

# Overcrowding and Understaffing in the Indian Criminal System

## TABLE OF CONTENTS

Overcrowding and Understaffing in the Indian Criminal System	1
Abstract	1
Harsh conditions of the prison	2
Understaffing and Training in Prisons	7
Understaffing of judges	8
Understaffing of the Police Force	10
Recommendations	11
References	14

## Abstract

One of the biggest menaces in the path to justice is time or as the former Prime Minister of the UK, William E. Gladstone said “Justice delayed, is justice denied.” This delay brings a slew of problems; poor living standards in the prisons, unending pressure on the judiciary, tampering with the rights of the prisoners, disrupting prison administration and unsegregated criminals which can lead to jail violence. According to an article by The Hindu<sup>1</sup>, nearly 70% of the prisoners in India are under trials. This allows the more heinous criminals to remain unconvicted and the wrongly convicted to remain in jails.

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<sup>1</sup> <https://www.thehindu.com/data/data-70-prisoners-in-india-are-undertrials/article32569643.ece>

Law Minister Kiren Rijju in the Rajya Sabha said that “ In case of the (25) high courts, there are 2,94,547 cases and 6,71,543 cases in the district and subordinate courts that are pending for more than 20 years as per data available on National Judicial Data Grid (NJJDG) on February 01, 2023.” He further added that “Pendency of court cases is a multi-faceted problem. Due to the increase in the population of the country and awareness of their rights amongst the public, filing of fresh cases is also increasing with leaps and bounds year after year.” The lack of staff in the judicial procedure fails against the high number of jail admits. Hence, the very idea and purpose of justice is being defeated. Not to mention but a court deals with an array of cases including criminal, legal, political, writs or personal. The situation is becoming more dire. The central governments, state bodies, judiciary system and activists have raised and answered several questions regarding this grave hurdle.

Apart from justice, basic human and civil rights are being put at stake and the citizen’s faith in justice gets severely hampered. The court is the only place where the socially-marginalized and the aggrieved people seek relief. The reasons for the same issue are many but with determination and reforms, we can chart out suitable policy-making and policy-implementation.

## Harsh conditions of the prison

The National Crime Records Bureau (NCRB) Reports 2021 is a thorough report of the number of actual convicts and the under trial prisoners state-wise from 2019 to 2021. The numbers reveal a dark picture of those in jails who are living in harsh conditions.

<b>Year</b>	<b>No. of Prisons</b>	<b>Actual Capacity of Prisons</b>	<b>No. of Prisoners at the end of the year</b>	<b>Occupancy Rate at the end of the year</b>
<b>2019</b>	1,351	4,00,934	4,81,387	120.1%
<b>2020</b>	1,306	4,14,033	4,88,511	118.0%
<b>2021</b>	1,319	4,25,609	5,54,034	130.2%

- As per data provided by States/UTs.

Year	No. of Convicts	No. of Undertrial Prisoners	No of Detenues	No. of Other Inmates	Total No. of Prisoners
2019	1,44,567	3,32,916	3,223	681	4,81,387
2020	1,12,589	3,71,848	3,590	484	4,88,511
2021	1,22,852	4,27,165	3,470	547	5,54,034

- As per data provided by States/UTs.
- Figures are as on 31<sup>st</sup> December of each year

The reports further states that prisoner's admit has increased by a whopping 10% totalling to 18,06,823 as of December, 2021. Out of these, 77.1% were undertrial prisoners. Uttar Pradesh has reported the maximum number of undertrials (21.2%, 90,606 undertrials) in the country followed by Bihar (13.9%, 59,577 undertrials) and Maharashtra (7.4%, 31,752 undertrials) at the end of 2021.

