IMPACT OF COVID-19 ON THE PRISONER’S RIGHT TO LIFE AND HEALTHCARE: DESCRIPTIVE STUDY FROM A HUMAN RIGHTS PERSPECTIVE

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ABSTRACT
The COVID-19 outbreak has been the most difficult challenge that the entire global community has faced in recent times, which has presented particular risks for prisoners due to the vulnerability of the prison population. Even though the Indian judiciary in many cases have affirmed that the prisoners have the fundamental right to healthcare, the answer to whether such right has been made available to the prisoners is a big no. Despite international covenants, domestic judgements, the infirm conditions of Indian prisons such as overcrowding and poor medical facilities continue to be a norm. From the lack of medical care in detention facilities to severe overcrowding and being abruptly cut off from the world outside, incarcerated persons have had to endure the worst form of human rights violations in the ongoing COVID-19 pandemic. This paper will look at the international human rights laws and related conventions regarding COVID-19 related violations in the prisons. It will outline the hardships faced by prisoners during the pandemic, taking into account the domestic scenario and case laws with the recent contribution made by Supreme Court. It also aims to suggest measures that needs to be taken to protect the rights of the prisoners.

CHAPTER I - INTRODUCTION
The COVID-19 outbreak has been the most difficult challenge that the entire global community has faced in recent times. However, the outbreak has presented particular risks for prisoners due to the vulnerability of the prison population. Worldwide, an estimate of over 11 million people are serving a sentence or awaiting trials.1 People detained are vulnerable for several reasons and are with generally poorer health than the rest of the population, often with underlying health conditions.2

Any coronavirus outbreak in prisons should - in principle - not take prison management by surprise, as contingency plans for the management of outbreaks of communicable diseases should be in place. This is an essential part of the obligation of the state to ensure the health care of people in prison required by international human rights law. The state has a total and inescapable responsibility and duty to care to protect the right to health of the prisoners.

The International Bill of Rights, together with a number of Charters and Treaties have set minimum standards that, when read together, articulate the right to health for prisoners and lay down a platform on which comprehensive international legal framework can be developed guaranteeing the right to health of all persons who are incarcerated and deprived of their liberty. However, around the world, governments and other decision-makers have failed to limit the spread of Covid-19 in prisons, leading to an increasing number of infections among incarcerated populations and Covid-19 related deaths behind bars.

The Amnesty International, in its report ‘Forgotten Behind Bars: COVID-19 and Prisons’, has noted that the measures governments have introduced to prevent the spread of the infection have often been inadequate and, in some cases, have themselves led to human rights violations. Hence, the demands of the International Covenant on Economic, Social, and Cultural Rights, “the right of everyone to the highest attainable standard of physical and mental health” are rarely, if ever, met in persons deprived of liberty.

They are easily susceptible to Covid-19 infection, and other physical and mental health issues. As a result of which, prisoners are not just denied the right to liberty but also their right to life and healthcare. In a sense, Covid-19 has become a death sentence to the inmates. Thus, it is imperative to analyse the rights of the prisoners locked up in prisons and come up with a mechanism to protect them against human rights violations.

CHAPTER II – INTERNATIONAL INSTRUMENTS PROTECTING THE RIGHTS OF PRISONERS DURING PANDEMIC

The spread of communicable diseases poses a great threat to the prison population, as it can spread quickly in environments like prisons, where a large number of people are placed within a confined area. The WHO has emphasised that the measures taken by the States to prevent / reduce COVID-19 would be unsuccessful unless and until stringent and efficient measures are implemented in prisons. Unlike HIV and TB which are not uncommon in prisons, COVID-19 is inherently dangerous because they are highly contagious, novel and affects all sectors of the society.

“Prisoners are sent to prison as punishment, and not for punishment”.  
-British prison commissioner Paterson


The above quote implies that, individual's detention under the custody of the state should not have a detrimental effect on the life and health of such people. However, in most of the nations, the prison system has a negative impact on the health of the prisoners. There are certain inalienable rights that are granted to the prisoners by international covenants, which primarily includes the right to life, right to healthcare, the right to be protected against torture, and the right to not contract contagious diseases and be protected against such infections.

These rights are applicable to all kinds of prisoners, which includes- under-trial prisoners and convicted prisoners. Also, most of the rights conferred under the international covenants also apply in case of police custody even though a person shouldn’t be held under police custody for a prolonged period.

There are several international covenants and instruments that safeguard the right to life and healthcare of the people deprived of liberty. According to which, the right to “the highest attainable standard of physical and mental health” is the one of the most important rights which should be made available to everyone including prisoners.

2.1. Protection conferred by the International Bill of Human Rights

The Universal Declaration of Human Rights (UDHR), confers everyone the right to a standard of living that is adequate for the health and well-being of an individual and his family. This particularly includes, food, shelter, and medical care. This provision also protects the rights of the prisoners and makes available to them the right to access medical care. Even though the words

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8 Ibid.

9 European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, “Report to the Romanian Government on the visit to Romania”, (February 2018). In addition, persons held in police custody must have immediate access to a lawyer and the possibility to have a medical examination by a doctor of their choice, in addition to any medical examination carried out by a doctor called by the police authorities; UN Human Rights Council, Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention, Resolution 31/31 (24 March 2016), arts 6-8. 2nd General Report on the CPT’s activities covering the period 1 January to 31 December 1991, CPT/Inf (92) 3, 13 April 1992, para. 36; African Commission on Human and Peoples’ Rights, Resolution on the Guidelines and Measures for the prohibition and prevention of torture, cruel inhuman or degrading treatment and punishment in Africa (Robben Island Guidelines), (October 17-23 2002), art.20.


11 Universal Declaration of Human Rights, 1948, art. 25.1.

12 Ibid.
used in the Declaration is “very broad and vague”\(^{13}\), given its historical significance, even the use of unspecific words have proven to be useful in the development of the right to health.\(^{14}\)

The right to health care of the prisoners can also be traced in the **International Covenant on Civil and Political Rights (ICCPR)**. The United Nation Human Rights Committee (UNHRC) has explained that, though the right to health of the people deprived of liberty is not specifically mentioned in the Covenant, it falls within the right to life (Article 6), prohibition of torture (Article 7) and right to humane treatment of persons deprived of liberty (Article 10) enshrined under ICCPR.\(^{15}\) The Committee has considered the complaints filed regarding lack of medical care in prisons under the right to life.\(^ {16}\) The rights to life\(^ {17}\) and humane treatment\(^ {18}\) impose a positive obligation on the member states to take appropriate measures to protect the life and well-being of the prisoners by safeguarding their right to health.\(^ {19}\)

According to the UNHRC, if the State party arrests or detains an individual then they have the responsibility to take care of the life of such individuals.\(^ {20}\) This is because, once a person is arrested or detained by the State authorities he would be completely under the control of the State and is in a vulnerable situation that is, not being able to fend themselves during such situations. Thus, it’s the State’s responsibility to provide adequate heath care and healthy environment. The Committee has also confirmed the State parties’ responsibility to provide adequate, pro-active and timely medical care to the people in detention.\(^ {21}\)

More specifically, the Committee in its Concluding Observations on Moldova\(^ {22}\) has clearly remarked that the failure of a state in taking positive steps towards the prevention of the spread of contagious diseases in prison would amount to a violation of right to life (Article 6) and prohibition of torture (Article 7) and right to humane treatment of persons deprived of liberty (Article 10) of the International Convention on Civil and Political Rights, 1996 (ICCPR).

Even prisoners serving severe penal sanctions or death sentence have the fundamental and inalienable right to life and medical care and the member states should respect, protect and fulfil

\(^{13}\) Toebes, B., *The right to health as a human right in international law*, (Antwerp: Intersentia Press, 1999)

\(^{14}\) Ibid.


