

Chained Women: Life Behind Bars



(Source: <http://www.indiaspend.com/making-sense-of-breaking-news/17000-women-in-prisons-in-2014-9-with-their-children-87661>)

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Chained Women: Life Behind Bars

Introduction

At the end of 2015, 17,834 women were in Indian prisons (with a rise of 11.3%, between 2011-15) according to National Crime Records Bureau (NCRB) of these, 66% were under trials, 32% were convicts and 1% was detenues and other prisoners. As many as 51 women prisoners died behind bars in 2015; 48 were natural deaths while three were suicides as a result of abysmal provision of medical staff. There were also 1,866 children living in prisons with their mothers, 597 women. Of these, mothers of 70% (1,310) children were under trials.

Prisons play a key role in the criminal justice and administration system in detaining and segregating offenders. While the primary goal of our prison system has been to protect the society from any form of harm and punishing those who have committed or have tried to harm it by violating the rules; in the recent times there has been a shift in the way role of the prison is viewed. While earlier on, prisons were largely seen as a form of punishment for the offender- therefore involving torture and rigorous labor; today they also focus on their rehabilitation and aim to give a second chance to the offender. The present criminal system in India falls exclusively under the domain of the State Government, as per the seventh schedule of the constitution. However, in India and several other countries, several instances have been reported of violation of the rights of the prisoners as a result of which various international instruments and rights have been formulated for the prisoners. In India, various legislations dealing with rights of prisoners have been enacted apart from Article 21 of the Constitution of India that gives the status of equality to the women and imposes obligation on the State to protect their rights to incorporate within its ambit, the access to rights to the prisoners within the jail premises. A recent report titled, 'Women in Detention and Access to Justice' presented by the Standing Committee on Empowerment of Women on December 2017 gives a fairly accurate description of the prison management system in India, the larger picture about the present condition of its women prisoners along with some worthwhile recommendations for action.

Women Prisoners in India and their rights

According to the National Expert Committee on Women Prisoners, women in Indian prisons of them are beaten, sexually molested or otherwise harassed in jail. For women prisoners, food rations are smaller, infrastructure is poor- prisons where women are lodged are overcrowded, unsanitary conditions and it is in these conditions that women often rear their children. The report said the difficulties of women prisoners are an extension of the general indifference that Indian society shows to the woman. Many women are charged with petty crimes, such as stealing while some are imprisoned with more serious offences such as murder and kidnapping. Separate prisons are available only for one-fourth of the total population of women in jail. The others are housed in segregated wings of prisons for men. Above all, the NCRB report 2015 revealed that an Indian prisoner is disproportionately from the oppressed class group. It states that 67% of the prisoners in Indian jails are merely accused of a crime and are yet to be found guilty by the courts and of these under-trials, SCs, STs, and Muslims account for 55%, a disproportionate number to their total population of 39%. The conviction rate, however, is less than half, thus raising the question of the over-criminalization of certain groups. Crime and criminality, to a large extent, is a social construct. In India, it is caste focused.

Why We Need to talk about the Condition of India's Prisons?

