



July 19, 2021

## **JAIL MAIL – Nelson Mandela Day**

Dear Friends,

Greetings from CHRI!

Every year, Nelson Mandela’s birth anniversary on 18 July 2021 is an opportunity for us to be encouraged by him and take action to inspire change. The long period of incarceration of this Nobel Peace Prize laureate highlighted the need to ensure the protection of prisoners’ rights under international human rights law.

The UN Standard Minimum Rules for Treatment of Prisoners 1955, revised in 2015, came to be known as the UN Mandela Rules “to honour the legacy of the late President of South Africa, Nelson Rolihlahla Mandela, who spent 27 years in prison in the course of his struggle for global human rights, equality, democracy and the promotion of a culture of peace”. The General Assembly resolution also extended the scope of Nelson Mandela International Day to:

- ✎ promote human conditions of imprisonment,
- ✎ raise awareness about prisoners being a continuous part of society, and
- ✎ value the work of prison staff as a social service of particular importance.<sup>1</sup>

As the global community worries about inoculation and learns to live with the ‘new normal’, the pandemic today has posed a separate set of problems for the prisoners and prison authorities.

### **How Prisons Were Affected in the First Wave and Second Wave**

Prisons across the world, including in India, witnessed the spread of the virus amid its staff and prisoners in early 2020. Taking cognizance of the matter, **the Supreme Court of India in March 2020 directed all states and UTs to take necessary measures and to reduce overcrowding in prisons.** CHRI tracked the state’s response to the pandemic by compiling state-wise information on its website on the number of prisoners and prison staff contracting the virus; the actual releases of prisoners and the impact it has on overcrowding in prisons across India. With the aim to check the compliance of the apex court’s order, CHRI analysed the minutes of the High Powered Committees. In its report titled *‘Responding to the Pandemic : Prisons and Overcrowding’ (2020)*, CHRI observed that the concerted efforts by these bodies in 22 states/Union Territories between April to June showed an overall fall in prison occupancy rates from 103.1% (1 April, 2020) to 93.3% (30 June, 2020).

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<sup>1</sup> Nelson Mandela International Day, UN - [https://www.un.org/en/events/mandeladay/mandela\\_rules.shtml](https://www.un.org/en/events/mandeladay/mandela_rules.shtml)

**By the time the second wave of the pandemic hit India, almost 90% of the prisoners who were released in 2020 had returned to prisons between February and March 2021.**<sup>2</sup> On 13 April 2021, CHRI wrote to then Chief Justice of India (CJI), Justice S. A. Bobde, and later to Justice N.V. Ramana, requesting him to take cognizance of the current circumstances and direct the High Powered Committee (HPC) to hold meetings and also specifically consider vulnerable groups within prisons.

Once again fulfilling its constitutional mandate of protecting the life of every person in the country, the Supreme Court on 7 May 2021, in IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS, passed a number of directions. Read [here](#).

During the second wave, CHRI continues to monitor the data released by authorities or published in the media. Here is the list of state-wise information periodically updated and a brief summary of the nation-wide information on states' response to the second wave of the pandemic

a) **The State/UT-wise number of prisoners and prison staff testing positive for COVID in the second wave of the pandemic (from 1 March 2021):**

- A total of 5,939 prisoners and 612 prison staff tested positive during the second wave (excluding the figures for Uttar Pradesh, as year-wise segregated numbers were not provided in the HPC minutes).
- Punjab prisons saw the highest spike in cases among prisoners, with 1086 prisoners testing positive. This was followed by Madhya Pradesh (667) and Rajasthan (600). In Delhi prisons, 221 prison staff tested positive for COVID-19 and the figure stood at 182 in Tamil Nadu.

b) **The State/UT-wise number of prison staff and prisoners vaccinated:**

- A total of 14,684 prison staff and 1,26,570 prisoners have been vaccinated for COVID-19. It should be noted that the figures for prison staff are only from six states - Andhra Pradesh (643), Delhi (1700), Goa (326), Haryana (2685), Odisha (8), Punjab (2474), Maharashtra (3641), and Jharkhand (2261).

c) **The State/UT-wise released on interim bail and parole (from 1 March 2021):**

