

CHRI's ANALYSIS OF CHANGES IN PRISON POPULATION BETWEEN DECEMBER 2019 & NOVEMBER 2021*

***Brief:** This note provides an analysis of prison data for 24 states and union territories. The analysis indicates an urgent need to strategize on ways to reduce prison overcrowding and calls for the immediate attention and action by the Supreme Court of India, Ministry of Home Affairs, National Human Rights Commissions, High Courts, Prison Departments and Legal Services Authorities.*

KEY FACTS & FIGURES

- ✓ The average increase in prison populations in 17 states is 23%
- ✓ Prison occupancy has on an average increased from 115% to 133%
- ✓ The proportion of undertrials has increased to 77%
- ✓ The year 2020 witnessed nearly nine lakh more arrests than 2019 despite lockdowns and extensive restrictions on movement of general public
- ✓ Only 21 states proactively disclose prison statistics on their website

I. INTRODUCTION

The 13th edition of the World Prison Population List¹ released on 2nd December 2021 stipulates that more than 1.1 crore people are imprisoned worldwide. It states that while prison population levels have been affected by various factors linked to COVID-19 pandemic, in many countries' prisoner numbers fell in the second quarter of 2020.

In India too, as a result of large number of interim releases of both convicts and undertrials, prisoner numbers saw a reduction by June 2020.² However, by December 2020 nearly all prisoners released temporarily, were recalled to prison. As the year 2021 nears an end, having witnessed a deadlier second wave of infections than that in 2020, CHRI set out to analyze the changes in prison population between December 2019 and November 2021.

The chronic overcrowding in prisons of the country was among the first concerns of the Supreme Court in handling the pandemic. The hon'ble Supreme Court in *In Re Contagion of COVID-19 in*

* This note has been prepared by Siddharth Lamba, Programme Officer, Prison Reforms, Commonwealth Human Rights Initiative.

¹ Published by the Institute of Crime & Justice Policy Research, UK and World Prison Brief. Available at https://www.prisonstudies.org/sites/default/files/resources/downloads/world_prison_population_list_13th_edition.pdf,

² Prison population was reduced by 10.42% whereas prison occupancy had been reduced to 103.1%. For more details see CHRI's Report, 'Responding to the Pandemic: Prisons and Overcrowding', 2020. Available at <https://humanrightsinitiative.org/download/Responding%20to%20the%20Pandemic%20Prisons%20&%20Overcrowding%20Vol%202.pdf>.

*Prisons*³ passed a series of orders to reduce prison populations across the country so that an explosive spread of the virus in prisons could be prevented. The Court directed the constitution of High Powered Committees in each State to determine categories of prisoners for emergency release to decongest prisons and ease prison overcrowding. Due to the efforts of the High Powered Committee, at least 42,529 undertrial prisoners and 16,391 convicts were released in 2020.⁴ The decongestion efforts continued in 2021 and during the second wave, and at least 5490 prisoners were reportedly released.⁵

This document provides an analysis of the changes in prison population, prison occupancy, prison capacity, gender-wise prison population, and the proportion of undertrial prisoners. Given the outcome of the analysis, which points to an upward trajectory in terms of numbers, the document concludes with a set of recommendations for consideration by various actors of the criminal justice system.

Data has been analysed for 24 states and union territories, which constitute nearly 84% of the total prison population in the country. The note highlights the increasing prison population inside the country's already overcrowded prisons which necessitates immediate measures towards decongestion.

Methodology: For the purpose of this analysis, the information on prison population for pre COVID-19 situation is taken from the Prison Statistics India 2019 (PSI) published for each year by the National Crime Records Bureau (NCRB). This provides data on the prison population in the States and UTs in India as on 31st December 2019. Information on prison population for post COVID-19 situation is taken from the prison department's websites of the States where the information is updated online as on 12th November, 2021. Data has also been used from other sources including information from affidavits filed by the respective States before the Supreme Court, or through telephonic calls made to the prison headquarters. However, even though information on prison populations is also available on the [ePrisons dashboard of the National Prisons Portal](#), due to several anomalies in this data, thus making it unreliable. Thus, it is not included in the analysis of the change in prison population.

³ *Suo Motu Writ Petition (Civil) No. 1 of 2020.*

⁴ For more information see 'Activities of NALSA During Pandemic', dtd 15 May 2020, prepared by the National Legal Services Authority, India.

⁵ Official data on releases is not available for 2021. This figure is per news reports and website data tracked by CHRI at <https://www.humanrightsinitiative.org/content/stateut-wise-prisons-response-to-covid-19-pandemic-in-india>.

II. AVAILABILITY OF INFORMATION ON PRISON POPULATION

In Re Contagion of COVID-19 in Prisons⁶, in its order dated 7th May, 2021 the Supreme Court observed “the fight against the pandemic is greatly benefitted by transparent administration” and advised the States to update prison population online. However, of the 36 states and UTs, only 21 states and UTs have uploaded data on prison population on the website. Fifteen States and Union Territories have not published their prison population on the website and there are no publicly accessible sources on their respective prison populations.

