

FEDERAL OMBUDSMAN OF PAKISTAN



REPORT OF THE NATIONAL COMMITTEE ON PRISONS CONSTITUTED BY THE FEDERAL OMBUDSMAN OF PAKISTAN IN PURSUANCE OF THE ORDERS OF THE HONOURABLE SUPREME COURT OF PAKISTAN

WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT

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No.2/SCR/WMS/2015

Islamabad, the 02nd October, 2015

NOTIFICATION

Subject: **NATIONAL COMMITTEE FOR PROVISION OF EDUCATION AND SKILLS DEVELOPMENT TO INMATES OF PRISONS WITH PARTICULAR REFERENCE TO THE CHILDREN AND WOMEN PRISONERS.**

In pursuance of the directives of the Honourable Supreme Court of Pakistan, MoU signed on 21st August, 2015 (**copy enclosed**) in the Wafaqi Mohtasib Secretariat and the series of meeting held in the Wafaqi Mohtasib Secretariat and in the Regional Office of Wafaqi Mohtasib in Karachi on the above subject, the Competent Authority has been pleased to constitute the following committee on the above subject:-

1.	Mr. S. M. Zafar, Advocate Supreme Court of Pakistan, former Senator and former Federal Minister for Law and Justice.	Chairman
2.	Mr. Shakil Durrani, former Chief Secretary Sind & KPK.	Member
3.	Mr. Zamarud Khan, Patron-in-Chief, Pakistan Sweet Homes, Islamabad.	Member
4.	Prof. Dr. Mukhtar Ahmed, Chairman Higher Education Commission of Pakistan, Islamabad.	Member
5.	Dr. S. M. Junaid Zaidi, Rector, COMSATS Institute of Information Technology, Islamabad.	Member
6.	Dr. Shahid Siddiqui, Vice Chancellor, Allama Iqbal Open University, Islamabad	Member
7.	Inspectors General(Prisons), Governments of Punjab, Sindh, KPK and Balochistan.	Member
8.	Hafiz Ahsan Ahmad Khokhar, Senior Advisor (Law), WMS, Islamabad.	Member
9.	Mrs. Shaheena Waqar, Head of Women Aid Trust, H. No. 36, St. No. 2, Sector G-10/3, Islamabad.	Member
10.	Joint Secretary, Ministry of Interior, Islamabad.	Member
11.	Mr. S. M. Tahir, Senior Advisor, WMS, Islamabad.	Member/Secretary
12.	Mrs. Farah Ayub Tarin, Senior Advisor, WMS, Islamabad.	Member
13.	Ms. Zariyab Musarrat, Director, Wafaqi Mohtasib Secretariat, Islamabad.	Co-opted Secretary
14.	Ms. Rafia Bano, Director, Wafaqi Mohtasib Secretariat, Islamabad.	Member

15.	Mr. Khalid Abbas, Superintendent Jail, Haripur District.	Member
16.	Mr. Javid Akhtar, Associated Press of Pakistan, Islamabad.	Member
17.	Hafiz Tahir Khalil, Bureau Chief, Daily Jang, Islamabad.	Member

2. The Committee shall devise a sustainable programme for implementation of the above said directives / Orders of the Honourable Supreme Court of Pakistan. The proposed plan should also include expanding, promoting and phasing out of the proposed programme.

3. The above said Committee shall submit its report to the Honourable Wafaqi Mohtasib within a reasonable time.

4. It is further desired that 1st meeting of the above said committee should be held within one month followed by subsequent meetings on fortnightly basis till completion of the report please.

(ARSHAD FAROOQ FAHEEM)
ADDITIONAL SECRETARY (ICW/R&A)

Copy to:-

- i) The Registrar, Supreme Court of Pakistan, Islamabad.
- ii) The Secretary, Law and Justice Division, Islamabad.
- iii) The Secretary, Ministry of Finance, Islamabad.
- iv) The Secretary, Establishment Division, Islamabad.
- v) The Secretary, Ministry of Interior, Islamabad.
- vi) The Finance Secretaries, Governments of Punjab, Sindh, KPK & Balochistan.
- vii) The Home Secretaries, Governments of Punjab, Sindh, KPK & Balochistan.
- viii) The Health Secretaries, Governments of Punjab, Sindh, KPK & Balochistan.
- ix) The Social Welfare Secretaries, Governments of Punjab, Sindh, KPK & Balochistan.
- x) The Inspectors General of Prisons, Governments of Punjab, Sindh, KPK & Balochistan.
- xi) The Inspectors General of Police, Governments of Punjab, Sindh, KPK & Balochistan.

Copy also to:

1. PS to Federal Ombudsman.
2. PS to Secretary, WMS.
3. Master File.

(ARSHAD FAROOQ FAHEEM)
ADDITIONAL SECRETARY (ICW/R&A)



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No.ps/sr advisor2015

Islamabad, the 11th August, 2015

NOTIFICATION

Subject: CONSTITUTION OF SUB-COMMITTEE TO CARRY OUT SYSTEMIC STUDY & ASSESSMENT OF GENERAL CONDITIONS IN PRISONS WITH PARTICULAR REFERENCE TO WOMEN & CHILDREN.

In pursuance of the directives of the Honourable Supreme Court of Pakistan, dated 28th May, 2015 issued in Suo-moto Case No.1 of 2006, the Honourable Wafaqi Mohtasib has been pleased to constitute a Committee headed by Prof. Justice (R) Shahzado Sheikh, former Judge Sharait Court and currently Senior Advisor, Head Office, Wafaqi Mohtasib Secretariat, Islamabad to carry out systemic study and Assessment of General Conditions in Prisons, with particular reference to women & children and suggest measures for systemic improvements and to curb mal-administration and dysfunction in Jails :

1	Prof. Justice (R) Shahzado Sheikh, former Judge Sharait Court/ Senior Advisor, Wafaqi Mohtasib Secretariat, H.O. Islamabad.	Chairman
2	Mr. S. M. Tahir, Senior Advisor, WMS, Islamabad.	Member
3	Hafiz Ahsan Ahmad Khokhar, Senior Advisor (Law), WMS, Islamabad.	Member
4	Mrs. Farah Ayub Tarin, Senior Advisor, WMS, Islamabad.	Member
5	Mr. Shah Mahboob Alam, Advisor, WMS, Islamabad.	Member
6	Maj. Gen. (R) Haroon S. Pasha, Advisor, WMS, Islamabad.	Member
7	Ms. Zariyab Musarrat, Director, Wafaqi Mohtasib Secretariat, Islamabad.	Member

(S. M. TAHIR)
Senior Advisor/

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No.2/SCR/WMS/2015

Islamabad, the 11th August, 2015

NOTIFICATION

Subject: CONSTITUTION OF SUB-COMMITTEE TO SUGGEST MEASURES REGARDING SEGREGATION & TREATMENT OF FIRST TIME OFFENDERS WITH PARTICULAR REFERENCE TO WOMEN & CHILDREN.

In pursuance of the directives of the Honourable Supreme Court of Pakistan, dated 28th May, 2015 issued in Suo-moto Case No.1 of 2006, the Honourable Wafaqi Mohtasib has been pleased to constitute a Committee headed by Mr. Shakil Durrani, former Chief Secretary, Sindh & KPK to suggest measures regarding Segregation & Treatment of First Time Offenders, with particular reference to women & children and suggest measures for improvements and to curb mal-administration and dysfunction in Jails :

1	Mr. Shakil Durrani, former Chief Secretary Sind & KPK.	Chairman
2	Mr. S. M. Tahir, Senior Advisor, WMS, Islamabad.	Member
3	Hafiz Ahsan Ahmad Khokhar, Senior Advisor (Law), WMS, Islamabad.	Member
4	Mrs. Farah Ayub Tarin, Senior Advisor, WMS, Islamabad.	Member
5	Mr. Shah Mahboob Alam, Advisor, WMS, Islamabad.	Member
6	Maj. Gen. (R) Haroon S. Pasha, Advisor, WMS, Islamabad.	Member
7	Ms. Zariyab Musarrat, Director, Wafaqi Mohtasib Secretariat, Islamabad.	Member

(S. M. TAHIR)
Senior Advisor/

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REPORT OF
THE NATIONAL COMMITTEE ON PRISONS
CONSTITUTED BY THE FEDERAL
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PAKISTAN

REPORT

The Honourable Supreme Court of Pakistan, in its Order dated 28-05-2015 issued in CMA No.1313/2015 in Suomoto Case No.1 of 2006 regarding miserable condition of women in jails recorded as under :

“We have examined this matter at length and in some detail. As well as examining prison figures, statistics and reports, we have also reviewed reports by independent international and local organizations, and the periodic executive and judicial reports to obtain an informed understanding of prison conditions. We are dismayed by the findings relating to living conditions that prisoners suffer and the ineffectiveness of an elaborate regulatory framework that is mandated to prevent such failures. We must stress that this failure to observe a due diligence to life approach as intended by law is arguably a breach of Constitutional (as per Ms. Shehla Zia & Others v WAPDA PLD 1994 Supreme Court 693, articles 9 and 14) and statutory duties.

Given the elaborate regulatory framework and based on the evidence received, we are compelled to conclude that there is a near total failure of the regulatory framework in relation to prison conditions. No official or body appears to have been effective in regulating the implementation of the prison law and rules to ensure prisoner welfare as required by law.”

2. The Honourable Supreme Court of Pakistan in paragraph-30 of the aforementioned order mentioned as under:-

“as noted above, although elaborate and often overlapping in mandate, the regulatory framework is limited in its scope to inspections to ensure compliance with the law and hearing prisoner complaints. It does not deal with systemic challenges that need to be addressed to effectively implement the statutory mandate. We therefore conducted a detailed review of the Ombudsman offices’ mandate and powers”

3. Having conducted a detailed review of mandate and powers of the Ombudsman offices, the Honourable Supreme Court in its aforementioned order stated as under:-

“31) As well addressing individual complaints as an external executive oversight body, critically, the Ombudsman offices are mandated “to diagnose, investigate, redress and rectify an injustice done to a person through mal-administration”, which is defined expansively to include “a decision, process, recommendation, act of omission or commission” that:

- a) Is contrary to law, rules or regulation...
- b) Is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory, or
- c) Is based on irrelevant grounds, or
- d) Involves an exercise of powers or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and
- e) Neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or the discharge of duties and responsibilities.

