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JAIL MAIL

Lessons learnt from the Pandemic: Ensure Right to Adequate Healthcare in Prisons

Dear friends,

Greetings from CHRI!

Today, marking the occasion of Constitution Day 2021, we would like to draw the attention of all stakeholders in the criminal justice system to the neglected healthcare infrastructure in prisons and the inadequate access to quality healthcare for the country's prison population.

Article 21 of the Indian Constitution provides that "*No person shall be deprived of his life or personal liberty except according to a procedure established by law.*" Right to healthcare is a crucial and integral part of the right to life. Hence, the state is duty bound to ensure that all its citizens have access to the highest attainable standards of healthcare. Access to adequate and quality healthcare is a basic right which should not be denied to any person despite their confinement inside a prison. As noted by the Institute of Criminal Policy Research (ICPR), "a sentence to imprisonment is a sentence of deprivation of liberty, not a damage to health".

In this Jail Mail, we analyse the response of Indian prisons in ensuring right to adequate healthcare during the pandemic. We look at specific examples of where states failed to take affirmative action as well some good practices. We also enumerate the lessons learnt and outline areas for prioritisation by state governments and prison departments.

1) What do the statistics tell us?

As on [December 2019](#), for about 4.78 lakh prisoners in India, there were only 1,962 medical staff catering to their daily medical needs. In the same year, on an average only Rs. 5 per day was spent on the healthcare needs of a prisoner. These figures are indicative of the quality of healthcare inside Indian prisons. Inadequate access to healthcare, including mental wellness, among prisoners is also reflected in the fact that the rate of deaths by suicide in the country's prisons in 2019 was estimated at 24.24 per lakh prison population, which is more than twice that of 10.4 per lakh population in the same year for the general population.

Lack of existing medical infrastructure and quality healthcare in Indian prisons resulted in the snowballing of COVID related cases and deaths among inmates and prison staff. CHRI [tracked](#) news reports on coronavirus infections in Indian prisons during the first and the second wave. This data indicates that more than **18,000** prisoners and prison staff tested positive for COVID and 17 died in the first wave alone. In the second wave, between 1st March 2021 and July 2021, CHRI documented **6,606 positive cases** of prisoners and prison staff and **34 deaths**. CHRI noted that in the second wave there was a visible decline in reportage on the spread of COVID in prisons with maximum news coming in from big cities like Delhi or Mumbai. However, given the impact that the second wave of COVID on general population in India, it would be safe to assume that the picture would have been similar, if not worse, inside prisons.

2) What steps were taken to curb the spread of COVID in prisons?

During the **first wave**, taking cognizance of the matter, the Supreme Court of India took steps as early as March 2020 ([order](#) dated 23-03-20) and directed measures to all states and Union Territories (UTs) to **reduce overcrowding** in prisons. The apex court also directed that prison specific readiness and response plans must be developed in consultation with medical experts. The court noted that “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 may be taken into consideration for similar circumstances.”

However, CHRI’s research indicates that only the HPCs of Karnataka, Odisha and Punjab made specific recommendations in this regard. A number of other steps were undertaken by the HPCs to ensure that medical facilities in prisons are improved. As documented in CHRI’s report, *‘Responding to the Pandemic: Prisons and Overcrowding 2020’*, these included:

- The HPCs of **Haryana and Karnataka** directed the state governments to fill up the sanctioned vacant posts of all medical officers and paramedical staff.
- In **Karnataka, Mizoram and Nagaland** the state administrations were asked to ensure that where prisons did not have medical officers, a doctor was to be deputed from the respective districts to visit the prison for conducting routine medical check-ups.
- In **Punjab**, the HPC directed the Department of Health and Family Welfare to take all necessary steps to provide sufficient medical infrastructure to ensure proper treatment of prisoners at the COVID Care Facilities created in prisons.
- The **Uttarakhand** HPC, not only ensured proper health check-ups of prisoners before their release on parole or interim bail but also directed the district administration to make the necessary arrangements regarding the medical examination of such prisoners/undertrials after a week following their transfer from the jail to respective residents. The jail authorities were directed to provide the full address and the contact details of the prisoners to the concerned Chief Medical Officers.
- In **West Bengal**, the ADG and IG of correctional services was asked to ensure proper health and hygiene conditions inside prisons as per standard protocol laid down by the WHO, the relevant guidelines set by the Health Ministry of the Government of India and the Government of West Bengal. They were also directed to submit fortnightly compliance report to the SLSA.
- As regards the vulnerable groups in prisons:
 - The **Haryana** HPC directed that such prisoners (women including children accompanying women, senior citizens or other such prisoners) who have been held to

