

SINDH PRISON REFORMS THROUGH THE LENS OF LEGAL AID:

FROM CURRENT ISSUES TO RECOMMENDING SECURITY AND LEGISLATIVE MEASURES



Legal Aid Office
Committee for Welfare of Prisoners

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Table of Contents

Acknowledgements	Pg 3
Abbreviations	Pg 4
Foreword	Pg 5
Executive Summary	Pg 7
Introduction	Pg 9
Background:	
a) Political and Legal Landscape	Pg 12
b) Prison Reforms in British India	Pg 14
c) Prison Reforms Post Independence	Pg 15
d) Current Prison Laws	Pg 16
e) Prison Administration	Pg 18
Key Findings:	
a) Overcrowding	Pg 21
b) Classification, Segregation & Separation	Pg 23
c) Infrastructure and Security	Pg 28
d) Torture, Abuse and Corruption	Pg 33
e) External Oversight	Pg 37
f) Education and Vocational Training	Pg 40
g) Drug Use	Pg 43
h) The Question of Insanity	Pg 48
i) Parole and Probation	Pg 52
j) Visitation	Pg 56
k) Administration and Personnel	Pg 59
Countering Violent Extremism:	
a) The Global War on Terror	Pg 62
b) Rise of Extremism in Pakistan	Pg 64
c) Extremism in Prisons	Pg 66
d) U.S.A, UK & KSA Models	Pg 68
e) Pakistan Contrasted	Pg 70
f) Way Forward with the Demobilized Strata	Pg 71
Legal Aid	
a) Void of Pro Bono Culture	Pg 73
b) The Legal Aid Office Model	Pg 76
c) Understanding the Prison Population	Pg 79
Recommendations	Pg 80

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Abbreviations:

CAT	Convention against Torture
CNSA	Control of Narcotics Substances Act, 1997
Cr.P.C	Code of Criminal Procedure
CVE	Countering Violent Extremism
COP	Community Orientated Policy
DIG	Deputy Inspector General
IG	Inspector General
LAO	Legal Aid Office
POO	Probation of Offenders Ordinance 1960
PPR	Pakistan Prison Rules (Jail Manual)
PRAC	Prevention, Rehabilitation and Aftercare
PPO	Protection of Pakistan Ordinance, 2013
PPC	Pakistan Penal Code
SMR	United Nations Standard Minimum Rules for Treatment of Prisoners
SMHO	Sindh Mental Health Ordinance, 2013
WPA	Women Protection Act, 2006
UTP	Under Trial Prisoner(s)
UNODC	United Nations Office on Drugs and Crime
YOIS	Youthful Offenders Industrial School

Foreword

The Legal Aid Office (LAO) has been the pioneer in facilitating legal aid and representation to underprivileged Under Trial Prisoners (UTPs) in the province of Sindh. In 2004, LAO was officially recognized by the Government of Sindh and a Committee for Welfare of Women Prisoners¹ was set up to facilitate the work of legal aid to under trial women and juvenile prisoners. From 2010-2011, reflecting on the success of operations, the Government of Sindh extended the mandate of LAO to incorporate the entire province of Sindh with all prison facilities and all types of prisoners. The Committee for Welfare of Women Prisoners was renamed as the Committee for Welfare of Prisoners² to reflect the expansion in the litigant base so as to include juvenile and adult male prisoners which also increased the influence of LAO in partaking prison reforms.



The TORs of the Committee include the following; to work for the purpose of streamlining procedures and improving conditions of the jails, to assist in the proper management of prisons in Sindh, to provide legal assistance to juvenile, male and female prisoners, to hire services of lawyers for the purpose of legal assistance to prisoners and to work for welfare of women prisoners and their children living with their mothers in the prisons. To achieve its TORs, in addition to its main office in Karachi, four sub-offices have been established in interior Sindh which together cater to 17 correctional facilities³ out of a total of 22 in the province. The methodology adopted centres around maintaining face to face dialogue and contact with clients in prisons. At the time of finalising this Report the litigant base is 1,050 prisoners implicated in 1,340 trials before 20 judicial districts⁴.

Since its operations during the last ten years, the LAO has been working within an under resourced and neglected penal system plagued by one crisis after another. With recent jail breaks and terrorist activities being linked to sources inside prisons, LAO has delved into research to study correctional facilities, their purpose and limitations within the Pakistani criminal justice system and to ascertain how penal reform strategies can be developed within our socio-cultural mores. Resources and efforts have been directed towards profiling large samples of the prison population with the focus on the vast majority of the prison population which is adult male prisoners. The routine visits to prison facilities, coupled with regular interaction with prison officials and criminal justice sector actors places the LAO in a unique position to conjure primary data. This data is then utilised to back recommendations for much needed reforms in prisons with the hopes of paving out a future road map for policy makers.

1 Notification no. GS/20-80/2003 (SO-II)/09

2 Notification no. SO(Prison-I)/HD/11-27/10

3 In addition the LAO also works with the Remand Home in Karachi.

4 Sindh is divided into 26 Judicial Districts.

This Report examines the new challenges confronting the Penal System within the context of the violent extremism discourse, the spread of which is resulting in enormous loss of life, involving civilians and non-combatants, irrespective of their gender, age, ethnicity etc. and its intrusion in Pakistan, particularly in Sindh. Violent extremism includes the demonstration of unacceptable behaviours by using any means or medium to express views which, foment, justify or glorify terrorist violence in furtherance of particular beliefs; seek to provoke others to terrorist acts; foment other serious criminal activity or seek to provoke others to serious criminal acts; or foster hatred which might lead to inter-community violence⁵. In this setting the Report first chalks out the relevant Pakistan Prison Laws and assesses their potential and limitations. It further looks into prison conditions with a focus on the overcrowding of prisons and studies separate mechanisms available for reducing prison population at the pre-trial, the trial, and post-trial stages. The report offers a narrative of conditions of the prisons undergoing rapid corrosion and radically becoming an appraiser of a dysfunctional institution, which is one of the main breeding grounds of hardened criminals and inducting violent extremists and terrorists. The report focuses on the corrupt and mal-governed prison system underlined by a weak and archaic regime of laws and how the rule of law *inter alia* has been undermined, centring on criminal justice institutions, including the police and other law enforcement agencies, the courts, the prosecution and the defence, and corrections. Violent extremism within prisons is analyzed with its precursors, forms and nodes in efforts to explore the possibility of extremist activity and issue of radicalization within prisons by using a combination of an assessment of prison conditions, comparative examples from different jurisdictions and a study of contemporary open source material.

The age old colonial penal regime and ethos must be questioned, challenged and replaced with contemporary thought and methodologies fit for the 21st century and the challenges it poses to our state of security. The Report is by no means final in its conclusions, but exploratory in nature with hopes to identify issues which require further action, investigation and study. It is hoped that it will pave way for new avenues for LAO and its Partners to develop new strategies to not only help in reforming the Prison System in Sindh, but more importantly tackle and devise methods for countering violent extremism inside the Prisons and within the Criminal Justice in the Province. It must be emphasized that the Report is only a reflection of the narrative surrounding the administration of criminal justice, its present incapacity to cure the multitude of problems addressing the Prisons in Sindh; the rise of violent extremism in Sindh and its deep intrusion in Sindh Prisons.

Justice (Retd.) Nasir Aslam Zahid
Chairperson CWP/LAO

⁵ Violent Extremism and Related Criminal Offences; The Crown Prosecution Service; http://www.cps.gov.uk/publications/prosecution/violent_extremism.html

Executive Summary

Prisons form an important link to the criminal justice system and reflect the quality of the rule of law of a particular jurisdiction. From legislation to actual implementation, the substance and the processes of law must be visible and the prison systems must be in consonance with the internationally accepted standards. The province of Sindh as on 15th April, 2014 has 25 prison facilities spread all over the province. The LAO is connected to 17 prisons from Karachi to Sukkur. During the last one year, LAO took up the exercise of evaluating the prison system in Sindh in line with its mandate which provides for assisting in streamlining the prisons and recommending reforms.

Therefore, eleven categories of the prison conditions were monitored, using litigation database, survey of prisons by interviewing the senior management and the mid-ranking officials of the prisons. Special questionnaires were also used for interviewing UTPs and 77 random prisoners were selected for the interviews. The profiling of prisoners was also taken up during the evaluation process, in which 2,333 UTPs were interviewed and profiled according to demographics between 9th May, 2013 and 8th February, 2014. This report is the culmination of the monitoring and evaluation conducted by LAO on the prison conditions and the status of the prisoners within the prisons. The survey could not have been possible without the exception cooperation provided by Mr. Nusrat Mangan, Inspector General (Prisons) Sindh and his office. LAO wishes to thank Mr. Mangan in helping us prepare this report which we hope will go a long way in developing the reforms in the Sindh prison system.

LAO also took up research on the legislative history of the prisons and the present laws in force in Sindh with regard to the prisons and the prisoners alike. So far the legislation is concerned it was found as obsolete rules and acting as obstructions in the facilitation of good management practice in the prisons and the welfare of the prisoners. The only law which applied today and has been found beneficial in character and scope is the Sindh Mental Health Ordinance, 2013. Apart from the Ordinance, some relief and alternatives were also seen in the probation and parole laws. Sanctions as admonitions were found in the probation laws which have rarely been used, if ever.

Between 9th May, 2013 and 8th February, 2014, LAO litigation saw a surge of 57.43% in *pro bono* litigation service to the UTPs. The jurisdiction also expanded in North Sindh to include District Prison, Ghotki and District Prison, Shikarpur, thus helping the LAO team in better understanding the prison conditions.

The prisons in Karachi, Hyderabad, Larkana and Shikarpur were found to be overcrowded, much exceeding their capacity while in other districts the situation of overcrowding was either not so bad or the prisons had enough prisoners without any issues of overcrowding taking place. A more serious problem was seen in District Prison, Shikarpur where juvenile prisoners were kept with the adult population. The reason for this cannot be attributed to the prison officials alone but the contribution of the paucity of funds and lack of resources is largely responsible for such incidents.

LAO found that 7.8% of the 2,333 UTPs interviewed admitted to regularly using drugs. The figure, however, should not be considered accurate as admission of such derivative behaviours is not generally acceptable and therefore persons are prone to hide and suppress the information. Added to this was also the influence of the prison atmosphere which brings in a special factor of fear. Nevertheless, the figures do provide a sample of the drug use available in the prisons.

The issue of torture, degrading and inhumane treatment is a legacy protected by the innocuous rules provided in Chapter 23 of the Pakistan Prison Rules (PPR). These rules provide for handing out archaic forms of punishments such as whipping, bar fettering and solitary confinement. Even though whipping and bar fettering have been prohibited⁶ but many other rules give so much personal discretion to the lower ranks in the prisons that degrading and inhumane treatment can never be ruled out as long as the present PPR continues to regulate the prison. Another important aspect is the absence of any other law which defines and prohibits torture. Therefore, the need for proper legislation in this regard is necessitated, in order to also comply with the Convention Against Torture Degrading and Inhumane Treatment (CAT).

LAO also took note of the visitation issues confronting the prisoners and also the abuse of the visitation and has dealt with on the subject at length in this report. The external oversight is the most important aspect of prison management, however, it was found that it was in use but not as legally required by the PPR and the mandate provided to the non-official visitors. Thus, it is fair to say that the mechanism is almost non-existent substantially and only works on the procedural level.

LAO found the security and infrastructure of the prisons requiring immediate attention by the Government of Sindh. The outer walls of Central Prison, Sukkur portray miserable conditions, miserable security and structural conditions bearing open to any threat to the prison. In Karachi, Mr. Nusrat Mangan, the IG Prisons informed the LAO team that the Central Prison was at a threat level from a *mohalla* called Ghausia Colony. On his personal intervention, due protective measures were taken and the walls of the Central Prison have been increased in height to weaken the threat.

As far as the administration and personnel of the prison are concerned, it was noted that the administration requires an upgrade to make it into a proper management system and automated as far as possible. The lower ranking prison staff requires capacity building and further training on the issues of prisoner handling, separation and segregation, handling of dangerous prisoners, etc. This requirement cannot be fulfilled unless the staff is also properly compensated and their salaries increased, including such privileges which may go to make their lives easier and comfortable.

The report has also dealt in depth on countering violent extremism as a holistic study and specifically in the context of the prisons. Different mechanisms applied in other jurisdictions were also researched and recommendations for a possible strategy in Pakistan are also a topic of this report.

Finally, LAO has made recommendations to improve the conditions of the prisons. It is hoped that this report with its recommendations will be assistive to the Government of Sindh and the office of the IG Prisons Sindh in order to further improve the prison conditions.

⁶ Whipping is prohibited only for *tazir* punishments

Introduction:

The United Nations and its affiliate the World Justice Project highlight ‘prison management’ as one of the key indicators used in gauging the rating of a country on the rule of law index⁷. The 2014 Rule of Law Index Report published by the World Justice Project underlines the poor and unsatisfactory state of the administration of justice in Pakistan. The report places Pakistan at 94th and 68th in terms of administration of civil justice and criminal justice among the 99 countries that are assessed⁸. Although the Prison System is intrinsically interlocked with the police and the judicial structures; this report aims to focus on the current conditions of the Prison System in Sindh and provides recommendations based on research and primary data gathered at the grass root level and the use of secondary sources.

A historical and political perspective of the Rule of Law and its role in prison administration and prison culture must be analysed in identifying the requisite elements for effective reform in prison laws and administration. The Report therefore focuses on this aspect and offers an overview of prison establishment and subsequent reforms in addition to the current conditions of prisons undergoing rapid corrosion since the 1980’s. With prisons overflowing it is impossible to isolate hardened criminals and militants from first time or casual offenders involved in much lesser gravity of offences. The provincial governments try to rectify the situation by employing perfunctory methods such as building more barracks and shifting prisoners to those prisons with lesser population. However, this does not even attempt to address the real and substantive problems, which has severely eroded the prison system in Pakistan. Prisoners on trial account for more than 80 per cent of the prison population. According to a 2010 study conducted by the Crisis Group only 27,000 of the country’s roughly 81,000 prisoners have been convicted⁹. As of April, 2014 the prisons in Sindh had a combined authorized capacity of 11,827 prisoners in comparison to the actual prison population of 18,437 prisoners¹⁰. Furthermore, an astounding 14,743 of them were UTPs. Prison resources, which would be inadequate even for a smaller prison population, are vastly overstretched. A Sindh provincial minister told the Sindh Assembly that the Government had only 155 vans to transport more than 13,000 prisoners to court¹¹. Prisoners are seldom transported to court on the date of their hearing, “It seems to take more time to bring a person to court than to actually dispose of the case”, said a former Advocate General of Sindh¹². Conditions are abysmal and prisoners’ rights regularly violated. Remand prisoners, for example, are assigned to labour in contravention of the law¹³.

7 The *WJP Rule of Law Index*® measures how the rule of law is experienced in everyday life in 99 countries based on expert surveys worldwide. It is the most comprehensive index of its kind and the only to rely solely on primary data. Adherence to the rule of law is assessed using 47 indicators organized around eight themes: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice.

8 The World Justice Project, (2014). *WJP Rule of Law Index*® 2014. p.16

9 crisisgroup.org, (2014). *REFORMING PAKISTAN’S PRISON SYSTEM*. [online] Available at: <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/212%20-%20Reforming%20Pakistans%20Prison%20System.pdf> [Accessed 5 Jul. 2013]

10 Population Statement of Sindh Jails as it Stood on 15/04/2014. Retrieved by the LAO team from the Office of the Inspector General Prisons - Sindh.

11 Plight of undertrials. (2010). Dawn. [online] Available at: <http://www.dawn.com/news/958188/plight-of-undertrials> [Accessed 23 Apr. 2014].

12 crisisgroup.org, (2014). *REFORMING PAKISTAN’S PRISON SYSTEM*. [online] Available at: <http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/212%20-%20Reforming%20Pakistans%20Prison%20System.pdf> [Accessed 19 Apr. 2014]

13 According to a report, “mysterious” deaths and suicides in prison more than doubled in 2009 from 108 to 240. Answer Hussain Sumra, “Mysterious deaths, suicides at jails more than double in 2009”, Daily Times, 5th January 2010.

Pakistan's death row population – roughly 7,700 – is more than one third of the total global death row population of about 20,000, a statistic aggravated by the high number of offences – over two dozen – punishable by death¹⁴. Due to 1991 Federal Shariat Court decision, for example, blasphemy crimes carry a mandatory death sentence. This also includes cases involving members of the Ahmadi community. Under the Hudood Ordinances, extra-marital sex is also punishable by death¹⁵, as is the possession of 100 or more grams of narcotics such as heroin¹⁶. According to HRCP's Kamran Arif: "Nobody checks if it is actually 100 grams of heroin or if it is 10 grams of heroin and 90 grams of some other ingredient"¹⁷.

This huge prison population has serious security implications. Law enforcement officials refer to prisons as the "think-tanks" of militant groups, where networks are established and operations planned, facilitated by the availability of mobile phones and a generally permissive environment. Prisons have thus become major venues of Jihadi recruitment and activity¹⁸. Pakistan generally suffers from absence of the writ of law. Sindh and in particular Karachi, portrays a complete breakdown of law. From 2002 to date Karachi has experienced thousands of deaths, arson, militancy and a surge of subversive mafias. Radicalization and violent extremism has manifestly become the multiplier force catalyzing subversion of the state and terrorizing the population. In light of this, the Report also examines violent extremism which rejects the formal, political and legal schemes, resulting in enormous loss of life of both civilians and non-combatants. The introduction of this new variety of crime has seriously aggravated an already pulverized Criminal Justice in Sindh. Violent extremism includes the demonstration of unacceptable behaviours by using any means or medium to express views which foment, justify or glorify terrorist violence in furtherance of particular beliefs; seeking to provoke others to terrorist acts; fomenting other serious criminal activity or seeking to provoke others to serious criminal acts; or fostering hatred which might lead to inter-community violence¹⁹. Among the nodes for radicalization, three physical venues are thought to be of concern: radicalized mosques, educational establishments (notably universities) and prisons²⁰. Also in the case of theocratic societies as Pakistan, madrassas encircle the educational configurations. The prisons remain heavily overpopulated, under staffed, badly managed and provide a fertile breeding ground for criminality and militancy. The prison culture facilitates the prisoners to convert into hardened criminals and revert to more heinous crimes rather than reforming them. In particular, radicalization and extremist activity in prisons has increased to dangerous levels and they must be highlighted as a matter of immediate concern²¹ necessitating immediate remedial actions. In this setting the Report builds on the Pakistan Prison Laws and assesses the projected goals²².

The majority of persons lodged in prisons consist of people belonging to the unprivileged sections of society, and that the majority of the prison population is from a rural and agricultural background. First time offenders involved in technical or minor violations of law account for a large number of prisoners. A large number of offenders sent to prisons do not require any therapeutically correctional treatment. They are as normal as citizens outside prison walls; they need to be protected from the harmful effects of exposure to prison life. On the other hand, harmful, habitual and dangerous recidivist prisoners need a progressive prison system that operates by keeping in view the protection aspect as much as correctional and rehabilitation outlook.

14 State of Human Rights in 2009. 2009. [online] Human Rights Commission of Pakistan. Available at: <<http://hrcp-web.org/hrcpweb/wp-content/ar/pdf/ar09e.pdf>> [Accessed 19 Apr. 2014].

15 Hudood Laws provide that the sentence for extra-marital sex is death by stoning.

16 crisisgroup.org. (2014). *REFORMING PAKISTAN'S PRISON SYSTEM*. [online] Available at:

<http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/212%20-%20Reforming%20Pakistans%20Prison%20System.pdf> [Accessed 19 Apr. 2014]

17 Ibid

18 Ibid

19 PS: Violent extremism and related criminal offences. 2014. [online] The Crown Prosecution Service. Available at: <http://www.cps.gov.uk/publications/prosecution/violent_extremism.html> [Accessed 19 Apr. 2014].

20 Radicalization or Rehabilitation: Understanding the challenge of extremist and radicalized prisoners | RAND. 2008. [online] Rand Corporation. Available at: <http://www.rand.org/pubs/technical_reports/TR571.html> [Accessed 19 Apr. 2014].

21 Ibid

22 See reference to Recommendation.

The Report has been divided in 5 main sections. The first section is introductory and sets out the basics of the Prison System in Sindh, reflecting on the legislative evolution of prison laws and administration in British India and subsequent developments post Pakistan's independence. The second section focuses on key findings surrounding prison conditions in Sindh such as the issues of separation and segregation of prisoners, the visiting rights, the oversight mechanism of NOVs, drug abuse etc. The alternatives to imprisonment such as parole and probation services are analyzed as modicums to reduce the over population in prisons. The third section is devoted to violent extremism, its causes and the problems. The cultural and ideological issues confronting the community leading to a cul-de-sac wherein the prisons have become the citadels of think tanks of violent extremists and act as safe vaults for these forces, making the war against terrorism even more complex. The fourth section puts out the objectives of the LAO and its performance in acting as effective state defenders providing legal aid to prisoners, and its sequential and final responsibility. The final section lays out the recommendations formulated by the LAO for effective prison reforms.

Pakistan has ratified the International Covenant on Civil and Political Rights (ICCPR) on June of 2010²³. The ICCPR is the primary treaty on protection of prisoners, and currently has 74 signatory states²⁴. This commits the parties to respect civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. Any holistic study on criminal justice system must address basic issues relating to prisons and prisoners. It is in the context of these issues that various aspects of human rights also have to be examined. With this in mind, the conditions of the prisoners in the Province of Sindh remain a matter of serious concern in the light of the United Nation's Standard Minimum Rules for the Treatment of Prisoners 1955 ("SMR"), which will be highlighted in the narrative.

The Report is by no means final in its conclusions, but exploratory in nature. It must be clarified that the Report is only a reflection of the narrative surrounding the administration of criminal justice, its present incapacity to cure the multitude of problems addressing the Prisons in Sindh; the rise of violent extremism in Sindh and its deep intrusion in Sindh Prisons. It is hoped that this Report will open new avenues for LAO and its Partners to develop new strategies to not only help in reforming the Prison System in Sindh, but more importantly tackle and devise methods for countering violent extremism inside the Prisons.

23 International Covenant on Civil and Political Rights. 2014. [online] United Nations Treaty Collection. Available at: <https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en> [Accessed 19 Apr. 2014].

24 Ibid

Background

Political and Legal Landscape:

The current sociopolitical and legal landscape of Pakistan is the product of evolution through four epochs; Hindu rule, Mughal rule, British colonization and the post independence period. Within this spectrum, personal and customary laws developed in the first two eras whereas much of the procedural laws and institutional structures of state organs came into being during the British colonial period. The state of administration of justice and laws as we know it today are the fruits of the legal renaissance that took place during British rule. Pakistan has continued to use its colonial inheritance without any substantial change barring periodic amendments and revisions which history has shown served vested interests of the ruling elite.

Throughout Pakistan's chequered history since independence in 1947, the state has oscillated between 33 years of military rule and 32 years of civilian government rule. The sanctity of its constitution has been repeatedly encroached upon with suspensions and subsequent amendments aimed at polarized struggles of centralizing or decentralizing power²⁵. The hallmarks of the nascent state soon became exploitation of Islam for political gains, legislatures dominated by feudal aristocracy, a military junta keen on usurping civilian power and a stunted democracy returning intermittently in the guise of feudal-political domination.

The instability of governance modes has had a profound impact on political and legislative development which has in turn undermined values of constitutionalism and rule of law in the country. The army junta staged its third coup d'état in 1977 when General Zia ul Haq took over as Chief Martial Law Administrator. The Supreme Court validated Zia's martial law regime under the notorious 'doctrine of state necessity' which empowered him to take all legislative measures under the law and constitution. Martial law was lifted in 1985 after eight and a half long years during which General Zia initiated the infamous Islamisation process which altered the basic structure of parliamentary democracy, introduced religious, sectarian and gender biases into law and made the violation of fundamental rights not just common practice but a matter of state policy. The next military regime followed after eleven years with General Pervez Musharraf but in this interim period four civilian governments were formed and dismissed without completing their tenure. Only as recently as in 2012 has a political party in Pakistan completed its full tenure of five years²⁶. It must also be mentioned that the democratic spells witnessed in between were maneuvered by the military and produced diluted results.

²⁵ It took Pakistan nine years to frame its first constitution which came into force on 23rd March 1956. The first encroachment on its sanctity was made when martial law was imposed in 1958 and General Ayub Khan surfaced as the country's first Chief Martial Law Administrator. This encroachment would set of a series of unprecedented extra constitutional acts in the tarnished constitutional future of Pakistan which would take it farther and farther away from international standards of human rights and rule of law.

The second constitution came into force in 1962 after nearly 4 years of martial law rule but in 1969 the country underwent its second period of martial law rule under the diktat of General Yahya Khan. Under his regime, the country experienced its first general elections in 1970 which resulted in the division of the 2 units of Pakistan along regional lines and further entrenched political polarization of the country between its west and east wings. After a war between the two wings and cessation of East Pakistan, a smaller Pakistan emerged in 1971. Z.A Bhutto assumed the role of the country's first Civilian Martial Law Administrator in 1972 and continued to do so until the third constitution came into being in 1973. From 1973 to 1977 Bhutto continued as the Prime Minister under a parliamentary system of governance which completely centralized executive and legislative powers in the hands of the Prime Minister.

²⁶ Pakistan Peoples Party (PPP)

Our socio-political evolution merits mention of the famous “lawyer’s movement” which spiraled after March 2007 when General Pervez Musharraf²⁷ decided to remove the Chief Justice of Pakistan. It brought together lawyers and civil society in an unprecedented way to fight for rule of law and independence of judiciary which had until that point been victimized by PCOs²⁸ and self-serving amendments. Supported by the media, with the absolute resolve to restore the Chief Justice and maintain rule of law and independence of judiciary, civil society galvanized itself in extraordinary ways and saw to the restoration of the Chief Justice in July 2007.

