

April 3, 2020

To,  
Justice (Retd.) H.L. Dattu,  
Chairperson,  
National Human Rights Commission,  
New Delhi – 110017.

**Subject: Seeking oversight of actions taken by administrations and police departments in response to the COVID-19 pandemic**

Respected Justice Dattu,

We are writing to you concerning some of the pertinent human rights concerns amidst this 21-day period lockdown announced by Prime Minister Mr. Narendra Modi on March 25, 2020. The World Health Organization (WHO), on March 11, 2020, upgraded the status of the COVID-19 from epidemic to pandemic affecting world-wide. Globally, over a million people have tested positive, resulting in over 53,000 deaths. In India, the number of those who have tested positive is growing as is the death toll.

We appreciate that the lockdown was a necessity. However, we cannot deny that it has led to great hardship for the poor and vulnerable. It is deeply concerning that the police is continuing to treat this humanitarian crises as a law and order problem. In the name of 'ensuring compliance with the lockdown', there are too many reports of the police resorting to abusive actions, often using physical force, lathis and foul language, against poor, marginalised and vulnerable communities, in search of a safe-space and bare essentials.

This submission contains four specific concerns – cases of police misconduct, living conditions in judicial and non-judicial institutions, situation of homeless and migrant workers and children in conflict with law.

### **1. Police Misconduct and Excess**

As the 1.3 billion plus Indian population remains in lockdown, with basic freedoms of movement, assembly, employment, and information on hold, with the police as the frontline implementer in every state at risk to their own health and safety, police professionalism and conduct are prime indicators of the State's approach in response to the pandemic.

However, as widely reported in the media and social media, and some of our direct encounters with the police, the police, who find themselves in an unexpected situation for which they have not been trained, have responded with excess force and insensitivity. In the immediate aftermath of the lockdown, several news channels and newspapers reported multiple instances of the use of disproportionate force on alleged 'lockdown violators'. Videos show vegetable vendors were slapped, doctors and nurses intimidated, and people brutally hit by lathis. Some of the police went to the extent of deflating tyres of vehicles of those attempting to provide essential services.

Despite clear orders by the Union Ministry of Home Affairs as to what services are to be considered as 'essential', the police unleashed force in complete disregard. The

police force across the country headed by the political executive has shown utter disregard towards the overall human rights situation at the time of a crisis. The highhandedness by the police on anyone and everyone out on the streets is a blatant human rights violation which the Hon'ble Commission should immediately take cognizance of.

The COVID-19 guidance issued by the OHCHR mentions that respect for human rights across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response. UN Special Rapporteurs also have asked States to refrain from using emergency measures to suppress human rights. UN High Commissioner for Human Rights Michelle Bachelet in a communication specific to India has expressed concerns over the police actions during the lockdown. **(Annexure 1)**

*“We understand the strains on police services at this time, but officers must show restraint and abide by international standards on the use of force and humane treatment in their efforts to respond to this pandemic, in accordance with the Supreme Court’s instruction.”*

The Kerala High Court in a recent suo motu order has reiterated that the fundamental right to life and personal liberty cannot be suspended even during an emergency. The court said that it is necessary to allay such fears among the citizens that there is an infringement of rights.

The NHRC is in a paramount position to lay down the golden standard for police behaviour and actions in this time of crisis. It is in this regard, we would like to draw your attention to a set of guidelines developed by the Commonwealth Human Rights Initiative (CHRI) on police conduct ensuring respect for human rights during the lockdown. **(Annexure 2)** The guidelines, setting out minimum protection measures to be made available for the police personnel, contain actionable points. Below is a summary of the areas covered for your easy reference.

- Complete prohibition of use of force except in cases where bare minimum force might be required.
- Police’s role as the crucial liaison between people and essential services.
- Developing clear operating procedures and protocols on police conduct during their interaction with people, including those in distress and vulnerable groups like the migrant workers, homeless, etc.
- Refrain from detaining and arresting people, rather use warning and facilitation as approaches.
- Firm and timely action against police personnel prima-facie engaged in misconduct.

**At this stage, we the undersigned, would make following specific appeals –**

- In the absence of any guidelines on police operations during the lockdown, the Hon'ble Commission may consider examining the CHRI guidelines on the same and formulate its own guidelines to be followed by all police personnel.

- Issue immediate directions to the Director Generals of Police of all states asking them to urgently issue necessary directions to the police personnel on the above-mentioned points. A copy of compliance should be submitted with the Hon'ble Commission.
- Issue immediate directions to the Director Generals of Police of all states asking them to urgently notify the Hon'ble Commission of the action taken against police officials involved in misconduct during the lockdown.

## **2. Living Conditions in Judicial and Non-Judicial Institutions**

Section 12(c) of the Protection of Human Rights Acts, 1993 (PHRA) mandates the Hon'ble Commission to visit jail and other institution under the control of the state government, where persons are detained or lodged for purposes of treatment, reformation or protection. The mandate is to study the living conditions of the inmates thereof and make recommendations thereon to the government. During this pandemic, given its rapid transmission, there is an increased vulnerability among people living in governmental and non-governmental institutions like prisons, institutions set up under the juvenile justice law and other safe living space. Due to a common living space often densely populated, marked with minimal facilities, there is a higher chance of transmission of the virus between inmates and into society as they are released.

UN High Commissioner Bachelet has also urged all the governments to take urgent measures to protect the health and safety of people in detention and other closed facilities. According to the High Commissioner Bachelet –

*“Covid-19 has begun to strike prisons, jails and immigration detention centres, as well as residential care homes and psychiatric hospitals, and risks rampaging through such institutions’ extremely vulnerable populations... It is vital that governments should address the situation of detained people in their crisis planning to protect detainees, staff, visitors and of course wider society.”*

WHO has also noted how prisons and other similar enclosed places are some of the places most susceptible to this disease. It published interim guidance titled “Preparedness, prevention and control of COVID-19 in prisons and other places of detention,” and specially pointed the reason as follows:

*People deprived of their liberty, such as people in prisons, are likely to be more vulnerable to various diseases and conditions. The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live **in close proximity with one another, which is likely to result in a heightened risk of person-to-person and droplet transmission of pathogens like COVID-19.***

In this specific regard, an order had been passed by a bench of the Hon'ble Supreme Court comprising of Chief Justice SA Bobde, Justices L.N. Rao & Surya Kant. The bench directed that all states and union territories were required to set up "high level committees" to determine class of prisoners who could be released on parole for four to six weeks. In terms of the order, this would certainly result in decongestion of prisons and would in turn curb furtherance of the Coronavirus outbreak.

*"The State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to seven years or less, with or without fine, and the prisoner has been convicted for a lesser number of years than the maximum."*

Following this order of the Supreme Court, certain steps were taken by governments. **(Annexure 3) We would like to express three specific concerns at this stage –**

- Barring one state, where there is a reference to inmates above the age of 65 years, age and health related vulnerabilities of the inmates have been completely ignored while considering and deciding on those eligible for parole, furlough and bail.
- There is no information on the actions taken to ensure physical distancing in generally overcrowded institutions, provisions and allotment of masks, sanitisers, soaps, etc., by the prison departments and others concerned of other institutions hosting inmates.
- There is no information on any action taken towards release of inmates and other protection measures taken for institutions other than prisons.

We would like to **draw your attention to two specific initiatives** that may assist the Hon'ble Commission in its intervention –

- CHRI has also prepared a document in this regard to assist all state prison departments, judiciary, legal services institutions and other stakeholders to undertake effective measures to ensure protection of all inmates and authorities involved. **(Annexure 4)**
- A joint submission by 130 lawyers from Mumbai titled, 'Recommendations with regards to the release of prisoners and/or detainees in other settings', to the Bombay High Court, Maharashtra Government and Administration. **(Annexure 5)** This submission also puts forward a comprehensive set of guidelines.

**At this stage, we the undersigned, would make following specific appeals –**

- Seek urgently from the High Level Committee in all states and union territories about the actions taken to decongest prisons and the status of the same till March 31, 2020.
- Authorise Hon'ble Commission's Prison Monitor to inquire and report back whether high level committees have been formed in all states and union territories, whether they have met and what actions have been taken.
- Direct the Chief Secretary in all states and union territories to submit information about the actions taken to decongest all judicial and non-judicial institutions hosting inmates.
- Direct the Director General of Prisons in all states and union territories to submit detailed reports on the prevention and protective actions undertaken in all prisons.

- Direct the Principal Secretary (Health) in all states and union territories to submit detailed reports on the prevention and protective actions undertaken in all judicial and non-judicial institutions hosting inmates.
- Submit with the High Level Committee in all states and union territories to consider judiciously and make assessment based on risks and vulnerability of the under-trials and convict prisoners. The risks and vulnerabilities, as also suggested by the WHO, should consider age, especially those above 50 years in age, disability and pre-existing/on-going health conditions.
- In the absence of any guidelines for judicial and non-judicial institutions hosting inmates during such times of pandemic, the Hon'ble Commission may consider examining the guidelines developed by CHRI and lawyers from Mumbai on the same and formulate its own guidelines to be followed by all prison departments.
- Most importantly, we urge the Hon'ble Commission to re-emphasise with all governments, the fundamental tenet of the criminal justice system in India – 'innocent until proven guilty'. Discriminating undertrials, based on the conviction period the offences they are booked under carry, is condemnable. Such acts prima facie violates Article 14 (equality) of the Indian Constitution and potentially threaten Article 21 (Right to Life). The Hon'ble Commission may consider impleading before the Hon'ble Supreme Court, exercising its powers under the PHRA, in this regard.

### **3. Situation of Homeless and Migrant Workers**

In the immediate aftermath of the lockdown announcement, millions of migrant labourers and their children were left without shelter, livelihood or basic facilities. They began to cross state borders to reach their villages. With a sudden stopping of railways and roadways, the migrant workers have been left stranded on the streets with no source for food and other essentials.