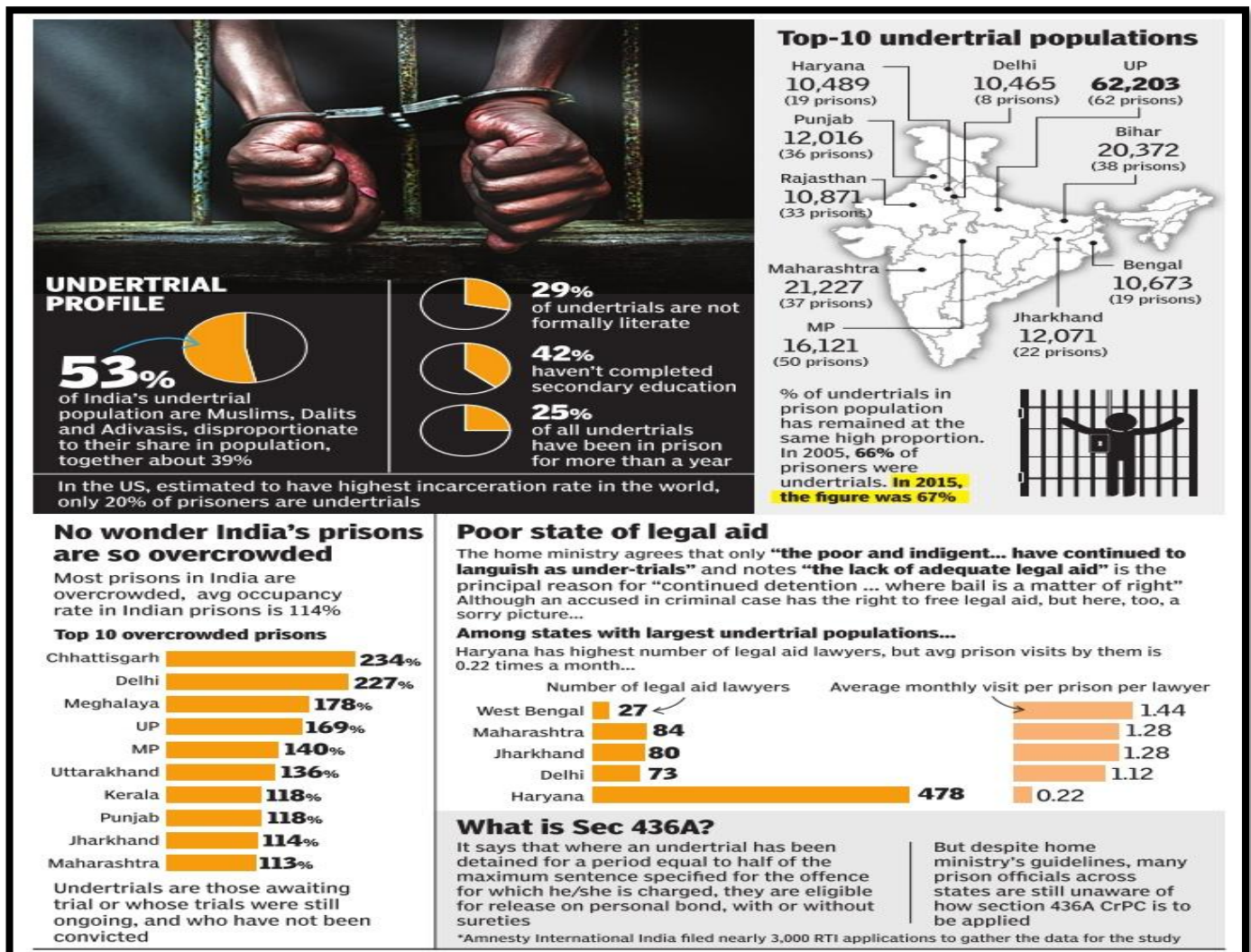
The present state of Indian prisons faces three long-standing structural constraints:

- Overcrowding, due to high percentage of under trials in the prison population,
- Understaffing and

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•Underfunding

The inevitable outcome is sub-human living conditions, poor hygiene, and violent clashes between the inmates and jail authorities and it is even worse for women who constitute a very small proportion of the prisoners. Together they, contribute to the big gap between the legal system and social reality while dealing with the present criminal system.



Source: <http://indpaedia.com/ind/index.php/Jails/> Prisons: India

Till 2015 there were , 17,834 women in Indian prisons, according to The Prison Statistics India 2015 report by the National Crime Records Bureau (NCRB) with the highest proportion of women prisoners were in district jails (41.4%), followed by central jails (33.5%). Only 17% or 2,985 women were lodged in prisons for women. The report most importantly pointed out that while, India's prisons are overcrowded with an occupancy ratio of 14% more than the capacity, out of the 3,789 inmates in open prisons, only 109 are women and there are still more men than women in

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open jails which implies that more than two-thirds of the inmates are under trials¹. According to a 2015 report of the Comptroller and Auditor General (CAG) of India on Tihar Jail², which has the largest complex of prisons in south Asia, as of March 2014, were grossly overcrowded with 14,209 prisoners against a capacity of 6,250. Also, the ratio between guarding staff and prisoners was between 1:11 and 1:14 against the ideal ratio of 1:6. The Standing Committee report in addition, states that while overcrowding of jails is a serious problem, women jails have more occupancy than capacity. As of December 31, 2015, the number of inmates in central jails was 1,85,182 against the authorised capacity of 1,59,158. This leads to lack of basic facilities to prisoners such as sanitation, food, and health care in jail and as a result of which, the needs of women prisoners are overlooked by penal institutions. However in a reply to the Committee on over-crowding, the Ministry highlighted that there are enormous demand on the limited resources of the states available with them. Most of the time, mother is also accompanied by a child, which worsens the situation. ³Growing up in restricted spaces, children sometimes miss any sort of education and may not be able to live a normal childhood as they should.