The oscillation between sham democracies and outright dictatorships drastically affected the Rule of Law which has in turn sacrificed Criminal Justice and particularly law and order at the altar. As all other key facets of the criminal justice system, the prison system was also damaged. Prisons, despite changes brought in other institutions, remain a literal legacy of the colonial period— a system of imprisonment established in 1860s and institutionalized around 1890 to 1946 – serving interests of British raj, maintain status quo, and promoting ethos centered on security and control, which went hand in hand with ethos behind military rule and that of the feudal political mindset, which had inherited the governance from the British thus continued to adhere to similar principles.

Even though Pakistan is flooded with statutory laws pertaining to criminal justice system, most of these were legislated during the earlier British colonial period; that being between 1860 and 1910. *The Penal Code* defining the penal offences their punishments was enacted in 1860, while the *Criminal Procedure Code* dates back to 1898. The *Prisons Act*, *Prisoners Act*, and *The Reformatory Schools Act* have been in force since 1894, 1900, and 1897 respectively. Given the nineteenth century influences on the ideas of *crime and punishment*, the principles revolving on *deterrence* rather than a *reformatory* view, coupled with the expected sensitivity of a colonial rule was dominant in the minds of the legislators, should be no surprise to any critic. Some of these laws enacted fell squarely within the natural scheme of the desired coercive legislation.

27 (who took over as the Chief Executive Officer of Pakistan on 12th October 1999) General Pervez Musharraf, the most recent of Pakistan’s four military rulers, who was in power from 1999 to 2008, is currently facing treason charges relating to his imposition of a state of emergency in 2007.

28 Provisional Constitutional Orders

Prison Reforms in British India :

Prison as a place for punishment was an 18th century invention where the emphasis was solely on retribution, denunciation and punitive consequences. Ideas on reformation and rehabilitation entered the debate and changed the inherent sentencing philosophy in the 19th century. Alongside this shift came a requisite change in the administration and set up of prisons. Different commissions and committees were established in British India after 1835 to work on prison reform. The first such committee was the Prison Discipline Committee, also known as the Macaulay Committee, set up in 1836 at a time when India had a large number of jails with a capacity to hold around 70,000 prisoners²⁹. Its report submitted in 1838 recommended the establishment of central prisons and the appointment of Inspector General's for prisons in provinces and sufficient space be allocated for buildings in prisons for the comfort of prisoners. Subsequent committees were appointed in 1864 and 1877 which suggested at least 640 cubic square feet of space be allotted for each prisoner, improvement in the diet, clothing and bedding and medical care of prisoners. Also worth mentioning is the introduction of the notion of 'prisoners ruling prisoners' around 1864 with the introduction of a system of warders i.e. prisoners promoted to exercise executive duties in prisons³⁰.

In 1888, the Fourth Jail Commission was appointed which used its recommendations to forward a consolidated draft bill on prisons laws which received the Governor General's assent in 1894. The foundations for contemporary prison administration in British India were firmly laid down with the Prison Act 1894 which provided for classification of prisoners, health care, separation of juveniles and women prisoners from adult male prisoners, etc. Subsequent committees such as the Indian Jails Committee of 1919-1920³¹ also contributed to the humanizing of prisons by identifying 'reformation and rehabilitation' as major objectives of prison reform³². The Committee further recommended that the care of criminals should be entrusted to adequately trained staff selected after careful scrutiny and rejected the idea of excessive employment of convict overseers. It took a strong objection to the presence of children in jails meant for adults and recommended creation of special courts for hearing of cases of juvenile delinquents and their housing in remand homes. Many of the recommendations were not implemented on the ground that the subject of prisons was within the purview of the provincial governments. It is ironic that even today; one of the major stumbling blocks in ensuring uniformity in prison conditions all over Pakistan is the fact that prison administration is a provincial subject.

Subsequent to the Prisons Act, the Prisoners Act of 1900 followed as an afterthought to consolidate laws relating to prisoners confined by the order of a court and provided guidance on admissions, removals, transfers of prisoners and procedures for the production of prisoners in courts. The Act further enables Provincial Governments to make rules to facilitate the purposes of the statute. The Reformatory Schools Act 1897 was passed to amend the law relating to reformatory schools and to make further provisions for dealing with youthful offenders.

29 Roth, M., 2006. *Prisons and Prison Systems*. 1st ed. Westport, Conn.: Greenwood Press, p.133.

30 Manaworker, M., 2006. *Prison Management: Problems and Solutions*. 1st ed. Gyan Publishing House, p.96.

31 Roth, M., 2006. *Prisons and Prison Systems*. 1st ed. Westport, Conn.: Greenwood Press, p.133.

32 Ibid

Prison Reforms Post Independence:

The Government of India Act of 1935 transferred the subject of prisons from the centre list to the provincial and hence it has been difficult to develop a uniform policy for prison reforms across Pakistan. Provinces have their own rules on day to day administration of prisons, transfer of prisoners. Etc. However, the prison reform agenda in Pakistan gained momentum in the 1950's owing to the recognition awarded to human rights of prisoners in treaties such as the 'Convention (III) Relative to the Treatment of Prisoners of War, Geneva Convention³³ and SMR³⁴.

The first reform program after independence was initiated by the Committee under the chairmanship of Col. Salamat Ullah, former Inspector General of Prisons of Uttar Pradesh in combined India³⁵. Subsequent reform committees had little or no impact due to lack of priority given by the Government. Other reforms committees included East Pakistan Jail Reform Commission 1956, The West Pakistan Jail Reforms Committee 1968-1970, Special Committee on Prison Administration 1981-1983, Prison Reforms Committee 1985, Jail Reforms Committee 1994, Jail Reforms Committee headed by Chief Justice of Pakistan 1997, Task force on prison reforms in 2000 etc. The most comprehensive of these reforms were those forwarded by the Law and Justice Commission of Pakistan in 1997 which put forth the objectives of modernised prisons as '(6 C's): custody, care, control, correction, cure and community' and added that the functions of modernise prisons were also imparting useful education and providing training to prisoners and organising recreational programmes and providing welfare and psychological counselling³⁶.

However, despite continuous criticism about the manner in which the prison system has been functioning and the fact that it does not measure up to the test of law and international standards of human dignity and preservation of fundamental human rights of prison inmates, successive governments have not been sensitized enough to effectuate national level prison reform. Prisons remain provincial subjects and provincial governments are responsible for establishment, maintenance and well being of prisoners.

33 12 August, 1949

34 UNODC: Standard Minimum Rules for the Treatment of Prisoners, http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

35 Akbar, M. and Bhutta, M., n.d. Prison Reforms and Situation of Prisons in Pakistan. *SOCIAL SCIENCES REVIEW OF PAKISTAN*, p.4.

36 Ibid



Current Prison Laws

The establishment and administration of the prison system in Pakistan is still firmly rooted in the Prisons Act of 1894 which is a federal legislation chalking out the bare bones of prison administration; enabling provincial governments to further define details by drafting rules³⁷. Since its enactment, it has hardly undergone any substantial change and its key provisions centre around maintaining discipline amongst prisoners, classifying what constitutes offending behaviour by prisoners and prescribing punishments for the same. The statute is laced with use of archaic vernacular and is unreservedly out of line with values prescribed by the SMR³⁸ as it sets a tone fit for prison management premised on ideals of retribution and punishment.

³⁷ Section 59 of Prisons Act, 1894

³⁸ UNODC: Standard Minimum Rules for the Treatment of Prisoners, http://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

The legislative landscape provides the framework for the day-to-day superintendence and management of prisons under the PPR 1978, more commonly known as the Jail Manual. This manual is a copious volume of 1250 detailed rules which govern the day to day administration of prisons in Sindh. The release on probation is governed by The Probation of Offenders Ordinance, 1960 and young persons under the age of 18 are protected by the Sindh Childrens Act³⁹ and Juvenile Justice System Ordinance, 2000⁴⁰.

The Prisons Act 1894 defines prisons 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 Jail⁴¹.

The PPR also known as the Jail Manual divide prisons into entral Prisons, Special Prisons, District Prisons and Sub-Prisons⁴².

A Central Prison is one that is declared by the Provincial Government as such⁴³ and has accommodation for more than 1,000 prisoners irrespective of the length of their sentences⁴⁴. The rules also provide that there shall be a central prison in each division of a province. The provincial government may, in its discretion, declare any special prison or district prison to be a central prison⁴⁵.

Special Prisons are usually women's prisons, open prisons, borstal institutions and juvenile training centers⁴⁶ and the provincial government may declare any prison as a special prison⁴⁷. No indication as to capacity for such a prison is given in comparison to the definition of a central prison.

District Prisons are defined in exclusionary terms as 'All prisons other than central prisons or special prisons, shall be deemed to be the district prisons⁴⁸. District Prisons are divided into three types: First Class, having accommodation ordinarily for 500 prisoners or more with sentences up to 5 years; Second Class, having accommodation ordinarily for 300 prisoners or more but less than 500 with sentences up to 3 years and Third Class, having accommodation ordinarily for less than 300 prisoners with sentences up to one year^{49 50}.

39 1955

40 Preamble, Juvenile Justice System Ordinance, 2000.

41 Section 3 (1)

42 Rule 4

43 Rule 3 (ii) Jail Manual substituted by Government of Sindh vide HD Notification No So (PRS-11) 11-94 dated 13-5-1996.

44 Rule 5(i)

45 Rule 5(ii)

46 Rule 6(iii)

47 Rule 6(i)

48 Rule 7

49 Rule 8(i)

50 In addition, the provincial government may, by general or special order, declare any place to be a subsidiary jail. The provincial government has established judicial lock ups at tehsil and sub-tehsil level. In judicial lock ups, less than 100 prisoners are accommodated.

At present, there are 5 central prisons, 11 district prisons, 1 Special Prisons Nara, 3 women’s prisons, 4 Young Offenders Industrial Schools and 1 open prison in Sindh.



Prison Administration

Prison administration in each province falls under the purview of the Home Departments in each province and at the apex of prison management is the Inspector General (IG) appointed by the Provincial Government exercising overall control and supervision of all prisons within the jurisdiction⁵¹. The IG is required to visit each jail at least once every year to ensure conformity to The Prisons Act 1894⁵².

⁵¹ Rule 888, Jail Manual
⁵² Ibid, Rules 897 and 898.

The post of IG is followed by the post of the Deputy Inspector General (DIG) based on the criteria of seniority⁵³. In each prison there is a superintendent and two or more deputy superintendents responsible for the day to day functioning of prisons⁵⁴. The subordinate prison staff includes chief warders, head warders and warders. District government authorities have the power to visit the prisons. Superintendents are also obligated to visit prisons at unannounced times to determine compliance to rules and orders and also to inspect the food every day⁵⁵.

Women prisons have a female assistant superintendent who controls the day to day matters of prison⁵⁶. 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.

A senior medical officer from the provincial health department works full time in Central and District Prisons and he or she is responsible for the physical and mental health of the prisoners under their care. He or she must also visit the prison daily and visit the prisoners confined within⁵⁷.

As mentioned above, subordinate prison staff includes chief warders, head warders and warders. Warders are mostly recruited from pensioned or discharged military personnel, with a secondary school certificate being the minimum requirement⁵⁸.

The budget for the prison department is allocated by provincial governments. It is important to note that the Government of Sindh has allocated an estimated budget of almost 2.3 billion rupees for its prisons from 2013-2014⁵⁹. Furthermore, half of the allocated estimated budget has been released and given to the prisons.

53 Ibid, Rule 890.

54 Ibid, Rules 939 and 940

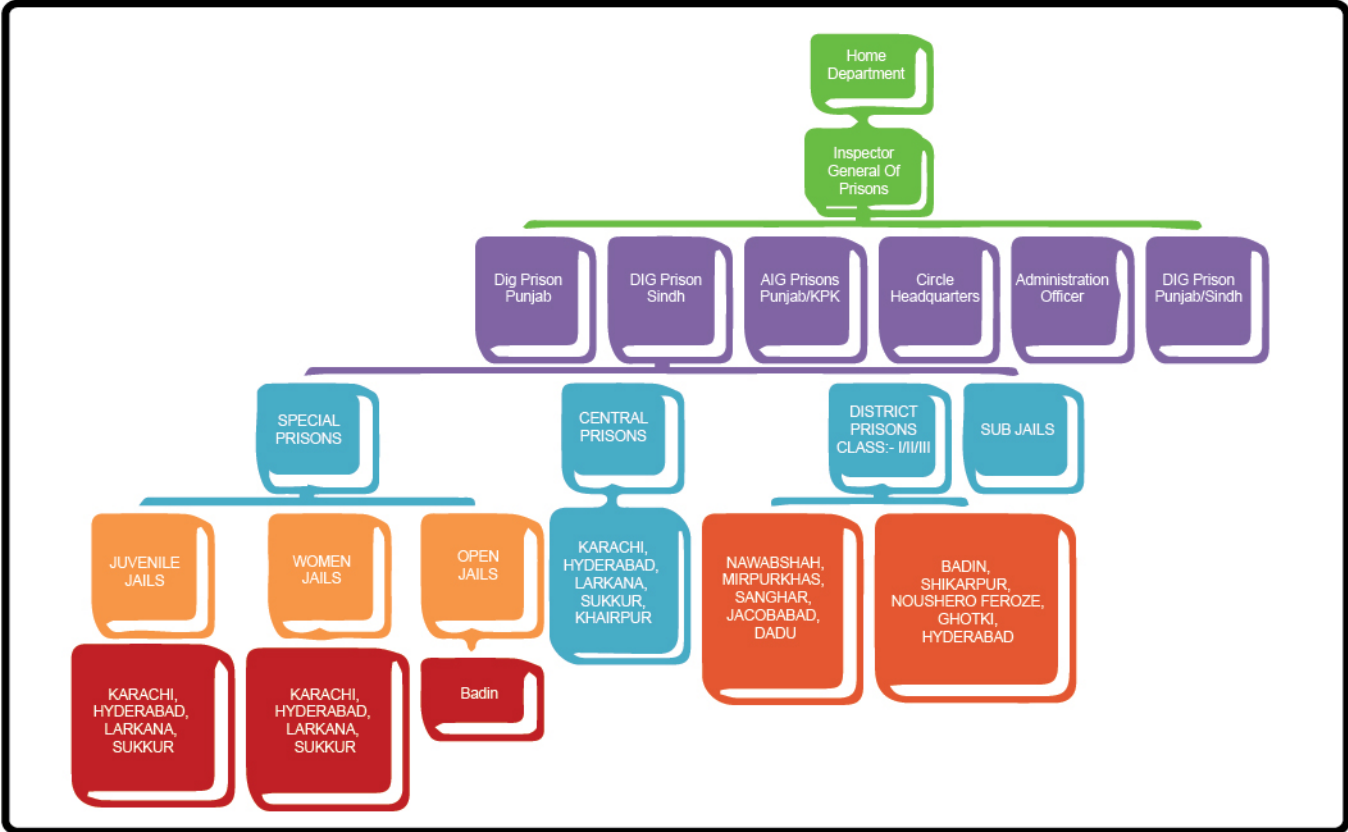
55 Ibid, Rules 943, 944 and 945.

56 Ibid, Rule 1180(i) and 1183 (i).

57 Ibid, Rule 976

58 Ibid, Rules 1113 (iii) and 1113(iv).

59 Document SC21015. Jails and Detention Places Budget Estimates 2013-2014. Issued by Home Department of Sindh.



Key Findings

Overcrowding

Prison overcrowding is a cause of concern all around the world. Law enforcement agencies, academics and policy experts from various parts of the world have been analyzing years of gathered data to formulate methods for decongesting prisons. According to the International Centre of Prison Studies (“ICPS”) more than 10.2 million people across the world were estimated to be held in penal institutions⁶⁰. It should be noted that the degree of overcrowding varies according to the country and there is no internationally accepted standard for the minimum rate space requirement for each prisoner⁶¹. However, the SMR suggests “accommodation provided for the use of prisoners and in particular their sleeping accommodation shall meet all requirement of health, due regard being paid to climate conditions and particularly to cubic content of air, minimum floor space, lighting and heating and ventilation”⁶².

The ICPS further estimates that in 2012 Pakistan had a prisoner population of 75,568 in 97 prison facilities (out of which 26 were located in Sindh)⁶³. A closer look at the provincial statistics reveals that the prison population in Sindh has steadily grown over the past 5 years from a grand total of 13,706⁶⁴ in 2010 to 18,437 prisoners On April, 2014⁶⁵ as against an overall authorized prison capacity of 11,827 prisoners. However, it is to be noted that overcrowding is not an across the board problem in Sindh Prisons but concerns itself primarily with adult male prison facilities as special prisons for women located in Karachi, Larkana and Hyderabad and juvenile prison facilities (Youthful Offenders Industrial Schools) in Karachi, Sukkur, Hyderabad and Larkana were found to be under populated.

Name Of Prison	Constructed	Authorized Capacity	Total Prison Population ⁶⁶
 Women Prison, Karachi	1998	250	73
 YOIS, Karachi	1993	350	214
 Women Prison, Hyderabad	2003	150	33
 YOIS, Hyderabad	2008	150	59
 YOIS, Sukkur	2010	50	17
 Women Prison, Larkana	1987	110	26
 YOIS, Larkana	2010	40	10

60 Walmsley, R. (2013). World Prison Population List 10th edition. *International Centre for Prison Studies*, [online] p.1. Available at: http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wpp1_10.pdf [Accessed 25 Apr. 2014].

61 Handbook on Strategies to Reduce Overcrowding in Prisons. (2013). *UNODC*, [online] pp.8-9. Available at: http://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf [Accessed 24 Apr. 2014].

62 SMR, Rule 1063 *Prisonstudies.org*, (2014). Pakistan | International Centre for Prison Studies. [online] Available at: <http://www.prisonstudies.org/country/pakistan> [Accessed 25 Apr. 2014].

63 *Prisonstudies.org*, (2014). Pakistan | *International Centre for Prison Studies*. [online] Available at: <http://www.prisonstudies.org/country/pakistan> [Accessed 25 Apr. 2014].

64 Sindh Prison Population as on 20th April, 2010.

65 Sindh Prison Population as on 15th April, 2014.

66 Population Statement of Sindh Women & Juvenile Prisons on 15th April, 2014.

The prime reason for the special prisons i.e. Women Prisons and YOIS to be under populated is that the law in practice seems to be more lenient towards women and children. More offences were made bailable after the enactment of the Protection of Women (Criminal Laws Amendment) Act 2006 (“WPA”). The law was amended to provide that even in situations where women were accused of non bailable offences, once they had spent 6 months in prison they shall be released on bail^{67 68}.

Efforts have been made to decongest prisons by constructing new barracks. However, this has not addressed the actual problem head on but merely circumvented it in the short run. For example, Youthful Offenders Industrial Schools (“YOIS”) as they exist today do not in anyway relate to the narrative on the juvenile prisoner’s treatment and the scope for their rehabilitation and reintegration into society. By merely, building a barrack within the prison next to the adult prison barracks and placing the name of “YOIS” does not solve the problem in anyway. Further to this observation, the LAO team during its visit to District Prison Ghotki witnessed that even though there is no officially designated YOIS, a name plate had been placed in the Prison on one barrack where juvenile offenders had been hoarded. The matter of overcrowding simply does not end with hoarding of prison population into barracks but becomes a stimulus of graver personal issues effecting the prisoners. There is a plethora of overcrowding related dilemmas facing prisons today, the foremost problems relate to sanitation, hygiene, spread of contagious diseases, sexual abuse and bullying. As an example the Women and Juvenile Prisons in Larkana are very closely located much against the established rules and the principles of respectable distance between the male and female prisoners.

The issue of overcrowding in the context of health was highlighted when a woman prisoner suffering from tuberculosis, in the Karachi Women Prison who infected a healthy mother and her two year old daughter who had recently been confined to the same barrack⁶⁹. Apart from these incidents, LAO staff observed first hand in District Prison, Ghotki an adult male prisoner suffering from tuberculosis was removed from the barrack and due to no facility for ailing patients to be put in quarantine he was forced out onto the scorching open ground outside the barrack. A high rate of the prison population spreads contagious diseases such as HIV, Hepatitis C and Tuberculosis and skin diseases such as scabies, therefore, programmes made to deliver effective treatments are impeded.

⁶⁷ Code of Criminal Procedure Second Amendment Ordinance 2006, Section 497

⁶⁸ The vigour of this law has been compromised to some extent by the Code of Criminal Procedure Amendment Act 2011.

⁶⁹ LAO conducted Interview on 7th November, 2013 at Women Prison, Karachi and it was revealed by the UTPs that there is no separation done between the UTPs who have been diagnosed with TB, Therefore, due to which the others in that barracks are at a high risk.

As part of a holistic strategy to decongest adult male prisons the Government should explore effective crime prevention programmes, treatment programmes/ orders for mentally ill prisoners and drug offenders . In addition emphasis must be placed on reduction of the length of stay of prisoners. According to International standards and norms, it was recommended that resorting to prosecution and incarceration should only be proportionate to the offence committed. In order to ensure that prisons are playing a proper role, which also includes the role of rehabilitation, it is extremely important that minor offences be processed in different ways.



For petty crimes a fast track of bail needs to be sought, this would prevent issues such as mingling with hardcore criminals.

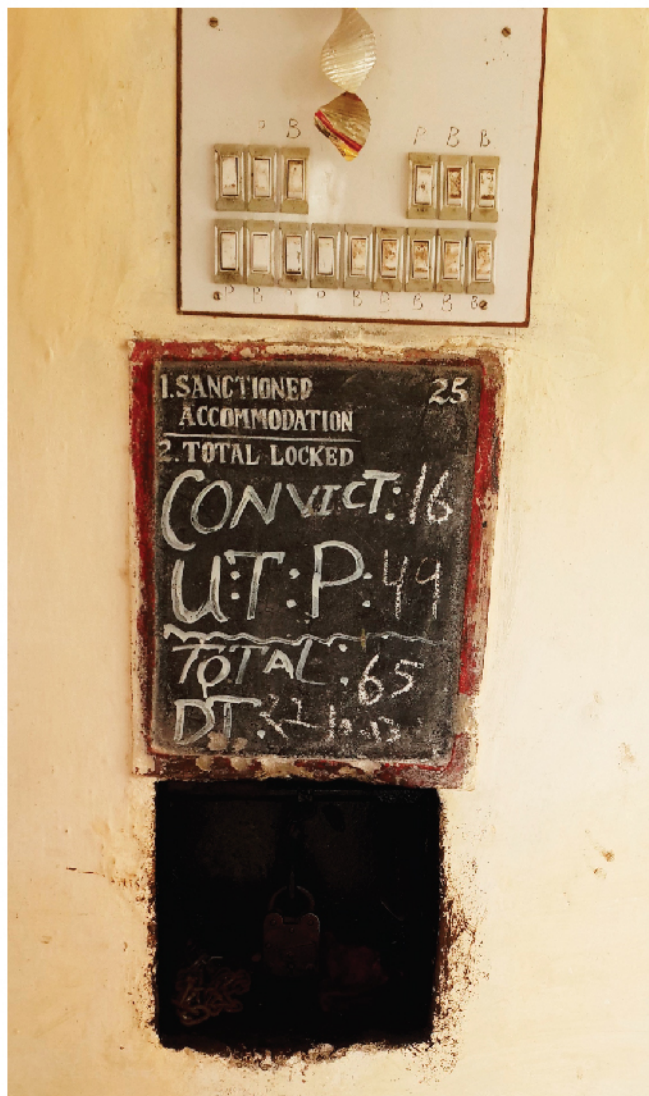
Moreover, the sentencing philosophy must be reinvented and redefined to train legal practitioners and judges on available alternatives to incarceration such as conditional discharges and probation. Judges need to view the trial in two stages; the first dealing with whether an offender is guilty or not, and the second coming into play upon a finding of guilt to deal with the question of an appropriate sentence. must not be the automatic presumption but must be considered and balanced with availability and appropriateness of non custodial sanctions. More opportunities for parole or other forms of early release should be developed. Parole systems and earned remission provide an incentive to prisoners for early release if they behave well. Furthermore, large prisons are not a solution to the problem. A change in sentencing philosophy will further prison overcrowding in the long run.

Classification. Segregation and Separation:

The Prison's Act, 1894, establishes the standards for the separation and segregation of prisoners; Sections 27 specifically deals with the separation of prisoners while sections 28 to 30 address convicts and condemn prisoners, however, the later sections do not go beyond the security questions involving the condemned prisoner. The Pakistan PPR, Rules 224 to 249 clearly provide for the classification of prisoners on the basis of their involvement in civil matters or criminal offences. They further require for the separation of female and juveniles from the other categories of prisoners. It has generally been observed that due to overcrowding in all the prisons of the country, the rules relating to segregation are not fully observed men and women should be imprisoned separately in a manner to prevent them from seeing, conversing or holding any communication with each other, juveniles should be kept separate from all other prisoners, remand prisoners should be kept separate from convicted prisoners, civil prisoners shall be kept separate from criminal prisoners and political prisoners shall be kept separate from all other prisoners⁷⁰.

⁷⁰ Rule 231, Pakistan Prison Rules

The Prison's Act, Section 27 to 30 and the PPR 1978 by Chapter 9 therein provide for the classification and separation of prisoners on the basis of their involvement in criminal offences or in civil matters. Interestingly, the term "segregation" which is now a part of the prison management terminology is conspicuously missing from the PPR. Even though there are no codified rules provided in the PPR, there is a positive sign that segregation is now gradually being introduced in the Sindh prisons through the directives of the Home Department and where necessary by the IG Prisons (the Chief Prison Officer) in maintaining due segregation between convicts undergoing a sentence for a politically affiliated but also in affiliation with extremist and terrorist related convictions and normal convicts. The prison authorities are also alive to the question of prescribed organisations and making the proper arrangements for their segregation from the normal convicts. Due emphasis is also being made on the prescribed and extremist prisoners to maintain a safe separation of these prisoners from the other inmates of the prisons.



