

Plight of Prisoners during COVID-19

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Abstract: *This article is about the status of prisoners in times of COVID-19. The State has always been barbaric towards the prisoners and they are not treated nicely in jails. It is not about being treated nicely but acknowledging their fundamental rights or the basic human rights in jail. The author wants to lay stress on how the jails are working in times of pandemic and what all measures are taken by the jail staff and government of the particular state to stop the outbreak in jails. Since Corona has hit every corner of the world, and while government is taking proper precautions to safeguard the citizens, we as a responsible human should also know about the conditions of prison and prison system in India as well. The author begins with a brief discussion of human rights and then it's relation with the prisoners. The article has also focused on the situation in prisons due to COVID-19 with reference to authentic data from verified sources and news articles. To conclude with, the author has talked about the measures taken by the apex court and governments of all the states for protection of prisoners and jail staff from spreading of pandemic inside the jails.*

Key Words: *COVID-19, pandemic, human rights, prisoners, corona virus, World Health Organisation, fundamental rights, overcrowded jails, decongestion.*

1. INTRODUCTION:

Corona virus sickness or disease is a contagious virus which has been discovered recently in 2019. A good no. of people have been infected with the Corona virus infection who are encountering light to normal respiratory ailment and getting recovered without requiring exceptional treatment. Old aged people and those with fundamental clinical issues like cardiovascular disease, diabetes, severe respiratory issues, and cancer are in highly risk groups.

An epic strain of Corona — SARS-CoV-2 — was first identified in December 2019 in Wuhan, a city in China's Hubei region with a populace of 11 million, after an episode of pneumonia without a conspicuous reason. The infection has now spread to more than 200 nations and regions over the globe, and was described as a pandemic by the World Health Organisation (WHO) on 11 March 2020. The Corona virus infection spreads fundamentally through drop of saliva or release from the nose when a contaminated individual coughs or sneezes, so it's significant that you additionally practice respiratory behavior (like, by coughing into a flexed elbow). As of now, there are no particular immunizations or medicines for Corona virus. Even so there are numerous continuous clinical trials assessing expected medicines are going on. World Health Organisation will keep on giving refreshed data when clinical discoveries become accessible.¹ India is a developing country and being in a civilized society it becomes the duty of the government to protect the well being and the rights of all the citizens besides inmates too. The fundamental rights are not absolute as they can be managed subject to some restrictions for the public welfare. But still there are certain rights which every citizen or say, an individual has being in any part of the world and cannot be waived by any chance, except by an order of the court of jurisdiction for eg; Article 21 i.e. protection of life and personal liberty, Article 17 i.e. abolition of untouchability etc. According to Universal Declaration of Human Rights – All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one other in a spirit of brotherhood. Numerous detainees are regularly not ready to benefit lawful guide because of clumsy endeavours of different stakeholders, helpless open guard and absence of data stream. This prejudices reasonable trial and challenges of legal safeguards available for prisoners' welfare. In India, National Human Rights Commission (NHRC) has been established that basically works under so many categories like Economic rights, Social rights, Cultural rights, Civil and Political rights etc. It has discussed about prisoners' rights and their violation under Section XIII of the Human Rights Violators Index. It has been keeping an eye on fake encounters, custodial deaths and rapes and besides this, also monitored on overcrowding of prisons, medical treatment of prisoners etc. Indian jails with their packed spaces and insufficient medical services offices are at high danger of turning out to be focal points for the spread of COVID-19. A current study shows that in 2018, prisons were occupied at a large no. From last five years and which resulted in overcrowding problem that India is facing right now. As an emergency response to COVID-19, more than 61,000 Indian prisoners have been released. The pandemic has intensified the dangers of confined conditions in jails throughout the globe.

