Prison reforms and situation of prisons in Pakistan

Muhammad Siddique Akbar

Institute of Social and Cultural Studies, University of the Punjab, Lahore-Pakistan **Mazhar Hussain Bhutta** Institute of Social and Cultural Studies, University of the Punjab, Lahore-Pakistan

ABSTRACT

Pakistan inherited the prison system as a colonial legacy after the partition of British occupied subcontinent in 1947. With the passage of time the deteriorating condition of prisons and prisoners beckoned the attention of governments and human rights organization as it began to realize that life conditions in prisons is closely related with recidivism rate and criminal behaviour. The ideas of community correction and rehabilitation altered the functions and objectives of modernized prison institution. To improve the living conditions of detainees, various commissions and committees have been constituted by government of Pakistan occasionally in context with paradigmatic shift in the penal philosophy throughout the world. Administrative, legislative and reformative measures were recommended by different commissions to address the major problems facing the prisoners and prisons. Notwithstanding, a substantive gap remained between policy decisions and implementation level. Living conditions in prisons are miserable due to poor implementation level. Prisons have turned into place of illegalities and fertile breeding places for offenders. Prisoners' classification based policies should be formulated to improve the living conditions of inmates. Prison system is closely associated with other organs of criminal justice system i.e. police, courts and community corrections. Reforms introduced to improve the prisons must encompass all the stakeholders. This paper analyses the degrading conditions of prisons and prisoners in Pakistan keeping in view the recommendations of commissions and committees formulated to reform the prison system in Pakistan. The situation needs improvement in accordance with the measures recommended by the different commissions and according to International Conventions/Regulations on Prisoners' Human Rights charted by United Nations.

Keywords: prison system, prisoners, prison reforms, prison situation in Pakistan

Introduction

"The degree of civilization in a society can be judged by entering its prison" Fyodor Dostovevsky (1821-1881)

Pakistan inherited the Prison System from the Britishers as a colonial legacy. This system was used by the colonial as an instrument of punitive measures adopted to suppress the political opponents and threat to the Crown as well as antisocial elements. Jails served as means to detain freedom fighters and regime defiant along with criminals. While the history of Western society's use of punishment dates back to eighteenth century public tortures, pillorying and executions at the scaffold. It was characterized by a legally approved "discrimination, violence, revenge, and penitence during Medieval and Ancient times" (Blomberg &Lucken, 2000). The appalling and shocking pain inflicted on the "body of the damned" dates back the past punitive system of Europe. Bodily punishment dramatized

around the spectacle of the scaffold disappeared in 19th century when prisons were constructed as place of punishment (Sargiacomo, 2009).

The presence of the church In Europe, until the early part of the eighteenth Century was important because the state did not benefit from just "naked violence." Instead, it had to broaden the purview its power through a "stage of virtue and penitence". It was marked by state sponsored expression of the law and order and desire to deepen the state's power. At scaffold, it was the belief that the soul of the damned was being saved through the elicitation of truth by confession (Spierenberg, 1995). Although the scaffold was used as a theatre of punishment and deterrent for poor and lower class, they increasingly did not attend as spectators. The theater of punishment slowly assumed the form of popular celebration and public event for jeering and demeaning the justice officials rather than magistrates' intentions to impose fear upon the masses. All this exercise became futile and useless. Thus, in reaction to public disorder, punishment became secluded and hidden from society (Spierenberg, 1995). This probably led to birth of prison as private and personalized way of punishment. Public theater became private act. Emphasis was laid to discard the public torture and executions. This was the beginning of a "new era of penal justice system where there was no more public execution, painful disfigurements or annihilation of criminal bodies. Despite all this the mechanism of oppression of previous century prisons are not completely vanished, as the new mechanism of penal justice consists of both "the deprivation of freedom" and "the technical alteration of the prisoners" (Foucault, 1975).