\(^{16}\) *Lantsov v. Russian Federation*, (2002) 9 IHRR. The Committee in this case found that the failure of the authorities to provide a “properly functioning medical service” to diagnose and treat the prisoner’s medical condition violated the right to life.

\(^{17}\) Human Rights Committee, General Comment No. 6: Right to life (Art. 6 of the Covenant) 30 April 1982, para 5.

\(^{18}\) Human Rights Committee, CCPR General Comment No. 21: Humane Treatment of Persons Deprived of Their Liberty (Art. 10) 10 April 1992, para 3.


such a responsibility. In a handful of its Concluding Observations on governments' compliance with the Covenant's obligations, the Committee has raised concerns about the poor conditions of the states’ prison medical care system. Indeed, “an inadequate level of health care can lead rapidly to situations falling within the scope of the term ‘inhuman and degrading treatment.’”

Within the UN system, the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the first ever treaty to expressly talk about the right to health. It confers to everyone the right to enjoy “highest attainable standard of physical and mental health” including those who are imprisoned or detained. According to the UN Committee on Economic, Social and Cultural Rights, the right to health enshrined under Article 12 is an inclusive right which includes within itself the right to access clean drinking water, nutritious food, proper housing facilities, clean environment, adequate sanitation, occupational safety and most importantly the access to health-related education and information which includes sexual and reproductive health.

The right to health enshrined under Article 12 of ICESCR, is a right that should be made available to everyone and should be applied without any discrimination on the basis of race, colour, sex, religion, or any other status. The principle of non-discrimination imposes a special obligation on the States to take into consideration the individual needs of the inmates, especially the needs of the vulnerable ones. Since the Covid-19 pandemic has deepened the already existing inequalities

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23 Pinto v. Trinidad and Tobago, (1990) 232 CCPR, para 12.7. This position was also argued by Lord Steyn in his partial dissent in the Privy Council case of Thomas and Hilaire v. Trinidad and Tobago (1999) 13 UKPC. Lord Steyn stated, “There are irreducible minimum standards of treatment of condemned men which a state must observe. Those obligations fall into two categories. First there are negative obligations. Thus, prisoners may not be assaulted. Secondly, there are positive obligations. Thus, there is an obligation on the State to ensure that even a condemned man is afforded necessary medical care.”


25 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 1; CESCR, General Comment 14: The right to the highest attainable standard of health, (Art. 12) UN Doc. E/C.12/2000/4 (2000), para. 34: “States should also refrain... from limiting access to health services as a punitive measure”.


27 CESCR, General Comment 14: The right to the highest attainable standard of health, (Art. 12) para 11.

28 Supra Note 26, art 12(1).

29 Supra Note 26, art 2.2.


and has exposed the vulnerabilities,\(^{32}\) it becomes extremely important to identify the vulnerable prisoners who are at the very risk of Covid-19 and immediately address their needs.\(^{33}\)

Further, Article 12.2 (c) of the ICESCR, specifically highlights the “right to prevention, treatment and control of epidemic, endemic, occupational and other diseases” by making available relevant technology and executing and/or improving relevant vaccination programmes and other initiatives.\(^{34}\)

General Comment No. 14 of the CESCR puts forth the obligations of states and non-state actors in upholding the fundamental right to health. According to CESCR General Comment No. 25 on Science and Economic, Social, and Cultural Rights (Article 15 of ICESCR) and Article 27 of the UDHR, member states are obligated to direct their resources and coordinate the actions of individuals in order to ensure that scientific progress occurs, and that its application and benefits are distributed and accessible, particularly to vulnerable and marginalised groups.\(^{35}\)

This might be applied for the diagnosis, treatment and vaccination to prisoners during COVID-19. The diagnostic tools would be useful in detecting the outbreak of infectious diseases and to evaluate the success of vaccines,\(^{36}\) whereas the treatment helps in reducing the morbidity and mortality thereby alleviating the burden on health care system and facilitating the realisation of the right to health. Furthermore, the CESCR in April 2020, has emphasised that “during the times of pandemic, the scientific development and the subsequent sharing of knowledge especially in the medical sphere, becomes extremely crucial in reducing the impact of the contagious disease like Covid-19 and in expediting the development of viable therapies and vaccinations.\(^{37}\)

The CESCR has further made it clear these obligations of the state to protect the life and health of the prisoners is one of the core obligations and the state parties in no way can justify its non-compliance.\(^{38}\) It has also specified that if the states refrain from providing equal medical access to prisoners then it would be in violation of its international obligation.\(^{39}\) In the event that states fail to meet their minimum core obligations, the ICESCR mandates that they “they take actions, individually and via international help and cooperation, to the best of their ability, to achieve full realisation of the rights recognised in the Covenant in a progressive way.”\(^{40}\)

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\(^{34}\) Supra Note 27, para. 16

\(^{35}\) CESCR, General Comment No. 25: On science and economic, social and cultural rights (Art. 15), para. 16, 47.

\(^{36}\) Supra Note 27, para. 12

\(^{37}\) Supra Note 35, para. 82

\(^{38}\) Supra Note 27, paras 43, 44, 47. Paragraph 47 states that the “core obligations” in paragraph 43 are non-derogable.

\(^{39}\) Supra Note 27, para. 34.

\(^{40}\) Supra Note 35, para. 82.
2.2. Equivalence of care vs equity

On one hand, United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)\footnote{These rules focus on nine thematic areas — (i) Prisoners’ inherent dignity as human beings; (ii) Vulnerable groups of prisoners; (iii) Medical and health services; (iv) Restrictions, discipline and sanctions; (v) Investigations of deaths and torture in custody; (vi) Access to legal representation; (vii) Complaints and inspections; (viii) Terminology; (ix) Staff training.} and other human rights instruments have obligated the States to provide health care services at a standard equivalent to that available for the people in the outside community.\footnote{The Nelson Mandela Rules, Rule 24; Third General Report on the CPT’s activities covering the period 1 January to 31 December 1992, 4 June 1993, para. 38; Blokhin v. Russia, (2013) 1132 ECHR, para. 137.} The revised Nelson Mandela Rules aims to reduce the difference between the life at prison and the life at liberty and respect the dignity of the prisoners as a human being.\footnote{IACHR, Principles and best practices on the protection of persons deprived of liberty in the Americas, Resolution 1/08, Principle X.} Further, the prisoners should be able to access the necessary healthcare services free of charge, without any discrimination.\footnote{Blokhin v. Russia, (2013) 1132 ECHR, para. 137.} The states are under an obligation to provide prisoners with nutritious food, clean water and toilet articles as are necessary for keeping their health and cleanliness.\footnote{The Nelson Mandela Rules, Rule 5.} The State parties along with ensuring physical health should also take appropriate measures to evaluate, promote, protect and improve the mental health of the prisoners.\footnote{Ibid., p. 8.}

On the other hand, ‘equity’ rather than ‘equivalence’ has been called for. This is because prisoners tend to be in a poor health condition due to the unfavourable conditions of the prisons and overcrowding\footnote{Penal Reform International, “Health in prisons: realizing the right to health. Penal Reform Briefing” nr.2, 2007 (2), p. 2.} and they require extra medical care and attention than the outside community. In other words, since incarceration creates a heightened degree of vulnerability, heightened duty of care is expected from the State parties.\footnote{Human Rights Dispatches: human rights issues within the context of the coronavirus pandemic-Special Rapporteur on extrajudicial, summary or arbitrary executions, available at https://www.ohchr.org/en/special-procedures/sr-executions/human-rights-dispatches-human-rights-issues-within-context-coronavirus-pandemic (Last visited on 17.05.2022).} Therefore, it is claimed that the health care providers, particularly those working on COVID-19, must be conversant with the specific needs of the prison population\footnote{OHCHR and WHO, Factsheet 31: The Right to Health, available at: https://www.ohchr.org/en/publications/factsheets/factsheet-no-31-right-health (Last visited on 17.05.2022).} and conditions of detention and adapt their treatment procedures accordingly.\footnote{Inter-American Commission on Human Rights, Organization of American States, “Revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners, Submission to the Open-Ended Intergovernmental Expert Group on The Standard Minimum Rules For The Treatment Of Prisoners” 5 (March 2014).}
Further, extra care and caution is required in case of elderly people, women\(^{53}\) and juvenile\(^{54}\) who are more vulnerable to a particular situation. This being said, providing even basic health care to prisoners has proved extremely difficult in countries and is chronically insufficient.

