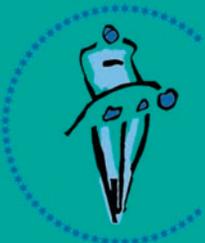
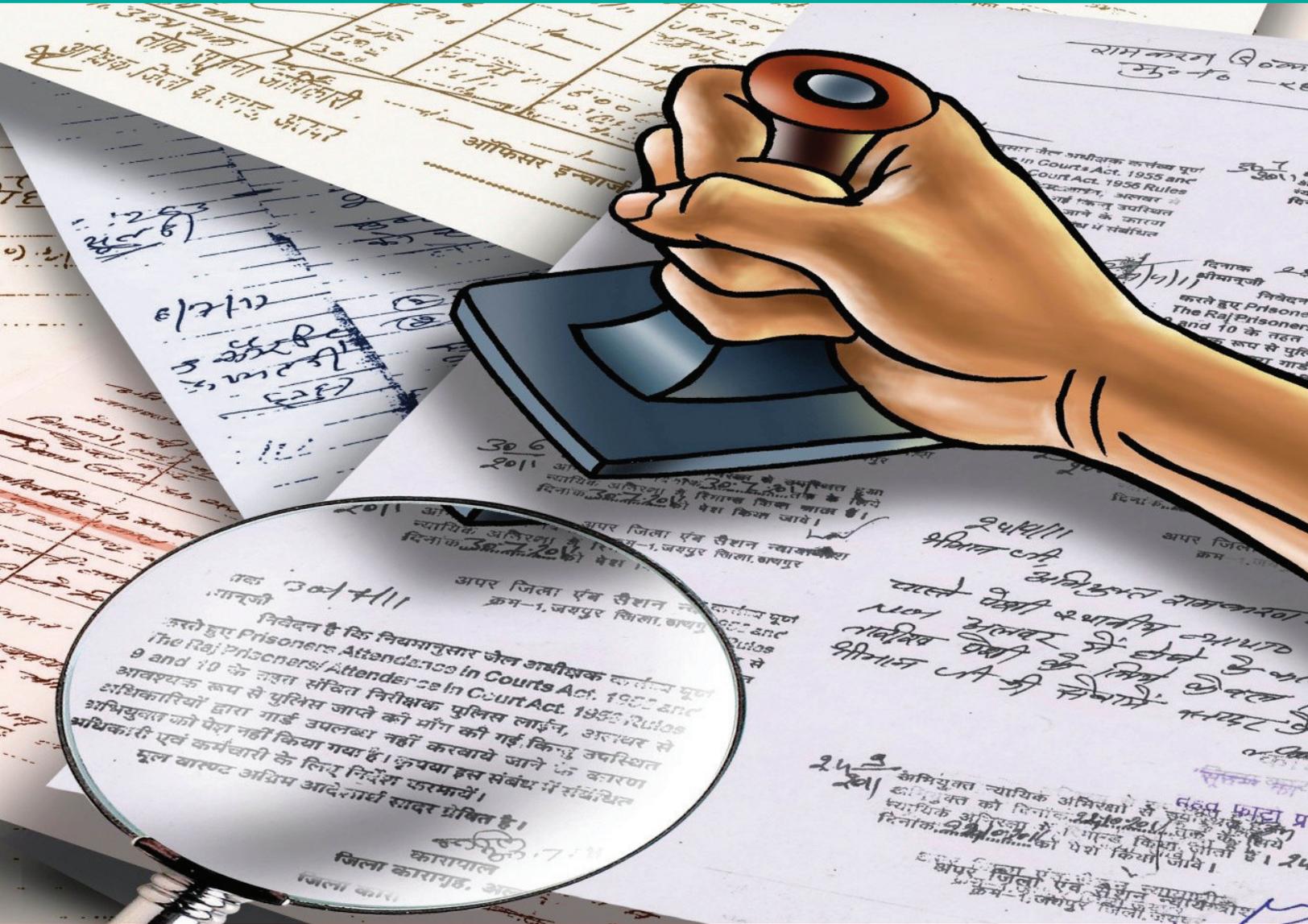


CHRI 2014

The Missing Guards

लापता जाफ़ता

A Study on Rajasthan's Court Production System



CHRI

Commonwealth Human Rights Initiative

Working for the practical realisation of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth Member States.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, Member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations allows for a national presence and an international network.* These professionals can steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK and Accra, Ghana.

International Advisory Commission: Yashpal Ghai - Chairperson. Members: Alison Duxbury, Wajahat Habibullah, Neville Linton, Vivek Maru, Edward Mortimer, Sam Okudzeto and Maja Daruwala

Executive Committee (India): Wajahat Habibullah – Chairperson. Members: B. K. Chandrashekar, Nitin Desai, Sanjoy Hazarika, Kamal Kumar, Poonam Muttreja, Ruma Pal, Jacob Punnoose, A P Shah and Maja Daruwala - Director.

Executive Committee (Ghana): Sam Okudzeto – Chairperson. Members: Akoto Ampaw, Yashpal Ghai, Wajahat Habibullah, Neville Linton, Kofi Quashigah, Juliette Tuakli and Maja Daruwala - Director.

Executive Committee (UK): Neville Linton – Chairperson, Richard Bourne (Acting Chair), Clare Doube (Vice Chair). Members: Meenakshi Dhar, Joanna Ewart-James, Frances Harrison, Sadakat Kadri, Sashy Nathan, Katherine O'Byrne, Rita Payne, Joe Silva, Michael Stone.

* Commonwealth Journalists Association, Commonwealth Legal Education Association and Commonwealth Parliamentary Association.

ISBN: 978-93-81241-15-8

© Commonwealth Human Rights Initiative, 2014. Material from this report may be used, duly acknowledging the source.

CHRI Headquarters, New Delhi

55A, Third Floor, Siddharth Chambers-1,
Kalu Sarai, New Delhi 110 016
India
Tel: +91 11 4318 0200
Fax: +91 11 2686 4688
E-mail: info@humanrightsinitiative.org

CHRI London (United Kingdom)

28, Russell Square
London WC1B 5DS
UK
Tel: +44-020-7-862-8857
Fax: +44-020-7-862-8820
E-mail: chri@sas.ac.uk

CHRI Africa, Accra

House No.9, Samora Machel Street Asylum
Down, Opposite Beverly Hills Hotel Near
Trust Towers, Accra,
Ghana
Tel/Fax: +233 302 971170
Email: chriafrika@humanrightsinitiative.org

www.humanrightsinitiative.org

The Missing Guards

लापता जाफता

A Study on Rajasthan's Court Production System

“
*For want of a nail the shoe was lost
for want of a shoe the horse was lost
for want of a horse the rider was lost
for want of a rider the message was lost
for want of a message the battle was lost
for want of a battle the kingdom was lost
and all for the want of a horseshoe nail.*”

– Unknown

Researcher: Raja Bagga

Authors: Raja Bagga and Maja Daruwala

Editors: Maja Daruwala and Sana Das

In Co-operation with:

Rajasthan Prison Department & State Human Rights Commission, Rajasthan

Acknowledgement

The Commonwealth Human Rights Initiative (CHRI) wishes to thank all the individuals who enriched this study with their knowledge and experience.

We would like to extend our deep appreciation to Mr Omendra Bharadwaj, former Director General of Prisons, Rajasthan, Mr Sarwar, Deputy Inspector General of Prisons, Rajasthan and Mr Rakesh Mohan, former Jail Superintendent, Alwar District Jail for facilitating in procuring the data for the study. We would also like to extend heartfelt thanks to Mr M.K. Devarajan, Hon'ble Member, State Human Rights Commission, Rajasthan for sharing information for the study. We wish to thank CHRI consultant, Mr R. K. Saxena, Retd. I.G. Prisons whose specialist knowledge helped shape up the study. Special thanks to Advocate Abha Joshi for her suggestions and inputs.

This study would not have commenced without the conceptualisation, feedback and invaluable editorial support by CHRI Director, Mrs Maja Daruwala. CHRI is grateful to Mr. Raja Bagga for his commitment and rigour in the preparation of the report. Our thanks also go to the other team members of the Prisons Reforms Programme, especially, Ms Sana Das for her vital suggestions and continued support throughout the study and Ms Tripti Kanungo and Ms Sugandha Shankar for supporting the research. We also wish to thank Ms. Bhavana Mahajan, Mr Arsh Khan and other interns who assisted us in data compilation and computation.

Finally, this study and report would not have been possible without the generous financial support of the Open Society Institute.

Contents

Acknowledgement	ii
Preface	iv
About the Study	v
I. The Problem of Non-Production : Typical Cases	1
II. The Standard	3
Rules	4
Responsibility-The Judiciary	7
Responsibility-The Prison and Police	9
Procedures	10
III. The Findings	11
A. Court Production Practice in Alwar: A View from Below	12
Court Production in Alwar	13
Frequency of Production in Alwar	17
B. Court Production in Rajasthan: The Big Picture	20
Court Production in Rajasthan: The Daily Reality	22
Rajasthan Escort Strength: Timeline	26
Court Production in Rajasthan: Consolidation	28
IV. Escort & Vehicles Requirement: Need Assessment	33
A. Escort and Vehicle Requirements in Rajasthan	33
B. Escort and Vehicle Requirements for the Ten Critical Districts	35
V. Conclusion & Recommendations	39
VI. Annexures	41
Annexure 1	
Methodology and Process	44
Annexure 2	
Alwar RTI Application	46
Annexure 3	
Sample Forms	47
Annexure 4	
Statutory Provisions Used	53

Preface

Non-production of undertrials in courts across India is a scandal. Breaches of statutory duty to diligently follow procedure as required by the Code of Criminal Procedure have become so routine that they go unremarked and remain unrepaired even as they destroy any possibility of fair trial. The causes of delay no doubt lie in the many infirmities and irregularities that plague each agency that makes up the criminal justice system.

These infirmities and irregularities have become so embedded that they are accepted as “normal”, and so continue to be disregarded both to accommodate a malfunctioning system and for the convenience of those running it. This is so because the burden of the malfunction does not fall on the authorities but on the hapless users of the system.

The impetus for repairing this must come from the realisation that delivering justice fairly in accordance with the law is the cornerstone of our legal system. Fairness for the victim and the accused are best guaranteed by strict adherence to the Criminal Code. This is the responsibility of all those who operate the system but no one more so than the judge in his court. The witness, victim and accused rely completely on the judge to bring the case to a fair and honest conclusion. Society’s respect for the rule of law is based on this. When judges insist on strict adherence to the procedures laid down in law, others will be bound to change malpractice and prod overall improvements that bring in higher standards and benefit everyone.

The complexity of repairing long-standing irregularities is so great that it has created a paralysis in the authorities. This, in turn prevents making any sort of beginning because each malfunctioning part is closely interconnected to another. The usual reaction then is for every authority to lay the blame on another authority or to point helplessly at the “system”. However a beginning must be made. It is necessary to slice each section of the criminal justice process, one by one, analyze it and work through its repair.

This study by CHRI seeks to do just this by examining the irregularities that have crept into the court production process. The study threw up two clear causes for breach of statutory duty to produce undertrial prisoners in court as required by the Code of Criminal Procedure.

One: The consistent lack of infrastructure – escorts and vehicles – to ensure that court warrants are acted on.

Two: Magistrates’ acceptance in the practice of non-production.

The gaps in production also point to the lack of challenge put forth by defence lawyers to ensure that the rights of the undertrials they represent are safeguarded as required by the statute. With the aim of providing solutions to this systemic problem, the study enquires into the practices of police, prison and court authorities and makes recommendations to the court and other stakeholders to ensure that under all circumstances people in custody awaiting trial must be produced before the court within the mandatory 15 days.

About The Study

This CHRI study began with an RTI application to the Alwar District Prison in October 2011, and then went beyond to look at the court production data of all districts of Rajasthan in 2013. The problem of physical production, especially due to the shortage of police escorts is systemic – not just to Alwar or Rajasthan but to the entire country. With the co-operation of the Prisons Department, CHRI sought and analyzed the production of inmates in court for all the Central and District jails in Rajasthan. The State Human Rights Commission (SHRC), Rajasthan has also observed shortage of police escort as a serious concern affecting the rights of prisoners in Rajasthan and shared their information for the study.

The Rajasthan data is based on the entries in the jail registers between July and September 2013. The Alwar data looks at court warrants used between the period 8 December 2006 and 5 December 2011 for 56 cases of 40 undertrials in the district jail. The study also examined the production (*peshi*) register and escort requisition forms from June to September 2011. The study analyzed how a chronic shortage of police escorts leads to routine non-production, causing delays.

Though these are common complaints and observations seen in court all the time, this study does not take account of whether once a prisoner is ferried from prison to the court he is in fact brought before the Magistrate from the court lock up or left there while the clerk marks his attendance without him ever being present before the Magistrate. It did not examine whether lawyers were present at the same time as their clients, whether charge sheets were produced, bail was applied for or whether the prosecution was ready, witnesses were present or expert evidence was taken; nor whether the judge was available. In other words, the frequency of an effective hearing that would progress the trial to resolution at each appearance has not been examined though its well-known absence is another significant cause of delay and breakdown of the fair trial system.

The study came up with the following observations:

- On any given day, approximately a third of prisoners in the state are not taken to the court on date stipulated. In Jodhpur and Bharatpur Central jails, the proportion of non-production is as high as 56 and 51 per cent, respectively. In contrast to this irregularity, Pratapgarh showed 100 per cent production.
- In the last 20 years the prison population has risen by 150 per cent but the number of escort personnel has increased by 4 per cent and just 40 new escort personnel have been appointed in this time in the State.
- In Alwar, in 41% occasions, inmates were not produced in court when ordered. On the occasions where they were not produced, in 70 % cases, the reason was shortage of police escorts. As a practice, the police department never gave written responses citing reasons for not providing the requisite escorts.
- The Alwar district jail uses a readymade rubber stamp mentioning shortage of police escort as the reason for non-production. The stamped production warrant is sent to the court instead of the prisoner and accepted by the court as a reason for automatically giving a new date.



Today is my date of hearing. When I go to the court, I will tell the judge everything. And yes, finally after two weeks, I will see my wife and children today.



Stop dreaming son. Going to court on hearing is a matter of chance. You are new here, you will get used to the stamps soon.



He was right! The bus left without me. Why was I not taken to court? Will I ever be taken? What about my case, my family, me?

The Problem of Non-Production: Typical Cases**



Amar*

Amar* Amar was arrested for allegedly harbouring a deserter of the Indian Army. If he is found guilty, his maximum sentence can be two years. The production warrant shows that the court asked for his production 14 times in 12 months, thus on average, at the intervals of 25 days. Out of the 14 appearances ordered, Amar was actually taken to court only four times. Between March 2011 and August 2011, he was not produced in court for a five-month stretch. The cause given on the warrant for every single non-appearance was routinely stated as: "Shortage of police escort"

Akbar*

Akbar was charged with theft. In the 14 months between August 2010 and October 2011, for which period his warrants were examined, the court ordered his presence 11 times. This means that he was asked to appear, on average at 40-day intervals. In fact, the warrant shows that he was physically taken to court only four times in 14 months. Of the seven occasions when he was not produced, four instances were owing to lack of police escorts and the other three because he was to be produced in another court.

Anthony*

Anthony was awaiting trial for causing death due to rash driving. In the 18 months of his stay in custody, the warrants show that the court ordered his presence on 10 occasions. On average, there was a gap of 56 days between hearings, Of the 10 occasions that the court did ask for him to be produced, he did not get to court on seven occasions owing to lack of police escorts. So he actually appeared before the magistrate only three times during 500 days of incarceration. One stretch lasted for over nine months without any appearance before the court.

Amrindar*

In the 55 months for which the warrants were examined, Amrindar was asked to appear in court 60 times. However, he was actually brought before court 33 times. In 18 of the 27 times he was denied access to the court, the excuse was the usual shortage of police escorts. In the four months between September 2009 and January 2010, he was not produced in court at all.

Sadly, these stories are not atypical and highlight a common practice in relation to undertrials in judicial custody that the CHRI study reconfirmed.

* Information received through RTI, names changed.

** The inmates were in prison for more than one offence.

Attributes of a Fair Trial*

- 1) Fair and public hearing by an independent and impartial tribunal.
- 2) Right to be presumed innocent until proven guilty according to law.
- 3) Right of the accused to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.
- 4) Right to be given adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.
- 5) Right to be tried without undue delay.
- 6) Right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance of this right; and to have legal assistance assigned to him in any case where the interests of justice so requires and without payment by him in any such case if he does not have sufficient means.
- 7) Right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
- 8) Right to have the free assistance of an interpreter if he cannot understand or speak the language used in court.
- 9) Right not to be compelled to testify against himself or to confess guilt.
- 10) Not to be held liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

* Based on Article 6 of the European Convention on Human Rights and constitutional and legislative provisions in India

The Standard

II

CUSTODY DEFENSE PESHU
MUCHALKA JUDICIAL MIND
OVERCROWDING JUVENILE
S167 LEGAL AID PRISON VISIT
PRACTICE AND POSSIBILITIES
REMAND BAIL CHARGESHEET
INDISCRIMINATE ARREST INVESTIGATION
EVIDENCE RULE OF LAW TRIAL
POLICE LOCK-UP PRE-TRIAL CLIENT
DETENTION BARS S436 DIAGNOSIS
JURISPRUDENCE S151 FAIR CUSTODIAL
TREATMENT REASONABLE GROUNDS
REFORM APPLICATION OF LEGAL MIND

Rights in Custody

No accused can be kept in custody for an indefinite period. It is the responsibility of the court to order the accused to be produced before it within a given period of time and then decide whether to remand¹ him back to custody. The law also prescribes the maximum period for this. There are essentially two types of remand. One is into the custody of the police and the other into judicial custody. The present study examined the frequency of appearances asked for by the court only in relation to judicial custody.