¹ https://www.who.int/health-topics/coronavirus#tab=tab_1

2. IN LIGHT OF FUNDAMENTAL RIGHTS:

The Indian Constitution guarantees various fundamental rights to the citizens out of which Freedom of speech and expression mentioned in Article 19(1) (a) is one and holds utmost importance for all of us. Undoubtedly, freedom of speech and expression means everyone is free to express their views, convictions and opinions freely by words of mouth, writing, publishing, or can choose any other mode of expression. But what remains controversial always is the right to remain silent or to dissent under the right of speech and expression. The Constitution of India under Article 39A, 14 and 21 safeguards the right of a person to secure justice notwithstanding his/her economic, social or mental status. This means every person who comes in conflict with the criminal justice system has a constitutional right to have a lawyer to defend him/her efficiently. The National Legal Services Authority and its counterparts in all the states and districts have been set up to ensure the practical realization of this right. Huge numbers of the prisons detainees are undertrials. That remembers a few profoundly announced captures for the wake of the citizenship fights. There have been at least 20 activists and students held in jail that were arrested during the lockdown and were kept in overcrowded prisons, the reason behind it was, for exercising their fundamental right to free speech and dissent, which no where violates the Article 19(1) (a). Out of them 3 have been already tested positive for covid-19 and many more are at risk being in overcrowded prisons. While the constitution of India has given all the basic rights but still it has not been interpreted correctly and in such a serious pandemic people are held behind bars which is itself a violation of human rights. We need to take a stand for those whose voices remain unheard and rights are disrespected.

3. SITUATION OF JAILS IN COVID-19:

Not less than 2191 inmates have been affected by this virus across the country. The condition is extremely risky and unsafe. There should be a 50% reduction in jails so as to bring social distancing. The jail division alone cannot be accused for this since it's not in their grasp. The issue also holds the court responsible for this. Some courts are under the containment zone or some are working with 30% staff present in the court, hence making the situation more complex. Huge numbers of the prisons detainees are undertrials. In circumstances where close imprisonment, mutual offices and spaces and helpless cleanliness are typical, detainees and jail staff are living in consistent dread of the ticking COVID-19 time bomb.

To cope up with the circumstances, the status of jails in various states has been discussed as follows:

- Medical teams from government hospitals are visiting prisons on a daily basis.
- They have also created temporary jails. Maharashtra has nearly 37 such jails in 27 districts. It's done to quarantine new admissions or those tested positive.
- A report by the National Legal Services Authority in May said about 42,000 undertrials and 18,000 convicts were released. Be that as it may, new admissions additionally happen regular.
- Undertrials are not allowed to present in the court, rather they have to do everything over a phone call be it meeting with a lawyer or talking to a family member.
- The jail of Jammu and Kashmir also disallowed visitors and home-cooked food for inmates to prevent the spread of infection but social distancing was not followed at all due to overcrowded jails.
- Detainment facilities in Uttar Pradesh were the most packed, while Sikkim enlisted the most noteworthy relative increment in prisoner populace since 2014. While Uttar Pradesh claimed to have released 18,000 prisoners as of June 26, 2020.

A brief **Data** showing Prisoners tested positive in some jails across the country: (Data till July, 2020)

Name of Prison	State	No. Of Positive inmates
Jaipur prison	Rajasthan	100
Akola prison	Maharashtra	97
Anantnag prison	J&K	96
Mumbai Central	Maharashtra	182
Tihar Central	Delhi	221
Etah jail	U.P.	36
Puzhal district	T.N.	30

No. Of deaths of prisoners in jail are as follows (as of August, 2020):

- Bihar: 4
- Delhi: 2
- Maharashtra: 6
- Uttar Pradesh: 3

Legal experts have said that there has been hesitance by the judiciary and legislature to address the developing number of detainees, and to decongest our prisons. While the judiciary is basically answerable for not considering the

issue of detainees, the legislature is yet to reform changes that could decriminalize out of date laws, or even rethink British-period criminal laws.

“The Supreme Court has passed no order, and has only directed the State governments to constitute high-powered committees (HPCs) so that they can come up with criteria by which prisoners can be released,” says Madhurima Dhanuka, programme head, Prison Reforms Programme, Commonwealth Human Rights Initiative. “As the committees have no power to release prisoners, the courts have to decide on a case-to-case basis.”

