

The Dismal State of India's Prisons: Overcrowded and Understaffed



Source: Sabrangindia.in

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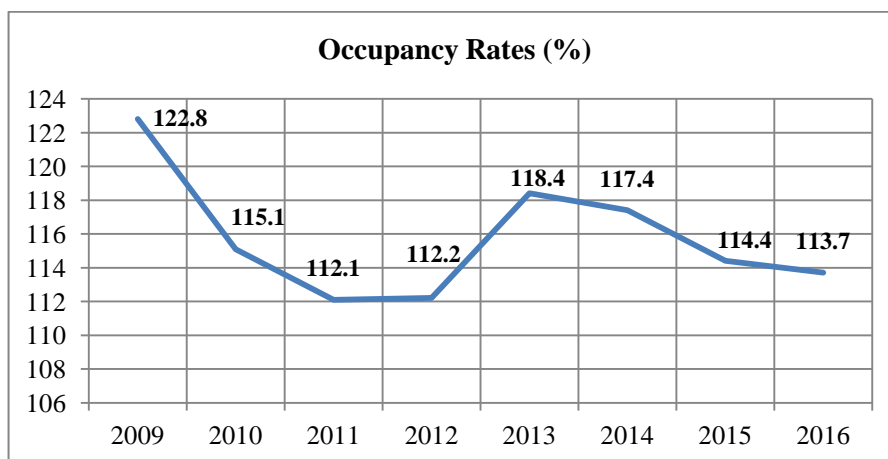
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Lead Essay

The Dismal State of India's Prisons: Overcrowded and Understaffed

On March 27, 2018, the Supreme Court (SC) took strong exception to the state of prisons in India and the alleged violation of the human rights of undertrial prisoners. Hearing a matter related to inhuman conditions in 1,382 prisons across the country, a bench of Justices M B Lokur and Deepak Gupta was informed by the amicus curiae that overcrowding in many jails is “well above 150 per cent and in one case it is as high as 609 per cent.” The bench directed the states and UTs to give their comments in two weeks on Standard Operating Procedures for Under Trial Review Committees (UTRCs) and warned the Directors General of Police (Prisons) of all states and UTs of contempt notice for non-compliance of its earlier orders with regard to submitting a plan of action to deal with issue of overcrowding prisons.¹

According to the National Crime Records Bureau (NCRB), overcrowding occurs when more inmates are staying in a prison as compared to the sanctioned strength. It is measured through the occupancy rate, defined as the number of inmates staying in jails against the authorized capacity for 100 inmates. Whereas an occupancy rate of 100 implies that the number of inmates is as per the authorized capacity of the jail, overcrowding in jail means the occupancy rate is more than 100. Below are the occupancy rates for the years 2009-2016 as recorded by Prison Statistics India (PSI), an annual statistical report brought out by NCRB.



Source: Prison Statistics India

The issue of overcrowding assumes importance for a number of reasons. Most importantly, beyond the statistics, overcrowding has material repercussions on the everyday lives of prisoners, most of who come from the socially and economically marginalised sections of the society (as noted by the 268th Law Commission Report).² Overcrowding leads to deterioration of the living conditions of the prisoners. An advisory issued by the Ministry of Home Affairs on 9th May, 2011 stated that overcrowding compels prisoners to be kept under conditions which are unacceptable to the United Nations Standard Minimum Rules for treatment of offenders to which India is a signatory. The advisory also noted that overcrowding undermines the ability of prison systems to meet the basic needs of prisoners – such as

¹ <https://economictimes.indiatimes.com/news/politics-and-nation/supreme-court-shocked-at-over-600-per-cent-overcrowding-in-jails/articleshow/63546381.cms>

