

**PRISON LAWS IN PAKISTAN:
NEED FOR REFORMATION UNDER INTERNATIONAL
HUMAN RIGHTS LAW**



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Requirements for the degree of LLM (HUMAN RIGHTS LAW)*

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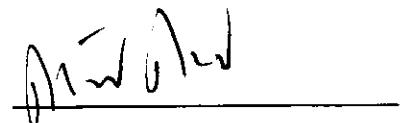
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It is certified that we have read the dissertation submitted by Tabasum Kazmi, Registration No 21-FSL/LLHRL/F09 on the topic of "Prison laws in Pakistan: need for reformation under International Human Rights Law" in the Faculty of Shariah & Law. We have evaluated the dissertation and found it up to the requirements in its scope and quality by the International Islamic University for award of LL.M Human Rights Law Degree.

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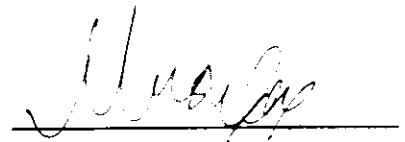


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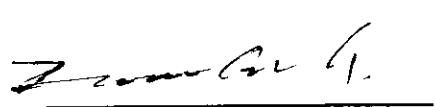


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**A Dissertation submitted in partial fulfilment of the
Requirements for the degree of MASTER OF LAWS
(HUMAN RIGHTS LAW) Faculty of Shariah and Law
In the International Islamic University, Islamabad**

DECLARATION

I hereby declare that this dissertation is original and has never been presented in any other university or institute of learning. I also declare that this thesis has never been copied and any secondary information used has been duly acknowledged in this dissertation.

TABASUM KAZMI

21-FSL/LLMHRL/F09

(NOVEMBER, 2011)

DEDICATION

FOR MY BELOVED MOTHER

For her never ending love and prayers which also remain unexpressed and
invisible but has substantially played a great role throughout my life.

ACKNOWLEDGEMENT

Praise be to Allah, the Sustainer of the words, the Merciful, the Compassionate! And may His everything blessings and peace be on Muhammad, (SAW) the last of His Messengers!

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My Younger Brother gave logistic support by providing useful material in the form of articles, books, and reports as well as giving his joyful company in my travels. Last but not least, I must acknowledge the contribution of my best and most loving friend, who gave logistic support by giving the idea to choose such a nice title of my thesis. And read most of the first draft and gave suggestions for improving the language. And also help to correct it. I thank them all for being there when I needed their support the most.

God bless them all!

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| | |
|------------|--|
| ADRD | American Declaration of the Rights and Duties of Man |
| ACHR | American Convention on Human Rights |
| (ACHPR) | African Charter of Human and People's Rights |
| (ACHPR) | African Charter of Human and People's Rights |
| (ACHR) | American Convention on Human Rights |
| (AHRC) | Asian Human Rights Commission |
| (CAT) | Convention Against Torture and other Forms of Degrading and Ill treatment |
| (CrPC) | Criminal Procedure Code, 1898 |
| (CEDAW) | Convention on the Elimination of All Forms of Discrimination against Women |
| (ECHR) | European Convention for the Protection of Human Rights and Fundamental Freedom |
| (Evidence) | Qanone-e-Shahadat Order, 1984 |
| (FIR) | First Information Report |
| (GF) | Global Foundation |
| (HRW) | Human Right Watch |
| (ICTY) | International Criminal Tribunal for the Former Yugoslavia |
| (ICTR) | International Criminal Tribunal for Rawanda |
| (ICC) | International Criminal Court |
| (ICESCR) | International Covenant on Economic Social and Cultural Rights |
| (ICCPR) | International Covenant on Civil and Political Rights |
| (JJSO) | Juvenile Justice System Ordinance |