This section deals with the (i) Rules, (ii) Responsibilities and (iii) Procedures as laid down by law with respect to the production of an inmate in court. The courts, jails, police and government are expected to perform their duties based on these standards. Any deviation from them breaches the law.

¹ Remand is an order of detention to custody.

The Rules

A. The 15-Day Rule

The law prescribes a fixed period within which an accused must be produced before the court, and accordingly, the maximum period for which he may be next remanded. The sections in the Code of Criminal Procedure (CrPC), 1973 dealing with this issue are Section 167 and Section 309.

Section 167(2) of the CrPC applies to the period before charges have been framed and while investigations are underway. It requires that the Magistrate “to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole ...”

Section 309 of the CrPC applies to the period after charges have been framed and the trial is in process. Section 309(1) clearly mandates: “In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.”

The proviso to Section 309 states: “Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time...”

While Sub-section (1) of Section 309 is applicable to every “inquiry or trial”, the proviso is applicable to “all Magistrates” thus excluding court of sessions. Therefore, after charges have been framed, a Magistrate is mandated to hold proceedings (a) as expeditiously as possible, in general; (b) on a day-to-day basis, till all witnesses in attendance have been examined; and (c) the gap between two hearings should not stretch beyond 15 days at a time in any case.

In both cases, before and after charges have been framed, any one remand order cannot exceed 15 days. This means that the Magistrate needs to apply his judicial mind and decide the duration of remand which could be one day or up to 15 days, but never beyond it.

The Twin Sections

“As Sub-section (2) of Section 167 as well as proviso (1) of Sub-section (2) of Section 309 relate to the powers of remand of a Magistrate, though under different situations, the two provisions call for a harmonious reading in so far as the periods of remand are concerned. It would, therefore, follow that the words ‘15 days in the whole’ occurring in Sub-section (2) of Section 167 would be tantamount to a period of ‘15 days at a time’ but subject to the condition that if the accused is to be remanded to police custody the remand should be for such period as is commensurate with the requirements of a case with provision for further extensions for restricted periods, if need be, but in no case should the total period of remand to police custody exceed 15 days.”

Chaganti Satyanarayana and Ors. v State of Andhra Pradesh, AIR1986SC2130

B. The Person in person

An accused has to be physically produced before the court for it to decide whether the accused needs to be further remanded to custody. Section 167 (2) (b) and Section 273 of the Code of Criminal Procedure deal with this issue.

Before the Code of Criminal Procedure (Amendment) Act, 2008, Section 167 (2) (b) read: “No Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.”

This provision was further strengthened by Explanation II below, which stated: “If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.”

Thus the provision not only makes physical production mandatory but also formulates a check to ensure that the same can be monitored.

Section 273 mandates that evidence is to be taken in the “presence” of the accused. It reads thus: “Except as otherwise expressly provided, all evidence taken in the course of the trial or any other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader.”

The provision for dispensation with personal attendance is extremely limited and specific.²

Thus, in both cases, before and after the charges have been framed, there are two firm immutable conditions in relation to the person in judicial custody: one, the person in custody must be present in court when the remand order is passed, unless his personal attendance has been dispensed with; and two, that any one remand order cannot exceed 15 days. There is no discretion or leeway given to the Magistrate to deviate from this.

The Code of Criminal Procedure (Amendment) Act, 2008 amended Section 167 (2) (b) of the CrPC by introducing electronic video linkage as another and seemingly more modernised method to produce an accused. The amended version reads:

“No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.”

2 Production of inmates charged with multiple offences all over the country: Abdul Karim Telgi, Abdul Wahid and Jacob Chacko v. State, 2008 CriLJ532 & Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Anr. MANU/SC/0106/2005; Seeking evidence of an expert outside India: The State of Maharashtra and P.C. Singh v. Dr. Praful B. Desai and Anr. AIR 2003 SC 2053; Screening of the witness in certain cases in the interest of justice: Sakshi v. Union of India (UOI) and Ors, 2005(2)ACR1537(SC)

Video-Conferencing: Substitution or Subversion?

Producing the accused before the magistrate through a video link between court and jail was intended to use technology to make up for shortfalls in infrastructure. It was argued that it reduced security risks and helped the system comply with the mandatory need to have the accused present before the magistrate when extending remand. None of these so-called possible benefits hushed the strong disquiet, that once again the rights of the accused were being mortgaged to the convenience of the system. It was feared that the same guarantees and safeguards that are required through physical production in the courtroom would not transfer into the video linkage process.

Through video production the body of the accused is electronically present. The statutory compulsion is fulfilled because the Magistrate is face to face with the electronically transmitted image of the accused. Experience however suggests the video link retains form while denying the substance needed to make a trial genuinely fair. This procedure can repeat several times. The person is pronounced present by virtue of his image being produced on a screen. The legal representative is invariably absent because the parties know that nothing beyond the formality of complying with Section 167 will take place. The accused has no opportunity for immediate or confidential legal consultation with his representative.

Given that the “appearance” is completed within a few minutes there is no opportunity for the accused to put forth any complaints, applications or request to the Magistrate. Since the view of the accused and his surrounding is partial it is impossible to know if he is under any kind of duress or intimidation or if he is injured or otherwise constrained from freely participating in the “court proceedings.” By substituting video-conferencing for real life physical production, the access of an undertrial to the outside world, the opportunity to communicate with his family and his advocate is severely curtailed. In the absence of any person to represent him, even the accused’s identity must be taken on faith when assurance of identity is a fundamental first step before any proceedings can go forward.

Video conferencing facilities for court trials in Rajasthan have only been initiated in Jodhpur and Jaipur Jail.

Responsibility-The Judiciary

Once in “judicial custody” a prisoner is the responsibility of the court. The court is responsible for ensuring that the person’s physical safety is ensured. It has an equal obligation to ensure that his legal right to a fair trial is safeguarded. Equally, being guided by the maxim “innocent until proven guilty” the court is bound to ensure that the loss of liberty is kept at a minimum and pretrial detention is minimised. Throughout the court process the Magistrate’s role is to ensure that every section of the CrPC is scrupulously followed and nothing is done or omitted that could prejudice the fair trial of the person in custody. This requires the court to ensure that all functionaries whose actions affect the prisoner do nothing that will impinge on the speed and fairness of the trial or subvert its course. Once the case is in court the magistrate has oversight of the running of the case and this includes the authority to question the functioning of agencies – the defence, the prosecution and the police – all of whom are collectively and severally, responsible to the court.

The higher courts repeatedly remind trial courts of the need to be vigilant in protecting the rights of the accused. They have directed lower courts not to condone administrative malpractices or to routinely allow administrative convenience to destroy the safeguards built into the Criminal Code. The higher courts have deprecated the practice of routinely extending remands every 15 days without any application of mind. The full bench of the Andhra Pradesh High Court in *Kurra Dasaratha Ramaiah and Ors. v State Of Andhra Pradesh* (1992), CriLJ 3485, summarises the responsibility of the Magistrate:

“As the accused is in the custody of the Court, the Magistrate can always compel the police or the jail authorities as the case may be to produce the accused before him. If the accused is not produced the Magistrate can enquire into the reasons for such non-production. It is only when the non-production is due to reasons beyond the control of the police or jail authorities, he can authorise further remand but before doing so, he must be satisfied that there are adequate grounds for so doing. When production of accused becomes impossible or beyond the control of the police or jail authorities, the judicial function of the Magistrate does not cease. He must still be satisfied on the basis of the record placed before him in the form of police diaries whether there is any need for granting further extension of remand.”

The Andhra Pradesh High Court in *M.A. Dharman, son of Appukuttan v. State of Andhra Pradesh by Secretary to Government, General Administration Department and Ors.* (1991)1 ALT 315 illustrates physical impossibilities to be situations such as

- The accused is mortally injured or grievously ill.
- The accused has to be produced in two different courts at the same time.
- Curfew has been imposed and thus travel is not possible.

The Court’s examples clearly indicate the extreme and limited circumstances in which the absence of the prisoner can be accepted by the court.

In this case, the Court had clearly stated that “Non-availability of escorts to produce the detainees before the learned Special Judge, pleaded by the Jail authority, hardly constitutes a ground for their continued non-production”

A year later, the full bench of the same court in *Kurra Dasaratha Ramaiah and Ors. v State Of Andhra Pradesh* (1992) CriLJ 3485 reaffirmed that a plea of impossibility of production owing to non-availability of escorts is not acceptable unless it can be shown that an intervening circumstance such as a natural disaster or a communal riot made it impossible to bring the prisoner to court. Even when impossibility is pleaded, the Magistrate must satisfy himself that the factual reality exists and has made production impossible and then record his reasons for excusing production in writing. Courts across the country have reaffirmed this position.

A Magistrate in Action

Location: A CMM court in Rajasthan

Date: 6 June 2013

A police officer came to the CMM court to complain about a magistrate who had refused to extend judicial custody of an undertrial. The undertrial in question was not produced in court that day owing to shortage of police escort and thus the Magistrate had refused to extend custody.

The CMM applauded the Magistrate's action and said that it was a matter of shame that magistrates (including him) blindly extend custody without physical production of undertrials.

When the police officers urged the CMM to allow the extension of custody, the CMM read out to the officers the provisions of Section 228 of the IPC, the penal provision on causing interruptions in judicial proceedings. He expressed the need to use reserve force to meet the requirements.



Responsibility-The Prison and Police

The law relating to attendance of prisoners in court whether for the purpose of giving evidence or for answering a criminal charge, was earlier contained in Part IX of the Prisoner's Act, 1900, Transfer of Prisoner's Act, 1955 and Code of Criminal Procedure, 1898. However, post 1955 the law is now governed by the Prisoners Attendance in Court Act, 1955 and Code of Criminal Procedure (CrPC), 1973. This section lays out the law and the procedures involved in the court production process.

The Prisoners Attendance in Court Act, 1955: Section 9 of this Act empowers the states to make rules in furtherance of the Act. Rajasthan made these rules in 1956.

Rajasthan Prisoners Attendance in Court Rules, 1956

- ♦ **Rule 9** specifies that the escort of prisoners under this Act shall be undertaken by the police.
- ♦ **Rule 10** lays down the procedure to requisition police escorts. "Whenever an order for production of a prisoner to give evidence or to answer a charge is received from a competent court by the Superintendent, Jail, such officer shall send a copy of the Court's order to the head of the local police, who thereupon shall cause the necessary police guard to be detailed in accordance with the terms of the order, and the prisoner shall be made over to the custody of this guard."
- ♦ **Rule 18** provides the ratio of guards per prisoner:
"The minimum strength of police guard be:
For not more than four prisoners, two constables,
For five or six prisoners, three constables, and
For seven to ten prisoners, one Head Constable and four constables.
A female warden shall, wherever possible accompany a female prisoner instead of one of the constables. When the prisoners are of desperate character or are likely to attempt to escape or when the number to be escorted exceeds ten, the strength of the guard shall be increased at the discretion of the officer-in-charge of the police."

When Person May Not be Produced in Person

Chapter XXII of the CrPC deals with the attendance of prisoners in court. Section 267 of the CrPC empowers the court to order the inmate to be produced before it from the jail. Section 268 lays down the power of the state government to exclude certain powers from the operation of Section 267 keeping in mind the nature of offence, the likelihood of the disturbance of public order and public interest. Section 269 of the CrPC provides for contingencies where the officer in charge of the prison can abstain from sending an inmate ordered by the court to be produced under Section 267. The section states:

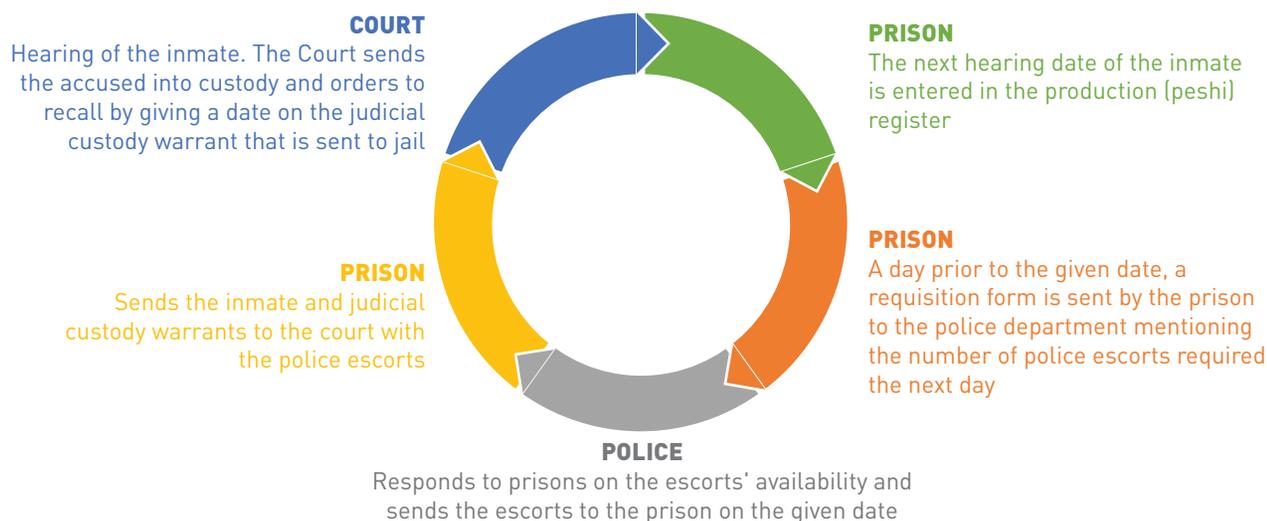
"Where the person in respect of whom an order is made under Section 267:

- (a) is by reason of sickness or infirmity unfit to be removed from the prison; or
- (b) is under committal for trial or under remand pending trial or pending a preliminary investigation; or
- (c) is in custody for a period which would expire before the expiration of the time required for complying with the order and for taking him back to the prison in which he is confined or detained; or
- (d) is a person to whom an order made by the State Government under Section 268 applies,
the officer in charge of the prison shall abstain from carrying out the Court's order and shall send to the Court a statement of reasons for so abstaining:

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).”

Thus Section 269 provides specific situations where the officer in charge can abstain from carrying out the court’s order. Non-production of inmates by the prison department for any other reason would be a violation of the Criminal Procedure Code.

Court Production Procedure



Documents involved in Court Production: Three official documents used in court production process are outlined below.

Judicial custody warrant (वारंट): The court issues a judicial custody warrant, addressed to the jail authority in whose custody a prisoner is. The warrant is the order to the custodian to present his prisoner to that court on a given date. The warrant has a space in which the court stamps the next date on which the person must be produced in court. This warrant, with successive dates on it is used throughout the trial, and has to be presented to the court on every trial date. The jail authorities hold the warrant and the prisoner does not usually have access to it.

Police Requisition Form (जाफ़ता मांग पत्र): A police requisition form is a request made by the jail to the Superintendent of Police of the district informing him of the number of police escorts required to accompany prisoners to court in accordance with the judicial custody warrants on that date. Requisitions go one day in advance. Though the rules require a written response from the police authorities, the practice observed is to inform the jail of the available personnel, orally.

Production (पेशी) Register: The *peshi* or production register records the name of each prisoner who is supposed to be taken from the jail to a court on a given date according to the court’s order. When the judicial custody warrant carrying the next date of production reaches the jail, the prisoner’s name is recorded in the *peshi* register for that given date. However, the names of those who are actually sent are ticked on the day of production. The entries in the register comprise the date, names of the prisoners, the court to which they are to be sent along with the name and number of the accompanying police escort. This is a jail record.

Production Warrant (वारंट): The court issues a production warrant addressed to the jail authority to produce a person confined or detained in a prison for answering to a charge or for the purpose of any proceedings against him.