### 2.3. Other Guidelines to tackle Pandemic in Prisons

The [Office of the United Nations High Commissioner for Human Rights (OHCHR)](https://www.ohchr.org/en)\(^{55}\), in its 2017 guidelines, has highlighted the causes and dangerous effect of overcrowding of prisons\(^{55}\), and has recommended the States to reduce the overcrowding of prison population by implementing appropriate schemes like releasing the low risk convicts provisionally or temporarily, assessing all cases of pre-trial detention, increasing the grant of bail in almost all cases expect the most serious cases, as well as reducing immigration detentions and closed refugee camps.\(^{56}\)

The [World Health Organisation (WHO)](https://www.who.int)\(^{57}\) has developed the prison health guidelines based on the explicit usage of the universal right to health.\(^{57}\) Under Article 2 of the WHO Constitution, 20 areas that requires necessary actions to be taken in order to enable everyone to achieve the highest possible standard of health has been mentioned. It emphasises the need for strengthening the health services,\(^{58}\) preventing the disease transmission,\(^{59}\) addressing mental health concerns\(^{60}\) and improving nutrition, housing, sanitation, recreation and other aspects of environmental hygiene.\(^{61}\)

The understanding of universal right to health is particularly relevant while considering the issues of prisons and ensuring that inmates have access to proper medical care.

The recent [WHO’s Interim Guidance note](https://www.who.int)\(^{58}\) relating to Covid-19 stated that, proper risk assessment has to be carried out by the health officials in prisons which includes proper screening at the entry points of the prisons.\(^{62}\) Further, it also stresses on restricting the visits, properly disinfecting the rooms, enforcing proper quarantines, and most importantly informing the prisoners regarding the COVID-19 situation along with the rationale for imposing such restrictions should be given.

In the event of an epidemic, prison employees should be briefed of the containment plan ahead of time, which may include isolation, moving inmates to a medical facility, and contacting health care teams using personal protective equipment. To fight the spread of COVID-19, prison staff

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\(^{55}\) Non-discrimination and the protection of persons with increased vulnerability in the administration of justice, in particular in situations of deprivation of liberty and with regard to the causes and effects of overincarceration and overcrowding, available at <https://digitallibrary.un.org/record/1655111?ln=en> (Last visited on 16.05.2022).


\(^{58}\) Constitution of the World Health Organisation, 1946, art 2(c).

\(^{59}\) Id, art 2(g).

\(^{60}\) Id, art. 2(m).

\(^{61}\) Id, art. 2 (l).

\(^{62}\) Supra note 5.
members must get immediate training on the transmission route, hand hygiene, personal protective equipment (PPE), disinfection, social distancing, questionable case identification, and correct case reporting. Staff might deliver food in rooms/cells; however, access to open air should be maintained, and rooms and surrounding areas should be disinfected on a regular basis.

The Subcommittee on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has suggested the states to identify prisoners at risk immediately, after which attempts should be taken to lower the prison populations by reviewing cases of pre-trial prisoners and while doing so availability of sufficient supplies should be ensured.63

Furthermore, in addition to all these legal commitments, the States have also agreed to prioritise health and effectively control communicable diseases through global agreements like the Sustainable Development Goals (SDGs). Among others, SDG3 expressly calls for nations to “end communicable disease outbreaks” by 2030.64 It emphasises the significance of “access to effective, necessary, affordable and quality health care services and vaccinations for everyone” in accordance with a right to health framework.65

2.4. Minimum core obligations of the State

Since the right to health is enshrined in several international human rights treaties, almost all countries are legally obliged to ensure the health and wellbeing of the prisoners by providing them adequate health care services.66 Also, the States cannot justify their non-compliance to this international minimum standard by stating economic hardships.67 Therefore, protecting the health and life of prisoners during Covid-19 pandemic by taking adequate measures becomes the important responsibility of the states.68

The scope of right to healthcare in prisons and standards and duties that state has to undertake during Covid-19 has been detailed by the United Nations, the Council of Europe, the Inter-American Human Rights system, and the African Human and Peoples’ Rights system. Further, appropriate efforts should be taken by the member states to protect the people infected with Covid-

63 Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic” (March 2020).
64 Ensure healthy lives and promote well-being for all at all ages, available at <https://sdgs.un.org/goals/goal3> (Last visited on 17.05.2022).
65 Sustainable development goals (SDGs): Goal 3. Target 3.8: Achieve universal health coverage, including financial risk protection, access to quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all [poster], available at <https://apps.who.int/iris/handle/10665/208286> (Last visited on 17.05.2022).
67 Id, para. 25.
19 from stigmatization or marginalization. Thus, the protection of prisoners’ right to life and health should be ensured according to the evolving recommendations issued by health authorities, while always respecting IHRL.

The UNODC, WHO, UNAIDS, and OHCHR has released a joint statement concerning the vulnerabilities of the prison population during COVID-19 pandemic and has emphasised on the necessary steps that needs to be taken by the States.

The UN Office on Drugs and Crime - prison reforms expert, has highlighted the poor conditions of the prison systems around the world, that struggle even to cater the very basic needs of the prisoners like sufficient space, sanitation facilities, nutritious food and clean drinking water; and how it has exponentially increased the challenges posed by COVID-19 and the actual feasibility of introducing meaningful infection prevention and control measures. He has also expressed concerns regarding how prisoners are often forgotten behind the bars, and how improper dissemination of information to the prisoners’ and prison staffs regarding the Covid-19 situation has created havoc inside the prisons. Finally, it has advised the states to take appropriate measures to alleviate the poor conditions existing in the prison.

Even though the international instruments have played a vital role in guiding the countries to take measures to protect the prisoners from Covid-19 pandemic, the system has its own drawbacks. The next Chapter this situation with special reference to the Indian prisons. It would analyse the existing condition of prisons in India, the measures taken by the government to face the unique challenges imposed by the Covid-19 and compare it with the internationally established standards.

CHAPTER III – ROLE OF INDIA IN PROTECTING THE PRISONER’S RIGHT TO HEALTH AND LIFE DURING PANDEMIC

In India, the Covid-19 pandemic has affected the lives of thousands of prisoners every day. Due to the pandemic, the prisoners’ rights are severely restricted, especially their right to communicate with friends, family and attorneys, access to justice, medical treatment, and rehabilitation. The Covid-19 pandemic has exposed the limitations of the already existing medical healthcare provisions in jails, the shortage of prison staffs and has raised concerns regarding the increased workload.

Pending cases as well as the number of under-trial prisoners has increased many-fold due to the suspension of regular court activities in light of the pandemic. Even though precautionary steps

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are taken by the prison authorities to alleviate the impact of the pandemic in prison, reports suggest that there is a continuous spread of Covid-19 in prison. There are more than 24,763 prisoner who are tested Covid positive and 51 among them had died, as on 19th July 2021.\(^{73}\)

## 3.1. Legal Framework protecting Prisoner’s rights

India has an obligation under the international laws such as the UDHR, ICCPR, ICESCR and the Nelson Mandela Rules, to respect (non-interference with the enjoyment of the right), protect (ensure the right by regulating non-state actors) and fulfil (take positive steps like legislations and policies to realise the right)\(^{74}\) the prisoners’ right to health without any discrimination.\(^{75}\)

### 3.1.1. Right to health and life under Indian Constitution

The right to health is not expressly mentioned as a fundamental right in the Indian Constitution, whereas Article 25 of the UDHR which confers the right to medical care to everyone, including those who are deprived of their liberty. In the case of *PBK Mazdoor Samity*\(^{76}\), Article 25 of the UDHR was read into Article 21 of the Indian Constitution by the Supreme Court, as the right to healthcare forms an essential part of the right to life guaranteed under Article 21 of the Constitution of India. Thus, the right to health conferred under Article 21 includes the right to access timely, adequate and affordable health care and has been made enforceable.

