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Lock Unlock: The Impact of COVID-19 on Health Security in Pakistani and Indian Prisons

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ABSTRACT

This paper assesses the state of COVID-19 in the Pakistani and Indian prison systems. Using publicly available data, governmental documents, media, and non-profit organization reports, and scholarly literature, we provide an overview of COVID-19 in each country and the current state of each nation's prison system. We then analyze the impact of the novel coronavirus on the corrections systems and each government's response to the virus in its prison infrastructure. The pandemic provides both Pakistan and India with the opportunity to change course and move toward a more sustainable prison system that protects human rights while bolstering health security.

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Introduction

On December 31, 2019, the World Health Organization (WHO) was notified of a cluster of pneumonia cases with an unknown cause originating in Wuhan, China. One week later, China identified a new coronavirus (2019-nCoV) as the cause of the quickly spreading outbreak. Nepal reported its first case of 2019-nCoV on January 24, 2020, marking the first confirmed case in South Asia. Sri Lanka and India followed with confirmed cases three and six days later respectively. Within weeks, COVID-19 had evolved into a global health crisis, being declared a global pandemic by WHO on March 11, 2020. As the pandemic progressed, much attention was paid to COVID-19 from the lens of health security, specifically of nations. In some nations, debates over virus-mitigation plans quickly coalesced around economic priorities, while others took a stronger non-traditional security approach, which emphasizes the promotion of human-focused security (Caballero-Anthony, 2016).

Within the criminal justice system, detention facilities create unique populations that are often more susceptible to the spread of disease. These centers approximate small-world networks, where residents can often be connected to one another using relatively short distance lengths; however, the constant flow of staff entering from the outside world creates opportunities for COVID-19 to be introduced into the system. Based on the theory of hyperdyadic contagion, once introduced into the system, a contagion would be expected to quickly diffuse through a network, creating ripple effects toward new individuals, increasing infection (*see*: Christakis & Fowler, 2009). This principle has been applied in multiple contexts, including the spread of violence, resources, and most relevant, viruses (*see*:

Bichler et al., 2019; Firestone et al., 2011; Green et al., 2017; Van Mieghem et al., 2008). Thus, theoretically and practically, prison populations are at heightened risk for exposure to the novel coronavirus. This paper assesses the state of COVID-19 in the Pakistani and Indian prison systems. Although eight countries are commonly included operationalization of the South-Asian region,¹ the current manuscript focuses primarily on India and Pakistan. In the subsequent sections, we discuss COVID-19, the prison systems, and the impact of the pandemic on the prisons in both countries. Although both nations have worked to forge unique identities, the ongoing prison conditions and the current health crisis underscores similar challenges, perhaps representative of the South Asian region.

COVID-19 in Pakistan

COVID-19 precipitated a severe health crisis in Pakistan. The International Crisis Group (2020) places Pakistan among the twelve countries hardest hit by coronavirus, largely attributed to the federal government reopening the country too early. As was the case in multiple countries, the pandemic hurt Pakistan's economy, which prompted Prime Minister Imran Khan to prematurely lift the nation-wide lockdowns on May 9, despite a continued surge in positive tests for the virus throughout the country (Gannon, 2020; TRT World, 2020b). Even Pakistan's Supreme Court weighed economic concerns in its ruling that all stores and shopping malls could immediately open, stating that the government cannot keep stores closed (Shah, 2020). However, lifting restrictions catalyzed existing trends, severely expanding the health security threat for the country. In fact, observers note that this policy decision has done little to improve the country's economic situation. On the contrary, Pakistan's already "ill-equipped and under-funded health systems" (International Crisis Group, 2020, p. 1) were quickly overwhelmed, threatening hostility and resentment amongst the citizenry. In the month following the easing of restrictions, Pakistan reported over 100,000 new cases, with media reporting that some hospitals closed their gates as they were at maximum capacity and medical care providers were contracting the virus at increasing rates (ur-Rehman et al., 2020). This is particularly problematic, as it provides ammunition for fringe and militant elements operating within the state to garner support for their political objectives.

Predicting a depression of growth by 2.5%, the United Nations Development Programme (2020) called for a political commitment from all countries to combat severe economic consequences while ensuring that the most vulnerable populations receive the aid they needed. However, country-level responses to the pandemic around the globe became grid-locked due to conflict between political factions. Specifically, the Pakistani Prime Minister's Tehreek-e-Insaf government maintained somewhat strained relations with the country's largest opposition parties (*see*: Mukhtar, 2020), the Muslim League and the Pakistan Peoples Party, resulting in conflicting policy and mixed messaging.

