

RAJASTHAN STATE HUMAN RIGHTS COMMISSION, JAIPUR

Projects by Law Students



Under the guidance of

Chairperson ,
Justice N.K. Jain
(Former Chief Justice
High Court of Madras & Karnataka)

With best Compliments
RSHRC

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RAJASTHAN STATE HUMAN RIGHTS COMMISSION



SECRETARIAT

Under the guidance
of Hon'ble Mr.
Justice N.K. Jain.
(Former Chief justice of
Madras and Karnataka
High Court)
Chairperson, RSHRC

Prepared by:-
Internship students of
various law
university and
colleges.

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Hon'ble Chairperson and Members Of Rajasthan State Human Rights Commission are :

From 06-07-2005

**Justice N K Jain,
Chairperson**

Members

Justice Jagat Singh

Shri D.S.Meena

Shri Pukhraj Seervi



Hon'ble Chief Minister Shri Ashok Gehlot

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RAJASTHAN STATE HUMAN RIGHTS COMMISSION
JAIPUR

* **HOMOSEXUALITY:-PERSPECTIVES AND HUMAN RIGHTS**



Under the guidance of Hon'ble
Mr. Justice N.K. Jain.
(Former Chief justice of Madras and
Karnataka High Court)



BY:-
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* INTRODUCTION

- SEXUAL ORIENTATION
- HOMOSEXUALITY
- SEXUAL IDENTITY

* Reasons for homosexuality:-

Q: Is it biological/genetic or learned behavior/psychological?

ANS: still to be defined and discovered and no full proof evidences available supporting the settled theories

· **Earliest recorded evidence of a homosexual couple – Egyptian male couple in around 2400 BC**

· **Two most prominent and ancient occurrences of homosexuality include Roman homosexuality and Greek Homosexuality.**

· **Most European nations did not accept homosexuality openly.**

· **In ancient America, a common accepted concept of sexuality (homosexuality) was called the Two Spirit Individual.**

· **In East Asia (especially Thailand) has not only accepted the concept of homosexuality but also allows open display of one's sexuality.**

* Dealing of various cultures with the homosexuality:

- In India, there is no explanation to clarify what a sexual misconduct is and what kind of a relationship would it ideally apply to.
- The Manusmriti disapproves of homosexuality and prescribes a number of punishments both for lesbianism and gay relationships.
- Some of the punishments prescribed by the Manusmriti are as follows:
 - A lesbian relationship between an older woman and a younger one – the older one's head is shaved off or two fingers cut and ride the donkey through the town.
 - Two men in a gay relationship are punished to bathe, dressed in his/their clothes.
- Middle eastern Islamic cultures do not approve of homosexual relationships but they've had their share of homosexual relationship both in the past and in recent times.
- Persia was the only Arabic nation that allowed and recognized male houses of prostitution.

* Attitude of various religions towards homosexuality

- Almost all religions **discourage** homosexual activities.
- Christianity considers homosexuality a **sin**. The Bible lays down death penalty for the one who engages in homosexual activities.
- Islam is against homosexuality. The Quran considers homosexuality as **sinful and unnatural**. It believes such behaviour should not be desired by men and it does not even acknowledge lesbianism.
- Hinduism was open to various ideas of sexuality in the medieval times. But the Manusmriti does **not accept** homosexuality.

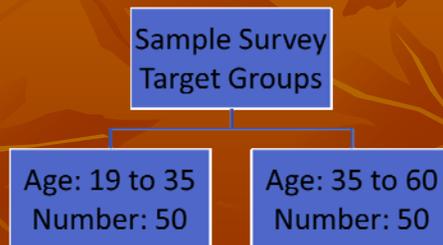
* Social scenario:-

- Largely, every society views homosexuality **negatively** and **disapproves** of it.
- Many nations have **criminalized** homosexuality.
- The law and society, in general, expect individuals to restrict themselves to heterosexual relationships.
- Countries like Canada and Norway have legalized both lesbianism and gay relationships.

