

## ADDRESSING THE CRISIS OF PRISON OVERCROWDING

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### Abstract

Indian jails face a plethora of issues ranging from overcrowding to a lack of basic amenities. Despite prisoners and under-trials being humans, there are too less advocates to fight for their fair treatment in the justice system. It was only recently that people have started paying attention to it after it was addressed by our President Draupadi Murmu and the Chief Justice of India D Y Chandrachud and. President Murmu shared with the citizens of India glimpses of what she observed on her visits to prisons across India. She noted that most inmates were awaiting trial and were imprisoned for long periods for minor crimes and, due to their family's weak financial situation, couldn't be bailed out.<sup>1</sup> These people, called 'under-trials', are forced to spend extended stretches of time in custody before appearing in front of a judge. Experts have narrowed down the causes to the slow justice system, insufficient legal and police behaviour. This research paper aims to shed light on how big of an issue prison overcrowding actually is, given the meagre attention it gets. It aims to inform and educate the readers regarding what causes it and how a multitude of people are affected by it. We delve into the underlying factors that contribute to prison overcrowding and what reforms the Indian government has come up with to curb this issue. The paper concludes with policy recommendations that can be adopted to better the current situation in prisons and advocates for amendments and addition of laws in statutes that protect the rights of inmates.

**Keywords:** prison overcrowding, under-trials, inmates, slow, rights.

GRASP - EDUCATE - EVOLVE

<sup>1</sup> <https://www.thehindu.com/opinion/op-ed/towards-reducing-indias-prison-footprint/article66329746.ece>

## I. Introduction

If we refer to the Prison Statistics India 2021, a report drawn by India's Ministry of Home Affairs, we can deduce that even though there was a slight decrease in the number of convicts that are imprisoned, there has been nearly 50% increase in under-trial prisoners. 3 out of 4 prisoners are reported to be undergoing, waiting or currently on trial, which narrows down the problem of overcrowding to one major issue. In 2021, 95% of the released undertrials were out on bail while a measly 1.6% was released via acquittal. This sheds further light on the tediously slow pace at which courts draw a conclusion in regards to a case and how it is not up to pace with the growing increase in cases every year.

The consequences of overcrowding affect not only inmates but also the staff. It has shown time and again to lead to increased bouts of violence among prisoners, threaten their mental and physical health due to shortage of staff and violation of basic human rights. A comprehensive approach is required to understand, deal with and overcome this issue. By analysing what are the causes for overcrowding in prisons and why they occur, it will be easier to devise a plan to reduce it. Criminal justice reform has been a topic of heated discussion for many years now but it is high time that the discussions are concerned with the incarcerated and those waiting for a verdict. This paper explores the various causes and consequences of prison overcrowding among other issues and in due course suggests alternative approaches through which the problem can be tackled.

## II. Issues in the Indian Prison System<sup>2</sup>

Safe to say, the prison system in India is riddled with many issues, not prison overcrowding alone. Some of the most evident issues are:

<sup>2</sup> <https://www.nextias.com/editorial-analysis/28-11-2022/conditions-of-prisons-in-india#:~:text=Over%20Crowding%3A%20Congestion%20in%20jails,leads%20to%20unsatisfactory%20living%20conditions.>

- Overcrowding

Prison overcrowding is one of the, if not the most prominent issues faced in the criminal reform system, which leads to poorly maintained jails and correctional facilities. 118 countries around the world are faced with this issue, almost a dozen of them holding inmates double to the occupancy available. The National Crime Record Bureau's most recent statistics show that 67% of all prisoners are still undergoing trial, and that the prisons in India are overcrowded by 129%.<sup>3</sup> This situation not only exposes the convicts to an unhealthy environment but also promotes further deterioration of their mental, psychological and physical health.

- Unhealthy living conditions

If we overlook the part where there is widespread flash among police authorities to make arrests and the tedious long judicial process in our country, what makes it worse is the fact that many prisons, if not most, do not follow the Model Prison Manual issued by the Ministry of Home Affairs. For example, in Maharashtra, the ground space allocated to each prisoner is a measly 1.19 square metres, opposed to the 3.71 square metre area recommended in the manual.

