

OVERCROWDING IN INDIAN PRISONS: DURING PRE COVID-19 AND ONGOING PANDEMIC

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Abstract

The Prison administration in India usually faces several challenges in prison management even during the normal times. These challenges got aggravated during the ongoing pandemic COVID-19. One of the main challenges has been the overcrowding in prisons in India. The Supreme Court of India (SC) took suo-moto cognizance of the issue of overcrowding in prisons during the pandemic and considered the situation that the prison inmates were at a high risk of transmission of COVID-19 virus due to the high rate of ingress and egress, in prisons. Thus, the Supreme Court directed the state governments to constitute a High Power Committee (HPC) and identify the prisoners including undertrials who could be released on interim bail or parole. The authors of this research paper have undertaken a study of the issue of overcrowding in Indian prisons in pre COVID-19 times and finding out if the overcrowding actually reduced in the last one year during the ongoing pandemic in view of the SC order. The authors have also explored and analysed the reasons behind such high overcrowding in India Prisons and have made some suggestions to overcome these in future.

Keywords: Prison Administration, Overcrowding, Undertrials, COVID-19, Indian Prisons

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Introduction

Indian's prison system needs urgent reforms. Research portrays that if positive steps are not taken urgently then several prisoners will continue to suffer under inhumane environment behind the bars. The report released by the Ministry of Home Affairs (MHA) in 2018 shows that 1845 prisoners died in custody in one year which was the highest in last twenty years.¹ One of the popular newspapers in India published an analytical study which stated that "Since 2000, the prisoner population across the world went up by 20%, but in India, that number was a staggering 71%. Additionally, since 2000, the rate of increase in the number of women prisoners (111.7%) was twice than that of the world rate. The primary reason was increase in the number of undertrials. In 2018, the proportion of undertrial prisoners in India was almost 70% of the total number of those imprisoned and their number during the

¹ Prison Statistics of India, 2018, National Crime Records Bureau, Ministry of Home Affairs, <https://ncrb.gov.in/sites/default/files/PSI-2018.pdf>

last decade increased by 25.4%. The duration of trials also appears to be going up. The share of undertrials confined for more than 3 years has increased by 140% since the year 2000.”²

Prison administration is an integral part of any society in the world. From ancient civilizations to modern nations, dispensation of justice accompanied by maintenance of law and order is vital for the preserving the existential fabric of society. As righteousness and satanic forces play combat, it is necessary to ensure that justice reigns supreme in the ramparts of the social system. The judicial system, police system and the political system are important components of the prison administration machinery.

The Prison administration in India usually faces several challenges in prison management even during the normal times. These challenges got aggravated during the ongoing pandemic COVID-19. One of the main challenges has been the overcrowding in prisons in India. Overcrowding got the prison administration extremely worried during the current pandemic crisis as the COVID-19 and its variants are capable of spreading easily and can lead to fatalities if precautions are not taken and if the health and hygiene protocols are not followed. One of the most effective precautions to be taken as per the health experts is social distancing. Due to overcrowding, social distancing is not possible in prisons, therefore, the prison departments across the country undertook various steps like setting up of isolation wards, quarantining of new prisoners for a period of 14 days before transferring them to regular prison, screening of prisoners, prison staff and service providers, supply of masks and sanitizers, limiting or prohibition of visits by lawyers and NGO’s and suspension of cultural and group activities.

The Supreme Court of India (SC) took suo-moto cognizance of the issue of overcrowding in prisons during the pandemic and considered the situation that the prison inmates were at a high risk of transmission of COVID-19 virus due to the high rate of ingress and egress, in prisons.³ The SC via its order dated 23rd March 2020, asked the state governments to identify the prisoners including undertrials who could be released on interim bail or parole. It directed the State Governments to constitute a High Power Committee (HPC), which would comprise of three members: (i) Chairperson of State Legal Services Authority, (ii) Principal Secretary of Home/ Prison, and (iii) Director General of Prisons, which would be empowered to determine who should be released. The Court clarified that HPC could determine who is to be released and while taking the decision consider certain factors such as nature of offence, severity of offence, and number of years served in prison.⁴

In light of the aforesaid circumstances, the authors of this research paper have undertaken a study of the issue of overcrowding in Indian prisons in pre COVID-19 times and finding out if the overcrowding actually reduced in the last one year during the ongoing pandemic in view of the SC order.

1. Prison administration as a part of the criminal justice system

The existence of orderly society in India mainly depends upon sound & efficient functioning of criminal justice system. In order to bring and keep peace & harmony in society criminal justice system plays an important role. There are mainly 3 wings of Criminal Justice System: a) Police, b) Courts and c) Prisons. These 3 wings provide maximum sense of security in the society as they manage to deal with the offenders and crimes without any discrimination based on colour, caste, religion, ethnicity, and gender, they provide justice to the society at large. Among these elements, prison administration is an important element in criminal justice system.