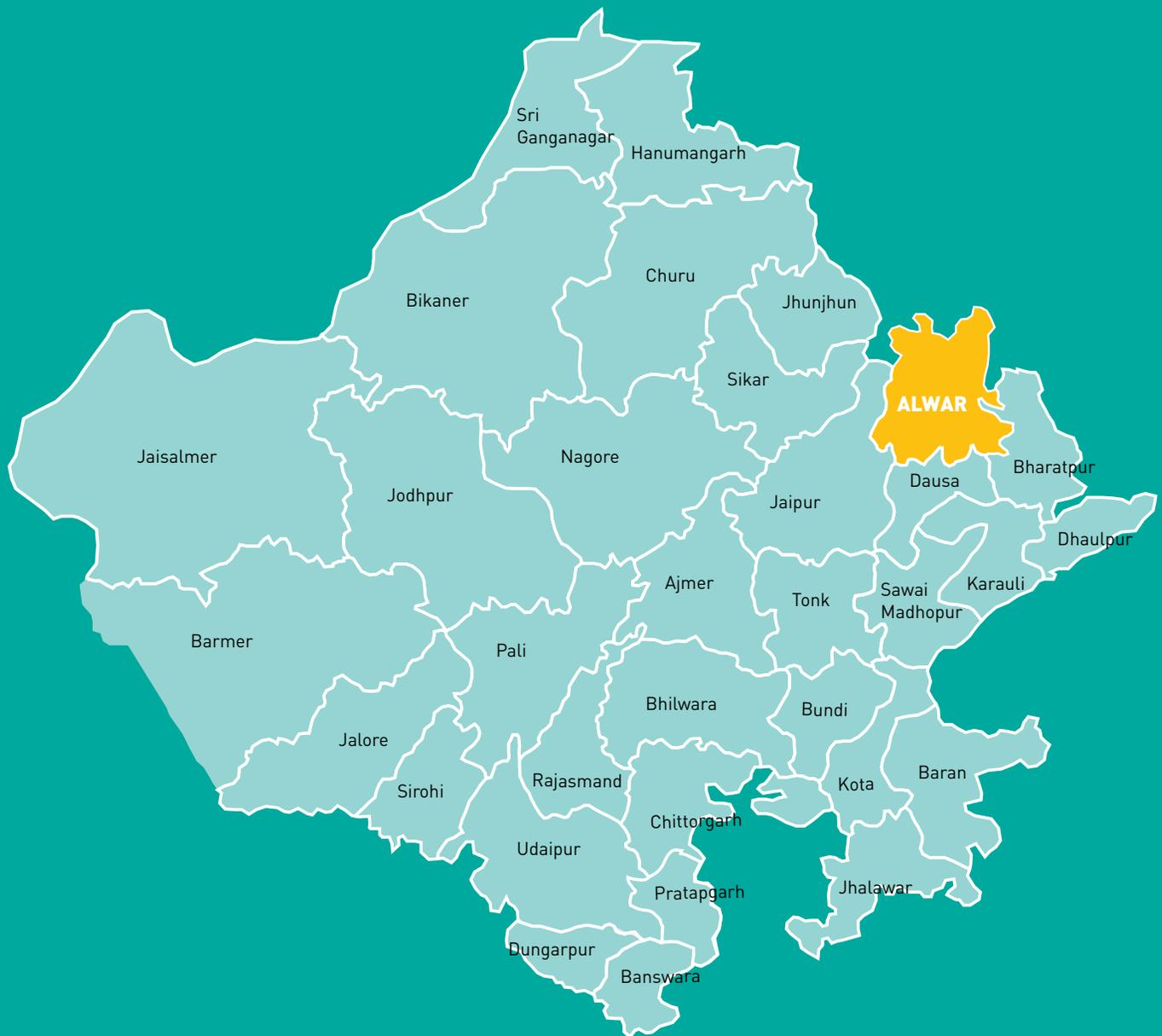
III

The Findings

Breakdown of the Court Production System



A. Court Production Practice in Alwar: A View from Below



MAP OF RAJASTHAN

Court Production in Alwar

There are 55 courts³ in Alwar District, one district jail, two sub-jails and one open-air camp. On average, they hold around 770 undertrials.⁴ On any given day, approximately 80 need to be ferried to 55 courts scattered throughout the district. Some prisoners are required to be produced in courts outside the district and occasionally outside the state. Alwar has 49 policemen sanctioned for escort duty. There are no vehicles specifically earmarked to take the prisoners to court, but there is one ambulance which is often used as a transport vehicle for moving inmates from one place to another.

Analysis

Production warrant, requisition forms and production registers of Alwar District Jail received through RTI were analyzed.

Production Warrants

The aggregated data relating to 56 production warrants of 40 undertrials who had spent over one year in the jail as on 18 October 2011, shows that various courts had given 746 dates for production of these inmates before them. But overall, these people were taken to court only in 434 instances. In other words, in 41 per cent of cases, production did not happen. The reasons for the non-production of undertrials are mentioned on the production warrant. We analyzed the reasons.

TABLE 1.1: TOTAL COURT PRODUCTION

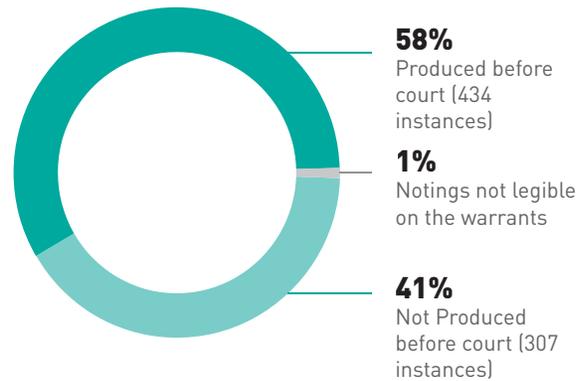
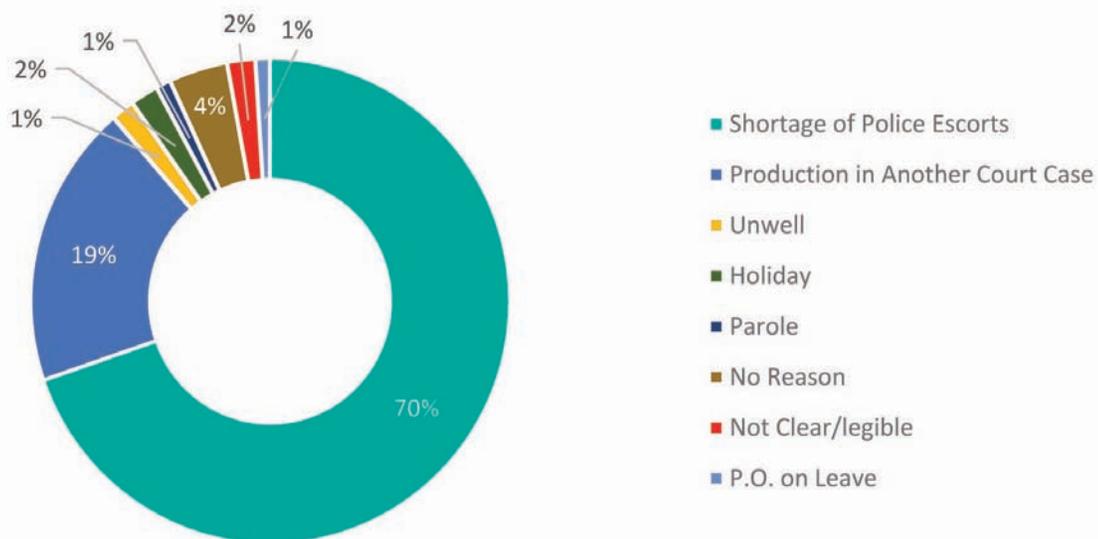


TABLE 1.2: REASONS FOR NON-PRODUCTION



³ Rajasthan Jail Committee Report 2010

⁴ http://rajprisons.nic.in/prison_statistics.htm

Shortfalls in police escort accounted for a staggering 70 per cent of missed court dates, while 19 per cent were missed due to clashing dates for productions in other courts and in 4 per cent of the cases no reason for non-production was mentioned on the warrant.

While the law⁵ excuses non-production if the prisoner is unwell or required in another court as mentioned above, there is no provision for not producing a prisoner for want of escorts or vehicles or any other administrative inconvenience. Nevertheless magistrates in Alwar repeatedly mentioned this as a valid reason for not seeing the prisoner before them on a given date. This clearly violates the procedural sections in the CrPC and the Prisoner's Attendance in Court Act.

The table below gives a detailed account of 40 inmates with 56 cases whose production warrants were analyzed for this study.

TABLE 1.3: PRODUCTION DETAILS OF INDIVIDUAL CASES

Name of the Undertrial*	Number of Months Spent in Jail (as per Information Available)	Total Number of Productions Ordered	Number of Times the Undertrial was Produced at Court	Number of Times the Undertrial was not Produced at Court	Not Clear
Vi2	57.5	50	23	27	0
Jg	56.1	60	33	25	2
Vi1	31.9	72	51	20	1
Jh	11.5	26	9	17	0
Pr	10.3	23	9	13	1
Ta	5.6	15	3	12	0
Mi	7.4	15	4	11	0
Su	16.5	46	35	11	0
Ja3	12.2	14	4	10	0
Ra2	12.2	14	5	9	0
Te	33.1	28	20	8	0
Ka	23.1	23	16	7	0
Raj	15.1	11	4	7	0
Rac	18.7	10	3	7	0
Bh	18.1	11	5	6	0
Bhg 1	8	7	1	6	0
Ja	13.1	13	7	6	0
Ja4	12.2	13	7	6	0
Ra3	13.1	13	7	6	0
RaS	17.7	11	5	6	0
Sa2	9.1	12	6	6	0
Ba	4.7	12	7	5	0
Gu	24.5	15	10	5	0
Ral	17	13	8	5	0
Ru	9.6	21	16	5	0
Sa	6.8	8	3	5	0
Sh1	9.6	21	16	5	0
Ar1	3.1	4	0	4	0
BhB	3.9	5	1	4	0

5 Section 269, CrPC.

* Names of the undertrials not disclosed

Name of the Undertrial*	Number of Months Spent in Jail (as per Information Available)	Total Number of Productions Ordered	Number of Times the Undertrial was Produced at Court	Number of Times the Undertrial was not Produced at Court	Not Clear
Ra1	13	14	10	4	0
Ar2	5.3	4	1	3	0
Ja2	11.3	12	9	3	0
Ka	7.2	4	1	3	0
Sh	7.2	4	1	3	0
Tu	3.1	4	1	3	0
Ab	4	6	4	2	0
Ak	15.3	8	6	2	0
Akk	5.4	8	6	2	0
Ha2	11	8	6	2	0
Ju2	4.4	4	2	2	0
Ku	3.5	3	1	2	0
Ab	5.4	8	7	1	0
Bhg 2	2.6	3	2	1	0
Bhg 3	4.9	3	2	1	0
Che	3.2	7	6	1	0
Ju 3	10.5	6	5	1	0
Kar	2.9	4	3	1	0
Pa	5.7	2	1	1	0
Ro	19.8	9	8	1	0
Ru 2	8.5	5	3	1	1
Sho	2.4	6	5	1	0
Sh 2	8.5	5	4	1	0
Su 1	4.9	4	3	1	0
Al	9.1	10	10	0	0
Ha1	9.1	4	4	0	0
Su2	6.3	5	5	0	0
Total	-	746	434	307	5

Production (*Peshi*) Register and Requisition Forms

In the four-month period under study, an examination of the requisition forms sent by the jail to the police seeking police escorts showed that the prison asked for a total of 7,392 escorts to take as many prisoners to court, to other prisons and for medical necessities. Of these, 6,474 or 87.5 per cent were required to be taken to courts. In order to identify how many inmates were ordered to be taken to court and how many were actually taken, the *peshi* register during the same period was studied.

TABLE 1.4: NUMBER OF INMATES REQUIRED TO BE ESCORTED OUT OF ALWAR PRISON AND REASONS FOR THE SAME

Month	Court Production	Transfer	Hospital	Miscellaneous	Total
June 2011	1,765	29	124	2	1,920
July 2011	1,608	106	146	9	1,869
August 2011	1,448	115	164	36	1,763
September 2011	1,653	1	177	9	1,840
Total	6,474	251	611	56	7,392

TABLE 1.5: COURT REQUISITIONS, ACTUAL PRODUCTIONS AND ESCORT SHORTFALL

Period	Number of Productions Ordered	Number of Productions Occurred	Non-Production	Escorts Provided	Percentage of Non-Production	Average Number of Inmates per Escort
June 2011	1,765	1,576	189	317	10.7	6
July 2011	1,608	1,242	366	354	22.8	5
August 2011	1,448	736	712	41	49.2	35
September 2011	1,653	571	1,082	262	65.5	6
Total	6,474	4,125	2,349	974	36.3	7

Summary Findings

- A total of only 4,125 prisoners were ferried to court under the care of 974 escorts. This translates to about 4 inmates per escort.
- 2,349 or 36 per cent undertrials were not taken to court on the dates they were expected to appear. On average, while 80 guards were requisitioned per day, only 12 were provided.
- During some months (particularly August and September) the difference between demand and availability of escort ranged between 49 per cent per cent and 65 per cent.
- The number of escorts provided in August was substantially lower than those provided in other months. As several festivals such as *Raksha Bandhan*, *Janamashtmi*, *Eid* and also Independence Day fall in this month, allocation of escorts to other duties is a probable reason for this shortfall.

The Andhra Pradesh High Court in Kurra,⁶ laid down the exceptional circumstances in which the plea of impossibility of non-production can be claimed. However, this high proportion of non-production on a daily basis shows that the laxity of the prison and police department and the unconcern of magistrates for breaches of statutory provision is the norm and obedience to the statute is the exception.

Court Lockups: Another Gap in Physical Production

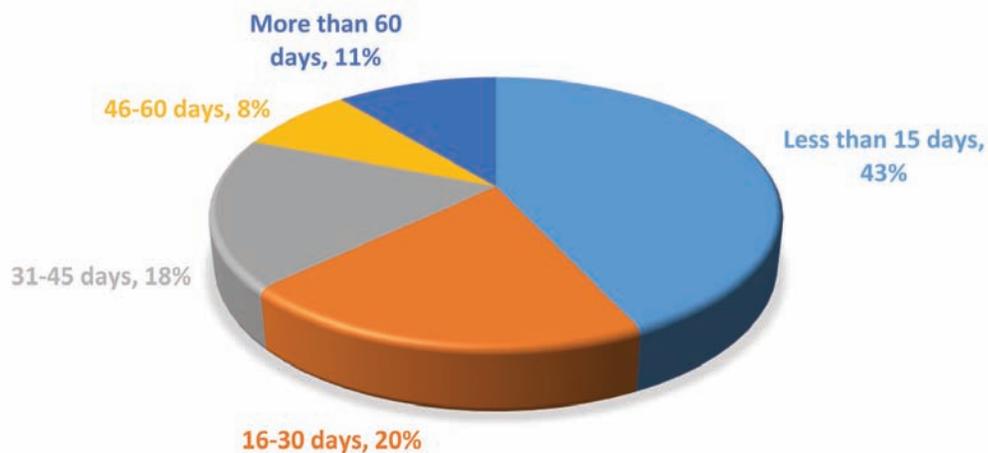
The production of an undertrial from the prison to the magistrate is a long-drawn process which involves the synchronisation of various actors and procedures. After reaching the courts, the undertrials are sent to the court lockups to wait their turn for the trial. The details of the same are recorded in the *roz namcha*. If time permits, the undertrials in the court lockups are presented before the magistrate; if not, they are sent back to the prison without being produced. But the record shows that the prisoner has appeared before the magistrate, even though he may never have left the lockup, met his lawyer or had the case progress any further. It is only the formality that is recorded.

6 Kurra Dasaratha Ramaiah and Ors. v State Of Andhra Pradesh (1992), CriLJ 3485

Frequency of Production in Alwar

The 40 prisoners examined had 56 cases against them in 38 courts. All were charge sheeted and had been in custody for different periods of time.

TABLE 1.6: FREQUENCY OF PRODUCTION



Summary Findings

- Out of the 56 cases observed, 46 were being tried in magistrate courts.
- In 57 per cent of the cases, inmates were produced beyond 15 days.
- Taking all 746 orders together, on average the gap between ordered productions comes to 27 days.
- In 11 per cent of the cases, the gap between the productions ordered by the magistrate stretched beyond 60 days.

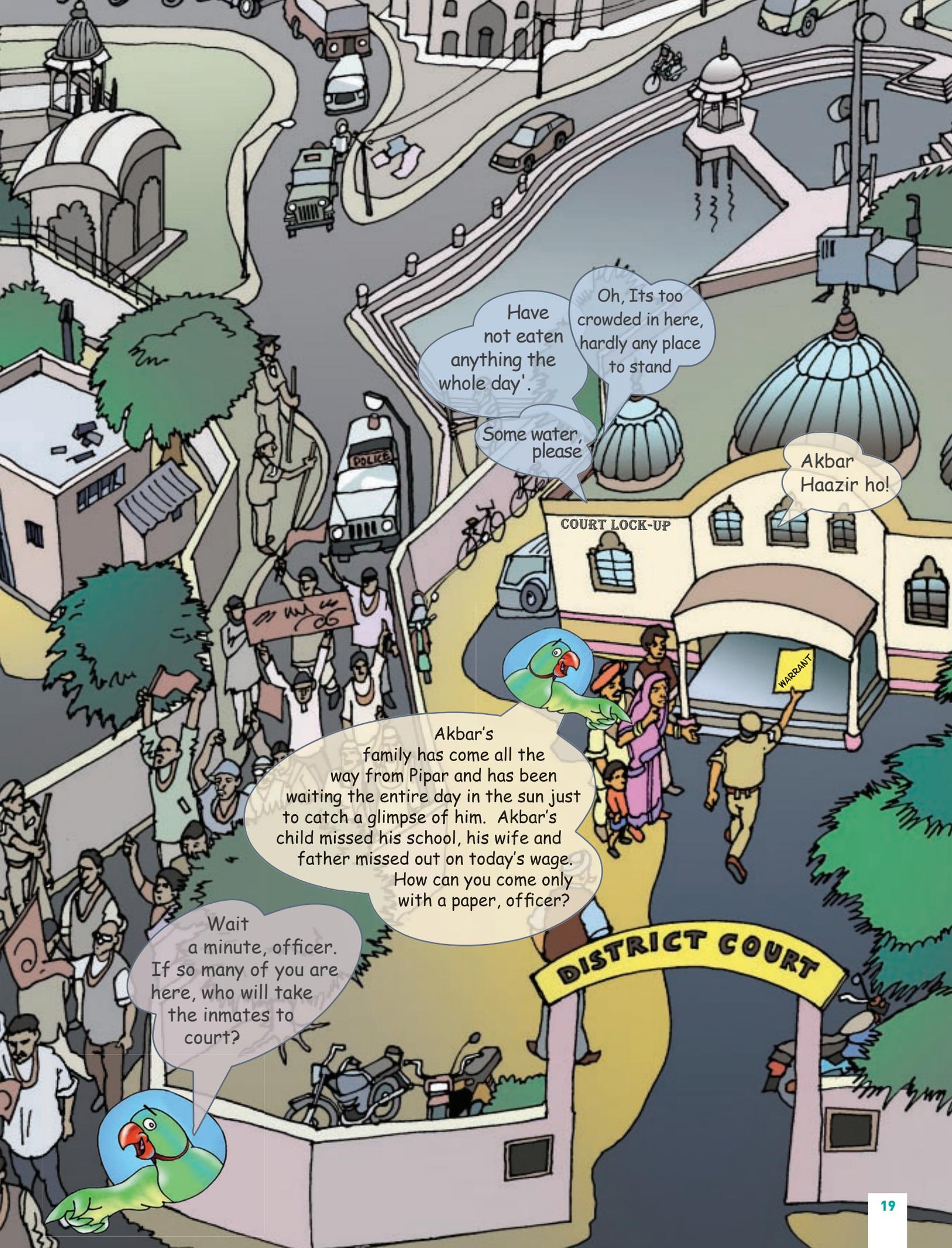
B. Court Production In Rajasthan: The Big Picture

This section deals with (1) the day-wise demand-supply of police escorts and gaps in court productions across district and central jails in the state; (2) the timeline of the increases in the escort strength since 1975; and (3) consolidation of state-level court production figures – the gaps in numbers and percentages across districts and jail types.