² <http://lawcommissionofindia.nic.in/reports/Report268.pdf>

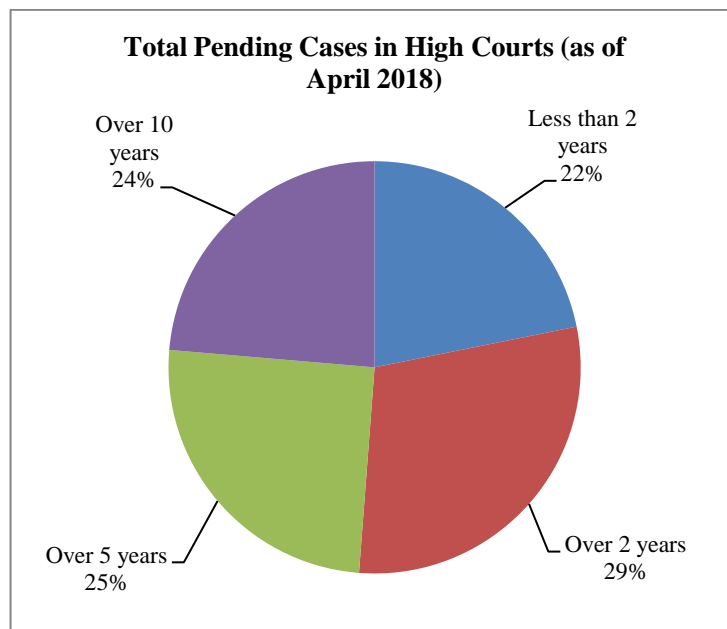
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healthcare, food, and accommodation. This, in turn, “endangers the basic rights of prisoners, including the right to have adequate standards of living and the right to the highest attainable standards of physical and mental health.”³ Further, the 268th Law Commission Report admitted that due to overcrowding and poor jail infrastructure, “there is no segregation of the under-trial and convicts.”⁴ The mixing up of undertrials with hardened criminals, or, say, persons imprisoned for civil offences and that for criminal offences, may not only lead to radicalisation of inmates, but may also constitute a threat of violence, attack on the bodily integrity of inmates, etc.

Hence, overcrowding ultimately acts as a disruption in the process of penal reformation and rehabilitation of the prisoner. However, overcrowding is only a symptom of larger problems that plague India’s prison and judicial system. It is therefore important that we look at the problems that lead to overcrowding in the first place. These include (but are not limited to) judicial delays and understaffing in prisons and the judiciary.

Judicial Delays

The issue of delay in disposal of cases has long been a matter of grave concern and has attracted dismay of sections ranging from civil society activists to the apex court. The significance of the issue is buttressed by data provided by the National Judicial Data Grid (NJDG). As per NJDG, there were 42.75 lakh cases pending in the 24 High Courts (HCs) in the country as on April 2018.⁵ More pertinent is the fact that of these cases, 23.65% have been pending for the last 10 years or above while only 21.83% cases have been pending for less than 2 years.



Source: National Judicial Data Grid

³ <http://mha1.nic.in/PrisonReforms/pdf/OvercrowdingPrison09052011.pdf>

⁴ <http://lawcommissionofindia.nic.in/reports/Report268.pdf>

⁵ http://njdg.ecourts.gov.in/hcnjdg_public/

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The figure for April 2018 shows a marginal increase as compared to figures for previous years cited by the Ministry of Law and Justice. According to the ministry, pending cases in HCs were pegged at 41.52 lakh by December 2014, 38.70 lakh by December 2015, and 40.15 lakh at the end of 2016.⁶

The situation is similar for the district and subordinate courts. The pending cases in these courts were pegged at 2.64 crores in 2014, 2.70 crores in 2015. The figure went up to 2.74 crores by December 2016.⁷ According to NJDG, as of April 2018, the pending cases were close to 2.69 crores.⁸

