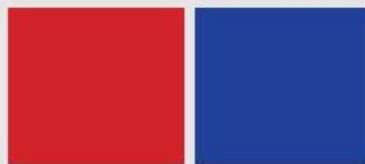


**INTERNSHIP REPORT – PRISON, PANDEMIC & CRIMINAL  
JUSTICE**



**POLICE FOUNDATION AND INSTITUTE  
INDIA**

- By Rakshitt C Bajpai,  
Dr Ram Manohar Lohiya National Law University, Lucknow

## **Pandemic, Prison and Criminal Justice**

### **Introduction**

Throughout history, nothing has killed more human beings than infectious disease. Covid-19 shows how vulnerable we remain – and how we can avoid similar pandemics in the future. The first case of the 2019–20 coronavirus pandemic in India was reported on 30 January 2020, originating from China.

As of 21 April 2020, the Ministry of Health and Family Welfare have confirmed a total of 18,601 cases, 3,252 recoveries (including 1 migration) and 590 deaths in the [country](#). Experts suggest the number of infections could be much higher as India's testing rates are among the lowest in the [world](#). The [infection rate](#) of COVID-19 in India is reported to be [1.7](#), significantly lower than in the worst affected countries.

The outbreak has been declared an epidemic in more than a dozen states and union territories, where provisions of the Epidemic Diseases Act, 1897 have been invoked, and educational institutions and many commercial establishments have been shut down. India has [suspended all tourist visas](#), as a majority of the confirmed cases were linked to other countries.

On 22 March 2020, India observed a 14-hour voluntary public curfew at the instance of the prime minister [Narendra Modi](#). The government followed it up with lockdowns in 75 districts where COVID cases had occurred as well as all major cities. Further, on 24 March, the prime minister ordered a [nationwide lockdown](#) for 21 days, affecting the entire 1.3 billion population of India. On 14 April, the prime minister [extended](#) the ongoing nationwide lockdown till 3 May.

Michael Ryan, chief executive director of the World Health Organisation's health emergencies programme, said that India had "[tremendous capacity](#)" to deal with the coronavirus outbreak and, as the second most populous country, will have enormous impact on the world's ability to deal with it. Other commentators worried about the [economic devastation](#) caused by the lockdown, which has huge effects on informal workers, micro and small enterprises, farmers and the self-employed, who are left with no livelihood in the absence of transportation and access to markets.

The emergence of COVID19 (Corona Virus Disease 2019) has really left the world in chaos and panic. In order to control the spread of this fatal virus and prevent the social transmission of this virus, countries around the world have been taking various steps. The Indian government recently initiated an all-India lockdown wherein, the people are to stay at their respective home and are not allowed to commute. A lot of criticism has been going in this context with regards the Human Rights and Fundamental Rights, but the situation demands for a total social isolation and social distancing, the best way to ensure this is to initiate a lockdown.

This Lockdown, though helped the government to control the social transmission of corona virus, did affect other sectors. As the news reports indicate there has been a lot of damage to the

Indian Economy, many Small-Scale Industries have suffered heavy losses, a large chunk of the population working as daily wage labours in the metropolitan cities have become refugees inside their own country, etc.

However, there is another section of the population which has usually been neglected in this situation, the prisoners. As the news indicates, a large number of prisoners have been released in various parts of the country.

The work of certain agencies like the State as well as the National Legal Service Authority and other NGOs has been very instrumental regarding the condition of the prisoners. Various new methods are being taken up by the government and the jail authorities around the country to deal with this pandemic and ensure social distancing and isolation among the prison population.

The recent policies of the government like all India lockdown affected the prison system and the criminal justice system also. This situation has created various challenges for functioning of the criminal justice system and the administration of law and order in the country. Since, the prisoners are also vulnerable to COVID19, recently a number of jails have started releasing them and some jails have also come up with special provisions to deal with this issue.

This internship report will not only discuss about the situation of prisoners in this pandemic, but will also suggest a few measures which can be thought about to improve the situation. All this will be discussed in the context of the related prison laws and regulations in India.

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## **Prisons and Pandemic**

- Health Issues & Prisons

According to the statistics of the National Crime Records Bureau the number of deaths in prisons has increased marginally from 1,655 in 2016 to 1,845 in 2018, having increased by [11.48%](#), which has been highlighted by the NCRB in their Prison Statistics of 2018. The jail authorities must look into this issue and ensure that the health facilities at prisons meet the basic standards.

