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OVERCROWDED PRISONS

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OVERCROWDED PRISONS - INHUMAN AND DEGRADING

Abstract: *This paper deals with the inhuman and degrading treatment caused by the overcrowding in prisons in Pakistan, reviewing the law in the context of the minimum standards prescribed under the international instruments, and the steps that would enable to achieve the treatment of prisoners in conformity with the norms of human dignity.*

Pakistan has a written Constitution, which guarantees fundamental rights. Article 9 of the Constitution guarantees that no person shall be deprived of life and liberty save in accordance with law, while Article 15 provides for freedom of movement, which has been made subject to any reasonable restriction imposed by law in public interest. The justification for withdrawing from prisoners certain rights enjoyed by free citizens, is to prevent them from either harming themselves or harming others. However, the withdrawal of certain rights as is essential for this purpose, neither deprives them from their fundamental rights nor entitles them to be treated in an inhuman and degrading manner. It certainly cannot justify the infringement of basic rights. When a person is confined, in accordance with law, the conditions of the confinement ought to meet the requirements as are inevitable for treatment conforming to the norms of humanity and for the purposes of upholding the dignity, which right has been declared as inviolable under Article 14 of the Constitution. The theme of this paper is to examine the treatment of prisoners, particularly on account of overcrowded prisons and to review the law in this regard.

CONDITIONS IN PRISONS

Though all the prisons in Pakistan are faced with the problem of housing inmates far exceeding the number than what each of them was originally designed for, I have selected the District Prisons at Mardan and Peshawar, in the North West Frontier Province of Pakistan, for the purposes of illustrating the conditions being

faced by the prisoners. The prison was built in 1846 by the British to accommodate 300 prisoners. Today the number of inmates exceeds 700. Due to meagre resources, the old building is in dilapidated condition and poses extreme health hazards for those who are confined in its four walls. The overcrowding invariably forces prisoners to sleep on the rooftops of the common toilets, without proper bedding, and as a consequence they remain exposed to different hazards. This overcrowding also adds to the already unhygienic conditions, as the ancient building lacks a proper sewerage system. The segregated portion within the premises for women prisoners presents an even worse example of the negation of the fundamental right with respect to the inviolability of human dignity. The rooms, originally built to accommodate not more than ten prisoners, are being used for the confinement of more than 40. It is not only the women prisoners who are locked in these gloomy, unventilated and unlit rooms, but also the infant children, some of whom are given birth in the same overcrowded premises. The prisoners in such overcrowded accommodation have no alternative but to sleep on the floor under hazardous conditions due to lack of space. The meagre resources at the disposal of the management allows not more than Rs. 20, 220 (approx US\$ 400) annually to be allocated for medicines, which in no way commensurate with the number of prisoners confined in this prison. The prisoners, therefore, run the risk of being exposed to health hazards.

The accommodation conditions in the prison at Peshawar, which is the provincial capital of the North West Frontier Province, are no different. Originally built to accommodate 800 inmates, more than 2800 prisoners are being kept in its building which was built more than a century ago. Since the majority of the prisons throughout the rest of the country were built during the same period, the conditions of hygiene, sanitation and other inhuman and degrading factors mainly due to

overcrowding, blatantly violate the basic principle that “people come to prison as a punishment, not for punishment”. Overcrowding, with several people to a cell far exceeding than what it was designed for, the compulsion to defecate in buckets in presence of others in the same cell which is also used as a living area, the debasing act of slopping out the buckets, the lack of sanitation, this all cumulatively amounts to inhuman and degrading treatment.

It is ironic that in such conditions, the menace caused by overcrowding, obliterates the distinction between the convicted prisoners for heinous criminal offences, and those whose guilt is yet to be proved; civil prisoners, juveniles, lunatics or prisoners confined for petty offences. Since all the inmates have to face the same treatment, the most unfortunate victims are those innocent infants who have to suffer these inhuman and cruel conditions merely because of the confinement of their mothers.

The pernicious combination of overcrowding, lack of access to sanitation, and poor hygiene inevitably amounts to inhuman, cruel and degrading treatment. It is an undisputed fact that even a convicted prisoner, despite his imprisonment, retains all the fundamental rights guaranteed under the Constitution. In this regard it is pertinent to reiterate that Article 14 of the Constitution, in unequivocal terms guarantees that the dignity of man shall be inviolable. The degrading conditions arising from overcrowded prisons and the resultant inhuman and cruel treatment most obviously violate the inviolability of the dignity of man.

THE PERCEPTION OF THE COURTS

The Lahore High Court, in a landmark judgment in the case of Saifudin Saif vs Federation of Pakistan (PLD 1977 Lahore 1174), while referring to the law laid

down by a division bench of the same High Court, in Begum Shamim Afridi vs the Province of Punjab (PLD 1974 Lahore 120), though in the context of solitary confinement, observed as follows:

Solitary confinement is a serious deprivation. Similarly, other deprivations mentioned in the statement of the detainee, if established, might amount to torture, if not physical, at least mental. In the circumstances, as in the present case, all types of solitary confinement **and/or deprivations are prohibited unless it becomes necessary to resort to the same by way of punishment in accordance with law.**

Moreover, the superior courts have consistently held that all punishments, which are inhuman and cruel, are violative of the dignity of man. The degradation caused by overcrowding comes well within the ambit of this description. It would not be out of place to refer to the observation made by the Court of Appeal in United Kingdom in R V Secretary of State for the Home Department, *ex parte Herbage* (No.2) (1987), 1 All ER 324. The Court of Appeal in the context of the prison authorities' decision to keep a sane prisoner in a psychiatric wing because of lack of accommodation observed as follows:

If it were to be established that the applicant as a sane person was, for purely administrative purposes, being subjected to in the psychiatric wing to the stress of being exposed to the disturbance caused by the mentally ill and disturbed prisoners, this might well be considered as a cruel and unusual punishment and one which was not deserved.

