

Human Rights Violations in Prisons and Its Reform from Pakistan's Perspective

Muhammad Zubair, Sadia Khattak

Assistant Professor of Law at Abdul Wali Khan University Mardan K.Pk Pakistan

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ABSTRACT

After the independence from British Government in 1947, Pakistan inherited a prison system which was based on a colonial legacy. The basic aim of the system was the suppression of the political opponents as the prisons were used mainly for the confinement of the freedom fighters instead of the criminals. Continuation of such policy resulted in the corrupt and dysfunctional prison system turned into place of illegalities and fertile breeding place for criminals. Similarly the prisons in Pakistan are overpopulated, understaffed and poorly managed. This situation needs improvement and this paper explores the current prisons conditions, violations of basic human rights along with possible recommendations for the improvements of system in Pakistan in order to bring it in line with the International standards.

KEY WORDS: Prison, Human Rights, Constitution, Reform, Civilise, Criminals, Prisoner.

INTRODUCTION

"The degree of civilization in a society can be judged by entering its prisons"

(Fyodor Dostoevsky, 1821-1881)

The essence of imprisonment is deprivation of one of the most cherished features of human life, individual liberty. By definition, depriving people of their liberty is a negative act and for that reason imprisonment is often described as a punishment of last resort, one which should only be imposed by a court of law when there is no other appropriate punishment [1].

The way a society treats its prisoners can tell you much about its culture. The prison system is in many respects an excellent prism through which to examine a particular culture. If a prison system is punitive, it might tell us that a particular society is tired of high crime rates. Or better yet it can convey whether or not a society respects human rights. One common theme in the history of prisons and prison systems is the mistreatment of the other—those most marginalized in society [2].

The Old Testament reports the use of imprisonment by Egyptians, Philistines, Assyrians, and Israelites. Jerusalem had at least three prisons at the time of Nebuchadnezzar, including *Beth ha-keli*, or "house of detention"; *Beth haasourim*, literally "house of chains"; and Bor, which was little more than an underground cistern [3].

Islamic history also gives some perspectives on the use of prisons. It has been revealed in Surah Yousaf that Hazrat Yousaf (A.S) was detained in a prison on face of the earth as under-trial inmate by Egyptian Chief (Aziz-e-Misr) and the word Sijjan (prison) has been used seven times in the same Surah of the Holy Quran [4].

Hence human rights violations within the prisons are not a new phenomenon but have its roots within the human history. The abuse of prisoners at the hands of officials is a routine matter not even in the developing world but in so called developed civilized world as well (Abu Ghuraib, Guantanamo Bay etc.). Pakistan being a signatory of International Covenant on Civil and Political Rights (ICCPR) is bound to stop violations of human rights in jail/prisons [5]. As imprisonment is not a pleasant experience anywhere in the World, yet the condition of many prisons in Pakistan can at best be described as mediaeval [6].

The prison's conditions in the country since its birth, is the most corrupt and dysfunctional which has also made their contribution to the already volatile state of rule of law in the country. The prison system in Pakistan due to its poor management, overpopulation and lack of sufficient prison staff has become a fertile breeding ground for criminals which have resulted in more crimes instead of its reduction. Therefore there is a need to examine the prison system of Pakistan in the context of deterioration in criminal justice system which has failed in the prevention and prosecution of criminals and protection of the powerful while victimizing the underprivileged [7]. Therefore, there is a great need of prison reform in Pakistan because prisons in our country are no better than criminal dens.

Here in prisons the rules are molded for the influential and wealthy prisoners and where the corruption, narcotics addiction, Physical and mental torture and sexual abuse at the hands of prison staff are the order of the day with the absence of even the concept of basic human rights. This paper briefly discusses the current

situation of prison system along with the problems faced by prisoners in Pakistan and analyses the various reforms introduced in the country till date.

DEFINITION OF PRISON:

Traditionally Prison/Jail is defined as a place where persons in custody pending trial is kept or confined as punishment after conviction (Encyclopedia Americana).

The Prison Act, 1894 (Act No. IX of 1894) defines prison as ‘any jail or place used permanently or temporarily under the general or special orders of a Provincial Government for the detention of prisoners and includes all lands and buildings appurtenant thereto but does not include:

(a) any place for the confinement of prisoners who are exclusively in the custody of the police; (b) any place specially appointed by the Provincial Government under Section 541 of the Code of Criminal Procedure 1898; (c) any place which has been declared by the Provincial Government, by general or special order to a subsidiary Jail’ [8].

