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PRISONS IN INDIA

With Special Reference to The Issue of Over Crowding, understaffing and Underfunding of the Prisons in India during and post COVID -19 Pandemic

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ABSTRACT

More than a two years into the COVID 19 pandemic, and yet it continues to pose as a challenge for all the policy makers, practitioners and also to those who are dealing with it head-on every day. Although the matters pertaining to health and health infrastructure, precautionary processes, the focus on state of the economy, food security, livelihoods of the citizens, education and access to online channels of communication to the students, the development of the vaccine to deal with the virus etc. have all been constantly in attention because of the media, but not all the issues of the dangers of the Covid 19 pandemic have been looked into. There is still a large amount of population lodged in the confines of the prisons whose risks to the Covid Pandemic have not been looked at closely from law and order perspective as well as from the viewpoint of public health concern. The prison population is perceived to be a threat to the public safety and order, thus their release from prisons is viewed as a danger to the society.

This article endeavors to explore and analyse the issue of overcrowding, underfunding and understaffing of prisons and its impact on the prisoners. It is also an attempt made to look at the roles and responses of the prison authorities and the courts to address these burning issues especially during and post the Covid 19 Pandemic.

Nelson Mandela's well known assertion says,

"It is said that no one truly knows a nation until one has been inside its jails. A nation should not be judged by how it treats its highest citizens, but its lowest ones."

How applicable is this statement in the present-day?

The statement is extremely significant in the present time for the very fact that it causes us to think about how we treat the prisoners in our country. We need to understand that prisoners

have been deprived of just a single right, and that is their right to freedom of movement. All their different rights, including their basic rights and basic freedoms, remain.

In spite of this, a very grim situation exists in reality, the prisoners in our prisons are treated with the most undignified and demeaning manner. It is not only because of the perception that the society has garnered over the years against the incarcerated but also because of the poor economic status of our country that our jails are kept at the worst level with very little funding and budgeting. There is a need to concentrate on the improvement of jails and to advance basic liberties, considering the fact that the inmates in prisons are the citizens of our country and ought not be denied their essential common freedoms as any other citizen.

There are two ways in which one can associate what is happening in the prisons. One way is by looking at the criminal justice system and the delays that keep on happening in the system, and the result can obviously be seen in the prison population. The reason could arise from the fact that in terms of resources and attention, very little is being provided to prisons. The other aspect is that in India, discrimination and marginalization of the vulnerable group, religious and ethnic minorities can be clearly seen in the society, this if not further embedded at least is propagated or extended inside the prison.

The Indian prisons have many structural constraints few important being Overcrowding, Understaffing and Underfunding. According to a report on the prison statistics for 2019 which was released by the National Crime Records Bureau, the number of inmates as on 31 December, 2019, were 4,78,600 who were lodged in different prisons in India, while the collective capacity of these prisons was only about 4,03,700 inmates.¹ This clearly shows that the number of prisoners was 118.5% of the prison capability, the highest since 2010. This phenomenon is not new in the Indian context, prisons here have always been housing more inmates than their capacity for decades now and this problem of overcrowded prisons is only getting worse.

The overcrowding of prisons in the country is an ever existing problem that is rarely addressed effectively. Even if it is widespread and long-lasting, it should never become a norm. From a humanitarian perspective, it is extremely important to address the issue of

¹ National Crime Records Bureau, Prison statistics 2019, Website title: Ncrb.gov.in URL: <https://ncrb.gov.in/en/prison-statistics-india-2019>

overcrowding in places of detention. This is a particularly a difficult task and challenging to achieve, as overcrowding has diverse and collective reasons, which are largely outside the prison system. It therefore cannot be looked only at the level of prisons but requires a complete and synchronized response from a broad range of authorities also comprising of certain efforts taken at the policy framing level as well effort taken by the society at large.

If we look at the issue of overcrowding there are multiple causes that can be linked to this persistent problem in prisons. By observing the global trend, it may be assumed that the rise in imprisonment rates and overcrowding in prisons are a direct result of the increase in the criminal activity worldwide. But in reality, this may always not be the case, there have been studies that have shown that the rates of imprisonment and crime may develop independent of each other, or that the increase in the commission of crimes may impact on proportions of imprisonment but not be constituted as the main factor that influences the ever increasing rates of incarceration. The increase in criminality may itself be due to multiple factors like the fact that the acts that were previously not defined as criminal acts have now been included to the list of acts that to be considered as offences. Also, some pre-existing offences may have been classified to become more serious and accorded a minimum fixed prison term.

