

Short Article

Health Care in Prisons and Detention Homes During COVID-19 Pandemic in India

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Abstract: *The paper deals with the legal framework for the health care in prisons and detention homes during COVID-19 pandemic in India. The World Health Organization has issued Guidance on COVID-19 for Prisons and Detention, 2020 for the health care system to deal with challenges of contagion in the arena of criminal justice system. The National Crime Record Bureau and the Prison Statistics India, 2020 revealed overcrowding and occupancy in jails as formidable threat of infection and transmission. Though the health and human rights envisages highest attainable standard of health among prisoners and detainees, ripple effect on community infection through detainees in detention homes and jails cannot be ruled out. The global outbreak of the COVID-19 has cascading effect on the health of inmates and convicts living in enclosed environments during the pandemic.*

Keywords: *COVID-19, Health Care, Prisoners, Detention Homes, Community Transmission.*

I. Introduction

The COVID-19 pandemic posed daunting challenges for the human right, health care and prison management (1). The rights of prisoners and detainees require a delicate balancing of the right to a speedy trial and safe prison environment and decongestions to contain the contagion of COVID-19 (2). The global outbreak of the COVID-19 has severe implications for the Indian overcrowded prisons. The mortality rate accentuates the potential risk of community transmission of imprisonment and their assimilation in society after the release (3). It estimated that a total of 2,191 such inmates tested COVID-19 positive across Indian jails running with high occupancy rates (4).⁴ A multiple petitions filed in the High Courts and Supreme Court seeking a release of prisoners and health care management in jails. These prisoners of Indian and foreign origin belong to specific categories of undertrials and convicts completing more than two-three. The plea based on the fact that our prisons are 17.6% overcrowded of its capacity. The National Crime Record Bureau (NCRB) reveals that the number of prisons increased from 1,339 in 2018 to 1,350 in 2019, but the occupancy rate did not show a decline (5). The human rights law

grounded in crime prevention and criminal justice also demand provision for the highest attainable standard of health (6). The paper analyses the implication of the health care in prisons and detention homes during the COVID-19 on pandemic and lockdown scenario of India.

II. Human Rights & Medical Ethics

The present crisis involves the interface of human rights, medical ethics and health care delivery among prisoners and inmates (7). There is no denying the fact that the state has a duty of care in detention homes along with the clean environment, health facility and human rights (8). The prison health services are at par with the commitments of Human rights and medical ethics in the holistic framework of the regional and national health care delivery. Article 12 of the Committee on Economic, Social and Cultural Rights, on 1 CESCR enjoins Right to the Highest Attainable Standard of Health serves guiding principles in the outbreak of COVID-19 (9). The *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, 2015 upheld public health measures without discrimination in prisons (10). The *Moscow Declaration on Prison Health as a Part of Public Health* dovetails public health authorities with penitentiary institutions (11). WHO reiterates that these principles contain risk, prevent infection of the diseases within and outside the penitentiary system during COVID-19 pandemic (12). It firmly grounded in human rights and health laws in tune with the international standards and norms in crime prevention and criminal justice (13).

III. WHO Guideline on Prisons

The control of the spread of infection in prisons is essential for preventing COVID-19 outbreaks to the population at large. The WHO *Interim Guidance Preparedness, Prevention and Control Of COVID-19 In Prisons and Other Places Of Detention*, 2020 chart out the strategic mechanism in prisons and detention homes. The Guidelines avoid serious prejudices to health and contagion of COVID-19 in (14). The guidance protects the health of inmates and convicts living in enclosed environments, considering them vulnerable to the COVID-19 disease than the general population. The staff and health care providers working in prisons can prevent and disease outbreak, health and in response to COVID-19 in prisons. Access to information and adequate health care providers should address human rights from mental disorders in such places (15). The correctional facilities should contain COVID-19 transmission within prisons and beyond their walls. This guidance presents the latest evidence about the signs and symptoms of COVID-19 and the prevention and management measures in a prison's specific contexts (16). There is an urgent need to incorporate the objectives of WHO Guideline in Indian prison and detention homes in COVID-19 pandemic.