PURPOSE OF PRISON:

In 1926 Fenner Brockway, who had been imprisoned during the First World War, wrote in a newspaper article: ‘The object of penal reformers should not be to reform the prison system but to abolish it’ (Priestley 1988:175). Here in the place first we have to carefully examine the purpose of prison that what is the logic behind sending the criminals to prisons and what purpose we want to achieve through it? Generally the proposed purpose behind the prisons is fourfold: it is one of the methods of punishment for the crime which they have committed. By awarding prison sentence, it is believed that criminals will be deterred in future from any thought of committing crime. Additionally by sending the criminals to prison will give a warning to the potential offenders that they will face the same consequences if they commit any crime. This is the main purpose behind the idea of sending criminals into prisons. Prisons are also believed in majority of the countries as a place of potential reform for the prisoners due to various activities such as teaching education, new skills, how to support himself/herself and receive encouragement to bring changes in their life and behaviour.

Finally, it is also a fact that some criminals pose real threat to public peace and endanger the security of the society at large. Therefore if we want to protect the community from such people then they should be sent behind the bars. The conclusiveness and compatibility of these objectives have been discussed by the prison practitioners and academics over the centuries [9].

The Legal Framework of Prison in Pakistan:

The legal framework of the prison system in Pakistan which regulates the establishment and management of prisons is a combination of various statutes majority of which has been inherited from the British India. The Britishers in India were using this prison system as an instrument of punitive measures instead of a reformatory centre in order to suppress the freedom fighters and other political opponents [10]. Still majority people including high ranking officials are of the view that human rights are not applicable/should not be applied to prisoners. Such views have no place in law and are wrong. Just like other people, prisoners are also human beings and therefore enjoy such rights even in prisons due to the universality of human rights. Therefore it means that every individual including a prisoner has human rights which are inalienable irrespective of their age, class, sex, status etc. However it does not mean that they can enjoy all rights just like anyone because no right is absolute and may be limited/restricted in certain situations. These limitations/restrictions are lawful and within the State’s Constitution and international human rights law. However, there are certain rights which cannot be suspended under any situation. Such rights comprises of: Right to human dignity: It is such an inalienable right which a prisoner retains and can’t be violated in any situations under the provisions of the Universal Declaration of Human Rights and Constitution of Pakistan, irrespective of the crime which he/she has committed.

Similarly, right to life, right to equality and freedom from discrimination, right not be tortured or treated cruelly or inhumanely have been guaranteed by the Constitution of Pakistan and under the Universal Declaration of Human Rights as well [11].

The primary legislative instrument governing the prison administration is the Prison Act of 1894, which regulates the maintenance of prisons and officers’ conduct; responsibilities of the jail officials; admission, prisoner’s removal and discharge from prisons; provisions related to health and other services/supplies to civil and remand prisoners. The above mentioned Act also regulate the conduct of the convicted prisoners, assignment of various tasks to prisoners, punishment of offences committed within the premises of jails and regulating other issues related to prisoners, for example health matters and visit etc.

Other areas such execution of sentences, transfer of prisoners from one jail to another, assigning prisons for their confinement, discharge of prisoners, and ensuring their attendance in courts is covered by the Prisoner’s Act of 1900 [12].

The Good Conduct Prisoners Probationary Release Act of 1926 provides that if the prisoner's behaviour and conduct during imprisonment is good and the jail officials are sure that in future they will abstain from criminal activity and will lead a peaceful and useful life may release them earlier than their due time [13].

The Prison Rules of 1978 govern the day-to-day superintendence and management affairs of prisons in Pakistan, which is also known as the Jail Manual. Other post-independence laws include the West Pakistan Maintenance of Public Order Ordinance (MPO), 1960, allows preventive measures such as controlling and detaining of people and publications on the basis of ensuring public peace, safety and maintenance of law and order in the country, [14] the Probation of Offenders Ordinance, 1960, permitting the release of prisoners on probation in few instances; the Juvenile Justice System Ordinance, 2000, provides for the "protection of minors having involvement in criminal cases", their "rehabilitation in community" and the "restructuring of juvenile courts"; [15] and the Mental Health Ordinance, 2001, regulates the inspection and care of those imprisoned people who are mentally disturbed [16].

West Pakistan Jail Warden Service Rules of 1962 regulates the prisons management through a career prison service, which sets wardens qualifications and is organised by the provinces under an inspector general of prisons. The other hierarchy included the director prisons at the division level under which the jail superintendents work at the district and municipal level.