Prison as a place of punishment after conviction, is an 18th century invention. This is a humanitarian alternative to harsh and brutal penal methods of the dark ages. It was also believed that loneliness of the criminals in a solitary confinement would make them repentance resulting in reformation and rehabilitation. Until 19th century that the reformatory movements took practical shape when for the first time classification, segregation, individualized treatment and vocational training etc. of inmates, were given due consideration. World moved from retribution to reformation and rehabilitation. This ideology also changed the objectives and functions of prisons throughout the world. Objectives of imprisonment vary in different countries depending upon their ideological notions about the function of penal system. These penal functions are usually incapacitation, deterrence; rehabilitation and reformation (Scott CL & Gerbasi JB., 2005) Prisons are also meant to perform diverse functions irrespective of confinement and detention. Prisons transformed into institutions of learning and correction. Detention became an opportunity for self improvement. Prisons have also become the place of illegalities and corruption.

Keeping in view the changing and diverse role of prisons, different commissions and committees were constituted to introduce prison reforms in Pakistan. Now the functions of modernized prison have changed. Custody, care, control, correction, care, cure, community involvement and successful re-adjustment in society are objectives of prisons (Law and Justice Commission of Pakistan, 1997). Prisons are used to execute the sentence awarded by the Court. Maintenance, Care, Custody and transfer of prisoners are carried out in modern penal institutions. Jails are used

for the maintenance of discipline and ensure prisoners' conformity. Prisons perform the function of imparting useful education / training to the prisoners in various trades/skills and other vocational disciplines for their successful economic rehabilitation. Organizing of recreational activities and psychological counseling of inmates are the auxiliary functions of the prisons (Law and Justice Commission of Pakistan, 1997). This paper briefly discusses the reforms introduced and analyses the current situation of prison in Pakistan.

Legislation on Prisons during British Rule in India

British Government either in process of implementation of its own authority or the vested authority by virtue of embracing the due maintenance of alliance with other states had through Regulation III of 1818 passed on the 7th April of the same year, for the confinement of state prisoner adopted a procedure to place any individual under personal restraint against whom there may not be sufficient ground to institute any judicial proceeding. It was the law of the time which never allowed any state prisoner to even think of his fundamental rights that he or she could not be behind the bar at one time or released from the clutches of the authority at the other on the will of the masters.

After the complete domination over sub-continent there was a requirement to amend the law relating to prisons in British India and to provide rule for the regulation of such prisons which under their control an Act No.IX of 1894 was passed by the Governor General of India in Council on the 22nd March. The said enactment came after Bombay Act II of 1874 which was applicable to civil jails in the Presidency of Bombay under the provisions of about eight sections i.e. Section 9 to 16 (both inclusive) without change. The Prisons Act was enforced on 1st July 1894 comprised of twelve chapters and sixty two sections on establishment, maintenance, duties of prison staff and admission, discipline, rights and obligations of prisoners.

Received the assent of the Governor General on the 11th March 1897 an Act VIII of 1897 was passed to amend the law relating to reformatory schools and to make further provisions for dealing with youthful offenders. After enactment of this law, the Reformatory Schools Act, 1876 was repealed. Although it was enforcement of very good law yet it was introduced much earlier in contravention of the requirement.

Act III of 1900, the Prisoners Act received the assent of the Governor General on 2nd February 1900 came into force at once. It was an ac to consolidate the law relating to prisoners confined by order of a court. It extended to the whole of British India inclusive of British Balochistan, the Santal Parganas and the Pargana of Spiti. The Act included nine parts and fifty-three sections had the guidance on admission, removal, discharge, attendance in court and employment of prisoners etc.

The Punjab Borstal Act, 1926 received the assent of the Governor on the 22nd July 1926 and that of the Governor General on the 16th August 1926 and was first published in the Punjab Government Gazette of the 27th August 1926. It was an

Act to make provision for the establishment and regulation of Borstal Institutions in the Punjab and for the detention and training of Adolescent offenders therein already received the sanction of the Governor General under sub-section (3) of section 80-A of the Government of India Act. The Act contains thirty-six sections to discuss various aspects of prisoners under twenty one years of age.

The 1932 Jail Manual received the assent of the Governor in council of Punjab on 31st December 1932. The said Manual included forty-two chapters, eleven hundred and sixty rules, twenty supplementary appendices and a comprehensive index. All the rules framed in the Manual are under the authority of section 59 of the Prisons Act 1894. The Manual consisted of special mention of the past of Factory Manager, appointment of European Warders for European prisoners, role of Senior Assistant Superintendent, documents of bails or surety bonds, duties of convict monitors, punishment like Transportation of life, accidental or unnatural deaths, details about state, Leprosy and European prisoners and their treatment etc.

