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The Missing Guards: Rajasthan government must act now to repair its broken court production system

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Rajasthan fails to produce one-third of its undertrials in court on a daily basis. CHRI's recent publication, "[The Missing Guards: A study on Rajasthan's Court Production System](#)" identifies chronic shortage of police escorts as a major factor for undertrial prisoners missing their due dates at court. This contributes to the cascading set of failures which lead to long overstays and endemic overcrowding in prison. Typically the court hauls up the prison for not bringing prisoners to court on due dates. The prison blames the police and the police blame the shortfall in their own numbers. Despite many representations to government the system remains where as it has been for decades. In the last 20 years, Rajasthan's prison population has risen 150 per cent. But, in real terms the escort force to take them to court has remained static since the 1970s. An increase of 4 per cent is only due to additional forces being made available for newly carved out districts.

By law undertrial prisoners must be physically brought before the judge at every date of trial. The maximum period between court dates is also laid down¹. Physical appearance allows the court, in whose charge the undertrial is, to make sure that the prisoner has not come to harm, has legal counsel and can make any representations he needs to. Regular access to court is a requirement of fair trial and a safeguard against torture. Imran from Jaipur Central Jail is a recent case in point: mainly because he could appear in court in a day's time to narrate it, he could invite a medical inquiry into the incident of being brutally branded with iron rods by inmates and prison staff. ([Read here](#))

Non-production denies the accused from being present in his own trial, creates unjustifiable delays, breaches due process and violates the rule of law under which we live. The anguish, disillusion and desperation of not being produced in court found in a legal aid register at Hanumangarh district jail says it all. "At least produce me in court on every date of hearing so that my fate may be decided one way or the other and I may get a chance to live my life" (*Peshi par nirdharit tareekh dar tareekh bheja jai, faisla dekar jivan jeena ka mauka diya jai*).

In Rajasthan, more than 2500 inmates are supposed to be produced before the magistrates. Taken cumulatively, approximately a third do not make it to the court on stipulated dates. Jaipur, Jodhpur, Kota, Bharatpur, Alwar, Ajmer, Bikaner, Jhalawar, Dholpur and Sikar are the top ten districts with highest non-production figures and account for 75% of the total non-production in the state. In Jodhpur and Bharatpur Central jails, non-production is as high as 56 and 51 per cent. An analysis of production statistics from Alwar district jail reveals periods without being brought to court can go for as long as five months.

The shortage of police escorts to accompany inmates to court has led to a dangerous practice where often only the ‘warrant’ appears before the court while the person remains behind bars. The court clerk automatically stamps the warrant with the next date and the process moves on. The practice is so common that Alwar district jail uses a readymade rubber stamp mentioning shortage of police escorts as the reason for non-production. The process is without any legal sanction and one that is of extreme prejudice to the accused. It has the effect of a third party - the prison authority being involved in the on-going trial process in which neither the accused nor his legal representative is involved.

Maja Daruwala, Director, CHRI says, “The infirmities and irregularities in the court production process 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 courts must 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. 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.”

The exceptions to the law of physical production are categorically laid down in the Attendance of Prisoners in Court Act and the Criminal Procedure Code. Except in cases where the prisoner is sick or infirm, or there is the likelihood of disturbance of public order or it is in public interest, or the prisoner is likely to complete their sentence during transit or if he is required in multiple cases at the same time, he must be produced physically. High Court judgments have placed limits even to these ‘impossibilities’ indicating again the law’s interest to be rigorous in its application to excuses or failures to produce the person physically.

Based on complaints and letter petitions from prisoners or on their own observations in court numerous courts across states like Andhra Pradesh, Punjab, Karnataka, and Maharashtra have taken up the issue of shortage of escorts and made it clear that lack of escorts is not sufficient reason for not bringing a prisoner to court. CHRI’s study reveals that in Rajasthan the issue remains a largely neglected one administratively to which video-conferencing is not the adequate solution and it comes with its own problems. As neither escort strength nor ratio of guards to prisoners have been properly evaluated according to current needs, and allocation of escorts often favours other requirements above physical production, many prisoners fall through the cracks of the system.

The study points to another vulnerability being created through the escort deficits as the same escorts also ferry prisoners to hospitals. Even in medical emergencies, 30 per cent of the time an inmate is not taken to a medical centre owing to a shortage of police escorts. The study considers the 2010 observations and concerns made in this regard by the Rajasthan Jail Committee as still valid. The Jail Committee Report states, “It also becomes difficult to provide medical facility to prisoners in the absence of police escorts. 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.” The fatal consequences of escort shortage was felt most acutely in the 2010 Jodhpur Central Jail case of a prisoner suffering from brain tumour who was sent for medical treatment after a delay of 10 full days that prolonged his agony and he eventually died in hospital in a short while. In investigating this case, the State Human Rights Commission of Rajasthan exposed the acute shortages in police escort strength and took up the issue with the state government.

Based on its study CHRI brought a PIL in the Rajasthan High Court (**Civil Writ 6459/2014**) to press for (i) adequate strength of the escorts, ideally as a separate cadre entrusted with the sole responsibility of producing

inmates to court, (ii) a district level inter-agency committee to periodically determine the escort requirement, and (iii) compensation in all cases of delayed physical production.

Acknowledging the gravity of the systemic problem, the Jodhpur bench has directed the government to give an estimate of the funds that would be required to fill the current deficit. At the last estimate done in 2010, the system required at least 712 additional escorts and 102 vehicles. Government would need to invest an additional 610 lakhs per annum. This may look like a lot but these estimates do not take account of offsetting the cost of keeping prisoners unnecessarily in jail for over long periods nor of repeatedly ferrying them back and forth for non-effective hearings, nor the cost to the state of overlong trials, and log jams that accumulate, the wasted hours spent by court staff, nor the payments to prosecutors for trials that drag on for years, nor the costs of legal representation the accused and his kith and kin have to bear not to speak of the time wasted by witnesses and victim as dates go by without proper hearings.

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