In criminal justice system when a person breaks the law and commits an act which causes harm and disturbance in society is penalized and prosecuted under the relevant section prescribed in the Acts and Statutes and is then produced in the court of law and if found guilty is punished and sent to

²Madhurima Dhanuka and Siddharth Lamba, Analysis – India’s prison system needs urgent reform, Hindustan Times, 2020, <https://www.hindustantimes.com/analysis/analysis-india-s-prison-system-needs-urgent-reform/story-HYecwGnYLtYqCZqfV3rycL.html>

³ In Re: Contagion of COVID 19 Virus in Prisons, Suo Motu Writ Petition (Civil) No. 1/ 2020, accessed from https://main.sci.gov.in/pdf/LU/16032020_100611.pdf

⁴Supreme Court of India Official Website, https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_31_17_21596_Order_13-Apr-2020.pdf

the prison. Persons accused of crime and apprehended by police are kept in prison as undertrials. Some may be bailable offences but because the accused cannot afford bail or there is no surety available to stand for the accused, they may languish in the prison. Proper administration and governance of the prisons in India can play a reformatory role for those who come out of the prison which in turn is essential for the rehabilitation purposes of the prisoners and also to ensure that they do not engage in criminal activities again thereby increasing the crime-rate in the country.

The judicial system that forms the highest layer of the prison administration, comprising of judges, lawyers and allied staff, is responsible for speedy and accurate dispensation of justice. As such, the judicial machinery is also an indispensable part of the overall governing system in the country for balancing the scales towards the weight of righteousness. One of the biggest problems with the Judiciary is not having an adequate number of judges especially in the lower courts where the criminal trials begin. While the number of judges stands less as compared with the standards expected, there has been an increase in the number of crimes year on year, which has bound the judiciary in the shackles of inefficiency and apathy. Cases are routinely adjourned, many times without any plausible reason, leading to unnecessary delays in delivery of justice and consequent psychological and financial burden on the parties subject to the case.

Lawyers are another crucial component of the judiciary. Corruption and political influence have also affected the legion of lawyers. Frequent requests for adjournments, corruption, undue influence and interference by politicians in the legal proceedings among other reasons has contributed to the accumulation of cases in turn increasing the time spent by undertrials in the prison.

The prison staff and allied workforce form the lowest level of hierarchy in the prison administration mechanism. An array of issues has paralyzed the institution of prison and its staff over the decades. While originally intended to be temporary places of detention for suspects and prisoners, the prison has become synonymous with the abode of Hades.

2. Challenges faced by Indian Prisons

Several research studies over the last five years of Indian Prisons have portrayed consistently serious challenges such as long detention periods of undertrials, pathetic living conditions, shortage of staff and inadequate training, corruption, extortion, poor social reintegration and rehabilitation programme, negligible healthcare and welfare activities, poor quality legal aid services and overcrowding.^{5, 6, 7}

One of the field studies too indicates similar issues as aforementioned: need for improvement of staff strength, requirement of improved service training, need for better infrastructural set-up, poor coordination between the police department and prison department to escort prisoners for court hearings resulting in adjournments and overcrowding.⁸ The authors' of this paper substantiate these issues through their own observations made at the Yerawada Central Jail, Pune, India through their professional engagements via the Institution's legal aid services.

Among the various challenges, the authors of this paper chose to focus on the overcrowding issue as that is one major problem that leads to several other challenges for the prison administration such as not being able to provide for better living conditions for inmates, poor healthcare and snag in facilitating legal aid services.

⁵ Utkarsh Sharma, Major Problems of Prison Administration in India, *International Journal of Legal Science and Innovation*, 2020, Vol.2, Issue 1, Pg.185-189 accessed from <https://www.ijlsi.com/wp-content/uploads/Major-Problems-of-Prison-Administration-in-India.pdf>

⁶ Dr. Priyadarshi Nagda, A brief study on Major Problems of Prisons System in India, *International Journal of Information Movement*, 2017, Vol. 2, Issue III, Pg. 156-159, accessed from http://www.ijim.in/wp-content/uploads/2017/07/Vol-2-Issue-III-156-159-paper-24-priyadarshi-nagda-MAJOR_PROBLEMS_OF_PRISONS_RELEVANT_TO_INDIA1.pdf

⁷ Dr. Kiran R. Naik, The Problems of Prisoners: An Analysis, *International Journal of Research and Analytical Reviews*, 2019, Vol. 6, Issue 2, Pg. 267-287, accessed from <https://ijrar.org/papers/IJRAR1AXP012.pdf>

⁸ Gupuneet Singh Randhawa and Dr. D J Singh, Analysis of Challenges faced by the Indian Prison System, *IOSR Journal of Humanities And Social Science*, 2015, Volume 20, Issue 11, Pg. 39-46, accessed from iosrjournals.org/iosr-jhss/papers/Vol20-issue11/Version-3/G0201133946.pdf

3. Overcrowding in Indian Prison prior to COVID-19

The authors dive deep to measure the problem of overcrowding by studying the statistics on overcrowding as well as analyse the causes for the overcrowding of prisons in India.

A. Statistics on overcrowding

The authors studied the comparative prison populations of several countries to understand the problem at hand in a better way. While comparing the Indian Prison population to that of several other countries the authors came across one of the studies published by the Prison Studies Organization⁹ dated 6th November 2018, according to which following were the prison populations of some of the countries in the world in that year:

Table 1: Prison Population of various countries in the year 2018

Country	Approx. Prison Population
India	4,20,000
United States of America	21,00,000
China	16,50,000
Russian Federation	583,000
Brazil	6,90,000
Thailand	364,000
Indonesia	249,000
Philippines	188,000
Mexico	204,000
Turkey	233,000
Iran	230,000

As seen above, India comparatively has less prison population than the countries similar in population and territory to India. However, that does not mean that India has any less crime rate or the best prison administration.

