

Original article**Health Rights of Prisoners and Prison Law Reforms during COVID-19 Pandemic in India**M.Z.M. Nomani¹, Zafar Hussain²**Abstract:**

Background: The National Crime Record Bureau and the Prison Statistics India, 2020 report on the overcrowding and occupancy in jails has ripple effect on the spread of the COVID-19. The protection to health freedoms of detainees and prisoners reflected in the *World Health Organization (WHO) Guidance on COVID-19 for Prisons and Detention*, 2020. The Indian jails have congestion and inhabitation and prone to contagion disease. The COVID-19 has an expanding transmission among detainees in prisons, jails and detention homes. **Objectives:** The *WHO Guidance on COVID-19 for Prisons and Detention*, 2020 standardizes the essential instrument to manage the COVID-19 difficulties in penitentiaries and confinement homes. The direction secures the strength of detainees and convicts living in encased conditions. The ostensible purpose is to contain the COVID-19 disease from spreading to general population and release the under trials for the safe healthy conditions. **Methodology:** The methodology applied the canons of statutory interpretation of *United Nations Principles of the Protection of Prisoners*, 1982 and *Basic Principles for the Treatment of Prisoners*, 1990 alongside the *Moscow Declaration on Prisons and Health*, 2003 and *Nelson Mandela Rules*, 2015 in fostering the health equity and criminal justice during COVID-19 pandemic. The mandate of the *WHO Interim Guidance on COVID-19 in Prisons and Other Places of Detention*, 2020 is straight out in preventive and medicinal measures for the penitentiaries and confinement homes in the virus of COVID-19. **Results:** The paper tracks the salubrious results of the international legal norms and national precedents of High Courts and Supreme Court in heralding systemic prison reform. The compliance of *WHO Interim Guidance on Preparedness, Prevention and Control of COVID-19 In Prisons and Other Places of Detention*, 2020 cultivated robust criminal administration during COVID-19 pandemic and the lockdown in India. **Conclusion:** The judgment of High Courts and Supreme Court on prison reform during the COVID-19 pandemic in India has resulted in Health Rights of Prisoners and Prison Law Reforms during COVID-19 Pandemic in India. It also refurbished the medical services in correctional facilities and confinement homes in criminal justice system.

Keywords: COVID-19; Detention Preparedness; Penitentiaries & Confinement; Jail Overcrowding; Prison Reform; WHO Guideline.

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Introduction

The jail in India has persistently showing packing propensities since the most recent many years. The information shows an immediate nexus of high inhabitation and COVID-19 diseases.¹ The normative arrangements and direction present the most recent proof about the signs and indications of COVID-19 and the anticipation and the executives' measures in a jail's particular settings.² The high inhabitation rates in the Indian prison have severe ramifications

for COVID-19.³ The freedoms and criminal equity oblige the privilege to live and the achievable norm of health. The *Universal Declaration on Human Rights (UDHR)*, 1948 and *International Covenant on Economic, Social and Cultural Rights (ICCPR)*, 1966 protect the human right to health.⁴ The *TRIPS Agreement*, 1995 and *Doha Declaration on Public Health*, 2001 give catalyst to the medical services and conveyance framework.⁵ The COVID-19 pandemic and difficulties of criminal justice system

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(CJS) in India rely upon the quick preliminary and regulation of the infection. The Supreme Court, High Courts and district courts switched to virtual space after the pronouncement In *Re: Guidelines for Court Functioning through video conferencing during COVID-19*.⁶ The Supreme Court took *suo moto* the contagion of COVID-19 in Prisons across the country. The COVID-19 in Children Protection Homes also received the Supreme Court's attention under the *Juvenile Justice (Care and Protection of Children) Act, 2015*.⁷ The paper tracks the salubrious results of the COVID-19 pandemic during the lockdown situation to cultivate criminal equity and jail improvement in India in the wake of *WHO Interim Guidance on Preparedness, Prevention and Control of COVID-19 In Prisons and Other Places of Detention, 2020*.