The Committee observed that one of the key reasons for overcrowding was the delay in trials resulting in many under trials being detained in jails for long periods. Under trials often remain behind bars for years despite the provisions of Section 436A of the Code of Criminal Procedure, which came into effect in 2005. According to a report by Amnesty International, “India has one of the highest under-trial populations in the world. As of December 2015, 67% of prisoners in India’s prisons were ‘under trials’ (people who were awaiting trial or whose trials were still ongoing, and who have not been convicted). In other words, there are twice as many under-trials in India’s prisons as there are convicts. With over a staggering 3.1 crore cases pending in various courts of the country as on March 31, 2016, jails across the country will remain overcrowded in the absence of any effective systemic intervention as per the experts. As per the fundamental rights guaranteed by the Indian constitution, under trials are presumed innocent till proven guilty. But they are often subjected to psychological and physical torture during detention and exposed to subhuman living conditions and prison violence.

Recently, the Delhi High Court dealt with a plea in pursuant to a letter received from Supreme Court judge Kurian Joseph who received an appeal from 612 women prisoners from Tihar Jail, complaining of overcrowding in Jail No. 6 where they were lodged, delay in disposal of their cases and their non-release on bail if they are unable to fulfil conditions of bail bonds. However, prison overcrowding and the extended detention of women isn’t a new problem. Indian prisons are notoriously overcrowded, leading to atrocious living conditions. Courts have, in the past, taken it upon themselves to issue directions to ease overcrowding, like when the Delhi High Court ordered the immediate release of 152 women under trials in Tihar Jail who had been held for over six months. To resolve this issue, the Committee however, has recommended that alternative methods should be used for dealing with non-criminal offenders and petty criminals.

Health status of women prisoners

Addressing health in prisons is essential in any public health initiative that aims to improve overall public health. A close look at the needs of women in prison and related health aspects raised issues of gender inequity and insensitivity, of human rights neglect and showed a general lack of public health concern. Women in prison generally have more, health problems than male prisoners and tend to place a greater demand on the prison health service than men do. They frequently suffer from mental health problems, among which post-traumatic stress disorder, depression and self-harming are regularly reported. Evidence shows that women prisoners are more likely to self-harm and commit suicide

¹ The prisons are overcrowded by 77.9% in Meghalaya, by 68.8% in Uttar Pradesh and by 39.8% in Madhya Pradesh. In absolute numbers, UP had the highest number of under trials (62,669), followed by Bihar (23,424) and Maharashtra (21,667). In Bihar, 82% of prisoners were under trials, the highest among states.

² CAG Report on Tihar available at http://www.cag.gov.in/sites/default/files/audit_report_files/Delhi_Report_2_2015.pdf

³ As many as 1,817 children were living in prisons with their mothers, 1,596 women at the end of 2014.

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than male prisoners, while this is the opposite in the community.⁴As many as 51 women prisoners died behind bars in 2015; 48 were natural deaths while three were suicides. The highest number of deaths were in Uttar Pradesh (10), followed by West Bengal (eight), and Punjab (six). Madhya Pradesh, Maharashtra and Puducherry reported one suicide each. Moreover, women in prison have specific health issues; the most prominent are related to reproductive health such as menstruation, menopause⁵, pregnancy and breastfeeding. Prevalence of HIV among some women prisoners and lack of medicines in prison hospitals is also a concern. They are found to suffer from a variety of health problems in the custodial environment - gynaecological, obstetric, physical and mental. Care is needed in all these aspects as well as rehabilitation.

On the issue of health care needs of women prisoners, the committee received a reply after noting, that there was a shortage of doctors, para-medical staff, and equipment in jails that was both shocking and worrisome. The Ministry said that the records of common health ailments prevalent among women prisoners are not available with the Ministry⁶. Similar findings are also mentioned in the NCRB data 2015, according to which, the Indian jails were 38% short of medical staff and only 1,866 medical staff (men and women) were employed against the sanctioned number of 2,993. Between 2011 and 2015, there was a 79% rise in the number of women medical staff (including psychologists/psychiatrists) in jails 92 to 165. As the nation's capital, Delhi has the most over-crowded jails and suffers from acute shortage of prison guards and senior supervisory staff. States like Uttar Pradesh, Bihar and Jharkhand are the least guarded jails, seeing over 65% staff vacancies among jailers, prison guards and supervisory levels.

