

STATEMENT

Recommendations for Prisons in light of the Covid 19 pandemic

Jan Swasthya Abhiyan and All India Peoples Science Network

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Jan Swasthya Abhiyan expresses its shock and condemns the recent circular issued by the Haryana Government which calls for imprisonment of the distressed migrant communities in 'temporary/make shift prisons'. The confinement of large number of people in temporary prisons aids neither in the control of the disease nor the welfare of the people. Why doesn't Haryana Government use stadiums as temporary resting places and physical distancing camp for those displaced due to the outbreak? Why further brutalise the poor with coercive action?

JSA also expressed its deep concern regarding the preparedness of Indian prisons to meet the challenges of the Covid 19 pandemic. According to National Crime Records Bureau statistics for year 2018, the prisons in India have an occupancy rate across the country of 117.6%. Further, the majority of the prison population (69.4%) are undertrials. Overcrowding in a confined space is a major health risk as it compromises hygiene and facilitates the spread of infectious diseases- and is a context in which COVID 19 could rapidly spread. Reports have already filtered in about rioting due to panic in some of the prisons.

JSA acknowledges and appreciates the steps taken by the Supreme Court of India and certain States to prevent the spread of the disease in prisons. But much more urgent action is needed..To combat the spread of Covid 19, it is imperative, noted by the Supreme Court, to focus on decongestion of prisons as well as improving the living condition in prisons. There need to be clear and cogent guidelines for prisons across the country to tackle the pandemic.

JSA makes the following recommendation:

A. Decongestion of prisons:

We believe that given the various vulnerabilities, priority should be given to the following actions , irrespective of the offences they are charged with:

1. Release of Category of undertrial prisoners in accordance to the standing order passed by the Apex Court in In ReInhuman Conditions in 1382 Prisons, (2016) 3 SCC 700 on bail.
2. Release on bail of Prisoners and/or detained in other settings above 60 years of age, keeping in mind the age factor and their increased susceptibility to the virus
3. Prisoners and/or detained who have existing health conditions including mental illness and disabilities must be given priority in releasing on bail
4. Court camps to be held in every prison to ensure early release without exposure to external public spaces
5. Release of Women Prisoners, especially release of women prisoners with Children Below 6 Years living with them in prison on Provisional bail. This is to ensure that the health of the children is not jeopardized and is in line with the intent behind Section 437 CrPC

6. Release of convicts on parole should be initiated immediately for a period of two months.
7. An immediate and proper evaluation of the implementation of s. 435A CrPC and release of undertrials who have completed more than half of the maximum penalty they may be convicted under.
8. Medical checkup of every prisoner for relevant symptoms before the release
9. Provision of transport facilities to all the released prisoners so as to ensure they have the means to reach their respective houses during the lockdown.
10. Speedy and proper functioning of the Undertrial Review Committee UTRC to ensure identification and release of the same.

B. For those prisoners who cannot be released the Prison should immediately allow for COVID Related changes and set up a detailed contingency plan for the same:

1. Since the inmates will not be able to meet families the prisons must set up a prison for a biweekly or weekly phone call to the family like is already being done in Tamil Nadu and Maharashtra. Apart from this they should also be allowed to contact their lawyer via phone and must be allowed to do so free of cost.
2. They should be immediately informed about the COVID 19 pandemic, how to prevent themselves getting the infection and the possible symptoms.
3. The health and hygiene systems must be improved to include more
 - a. Spaces for bathing and more mobile toilets
 - b. Soap, sufficient water and sanitizer given to each prisoner regularly
 - c. Set up prompt and efficient channels of reporting to ensure that both the prisoners and the prison staff can immediately inform the medical facility of any possible case.
 - d. Regular visits by doctors and health workers during this period to ensure good health and continuous checkup of the staff and inmates
 - e. The medical facility must be ready in each prison to deal with cases of COVID primary checkups as necessary
4. Prisons must also set up isolation centres to be used in case of any infected person. This is being done in some States but must be replicated across the country.
5. Set up a monitoring committee or activate the existing Visitor committee to ensure the above health measures are in place. and give a report to the Under trial Review committee already in place. This committee should include a doctor, public health professional and a social worker apart from prison and District Legal Services Authority officials during the time of Coronavirus pandemic and be empowered to take decisions for the prison wellbeing.
6. As clearly stated in United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) there should not be any inhuman or degrading treatment or punishment; the prohibition of prolonged solitary confinement. The non-medical prison staff should not at any

point of time take any medical or clinical decisions and such decisions should only be taken by health-care professionals. The decisions of health-care professionals should not be ignored or overruled by non-medical prison staff.

As health groups we call for a moratorium on new arrests and prosecutions of all non-violent offenses. Non-custodial measures for administration of justice must be exercised, especially for juveniles in conflict with law and all other vulnerable groups including women and old age people. Exposing non-violent offenders, low-level offenders, and others to grave danger contravenes public health guidance and violates notions of due process and the prohibition against cruel and unusual punishment.

We urge governments of states to not summon witnesses or do further arrests and subsequent custody as it is a crucial means of decongesting the institution and preventing disease from external environments.

We demand that those who violate lockdown norms must not be criminalized, especially the homeless and the poor; and find other ways of administration to ensure they are not adding to the burden of the prisons.

We urge all States to come up with guidelines for not only decongestion but also improving the living condition of prisons and other detention centres like observation homes etc.