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Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights in
the countries of the Commonwealth

COVID-19 AND PRISONS: ENSURING AN EFFECTIVE RESPONSE

With the rising spread of the pandemic COVID-19 in India and globally, this document has been prepared by the Commonwealth Human Rights Initiative to assist all state prison departments, judiciary, legal services institutions and other stakeholders to undertake effective measures to ensure protection of all prisoners, prison administrators and staff, prison visitors and all persons associated with prisons.

I. INTRODUCTION

The World Health Organization (WHO) has declared a virus, the COVID-19 or Coronavirus as a pandemic affecting worldwide. The virus has created havoc, and as on 22 March 2020, it is affecting more than 3.4 lakh persons in 188 countries. The number in India has also risen to 396, and is increasing each day.

Though every single person is vulnerable, prisoners detained in prison/correctional homes are at the most risk owing to the closed prison setting and proximity in common living space. The UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, has in a recent statement also highlighted that ‘overcrowding, poor nutrition and a lack of hygiene’ were serious concerns, indicating a high risk to prisoners’ health.¹ Further, people in detention often live in poor hygiene conditions, have inadequate access to health facilities and are completely dependent on the authorities to exercise their right to health as compared to a free person outside. In ordinary times, prisons have always been low priority for state governments, let alone the emergency situation that has become apparent after the outbreak.

In India this risk was recently acknowledged by the Supreme Court where in the court on its own motion took notice of the issue in *In re: contagion of covid 19 virus in prisons*. In an order dtd. 16 March 2020 the court stated,

“the bitter truth is that our prisons are overcrowded, making it difficult for prisoners to maintain social distancing....like any other viral diseases susceptibility of COVID-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses like COVID-19 proliferate in closed spaces such as prisons. Studies also suggest that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenues etc.) are brought to the prison on a daily basis. Apart from them, several correctional officers and other prison staff enter the prison regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore there is a high risk of transmission of COVID-19 virus to the prison inmates.....we are of the opinion that there is an imminent need to take steps on an urgent basis to prevent contagion of COVID-19 virus in our prisons.”

This fear of a contagion is not only true for India but for all countries across the world. As per numerous media reports, some prisoners across at least six countries namely England, United States of America, Iran, China, Italy and France have tested positive for COVID-19. In the last few weeks many countries including the United States of America and England, have prepared

¹ <https://yubanet.com/world/iran-un-expert-alarmed-by-detention-conditions-in-the-wake-of-recent-protests/>.

and published guidance on precautions to be undertaken to prevent spread of the COVID-19.

It is the duty of the state and its duty-holders to ensure physical and mental well-being of the person who is deprived of liberty. In India, prisons being the state subject, the primary responsibility falls on the state governments to undertake proactive steps to prevent spread of the COVID-19 in all places of confinement, including prisons, detention centres, child care institutions, shelter homes, psychiatric homes etc. This document provides guidance on precautionary measures that may be undertaken by state governments, prison administrators, courts, legal services authorities etc. to prevent and contain any spread of the COVID-19 in prisons.

However, while one must take all adequate steps to limit infections, it is important to uphold human rights principles and ensure no undue hardships are cast upon prisoners in the garb of precautionary measures. All precautionary measures undertaken should protect the life of prisoners and ensure fair and equal access to safety and health care facilities, equivalent to that available in the community. The following basic principles, as laid down under Nelson Mandela Rules 2015, must be adhered to by states in implementing the precautionary measures:-

- ❖ The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.²
- ❖ There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status.³
- ❖ All prisoners shall be treated with respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification.⁴
- ❖ Prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.⁵

² Rule 1, Nelson Mandela Rules 2015.

³ Rule 2, Nelson Mandela Rules 2015.

⁴ Rule 1, Nelson Mandela Rules 2015.

⁵ Rule 2, Nelson Mandela Rules 2015.

II. PRECAUTIONARY MEASURES FOR ALL PRISONS

This section provides guidance on possible precautions that may be undertaken by prison authorities/state governments. These may be considered, with due to reference to applicable state laws/rules/prison manuals.

A. Hygiene and Cleanliness: Cleanliness both of self and surroundings is an effective means to check the spread of contagious diseases within prisons. However, in several states, prisoners are required to purchase their own soap, do not have frequent access to water and are responsible to clean their own barracks/sleeping spaces etc. As such, it is suggested that:-