4. STATUTORY MEASURES:

On 16th March, the Supreme Court asked the States and Union Territories on their arrangements to prevent the Corona virus spread in prisons. Most of the states were ready to release certain categories of detainees on bail and parole. The thought was to decongest the 1,401 detainment facilities in the nation, which, as indicated by 2018 National Crime Records Bureau (NCRB) data, were stuffed with around 4, 50,000 individuals, about 60,000 over the authorized limit.

Till 30th June, almost 805 prison staff and detainees have tested positive for Corona virus across jails in the nation, according to Commonwealth Human Rights Initiative (CHRI). On March 23, the Supreme Court ordered all the states to form a committee under State Legal Services Authority (SLSA) and immediately decide the guidelines on which prisoners can be released on anticipatory bail or parole so that jails can be decongested and to prevent the spread of virus inside the jails. As a result, on the recommendation of the Prisoners Parole Advisory Committee, special parole may be granted for a period not exceeding 4 weeks. The Supreme Court refused to entertain a petition to ease congestion of prisons in the middle of COVID-19 pandemic, since the situations in all the states are different and hence giving a common guideline for all would not be fair and might appear to be tyrannical. The Supreme Court, led by CJI Bobde, said “Counsel for the petitioners seeks permission to withdraw this petition with liberty to move the jurisdictional High Court. Permission sought for is granted. The writ petition is dismissed as withdrawn”. The honourable court explicitly mentioned that the direction was not to release all the prisoners in all the states & Union Territories but the main aim was to decongest the prisons & to prevent the spread of COVID-19 among prisoners or jail staff. The direction issued by the court was to release undertrial prisoners on interim bail or parole for offences demanding up to 7 years in jail so as to prevent overcrowding of prisons. Delhi and a few states like Karnataka and Chhattisgarh guaranteed huge numbers ought to be released. In Maharashtra, only those sentenced less than seven years could be released. Later through a request, they extended the class of detainees who could be released. Congestion is more in big urban areas. Mumbai's Arthur Street jail is still overcrowded about thrice the official limit of 900. In Rajasthan, there has been 100% screening done of the inmates by the State Prisons Department and they were also interviewed to know about their recent travel history. Also 2 new wards and an isolation ward have been set up to treat the prisoners who have been infected. Even then, as we know the virus has attacked every corner, the number of inmates who are corona positive has reached 100 till July. The courts have taken a decision that those arrested in financial, terrorism and organised crime and under passport act have been rejected. The accused charged under Unlawful Activities (Prevention) Act (UAPA) or the individuals who fall under "organised" criminal offenses are prohibited. It can be said that the entire categorization is based on the seriousness of offence rather than the risks the virus poses to different categories of the people.

5. CONCLUSION:

The best way to prevent and slow down transmission is to be well informed about the COVID-19 virus, the disease it causes and how it spreads. Protect yourself and others from infection by washing your hands or using an alcohol based rub frequently and not touching your face. India has affirmed in excess of 4, 50,000 instances of COVID-19 up until now, making it the world's fourth-most noticeably terrible hit nation. Significant urban areas, for example, Delhi and Mumbai are especially influenced, with emergency clinics attempting to oblige basically sick patients. The current flood in diseases follows two and a half month India-wide lockdown that started on 25 March and seriously upset the economy and jobs. A few scientists state the administration neglected to exploit this chance to set up the nation's battling wellbeing foundation. While there has been a utilization of mind to prison reforms in India, the thoughts were delayed in coming, the usage even more slow. Some place, the will — regardless of whether in the legal executive or council — has been deficient. There is as yet a hesitance to concede bail to undertrials, with the outcome that correctional facilities are stuffed, and as we are currently observing, hotbeds of disease. More than 61,000 prisoners in India have been released, including nearly 3,600 in the National Capital Territory of Delhi, according to CHRI. Almost every State and Centre-led committees have suggested prison reforms from a long time. However, when the novel Corona virus raised its head in the nation, the Supreme Court needed to mediate and guide States to release prisoners. Lastly, the condition of overcrowding problems should be solved immediately otherwise the situation will be worsening and the system would be answerable in many aspects. Basic hygiene and physical distancing should be maintained inside the jails and all the staff also need to be taken care of. Even after the government lays down all the important guidelines, it is on the people to follow them and save themselves and their family, colleagues or the society.

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