
THE CONDITION OF WOMEN PRISONERS OF PAKISTAN AND HOW THE LEGAL SYSTEM DEALS WITH IT: COMPREHENSIVE ANALYSIS WITH INDIA

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This article is dedicated to my parents, Advocate Shahzad Saeed, and Ali Hamza this wouldn't have been possible without their constant support.

&

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This article is dedicated to Professor Tasneem Kausar, Barrister Saram Israr, Mishayal Zia, and Sara Naeem

ABSTRACT

Women in Pakistani society suffer from various discrimination in various sectors of society. The women prisoners in Pakistan suffer from mental and physical torture, they have a series of struggles and unheard stories. The research paper discusses the condition of women prisoners in Pakistan, how they have been facing inequality behind bars, the challenge they face regularly, and how the legal system has been failed to protect them. Their existence is a burden in jails, and they handle mistreatment on regular basis.

Due to lack of education and unawareness of fundamental rights, women prisoners in Pakistan and India have been facing massive challenges including mother prisoners. Society hardly accepts female prisoners due to offenses they have committed. NGOs and the government of Pakistan have been taking possible steps for better conditions for prisoners. There is an urgent need for reforms and make new laws according to the UN charter. The research paper will also discuss a legal analysis of female prisoners' condition and how the legal system deals with it. Several international conventions protect the dignity of female prisoners including their children. Torture is prohibited under any circumstances because it is open exploitation of female prisoners. Various cases are discussed in the article that will elaborate on sexual assault and physical abuse behind bars. In this article, it will suggest reforms for the betterment of the condition of women prisoners in imprisonment facilities, education, fundamental rights, and the right to live their life without any share.

Introduction

The ratio of women prisoners in Pakistan in July year 2018 was reported that the estimated number of women prisoners in 1955 across the country out of the total number 1225 are juveniles and 33 are on death row less than 1% of all death row inmates.¹

The global prison population including girls is 6.9%. The highest female prison population rates are in the USA (about 65.7% 100000 of the national population) the number of women and girls in prison worldwide has been massively increased by some 53% since about 2000 when the total was estimated at approximately 466,000.²

The ratio of women prisoners is lesser than the men in prisons, but the above reports show the massive increase of them, women face mental illness and physical torture. The administration of prisoners lacks to facilitate them with their legal rights the small amount of population of women prisoners is unaware of their fundamental rights including health facilities also access to justice right to fair trials and bails. Due to the increasing ratio of male prisoners as compared to female prisoners, the question here lies is that what is the comparison of the nature of crime in both genders. Another point that can be raised here is that are there any measures taken by the administration of prisons regarding the mental torture, physical torture, and harassment they face behind the bars. There is an ignorance of checks and balances on them also there is hardly any protection for them by the justice system for preventing mental and physical illness of prisoners the priority should be proper maintenance of their living standards and protection to their legal rights. Undoubtedly, it's a dreadful situation across the country. According to the **Prisons Act, 1894 Section 3(2)**. In the prisons act "criminal prisoner means any prisoner duly committed to custody under the writ, warrant or order of any court or authority exercising original jurisdiction, or by order of a Court Marshal."³

¹ 'Women's Prisons: A Feminist Issue - Prism - DAWN.COM' <<https://www.dawn.com/news/1468981>> accessed 22 February 2022.

² 'News | World Prison Brief' <<https://www.prisonstudies.org/news/more-1035-million-people-are-prison-around-world-new-report-shows%23%20text=More%20than%2010.35%20million%20people%20are%20held%20in%20penal%20institutions,at%20Birkbeck%2C%20University%20of%20London.>>> accessed 22 February 2022.

³ 'Definitions | Prisons Act, 1894 | Bare Acts | Law Library | AdvocateKhoj' <<https://www.advocatekhoj.com/library/bareacts/prisons1894/3.php?Title=Prisons%20Act,%201894&STitle=Definitions>> accessed 23 February 2022.

Problems of women prisoners in Pakistan

The women prisoners often face difficulties in filing an appeal in higher courts. They are unaware of their legal rights and remedies also how the constitution protects them. There is a legal right granted to all prisoners that they can hire a legal advisor, although if a prisoner cannot afford a legal advisor there are rear chances in which the state would entertain them with this right. There is no proper facility of sanitation, mostly it has been observed in Pakistan that bathroom area is located within the cells, food is provided to them in the very same situation. The living situation inside prisons is very critical and is also very dangerous. Overcrowding is another issue in prisons of Pakistan, this issue is hardly reported the highest capacity of prisoners is in Kot Lakhpat Jail and the lowest was recorded in Mardan.⁴

Variable	Capacity	No. of prisoners
Karachi	89	77
Larkana	14	14
Lahore	165	125
Mansehra	10	7
Haripur	26	37
Mardan	10	12
Peshawar	45	39

⁴ 'Justice Delayed Is Justice Denied: Issues & Solution's Pertaining to Pendency in Indian Judiciary By: Kavisha Gupta' <<https://www.latestlaws.com/articles/justice-delayed-is-justice-denied-issues-solutions-pertaining-to-pendency-in-indian-judiciary-by-kavisha-gupta>> accessed 22 February 2022.

Multan	84	68
Hyderabad	33	31

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There is a lack of facilities of health and sanitary due to overcrowding in prisons, prisoners often drink unclean water there is a lack of supply of clean water, water-borne diseases like hepatitis due to this.

While some women prisoners are allowed to keep their children with them but not facility of proper education for them. The facility of education is available in Karachi and Hyderabad jails and where teachers are appointed for teaching.

The inhuman treatment of women prisoners causes intense physical and mental suffering and due to this, they commit suicide and self-harm.

Many prisoners complained that their lawyers do not behave professionally and cause a delay in cases. Most prisoners are from rural areas, and they are illiterate and poor. Mostly do not have formal education and cannot have legal assistance and cannot afford a lawyer to proceed with the case. The basic problems of women prisoners are the pendency of cases.

Who are prisoners?

There are many legal meanings of the word “prisoners” however according to the black’s law dictionary:

“One who is deprived of his liberty, one who is against his will kept in confinement or custody. A person restrained of his liberty upon any action, civil or criminal, or upon command.”⁶

⁵ UNODC, ‘FEMALES BEHIND BARS Situation and Needs Assessment in Female Prisons and Barracks’ (UNODC) 24 <https://www.unodc.org/documents/pakistan/female_behind_bars_complete_final.pdf> accessed 22 February 2022.

⁶ ‘What Is PRISONER? Definition of PRISONER (Black’s Law Dictionary)’ (*The Law Dictionary*, 7 November 2011) <<https://thelawdictionary.org/prisoner/>> accessed 22 February 2022.

Women prisoners around the world are living in miserable conditions, they are deprived of their fundamental rights, the restriction that is imposed by the system is affecting their mental health. In some cases, they suffer mental torture, other than this they face the humiliation of their dignity, the rights to the women prisoners are violated, the rights may be granted by the justice system has a lack of implementation by the jail administration, however not every woman behind the bar is criminal, she might not have attempted any offense or might be innocent on the bases of the wrong accusation.

Around the world, many international organizations are working on the betterment of the condition of women prisoners also they have been raising their voices against injustice happening to them. The state laws are made to protect their basic rights, the right to medical treatment, the right to secure life also the anti-torture law for the prisoner, etc.

Every human is entitled to have the basic right but prisoners whether male or female are persons who are deprived of the right to dignity and right to freedom of movement. Globally, female prisoners represent 5% of the total prison population, but this proportion is massively increasing, especially in countries where the level of illicit drugs is in larger use.⁷

The constitutional status of women prisoners in Pakistan

The report, “plight of women in Pakistan’s prisons” was submitted to prime minister Imran Khan on August 26, 2020.⁸ The report consisted of many important issues regarding women prisoners in Pakistan, the condition they live in, and how this has become one ignorant issue. Pakistan prisons laws should be improved to provide women prisoners with a safe and secure life. The report also raised a point that how the prison of Pakistan and the laws regulating them don’t meet international standards.

