

PANDEMIC AND PUNISHMENT

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ABSTRACT

The prevailing pandemic has changed the world completely; it has led to a substantial loss of human life around the globe and has bestowed an unprecedented challenge on public health, food systems and the world of work. Due to the economic collapse, billions of people are at a risk of falling into extreme poverty and nearly half of the world's 3.3 billion workforce is at a risk of losing their livelihoods. The pandemic is not merely affecting public and private sectors but has also been adversely affecting the criminal justice systems all over the world.

During the pandemic, a spotlight has been shone on prisons which have been described as petri dishes of contagion. There were serious concerns that without intervention it would spread rapidly in prisons and modelling estimations by Public Health England made available in late April suggested that, without action, there could be as many as 77,800 cases and 2,700 deaths from a prison population of around 81,000ⁱ. The courts, too, are struggling to adopt procedures to meet social distancing requirements while law enforcement officers must balance their policing duties with efforts to minimize the risk of transmission between themselves and the prison communitiesⁱⁱ.

As the months wear on, states are enacting laws to tackle governance challenges in societies under lockdown, including dealing with new coronavirus-related crimes. The profound impact of the pandemic has not only discombobulated the court proceedings but has also sparked responses that may have long-term implications for the administration of justice. With the global, the world has prioritised health, and rightly so. But in the criminal-justice context, there are serious questions about how the state should prioritise the response.

INTRODUCTION

The pandemic has led to a global health emergency as it can cause respiratory problems, fever, breathing difficulties, pneumonia and, in severe cases, death. Therefore, the spread raises questions about the criminal liability of persons who transmit the virus or risk its spread to others. In a country like Pakistan, where the virus is spreading at a snail's pace, there are no stringent laws to curb the spread and no such Act has been enacted to hold people accountable for being careless and for defying the standard operating procedures formulated by the government.

However, if we observe other jurisdictions, such as Australia, the Federal Minister for Health warned that persons spreading the virus in Australia could face jail time and that deliberate transmission may lead to sentences up to life imprisonmentⁱⁱⁱ. This highlights the role of criminal law in preventing the spread of the virus and in combating the COVID-19 pandemic. It also raises concerns about the scope and spectrum of criminal liability, and importantly, about the implications of human rights and civil liberties.

Criminalisation and imposing sanctions may have positive implications such as masses would think twice before acting recklessly and threatening other people's lives because they would know that they cannot walk away from the gallows acting irresponsibly during the crucial pandemic period. "We are walking a tightrope. We need to find the balance between saving lives from coronavirus, and allowing people the hard won freedoms that are the framework for those lives - such as a right to a private and family life, to freedom of assembly, and to an education. This must go hand in hand with an economic recovery that provides everyone with an adequate standard of living." At the same time, we must protect those many other lives which will be put at risk without access to appropriate health and social care, such as older and disabled people, patients with cancer or with mental health challenges - or risked through the rising rates of domestic violence.^{iv}

BACKGROUND

Legal Developments in other countries amid Pandemic:

In response to the novel coronavirus outbreak, governments all around the world adhered to widespread lockdowns and temporary closure of businesses. As the pandemic surged, complying with restrictions got recognised as the social norm and individuals who breached those restrictions were punished and suffered consequences. However, the Japanese government thought differently and rather than enacting rigid laws, Japan adopted a voluntary policy because the domestic emergency law does not allow the government to enforce pandemic-related restrictions and it turned out to be successful.

The voluntary requests encouraged many to adhere to the restrictions. One potential reason for this success is that adhering to the stay-at-home policy and temporary business closure was nationally recognised as the social norm during the pandemic (hereinafter called “restriction norms”). For example, in a public opinion survey in July, 67% of the respondents agreed to adhere to voluntary restrictions rather than pursuing economic activities while only 25% supported the pursuit of economic activities ([Japan Broadcasting Corporation, 2020](#)). In Japan, the violation of pandemic restrictions was considered as breaking social norms and violation did not engage legal rights of any person residing in that particular state.

