

IMPRISONED AND UNSAFE

PRISONERS AND
THE PANDEMIC



Lockdown on Civil Liberties - I
A PUCL (Maharashtra) series

The Lockdown on Civil Liberties Series

The lockdown and attendant issues have led to major violations of civil liberties and human rights. While some restrictions on rights may have been inevitable due to the nature of the pandemic, we believe that a large number of violations were entirely avoidable. The impact has been across sectors including economy, education, health, media, prisons, employment, migrant workers, women, domestic workers, sex workers, access to justice and many other segments. The lockdown has also been used by the Government to push through undemocratic means laws and policies which are against the people.

In this context the PUCL Maharashtra has decided to bring out various segmentwise reports to record the impact. While some of the reports like the present one focuses on Maharashtra others deal with all India situation.

The present report is the first in the series. PUCL had filed a Petition in the Bombay High Court concerning the prison conditions in Maharashtra and many of the annexures are taken from status reports filed by the State Government in Court. Some of them are therefore in Marathi and the report itself concentrates on Maharashtra.

This Report has been authored by Mihir Desai but is a combined effort of many persons including Vijay Hiremath, Shiraz Prabhu, Sandhya Gokhale, Lara Jesani, Geeta Seshu, Chayanika Shah, and many other members of PUCL (Maharashtra). We are also thankful to lawyers Kritika Agarwal, Isha Khandelwal and Archana Rupwate for helping with the court case.

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PUCL (Maharashtra)

2nd September, 2020

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Introduction

On 11th August, 2020 the Times of India reported that on 9th August 8 prison staff in Taloja prison, Navi Mumbai had tested positive¹. As of 1st August, 19 prisons in the state reported 1029 Covid-19 cases, which included 769 inmates and 260 jail staff². The news about spread of Covid-19 in the country's prisons is not surprising.

On 21st July there was an article in Scroll³ which reported that 86 people lodged in Anantnag jail in South Kashmir had tested positive. This jail has capacity of 60 prisoners but it houses 193 prisoners. On the other hand, in Guwahati's central jail it was found that Akhil Gogoi, a peasant leader and activist against the Anti citizenship protest was tested positive for coronavirus. When tests were done out of 1000 prisoners 438 had been tested positive. On the same day, 18 prisoners from Cuddalore, Villipuram and Kallakurichi sub-jails in Cuddalore district of Tamil Nadu were reported to be Covid positive⁴. As of 27th July, the pandemic which had spread to jails in Odisha, had 7 prisoners in Puri, 5 in Rourkela, 2 in Umakote, 9 in Chowduar, 1 in Jajpur, 5 in Banpur and 54 prisoners and 14 jail staff in Behrampur testing Covid positive⁵. In Jeypore sub-jail at Koraput, by 10th August, five persons including the jail superintendent, two wardens and two prisoners had tested Covid positive⁶. In Rajahmundry prison in Andhra Pradesh, on 6th August, from 900 inmates who were tested out of 1640 lodged in the jail, 247 tested Covid positive⁷. In a latest news, a total of 59 prisoners in Poojappura Central Prison in Thiruvananthapura, all

¹ <https://timesofindia.indiatimes.com/city/mumbai/8-more-taloja-prison-staff-test-Covid-positive/articleshow/77471822.cms>

² <https://indianexpress.com/article/cities/mumbai/after-state-directives-temporary-prisons-double-up-as-isolation-Covid-care-facilities-6536267/>

³ <https://scroll.in/article/968068/Covid-19-in-conflict-zones-nearly-half-the-inmates-of-two-prisons-in-kashmir-and-assam-infected>

⁴ <https://www.newindianexpress.com/states/tamil-nadu/2020/jul/22/18-prisoners-in-three-northern-tn-districts-test-positive-2173037.html>

⁵ <https://thewire.in/rights/odisha-prisons-Covid-19-spread>

⁶ <https://www.newindianexpress.com/states/odisha/2020/aug/10/jeypore-jail-superintendent-tests-Covid-19-positive-along-with-four-others-2181410.html>

asymptomatic, have tested Covid positive on 12th August, out of 107 prisoners who were tested following the positive test of a 71 year old remand prisoner⁸. The situation across other jails in the country cannot be much different. But lack of testing and lack of transparency prevents us from knowing the true picture.

While the jury is still out on many aspects of Covid-19, three things are clear. One of the ways of curtailing its spread is through physical distancing. Additionally, individuals are required to disinfect their hands regularly and wear masks when in public. Second, those who are suspected to be positive or have been in proximity with those who are positive require to be residentially or institutionally quarantined. Third, the only way to ascertain whether a person is positive is through the RT-PCR test popularly known as swab test.

Physical distancing, hygiene, adequate and clean quarantine facilities and testing are therefore the minimum requirements to deal with the Covid-19 situation. Additionally early medical care is a must.

In India prisons are as a rule overcrowded. The density is higher than the capacity even without taking into account physical distancing. When one takes into account physical distancing the congestion is a ripe recipe for spread of infection. Besides, generally the hygienic conditions in prisons are very poor and medical facilities are sparse. Prisoners connection to the outside world is either through personal interviews with family members and lawyers or during their court visits. This has been stopped presently. But the staff comes and goes to the prison on a daily basis and interacts with prisoners and similarly new prisoners from outside are admitted to the prisons. The latter can be controlled through stoppage of admitting new inmates or allowing them only after quarantine. But the staff's entry and

⁷ <https://timesofindia.indiatimes.com/city/vijayawada/andhra-pradesh-247-inmates-in-rajahmundry-prison-test-positive-for-Covid-19/articleshow/77397849.cms>

⁸ <https://www.newindianexpress.com/states/kerala/2020/aug/12/thiruvananthapuram-prison-on-high-alert-after-59-inmates-test-positive-for-Covid-19-2182505.html>

exit is a regular affair since many of them do not stay within prison precincts. In addition many food items and medicines are brought from outside and there is chance of infection.

Thus while the chance of initial infection would be lower in prison than in an ordinarily crowded place, once infection enters, its spread is very difficult to stop. The same is the case with other homes of confinement including children's homes, women's homes, beggars' homes, etc. While the present Report is confined to prisons the situation would not be any better in the other homes.

To begin with it is important to recall that the prisoners, in terms of health and health care have the same rights as an ordinary citizen. It is important to look briefly at the development of prison jurisprudence in India.

Supreme court and prison conditions

Public interest litigation which started developing in India since the late 1970s has its origin in prison conditions. The Supreme Court, sometimes as a response to a petition filed before it or at times on the basis of a letter from a prisoner passed series of judgments concerning prison conditions over the next few decades. Essentially the Supreme Court held that the prisoners were not deprived of their fundamental rights merely because of incarceration. Besides, "bail not jail" was the principle laid down. Torture in any form was outlawed. To what extent these directions were actually implemented is altogether a different matter. Even prior to the era of public interest litigation, the Supreme Court had intervened in some cases concerning prisoners' rights.

In 1966 in *State of Maharashtra v. Prabhakar Pandurang Sanzgiri* aid of Article 21 was taken for the first time to a prisoner while dealing with the question of his right of reading and writing books while in jail.

The segregation of prisoners was challenged in *D. Bhuvan Mohan Patnaik v. State of A.P.*⁹ and a three-Judge Bench of the Supreme Court held that resort to oppressive measures to curb political beliefs (the prisoner was a Naxalite because of which he was put in a “quarantine” and subjected to inhuman treatment) could not be permitted.

In the landmark judgment in the case of *Sunil Batra (II) v. Delhi Administration*¹⁰, the Apex Court held:

48. Infringements may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infringement of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infringement will be arbitrary under Article 14 if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and unappealable, and unfair, under Article 21 if it violates natural justice. The string of guidelines in *Batra* [*Sunil Batra v. Delhi Admn.*, (1978) 4 SCC 494] set out in the first judgment, which we adopt, provides for a hearing at some stages, a review by a superior, and early judicial consideration so that the proceedings may not hop from Caesar to Caesar. We direct strict compliance with those norms and institutional provisions for that purpose.

In Paragraph 53 of the decision, the Apex Court held thus:

53. Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this humane amenity. Subject, of course, to search and discipline and

⁹ 1975 3 SCC 185

¹⁰ 1980 3 SCC 488

other security criteria, the right to society of fellow-men, parents and other family members cannot be denied in the light of Article 19 and its sweep. Moreover, the whole habilitative purpose of sentencing is to soften, not to harden, and this will be promoted by more such meetings. We see no reason why the right to be visited under reasonable restrictions, should not claim current constitutional status. We hold, subject to considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of rights and shall be respected.

In *Kishore Singh Ravinder Dev v. State of Rajasthan*¹¹ the Court dealt with the parameters of solitary confinement. In *Prem Shankar Shukla v. Delhi Admn.*¹² and *Kadra Pehadiya v. State of Bihar*¹³ Supreme Court prohibited putting of undertrial prisoners in leg-irons or as they are popularly known bar fetters. A challenge was made to a prison rule which permitted only one interview in a month with the members of the family or legal advisor in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*¹⁴ and the rule was held violative of Article 21.

Besides, right to speedy trial is held to be a fundamental right. This includes granting bail where trial is protracted. The first decision in this regard is by a two-Judge Bench in Supreme Court *Legal Aid Committee representing Undertrial Prisoners v. Union of India* [(1994) 6 SCC 731 : 1995 SCC (Cri) 39], where the Bench was concerned with the detention of a large number of persons in jail in connection with various offences under Narcotic Drugs and Psychotropic Substances Act, 1985. The Court, after noting the stringent provisions relating to bail as incorporated in that Act, directed release of those undertrial prisoners who were languishing in jail for a period exceeding half of the punishment provided in the Act. This decision was cited with approval by another two-Judge Bench in *Shaheen Welfare Assn. v. Union of*

¹¹ 1981 1 SCC 503

¹² 1980 3 SCC 526

¹³ 1980 3 SCC 526

¹⁴ 1981 1 SCC 608

India [(1996) 2 SCC 616 : 1996 SCC (Cri) 366] in which harsh provisions of TADA were borne in mind and the Bench felt that a pragmatic and just approach was required to be adopted to release TADA detenus on bail because of delay in conclusion of trials. The Bench classified these undertrials in four categories and passed different orders relating to their release on bail. The Petition before the Apex Court was founded on a letter received.

In a recent decision in the case of Inhuman Conditions in 1382 Prisons¹⁵, the Apex Court dealt with the issue of implementation of Section 436–A of the Code of Criminal Procedure, 1973 as well as the Prison Reforms. In Paragraph 56, the Apex Court issued various directions which read thus

56. The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity. To give effect to this, some positive directions need to be issued by this Court and these are as follows:

56.1. The Undertrial Review Committee in every district should meet every quarter and the first such meeting should take place on or before 31-3-2016. The Secretary of the District Legal Services Committee should attend each meeting of the Undertrial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.

56.2. The Undertrial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 CrPC and Section 436-A CrPC so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Undertrial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to

¹⁵ 2016 3 SCC 700

first-time offenders so that they have a chance of being restored and rehabilitated in society.

56.3. The Member-Secretary of the State Legal Services Authority of every State will ensure, in coordination with the Secretary of the District Legal Services Committee in every district, that an adequate number of competent lawyers are empanelled to assist undertrial prisoners and convicts, particularly the poor and indigent, and that legal aid for the poor does not become poor legal aid.

56.4. The Secretary of the District Legal Services Committee will also look into the issue of the release of undertrial prisoners in compoundable offences, the effort being to effectively explore the possibility of compounding offences rather than requiring a trial to take place.

56.5. The Director General of Police/Inspector General of Police in charge of prisons should ensure that there is proper and effective utilisation of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation, etc. . . .

56.8. The Undertrial Review Committee will also look into the issues raised in the Model Prison Manual, 2016 including regular jail visits as suggested in the said Manual.

Above are just a few instances of the Courts intervening but the Court reports both of High Courts and Supreme Court are filled with cases related with prison conditions. The Courts have from time to time expressed their anguish that despite repeated directions the prison conditions have not been improving. One of the recent case is the one decided by Bombay High Court in the case of Jan Adalat¹⁶ where finally while disposing of the case the Court issued the following directions:

ORDER :

(b) Till a Committee which the State Government is proposing to appoint submits its recommendations, the State

¹⁶ Jan Adalat Versus State of Maharashtra dated 1.3.2017

Government shall take a decision on the issue of number of toilets and bathrooms required in each existing Jail. **The State Government shall ensure that separate bathrooms are made available to the women prisoners for taking bath in privacy.** The State Government shall maintain the dignity of women prisoners by providing privacy to individual women prisoners ; . . .

(d) The State Government shall construct sufficient number of additional toilets in the aforesaid three Jails as well as in all other Jails in the State within a period of six months from today; . . .

(f) The State Government shall provide modern facilities to enable family members/relatives to meet the prisoners in all the Jails in the State including the aforesaid three Jails. Instead of fixing a metal grill for separating the prisoners and the persons interviewing the prisoners, glass windows or transparent acrylic windows shall be provided to ensure that the prisoner and visitor are clearly visible to each other. Modern Audio System shall be provided so that the prisoners and the persons interviewing the prisoners are clearly audible to each other. An arrangement shall be also made to provide adequate number of windows in all the Jails in the State so that all inmates can get an opportunity to meet their family members and lawyers as provided in the Rules. The number of windows provided shall be consistent with the number of prisoners in each prisoners. As regards the jails in Mumbai and Pune, compliance shall be made with the recommendations of the Judicial Officers on this aspect. The State Government shall provide electronic clock for the benefit of the visitors in the hall/room where interviews are conducted. Compliance with these directions shall be made within six months from today;

(g) **The State Government shall appoint a permanent Committee of Social Workers and Dietitians to make surprise visits to all Jails for testing the quality and quantity of food served to the prisoners as well as the cleanliness and hygiene in the kitchens in the Jails.**

The State Government shall appoint such Committees for every District. The Committees shall make surprise visits (without prior intimation to the Jail Officers) at least once in a month and regularly and punctually submit a report to the Inspector General of Prisons or to any Senior Officer appointed by him. Immediate remedial measures shall be taken on the basis of the reports including action against erring Jail staff ; . . .

(i) The State Government shall evolve a Scheme for ensuring that the women prisoners are able to meet their minor children (who are not staying with them) at frequent intervals.

(j) As regards the Jails at Arthur Road and Byculla in Mumbai and Yervada at Pune, the learned Principal Judge of the City Civil & Sessions Court at Mumbai or the Principal District Judge at Pune, as the case may be, shall nominate Judicial Officers to visit the said Jails and to inspect the Jails in the context of implementation of the directions issued under this Judgment and Order as well as interim orders. Their first visit to the said three Jails shall be in July 2017. Thereafter, the Officers shall visit the Jails once in every six months;

(k) The Judicial Officers so appointed shall submit reports to the Registrar (Judicial-I) in a sealed envelope which shall be placed before this Court for consideration;

(l) As stated by the learned Additional Public Prosecutor, the State Government shall constitute a Committee presided over by a Retired Judge of this Court. The members of the Committee shall be the Additional Director General of Police—cum—Inspector General of Prisons, Shri S.N.Chavan, a Retired Prison Officer and Dr.Vijay Raghvan. The State Government may consider of appointing two other members as suggested in Paragraph 24 above. Necessary Government Resolution shall be issued within a period of one month from today. The Terms of Reference shall be fixed by the State

Government in terms of the observations made in this Judgment and Order. The Committee shall be empowered to look into all the aspects of the Jails in the light of the decisions of this Court as well as the Apex Court, the Model Prison Manual, 2016 (and its further versions) and Resolutions of the United Nations. The Committee shall suggest all measures to be for creating modern Jails with all proper amenities and for modernization of existing Jails ;

(m) The Committee shall be given time of six months to submit its report from the date on which entire infrastructure is provided. Needless to add that all infrastructures such as adequate office premises, meeting room, furniture, computers, printers, secretarial staff, etc. shall be made available to the members of the Committee;

(n) The State Government shall comply with all the directions contained in all the interim orders which are not inconsistent with Judgment within a period of three months;

Five things are clear from this. First, the Courts have repeatedly held that incarceration does not lead to prisoners being deprived of their fundamental rights. Second, prisoners' constant interaction with families is very crucial. Third, despite repeated directions prison conditions remain pathetic. Fourth, prison administration cannot be relied upon to reveal the reality of prison conditions and thus surprise visits by independent bodies are a must to oversee the prisons. Fifth, prisons are very congested.

Any effective dealing with Covid like situation requires the prison administration and courts to bear in mind the above.

Supreme court in Covid times and prisons

Possibly realizing this, the Supreme Court, on 16th March, 2020 issued notices in a suo motu petition to all State Governments

concerning prison conditions. The Supreme Court in its order observed¹⁷:

While the Government of India advises that social distancing must be maintained to prevent the spread of Covid-19 virus, the bitter truth is that our 3 prisons are overcrowded, making it difficult for the prisoners to maintain social distancing. There are 1339 prisons in this country, and approximately 4,66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%, and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3% respectively. Like most other viral diseases, the susceptibility of Covid-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses such as Covid-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenues etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of Covid-19 virus to the prison inmates. For the reasons mentioned above, our prisons can become fertile breeding grounds for incubation of Covid-19.

On 23rd March, 2020 the Supreme Court issued directions to the State Governments and observed as follows¹⁸:

Taking into consideration the possibility of outside transmission, **we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes.** Also, the transfer of

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https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_1_1_21537_Order_16-Mar-2020.pdf

¹⁸ https://www.livelaw.in/pdf_upload/pdf_upload-371636.pdf

prisoners from one prison to another for routine reasons must not be resorted to except for decongestion to ensure social distancing and medical assistance to an ill prisoner. **Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen. We also direct that prison specific readiness and response plans must be developed in consultation with medical experts.** “Interim guidance on Scaling-up Covid-19 Outbreak in Readiness and Response Operations in camps and camp like settings” jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. **A monitoring team must be set up at the state level to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously.** The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (Covid - 19). Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled. **We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate.** For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser

number of years than the maximum. **It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.** The Undertrial Review Committee contemplated by this Court In re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment. The High Powered Committee shall take into account the directions contained in para no.11 in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

On 7.4.2020 the issue of transport for the released prisoners was taken up, especially in view of the lockdown and the Supreme Court ordered¹⁹:

In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force. We further direct that the States/Union Territories shall ensure through Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of lockdown.

Finally, on 13.4.2020 the Supreme Court observed²⁰:

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https://main.sci.gov.in/supremecourt/2020/9761/9761_2020_0_17_21585_Order_07-Apr-2020.pdf

We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

Subsequent to this, the Supreme Court has not at all looked at the situation of prisons. It was expected that each of the States was required to file detailed periodic status reports concerning decongestion of prisons, health facilities in prisons, testing carried out and the health status of prisoners but this has not been done.

Prison situation in Maharashtra

Maharashtra has totally 60 prisons. As on 31st March, 2020 the total capacity of these prisons was 24,032 while the total number of prisoners were 36,061- thus 150% of the capacity. Out of these 9169 (25%) were convicts and 26,762 (75%) were undertrials. The prison wise breakdown is given in **Annexure 1**.

According to a statement given by the State Government in the High Court, taking into account social distancing norms required to be maintained the prison population should be reduced to 16,000. It was therefore important to release approximately 20,000 prisoners to make social distancing possible. A copy of the Statement is at **Annexure 2**.

On 16th March, 2020 the prison and state authorities held a video conferencing meeting and they decided that in order to decongest prisons, courts should be approached and requested to grant bail/ provisional bail in matters involving minor crimes and personal interviews with family members and lawyers should

be stopped for 15 days. The report filed by State Government which includes these Minutes is at **Annexure 3** .

State Government constituted the High Powered Committee presided over by a senior sitting judge of the Bombay High Court. The Committee met for the first time on 25th March, 2020. It recommended that

1. Undertrial prisoners who would face maximum punishment of less than 7 years or less be released on interim bail on personal bond for 45 days and after that on blocks of 30 days till such time as the notification under Epidemic Diseases Act continues;
2. Convicted prisoners who have been sentenced to 7 years or less be considered for emergency parole on similar basis by the prison authorities
3. Those convicted for more than 7 years could be released only on similar emergency parole provided on the earlier occasions when they were granted parole or furlough they had surrendered on time.
4. The authorities were to take into account the seriousness of the crime while granting release.
5. Those charged with or convicted of serious economic offences/ bank scams or charged under certain special laws like PMLA, MCOCA, UAPA were not be extended this benefit.
6. The release was to be effected within 7 days of the prisoner making the application.

Copy of the Minutes is at **Annexure 4**.

Since under the parole rules of the State Government emergency parole could only be granted under restricted conditions such as death of a relative, on 8th May, 2020 the parole rules were amended by the State to incorporate the above situation extending emergency parole during Covid times. A copy of the Amended Rules is attached as **Annexure 5**.

In the meanwhile, on 8.4.2020 Advocate Mr. S. B. Talekar made a representation challenging the discrimination concerning interim bail and parole to those charged under special laws like UAPA.

The High Court took it up and finally observed that this was for the High Powered Committee to decide. The HPC took up this issue on 11.5.20 and rejected the contention and thus those charged under UAPA, etc. continued to be excluded²¹.

Decongestion should have been based, apart from other things, on age, disabilities, comorbidities, sex and general health conditions. This would be especially true for undertrials, who are yet to be held guilty of any offences.

In any event, in a separate order passed by the HPC on 11.5.2020 the Court noted that between 25.3.2020 and 10.5.2020 5105 prisoners were released and 3017 were in the process of being released. The HPC observed that even undertrial prisoners charged with offences having sentence of more than 7 years would be released on personal bonds in the manner which convicts were to be released. In fact this was an oversight in the earlier order which needed to be rectified. The HPC felt that with this change the number of prisoners who could be additionally released would be 9520 thereby totaling the released prisoners to 17642 leaving 17597 prisoners inside the 60 prisons decongesting them. This was also because 37 additional temporary prisons were started so that new arrestees could be placed in those prisons and not in the existing 60 prisons. A copy of the Minutes is at **Annexure 6**.

The intention may have been good but the results were disastrous. In all likelihood, many of the convicted prisoners whose parole depended on the prison authorities managed to get paroled as some of the prison authorities were keen to remove congestion. But those who were undertrials had to apply to courts to get temporary bails and many of these bail applications, rather than being decided on pure humanitarian grounds in the Covid situation were decided on merits and rejected. The end result was that on 19.6.2020 the prison population in the 60 prisons was 28,950 much higher than the normal capacity and far too much higher than the 16,000 capacity needed for social distancing. A chart showing the breakup of prison population on 19.6.2020 is at **Annexure 7**.

²¹ https://www.livelaw.in/pdf_upload/pdf_upload-374650.pdf

This does not include the prison population of temporary prisons whose occupancy is not known.

The High Court passed its judgment on various aspects of prison conditions on 2.7.2020. Various Petitions including one filed by PUCL were decided. As regards decongestion the Court however refused to interfere. Essentially the High Court held that since HPC was constituted by the Supreme Court and HPC was at full liberty to decide inclusions and exclusions for parole and temporary bail.

This was a completely erroneous approach by the High Court. While the Supreme Court had directed HPCs to be set up and determine the persons who should be released, this did not denude the High Courts from exercising their jurisdiction under Article 226 of the Constitution to examine the decisions of the Committee. Besides this was a gross case of violation of Article 21 of the Constitution of India wherein large number of prisoners were at the risk of being infected. It was a question of right to life and it is not open to the High Court to say that we will not intervene when the right to life is at stake. This High Court judgment dated 2.7.2020 is at **Annexure 8**.

Subsequently another Petition was filed, this time by National Alliance of Peoples Movements (NAPM) and Medha Patkar challenging the discriminatory treatment by the HPC concerning not allowing the release of prisoners charged under special laws like UAPA, NDPS, MCOCA, etc. This Petition was also dismissed by the High Court holding that there was nothing unreasonable or arbitrary about not releasing such persons. A copy of the High Court's Judgment delivered in August, 2020 is at **Annexure 9**.

We believe that it is important for the HPC to immediately ensure decongestion of prisons by not making distinction on the basis of offences charged with especially for those prisoners above 60 years. Even for those below 60 years if the prisoners are suffering from comorbidity they should be released on temporary bail. Convicts are granted parole while undertrials are granted bail- temporary or otherwise. When offence against a person is not yet proved distinction based on offence is totally unjustified. Several political prisoners charged under Special Laws like UAPA,

are facing incarceration in spite of flimsy evidence and charges under these laws have led to indefinite incarceration without any conviction, whereby the process itself is the punishment.

SPREAD OF Covid IN PRISONS

On 2nd May, 2020 the Central Government issued Guidelines and protocols concerning safety measures in prisons. These are too broad and at times very vague but even these soft protocols are hardly followed. A copy of the Guidelines are at **Annexure 10**.

On 10th May, 2020 it was reported that in Arthur Road prison in Mumbai , out of 270 persons tested 77 inmates and 26 staff members were tested positive. Arthur Road prison has the capacity of 804 prisoners but it had 2800 prisoners.

This led to a plethora of public interest litigations being filed in Bombay High Court including one by PUCL which has been referred to above. It was pointed out that the relatives do not even know as to who was tested positive and who was tested negative. Status Report was sought from the State Government by the Court. The Court also directed the prison authorities to inform the relatives about those who were tested positive. Towards the end of May a report was filed by the Government. This Report disclosed that nearly 179 persons across 6 prisons had been tested positive with as many as 158 from Arthur Road²². See Annexure 3.

What was more important was the revelation in the report that four prisoners in different prisons had died and it was after their death that they were detected Covid positive.

Soon the infection also spread to other prisons. On 4th June it was reported that 60 persons including 8 staff members had been found positive in Solapur prison²³. On 6th June it was reported that

²² This list was given by the State with the other documents attached in Annexure 3. Without any concern for privacy, the State had also disclosed the names of all the people who had contracted Covid-19 in the prison. To safeguard their right to privacy we have not included the names here in this report.

29 prisoners in Aurangabad were found to be positive²⁴. On 15th June another report was filed which showed that in 11 prisons 17,695 persons were screened, swab testing was done for 1681 prisoners out of whom 269 were detected positive. A copy of the Report dated 15.6.2020 is attached as **Annexure 11**.

All this information came out not voluntarily by the State or prison authorities but through media information and later on through status reports directed by the Court. The cases were disposed on 2nd July, 2020 and now there is no official manner of knowing how many prisoners are tested and how many are positive. The website of prisons is very sketchy and does not deal with Covid affected persons.

On 10th July it was reported that 596 inmates and 167 prison staff have tested positive for the coronavirus disease (Covid-19) across the state till date. It was also reported that the Nagpur Central Prison is the worst hit, with more than 200 inmates and 57 prison staff infected with the virus²⁵. Many prison staff anonymously reported that there was large scale under reporting of Covid positive cases from prisons.

One of the major issues in these cases concern testing. While during the hearings the State authorities agreed to ensure that every prisoner would be daily subjected to thermal temperature testing , this is hardly effective. What is necessary is the swab test. It became necessary to do the swab test of all prisoners in contact with those who are positive. But initially the jail authorities insisted on doing swab tests only of those who were symptomatic. During the hearing of the cases it said that it would do swab test of asymptomatic prisoners if they were “high risk” prisoners. High risk meaning those asymptomatic persons who are in contact with positive persons for at least 15 minutes within a range of 3 feet. This is highly unsatisfactory definition at

²³ <https://www.news18.com/news/india/60-including-eight-staff-contract-coronavirus-at-solapur-jail-2653847.html>

²⁴ <https://www.news18.com/news/india/29-inmates-from-aurangabad-central-jail-test-positive-for-coronavirus-2656837.html>

²⁵ <https://timesofindia.indiatimes.com/city/pune/Covid-19-cases-rise-in-maharashtras-prisons/articleshow/76889295.cms>

least for prisons. However the Court in its judgment accepted it and further said that any persons developing symptoms within prisons should be tested.

The paucity of testing is also reflected by the fact that Vara Vara Rao, the famous poet who has been incarcerated since nearly 2 years under UAPA was found to be positive only when he was taken out of the jail to a Government hospital for treatment concerning other ailments²⁶. For two co-prisoners incarcerated in the same case who were in close contact with Vara Vara Rao - noted academic Anand Teltumbde and activist Mahesh Raut - obtaining credible test reports from the prison authorities has itself posed a challenge. The Covid test of the latter who had been suffering fever for 4-5 consecutive days had been declared to be negative, even as discrepancies have been found in medical reports submitted before the Bombay High Court, which has consequently sought an explanation from the Taloja Prison officials²⁷.

It also needs to be kept in mind that while all prisons need to have medical staff, many of those posts are not filled up. Out of 175 sanctioned posts of health workers including doctors 63 posts are vacant. One can imagine in a situation like the present one this dearth of staff would have even more impact than usual. A chart showing the present prison medical staff is at **Annexure 12**.

We immediately demand that all vacant positions in prisons be immediately filled up and prisoners and staff be regularly tested through swab testing and be provided adequate equipment including masks, sanitizers, etc. to protect themselves.

Personal visits

²⁶ <https://www.thehindu.com/news/national/varavara-rao-tests-positive-for-Covid-19/article32103559.ece>

²⁷ <https://mumbaimirror.indiatimes.com/coronavirus/news/bhima-koregaon-elgar-parishad-teltumbde-raut-have-same-bp-pulse-and-o2-levels-jail-reports/articleshow/77425081.cms>

The interaction between prisoners and their relatives and lawyers happens at two places- one during prison visits by relatives and lawyers and second when the prisoners, especially undertrials are produced in Court at regular intervals. Both types of personal visits were stopped as soon as the lock down began and in fact a little prior to that. Even the Supreme Court in its order dated 23.3.2020 (referred to earlier) categorically stated that these visits and appearances have to stop.

In ordinary times under the *Maharashtra (Facilities to Prisoners) Rules, 1962* the undertrial as well as newly convicted prisoners are entitled to personal meetings (interviews) with relatives. Convicts are also entitled to interviews. The interview is to last for 20 minutes and can be extended if required. The Supreme Court has held (as quoted below) that prisoners are entitled to minimum 2 interviews per week irrespective of what the rules say. The practice being followed across prisons after the lock down was that each prisoner was allowed one call a month for 2 minutes.

A categorical principle governing the rights of prisoners has been laid down in *Sunil Batra v. Delhi Admn.*, where the Hon'ble Supreme Court held that interview/interaction with family members, close friends etc are part of prisoners' guaranteed constitutional rights and the treatment of the prisoners should satisfy the test of Articles 14, 19 and 21 of the Constitution²⁸. The Court held that the visits to prisoners by family members and friends are solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison inmates of this human amenity. Following the guidelines enunciated in the Sunil Batra case, the Supreme Court in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* held²⁹,

No prison regulation or procedure laid down by any prison regulation, regulating the prisoner's right to have interviews with members of his family and friends can be upheld as constitutionally valid under Articles 14 and 21 unless it is reasonable, fair and just...**We would go so far as to say**

²⁸ 1978 4 SCC 494

²⁹ 1981 1 SCC 608

that even independently of Rules 550 and 559A, we would regard the present norm of two interviews in a week for prisoners as furnishing a criterion of what we would consider reasonable and non-arbitrary.