For example, on March 23, Sindh Province, the only territory held by opposition parties, clashed with the central government when it became the first territory to implement a province-wide lockdown (International Crisis Group, 2020). This ran contrary to PM Khan's fear that a country-wide lockdown would result in the roughly 25% of Pakistanis already living below the poverty line being forced to remain at home without means of income (Maqsood, 2020). However, just one week later, Khan was forced to reckon with increasing case counts and moved the country into a national lockdown. In an attempt to

provide direct relief to those affected by the lockdown and ongoing health crisis, the government issued payments to a large number of citizens (Maqsood, 2020), a policy implemented by multiple countries, such as Spain, Denmark, France, and the United States (Kaplan, 2020). Citing economic reasons, Khan opened the country back up on May 9, and in the month after, cases quadrupled in Pakistan, bringing the total death count up to 2,356 people (ur-Rehman et al., 2020). The Prime Minister cited economic reasons for reopening, noting that his government could not afford to continue providing cash hand-outs to the approximately 150 million people affected by Pakistan's shutdowns, noting also an anticipated 30% shortfall in government revenues. Khan cited rhetoric from American president Donald Trump, describing that 100,000 deaths occurred in the United States but that country also had decided it would also collapse if under a lockdown (Ray, 2020); however, in doing so, the Prime Minister failed to account for the fact that the health systems of the two countries have extremely different capacities, though in many of the U.S.'s hardest hit areas, hospitals also were unable to meet the needs of their local communities (see, e.g. Hutchinson & Margolin, 2020). In early July 2020, Pakistan opened its borders for trade, once again increasing the possibility of cross-border spread. The ongoing crisis has seriously impacted all Pakistani citizens. However, given the focus of this paper, in the next few sections we describe the prison system in Pakistan followed by how the pandemic has impacted it.

Prisons in Pakistan before COVID-19

Pakistan is the fifth most populous country in the world with a population of 220 million (Worldometer, 2020b). Pakistan's five provinces each have four categories of prisons: central prisons, special prisons, district prisons, and sub-jails (Zhang, 2017). Pakistan has a total prison population of 77, 275 with an occupancy rate of 133.8% in 2019 (World Prison Brief, 2020). Pakistan's prisons are over-populated by nearly 34%, holding approximately 20,000 incarcerated individuals over capacity across Pakistan's 114 jails (Human Rights Watch [HRW], 2020a; Justice Project for Pakistan [JPP], 2020a; World Prison Brief, 2020). At least 62% of prisoners are currently under trial,² meaning that over half of the country's incarcerated population has not even been convicted of a crime. JPP (2020a) reports that at least 1,500 incarcerated individuals are at the age of 60 or over. Females represent 1.6% of Pakistan's prison population, while juveniles represent 1.7%.

These numbers starkly indicate the over-crowding in prisons which could lead to unhygienic conditions even in normal times. The Justice Project for Pakistan (JPP) (2020a) reported that justice-involved individuals in Pakistan are subject to over-crowded prisons, where they are "cramped in tiny cells with no proper hygiene facilities, making them more vulnerable to contagious diseases." Past reports have documented severe deficiencies within Pakistani prisons, including inadequate toilet facilities and lack of access to clean drinking water (Dawn, 2013). Based on these reports, prisoners in Pakistani are subjected to conditions that do not promote proper hygiene and health behaviors.

While the prison system is already under-staffed generally, the total number of health-care vacancies is approximately one per jail. This could be problematic for organizational climate, decreases in which have been correlated with decreased commitment to the organization by staff (Kras et al., 2019). There are currently 108 vacant positions for medical officers in Pakistan's prisons (JPP, 2020a; United Nations Office on Drugs and Crime

[UNODC], 2020), indicating the lack of proper healthcare available to the prisoners. Consequently, in addition to prisons themselves posing an increased risk to those housed within them, current data suggest that the system is ill-prepared for outbreaks within the institutions. This effect is magnified because Pakistani prisons are already deficient in providing proper hygiene to incarcerated individuals. This problem is further exacerbated at the local level. For example, 10% of the prisons in Punjab do not have access to ambulances (JPP, 2020a); this means that these facilities are unable to transport individuals for emergency care.

Community corrections in Pakistan

Pakistan's community corrections system primarily includes probation and parole which are attached to the provincial Home Departments in Punjab, Sindh, Balochistan, and Khyber Pakhtunkhwa. A Director of Reclamation and Probation heads each Provincial Directorate, supported by Deputy Directors and Assistant Directors, probation and parole officers, office superintendents, and other administrative and support staff (Penal Reform International, 2012). While each province has some differences in operations, they are governed by the Probation of Offenders Ordinance 1960/Rules 1961.

The Good Conduct Prisoners' Probation Release Act, 1926, and its Rules, 1927, along with certain executive orders for implementation govern parole releases in Pakistan. These releases are primarily to allow prisoners to serve the last portion of their sentence in the community after completing a mandatory period in the prison. The main difference between probation and parole in Pakistan is that probation is given/revoked by the judiciary and parole is authorized/revoked by the Executives. The probation and parole population is not uniformly reported across all provinces. Punjab, the most populated province of Pakistan, reported 44,437 probationers and parolees under their jurisdiction in 2017-2018 compared to a prison population of 50,226 (Altaf et al., 2018). The introduction of the National Judicial Policy (NJP) 2009 led to significant progress in the use of probation as an alternative measure to detention in the country with steadily an increasing number of probationers leading to an almost even split in parole/probation and prisoner populations in the Punjab province (Mahmood, 2016).

However, probation and parole are grossly underfunded compared to prisons. Altaf et al. (2018) report that the annual spending of the Prisons Department per prisoner in 2017-2018 was 18,561 Pakistan Rupee (US \$111.92), whereas the annual spending of the Reclamation and Probation Department per probationer/parolee was 3,381 Pakistan Rupee (US \$20.39) clearly indicating the cost-savings of community corrections. The scarcity of official data makes it difficult to assess whether probation and parole are uniform within and across provinces and these alternative approaches have been largely neglected in the criminal justice system of Pakistan (Mahmood, 2016).

Prisons in Pakistan during COVID-19

Given the overcrowding in prisons, it would be almost impossible to enforce recognized best practices – such as social distancing, increased use of hand sanitizer, washing hands with soap and water – for minimizing risk in prisons. Overcrowding in prisons coupled with poor hygiene has longitudinally posed significant risks to health security in the

country's prisons. The COVID-19 pandemic tests the limits of the Pakistani prison system's ability to mitigate threats for its population. Because of structural problems in the system, the high levels of positive cases during the pandemic were not unexpected.

Pressure has been mounting on Pakistani authorities to engage in transparent reporting of the prevalence of COVID-19 and testing protocols within the country's prison system. Amnesty International (2020a) reported that on April 21, 2020, one month after the first reported case of COVID-19 in a jail in Lahore, the government confirmed at least 97 incarcerated individuals nationwide had contracted COVID-19; however, the government revised this number to 86 just five days later without explanation. This abrupt revision undermined the legitimacy of the government's official reporting, raising concerns of biases in the official data being presented. This is in contrast to calls from prisoners where approximately 150 prisoners were expected to have contracted the virus in March 2020 (TRT World, 2020a). While Amnesty International (2020a) reports no additional official updates from the government, the Justice for Pakistan Project (2020a) reports that at least 1,890 Pakistani prisoners have tested positive and three have died of COVID-19.³ No official reports have been released by the Pakistani government on the number of justice-involved individuals who have recovered from the virus.

A descriptive analysis of the available data suggests a disproportionate prevalence of the virus within Pakistan's prison population, as shown in Table 1. While the Pakistan prison population accounts for approximately 0.035% of the Pakistani population, incarcerated individuals represent over 18.31 times that ratio for testing positive for the novel COVID-19. This is theoretically expected through the lens of network science, as contagions are expected to diffuse through networks more quickly when the 'shortest path' when traveling from person-to-person remains quickly traveled (i.e. betweenness centrality, *see*: Freeman, 1977). Death rates amongst incarcerated individuals, based on available data, approximate similar trends to the broader Pakistani population. Thus, Amnesty International's (2020b) warning from March 2020 when the first inmate in Lahore was confirmed to be positive for COVID-19 that "Pakistani prisons and detention centers could become hotspots for the transmission of coronavirus" appears to have been merited. However, more reliable data and further analysis are needed to draw definitive conclusions of trends within the prison system.

Care should be taken to contextualize these figures. Specifically, data on prisoner positive rates and fatalities are reliant on data compiled by the Justice for Pakistan Project. This is currently the best available data to assess the impact of COVID-19 on Pakistan's prison system, but it is highly likely that reported cases do not account for the 'dark figure of COVID-19,' a concern that is heightened by the Pakistani government's failure to release transparent data on testing protocols and administration within the prison system. Thus, we

Table 1. Comparing Pakistan's general and prison populations against COVID-19 measures.

Category	Pakistan Prison Population	Population of Pakistan	Ratio (%)
Population	77,275	220,892,340	0.035
COVID-19 Positive Tests	1,890	294,638	0.641
Death from COVID-19	3	6,274	0.048

Data on Pakistan's population and COVID-19 case and death counts was pulled from the Worldometer data and represents the reporting as of 7:15PM CST on August 27, 2020 (Worldometer, 2020a, 2020b). Data on Pakistan's prison population comes from the Justice for Pakistan Project (JPP, 2020a).

should consider these figures to be conservative estimates, with ratios representing minimum thresholds though likely far higher in reality.

Because of the exorbitant risk Pakistan's prisoners face, various groups have called for the Government to take immediate steps to protect vulnerable populations. For example, the Legal Rights Forum [LRF] (2020) cites the International Covenant on Economic, Social and Cultural Rights (ICESCR) as the foundation for justifying why the Government has a duty to protect prisoners in the country. Similarly, the Justice Project for Pakistan (2020b) cites the Nelson Mandela Rules declaring prisoner healthcare as a responsibility of the state (*see also*: UN General Assembly, 2015). Both reports highlight several recommendations that the government could implement to better address safety during the health crisis. Among others, both reports argue that prison populations could be reduced, with special care taken to release those most at risk.