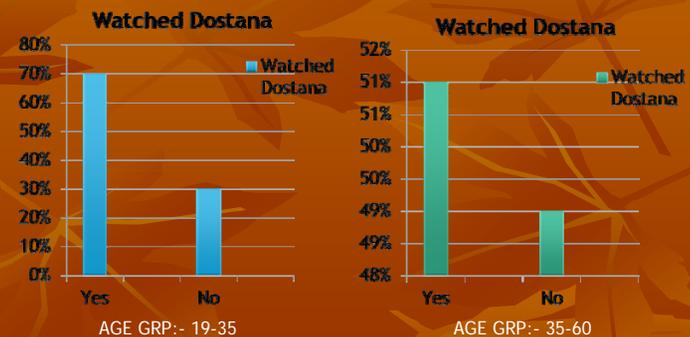
Social Perspective

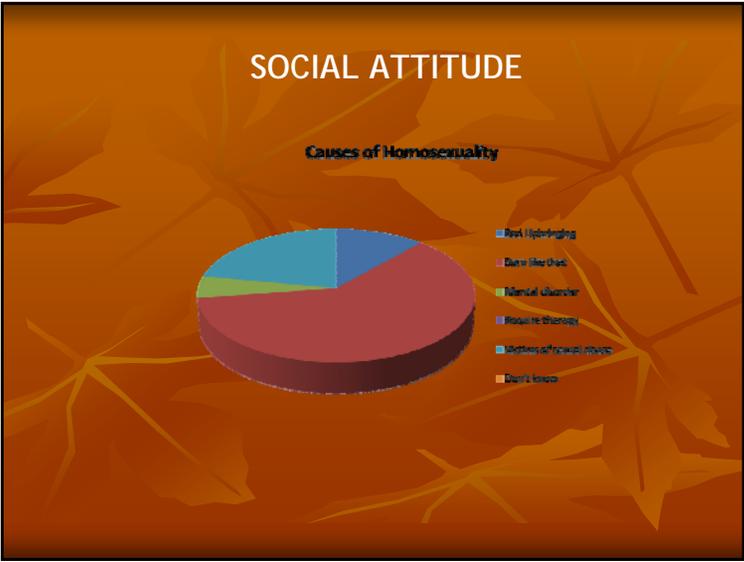
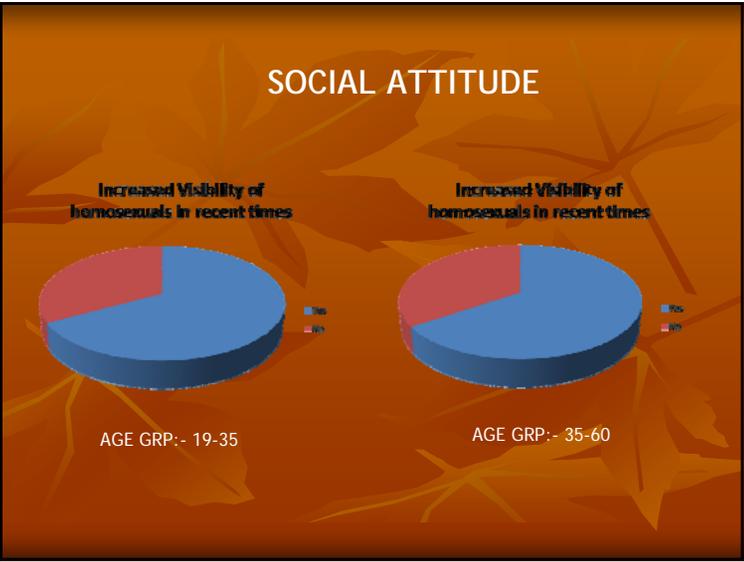
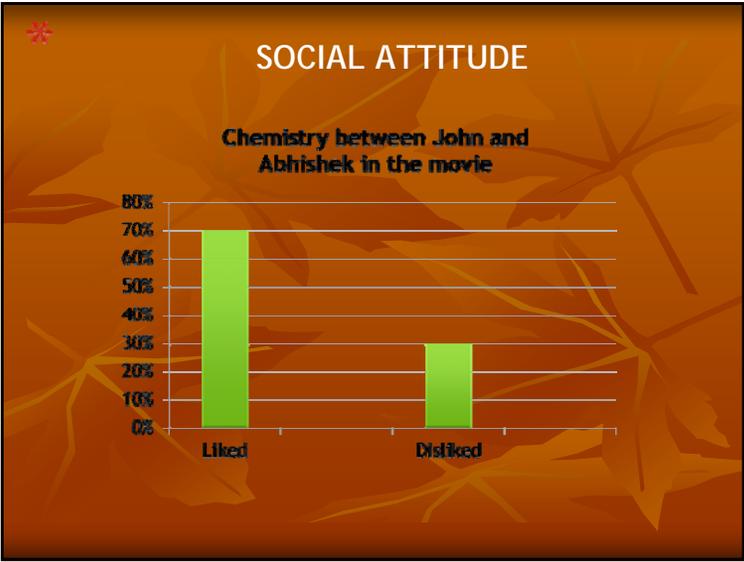
Analysis