1. **For maintaining self-hygiene:** Prison authorities must provide free of cost:
 - a) soaps/hand wash in toilets inside the barracks to encourage inmates to wash their hands frequently, especially before eating anything.⁶
 - b) cloth masks/ handkerchief/ *gamcha* to all prisoners to encourage prisoners to cover their mouth as far as possible.
 - c) Prisoners must be advised to conduct frequent washing of hands.
 - d) Sanitisers for prisoners and prison staff, where access to water is not easily available and work involves close interaction with prisoners/staff/office files etc - like in factory areas, administrative areas, hospitals, legal aid clinics etc.
2. **For maintaining cleanliness in wards, barracks and common areas:** Prison authorities must ensure that all wards, barracks and all common areas are cleaned with water and disinfectants once everyday and sanitised every alternate day. Sweepers must be appointed by each prison, where not available already, to ensure proper cleanliness in common areas, wards and barracks.
3. **Oversight over hygiene:** The prison administration should direct warders and convict warders/officers in-charge of a particular barrack to:
 - a) ensure that each individual prisoner staying in the barrack takes a bath every day and maintain personal hygiene such as cutting of nails, frequent washing of clothes, etc.;
 - b) keep a constant watch on the health of prisoners. Anyone sneezing, coughing, having fever or breathlessness must be immediately segregated from the rest and report the same to the Medical Officer at the earliest;
 - c) ensure that toilets inside the barracks have soaps all the time and encourage prisoners to keep washing their hands frequently, especially before eating anything;

⁶ Nagpur Prison authority has provided soaps to the prisoners and masks to prison staff.
<https://economictimes.indiatimes.com/news/politics-and-nation/coronavirus-outbreak-nagpur-jail-prisoners-supply-masks-to-govt-depts/articleshow/74723620.cms?from=mdr>.

- d) encourage inmates in the barrack to cover their mouth with a handkerchief/*gamcha*/cloth as far as possible;
- e) ensure that the living space inside barracks is cleaned once with water every day;
- f) ensure that footwear of prisoners is kept outside the barrack;
- g) ensure that inmates do not sleep facing each other;
- h) ensure that all movables in the barracks are sun dried daily

B. Awareness of Prisoners: It is important to make prisoners aware of the COVID-19, its impact, implications, precautions etc. This would ensure their willingness to adhere with any restrictions imposed and effective implementation of precautionary measures undertaken by the prison authorities. This may be done through:-

1. **Posters:** Prisons and legal services authorities may make awareness posters on COVID-19 in local language and display widely across prisons, e.g. posters prepared by Haryana State Legal Services Authority, annexed herein as **Annexure A** on Page 18 .
2. **Awareness sessions:** Prior to application of precautionary measures, particularly those that impose restrictions on regular routine of prisoners, must be explained by the officer-in-charge of prison, or any person so deputed by him, to all prisoners through awareness sessions. The session should include provision of interaction wherein prisoners may raise queries or seek answers or even give suggestions. Prisoners may also be apprised of the benefits of self-reporting where they experience any symptoms of the virus and also of the importance of washing hands and keeping safe distance from other prisoners.
3. **Use of informative audio or videos:** Where facilities are available, informative videos may be displayed for prisoners several times a day. Also, pre-recorded audios may be played through the public address system/loud speakers in prisons, to provide relevant information. Also news clips or audio may be shared to apprise prisoners on latest developments and spread of the virus. This will enable them to gather pertinent information

C. Steps to address overcrowding: As aforementioned overcrowded spaces pose a huge risk in the event of a contagion, and thus prison administrators must immediately convene meetings with relevant authorities to address the issue of overcrowding. While transfers to prisons in other districts might be difficult given the lock-downs in several states/cities, some suggested measures that may be undertaken are as follows:-

1. **Temporary Accommodation:** The State government has the power to declare any place as temporary prisons to deal with emergency situations. Given the emergency situation posed by the COVID-19, it is suggested that where occupancy rate is nearing 100% alternative places must be immediately identified for temporary accommodation of prisoners. However,

all such temporary accommodation must adhere to basic minimum standards as laid down under the Model Prison Manual 2016/ applicable state prison act/ rules.

2. **Transfers to alternative accommodation:** Where no temporary accommodation can be arranged, the prison authorities may direct for the transfer of convicts to other prisons, or seek permission of court for transfer of undertrials/detenues to other prisons within the state.⁷
3. **Temporary Release of convicts:** An effective means to reduce the prison population is to grant parole to convicts, in accordance with applicable laws/rules. West Bengal, for instance, has considered grant of 15 day special parole to all lifers who have served more than 10 years of their sentence in jail and those who have been out on parole without police escort at least thrice and have returned on their own with no adverse report. However, any such special release may be granted only in view of applicable restrictions on movement/lock down situation in the city/city of residence of the prisoner to ensure his/her safe travel. Further, to ensure no inadvertent spread of the virus post return of the convict, the duration of the release maybe extended to 2-3 months.
4. **Seek intervention of courts:** The state government/prison authority should approach the courts to issue directions to reduce the number of admissions in prison, and liberal use of bail provisions. (see section III for more details)

D. Medical facilities: Figures indicate there are high vacancies in medical staff across prisons in India.⁸ This means that most prisons have inadequate medical staff to ensure effective response, were the virus to spread in prisons. This necessitates that prison administration must take proactive measures to address this shortage, through stop-gap arrangements/assistance from the state health department. They must at the minimum ensure daily visits by medical officers (either on deputation from the state health department or short-term hire on contractual basis) where full-time permanent medical officers are not appointed. The following measures are suggested:

1. **Screening of all prisoners:** Conduct screening of all prisoners, as has been proposed by Maharashtra⁹, to rule out the possibility of any infection and isolate those who exhibit symptoms of the virus.