- Right to Health and Medical Treatment of Prisoners

The Hon'ble Supreme Court in series of cases held "right to health care" as an essential ingredient under Article 21 of the Constitution. Article 21 casts an obligation on the State to preserve life. A doctor at the Government hospital positioned to meet this state obligation is, therefore, duty bound to extend medical assistance for preserving life. Every doctor whether at a Government hospital or otherwise has the professional obligation to extend his services with due expertise for protection of life.

Furthermore, no law or State action can intervene to avoid/delay the discharge of the paramount obligation cast upon members of the medical profession. The obligation being total, absolute and paramount, law of procedure whether in statutes or otherwise which should interfere therefore with the discharge his obligation cannot be sustained and must therefore give way. The same was held by the court in the case of [Parmann Katara v. Union of India](#).

Denial of the Government's hospital to an injured person on the grounds of non-availability of bed amounts to violation of 'right to life' under Article 21. Article 21 imposes an obligation on the State to provide medical assistance to injured person. In the Case of [Paschim Bengal Khet Mazdoor Samiti v. State of West Bengal](#) the hon'ble Supreme Court of India held that preservation of human life is of paramount importance.

In the case of [Rasikbhai Ramsing Rana v. State of Gujarat](#) the petitioners convicted in the Central Prison, Vadodara suffering from serious ailments were deprived of proper and immediate medical treatment for want of jail escorts required to carry them to hospital. The Gujarat High Court expressed shock and called I.G. Prison and Addl. Chief Secretary and they both acted with promptness and issued with necessary directions in this regard and held that negligent Officers were to be held personally liable.

In 2005, the Gujarat High Court issued directions to State Government, that all Central and District jails should be equipped with ICCU, pathology lab, expert doctors, sufficient staff including nurses and latest instruments for medical treatment. This was done on the basis of a *suo moto* cognizance that was taken up by the Gujarat Hight Court.

- Medical Officer in Prison

[Section 3\(8\) of the Prisons Act, 1984](#) defines the term "Medical Officer", which means a qualified Civil Assistant Surgeon as appointed by the Government; and "*Medical Subordinate*" means an Assistant Surgeon, Apothecary or qualified Hospital Assistant. In other words, "medical subordinate" means a qualified hospital assistant as appointed by the Government.

As per [Section 13](#) of the Prisons Act, 1984 the Medical Officer is subject to the control of Superintendent, the Medical Officer shall have charge of the sanitary administration of the prison, and shall perform such duties as may be prescribed by rules made by the State Government under [Section 59](#).

Whenever the medical officer has reason to believe that the mind of the prisoner is, likely to be, injuriously affected by the discipline or treatment to which he is subjected; the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper. This report, with the orders of the Superintendent thereon, shall forthwith be sent to the Inspector General for information, which has provided for under [Section 14](#) of the Prisons Act,1984.

The reading of [Section 15](#) of Prisons Act, 1894, states that on the death of the any prisoner, the Medical Officer shall forthwith record in a register, the following particulars so far as they can be ascertained, namely: -

(i) the day on which the deceased first complained of illness or was observed to be ill,

- (ii) the labour, if any, on which he was engaged on that day,
- (iii) the scale of his diet on that day,
- (iv) the day on which he was admitted to hospital,
- (v) the day on which Medical Officer was first informed of the illness,
- (vi) the nature of disease,
- (vii) when the deceased was last seen before his death by the Medical Officer or Medical Subordinate,
- (viii) when the prisoner died, and
- (ix) (in cases where a post-mortem examination is made) an account of the appearances after death, together with any special remarks that appear to the Medical Officer to be required.

However, these are mere basic sanitary conditions and health facilities which need to be maintained. Although there are certain shortcomings in implementing these measures, it's the lacuna which needs to be filled by the legislature as the judiciary cannot intervene in the administration of the prisons.

The Supreme Court has observed that the penological goals which may be regarded as reasonable justification for restricting the rights to move freely within the confines of penitentiary are now well settled. If, the prisoners have been entitled to rights guaranteed by Articles 19, 21 and 14, subject to certain limitations, there must be correlation between deprivation of freedom and legitimate functions of a correctional system. It is now well settled, that deterrence, both specific and general, rehabilitation and institutional security are vital considerations.

Compassion whether possible and cruelty only where inevitable is the art of correction confinement. When prison policy advances such a valid goal, the court will not intervene officiously. This proposition has been propounded upon by the hon'ble Supreme Court in the case of [\*Charles Sobaraj v. Supdt Central Jail Tihar\*](#)

Recently, in 2014 the Hon'ble Gujarat High Court held that the High Court cannot sponge into internal affairs of the jail administration under Article 226 of the Constitution. How to manage and regulate the jail administration is essentially and entirely a concern and look-out of the jail authorities and as long as the orders passed by them are just, fair and proper, this Court has no right or business to meddle with the same and thereby in the internal affairs of the Prison Administration.