The first table clearly shows that all jails in the country have currently convicts over the capacity limit. The jails are always over-filled as the crime rates continue to increase. Only 15 States/UTs were having Women Jails (32 Women Jails) with a total capacity of 6,767 in India. These States/UTs (Number of Jails) (Capacity) are

- Rajasthan (7) (998),
- Tamil Nadu (5) (2018),
- Kerala (3) (232),
- Andhra Pradesh (2) (280),
- Bihar (2) (202),
- Gujarat (2) (410),
- Uttar Pradesh (2) (540),
- Delhi (2) (680),
- Karnataka (1) (100),
- Maharashtra (1) (262),
- Mizoram (1) (96),
- Odisha (1) (55),
- Punjab (1) (320),
- Telangana (1) (260) and
- West Bengal (1) (314)

The actual capacity of prisons has increased from 4,14,033 in 2020 to 4,25,609 in 2021 (as on 31<sup>st</sup> December of each year), having increased by 2.8%. Number of prisoners lodged in various jails has

increased from 4,88,511 in 2020 to 5,54,034 in 2021 (as on 31st December of each year), having increased by 13.4% during the period.

In the chapter named 'Overcrowding' in Aryeh Neier's book named 'Prison Conditions in India', a report reveals the following-

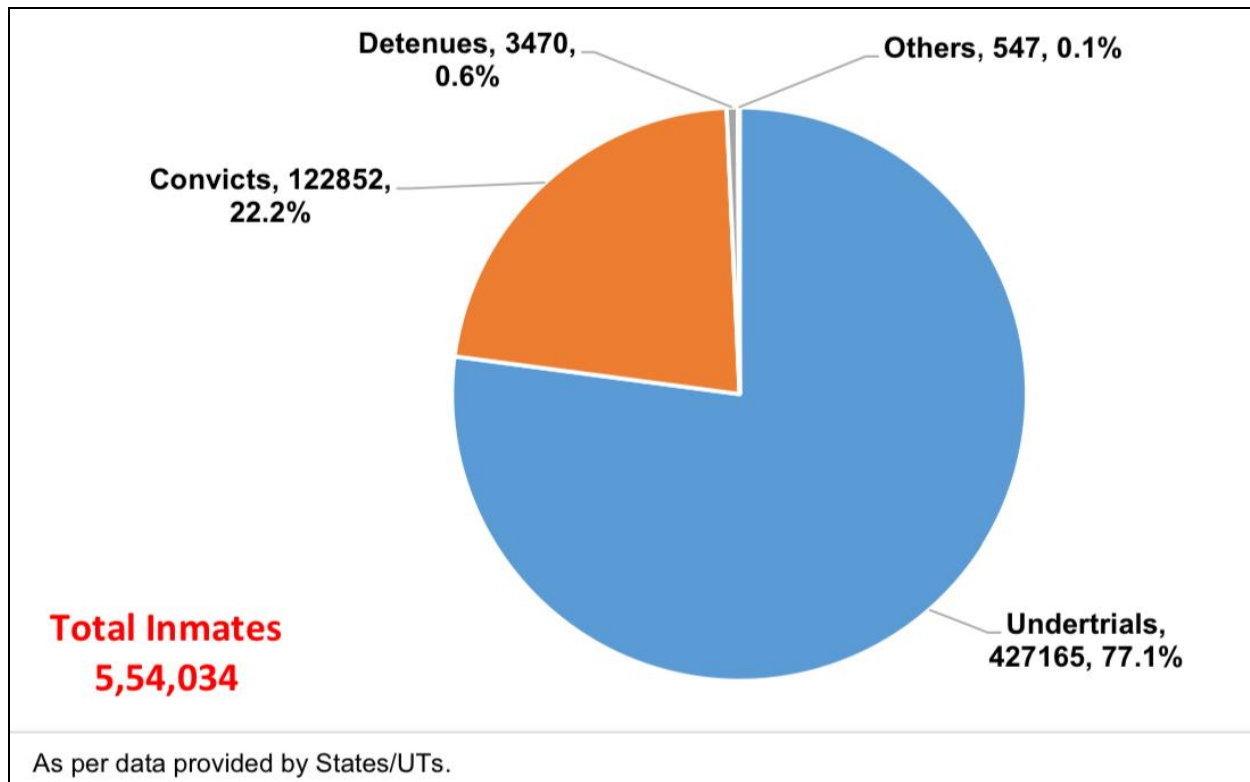
*'Almost all over India overcrowding in prisons has become a common problem. In some prisons the cells and barracks which were originally meant for accommodating inmates have been converted into store-rooms, godowns, work-shops, etc. The original authorized accommodation of an institution is thus slowly shrinking whereas the daily average population and the total admission indicate a steady increase. As a consequence, overcrowding has assumed the proportions of a major problem for the Correctional Administration.'*