Material & Method

The COVID-19 anomic conditions grow openings for the CJS and experimentation dovetailing polemical shapes and actual work. The disease and control measures adjust research on wrongdoing, equity.⁸ It calls for restoring criminal equity, detainment, and jail change. The fundamental strategy changes on medical care the executives in prisons and detainment homes offer a broad scope of remedial measures among law and courts.⁹ The containment methodology applied SIR epidemiological model¹⁰ and cross sectional study¹¹ during COVID-19 pandemic across all the inmates of Indian jails. The reformatory plan empowered detainment homes in a fair and even handed way.¹² COVID-19 health crisis frequently prompted the dictatorship, yet medical services and criminal equity changed with calming notes.¹³ The Courts set out on the immediate benefits of the online mode for admittance to criminal equity in the COVID-19 pandemic. The fast shift to Online Dispute Resolution (ODR) received innovative advancements and balanced the obstructions for rapid preliminary.¹⁴ The material and strategy for COVID-19 pandemic and difficulties of health organisation and CJS utilise National Crime Record Bureau, Prison Statistics India, and Hindu Newspaper, Associated News of India and Press Trust of India Report, 2020 information in the current examination in the World Health Organization *Guidance on Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention, 2021*.¹⁵

Results

The COVID-19 pandemic offers freedoms for

the CJS, jail change and health protections of detainees and under preliminary detainees in prisons and confinement homes. The difficulties presented by COVID-19 to law authorization and the courts bear calming refinement in growth of detainment facilities, social removing law consistency, imprisonment, and arrangements in the changing impression of the victimology.¹⁶ Indian courts took advantage of these lucky breaks for revamping CJS by arranging helpful judgment and orders during the COVID-19 pandemic.¹⁷

Incidence & Trends of Contagion: The absolute number of detainment facilities at the public level has expanded from 1,339 out of 2018 to 1,350 every 2019, expanding by 0.82%. The 25th version of the Prison Statistics in India report delivered by the *National Crime Record Bureau (NCRB)* uncovers some stunning outcomes. Most outstandingly, the quantity of under preliminary detainees still significantly eclipses the number of convicts in Indian prisons.¹⁸ The penitentiaries in India have consistently been stuffed, with the expanding number of undertrials housed there.

The number of penitentiaries expanded from 1,339 detainment facilities in 2018 to 1,350 jails in 2019, an increment of 11 jails in only one year. Nonetheless, to decrease the inhabitation rate, 118.5 per cent in 2019 rather than 117.6 per cent in 2018. 4.7 lakh detainees held up in these 1,350 penitentiaries. Delhi has revealed the most elevated inhabitation rate (174.9%) trailed by Uttar Pradesh (167.9%) and Uttarakhand (159.0%). Thus the global¹⁹ and local²⁰ impact of the COVID-19 pandemic on institutional and community corrections are very vivid.

Cluster & Congregation in Prison: The National Crime Record Bureau (NCRB) uncovers that the number of jails expanded from 1,339 every 2018 to 1,350 out of 2019. However, the inhabitation rate did not show decay. It assessed that an aggregate of 2,191 prisoners tried COVID-19 positive across Indian correctional facilities running with high inhabitation rates.²¹

Source: National Crime Records Bureau, Prison Statistics India, 2019; Executive Summary p.

