

Prison health is Public Health

BRIEF BACKGROUND NOTE

Letter to Chief Justices of High Courts and the State High Powered Committees to safeguard health and health rights of all prisoners during the COVID-19 pandemic

Overcrowding in Indian prisons - an imminent threat of COVID-19 risks to prison in-mates

Health risks faced by prisoners, particularly in overcrowded and under-staffed, under-resourced prisons during the ongoing COVID-19 pandemic remain a public health concern and warrant immediate attention by the concerned authorities. Prisons are not equipped to meet health care needs of inmates even in normal circumstances. As a result, and given the public health measures necessary to contain the pandemic, prisons are potential hotspots for COVID-19 infections. As of October, 2020, a total of 18,157 prisoners and prison staff had tested positive and 17 had reportedly died due to the virus. WHO has warned that ‘efforts to control COVID-19 in the community are likely to fail if strong infection prevention and control measures, testing, treatment and care are not carried out in prisons and other places of detention as well’.

Prisons in India are notorious for overcrowding. As per the [Prison Statistics India-2019](#), out of the 1,348 prisons in India, about 538 or 40 per cent of the total jails were found to be overcrowded, ranging from 1 to 636 per cent over and above their officially sanctioned capacities. In 2019 **under trial prisoners (UTPs) formed 70 per cent of the total prison population**. Of the 3,30,487 such UTPs in all, 14,049 have been in for between 3-5 years and 5011 have already spent more than 5 years. It is also important to note that more than 80 % of the UTPs belong to socio-economically marginalised groups – Scheduled Castes 21%, Scheduled Tribes 12% and Other Backward Classes 30 % ; Muslims 18%. Delay in conducting trials, lack of easy bail, and indiscriminate arrests were the major reasons for this large population of under trials in prisons. As of 2019, the number of UTPs under Indian Penal Code (IPC) crimes were 2,58,883; under Special and Local Laws number of UTPs was 71,513 and convicts were 17,400. In 2019 under the Unlawful Activities Prevention Act (UAPA), 1948 arrests had been made, while only 34 had been convicted. During 2014-18 more than 50 per cent of cases under UAPA had ended in acquittals; in 2018 conviction rate was 27.2%. In January 2021 a [38-year old Adivasi woman detained under UAPA in Pune prison, died of heart related ailments while awaiting trial for six years](#).

In March 2020, in the initial stages of the COVID-19 pandemic in India, the Hon'ble Supreme Court of India (SC) in [the suo motu Petition \(Civil\) No.1/2020](#) noted with concern the issue of overcrowding in prisons. In view of the unprecedented situation created by the pandemic, it ordered release of prisoners to reduce overcrowding and achieve decongestion, to achieve physical distancing within prison premises, in order to prevent the outbreak of COVID-19 in prisons. State Governments and Union Territories (UTs) were directed to constitute a High Powered Committee (HPC) for determining the class/category of prisoners to be released on interim bail or parole, such as depending upon nature and severity of offence, the number of years to which a prisoner has been sentenced, the stage of trial, or any other relevant factor that the Committee considered appropriate. During the second wave of the COVID-19 pandemic since March 2021, [the Supreme Court \(SC\) through an order dated May 7, 2021](#) again directed HPCs to do the needful.

In its May 2021 order, the SC mentioned, “The requirement of decongestion is a matter concerning health and right to life of both the prison inmates and the police personnel working”. The HPC of Delhi also noted that “**Right to Life under Article 21** is the most precious Fundamental Right of every citizen of India. It unconditionally embraces even an under trial/convict walled off from the society.”

Several judgements have recognized the Right to Health and Right to medical care of prisoners as a component of Right to Life under Article 21. These principles of the Right to Life under Article 21 of the Constitution, of the rights to health as per public health principles, are applicable to all citizens without any discrimination. There should be no discrimination against prisoners also in applying these principles, just as the virus does not discriminate among prisoners based upon their offences. Addressing the pandemic in prisons and other custodial settings is an integral part of the public health response to COVID-19, and hence should be guided by public health principles for primary prevention.

According to the [World Medical Association Declaration of Edinburgh on Prison Conditions and Spread of Tuberculosis and other Communicable Diseases](#), “Prisoners enjoy the same health care rights as all other people. This includes the right to humane treatment and appropriate medical care.... **The most efficient way of reducing disease transmission is to improve the prison environment by putting together an efficient medical service that is capable of detecting and treating the disease, and by targeting prison overcrowding as the most urgent action).**” It also recommends that wherever possible alternatives to detention should be used.