The main reasons highlighted in the book were as follows-

- Unnecessary detention of under trials
- Heavy influx of short-term convicts
- Under trials still awaiting their first hearing

The NCRB Report also saw a rise in the number of foreign inmates in Indian jails; though the majority of them were under trials. Among the foreign convicts, the highest number of foreign convicts were from Bangladesh ( 505 convicts) followed by Nepal (281 convicts), Nigeria ( 73 convicts) and Pakistanis ( 63 convicts) at the end of 2021. West Bengal has reported the highest number of foreign convicts lodged in their jails (329) followed by Uttar Pradesh (257) and Delhi (61) at the end of 2021.

Prisoners in jails are of two types- convicts and undertrials. Among 4,27,165 undertrial prisoners, around 70.9% of prisoners were confined for periods up to 1 year (3,02,917 prisoners), as on 31st December, 2021. Out of the undertrials, the most number of undertrial prisoners (1,46,074 prisoners) were confined for up to 3 months accounting for 48.2%. This is followed by 86,525 undertrial prisoners who were confined for 3-6 months and 70,318 undertrial prisoners who were confined for 6-12 months.



The National Legal Services Authority (NALSA) released a report stating that 5,029 undertrials were still in jail after receiving bail. The reasons stated for this type of behavior are multiple charges against the detained person or family members were not able to furnish the amount of surety for all the charges.

However, the Supreme Court, in a ruling<sup>2</sup>, has said that ‘In case undertrial not released within 7 days of getting bail, the jail Superintendent has to inform the secretary of the District Legal Service Authority, who may send a volunteer or jail visiting advocate to interact with the prisoners to assist them in all ways possible towards their releases.’ The SC Guideline also said the jail Superintendent has to give a copy of the bail order to the prisoners.

Union Law Minister, Kiren Rijju, in a Rajya Sabha speech said that nearly 6.72 lakh cases are pending in various district and subordinate courts for more than 20 years, the government told Lok Sabha. In case of High Courts, there are 2,94,547 such cases. In a written reply, Law Minister Kiren Rijju said, “The number of cases pending for more than 20 years in the Supreme Court of India, as per the data

<sup>2</sup>

<https://www.livelaw.in/top-stories/supreme-court-issues-directions-for-timely-release-of-prisoners-after-getting-bail-220526>

retrieved from the Integrated Case Management Information System (ICMIS) as on January 27, 2023, is 208 cases."

## Deaths and transfers in prisons

Year	Total No. of Deaths in Prisons	No. of Natural Deaths	No. of Un-natural Deaths (incl. Suicide)
2019	1,764 <sup>\$</sup>	1,538	160
2020	1,887 <sup>\$</sup>	1,642	189
2021	2,116 <sup>\$</sup>	1,879	185

- As per data provided by States/UTs.

Number of deaths in prisons has increased from 1,887 in 2020 to 2,116 in 2021, having increased by 12.1%. Number of unnatural deaths in prisons has decreased by 2.1% from 189 in 2020 to 185 in 2021. Among the 185 un-natural deaths of inmates, 150 inmates have committed suicide, 11 inmates were murdered by inmates, 6 inmates died in accidents, 3 inmates died due to assault by outside elements, 1 inmate died due to firing and 1 inmate died due to negligence/excess during 2021. For a total of 52 inmate deaths, the cause of the death is yet to be known. Intra-prison conflicts have been nothing new in the Indian prison scenario.