For all the steadfast increase in inmate population, there has been no visible addition to space or expenditure devoted to them. As a result of this, inmates are forced to share the already scarce resources among more people and in smaller portions every day. This can be observed especially in allocation, usage and enjoyment of food, medical attention, hygiene, education and training. The Supreme Court has addressed this issue multiple times over the years but hasn't made any remarkable progress yet.<sup>4</sup>

- Shortage of staff and inadequate training

Due to lack of mental health professionals within the prison, there is an evident lack of care

<sup>3</sup> [https://www.mha.gov.in/sites/default/files/2022-09/OvercrowdingPrison09052011%5B1%5D\\_0.pdf](https://www.mha.gov.in/sites/default/files/2022-09/OvercrowdingPrison09052011%5B1%5D_0.pdf)

<sup>4</sup> <https://thewire.in/rights/indian-prisons-congested-overcrowded>

towards the psychological health of inmates, as reflected by the suicide rates that are hiking every year. Even though the Prison Act of 1900 stated that there must be a welfare and law officer in every jail in the country, these positions are found empty in almost all jails across the nation. Only six states and one union territory in India have psychologists to offer help and support to prisoners.<sup>5</sup>

- Unequal treatment and corruption

While one side of this coin is indiscriminate arrests, the other side is the differential treatment guards and staffs show towards the incarcerated. Those with connections and power in the outside world are provided with the most comfortable rooms, Michelin-star level food, etc. as if it was a hotel and not a prison. This further stretches the gap between the haves and have-nots, where the poor are actually suffering everyday while the ones higher up are enjoying their lives.

- Improper planning of prison programs

In 2021, the number of jails in India increased by 1%, which is a 2.8% increase in capacity of jails across the country. This was not in proportion to the increase in inmate population, as there was a 13.4% increase in prisoners lodged into jails. Rajasthan, Tamil Nadu and Madhya Pradesh have the most prisons but the states with the most inmates are Uttar Pradesh, Bihar and Madhya Pradesh.<sup>6</sup> Any attempts made by the Indian government to improve the prison system did not produce any noteworthy or noticeably beneficial impact, which shows slight negligence and the lack of proficient planning in this area.

- Poor health care

There is an evident issue of not enough medical workers to look after the needs of all the prisoners in a facility. Medical staff includes pharmacists, attendants, resident medical officers and lab technicians among others. This

leads to delays in attending to inmates and can cause serious injury. Goa has the highest vacancy of medical staff, at a whopping 84.6%, followed by Karnataka at 67.1% and Ladakh at 66.7%. It is to be noted however that Goa has 2 staff for over 500 inmates while Karnataka only has one for 5,969 inmates. There is an average of 34% vacancy in medical staff across the nation and Mizoram has reported to have no staff at all. This poses a tremendous threat to the safety and health of inmates.<sup>7</sup>

- Abuse and violence against those in police custody.

Professor Pratiksha Baxi of Jawaharlal Nehru University has even found out through her study that deaths occurring under custody have increased by 7% in 2020. This study also uncovered that ‘unnatural incidents’, a humorous attempt at covering up murders and suicides occurring in the jail, increased by 18%. Courts across the country have heard numerous pleas from prisoners regarding the alarming situation in jails where inmates were denied the right to call and speak with their family or let them visit, eat home-cooked food, read letters from their family members and even get medical treatment done.

Activists have uncovered that there is a gender aspect to this as well, that is often overlooked.<sup>8</sup>

### III. Causes of Prison Overcrowding

Just like any other issue, prison overcrowding also has causes that are more impactful than others. Among these, the case of under-trials is the most bothersome. An under-trial, as the name suggests, is someone who is currently in custody and awaiting trial.

Researchers say that an unprecedented increase in the number of under-trials due to:<sup>9</sup>

<sup>5</sup> <https://www.drishtias.com/daily-updates/daily-news-analysis/overcrowding-of-prison>

<sup>6</sup> [https://ncrb.gov.in/sites/default/files/PSI-2021/Executive\\_ncrb\\_Summary-2021.pdf](https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-2021.pdf)

<sup>7</sup> <https://www.drishtias.com/daily-updates/daily-news-editorials/state-of-prisons-in-india>

<sup>8</sup> <https://www.dw.com/en/why-are-indias-jails-so-overcrowded/a-61063696>

<sup>9</sup> <https://img1.wsimg.com/blobby/go/9539ecd5-ca62-4cce-aae2-19759ee2b092/Problems%20Faced%20by%20UT%20-%20Hitaishi%20Tulsian.pdf>

- Delay in trials and judicial decisions

If we refer to the Prison Statistics India 2021, a report drawn by India's Ministry of Home Affairs, we can deduce that even though there was a slight decrease in the number of convicts that are imprisoned, there has been nearly 50% increase in under-trial prisoners. 3 out of 4 prisoners are reported to be undergoing, waiting or currently on trial, which narrows down the problem of overcrowding to one issue. In 2021, 95% of the released undertrials were out on bail while a measly 1.6% was released via acquittal. This sheds further light on the tediously slow pace at which courts draw a conclusion in regards to a case and how it is not up to pace with the growing increase in cases every year.<sup>10</sup> **Vakil Prasad Singh v State of Bihar (2009)** – It was settled in this case that under Article 21 of the Indian Constitution, everyone undergoing a criminal trial or persecution has the right to enjoy a speedy trial. **Babu Singh v State of UP (1978)** was a similar case where the appeal filed by the petitioners was on stay for 5 long years.

