

IMPORTANT

No. VII-11016/20/2016-PR
Government of India
Ministry of Home Affairs

Women Safety Division, 2nd Floor,
Major Dhyan Chand National Stadium,
India Gate, New Delhi-110002
November 25, 2019

To

1. **The Principal Secretary (Home) of all States and UTs**
2. **DG/IG (Prisons) of all States/UTs**

Sub: Addressing the issue of Overcrowding in Prisons and providing relief to under trial prisoners.

Sir/Madam,

The National Crime Records Bureau (NCRB) released its annual publication 'Prison Statistics India 2017' last month. As per the report, the actual capacity of prisons has increased from 3,80,876 in 2016 to 3,91,574 in 2017. The number of prison inmates has increased from 4,33,003 in 2016 to 4,50,696 in 2017. The occupancy rate of prisons at the end of the year 2017 was 115.1%. The number of under-trial prisoners has increased from 2,93,058 in 2016 to 3,08,718 in 2017. The snapshot of prison population indicates that prisons of several States are overcrowded and have population of inmates more than its capacity.

2. 'Prisons' and 'persons detained therein' are State subjects in Entry 4 of List II of the Seventh Schedule to the Constitution. The administration and management of prisons therefore vests with respective State Governments. However, given the fact that prison reforms and safe custodial management is an important issue, the Central Government attaches high importance to the improvement of prison conditions and efficient prison management. The Hon'ble Supreme Court has also issued several directions in the past laying down guidelines for the State authorities in matters of prison administration and prison reforms.

3. Overcrowding in prisons and a large number of under trials has been a matter of concern for the Government of India. The Ministry of Home Affairs has taken several steps to address the issue of over-crowding in prisons. Section 436A has been inserted in the Code of Criminal Procedure (Cr. PC) which provides for release of an under-trial prisoner on bail on undergoing detention for a period extending up to one-half of the maximum period of imprisonment specified for an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that

law). E-Prisons software has been developed to enlist the types of offences that under-trial prisoners are charged with, the date of completion of the maximum sentence, the date of completion of half the maximum sentence, whether the individual is already imprisoned for a period in excess of the half maximum sentence, and is thus eligible for release on bail under Section 436 A of the Code of Criminal Procedure. **The Eprisons portal thus enables the State Jail authorities to access the data of inmates in a quick and easy mode** to assist in identifying inmates whose cases are due for consideration by the Under Trial Review Committees. **States and UTs are requested to make full use of Eprisons facility in this regard.**

4. The Ministry of Home Affairs has also circulated Standard Operating Procedure (SOP) for Under Trial Review Committees to States and UTs on 18th February 2019 about the steps to be taken by various stakeholders. This SOP provides useful guidance to all stakeholders for addressing the issue of under trials and provides step by step guidance to all stakeholders. **All States and UTs are again urged to take steps listed in the SOP.** The Model Prison Manual 2016 circulated to all States and UTs also has a chapter on 'Legal Aid' which provides for facilities which may be provided to undertrials viz. legal defence, interview with lawyers, signing of Vakalatnama, application to Courts for legal aid at Government cost etc. **States/UTs are requested to coordinate their efforts with State Legal Service Authorities and make use of all resources at their disposal to address the issue of undertrials and overcrowding in their prisons.**

5. The Government of India had also introduced the concept of plea bargaining through Section 265-A of Cr.P.C. which enables pre- trial negotiation between the defendant and the prosecution during which the defendant agrees to plead guilty in exchange for certain concessions by the prosecutor. **States/UTs are requested to make use of this provision.**

6. MHA has issued regular advisories to the States & UTs to adopt the above measures with a view to reducing overcrowding in prisons and addressing the issue of under-trials. Detailed advisories in this regard were issued on 9th May 2011, 17th January 2013 and 27th September 2014. **These advisories are available on MHA's website for reference by States/UTs.**

7. The following directions of Hon'ble Supreme Court of India in Writ Petition (Civil) No.406/2013 dated 5th February 2016 are also reiterated to all State/UT authorities for their guidance and compliance to address the issue of overcrowding and under-trials in prisons:

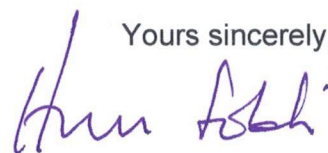
- i) The Under Trial Review Committee in every district should meet every quarter. The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.
- ii) The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. 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 Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.

- iii) 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.
- iv) 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.

8. States and UTs are requested to make concerted efforts to provide legal assistance and other support to under-trial prisoners in coordination with State Legal Services Authorities and take effective steps to address and reduce overcrowding in their prisons.

Yours sincerely,



(Arun Sobti)

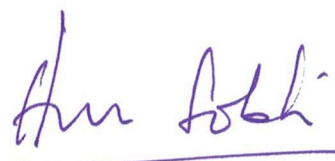
Deputy Secretary to the Govt. of India

Tele : 2307 5297

Email: dspr.atc@mha.gov.in

Copy to:

The Member-Secretary, National Legal Services Authority, 12/11, Jam Nagar House, Shahjahan Road, New Delhi with the request to issue suitable instructions to all State Legal Service Authorities in States to coordinate with State Jail authorities in the above matter.



(Arun Sobti)

Deputy Secretary to the Govt. of India

Tele : 2307 5297

Email: dspr.atc@mha.gov.in