Amar hasn't been sent for the last three hearings, has been pleading to be sent this time; Akbar is desperate to meet his family in court.

Anthony is ready to even pay some money to be taken to the court for the hearing. What will you do, officer? Who will you take? Who will you leave, officer?



Have not eaten anything the whole day'.

Some water, please

Oh, Its too crowded in here, hardly any place to stand

Akbar Haazir ho!

COURT LOCK-UP

WARRANT

Akbar's family has come all the way from Pipar and has been waiting the entire day in the sun just to catch a glimpse of him. Akbar's child missed his school, his wife and father missed out on today's wage. How can you come only with a paper, officer?

Wait a minute, officer. If so many of you are here, who will take the inmates to court?

DISTRICT COURT

The Daily Reality

In 2010, Rajasthan had 834 courts in 33 districts. There were about 11,000 undertrials in 96 jails⁷. On an average, 2500 inmates were to be produced in court every day. In order to produce these inmates daily, the sanctioned capacity of police escorts was 874. In 2010, 4 heavy and 18 medium vehicles were available in the Prison Department. A maximum of only 620 prisoners could be taken to courts by these vehicles. While the police must provide the personnel for escorting prisoners, the jail authorities must provide the vehicles.

All jails in Rajasthan maintain a daily record of the number of inmates that are required to be produced in court and the number actually taken to court. CHRI, with the cooperation of the Rajasthan Prison Department, collated and compiled this data across eight central jails, 23 of 25 district jails⁸ and two women's reformatories for the period July to September 2013. Similar data for the undertrials lodged in sub-jails in these districts were not available.

In order to understand the daily reality of providing police escorts across the state, three months' data was averaged to give daily figures. The daily average of the number of prisoners required to be produced, and the number actually being brought to the court was worked out on the basis of 71 court working days between July and September 2013.

The table below details the undertrial population of all central and district jails in the state and the average number of inmates ordered to be produced in court in each district on any given day. In order to meet this requirement, the number of courts and the escort strength sanctioned in each district are also mentioned. Finally, with this infrastructure, the average number of inmates actually produced on a daily basis and thus the gap between the numbers ordered and produced was arrived at in the table.

TABLE 2.1: RAJASTHAN COURT PRODUCTION DATA – DAILY AVERAGE

Particulars and Location of Jail	Undertrial Population (Mar 2013)*	Number of Courts (Dec 2010)**	Sanctioned Escorts Strength (Dec 2010) **	Number of Inmates to be Produced in Court (per day) #	Number of Inmates Actually Sent to Court (per day) #	Production Gap (in Number of Inmates per day)	Percentage Gap
A. CENTRAL JAILS							
Jodhpur	740	39	38	100	44	56	56.06
Bharatpur	339	30	26	68	33	35	51.75
Jaipur	1,272	123	142	213	119	94	44.24
Ajmer	573	41	26	72	47	25	35.13
Kota	1,000	50	17	135	90	45	33.23
Bikaner	404	27	12	69	48	21	30.98
Udaipur	583	42	39	59	47	12	20.57
Sri Ganganagar	200	32	33	38	33	5	11.01
Central Jails (Total)	5,111	384	333	756	462	294	38.93

7 Rajasthan Jail Committee Report, 2010.

8 Data from Dausa and Jalore District Jails were not made available.

Particulars and Location of Jail	Undertrial Population (Mar 2013)*	Number of Courts (Dec 2010)**	Sanctioned Escorts Strength (Dec 2010) **	Number of Inmates to be Produced in Court (per day) #	Number of Inmates Actually Sent to Court (per day) #	Production Gap (in Number of Inmates per day)	Percentage Gap
B. District Jails							
Sikar	156	30	24	32	18	14	43.09
Karoli	134	10	21	23	13	10	42.42
Churu	169	11	33	17	10	7	41.93
Alwar	527	55	49	77	48	29	37.39
Jhalawar	354	22	19	50	34	16	32.2
Baran	234	22	28	25	17	8	31.96
Sirohi	114	10	17	16	11	5	31.2
Chittorgarh	399	32***	46***	35	25	10	29.64
Pratapgarh	214			15	15	0	0
Gangapurcity	132	14	7	10	7	3	29.4
Pali	97	25	38	15	11	4	27.56
Dhaulpur	375	15	17	52	37	14	27.42
Bhilwara	349	35	41	42	31	11	26.15
Dungarpur	151	12	5	16	12	4	25.98
Jhunjhunu	241	9	19	30	23	7	23.23
Bundi	180	20	7	25	19	6	22.92
Tonk	290	13	17	27	22	4	16.34
Rajsamand	159	22	27	24	21	3	12.9
Nagore	98	20	41	15	13	2	11.45
Hanumangarh	234	22	24	31	29	2	7.2
Banswara	265	10	12	21	20	1	6.73
Jaisalmer	59	10	7	7	7	0	3.95
Barmer	123	8	16	15	14	0	2.81
Dausa	146	12	14	No Info	No Info	No Info	No Info
Jalore	95	11	12	No Info	No Info	No Info	No Info
District Jails (Total)	5,054	427	515	619	457	161	26.09

WOMEN'S REFORMATORIES							
Jaipur	47	N.A.	N.A.	6	4	2	29.51
Jodhpur	79	N.A.	N.A.	10	7	2	23.36
Total	126	N.A.	N.A.	15	11	4	25.66

* Rajasthan Prison Statistics. http://rajprisons.nic.in/prison_statistics.htm

** Rajasthan Jail Committee Report, 2010

*** Chittorgarh and Pratapgarh have 32 courts in total. 47 escorts have been sanctioned for Chittorgarh and Pratapgarh combined.

As the average number of inmates to be produced in Court and those who were actually sent to Court per day are in fractions, they have been rounded off to the nearest whole number

TABLE 2.2: RAJASTHAN COURT PRODUCTION DATA – CONSOLIDATED BY JAIL TYPE: DAILY AVERAGE

Jail Type	Undertrial Population (Mar 2013)*	Number of Courts (Dec 2010)**	Sanctioned Escorts Strength (Dec 2010)**	Number of Inmates to be Produced in Court (per day)	Number of Inmates Actually Sent to Court (per day)	Production Gap (per day)	Percentage Gap
Districts which have Central Jail (8)	5,111	384	333	716	437	343	38.93
Districts which have District Jail (23/25)	5,054	427	515	586	433	188	26.09
Districts which have Women's Reformatories. (2)	126			14	11	3	25.66
Grand Total	10,291	811	848	1618	1083	535	33.07

* Rajasthan Prison Statistics. http://rajprisons.nic.in/prison_statistics.htm

** Rajasthan Jail Committee Report, 2010

Summary Findings

- The tables reveal the overall inadequacy of police escorts and their disproportionate allocation across districts. As no separate data was maintained or made available for escorting women inmates, a similar analysis could not be made for women lodged in reformatories.
- The Jail Committee Report of 2010 puts the average daily requirement at 2500 prisoners to be taken to court. The daily average (over 71 days) analyzed by CHRI worked out to 1618 prisoners. However, with 874 sanctioned police escorts, on average only 1083 inmates were produced daily. The average cumulative non-production for the same time-line is 33 per cent. This however reveals only half the picture. Uneven and irrational deployment of personnel and their diversion to other duties beyond escorting prisoners depending on the policing priorities of the day is another cause for the high rates of non-production.
- Escorts are not deployed proportionately. Amongst Central Jails, Jaipur and Kota illustrate the maximum mismatch of escorts to production needs. Jaipur at 43 per cent has the lion's share of escorts but sends only 28 per cent of all central jail prisoners required to go to the court. Of the total undertrials in central jails, 18 per cent are to be produced from Kota. But only 5 per cent of the strength is sanctioned for the district.
- While escorts are allocated proportionately in most districts, Nagore, Pali, Churu and Chittorgarh have disproportionately higher allocation whereas Dhaulpur and Jhalawar have disproportionately lower allocation compared to the productions ordered by the court from their jails.
- The state has just 848 escorts for 811 courts, thus an abysmal court-escort ratio of 1.05:1. In the 8 district central jails with district jails, the situation is far worse with the ratio even below one, as 333 escorts operate under 384 courts. With productions distributed across multiple courts, for the production of a single inmate, a separate guard would be required, thus off-setting the standard ratio.

Beyond the numbers, the escort strength needs to take into account the requirement of higher deployment of guards for habitual offenders and warring factions. In order to ensure the safety and security of the inmates and also to minimise any chance of escape, the deployment of guards for producing habitual offenders and inmates of rival gangs require heavy *bandobast*. Another factor that needs to be considered while assessing the escort strength is the allocation of police officers entrusted with escorting duties for other work. Political rallies, festivals and other events lead to diversion of police guards from escort work. Also, of the total sanctioned strength, there

Women Prisoners and Police Escorts

Women prisoners are to be taken to court or elsewhere by women escorts. However, in the Alwar study we did not find any separate list of women prisoners with the requisition requests. Moreover, the only way to identify a woman prisoner for whom a woman escort is required is by titles such as shrimati, w/o, etc. The list of police escorts does not specify the strength of women police escorts. There are two women's reformatories in Rajasthan – in Jaipur and Jodhpur. The quantum of non-production observed in our study in the reformatories was 23 per cent and 29 per cent respectively. Information about the number of women constables should be made available through the requisition letter or the letter from reserve police lines deputing the escort force.

would be gaps in the form of vacancies and leaves. Thus there would be a clear gap between the sanctioned and actual available strength on any given day.

While the M.A. Dharman judgment, stated in the earlier section, explains the exceptional circumstances under which impossibility of physical production may be taken as a plea, these numbers and allocation priorities show that the reality is completely and chronically detached from the standards. Rajasthan is illustrative of a situation that exists all across the country.⁹

Escorts for Medical Needs

Another crucial reason why police escorts are needed is to take inmates to hospital. When a prisoner is in judicial custody, it is the duty of the state to provide adequate medical attention as and when needed. Jails are normally equipped with a doctor on duty. However, when a case is beyond the expertise or limited infrastructure of the jail, it is referred to an outside medical centre. Such cases are of extreme emergency and hence are referred for attention to outside medical centres.

TABLE 2.3 RAJASTHAN MEDICAL NEEDS DATA – CONSOLIDATED BY JAIL TYPE

Type of Jail	No, Jails Studied/Total Jails	Number of Inmates to be Sent to Medical Centres outside jail (Jul-Sep 2013)	Number of Inmates actually sent (Jul-Sep 2013)	Gap in Medical Attention	Percentage Gap
Central Jail	(8/8)	6,677	3,785	2,892	43.31
District Jail	(23/25)	4,235	3,891	344	8.12
Women's Jail	(2/2)	462	345	117	25.32
Grand Total	(33/35)	1,1374	8,021	3,353	29.48

Even in medical emergencies, as shown in Table 2.3, in 30 per cent cases, an inmate is not taken to a medical centre, owing to a shortage of police escorts. This could be fatal and cause irreparable damage to the lives of inmates.

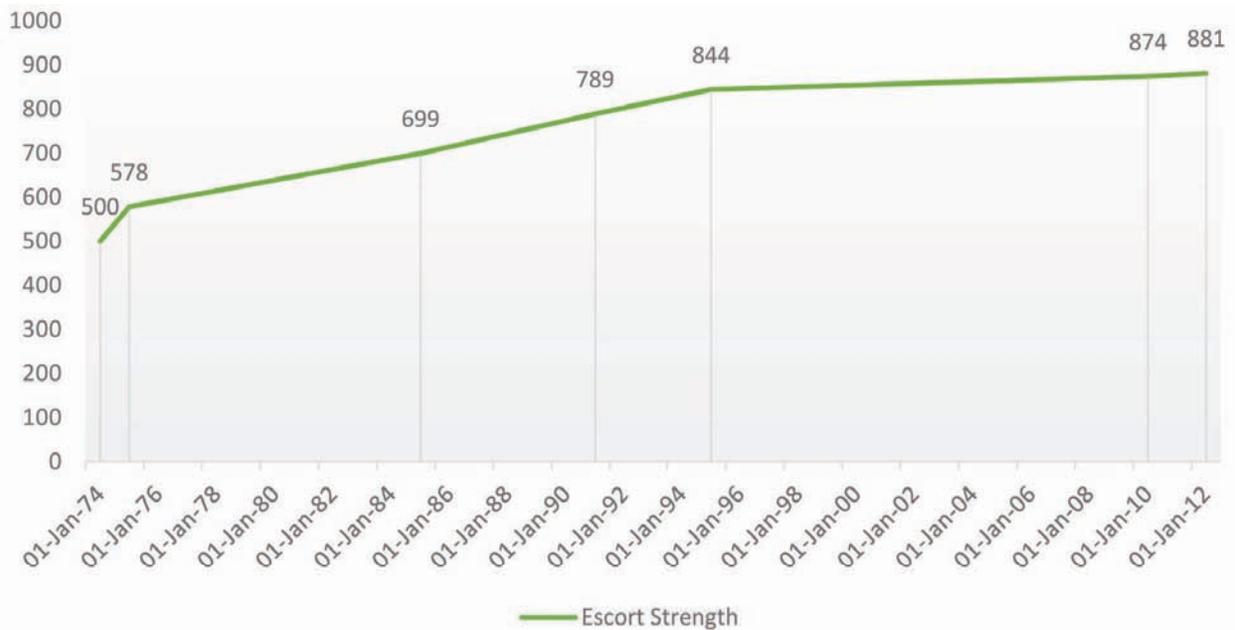
The Rajasthan Jail Committee Report, 2010 mentions:

“It also becomes difficult to provide medical facility to prisoners in the absence of police escort. In April 2010, from Jaipur Central Jail 468 prisoners were to be sent for specialist treatment of which only 51 could be taken to hospital. Even when the guards have been provided, they are made available later in the day, and sending prisoners to a general hospital becomes redundant as specialists leave the hospital by that time.”

⁹ <http://www.newindianexpress.com/cities/bangalore/Shortage-of-Police-Personnel-Delays-Justice-for-Undertrials/2014/09/01/article2408714.ece>; <http://thecanaratimes.com/epaper/index.php/archives/27684>; <http://sikhsiyasat.net/2011/12/09/undertrials-in-nabha-jail-to-go-on-hunger-strike/>

Rajasthan Escort Strength: Timeline

TABLE 2.4 RAJASTHAN ESCORT STRENGTH TIMELINE GRAPH¹⁰



In the last 20 years, the population of Rajasthan has increased by 55 per cent¹¹. IPC Crimes in the state have increased by 47 per cent¹². The prison population has also increased by 150 per cent¹³ in this time period. However, the above table clearly shows that the escort strength has increased by less than 50 personnel (4 per cent) in these 20 years. While crime and the number of inmates have increased in the last two decades, the infrastructural mechanisms have clearly lagged far behind thus creating a major gap in the system.

TABLE 2.5 RAJASTHAN ESCORT STRENGTH: TIMELINE OF GOVERNMENT NOTIFICATIONS

Timeline of Increase in Strength of Escort	Date of Order/ Notification	Total Sanctioned Strength of Police Escorts			
		Head Constables	Constables	Others	Total
A	Strength before 1975	74	426		500
	Increase as per Notification/ Order No- F.3 (22) Home-Gr. II/74	15 December 1975	14	64	78
B	Strength as on 15 December 1975	88	490		578
	Increase as per Notification/ Order 15/6/ Home-2/85	10 October 1985	19	102	121

10 Information received from Rajasthan SHRC.
 11 <http://www.citypopulation.de/php/india-rajasthan.php>.
 12 <http://police.rajasthan.gov.in/CrimeTrend.aspx>.
 13 PSI 1995, NCRB & <http://rajprisons.nic.in/pdf/pop310814.pdf>.

