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# A RESEARCH ANALYSIS ON THE OVERCROWDING OF PRISONS

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## ABSTRACT

Our prisons are flooded with undertrials who find it difficult to exist in inhumane and congested conditions. Due to overcrowding, prisoners easily become vulnerable to contracting serious infections and diseases. Overcrowding takes place due to issues such as repeated denial of bail even when prisoners do not have a direct link to the commission of the offense. For instance, case of political prisoners who are booked for anti-terrorism cases and have participated in riots have to undergo long periods of incarceration and denied bail repeatedly even when no actual proof exists regarding the commission of offenses.<sup>1</sup>Cases, where political prisoners are still languishing in jails, are the Bhima Koregoan Case, Elighar Parishad case, and the Bombay Blasts Case (1993), where under trials are suffering from serious ailments and abysmal jail conditions. The basic reasons behind overcrowding of prisons are shortage of accommodation, an increase of crime rate, poverty, low-level of literacy, lack of proper education, poor infrastructure, lack of legal aid, and rise in corruption.<sup>2</sup> The other problems concerning undertrials are unnatural deaths, gross inadequacy of staff, and undertrained or inefficient staff. There is a clear violation of Article 14 and Article 21 of the Constitution of India. This paper discusses the landmark Supreme Court judgments that have addressed the issues of undertrial prisoners and overcrowding and the guidelines laid down in these cases. This paper further discusses the various solutions that can be adopted to reduce the congestion rate of undertrial prisoners in prison cells such as free legal aid, release on personal bond, plea bargaining, compounding of offenses, pardon, furlough, alternative forms of imprisonment, jail development and rehabilitation programs.

**Keywords:** Undertrials, Overcrowding of prisoners, Speedy trial, Alternative forms of imprisonment.

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<sup>1</sup> *Protecting Prisoners: On Overcrowding of prisons*, THE HINDU, (May 13th, 01:31 IST), <https://www.thehindu.com/opinion/editorial/protecting-prisoners-the-hindu-editorial-on-overcrowding-of-prisons/article34545382.ece>

<sup>2</sup> Kavish Gupta, *Critical Analysis of Overcrowding in Prisons and Its Remedial Measures*, *LatestLaws*, (18<sup>th</sup> May 2018), <https://www.latestlaws.com/articles/critical-analysis-of-overcrowding-in-prisons-and-its-remedial-measures-by-kavisha-gupta/>

## Supreme Court Judgments on Overcrowding

The Supreme Court has also laid down instructions in the **Hussainara Khatoon case** regarding the treatment of undertrial prisoners. The Supreme Court *interpreted 'speedy trial' to be ensured as a fundamental right within the scope of Article 21 of the Indian Constitution*. It also emphasized the granting of free legal aid to indigent prisoners who suffered in jails for many years unable to afford proper legal support. The Supreme Court further underlined the conditions upon which the accused is to be released on **personal bond** to prevent him from fleeing such as the length of his residence in the community, employment status, family and relationships, his reputation, character, and mental condition, the record of convictions and record of court appearances, the identity of responsible members of the community vouching for his reliability, nature of the offense committed and any other factor.<sup>3</sup>

The Supreme Court has recently passed a **judgment dated March 23<sup>rd</sup>, 2020** to control the spread of the Corona Virus pandemic among prisoners. The 3-judge bench comprising of Chief Justice SA Bobde, L.Nageswara Rao, and Suryakant passed instructions directing each State/UT *to formulate a High Powered Committee to segregate which class of prisoners are to be released on bail and which class required to be released on parole*.<sup>4</sup> The main members of the High-Powered Committee are :

1. Chairman of the State Legal Services Committee
2. Principal Secretary (Home/Prison)
3. Director-General of Prisons<sup>5</sup>

The High-Powered Committee was given the discretion by the Supreme Court to determine the class of prisoners which are to be released based on relevant characteristics such as the *nature of the offense, the number of years to which he/she has been sentenced, and the severity of the offense, number of years to which he/she is charged with, facing of trial or any other factor* which the Committee was to be ascertained as proper.<sup>6</sup>