To measure the problem, it is important to look at the evidence of the problem in India. Below given table shows the overcrowding in Indian Prisons over the years. The data for the years 2004 - 2013 and 2016 is obtained from the website of UN Office of Drugs and Crime.¹⁰ Further the statistics for remaining years 2014, 2015, 2017-2019 is gathered from the statistics published by the National Crime Records Bureau (NCRB) of India.¹¹

Table 2: Overcrowding of Indian Prison over the years

Year	Total Population of Prison in the given year	Actual Capacity of the Prison in the given year	Ratio of prisoners held to prison capacity (%) [Occupancy Rate]
2004	331,391	235,012	141.0%
2005	358,368	246,497	145.4%
2006	373,271	263,911	141.4%
2007	376,396	277,304	135%
2008	384,753	297,777	129.2%
2009	376,969	307,052	122.8%
2010	368,998	320,450	115.1%

⁹ Roy Walmsley, World Prison Population List, Twelfth Edition, Institute for Criminal Policy Research, 2018, available at https://www.prisonstudies.org/research-publications?shs_term_node_tid_depth=27 and https://www.prisonstudies.org/sites/default/files/resources/downloads/wppl_12.pdf

¹⁰ UNODC, United Nations Office on Drugs and Crimes, available at <https://dataunodc.un.org/data/Prison/Overcrowding>

¹¹ National Crime Record Bureau, <https://ncrb.gov.in/en/prison-statistics-india>

2011	372,926	332,782	112.1%
2012	385,135	343,169	112.2%
2013	411,992	347,859	118.4%
2014	418,536	356,561	117.4%
2015	419,623	366,781	114.4%
2016	433,003	380,876	113.7%
2017	450,696	391,574	115.1%
2018	466,084	396,223	117.6%
2019	478,600	403,739	118.5%

From the perusal of the above data it is evident that India has been striving to resolve the situation in terms of overcrowding of prisons consistently. The overcrowding of prisons from the year 2005 till 2016 consistently went down from 145.4% to 113.7%, however once again it has started rising since 2017. India has built more facilities and made available more infrastructures to house more prisoners to ensure that there is reduced overcrowding of prisoners in jail, but there has been equally a steady increase in the number of prisoners especially the undertrial over the years and thus the problem of overcrowding persists.

The authors studied the yearly statistics on prison population made available on the website of NCRB¹² and on the website of the United Nations Office on Drugs and Crime (UNODC)¹³, and found that in comparison to convicts the undertrial prisoners' population was perniciously high and was the main reason for overcrowding in the prisons.

Table 3: Year wise number of undertrials held and the percentage against the total population of prison in India

Year	Number of Undertrials held	Percentage against the total prison population
2004	217,130	65.5
2005	237,076	66.2
2006	245,244	65.7
2007	250,727	66.6
2008	257,928	67.0
2009	250,204	66.4
2010	240,098	65.1
2011	241,200	64.7
2012	254,857	66.2
2013	278,503	67.6
2014	282,879	67.6
2015	282,076	67.2
2016	293,058	67.7
2017	308,718	68.5
2018	323,537	69.4
2019	330,487	69.1

Source: NCRB¹⁴ and UNODC¹⁵

¹² National Crime Record Bureau, <https://ncrb.gov.in/en/prison-statistics-india>

¹³ Persons held by Status, Unsented by Country, UNODC, United Nations Office on Drugs and Crimes, available at <https://dataunodc.un.org/data/prison/total%20persons%20held%20unsented>

¹⁴ National Crime Record Bureau, <https://ncrb.gov.in/en/prison-statistics-india>

¹⁵ Persons held by Status, Unsented by Country, UNODC, United Nations Office on Drugs and Crimes, available at <https://dataunodc.un.org/data/prison/total%20persons%20held%20unsented>

From the above table it is clear that the undertrial prisoner's population in India prisons has always been mostly 64% and above and reached 69.1% in the year 2019.

In the year 2019, in the Asian Continent there were only two countries with more undertrial population than India, that is Bangladesh at 81.3% and Lebanon at 91.9%. But all other countries have comparatively very less undertrial percentage compared to overall prison population than India in 2019, for example China 20.5%, Japan 12.4 %, Mongolia 25.4%, Philippines 59.2%, Thailand 11.8%, Singapore 10.5% and Saudi Arabia 20%.¹⁶ Thus, it is observed that India needs to work hard to bring down the percentage of undertrial prisoners against the total population of prisoners.

B. Causes of overcrowding during the Pre COVID-19 time

The authors have found three main causes for overcrowding through their personal visits to Yerawada Central Prison located in Pune, Maharashtra, India and through otherdoctrinal research. These three main causes are: inability to provide bail amount or security; delayed investigation and; delayed trial. These causes are further explained herein below:

a) Inability to provide bail amount or Security:

Many undertrials are languishing in jails due to their inability to provide bail amount or surety as per the procedure. Many are poor and unable to pay the bail amount in respect ofailable offences. Getting bail is considered to be a matter of right. But the reality is quite different at the ground level. Those who are somewhat educated, aware about their rights and have money come out of the prison. But the poor and disadvantaged because they do not have money, nor are educated, who did not understand the repercussions for their wrongful act are held fora crime, which at times they are not even aware is a crime. The authors have come across several such instances at Yerawada Central Prison where the undertrials were unaware of the status of the legal proceedings against them and did not have the money for bail or surety. In petty cases, the accused whether they have committed the crime in reality or not, are ready to plead guilty and just want to come out of the prison.

