwares to be installed in E Prisons Portal/PMS at the Jail level, the burden of exercise being carried out through UTRC would be significantly reduced.
- This would also ensure that concerned Trial Courts assisted by their own continuous collection of period of detention added by Software Filters, whose access would also be provided to each Criminal Courts qua inmates, with highlighters would prompt the Trial Courts to require the Legal Aid Counsel/Private Counsel to move a technical bail application without even waiting for recommendation from UTRC.

**Suggestion No.3:Inclusion of Chief Public Prosecutor in UTRC.**

- During the discussion with various stake holders it was felt by NALSA, that as a Prosecuting Agency, State is represented in each criminal court i.e MMs/Sessions through a Public Prosecutor. As and when any Bail

Application is moved by the UTPs either on merits or on technical grounds, as a matter of routine, they are opposed by Public Prosecutors/Additional Public prosecutors/Asstt Public prosecutors representing State in the Court. Hence, inclusion of Chief Public Prosecutor of the District in the UTRC would go a long way in making it holistic. More so, the Directorate of Prosecution being the sole prosecuting agency, if included would be the only component of the UTRC, who would be physically present in the Court when the Bail Applications of the recommended cases would be heard. They can also be instrumental in the follow up of the Bail Application.

#### **Suggestion No.4: Expanding the mandates of UTRC**

- NALSA believes that in addition the mandate of UTRC as notified by Ministry of Home affairs and compliance of directions issued by this Hon'ble Court, it is evident from the name itself that it is an Under Trial Review Committee, which can also be requested to individually look into the specific cases so as to ascertain why a

particular criminal trial is not getting concluded in reasonable time and is getting dragged. Such a review of individual cases can go a long way in identifying the broad reasons which plague the criminal courts and results in the delay of trials. This would also help reduce to ratios of 70% inmates in Jails as UTPs upon 30% as Convicts.

➤ The UTRC assisted by Chief Public Prosecutor would be able to identify specific reasons which end up in delay of particular case. Apart from identifying bottle necks in the Criminal Justice System of a particular district, the indicative reasons which can be looked into and addressed by such a high powered committee would include the following:

- i. Non filing of FSL/CFSL report in time.
- ii. Failure of police to trace, serve and produce the witnesses
- iii. Effect service on Public witnesses/eye witnesses
- iv. Delay caused in frequent transfer of investigation related witnesses like police officials, documents.
- v. Tracing and producing expert witnesses like medial and forensic witnesses etc.
- vi. Seeking Cooperation from the Bar and the Private Counsel of UTPs.
- vii. Availability of effective and efficient Free Legal Services.
- viii. Rational distribution of criminal cases in different courts within district
- ix. Paucity of staff like Ahlmad or stenographer for the criminal court

- x. IT Infrastructural need like, Desktop, printer, nicnet, stationary etc.
- xi. Delay caused by lack of efficiency in administrative set up like Copying Agency, Facilitation Centre, Record Room( in case of fetching of old file ) etc.
- xii. Non availability of dedicated PPs in each criminal court.
- xiii. Non availability of reliving PP in case regular PP is in leave
- xiv. Non usage of ADR methods apart of usage of Plea Bargaining for quick adjudication
- xv. Identification of cases for Holding of Lok Adalts in the jail
- xvi. Suggest segregation of trial in case one or more co-accused are absconding.
- xvii. Suggestions, inputs and interventions in such cases leading to delay by UTRC can be a game changer and learning out of such suggestions can help in policy making and would ensure speedy justice in criminal judicature.

Submitted for Kind Consideration

(Alok Agarwal )  
Member-Secretary

NEW DELHI

Dated: