

Protecting prisoners' rights

Overcrowding in prisons has put several inmates at risk of COVID-19 infection and death

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The catastrophic surge in COVID-19 cases across India in April and May led to a great number of deaths (still being counted) and put an enormous strain on the healthcare system and governments.

In the midst of the surge, prisoners were largely forgotten. The failure of the authorities to reduce severe overcrowding in prisons left thousands of prisoners at risk of infection and death. According to data, there are 12,715 inmates lodged in 11 sections of Tihar Jail alone as against the lodging capacity of 7,425. Out of them, 11,077 are undertrials.

Violating human rights

As was expected, given the poor state of prisons in India, hundreds of prisoners got infected during the pandemic and a number of them died. This vitiates a fundamental right derived from Article 21 of the Constitution. Overcrowded jails are a violation of the human rights of prisoners (*Re-Inhuman Conditions in 1382 v. State of Assam*, 2018). As the court said in *Charles Sobraj v. The Suptd., Central Jail, Tihar, 1978*, "imprisonment does not spell farewell to fundamental rights".

The aim of imprisonment is not merely deterrence of crime but also reformation. Apart from risking the lives of inmates, ignorance of the poor conditions of prisons has also added to the misery of the families of those in jail. Since physical meetings between the inmates and family members were suspended, many families have been unaware of the conditions of their loved ones in prison. While the Supreme Court ordered that prisons adopt video conferencing technologies to overcome the lack of physical meetings, this has not been properly implemented, according to Amnesty International. A report of the organisation noted that prisoners in Jammu and Kashmir were allowed a phone call to their family only once in 15 days.

In May, prominent Hurriyat leader and chairman of Tehreek-e-Hurriyat, Mohammad Ashraf Sehrai, died in detention in Jammu. Sehrai had been

jailed under the Public Safety Act, a detention law that allows detention of any individual for up to two years without a trial or charge. He had tested positive for COVID-19 posthumously. His son said that Sehrai had complained of ill-health when the family had spoken to him 10 days earlier but there had been delay in his treatment till death became inevitable. Sehrai's death has exposed the condition of prisons in Jammu and Kashmir. It has also exposed the condition of political prisoners who often languish in jail for years and are rarely convicted.

Political prisoners

Ever since the pandemic outbreak, human rights activists have demanded the immediate release of political prisoners on humanitarian grounds but this has fallen on deaf ears. There are several Kashmiris kept in preventive detention in jails in Uttar Pradesh, Delhi, and other parts of India. A number of them are undertrials. According to Article 14 (3)(c) of the International Covenant on Civil and Political Rights, an accused has the right to be tried without undue delay. The state is bound to provide legal assistance to prisoners, ensure their safe and timely release and safeguard their rights to a fair and speedy trial (*Hussainara Khatoon v. Home Secretary, State of Bihar, 1979*). But this is not the reality for a large number of prisoners.

Taking cognisance of this issue, the Supreme Court directed the States to examine releasing inmates, convicted or facing trial on non-serious charges, from jails either on regular bail or on parole. It also directed them to provide transport facility to the prisoners to reach home. It is hoped that States will comply. Some have said that they have begun reviewing prison occupancy. Given that States have started vaccinating prisoners too, the situation may improve soon. But India cannot ignore the problem of overcrowding, pandemic or no pandemic.

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