Among these 15 States and UTs, only Andhra Pradesh provided information based on a telephonic request, while rest of the States and UTs either declined to share information via telephone or could not be contacted. Jharkhand and Telangana’s prison population is taken from the affidavits filed by the respective State governments in the suo motu writ petition mentioned above. The only source of information on updated prison population for the remaining 12 States and UTs is the ePrisons dashboard.

ePrisons dashboard hosted by the National Prisons Portal is supposed to have live statistical information on prisons state-wise updated on a daily basis. However, a bare perusal of the statistical information given on the portal reveals several anomalies which render it unreliable.

STATES WHICH HAVE PUBLISHED PRISON POPULATION AFTER 31ST DEC. 2019

12 Nov. 2021	Within 1 month (Oct. to 12 Nov.)	July to September	January to June 2021	Anytime in 2020	31 Dec. 2019
	<ol style="list-style-type: none"> 1. Assam 2. Bihar 3. Himachal Pradesh 4. Kerala 5. Tripura 6. Chandigarh 7. Andhra Pradesh* 	<ol style="list-style-type: none"> 1. Arunachal Pradesh 2. Haryana 3. Goa 4. Madhya Pradesh 5. Maharashtra 6. Meghalaya 7. Nagaland 8. Odisha 9. Punjab 10. Rajasthan 11. Uttar Pradesh 12. Delhi 	<ol style="list-style-type: none"> 1. Jammu & Kashmir 2. Tamil Nadu 3. Jharkhand** 4. Telangana** 	<ol style="list-style-type: none"> 1. Mizoram (August) 	<p style="text-align: center;">STATES WHICH HAVE NOT PUBLISHED PRISON POPULATION SINCE 31ST DEC. 2019</p> <ol style="list-style-type: none"> 1. Chhattisgarh 2. Gujarat 3. Karnataka 4. Manipur 5. Sikkim 6. Uttarakhand 7. West Bengal 8. A & N Islands 9. D & N Haveli 10. Daman & Diu 11. Lakshadweep 12. Pondicherry

* Andhra Pradesh has not published prison population on its website. The Andhra Pradesh’s prison population has been collected over a telephone call.

** Jharkhand and Telangana have not published prison population on its website. Jharkhand’s prison population is extracted from the affidavit submitted by the State to the Supreme Court in Sua Motu Writ Petition No. 1 of 2020 titled In Re Contagion of COVID-19 Virus in Prisons.

Key Findings:

- Only 21 States and UTs out of total 36 have updated information on their websites as recommended by the Supreme Court.
- Among these, only seven States have updated prison population in the last one month i.e. from 1st October, 2021 to 12th November, 2021.

⁶ Sua Motu Writ Petition (Civil) No. 1 of 2020.

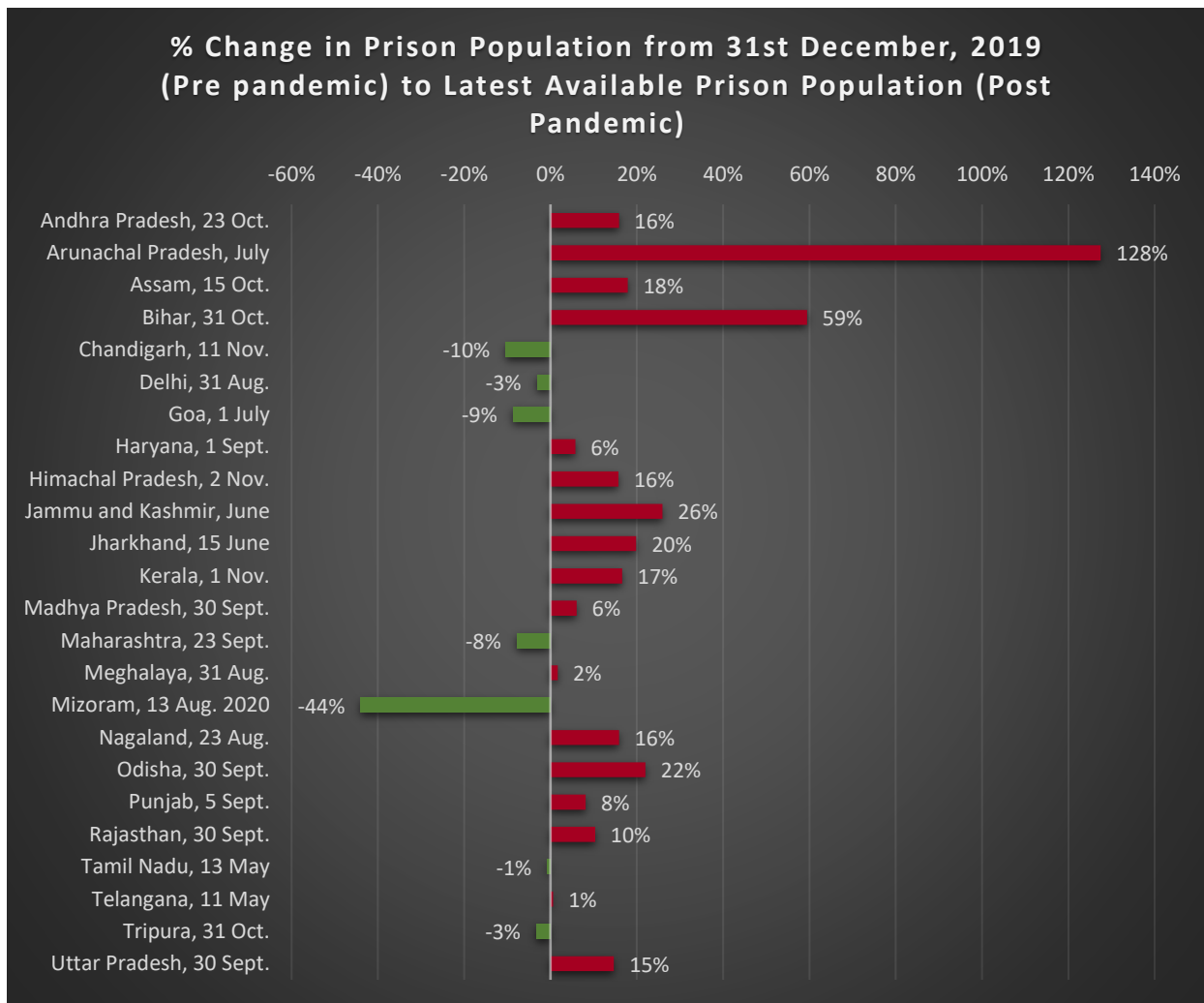
- Twelve States and UTs have updated their prison population between July to September 2021.
- Four States have published updated prison population this year but have not updated it in last four months.
- Mizoram had last updated its prison population on the website in August, 2020.