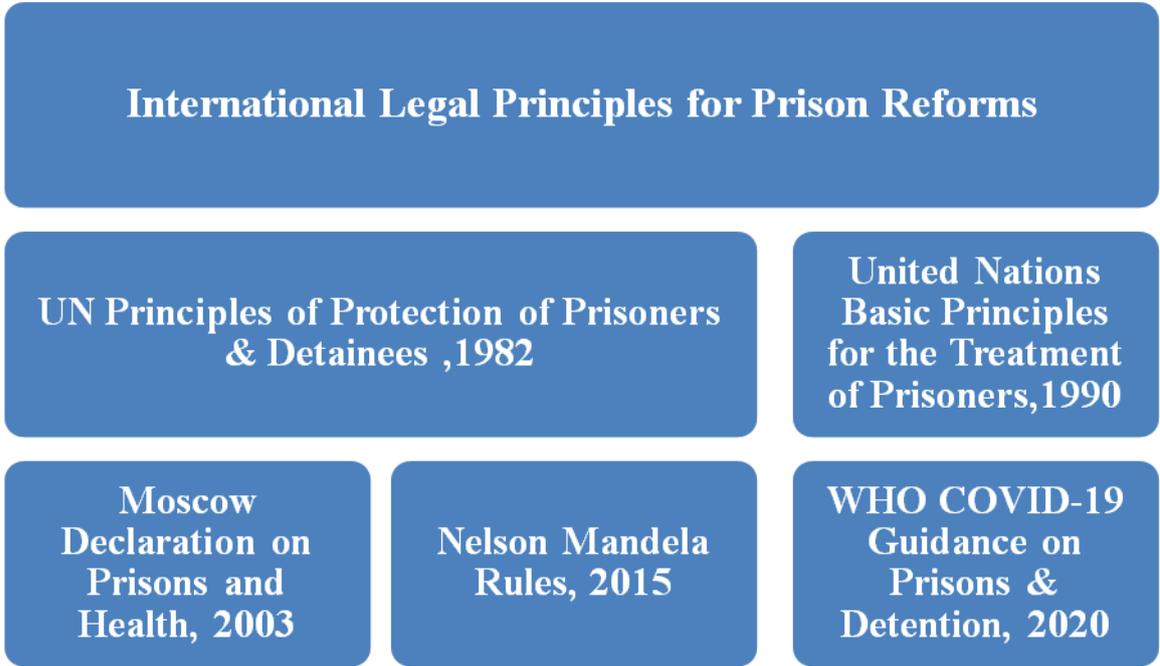


Figure-1: International Legal Norms for Prisoners Health

Source: Hindu Newspaper, Associated News of India& Press Trust of India Report, 2020