(as per the survey conducted by the researcher in various towns and cities of Rajasthan)



SOCIAL ATTITUDE





* Legal Perspective

Homosexuality in the Indian Law

- Section 377 was introduced to India in the year 1837, which was finally implemented in 1860.
- In 1885, it was suggested to Queen Victoria that the law be extended to homosexual women but she refused to believe that such relations could exist between women.

Section 377 of the Indian Penal Code reads, “**Unnatural offenses:** Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for term which may extend to ten years, and shall also be liable to fine.

Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section”.

* Legal perspective:-

Section 377

- *Indian law considers homosexuality as an unnatural offence.*
- *Section 377 is applicable to all men and women who indulge in penetrative sex 'not meant for reproduction'.*
- *Homosexuals (gay men) are brought to book and punished under this law as it is difficult to prove non-productive sex between heterosexuals (Section 294 – “obscene behavior in public” is also used against gay men).*

Position in various countries:-

Country	Lesbianism	Gays	Maximum penalty
Egypt	Illegal	Illegal	A variety of laws are applied
Kenya	Legal	Illegal	14 years
Nigeria	Legal	Illegal	Death
Canada	Legal	Legal	---
Afghanistan	Illegal	Illegal	Death
Australia	Legal	Legal	---
Bangladesh	Illegal	Illegal	Life
Pakistan	Illegal	Illegal	Death
India	Illegal	Illegal	10years/fine
Europe	Legal	Legal	---
Iran	Illegal	Illegal	Death
Iraq	Legal	Legal	But still a taboo

* Cases involved:-

- **Khanu vs. Emperor:-**An adult having oral sex with a child and looked into the question of whether the sin comes under the confines of Sec 377.
- **Lohana Vasanthlal Devchand vs.the State:-** The act of oral sex involves enveloping of penis by the mouth, thus creating an alternative socially unacceptable activity, which is against the order of nature.
- **Biren Lal vs. the State of Bihar:-**The Court held that penetration must be proved, but here the victim has no evident to prove the move towards the penetration of his anus.

* Other Issues:-

- Attitudes towards Gays and Lesbians in their Workplace
- Family Issues
(Acceptance, Rejection and Parenting)
- Social Psychological Issues
- Policy Issues
- Occupational Stereotypes and Networking

Human rights should be granted to those who behave as human beings and respect human life and nature. Since human beings are social creatures and were created by the nature so they must respect the views and moral conducts of society and nature. Society in the past ,present and in future as well will deny the equal status to those who go against the natural and social norms. So in my opinion homosexuals should not be granted equal rights and rather they should be given treatment and therapies to come over with their abnormal behavior.

* Homosexuals and human rights:-

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PRISONER'S RIGHTS



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" No iron curtain can be drawn between the *prisoner and the constitution.*"



AIR 1980 SC 1579

"When only the rich can enjoy the law...and the poor...cannot have it, because its expense puts it beyond their reach, the threat to...free democracy is not imaginary but very real, because, democracy's very life depends upon making the *machinery of justice so effective that every citizen shall believe in and benefit* by its impartiality and fairness."



(1978) 3 SCC 544

Less than 200 years ago, the attitude to prisons, prisoners and punishment was *brutal and barbaric*. Recognition of the human being in the convicted offender is an idea that has been accepted after a long struggle with the state.



The past decade has witnessed an increasing *consciousness* about the desirability of *prison reforms*. It is now being recognized that a *reformatory philosophy* and a *rehabilitative strategy* must form a part of prison justice.

• The Indian socio-legal system is based on non-violence, mutual respect and human dignity of the individual. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity.