Every prisoner is entitled under Article 22 of the Constitution to consult and be defended by a legal practitioner of her/his choice. In Francis Coralie matter(supra), the Supreme Court further observed that:

On the right of a prisoner to consult a lawyer, the Hon'ble Supreme Court held that the right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously included in the right to live with human dignity and is also part of personal liberty ... **A prison regulation may, therefore, regulate the right of a detenu to have interview with a legal adviser in a manner which is reasonable, fair and just but it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview and if it does so, it would be violative of Articles 14 and 21.** We are therefore of view that sub-clause (i) of clause 3(b) regulating the right of a detenu to have interview with a legal adviser of his choice is violative of Arts. 14 and 21 and must be held to be unconstitutional and void.

During the pendency of the petition in the High Court, a circular dated 27.5.2020 was issued allowing all prisoners to avail coin-phone and video call services to contact their lawyers and family members. But it has been found that the telephonic facility is very erratic and sometimes prisoners are allowed very short conversations and sometimes not at all.

It is also the right of the family and lawyer to know the status of their family members/client lodged inside the prison. However even this was not being done. During the course of hearing some of the suggestions were accepted but even now the telephone

facility is very erratic and dependent on the subjective whim of the prison authorities.

The case of Vara Vara Rao who was in Taloja jail is illustrative. He was in Taloja prison and is 80 years old with comorbidities. He was initially shifted to the jail hospital due to ailments and was then taken to JJ Hospital Mumbai due to complications. His bail application was pending. In spite of his bad health he was rushed back to the jail hospital within 3 days and on one occasion when he was allowed telephonic conversation with relatives he seemed totally delirious and extremely unwell. Due to his stature in society as an extremely popular poet and dissenter this became a big issue and he was again rushed back to JJ Hospital. In the hospital he suffered head injury and he was also detected with Covid. Pursuant to being shifted to a private (Covid) hospital following a directive issued by NHRC, the family was denied updates of his health³⁰ until the Bombay High Court on 28th July permitted the family to meet him via video-conferencing³¹.

However since then, his relatives are not allowed to see him and neither the hospital nor the jail authorities are giving any updates of his health to his relatives³². Only when the Court asked have his reports been now filed in court but are yet to be shown to the relatives. The iron curtain around the jails and hospitals were preventing anyone from knowing what is the true picture. This was the case when the Court was monitoring the issue. One can imagine the situation in all other cases.

We therefore demand that prisoners be allowed to have telephonic/ video conferencing with their relatives/ lawyers at least twice in a week for 10 minutes each at the State's expense and the relatives be informed immediately and from time to time of the health status of the prisoners by the jail authorities and their health reports be handed over to the prisoners/ relatives.

³⁰ <https://indianexpress.com/article/india/varavara-raos-family-writes-to-nhrc-says-not-provided-information-about-his-health-6522220/>

³¹ <https://www.thehindu.com/news/cities/mumbai/kin-meet-varavara-rao-via-video-conferencing/article32241957.ece>

³² <https://www.outlookindia.com/website/story/india-news-720-hours-and-counting-ailing-varavara-raos-family-awaits-news-on-his-health-writes-jailed-poets-nephew/358492>

Monitoring of prisons

The entire prison jurisprudence which has developed from late 1960s and more particularly from late 1970s is on the recognition more particularly by the Supreme Court that prisoners are not denuded of their fundamental rights and the fact that incarceration leads to a situation where fundamental rights are difficult to exercise. It is also recognised that prison authorities tend to exercise unbridled power over the prisoners and therefore it is absolutely incumbent to make them accountable.

Towards this, two steps have been recognised by the Courts- one transparent flow of information and two monitoring of prisons by independent authorities.

The Supreme Court, in its order dated 23.3.2020 has also directed that a monitoring committee at the state level be set up to ensure that directions concerning remand homes and prisons are complied with. However no one knows what this monitoring committee has done.

Monitoring is a way of systematically measuring and assessing the extent of implementation of prison regulations and other aspects. It can allow constant feedback which can lead to a positive, systematic change. Under the current Covid-19 situation and a complete lack of communication or method for assessment, it becomes even more pertinent than ever that the prison system is closely monitored.

WHO has suggested in its report on *Prevention and control of Covid-19 in prisons and other places of detention* that:

“Even in the circumstances of the Covid-19 outbreak, bodies of inspection whose mandate is to prevent torture and other cruel, inhuman or degrading treatment or punishment should have access to all people deprived of their liberty in prisons and other places of detention (including persons in isolation), in accordance with the provisions of the respective body’s mandate.”

The Bombay High Court, in the case of Jan Adalat passed a Judgment on 1.3.2017 wherein two committees have been prescribed for visiting jails - one of social workers to make surprise visits to check diet, hygiene and cleanliness and the other of judicial officers for checking other conditions³³. The Judgment prescribes them as permanent committees. In fact during Covid times it is even more important to have monitoring since prisons have virtually become fortresses.

Surprise visit teams should be immediately activated and visit all prisons every 15 days. Their reports should be made public. Commonwealth Human Rights Initiative (CHRI) has come out with two formats for ensuring transparency and accountability for prisons during the time of Covid³⁴. It is important that prisons set up mechanisms in terms of these formats.

Temporary Prisons

In view of overcrowding, temporary prisons were required to be established. These have three objects. One, to keep new prisoners. Second, to decongest existing prisons by shifting some of the existing prisoners from jails. Third, to use as quarantine centres as also Covid care centres for prisoners.

Under Section 7 of the Prisons Act 1894, Collectors can declare locations in their districts as temporary prisons. From the latest information available Collectors of 27 districts throughout the State of Maharashtra have declared 36 locations as temporary prisons. Also a Government Resolution dated 15th May 2020 has been issued to enable Collectors to declare additional facilities as temporary prisons. The list of temporary prisons established is part of **Annexure 3**.

We received message from the lawyer from an inmate at Namdar Gopal Krishna Gokhale, Vidya Nagar, Kharghar which is a quarantine centre for Taloja prison. It is a school building. The

³³ 2017 SCC Online BOM 239

³⁴ <https://www.humanrightsinitiative.org/publication/report-of-the-national-consultation-on-prisons-ensuring-an-effective-response-to-Covid19>

inmate informed the lawyer who telephonically spoke to the inmate on 19.6.2020 that the conditions were abysmal with 350 inmates/people and only 3 toilets. One bathing facility with no bucket or mug. People were sleeping in corridors. The inmate is inside a classroom with 34 inmates and the facility is jam packed. No distancing is possible.

It is important that Temporary jails including quarantine and Covid care centres must comply with the standards as per the Guidelines for Quarantine Facilities including basic standards of hygiene and life compatibility issued by the Ministry of Health and Family Welfare. The Annexures therein must be filled in for the record of compliance of each Quarantine Facility and submitted to the ADG and made public.

Prisoners must be tested before being shifted from one jail to another. As of now phone call/video call facilities have been approved for an inmate in Prisons, there is no information if the same arrangements have been made for temporary jails.

The temporary jails cum Covid care centres must have records of all inmates, and must be readily available to the family of the concerned inmate. It must have a call facility similar to the ones available in existing prisons.

The persons newly remanded in custody are being sent to the Temporary Jails. It is important to have separate centres for isolating asymptomatic inmates so that the new inmates do not come in contact with a positive patient.

Conclusion

The prisons in Maharashtra are highly congested. They are ripe for spread of Covid-19 and this is precisely what has been happening. In the absence of proper hygiene and physical distancing Covid has been spreading across prisons. Prisons in Covid times are like closed fortresses with only some information trickling out. In the absence of any independent information it is impossible to find out how many prisoners and staff are affected

and how are they being treated. Even the limited information which has come out is scary. Even in normal times prisons in India are known to be consistently violating human rights. In the present situation of pandemic the situation has become much worse. It is crucial that the recommendations and demands raised by PUCL in this report be satisfactorily met for prisoners and even the staff to have some solace.

To summarise, we demand:

- (a) Immediate decision by the High Powered Committee to allow even prisoners charged under special laws such as UAPA, MCOCA, NDPS to be released on temporary bail or emergency parole during Covid times, especially if they are above 60 years of age or are suffering comorbidities;**
- (b) All willing prisoners and prison staff be regularly tested through the swab test and their reports be given to them and communicated to their families;**
- (c) All vacancies of especially medical staff in prisons be immediately filled up;**
- (d) Prisoners be allowed at least two free telephone calls/ video calls every week for ten minutes each with their relatives/ lawyers.**
- (e) Committees as set out in the Jan Adalat Case be immediately constituted and be directed to make surprise regular visits to prisons to ensure that all human rights of prisoners are protected. Accountability mechanisms be set up in terms of the formats spelt out by CHRI.**
- (f) Temporary prisons including quarantine centres and Covid care centres should meet the minimum requirements as prescribed for regular prisons.**

राज्यातील कारागृहांची माहिती माहे मार्च-२०२०

१) कारागृह प्रकार व संख्या

| अ.क्र. | कारागृह प्रकार | कारागृह संख्या |
|--------|----------------------------|----------------|
| १ | मध्यवर्ती कारागृह | ९ |
| २ | जिल्हा कारागृह | २८ |
| ३ | विशेष कारागृह रत्नागिरी | १ |
| ४ | किशोर सुधारालय नाशिक | १ |
| ५ | मुंबई जिल्हा महिला कारागृह | १ |
| ६ | खुले कारागृह | १९ |
| ७ | खुली वसाहत आटपाडी | १ |
| | एकूण | ६० |

२) अधिकृत बंदीसंख्या - २४०३२

प्रत्यक्ष बंदीसंख्या - ३६०६१

टक्केवारी - १५०

३) बंदीप्रकार व बंदीसंख्या

| अ. क्र. | बंदीप्रकार | बंदीसंख्या | | | |
|---------|--------------------|--------------|-------------|--------------|------------|
| | | पुरुष | स्त्री | एकूण | टक्केवारी |
| १ | सिध्ददोष बंदी | ८८०८ | ३६१ | ९१६९ | २५ |
| २ | न्यायाधीन बंदी | २५५७४ | ११८८ | २६७६२ | ७५ |
| ३ | स्थानबध्द/इतर बंदी | १३० | ० | १३० | ० |
| | एकूण | ३४५१२ | १५४९ | ३६०६१ | १०० |

| अ. क्र. | कारागृहाचे नांव | अधिकृत बंदीक्षमता | | | सिध्ददोष बंदी | | न्यायाधीन बंदी | | स्थानबद्ध/ इतर बंदी | | एकूण बंदी | | |
|---------|-------------------------------------|-------------------|------------|--------------|---------------|------------|----------------|------------|---------------------|----------|--------------|------------|--------------|
| | | पुरुष | स्त्री | एकूण | पुरुष | स्त्री | पुरुष | स्त्री | पुरुष | स्त्री | पुरुष | स्त्री | एकूण |
| अ) | मध्यवर्ती कारागृह | | | | | | | | | | | | |
| १ | अमरावती म.का. | ९०९ | ३४ | ९४३ | ८२५ | २९ | ४७८ | १८ | ० | ० | १३०३ | ४७ | १३५० |
| २ | नागपूर म.का. | १६६८ | १४२ | १८१० | ९३१ | ३३ | १३४० | ३६ | ५ | ० | २२७६ | ६९ | २३४५ |
| ३ | औरंगाबाद म.का. | ५०८ | ३१ | ५३९ | ८९३ | ३९ | ७६६ | ३९ | १६ | ० | १६७५ | ७८ | १७५३ |
| ४ | नाशिकरोड म.का. | २९५८ | ६० | ३०१८ | १४८२ | ४५ | १४४६ | ३१ | ५२ | ० | २९८० | ७६ | ३०५६ |
| ५ | कोल्हापूर म.का. | १६६५ | ३४ | १६९९ | ९६० | ३६ | १२१८ | ४० | ० | ० | २१७८ | ७६ | २२५४ |
| ६ | येरवडा म.का. | २३२३ | १२६ | २४४९ | १३५८ | ९१ | ४०४३ | १७० | ३१ | ० | ५४३२ | २६१ | ५६९३ |
| ७ | मुंबई म.का | ८०४ | ० | ८०४ | ६६ | ० | २८७५ | ० | ० | ० | २९४१ | ० | २९४१ |
| ८ | ठाणे म.का. | १०८० | २५ | ११०५ | १४३ | ८ | ३४४९ | ११२ | ६ | ० | ३५९८ | १२० | ३७१८ |
| ९ | तळोजा म.का. | २१२४ | ० | २१२४ | २५३ | ० | २३८२ | ० | ० | ० | २६३५ | ० | २६३५ |
| | एकूण (अ) | १४०३९ | ४५२ | १४४९१ | ६९११ | २८१ | १७९९७ | ४४६ | ११० | ० | २५०१८ | ७२७ | २५७४५ |
| ब) | जिल्हा कारागृह वर्ग-१ | | | | | | | | | | | | |
| १ | अकोला जि.का. | ६७३ | २२ | ६९५ | ४७ | ० | ३०३ | २५ | ४ | ० | ३५४ | २५ | ३७९ |
| २ | भंडारा जि.का. | ३३८ | ५ | ३४३ | ३४ | ० | २७७ | ८ | ० | ० | ३११ | ८ | ३१९ |
| ३ | चंद्रपूर जि.का. | ३२२ | ११ | ३३३ | ३५ | ० | ४४९ | १७ | १ | ० | ४८५ | १७ | ५०२ |
| ४ | यवतमाळ जि.का. | २२४ | ५ | २२९ | २८ | ४ | २६० | ११ | ० | ० | २८८ | १५ | ३०३ |
| ५ | मोर्शी खुले का. | २०० | ० | २०० | १४९ | ० | ० | ० | ० | ० | १४९ | ० | १४९ |
| ६ | वर्धा जि.का. | २४३ | ९ | २५२ | ३८ | ० | २४२ | ३ | १ | ० | २८१ | ३ | २८४ |
| ७ | गडचिरोली खु.का. | ७५ | ० | ७५ | ५८ | ० | ० | ० | ० | ० | ५८ | ० | ५८ |
| ८ | धुळे जि.का. | २८५ | ९ | २९४ | ३० | ० | २२३ | १९ | ० | ० | २५३ | १९ | २७२ |
| ९ | लातूर जि. का. | ४८० | २० | ५०० | ६ | ० | २८६ | १६ | ० | ० | २९२ | १६ | ३०८ |
| १० | किशोर सु.नाशिक | १०५ | ० | १०५ | ० | ० | ० | ० | १३ | ० | १३ | ० | १३ |
| ११ | पैठण खुले का. | ५०० | ० | ५०० | ३५३ | ० | ० | ० | ० | ० | ३५३ | ० | ३५३ |
| १२ | येरवडा खु.का. | १७२ | ० | १७२ | १६३ | ० | ० | ० | ० | ० | १६३ | ० | १६३ |
| १३ | भायखळा जि.का. | २०० | ० | २०० | ८१ | ० | २७१ | ० | ० | ० | ३५२ | ० | ३५२ |
| १४ | कल्याण जि.का. | ५०५ | ३५ | ५४० | ४६ | ७ | १७०० | १११ | ० | ० | १७४६ | ११८ | १८६४ |
| १५ | रत्नागिरी विशेष.का | २४३ | ३ | २४६ | ५ | ० | १३४ | १० | ० | ० | १३९ | १० | १४९ |
| १६ | मुंबई महिला जि.का. | ० | २६२ | २६२ | ० | ७ | ० | ३६१ | ० | ० | ० | ३६८ | ३६८ |
| | एकूण (ब) | ४५६५ | ३८१ | ४९४६ | १०७३ | १८ | ४१४५ | ५८१ | १९ | ० | ५२३७ | ५९९ | ५८३६ |
| क) | जिल्हा कारागृह वर्ग-२ | | | | | | | | | | | | |
| १ | बुलढाणा जि.का. | ९७ | ४ | १०१ | ७ | ० | २१८ | ९ | ० | ० | २२५ | ९ | २३४ |
| २ | वाशिम जि.का. | १७० | ३० | २०० | ४ | ० | १४९ | १२ | ० | ० | १५३ | १२ | १६५ |
| ३ | बीड जि.का. | १४४ | १७ | १६१ | ४ | ० | २२४ | १० | ० | ० | २२८ | १० | २३८ |
| ४ | जालना जि.का. | ५२६ | ३० | ५५६ | ६ | ० | १८३ | ३ | ० | ० | १८९ | ३ | १९२ |
| ५ | जळगांव जि.का. BUCL (Maharashtra) | १८६ | १४ | २०० | ८ | ० | ४३४ | १० | ० | ० | ४४२ | १९ | ४५२ |

| अ. क्र. | कारागृहाचे नांव | अधिकृत बंदीक्षमता | | | सिध्ददोष बंदी | | न्यायाधीन बंदी | | स्थानबद्ध/ इतर बंदी | | एकूण बंदी | | |
|-----------|------------------------------|-------------------|-------------|--------------|---------------|------------|----------------|-------------|---------------------|----------|--------------|-------------|--------------|
| | | पुरुष | स्त्री | एकूण | पुरुष | स्त्री | पुरुष | स्त्री | पुरुष | स्त्री | पुरुष | स्त्री | एकूण |
| ६ | नांदेड जि.का. | १०५ | ३० | १३५ | ४ | ० | १४१ | २० | ० | ० | १४५ | २० | १६५ |
| ७ | नंदुरबार जि.का. | ४५० | ५० | ५०० | १ | ० | १५६ | ० | ० | ० | १५७ | ० | १५७ |
| ८ | परभणी जि.का. | २४० | १२ | २५२ | ७ | ० | ३५४ | १३ | ० | ० | ३६१ | १३ | ३७४ |
| ९ | उस्मानाबाद जि.का. | २४२ | २७ | २६९ | १ | ० | १८७ | १६ | ० | ० | १८८ | १६ | २०४ |
| १० | औरंगाबाद खु.का. | ९० | ० | ९० | ७४ | ० | ० | ० | ० | ० | ७४ | ० | ७४ |
| ११ | अहमदनगर जि.का. | ६३ | ६ | ६९ | २ | ० | १२९ | ० | ० | ० | १३१ | ० | १३१ |
| १२ | सांगली जि.का. | २०५ | ३० | २३५ | २ | ० | ३२८ | ० | १ | ० | ३३१ | ० | ३३१ |
| १३ | सातारा जि.का. | १५९ | ९ | १६८ | १ | ० | २१४ | १३ | ० | ० | २१५ | १३ | २२८ |
| १४ | सोलापूर जि.का. | १२७ | १४ | १४१ | ७ | ० | ३६२ | ३१ | ० | ० | ३६९ | ३१ | ४०० |
| १५ | विसापूर खु. का. | २०० | ० | २०० | ९१ | ० | ० | ० | ० | ० | ९१ | ० | ९१ |
| १६ | अलिबाग जि.का. | ८० | २ | ८२ | ० | १ | ८७ | ४ | ० | ० | ८७ | ५ | ९२ |
| १७ | सावंतवाडी जि.का. | ५६ | २२ | ७८ | ३ | ० | ४९ | ९ | ० | ० | ५२ | ९ | ६१ |
| १८ | सिंधुदुर्ग जि.का. | २०० | ० | २०० | ५० | ० | ९ | ० | ० | ० | ५९ | ० | ५९ |
| | एकूण (क) | ३३४० | २९७ | ३६३७ | २७२ | १ | ३२२४ | १५० | १ | ० | ३४९७ | १५१ | ३६४८ |
| ड) | जिल्हा कारागृह वर्ग-३ | | | | | | | | | | | | |
| १ | अमरावती खुले का. | ८० | ० | ८० | ६३ | ० | ० | ० | ० | ० | ६३ | ० | ६३ |
| २ | नागपूर खुले कारागृह | ८० | ० | ८० | ७२ | ० | ० | ० | ० | ० | ७२ | ० | ७२ |
| ३ | अकोला महिला खु.का. | ० | ५० | ५० | ० | ३० | ० | ० | ० | ० | ३० | ३० | ३० |
| ४ | नाशिकरोड खुले का. | २१० | ० | २१० | २०० | ० | ० | ० | ० | ० | २०० | ० | २०० |
| ५ | भुसावळ जि.का. | ६० | ० | ६० | ० | ० | ४६ | ० | ० | ० | ४६ | ० | ४६ |
| ६ | स्वतंत्रपूर खु.वसाहत | २८ | ० | २८ | २ | ० | ० | ० | ० | ० | २ | ० | २ |
| ७ | कोल्हापूर जि.का. | १०४ | २१ | १२५ | ४ | ० | १६२ | ११ | ० | ० | १६६ | ११ | १७७ |
| ८ | कोल्हापूर खुले का. | १४० | ० | १४० | ११४ | ० | ० | ० | ० | ० | ११४ | ० | ११४ |
| ९ | येरवडा महिला खुले का. | ० | ५० | ५० | ० | ३१ | ० | ० | ० | ० | ३१ | ३१ | ३१ |
| १० | जे.जे. रुग्णालय का. | २० | ० | २० | ० | ० | ० | ० | ० | ० | ० | ० | ० |
| ११ | ठाणे खु.का. | २५ | ० | २५ | २० | ० | ० | ० | ० | ० | २० | ० | २० |
| १२ | यवतमाळ खु.का. | १५ | ० | १५ | १५ | ० | ० | ० | ० | ० | १५ | ० | १५ |
| १३ | वर्धा खु.का. | १५ | ० | १५ | १४ | ० | ० | ० | ० | ० | १४ | ० | १४ |
| १४ | धुळे खु.का. | १५ | ० | १५ | १५ | ० | ० | ० | ० | ० | १५ | ० | १५ |
| १५ | लातूर खु. का. | १५ | ० | १५ | १० | ० | ० | ० | ० | ० | १० | ० | १० |
| १६ | रत्नागिरी खु.का | १५ | ० | १५ | ११ | ० | ० | ० | ० | ० | ११ | ० | ११ |
| १७ | सिंधुदुर्ग खु.का. | १५ | ० | १५ | १२ | ० | ० | ० | ० | ० | १२ | ० | १२ |
| | एकूण (ड) | ८३७ | १२१ | ९५८ | ५५२ | ६१ | २०८ | ११ | ० | ० | ७६० | ७२ | ८३२ |
| | एकूण (अ ते ड) | २२७८१ | १२५१ | २४०३२ | ८८०८ | ३६१ | २५५७४ | ११८८ | १३० | ० | ३४५१२ | १५४९ | ३६०६१ |

Annexure 2

IMPORTANT POINTS IN VIEW OF PREVENTION OF CONTAGION OF COVID-19 INSIDE THE PRISON AND DECONGESTION OF THE PRISONS

1) In order to decongest the prisons necessary steps has been taken by the respondents. For maintaining social distancing inside the Jail the decongestion equation is as follow:-

As per the Prison Manual an inmate has to be provided a space of 3.71 Sq. Mtrs. (40 sq. ft.). This provides him five ft. of width. Hence for social distancing, the capacity of the barracks will have to be reduced by factor of 2/3rd

The total capacity of prisons of Maharashtra is 24000. 2/3rd of this is 16000. Current prison population on 10.05.2020 is 34000.

Therefore, $34000 - 16000 = 18000$ prisoners.

2229 inmates (till 23.05.2020) are released on Emergency Parole.

Therefore $18000 - 2229 = 15771$ inmates will have to be released under the fresh HPC guidelines (i.e. guideline of HPC dated 11.05.2020)

Further it is submitted that in view of guideline of HPC dated 11.05.2020, the Jail Superintendents of all the Jails in Maharashtra have forwarded 14,121 bail applications of Under Trial Prisoners to the concerned Courts.

2) High Power Committee (hereinafter referred to as HPC) has been constituted by the Government of Maharashtra vide GR NO- JLM0320/CR58/Prison-2 dated 24-03-2020 pursuant to the order dated 23-03-2020 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 1/2020.

On 25.03.2020 the HPC conducted its meeting “ to determine” the category of the prisoners to be released on emergency parole or interim bail for such period as may be thought appropriate. The HPC recommended the release of certain categories of Under Trial Prisoners charged for the offences punishable up to 7 years or less on interim bail. It also recommended the release of certain categories of convicts on emergency parole.

High-Power Committee conducted its 2nd meeting on 11.05.2020 and recommended the release of all Under Trial Prisoners charged for the offences punishable for 7 years or more except those falling in certain categories of offences under IPC and also under Special Acts.

3) The Government of Maharashtra amended Rule 19 of Maharashtra Prisons (Bombay Furlough and Parole) (amendment) rules 1959 (amended from time to time) for releasing the certain categories of convicted prisoners Notification dated 08.05.2020.

As per the recommendation of the HPC following prisoners are released on Interim Bail and Emergency Parole.

- i) Prisoners released on Interim Bail till date 5105(HPC-1)+1036(HPC-2)= 6141
- ii) Prisoners released on Emergency Parole till date --- 2229

4) In order to curb the contagion of COVID-19 and to decongest the prisons, the Government of Maharashtra by its resolution dated 15.05.2020 empowered the District Collectors, for declaring any private or public building, premises as a Temporary Jail. All newly admitted prisoners are now confined in the said Temporary Jails. 23 Temporary Jails have been opened in the State so far. These Temporary Jails and the number of prisoners confined in the said temporary jails is given in the chart attached herewith.

5) In order to curb the contagion of COVID-19, the greatly overcrowded prisons such as Yerwada, Mumbai, Thane, Byculla, Kalyan, Nashik Road, Aurangabad and Nagpur prisons have been locked down totally. There is no ingress or egress of any staff members and prisoners also. Only vehicles necessary for collection of garbage, supply of milk, vegetables, ration and canteen articles are allowed to enter the prison.

6) In order to curb the contagion of COVID-19 in the prison all the prison Superintendents are taking precautions to maintain cleanliness, hygiene etc. in the prison such as:

A) Primary checkup of temperature of prisoners and staff members with the help of Digital Thermometer and Oxygen level in blood with the help of Oxymeter is done is done.

B) Masks are provided to all the prisoners and staff members.

C) Cleaning of hands with sanitizers, soap is also carried out.

D) General awareness amongst the prisoners and staff members regarding COVID-19 is also carried out.

E) If any symptom of cough, fever, throat infection, temperature amongst prisoners, staff members is seen then it is attended to immediately.

F) Special attention, with regard to the health of prisoners of old age, diabetics, blood pressure, pregnant women, women prisoners, children with female inmates, is paid by the prison administration. Utmost care is taken in respect of prisoners above 60 year of age.

G) Screening tests of every newly admitted prisoner is done at the main gate.

H) Prisoners from overcrowded prisons are transferred to the other prisons which are not overcrowded.

I) In all Central Jails and some of the class-I jails there are separate yards which are used as quarantine yard.

J) Diet enriched with Vitamin C is given to the inmates.

K) In all Central Jails and Class-I Jails there is a medical staff including Medical Officers, Compounders; Nursing Orderly's taking care of the prisoners. In Class-II Jails Medical Officers from Civil Hospital visits and treats the prisoners and if necessary recommends to refer the prisoners to Civil Hospital for further treatment.

L) There is sufficient stock of medicines available in the prison hospitals.

M) All the prisons and premises are regularly disinfected with the help of the Municipal Authorities.

N) In order to avoid to contagion of spread COVID-19 no new prisoner is admitted in the prison. New prisoner is admitted in either the quarantine yard of temporary Jail declared by Collectors.

7. About COVID-19 positive prisoners:-



A) In Mumbai Central Prisons, 158 Prisoners are found COVID-19 positive and these prisoners are kept in Circle No. – 3, barrack No. 1 & 2, and yard No. 10 and treated there only. 7 members Team of Medical Officers from J. J. Group of Hospitals Mumbai visiting and treating said inmates daily. Near about 26 staff members are found COVID+-19 positive and they are taking necessary treatment. The list of the prisoners is annexed herewith.

B) In Yerwada, Talaja and Dhule Prison death of a prisoner took place in each prison and afterward it is found that the said prisoner was COVID-19 positive submitted that three more inmates are found positive in Dhule District Prison. They are taking medical treatment as per protocol. The prison wise list of COVID-19 positive prisoners is annexed herewith.

C) In Satara District Prison 10 prisoners are found COVID-19 positive and they were admitted and treated in the Quarantine Ward of Civil Hospital Satara. The list of COVID-19 positive prisoners is annexed herewith.

D) In Byculla District Prison one lady prisoner is found COVID-19 positive and she was admitted and treated in the Quarantine Ward of J. J. Group of Hospital Mumbai. Also one staff member in Byculla District Prison is found COVID-19 positive. The list of COVID-19 positive prisoners is annexed herewith.

8. It hereby submitted that if any inmate of a prison is found Covid positive, it is the responsibility of the Municipal Commissioner/Collector to take over and issue instructions to the health authorities and the Superintendent of Prisons.

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|   | |
| महाराष्ट्र शासन, गृह विभाग महाराष्ट्र कारागृह व सुधारसेवा | |
| दूरध्वनी क्रमांक ०२०/२६१२४८१५ फॅक्स नंबर-०२०/२६१२५८७८. Email- igoffice.jud-mh@gov.in | अपर पोलीस महासंचालक व महानिरीक्षक, कारागृह व सुधारसेवा, महाराष्ट्र राज्य, यांचे कार्यालय, मध्यवर्ती इमारत, २ रा मजला, पुणे-४११ ००२ |
| जा.क्र.न्यावि/कोरोना व्हायरस/उपाययोजना/ 2857/२०२०,कक्ष-९ (३), पुणे-१ दिनांक १८.०३.२०२० | |

कोरोना व्हायरस/अत्यंत महत्वाचे

Despatched On -----

प्रति,

- १) विशेष पोलीस महानिरीक्षक (कारागृह), दक्षिण विभाग, मुंबई/ पूर्व विभाग, नागपुर
- २) कारागृह उपमहानिरीक्षक, पश्चिम विभाग, पुणे/ मध्य विभाग, औरंगाबाद.
- ३) अधीक्षक, मध्यवर्ती/जिल्हा/खुले/खुली व./किशोर सु./विशेष कारागृह (सर्व)

विषय:- कोरोना व्हायरसवर प्रतिबंधात्मक उपाययोजना करणेबाबत.

संदर्भ:- १. मा.श्री.गृह मंत्री यांचे दिनांक १५.०३.२०२० चे अर्धशासकीय पत्र.

२. शासनाचे पत्र क्र.डीआरएम-२०२०/प्र.क्र.१७/पोल-८ दि.१४.०३.२०२०

३. डि.१६.३.२०२० रोजी श्री.सी. द्वारे अधीक्षकांची बैठक

उपरोक्त संदर्भीय पत्रानुसार कळविण्यात येते की, राज्यातील कारागृहातील बंद्यांना 'कोरोना व्हायरस' ची लागण होणार नाही यादृष्टीने प्रतिबंधात्मक उपाययोजनाबाबतच्या आवश्यक सूचनाची प्रत उचित कार्यवाहीसाठी सोबत जोडली आहे.

सहपत्र-६

(सुनिल रामानंद)

अपर पोलीस महासंचालक व
 महानिरीक्षक, कारागृह व सुधारसेवा,
 महाराष्ट्र राज्य, पुणे-१
 18/03/2020

प्रत:-मा. अपर मुख्य सचिव(अ. व सु.)(तुरुंग), गृह विभाग, महाराष्ट्र शासन, मंत्रालय,
 मुंबई-३२ यांना संदर्भीय पत्रान्वये माहितीस सादर.

