

Prisons in Pakistan: ‘The Institutions of Abuse’

Zaira Anwar^φ

^φ Zaira Anwar is in her second year, of the LLB programme of the University of the Punjab, at the Pakistan College of Law. She can be reached at zaira.anwar@icloud.com.

Abstract

The modern Pakistani system of imprisonment is cumbersome and poorly managed as the prisoners are not just isolated from the world but are also kept in the most inhumane circumstances. Since the system of imprisonment is one of the most important tools at the disposal of the criminal justice system in Pakistan, its proper functioning is essential to ensure the rehabilitation of convicts. It is also important to ensure that the state does not legitimise a device of abuse under the guise of retribution, which is what the prisons in Pakistan are well known for. Lack of accountability and effective oversight leaves prisoners at the behest of the prison staff which results in inmates being subjected to abusive behaviour. None of their fundamental rights are upheld and they are forced to suffer in silence to ensure their survival. While illegal practices abusing prisoners also exist, the applicable legislation will be evaluated to see what forms of abuse it allows for and how, if at all, those can be prevented.

Introduction

With the rise of the state as a social order, the system of imprisonment has evolved to be one of the most important tools at its disposal. The use of prisons can be traced back to the time of Ancient Romans who emerged among the first in the world to employ them as a form of punishment, renouncing their former use of detention and torture. The modern prison system took birth in London, in the light of Jeremy Bentham's theory of utilitarianism followed by the undue efforts of a number of prison reformers who contributed towards establishment of an effective penal system. John Howard, Piper Kerman and Alexander Paterson are a few prominent reformers who designed a standard imprisonment system which was incorporated by various States. This made conventional punishments¹ redundant. The change in practice was reflective of the change in the ideology leading criminal justice, from retributive to reformatory and rehabilitative.

The System of Imprisonment in Pakistan, where the prison is a place of punishment after conviction, is an 18th century invention, a progeny of colonialism. The British in the Indian subcontinent used this system to torture political opponents, suppress the freedom fighters and jail the habitual criminals. It featured wide discrimination, brutality, suppression and violence. The legislations passed by the British Government regulating prisons in the subcontinent not only infringed the fundamental rights of inmates but also closed all possible doors of escape from the cycle of torture for state prisoners. As the number of young offenders increased, the British realised that there was a need to amend the law regulating prisons as the former Regulations of 1818 were proving to be insufficient. Thus, the Prisons Act 1894 was passed, amending the law relating to prisons in British India and to provide rules on the establishment, maintenance and obligations of prisoners. This law is still a viable authority in Pakistan today.

To judge how civilised a society is one must enter its prisons, as the treatment of the society's unwanted, undesirable and loathsome members speaks volumes about its perception of civilisation. In the prisons of Pakistan, certain like-minded, or rather (criminal minded) individuals are locked up under one roof. They end up absorbing their harsh surroundings and are

¹ The likes of public executions, painful disfigurements and annihilation of bodies.

nurtured by their companions. This places prisons in a unique position of shaping the inmates' thought. Unfortunately, breeding crime has become an organic result of this. Currently, state prisons present a sorry state of affairs featuring the slow dismantling of humanity and hardening of criminal convictions, rendering prisons a birth place for serious crime. Such treatment, when enabled by state devices² is a clear green light for torture and for the infringement of the rights guaranteed by the constitution of Pakistan and human rights documents such as the Universal Declaration of Human Rights³.

Pakistan's system of imprisonment is an issue which is sufficient to raise questions on the country's civility. It urgently needs to be dealt with before it ends up dehumanising every criminal, under the guise of reformation and rehabilitation.