• Even the prisoners have human rights because the prison torture is not the last drug in the Justice Pharmacopoeia but a confession of failure to do justice to living man. For a prisoner *all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment*.

The corner stone of social justice, from which custodial legality takes its sustenance, is the Constitution. The judicial activism and human rights movements have endowed certain minimum rights and safeguards for the protection of human dignity and personal liberty of prisoners who have been condemned by the society as law breakers and are put behind the bars.



The prisons play a vital role in the administration of criminal justice system and in the due execution of the sentences awarded by them assisting the Court in the review of the sentences awarded by them.



Every reformed and rehabilitated prison inmate must become an asset instead of enduring to be a threat to the society.



CONSTITUTIONAL PROVISIONS



Article 19(1) (a)

Article 19(1) (a) provides for freedom of speech and expressions.

Freedom of thought and expression is one of the important political freedoms guaranteed by Article 19(1) (a) of the Constitution. In the Pandurang sanzgiri's case the petitioner had written a book in Marathi titled 'Inside Atom' with the permission of the Government. The Supreme Court observed that the book being purely of scientific interest the manuscript of the same could be sent out of the jail for publication. Every activity, which is supplementary to and is essential for, the free exercise of a fundamental right is considered to be a part of that fundamental right.

Article 20(1)

Protects the person from ex-post facto laws. Person shall be convicted of any offence only in violation of a law in force at the time of the commission of the act charged as an offence.

Article 20(2)

Embodies the principal of 'double jeopardy', that is, no person shall be prosecuted and punished for the same offence more than once.

Article 20(3)

Provide for important safeguards to the under trials that the jail authorities or police authorities cannot compel the prisoners to give testimony which is likely to expose them for criminal consequences.

Article 21

Article 21 provides no person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person whether he is a national or foreigner. It is available even to convicts in jails.

Personal liberty, thus, is a sacred and cherished right under the Constitution. The expression life or personal liberty has been held to include the right to live with human dignity and thus it would also include within itself a *guarantee against torture and assault by the State* or its functionaries.

Right to speed trial, right against handcuffing, right against inhuman treatment are some of the rights which come under the purview of the Article 21.

Article 22

Article 22 provides for protection against arrest and detention in certain cases.

Article 22 guarantees protection against arrest and detention in certain cases and declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

Article 25(1)

Article 25(1) provides for freedom of conscience and free profession, practice and propagation of religion. This right to religion can be equally enjoyed by the prisoner also.

Article 39A

Article 39A is a Directive Principle of State Policy and grants equal justice and free legal aid. It deals with providing free legal aid to disabled categories and women are among them.



LANDMARK JUDGEMENTS



Right to Legal Aid

M.H. Wadanrao Hoskot v. State of Maharashtra, the Court held that the right to legal aid is one of the ingredients of fair procedure.

*“ If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, for want of legal assistance, there is implicit in the court under article 142 read with article 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. Where the prisoner is disabled from engaging a lawyer, on reasonable grounds such as indigence or any other situation, **the court shall, if the circumstances of the case, the gravity of the sentence, and the ends of justice so required, assign competent counsel for the prisoners defense, provided the party doesn't object to that lawyer.**”*



Khatri & Ors v State of Bihar & Ors (AIR 1981 SC 928), the Supreme Court gave directions that the state is under a constitutional mandate to provide free legal aid to an accused who is unable to secure legal services on account of poverty, at the cost of the state.

Right to Speedy Trial



Hussainara Khatoun & ors v. Home Secretary, State of Bihar (AIR 1979 SC 1360), the apex court gave the following directives:

- The state government should set up more courts for the trial of cases in the matter of administration of justice.
- The state government should appoint competent judges for the newly established courts.
- In case where the police investigation has been delayed by over two years, the final report or charge-sheet must be submitted by the police within a further period of three months. Upon failure to do so, the state government should withdraw such cases.
- The women and children who are in jails in Bihar because their presence is required for giving evidence, or who are victims of offence should be released, and should be taken forthwith to welfare homes or rescue homes. They should be kept there and properly looked after.