The problem of segregation, however, does not end with these simple measures. The major hurdle in the proper implementation of the rules and directives pertaining to segregation require a massive overhaul of legislation and commensurate with the legislation priority by the Government of Sindh in allocating sufficient budget for restructuring the prison system altogether. International standards are balanced with the security and the issues vis-à-vis the right of militancy culture and the surge in radicalisation. For example, in Australia, terrorists are segregated from normal convicts in prison due to the fear that they might also be radicalized⁷¹. However, on an interesting note, the United Kingdom found that by concentrating terrorists together created pressure to conform and remain adherent to militancy values, due to this reason terrorists are placed together with normal convicts, albeit, with extra supervision⁷².

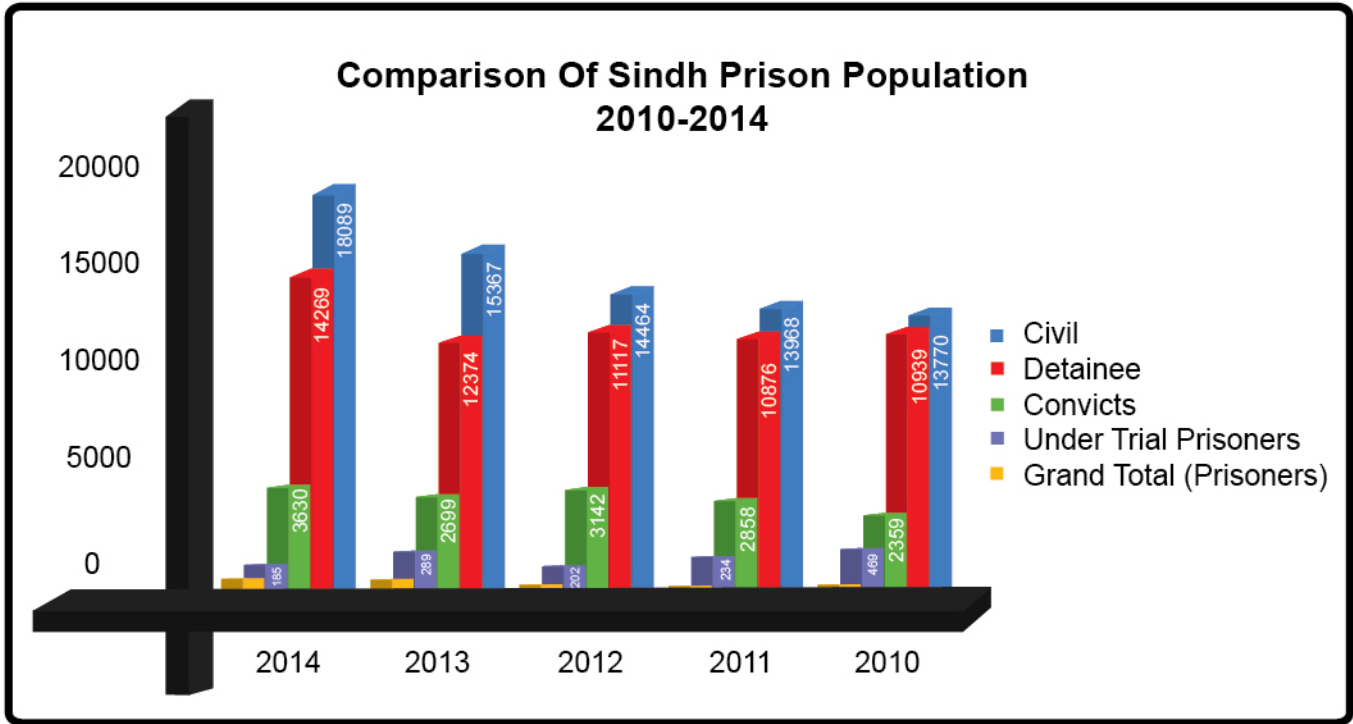
The PPR categorises prisoners as either class A, B or C. However, prisoners are further categorised as under trial or convicted prisoners. Class A or B prisoners are initially required to fulfill the criteria set out under Rule 228 (ii). These being whether the offender is a first time offender or a habitual offender, whether the offence committed is serious according to the sentence given (where the offender is convicted), the income, profession, education, social status and financial background of the offenders' family⁷³.

71 Broadhurst, R., Fealy, G. and Jones, C., 2013. *Does prison incubate violent Islamist extremists?*. [online] East Asia Forum. Available at: <<http://www.eastasiaforum.org/2013/06/25/does-prison-incubate-violent-islamist-extremists/>> [Accessed 20 Apr. 2014].

72 Ibid.

73 Rule 248 (ii), Jail Manual— In the Sindh Amendment this rule further states that "Members of Senate, National Assembly, Provincial Assembly, Officers of grade 17 or above in the Federal or Provincial Government, Commissioned Officers in the defence forces or the Rangers... and any person paying income tax... not less than Rs. 10,000/- per year shall be classified as better class facilities, both in the jail, and the sub-jails and while in police custody."

A prisoner also has the right to file an application to the Provincial Government seeking a better class in prison due to better education, social background or perhaps even financial background⁷⁴. However, the grant of such an application depends on the provincial governments and eligibility does not automatically provide the offender with a right⁷⁵.



74 Rule 541, Jail Manual
75 1980 S C M R 632

There are copious volumes of material available in print and on the internet discussing not only theoretically appraising the problem but also providing possible management of the grave problems of separation and the underlying problems in the absence of maintaining separation procedures. The LAO has been involved in this critical area of the prisons in Sindh and its aftermath seen in rising recidivism amongst the juvenile, adult casual and first time offenders. The organization during the inception of the current project took up the exercise of visiting different prisons and obtaining direct information from the prisoners and the views of the prison officials. Out of the 17 prisons that LAO visited for the purposes of this exercise, 7 of them had detained UTPs and convicted prisoners in the same barracks; 5 of the prisons had not segregated juvenile prisoners from adult prisoners; 12 prisons in Sindh had not segregated hardened/repeat offenders from UTPs and 4 prisons had not segregated civil prisoners from persons imprisoned for a criminal offence. Furthermore LAO interviewed 77 UTPs for the purposes of this exercise and 5 of them admitted that they were allowed to meet with their spouse or a partner in a private setting as long as they paid illicit money to jail officials. 15 UTPs admitted that they were not segregated from prisoners suffering from infectious diseases such as hepatitis and tuberculosis.

After the observation and personal interviews of the prisoners, interviews were conducted with the prison officials to ascertain the real on ground situation and their views on the issue of separation. LAO interviewed 17 high ranking prison officials on the questions which had earlier been asked from the prisoners. 7 prison officials from 7 different prisons in Sindh stated that they do not segregate healthy prisoners from prisoners suffering from infectious diseases.

From the research conducted, the most obvious of the problems facing the prisons system in Sindh appears to be a very low priority level assigned to the prisons on a similar pattern as that to education. The budget allocations are therefore extremely low given the threat of fast deteriorating prison conditions. The higher governments are impervious to the drastic impact which the prison situation presents.

One view of such sequestration is that by keeping extremists detained in prison facilities does not solve the problem as extremist mind set remains embedded even after the offender is freed from prison. Anna Warsi, a High-Court lawyer and a fellow at the Lahore-based Research Society of International Law who studies terrorism, says keeping extremists locked up without any opportunity to better themselves doesn't help, especially given that the vast majority of terrorism suspects are later freed because of a lack of evidence or intimidation of witnesses. "There should be reformatory schools or courses for them. They need brainwashing," she says. "You have to kill an idea with an idea, to change their mind-set"⁷⁶. This view is relevant at a theoretical level of CVE discourses but the same cannot be implemented at the ground level because of the dynamics of criminality and which is a part of the viable criminology based intervention in these situations.

76 In Karachi Jail: Should Jihadists Be Separated?.(2010).[online] Available at: <http://content.time.com/time/world/article/0,8599,2003066,00.html> [Accessed 23 Apr. 2014].

It is no surprise that the head of Sindh's Hyderabad district police admitted to the LAO team that hardened criminals in the District's Central Prison were planning and coordinating illegal activities, including kidnapping for ransom from within prison walls thus proving how the inadequate check and control over criminal activities within the prisons has resulted in a serious threat to the stability of the country. Moreover, to decrease the risk of spreading extremism into the mind of a petty offender there is a dire need to isolate such hardened criminals.

The rise in street crimes in Karachi and Sindh added to the contumacy in crimes can be traced as one of the major causes for the ineffectiveness of the ongoing law enforcement operation since September, 2013. This issue becomes important and sensitive from the point of view of rising violent extremism in Sindh. The fact that prisons in Sindh and generally all over Pakistan continue to be ignored and are substantially absent goes against the criminal justice mechanisms and remain the crucial missing link. The Government of Pakistan and the Government of Sindh cannot realize the writ of the law unless the Government makes a paradigm shift in its approach to improving the writ of law in Karachi and Sindh.

Infrastructure and Security

Classification of prisoners plays a vital role for security purposes. The method of assessing inmate risks that balance the security requirements with the program needs. Prisons are not just classified based on gender or offence committed but also designated by the security level. As UTPs enter the prison system via court, where they are usually assessed and classified on basis of the crime they are accused of, their criminal history, escape risk, behavioral issues (if any), and health and programming needs⁷⁷.

The classification of the prisoners and their designation are done by security level. There are four types of security used by the division of prisoners, which are super maximum, maximum, medium and minimum. These classifications are done for the public interest. Such divisions can be seen in the prisons of the United States, which began back in 1937, and Canada⁷⁸. The general division remains the same even though State, federal and military laws, traditions and the practices differ from how they operate. However, there is still some generalized way of how different security levels operate. Prisons with the greatest internal and external security controls are the super maximum (super-max) followed by maximum security prisons. Inmates in super-max, compared to maximum security prisons, are locked in prison all day, they are only allowed out from their cell for shower or for recreational activities. The inmates in super-max are ideally in single cells. The exterior security of maximum and super-max consists of combination of layers of razor wire, walls, lights, cameras, armed security guards, and attack dogs on patrol.

The state usually has only one super max, maximum security prisons are responsible for holding mostly the serious offenders and most of those who could not be handled in the freer atmosphere of medium and minimum security prisons. Furthermore, in many states, where death penalty still exists, their death row is located at the maximum security prison. The areas are separate in the prison for death rows, sometimes a different building is allocated to them and often they have a separated designated staff and procedures. Moreover, maximum security prisons can have the same exterior as the super-max prisons but inside, the inmates are not locked for the whole day. The inmates in maximum security may or may not be provided with double-bunked, depending on the prison population i.e. whether it is overcrowded or not. Maximum security prisons allow the inmates to access the yard (large gathering areas for inmates), cafeteria and the chapel; however, that only under a proper supervision. The visiting and contact with the outside world is less strict than the super-max prison.

⁷⁷ Prisons, Chapter 7. (2014). [online] Available at: http://www.sagepub.com/upm-data/43448_7.pdf [Accessed 25 Apr. 2014].

⁷⁸ Ibid.

The exterior of the medium security prisons can be similar to super-max and maximum security but the inmates confined there has many more opportunities to attend school, treatment, and other recreational activities. They are also provided with greater options for rooms, from dormitories to single cell. They are also allowed visitors and have contact with the outside world which is less restricted as compared to super-max and maximum security prisons. Moreover, some inmates in medium security prison are also allowed to leave the institution for work-related; however, it is much more common in minimum security prisons. The inmates confined in minimum security are of mix crime categories, from the convicted murderer doing life to burglars or drug user who is waiting to be transferred to a lower-security prison or who is engaged in the substance abuse programming that the prison affords. The interior of medium security prisons is mostly college campus type, with several buildings are devoted for different purposes. There might be a separate building for cafeteria, a separate programming and treatment building, a separate building for recreation, and separate work and housing building. The prisons in medium security are highly involved towards industrial work such as furniture, clothing and printing license plate for the state⁷⁹.

On the other hand, minimum security prisons have the most relaxed exterior security. Few of them do not even have fences or wall. The inmates are provided with a lot of programming facilities, either inside the institution or outside in the community. The accommodation options are as diverse as medium security prisons, where prisons can freely roam in the premises with recreational activities provided to them. The inmates confined often be freed within a time period of a year or two, visitation option provided are more liberalized in order to make the transition smoother from prison to the community. The prisoners confined are encouraged to work. The inmates incarcerated are usually “short-timers” or a prisoners who are relatively close to release date⁸⁰.

In Pakistan such prison security is unknown and there is no proper separation and segregation done between hardened criminals and minor. The recent surge of terrorist attacks on Pakistan prisons proves that the prisons are in need of prompt reform for their external and internal security.

⁷⁹ Ibid

⁸⁰ Ibid.

– Mr. Nusrat Mangan, the Inspector General of Prisons stated that the biggest threat that prisons face is the contact of prisoners with the outside world. Mr. Mangan stated that the Central Prison in Karachi faced the biggest peril which was as a result of the interference between the boundary wall of the Ghouseia Colony and Central Prison, Karachi. The boundary wall of the Ghouseia Colony was approximately 10 meters higher than that of the Central Prison and it was relatively easy for any passerby to throw any object inside the prison. However, in 2011 the wall of the Central Prison was raised by 15 meters to ensure that such atrocity could no longer take place. This has curbed the access problem in Karachi Central Prison however; Mr. Mangan stated that there is corruption at the lower level with some guards allowing food items and sometimes mobile phones to be sneaked inside the prison. This is also found in the “ignorance or compliance of the search officer when the prisoner comes from the court to the prison” as stated by Mr. Mangan.

The IG further stated, with regards to visitors, that 4 prisons in Sindh have CCTV installed in order to ensure that there is proper visitor identification inside and within the vicinity of the Prisons⁸¹.



LAO team took a picture of CCTV equipment in Central, Prison Hyderabad on 4th Feb, 2014

⁸¹ On 12th March, 2014 the LAO team conducted an interview with the Inspector General (IG Prisons)

In last two decades Pakistan has taken steps to counter terrorism by introducing different regimes⁸². However, due to the loopholes in the existing legal framework, which also includes the board definition of terrorism provided in the Anti-Terrorism Act (ATA) , high security and lack of high security in prison for terrorist suspects, lack of protection for witnesses and judges, in adequate funding and inexpert prosecution. Therefore, there was no positive change in the current threat Pakistan is exposed with. Furthermore, the previous PPP (Pakistan People’s Party) Government had imposed moratorium on the death penalty, thus detained thousands of convicted criminals and terrorists on death row⁸³.

Moreover, the most important point of concern for security and rehabilitation of prisoners is contained in Chapter 9 of the PPR on the classification and separation of prisoners. Although chapter 9 specifically provides that UTPs shall be kept separate from convicted prisoners,⁸⁴ there remains a security risk because the UTPs regardless of the severity of crime they are involved in or their past criminal history they all are confined in the same barracks. This leaves the UTP involved in non-violent crime vulnerable to seasoned and hardened criminals who may cause physical harm to them. It is for this reason that the PPR has to be amended to provide the UTPs that are hardened and/or repeat offenders. This will ensure effective rehabilitation for first time offenders and/or repeat offenders and will ensure effective rehabilitation for them and will decrease the chance for recidivism.

There are total 99 (ninety-nine) prisons facilities in Pakistan⁸⁵.

Name of Province	Number of Prisons
Punjab	32
KPK	23
Baluchistan	11
Sindh	22
Azad Kashmir	06
Gilgit Baltistan	05

Out of the twenty-two prisons only five prisons were made before partition⁸⁶. However, there is no difference in the infrastructure of those prisons built after partition despite the fact that resources and technology along with the budget provided for a better infrastructure, such as Central Prison, Larkana was constructed in 1985, it is in a life threatening condition even after renovation. On June 28, 2012 a UTP died and another inmate suffered injuries when a portion of the barrack’s ceiling fell off on them. According to the Superintendent the barrack in which the incident occurred was constructed in 2008 and was recently renovated⁸⁷.



(Picture of one of the Barracks in Central Prison, Larkana)⁸⁸.

82 The legal framweord was introduced by Anti Terrorism Act (1971), later in early October, 2013 the Government introduced presidential decree called “The Anti terrorism Ammendement Ordinance”, this included dozen of changes to the Anti-Terrorism Act 1997.

83 Center for Research & Security Studies (2013). *Pakistan’s Challenges in Anti-Terror Legislation*. p.6.

84 Chapter 9. Rule 231 (iii). Pakistan Prison Rules.

85 National Academy for Prisons Administration.

86 Central Prison Karachi (1899), Central Prison Hyderabad (1894), Central Prison Sukkur (1941), District Prison Sukkur (1904), Special Prison Nara Hyderabad (1942).

87 Prisoner dies as portion of jail roof falls. (2012). *Dawn*. [online] Available at: <http://www.dawn.com/news/730231/prisoner-dies-as-portion-of-jail-roof-falls> [Accessed 25 Apr. 2014].

88 Picture taken by Team LAO on 24th October, 2013.

Moreover, the condition of the Sukkur District Prison is literally crumbling and an imminent threat to prisoners being contained in the condemned structure. It was recently come to the attention of the LAO that the prison buildings in District Prison, Sukkur were condemned by the Engineering Department of the Sindh Government⁸⁹. Moreover the wall protecting the Central Prison, Sukkur is also in a terrible condition which requires immediate constructions before any mishap related to security such as recent terrorist threats⁹⁰.



(Picture of the boundary wall of Central Prison, Sukkur)⁹¹.

It should be noted that in Chapter 35 of the PPR gives provision on prison building and maintenance. However, it is ignored and not followed.

The protection of Pakistani prisons should result in a safer environment within the prisons and also across the world. Therefore, new reforms should be introduced which covers safety and security of prisons. It can be proposed that similar security prisons should be constructed in order to counter violent extremism (CVE). The country is exposed to serious threats and prisons being one of the major ones. Government must be urged to introduce high security prisons in which prisoners and detainees who are involved in terrorist and militant activities should be confined. They can either be confined within the prisons, if the infrastructure and security are made up to the standard and proper separation and segregation are maintained, or special prisons should be made for this purpose. However, it should be noted that the construction of separate prisons will expose them to more threats. Therefore, it is recommended that well-trained staff should be appointed to watch and ward duty of high security enclosures. The government must learn from previous incidents of security lapse. A double ring of security should be provided, proper watch towers should be constructed and special armed guards should be appointed on duties. Furthermore, provisions should be made that no staff on duty should come in direct contact with the prisoners except for those who are on duty. However, it should be kept in mind that the basic rights of prisoners should not be compromised.

⁸⁹ The District Prison - Sukkur is century old jail commissioned in the year 1904 which has already been declared condemned (unfit for prisoners as well as staff accommodation) by the Executive Engineer, Provincial Building Division Sukkur report under letter No. BB/1945 on 06-12-2006.

⁹⁰ According the Prison Official (name not mentioned due to privacy) 16 terrorist detainees are confined in Central Prison, Sukkur.

⁹¹ Picture taken by Team LAO on 23rd October, 2013

Torture, Abuse and Corruption:

Perhaps the best definition for torture is contained in Article 1 of the Convention Against Torture and Other, Inhuman or Degrading Treatment or Punishment (CAT):

“...the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Particular attention must be paid to three key ingredients: there must be (1) physical and mental pain or suffering and (2) it is inflicted for the purposes of extraditing an extrajudicial confession or for any reason based on discrimination of any kind and finally (3) the pain or suffering must be inflicted by a person acting in an official capacity.

Keeping this definition in mind, we will now examine the laws relating to torture in Pakistan. Article 14(2) of Pakistan's Constitution prohibits the use of torture on a person for extraditing extrajudicial confessions only. It can furthermore be assumed that the word "torture" covers only physical suffering/pain and not mental suffering/pain as the latter seems to be purposely omitted from the Constitution. Furthermore, torture has been a resourceful tool for Pakistan and it has been deeply enrooted into Pakistan's framework since her inception; indeed the best way to ratify the methods of torture as a tactical measure for interrogation and security is the simple omission of enacting or implementing any legislative acts condemning torture in the first place. Although Article 14 (2) of Pakistan's Constitution prohibits the use of torture on a person for extraditing extrajudicial confessions, the fact remains that the word "torture" is not properly defined in the Constitution and that torture cells in Pakistan are a part of an everyday existence.

Although, Pakistan has signed the CAT in April 17th, 2008 and ratified it in June 23, 2010, the institutional framework of Law Enforcement Agencies says otherwise⁹². Recent legislation implemented in Pakistan - such as the Protection of Pakistan Ordinance, 2013 (PPO) - encourages employees of law enforcement agencies to inflict torture on pre-trial prisoners during the investigation period. For example, Section 167 of the Cr.P.C. gives a provision of a maximum of 15 days remand on a person that has been arrested for police investigation purposes. The PPO supersedes the Cr.P.C. and gives a provision of a maximum of 90 days remand. Persons in remand are easily susceptible to be tortured by the police because not only does the police have a limited amount of time to collect evidence to be used against an Accused in court, but also because it is easier to beat, torture and humiliate in order to extradite a confession. The PPO gives law enforcement agencies broader based powers and a lot more time to investigate before the charge is framed and the Accused is tried in a court of law. The PPO boils down to the Government turning a blind eye to the investigative methods conducted by the police.

92 Treaties.un.org, (2014). *UNTC*. [online] Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en [Accessed 25 Apr. 2014].

Furthermore, the PPR itself has relevant Chapters that sanction torture through punishments to unruly prisoners, more specifically, Chapter 23 of the PPR on "Offences and Punishments". Rule 584 states that solitary confinement for a period exceeding seven (7) days, imposing of bar fetters and whipping can be awarded to a prisoner as a major punishment. This rule stems from Section 46 of the Prisons Act, 1894 where major punishments are listed, including but not limited to the major punishments mentioned above. Section 46 also states that it is up to the discretion of the Superintendent of the prison to determine whether to award the listed punishments to a prisoner, as long as he or she has committed one of the offences listed in Section 45. However, after the implementation of the Abolition of the Punishment of Whipping Act, 1996, the punishment of whipping is "reserved for serious offences and if inflicted, shall be severe enough to act as a real deterrent"⁹³. That being said, the Act only abolishes the sentence of whipping for offences which are not hadd (serious). Prisoners are safe from whipping if they commit a tazir offence, or an offence which is not "serious". The argument that arises against this provision is that the act of punishing prisoners by whipping, regardless of the severity of the offence, is an archaic method of punishment and it is a prima facie violation of Pakistan's Constitution, where it is stated that "Laws inconsistent with or in derogation of fundamental human rights [are] to be void"⁹⁴. The Government of Sindh needs to remember that Pakistan has adopted the Universal Declaration of Human Rights (UDHR) in 1948 where Article 5 states "No one shall be subjected to torture or to cruel, inhumane or degrading treatment or punishment." Therefore, in order to bring the PPR up to date with international human rights, the punishment of whipping must be strictly prohibited, regardless of the severity of the offence.

Persons detained in prisons very seldom raise issues of abuse due to the fear of repercussions and increased physical violence from the prison authorities. Recent LAO cases have highlighted some of the horrifying torture endured by those UTPs in police custody and those in prisons. One such case is that of Zahid Jamal⁹⁵, a UTP who admitted to being beaten while in custody until his scalp split apart⁹⁶. Moreover, in 2010, 200 children in the YOIS Karachi were interviewed by a medical team. The medical team found that almost 60 percent of the boys had been subjected to major torture such as electric shock, severe beating, handing (and) cheera (forced stretching apart of the legs, sometimes in combination with kicks to the genitalia⁹⁷. Prison conditions reflect those of the medieval era where the life of the prisoner was wholly dependent on the privilege of the "jailor". In 2014, despite the rules, the regulations and the supervision by the official and non-official visitors, including the judiciary, things have not changed much and the conditions remain as life threatening as they were centuries ago in this opaque world free from public accountability.

On a brighter note, the Federal Shariat Court of Pakistan has recently given an inventive decision by holding that any rules within Chapter 23 of the PPR that award solitary confinement, bar fetters and whipping as a punishment are repugnant to the injunctions of the Holy Qur'an because these punishments preclude a prisoner from "performing ablution, offering compulsory prayers five times a day; [reciting] the Qur'an; reading and writing; [and is also handicapped from] answering the call of nature."⁹⁸ This decision by the Federal Shariat Court offers a creative justification for abolishing the punishments of solitary confinement, bar fetters and whipping from Chapter 23 of the PPR which will bring the law in Pakistan up to date with international human rights with an Islamic viewpoint.

93 Rule 588 PPR

94 Article 8

95 Name of the prisoner has been changed for confidentiality reasons.

96 LAO interview conducted with UTP.

97 Malik, M. and Shirazi, R. (2010). An Analytical Review of Juvenile Delinquents In Jails Of Sindh Province: Some Problems And Suggestions to Over Come. *Indus Journal of Management & Social Science (IJMSS)*, 4(1), p.51.

98 Dr. Muhammad Aslam Khaki v. State [2010] PLD 1 Federal Shariat Court

However, should the Government of Pakistan be criticized for giving law enforcement agencies the support and power to keep millions of innocent people safe? With the recent epidemic of terrorist attacks around the globe and the countless innocent lives lost to savage and cowardly attacks, perhaps torture is not a repugnant practice regardless of a person's culpability.

This question must be answered in the negative. There is insurmountable evidence that shows torture is in fact an ineffective method of gaining information and that regular interrogation methods are more effective. On the subject, Ali Soufan, a former FBI agent and an expert on al-Qaeda says the following, "Time and time again, people with actual experience with interrogating terror suspects and actual experience and knowledge about the effectiveness of torture techniques have come out to explain that they are ineffective and that their use threatens national security more than it helps"⁹⁹. This is due to the fact that torture techniques are designed to make captives disclose such statements that will please their torturer, whether or not the information disclosed is true or false.