Analysis: There is no information on the prison population of one third of the States and UTs in India in the public domain. The latest available information on prison population for these States and UTs is as on 31st December, 2019. Non availability of updated prison statistics is a major challenge in bringing transparency in the traditionally closed prison system. In addition to the Supreme Court's observation that a transparent administration is important in fighting the pandemic, the State Information Commission of Rajasthan had also noted in an [order dated 22.12.2014](#) that categorized prison population should be displayed proactively on the website of the prison department. An analysis of High Powered Committees directions/decisions vis-à-vis publishing of prison population online also revealed that in all States except Gujarat where the HPC had directed to publish prison population, the direction has been complied with.

Recommendation: *CHRI recommends that the HPCs of the said 15 States and UTs where the updated prison statistics are not available should **direct the prison authority to update this information on their website every month.** The prison authorities too may take suo moto steps to ensure that prison statistics are updated on their websites regularly. They must also make efforts to cross-check the statistics on the e-prisons dashboard to ensure that correct information is reported.*

III. CHANGES IN PRISON POPULATION

To determine the change in state wise prison population, the prison population of only those 24 States and UTs is taken for which prison population from anytime in the year 2020 or 2021 is available.



Key Findings:

- Only **seven States** and UTs out of 24 have **reduced** prison population in comparison to the prison population as on 31st December, 2019.
- Average % increase in prison population among the **seventeen States and UTs** where prison population has **increased** is of **23%**.
- Average % decrease in prison population among the **seven States and UTs** where prison population has **decreased** is of **11%**.

- **Overall** in the 24 States, prison population increased from 400268 as on 31st December, 2019 to 455886 in 2021⁷ which is an **increase of 14%**. This is a huge jump from the 2 to 4 percent annual increase in prison population each year since 2015 to 2019.

Analysis: Data reflects an **alarming increase in prison populations** across more than two third of the States and UTs for which prison population after the two waves of COVID-19 is available. Such an increase despite the decongestion efforts calls for an investigation into the factors behind such exceptional increase in prison population.

A brief look at the arrests⁸ in 2019 and 2020 throws some light on the possible reason for the increase in prison population. In 2019 a total of 1,30,39,442 (1.3 billion approximately) persons were arrested under the provisions of Indian Penal Code, State Local Laws and Code of Criminal Procedure. In **2020, total number of persons arrested increased by 9,04,301 (0.9 million approximately)** taking the total number of persons arrested to 1,39,43,743 (1.39 billion approximately). A closer look at the total number of arrests under the IPC, SLL, CrPC and preventive detention laws reveals that the number of arrests under IPC crimes increased by 42% and the number of arrests under SLL offences increased by 14%. Whereas arrests under CrPC provisions decreased by 9% and arrests under preventive detention laws decreased by 16%.

This prima facie shows that higher number of arrests for IPC and SLL offences was certainly one of the factors behind the jump in prison population. **Such a high increase in persons arrested in the year 2020 despite several phases of lockdown and resultant restrictions on movement is concerning.** Such an increase in the number of arrests defeats the purpose of the Supreme Court [order dated 7.05.2020](#) which asked the Police to limit unnecessary arrests and strictly adhere to the arrest guidelines given in the Arnesh Kumar vs. State of Bihar and Ors., (2014) 8 SCC 273⁹.