Television and print media reported tens of thousands of men, women and children walked long distances in conditions of acute distress to try to reach their homes in Uttar Pradesh, Uttarakhand, Bihar, Haryana, Punjab, Rajasthan and Madhya Pradesh. Many of them succumbed to the long walks and died and some of them were killed by the moving vehicles. Many were victims of police excesses as they beat them, made them run or punished them by making them sit like '*murga*' (rooster). All the visuals of these were shared widely in media and social media.

Specific interstate transit bus terminals (ISBT) across the country crumbled under the weight of the migrant daily wagers wanting to go home. This created an unprecedented situation and visuals from Delhi's Anand Vihar ISBT were not only worrisome but demonstrate apathy of the planning of this lockdown and struggles of migrant workers. This is just one example.

In the absence of wages, homes and food, the migrant workers find it a better 'choice' to head back to their villages. Besides, under the circumstances of a pandemic and the fear it has unleashed, workers would like to go back to their villages and towns and be with their families. Such extra-ordinary situation calls for exemplary actions by the state to facilitate them, maintaining appropriate social and medical practices. We

cannot but wonder what stops the Government of India from taking such steps to facilitate safe travel for these hapless migrant workers when it could do so for Indian citizens stuck overseas?

Many of the migrant workers remain stuck in several Indian cities and towns where they are stranded without adequate ration, cooked food and basic essentials. Governments have announced support in such cases, however, we fear that till today it is not adequate in the absence of a clear mechanism for doing so. Some mechanisms put in place are complex and cumbersome. Certain orders pass the buck from State responsibility to ordinary citizens. These are first-hand experiences of those involved in day to day relief support with the migrant workers, homeless and other vulnerable communities like the de-notified tribes, nomadic tribes, sex-workers, etc.

The existing state and district level mechanisms for providing relief appear to be either over-burdened or lacking expertise in such situation of crisis. Given that the Disaster Management Act, 2005 (DM Act) is now in force, it requires minimum support actions by the authorities at national, state and district levels to the affected communities. Despite appeals from the Ministry of Corporate Affairs as well as Ministry of Labour and Employment, business establishments are shying away from taking responsibility of workers, of which large number were engaged as daily wage earners in the company supply chain.

UN High Commissioner Bachelet has also expressed distress and regret on the plight of millions of migrant workers in India and government measures that compromise individual privacy. According to her measures such as stamping hands, sticking notices outside residences will unduly stigmatise people within the community. In the statement she also welcomed the recent order of the Supreme Court directing the governments to provide enough food, water, beds and supplies as well as psychological counselling in shelters that should be run by volunteers and not security forces. **(Annexure 1)**

*“The lockdown in India represents a massive logistical and implementation challenge given the population size and its density and we all hope the spread of the virus can be checked.... It is nonetheless important to ensure that measures in response to the COVID-19 are neither applied in a discriminatory manner nor exacerbate existing inequalities and vulnerabilities.... In spite of all these significant efforts, more needs to be done as the human tragedy continues to unfold before our eyes.”*

There is an urgent need to set up a response system under the monitoring of the Hon'ble Commission at national and state levels, with the involvement of the State Human Rights Commissions (SHRCs). **At present, given no public notifications, we are unaware if the offices of the Hon'ble Commission and SHRCs are working remotely. We would urge that the NHRC in coordination with the SHRCs collaborate to keep the implementation of state and district level relief measures under the DM Act.**

**At this stage, we the undersigned, would make following specific appeals –**

- Establish a dedicated 24X7 helpline, probably activating the existing MADAD 14433, to be the nodal helpline for all migrant workers in distress.

- Establish a system to coordinate with all the SHRCs and appealing them to establish state level helpline numbers to be the nodal helpline for all migrant workers in distress.
- Appeal to the SHRCs to be the link with the local authorities for ensuring timely and adequate access to relief including stay facilities and dry ration/cooked food sufficient for the period of their stay and undertake daily review, including onsite visits.
- Issue immediate directions to all state governments to evolve definite inclusive policies and abstain from emphasising on identity card proofs like the ration card, aadhar etc. to access relief services such as accommodation in relief camps, access to cooked food, delivery of ration and essentials, interim monetary relief etc. Any person, immaterial of being a local resident or a migrant, including homeless and vulnerable communities like the de-notified tribes, nomadic tribes, sex-workers etc, should be able to access services provided in the times of lockdown through relevant provisions of the DM Act.
- Establish a 'joint working group' at national and state levels with the Ministry of Corporate Affairs, Ministry of Labour and Employment and, Ministry of Consumer Affairs, Food and Public Distribution, for day to day monitoring of the helpline.
- Direct the concerned governments to provide ex-gratia compensation to the families of the migrant workers who died after the lockdown. Such families or their representatives should be able to approach the Hon'ble Commission based on the specific directions.
- Direct all the state and union territory administrations, Ministry of Railways, Ministry of Civil Aviation, Ministry of Health and Family Welfare and other concerned ministries to develop plan and roadmap for safe rescue of migrant workers stuck in other states. Where necessary, utilise the services of vehicles of Indian Army and para-military forces to ensure the safe and secure transportation of stranded workers.
- Direct all the state and union territory administrations to put in place adequate quarantining facilities for migrant workers upon their return to villages. The directives should include guidelines for sensitive treatment and facilities.
- Issue public directions allowing and encouraging complaints of negligence or inaction by the administration during the lockdown to be submitted by victims themselves or on behalf of them in accordance with Section 12 (a) of the PHRA.

#### **4. Children in Conflict with Law**

While the Juvenile Justice Committee of the Punjab and Haryana High Court has issued a direction to all Juvenile Justice Boards (JJBs) to release children on bail on the basis of nature of offence alleged against them, we strongly feel that the release should be on the basis of principles of juvenile justice laid down in Chapter 3 of the

Juvenile Justice Act, 2015 (JJ Act). In addition to this, it should be on the basis of needs and risk assessment of every child. A case-to-case approach is necessary as in the case of children in conflict with the law bail is a rule and its denial an exception under Section 12 of the JJ Act.

Guidelines need to be put in place for child care institutions (CCIs) on preparedness, prevention and safety for children who will remain in these institutions even if a few are released. For example, directions may be passed for the state governments to introduce video conferencing that will allow children to stay in touch with their families and help in maintaining their emotional well-being amidst fears of spread of COVID-19.

In a situation of such a pandemic, parents/guardians should not be forced to take their children back as they themselves may not be in a condition to support their child's well-being and ensure protection.

Every child sent back should be given a sponsorship through sponsorship at the rate prescribed under the Integrated Child Protection Scheme (ICPS), routed through the District Magistrate and disbursed by the Probation Officer of the District Child Protection Unit (DCPU).

**At this stage, we the undersigned, would make following specific appeals –**

- Direct the Union Ministry of Child and Family Development to issue circular to all state governments clearly directing the following:
  - Preparation of a list of person(s) responsible for escorting the child back home.
  - Advisory laying down the procedures required to be followed for smooth inter and intra-state movement along with directions to the police for providing transport and meeting the food and boarding and lodging costs of the child and the escort during the transfer.
- Appeal to the National Commission for Protection of Child Rights (NCPCR), one of the members of the statutory NHRC after the latest amendments to the PHRA, to ensure that the JJBs undertake adequate risk assessment in all cases and abide by the fundamentals of the JJ Act - bail is a rule and its denial an exception.
- Appeal to the NCPCR to develop guidelines for CCIs to deal with such situations of pandemic and lockdown.

We believe that the Hon'ble Commission and SHRCs must play a definitive role in upholding ALL human rights for ALL in this period of lockdown. In addition to the above-mentioned in this submission, we further appeal –

- Direct the Director General of Police in all states and union territories to register FIRs and take firm actions as per law, against hate speech openly being spread by television news channels and public figures, including politicians, to vilify minority communities, specifically in the context of COVID-19 spread as a result of actions attributed to Tableeghi Jamaat Markaz (Centre) in Delhi.



- Direct the Government of Delhi to inquire into claims that the aforementioned Markaz made several unsuccessful attempts to reach local authorities for assistance to safely transport its members out of the Markaz in response to calls for a lockdown, and to fix responsibility on authorities where administrative inaction is proved.
- Direct the Government of India to ensure high speed internet connectivity in Jammu and Kashmir amidst this lockdown.
- Direct the National Disaster Management Authority to submit true and original copies of the National Plan prepared in accordance with Sec 11 of the DM Act.
- Direct the Ministry of Corporate Affairs, Ministry of Labour and Employment, Ministry of Consumer Affairs, Food and Public Distribution and, Ministry of Health and Family Welfare to submit their respective action plans (drawn based on the National Plan) in accordance with Sec 11 (6) of the DM Act.
- Direct the State Disaster Management Authority in all states to submit true and original copies of the State Plan prepared in accordance with Sec 23 of the DM Act.
- Direct the Chief Secretary in all states to submit ministerial/departmental action plans (drawn based on the State Plan) in accordance with Sec 23 (7) of the DM Act.

Last but not the least, the National Disaster Response Force (NDRF) which holds expertise, including medical, in adverse disaster situations, is completely silent about how it proposes to address the impact of COVID-19. With 12 battalions (each battalion comprises of 18 specialists and 45 other personnel) present across the country, role of the NDRF may be crucial in coordinating much of the relief work, especially for the migrant workers, homeless people, members of vulnerable communities etc. This is a disaster like no other and will require immediate as well as well-planned longer time disaster relief.

We thank you for your patient reading and look forward to definite actions on the concerns brought to your notice through this submission. We are willing to extend all possible support to the Hon'ble Commission and SHRCs in addressing human rights concerns.