Constitutional equality is for every individual in the society and access to the law is a fundamental right under article 25 of the constitution of Pakistan which states,

⁷ ‘Pregnant Women Facing Incarceration For Drug Abuse’ (*Addiction Center*)

<<https://www.addictioncenter.com/news/2022/01/pregnant-women-incarceration-drug-abuse/>> accessed 23 February 2022.

⁸ Ministry of Human Rights, ‘Plight of Women in Pakistan’s Prisons REPORT’ ([mohr.gov.pk](http://www.mohr.gov.pk))

<http://www.mohr.gov.pk/SiteImage/Misc/files/Prison%20Report_acknowledgment.pdf> accessed 22 February 2022.

“Article 25 ensures equality before the laws and equal protection of the law and states that there shall be no discrimination based on sex alone. Article 25 (3) and 26(2) allow the states to make special provisions for the protection of women and children.”⁹

The law must be for all persons no matter what religion they practice, what caste they belong to, color, sex, etc. All are equal in the eye of law. The constitution doesn't directly protect the rights of women prisoners, on the other hand, many indirect provisions in the constitution protect the right of human dignity of women prisoners in Pakistan.

In 1991 Pakistan prime minister Benazir Bhutto promulgated regulations prohibiting police from keeping women overnight in custody, although they have not been in practice ever since these rules were introduced. The culture of police torture in Pakistan is an ignorant issue there are few cases in which the victims come forward with their stories in police custody and it is difficult to tell the terrible situation they face in jail on regular basis or under custody. In Pakistan, 80% of women prisoners arrested by police are raped in the lockups which is the exploitation of women's human dignity and their right to have a safe life.¹⁰

Article 9 of the Constitution of Pakistan states,

“Security of person. No person shall be deprived of life or liberty save in accordance with law”.¹¹

Whereas article 15 of the constitution of Pakistan guarantees freedom of movement and freedom to reside and settle in any part of the country and the only situation in which this fundamental right would be restricted if imposed by the law in the favor of the public interest.¹²

Article 14 states,

“The dignity of man and, subject to law, the privacy of home, shall be inviolable.2. No person

⁹ ‘About Women Rights | Punjab Portal’ <https://punjab.gov.pk/about_women_rights> accessed 23 February 2022.

¹⁰ ‘WOMEN PRISONERS IN PAKISTAN : CHANGING PRACTICES TO ENFORCE LAWS & RIGHTS’ (arabianjbmr) <http://www.arabianjbmr.com/pdfs/KD_VOL_1_4/5.pdf> accessed 22 February 2022.

¹¹ ‘Constitution of the Islamic Republic of Pakistan 1973 - Part II’ <<http://www.commonlii.org/pk/legis/const/1973/3.html>> accessed 23 February 2022.

¹² *ibid*.

shall be subjected to torture for the purpose of extracting evidence.”¹³

Legal framework and provision in Pakistan related to woman prisoners

Most of the woman prisoners are unaware of their fundamental rights and deprived of their right to a fair trial and the right to hold an opinion, they are unable to justify the allegations for which they are taken into custody. The main provisions and rules that directly regulate the rights of prisoners, duties of jail administration, and the laws for the treatment of women prisoners are:

1. The prison act 1894
2. The prisoner act 1900
3. Good conduct prisoners probational release act 1926
4. The prison rules 1978
5. The Punjab probation and parole service ordinance 2019
6. Code of criminal procedure 1898 ¹⁴

The above acts give not just a dense knowledge of the rights of women prisoners but also clear the purpose of prisons, their management, ability to perform duties under the law and order, the maintenance of discipline, and procedure to appeal and petition as well. Ms. Kalpna Devi, and Advocate high court express her views about the journey of a female accuse from the day she starts suffering disrespect to her existence and from the day she is arrested, also to her journey behind the prisons, the torture she faces every single day and the mistreatment she faces eventually it is very devastating and painful to imagine for any individual. She said,

“The views of accused women start from the moment when a male police officer puts his hand on her shirt, scarf, or arm. In Islam, he is not a mahram, so he can not touch her in that way. But he drags her to the police van and station. (From any part of the body) And the woman police personnel are not present everywhere. They must produce the arrested person to the judicial magistrate in 24 hours. But they are kept at the police station for longer periods. So, women are at risk everywhere at a male police station, in prisons, in Darul Emaan, even in the court premises. Sexual abuse is not a sexual act only. It is committed with words, with gazing

¹³ *ibid.*

¹⁴ Khushboo Ali Bagri, ‘Women Prisoners in Pakistan: A Case Study of Rawalpindi Central Jail’ (Social Science Research Network 2010) SSRN Scholarly Paper ID 1716825
<<https://papers.ssrn.com/abstract=1716825>> accessed 23 February 2022.

eyes, with the behavior. Sexual abuse has already started with arrests. When a pretty accused woman is produced in court, everybody is staring at her, lawyer persons, other court officials, and even judges.”¹⁵

Asia Watch and the Women Rights and Project of Human Rights Watch presented a report according to which 70% of women in police custody suffer sexual abuse and physical torture from the jail administration. The women prisoners are beaten brutally after the effects of this torture daily lead to mental illness, and it becomes difficult for them to recover afterward.

Punjab the province that has the most population as compared to other provinces contains 844 female prisoners. There are different offenses under which female prisoners are charged for instance kidnapping, abduction, murder, drugs smuggling, robbery, sex business, dacoity, and theft. 30 female prisoners are charged with kidnapping and abduction, 264 are convicted under the offenses of murder, 14 are charged under the offense of robbery and dacoity. The trial women prisoners are 572 whereas 253 are convicts and 19 are condemned.¹⁶

Mostly Crimes Incarcerated for:

Crimes	Punjab	Sindh	KBK	Baluchistan	Gb	Total
Murder	289	91	63	7	0	450
Narcotics	270	40	31	5	0	346
Kidnapping & Abduction	29	20	19	0	0	68
Robbery & Theft	55	12	0	0	0	67

¹⁵ Kalpana Kannabiran and Ranbir Singh, *Challenging The Rules(s) of Law: Colonialism, Criminology and Human Rights in India* (SAGE Publications Inc 2008).

¹⁶ ‘Crime-Wise Population | Punjab Prisons’ <https://prisons.punjab.gov.pk/crime_wise_population_statement> accessed 23 February 2022.

Unlawful Marriage	0	-	27	-	-	27
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Pakistan communities are often criticized in the world just like other countries in which males play a dominant role to lead every sector, this strong patriarchal trend has impacted the ability of women's decision-making power and has challenged her contribution to society as a mother, sister, or daughter.

Being a developing country even then the system of the country is lacking to protect its women people are classified in the cast, clan, and class and she is the actual problem. Discrimination is strictly prohibited by the law and by the constitution of Pakistan, all the discrimination and class differences have made most of the females insecure and have also negatively impacted her status at every level.¹⁸

In Pakistani society, it's a myth to talk about why women commit crimes, what are the reasons that made them murderers, it's a bitter reality that yes poverty, lack of awareness of their rights, mistreatment from society has forced them to this stage to commit crimes. Women in the community we all are part of are considered victims, due to the crimes committed by men. According to the satisfied information, mostly women are portrayed as victims unfortunately in recent years the increase in the ratio of women prisoners has made the government and system shocked. There should be an investigation into why these women commit crimes so that the system comes up with a possible solution. The "blind trust" on the concept that males are the only protectors of females has raised many questions? If they are considered as the protector of women then why do naïve young girls commit crimes such as murder, theft, abduction, and sex business? Men are expected to be responsible enough when it comes to proving safe and healthy life for women in their homes. this culture of expectation from a single gender is problematic in every way possible, the contribution of women and her series of sacrifices is not appreciated by the members of their families. The identity crisis is another

¹⁷ 'Plight of Women in Pakistan's Prisons REPORT' (n 8) 75.

