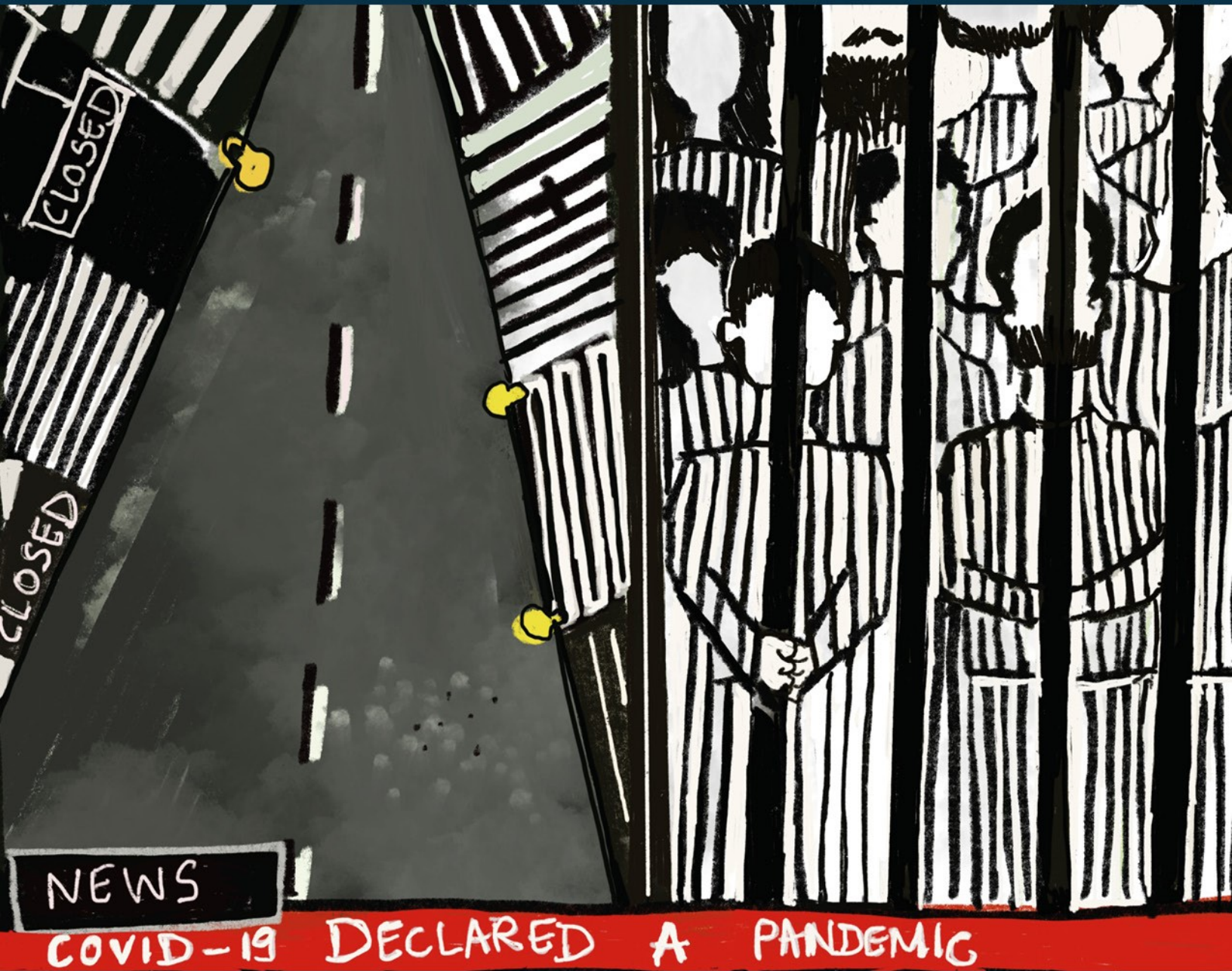


RESPONDING TO THE PANDEMIC: PRISONS AND OVERCROWDING



CHRI

Commonwealth Human Rights Initiative
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EXECUTIVE SUMMARY

As ‘physical distancing’ emerged as the new *mantra* of 2020, the Supreme Court of India, initiated efforts to decongest prisons as it recognized the inability of the country’s overcrowded prisons to comply with these norms. The court directed the constitution of High-Powered Committees (HPCs) at state-levels to oversee the decongestion efforts, while also directing the Undertrial Review Committees (UTRC), a district-level body mandated to review cases of prisoners, to meet every week.