Another crucial factor behind such increase in prison population could be the **restricted functioning of Courts during the pandemic** and the resultant increase in pendency of cases. This assumption is supported by the fact that despite decrease in number of persons arrested under the provisions of CrPC and preventive detention laws, the number of persons staying beyond 24 hours in detention in cases of arrests under CrPC and number of persons remained in custody at the end of the year in cases of preventive detention laws increased in the year 2020 in comparison to 2019.¹⁰

⁷ Apart from Mizoram for which latest prison population is only available from August 2020, the rest of the 23 States and UTs have updated prison population in 2021. Hence 2021 is considered as the year of comparison.

⁸ Statistics on number of arrests in India are provided by the National Crime Records Bureau in its annual publication Crime in India.

⁹ See CHRI's briefing paper on the guidelines given in the Arnesh Kumar case [here](#).

¹⁰ 17% of total arrested under CrPC were in detention beyond 24 hours in cases in 2019 which increased to 28% in the year 2020. 14% of the total arrested under preventive detention laws were in custody at the end of the year in 2019 which increased to 17% in 2020. Source: Crime in India 2019 and 2020 released by the National Crime Records Bureau.



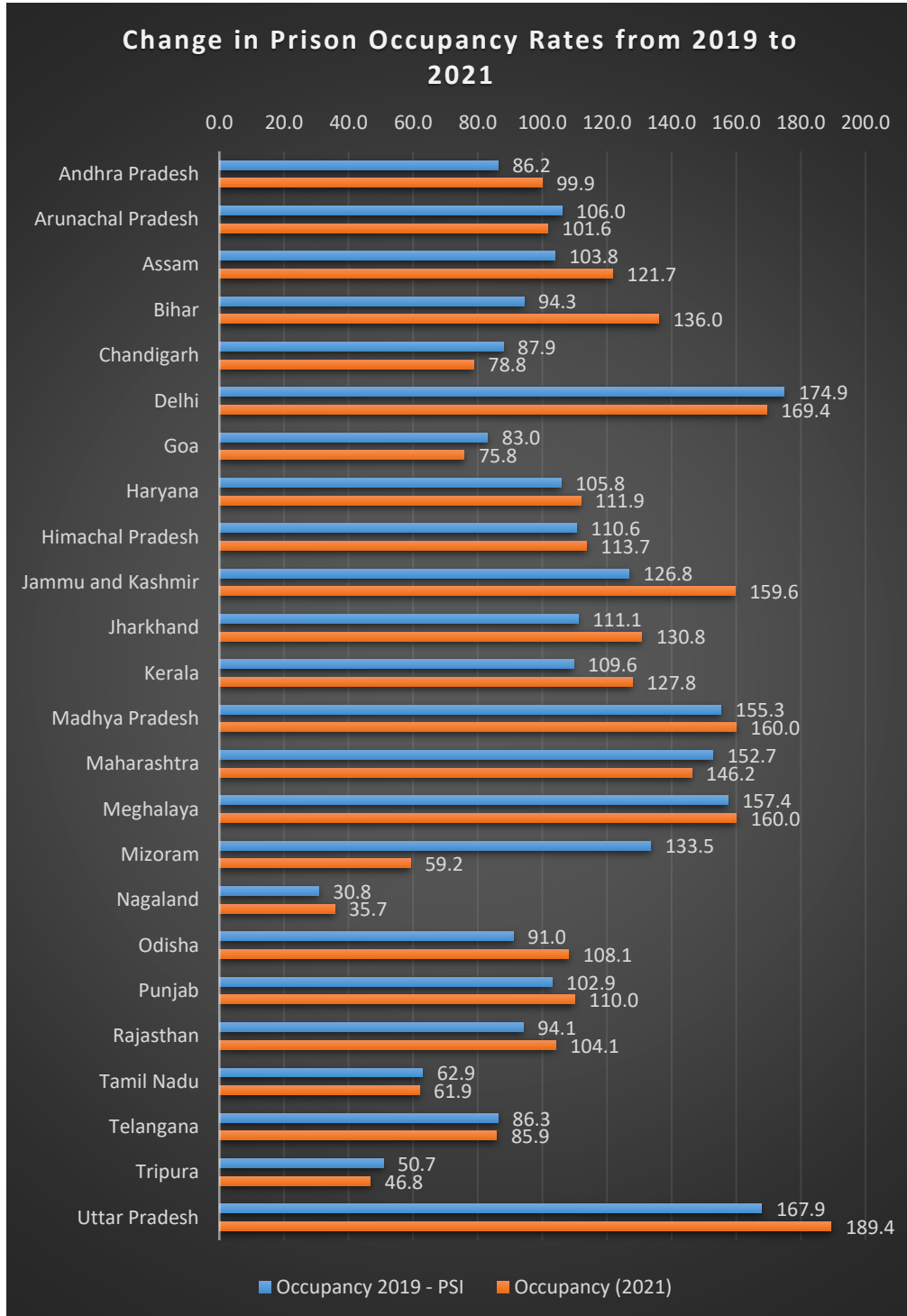
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Recommendation: *These findings reflect the need of a twofold approach in addressing this sudden surge in prison population. One, the **arrests should be limited** in compliance with the Supreme Court guidelines in the case of Arnesh Kumar must be strictly followed. Towards this the judiciary and lawyers including legal aid lawyers must work to ensure effective production and remand hearings, which will enable the implementation of Arnesh Kumar guidelines and thus keep a check on unnecessary detentions in prisons. Second, the Courts should prioritize cases and appeals where the accused is in prison so that the additional pendency caused by the pandemic does not result in further increase in prison population defeating the purpose of the decongestion efforts initiated in March 2020. HPCs may identify and decide categories for prioritizing cases so that pending cases are prioritized uniformly across the States.*

IV. CHANGES IN PRISON OCCUPANCY/OVERCROWDING

This section analyses State wise change in prison occupancy from 2019 to 2021.