During the meeting dated 16.03.2020 through video conferencing with regional heads and Superintendents of all Prisons, following directions are given regarding preventive measures to fight against CORONA virus, COVID-19.

- It is mandatory at the Main Gate of all the Prisons in the State, all the prisoners & the prison staff need to undergo primary checkup of temperature and assessment of General Physical condition. For that Prison Superintendents are instructed to purchase digital thermometer and measure the temperature and keep a record for each individual. Everyone entering will be made to sanitize his/ her hands.
- Following quantity of digital thermometer has been fixed for procurement.
 - 1] Central Prison- 05
 - 2] District Prison Class 1- 03
 - 3] District prison Class 2- 02

Basic training should be provided to staff to record the temperature through digital thermometer. Record of such training shall be kept.

- It is instructed to produce inmates through video conferencing only before concerned court. Physical production of the inmates in the court shall be prohibited.
- To reduce overcrowding in the prisons, all Prison Superintendents are instructed to meet the concerned Judicial Authority and request them to grant regular/provisional bail to the inmates with minor and medium level of crime.
- Made awareness to the staff and inmates regarding Corona Virus. If any symptoms like cough, fever, throat infection etc. observed, it should be informed immediately to the senior officials.
- Till further orders Galabhet [Meeting of inmates with their sixteen years below children] initiative shall be suspended.
- Prison Authority shall provide hand sanitizer or soap near Main Gate entrance itself.
- Prison Authority shall organize medical camps for screening of COVID-19 with the help of Civil Hospitals and non-government organizations. Also, it is instructed to pay special attention towards old age, diabetics, blood pressure inmates.
- Screening of medical case papers of the newly admitted inmates in the judicial custody from Police Custody should be done.

- All the regional heads may transfer the prisoners from the overcrowded prisons to the prison which are under/ less crowded.
- Superintendents to identify earmark and sanitize cells to quarantine suspected/ infected prisoners.
- There should not be any panic in the jail regarding CORONA, but every preventive measure must be taken care of. Entire staff and inmates are instructed accordingly.
- Facility for the clean/ hygiene quarantine cell/place to be created within the empty staff quarters for the suspected Prison staff to handle the situation.
- It is declared that the empty barracks and the rooms at rest house of Jail Officers Training Center as Quarantine ward for the staff and family.
- Manufacturing of MASK by the department, to be made for the Prisoners and the staff.
- All the inmates are requested to avoid personal interviews with family members for coming 15 days. Instead use of public telephone booth and video phone calling is advised.
- It is advised to all the superintendents to keep the enough stock of ration for the inmates.
- Diet enriched with Vitamin C to be given to the inmates.



महाराष्ट्र शासन
कारागृह विभाग

सुधारणा व पुनर्वसन

Tel.No. : (020) 26124815
Fax No. : (020) 26125878
Email ID: igoffice.oandm-mh@gov.in
Website : www.mahaprison.gov.in

अपर पोलीस महासंचालनालय व महानिरीक्षणालय,
कारागृह व सुधारसेवा, महाराष्ट्र राज्य,
जुनी मध्यवर्ती इमारत, २ रा मजला,
पुणे ४११ ००१

अत्यंत महत्वाचे

परिपत्रक

जा.क्र.इप्रवि/बंसुवा/कोआप/२०२०/कक्ष-४

2921

पुणे ४११ ००१, दि.०८.०४.२०२०.

विषय: बंधांना मनीऑर्डरद्वारे येणाऱ्या खाजगी रक्कमेबाबत...
मनी ऑर्डर ऐवजी ऑनलाईन रक्कम स्विकारणे बाबत.

संपुर्ण देशभरात कोरोनामुळे आणिबाणी सदृश्य परिस्थिती निर्माण झाली आहे. सर्वस्तरावर संचारबंदी लागू आहे. देशातील संचारबंदीच्या परिस्थितीत शासनाने जनतेला रोखीचे व्यवहाराऐवजी ऑनलाईन करण्याचे आव्हान केलेले आहे. महाराष्ट्र राज्यातील विविध कारागृहात अनेक बंदी बंदिस्त आहेत, त्यांच्या नातेवाईकांकडून मनीऑर्डरद्वारे प्राप्त होणाऱ्या रक्कमा कारागृहापर्यंत पोहचण्यात अडचणी निर्माण झालेल्या आहेत. पर्यायाने बंदी उपहारगृहातून त्यांना आवश्यक वस्तूंची खरेदी करू शकत नाहीत. महाराष्ट्र कारागृह नियमावली १९७९ मधील प्रकरण-३१, Section-II, Rule 4 (iv) (h) अन्वये बंधाचे नातेवाईकांना बंधांना मनीऑर्डरद्वारे पाठवावयाची रक्कम यापुढे ऑन लाईन पध्दतीने पाठविण्याने अथवा वर्ग करण्यास पुढील आदेश होईपर्यंत परवानगी देण्यात येत आहे. मनीऑर्डरने रक्कम मागविण्यासाठी जी रक्कम मर्यादा आहे तीच रक्कम मर्यादा ऑनलाईन पध्दतीने रक्कम मागविण्यासाठी लागू राहिल.

यास्तव राज्यातील सर्व कारागृह अधीक्षकांना सूचित करण्यात येते की, प्रत्येक कारागृहाचे आहरण व संवितरण अधिकारी यांचे नावे ज्या कोणत्याही बँकेत बँक खाते आहे, त्या बँक खात्यात बंधांच्या नातेवाईकांना रक्कम वर्ग करता यावी यासाठी कारागृहाच्या बँक खाते क्रमांक व तत्सम आवश्यक माहिती (जसे, बँक खाते ज्यांचे नावे आहे त्याचा तपशील, बँकेचे नांव, ब्रँच कोड, आएएफएससी कोड इत्यादी), कारागृहातील बंधांना तात्काळ द्यावी. बंधांनी सदरची माहिती कारागृहातील दुरध्वनी सुविधेच्या माध्यमातून त्यांच्या नातेवाईकांना कळवतील, बंधांच्या कोणत्याही नातेवाईकांने बंधाला आवश्यक असलेली रक्कम मनीऑर्डर ऐवजी ऑनलाईन वर्ग केल्यास त्यानुसार बंधांच्या नावे जमा करण्याची नियमानुसार कारवाई करावी.

(सुधिल ममानंद)

अपर पोलीस महासंचालक

व महानिरीक्षक, कारागृह व सुधारसेवा,

महाराष्ट्र राज्य, पुणे ४११ ००१.

०८/०४/२०२०

०८/०४/२०२०

प्रति,

विशेष पोलीस महानिरीक्षक (सर्व) / कारागृह उपमहानिरीक्षक (सर्व)

अधीक्षक, मध्यवर्ती/जिल्हा/खुले जिल्हा/विशेष जिल्हा/महिला कारागृह (सर्व)

प्राचार्य, दौ जा तु अ प्र म वि येरवडा, पुणे

प्राचार्य, किशोर सुधारालय, नाशिक/संपर्क अधिकारी, स्वतंत्रपूर खुली वसाहत, आटपाडी.

तात्पुरते कारागृहांची माहिती

दिनांक :-23/05/2020

विभाग-पश्चिम

| अ.क्र. | जिल्हा | तात्पुरते कारागृह घोषित करण्यात आले आहे काय? | केले असल्यास ठिकानाचे नाव | बंदी क्षमता | दाखल बंदी संख्या | | |
|--------|--------|--|--|-------------|------------------|-------|------|
| | | | | | पुरुष | महिला | एकूण |
| 1 | पुणे | होय | मागासवर्गीय मुलींचे वसतिगृह,प्रेस कॉलनी समोर,येरवडा पुणे-६ | | 97 | 14 | 111 |
| | | | डॉ बाबासाहेब आंबेडकर रिसर्च अँड ट्रेनिंग इन्स्टिट्यूट,येरवडा संकुल ,बाटी,पुणे-६ हे सामाजिक न्याय व विशेष विभाग ,मुलींचे वसतिगृहा समोर असलेल्या तथा एकाच कम्पाऊंड मध्ये असलेल्या महात्मा जोतिबा फुले मुलांचे वसतिगृह व क्रांतीज्योती सावित्रीबाई फुले मुलींचे वसतिगृह | | | | |
| | | | येरवडा खुले कारागृहाच्या परिक्षेत्रावरील के.के. मंगल लॉन येथिल वधू व वर कक्ष व डायनिंग हॉल | | | | |
| 2 | सातारा | होय | यशोदा शिक्षण प्रसारक मंडळ ,यशोदा कॉलेज ऑफ आर्किटेक्चर ,खोली नं . C/102,,खोली नं.C/103,एन.एच .४ हायवे लगत ,वाढे,ता. जि .सातारा | | 60 | 1 | 61 |

| अ.क्रं. | जिल्हा | तात्पुरते कारागृह घोषित करण्यात आले आहे काय? | केले असल्यास ठिकानाचे नाव | बंदी क्षमता | दाखल बंदी संख्या | | |
|---------|-----------|--|---|-------------|------------------|-------|------|
| | | | | | पुरुष | महिला | एकूण |
| 3 | सांगली | होय | पटवर्धन हायस्कूल, जुने कलेक्टर ऑफिस शेजारी, राजवाडा आवार, सांगली. | | 41 | 0 | 41 |
| 4 | कोल्हापूर | होय | औद्योगिक प्रशिक्षण संस्था, (I.T.I.), संभाजी नगर येथील येथिल मुलांचे वसतिगृह | | | | |
| 5 | सोलापूर | होय | सोलापूर जिल्हा कारागृह पाठीमागील नविन बांधकाम करण्यात आलेले बॅरक | 40 | 38 | 0 | 38 |
| 6 | अहमदनगर | नाही | | | | | |

विभाग-मध्य

| | | | | | | | |
|---|----------|------|---|-----|----|---|----|
| 1 | औरंगाबाद | होय | एस.बी.ओ.ए.पब्लिक स्कूल, एन-११, हडको औरंगाबाद | 120 | 48 | 7 | 55 |
| | | होय | जिल्हा परिषद प्राथमिक शाळा, तेलवाडी, ता. पैठण, जि. औरंगाबाद | | | | |
| 2 | जालना | होय | पोलीस प्रशिक्षण केंद्र जालना येथिल अजिंठा ईमारती शेजारील गुरुकुल ईमारतीचे तिन हॉल | | 0 | 0 | 0 |
| 3 | परभणी | होय | अल्पसंख्यांक मुलींचे वसतिगृह, ऑ. प्र. संस्था परिसर, परभणी | 24 | 28 | 0 | 28 |
| 4 | हिंगोली | नाही | | | | | |
| 5 | बीड | होय | शासकीय मुलींचे वसतिगृह, शिवाजी महाराज चौक, बीड | 40 | 62 | 2 | 64 |
| 6 | नांदेड | होय | नांदेड जिल्हा कारागृह वर्ग-2(नविन बांधकाम) | 50 | 50 | 0 | 50 |

| अ.क्र. | जिल्हा | तात्पुरते कारागृह घोषित करण्यात आले आहे काय? | केले असल्यास ठिकानाचे नाव | बंदी क्षमता | दाखल बंदी संख्या | | |
|--------|-----------|--|---|-------------|------------------|-------|------|
| | | | | | पुरुष | महिला | एकूण |
| 3 | सांगली | होय | पटवर्धन हायस्कूल, जुने कलेक्टर ऑफिस शेजारी, राजवाडा आवार, सांगली. | | 41 | 0 | 41 |
| 4 | कोल्हापूर | होय | औद्योगिक प्रशिक्षण संस्था, (I.T.I.), संभाजी नगर येथील येथिल मुलांचे वसतिगृह | | | | |
| 5 | सोलापूर | होय | सोलापूर जिल्हा कारागृह पाठीमागील नविन बांधकाम करण्यात आलेले बँरेक | 40 | 38 | 0 | 38 |
| 6 | अहमदनगर | नाही | | | | | |

विभाग-मध्य

| | | | | | | | |
|---|----------|------|---|-----|----|---|----|
| 1 | औरंगाबाद | होय | एस.बी.ओ.ए.पब्लिक स्कूल, एन-११, हडको औरंगाबाद | 120 | 48 | 7 | 55 |
| | | होय | जिल्हा परिषद प्राथमिक शाळा, तेलवाडी, ता. पैठण, जि. औरंगाबाद | | | | |
| 2 | जालना | होय | पोलीस प्रशिक्षण केंद्र जालना येथिल अजिंठा ईमारती शेजारील गुरुकुल ईमारतीचे तिन हॉल | | 0 | 0 | 0 |
| 3 | परभणी | होय | अल्पसंख्यांक मुलींचे वसतिगृह, ऑ. प्र. संस्था परिसर, परभणी | 24 | 28 | 0 | 28 |
| 4 | हिंगोली | नाही | | | | | |
| 5 | बीड | होय | शासकीय मुलींचे वसतिगृह, शिवाजी महाराज चौक, बीड | 40 | 62 | 2 | 64 |
| 6 | नांदेड | होय | नांदेड जिल्हा कारागृह वर्ग-2(नविन बांधकाम) | 50 | 50 | 0 | 50 |

| अ.क्र. | जिल्हा | तात्पुरते कारागृह घोषित करण्यात आले आहे | केले असल्यास ठिकानाचे नाव | बंदी क्षमता | दाखल बंदी संख्या | | |
|--------|------------|---|--|-------------|------------------|-------|------|
| | | | | | पुरुष | महिला | एकूण |
| 7 | उस्मानाबाद | होय | जिल्हा प्रशासकीय प्रशिक्षण संस्था(DATI)उस्मानाबाद (वसतिगृह) | | 14 | 0 | 14 |
| 8 | लातूर | नाही | | | | | |
| 9 | नाशिक | होय | के.एन.केला माध्यमिक शाळा, जेल रोड, नाशिक येथील पहिल्या मजल्यावरील ज्यु.के.जि.च्या चार खोल्या | 60 | 49 | 3 | 52 |
| 10 | धुळे | होय | जिजामाता हायस्कूल, मुर्लीचे वसतिगृह, धुळे | 50 | 49 | 0 | 49 |
| 11 | नंदुरबार | नाही | | | | | |
| 12 | जळगांव | नाही | | | | | |

विभाग-दक्षिण

| | | | | | | | |
|---|-------------|------|--|-----|-----|---|-----|
| 1 | मुंबई | नाही | | | 0 | 0 | 0 |
| 2 | मुंबई उपनगर | नाही | | | 0 | 0 | 0 |
| 3 | ठाणे | होय | डॉन बॉस्को स्कूल, डी.बी.चौक आधारवाडी जेलच्या बाजूला, कल्याण(प.), जि. ठाणे | 150 | 0 | 0 | 0 |
| 4 | पालघर | नाही | | | 0 | 0 | 0 |
| 5 | रायगड | होय | नामदार गोपाळ कृष्ण गोखले हायस्कूल, खारघर नोड, स.क्र. -१२, प्लॉट क्र-एफ-२, खारघर | | 158 | 0 | 158 |
| | | | छत्रपती शिवाजी महाराज चौका शेजारील सरदार कान्होजी आंग्रे स्मारकाच्या पाठीमागील अलिबाग नगरपालिकेच्या शाळेची इमारत | | 0 | 0 | 0 |

| अ.क्र. | जिल्हा | तालपुरते कारागृह | केले असल्यास ठिकानाचे नाव | बंदी क्षमता | दाखल बंदी संख्या | | |
|--------|------------|------------------|---|-------------|------------------|-------|------|
| | | | | | पुरुष | महिला | एकूण |
| 6 | रत्नागिरी | नाही | | | | | |
| 7 | सिंधुदुर्ग | होय | औद्योगिक प्रशिक्षण महाविद्यालय (आय.टी.आय.) इमारत, सावंतवाडी | 50 | 1 | 2 | 3 |

विभाग-पूर्व

| | | | | | | | |
|---|---------|------|---|----|----|----|----|
| 1 | नागपूर | होय | मंगलमूर्ती लॉन, वर्धा रोड, नागपूर मध्यवर्ती कारागृह परिसर | 25 | 67 | 0 | 67 |
| 2 | अमरावती | होय | डॉ नरेंद्र भिवापूरकर अंध विद्यालय येथील मुलांचे वसतिगृह, अमरावती मध्यवर्ती कारागृह वसाहती जवळ | 60 | 67 | 10 | 77 |
| 3 | बुलडाणा | होय | ग्रामसेवक प्रशिक्षण केंद्र, पोलीस मुख्यालयाच्या पाठीमागे, सिंहगड बिल्डिंग, बुलडाणा, ता. जि. बुलडाणा | 35 | 41 | 3 | 44 |
| 4 | अकोला | होय | अकोला रेल्वे स्टेशन जवळील जुने शासकीय विश्राम गृह इमारत | 20 | 19 | 1 | 20 |
| 5 | वाशिम | होय | शासकीय बहुउद्देशीय संमिश्र अपग केंद्र, जुनी जिल्हा परिषद वाशिम | 70 | 33 | 0 | 33 |
| | | | वाशिम जिल्हा कारागृह रेस्ट हाऊस (महिलांसाठी) | 15 | 2 | 0 | 2 |
| 6 | यवतमाळ | होय | शासकीय अध्यापक महाविद्यालय मुलांचे व मुलींचे वसतिगृह, गोंधणी रोड, यवतमाळ | 40 | 28 | 1 | 29 |
| 7 | वर्धा | नाही | | | | | |

| अ.क्र. | जिल्हा | तात्पुरते कारागृह घोषित करण्यात आले आहे काय? | केले असल्यास ठिकानाचे नाव | बंदी क्षमता | दाखल बंदी संख्या | | |
|-------------|----------|--|---------------------------|-------------|------------------|-------|------|
| | | | | | पुरुष | महिला | एकूण |
| 8 | भंडारा | नाही | | | | | |
| 9 | गोंदिया | नाही | | | | | |
| 10 | चंद्रपूर | नाही | | | | | |
| 11 | गडचिरोली | नाही | | | | | |
| एकूण | | | | | 952 | 44 | 996 |

टिप : ज्या जिल्हयांमध्ये तात्पुरती कारागृहे घोषित करण्यात येतील तेथे तात्काळ बंदी दाखल करण्यास सुरुवात करण्यात यावी.

Minutes of Meeting of High Power Committee dated 25/03/2020

1. This High-Power Committee has been constituted vide GR No - JLM0320/CR58/Prison-2 dated 24-03-2020 pursuant to the order dated 23-03-2020 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 1/2020 (hereinafter referred to as 'the said order'). By said order, the Hon'ble Supreme Court, having regard to Article 21 of the Constitution of India, in the wake of the present crisis arising out of the spread of Corona Virus (COVID19), has issued various directions in relation to the overcrowding of prisons and remand homes.

2. The directions issued by the Hon'ble Supreme Court, so far as it relates to this Committee is concerned, read thus:

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (iii) Director General of Prison(s). to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate".

(emphasis supplied)

3. Thus, this Committee is "to determine", "which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate." and "the category of prisoners who should be released".

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4. In determining "the class" or "the category" of the prisoners who can be so released, the said order itself provides the various factors that can be taken into consideration. These factors may be summarized as under:

- (a) Nature of offence
- (b) Severity of offence
- (c) Number years to which the convict has been sentenced
- (d) Any other relevant factor

5. It is noticed that the Hon'ble Supreme Court in the said order has already directed the Undertrial Review Committee to meet every week to take decisions in consultation with the concerned authority.

6. A careful consideration of the aforesaid demonstrates that, it is not that the convicted prisoners/the undertrial prisoners, who have been convicted/facing trial for offence punishable with imprisonment up to 7 years or less (as decided by us hereunder) are to be en masse/en bloc released, without considering other relevant factors such as the nature of offence, the severity of the offence, etc. Therefore, the decision that is being taken by this Committee cannot be construed to itself operate as an order of release. It is ultimately for the Competent Authority/learned Judge to pass an appropriate order in that regard in accordance with law. Needless to observe that such order ought to lay down requisite terms and conditions of the temporary release, if any. Undoubtedly, under the present scenario, a relaxed approach needs to be adopted in this regard in view the directions and spirit of the said order of the Hon'ble Supreme Court.

7. The two members of this Committee viz. Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra and Shri S.N. Pandey, Director General Prisons, Maharashtra, have telephonically consulted the learned Advocate-General for the State of Maharashtra in this regard, enabling this Committee to take appropriate decision, as reflected hereinafter.

8. After considering all the relevant factors as also the circumstances presently prevailing in the State of Maharashtra, this Committee has decided as under:

- (i) Undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less be favourably considered for

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release on interim bail on personal bond of such amount as may be determined, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(ii) The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(iii) The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(iv) The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOB, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.

(v) This decision shall apply to only such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the

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concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.


(vi) Before the temporary release of the prisoners, the necessary medical protocol in relation to screening for Corona virus (COVID-19) shall be followed by the jail authorities and action be taken accordingly.

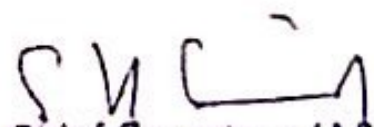
(vii) The prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance with law. In considering every case for such release, the "nature of the offence" and the "severity of the offence" shall be considered. The possibility of the prisoner committing offence in case of temporary release (such as habitual offenders) or likelihood his/her absconding should also be considered as important tests to decline such requests for temporary release.

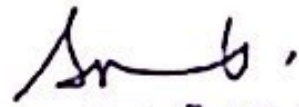
(viii) The decision for temporary release of the prisoner shall be taken and implemented as expeditiously as possible, enabling his/her actual release within a maximum period of one week from the date of filling of an application in this regard by the prisoner.

(ix) All the above factors shall be considered before taking a decision of the temporary release of the prisoner. The directions and spirit of the said order of the Hon'ble Supreme Court shall however be foremost kept in mind.

(x) Inasmuch as the Hon'ble Supreme Court is in seisin of the matter, the aforesaid decision/directions shall be subject to further orders of the Hon'ble Supreme Court.


Hon. Justice Shri A. A. Sayed, Judge, Bombay High Court


Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra


Shri S.N. Pandey, Director General Prisons, Maharashtra

RNI No. MAHBIL /2009/31733



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-अ

वर्ष ६, अंक ३१(२)]

शुक्रवार, मे ८, २०२०/वैशाख १८, शके १९४२

[पृष्ठे २, किंमत : रुपये १५.००

असाधारण क्रमांक ५४

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाने केंद्रीय अधिनियमान्वये तयार केलेले
(भाग एक, एक-अ आणि एक-ल यांमध्ये प्रसिद्ध केलेले नियम व आदेश यांव्यतिरिक्त) नियम व आदेश.

HOME DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Raiguru Chowk,
Mumbai 400032, dated the 8th May, 2020.

NOTIFICATION

PRISONS ACT, 1894.

No. APP-0920/CR.179/2020/PRS-3.—In exercise of the powers Conferred by clauses (5) and (28) of section 59 of the Prisons Act (IX of 1894), in its application to the State of Maharashtra, and of all other powers enabling it in that behalf, the Government of Maharashtra hereby makes the following rules further to amend the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, namely:—

1. The rules may be called the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2020.

2. In sub-rule -(1) of rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, after clause (B) the following clause shall be added, namely :—

“(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government :

(i) For convicted Prisoners whose maximum punishment is 7 years or less, on their application shall be favorably considered for release on emergency parole by the Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or

(१)

महाराष्ट्र शासन राजपत्र असाधारण भाग चार-अ, मे ८, २०२०/वैशाख १८, शके १९४२

furlough), for the period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days :

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc. (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.

By order and in the name of the Governor of Maharashtra,

N. S. KARAD,

Deputy Secretary to Government.

Annexure 6

1

MINUTES OF THE HIGH POWER COMMITTEE MEETING DATED 11th MAY, 2020 PURSUANT TO THE REPORT DATED 10TH MAY 2020

1. There is a Report dated 10th May, 2020 of Shri Sunil Ramanand, Addl. Director General of Police & Inspector General of Prisons & Correctional Services, Maharashtra, requesting for second meeting of this High Power Committee (constituted under the order dated 23.03.2020 of the Hon'ble Supreme Court) to consider the recommendations for release of further categories of prisoners mentioned in the said Report. Accordingly, this Committee meeting was convened on urgent basis to consider the recommendations in the said Report.

2. In the said Report it is stated that in view of the serious situation that has arisen as prison inmates and officers and staff serving in some of the prisons of the Maharashtra have been infected by COVID-19 and there is distinct possibility of such situation arising in other prisons too, it is requested to accept the recommendations in the said Report for release all undertrial prisoners charged for the offences punishable for 7 years or more, except those falling in following category of offences:

(1) Indian Penal Code

- a) IPC – Chapter VI–Offenses against State– IPC 121 to 130
- b) IPC – 303
- c) IPC – 364(A), 366, 366(A), 366(B), 367 to 374

- d) IPC – 376(a) to (e)
- e) IPC – 396
- f) IPC – 489(a) to (e)
- g) Bank Frauds and Major Financial Scams

(2) SPECIAL ACTS

- a) MCOC, TADA, POTA, UAPA, PMLA, Explosives Substances Act, Anti Hijacking Act
- b) NDPS (Other than personal consumption)
- c) MPID
- d) POCSO
- e) Foreigners in Prison.

3. The following data is placed before this Committee in the form of Charts :

a. There were 35,239 prisoners in the State of Maharashtra against the prison capacity of 23,547 in the 60 prisons of the State.

b. After the decision of the High Power Committee dated 25th March, 2020 (constituted pursuant to the order dated 23rd March, 2020 of the Hon'ble Supreme Court), a total 5105 prisoners were released and 3017 are in the process of being released.

c. If the recommendations in the said Report are accepted, 9520 more prisoners would be released and the total number of prisoners expected to be released would be 17642 (i.e 5105 + 3017 + 9520).

4. Having perused the said Report and considering the extraordinary circumstances pointed out in the said Report and keeping in view the safety, health and welfare of prisoners, we accept the recommendations in the said Report.

5. The decision of this High Power Committee dated 25th March, 2020 shall now be applicable also to the category of prisoners mentioned hereinbelow. We accordingly issue the following directions:

(i) All undertrial prisoners booked/charged for such offences for which maximum sentence is above 7 years shall, be favourably considered for release on interim bail (except those failing the categories enumerated below) on personal bond of such amount as may be determined for a period of 45 days or till such time as the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station, within whose jurisdiction they are residing, every 30 days. The exception made shall apply to the following category of offences:

(1) Indian Penal Code

- a) IPC – Chapter VI–Offenses against State– IPC 121 to 130
- b) IPC – 303
- c) IPC – 364(A), 366, 366(A), 366(B), 367 to 374
- d) IPC – 376(a) to (e)
- e) IPC – 396
- f) IPC – 489(a) to (e)
- g) Bank Frauds and Major Financial Scams

(2) SPECIAL ACTS

- a) MCOC, TADA, POTA, UAPA, PMLA, Explosives Substances Act, Anti Hijacking Act
- b) NDPS (Other than personal consumption)
- c) MPID
- d) POCSO
- e) Foreigners in Prison.

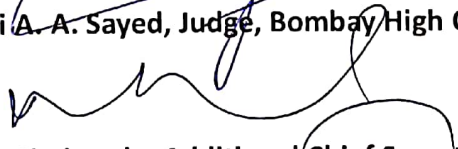
It is clarified that the rest of the clauses (iv) to (x) of the decision dated 25th March, 2020 of this Committee shall apply and shall form part of the present decision.

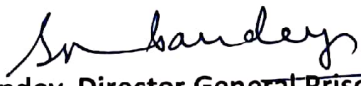
6. The data shows that there are 1340 prisoners who are above the age of 60 years. Out of these 1340 prisoners, majority of them would be able to avail the benefit of the above directions of this Committee. Insofar as remaining prisoners above 60 years age are concerned and/or those prisoners with underlying medical conditions which puts them at higher risk for severe illnesses from COVID-19, all concerned Authorities, including the concerned Superintendent of Prison shall take appropriate measures including their isolation. We make it clear that notwithstanding the decision of this Committee dated 25-03-2020 and the present decision, it would be open to such prisoners to apply for interim bail on the same terms as mentioned in the decision of this Committee dated 25-03-2020 to the concerned Court and orders may be passed after considering the facts and

circumstances of the case and examining the medical reports and other relevant records.

7. In the earlier decision dated 25th March, 2020 of this Committee, we had stated that the said decision shall 'presently' not apply to the prisoners having place of residence outside the State of Maharashtra. The said decision would now apply to the prisoners whose place of residence is outside the State of Maharashtra as well. This direction, however, shall come into effect only after the lock down period is over and public transportation is available.


