



**CHRI**  
Commonwealth Human Rights Initiative  
working for the *practical* realisation of human rights in  
the countries of the Commonwealth

## **CHRI's Note to assist the Supreme Court constituted 'High Powered Committee' for release of prisoners amid COVID-19**

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This note is prepared by the Commonwealth Human Rights Initiative to assist the high powered committees set up in each state/UT by the Hon'ble Supreme Court "to determine which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate." This is in continuation of our guidance note on COVID-19 and Prisons: Ensuring an Effective Response.<sup>1</sup>

### **I. Background**

The Supreme Court has taken *suo motu* cognizance of the high risk of COVID-19 transmission to prisons in the petition *In Re: Contagion of COVID-19 Virus in Prisons*. In the order dated 23.03.2020, it said, "Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of Corona Virus within the prisons is controlled."

The court has also directed the State/UT Governments to constitute a High Powered Committee (HPC) comprising the Chairman of the State Legal Services Committee (SLSA), the Principal Secretary/Chief Secretary (Home/Prison) and the Director General of Prisons to determine the category of prisoners to be released on parole or interim bail to address the risk of transmission of COVID-19 especially due to overcrowding in prisons.

However, the order of the Supreme Court has been followed by an unprecedented nation-wide lock-down ordered by the Hon'ble Prime Minister in response to the increasing number of COVID-19 cases in India. The lock-down has now posed various practical difficulties in effectuating the releases for the committee and other authorities. In order to address these issues, particularly for the safe transit of the prisoners from prison to their homes, it is suggested to include the Director General of Police in the meeting of the HPC.

#### **Terms of Reference as set by the Supreme Court for the HPC**

The court has entrusted the HPC with two tasks:

- 1) To determine the class of convicts who can be released on parole.
- 2) To determine the class of undertrial prisoners who can be released on interim bail.

The Committee shall be guided by the following factors:

- a. Nature of offence charged or convicted for,
- b. Number of years the convict has been sentenced for,
- c. Severity of the offence the undertrial has been charged with and facing the trial for

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<sup>1</sup> Available at

<https://www.humanrightsinitiative.org/download/1584970817CHRI%20Suggestions%20on%20Covid%2019%20and%20Prisons.pdf>.

- d. Any other factor as the committee may consider relevant.

## II. Temporary Release of Convicts

- 1) **Suggested Framework for Release<sup>2</sup>:** Since the convicts are in the custody of the state and one of the committee members is the Chief Secretary/Principal Secretary, it is suggested that the State may release the convicts on 'temporary release' by exercising the powers conferred under S.432 of the Code of Criminal Procedure, 1973 (CrPC)<sup>3</sup>. It must also be noted that the provisions of parole under the state prison rules are also framed under S.432 of the CrPC. Sub-section (7) of S.432 defines 'appropriate government', according to which except for the sentences under any law where the executive power of the Union extends, the Government of the State is the 'appropriate government' within which the offender is sentenced or the said order is passed.<sup>4</sup>

This has been suggested because the parole rules for most states require an application from the convict; prior approval by the police authorities and an assessment of the conduct of the prisoner by the prison superintendent, prior to grant of parole. Given the circumstances and paucity of time, adhering to the process may not be tenable.

It is further suggested that the HPC may issue appropriate directions to waive off the requirement of seeking the opinion of the presiding judge of the sentencing court prior to grant of release as per Section 432, sub-section (2)<sup>5</sup> of CrPC. We believe that the directions issued by the Hon'ble Supreme Court to release certain categories of prisoners already fulfils this requirement.

Given the increasing spread of the virus, the convicts should be released for at least two months. Further, the period of release of the convicts must be counted as a part of the sentence served and remission should also be granted to them for this period.

- 2) **Suggested Categories of Prisoners:** In deciding the categories of prisoners for release, priority should be given to those convicts who have been released on parole at least once and have reported back to prison without flouting any condition of parole. Further preference should be given to those convicts who are above 50 years of age, given their higher vulnerability to the coronavirus. Keeping these in mind, the following categories of convicts may be considered for temporary release by the HPC:

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<sup>2</sup> This framework has been suggested by Mr RK Saxena, former IG Prisons Rajasthan and member of the All India Jail Reforms Committee (Mulla Committee), 1980-83.

<sup>3</sup> S. 432. Power to suspend or remit sentences.

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without Conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

<sup>4</sup> S.432 (7) In this section and in section 433, the expression " appropriate Government" means,-

(a) in cases where the sentence is for an offence against, or the order referred to in sub- section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government; (b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

<sup>5</sup> S.432(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists."

- Convicts who have completed their sentence but are still in prison due to non-payment of fine .<sup>6</sup>
- Convicts who are serving a sentence of not more than seven years and have served at least one third of their sentence.
- Convicts who do not fall in the above categories but their sentence would get over within next two months may be considered for unconditional final release.

Convicts who have been convicted under the provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA), The Prevention of Terrorism Act, (POTA), Unlawful Activities (Prevention) Act (UAPA), The Explosive substances Act, The National Security Act (NSA), Official Secrets Act, Anti Hijacking Act; Cases of prisoners convicted for the offence of S.376 and S.326A, human trafficking and the Protection of children from sexual offences Act (POCSO), Immoral Traffic (Prevention) Act; and Cases of repeat offenders convicted under the Narcotic Drugs and psychotropic Substances Act (NDPS) for commercial quantity, may not be considered for release.

