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PRISON HEALTH IS PART OF PUBLIC HEALTH:

With special reference to COVID-19

Author:

Dr. K. SRIGOURI & JALLI KAVITHA

Designation:

VIDHYAYANA

Asst. Professor of Law P. G. Department of Legal Studies and Research,

Acharya Nagarjuna University, Guntur, Andhra Pradesh

&

P. G. Department of Legal Studies and Research,

Acharya Nagarjuna University, Guntur, Andhra Pradesh



As the pandemic spreads, the response to COVID-19 in prisons of detention becomes more challenging efforts to control COVID-19 in the community are likely to fail if strong infection prevention and control measures, testing, treatment and care are not carried out in prisons and other places of detention as well.

Prison health is part of public health so that nobody is left behind. As part of public health response, WHO worked with partners to develop a set of new materials on preparedness, prevention and control of COVID-19 in prisons and other places of detention.

The World Health Organisation has declared COVID-19 to be a pandemic. The symptoms of COVID-19 appear within 2 to 14 days after exposure and include fever, cough, a runny nose and difficulty in breathing.

The virus can be detected using a RT-PCR test. An RT-PCR or reverse transcription polymerase chain reaction test is DNA-based and can quickly tell if someone harbours the virus. In India, the government facilities to test for the virus include 52 labs belonging to the Viral Research and Diagnostic Laboratories network of the Indian Council of Medical Research (ICMR), 10 labs under the National Centre for Disease Control (NCDC), and the NIV. Guidelines by the World Health Organization specify that one of the ways to reduce the risk of infection is by regularly and thoroughly cleaning one's hands with an alcohol-based hand rub or washing them with soap and water. Regular washing becomes important as the virus tends to be viable from hours to more than a day on different surfaces that are regularly touched with hands.

The current COVID-19 crisis, with its closure of shops, academic institutions and postponement of public examinations, has put the people in a de facto quarantine. Nonetheless, the question whether a public authority or state can promulgate an order for quarantine is a legal issue.

In India, the Epidemic Diseases Act, 1897, a law of colonial vintage, empowers the state to take special measures, including inspection of passengers, segregation of people and

other special steps for the better prevention of the spread of dangerous diseases. It was amended in 1956 to confer powers upon the Central government to prescribe regulations or impose restrictions in the whole or any parts of India to control and prevent the outbreak of hazardous diseases. Quarantine is not an alien concept or strange action and it has been invoked several times during the bizarre situations caused by the cholera, smallpox, plague and other diseases in India. People in prison live in settings in close proximity and thus may act as a source of infection, amplification and spread of infectious diseases within and beyond prisons.

The Supreme Court *suo motu* took cognisance of fears over the COVID-19 pandemic affecting overcrowded prisons in India, on March 16. The difficulties in observing social distancing among prison inmates, where the occupancy rate is at 117.6%, were highlighted and directions issued to prevent the spread of COVID-19 in prisons in India.

The setting up of isolation cells within prisons across Kerala, and the decision of the Tihar Jail authorities to screen new inmates and put them in different wards for three days are appreciated as reasonable preventive measures. Further, notices were issued to all States to deal with the present health crisis in prisons and juvenile observation homes.

Protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty. People deprived of their liberty, such as people in prisons and other places of detention, are more vulnerable to the coronavirus disease (COVID-19) outbreak. There are more than 10.7 million people imprisoned throughout the world. Prisons are notorious incubators and amplifiers of infections, and the fear among inmates due to COVID-19 is deepening all across the world (France, UK, US and Australia among many others). During the current pandemic, protecting prisons from the 'tidal wave of COVID-19' proves to be a challenging issue for States. After all, they have obligations and duties under international law to safeguard the human rights of prisoners, particularly their right to life, health and human treatment.



196 years ago (1824) that the U.S. Supreme Court, in an en banc sitting led by Chief Justice John Marshall, affirmed the powers of the state to enact quarantine laws and impose health regulations. Several human rights and policy institutions have issued demands and guidelines for how States should deal with the COVID-19 pandemic in prisons. Many countries across the world are already taking steps to reduce the risk of outbreaks. Four countries in the Middle East have commuted jail terms or temporarily released prisoners. In Turkey, a draft law was submitted to the Parliament on 31 March which is expected to be passed within days. It would lead to the early release of up to 90,000 prisoners – around one third of Turkey's prison population. The draft law has drawn sharp criticism on discrimination grounds as it reportedly excludes thousands of political prisoners unfairly charged with terrorism offences or crimes against the State.