¹⁸ 'Prisons and Terrorism: Radicalisation and De-Radicalisation in 15 Countries' (ICSR) <<https://www.clingendael.org/sites/default/files/pdfs/Prisons-and-terrorism-15-countries.pdf>>.

debate that why women commit violence, their emotional instability has forced them to commit crimes that include “sex business”.

Discrimination and lack of opportunities

The lack of opportunities in almost every sector is one of the most prominent reasons why women commit an offense. The constant rejection they face from the working-class communities has always proved to be a red sign for young girls who want to overcome poverty and want to live an independent and secure life. Harassment by male colleagues in the workplace has threatened the human dignity of women, the factor of helplessness and having no support from their families has ended up women as criminals.

“Domestic violence, the violence against women is another strong reason that has exploited their dignity and self-respect and this main problem lies in the lower class, where the husbands are financially dependent on their female families, the long struggle of mental exploitation and physical violence tolerance has changed the women victims into the criminal, they are exploited at that stage where they commit murder of their husbands, brother, and close family members and end up under the charges of life imprisonment and hang till death.”¹⁹

Laws that regulate rules for female prisoners (Pakistan Prisons Rules 1978)

There are direct provisions that help the judicial system to interpret these rules and regulate the maintenance of women prisoners. after the 18th amendment of the constitution of Pakistan 1973 on 2010. Provinces have the power to make rules regarding the prisoners.

In this regard the province Sindh is allowed to make rules according to the standards set by Bangkok rules has “Sindh prison rules 2020” in Punjab draft rules are framed and Baluchistan didn't amend these rules including KPK they did not make changes in prison rules regarding the protection of women and children. According to Pakistan prison rules 1978, rule 230 elaborates the clarification of women prisoners which states, “women prisoners will be clarified in the same manner as it is persuaded in the case of males.”²⁰

¹⁹ Adeela Khalid and Nashi Khan, ‘Pathways of Women Prisoners to Jail in Pakistan’ (2013) 3 Health Promotion Perspectives 31.

²⁰ ‘Pakistan Prison Rules 1978’ (data.jpp.org.pk) <<https://data.jpp.org.pk/en/document/ij4ejwvn1e?page=1>>.

The rule strictly clarified the women prisoners as separate from males. There must not be a joint jail, it's a violation of the privacy of female prisoners which is also their fundamental right in the constitution. 1,121 out of 73,242 Prisoners in Pakistan are females, counting for 1.5% half the total prison population. The largest women prison population is in Punjab (727), followed by Sindh (205) and KPK (166). There are only 20 female prisoners in Baluchistan and 3 in Gilgit Baltistan. This should also be noticed that 66.7% of the total female prison population in Pakistan consists of Under Trial Prisoners (UTPs). 62.2% of prisoners in Pakistan are under trial prisoners (UTPs) in Sindh the percentage is 72.2% in KPK it is 78.3% and in Baluchistan, 80% of the women prisoner's population are under trial.²¹

Under the provision of separation of prisoner's rules 231 also clearly clarifies reasons separately however it also focuses on the detention centers of juveniles should be separate from all other prisons, also the rule states as under:

“In a prison containing men as well as women. Prisoners, the women shall be imprisoned in a separate prison, all separate parts of the same prison in such manner as to prevent there seeing, conversing, or holding any communication with the male prisoners.”²²

Women and male prisoners are kept in separate prisons, they are deprived of certain liberties, and of course, sexual relationships are one of the reasons, the drive took half privacy as well.

At least 5,189 prisoners housed in jails across Pakistan are suffering from diseases like HIV /Aids, and hepatitis C said federal ministers for human rights Shireen Mazari while presenting a report before the Islamabad High Court (IHC).²³

Prison Profile	Punjab	Sindh	KPK	Gilgit	Baluchistan	Total
Total female Prisoners	727	205	166	3	20	1121

²¹ 'Plight of Women in Pakistan's Prisons REPORT' (n 8).

²² 'Pakistan Prison Rules 1978' (n 20).

²³ 'Prison Conditions' (*The Express Tribune*, 10 January 2021) <<http://tribune.com.pk/story/2279430/prison-conditions>> accessed 23 February 2022.

Female Population %	1.6%	1.3%	1.7%	-	0.9%	1.5%
Female Prisoners Under Trial	452	148	130	2	16	748
Under Trial %	62.2%	72.2%	78.3%	66.7%	80%	66.7%
No of old age prisoners	42	1	3	0	0	46
No of mothers with children	83	16	29	2	4	134
No of children	126	26	38	1	5	195

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Women who are victims of violence specifically sexual violence face long-time struggles with their reproductive health. Keeping prisons separate for female prisoners is important for their sexual health because the damage ends up with the disease and common cancer and HIV, different studies show that females are at least twice at risk as compared to men when it comes to HIV through sexual intercourse. Women are normally engaged in sex abuse, prostitution before they are part of prisons, this increases the risk of diseases behind the bars.

According to a study on women prisoners in the Russian Federation,

“Between one third and one-half of women arrive in prisons infected with STDs, syphilis. Over 5% of women prisoners are HIV positive. HIV has often been accomplished with hepatitis C. 3.5% of women suffer from active forms of tuberculosis. other widespread health conditions include alcoholism, drug addiction, somatic diseases as cardiovascular and gynecological problems.”

²⁴ ‘Plight of Women in Pakistan’s Prisons REPORT’ (n 8) 7.

The concept of keeping males and women in separate prisons in different countries also directly prohibited by the legal systems has the same aim as Pakistan and its legal system believes in, which is not to compromise with the sexual and reproductive health of female prisoners, the health of women prisoners in Pakistan and on an international scale also believes that women prisoners require particular attention as they face many challenges that had damaged them physically before entering into prisons, such as constant domestic violence, sex working violence and injecting drugs.

Children with Mothers in Prisons

According to rule 326 which is “Children to be allowed to remain with their mothers” states,

“Women prisoners shall be allowed to keep their children with them in prison till they attain the age of three years.”

Further, the amendment in Rule 326 for the provinces Punjab, Sindh, and N.W.F.P states that the women prisoners who are mothers are allowed to keep their children till they attain the age of six years.²⁵

Some of the harsh realities are that when a male(father) commits an offense usually the females take care of his children, but eventually when a female(mother) commits an offense usually families do not support their children and often step back from them, in such cases the state institutions take responsibility of such children and allows women prisoners to keep their children along with them till they attain the age of 6 years in prison.

Keeping children in the prison might affect their childhood in many ways, the psychological stress they suffer throughout leaves a lifetime trauma for the rest of their lives. Raising a child behind the bars is a challenging task for mothers. Children consistently report that “children experience a range of psychological problems during the imprisonment of a parent, inducing depression, hypersensitivity, aggressive behavior, withdrawal regression, clinging behavior, sleep problems, eating problems, running away problems, truancy, poor school grades, and delinquency.”

²⁵ ‘Pakistan Prison Rules 1978’ (n 20).

In addition, “parental separations can be experienced as desertion or abandonment, which can compound distress for children.”²⁶

Rule 326 of Pakistan Prison Rule is not always implemented, according to KPK prison rules, the women prisoners are allowed to keep their children till they attain the age of 8 years inside the prison, the prison authorities must provide them with the best possible maintenance and facilities, which include health facilities, also medical check-ups that would groom them mentally also the facility of religious education no matter what religion the mother and child practice.