Shortage of Staff

Understaffing is a problem witnessed both at the level of prisons as well as that of the judiciary. Prisons in India are managed by three categories of personnel viz., jail cadre staff (including guarding staff), correctional staff and the medical staff. According to the recommendations of the 2016 Model Prison Manual, there has to be one guarding staff for every six prisoners. However, as per the latest PSI report, in 2015, there were 9 inmates per jail cadre staff. Worse, there were 225 per medical staff and 703 per correctional staff. In total, there were 53,009 total jail officials to take care of 4,19,623 inmates – which amounts to 1 jail official per 8 inmates – a poor figure by international standards. In the UK, the ratio of prisoner to prison officers as of 30 September 2015 was 4.8 at male establishments and 3.5 at female establishments.⁹ A 2012 research paper on the prison system in France noted that the ratio of inmates-to-staff in the country is about 2.5 inmates per prison guard.¹⁰

The figures put out by subsequent PSI reports are a cause of worry, since, as the report itself points out, “the number of inmates per official is a real indicator of how well inmates are looked after in the prisons.” More importantly, in its analysis of the PSI data on staff shortage, the Commonwealth Human Rights Initiative (CHRI) argues that low numbers of guarding and correctional staff perpetuates “adversarial staff-inmate relations” – breeding a “culture of punishment with extra lock-up hours to serve 'effective' management.”¹¹ The analysis further notes that prison staff is, in most cases, ill-trained, poorly paid, badly accommodated and often remains without promotion or any career advancement for years together.

As far as the judiciary is concerned, data from the Ministry of Justice shows that as of April 2018, the total vacancies in the 24 HCs as a proportion of their approved strength stands close to 40%.¹² Further, as of December 31, 2017, the vacancies in the subordinate courts stood close to 25% of the approved strength, as revealed by the Minister of Law and Justice in response to a question in the Lok Sabha.¹³

⁶ http://www.business-standard.com/article/current-affairs/cases-pending-in-sc-hcs-down-since-2014-upward-swing-in-lower-courts-117100100138_1.html

⁷ http://www.business-standard.com/article/current-affairs/cases-pending-in-sc-hcs-down-since-2014-upward-swing-in-lower-courts-117100100138_1.html

⁸ http://njdg.ecourts.gov.in/njdg_public/main.php

⁹ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-12-01/18366/>

¹⁰ Page <https://jjrec.files.wordpress.com/2014/04/rec20121.pdf>

¹¹ <http://www.humanrightsinitiative.org/download/CHRI%20Breakdown%20on%20NCRB%20Report.pdf>

¹² <http://doj.gov.in/appointment-of-judges/vacancy-positions>

¹³ <http://164.100.47.190/loksabhaquestions/annex/14/AU6111.pdf>

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Approved Strength, Working Strength, and Vacancies of Judges in SCs and HCs

Sl. No.	Name of the Court	Approved Strength			Working Strength			Vacancies as per Approved Strength		
		Pmt.	Addl.	Total	Pmt.	Addl.	Total	Pmt.	Addl.	Total
A.	Supreme Court of India	31			24			07		
B.	High Court									
1	Allahabad	76	84	160	72	28	100	04	56	60
2	Telangana & Andhra Pradesh *	46	15	61	30	0	30	16	15	31
3	Bombay *	71	23	94	56	14	70	15	09	24
4	Calcutta *	54	18	72	23	10	33	31	08	39
5	Chhattisgarh	17	05	22	09	03	12	08	02	10
6	Delhi *	45	15	60	37	0	37	08	15	23
7	Gauhati	18	06	24	08	10	18	10	-04	06
8	Gujarat	39	13	52	30	0	30	09	13	22
9	Himachal Pradesh *	10	03	13	08	0	08	02	03	05
10	Jammu & Kashmir*	13	04	17	10	0	10	03	04	07
11	Jharkhand *	19	06	25	10	07	17	09	-01	08
12	Karnataka	47	15	62	18	12	30	29	03	32
13	Kerala	35	12	47	34	03	37	01	09	10
14	Madhya Pradesh	40	13	53	32	0	32	08	13	21
15	Madras	56	19	75	43	15	58	13	04	17
16	Manipur *	04	01	05	02	0	02	02	01	03
17	Meghalaya*	03	01	04	01	0	01	02	01	03
18	Orissa	20	07	27	16	0	16	04	07	11
19	Patna	40	13	53	20	12	32	20	01	21
20	Punjab & Haryana	64	21	85	40	10	50	24	11	35
21	Rajasthan	38	12	50	28	05	33	10	07	17
22	Sikkim	03	0	03	03	0	03	0	0	0
23	Tripura	04	0	04	02	0	02	0	0	02
24	Uttarakhand	09	02	11	07	01	08	02	01	03
	Total	771	308	1079	539	130	669	232	178	410