A. Laws Regulating Pakistan's Prison System

The Prisons Act of 1894 serves as the primary legislation regulating the prison administration in Pakistan. From maintaining the prisons to the discharge of prisoners, this act covers all aspects of an inmate's life. The Prisoner's Act of 1900 regulates the laws regarding the execution of sentences, the transportation and confinement of prisoners. While the Punjab Borstal Act of 1926 provides for the reformation and rehabilitation of offenders, the Good Conduct Prisoners Probationary Release Act of 1926 grants a way out for the early release of prisoners as a reward for their good behaviour. In addition to these statutes, the Pakistan Prison Rules 1978, commonly known as the 'Jail Manual', is a set of rules dealing with the daily superintendence and governance of the prisons. Other laws include the Juvenile Justice System Ordinance 2000 which provides for the rehabilitation of the child offenders.

As is obvious from the titles of these legislations, the regulations are old. While age might not always be an indicator of redundancy, the current

² Such as legislation and prisons.

³ Universal Declaration of Human Rights, art 5; "*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*".

state of prisons being regulated by these laws in Pakistan advocates for this conclusion. The facts available for the prisons in Pakistan will be assessed to see how well they support this proposition.

The purpose of prisons has evolved with time. In doing so, it has changed from being a punishment to aiming to be an institute which would not only act as a deterrent to criminal behaviour but would also rehabilitate those who have chosen to escape the confines of the law. Prisons play a pivotal role as they shape the sensitivities of those whose cause has not yet been lost to illegality. They still have a chance to regret their actions and reform themselves to re-enter society, as law abiding individuals. Their capacity to be moulded by their surroundings is immense and equally large is their capacity to be misled. But this is not something a state can afford. Because whoever is moulded to be a criminal within the walls of a prison is a failing in which the state not only has a stake but has also contributed towards.

Also, the very device by which the state tries to control crime should not be a device which enables it. The rules regulating this institution will be analysed to see how well, if at all, they can deal with problems plaguing the system of imprisonment and to reach conclusions on how those problems can be dealt with.

B. Overcrowding of Operating Prisons

The total number of prisoners in the jails of Punjab are 49,519 against the capacity of 27,824 prisoners as calculated in 2018.⁴ This means that these prisons are housing prisoners over double their capacity. The Adiala Jail of Rawalpindi in particular has been struggling with overcrowding for a number of years. A record of the late 2000 showed there to be 6,195 inmates in this jail, although it had the capacity for only 1,900 prisoners.⁵ Overcrowding is

⁴ Punjab Prisons, 'Crime-wise Population' (*Government of the Punjab*) <http://www.prisons.punjab.gov.pk/crime_wise_population_statement> accessed 15 February 2018.

⁵ Hassan Abbas, *The Taliban Revival: Violence and Extremism on the Pakistan-Afghanistan Frontier* (Yale University Press 2014) 3.

itself a problem as it disrupts the operation and mechanism of prisons. It also has engendered further problems within the prisons in Pakistan.

According to the Prisons Rules 1978, all prisoners are to be provided sufficient space which the rules identify to be 18 square meters.⁶ The active reality of prisons is nowhere near this as prisons are overcrowded to the extent that the prisoners in barracks seem to lie over each other. Not only is this an unacceptable and inhumane living condition, it also serves as a potential breeding ground for infectious and transmittable diseases such as Hepatitis C and Tuberculosis which adds to the misery of incarceration. This undermines the ability of the system to provide proper rehabilitation, healthcare and accommodation to inmates and is likely to result in behavioural disorders and contribute to poor mental health of the prisoners. The congestion has been seen to make prisoners violent which aggravates crime within jail cells. The frustration and anxiety among the prisoners also contributes to violent behaviours such as prison riots and self-harm.

1. Overcrowding and Separation of Prisoners

The Prisons Act 1894 emphasises on the separation and segregation of prisoners. It mandates separation of inmates under twenty-one years of age and those who have not yet reached puberty, from the rest of the inmates.⁷ This provision was to prevent the amalgamation of adult and juvenile prisoners so that the former does not exploit the latter in any way. The undulating overpopulation of the prisoners has impeded this separation as prisoners are forced to reside together, irrespective of their age and degree of offence.