In some cases, the undertrials have spent such lengths of time in prison, which runs more than the actual punishment prescribed for the crime. These circumstances called for an Amendment in Section 436 in the year 2005.¹⁷ This amendment required release of poor person on personal bond. Under the bond the accused is supposed to guarantee that the accused will come before the court or other authority whenever called and also attend the trail. The bail must be furnished within 7 days which means that such undertrial must not be detained for more than 7 days.^{18,19}

b) Delayed Investigation:

One of the main reasons for overcrowding of prisons in India is delayed investigation. The authors have studied the yearly publication titled "Crime in India" published by the NCRB and gathered data on delays in investigation in cases relating to Indian Penal Code (IPC) and Special and Local Laws (SLL). The same is presented below in the form of table for clear understanding.

¹⁶ Supra at 15 and 16

¹⁷ The Code of Criminal Procedure (Amendment) Act, (2005) (Act 25 of 2005) w.e.f. 23-6-2006.

¹⁸ Explanation to the proviso to Section 436 CrPC.

¹⁹ Madhurima, "Undertrial Prisoners and The Criminal Justice System", edited by Swati Mehta, (coordinator), 2010, Prison Reforms Programme, Commonwealth Human Rights Initiative (CHRI), pp.25-32, retrieved from <http://www.humanrightsinitiative.org>.



Table 4: Delay in Investigation by Police in cases relating to IPC and SLL over the years

Year	Cases under	Number of cases pending investigation at the start of year including cases from previous years	Number of cases pending investigation at the end of the year	% of Pendency
2004	IPC	2303354	543056	23.6
	SLL	4424205	222711	5
2005	IPC	2365658	568773	24
	SLL	3426446	214899	6.3
2006	IPC	2447063	637014	26
	SLL	3439063	212390	6.2
2007	IPC	2626687	659308	25.1
	SLL	3956124	219010	5.5
2008	IPC	2752687	687123	25
	SLL	4063735	223743	5.5
2009	IPC	2808468	759665	27
	SLL	4778770	232098	4.9
2010	IPC	2985719	826631	27.7
	SLL	4757459	265775	5.6
2011	IPC	3146326	856444	27.2
	SLL	4192641	252342	6
2012	IPC	3243783	845495	26.1
	SLL	3906719	258866	6.6
2013	IPC	3494804	948888	27.2
	SLL	4251561	283012	6.7
2014	IPC	3793771	1065421	28.1
	SLL	4637402	278419	6
2015	IPC	4010195	1140800	28.4
	SLL	4646419	300416	6.5
2016	IPC	4116498	1241443	30.2
	SLL	2156376	353878	16.4
2017	IPC	4291686	1249435	29.1
	SLL	2300682	430721	18.7
2018	IPC	4384601	1239923	28.3
	SLL	2372334	406373	17.1
2019	IPC	4470678	1307738	29.3
	SLL	2337755	421242	18

The above data portrays that the percentage of pendency in investigation of cases by police relating to IPC has increased from 23.6 % in 2004 to 29.3 % in 2019, where as in the cases relating to SLL it has increased from 5% in 2004 to 18% in 2019. Thus overall the percentage of pendency has only increased over the years, though there have been some ups and downs in between the years.

In many cases it was found that there is a delay in filing charge sheet by the authorities in the court of law. This is a major drawback in the criminal justice system as due to the delay in filing charge-sheet the undertrial languishes in jail even without knowing the exact charges for which he/she is put behind bars. There is another side to this. The charge sheet cannot be filed because of the heavy workload on the police and a smaller number of staff.

If the Section 167 of Code of Criminal Procedure is implemented properly then such situations would not arise. This provision speaks about filing of charge sheet within 90 days by the concerned investigating officer in the court of law in case of offences that are more serious and punishable with higher forms of punishment such as capital punishment, imprisonment for life or imprisonment not lesser than 10 years. For other tribulations the period for filing the charge sheet is 60 days. The provision also provides that if the investigation is not completed within the given time as per law, then it is mandatory to release the accused on bail provided he/she is ready and able to satisfy the requirements of bail.

c) Delayed Trial:

In some cases, the undertrials were detained in the prison for long because there is inordinate delay in trial of the case. The authors have gathered yearly data on delay in trial by courts in cases relating to IPC and SLL from yearly publication called “Crime in India” published by the NCRB. The data gathered from several yearly publications has been presented below in the form of a table for a better data analysis.

Table 5: Delay in Trial by Courts in cases relating to IPC and SLL over the years

Year	Cases under	Number of cases for Trial including pending cases from previous years	Number of cases for which Trial is pending at the end of the Year	% of Pendency
2004	IPC	6768713	5636391	83.3
	SLL	8072165	4370955	54.1
2005	IPC	6991508	5822752	83.3
	SLL	7272251	4688745	64.5
2006	IPC	7192451	5999200	83.4
	SLL	7645056	4833933	63.2
2007	IPC	7473521	6294750	84.2
	SLL	8315394	5021849	60.4
2008	IPC	7833842	6625756	84.6
	SLL	8580257	5124513	59.7
2009	IPC	8130053	6957972	85.6
	SLL	9368118	5129103	54.8
2010	IPC	8549655	7258302	84.9
	SLL	9314925	4854308	52.1
2011	IPC	8939161	7563016	84.6
	SLL	8472922	4902942	57.9
2012	IPC	9328085	7888408	84.6
	SLL	8251289	5280087	64
2013	IPC	9781426	8296284	84.8
	SLL	8976765	5665241	63.1
2014	IPC	9930625	8457884	84.8
	SLL	9496060	5822591	61.3
2015	IPC	10502256	9013983	85.8
	SLL	10074819	6498999	64.5
2016	IPC	11107472	9709482	87.4
	SLL	7251442	5948794	82
2017	IPC	11524490	9968435	86.5
	SLL	7484564	6238504	83.4

2018	IPC	12106309	10659729	88.1
	SLL	8051021	6652238	82.6
2019	IPC	12661337	11256816	88.9
	SLL	8380425	6984534	83.3

The perusal of above data indicates that the scene in regard to the delay in trials by courts too just like delay in investigation by police is grim. The percentage of delay in trials pertaining to IPC cases has increased from 83.3 in 2004 to 88.9 in 2019. The percentage of delay in trials pertaining to cases under the SLL has increased from 54.1 in 2004 to 83.3 in 2019. The tremendous increase in the percentage of delay in cases under the SLL category of cases over the years is extremely worrisome.