We are therefore compelled to make the point that, in view of the Ombudsman offices’ mandate, it is not sufficient to just address

individual complaints, the Ombudsman offices must address systemic failures that are the root causes of “mal-administration” and formulate and enforce standards of “good administration” as envisaged by the law.

“32) Based on the reports reviewed by us there is evidence of significant mal-administration and systemic dysfunction in the criminal justice system at large and prisons in particular including regulatory frameworks, which needs to be rigorously diagnosed to be effectively rectified, implemented and monitored for quality and impact. The failure to adopt and implement a sufficient due diligence to life approach as required by the law constitutes a breach of statutory duty. The Ombudsman offices may therefore form standing committee/s and inspection team/s to examine the systemic failures in the administrations to rectify such failures and set good administration standards that if breached would be deemed to be mal-administration.”

4. In order to implement the mandate given to the offices of Ombudsman by the Honourable Supreme Court, the Honourable Wafaqi Mohtasib constituted a high powered Committee to visit important jails in all the provinces with a view to getting factual and first hand information not only about the living conditions of prisoners in jails, particularly the women and children including juvenile prisoners but also to report on overall condition of jails including sanitary, cleanliness, quality of food, medical and clinical facilities, violence to the prisoners, oversight mechanism and arrangements for the relatives of the prisoners visiting the jails etc. The Committee

constituted by the Honourable Wafaqi Mohtasib for this purpose visited the following jails on the dates mentioned against each:

• Central Jail Adyala	25-06-2015
• Central Jail Haripur	31-07-2015
• Central Jail Karachi	07-08-2015
• District Jail Quetta	31-08-2015
• Central Jail Much	01-09-2015
• Central Jail Kot Lalhpat, Lahore	05-10-2015

5. The reports prepared on the visits to the above-mentioned Jails highlighted not only the conditions of women and children living with their mothers in jails and the juvenile prisoners, under trial as well as convicted, but also identified the core issues which were considered to be the main cause of miserable conditions of prisoners in jails.

Major issues highlighted by the visiting teams in their reports:

i. Over - Crowdedness

Almost all the jails visited by the members of the Committee were over-crowded. The main reason was that about 70-80% inmates in the jails were under-trial prisoners.

ii. Shortage of Manpower

The staffing position of jails was found unsatisfactory. There was no increase in the number of officials although the number of prisoners over a period of time increased manifolds – almost double of the approved capacity in some jails.

iii. Transportation of Prisoners to Courts

Due to shortage of approved transport it was not possible for the jail administration to produce all the under-trial prisoners in the trial courts for hearing of their cases. In some jails there was no official vehicle even for the jail Superintendent and staff.

iv. Implementation of Pakistan Prison Rules 1978 (Prison Manual)

Prison Manual lays down detailed procedures to carryout day to day functions in the jails for ensuring good standards and also to overcome systemic failures and dysfunction in the jails. Although the Prison Manual is quite comprehensive and well conceived but its non implementation results in systemic failures. It stresses on the visits of senior government officials for corrective and remedial measures wherever acts of maladministration are noted and systemic failures are identified.

v. Lack of External Oversight Mechanism

In some jails the external oversight mechanism was not in place in its letter and spirit. The visits by the senior members of judiciary and the senior government executives responsible for ensuring external oversight had become few and far between. In a jail visited by members of the Committee, neither any Minister nor any senior officer had visited the jail during the last many years. Regular periodic visits of senior members of judiciary, judicial magistrates and senior officials from the executive to the jails will, to an extent help in reducing maladministration and other problems faced by the

prisoners and the prison administration but infrequent and perfunctory visits alone are not the solution.

vi. Health and Sanitary Conditions

Many important positions like women Medical Officer, Nursing Assistant, Male Dispensers, Lady Dispenser, X-ray machine attendant and Technicians etc have remained vacant for the last many years and no serious efforts appear to have been made to fill up these positions. Only in Central Jail Adyala 193 posts out of sanctioned strength of 709 posts were found vacant. In Central Jail Haripur, some important positions like Pharmacy technician, Dental technician X-ray/Lab/ECG technicians and lady health visitors for female section were vacant. There were no cardiologist, medical specialist, dental/general surgeon in most of the jails.

vii. Unsatisfactory Service Structure

In most of the jails the senior officers and the staff members were found dissatisfied with their service structures. There was no effective system for ensuring their promotions and upward progression on regular basis. In some jails not only the Superintendent/Deputy Superintendent but also the officials at the lower level particularly the wardens were stuck up at the same position for more than 20-years and still they had no hope of promotion till their retirement.

viii. Death Cells and High Risk Barracks

This was a major issue being faced by the jail administration. It was also resulting in over-crowdedness in death cells because the prisoners convicted for death sentence were shifted to death cells on conviction by the trial courts although it was yet to be confirmed by the High Court and Supreme Court. Moreover, the extra/legal facilities being provided to the terrorists and the hardened criminals out of few and also to other rich convicts and under-trials, needs to be addressed by developing internal checks.

ix. Computerization of Data

There was no system of maintaining computerized data of the prisoners to have quick information from the date of entry in jail, the details of the prosecution process and also the information about their release from the jail or conviction. Although the administration in some jails was moving towards computer regime but there was need to introduce the computer based system to keep complete record of the prisoners, easily accessible even by the common citizens interested in having information about any particular prisoner.

x. Education Facilities

Most of the female and young prisoners, either under-trial or convicted, were keen to improve their educational levels but there were no proper schools/institutions either inside the jails or in its proximity for their education pursuits. In many jails particularly Central Jail Haripur and Adyala a large number of prisoners are enrolled with Allama Iqbal Open University. A need was felt to institutionalize this

arrangement on sustained grounds by taking some Universities on board alongwith the Higher Education Commission. Moreover, the libraries in some jails were found stuffed with obsolete books having no relation with present time day-to-day requirements. These needed to be upgraded.

xi. Condition of Inmates

The general condition of prisoners in the jails was not found satisfactory. These prisoners have been classified in three categories;

a. Adults (males)

Major percentage of prisoners in jails belongs to this category. About 80% of them are under-trial prisoners facing prosecutions in trial courts for the last many years. They live in miserable and sub-human conditions mainly due to over-crowdedness and lack of proper living and sanitary conditions. In most of the jails the facility of toilets and washrooms is not commensurate with the number of prisoners. The male prisoners have also been engaged for rigorous works like working in the kitchen, weaving of carpets, steel fabrication works in extreme weather conditions. There is no satisfactory arrangement for their medical treatment in precarious and emergency conditions.

b. Women Prisoners

Women prisoners in almost all the jails are housed in separate barracks but are forced to live with the male prisoners in the same building of the jail and are thus exposed to different kinds of fears including harassment and abuse. They were so frightened and threatened that they did not utter a single word against the jail

administration although the incidents of sexual harassment in jail are quite common especially in district prisons as reported in the media. In some jails infants and small children, boys and girls were also living with their mothers.

In few jails there were women from foreign countries particularly from Central Asian Republics, Turkey, Philippines, and China and also from African countries. Most of them were jailed on the charges of drug trafficking. As there was no one to pursue their cases in the courts they are continuing to be a burden on our jails.

c. Juvenile Prisoners

This class of prisoners is very conspicuous due to their age bracket i.e. below 18-years of age. Most of them have been sent behind the bars for suspicion in involvement in petty crimes like scuffles, small thefts or due to false allegations by their employers while working at their homes etc. A few juvenile prisoners were confined to jail under Foreigners Act and were languishing in jails because they had neither any relative nor proper legal aid to pursue their cases in the courts. Most of them belonged to Afghanistan and had come to Pakistan in search of livelihood.

Many such prisoners were keen to continue their education and were thus enrolled either with A.I.O.U or with some educational boards/ universities.

6. The core issues identified in the preceding paragraphs were discussed and analyzed by the members of the Committee who

agreed that for remedial purposes these could be grouped in the following two major categories:

- i. Segregation of women and juvenile prisoners (convicted as well as under trial) from the other male prisoners;
- ii. Welfare oriented initiatives including workable mechanism for promotion of education and skills development to the prisoners in jails in collaboration with premier educational institutions and NGOs/philanthropists.

7. In order to seek expert opinions to deal with the issues, the Honourable Wafaqi Mohtasib constituted the following three Sub-Committees to make recommendations:-

- i. The first Sub-Committee was to suggest measures relating to the under-trial prisoners under Justice (R) Pir Ali Shah, Provincial Ombudsman of Sindh for the protection against harassment of women at the work place. (Report at Appendix-I)
- ii. The second Sub-Committee made suggestions on conditions in prisons and visiting rights. This was headed by Prof. Justice (R) Shahzado Sheikh, former Judge Shariat Court and Senior Advisor, Wafaqi Mohtasib Secretariat, Islamabad. (Report at Appendix-II)

iii. The third Sub-Committee suggested measures for improving the duties of Prison Supervisory and Monitoring committees and on segregation and treatment of first time offenders under Mr. Shakil Durrani former Chairman, WAPDA and former Chief Secretary, Sindh and KPK. (Report at Appendix-III)

8. Salient Issues identified by the Chairmen of three Sub-Committees in their Reports:

Report of Justice (R) Syed Pir Ali Shah

- As a matter of recourse, Jail authorities should take responsibility of assessing the situation of UTPs in their custody for which they have not received production orders from concerned trial court for the past many consecutive dates of hearing.
- Secretary, Home Department to oversee as to why UTPs are detained for an indefinite period and production orders are not obtained from the concerned Courts from where initially accused were remanded to jail custody.
- Provincial Governments must provide adequate funds, finances, for expansion/construction of barracks (Building) with all basic necessities.