The spread of Covid-19 in prisons is clearly not a matter of if, but when. What States should do to protect prisoners is indeed straightforward and the European Prison Rules adopted by the Council of Europe in 2006 may be used as a guideline: they should provide access to health services available in the country without discrimination on the ground of their legal situation. If this is not possible, as reiterated by the European Committee for Prevention of Torture (CPT) on 20 March 2020, States should consider measures alternative to imprisonment such as commutation of sentences, early release and probation. It must be noted that neither the ICCPR nor the European Convention lay down a general obligation to release prisoners on health grounds, but, as the CPT underlined, such an approach may be imperative in the face of the unprecedented COVID-19 pandemic.

Similarly, on 25 March, the UN Commissioner for Human Rights, Michelle Bachelet, has called on governments to work quickly to reduce the number of people in detention – those particularly vulnerable to COVID-19, among them older detainees and those who are sick, as well as others detained simply for expressing critical or dissenting views, including political prisoners.

Such repeated calls are indeed for good reason. As detailed above, States have obligations under international law. In case where mass-deaths or permanent organ failures



occur due to the spread of this epidemic within prisons, their accountability may arise. Before COVID-19 spreads like wildfire through prisons, States should take swift action.

Discharged prisoners who have either tested positive for Covid-19 or shown symptoms of the illness have been given travel warrants to use on public transport to return to their homes, the Guardian has learned.

The prisoners had been quarantined, some in shared cells, as part of a strategy known as “cohorting”, which came under fire after the Guardian revealed the practice last week. A source at Wandsworth prison has told the Guardian that several prisoners who were discharged after completing their sentences last week had been held in quarantine after either testing positive or showing symptoms.

A Ministry of Justice spokesperson did not dispute that the men were issued with travel grants, when approached with questions about their release. “We have robust and flexible plans in place and all release arrangements are determined on a case-by-case basis using public health guidance,” the spokesperson said.

The United Nations high commissioner for human rights, Michelle Bachelet, raised an alarm on March 25 about detention facilities and COVID-19 around the world, warning of “catastrophic consequences” if the prison population is neglected. Among the measures she called for are early release of vulnerable detainees. International guidance says the most important approach for detention centers to prevent transmission of the coronavirus is to impose “social distancing,” which is defined as allowing two meters of separation at all times among detainees and staff, including during meals and within cells. It is also critically important to isolate individuals at high risk, individuals testing positive or with symptoms consistent with COVID-19, as well as their close contacts. However, such measures are not feasible in the Philippines’ severely overcrowded prisons reinforcing the need for authorities to immediately reduce prison populations.



Human Rights Watch, in a document on the human rights dimension of COVID-19, recommended that government agencies with authority over prisons, jails, and immigration detention centers should consider reducing their populations through appropriate supervised or early release of low-risk detainees, including those in pre-trial detention for non-violent and lesser offenses, those near the end of their sentence, and those whose continued detention is similarly unnecessary or unjustified. Inmates at high risk of suffering serious effects from the virus, such as older people and people with underlying health conditions, should also be considered for similar release with regard to whether the detention facility has the capacity to protect their health, including guaranteed access to treatment, and considering factors such as the gravity of the crime and time served.

The government has a responsibility to protect and provide medical treatment for detainees who are not released. The authorities should draft comprehensive plans to prevent and respond to a COVID-19 outbreak in detention facilities that do not rely on simple lockdowns, but provide measures to protect the physical and mental health of detainees. Prisons should protect inmates and staff while allowing detainees to have access to family and legal counsel.

“The Philippines faces catastrophic public health problems in its horribly overcrowded prisons and jails in the coming weeks,” Robertson said. “For humanitarian reasons and to stop COVID-19 from spreading, authorities need to get ahead of this situation by undertaking early releases and making sure the country’s detention facilities are equipped to take on the coronavirus.”

To stem COVID-19 outbreaks, Asian authorities should immediately release prisoners detained for exercising their basic rights, without charge, and for low-level and nonviolent offenses. The authorities should also consider releasing older prisoners and those with underlying medical conditions who would be at greater risk if they became infected.

“A major crisis is brewing in Asia’s overcrowded prisons and jails,” said John Sifton, Asia advocacy director. “Governments in Asia need to move quickly to reduce detention



populations by releasing people who shouldn't be in custody the first place, like political prisoners and those jailed for minor offenses.”