Sincerely,

- |   |                |                                                                  |
|---|----------------|------------------------------------------------------------------|
| 1 | A. Aloysius    | : Convenor, Multi Stakeholder Initiative –<br>Tamil Nadu         |
| 2 | Amita Joseph   | : Director, Business and Community Foundation                    |
| 3 | Anil Chaudhary | : Convenor, People's Commission on Shrinking<br>Democratic Space |
| 4 | Aruna Roy      | : Mazdoor Kisan Shakti Sangathan                                 |

- 5 Ashish Kothari : Pune
- 6 Babloo Loitongbam : Executive Director, Human Rights Alert
- 7 Dr. Bala Murugan : Member, Tamil Nadu Alliance
- 8 Beena Pallical : General Secretary, NCDHR & Dalit Arthik Adhikar Andolan
- 9 Bharti Ali : Executive Director, HAQ: Centre for Child Rights
- 10 Dakxinkumar Bajrange : Convenor, National Alliance Group for Denotified and Nomadic Tribes
- 11 Dhirendra Panda : Convener, Civil Society Forum on Human Rights
- 12 Enakshi Ganguly : Co-founder HAQ: Centre for Child Rights
- 13 Henri Tiphagne : Advocate & Executive Director, People's Watch
- 14 Indira Jaising : Senior Advocate, Supreme Court of India
- 15 Kalpana Kannabiran : Professor & Director, Council for Social Development, Hyderabad
- 16 Kavita Srivastava : National Secretary, People's Union for Civil Liberties
- 17 Kirity Roy : Secretary, Banglar Manabadhikar Suraksha Mancha
- 18 Lara Jesani : Advocate, Mumbai
- 19 Leo Saldhana : Environment Support Group, Bangalore
- 20 M.A. Britto : Convenor, Campaign Against Camp Coolie System
- 21 M.G Devasahayam : Former Army and IAS Officer
- 22 Maja Daruwala : Senior Advisor, Tata Trust and Commonwealth Human Rights Initiative
- 23 Mathew Cherian : CEO, Helpage India and Member of the NHRC's Core committee on rights of the elderly
- 24 Mathews Philip : Executive Director, South India Cell for Human Rights Education and Monitoring and Member, NHRC Core Group on NGOs and Human Rights Defenders
- 25 Mayank Sinha : Secretary, National Alliance Group for Denotified and Nomadic Tribes

- 26 Medha Patkar : Narmada Bachao Andolan and National Alliance of People's Movements
- 27 Mihir Desai : Senior Advocate, Mumbai
- 28 Miloon Kothari : Independent Expert on Human Rights and Social Policy
- 29 Nikhil Dey : Mazdoor Kisan Shakti Sangathan
- 30 Nitya Ramakrishnan : Advocate, New Delhi
- 31 Dr. Paul Basker : Convenor, Tamil Nadu Alliance
- 32 Paul Divakar : Chairperson, Asia Dalit Rights Forum
- 33 Pradeep Narayanan : Director, Partners in Change
- 34 Rajendra Prasad : Convenor, CACL – Tamil Nadu and Pondicherry
- 35 Dr. Ruth Manorama : Social Activist & Feminist, Former NHRC NGO Core Group Member
- 36 S.M. Prithviraj : Convenor, Tirupur Peoples forum for environment and labour rights
- 37 Sajjad Hassan : Convenor, Citizens Against Hate
- 38 Sanjay Parikh : Senior Advocate, Supreme Court of India
- 39 Sanjoy Hazarika : International Director, Commonwealth Human Rights Initiative
- 40 Prof. Shanta Sinha : Former Chairperson, National Commission for Protection of Child Rights
- 41 Shivani Chaudhry : Housing and Land Rights Network
- 42 Sudha Ramalingam : Advocate and Activist, Practicing in Madras High Court
- 43 Tom Thomas : CEO, Praxis – Institute for Participatory Practices
- 44 V.A. Ramesh Nathan : General Secretary, National Dalit Movement for Justice
- 45 Dr. V. Vasanthi Devi : Former Chairperson, State Commission for Women – Tamil Nadu and Former Vice-Chancellor, MS University – Tirunelveli
- 46 Virendra Dayal : Former Member, National Human Rights Commission

- 47 Wajahat Habibullah : Former Chairperson, National Commission for Minorities and Former Chief Information Commissioner of India
- 48 Wilfred Dcosta : Alliances and Linkages Convenor, Indian Social Action Forum

**Copies to –**

- All Members, National Human Rights Commission
- Secretary General, National Human Rights Commission
- Registrar Law, National Human Rights Commission
- Chairperson and Members, All State Human Rights Commission
- Bureau Members, Global Alliance of National Human Rights Institutions
- Secretariat, Global Alliance of National Human Rights Institutions
- Secretariat, Asia Pacific Forum of National Human Rights Institutions
- Secretariat, Asian NGO Forum on National Human Rights Institutions

# ANNEXURE 1



UNITED NATIONS  
HUMAN RIGHTS  
OFFICE OF THE HIGH COMMISSIONER

WHAT ARE HUMAN RIGHTS?

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## COVID-19: UN human rights chief "distressed" over plight of India's internal migrants, welcomes measures to limit impact

GENEVA (2 April 2020) – UN Human Rights chief Michelle Bachelet said today she was distressed by the plight of millions of internal migrants affected by the sudden announcement of a lockdown in India. She welcomed subsequent measures to address their situation but noted that pervasive challenges remain.

"The lockdown in India represents a massive logistical and implementation challenge given the population size and its density and we all hope the spread of the virus can be checked," the High Commissioner for Human Rights said. "It is nonetheless important to ensure that measures in response to the COVID-19 are neither applied in a discriminatory manner nor exacerbate existing inequalities and vulnerabilities."

Following the announcement of the lockdown to limit the spread of COVID-19, many impoverished migrants were left without work and unable to pay for their rent and food. Without the ability to sustain themselves in urban centres and in light of the almost complete shutdown of public transportation, hundreds of thousands of migrant men, women and children were forced to walk hundreds of kilometres trying to reach their villages and home States. Some have died making the journey.

On 29 March, in an effort to contain the spread of the virus, the Ministry of Home Affairs issued an order to States to intercept migrants on their way home and require them to enter quarantine for a two-week period. The High Commissioner welcomes the Supreme Court of India's subsequent instruction on 31 March to ensure that migrants are provided enough food, water, beds and supplies as well as psychosocial counselling in shelters that should be run by volunteers instead of security forces, and that they should be treated in a humane manner.

"The Supreme Court's order and its implementation will go a long way to ensuring the safety and rights of these vulnerable migrants. Many of these people's lives have been suddenly uprooted by the lockdown, placing them in very precarious situations," Bachelet said.

The Government has taken a number of other measures to address the situation such as ensuring the distribution of food services on a massive scale, pressing employers to pay wages and landlords to waive rents. "In spite of all these significant efforts, more needs to be done as the human tragedy continues to unfold before our eyes," the High Commissioner said. Special Measures should also take into account the particular situation of migrant women, who are among those most economically vulnerable and impacted by the situation.

Earlier this week, reports and images emerged of police officers beating people, including migrants, with batons for breaking quarantine rules and returning migrants being doused with disinfectant. "We understand the strains on police services at this time, but officers must show restraint and abide by international standards on the use of force and humane treatment in their efforts to respond to this

pandemic, in accordance with the Supreme Court's instruction." A number of States have now issued explicit orders to their police forces to refrain from the use of force to contain the virus.

The High Commissioner also expressed regret at measures that have the effect of stigmatising sections of society, including migrants, such as the practice in some States of stamping hands of those quarantined in their homes, reportedly to ensure that they stay home, and sticking notices outside the homes of people quarantined.

"It is important to weigh such measures against the right to privacy and avoid measures that would unduly stigmatise people within the community, who may already be vulnerable due to their social status or other factors," Bachelet said.

Containing COVID-19 in the country that hosts one-sixth of the world's population will require efforts not only by the Government, but also the population at large. The High Commissioner encouraged the Government to work shoulder-to-shoulder with civil society on the response – including many NGOs who are already providing relief.

"This is a time for domestic solidarity and unity. I encourage the Government to draw on India's vibrant civil society to reach out to the most vulnerable sectors of society, to ensure no one is left behind in this time of crisis," Bachelet said.

ENDS

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## **ANNEXURE 2**



# CHRI

Commonwealth Human Rights Initiative

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

## **Respecting Human Rights while Enforcing the Lockdown:**

### **Guidelines for Police**

March 2020

# RESPECTING HUMAN RIGHTS WHILE ENFORCING THE LOCKDOWN

## GUIDELINES FOR POLICE

*“COVID 19 is a test of societies, of governments, of communities and of individuals. It is a time for solidarity and cooperation to tackle the virus, and to mitigate the effects, often unintended, of measures designed to halt the spread of COVID 19. Respect for human rights across the spectrum, including economic and social rights, and civil and political rights, will be fundamental to the success of the public health response”.<sup>1</sup>*

**United Nations Office of the High Commissioner for Human Rights**

### **Aim**

These guidelines propose actionable measures to assist police departments across India to implement the critical task of enforcing the current nationwide lockdown within the Constitutional framework. This requires the police to approach its mandate in a humane, transparent, accountable and non-discriminatory manner, in the spirit of service, always respecting the human rights of the population.

### **Nationwide Lockdown**

Starting 25<sup>th</sup> March 2020, the Prime Minister of India announced a 21-day nationwide lockdown in the wake of the worldwide pandemic caused by the rapid spread of the COVID-19 or Coronavirus. This necessitates the estimated 1.3 billion people of India to be ordered to be confined indoors and take major precautionary measures in everyday life. It has compelled the curtailment of the fundamental rights to movement, assembly, livelihood, and education. Only the most essential services designated by the Central and state governments are allowed to operate. While the lockdown has caused widespread disruption, fear and anxiety across all segments of society, it disproportionately debilitates the poor and vulnerable. Starvation and homelessness are a looming reality for lakhs of people left without wages. The police too are under severe strain, and face overwhelming structural and resource constraints and challenges. They are required to act in public service while facing the very tensions to their own health and the safety of their loved ones.