- Provincial Chief Secretary within his domain should oversee if finances provided through public sector development plans/programs and regular budget provision/finances provided for new construction/project development plans within the jail premises have been utilized by the concerned quarters or otherwise.

Report of Prof. Justice (R) Shahzado Sheikh

- All those who are confined to prisons are not convicted. Even all the accused may not be guilty.
- Juvenile and women prisoners should be completely segregated from all others. Juvenile and first time offenders in most cases including theft, brawls, hurts be segregated from convicts and handed over to their families, on security in cash and involvement of local notables.
- Since Session Judge is the custodian of prisons, the system needs to draw strength from ownership of the judiciary right from its apex.
- The District and Session Judge should therefore head the Prison Stakeholder's Board comprising officials and non official members.
- Prison Monitors and Boards of Visitors should be assigned clear and defined duties and responsibilities. They should have unfettered access to all prison areas.

- The female prisoners constitute the most vulnerable and fragile segment of the prison population along with children. Therefore, very special measures need to be taken and should be continuously monitored. As management of the jails is the sole responsibility of the judiciary so comprehensive templates to ensure proper management of the jails must be on the agenda of the Supreme Court.
- Community participation within the boundaries of the jail must be promoted to ensure pleasant environment in the jails.

Report of Mr. Shakil Durrani

- The under trial prisoners are kept in detention so that they do not tamper with the evidence against them and that they are restrained from causing further damage to the society. The experience has revealed that most of the under trial prisoners during their long stay in the jails become hardened prisoners. Therefore the juvenile and first time offenders in most cases other than involved in heinous crimes are segregated from the convicts. In these cases the offenders could be handed over to their families, the numberdars or the local notables with some security to ensure their good conduct.
- The drug users are victims of harmful substance and do not belong to the prisons. They need care and treatment so

that they are rid of their addiction and could become useful members of the society.

- Provincial level Committees, headed by Chief Minister/Home Minister, with representation of the relevant Ombudsman and the civil society be constituted to formulate rules for jails. Similarly there should be District level Prison committees which would constantly visit and monitor the conditions in prisons. Experience has shown that the laws and rules are generally sound but their implementation is very weak. Some renowned civil servants or retired officers of judiciary can also be appointed as Justice of Peace to ensure proper supervision and implementation of laws. Although different Institutions/ NGOs have promised for the promotion of education and skill development of prisoners but this task exclusively falls within the ambit of provincial governments.

Welfare Oriented Initiatives, Education/Skill Development

9. In order to initiate welfare oriented steps for the betterment of prisoners and to provide education and skills to them particularly the women and juvenile prisoners, it was considered necessary to discuss the issue with the heads of some premier institutions like Higher Education Commission, Allama Iqbal Open University, COMSATS Institute of Information Technology and also with some reputed NGOs/Organizations already working for the welfare and provision of education to the women and children in jails. The

Honourable Wafaqi Mohtasib invited the heads of HEC, COMSATS Institute of Information Technology and Allama Iqbal Open University along with the Patron-in-Chief of Pakistan Sweet Homes and the representatives of Provincial Governments/Home Departments in a meeting held on 21-08-2015. The participants of the meeting endorsed the proposed welfare oriented initiatives and offered their services and contributions in kind for this noble cause. Keeping in view the keen interest shown by the participants from different educational institutions, the provincial governments and Patron-in-Chief of Pakistan Sweet Homes, a Memorandum of Understanding (MoU), was signed for their voluntary cooperation to achieve these objectives. A Prisoners' Endowment Funds was proposed to be created for the welfare of the prisoners and a proper mechanism established for its operation.

10. The Honourable Wafaqi Mohtasib had separately constituted a National Committee, under the chairmanship of Senator S.M. Zafar, for provision of education and skills development to inmates of prisons with particular reference to children and women prisoners. The Committee held its first meeting in Lahore on 11-09-2015. It was attended by the senior officials of Home Department, representatives of Allama Iqbal Open University, COMSATS Institute of Information Technology, Higher Education Commission and a few NGOs. All the participants expressed their commitment to cooperate with the Offices of the Ombudsman, Federal as well as Provincial in implementation of the orders of the Supreme Court of Pakistan. They offered to provide free of cost education facilities to the prisoners, up-

grade the libraries and computer labs by providing books and computer hardware. The members of the committee along with Senator S.M. Zafar, Mr. M. Salman Faruqi, Federal Ombudsman and Patron-in-Chief, Pakistan Sweet Homes visited Kot Lakhpat Jail, Lahore on 05-10-2015. Vice Chancellor, Punjab University Lahore also joined them in the visit and offered free of cost education at all levels to the inmates of the jail. Honouring the pledges made by the heads of premier educational institutions and Patron-in-Chief, Pakistan Sweet Homes, the following practical steps have been taken:-

- i. The Vice Chancellor, Allama Iqbal Open University upgraded the libraries in Central Jail Adyala and District Jail Quetta by providing books which could be useful for the prisoners for improving their educational levels.
- ii. COMSATS University provided books to Central Jail Haripur and also expressed commitment to establish computer lab in that jail.
- iii. The first Pakistan Sweet Home for children was inaugurated by the Honourable Wafaqi Mohtasib in Kot Lakhpat Jail Lahore on 05-10-2015. The inauguration ceremony was attended by luminaries like Senator S. M. Zafar, former Law Minister, Vice Chancellor Punjab University, representatives of HEC, COMSATS, Allama Iqbal Open University, representatives of Government of the Punjab, Inspector General of Prison,

Punjab, members of civil society and Senior Advisors of Federal & Provincial Ombudsmen.

11. The final meeting of the National Committee was held on 16-11-2015 in the Wafaqi Mohtasib Secretariat Islamabad under the Chairmanship of Senator S.M. Zafar to discuss the reports submitted by the Chairmen of the three sub-committees and also to suggest mechanism for provision of education and skill development to the prisoners along with sources of funding to ensure execution of these proposals on sustained grounds. The members of the committee agreed on the following main recommendations:-

i. A Prison Endowment Fund would be set up for creating additional resources for NGOs working for prison reforms, citizens committees for jails and prison managers themselves for their instant un-budgeted needs to create conducive environment for reforming prisoners and their education, skill improvement and medically treat them for diseases including venereal ailments, hepatitis, rehabilitating drug addicts etc. as well as pay fines on their behalf. It was proposed that Provincial Funds be headed by Education Ministers or any Minister designated by Chief Minister who is passionate about prison reforms and may comprise of eminent citizens heading charitable institutions, NGOs, leading professionals and retired public servants.

ii. The HEC, AIOU and COMSAT have offered to upgrade the prisoners' skills in consultation with the provincial

governments as little or no attention was paid to provide education to the prisoners for developing their professional skills so that they could be gainfully employed not only in the prisons but also as free citizen. It was proposed to allocate jails to them in their proximity and also persuade them to undertake provision of education and skills to inmates of prisons on voluntary basis. Similarly Secondary and Intermediate Boards should be approached for similar initiatives and exemption of fee for prisoners wishing to improve their education on the pattern the Vice Chancellor of Punjab University offered during his visit to Kot Lakhpat jail. These will be their contribution to the proposed Endowment Fund.

iii. Some renowned lawyers and doctors offered to provide legal assistance to prisoners' pro-bono on the pattern of legal aid being extended in Sindh in particular under the patronage of Mr. Justice (R) Nasir Aslam Zahid. Similarly the doctors who attended the meetings in this office offered to make visits to the neighboring prisons on voluntary basis as their contribution to the proposed fund.

iv. The representatives of Chambers of Commerce and Industry, Stock Exchanges and philanthropists also offered to support the proposed Endowment Fund, if it was ensured that the funds would be properly managed and their contributions be put to beneficial use.

RECOMMENDATIONS

I. Administrative Issues

- i. An important statistical data and detailed information about prisoners, especially women and juveniles should be prepared, computerized and made readily available. The prisoners should be timely informed about the remission in their punishment and the date of their release. This should be the responsibility of the concerned Home Departments and Inspector Generals Prison.
- ii. The service structure of officers and staff in prisons must be rationalized so that it remains in conformity with other government officials. Presently there exists frustration amongst them because of discrimination against them in terms of salaries, allowances and promotion prospects so that they do not feel demoralized. Moreover, all approved positions of the required administrative staff lying vacant for years should be immediately filled.
- iii. The jail staff particularly the Superintendent, Dy. Superintendent, doctors, lady doctors & technicians etc should be posted out of jails after every three years to check the acts of mal-practices which may happen due to their prolonged association with the un-wanted elements.

iv. Proper facilities of food, health, education, sanitation and furniture be provided for the prisoners as laid down in the Prison manuals and rules. Visits by family members, lawyers and welfare personnel be facilitated and a record maintained. The prisoners should be especially protected against malnutrition, physical and sexual abuse and diseases particularly HIV, hepatitis and other infectious and contagious diseases.

II. Segregation of Women Prisoners/Juveniles and Children Living with their Mothers

i. All women prisoners, convicted as well as those under trial must be kept in separate prisons or in high-walled segregated barracks where no separated prisons are available so that there is no contact with the male prisoners and prison staff.

ii. The non-violent under-trial juvenile prisoners, except those involved in very heinous offences, may be handed over to their family members, Parole officers or notables of their localities if they are ready to take their responsibility after a security guarantee is provided. They would be responsible for their good conduct, continuation of education and their production in the trial courts on the date of hearing. As in some countries thought may be given for inserting a small chip in the foot of the prisoner to monitor movements and activities.

iii. The women prisoners with infants not involved in heinous crimes can be allowed to stay at their homes, provided their guardians/relatives either provide security guarantees or are ready to pay for the police guard which might be deployed by the jail administration at their residence. Similarly the Union Councils in villages can take responsibility for the women prisoners who otherwise would live with their infant children in jails.

iv. The prisoners belonging to foreign countries, except in cases against the security of the State, should be repatriated to their respective countries with a view to reducing the financial and administrative burden on the prisons. For this purpose their diplomatic missions in Pakistan can be consulted.

v. The children compelled to live with their mothers in the jails may be handed over to NGOs, social welfare departments or the privately operated Organizations like Pakistan Sweet Homes either inside the jails or those established outside, with the permission of their mothers/guardian, so that they escape the prison environment and are provided better living conditions, a conducive environment and education. The first Pakistan Sweet Home has been established in Central Jail Kot Lakhpat Lahore and the second is being inaugurated soon in Central Jail Adyala.