We are conscious of our widely extraordinary powers under Article 226 of the Constitution of India and more than that we are further conscious of our restraints and bounds of unwarranted trespasses into the realm of administrative affairs, where the impugned order is found to be just, fair and proper. This was held in the case of [\*Motisingh Kesnsinh v State of Gujarat\*](#).

- Overcrowding

Between 2008 to 2018, the prisons had an occupancy rate of 117 per cent. This means, that on average, our prisons were having 17 per cent more prisoners than their full capacity. In 2008, the capacity of our prisons was 2,97,777 inmates, our prisons had an occupancy of 3,84,753 inmates. By 2018, the capacity of prisons was increased to 3,96,223 inmates, however, the occupancy of the prisons increased to 4,66,084. The latest prison statistics report for the year 2018 showed a high degree of variation of over occupancy in the jails.

For instance, Uttar Pradesh had an occupancy rate of 174 per cent. This means that UP was having 74 per cent more inmates than its full capacity. Delhi ran with an occupancy of 154 per cent, Chhattisgarh with 153 per cent and Uttarakhand with 150 per cent.

In total, there were 18 states and Union Territories (UTS) having less inmates than their capacity. Among big states, Tamil Nadu had a 60 per cent occupancy, Telangana had an occupancy of 77.1, followed by Andhra Pradesh (79.5), Odisha (86.1) Rajasthan (92) and Bihar (93.3). Nagaland had an occupancy of 30.5 per cent, Tripura had 47.9, followed by Goa (69.7), Manipur (72.3), Assam (93.2) and Punjab (95.7).

All these statements are supported by the data of [National Crime Records Bureau](#) and has been analysed thoroughly.

Overcrowding in prisons results in a number of problems. Due to the overcrowding of prisons, it becomes very difficult to ensure cleanliness and hygiene inside the prisons. Moreover, the situation becomes even worse under the on spread of COVID19 pandemic. Even if a single person gets infected, it'll become very difficult for the prison authorities to isolate it and prevent other inmates from acquiring this infection.

While the Government of India advices that social distancing must be maintained to prevent the spread of COVID-19 virus, the bitter truth is that our prisons are overcrowded, making it difficult for the prisoners to maintain social distancing. There are 1339 prisons in this country, and approximately 4,66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%, and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3% respectively.

Like most other viral diseases, the susceptibility of COVID-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses such as COVID-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detainees etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of COVID-19 virus to the prison inmates. For the reasons mentioned above, our prisons can become fertile breeding grounds for incubation of COVID-19. Furthermore, the ongoing spread of pandemic has made the situation worse.

- Contingency Plan for Pandemic

One of the biggest concerns of the jail authorities around the country has been that of devising a strategy to prevent the spread of this virus within the prison, using the available resources. The Section 7 of the Prisons Act, 1984 does mention about the regional arrangements that can be made by the Inspector General of the Police in accordance with the decision of the respective State Government. However, there is no provision, mentioned within the Prisons Act, which specifically deals or has down any protocol or a contingency plan regarding the spread of any such pandemic.

Complying with the above-mentioned provision of the Prisons Act, 1984, some jail authorities did initiate the respective measures. For instance, the [Director General of Prisons, Kerala](#) has set up isolation cells within prisons across-Kerala.

Those suffering with COVID-19 symptoms such as cold and fever are being moved to these isolation cells. All the new inmates who will be admitted to the prisons in Kerala will be isolated in the isolation cells in the admissions block for six days before permitting their entry into the regular prison cells.

Similarly, an isolation ward has been set up in the Tihar Jail, Delhi and all the 17,500 inmates of the said Jail were checked for COVID-19, and it was found that none displayed any symptoms relating to COVID-19. The authorities of the Tihar Jail have also decided that new inmates will be screened and put in different wards for three days.

- Supreme Court Decision and Response of Jail Authorities

The hon'ble Supreme Court of India, in its order dated 23-03-20 directed measures to all states and UTs for reducing overcrowding in prisons. This order was passed in the light of the spread of the COVID 19 Pandemic, which has affected 5114 individuals in India as on 08-04-2020. The court directed states/ UTs to constitute a High-Powered Committee to determine the categories of prisoners to be released on interim bail/ parole or furlough to reduce overcrowding in prisons.

As a response to this order, the respective jail authorities around the country have initiated different measures, these measures have been listed in a tabular form in this [hyperlink](#).