- The highest release of prisoners during the second wave took place in Madhya Pradesh, with 11,711 prisoners released. This was followed by Uttar Pradesh with 10,123 releases and Delhi where 2800 prisoners were released. A total of 1,534 prisoners were released in Gujarat.
- Most States/UTs continued to release prisoners primarily on the basis of the duration of the sentence or the nature of the offence. However, states/UTs like Bihar, Delhi and Maharashtra identified categories on the basis of age and existence of co-morbidities.

d) **The State/UT-wise details regarding the publishing of decisions of the HPCs on the website of the State Legal Services Authorities/State Governments/High Courts; and**

- Twenty-eight States/UTs had updated the information on the decisions of the HPCs on their websites, mostly on the website of the SLSA. The average number of meetings stood at two meetings, with the HPCs of 15 States/UTs meeting only once amidst the second wave.
- In eight States/UTs<sup>3</sup>, the HPCs met twice during this period. The HPCs of Andhra Pradesh, Goa, Madhya Pradesh and Uttarakhand met three times, while the HPC of Odisha held ten meetings, and the Karnataka HPC and the Assam HPC met four times each.

<sup>2</sup> IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS, Order dated 07 May 2021 -

[https://main.sci.gov.in/supremecourt/2020/9761/9761\\_2020\\_31\\_301\\_27999\\_Order\\_07-May-2021.pdf](https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_31_301_27999_Order_07-May-2021.pdf)

<sup>3</sup> Bihar, Jammu & Kashmir, Jharkhand, Manipur, Tamil Nadu and Uttar Pradesh

- e) **Details of cases/writ petitions pending in various High Court on prison related issues and key directions issued in regard to release of prisoners, access to medical facilities and other covid related issues.**
- Some of the significant orders during the second wave of the pandemic involved the direction by the Bombay High Court, whereby it directed the Government to formulate a policy for vaccination for prisoners without an Aadhaar Card or other ID proof. A similar order was passed in *Krushna Prasad Sahoo v. State of Orissa & Ors.* The Court also asked the State to comply with the Maharashtra Prison (Prison Hospital) Rules, 2015 and address the problem of shortage of medical staff in prisons.
  - In the case of *Natasha Narwal v. State of NCT Delhi* the Delhi High Court directed the extension of tele-calling facilities for prisoners to the prepaid numbers of relatives who were verified by the prison. The direction also allowed for the use of the Prison ID in lieu of Aadhaar Card or other ID for vaccination, and the use of the phone number of a relative if the prisoner did not have a phone number.
  - The Madhya Pradesh High Court in *In Reference (Suo Motu) v. The State of Madhya Pradesh & Ors.* extended the criteria for release of convicts by directing the release on emergency parole of at least 90 days to males who are above 60 years, females who are either above 45 years, or pregnant, or lodged in jail with their minor children, prisoners suffering from health issues such as cancer, hearing ailment, tuberculosis, hepatitis A & B, HIV, Asthma, kidney dysfunction, have undergone bypass surgery, or suffer from more than 40% disability.

Even as the national figures for COVID-19 cases drop following the second wave, our prisons continue to have high occupancies despite these periodic efforts. Towards this, you can:

- **As police officers:** Ensure that arrests are compliant of legal provisions, including S.41 A, B, C, and D of the Code of Criminal Procedure 1973;
- **As members of the HPC:** Continue to periodically monitor the occupancy of prisons; and consider the release of prisoners who are elderly or have comorbidities as identified by the Indian Council for Medical Research;
- **As prison officers:** Ensure effective communication between prisoners and their families and lawyers; Ensure prisoners' access to adequate healthcare facilities; Ensure proactive disclosure of information relating to prison occupancy, health of prisoners, etc. to ensure access to information for relevant stakeholders;
- **As a representative of the prison head office/state home department:** Ensure that the sanctioned posts for prison medical staff are filled up at the earliest; Work towards improving the healthcare facilities inside prisons and develop prison-specific health care plans with medical experts;
- **As legal services functionaries:** Ensure regular conduct of Undertrial Review Committee meetings in every district as per the Supreme Court's order.
- **As Prison Monitors (Human Rights Institutions, Board of Visitors):** Monitor prison conditions regularly and ensure timely redressal of grievances of prisoners.

Write to us at [chriprisonsprog@gmail.com](mailto:chriprisonsprog@gmail.com) with your comments and suggestions.

Stay safe!

With best regards,

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