



The Lankan Prison Protests: A Critique of the Government's Response

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Introduction

On November 30, 2020, during the coronavirus pandemic, there were [ongoing debates](#) about public health issues, with the Mahara prison prisoners in Sri Lanka protesting for the same.

The protests were mainly about the over-crowded prisons, where the Covid-19 infection was spreading rapidly due to prisoners' cramming in cells, where practising social distancing was next to impossible. The prison facility in Mahara has a [capacity](#) to accommodate 10,000 prisoners only. But, more than 26,000 prisoners were stuffed into the prisons, more than double the capacity. Spike in Covid-19 infections in the prisons had created a fear among the prisoners as there was no segregation of infected prisoners. One of the main demands of the protest was an increase in [isolation facilities](#). Water supply lines were damaged, and the prisoners were denied a basic necessity of life- water! When they demanded supply of water, they received [gunshots](#).

The Immediate Response of the Government

The Sri Lankan Government conveniently [labelled it as a riot](#), and the prison officers open fired on the protesters to quash their demands. This inhumane act killed 8 inmates, and around 50 were injured. The families of these inmates and the opposition pressurized the government to investigate the matter, and a [probe panel was set up](#).

Where does the Law Stand?

Although the Sri Lankan Constitution, under Article 14(1)(b), and the [International Covenant on Civil and Political Rights](#) assure the rights to freedom of peaceful assembly, it is implemented in a biased manner depending on the organizer and the subject of the [protest](#), in a manner that is favourable to the political environment. For example, UN Special Rapporteur, Clement Nyaletsossi Voule, remarked that the effect of the Vagrants Ordinance of 1841 was more biased against the peaceful assembly of certain communities like the LGBTQ+ community. The [Department Order No. 19](#) and [IG circular 2595/2016](#) guide assemblies' management in conformity with the international standards. Its specified aim is "to prevent disturbances as more desirable and a greater achievement than quelling disturbances by force." In line with this, the administration should have maintained public health conditions and ensured proper testing and quarantining facilities to prevent such an agitation. Rather, they tried to clamp down on basic demands.

Blatant Violations of the Prisons Ordinance

Turning towards the [Prisons Ordinance](#) of Sri Lanka, which can be applied in this case, it can be seen that several provisions had been blatantly violated.

Rule 3 of Part I of the Ordinance provides for temporary shelter or safe custody of prisoners without prisons' walls for those who cannot be conveniently or safely kept therein. It also mentions the condition of a possibility of an outbreak of epidemic disease within the prison, in which case the Minister can order temporary shelter or safe custody if the number of prisoners is greater than that can be safely accommodated. The failure of authorities to take action under this rule should be seen as a violation of the prisoners' right of life. Even in the [USA](#), the lack of prison facilities leading to overcrowding of prisons fueled private prison companies' growth, which were poorly regulated and insufficiently monitored.

Rule 13 of Part II of the ordinance states that the prison officers have a duty to maintain discipline and order among prisoners. It is lawful to use a degree of force which is reasonable and compulsory to compel obedience from the prisoners. Firing on the unarmed protesters who were only asking for basic human rights was neither reasonable nor compulsory. The prisons in the USA also shared the same story of unreasonable force used to discipline the prisoners. A study shows that about half the convicts for non-violent crimes were [incarcerated](#), with a diminished chance for parole.

Rule 18 of Part II covers the duties and functions of a medical examiner. These include reports on cleanliness, drainage, warmth and ventilation of the prisons, and reports on water, bedding, sanitation etc. This incident has brought to light the inhumane and degrading conditions of the Mahara prison and the prison authorities' negligence. Even in [India](#), the 2015 MHA report (came after the Mulla Committee) pointed out the poor state of hygiene, sanitation and ventilation in Indian prisons. In about 9 states, the post of Medical Officer was not even created to look into the healthcare of the inmates.

Rule 6 of Part VIII specifies the duty of the jailer to inform the medical officer about the details of all the sick prisoners and the medical officer to recommend differences in treatment of such prisoners. There was a complete violation of this rule as, ideally, the infected prisoners should have been placed in quarantine facilities and separated from the healthy prisoners.