Further inquiring into the ground realities of the delay in courts, the authors found that, in many instances the advocates provided by the Legal Aid Services Authority were not proactive and did not appear before the court, and sometimes the accused was not escorted from the Prison by the Police Department due to some or the other reason. Both these reasons led to adjournments, which can be a possible contributor to the delay in trials. Judges being burdened with high number of cases is also a likely cause for the delay in trial.

The law in Section 473 (6) of CrPC addresses the issue of delay in trial and states that if the trial does not begin within 60 days from the first day fixed for evidence, then the accused will be eligible for bail. However, the Court has the power to reject the bail and refuse to release the accused if the Judge provides the reasons in writing. These kind of checks and balances are important at every step but must not affect the effectiveness of the remedies.

A retired Director General of Police namely S N Tewari stated that “substandard investigation and poor collection of scientific evidence by police are the main reasons behind the cases turning weak in court. Lack of supervision by senior officers like SPs, lack of adequate number of government lawyers and shortage of judges are the other major factors for the poor conviction rate here. Police are unable to concentrate on proper investigation because of shortage of staff and extra work burden”.²⁰

4. Analysing related factors for the causes of delayed investigation and trial

In the Criminal justice system, especially when dealing with the causes of delayed investigation by Police and delayed trial by Courts, the factors such as the number of police personnel, the number of prosecutors and the number of judges matter.

a) Police Personnel and Investigation in India

The total strength of Police personnel in India for the year 2010 per 1 Lakh population was 133.²¹ The strength of investigating officers across India in the year 2010 was 166746 in comparison to the total of pending investigations 7743178 (IPC + SLL) in 2010. The latest official figures available for total actual strength of Police personnel in India is for the year 2016, which was 137 per lakh population, where the sanctioned requirement was of 181 police per lakh population, and which is nowhere close to the UN recommended strength of 222 per lakh population. However, it is not all about numbers and it is not true that where the police strength is low the investigation pendency is higher.

One of the study based on NCRB data of the year 2017 stated that “Assam and Maharashtra, despite having 80 per cent or more of their police posts filled, are still reporting 63 per cent and 41 per cent case pendency. Uttar Pradesh, despite having only 67 per cent of its police force filled, reports 19 per cent pendency, whereas Tamil Nadu, with nearly the same proportion of sanctioned

²⁰Debabrata Mohapatra, Odisha’s conviction rate worst in country: NCRB, available at <https://timesofindia.indiatimes.com/city/bhubaneswar/odishas-conviction-rate-worst-in-country-ncrb/articleshow/73199797.cms>

²¹Crime In India, 2010, National Crime Records Bureau, https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2017.5_2010.pdf

force filled, has double the pendency rate (39 per cent). Kerala and Madhya Pradesh, with nearly 80 per cent of police sanctioned strength filled, have managed to bring down case pendency to 12 per cent and 6 per cent.” Thus the police strength and investigation pendency is not inversely proportional at least in India. However, there is an inherent flaw in estimating the sanctioned strength of the police, as it expects the police to be on duty 24 x 7. This logically leads to the indication that the police must be overworked and may be ineffective.²²

The investigating police must not be the same as the police personnel performing various tasks such as maintenance of law and order, enforcing various laws in the States emergency and election-related duties. SC in the case of *Prakash Singh v. Union of India*²³ had advised such separation, but it has not been implemented properly. Investigating crime needs time, resources, skills, training and forensics knowledge and capabilities. The police personnel lack training especially in terms of securing evidence from crime scenes and do not comprehensively understand the legal aspects relating to admissibility of evidence. Also often investigations are influenced by political and extraneous considerations. To investigate police also need to have the confidence and support from the society. However, the police are often viewed by public as corrupt, inefficient, politically influenced and indifferent.²⁴

b) Prosecution and Prosecutors

Public Prosecutors are appointed by the State Governments in various cadres for prosecuting cases at different levels of courts, subordinate to the High Court of the State. In each State there is a prosecution wing which is headed by Director of Prosecutions. However, the practice in each State is not uniform and thus such head of the prosecution wing could be a senior police officer or a judicial officer of the level of District and Sessions Judge. The Directorate appoints Assistant Public Prosecutors for the Magisterial Courts in districts. The prosecution of cases in Magisterial Courts is the responsibility of the Director of Prosecutions. At the level of Sessions Court, there are public prosecutors, who are appointed by the State Government upon receiving a panel of lawyers recommended by District Magistrate in consultation with the Sessions Judge. For the appointment of public prosecutors in the High Court, the State Government receives the recommendations from the High Court. However, the Attorney General of the State is a constitutional appointee and is appointed by the Governor of the State under Article 165 of the Constitution of India.