The Prisons Act 1894 also mandates separation of unconvicted criminal prisoners from convicts.⁸ However, owing to prison overcrowding, convicted prisoners are often kept together with those under-trial and those awaiting-trial. Such conditions do not allow the separation of prisoners in accordance with the status of their relevant charges. This can and does result in the exchange of negative influence on those who have committed offences

⁶ Pakistan Prisons Rules 1978, rule 745.

⁷ The Prisons Act 1894, s 27(2).

⁸ The Prisons Act, s 27(3).

of a lesser degree and allows for them to adopt the criminal proclivities of hardened criminals who have either been imprisoned for serious offences or have been imprisoned for longer periods of time.

a. Overcrowding and Minors

The Pakistan Penal Code 1860 does not recognise criminal acts by minors as offences.⁹ Regardless of this, children continue to be incarcerated in state prisons for minor offences. The treatment of child offenders, their mental, moral and psychological care in prisons is an issue which needs to be grappled with. The Juvenile Justice Act 2015 mentions the need to develop Borstal Institutions in Pakistan for the moral support and psychological care of the children. It also proposes segregation of juvenile offenders so that they are not influenced by adult criminals. Children are, regardless of this provision, kept with other older detainees in prisons.

Currently, Punjab, Sindh and Khyber Pakhtunkhwa have two, four and one borstal respectively, while Balochistan has none. A country where there is a plight of juvenile offenders, there is a scarcity of functional borstals for their accommodation. Juvenile offenders are therefore still being imprisoned in regular prisons, specifically in Khyber Pakhtunkhwa and Balochistan, which not only violates explicit provisions governing prisons, but also allows for sexual and emotional exploitation of minors

The existing borstals are undeveloped and lack trained staff to meet the special needs of children. A youth detention centre should be established to provide services to the juvenile delinquents aiming for their rehabilitation. Facilities such as education, certified teachers and other vocational training opportunities should be provided in the borstal institutions. Since regular prisons are too violent for children, their rehabilitation is almost impossible there. Children are undoubtedly the building blocks of a society and every society is responsible for shaping their youth. Children cannot therefore, be left in the most sensitive and impressionable years of their lives, around those who the state has decided to protect the rest of its subjects from. For this, borstal institutions must be developed so that young offenders can be rehabilitated and taught the value of criminal sanction and respect for the law.

⁹ Pakistan Penal Code 1860, s 83.

Even though the imposition of the death penalty is prohibited by the 2000 legislation, at least 10% of the current death row population (around 800 children) comprises of juvenile offenders.¹⁰ Children, both male and female are housed in prisons with adult prisoners after being sentenced to death. There is no special facility or separate unit available for the juvenile offenders who await their execution. Not only are these prisons darker, dirtier and in worse conditions than regular prisons, they do not proffer an appropriate environment for children. Given the precedent of the fate of death row prisoners in Pakistan, it is unlikely that a minor will be executed pursuant to a death sentence. However, the conditions in which underaged convicts are kept is a pressing cause for concern.

Until the child remains on death row, it is subjected to the harsh treatment received by adult death row convicts which is in addition to the pre-existing unfriendly and harsh environment of prison. This coupled with the looming idea of execution causes many such children to develop mental conditions. While the sentence of death might later be revoked or never actually implemented, the child subject to the abysmal conditions inside the prison is likely to become beyond reproach and lose its capability of re-joining the society, as a reformed individual. The child is more likely to develop hardened criminal tendencies and will undoubtedly be worse off than it was before its incarceration.

b. Overcrowding and Female Juvenile Delinquents

The Juvenile Justice System Ordinance 2000 also provides that there should be a separate detention facility for female juveniles. Delinquent girls are reported to be exposed to abuse at a much higher rate than underaged male offenders. They develop conduct disorders as well as mental disorders while engaging with their deviant peers and are often victims of abuse. Besides the unenforced provision of separate accommodation for minors, there is nothing else which offers a safeguard to underaged female minors in prison.