Unfortunately these early days of the nationwide lockdown has witnessed large-scale suffering, compounded by an insensitive and often brutal response by state authorities. Police brutality - writ large in videos virtually from all states across the country - has

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<sup>1</sup> COVID 19 and its human rights dimensions:  
<https://www.ohchr.org/EN/NewsEvents/Pages/COVID-19.aspx>, accessed on 26 March 2020



dehumanised the state response.<sup>2</sup> Taking notice *suo moto* and calling for judicial intervention, the High Court of Kerala will monitor all State action in Kerala during the lockdown period<sup>3</sup>:

*“While we have come across an abundance of material in the print and social media, that would lead us to believe that exemplary work is being done by the health authorities as well as by the police personnel, we cannot turn a blind eye to some of the other material that has been published in the print, electronic and social media in the past week, that would point to excesses committed by the police personnel in the course of discharge of their duties. We have also to allay the fear among the citizenry as regards infringement of their fundamental rights. We are therefore of the view that the implementation of the lockdown in this State, by the Central or State authorities, must be under the watchful eyes of the Judiciary and, towards this end, we deem it appropriate to institute this suo moto proceeding to monitor State action during this lockdown period”.*<sup>4</sup>

At this time of collective hardship, the populace at large is looking to the police for professionalism, protection, assistance and guidance. The police have a distinct role in making sure the lockdown is adhered to with minimum hardship to all communities, and need to build a secure base of public trust and support. In tandem, the police are the key ground-level liaison point for essential services providers going about their work and keeping supply chains in motion. All police actions need to be done in the spirit of public service with accommodation, empathy and an abiding respect for rights and human dignity; while ensuring all precautions to guard against the spread of the virus. It is only this that can calm fear, clear confusions, and build trust and solidarity. Honouring these underlying principles will ensure success in getting through both this unprecedented lockdown and public health crisis.

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<sup>2</sup> Delivery Guys Carrying Orders Beaten Up Mercilessly By Police As Country Enters Lockdown, [https://www.indiatimes.com/news/india/delivery-guys-carrying-orders-beaten-up-mercilessly-by-police-as-country-enters-lockdown-509233.html?fbclid=IwAR1OgeshOLRR\\_AHK1Ji8wTbUS0IaQx0hOPzhaSc\\_l9g8wYnv8-x4muEZzxU](https://www.indiatimes.com/news/india/delivery-guys-carrying-orders-beaten-up-mercilessly-by-police-as-country-enters-lockdown-509233.html?fbclid=IwAR1OgeshOLRR_AHK1Ji8wTbUS0IaQx0hOPzhaSc_l9g8wYnv8-x4muEZzxU), Accessed on 26 March 2020; "15,000 Ltrs Milk, 10,000 kg Veg Dumped": E-Tailers Allege Police Attacks, <https://www.ndtv.com/india-news/coronavirus-india-lockdown-e-tailers-complain-police-beating-up-delivery-agents-2200587>, accessed on 26 March 2020; Quirky and innovative ways in which police made sure Indians follow lockdown rules, <https://theprint.in/india/quirky-and-innovative-ways-in-which-police-made-sure-indians-follow-lockdown-rules/388085/>, accessed on 26 March 2020

<sup>3</sup> It is hoped other state High Courts will take on this important role of monitoring during the lockdown.

<sup>4</sup> Kerala High Court in Suo Moto Petition (Unnumbered of 2020) dated 30 March 2020: [http://highcourtofkerala.nic.in/lat\\_orders/suomotu\\_un\\_wpc\\_of%202020dtd30032020.pdf](http://highcourtofkerala.nic.in/lat_orders/suomotu_un_wpc_of%202020dtd30032020.pdf)

## GUIDELINES

CHRI recommends the following measures as guidelines to all state police departments.

### **Lockdown Management Plan<sup>5</sup>**

The police leadership in every state needs to develop a holistic Lockdown Management Plan (hereafter the Plan) at the earliest. The Plan should frame the policing approach. It must be designed to equip police officers to understand their role in enforcing the lockdown without highhandedness, and enable operational decision-making and action to be swift, reasonable, fair and accessible. It can provide practical guidance for all aspects of the operational response - including managing the public, facilitation of essential services, minimal use of force, curtailed arrests, measures to reach out to vulnerable groups, protective measures to prevent the spread of the virus; as well as internal reporting, supervision, accountability, and communication requirements, at all levels, to ensure police on the ground are well informed and accountable. For targeted results, states may develop a separate plan for rural and urban areas, as need be.

It may be written as a Standing Operating Procedure (SOP) – concise, clear, and well organized, with specific practical steps for field implementation. To ensure it reaches the hands of all personnel, particularly those at field-level, the Plan can be published as easy-to-refer checklists and/or pocket books which can be circulated as paper copies and/or, for ease of access, digitally on mobile phones and computers in the language of the state, as well as the link languages of Hindi and English where possible. As department-wide operational guidance, it should be uploaded on state/district police websites, displayed in various police units particularly police stations, and available with mobile patrolling units. Taking all measures to make the Plan easily accessible to the public can raise public awareness and enable public cooperation with the police.

With the need to abide by physical distancing and restrictions on gatherings of people, as well as all police time taken up by the urgent handling of the current crisis, it is recognized that instituting special training on the Plan will be difficult at this time. As an alternative, supervising officers, particularly district police chiefs, police stations in charge, and heads of units, can hold targeted sessions at their levels to orient their staff on the Plan and its provisions.

While police leaders are best placed to frame a holistic plan within local contexts, CHRI urges that the following areas are included in every plan through actionable measures elaborated below.

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<sup>5</sup> CHRI takes note of the briefing paper circulated by the Indian Police Foundation to the Offices of all state Director Generals (DGs) of Police, Police Commissioners of metro cities and DGs of central paramilitary forces advising the preparation of a 'Pandemic Preparedness Plan'. The drafting of these guidelines are our effort to lend support to all the various efforts to assist and support police departments in shaping the needed responses to the current challenges before them.

## Summary of Measures

### **Protective Measures Against Covid-19**

*Like other essential service providers, the nature of their work places police personnel at great risk of contracting the virus, and thus spreading it. It is vital that all police, especially those in police stations and out on the streets, strictly adopt protective measures at all times. Police officers overseeing lock-ups must ensure protective measures for all persons in custody.*

### **Guidance on Minimised Use of Force**

*In the midst of unprecedented restrictions on people's daily lives, the use of force by police as a means to enforce the lockdown must be prohibited. Non-violent means must be devised and implemented.*

### **Facilitating Access to Essential Service Providers and Full Cooperation with Service Providers**

*The police are the crucial liaison point between people and essential services. This not only ensures the smooth conduct and delivery of essential services, it can save lives. This is a critical component of the police role and must be prioritised.*

### **Specific Protocol on Stop, Verify and Assist**

*It will smoothen the police's job in regulating and assisting people found on the streets to have a simple, practical, easily implementable protocol to refer to in terms of questions to ask and possible responses.*

### **Guidance on Curtailed Arrests and Detention**

*To prevent unnecessary detention, it is urged that there is no arrest or detention for alleged violations of the lockdown. In line with the critical need to ensure people, and police personnel, are not put in danger of contracting the virus by being in close proximity in custody, the police should curtail all arrests and detention as far as possible.*

### **Accountability for Police Misconduct**

*There must be firm action against any police personnel found deviating from, abusing, and/or violating established procedures and principles governing lockdown management, particularly on use of force, arrest, detention, and managing the public and essential services.*

### **Special Measures to Protect Vulnerable Groups**

*Certain vulnerable groups face immense difficulties accessing assistance and services, which will only be amplified during the lockdown. It is crucial to identify people and groups who may be at risk of coming into harm and/or of being further marginalised, due to the restrictions on movement and interaction.*

### **Ensuring a Non-Discriminatory Response**

*The police must be non-discriminatory in its response and be vigilant to monitor for and stem any instances of discrimination.*

### **Regular and Clear Communication; both Internally across all levels, and with the Public**

*There must be consistent, concerted communication within the police, across the ranks; and with the public, throughout the duration of the lockdown, of the lockdown management plan, developments, measures to be taken, and assurances by police leaders.*

## **I. Protective Measures Against Covid-19**

*Like other essential service providers, the nature of their work places police personnel at great risk of contracting the virus, and thus spreading it. It is vital that all police, especially those in police stations and out on the streets, strictly adopt protective measures at all times. Police officers overseeing lock-ups must ensure protective measures for all persons in custody.*

1. Ensure that all police personnel in the field have adequate protective gear including masks and gloves, and are provided hand sanitisers
2. Instruct all police personnel to maintain a physical distance of 3 feet<sup>6</sup> from each other at all times, whether in offices, police stations, and on the streets:
  - a. Ensure the physical distancing requirement is adhered to during meetings and briefings
  - b. Prescribe the number of personnel permitted to be in Police Control Room (PCR) vans and any police vehicle to adhere to the physical distancing requirement
  - c. Strictly enforce that only one personnel is permitted to ride police motorcycles/two-wheelers
3. Disinfect all offices, police stations, outposts, *chowkis*, Police Control Room vans, and all police vehicles daily
4. Take all measures to ensure the following are operationalized in all administrative units:
  - a. Provide clean running water and working hand-wash facilities
  - b. Ensure sufficient supplies of hand sanitisers for staff in each unit
5. Operationalise the following in all police stations/lock-ups:
  - a. Disinfect and thoroughly clean police lock-ups for men and women daily
  - b. Maintain high standards of hygiene for all police staff and persons in lock-ups
  - c. Ensure a distance of 3 feet can be kept between each person in police lock-ups at all times, including at night to sleep (in sync with guidelines in Part V)
  - d. Provide and guarantee a consistent supply of separate bars of soap to each person in police lock-ups, and instruct each person to wash or sanitise their hands frequently
  - e. Provide hand sanitisers where access to running water is limited
  - f. Provide a cloth mask/handkerchief/gamcha/tissue paper to each person in police lock-ups to enable them to cover their mouth as much as possible
  - g. Instruct Station House Officers and select police personnel at every police station to keep a vigilant check on the health of each person in lock-up. Anyone sneezing,

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<sup>6</sup> As per guidance from the World Health Organization: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

coughing, having fever or breathlessness must immediately be sent to the nearest medical facility for testing