Torture in Police Custody

The horror stories coming out of Mumbai's Byculla Women's prison highlight unspeakable indignities and torture of its inmates. Manjula Shetye, 40, was a few months from being released when she was killed, allegedly by five guards and the jailor, in Mumbai's Byculla prison on June 23. While hearing a petition on the conditions of jails in Maharashtra, Bombay High Court had directed a prison reforms committee be set up. A government resolution was passed on June 1 for the formation of a five-member committee of retired judge Dr S Radhakrishnan, additional DG Upadhyay, Dr Vijay Raghavan of TISS, retired jail superintendent S N Chavan and a joint or deputy secretary (prisons). "The committee is yet to meet. Its terms of references are wide including working on reforms in tune with UN conventions, the Model prison manual, 2016 to bring about changes in the existing prison system," Dr Vijay Raghavan said⁷. Her murder raises an important question, "How long will we ignore the brutality and the poor living conditions in India's prisons? Women frequently experience violence in custody⁸. Sexual violence by police against women in custody has been reported in both Bangladesh and India. Despite the fact that India has signed the United Nations Convention against Torture in 1997, it has been two decades since signing the treaty, it has done little to enact a specific law against torture committed by people acting in official capacity. The treaty commits the country to transparency and accountability. It calls for establishing a dedicated and comprehensive inspection regime with a three-fold task: preventing torture, penalising the perpetrator and compensating the victim. Since the lapse of the Prevention of Torture Bill in 2014, The Indian state has either denied the existence of torture in the country or defended its resistance to enacting a law by claiming there are sufficient provisions in the domestic legal framework to prohibit and penalise torture. But when examining places of incarceration, on ground, there are no such protections. Asian Centre for Human Rights (ACHR) stated that custodial rape remains one of the worst forms of torture perpetrated on women by law enforcement personnel and a number of custodial rapes of women take place at regular intervals. The biggest problem of combating custodial torture perpetrated

⁴ 1,702 prisoners died in jails nationwide in 2014, according to this reply by the ministry of home affairs to the Lok Sabha (Parliament's lower house) in August 2016.

⁵ Under the present system, women are been provided less than five sanitary pads per month.

<http://www.dnaindia.com/india/report-female-prisoners-state-sparks-worry-2573246>

⁶ The Ministry has further informed the Committee that health care facilities by and large need improvement in jails in view of shortages of Doctors, para-medical staff and equipments.

⁷ <http://indianexpress.com/article/india/byculla-jail-inmate-death-women-who-left-prison-speak-of-frequent-beatings-climate-of-terror-4726830/>

⁸ Custodial violence, includes torture, death and other excesses in police custody or prison

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inside prisons is of course that the victim remains in the custody of the perpetrator. Most cases of torture and ill treatment go unreported because prisoners fear repercussions after filing complaint. The Committee in regard to custodial deaths raised the issue of infringement of human rights of prisoners as a result of police behaviour during detention. This included cases of rapes and deaths that have taken place in custody. The Committee recommends that better surveillance measures may be put in place to ensure effective prison management. Further, it recommended that there should be greater interface with civil rights activists and their access to people in custody. The Committee also pointed out that the shortage of women officials in prison management adversely impacts the management of women inmates.

Make Equal Justice a Reality

The issue of overcrowding on hand one and rise in the number of female inmates on another has highlighted the shortcomings in almost all prison systems in meeting the gender-specific needs of women prisoners. Therefore, any modern approach to provide a more acceptable criminal justice policy for women must pay greater attention to their problems. In the recent time, we do have seen more protection mechanisms that have been put in place to protect the rights of the prisoners' actors who are at risk in the face of longstanding suspicion of human and help change their fates.