There must be no reason for discrimination on race and the cost of the mother and her child. Giving respect to the dignity of the child, the prison rules prohibit that the place of birth on a birth certificate should not affect the identity of the child for the rest of their life. It must not reflect the fact that their mother had committed an offense and they are the ones who would face the stigma of their birthplace when they rejoin society.

According to research by UNODC among “56 female prisoners in Kabul Afghanistan, 78.5% of the women were mothers out of which 43 children living with their mothers in prisons, and other 107 were living with their families are relatives, 9 were in orphanages. 55 children were grown up and living on their own.”²⁷

Variable	Mother with children	No. of children
Karachi	7	10
Larkana	2	2
Lahore	13	16

²⁶ Joseph Murray, ‘The Effects of Imprisonment on Families and Children of Prisoners’, *The Effects of Imprisonment* (2005).

²⁷ ‘Handbook on Women and Imprisonment’ (UNODC) <https://www.unodc.org/documents/justice-and-prison-reform/women_and_imprisonment_-_2nd_edition.pdf>.

Mansehra	1	1
Haripur	6	7
Mardan	3	7
Peshawar	7	10
Multan	7	17
Hyderabad	7	8

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The mother prisoners face emotional disorders and even depression while raising their child in prison, the pressure they suffer about how exactly their child would face hardships in the society after release from prison is a considerable issue. Society, family, friends, and relatives hardly accept them, the legal system must protect the dignity of such children, who are rejected by their family members. The fear of this rejection of children ends up with generalized anxiety which often mother prisoners suffer. The guilt that most of the mothers' prisoners face every day while raising a child in such an environment is a difficult part. The level of stress they take suicide among mother prisoners is one of the most ignorant issues. There must be proper counseling sessions held by a psychologist, who should guide them with possible best solutions about raising their child in an ideal manner. After the separation between the children and mother, the children are stigmatized based on the crimes their mother has committed.

Convicted mother with suckling baby, suspend the sentence because a woman was suffering for want of proper care and medical facilities.²⁹

²⁸ *ibid* 25.

²⁹ *Mst Sitara Bibi v The State* (P Cr L J).

Reproductive health of female prisoners

The reproductive health of female prisoners needs attention from the prison management. It is difficult for pregnant prisoners to give birth in such a toxic environment, there should be an availability of trained paramedical staff. “About 2 and 3 pregnant prisoners were reported from Hyderabad and Multan respectively while in Karachi one pregnant woman was reported. It was reported that 2 pregnant women were released in Karachi, pregnant women are referred out of jail for delivery as no facility is available in jails.”

The federal Shariat court in 1981 during deciding case gave the reference of the famous case of Ghamidiyyah, the Holy Prophet (PBUH) suspend the sentence passed on a pregnant woman till the period of Rizaat not till delivery of child because the decision was basically for betterment and welfare of a child.³⁰

The qualified staff should be appointed in different prisons across all provinces to provide medical care to pregnant prisoners. Proper food should be provided to them throughout their pregnancy duration. The right to health is a basic human right of every woman prisoner, especially those who have conceived. they might have pregnancy difficulty if not provided with care and proper medication. They must not be forced to perform any task inside the prison given by the prison administration until they deliver their child.

Mental health issues of female prisoners

The woman is emotionally damaged after the commission of an offense. women prisoners are forced into sex and face sexual harassment from male guards because of asking favors from them, this is an open threat to their dignity and exploitation of their existence. A review of female prisoners in Pakistan found that 12.5% of the total women interviewed stated that they had faced some form of sexual harassment while in prison (not rape).³¹

There are hardly any facilities inside the prisons including a psychologist who could council such cases. Women prisoners counseling is an important part of jail services, the administration

³⁰ *Hazoor Bakhsh v Federation of Pakistan* (FSC).

³¹ Z Zadeh and K Ahmad, ‘Mental Health Issues of Women Prisoners in Karachi Pakistan’ [2012] undefined <<https://www.semanticscholar.org/paper/Mental-Health-Issues-of-Women-Prisoners-in-Karachi-Zadeh-Ahmad/5f22ed8107f0a56c4acc6c15cd1ff9f77b08e42d>> accessed 23 February 2022.

of prisons of women should take possible measures to provide trained psychologists and should spread possible awareness about mental health and its importance among prisoners.

Self-harm and suicide awareness among prisoners aim to provide an understanding of how important their worth is no matter if they had committed an offense. Prison management must provide short training courses to medical staff so that they must have an idea to deal with crucial cases of mentally ill women prisoners, the team of medical experts should adopt a better strategy to interact with mentally ill patients in prison, their behavior must be soft and polite in a way that the patients should feel easy and safe while communicating with the.

Usually due to fear of jail administration, including male staff and guards, women prisoners hardly open about the depression they suffer through in front of medical staff. There is no psychiatric ward for mentally ill prisoners, but it is a requirement under rule 435 of the jail manual. There are different methods of torture which women prisoners suffer every single day mentally and physically although the legal system of Pakistan and international laws provide possible protection of inhuman treatment also torture of the women prisoners.³²

The implementation of such provisions lacks in Pakistan however this is a violation of anti-torture laws of prisoners. The right to have safe life is a fundamental right under the constitution of Pakistan, the prisoners face mental torture in the forms of the abusive language they face every time while interacting with the staff members and physical torture is in the form of constant rape in prison throughout detention.

Section 54 of the mental health ordinance 2001 states,

“The inspector general of prison, if the accused person is detained in jail, and the board of visitors is any two members of such board if the accused person is detained in a psychiatric facility, may visit him 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.”³³

The chief psychiatrist has pointed an issue that it is the responsibility of jail administration to investigate the patients with mental illness and the prisoners who suffer from depression as well, then the schedule should be made for weekly visits according to the availability of women

³² ‘Pakistan Prison Rules 1978’ (n 20).

³³ ‘The Mental Health Ordinance 2001’ <<http://punjablaws.gov.pk/laws/430a.html>> accessed 23 February 2022.

prisoners and the doctor, they hardly pay attention to them, as a result, these patients remain untreated.

Medical facilities for women prisoners

Medical facilities for women prisoners are commonly poor in Pakistan. According to human rights, activist, and lawyer Asma Jahangir wrote a book named “The Haddood Ordinances, a divine sanction?” on page 137 the author emphasized the lack of medical professionals inside the women's prison in these words,

“a lady doctor is not available in any of the jails in Punjab, except Multan. in ordinary jails, where a large number of (females) under trials are imprisoned, no female doctor is available.”

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But now the situation has changed some improvement done by the government related to medical facilities for women prisoners. Pakistan prison rules 1978 with some exceptions are according to the UN standard minimum rules for the treatment of prisoners.

Rule 28 of Nelson Mandela rules focuses on the necessity of accommodation of women prisoners for their parental and postnatal treatment. The Rules states

“In women prisons, there shall be special accommodation for all necessary parental and post-natal care and treatment. Arrangements shall be made wherever practice is able for children to be born in a hospital outside the prison. If the child is born in prison, this fact should not be mentioned in the birth certificate.”³⁵

According to data, female medical officers are employed in jails of all provinces.

“Punjab has 11 permanent female medical workers visiting female consultants from concerned DHQ and KPK has 5 female medical workers. Sindh has 7 sanctioned medical officers and

³⁴ Asma Jahangir and Hina Jilani, *The Hudood ordinances: a divine sanction? ; a research study of the Hudood ordinances and their effect on the disadvantaged sections of Pakistan society* (Sang-e-Meel Publ 2003) 137.