Specifically addressing this issue, in March 2020, the Islamabad High Court ordered the release of "under-trial prisoners alleged to have committed offences falling within the ambit of the non-prohibitory clause are admitted to bail, subject to furnishing such surety or security as may be deemed appropriate by an officer authorised in this regard by the Deputy Commissioner, Islamabad Capital Territory," also directing Islamabad police to not arrest individuals for petty offenses (Asad, 2020). While a somewhat controversial decision, the ruling would have resulted in at least 408 prisoners convicted of minor offenses being released from Adiala jail (Geo News, 2020). Additionally, the court ordered police to refrain from "unnecessary events" (Asad, 2020). Such a move is a drop in the ocean in the context of the country's 20,000 incarcerated individuals above the maximum operating capacities of Pakistani prisons. However, it set legal precedent for other states to follow suit, which could result in a larger long-term impact on Pakistan's justice system. The Sindh High Court also ordered the release of just over 800 prisoners that had not yet been convicted (JPP, 2020b). In addition to reducing the risk of contracting COVID-19 for a large number of individuals, many of whom are not yet actually convicted of a crime, the prison reductions could help address the overcrowding in the system more broadly, creating opportunity for the implementation of a framework for increased sanitation standards. The Islamabad High Court's decision was promptly appealed to the Supreme Court of Pakistan sparking criticism from the Pakistan Bar Council (Geo News, 2020).

In April 2020, the Supreme Court recommended the release of prisoners currently under trial who are charged with "offences under non-prohibitory clauses, vagrancy law, or offences carrying less than three years sentence may be considered for bail: 1) Persons suffering from ailments or physical or mental disability, 2) All women and juvenile under-trial prisoners, 3) Under-trial prisoners who are 55 years of age or older, and 4) Other male UTPs provided there is no history of past convictions" (JPP, 2020b). Although it contributes to prison population reduction, the order excludes several categories of at-risk populations. For example, the Supreme Court explicitly addresses those currently under trial, but provides no provision for those who have been convicted. Past research has found that prisons have engaged in risk-based assessments in determining which prisoners could be released during the pandemic (Lofaro & McCue, 2020), bolstering the case for including non-violent offenders in such orders. The Supreme Court's intervention to block the release of prisoners ordered by a High Court is not unique to the Pakistani context. In June 2020, the U.S. Supreme Court blocked an order from a federal judge that would have released over 800 prisoners at risk of COVID-19 in Ohio (COVID-19 World News, 2020). In both

situations, the politicization of criminal justice reform likely impacted decision-making, with the Supreme Court of the respective countries handing victories to the governing parties.

Advocacy groups have urged for Pakistan to take even further steps to protect prisoners, including releasing all individuals convicted for minor or non-violent offenses, release all individuals awaiting trial, and to release all prisoners over the age of 60 who meet specific criteria (LRF, 2020). Additionally, groups have called for increased release of prisoners who are mentally ill or disabled and for women and children who have yet to be convicted (JPP, 2020b; LRF, 2020). Ultimately, concerns remain for the safety of Pakistan's prison population, with heightened frustration over the country's lack of protections for its vulnerable populations and the reopening of the nation while unable to stop the spread of COVID-19 within its borders.

COVID-19 in India

India is the world's second most populous country with a population nearing 1.37 billion (Worldometer, 2020d). At the time of writing this paper, India's recorded coronavirus case total surpassed that of Brazil, making it the second worst-affected country in the world after the United States (Pathak, 2020). India recorded 90,802 new cases and the highest one-day increase in new cases anywhere in the world since the pandemic began. India's total cases are now more than 4.2 million (Pathak, 2020). Indian politicians widely tout the current rate of deaths per hundred thousand people (5.3) being lower than that of United States (57.75), United Kingdom (62.63), & Peru (92.80), but India's rate is much higher than its immediately neighboring countries such as Pakistan (2.99), Bangladesh (2.78), and Nepal (1.03) (John Hopkins University, n.d.).

On January 31, 2020, in its first situation report of the novel coronavirus (2019-nCoV), WHO (2020a) declared the virus a Public Health Emergency of International Concern (PHEIC). At that time, India had one case of COVID-19 in the State of Kerala as a result of travel to China. Since then, the numbers have increased exponentially with the 209th WHO situation report dated August 17th, 2020 confirming 2,589,682 cases and 49,980 deaths in India (WHO, 2020b). Testing has significantly improved with 969 labs in the government sector and 501 private labs testing about 30,041,400 samples to date with 731,697 samples tested on a single day on August 16, 2020 (WHO, 2020b). These numbers, however, may not reflect the true magnitude of cases in India. The stigma resulting from testing positive has resulted in many people trying to manage their symptoms without subjecting themselves to testing. A recent antibody study conducted in five areas of Pune (a city in Western India) revealed that 51.5% of residents tested positive, with one of the areas reporting 65% (the threshold for herd immunity). A similar study conducted a few weeks back in the nation's capital city, New Delhi, indicated positive antibody tests for 29% of people which translates to about 6 million infections. In sum, the number of cases confirmed positive tests, antibody tests, and projected increases point to a grim few months ahead (Thevar, 2020). The large youth population of India (35% of its population of 1.2 billion) aged between 18 and 24 years is expected to mitigate the deaths resulting from the COVID-19 virus, the question that remains to be answered in the forthcoming weeks is whether India will lead the world in the total number of cases and total number of deaths.