Source: Department of Justice

Approved Strength, Working Strength, and Vacancies of Judges in Subordinate Courts

Sl. No	Name of States/UTs	Sanctioned Strength as on 31.12.2017	Working Strength as on 31.12.2017	Vacancies as on 31.12.2017
1	Andhra Pradesh & Telangana	986	920	66
2	Arunachal Pradesh	28	17	11
3	Assam	429	352	77
4	Bihar	1828	993	835
5	Chhattisgarh	398	335	63
6	Goa	55	43	12
7	Gujarat	1496	1121	375
8	Haryana	645	496	149
9	Himachal Pradesh	159	148	11
10	Jammu & Kashmir	253	224	29
11	Jharkhand	672	419	253
12	Karnataka	1303	976	327
13	Kerala	535	450	85
14	Madhya Pradesh	2021	1293	728
15	Maharashtra	2097	1930	167
16	Manipur	49	40	09
17	Meghalaya	97	39	58
18	Mizoram	63	46	17
19	Nagaland	34	22	12
20	Odisha	862	656	206
21	Punjab	674	538	136
22	Rajasthan	1225	1122	103
23	Sikkim	23	18	5
24	Tamil Nadu	1108	908	200
25	Tripura	107	76	31
26	Uttar Pradesh	3204	1856	1348
27	Uttarakhand	291	230	61
28	West Bengal	956	916	40
29	A & N Island	11	11	0
30	Chandigarh	30	30	0
31	D & N Haveli and Daman & Diu	7	7	0
32	Delhi	799	482	317
33	Lakshadweep	3	2	1
34	Puducherry	26	12	14
	Total	22474	16728	5746