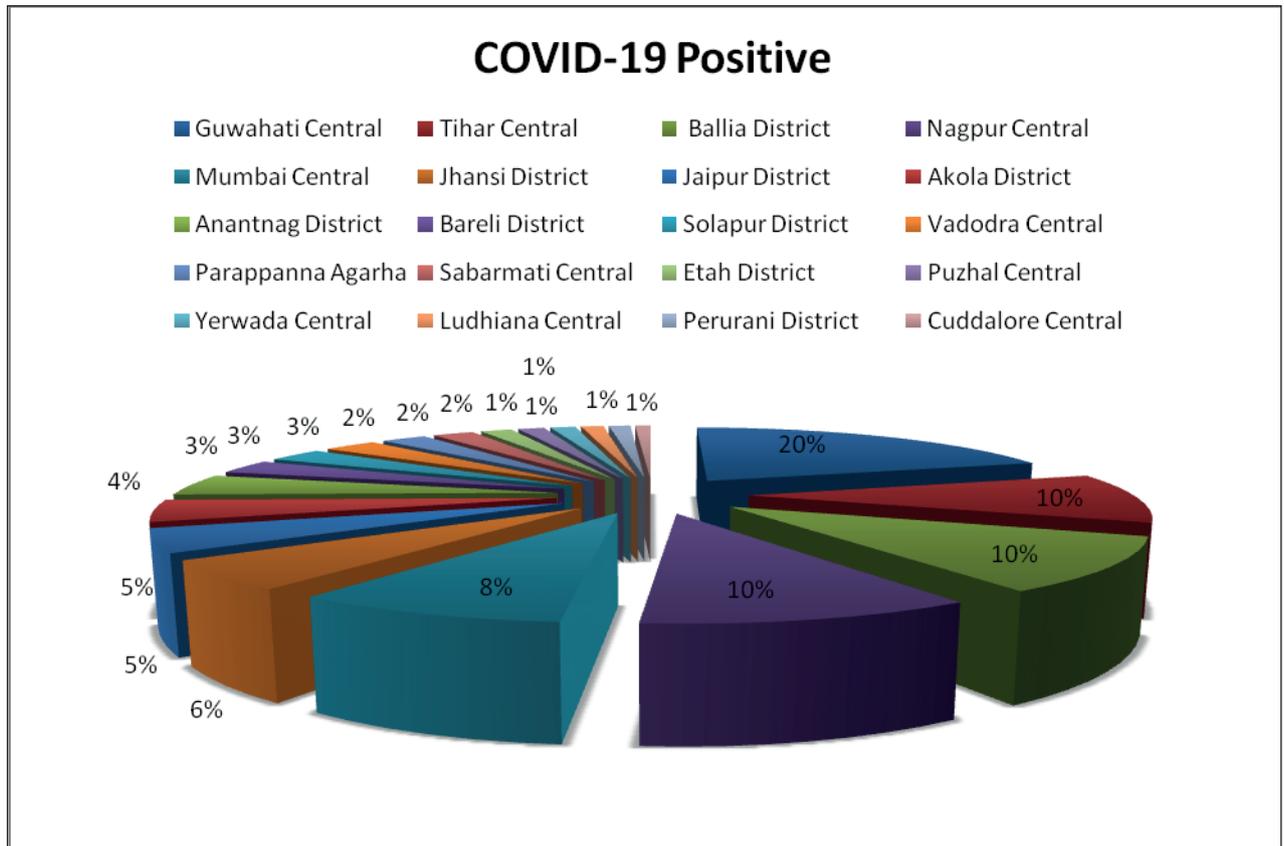


Figure-2: COVID-19 Positive Cases in Indian Prisons

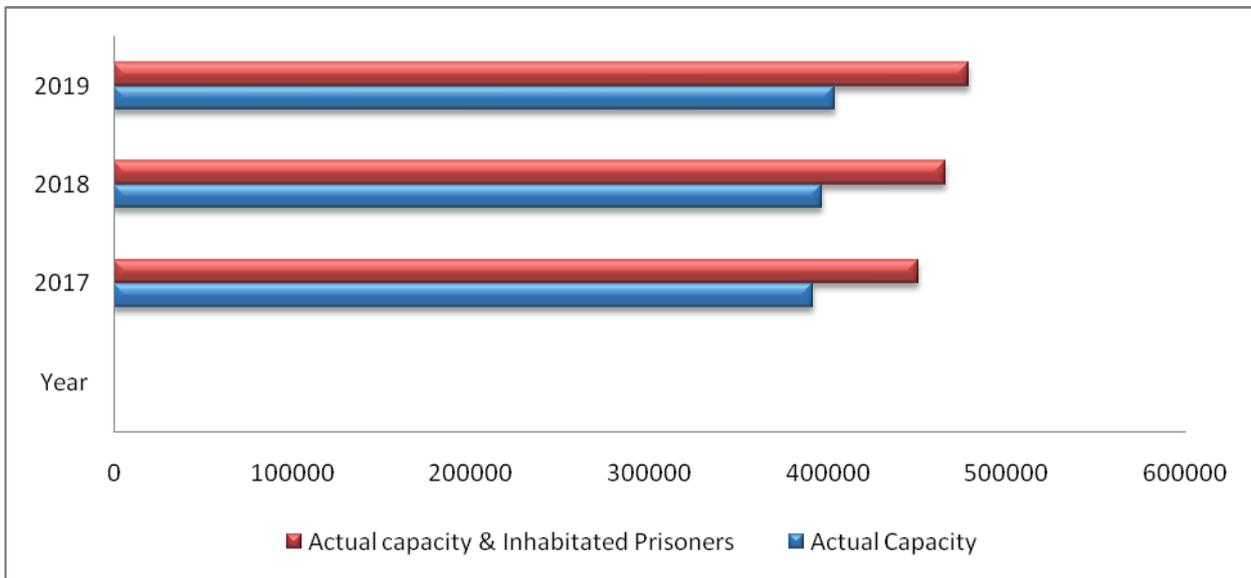


Figure-4: Prison Overcrowding in India 2017-2019

ix, [as on 1.9.2020].