Key Findings:

- Overall in the 24 States and UTs, prison occupancy increased from 119% in 2019 to 133% as per the latest available data after 31st December, 2019.
- Sixteen States had overall overcrowded prisons (prison occupancy more than 100%) in 2021 in comparison to 14 States with prison overcrowding in 2019.
- Prison Occupancy has reduced in only nine States and UTs namely Arunachal Pradesh, Goa, Maharashtra, Chandigarh, Mizoram, Tamil Nadu, Telangana, Tripura and Delhi by an average of 12.5%.
- In rest of the 15 States and UTs, prison occupancy increased by an average of 14.7%.

Analysis: The steep increase in prison occupancy is explained by the surge in prison population. Analysis of prison occupancy contradicts the expected outcome of the prison decongestion efforts. A closer look at the State wise prison population in States which had overall prison overcrowding shows that the number of prisoners in States with overall prison overcrowding increased from a total of 2,89,238 (289 thousand approximately) prisoners in 14 States in 2019 to 4,21,858 (421 thousand approximately) prisoners in 16 States in 2021.

Recommendation: *Such a steep increase in State wise prison overcrowding calls for a targeted review of cases who can be released on regular bail and pre-mature release to sustainably address prison overcrowding. The fact temporary decongestion efforts have completely failed to ease prison overcrowding in the long term shows that decongestion can only be successful if it involves focus on permanent release or alternative modes of punishment. The HPCs must include the aspects of permanent releases and implementation of Probation of Offenders Acts in their agendas to make the decongestion exercise more sustainable. Further, mechanisms such as Under Trial Review Committees must function robustly, to ensure that all cases which can be considered for release are intimated to the competent courts.*