The government's response in India has been characterized by dramatic moves without much forethought. India did a test-run of a national 14 hour "Janata Curfew" on March 22 and went into full national lockdown on March 24, putting restrictions on the movement of nearly one-and-half billion Indians for two months. These actions were taken without foresight and had a devastating impact on millions of unorganized migrant daily-wage workers who live from hand to mouth. Left without a source of income, or means to travel, there was a mass exodus of almost ten million people returning to their villages, many of them walking or cycling hundreds of miles. The nationwide lockdown imposed by the Government of India banned people from stepping out of their homes; closed all shops and services except for pharmacies, hospitals, groceries, and essential services; closed all commercial and private businesses allowing only work-from-home; suspended all educational institutions; closed all religious institutions and places of worship; suspended all non-essential transport and prohibited all kinds of public activities including political, social, religious, cultural, and entertainment. This early closure was lauded by experts and health officials, but the impact on the economy resulted in the government relaxing these measures much before the pandemic could be contained.

The lockdown and unlock dates shown in Table 2, observed in relation to the growth of number of cases as indicated in Figure 1, clearly indicate that, like with Pakistan, while India did well in initiating the lockdown, it opened up too soon. Given the large population of the country and high population density, opening up of the country through its UNLOCK phases has been largely unsuccessful with new cases rising at a rapid rate since the country launched its first opening up through UNLOCK-1 on June 1, 2020.

COVID-19 is predicted to plunge the global economy into its worst recession since World War II and its impact on India will prove to be catastrophic. Despite the economic recovery packages put forth by the Indian government, the International Labour Organization (2020) projects that 400 million people in India are likely to fall into poverty

Table 2. Timeline of India's lockdown and reopening phases.

Nationwide lockdown:

- Phase 1: 25 March 2020 – 14 April 2020 (21 days)
- Phase 2: 15 April 2020 – 3 May 2020 (19 days)
- Phase 3: 4 May 2020 – 17 May 2020 (14 days)
- Phase 4: 18 May 2020 – 31 May 2020 (14 days)

Unlock:

- Unlock 1.0: 1 June 2020 – 30 June 2020 (30 days)
- Unlock 2.0: 1 July 2020 – 31 July 2020 (31 days)
- Unlock 3.0: 1 August 2020 – 31 August 2020 (29 days)

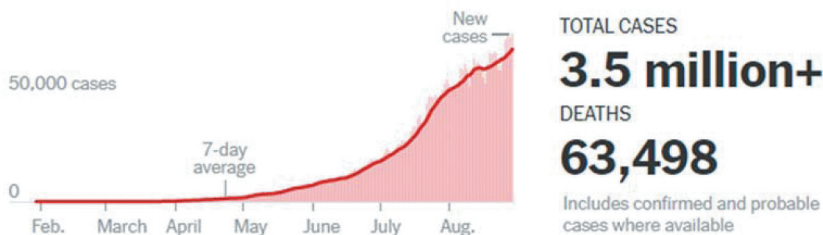


Figure 1. Growth Curve of India's COVID-19 cases.

Note: Image credit: (The New York Times, 2020).

as a result of the economic stoppage caused by the pandemic. While the global GDP is expected to contract by 5.2% (The World Bank, 2020), it is projected that India's economy will contract by 20% in the first quarter of the fiscal year (PTI, 2020). In an effort to mitigate the financial losses and bolster the country's economic security, the government's UNLOCK-4 plans will allow metro trains to resume services from September 7 and political, social, and religious congregations of up to 100 people will be permitted from September 21 (Arora, 2020).

The initial hotspots of COVID-19 in India were in large metropolitan areas, but the pandemic has now diffused to the farthest corners of the country. India's prisons are also now looking at the possibility of becoming the biggest virus clusters given the large number of people living in close proximity.

Prisons in India before COVID-19

In India, the State Governments are exclusively responsible for the management and administration of prisons. They are guided by the Prisons Act of 1894 and each state government has its own prison manual (Ministry of Home Affairs, n.d.). The individual states have the primary responsibility of prisons and have the authority to change any prison laws or policies in their respective state prison systems. For the past two decades, India has been trying to reform its prison system with advisory committees, commissions, and training institutes. The primary issues driving the reform are "overcrowding, prolonged detention of undertrials, unsatisfactory living conditions, staff shortage, poor training, corruption and extortion, inadequate social reintegration programs, poor spending on healthcare and welfare, lack of legal aid and allegations of indifferent and inhuman approach of prison staff among others" (Lok Sabha Secretariat, 2017, pp. 3–4).