So far torture in the prisons of Pakistan has been discussed with examples of physical pain/suffering. However, the PPR is devised in such a way that it can cause great mental suffering to prisoners that are religious minorities, more specifically to those who follow Hinduism and are vegetarians/vegan prisoners. Chapter 20 of the PPR regulates the diet of all prisoners. This rule stems from Section 59 (11) of the Prisons Act, 1894 where it is stated that the Provincial Governments have the power to make prison rules regarding food, bedding and clothing of criminal prisoners. With this in mind, it was recently come to the attention of LAO that practicing Hindus who are detained in Central Prison, Sukkur are being denied vegetarian food and only being provided food with meat on a certain day of the week. Consumption of meat is repugnant to the injunctions of Hinduism. This social injustice arises from the fact that Chapter 20 of the PPR does not provide any provision to the specific dietary needs of religious beliefs which is clearly in conflict with the Constitution of Pakistan where every citizen has the right to profess, practice and propagate his religion; and where "every religious denomination and every sect thereof" has the right to "establish, maintain and manage its religious institution"¹⁰⁰. It can also be argued that by denying Hindu prisoners in Pakistani jails basic vegetarian foods, the prisons are in fact infringing Article 1 of CAT by inflicting mental suffering on Hindu prisoners on a reason based upon discrimination. Chapter 20 of the PPR needs to be amended to ensure that, so far as reasonable, prisoners receive diets based upon the needs of their religious beliefs.

77 UTPs purely taken and interviewed by LAO as a random sample provided data on the prison conditions (below).¹⁰¹ In this regard, 11 (14.3%) UTPs replied in the affirmative when asked if they had seen or experienced any abusive behaviour; again, 2 (2.6%) UTPs replied in the affirmative when asked if they received a reduction in diet as a form of punishment; 5 (6.5%) UTPs replied in the affirmative when asked if they or anyone they know were placed in bar fetters as a form of punishment and 14 (18.2%) UTPs

99 Knapp, A. (2009). An FBI Interrogator on the Effectiveness of Torture. *Outside the Beltway*. [online] Available at: http://www.outsidethebeltway.com/an_fbi_interrogator_on_the_effectiveness_of_torture/ [Accessed 25 Apr. 2014].

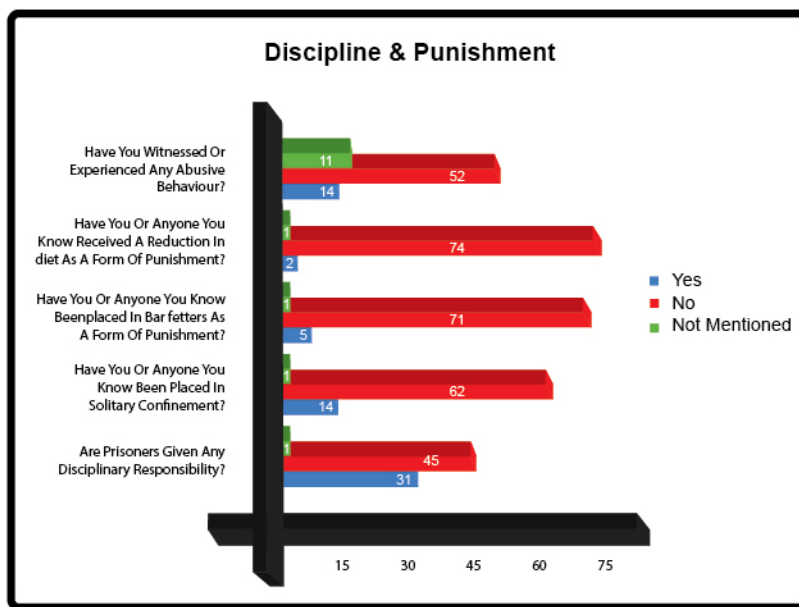
100 Article 20. Constitution of Pakistan.

101 These interviews were conducted by LAO between 9th May, 2013 and 8th February, 2014.

replied in the affirmative when asked if they or anyone they know were placed in solitary confinement as a form of punishment. Especially relating to disciplinary responsibilities¹⁰² 31 UTPs replied in the affirmative when asked if other prisoners were given disciplinary powers by the prison authorities. These figures in real terms may vary according to the categories of prisoners, their classifications, etc. What must be emphasized and also guide the readers is the fact that interviews taken from the inmates of the prisons cannot be confirmed as they are not only bound by the environment in which they live but the fear ofreprising not only by the prison officials but by the “moqaddam” and “naib moqaddam”¹⁰³ also.

The practice of these appointments violates the PPR in every possible context. Reference is made to Rule 1113 of the PPR¹⁰⁴ . Even though the PPR recommends the appointment of ex-military personnel for appointment as warders, this practice has been given up since late. The IG of Prisons has also been given discretionary powers for the appointment of warders (prison constables) as the new title by a directive of the Home Department. This discretion has been defined as “judicial discretion” for the first time in Section 26, Regulation IV of 1827: “The law to be observed... in the absence of specific law and usage justice, equity and good conscience alone” The question of substitution of convicts for the recommendations goes against the basis of discretion. This Section from the Regulation IV of 1827 was thereafter adopted and inserted as Section 24(a) in the General Clauses Act, 1897¹⁰⁵ . The practice of appointment of convicts has not been recently innovated but goes way back as a practice and usage which for all intents and purposes of the Prisons Act 1894 and the PPR contravenes the purpose and object of the laws. The practice also encourages and becomes a motivating force in developing a sub-culture of gangs within the prison walls. This practice requires to be done away with immediately or as soon as possible as the same is again a mechanism for breeding abuse and corruption by non-state actors with the help of the state machinery.

It has been shown that the PPR is in need for amendments in order to bring the rules up to date with international human rights, more specifically, CAT and UDHR. Furthermore, torture is not explicitly prohibited in any provision of Pakistan's legislation and no definition of "torture" exists that prohibits inflicting physical and/or mental pain and suffering to gain extrajudicial confessions and/or due to discriminatory reasons. Chapter 23 of the PPR has to be changed in such a way that prohibits the punishments of bar fetters and whipping and there must be a provision in the PPR that accommodates for food with respects to the religious beliefs of prisoners.



102 See Rule 1113 of the Pakistan Prison Rules

103 “Moqaddam” is a vernacular term used for those prisoners who are officially appointed to oversee the discipline of the prisoners in their barracks under Chapter 19 of the PPR. The authority of the Moqaddams is not only official authority which makes them formidable but by such authority their personal control over the barracks also increases to extreme levels and thus they become the hub of the internal authority within the prisons. In these circumstances the answers which are obtained either in declining to reply or in the negative, do not portray the real picture of the prison conditions.

104 Requirement for establishment in the warder guard: Rule 1113. (i) Men for warder establishment shall be recruited from division in which the Headquarter Prison is located. (ii) The minimum height of accepted candidates for establishment shall be 1 Metre and 70 Cm. and the minimum with of chest, 78 Cm. Candidates shall have normal vision in both eyes without glasses, be 235 physically fit in all respects for prison services and not be under twenty one years or more than twenty five years of age. Explanation.--Inspector General of prisons is empowered to relax the above conditions to suit local conditions by a general or special order.

105 “24-A. Exercise of power under enactments. – (1)Where, by or under any enactment, power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment.

External Oversight:

According to the SMRs the role of the non-official visitors (“NOVs”) becomes a primary catalyst in reforming and improving conditions in prisons universally. SMR 55 provides that there shall be regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

Even though the SMRs were introduced in the 1970’s, the British Government in pre partition India had introduced this concept in rudimentary form for the treatment of prisoners and their oversight in the 19th century. The institution of the NOVs was established as far back as 1890 which encapsulated the concept of accountability in the management, administration and supervision of the prisons and the prisoners therein. NOVs can be said to be fine examples of governance introduced by the British in the administrative system in British India. Regrettably, this laudable initiative has been lost in the narrative of decrying “colonial legacy” without taking into account the concepts made available to the sub-continent and the denial of the same resulting in bruised governance in which prisons surface as gruesome victims of political history.

Deitch, M (2006) states that in order to understand the philosophy underlying an effective supervision mechanism “... any discussion of [oversight] in the correctional context must begin with the recognition that oversight is not a goal in and of itself. Rather, oversight is a means of achieving the twin objectives of **transparency** of public institutions and **accountability** for the operation of safe and humane prisons and jails”.¹⁰⁶ In this context therefore transparency denotes openness, communication, and accountability and the opening up of what are otherwise correctional fortresses that are kept out of the public eye.

Accountability implies answerability, blameworthiness, liability, and the expectation of and assumption of account-giving.

Section 59(25) of the Prison Act, 1894 provides for the appointment of visitors in prisons and Chapter 38 of the PPR addresses the issue of supervision of prisons in detail . The regime provided for under Chapter 38 of the PPR can be categorized as the transparency and accountability tools provided for in the current legislation for external oversight of prisons by non-official visitors.

Rule 913¹⁰⁷ divides visitors of prisons into ex-officio officials and non-officials who are appointed by name. The non-official visitors are appointed by the Home Department and are generally included from social workers, philanthropists, doctors, industrialists and the intelligentsia of the Province. The appointment of NOVs is made by the Government for a period of four years and is required to be officially notified in the Provincial gazette.¹⁰⁸ In addition to District and Sessions Judges and DIG and Superintendents of Police, Members of the National and Provincial Assemblies including the Senate may also be appointed as ex-officio visitors of the prisons situated in their respective constituencies.

¹⁰⁶ Deitch, M. (2009). Distinguishing the various functions of effective prison oversight. *Pace L. Rev.*, [online] 30, p.1. Available at: <http://digitalcommons.pace.edu/cgi/viewcontent.cgi?article=1746&context=plr> [Accessed 24 Apr. 2014], p.1.

¹⁰⁷ PPR

¹⁰⁸ Rule 916: (i) Government may appoint such number of persons, not exceeding ten for a District Prison and fifteen for a Central Prison, to be nonofficial visitors in respect of any prison, as it may think fit, depending on the population of the prison.

(ii) Every non-Official visitor shall hold office for four years, but may be re-appointed on the expiry of his term.

The focus of the discussion in this segment will be on external oversight/NOVs as opposed to internal mechanisms of oversight as prisons are institutions where the imbalance of power is at its greatest between detainer and detainee/ State actor v Private citizen. Goods are scarce, demand is great and essentially there is a danger of everything being commodified and a marked threat to national security when prison control is allowed to remain corrupt without checks and balances.

The rules provide that every non-official visitor is expected to take interest and visit the prison of which he is a visitor once a month and often, if possible and there is no requirement to give prior intimation to the prison about the intended visit¹⁰⁹. An enabling environment is provided as the rules state that all visitors shall be afforded every facility for observing the state of the prison and its management and shall be allowed access under proper regulations, to all parts of the prison and to every prisoner.¹¹⁰ However, this access is curbed as visits after the prisoners have been locked up for the night or on any public holiday or Friday are not permitted.¹¹¹

Official visitors may call for and inspect any book or record in the prison other than those of a confidential nature, unless the Superintendent, for reasons to be recorded it writing declines on this ground that its production is undesirable. Every official and non-official visitor shall have the right to see any prisoner and to put any question to him. The scope of inspections of visitors is wide ranging as the rules provide that they shall inspect the barracks, cells, wards, workshops and other buildings of the prison generally and the food; ascertain whether consideration of health, cleanliness and security are attended to, whether proper management and discipline are maintained in every respect, and if any prisoner is illegally detained or is detained, for an undue length of time while awaiting trial; hear, attend to all representations and petitions made by or on behalf of prisoners and direct if deemed advisable that any such representation or petitions be forwarded to the Government.¹¹² These are undoubtedly serious responsibilities that are imposed upon those notified as NOVs.

In terms of the reporting and findings of the visits, the rules provides that a copy of the remarks made by every visitor, together with the Superintendent's comments or the action taken by the Superintendent, shall be forwarded to the Inspector General and in the case of remarks about the long detention of UTPs, a copy of such remarks shall also be forwarded to the District Magistrate.¹¹³ The rules miss out any provision for directly forwarding grievances and reports to the Government / Home Department. The mechanism provided is limited in that the reports of NOVs are to be submitted to the Inspector General alone. The Inspector General may pass orders on remarks made by a visitor and has the ultimate discretion on forwarding these to the Government.

In addition certain provisions are archaic and need to be brought in line with contemporary needs. For example the rules provide that the remarks of NOVS shall be entered in the visitors' book at the time of their visit to the prison. Any remarks not recorded at the time and received subsequently from non-official visitors, shall be ignored. In addition to rules prohibit visitors from publicity to any remarks recorded by them in the visitors' book by publication in the press or otherwise. The rules require amendments and overall as is the case with the entire PPR, gender neutralising in the legislation is also a necessity.

109 Rule 918 PPR

110 Rule 919 PPR

111 Rule 922 PPR

112 Rule 921 PPR

113 Rule 927 PPR

The present legislative landscape etched by the British may not be in line with contemporary needs but irrespective of the shortcomings the current provisions possess potential for opening up the opaque world of prisons. The UN's Special Rapporteur on Torture noted that "... there needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view... what is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty."¹¹⁴

Unfortunately it appears that the Government of Sindh has only recently taken up the issue and notified a panel of NOV^s¹¹⁵. There is a requirement to actively engage those nominated and provide them with adequate training so that they are able to carry out the onerous reporting and supervisory responsibilities that the law imposes upon them. One method of reviving the NOV system is to conduct joint meetings of the senior prison officials with the notified NOVs and bring the latter aboard and make them feel bounded to the prison administration. The Home Department should also take serious note of the lack of monitoring and evaluation by any NOVs notified and make it mandatory for them to take up their responsibilities under the PPR and provide their expertise and specialized comments to the Home Department for further consideration by the Government of Sindh in the improvement of the conditions in prisons.



¹¹⁴ Sir Nigel Rodley, United Nations former Special Rapporteur on Torture, 3 July 2001

¹¹⁵ Notification: No. HD/SO(PRS-1)/11-302/2012; Government of Sindh Home Department, dated 24th May, 2013

Education and Vocational Training:

There is currently no provision in the PPR or in any legislation enacted or implemented in Sindh that provides a systematic approach towards educating prisoners. The dire truth is that prisoners in Sindh are deprived of the classroom/college setting education and instead are given petty vocational training implemented through ad hoc verbal directives issued by the Home Department. Rule 298 of the PPR provides that every inmate sentenced to imprisonment for a year or more will be given instructions in reading, writing and arithmetic for two hours daily, however, this is not implemented and there is an absence in the PPR on how such educational instructions should be carried out. The LAO team has observed that children confined in Youthful Offenders Industrial School (YOIS), also known as juvenile jail, are given rudimentary classroom setting education in language, arts and religion only. This is not only an infringement of the Constitutional rights of young offenders where it is their right to receive free compulsory education by the State until they attain the age of 16¹¹⁶ but it is also defeating the purpose of a rehabilitation center.

If prisoners in Pakistan are to be reformed and rehabilitated back into society then education is the stepping stone to their self-sufficiency and successful reintegration. Constructing proper educational centers in prisons which would train prisoners on how to be productive members of society would benefit society as a whole. By investing more in education, the Government of Sindh can expect to see less crime and less expenditure on law enforcement and criminal justice. It is no wonder why the current trends generated by LAO in its profiling exercises show a higher culpability for crime and a higher prisoner population amongst uneducated laborers and low-wage earners¹¹⁷. An astounding 51.8% UTPs interviewed by LAO between May 9th, 2013 to November 9th, 2013 were laborers or low-skilled workers.” Not only this, but the data produced by LAO has repeatedly shown that any person employed as a low-skilled worker is more likely to be accused, arrested and charged for the suspicion of committing a crime.¹¹⁸

A fairly recent study conducted by Lance Lochner and Enrico Moretti shows that "the social savings from crime reduction associated with high school graduation amongst men... is about 14-26% of the private return (savings in resource cost) suggesting that a significant part of the social return to completing high school comes in the form of externalities from crime reduction."¹¹⁹ It is crucial for the Government of Sindh to understand the importance of education and to implement it properly in prisons. The social returns that Sindh would gain from educating its prisoners would be invaluable.

The only type of education available to prisoners is Islamic education which is taught by unqualified teachers who are at risk of teaching extremist literature to the prisoners which creates a blatant security risk. In fact, sources from the prison administration have informed the LAO's team that in 2011 an Islamic Instructor managed to brainwash almost the entire prison population into becoming violent extremists in the time span of one year. When the prison authorities gained knowledge of this, they terminated the Islamic instructor from his duties which created a short revolt from the prisoners. The termination of the Islamic instructor also gained the attention of Islamic extremists outside of the prison which created protests surrounding the prison walls. The prison authorities need to be made aware that by providing arbitrary Islamic education to prisoners creates a security risk which is potentially more dangerous than an armed gun. In the current state of Pakistan, all forms of Islamic Seminaries or Islamic schooling have no check and balance systems and are armed with arbitrary syllabuses which may or may not contain extremist teachings.

¹¹⁶ Article 25A Constitution of Pakistan

¹¹⁷ Legal Aid Office's Research and Profiling of Under Trial Prisoners in Sindh.

¹¹⁸ Ibid.

¹¹⁹ Lance Lochner, Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*. March, 2004.[Accessed 20 Jan, 2014]

The Model Indian Jail Manual provides a great example on implementing a systematic educational programme for inmates in prison. Chapter XIII of the model focuses on using education as a reformative treatment.¹²⁰ This process not only focuses on providing literacy but also inculcating positive values amongst the inmate population through a comprehensive education programme.¹²¹

By looking at the Model Indian Jail Manual, the main objective behind any educational programme should be to promote positive and constructive energies in the student and to give them a sense of social responsibility and social consciousness. The executive branch of the Government of Sindh should: (1) amend the PPR so it contains provisions on educating all types of prisoners; (2) create a clear cut syllabus that focuses on the needs of prisoners only, such as but not limited to, providing opportunities to illiterate prisoners so they can meet the minimum requirements of reading and writing and provide advanced opportunities to literate prisoners so they can expand the horizons of their minds through increased knowledge and character; (3) prohibit the use of unsanctioned Islamic instructors and education and create a proper Islamic education syllabus focused on the teachings of Islam relating to peace, harmony and the importance of brotherhood through the teachings of the Qur'an and Sunnah and (4) develop proper education facilities in all prisons with a library that contains a catalogue of wide ranging literature both fiction and non-fiction to expand the horizon of the minds of the prisoners. Most importantly, the prison authorities themselves must be positive in their attitude and foster a train of thought that will encourage prisoners on the advantages of living a law-abiding life; this must be implemented not only through teaching the prisoners this universal truth but practiced by the prison authorities themselves.



120 Bureau of Police Research & Development, (2014). *Model Prison Manual for Prisons in India*. [online] Available at: <http://bprd.nic.in/writereaddata/linkimages/1445424768-content%20%20chapters.pdf> [Accessed 22 Apr. 2014].

121 Ibid



Picture taken by LAO team visiting Central Prison, Sukkur on 2nd April, 2014

Vocational /technical training and work programmes are just as important as education when it comes to prison culture. The prisoners must be able to rely upon a skill set that will come in use when they are released or else the chances of recidivism increase .From the research of LAO it appears that there are limited vocational training or work programmes available to the prisoners and most are sewing clothing articles which prisoners can learn from other prisoners. Female and male prisoners are allowed to purchase sewing materials from their own money and create clothing articles which they can sell for a profit.

A recent study done by the Rand Corporation shows inmates who participate in vocational training and work programmes have an astonishing 43% lower odds of returning to prison than those who do not.¹²² Furthermore, this study showed that prisoners that participated in vocational training had a 13% higher chance of being employed after being released than those who did not. It was also shown that it is actually more expensive not to provide prisoners with vocational training - in the United States of America training each prisoner costs \$1,400 to \$1,744 per inmate, with imprisonment costs being \$8,700 to \$9,700 less for each inmate who received correctional education compared to those who did not.

It is disheartening to see that no training programme exists in Pakistan today that can decrease recidivism amongst prisoners and also be cost-effective to the Government of Sindh. To counter this problem, the executive branch of the Government of Sindh should: (1) implement training programmes in all prisons that teach discipline and work culture amongst inmates; (2) implement a policy for training programmes and incorporate it in the PPR; (3) promote working skills and self-confidence amongst inmates; (3) teach the importance of having an occupation and having economic security to the prisoners and (4) focus equally on youthful offenders which will result in them having a skill to fall back on in case they decide not to pursue academic studies further.

Drug Use :

Pakistan has ratified the three main international drug control conventions namely the Single Convention on Narcotic Drugs, 1961 (“1961 Convention”) as amended by the 1972 Protocol,¹²³ the Convention on Psychotropic Substances, 1971¹²⁴ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988¹²⁵ (“1988 Convention”). These are the basis for international efforts in the control of narcotic drugs and psychotropic substances which emphasize the prohibition on manufacturing narcotics and the need for rehabilitating narcotic addicts.

¹²² Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook. (2013). Rand Corporation. [online] Available at: <http://www.rand.org/news/press/2013/08/22.html> [Accessed 23 Apr. 2014].

¹²³ Ratified by Pakistan on 9th July 1965

¹²⁴ Ratified by Pakistan on 9th June 1977

¹²⁵ Ratified by Pakistan on 25th October 1991

Article 3 of the 1988 Convention establishes the offences and sanctions; Paragraph 1(a) states, inter alia, that the production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery... the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drug...shall be considered criminal offences under the signatory state's domestic law. Under paragraph 2, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption will also be treated as a criminal offence if committed intentionally. Parties to the Convention can provide, as an alternative to conviction or punishment, or in addition to conviction and punishment of an offence, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.¹²⁶ Furthermore, Article 38 of the 1961 Convention concerns the treatment and rehabilitation of drug addicts. According to paragraph 1, the parties to the Convention should give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved. Apart from drug addicts, this article, under paragraph 2 also provides for the training of personnel in the treatment, rehabilitation and reintegration of abusers of drugs back into society. The Convention recognizes that one of the most effective methods of treatment for addiction is treatment in a hospital institution having a drug free atmosphere and it urges those countries which have a serious drug addiction problem and the economic means to do so, to provide such facilities.¹²⁷

In Pakistan, the Control of Narcotic Substances Act 1997 ("CNSA"), provides punishment for possession of narcotic drugs for a period up to two years¹²⁸ where a person is found in possession of 100 grams or less of narcotic substances, and a period of up to seven years where it exceeds 100 grams but is less than 1 kilogram¹²⁹ and enhances the possible sanctions to death or imprisonment for life, or imprisonment for up to fourteen years where the possession exceeds 1 kilogram.¹³⁰ It is important to mention that under Section 2(s) of the CNSA, a "narcotic drug" means "coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs." The CNSA is piece of legislation that requires serious review. As cited above, Section 2(s) defines the contraband items falling in the category of "narcotic drug" and includes "all manufactured drug". This is a grave and consequent leading definition which fails to take into account narcotics and manufactured drugs as separate category. The definition ought to have been vetted before being legislated. The obvious impact from a bare reading of the Section leads to the inference that every manufactured drug is considered a narcotic under the CNSA. Chapter VI of the Act¹³¹ also provides for treatment and rehabilitation of addicts. By the set law, every provincial government is mandated to register all addicts within its jurisdiction for the purpose for treatment and rehabilitation of addicts. Furthermore, the Federal Government has been burdened with the responsibility of bearing all expenses for first time compulsory detoxification or "de-addiction" of an addict. This is a fine example on how the state has (on paper) complied with its main obligations under the conventions and brought its domestic law in line with the same.

126 Under paragraph 4

127 Resolution II

128 Section 9 (a) CNSA

129 Section 9(b) CNSA

130 Section 9(c) CNSA

131 Sections 52 and 53 CNSA

According to the UNODC Technical Summary Report on Drug Use in Pakistan 2013, 'it is probable that drug trafficking from Afghanistan, to and through Pakistan, leads to increased levels of opium and heroin use in Pakistan even if most drugs are intended for higher value markets in other countries.'¹³² An estimated 5.8% of the population in Pakistan aged between 15 and 64 used drugs in the year 2012 with cannabis being the most commonly used drug at 3.6% of the same population.¹³³ The highest prevalence of drug use is seen in Khyber Pakhtunkhwa where 11% of the population use illicit substances, followed by Sindh at 6.5% and Punjab at 4.8%. This goes to show the increased prevalence of drugs in the whole of Pakistan.

Further to this a 2010 UNODC article on Female Drug Use in Pakistan stated that the 60 female drug users who reported a history of arrest and jailed, 36.7% informed that they were using drugs even when they were arrested.¹³⁴

A fairly large proportion of women were tobacco smokers before being imprisoned and nearly half of them continued smoking even within the prisons, this being 22.3%, according to another UNODC document.¹³⁵ A moderate 8.9% use of synthetic/pharmaceutical drugs was also reported. However, analysis confirmed that drug use among women in prisons was not a regular phenomenon as substances such as alcohol, charas (hash), heroin, afheem and bhang being used in prison was below 1%. This was because drugs were not available in prisons thus their continued use was not possible.

In June 2013, the LAO reported some juveniles in the Youthful Offenders Industrial School ("YOIS") in Karachi accepting that gutka¹³⁶ was consumed inside prisons. When asked where the same came from, their response was that they would be supplied either at the Mulaqat (visiting) area when someone from their family had come to meet them or when they were gone to the Courts for their case hearings.¹³⁷

LAO staff conducted research on the use of drugs by prisoners in other prisons¹³⁸ and interviewed 2,333 under trial prisoners for this purpose. The results showed that 182 (7.8%) UTPs admitted that they habitually use narcotics. Heavy users of heroin could also be ascertained upon inspecting the arms for any scarring caused by syringe needles. Most of the UTPs that admitted to drug use were from the YOIS facilities as it was easier for young persons to trust the lawyers of LAO and build a bond and confide. Furthermore, this trend found amongst the YOIS prisoners also seems to be confirmed by a report conducted by the UNODC where their generated trends showed that regular cannabis users in Pakistan are predominately young persons.¹³⁹ It was concluded that a higher number of drug related crimes indicated that there was a higher likelihood of UTPs admitting to LAO during the interview that they are habitual drug users. Furthermore, the most popular narcotic amongst the UTPs was Gardaa,¹⁴⁰ a variation of Charas, which is primarily made in Afghanistan using dried cannabis leaves.