³⁵ ‘UN Standard Minimum Rules for the Treatment of Prisoners’ (UNODC) 9
<https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf>.

Baluchistan has four medical workers. No female doctors are available in any jail of Gilgit Baltistan.”³⁶

But hospitals in jails have only first aid medical attention.

According to a report presented in the high court by a commission headed by the ministry of human rights of Pakistan in Islamabad high court. Many prisoners suffer from serious illnesses such as hepatitis, HIV, TB (tuberculosis), mental diseases, and other sicknesses. The province wise statics of female prisoners who are suffering from different diseases and sicknesses are following:

Prisoners Illness	Punjab	Sindh	KPK	Baluchistan	Total
Hepatitis	34	1	0	-	35
HIV	2	1	0	-	3
TB(Tuberculosis)	0	2	0	-	2
Mental diseases	8	0	0	-	8
Other sicknesses	27	0	20	-	47

According to statistics 71 female prisoners are suffering from different illnesses.³⁷

According to rule 33 of Bangkok Rules “whereby all staff assigned to work with female prisoners should receive training relating to gender-specific needs of women prisoners”³⁸

³⁶ ‘Plight of Women in Pakistan’s Prisons REPORT’ (n 8) 9.

³⁷ ‘2020 PLD 268 - KHADIM HUSSAIN Versus SECRETARY, MINISTRY OF HUMAN RIGHTS, ISLAMABAD - ISLAMABAD’ 6 <https://pakistanlaw.pk/case_judgements/632/khadim-hussain-versus-secretary-ministry-of-human-rights-islamabad?search=Damages&searchMode=> accessed 24 February 2022.

³⁸ ‘BangkokRules-Updated-2016-with-Renumbering-SMR.Pdf’ 19.

including health, emotional and psychological needs, and dignity.

Neglect in fulfillment of medical needs violates article 9 of the constitution because it is the right of every prisoner to have access to medical care and medical treatment shall be without discrimination.

Prohibition of torture of women prisoners

Pakistan took its first step to declare torture as a crime, this was the result of a history of custodial death and humiliations, mistreatment of prisoners around the country was facing. On 14th July 2001, justice project Pakistan and the world organization against torture introduced the adoption of torture and custodial death (Prevention and punishment) bill 2021 by the senate of Pakistan.

The torture adopted by custodial officials is another debate it is taken for granted around the country while the bill prescribed the penalties of committing torture as 10 years of imprisonment and charges fine of amount 2 million rupees for any public servant.

The founder and executive director of justice project Pakistan mentioned “Torture is accepted as an inevitable fault of law enforcement and preparators typically go unpunished.”³⁹ the executive director also added that if the torture and custodial death bill 2001 was accepted and implemented properly, this would provide a real legal remedy for the victim. The abusive behavior of police and jail administration must be taken into accountability women prisoners suffer from living their lives in peace, the mistreatment and torture can be in many ways and some of them are beating harassing, and raping then there's a series of the struggle of NGOs and human rights activist also advocates who have been raising their voices against custodial torture and torture in prisons. The constitution of the country prohibits torture against any human being and “Pakistan is obligated under international law to refrain from torture and ill-treatment of prisoners in custody and to provide female victims of such abuse with equal protection of the law.”

According to the 1988 survey in Punjab reports about women prisoners, including women who are convicts and the other pretrial females. 78% was the total ratio who stepped forward and

³⁹ ‘Pakistan Takes the First Step towards Making Torture a Crime | OMCT’
<<https://www.omct.org/en/resources/statements/pakistan-takes-the-first-step-towards-making-torture-a-crime>>
accessed 24 February 2022.

talked about the mistreatment they had faced in the custody of police among which 72% claimed that they suffered from sexual abuse from the police. In 1991 local newspapers reported violence against them, according to it 20 alleged cases were of rape, 12 of these cases also highlighted that police official were also involved.

International standards of women prisoners in India

Maneka Gandhi (2018) minister of women and child development in India produced recommendations also solutions to prove the standard of living behind the bars for women. She also emphasized the purpose of why the prisons should have better conditions, the report included many important issues that increasing in India often fails, such as pregnant women face lack of health treatment.⁴⁰

The report suggested a possible solution to the national prison manual 2016 because most women prisoners face mental illness issues due to extreme pressure, one of the suggestions was to hire female counselors and psychologists so that the prisoners could feel safe to share their mental issues. There is another pressure on women prisoners which is concerned about how society would accept them after their bail.

The constitutional status of women prisoners in India

The supreme court of India in the case of Hussain Ara Khatoon v Home Secretary State of Bihar (1979 AIR 1369).

The bench of the case included Bhagwati, P.N., Pathak, R.S Koshal, A.D.

This case is one of the landmark cases in the history of India, which was decided on the 9th of March 1979 judgment highlighted how important it is to grant speedy justice to the people. The speedy trial around the world is recognized as a fundamental right. Article 21 was the main point in the whole judgment. Interpretation of Article 21 was elaborated by the bench in the following words “what fear can these lost souls have in the judicial system which denies them a bear trial for so many years and keep them behind bars, not because they are guilty, but because they are poor to afford bail and the courts have no time to try them.” Article 39 A of

⁴⁰ ‘Report on “Women in Prisons” Launched by the Ministry of Women and Child Development.’ <<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1536513>> accessed 24 February 2022.

the constitution of India provides “for free legal aid to the poor and weaker sections of the society and ensures justice for all.”⁴¹

The constitution of India contains no such direct provisions that protect the rights of women prisoners, but by the act of judicial interpretations, some of them are protected under certain provisions. Article 14 of the constitution of India states, “the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” The right to equality is the fundamental right for every individual living in society today.⁴²

From articles 12 to 35 of the Indian constitution fundamental rights are highlighted. the right to practice religion, this freedom of speech, freedom of expression and the right to become a member of an association and the right to have education are the rights for a common public which includes the women prisoners as well.⁴³

Through the creativity of the Indian judiciary, some of the basic rights are granted to women prisoners that honor the existence and dignity which include the right to legal aid right to live with human dignity, right to have an interview with a friend, family, lawyer and rights against inhuman treatment and article 15 of the Constitution of India all states "the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."⁴⁴ whereas article 21 of the Constitution of India focuses on various rights that include the right to free aid, rights against custodial violence and death in lock-ups.

Rape and sexual assaults of women prisoners in India

Rape and sexual assaults are a violation of the dignity of any woman, somebody who is free from bars or someone behind the bar has a right of equal protection of real life. Women prisoners in India face rape and sexual assault by the jail administration or by the custodial staff, this is an open violation of human dignity.

⁴¹ Rajeswari Rajesh, ‘Case Analysis: Hussainara Khatoon & Ors. v Home Secretary, State of Bihar (1979)’ (6 June 2021) <<https://www.legalbites.in/case-analysis-hussainara-khatoon-1979/>> accessed 24 February 2022.

⁴² ‘Article 14 of the Constitution of India’ <<https://iitr.ac.in/internalcomplaintscommittee/annexure.pdf>>.

⁴³ ‘Fundamental Rights (Article 12 -35) - List of Fundamental Rights’ (BYJUS) <<https://byjus.com/free-ias-prep/fundamental-rights/>> accessed 24 February 2022.

⁴⁴ ‘Article 15 in The Constitution Of India 1949’ <<https://indiankanoon.org/doc/609295/>> accessed 24 February 2022.