⁷ Model Prison Manual, 24.45 states that 'During an emergency or on administrative grounds, the Inspector-General is authorized to transfer undertrial prisoners from one prison to another within the State, provided that if a prisoner is transferred to a place outside the jurisdiction of the court concerned, prompt intimation should be sent to the court. The prisoner shall be produced before the court on the due date.

⁸ According to National Crime Records Bureau's Prison Statistics India 2018, 40.5% of the total sanctioned strength of Medical staff in prisons is vacant. Nationally, there are 243 prisoners per medical staff in India. <http://ncrb.gov.in/sites/default/files/PSI-2018.pdf>.

⁹<https://www.livemint.com/news/india/60-000-maharashtra-prisoners-to-undergo-health-check-up-11584626298533.html>.

2. **Periodic Health Checks:** Conduct periodic health check-up of prisoners for identifying prisoners vulnerable to COVID-19 and also encourage prisoners to self-report if they are experiencing any symptoms.
 3. **Segregation of vulnerable prisoners:** The following categories of prisoners, who are considered more vulnerable to COVID-19, must be segregated immediately from the rest and special care must be provided:
 - i) above the age of 50;
 - ii) diabetic;
 - iii) HIV patients;
 - iv) have respiratory problems;
 - v) have low immunity and frequently fall ill;
 - vi) any other category - as advised by medical officer
 4. **Quarantine wards** - Prison administrators must demarcate in each prison adequate spaces to be used as quarantine wards. All such places must not usually be frequented by inmates. Where no such space may be available, the nearest hospital where such quarantine wards are available or notified by the government must be immediately approached.
 5. **Quarantine:** Ensure that cases of cough, cold and fever are treated separately, and where required, such cases isolated from other prisoners till complete recovery. with proper segregation among them.
 6. **Detection equipment:** For prompt and early detection of possible cases, non-contact thermometers must be provided in all prisons and thermal scanners must be set up in all prisons with the population of more than 1000.
 7. **Availability of Medical Escorts:** Prison to request for 2-5 medical escorts in prisons to be stationed at all times to ensure that any suspected patient is immediately taken to the nearest district hospital for further test and isolation.
 8. **Use of tele-medicine:** Where required, and facility available, use telemedicine to receive prompt advice and prescriptions in all suspected cases.
 9. **Medical Facilities for other patients:** While it is important to ensure adequate facilities are available to respond to the virus, it is equally important to ensure that other existing patients/future patients are not neglected and adequate medical facilities are available for them. It is also important to effectively shield ill persons/persons visiting the OPD from any suspected cases/further infections. As such the prison administrators may, in consultation with the medical officers, take appropriate measures.
- E. Precautions to be undertaken during various prison processes:** In addition to precautionary steps listed above, it is also important that prison staff undertake due care and caution in the conduct of their duties.
1. **At the time of Admission:**
 - a) **Search procedures:** Searching staff must be provided with masks, additional coats and sanitisers. Staff must be advised to wash hands before

and after conducting the search. All items, including contrabands, recovered, must be duly cleaned before storage.

- b) Recording of travel history and possible contact with COVID infected person:** A register may be kept at the admission desk/ or prisoners may be required to complete a 'self declaration form' - providing information on recent travel history and possible contact with a COVID-19 infected person.
- c) Health Screening:** All new entrants are required to undergo a medical examination within 24 hours of admission. Each prisoner must be carefully screened by medical officers (who should use gloves, masks, and sanitise before and after screening each patient). Those who show symptoms of coronavirus must be immediately segregated and arrangements be made to send him/her to the nearest government health facility, so designated to treat such cases, for further testing and treatment.
- d) Basic information:** All new entrants must be informed of their rights and duties, and in particular all precautionary measures in place against COVID-19 including precautions that they are supposed to observe once lodged in barracks with other prisoners.
- e) Provision of basic essentials:** In addition to the other basic essentials (these differ across states) that are provided to new entrants, they must be provided with at least 2 soap bars, washing powder/bars and a handkerchief/ *gamcha*.
- f) Admission wards:** New entrants must be kept in separate isolation wards/cells/barracks for a period of 6 to 14 days, depending on the infrastructural availability as is already being done in the prisons of Kerala and Tihar Prisons in Delhi.¹⁰
- g) Foreign Nationals:** Special attention must be paid to cases of foreign national prisoners, and those who have travelled from abroad within the last 30 days, must be kept in compulsory quarantine for 14 days.