Five of the 10 countries with the largest prison populations are in Asia. China's official prison population is the second largest in the world, even without counting the one million held in “political education” camps in Xinjiang, and unknown numbers in “black jails,” “custody and education” facilities, and other forms of arbitrary detention. India, Thailand, Indonesia, and the Philippines are also in the top ten.

Many prisons and jails in Asia are overcrowded, according to the Institute for Crime and Justice Policy Research, with Indonesia, Cambodia, and Bangladesh prisons at over 200 percent capacity. The Philippines has a 464 percent overcapacity rate, the most overcrowded prison system in the world – some of its prisons are over 500 percent capacity.

The large percentage of pretrial detainees in many Asian countries is a major factor in the overcrowding. In the Philippines, for instance, 75 percent of detainees have not been convicted of any crime, and many wait years before going to trial. In Bangladesh, pretrial detainees make up approximately 80 percent of detainees; in India, the number is approximately 67 percent.

In the Philippines, crowding in jails has grown worse in recent weeks, as authorities have made 17,000 new arrests for curfew and quarantine violations – including many children. These facilities normally provide poor health care. In the national penitentiary near Manila, 5,000 inmates die each year – one in five. Yet the government has taken no significant steps to avert an impending crisis other than to ban jail visits and send sick staff to home quarantine.

Myanmar is especially ill-equipped to deal with an outbreak of coronavirus, whether among the general population or in overcrowded prisons. The country's entire system of almost 100 prisons and labor camps has only 30 doctors and 80 nurses, according to the Assistance Association for Political Prisoners (Burma).

On March 25, the United Nations Subcommittee on the Prevention of Torture called on governments to “reduce prison populations and other detention populations wherever possible,” taking full account of non-custodial measures provided for in the United Nations Standard Minimum Rules for Non-custodial Measures, known as the Tokyo Rules.

The UN High Commissioner for Human Rights, Michelle Bachelet, has also called on governments to reduce detainee populations as part of overall efforts to contain the COVID-19 pandemic: “Now, more than ever, governments should release every person detained without sufficient legal basis, including political prisoners and others detained simply for expressing critical or dissenting views.”

In addition to those who should be released immediately, such as people in pretrial detention for low-level or nonviolent offenses or who do not present a significant flight risk, governments in Asia should consider alternatives to detention for:

- People at higher health risk, such as older people, pregnant women and girls, people with disabilities that may place them at greater risk of COVID-19 complications, and people with compromised immunity or chronic conditions such as heart disease, diabetes, lung disease, and HIV. Assessments should determine whether their health can be protected if they remain in detention, and take into account factors like time served, the gravity of the crime, and the risk their release would represent to the public.
- People with care-giving responsibilities accused or convicted of nonviolent crimes, including women and girls incarcerated with their children and prisoners who are primary caregivers to children;
- People in semi-open facilities who work in the community during the day;
- People convicted of crimes close to the end of their sentences; and
- Other people whose continued detention is unnecessary or disproportionate.

Governments have an international legal obligation to protect and treat the inmates who remain in custody. They should draft and implement comprehensive plans to prevent and respond to a COVID-19 outbreak in detention facilities that do not rely on simple lockdowns



but provide measures to protect the physical and mental health of detainees. Prisons should protect inmates and staff while allowing detainees access to family and legal counsel. International guidance says the most important approach for detention centers to prevent transmission is to impose “social distancing,” defined as allowing two meters of separation at all times among detainees and staff, including during meals and within cells. It is also critically important to isolate people at high risk, those testing positive or with symptoms consistent with COVID-19, and their close contacts. However, such measures are not feasible in Asia’s overcrowded prisons, reinforcing the need for authorities to immediately reduce prison populations.

Plans to mitigate risk in prisons should also include ensuring access to potable water; providing hygiene products and information about the disease to detainees; thoroughly and regularly disinfecting cells in police stations, courthouses, jails, and prisons; screening and testing protocols for prison staff, visitors, and detainees; avoiding transferring detainees between facilities when possible; and ensuring health care and mental health services for all detainees, particularly those infected.

All plans should include attention to female prisoners and prisoners with disabilities, who have unique health needs and whose interests are often marginalized within prison systems. Prisons and detention centers across Asia should develop plans to isolate or separately house particularly vulnerable detainees and those testing positive and their close contacts, based on the best available evidence about the effectiveness of the measures. Such measures should be proportionate, and detainees should not experience such measures as punitive, or they may delay notifying prison staff if they experience symptoms. The authorities should also take into account the impact that isolation may have on detainees’ mental well-being.