Unfortunately, such cases hardly came to the limelight or even the victims behind the bars did not demand justice due to the pressure of the jail authorities. right to access to justice is everyone's fundamental right as mentioned in article 14 and article 21 of the Indian Constitution.⁴⁵

The victims of rape and sexual assault (women prisoners) go through mental disorders due to the unethical authorities they face on regular basis. rape is an offense and somebody who commits this offense is punishable by the justice system. due to the lack of communication between German prisoners and their families, it's hard for them to talk about the torture they suffer every day. On the other hand, if the constitution of India ensures to protect the life of convicts under trial and criminal then why did the woman behind a part says the threat to their life and fundamental rights? The justice system is, however, lacking to provide them secure life, the fear to live in the moment peacefully is common for the victims (women prisoners) in India, this part is being ignored for a very long time now. There is no pressure of accountability on the people who rape such victims.

Section 376 of the Indian penal code consists of provisions directed to the punishment of rape “clause 2 section 376 intends to take within its ambit the custodial officers and defines circumstances under which they can be charged with an offense of rape against women.”

section 376(2)(A) says “a police officer is said to have committed rape against women if the women were present within the limits of the police station of which the police officer is appointed, or the women were within the premises of that station or if the women were in the custody of the police officer or a subordinate police officer who was under the police offices.”⁴⁶

The protection under the provisions and action must be the state's responsibility to look after the mistreatment done to the women prisoners. the justice system should be more effective for the accountability of jail administration.

Kiran Bedi in her book addresses the issue of women prisoners in these words, “women prisoners were subjected to the most humiliating experience which robbed them of what little dignity and self-respect they reached the prison with. It must be considered some sort of miracle

⁴⁵ ‘Constitution of India’

<https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2014> accessed 24 February 2022.

⁴⁶ ‘Section 376 in The Indian Penal Code’ <<https://indiankanoon.org/doc/1279834/>> accessed 24 February 2022.

that these women managed to cling on to their sanity, despite the overwhelming odds they faced.”⁴⁷

Women around the world don't deserve to be treated like animals. women in a society where males are dominant in varieties of sectors can hardly make space to live their lives with dignity. the massive amount of pressure daily on women prisoners only leads to a mental state of abuse, they are terrified every day due to this extreme pressure. the children who live within the present with their mother are observed that affects situations happening around them, they are unaware of circumstances that why their mothers are in inaccessible due to imprisonment. and how they suffered torture in their presence. this may impact the mental grooming and growth of the child as well the mother is not just only survival behind the prison but also the child living with her, both are victims.

One of the leading cases in India is *Sunil Batra v Delhi administration* 1978 4 SCC 409 ⁴⁸ the case is a landmark case in the legal history of India. Constitution and statutory provisions discussed the prison act 1984 article 14, 15, 19, 21, 32, and 226 of the constitution of India, 1949 and the Punjab prison manual. Many important questions were raised in this case, keeping in view the condition of the prisoners in India, the torture they suffer, and their living standards. The convict under the death sentence was the petitioner in this case, wrote a letter to the judges of the court in that he addressed the issue of the difficulties the prisoners face regularly he also mentioned the mistreatment they faced by the police authorities. The letter was in favor of prisoners and their rights, they demanded fundamental rights under the constitution of India. The letter written by the petitioner was then considered as a writ of habeas corpus. The senior bench of judges decided to address the court under article 32 of the constitution of India. ⁴⁹

Article 32 of the Indian constitution states the following provision “individuals may seek redressal for the violation of their fundamental rights... Constitutional weapons, known as writs for the enforcement of such rights.”⁵⁰

⁴⁷ Kiran Bedi, *It's Always Possible: One Woman's Transformation of Tihar Prison* (Himalayan Institute Press 2006).

⁴⁸ ‘Sunil Batra vs Delhi Administration on 20 December, 1979’ <<https://indiankanoon.org/doc/778810/>> accessed 24 February 2022.

⁴⁹ ‘Prem Shankar Shukla vs Delhi Administration on 29 April, 1980’ <<https://indiankanoon.org/doc/853252/>> accessed 24 February 2022.

⁵⁰ Nirmalendu Bikash Rakshit, ‘Right to Constitutional Remedy: Significance of Article 32’ (1999) 34 *Economic and Political Weekly* 2379.

The inhumane condition in the prison was the focus in this case. The court in the judgment also mentioned that it is the responsibility of the code to protect the rights of prisoners under the constitution, especially under articles 14, 19, and 21.

The right of the prisoner shall be protected under the constitutional provisions of India article 14, 19, and 21. But the court issued a duty to the district magistrate to visit the prisons on the weekly basis due to the poor condition and inhumane torture the prisoners faced, this decision brought a revolution, as the writ highlighted the most important discussion in Indian history.

The horrific incidents inside the prison left many questions unanswered, but the possible solution from the code was to recognize the dignity of the prisoners as important as any normal person has. The code expected a responsible implementation of the prisoner's law by the authorities without any compromises. There shall be no torture inside the prisons, the medical care shall be provided to the prisoners to protect their right to a healthy life. All state governments shall take care of all necessities of the prisoners and also checks and balances should be the top priority of the system to maintain peace behind the bars. That case emphasized the duties and responsibilities of the jail superintendents, they must respect the dignity of the prisoners. The court also decided the right to have access to courts, without any factor of discrimination every common person has a right to seek justice from the courts.

One of the women prisoners named Meena who had spent four years of charges in Shahjahanpur district jail mentioned in her conversation that was a lack of peace, everyone was busy on their own in a way that unfortunately there was no silence, this was ultimate torture for the prisoners, everyone was so much engaged in interfering each other's business, she also mentioned sometimes she missed to be all alone when nobody could judge her around, look at her or even touch her without her consent. Every time people seek peace in the prison, they are badly treated by the jail authorities. There was hardly anyone who could understand the pain the prisoners were going through. Many of the women prisoners used to cry and grieve over their existence in jail, she also added about the living standards behind the bars, Mina continues, she recalls the memory in 2002 when there was a shortage of water supply and how she couldn't manage to take bath and she along with her fellows used to take one in four or five days, she mentioned that not everything is according to your requirements, the food, the sleeping schedule and also not even your bathing time. Another prisoner named Leela also shares her experience at Byculla present, "how the expectation tonight of privacy is being done

inside the jails. The gene decided to install CCTV cameras inside the women prisoner's area. This disappointing act was justified as a check and balance on them," several of us prisoners opposed this move-we said if you want to install CCTV cameras, you should do it in the offices, that we're violence against prisoners and enemy exchange of money as bribes take place," she says" we were fine with the cameras in the outside"⁵¹

Lack of women prisons in India

The overcrowding issue of prisoners is an ignorant issue, there are insufficient prisons as compared to the increasing ratio of prisoners. There are 1,412 prisons in India, according to the 2018 prison statistics India report, the table shows the wider understanding of the issue.

Jail's Name	Number of prisons
Sub jails	732
Women jails	20
Central jail	137
District jail	394
Special jail	42
Borstals schools	20
Open jails	64

⁵¹ "“Buzz of a Mosquito... But With the Sound of Grief”: The Lives of India's Women Prisoners' (*The Wire*) <<https://thewire.in/women/india-women-prisoners-rights>> accessed 24 February 2022.

Other jails	3
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Search and medical examination of prisoners in Pakistan

Rule 19 and 21 of the jail manual deals with the search and medical examination of prisoners before admission in prison.

Before admission in prison medical officer shall examine the physical and mental condition of women prisoners. Search and examination by women warden. Medical officers detect unexplained injuries and wounds and entered these in the injury register of prison. but in practice, no history of sexual abuse and violence is reported. In Gilgit no health screening of female prisoners, they are probably sent to DHQs in doubtful cases.

The human rights committee of the united nation in its general comment 16 on article 17 stated that

“So far as personal and body search is concerned, effective measures should ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched. A person being subjected to a body search by state officials are medical personal acting at the request of the state, should only be examined by persons of the same sex.”⁵³

Search and examination of female prisoners aim to make sure safety measures of prisons precautionary measures are taken before female prisoners enter the prison, women warder should be professional while dealing with prisoners. She must be aware of examination ethics. The dignity of the prisoner should be her topmost priority.