- h. Ensure every arrested person is medically examined immediately after arrest as per Section 54 of the Code of Criminal Procedure; if kept in custody, s/he is mandatorily medically examined every 48 hours [based on the direction in *D.K. Basu vs. State of West Bengal*]
6. Instruct field-level personnel to abide by the following safety measures:
  - a. Avoid physical contact with any person on the street
  - b. Maintain a distance of 3 feet, as far as possible, while interacting with members of the public
  - c. Use separate handtowels/handkerchiefs and avoid sharing
7. Lay down clear protocol for police personnel to follow immediately on returning home, with emphasis on washing hands and face, bathing and changing clothes, and daily washing of the police uniform
8. Take measures to ensure that all police personnel, especially those on the field, can be regularly tested for the virus given their constant exposure to public spaces. Anyone showing symptoms should immediately be removed from duty and provided medical attention
9. Formulate a contingency plan for fulfilling police duties, and providing support to those taken ill, in the event of the spread of the virus among personnel. The plan must:
  - a. Draw up a deployment plan to manage existing, available strength
  - b. Assure the subordinate ranks, particularly the constabulary, of guaranteed pay and adequate leave to recover
  - c. Cover costs of treatment as part of the existing medical insurance provided to officers across ranks
  - d. Provide support, including supply of essential goods, to the families of personnel, where necessary
10. Prominently display the instructions on maintaining distance and hygiene on posters, in the local language, outside every police office and police station
11. Designate a senior officer at Police Headquarters as the nodal point to receive and monitor all reports of virus symptoms and/or positive cases. Call for reports to be promptly sent to immediate supervisors, with a copy to the nodal officer, to inform when virus symptoms are found among police personnel and persons in custody

## II. Minimize Use of Force

*In the midst of unprecedented restrictions on people's daily lives, the use of force by police as a means to enforce the lockdown must be prohibited.<sup>7</sup> Non-violent means must be devised and implemented.*

12. Issue and strictly enforce a department-wide circular<sup>8</sup> that prohibits police personnel from using force on persons found out on the streets, and directs the use of only non-violent means to resolve these situations. In the circular, reiterate Principle 8 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: *Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.*
13. Orient and equip field-level personnel with the skills of effective dialogue and communication to understand people's reasons or recognise their compulsions for being out on the streets; and provide the needed assistance
14. Expressly prohibit police personnel from doing the following, classify these as acts of serious police misconduct with appropriate punishments:
  - a. Beating, or threatening anyone with beating, for alleged violation of the lockdown
  - b. Forcing people to roll, crawl, squat, do sit-ups, or be made to do humiliating acts as public punishments for alleged violation of the lockdown
15. Permit force only to be used where life or property is endangered, restrict such force to the minimum extent necessary, and take all measures to prevent harm and injury. Require mandatory reporting to the supervising officer of any incident where minimum force had to be used
16. Arrange regular orientations of field-level officers with supervising officers, through video conferencing when needed, on the prohibition against any use of force except in the defined circumstances

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<sup>7</sup> A judge of the Kerala High Court, Justice Devan Ramachandran, has written to the Director General of the Kerala Police requesting him to direct all Kerala Police officers not to use force against alleged violators, unless it is "absolutely essential to use force and even then, only to the extent necessary". As reported on Live Law on 28 March 2020.

<sup>8</sup> Reiterate the guidance on no force, as in the circular, in the Plan; and annex the circular to it.

### **III. Ensure Access to Essential Services and Full Cooperation with Service Providers**

*The police are the crucial liaison point between people and essential services. This not only ensures the smooth conduct and delivery of essential services, it can save lives. This is a critical component of the police role and must be prioritised.*

17. Instruct, orient and equip field-level officers to take all necessary measures to facilitate unhindered, timely and safe movement of every designated essential service provider, and the movement of people to access essential services, including:
  - a. Guiding delivery persons to reach the point of delivery through the shortest route possible, keeping in mind blockades and road/gate closures
  - b. Assisting people with information about the location of the nearest grocery/kinara stores, chemists, ATMs, hospitals, ration shops, primary health centres, and all other essential services
  - c. Assisting anyone in need of medical aid or intervention to reach the closest hospital
  - d. Coordinate with civil society organisations and NGOs to facilitate access to essential services, especially to identify and reach out to vulnerable individuals and/or communities, particularly the disabled/physically and mentally challenged individuals and groups, senior citizens, and children
18. Ensure that all police personnel across ranks, especially field-level officers, have full knowledge and awareness of each designated essential service provider in their state, as per government and departmental orders issued
19. Circulate departmental orders with the list of essential service providers by all means necessary, such as to the official mobile and WhatsApp numbers of personnel, making sure that every Beat Constable, every officer on patrol duty, and every officer on law and order duty have this list in their possession with easy access when on duty on the roads
20. Ensure that all police personnel, especially field level officers, have full knowledge and awareness of the specific document(s) or identification proof which essential service providers have to carry and show the police
21. Actively disseminate clear information in publicly accessible channels (including regional, locally and national broadcast agencies, both public and private) about the process, conditions, and documentation, if any, required to obtain a “movement pass” for essential service providers or for members of the public
22. Ensure that the process of issuance of the movement pass is swift, easy to follow, and does not require physical verification of any kind. To ensure accessibility for all,



the process could be completed not just through online platforms but also through modes such as text messages and WhatsApp

23. Ensure at all times that all persons accessing a service, such as when waiting outside a provisions/grocery store or ration shop, adhere to the requirement of physical distancing

#### **IV. Establish a “Stop, Verify and Assist” Protocol**

*It will smoothen the police’s job in regulating and assisting people found on the streets to have a simple, practical, easily implementable protocol to refer to in terms of questions to ask and possible responses.*

24. Develop a ‘Stop, Verify and Assist’ protocol that will lay down step-by-step procedures for police personnel to follow on stopping and engaging with persons found on the streets. The protocol should be designed to guide field level officers in their interaction with the public. Emphasis should be on being cooperative and facilitating assistance. At a minimum, it should contain:
  - a. Basic questions to understand the reasons for a person being outside and respond accordingly, the questions should be limited to finding out where a person is going and their reason for going there, and should not be invasive
  - b. Various kinds of assistance the police can provide to help a person access essential services, including referral to helplines
  - c. Objective and clear criteria to identify genuine breaches of lockdown conditions and the proportionate police responses possible

#### **V. Limit Arrests and Detention<sup>9</sup>**

*To prevent unnecessary detention, it is urged that there is no arrest or detention for alleged violations of the lockdown. In line with the critical need to ensure people, and police personnel, are not put in danger of contracting the virus by being in close proximity in custody, the police should curtail all arrests and detention as far as possible.*

25. Recognise the grave threat to persons in the contained and limited spaces of police custody, and to police personnel themselves, of contracting and spreading coronavirus and the urgent need to take all necessary preventive measures

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<sup>9</sup> The Kerala High Court in Suo motu Writ Petition – COVID-19 ( W.P. (C) No.9400 OF 2020) (dated 25th March 2020) stated that because of the lack of access to courts during the lockdown, arrests should not be made except in matters where arrest is “inevitable”, and with the exercise of discretion in serious/heinous offences : [http://highcourtofkerala.nic.in/downloads/COVID\\_19\\_wpc9400\\_2020\\_orderdtd25032020.pdf](http://highcourtofkerala.nic.in/downloads/COVID_19_wpc9400_2020_orderdtd25032020.pdf)



26. Ensure that police personnel are aware that the commonly invoked legal provisions to hold a person in violation of lockdown conditions areailable<sup>10</sup>
27. Ensure that police personnel can provide, prima facie, evidence-based reasons for suspecting a person in violation of any such legal provision
28. Direct all arresting officers to refrain from making arrests in all cases of suspected violators; instead they should condone/give warnings/impose fines
29. Direct Station House Officers to coordinate with the Secretary of the District Legal Services Authority or the Taluk Legal Services Committee (as applicable) to identify the legal aid lawyer designated/attached to his/her police station; and put up the names and contact details of the legal aid lawyers outside every police station

#### *Minimise taking people into police custody*

30. Impose a blanket rule that in all cases of offences with punishment up to 7 years, arresting officers are directed to not make arrests, with reasons recorded in writing, as per the provisions of Sections 41 and 41A, Code of Criminal Procedure
31. Resist from making arrests even in cases of offences with punishment beyond 7 years, unless in matters where arrest is absolutely necessary as per conditions laid down in the Code of Criminal Procedure. Any arrest made must fully adhere to all the procedures and rights on arrest laid down in the Constitution and the Code of Criminal Procedure
32. Prohibit police personnel from carrying out any preventive arrests during the coronavirus pandemic
33. Seek court directions to move persons out of police lock-ups through release on bail in all cases

#### **VI. Account for Police Misconduct**

*There must be firm action against any police personnel found deviating from, abusing, and/or violating established procedures and principles governing lockdown management, including on use of force, arrest, detention, and managing the public and essential services.*

34. Emphasize a strict adherence with laid down procedures and human rights standards, at all levels, in enforcing the lockdown

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<sup>10</sup> For example, Sections 188, 268, 269, 270, 271 of the Indian Penal Code, 1860; The Epidemic Diseases Act 1897 (Sections 2 and 3), and The Disaster Management Act, 2005 (Sections 51 to 60)

35. Follow clear reporting procedures on every police action, particularly from officers on the streets in charge of implementing the Stop, Verify and Assist Protocol, to allow review and ensure officers are accountable for their actions
36. Ensure all members of the public are able to easily file complaints against police officers for any alleged misconduct or criminality, for instance through a dedicated helpline with the numbers well publicised. Make it compulsory for the supervising officer to acknowledge and respond to every complaint received, clearly stating the course to be taken
37. Take firm action, departmental or criminal as warranted, against any police personnel, irrespective of rank, who:
  - a. Commits any act which obstructs, prevents, or limits an essential service provider from carrying out their duty
  - b. Causes harm or injury to an essential service provider
  - c. Uses arbitrary or abusive use of force against a person or persons
  - d. Unnecessarily or unlawfully arrests or detains a person or persons

*If prosecution is called for, in line with the conditions of these guidelines, and if the police personnel cannot be taken into custody, immediately suspend them from duty and initiate the legal process as soon as it is feasible.*

