

## Two-thirds of India's prisoners are yet to be convicted

*The second edition of the India Justice Report is all about comparisons and tracking the rise and falls in each state's structural and financial capacity to deliver justice. Using the latest available government figures the first ever ranking was published in November 2019. The ranking is based on quantitative measurements of budgets, human resources, infrastructure, workload, diversity across police, judiciary, prisons and legal aid in 18 large and medium sized states with a population of over 1 crore and 7 small states. Data for 7 Union Territories (UTs) and 4 other unranked states is also provided. The IJR 2020 not only provides pillar and theme wise comparisons between similarly situated states one against another, but also allows for an understanding of what improvements and shortfalls have been made within each state's own pillars and themes since IJR 2019 and over 5 years. These mark out clear discernible trends and directions.*

- Rajasthan topped the ranking amongst large and mid-sized states (12<sup>th</sup> to 1<sup>st</sup>)
- Himachal Pradesh (6<sup>th</sup> to 1<sup>st</sup>) beat all other small states to top the table

### Biggest Winners

- **Rajasthan (12<sup>th</sup> to 1<sup>st</sup>):** improved utilisation of prison budgets, decrease in officer and cadre staff vacancies, inmates per prison functionary, reduction in share of undertrials over 5 years
- **Telangana (13<sup>th</sup> to 2<sup>nd</sup>):** improvement in prison budget used, reduction in vacancies, increase in share of women in prison staff

### Biggest Losers

- **Karnataka (3<sup>rd</sup> to 14<sup>th</sup>):** decline in prison budget used, increasing vacancies of all prison staff except officers, over 5 years: declining prison budget used, spend on prisons trails overall increase in state expenditure
- **West Bengal (4<sup>th</sup> to 12<sup>th</sup>)<sup>1</sup>:** reduction in share of women staff, over 5 years: increasing cadre staff and officer vacancies, spend on prisons trails increase in overall state expenditure
- **Occupancy rates up from 114% (Dec 2016) to 119% (Dec 2019)**
- **Nearly 70% of all inmates are people awaiting trial or investigation; One undertrial for every two convicts**
- **The national average stands at one probation/welfare officer per 1,617 prisoners and one psychologist/psychiatrist for every 16,503 prisoners. In UP this goes up to 1 for every 50,000 inmates.**
- **Desperate shortage of doctors in most areas; average vacancies of medical staff at 41%.**

Two-third of the total prisoners in India are imprisoned without conviction. In the last five years, only in 2019, the growth of convict prison population was more than undertrial prison population. Although the country's incarceration rate, at 35 per 100,000, is much lower than BRICS countries, like Brazil and Russia, but as of December 2019, the nationwide prison occupancy rate stood at 119%, up from

<sup>1</sup> Due to non-receipt of data for 2 years, the NCRB has repeated *Prisons Statistics India (Dec 2017)* data for West Bengal in the latest PSI report (Dec 2019)

114% (IJR 2019), with prisons in Delhi overcrowded by as much as 75% while those in Uttar Pradesh by nearly 70%. The most overcrowded prisons were Central (124%) and District jails (130%).

India's prisons remain places of custody with little movement toward becoming places of correction and rehabilitation. Overcrowding coupled with staff shortages at all levels— low salaries, poor training, long hours, characterise prison administrations across states.

### Overcrowded prisons

Much of the overcrowding continues to be due to the presence of 'undertrials' – people in custody awaiting investigation, inquiry or trial. They still constitute nearly 70% of all prison inmates. In 35 States and UTs, the share of undertrial inmates was above 50 per cent. Over 5 years the share of undertrial prisoners shows an increasing trend in 23 states/UTs<sup>2</sup>. For every convict, India has two undertrials in its jails. With the lock down prisoners' rights have been affected by delays and lack of access to lawyers and courts. Video conferencing has proved to be only a partial remedy.

16 states/UTs report that 90% of their jails have video-conferencing facilities. Five of the large and mid-sized states though had less than 50%; Kerala (42%); Rajasthan (38%); West Bengal (32%); Karnataka (31%); and Tamil Nadu (9%). Nagaland, Mizoram and Sikkim's jails had none.

Despite the newfound significance in the wake of the COVID-19 pandemic<sup>3</sup> the increasing use of this technology without rigorous oversight monitoring and evaluation of its functioning continues to throw up grave doubts about its impact on the fair trial rights of accused persons

### Almost one-third of the sanctioned positions of prison officials is vacant

Vacancies plague prison administration. Nationally at 2019 average vacancies ranged from 29% (cadre staff) to 42% (correctional staff). While having reduced at all positions, vacancies have increased since 2016 at the level of correctional staff (from 39% to 42%) and medical staff (from 35 % to 41%).

At officer level, half the states/UTs have about one in three positions vacant. Vacancies range from 75% in Uttarakhand to less than 1% in Telangana while cadre staff vacancies stand at 29%. Amongst states, vacancies range from 64% in Jharkhand to none in Nagaland.