The House of Lords, in R V Deputy Governor of Parkherst Prison, *ex parte Haque* (1991), 3 WLR 340, confirmed the basic principle that prisoners had remedies against being subjected to intolerable conditions. The degradation and intolerable conditions caused by overcrowding are, therefore, not warranted and as such amount to both physical as well as mental torture.

STANDARDS PRESCRIBED UNDER INTERNATIONAL INSTRUMENTS

There are certain international instruments, which lay down standards for prison authorities to observe. The United Nations Standard Minimum Rules for Treatment of Prisoners envisage principles to be applied in the light of local conditions. Rule 9 (1) includes a requirement for prisoners to be accommodated in single cells at night, and to be allowed natural light, fresh air and artificial light when desired. Rule 12 provides that sanitation should be such as permit prisoners to comply with the needs of nature when necessary, and to ensure a clean and decent manner for this purpose. There are provisions relating to medical services and communications with friends and relatives at regular intervals. Similarly the International Covenant in Civil and Political Rights acknowledges that the essential aim of the confinement of prisoners is their reformation and social rehabilitation which requires that they be treated humanely, and with respect for the inherent dignity of human person. The European Convention on Human Rights outlaws torture and inhuman or degrading treatment or punishment.

In the light of the above-mentioned international instruments, the conditions caused by overcrowding amounts to inhumanity, and blatantly violate the dignity of the persons held in confinement in prisons. However, these international instruments are intended as guidelines and are not binding. The conditions caused by overcrowding as have been more fully described above, fall far short of the minimum standards as envisaged in these instruments.

THE LEGAL REGIMES FOR PRISONS IN PAKISTAN

In Pakistan, the Prisons Act, 1894, The Prisoners Act, 1900 and the subordinate legislation in the form of Prison Rules, governs the legal regime for prisons. This legal regime having been drafted and enacted almost a century ago has become outdated and obsolete. It in no way takes into consideration the changed circumstances. The provisions in the Prisons Act, 1894 relating to accommodation, are restricted to segregation of prisoners without providing for ensuring conditions in accordance with the principles of humanity and upholding dignity. The Remission system under the Prison Rules, gives discretion to the authorities, which is more than what is essentially required and it leaves the door open for the abuse of it. The annual budgetary allocation for prisons in the respective provinces, further adds to the already degrading treatment of prisoners, as it is not sufficient to meet even those minimal requirements as envisaged in the statutes and the Rules. It is also important to mention that the punishment provided for offences in relation to prisons, hampers the early release of the prisoners and, therefore, increases overcrowding in the prisons.

RECOMMENDATIONS

In a case the House of Lords in the United Kingdom had expressed the view as follows:

Whenever one person is lawfully in the custody of another, the custodian owes a duty of care to the detainee...But short of anything that could properly be described as a physical injury or an impairment of health, if a person lawfully detained is kept in conditions which cause him for the time being physical pain or a degree of discomfort which can properly be described as intolerable. I believe that could and should be treated as a breach of the custodians duty of care for which the law should award damages.

While subscribing to the above views, I would further add that the state owes a duty of care to the prisoners and it is time that the law recognizes the right to damages in case of a breach. In order to ensure treatment that conforms to the norms of human dignity, revolutionary changes are to be made in the management of the prisons and the treatment of the inmates. The statutory enactments, having become obsolete and outdated are required to be redrafted with emphasis on meeting the minimum standards prescribed by the United Nations Standard Minimum Rules for Treatment of Prisoners so that they may become binding under the local law. This would enable the courts to exercise a greater degree of judicial review. The root problem, which is that too many people are unnecessarily sent to prison for too long may be addressed by reviewing the punishment provided under various statutes. In my opinion the maximum punishment up to six months, provided for an offence should be abolished and replaced with fine, compulsory community service so as to relieve the burden on prisons. There is a need to establish the institution of a “prison ombudsman”, to deal with complaints from the prisoners. Such an institution is effectively functioning in the United Kingdom, which was instituted as a consequence of the recommendations made by the Woolf Committee constituted to look into the causes of the prison riots. The introduction of the concept of Parole system, which is not in existence in Pakistan at present, would reduce the number of prisoners. The system of remission needs to be abolished and instead replaced by a system whereby an independent judicial body is empowered to order the release of prisoners after satisfying itself that the prisoner is no more a risk to the public as a consequence of reviewing the cases at regular intervals. Last, but not the least, new prisons are required to be constructed. However, keeping in view the meagre resources and other priorities in a developing economy, this may not be possible in the short term. In this regard, encouraging the non-governmental organizations, by giving them appropriate incentives, and privatising certain selected services, may be an alternative for insuring the treatment of prisoners within the ambit of human dignity.