The Supreme Court also passed measures regarding a **response plan** to be created in consultation with medical professionals to be ever-ready and to tackle urgent situations. The

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<sup>3</sup> Hussainara Khatoon and Ors. V. Home Secretary, State of Bihar, 1979 AIR 1369

<sup>4</sup> In Re: Contagion of COVID-19 In Prisons, 2020 SCC OnLine SC 320

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Court took into account the ‘Interim Guidance on scaling-up COVID-19 outbreak in Readiness and Response operation in camps and camp-like settings published by *the Inter-Agency Standing Committee of the UN on 17<sup>th</sup> March 2020*. These camps have been jointly developed by the International Federation of Red Cross (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR), and the World Health Organisation (WHO).<sup>7</sup>

The Supreme Court also pressed for **video conferencing of prisoners** and *discontinued the physical appearances made by the prisoners*. It called for **maximum social distancing** to be ensured among under trials. It ordered that transfer of prisoners from one prison to another prison must not be permitted for routine reasons except in circumstances where it is done to reduce congestion, to provide medical assistance to ill prisoners, and to ensure medical assistance.<sup>8</sup>

In **Gautam Navalkha v. National Investigation Agency**, the Supreme Court highlighted the problem of overcrowding of prisons and promoted house arrest as a solution to this problem. The Apex Court held while granting house arrest, the Court has to look into conditions such as the health and age of the accused person. The Court concluded by dismissing the default bail application of Gautam Navlakha as it did not consider house arrest to fall within the purview of custody under S.167 CrPC.<sup>9</sup>

The Supreme Court also appointed Justice Amitava Roy’s (Retd.) Committee to lay down the following directions concerning prison reforms:

- a. A Speedy trial must be conducted to overcome the problem of overcrowding of prisons.
- b. The lawyer to prisoner ratio must be such that there must be one lawyer appointed to address 30 prisoners.
- c. Special and fast-track courts must be set up to deal with petty offenses that are pending for more than 5 years.
- d. Prisoners convicted for petty offences who are unable to furnish sureties must be released by taking a Personal Recognizance (PR) bond.
- e. The Courts must avoid giving adjournments in cases where witnesses are present and the concept of plea bargaining must be promoted.

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<sup>7</sup> *Id.*

<sup>8</sup> *Supra* at 7

<sup>9</sup> *Gautam Navlakha v. National Investigation Agency*, 2021 SCC OnLine SC 382

- f. Provision of free legal aid and education must be given to the prisoners. Further, they must be able to develop additional vocational skills so that they become employable after serving their sentence.
- g. Preference must be given by Courts for awarding sentences based on fines and using admonition instead of sending prisoners to jails. Courts must further try to release offenders on a probationary basis pre-trial or post-trial in deserving cases.<sup>10</sup>

### **Solutions that can be adopted**

Various strategies that can be adopted for reducing the overcrowding of prisons:

- a. Introduction of **fair social policies** so that those specific policies are implemented in such a way that certain techniques that can be developed that reduce congestion rates in prisons.<sup>11</sup>
- b. Judges should be given a far **wider discretion** when it comes to sentencing and can deviate from the usual norm of granting a minimum sentence.<sup>12</sup>
- c. **General assessments and public opinion** must be taken when it comes to making policies concerning the treatment of prisoners and the commission of crimes.<sup>13</sup>
- d. Prisoners must be provided a framework to take a year off and participate in **rehabilitation programs**.<sup>14</sup>
- e. **Evidence-based policies** must be incorporated to respond to individual country needs. The profile of detainees, a pattern of pre-trial confinement, professional staff readiness to take care of detainees and prisons, enhancement of social reintegration prospects, and building of emotionally supportive networks are to be taken into consideration to decongest prisons.<sup>15</sup>
- f. To ensure that there is a **strong political will** that plays a major role in decreasing congestion in prison systems. A strong political will plays an important role in bringing about the necessary changes in the existing laws to bring about the desired changes in the de-congestion of prisons.<sup>16</sup>