The needs of women prisoners often differ from their male counterparts. Women need gender-specific facilities for healthcare, to help them in childbirth, to care for their children in prison, to receive counseling to guard against the possibility of rape and sexual assault and to maintain contact with their dependants outside the prison. This is reflected in the international standards on the treatment of prisoners and detainees. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment explicitly recognizes the need for specific measures to be adopted to protect the rights and special status of women, particularly pregnant women and nursing mothers; this difference should be reflected in their treatment in the criminal justice system and particularly in their treatment in prisons. However, some Supreme Court and High Court judgments, most importantly the D K Basu guidelines on arrest⁹ do lay down by the Supreme Court in 1997, and now incorporated by recent amendments in the Code of Criminal Procedure (CrPC) have created a few safeguards, there is need for vigilant judges to ensure the strict implementation of these guidelines and provisions. The Model Prison Manual, 2003 revised in 2016, was drafted by the Bureau of Police Research and Development (BPR&D), calls for women doctors, superintendents, separate kitchens for women inmates, and pre- and post-natal care for pregnant inmates, as also temporary release for an impending delivery is yet to be implemented says Monica Dhawan, director of retired IPS officer Kiran Bedi's prison reform NGO, India Vision Foundation (IVF) Also there has no impact assessment that was conducted on its implementation as per the Committee Report. The Government needs to ensure its speedy implementation. Holding that the criminal justice system in the country is based on reformation and rehabilitation of criminals, a bench of Justices Madan B Lokur and Deepak Gupta said the governments must take a humane approach towards prisoners¹⁰. The court expressed that since prisoners are forced to live an inhuman life in overcrowded jails with no basic facilities and many of them were committing suicide and dying unnatural death, the open jail system could pave the way for them to live with dignity.

Prepared By

Nancy D Cruz

⁹ DK Basu's guidelines on arrest <http://www.sangrurpolice.in/safety-tips/d-k-basu-case-guidelines/>

¹⁰<https://epaper.timesgroup.com/Olive/ODN/TimesOfIndia/shared/ShowArticle.aspx?doc=TOIDEL%2F2017%2F12%2F20&entity=Ar01508&sk=C08F88D8&mode=text>

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Headline

Territorial Army battalion of ex-Army men to clean Ganga

(Sushant Singh, *The Indian Express*, January 9, 2018)

The Central government is planning to raise a Territorial Army battalion comprising of ex-Army servicemen which would act as a Composite Ecological Task Force for the National Mission for Clean Ganga, the nodal agency for cleaning the river Ganga. An official document states that the battalion will be raised “as a pilot project”, and “will be responsible for the tasks and activities related to resurrecting the Ganga,” by monitoring ecological and environmental projects related to the river and raising public awareness through campaigns. This move comes in the light of the latest CAG report on the NDA Government’s flagship Namami Gange programme, which has held the Government responsible for tardy implementation of the programme and, more importantly, gross underutilisation of funds.

Read more: <http://indianexpress.com/article/india/territorial-army-battalion-of-ex-armymen-to-clean-river-ganga-5016892/>

Date Accessed: 15.01.2018

Governance and Development

POLITCS AND GOVERNANCE

Biometric registration: Centre relaxes norms for cruise tourists

(The Indian Express, January 15, 2018)

The Ministry of Shipping has relaxed its rules for cruise tourists with e-visas, enabling them to register details at a time of their choosing after arrival. This also exempts them from registering their biometric details and makes the whole process voluntary for a period of 3 years. In a new set of Standard Operating Procedures for cruise tourism, the need for digitalisation was stressed to reduce the time to process the details of tourists arriving at the port and to provide a hassle-free immigration clearance. This move is expected to increase the prominence of India as a cruise destination.

Read more: <http://indianexpress.com/article/india/biometric-registration-centre-relaxes-norms-for-cruise-tourists-5024850/>

Date Accessed: 15.01.2018

GOVERNMENT

Orange passports proposal shows BJP's discriminatory mindset: Rahul Gandhi

(The Hindu, January 15, 2018)

MEA's new policy to introduce passports with orange covers for migrant workers who come under the ECR status has met with strong criticism from the opposition with Rahul Gandhi terming the move as discriminatory. MEA also announced that the last page of the passport with details such as name of the spouse, parents and address would no longer be printed on any Indian passport while those who have not cleared 10th standard school leaving exam and require a clearance certificate from authorities to travel for jobs abroad will be given a separate passport with a orange jacket.

Read more: <http://www.thehindu.com/news/national/orange-passports-proposal-shows-bjps-discriminatory-mindset-rahul-gandhi/article22441522.ece>

Date Accessed: 15.01.2018

EDUCATION

JEE Advanced 2018: Make separate merit lists for girls, government tells IITs

(Somdatta Basu, The Times of India, January 15, 2018)

The Ministry of Human Resource and Development has directed Indian Institutes of Technology to prepare separate merit lists for women from the academic year 2018-2019. This is to ensure that women constitute at least 14 per cent of the total students on each IIT campus. The Ministry specified that the additional number of women to be admitted would be supernumerary, which implies that the merit list would not result in lesser number of seats for men, but that IITs will be required to increase the number of seats in order to achieve the 14% target. Furthermore, as the article notes, all existing reservation would apply proportionately for the extra seats.