Hussainara Khatoun (II) v. Home Secretary, State of Bihar (AIR 1979 SC 1369), the Supreme Court directions were:

- The state is under a constitutional mandate to ensure speedy trial.
- The state government should provide under-trial prisoners a lawyer at its own cost for the purpose of making an application for bail.
- The state must take positive action to enforce the fundamental rights of the accused to speedy trial. Such action may include strengthening the investigative machinery, setting up new courts, appointment of additional judges and other measures calculated to ensure speedy trial.

Right against Solitary Confinement



Sunil Batra v. Delhi Administration & Ors (AIR 1978 SC 1675), The Supreme Court's Directives were:

- It is a severe and separate punishment which can be imposed only by the court.
- Prisoners sentenced to death cannot be kept under solitary confinement. They shall not be denied any community amenities, subject to reasonable regulation of prison management.
- A prisoner shall be restrained only if there is clear and present danger of violence or likely violation of custody.



Right against Handcuffing & Bar Fetters



Prem Shanker Shukla v. Delhi Administration (AIR 1980 SC 1535), the Supreme Court Directives were:

- The minimum freedom of movement, under which a detainee is entitled to under Art.19, cannot be cut down by the application of handcuffs.
- Handcuffs must be the last refuge as there are other ways for ensuring security.
- There must be material and sufficiently stringent grounds to satisfy a reasonable mind that there is clear and present danger of escape of the prisoner who is being transported by breaking out of police control.
- Even when in extreme circumstances handcuffs have been put on the prisoner, the escorting authority must record the reasons for doing so in the Daily Diary Report. They must also be shown to the court.

Communication with family, friends & lawyers



Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others, the Supreme Court ruled that the right to life and liberty includes the right to live with human dignity and therefore a detainee would be entitled to have interviews with family members, friends and lawyers without severe restrictions (at least two in a week).

- Court stressed upon the need of permitting the prisoners to meet their friends and relatives.
- The court held that the prisoner or detainee could not move about freely by going outside the jail and could not socialize with persons outside jail.
- The court said that:



" Personal liberty would include the right to socialize with members of the family and friends subject, of course, to any valid prison regulations and under Art. 14 and 21 such prison regulations must be reasonable and non-arbitrary. "

Prison Labour & Wages



Remuneration, which is not less than the minimum wages, has to be paid to anyone who has been asked to provide labour or service by the state. Whenever during the imprisonment, the prisoners are made to work in the prison; they must be paid wages at the reasonable rate.

People's Union for Democratic Rights v. Union of India, the Bench observed:

" We are, therefore, of the view that where a person provides labour or service to another or remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23. "



State of Gujarat v. Hon'ble High Court of Gujarat, the Supreme Court observed:

- It is lawful to employ prisoners sentenced to rigorous imprisonment to do hard labour whether he consents to do it or not.
- The prisoners must be paid equitable wages for the work done by them.
- The jail official may permit if any prisoner makes a request to do a work they chose to do.

Right to expression



State of Maharashtra v. Prabhakar Panduranga, the court held that the right to personal liberty includes the right to write a book and get it published and when this right was exercised by a detainee its denial without the authority of law violated Article 21.



The prisoner should not be restricted from writing a book, painting or any form which allows himself to be expressed freely.

Production of the Accused



Khatri & Ors v. State of Bihar II [(1981) 1 SCC 635] (the Bhagalpur Blinding case) :

- The Court urged that the constitutional requirement to produce an arrested person **before a judicial magistrate within 24 hours of his arrest** be strictly and scrupulously observed.



- viii. Prospects for the **rehabilitation**;
- ix. Possibility of **treatment or training** of the offender;
- x. Possibility that the **sentence** may serve as a **deterrent** to crime by the offender; and
- xi. Possibility of a **return** of the offender to **normal life** in the community.



Suitable Sentencing

Mohd Giasuddin v. State of Andhra Pradesh (AIR 1977 SC 1926).

The Supreme Court gave the orders:

- While giving a sentence, equal importance must be given to the criminal as much as on the crime.
- The Law Commission of India in its 47th Report recommended that an appropriate sentence must be an amalgamation of various factors as-

- i. **Age** of the lawbreaker;
- ii. **Circumstances** of the offence;
- iii. **Criminal record**, if any;
- iv. **Nature** of the offence;
- v. **Background** of the offender with reference to education, home life and social adjustment;
- vi. **Professional and social record** of the offender
- vii. **Psychological condition** of the offender;



Classification of Prisoners in Jails

On the basis of age, sex, nature of offence, and state of health (including mental condition) habitual, hardened criminality the prisoners are classified and housed.