## **VII. Protect Vulnerable Groups**

*Certain vulnerable groups face immense difficulties accessing assistance and services, which will only be amplified during the lockdown. It is crucial to identify people and groups who may be at risk of coming into harm and/or of being further marginalised, due to the restrictions on movement and interaction.*

38. Take special measures and formulate plans to address the specific needs and vulnerabilities of women, children, the sick, senior citizens, disabled persons; or any other group, which will be particularly hampered by the restrictions on movement and social interaction, including:
  - a. Assisting in delivering rations or medicines to their residences
  - b. Escorting anyone in need to a hospital, bank, ration shop or provisions store, or any other essential service
  - c. Facilitating the continuity of medical or support services for the sick, senior citizens, and disabled persons especially or anyone in need
  - d. Where possible, making regular phone calls to check in on anyone in need
39. Recognize the distinct hardship and safety concerns faced by vulnerable groups including the homeless, migrant workers, sex workers, trans persons, members of minority groups, women and children in unsafe houses, and communities from the Northeast susceptible to hate crimes. As a start, this can be done by:
  - a. Devising specific support services or strategies for anyone in need

- b. Consulting civil society organisations and other relevant stakeholders to build a repository of effective referrals for anyone in need
- c. Assuring anyone in need of police presence and response

40. Take special and specific measures, at police station and district levels, to speak to minority group members in the community to learn and understand their needs and complaints, provide assurance, seek suggestions, and frame the police response based on this

### **VIII. Do not Discriminate and Be Accessible to All**

*The police must be non-discriminatory in its response and be vigilant to monitor for and stem any instances of discrimination.*

- 41. Treat all persons as equal before the law as guaranteed in Article 14, Constitution of India. Carry out all policing duties impartially and with no discrimination against any citizen on the grounds of religion, race/ethnicity, caste, sex, place of birth as guaranteed by the Constitution
- 42. Be vigilant of and take lawful action against any racial, religious, caste-based, or any identity-based stereotyping, discriminatory statements or actions in the community; or by police personnel; in adherence with the conditions required by these guidelines
- 43. Swiftly inquire into discriminatory and/or insensitive actions or behaviour by any police personnel, in adherence with the conditions required by these guidelines
- 44. Incentivise field-level personnel that take special measures and formulate plans towards building community trust in policing

### **IX. Communicate Clearly and Be Visible**

*There must be consistent, concerted communication within the police, across the ranks; and with the public, throughout the duration of the lockdown, of the lockdown management plan, developments, measures to be taken, and assurances by police leaders.*

*Within the department*

- 45. Ensure relevant and updated information on the conditions of the lockdown, including central/state-specific guidelines, and the Plan are shared, in an easily understandable format and language, with all supervisory officers including the station house officers, district police chiefs, officers in charge of a range, officers in charge of a zone, heads of all departments/units and any other supervisory officer
- 46. Hold daily briefings at all levels through video or conference calls as far as possible, from police station, district, range and headquarters, to share up-to-date information

across rank and file, and review concerns related to conduct of the lockdown, including specific action needed

47. Ensure that all relevant and updated precautionary measures to be taken by police personnel are continually reiterated in the daily briefings
48. Make concerted efforts to ensure beat/patrol officers responsible for patrolling areas and interacting with the public are well versed with the lockdown plan and are clear about the steps to be taken
49. Review the implementation of the Plan at regular intervals

*With the public*

50. Regularly assure the public of police presence and support during the lockdown, through videos and social media, particularly on Twitter, and to ensure maximum outreach, through radio
51. Actively disseminate easily understandable information that relays the responsibilities of the public in adhering to the lockdown, including the restrictions in place, actions that could constitute genuine breaches and their penalties; actions that can be facilitated, and the essential services available; through various mediums, at all levels, including police/government websites, press, television, news channels, radio and online news portals, flyers, display boards at/near public places that are allowed to remain open, announcements through loudspeakers in residential colonies, social media, and any other medium as suitable
52. Take steps to ensure the information reaches all people, including those with little or no reading abilities, and people with special needs
53. Share regular updates with the public about relevant developments regarding the coronavirus crisis and government/police measures
54. While taking all the needed protective measures including maintaining the required physical distance, prioritise weekly visits by beat officers to households in their jurisdiction, to maintain regular contact with the residents of their local communities. This will enable the police to remain abreast of difficulties faced by communities and facilitate redress as suitable, including coordinating with local administration and/or other essential services

## 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 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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## **ANNEXURE 3**

### **Measures to Protect Inmates from Transmission of COVID-19**

The Supreme Court directed all states and Union Territories to constitute high powered committees to take measures to release prisoners to decongest prisons and curb the spread of COVID-19. In a *suo moto* Writ Petition (civil) No. 1 of 2020, filed on 16<sup>th</sup> March, 2020, the court issued notices to all states to show cause why directions should not be issued for dealing with the present health crisis with regard to prisons and remand homes. The Court had given the states till 23<sup>rd</sup> March, 2020 to file their responses.

In the 23<sup>rd</sup> March, 2020 order, the court directed the following:

- The physical presence of all undertrial prisoners before courts to be stopped forthwith and recourse of video conferencing be taken for all purposes.
- The transfer of prisoners from one prison to another must not be resorted except for decongestion.
- No delay in shifting sick persons to a Nodal Medical Institution in case, any possibility of infection is seen.
- That prison specific readiness and response plans must be developed in consultation with medical experts, for which the court recommended “***Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings***” jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 be considered.
- A monitoring team must be set up at the state level to ensure directives issued with regard to prisons and remand homes are being complied with.
- Each state/union territory must constitute a High-Level Committee to determine which category of prisoners can be released on parole or interim bail.
- The Undertrial Review Committee shall meet every week.

As of 23<sup>rd</sup> March, 2020, several states have already taken initiatives in respect of persons detained in prisons and remand homes.

<b>State/UT</b>	<b>Initiatives Taken</b>
Bihar	Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls
Karnataka	<ul style="list-style-type: none"><li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li><li>• Adopted screening of prisoners returning from parole to prevent possible transmission</li></ul>
Maharashtra	<ul style="list-style-type: none"><li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li><li>• Has identified special groups of prisoners, who are more vulnerable such as older prisoners with respiratory diseases etc.</li></ul>
Andhra Pradesh	Has identified special groups of prisoners, who are more vulnerable such as older prisoners with respiratory diseases etc.

Uttarakhand	Has identified special groups of prisoners, who are more vulnerable such as older prisoners with respiratory diseases etc.
Punjab	Has identified special groups of prisoners, who are more vulnerable such as older prisoners with respiratory diseases etc.
Uttar Pradesh	<ul style="list-style-type: none"> <li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li> <li>• Has constituted “COVID-19 Special Task Force in all 71 prisons.</li> </ul>
Tripura	Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls
Jharkhand	<ul style="list-style-type: none"> <li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li> <li>• Has started taking measures to decongest prisons by transferring prisoners from congested prisons to other prisons where numbers are low.</li> </ul>
Rajasthan	Has started taking measures to decongest prisons by transferring prisoners from congested prisons to other prisons where numbers are low.
Goa	<ul style="list-style-type: none"> <li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li> <li>• Adopted screening of prisoners returning from parole to prevent possible transmission</li> </ul>
Kerala	<ul style="list-style-type: none"> <li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li> <li>• Adopted screening of prisoners returning from parole to prevent possible transmission</li> </ul>
Telangana	<ul style="list-style-type: none"> <li>• Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls</li> <li>• Adopted screening of prisoners returning from parole to prevent possible transmission</li> </ul>
Haryana	<ul style="list-style-type: none"> <li>• Adopted screening of prisoners returning from parole to prevent possible transmission</li> <li>• Has started block-wise time table relating to food and other services for prevention of overcrowding.</li> </ul>
U.T. of Ladakh	Has identified special groups of prisoners, who are more vulnerable such as older prisoners with respiratory diseases etc.
Jammu & Kashmir	Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls
Chandigarh	Has advised prison authorities that visitors may be allowed to interact with prisoners through video calling or telephonic calls



As of 31<sup>st</sup> March, 2020, the following states have taken initiatives in compliance with the Supreme Court's directive.

States/UTs	Measures Taken
Assam	On March 28 <sup>th</sup> , 41 prisoners were released from Tezpur Jail. <sup>1</sup> Authorities in different jails have released 722 prisoners so far <sup>2</sup> on personal bonds and have handed the prisoners over to the respective police stations.
Punjab	In order to decongest, Minister Sukhjinder Singh Randhawa has said that Punjab will release 6000 prisoners. Convicts will be released on parole for 6 weeks and UTs on interim bail for 6 weeks. <sup>3</sup>
Maharashtra	Home Minister Anil Deshmukh has asked for the release of 11,000 convicted /UT prisoners imprisoned for offences with prescribed punishment up to 7 years, with or without fine, on emergency parole or furlough. <sup>4</sup>
Kerala	The prison department has made use of the prisoners to roll out face masks and sanitisers. <sup>5</sup> The High Court granted parole till April 30 <sup>th</sup> to all prisoners who are either UTs or remand prisoners, provided they are sentenced to less than 7 years imprisonment. Such prisoners would have to report their nearest police station and remain in their homes. In case of any violation, the police were free to arrest them and put them back in jail. <sup>6</sup>
Delhi	The high-level committee headed by Justice Hima Kohli of the Delhi High Court along with officials of DG Prisons, Delhi SLSA and Home Department of the Delhi Government resolved to grant 8-week paroles to around 3000 prisoners. The committee also relaxed the category of UTs who can be released on interim bail but UTs undergoing trial in sexual assault, rape, drug cases and acid attacks as well as those accused in corruption and under investigation in terror and anti-national activities would not be considered for interim bail. <sup>7</sup>

<sup>1</sup> <https://thewire.in/government/covid-19-prisoners-release-jail>

<sup>2</sup> <https://www.indiatoday.in/india/story/assam-releases-722-prisoners-to-reduce-crowding-amid-covid-19-outbreak-1661757-2020-03-31>

<sup>3</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/covid-19-in-a-bid-to-decongest-punjab-to-release-6000-prisoners-from-jails-across-state/articleshow/74837092.cms>