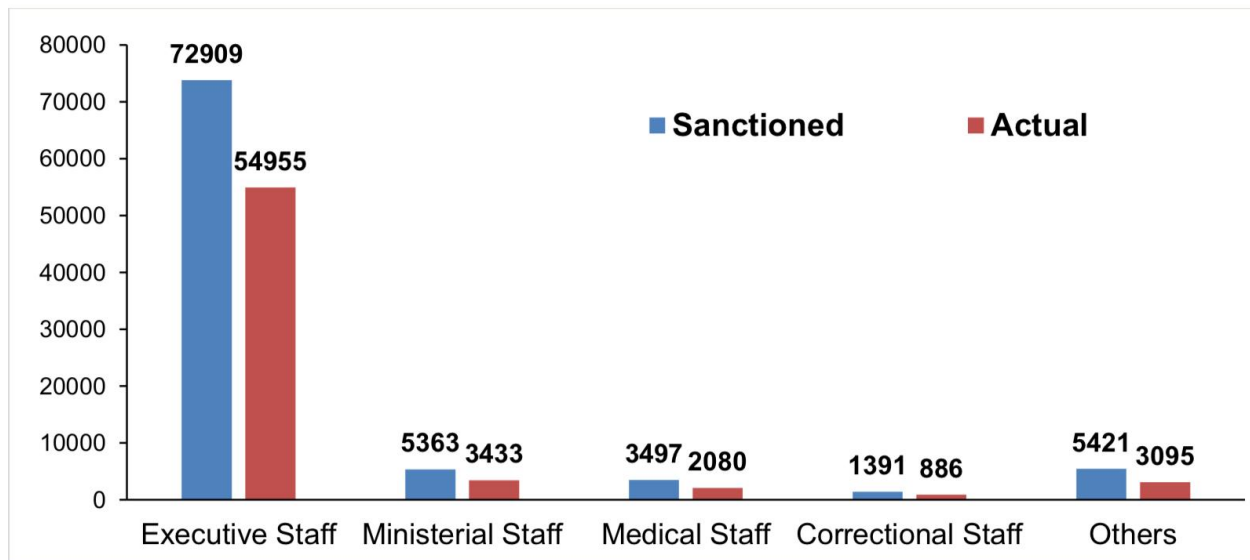
The conditions of the prisoners worsened during the pandemic as quarantine protocols were not possible to abide by and covid cases caught up and spread throughout prisons in India. The Commonwealth Human Rights Initiative (CHRI) collated data from media reports. It estimates that 18,157 prisoners and prison staff were infected during the first wave of the virus (from March 2020 until February 2021). It also states that at least 17 people died due to COVID-19 in the same period.

**The Transfers of Prisoners Act, 1950** provided for the removal from one State to another of persons confined in a prison. Transfers occur due to various reasons; change in external security, disruptive behavior or due to personal reasons of the inmate. Transfers are often used as an easy fix to decongest prisons without solving the core issue. 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.

## Understaffing and Training in Prisons

Chapter 11 of the NCRB Report charts out five different categories of Prison staff- Executive, Medical, Correctional, Ministerial and Others.



- As per data provided by States/UTs.

The following chart shows the number of posts sanctioned and the actual number of staff present in the prisons. Social workers in the Others section have almost remained zero in several states like Arunachal Pradesh, Andhra Pradesh and Haryana.

India's prisons are understaffed by at least 33 per cent with the highest vacancies found at the officer and correctional staff levels. This has increased the workload of the staff and is having an impact on the 'correctional' aspect of imprisonment. The findings are part of the India Justice Report 2019, an initiative of Tata Trusts.

According to the report, the nationwide prison occupancy rate stood at 114 per cent as of 2016. On any given day, there are over 400,000 prisoners in India. Much of this overcrowding is due to the presence of 'undertrials' - people in custody awaiting investigation, inquiry or trial - who constitute

nearly 68 per cent of all prison inmates. For every convict, India has two undertrials in its jails. Nationally, on average, vacancies ranged from 33 per cent to 38.5 per cent. These vacancies rose by 10 per cent between December 2012 and December 2016. With the exception of three states and Union Territories, all others registered high levels of vacancies in 2016.

At the level of cadre staff, 17 states and UTs had a vacancy of above 25 per cent, while at the officer level, as many as 22 states and UTs had vacancy levels of over 25 per cent.