Amnesty International, a non-governmental organisation that advocates for human rights, stated that India has a much greater number of under-trials when compared to democracies around the world. While many reports claim that there was a 22% decline in prison occupancy during the COVID-19 lockdown in India, a study by Commonwealth Human Rights Initiative (CHRI) showed that it had actually increased by 23%, with nearly 90,000 arrests during the lockdown period alone. Alongside a rise of under-trials, there has also been a significant rise in the time one has to wait to even present him before the court of law. Most prisoners released under the Supreme Court's initiative during lockdown were called back after a period of one year. Experts have argued that bail must be liberalised more, more so in cases where trials are unnecessarily prolonged

and the accused has been imprisoned for years on end.<sup>11</sup>

- Loopholes in the bail system

**Uday Mohanlal Acharya v State of Maharashtra (2001)** was a case where the court laid down that one should be released by default if they were in custody for 60 days when investigation with respect to their case is incomplete and under 90 days for offences which are punishable up to 10 years.

- Poverty, illiteracy and insufficient legal aid

Almost half of the prison population dropped out before completing their secondary education and one-fourth are illiterate.<sup>12</sup> They are unaware of their rights and hence fall prey to physical, mental and legal maltreatment and with no legal aid. Most of them are poor as well, which puts them in a position where they are unable to hire their legal representatives. Police often book the poor and powerless, those who are not economically stable or belonging to a high class in society under false cases as well. Filmmaker and historian Uma Chakravarti stated that even though jail inmates are entitled by law to human rights and dignity they do not have an institution or mechanism through which they are able to voice their opinions and concerns.

In **Arnesh Kumar v State of Bihar**, the Supreme Court of India laid down a check-list of sorts, or rather guidelines that police officers were to follow to determine whether a person's actions mandated an arrest. The court established the rules of making an arrest, marking this case in history as a paramount one in criminal law.

According to Section 436A of the Criminal Procedure Code, undertrials who have completed at least half of their maximum possible prison term can seek release through a personal bond. However, there is mass unawareness and ineffectiveness in

<sup>10</sup> <https://www.nextias.com/editorial-analysis/28-11-2022/conditions-of-prisons-in-india>

<sup>11</sup> <https://www.dw.com/en/why-are-indias-jails-so-overcrowded/a-61063696>  
<sup>12</sup> <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>

implementing this statute. In 2016, only 929 of the eligible 1557 under-trials were released and the situation worsened since most inmates are unaware of the existence of such a statute.<sup>13</sup>

- Indiscriminate arrests

Police have often faced immense backlash on how they've arrested people on the basis of their social standing, economic status, caste, creed, etc. and not because of any fault of the one arrested. To curb this issue, Section 41 of the CRPC laid down protocol for arrests police can make without a warrant, which included those accused or suspected of committing severe crimes such as rape, murder, dowry death, etc.

The 2021 Prison Statistics of India Report stated that 60% of all under-trial prisoners are those belonging to 'lower' castes, i.e., the Dalit, Adivasi and OBC communities. Abantee Dutta, a representative of the Assam-based legal aid collective Studio Nilima told The Quint that "The fact that a majority of under-trial prisoners come from marginalized communities further reflects an inherent bias in the system."<sup>14</sup>

In the case of *Joginder Kumar v State of Uttar Pradesh* (1994), the Supreme Court laid down that police must inform the one who is arrested must be informed of what crime he is accused of and all the rights he can exercise while defending himself against this claim.

- Shortage of judges

There is a very slow pace at which judges are chosen to fill vacant posts. The growing number of cases has already strained the exiting judicial infrastructure to a great extent but combined with the administrative processes and complexities in appointing a judge, the job gets finished slower. There is also not enough funding to carry the process at the coveted pace. Judges are also bombarded with a huge case load and the pace at which replacements are brought in, it is not very helpful.

<sup>13</sup> <https://www.drishitias.com/daily-updates/daily-news-analysis/overcrowding-of-prison>

<sup>14</sup> <https://www.thequint.com/news/law/indias-undertrial-prisoners-why-are-66-percent-from-marginalised-castes#read-more>

- Delays in investigation

Similar to most other issues in India, investigation delays also occur due to insufficient funds. This includes less manpower, out-dated techniques for investigation, insufficient forensic equipment, among others. There is also the issue of documenting every important fact and circumstance, navigating the legal procedures and bureaucracies and pressure faced due to higher-ups or those in positions of power. There is also the backlog of cases from many years ago that add salt to the wound.