### III. Release of Undertrial prisoners on Interim Bail

- 1) **Suggested framework for release:** As undertrial prisoners are in judicial custody, it is suggested that the Chairperson of the State Legal Services Authority (SLSA) on behalf of the High Court, may issue appropriate directions, specifying the procedures to be followed for the review, adjudication and release of undertrial prisoners (UTPs). In order to ensure prompt review of cases of UTPs, the Committee should notify the eligibility criteria (see below for suggested categories) to the prisons by **28th March 2020**. Thereafter, the following process may be adhered to:
  - i. The officer-in-charge of prison should prepare a list of all eligible UTPs. (sample format enclosed). For ease in preparation of the lists, prisons may use CHRI's analytical tool - ***Evaluation of Prisoner Cases & Information (EPIC)***.<sup>7</sup> EPIC is a simple analytical tool which assists in computing the eligibility of under-trial prisoners' u/s 167,436,436A Cr.P.C, evaluating whether cases fall under petty offences, are eligible under plea bargaining or are compoundable/non compoundable cases. Its use is simple, and results are quick and accurate.
  - ii. This list should be shared with the District & Sessions Judge, DLSA Secretary and the HPC by **31st March 2020**.
  - iii. The District & Sessions Judge may then issue directions to the concerned court or constitute a special court to adjudicate all the matters expeditiously with the assistance of the public prosecutor and defence lawyers/legal aid lawyers. This special court may function via video-conferencing or if possible, be held inside the prison premises, wherein eligible prisoners can also be given the opportunity to be heard. These hearings should be completed within **a week** of the receipt of the list from the prison.
  - iv. Unless there are specific objections to release on bail by the public prosecutor with reasons which must be put in record by the Court, the Court may pass

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<sup>7</sup> This can be downloaded (free-of-cost) from <https://www.humanrightsinitiative.org/publication/epic-evaluation-of-prisoner-information-and-cases>.

orders of release on 'interim bail' on the same day and ensure that the release warrants are sent to the prison on the same day.

- v. It is further suggested that weekly follow-ups may be made by the secretary, DLSA for each district, to ensure that the releases are effectuated.

**Note:** As several district courts across India have suspended work in light of the COVID-19 and now the nation-wide lock-down, the HPC should ensure that this would not impede the adjudication process, and all necessary orders may be passed in this regard.

**2) Suggested Categories of Prisoners:** All undertrial prisoners who fall under any of the categories out of the total 14 categories as mentioned under NALSA's Standard Operating Procedures on the functioning of Under Trial Review Committees should be reviewed, and considered for release on personal bond:

- a. UTPs falling under Section 436 A CrPC;
- b. UTPs ordered to be 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 CrPC;
- e. UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Section 379, 380, 381, 404, 420 IPC or alleged to be an offence having 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 27 A or for Offences involving commercial quantity) and where investigation is not completed in 60/90/180 day;
- g. UTPs who are imprisoned for offences which carry a maximum punishment of 2 years;
- h. UTPs who are detained under Chapter CrPC .i.e. u/s 107, 108, 109 and 151 of CrPC;
- i. UTPs who are sick or infirm or require specialized medical treatment or are vulnerable to the virus on account of age, pre-existing health conditions such as diabetes, hypertension, respiratory problems etc.
- j. Women UTPs, particularly those who are pregnant, or with children or have young children living outside;
- 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 ¼ of the maximum sentence possible;
- l. UTPs eligible for release under Section 437(6) of CrPC where 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;

**3) Suggested Restriction/Conditions of Release:** The competent court while granting bail, may stipulate, in addition to other conditions, that the prisoner prior to his/her release would:

- provide an undertaking which provides details of their place of stay post-release and the contact number of self/family member/friend, and
- immediately inform the prison authority preferably through telecommunication, if they reflect symptoms of COVID-19 or test positive for COVID-19 post-release.

#### **IV. Guidelines for the release of prisoners and their return**

As the country is in 'lock down' wherein the Central Government has directed a ban on any non-essential travel/commute, it is important that, for all releases made during this period, the following guidelines maybe considered: -

- 1) Health Screening prior to release:** Strict screening of prisoners for the symptoms of COVID-19, i.e. Fever (high temperature), cough and problem in breathing before release. No prisoner with these symptoms should be released without a proper diagnosis of the ailment. Such prisoners should be confined in the quarantine.
- 2) Consent of prisoner:** No prisoner should be released without their consent.
- 3) Provision for safe-transit:** To ensure the prisoners safe transit to his/her residence, arrangements should be made by the authorities prior to release. These may include:-
  - a. issuing of directions upon the Police department to allocate adequate escort guards to the prison authorities to escort the prisoner to their homes. Police escorts might be easily available, given their non-requirement for court productions in light of the lock-down.
  - b. or alternatively, police vehicles may transit prisoners to the district headquarters, and from there to their respective police stations with the help of the local policemen, who can escort them to their homes. However, all personnel assigned to escort should be provided masks and sanitisers.
  - c. A woman prisoner shall be accompanied by a woman police personnel.
- 4) Post-release subsistence:** Prior to the release of prisoners, it must be ascertained that the prisoner has a place of residence, where he can be stationed till the duration of his release and during the lock-down. The Committee may also consider making a provision for subsistence allowance for all released prisoners, so as to ensure they can sustain themselves post their release. This may be ensured by:-
  - a. permitting prisoners to withdraw their wages earned till the preceding month and belongings if any.
  - b. granting a sum of money/articles which can be provided to each prisoner upon release.
  - c. Prisoners willing to take cooked food for the journey from the prison may be provided suitable food packets.
- 5) Return to prison:** The committee must issue necessary directions to the prisons to ensure that all the prisoners who shall be released on the recommendation by this Committee shall not be admitted back to prison without adequate screening at the time of return to ensure that they do not transmit the virus from the community to the prison.