The territory of Uttar Pradesh has the most noteworthy, and Sikkim has the least inhabitation rate. The quantity of passing in detention facilities has diminished imperceptibly from 1,845 of every 2018 to 1,775 out of 2019, having fallen by 3.79%. The circumstance set off the case in the High Courts and the Supreme Court for the arrival of detainees. The supplication is dependent on the way that our jails are 17.6% packed of its ability. The under preliminaries and convicts finishing beyond what two-three can look for delivery from detainees. They also entitle medical services to the board in correctional facilities, particularly when the COVID-19 pandemic pronounced as a calamity under Disaster Management Act, 2005.²²

De-congestion of Prisoners in Jail: In *RE: Contagion of COVID 19 Virus in Prisons*, a mediation application was recorded in this suo moto request looking for the arrival of those 802 “announced outsiders” in the six confinement places of Assam. They have finished over a year in detention.²³ The Court joined various petitions and requested the arrival of outsiders in Assam’s confinement habitats, having finished two years in bondage on an obligation of Rs. 5,000.

The premise of the delivery request owes to the *Supreme Court Legal Services Committee v. Union of India* the Court had coordinated that prisoners’

arrival over three years might be delivered bond, customary revealing at a police headquarters biometric recording.²⁴ The mediation of the Supreme Court brought about the liberating of 802 proclaimed outsiders in the six confinement places of Assam. The Supreme Court choice province of Maharashtra delivered 601 detainees from 37 penitentiaries.²⁵

Discussion

The falling impact of the COVID-19 rotated the certifiable execution of general health shields other than preliminary and arrival of the detainees. The COVID-19 pandemic has large amounts of virus and regulation and turn, emphasised experimentally educated pre-preliminary guardianship, de-congestion development and dis-boosted custodial assents.²⁶ The criminal procedures during the pandemic exchanged throughout to time-bound online preliminary and cutting the excessive monetary commitments and ban on charges and fines, the remedial offices, imprisoned strategies, and arrival of older and individuals in danger.²⁷

Prison and Health Norms: The UDHR, 1948, and ICCPR, 1966 fills in as core values for health administrations. The United Nations Principles of the Protection of Prisoners, 1982 cast obligation for the physical and psychological health treatment at standard in detention and confinement.²⁸ The United Nations Basic Principles for the Treatment of Prisoners, 1990 bear the cost of admittance to health administrations without segregation.²⁹



Figure-7: Supreme Court Mechanism for Removal of Overcrowding in Prison

The *Moscow Declaration on Prisons and Health*, 2003 furnishes arrangements with the reformatory procedure of prison foundations.³⁰ The *Nelson Mandela Rules*, 2015, maintain general health measures without segregation in jails.³¹ The *United Nations Sustainable Development Goals 2015–2030* and the *United Nations Secretary-General's High-Level Panel on Access to Medicines*, 2016 gives the essential structure of the enviro-health right statute.³² The World Health Organization (WHO) advocates preventing hazards in the prison framework during the COVID-19 pandemic.³³

COVID-19 Pandemic & Prison Reforms: The *WHO Interim Guidance on Preparedness, Prevention and Control of COVID-19 in Prisons and Other Places of Detention*, 2020 explains preventive and medicinal measures for the jails and detainment homes in the infection COVID-19.³⁴ The COVID-19 pandemic and difficulties of CJS in India rely upon the quick preliminary and regulation of the infection. The Supreme Court *In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 pandemic* commanded for the ODR.³⁵ In the

State of Maharashtra v. Praful Desai, the courts snared with the internet and progress to utilising video conferencing and data innovations at the consultation, preliminary stage and investigative stage.³⁶ Moreover, the Court depended on Article 142 of the Constitution of India, 1950 to make such requests as are fundamental for doing equity. The Supreme Court and High courts of India exchanged over to online hearings and debate goal to keep away from the human interface and spread of the infection during the COVID-19 pandemic situation.³⁷ The Supreme Court took *suo motu* comprehension of the congestion in penitentiaries In *RE: Contagion of COVID-19 Virus in Prisons*.³⁸ It established High Powered Committees to set modalities for the arrival of the classification of detainees on parole and between time bails. The under trials detained for a very long time delivered on parole on the ground of contagion.³⁹