The Prison Rules do not address the gender-specific needs of the female child offenders. They fail to provide measures addressing their biological, psychological and environmental needs as distinct from their male

¹⁰ Zainab Z. Malik, *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders* (Justice Project Pakistan 2017).

counterparts. This includes hygienic requirements, provision of sanitary napkins and medical support, protection from sexual abuse within the prison by the prison staff and by other inmates, especially for minor females. The current rules leave majority of such needs, of both minors and adult females, unaddressed and forces many females to resort to other means (such as carrying out personal favours for the prison staff) in order to fulfil these needs. Not only does this encourage illegal behaviour, it allows more room for abuse of female inmates.

2. Suggestions for Reform

It goes without saying that new jails need to be constructed to deal with problems of overcrowding, with specific attention to be paid to separate facilities for minors and females. Alternatives to jail sentencing, such as probation, community service or pecuniary penalties can also offer a workable solution to this problem, as these will decrease the number of individuals incarcerated in prisons, reducing the burden on a system which is crippled by the workload it carries. In addition to this, steps should be taken to expedite the in-court procedures and to set alternatives for long waiting periods of imprisonment for prisoners under-trial to reserve spaces in prisons for violent criminals.

Criminal convictions of minors need to be reversed to enforce protections of the Juvenile Justice System Ordinance. Those who are rightfully convicted but are still under the age of majority must be housed within effective juvenile detention centres, which must be provided in every province. Such centres protect minors from the harsh circumstances and abuse of prisons and can ensure that a child's mental and academic development is not stunted during the detention. This is a particular cause for concern as the incarceration is spent directly under the state's watch and any abuse suffered by the minor as a consequence is the sole responsibility of the state. Therefore, if a child remains uneducated or has health concerns due to its imprisonment, the state being the sole authority is directly responsible for all such failures. It cannot therefore, afford to fail in the protection of tenets which it, itself accords the status of a fundamental right.

C. Unwarranted Punishments

By the late 20th century, corporal punishments had been rooted out from a number of developed countries. Unfortunately, the unwarranted physical torture has not yet abandoned the penal institutions of Pakistan. The legislations regulating the prison system, at various instances, allow for the use of such punishments.

1. Punishment of Whipping

The Pakistan Prison Rules 1978 permit various punishments such as the use of handcuffs, bar fetters, hard labour, whipping, solitary confinement and chain links. These measures have been denounced by the international community as most equate them with torture and inhumane and degrading treatment. This makes such punishments not only a violation of the prohibition on torture but also the right to life.¹¹

In Pakistan, the Prisons Act 1894 and the Borstal Act 1926 provide for whipping as a punishment for offences committed by the male prisoners. It is considered as a permitted disciplinary measure as long as it is adopted in the presence of a jail Superintendent or a Medical officer. The Prisons Act, 1894 states;

*“Whipping shall be inflicted with a light rattan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter rattan.”*¹²

Though the law emphasises on the weapon being lighter in nature and the number of whipping not exceeding 30 lashes, a strict adherence to these stipulations cannot be guaranteed. One would not expect the untrained prison staff to keep a check on the number of lashes administered to hundreds of prisoners. Since their power is absolute and there is no effective oversight, its abuse is only a natural consequence.

¹¹ International Covenant on Civil and Political Rights 1976, art 6, 7, 10.

¹² The Prisons Act, s 53(2).