More importantly, the understanding of health as a complete physical, mental and social well-being and not merely the absence of a disease or infirmity as contemplated under the WHO\(^{77}\) has been incorporated in to Article 21. And, by virtue of this judgement, government's failure to give prompt medical care to someone who is in need of it, would result in a violation of his/her right to life enshrined under Article 21 of the Indian Constitution.

It is important to note that the Supreme Court, in catena of judgement, has held that the prisoners shall retain all the fundamental rights expect few restrictions that arise due to imprisonment.\(^{78}\) In *Charles Sobhraj v. The Superintendent, Central Jail, Tehari*\(^{79}\), the Apex Court observed that a prison sentence doesn’t “spell farewell to the fundamental rights”. It also held that, if the State

\(^{73}\) Ibid.


\(^{77}\) *Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."


\(^{79}\) 1978 AIR 1514.
doesn’t provide adequate health care services to the prisoners, then it is a violation of the fundamental right to life of the prisoner and attracts remedies of the court.80

Further, the Supreme Court has held that, over-crowding of prisons itself results in the violation of the fundamental right to life, as over-crowding increases the risk of diseases, noise levels, makes surveillance difficult and ultimately increases the danger level. Thus, the Court observed that, in case of over-crowding, life would become difficult for prisoners and more challenging for the prison staffs.81 Both international and regional human rights mechanisms have recognised breaches of the prohibition of torture due to overcrowding, as detainees are forced to live for prolonged periods in deplorable material conditions.82

Article 21 of the Indian Constitution provides everyone the right to healthcare, regardless of their status as criminal or an innocent person.83 Further, as per Article 47 of the Indian Constitution, the State has the duty to take appropriate measures to protect the public health. Such measures include making available to the public, the health care services, nutritious food, healthy and safe working conditions, and adequate housing. One needs to understand that, prison health is a part of public health and states are of the bounden duty to take proper care of those who are under the custody of the state.84

In the case of Rasikbhai Ramsun Rana vs. State of Gujarat85, the High Court held that, jail authorities would be liable for not providing timely and adequate medical treatment to prisoners who suffer from serious illness. It has also emphasised on having ICCU with latest medical equipment, pathology lab, expert doctors and other staffs in prisons. Further, in the case of Sanjay v. State86, the Delhi HC ordered the jail officials to take measures to provide meditatio

cal therapy and counselling sessions for the prisoners. The New Model Prison Manual, 2016 came into picture after the direction of the courts in the case of In Re-Inhuman Conditions in 1382 Prisons87 to reform the conditions of prison in India.


Apart from the Indian Constitution, the Prisons Act, 1894 and the Model Prison Manual, 201688 require the States to take steps to provide proper sanitation89, shelter and safe custody for prisoners in the event of an epidemic disease outbreak, especially when the number of prisoners

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81 Shri Rama Murthy v. State of Karnataka, 1997 (2) SCC 642.
83 Parmanand Katara v. Union of India, AIR 1989 SC 2039.
85 1997 Cr LR (Guj) 442.
87 AIR 2016 SC 993.
89 The Prisons Act, 1894 (Act 9 of 1894), s. 4.
exceeds the standard occupancy capacity.\textsuperscript{90} Further, as per the Prisons Act, a prisoner must be examined by a medical professional before being admitted to the jail\textsuperscript{91} and it imposes an obligation on the medical officers to ensure sanitation and hygiene.\textsuperscript{92} The All-India Committee on Jail Reforms 1980-83 has also emphasised on the importance of maintaining health and hygiene in the prisons.

On the other hand, the Model Prison Manual, 2016 has contemplated extensive guidelines for prisons during outbreaks of epidemic diseases.\textsuperscript{93} During epidemic outbreaks, the Prison Manual contemplates permanent segregation sheds\textsuperscript{94} for all the infected inmates, avoiding overcrowding in isolation wards\textsuperscript{95}, and treating patient's clothes and contaminated barracks. It enumerates prisoners’ right which includes their right to health under ‘right to basic minimum needs’ which states that prisoners have “Right to fulfilment of basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding and other equipment.”

Furthermore, the National Disaster Management Authority's Guidelines on Biological Disaster Management urge the Ministry of Health and Family Welfare to develop a pandemic management strategy and asks for pandemic preparedness in every sector, including prisons.

3.2. Measures taken by Governments in the Country to Safeguard Prisoner’s Rights and Interests

The government of India has an obligation, under domestic law and international human rights law, to protect the rights of people deprived of their liberty, including during pandemics and public health emergencies. Therefore, States must adopt relevant measures to protect prisoners from COVID-19. Some of the important guidelines given by the Ministry of home affairs\textsuperscript{96} are, the authorities are directed to follow the test-track-treat protocol, screening at the entry and exit point of the prison, regular screening of prisoners above the age of 60 years and other vulnerable people, maintaining social distancing, hygiene and quarantine in necessary cases, ensuring vaccinations to the prisoners and jail authorities, restricting visitation time and replacing it with video conferencing facility.

Further, the National Human Rights Commission, in its advisory relating to the health of prisoners\textsuperscript{97} among other measures, has directed the law enforcement authorities to follow the measures like, allowing the inmates to access their medical records and keep their family members

\textsuperscript{90} Id., s.7.
\textsuperscript{91} Id., s. 24.
\textsuperscript{92} Id., s.13.
\textsuperscript{93} Supra Note 88, Chapter XII – Epidemics, Prison Manual.
\textsuperscript{94} Id. at 12.58.
\textsuperscript{95} Id. at 7.84.
\textsuperscript{97} Supra note 72.
Updated, dietary plans should be adjusted according to the needs of the convicts with underlying health conditions, pregnant women, the elderly, disabled, and other vulnerable populations, regular checking of inmates with underlying health conditions and old age prisoners. Most importantly, the prison authorities have the responsibility to ensure the mental health of all the prisoners by taking appropriate measures like conducting yoga sessions, meditation, recreational activities, counselling and so on by having a tie up with the local organisations and institutions.

3.3. Interventions by the Indian Judiciary During Covid-19

In 2020, during the first wave of Covid-19, prisons were quickly infested with the virus and many prisoners and prison staffs were tested positive. Indian prisons were at the danger of becoming epicentres for the transmission of the corona virus, because of the congested environments and insufficient healthcare services. Subsequently, the Apex Court took Suo moto cognizance of the matter and directed all the states/UTs to address the problem of overcrowding and inadequate medical facilities to the inmates in prisons as quickly as possible.

The Court reiterated that, in light of the Article 21 of the Indian Constitution, it has become extremely important to control the spread of the pandemic within prisons. The Court also ordered States and Union territories to form a High-Powered Committee (HPC) to assess the category of prisoners who may be released on interim bail or parole to reduce overcrowding in prisons. However, as soon as the Covid-19 cases dropped, the inmates released on temporary or interim bail / parole were directed to return to the prison.

Later in March 2021, the Covid-19 cases once again increased in India with the ‘second wave’. During that time, the People's Union for Democratic Rights (PUDR) wrote an open letter to Chief Justice of the Delhi HC, DN Patel, raising concerns regarding the plight of vulnerable prisoners, like as women, children, and those over 50 years old. The Supreme Court, on 7th May 2021, made reference to its previous order dated 23.03.2020 and directed the HPC to analyse the situation and propose release of prisoners.