Read More: <https://timesofindia.indiatimes.com/home/education/make-separate-merit-lists-for-girls-government-tells-iits/articleshow/62491972.cms>

Date Accessed: 15.01.2018

HEALTH

More Than Half of India Rejects Government Medical Care

(Anoo Bhuyan, The Wire, January 12, 2018)

Medical negligences, poor standards and prohibitive prices in the health care sector was widely prominent last year, leaving patients strapped for choice. However, data from the fourth National Health and Family Survey (NHFS) confirms that more Indians, both in rural and urban areas are opting for private health care despite its exploitative prices than government health services especially after the tragedies in Gorakhpur. The survey report suggests that less than half of urban (42%) and rural (46%) India opt for

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government health services. While a large chunk of the urban population reject government healthcare, rural India still depends on community health centres and primary health centres, with 14% and 12% choosing these points of care. Only about 1% of people choose traditional Indian medicine with AYUSH medicines having a dismal uptake. Over all, 55.1% of households don't use government health facilities due to poor health care quality or absence of accessible health care facility. Among states, Uttar Pradesh recorded the largest percentage of population who reject government health care altogether with almost 80% of the population rejecting it.

Read more: <https://thewire.in/213071/half-india-rejects-government-medical-care/>

Date Accessed: 15.01.2018

URBAN TRANSPORT

Access to disabled: HC seeks answers

(TNN, *The Times of India*, January 11, 2018)

Responding to a Public Interest Litigation seeking directions to make Delhi's roads, government offices and public transport disabled-friendly, the Delhi High Court demanded an explanation from senior officials for the failure of agencies to conduct a 'disabled access audit' of buildings in Delhi. A bench of acting Chief Justice Gita Mittal and Justice C Hari Shankar directed agencies, including PWD and CPWD, to ensure that the audit is conducted for all buildings, and gave them time till February 13 to explain to the Court the measures undertaken for physically disabled, visually and auditory impaired persons. The Court also asked the Delhi Police to submit status on the audit.

Read More: <https://timesofindia.indiatimes.com/city/delhi/access-to-disabled-hc-seeks-answers/articleshow/62451201.cms>

Date Accessed: 15.01.2018

ENVIRONMENT

Cannot evict tribals from tiger reserves without their consent: NCST

(Ishan Kukreti, *Down to Earth*, January 12, 2018)

In a recent meeting to discuss the issue of the National Tiger Conservation Authority's order rejecting forest rights under Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (FRA) in Tiger Reserves, the National Commission for Schedule Tribes (NCST) recommended that "no tribal shall be vacated from the forest area until an alternate land is provided to them" and that tribals cannot be evicted from Tiger Reserves without their consent. The NCST also recommended that the compensation amount to tribals be increased from Rs. 1 million to Rs. 2 million using the funds under the Compensatory Afforestation Fund Management and Planning Authority (CAMPA).

Read More: <http://www.downtoearth.org.in/news/cannot-evict-tribals-from-tiger-reserves-without-their-consent-ncst-59488>

Date Accessed: 15.01.2018

India and the World

INTERNATIONAL AFFAIRS

Villagers on India - Myanmar border to get passes

(Vijaita Singh, *The Hindu*, January 13, 2018)

The Indian government, in a joint collaborative with the Myanmar government will be issuing “border pass” to all the residents living within 16 km from the boundary line and has asked the north eastern states to enrol the border residents under Aadhar urgently. This is done to facilitate movement of people across the border and to enhance economic interaction. This was also considered necessary in the light of growing extremist activity around these border regions. A high-level committee report submitted by Joint Intelligence Committee set up in the aftermath of the ambush carried out by NSCN-K rebels in Manipur recommended dedicated crossing points in border villages where policemen would be made in charge of regulating the movement of people. The government however clarified that this policy would not affect its official stance on the Rohingya migration.

Read more: <http://www.thehindu.com/news/national/villagers-on-india-myanmar-border-to-get-passes/article22437211.ece>

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Issue Coordinator: Nancy D Cruz



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