Prisons require an effective process of reprimand to ensure discipline. Had there been no punishments in prisons, the inmates would be difficult to control. But the role of prisons is the prevention of crime and to achieve such results, a fair degree of deterrence through such punishments is necessary. However, the reprimand should not be so harsh that the primary aim of reformation, rehabilitation and reclamation of imprisonment is lost. Punishments must be lighter and only given when they are essential as such degrading treatment develops psychological issues among the prisoners resulting in them being damaged, mentally and physically. Whipping is therefore, not just inhumane but also violative of the fundamental rights of humans. Provisions sanctioning such punishments should be repealed to completely prohibit physical beating and torture, thereby ensuring the dignity of a prisoner.

a. Corporal Punishments and Dignity

The dignity of an individual is an inviolable constitutional right and the Constitution of Pakistan explicitly prohibits subjecting individuals to torture or inhumane or degrading treatment.¹³ All corporal punishments should therefore be prohibited. Although, there are laws prohibiting corporal punishments of minors in custody¹⁴ they fail as they compete with other laws which also apply to the same inmates and sanction such punishments. The Juvenile Justice System Ordinance in particular, is one such law and its limitations also lie in the fact that it is not applicable to the whole of Pakistan. The Abolition of the Punishment of Whipping Act 1996 is another legislation prohibiting corporal punishment, but it does so for such punishments being awarded in sentences for crimes, not as a disciplinary measure for prisoners.

Whipping is still provided for the offence of *Qazf*, *Zina* and theft provided in the Offence of *Qazf* (Enforcement of *Hadd*) Ordinance 1979, Offence of *Zina* (Enforcement of *Hadd*) Ordinance 1979 and in the Offences Against Property (Enforcement of *Hadd*) Ordinance 1979, respectively. These laws cannot be criticised much as these punishments are derived from the Holy Quran, the most sacred scripture in Islam. Since Pakistan hosts a Muslim majority, such punishments hail much support locally and cannot be

¹³ The Constitution of Pakistan 1973, art 14(2).

¹⁴ The Juvenile Justice System Ordinance 2000, art 12.

condemned as being inhumane, for fear of such criticism to be interpreted as carrying moral impediment.

The punishments granted to prisoners for *Tazir* offences can always be altered since their award lies within the discretion of the court. The intentional use of physical force to cause pain to the prisoners for *Tazir* offences must be prohibited. In fact, the relevant provisions of the Prisons Act 1894, prescribing the punishment of whipping, must be repealed to align the law with the Abolition of Punishment of Whipping Act of 1996.

Furthermore, The Prisons Act, 1894 also provides for starvation as a punishment to the prisoners for prison-offences. The Superintendent is empowered to punish the prisoner by a penal diet in which he is denied food for up to 96 consecutive hours.¹⁵ These punishments are often coupled with other barbaric practices to further increase the tribulations of the prisoners. Such provisions can in no way be thought of aiming at the rehabilitation of the prisoners rather, they seem to make the prisons a living hell for their inhabitants. While such punishments might sufficiently ridicule and hurt inmates, they will never be able to achieve something beyond mere retribution. Torture, while effective as a device for conveying pain, does not act as anything more than that. It is not therefore, a stretch to conclude this to be useless to a system which aims to rehabilitate those under its purview.

D. Lack of training

The growing agony and suffering of the prisoners is further aggravated by the abusive behaviour of prison staff.

1. Untrained Staff

The contribution made by the prison officers in making the prisons unbearable for prisoners has been relatively ignored. Their service, training,

¹⁵ The Prisons Act, s 46(9).

education and demeanour play an essential role in the lives of the inmates. The prison warders are required to attain at least middle school education according to the Prison Rules 1978, but the rules also allow the Inspector General of Police to relax this criterion as he may deem fit. This compromised standard for the education requirements of prison staff affects their treatment of prisoners. Had they been educated, they would have worked within their professional capacity in a much organised manner.

The prison staff lack grooming and skills to handle crisis situations and tend to begrudge inmates. They go by the 'I will treat you the way you treat me' attitude and in the process, prisoners learn to use all means necessary, regardless of legality, in order to be spared of their wrath or mischief. Such unfair treatment and the need to do whatever it takes to survive, desensitises inmates to violence, cruelty and barbarism. This often leads to inmates doing various activities to remain within the good graces or to be spared of the staffer's ire which includes sexual and monetary favours which victimises females the most. These are all coerced acts. Since there is no reporting mechanism inside prisons which would ensure anonymity of the complainer, inmates are discouraged to act against such abuses and are forced to suffer through their misery in silence.