III. Supervision/Monitoring

i. In view of the fact that the existing prison monitoring committees and the casual visits of the Sessions Judges, DCOs and other officials have been unable to bring meaningful improvements in the living conditions and safety and well being of the prisoners it is proposed that an effective and responsible system be introduced. There is need for a Provincial-level standing committee headed by the Home Minister or in his absence by the Chief Secretary for updating the Operating Rules, ensuring uniformity, procuring the finances and trained personnel and monitoring the District committees. The committee would consist of the Provincial Ombudsman, Secretaries Education, Health, Social Welfare departments, the Inspector General Prisons and four private persons including at least one lady member. For each District prison there would be Supervisory and monitoring committee to be headed by the DCO/Deputy Commissioner or an appointed Prison Grievance Resolution Officer and consisting of the District ombudsman, concerned officials from the Education, Health, Social Welfare departments and four members from the private sector. This committee would appoint a number of 'Authorized Inspectors' from the official or the private sector to setup offices within the compound of the prisons for maintaining a constant monitor of the conditions especially during the night.

ii. These committees and the Authorised Inspectors would be responsible for preventing and prosecuting those responsible for physical and sexual violence on prisoners particularly women and the juveniles by other prisoners or prison staff.

iii. Thought could be given to empowering some persons of renown, committed activists or retired public officials as Honorary Magistrate or Justice of the Peace for addressing and resolving the problems of inmates of the jails.

iv. The Grievance Resolution Offices (GROs) at the district level and Provincial Ombudsmen would be required to address complaints of the people on predetermined dates.

IV. Welfare Oriented Initiatives, Education/Skill Development

i. In order to initiate better skill development and welfare oriented measures for the betterment of prisoners and to provide education particularly to the women and juvenile prisoners, the Provincial governments would approach some of the premier institutions like Higher Education Commission, Allama Iqbal Open University, COMSATS Institute of Information Technology and reputed NGOs/Organizations working for introducing such programmes. The heads of these academic institutions along with the Patron-in-Chief of Pakistan Sweet Homes and the representatives of Provincial Governments have already concurred to the suggestion in a meeting held on 21-08-2015.

ii. Prison issues should be included in the regular proceedings of Law and Justice Commission and High Court Chief Justice headed committees.

iii. The women prisoners after their release from the jail should be provided proper security and care in collaboration with some renowned NGOs working in the relevant field.

iv. There is a need to create A Prisoners' Endowment Fund initially with a capital of Rs 200 million, in coordination with the provincial governments which would be operated by a team headed by the Provincial Education Ministers by rotation and consisting of Vice Chancellors or their representatives for financing skill development of the prisoners and providing assistance to deserving prisoners from all over the country.

**Interim Sub-Committee Report-I
On Prison Reforms**

Proposed Measures Relating to the
Under Trial Prisoners (UTPs)

WAFaqI MOHTASIB SECRETARIAT
36 Constitution Avenue, Islamabad

OMBUDSMAN
THE PROTECTION AGAINST HARASSMENT OF
WOMEN AT THE WORK PLACE
7th Floor, New Sindh Secretariat Building, Karachi

Honorable Wafaqi Mohtasib through his Secretariat Notification No.2/SCR/WMS/2015 dated 11th August 2015 constituted a Committee, entrusted with an assignment to propose measures relating to the UTP's and such, report may be furnished by 21.08.2015.

IMPORTANT

We are conscious of the fact that Prisons/Jails are being inspected/visited by the learned District and Sessions Judge of the concerned District and being monitored by the Honourable High Court. Above all, such affairs relating to UTPs are overseen by the Honourable Apex Court. Therefore this committee is confined to propose the measures relating to the UTPs which are in consonance with the Directions, Orders and Observations passed by the Honourable Courts.

REPORT PROPOSING MEASURES RELATING TO THE UNDER TRIAL PRISONERS (UTPs) IN THE LIGHT OF ABOVE NOTIFICATION

- A. In order to fulfil the requirements of the assignment entrusted to the Committee, 1st meeting was convened on 13-08-2015, which was attended in person by the members shown at Sl.No.1,3,5,7,9,10 and 11. While, representatives of Home Secretary (Sr.No.2) and Inspector General Prison (Sr.No.5) also attended. However, members at Serial No.4 and 8 did not attend.
- B. After due deliberations, sharing experience and views of each other, with consensus it was deemed fit and proper that following concerned authorities who are also members of this Committee, to work out facts and figures so that, remedial measures can be formulated; identifying the basic issues and living conditions of UTPs within Jail premises and outside the jail premises when UTPs are presented before Trial Courts, so that meaningful report on the subject can be prepared.
- i) Home Secretary, Government of Sindh, Karachi.
 - ii) Inspector General (Prisons), Sindh, Karachi.
 - iii) Superintendent Central Jail, Karachi.
 - iv) SSP, Court Production, Karachi.
- C. Participants mutually agreed that the next meeting of the Committee be fixed on 20-08-2015 with understanding that in the meantime concerned authorities will hold internal meetings to work out the facts and figures and remedial measures can be sorted out to enable the committee to consolidate bottlenecks if any, which could be identified, addressed relatively and appropriately, as well.
- D. 2nd meeting of the committee again resumed on 20-08-2015 when concerned authorities filed their joint report regarding issues of UTPs identifying remedial measures/recommendations. (Copies annexed as "X", "B", "C" & "D"). This time meeting was attended by committee members at Sr. No.1, 6, 7, 8, 9, 10 and 11. As usual, committee members at Sr.No.2&5 sent their representatives. While committee members at Sr.No.3&4 did not come forward to attend the meeting.
- E. The esteemed Committee after a long and point to point meticulous decision identified basic issues / problems pertaining to resolution mechanism of UTPs, unanimously decided to propose the following feasible recommendations / remedial measures relating to UTPs for prompt implementation in letter and spirit by the concerned quarters :-

Issues / Problems faced by the UTPs within and outside Jail.

1) Overcrowding in Prisons/Jails

Reportedly over all there are 20163 prisoners in jails of the Province. Out of these, 16226 are Under Trial Prisoners (as on 18-08-2015). This shows more than 80% UTPs confined in Prison/Jail awaiting their trials.

2) Production of UTPs before trial courts

According to SSP Court Production Police, they are able to manage production up to 70% UTPs only due to shortage of prison vans and manpower. He claims to have presently 11x22 (Hino large) plus 24x8 (Toyota) prison vans and 439 Police Force and that prison vans require major repairs. According to SSP Court Production Police, they need 10x22 (Hino large) plus 15x8 (Toyota) prison vans more and at least 250 Police personnel to ensure 100% production of all the courts including budgetary provisions for sanitation, construction of additional wash rooms and M&R works must be enhanced.

- i) The staff position of Court Police be improved considerably along with the increase in Prison Vans.
- ii) The number of Courts has to be increased in order to decrease the work load on the Courts.
- iii) Honorable Courts to prioritize the burden of custody cases. The cases in which the accused are behind bar, may be given top priority.
- iv) Special Courts may be established to concentrate on the cases involving jail custody so that the cases to proceed on priority basis within the prescribed time.
- v) Regular Courts be held inside the jail to release inmates involved in minor offences.

3) Trial courts to hear the cases regularly and ensure that whatever custody is produced, the cases of produced UTPs must proceed

and witnesses attending the Courts may not be returned unexamined.

- 4) District & Sessions Judges who are also Directors of Human Rights during their monthly visits of jails may review cases of UTPs involved in minor offences and pass necessary orders with regard to expeditious trial.
- 5) District, Criminal Coordination to ensure that the Case Management is enforced at the level of District & Sessions Judges.
- 6) Further strengthening of existing Case Management System so that the cases of UTPs may proceed expeditiously:
It is domain of Honorable High Court to take necessary step to curb protracted proceedings of the cases and to enforce case management system.
- 7) Non Production/Short Production (PESHI GHUM)
In fact there is a communication gap between Trial Courts and Jail Authorities which fails to update and convey/record of date of hearing. Concerned Superintendent Jail to ensure that whenever a UTP is not produced before the trial court for certain reasons, his/her Production Warrant must be submitted before the trial court enabling it to fix next date of hearing. To achieve this object, Superintendent Jail and District & Sessions Judge may designate focal person to avoid such communication gap.
- 8) Trial Courts to ensure that Production Warrants indicating next date of hearing of produced UTPs is handed over to Court Police which will, in turn, ensure that it is given to Jail Authorities while handing over the custody of UTPs learned. District & Sessions Judges to review Non Production and Short Production of UTPs.
- 9) Surety Bonds: A good number of UTPs are languishing in Jails for want of surety even after grant of bail by the Court. Philanthropists, NGOs, Legal Aid Office and Members of Bar be persuaded to come forward and provide surety.

- 10) Adequate arrangement for Legal Aid: Some of UTPs are unable to hire a Counsel for their defense. Though, Prosecutor General Office provides Pauper Advocates in some cases yet there is need for covering all deserving cases.

Some volunteers and NGOs like Legal Aid Office are providing legal assistance to the UTPs, yet there seems absence of qualitative legal aid to cover all deserving cases so the members of Bar and members of civil society can be persuaded to come forward in rescue of deserving UTPs.