	Timeline of Increase in Strength of Escort	Date of Order/ Notification	Total Sanctioned Strength of Police Escorts			
			Head Constables	Constables	Others	Total
C	Strength as on 10 October 1985		107	592		699
	Increase as per Notification/ order No. 27/4/Home-2/ab Group-6/85	17 May 1991	18	72		90
D	Strength as on 17 May 1991		125	664		789
	Increase as per Letter No. (13) (34) Home-6/95	28 October 1995		52	3	55
E	Strength as on 28 October 1995		125	716	3	844
F	Strength as mentioned in the Rajasthan Jail Reform Committee, 2010	2010				874
G	Strength as mentioned in letter to SHRC dated 26 Oct 2012 from the Police & Law and Order Dept., Jaipur	2012				881

The Rajasthan Police Department have repeatedly initiated efforts to re-assess escort strength and suggested an increase in the force. A letter from the ADGP's office dated 31st December 2010, addressed to the Home Department shared the concern of inadequacy of the available strength to escort inmates to the court. The letter mentioned:

“इस प्रकार राज्य के समस्त जिलों में स्वीकृत चालनी गार्ड वर्तमान परिपेक्ष्य में काफी कम है। जिससे मुल्जिमान को न्यायालय में नियमित रूप से पेशी पर उपस्थित नहीं किया जाता है। जिसके कारण प्रकरणों में अनावश्यक विलंब होता है।”¹⁴

The letter also mentioned that the police authorities have analyzed the average number of inmates to be produced daily in court, and, based on the norms, evaluated the number of escorts which need to be sanctioned. The financial implications for this were also arrived at. In a letter from the ADGP's office dated 14 May 2013 addressed to the Home Department, the Police Department again brought up this issue as follows:

“चालानी गार्ड की नफरी में वृद्धि नहीं होना तथा वर्तमान में कोर्ट्स की संख्या में वृद्धि एवं जेलों में बंदियों की संख्या में अत्यधिक वृद्धि से चालानी गार्ड्स की गंभीर समस्या उत्पन्न होती है, जिससे बंदियों को संबंधित कोर्ट्स में तारीख व पेशियों पर प्रेषित नहीं किया जा सकता, तथा यह कोर्ट्स के आदेशों की अवमानना के श्रेणी में आता है। दूसरी तरफ बंदियों के अधिकारों का भी हनन होता है।”¹⁵

In another letter from the ADGP's office dated 16 May 2013 addressed to the SHRC's office, the authorities cited multiple occasions where letters were written to the Home Department for sanctioning of escorts, but none of them were acted upon.

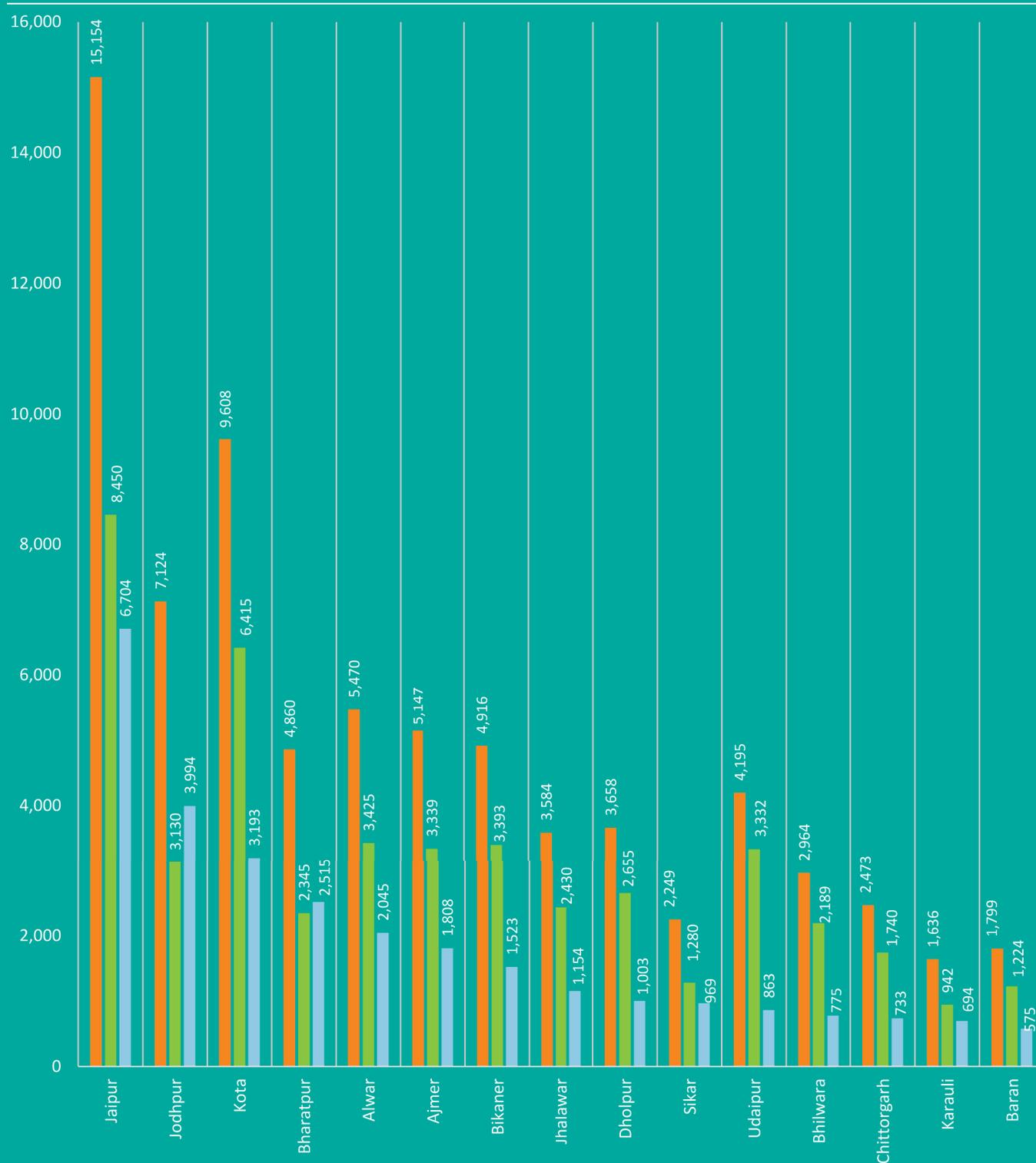
14 “So, the sanctioned escort strength in all the districts of thre state in the current scenario is extremely less. Because of this, inmates are not brought to the court regularly for their production. This causes unnecessary delay in trial.”

15 “No increase in the number of escort guards, while exsive increase in the number of courts and prisoners has created a serious problem of escort guards, because of which inmates cannot be produced in the court on their specific dates. This comes under the category of contempt of court. On the other hand, this also leads to violation of the rights of the prisoners.”

Court Production in Rajasthan: Consolidation

Overall, across Rajasthan, during the three month period from June to September 2013, 33 per cent of the inmates were not sent to court for their production (*peshti*). The overwhelming reason was shortage of police escorts.

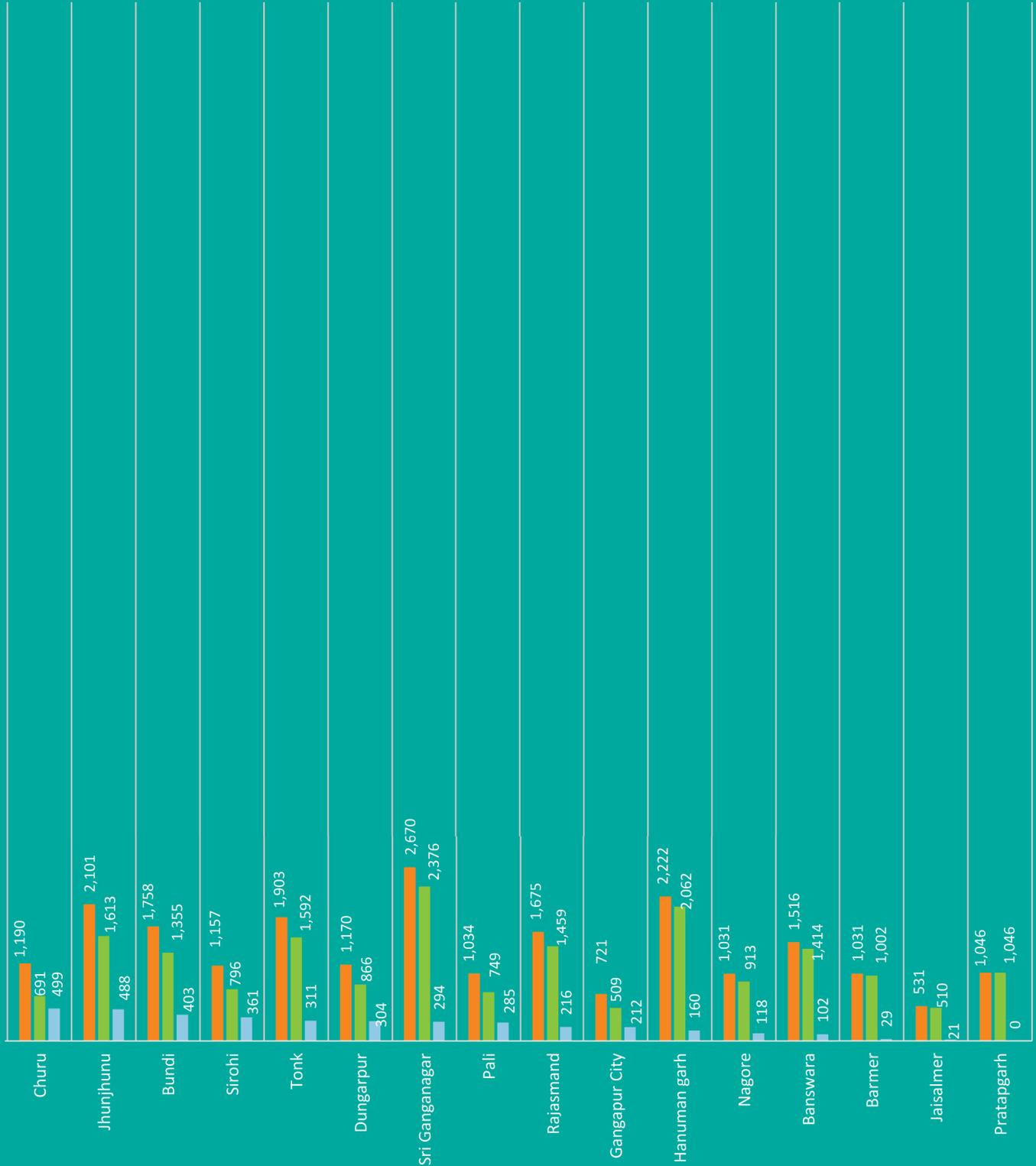
TABLE 2.6: RAJASTHAN COURT PRODUCTION DATA – NUMBER GAPS



■ Number of Prisoners to be Produced in Court

■ Number of Prisoners Actually sent to Court

■ Production Gap



* Information from Dausa and Jalore were not provided

PERCENTAGE OF NON-PRODUCTION

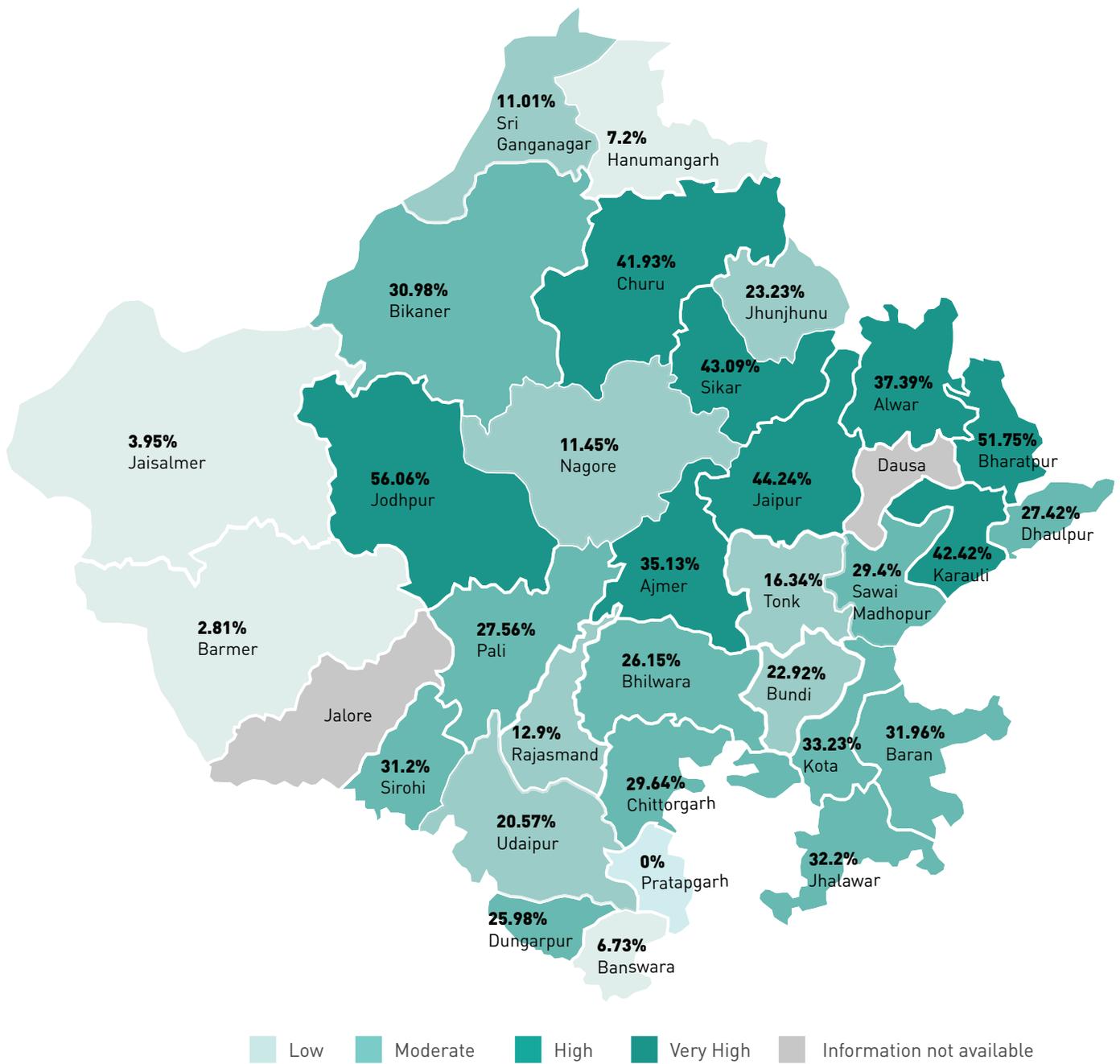
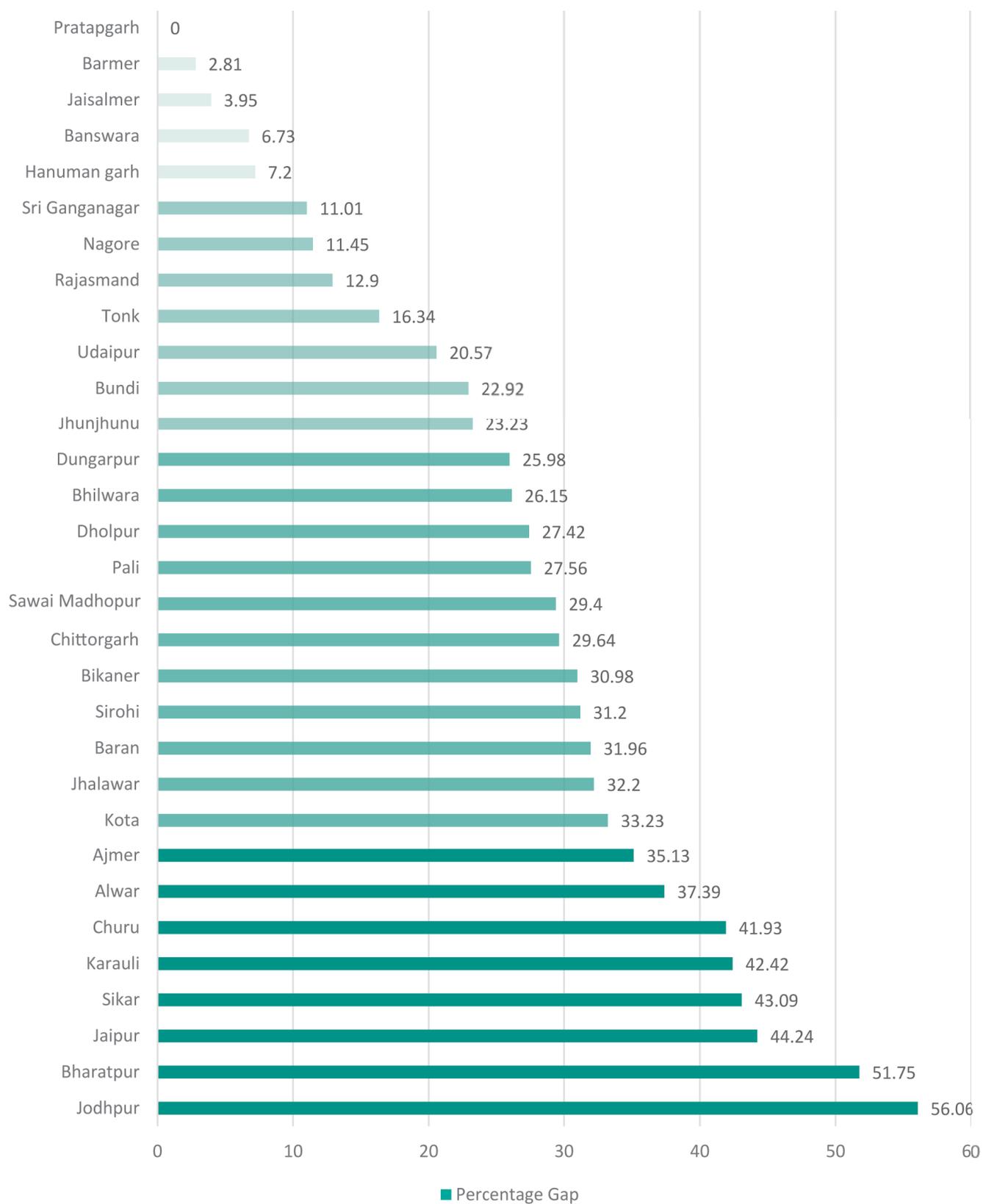


TABLE 2.7 MAPPING RAJASTHAN NON-PRODUCTION PERCENTAGES



Summary Findings

- Top ten districts with highest non-production are Jaipur, Jodhpur, Kota, Bharatpur, Alwar, Ajmer, Bikaner, Jhalawar, Dholpur and Sikar. These ten districts account for 75% of the total non-production in the state.
- The non-production in the number of inmates was highest in the case of Jaipur Central Jail and in terms of percentages in the case of Jodhpur Central Jail. When summoned by the court in May 2013 to explain the lack of timely productions, the jail authorities of Jodhpur Central Jail analyzed the gap between their requests for escorts and the actual numbers provided. They found that over a two-month period – April and May 2013 – only a third of the prisoners who were to be produced in court could actually be sent. The majority had to miss their court dates, some of them repeatedly.
- CHRI's study of a few months later confirmed that the shortfall continued. From July to September 2013 only 44 per cent of the inmates who had to be produced in court could actually be taken to court.
- Bharatpur and Jaipur Central Jails had similar high rates of non-production. Sri Ganganagar was the only Central Jail with low levels of non-production. This can be attributed to the relatively high number of escorts sanctioned in Sri Ganganagar. In order to escort on an average 38 inmates every day, 33 escorts are sanctioned in the district.
- District jails at Pratapgarh, Barmer and Jaisalmer have done reasonably well to keep the proportion of non-production at under 5 per cent, with Pratapgarh having zero production gap.