STRUCTURE OF THE PRISON DEPARTMENT [17]

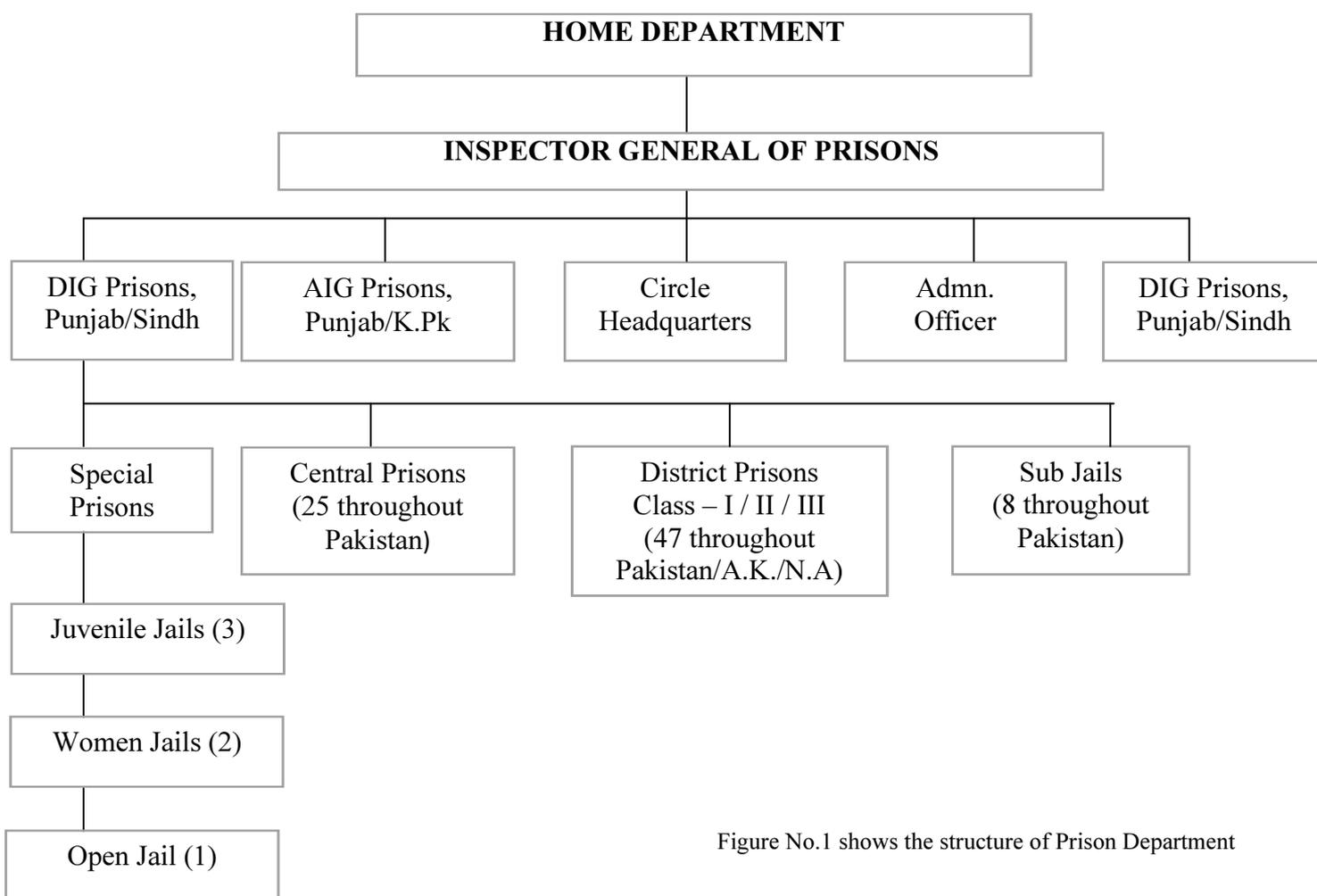


Figure No.1 shows the structure of Prison Department

As prison system is a provincial subject, therefore it is the responsibility of the governments at province level to establish, maintain, improve, hire prison officials, and prison-related legislation etc. There are the following types of jails in each province as per Jail Manual; these are [18]:

- 1) Central Prisons. 2) Special Prisons. 3) District Prisons. 4) Sub-jails.

Central prisons

Nearly in every division of a province, there is a central prison. The prisoner's capacity in these prisons is more than 1000 prisoners irrespective of the length of sentences. It is the discretion and authority of the provincial government to assign such status to any special or district prison.

Special prisons

Special prisons include those prisons which are exclusively for women, or open prisons, or borstal institutions, or juvenile training centres. It also comes within the domain of the provincial government and they can establish such prisons at a time and place of its own choosing or can declare any existing one as a special prison.