132 Drug Use in Pakistan 2013 Technical Summary Report. (2013). UNODC, [online]. Available at: https://www.unodc.org/documents/pakistan/2013.03.01ab_Summary_Report_Drug_Use_in_Pakistan_SvdV_v1.pdf [Accessed 24 Apr. 2014]

133 Ibid

134 Female Drug Use in Pakistan. (2010). UNODC, [online] p.33. Available at: http://www.unodc.org/documents/pakistan/female_drugs_use.pdf [Accessed 24 Apr. 2014].

135 FEMALES BEHIND BARS Situation and Needs Assessment in Female Prisons and Barracks. (2011). UNODC, [online] p.18. Available at: https://www.unodc.org/documents/pakistan/female_behind_bars_complete_final.pdf [Accessed 24 Apr. 2014].

136 Gutka is a mixture of tobacco, betelnut and the blood of slaughtered animals. Beyond narcotics, this is one of the worst addictions prevalent in Pakistan.

137 Gutka has been banned by the Government of Sindh under Section 144 (power to issue an order in times of urgency) in 2011.

138 LAO conducted interviews from May 9th, 2013 to February 8th, 2014.

139 Drug Use in Pakistan 2013 Technical Summary Report. (2013). UNODC, [online]. Available at:

https://www.unodc.org/documents/pakistan/2013.03.01ab_Summary_Report_Drug_Use_in_Pakistan_SvdV_v1.pdf [Accessed 24 Apr. 2014].

140 Gardaa is notoriously famous in Pakistan and usually enters through Peshawar and quickly becomes readily available in every major city.

In a recent interview with the Superintendent of the Central Prison, Larkana it was confirmed that items that are predominantly recovered and seized during search operations in prisons are mobile phones and drugs¹⁴¹. It should be noted that a major riot took place in Hyderabad's Central Jail in March 2011 resulting in death and injury to prisoners and the prison staff. Inmates involved who later appeared before a judicial commission mentioned that drugs were sold to prisoners with the support of the prison authorities and prisoners claimed that cannabis was cultivated inside the prison.¹⁴² However, it seems that the remedial actions being taken are mostly search operations which seize these items once they enter prisons instead of efforts geared at ensuring they do not enter in the first place.

With regards to treatment of drug addicts in prisons, LAO has observed that in 3 prisons in Karachi and Larkana drug addicts are segregated from others and kept in separate wards. They are given proper medication to help with withdrawal reactions which can include muscle aches, abdominal pain, nausea and vomiting. There is also a doctor on call 24 hours a day who also conducts daily visits to drug addicts and personally administers the medicine. A prison official interviewed by LAO informed the interviewer that drug addicts serving time in prison generally lose their addiction; however, on release from prison most of them return to the use of drugs and suffer a relapse.

S#	Type of Prison	No. of Drug Addicts kept in Separate Treatment Ward ¹⁴³
1	Central Prison Karachi	31
2	District Prison Malir Karachi	90
3	Central Prison Larkana	31
	Total	152

One of the general observations in the Report of the Functional Committee on Human Rights on Conditions of Jails in Pakistan, 2005, relates to the use of drugs. It reads “there is an internal mafia of the Jail which includes inmates and Jail Staff. They are active in providing drugs and related item.” However prisons often do not want to acknowledge that drug use takes place inside in spite of their security measures.

A study was also conducted in the prisons of Sindh to assess the proportion of seropositivity of Hepatitis C amongst the prison inmates in Sindh jails. 7539 prison inmates in 14 prisons in Sindh were screened for the same. The study revealed that Hepatitis C seropositivity is significantly higher (12.8%) than measured in the general population of Pakistan through the national survey (4.9%). However it is lower than that reported from correctional facilities of developed countries. The highest proportion of seropositive prisoners was present at District Jail Jacobabad (16.7%) and the lowest in YOIS in Karachi (4.3%).¹⁴⁴

141 Interview conducted by LAO on 24th Oct, 2013 at Central Prison, Larkana.

142 Jail officials behind sale of phones, liquor, say inmates. (2011). [online] Available at: <http://www.dawn.com/news/613944/jail-officials-behind-sale-of-phones-liquor-say-inmates> [Accessed 24 Apr. 2014].

143 LAO sources informed on 22nd April, 2014 that these prisoners are confined in a separate barracks from other prisoners. However, in Central Prison, Larkana they are kept in Prison Hospital without any separation because of overpopulation in prison

144 Gorar, Z. and Zulfikar, I. (2010). Seropositivity of hepatitis C in prison inmates of Pakistan—A cross sectional study in prisons of Sindh. JPMA. The Journal of the Pakistan Medical Association, 60(6),

The provision of drug treatment services in a prison setting requires good support from the prison administration. What is key in this scenario is ensuring the prison authorities can build synergies with treatment facilities outside prisons so as to ensure vulnerable prisoners being released are channeled towards further treatment and supervision. Both the prisoners and the prison staff must also be trained adequately on the perils of HIV /AIDS and means of transmission and prevention of the same within the prison environment's context.



The Question of Insanity :

A report published by *Human Rights Commission of Pakistan* in March 2012 notes: "Health care facilities remained woefully inadequate in prisons. Mental health facilities in prisons across Pakistan were almost non-existent. The Karachi Central Prison where around 3,700 prisoners were detained had one psychiatrist and no medical officer. The Hyderabad Central Jail had one psychiatrist for nearly 1,700 prisoners, the Central Prison in Peshawar had 156 prisoners, two psychiatrists, two psychologists and four nurses, Sukkur prison had 1,022 prisoners with no psychiatrist, but two medical officers, while the Turbat prison had 81 prisoners with no psychiatrist or psychologist, but one medical officer." (Human Rights Commission of Pakistan (March 2012) *State of Human Rights in 2011*)¹⁴⁵

The United States Department of State Country Report on Human Rights Practices published in May 2012 notes under the heading Prison and Detention Centre Conditions:

"Police often did not segregate detainees from convicted criminals. Prisoners with mental illness usually lacked adequate care and were not separated from the general prison population." (US Department of State (May 2012) *Pakistan: Country Report on Human Rights Practices-2011*)¹⁴⁶

The Prisoners Act 1900 by Section 30 and the PPR in Chapter 18, Rules 433 to 455 govern the procedure to be adopted for prisoners defined as "lunatics" as provided in the (repealed) Lunacy Act, 1912. The substantive law dealing with such prisoners is found in Criminal Procedure Code, 1898 in Chapter XXXIV titled LUNATICS. Sections 464 to 475 provide the jurisdiction to the courts to administer and manage the UTPS who are psychiatrically so incapacitated that they cannot stand trial.

The Mental Health Ordinance, 2013 has replaced the Mental Health Ordinance, 2001. The latter legislation was enforced but never implemented and was more or less redundant. For the first time, any beneficial legislation has taken into consideration the neglected section of the community that is the UTPs and the convicts.

The Ordinance provides healthcare facility to under trial and convicted prisoners. Relevant definitions and the provisions therein make the Ordinance comprehensively covering the prisoners. The definition clause in the first instance provides the meaning of the "Court of Protection" i.e. a District Court having jurisdiction under this Ordinance in matters specified herein and designated as such by the Government,¹⁴⁷ while a "Magistrate has been defined as a Judicial Magistrate of the first class specially empowered by the Government to perform functions and exercise powers of a Magistrate under this Ordinance,¹⁴⁸ the most important definition with reference to prisoners is found as "mentally disordered prisoner" which means a person, who is a prisoner for whose detention in or removal to a psychiatric facility or other place of safety, an order has been made in accordance with the provisions of section 466 or section 471 of the Code of Criminal Procedure, 1898 (Act V of 1898), and Section 30 of the Prisoners Act, 1900 (III of 1900).¹⁴⁹

¹⁴⁵ Human Rights Commission of Pakistan, (2011). *State of Human Rights in 2011*. p.63.

¹⁴⁶ 2010 Country Reports on Human Rights Practices. (2011). United States Department of State.

¹⁴⁷ Section 2 (e) & (f), Mental Health Ordinance, 2013

¹⁴⁸ Section 2 (k) Mental Health Ordinance, 2013

¹⁴⁹ Section 2 (o), Mental Health Ordinance, 2013

The Government of Sindh may within the limits of the Province of Sindh, shall constitute the mental health authority whose functions are elaborate and progressive in making the law substantial in its nature and scope provided the Government of Sindh provides much needed budget and, the infrastructure and the resources for the implementation of the Ordinance. The establishment or maintain psychiatric facilities for the assessment, admission, treatment, rehabilitation, care and after care of mentally disordered patients at such places, as it deems fit. The psychiatric facilities established may organize or maintain separate units for persons who have been convicted of any offence and are mentally disordered for whom special security measures shall be required.¹⁵⁰

Where any person is detained under the provisions of section 466 or section 471 of the Code of Criminal Procedure 1898 (Act V of 1898), the Inspector-General of Prisons, if the accused person is detained in a jail, and the Board of Visitors or any two members of such Board, if the accused person is detained in a psychiatric facility, may visit him in order to ascertain his state of mind and such a detainee shall be visited once at least in every six months by the Inspector-General of Prisons or, as the case may be, the Board or any two members of such Board, shall make a report as to the state of mind of such person to the authority under whose order the accused person is detained and the Inspector-General of Prisons or, as the case may be, the Board of Visitors or any two members of such Board, shall make a report as to the state of mind of such person to the authority under whose order the accused person is detained.¹⁵¹ The Government may empower the officer in charge of the jail in which such accused person is detained to discharge all or any of the functions of the Inspector General of Prisons under sub-section (1).¹⁵² The Federal Government has been authorized, in consultation with the Provincial Governments, by notification in the official Gazette, to make rules for carrying out the purposes of this Ordinance. One of the prescribed purposes for framing Rules for carrying out the objects of the Mental health Ordinance, 2001 is to regulate the admission, care and treatment of UTPs or convicted prisoners.¹⁵³

The Mental Health Ordinance is a whiff of fresh air for the incarcerated population of the prisons, jumping in time far ahead of the archaic obsolete laws which continue to further distress the atmosphere behind the walls of the prisons.

The issue of “lunacy”, a term now almost repealed in its usage, and known more as a “hate” or “scornful” term remains to haunt the social and cultural stigmatization of the ill patient prisoners. The Criminal Justice System is as insensitive to the hopeless and despairing conditions, many of whom are simply not aware of the reason for which they are incarcerated, while many when appearing in Court are as unaware of their situation as the “due process of law” takes its course. Indeed a most reprehensible travesty of law and justice.

LAO takes special care of matters related to psychiatrically ill prisoners as soon as the lawyers entrusted with the cases, come to know of such prisoners. The enigma facing the defence counsels lies in the following provision of the Code of Criminal Procedure, 1898. The obstacle which has always remained prior to the promulgation of the Mental Health Ordinance, 2013 has been found to de-functionalize the procedure provided by the Cr.P.C is the ambiguity in the use of the language of Chapter 34 wherein the term lunacy was never considered to be a question of mental insanity which could either be temporary or permanent or could also mean such disorders which have been clearly placed in the Mental Health Ordinance, 2013. For this reason the prisoners continue to suffer and it is only in exceptional cases that the matter of lunacy is given due importance and are sent for treatment.

150 Section 6 clause (2)(d), Mental Health Ordinance, 2013

151 Chapter 9, Section 53 (1) & (2), Mental Health Ordinance, 2013

152 Section 53 (2), Mental Health Ordinance, 2013

153 Section 59 (1)(C) Mental health Ordinance, 2013

The provisions under Chapter 34 do not require a separate or independent application to be made to the concerned courts for determining the psychological condition of the concerned prisoner; in fact the law provides suo moto powers to the Presiding Officers of the Magisterial or the Court of Sessions to cognizance of the prisoner's condition by his behaviour, conduct and his demeanor in the court room. The High Court acts as the Appellate Court and rarely acts as the Court of Sessions to take up a trial as the Court of First Instance, and is therefore not the relevant judicial forum for the purposes of the above cited sections. Only when the orders by the respective courts are assailed, the High Court is moved in its appellate jurisdiction.

The insensitive and supercilious attitude at all levels of the court proceedings makes the law irrelevant but also further deteriorates the condition of the ailing prisoner. The problem lies as much in refusing to use the powers but also on the question of "discretion" and the modality provided for it since the Regulation IV of 1824 (SIND CODE) the General Clauses Act, 1897 and the use of fair, reasonable and non-arbitrary principled approach to the issue of psychiatric problems.

On a large average those UTPs who are in no position physically to put up a valid defence in court are being tried regardless of Chapter XXXIV Code of Criminal Procedure, 1898. In this the other forums of Criminal Justice System also become part of ostracizing the mentally impaired prisoners.

This insensitivity is clear in the legislation and administrative spheres of government also. Since 2001 the Mental health Ordinance has been enforced yet no visible infrastructure is yet available. Similarly, Neither Prisoners Act, 1900 nor the PPR, nor the Criminal Procedure Code has been amended accordingly.

Human rights and mental illness are closely related. Persons with mental illness are most vulnerable to violation of their rights in the society. They are stigmatized, isolated and discriminated. A mentally ill prisoner has a double disadvantage. Even when quality psychiatric care is provided, the inmate/patient still has been doubly stigmatized—as both a mentally ill person and a criminal. He may not be able to defend his/her case. Many times, a person with mental illness may not receive proper treatment and remains in the custody for years. This maybe an account of being unfit to stand trial, lack of support, or because the family is able but unwilling to bail out the person because of the illness.

Trans-institutionalization is the movement of persons with severe mental disorders between prisons and the mental hospital and prisoner other custodial settings (Pedersen & Kolstad, 2009). Persons with mental illness are likely to remain in prisons for unnecessarily long periods of time because their illnesses go unnoticed, undiagnosed and untreated (Priebeetal, 2005)¹⁵⁴. Even if they are brought to the notice of the court, he/she may not be fit to stand trial. Non availability of timely treatment and continuous care further aggravates the situation. Deinstitutionalization or closing down psychiatric hospitals has in fact led to trans institutionalization (Kalapos, 2009).¹⁵⁵

154 Suresh Bada Math, Pratima Murthy, Rajani Parthasarathy, C Naveen Kumar, S Madhusudhan (editors): Mental Health and Substance Use Problems in Prisons. The Bangalore Prison Mental Health Study: Local Lessons for National Action. Publication, National Institute of Mental Health and Neuro Sciences, Bangalore, 2011. Can be accessed at: http://www.nimhans.kar.nic.in/prison/chapter_10-r_he_prisoners.pdf. Retrieved on 20/03/2014.

155 Ibid

Imprisonment or incarceration is a legal punishment that may be imposed by the state for the commission of a crime or disobeying its rule. The objective of imprisonment varies in different countries and may be: a) punitive and for incapacitation, b) deterrence, and c) rehabilitative and reformatory (Scott CL & Gerbasi JB, 2005).¹⁵⁶ In general, these objectives have evolved over time as shown in the accompanying figure. The primary purpose and justification of imprisonment is to protect society against crime and retribution. In current thinking, punitive methods of treatment of prisoners alone are neither relevant nor desirable to achieve the goal of reformation and rehabilitation of prisoners.

The State is under an obligation for protecting the human rights of its citizens as well as to protect the society at large, and is authorized to do so. To protect the citizens from any possible abuse of this authority, they are given certain basic privileges recognized by the Constitution of Pakistan as Rights. Elevation of such claims to the status of Rights, gives the citizens the capacity to evoke the power of the Judiciary to protect themselves against violation of such rights, as well as to seek redressal for their restitution.¹⁵⁷

The fact that prisoners by becoming inmates of the prisons do not lose their citizenship is a simple proposition and established law. While they remain reactive sections of the society and extremely low priority for reforming the prison system. The Government of Pakistan must not forget that it is not only signatory to many United Nations Conventions but has also ratified them. As an obligation unless there is a drastic change in its vision not much can be hoped for either for the Criminal Justice System, in which the Prisons are an integral component, as well as the Rule of Law will continue to be elusive.

¹⁵⁶ Ibid
¹⁵⁷ Ibid

Parole and Probation

The United Nations Standard Minimum Rules for Non-Custodial Measures (“**Tokyo Rules**”) were adopted in 1990¹⁵⁸ and provide the international guidelines for reduction of imprisonment as a form of punishment and outline general standards that member states should adopt to implement efficient alternatives to imprisonment. As a member state Pakistan has an obligation to develop non-custodial measures and alternatives to imprisonment. The universal consensus budding up is using more non-custodial measures to move towards depenalisation and decriminalisation in efforts to reintegrate as many offenders back into society as is possible.

The majority of prisons in Pakistan are overcrowded. This leads to issues of poor health and hygiene, high risk behaviour (such as suicide and forced sexual contact) and poor prison management. Low quality rehabilitation services increases the chances of prisoners re-offending and making first time offenders into future hardened criminals. According to the Human Rights Commission of Pakistan, about 64% of the total prison population is comprised of prisoners under remand awaiting their court decision.¹⁵⁹ To counter these problems, effective and efficient probation and parole systems can play a vital role in community rehabilitation of offenders and reducing the prison population, which in turn contributes to better prison management and the overall improvement of prison conditions.

Parole and probation release convicted prisoners on a conditional basis. The former is granted by the Home Department and the latter is granted by a Court if it is believed that the prisoner has a chance of living a crime free life. This not only assists the prisoner in pursuing a productive lifestyle, but also safeguards society in case a prisoner relapses into a life of crime for which he or she is to be re-incarcerated.

In Pakistan, courts usually impose custodial sentences for those who are convicted and the practice of probation and parole appears to remain elusive. The principal law governing the scheme of probation is the Probation of Offenders Ordinance 1960 (“**POO**”), under which the High Court and the Court of Sessions have the power to release adult offenders on probation or issue conditional discharges.¹⁶⁰ This law was supplemented by the Juvenile Justice System Ordinance of 2000 (“**JJSO**”) which provides for a separate scheme of probation procedures for those under 18 years.¹⁶¹

The POO enables Courts to make probation orders for a period between one and three years during which a person is placed under the supervision of a probation officer.¹⁶² The duties of the probation officers are to visit offenders released on probation at reasonable intervals and see whether he or she is observing the conditions of the bond under which they are released.¹⁶³

158 Adopted by General Assembly resolution 45/110 of 14 December 1990

159 State of Human Rights in 2010. (2010). *Human Rights Commission of Pakistan*.

160 The category (C) and (D) of the powers have been deleted by the Amendment Ordinance LXVI of 2002 which also allowed the Magistrate Courts with the powers of probation.

161 Section 11 JJSO

162 Section 5 POO

163 Section 13 POO.

The Courts are empowered to exercise their probation jurisdiction over all offenders excepting offences punishable by death or imprisonment for life or for the description mentioned below:

1. Harboursing robbers or dacoits;
2. Exposure and abandonment of child under twelve years by parent or person having care of it
3. Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft Extortion by putting a person in fear of death or grievous hurt; ;
4. Putting person in fear of death or of grievous hurt, in order to commit extortion; ;
5. Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc;
6. Putting person in fear of accusation of offence, in order to commit extortion;
7. Punishment for Robbery;
8. Attempt to commit Robbery;
9. Robbery or dacoity, with attempt to cause death or grievous hurt;
10. Attempt to commit robbery or dacoity when armed with deadly weapon;
11. Making preparation to commit dacoity;
12. Punishment for belonging to gang of thieves;
13. Assembling for purpose of committing dacoity:
14. house-trespass or house-breaking after preparation for hurt or assault;
15. house-trespass or house-breaking after preparation for hurt or assault;

In addition to release on probation, the POO provides for conditional discharges where the Court dealing with an UTP is of the view that probation will not be appropriate punishment and the offence in question is punishable with imprisonment for not more than two years.¹⁶⁴

In deciding whether a probation order or conditional discharge is the appropriate form of sentencing, the law requires the courts to exercise their powers after considering factors surrounding both the background of the offender (age, character, antecedents, mental condition of offender) as well as the offence (nature of offence, extenuating circumstances for commission etc). To this end the Tokyo Rules emphasise on the importance of 'social inquiry reports'¹⁶⁵ prepared by competent, authorized officials or agency which should contain social information on the offender that is relevant to the person's pattern of offending and current offences. It should also contain information and recommendations that are relevant to the sentencing procedure so that the judge can gain a comprehensive understanding of the potential effect of his sentencing decision. The Probation of Offenders Rules 1961 provide that courts may require Probation Officers to conduct preliminary enquiries regarding the character, antecedents, home surroundings and other matters related to the offender where the court proposes to make a probation order¹⁶⁶ however this practice is rarely exercised.

¹⁶⁴ Section 4 POO

¹⁶⁵ Rule 7 Tokyo Rules

¹⁶⁶ Rule 18 Tokyo Rules

In Pakistan, even though a very valuable alternative to imprisonment has been provided for as early on as in 1960 the practice of alternatives to incarceration or diversion from prisons have not taken root.

It can safely be assumed that if ‘social inquiry reports’ or ‘background reports’ were readily prepared and available for courts and judges were sensitised towards non-custodial measures the provisions of the POO would allow a sizeable number of offenders to be released, thereby reducing the prison population. In addition probation and alternatives to custodial sentencing should be introduced to law students and the bar councils should train and sensitise lawyers on probation, parole and other sentences.

In case of admonition provided in the POO it appears through empirical observations, the courts take a conservative and cautious approach and are traditionally bent towards a retributive mindset. This is an unfortunate set of circumstances as the POO was devised to reform and rehabilitate offenders and its main objective was to prevent turning offenders into hardened criminals by their association with other hardened criminals in the prisons. Offenders being forced to live a life of stigma and stigmatization incur a great social cost to the Province of Sindh as these offenders are usually re-incarcerated and have a very slim chance of being rehabilitated.

The table below shows the existing number of probation officers in all provinces: ¹⁶⁷

Name Of Province	Director	Deputy Director	Assisstant Director	Probation Officers			Sanctioned Strength Of Probation Officer	Parole Officers
				Male	Female	Total		
Punjab	1	1	10	32	4	36	57	20
KPK ¹⁶⁸	1	1	0	25	6	31	37	2
Sindh	1	0	2	2	0	2	23	14
Balochistan	1	2	2	2	0	2	14	6

It is unfortunate that the POO has been available since 1960 but there is still no institutionalization of this mechanism, either in Sindh or in Pakistan generally. As can be seen in the chart above, only 2 probation officers have been appointed in Sindh and these 2 have been so appointed in recent days. The number of probation officers in the province remains grossly inadequate and it is inconceivable to think of how a few probation officers can cater to and supervise probationers across 23 different districts in the province. The Probation and Reclamation Department appears to be one of the smallest wings in the Home Department and requires urgent attention and development. The dismal picture is not specific to Sindh alone but is portrayed throughout Pakistan.

¹⁶⁷ Information provided to LAO by a parole officer on 20th January, 2014 (identity held on request).

¹⁶⁸ Sindh Reclamation & Probation Department on 20th January, 2014 informed LAO.

On a brighter note, since 2009, under directives of the National Judicial (Policy-making) Committee (NJPMC), courts have become more lenient towards granting probation: 1,338 prisoners have been released in Sindh. ¹⁶⁹ Even after limited scope there has also been some effort to improve the effectiveness of the probation and reclamation departments. For example, Sindh had only two probation officers ¹⁷⁰ and in order to improve this, the Provincial Public Service Commission announced sixteen new positions in April 2010, but the written test required in order to obtain these positions was not held for almost a year. Due to the lack of sufficient probation officers, three assistant directors and two head clerks have been performing these duties.¹⁷¹ In Sindh, 998 probationers were under the supervision of probation officers including 135 juveniles while 2213 prisoners were released on parole. ¹⁷² However, figures reproduced from NJPMC are debatable to the extent that with the given strength of the probation officers available it does not seem possible to oversee 998 probationers. Given the extremely low official figures provided for available probation officers.



169 NJPMC takes exception to faulty investigations. (2011). The Nation. [online] Available at: <http://www.nation.com.pk/national/16-May-2011/NJPMC-takes-exception-to-faulty-investigations> [Accessed 24 Apr. 2014].

170 Institutional Assessment on Probation Department in Pakistan, UNICEF booklet June 2012

171 crisisgroup.org, (2014). REFORMING PAKISTAN'S PRISON SYSTEM. [online] Available at:

<http://www.crisisgroup.org/~media/Files/asia/south-asia/pakistan/212%20-%20Reforming%20Pakistans%20Prison%20System.pdf> [Accessed 5 Jul. 2013]

172 Sindh Reclamation & Probation Department on 20th January, 2014 informed LAO.

As far as parole is concerned, it remains an executive discretion; most of the parolees may have been released on political considerations. It is also not clear from the National Judicial Policy-Making document as to what extent are the parole officers in real terms of the stated law are actually involved in supervising the said released prisoners. For example, in March, 2014 an LAO researcher interviewed a parole officer posted in a city in Sindh and he disclosed that he only goes to his office when it is time to receive his salary. This interview is substantiated by the general situation in Pakistan where ghost schools exist and teachers only go to receive their salaries which is a well known fact and admitted by the Government on several occasions.

Visitation :

The importance of visitation rights for prisoners cannot be stressed enough. According to Abraham Maslow¹⁷³, humans need to feel a sense of belonging through social connections such as family members, intimate partners, colleagues and confidants. He further believed that many people become susceptible to loneliness, social anxiety and clinical depression in the absence of this basic human feeling.¹⁷⁴ Feelings of love and belonging rank 3rd on Maslow's Hierarchy of Needs after physiological needs such as food & water and safety needs such as absence of war, natural disaster and family violence.¹⁷⁵ It is widely believed that deficiencies in feelings of love and belonging result in a disability to form and maintain relationships and feel compassion for other human beings.¹⁷⁶ This argument seems to have a lot of merit by observing the classic study conducted by Holt and Miller (1972)¹⁷⁷, where it was shown that prisoners who had regular visits from family members had a significantly lower recidivism rate compared to those prisoners who had no such visits.¹⁷⁸ This shows that the rehabilitation of prisoners through prison visitation should be encouraged and that prisoners should have access to meet with their families and intimate partner.