In 2019, there were about 478,600 people in prisons and jails in India at an occupancy rate of 118.5% (NCRB, n.d.). The 1,350 prisons referenced in the 2019 data include 617 Sub Jails, 410 District Jails, 144 Central Jails, 31 Women Jails, and other specialized types of jails. The highest number of inmates were lodged in various Central (46%) and District Jails (43%) whose occupancy rates exceeded capacity. Overcrowding and high occupancy rates have been a consistent problem in Indian prisons as demonstrated by the data in Table 3.

Most prisoners in India are male (96%), and 70% of the total prison population comprises under-trial prisoners. India ranks 15th out of 217 countries in under-trial incarceration (Tata Trusts, 2019). Table 4 shows the annual ratio of prisoners undertrial to those convicted of a crime. This statistic is rather alarming as it represents those who have been locked up without a conviction. Illiteracy, poverty, and lack of understanding of the

Table 3. India's prison type & occupancy.

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the End of the Year	Occupancy Rate at the End of the Year
2017	1,361	391,574	450,696	115.1%
2018 [#]	1,339	396,223	466,084	117.6%
2019 [#]	1,350	403,739	478,600	118.5%

Image credit: Recreated from NCRB (n.d.). Numbers represent data provided by States/UTs. [#]Due to no data being received from West Bengal in 2018 and 2019, data provided for 2017 was used. Figures represent levels as of December 31st for each respective year.

Table 4. India's prisoner types & demography.

Year	No. of Convicts	No. of Under-trial Prisoners	No. of Detenues	No. of Other Inmates	Total No. of Prisoners
2017	139,149	308,718	2,136	693	450,696
2018 [#]	139,488	323,537	2,384	675	466,084
2019 [#]	144,125	330,487	3,223	765	478,600

Image credit: Recreated from NCRB (n.d.). Numbers represent data provided by States/UTs. [#]Due to no data being received from West Bengal in 2018 and 2019, data provided for 2017 was used. Figures represent levels as of December 31st for each respective year.

prison system coupled with police corruption and the huge backlog in court cases results in many prisoners languishing in the prison for a very long time without legal recourse.

Prisoners consistently have lower life expectancy and higher health risks due to unsanitary conditions in prisons and lack of healthcare. As noted in the recent Tata Trust (2019) study, prison populations have comparatively higher rates of diseases such as HIV, STD, Tuberculosis, and Hepatitis B & C compared to the general population (Tata Trust, 2019). In 2016, the death rate (per 100,000 prisoners) had consistently increased over the years to 382.2.

The Supreme Court of India has recognized the overcrowding of prisons and tried to address it in the past few years through directives to States. In response to an amicus curiae brief the court was informed that many prisons were functioning at 150% capacity with one prison at 609% capacity. The court emphasized that prisoners have 'human rights' and cannot be kept in jails 'like animals' (PTI, 2018). The Supreme Court had directed the States, in 2016 to submit a plan of action to address overcrowding of prisons and noted that not a single State had submitted a plan by the deadline of March 2017. This indicates a complete lack of interest by authorities to tackle the issue. More recently, in February 2020, the chief justice of the supreme court clearly stated that overcrowding in jails is connected to "performance of courts" and held courts squarely responsible for not handling cases quickly to reduce the number of under-trial prisoners (The Print, 2020).

The problem of overcrowding is further exacerbated by the poor staffing in jails which is purported to be at, on average, 30% to 40% of sanctioned strength (The Print, 2020). The Tata Trust (2019) report which, for the first time in India, analyzed data across the four pillars of the criminal justice system (police, prisons, judiciary, and legal aid) states that there are just 621 correctional staff across India's 1,421 jails. Uttar Pradesh has only one sanctioned correctional staffer for 95,366 inmates. The new Model Prison Manual (Ministry of Home Affairs, 2016) stipulates one medical officer for every 300 prisoners and requires central prisons to have a doctor available at all times. Most often, these positions are left unfilled and medical staff are unavailable for prisoners; for example, the Uttarakhand jail has a vacancy for 10 medical officers and does not have a single officer available at the facility. More than 12 states in India are operating at less than 50% capacity of medical officers. Further, the prison manual requires prison systems to have a cohort of correctional staff geared toward rehabilitation of prisoners. These correctional staff can include welfare officers, social workers, counselors, psychologists, and lawyers to ensure the well-being of prisoners providing individualized care to ensure their needs are met. However, according to the 2019 Prison Statistics of India, four states with prison populations ranging from 7,000 to 25,000 had no such staff, and few others had only one or two staff for prison populations ranging from 15,000 to 100,000 (NCRB, n.d.). Despite vacancies and funds allocated for

hiring of staff, these positions remain unfilled primarily because these staff are grossly underpaid.

Even without the pandemic, India has been contending with serious issues in its prison system. Operating over capacity with acute shortage of staff often results in prisoners being forced and locked up in crowded small spaces for long periods of time even though space may be available in other areas of the prison. This results in poor sanitary conditions. Additionally, this makes separation of convicted prisoners from undertrial prisoners, non-violent, or first offenders impossible. Reform and educational activities or prison industries are impossible to operate with the shortage of staff. Many prisons have been using long-term inmates as free labor inside prisons to manage various tasks to act as warders, convict officers, or night watchmen. This enables some convicts to have power over other prisoners and allows for exploitation, violence, and collusion in many illegal activities, including corruption in the prison system. In this milieu, the COVID-19 pandemic has further exacerbated the human rights violations in the Indian prison system.