Moreover, the global pandemic has affected the prisons, especially in the United States. In the United States, for example, it was reported in early May that prisons comprise eight of the top 10 infected institutions with a single prison in Ohio State identified as the largest known source of coronavirus infections in the country. Since the prisons in the US are already overcrowded with a large number of prisoners, adhering to social distancing is impossible. The overcrowding of prisons is prevalent due to criminal justice policy, not of rising crime rates, and undermines the ability of prison authorities to meet basic human needs such as healthcare, food and accommodation.

Looming threats of pandemic coerced federal and local policymakers to take meaningful steps to protect people in prisons and the general public from COVID-19. The laws have been made

flexible such as to release a large number of people from prison, necessary steps taken to end mass incarceration and various policy changes have taken place during the pandemic like eliminating cruel copays for incarcerated people. Legal developments took place such as the New Jersey legislature enacted a Bill (S2519)^v on October 19th, assented by Governor Phil Murphy that allowed people with less than a year left on their sentences to be released up to eight months early. More than 2,000 people were set free on Wednesday, November 4th, from state prisons and an estimated 10,000 people were released in the following weeks and months. Even the courts of various jurisdictions directed to immediately release prisoners as US prisons were described as a “living hell” during the pandemic, as Aljazeera reported.^{vi} On the other hand, some women screamed and called fake medical emergencies just to get out of their cells where they were packed like sardines.

In June 2020, California State courts reviewed approximately 3,500 people who had been identified for early release from prisons in response to COVID-19^{vii}. Similarly, other States adhered to this technique to mitigate the spread of the virus. In Michigan, the Chief Judge of the Wayne County Circuit Court signed at least 200 orders for administrative releases from March through June^{viii}. These court orders enlighten that during the pandemic when the need for mental healthcare has peaked, the limited services offered in prison have diminished further.

LEGAL DEVELOPMENTS IN PAKISTAN AMID PANDEMIC

Pakistan being a developing country felt the social and economic effects of COVID-19 with greater intensity as the public health system was already struggling with a ratio of one doctor to 963 people and one hospital bed to 1,608 people^{ix}. The COVID-19 pandemic is expected to regress some of the gains Pakistan has made in poverty reduction. Poverty had previously declined from 64.3 percent in 2001 to 24.3 percent in 2015,^x lifting more than 23 million people out of poverty in the past 15 years.

The government of Pakistan responded by allocating a Rs1.2 trillion economic relief package to help support businesses in response to the COVID-19 outbreak. Of this amount, a total of Rs150 billion was allotted for low-income groups, particularly labourers, while Rs.280 billion

(\$1.76 billion) were assigned for wheat procurement. Loan interest payments for exporters were deferred temporarily, while a package of 100 billion rupees (\$63 million) was provided to support small industries and the agriculture sector^{xi}.

Moreover, another concern was the overcrowding of Pakistani prisons and it's not that Pakistan's prisons were dangerously overcrowded before COVID-19 struck. Amnesty International and Justice Project Pakistan urged state departments to urgently submit lists of prisoners at risk who can be eligible for early, temporary or conditional release and recommended to immediately and unconditionally release all prisoners detained solely for the peaceful exercise of their human rights.

In response to all these threats, each province of Pakistan relied on different laws to deal with the coronavirus pandemic. On 27 March 2020, the Province of Punjab promulgated the Punjab Infectious Diseases (Prevention and Control) Ordinance of 2020. In the Province of Sindh, the relevant law for the prevention of the spread of dangerous epidemic diseases is the Sindh Epidemic Diseases Act, 2014. In the province of Khyber Pakhtunkhwa, the Government has taken cover of the Provincial Disaster Management System under the National Disaster Management Act of 2010 as amended through the National Disaster Management (Khyber Pakhtunkhwa) Amendment Acts of 2012 and 2019. The Government of Balochistan has been relying on the West Pakistan Epidemic Diseases Act, 1958; the Federal Capital Territory of Islamabad has relied on a combination of the West Pakistan Epidemic Diseases Act, 1958 and the National Disaster Management Act, 2010^{xii}. Emergency allocation of funds and legal amendments took place as a result of the raging pandemic and to make sure that protections are proportionate, measured, and rooted in science and the law. Any changes that restrict people's rights must be flexible, with review and end points, and remain open to challenge. If we want to protect public health and save lives, then changes need to complement or enhance our human rights, not treat them as optional.