It emphasised the need for decongestion of the prisons as it has a direct impact on the health and right to life of both the prisoners and police personnel. The court also asked the authorities to take into account the concerns of the prisoners who may refuse to be released due to their social backgrounds and fears of contracting the fatal illness. It also directed the prison authorities to ensure the availability of adequate health care facilities in all prisons and to take proper measures to release the prisoners by taking into account the curfew and lockdowns in certain states.

The Court gave the following directions:
1. Proper sanitation, hygiene and healthcare facilities should be made available;

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98 Supra Note 93.
100 PTI, “End blanket extension of parole, bail due to Covid as only 3 infected in jails, says Delhi HC” The Print 20.10.2020 available at <https://theprint.in/judiciary/end-blanket-extension-of-parole-bail-due-to-covid-as-only-3-infected-in-jails-says-delhi-hc/527330/> (Last visited on 17.05.2022).
101 Supra Note 99.

3. In order to enhance transparency and dissemination of proper information, the respective states should update the prison occupancy and the meetings of the High-Powered Committee on their official websites.

In the Court’s opinion, transparent administration would greatly benefit the battle against the Covid-19 pandemic. Finally, the court directed regular testing of convicts, as well as jail employees, should be done to restrict the spread of the Covid-19 virus in prisons, and urgent treatment should be made accessible to both inmates and staff. Furthermore, everyday hygiene standards must be maintained, and sanitation must be enhanced. The Supreme Court has also urged the officials to limit arrests as far as possible and it is in line with the international human rights mechanisms.102

In the case of In Re Respondent v. State of U.P., the Allahabad HC, in order to address the potential consequences of the lockdown imposed to prevent the spread of coronavirus, has ordered that all accused-applicants whose bail applications were granted on or after March 15, 2020 but who had not been released due to a lack of sureties during the lockdown be released on personal bonds if they agree to provide the required sureties within one month of the date of their release.

In a suo moto public interest litigation, the Bombay HC has directed the State to conduct RT-PCR test for every arrested individual and vaccinate the prisoners who are above 45 years of age. It also directed the State to have temporary prisons, COVID-19 care centre and fasten the process of releasing the prisoners through interim bail, parole.104 Further, the Bombay High court, has held that, the classification between those accused under the IPC and those accused under special enactments like as NDPS, PMLA, UAPA, PCA etc. with respect to the release on parole owing to the Covid-19 epidemic is non-discriminatory.105

Further, in the case of Natasha Narwal v. State of NCT Delhi, the Delhi HC ordered that those prisoners who are tested positive for Covid should be given the opportunity to converse with their family for a minimum of 5 minutes about their health. Also, the duration of E-mulaqaats to be extended from 15 minutes to 30 minutes on a weekly basis.

Recommendations of the High-Powered Committee:

In order to alleviate the problem of over-crowding, as per the SC order, High Powered Committees were constituted in most of the states which recommended the category of prisoners who should be released. The criteria set forth by these committees differ from state to state.106

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102 Supra Note 70.
104 High Court on its own Motion v. State of Maharashtra, 12-Cri. SMP-1-2021.
105 Ibid.
the common criteria for release is that prisoners who are accused of offence which has a punishment as imprisonment less than 7 years are eligible for release, subject to few conditions like they shouldn’t be repeat offenders and so on. In very few states, vulnerable people like the old age people and women are considered as criteria for release.

CHAPTER IV – THE STATE OF AFFAIRS OF INDIAN PRISONS – A STATISTICAL ANALYSIS

As discussed above, prisoners are the most vulnerable population as they are more prone to catch an infection. They are also considered to be a double handicap, as they are have far poorer health status than the rest of the population, suffering more frequently from health conditions such as diabetes, heart conditions, mental illness etc. because of the unhygienic prison environment, non-availability of nutritious food and are also restricted from accessing medical health care services like a free citizen as his liberty is curtailed by the state. Ethnic minority and socioeconomically disadvantaged individuals are differentially affected by both the criminal justice system and Covid-19. All prisoners become the wards of the state and the State has greater responsibility to protect and safeguard the prisoner’s right to health and life.

Further, it is the State governments obligation as per Schedule VII, List II, Entry 4 of the constitution. However, as per the statistical data (Annexure I), over 18,000 inmates and prison employees are tested positive between May and December 2020, among which 17 people died. This pattern also persists in the pandemic’s second wave, where more than 5,000 positive cases (both convicts and prison staffs) and 18 people lost their lives by 2021. This chapter attempts to analyse the effectiveness of the various measures taken by the Indian government to protect the prisoners during the wake of Covid-19 pandemic.

4.1. Inadequate temporary measures

Our prison system has several longstanding problems like inadequate infrastructure, poor hygienic conditions and health care facilities. These problems have been exacerbated during the Covid-19 pandemic, thereby pushing the prisoners to extreme vulnerability. This being said, without addressing these longstanding issues, the temporary measures taken by the government to decongest jails would not prevent the spread of the Covid-19 infection within the prison premises.

Further, COVID-19 outbreaks have been reported in jails in several states, with no control mechanisms in place. The virus also claimed the lives of inmates. Human rights organisations have petitioned both high courts and the Supreme Court on several occasions, but little has changed on the ground.

According to the India Justice Report 2019, Inmates have a short life expectancy and are susceptible to a variety of infectious ailments. Despite particular legislation and rules to combat diseases, run prison hospitals, and schedule frequent health check-ups, such situations

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107 Supra note 81.
109 Supra Note 89.
remain unaddressed. In actuality, jail hospitals operate in a haphazard manner. They frequently lack enough equipment, and the quality of therapy is dependent on overworked personnel.\textsuperscript{111}

As per the international law, the states’ responsibility to protect the right to health of the prisoners has three dimensions – (i) taking appropriate preventive measures, (ii) ensuring prisoner’s the access to treatment and medication, (iii) policies to alleviate the systemic threats to health and safeguard the vulnerable prisoners, and (iv) enhancing transparency.

4.2. Decongestion of prisons

Following the outbreak of the COVID-19 epidemic, overcrowding of prisons in India received increased attention, as it extremely dangerous considering the highly contagious nature of the virus. According to the Prison Statistics India Report (2020), published by the NCRB, there is a total of 1,306 prisons in India. The actual capacity of prisons is 4,14,033 and the number of prisoners at the end of the year were 4,88,511, which is direct evidence of overcrowding in Indian prisons.\textsuperscript{112} On average, the occupancy rate of Indian prisons is 118\%, which means that 18\% more inmates are held in the Indian prisons than their normal capacity. The most concerning fact is that, nearly 76\% of the Indian prison population (i.e., 3,71,848 prisoners) are undertrials. While prison occupancy rates are high in some states, such as Uttar Pradesh (177\%), Sikkim (173.8\%), Uttarakhand (168.6\%), Delhi (159.5\%), Madhya Pradesh (158.6\%), Meghalaya (154.9\%) and Chhattisgarh (131.8\%), even in states where prisons are not overcrowded, such as Karnataka (98.3\%), Rajasthan (96.3\%), and Haryana (94.8\%) the numbers are alarming, especially in the face of a pandemic.

\textsuperscript{111} Sukanya Shantha, “Poor Medical Care for Prisoners Explains Why Number of Custodial Deaths Is Only Rising”, The Wire 15.01.2020 available at <https://thewire.in/rights/prison-custodial-death-medical-care> (Last visited on 17.05.2022).

\textsuperscript{112} National Crime Bureau, “Prison Statistics of India” (2020).
Occupancy rate in various Jails as on 31st December, 2020 in respect of States/UTs

Source: Prison Statistics India 2020

Taking into account the status of overcrowding of the prisons in India, the Supreme Court has taken urgent measures and directed the States to limit the arrests and release the prisoners on
interim bail / parole for de-congestion of prisons. First of all, the decongestion of prisons was delayed throughout the nation due to the courts' limited functioning and procedural difficulties. Moreover, data given in the Prison Statistics India -2020 report is completely shocking. Irrespective of such measures being proposed by the Apex Court, the lockdown has led to a large number of arrests, negating the effectiveness of the measures to de-congest. According to the Prison Statistics India Report, 2020 – there were about 16,31,110 new prisoners admitted into the jails across the country in 2020.