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### **Criminal Justice and Pandemic**

In all parts of the world, due to postponement of all forms of hearings, criminal litigation is at halt. While the hon'ble Supreme Court of India shifted towards online medium for conducting its urgent cases of special importance (both civil and criminal), the US Supreme Court in Washington D.C. had [postponed oral arguments](#) which also involved a lawsuit on President Trump's tax returns.

In New Zealand, new jury trials are suspended for two months, considering Covid-19 hit. Chief Justice Dame Helen Winkelmann, in her statement, stated *“there is a special onus on the courts to protect the health of jurors who are performing an important civic duty, as the duties of the empanelling juries involve bringing large number of people together in relatively confined spaces. Once empanelled, jurors are inevitably spending significant periods of time in relatively close contact.”* On the same lines, the courts in Saudi Arabia have postponed all their hearings. It has been decided that these cases will be prioritized once the courts' resume with parties relevant to those cases notified electronically. A similar approach is being followed in other jurisdictions as well.

- Prisons and Jails

*"To the extent that we don't do a good job in jails and prisons," Homer Venters, an epidemiologist, says, "we will certainly prolong the life of this outbreak."*

Venters is a former chief medical officer, who while responding to the challenges states that "all these terms 'self-quarantine', 'social-distancing' and 'flattening the curve of the epidemic' [are unimplementable](#) behind the prison cells. To support his statement, he further points out to the fact that *"the jails are built to operate this way: big pens, big groups of people coming in. Five, ten, fifteen, twenty at a time going in blocks through cells. They start out in one cell, then they go to a second cell. They might go through six or eight cells. They don't really have hand-washing access built-in. That is basically a system designed to spread communicable disease"*.

While this may be a general concern, the measures taken in this regard are varying, ranging from [releasing the prisoners](#) to [pardoning petty offenders](#). Such measures will prove highly effective in the light of the above observation on prison conditions.

After the first case was reported, of a [prisoner tested positive](#) for the virus, more California Countries have started [releasing the inmates](#) to protect their jails from possible corona outbreaks. These instances point towards the dangers over-occupied cells carry with them. Quite different from the above-stated instances, [Iran freed 85,000 prisoners](#), more than half of which were political prisoners, after examining the health emergency after Covid-19 outbreak.

[Commenting on the status quo](#), USA's top public prosecutor Rob Sanders stresses on the fact that *"while there was a necessity to release more people from jail to stop the spread of COVID-19, his jurisdiction i.e. the US is just not prepared for the aftereffects of the pandemic. In his county, nearly every inmate accused of a nonviolent offence is being considered for release, forcing his team to work on "hundreds of cases at once" and all electronically—something that has never happened in his 21 years in public service, he said. "In a sense, this is like a giant experiment with 'no money bail' because we're releasing so many defendants we usually wouldn't"*.

For India, it will be difficult to insulate the jails from pandemic with [61,621 inmates over 50 years lodged in 1,399 prisons](#). The Indian Supreme Court, working on the above lines, has ordered the States to consider [releasing some prisoners on parole](#) or on interim bail as

appropriate. This has been done to prevent overcrowding in prison cells, so that the spread of the virus may be contained.

For doing so, the States are required to devise a plan after the formulation of a high-powered committee. Additionally, as a matter of precaution, Tihar, the largest prison complex in South Asia has decided to [release around 3000 inmates](#) in the upcoming days.

Even the Iranian government has temporarily released 85,000 prisoners in an emergency move to stop the spread of the coronavirus.

Gholamhossein Esmaili, Iran's judiciary minister, on Tuesday said: Some 50% of those released are security-related prisoners... also in the jails we have taken precautionary measures to confront the outbreak," [Sky News reported](#).

Conditions inside Iran's jails have reportedly deteriorated within recent weeks, with inmates [reporting large numbers of deaths from the Coronavirus in the country's overcrowded prisons](#). As of Monday, over 850 people had died in Iran after catching the COVID-19 virus, with more than 14,000 infected. Those who have passed away include religious leaders. Ayatollah Hashem Bathayi Golpayegani, who sits on the clerical body responsible for choosing Iran's supreme leader, died two days after contracting the virus. A number of political prisoners are reportedly included among those released by the Iranian regime this week.