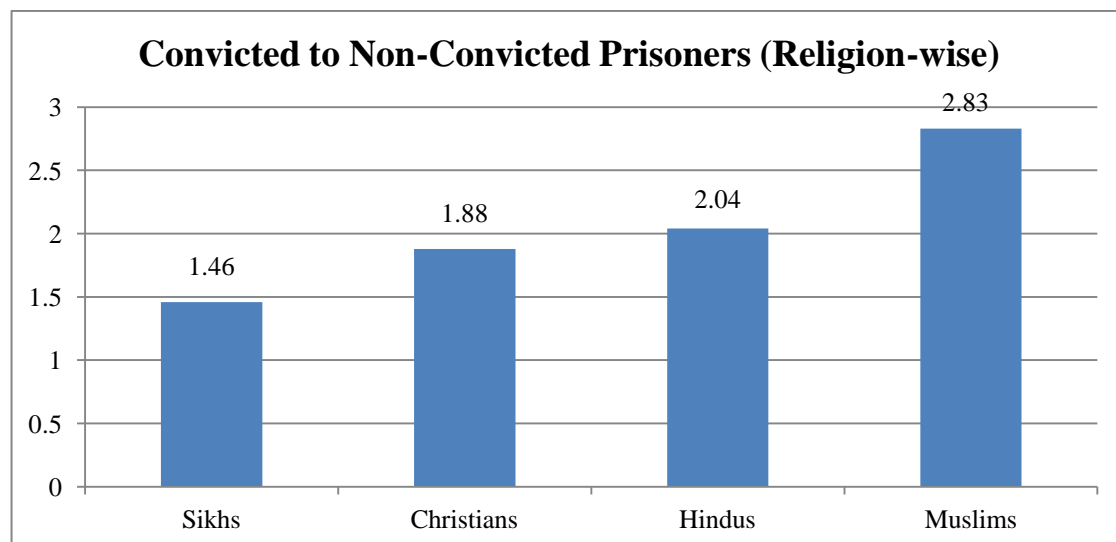
Source: Lok Sabha

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The issue of judge-population ratio was raised in April 2016 by the then Chief Justice of India, T S Thakur, who lamented the Government's inaction in increasing the number of judges to handle the "avalanche" of litigations. This had prompted the Prime Minister to assure him of the government's resolve in finding a solution jointly with the judiciary.¹⁴ However, during 2014-2018, India's judge-population ratio has only seen a marginal increase. In 2014, the ratio was 17.48 judges (SC, HCs and the subordinate courts) per million people. This increased to just 19.66 in the year 2017.¹⁵

Social Implications

According to the 2016 NCRB report, nearly 55% of undertrials across the country are Muslims (20.9%), Dalits (21.6%) or Adivasis (12.4%), even when they together account for only around 39% of the country's population.¹⁶ Moreover, the brunt of the excruciatingly slow criminal justice system is borne by these weaker sections of the society. This can be seen by the ratio of convicted to non-convicted prisoners, i.e. the ratio of undertrials, detenues, and other category prisoners to the number of prisoners who have been convicted.¹⁷ A religion-wise analysis of data from the 2015 PSI report shows that for every one convicted Muslim, there are nearly three Muslims (2.83) waiting for their trials. Similarly, a caste-wise analysis of the data reveals that for every convicted Adivasi, there are slightly over three Adivasis (3.54) waiting for trials.



Source: Prison Statistics India

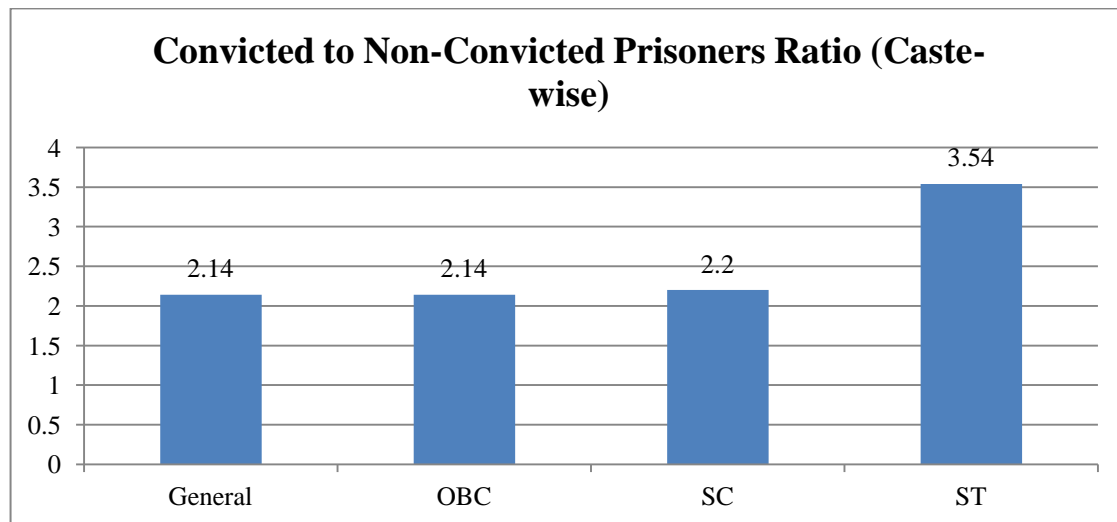
¹⁴ <https://economictimes.indiatimes.com/news/politics-and-nation/an-overworked-chief-justice-ts-thakur-breaks-down-in-front-of-pm-modi/articleshow/51965197.cms>