IV. Trial of Prisoner

Taking into consideration the COVID-19 pandemic scenario and its ripple effect on the spread of infection, the Supreme Court of India switched over to video-conferencing hearings to restrict the human interface and spread of the virus (17). All the states and Union Territories enjoined for the release of prisoners who have jailed up as under trials for offences providing maximum

imprisonment for seven years and also those who have jailed for up to seven years on parole. Furthermore, the restraint has put on the transfer of the prisoners in all cases barring those of decongestion. In the backdrop of the Supreme Court decision state of Maharashtra released 601 inmates from 37 prisons. The Supreme Court directed to constitute High Powered Committees to look into the over-crowding problems in prisons and ordered the release of prisoners on parole or interim bail (18). the Supreme Court In *Re: Contagion of COVID-19 Virus in Prisons* took *suo motu* cognizance for release of foreigners in Assam's detention centres on furnishing a bond of Rs. 5,000 as they have completed one or two years in prison. The intervention of the Supreme Court resulted in freeing of 802 "declared foreigners" in the six detention centres of Assam (19).

V. Release of Prisoner

The judgment owes its genesis in the Supreme Court pronouncement in *Supreme Court Legal Services Committee v. Union of India* (20). The Supreme Court directed that detainees were completing more than three years released on the conditions of the bond of Rs.1 lakh. They are subject to weekly reporting at a police station and provide address and biometric record. In *Re: Contagion of COVID-19 Virus in Prisons Case*, the court applied the same test in releasing the foreign detainees except for the surety of Rs. 1 lakh, a bond of Rs. Five thousand to be paid wake of the COVID-19 pandemic. The Supreme Court took *suo motu* cognizance of COVID 19 positive test reports of 35 children in a shelter Home in Roypuram, Chennai. The Division Bench directed the State of Tamil Nadu to file a status report on the health safeguards for the prevention of COVID-19 and in the children shelter homes across states (21). In *Re: Contagion of COVID 19 Virus In Children Protection Homes*, the Supreme Court *suo motu* cognizance of news reports of 35 out of 57 children in a protection home at Royapuram, Chennai have tested positive for COVID 19. The court ordered for taking preventive measures to protect children from the spread of COVID-19 and directed Juvenile Justices Committees of the High Courts to monitor their health conditions.

VI. Health Rights Of Prosoners

Section 37-39 of the *Prisoners Act*, 1894 contains provisions for the health and treatment of prisoner in jails and hospitals. Chapter VII of the *Prison Manual*, 2016 enunciates the health care of prisoners in jails and detention centres [22]. The National Crime Records Bureau prisons statistics for 2018 reveals unnatural deaths mainly on account of the poor medical care. The Directorate of Health Services has provisions for prison ward in every civil hospital but on the ground these are rarely functional. *Dr S. Radhakrishnan Committee* in 2017 delve deep in to he health rights of prisoners by recommending a team of five medical experts – one gynaecologist, one general physician, one skin specialist, on psychiatrist or a social worker with psychological training and one paediatrician visit jails once for two hours on weekly. These recommendations are yet to be implemented except the fact that the Director of Health Services made it mandatory to civil surgeons to arrange weekly medical check up. the Bombay High court in *People's Union for Civil Liberty v. State of Maharashtra* in 2006 issued guidelines with similar composition as recommended by the Radhakrishnan committee for health care.

VII. Conclusion

The human rights response to the outbreak of COVID-19 upheld public health measures without discrimination of any kind. The under trials and inmates in prisons, detention centres and protected homes are considered more vulnerable to COVID-19 infection. The denial of health care and timely release considered human rights violations under *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, 2015. The World Health Organization reiterated that the *Nelson Mandela Rules and Principles* accorded enforcement in the in prisons during COVID-19 pandemic. The jails and detention authorities under the criminal justice system need to ensure that the inmates and detainees enjoy healthcare access during COVID-19 pandemic and quarantine enforcement. The prisons can not be breeding ground for the corona virus and spread of pandemic among the custodial population of India.

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