There is no single source where the number of prosecutors sanctioned strength and actual appointments can be found. Thus the authors try to present some of the glimpses through their research. One of the recent news reports that there is a constant and severe shortage of public prosecutors in Karnataka, where there is 40 percent vacancy in the public prosecution wing. This has serious repercussions on the pending criminal trials.²⁵ Such shortages of public prosecutors have been reported from several places in India over the last few years.²⁶ However, it must be noted that it is not only the shortage in number of public prosecutors that impacts criminal justice system, but there are several other challenges in relation to the proper functioning of the public prosecution. There are issues with the mode of appointment, accountability of prosecutors, extreme workload, lack of

²² Priya Vedavalli and Tvesha Sippy, 2019, Don't just blame India's Courts it's the police that can't solve criminal cases in time, *The Print*, <https://theprint.in/opinion/dont-just-blame-indias-courts-its-the-police-that-cant-solve-criminal-cases-in-time/337951/>

²³ (2006) 8 SCC 1

²⁴ Anviti Chaturvedi, 2017, Police Reforms in India, Analytical Reports, PRSINDIA, <https://prsindia.org/policy/analytical-reports/police-reforms-india>

²⁵ Deccan Herald News, Alarming shortage of public prosecutors, 4th October 2019, <https://www.deccanherald.com/opinion/second-edit/alarming-shortage-of-public-prosecutors-766357.html>

²⁶ Businessworld, HC issues notice to Delhi govt on plea seeking appointment of 73 posts of Additional Public Prosecutors, 17th Feb 2021, <http://www.businessworld.in/article/HC-issues-notice-to-Delhi-govt-on-plea-seeking-appointment-of-73-posts-of-Additional-Public-Prosecutors/17-02-2021-378715/>; Tribune India, Shortage of public prosecutors, delay in lab reports impediments: Judges, Chandigarh, 14th May 2018, <https://www.tribuneindia.com/news/archive/chandigarh/shortage-of-public-prosecutors-delay-in-lab-reports-impediments-judges-588961>

infrastructure resources and incentives that are other factors impacting the speedier trial of criminal cases in courts in India.²⁷

Recently, the Central Government's MHA has brought in place a project called e-Prosecution with the help of National Informatics Centre, wherein all States are requested to provide basic information about their Prosecution Departments on this portal called e-prosecution.²⁸ This project requires the States and Union Territories (UTs) to provide link to their Department of Prosecution Website. However, the authors found that in July 2020 only four States (Chhattisgarh, Madhya Pradesh, Delhi and Rajasthan) had put out some information, and exactly after one year that is as on 10th July 2021, only 13 States and 2 UTs have provided a link on the e-prosecution portal. Most of these links open into the home page of Law Department of the States and UTs, where no or very little information on the prosecution department is available. Out of the 15 links available, the authors found that the best website link was that of Madhya Pradesh and other states like Odisha, Rajasthan and Uttar Pradesh provided good information. The authors rate the State of Madhya Pradesh as best as it seems to have taken excellent steps to improve the performance of the prosecution department and it provides a good model for the remaining States to follow in terms of maintaining data, transparency and also on the qualitative front providing recognition to prosecutors through their ranking as star performers which definitely motivates the prosecutors to do better in their sphere. Further one more good effort of this E-prosecution project visible on the website is under the section titled "Prosecutor's Profile", which lists the names and contact details (except phone numbers) of the various public prosecutors in each district and taluka of India.

c) Judges

As far as the situation relating to number of judges across India is concerned, one of the news article in September 2018, stated that "India has 19 judges per 10 lakh people on an average, according to a Law Ministry data which also states that the judiciary faces a combined shortage of over 6,000 judges, including over 5,000 in the lower courts itself."²⁹ To find out if there has been any improvement the authors referred to the Annual report of the year 2019-2020 Ministry of Law and Justice, Government of India, published online by the Department of Justice.³⁰ The authors gathered the following data from the said Annual report:

Table 6: Vacancies in Indian Judiciary

Type of Court/s	Number of sanctioned posts of Judges	Number of Judges currently working and filled	Number of vacancies	Information as on date
Supreme Court of India	34	33	1	31.12.2019
Various High Courts in India	1079	678	401	31.12.2019
Various Subordinate Courts in India	23597	18237	5360	20.12.2019
Total	24710	18948	5762	

²⁷ Anupama Sharma, Public Prosecutors, Victims and the expectation gap: An analysis of the Indian Jurisdiction, Socio Legal Review, Manupatra, 2017, Vol. 13, Pg. 87-107, <http://docs.manupatra.in/newsline/articles/Upload/116BE5E2-14EF-4753-BD49-3E308403D5E7.pdf>

²⁸ E-Prosecution Portal of Govt. of India, <https://eprosecution.gov.in/eprosecution/>

²⁹ Press Trust of India, New Delhi, 24th September 2018, published through The Hindu Business Line, available at <https://www.thehindubusinessline.com/news/india-has-19-judges-per-10-lakh-people-data/article25030009.ece>

³⁰ Annual Report 2019-2020, Ministry of Law and Justice, Government of India, accessed from <https://doj.gov.in/reports-and-documents/annual-report-0>

While the situation in terms of filling in the vacancies at Supreme Court has considerably improved, there has been not much improvement in filling in the vacancies in the High Courts and Subordinate Courts. Thus the combined shortage of over 6000 judges in India from September 2018 has only gone down only to 5762 by the end of December 2019. The authors are hopeful that the vacancies in the judiciary will be filled in at a much faster rate given the need to deal with huge backlog of cases and also in the interest of justice not being delayed and denied.