<sup>4</sup> <https://www.deccanherald.com/national/west/coronavirus-11000-prisoners-to-be-released-in-maharashtra-amid-covid-19-crisis-818081.html>

<sup>5</sup> <https://www.thequint.com/news/india/covid-19-prisoners-roped-in-for-making-masks-in-kerala>

<sup>6</sup> <https://gulfnews.com/world/asia/india/covid-19-1000-kerala-prisoners-to-get-parole-till-april-30-1.70703967>

<sup>7</sup> <https://www.newindianexpress.com/cities/delhi/2020/mar/31/release-eligible-undertrials-on-parole-says-high-level-panel-to-avoid-spread-of-covid-19-2123771.html>



	Tihar Jail has already released 419 prisoners on March 28 <sup>th</sup> (356 inmates on a 45-day interim bail and 63 on 8-week parole). <sup>8</sup>
Uttar Pradesh	The UP govt has decided to free 11,000 prisoners lodged in 71 jails on parole. The prisoners sentenced or undergoing trial for offences entailing a 7-year imprisonment would be considered. Convicts would be released on a 8-week parole while UTs would be released on a 8-week interim bail on personal bond. <sup>9</sup>
Madhya Pradesh	A state-level committee, comprising the Madhya Pradesh High Court Chief Justice, principal secretary and DG Prisons resolved to release 12000 prisoners. They will be provided with a 60-day parole to convicts. <sup>10</sup>
Tamil Nadu	Has released 1180 inmates for 9 central prisons and has asked them to appear before their respective courts on April 9. <sup>11</sup>
Uttarakhand	Govt spokesperson Madan Kaushik said that the government will release 855 prisoners on parole from 11 jails in the state for a period of six months. <sup>12</sup>
Odisha	The govt released 80 prisoners on 28 <sup>th</sup> March and has finalised 1727 inmates who will go on parole in the following week. 856 prisoners have also been relocated to different jails. New prisoners will be made to undergo 14 days of quarantine before being allowed to mingle with old inmates. <sup>13</sup>
Gujarat	The government has said it will release 1200 prisoners for two months on parole and interim bail. <sup>14</sup>

<sup>8</sup> <https://thewire.in/government/covid-19-prisoners-release-jail>

<sup>9</sup> <https://www.outlookindia.com/website/story/india-news-coronavirus-uttar-pradesh-to-release-11000-prisoners-on-parole-to-decongest-jails/349627>

<sup>10</sup> <https://timesofindia.indiatimes.com/city/bhopal/covid-19-parole-for-12000-prisoners-in-madhya-pradesh/articleshow/74857179.cms>

<sup>11</sup> <https://thewire.in/government/covid-19-prisoners-release-jail>

<sup>12</sup> <https://www.newindianexpress.com/nation/2020/mar/29/covid-19-uttarakhand-to-release-855-prisoners-on-parole-2123091.html>

<sup>13</sup> <https://www.thehindu.com/news/national/other-states/coronavirus-odisha-releases-80-prisoners-on-parole/article31195849.ece>

<sup>14</sup> <https://www.indiatoday.in/india/story/covid-19-gujarat-free-1-200-prisoners-2-months-1661048-2020-03-29>

## **ANNEXURE 4**



# CHRI

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.<sup>1</sup> 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

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<sup>1</sup> <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.<sup>2</sup>
- ❖ 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.<sup>3</sup>
- ❖ 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.<sup>4</sup>
- ❖ Prison administrations shall take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings.<sup>5</sup>

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<sup>2</sup> Rule 1, Nelson Mandela Rules 2015.

<sup>3</sup> Rule 2, Nelson Mandela Rules 2015.

<sup>4</sup> Rule 1, Nelson Mandela Rules 2015.

<sup>5</sup> 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.<sup>6</sup>
  - 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;

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<sup>6</sup> 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.<sup>7</sup>
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.<sup>8</sup> 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 Maharashtra<sup>9</sup>, to rule out the possibility of any infection and isolate those who exhibit symptoms of the virus.

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<sup>7</sup> 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.

<sup>8</sup> 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>.

<sup>9</sup><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.<sup>10</sup>
- 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.<sup>11</sup> This has also been followed by some states in India.<sup>12</sup> While a complete ban might be justified as it is not only essential to protect prisoners' from contact with the virus

<sup>10</sup> 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](https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_1_21537_Order_16-Mar-2020.pdf)

<sup>11</sup> "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.

<sup>12</sup> 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.<sup>13</sup> 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 etc<sup>14</sup>.

Therefore it is recommended that any restrictions on visitation should mandatorily be accompanied by availability of alternative options<sup>15</sup> 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

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

<sup>14</sup> 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>.

<sup>15</sup> 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,<sup>16</sup> prior to be allowed to visit the prisoner.
- b. Not more than two visitors per prisoner must be allowed.<sup>17</sup>
- 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.

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<sup>16</sup> 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.

<sup>17</sup> 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 products<sup>18</sup> 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:-

**G.**

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.

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<sup>18</sup> 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/33E1INT>; 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.<sup>19</sup>
8. All necessary medical support must be provided to prison staff and their families.<sup>20</sup>

**H. Monitoring of Prisons:**<sup>21</sup> 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.<sup>22</sup>

### **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

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

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

<sup>21</sup> "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'

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



spaces<sup>23</sup> created on an ad hoc basis for this purpose.<sup>24</sup> 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'<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup>

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

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

<sup>24</sup> 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/>.

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

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

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

day instead of the usual 200.<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup>

**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.<sup>31</sup>
  - 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.

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

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

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

<sup>31</sup> 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 release<sup>32</sup> 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 2018<sup>33</sup>, 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;

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<sup>32</sup> 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>.

<sup>33</sup> 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 पलू 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।



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 सम्पर्क करें।

अगर खांसी, बुखार या सांस लेने में परेशानी हो तो तुरंत डॉक्टर से 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](http://www.hslsa.gov.in), ई-मेल : [hslsa.haryana@gmail.com](mailto:hslsa.haryana@gmail.com)



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**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.

**International Advisory Commission:** Alison Duxbury, Chairperson. Members: Wajahat Habibullah, Joanna Ewart-James, Edward Mortimer, Sam Okudzeto and Sanjoy Hazarika

**Executive Committee (India):** Wajahat Habibullah, Chairperson. Members: B. K. Chandrashekar, Jayanto Choudhury, Maja Daruwala, Nitin Desai, Kamal Kumar, Madan B. Lokur, Poonam Muttreja, Jacob Punnoose, Vineeta Rai, A P Shah and Sanjoy Hazarika

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Sanjoy Hazarika, International Director

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[www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

**ANNEXURE 5**

To,

29 March 2020

1. The Hon'ble Chief Justice B P Dharmadhikari,  
105-Bombay High Court  
(P.W.D) Building, Fort, Mumbai -32
2. The Hon'ble Justice A.A.Sayed,  
105-Bombay High Court  
(P.W.D) Building, Fort, Mumbai -32
3. Shri Uddhav Thackeray,  
Chief Minister,  
Mantralay, Nariman Point, Mumbai, Maharashtra
4. Shri Anil Deshmukh  
The Hon'ble Home Minister, Maharashtra  
Mantralay, Nariman Point, Mumbai, Maharashtra
5. Shri Shree Kant Singh,  
Additional Chief Secretary (A&S) Home,  
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6. Shri Shrikant D Kulkarni,  
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Director General of Police (Prisons), Maharashtra
8. Shri Sunil Ramanand,  
Additional Director General of Police (Prisons), Maharashtra

**Subject: Recommendations with regards to the release of prisoners and/or detainees in other settings.**

Sir,

We, the undersigned advocates from Maharashtra, write out of a shared and urgent concern regarding thousands of individuals incarcerated in prisons and other settings of detention such as observation homes, special homes, children homes, detention centres, borstal homes, etc. during the escalating COVID-19 pandemic. We seek your immediate action to reduce the risk of transmission of COVID-19 among the incarcerated.

In the view of Novel Corona Virus (COVID-19) posing a threat to the whole world, World Health Organization has declared it a global pandemic. Until now India has reported more than 724 cases with 17 deaths (as of March 27, 2020 time; 13:20). Nearly 400,000 people have tested positive and around 17,000 have died across the world. Maharashtra is worst hit by the pandemic with 135 positive cases reported so far, highest in the country.



Addressing the nation to deal with this crisis, the Hon'ble Prime Minister Narendra Modi said that „*Social distancing is the only way to break the cycle of infection.*’ A country-wide lockdown is ongoing from 24<sup>th</sup> March, 2020 to ensure self-isolation and social distancing.

Even the Hon'ble High Court of Bombay has issued regular orders limiting the functioning of not only High Courts but also of subordinate courts. At subordinate level, only remand and extremely urgent matters that cannot wait beyond a week are being taken up. Thus, bringing a halt to the ongoing cases of thousands of undertrials. Accused are no more being brought to court and have been put under further restrictions with regards to any communication with the outside world, including their lawyers and family members.

The International body on health, the WHO has also noted how prisons and other similar enclosed places are some of the places most susceptible to this disease. It published interim guidance titled “**Preparedness, prevention and control of COVID-19 in prisons and other places of detention,**” and specially pointed the reason as follows:

*People deprived of their liberty, such as people in prisons, are likely to be more vulnerable to various diseases and conditions. The very fact of being deprived of liberty generally implies that people in prisons and other places of detention live **in close proximity with one another, which is likely to result in a heightened risk of person-to-person and droplet transmission of pathogens like COVID-19.** In addition to demographic characteristics, **people in prisons typically have a greater** underlying burden of disease and worse health conditions than the general population, and frequently face greater **exposure to risks such as smoking, poor hygiene and weak immune defence due to stress, poor nutrition, or prevalence of coexisting diseases, such as bloodborne viruses, tuberculosis and drug use disorders.***

## **PRISONS AND OTHER SETTINGS OF DETENTION IN MAHARASHTRA**

Maharashtra prisons, detention centres, juvenile homes are some of the most overcrowded prisons/detention centres in the country. This doesn't even take into account the large number of prison department staff. We know that COVID-19 spreads quickly in closed spaces and given the existing overcrowding and resultant poor conditions in Indian prisons, the fear of the spread of COVID-19 among the prisoners and the staff in Maharashtra Prison is imminent and needs to be addressed with absolute immediacy.