![Graph showing total inmates admitted during 2020](https://www.supremoamicus.org)

**Source:** Prison Statistics India 2020

According to a study by the Criminal Justice and Police Accountability Project, while the Madhya Pradesh state government released 6,500 to 7,000 inmates to decongest prisons, just as many new undertrial inmates (6,497 inmates) were added to the prison population in the months following.

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the announcement of the lockdown. As a result, 109 of Madhya Pradesh's 131 prisons remained overcrowded by the end of June 2020, with 23 jails housing twice as many convicts as their limits.

Also, another reason for the increase in number of prisoners is due to the increase in pending trials since no regular hearing (only urgent matters) took place in Courts during Covid-19 situation. Since, the hearings are pending the number of undertrial prisoners also increase, which constitute about 70% of the population and around 40,000 more undertrials were held in prisons in 2020 than in 2019.

There is also a decline in the number of release of convicts in the year 2020 compared to 2019 by 41.2% i.e., from 1,86,256 in 2019 to 1,09,516 in 2020 (convicts) and a decrease by 19.6% in case of under-trials i.e., from 16,06,731 in 2019 to 12,91,504 in 2020. This is contrary to our expectations, since the number of releases during the pandemic should be at least little higher than the previous year.

Therefore, it can be said that the temporary measures taken to decongest the prisons has been proved to be inadequate, since 27% of jails in 19 states remain to be overcrowded even after this directive was implemented.

4.3. Isolation of new inmates

Isolating new inmates from the rest of the prisoners can obviously to an extent can prevent the Covid-19 infection in prisons, but such a measure would be useless if not accompanied with a healthy environment with proper sanitation and adequate health care services. Various news report has explained the injustices faced by the under-trials during their time in prison. Their basic human rights are curtailed and are almost forgotten and shunned by the Indian society. Moreover, in Panchpouli COVID-19 quarantine centre, even though prisoners who are tested positive are claimed to kept in an isolated ward, during meal times they were made to eat along with other prisoners. Further, as per the under-trials held in that centre, no steps were taken by the authorities to ensure clean environment, proper hygiene and adequate medical facilities;


115 According to the National Judicial Data Grid, between 2019 and 2020, the backlog of cases has increased by 18.2 per cent in district courts, 20.4 per cent in high courts, and 10.35 per cent in the Supreme Court.

116 supra note 112.

117 Ibid


and moreover, they didn’t even pay heed to the needs of the vulnerable prisoners like the pregnant women.\textsuperscript{121}

Thus, despite all rules and regulations, Indian prisons remain to be un-hygienic and medically dangerous. In a letter sent from prison in Mathura, Dr. Kafeel Khan characterised Indian prison as a “living hell” and the conditions are worse even during the pandemic.\textsuperscript{122} He also said that over 120 detainees share a single toilet.

4.4. Establishing COVID-19 Care Centre

In order to provide medical treatment to the convicts, a COVID-19 care centre is required. Establishing such centres, however, will need a significant number of medical officers and specialists. According to the 2020 Prison Statistics, India's jails have just 2,232 medical personnel to care for 4,88,511 prisoners as of December 31, 2020.

\textbf{Sanctioned & Actual Strength of Jail Staff in the Country as on 31st December, 2020}

<table>
<thead>
<tr>
<th>Jail Staff</th>
<th>Sanctioned Strength</th>
<th>Actual Strength</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jail Staff</td>
<td>87,961</td>
<td>61,296</td>
</tr>
<tr>
<td>Officers - DG/Addl. DG/IG, DIG, Etc</td>
<td>7,167</td>
<td>4,958</td>
</tr>
<tr>
<td>Jail cadre Staff - Head Warder etc.</td>
<td>65,742</td>
<td>46,839</td>
</tr>
<tr>
<td>Correctional Staffs - Probation Officer / Welfare Officer, psychologist / Psychiatrist, etc</td>
<td>1,315</td>
<td>789</td>
</tr>
<tr>
<td>Medical Staff</td>
<td>3,316</td>
<td>2,232</td>
</tr>
<tr>
<td>Women jail staffs/officers (incl. medical officers)</td>
<td>-</td>
<td>8,380</td>
</tr>
</tbody>
</table>

\textsuperscript{121} \textit{Ibid.}

\textsuperscript{122} “Kafeel Khan describes prison to be ‘a living hell’ in letter from jail” SabrangIndia 06.07.2020 available at <https://sabrangindia.in/article/kafeel-khan-describes-prison-be-living-hell-letter-jail> (Last visited on 18.05.2022).
Sanctioned & Actual Strength of Jail Staff in the Country as on 31st December, 2020

**Source:** *Prison Statistics India 2020*

Also, there is a shortage of prison officers, making it difficult to tackle prisons during Covid-19 with under-resourced prison staffs. In the Karnataka’s largest prison, Parppana Agrahara jail, there are just two medical practicing for 4,400 prisoners and no women medical officer at all for the 126 women prisoners. Further, only 4.5% of the total budget for prisons (91.53 Crores) is allocated for medical matters. Even in normal circumstances, such a meagre medical budget for medical staff and essential treatments is insufficient.

The lack of medical officers in the prison and the general apathy towards the prisoners has led to the inhumane conditions of those prisoners who are tested Covid positive. Such concern was raised by recent revelations about Kerala journalist Siddique Kappan's health. He was tested positive for COVID-19 in Mathura jail and was having treatment at KM Medical College Hospital. He was shackled to a cot like an animal and was even refused access to the bathroom. Even the most basic protection gear and hygiene items were forbidden to inmates in most nations.

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124 *Supra* note 112.

125 Sparsh Upadhyay, “He is chained like an animal in Hospital, Journalist Siddique Kappan’s Wife writes to CJI Ramana seeking his immediate release” *Live Law* 15.04.2021 available at 'He Is Chained Like An Animal In Hospital’, Journalist Siddique Kappan’s Wife Writes To CJI Ramana Seeking His Immediate Release (livelaw.in)> (Last visited on 19.05.2022).
Additional safeguards are needed to protect prison officials against infection, in addition to visiting restrictions. Because of understaffing prison authorities couldn’t afford staff rotating leave. Therefore, extra care and proper sanitization should be implemented in the jail facility. Gloves, masks, and gowns should be supplied to all jail workers.

“No matter who you are, or where you are, people deserve access to face masks, adequate quantities of soap, sanitising items and clean running water”
- Netsanet Belay, Amnesty International's research and advocacy director.

Further, personal protective equipment, particularly in jails, should be supplied free of charge, and governments should expand access to COVID-19 testing and therapies to prevent and control possible epidemics.

Inmates' health should not be judged exclusively on the basis of their temperature; other symptoms should also be considered. Every institution should require temporary isolation of each incoming inmate, followed by surveillance of visual indicators of respiratory disease and queries about previous interaction with a suspected COVID-19 patient.

4.5. Build capacity and amplify medical care in prisons

Taking into account the problem of congestion, the Bombay HC ordered the State governments to look into the possibility of setting up of new prisons. Though the construction of new jails needs substantial planning and funding, a faster approach should necessarily be taken to fix the problems of capacity constraint and prepare jails for future issues. To avoid a major catastrophe, immediate and long-term improvements in medical treatment are required not only during pandemics but also during normal times. The following limitations has to be overcome:

- Lack of specialised doctors visiting prisons
- Lack of medical escorts for transportation of inmates to hospitals outside jail premises
- Challenges with regard to procurement of medicines
- High rate of persons suffering from tuberculosis, HIV/AIDS, hepatitis C and skin allergies.
- High rate of death by suicide inside prisons also points to inadequate access to mental counselling and treatment. In 2019, the rate of death by suicide stood at 24. 24 per lakh prison population, which was more than double than in the general population.