2. Visits by family, friends and legal representatives: Many prisons across the globe have completely banned visitation for a specific period of time.¹¹ This has also been followed by some states in India.¹² While a complete ban might be justified as it is not only essential to protect prisoners' from contact with the virus

¹⁰ See, Hon'ble Supreme Court's order dated 16.03.2020, In Re : Contagion of Covid 19 Virus in Prisons (SMW(C) No. 1/2020 PIL-W). Available at:

https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_1_21537_Order_16-Mar-2020.pdf

¹¹ "Prison visits have been banned outright or restricted in some form. In the Philippines, where there are 33 cases reported, prison visits were banned from 11 March for a one-week period and Hungary (which has had 12 cases) brought in a ban on physical contact during visits. Kuwait, with 69 cases, also banned prison visits. The Netherlands also banned prison visits, except for children who are in detention, following the government measures closing most public places and lifting the right to hold assemblies as of 13 March 2020.", Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 5-6.

¹² West Bengal, Tihar Prisons, Bihar and Madhya Pradesh have banned Mulaqat (visits) for the prisoners as a preventive measure. Tihar: <https://bit.ly/3bmTyMJ>; Madhya Pradesh: <https://bit.ly/2U8yqE1>; West Bengal: <https://bit.ly/2y3AMf3>; Bihar: <https://bit.ly/3dnUmCT>.

from the outside world but also required to protect their family and friends who will risk encountering the virus during commute or waiting in large groups outside prisons. At the same time, one must be aware that a complete shutdown of all modes of communication for prisoners can impact prisoners both emotionally and mentally.

Given the situation, and the increasing number of COVID-19 cases in India, prisoners are also worried about the safety of their families. This is further expounded where mothers are confined in prisons and are unable to meet their children as separation from children can bring a whole host of consequences for both the caregiver and the child(ren). Further, restricting visits from legal representatives can bring increased levels of anxiety and impact on the right to fair trials.¹³ Thus, a complete lack of communication would not only add to their anxiety but might lead to undesirable incidents in prison, including aggressive behaviour, rioting etc¹⁴.

Therefore it is recommended that any restrictions on visitation should mandatorily be accompanied by availability of alternative options¹⁵ for communicating with family, friends and legal representatives, such as access to telephones and video conferencing as well as email. All such restrictions should be immediately communicated to the prisoners, and alternative mechanisms duly explained. These alternative options may include:

- a) **Phone calls:** Where Prisoner Inmate Calling Systems or phone facilities are available, prisoners must be allowed to call their families on a daily basis for 5-7 minutes each day/every alternate day/as frequently as they are allowed visitation (depending on the prison population and permissible limits). Until the ban on visitation is not lifted, all costs towards making calls must be borne by the prison department.

Prisons without a phone facility should set up an office land-line phone at the inside office/*chakkar/deori* to allow prisoners to speak with their family members, as frequently as they are allowed to meet them in person. Timings for different barracks may be fixed for administrative convenience. A warder may be asked to dial the phone number, verify the name and relation with the

¹³ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

¹⁴ Over fears of Coronavirus, riots in prisons have erupted across the world in countries such as Italy, United States of America, Sri Lanka, Iran, Columbia, Lebanon and recently also in India (Dum Dum Correctional Home in Kolkata, West Bengal). See, for India: <https://bit.ly/3dnyQOA>; Iran: <https://bit.ly/2Vwmo9f>; U.S.: <https://abcn.ws/2wwXdZk>; Lebanon: <https://bit.ly/2UGxyFZ>; Columbia: <https://bit.ly/3blIGPd>; Sri Lanka: <https://abcn.ws/3bjKkAQ>.

¹⁵ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

prisoner before handing over the phone to the prisoner. A prisoner may be allowed to speak for 5-7 minutes.

However, due care must be taken to sanitize the phone equipment before and after each call is made. Or alternatively disposable, low cost phone covers may be made available, which may be used and replaced for each call.

b) Video conferencing: Where available prisoners should be permitted to use video conferencing to interact with their family/friends/legal representatives.

c) Precautions for visits: It is further suggested, and keeping in consideration the prevalent circumstances, wherein visitations may be restricted, and then re-allowed, certain precautionary measures must be in place for at least 45-60 days. These should be undertaken especially in prisons where there are no glass partitions between the visitor and the prisoner. These include:

- a. A new screening protocol for visitors must be adopted which involves a series of questions being asked regarding illness, symptoms and travel outside of the country, including that of any family member,¹⁶ prior to be allowed to visit the prisoner.
- b. Not more than two visitors per prisoner must be allowed.¹⁷
- c. Items from family/friends must not be allowed inside except for packed medicines. A notice may be displayed in the visitor's room in regard to the same.
- d. Restrict the number of prisoners during visits ensuring that there is more than one metre distance between two prisoners. This would require increasing the timing of mulaqat to accommodate everyone with precautions.
- e. Direct all prisoners and visitors to maintain distance from the mesh and not to touch the mesh.
- f. Direct all prisoners and visitors to cover their mouth with a mask/ handkerchief/ *gamcha/ dupatta*.
- g. Make adequate provisions for all prisoners and visitors to wash their hands before and after the mulaqat.