Historical survey of Prison Reforms in Pakistan

After independence the prisons and prison departments as a whole remained a low priority item on the Government agenda. Prisons remained exclusive provincial concern in the successive constitutions of the Republic of Pakistan. Provincial Governments could not make tangible efforts to maintain and improve the lot of the existing prisons available in the country. Quite a few numbers of new jails were constructed in the last fifty years, on the recommendations of various prisons reform committees.

As the world civilized, human rights of prisoners began to be recognized. The first prison reform programme was introduced in Pakistan during the 1950 under the chairmanship of Col Salamat Ullah, ex-IG Prisons (UP combined India). Later on different reform committees were constituted in the provinces and under the Federal Government auspices to redress the prisoners' grievances. The recommendations of these Committees were invariably given the Government approval for reforming the systems prevalent in prisons. However no productive work could be done mainly because of financial constraints. List of reforms/reform committees is as follows;

- The meetings of the following Committees / Commissions / Conferences were held during the last 50 years.
- First Prison Reforms Committee under Col. Salamat Ullah, Ex-IGP of UP combined India in 1950/1955.
- East Pakistan Jail Reform Commission chaired by S. Rehmat Ullah, CSP, Commissioner in 1956.
- The West Pakistan Jail Reforms Committee headed by Mr. Justice S.A. Mahmood (S.Pk.), Retired Judge, High Court of West Pakistan in 1968-70.
- Jail Reforms Conference under Prison Division, Government of Pakistan in 1972.

- Special Committee on Prison Administration headed by Mr. Muhammad Hayatullah Khan Sumbal, Home Secretary appointed by Governor of Punjab 1981-83.
- Prison Reforms Committee headed by Mr. Mahmud Ali, Minister of State in 1985.
- Jail Reforms Committee headed by Maj Gen (Retd) Nasirullah Khan Babar, Minister for Interior & Narcotics Control in 1994.
- Jail Reforms Committee under Mr. Justice M. Rafique Tarar, Pak Law Commission headed by Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan in 1997.
- Pak Law Commission headed by Mr. Justice Sajjad Ali Shah, Chief Justice of Pakistan in 1997.
- Task Force on Prison Reforms under Mr. Justice Abdul Qadir Sheikh in 2000.
- Meetings held at the national level by M/O Interior 2005 under the Chairmanship of former Minister for Interior Mr. Aftab Ahmed Khan Sherpao.

In addition meetings were also held under the Chairmanship of Principal Secretary to the Prime Minister and in the National Reconstruction Bureau, Islamabad with the coordination of Central Jail Staff Training Institute now upgraded as National Academy for Prison Administration (NAPA), Lahore. A copy of the final report has been provided to all the Provinces by the Chairman, National Reconstruction Bureau, Prime Minister's Secretariat, Islamabad has been provided to all the Home Secretaries and Inspectorates of Prisons for implementation (NAPA, 2011). All these above commissions and committees have strongly recommended more or less similar reforms in the prison system of Pakistan in context with the functions and objectives of modernized prisons. Law and Justice Commission of Pakistan in 1997 presented a comprehensive report to reform the prison system in Pakistan. This commission recommended the construction of new jails so that the problem of overcrowding could be overcome. Law and Justice Commission of Pakistan, (Jail Reforms Report no 23, 1997) has recommended following objectives and functions of modernized prisons.

Objectives of the Modernized Prison (6 Cs)

(i) Custody: Keeping inmates in safe place of confinement to the

satisfaction of court.

(ii) Care: Meeting basic needs (e.g. accommodation, food,

medicine) of the inmates.

(iii) Control: Maintaining order and discipline within the prison

premises.

(iv) Correction: Motivating inmates through ethical, moral and

vocational teachings to become useful and law-abiding

citizens.

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(v) Cure: Providing treatment (through physical, medical and

psychological counseling) to reform and rehabilitate the

inmates.

(vi) Community: Re-socializing inmates religious and other

Functions of the Modernized Prison

• Execute the sentence awarded by the Court.