- *Political prisoners* are kept in '**A**' category.
- '**B**' category prisoners are *not assigned to do any labour*, instead C category prisoners will assist the B category in their daily chores.
- '**C**' category prisoners are assigned with *compulsory labour*.



The courts are guided by the *Prison Rules* in classifying the prisoners. The prison rules provide for consideration of **character of prisoner**, his **social status**, **education**, **mode of living** and most importantly the **severity of the crime** he has committed while recommending for treatment in a particular class.

Prison Facilities

A Convict Prisoner in the central Prison v. State of Kerela (1993
Cri. LJ 3242)

High Court's Directives:



- Blades for shaving, sterilized needles in dispensaries and sufficient fans should be provided. Sanitary napkins which are not included in the clothing supplied to the female prisoners, should also be supplied.
- Educational and recreational facilities, within reasonable limits may be provided in prisons.
- High security prisons shall be built to house the category of prisoners who are considered dangerous.
- The state shall effectively implement segregation, keeping habitual offenders away from freshers, to avoid the possibility of hard core criminals turning jails into schools of crime.



DIRECTIONS ISSUED



Directions for Jails by RSHRC



1. **Complaint No. -07/17/3061-** RSHRC directed DG Jails to take effective steps to curb irregularities and exploitation in jails.
2. **Complaint No. 08/18/418-** RSHRC sought details from Principal Secretary Home Department, Government of Rajasthan regarding the expenditure incurred on electricity and related facilities given to prisoners in open jail.
3. **Complaint No. 08/17/3282-** The matter pertaining to the complainant having a criminal character and his being associated with a political party was brought to the notice of senior members of the same political party.
4. It was learnt that delay in receiving FSL Report in respect of under-trial/convicted prisoners and deaths in judicial custody was mainly due to lack of staff in FSL. The Government was asked to fill up the required vacancies of personnel in FSL soon.



5. DG, Jails, Rajasthan was asked to ensure that the prisoners received the due facilities and their medical check up was also done regularly.
6. **Complaint No. 2/23/1881-** The RSHRC directed that the heirs of the deceased prisoner be given an interim assistance amounting to Rs 50,000/- as compensation.
7. Inspection was carried out of the Central Jail, Jaipur by member and Secretary of RSHRC namely Shri Pukhraj Seervi and Shri Girraj Singh on 18-01-2007 and the following recommendations were made to the State Government – lack of adequate jail staff, requirement of modern techniques for security, posting of lab technician in jail hospital, making available ambulance for sick prisoners, increasing number of wards in proportion to number of prisoners etc.

8. **Complaint No. 07/17/2196-** RSHRC sought explanation of DG Jail on a complaint pertaining to physical and mental torture and inhuman treatment meted out to prisoners in jail.
9. **Complaint No. 06/24/3080-** In compliance of directions issued by RSHRC instructions are passed by DG Jail Rajasthan to all DIGs etc. to ensure that prisoners were not beaten up or forced into labour, and that monetary exploitation and extortion did not take place.
10. **Complaint No.07/17/2439-** The Jail administration was instructed to ensure order as per law in the jail premises so that no complaints were received from prisoners.



SITUATION IN JAIL



CENTRAL JAIL, JAIPUR, RAJASTHAN WOMEN'S CELL

Total number of inmates= **179** (including 12 children, upto 6 years)



- Rigorous Imprisonment = 112
(6 children)
- Simple Imprisonment = 15
(1 child)
- Foreigners = 2
(1 child)
- Under-trials = 50

Number of Barracks = 8 (each housing about 20-25 inmates)

Each barrack has :

- Inbuilt toilet and bath facility, which the inmates can use in the nights, or when they are locked in the rooms.
- Approximate 7 fans present in each room.
- 4 open shelves of 5x3 feet to keep personal belongings.



Inmates are classified in the barracks *alphabetically*. Inmates having children can keep them with themselves.

Number of Solitary Confinement Barracks = 4 (at present no-one has been kept there)



A **CRÈCHE** has been made for the children present.
There are facilities like a television, carrom board, books, cycles, chairs, toys etc.
The room is furnished with 4-5 long benches, 6 fans and a cooler.