This report documents the performance of the HPCs of 24 states and union territories and assesses the reduction in prison populations between 1 April, 2020 and 30 June, 2020. It also analyses the functioning of the UTRCs of 17 states and union territories during the said period, and assesses the compliance with the mandate to meet weekly, and analyses the minutes of their meetings from across five regions to understand the role of the UTRCs in decongestion process. A study was conducted of responses received from prison departments in 20 states and two UTs²² and the State Legal Services Authorities (SLSAs) of 16 states and three UTs²³. The report also includes state-wise reports, which include the analysis of the HPC minutes and data on the UTRC meetings for each of the 24 States and four UTs.²⁴ The key findings from the report are as follows:

A. Impact of Decongestion Efforts on Prison Occupancy

Analysis of the prison population, of 22 states/Union Territories, indicates an average fall in the prison population by 10.42% between 1 April 2020 and 30 June 2020. However, the inmate population in Bihar, Jharkhand, Uttar Pradesh and Andaman and Nicobar Islands increased during this period.

While the overall occupancy rate in the 22 states/UTs on 31 December, 2019 stood at 107.8%, it had come down to 103.1% by 1 April, 2020. **Between 1 April and 30 June, 2020, the overall occupancy had further come down to 93.3%. However, a closer look at the prison-wise occupancies of 19 states and two UTs²⁵ reveal that 27% of the prisons of these states/UTs were still overcrowded.**

As a precautionary measure, to reduce the risk of spread of COVID-19 inside prisons, several countries set up temporary prisons. This enabled them to keep new inmates in

²² Andaman & Nicobar Islands, Bihar, Chandigarh, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Rajasthan, Sikkim, Telangana, Tripura, Uttarakhand and Uttar Pradesh

²³ Andhra Pradesh, Bihar, Chandigarh, Delhi, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Sikkim and West Bengal

²⁴ Andhra Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Punjab, Rajasthan, Sikkim, Telangana, Tripura, Uttarakhand, Uttar Pradesh, West Bengal, Andaman & Nicobar Islands, Chandigarh, Delhi and Jammu & Kashmir.

²⁵ Jharkhand did not provide prison-wise occupancy figures and only provided total occupancy of the state prisons.

quarantine for 14 days and mitigated the risk of the spread of virus to existing prison populations. In India, only seven states and one UT had set up temporary prisons during this period. These included Bihar (3), Goa (1), Kerala (55), Maharashtra (36), Manipur (1), Meghalaya (1), Uttarakhand (5) and Chandigarh (1).

However, some states²⁶ resorted to transfer of prisoners from overcrowded prisons to others, and did not focus on decongestion measures. In Bihar, the prison department transferred 14,903 prisoners which amounted to more than 35% of their prison population, to ease overcrowding in select prisons. However, at the end of June, 25 prisons were overcrowded, as opposed to 19 prisons on 1st April. Further, the overall occupancy increased from 86.7% on 1st April to 92% on 30th June 2020.

Another practice was noticed in Haryana where the women prisoners from one prison (*Gurgaon*) were transferred to another prison (*Jhajjar*) due to insufficient infrastructure for effective quarantine/isolation. However, this resulted in overcrowding in Jhajjar prison.

B. Functioning of the High Powered Committees

The HPCs were constituted in all 28 states/UTs that provided information. These had a Chairperson who was the Executive Chairperson of the State Legal Services Authority, and two Members - the Principal Secretary (Home/Prison) and the Director General of Prisons - as mandated by the Supreme Court.

There was an average of three meetings in each of the 24 states/UTs. While the HPCs of Himachal Pradesh, Meghalaya, Nagaland, Telangana, Tripura and Sikkim only held one meeting each, Odisha held the maximum number of 15 meetings during this period. No correlation was found between the number of meetings held by the HPCs and the release of prisoners, though a higher number of meetings did ensure regular monitoring of prisons, and effective measures to curb the spread of the virus.

C. Categories identified by HPCs for Release of Prisoners

The Supreme Court had left it to the discretion of the HPCs to determine the categories of cases for different class of prisoners. It had merely suggested that those who have been convicted or are undertrial for offences for which the maximum prescribed imprisonment is seven years or less, with or without fine or those who are convicted for a lesser number of years than the maximum may be considered for release. While this category was identified by 26 states/UTs for release of undertrials and by 17 states/UTs for release of convicts, seven states/UTs²⁷ did not determine any other category at all.

²⁶ Chhattisgarh, Gujarat, Haryana, Karnataka

²⁷ Goa, Odisha, Telangana, Tripura, Uttar Pradesh, Uttarakhand and Andaman and Nicobar Islands

The highest number of categories for undertrials were identified by the HPCs of Delhi (18), Punjab (15) and West Bengal (10). For convicts, the highest numbers were those of Delhi (7), Odisha (6) and Punjab (6). Three states²⁸ did not determine any category for convicts and considered their release on a case to case basis.