Chapter 22, Rule 538 of the PPR gives newly convicted prisoners reasonable facilities for seeing or communication with their relatives, friends and legal adviser. He or she will also be allowed to write letters to his relatives or friends. Moreover, Rule 544 of the same Chapter facilitates the same privileges mentioned above to every convicted prisoner at least once a week. The problem that stems from these two rules is that a "newly convicted prisoner" as stated in Rule 538 is not defined and therefore no distinction can be drawn from an ordinary convicted prisoner. Due to this fact, it is impossible for the prison authority to strictly carry out their duties in Rule 538 stated above.

173 An American psychologist who obtained fame through "Maslow's Hierarchy of Needs".

174 Psychclassics.yorku.ca, (2014). *Classics in the History of Psychology -- A. H. Maslow (1943) A Theory of Human Motivation*. [online] Available at: <http://psychclassics.yorku.ca/Maslow/motivation.htm> [Accessed 24 Apr. 2014].

175 McLeod, S. (2007). *Maslow's Hierarchy of Needs*. [online] Simply Psychology. Available at: <http://www.simplypsychology.org/maslow.html> [Accessed 24 Apr. 2014].

176 Ibid.

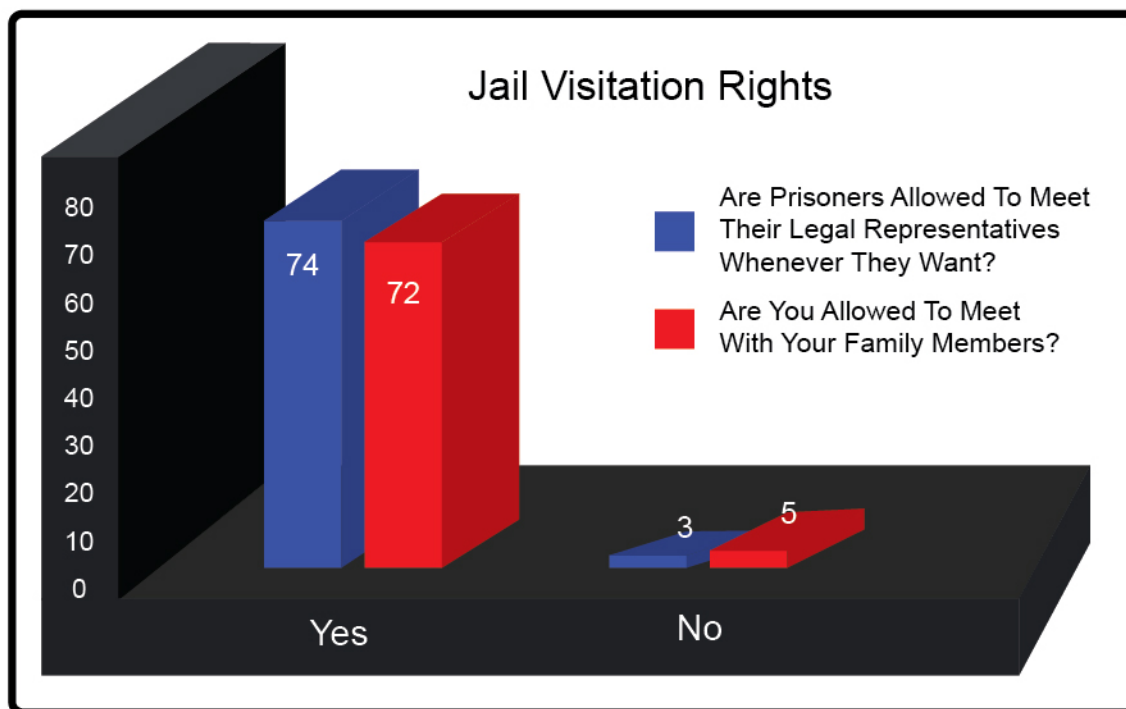
177 American Social Researchers

178 Fcnetwork.org, (2014). *EXPLORATIONS IN INMATE-FAMILY RELATIONSHIPS - Summary*. [online] Available at: <http://www.fcnetwork.org/reading/holt-miller/holt-millersum.html#SUMMARY> [Accessed 24 Apr. 2014].

Rule 566 of the same chapter gives the same privileges of visitation as stated above to UTPs, however, any interview with a legal adviser and/or family member must take place within sight, but out of hearing of a prison official. This is an unfortunate set of circumstances because case proceedings can take many years to come to a conclusion and until then a UTP will be deprived of seeing his or her loved ones in privacy.

An unfortunate fact was recently disclosed to the LAO team during a visit conducted in a prison in Interior Sindh. A prison constable was boasting and was proud of the fact that the prison authority in that certain prison only allows the inmates to meet with their family members if they receive illicit bribes per visit. The blatant corruption done by the prison authorities undermines the entire PPR and incurs aggression and mental disturbances from the prisoners. Regardless of the fact that receiving illicit bribes is inherently against posited law, the prisoners who are not able to afford to pay prison officials have no choice but to languish behind bars with no contact from family members.

As can be seen from the graph below, LAO interviewed 77 UTPs detained in prisons across Sindh and conducted interviews. For the purposes of visitation, LAO asked whether the UTP was allowed to meet with their family members to which 72 of the 77 interviewees replied in the affirmative; furthermore, 74 of the 77 UTPs replied in the affirmative when asked if they are allowed to meet with their legal representatives. The UTPs also stated that they are generally allowed 15-20 minutes to meet with their family members and legal counsel. The results give a good indication that the visitation privileges as stated in the PPR are being complied with most UTPs although such privileges can be taken away as a form of punishment or through corrupt practices by prison officials. The LAO team also observed that most prisons in Sindh have a Public Call Office (PCO) where prisoners are allowed two minute phone calls/day to speak with family members or friends, albeit, monitored by the jail authority.





In accordance with Maslow's Hierarchy of Needs (above), expression of intimacy with a spouse or partner is one of the core aspects of being a human being; taking away such basic human needs would increase pent-up frustration and aggression amongst the inmate population. Due to this reason, the Home Department issued a notification to amend the PPR that would allow every convicted prisoner "whose term of imprisonment exceeds (05) years" to keep their spouse with them "inside the jail premises in place specially meant for the purpose for one night in every three months."¹⁷⁹

The shortfall of this directive comes in two forms. Firstly, this privilege is allowed only for convicted prisoners and not UTPs. As mentioned above, UTPs are detained in prisons for an undetermined amount of time which ordinarily last for multiple years. A UTP's disassociation from their spouse will in no doubt have a negative psychological toll on their overall well being. The Home Department needs to bear in mind that the whole exercise of detaining UTPs in prison is undermined if they become hardened criminals due to pent-up frustration. By denying a human being from one of his or her basic necessities, the Government of Sindh is incurring great social costs for the future. Furthermore, 5 UTPs in confirmed to LAO that they are only allowed to meet with their spouse in a private setting by providing the jail authority with illicit bribes.¹⁸⁰ These corrupt practices can be stopped by the Home Department by including UTPs in the provision provided under Rule 544 (ii) of the PPR.

Secondly, a shortfall that stems not from the Rule itself, strict sensu, but from implementation of the rules, is that there are barely any prisons in existence in Sindh that have built the necessary facilities for prisoners to meet with their spouse in a private setting. It has been over 3 years since the Home Department has issued the order amending the PPR that allows convicted prisoners to meet with their spouse and it still has not been implemented. The Superintendents need to keep in mind that they have the power under Chapter 35, Rule 887 of the PPR to propose for construction work for the construction and maintenance of buildings and they should avail such powers to expedite the construction of buildings to facilitate conjugal visits.

179 Notification by Government of Sindh – Home Department. (No.SO Prison-I)/HD/9-163/09, May 07 2010. Now contained in the PPR, Rule 544 (ii), provided that a photocopy of the Nikahnama (marriage contract) is furnished to the prison authorities.

180 From researched gathered by LAO from 2013-2014. Names of the UTPs and the prisons are withheld due to reasons of confidentiality.

Administration and Personnel

Prison administration in each province is headed by an Inspector General (IG) appointed by the Provincial Government exercising overall control and supervision of all prisons within the jurisdiction.¹⁸¹ The IG is required to visit each jail at least once every year to ensure conformity to The Prisons Act 1894.¹⁸² The post of IG is followed by the post of the Deputy Inspector General (DIG) based on the criteria of seniority.¹⁸³ In each prison there is a superintendent and two or more deputy superintendents responsible for the day to day functioning of prisons.¹⁸⁴ The subordinate prison staff include chief warders, head warders and warders. Superintendents are also obligated to visit prisons at unannounced times to determine compliance to rules and orders and also to inspect the food every day.¹⁸⁵

However, to verify whether this practice actually happens, LAO interviewed 77 UTPs and 40 of them replied in the negative when asked whether the Superintendent of the prison conducts surprise visits. The anomaly which is seen in the Rules and the actual practice is attributable to the insufficient personnel and heavy overload of work which hinders the Superintendents from visiting the prisoners. It must be appreciated that the office duties and the time consumed by the prison officials required to complete other miscellaneous jobs delegated to them physically make it impossible for the superintendents and other officials to comply with the rule. It must also be borne in mind that the Rule is not mandatory to the extent that the visits have been made obligatory in the context “as far as practical”. Nevertheless the importance of the visits should not be underestimated and the Government of Sindh through the Home Department should take the matter up with the prison officials and find feasible via Medias to overcome this genuine problem which is faced not only by the prisoners but also by the officials.

It is important to note that 42 of the 34 UTPs replied in the affirmative when asked if the prison authority favours a certain class of prisoners over other classes (i.e. seasoned prisoners, VIP prisoners and source able prisoners). The VIP culture is predominating in the Pakistani society and it comes as no surprise if this culture is also found integrally bound in the prisons. The reason being, “the political prisoners” who wheel a lot of power and in real terms become the impetus for favours by way of promotions, perks and privileges for such prison officials who provide them with requisite facilities which they usually would prefer to have within their selves. Added to this factor is the recent development in Pakistan where high profile politicians are held in prisons for long durations without expeditious trial on allegations of offences.

181 Rule 888, PPR

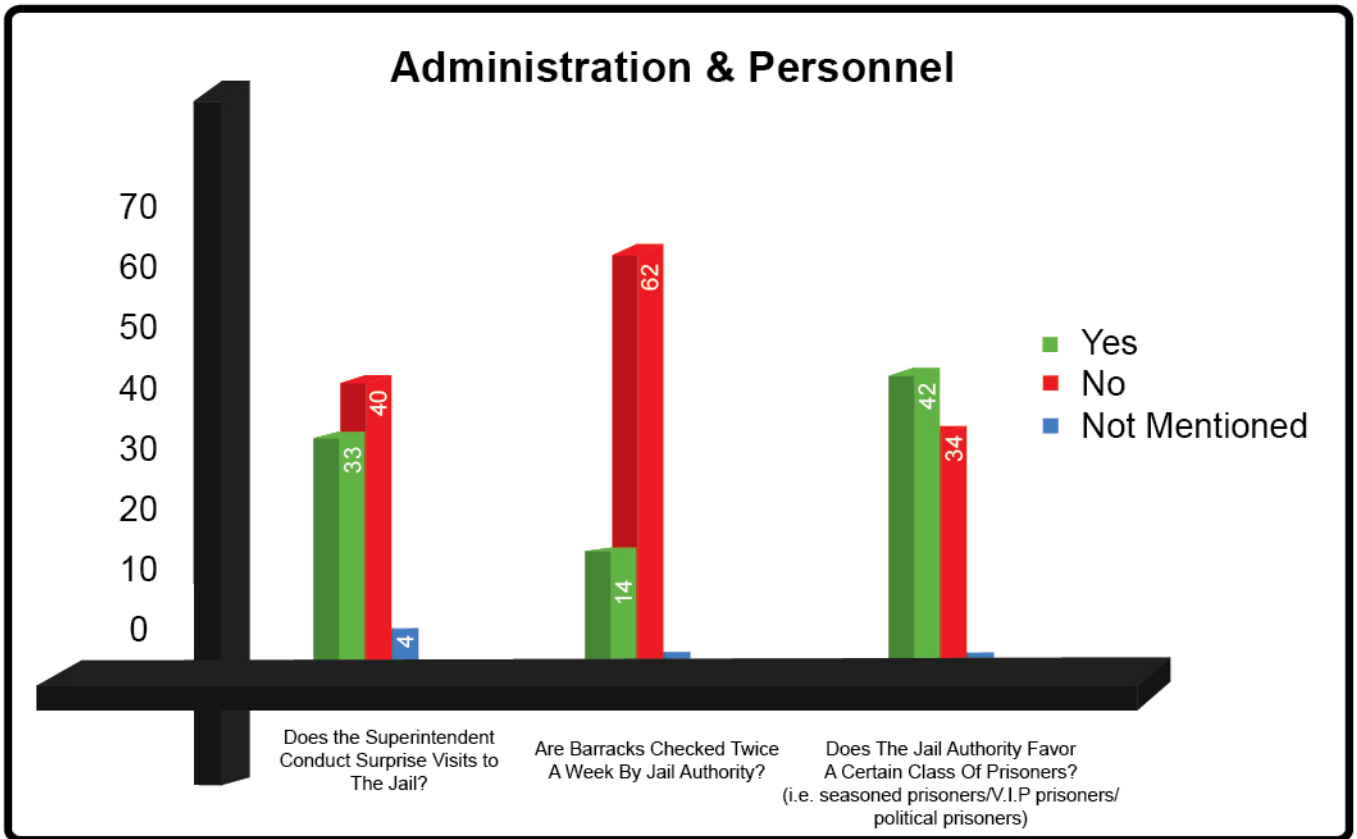
182 Ibid, Rules 897 and 898.

183 Ibid, Rule 890.

184 Ibid, Rules 939 and 940

185 Ibid, Rules 943, 944 and 945.

Administration & Personnel



Women prisons have a female assistant superintendent who controls the day to day matters of prison.¹⁸⁶ 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 are on remand 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”.¹⁸⁷

A senior medical officer from the provincial health department works full time in Central and District Prisons and he or she is responsible for the physical and mental health of the prisoners under their care. They are additionally responsible for general hygiene in the premises, and at least once every week they must inspect every part of the prison to “satisfy himself [or herself] nothing exists therein which is likely to be injurious to the health of the prisoners”.¹⁸⁸ He or she must also visit the prison daily and visit the prisoners confined within.¹⁸⁹ However, in practice this law is often violated as the medical officer may neither inspect nor visit the prison for weeks at a time. The medical officer is also in charge of examining drainage and water supply arrangements and ensuring that adequate precautions have been taken against overcrowding in cells and barracks.

¹⁸⁶ Ibid, Rule 1180(i) and 1183 (i).

¹⁸⁷ Ibid, Rule 224

¹⁸⁸ Ibid, Rule 983.

¹⁸⁹ Ibid, Rule 976

As mentioned above, subordinate prison staff includes chief warden prisons, head warden prisons and ordinary grade warders.¹⁹⁰ The warden establishment in each province involves the grouping of prisons into one or more “circles” based on the total number of prisons in the province.¹⁹¹ Each circle is headed by a Superintendent, who manages the appointment, transfer and promotion of warders in the grouping. Warders are mostly recruited from pensioned or discharged military personnel, with a secondary school certificate being the minimum requirement.¹⁹² The rule is routinely flouted. During gender sensitization workshops conducted by the LAO in 2010-2011 for the prison officials, police department and subordinate judiciary funded by the German Consulate General, Karachi, and supervised by Justice (Retd.) Nasir Aslam Zahid it was revealed that mostly the warders were either police constables of the prisons or convicts who had been chosen on grounds of “good conduct”.

Rule 1113 (iii) states:

“As far as possible the warden guard shall be recruited from pensioned or released soldiers of the defence services. The candidates must have good character in their discharge certificate (therefore ex-military men who are convicts do not fall under this category).

Explanation. -- Inspector General of prisons is empowered to relax the above conditions to suit local conditions by a general or special order.”

The *explanation* to the concerned rule effectively makes it superfluous, when the “discretion” deemed in the rule is applied *mala fide*. This has resulted in a lot of convicts who have become warden guards with the (legal) permission of the IG of prisons.

The major responsibilities of the Chief Warden in central and first-class district prisons include: posting and assigning warders their duties, assisting the Deputy Superintendent in unlocking, counting and locking up prisoners and ensuring the perimeter boundaries, as well as all entrances leading to enclosures and barracks are secured.¹⁹³ The responsibilities of warders include transferring prisoners from one barrack to another, holding workshops or supervision of a party of prisoners inside or outside the prison.¹⁹⁴

Despite the laws being present theoretically, the implementation is ignored by the officials. Since inspectorates of prisons are an attached department of the Provincial Home Ministry. Serving officials emphasise they lack autonomy and independent decision-making authority. A former IG has stated that “All my proposals get dumped in the Home Ministry”.¹⁹⁵

This lack of autonomy is aggravated by political intrusion in prison affairs, for example, the high incidence of political prisoners, including senior political party leaders during periods of military rule or during trials of corruption charges. Senior prison officials often grant preferential treatment in the hope of political backing once a leader is released and retains his position of influence.¹⁹⁶

190 Corruption, Abuse and Torture; *Infra* – Chief Warden Prisons have been changed to Senior Superintendent of Prisons; Head Warden Prisons have been changed to Head Constable Prisons; Ordinary Grade Warders have been changed to Prison Constables through a 2012 notification issued by the Home Department.

191 Rule 1110, PPR

192 *Ibid*, Rules 1113 (iii) and 1113(iv).

193 *Ibid*, Rule 1138

194 *Ibid*, Rule 1146(i).

195 International Crisis Group, (2010). *REFORMING PAKISTAN'S CRIMINAL JUSTICE SYSTEM*.

196 *Ibid*

Countering Violent Extremism:

The Global War on Terror

The majority of Muslims reject the violent means of Islamist radicals, decrying them as unorthodox to a religion of peace. Yet the radicals' ability to appeal to religious devotion and a common sense of grievance among Muslims is undeniably a source of power, allowing extremists to attract resources, followers and moral support.¹⁹⁷ The views presented by Kristin M. Lord, John A. Nagl, and Seth D. Rosen in their paper, "Beyond Bullets: A Pragmatic Strategy to Combat Violent Islamist Extremism"¹⁹⁸ lays bare a socio-cultural discourse which will for a long time remain open ended. The impact of the statement reproduced supra cannot be cursorily dismissed or accepted, per se. The narration of undying tragedies in Pakistan at the hands of violent extremists, and the immediate and considered response by a majority of the people manifests the confused and convoluted threat acuties maintained not only by the mass, but by the middle class educated segments of the social order of the country.

From 2001, the entire world has witnessed catastrophic chain of events starting from the destruction of the twin towers in September 11th and the Bush Administration's invasion of Afghanistan to deprive al-Qaeda of its sanctuary and training camps in October. Between 2001 and 2006, there was a major paradigm shift in the strategy implemented by the Bush Administration and the global war on terror. For example, the former President of the United States of America, George W. Bush has been reported saying in 11th April 2004 that:

*"Our goal is not to reduce terror to some acceptable level of nuisance. Our goal is to defeat terror by staying on the offensive, destroying terrorists, and spreading freedom and liberty around the world."*¹⁹⁹

This statement provided by the former U.S. President was in essence the initial response to the colossal damage caused by al-Qaeda on American soil to unsuspecting innocent human lives and property. In 2003, the US administration justified the invasion of Iraq through the perceived links between Saddam Hussein and al-Qaeda, a claim later refuted.²⁰⁰ Nevertheless, America's approach to counter terrorism shifted noticeably during former President Bush's second term. Administration officials used less aggressive rhetoric and discussed dropping the phrase "global war on terror" in favour of a "global struggle against violent extremism."²⁰¹

The "war on terror" was a reaction to the 2001 hijackings. The response was layered by providing for preventive measures to inhibit further attacks by al-Qaeda and its affiliates, and the US initiated offensive track against Iraq and Afghanistan which till then was governed by the Taliban. Since 2005-06 the scenario was rapidly absorbing the issues of societal cultures, politicization of Islam, and the common beliefs held at grass root levels in the Muslim dominated countries. The new approach became theoretical and technologically more effective in applications coping with "terrorism" as violent extremism till then remained entangled with the former term.

197 Kristin M. Lord, John A. Nagl, Seth D. Rosen, Beyond Bullets: Strategies for Countering Violent Extremism. (2008). *Solarium Strategy Serie S*. [online] Available at: http://www.cnas.org/files/documents/publications/LordNaglRosen_Beyond%20Bullets%20Edited%20Volume_June09_0.pdf [Accessed 25 Apr. 2014].

198 Ibid

199 PBS NewsHour, (2014). *President Bush Addresses the Nation* | PBS NewsHour. [online] Available at: http://www.pbs.org/newshour/bb/white_house/july-dec03/bush_iraq_speech.html [Accessed 24 Apr. 2014].

200 Kevin M. Woods and James Lacey, Saddam and Terrorism: Emerging Insights From Captured Iraqi Documents, Volume 1 (Redacted) (Alexandria, VA: Institute for Defence Analyses, 2007); accessed on 5th July, 2013, available at http://a.abcnews.com/images/pdf/Pentagon_Report_V1.pdf. U.S. Senate Select Committee on Intelligence, Report on the Use By the Intelligence Community of Information Provided By the Iraqi National Congress (8 September 2006) accessed on 5th July, 2013, available at <http://www.intelligence.senate.gov/phaseiinc.pdf>; Mark Mazzetti, "Senate Panel Releases Report on Iraq Intelligence," *The New York Times* (8 September 2006); accessed on 5th July, 2013, available at http://www.nytimes.com/2006/09/08/washington/09intelec.html?_r=2&oref=slogin&. Warren Strobel, "Exhaustive Review Finds No Link between Saddam and al Qaida," *McClatchy Newspapers* (10 March 2008), accessed on 5th July, 2013, available at <http://www.mcclatchydc.com/2008/03/10/29959/exhaustive-review-finds-no-link.html#UdZcFqu1HFw>.

201 Schmit, E. and Shanker, T. (2005). U.S. Officials Retool Slogan for Terror War. *The New York Times*. [online] Available at: [http://www.nytimes.com/2005/07/26/politics/26strategy.html?_r=0%20\[Accessed%2024%20Apr.%202014](http://www.nytimes.com/2005/07/26/politics/26strategy.html?_r=0%20[Accessed%2024%20Apr.%202014) [Accessed 25 Apr. 2014]

The election of President Obama launched a new chapter in the American effort to combat violent extremism. Obama's immediate steps were to deprive extremists of anti-American sympathy and public support by issuing executive orders to close the Guantanamo Bay facility and ban the use of interrogation methods he considered torture.²⁰²

President Obama also moved rapidly to adopt a new strategy in Afghanistan and Pakistan, the territorial heartland of violent Islamist extremism. That strategy aims to destroy al-Qaeda's safe haven in those countries and disrupt its ability to launch future attacks. Referring to al-Qaeda's relations with Islamist militants in Afghanistan and Pakistan, General David H. Petraeus indicated that "There is a degree of hierarchy, there is a degree of interconnection, and there is certainly a flow of people, money, expertise, explosives and knowledge."²⁰³

The policy of Obama's Administration has offered a promising foundation for building an effective new strategy to counter violent extremism. It is a policy that continues the aspects that were worth retaining in the Bush Administration, and simply rejects those that were not worth retaining. A large number of policy makers and national security experts from both parties are likely to find common ground regarding the contours of the principled and pragmatic new policy to combat violent extremism.²⁰⁴

202 4 Scott Shane et al. (2009). Obama Reverses Key Bush Security Policies. *The New York Times* [online] Available at: <http://www.nytimes.com/2009/01/23/us/politics/23obama.html?pagewanted=all> [Accessed 29th Jun. 2013]

203 J. DREAZEN, Y. (2009). Al Qaeda's Global Base Is Pakistan, Says Petraeus. *The Wall Street Journal*. [online] Available at: <http://online.wsj.com/news/articles/SB124182556238902393?mg=reno64-wsj&url=http%3A%2F%2Fonline.wsj.com%2Farticle%2F%2FSB124182556238902393.html>. [Accessed 25 Apr. 2014].

204 Kristin M. Lord, John A. Nagl, Seth D. Rosen, Beyond Bullets: Strategies for Countering Violent Extremism. (2008). *Solarium Strategy Serie S*. [online] Available at: http://www.cnas.org/files/documents/publications/LordNaglRosen_Beyond%20Bullets%20Edited%20Volume_June09_0.pdf [Accessed 25 Apr. 2014].

Rise of Extremism in Pakistan

Despite the predominance of traditional Muslim networks in Pakistan, extremist movements have gained disproportionate strength due to major regional political trends that have developed over the past 37 years. The purpose of this Chapter is to explore the historical strengths and methods by which the extremist groups in Pakistan have been augmented to drastically influence the society today and “whether any possibility of de-radicalization of these groups is possible within the present framework of Pakistan’s political structure.” Unlike the common view held by almost all the critics of General Zia’s Islamization in the 1980’s through a hegemonistic program using Islam as the articulating principle underlying the theocratic regime fostered in by General Zia and continuing to the present day; the blame for the rise in extremism from the day of General Zia’s illegitimate takeover of the State on 5th July 1977 should be equally shifted to all the Governments, the State actors and the non-State actors involved in establishing a theocratic mandated governmental system in Pakistan since its early years of establishment. The roots of soft extremism had already been sowed in the State and the society alike. The blame that can be put on General Zia is pertinent and appropriate when his Islamist agenda which was devoid of the basic Islamic tenants of the Holy Qur’an and Sunnah were imposed by him.

One of the primary themes of the Islamist rise was to subjugate the moderate and sufisitic thought based sect called the Bralvi’s which form part of one of the main arteries of Islam that is the Sunni’s. After General Zia’s demise no government ever showed any interest in reducing the radicalized effect which the 11 year dictatorship had sown in the political and social system of the country. It is noteworthy to point out that 1979 played a water shed moment in the political shift of Pakistan towards extremism. The Iranian revolution at one hand and the Saudi response to the same brought in a proxy war within the boundaries of Pakistan itself. On one hand was the rise of Shi’ite theocracy next to the country’s borders to counter which the Saudi’s enormously funded the Wahabi sect. Both of these found the medium of madrassah (Islamic education facilities) as the conduit of developing and indoctrinating the minds of the youth. One reason for the rise of extremism may also be placed on the State’s failure to provide education at the primary and secondary levels to the masses for and which problem continues through the 67 years of Pakistan’s existence. The vacuum produced by the State’s insensitivity towards education also contributed to the rise of madrassah education as these informal institutions provided not only education but also many other economic inducements to the families of the children who were studying in these institutions.