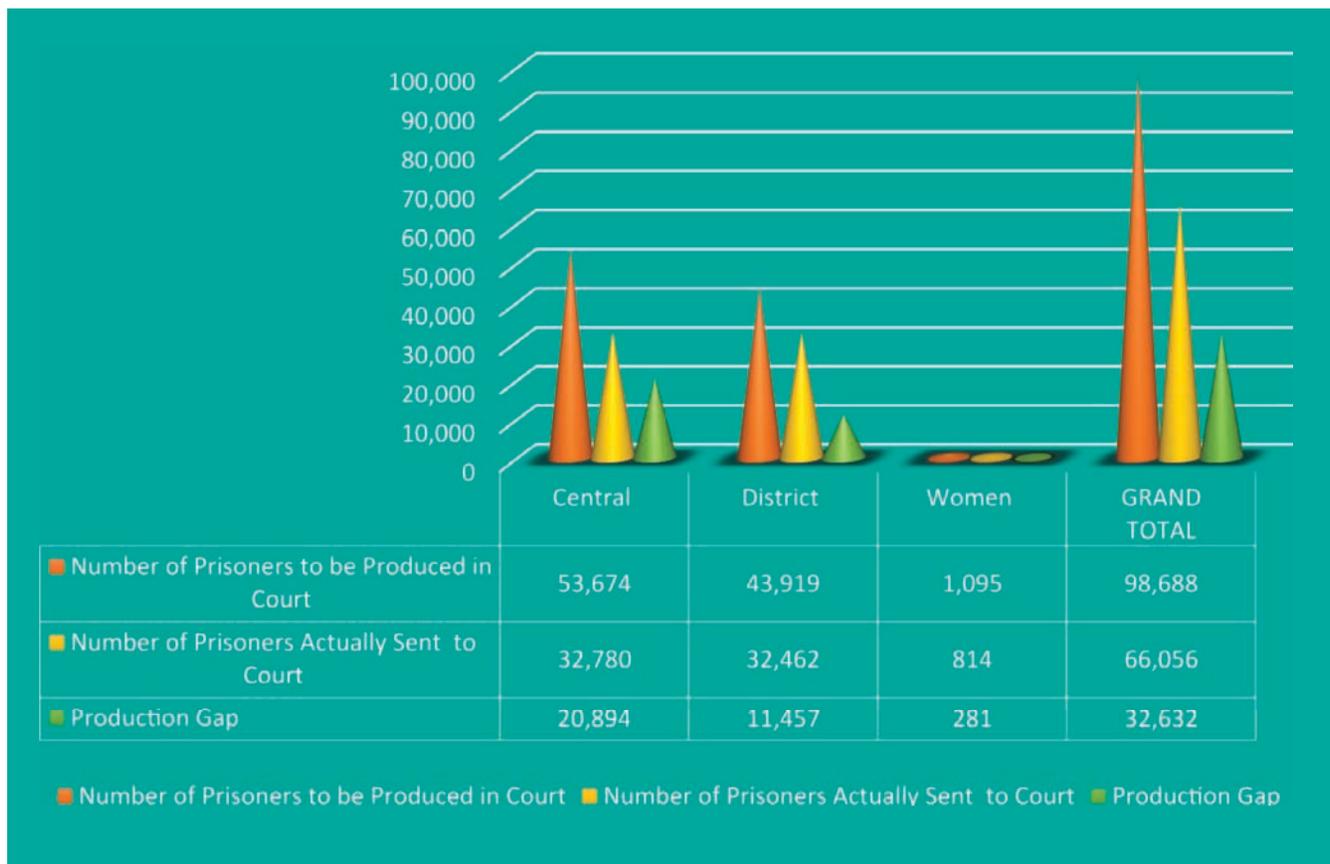
Pratapgarh's Full Production Vs Bharatpur's Non-production

Pratapgarh, the 33rd district of Rajasthan came into existence in January 2008. It is one of the smallest districts of Rajasthan, both in terms of area and population (32nd of the 33 districts). Our study shows that Pratapgarh is the only district with zero production gap, i.e. every inmate ordered by the court to be produced was produced in the three months studied. It has one district jail and four sub-jails. Our study is confined to district jails. Mr Pramod Singh, Jailor, Pratapgarh District Jail was contacted to understand the reasons for this remarkable feat and he attributed it to multiple factors. Pratapgarh has only one court complex and so the escort force do not have to be divided into smaller groups and thus more inmates can be taken to court at a time. Also, the court complex is located very close to the jail ensuring easy access. To add to that, the border home guards are also deployed for escorting prisoners. Further, only a small proportion of inmates housed have their trial outside Rajasthan, thus causing minimum diversion. Another source of diversion is the deployment of escort force for law and order requirements. As the district is relatively peaceful, availability of police for escort work is usually not compromised.

Bharatpur, however, shows a completely different story with more than half of the inmates not produced on a daily basis. One of the Non-Official Prison Visitors* of Bharatpur District Jail wrote to the Rajasthan High Court, among other authorities, to highlight the frequent irregularity of court production of undertrials from Bharatpur Jail. As a result, the Rajasthan High Court, the Superintendent of Bharatpur Jail and the District & Session Judge of Bharatpur wrote to the Bharatpur District SP to take corrective action. The SP issued directions dated 12 December 2012 to the Reserve Police Inspector, Police Lines, Bharatpur to ensure that adequate numbers of police personnel are sent to the prison on a daily basis for escort duty. However that does not seem to have improved the situation in Bharatpur as it ranks second in non-production among all the districts in Rajasthan.

* Non-official visitors are civil society representatives who are appointed by the State Government to visit and inspect the prisons. Their purpose is to monitor the prison conditions and secure the rights of prisoners.

TABLE 2.8: RAJASTHAN COURT PRODUCTION DATA – CONSOLIDATION BY JAIL TYPE

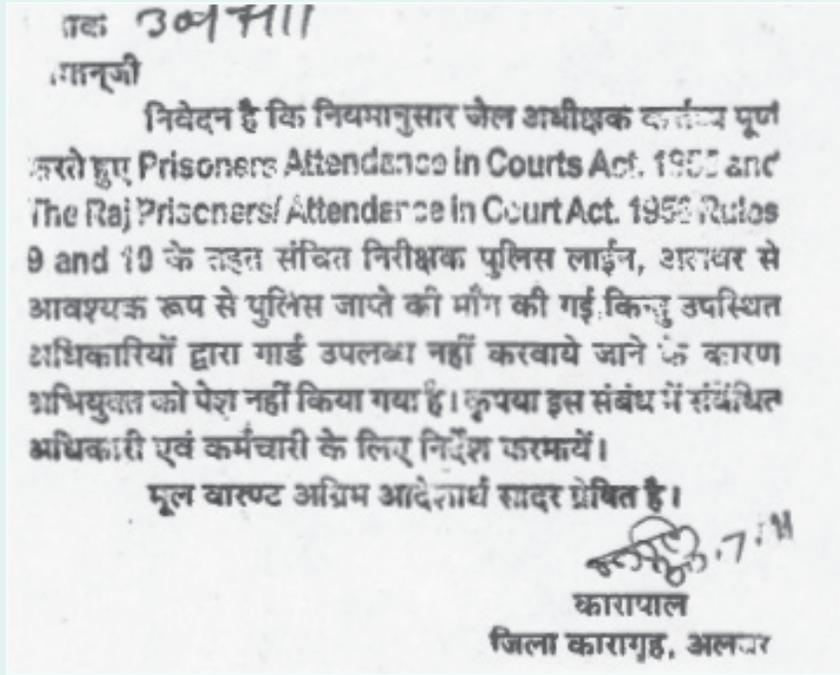


Summary Findings

- Central jails are supposed to be better equipped with resources which should ideally translate into better implementation of laws. However, Table 2.2 shows that the central jails have fared worse than district jails in producing inmates before the court.
- Out of the eight central jails, five feature in the top ten and three (Jodhpur, Bharatpur and Jaipur) in the top five districts with the highest proportion of non-production of inmates to court.
- The probable reason for this is illustrated in Table 2.1, which shows that in districts where there is a central jail, an average of 55 per cent of undertrial inmates are supposed to be produced on a daily basis, but only 38 per cent of the escorts are sanctioned.

The Rubber Stamp:¹⁶ Res Ipsa Loquitur ¹⁷

Non-production of the prisoner is such a common practice now that prison authorities do not bother with explaining the prisoner's absence to the court and the court does not ask for an explanation. Instead, absence of the prisoner and the courts' tolerance of this malpractice are so predictable that the prison administration has reduced the bother of it all by making a rubber stamp which they use to send to the court instead of the prisoner.



The Stamp says:

“निवेदन है कि नियमानुसार जेल अधीक्षक कर्तव्य पूर्ण करते हुए Prisoners Attendance in Court Act, 1956 and The Raj Prisoners Attendance in Court Act 1956, Rules 9 and 10 के तहत संचित निरीक्षक पुलिस लाइन, अलावर से आवश्यक रूप से पुलिस जापते की मांग की गयी किन्तु उपस्थित अधिकारियों द्वारा गार्ड उपलब्ध नहीं करवाये जाने के कारण अभियुक्त को पेश नहीं किया गया है। कृपया इस संबंध में संबंधित अधिकारी एवं कर्मचारी के लिए निर्देश फरमायें।

मूल वारंट अग्रिम आदेशार्थ सादर प्रेषित है।”

The court in turn mostly puts its own rubber stamp on the record and mentions:
“मुल्जिम क ख ग P/W से अनुपस्थित। अब P/W से दिनांक १२३४ को पेश करे।”

16 The Stamp reads thus: “In accordance with the rules, the Jail Superintendent while following his duties, as per the Prisoners Attendance in Court Act, 1956 and The Raj Prisoners Attendance in Court Act, 1956, Rules 9 and 10, sought escort force from the Reserve Officer, Police Lines, Alwar but as the guards were not made available, the accused is not being produced in court. Request you to kindly issue directions for the officer for the same. The warrant has been produced for your directions.”
17 Latin phrase meaning “the thing speaks for itself”.

Escort & Vehicle Requirements: Need Assessment

The RTI data, the jail registers, the SHRC data and the Rajasthan Jail Committee report, all clearly indicate shortage of police escorts as reasons for non-production of inmates to court in Rajasthan. Having quantified the problem, the logical step is to identify practical solutions. This section deals with the requirement of escorts and vehicles to ferry the inmates from prison to court and back. The assessment of the escort force is based on the Rajasthan Prison Department's evaluation of escorts needs. The assessment of the escort vehicles was done based on the norm prescribed by the Rajasthan Jail Committee report 2010. Also, based on the district wise data of non-production of inmates, the top ten critical districts have been chosen and the need assessment of their escort and vehicles requirements has been made.

A. ESCORT & VEHICLE REQUIREMENTS IN RAJASTHAN

1. ESCORT REQUIREMENTS

The Rajasthan prison department assessed the escorts requirements based on the norms set up by the Rajasthan Police Rules 1948. The department in the letter dated 31st December 2010, wrote to the Rajasthan Home department to sanction an increase in the strength of police escorts. The assessment of the requirement of the escorts report was attached to the letter. The requirement took into account the average number of accused produced per day. The Prisoners (Attendance in Court) Act 1955 also lays down norms for escorts required for transfer of prisoners through production warrants. The norms roughly translate to a ratio of maximum two inmates per guard.

TABLE 3.1: ASSESSMENT OF ESCORT NEEDS

Average number of accused to be produced in court (Per day)		
Local Court	Sent outside the district	Total
2429	582	3011

Escort Strength	Sub-Inspector	H.C	Constable	Total
According to norms	11	181	1187	1379
Sanctioned strength	2	132	730	864
Excess Requirement ¹⁸	9	77	626	712

Based on the assessment, the department also computed the financial obligation to the state, as follows:

TABLE 3.2: FINANCIAL OBLIGATION

Expenses against appointment of police escorts	Number of escorts	Salary (p.m)	Months	Total Amount (in Rs)
Sub Inspector (Direct appointment)	9	11100	12	1198800
Head constable	77	15161	12	14008764
Constable	626	6100	12	45823200
Total	712			610.31 lakh

As per the assessment, on an average, 3011 inmates in Rajasthan jails are ordered to be produced in court daily. As per the norms, 1379 escorts are required to ferry these inmates. However there is a shortfall of 712 escorts. The financial obligation to the state for the additional increase in the escorts force would be 610.31 lakh per annum.

2. ESCORT VEHICLE REQUIREMENTS

While the escort force is under the police department, the escort vehicles are to be managed by the prison department. As per the Rajasthan Jail Committee Report 2010, the Rajasthan Prison Department had 4 heavy and 18 medium vehicles. The district-wise distribution of these vehicles are not available. According to the committee report, this strength is highly inadequate to produce escorts on a daily basis. The committee also proposed norms to assess the requirement of vehicles for escorting inmates to court and back. The norms are reproduced below:

For 100-200 prisoners

1 Mini Bus

For 200-500 prisoners

1 Light Vehicle and 2 Mini Buses

For 500-1000 prisoners

1 Light Vehicle, 1 Bus and 2 Mini Buses

¹⁸ The information provided in Table 3.1 points to apparent inaccuracies in the calculation of the excess requirement. Other norms may also have been taken into account.

For 1000-1500 prisoners 1 Light Vehicle, 2 Buses and 2 Mini Buses

For more than 1500 prisoners 1 Light Vehicle, 3 Buses and 2 Mini Buses

These vehicles may be provided at sub jails on the basis of tender and departmental vehicles may be made available at Central/ District Jails.

Based on these norms and Rajasthan prison population in 2013, an assessment of escort vehicles has been made in Table 3.3

TABLE 3.3: ASSESSMENT OF ESCORT VEHICLES NEEDS

Number of Prisoners	Number of Districts	Norm	Requirement
For 100-200 prisoners	(7+1) ¹⁹	1 Mini Bus	8 Mini Bus
For 200-500 prisoners	15 ²⁰	1 Light Vehicle and 2 Mini Buses	15 Light Vehicle and 30 Mini Buses
For 500-1000 prisoners	2 ²¹	1 Light Vehicle, 1 Bus and 2 Mini Buses	2 Light Vehicle, 2 Buses and 4 Mini Buses
For 1000-1500 prisoners	7 ²²	1 Light Vehicle, 2 Buses and 2 Mini Buses	7 Light Vehicle, 14 Buses and 14 Mini Buses
For more than 1500 prisoners	1 ²³	1 Light Vehicle, 3 Buses and 2 Mini Buses	1 Light Vehicle, 3 Buses and 2 Mini Buses
Total	33	-	25 Light Vehicle, 19 Buses and 58 Mini Buses

B. ESCORT & VEHICLE REQUIREMENTS IN RAJASTHAN FOR THE TEN CRITICAL DISTRICTS

1. ESCORT REQUIREMENTS

The overall proportion of non-production of inmates to courts in Rajasthan is 33 %. While most districts have high levels of non-productions, the ten districts with the highest quantum of non-production accounts for 75% of the total non-production in the state and thus need special attention. These districts are Jaipur Jodhpur, Kota, Bharatpur, Alwar, Ajmer, Ajmer, Bikaner, Jhalawar, Dholpur and Sikar. Not surprisingly, seven out ten districts in question have central jails as they house more number of inmates. The assessment made by the police department with respect to these ten districts are re-produced below:

19 Barmer, Bundi, Dungarpur, Jalore, Karauli, Rajasamand, Sawai Madhopur and Jaisalmer (1)

20 Banswara, Baran, Bhilwara, Chittorgarh, Churu, Dausa, Dholpur, Hanumangarh, Jhunjunu, Nagaur, Pali, Pratapgarh, Sikar, Sirohi and Tonk

21 Jhalawar and Ganganagar

22 Ajmer, Alwar, Bharatpur, Bikaner, Jodhpur, Kota and Udaipur

23 Jaipur

TABLE 3.4: ASSESSMENT OF ESCORT NEEDS: TEN CRITICAL DISTRICTS

S.No.	District	Average Number of accused to be produced (Per day)			According to Norms				Sanctioned Strength				Total Requirement				Financial Obligation
		In Local Court	Outside the District	Total	Sub-Insp.	H.C.	Constable	Total	Sub-Insp.	H.C.	Constable	Total	Sub-Insp.	H.C.	Constable	Total	
1.	Ajmer	204	30	234	2	11	81	94	0	4	22	26	2	7	59	68	58,58,724
	GRP Ajmer	50	0	50	0	2	12	14	0	0	0	0	0	2	12	14	12,42,264
2.	Kota Metro	136	19	155	2	4	50	56	0	0	0	0	2	4	50	56	46,54,128
	Kota Rural	45	1	46	0	5	21	26	0	3	14	17	0	2	8	10	9,49,464
3.	Bharatpur	175	41	216	1	11	72	84	0	4	21	25	1	7	50	58	50,66,724
	Jodhpur Metro	156	42	198	2	7	71	80	0	5	28	33	2	2	43	47	37,77,864
4.	Jodhpur Rural	42	3	45	0	4	22	26	0	4	20	24	0	0	4	4	2,92,800
	GRP Jodhpur	8	0	8	0	1	6	7	0	0	0	0	0	1	6	7	6,21,132
5.	Jhalawar	107	22	129	1	5	51	57	0	3	16	19	1	2	35	38	30,59,064
	Jaipur Metro	185	206	391	2	5	64	71	2	10	106	118	0	0	0	0	0
	Jaipur rural	78	10	88	0	6	38	44	0	4	20	24	0	2	19	21	17,54,664
7.	Alwar	97	10	107	0	9	46	55	0	7	42	49	0	2	16	18	15,35,064
8.	Bikaner	45	8	53	0	3	22	25	0	2	10	12	0	2	16	18	15,35,064
9.	Sikar	46	4	50	0	3	26	29	0	4	20	24	0	2	16	18	15,35,064
10.	Dholpur	42	5	47	0	2	12	14	0	3	14	17	0	0	0	0	0
	Total	1416	401	1770	10	78	594	668	2	53	333	371	8	35	334	339	318,82,020

In Table 3.4, the districts are arranged as per the financial resources required by each district to ensure adequate escort force. The table above shows that on an average 1770 inmates are to be produced in court on a daily basis. In order to produce them, 668 escorts would be required. With the current available escort strength, additional 339 escorts with an investment of Rs. 313 lakhs would be required. Shortage of escorts, based on the norms, are highest in Ajmer, Kota and Bharatpur and thus require the maximum financial investment. Jodhpur and Jaipur, which have the highest levels of non-production are relatively better off in terms of escort strength. In fact, the sanctioned escort strength exceeds the required strength (as per the norms) in Dholpur and Jaipur metro. This implies that the revision of the norm is necessary. It also re-instates the fact that shortage of escorts is not the only reason for non-production. Even when the requisite strength is available, the same is usually deployed to take care of law and order requirements, therefore a separate force dedicated only to escorting becomes extremely important. Moreover, while Jaipur metro has 47 escort guards more than what the norm prescribes, Jaipur rural has a shortage of 20 guards. Thus, intra district mis-allocation of escorts would also lead to non-production and needs due attention.

