Community Services Viz-a-viz Penalization An Emerging trend

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Developments in alternative sentencing

Overview

In 2016, Pakistani prisons had 84,315 prisoners. Punjab jails held 49,603 prisoners against a capacity of 23,617, Sindh 20,308 against 12,245 and Khyber Pakhtunkhwa 11,200 against a capacity of 7,547 Of the 1,497 total female prisoners, Punjab had 920 women, Sindh 249, Khyber Pakhtunkhwa 309, Balochistan 18 and Gilgit-Baltistan one woman in prisons.

About 70 percent are under trial prisoners.

Pakistan's prison population

	Total male population	Total female population	Total prisoners	Total capacity
Punjab	48,683	920	49,603	23,617
Sindh	20,059	249	20,308	12,245
Khyber Pakhtunkhwa (till Nov-2016)	10,891	309	11,200	7,547
Balochistan (till Nov-2016)	2,798	18	2,816	2,585
Gilgit-Baltistan (till Nov-2016)	387	1	388	-
Total	82,818	1,497	84,315	

Total capacity: about 46,000, total prisoner 84,315
Female prisoners and juveniles

- **According to a report by the Ministry of Interior published in October, of the 939 women incarcerated in jails in Punjab at the time, 110 were accompanied by their children. Of these 110 women, 60 were under trial, 45 had been sentenced while five were facing the death penalty. Efforts should be made for maintenance and protection of children of incarcerated mothers outside the prison once they are of school-going age. Various reports about children of incarcerated mothers recommend that all children of school-going age be shifted to foster homes for a nurturing environment prisons lack in. In September, a district and sessions judge ordered such children sent to SOS village in Lahore. Their mothers would be able to meet them at the village once a week. Four children were immediately shifted to SOS village. The consent of the parent should, however, be obtained before any such action.**

- A recent Law and Justice Commission report states that since 2013 to August 2016 trial courts have released 80,116 offenders placed on probation in Punjab. In Sindh, 2,060 convicts while 4,278 convicts in Khyber Pakhtunkhwa have been placed on probation during this period. In Balochistan, this number is 194. According to the report, the Punjab government has released 527 convicts on parole since 2013, the Khyber Pakhtunkhwa government has released 18, Sindh (7) while 41 offenders have been released on parole in Balochistan.
- "About inmates: SC orders report on non-compliance of parole laws", The Express Tribune, October 28th, 2016

- **The report also recommended that the top court issue directions to all jail superintendents to identify eligible under-trial prisoners who can be released on parole so that their cases can be processed on fast-track basis. "High courts may be asked to issue directions to all criminal courts to give reasons in their judgments as to why the benefit of probation is not being extended to a convict who is, otherwise, eligible for release on probation," says the report.**

The commission suggests that the procedure for making a request for parole should be simplified so that more prisoners could be released for working not just as domestic servants but also in industry, trade and other commercial institutions. The report also recommends that appropriate wages should be paid to working parolees, enabling the government to earn revenue. Probation and parole officers should be activated and asked to visit jails frequently for conducting inquiry and submit their report to facilitate courts as well as provincial governments in considering the cases of deserving convicts. Provincial justice committees headed by respective chief justices are mandated to strengthen the criminal justice system; therefore, these bodies should also play their roles in making both the laws effective. Likewise, placing names of probation is a discretionary sentencing power of courts; therefore, judicial officers must provide reason(s) in their judgments while rejecting the cases prima facie fit for probation.

Key developments in alternatives to imprisonments since 2000

Europe

Pre-trial alternatives

- European Convention on Human Rights -- Article 5 and the case law of the ECtHR prohibits pre-trial detention except for the purpose of bringing the accused person before the competent legal authority on reasonable suspicion of having committed an offence or when it is considered reasonably necessary to prevent their committing an offence or fleeing. The presumption under the ECHR is that the accused should remain at liberty before trial and that pre-trial detention can only occur if it is justified by relevant and sufficient reasons, such as:

- a risk that the accused person will fail to appear at trial
- a risk of interference with evidence or witnesses or other obstruction of justice
- a risk that the person will commit a further offence while on bail
- a disturbance to public order would result, or
- There is a risk of harm against which the accused person would be inadequately protected.

- **Article 9 - The International Convention on Civil and Political Rights**
- **1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.**
- **2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.**
- **The Constitution of Pakistan articles 9-10 and case law on arbitrary detention**

- **Some recent developments in Europe**
- According to a European Union study some of the states introduced measures designed to reduce numbers remanded in prison. Usually, where pre-trial detainee numbers fell significantly, so too did total prisoner numbers. Several states achieved striking reductions in the rate per 100,000 of prisoners detained pre-trial.
- Legislative and procedural reforms were the main path to success.
- Alternatives to imprisonment in Europe

- **Greece and Italy are unusual in that their systems feature 'rehabilitative' measures at the pre-trial stage, involving probation supervision or similar interventions before any finding of guilt. In Italy's case, one such measure, the messa alla prova, is held out as an example of good practice (pre-trial probation capable of nullifying the criminal prosecution) and is therefore described in section 5. For its part, Greece has introduced pre-trial measures involving mediation, diversion, and programme participation (although these are in practice rarely used). In both cases the successful implementation of the pre-trial 'alternative' can mean a complete end to the prosecution and no further penalty.**