Protection of Juvenile Offenders: The Supreme Court took cognizance of COVID 19 positive test reports of 35 youngsters in a safe house Home in Royapuram, Chennai, under the *Juvenile Justice (Care and Protection of Children) Act*, 2015.⁴⁰ In the *Re Contagion of COVID-19 Virus In Children Protection*

Homes, the Supreme Court applied a similar test in delivering the youngsters from the sanctuary home in the wake of the COVID-19 pandemic.⁴¹ The Supreme Court coordinated Juvenile Justices Committees of the High Courts to screen their medical issue and present a status report on the strength of the youngsters cover homes across states.⁴² The Supreme Court gave broad bearings to government assistance panels, adolescent equity sheets, and Juvenile courts to deliver stipulation to Section 12 of the *Juvenile Justice (Care and Protection of Children) Act, 2015* during the COVID-19 pandemic.⁴³ The Supreme Court additionally looked for a reaction from Uttar Pradesh, Bihar, Uttarakhand and Tripura state on the situation with the soundness of kids in detainment home during COVID-19 pandemic. The Court guided Uttar Pradesh, Bihar, Uttarakhand and Tripura state states to record a status report on the condition and misgivings of COVID-19 among children and adolescent detention homes.⁴⁴

Conclusion

The detainees in penitentiaries, confinement focuses and ensured homes viewed more defenceless against COVID-19 disease. The forswearing of medical services and convenient delivery considered common liberties infringement under *Nelson Mandela Rules, 2015*. That is why the World Health Organization repeated that the Nelson Mandela Rules and Principles agreed to the requirement in the penitentiaries during the COVID-19 pandemic. The Indian courts have authorized the worldwide standard for the health and CJS across the under preliminary detainees, unfamiliar prisoners and adolescent wrongdoers. The protected targets of the privilege to life and feasible norm of health saw quick preliminary and arrival of convicts on bail, bond and guarantees. It very well might be reviewed that Section 436A *Criminal Procedure Amendment Code, 2005* to reduce the position of the under preliminary detainees. The Home Ministry Affairs gave rules in 2013 yet, for the most part, stayed non-practical because of the absence of mindfulness among prison and detainees. The CJS and health organization have

gone through the way toward beating during the COVID-19 pandemic. The disease and contagion standards interestingly renovated the foundational change in the criminological cycle and admittance to equity. The prisons and confinement specialists under the CJS need to guarantee that the prisoners appreciate medical care access during the COVID-19 pandemic and isolate requirement.

Recommendation:

- The study recommends a robust legal framework for the health care in prisons and detention homes during COVID-19 pandemic in India in the given corpus of the criminal administrative architecture.
- The World Health Organization has issued Guidance on COVID-19 for Prisons and Detention, 2020 calls for the systemic reform in the for the health care system in detention and prisons in India.
- It also demands for the consequential refurbishing of the criminal justice system to fight bravely against contagion and criminals alike. Since the overcrowding and occupancy in jails is a formidable threat of infection and transmission.
- The COVID-19 has cascading effect on the inmates and convicts living in enclosed environments during the pandemic and in dire need of health and human rights protection.

Contribution of Authors:

M.Z.M. Nomani: Formulation of Research methodology, analysis of material and methods, interpretation of statutes for the manuscript.

Zafar Hussain: Preparation of the research design, formulation of interpretative skills and development of case laws for the manuscript.