TABLE 3.5: FINANCIAL OBLIGATION: TEN CRITICAL DISTRICTS

Expenses against appointment of police escorts	Number of escorts	Salary (p.m)	Months	Total Amount (in Rs)
Sub Inspector (Direct appointment)	8	11100	12	1065600
Head constable	35	15161	12	6367620
Constable	334	6100	12	24448800
Total	712			318.82 lakh

2. ESCORT VEHICLE REQUIREMENTS

As per Table 3.3 in the previous section, at least 25 light vehicles, 19 buses and 58 mini buses would be required to escort inmates to all the courts in Rajasthan. For the ten critical districts in question, a need assessment of the requirements of escort vehicle was made.

TABLE 3.6: ASSESSMENT OF ESCORT VEHICLES NEEDS: TEN CRITICAL DISTRICTS

Number of Prisoners	Number and Name of Districts	Norm	Requirement
For 100-200 prisoners	Nil	1 Mini Bus	-
For 200-500 prisoners	(2) Sikar, Dholpur	1 Light Vehicle and 2 Mini Buses	2 Light Vehicle and 4 Mini Buses
For 500-1000 prisoners	(1) Jhalawar	1 Light Vehicle, 1 Bus and 2 Mini Buses	1 Light Vehicle, 1 Bus and 2 Mini Buses
For 1000-1500 prisoners	(6) Alwar, Ajmer, Bharatpur, Jodhpur, Kota, Bikaner	1 Light Vehicle, 2 Buses and 2 Mini Buses	6 Light Vehicle, 12 Buses and 12 Mini Buses
For more than 1500 prisoners	(1) Jaipur	1 Light Vehicle, 3 Buses and 2 Mini Buses	1 Light Vehicle, 3 Buses and 2 Mini Buses
Total	10	-	10 Light Vehicle, 16 Buses and 20 Mini Buses

The assessment shows that 10 light vehicles, 16 buses and 20 mini buses would be required to ferry inmates from prison to court and back in these ten districts.

In order to bring down the proportion of non-production, the state, needs to invest additionally in at least 712 escorts and 80 vehicles as per the prevailing norm. Further, with the changes in the jurisprudence on the matter of handcuffing, the norm needs an urgent re-evaluation

Conclusion & Recommendations

Conclusion

Article 21 of the Indian Constitution guarantees the right to liberty which can only be restricted according to procedures established by law. The Supreme Court in *Maneka Gandhi v Union of India*, 1978 AIR 597 held that these procedures can never be “arbitrary, unfair or unreasonable”. Extending custody routinely for no other reason than administrative failure or convenience is a violation of this right. Choosing some undertrial inmates for production before courts and leaving behind others owing to a shortage of escorts must necessarily lead to discrimination against certain inmates without a legally valid reason and this amounts to arbitrariness which falls foul of Article 21. The deplorable practice of substituting a rubber stamp for a human being is a clear proof of illegality and must be stopped.

The entire system of pretension to fulfill the mandatory appearances of accused persons before courts is a major hindrance in resolving the problem of overcrowding in prisons. It also does not help Magistrates reduce their caseloads. It does not even have the benefit of administrative convenience, because it merely postpones the trial from progressing to the next stage and creates log jams at different levels. In jails, the chance nature of whether one gets to court or not, generates space for arbitrary decision making, patronage and corruption. Those who can influence the decision-making functionaries by hook or by crook get priority treatment and the weakest have to endure much more time in jail than they would if they had the means to pay off the system. The permissive practice of dealing with remand extensions without application of mind and without the prisoner being present also encourages the lawyer to be absent or unprepared routinely when they should be defending their clients' interests ardently. It also suggests contempt for the court's time.

The relationship of the accused person as an alleged wrong-doer, is directly and exclusively with the state. The judge is the representative adjudicator of the state and the prosecuting counsel represents the government's interests. The defendant is represented either by himself or by his attorney. The rubber stamp soliciting the next date of hearing comes from the prison authorities to the judge. It asks for the trial to be postponed. Neither the prisoner nor his attorney knows of it nor have they consented to it. In fact, the rubber stamp request is an unwelcome, unconstitutional, illegitimate interloper to the proceedings. It has no *locus standi*, and as a stranger to the proceedings, breaches the strict due process bond of state and citizen. It cannot be permitted in the strictly regulated judicial process. The response from the court assenting to the postponement is also wrong in that it welcomes an intruder and allows a mere rubber stamp to intervene when it has no power to make such a request.

Recommendations

The system is intertwined and the shortfalls and weaknesses of each impact on the others. Each actor pleads helplessness, but the greatest ramification is on the undertrial who must bear the burden of the sum of the faults of the entire system. Despite occasional guidance and ad hoc measures to reduce the length of pretrial detentions, duration of trial and the number of undertrials lodged in jails, little has been done over the years to repair the system in a holistic and coordinated manner so as to take account of all the challenges before each actor. Holistic reforms are presently not visible on the horizon. However, much can be achieved through small changes in practice and modest infusions of money and manpower. We recommend on a priority basis:

Courts

- Magistrates must always ensure the production of inmates on every single date of hearing before the Court. Section 167(2) (b) CrPC must be strictly adhered to and any further custody of accused persons shall not be authorized in their absence before the Court.
- Magistrates must not give repeated extensions of remand without genuine application of mind.
- Magistrates must always defend the statutory requirement of physical production of inmates within 15 days as per Section 167 and Section 309 CrPC.
- Magistrates should insist on compliance of Explanation II of Section 167. Also, as the requirement of physical production is not dispensed with even after the chargesheet has been filed, recording the production (via signature) on the order authorising the inmate's detention should be insisted even after the chargesheet is filed.
- Magistrates must hold effective hearings in jails on a regular basis with lawyers in attendance.
- Video-production of the accused, at the pre-trial and trial stage should be ordered only after all options of physical production have been exhausted.
- The supervising judges must take into account the performance of the magistracy in breaching the statutory requirements relating to periods of remand as well as condoning physical absence of undertrials.
- Magistrates must immediately prohibit the illegal practice of granting dates for remand on the strength of rubber stamp requests.

Prison

- It must stop the use of rubber stamps on Production warrants to cite reasons for non-production.
- It must keep the record of the gap between escorts requisitioned and escorts provided and its impact on court production and send regular reports to the District Judge.
- The heads of the Prison and Police Department must have periodic meetings with to attend to shortfalls and gaps.
- The Prison Department must ensure full compliance with the Prisoners (Attendance in Court) Rules enacted by the state.

Police

- Police authorities must discontinue the practice of oral response to requisitions, and must give written replies to the requisition forms sent by the jail authorities to them on a daily basis, mentioning the reasons for not providing the number of escorts requisitioned, failing which disciplinary action must follow.

- The Police Department should make a submission to the State Government mentioning the strength of escort force required to ensure production of the inmates to the courts and hospitals as per the rules formulated. Based on the requirement, the financial, recruitment, training and deployment needs should also be submitted to the government.
- The Police Department must ensure full compliance with the Rajasthan Prisoners (Attendance in Court) Rules, 1956 enacted by the state, in particular, Rule 9, 10, 18.

State Government

- The government should constitute or carve out from other security personnel a separate Escort Reserve Force completely dedicated to escorting the accused to the court. The escorts should be under the control of the Prison Department as recommended by the Eighth Report of the Administrative Reforms Commission of Rajasthan (March 2001).
- If a separate force cannot be constituted, the government must ensure that the strength of the escort force and the vehicles to ferry the inmates to courts and medical centres are in proportion to the studied and current needs of that locality, its courts and jail population. The strength of the escort force and vehicles must be in accordance with the number of productions to a particular court and district-wise assessment of the annual trends of demand and supply. This will help build a better rationale and plan for varied allocations across districts and types of jails.
- In order to assess the escort needs either as a separate force or the same, the existing norm needs to be revised. Also, based on the norm for vehicle and escort requirements, planning on the financial allocations need to be made.
- The state government should, through a Home Department order, expand the mandate of the Periodic Review Committees (*Avadhik Samiksha Samiti*) set up in all jails of the state, to timely address irregularities in court production of undertrials while reviewing their cases. As an inter-agency committee at the district level comprising functionaries from the judiciary, representatives of the Police Department, District Magistrate, Prison Department, Probation Department, and which meets monthly inside the jails, the PRC is best equipped to meet and discuss the management of escorts requirement and deployment periodically.
- As this study has not taken into account the statistical information of the problem of court productions of undertrials housed in subjails, the state government should undertake a thorough study of this to assess the larger number of non-productions anticipated.
- In order to make the system accountable, the government must pay compensation to prisoners when non-production is not due to impossibility.
- The government should provide adequate infrastructure for court lockups so that the inmates may be kept in humane conditions while waiting for their appearance in court.
- The government should provide separate allocation of escort strength for medical purposes and women prisoners exclusively.

“The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, as pointed out by the Court in *Rhem v. Malclm* (1): ‘The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty.’ It is also interesting to notice what Justice, then Judge, Blackmum said in *Jackson v. Bishop* (2): ‘Humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerations’...”

– Justice Bhagwati in *Hussainara Khatoon & Ors v Home Secretary, State Of Bihar*, 1979 AIR 1369

Annexures

- Annexure 1 | Methodology and Process
- Annexure 2 | Alwar RTI Application
- Annexure 3 | Sample Forms
- Annexure 4 | Statutory Provisions Used

Annexure 1

Methodology and Process

CHRI initiated the study by filing an RTI request with the Alwar District Prison on 18 October 2011 which sought certified copies of:

- (a) Production Warrants of undertrial prisoners who had completed one year or more in prison as on 18 October 2011;
- (b) Police Escorts Requisition forms for the quarter 1 June 2011 to 30 September 2011;
- (c) Replies of Superintendent of Police to the Police Escorts Requisition form for the quarter 1 June 2011 to 30 September 2011;
- (d) *Peshi* Register entries for the quarter 1 June 2011 to 30 September 2011.

CHRI received a complete response to its application within 30 days from the Public Information Officer (PIO) as mandated by the Right to Information Act. A total of 1,450 pages of information were received. The jail provided 341 pages of production warrants, 532 pages of police requisition forms, zero replies to the police requisition forms and 577 pages of production or *peshi* register entries.

A second RTI was filed with the Superintendent of Police, Alwar District requiring information on:

- (a) The total sanctioned strength as on 30 September 2011;
- (b) The total actual strength as on 30 September 2011;
- (c) The number of police personnel deployed as police escorts for the quarter 1 June 2011 to 30 September 2011;
- (d) The number of police personnel deployed for VIP duty for the quarter 1 June 2011 to 30 September 2011.

They responded on the queries pertaining to the actual and sanctioned strength of the police force but refused to give the figures related to police personnel deployed for VIP duty and as police escorts, citing a circular. No copies of the replies made to the Prison Department to requisition letters for police escorts were received. When queried, the Superintendent of Prison stated that the replies are never sent in written form but are orally addressed. Neither did they provide a copy of the circular nor justified how it was applicable to them. When asked to give us a copy of the circular, they directed us to the Home Department, who had issued the circular. CHRI then filed an RTI application for a notification which should have been proactively disclosed. Though it received the circular, CHRI was not sure as to how it was applicable to this case. The circular mentioned organisations under Section 24 of the RTI Act, 2005 which were exempted from disclosing information. A first appeal was filed seeking the justification behind the denial of information and also seeking reasons for the delay. No response to this has been received to date.

CHRI set about analysing the data collected through the RTI application on court production of undertrials in Alwar district prison, Rajasthan and looked closely at the cases of several undertrials. It arrived at conclusions on the nature and extent of violations of their rights, based on a comparison between the findings obtained through the RTI inquiry and the laws and jurisprudence governing the sphere of court production.

The analysis of the RTI responses was approached in two ways: (i) assessment of production warrants issued by the court to prisons, and (ii) analysis of police requisition forms sent by prisons to the police, and the entries in the production or *peshi* register at the prisons.

The time period and sample for the analysis of these two data sets were somewhat different. For the analysis of production warrants, the study took into account the cases of all undertrials who had been in prison for at least a year on the cut-off date of 18 October 2011 (the date of filing the RTI application). Their productions had been called for/warranted by the court between 8 December 2006 and 5 December 2011. However, for the analysis of the police requisition forms and entries in the production register, owing to the voluminous data, it was decided to select a small sample for analysis comprising all categories of prisoners taken from prison to court, hospital, academic or vocational training site, etc, for the period 1 June 2011 to 30 September 2011, which included cases from the above sample as well.

Verifying the Data from the Courts: To crosscheck the data received through the RTI responses from the prison, requests were made to the ACMM in Alwar to verify from the relevant district courts the stages of the trials of the 40 undertrials for the time period specified in the RTI. This enabled CHRI to do a legal analysis using the related CrPC provisions and laws of court appearance.

Rajasthan Court Production Data: CHRI shared the preliminary data with the Rajasthan Prison Department and they in turn facilitated access to an inmate travel register maintained by all jails in Rajasthan. This register records the number of inmates ordered to be produced in court or requested to be sent for medical purposes and the number of people who are actually sent for the same, on a daily basis. We were provided access to registers for the period 1 June to September 2013. The information received from sub-jails was incomplete and not standardised. Complete data was received from eight central jails and 23 of the 25 district jails.

Data received from SHRC: CHRI also shared the escorts data with the Rajasthan State Human Rights Commission. They in turn shared the information available with them on the matter. This included the data on the increases in sanctioned escort strength in the last forty years. The data also included correspondences between the Rajasthan police department and the State Government on the issue of shortage of escorts.

Annexure 2

Alwar RTI Application

From
Tripti Kanungo
A-1, Sarvodaya Enclave,
Ground Floor,
New Delhi - 110017

Date: 18/10/11

To,
The Superintendent (Public Information Officer),
District Jail Alwar,
Alwar - 301001,
Rajasthan

Dear Sir/Madam,

Sub: Application for information under section 6(1) of the Right to Information Act, 2005.

I would like to obtain the following information under the Right to Information Act:

1. Certified copies of the production warrants (all sides, both front and back), of those inmates who have been under trial for more than a year as on October 18, 2011.
2. Certified copies of the police escorts requisition order/letter dating from 1 June 2011 to 30 September 2011.
3. Certified copies of the letter from the office of Superintendent of Police in response to the requisition letter dating from 1 June 2011 to 30 September 2011.
4. **Certified copies of the 'Peshi Register' dating from 1 June 2011 to 30 September 2011.**

I am a citizen of India. I have attached an IPO (bearing number 92E 429525) for Rs. 10/- towards payment of the prescribed application fee. I would like to receive this information at my postal address mentioned above. Kindly inform me of the additional fee payable for obtaining the information requested above.

Thanking you.

Yours' truly,

(TRIPTI KANUNGO)

Annexure 3

PRODUCTION WARRANT - SAMPLE

"सूचना का अधिकार अधिनियम, 2005 के तहत फोटो प्रति की फोटो प्रति प्रमाणित"

PART V-1

Despatch No. Date

Court of the
 जिला न्यायाधीश (सिविल) एवं न्यायिक मजिस्ट्रेट प्रथम वर्ग का अदालत, अलवर (राज.)