The Deobandi ideology also greatly contributed to the rise of religious extremism in Pakistan and especially in Sindh. Deobandi Militants refer to jihadi outfits that subscribe to and are guided by a Deobandi ideology, which was started in Deoband, India by a Muslim scholar Shah Waliullah. The main driving force of this ideology was to stop people from Sufi practices, which were seen as taking Muslims away from Islam. This ideology was later used in the 1980s to incite Muslims to jihad against the Soviet troops in Afghanistan. The two original jihadi outfits that stemmed from the Deobandi ideology were Harkat-ul-Jihad-ul-Islami (HUJI) which was established in the early 1980s by Pakistanis in Afghanistan, and the Sipha-e-Sahaba Pakistan (SSP). SSP was established to counter the growing influence of the Iranian revolution. The intelligence agencies of Pakistan at the time supported Maulana Haq Nawaz Jhangavi, a Deobandi Mullah based in Jhang to propagate against Shiism. In the mid-1990s the SSP split into two groups with some of its leaders forming the Lashkar-e-Jhangabi (LeJ). Harkat-ul-Mujahidden (HuM) and Harkat-ul-Ansar (HuA) also stemmed from SSP. Maulana Fazlur Rehman Khalil was heading HuM. Jaish-e-Mohammad (JeM) was carved out of HuM by military intelligence agencies and it was funded with money from Al-Qaeda.²⁰⁵

205 Siddiqi, D. (2013). *The New Frontiers: Militancy & Radicalism in Punjab*. Centre for International and Strategic Analysis. [online] Available at: http://strategiskanalse.no/publikasjoner/202013/2013-02-04_SISA2_The_New_Frontiers_-_Ayesha_Siddiqi.pdf [Accessed 25 Apr. 2014].

Ahle-Hadith in Pakistan is referred to as Salafi or Wahabi. According to Prof. Khalid Masud, in the early 1980s the Saudi Government distributed their money for the jihad in Afghanistan. This was a period when Saudi Arabia was searching for credible partnerships in the Muslim world to counter the Iranian influence. In the 1990s the Government of Saudi Arabia helped to fund a HQ for the Salafi militant outfit Lashkar-e-Taiba (LeT) in Muridke, Central Punjab. These military outfits are driven by suave and educated middle class leadership aimed at penetrating different segments of the society.²⁰⁶ This is done by the use of welfare organizations and trusts which have of recent abundantly mushroomed in Pakistan. Again, there has been no check on these organizations. Given the pathetic economic condition which the common person in Pakistan which a person has to go through every day of his or her life, these trusts and welfare organizations play a major role in providing food, shelter and other accompaniments necessary for a poor and impoverished population. Thus, they have not only gained a very strong foot hold within the community but are also able to relay their ideological views to the beneficiaries. Therefore, in the vicious circle of the socio-economic issues faced by the Pakistanis, home grown extremism finds sharply rising trends.

Shiite militancy in Pakistan dates back to the early 1980s. Encouraged by the Iranian revolution and funded by Tehran. Shiite scholars established the Tehreek-e-Nifaz-e-Fiqah Jafriya (TNFJ). Later in the 1990s a militant outfit was established in the name of Sipah-e-Mohammad (SeM) which was created to target sunnis.

Barelvi school of thought is founded by Ahmed Raza Khan and is sympathetic to Sufi Islam. Barelvis were not inclined towards aggressive jihad, as advocated by Deobandi and Wahhabi outfits after 1979 so its supporters did not get any share of financial resources or support from the Pakistani state or other states. In the last decade, however, Barelvi scholars like Maulana Fazl Kareem began to develop a militant arm.²⁰⁷

The year 2001 saw a collision of ideologies when the Government of Pakistan decided to become part of the global war on terror, this policy was severely criticized not only by the clerical section but the suave and educated middle class and which also unfortunately also includes the youth. It must be put on record that the majority of the Pakistani society does not agree with the extremist view points and continues to bond with moderate and liberal Islam. The problematic area is found in the media and the vocal groups which tend to show extremism as a majority opinion and shun the moderate section of the society. The results of the 2008 elections and thereafter 2013 elections bear witness to this fact.

²⁰⁶ *ibid.*

²⁰⁷ *ibid.*

Extremism in Prisons

Prisons however distant by their walls from the community, nevertheless, remain closely connected with its population. It must be remembered that to measure the societal fault lines in any society; detained prisoners and the charges that they are accused of or have been found guilty of provide a measurement standard. The prisons in the province of Sindh demonstrate the rising violent extremism intruding in the Province and especially in Karachi, which of late was the liberal and cosmopolitan face of Pakistan.

Violent extremism demonstrated its stretch within the area of prison walls on 26th June, 2013 where a pre-planned attack was made on the Senior Puisne Judge of Sindh High Court (SHC). Justice Maqbool Baqar was the main target of the attack in Karachi, killing nine people and wounding the Judge in the process. The following day, on 27th June, 2013, Rangers' personnel launched a search operation inside Central Prison, Karachi that lasted eight hours following information about a mobile phone allegedly used in the assassination attempt on the said Judge. A senior officer of the Police established that two Lashkar-e-Jhangvi group members, Farhan and Azeem Shaikh, previously had planned an attack on the Judge prior to their arrest in 2011. Farhan was currently imprisoned in the Central Prison, while Azeem Shaikh had been released from prison in June, 2012.

The Rangers officials also questioned Farhan, the former chief of Lashkar-e-Jhangvi, Akram Lahori, and other banned outfit members in a bid to obtain possible leads for the probe. A cell phone that was believed to have been used in carrying out the attack on the Judge was also seized. An official was reported saying:

"They [The Rangers] believe that the mastermind used this cell phone device to carry out the attack..."

The official further stated:

"The cell phone is believed to have been used in making contact with other terrorists and planning the execution of the attack." ²⁰⁸

During the operation, several other cell phones, laptops and internet devices from the inmates' possession were seized. The recovered devices were sent to experts to extract records which might help in the investigation of several cases.

It was later found that The Tehreek Taliban Pakistan (TTP) took responsibility of the attempted assassination of Justice Maqbool Baqar. The apparent reason for the inhuman attack could be because he is considered to be an articulate judge, whose dispensation of justice didn't find favour with TTP. He was also the Administrative Judge for the Anti-Terrorist Courts in Sindh.

The Sindh Prisons which house offenders ranging from petty crimes to most violent extremists are severely handicapped by under allocation of funds to address the internment of violent extremists and to isolating them in every possible way from the ordinary prisoners. Prisons for reasons ranging from socio-economic forces to ideological cohesion provide fertile breeding grounds for the recruitment of violent extremists . ²⁰⁹

208 Prison watch: Rangers refuse to share details of 8-hour-long operation in jail. (2013). The Express Tribune. [online] Available at: <http://tribune.com.pk/story/570293/prison-watch-rangers-refuse-to-share-details-of-8-hour-long-operation-in-jail/> [Accessed 25 Apr. 2014].

209 An under trial prisoner who has recently been granted bail was interviewed by the Legal Aid Staffer. The ex-prisoner confided that on the day of his admission to the Central Prison, was categorized as mentally disordered prisoner and was confined in the "Lunatic Ward" in local vernacular dubbed "Charya Ward". In the ward he got acquainted with a member of a militant Islamist group. Both were normal individuals; on hearing the ordeal of the former. Arrangements were made for his transfer to the special "circle" where the members of that militant violent extremists group are incarcerated. He was in many ways induced and encouraged to join the outfit. He was also offered security for his family. By the time he reached Legal Aid Office for hiring an advocate, he had already been granted bail, and therefore the LAO declined to engage an advocate to represent him

It is sheer callousness and ignorance of the prison system to lay blame on the officials of the Prisons for allowing the prison system to allow recruitment centers for the extremists. As Mr. Nusrat Mangan, I.G. (Prisons) candidly stated that there is corruption at the lower level with some guards allowing food items and sometimes mobile phones to be sneaked inside the prison.²¹⁰ This is also found in the “ignorance or non-compliance by the search officer when the prisoner comes from the court to the prison”.²¹¹ The issue of corruption goes much deeper than the illegal import of cell phones etc., a thorough study of the prisons all over Pakistan Prisons would reveal ideological denominations far more dangerous than corruption which encourages breeding of violent extremists in the prisons. The problem does not lie simply in retaining a certain ideology but when the identity of the ideology takes over the religion and not simply its interpretation. At this point the sub-groups or sects of any religion become dangerous, not only to the followers of the religion, but to the religion itself.

Sindh to a large extent portrays a far better scenario than other provinces in that, the majority of Sindhi population remains tied to its binding faith of Bareilvi origin and Sufi saints continue to play a dominant role in Sindhi life. Thus, the Sindh Prisons are relatively safer than prisons in other provinces. Radicalization of Wahhabi or Salafi thought is gradually making its stronghold in Sindh and post hoc also intervening in the prison staff; this is a grave issue which cannot be controlled or regulated by the Senior Prison Officials but must be taken up by at the Governmental level.

Many sources of improvement have been witnessed during the tenure of Mr. Mangan. The most important is the prohibition of independent Muslim clerics from creating their identity classes in the prisons, permeating the prisons with divisive sectarian and militants segments in prison populations. Since recent past the Senior Prison Officials have informed LAO that after a notification issued by the Home Department only those religious scholars take Islamic classes of the prisoners who have been approved by the Home Department.

The frailty of the Government's political will to overhaul the menace of the madrassa system, notwithstanding, the proposed reforms, now shelved had only made simple addition to the curricula of the madrassas, would provide further requisites to the modernist violent extremists. Inclusion of English language or computer skills only adds to the arsenal of the extremists. These ad hoc patches are in fact more destructive, than any reforms they may seek in the indoctrination of the young minds, by the violent extremist preachers and other functionaries of the madrassas.

In Karachi Central Prison and other prisons throughout Sindh, madrassas have been for a long time firmly established. Since early 1990s these madrassas became active in the indoctrination process during the Kashmir crisis. After 9/11 with the new definitions of Jihad, the dangers portending from these madrassas assumed horrendous proportions. The madrassas belonging to different sects as Sunni, Wahhabi, Deobandi, etc., continued to churn out brainwashed minds free to mingle with other members of the prison populations, cutting across the issues of separation of prisoners. The madrassahs published literature which was freely distributed amongst the prisoners.

210 Supra; Infrastructure and Security
211 Ibid

Madrasahs played a dominant role in tearing down that little amount of cosmetic separation of prisoners, by inflicting their poison into the deeper crevices of an obsolete and severely incapacitated prison system, which by no stretch of imagination has the ability or capacity to take up CVE measures.

Sources from the prison administration have informed the LAO's team that in 2011, an Islamic Instructor managed to brainwash almost the entire prison population into becoming violent extremists in the time span of one year.²¹² When the prison authorities gained knowledge of this, they terminated the Islamic instructor from his duties which created a short revolt from the prisoners.²¹³ The termination of the Islamic instructor also gained the attention of Islamic extremists outside of the prison which created protests surrounding the prison walls.²¹⁴

Apart from this measure there are other steps also underway to tackle the issue of confronting violent extremism in Sindh Prisons which is a very welcome breather moving away from the gloomy picture of rising extremism till 2013.

U.S.A, UK and KSA Models

The United States of America and the United Kingdom have undertaken considerable efforts to countering violent extremism (CVE) in their countries. CVE may be defined as, "reducing the number of terrorist group supporters through non-coercive means."²¹⁵ The CVE objective is distinguished from combating terrorism in one crucial way, that is, it is focused more on sympathizers of terrorist organizations that are usually law-abiding citizens. On the other hand, combating terrorism is focused on stopping groups or organizations that attack civilians for political objectives. There is a wide approach taken by these Western countries in order to achieve this: shutting down radical websites, contradicting a terrorist group's message about the targets and correcting the main problems that cause people to sympathize with terrorist organizations.²¹⁶ The hope is that these efforts will convince certain law-abiding citizens to stop supporting terrorist organizations, or making sure certain law-abiding citizens do not become supporters in the first place.

By analyzing these methods, it can be said with certainty that the object is to change the ideology of certain individuals to stop any support and/or sympathy given to radical and/or terrorist organizations. This means that educating a certain group of people is imperative if CVE is to be successful, and making sure their countries are clean from al-Qaeda propaganda. However, this objective is only achievable by tailoring the standard methods measurable on the basis of the success, in the settings of the particular country which adopts them, especially applying the rules of the law, opportunity, communication, conflict, ideology processes and interests on the mount of economic costs vis-à-vis social benefits prima facie, this can be observed through empirical facts of a particular country's cultural and socio-economic conditions. The main problem is that there can never be a single universal CVE plan that can be applied in every country. For example, the United States cannot follow the same model as the United Kingdom's. This is because the United Kingdom has a larger Muslim population that has not assimilated with the rest of society, but strictly adheres to the same cultural habits practiced in home countries. Technology plays an important role for CVE in the United States as sympathizers usually articulate their views on social media websites and so the monitoring of websites is central for catching suspected sympathizers. However, this model may not be the best for the United Kingdom as it would be better to focus on the assimilation of the Muslim population.²¹⁷

212 Supra; Educational & Vocational Training

213 Ibid

214 Ibid

215 U.S. Strategy for Countering Violent Extremism: An Assessment, Will McCants and Clinton Watts.

216 Ibid

217 Prevent Strategy. (2011). Secretary of State for the Home Department by *Command of Her Majesty*. [online] Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97976/prevent-strategy-review.pdf [Accessed 25 Apr. 2014].

It is needless to emphasize that most of CVE efforts are aimed towards the Muslim population(s) almost exclusively. Although this prejudices every Muslim living in the United States and United Kingdom, it is an important protocol to follow if CVE is to be successful as most of the terrorist group sympathizers are amongst the Muslim population. The White House has also implemented a Community Oriented Policy (COP) where it will take a Community-Based Approach to find suspected terrorists or terrorist group sympathizers.²¹⁸ One of the ways to fully utilize a COP is to approach local religious institutions - such as Mosques and enlist their help. The willingness to help stop potential terrorist attacks amongst the Muslim population was recently shown in Toronto, Canada where an al-Qaeda plot to derail a Via Rail Canada train was foiled within the country due to the help of a local Mosque and its members.²¹⁹ Muhammad Robert Heft, a Muslim community leader was reported saying: *"...in our hearts we all love Canada. It's our country. It's our tribe. We want safety for all Canadians regardless of religion."*²²⁰

Certainly, this is a good indication that if local Mosques that endorse peace and tolerance can be found then that is a good place for starting a COP initiative.

Saudi Arabia has taken keen interest in developing its own domestic policy for CVE. The Saudi Government through involvement of several ministries and departments developed the strategy for prevention, rehabilitation and aftercare (PRAC). The mechanism utilized in the strategy has been a great success with up to 80-90% rehabilitated violent extremists.²²¹ The Ministry of Interior takes the lead and it is responsible for safety and security of the public including all dimensions of safety measures.²²² The strategy includes the Ministries of Islamic Affairs, Endowment, Da'wah, and Guidance; Education; Higher Education; Culture and Information; Labour and Social Affairs.

PRAC is primarily based on ideological philosophy of the State. An important aspect in the success of PRAC lies in the homogeneity of the Saudi population, which popularly follow Wahabism. The Imams of Kaabah and Mehdina Shareef are revered figures for the followers of Islam and their support in the development of PRAC strategy can never be underestimated. The Saudi Government utilizes the Ministries of Islamic Affairs and the High Education Commission in de-indoctrination of the violent extremist mindset. This is achievable as the basic confrontation within the Muslim society in Saudi Arabia is more politically driven than on the fundamentals of the religion. Almost all proponents of radicalization do not differ with the State on contentious matters, such as the manner of prayers, the timing of fasting or the issues involving other tenants of Islam. The difference lies in political demarcation of the ideologies which are convoluted in the concept of jihad. The Saudi Government has successfully been dealing with the issue. In that the radicals are given a soft concept of jihad and they are made to realize that this institution of Islam is meant for the defence of the religion and the only authority which Allah and his Holy Prophet has ordained is the State. The concept of *Am'r bil maroof wa naheen ani munkir* (the ruler is to be obeyed and those who deny are in rebellion) drawn from the Holy Qur'an has a deep impact on the usually uneducated radicals and given the Saudi affluence, their rehabilitation and reintegration into society is a much easier task compared to either the PREVENT strategy or the COP adopted by the United States. The major difference which stands out is the commonality of the sub-grouping of Wahabism is in fact the main stay in making PRAC a success. Even though, there are numerous numbers which do revert to a radical mindset.

218 EMPOWERING LOCAL PARTNERS TO PREVENT VIOLENT EXTREMISM IN THE UNITED STATES. (2011). *Presented by the White House*. [online] Available at: http://www.whitehouse.gov/sites/default/files/empowering_local_partners.pdf [Accessed 25 Apr. 2014].

219 Sieczkowski, C. (2014). Muslims Helped Foil Terror Plot In Canada; Imam Tipped Officials To Plans To Derail Train. *Huffington Post*. [online] Available at: http://www.huffingtonpost.com/2013/04/23/muslims-foil-terror-plot-canada_n_3140528.html. [Accessed 25 Apr. 2014].

220 Ibid

221 Boucek, C. (2008). Saudi Arabia's "Soft" Counterterrorism Strategy: Prevention, Rehabilitation, and Aftercare. *Carnegie Endowment for International Peace*, 97.

222 Ibid

Pakistan Contrasted

Pakistan is a country with a population of 193,238,868 people (July 2013 est.)²²³ all packed into a small area. The GDP per capita (PPP) is 2,600 USD (2012 est.)²²⁴ which is relatively very little compared to the United States and United Kingdom. Furthermore, Pakistan contains the second largest Muslim population in the world and is home to diverse ideological denominations with an average literacy rate of 54.9% for persons over the age of 15²²⁵.

Due to Pakistan's highly contrasted cultural and socio-economic conditions and divergent religious philosophies even though flowing from the same religion of Islam but unlike the situation in Saudi Arabia, United States and United Kingdom. Devising a viable methodology for countering violent extremism is an intensely challenging exercise if it is to be developed by the Government of Pakistan and the Province of Sindh.

Today, Pakistan suffers from not only divergent but colliding view points on religion which has evaporated the unison of the population. Added to this problem, are the ethnic and cultural dogmas which plague the Pakistani society. To devise a practicable strategy, a very rational and complacent policy will have to be made which could embrace the population at least in the religious dimension.

The diverging views are not a recent development but in fact go back to the days of Shah Waliullah and even prior to that to the Mughal emperor Jahangir. The rise of Shiaism can be traced to Queen Noor Jehan whom played a vital role in expanding the Shia sect within the Mughal Empire. Shah Waliullah around early 18th century was influenced by the Wahabi interpretation of Islam and became a major proponent in the spread of Wahabism. The actual division within the Sunni sect that was predominantly practiced in the sub-continent was brought about by the establishment of Darul-ul-Oom Deoband. The Deobandi sect is based on the rigid textual interpretation of the Holy Qur'an and the Sunnah. Deobandis evolved from the largely practiced beliefs of Islam in the sub-continent which are based on moderate and normative understanding of the text of the Holy Qur'an and the Sunnah of the Holy Prophet. The Muslim Saints such as: Hazrat Ghous-e-Azam, Hazrat Khwaja Muin-ud-Din Chisti, Hazrat Data Ghanj Bux and Hazrat Bahauddin Zakaria, etc. The teachings of these Saints also have had a deep impact in the development of Islam as a religion of tolerance, peace and brotherhood which concepts were initially embedded by our Holy Prophet, Muhammad and his guided caliphs.

Given the cross currents on the move in Pakistan, it is not possible to implement PRAC or PREVENT, however they may be tailored to cater to the situation in Pakistan. From 1947, education has been on the lowest priority list of successive governments till to date. As the result, similar to the pattern of informal judicial and administrative forums superseding the Constitutional forums as the judiciary, religion was again used for purposes of establishment of madrassahs in Pakistan. These mushroomed as unprivileged and insecure class of the people thronged to them where not only education was provided to their children but also the family if in need was economically looked after.

223 Central Intelligence Agency, the World Factbook, accessed on 1st July, 2013, available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/pk.html>.

224 Ibid

225 United Nations Educational, Scientific and Cultural Research (UNESCO), Accessed on 2nd July, 2013, available at, <http://www.uis.unesco.org/literacy/Pages/data-release-map-2013.aspx>.

Way Forward with the Demobilized Strata

Law breaking supporters may be mobilized or demobilized, those who fall under the former category are committing criminal acts under the garb of their religious beliefs and those who fall under the latter category are unable to commit criminal acts due to their imprisonment. This research project focuses on extremist elements inside prison facilities in Sindh and recommends reform proposals within the discourse of the potential that prisons may possess in furthering and inculcating violent extremist ideology and behaviours amongst prison inmates as is evident from the appropriation of Jihadi propaganda from Central Prison, Karachi following a search raid by the Rangers.²²⁶

In exploring the potency of the demobilized extremist strata in prisons, it is important to situate the dialogue in the milieu of the present prison infrastructure and associated abysmal conditions. The inefficiency and corruption of prison officials is an endemic plaguing the system from top to down. Nepotism and political interference embedded in Pakistan's roots renders the notion of accountability a fantasist's myth.

In Pakistan, 92,000 prisoners share 41,000 prison places, often mixing juvenile with adult offenders and making no distinction between minor offenders, hardened criminals and politically motivated militants. The frightening reality is that jail staffs are in short supply and deficiently trained, and as a result, reports of mistreatment and even torture are frequent. Moreover, the Government's recent successes in fighting domestic militancy have produced 4,000 additional inmates, of which 3,700 are thought to be affiliated with al-Qaeda or the Taliban. Combined with detainees from Guantanamo, which have recently been sent back to Pakistan, militants of all kinds now represent the fastest growing part of the Pakistani prison population, making the overcrowding worse and exposing 'ordinary' inmates to increasing numbers of battle hardened extremists.²²⁷

Pakistan's prison system, like the rest of its criminal justice sector, has become inadequate in dealing with the rising security challenges. This has been observed in the recent grenade explosion within the premises of Central Prison, Karachi. On 22nd June, 2013, unknown men lobbed two grenades into the central jail from a bridge that overlooks the prison. Inspector General (IG) of Jail, Nusrat Mangan said that one of the explosives fell outside his office whilst the other in a bush, although there was no loss of life, two policemen had been wounded in the attack. The assailants were fired at by the guards prompting them to flee. It is important to know that the jail also hosts a wing for women prisoners and a borstal for juvenile offenders. As a result the research process was temporarily slowed down.²²⁸

Although changes have been made by the Government and their international partners, by far and large their actions are deemed to be insufficient and focused more on punishment rather than deterring the issue at hand. All recommendations in the past have more or less proposed similar changes but there has either been lack of government will and/or executive will or weak implementation.

The Pakistani Government has been urged to take immediate steps for completely disconnecting supply lines of Taliban, including arms and ammunition, food, financing and communication, if it wants to defeat Taliban.

226 Search operation conducted at Karachi Central Jail. (2012). *The News*. [online] Available at: <http://www.thenews.com.pk/article-107235--Search-operation-conducted-at-Karachi-Central-Jail-> [Accessed 25 Apr. 2014].

227 Prisons and Terrorism Radicalisation and De-radicalisation in 15 Countries. (2010). ICSR. [online] Available at: <http://icsr.info/wp-content/uploads/2012/10/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15Countries.pdf> [Accessed 25 Apr. 2014].

228 Baloch, S. (2014). Attack on SHC judge planned from inside Karachi Central Jail. Dawn. [online] Available at: <http://www.dawn.com/news/1021565/attack-on-shc-judge-planned-from-karachi-central-jail> [Accessed 25 Apr. 2014].

The Government of Pakistan should keep in mind that once it has demobilized a suspected violent extremist, it would be wise to educate and de-radicalize the supporter by enlightened Islamic teachings that have been lost in the battle of ideologies. Today, moderate Islam can be revived on the basis of retuning the Sunni group that is generally termed as the Brailvis. This sect has throughout history acted as a sponge and remained a buffer to absorb the extreme views expostulated by either ends of the spectrum of Islamic schism arising from the mindset of Wahabis at one end and Shias at the other end. This specific factor has not been given enough attention that would effectively displace the extremist indoctrinations. The whole CVE initiative would be pointless if a captured violent extremist was merely placed in prison to be released after a set period term.

As a pilot project, prisons provide the best model for devising a strategy to de-radicalize and temper the hardness of the ideologies. As mentioned above, given by the information provided by the IG prisons, Mr. Nusrat Mangan and Superintendents of the prisons visited in Sindh, today only Government approved Muslim scholars are providing religious education to the prisoners. At this point, a serious consideration is required on the curriculum which must be developed keeping in view the fundamental rights of the incarcerated prisoners provided in Article 20 of the Constitution of Pakistan. However, the right has been made subject to law, public order and morality. This Article must be applied in the prisons for the purposes for providing religious education. The radical elements must also be given an intense course on the issue of their moral obligations to their immediate family and to their near and dear ones. Both have to be done in a tandem; and with this the families of the prisoners who have become radicalized in their views must be actively involved in retrieving these persons from the extreme depth where they have lost a social contact with their own community but can psychologically through proper therapies can be brought back into life.