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References

- Enggist S, Møller L, Galea G, Udesen C. Prisons and health. WHO Regional Office for Europe; 2014.
- Nomani MZM, Parveen R. Legal dimensions of public health and COVID-19 pandemic in India. *Systematic Review in Pharmacy*, 2020; 11(7):131-134; <https://doi.org/10.31838/srp.2020.7.21>
- Marshall T, Simpson S, Stevens A. Health care in prisons: a health care needs assessment. Birmingham: University of Birmingham; 2000 Feb.
- CESCR GC on the Right to the Highest Attainable Standard of Health, UN Doc E. C 12/2000/4 (General Comment 14), Para. 34; 14.
- Nomani MZM, Alhalboosi AKK, and Rauf M. Legal and intellectual property dimension of health and access to medicines in India. *Indian Journal of Forensic Medicine & Toxicology*, 2020;14(1):118-122; <https://doi.org/10.37506/v14/i1/2020/ijfmt/192878>
- Nowotny K, Bailey Z, Omori M, Brinkley-Rubinstein L. COVID-19 exposes need for progressive criminal justice reform. *American Journal of Public Health*, 2020; 110(7), 967-968.
- Senthilkumaran S, Meenakshisundaram R, Shah S, Thirumalaikolundusubramanian P. Coronavirus Disease (COVID-19) in Children: Indian Perspectives. *Indian Pediatrics*. 2020; 57(6):585.
- Gover AR, Harper SB, Langton L. Anti-Asian hate crime during the COVID-19 pandemic: Exploring the reproduction of inequality. *American Journal of Criminal Justice*. 2020; 45(4):647-67.
- Nomani MZM, and Sherwani F. Legal control of COVID-19 pandemic & national lockdown in India. *Journal of Cardiovascular Disease Research*, 2020; 11(4): 32-35; <https://doi.org/10.31838/jcdr.2020.11.04.06>
- Lebkiri N, Abidli Z, Jadda S, Mokhtari A, and Soulaymani A. Impact of containment type on COVID-19 propagation in Morocco using the SIR model. *Bangladesh Journal of Medical Science*, 2020; 19: S 58-S 65. <https://doi.org/10.3329/bjms.v19i0.48167>
- Gupta, N., Pandey, S., & Anshu, A. Innovative anatomy assessment methods in COVID-19 Pandemic: statistical observations and students viewpoints. *Bangladesh Journal of Medical Science*, 2020; 19:S21-S27. <https://doi.org/10.3329/bjms.v19i0.47831>
- Puddister K, Small TA. Trial by Zoom? The Response to COVID-19 by Canada's Courts. *Canadian Journal of Political Science*, 2020;53(2):373- 377.
- Guner, H.R., Hasanoğlu, I., & Aktaş, F. (2020). COVID-19: Prevention and control measures in community. *Turkish Journal of Medical Sciences*, 2020; 50(SI-1), 571-577.
- Nomani MZM, Hussain Z. Innovation technology in health care management in the context of Indian environmental planning and sustainable development. *International Journal on Emerging Technologies*, 2020; 11(2):560-564.
- World Health Organization. Preparedness, prevention and control of COVID-19 in prisons and other places of detention: interim guidance, 8 February 2021. World Health Organization. Regional Office for Europe; 2021.
- Halford E, Dixon A, Farrell G, Malleson N, Tilley N. Crime and coronavirus: social distancing, lockdown, and the mobility elasticity of crime. *Crime Science*. 2020;9(1):1- 12.
- Nomani MZM, Sherwani F, and Allail J. Advances in epidemic control laws & COVID-19 pandemic in India: A medico-legal analysis. *Indian Journal of Forensic Medicine & Toxicology*, 2021; 15(2): 2763-2769. <https://doi.org/10.37506/ijfmt.v15i2.14790>
- Panigrahi M, Pattnaik JI, Padhy SK, Menon V, Patra S, Rina K, Padhy SS, Patro B. COVID-19 and suicides in India: a pilot study of reports in the media and scientific literature. *Asian Journal of Psychiatry*. 2021; 1; 57:102560.
- Byrne JM, Hummer D, Rapisarda SS, editors. The Global Impact of the COVID-19 Pandemic on Institutional and Community Corrections. Routledge; 2021 Jul 8.
- Rahman S, and Khan S. Patients' case scenario as well as approaches and strategies adopted to manage COVID-19 pandemic at Aligarh Muslim University, Aligarh, India. *Bangladesh Journal of Medical Science*, 2020;19: S28-S 35. <https://doi.org/10.3329/bjms.v19i0.47832>
- Srivastava SP, Problems and priorities of prison reform in India. *Indian Journal of Criminology*. 1978;6(2):106-12.
- Nomani MZM, Parveen R. COVID-19 pandemic and application of disaster management act, 2005: Promises and pitfalls. *International Journal of Pharmaceutical Research*, 2020; 12(4): 3730-3734. <https://doi.org/10.31838/ijpr/2020.12.04.509>
- In RE: Contagion of COVID- 19 Virus in Prisons* [Suo Motu Writ Petition (C) NO. 1/2020; order dated April 13, 2020]
- Supreme Court Legal Services Committee v. Union of India (Writ Petition (Civil) No.1045 of 2018* dated May 10, 2019
- Coronavirus: Maharashtra releases 601 inmates from 37 jails in 3 days, *The Economic Times*, (March 30, 2020).
- Stogner, J., Miller, B. L., & McLean, K. Police stress, mental health, and resiliency during the COVID-19 pandemic. *American Journal of Criminal Justice*, 2020; 45(4), 718-730.
- Godman, B. (2020). Combating COVID-19: Lessons learnt particularly among developing countries and

