[Asad Gulzar](https://www.thenews.com.pk/writer/asad-gulzar)

June 14, 2021

**Imprisoned in a pandemic**

During these uncertain times, it is easy for the general population to disregard the bolted away populace of our general public. Inside the criminal justice system of our country, detention centers and penitentiaries create a unique populace that is frequently more vulnerable to the spread of any contagious disease. These prisons are notoriously overcrowded with an underwhelming infrastructure, where prisoners can regularly be in extremely close proximity with each other.

With around 10.3 million individuals detained in penitentiaries globally and around 80,000 in Pakistan, prisons risk turning into breeding grounds for Covid-19, particularly developing countries like Pakistan. As the greater part of the penitentiaries in our country are crammed way past their authorized capacity, the consistently increasing jail populace remains profoundly powerless against getting infected by Covid-19, as social distancing in such overcrowded places is virtually impossible.

A bare perusal of the Pakistan Prison Rules would illustrate that Pakistan does have, theoretically, the essential legal infrastructure and a regime of laws that would help prisoners during the Covid–19 pandemic. The said Rules have expressly laid down the protocols to be followed in prisons, in case of a viral outbreak which includes procedures for vaccinations, isolation and disinfection. More specifically, Rule 786 to 808 deals with the medical protocols and treatment of the prisoners and expressly states that a medical practitioner has to be present at jail premises at all times.

Unfortunately, the problem lies with the practical application of the law. Another glaring example of this is the fact that the government of Pakistan through its Ministry of National Health Services, Regulations and Coordination on Dec 4, 2020, has already issued a comprehensive set of guidelines for the jail population and prison staff titled ‘Health and Safety Measures for Pakistani Prisons and Prisoners with Reference to Covid-19’ – which echoed the guidelines issued by the World Health Organization (WHO) to provide health & safety measures for protecting the health and wellbeing of people detained in prisons, prison staff, and visitors.

The said guidelines expressly list down, amongst other things, the standard protocols for hygiene, screening, social distancing, symptomatic and asymptomatic cases etc. However, the everyday implementation of these measures is yet to be observed as being implemented. These guidelines recognized the vulnerability of the prisoners being at risk of contracting the virus, being confined within close proximity to one another along with a compromised immune system due to malnourishment and poor hygiene. However, according to the medical journal, ‘Annals of Medicine and Surgery’ (Volume 57), general preventive measures were not followed in letter and spirit nor were masks, soaps and sanitizers distributed uniformly amongst the inmates. Furthermore, prisons, especially in rural areas, still lack basic medical facilities to combat the virus.

Another factor that needs immediate redressal is the effects of the Covid-19 pandemic on the mental health of the prisoners. Work and activities in prisons are often scarce, yet they are a key component of the prisoners’ rehabilitation process and everyday life – for instance, schooling, training and cultural activities. Now that restrictions have been placed due to the pandemic, prisoners often find themselves alone and isolated for weeks. Similarly, prisoners are now unable to meet family members frequently due to restrictions on visitation hours. Moreover, there was a time when food and other essential items could easily be delivered to inmates; however, the same has become a rarity due to the pandemic. All of these factors combined must have an adverse and intangible effect on the mental health of the prisoners.

Last year, the Islamabad High Court came to the aid of the prison population by ordering en-bloc release of the prisoners falling within the eligible criteria of release as per the guidelines of the WHO and following examples of other foreign jurisdictions. The Supreme Court, however, reprimanded the high courts for such “wholesale” release and, amongst other things, stated that the prisoners are in fact much safer inside jail cells. It is imperative to note the constant flow of the staff going to and from jail premises, and detainees leaving prison premises to attend court hearings leaves the door open for Covid-19 to be brought into the system. Perhaps, the need of the hour is for the apex court to review its order dated April 7, 2020 in light of the current fatalities being caused by the pandemic, which returned with a vengeance.

At the time of writing this article, more than 3000 inmates had tested positive for the virus in Pakistan. It should be noted, however, that prison officials are neither too accommodating nor transparent in sharing data with non-state organizations or ‘outsiders’. According to a report titled ‘Prisoners of The Pandemic’ published by Amnesty International, Pakistan is on the list of nations whose jail centers lack necessary precautionary tools to minimize the effects of the spread of the virus. Detainees are said to struggle getting basic items like soap, sanitizers and even access to clean water or rudimentary facial masks. It is no secret that outside agents and other independent monitoring bodies such as civil society, lawyers and the prisoner’s families are alarmingly helpless in getting access to prisons due to strict lockdowns and fear of spreading/contracting the virus.

Now that the vaccines have begun to roll out and major jails in Sindh and Punjab have started vaccinating the elderly prison population, it is pertinent that all the detainees are given the option to complete their inoculation, regardless of age and location of the prison. The same can be upheld by Article 9 of the constitution of Pakistan wherein it is expressed that the security of an individual is a basic right, alongside equality of all citizens revered under Article 25.

Under the fundamental right to health, the option to get the Covid–19 vaccinations should be available in sufficient quantities within the state to the entire prison population. This means making the vaccine accessible to all prisoners, without any social or fiscal discrimination; provided respectfully as per the medical code of ethics. To be deemed ‘accessible’, the vaccination facilities and services must be in reach to all, especially the most vulnerable and marginalized sections of the population – the prison population.

At the end of the day, we cannot turn a blind eye to the fact that prisoners are human beings too, and being ‘wards of the state’, they are entitled to fair and equal treatment in respect of all their rights as citizens under the law, the constitution and principles of natural justice. Non-observance of instructions contained in Jail Manual(s) and Prison Rules, in respect of rights and facilities to be provided to prisoners in case of a viral disease, is not only a violation of human rights of the prisoners but also a grave legal and constitutional violation. In addition, we should likewise ensure that pandemic-triggered lockdowns and limitations don't turn into a norm in jails, which can conceivably be kept implemented indefinitely if left unaddressed by the state and autonomous associations.

The writer is a Bertha Justice Fellow for the Foundation for Fundamental Rights (FFR).