⁵² ‘Telling Numbers: Prison Space Grows, but Prisoner Count Grows Faster, Data Show’ (*The Indian Express*, 13 January 2020) <<https://indianexpress.com/article/explained/prison-space-grows-but-prisoner-count-grows-faster-data-show-6213175/>> accessed 24 February 2022.

⁵³ ‘CCPR General Comment No. 16: Article 17 (Right to Privacy) The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation’ (UN Human Rights Committee (HRC), 8 April 1988) 2 <<https://www.refworld.org/docid/453883f922.html>>.

Right to sue in the respect of torts committed in prison

Islamabad high court in the case Khadim Hussain vs sectary, ministry of human rights, Islamabad, and others.

“Prisoner had a right to sue in the respect of torts committed in a prison ---action could be brought by a prisoner against the prison authorities and the state for false imprisonment, breach of statutory duty, violation of fundamental right, degrading and inhuman treatment, misfeasance in a public office is on the ground of negligence.”⁵⁴

It is a famous maxim that “Ubi jus ibi remedium” this means that “where there is a right there is a remedy.” Where wrong is committed against a prisoner he gets remedial right so his grievance may be redressed. Such a person can seek exemplary or punitive damages from the court which according to lord Derlin can be against arbitrate, unconstitutional and oppressive acts of civil servants. If there are under trial prisoners, when they are presented before the court on the hearing can complain judge regarding ill-treatment in prison.

Rights under Constitutional Law

A writ is the prerogative of superior courts which they can issue against public functionaries when any right of people gets violated. Under Article 184 (3) of the constitution, the writ can be filed in the supreme court, and under article 199 of the constitution, the writ can be filed in the high court. For prisoners damages under tort law may not be a sufficient remedy as they are in opposition where their rights can be protected easily. So, a writ should be an adequate relief for a prisoner whose right is being violated. Every state must protect the people. The people include citizen naturalized people, foreigners, and the people incarcerated under article 9 ensures the right to life of the people. Right to life does not only ensures life in a narrow sense but also conditions that are necessary for a healthy and good life.

There is inhuman treatment in prisons that is a sheer violation of article 14 of the constitution that ensures inviolable dignity. The mere fact that a person has committed a crime in past and serving the sentence does not make him less of a human being and he or she must be dealt with

⁵⁴ ‘2020 PLD 268 - KHADIM HUSSAIN Versus SECRETARY, MINISTRY OF HUMAN RIGHTS, ISLAMABAD - ISLAMABAD’ (n 37).

per dignity of a human being.

Bail and suspension of sentence of women prisoners

Section 497 (1) of criminal procedure code 1898⁵⁵ is about the bail of women. Bail is easy for women as compared to men. In Pakistan, the law of granting bail is flexible for women in minor offenses because bail is given to females as a matter of right.

The first proviso of section 497 Cr.P.C is about the bail of juveniles, women, and old age persons.

The proviso is “provided that court may direct that any person under the age of sixteen years or any women or any sick of an infirm person accused of such an offense be released on bail.”⁵⁶

Bail cannot be claimed as of right after the conviction. Bail can be granted as a matter of right in bailable offenses. When a woman is arrested in a non-bailable offense, she must produce before a court in 24 hours and a court can release her on bail on the first hearing. The Law of bail for women becomes more flexible and due to these criminals or gangs using women as the carrier and on the back, they act as abetter. The court cannot grant bail if the appearance of guilty of an offense is punishable with the death penalty and life imprisonment. Court has power due to section 497 of Cr.P.C, release on bail any women but in the practice, the situation is completely due to gender.

Many women offenders are poor illiterate and unaware of their legal rights that are guaranteed by statutes and the constitution. Poor offenders cannot approach legal aid and they even do not hire a lawyer. Many women are suffering in prison because they cannot pay the expenses of lawyers.

Many women offenders even cannot know there is an option of suspension of sentence under section 426 of Cr. P.C after conviction.⁵⁷ Even most women prisoners cannot file bail and appeal in jail because they have no access to their legal heirs and sometimes legal heirs neglect the offender due to community pressure or due to financial issues.

⁵⁵ ‘CODE OF CRIMINAL PROCEDURE (ACT V OF 1898)’.

⁵⁶ ‘Code_of_criminal_procedure_1898.Pdf’ 173.

⁵⁷ ‘CODE OF CRIMINAL PROCEDURE (ACT V OF 1898)’ (n 55) 159.

In some cases, courts grant bail or suspend the sentence then women offenders do not have surety bonds. The state must pay surety from the social welfare department. In some cases, NGOs help women offenders in bail and suspension of a sentence because they have their legal team to help.

The Punjab legal aid act 2018 makes for legal aid of poor offenders but in practice, this act is not applicable.⁵⁸

Courts mostly grant bail to women offenders with suckling babies, pregnant women easily for better care of the child.

“Lady convict was given birth to a baby in jail. Not in the interest of the baby to be kept in jail, sentence suspended.”⁵⁹

in this case, the court suspends the sentence for the betterment of the child and mother because there are not sufficient medical facilities in jail where pregnant women can survive. In the latest case Islamabad, the high court granted bail to a woman 8 months of pregnancy.⁶⁰

The court always keeps in view the medical and physical condition of the offender. Proper care and medical facilities are not available in jails that are dangerous for mothers and newborn babies.

The accused was female with an advanced age of 70 years. Entitled the female accused to be released on bail. (2008 YLR 2262)⁶¹

Women prisoners in international law

International law prohibits any act that is considered as a humiliation of dignity of any human. article 7 of the 1966 International covenant on civil and political rights states that “no one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.”

⁵⁸ ‘The Punjab Legal Aid Act 2018’ <<http://punjablaws.gov.pk/laws/2711.html>> accessed 25 February 2022.

⁵⁹ ‘Liaquat and Another v. Pakistan | Global Health & Human Rights Database’ <<https://www.globalhealthrights.org/liaquat-and-anr-v-pakistan/>> accessed 25 February 2022.

⁶⁰ *Naseem Bibi v Gull Faraz and another* (Islamabad).

⁶¹ *Mst Haleema Mai v The State* (Peshawar).

Whereas Article 10 (1) states that “all persons deprived of the liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁶²

No human deserves to be subjected to mistreatment and torture. Everyone has equal status in the eye of the law, there is no discrimination considered due to the difference of class, caste, race, and sex. Torture against any human is an exploitation of their dignity, this exploits women prisoners' mental health, despite considering that their liberty and freedom is deprived by the law temporarily it does not mean that the deprivation of their rights allow jail authorities and police officials to make them suffer physical and mental pain.

Degrading treatment violates their human dignity it is considered an illegal activity around the world, and it is also prohibited under any circumstances. Torture in custody includes acts like bone-breaking, putting hot water on the air-sensitive areas, forced nudity which is often done to females, sleep deprivation, rape, and dehydration. These are the most common ways that police officials in custody usually adopt to obtain information for incidents and forceful confessions in the court.

Torture leaves severe trauma which causes long-lasting effects on the victim's mental and physical health. this is another challenge that women in custody and prison often face.

Article 1 of the declaration on the protection of all persons from being subjected to torture and other cruel, inhumane, or degrading treatment or punishment (1975) defines torture in the following words

“Any act by which severe pain or suffering whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or third person information or confession, pushing him for an act that he has committed or is suspected of having committed or intimidating him or other persons. It does not include pain or suffering arriving only from inherent in or incidental to, lawful sanctions to the extent consistent with the standard minimum rules for the treatment of prisoners.”⁶³

⁶² ‘OHCHR | International Covenant on Civil and Political Rights’

<<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> accessed 25 February 2022.