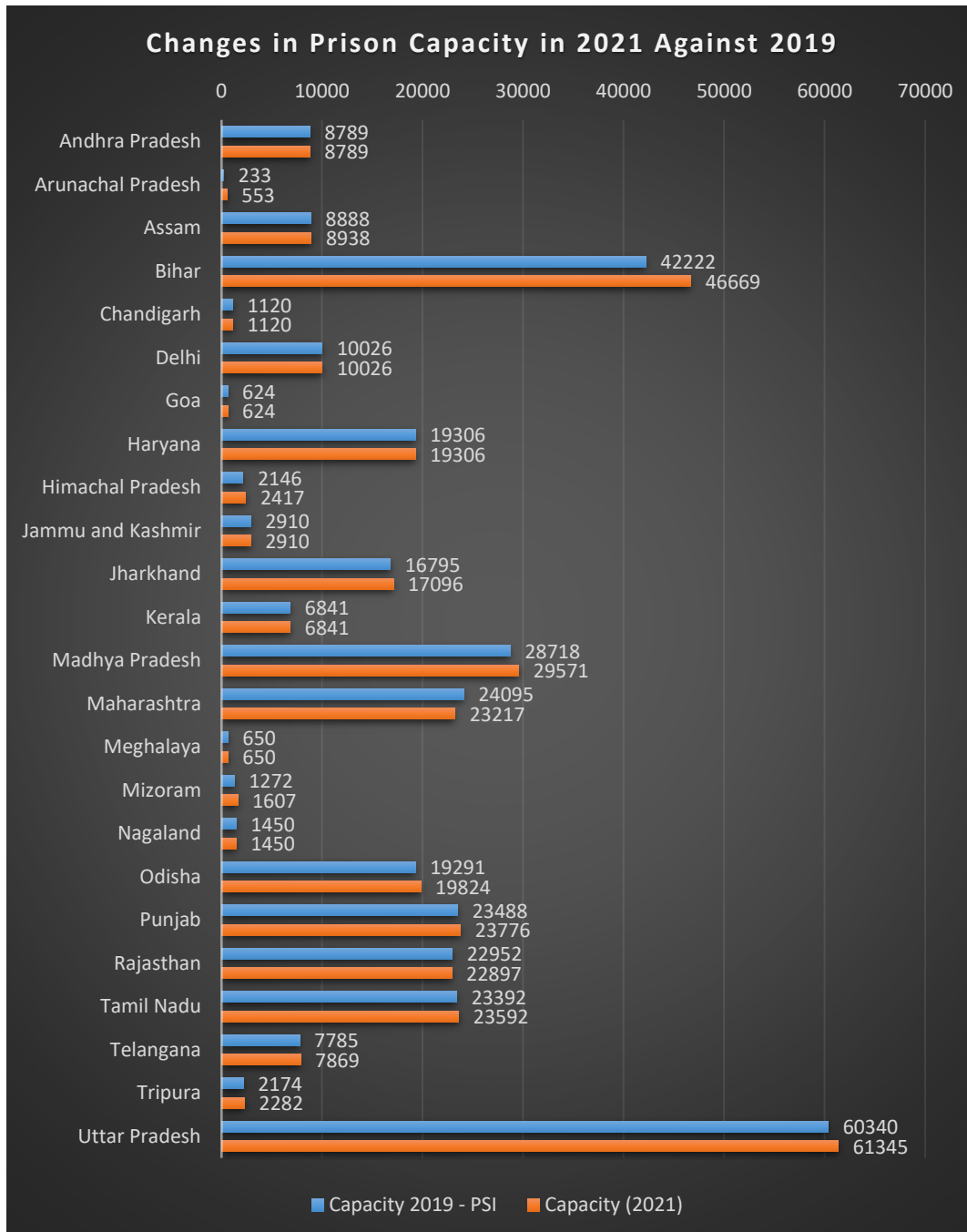


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V. CHANGES IN PRISON CAPACITY

In this section the change in prison capacity for the 24 States is analysed. For the States namely Andhra Pradesh, Jammu & Kashmir, Kerala, Meghalaya and Nagaland where the updated prison capacity is not provided in the prison statistics available on the website, the capacity as of 31st December, 2019 (PSI) has been assumed.



Key Findings

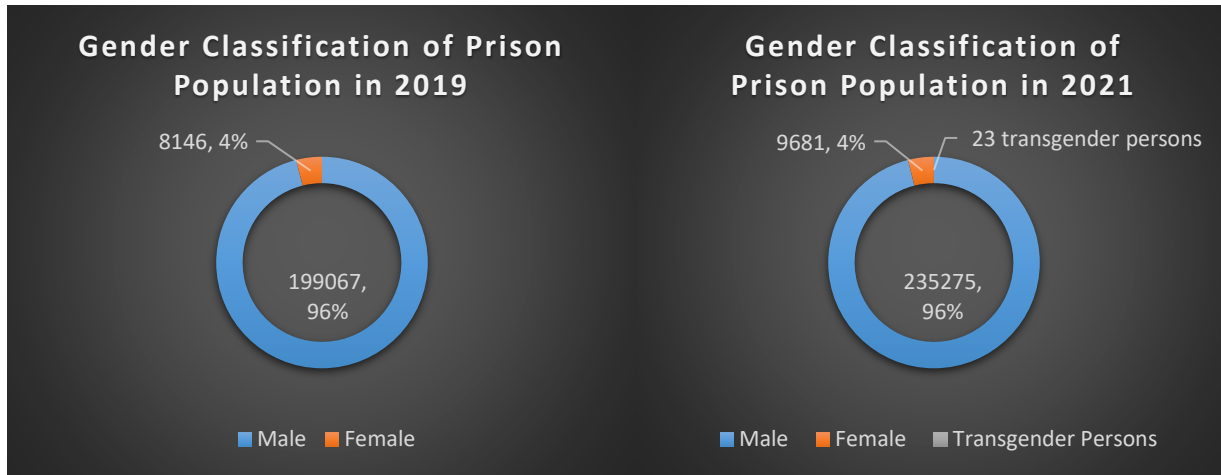
- Overall in the 24 States and UTs, prison capacity has increased marginally by 2%, from 3,35,507 in 2019 to 3,43,369 in 2021. The increase in prison population in these states is by 14% from 4,00,268 as on 31st December, 2019 to 4,55,886 in 2021.
- Apart from two States namely Rajasthan and Maharashtra, prison capacity has increased in all States as reflected in the graph above.

Analysis: The graph above shows that there is only marginal increase in the overall prison capacity which is far lower than the rate of increase in prison population. This increase may also be on account of temporary prisons that were designated such during the pandemic. It is important to note that increasing prison capacity in isolation is not a sustainable solution to address overcrowding.

Recommendation: *It is important to ensure that the increase in prison capacity is proportional to the increase in prison populations and growing needs keeping in mind the requirement mandated segregation of inmates based on their categories.*

VI. CHANGES IN GENDER WISE PRISON POPULATION

Out of the 24 States and UTs for which updated prison population data was available, gender wise classification of prisoners was not included in the five States namely Jharkhand, Maharashtra, Rajasthan, Tamil Nadu and Uttar Pradesh. Therefore, the below mentioned analysis does not include the abovementioned five states and the comparison is based only on the 19 states which provided the gender classification of the respective prison population.