- Unnecessary arrests and police arbitrariness

In India, once a petty offence is registered via an FIR, an investigation is conducted by the police department, after which the accused party is either issued with a summons to court or an immediate arrest. Even though the law aims to prevent unnecessary detention pre-trial, there are three exceptional cases where it is necessary. If the accused has a history of violence or is a repeat offender, he is to be put in detention pre-trial. Secondly, if the accused is deemed a threat to public safety, where their behaviour suggests they might cause harm to others and a risk to the community. Lastly, when someone is rendered a flight risk, i.e., has a past behaviour of escape or attempts to flee detention to evade the judicial process.<sup>15</sup>

Owing to the sharp increase in arrests in 2021 compared to 2020, the Government of India faced more difficulties in catering to all the inmates, 8 of 10 who were awaiting trial. 1.47 Crore people were arrested in 2021 and the inmate population grew from 4, 88, 511 in 2020 to 5, 54, 034 in 2021. There was a 13% increase in India's inmate population, bringing the occupancy rate to a whopping 130% across all jails.

The Indian Justice Report of 2021 read that this annual increase observed each year was

<sup>15</sup> <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>

concerning and despite decongestion efforts by the police, over 18.1 lakh people entered and left prisons all over India in 2021 alone. IJR is an independent study that annually analyses government data and on that basis ranks states on the criteria of delivery of justice. This report is made by a culmination of organisations that work towards the improvement and amelioration of the justice sector in India. It sources its information from the National Crime Records Bureau's (NCRB) annual review of Prison Statistics in India (2021).<sup>16</sup>

- o Insufficient legal aid and representation

Given that most people who are arrested belong to marginal communities that cannot maintain themselves financially, availing legal aid becomes an issue. They are unable to afford a lawyer to represent or take up their case, which creates an imbalance when face-to-face with their opposition's well-educated and prepared counsel. NALSA, short for National Legal Services Authority, is unable to provide free legal services to those in need, which is what it was established for in the first place. There is an evident scarcity of public defenders in the legal system as well.

#### IV. Consequences of Prison Overcrowding

Some particular groups such as women and children who are imprisoned are affected in worse ways, given that their well-being is an already dwindling topic of discussion.

The issue of overcrowding prisons has reached such a high that the Bengal Security Force has started handing over illegal migrants with no previous criminal record to Bangladeshi officials. If they had followed proper procedure as mandated by law, the migrants would have been in correctional homes. In 2021, despite the capacity of Indian jails being 4.25 lakh there were up to 5.54 inmates reported across jails all

over India. This was the highest prison occupancy has ever been in a decade.<sup>17</sup>

It prevents maintenance of standards for health care, educational training, etc. within the prison itself. Studies also show that overcrowding, which causes an invasion of privacy, has led inmates to become more violent and engage in acts of self-harm and suicide. Inmates spend, in the most extreme cases, 23 hours a day in their overcrowded cell. In some prisons it has heightened to the extent that prisoners sleep in shifts, share beds and even tie themselves to their bars so they can sleep upright.<sup>18</sup>

#### V. Solutions to Prison Overcrowding<sup>19</sup>

##### Efforts for reforms:

The Department of Justice set up Fast Track Special Courts for faster trials and disposal of cases. A model jail manual was released in 2016 by the Union home Minister which laid down the state's obligation to look over the wellbeing of prisoners after they give up their rights before undergoing legal proceedings. The Law Commission of India in 2017 made a few suggestions to overcome the issue of overcrowding. They suggested that convicts who have been served with sentences as long as seven years should be released after serving one-third of the sentence and those with a longer term to be released halfway through. They also urged the police to prevent unnecessary arrests and the magistrates to refrain from passing remand orders. The Supreme Court of India formed the Justice Amitava Roy Committee, which suggested that each prisoner should have one free phone call a day in the first week of his prison sentence and various other adaptations such as modern cooking facilities.