Finally it may be said, that COP, similar to The White House's plans mentioned above, appears to be a possible stepping stone in devising a CVE strategy in Pakistan. It must be indoctrinated into Pakistani minds that as citizens of the country they have a civic duty to report to the proper officials any suspected terrorist or a supporting of an extremist ideology albeit law-abiding citizen(s). The Pakistani Government must make contacts with the proper religious leaders that have the willingness to cooperate, and give them the responsibility to keep out a watchful eye of any suspected terrorist activity or any extremist indoctrinations. This will yet again be no easy task due to the diverse ethnic groups in Pakistan and the different Islamic sectarian divisions. There will still be a need for overall ideological reformulation of Pakistani minds, this will be a long and slow process, compliance from citizens will be required if Pakistan is to be successful in countering violent extremism. The 40 years of ideological indoctrination, is a rocky road to mend. Thus, it may be concluded that the picture of the prisons drawn through the lens of the legal aid show a fractured institution which is in a state of flux and unless the rule of law and the Criminal Justice System are not taken up in all seriousness the State will head towards a non-retrievable situation.



Legal Aid :

Void of Pro bono Culture

Legal practitioners, albeit self-employed, carry a societal obligation which overrides their professional association and personal interests. Lawyers are bound to serve the interests of justice and the interests of the public. In present day Pakistan, however, the profession no longer commands its age-old respect and the residue of any nobility in the legal profession needs to be safeguarded if not revived all over again.

The Bar Council in England and Wales was established in 1894 as an interest body with the mandate to regulate and represent Barristers. It took the English eight decades to publish a formal treatise on the Code of Conduct of Barristers in 1981. The latest 8th edition of the Code was published on October 31, 2004 and exceeds 369 pages which profess to enshrine the adherence of lawyers to professional ethics and best practices. The Code provides a basis by which all Barristers should conduct their practices whether in public or in private and the austerity of these regulations aptly befits the reputation and gravitas of the profession in England and Wales.

The Pakistani comparable stems from Section 13(d) of the Legal Practitioners Bar Council Act (LBCA) of 1972 which empowers the Pakistan Bar Council to formulate standards of professional conduct and etiquette for lawyers. Under the provision of Section 13(d), the “Canons of Professional Conduct and Etiquette (CPCE)” were devised to lay out the professional standards of lawyers. The opening body of the CPCE states that “an advocate shall at all times uphold the dignity and high standing of his profession as well as his own dignity and high standing as a member of it.” Moreover, the CPCE goes on to provide that ‘in fixing fees it should never be forgotten that the professional [the advocate] is a branch of the administration of justice and not a mere money-making trade’.²²⁹

Unfortunately however, the concept of pro-bono or “low-bono” legal work is rather elusive in the legal fraternity of Pakistan in spite of the fact that a 1982 amendment to the LBCA incorporated Section 13 (1a) which states that the Pakistan Bar Council’s function is to ‘provide free legal aid’. There also exists the Pakistan Bar Council Legal Aid Rules of 1999 of which Section 3 stipulates that these are framed to ‘provide free legal aid to the poor, destitute, orphan, widows, indigent and other deserving litigants’ involved in a multitude of cases. The Rules etch out an entire regime of free legal aid committees, with a provision for a central free legal aid committee providing free legal aid for litigants before the Supreme Court or any other authority operating on a federal level. Furthermore a provision for Provincial free legal aid committees with seats at the High Courts of Sindh, Khyber Paktunkhwa, Balochistan and Punjab which shall provide free legal aid before High Courts and authorities at the provincial level. The Rules go on to providing for similar district level committees as well. Rule 8 provides that any person desirous of free legal aid must submit an application to the ‘appropriate committee’ or members thereof and the application shall be processed as soon as possible on a needs basis. Although these rules were devised to provide meriting underprivileged people with free legal aid, the Pakistan Bar Council found it extremely difficult to find lawyers that were willing to represent a client, pro bono, and exercise the same diligence and commitment that he or she would with a regular paying client.²³⁰ Unfortunately, it was because of this reason that only 2-3% of the applicants received free effective legal aid.²³¹ Lastly, the legislative framework on legal aid services ignored to a certain extent UTPs from its ambit.

229 Canons of Professional Conduct and Etiquette. Chapter II (10).

230 The Crisis of Legal Aid in Pakistan. Insaf Network Pakistan. Yasser Latif Hamdani – Legal Consultant. Can be found on: <http://inp.org.pk/sites/default/files/job%20description/%20/The%20Crisis%20of%20Legal%20Aid%20in%20Pakistan.pdf>. Access Date: 04/14/2014.

231 Ibid

According to the article “The Crisis of Legal Aid in Pakistan” by the Insaf Network Pakistan, frequent adjournments are sought without any rhyme or reason under Order XVII Rule 1 of the Civil Procedure Code 1908; “Adjournments are sought for reasons as simple as “I had a headache last night” or “I didn’t have time to prepare”.

It is pertinent to mention here that The Public Defender and Legal Aid Office Ordinance 2009 was promulgated but the same lapsed, as the Assembly did not adopt it as a Legislative Act. It aimed to promote justice throughout Pakistan by providing quality and free legal services to indigent persons, protecting individual rights, and advocating for effective defender services and a fair justice system; and to ensure equal protection of law to such persons through free legal assistance, advice and representation in the Courts or outside.²³²

The law called for the creation of a chief public defender’s office, assisted by additional chief public defenders, district public defenders and public defenders, all to be appointed by and accountable to the Federal Government.²³³ The Government could have directed the chief public defender and his associates to represent any indigent person in court, or provide the person free legal assistance or advice.²³⁴ This authority also extended to any court of law.²³⁵

An indigent person who sought free legal advice or representation in court could have applied to the Government or any of the functionaries mentioned above. If the person was physically present, the application was to be submitted through the superintendent jail. Where the Accused was under eighteen, insane or otherwise unable to make an application, any other person interested in the welfare of such person could have done so on his or her behalf. Each application must have been accompanied by an affidavit confirming that the applicant is indigent.²³⁶

It would be a positive step if this country-wide Ordinance was implemented in the public interest as this would have resulted in a great number of people having access to legal aid services. Underprivileged persons, including prisoners, who lack the financial capacity to pay for private legal counsel and are unaware of their legal rights would have greatly benefitted from the presence of this Ordinance.

An important recommendation given by the National Judicial Policy 2009 states that the Chief Justices of High Courts, in consultation with the Chairman of the Legal Aid Committee of the Provincial Bar Councils or Pakistan Bar Council, may appoint lawyers in such cases where the accused is not represented by a counsel in order to avoid delay.²³⁷ In this regard a list of the advocates should be maintained in each district so that they can be appointed for the provision of legal aid to accused persons who cannot afford to hire the services of private counsels. Further, the Federal/Provincial Governments may allocate sufficient fund for the Pakistan Bar Council and Provincial Bar Councils for activation of Legal Aid Committees functioning under the Legal Practitioners Act 1973 for paying the fee of advocates in deserving cases. The District Legal Empowerment Committees should be activated for providing legal aid to the deserving litigants, who despite having valid cause could not pursue their cases in courts on account of limited financial resources.

232 The Public Defender and Legal Aid Office Ordinance 2009, Preamble

233 Ibid, Section 4 (1)

234 Ibid, Section 4 (6)

235 Ibid, Section 4 (7)

236 Ibid, Sections 14 (1); 14(2); 14(3);14(4)

237 National Judicial Policy 2009. Accessed on 18th January, 2014 at

Providing quality assured and effective legal aid should be the cornerstone of Pakistan’s justice system as long periods of pre-trial detention reduces the chances of the accused receiving a fair trial; evidence goes stale, witnesses disappear, the pressure to plead guilty increases as people lose confidence in the justice system. Without legal assistance, cases cannot be prepared, nor can there be expeditious trials. A proper functioning legal aid system helps reduce the time for which suspects are held in police stations and later prisons, in turn facilitating the reduction of the prison population and reducing overcrowding. Regrettably, despite having a substantial amount of legislation, implementation remains a problem in Pakistan. Rather than bringing in new sections of law that discuss provisions of legal aid to various sections of society, steps should be taken to make sure that those already implemented are carried out.

The Legal Aid Office Model

To date there has been no serious motivation shown by either the Federal Governmental or the Bar Councils towards enforcement of the laws mentioned above. However, it must be mentioned that the Government of Sindh supported the establishment of the Committee for the Welfare of Prisoners (on the instructions of the Governor of Sindh) in 2003. As it stands today, the LAO is the only institutionalized provider of legal aid to underprivileged under trial prisoners in 17 jail facilities across Sindh.

LAO believes that access to legal aid and legal counseling should be readily available to all prisoners especially women and children inside the jail. They should be provided legal advice on matters of their concern, have access to lawyers who can follow up their cases in courts and at every stage of their case, including investigation. The civil society must also step up and fund legal aid projects which would bring gainful employment to hardworking lawyers, thereby improving the quality of free legal aid available in the country.

From May 9th 2013 to February 8th 2014, LAO lawyers made 1013 jail visits across Sindh in which 2,333 adult male and female prisoners and juvenile prisoners were interviewed. Out of the 2,333 interviewed and assessed for legal aid 1,812 prisoners engaged the services of LAO lawyers. This data shows that 77.67% of applicants were granted free legal aid by LAO ²³⁸.

S#	LAO Office	Cases Resolved During 9th May 2013 to 8th February 2014 By Way Of Acquittals	Percentage Of Cases Resolved By Way Of Acquittals
1	Karachi Office	125	55.28%
2	Hyderabad Office	38	16.81%
3	Larkana Office	29	12.83%
4	Sukkur Office	14	6.19%
5	Khairpur Office	20	8.84%
	Total	226	100%

238 The policies of LAO do not allow legal aid to be given to persons accused of and charged with heinous crimes or hardened/repeat convicted criminals. Secondly, due to an understanding with the Karachi Bar Association, LAO does not provide legal aid to anyone who is already being represented by private counsel or after LAO’s intervention a private lawyer is engaged.

LAO has assisted in the acquittal of 226 UTPs across 8 prisons in Sindh. An LAO lawyer's ultimate aim is to try and achieve an acquittal on merit where the case takes its full course and the prosecution is unable to prove beyond a reasonable doubt that the Defendant had in fact committed the crimes that he or she was being accused of. However, in some cases LAO lawyers file a 249-A/265-K application under the Code of Criminal Procedure (Cr.P.C.), 1898 where prosecution witnesses are not produced in court, or if there is no probability of the accused being convicted of any offence. LAO lawyers also file compromise applications under section 345 of the Cr.P.C when the complainant, usually the State and the accused compromise and come to an understanding. The underlying theme of the intervention by LAO lawyers is to expedite the legal proceedings on an informal fast track to save the physical time period of the UTP in prison.

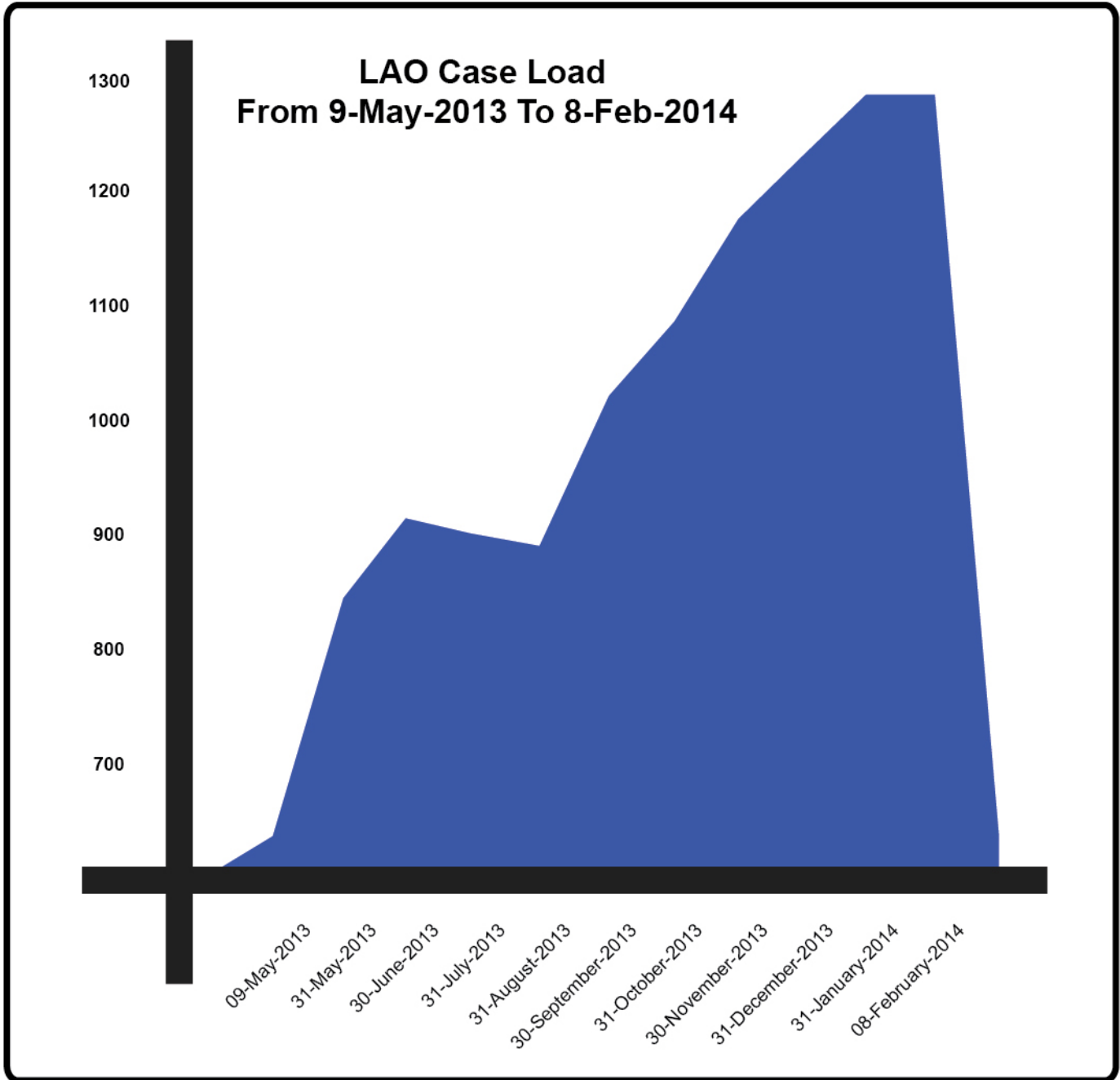
S#	LAO Office	Cases Resolved During 9th May 2013 to 8th February 2014 By Way Of Convictions	Percentage Of Cases Resolved By Way Of Convictions
1	Karachi Office	244	80.8%
2	Hyderabad Office	22	7.29%
3	Larkana Office	18	5.96%
4	Sukkur Office	10	3.31%
5	Khairpur Office	8	2.64%
	Total	302	100%

During the period stated above, 302 UTPs that were being represented by LAO lawyers were convicted. LAO wishes to represent as many meriting underprivileged prisoners as possible by providing them with free legal representation and ensuring they receive a fair trial. That being said, some case proceedings that have naturally taken their course come to a conclusion where the prosecution successfully proves beyond a reasonable doubt that the Defendant had committed the crimes that he or she was charged with and the Defendant is then convicted on merit. In most cases however, UTPs being charged with a low class drug offence, such as Section 6/9(a) Control of Narcotic Substances Act, 1997, will against the advice of their lawyers plead guilty because by doing so the UTP will be released from jail faster than the time it would take for the case proceeding to run its full course. Apart from the cases falling under Section 6/9(a), due to the current practice, the courts are taking a lenient stance on offences in which the maximum punishment is up to 7 years. During the proceedings most UTPs plead guilty and most of are released due to the sentence already undergone if the same is substantial. Thus, even by conviction the UTP's exposure time to prisons is reduced, thereby achieving the objective. It is to be noted that no formal law exists in Pakistan on plea bargaining.

9th May2013 To 8th February 2014

S#	LAO Office	No. Of Cases In Which The Ball Application Filed	No. Of UTPs Who Were Released On Bail	Number Of Cases In Which The Ball Was Granted But Surety Was Not Submitted
1	Karachi Office	522	104	287
2	Hyderabad Office	125	71	56
3	Larkana Office	95	25	47
4	Sukkur Office	63	21	31
5	Khairpur Office	23	32	7
	Total	828	253	428

LAO lawyers filed 828 bail applications for UTPs during the period stated above. The unfortunate fact is that even though the UTPs do get bail, the surety amount is so high that it is not feasible for a UTP to pay due to his or her financial situation. Surety amounts also depend on the gravity of the offence as determined by the courts. By setting high surety amounts, the bail that is granted is negated. LAO lawyers usually file an application for the reduction of the surety amount at the same court or an appellant court. Therefore, most bails are obtained through supplementary proceedings. Lastly, it should be mentioned, LAO lawyers always file a bail application if the offence is aailable offence as listed under Schedule II of the Cr.P.C. If the offence is non-bailable, then the LAO lawyer still files a bail application after the completion of the police investigation under section 173 Cr.P.C.



LAO had a total case load of 836 cases at the end of May, 2013. During this time, LAO was working in 8 prisons across Sindh. After LAO's expansion into District Prison Ghotki on July 1st, 2013 and District Prison, Shikarpur on September 1st, 2013, LAO's case load started to rapidly expand. During the 9 months of activity, LAO has seen a growth of 57.43% in its case load and it is steadily expanding. It is important to note here that the policies of LAO do not allow legal aid to be given to persons accused of and charged with heinous crimes or hardened /repeat convicted criminals. Secondly, due to an understanding with the Karachi Bar Association, LAO does not provide legal aid to anyone who is already being represented by private counsel or after LAO's intervention a private lawyer is engaged.

Understanding the Prison Population

Through the cross sectional profiling of UTPs conducted between May 9th, 2013 and February 8th, 2014 LAO has found that UTPs that are awaiting the conclusion of their trial typically come from poor, underprivileged families originating from Karachi or Interior Sindh. They are usually between the ages of 19-30 and possess a low-skilled job such as laborers or drivers. Most of the UTPs profiled fall under the income bracket of Rs. 10,000/- to Rs. 15,000/- per month. It is also interesting to note that 182 (7.8%) UTPs admitted to LAO's lawyers that they habitually use narcotics. Heavy users of heroin could also be ascertained by LAO lawyers upon inspecting the arms for any scarring caused by syringe needles. The most popular narcotic amongst the UTPs was Gardaa, a variation of Charas, which is primarily made in Afghanistan using dried cannabis leaves. Gardaa is a notoriously famous narcotic in Pakistan that enters the country through Peshawar and becomes readily available in every major city of Pakistan.

Carrying a firearm without a license leads in crime rate, however, the fact remains that the majority of the UTPs are first-time offenders and have the potential to be rehabilitated back into society. It is pertinent to mention that although the PPR provide for a separation of convicted first time offenders from hardened and/or repeat convicted prisoners, there is no such provision in existence for the separation of UTPs. As the current situation stands, first time UTPs that are being charged for non-violent offences are detained in the same barracks as UTPs that have been previously convicted and/or being charged for a violent/heinous crime. It is imperative for the Government of Sindh to focus on rehabilitating UTPs by focusing on separating prisoners under trial for a non-violent offence and providing them with vocational opportunities in order to reduce recidivism.

Recommendations

LAO has been involved with the prisons in Sindh since the last ten years. During this period, the conditions of prisons have been closely observed from the infrastructure to the conditions of inmates of the prisons. This report provides technical details of our interaction with the prison officials and the prisoners whom we represent. From the research conducted by LAO, we have concluded that the prison system is suffering from serious lapses and gaps exist which make the prisons even more fragile and weak. This precarious situation is found from the legislation to the implementation level. The pivotal role of the Government of Sindh becomes even more crucial if the rule of law is to be realized in the prison scheme of the Sindh province. LAO, on the basis of its study of the prisons as formulated the following recommendations.

The legislation dealing with prisons and the prisoners is outdated and archaic in the present day situation. Most of the provisions have lost their relevance; it has also been frequently observed that the provisions especially those of the PPR are becoming an obstacle in proper management of the prisons. The amendments in the laws relating to the prisons, the prisoners and the laws thereto require immediate amendments, repealment of many provisions and addition of new laws to bring the prison system up to date for governance, fair treatment of the prisoners and to meet the rising threat of terrorism and violent extremism.

The prisons should be provided with computerized systems for all movements of the prisoners from within the prisons to external points and their reentry. The admission of new prisoners should also be made certain to be computerized. The details of the visitors coming to meet the prisoners should be recorded and computer record kept thereof.

- (1) With regard to the overcrowding it is recommended that emphasis be placed on the reduction of the length of the stay of prisoners. Furthermore, the courts should focus on taking up the question of separating conviction from sentencing and the circumstances surrounding the offence. The conduct and background of the offender may also be taken into consideration while sentencing takes place. For this purpose, conviction requires to be separated from sentencing.
- (2) With regard to segregation and separation, more prisons need to be constructed. There must be proper facilities for the convicts, the UTPs, the condemned prisoners, political prisoners and especially women and juvenile prisons should be constructed as provided in the International Standards. Due caution must be taken in dealing with violent extremists and steps should be taken so ordinary prisoners do not come in contact in any manner or any facility with such offenders. Segregation must also be strictly followed between the violent extremists, the hardened criminals and ordinary convicts. Separation must be strictly complied in case of juveniles and under no circumstances should they be allowed to mix with the adult population in the prison. The Government of Sindh should consider increasing the budget allocation to the prisons and also increase the salary of the prison staff from the highest echelon to the lowest run of the hierarchy. This is imperative for providing incentive to the prison staff in proper performance of their duties.

- (3) With regard to infrastructure and security, prisons require to be immediately refurbished and the repair and maintenance of the outer and inner walls be taken up. Scanners, CCTV cameras, electronic jammers, and all other surveillance and security should be provided to the prisons. It is further recommended that the Government of Sindh should develop a comprehensive security strategy between the Rangers, the Sindh Police and the Sindh Prison's Police for enhancing the security of the prisoners. In this regard, it is strongly recommended that the Government of Sindh should give priority to the prisons and take steps of removing the prisons from the centers of the major cities and town. It has been observed that almost all the prisons are located in the most sensitive and central locations within the cities, surrounded by katchi abadis and mohallas which also do become a source of threat.
- (4) With regard to visitation rights, it is strongly recommended that necessary steps be taken and guidelines be provided by the Government of Sindh to the prison officials on visitation rights subject to proper verification of the identity of the visitors. In this connection, categories of visitors should be pre-approved by the Home Department or the office of the IG prisons prior to allowing visitors to come inside the prisons. The immediate family then the distant family, if any and reliable and credible friends and acquaintances should only have the permission to meet the prisoners. Proper facilities are made where a prisoner could comfortably meet his or her relatives and friends. The right of legal representation of a prisoner must be given due regard and the representing advocate must have access to the visitor as and when required without any obstacle or obstruction coming in their communication. Recently, the Government of Sindh has allowed the meeting of spouses in the prisons for one night in three months. This permission is only valid for the convicts. Given the long imprisonment of the UTPs during the legal proceedings, it is recommended that this permission of meeting of spouses should also be extended to the UTPs.
- (5) External oversight is a major mechanism for transparency and accountability for prison governance and prison welfare. It is strongly recommended that the Home Department must make sure that the visitors who have been placed on the NOV list comply with their mandate and give ample time from their schedule to the prisons, taking interest in the prison conditions and in alleviating the problems faced by the prisoners in the prisons in accordance to law. Proper gazette notifications should be duly publicized and the list of the NOVs be made present at the front gate of the prisons. Care should be taken that only those eligible persons should be taken up as NOVs who have compassion, interest and ability to be of assistance in taking up prison issues.
- (6) With regards to educating prisoners the Government of Sindh should focus more on implementing vocational training courses for the prisoners so they have a skill set when released from prison. Doing so will provide great social savings to the Province of Sindh and reduce recidivism rates. The Government should also amend the PPR to include rules for providing systematic educational system in the prisons. This educational system must prohibit the use unsanctioned Islamic instructors and education and create a proper Islamic education syllabus focused on the teachings of Islam relating to peace, harmony and the importance of brotherhood through the teachings of the Qur'an and Sunnah.

- (7) With regard to drug use, the prison officials must make sure that all possible methods of illegal import of drugs are stopped. In this regard, special care requires attention when the prisoners are being taken for their hearings in courts and their return to the prisons after the court proceedings. Care should also be taken while any visitor is meeting a prisoner during his stay in the court. For this purpose, relevant laws need to be updated and strictly implemented. Those prisoners who are already drug addicts should be provided proper treatment and detoxification. Special care must be provided that once such prisoners have been detoxified they do not revert to addiction in the prisons.
- (8) With regard to torture, degrading and inhumane treatment, legislation must be made which defines torture in line with Article 1 of CAT. All steps must be taken to tune the laws in a manner by which torture becomes an offence. The prison administration must adhere to the PPR. The judgments which have been passed by the Supreme Court of Pakistan, Federal Shariat Courts and the High Courts must be duly complied with as required by Article 187 of the Constitution of Pakistan and the law.
- (9) With regard to the question of insanity, it is strongly recommended that the prison officials should strictly follow Chapter 18 of the PPR and those prisoners who may be suspected of suffering from mental impairment or mental disorder should immediately be referred to the competent doctors and psychiatrists for assessment and evaluation of their mental condition. With the promulgation of the Sindh Mental Health Ordinance, 2013, prisoners now have access to psychiatric treatment which should be immediately utilized for the purposes of treatment and aftercare of the prisoner.
- (10) With regard to parole and probation, laws do exist but in practice these have been found either to be ignored or not effectively implemented. More parole and probation officers must immediately be appointed from the qualified and eligible personnel. The courts must liberally use probation in minor offences while the Home Department should utilize the parole system, however, in both cases caution is required to the extent that the parole and probation officers comply with the conditions of the stated laws and no abuse of these takes place. The probation and parole laws also require immediate updating in order to meet the requirements of the present day situation.
- (11) With regard to administration and personnel, it is recommended that necessary upgrading of laws, especially the Prisons Act 1894 , Prisoners Act 1900 and the PPR be revised. The administration should be developed to secure good governance in the prisons and the police officials and staff should be given the same perks and privileges which the Government of Sindh provides to the Sindh police. Proper computerization of the management of prisons should be installed and steps taken to bring the prison administration to the international levels of prison management.



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