⁶³ ‘OHCHR | Declaration on the Protection of All Persons from Being Subjected to Torture’

<<https://www.ohchr.org/en/professionalinterest/pages/declarationtorture.aspx>> accessed 25 February 2022.

the treatment in which the behavior of the prison authorities is cruel, and not a compromising behavior. Degrading treatment does not include any physical suffering, but mental pain. Women prisoners are asked to change their clothes in front of others due to the lack of privacy, this is disturbing for them, also often the jail administration uses abusive language with the women prisoners and their children which is intolerable for them.

Body searching of women prisoners by the warden (female) is humiliating mostly. The improper touching on different parts of the body is extremely disrespectful, many women prisoners suffer from harassment and sexual assault before they enter the prisons, which is traumatizing in the first place for them but when they have been imprisoned the story of many are repeated it, humiliating someone's body intentionally is also considered as torture.

Article 7, International Covenant on Civil and Political Rights

“No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhumane or degrading treatment or by punishment.”⁶⁴

Human rights defender Nerges Mohammadi was detained in Iran prison where she suffered humiliation in the form of sexual abuse and harassment. This discussion took place on May 27 on the clubhouse social media app with a group of victims with similar stories. She added in the conversation that people suffered torture and inhumane treatment based on their gender. she told about the life behind bars, she says she observed female prisoners suffering from mental breakdowns and the root cause of this problem was the harassment and sexual assault they used to face. Women prisoners around her were going through the worst, throughout her detention duration. Mohammadi is the spokeswoman of the defenders of the human rights center, an organization that is now banned in Iran due to raising voices on the most controversial issues. The co-founder of the organization is Ebadi. Her release took place when the United Nation and international human rights groups around the world showed up their concerns and pressured the Iranian government to release her on an immediate basis. She couldn't spend a year from the release date and was taken into custody for raising her concerns regarding the condition of women prisoners in Iran. She was punished with a new sentence of

⁶⁴ ‘Article Seven, International Covenant on Civil and Political Rights | Encyclopedia.Com’
<<https://www.encyclopedia.com/science/encyclopedias-almanacs-transcripts-and-maps/article-seven-international-covenant-civil-and-political-rights>> accessed 25 February 2022.

30 months in prison and 80 lashes on the charges of “spreading propaganda”, “defamation” and “rebellion against the prison authorities.”⁶⁵

UN Bangkok rules of women offenders and prisoners

“More than 100,000 women and girls are held in the prison around the world. Only 2.9% on average, women prisoners have lessor ratio in national prisons.”⁶⁶

The increasing population of women prisoners is increasing day by day as compared to the ratio of men.

In 2010, The United Nations adopted the rules for the treatment of women prisoners and non-custodial measures for women offenders (the Bangkok Rules) the rules were adopted to provide rights and protection to them under these rules.

The focus of the Bangkok rule is to reduce imprisonment globally, also to provide better facilities for two women behind prisons, to promote awareness about their legal rights, and adopt the possibility best ways to promote non-custodial alternatives imprisonment.

The United Nations rules for the treatment of women prisoners and non-custodial measures for women offenders (the Bangkok Rules) were adopted by the United Nations General Assembly in December 2010. These rules mainly bring attention to all principles which were highlighted in the United Nations conventions and declarations, these rules are the first instrument that addressed the urgent need of not just protection to rights of women prisoners but also emphasizes the role of justice agencies, the state government, and administration of prison four taking measures to protect the dignity of prisoners, including women and children.

Part 2 of UN Bangkok rules deals with:

“Rules applicable to special categories relate to the classification and treatment of special categories of inmates; For example, inmates who have been victims of violence, pregnant

⁶⁵ ‘Women Share Stories Of Sexual Abuse In Iranian Prisons’ <<https://www.rferl.org/a/women-sexual-abuse-iran-prisons/31282808.html>> accessed 25 February 2022.

⁶⁶ ‘UN Rules for the Treatment of Women Prisoners and Non-Custodial Sanctions for Women Offenders (the Bangkok Rules)’ <<https://www.penalreform.org/wp-content/uploads/2016/07/BangkokRules-Updated-2016-with-renumbering-SMR.pdf>>.

inmates, and ethnic and racial minorities are indigenous inmates.”⁶⁷

The aim of the criminal justice system in specific and of state and society, in general, should be to reform the criminal than punish him. United Nations realized these formulated rules in December 1990. These rules are united nations standard minimum rules for non-custodial measures (the Tokyo rules).

These rules provide for both pre-trial and post-trial stages, i.e., after sentence. for pre-trial stages, the Tokyo rules lay that the agencies involved in the criminal justice system including police, the prosecution should have the power to release on accused if they consider that the perusal of the case is not necessary.⁶⁸ Further, the Tokyo rules lay that a standard should be laid out to establish which case is to be pursued or not. This setting of a standard shows that Tokyo rules not only aim to avoid detention but also to establish a rule of law.

It is also laid that for petty crimes, the persecution should impose non-custodial measures. Tokyo Rules further suggest that pre-trial detention becomes inevitable, the inmates should be treated humanely. This principle is not new to most legal systems including Pakistan holds that the dignity of everyone is inviolable.

For the post-trial stage, the rules suggest that there should be an unbiased, objective social inquiry report that contains social information of the offender with regards to crimes committed and the pattern of Commission of crime. search I report should be available to judge. The judge should have the power to impose non-custodial measures to avoid detention. It has been suggested by the rules that there should be a measure for did you mean integrate no fingers in society. such a system of early release and reintegration is also available in Pakistan which is done through parole and probation. To conclude, Tokyo rules provide a framework for a criminal justice system that rehabilitation of offenders and society.

Conclusion and recommendations

There is no doubt that the prisoners are deprived of their basic rights but not from the fundamental rights they are human beings at the end of the day they must enjoy a dignified life. Illiteracy is one of the most prominent factors of attempting offenses government must

⁶⁷ *ibid.*

⁶⁸ ‘UN Standard Minimum Rules for the Treatment of Prisoners’ (n 35).

introduce schemes that could help females to overcome poverty. The condition of women prisoners is miserable and pathetic, the government must introduce training for the jail staff members and religious education should be made mandatory for women prisoners, they should be access to justice for all. The government needs to focus on the implementation of the prisons law there is an urgent need for more prisons in the country to overcome the problem of overwhelming prisoners, it has been a major issue. The condition of central jails is poor and disappointing. Adalia jail provides better facilities to prisoners as compared to the rest of the jails. The doctor should be trained for examining the women prisoners during their pregnancy duration. There is a need for training psychologists who must be trained in such a way that they could help women prisoners suffering from pressure and anxiety. Their training could include communicating with such patients who have been victims of torture in jails. Pakistan has been violating different provisions of the Conventions on the elimination of all forms of discrimination against women (CEDAW) and the convention on the rights of the children (CRC).

The most pathetic situation of the society we live in is that we hardly accept women after they are released from the jails. The women prisoners should be taught some skills to run small businesses and earn money for their families after completing the detention period.

Their cases should be resolved as soon as possible by the courts. The prisons should be divided separately for women and men, the prisons must be constructed in a way that there is privacy for all. Mother prisoners should be granted rights, there should be a facility of education for the children of women prisoners.

The medical staff is not satisfactory it must be improved, and the medical staff members must visit the mothers and newly born `children. The counseling of women prisoners is important in a way, that they must not attempt suicide and self-harm.

National legislation should introduce laws that could help prevent sexual assaults behind the bars. Torture must be banned in police custody; this needs severe mental disorder and depression. Speedy justice should be ensured, proper enforcement of prisons laws is important on an urgent basis.