While some acts are committed due to vengeance or lack of oversight, others could be attributed to lack of knowledge and training. The practice of putting condemned prisoners in death row cells, while their appeals are pending, instead of keeping them in general barracks, is one such practice. A Lahore-based lawyer, working for a non-profit, human rights law firm¹⁶ analysed the current state of a few prisoners kept at Kot Lakhpat Jail and stated the following for prisoners on death row:

*"Most of the prisoners on death row, who gradually develop 'death row phenomenon' or 'death row syndrome' are mostly so worn out mentally and physically that they don't even understand the situation they are really in. The condemned prisoners are locked in separate cells, away from the general barracks which, in itself is a mental torture, as these 'black cells', are a reminder of imminent death."*¹⁷

¹⁶ The Justice Project Pakistan.

¹⁷ Irfan Aslam, 'Between Life and Death' (*Dawn*, 7 September 2014) <<https://www.dawn.com/news/1130263>> accessed 15 February 2018.

This demonstrates the dire need for training and education of prison staff. Most of the prison staff has not received formal education and in-service training. Furthermore, corruption and malpractice are very common among the jail authorities, as reported through several cases.

In one case, the jail staff at Punjab's Toba Tek Singh district prison tortured three prisoners to an extent that their genitals were taped and they were compelled to drink litres and litres of water without being allowed to urinate. They were released after four hours of prolong abuse by which time they had developed renal ailments.¹⁸ The case of *Qalandar Bux v The State*¹⁹ is another such example. A good way to do ensure the elimination of such practices is to ensure effective accountability of the prison staff. Aiding this would be the proper training of staff members to inculcate ethical, moral and professional practices within prisons.

a. Lack of Training Institutions

For the training of thousands of individuals, there is only one institute in Pakistan (Lahore), known as the National Academy for Prisons Administration (NAPA). This institution is neither up to the mark nor taken very seriously. It is merely a formality which many overlook. The newly-recruited prison staff lack the expertise to deal with the prisoners through modern methods of rehabilitation due to which they fail to impart correctional education and vocational training to the inmates.

Personal frustration due to job dissatisfaction, slow promotion and low salaries tremendously affect the staff's performance and their treatment of prisoners. Given the culture of impunity for mistreatment and torture in Pakistani prisons, inmates often become the target of the staff's personal frustration.

The only form of oversight available is the Jail Superintendent who is responsible for the general management of the prison.²⁰ The superintendent

¹⁸ 'HRCPC Condemns Brutal Torture' (*The Express Tribune*, 12 October 2010) <<https://tribune.com.pk/story/61437/hrcp-condemns-brutal-torture/>> accessed 15 February 2018.

¹⁹ *Qalandar Bux v The State* [2013] 2067 YLR.

²⁰ Extending from the maintenance of records of each prisoner to the remission of their term of imprisonment.

is essentially the final authority in the prison and does as he sees fit, without any form of accountability.

b. Arbitrary Powers and Unchecked Practices

The Prisons Act 1894 empowers the Superintendent to exercise complete control over all subordinate officers for matters relating to discipline, labour, expenditure, punishment and control.²¹ While judges and district coordination officers can and do visit prisons to ensure the smooth maintenance of the institution, the superintendent's powers go further unchecked when such inspectional visits occur infrequently, which is usually the case. The superintendent can therefore dictate the lives of the inmates, as he may please.

The Prisons Act 1894 permits the confinement of convicted prisoners using irons bars, or other mechanical restraint, for up to three months, in cases where the superintendent thinks necessary.²² Since no reference has been made as to what may be circumstances constituting necessity, misuse of such power is inevitable and occurs often. It further allows the Superintendent to extend the period of a prisoner's confinement behind iron bars under necessity, subject to the permission of the Director of Prisons.