3. Deferred lock in and lock up timings: Prisons should prepare and implement separate lock-in and lock-out time-tables for different wards in the prison. This would ensure less crowding of spaces and ensure minimal contact among prisoners.

¹⁶ Implemented by New York in its 52 state prisons, Penal Reform International's Briefing Note, briefing note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

¹⁷ Implemented by Irish Prison Service, Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 6.

4. Food and kitchen: All prisoners are served food that is prepared in the kitchen, thus it is important to maintain proper kitchen hygiene and take abundant caution in the preparation of food. In order to ensure this, it is suggested that

a) For prisoners working in kitchen:

- i) Any prisoner who is coughing, sneezing, has fever or exhibits any such symptoms must not be allowed to work in the kitchen.
- ii) All prisoners must take baths and wash their hands frequently during the preparation of food.
- iii) The barrack/s, where prisoners working in the kitchen stay, must also be cleaned with water and disinfectants everyday.
- iv) No footwear must be allowed in the cooking area.

b) For kitchen hygiene:

- i) The kitchen and utensils must be cleaned with water thoroughly before preparation of every meal.
- ii) All kitchen cloths used during the preparation of food, for wiping etc. must be thoroughly cleaned and disinfected at least once a day.

c) For kitchen supplies procured from outside:

- i) As far as possible, in prisons with their own kitchen gardens, fresh produce must be used to prepare food.
- ii) Where vegetables, milk and other food items are procured from outside, due care must be taken to wash all washable items with water and maintain cleanliness in use of rest of the items.

5. Bail/releases on completion of sentence: Prison authorities must ensure that there are no unnecessary delays in release of persons where either bail has been granted by the court, or a prisoner is to be released on completion of sentence. All such prisoners must be screened before release for any possible symptoms of COVID-19 at the time of release, to prevent any spread in the community. Further, prison administration should speak to the prisoner, apprise him of prevalent lock-down and travel prohibitions and advise him/her on available modes of transport to reach his/her home safely.

6. Recreation and education activities: While recreational activities and education are very important, steps must be taken to ensure that during this period, such activities involve the least physical interaction between inmates. It is recommended to completely suspend any group activities such as theatre plays etc.

7. Vocational training: Vocational training usually involves visit by authorised trainers or representatives from organisations to visit prisons. It also involves close involvement of prisoners and contact with equipment etc. In view of the

present risks, it is advisable to stop all vocational training activities, unless it is felt that continuation of such activity poses no perceivable risk.

8. Factory work: As factory work also involves close contact between prisoners, administrators, equipment etc. it is advisable to cease all factory work for the time being. However, if there is an urgent need to continue such work, for instance where prisoners are engaged in producing masks or other essential products¹⁸ including those required for consumption within prisons, precautions must be undertaken, while carrying on with factory work. These may include:-

- a) Any prisoner who is coughing, sneezing, has fever or any such symptoms must not be allowed to work in the factory.
- b) The number of workers in the factory area can be restricted, particularly where the distance between prisoners of more than one metre cannot be maintained.
- c) Before commencing work, all prisoners must be asked to clean all equipment/ machines/ tools with a cloth soaked with water.

F. Safety Measures for Prison Staff: As much as it is important to undertake precautions to keep prisoners safe and protected from the spread of the virus, it is equally prudent to ensure adequate safety measures for prison staff are also set in place. These may include:-

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1. All prison staff must wash their hands/use sanitiser before entering prison or before their shift.
2. All prison staff must be instructed to wash hands regularly and frequently.
3. The officer in-charge of a prison must brief their staff to prioritise efforts to increase healthcare and hygiene in prison.
4. The officer-in-charge of a prison must hold meetings with staff to apprise of safety measures and ascertain staff are undertaking adequate security measures at their residence.
5. All prison staff must immediately inform the officer-in-charge if they have come in contact with any person suspected to be infected with the virus, or if they are showing symptoms of the virus. In all such cases, they must immediately stop coming to work, and self-isolate them at home, or visit the nearest notified government health centre for testing and further treatment.

¹⁸ Prison administrations across the country have roped in prisoners to make face masks to address the acute demand. Kerala and Tihar Prisons are also planning to make hand sanitizers. Aligarh Prison, Uttar Pradesh: <https://bit.ly/2wvhKgT>; Chandigarh: <https://bit.ly/2xkkfmA>; Himachal Pradesh: <https://bit.ly/2QCYZPM>; Hyderabad: <https://bit.ly/3afhelO>; Bihar: <https://bit.ly/3bfhamn>; Ghaghidih Central Jail, Jharkhand: <https://bit.ly/2xj2vaS>; Maharashtra: <https://bit.ly/2J9WlwK>; Tihar Prisons: <https://bit.ly/2QBcnnt>; Parappana Agrahara, Karnataka: <https://bit.ly/33E11NT>; Kerala: <https://bit.ly/3dlEK2u>; Bihar: <https://bit.ly/2vFB4HV>.