Especially in the Context of the COVID -19 Pandemic, the overcrowding of Prisons needed to be highlighted and looked at with a different perspective. After the order of the Hon'ble Supreme Court which was passed on 23rd March 2020, the various State Governments Across the country constituted the three-member High Powered Committee (HPC) comprising of the Chairperson of the State Legal Services Authority to classify the prisoners into different categories who could be released based on criteria decided by them. The HPCs divided the prisoners into 2 categories. The first, the categories of prisoners identified for release and in the second the categories of prisoners excluded by the HPCs. The Supreme Court also asked the under trial review committees (UTRCs) to meet up every week to deliberate on matters pertaining to the release of the under trials either on bail or PR Bond. The Court with regard to further reduce the pressure on the prisons, reiterated the orders passed in the case of *Arnesh Kumar v. State of Bihar*² which stated that making arrests in case of persons charged with offences where the maximum sentence was less than 7 years, should be avoided as far as possible. The World Health Organization and other United Nations agencies with regard to overcrowding of prisons during the pandemic also issued a statement calling on governments around the world to release prisoners who were "at particular risk of COVID-19" and those

² *Arnesh Kumar v. State of Bihar and another*, (2014) 8 SCC 273.

who “could be released without compromising public safety.”

On April 13, 2020, the court made it clear that releasing prisoners was not "compulsory" and that its earlier directive was meant to prevent prison overcrowding in light of the pandemic. This clarification came in response to numerous public interest lawsuits that called for clearer rules and better conditions for prisoners.

In India's extremely overcrowded prisons, where it was impossible to provide for hygiene requirements, maintaining social distancing norms was and is a challenging task. If the States focus had not been brought to India's inadequately secured jail complexes, the virus would have quickly spread there, infecting thousands of prisoners.³ Since everyone has the right to health, various measures were adopted by the States to protect the inmates. In accordance to the HPCs' guidelines, the courts nationwide granted temporary bail to 68,264 inmates until December 14, 2020.⁴

The state was supposed to take action to reduce jail overcrowding based on the guidelines issued by the HPCs, but the facts depict a dismal picture. The high rate of jail occupancy and the rise in the number of cases still before trial demonstrate how the criminal justice system has only further consolidated its approach to the control of crime. In the state of Maharashtra, authorities released over 7,200 prisoners by May 2020 to check overcrowding in jails; around 10,000 more were expected to be released on temporary bail or parole.⁵ The Uttar Pradesh government had declared in May that it would release 11,000 prisoners, including 8,500 undertrials, on personal bonds for eight weeks.⁶ The release of inmates awaiting trial and the release of prisoners both decreased in 2020 by 19.6% and 41.2%, respectively. Although it was anticipated that more prisoners would be freed during the epidemic, there was actually a sizable decrease.

Apart from the considerable curbs on several rights of prisoners, the pandemic led to a multiplied burden on the already under-resourced prisons, not only financially but also in terms of human resources - with the funds having to be diverted to aid the prison staff and

³ Jai Dehadrai, 'In the Time of Coronavirus, the Right to Bail is Part of an Undertrial's Right to Life', The Wire (online, 26 March 2020) <https://thewire.in/law/in-the-time-of-coronavirus-the-right-to-bail-is-part-of-an-undertrials-right-to-life>.

⁴ See State/Ut Wise Prisons' Response to The Coronavirus Pandemic in India (28 June 2021) <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india#Table%20G>.

⁵ The Indian Express, 'COVID-19: Maharashtra releases 7200 prisoners to curb overcrowding', 17 May 2020. Available at: <https://www.newindianexpress.com/nation/2020/may/17/covid-19-maharashtra-releases-7200-prisoners-to-curb-overcrowding-2144489.html>.

⁶ Newslandry, 'What's India doing to keep its prisoners safe from coronavirus?', 31 March 2020. Available at: <https://www.newslandry.com/2020/03/31/whats-india-doing-to-keep-its-prisoners-safe-from-coronavirus>.

their families who are going through the danger of contracting the virus. The state of affairs has clearly displayed the deficiencies of the existing healthcare provisions inside prisons, and intensified worries of prison staff vacancies and their growing workload. With suspension of everyday court work and the continuance of only critical hearings, the case pendency's have also increased. This has once again affected the jail populations, growing intervals of detention pending trial. Correspondingly, with appeal hearings delayed, and early release trials stalled, convicts have continued to be constrained for longer durations. In striking disparity to what the situation warranted, instead of releasing convicts, the governments seemed more at ease exposing them to the dangers of the Pandemic. The Prison Statistics of India report does not even mention or analyse the effects of the governments' refusal to decongest jails.

Alongside the issue of overcrowding of the prisons, the other major matter of concern is the understaffing of the Prisons. According to the findings of the India Justice Report 2019, an initiative of Tata Trusts, the prisons in India are understaffed by at least 33 per cent to 38.5 per cent. The highest vacancies being found in the officer and correctional staff levels. Because of this understaffing the workload of the staff has increase which in turn is having an effect or bearing on the correctional and reformative aspect of the Prison system.

The consequences of the issues of overcrowding and staff shortages can be felt by the prison staff as well as the prisoners. The reasons that have been associated with staff shortages in prisons are the low salaries, poor training being imparted to the staff, lack of promotional opportunities, long hours of work, demanding and strenuous workloads etc.

The report states that the intention of transforming prisons from places of detention into places that maximize the chance of returning a reformed person into society can be achieved through services offered by the correctional staff, comprising welfare officers, psychologists, lawyers, counsellors and social workers, among others.⁷ The large number of vacant posts are also hindering the prison administration to perform its tasks according to the guidelines of the Prison Manual.