The Model Prison Manual, 2016, has suggested one correctional officer for every 200 prisoners, and one psychologist for every 500. The national average stands at one probation/welfare officer per 1,617 prisoners and one psychologist/psychiatrist for every 16,503 prisoners. At the state-level, this goes up to 50,649.<sup>4</sup> Nine states/ UTs, including Andhra Pradesh and Sikkim, have not sanctioned any posts. In the twenty-seven states/UTs that have, vacancies can range from 100 per cent to no vacancies.<sup>5</sup>

At the cadre level, as of 2019, only 14 states met the benchmark of six inmates per cadre set by the manual; a slight decline since IJR 2019.

Even more worrying is the vacancies of medical staff. With COVID-19 still in full swing the risk to inmates and staff has gone up manifold.

<sup>2</sup> A&N Islands, Mizoram, Uttarakhand, Chandigarh, Delhi, Manipur, Tripura, Punjab, Tamil Nadu, Haryana, Sikkim, Assam, Maharashtra, Karnataka, Himachal Pradesh, Telangana, Gujarat, Uttar Pradesh, Madhya Pradesh, West Bengal, Odisha, Puducherry, Jammu & Kashmir

<sup>3</sup> The Supreme Court suspended physical production of undertrials in courts vide its 23 March order in the Suo Moto Writ Petition (Civil) No 1 of 2020.

<sup>4</sup> Uttar Pradesh

<sup>5</sup> A&N Islands (not ranked), Jharkhand, Telangana, Uttar Pradesh.

As against the norm of placing at least one medical officer for every 300 prisoners, and one doctor being always available in central prisons, in half the states/UTs about one in four positions remains empty. Twelve states/UTs<sup>6</sup> have a shortfall of 50% or more medical officers, Punjab and Arunachal Pradesh both have more officers than their sanctioned strength.<sup>7</sup>

Overcrowding coupled with high vacancy levels inevitably result in: a) inmates bring crowded together -- young and first-time offenders with repeat offenders -- and locked up in small spaces despite the availability of vacant barracks; b) minimal welfare initiatives; and c) compromised visiting hours.

### Need for better health for prisoners

The number of deaths per 100,000 prison population in 2001 was 311.8, which increased to 382.2 in 2016. In 2019, it is 370.87. The prevalence of HIV, sexually transmitted infections, Hepatitis B and C, and tuberculosis in prison populations is two to 10 times higher than the general population. The rate of infections from the COVID virus is not fully known. But as of Dec 2020, over 18,000 inmates and staff<sup>8</sup> have been affected.

• Budget	<ol style="list-style-type: none"> <li>1. Spend per inmate (Rs, 2019-20)</li> <li>2. Prison Budget utilised (% , 2019-20)</li> </ol>
• Human Resources	<ol style="list-style-type: none"> <li>1. Officers, vacancy in prisons (% , Dec 2019)</li> <li>2. Cadre Staff, vacancy in prisons (% , Dec 2019)</li> <li>3. Correctional staff, vacancy in prisons (% , Dec 2019)</li> <li>4. Medical staff, vacancy in prisons (% , Dec 2019)</li> <li>5. Medical officer, vacancy in prisons (% , Dec 2019)</li> </ol>
• Diversity	<ol style="list-style-type: none"> <li>1. Women in prison staff (% , Dec 2019)</li> </ol>
• Infrastructure	<ol style="list-style-type: none"> <li>1. Prison occupancy (% , Dec 2019)</li> </ol>
• Workload	<ol style="list-style-type: none"> <li>1. Inmates per officer (persons, Dec 2019)</li> <li>2. Inmates per cadre staff (persons, Dec 2019)</li> <li>3. Inmates per correctional staff (persons, Dec 2019)</li> </ol>
• Technology	<ol style="list-style-type: none"> <li>1. Jails with V-C Facility (% , Dec 2019)</li> </ol>
• Training	<ol style="list-style-type: none"> <li>1. No. of personnel trained (% , Dec 2019)</li> </ol>
• Trends	<ol style="list-style-type: none"> <li>1. Officer vacancy (pp, CY '15-'19)</li> <li>2. Cadre staff vacancy (pp, CY '15-'19)</li> <li>3. Share of women in prison staff (pp, CY '15-'19)</li> <li>4. Inmates per prison officer (pp, CY '15-'19)</li> <li>5. Inmates per cadre staff (pp, CY '15-'19)</li> <li>6. Share of undertrial prisoners (pp, CY '15-'19)</li> <li>7. Spend per inmate (% , FY '16-'20)</li> <li>8. Budget used (pp, FY '16-'20)</li> <li>9. Difference in spend: prisons vs state (pp, FY '14-18)</li> </ol>

<sup>6</sup> Uttarakhand, West Bengal, Goa, Karnataka, Mizoram, Jharkhand, Madhya Pradesh, Assam (not ranked), Haryana, Chhattisgarh, Chandigarh (not ranked), Tripura.

<sup>7</sup> PSI data does not indicate if medical officers enumerated include part time and contractual staff or only full-time medical government doctors

<sup>8</sup> <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>