While this is a health crisis that is disproportionately impacting senior citizens, it is disappointing to note that only five state HPCs (Mizoram, Punjab, West Bengal, Delhi and Jammu & Kashmir) considered cases of elderly prisoners for release.²⁹ Similarly, barring the 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 Punjab HPC specifically mentioned pregnant women as the category for release. It was disappointing to note that in Chhattisgarh, the HPC considered and resolved not to issue any general direction for release of prisoners aged above 60 years in view of the scope of the orders passed by the apex court.

D. Categories identified by HPC for Exclusion from Consideration

The top five categories of cases that were excluded, even for a consideration for release are cases involving crime against women (19 states/UTs)³⁰; crime against children (19 states/UTs)³¹; offence under Narcotic Drugs and Psychotropic Substances Act (17 states/UTs)³²; foreign nationals (13 states/UTs)³³ and; offence under Unlawful Activities (Prevention) Act (10 states/UTs)³⁴. Other excluded categories could be further sub-divided. One category include offences against national security or against the state or terrorism cases or those which are being investigated by the NIA, CBI, ED, special police cells, etc. Another category is related to economic offences like financial frauds, offence relating to counterfeit currency; offences under Prevention of Money Laundering Act, Prevention of Corruption Act, etc. Some states also excluded prisoners based on number of pending trials; period of detention; belonging to other states and; those who violated conditions during parole or interim bail. Other excluded categories include serious offences under IPC, special laws and state local laws.

²⁸ Manipur, Tripura and West Bengal

²⁹ The definition of elderly prisoners varied - Punjab considered '65 years and above' as the parameter and Delhi considered 65 years for male undertrials and 60 years for women prisoners.

³⁰ Andhra Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Meghalaya, Mizoram, Nagaland, Odisha, Punjab, Sikkim, Telangana, Uttarakhand, West Bengal, Chandigarh, Delhi, Jammu & Kashmir

³¹ Ibid

³² Goa, Gujarat, Haryana, Himachal Pradesh, Karnataka, Maharashtra, Meghalaya, Nagaland, Odisha, Punjab, Sikkim, Telangana, Uttarakhand, West Bengal, Chandigarh, Delhi, Jammu & Kashmir

³³ Haryana, Maharashtra, Meghalaya, Nagaland, Punjab, Sikkim, Tripura, Uttar Pradesh, Uttarakhand, West Bengal, Chandigarh, Delhi, Jammu & Kashmir

³⁴ Goa, Gujarat, Haryana, Karnataka, Maharashtra, Meghalaya, Nagaland, Punjab, Telangana, Delhi

E. Process of Identification, Consideration and Release of Prisoners

Undertrials:

To implement the directions of the HPC, various functionaries including the legal services institutions, prisons, district administration and police authorities had to work in a coordinated manner to ensure the release of prisoners. This involved various stages that started with the identification of prisoners eligible for release and filing applications.

While in most states the legal aid functionaries worked in close coordination with prison authorities in drafting and filing applications³⁵, in Gujarat and West Bengal standard bail applications, bond proformas were used and in Himachal Pradesh and some districts of Maharashtra bail applications were filed online/ through email to comply with the social distancing guidelines of the Central Government. In Manipur, the HPC directed that its resolution with the list of eligible undertrials were to be treated as bail application.

In considering the bail applications, some states resorted to the routine method of filing before the concerned judicial magistrate, while in other states special sitting of the remand magistrates was directed to dispose of all applications. In Karnataka, a district-level Committee consisting of the District Judge, Commissioner of Police, Jail Superintendent and Public Prosecutor had to collate the details of undertrials and evaluate on a case-to-case basis. **In six states³⁶ the judicial magistrates were asked to visit the prisons to consider the bail applications, whereas, in Uttarakhand and Chandigarh, online hearings of bail applications were conducted.**

Convicts:

Most HPCs directed the concerned state government and prison authorities to release the convicts on parole or furlough as per the act and rules. The HPCs in states like **Delhi and Haryana also directed for the amendment of the existing rules to expand the eligibility and/or time-period of emergency/regular parole under existing rules.**

In six states/UTs³⁷ the HPC directed the prison departments to exercise their powers to grant remission for eligible prisoners. In three states³⁸ this was identified as a separate category for release. Bail was considered for convicts in the case of Gujarat and Manipur. Different procedures with regard to consideration of parole applications was followed in different states.