Justice Shri A. A. Sayed, Judge, Bombay High Court


Shri Sanjay Chahande, Additional Chief Secretary
(A&S) Home, Govt. of Maharashtra


Shri S.N. Pandey, Director General Prisons, Maharashtra

Annexure 7

Prison Population

Date:19/06/2020

Region:West

| Sr.No. | Prison name | Undertrial | | Convict | | Total |
|--------|---------------------------|------------|--------|---------|--------|-------|
| | | Male | Female | Male | Female | |
| 1 | Yerwada Central Prison | 3494 | 146 | 1074 | 76 | 4790 |
| 2 | Women Open Prison Yerwada | 0 | 0 | 0 | 13 | 13 |
| 3 | Yerwada Open Prison | 0 | 0 | 46 | 0 | 46 |
| 4 | Satara Dist Prison | 280 | 17 | 2 | 1 | 300 |
| 5 | Kolhapur Central Prison | 1125 | 13 | 812 | 26 | 1976 |
| 6 | Open Prison Kolhapur | 0 | 0 | 53 | 0 | 53 |
| 7 | Kolhapur Dist Prison | 90 | 18 | 0 | 0 | 108 |
| 8 | Sangali Dist Prison | 334 | 28 | 1 | 0 | 363 |
| 9 | Open colony Atapadi | 0 | 0 | 2 | 0 | 2 |
| 10 | Solapur Dist Prison | 260 | 24 | 2 | 0 | 286 |
| 11 | Ahemadanagar dist Prison | 92 | 0 | 0 | 0 | 92 |
| 12 | Visapur Open Prison | 0 | 0 | 34 | 0 | 34 |

Region:Central

| | | | | | | |
|----|-----------------------------|------|----|------|----|------|
| 13 | Aurangabad Central Prison | 661 | 32 | 679 | 30 | 1402 |
| 14 | Open Prison Aurangabad | 0 | 0 | 20 | 0 | 20 |
| 15 | Nashikroad Central Prison | 1036 | 31 | 1269 | 35 | 2371 |
| 16 | Nashikroad Dist Open Prison | 0 | 0 | 89 | 0 | 89 |
| 17 | Osmanabad Dist Prison | 206 | 15 | 3 | 0 | 224 |
| 18 | Latur Dist Prison | 257 | 14 | 7 | 0 | 278 |
| 19 | Open Prison Latur | 0 | 0 | 1 | 0 | 1 |
| 20 | Nanded Dist Prison | 185 | 18 | 8 | 0 | 211 |
| 21 | Parbhani Dist Prison | 353 | 15 | 2 | 0 | 370 |
| 22 | Beed Dist Prison | 256 | 13 | 3 | 0 | 272 |
| 23 | Jalana Dist Prison | 174 | 8 | 4 | 0 | 186 |
| 24 | Paithan open Prison | 0 | 0 | 95 | 0 | 95 |
| 25 | Jalgaon Dist Prison | 355 | 14 | 3 | 0 | 372 |
| 26 | Bhusaval dist Prison | 49 | 0 | 0 | 0 | 49 |
| 27 | Dhule Dist Prison | 224 | 17 | 12 | 0 | 253 |
| 28 | Dhule Open Prison | 0 | 0 | 2 | 0 | 2 |
| 29 | Nandurbar Dist Prison | 155 | 0 | 2 | 0 | 157 |
| 30 | Borstal School Nashik | 12 | 0 | 0 | 0 | 12 |
| | | | | | | |

Region:South

| | | | | | | |
|----|------------------------|------|-----|----|---|------|
| 31 | Mumbai Central Prison | 2008 | 0 | 31 | 0 | 2039 |
| 32 | Thane Central Prison | 2549 | 90 | 86 | 4 | 2729 |
| 33 | Thane Dist Open Prison | 0 | 0 | 10 | 0 | 10 |
| 34 | Taloja Central Prison | 2266 | 0 | 47 | 0 | 2313 |
| 35 | Kalyan Dist Prison | 1313 | 105 | 34 | 6 | 1458 |

| | | | | | | |
|----|-----------------------------|-----|-----|----|---|-----|
| 36 | J.J.Hospital Prison Ward | 0 | 0 | 0 | 0 | 0 |
| 37 | Byculla Dist Prison | 105 | 0 | 19 | 0 | 124 |
| 38 | Mumbai Wonen Prison,Byculla | 0 | 280 | 0 | 1 | 281 |
| 39 | Alibaug Dist Prison | 98 | 0 | 0 | 0 | 98 |
| 60 | Ratanagiri Special Prison | 119 | 10 | 4 | 0 | 133 |
| 41 | Open Prison Ratnagiri | 0 | 0 | 5 | 0 | 5 |
| 42 | Sawantawadi Dist Prison | 40 | 13 | 0 | 0 | 53 |
| 43 | Sindhudurg Dist Prison | 7 | 0 | 25 | 0 | 32 |
| 44 | Sindhudurg Open Prison | 0 | 0 | 5 | 0 | 5 |

Region:East

| Sr.No. | Prison name | | | | | |
|--------|--------------------------|--------------|-------------|-------------|------------|--------------|
| 45 | Nagpur Central Prison | 1095 | 31 | 744 | 24 | 1894 |
| 46 | Open Prison Nagpur | 0 | 0 | 70 | 0 | 70 |
| 47 | Amaravati Central Prison | 443 | 13 | 621 | 17 | 1094 |
| 48 | Open Prison Amaravati | 0 | 0 | 15 | 0 | 15 |
| 49 | Morshi Open Prison | 0 | 0 | 51 | 0 | 51 |
| 50 | Buldana Dist Prison | 179 | 13 | 3 | 0 | 195 |
| 51 | Akola Dist Prison | 335 | 30 | 16 | 0 | 381 |
| 52 | Women Open Prison Akola | 0 | 0 | 0 | 13 | 13 |
| 53 | Washim Dist Prison | 159 | 12 | 1 | 0 | 172 |
| 54 | Yavatamal Dist Prison | 271 | 14 | 8 | 0 | 293 |
| 55 | Open Prison Yavatamal | 0 | 0 | 8 | 0 | 8 |
| 56 | Wardha Dist Prison | 206 | 4 | 18 | 0 | 228 |
| 57 | Open Prison Wardha | 0 | 0 | 7 | 0 | 7 |
| 58 | Chandrapur Dist Prison | 468 | 16 | 13 | 0 | 497 |
| 59 | Bhandara Dist Prison | 266 | 9 | 19 | 0 | 294 |
| 60 | Gadchiroli Open Prison | 0 | 0 | 31 | 0 | 31 |
| | Total | 21525 | 1063 | 6116 | 246 | 28950 |

Annexure 8

judg. PIL 2-20 & 2 ors.odt

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

PIL-CJ-LD-VC-2 OF 2020

WITH

I.A. NO. CJ-LD-VC-2 OF 2020

(For Direction)

WITH

I.A.NO.CJ-LD-VC-1 OF 2020

(For Interim Relief)

1. People's Union for Civil Liberties

Bhatia Bhavan, 1st floor, Flat No.29,

Babrekar Marg, Dadar (West),

Mumbai 400 028.

2. Sandhya Gokhale

Bhatia Bhavan, 1st floor,

Flat No.29, Babrekar Marg,

Dadar (West), Mumbai 400 028.

..Petitioners/Applicants

vs.

1. The State of Maharashtra

through Principal Secretary of the

Home Department, Mantralaya,

Madam Cama Road, Mumbai 400 032.

2. The State of Maharashtra
through Principal Secretary of
the Law and Judiciary Department
Mantralaya, Madam Cama Road,
Mumbai - 400 032.

3. Director General of Police
Maharashtra Police,
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

4. Addl. Directorate of Police & Inspectorate
of Prisons and Correctional Services,
2nd floor, Old Central Building,
Pune - 411001.

5. Addl. Director General of Police
(Law & Order),
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

6. Shri S.N. Pandey
Director General of Police (Prisons)
Maharashtra.

.. Respondents

Mr. Mihir Desai, Senior Advocate a/w Ms. Isha Khandelwal a/w Ms. Kritika Agarwal for applicant/petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for State.

WITH
PIL NO. 15 OF 2018
WITH
I.A. 1 OF 2020
(Converted from OS)

Archana Rupwate, aged 30 years,
Occupation : Advocate,
having office at 1st floor, 61/Jalaram
Krupa, Janmabhoomi Marg,
Fort, Mumbai 400001. ..Petitioner/Applicant

Vs.

1. The State of Maharashtra
through Principal Secretary of the
Home Department, Mantralaya,
Madam Cama Road, Mumbai 400 032.

2. The State of Maharashtra
through Principal Secretary of
the Law and Judiciary Department

Mantralaya, Madam Cama Road,
Mumbai - 400 032.

3. Director General of Police
Maharashtra Police,
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

4. Addl. Directorate of Police & Inspectorate
of Prisons and Correctional Services,
2nd floor, Old Central Building,
Pune - 411001.

5. Addl. Director General of Police
(Law & Order),
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

.. Respondents

Mr. Mihir Desai, Senior Advocate i/by Ms. Afreen Khan for
applicant/petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak
Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for
State.

WITH
PIL-CJ-LD-VC-5 OF 2020

Geeta Bharat Jain
Jain Bungalow, New Golden
Nest Phase 13, Opp. Hanuman
Temple, Bhayander (East),
Thane - 401105. .. Petitioner

Vs.

1. State of Maharashtra
2. Director General of Prisons
3. Assistant Director General of Prisons .. Respondents

Mr. Sunny Punamia for petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for State.

WITH
PIL-CJ-LD-VC- 24 OF 2020

1. Devmani Shukla, aged about 38 years
s/o. Jagdish Prasad Shukla
Occupation : Advocate,
residing at 02, Janbhagyodaya Chawl
Committee, Gaondevi Road, Opp.

Human Temple, Poisar, Kandivali (East),
Mumbai 400 101.

2. Nikita Abhyankar, aged about 28 years
D/o. Rajendra Abhyankar
Occupation : Advocate,
residing at B3, 702-703, Saket Complex,
Majiwada, Thane (W) - 400601 .. Petitioners

Vs.

1. The State of Maharashtra
through the Government Pleader,
High Court Building, Mumbai 400 001.

2. High Powered Committee of Maharashtra
having its address at Administrative Building,
4th floor, Legal Department, Anant Kanekar
Marg, Bandra (E), Mumbai 400051.

3. The Undertrial Review Committee,
Mumbai.

4. Maharashtra State Legal Services Authority

having its address at 105 High Court
(PWD) Building, Fort, Mumbai 400 032.

5. Maharashtra Prison Department

44, Samrat Ashok Path, Sector No.5,
Mohanwadi, Yerawada, Pune,

Maharashtra 411006.

.. Respondents

Mr. Bhavesh Parmar with Mr. Monil Punjabi i/by Ms. Gauri Govilkar for petitioners.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for State.

Dr. Milind Sathe, Senior Advocate a/w Mr. Rahul Nerlekar for respondent No.4.

CORAM: DIPANKAR DATTA, CJ. &

M.S.KARNIK, J.

RESERVED ON : JUNE 26, 2020

PRONOUNCED ON : JULY 2, 2020

JUDGMENT (Per M.S. Karnik, J.):

The spread of COVID-19 infection resulted in a pandemic. It virtually brought life to a complete standstill. Lockdown which was rarely brought into effect was witnessed. The spread of COVID-19 had the potency of completely disrupting normal life. Various precautionary measures to contain the spread of the infection are suggested by the experts which include use of masks, sanitizers, etc. The Government, the administration, doctors, experts in the field of medicine were at pains to emphasize the need for maintaining hygiene and importance of social distancing. The focus also was at avoiding over crowding. Therefore arose a need to decongest the correctional homes which had high density of inmates. A High Powered Committee ('HPC' for short) came to be constituted in terms of the order passed by the Supreme Court dated March 23, 2020 in Suo Motu Writ Petition (C) No. 1 /2020. Accordingly recommendations were made by the HPC, chaired by the Senior Administrative Judge of this Court to decongest the correctional homes of its inmates.

2. It is well settled that Right to life, enshrined under Article 21 of the Constitution of India means something more than survival or animal existence. It would include the right to live with human dignity. It is now established that even where a person is convicted and imprisoned under the

sentence of Court, he does not lose all the fundamental rights belonging to all persons under the Constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration. The prisoner remains a human being notwithstanding his imprisonment and would be entitled to minimum human rights. The Apex Court **In Re : Contagion of Covid -19 Virus in Prisons Suo Motu Writ Petition (Civil) No.1 of 2020** has observed that the issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID - 19). The HPC has been constituted to determine the class of prisoners who can be released on parole or on interim bail, in view of the observations of the Apex Court that having regard to the provisions of the Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled. It is therefore imperative for the State to undertake all such measures for the safety of the health and hygiene of the prisoners in view of the pandemic of COVID-19.

3. The issue raised in these Public Interest Litigations ('PILs' for short) relate to the alleged lack of facilities for proper treatment of prisoners lodged in various correctional homes. Since the Petitions are interlinked, this Court had proposed to consider the same analogously, whereafter these Petitions came to be clubbed together and heard.

4. At the outset, it would be pertinent to state that on the earlier occasion, this Court during the course of the hearing of these PIL Petitions, issued directions calling for composite comprehensive report from the State touching upon all the aspects raised in these PIL Petitions as well as measures taken in this regard.

5. On May 26, 2020 the contentions raised by the learned Senior Counsel Shri Mihir Desai for some PIL Petitioners came to be recorded. Upon considering the response of the State Government, certain interim directions were issued. Learned Senior Counsel Shri Desai had submitted that the progress achieved by the State of Maharashtra in regard to containing the spread of COVID-19 infection amongst the inmates of various correctional homes is more or less satisfactory. Upon Shri Desai voicing a grievance that 'there are large number of bail applications pending before diverse Criminal Courts which frustrates the purpose for which the HPC came to be constituted', this Court observed thus :-

"Even though the High Powered Committee has delineated categories of under-trial prisoners who would be entitled to release on interim bail, we are of the opinion that the relevant courts are not supposed to act as mere post-offices and allow applications without application of mind. We have no doubt in our mind that in the light of the guidelines issued by the High Powered Committee, the relevant courts, to the best of its ability and with the resources available at its disposal, have been striving to take appropriate steps to dispose of as many applications for bail as possible in accordance with law and in the light of the guidelines of the High Powered Committee. No direction as such is required to be made, since we hope and trust that no application for bail shall be kept pending unnecessarily."

6. As regards the submission of Shri Desai that although family members/relatives of the inmates of correctional homes other than Arthur Road correctional home are being informed about the particular inmate having been infected by the virus, there is no system of informing the family members/relatives of COVID - 19 positive inmates, Public Prosecutor Shri Thakare responded that the family members/relatives of the inmates of the Arthur Road Correctional Home, who have tested positive would be duly informed. Having regard to this submission, this Court refrained from issuing any direction in his behalf in the hope and trust that Shri Thakare's submission shall be duly honoured.

7. It was then urged by Shri Desai that personal meetings of inmates with their family members/relatives have been stopped and presently there is no system in place by which interaction between the inmates and their family members/relatives is possible. Shri Thakare then invited the attention of this Court to the memo dated May 24, 2020 issued by the Additional Director General of Police and Inspector General of Prisons and Correctional Services, Pune, Maharashtra State (hereafter "the ADG, Prisons"). He further submitted that video conferencing facilities are being arranged so that inmates can at least establish contact and talk to their family members/ relatives. Shri Desai pointed out that though memo dated May 24, 2020

was in place, but there is no certainty as to when the video conferencing facilities would be commissioned. He therefore requested that the inmates be allowed two phone calls a week to talk to their family members/relatives. On this submissions of Shri Desai this Court observed thus-

"We trust that the contents of the memo dated May 24, 2020 shall be given full effect by the Correctional Home authorities. However, having regard to the uncertainties of connectivity, an additional facility of allowing the inmates to reach out to their family members/relatives by making phone calls could be allowed till such time Video Conferencing facilities are commissioned and even thereafter, if there is lack of connectivity. The number of phone calls per week per inmate, the duration of the phone calls and the days on which the same may be allowed are left entirely to the discretion of the Correctional Home authorities."

8. This Court also issued directions that the Circular dated April 8, 2020 which provides that the jailor shall open a bank account and provide all particulars for facilitating deposits shall be duly implemented immediately. It was further directed that the bank account number as well as all other requisite particulars for transfer of money shall be displayed by the correctional home authorities on their website for information of all concerned. This Court thus observed that once deposits are made by the family members/relatives of any inmates in such bank account, the same shall be utilised in a manner that benefits him, according to law.

9. On the other points of concern raised in the PIL Petitions, a report was called from the ADG (Prisons), Pune,

Maharashtra State. Thereafter a report dated June 8, 2020 was filed. Upon perusal of the report this Court passed the following order -

P.C.:

1] Pursuant to the order dated May 26, 2020, the Additional Director General of Police and Inspector General of Prisons and Correctional Services, Maharashtra State (hereafter "the ADG, Prisons") has filed a report dated June 8, 2020.

2] We have perused the report.

3] Mr. Desai, learned Senior Counsel appearing on behalf of the Petitioners, upon perusal of such report as well as on consideration of other relevant aspects, has raised three points of concern and made necessary prayers, as follows:-

(i) In Solapur and Aurangabad Correctional Homes, 60 and 20 inmates respectively have tested positive; however testing of asymptomatic inmates has not been undertaken in terms of the guidelines of the Indian Council of Medical Research (hereafter "the ICMR") dated May 18, 2020. He prays for a direction on the prison authorities for testing of asymptomatic inmates, at the earliest.

(ii) Although the inmates of the correctional homes have been permitted interactions with their family members by making phone calls of three minutes duration twice a month, there exists a circular dated February 12, 2019 issued by the prison authorities which has provisions for wider interaction between the inmates and their family members. He submits that the prison authorities may be directed to extend to the inmates the wider benefits flowing from the said circular (dated February 12, 2019.)

AND

(iii) As on Tuesday last, 11,527 applications for temporary bail are pending before the Magistrates/Sessions Courts, which tend to frustrate the spirit of the order of the Hon'ble Supreme Court dated March 16, 2020 as well as the recommendations of the High Powered Committee constituted in terms thereof; hence, prayer is made for direction to the Magistrates/Sessions Courts to expedite their decisions on such applications.

4] Insofar as the first point of concern raised by Mr. Desai is concerned, we find from a report dated June 8, 2020 of the ADG, Prisons that he is aware of the guidelines issued by the ICMR for COVID-19 testing dated May 18, 2020. It is also evident from a

memo dated June 8, 2020 of the Director of Health Services, Pune addressed to the ADG, Prisons that he has been informed of the requirements of testing of inmates of correctional homes in terms of such guidelines of the ICMR. Considering the further submission of Mr. Desai that even inmates of correctional homes have breathed their last after testing positive for COVID-19, we call upon the ADG, Prisons to furnish information on the following points:-

- (i) the protocol being followed in correctional homes for testing of inmates who are asymptomatic and in direct and high risk contact of inmates who have tested positive for COVID-19; and
- (ii) on the authenticity of the submissions of Mr. Desai that inmates have passed away upon testing positive for COVID-19.

5] Regarding the second point of concern, we direct the ADG, Prisons to consider the desirability of extending the benefits of the circular dated February 12, 2019 to the inmates of the correctional homes, in the light of the fact that number of inmates may have been released on temporary bail in pursuance of the extant judicial/administrative orders and guidelines on the subject and that load of inmates in the correctional homes may not be that burdensome as in normal times. However, if the benefits are denied, the reason shall be indicated in the report to be filed in terms of this order.

6] Also, upon appreciation of the third point of concern, we consider it expedient to call for reports from each of the Principal District & Sessions Judges. The exact number of pending applications for temporary bail filed by the inmates of correctional homes from all over Maharashtra to avail the benefit of the recommendations of the High Powered Committee as on close of working hours today together with the dates of presentation of such applications, shall be indicated in separate reports to be filed by each Principal District & Sessions Judge by close of working hours of Monday next (15th June, 2020). A compilation of the facts and figures shall be made by the Registrar (Legal and Research) and placed before the Bench for consideration on Tuesday next (16th June, 2020), when both these Petitions shall be listed once again."

10. The PIL Petitions then came to be heard on June 16, 2020. Upon perusal of the report of the ADG (Prisons), this Court observed that the report of ADG (Prisons) reveals a

very sorry state of affairs. Considering that number of tests amongst the inmates of the correctional homes across Maharashtra were abysmally low, which requires corrective measures to be adopted by the State and having regard to the facts and figures which have come on record, this Court requested Shri Kumbhakoni, learned Advocate General for the State of Maharashtra, to appear in these matters and to obtain appropriate instructions from the prison authorities on the points raised by Mr. Desai as well as the point raised in the report of ADG (Prisons) that there is insufficient space for quarantining those inmates of correctional homes, who test positive. This Court further observed that having regard to a particular disclosure in such report, the Collectors of various districts have also to be encouraged to explore and identify space available for such quarantine.

11. So far as the grievance of Mr. Desai that the Circular dated February 12, 2019 is not being appropriately enforced, this Court recorded that the ADJ (Prisons) has permitted all the Superintendents of Correctional Homes to purchase additional cellular phones with a view to enforce the terms of the Circular dated February 12, 2019. This Court therefore expressed that it has no doubt that the Superintendents, shall act in terms of the instructions of the ADG (Prisons) to enable the inmates of the prison to have wider interactions with their family members.

12. Noticing that not 11,857 applications but only 1342 applications for temporary bail are pending in all Courts across Maharashtra to avail the benefits of the HPC recommendations, the said issue was closed with the observation that all such pending applications shall be disposed of as expeditiously as possible in accordance with law.

13. During the course of the hearing on June 19, 2020, learned Advocate General placed before this court a document, which refers to the measures the Government proposes to undertake in correctional homes (in view of the present pandemic), for the greater interest of its inmates. The petitioners were called upon to respond to the measures and offer their suggestions to the learned Advocate General for enabling the Government to consider the suggestions offered by the respective petitioners in the proper perspective. The State was called upon to place before this Court whatever measures the Government proposes to implement for the benefit of the inmates in the correctional homes - both undertrial prisoners or convicts. It would be material to refer to paragraph 4 of the order dated June 19, 2020 which reads thus :-

"4. We make it clear that postponement of the hearing of these PIL Petitions till Tuesday next would not be seen as an impediment by the Government to implement such of the welfare measures as are already conceived for the inmates including, inter alia, attending to each and every inmate without fail in terms of the standard medical protocol as and when he/she requires medical attention."

14. During the course of the hearing on June 23, 2020, Shri Kumbhakoni placed before us a document which refers to the measures to be undertaken by the State Government in prisons in view of the pandemic of COVID-19. Learned Senior Advocate for the Petitioners expressed satisfaction with the measures to be undertaken as reflected in the document. He, however, submitted that certain additional safeguards needed to be incorporated in the document which would enure to the health, hygiene and safety of the inmates. Accordingly, learned counsel made their submissions and offered their suggestions.

15. We have heard Shri Desai, learned Senior Counsel appearing on behalf of some of the PIL Petitioners and also the Counsel appearing on behalf of the other PIL Petitioners. We have also heard Shri Kumbhakoni, learned Advocate General on behalf of the State.

16. In fairness to all the Counsel appearing, it must be mentioned that none of the parties treated these Petitions as adversarial in nature. The suggestions made on behalf of the Petitioners were duly considered by the Respondents whereafter the document which refers to the measures to be undertaken by the State Government is placed on record by the learned Advocate General. Even some of the suggestions made by the learned Senior Counsel appearing on behalf of the PIL Petitioners came to be accepted by the State during the course of this hearing.

17. We may firstly refer to the document which the State Government has placed on record pertaining to the measures to be undertaken in the prisons in view of the pandemic of COVID-19. The same reads thus :

1. In view of various guidelines issued by the Indian Council for Medical Research (ICMR), Government of India and as also the Public Health Department, Government of Maharashtra, from time to time till this date, it has become necessary to modify and consolidate the instructions/guidelines issued earlier, in regard to the protocol to be followed in the administration of various prisons, situated in the State of Maharashtra, for the effective handling of the spread of Corona cases. In this regard some reports about corona cases received from some of the prisons of the State, since the outbreak of the virus, are also considered, in their proper perspective.

2. After discussing various aspect in the aforesaid regard with the officials from the Public Health Department of the State of Maharashtra and all concerned, following guidelines are issued for being implemented, with immediate effect, in every prison situate in the State of Maharashtra. It is clarified that these guidelines are to be read and considered for their implementation along with all guidelines issued earlier on this issue and to the extent the earlier guidelines are inconsistent with these guidelines, the guidelines issued hereunder will prevail.

3. In effectively implementing these guidelines, all the guidelines issued, from time to time, not only by the ICMR but also issued by the Central as also State Governments and their various Departments, in regard to the virus, are to be borne in mind.

4. Under Section 7 of the Prisons Act 1894, so far, Collectors of 27 districts throughtout the State of Maharashtra have declared 36 locations as temporary prisons. In other revenue Districts steps are being taken to declare appropriate places accordingly, as temporary prisons. These premises are being used for decongesting the prisons. Such places declared as Temporary prisons shall also be used as 'Quarantine Centre' and 'Covid Care Centre' by providing proper partitioning and required facilities.

5. Further, the Collectors, as needed, shall declare temporary prisons as per Home Deptt. GR No.JLM 0520/PraKra 64/Prison-2 dated 15th May 2020 and provide facilities as per the requirement.

6. These 'Quarantine Centres' and 'Covid Care Centres' forming part of these temporary jails shall comply with the standards and guidelines prescribed therefor by the Public Health Department of the State of Maharashtra from time to time.

7. These 'Quarantine Centres' and 'Covid Care Centres' forming part of these temporary jails shall maintain, amongst others, relevant record of every inmate, relating to his or her health condition relating to the infection of Corona virus, if any.

8. In all prisons of the State, every inmate shall be examined daily with a thermal scanner. In case any inmate is found to have temperature above 100.4 degrees Fahrenheit and/or shows symptoms such as cough, breathlessness, etc. which are, so far, known as the signs of infection of Corona virus, he/she should immediately be referred to the nearest aforesaid newly designated temporary jail cum 'Covid Care Centre'.

9. At each such 'Covid Care Centre' further action is to be taken, as per the advice of doctor, on Covid testing. Further, action is to be taken in terms of the ICMR and other guidelines issued from time to time, for treating such inmate and for consequent further course.


10. Further, every Covid-19 positive prison inmate shall be classified by the medical officer as given below and the Superintendent shall be informed to transfer him accordingly


- a) Mild or very mild cases - temporary jail - Covid Care Centre (CCC)
- b) Clinically assigned as moderate - Dedicated Covid Health Centre (DCHC)
- c) Clinically assigned as severe - Dedicated Covid Hospital (DCH)

All Districts in the State have designated DCHC and DCH. The shifting, as aforesaid, is to be done by the Superintendent, in consultation with District Collector/Municipal Commissioner or concerned health officials. All security concerns about the prisoners shall be taken care by the prison authorities and the local police.

11. If inmate as above is tested positive then further contact tracing and their categorisation is required to be done. Inmates/Prison staffers who have come within a distance of 3 feet of the Covid-19 positive inmate for more than 15 minutes shall fall in the 'High Risk' category. Those in contact beyond a distance of 3 feet shall fall in the category of 'Low Risk'.


12. Every 'High Risk' inmate shall be institutionally quarantined in the aforesaid temporary prisons declared by Collectors. He will be tested for Covid, anytime between the 5th and the 10th day, as per the advice of the doctor. Further course to be resorted as mentioned in above paragraphs.

 All the Low risk inmates shall continue to remain in the prison but would be examined daily by thermal scanning and would be watched for the Covid symptoms.

14. Every prison authority, such as the Superintendent thereof, shall update the family members of those inmates who are asymptomatic but turn out to be positive, as also those who are symptomatic, whether mild, moderate or severe, within less than 48 hours of the detection of the fact that such inmate has  infected with Covid.



15. The place of residence of a Covid positive inmate shall be disinfected.

16. To take care of inmates, above the 60 years of age, as they are more susceptible to the Covid infection, as far as possible, a separate arrangement shall be made, inside the prison itself, so that they do not come in contact with other inmates of the lower age group.

17. Further, for all the inmates above 60 years, shall be medically examined by organising special screening to find co-morbid conditions like diabetes, hypertension, cancer, heart ailment etc. Depending on the co-morbid conditions, such inmates shall be further periodically checked as per the advice of the doctor. In the known cases of hypertension, their blood pressure shall be checked regularly and for known diabetic inmates, blood sugar levels shall be regularly checked. Any deviation found from the normal parameters of such inmates must be treated immediately, in order to bring the relevant parameters  under control.

18. Lawyers duly engaged by the inmates will be allowed to seek instructions from the inmates either via emails or by speaking to the inmate after getting an appointment via email, in that regard, from the Superintendent of the concerned jail.

19. In terms of the Facilities to the Prisoners Rule 1962, postal correspondence with the prisoners will be permitted, only relating to the non-containment areas, since the postal service in such areas has resumed.

 hri Kumbhakoni, learned Advocate General assures this Court  that the guidelines contained in this document shall



be duly implemented and complied with by the prison authorities.

18. Over and above the measures provided for in the document referred to herein before, learned Senior Counsel Shri Mihir Desai made the following suggestions :-

(a) The definition of 'High Risk prisoners' should be as per Standard Operating Procedure ('SOP' for short) issued by National Centre Disease Control (NCDC) for contact tracing of COVID-19 cases. This he suggests, as according to him, though the State has agreed to test all high risk prisoners, nothing has been placed on record to indicate who these high risk prisoners are.

(b) Where any inmate has been diagnosed as COVID positive, all the prisoners and staff from such correctional facilities (temporary prisons included) must be tested. According to him, priority should be given to inmates and staff older than 50 years and/or those with co-morbidities and other vulnerabilities.

(c) The inmates who are above 60 years of age and suffering from co-morbidities be given special attention.

(d) Given further fear of such outbreaks in other prisons, as a preventive measure, random testing should be periodically conducted in all the correctional facilities (temporary prisons included) to enable prison authorities to take preventive measures in time.

(e) Every inmate should be allowed one call (video/phone) per week to contact their family members and/or lawyers for 10 minutes. The same facility should be extended to the inmates in temporary prisons.

(f) Family members and lawyers of prisoners should be immediately informed of any transfer of the inmate from one facility to another.

(g) Temporary prisons (including quarantine centres) must comply with the guidelines as prescribed by the Jail Manual and NCDC.

(h) The prisoners must be tested before being shifted from one jail to another and must be placed in an appropriate quarantine and Covid Care facility.

(i) Given the lack of information in the public domain, the state should upload information, with regards to the prison and its inmates, once every week on the e-prisons website. For monitoring purposes, the same should be submitted to this Court during the pendency of this case. The committee as prescribed by the Jan Adalat decision of this Court in **Criminal PIL St. No.46 of 2015** should be activated with addition of the health experts. A detailed weekly report be submitted to the Secretary, Ministry of Health and other related bodies with recommendations.

19. The Counsel appearing for the petitioners in other connected PIL Petitions adopted the suggestions made by

Shri Desai. In addition, they had the following suggestions to offer :

- (a) All staff should be tested as being done for inmates.
- (b) The staff deputed at an identified quarantine centre cum temporary jail be provided with PPEs as applicable.
- (c) The duty officers should not be rotated and given different posting as per the present practice. For the time being an officer on duty be continued in the facility where he is presently posted.
- (d) The existing vacancies of staff should be filled up. The staff presently posted at a particular prison should not be sent to quarantine centres/ temporary prisons as that would lead to further reduction in the prison staff.
- (e) As per the letter of the Central Government dated May 2, 2020 provisions be made for sanitizers/mask, etc. for prisoners and for upkeep of hygiene and cleanliness.
- (f) Adequate stock and availability of regular patient specific medicines in all prison/quarantine cum temporary jails be arranged.
- (g) Doctors must visit regularly and the Jail Superintendent must submit a comprehensive report to the Additional Director General punctually.
- (h) Women/menstruating prisoners should have good quality sanitary napkins for free and it should be given in advance. A dustbin with a lid and a supply of old

newspapers to be provided in all female barracks for disposal of sanitary pads at all times.

20. During the course of the hearing, on instructions of the concerned officials, Shri Kumbhakoni stated that the State would accept some of the suggestions made by the Petitioners. He agreed to accept the following suggestions :

(a) All the staff deployed in the correctional homes will be tested in the same manner as the inmates as per SOP.

(b) As far as possible the staff deployed in the correctional homes/temporary prisons shall be posted in the present place of posting and they will not be rotated.

(c) The guidelines issued for the maintenance of hygiene and safety measures for the inmates by the Central Government, State Government or its authorities will be complied with.

(d) A dedicated e-mail ID for lawyers for taking appointment with their inmate-clients in the correctional homes will be notified at the earliest on the website of the prison authorities.

(e) The inmates will be educated on the importance of preventive measures and hygiene. Awareness programmes to contain the spread of the virus will be organised on regular basis by the Jailor/Competent Authority of the correctional homes including temporary prisons.

(f) The women inmates shall be provided in advance with good quality sanitary napkins for free and the prison authorities shall ensure proper hygiene and appropriate facility for disposal of sanitary pads at all times.

(g) Telephone call facilities to contact the family members of the inmates shall be made available in the temporary prisons in the same manner as is being done in the case of regular correctional homes.

(h) The prison authorities will inform the family members / relatives of the inmates upon their transfer to the temporary jails and/or quarantine centres and/or Covid Care Centres.

(i) Every possible endeavour will be made by the Prison Authorities to scrupulously follow the guidelines issued from time to time, not only by the ICMR but also as issued by the Central Government, State Government and its various departments in regard to the virus, unless on account of security concern in temporary prisons, the authorities are unable to do so.

(j) The details of the 37 temporary prisons will be uploaded on the website along with other necessary details as done in case of correctional homes.