6. Disposable Masks/ gloves/additional coats and hand sanitizers must be provided to all prison staff, particularly warders, head warders, matrons, sentry and guards who are in close proximity with prisoners or visitors during their shift. Disposable coats must be discarded in special bins after use.
7. If any prison staff has symptoms of the virus, they must be given paid sick leave, to avoid situations where due to financial need they come to work in the detention facility while they are unwell.¹⁹
8. All necessary medical support must be provided to prison staff and their families.²⁰

H. Monitoring of Prisons:²¹ While it is accurate that prison visits by persons from the outside should either be stopped or conducted only when absolutely necessary, it is equally important that some form of oversight is in place to oversee that all precautions are being taken; respond to queries of prisoners (as often prisoners are not satisfied by responses provided by prison administrators for lack of trust); and ensure arbitrary restrictions have not been enforced. As such it is suggested that,

1. All visits by Non-Official Visitors and Official Visitors, except for the District Magistrate, the District and Sessions Judge and the District Medical/Health Officer, may be suspended till 15th April 2020.
2. The District Magistrate, District and Sessions Judge and the District Medical/Health Officer may depute one officer e.g. the Secretary, District Legal Services Authority, in this regard.
3. During their visit, they must visit all parts of prison, particularly separate cells, high security cells and review (with due caution) all places of quarantine/isolation, if any, to prevent excessive use of quarantine, abuse of power, use of torture or ill-treatment.²²

III. MEASURES IN CASE OF SUSPECTED/POSITIVE CASES OF COVID-

19

1. Any prisoner who exhibits symptoms of COVID-19 i.e. fever, cough or problem in breathing or is identified by an appropriate medical staff as vulnerable/suspected must be immediately shifted to quarantine/isolation

¹⁹ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 10.

²⁰ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 10.

²¹ "While some protective measures are legitimate, there is no evidence indicating that during the COVID-19 pandemic places of detention should not be accessed by monitoring bodies. Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison'

²² Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 9.

spaces²³ created on an ad hoc basis for this purpose.²⁴ Such quarantine must be administered by the prison authority in conformity with the Guidelines issued by the Ministry of Health and Family Welfare, Government of India for 'Home Quarantine'²⁵ to the extent possible and applicable in prisons.

2. The prison authorities should also immediately inform the appropriate authorities including the district magistrate and chief medical/health officer.
3. They must also inform the family members of such prisoners.
4. The medical officer of the prison must conduct a medical examination of quarantined prisoners daily and submit a report to the officer-in-charge of prisons.
5. The officer-in-charge of prisons should ensure that prison staff are regularly made aware of the protocols issued by the health department from time to time.

IV. MEASURES FOR JUDICIARY AND LEGAL SERVICES INSTITUTIONS

It is imperative that justice systems too join in fighting the COVID-19 pandemic. The International Legal Foundation has called for suspending the arrests and pretrial detention of persons accused of low-level offences, for releasing of elderly inmates; for shifting people with pre-existing medical conditions to non-custodial measures, as well as; for expedited parole hearings, as effective measures to reduce overcrowding in light of the COVID-19.²⁶ Similarly, Penal Reform International, has called for an urgent review of the detention of individuals on remand. It has suggested that the cash bail systems should be lifted, to ensure that pre-trial detention is not excessively imposed. It further states that individuals most at risk, in particular older persons and individuals with mental and underlying physical health issues, should be immediately considered for release, to avoid serious consequences in case COVID 19 would spread in prison and also to free up essential healthcare services.²⁷

Justice systems in some countries have already taken steps in this direction. For instance, in France the Ministry of Justice is asking for newly handed down short term prison sentences to be delayed, resulting in about 30 admissions to prisons per

²³All such spaces must adhere to basic minimum standards laid down under various national and international documents.

²⁴ J&K Prison Department, Kerala Prisons Department, Uttar Pradesh Prison Department and Tihar Prison Administration have set up quarantine and isolation wards for this purpose.
<https://www.indiatoday.in/india/story/coronavirus-delhi-tihar-jail-1655407-2020-03-14>;
<https://www.thekashmirmonitor.net/new-arrivals-in-jk-prisons-screened-suspects-quarantined-dg-prisons-v-k-singh/>.

²⁵ <https://www.mohfw.gov.in/pdf/Guidelinesforhomequarantine.pdf>.

²⁶Mythri Jayaraman, ILF International Fellows Advisory Council Member,
<https://www.theilf.org/post/coronavirus-prisoners-and-public-defenders>.

²⁷ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison'.

day instead of the usual 200.²⁸ In the US, 31 prosecutors representing over 17 million people are calling for release of people being held because they pose a risk to public safety as part of a set of recommendations amid COVID-19.²⁹

It is imperative in light of the COVID-19 pandemic, that the Indian judiciary also undertakes certain proactive steps to:

A. Reduce the number of persons sent to judicial custody: An effective measure to reduce risks associated with exposing prison populations is to reduce the number of admissions to prisons. This can be done by taking collective action to sentence less number of persons to judicial custody, and liberal grant of bail.