<sup>16</sup> <https://theprint.in/india/8-in-10-prisoners-in-india-await-trial-majority-of-jails-overcrowded-finds-report/1126972/>

<sup>17</sup> <https://www.thehindu.com/data/data-indian-jails-are-overflowing-in-26-states-prisoner-count-exceeds-capacity/article6598284.ece>

<sup>18</sup> <https://www.penalreform.org/issues/prison-conditions/key-facts/overcrowding/>

<sup>19</sup> <https://www.nextias.com/editorial-analysis/28-11-2022/conditions-of-prisons-in-india>



The Delhi Government introduced a new policy this year, where convicts who showed signs of good behaviour while they were still under trial can be excused before they serve their complete term. This reform was commended by many and helps aid in reintegration of convicts back into society. It also focuses on how positive behaviour will prove to be beneficial for criminals, encouraging them to stray away from their current path of illegal acts. The police reward inmates for good behaviour and the government aims to motivate offenders to transform themselves and reintegrate into society without any hiccups or stigma surrounding them.<sup>20</sup>

#### Suggestions:

Proper training of prison staff and adding provisions to the Prison manual that protect inmates' rights will be a step towards improving their quality of life. If police and administration of the jail join forces, combined with regular inspections by judicial officers, they will be able to narrow down problem areas and subsequently take actions in working to eliminate it. Introduction of modern technologies to improve standards of living, healthcare and security will also prove to be beneficial. Courts and the police must work together to bring down the number of under-trial prisoners. Coming to the aspect of legal aid, it is suggested that one lawyer be available for every 30 prisoners, avoid adjourning cases where witnesses are present and promote plea bargaining when hearing cases. The court can also exercise its discretionary powers and release under-trials on probation before trial or even fine them instead of sending them to custody.<sup>21</sup>

Penal Reform International is a non-governmental organisation that advocates for human rights and support reforms that make the justice system non-discriminatory and work

on the basis of equity and justice to all. Over a span of 30 years, they've successfully mended justice systems of nearly 90 countries for the better. Their earliest achievement dates back to 1989, when they formed this organisation after the fall of the Berlin Wall. They published a ten-point plan to reduce prison overcrowding in 2012, which is applicable to this day.

Sentencing community service or probation for less serious offences as compared to direct imprisonment for any duration is recommended. Keeping tabs on who are coming in for what crime and making reforms on the basis of those statistics will prove to be helpful as well. We must encourage alternatives to pre-trial detention, such as bail and limit the use of imprisonment as punishment for minor offences. For example, many countries across the world have systems where instead of imprisonment, one is given police warnings, fined or referred to a mental health treatment.

Improving access to legal aid pre-trial will help in reducing the problem of under-trials to an extent. Alternative sentencing and enforcing a time limit to court proceedings are two other ways through which we can overcome prison overcrowding. There is also the need to look over our laws and decriminalize acts that do not pose a serious threat to the community anymore. We can impose a minimum and maximum sentence for particular offences to ensure a consistent sentencing practice and permit release of inmates by parole to free up prison space on the basis of crime committed.

Rehabilitation and reintegration programs for minors and children to improve their chances of surviving and functioning in the outside world will help aid in a brighter future for our country. Similarly, we must also introduce programs targeted towards juvenile offenders' welfare and on reducing their numbers in the system. On the topic of inmate welfare, it is high time reforms are made that identify inmate rights

<sup>20</sup> <https://indianexpress.com/article/cities/delhi/for-delhis-convicts-good-behaviour-as-undertrials-can-now-mean-shorter-jail-term-8567901/>

<sup>21</sup> <https://www.drishitiias.com/daily-updates/daily-news-analysis/overcrowding-of-prison>

and improve their standards of living and accessibility to basic necessities.<sup>22</sup>

## VI. Case Laws

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## VII. Conclusion

In 2019, 3.28 lakh prison inmates were under trial while only 1.42 lakh were convicted of crimes. An under-trial is defined as someone who is imprisoned or in custody awaiting trial for the crime they were accused of. With 2020 nearing its end, almost 1.6 Crore criminal cases were pending in courts across India for over a year, meaning the accused or 'undertrials' were increasing as time passed. The National Crime Bureau reported that while jail occupancy usually fluctuated between 115 to 118%, there was an unprecedented rise of 30% in 2021 and 2022. What we need to factor in to understand the seriousness of the situation is that this hike occurred after the Supreme Court's *suo motu* decision to set up state committees and decongest prisons.<sup>23</sup>

On July 16<sup>th</sup> 2022, the then Chief Justice of India N V Ramana held a meeting to address this situation. He said that due to haphazard arrests and difficulty in attaining bail there are many issues that extend the process of incarceration, especially among undertrials. This meeting came upon a time when various activists and journalists were getting unreasonably arrested across the nation.<sup>24</sup>

While the legal community and citizens of the nation alike have suggested a variety of changes to improve the problem of

overcrowding, the most common and noteworthy ones are to make justification-based arrests, make reforms to the current bail system and have proactive magistrates and trial judges.<sup>25</sup>

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