- 11) Improvement of Living Condition in Jails: Abnormal increase in population of jails in the Province has given birth to number of problems, like overcrowding, shortage of accommodation, shortage of clean drinking water and unhygienic conditions etc particularly in Central Prison Karachi and District Prison Malir Karachi where 8261 UTPs are confined out of 16226 UTPs (as on 18-08-2015), i.e. 51% of UTPs. On-going operation against terrorists and criminals is also contributing towards overcrowding in Jails, particularly in Karachi. As such, it is high time to address on humanitarian grounds on priority basis.

i) Funds required for repair of prison vans to be made available on priority basis.

ii) 10x22 (Hino large) and 15x8 (Toyota) prison vans including two APCs will be required for Court Police for Karachi Division. Similarly, mobility in rest of the Province also needs to be increased to facilitate and ensure 100% production of UTPs. Three prison vans for Hyderabad, District and two vans for each prison for rest of the Districts across the Province will be needed.

- 12) Jails be exempted from load shedding besides there should be alternate arrangement of power supply by way of stand-bye generators.

- 13) Construction of new District Jails at least each at District Headquarter level and Sub-Jails at each Taluka level with

additional manpower for security, management and cleanliness have also become inevitable.

- 14) Meeting of Prisoners / Inmates with their families and friends: Abnormal increase (overcrowding) in Jails is also resulting in shortage of interview sheds and booths which in turn causes hardships for interview seekers. Improvement and enhancement be made in existing infrastructure to cater the ever increasing number of interview seekers. Government and members of civil society can address this issue by 100% increase in existing capacity particularly at Karachi Central Prison, District Jail, Malir and Central Prison, Hyderabad.
- 15) Insufficient Bakhshi Khannas: Existing Bakhshi Khannas particularly in premises of Karachi City Court are insufficient and the same may be expanded.
- 16) Inadequate Health Facilities: Overcrowding in jails of the Province is also affecting existing medical facilities of jails. Though extra Medical Officers have been posted by Sind Health Department, yet medical needs of jail inmates is not fully attended.
 - i) Medical / Para-medical staff must commensurate with population of jail inmates. Consultants / Specialist cadre doctors may be rotated to visit jails regularly.
 - ii) Indoor capacity of Jail hospitals may also be expanded.
- 17) Expansion of Prisons: The prisons are overcrowded and the inmates are not properly handled for which new jails / barracks may be built in sufficient numbers. The Provincial Government may take immediate action on priority basis for construction of new jail buildings/barracks in jail premises where sufficient space/land is available.

Concluding Observations:

- a) As a matter of recourse, jail authorities to take responsibility of assessing the situation of UTPs in their custody for whom they have not received production orders from concerned Trial Courts for the past many consecutive date of hearing. It has not been disclosed before the Committee that such demands of the infrastructure etc were made earlier or the same have been made now. Concerned Authorities must take responsibility on their shoulders and to work devotedly and to contribute to serve the nation with spirit and dedication.
- b) Secretary, Home Department to oversee as to why UTPs are detained for an indefinite period and production orders are not obtained from the concerned Courts from where initially accused were remanded to Jail custody. It is irony that concerned authorities are not actively functioning which is part of their duty. By doing such an exercise of verifying the UTPs waiting for a number of months for their production before the Trial Courts, heavy responsibility rests upon the Concerned Authorities.
- c) In the same breath SSP (Court Production) to take responsibility that UTPs produced from the Jail should not be returned without his/her production before the concerned Trial Court. Because, it has been experienced that UTPs do manage to hinder the proceedings of the case until and unless prosecution witnesses are won over by them. In these state of affairs UTPs are oftenly produced, soon after the case is adjourned by the Trial Court for want of Jail custody.
- d) All the same we are also conscious of the fact that preventive measures are to be taken to avoid exploitation of the situation from all the four concerns. It is un-denied fact that nongovernmental organizations are almost unregistered and they hardly deliver the goods and do not play their role fairly, inconsonance with their aims and objects. Huge funds availed by them from the donor agencies are also being utilized unaudited and there must be check and balance.

- e) Enforcement of above said measures for productive results:
 - i) On priority, Provincial Government to provide adequate funds, finances for expansion/construction of barracks (building) with all basic necessities.
 - ii) Provincial Chief Secretary within his domain to oversee, if finances provided through public sector development plans/programs and regular budget provision/finances provided for new construction/ project development plans within the Jail premises have been utilized by the concerned quarters or otherwise.
- f) In case, we are able to keep check and balance on the concerned authorities/ functionaries, the issues of UTPs in Jail custody can be resolved in all spheres and there will be smooth sailing towards quality performance all around.
- g) I must acknowledge the contribution of esteemed members of the Committee for their valuable suggestions in formulating the proposed measures, on the subject.

(SYED PIR ALI SHAH)
Former Judge High Court of Sindh
Chairman of the Constituted Committee

**Interim Sub-Committee Report-II
On Prison Reforms**

PRISONS & VISITING RIGHTS

WAFaqI MOHTASIB SECRETARIAT
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Background

Systemic Study and Assessment of Conditions in Prisons

In view of the directions of the Honourable Supreme Court, Honourable Wafaqi Mohtasib constituted a Committee for systemic study and assessment of actual situation on ground in the country. The Committee visited some important prisons. A study group under the chairmanship of Mr. S. M. Zafar examined the reported issues.

Federal Ombudsman team identified core issues and concerns, in some detail, and noted certain serious shortcomings and failures in the system. Very miserable *life* conditions, prevailing in these prisons, have been reported. Over all, the situation is pathetic, even in the jails in provincial metropolises which remain under media watch and spotlight of camera sessions of publicity-prone politicians.

The International Crisis Group found the living conditions 'abysmal' while the Human Rights Commission of Pakistan speaks of the 'dismal' prison conditions in the country. HRCP, quoting the UN Office of Drugs and Crime, makes a damning indictment of the dire state of affairs in the following words; 'Female prisoners in Pakistani jails were facing harassment, insanitary conditions and lack of proper health care. It is widely believed that a majority of female prisoners experience sexual harassment and sexual violence at the hands of jail wardens. During the prison surveys, UNODC found prevalence of suicidal depression, sleep disorders and other mental illnesses among female prisoners'.

Overcrowding in dilapidated *infrastructures*, which were raised in colonial penal design, in 19th century, present an equally dismal picture of *institutional* deterioration and decay. Prison rules are as archaic in concept and composition, as the crumbling ancient physical structure.

The widening (untrained) *staff-inmate ratio* further adds to mismanagement and increased violence. However, for all these ills, lack of *resources* is cited as one of the important apparent explanations.

In this back drop, jails are flourishing as fertile breeding places for offenders. There is no surprise to find out a *one-time-casual* to return as an *all-time-habitual* in the same prison used for confinement of both, *convicts* and *accused*.

Incidents of deaths where allegations of coercion, torture or physical violence are made, are also increasing.

State of Human Rights:

Historically prisons have been kept in clandestine cover where human rights are violated by the shady state instrument.

Management Issues:

Training of Staff is minimal. In fact, there is only one National Academy of Prison Administration (NAPA) in Lahore. National security dimensions, in the present milieu, include the concerns for security of important jails, in the country. Security within, is essential to pursue the action taken outside, to its logical conclusion. There is dearth of security devices, e.g., CCTV, etc., Blind and dark spots, in the prison layout, need to be lighted up and activities captured on video cameras.

The grave injustice that should hang heavy on anybody's conscience, is the non-production of under-trial accused in offences, the maximum punishment of which, if proved guilty, could be only a fraction of what they are made to suffer.

Human Considerations:

Meetings with relatives are not easy and *free* of extortion. The situation suggests that only a few meetings take place without exploitation, which has become customary, even immoral, in one or the other form. Meetings with relatives need to be streamlined and made bribe-free. For example, Family '*Visit Card*' may be issued right at the time of entry of the prisoner in the prison, with prescribed schedule and frequency of meetings with parents, spouses and children, carrying necessary identification data, etc. With the assistance of notified NGOs, on rotational basis, volunteer(s) holding NGO cards countersigned by Jail Superintendent may be present in jail premises, every day during meeting hours. Entries about the meeting should be made in the '*Visit Card*', and all meetings should be recorded/monitored on CCTV.

It is also a common complaint that for getting meals from their families or getting some minor entitlements/facilities, prisoners suffer coercion, including sexual. New comers are subjected more to harsh conditions, to break them. Among the inhuman and insulting painful

practices, leg irons, fetters, shackles, and chains are still applied. Unnecessary excessive physical punishments are illegally imposed.

There is lack of paid-work opportunities, and wages are not paid or only partially paid where prisoners are subjected to work, even under very *harsh* conditions.

Health and Hygiene Conditions:

Basic needs like clean water are mostly missing. There is lack of proper health care. Due to increasing numbers of HIV/Aids, Hepatitis cases, prevention programs are immediately needed. Drug users are victims of *induced* addiction, and do not belong to the prison. They need care and treatment so that they can get rid of their addiction and become useful members of the society. The same is true for the insane or psychologically unstable persons. They too need to be medically treated and kept in asylums, and not prisons.

Education:

There is inadequate provision, bordering on denial of education and skills development programmes for inmates, particularly for juvenile prisoners, women prisoners and their accompanying children.

However, key steps in the reform process may be identified as under:

- *Reform* for prisoners, includes:
 - classification,
 - segregation,
 - individualized treatment,
 - vocational training,
 - reducing *criminal capability*,
 - creating *deterrence*, through:
 - Custody,
 - care,
 - discipline,
 - cure by:
 - reformation, and
 - rehabilitation.

- *Utilize* community resources and services:
Conceptual clarity: community cooperation does not mean compromise as spectator of illegality, brutality and corruption,

- *Integrate* monitoring mechanism of Prison Stakeholders' Board comprising, higher level:
 - police,
 - courts, &
 - community.

Entry into Jail:

At the time of entry in jail, the following needs to be ensured, strictly:

- Medical Examination/Health Condition/Personal Data,
- Board Certification whether Prisoner can perform, hard/medium/light labour
- Medical Examination of Women Prisoners by Lady Medical Officer

Prisoner Differentiation and Segregation:

Children and adolescents are detained with hardened prisoners due to lack of space. They suffer torture and sexual abuse. The prisons need to be physically partitioned into sections on the basis of different classifications. For example, following may be considered:

1. *Juvenile* and *women* prisoners should be completely segregated from all others and secured:

Juveniles and first time offenders in most cases including theft, brawls, hurt etc. be segregated from convicts, and be handed over to their families, on security, in cash, and involvement of local notables, to ensure future good conduct, on the commitment to produce the accused whenever required by the law.