In [September 2020 the Supreme Court](#), while hearing a plea for interim release of prisoners charged under Special Acts amid COVID-19, held that HPCs will be at liberty to change its norms as per changing conditions. Prisoners should get the same rights as other patients, including right to health services available in the country without discrimination on the grounds of their legal situation. The Supreme Court in the case of [Parmanand Katara v Union of India AIR 1989 S.C. 2039](#) held that: **Right to Health** is a part and parcel of **Right to Life** and therefore **right to health** is a fundamental **right** guaranteed to every citizen of **India** under Article 21 of the Constitution of **India**; that Article 21 of the Constitution casts the obligation on the State to preserve life; and that the patient whether s/he be an innocent person or a criminal liable to punishment under the laws of the society, it is the obligation of those who are in charge of the health of the community to preserve life so that the innocent maybe protected and the guilty may be punished.

The ongoing COVID-19 pandemic has led to severe restrictions of rights of prisoners, particularly their communication with families and lawyers, access to courts, access to medical care, access to rehabilitation facilities, etc. As medical and other public health professionals, we are guided by the Constitution of India and various international conventions and guidelines that call for ethical treatment of prisoners and for safeguarding their fundamental right to life.

It is in this context that this appeal is initiated by Forum for Medical Ethics Society ([FMES](#)) and Jan Swasthya Abhiyan ([JSA](#)), on behalf of health care workers and public health professionals, to the Chief Justices of High Courts and the State High Powered Committees, to safeguard health and health rights of all prisoners during the COVID-19 pandemic based upon public health and human rights principles. Two other appeals have been made earlier, with similar objectives. We are making this appeal to the authorities in India to formulate appropriate criteria and implement urgently the 2020 orders of the Supreme Court for release of prisoners to achieve de-congestion of prisons in India.

Adequacy of approach to Decongestion: Irrespective of a health emergency crisis, the reduction in over-crowding was long overdue, as jails presently hold inmates far beyond their normal capacity, as mentioned earlier, [up to as much as 636 per cent](#). Overcrowding violates the rights of prisoners to freedom from torture and the right to be treated with dignity, rights that are recognised by international and regional human rights mechanisms. [Reports show](#) that out of the 1,350 jails in India, COVID-19 infections have been reported from at least 351 jails or 26% of the totals jails (August 2020); among the COVID-19 infected prisons, 52 prisons had overcrowding from 101% to 312% as of Dec 31, 2018 with Mumbai Central Jail topping the list with 312% overcrowding.

During the first wave, over 61,100 prisoners were released, which achieved only about 15.4% overall reduction in occupancy rate. [This was not adequate to address the extent of overcrowding](#) of 40% of the Indian prisons, including 134 prisons that have overcrowding from 100% to 636%.

Therefore, in the present crisis, it is imperative **not only to decongest the prisons, but to actually reduce the numbers well below the normal prison capacity.**

Criteria for Release to achieve Decongestion: The existing criteria for release is based on the seriousness of the offence and corresponding years to be served in prison, rather than vulnerability to getting infected. Such directives prohibit release of certain categories of prisoners, such as those in for life, those detained under special and local laws, and political prisoners under UAPA, NSA, etc. For instance, in drawing up the criteria for release the Delhi HPC has given some consideration to medical condition of under trial prisoners (UTPs), however it also states that in order to be eligible for interim bail they should be facing trial in a case which prescribes a maximum sentence of 10 years or less and are not involved in multiple cases. As per prison statistics, 53.5 per cent of the total prisoners are in for life and another 14 % for more than 10 years of imprisonment. Given this, almost 67 % would get excluded if criterion of less than 10 years of imprisonment is applied. Moreover, nearly 50 per cent of convicts are between 30-50 years and 20 per cent are over 50 years of age.

These criteria are discriminatory and violate the Right to Life and Right to Health, which have motivated the orders in the first place, as the legal considerations would exclude several categories of prisoners, such as political prisoners, who may be similarly sick, or more vulnerable to COVID-19 infection due to age, or pre-existing chronic conditions such as hypertension, diabetes, COPD, heart ailments etc.

Given that the release of prisoners has been initiated due to a public health emergency, and is motivated by human rights and right to life considerations of safeguarding health, **the release criteria must also be shaped by measures to protect foremost the prisoners at particular risk of COVID-19, such as older people and people with pre-existing health conditions, pregnant women and children, just as observed for the general population.**

Access to timely and quality healthcare (preventive and treatment) for prisoners: Most prisons lack proper medical staff and do not have facilities for in-patient treatment for even minor illnesses, let alone specialized testing and care for COVID-19 infections. Even in non-epidemic times prisoners are completely at the mercy of the prison staff when it comes to accessing medical treatment even for minor illnesses. Timely testing, diagnosis and treatment are not available in the prison premises even in normal times. Prisoners are often taken to the hospital after the OPD timings are over and hence are not examined on time or they are often moved to a hospital only after their condition deteriorates, often resulting in deaths. According to Government hospital doctors most of these deaths [could be avoided if proper medical care is provided on time.](#)