5. Efforts of the Central Government in addressing overcrowding in Prisons

Prison is a state subject which is listed in Entry 4 of List II of seventh schedule of the constitution, hence prison administration and management of prisons falls within the purview of State Government. The Central Government issues to the State Government from time-to-time recommendations but it is within the capacity of the State governments to take necessary measures in the matter of prison administration and prison reforms.

MHA of the Central Government has taken several legislative and policy measures to deal with the issue of overcrowding in prisons. Sec 436-A has been inserted by amendment in Code of Criminal Procedure (CrPC) in order for a release of under-trial prisoner on bail if such prisoner has undergone detention for a period extending upto one half of maximum period of imprisonment specified for an offence under any law. Another step by MHA has been that of developing an E-prison software in order to keep an track of under-trial prisoners who are charged with offences, date of completion of half maximum sentence of offences and eligible for release on bail under Section 436 A of CrPc. E-prison portal enables access to the data of inmates by the State authorities in quick and easy mode and it also helps under-trial review committee to identify inmates whose cases are due for consideration.

MHA has also circulated Standard operating procedure (SOP) for the Under Trial Review Committees (UTRC) on 18th February 2019. This SOP provides step by step guidelines to all stake holders. All States and UTs have been urged to take necessary action according to the SOP.

Model Prison Manual 2016 has been developed by Bureau of Police Research and Development, Govt. of India³¹ for the benefit of prison administration of all States and UTs. However, the States and UTs have to adopt this New Manual over their previous versions. This 2016 Manual provides for detailed guidelines relating to legal aid facilities for the under-trial prisoners. The States are required to make concerted efforts in conjunction with the State Legal Services Authority and aid in resolving the overcrowding issue. The Government of India has also requested the State administration to make use of plea bargaining available under Section 265-A of CrPc, by which pre-trial negotiation could be initiated and the accused if pleads guilty would receive certain concession in sentence in exchange.

6. COVID-19 pandemic and the issue of overcrowding in Indian Prisons

As mentioned in the introduction of this paper, Supreme Court of India took suo-motu recognition of the issue of overcrowding in prisons and ordered constitution of HPC to look into recommending release of prisoners based on certain criteria.

The HPC recommended prisoners release on the basis of seriousness of offence, danger to the society if released and the likes, but did not consider their vulnerability to get infected. It is also said that the trial courts which heard the bail applications of the prisoners or the undertrials, which were recommended by the HPC, did not release the prisoners or the undertrials only on the basis of recommendations of the HPC but applied the same criteria for release that is used during the normal times.³² Study by the Commonwealth Human Rights Initiative, among other things reported State and UT wise numbers of Prisoners and prison staff who got infected with COVID-19 during the first wave of pandemic, the sum of which stands at 18097 out of which a total of 17 deaths are known. The highest numbers are seen in the States such of Uttar Pradesh at 7000, followed by Maharashtra at 2752 and Assam at 2496. Another table in the same study also provides the estimated and actual numbers of releases across Indian States and UTs during the first wave. While the reports estimated 11000

³¹Model Prison Manual, 2016, Bureau of Police Research and Development, Ministry of Home Affairs, <https://www.mha.gov.in/sites/default/files/PrisonManual2016.pdf>

³²Raghavan, V. Prisons and the pandemic: the panopticon plays out. *J. Soc. Econ. Dev.* (2020).

prisoners release in Uttar Pradesh, the actual numbers were more, that is 12055. In States like Maharashtra and Assam the actual number of prisoners released was much lower than estimated in reports. However, the released prisoners were called back to Prisons in Feb-March 2021.³³

Soon in April 2021 the second wave of COVID-19 pandemic gripped the entire country and once again Supreme Court stepped in and passed an order dated 7th May 2021 in its *Suo Motu* writ petition.³⁴ Through this order the Supreme Court directed release of all those prisoners who were released in the previous year upon the recommendations of the HPC to save valuable time. Further, the HPC were also expected to consider fresh cases for release. The court also encouraged transparency in regard to the prison occupancy and the decisions of the HPCs, and asked the States to follow such best practices that were already being practiced by some. The Court directed that all the decisions of the High Powered Committees (HPCs) must be published on the websites of State Legal Services Authorities/ State Governments/ High Courts.

After the aforesaid order of the Supreme Court in May 2021, the authors of this paper conducted a limited check towards the end of July 2021 on the websites of the State legal services authorities or other Government websites for only those States which were discussed earlier in the paper to have high number of COVID-19 infections. The findings have been discussed in subsequent paragraphs.

Assam State Legal Services Authority updated the Minutes of only four of its Meetings of the HPC.³⁵ The Assam Prison population published fortnightly as on 15-06-2021 showed occupation by 9885 people as against the capacity of 8938. The occupancy on 31st May 2021 was 9165 and 15th May 2021 was 8751. Thus, again showing the tendency of increase in the prison population as the curve of the second wave of COVID-19 has slumped down.