21. We may now deal with the submissions of Shri Desai and other learned counsel for the Petitioners, which the learned Advocate General is not willing to accept on behalf of the State, and therefore requires an adjudication.

22. Shri Desai, learned Senior Advocate pointed out that in terms of the directions of the Supreme Court in *Suo Motu Writ Petition (C) No. 1 of 2020* dated March 23, 2020 a monitoring team must be set up at the state level, to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously. According to Shri Desai such a monitoring team has not been set up. Countering this submission, learned Advocate General, placed on record a G.R. dated May 8, 2020 whereby the monitoring team has been set up. He submits that the same is functioning in compliance with the directions issued by the Apex Court. In our opinion, in view of this G.R., the concern of Shri Desai stands addressed. This submission of Shri Desai therefore does not merit any consideration.

23. Shri Kumbhakoni, learned Advocate General submitted that in respect of 'High Risk Prisoners', various guidelines issued by the ICMR, Government of India as also the State Government and its authorities will be duly complied with. It is not possible for us to accept the submission of Shri Desai that the definition of 'High Risk Prisoners' should be as per SOP issued by National Centre Disease Control (NCDC) for contact tracing of COVID-19 cases. We cannot substitute our opinion for that of the experts in the field and direct the State Government to accept the definition of 'High Risk Prisoners' as per the SOP issued by NCDC. Once the learned Advocate General has made a statement that the State will

follow the guidelines issued by the ICMR, the Central Government, the State Government and its authorities in the case of High Risk Prisoners, then it is not possible for us to substitute our opinion in matters of State which are in the realm of policy based on the opinion of the experts. Even as regards the safety measures to be adopted in respect of the health and hygiene of the inmates and also the hygiene in the prisons, we are satisfied with the assurance of the learned Advocate General, that the State would abide by the various guidelines issued by ICMR, Government of India and also Public Health Department of the State of Maharashtra and its authorities in this regard. A reading of the document of safety measures would reveal that the measures stated therein would be implemented along with all guidelines issued earlier on this issue. To the extent earlier guidelines are inconsistent with the fresh guidelines, the fresh guidelines will prevail.

24. We are satisfied with the measures the State proposes to undertake and are not impressed with the submission of Shri Desai that the safety measures in case of inmates who are above 60 years of age are inadequate. Clause 17 of the document reproduced in paragraph 17 addresses this concern. The learned Advocate General has assured that all possible care will be taken by the prison authorities in respect of the inmates who are above 60 years of age. They are kept together in the same barrack/circle in the correctional home so as to enable the prison authorities to

effectively monitor them. There is, thus, no reason to interfere.

25. Learned Advocate General then placed on record the guidelines of June 2,2020 to be followed by the correctional homes issued by the Public Health Department of the State Government in respect of the measures to be undertaken by the prison authorities for safety and wellbeing of the inmates in the present times. These guidelines provide for measures to be undertaken in respect of maintaining hygiene, norms for social distancing, etc. to be followed in correctional homes. It also provides steps to be taken in case any inmate shows any symptoms relating to COVID-19. It has also been provided that the inmates should be medically examined at regular intervals and a suspect, if any, be sent for testing. Instructions have been issued for sanitizing the residential areas of the inmates. Inmates above 30 years of age are to be examined for any other comorbidities. These guidelines also provide for precautions to be taken in respect of the inmates who are recently lodged. The guidelines also deal with the sanitization and hygiene protocol to be followed in the kitchen area, toilets and the frequency of the sanitisation thereof at regular intervals. Social distancing norms and measures for maintenance of hygiene are set out. The said guidelines also deal with the norms to be followed in respect of the inmate who has tested COVID-19 positive.

26. We find the guidelines in the communication dated June 2, 2020 addressed by the State Public Health Department to the Prison/Jail Authorities to be comprehensive in nature. The guidelines need to be scrupulously followed by the correctional homes and temporary prison facilities. We have no manner of doubt that these guidelines which are issued by the Public Health Department of the State, as regards the measures to be undertaken in the correctional homes regarding the safety and hygiene, the authorities concerned will scrupulously abide by the same.


27. Learned Advocate General also assured this Court that apart from the guidelines of the ICMR for testing of the inmates, the guidelines of the Central Government issued from time to time shall be complied with for High Risk prisoners.

28. In so far as quarantine centres are concerned, learned Advocate General submitted that as these centres are within the temporary prisons, the ICMR guidelines would be followed as far as possible by taking every precaution to protect the health and wellbeing of the inmates. This he would so submit, as according to him, the temporary prisons are located in structures like school buildings and other municipal buildings which may lack all the security features as a regular jail does and therefore,

from the point of view of security, it may not be possible to strictly follow the ICMR guidelines.

29. We are of the opinion that as it is a matter of health and wellbeing of the inmates, the guidelines of the ICMR need to be followed even in respect of the temporary prisons without compromising in any manner the security concerns. Any deviation from the guidelines issued by the ICMR in respect of the temporary prisons can only be on account of security concern or under some exceptional circumstance.

30. Shri Kumbhakoni submits that though it is the ultimate aim of the State Government and the Prison Authorities to test each and every inmate, it may not be possible to immediately do so, as having regard to this unprecedented situation and the challenges faced by the State in reaching out medical aid and help to those who are already affected by the virus, the resources available have to be evenly distributed to all concerned in the society. It is for this reason, in response to Shri Desai's submission, Shri Kumbhakoni submits that it is not immediately possible to test each and every inmate. We do not find this submission of Shri Kumbhakoni unreasonable. In any case, we are satisfied with the measures taken by the State Government for the present. The State has accepted most of the suggestions of the Petitioners during the course of this

hearing. We therefore do not propose to issue any directions on this submission of Shri Desai. We may, however, hasten to add that whenever an inmate shows signs of any physical omfort or complains of such discomfort like cough, cold, etc. such inmate should be immediately tested.

31. We are also satisfied with the submission of Shri Kumbhakoni that with the passage of some time, the State would review the SOP and would endeavour making improvements in the medical and safety protocol to be followed in respect of the health and wellbeing of the inmates. We hope and trust that the State will continuously endeavour to improve upon the measures regarding the protocol to be followed in respect of health and wellbeing of the inmates. We have no manner of doubt that the concerned authorities of the State will continuously monitor the situation, and after taking into consideration the opinion of the experts in the field of medicine and health care, the standard operating protocol will be revised from time to time ensuring to the benefit of the inmates.

32. We have heard Shri Bhavesh Parmar, learned counsel appearing for the PIL Petitioners in PIL No. 24 of 2020 and Shri Milind Sathe, learned Senior Advocate on behalf of the Respondent No.4.

33. Shri Bhavesh Parmar firstly submits that the Undertrial Review Committee ('URC' for short) contemplated by the Apex Court in *In Re Inhuman Conditions in 1382 Prisons (2016) 3 SCC 700*, has not been constituted. Shri Parmar would then submit that the SOP for URC prepared by the National Human Rights Commission must be adhered to. Inviting our attention to paragraph 24 of this Petition, he next submitted that the categorisation of the prisoners to be released on interim bail/emergency parole by the HPC is not determined correctly and is arbitrary.

34. Shri Kumbhakoni, learned Advocate General pointed out that the URC contemplated by the Apex Court is functional at the District level. This being the position, we have no manner of doubt that the URC will discharge its functions in terms with the decision of the Apex Court.

35. Shri Sathe, learned Senior Advocate appearing for the Respondent No.4, invited our attention to the order dated March 23, 2020 passed by the Apex Court in **Suo Motu Writ Petition (C) No. 1/2020**. Shri Sathe submits that the HPC has been constituted under the orders of the Apex Court, to determine which class of prisoners can be released on parole or on interim bail, for such period as may be thought appropriate. He would submit that the Apex Court left it open for the HPC to determine the category of prisoners who should be released. He would urge that the

HPC has been constituted in the present context of the pandemic of Corona virus (COVID-19) to ensure that the spread of Corona virus within the prisons is controlled. His argument is that the Petitioners have to either approach the Apex Court or the HPC if the Petitioners have any grievance regarding the categorisation made by the HPC. He would therefore submit that it is not open for this Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India to examine the correctness of the categorisation done by the HPC. Shri Sathe then relied upon the decision of the Apex Court in the case of **In re the Special Courts Bill, 1978 AIR 1979 SC 478.** to submit that even otherwise on merits the categorisation by the HPC is in terms with what is laid down in this decision and therefore cannot be said to be arbitrary.

36. We find force in the submission of learned Senior Advocate Shri Sathe that this Petition challenging the decision of the HPC should not be entertained. In this context it would be useful to refer to the observations of the Apex Court made in the orders dated March 23, 2020 and April 13, 2020 in **Suo Motu Writ Petition (C) No. 1/2020.** The relevant portion of the order dated March 23, 2020 passed by the Apex Court reads thus :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID - 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that

the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

(emphasis supplied)

37. A reference also needs to be made to the relevant portion of the order dated April 13, 2020 which reads thus :

“We make it clear that we have not directed the States/Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the State/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

38. A reading of the orders passed by Their Lordships will reveal that the HPC was constituted pursuant to the directions of the Supreme Court. The HPC was to determine which class of prisoners may be released on interim bail or parole during the pandemic (COVID 19) for such period as may be thought appropriate. The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of Corona virus in the prisons, the spread of the disease is manageable. The Apex Court further made it clear that it is left open for the HPC to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate. It was further clarified by the Apex Court that it has not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The Apex Court thus observed that the purpose of the order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

39. A reading of the orders of the Apex Court leaves no manner of doubt that it is for the HPC to determine the category of the prisoners, which the Committee may

consider appropriate to release in the light of the observations made by the Apex Court. Again it is for the State to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released. In our opinion, in view of the clear mandate of the Apex Court, it is for the HPC to determine the category of the prisoners who should be released. It would therefore not be permissible for this Court to entertain a Petition against the determination by the HPC unless a clear case of transgression of the prisoners' rights is made out.

40. We are of the view that for seeking intervention of this Court in the exercise of the writ jurisdiction, a clear case of constitutional rights or statutory prescriptions being transgressed has to be made out. The Petitioners contend that the categorisation by the HPC affects their rights. As noted earlier, the HPC has been constituted for a specific purpose by the Apex Court for decongesting the prisons for a specific period in view of the outbreak of the present pandemic and thus it is for the HPC to determine the categories in the light of the observations of the Supreme Court. We are afraid that the case put forth by the Petitioners is not in the nature of transgressing any constitutional right or statutory prescription.

41. There is another reason why we are not inclined to issue the writ of mandamus prayed for by the PIL Petitioners. The HPC has been constituted by the Apex Court to deal with this extra ordinary situation of decongesting the prisons having regard to the outbreak of the present pandemic. In our opinion, determination of the categories by the HPC under these circumstances to release certain prisoners does not confer any right on the PIL Petitioners to contend that similar indulgence may be shown to them or similar such concessions be extended to them. The PIL Petitioners therefore cannot claim any legal right on the basis of categorisation made by the HPC. It is well settled that concession cannot be claimed as a matter of right and therefore a writ of mandamus cannot be issued. In this context a profitable reference can be made to the decision of the Apex Court in the case of **K. V. Rajalakshmiah Setty & another vs State Of Mysore and another (AIR 1967 SC 993)** from which we draw support. Paragraph 12 of the decision which is relevant reads thus :

“12. There is some force in some of the contentions put forward on behalf of the State of Mysore. It is not necessary to test them as we find ourselves unable to uphold the contention of the appellants. No doubt some concession had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 63 persons also received some concession but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so. There was no service rule which the State had transgressed nor has the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from surveyors. The indulgences shown to the different batches of persons were really ad-hoc and we are not in a position to say what, if any, ad-hoc indulgence should be meted out to the appellants before us.”

We are therefore not inclined to interfere in the exercise of our writ jurisdiction under Article 226 of the Constitution of India. Resultantly PIL No. 24 of 2020 deserves to be dismissed.

42. Hence the following order.

ORDER

- (i) The directions issued under the interim orders passed in these PIL Petitions will have to be fully complied with by the State Government.
- (ii) The measures to be undertaken in prisons in view of the pandemic of COVID-19 as per the document produced by the State and as reproduced in paragraph 17 of this judgment should be strictly implemented and complied with.
- (iii) The statements of the Advocate General accepting the suggestions of the Counsel for the Petitioners as well as the assurances as recorded in paragraph 20 are accepted. The State is directed to comply with and implement the same immediately.
- (iv) Every possible endeavour shall be made by the Prison Authorities to scrupulously follow the guidelines issued from time to time by the ICMR, Central Government as well as State Government and its authorities regarding the safety measures to be undertaken in the

correctional homes/temporary prisons for its inmates.

- (v) The prison authorities are directed to refer any inmate for testing in case of any signs of physical discomfort like cough, cold, etc.
- (vi) The Respondents are directed to notify the details of the 37 temporary prisons on the website and apart from maintaining the record in terms of Clause 7 of the measures to be undertaken mentioned in paragraph 17, the family members/ close relatives of the inmate shall be immediately informed about his or her health condition relating to the infection of the Corona virus.
- (vii) The assurance of the learned Advocate General that there shall be random testing of inmates across the jail/circles or barracks is accepted and the prison authorities are directed to forthwith implement the measures for random testing.
- (viii) The State shall endeavour to deploy sufficient/ additional staff at the correctional homes and temporary jails and/or Quarantine Centres and/or Covid Care Centres.
- (ix) The correctional homes/temporary prisons shall abide and comply with the guidelines issued by the Public Health Department of the State Government dated June 2, 2020.
- (x) We accept the assurance of the learned Advocate General on behalf of the State that the SOP for the

wellbeing, safety and precautionary measures will be revised from time to time at regular intervals after seeking opinion of the experts in the field of medicine and health care.

43. PIL Petition No. 24 of 2020 is dismissed.
44. The other PIL Petitions are disposed of in above terms.
45. The applications, if any, are disposed of.
46. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)

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Annexure 9

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Chavan/SM Patil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
PIL-CJ-LD-VC- NO. 44 OF 2020**

1. National Alliance for People's Movements

Through its National Convener,
Medha Patkar, Aged:65 Years, Occu. Social
Service, Having its office at-Raghav Shri
Raghuraj Sahnivas,
Sinhgad Road, Pune -411030.

2. Medha Patkar

Age:65 Years, Occu. Social Service,
Raghav Shri Raghuraj Sahnivas,
Sinhgad Road, Pune -411030.

3. Meera Sadanand Kamath

Age:74 years, Occu. Social Activist
and Housewife, R/o. Flat No.2,
Ruchi Co-operative Housing Society Ltd.,
Chickoowadi Road, Shimpoli,
Boriwali(W), Mumbai-400092.

... Petitioners

Vs

1. The State of Maharashtra

Through its Additional Chief Secretary,
Home Department, Mantralaya,
Mumbai -32.

2. The Director General of Prisons,

MS, Pune.

3. The High Powered Committee

Through its Member Secretary,
Mumbai.

... Respondents

.....
Mr. S. B. Talekar i/b. Talekar and Associates for the Petitioners.

Mr. Deepak Thakare, Public Prosecutor a/w. Ms. S. D. Shinde, APP for the State.

.....
CORAM : DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.

RESERVED ON : JULY 24, 2020
PRONOUNCED ON : AUGUST 5, 2020.

MADHAV J. JAMDAR, J.:

1. The petitioner No.1 claims to be an alliance of progressive people's organizations and movements and *inter alia* claims to stand against the infringement of human rights, civil liberties communalism, casteism, untouchability, corruption and discrimination of all kinds. However, the petitioner No. 1 is not registered body. The petitioner No.2 is the national convener of the petitioner No.1 and a social Worker. The petitioner No.3 is also a social activist. The petitioner Nos. 2 and 3 are the citizens of India.

2. This Public Interest Litigation has been filed seeking quashing of the decision of the High Powered Committee (hereafter "the HPC", for short) dated 25th March, 2020 to the extent of Clauses (iii), (iv) and

(vii) of paragraph 8, decision/minutes of the HPC meeting dated 11th May, 2020 excluding certain categories of offences provided in paragraph 5(i) and 5(ii) for the purpose of grant of interim bail and corrigendum dated 18th May, 2020 of the minutes of meeting of the HPC dated 11th May, 2020 to the extent of clarification that the class and/or category of cases determined by the HPC for temporary release be not read as a direction made by it for mandatory release of the prisoners falling in that category or class and a further clarification that case of every prisoner be considered on case to case basis for deciding the temporary release of such prisoner. In the PIL petition, a further relief has been sought seeking direction to the respondents to release the prisoners convicted with life imprisonment without insisting that they should have been released in the past at least twice, either on furlough or parole.

3. We have heard Mr. S. B. Talekar, the learned Advocate appearing for the petitioners and Mr. Deepak Thakare, the learned Public Prosecutor for the respondent Nos. 1 and 2.

4. Mr. S. B. Talekar pointed out the orders dated 23rd March, 2020 and 13th April, 2020 passed by the Supreme Court in suo motu **Writ Petition (C) No. 1 of 2020** (In Re: Contagion of COVID 19 Virus in prisons) and connected matters, minutes of the HPC dated 25th March, 2020 and 11th May, 2020 and corrigendum dated 18th May, 2020 to the minutes of the meeting of HPC dated 11th May, 2020. It is the contention of Mr. Talekar that the HPC has exceeded its jurisdiction and the classification made by the HPC is not reasonable classification. He submitted that the classification which the HPC has made fails to satisfy two conditions viz. the classification is required to be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others who are left out of the group, and that the differentia must have a rational relation to the object sought to be achieved; therefore, it violates Article 14 of the Constitution of India. He submitted that the HPC was constituted by an order dated 23rd March, 2020 of the Supreme Court for the purpose of ensuring maximum possible distancing among the prisoners including the under-

trials. Thus, he submitted that excluding certain categories of prisoners or under-trials for emergency release in view of the pandemic caused by COVID-19, is not reasonable classification as there is no nexus between the basis of classification and the object for which the HPC was constituted. Mr. Talekar further submitted that only convicts who are likely to abscond or having antecedents may not be released. Mr. Talekar further submitted that Clause 8(iii) of the HPC's minutes of meeting dated 25th March, 2020 requiring that the prisoners should have been released on two occasions earlier either on parole or furlough for the purpose of getting benefit of emergency parole is causing hardship, as there are several convicted prisoners who are otherwise entitled for emergency release but are deprived of the same in view of the said requirement. He relied on the judgment of this Court passed in **Criminal Writ Petition-ASDB-LD-VC No.65 of 2020** (Milind S. Patil & Ors. V/s. The State of Maharashtra & ors.) and stated that the said decision passed in favour of the three petitioners who have filed the said Criminal Writ Petition be made applicable to all the prisoners. Mr. Talekar relied on the judgment of the Supreme Court reported in

(1983) 2 SCC 277 (Mithu vs. State of Punjab) to support his submission that the classification made by the HPC is not reasonable as Section 303 of the Indian Penal Code (hereafter “the IPC”, for short), although held to be unconstitutional, is also included in the excluded category. He relied on the judgment of the Supreme Court reported in (2018) 11 SCC 1 (Nikesh Tarachand Shah V/s. Union of India and Another) by which Section 45(1) of the Prevention of Money Laundering Act, 2002 insofar as it imposes two further conditions for release on bail was declared unconstitutional. It is his contention that there is no necessity to exclude the offences arising out of Special Acts. He also relied on the Full Bench decision of this Court reported in 2019 (6) Mah. L.J. 186 (F.B.) (Kantilal Nandlal Jaiswal V/s. Divisional Commissioner, Nagpur and Another) and the decision of the Division Bench reported in 2019 SCC Online Bom. 5111 (Hariom Vijay Pande V/s. State of Maharashtra, through Divisional Commissioner and Another) to contend that parole is a limited legal right available to the convict but is a statutory right. Lastly, he pointed out the decision of this Court passed in PIL CJ-LD-VC- 2 of 2020 (People’s Union for

Civil Liberties V/s. The State of Maharashtra and Ors.) and contended that as far as the aspect regarding the HPC's decision is concerned, the said decision is *per incuriam* in view of the aforesaid decisions in Kantilal Nandlal Jaiswal (supra) and Hariom Vijay Pande (supra).

5. On the other hand, Mr. Deepak Thakare contended that the orders of the HPC are not arbitrary. He referred to the decision of the Supreme Court in suo motu **Writ Petition (C) No. 1 of 2020** dated 23rd March, 2020 and 13th April, 2020 and submitted that the Supreme Court has specifically clarified that the Supreme Court has not directed the State/Union Territories to compulsorily release the prisoners from their respective prisons and the only purpose of those directions was to ensure the State/Union Territories to assess the situation in their respective prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose, to determine the category of prisoners to be released. He submitted that the Supreme Court has left it open to the HPC to determine the category of prisoners to be released. He relied on the aforesaid judgment of this Court in the case of People's Union for Civil

Liberties (supra) and submitted that the HPC has not made any transgression of the prisoners' rights and therefore, the PIL petition be dismissed.

6. Before considering the rival submissions, it is necessary to see the circumstances in which the HPC was constituted and took the decisions.

7. COVID-19 has affected the entire world. The State of Maharashtra and the Union of India announced the lock down on 22nd March, 2020 and 24th March, 2020 respectively and till date, the lock down is continued from time-to-time with modified restrictions. To contain the spread of COVID-19, various precautionary measures have been suggested by the experts which *inter alia* include physical distancing. In view of these circumstances, the Supreme Court by order dated 23rd March, 2020 passed certain directions to ensure maximum possible distancing among the inmates of the correctional homes including the under-trials. Each State/Union Territory was directed to constitute a high-powered committee comprising of (i) the Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/

Prison) and (iii) the Director General of Prison. The Supreme Court in the said order specifically directed that it is for the HPC to determine the category of prisoners who should be released depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged and is facing trial or any other relevant factor which it may consider appropriate.

8. Pursuant to the aforesaid order dated 23rd March, 2020 of the Supreme Court, the HPC was constituted by the Maharashtra Government vide GR No.JLM0320/CR58/Prison-2 dated 24th March, 2020. The HPC, *inter alia*, took various decisions as reflected in paragraph No.8 of the minutes of its meeting held on 25th March, 2020. Clause Nos. 1 and 2 of the said decision mentions that the HPC decided to consider favourably release on interim bail/emergency parole of under-trial prisoners or convicted prisoners who have been booked/charged/convicted for such offences for which maximum punishment is 7 years or less. Clause No. (iii) mentions that the HPC further decided that the convicted prisoners whose maximum sentence

is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough). Clause No. (iv) as modified by further decisions of HPC mentions that the aforesaid directions shall not apply to under-trial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under the Special Acts [other than the IPC] like the Maharashtra Control of Organised Crime Act (hereafter “the MCOC Act”, for short), the Terrorists and Disruptive Activities Act (hereafter “the TADA”, for short) the Prevention of Money Laundering Act (hereafter “the PMLA”, for short), the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act (hereafter “the MPID Act”, for short), the Narcotics Drugs and Psychotropic Substances Act (hereafter “the NDPS Act”, for short), the Prevention of Terrorism Act (hereafter “the POTA”, for short), the Unlawful Activities (Prevention) Act (hereafter “the UAPA”, for short), the Protection of Children from Sexual Offences Act (hereafter “the POCSO Act”, for short), etc. Clause No. (v) provides that the decision shall apply to only such prisoners, which in the

opinion of the concerned jailer, keeping in view the overall infrastructure available at the concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners. Clause No. (vii) further clarifies that the prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance with law. It is also provided that in considering every case for such release, the "nature of the offence" and the "severity of the offence" shall be considered, the possibility of the prisoners committing offence in case of temporary release (such as habitual offenders) or likelihood of his/her absconding should also be considered as an important test to decline such requests for temporary release.

9. The Supreme Court, thereafter passed further directions dated 13th April, 2020 in the aforesaid suo motu Writ Petition (C) No. 1 of 2020 and clarified as follows :

"We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the State/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain

prisoners and for that purpose to determine the category of prisoners to be released.

We make it clear that aforesaid order is intended to be implemented fully in letter and spirit.”

10. Thereafter, the HPC in the meeting dated 11th May, 2020 read with corrigendum dated 18th May, 2020, *inter alia*, directed that the decision of the High Power Committee dated 25th March, 2020 shall be applicable to all undertrial prisoners booked/charged for such offences for which maximum sentence is above 7 years and they shall be favourably considered for release on interim bail except to the following category of offences:

(1) **Indian Penal Code**

- a) IPC-Chapter VI-Offences against State-IPC 121 to 130
- b) IPC-303* (though held unconstitutional, these accused are hardened repeat offenders)
- c) IPC-364(a), 366, 366(A), 366(B), 367 to 373
- d) IPC-376, 376(A), C,D,E
- e) IPC-396
- f) IPC-489A, B, D
- g) Bank Frauds and Major Financial Scams

(2) **Special Acts**

- a) MCOC, TADA, POTA, UAPA, PMLA, Explosives Substances Act, Anti Hijacking Act
- b) NDPS (Other than personal consumption)
- c) MPID

- d) *POCSO*
- e) *Foreigner's in Prison.*

11. The HPC further recorded and directed that the data shows that there are 1340 prisoners who are above the age of 60 years. Out of these 1340 prisoners, majority of them would be able to avail the benefit of the directions of the HPC and as far as remaining prisoners above 60 years are concerned and/or those prisoners with underlying medical conditions which puts them at higher risk for severe illnesses from COVID-19, all concerned Authorities, including the concerned Superintendent of Prison shall take appropriate measures including their isolation. The HPC further clarified that notwithstanding the decisions of the Committee, it would be open to such prisoners to apply for interim bail on the same terms as mentioned in the decision of this Committee dated 25th March, 2020 to the concerned Court and orders may be passed after considering the facts and circumstances of the case and examining the medical reports and other relevant records.

12. The main contention of Mr. Talekar is that the HPC has exceeded its jurisdiction and classification made by the HPC does not satisfy the requirement of Article 14 of the Constitution of India.

13. The contention of Mr. Talekar that the HPC exceeded its jurisdiction by classifying the prisoners is without any basis. A perusal of the order of the Supreme Court in suo motu **Writ Petition (C) No. 1 of 2020** by which the HPC was directed to be constituted clearly shows that complete discretion was given to the HPC to determine the category of prisoners who should be released to reduce overcrowding in prisons. The Supreme Court has directed that the prisoners can be categorized depending upon the nature of offence, the number of years to which he/she has been sentenced or the severity of the offence, which he/she is charged with and is facing trial or any other relevant factor, which the HPC may consider appropriate. The Supreme Court by order dated 13th April, 2020 further clarified that there was no direction for compulsory release of the prisoners from their respective prisons and the purpose of the directions was to assess the situation by the State/Union Territory in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released. It is very clear that the HPC was dealing with the question of prisoners to

be released for reducing overcrowding and the Supreme Court has not directed release of all the prisoners. It is to be noted that the Supreme Court has left it open at the entire discretion of the HPC to determine the category of prisoners who can be released on emergency bail/parole. Pursuant to the direction of Supreme Court, the HPC took decision as set out hereinabove. Thus, there is no substance in the contention of the petitioners that the HPC exceeded its jurisdiction.

14. Now we will examine the second contention of the learned advocate for the petitioners that the classification of the offences made by the HPC does not satisfy the requirement of Article 14 of the Constitution of India. The Supreme Court in its decision reported in **AIR (39) 1952 SC 75** (The State of West Bengal v/s. Anwar Ali Sarkar and Another), held that equality before the law or the equal protection of laws does not mean identity or abstract symmetry of treatments. Distinctions have to be made for different classes and groups of persons and a rational or reasonable classification is permitted. The Supreme Court in the said decision quoted with approval following passage from Willis on Constitutional Law (1936 Edition, at page 579):-

"The guarantee of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate. 'It merely requires that all persons subject to such legislation shall be treated alike under like circumstances and conditions both in the privileges conferred and in the liabilities imposed.' 'The inhibition of the amendment was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.' It does not take from the states the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis."

15. In the aforesaid decision, the seven principles formulated by Hon'ble Fazl Ali, J. (as His Lordship then was) read as follows:-

"1. The presumption is always in favour of the constitutionality of an enactment, since it must be assumed that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience and its discriminations are based on adequate grounds."

2. The presumption may be rebutted in certain cases by showing that on the face of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.

3. The principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment.

4. The principle does not take away from the State the power of classifying persons for legitimate purposes.

5. Every classification is in some degree likely to produce some inequality, and mere production of inequality is not enough.

6. If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons.

7. While reasonable classification is permissible, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the object sought to be attained, and the classification cannot be made arbitrarily and without any substantial basis."

16. Yet again, the Hon'ble Supreme Court in its decision in Arun Kumar and Others V/s. Union of India and Ors. reported in

(2007)1 SCC 732 held as follows:

“95. It is no doubt true that Article 14 guarantees equality before the law and confers equal protection of laws. It is also true that it prohibits the State from denying persons or class of persons equal treatment provided they are equals and are similarly situated. But, it is equally well established that Article 14 seeks to prevent or prohibit a person or class of persons from being singled out from others situated similarly. If two persons or two classes are not similarly situated or circumstanced, they cannot be treated similarly. To put it differently, Article 14 prohibits dissimilar treatment to similarly situated persons, but does not prohibit classification of persons not similarly situated, provided such classification is based on intelligible differentia and is otherwise legal, valid and permissible.

96. Very recently in Confederation of Ex-Servicemen Associations v. Union of India, (2006) 8 SCC 399, the Constitution Bench had an occasion to consider a similar question. Referring to State of W.B. v. Anwar Ali Sarkar and several others cases, one of us (C.K. Thakker, J.) observed that:

".....it is clear that every classification to be legal, valid and permissible, must fulfill the twin-test, namely;

(i) the classification must be founded on an intelligible differentia which must distinguish persons or things that are grouped together from others leaving out or left out; and

(ii) such a differentia must have rational nexus to the object sought to be achieved by the statute or legislation in question".

17. A few years prior to the above referred decision, the Supreme

Court in its decision in K.R. Lakshman and Others v/s. Karnataka Electricity Board and Ors. reported in (2001)1 SCC 442, held as follows:

“4.

.....The concept of equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. All that Article 14 guarantees is a similarity of treatment and not identical treatment. The guarantee of equal protection of law and equality before the law does not prohibit reasonable classification. Equality before law does not mean that things which are different shall be treated as though they were the same. The principle of equality does not absolutely prevent the State from making differentiation between the persons and things. The State has always the power to have a classification on a basis of rational distinctions relevant to the particular subject to be dealt with but such permissible classification must satisfy the two conditions namely the classification to be founded on intelligible differentia which distinguishes persons or things that are grouped from others who are left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the legislation. In other words, there must be a nexus between the basis of classification and the object of the legislation. So long as the classification is based on rational basis and so long as all persons falling in the same class are treated alike, there can be no question of violating the equality clause. If there is equality and uniformity within each group, the law cannot be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar situation, some included in the class get an advantage over others, so

long as they are not singled out for special treatment. When a provision is challenged as violative of Article 14, it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it and having ascertained the policy and object of the Act,, the Court has to apply a dual test namely whether the classification is rational and based upon an intelligible differentia which distinguished persons or things that are grouped together from others that are left out of the group and whether the basis of differentiation has any rational nexus or relation with its avowed policy and objects. The power to make classification can be exercised not only by the legislature but also by the Administrative Bodies acting under an Act.”