There is vast **OPEN AREA** all around the barracks, so that the inmates do not feel congested, and can roam about.
There are swings, slides etc. for the children too.



VISITORS

There is no restriction as to who can meet the prisoners, but close relations are given preference over friends and others.

Visitors are allowed:

- ❖ On weekly basis for under-trials; and
- ❖ Every 15 days for Convicts .



MEDICAL FACILITY

A Doctor has been appointed for the jail inmates who is available from morning till evening in the campus, and rest of the time is accessible on call.

A Nurse is present 24x7.

Small room has been made a hospital which consists of 2 beds and inbuilt bath and toilet facilities.

Regular Medical Examination Camps are set up at an interval of 2-3 months where a gynaecologist is called, tests for eyes, dental, children, HIV etc. tests are done.

When a new entrant comes, she is made to undergo a complete medical examination, which includes a pregnancy test.

BOOKS PUBLISHED

- These books are kept in the Libraries of different schools and colleges for awareness of students as well as the teaching and ministerial staff. Some books are even kept in the UN-Congress Library at New Delhi.
- Teachers of various school are interacting with the students on these issues in zero hours.
- About legal aid committees, NGO's / Educational Institutions above 55, and some Newspapers have re-printed/Published these booklets as intimated and about 80,000 booklets titled on women, child rights, dalits, arrest, human rights and HIV have been published and distributed free of cost among the general public to create awareness.

Students reciting the oath of section 51(A) of Constitution of India under the guidelines of RSHRC.



■ In addition to that in legal literacy and awareness program, chairman motivated students and even general public to recite the pledge as mentioned in article 51(A) of Constitution of India. It is good sign that so many schools have started taking prayer as per instructions of different concerned authorities as per the request of the commission. Some of them are as follows:-



बियानी गर्ल्स कॉलेज विद्याधर नगर, जयपुर में राजस्थान राज्य मानवाधिकार आयोग के निर्देश पर छात्राओं को भारत के संविधान के अनुच्छेद 51ए का संकल्प दिलाते कॉलेज के वाइज प्रिंसिपल पी.सी. जांगिड़।



Students of some institutions reciting the Oath as per Article 51(A) of Constitution of India under the guidelines of RSHRC.



Students reciting the pledge.



Rajasthan State Human Rights Commission

“BEWARE OF YOUR RIGHTS AND DISCHARGE DUTY WITH DEVOTION”
Chairperson : Justice N.K. Jain



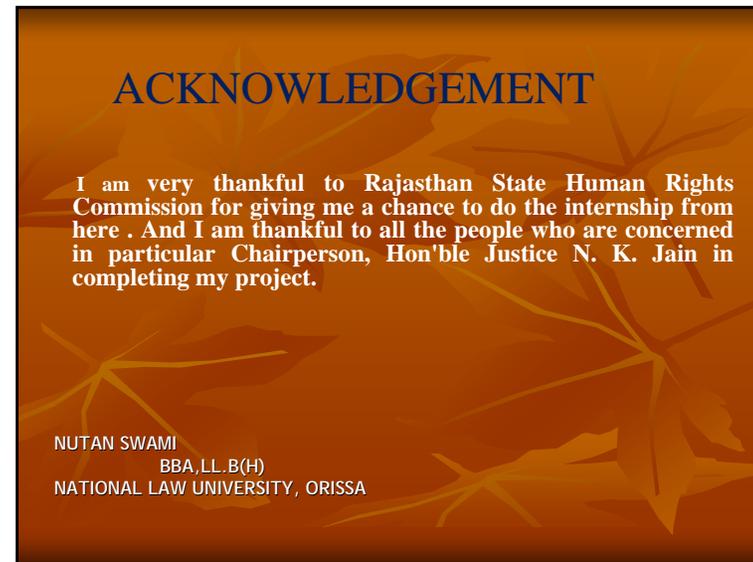
Bibliography



www.rshrc.nic.in



www.unicef.co



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I am very thankful to Rajasthan State Human Rights Commission for giving me a chance to do the internship from here . And I am thankful to all the people who are concerned in particular Chairperson, Hon'ble Justice N. K. Jain in completing my project.

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