be vulnerable by jail medical officer, are to be given healthy, nutritious diet that is enriched with Vitamin C to increase their immunity.

- The **Maharashtra** HPC passed directions for the isolation of prisoners above 60 years and/or those prisoners with underlying medical conditions which puts them at higher risk for severe illnesses from COVID-19. Unfortunately there were no guidelines passed for regulating the 'isolation' which may have led to severe restrictions on prisoners' rights during their period in isolation.
- The **Odisha** HPC directed to provide proper medical facilities to all those prisoners who need medical assistance and to coordinate with medical authorities to provide proper care and medical assistance to the prisoners and to ensure the health and safety of the UTPs who are old and sick and more vulnerable to viral infections.

With the onset of the **second wave** of the pandemic, the Supreme Court again took cognizance of the situation and passed an [order \[Suo Motu Writ Petition\(C\) No.1/2021\]](#) dated 7th May 2021. In its order the court's directions addressed issues of: control and limiting of arrests; asked HPCs to consider release of prisoners again (fresh releases and release of those who were considered for release in 2020); all decisions of the HPCs to be published on respective SLSA/High Courts/State Government websites; authorities to ensure that proper medical facilities was provided to all prisoners; steps shall be taken for transportation of released inmates, if necessary, in view of curfews and lockdown in some States.

3) Were any prisoners released on the basis of their health and age?

CHRI's report highlighted that during the **first wave** only five state HPCs (Mizoram, Punjab, West Bengal, Delhi and Jammu & Kashmir) considered cases of elderly prisoners for release. This was disappointing to note as this pandemic was a health crisis that disproportionately impacted senior citizens. Similarly, barring three (**Mizoram, Punjab and Delhi**), no other HPC considered undertrials who were suffering from co-morbidities, chronic diseases and pre-existing conditions like chronic diabetes, HIV, serious neurological issues, chronic lung and kidney disease, severe asthma, heart condition, cancer, Hepatitis B or C, Tuberculosis, etc. Only the **Punjab** HPC specifically mentioned pregnant women as a category for release.

During the **second wave**, some states did consider release of inmates on the basis of co-morbidities and age. According to the submission made by the National Legal Services Authority (NALSA) in the Supreme Court¹, pursuant to the court's order on 7th May 2021, **HPCs of 14 states² had taken age into consideration** while recommending release of prisoners and ultimately **only 1,156 were released**. For these maximum releases were done in Uttar Pradesh where 232 prisoners of 65 years and above male inmates and 50 years and above female inmates were released. Considering co-morbidities of prisoners as another criteria for release, some 16 states³ released a total of 878 inmates. UP again released maximum of these inmates (435).

¹ IN THE MATTER OF- In Re: Contagion of Covid-19 virus in prisons

'Report of National Legal Services Authority (NALSA) on release of prisoners in compliance with the directions of the hon'ble court in Suo Moto Writ Petition (C) no. 1 of 2020'

² Andhra Pradesh, Arunachal Pradesh, Assam, Chhattisgarh, Delhi, Haryana, Jammu and Kashmir, Ladakh, Madhya Pradesh, Maharashtra, Mizoram, Odisha, Punjab and Uttar Pradesh

³ Andhra Pradesh, Arunachal Pradesh, Bihar, Chandigarh, Delhi, Jammu and Kashmir, Ladakh, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Odisha, Punjab, Sikkim, Uttar Pradesh and Uttarakhand

4) Have prisoners been vaccinated?