CONCLUSION

The preventing measures adopted in Australia were tyrannical, even the premier explicitly stated that any individual acting recklessly must face full force of the law and harsh penalties. Legislators and other relevant departments in Australia must exercise restraint and caution when enacting and implementing criminal laws to ensure they don't infringe fundamental human rights.

Although Japan formulated State friendly policies and considered public interest in order to curb the spread rather than resorting to legal sanctions, Japan was surprisingly quite successful as people extended their full support. The Japanese government believed that the infringement notices and the use of some police powers may be adequate and necessary to enforce public health orders; the use of criminal law and punishment must be the last resort.

In the United States of America, things were not going in the right direction despite enacting various laws and developing social policies in order to control the raging pandemic. Partisan politics is prevalent in the US as democratic lawmakers have urged the State agencies to once again impose stricter social distancing guidelines to continue curbing the spread of the coronavirus, while many Republicans say that continued lockdown measures will cater the US economy.

Pakistan has successfully flattened the coronavirus curve despite having limited resources and timid laws. The World Health Organisation Chief Tedros Adhanom Ghebreyesus appreciated Pakistan's response to the pandemic as the state suppressed the virus while keeping the economy afloat. Pakistan also promulgated the relevant laws as mentioned above to ensure legal enforcement so that people paying no heed to the laws shall face the music.

ENDNOTES

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- ⁱ Covid-19: how is it impacting prisoners' health? Published on 22 June 2020 by Dr Marianda Davies <https://www.nuffieldtrust.org.uk/news-item/covid-19-how-is-it-impacting-on-prisoners-health>
- ⁱⁱ Global Initiative against transitional organised crime , Posted on 03 Jun 2020 <https://globalinitiative.net/analysis/pandemic-and-punishment/>
- ⁱⁱⁱ Tom Stayer , ‘ People Who Deliberately Spread Coronavirus to Health Workers Face Life in Prison, Government Warns’, *SBS News* (online, 8 April 2020) <<https://www.sbs.com.au/news/people-who-deliberately-spread-coronavirus-to-health-workers-face-life-in-prison-government-warns>>.
- ^{iv} <https://www.equalityhumanrights.com/en/our-work/news/covid-19-restrictions-and-effect-human-rights> Equality and Human Rights Commission , Published on 22 September , 2020
- ^v Governor Murphy Signs Legislation Requiring Public Health Emergency Credits To Be Awarded to Certain Inmates and Parolees During a Public Health Emergency. www.nj.gov/governor/news/news/562020/20201019c.shtml
- ^{vi} Prisoners and their families describe the emotional, physical and financial toll of the pandemic. By Daniel Moritz-Rabson , 26 February , 2021. <https://www.aljazeera.com/features/2021/2/26/a-living-hell-inside-us-prisons-during-the-covid-19-pandemic>
- ^{vii} California to release 3,500 inmates early as coronavirus spreads inside prisons , Los Angeles times. <https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons>
- ^{viii} The chief Judge of the Wayne County Circuit Court signed at least 200 orders for administrative releases from March through June. https://courts.michigan.gov/news-events/press_releases/pages/press-release-archive.aspx
- ^{ix} Economic Survey 2018-19, Ministry of Finance .It was announced on 4th July 2019. <https://www.ibef.org/economy/economic-survey-2018-19>.
- ^x World Bank. 2018. From Poverty to Equity - Pakistan at 100. Washington, DC: World Bank. <https://documents1.worldbank.org/curated/en/868741552632296526/pdf/135319-WP-P163618-14-3-2019-20-44-35-PakPNFromPovertytoEquityFinal.pdf>.
- ^{xi} Coronavirus Legislation Pakistan ; Authors Jawad Sarwana, Anees Ahmed, Bilal Channah and Ayesha Noureen <https://www.coronavirus-legislation.com/home/pakistan>
- ^{xii} Coronavirus Legislation Pakistan ; Authors Jawad Sarwana, Anees Ahmed, Bilal Channah and Ayesha Noureen <https://www.coronavirus-legislation.com/home/pakistan>