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<sup>10</sup> In Re: Inhuman Conditions in 1382 Prisons, (2018) 16 SCC 636

<sup>11</sup> *Supra* at 2

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

- g. **Alternative forms of imprisonment** should be encouraged such as house arrest or house capture instead of detainment in jail as this would enable prisoners to be monitored consistently through telecommunication or other methods of innovation.<sup>17</sup>
- h. Jail authorities must be granted the discretion to **implement jail development programs** so that prisoners or accused can be housed in protected and altruistic conditions.<sup>18</sup>
- i. There must be spread of awareness regarding S.436 A of CrPC (the maximum sentence that can be awarded to undertrials) as well as other provisions of the Constitution such as Article 39 A (provision of free legal aid) and Article 22 (Preventive Detention) of the Constitution to the accused and their families.<sup>19</sup>
- j. Many countries all over the world such as the U.S.A and the U.K are supportive of restorative justice methods such as **out-of-court settlements, plea bargaining, and offender mediation**. This practice must also be encouraged in India so that prisoners are not unnecessarily incarcerated for a large number of years. India has already formed the Lok Adalat system where many fast-track courts are functioning but we need more such courts to be established to look into matters of undertrials.<sup>20</sup>
- k. Reformatory tools such as **probation and parole** need to be encouraged. Probation means that a convict instead of being kept in prison is kept under the supervision of a probationary officer. If the convict, modulates his behaviour and conduct based on the conditions imposed upon him by the Court, then upon the discretion of the Court, taking into consideration his/her good behaviour will release or acquit him/her. Parole is the last stage of correctional reform wherein a prisoner is kept under the supervision of a correctional authority. The correctional authority has to determine whether he can be released to live freely in society without any sort of supervision. Probation is the first step towards reformatory justice and parole comes at the last stage.<sup>21</sup>
- l. **Furlough** is another reformatory tool that grants remission of a sentence. It helps prisoners or undertrials retain their basic familial ties. It should be encouraged to reduce the negative effects of prison life.<sup>22</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Vidushi Gupta, *The State of Undertrial Incarceration in India*, CCLSNLUJ (2020),

<https://criminallawstudiesnluj.wordpress.com/2020/10/25/the-state-of-undertrial-incarceration-in-india/>

<sup>20</sup> Sarfaraz Ahmed Khan, *Restorative Justice Under the Criminal Justice System In India: With Special Reference To Plea Bargaining And Compounding Measures*, WBNUJS (2015),

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2566126](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2566126)

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

- m. **Pardon** is an act of mercy whereby the prisoner is absolved from a penalty imposed upon him. Granting of a pardon can be absolute, or conditional. **Article 72 and 161** of the Indian Constitution provide the President of India and the Governor, respectively to grant pardon, reprieve or commute the sentence of any convict. There must be pardon of undertrials who are being unfairly detained and when there is no evidence of any offense being committed by them.<sup>23</sup>

Despite the above recommendations passed in various Supreme Court judgments and the appointment of a High-Powered Committee to look into the problem of overcrowding of prisons and suggest prison reforms, there are still many instances where prisoners are languishing in jails without even having access to basic amenities such as health, hygiene, legal aid, education, and proper infrastructure. Based on the Prison Statistics India Report published in 2019, the occupancy rates of prisoners in 2019 hiked up to 118.5%.<sup>24</sup> This clearly shows the plight of the prisoners in the country. The above-mentioned solutions/directions of the Supreme Court can go a long way in decreasing the rate of overcrowding of undertrials in prisons and in improving the overall standards of prisons but requires proper implementation and a higher budget proposed by the Central government as well as the State government.

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<sup>23</sup> *Supra* at 20

<sup>24</sup> Prison Statistics, 2019, <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>