- [Disruption in Death Penalties](#)

As lockdown in the US is expected to last for [10-12 weeks](#), States have postponed the execution of the convicts, including the State of Texas where Texas Court of appeals [stayed its second execution](#) in the last 60 days. While postponing the execution, the Court noted that *"the execution should stay at the present in light of the current health crisis and the enormous resources needed to address that emergency"*

Professor Douglas A Berman of Ohio State University, after analyzing the continuous delaying executions, observes on his [personal blog](#) (dedicated to Criminal Justice), *"Upon seeing [this new story](#), headlined "U.S. Coronavirus Lockdown to Last 10-12 Weeks, Top Trump Official Says," I am now thinking it may not be too early to start wondering if one echo effect of [this global pandemic](#) could be the functional or formal end to the death penalty in the United States. Texas has already postponed two executions, and that furthers my thinking that there is now a real possibility we might not end up having any more executions in 2020. Moreover, I would be surprised if any new executions get scheduled for 2020 even if some existing executions dates stay in place later in the year. Consequently, the US would seem to now be on pace for its lowest number of executions in nearly four decades."*

He further states *"As courts struggle to figure out how to keep functioning at all during this period, on-going capital trials should and likely will be suspended (and perhaps resolved via pleas). New capital cases are unlikely to be brought, and I see now a real possibility that we might not end up having any more capital sentences imposed in 2020. [This DPIC fact sheet](#) details that we had 34 death sentences in 2019; I will be surprised if we end up with more than 10 in 2020"*.

Although the author cannot comment on the formal end of the death penalty after the end of the global pandemic, such disruptions along with the age-old moral considerations may be taken into account by policymakers in the 21st century.

- Measures taken against Violators of Lockdown

Countries are resorting to different penal laws, which are generally not used in common parlance, in order to contain the spread of the virus. Singapore recently issued new regulations under its Infectious Disease Act after [charging China couple](#) with the provisions of the same, for giving false information to the MOH Officials.

With new regulations coming into effect, various offences under the Infectious Diseases Act (IDA) can now be compounded with the introduction of the Infectious Diseases (Composition of Offences) [Regulations 2020](#), which means people who are guilty of less serious breaches can be fined instead of being charged in court.

A similar course is being followed [in other nations as well](#). In the US, individuals could face fines, criminal charges, and even jail time for breaking quarantine.

While in China the punishments are harshest, in worse affected Italy, there are reports which point that anyone despite showing symptoms of the disease if refuses to self-isolate risks being charged with causing injury and being jailed for six months to three years apart from being slapped with a fine. Further, a "*careless*" coronavirus sufferer transferring the virus to someone can be charged with "*intentional murder*" and may spend up to 21 years in jail. Similarly, [Iran](#) and [Hongkong](#) have announced that anyone violating the regulations on the health emergency would be arrested and jailed without warning.

In India, however, even in presence of [emergency regulations](#) and penal provisions under [criminal code](#) (tough laws), there are [very limited cases](#) that report the imposition of penalties or any other means of punishment for non-compliance with health restrictions, despite instances of quarantine violation.

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### **Suggestive Measures**

- Filling the Legislative Lacuna – The legislature should take the appropriate steps towards fulfilling the legislative lacuna's and lack of legislations related to the Prisons. There is an immense need of codification of Prison Laws, if codification is not possible, in that scenario amendments in the Prison Act of 1894 are required. Since law is a dynamic aspect of a society and needs to evolve from time to time, modern day problems require modern day solutions which can be brought about by bringing the necessary amendments. Even the Judiciary can contribute towards this initiative by

laying down the necessary guidelines regarding different aspects related to the general administration of prisons.

- Lack of Resources – No legislation or policy is faulty by virtue of its origin, as a lot of research is done while framing it. The fault lies in the application and proper implementation of such policies at the ground level. This happens due to the lack of proper institutions and resources at the district level to accommodate such policies of the government. Therefore, the policymakers and the legislature should take such factors into account while framing any policy or law not only related to the administration of prisons, but in overall administration of law and order.
- Contingency Plans – For future crisis, the authorities should frame a proper contingency plan to accommodate any sort of situation which may arise in circumstances of any epidemic. The online proceedings and criminal trials can be of certain assistance in this regard.
- Training & Equipment – Proper inventory of the Personal Protective Equipment should be maintained in such institutions and the jail authorities should hold training sessions of the jail staff for dealing in such situations, regular drills can also be resorted to for ensuring the compatibility of jail staff to deal with such diseases.

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### **Conclusion**

While the adequate measures under various laws are being taken, whether they're of releasing the prisoners, stopping the jury trials and punishing the violators present a never discovered aspect of Criminal justice System around the globe, re-formulation of such laws is mandatory for tackling such crisis situations in future on each corner i.e. penal, preventive and precautionary in nature.

Additionally, as there are reports of ineffective implementation of laws, devising certain rules to manage the instant crisis is the need of the hour. No one operating with a good cause should be punished. As Emily Mooney [points out](#), "*No doubt these policies are well-intended but using fines or jail time to punish people who violate public health restrictions should be avoided in all but the most egregious cases as they are likely to disproportionately harm the poor*".

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