Today, in such pressing times, while the whole country has been put under lockdown to ensure social distancing, the prisoners do not have the option to make choices or implement measures which would protect them or those around them, as well as prevent further spread to and within communities outside the institutional environment. Prisons will serve as sources of re-infection if they are not immediately de-congested. The entire exercise of the Maharashtra state lockdown and India-wide lockdown will be useless if there remains large number of individuals who are at risk. In a press release, dated March 23, 2020, the Commonwealth Human Rights Initiative stated that some prisoners in the United Kingdom, the United States of America, Iran, China, Italy and France have already been tested positive for COVID-19. Give the trajectory of the diagnosed cases, our prison systems are also at the brink of being infected.



## SUPREME COURT DIRECTIONS

The Hon'ble Supreme Court also took *suo moto* cognizance of the critical risk of COVID19 infection spreading in overcrowded prisons across the Country and on 23<sup>rd</sup> March 2020 gave the following directions: :

1. *“Taking into consideration the possibility of outside transmission, we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. Also, the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution incase of any possibility of infection is seen.”*
2. *“We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.”*
3. *“It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”*
4. *“The Undertrial Review Committee contemplated by this Court In Re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment. The High Powered Committee shall take into account the directions contained in para no.11 in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.”*

Thus, the state government is required to form a High Powered Committee. The committee has to determine the following:

- 1) Class of convicts who can be released on parole.
- 2) Class of undertrial prisoners who can be released on interim bail.

While the Supreme Court suggested that the Committee should look at the nature of the offence charged or convicted for, number of years the convict has been sentenced for and severity of the offence the undertrial has been charged with and facing the trial for, **it also gave powers to the committee to decide any other relevant factors as the committee may consider appropriate.**

## SUGGESTED CATEGORIES FOR RELEASE

Given the various vulnerabilities, in deciding the categories of the prisoners and/or detained in other settings for release, priority should be given to the following, irrespective of the offences they are charged with:

1. Prisoners and/or detained in other settings above 50 years of age,
2. Children in conflict with law detained at different settings,
3. Prisoners and/or detained in other settings with pre-existing health conditions,
4. Prisoners and/or detained in other settings with disability and mental illness,
5. Pregnant women and/or with children in prisons and/or detained in other settings,
6. Women Prisoners and/or detained in other settings,
7. Category of undertrial prisoners to be released in accordance to the standing order passed by the Apex Court in *In Re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700.
8. Category of convicts scheduled for early release.

It is a welcoming decision of Home Minister for State of Maharashtra, Anil Deshmukh promising the release of 11,000 inmates in view of spread of COVID 19. As a first step, On 27<sup>th</sup> March 2020, an order was passed by the High Powered Committee to decided that undertrials who have been booked/charged for such offences for which maximum punishment is 7 years or less be favorably considered for interim release, but excluding people charged under MCOC, PMLA, MPID, NDPS, UAPA etc, foreign nationals and people from other states This categorization is shocking and unfair.

The Indian Criminal Justice System envisages the innocence of a person until proven guilty. By such exclusion, the Right to Life envisaged under Article 21 of the Indian Constitution of undertrials charged under the various Special Acts and/or undertrials who are from other States is under threat. To have such a criteria also violates the principles laid under Article 14. Such an exclusion would mean that the rights are not equally guaranteed by the Constitution to all and those in the excluded categories are “unequal citizens” in the eye of law.

Further, inmates of foreign nationality and of different states should not be confined to the prison under the unusual pressing circumstances. Instead of putting a blanket restriction on releasing undertrials of foreign nationality and those having a place of residence out of Maharashtra, provisions should be made to send them safely back to their place of residence so that they remain safe and the burden on the prison system is also relieved. If the foreign nationals have no place to stay in India and there is a blanket ban on international flights, care should be taken to keep them healthy and safe.

Even if categories excluded by the High Powered Committee are considered, it is imperative that vulnerable people (suggested categories) amongst those are considered for release. These are acknowledged to be high-risk categories and excluding them only on account of the nature of crime charged with, is like giving the death sentence to them. The need of the hour is not only to decrease the overcrowding but also to ensure that people get proper access to health care.

The process of law will continue after this devastating crisis is over but the immediate need right now is to ensure that most minimal number of prisoners are kept in prisons and the others are able to access healthcare outside. The prison system and the government will bear

immense responsibility for the safety and proper health of all those it continues to detain and the only way to ensure the safety is to release on interim bail to undertrials without discriminating what charges are against them. The state and the judiciary have the resources to put reasonable restrictions on the movements of the released persons, and thus in case of the above mentioned categories, if any of the individuals is detained/charged/convicted with serious offences, release can be considered on strict bail conditions. Given that the entire country is under lockdown, the fear of an accused jumping bail or tampering of any evidence is minimum.

### **SUGGESTED GUIDELINES FOR RELEASED PRISONER/DETAINEES**

Given that the entire country is under lockdown, it is important that, certain guidelines be followed for the release:

1. **Consent of prisoner:** No prisoner should be released without their consent.
2. **Provision for safe-transit:** Other than ensuring safe transit of those in other cities, towns within the state, it is important that prisoners and/or detained in other settings in Maharashtra are also released. Maharashtra has a huge number of inmates who are from other states. Since there are restrictions on travels etc., it is important that the State government ensures safe travel to each inmate that is released. Financial and logistical arrangements should be made by the authorities.
3. **Post-release subsistence:** Prior to the release, the Committee must provide subsistence allowance for all released prisoners, so as to ensure they can sustain themselves post their release.
4. **Medical Assistance:** Strict screening of prisoners should be carried out for symptoms of COVID-19, i.e. fever (high temperature), cough and problem in breathing before release. In case of any symptoms, adequate medical assistance should be provided.

### **SUGGESTED GUIDELINES FOR PRISONERS WHO CANNOT BE RELEASED**

In its document, WHO further states:

*It is of paramount importance to work in partnership across public health agencies, health-care services and places of detention, bringing together community services and prison/detention services. The human rights framework provides guiding principles in determining the response to the outbreak of COVID-19. The rights of all affected people must be upheld, and all public health measures must be carried out without discrimination of any kind. People in prisons and other places of detention are not only likely to be more vulnerable to infection with COVID-19, they are also especially vulnerable to human rights violations. For this reason, WHO reiterates important principles that must be respected in the response to COVID-19 in prisons and other places of detention, which are firmly grounded in human rights law as well as the international standards and norms in crime prevention and criminal justice.*

On the lines of the principles mentioned in the document, we suggest the following:

1. Ensure that the prisoners are informed on the status of the COVID-19 and their rights.
2. Inmates should have access to hand sanitizer, soap and cleaning supplies at no cost. Common areas should be sanitized.

3. Minimize the impact of restrictions on prisoners. **In absence of face-to-face visits, arrangements should be made to provide frequent opportunities to communicate with their family members, friends and lawyers via phone calls or video conferencing. Communication services should be made available for free.**
4. Impose strict protocols for staff entering the prisons.
5. Given the seriousness of the situation, health care mechanism should be improved. **Regular doctors, health care workers should be assigned to the jails.** People in prisons and other places of detention should enjoy the same standards of health care that are available in the outside community, without discrimination on the grounds of their legal status.
6. Prisoners should be provided **a minimum monthly sustenance of Rs. 3000** for the purchase of food, daily needs etc.
7. Adequate measures should be in place to ensure a gender-responsive approach in addressing the COVID-19 emergency in prisons and other places of detention.
8. Adequate measures should be in place to prevent stigmatization or marginalization of individuals or groups who are considered to be potential carriers of the virus.
9. Adequate measures should be in place to protect persons in isolation from any form of ill treatment and to facilitate human contact as appropriate and possible in the given circumstances (e.g. by audiovisual means of communication).
10. Direct that adherence to all fundamental safeguards incorporated in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) be maintained. There should not be any inhuman or degrading treatment or punishment; the prohibition of prolonged solitary confinement. The non-medical prison staff should not at any point of time take any medical or clinical decisions and such decisions should only be taken by health-care professionals. Their decisions should not be ignored or overruled by non-medical prison staff.
11. As a result of the lockdown, the prisoners have minimum communication with the outside world and will have no recourse in case of any dispute, **thus it must be ensured that even in these times, external inspection of prisons and other places of detention by independent bodies such as designated prison visitors, doctors, civil society organisations and/or the district judge continues.**

## SUGGESTED GUIDELINES FOR FUTURE ARRESTS

Other than policy for release of prisoners, it is also very important that further imprisonment be prevented.

1. Enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages. (WHO principle)
2. The Hon'ble Supreme Court in its order directed that "*The High Powered Committee shall take into account the directions contained in para no.11 in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 27.*" This para refers to direction to ensure that the police officers do not arrest an accused unnecessarily and magistrate do not authorise detention casually and mechanically.
3. Even though the above observations were restricted to a certain category of cases, the same can be applied in the present unusual circumstances to other cases as well. The principle of, "**bail is a rule**" should be followed and no person should be arrested/detained or sent for judicial custody, unless such arrest/custody is inevitable.

Prisoners are one of the most vulnerable populations in our country. Given the make and condition of our prisons and/or other settings of detention, if action is not taken immediately, they are the most at risk during this growing pandemic. These circumstances require extraordinary measures. It is the time for the State to dramatically reduce the prison population immediately for the health of this vulnerable population and our collective health. Any restriction on the basis of the crime they are alleged to have committed is unfair and violates their fundamental rights. When this pandemic infects the prisons and/or other settings for detention, there will be unmanageable consequences, both for inmates and for the wider community. We cannot wait for this to occur and should act now.

We urge you to take the extraordinary measures and necessary actions to drastically reduce the overcrowding in prisons and other settings of detention before the situation is out of control.

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