- the implications. *Bangladesh Journal of Medical Science*, 2020; 19:S103-S 108. <https://doi.org/10.3329/bjms.v19i0.48413>
28. Council for International Organizations of Medical Sciences. principles of medical ethics relevant to the protection of prisoners against torture. *International Journal of Health Services*. 1984 Jan 1:505 -508.
 29. Assembly, U. G. (1990). Basic principles for the treatment of prisoners. *UN General Assembly Resolution. Geneva*.
 30. Fraser A, Møller L, van den Bergh B. The health of prisoners. *The Lancet*. 2011 Jun 11;377(9782):2002.
 31. McCall-Smith K. United nations standard minimum rules for the treatment of prisoners (Nelson mandela rules). *International Legal Materials*. 2016; 55(6):1180-205.
 32. Nomani MZM. The human right to environment in India: Legal precepts and judicial doctrines in critical perspective. *Asia and Pacific Journal of Environmental Law*, 2000; 5(2):113-34.
 33. World Health Organization. Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance 15 March 2020. World Health Organization. Regional Office for Europe; 2020.
 34. Nomani MZM, and Parveen R. Medico-legal insights into COVID-19 pandemic & the platter of health law reform in India. *International Journal of Pharmaceutical Research*, 2020; 12(1) Supp: 2328-2332; <https://doi.org/10.31838/ijpr/2020.SP1.332>
 35. *In Re: Guidelines for Court Functioning through Video Conferencing during COVID-19 pandemic*, 2020 SCC ONLINE SC 355 order dated 06.04.2020
 36. *State of Maharashtra v. Praful Desai* (2003) 4 SCC 601
 37. Nomani MZM, and Tahreem M. Constitutionality and legality of coronavirus (COVID-19) in India: Limits of sanction & extent of liberation, *International Journal on Emerging Technologies*, 2020; 11(3): 14-18.
 38. *In RE: Contagion of COVID-19 Virus in Prisons* [suo motu writ petition (C) NO. 1/2020; order dated March 23, 2020
 39. Coronavirus: SC directs states, UTs to set up panel to consider release of prisoners on parole, *The Economic Times*, (March 24, 2020) <https://economictimes.indiatimes.com>
 40. *In Re Contagion of COVID-19 Virus in Children Protection Homes, 2020 SCC OnLine SC 354*, order dated 03.04.2020
 41. *In Re: Contagion of COVID-19 Virus In Children Protection Homes, Suo Motu Writ Petition (C) No.4/2020 Dated 11-06-2020*
 42. Khan MG, Yezdani U, Chakravorty A, and Shukla T. Efforts and challenges paved by India to confront of corona virus (COVID-19). *Bangladesh Journal of Medical Science*, 2020; 19: S88-S92. <https://doi.org/10.3329/bjms.v19i0.48198>
 43. Nomani MZM, Lone AA, Alhalboosi AK, Raj AA, Allail B. Therapeutic perception of access to medicines and health care in government hospital of union territory of Jammu and Kashmir. *Journal of Forensic Medicine & Pathology*, 2020; 13(1):57-63.
 44. COVID-19 in children's homes: SC seeks response from Uttar Pradesh, Bihar, Uttarakhand and Tripura, <https://www.nationalheraldindia.com/india/COVID-19-in-childrens-homes-sc-seeks-response-from-uttar-pradesh-bihar-uttarakhand-and-tripura>