- **Other countries including the UK and France also enable pre-trial defendants to access addiction treatment or similar programmes during the pre-trial phase but – in contrast to the abovementioned schemes – participation is commonly ordered as a condition to release pending trial. The measures are aimed at ensuring participation at trial or preventing a further offence, rather than diverting from, or potentially ending, the criminal justice process. Despite the requirement of consent, the conditionality sets this approach apart from the Italian and Greek examples.**

Several states have adapted their use of alternatives to pre-trial detention over this period, changing their systems to bring greater efficiency into the conditional release process and reduce the numbers needing to be detained. In Latvia, for example, legislation came into force in 2005 improving access to pre-trial alternatives and imposing limits on the use of detention pre-trial. Generally the use of money bail or personal securities has fallen significantly, perhaps due to the widespread difficulties many people face in coming up with sufficient funds.

Many states have introduced, or extended their use of, electronic monitoring as a core element of conditional release pre-trial. England and Wales have used it extensively throughout the period since 2000. Portugal introduced it on a trial basis from 2002 – 2004 and it is now widely used pretrial. In France it is routinely ordered as a means of imposing a curfew or house arrest. Greece ran a limited pilot of electronic monitoring with home detention in 2013, but this achieved almost zero take-up.

- **Concerns**
- privacy and data safety - the use of electronic monitoring (now accompanied in some states by GPS tracking)
- expansion in penal control - virtual prison
- Alternatives to prison sentencing
- **1.** community sanctions (often involving unpaid work for a stated number of hours or days)
- **2.**supervision or control without treatment or rehabilitation (for example, curfews enforced by electronic monitoring, suspended custodial sentences) and
- **3.** supervision or control with treatment or rehabilitation (for example supervised access to training, education, drug or alcohol treatment, mental health care or restorative justice, often with regular probation supervision included.

- **Many of the international legal instruments cover the subject matter of alternatives to imprisonment.**

- **The United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) were exclusively formulated for this purpose.**

- **Rule 1.5** of the Tokyo Rules encourage member States to "develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender."
- **Rule 2.3**, states that, "in order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system should provide a wide range of non-custodial measures, from pre-trial to post-sentencing dispositions."
- **Rule 2.5** recommends that States give consideration to dealing with offenders in the community, avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law. They also urge States to develop new non-custodial measures and to closely monitor and systematically evaluate their use.

- **Rules 8 and 9** of the Tokyo Rules talk about sentencing dispositions: “8.1 The judicial authority, having at its disposal a range of non-custodial measures, should take into consideration in making its decision the rehabilitative needs of the offender, the protection of society and the interests of the victim, who should be consulted whenever appropriate. 8.2 Sentencing authorities may dispose of cases in the following ways: (a) Verbal sanctions, such as admonition, reprimand and warning; (b) Conditional discharge; (c) Status penalties; (d) Economic sanctions and monetary penalties, such as fines and day-fines; (e) Confiscation or an expropriation order; (f) Restitution to the victim or a compensation order; (g) Suspended or deferred sentence; (h) Probation and judicial supervision; (i) A community service order (j) Referral to an attendance centre; (k) House arrest; (l) Any other mode of non-institutional treatment; and/or (m) Some combination of the measures listed above.”

- Rule 9 of the Tokyo Rules explains post-sentencing alternatives; “[t]he competent authority shall have at its disposal a wide range of post-sentencing alternatives in order to avoid institutionalization and to assist offenders in their early reintegration into society”.
- Rule 9.2 refers to furlough or half-way houses, work or educational release, various forms of parole, remission and pardon, in this context. Among these, parole and remission, could be considered as the main alternatives to prison, to be applied at post-sentencing stage.

- In specialist areas, the UN has given considerable attention to alternatives to imprisonment. For example for:
- Juveniles: the UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules);
- Drug users: the Guiding Principles on Drug Demand Reduction of the General Assembly of the United Nations;
- the mentally ill: the UN Principles for the Protection of Persons with Mental Illness; and
- Women: the Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules).
- The International Covenant on Civil and Political Rights (ICCPR) and the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment also focuses on alternatives to custody and stress the minimum use of custodial sanctions.
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- Criminal Revision No. 114 of 2009 date of hearing 8/11/2013 decided on 29/11/2013
- Ghulam Dastgir and Three others vs. the state decided by Justice Faez Isa
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- Juvenile Justice System Ordinance

- **section 11** Where on conclusion of an inquiry or trial, the juvenile court finds that a child has committed an offence, then not withstanding anything to the contrary contained in any law for the time being in force, the juvenile court may, if it thinks fit—
- direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the court may require, for the good behaviour and well-being of the child for any period not exceeding the period of imprisonment awarded to such child;
- Provided that the child released on probation be produced before the juvenile court periodically on such dates and time as it may direct.
- (b) make an order directing the child offender to be sent to a borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier. (c) reduce the period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation shall be unnecessary.

THANKS...