District prisons

The third category of prisons in Pakistan is known as district prison, which is further divided into three sub classes. The first class of district prisons has an accommodating capacity of 500 prisoners or more, sentenced up to five years, while second class prisons can accommodate between 300 to 500 prisoners having a sentence which is up to three years. The last category is that of third class, which can accommodate less than 300 prisoners, sentenced up to one year.

Sub-jails

The last category in the hierarchy of prisons is that of Sub-jails, which has limited facilities as compared with the others, where criminal suspects may be detained on remand. A provincial Government by general or special order can declare any place a "subsidiary jail" [19].

There are various classes in prisons for inmates (prisoners). A criminal from a poor background is normally assigned Class C, with virtually no amenities. Class B status in prisons is usually assigned to prisoners of higher social status, with better conditions and can procure good food and other amenities from their own pockets. Prominent Offenders are normally sent to Class A prisons. In addition to these, there is also a separate system for Juveniles in prisons and these offenders are sent to those juvenile wards in regular jails [20].

History of Prison Reforms in Pakistan:

The prison conditions in Pakistan are very poor and much below the international standards. The prisoners' treatment at the hands of the officials is very inhuman and abusive. Apart from overcrowding, there are other violations of the human rights such as discrimination, torture, sexual abuse, inadequate food and medical care etc. Majority of prison facilities were of antiquated construction, without the capacity to control indoor temperatures [21].

Keeping in view such a situation various Governments since independence introduced reforms in the prison system but has always been a low priority on their agenda as it comes within provincial jurisdiction. But unfortunately Provincial governments on their part have made no concrete efforts for the maintenance and improvement of the prison conditions in the country apart from the construction of new prisons to accommodate the increasing number of prisoners. Quite a few numbers of new prisons were constructed since independence on the recommendations of various prisons reform committees established under different governments.

Pakistan introduced its first prison reform programme in 1950, which was headed by Col. Salamat Ullha (ex-IG Prisons), which was followed by various reform committees constituted by different provinces and the federal government in-order to address the prisoners grievances. The findings of Pakistan's Senate Functional Committee on Human Rights are that the prisons in Pakistan only serve one purpose that is the confinement of the alleged offenders till the disposal of their trial or the imprisonment of the convicts for their term. Rehabilitation of the prisoners receives very little attention from the officials which shows jail/prison like that of medieval times. Apart from this the Committee mentioned few other areas which need immediate attention. Overcrowding of prison is one among them where the inmates' number has doubled and needs immediate attention of the Government to provide more accommodation along with the creation of Court Police under the Prison department in order to bring it in line with the international standards. The other recommendation from the Committee is that of the women jails and for Juvenile offenders' jail facility in order to keep them away from hardened habitual criminals and to become better and useful citizens. At the end of recommendations the emphasis of the Committee is that prisoners whether under trial or convicts are human beings and need to be treated like that and entitled to all rights guaranteed by the Constitution of Pakistan as their citizens except freedom of movement beyond prisons [22]. These findings in the shape of recommendations were given to various Governments for approval in-order to bring reforms in the prison system of the country but unfortunately no productive work could be done to change the system [23].

Present Condition of Prisons in Pakistan

The total number of Prisons in Pakistan is 88 with an authorised capacity of 41967 but at present there are more than 77235 prisoners in these prisons which is nearly double the authorised capacity [24]. As the rate of

imprisonment is increasing with the passage of time, exacerbating the acute problem of overcrowding in our prisons along with other issues which has been discussed.

Statistics approximately show that currently there are more than nine million people behind the bar worldwide, majority of which are in the United States of America, China and Russia (Walmsley 2005). Rates of imprisonment are usually quoted per 100,000 of a country's total population [25].

CONCLUSION:

Prisons conditions in Pakistan are in pathetic state where violation of rules for wealthy and upper class is a normal practice with other social evils and crimes such as corruption, torture, sexual abuse, drug addiction and disease are rampant and where there is no concept of even basic human rights [26]. Therefore if we want to improve the condition of our prison system in-order to coup up with the challenges, then we have to make amendments in the rules and procedures which are decades old, with proper training of the jail officials at home and abroad. Likewise, water treatment plants along with medical laboratories should be established in the prisons. Unnecessary physical punishments which are part and parcel of life in prisons should be avoided. At the end, it may be concluded that although the prisoners confined in prisons might have committed some offences yet it is a fact that they are still human beings and therefore entitled to some basic human rights, which have been guaranteed to them by the Constitution of Pakistan and International Human Rights Law.

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