18. Thus, it is clear that as per the settled legal position the principle of equality does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, and the varying needs of different classes of persons often require separate treatment. The principle of equality does not take away from the State the power of classifying persons for legitimate purposes. It is settled legal position that the concept of equality before law means that among equals the law should be equal and should be equally administered and that the likes should be treated alike. Equality before law does not mean that things which are different shall be treated as though they were the same. The State

has always the power to have a classification on the basis of rational distinctions relevant to the particular subject to be dealt with but such permissible classification must satisfy the two conditions, namely the classification should be founded on intelligible differentia which distinguishes persons or things that are grouped from others who are left out of the group and that the differentia must have a rational relation to the object sought to be achieved by the legislation.

19. We will examine the decisions of the HPC in the light of the above referred settled legal position as requirements of Article 14 will also apply to the decisions of HPC.

20. The Supreme Court by order dated 23rd March, 2020 directed formation of HPC for determining class of prisoners who can be released on parole or on interim bail for such period as may be thought appropriate. The said direction was passed with the object of ensuring maximum possible distancing among the prisoners including undertrials. However, the Supreme Court specifically directed to determine the category of the prisoners who should be released depending upon, *inter alia*, the nature of offence and severity of the

offence and any other relevant factor as deemed appropriate by the HPC. It is also to be noted that the Supreme Court has not imposed any restrictions on the power of the HPC and it is the complete discretion of the HPC to determine the category of the prisoners to be released.

21. The HPC in Clause 8 (iv) clarified that its decision will not apply to under-trial prisoners booked for serious economic offences/bank scam or offences under Special Acts like TADA, MCOC Act, PMLA, MPID Act, NDPS Act, UAPA, POCSO Act, etc. or prisoners convicted thereunder. The HPC further clarified that in considering every case for such release, the nature of the offence and the severity of the offence shall be considered and the possibility of the prisoners committing offence in case of temporary release (such as habitual offender) or likelihood of his/her absconding should also be considered while dealing with an application for temporary release.

22. For the purpose of examining whether the classification of offences under the Special Acts satisfies the requirement of reasonable classification, it is necessary to see the purposes for which some of such



Special Acts were enacted.

- (i) The MCOC Act was enacted to make special provisions for prevention and control of, and for coping with, criminal activity by organized crime syndicate or gang.
- (ii) The TADA was enacted to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities.
- (iii) The POTA was enacted to make provisions for the prevention of, and for dealing with, terrorist activities and for matters connected therewith.
- (iv) The UAPA was enacted to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities.
- (v) The PMLA was enacted to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering. Section 3 thereof provides that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or

activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

- (vi) The Explosive Substances Act *inter alia* provides punishment for causing or attempt to cause explosion likely to endanger life or property. The explosive substance/special category explosive substance mentioned in the said enactment includes RDX, PETN, HMX, TNT, NTP, CE etc.
- (vii) The Anti-Hijacking Act, 2016 was enacted for dealing with the unlawful acts of seizure or exercise of control of aircraft which jeopardize safety of persons and property.
- (viii) The NDPS Act was enacted to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances to provide for the forfeiture of property derived from, or used in illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic

Substances and for matters connected therewith.

- (ix) The MPID Act was enacted to protect the interest of depositors in the Financial Establishments and matter relating thereto.
- (x) The POCSO Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

23. We have set out hereinabove the purpose for which the said Special Acts were enacted as the same clearly justifies their classification as category to which the benefit of the emergency bail/parole is denied, as done by the HPC. These offences are totally different from offences punishable under the IPC, and commission of the said offences affects the entire nation.

24. It is true that acts of commission/omission amounting to crime in terms of the extant laws are regarded as offences against the society;

however, it is to be noted that the offences under Special Acts like MCOC Act, TADA, POTA, UAPA, PMLA, Explosive Substances Act, Anti Hijacking Act etc. all are against the nation and affects the very foundation of the State. Offences, which are sought to be checked by these Special Acts, cripple the economy of the State as well as the nation and affect the economic interest of the citizens. The said Special Acts excluded by the HPC from giving benefit from the emergency parole/bail are enactments relating to terrorist activities, relating to economic offences, socio-economic offences, crimes against women and children etc. The purposes for which the said Special Enactments were enacted as set out hereinabove clearly shows that the nature of offence and severity of the offence contemplated by these special enactments is totally different from the IPC offences. The submission of Mr. Talekar that there are no special provisions made to deal with the bail applications for the offences falling under some of the Special Acts and the provisions of the Cr.P.C. are applicable, is not at all relevant aspect as what is contemplated by the Supreme Court is, classification of prisoners for giving benefit of emergency parole/bail *inter alia* on the


basis of nature of offence and/or severity of the offence. Therefore, the submission that the classification or the categorization of these offences separately from other offences and labelling them as not eligible for release on emergency bail/parole is contrary to the rights of prisoners guaranteed by Article 14, is without any substance.


25. The HPC also categorized certain offences under the IPC and held that the benefit of emergency bail/parole is not applicable to them. Sections 121 to 130 of the IPC are offences against the State. Section 303 of the IPC, although held unconstitutional, contemplates a situation where murder is committed by a convict while undergoing a sentence of imprisonment for life. Such a convicted prisoner is seen as a habitual offender and, therefore, is denied the benefit of release. The offences punishable under Sections 364(A), 366, 366(A), 366(B), and 367 to 373 are relating to kidnapping for ransom etc. Sections 376, 376(A), (C), (D) and (E) are relating to rape. Section 396 is concerning dacoity with murder. Offences under Sections 489A, 489B and 489D are concerning counterfeit currency notes or bank notes, etc. Thus, the

nature of offences under the IPC, categorized by the HPC for not giving benefit of emergency bail/parole, clearly show that the nature of offence as contemplated by these statutory provisions are totally different than the offences contemplated by the other provisions of the IPC and rightly categorized by the HPC for denial of benefit.

26. It is the contention of Mr. Talekar that the categorization of the offences as directed by the order of the Supreme Court is to be made on the basis of the punishment imposed or provided under the relevant provisions of the IPC or the Special Acts. That the orders of the Supreme Court passed in suo motu **Writ Petition (C) No. 1 of 2020** conferring unrestricted and unbridled powers on the HPC to determine the category of prisoners who should be released depending upon various factors mentioned therein together with the clarification that not all but only “certain prisoners” are to be released, have been noticed above. Therefore, when the Supreme Court has specifically mentioned the factors to be taken into consideration while the HPC categorizes the various offences which *inter alia* includes the nature of offence and severity of the offence and it has done so, there is no substance in the

contention of Mr. Talekar and we reject the same.

27. It is also significant to note that although the HPC excluded under-trials as well as convicts *qua* offences under the Special Acts as well as certain offences under the IPC from getting the benefit of emergency bail/parole, still as far as prisoners aged in excess of 60 years the HPC has not placed the said restrictions as chances of people of advanced age getting affected by COVID-19 are more. The HPC in this behalf has specifically mentioned that the concerned court may pass orders after considering the facts and circumstances of the case and examining the medical reports and other relevant records. Thus, it is r that the HPC while categorizing various prisoners to reduce overcrowding in prisons has taken into consideration various aspects including age of the prisoners and therefore, the contentions raised by the petitioners are without any basis.

28. The submission of Mr. Talekar that Section 303 is held to be unconstitutional and, therefore, classifying the same for not considering such prisoners for release on emergency parole is also without any substance as by corrigendum dated th May, 2020, the HPC has

specifically clarified that although Section 303 of the IPC is held to be unconstitutional, the accused who are under going sentence of imprisonment for life are charged of subsequent offence of committing murder; hence, are habitual offenders and therefore, shall not be considered for emergency bail/parole.

29. The contention of Mr. Talekar relying on the Full Bench decision of this Court in Kantilal Nandlal Jaiswal (supra) and the Division Bench decision in Hariom Vijay Pande (supra), that grant of emergency parole in view of COVID-19 pandemic is right conferred on the convicted prisoners, is also misconceived. Mr. Talekar has raised the said contention as it is held by the Division Bench in People's Union for Civil Liberties (supra) that determination of the categories by the HPC to release certain prisoners does not confer any right on the other prisoners to contend that similar indulgence may be shown to them or similar such concession be extended to them and, therefore, they cannot claim any legal right on the basis of categorization made by the HPC. It is further held in the said decision that concession cannot be claimed as a matter of right and, therefore, a writ of mandamus cannot be issued.

30. For examining the contention of the petitioners that the said decision in People's Union for Civil Liberties (supra) is *per incuriam* as the aforesaid Full Bench and Division Bench decisions were not placed before the coordinate Bench, it is necessary to see the controversy involved in the said cases and what have been held therein and whether the same are applicable to the present case.

31. It is to be noted that following two questions were referred to the Full Bench:-

- (i) *Whether parole is a right or a concession offered by the State or a mere administrative decision of the State dictated by its administrative policy or a special right of a prisoner in special circumstances or something else?*
- (ii) *Whether proviso to Rule 19 (2) introduced in terms of notification dated 16th April, 2019 is violative of Article 14 and Article 21 of the Constitution of India and if yes, what treatment must it be given?*

The said questions are answered by the Full Bench in the following manner:-

- “(i) Question (I) referred to this Bench is answered by holding that parole is not a mere administrative decision dictated only by the administrative policy of the State but it is a limited legal right available to the convict or prisoner subject to satisfaction of the requirements specified in the Rules of 1959 for grant of parole, with

the avowed objectives to be achieved as specified in Rule 1(A) of the said Rules.”

“(ii) It is found that the proviso to Rule 19(2) of the Rules of 1959 introduced in terms of Notification dated 16-4-2018 violates Article 14 and 21 of the Constitution of India and thereby question (ii) is answered against the State. Accordingly, the said proviso to Rule 19(2) of the Rules of 1959 introduced in terms of Notification dated 16-4-2018 is struck down as violative of Articles 14 and 21 of the Constitution of India and it is found to be ultra vires even to the objectives stated in Rule 1(A) of the Rules of 1959.”

32. The Division Bench of this Court in the judgment reported in Hariom Vijay Pande (supra) held as follows:-

“Parole leave is recognized as a statutory right as per Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (hereinafter referred to as 'Rules of 1959' for short) and the convicts are entitled for parole leave, if the circumstances as referred in Rule 19 exist. Of course, it is not the absolute right of the convict to seek parole leave and the right is circumscribed by various other considerations including the objective satisfaction of the jail authorities and the authority competent to consider the application made by the convict for grant of parole leave.”

33. The aforesaid Full Bench and Division Bench decisions are not applicable to the report of the HPC as well as consequent amended Rule 19(1) (C) (i) and (ii) of the Maharashtra Prisons (Bombay

Furlough and Parole) Rules, 1959, as the said amended Rules are providing for temporary release of prisoners on temporary parole leave till the Notification under the Epidemic Diseases Act, 1897 is in operation. The objectives of releasing of prisoner on furlough and parole leave are set out in Rule 1(A) of the Rules of 1959 and the same are as follows:-

- (a) To enable the inmate to maintain continuity with his family life and deal with family matters,*
- (b) To save him from evil effects of continuous prison life,*
- (c) To enable him to maintain and develop his self-confidence,*
- (d) To enable him to develop constructive hope and active interest in life.*

34. This Court in Kantilal Nandlal Jaiswal (supra) and Hariom Vijay Pande (supra) were examining the nature of furlough and parole leave in the light of above referred objectives for releasing the convicts on furlough or parole leave.

35. In the present case, we are dealing with the release on emergency parole for short period till the State Government withdraws the

notification under the Epidemic Diseases Act, 1897 for the purpose of reducing overcrowding in the prison. Therefore, the decisions of this Court on which Mr. Talekar has relied on are not at all applicable to the present case. Thus, the contention that the decision in People's Union for Civil Liberties (*supra*) is *per incuriam* is without any basis.

36. However, it is to be noted that pursuant to the decision of the HPC dated 25th March, 2020, by exercising powers under clauses 5 and 28 of Section 59 of the Prisoners Act, 1894, Clause Nos. C (i) and (ii) were inserted in Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 *inter alia* providing that the prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by the Superintendent, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough). A coordinate Bench of this Court in its decision in Milind Ashok Patil (*supra*) held that if such convicts are never released either on furlough or parole previously or not released on 2 occasions either on furlough or parole and therefore, there was no occasion for them to return back within time on 2

occasions and are thus deprived of the said benefit of emergency parole, such literal interpretation may lead to absurdity and in that event, there is no occasion to invoke the condition imposed under the said amended Parole Rule. It is further held in the said judgment that if the convicts are not released on 2 occasions either on furlough or parole and/or their previous applications are not rejected either on the ground that they are habitual offenders or likely to abscond, then the authorities can still consider their applications for release on emergency parole. In the said judgment it is further made clear that if the convicts are released on 2 (two) occasions or on 1 (one) occasion, either on parole or furlough previously and they are late in surrendering then they are not entitled for the benefit of the emergency parole. It is further clarified that the authorities can impose suitable stringent conditions on the convicts who were never released on parole or furlough or released on 1 (one) occasion and returned back within time, if they are otherwise entitled for the benefit of emergency parole. We make it clear that the said observations made in the judgment in Milind Ashok Patil (supra) are applicable to the convicts whose cases falls in the criteria laid down

therein.

37. It is very clear that the recommendation of the HPC are not fetters on the competent Court for considering regular bail applications. The HPC was only considering classes of prisoners who can be released on temporary bail/parole for the purposes of de-congesting the prisons.

38. Both Mr. Thakare and Mr. Talekar have submitted information regarding the present position of the prisons. The said information reveals that as on 24th July, 2020, total number of prisoners released on emergency bail/parole to prevent spread of COVID-19 is 10,338 and presently 26,279 prisoners are in prison. The chart produced by Mr. Talekar shows that the official capacity of the prisons is 23,217. The chart produced by Mr. Thakare shows that the State Government for the purpose of reducing overcrowding have opened temporary prisons at about 36 locations and presently about 2,597 prisoners are occupying such temporary prisons and the process of transferring some more prisoners to the temporary prisons is in progress. Thus, it is clear that the respondents have already taken various steps as well as they are taking steps for reducing overcrowding in the prisons.

39. After examining the various recommendations/directions of the HPC and the directions of the Supreme Court and the nature of offences and the severity of the offences which are contemplated under the Special Acts mentioned by the HPC as well as offences under the IPC, which were excluded by the HPC from getting benefit of emergency parole/bail, it is clear that the HPC balanced the rights of the prisoners to maintain maximum possible distancing to contain the spread of COVID-19 as well as the rights of the society.

40. For the reasons discussed above, this PIL petition stands disposed of granting limited relief as indicated in paragraph 36 above.

MADHAV J. JAMDAR, J.

DIPANKAR DATTA, CJ:

1. Having read the detailed judgment prepared by my learned brother Justice Jamdar, I unhesitatingly record my concurrence therewith.

However, regard being had to some of the contentions debated at the Bar by Mr. Talekar, learned advocate for the petitioners relying upon the relevant orders of the Supreme Court dated March 23 and April 13, 2020, I wish to pen my views too.

2. The first question arising for consideration is, whether the inmates of correctional homes have a right to claim release on interim bail/emergency parole in view of the prevailing pandemic?

2.1. For answering this question, one has to take a few steps backwards in point of time. The World Health Organisation declared the COVID-19 outbreak a pandemic on March 12, 2020. It was on that fateful day that COVID-19 took its first toll in India. People were largely unsure of how to tackle it. The unprecedented pandemic became a national challenge, requiring adequate measures to be put in place by the executive Government(s) to prevent an outbreak. In due course, avoidance of congregation and social distancing emerged as precautionary measures. To borrow from its decision delivered not too long ago, the Supreme Court perceived that the rigours of the rough edges of the law need to be softened for law to retain its humane and

compassionate face. Anticipating that the highly packed correctional homes in the country would be a potential risk for the inmates thereof, the Court even before the national lockdown was announced adopted an extra-ordinary approach to deal with an extra-ordinary situation. To ensure what is just in the circumstances, *suo motu* cognizance of the fact of overcrowding in correctional homes was taken to decongest the same. Consequently, Writ Petition (C) No. 1 of 2020 (hereafter the said writ petition) came to be registered. By its order dated March 16, 2020, the Court issued notice to all the States/Union Territories and sought for responses as to how the problem of overcrowding in correctional homes was being dealt with by them. Upon consideration of the responses that were placed on record, an order dated March 23, 2020 followed *to ensure that the spread of the Corona Virus within the prisons is controlled*. Directions were issued to each State/Union Territory to constitute a High Powered Committee (for short, the HPC). The HPC was conferred power to examine and determine the classes of home inmates, who are either under-trial prisoners or convicts, deserving of release for temporarily either on interim bail or

parole for such period as may be thought appropriate. Keeping an eye on the health and welfare of the inmates of correctional homes, the object of the order was to restrict and control the contagion. The subsequent order dated April 13, 2020 of the Supreme Court in no uncertain terms made it clear that the Court had not directed the States/ Union Territories *to compulsorily release the prisoners from their respective prisons*. The purpose of the order, it is recorded, had been to enable the States/Union Territories to assess the situation in their prisons having regard to the pandemic and to *release certain prisoners and for that purpose to determine the category of prisoners to be released*.

2.2. While making its aforesaid orders, the Supreme Court indicated some broad guidelines. In view of the guidelines forming part of its relevant orders, it is clear as crystal that the Court permitted determination of classes of home inmates to be released and such determination was left to the sole wisdom of the members constituting the HPC bearing in mind the essence of decongestion of the correctional homes.

2.3 It is indeed true, as contended by Mr. Talekar, that the Supreme Court invoked its power under Article 32 of the Constitution of India looking at the rights of home inmates guaranteed by Article 21. It is truism that once in custody, the individual under detention loses his right to free movement without, however, sacrificing his right to life and that failure of the State to protect the right to life of the detainee could lead to consequences for the State, not too palatable. The judiciary being an organ of the State, reaction of the Supreme Court to rise to the occasion reminds me of the maxim *salus populi est suprema lex*, meaning that regard for the public welfare is the supreme law. This principle would seem to authorize a State instrumentality to serve society as a whole without granting unwarranted favours to a particular class of people, unless justified, at the cost of others. It needs no reiteration that at all times and by all quarters, sincere efforts have to be made to maintain and sustain the safety of the people. Although not expressly referred to in its orders, the Court might have called in aid such maxim. Having read the orders of the Supreme Court passed in the

said writ petition, a justice-oriented approach appreciating the safety of the home inmates is indeed discernible leading to directions requiring decongestion of the correctional homes. I am, however, of the firm opinion that the orders passed by the Court on the said writ petition, targeted as it were to do proper justice to the cause before it, reflect the exercise of equitable power under Article 142 of the Constitution of India, rather than such orders declaring any law under Article 141 constituting a binding precedent.

2.4. Mr. Talekar claimed that an entitlement to temporary release on interim bail or emergency parole is a facet of right to life and personal liberty. According to him, the Supreme Court has time and again held that if a person commits a crime, it does not mean that by committing such crime he ceases to be a human being and that he can be deprived of those aspects of life which constitutes human dignity. A prisoner enjoys all fundamental rights, notwithstanding the restrictions brought about by his incarceration. He further contended that a coordinate Bench of this Hon'ble Court held that parole leave is recognized as a statutory right and the convicts are entitled for parole leave. Rule 19 of

the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959 were referred to by him, for highlighting that a convict/prisoner could be released on emergency parole during the period the notification issued under the Epidemics Diseases Act, 1897 continues to be in operation. In any case, he submitted that an entitlement for interim bail or emergency parole is a fundamental right or a statutory right which flows from Article 21 of the Constitution of India and not a concession as held by this Court in People's Union for Civil Liberties (supra).

2.5. I am afraid, I cannot persuade myself to agree with Mr. Talekar. The coordinate Bench in People's Union for Civil Liberties (supra) viewed the temporary release as a concession and held that a Mandamus would not lie to enforce a concession. Mr. Talekar's contention that release on parole being a right traceable to statutory rules which the decision in People's Union for Civil Liberties (supra) overlooked and is, thus, *per incuriam*, is unacceptable because such contention fails to notice that in the present case, grant of parole under statutory rules is not in issue; what is under consideration is whether the orders of the Supreme Court have created any right in favour of home inmates to be

released or is it a privilege, concession or exemption granted in the special facts and circumstances.

2.6. Concession, in legal parlance, is a Government grant for specific privileges. It is, thus, a form of privilege. An exemption is a concession allowed to a class or individual from general burden for valid and justifiable reason. It is a freedom from an obligation which the class or individual exempted is otherwise liable to discharge. Exemption is also a form of privilege. The terms are capable of being used interchangeably. Privilege, concession, exemption, ~ by whatever name one calls it, are generally advantages or benefits specially made available to a class, and not to others, in given situations and for valid reasons. Law is well settled that the recipient of a privilege, concession or exemption has no legally enforceable right against the Government except to enjoy the benefits during the period of its grant. This right to enjoy is defeasible, in the sense that it is not independent of any contingency and may be taken away in exercise of the very power under which the privilege, concession or the exemption were granted.

2.7 It is fallacious to contend that home inmates can claim an absolute right for release in a situation like the prevailing pandemic as if it were flowing either from Part III of the Constitution or any other statute. An exception has been made to the rule requiring confinement in terms of an extant law. In my opinion, relief by way of release of home inmates for a temporary period contemplated by the order dated March 23, 2020 is in the nature of a special privilege conferred on them by the Supreme Court amid the looming crisis, whereby a class of inmates (to be determined by the HPC) would enjoy an exemption from continuing to remain in the correctional homes till such time the lockdown continues and the pandemic is not brought under complete control but subject to determination made by the HPC. Such special, Court ordered, privilege conferred on the home inmates, which is equitable in nature, is not a vested right since the benefit of release can be taken away by the Court without the consent of the home inmates; hence one cannot complain of breach unless of course the determination of the HPC suffers from fundamental flaws vitally affecting rights guaranteed by Article 14 of the Constitution. If indeed

release for a temporary period on interim bail or emergency parole could have been claimed as a matter of right by every inmate of a correctional home citing the uncertainties of the prevailing pandemic, such a right ought to have had the sanction of law traceable either to a legislation of the competent legislature, or to an order having the force of law which the executive has authority to make or to a law declared by the Supreme Court binding on all Courts under Article 141 of the Constitution. In the absence of any such law, no right did crystallise for the inmates of the correctional homes to seek release on interim bail or emergency parole as a matter of entitlement as contended by Mr. Talekar. Restricted to the determination made by the HPC, an inmate could raise a grievance if he were to suffer a legal injury thereby and not otherwise.

2.8. The decisions in *Kantilal Nandlal Jaiswal* (supra) and *Hariom Vijay Pande* (supra) relied on by Mr. Talekar have no relevance to the present case. The rules under consideration before the relevant Benches for release on parole, does also seem to suggest that none can claim an absolute right of release after spending certain years in the correctional

homes; it is only upon fulfillment of conditions, as specified, that a legitimate claim for being considered for release on parole could arise for enforcement which is quite different from claiming a right to be released on parole. A convict, not fulfilling the conditions for release, has no right to claim release; it is only a limited right of consideration that one has which can be enforced in an appropriate situation.

2.9. The first question is, therefore, answered against the petitioners by holding that there is no right or entitlement that a home inmate may claim to seek temporary release during the pandemic merely based on the order dated March 23, 2020 of the Supreme Court; however, if the offence with which he has been charged or convicted is included in the 'qualifying category' by the HPC, he has a right to claim the benefit of temporary release by the appropriate court/authority in the light of the HPC's determination as well as the overriding object of such release.

3. Did the HPC exceed its jurisdiction, is the next question which would call for an answer.

3.1. Mr. Talekar pointed out that the HPC owes its existence to the order of the Supreme Court dated March 23, 2020 and not to any

statute; therefore, the powers of the HPC are limited to what is provided for by the Supreme Court. According to him, the jurisdiction of the HPC came to an end with the determination of the class or category of prisoners entitled for release on application of the parameters laid down by the Supreme Court and others factors considered by the HPC to be appropriate. An argument has been advanced that the HPC ought not to have imposed restrictions as well as sounded caution that its recommendations are not to be considered as directions for release of prisoners falling in a particular class or category, which is otherwise qualified for release. It has also been argued that the clarification made by the HPC that case of every prisoner has to be considered on its own merits so as to decide the desirability of temporary release of such a prisoner and on a case to case basis, has made it impossible for the prisoners to get interim bail or emergency parole, even if they were otherwise entitled to be released on interim bail or emergency parole, and thereby the object for which the HPC was constituted stands frustrated.

3.2. This argument too is not of much substance. It cannot be ignored

that the HPC determined a broad class of home inmates qualifying for release without, however, having the benefit of the criminal antecedents of each particular inmate. Some amount of discretion to be exercised had to be reserved for the judiciary as well as the authority competent to grant parole without any of them being fazed by the presence of the senior most puisne Judge of this Court as the Chairperson of the HPC and two senior officers of the administrative executive as members thereof, and without having full confidence in their own existence so that the process of decision making leading to the decision for release itself were not, in any way, affected. Since the Supreme Court made it clear that only “certain prisoners” were required to be released, a vital point here and there which would otherwise be significant in deciding the fate of an applicant for temporary release on bail/parole could not have been excluded from consideration by an administrative direction to release particular classes of under-trial prisoners and convicts. I am, thus, of the view that the HPC did not exceed its jurisdiction in sounding the caution with which Mr. Talekar has joined issue.

3.3. This question is, thus, answered against the petitioners.

4. Did the HPC act in an arbitrary manner, thereby infringing the guarantee of equality in Article 14 of the Constitution? This is the most important question that needs to be answered now.

4.1. Mr. Talekar has taken strong exception to the HPC carving out certain offences which, according to it, would not qualify for interim bail and emergency parole during the pandemic. It is his contention that such determination is manifestly arbitrary, thus violating Article 14 of the Constitution, and contrary to tests of rationality and proportionality applied by the Supreme Court.

4.2. Having regard to the composition of the HPC and vesting in it of wide powers by the Supreme Court, it is apparent that the Court reposed complete faith and confidence in the members thereof insofar as determination of classes of under-trial prisoners or convicts is concerned who could be released on bail or parole, respectively, during the pandemic. The HPC, owing its origin to the order dated 23rd March, 2020 of the Supreme Court, had an onerous duty of ensuring that rights of home inmates are not transgressed while it embarked on a determination of the class of inmates who could be identified for

temporary release. There can also be no dispute that the HPC, being essentially a committee constituted to discharge functions administrative in nature, and despite having wide discretion in such determination, its members were expected to proceed not in an arbitrary manner but consistent with the principles of equality as well as keeping an eye on societal needs.

4.3. The orders of the Supreme Court dated March 23, 2020 and April 13, 2020 are clear. Determination, as required, in terms of the orders of the Court would necessarily lead to a classification of inmates of correctional homes for the purpose of release and there can be no gainsaying that such classification ought also to be reasonable by all standards. The test of reasonable classification, propounded by Hon'ble S.R. Das, J. (as the Chief Justice of India then was) in *Anwar Ali Sarkar* (supra), of there being an intelligible differentia, which distinguishes those grouped together from others, and such differentia having a rational relation with the object to be achieved, is by now the final word in the judicial firmament of this country for examining a challenge to a classification on the ground that it is unreasonable.

4.4. The HPC while proceeding to comply with the orders of the Supreme Court, as of necessity, had to create groups ~ one group including classes of home inmates who could be considered for temporary release on bail/parole and the other, not entitled to such release ~ or else all the inmates of the correctional homes would have to be released in view of the pandemic. The intelligible differentia is provided by classification of alleged offenders charged with offences that could be characterised as anti-national ~ those aiming to destabilize the economy of the country and/or forming a potential threat to the unity, integrity and sovereignty of the nation and/or by their criminal acts making themselves liable to be proceeded under the special enactments. In the opinion of the HPC, these inmates form part of the 'excepted category' who should continue to remain behind the bars despite the object of decongestion of correctional homes that the Supreme Court had in mind as well as to deny them the benefit of release looking at the object of prevention of activities directed towards causing economic loss, questioning and disrupting the sovereignty and territorial integrity of India and the nature of aggravated offence

towards women and children. Manifestation of a fine balance is, thus, conspicuous by its presence.

4.5. To my mind, it could not have been and was never the intention of the Supreme Court that the pandemic notwithstanding, those awaiting trial because of their involvement in serious economic offences/socio-economic offences, offences aimed at subverting the unity, integrity and sovereignty of India, offences against women and children, etc. or those convicted for such offences should be temporarily released, ignoring the nature and the gravity of the offences with which they have either been charged or convicted. That is precisely the reason as to why the HPC was guided to bear in mind the nature of the offence and the severity of the offence. The order dated April 13, 2020 is eloquent that “certain prisoners” are to be released. In that view of the matter, the contention that unreasonable classification has been made is thoroughly misconceived.

4.6. The attack to the determination made by the HPC on the ground that it fails the test of proportionality is equally unmeritorious. The doctrine of proportionality requires the Court to judge whether an

action taken was really needed as well as whether it was within the range of course of action which could reasonably be followed. Applying such test, I see no reason to hold that the HPC acted in a manner warranting interference.

4.7. I, accordingly, hold that the recommendations made by the HPC are not arbitrary and do not offend the equality clause in Article 14.

5. The next question arising for decision is, has there been a non-application of mind by the HPC while considering the issue of restrictions on grant of bail imposed by the Special Acts?

5.1. Much has been argued by Mr. Talekar by referring to a stray observation of the HPC in the minutes of meeting dated March 25, 2020 that there has been non-application of mind. The emphasis is that not all the Special Acts referred to therein contain restrictions on grant of bail, in addition to those under the Code of Criminal Procedure, and thus the HPC, labouring under a misconception, proceeded to deny the benefit of release to a large cross-section of prisoners.

5.2. It is true that such an observation appears in the minutes of meeting dated March 25, 2020 but the decision taken that day has since been modified as it appears from the subsequent minutes of meeting dated May 11, 2020, since corrected further on May 18, 2020. No such observation appears therein and I find no good reason to find fault with the recommendations on the specious ground that in one of the first minutes that were drawn up, there might have been some slip which went unnoticed.

5.3. Application of mind being writ large over the proceedings of the HPC, there is obviously no reason to interfere.

6. Is the recommendation of the HPC operating harshly against those under-trial prisoners charged with offences under the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999 (hereafter “the MPID Act”) which provide for a maximum punishment of six years, and therefore, contrary to the orders of the Supreme Court passed in the said writ petition? Also, whether irrespective of the nature and/or severity of offences, all crimes carrying punishment of 7 (years) or less ought to have been included in

the 'qualifying category'?

6.1. The offences which are triable under the MPID Act, would in all likelihood attract section 409 of the IPC since the common ingredient is criminal breach of trust. Although seldom an accused is sentenced to the maximum punishment prescribed under section 409 of the IPC, the possibility thereof in future can never be ruled out. To view the offence committed of duping or defrauding investors as punishable only under the MPID Act in isolation and in ignorance of a cognate offence punishable under the IPC, would not have been appropriate. Additionally, the offence triable under the MPID Act being a socio-economic offence, excluding those charged thereunder for humane and compassionate treatment in terms of the orders passed in the said writ petition does not call for any interference.