Community corrections in India

The two community corrections in India are probation and parole. In India probation is granted under *The Probation of Offenders Act (Act No. 28 of 1958)* which contains elaborate provisions relating to probation of offenders, applicable throughout the country. The intent of this ACT was to reform amateur offenders by providing rehabilitation in society and to prevent the conversion of youthful offenders into obdurate criminals under environmental influence by keeping them in jails along with hardened criminals. There are no official statistics about how often probation is implemented by the courts, however, the popular notion is that it is not uniformly implemented. Further, the lack of probation-officers due to open vacancies makes it extremely difficult to implement and therefore is not an option of choice used by judges. Parole in India is administered by the rules of the Prison Act, 1894, and Prisoner Act, 1900. Each state in India has its own parole rules with some minor alternations from each other. During the year 2019, a total of 26,390 persons were released on parole and only 205 prisoners (less than 1%) released on parole have absconded (NCRB, n.d.). Similar to Pakistan, community corrections in India face a pending crisis due to staffing, and it is likely that the effects of COVID-19 will add further stress on the system.

Prisons in India during COVID-19

Media reports have referred to India's prisons as 'ticking time bombs' with more than 70% of prisoners (and their children) residing in enforced proximity either due to overcrowding or shortage of staff (The New Indian Express, 2020). These conditions are further worsened by the inability of prisoners to maintain personal hygiene, the single largest protector from the virus. India's prisons are looking at the possibility of becoming the biggest virus clusters and in response jails have been racing against time to put in place measures to avoid this situation. The first step taken to address this issue was a directive to all States by the Supreme Court of India on March 23, 2020. The court ordered each State to form high-level committees to put in place processes and guidelines to release convicted prisoners on parole for four to six weeks; and to consider interim bail for undertrial prisoners with offences that required a sentence of less than seven years. On April 13 2020, in response to various public

interest lawsuits that demanded clearer guidelines and better conditions for prisoners, the court clarified that it was not ‘compulsory’ for States to release prisoners and its earlier directive was intended to prevent overcrowding of prisons in view of the pandemic.

As States started forming high-powered committees at the direction of the Supreme Court, the policies and processes varied from State to State, making it impossible to implement a uniform national response. For example, the 18 member high-powered committee in Maharashtra State, charged with selecting prisoners for release excluded people charged under the Maharashtra Control of Organised Crime Act, Prevention of Money Laundering Act, Maharashtra Protection of Interest of Depositors Act, Narcotics Drugs and Psychotropic Substances Act, Unlawful Activities Prevention Act, and foreign nationals (Chaudhari, 2020).

Based on data gathered by the Commonwealth Human Rights Initiative (2020), which relies on media reports to compile state-by-state statistics, as of August 26th, 2020, including prisoners and staff the total number of COVID-19 cases in Indian prisons is 6,621 with 15 related deaths, as shown in Table 5. The total number of prisoners released since these measures were implemented is 61,100 representing about 15.4% of the total prison population in India. Even with these releases, the occupancy rate of Indian prisons remains above capacity at 103.1%.

In comparing the ratios in Tables 1 and 5, we see similar findings for both Pakistan and India. For both countries, roughly 0.035% of the population is incarcerated; however, it should be noted that while proportions are the same, India has a far greater number of individuals within its corrections system, given the sheer volume of its population. While inter-country direct comparisons cannot be made about the proportion of COVID-19 positives, in India, the ratio is far lower. Even though the Indian data suggest a ratio approximately one-third less than Pakistan, officially reported data for this field include staff and prisoner positive cases – thus, the true proportion of prisoners who test positive out of all Indian positive cases would be even smaller. In India, the proportion of COVID-19-related deaths is actually smaller than the proportion of the prison to the general population. While these numbers may look promising based on the available data, it is yet to be seen what the official statistics (when available) will reveal and if the data collected from media reports line up with it.

There have been many criticisms of the approach taken by the Indian Supreme Court, mainly because it created a climate of imperfect and unequal justice in the country. By allowing the individual States to define the criteria for release, a person with the same charges would be treated differently depending on where they were imprisoned. Some States used the pandemic as an opportunity to imprison or refuse to release activists and human

Table 5. Comparing India’s general and prison populations against COVID-19 measures.