Rule 77 of Part X provides the use of force against prisoners trying to escape. It clearly mentions that the prisoner must be given a warning before the use of firearms against him. Rule 77(4) also states that weapons shall be used only to deform and not to kill. This provision was clearly violated when the guards started open-firing on the protesters.

According to Rule 81, there must be an inquiry into the offence within 7 days by a tribunal appointed by the Magistrate for every prison offence. So, even if the prisoners were violating the discipline of the prison, any action prior to the enquiry is unlawful, especially in such delicate circumstances.

The [South African Constitution](#) guarantees the right to adequate and satisfactory accommodation, adequate nutrition and medical treatment and right not to be punished in a cruel, degrading or inhuman way to all its prisoners. Even in the [United Kingdom](#), the prisoners are constitutionally guaranteed the right to healthcare and the right to life to all its prisoners.

There are many countries in which prisoners have a wide range of constitutionally recognized rights, which even the international norms endorse but what happened in Sri Lanka is not an isolated incident. There are many countries which treat their prisoners poorly. This is in conflict with the aim of rehabilitation of offenders. Such prison environments are counterproductive and produce hardened criminals with a high degree of recidivism.

Conclusion

The inmates of the Mahara prison were upset for over a month because their pleas for increasing testing and separating infected prisoners were unheeded, according to [Senaka Perera](#), a lawyer with the Committee for Protecting Rights of the Prisoners.

David Griffiths, Director of the Office of the Secretary-General at Amnesty International stated, "In the immediate term, there must be a thorough and impartial investigation into this incident and the use of lethal force – including firing live ammunition – by prison authorities".

The main cause that led to this chain of events was negligence on the part of the prison authorities when they took in more prisoners than could be accommodated. It was also wrong to deny basic facilities to the inmates. To call the protest, a "riot" would be to strip the prisoners of the only rights that protect them from the merciless treatment

(This piece is authored by Harsh Mahaseth and Prakruthi Jain. Harsh is an Assistant Lecturer and Faculty Board, JGLS Pro Bono Publicus, at Jindal Global Law School, and a Research Analyst at Center for Southeast Asian Studies at Jindal School of International Affairs. Prakruthi is an undergraduate law student at NALSAR University of Law)

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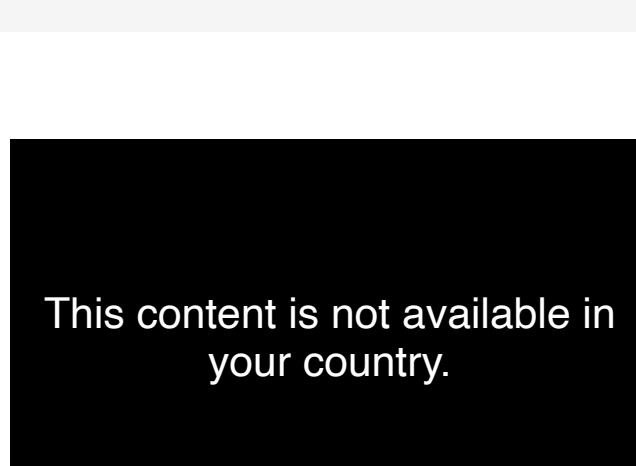
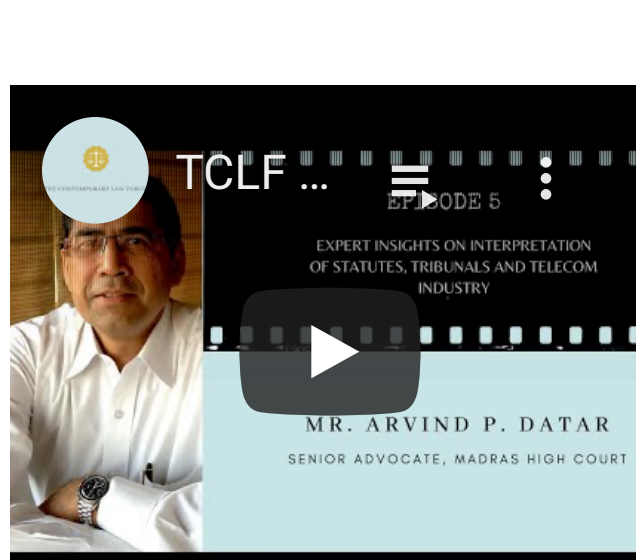


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