6.2. It is true that some of the offences which carry a punishment upto 7 (seven) years have been included in the 'excepted category'. But that, by itself, does not afford ground to hold that the recommendation of the HPC is flawed. The nature of the offence as well as its severity is what would tilt the balance in favour of or against release and the HPC

having taken a decision that is plausible, it is not for the writ court to sit in judgment as if it were a court of appeal and substitute the decision of the HPC.

6.3. The contentions of Mr. Talekar, though attractive at first blush, on deeper examination pale into insignificance.

6.4. The questions are answered against the petitioners.

7. Does the decision in *Mithu* (supra) afford any aid to the petitioners for holding that the HPC faltered in including section 303 of the Indian Penal Code in the 'excepted category'?

7.1. The decision in *Mithu* (supra) declared section 303 unconstitutional since death was provided as the mandatory sentence for commission of murder by a person while being under a sentence of life in prison. The Court considered various situations, some even hypothetical, reference to which here is not considered necessary. Ultimately, it was held that the impugned provision deprives the court of the use of its wise and beneficent discretion in the matter of life and death. However, such declaration of unconstitutionality, in my view,

does not take away the authority of the HPC to deny the benefit of release to a convict who, while under a sentence of life in prison, commits a murder. Inclusion of section 303 in the 'excepted category' gives the impression that the HPC was not inclined to extend the benefit of release to a convict, who is a repeat offender and would have faced death but for the declaration in Mithu (supra) that section 303 is unconstitutional.

7.2. This question is, thus, also answered in the negative.

8. The concern expressed by the petitioners with regard to the plight of inmates of the correctional homes during the prevailing pandemic does not require any further deliberation in view of the coordinate Bench decision of this Court in People's Union for Civil Liberties (supra). Comprehensive guidelines have been framed for implementation by the authorities of the correctional homes which would be adequate and sufficient to cater to the needs of such inmates, who would stand deprived of temporary release on interim bail/emergency parole.

9. The last question pertains to the relief that could be afforded to the petitioners. I am *ad idem* with my learned brother Justice Jamdar that the petitioners are entitled to no more than the observations in paragraph 36 of His Lordship's judgment. The authorities shall, therefore, act in terms thereof.

10. This Judgment will be digitally signed by the Sr. Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

**Pravin D.
Pandit**

Digitally signed by
Pravin D. Pandit
Date: 2020.08.05
17:09:06 +0530

CHIEF JUSTICE

Annexure 10

IMPORTANT
MOST IMMEDIATE

No. 17013/17/2020-PR
Government of India
Ministry of Home Affairs

**

Women Safety Division
Major Dhyan Chand National Stadium
India Gate, New Delhi - 110002
May 2, 2020

To

The Chief Secretaries of all States and UTs
The DG/IG Police of all States and UTs
The DG/IG Prisons of all States and UTs

Sub: Management of COVID-19 in Indian Prisons – guidelines and protocols which may be followed while dealing with persons arrested, detained and those in Prisons and Correctional Homes.

—
Sir/Madam,

The novel Coronavirus disease (COVID-19) pandemic is a global health crisis which has affected a huge population the world over. The virus, which causes the disease, is highly infectious and even pre-symptomatic people can infect others. Any person who is in close contact with someone who has suspected or confirmed COVID-19 (e.g. fever, cough, breathing difficulty, etc.) is at risk of contracting the disease.

2. People in prisons and other places of detention, living in closed and crowded environment, are likely to be more vulnerable to the coronavirus disease (COVID-19). Moreover, experience shows that prisons, jails and similar settings where people gather in close proximity may act as a source of infection, amplification and spread of infectious diseases within and beyond prisons. Prison health is therefore widely considered as public health. Any control strategy for COVID-19 in the community which does not encompass the prison context will not be sustainable.

3. An instance was brought to the notice of this Ministry in which certain inmates in a prison tested COVID-19 positive. In view of this, it is considered expedient to issue these guidelines to reiterate the precautions and measures to be taken.

4. Prevention of import of COVID-19 into prisons and other places of detention is an essential element in avoiding or minimizing the occurrence of infection and serious outbreaks in these settings and beyond. It is therefore considered essential that Health-care teams of States and UTs should work with the Custodial/detention staff in prisons and other places of detention, following the National guidelines and protocols on the subject issued by the Government of India from time to time.

5. In context of prisons and persons arrested by Police in present times, the **following broad guidelines/protocol, read with** the national 'Guidelines on disinfection of common public places' (**Annex-X**) and 'Guidelines on rational use of Personal Protective Equipment' (**Annex-Y**) issued by the Ministry of Health and Welfare, Government of India, may be observed:

- a) Custodial/detention staff should work together with health-care teams in prisons and other places of detention to enable identification of suspected cases among prisoners/detainees,
- b) Isolation of such identified persons in single accommodation and a subsequent clinical assessment.
- c) Risk assessment/ risk management → Thermal Screening (handheld thermometer) at the point of arrest/taking custody by Police and also at entry to prison should be available.
- d) Information should be collected from arrested and convicted persons on any history of fever, cough and/or shortness of breath, recent travel history to affected areas and possible contact with confirmed cases in the last 14days.
- e) Decision to limit or restrict visits to Prisons as already communicated to be strictly implemented.
- f) A detailed daily registry of people moving in and out of the prison should be maintained.
- g) Prison/detention management should consider implementing measures of physical distancing, limit the mobility of people within the prison/detention system and/or to limit access of non-essential staff and visitors to prisons and other places of detention, depending on the level of risk in the specific area.

6. In order to strengthen efforts at the field level to tackle the situations arising out of COVID-19, it is considered necessary to follow the Standard Operating Procedure (SOP), prepared in coordination with BPR&D and Ministry of Health and Family Welfare, for the safe custody, medical care, transport, while avoiding transmission of COVID-19 and also ensuring safety of prison staff (healthcare, sanitary, and court staff etc.) as in **Annex-Z**.

7. If a person, who has served his sentence, is an active COVID-19 case at the time of release, or is the contact of a COVID-19 case and still within the quarantine period, the prison authorities should ensure that the person discharged has a place to go where he can maintain isolation in a health facility/quarantine, and that the local authority is notified that the person has been discharged while making sure that transfer and follow-up has been tied up with local authorities.

8. Due to their close interaction with crime perpetrators and prisoners on a daily basis, Police officers, Prison officers and health-care professionals working in prisons are at enhanced risk. It is therefore recommended that the following general precautions may be observed by them:

- Hands should be washed often with soap and water and dried with single-use towels
- Alcohol hand sanitizer containing at least 70% alcohol is also an option if available
- Physical distancing should be observed

- Disposable tissue should be used to cover mouth and nose when coughing or sneezing, then thrown in a bin with a lid
- Touching of eyes, nose or mouth should be avoided if hands are not clean.
- All staff should be alert to the enhanced risk of COVID-19 infection in people in prisons and other places of detention.

9. In addition to the above, use of Personal Protective Gear may be regulated as per guidelines prescribed by the Ministry of Health and Family Welfare, as indicated in **Annex-M** of this letter.

10. Cooperation of all State and UT authorities is solicited in making use of the attached guidelines, and other useful information provided therein, for effective containment of the pandemic and for the safety and security of persons under custody in prison premises, detention homes etc. and various security personnel and prison staff etc. The attached documents can be customized as per local requirement and be also translated into regional/local language of the State for wide propagation and dissemination to officials at all levels, particularly those at ground level and frontline workers.

Yours sincerely,

Digitally signed

(Arun Sobti)

Deputy Secretary (PR & ATC)

Tele: 2307 5297

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COVID-19: Guidelines on disinfection of common public places including offices

Scope: This document aims to provide interim guidance about the environmental cleaning /decontamination of common public places including offices in areas reporting COVID-19.

Coronavirus Disease 2019 (COVID -19) is an acute respiratory disease caused by a novel Coronavirus (SARS-CoV-2), transmitted in most instances through respiratory droplets, direct contact with cases and also through contaminated surfaces/objects. Though the virus survives on environmental surfaces for varied period of time, it gets easily inactivated by chemical disinfectants.

In view of the above, the following guidelines are to be followed, especially in areas reporting COVID-19. For ease of implementation the guideline divided these areas into (i) indoor areas, (ii) outdoor areas and (iii) public toilets.

1. Indoor areas including office spaces

Office spaces, including conference rooms should be cleaned every evening after office hours or early in the morning before the rooms are occupied. If contact surface is visibly dirty, it should be cleaned with soap and water prior to disinfection. Prior to cleaning, the worker should wear disposable rubber boots, gloves (heavy duty), and a triple layer mask.

- Start cleaning from cleaner areas and proceed towards dirtier areas.
- All indoor areas such as entrance lobbies, corridors and staircases, escalators, elevators, security guard booths, office rooms, meeting rooms, cafeteria should be mopped with a disinfectant with 1% sodium hypochlorite or phenolic disinfectants. The guidelines for preparing fresh 1% sodium hypochlorite solution is at **Annexure I**
- High contact surfaces such elevator buttons, handrails / handles and call buttons, escalator handrails, public counters, intercom systems, equipment like telephone, printers/scanners, and other office machines should be cleaned twice daily by mopping with a linen/absorbable cloth soaked in 1% sodium hypochlorite. Frequently touched areas like table tops, chair handles, pens, diary files, keyboards, mouse, mouse pad, tea/coffee dispensing machines etc. should specially be cleaned.
- For metallic surfaces like door handles, security locks, keys etc. 70% alcohol can be used to wipe down surfaces where the use of bleach is not suitable.
- Hand sanitizing stations should be installed in office premises (especially at the entry) and near high contact surfaces.
- In a meeting/conference/office room, if someone is coughing, without following respiratory etiquettes or mask, the areas around his/her seat should be vacated and cleaned with 1% sodium hypochlorite.
- Carefully clean the equipment used in cleaning at the end of the cleaning process.
- Remove PPE, discard in a disposable PPE in yellow disposable bag and wash hands with soap and water.

In addition, all employees should consider cleaning the work area in front of them with a disinfecting wipe prior to use and sit one seat further away from others, if possible

2. Outdoor areas

Outdoor areas have less risk than indoor areas due to air currents and exposure to sunlight. These include bus stops, railway platforms, parks, roads, etc. Cleaning and disinfection efforts should be targeted to frequently touched/contaminated surfaces as already detailed above.

3. Public toilets

Sanitary workers must use separate set of cleaning equipment for toilets (mops, nylon scrubber) and separate set for sink and commode). They should always wear disposable protective gloves while cleaning a toilet.

| Areas | Agents / Toilet cleaner | Procedure |
|--|---|---|
| Toilet pot/ commode | Sodium hypochlorite 1%/ detergent Soap powder / long handle angular brush | <ul style="list-style-type: none"> • Inside of toilet pot/commode: • Scrub with the recommended agents and the long handle angular brush. • Outside: clean with recommended agents; use a scrubber. |
| Lid/ commode | Nylon scrubber and soap powder/detergent 1% Sodium Hypochlorite | <ul style="list-style-type: none"> • Wet and scrub with soap powder and the nylon scrubber inside and outside. • Wipe with 1% Sodium Hypochlorite |
| Toilet floor | Soap powder /detergent and scrubbing brush/ nylon broom 1% Sodium Hypochlorite | <ul style="list-style-type: none"> • Scrub floor with soap powder and the scrubbing brush • Wash with water • Use sodium hypochlorite 1% dilution |
| Sink | Soap powder / detergent and nylon scrubber 1% Sodium Hypochlorite | <ul style="list-style-type: none"> • Scrub with the nylon scrubber. • Wipe with 1% sodium hypochlorite |
| Showers area / Taps and fittings | Warm water Detergent powder Nylon Scrubber 1% Sodium Hypochlorite/ 70% alcohol | <ul style="list-style-type: none"> • Thoroughly scrub the floors/tiles with warm water and detergent • Wipe over taps and fittings with a damp cloth and detergent. • Care should be taken to clean the underside of taps and fittings. • Wipe with 1% sodium hypochlorite/ 70% alcohol |
| Soap dispensers | Detergent and water | <ul style="list-style-type: none"> • Should be cleaned daily with detergent and water and dried. |

- 70% Alcohol can be used to wipe down surfaces where the use of bleach is not suitable, e.g. metal. (Chloroxyleneol (4.5-5.5%)/ Benzalkonium Chloride or any other disinfectants found to be effective against coronavirus may be used as per manufacturer's instructions)
- Always use freshly prepared 1% sodium hypochlorite.

- Do not use disinfectants spray on potentially highly contaminated areas (such as toilet bowl or surrounding surfaces) as it may create splashes which can further spread the virus.
 - To prevent cross contamination, discard cleaning material made of cloth (mop and wiping cloth) in appropriate bags after cleaning and disinfecting. Wear new pair of gloves and fasten the bag.
 - Disinfect all cleaning equipment after use and before using in other area
 - Disinfect buckets by soaking in bleach solution or rinse in hot water
4. **Personal Protective Equipment (PPE):** Wear appropriate PPE which would include the following while carrying out cleaning and disinfection work.
- Wear disposable rubber boots, gloves (heavy duty), and a triple layer mask
 - Gloves should be removed and discarded damaged, and a new pair worn.
 - All disposable PPE should be removed and discarded after cleaning activities are completed.
 - Hands should be washed with soap and water immediately after each piece of PPE is removed, following completion of cleaning. (Refer to **Annexure II: Steps of Hand Hygiene**)

Masks are effective if worn according to instructions and properly fitted. Masks should be discarded and changed if they become physically damaged or soaked. (**Annexure-III: Guidelines for use of mask**)

Annexure-I

Guidelines for Preparation of 1% sodium hypochlorite solution

| Product | Available chlorine | 1percent |
|---|------------------------------------|----------------------------------|
| Sodium hypochlorite – liquid bleach | 3.5% | 1 part bleach to 2.5 parts water |
| Sodium hypochlorite – liquid | 5% | 1 part bleach to 4 parts water |
| NaDCC (sodium dichloro-isocyanurate) powder | 60% | 17 grams to 1 litre water |
| NaDCC (1.5 g/ tablet) – tablets | 60% | 11 tablets to 1 litre water |
| Chloramine – powder | 25% | 80 g to 1 litre water |
| Bleaching powder | 70% | 7g g to 1 litre water |
| Any other | As per manufacturer's Instructions | |

Steps of Hand Hygiene

Hand-washing technique with soap and water

- 1 Wet hands with water
- 2 Apply enough soap to cover all hand surfaces
- 3 Rub hands palm to palm
- 4 Rub back of each hand with palm of other hand with fingers interlaced
- 5 Rub palm to palm with fingers interlaced
- 6 Rub with back of fingers to opposing palms with fingers interlocked
- 7 Rub each thumb clasped in opposite hand using a rotational movement
- 8 Rub tips of fingers in opposite palm in a circular motion
- 9 Rub each wrist with opposite hand
- 10 Rinse hands with water
- 11 Use elbow to turn off tap
- 12 Dry thoroughly with a single-use towel
- 13 Hand washing should take 15–30 seconds

Guidelines for use of mask

The correct procedure of wearing triple layer surgical mask

1. Perform hand hygiene
2. Unfold the pleats; make sure that they are facing down.
3. Place over nose, mouth and chin.
4. Fit flexible nose piece over nose bridge.
5. Secure with tie strings (upper string to be tied on top of head above the ears –lower string at the back of the neck.)
6. Ensure there are no gaps on either side of the mask, adjust to fit.
7. Do not let the mask hanging from the neck.
8. Change the mask after six hours or as soon as they become wet.
9. Disposable masks are never to be reused and should be disposed off.
10. While removing the mask great care must be taken not to touch the potentially infected outer surface of the mask
11. To remove mask first untie the string below and then the string above and handle the mask using the upper strings.
12. Disposal of used masks: Used mask should be considered as potentially infected medical waste. Discard the mask in a closed bin immediately after use.

**Ministry of Health and Family Welfare
Directorate General of Health Services
[Emergency Medical Relief]**

Novel Coronavirus Disease 2019 (COVID-19): Guidelines on rational use of Personal Protective Equipment

1. About this guideline

This guideline is for health care workers and others working in points of entries (POEs), quarantine centers, hospital, laboratory and primary health care / community settings. The guideline uses setting approach to guide on the type of personal protective equipment to be used in different settings.

2. Introduction

Coronaviruses are a large family of viruses, some causing illness in people and others that circulate among animals, including camels, cats and bats. Rarely, animal coronaviruses can evolve and infect people and then spread between people such as has been seen with MERS and SARS.

The outbreak of Novel coronavirus disease (now named COVID-19) was initially noticed from a seafood market in Wuhan city in Hubei Province of China in mid-December, 2019, has spread to more than 185 countries/territories worldwide including India.

The causative agent for COVID-19, earlier termed provisionally as novel Coronavirus has been officially named as SARS-CoV-2.

3. Mode of transmission

There is clear evidence of human-to-human transmission of SARS-CoV-2. It is thought to be transmitted mainly through respiratory droplets that get generated when people cough, sneeze, or exhale. SARS-CoV-2 also gets transmitted by touching, by direct touch and through contaminated surfaces or objects and then touching their own mouth, nose, or possibly their eyes. Healthcare associated infection by SARS-CoV-2 virus has been documented among healthcare workers in many countries.

The people most at risk of COVID-19 infection are those who are in close contact with a suspect/confirmed COVID-19 patient or who care for such patients.

4. Personal Protective Equipment (PPE)

Personal Protective Equipments (PPEs) are protective gears designed to safeguard the health of workers by minimizing the exposure to a biological agent.

4.1 Components of PPE

Components of PPE are goggles, face-shield, mask, gloves, coverall/gowns (with or without aprons), head cover and shoe cover. Each component and rationale for its use is given in the following paragraphs:

4.1.1 Face shield and goggles

Contamination of mucous membranes of the eyes, nose and mouth is likely in a scenario of droplets generated by cough, sneeze of an infected person or during aerosol generating procedures carried out in a clinical setting. Inadvertently touching the eyes/nose/mouth with a contaminated hand is another likely scenario. Hence protection of the mucous membranes of the eyes/nose/mouth by using face shields/ goggles is an integral part of standard and contact precautions. The flexible frame of goggles should provide good seal with the skin of the face, covering the eyes and the surrounding areas and even accommodating for prescription glasses.

4.1.2 Masks

Respiratory viruses that includes Coronaviruses target mainly the upper and lower respiratory tracts. Hence protecting the airway from the particulate matter generated by droplets / aerosols prevents human infection. Contamination of mucous membranes of the mouth and nose by infective droplets or through a contaminated hand also allows the virus to enter the host. Hence the droplet precautions/airborne precautions using masks are crucial while dealing with a suspect or confirmed case of COVID-19/performing aerosol generating procedures.

Masks are of different types. The type of mask to be used is related to particular risk profile of the category of personnel and his/her work. There are two types of masks which are recommended for various categories of personnel working in hospital or community settings, depending upon the work environment:

1. Triple layer medical mask
2. N-95 Respirator mask

4.1.2.1 Triple layer medical mask

A triple layer medical mask is a disposable mask, fluid-resistant, provide protection to the wearer from droplets of infectious material emitted during coughing/sneezing/talking.

4.1.2.2. N-95 Respirator mask

An N-95 respirator mask is a respiratory protective device with high filtration efficiency to airborne particles. To provide the requisite air seal to the wearer, such masks are designed to achieve a very close facial fit.

Such mask should have high fluid resistance, good breathability (preferably with an expiratory valve), clearly identifiable internal and external faces, duckbill/cup-shaped structured design that does not collapse against the mouth.

If correctly worn, the filtration capacity of these masks exceeds those of triple layer medical masks. Since these provide a much tighter air seal than triple layer medical masks, they are designed to protect the wearer from inhaling airborne particles.

4.1.3 Gloves

When a person touches an object/surface contaminated by COVID-19 infected person, and then touches his own eyes, nose, or mouth, he may get exposed to the virus. Although this is not thought

to be a predominant mode of transmission, care should be exercised while handling objects/surface potentially contaminated by suspect/confirmed cases of COVID-19.

Nitrile gloves are preferred over latex gloves because they resist chemicals, including certain disinfectants such as chlorine. There is a high rate of allergies to latex and contact allergic dermatitis among health workers. However, if nitrile gloves are not available, latex gloves can be used. Non-powdered gloves are preferred to powdered gloves.

4.1.4 Coverall/Gowns

Coverall/gowns are designed to protect torso of healthcare providers from exposure to virus. Although coveralls typically provide 360-degree protection because they are designed to cover the whole body, including back and lower legs and sometimes head and feet as well, the design of medical/isolation gowns do not provide continuous whole-body protection (e.g., possible openings in the back, coverage to the mid-calf only).

By using appropriate protective clothing, it is possible to create a barrier to eliminate or reduce contact and droplet exposure, both known to transmit COVID-19, thus protecting healthcare workers working in close proximity (within 1 meter) of suspect/confirmed COVID-19 cases or their secretions.

Coverall and gowns are deemed equally acceptable as there is a lack of comparative evidence to show whether one is more effective than the other in reducing transmission to health workers. Gowns are considerably easier to put on and for removal. An apron can also be worn over the gown for the entire time the health worker is in the treatment area. Coveralls/gowns have stringent standards that extend from preventing exposure to biologically contaminated solid particles to protecting from chemical hazards.

4.1.5 Shoe covers

Shoe covers should be made up of impermeable fabric to be used over shoes to facilitate personal protection and decontamination.

4.1.6. Head covers

Coverall usually cover the head. Those using gowns, should use a head cover that covers the head and neck while providing clinical care for patients. Hair and hair extensions should fit inside the head cover.

The specifications for all the PPEs are at **Annexure-A**.

5. Rational use of PPE

The PPEs are to be used based on the risk profile of the health care worker. The document describes the PPEs to be used in different settings.

5.1. Point of Entry

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|--|---|---------------|-------------------------------------|--|
| 1 | Health Desk | Provide information to travellers | Low risk | Triple layer medical mask Gloves | Minimum distance of one meter needs to be maintained. |
| 2 | Immigration counters, customs and airport security | Provide services to the passengers | Low risk | Triple layer medical mask Gloves | Minimum distance of one meter needs to be maintained. |
| 3 | Temperature recording station | Record Temperature with hand held thermal recorder. | Low risk | Triple layer medical mask Gloves | |
| 4 | Holding area/ Isolation facility of APHO/ PHO | Interview & Clinical examination by doctors/ nurses | Moderate Risk | N-95 masks Gloves | |
| 5 | Isolation facility of APHO | Clinical management (doctors, nurses) | Moderate Risk | N-95 masks Gloves | |
| | | Attending to severely ill passenger | High risk | Full complement of PPE | When aerosol generating procedures are anticipated |
| 5 | Sanitary staff | Cleaning frequently touched surfaces/ Floor/ cleaning linen | Moderate risk | N-95 mask Gloves | |
| 6 | Administrative staff | Providing administrative support | No risk | No PPE | No contact with patients of COVID-19. They should not venture into areas where suspect COVID-19 cases are being managed. |

5.2. Hospital Setting

5.2.1. Out Patient Department (Respiratory Clinic / Separate screening area)[#]

| S. No | Setting | Activity | Risk | Recommended PPE | Remarks |
|-------|--|--|---------------|---------------------------|---|
| 1 | Triage area | Triaging patients Provide triple layer mask to patient. | Moderate risk | N 95 mask Gloves | Patients get masked. |
| 2 | Screening area help desk/ Registration counter | Provide information to patients | Moderate risk | N-95 mask Gloves | |
| 3 | Temperature recording station | Record temperature with hand held thermal recorder | Moderate Risk | N 95 mask Gloves | |
| 4 | Holding area/ waiting area | Nurses / paramedic interacting with patients | Moderate Risk | N 95 mask Gloves | Minimum distance of one meter needs to be maintained. |
| 5 | Doctors chamber | Clinical management (doctors, nurses) | Moderate Risk | N 95 mask Gloves | No aerosol generating procedures should be allowed. |
| 6 | Sanitary staff | Cleaning frequently touched surfaces/ Floor/ cleaning linen | Moderate risk | N-95 mask Gloves | |
| 7 | Visitors accompanying young children and elderlies | Support in navigating various service areas | Low risk | Triple layer medical mask | No other visitors should be allowed to accompany patients in OPD settings. The visitors thus allowed should practice hand hygiene |

All hospitals should identify a separate triage and holding area for patients with Influenza like illness. If there is no triage area / holding area for patients due to resource constraints, such hospitals will follow the above guidance for general OPD.

5.2.2. In-patient Services

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|--|---------------------|---------------|---------------------|--|
| 1 | Individual isolation rooms/ cohorted isolation rooms | Clinical management | Moderate risk | N 95 mask Gloves | Patient masked. Patients stable. No aerosol generating activity. |
| 2 | ICU/ Critical | Critical care | High risk | Full complement of | Aerosol generating |

| | care | management | | PPE | activities performed. |
|---|---|---|--|---|--|
| 3 | ICU /critical care | Dead body packing | High risk | Full complement of PPE | |
| 4 | ICU/ Critical care | Dead body transport to mortuary | Low Risk | Triple Layer medical mask Gloves | |
| 5 | Sanitation | Cleaning frequently touched surfaces/ floor/ changing linen | Moderate risk | N-95 mask Gloves | |
| 6 | Other Non-COVID treatment areas of hospital | Attending to infectious and non-infectious patients | Risk as per assessed profile of patients | PPE as per hospital infection prevention control practices. | No possibility of exposure to COVID patients. They should not venture into COVID-19 treatment areas. |
| 7 | Caretaker accompanying the admitted patient | Taking care of the admitted patient | Low risk | Triple layer medical mask | The caretaker thus allowed should practice hand hygiene, maintain a distance of 1 meter |

5.2.3. Emergency Department

| S.No | Setting | Activity | Risk | Recommended PPE | Remarks |
|------|-----------|--|---------------|------------------------|--|
| 1 | Emergency | Attending emergency cases | Moderate risk | N 95 mask Gloves | When aerosol generating procedures are anticipated |
| 2 | | Attending to severely ill patients of SARI | High risk | Full complement of PPE | Aerosol generating activities performed. |

5.2.4. Pre-hospital (Ambulance) Services

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|---|---|---------------|-------------------------------------|--|
| 1 | Ambulance Transfer to designated hospital | Transporting patients not on any assisted ventilation | Moderate risk | N-95 mask Gloves | |
| | | Management of SARI patient while transporting | High risk | Full complement of PPE | When aerosol generating procedures are anticipated |
| | | Driving the ambulance | Low risk | Triple layer medical mask Gloves | Driver helps in shifting patients to the emergency |

5.2.5. Other Supportive/ Ancillary Services

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|---------------------------|--|---------------|------------------------|--|
| 1. | Laboratory | Sample collection and transportation | High risk | Full complement of PPE | |
| | | Sample testing | High risk | Full complement of PPE | |
| 2 | Mortuary | Dead body handling | Moderate Risk | N 95 mask Gloves | No aerosol generating procedures should be allowed. No embalming. |
| | | While performing autopsy | High Risk | Full complement of PPE | No post-mortem unless until specified. |
| 3 | Sanitation | Cleaning frequently touched surfaces/ Floor/ cleaning linen in COVID treatment areas | Moderate risk | N-95 mask Gloves | |
| 4 | CSSD/Laundry | Handling linen of COVID patients | Moderate risk | N-95 mask Gloves | |
| 5 | Other supportive services | Administrative Financial Engineering Security, etc. | No risk | No PPE | No possibility of exposure to COVID patients. They should not venture into COVID-19 treatment areas. |

5.3. Health Workers in Community Setting

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|---|---|-------------|-----------------------------|---|
| 1 | ASHAs/ Anganwadi and other field staff | Field Surveillance | Low Risk | Triple layer mask Gloves | Maintain distance of one meter. Surveillance team to carry adequate triple layer masks to distribute to suspect cases detected on field surveillance |
| 2 | Doctors at supervisory level conducting field investigation | Field surveillance Clinical examination. | Medium risk | N 95 mask Gloves. | |

5.4 Quarantine facility

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|---|---|---------------|-----------------------------|---------|
| 1 | Persons being quarantined | | Low Risk | Triple layer mask | |
| 2 | Healthcare staff working at quarantine facility | Health monitoring and temperature recording | Low Risk | Triple layer mask Gloves | |
| | | Clinical examination of symptomatic persons | Moderate Risk | N-95 masks Gloves | |
| 3 | Support staff | | Low Risk | Triple layer mask Gloves | |

5.5 Home Quarantine

| S. No. | Setting | Activity | Risk | Recommended PPE | Remarks |
|--------|---------------------------|---|----------|-------------------|---|
| 1 | Persons being quarantined | | Low Risk | Triple layer mask | |
| 2 | Designated family member | Taking care of person being quarantined | Low Risk | Gloves | While cleaning commonly touched surfaces or handling soiled linen |
| 3 | Other family | | No Risk | No PPE required | Maintain a distance of at least 1 meter from person under home quarantine. Senior citizens in the household should stay away from such persons under home quarantine. |

Points to remember while using PPE

1. PPEs are not alternative to basic preventive public health measures such as hand hygiene, respiratory etiquettes which must be followed at all times.
2. Always (if possible) maintain a distance of at least 1 meter from contacts/suspect/confirmed COVID-19 cases
3. Always follow the laid down protocol for disposing off PPEs as detailed in infection prevention and control guideline available on website of MoHFW.