³⁵ The HPCs in seven states (Chandigarh, Chhattisgarh, Karnataka, Maharashtra, Mizoram, Odisha, Uttarakhand) specifically directed the legal services authorities at different levels to depute panel lawyers to facilitate the same.

³⁶ Andhra Pradesh, Chhattisgarh, Goa, Gujarat, Punjab and Uttar Pradesh

³⁷ Haryana, Odisha, Punjab, Chandigarh, Meghalaya and Delhi A

³⁸ Himachal Pradesh, Mizoram and Sikkim

In Himachal Pradesh³⁹, Maharashtra⁴⁰, Mizoram⁴¹, Odisha, Uttarakhand⁴² and West Bengal, the HPCs directed the district magistrates and superintendents of police to make arrangements for transit of prisoners from the prisons to their respective homes. While in Uttar Pradesh, the prisons department worked with UP State Road Transport Corporation to provide an adequate number of clean and sanitised buses for transportation of released prisoners, in Gujarat, with coordination of NGOs and district administration, ration kits were also provided to released inmates.

F. Period of Release

Based on the information provided in the HPC minutes, the period of initial release for undertrials ranged between four weeks and 24 weeks with Uttarakhand releasing undertrials for as long as six months. However, Andhra Pradesh and Chhattisgarh initially released undertrials only for four weeks.

With regard to convicts, Meghalaya and Mizoram released eligible convict prisoners by remitting their sentences. Uttarakhand enabled convicts to benefit from a six-month release, the longest such period in the country. Initially, Odisha and Chhattisgarh only provided special parole for 21 days, which was later increased by seven weeks (approximately) in both states.⁴³

While 10 states⁴⁴ and three UTs⁴⁵ provided an initial period of release for both undertrials and convicts, only nine of them further extended the time-period for both categories. It is important to note here that a majority of releases were temporary in nature, meaning these prisoners would be re-admitted to prisons.

G. Medical Facilities inside Prisons

Concerned with inadequate health care facilities, a number of steps were taken by the HPCs. In Haryana⁴⁶ and Karnataka⁴⁷, they directed the state government to fill the sanctioned but vacant posts of all medical officers and paramedical staff.

³⁹ The concerned District Magistrate to ensure that the travel pass is provided to the released prisoners.

⁴⁰ Buldana, Bhandara and Jalgaon districts.

⁴¹ The Deputy Commissioners and Superintendants of Police shall also inform the Local Level Task Force to ensure that the released prisoners safely reach their residence.

⁴² The HPC granted 6 to 10 days from the date of filing the personal bond to the transmission of such prisoners on their release from jails to their respective places and also to coordinate with the other state and their District Administration, whose prisoners are going to be released on interim bail and parole for transmission of such prisoners to their respective places and vice versa.

⁴³ The extensions were given for a specific date. Chhattisgarh after the initial release till 31 May, later extended it to 30 June 2020; Odisha extended it till 3 May 2020.

⁴⁴ Andhra Pradesh, Chhattisgarh, Gujarat, Haryana, Karnataka, Maharashtra, Punjab, Uttar Pradesh, Uttarakhand, West Bengal

⁴⁵ Chandigarh, Delhi and Jammu & Kashmir

⁴⁶ The Haryana HPC also directed to depute one Medical Officer each and other para medical staff for examination and treatment of prisoners at Special Jails, Karnal, Hisar and Rewari.

⁴⁷ Karnataka HPC minutes provided that immediate steps needs to be taken for appointment of sanctioned medical staff in 9 central prisons, 21 district prisons and 15 taluka/ revenue prisons.

In Karnataka, Mizoram and Nagaland, doctors were deputed at some prisons to attend to health issues. In Haryana and Chandigarh, the HPCs directed the setting up of prisoner wards in the COVID-19 dedicated hospitals. The Uttarakhand HPC not only ensured adequate health check-ups of prisoners before their release, but also directed the Chief Medical Officer to make the necessary arrangements for their medical examination a week after their transfer from the jail to their respective locations.

To ensure effective distancing in prisons, the Odisha HPC asked the prison department to open enough kitchens with facilities of adequate utensils, roti makers and other infrastructure; each kitchen in a jail was to cater to a maximum of 200 prisoners, in accordance with the recommendations in the Mulla Committee Report, 1983.

In Punjab, the prisons followed the policy of ‘Chasing the Virus’ under which 85% of staff was tested and random sampling of prisoners was done. It instituted a three-level of testing; before entering the special jails, after completion of 14 days’ quarantine period in special jails; following 14 days’ quarantine in regular jails.