## Understaffing of judges

The judges and the police force form the backbone of the judicial system in India. While the judges administer justice according to the criminal procedures, the police are entrusted with the task of enforcing the sections and maintaining law and order. The vast majority of people place their trust on these two forces to get justice. However, multiple recent reports have shared data proving a large gap in the training, employment and posting of the judges and police forces.

The root cause seems to be a shortage of trained judges especially in the lower subordinate courts. As early as 1987, the Law Commission had taken note of the crisis before the judiciary and had advised immediate appointments to fill vacancies, as well as a three-fold increase in the judge-to-population ratio from the then existing levels to 50 per 100,000 citizens. Many critics blame the role of the respective state governments in the appointment of the subordinate court judges. Too much emphasis on promotion based on seniority and the Annual Confidential Reports is also said to be the cause of lack of talent in the lower judiciary. The Annual Confidential Reports is the national reports containing provisions for evaluations, reporting and reviewing of the work of all the service people in the Judiciary. This system is administered under The All India Services (Confidential Rolls) Rules, 1970. It provides for revision of the services of the judges for upto a minimum of three months.

The Report is said to have multiple loopholes which are used at the whims of the Government for the promotion of judges. Firstly, it is quite an old system that started in the 1940's for the promotion of the judges. And since it is a confidential report, the junior judges do not get to communicate with their senior officers when it comes to their own promotions. The verdict of the S P Gupta vs. the Union of India<sup>3</sup> case in 1981 stated that the appointment to the Supreme Court shall be made only on the records of the services in the High Court. This leads to the downplay of their experiences in the lower

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<sup>3</sup> <https://indiankanoon.org/doc/112850760/>



courts and many do not fully commit to the service. Only a few judges of the Supreme Court have adequate experience in the subordinate courts.

**Huge pending appointments of judicial, non-judicial officers and judges in the judiciary:**

The first and foremost reason affecting the proper working of the judiciary that leads to increase in pendency is inordinate delay in filling up the vacancies of judicial officers and judges, around 6000 posts are lying empty in the subordinate courts. The Judges to Population Ratio in India is 20 Judges per million Population. The Law Commission had recommended 50 Judges per million. Not only this, over 400+ vacancies of High Court Judges are vacant and the apex court itself has 4 vacancies. In a court not only judges and advocates are essential for its working but also the non-judicial officers who work in the court.

The early retirement age for the senior judges is seen as a cause for the pendency of cases and frequent shuffle of judges causes miscommunication among the fellow judges. India has the lowest retirement age in the judiciary field. In the USA, the judges have a lifetime holding authority over their positions unless they wish to voluntarily retire. This makes their position strong and gives a strong command over the executive. The US Presidents change every five years but the Chief Justice remains for a longer period that allows them to interpret the Constitution properly and see that the political authority does not exceed the judiciary powers. Now while the USA has a Presidential form of government and India has a Parliamentary form of government, it does not necessarily mean that the Indian executive should have more power than the Judiciary.

Another cause that severely delays the process of administering justice is underfunding by the Government. Most courts, including the Supreme Court, lack infrastructure and the smart technology to facilitate swift justice. The employment of staff and bearers in the Courts has also been skewed who could otherwise have helped in the ease of carrying out the proceedings.

The fact that even high profile cases take years and decades to be solved, it results in the victims losing faith and the convicts getting away. This passively leads to situations like extra-judicial killings or forced/false encounters to end the case and avoid the slow judicial proceedings at any cost. This not only defeats the essence of justice in the country but also damages the reputation of the judicial system. Criminals get away with crimes, never facing the consequences of their actions while the victims continue to suffer.

## Understaffing of the Police Force

Expenditure on police training in the states and Union territories has actually diminished. There has also been a recurrent pattern of state governments and Union territories failing to spend funds budgeted for police. The states and Union territories spent only Rs 1,53,766.19 crore of the Rs 1,78,338.47 crore they were allotted in FY 2020-2021, and Rs 1,67,489.15 crore of Rs 1,94,116.34 crore in FY 2021-2022.