Although it is not clear as to when the vaccination drive in most of the states' prisons started, but the [data compiled by CHRI](#) based on media reports and HPC minutes of meetings, by the end of September 2021, some **1,77,071 inmates had received the first dose**, while some **85,443 had received the second dose** of the COVID vaccine across in 24 states/UTs. In these states about **17,897 prison staff received the first dose of the vaccine and 1,078 got the second dose**.

5) Lessons for future, what can be done:

Even though steps were taken at different stages to temporarily de-congest prisons, ensure COVID protocol and efforts to limit the spread COVID inside, but the bitter truth remains that the general healthcare in prisons is a neglected area. While it might take a long time to overcome the scars left behind by the pandemic, perhaps, it is also an opportunity for an institution like prisons to introspect and fill gaps that exist in the healthcare infrastructure and prisoners' access to medical healthcare. It is time for the Governments to treat healthcare as top priority for all its citizens, including those behind bars. Prison healthcare should be treated as part of public healthcare and inmates should enjoy the same standard of healthcare that are available to the general public as mandated under the United Nations Standard Minimum Rules for the Treatment of Prisoners 2015 (the Nelson Mandela Rules)⁴.

What you can do:

As State Government

- State Governments must ensure that public healthcare receives adequate financial resources, which must also be extended to prisons.

As Prison Departments

- Ensure that every prison in the state, must have either a full-time or part-time medical officer. Immediate focus must be laid on filling medical staff vacancies in all prisons, with at least one full-time doctor per 300 inmates as per the Model Prison Manual 2016 in every Central prison in the state. As far as possible, full-time medical officers must also be appointed in every district jails and sub-jails. If not possible, doctors must be engaged on contractual basis to ensure regular check ups of prisoners in district and sub jails.
- Issue an order directing the Superintendent and Medical Officers of all prisons to:
 - Ensure that the prison administration must take account of the individual needs of prisoners, in particular the most vulnerable categories in prison settings as mandated under the Nelson Mandela Rules⁵.
 - Ensure equal access to prison hospitals, proper diet, timely referral to hospitals outside to both, male and female inmates.
 - Collaborate with State Health Department and concerned district hospital to ensure that regular visits are conducted by psychologists, psychiatrists, dentists, dermatologists, gynaecologists, paediatricians and others specialist doctors. For this purpose, well-regarded local medical practitioners and private hospitals may also be requested to organise medical camps inside prisons to provide free specialised medical services.

⁴ Rule 24(1) – The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.

⁵ Rule 2, Nelson Mandela Rules 2015.

- Collaborate with local medical colleges to develop awareness material and organise awareness programmes for prisoners on common ailments and maintenance of hygiene in prisons.
- Issue an order directing senior prison officers, who are mandated to visit prisons in their jurisdiction as per the state prison rules, to particularly focus on medical facilities in prisons during their visits and if prisoners were facing any medical concerns.
- Publish prison-wise information on the state prison websites periodically, at least every quarter, regarding the number of medical officers and staff appointed; number of visits made by visiting doctors; number of prisoners above the age of 60, 70 and 80 years; number of prisoners suffering from prolonged ailment; number of prisoners treated in prison hospitals and referred outside for treatment.

As Judiciary

- The administrative High Court Judge of the concerned districts should monitor the health care facilities in prisons falling in their jurisdictions by directing surprise visits by DLSA representatives or civil society organisations.
- Since prisons are more susceptible to the spread of contagious viruses and other diseases like Tuberculosis, judiciary may take steps to ensure that overcrowding is prevented.

As Prison Monitors

- Human Rights Commissions, Board of Visitors and other independent prison monitors must ensure that no prisoner is discriminated in accessing healthcare facilities in prison.

As Media and civil society

- Continue to document, reflect and amplify the experiences of prisoners on access to healthcare facilities in prisons in different states by reaching out to the families of prisoners and recording their experiences; seeking official information on the current status through contacts with officials or using RTI requests.

Write to us at chriprisonsprog@gmail.com with your comments and suggestions.

Stay safe!

With best regards,

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