H. Communication with Family

As substitution for physical meetings, the prison departments were directed by the HPCs to allow prisoners to speak to their families/ relatives on landline phones in Karnataka, Haryana, Manipur, Mizoram, Odisha and Chandigarh. Mobile communication was allowed by the HPCs of Manipur and Mizoram. The Haryana, Mizoram, Odisha, Punjab and Chandigarh HPCs went a step ahead to enable communication through video conferencing.

I. Monitoring Team

After the direction of the Supreme Court to set up a state-level monitoring team to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously, the HPC minutes of Haryana, Odisha, Punjab, Uttar Pradesh and Chandigarh provided compliance with the said direction. Additionally, they also formed the district-level monitoring team. As a good practice, the Odisha and Chandigarh HPCs directed the UTRCs to act as district-level monitoring body which avoided multiplicity of oversight bodies.

J. Functioning of the Undertrial Review Committee during the Pandemic

Formed under the directions of the Supreme Court in April 2015⁴⁸, the Under-trial Review Committee (UTRC) is headed by District & Sessions Judge; with District Magistrate; Superintendent of Police; Secretary, District Legal Services Authority; and Officer-in-charge of all prisons in a district as members. In 2018, the NALSA issued a Standard Operating Procedure (SOP) on UTRCs to help them streamline their work by identifying 14 categories.

⁴⁸ Writ Petition (Civil) 406/2013, Re-inhuman Conditions in 1382 Prisons

During the pandemic, the Supreme Court directed the UTRCs across the country to function on a weekly basis. Based on the information received from 17 SLSAs, the UTRCs were formed in only 231 out of the 284 districts in these 17 states.

Further, in the 11 states/UTs where month-wise and district-wise data was available, Chandigarh had the highest percentage compliance at 117%, followed by Odisha and Jammu & Kashmir (108%); Himachal Pradesh and Sikkim (106%); Goa (104%) and; Haryana (100%). However, Mizoram had the lowest compliance at zero percentage compliance. Manipur, Nagaland and Meghalaya also had very low compliance at six, 31 and 39 percent respectively.

While the UTRCs contributed towards the implementation of the directions given by the HPCs, it is also a matter of concern that while doing so, they did not concurrently conduct their usual course of work by reviewing the 14 categories of cases prescribed. Only nine out of the 21 UTRCs, whose minutes were analysed by the CHRI, reviewed all mandated categories as ordered by the Supreme Court, and as prescribed in the NALSA SOP.

LESSONS LEARNT AND NEXT STEPS

The key lesson of the pandemic is that decongestion of prisons is possible and that prison reforms cannot happen in isolation. These would need to grow with accountability and reform of the criminal justice system. The process of decongestion should not be viewed as a one-time exercise. Coordinated efforts of all stakeholders including prison departments, legal services institutions and judiciary are required to address some of the systemic challenges faced by the prison system. Mandate holders in the criminal justice system need to work for:

1. Regular decongestion exercises to effectively address the problem of overcrowding in prisons.
2. Along with decongestion, the focus must also be on regulating the inflow into prisons by ensuring strict implementation of legal provisions that check arbitrary arrests (S.41A, B, C and D of the Code of Criminal Procedure, 1973).
3. The judiciary and other stakeholders must consider alternatives to imprisonment like the implementation of Probation of Offenders Act, 1958, to support efforts to reduce overcrowding in prisons.
4. The decongestion efforts of states must be monitored by the Supreme Court at frequent intervals.
5. The judiciary, with the help of the concerned departments, must develop recovery plans to regain the normal pace of work to mitigate the impact of the pandemic on judicial processes l strengthening shared information, communication, and technology (ICT) infrastructures among the functionaries.

6. States need to ensure effective communication between lawyers and their clients in prisons. This can be strengthened by the bar councils and prison departments through framing of guidelines for conducting prison visits, telephonic conversations etc.
7. Prison departments must proactively disclose information on prison occupancy and health of prisoners to enable free flow of information among the monitoring bodies, lawyers, families of prisoners and civil society.
8. Prison and social justice empowerment departments must develop reintegration plans for newly released prisoners/detainees to ensure they integrate back into society.
9. State Governments must allocate additional budgets for prisons and recruit staff to fill in vacant positions.
10. State Governments must endeavour to improve the healthcare facilities inside prisons with prison-specific long-term health care plans to be developed with the medical experts.
11. Legal services institutions must strengthen the functioning of prison legal services clinics and to prioritise efforts to apprise prisoners of the progress in their cases, current court processes and conduct legal awareness sessions to ensure that prisoners are informed about their legal rights.
12. All stakeholders must endeavour to make temporary solutions permanent by developing long-term strategies for reforms in the functioning of the criminal justice system.