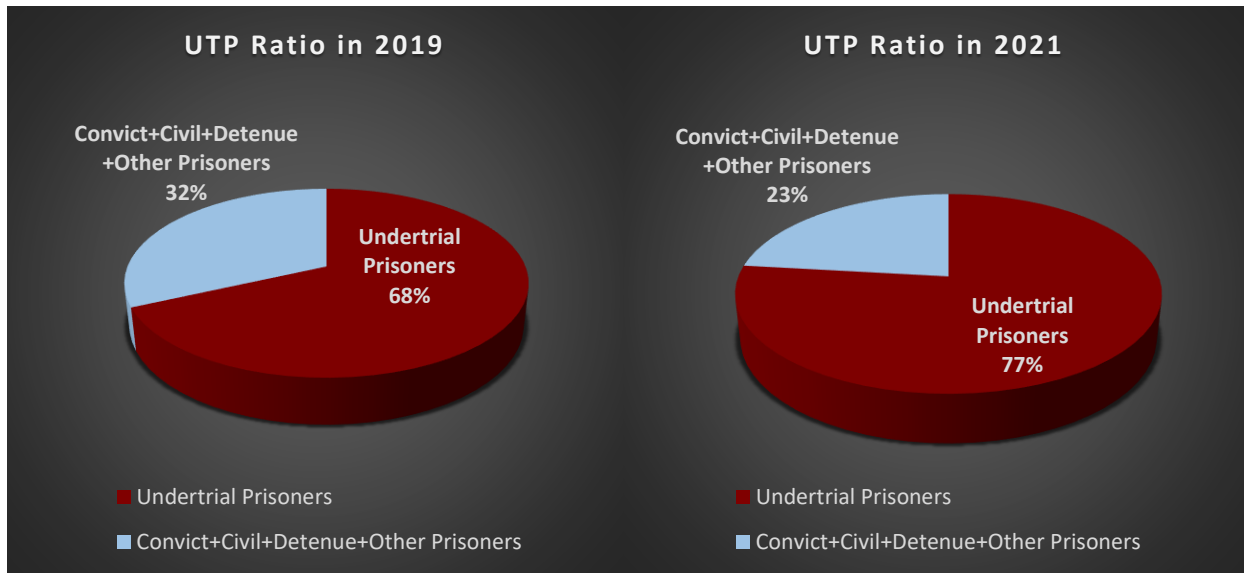


Key Finding:

- The overall data reflects that in 19 States and UTs where gendered prison population was available, recorded gender ratios remain unchanged. One should also note that only seven States and UTs out of the 24 States & UTs namely Andhra Pradesh, Assam, Kerala, Odisha, Punjab, Tripura and Delhi include transgender persons as gender category in their prison populations formats.

VII. CHANGE IN UNDERTRIAL PRISONERS' RATIO

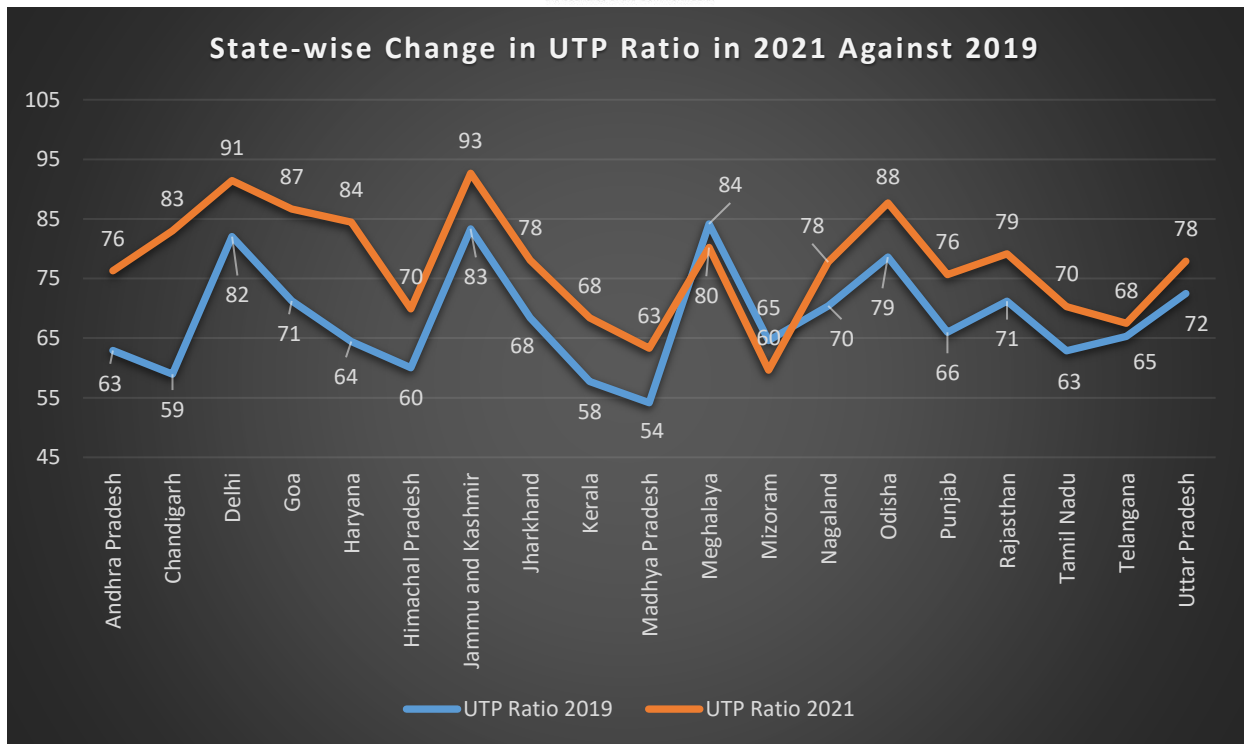
This section analyses the change in the ratio of Undertrial prisoners in the total prison population. For the purpose of comparison, only 19 States which had updated prison type wise classification in the updated prison statistics have been included in this analysis. Four States namely Bihar, Maharashtra, Arunachal Pradesh and Tripura have not provided prisoner type wise classification of their respective prison populations updated on the website. In the case of Assam, the prisoner type wise classification given in the published prison population does not match with the total prison population mentioned in the same document. Therefore, Assam is also not included in this analysis.