Order for Production of Prisoner in Court

मरुतार V शिवरा काठ

Case No. 465/09 कोटा

To

**THE OFFICER-IN-CHARGE
OF THE JAIL AT**
अलवर

You are hereby required to produce रूप son of बुधश्याम
 Caste गुजर resident of चौराघाट now a prisoner in your custody before this Court on the 01 day of 04 20 11 by R. O. Das
 O'clock in the forenoon of the same day, to give evidence (or to answer a charge) now pending before this Court, and after such charge has been disposed of, or the Court has dispensed with his further attendance, cause him to be conveyed under sure and safe conduct back to the said prison.

Given under my hand and the seal of the Court, this 22/3/11 day
 of 20

नोट:- अभियुक्त इस प्रकार का पट्टे जमानत पर आजाद है।

R. O. Das
 जिला न्यायाधीश (सिविल) एवं न्यायिक मजिस्ट्रेट प्रथम वर्ग का अदालत, अलवर (राज.)

SEAL

"सूचना का अधिकार अधिनियम, 2005 के तहत फोटो प्रति की फोटो प्रति प्रमाणित"

34/11
22/3/11

लोक सूचना अधिकारी
 अदालत जिला अलवर, अलवर

Signature

Designation

"सूचना का अधिकार अधिनियम, 2005
तहत फोटो प्रति की फोटो प्रति प्रमाणित"

23-7-11
अतिरिक्त सिविल न्यायाधीश (क० ख०)
एवं न्यायिक मजिस्ट्रेट सं०-1, अलवर

18-8-11

अतिरिक्त सिविल न्यायाधीश (क० ख०)
एवं न्यायिक मजिस्ट्रेट सं०-1, अलवर

23-7-11

अतिरिक्त सिविल न्यायाधीश (क० ख०)
एवं न्यायिक मजिस्ट्रेट सं०-1, अलवर

अतिरिक्त सिविल न्यायाधीश (क० ख०)
एवं न्यायिक मजिस्ट्रेट प्रथम वर्ग सं० 1
अलवर (राज०)

29/8/11

विस्तार से कि विद्यमान गैर आदेशक कर्तव्य पूर्ण
नहीं हुए Prisoners Attendance in Courts Act, 1955 and
The Prisoners Attendance in Court Act, 1955 Rules
9 and 10 के तहत मौजूद निर्देशक प्रतिक्रिया, अलवर से
आवश्यक रूप से सुनिश्चित करने का कार्य है किन्तु उपस्थित
अधिकारियों द्वारा कार्य उपलब्ध नहीं करवाये जाने के कारण
अभिप्रेत को पेश नहीं किया जा सका है। सूचना इस संबंध में संबंधित
अधिकारियों एवं कर्मचारियों के लिए भिन्न भिन्न है।
मूल चारपट अधिम आदेशावय सादर प्रेषित है।

"सूचना का अधिकार अधिनियम, 2005 के
तहत फोटो प्रति की फोटो प्रति प्रमाणित"

कायापाल 30/9/11
जिला कारागृह, अलवर

लोक प्रमाण अधिकारी
आसिक जिला कारागृह, अलवर

30/09/11 अतिरिक्त सिविल न्यायाधीश (क० ख०)
एवं न्यायिक मजिस्ट्रेट सं०-1, अलवर

अतिरिक्त सिविल न्यायाधीश (क० ख०)
एवं न्यायिक मजिस्ट्रेट प्रथम वर्ग सं० 1
अलवर (राज०)

POLICE REQUISITION FORM - SAMPLE

4

सूचना का अधिकार अधिनियम, 2005 के तहत फोटो प्रति की फोटो प्रति प्रमाणित

राजस्थान सरकार
जेल विभाग

आर.जे. 15

संख्या

5960
D.H. 21/8/11

दिनांक 21/8/11

श्रीमान सुपरिन्टेंडेंट साहब पुलिस,
R.J. जेल, अलवर

पुलिस हैड क्वार्टर से गार्ड बुलवाये जाने का फार्म

क्रमांक	नाम बन्दी, नाम पिता, जाति, निवास.स्थान सहित	घरा	चालान तिथि	चालान किये जाने का स्थान	कारण चालान	विशेष विवरण
1.	अमरपाल सिंह S/O कालू खोटा	22 भाकिम चौपालम अलवर	21/8/11	अलवर	आर.जे. 15	मामूली गार्ड
2.	सुरेश कुमार S/O उमरदयाल	302	do	do	do	do
3.	सुकरपाल S/O उमरदयाल	do	do	do	do	do
4.	अजय सिंह S/O उमरदयाल	do	do	do	do	do
5.	अमित S/O कालू खोटा	392	do	do	do	do
6.	अमरपाल S/O कालू खोटा	392	do	do	do	do
7.	अमरपाल S/O कालू खोटा	392	do	do	do	do
8.	अमरपाल S/O कालू खोटा	392	do	do	do	do
9.	अमरपाल S/O कालू खोटा	392	do	do	do	do
10.	अमरपाल S/O कालू खोटा	392	do	do	do	do
11.	अमरपाल S/O कालू खोटा	392	do	do	do	do
12.	अमरपाल S/O कालू खोटा	392	do	do	do	do
13.	अमरपाल S/O कालू खोटा	392	do	do	do	do
14.	अमरपाल S/O कालू खोटा	392	do	do	do	do
15.	अमरपाल S/O कालू खोटा	392	do	do	do	do
16.	अमरपाल S/O कालू खोटा	392	do	do	do	do
17.	अमरपाल S/O कालू खोटा	392	do	do	do	do
18.	अमरपाल S/O कालू खोटा	392	do	do	do	do
19.	अमरपाल S/O कालू खोटा	392	do	do	do	do
20.	अमरपाल S/O कालू खोटा	392	do	do	do	do
21.	अमरपाल S/O कालू खोटा	392	do	do	do	do
22.	अमरपाल S/O कालू खोटा	392	do	do	do	do
23.	अमरपाल S/O कालू खोटा	392	do	do	do	do
24.	अमरपाल S/O कालू खोटा	392	do	do	do	do
25.	अमरपाल S/O कालू खोटा	392	do	do	do	do
26.	अमरपाल S/O कालू खोटा	392	do	do	do	do

सूचना का अधिकार अधिनियम, 2005 के तहत फोटो प्रति की फोटो प्रति प्रमाणित

ऑफिसर इन्चार्ज
जेल

अतिरिक्त जिला कारागृह, अलवर P.T.O

सूचना का अधिकार अधिनियम, 2005 के

तहत फोटो प्रति की फोटो प्रति प्रमाणित

27	जगदीश शिवाजी - 344	25/8/11	COMPTON	वास्तु उपकरण प्रमाणित गाँव
28	जयपाल शिवाजी - 504	-do-	-do-	-do-
29	अशोक कुमार शिवाजी - 302	-do-	-do-	-do-
30	कृपाल सिंह शिवाजी - 302	-do-	AD5 (P) 1101	-do-
31	मोक्षदा कुमार शिवाजी - 344	-do-	-do-	वास्तु उपकरण प्रमाणित गाँव

— गाँव आठ पिठ अलवर डि. 8.00 कि.मी. 25/8/11

1	शिवराज शिवाजी - 300	25/8/11	मार्किंग	वास्तु उपकरण प्रमाणित गाँव
2	महापाल शिवाजी - 300	-do-	-do-	-do-
3	शिव शिवाजी - 300	-do-	-do-	-do-
4	कुमार शिवाजी - 300	-do-	-do-	-do-
5	कुमार शिवाजी - 300	-do-	-do-	-do-
6	हरिपाल शिवाजी - 300	-do-	-do-	-do-

— गाँव जयपुर डि. 8.00 कि.मी. 25/8/11

दीपक शिवाजी - 307 25/8/11
 गाँव चिपड़ा के बसतारा है जहाँ पर गाँव प्रमाणित गाँव

सूचना का अधिकार अधिनियम, 2005 के तहत फोटो प्रति की फोटो प्रति प्रमाणित

लोक सूचना अधिकारी
 अधिकांक जिला बारागढ़, अलवर

गाँव चिपड़ा के बसतारा है जहाँ पर गाँव प्रमाणित गाँव
 गाँव चिपड़ा के बसतारा है जहाँ पर गाँव प्रमाणित गाँव

कारापाल
 जिला बारागढ़, अलवर

2-9-7

सूचना के तहत फालिग

कुल 34 बन्दी 34 पारबट पुलिस गार्ड ई० सी के सुपर कर हस्तांतर लिपे व मार्ग सुझा की दिशा में ही गई। सुझा का विशेष ध्यान रखा जाये।

[Signature]

पालान साठ पिठ अलवर श्री. 8.00 AM 29/7/11

- 1 मेगल सिंह 510 बन्धन सिंह
- 2 कोरल सिंह 510 विकार सिंह
- 3 धनपु 510 चांदमल
- 4 कर्ण 510 यादव
- 5 पुष्प 510 सुब्बा पेशवा
- 6 दरबारी 510 सुभारी
- 7 गोविन्द 510 प्रभाल
- 8 लोचन 510 प्रभाल
- 9 माहक दीन 510 समेली
- 10 सुब्बा 510 गीमा

कुल 34 बन्दी 34 मेगल सिंह पुलिस गार्ड की दस्त्रा/सिंह H-290 का सुपर कर हस्तांतर लिपे व मार्ग सुझा की दिशा में ही गई। सुझा का विशेष ध्यान रखा जाये।

कुल बन्दी	कुल पारबट	पैसा लिपे	पैसा वही लिपे	कार्ड/पारबट	कुल
34	34	34	NIL	NIL	34

[Signature]
अलवर

Annexure 4

Statutory Provisions Used

PRISONERS ATTENDANCE IN COURT ACT, 1955

Section 9: Power to Make Rules.

- (1) The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power such rules may provide for:
 - a) The procedure for obtaining the counter signature of an order made under Section 3;
 - b) The authority by whom and the manner in which a declaration that a person confined in prison is unfit to be removed there from may be made;
 - c) The conditions, including payment of costs and charges, subject to which an order made under Section 3 by a Civil Court may be executed;
 - d) The manner in which a process directed against any person confined in a prison issued from any court may be served upon him;
 - e) The escort of persons confined in a prison to and from courts in which their attendance is required and for their custody during the period of such attendance;
 - f) The amount to be allowed for the costs and charges of such enforcement of this Act;
 - g) The guidance of officers in all other matters connected with the enforcement of this Act.

RAJASTHAN PRISONERS ATTENDANCE IN COURT RULES, 1956

Rule 9: Police to Provide Escort

The escort of prisoners under the Act, shall be undertaken by the police.

Rule 10: Procedure to Obtain Escort

Whenever an order for production of a prisoner to give evidence or to answer a charge is received from a competent court by the Superintendent, Jail, such officer shall send a copy of the Court's order to the head of the local police, who thereupon shall cause the necessary police guard to be detailed in accordance with the terms of the order, and the prisoner shall be made over to the custody of this guard.

Rule 18: Strength of Police Guard

The minimum strength of the police guard be:

For not more than four prisoners, two constables,

For five or six prisoners, three constables, and

For seven to ten prisoners, one Head Constable and four constables.

A female warden shall, wherever possible accompany a female prisoner instead of one of the constables.

- (2) When the prisoners are of desperate character or are likely to attempt to escape or when the number to be escorted exceeds ten, the strength of the guard shall be increased at the discretion of the officer-in-charge of the police.

CODE OF CRIMINAL PROCEDURE CODE

Section 167: Procedure when investigation cannot be completed in twenty-four hours

- (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.
- (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that-

- (a) The Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding-
- (i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
 - (ii) Sixty days, where the investigation relates to any other offence,
- And, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;
- (b) No Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;
- (c) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorize detention in the custody of the police.

Explanation I. For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in Custody so long as he does not furnish bail.

Explanation II. If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorizing detention.

(2A) Notwithstanding, anything contained in sub-section (1) or sub-section (2), the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred, a copy of the entry in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and on the expiry of the period of detention so authorized, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order; and, where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2):

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer in charge of the police station or the police officer making the investigation, as the case may be.

- (3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.
- (4) Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.
- (5) If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.
- (6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

Section 267: Power to require attendance of prisoners

- (1) Wherever, in the course of an inquiry, trial or other proceeding under this Code, it appears to a Criminal Court:
 - (a) That a person confined or detained in a prison should be brought before the court for answering to a charge of an offence, or for the purpose of any proceedings against him, or
 - (b) That it is necessary for the ends of justice to examine such person as a witness, the court may make an order requiring the officer in charge of the prison to produce such person before the court for answering to the charge or for the purpose of such proceeding or as the case may be, for giving evidence.
- (2) Where an order under sub-section (1) is made by a Magistrate of the second class, it shall not be forwarded to, or acted upon by the officer in charge of the prison unless it is countersigned by the Chief Judicial Magistrate to whom such Magistrate is subordinate.
- (3) Every order submitted for countersigning under sub-section (2) shall be accompanied by a statement of the facts which, in the opinion of the Magistrate, render the order necessary, and the Chief Judicial Magistrate to whom it is submitted may, after considering such statement, decline to countersign the order.

Section 268: Power of state government to exclude certain persons from operation of section 267

- (1) The state government may, at any time having regard to the matters specified in sub-section (2), by general special order, direct that any person or class of persons shall not be removed from the prison in which he or they may be confined or detained and thereupon, so long as the order remains to force, no order made under section 267, whether before or after the order of the state government, shall have effect in respect of such person or class of persons.
- (2) Before making an order under sub-section (1), the state government shall have regard to the following matters, namely:
 - (a) The nature of the offence for which, or the grounds on which, the person or class of persons has been ordered to be confined or detained in prison;
 - (b) The likelihood of the disturbance of public order if the person or class of persons is allowed to be removed from the prison;
 - (c) The public interest, generally.

Section 269: Officer in charge of prison to abstain from carrying out order in certain contingencies.

Where the person in respect of whom an order is made under section 267,

- (a) Is by reason of sickness or infirmity unfit to be removed from the prison; or
- (b) Is under committal for trial or under remand pending trial or pending a preliminary investigation; or
- (c) Is in custody for a period which would expire before the expiration of the time required or complying with the order and for taking him back to the prison in which he is confined or detained; or
- (d) Is a person, to whom an order made by the state government under section 268 applies, the officer in charge of the prison shall abstain from carrying out the court's order and shall send to the court a statement of reasons for so abstaining.

Provided that where the attendance of such person is required for giving evidence at a place not more than twenty-five kilometres distance from the prison, the officer in charge of the prison shall not so abstain for the reason mentioned in clause (b).

Section 273: Evidence to be taken in presence of accused

Except as otherwise expressly provided all evidence taken in the course of the other proceeding shall be taken in the presence of the accused or, when his personal attendance is dispensed with, in the presence of his pleader.

“Provided that where the evidence of a woman below the age of eighteen years who is alleged to have been subjected to rape or any other sexual offence, is to be recorded, the court may take appropriate measures to ensure that such woman is not confronted by the accused while at the same time ensuring the right of cross-examination of the accused.”

Section 309: Power to postpone or adjourn proceedings

(1) In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

(2) If the court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance no adjournment or postponement shall be granted, without examining them, except for, special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Explanation 1.

If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.

The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

CHRI PROGRAMMES

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives there is a need for functional mechanisms of accountability and participation within the Commonwealth and its Member States. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice.

STRATEGIC INITIATIVES PROGRAMME

CHRI monitors Member States' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the United Nations, the African Commission for Human and Peoples' Rights and the Commonwealth. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform process; monitoring the performance of Commonwealth countries at the United Nations Human Rights Council; engaging with the United Nations Universal Periodic Review process; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening. CHRI is also involved in monitoring the work of IBSA – the India, Brazil and South Africa Dialogue Forum – through a human rights lens. CHRI promotes civil society engagement with government on foreign policy issues with the aim of democratising this niche policymaking area.

ACCESS TO INFORMATION

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation and assists partners with implementation of good practice in relation to freedom of information. In relation to freedom of information, CHRI works collaboratively with local groups and officials, building government and civil society capacity, as well as advocating with policymakers. CHRI is active in South Asia, most recently advocating for a national law in Maldives and Pakistan; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to encourage interest in access to information legislation.

ACCESS TO JUSTICE

Police Reforms

In too many countries the police are seen as oppressive instruments of State rather than as protectors of the rights of citizens. This attitude is linked to widespread rights violations and the denial of justice. CHRI thus promotes systemic reform so that the police act as upholders of the rule of law. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability and political interference with the police.

Prison Reforms

CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractice. A major focus area is highlighting and intervening in the failures of the legal system that result in systemic overcrowding, intolerably long pretrial detention periods and prison overstay. Another area of concentration is reforming failed prison oversight mechanisms. CHRI aims to improve the administration of prisons and is of the view that this will have a positive effect on the administration of justice overall.

This CHRI study analyses the court production system in Rajasthan. The court production system involves synergy of multiple actors and processes. It is only through their harmonious interaction that the right of undertrials to be produced in person before the courts every 15 days can be safeguarded.

The study examines the chronic shortage of police escorts that leads to routine non-production of undertrials across the state. It also looks at the Magistrates' acceptance of this practice of non-production.

Based on the analysis of the information received primarily from an RTI request to Alwar district prison and production gap data obtained from jail registers maintained across all central and district prisons of Rajasthan, the study reveals the discordance between the requirements of the law and its practice, between demand and supply, and questions these irregularities.

The study advocates for adequate strength of the escorts, ideally as a separate cadre entrusted with the sole responsibility of producing inmates to court such that the right to fair and speedy trial does not fall caprice to administrative convenience which appears to be the norm today.



Commonwealth Human Rights Initiative

55 A, Third Floor, Siddhartha Chambers-1, Kalu Sarai
New Delhi - 110016

Tel: +91-11-43180200 | Fax : 91-11-43180217

info@humanrightsinitiative.org | www.humanrightsinitiative.org