2. Within prisons, population be *segregated* as:
 - Convicts,
 - Condemned Prisoners,
 - Under Trial Prisoners:
 - Minor Offences,
 - Major Offences:
 - Civil prisoners,
 - Political Prisoners,
 - Persons detained under detention laws,
3. Convicted prisoners be further segregated as:

- casuals (chance offenders),
- habitual (repeat offenders),
- juvenile (under 18),
- adolescent (over 18, under 21),
- adults (over 21)
- Undergoing
 - rigorous imprisonment,
 - simple imprisonment.
 - Sentenced to death.

Special prisons may be managed separately, e.g., the following:

- women's prisons,
- open prisons,
- juvenile jails,
- borstal institutions and juvenile training centres.
- sub-jails

Private Sector Participation and Out-sourcing

Private sector participation and out-sourcing of certain *selected services* like, *health, education/training and food*, may be encouraged. For example in Florida, responsibilities include: oversight and contractual compliance for the private prison system, operation of correctional facilities, public safety, *educational, treatment, and vocational programs for reducing recidivism*.

Provincial Steering Committees

Provincial Committees, headed by Secretary, Home Department, comprising representatives of Education, Health, and Social Welfare Departments, IG Prisons, Provincial Ombudsman and three members from Civil Society (at least one lady), may work, on permanent basis, on policy matters, laws/rules, and actual operations, supported by the monitoring mechanism.

Standing Committees

At the District Prison level, a Standing Committees under Deputy Commissioner/DCO, comprising representatives of Health, Education, and Social Welfare Departments, representative of Provincial Ombudsman,

Superintendent and Deputy Superintendents of Prisons, Parole and Probation Officers and six members from Civil Society, may be responsible for ensuring compliance with law and rules. They should be provided offices outside the perimeters of the prisons so that they could be easily approached by the inmates or their relatives whenever needed, round the clock.

District and Session Judge and Higher Judiciary

The District and Session Judge should head the Prison Stakeholders' Board comprising *official* and *non-official members*. *The non-official members should be strictly non-political with unblemished record.*

The Board may comprise:

- Chairman, District Council or Mayor of the city,
- President, Chamber of Commerce,
- President, District Bar Association,
- Chairman of District Agriculture or Farmers Association,
- Civil Surgeon,
- Concerned Member, Provincial Assembly,
- Woman Member of Provincial Assembly or District Council,
- Minority MPA or Councilor,
- Two prominent members of registered NGOs,
- Two retired civil servants belonging to Police, Judiciary or District - Administration not below BS 20.

Sessions Judge must make surprise visits of each jail on prescribed intervals. No Board member should visit alone. A minimum of three private members with a serving officer (together) may be nominated by Sessions Judge for visits without prior notice at any time.

It is proposed that the District & Sessions Judge, along with members of the Prison Stakeholder's Board should visit the Prison for at least 8 hours on the first or the last Saturday of the month. The details of observations and instructions/ decisions should be documented along with the details of progress made on previous decisions and the matters still pending, for follow up and review at the time of next visit.

He should send quarterly report to the concerned Chief Justice. The Chief Justices Committee may like to make a suitable *template* on Prisons situation as part of their regular agenda.

Prison Stakeholder's Board under Sessions Judge, should coordinate functions of *official* and *non-official visitors* and look into:

- Enforcement of Prison Act, Laws, Rules, Orders, etc.
- Execution of sentences,
- Maintenance of Prisoners and Prison,
- Order and discipline,
- Financial over-sight,
- *Community-assisted systems of:*
 - Education/Skill Training,
 - Welfare,
 - pre-trial services,
 - bail scope:
 - personal bond in appropriate cases,
 - non-custodial penalties/fines, in appropriate cases,
 - probation,
 - parole,
 - remissions,
 - rehabilitation:
 - Religion,
 - Recreation,
 - Psycho-therapy.

-review all cases where accused have already served the maximum term prescribed for the alleged offence.

-Policy may be formulated for:

-not consigning, ordinarily, to judicial remand in prisons, the accused except in heinous categories of crimes,

-juveniles and females accused of drug offences and first time offenders, be not committed to prisons but sent to correction centres or rehabilitation homes, their families or notables who provide guarantee for their required presence and good conduct.

Prison Monitors and Boards of Visitors:

Prison Monitors and Boards of Visitors should be given clear and defined duties and responsibilities. They should follow up their own observations and recommendations. Particularly for women social workers'

terms of reference should include monitoring of *mental health* and *rehabilitative assistance*,

Concepts of human rights are much wider than conceived in our criminal justice system. Following, for example, need to be recognized as *rights of prisoners*:

1. Food should be provided, in quality and quantity according to caloric requirement of a healthy person,
2. Food should be provided to Patient Prisoners according to their medical requirements,
3. Clean Drinking Water should be provided, which should be periodically tested,
4. It should be ensured that the shelter is livable.
5. Free education for prisoners and children, with them, must be provided with arrangements for examination, leading the earning relevant degrees, certificates, etc.
6. Regular medical checkup and treatment, accordingly, should be provided within jail prisoners. Emergency and related special medical support may be available out-door also, on need basis,
7. There should be religious freedom, with reasonable facilities for prayers for each segment,
8. Clean clothing and bedding should be ensured and monitored properly,
9. Remissions should be available to all, without extortion by the jail administration during the process of intimation and application of such orders,
10. Filing of Appeal, Free Jail Appeal, and Free Legal Aid should be available for all, within jail system. There are instances where the Jail Administration takes the plea that some prisoner had not appealed and had not opted for such free service. In each of such cases, the Jail Superintendent should keep on record written evidence of the prisoner not availing such facility and should inform the concerned court and the home department about it, immediately.
11. Meetings with Relatives should be allowed on regular basis,
12. Privacy in spousal meetings must be maintained,
13. Physical exercise/sports/outdoor time, time must be incorporated and enforced within the daily time table of the prisoners,
14. Safe-keeping of personal belongings/cash, should be ensured in a secure and accountable system,
15. Free access to library is essential. The inmates should not be prevented from *reading* and *writing*. Access to approved newspapers,

- etc. should also be available. Healthy literary promotion and competitions should be encouraged.
16. No handcuffs and fetters should be used as instruments of humiliation and insult,
 17. All physical punishments awarded by Jail Superintendent should be subject to confirmation, and all other punishments in general should also be reviewed, by District & Sessions Judge.
 18. Prisoners should be allowed to keep watch, radio, and television/ radio in common rooms,
 19. There should be no restriction on number of letters received and mailed by Prisoners.
 20. Wash room drainage and bathing arrangements should be clean according to hygiene standards,
 21. Adequate ventilation in barracks should be provided in hygienic conditions,
 22. Prisoners should be trained in skills and vocations, for employment/ gainful occupations.

FEMALE PRISONERS:

1. Separate Wards must be properly secured and monitored, for females,
2. In all circumstances, where body search is necessary, it should only be carried out Lady Warden, without any insult or excess,
3. No punishments like stripes/handcuffs, etc., should in any case be allowed for female prisoners,
4. Permission to keep personal jewellery, comb, soap etc., should be allowed for them,
5. Required food for Suckling Mothers, and Pregnant Women Prisoners should be ensured, and monitored,
6. Proper arrangements for delivery/maternity requirements should be made available within the Ward/Prison,
7. Proper arrangements me made for stay of children up to six years of age with their mothers,
8. Schools for education of Children, should be adequately arranged, in collaboration with the designated/approved NGOs,
9. Special Remissions and parole may be allowed reasonably more liberally, for mothers, specially suckling mothers and pregnant women prisoners,

10. Suspension of Death Sentence of Pregnant and Suckling Mothers may be made through a reasonably liberal and properly laid system,
11. Female Prisoners should be handed over to their relatives on proper identification, on completion of sentence.
12. Women (literacy, education and vocational training for gainful employment), may be developed as an essential feature, in collaboration with NGOs and private sector, philanthropy.
13. Out-door healthy activities, as family and community participation should be organized,
14. Healthcare, e.g., treatment of infectious disease, etc., should be provided, along with strict observance of hygienic living conditions.
15. Concept of sweat homes should be expanded.

OVERCROWDING

Detention in petty offences and pre-trial detention should be avoided as far as possible, by streamlining bail and procedures/requirements of arranging sureties. Furthermore, drug edicts should not be confined in jails. Instead separate arrangements should be made for them in Rehabilitation Centres.

COMPENSATED LABOUR

Opportunities should be provided to prisoners to acquire skills and *earn*, with the broader objective of making them usefully productive member of the society after release also. They should be *paid* for their work. Prisoners should have the option to *refuse* work.

Information and Awareness

Prisoners of different, languages, social background (mostly socially backward), and economic conditions, are admitted in jails. In such a situation, it may be ideally, in fact essentially, required to keep all '*first entrants*' in '*pre-confinement prison-sections*', where training exposure, with necessary *information pack*, should be provided, including:

- Proper listing and notification of prohibitions,
- For awareness about rights of Prisoners, these should be displayed prominently, including:
 - chart of rights,
 - disciplinary requirements,
 - methods of making complaints/grievance redressal,
 - special exhibits for illiterate prisoners.

Ombudsman's Constant Oversight

The Ombudsman may form:

Standing Committees to:

- i. pursue action on the above recommendations,
- ii. follow up progress on implementation of decisions,
- iii. monitor systemic issues to remain vigilant against mala-administration,
- iv. analyze individual complaints, *periodically*, for *impending* systemic issues,

and

Inspection Teams to:

- i. inspect conditions continuously,
- ii. liaise with administration, concerned Agencies, and Provincial Ombudsmen,
- iii. sensitize concerned policy and decision makers about the issues,

Inspections and visits of prisons by executive and judicial officers and social welfare organizations, during day time are useful only to an extent but cannot cleanse the abusive practices or poor conditions *pervading* the system. The Ombudsman may provide institutional assistance to deal with the issue.

