

THE STATE OF INDIAN PRISONS

Relevant for: Developmental Issues | Topic: Rights Issues - Human Rights and NHRC

Indian prisons make news when there is a jail break, a prison riot or when the lawyers of high-profile businessmen or economic evaders fight against their extradition to India. And in the midst of the election process this year, the release of the data-driven report, the *Prison Statistics India 2016*, published by the National Crime Records Bureau (NCRB) in April went largely unnoticed.

This edition of the report is different from its earlier versions on account of its omission of certain key demographic data. Despite these gaps, the report raises a number of red flags signalling the rot in India's prison system. But before we go forward, a simple question needs to be asked. Who are our prisoners?

The report tells us that at the end of 2016, there were 4,33,033 people in prison; of them 68% were undertrials, or people who have yet to be found guilty of the crimes they are accused of. India's under-trial population remains among the highest in the world and more than half of all undertrials were detained for less than six months in 2016. This suggests that the high proportion of undertrials in the overall prison population may be the result of unnecessary arrests and ineffective legal aid during remand hearings.

The most significant shortcoming of the report lies in the NCRB's failure to include demographic details of religion and the Scheduled Caste and Scheduled Tribe status of prisoners, which are crucial to understanding India's prison population. This information was consistently published for the last 20 years and instrumental in revealing the problematic overrepresentation of Muslims, Dalits and Adivasis among under-trials in prisons.

Investigating India's porous prisons where incarceration and connectivity go together

The report of 2015, for instance, said that Muslims, Dalits and Adivasis accounted for 55% of the under-trial population even though they made up only 50% of the convict population and 38% of the total Indian population.

Another disturbing point is the rise in the number of people held under administrative (or 'prevention') detention laws in Jammu and Kashmir (a 300% increase), with 431 detainees in 2016, compared to 90 in 2015. Administrative, or 'preventive', detention is used by authorities in J&K and other States to unfairly detain persons without charge or trial and circumvent regular criminal justice procedures.

But a new and important addition to the report is the number of prisoners eligible to be released and actually released, under Section 436A of the Code of Criminal Procedure, which allows undertrials to be released on a personal bond if they have undergone half of the maximum term of imprisonment they would have faced if convicted. In 2016, out of 1,557 undertrials found eligible for release under Section 436A, only 929 were released. Research by Amnesty India has found that prison officials are frequently unaware of this section and unwilling to apply it.

In 2017, the Law Commission of India had recommended that undertrials who have completed a third of their maximum sentence for offences attracting up to seven years of imprisonment be released on bail. Perhaps the NCRB should consider including the number of such undertrials in its upcoming report for informing the policy on the use of undertrial detention.

Ripe for prison reform

The 2016 prison statistics do not mention the number of prison visits by official and non-official visitors which typically include district magistrates and judges, social workers and researchers. This number, while not as disaggregated as it should be, must nevertheless be used to provide some information on independent monitoring of prisons. This is essential to uncover torture and other forms of ill-treatment, increase transparency and balance the power asymmetry in prisons.

The relevance of prison visits is underlined by the number of “unnatural” deaths in prisons, which doubled between 2015 and 2016, from 115 to 231. The rate of suicide among prisoners also increased by 28%, from 77 suicides in 2015 to 102 in 2016. For context, the National Human Rights Commission in 2014 had stated that on average, a person is one-and-a-half times more likely to commit suicide in prison than outside, which is an indicator perhaps of the magnitude of mental health concerns within prisons.

The NCRB has said that about 6,013 individuals with mental illness were in jail in 2016. It does not provide information on whether these prisoners were diagnosed with mental illness before entering prison, making it difficult to determine whether prison conditions worsened their plight.

The report states that there was only one mental health professional for every 21,650 prisoners in 2016, with only six States and one Union Territory having psychologists/psychiatrists. Odisha, Uttar Pradesh and Madhya Pradesh, the three States with the most prisoners with mental illness, did not have a single psychologist or psychiatrist.

All things considered, the report has important information which can be used to facilitate a dialogue on improving prison policies. But these conversations will be limited and the public's right to know about the functioning of the criminal justice system thwarted if critical information is delayed inordinately or withheld without credible reason. The NCRB's apparent reluctance to be prompt and open about its prison statistics does not bode well for the democratic discourse in India.

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