¹⁵ <http://164.100.47.190/loksabhaquestions/annex/13/AU2685.pdf>

¹⁶ <http://indianexpress.com/article/india/india-news-india/over-55-per-cent-of-undertrials-muslim-dalit-or-tribal-ncrb-3731633/>

¹⁷ <https://www.livemint.com/Opinion/93JZlySuxiVURtuqbA61TN/Do-Muslims-in-India-suffer-a-bias-when-it-comes-to-imprisonm.html>

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Source: Prison Statistics India

Moreover, women inmates - undertrials in particular - suffer from the most horrific living conditions. The UK Home Office's 2016 report on the state of prisons in India quoted a former inmate of the Tihar Jail on the subhuman conditions of the prisons which take a toll on both the physical as well as the mental health of women inmates. The report further quoted Delhi-based human rights lawyer Maninder Singh on the conditions of women undertrials who have kids and are forced to stay with them in pathetic conditions.¹⁸ According to data from PSI, as many as 1760 children were living in prisons with their mothers (both undertrials and convicts) by the end of 2015.

Way Forward

In February 2016, issuing guidelines relating to prison reforms, a Social Justice bench of the SC quoted Baroness Stern from her book, 'A Sin Against the Future: Imprisonment in the World,' the following:

"Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a state treats people, whoever they are. No one should fall below it."

Hence, the SC noted that prisoners, like all human beings, deserve to be treated with dignity and have basic human rights guaranteed under Article 21 of the Constitution.¹⁹ The government is hence obligated to adequately prioritise the issue of overcrowding by addressing the problems of judicial delays, vacancies, staff shortages, etc., to alleviate the everyday suffering of tens of thousands of inmates which continue to live in conditions of utter degradation in these prisons.

¹⁸ <https://www.gov.uk/government/publications/india-country-policy-and-information-notes>

¹⁹ <http://www.livelaw.in/prisoners-like-all-human-beings-deserve-to-be-treated-with-dignity-sc-issues-landmark-guidelines-on-prison-reforms/>

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However, in the final analysis, data from various sources indicates that no substantive policy measures have been initiated by the central government to solve these problems in the last four years. More recently, in a letter to Chief Justice of India Dipak Misra, Justice Kurian Joseph expressed displeasure over the Law Ministry's refusal to act on the Collegium's recommendation to elevate a judge and a senior woman advocate to the apex court. Justice Kurian writes that the three-month delay by the government is a threat to the "very life and existence of the institution" that is judiciary.²⁰

Hence, as far as vacancies are concerned, it is vital that the central government ensures that the collaborative process of the executive and the judiciary in filling up judicial vacancies is seamless, efficient, and at pace with which vacancies arise due to retirement, resignation or elevation of judges. As for the conditions of prisons, there needs to be a joint effort by the central and state governments/UTs to ensure that institutional mechanisms such as UTRCs work efficiently and, as directed by the SC, prepare a concrete plan of action to deal with the issue of overcrowding prisons.

Further, as per the 2016 Model Prison Manual, the suggested minimum accommodation space per prisoner is 3.71 Sq. mtrs in sleeping barracks and 8.92 Sq. mtrs of ground area in cells. However, the government admits that there are no central statistics available on the actual space available to inmates in different jails across states and UTs.²¹ It is thus required that central assessment surveys be carried out to assess compliance by various state governments/UTs so as to ensure that the suggestions of the manual are materialised.