Prisons are a provincial subject, but Federal Ombudsman can ensure uniformity in monitoring, reporting, and implementation processes through coordination of Provincial Ombudsmen, who may work with Provincial jail administration through collaborations with NGOs and CBOs.

**Interim Sub-Committee Report-III
On Prison Reforms**

SEGREGATION AND TREATMENT OF FIRST TIME OFFENDERS

WAFaqI MOHTASIB SECRETARIAT
36 Constitution Avenue, Islamabad

Prison Reforms for the Ombudsman's Office

The Supreme Court of Pakistan vide its Order dated 28/5/2015 in suomoto Case No1 of 2006 paragraphs 31 & 32 outlined critical issues relating to the conditions in prisons in the country and the inherent obligations of the office of the Ombudsman to take cognizance and address the shortcomings. Part of the order is reproduced below:

- Paragraph 31) 'As well as addressing individual complaints as an external executive oversight body, critically, the Ombudsman offices are mandated "to diagnose, investigate, redress and rectify an injustice done to a person through mal-administration", which is defined expansively to include "a decision, process, recommendation, act of mission or commission" that:
 - a) Is contrary to law, rules or regulation....
 - b) Is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory, or
 - c) Is based on irrelevant grounds, or
 - d) Involves an exercise of powers or the failure or refusal to so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and
 - e) Neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or the discharge of duties and responsibilities.

We are therefore compelled to make the point that, in view of the Ombudsman offices' mandate, it is not sufficient to just address individual complaints, the Ombudsman offices must address systemic failures that are the root causes of "mal-administration" and formulate and enforce standards of "good administration" as envisaged by the law and which form the fundamentals of overall good governance.

- Paragraph 32) Based on the reports reviewed by us there is evidence of significant mal-administration and systemic dysfunction in the criminal justice system at large and prisons in particular including regulatory frameworks, which need to be rigorously diagnosed to be effectively rectified, implemented and monitored for quality and impact. The failure to adopt and implement a sufficient

due diligence to life approach as required by the law constitutes a breach of statutory duty. The Ombudsman offices may therefore form standing committee/s and inspection team/s to examine the systemic failures in the administrations to rectify such failures and set good administration standards that if breached would be deemed to be mal-administration’.

Upon receipt of the Supreme Court orders the Federal Ombudsman constituted a team comprising the following from within the Ombudsman office and from outside to enquire, diagnose and evaluate the issues raised before formulating recommendations to address the institutional and framework problems:

- a) Mr Shakil Durrani former Chief Secretary KPK and Sind
- b) Mr. S.M. Tahir, Senior Advisor
- c) Hafiz Ahsan Ahmed Khokhar, Senior Advisor (Law)
- d) Mrs. Farah AyubTarin, Senior Advisor
- e) Maj. Gen. Haroon S. Pasha, Advisor.
- f) Mr. Shah MehboobAlam, Advisor (Inv.t.)
- g) Mr. Iqbal Ahmed Qureshi, Consultant Law.
- h) Ms. Zariyab Mussarat, Director.
- i) Miss. Rafia Bano, Director.

The team was directed to study, enquire and analyze the issues raised by the Honourable Court after visiting some prisons and through meetings with the officials responsible for administering the prisons in the four provinces. A National Committee was also constituted under Mr. S. M.Zafar to examine the issues involved to make suitable recommendations. Thereafter the Federal Ombudsman along with his team and including Mr. S. M. Zafar, Mrs. Suriya Anwar of SOS Pakistan, the Vice Chancellor Punjab University (Dr. Mujahid Kamran), Mr. Zammurad Khan of Sweet Homes, the Higher Education Commission representatives, an official from the Chambers of Commerce and Industry, journalists and others visited the Camp Jail Kot Lakhpat to see and assess the prison conditions personally and hold in-depth discussions with male and female prisoners, officials of the Punjab Home Department, the IG Prisons and prison officials, Social Welfare personnel and a few journalists covering prisons.

The problems and issues raised in the Supreme Court order together with the shortcomings/failures noticed and identified by the Ombudsman team following their

visits to different prisons reveal the following core matters of concern that need addressing:

1. There is evidence of significant mal-administration and systemic dysfunction in the criminal justice system at large and prisons in particular which includes a lax regulatory framework which almost functions in default. This has resulted in the grave abuses and instances of mal administration relating to poor living conditions, near absence of education facilities, unsatisfactory health and sanitation conditions and cases of physical violence and sexual abuse of the inmates both by the prison staff and hardened criminals. These shortcomings need to be rigorously diagnosed and effectively rectified, implemented and monitored for quality and impact by the provincial governments.
2. There is inadequate provision, bordering on denial, of Education and Skills Development programmes for inmates of prisons with particular reference to the Children & Women prisoners. Efforts are in hand to concentrate on this area in collaboration with HEC, COMSATS University, Allama Iqbal Open University and Pakistan Sweet Homes so that the prisoners, after completing judicial confinement or punishment, become useful citizens in the society. However it must be realized that these are basically the core responsibilities of the provincial governments who must live up to their obligations.
3. The living and sanitary conditions of prisoners in jails ranged from unsatisfactory to pathetic apart from a lone example or two except when high officials visit the prisons. This is exemplified by over-crowdedness, shortage of professional staff, poor sanitation and wash-room facilities, limited health care, reports of physical and sexual violence perpetrated on and by prisoners, insufficient external oversight mechanism, non-production of under-trial prisoners to courts, un-necessary/illegal detention of under-trial prisoners involved in petty crimes like petty thefts and scuffles etc. All these issues have been discussed in the Ombudsman's reports on visits to Adyala and Haripur jails. Copies of the reports are enclosed. In addition to there is a copy of the Report on Jail Reforms

prepared by the Government of KPK in 1995 by the Committee headed by Begum NasimWali Khan.

The Supreme Court order had also directed the Ombudsman's to 'form standing committee/s and inspection team/s to examine the systemic failures in the administrations to rectify such failures and set good administration standards that if breached would be deemed to be mal-administration.

The order further emphasized that under the Ombudsman offices' mandate it is not sufficient to just address individual complaints but that 'the Ombudsman offices must address systemic failures that are the root causes of "mal-administration" and formulate and enforce standards of "good administration" as envisaged by the law.

The draft report consists of two sets of recommendations which are mutually exclusive and could be implemented jointly or separately.

This deals with a qualitative and philosophical issue. Ideally how should the State deal with an accused and whether it is always essential or prudent to incarcerate all offenders regardless of the gravity of their alleged offences before the judicial proceeding against them are initiated? Further, should all those found guilty be confined to prisons only or could there be recourse to non-custodial penalties. Could a case be made out for not consigning to judicial remand in prisons the accused persons except in five or six most heinous categories of criminal cases. These would include murder and attempted murder, robbery and dacoity, rape and sodomy, kidnapping, sedition, espionage and terror against the State? Corruption and white dollar crimes would be in addition to those listed. Could juveniles and female offenders, drug users and first time offenders regardless of their age not be sent to prisons but handed over to the custody of their families or neighbourhood notables who would stand guarantee for their required presence and for good conduct? Could the sentences of the first-time offenders not be suspended so that they may become economically useful both to pay their fines and also to support their families? This is much like the present parole system in vogue. This issue would have political implications but the social and financial benefits accruing to the individual, the family and the society could be many times greater. The highly polarized nature of our society, some perverse

traditional and cultural mores of the people which are predisposed to violence and revenge-seeking and a culture steeped in 'saving face' would continue to place obstacles to such a policy shift.

The second set of recommendations in the Report consist of adopting remedial, palliative and reformatory measures to address matters of prisoners' physical, sexual and psychological abuse by the prison officials or fellow prisoners, ensuring adequate food and living conditions, proper health care and sanitation system and provision of education, skill development and reformatory measures required. Interestingly all these standards and even safeguards are available in the Prison Acts and Prison Manuals already. There is however scant interest in implementation! Therefore the mechanics for monitoring of the prison administration and inmates care through executive, judicial, third party non-government agencies and the Federal and Provincial Ombudsman needs greater focus. Such material improvements required in the prisons and the need for constant monitoring are more conventional prison issues and are quantitative in nature with budgetary implications. These are as mentioned already set out in detail in the Prison Manuals and Operating Procedures but ways would need to be found to ensure effective operations which do not appear to be the case.

Before dilating on the two set of issues it may be appropriate to highlight some central 'truths' regarding the prisoners as informed by the professional prison staff or as gleaned by the Ombudsman's team after their interaction with the prison staff and the prisoners.

- There is much frustration and anger amongst the prisoners because of the delays in prosecution and adjudication of cases in courts. These delays also lead to huge costs which are incurred by the State because of such delays in the prosecution and adjudication of criminal cases in courts and this is the prime reason for the swelling numbers of prisoners in the jails.
- Perhaps only 20% of the convicts and other inmates have pathological 'criminal' intent and warped bent of mind which is predisposed towards crime. The majority of the convicts and the accused are 'on the spur offenders' not disposed to criminal conduct. They are compelled by passion, impulse or the weak administrative and judicial system into taking the law in their own hands. Where

the State abdicates or delays in undertaking its responsibilities the real and imagined grievances of even law abiding citizen are settled through recourse to violence.

- Nearly 75% of the inmates in prisons are under trial prisoners which reflect poorly on the investigation, prosecution and adjudication of the cases. This of course does not imply that these inmates are all innocent of the charges against them but that human rights are affected when delays in court processes result in unnecessary incarcerating some of the accused who ultimately are acquitted.
- It was revealed that, most gratuitously in the Punjab province alone, there are 21000 prisoners on parole and similarly there would be thousands more in other provinces. These are normally juveniles or first time offenders in petty cases who are released to Parole officers after the Police investigations rather than being sent into judicial remand. As such they avoid mixing up with the hardened criminals in the prisons.
- There exists frustration amongst the Prison officials about their compensation package and their Service structure compared to other government officials and in particular the denial of risk allowance upsets them.
- There is a near absence of proper training and rehabilitation of the inmates in the prison which denies them an opportunity of doing useful labour in the prisons and later professional work on their release from the prisons. There appears to be some scope of inviting private entrepreneurs to undertake income-generating projects in the prisons. Convicts could be employed more widely in programmes of afforestation, agriculture (like the aborted Burewala agriculture scheme some years back), canal cleaning and other forms of community service etc?
- To what extent could non-custodial penalties be awarded to convicts and what is the nature and scope of suspended sentences widely practiced in other parts of the world is a subject where views of the provinces needs to be sought for any changes that could be brought about.

