



# Overcrowding of Prison

## Why in News

The [Supreme Court \(SC\)](#) of India has ordered the **interim release of eligible prisoners** in view of the uncontrolled second surge in the raging Covid-19 pandemic.

- The Court's order aims to decongest jails and a measure that **protects the [right to life and health of the prisoners](#)**.

## Key Points

### ▪ Important Points of Supreme Court Order:

- Emphasised the need to adhere to the norms it had laid down in **Arnesh Kumar vs State of Bihar (2014) case**.
  - Under this case, the police were asked not to effect unnecessary arrests, especially in cases that involve jail terms **less than seven years**.
- Authorities in all districts in the country to give effect to **Section 436A of the [Code of Criminal Procedure \(Cr.P.C\)](#)**.
  - Under the Section 436A of the Cr.P.C, the undertrials who have **completed half of the maximum prison term** prescribed for the offence may be released on **personal bond**.
- Suggested the legislature to consider the idea of **placing convicts under house arrest** to avoid overcrowding of prisons.
  - The **occupancy rate in prisons** climbed to 118.5% in 2019. Moreover, a **very large sum of the budget** is used for the maintenance of prisons.
- Ordered all States to **take preventive steps** as well as **constitute high-powered committees** to determine the class of prisoners who could be released on bail or parole for a specified period.

### ▪ Status of Indian Prisons:

- Indian prisons face **three long-standing structural constraints**:
  - Overcrowding,
  - Understaffing and underfunding and
  - Violent clashes.
- The **Prison Statistics India 2016**, published by the [National Crime Records Bureau \(NCRB\)](#) in 2019 highlights the plight of prisoners in India.
  - **Under-trial Population:** India's under-trial population remains among the highest in the world and more than half of all undertrials were detained for less than six months in 2016.
    - The report highlights that at the end of 2016, there were 4,33,033 people in

- prison, of whom **68% were undertrials.**
- This suggests that the high proportion of undertrials in the overall prison population may be the result of **unnecessary arrests** and **ineffective legal aid** during remand hearings.
- **People Held Under Preventive Detention:** There is the rise in the number of people held under **administrative (or 'prevention') detention laws** in Jammu and Kashmir.
  - A 300% increase, with 431 detainees in 2016, compared to 90 in 2015.
  - Administrative, or 'preventive', detention is used by authorities to detain persons without charge or trial and circumvent regular criminal justice procedures.
- **Unawareness about Section 436A of C.R.P.C.:** There is a gap between the number of prisoners eligible to be released and actually released, under Section 436A of the Code of Criminal Procedure.
  - In 2016, out of 1,557 undertrials found eligible for release under Section 436A, only 929 were released.
  - Also, research by Amnesty India has found that prison officials are frequently unaware of this section and unwilling to apply it.
- **Unnatural Deaths in Prison:** The number of "unnatural" deaths in prisons has doubled between 2015 and 2016, from 115 to 231.
  - The rate of suicide among prisoners also increased by 28%, from 77 suicides in 2015 to 102 in 2016.
  - The [National Human Rights Commission \(NHRC\)](#) in 2014 had stated that on average, a person is one-and-a-half times more likely to commit suicide in prison than outside. This is a possible indicator of the magnitude of **mental health concerns** within Indian prisons.
- **Lack of Mental Health Professional:** There was only one mental health professional for every 21,650 prisoners in 2016, with only six States and one Union Territory having psychologists /psychiatrists.
  - Also, the NCRB had said that about 6,013 individuals with mental illness were in jail in 2016.
  - As per the Prison Act, 1894 and Prisoner Act, 1900, there should be a **welfare officer and a law officer** in each jail but recruitment of these officers is still pending. This state explains the low political and budgetary priority which prisons have received during the preceding century.

## Recommendation for Prison Reforms

- The Supreme Court appointed **Justice Amitava Roy (retd.) Committee** has given the following recommendations to [reform prisons.](#)
  - **For Overcrowding:**
    - **Speedy Trial:** Speedy trial remains one of the best ways to remedy the unwarranted phenomenon of overcrowding.
    - **Lawyer to Prisoner Ratio:** There should be at least **one lawyer for every 30 prisoners**, which is not the case at present.
    - **Special Courts:** Special fast-track courts should be set up to deal exclusively with petty offences which have been pending for more than five years.
      - Further, accused persons who are charged with petty offences and those granted bail, but who are unable to arrange surety should be released on a **Personal Recognizance (PR) Bond.**
    - **Avoid Adjournment:** An adjournment should not be granted in cases where witnesses are present and the concept of plea bargaining, in which the accused admits guilt for a lesser sentence, should be promoted.
  - **For Prisoners:**
    - **Accommodative Transition:** Every new prisoner should be allowed a free phone call a day to his family members to see him through his first week in jail.

- **Legal Aid:** Providing effective legal aid to prisoners and taking steps to provide vocational skills and education to prisoners.
- **Use of ICT:** Use of video-conferencing for trial.
- **Alternatives:** The courts may be asked to use their "discretionary powers" and award sentences like "fine and admonition" if possible instead of sending the offenders to jails.
  - Further, courts may be encouraged to release offenders on probation at pre-trial stage or after trial in deserving cases.
- **Filling Vacancies:**
  - The Supreme Court should pass directions asking authorities to start the recruitment process against permanent vacancies within three months and the process should be completed in a year.
  - For Food: Modern cooking facilities and canteens to buy essential items.
- In 2017, the [Law Commission of India](#) had recommended that undertrials who have completed a third of their maximum sentence for offences attracting up to seven years of imprisonment be released on bail.

## Constitutional Provisions

- **State Subject:** 'Prisons/persons detained therein' is a **State subject** under **Entry 4 of List II** of the **Seventh Schedule** to the Constitution of India.
  - Administration and management of prisons is the responsibility of respective State Governments.
  - However, the **Ministry of Home Affairs** provides regular guidance and advice to States and UTs on various issues concerning prisons and prison inmates.
- **Article 39A:** Article 39A of the Constitution directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, **provide free legal aid by suitable legislation or schemes or in any other way**, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
  - **Right to free legal aid or free legal service** is an essential fundamental right guaranteed by the Constitution.
  - It forms the basis of reasonable, fair and just liberty under **Article 21** of the Constitution of India, which says, **"No person shall be deprived of his life or personal liberty except according to procedure established by law"**.

## Key Terms

- **Undertrials:** These are the people who are yet to be found guilty of the crimes they have been accused of.
- **Preventive Detention:** The imprisonment of a person with the aim of preventing them from committing further offences or of maintaining public order.
  - **Article 22 (3) (b)** of the Constitution allows for preventive detention and restriction on personal liberty for reasons of state security and public order.
  - Further, **Article 22 (4)** states that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:
    - An Advisory Board reports sufficient cause for extended detention.
    - Such a person is detained in accordance with the provisions of any law made by the Parliament.
- **Personal Recognizance (PR) Bond:** It is also known as Own Recognizance (OR) bond, and sometimes referred to as "no cost bail". With this type of bond, a person is released from custody and is not required to post bail.
  - They are, however, responsible for showing up on their specified court date, and must sign a release form stating this promise in writing.
  - The person is then released from custody based on their promise to appear in court and abide by any conditions of release set by the court.

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