²⁰ <http://www.thehindu.com/news/national/justice-kurian-joseph-writes-to-cji-dipak-misra-on-appointment-of-sc-judges/article23515086.ece>

²¹ <http://164.100.47.190/loksabhaquestions/annex/12/AS303.pdf>

Headlines

MGNREGA Funds Frozen? 99% of Wages Remain Unprocessed for April 2018

(The Wire, April 11, 2018)

NREGA Sangharsh Morcha, an organisation agitating for the rights of workers covered under MNREGA, has revealed that 99% of MGNREGA wages have still not been paid in April 2018. The Fund Transfer Orders (FTO) have remained unprocessed. Only 86% of the FTOs of March and 64% of the FTOs of February have been paid. The introduction of the National Electronic Fund Management System (NEFMS) aimed at streamlining the disbursement of wages has only resulted in further delays and allowed the Finance Ministry to have complete control over MGNREGA funds. Wage rates have also remained stagnant since the Ministry of Rural Development has not revised the wages yet. The Ministry of Finance has claimed that compensation for the delay in payment of wages will be a heavy financial burden and hence, only partial amount could be paid.

Read more: <https://thewire.in/labour/mgnrega-wages-unprocessed-april-2018>

Date Accessed: 16.04.2018

Governance and Development

GOVERNMENT

Govt not to hike basic salary to Rs 21,000 to increase EPFO coverage

(Prashant K. Nanda, *Livemint*, April 16, 2018)

The Union government has dismissed the proposal earlier approved by the central board of Employees Provident Fund Organization (EPFO) to increase the salary threshold from up to Rs15,000 to Rs21,000 per month and expanding the social security net for nearly six million organized sector employees in a bid to ease the burden on the government exchequer as it might lead to additional expense. As per a labour ministry official, enhancing the salary cap “may cost the government up to Rs3,000 crore per year. And that’s not a great proposition right now.” Currently, the organized sector employees earning a monthly salary of up to Rs15,000 are mandatorily covered under EPFO and enjoy both provident fund (PF) and pension benefits. Thus enhancing that to Rs21,000 per month would have added some six million more workers under the social security net at a time when the Union government is talking about expanding social security net to a larger pool of people and even for unorganized sector employees.

Read More: <https://www.livemint.com/Politics/BmJca9oO4tUzo7HgJGMA9H/Govt-not-to-hike-basic-salary-to-Rs21000-to-increase-EPFO-c.html>

Date Accessed: 16.04.2018

CVC’s advice on graft has few takers

(Josy Joseph, *The Hindu*, April 15, 2018)

As per the report of the CVC for 2017 that was tabled in Parliament, government institutions including Ministries, public sector units and government-controlled banks have routinely ignored or diluted its recommendations against their senior officials accused of corruption, violating vigilance norms. The CVC observed that “during the year 2017, while there were some significant deviations from the Commission’s advice, instances where the advice tendered had been substantially diluted without approaching the Commission for reconsideration of its advice was also noted.” As a result, in 2017, the total number of complaints received by the Commission was just 23,609, less than half of what was received the previous year and lowest in five years.

Read More: <http://www.thehindu.com/news/national/cvcs-advice-on-graft-has-few-takers/article23543012.ece> Date Accessed: 16.04.2018

HEALTH

‘Aadhaar not to be must for Modicare’

(Jatin Gandhi, *Hindustan Times*, April 15, 2018)

Unlike the card-based model followed under Rashtriya Swasthya Bima Yojana, the government will now opt for the list based model for the new National Health Protection Scheme (NHPS) that offers an insurance cover of Rs 5 lakh to every vulnerable family that will be identified on the basis of socio-economic caste census data (SECC). Further as a recent development, the government may not insist on submitting Aadhaar and documents such as ration card would be enough to avail Scheme. “The decision (not to insist on Aadhaar) has been taken due to the sensitivity involved with Aadhaar,” said an official, while speaking on the condition of anonymity. A voter card, driving licence, ration card or any other “government prescribed identification card” would allow families to be included in the list of beneficiaries who will be given an e-card details of which would be accessible through a QR code to avail the Scheme.