(PPC) Pakistan Penal Code, 1860

(SPARC) Society for the Protection of the Rights of the Child

(SHO) Station House Officer

(SHARP) Society for Human Rights and Prisoners Aid

(UDHR) Universal Declaration on Human Rights

(UN) United Nations

(USA) United States of America

(WHO) World Health Organization

(WPA) Women Protection Act

Case Laws

- P Cr. L.J 1989 (Lahore), Rahim Khatoon vs. the State, 1989
- PLD 1996 Lahore 45, Asia vs. The State
- P Cr. L J 1991(Lahore) 1, Sajjad and 3 others vs. The State,
- *The Saga of the Prisoners on Death Row*” Available on
<http://alaiwah.wordpress.com/2011/03/15/the-saga-of-the-prisoners-on-death-row/>
- “*Urgent Appeal Case AHRC-UAC-166-2010*” Available on
http://crisisbalochistan.com/secondary_menu/human-rights/pakistan-prison-officials-remain-unpunished-despite-torturing-inmates-by-taping-their-male-organs.html
- “*UA-339-2006 PAKISTAN: A man deprived of a fair trial faces imminent execution*” Available on <<http://www.humanrights.asia/news/urgent-appeals/UA-339-2006>>
- Gilboa v. Uruguay, Communication No. 147/1983, HRC 1986 Report, Annex VII.B.
- The Republic of Ireland v. The United Kingdom
Series A, No. 25, Before the European Court of Human Rights. 18 January 1978

ABSTRACT

This thesis apprises that Pakistani prison laws need reformation under the International Standards of International Human Rights law. These international standards are obligatory on all States. Whether they are States Parties of the relevant conventions or not, it is compulsory to respect human rights of all individuals of the State. These issues are the subject matter of this thesis. The thesis also assesses the performance of Pakistani police in dealing with prisoners. What type of treatment they give to prisoners in jails? The thesis mentions problems of the prisoners, and how to overcome all these problems. The thesis also explains the human rights standards, and show that all human beings have right to use these standards because they are human beings. By birth human rights are with human beings. Prisoners are also human beings, so they are fully entitled to all these human right standards without any discrimination. There is a great analysis of Pakistani prison laws with International Laws. It shows the importance of Human Rights Law. I will mention Pakistani laws related to prisoners and the standard of their implementation in Pakistani jails. It will be concluded from this thesis that is need for amendments in Pakistani laws related to prisoners. There is a need to apply Human Right standards in our jail system in Pakistan.



PRISON LAWS IN PAKISTAN:

NEED FOR REFORMATION UNDER INTERNATIONAL

HUMAN RIGHTS LAW

INTRODUCTION:

Human Rights developed with the development of human beings on earth, without them were not he/she able to spend his /her life in dignity nor capable to develop a society and tradition, where human values could be honored with justification. It is a bitter experience that after the society came into existence human beings had to face sufferings and atrocities in one or other way.¹

Human rights are the privileges of individuals. They are the rights of all human beings in equal opportunity. We are entitled to them just because we are human beings. They originate from the natural level of the human person,² and have been defined as “those claims made by men, for themselves or on the behalf of other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of mankind. These claims relate to standards of life which every person has rights to expect from a society as a human being.”³

Human rights are thus claims, which are invariably supported by ethics and which should be supported by law, made on society, especially on its official managers, Thus claims are made by Individuals or groups on the bases of their humanity. They apply regardless of race, color, sex or other distinctions and may not be withdrawn or denied by governments, people or individuals.⁴

¹ S.K. Singh, *Human Rights in Pakistan*, ed, M.H.Syed, (New Delhi: Pentagon Press, 2007), 1.

² Mashood A. Baderin, *International Human Rights and Islamic Law*, ed. Prof Vaughan Lowe, Chichele, (Oxford University: Oxford Press, 2005), 16.

³ ibid.

⁴ ibid -17.

By Human rights law we mean something relatively accurate, a type of public international law declaring rights for individuals and duties for states as well as for household and international remedies for breach of rights and duties.⁵ The idea of human rights tradition also means “different things to different people.”⁶ To some, it means to make sure that everyone is pleased with respect for their natural dignity and human importance. To others it means that “judges, the police, and immigration officials are required to protect the interest of terrorists, criminals, and other undesirable elements at the expense of the security of the population.”⁷

Locke defined government as a social contract between the rulers and the ruled. Citizens, he believed, are obliged to give allegiance only to a government that protects their human rights. Those rights may even have precedence over the claims and interests of the government. Government can only be legitimate when it systematically honors and protects the human rights of its citizens.⁸

In reality, the meaning of Human Rights is so broad that it is not simple to define. Generally it means all those rights which are essential for the growth of all human beings. The concept of human rights is connected to the continuation and overall development of human beings, it is essential to his freedom and dignity and a condition for his bodily, ethical, social and spiritual growth. These rights provide a pleasant environment for physical and moral development of man.⁹

So it is said that the rights which are the utmost requirement for nourishing the human dignity, and along with it, which facilitate over all development of a man and make them a perfect man are actually, what Human Rights mean. These rights are related to total entity of

⁵ Saladin Meckled-Garcia and Basak Cali, *The Legalization of Human Rights*, (London and New York: Routledge Press, 2006), 14-1.