- The plight of the families of the prisoners needs to be addressed also because with the breadwinner in prison the livelihood of the family and children's education is adversely affected.
- Inspection visits of the prisons by executive and judicial officers and the social welfare organisations during day time are of very limited use only and cannot cleanse the abusive practices or poor conditions generally. Were such 'inspections' useful the prison conditions would not have been as poor as these are. The Ombudsman could provide the institutional assistance to deal with the issue.

RECOMENDATIONS

Part I: Non-Confinement of Prisoners in some cases

The State employs prisons to isolate and detain the convicted offenders in proportion to the gravity of their crime both as a means of retribution and as deterrence from harming the society in the future. The under-trial prisoners are kept in detention so that they do not tamper with the evidence against them and that they are restrained from causing further damage to the society. Civilized societies also make efforts, perfunctory or real, to reform and rehabilitate the prisoners so that they could become useful members of the community.

There is unfortunately a dark, morose and seamy environment in the prison. It is inhabited with people who have deliberately and consciously infringed the law to secure unlawful fulfillment of their desires. Prison officials contend that a minority of the convicts has inherently criminal mindsets and the remaining ones have broken the law either impulsively or through violence, stealth or subterfuge for one time personal or selfish reasons. While the former category of convicts are prone to recidivism and are prime candidates for repeat violation the latter are unlikely to repeat a crime having achieved their vengeful or honour-code objective once. Our paternalistic, macho and culture-bound society places a high value on revenge and forcible acquisition of ones perceived rights because where the State fails to address the grievances there is little option for the individual but to seek the remedy himself or herself. It is therefore no surprise that the prisons consist of aggressive and macho-confident inmates who display their crimes as badges of honour encouraging others to follow their examples. The fact that only about a tenth of those who commit serious crimes are eventually and effectively punished by the State provides further encouragement and incentives for the criminals not to desist from crime. Such criminals are actually looked up to as brave men of honour and ballads of their deeds are on the young prisoners' lips.

Such being the environment of the prisons it is not surprising that fresh inmates who are incarcerated with these hardened ones learn quickly from them and actually start looking up to those convicted of serious crimes like murder, robbery, kidnapping, rape and sodomy. Terror and treason crimes are of course

different and so are white collar crime and corruption. The new recruits learn fast all the more so when they are convinced that the chances of being nabbed by the police are low and that of conviction in a court of law very rare. Where is the State when there are murderers who have committed dozens of different killings and in a couple of cases even a century of murders has been crossed but few have been punished?

It is therefore important for the good of the society and the safety of the people that first time offenders in all but six heinous crimes be segregated from the hardened criminals. Even in these six categories it would be prudent not to mix the under-trial prisoners with the convicted criminals till the final adjudication of their cases and maybe not even then.

It is recommended that juveniles and first time offenders in most cases including theft, brawls, hurt etc are segregated from the convicts. In most of these cases the offenders could be handed over to their families, the numberdars or the local notables with security, preferably in cash, to ensure future good conduct and the commitment to produce the accused whenever required by the law. Those whom the police deem dangerous or those who are likely to skip bail could be confined in secure compounds where a decent living and compulsory education and skill development is provided. In the Punjab approximately 21000 such offenders have been placed on parole with the Probation Officers after the initial police investigations but without contaminating them in prisons. Their subsequent conduct is said to be satisfactory.

Two real life examples would bear out the advantages of not confining ordinary offenders in prisons. In a village outside Peshawar a quarrel over a local dispute led to firing between two economically well-off groups of young hotheads. There were injuries caused leading the police to arrest some from each side. Rather than confining them to judicial remand the administration decided to hand them to designated notables of the area on their surety. Soon afterwards the notables resolved the dispute between them and the criminal cases were quashed. A couple of them later completed their studies and one even went abroad for a degree. On return he was elected to the local council where he served the village. Were they sent to the prison rather than being provided the alternative resolution by the notables their dispute could have led to further deteriorated

leading to further bloodshed and wastage of resources. These persons were well-off and influential and got a special treatment; the majority of the accused are not so lucky!

Similarly in the Malakand division two decades back there arose a dispute between some persons from Buner and Dir over the sale of a vehicle. The differences soon got out of hand resulting in seizure of more and more vehicles and detention of persons from either side. Rather than pursuing police First Information Reports the administration deemed it fit not to arrest those charged but to convene a Jirga to resolve the problems. This was soon accomplished peacefully and no one went to prison.

The system of administration of criminal justice in the English jurisprudence is marked by punishing the offender while in the Tribal Areas of Pakistan for instance the essence of the Jirga system is on assuaging the physical and 'honour' injury caused to the victim. The English system makes an effort to adduce evidence to find the accused guilty while the Pukhtun tribal system is concerned more with what the aggrieved person would accept in response. It is not unknown that an offender is forgiven merely by tendering a public apology or a 'nanawatai' seeking refuge.

It is also felt that drug users are victims of harmful substance addiction and do not belong to the prisons. They need care and treatment so that they are rid of their addiction and could become useful members of the society. The same is true of the mentally insane or psychologically unstable persons; they too need to be medically treated and kept in separate premises or asylums.

Part II ; Ensuring conformity with Prison laws and Rules

A number of Committees have been established in the past to improve the living food, sanitation and health conditions in the prisons. The issues of the prevention of physical and sexual violence, elimination of drug use effectively, discouraging corruption in arranging 'mullaqaat' of the inmates with their families, provision of

outside food and allowing inmates the use of cell phones have variously been addressed by the Prison Manuals and SOPs. The more important matters like the interminable length of time judicial proceedings consume and the capricious manner in which under trial prisoners are taken by the police to the courts for hearing etc concern the judiciary and the provincial governments and as such do not belong to this study.

It would appear that mostly the appropriate recommendations needed for bringing about improvements in the prisons are already available in the Prisons Acts and Manuals and in the various reports. The problem lies in the actual implementation of these reports by the provincial governments and how the Ombudsman offices in the Federation and the Provinces could be involved in ensuring effective implementation. There would be additional financial outlays required but finances do not appear to be the main issue as provinces could bear these. In any case money is never the main constraint in life and in ensuring effective administration as the main constraint is always that relating to the 'mindset'. There of course would be the need for money to build new maximum security prisons to house dangerous anti- State convicts and suspects.

How best could institutional oversight be developed and sustained so that the law available on the statute books is properly implemented? There appears to be an absence of an institutional oversight arrangement of the prisons by either Government agencies or by through impartial non-government means which could report and possibly address routine mal-administration matters on the spot. Referral of all complaints up the hierarchy would not yield results as these are seldom acted upon vigorously. Systemic mal-administration cannot be eliminated through perfunctory short day time visits of the District Coordination Officer or the District and Sessions Judge or the other administration and district judicial functionaries. Similarly other agencies such as the social welfare officials and the civil society activists hold cursory 'inspections' or surprise visits to

pinpoint the jail administration's improprieties but such visits yield little and could be counter-productive in instilling a false sense of 'sub-achha' sentiments. Where for instance were these inspecting individuals and committees when the fourteen years old under-trial boy in the Peshawar prison was being 'rented' for a price for sexual abuse by prison officials to their colleagues and other prisoners? Accountability must be constant, continuous and impartial to be meaningful. What is really required is to also appoint respectable members from the civil society, alongside the officials, to visit prisons without prior permission at any time of the day and night to monitor matters. They should be provided offices and guest rooms outside the prisons but within the outer perimeter walls so that they could monitor round the clock. In every district a few Honorary Magistrates or Justices of Peace could be appointed as happened before Partition to address matters on the spot. This arrangement should assist in keeping the prison staff on their feet and should result in improving the living conditions of the inmates.

Prisons are a provincial subject and as such no formal role is envisaged for the Federal Ombudsman office though to ensure greater uniformity in the monitoring and supervisory processes of the working of the provincial Ombudsman there could be a onetime involvement to establish the institutional framework and operating procedures.

Even in the working of the provincial Ombudsman it would be best for the organization to only monitor the working of the provincial and citizen associations rather than establishing an additional hierarchy of inspecting officials. Complaints of mal administration would of course be entertained and remedial measures taken.

- Prisons being a provincial subject under the constitution Provincial Steering Committees under the Home Departments may be created to determine policy, evaluate amendments in the law and rules, supervise operation and monitoring mechanism, ensure uniformity in prison administration and for providing funding for efficient working. This Committee would be chaired by the Secretary-

Additional Secretary Home responsible for prisons and would consist of representatives of the Education, Health, Social Welfare departments, IG Prisons, a representative of the Ombudsman and three members from the Civil Society with at least one lady.

- At the District prison level a Standing Committee under the Deputy Commissioner-DCO or his immediate subordinate be created consisting of representatives of the District Judiciary, Health, Education, Social Welfare Department, a representative of the provincial Ombudsman, the Superintendent and Deputy Superintendents of prisons and all Parole and Probation Officers and at least six members from the Civil Society. This Committee and especially its private members would be indispensable for ensuring compliance with the law and rules. They should be provided offices and rooms for overnight stay outside the perimeters of the prisons so that they could be easily approached by the inmates or their relatives whenever needed. Thought could be given to empowering some of the distinguished private members as Honorary Magistrates or Justices of Peace which is already ordained by law to file reports against malpractices and deviant conduct or lapses of prison officials.
- Till additional or alternate Rules are adopted all existing agencies and fora would continue to perform their duties as mandated.