According to an article published by the Times of India⁸ states that the Prisons in India have a sanctioned strength of around 49030 prison staff at various ranks, of which, the staff strength at present is about 40000. It clearly shows that the ratio in Indian Prisons between the prison staff and the prisoners is roughly 1:7. Which shows that only one prison officer is attending to or is available for 7 prisoners in India, whereas in the UK, 2 prison officers are available

⁷ India Justice Report 2019, an initiative of Tata Trusts

⁸ Readers Blog, by the times of India , Jan 1, 2022.

for every 3 prisoners.

The highly unsatisfactory conditions of prisons and prisoners often gets reported in India the reasons for these as already mentioned is overcrowding and understaffing, but apart from that the other issue that plagues the prisons and the prisoners is the underfunding of the prisons. Availability of adequate fund is a prerequisite in the effective functioning of a prison institution. India's budget for prisons for the financial year 2019-20 was Rs. 6,818.1 crores. The actual expenditure during this period was Rs. 5,958.3 crores – 87.39 per cent of the annual budget. Out of this total expenditure, 34.59 per cent was spent on inmates for provisions such as food, medicines, clothing, and vocational or educational training.⁹ Nationally, nineteen states and UTs spent between ₹20,000 to ₹35,000 per inmate annually which is less than ₹100 per day on each prisoner.¹⁰ This money is spent on annually for the upkeep for food, clothing, bedding, water, sanitation, medical care, hygiene etc.

The major problem remains with the proper utilization of the budget. Also the deep rooted woes of corruption in the prison system adds to the gap between the budget sanctioned and budget actually spent on the actual prisoner. The gap and discrepancies that exists has led a three-judge bench Hon'ble Supreme Court headed by Justice M B Lokur the bench, also comprising Justices P C Pant and Deepak Gupta, stating that "There is a huge discrepancy in this regard which needs to be looked into. It may also perhaps be necessary to have the accounts audited to ascertain whether the money is being spent wisely and whether it is being utilised for the benefit of the prisoners or not."¹¹

Inspite of the same being directed by the Hon'ble Supreme Court, it can be seen that there is still a gap between the actual budget apportioned and the budget spent on the wellbeing of the prisoners during and post the pandemic. The budget which is sanctioned to these prisons needs to be increased along with priority to be given to the overall improvement of the prisoner and prisons. The way the budget handling should be done needs to get appropriate attention to ensure that the jails are reformed. If the prioritization and allocations of funds is not done in a proper manner the whole exercise and discussions on jail reforms will become futile.

When the liberty of a person is taken away because he/she committed an act prohibited by law of the land, the State is obligated to look after them and provide them with proper and timely healthcare. During the pandemic, it was observed that the governments still continued

⁹ National Crime Records Bureau, Prison statistics 2019,

¹⁰ India Justice Report 2019

¹¹ Re-Inhuman Conditions in 1382 Prisons vs. State of Assam and Ors. WP(C) 406 / 2013

to indiscriminately incarcerate people without reasonable care that needed to be taken during the time putting at risk the prisoners' wellbeing.

It cannot be denied that the issue of overcrowding, understaffing and underfunding is not a new phenomenon and it is not a problem which is restricted to India alone. However, all these issues assumed greater significance amidst the COVID-19 pandemic as prison inmates were one of the most vulnerable and defenseless groups. Starting with the lack of medical care in prisons to extreme overcrowding along with being abruptly cut off from the world outside, the incarcerated persons have had to endure the worst form of human rights violations during the COVID-19 pandemic. The pandemic highlighted and brought to the forefront the plight of prisons and prisoners which has been an area overlooked over the years.

The time has come for the governments to take immediate notice & action to reduce the overcrowding of prisons by understanding that the overcrowding of the prisons is a result of criminal justice system not of rising crime rates, the overcrowding weakens the capability of prison systems to meet the basic human needs, such as healthcare, food, and accommodation. It also affects the positive reinforcement of the provisions and efficacy of rehabilitation programmes, educational and vocational training, and any recreational activities. The unwarranted use of pre-trial incarceration, and the prison being used for minor, insignificant offences and petty are one of the crucial reasons for the rise in the prison population. The problem of overcrowding can be dealt by ensuring an expedited judicial process through more judicial appointments and meeting the international norms of judge to population ratio. Arranging for bails based on personal surety for poor people in petty cases and most importantly develop a better infrastructure of jails.

The understaffing too needs to be addressed as a matter of grave concern to ensure smooth administration of the prisons as well as to not overwork the existing staff. the Governments need to look deeply into the matters pertaining to fund allocation and utilization in the prisons to ensure that the basic needs of the prisoners are taken care of.

Finally, it is vital to remember that prisoners have been made only to give up one right, which is their right to freedom of movement. All other rights, including their fundamental and human rights, still remain which need to be protected. The situation in which the prisoners and prisons were during the pandemic is in a way a reflection of the economic status of the society we live in. Being a poor nation, our jails are the worst kept institutions with very little importance given to their conditions, funding and budgeting.