A PRS Legislative Research report <sup>4</sup>has made a few observations and numbers in case of the police administration and functioning in the country. First, The Bureau of Police Research and Development has also noted a 30.5% deficiency in stock of required vehicles with the state forces. Comptroller and Auditor General Report audits have found shortages in weaponry with state police forces. For example, Rajasthan and West Bengal had shortages of 75% and 71% respectively in required weaponry with the state police.

Secondly, in every democratic country, the police are made accountable to the political executive for transparency and to ensure independence. However, in India, the respective state executive uses, or rather misuses the police force to meet their motives. This works directly as a disruption to the independent functioning of the police and they lose their motivation. Much has also been said about the burdened working hours, low pays and fewer welfare activities done for them.

Lastly, it points out that almost 86% of the police force consists of constable positions. They are the lowest in the hierarchy of the police administration and positions. They perform a variety of tasks; ranging from the menial paperwork to the hard groundwork or the investigation and traveling long distances to carry out the investigations. The level of promotions among them is a few and the highest promotion a constable can get in their work life is that of the head constable; who again works under the command of the Superintendents and the Officer-in-Charge. Hence, again they lose their motivation and incentive to work efficiently in a burdened atmosphere. This lower section of the police force even though forming the highest percentage of the force are the most neglected.

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<sup>4</sup> <https://prsindia.org/policy/analytical-reports/police-reforms-india>

State expenditures on police reforms have remained low in contrast with the state budgets. It is reportedly less than 3% of the total budget. The spending is low but the interference is high. Some experts have called for political accountability only to a certain level. They call for operational freedom of the police forces so that investigations can be carried out effectively and swiftly. The Indian nature of high-collar jobs and preferring only higher-level jobs and designations hampers the working and the motivation of the lower level officers and undermines their contribution.

## Recommendations

We can realize the system is a little too entrenched in red-tapism and administrative difficulties. Questions have been raised on the grounds of human rights and the inhumane conditions of prisoners. The Ministry of Home Affairs, Government of India has issued a Working Group way back in 1872 to address the conditions of the prisons in India. It called for the development of correctional administration to ease the pressure on prisons and emphasized on alternatives to harsh imprisonments. The solutions do not necessarily require many new policies. It rather needs strict enforcement of the reforms and recommendations already existing and in circulation.

1. A report titled 'Measures for Effective prison management and filling up of vacancies of prison officers and staff in jails' dated 9th January, 2023 by the Home Ministry of India focuses on the non-compliance by several state governments in abiding by the **Model Prison Manual 2016**. This particular subject falls under the Concurrent List, hence the state governments do not take them seriously. To make it completely under the Union might not be the solution but the degree of conformity can surely be challenged by the Centre. The Centre should file a Public Interest Litigation (PIL) in the Supreme Court and the Court in turn can direct orders to mandate these rules. Follow-ups are ineffective but assigning Central Commissions in every state will ensure the provisions of the manuals are committed to.
2. The same report has made provisions for mandatorily segregating prisoners as follows- women, juveniles, under-trials, convicts, high-risk offenders and offenders with the aim of radicalizing or propagating harmful views within the prisons to the other prisons. It also calls for separate imprisonment of the drug offenders as they fall under a different section of crimes. Such segregation will also help the police and the prison staff to deal with them accordingly and ensure better safety of all the inmates. Keeping similar kinds of prisons together is also effective

in bringing about a psychological awareness among them and influencing them in a positive way in the long run.