The Maharashtra State Legal Services Authority website was non-functional probably due to technical issues and thus the main State Government Website was referred for the HPC's decisions. It is interesting to quote paragraph 9 from the minutes of the HPC meeting dated 11th May 2021 which is evident of the precarious situation in Maharashtra: "From the data placed before us it is seen that the prison population was reduced from 36,061 as on 31.03.2020 to 26,379 as on 31.07.2020, due to temporary release of eligible prisoners pursuant to the decisions of the High-Power Committee. After 31.07.2020, however this figure of 26,379 steadily increased each month and as on 30.04.2021 the prison population has reached 34,224. The data also shows that as on 11.05.2021 the total prison population is 34,733 out of which 29,186 are under trial-prisoners and 5,547 are convicted prisoners". Further the situation is such that out of 16147 bail applications which were filed on the recommendations of HPC of Maharashtra, only 214 were allowed, 3182 were rejected and remaining are still pending in different courts. This clearly shows the reluctance of the lower judiciary to act on the recommendations of the HPC, but the reasons need to be investigated. However, the HPC of Maharashtra recommended that the huge number of bail applications that were pending before various courts must be decided by 20th May 2021.³⁶ The monthly statistics report available at the Maharashtra Prison Department website³⁷ indicates that the prison population reduced to some extent from 34749 in end of April 2021 to 33428 by June end. The reduction is dismal given the fact that the actual capacity of the prisons is to hold 24722 prisoners. Thus overcrowding is still high in the prisons of Maharashtra.

The minutes of the HPC of Uttar Pradesh were found on the Uttar Pradesh State Legal Services Authority website³⁸ which directed once again the release of the prisoners that were released in the previous year upon the suggestions of HPC. The prison occupancy is very regularly published on the

³³ Commonwealth Human Rights Initiative, State/UT wise prison's response to the coronavirus pandemic in India, <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>

³⁴ In re: Contagion of COVID 19 Virus in Prisons, *Suo Motu Writ Petition (C) No. 1/ 2020*, 7th May 2021, https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_31_301_27999_Order_07-May-2021.pdf

³⁵ Assam State Legal Services Authority, Govt. of Assam, <https://aslsa.assam.gov.in/>

³⁶ Maharashtra High Powered Committee Minutes of Meeting of 7th May and 11th May 2021, https://maharashtra.gov.in/pdf/Minutes_of_Meetings_of_07_05_2021_and_11_05_2021_4.pdf

³⁷ Maharashtra Prison Department, <http://mahaprison.gov.in/1080/Prison-Statistics>

³⁸ Uttar Pradesh State Legal Services Authority, <http://upslsa.up.nic.in/minutes%20dated%2010.5.2021.pdf>

Uttar Pradesh prison website. As on 30th June 2021, the prison occupancy in Uttar Pradesh was found to be 109619 against the actual capacity of 60805,³⁹ thus hinting towards overcrowding in the prisons of Uttar Pradesh, this means that the HPC will have to further strive to resolve the problem of overcrowding by making more recommendations for release on bail or parole.

Overall it can be said that with all good intentions of the Supreme Court in taking Suo Motu cognizance of overcrowding as well as the efforts of the HPCs across various States and UTs in India, the ground situation has scarcely changed.

Conclusion and suggestions

During the pre-covid times, it is often found that the under-trial prisoners who have committed petty offences are lying in the prison due to inadequacy of police staff to escort them to the court of law. Many under-trials don't have adequate legal representation due to financial constraints. In such cases quality legal aid and pro-bono services must be extended to such under-trial prisoners, meaning efforts must be made to provide quality and experienced lawyers through the legal aid services. It is a fact that due to the large number of prisoners and inadequate police strength, it becomes difficult for the police personnel to escort prisoners for regular hearings of criminal trials. The inadequacy in number of public prosecutor also leads to delay in trials, thus stretching the duration of housing the undertrials in prison.

Further even during the covid-19 pandemic despite all its efforts the Supreme Court of India and the HPCs of the States and UTs have been unable to reduce the overcrowding in Indian Prisons to a large extent. The reluctance of the lower judiciary in following the recommendations of the HPCs in releasing the prisoners on bail is evident at least in the case of State of Maharashtra. The numbers in the case of Uttar Pradesh and Assam also indicate the truth of existence of overcrowding despite the pandemic.

In light of these findings and conclusion, the authors humbly have following suggestions to make:

1. Video conferencing facilities to be made available in all prisons by the States to enable the undertrials to witness the trial and be present before the court virtually if not physically possible
2. Video conferencing to be available at all levels of judiciary including the most subordinate court which hears any criminal applications or conducts criminal trials, to be able to virtually connect with the appropriate prison where the accused is being detained.

The above two recommendations, if implemented across India, will save the escort time and efforts of the police and administrative costs. Also, there is more safety in producing the accused over the video conferencing then producing him in the court. The lawyer can be allowed to appear either from the Prison standing beside the accused for better communication between the two or the advocate could appear in person in the court without the accused. These small changes can make the bureaucratic processes less cumbersome and aid in the deliver justice expeditiously.

3. The recruitment of public prosecutors and judges in subordinate courts needs to improve with some form of accountability mechanism to be brought in place for failure of such recruitment.
4. For reducing the overcrowding in prisons during the pandemic, at least for those whose names have been recommended by the HPC, bail must be granted without requirements of security deposits and on imposition of certain conditions. Such conditions could include, (i) that the undertrial is required to call up the appropriate police station regularly where FIR was registered, at least once a week to inform about the whereabouts and health, (ii) that the undertrial shall not leave the local jurisdiction of the police station where his residence is located, (iii) that the undertrial shall appear before the appropriate police

³⁹ Prisons Administration and Reform Services, Govt. of Uttar Pradesh, <http://upprison.gov.in/article/en/Population-of-Prisoners>

station and appropriate court when personnel attendance is required by respective police station or court.

The authors of this paper sincerely wish that the various stakeholders involved in the criminal justice administration in India take the recommended steps in the interest of justice and reducing gradually the overcrowding in the Indian Prisons.

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