Prisons and detention facilities are not isolated from their communities, but consist of staff and other workers, as well as new and released detainees, who go back and forth between the facilities and their homes. Reducing the prisoner population through releases prior to widespread transmission, including by placing prisoners in temporary offsite

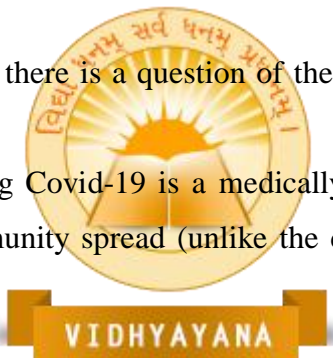
quarantine or self-isolation as necessary, will reduce the risks to prisoners, staff, and to surrounding communities, Human Rights Watch said.

“Reducing overcrowding is critical to averting a health crisis both inside and outside prisons and jails throughout Asia,” Sifton said. “Without protecting prisoners’ health, Asia’s governments will be unable to stem this pandemic.”

India has already released thousands of inmates, after the Supreme Court advised prisons to free those awaiting trial for crimes with punishments of seven years or less. Harsh Mander, a social activist in India, admitted authorities face difficult choices, running the risk of permitting the virus to spread as released prisoners make long journeys home, some to far-flung villages.

“There is of course a trade off – there is a question of them carrying the virus. There is no perfect choice here,” he said.

Releasing prisoners during Covid-19 is a medically smart move as segregation is a key element of preventing community spread (unlike the concentration of migrant workers that many states are doing).



In Delhi’s Tihar jail (and presumably across India) 82 percent of the prisoners are undertrials. They come under the accepted jurisprudence of punishments of less than seven years and involving physical harm being considered non-heinous, a principle accepted in Delhi High Court judgment. As for convicts, again the same principle is being applied with the executive privilege of granting remissions to those with one to six months left in their sentences.

This shows a measured and balanced approach, both in dealing with crime and balancing it with the need to contain the coronavirus pandemic. However, it does raise the question of tracking of prisoners being released on bail. While most will abide by their bail conditions and report at the local police stations regularly, some will not. However, the ability to evade justice, even in India, is a function of socio-economic strata (think of the



VIDHYAYANA

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globally wanted Brazilian fugitive Carlos Ghosn) with the police having a fairly good ability to detain those lower down the pecking order. Obviously, this comes at a cost, which is still much less than turning prisons into Covid-19 incubators.

As per the directions of the Supreme Court, state governments are releasing prison inmates on parole to decongest overcrowded prisons. Such steps are essential to evade the situation where prisons might become an epicentre of the coronavirus pandemic.

The Coronavirus disease (COVID-19) pandemic has created extraordinary challenges for the authorities.



VIDHYAYANA

Reference

1. L.S. Sathiyamurthy, *Quarantine and the law*, The Hindu, April 03-2020.
2. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) 20 March 2020.
3. <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>
4. <https://caravanmagazine.in/law/how-india-is-endangering-vulnerable-prisoners-amid-covid-19>
5. Bill gates (2020)“Responding to Covid-19 — A Once-in-a-Century Pandemic?” N Engl J Med 30 April; Vol.382: p.1677-1679.
6. Talha Burki (2020)“Prisons are “in no way equipped” to deal with COVID-19” WORLD REPORT, Vol. 395, Issue 10234, 02 May.
7. Mr. Avnish Bhatt, Prof. (Dr.) Rajesh Bahuguna(2019) “Rights of Prisoners from Human Rights Perspectives: a Select Study of Women Prisoners in India” *International Journal of Engineering & Technology*, Vol.8 (1.10) p.113-121.
8. Kum-Kum Bhavnani & Angela Davis (1997) Fighting for her Future: Reflections on Human Rights 1 and Women’s Prisons in the Netherlands, *Social Identities*, Vol.3:1, p.7-32.
9. Erlendur Baldursson (2000) Prisoners, Prisons and Punishment in Small Societies, *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 1:1, p.6-15.

Sabine Carl (2013) Prisoner welfare, human rights and the North Rhine-Westphalian prison ombudsman, *Journal of Social Welfare and Family Law*, 35:3, p.365-377.