3. A major recommendation would be to not make laws that are home to weak cases and increase the number of under trials. . Laws like Unlawful Activities Prevention Act (UAPA), Prevention of Money Laundering Act (PMLA) and Section 153A only increase the number of under-trials in the jails and many of them continue to await even their first hearing. Between 2018 and 2020, 4690 suspects were arrested under the UAPA but only a mere 3% were convicted. Plus, getting a bail in these cases are quite difficult so the arrestees spend a considerable amount of time inside the jails. Arresting a person only on mere suspicion without a strong case puts burden not only on the prison facilities but also on the judiciary. Having a healthy conviction rate ensures a healthy democracy and crime rate.
4. The **United Nations Office on Drugs and Crime Handbook on strategies on reducing overcrowding in prisons**, Criminal Justice Handbook provides a wide range of short and long-term measures to reduce overcrowding in prisons. Under short-term categories, it suggests and calls for temporary release of low-risk prisoners to immediately relieve pressure on the prisons. Reviewing illegal and unnecessary detentions by police officers and releasing suspects can also help. Under long-term strategies, it suggests simplifying the process of the criminal and judicial function. The paperwork and the cross-verification process are too time-consuming and delays real trials to take place. Better communication between the judicial agencies will prove beneficial. Another key role can be made by organizing awareness campaigns for the prisoners to get them aware of their legal aid by the government and other agencies. The IPC under the Arrest sections has made it compulsory to let the prisoners know about every possible way and means of bail and legal aid. However, this is neglected by the arresting officer and also due to poor understanding by the prisoners. This could be solved by simplifying the wording of the legal clauses in several vernacular languages.
5. There are currently 5,54,034 prisoners in india. It is a huge population but easily the most forgotten people in our country. To bring a reform and stir among them, the popular media and political leadership should talk about them, bringing the attention of the public sympathy. In a country like India, where political executives have a massive influence on the opinions of the people, by talking about the prisoners of India, it can bring massive and swift prison reforms. Reformative prisons, welfare and rehabilitation of the prisons are never the talks during elections but by allowing the prisoners their voting rights and appealing to the normal voters, it might even benefit the parties.
6. The most obvious measure to meet the increasing prison population is to increase their capacity. However, the construction of new prison capacities has been minimal as they are not lucrative and do not serve the interests of anyone. Hence if we make it attractive and

investment-worthy, stakeholders will invest in new capacities. By engaging the prisoners in work to generate revenues, private or government agencies can invest in building prison places in the most congested ones. The construction of a new Alipore Jail museum in Kolkata has been opened up for the public. The revenues generated are used back in the welfare of the Alipore prisons. Prisons are public places that house convicts and also under-trials, hence the government instead of neglecting them, should build and invest in them.

7. In prisons across India, numerous positions are vacant for psychologists and psychiatrists. They continue to remain vacant as the vacancies are never marketed or made public. The young graduates are job-ready but not employed and utilized for the same. Psychologists are required in prisons as the mental health of prisoners, who are battling mental stress, traumatic experiences; are vital to tend to. State and UT authorities have been requested by the MHA to launch special recruitment drives to fill up all the vacancies for jail staff of all categories.
8. For the judicial conditions, a commission can be set up to make it faster by reducing the unnecessary workload of cross-examining of the witnesses in the non-working hours of the court to utilize time effectively. However, to ensure the same, there needs to be proper infrastructure. A major workload is in district courts where lawyers work outside the court beneath a shed with a chair and table. Not only infrastructure but proper security has to be ensured in court premises so that these commissions can work without any fear and biases caused due to security threats to them.
9. The solution to the problem of case pendencies is to limit the number of Adjournments of cases. The main reasons for adjournment were either too much work with the advocate or lack of work with the advocate. So the solution is to form an Alternate Dispute Redressal Forum inside the court. In Order 26, Rule 9 of the Civil Procedure Code (CPC), it gives the Court power to make a Commission to make local investigations to be requisite or proper for elucidating any matter in dispute. Section 89 of CPC which is the settlement of disputes outside the court, the settlement of dispute outside the court can be referred to as arbitration or conciliation or Judicial settlement including Lok Adalat or mediation. It must be ensured that bail doesn't remain an exception.
10. In her speech while presenting the Budget for 2023-2024, the Finance Minister, Nirmala Sitharaman, has announced an outlay of Rs. 7,000 Crores for launching Phase-3 of the e-courts in India. While Phase-1 which concluded in 2015, set up 14,249 sites were computerized, the Phase-2 of the e-Court project, 18,735 District and Subordinate Courts were computerized. The Phase-3 of this project aims to make the process of seeking justice more accessible. Petitions and litigations can be filed from anywhere via digital means. The Covid-19 stalled many hearings; this aims to facilitate faster judgment.

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