Category	India Prison Population	Population of India	Ratio (%)
Population	478,600	1,382,347,512	0.035
COVID-19 Positive Tests	6,621	3,687,939	0.180
Death from COVID-19	15	65,435	0.022

Data on India’s population and COVID-19 case and death counts was pulled from the Worldometer data and represents the reporting as of 3:48 PM CST on August 31, 2020 (Worldometer, 2020c, 2020d). Note: The prison population field represents all prisoners, but data for COVID-19 positives in prisons aggregates prisoners and staff. Data on India’s prison population COVID-19 data comes from the Commonwealth Human Rights Initiative (2020), while data on total number of prisoners comes from the NCRB (n.d.).

rights workers. Many students and activists who participated in peaceful protests against India's recent discriminatory citizenship laws based on religion continue to be unfairly detained (Amnesty International, 2020c). Amnesty International released a report citing India as one of the countries where many human rights defenders were kept in pre-trial detention under the Unlawful Activities (Prevention) Act (UAPA), legislation which has often been liberally and unjustly used to imprison critics of the government. For example, the case of Safoora Zargar, a pregnant activist who protested against laws that discriminate against Muslims, was detained as an undertrial prisoner and was finally released in June after much campaigning on her behalf. Similarly, other activists continue to be detained despite health concerns or other illnesses (Amnesty International, 2020d). Another major criticism of the Supreme Court's response was that the court merely directed the formation of high-powered committees to determine the categories of prisoners. The actual task of releasing them was at the initiative of the offenders or their families as application for bail had to be filed, and hearings conducted before a release could occur. All of this during the pandemic made the task onerous and difficult for prisoners and their families as the courts had restricted their work during the pandemic to urgent cases only (Jain, 2020).

Given that the occupancy rate of prisons and jails still lurks above the 100% mark, and the staffing shortfall is yet to be remedied, merely releasing prisoners to decongest the prison is going to be insufficient. Proper measures and safety precautions have to be put in place for those still in the prisons as inmates or staff. Also, the suspension of family visits, legal aid services created isolation among prisoners who could not access the legal help they needed to take advantage of the bail options. This is a violation of human rights. It was only towards the end of June 2020 that video-conferencing facilities were introduced in jails. Even this information is not publicly available on websites of the prisons. Families with little or no access to the internet have no way of knowing how their relative is doing in the prison.

In sum, India's response to COVID19 in prisons has laid bare the inefficiencies and injustices in the criminal justice system. It has highlighted the problems caused by letting States make their own decisions about who to release and who not to. Further, the high-handed attitude of the government to human rights workers using pandemic-related restrictions towards activists and critics of the government demonstrates the shrinking of civic space and suppression of voices that are uncomfortable to the government (Amnesty International, 2020e).

Conclusion

Stemming from a unified polity prior to 1947, India and Pakistan have also been intimately connected, despite both nations striving to develop distinct identities. Past work has found this nation-building mentality forged into the very core of the nation, such as the school system (Lall, 2008). The COVID-19 pandemic, in some ways, is a test of how similar they still are. In examining the response of both the countries to the pandemic, it can be seen that prison systems in the two countries face similar circumstances, including overcrowding, understaffing, and concerns over hygiene and prisoner safety. Specifically, both India and Pakistan face a critical shortage of medical staff in prisons to the extent that the safety and well-being of incarcerated individuals are at severe risk.

Additionally, both countries took the consequential step of reopening the nation before they fully controlled the spread of COVID-19 as a step to stabilize economic security.

Conversely, each country's political elite largely controlled the COVID-19 response, shaped by the political, cultural, and economic changes that have taken place in each country. For example, Pakistan's Prime Minister Khan clashed with Sindh Province's decision to institute lockdown protocols only to reverse course later. Similarly, succumbing to calls to stabilize the economy, India's Prime Minister Modi prematurely reopened the country, resulting in a dramatic increase in positive cases. Ironically, each country has accused the other of engaging in unlawful or unjust imprisonment of activists (*see, e.g.*: BBC News, 2020; HRW, 2020b), ignoring their own use of similar tactics. Although both countries have taken steps to address the historically rooted, systemic issues that plague their corrections systems, inadequate policies have been implemented, resulting in limited protections for some of the populations most vulnerable for exposure to the novel coronavirus through closed networks. The pandemic offers an opportunity to both countries to evaluate their own approaches and to recognize the similarities still connecting them, rooted through common memories of colonization, embedded in the Weberian (1978) framework for ethnicity.

The pandemic has offered both India and Pakistan an opportunity for a natural experiment to test what happens if large numbers of undertrial prisoners or convicts with shorter sentences are released? If there are no increases in crime rates despite the large number of releases, or if the number of absconded individuals remains as low as the statistics indicate (less than 1%), it goes to prove that such large numbers of undertrials really do not need to be incarcerated in the first place. The justice system can still function without incarcerating them. This will then allow the existing prisons to function at or below capacity, with staffing that meets the requirements of the model code. Further, both countries need to make the conditions of work in prisons more conducive thereby attracting more applicants and filling up vacancies sooner. If these measures are coupled with increased funding and wider implementation of community corrections, the COVID pandemic offers both countries a chance to truly reform its prison systems.

Notes

1. The eight member states of the South Asian Association for Regional Cooperation are: Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan, and Sri Lanka (Dmello, 2019; NTI Nuclear Security Index [NTI], 2011).
2. The trial status of some prisoners was unavailable.
3. JPP collected data from official government figures, leaked reports, and media reports. For a full list of sources, see: (JPP, 2020a).

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