- Maintenance, Care, Custody and transfer of prisoners.
- Maintenance of orders and discipline amongst the prisoners.
- Control of expenditure relating to prison management.
- Enforcement of Prison Act, all Laws, Rules/Regulations and orders pertaining to the protection and maintenance of prison/prisoners.
- Imparting useful education / training to the prisoners in various trades/skills and other vocational disciplines for their rehabilitation.
- Organizing of recreational programmes, welfare measures and psychological counseling of inmates for their correction and rehabilitation.

(Source: Law and Justice Commission of Pakistan, Jail Reforms Report no 23, 1997)

Administrative system of Prison in Pakistan

Prisons are a provincial subject like policing. Provincial governments are responsible for establishment, maintenance and improvement of prisons. Legislation on prisons, recruitment and salaries of prison staff come under the jurisdiction government of each province. According to section (5) of Jail Manual (JM), an inspector general appointed by the provincial government heads the prisons establishment by exercising overall control and supervision of all prisons in the province. Each prison has superintendent and two or more deputy superintendent to control day to day functioning of prison. The subordinate prison staff includes chief warders, head warders and warders. District government authorities have the power to visit the prisons. Each women prison has female assistant superintendent who controls the day to day matters of prison. This female superintendent is headed by the superintendent of local prison. Prison guards are appointed in the jails to control the prisoners and maintain law and order. The prison population is composed of those convicted of crimes or on remands for criminal charges, as well as civil prisoners and any person "ordered to be detained in prison without trial under any law relating to the detention of such person". Convicted prisoners are classified into "casuals" (chance offenders) and "habitual" (repeat offenders), and further classified into juveniles (under the age of eighteen), adolescents (over eighteen and under 21), and adults (over 21). The rules also distinguish between those undergoing rigorous imprisonment (hard labour) and those undergoing simple imprisonment. Remand prisoners are classified into those

facing the district and session's court and those committed to other courts. Women prisoners are similarly classified There are four kinds of prisons in each province:

Central prisons

There is a central prison each division in a province. Central prison has detention capacity for more than 1,000 prisoners, irrespective of the length of sentence. The provincial government has discretionary authority to redesign at any special prison or district prison as a central prison.

Special prisons

These include women's prisons, open prisons, borstal institutions and juvenile training centres. The provincial government can establish a special prison at a time and place of its choosing or can declare any existing prison a special prison.

District prisons

Other than central prisons or special prisons, all prisons are designated as district prisons, which, in turn, are divided into three classes: first class, capable of accommodating 500 prisoners or more, sentenced up to five years; second class, capable of accommodating between 300 and 500, sentenced up to three years; and third class capable of accommodating less than 300, sentenced up to one year.

Sub-jails

These are smaller facilities where criminal suspects may be detained on remand. A provincial government can declare any place "by general or special order" a "subsidiary jail".

Present Condition of Jails in Pakistan

Now we will analyze the conditions of prisons in Pakistan keeping in view the objectives and functions of modernized prisons suggested by law and justice commission of Pakistan. The table 1 given below depicts the sanctioned capacity and actual prison population in the jails of four provinces, GilgitBaltistan and Azad Kashmir. Jails in Pakistan are heavily over crowded. Prisons have more than 35000 additional inmates than their capacity (See table 1). Approximately 50,000 to 78,000 prisoners are waiting for trials while the number of prisoners is increasing day by day due to increasing crime rate, present security challenges and bulging population in Pakistan.

Table 1 Province-wise prison population and authorized capacity

Sr. No.	Name of Province	No. of Prisons	Authorized Capacity	Prison Population
1.	Punjab	32	21527	52318
2.	Sindh	22	10285	14422

3.	Khyber	23	7982	7549
	Pukhtunkhwa			
4.	Balochistan	11	2173	2946
5.	Azad Kashmir	06	530	663
6.	Gilgit Baltistan	05	173	430
	Total	99	42670	78328

(Source: National Academy for Prison Administration)

A corrupt and dysfunctional prison system has contributed to and is a manifestation of the breakdown of the rule of law in Pakistan. Overcrowding is also responsible for institutional and infrastructure decay. This overcrowding and a widening staff-inmate ratio that adversely affects the ability to run prisons are partly responsible for increased violence, both among the prisoners and between inmates and prison personnel. Because the female prison population is low i.e. 900, overcrowding is not a problem in women prisons (Crisis Group Report, 2011). Jails have become fertile place for nurturing the criminals. They come out as hardened criminals instead of reformed and refined citizen. The situation becomes worse due to sluggish criminal justice system and complicated procedural laws. There is only one prison staff training institute named as National Academy of Prison Administration (NAPA) Lahore, in Pakistan It comes under the jurisdiction of federal government. No such training institute is available at provincial level.