B. Reduction in execution of short term sentences: Another measure would be to reduce the execution of short term sentences for the time being. For instance, in France, courts were asked to postpone the execution of short prison terms. This has led to reduction in daily prison admissions from 200 to 30.³⁰

C. Review and order release of prisoners: As stated in the beginning of the document, it is important to address the issue of overcrowding in prisons. An effective means of addressing this would be to review and order release of prisoners who are unnecessary detained. In this regard,

1. The Supreme Court or High Courts may issue directions to all district courts to review cases for those in custody and grant bail in cases wherein the undertrial is:
 - a. accused of compoundable offences.
 - b. accused of offences which have a maximum punishment of 2 years.
 - c. all cases of individuals in pre-trial detention for minor or non-violent offences.³¹
 - d. vulnerable to the virus on account of age, pre-existing health conditions such as diabetes, hypertension, respiratory problems etc.
 - e. sick or infirm or terminally ill or requires specialised medical treatment.
 - f. a first time offender, has minimal flight risk, has low risk to manipulate evidence or witnesses, does not appear dangerous to society, or any other factor considered by the concerned district court.
 - g. women prisoners, especially those accompanied by children.
 - h. granted bail but is unable to furnish sureties, may either be released on personal bond or their surety amount may be reduced as per S.440 of CrPC by the concerned court.

²⁸ <http://www.justice.gouv.fr/la-garde-des-sceaux-10016/covid-19-mesure-daccompagnement-penitentiaire-33010.html>.

²⁹ <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Release-FINAL.pdf>.

³⁰ <http://www.justice.gouv.fr/la-garde-des-sceaux-10016/covid-19-mesure-daccompagnement-penitentiaire-33010.html>.

³¹ Penal Reform International's Briefing Note on 'Coronavirus: Healthcare and human rights of people in prison', Page 11.

- i. any other case as deemed fit by the court.
2. The National Legal Services Authority must direct all SLSAs/DLSAs across the country to hold an urgent meeting of the Under-trial Review Committee by 31st March 2020 and recommend the following cases for release³² on bail to be decided by the respective court by 3 April 2020. The services of the convict paralegal volunteers appointed to the prison legal aid clinic may be utilised in drafting and filing of applications to assist the UTRC in their urgent meeting. The committee should review cases of all eligible prisoners as provided under the National Legal Services Authority's (NALSA) Standard Operating Procedure for the functioning of UTRCs, issued in December 2018³³, i.e.
- a) UTPs / Convicts falling under covered under Section 436A Cr.P.C.;
 - b) UTPs released on bail by the court, but have not been able to furnish sureties;
 - c) UTPs accused of compoundable offences;
 - d) UTPs eligible under Section 436 of Cr.P.C.;
 - e) UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Sections 379, 380, 381, 404, 420 IPC or alleged to be an offence not more than 2 years imprisonment;
 - f) UTPs become eligible to be released on bail u/s 167(2)(a)(i) & (ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;
 - g) UTPs who are imprisoned for offences which carry a maximum punishment of 2 years;
 - h) UTPs who are detained under Chapter VIII of the Cr.P.C. i.e. u/s 107, 108, 109 and 151 of Cr.P.C.;
 - i) UTPs who are sick or infirm and require specialized medical treatment;
 - j) UTPs women offenders;
 - k) UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
 - l) UTPs who are of unsound mind and must be dealt with Chapter XXV of the Code;

³² At least two states, Maharashtra and Punjab are planning to release undertrials and convicts charged for petty/minor offences, drug related offences, etc.

<https://timesofindia.indiatimes.com/india/coronavirus-outbreak-punjab-mulling-release-of-5800-jail-inmates/articleshow/74694711.cms>; <https://www.businesstoday.in/current/economy-politics/coronavirus-in-india-maharashtra-govt-plans-to-release-5000-prisoners-to-decrease-congestion-in-jails/story/398755.html>.

³³ National Legal Services Authority's (NALSA) Standard Operating Procedure for the functioning of UTRCs.

- m) UTPs eligible for release under Section 437(6) of Cr.P.C, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case;
- n) Convicts who have undergone their sentence or are entitled to release because of remission granted to them.

D. Remote hearings of cases/bail applications: It is suggested that where courts have issued orders, in light of COVID-19, to conduct hearings for only urgent cases, priority should be given to hear bail/urgent applications of those in custody. In all such hearings, attendance of prisoners may be ascertained through video conferencing (where available). It is suggested that,

1. In all such hearings it must be ensured that the lawyer of the accused is present in the court. The court may also provide some time to the lawyer to communicate with the accused before the hearing.
2. The presiding officer must communicate with the prisoner and must ensure that sufficient time is given to all court proceedings when the person is in custody.
3. No hearings where presence of the accused is mandatory should be undertaken via video conferencing unless interests of justice so require.