4.6. Immunisation of inmates

Prisoners, despite being the most vulnerable population, were not given priority during immunization programmes vaccinated only after significant delay. The WHO has given a roadmap for the governments to determine who should be prioritized in the vaccination programmes, when vaccines are scarcely available.

The roadmap expressly mentions that prisoners should be prioritised in such vaccination programmes as they are held within confined spaces where physical distancing is a complete mockery. While prison staffs were considered as ‘frontline workers’ and were included in the one of the three-priority category for vaccination, prisoners were not included in the list given by the Ministry of Health and Family Welfare guidelines.

4.7. Contact with the outside world

After the announcement of the nationwide lockdown, there was a complete ban on the physical visits (mulaqats) of the family members and lawyers of the prisoners in the prisons in India, without making any alternative arrangements for the same. Even though the Supreme Court has directed the prison authorities to provide video conferencing facilities to the prison inmates, such facilities were not made available in many states. In most of the states, the introduction of VC facility was made available only at a later point of time. By the end of 2020, 907 out of the 1,306 prisons had been outfitted with Video Conferencing (VC) facilities.

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127 Ananya Bharadwaj, “Cases rise but over 87% inmates in Delhi’s prisons can’t get Covid shot. Age is the culprit”, *The Print* 11.05.2021 available at <https://theprint.in/health/cases-rise-but-over-87-inmates-in-delhis-prisons-cant-get-covid-shot-age-is-the-culprit/655999/> (Last visited on 19.05.2022).
131 Supra note 112.
Even though such technologies are made available to the prisoners, they were not able to talk for adequate time. Even today there are many jails in India that doesn’t have any video conferencing facility thereby the prisoners are completely cut off from their friends and families.

4.8. Lack of information – Riots

Sudden lockdowns and restrictions without properly informing and educating the prisoners would result in chaos. An example for this is the incident that took place in Dum Dum prison in Kolkata, West Bengal, where violence broke out in response to the sudden lockdowns and restrictions imposed in light of Covid-19, and as a result of which four inmates died and 28 others were severely injured.

Further the measures adopted by the State authorities should be proportional to the need. If the government measures are not proportional then it would themselves amount to violation of human rights of the prisoners. Quarantine per se doesn’t mean solitary confinement and are subject to the review of competent medical officer. It should be imposed only in extreme
situations when no alternatives are available. Solitary confinement for a prolonged-periods (i.e., more than 15 days) is considered to be a torture.\textsuperscript{132}

Authorities must ensure that adequate measures are in place to mitigate the negative effects of isolation, lack of activity, and human contact during such isolation or quarantine measures, including adequate daily access to fresh air, physical activity, additional phone time, video calls, and other opportunities for entertainment and contact with family and friends. States must also guarantee that isolation or quarantine are not used to legitimise discrimination or the imposition of harsher or less suitable conditions on a specific population, such as minors, under any circumstances.

4.9. Releasing prisoners

As the Supreme Court has asked the States to constitute High Powered Committee and decide on the criteria for the release of prisoners on interim bail / parole, the committee constituted in each state has come up with its own criteria. In most cases, the release was merely based on the severity of offences or the number of years of imprisonment. While some states have given due consideration to the vulnerable prisoners who are more prone to the infection, many states have arbitrarily excluded such people without even thinking about them.\textsuperscript{133}

Among other prisoners, women, children and elderly people are the most vulnerable and they require special measures to be undertaken. As per the Prison Statistics, 2020 there are about 1,427 women prisoners with 1,628 children and there are about 63,687 prisoners above the age of 50 years. They are often invisible to the officials and are vulnerable due to various reasons. Even the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (also known as Bangkok Rules), which is accepted by the world at large, has differentiated the women prisoners from the ‘general pool’ of prisoners and has accorded positive discrimination to them.

\textsuperscript{132} Supra note 45, Rules 43 and 44.
The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has advised States to immediately identify and address the needs of the groups of people who are at a greater risk of being prone to the infection.\textsuperscript{134}

Under Indian laws, senior citizens are those who have crossed the age of 60 years.\textsuperscript{135} Under international law, there is no global definition for who is an older person and it differs from country to country. Even though, a few systems consider people who are 60 years or above as an older person, the OHCHR has adopted a context specific definition, recognizing that “age is a social construct based on custom, practice, and the social role a person plays in his or her community”.

However, from a rights perspective, an arbitrary minimum age limit is problematic because it risks failing to adapt to individual needs and rights of the person. “Older age” should be examined in each setting, as OHCHR does, and persons’ self-identification should also be taken into account. So, while safeguarding older prisoners during Covid-19, wide and right based definition should be adopted.

This demographic is most vulnerable to COVID-19 infection. To prevent deaths, interim bail should be provided to every prisoner who are above 50 years (or the case may be), pregnant women and those with medical conditions. Even though, it is an understood fact that the States are responsible for prison related matters, it is advisable that the Courts come up with certain minimum guidelines that protect the most vulnerable people in the prison.

\textsuperscript{134} Supra note 63.

\textsuperscript{135} Maintenance of Senior citizens Act, 2007 (Act 56 of 2007), s.2(6).
4.10. Enhance Transparency in Reporting

The international human rights organisations have urged the State authorities to improve the timely collection and exchange of public health statistics, particularly for those in detention or prison. As per the recommendations of the Amnesty International, data with respect to infection, treatment, vaccinations and death rates in prison should be updated regularly made available to the people.\(^{136}\)

In stark contrast to what the circumstances required, governments appeared to prefer exposing inmates to the pandemic's dangers rather than releasing them. It is interesting to note that, the PSI report does not even mention the effects of the governments' failure to decongest jails.

Invisibilization of pandemic’s impact

The NCRB has mentioned pandemic in its PSI report only to solely discuss the mitigating measures taken by the jail administration. In the report, where it talks about deaths and illness of the inmates, there is no mention about the number of deaths caused due to Covid-19 pandemic or number of prisoners infected by the Covid-19 virus.

It can be assumed and inferred from the report that they have included Covid-19 caused deaths under the head of deaths due to ‘other’ illnesses, within the category of ‘natural’ deaths. This is because there is an increase in the number of deaths due to illness from 22.7% in 2019 to 27% in 2020. However, the deaths caused due to Covid-19 should be attributed as deaths caused due to the negligence of the State, since the state has failed to test, track and treat the prisoners adequately.\(^{137}\) Every person irrespective of their status have the right to life and the States are obliged to protect them from arbitrary deaths.\(^{138}\)

Further, without sufficient data it is really difficult to assess the impact of the pandemic on the incarcerated population. The impact of the Covid-19 on the prisoners is completely invisibilized by the State authorities. The facts that the State chooses to reveal and withhold can influence the story in its favour.

The government attempts to create an appearance of proactiveness by simply mentioning mitigating measures taken by them. A close and contextual reading of the PSI – its gaps and silences – and the information offered by the CHRI report, on the other hand, reveal the criminal justice system's obsession with crime control and maintaining law and order, even at the expense of prisoners’ health and lives.

This shows that government on one hand has indiscriminately arrested people and the other hand is insensitive to the needs of the prisoners. The epidemic brought to light not just the

\(^{136}\) Supra Note 130.

\(^{137}\) Supra Note 130.

\(^{138}\) International Covenant on Civil and Political Rights, 1966, art.6.
situation of healthcare in jails, but also the fact that governments use excessive imprisonment as a panacea for all ills.

4.11. Creative ways to address health related issues in prison

States must think outside the box to manage the health of the prisoners. Artificial intelligence systems may be utilised for video monitoring to maintain social distance measures, thermal screening, effective shift allocation, and automatic disinfection systems.\textsuperscript{139} Food quality, sanitation, medical facilities, and prisoner behaviour may all be improved with personalised jail administration and partnership with outside firms. COVID-19 has emphasised the insufficient healthcare provided to Indian prisoners. Failure to solve the health crisis imposes a new informal penalty on top of the legal one imposed by the courts. It must come to an end.