There is acute shortage of administrative staff and budget allocation is quite meager. Prison officers' salaries are low and promotions to upper hierarchy are very slow. Consequently, inefficiency and corruption linger in the jails (Crisis Group Report, 2011). Old & dilapidated 19th century physical structure of jails does not fulfill the objectives and functions of modernized prison. Prisons are plagued with administrative and financial problems. Security devices (CCTV) are non-functional or absent. Amendment in Rules is direly required as Pakistan Prison Rules are 28 years old. Training of Prison Staff at home and abroad is minimal. New medical laboratories need to be established. Water Treatment Plants are insufficient or non-functional.HIV/Aids / Hepatitis prevention programmes should be steered. Educational/vocational Programmes need to be reformed and modernized (Human Rights Commission of Pakistan, 2011). Remission System should be made more liberal by prison authorities. Mobile phone use should be immediately stopped and replaced with installation of PCOs/Booths. Prisoners cannot meet their relatives without offering bribes to prison guards. Transport facilities are inadequate and sometimes unavailable in case of emergency.

Prisoners are brought to courts in degrading way by small prison vans which carry the prisoners more than capacity. Sometimes prison guards could not find place and they travel by hanging outside the vans. Children and adolescents are detained in custody with hardened prisoners due to lack of space. They suffer from torture and sexual abuse. Due to apathy of jail staff many poor detainees cannot consult

lawyer and they are denied their right to a fair trial. Protracted detention without free and fair trials is order of the day. The World Organization against Torture (OMCT) reports that it has received alarming evidences from local NGOs working in Tribal Areas in Pakistan's North Western Frontier Province (NWFP) that practices used against children in conflict with the law are in direct contradiction with the country's Juvenile Justice System Ordinance (JJSO).

Inequalities and distinctions, insufficient prison programmes, low spending on health care and welfare, lack of free legal aid, physical, emotional and psychological abuse of prisoners are rampant problems. Prisons have become centre of coercion, corruption and illegalities. Custodial torture and deaths are order of the day irrespective of United Nations declaration states that

"No one shall be subject to torture or cruel, inhuman or degrading treatment of punishment" (UDHR, 1948)

Also important is the United Nations Covenant on Civil and Political Rights which states in part:

"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". (UNICCPR, 1966)

Although in prisons the conditions of confinement are the criminal history of their inmates and their behaviour in prison are supposed to be the factors that play an important role, other factors are also important in developing countries like Pakistan and India where a "class system is deeply rooted in jails" (Neier, A. and Rothman, D.J, 1991) in. According to a report, Human Rights Watch (2006) states that under the present prison system in Pakistan, special perks and privileges are offered to the well off prisoners. It is also believed that many career criminals also go to jails to avoid conflict with rival gangs. Prisons are place of detention both for criminals as well as accused. The ultimate purpose of rehabilitation and reformation is that prisons should be the place of both social skills learning and earning. To creative a better living environment, the prisons must be a miniature world for the detainees. The prisons must respond to emotional, psychological and physical needs of the inmates. European countries are searching and implementing alternative to traditional prison system to conserve resources and better rehabilitation of the offenders. Unfortunately, this has not been worked in India. Consequently prison system administration and prison reform is low priority agenda in Pakistan (Commonwealth Human Rights Initiative, 2008).

In order to obtain meals and other facilities the low class prisoners, juveniles and women are obliged to fan the prison officers, massage them, and also provide them sexual services, The situation is particularly very disgusting and harsh for newly coming convicts or accused. The newly inducted prisoners are made more subject harsh conditions of jails. The purpose behind this inhuman method is to break them. Use of leg irons, fetters, shackles, and chains is common. Unnecessary physical punishments are part and parcel of life in jails. The weaker section,

particularly female and adolescent prisoners are more susceptible to detention moral and sexual abuse.