ANNEXURE A

Posters developed by Haryana State Legal Services Authority



Reduce the Risk of **Coronavirus** Infection

Please do not believe on rumours and baseless information

Coronavirus is a new flu type disease, spreading in China and other Countries

SYMPTOMS OF CORONAVIRUS

★ Cough ★ Fever ★ Shortness of Breath

Don't Neglect the Symptoms

Do's

- ☞ Observe good personal hygiene
- ☞ Practice frequent hand washing with soap
- ☞ Follow basic respiratory etiquette i.e. cover your mouth while sneezing and coughing
- ☞ Wash you hands with soap and running water (when hands are visibly dirty)
- ☞ Clean your hands with alcohol based hand rub or soap and water (when your hands are not visibly dirty)
- ☞ Throw used tissues into closed bins immediately after use
- ☞ See a doctor if you feel unwell

Don'ts

- ☞ Have a close contact with anyone, if you are experiencing cough and fever
- ☞ Spit in public
- ☞ Consume raw/undercooked meat
- ☞ Visit the places where animals are slaughtered



**If you have come from one of the Coronavirus affected country and have the above symptoms, call at
National Helpline No. 011-23978046,
State Helpline No. 8558893911 or
report to nearest Government Health Centers**

If you have cough, fever or difficulty in breathing, contact a doctor immediately.

HARYANA STATE LEGAL SERVICES AUTHORITY

Plot No.9, Sector-14, Panchkula (Haryana) Telephone No.0172-2562309,
email:hslsa.haryana@gmail.com, Toll Free No.1800-180-2057



कोरोना वायरस

संक्रमण का खतरा घटाएं



अफवाहों और आधारहीन सूचनाओं पर विश्वास न करें

कोरोना वायरस एक नई बीमारी है जो कि आज कल चीन व अन्य देशों में फैल रही है और अन्य देशों को भी प्रभावित कर रही है। यह एक प्लू जैसी बीमारी है

कोरोना वायरस के लक्षण

★ खांसी ★ बुखार ★ सांस लेने में तकलीफ

लक्षण पाये जाने पर लापरवाही न बरतें

क्या करें

- ☞ अपनी व्यक्तिगत स्वच्छता पर ध्यान दें।
- ☞ साबुन से लगातार हाथ धोते रहें।
- ☞ छींकने और खांसने के दौरान अपना मुंह ढकें।
- ☞ जब आपके हाथ गंदे दिखें, तब अपने हाथों को साबुन और बहते पानी से धोएं।
- ☞ जब आपके हाथ स्पष्ट रूप से गंदे न हों, तब भी अपने हाथों को अल्कोहल आधारित हैंड वॉश या साबुन और पानी से साफ करें।
- ☞ प्रयोग के तुरंत बाद टिशु को किसी बंद डिब्बे में फेंक दें।
- ☞ अस्वस्थ महसूस होने पर डॉक्टर से मिलें।

क्या न करें

- ☞ यदि आपको खांसी और बुखार हो तो किसी के संपर्क में न आएं।
- ☞ सार्वजनिक स्थानों पर न थूकें।
- ☞ कच्चे अघपके मांस के सेवन से बचें।
- ☞ जानवरों के वध किये जाने वाले स्थलों पर न जाएं।



अगर खांसी, बुखार या सांस लेने में परेशानी हो तो तुरंत डॉक्टर से संपर्क करें।

यदि आप पिछले दिनों कोरोना वायरस से प्रभावित देश से लौटे हैं और आप में उपरोक्त लक्षण मौजूद हों, तो राष्ट्रीय हेल्पलाइन नं.011-23978046 या राज्य की हेल्पलाइन नं. 85588-93911 पर या अपने नजदीकी स्वास्थ्य केन्द्र पर तुरंत संपर्क करें।

हरियाणा राज्य विधिक सेवा प्राधिकरण

इन्स्टिट्यूशनल प्लॉट नम्बर 9, सैक्टर-14, पंचकुला दूरभाष/फैक्स नम्बर 0172-2562309, टोल फ्री नम्बर 1800-180-2057 वेब साईट : www.hslsa.gov.in, ई-मेल : hslsa.haryana@gmail.com





Say NO
to human touch



&



YES
to **HUMANE TOUCH**

About CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation working in the area of human rights. In 1987, several Commonwealth professional associations founded CHRI, since there was little focus on human rights within the association of 53 nations although the Commonwealth provided member countries the basis of shared common laws.

Through its reports and periodic investigations, CHRI continually draws attention to the 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, the United Nations Human Rights Council members, the media and civil society. It works on and collaborates around public education programmes, policy dialogues, comparative research, advocacy and networking on the issues of Access to Information and Access to Justice.

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

CHRI is headquartered in New Delhi, India, with offices in London, UK and Accra, Ghana.

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Sanjoy Hazarika, International Director

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