Prisoners should therefore, have a right of appeal against the discretionary powers of Superintendent, which is currently not available. This is also further evidence of the need for compartmentalisation and division of labour within the prison administration. If there are different individuals dealing with different matters, it is unlikely that one individual sits as the all-powerful monarch treating the prison as his personal kingdom. Also, a system of checks and balances could be introduced to the same effect.

The law for this purpose needs to be refashioned and amended. Moreover, it becomes almost impossible for the Superintendent or the Deputy Superintendent to keep a direct check on each and every officer of the prison on a daily basis which is why violations of duties, wilful breach or neglect of rules and regulations is common among the prison staff.

²¹ The Prisons Act, s 11(1).

²² The Prisons Act, s 58.

Prison officials should be strongly condemned from exploiting the prisoners by making them provide personal services and by accepting bribes. Strict measures should be taken against those who abuse their powers. Furthermore, independent institutions for investigation of abuses within prisons and training centres for the prison staff should be established to prevent unethical and unlawful practices allowing for torture and abuse of prisoners at the hands of the jail authorities.

E. Degrading and Deplorable Living Conditions

The overcrowding crisis, mental abuse, physical punishments, and maltreatment by the prison staff pose grave risks to the prisoner's health. In addition to this, the deplorable conditions of the prison exacerbate severe problems which endanger the lives of the prisoners. Inmates are denied adequate medical facilities including dental and mental health care. According to the HRCP's report of 2010, Karachi's Central Jail had only 3 doctors for around 2,200 prisoners when nearly 50 inmates were suffering from AIDS/HIV while at least 400 prisoners had scabies.²³ This is indicative of the poor standard of healthcare provided at this prison and the general disregard for the physical and mental wellbeing of inmates at prisons in Pakistan.

The U.N Standard Minimum Rules for the Treatment of Prisoners require every institution to provide the services of at least one qualified medical officer.²⁴ In addition to this, access to medical care for inmates has been deemed to a constitutionally guaranteed right by the Supreme Court of Pakistan.²⁵ The court has also, through various judicial decisions, directed jail staff to provide prisoners with proper medical treatment in jails and for this it ordered the relevant authorities to go beyond the jail premises in extraordinary circumstances just to ensure the well-being of the prisoners by stating:

²³ *Jails, Prisoners and Disappearances* (HRCP 2014) 94, 95.

²⁴ U.N. Standard Minimum Rules for the Treatment of Prisoners, s 22(1).

²⁵ *Mst. Rohaiifa v Federation of Pakistan* [2014] PLD 174 (SC).

*“In case convicts/detainees required medical treatment which was not possible in jail hospital or jail premises, they should be taken to proper hospitals. All efforts should be made to secure their health and life which was their guaranteed right under the Constitution.”*²⁶

While the Prison Rules of Pakistan do require the need to maintain a hospital in each prison, there is nothing in the rules which emphasises the maintenance of medical equipment and provision of necessary medicines in the hospitals. The rules also provide that every prisoner complaining of any illness shall be taken to the Medical Officer for examination but in practice their request is turned down as staff are inclined to deny majority of requests of prisoners, unless they are given some form of consideration in return. This can take the form of money or other favours the likes of those mentioned above which subjects inmates to abuse inside the prison. The denial of medical care by the Prison Staff is often used as a way to punish the prisoners as well which is not permitted within any of the legislations governing prisons.