A committee chaired by the Chief Justice of Pakistan on parole and probation observed that the benefits of parole/probation laws are not extended to the deserving good conduct convicts/offenders. It was resolved after deliberation that judges, lawyers and other stakeholders should be sensitized about the effectiveness about the parole/probation law to reduce the load on prison and provide opportunity of rehabilitation through parole/probation services. The Committee asked the Provincial Governments to strengthen the Provincial Directorates Reclamation and Probation in term of manpower and necessary infrastructure the Committee asked the Provincial Government to prepare schemes and getting requisite staff, transport and office accommodation etc. the Committee asked the Provincial Government to consider appointment of Probation/Parole Officers on transfer basis from other departments. The Committee also asked the High Courts to issue directions to the judges for invoking provinces of Probation of Offenders Ordinance, 1960 to extend the benefits to good conduct and deserving offenders involved in minor offences and asking the District & Sessions Judges to convene frequent meetings of the District Criminal Justice Coordination Committees for discussing the issues relating to Parole/Probation. Juvenile prisoners fall under the jurisdiction of the Juvenile Justice System Ordinance (JJSO), 2000. With the promulgation of this ordnance, the situation of juvenile prisoners has improved in Pakistan (Crisis Group Report, 2011). After this ordnance came into force, there were 4,979 children in prison, but by the end of 2010 that number had been reduced by more than half. In 2011, there were 1,225 juvenile prisoners, of whom 1,074 were on remand and the rest convicted (Society for the Protection of the Rights of the Children [SPARC], 2010). Proper implementation and reduced number of juvenile offenders has contributed to lowering the sufferings of adolescents in jails and detention centres. Despite the recommendations of commissions, the facilities of recreation and vocational education are at minimum level in the prisons. The process of readjustment of released prisoners in is slow as they do not possess necessary social skills to absorb in the community. Meetings with family members and friends are mediated through bribery and favoritism. These harsh conditions of prison contribute to antisocial behaviour of the offenders. This vicious cycle of apathetic community and nasty environment of prisons also overburden the deteriorating standard of criminal justice system.

Conclusion

Despite the recommendations of different commissions and committees to reform the prison system in Pakistan, the human situation of the jails is still worse. The administrative measures taken to improve the conditions of jails are required to be implemented in true spirit. At legal level Pakistan prison rule should be reviewed. Prisons are an important organ of criminal justice system and reflect degree of civilization of a society. Dilapidated conditions of prisons lead to low self esteem and degradation of inmates. Poor rate of conviction, unnecessary and lengthy procedure of trial , production mechanism of prisoners in courts, creation of unnecessary hurdles in awarding jail remission to prisoners, problem of holding

courts in jails, over-crowding, accommodation facilities, non-existence of medical testing laboratories, lack of market oriented jail industries and improper security arrangements are standing problems that demand comprehensive program for prison reforms. Such dismal picture of prisons hinders the reformative/ rehabilitative process of prisoners. The number of adult male prisoners is in larger quantity than juvenile and women prisoners. A multilayered and classification led reformation and implementation system should be introduced to improve the prisons. Community-based rehabilitation of offenders-probation/parole system has not yet got relevance in criminal justice of Pakistan. Above all, there is need to enhance professional capacity of prison managers and prison administration to be trained in accordance with changing paradigms of criminal justice across the world.

Prison system is closely linked with criminal justice system. As part and whole are closely interrelated, the overhauling and reform of whole criminal justice system could contribute to better functioning of institution of prison. An in-depth study by the learned criminologists, sociologist, clinical psychologists, criminal justice practitioners, judges, lawyers and all other stakeholders is required to be conducted and understand the Prison Systems in Pakistan. As prisons are provincial subject, major responsibility lies on the provincial governments to reform the institution of prison. Provincial level committees could be more effective to implement reforms. As earlier commissions were federal level; a gap remained between implementation and policy. Role of the prisons and Criminal Justice system should be redefined in the light of this study and instruments available at international level. In this regard, international best practices regarding the reform of prisons could also be consulted to evaluate prison system in Pakistan.

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