Read More: <https://www.hindustantimes.com/india-news/aadhaar-not-to-be-must-for-modicare/story-6c6SkdgNEXX01eyd16J7PP.html>

Date Accessed: 16.04.2018

Malnutrition cases in Maharashtra under-reported, finds survey

(Tabassum Barnagarwala, *The Indian Express*, April 16, 2018)

A public health department survey has found significant discrepancies in the records of National Family Health Survey-4 and the ICDS, revealing that malnutrition and wasting in several districts of Maharashtra is higher than what was stated by the Ministry of Health and Family Welfare. The public health survey was conducted after a NGO highlighted under-reporting of malnutrition cases in the state. The NGO’s survey stated that sanganwadis had no or incomplete records of 50.9 per cent of the children. The study further said there were 29.1 per cent malnourished children as opposed to the National Family Health Survey-4 (NFHS-4) which

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recorded the prevalence of severe acute malnutrition at 9.4 per cent and that of moderate acute malnutrition at 16.5 per cent in Maharashtra. The ICDS data also showed 10.3 per cent children were underweight, while the latest health survey diagnosed 28.18 children as underweight. This under-reporting of cases reflects improper management of records by local health centres and ignorance about the prevailing health scenario in the state.

Read more: <http://indianexpress.com/article/india/malnutrition-cases-in-maharashtra-under-reported-finds-survey-nfhs-4-5138960/>

Date Accessed: 16.04.2018

INNOVATION

Social innovation lab to be set up at International Centre in SPPU

(The Indian Express, April 16, 2018)

A Social Innovation and Entrepreneurship (Sino) Lab dedicated to conceptualisation and development of innovative ideas and solutions to social problems will soon be set up at the Savitri Bai Phule University in Pune. This lab also seeks to promote and provide a platform to female entrepreneurs engaging in social issues apart from collaborating with start ups involved in innovative research. The lab will be funded by the European Commission and will initially focus on promoting the Clean India campaign and abolishment of manual scavenging.

Read more: <http://indianexpress.com/article/cities/pune/social-innovation-lab-to-be-set-up-at-international-centre-in-sppu-5138872/>

Date Accessed: 16.04.2018

LAW AND JUSTICE

Supreme Court Dismisses Plea Seeking Guidelines on Case Allocation

(The Wire, April 11, 2018)

A bench comprising of Chief Justice Dipak Misra and Justices A.M. Khanwilkar and D.Y. Chandrachud dismissed a PIL seeking framing of guidelines for rational and transparent allocation of cases and constitution of benches to hear them. The judges referred to the constitutional position of the CJI and his powers to allocate cases and set up benches, also adding that there cannot be any distrust in the functioning of the highest organ of the judiciary. The PIL was filed after four Supreme Court judges publicly expressed their concerns over the functioning and allotment of cases.

Read more: <https://thewire.in/law/supreme-court-dismisses-plea-seeking-guidelines-on-case-allocation>

Date Accessed: 16.04.2018

Society

DISABLED

Justice Still Inaccessible To Disabled Survivors of Sexual Abuse

(Swagata Yatavar, *IndiaSpend*, April 11, 2018)

As per a recent report, “Invisible Victims of Sexual Violence: Access to Justice for Women and Girls with Disabilities in India” by Human Rights Watch (HRW), women and girls with disabilities who survived sexual violence continue to face high barriers to the justice system despite legal reforms five years ago to laws against sexual violence. The report which investigated 17 rapes and gang rapes in eight states-Chhattisgarh, Delhi, Karnataka, Maharashtra, Odisha, Tamil Nadu, Uttarakhand, and West Bengal where survivors live with a spectrum of disabilities, including physical, sensory, intellectual and psychosocial disability, lists out the challenges many women and girls with disabilities face throughout the justice process starting from filing a police report, obtaining appropriate medical care, having complaints investigated, navigating the court system, and getting adequate compensation.

Read More: <http://www.indiaspend.com/cover-story/justice-still-inaccessible-to-disabled-survivors-of-sexual-abuse-2-33038>

Date Accessed: 16.04.2018

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