1. Institutionalised Discrimination

Pakistan Prisons Rules 1978 divide prisoners into various classes and provide that the separation of prisoners shall be carried out to the fullest extent. It states that convicted prisoners shall be divided into three classes; A, B and C based either on their status, character or previous criminal record.²⁷

The superior class prisoners enjoy greater privileges over their ‘inferior’ fellow prisoners. Kept apart from the inferior classes they are supplied with accommodation superior to that provided for C class prisoners which is sanctioned by the Prisons Rules 1978. They also enjoy better facilities for bathing, utensils and toilets which are not available to their C class counterparts. The only thing which is the same for both classes of prisoners is the food which can also be supplemented by the superior class

²⁶ *ibid.*

²⁷ Pakistan Prisons Rules 1978, rule 242(i)(b): “Class A and Class B will contain all prisoners who are by social status, education and habit of life have been accustomed to a superior mode of living. Class C will consist of prisoners who are not classified as A and B.”

prisoners at their own expense. The Superior class prisoners are even allowed to employ other prisoners to provide them with additional services.²⁸

Jails are constructed in a manner that the prison barracks and cells are not adapted for extreme weather conditions; too cold in winters and too hot in summers. Heating and cooling equipment is only provided to class A and B prisoners and the access of class C prisoners to such equipment is up to the warden which allows the warden more room for discretion and more area for abuse of such prisoners. Class A prisoners are therefore the most privileged within the prison.

The prisons of Pakistan deserve strong condemnation as to the unhygienic conditions and the dreadful environment they provide to the prisoners. In a country where fatal diseases like Malaria and Dengue fever are common, as unclean places are good breeding grounds for such diseases, measures must be taken to fight them. These diseases are common in prisons and Pakistan's prisons are becoming home to their rampant spread. While superior class prisoners can make use of mosquito nets at their own expense,²⁹ not such facility is available to lower class prisoners.

Not only is this inherently unfair as equality before the law is a construct inherent to the body of law, it also condones unfair treatment within prisons as the applicable rules sanction such behaviour and act as a comprehensive guide for such discrimination. Such division of inmates, into groups based on

their social status, wealth and occupation, in addition to the offence they have committed, is a practice which needs to be removed from the system of imprisonment in Pakistan. Such discrimination is so well entrenched in prisons that the prisoners also exploit each other and this inevitably results in the perpetration of crime. The legislations are to be blamed for this as they disregard consequences of such disparity among prisoners.

Prisons are not places where such incitement should be encouraged. To eradicate these differences, the convicts should be treated equally. From being allowed to wear one's own clothes instead of jail uniform to the

²⁸ *ibid* rule 258.

²⁹ Pakistan Prisons Rules, rule 262.

providence of legal aid, all prisoners should be treated as ‘humans’ in the very least and accorded all necessities, without discrimination.

Conclusion

Being a signatory to and having endorsed the international treaties such as the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which have specific directions for the treatment of prisoners without torture, cruelty or inhumane treatment, the government of Pakistan is obliged to fulfil these obligations. Steps should be taken to eradicate the degrading treatment of the prisoners from the system to make it less brutal and more reformative.

The Provincial Minister for Jails and the Inspector General should pay frequent visits to check the cleanliness of the jails. They should meet the prisoners themselves and ask them for their problems and help them out. Not only would this increase accountability and oversight, it would also allow inmates access to basic rights within prison, without having to resort to illegal means.

It is clear that most of the laws related to the prisons are old and outdated. They are inherently biased legislations which continue to work with the perceptions of a time, rules of which are not suitable to the social standards of today. These rules should therefore be replaced to make provisions addressing, in the very least, the four areas (overcrowding, Punishments, Staff training and conditions/facilities available in prison) discussed in this article. The reform in these areas should be made being wary of the faults of its predecessor which resorts to gender bias and socio-economic discrimination in its protections. Not only would this prevent prisons from being the primary abuser of inmates and a breeding ground for crime, which they stand to be for now, but it would also help in achieving the aim of rehabilitation, which many systems of imprisonment acquired decades ago. The much-needed reform in this area would improve prisons as an institution and this would help the

criminal justice system resurrect the viability of one of the most important tools at its disposal.

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