Personal Protection Equipment (PPE) - Specifications

(for Contact & Airborne precautions)

1. PPE Kit
 - 1.1 Gloves
 - Nitrile
 - Non-sterile
 - Powder free
 - Outer gloves preferably reach mid-forearm (minimum 280 mm total length)
 - Different sizes (6.5 & 7)
 - Quality compliant with the below standards, or equivalent:
 - a. EU standard directive 93/42/EEC Class I, EN 455
 - b. EU standard directive 89/686/EEC Category III, EN 374
 - c. ANSI/SEA 105-2011
 - d. ASTM D6319-10
 - 1.2 Coverall (medium and large)*
 - Impermeable to blood and body fluids
 - Single use
 - Avoid culturally unacceptable colors e.g. black
 - Light colors are preferable to better detect possible contamination
 - Thumb/finger loops to anchor sleeves in place
 - Quality compliant with following standard
 - a. Meets or exceeds ISO 16603 class 3 exposure pressure, or equivalent
 - 1.3 Goggles
 - With transparent glasses, zero power, well fitting, covered from all sides with elastic band/or adjustable holder.
 - Good seal with the skin of the face
 - Flexible frame to easily fit all face contours without too much pressure
 - Covers the eyes and the surrounding areas and accommodates for prescription glasses
 - Fog and scratch resistant
 - Adjustable band to secure firmly so as not to become loose during clinical activity
 - Indirect venting to reduce fogging
 - May be re-usable (provided appropriate arrangements for decontamination are in place) or disposable
 - Quality compliant with the below standards, or equivalent:
 - a. EU standard directive 86/686/EEC, EN 166/2002
 - b. ANSI/SEA Z87.1-2010

- 1.4. N-95 Masks
 - Shape that will not collapse easily
 - High filtration efficiency
 - Good breathability, with expiratory valve
 - Quality compliant with standards for medical N95 respirator:
 - a. NIOSH N95, EN 149 FFP2, or equivalent
 - Fluid resistance: minimum 80 mmHg pressure based on ASTM F1862, ISO 22609, or equivalent
 - Quality compliant with standards for particulate respirator that can be worn with full- face shield

- 1.5. Shoe Covers
 - Made up of the same fabric as of coverall
 - Should cover the entire shoe and reach above ankles

- 1.6. Face Shield
 - Made of clear plastic and provides good visibility to both the wearer and the patient
 - Adjustable band to attach firmly around the head and fit snugly against the forehead
 - Fog resistant (preferable)
 - Completely covers the sides and length of the face
 - May be re-usable (made of material which can be cleaned and disinfected) or disposable
 - Quality compliant with the below standards, or equivalent:
 - a. EU standard directive 86/686/EEC, EN 166/2002
 - b. ANSI/SEA Z87.1-2010

3. Triple Layer Medical Mask
 - Three layered medical mask of non-woven material with nose piece, having filter efficiency of 99% for 3 micron particle size.
 - a. ISI specifications or equivalent

4. Gloves
 - Nitrile
 - Non-sterile
 - Powder free
 - Outer gloves preferably reach mid-forearm (minimum 280mm total length)
 - Different sizes (6.5 & 7)
 - Quality compliant with the below standards, or equivalent:
 1. EU standard directive 93/42/EEC Class I, EN 455
 2. EU standard directive 89/686/EEC Category III, EN 374
 3. ANSI/SEA 105-2011
 4. ASTM D6319-10

5. **Body Bags - Specifications**

- 1) Impermeable
- 2) Leak proof
- 3) Air sealed
- 4) Double sealed
- 5) Disposable
- 6) Opaque
- 7) White
- 8) U shape with Zip
- 9) 4/6 grips
- 10) Size: 2.2 x 1.2 Mts
- 11) Standards:
 - a) ISO 16602:2007
 - b) ISO 16603:2004
 - c) IS016604:2004
 - d) ISO/DIS 22611:2003

All items to be supplied need to be accompanied with certificate of analysis from national/ international organizations/labs indicating conformity to standards

All items: Expiry 5 years

* Due to scarcity of coveralls, and risk versus benefit, that as an emergency temporary measure in larger public interest, in present given circumstances, the fabric that cleared/passed 'Synthetic Blood Penetration Resistance Test' (ISO 16603) and the garment that passed 'Resistance to penetration by biologically contaminated solid particles (ISO 22612:2005) may be considered as the benchmark specification to manufacture Coveralls.' The Coveralls should be taped at the seams to prevent fluid/droplets/aerosol entry.

The test for these two standards (ISO 16603 and ISO 22612:2005), which can be performed in Indian laboratories are as per WHO Disease Commodity Package (Version 4.0)

Standard Operating Procedure (SOP) for Handling Arrested Persons, Detainees and Inmates during the Pandemic

1. The following principles are the guiding light of this SOP:
 - i. Hand Hygiene and Respiratory Etiquettes
 - ii. Social Distancing
 - iii. Segregation
 - iv. Security of Inmates
 - v. Health Monitoring
 - vi. Minimum Movement
 - vii. Tracking and Tracing of contacts
 - viii. Remote Meetings

2. **New inmates/detainees/arrested persons**
 - a) Careful screening of all new inmates shall be conducted for COVID-19. Any suspected inmate, based on this screening, may be tested for COVID-19. If an inmate is found COVID-19 positive, his clinical status would be assessed and shall be put in appropriate isolation facility in the jail hospital or separate barrack earmarked for the purpose.
 - b) The detainees, who are asymptomatic but suspected to have been in contact with the COVID-19 positive patient, should be sent to quarantine facility and monitored. Detainees who are symptomatic should be sent to an isolation facility (as suspected cases) and tested for COVID-19. If confirmed positive, he will be transferred to the isolation facility for COVID positive cases. At no point of time, a suspect COVID case will be mixed with a confirmed case.
 - c) For such purpose, the Jail Hospital/Medical Ward should be sufficiently upgraded by increasing the number of beds, personal protective equipment (PPE) for the medical staff, COVID-19 testing kits, and other medical equipment.
 - d) All incoming detainees/new inmates should be lodged separately and should follow physical distancing and suitable hygiene measures. Such asymptomatic detainees should be lodged separately and should have separate dining space.
 - e) Only new or properly cleaned clothing and bedding articles should be provided to new inmates.
 - f) There may be some instances of the influx of detainees who might have had a history of foreign travel or exposure to COVID-19 patients. For such a scenario, a separate building with sufficient space may be earmarked to act as a holding area until their screening is completed. This holding area should be properly sanitized before use.

- g) In case, a separate building is not available for the holding area, a temporary structure may be erected for use as holding area and screening ward.

3. **Procedure to be followed for existing inmates:**

- i. Any inmates returning from parole or furlough should be lodged in separate barracks/cells for a fixed number of days as decided by the health experts.
- ii. Sufficient number of teams may be formed for carrying out the screening for COVID-19.
- iii. The existing inmates, who are asymptomatic but suspected to have been in contact with the COVID 19 positive patient, should be sent to quarantine facility and monitored. Existing inmates who are symptomatic should be sent to an isolation facility (as suspected cases) and tested for COVID-19 as per the guidelines issued by ICMR. If confirmed positive, he will be transferred to the isolation facility for COVID positive cases. At no point of time a suspect COVID case will be mixed with a confirmed case.
- iv. Proper caution may be exercised while shifting the COVID-19 positive inmates for isolation. The staff must wear appropriate personal protective Gears, while dealing with the COVID-19 positive inmates. The vehicles carrying the COVID-19 inmates must be properly sanitized. The COVID-19 inmates must also be made to wear triple layer medical masks.
- v. Meal timings for inmates should be staggered to ensure physical distancing. Rearrange sitting arrangement for inmates at the dining space.
- vi. Inmates under quarantine should have separate dining space maintaining physical distancing.
- vii. The inmates should be encouraged to ensure personal hygiene (Hand hygiene and respiratory etiquettes).

4. **Procedure to be followed for temporary prisons:**

- i. If there is a large outbreak of COVID-19 in a prison, a temporary prison may have to be created.
- ii. Depending on the circumstances and availability of resources, when a new building, like a stadium, guest house, school building, community hall, etc., is notified as a temporary jail, all precautions, as applicable to a regular prison, should be adopted.
- iii. Special consideration may be given to sanitization of such building, strict access control, social distancing and disposal of medical and other waste, etc.
- iv. The potentially exposed inmates/detainees will be segregated and kept in a separate quarantine and monitored on a daily basis.

5. **Other precautions to be followed by the Prison authorities:**

- a. Only one point of entry/exit should be used as far as possible.
- b. The staff at the entrance should use masks, face-shields, gloves, thermal scanning equipment and sanitizers while screening the inmates and performing other duties.
- c. The prisons need to be frequently disinfected at least once a day.
- d. All the toilets, bathrooms, kitchens, and other common areas must be cleaned and sanitized daily.
- e. Prison staff interacting with the inmates, who are in quarantine, should wear face masks, face-shields, and gloves.

- f. All inmates should be made aware of COVID-19 symptoms and the importance of maintaining personal hygiene and social distancing.
- g. Signage at essential points should be placed to make the Prison staff and inmates informed of the precautions to be taken to prevent the spread of COVID -19.
- h. All inmates must be provided with personal soaps and face covers.
- i. All clothing and bedding of the inmates should be cleaned by detergent, bleaching powder in hot water. The clothing and bedding of the inmates under quarantine should be cleaned separately.
- j. The facility of Mulaqats, i.e., meeting between the prisoners and their family members, should be stopped till the pandemic is controlled. Video Conference and phone calls between inmates and his family members should be allowed.
- k. Group activities that are not of essential nature be stopped and only crucial group activities should be carried out duly following the guidelines for distance of at least six feet between two individuals.
- l. Anybody (Prison staff or inmates) having any symptoms of fever, cough, breathlessness, sore throat, should be sent immediately for thorough medical checkup and follow up.

6. **Miscellaneous General Guidance Points**

General

- 1) Prisons should review their continuity and contingency plans and update them to ensure that they can perform critical functions with reduced numbers of personnel, in a manner that does not have a negative impact on the security of the prison.
- 2) Staff and prisoners should be reminded to wash their hands for 40 seconds frequently and catch coughs and sneezes in tissues and dispose it appropriately in bins with closed lids.
- 3) Frequently clean and disinfect objects and surfaces that are touched regularly. Also disinfect objects / surfaces not ordinarily cleaned (e.g. cell doors / bars, doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks and telephones, blankets, and clothing).
- 4) Develop a process and space to screen all persons entering prison.
- 5) Screening stations should be outside the entrance to the prison.
- 6) Confirmed cases of coronavirus (COVID-19) should be notified by prison to local State Health authorities.
- 7) Disinfect the cell of the person who is suspected or confirmed of having contracted COVID-19 thoroughly.
- 8) Keep the individual's movement outside the COVID-19 isolation space to an absolute minimum
- 9) Ensure that the individual is always wearing a face protection when outside of the medical isolation space, and whenever another individual enters.

- 10) Masks should be changed at least 8 hourly or earlier, if visibly soiled or wet.

Generating Awareness and special initiatives

- 11) Any person (staff /visitors/vendors/service providers) showing symptoms of COVID-19 or who has been in contact with a confirmed or suspected case of COVID19 MUST NOT BE ALLOWED TO ENTER the prison.
- 12) Communicate with prisoners the temporary impact of COVID-19 on ordinary prison routines (including visits and other services).
- 13) Stress the importance of protecting the health of staff, prisoners, and the community.
- 14) Show the prisoners the information posters and explain the information and verify that the prisoner understands the content.
- 15) Encourage prisoners to report any symptoms of COVID-19 to a staff member for the health and well-being of everyone.
- 16) Consider reducing the number of prisoners gathering in groups, attempt to reduce movement of prisoners and avoid mixing individuals from different prisoner groups (particularly at-risk prisoners)
- 17) Provide access to virtual / telephone visit options. If moving to virtual / telephone visits, disinfect electronic equipment regularly.
- 18) Increase supplies of food, water and medication.
- 19) Consider using the prison industry to produce masks and other useful equipment.
- 20) If possible, consider making hand sanitizer containing at least 70% alcohol (where permissible based on security restrictions).
- 21) Communicate with staff and prisoners, using verbal commands / providing verbal direction from a distance instead of using physical contact.
- 22) Explain by showing / demonstrating.

Staff – personal protection and handling of inmates

- 23) Staff should minimize any non-essential contact with suspected corona virus (COVID-19) cases.
- 24) Ensure prison staff has all the necessary information / fully understand the COVID-19 prevention and response procedures. Prison staff should be made aware of all relevant procedures and protocols and should be regularly briefed/ trained and updated on the procedure. This is very essential and adequate attention may be paid by senior officers.
- 25) Communicate with prison staff that COVID-19 prevention and response procedures will temporarily impact the ordinary prison routine.

- 26) Screen all staff before they enter the prison.
- 27) DO NOT ALLOW ENTRY if a staff member shows or has experienced any symptoms of COVID-19.
- 28) If a staff member has been in contact with an individual infected by COVID-19 or with symptoms related thereto, consider assigning them duties with no or limited contact with prisoners and other staff for a period of 14 days (i.e. external patrol or towers).
- 29) Encourage staff to be extra observant and communicate with prisoners. Look for prisoners with COVID-19 symptoms and be aware of unusual suspicious prisoner behavior as a result of restricted movement and activities.
- 30) Inform staff why it is important that they do not come to work if they show any symptoms of COVID-19, and put into place procedures so they can be paid and are not penalized in other ways for being absent;
- 31) Determine the least amount of staff you need to operate your prison.
- 32) Have a contingency plan to call on other uniformed personnel to temporarily support a massive staff shortage (police, military, other uniformed personnel);
- 33) Increase vigilance and interact with prisoners to get more information about possible symptoms of disease and signs of unrest among prisoners.
- 34) Register all possible symptoms of disease in prisoners and other staff.
- 35) Limit direct contact with prisoners if possible, conduct visual searches on low-risk prisoners.
- 36) Don't approach or stand directly in-front of prisoners, reduce the risk of prisoners coughing or breathing directly on you.
- 37) Do prisoner counts from a distance if possible.
- 38) If you need to physically handle/direct prisoners, wear gloves, eye protections and a face-mask if possible or wash your hands before and immediately after if no gloves are available.
- 39) Do not conduct area searches without gloves.
- 40) If no gloves are available, limit touching areas and ensure you wash your hands before and immediately after searching.
- 41) Ensure at least 2 meters distance between you and the prisoner when interviewing, counseling, admitting, or discharging prisoners.
- 42) If in an office, use the desk and chairs to create distance. Clean your equipment several times a day with disinfectant - if available (including radio, phone, handcuff, handcuff keys, etc.).

- 43) If possible, change clothes and shoes before going home.
 - 44) Remind staff on the special vulnerability of prisoners and their duty of care as well as operations in accordance with human rights standards
 - 45) As soon as an individual develops symptoms of COVID-19, they should wear triple layer medical mask and should be immediately placed in isolation in a separate space from other individuals, preferably in a separate building inside the prison.
 - 46) Minimize the number of staff in contact with infected prisoners, particularly staff belonging to at risk groups.
-

Guidelines for use and disposal of protective gears, as per guidelines of the Ministry of Health and Family Welfare

1. Gloves

- Wear gloves at all times while on duty.
- Remove gloves properly and perform hand hygiene on coming in contact with blood or body fluids and then put on a new pair of gloves.
- The procedure of wearing and taking off gloves is at **Annex-(i)** of these guidelines.

2. Facial protection

- Use of triple layer medical mask for facial protection is recommended while on duty. Using a mask incorrectly may hamper its effectiveness and may cause harm to the personnel. So it must be used correctly. The correct steps in wearing and taking off the mask are at **Annex-(ii)** of these guidelines.

3. Face shields

- A face shield to protect mucous membranes of the eyes, nose, and mouth during activities that are likely to generate splashes or sprays of blood, body fluids, secretions, and excretions.
- Security personnel on COVID duty will wear a face-shield at all times while on duty.
- While taking off the face shield, ensure that the front surface is NOT touched. If one accidentally touches the same, perform hand hygiene as detailed in the document.
- The face shield is reusable. The front portion can be decontaminated by wiping with 70% alcohol or 1% sodium hypochlorite solution. This is to be followed by hand hygiene.
- The specifications of protective gears (triple layer mask, gloves and face shield) are at **Annex-(iii)** of these guidelines.

4. Safe disposal of used protective gears

- For disposal of used mask/gloves, guidance is at **Annex-(iv)** of these guidelines.

Correct steps in wearing and taking off the Gloves

When the hand hygiene indication occurs before a contact requiring glove use, perform hand hygiene by rubbing with an alcohol-based handrub or by washing with soap and water.

I. HOW TO DON GLOVES:



1. Take out a glove from its original box



2. Touch only a restricted surface of the glove corresponding to the wrist (at the top edge of the cuff)



3. Don the first glove



4. Take the second glove with the bare hand and touch only a restricted surface of glove corresponding to the wrist



5. To avoid touching the skin of the forearm with the gloved hand, turn the external surface of the glove to be donned on the folded fingers of the gloved hand, thus permitting to glove the second hand



6. Once gloved, hands should not touch anything else that is not defined by indications and conditions for glove use

II. HOW TO REMOVE GLOVES:



1. Pinch one glove at the wrist level to remove it, without touching the skin of the forearm, and peel away from the hand, thus allowing the glove to turn inside out



2. Hold the removed glove in the gloved hand and slide the fingers of the ungloved hand inside between the glove and the wrist. Remove the second glove by rolling it down the hand and fold into the first glove



3. Discard the removed gloves

4. Then, perform hand hygiene by rubbing with an alcohol-based handrub or by washing with soap and water

Wearing and taking off Triple layer medical mask

- Hold the Triple layer medical mask in right alignment for the nasal clip to be placed over the nose. The external pleats of the triple layer mask should face downwards.
- Open the mask pleats and place the mask carefully to cover mouth and nose.
- For the triple layer mask, tie the upper strings first, followed by the lower string. Fix securely to minimize any gaps between face and mask.
- While in use, avoid touching the mask especially its front side, because this surface is likely to be highly contaminated and may pose a risk of infection.
- Remove the triple layer mask by untying the lower string first, followed by the upper string.
- Be careful NOT to touch the front surface of mask while removing.
- Disposed off in the recommended manner as mentioned in the document.
- After removal or whenever you inadvertently touch a used mask, clean hands by using an alcohol-based hand rub (if available) or soap and water.
- Replace masks with a new clean, dry mask after 8 hours or as soon as they become damp/humid.
- Do not reuse single-use masks.

Specifications of Personal Protective Gears required by police/security personnel performing duty in COVID-19 affected areas

Gloves

- Latex (examination) gloves
- Non-sterile
- Powder free
- Gloves preferably reach mid-forearm (minimum 280 mm total length)
- Different sizes (6.5 & 7)
- Quality compliant with the below standards, or equivalent:
 - a) EU standard directive 93/42/EEC Class 1, EN 455.
 - b) EU standard directive 89/686/EEC Category 111, EN 374.
 - c) ANSI/SEA 105-2011.

Face Shield

- Made of clear plastic and provides good visibility to both the wearer and the patient.
- Adjustable band to attach firmly around the head and fit snugly against the forehead.
- Fog resistant (preferable).
- Completely covers the sides and length of the face.
- Re-usable (made of material which can be cleaned and disinfected).
- Quality compliant with the below standards, or equivalent:
 - a) EU standard directive 86/686/EEC, EN 166/2002.
 - b) ANSVSEA Z87.1-2010.

Triple Layer Medical Mask

- Three layered medical mask of non-woven material with nose piece, having filter efficiency of 99% for 3 micron particle size.
 - a) ISI specifications or equivalent

Procedure to dispose off used masks and gloves

Option 1:

Used masks/gloves and disposable tissues should be placed in a disposable leak-proof garbage bag and sprayed with 1% sodium hypochlorite allowing a contact time of 30 minutes and allow it to air dry. Thereafter it can be disposed of through the general waste management system.

Option 2:

Soak the mask, gloves and used tissues in 1% sodium hypochlorite solution. The solution can be bought from medical stores. Soak the used mask, gloves etc. in this solution for minimum of 30 minutes. Ensure the masks and/or other wastes are below the surface of the liquid. After 30 minutes, discard the remaining solution in drain. Secure the disinfected waste (masks, disposable gloves, tissues etc.) in a polybag and discard in a bin meant for dry waste or non-biodegradable waste.

Option 3:

In cities, where authorized waste collectors are available and provisioning has been made to collect bio-medical waste, hand over the bags containing biomedical waste to them

Annexure 11



Maharashtra Govt. Home Deptt.
Maharashtra Prison & Correctional Services.

Reformation & Rehabilitation

Tel.No. : (020)26124815
Fax No. : (020)26125878
Email ID : igoffice.jud-mh@gov.in
Website : www.mahaprison.gov.in

Adl. Director General of Police & Inspector
General of Prison & Correctional Services,
Maharashtra State, Old Central Building,
2nd Floor, Pune-1

To,

The Chief Public Prosecutor,
High Court, (Appellate Side)
Mumbai.

O.W. No. JUD/Covid-19/HC/WP/2988/D-9(3) /2020, Pune Dated ³²⁰² 15 June -2020

Subject:- Submission of compliance report.

PIL-CJ-LD-VC-5 OF 2020 (Sr.no.2)

1) Geeta Bharati Jain ----- Petitioner

Vs.

State of Maharashtra and Ors. ---- Respondents

WITH

PIL-CJ-VC-LD-VC-2 OF 2020 (Sr.No.5)

I.A.CJ-LD-VC No. 1 OF 2020-06-14

2) Peoples Union Civil Liberties and Anr --- Petitioner

Vs.

State of Maharashtra & Ors. --- Respondents

WITH

PIL NO.15 of 2018

3) Archana Rupwate ----- Petitioner

Vs.

State of Maharashtra ---- Respondents.

With reference to above mentioned subject compliance report regarding the judgement dated 12.06.2020 in the said matter is attached herewith.


(Sunil Ramanand)

Additional Director General of Police &
Inspector General of Prisons &
Correctional Services,
Maharashtra State, Pune-1

**Compliance report in the matter of Hon'ble High Court, Bombay
Judgement Dated June 12, 2020. in the PIL No. 2/2020 with 5/2020.**

It is hereby submitted that Municipal Commissioners and District Collectors are the Designated Authorities under the Epidemic Diseases Act, 1897 and the Disaster Management Act, 2005. These two authorities are in charge of all the resources required to manage the outbreak of Covid-19. In addition, Collectors have been empowered under section 7 of the Prisons Act, 1894 to declare temporary prisons. The Collector is also the Chairman of the Board of Visitors of every Prison of the Maharashtra State (except Mumbai). On the outbreak of Covid-19 in Prisons, the Superintendents promptly inform these two authorities and seek their intervention in accordance with latest protocol. The table in the annexure gives the status of Covid-19 outbreak in prisons.

It is further submitted that mass swab testing of asymptomatic prison inmates may not be undertaken until express assurance of quarantine facility is given by the Municipal Commissioners / Collectors as many of the prisons in the state are overcrowded.

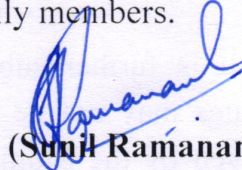
The details of the four Covid-19 related deaths are as under

- 1.) Yerwada Central Prison – Convict Baswanappa Bhimasha Maggi, age 80 years, was in the said prison since 15th Feb 2019. He was admitted to Sassoon hospital on 7th May 2020 due to lower respiratory track infection with vomiting. He died on 9th May 2020. As per his death certificate, he died due to Covid-19.
- 2.) Taloja Central Prison –Under trial inmate Haroon Bashir Shaikh, age 53 years, was in the said prison since 24th April 2020. He was admitted to Sir J.J. hospital on 9th May 2020 due to diabetes. He died on the same day. Thereafter his throat swab was taken and it tested positive for Covid-19. The cause of death was certified as Pneumonia cellusis with Covid-19.
- 3.) Dhule District Prison - Under trial Raees Papa Bashir Mansoori, age 23 years, was in the said prison since 9th May 2020. He was admitted to Bhausahab Hire Govt. Medical College & Hospital on 12th May 2020 as he exhibited withdrawal symptoms. He died on 13th May 2020. Thereafter his throat swab was taken and it tested positive for Covid-19. The cause of death was certified as Sepsis with alcohol and Ganja withdrawal with polycythemia.

4.) Taloja Central Prison – Under trial inmate Balu Baburao Gadshinge, age 33 years, was admitted to the said prison on 10th October 2019. He committed suicide inside the Prison Hospital by hanging himself on 27th May 2020. Thereafter his throat swab was taken and it tested positive for Covid-19.

It is further mentioned that District Collectors have declared 35 prisons in 26 districts in order to decongest existing prisons and also to hold and quarantine newly arriving inmates. Thane Central Prison is grossly overcrowded. The Superintendent has requested Collector Thane to open a temporary prison. However, no temporary prison has been opened as yet.

A letter dated 14th June 2020 issued by the ADG prisons has permitted Superintendents to purchase additional cellular phone with a view to enforcing the circular dated 12th February 2019 whereby inmates of Prisons will be able to have wider interaction with family members.



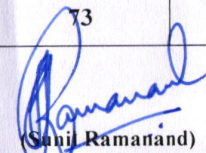
(Sunil Ramanand)

Additional Director General of Police &
Inspector General of Prisons &
Correctional Services,
Maharashtra State, Pune-1

Annexure of Covid-19 outbreak in prisons.

Date:13/06/2020

| Sr. No | Prison Name | Monitoring Authority | Number of Screenings | Number of Swab Tests | Number of Positive cases detected (inmates) | Number of Cured (inmates) | Number of death (inmates) | Number of Positive cases detected (Jail Staff) | Number of Cured (Jail Staff) | Number of death (Jail Staff) |
|--------------|--------------------------------|---|----------------------|----------------------|---|---------------------------|---------------------------|--|------------------------------|------------------------------|
| 1 | ADGP & IG Prisons Office, Pune | Dr.Snehal Kotalwar, Pune Municipal Corporation , Dhole Patil Regional Office, Pune | 47 | 1 | 0 | 0 | 0 | 1 | 1 | 0 |
| 2 | Mumbai Central Prison | Dr.Arun Rathod ,Sir J. J. Hospital Mumbai. | 2082 | 545 | 158 | 98 | 0 | 39 | 37 | 0 |
| 3 | Thane Central Prison | Dr. Ashwini Deshpande, Wadia Hospital on behalf of Thane Municipal Corporation | 4000 | 11 | 2 | 2 | 0 | 4 | 2 | 0 |
| 4 | Taloja Central Prison | Chief Medical Officer, Taloja Central Prison | 2217 | 2 | 2 | 0 | 2 | 0 | 0 | 0 |
| 5 | Byculla District Prison | Dr. Shilpa Patil, Sir J. J. Hospital, Mumbai | 184 | 31 | 0 | 0 | 0 | 2 | 1 | 0 |
| 6 | Mumbai Women Prison, Byculla | Dr. Shilpa Patil, Sir J. J. Hospital, Mumbai | 330 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| 7 | Yerwada Central Prison | Dr. Maya Lohar, Ward Medical Officer, Pune Municipal Corporation, Pune | 4466 | 1 | 1 | 0 | 1 | 0 | 0 | 0 |
| 8 | Satara District Prison | Civil Surgeon, Govt District Hospital, Satara on behalf of Collector Satara District. | 378 | 187 | 10 | 10 | 0 | 0 | 0 | 0 |
| 9 | Solapur District Prison | Dr. Borade, on behalf of Municipal Commissioner, Solapur. | 377 | 377 | 62 | 2 | 0 | 13 | 8 | 0 |
| 10 | Aurangabad Central Prison | Dr. Padhalkar, CMO, Municipal Corporation, Aurangabad. | 3318 | 517 | 29 | 0 | 0 | 14 | 2 | 0 |
| 11 | Dhule District Prison | Dr. Sayyad Ali, on behalf of Municipal Commissioner, Dhule. | 296 | 8 | 4 | 2 | 1 | 0 | 0 | 0 |
| Total | | | 17695 | 1681 | 269 | 115 | 4 | 73 | 51 | 0 |



(Sanil Ramanand)

Additional Director General of Police &
Inspector General of Prisons &
Correctional Services,
Maharashtra State, Pune-1

Annexure 12

Maharashtra Prison Department Medical Branch in Prison

| Sr. No. | Details | Sanctioned Post | Filled posts | Vacant posts |
|---------|--------------------------------|-----------------|--------------|--------------|
| 01 | Psychologist | 05 | 03 | 02 |
| 02 | Phychiatrists | 03 | 01 | 02 |
| 03 | Medical Officer Class-I | 03 | 02 | 01 |
| 04 | Medical Officer Class-II & III | 41 | 30 | 11 |
| 05 | Compounder | 47 | 34 | 13 |
| 06 | Nursing Orderly | 67 | 37 | 30 |
| 07 | Lab Technician | 09 | 05 | 04 |
| Total | | 175 | 112 | 63 |

Temporary Prisons

Date:-25/05/20

| Sr.No. | District | Temporary Prison Location | Temporary Prison Population | | |
|--------|------------|--|-----------------------------|--------|-------|
| | | | Male | Female | Total |
| 1 | Pune | Schedule Cast, Girl's Hostel, Near Press Colony, Yerwada, Pune-6 | 97 | 14 | 111 |
| | | Dr. Babasaheb Ambedkar Research and Training Institute, Yerwada .Mahatma Jyotiba Phule Boy's hostel & Krantijyoti Sawitribai Phule Girl's hostel | | | |
| | | K.K.Mangal Lawn, Yerwada Open Prison | | | |
| 2 | Satara | Yashoda shikshan Prasarak mandal, Yashoda college of Architecture. At Post- Wadhe, Tah-Satara, District-Satara | 60 | 1 | 61 |
| 3 | Sangali | Patwardhan High School, Near old Collector office, Sangali | 41 | 0 | 41 |
| 4 | Kolhapur | I.T.I., Boy's Hostel, Sambhajee Nagar, Kolhapur | 0 | 0 | 0 |
| 5 | Solapur | Solapur District Prison, New Building. | 38 | 0 | 38 |
| 6 | Aurangabad | S.B.O.A. Public School, N-11, Hudako, Aurangabad. | 48 | 7 | 55 |
| 7 | Jalana | Police Training Center Jalana, Gurukul Building. | 0 | 0 | 0 |
| 8 | Parbhani | Minority Girl's Hostel, I.T.I. Parbhani | 28 | 0 | 28 |
| 9 | Beed | Government Girl's Hostel, Shivaji Maharaj Chauk, Beed. | 62 | 2 | 64 |
| 10 | Nanded | Nanded District Prison, New Building | 50 | 0 | 50 |
| 11 | Osmanabad | D.A.T.I. Hostel, Osmanabad. | 14 | 0 | 14 |
| 12 | Nashik | K.N.Kela, High School, Junior K.G. Building, Jail Road, Nashik. | 49 | 3 | 52 |
| 13 | Dhule | Jijamata High School, Girl's Hostel, Dhule. | 49 | 0 | 49 |
| 14 | Raigad | Namadar Gopal Krushna Gokhale High school, Kharghar Node, Sector-12, Kharghar. | 158 | 0 | 158 |
| | | Municipal Corporation School, Near Chatrapati Shivaji Maharaj Chauk, Alibaug. | 0 | 0 | 0 |

| | | | | | |
|-------|------------------|---|-----|----|-----|
| 15 | Sindhudurg | I.T.I. Sawantwadi. | 1 | 2 | 3 |
| 16 | Nagpur | Mangalmurti Lawn, Nagpur Central Prison, Nagpur. | 67 | 0 | 67 |
| 17 | Amaravati | Dr. Narendra Bhivapurkar Blind School, Boy's Hostel, Near Amaravati Central Prison. | 67 | 10 | 77 |
| 18 | Buldana | Gramsevak Prashikshan Kendra, Sinhgad Building, Buldana, Tal-Buldana. | 41 | 3 | 44 |
| 19 | Akola | Government Rest House, Near Akola Railway Station. | 19 | 1 | 20 |
| 20 | Washim | Shasakiya bahuuddeshiya samishra apang kendra, Old Jilha Parishad. | 33 | 0 | 33 |
| | | Rest House, Washim District Prison | 0 | 2 | 2 |
| 21 | Yavatmal | D.Ed College, Yavatmal, Dist-Yavatmal | 28 | 1 | 29 |
| 22 | Wardha | | | | |
| 23 | Bhandara | | | | |
| 24 | Gondiya | | | | |
| 25 | chandrapur | | | | |
| 26 | Gadchiroli | | | | |
| 27 | Ahemadanagar | | | | |
| 28 | Hingoli | | | | |
| 29 | Latur | | | | |
| 30 | Nandurbar | | | | |
| 31 | Jalgaon | | | | |
| 32 | Mumbai | | | | |
| 33 | Mumbai sub urban | | | | |
| 34 | Thane | | | | |
| 35 | Palghar | | | | |
| 36 | Ratnagiri | | | | |
| Total | | | 950 | 46 | 996 |