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Overcrowding in jails declared unconstitutional by IHC

Malik Asad | Published April 6, 2020

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IHC issues 38-page verdict in prisoners' case, allowing inmates to sue govt, jail authorities for inhumane treatment. — AFP/File

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ISLAMABAD: The Islamabad High Court (IHC) on Sunday issued a detailed order on the petitions filed by Adiala jail inmates, declaring that overcrowding in jails is unconstitutional and ruled that a prisoner can sue the government and jail authorities for inhumane treatment during incarceration.

The court issued directives to the federal government and Islamabad's commissioner for observance of

Athar Minallah pointed out alarming conditions of prisoners, loopholes in the criminal justice system and how prisoners are subjected to inhumane treatment. "The intolerable and shockingly inhumane and degrading treatment highlighted in the proceedings in hand meets the threshold of the hypothetical illustration in the above judgement," the court observed.

Subsequently, the court offered a remedy to the prisoners that they could seek compensation as the order read: "It is, therefore, obvious that the incarcerated prisoners, subjected to the unimaginable degrading and inhumane treatment highlighted in these proceedings, may have become entitled to seek damages against the prison authorities and the state."

Chief Justice Minallah observed: "Most of the victims of the deteriorating criminal justice system are those who belong to economically and socially marginalized sections of the society. They do not have the means to access the courts nor has the state fulfilled its constitutional obligation in ensuring that each citizen receives 'inexpensive and expeditious' justice mandated under Article 37(d) of the Constitution."

IHC issues 38-page verdict in prisoners' case, allowing

treatment

According to the decision, the worst victims of what appears to be a dysfunctional criminal justice system are the pre-trial or under-trial incarcerated persons who are presumed to be innocent but, due to several factors, are treated as condemned prisoners.

The prisoners in their respective applications had claimed they could not access the courts and that they feared being punished by the prison authorities for attempting to draw court attention towards their plight.

On court's notice, the commission constituted by the court to inquire into prisoners' miseries submitted a "shocking" report. It disclosed that the overall prison population at the time of filing of the report was around 74,000 while the authorized capacity of all the prisons in Pakistan was 55,634 inmates. In Punjab, 29 out of 41 prisons were found overcrowded while in Sindh eight jails were reportedly overcrowded. "The most disturbing feature is the exceptionally high number of prisoners who retain their presumption of "innocence" till a competent court has handed down a conviction following a fair trial." Out of 73,721 prisoners across the country, more than 60 per cent

HIV, tuberculosis, hepatitis and mental diseases.

The report stated that jails across Pakistan lacked proper medical facilities, doctors and paramedical staff. It noted that the prisoners were generally neither aware of their rights nor had proper access to courts.

Regarding the basic necessities, the report mentioned the toilets lacked sanitation, the prisoners may have to "wait for hours" for their turn because of overcrowding. The jail hospitals were understaffed and lacked proper equipment, it said, adding that the privileged managed to exploit the system by getting themselves admitted to a hospital even when not in need, while those who required urgent attention became victims to apathy and red-tapism of those managing the prison regimes.

Legal regime governing establishment and management of prisons

The verdict noted that the prisons were established and being managed under various primary legislations as well as rules and regulations dealing with almost every aspect from admission, incarceration of the prisoners and their treatment till release. The court cited dozens of laws related to prisoners according to which the jail authorities as well as the respective governments could take certain steps for the well-being of the inmates including suspending their sentence and setting them

Office Act, 2009 which aims at promoting justice throughout Pakistan by providing quality and free legal services, protecting individual rights and advocating effective defender services and a fair justice system," the court verdict noted. "Regrettably, the said law, although enacted, remains non-operational," it observed.

The Jail Manual, read with the relevant primary statutes, makes it a statutory duty of the prison authorities and the respective governments to treat prisoners in accordance with the minimum standards elaborated therein.

International conventions

According to the verdict, the Government of Pakistan has ratified seven crucial conventions having relevance to the rights of prisoners, International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Rights of the Child; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; International Covenant on Civil and Political Rights; International Covenant on Economic Social and Cultural Rights; Convention on the Elimination of All Forms of Discrimination against Women; and Convention on the Rights of Persons with Disabilities.

provisions of the aforementioned conventions, rather than being in conflict, were in conformity with the fundamental rights guaranteed under the Constitution. The fundamental rights under Articles 9 and 14 in fact contemplate the obligations of the State under the aforementioned ratified conventions, it ruled.

Prisoner's rights

A prisoner has been defined as "a person legally committed to prison as a punishment for a crime or while awaiting a trial".

The object of undergoing a sentence pursuant to being convicted by a competent court of law is to make the convicted person and others realise that what the former has done. However, a non-convicted prisoner has altogether a different status by retaining the presumption of innocence, which is an integral and fundamental part of the right to a fair trial.

According to the court, the Constitution guarantees the right to life under Article 9. It is implicit in Article 9 that it is the duty of the state to ensure that every person incarcerated in the prisons of Pakistan, including those who are convicted for an offence and undergoing sentence.

"The prisoner is thus entirely dependent on the State and at its mercy for the purposes of safeguarding the

human. Inhumane treatment of a prisoner is a serious violation of the constitutional rights guaranteed under Articles 9 and 14 of the Constitution," the court ruled.

Overcrowding unconstitutional

Subsequently, the court declared that "overcrowding of prisons, failure to segregate prisoners in accordance with the provisions of the Jail Manual, inhuman and degrading treatment, denial of prompt and timely health assistance, denial of access to proper legal advice and courts, is unconstitutional."

The court directed the federal government "to take immediate steps…to ensure that prisoners incarcerated in the prisons across Pakistan are dealt with and treated in conformity with the obligations of the State of Pakistan pursuant to ratification of the conventions."

According to the verdict, the Implementation Commission chaired by the minister for human rights should "endeavour to give effect to the recommendations made in its report and to may consider amending the laws accordingly.

"The federal government is also directed to take steps for making the Public Defender and Legal Aid Office Act 2009 operational to enable the economically underprivileged to have effective access to the right of

order to ensure that each undertrial prisoner, who has a case pending before any court under the jurisdiction of this court and cannot afford the cost, has access to proper legal advice and to the courts."

Parole officers

The court also directed Islamabad chief commissioner Amir Ali Ahmed "to appoint parole officers and fill other vacancies in order to consider release of deserving prisoners under the Good Conduct Prisoners Probational Release Act, 1926 and the Parole Rules."

The court disposed of the petitions with the directions to the district and sessions judges of Islamabad to visit the Central Prison, Rawalpindi along with the deputy commissioners of Rawalpindi and Islamabad to enquire whether the prisoners relating to cases pending are treated in accordance with law.

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