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Key Findings

- Overall proportion of Undertrial Prisoners has increased from 68% in 2019 to 77% in 2021.
- The proportion of Undertrial Prisoners has increased in 2021 in all the given States and UTs except in Mizoram and Meghalaya which show a marginal decrease in the UTP ratio. Increasing UTP ratio indicates that the major cause of steep increase in the prison population is led by the increasing number of Undertrial prisoners in our prisons.

Analysis: The graph depicting a State wise comparison of share of Undertrial prisoners in the total prison population in 2021 against that of 2019, reveals a steep increase in all States and UTs except two which recorded a marginal decrease. Increasing proportion of already very high Undertrial prisoners' proportion in prison populations across the country is worrying but also calls for efforts towards decongestion of prisons.

Recommendation:

The Supreme Court through constitution of the HPCs succeeded in temporarily reducing prison population through large number of interim releases. This indicates that decongestion is possible. This increasing proportion of undertrials emphasizes upon the need for sustainable decongestion initiative that are focused on ensuring zero unnecessary arrests and quick disposal of pending criminal cases where the accused is in judicial custody. Increased UTP ratio also calls for effective implementation of the [NALSA SOP on functioning of UTRCs](#) so that all cases of prisoners whose cases are eligible to be considered for release are heard by the concerned Courts without any delay.

CHRI's KEY RECOMMENDATIONS TO ADDRESS OVERCROWDING IN PRISONS

Supreme Court of India

- ☑ Direct the High Powered Committees to review prison occupancy rates in their state, and identify measures to effectuate release of prisoners.
- ☑ Direct states/UTs to proactively disclose prison statistics on their website, and to update the information on a monthly basis.
- ☑ Conduct periodic review, atleast once every 3 months of prison population and occupancy rates across all States/UTs to ensure a sustained decongestion effort is undertaken by all states to address the issue of increasing prison population.

Ministry of Home Affairs, Government of India

- ☑ Issue an advisory directing state governments to conduct a review of prison population in their states, and effectively address the issue of prison overcrowding. State prison departments must be encouraged to share this data with the judiciary, legal services authorities, prosecution, police and other stakeholders, so that practical solutions can be devised in a collaborative manner.

National Human Rights Commission

- ☑ Take cognizance of the increasing prison population and subsequent impact on prison conditions and issue directives to its special rapporteurs and special prison monitors to conduct regular inspection visits to prisons where occupancy rates are above 100%.
- ☑ Write to all the State Human Rights Commissions to engage with the state prison departments in addressing the issue of increasing prison population and occupancy levels through conducting state-wide consultation with key stakeholders and civil society organisations on this issue.

High Courts

- ☑ To reduce inflow of pretrial/remand/undertrial prisoners in prisons, there is a need to strictly monitor the implementation of S.41A, B, C, D of the CrPC to keep a constant check on the inflow in prisons. The concerned HC may issue directives for ensuring the implementation of the Arnesh Kumar directives through stricter scrutiny by magistrates at the time of production and remand hearings.
- ☑ The reduced court operations has increased case backlogs and has led to increased length of judicial and administrative proceedings. The concerned HC may issue

directives to all District Courts to prioritize cases and appeals where the accused is in prison.

- ☑️ Constitute a committee to prepare a consultation paper on ‘Decongesting Prisons’ in the state.



High Powered Committees

- ☑️ HPCs must seek compliance report from the police and judicial officers on the implementation of the Arnesh Kumar directives.
- ☑️ HPC may identify and decide categories for prioritizing cases so that pending cases are prioritized uniformly across the States.



State Prison Headquarters

- ☑️ All States must publish updated prison population statistics for each prison including gender and prisoner type wise classification and prison capacity on monthly or quarterly basis as suggested by the Supreme Court.
- ☑️ State Prison Headquarters must conduct monthly review of prison overcrowding, whereby data on prison admissions, prison population, occupancy and overcrowding, prison releases must be shared with the Chief Justice of the concerned High Court and the Executive Chairperson of the State Legal Services Authority.



National & State Legal Services Authority

- ☑️ Conduct regional or state-wide consultations with the secretaries of the District Legal Services Authority and Officer-in-charge of prisons to streamline and strengthen the functioning of Under Trial Review Committees (UTRCs). They must ensure that the UTRCs review prisoners’ cases of all the 14 mandated categories of cases; timely conduct of meetings; effective follow up and action on recommendations made.