CHAPTER V - CONCLUSION AND SUGGESTIONS

Even though the standards prescribed by the International Covenants are sufficient to prevent and tackle the prisoner’s problems that arise from unforeseen circumstances like the pandemic, there is a problem with the implementation of such standards in a domestic setting. There are systemic gaps that have led to serious violations of prisoners’ rights in India during Covid-19. Further, the disjuncture between what is in the law and what actually happens on the ground stems from challenges that can be solved by state actions. In other words, the problem is not with the law but with its implementation.

Worldwide, there are about 11 million persons in prisons as prisoners and detainees and these prisons are not only overcrowded and improperly sanitized but also has no proper access to medical facilities and to practice mutual-and self-protection measures is a nightmare. Detention during the pandemic would turn into a death sentence for many of the prisoners and it is the real risk at present. This bitter reality is a humanitarian crisis and is a long-term issue for the future incarceration systems. Covid-19 could be allowed to act as collective death sentences. However, it could be viewed as a chance to reconsider incarceration and sentencing rules, particularly their inherent discriminatory aspects.

The pandemic presents an opportunity for prisons to meet the gaps in prisoners’ access to medical care. The governments should treat health as a top priority for all citizens, including those behind bars. Prison healthcare should be an integral part of the public healthcare system in India, both in letter and spirit.

The COVID-19 pandemic has brought out in bold relief the systemic deficiencies in the jails of India. The need for reforms in Jail administration has surfaced as a critically important task. Prison inmates also enjoy the Right to Life as enshrined in the constitution as any other citizen of India. The ultimate reason for the non-implementation of the measures in the prison is due to lack of

staffs and other resources. The already existing problems of poor sanitation and overcrowding in prisons has made it nearly impossible to effectively prevent Covid-19 in the prison setting. However, under the international human rights law, ensuring right to health and life to everyone including prisoners, is one of the core obligations of the state and it cannot justify its non-compliance by quoting economic hardships. It’s the state’s three-fold obligation to respect, protect and fulfil the right to life and health of the prisoners.

The State has an international obligation to uphold the right to life of the prisoner by taking adequate measures to prevent arbitrary deaths of such prisoners. State has a heightened duty owing to the heightened vulnerability of the persons who are detained by the State. It should also ensure the rights of the prisoners to have continuous access to adequate and timely health care without any kind of discrimination.

In order to meet international human rights standards, the following measures have to be taken by the states:

1. States must prepare policies and action plan to protect the rights of the people in prisons from future pandemics. It should ensure transparency by putting up data in the official websites regarding the impact of the pandemic on the prisoners.

2. States have to keep a check on the occupancy rate of prisons. Such data should be also updated and made available in public. It’s the states responsibility to decongest the prisons by taking appropriate measures like avoiding indiscriminate arrests, increasing the number of prisons according to needs and so on.

3. Ensure that adequate health and hygiene facilities, equipment, supplies and personnel are provided for all who remain in detention, in order to allow detainees, the same level of access as is available to the population as a whole.

4. Provide prisons with the appropriate testing capacity to prevent the transmission of COVID-19 within custodial settings. Prioritise people deprived of liberty and other people working in custodial settings in COVID-19 vaccine roll outs, as well as in the provision of Personal Protective Equipment (PPE).

5. Ensure that all detainees receive reliable, accurate and up-to-date information concerning all measures being taken, their duration and the reasons for them.

6. States should make sure that there are adequate financial and human resources present in the prison systems, in order to enhance the efficiency to deal with pandemics. Further, such staffs should be given proper training to prepare them for unprecedented situations.

140 UNHRC has emphasized that “treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule”, which “as a minimum, cannot be dependent on the material resources available in the state party”.
emergencies. Also, it should also make the prison staffs sensitive to the needs of the prisoners.

7. It should also make them aware about the rights of the prisoners and how prisoners should be treated with dignity.

8. Right to life and health of prisoners is a wholesome right which includes within itself the right to access clean drinking water, nutritious food, hygienic environment, etc. If these measures were adequately taken, we could have effectively minimised the impact of Covid-19 on the prisoners.

9. Further, the right to health doesn’t stop with physical health but also includes mental health. Therefore, it’s the States responsibility to preserve the mental health of the inmates by providing counselling, therapies and by conducting yoga sessions et al.

10. When a state imposes a restriction, it should be proportional to the health emergency. In case, family visits, lawyer visits are curtailed then alternate arrangements like phone calls, video conferencing should be made available.

11. Ensuring meaningful human contact every day. Ensuring meaningful contact with family, partners, and support networks. Ensuring access to healthcare workers, social workers, legal advice, and other forms of psychosocial support, including for sexual and reproductive health.

12. It is also advised that States should ratify the Optional Protocol on Convention Against Torture. Unlike, other international treaties, OPCAT provides for a national mechanism to monitor prisons by having regular visits et al.

A number of the challenges that have dogged the pandemic may have been avoidable had human rights been safeguarded and prioritized more judiciously. Universal access to healthcare would have facilitated more widespread testing. Stronger anti-discrimination policy might have avoided minorities being disproportionately affected by the virus. India should take adequate measures to implement all these recommendations, which would help in tackling pandemics in the future. The Covid-19 pandemic is just one among many pandemics that we are about to witness. Therefore, its extremely important to massively overhaul the existing prison system at its roots to protect its prison population from another crisis in the future. Promoting human rights now will help societies emerge more resilient from this pandemic in the future. #NoCurfewOnHumanRights

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Annexure I

State/UT wise number of positive cases of prisoners and prison staff in the first wave (May 27, 2020 – Dec. 14, 2020) and second wave (Mar. 1, 2021 – Jul. 19, 2021)

<table>
<thead>
<tr>
<th>Name of State</th>
<th>Number of COVID-19 cases in prisons (Inmates and staff)</th>
<th>Number of Covid-19 positive cases in prisons</th>
<th>Covid-19 related deaths (First wave)</th>
<th>Covid-19 related deaths (second wave)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Inmates</td>
<td>Prison Staff</td>
<td>Inmates</td>
<td>Prison Staff</td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>1,375</td>
<td>490</td>
<td>150</td>
<td></td>
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<tr>
<td>Assam</td>
<td>2,496</td>
<td>223</td>
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<td></td>
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<tr>
<td>Bihar</td>
<td>96+224+3</td>
<td>86</td>
<td></td>
<td></td>
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<tr>
<td>Chhattisgarh</td>
<td>41</td>
<td>91</td>
<td></td>
<td></td>
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<tr>
<td>Delhi</td>
<td>200</td>
<td>382</td>
<td>221</td>
<td></td>
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<tr>
<td>Goa</td>
<td>33</td>
<td>32</td>
<td>34</td>
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<tr>
<td>Gujarat</td>
<td>23+64+70</td>
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<td>Haryana</td>
<td>1+2+36</td>
<td>450+98</td>
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<td></td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
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<td>16</td>
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</tr>
<tr>
<td>Jharkhand</td>
<td>105+183+350</td>
<td>264</td>
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<tr>
<td>Karnataka</td>
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<tr>
<td>Kerala</td>
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<tr>
<td>Madhya Pradesh</td>
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<tr>
<td>State/UT</td>
<td>Total</td>
<td>New Cases</td>
<td>Death</td>
<td>Recovered</td>
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<td>-----------</td>
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</tr>
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<td>Puducherry</td>
<td>1</td>
<td>41</td>
<td>3</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td>18,157</td>
<td>5,960</td>
<td>646</td>
<td>28</td>
</tr>
</tbody>
</table>

**Source:** State/UT Wise Prisons Response to COVID-19 Pandemic in India, Commonwealth Human Rights Initiative