⁶ Andrew Clapham, *Human rights a very short introduction*, (Oxford University: Oxford Press, 2007), 2-1.

⁷ ibid.

⁸ George Clack, Mildred Sola Neely, et al., *Human rights in brief*, (America: U.S. Department of State), 4.

⁹ S.K. Singh, *Human Rights in Pakistan*, ed, M.H. Syed, (New Delhi: Pentagon Press, 2007), 2.

man and their overall development. Thus Human Rights are the rights provided by nature to every human being right from his birth, without any distinction. It is not a gift of any state, ruler or government.¹⁰

In all civilized nations efforts are made to define and support human rights. The core of the idea is the same everywhere. Human rights are the rights that one has just because of his status as human being. They are common and equal. One can no more drop these rights than one can discontinue being a human being.¹¹

Scholars have different views about the origin of Human Rights thought. While some declare that "Human Rights are as old as people are, other hold that Human Rights should be listed as new business,"¹² a better viewpoint to bearing in mind of Human Rights also as old or new business is to consider it as an evolutionary fact that has advanced over time during the different stages of human society and enlightenment.¹³ Right from their birth, human beings have strived to raise voice for lawful and just rights.¹⁴

The historical evolution of visions of international human rights that continues to this day started centuries ago with efforts attempting to address these difficult and universal questions. It began as soon as men and women abandoned nomadic existence and settled in organized societies, long before anyone had ever heard of the more recent expression Human Rights or before nation states Negotiated specific international treaties.¹⁵

¹⁰ I.S.K. Singh, *Human Rights in Pakistan*, ed, M.H.Syed, (New Delhi: Pentagon Press, 2007), 2.

¹¹ George Clack, Mildred Sola Neely, et al., *Human rights in brief*, (America: U.S.Department of State), 2.

¹² Mashood A. Baderin, *International Human Rights and Islamic Law*, ed. Prof Vaughan Lowe, Chichele, (Oxford: Oxford Press, 2005), 17.

¹³ Ibid.

¹⁴ S.K. Singh, *Human Rights in Pakistan*, ed, M.H.Syed, (New Delhi: Pentagon Press, 2007), 1.

¹⁵ Mashood A. Baderin, *International Human Rights and Islamic Law*, ed. Prof Vaughan Lowe, Chichele, (Oxford University: Oxford Press, 2005), 17.

The principle of Human Rights is the expression in the public ethics of world politics of the thought that each person is a subject matter of international concern. It does not matter what a person's spatial location may be or which political part or social group the person may belong to. Everyone has human rights, and tasks to respect and defend these rights may in principle enlarge across political and social limits.¹⁶

Human Rights are meant for all human beings. Since the prisoners are also human, they are entitled to enjoy all these rights as a human. The purpose of my thesis is also that it is very necessary to enforce international human rights in jails of Pakistan because these rights are the natural rights for all human beings and compulsory to use in their life. No one can take legally human rights from any person. And I shall explain all these things in my thesis.

The first chapter of my thesis is “Norms/Standards of International Human Rights law” and under this chapter I mention human rights standards which are compulsorily used by all human beings and without their use no one survive as a human. I have mentioned related standards of “prohibition against torture”, “Equality and non discrimination”, “Meeting the social and cultural needs”, “The right to a fair trial” and other rights of prisoners. I have explained that which type of rights are given by International Human Rights Law for all these aspects which I have mentioned above.

The second chapter is related with “Prison Laws in Pakistan” In this chapter I have given an overview of prison laws of Pakistan, The types of laws that are used in Pakistan for prisoners followed by the control and duties of officers of prisons. I have also stated types of their duties

¹⁶ Charles R.Beitz, *The idea of human rights*, (Oxford University: Oxford Press, 2009), 1- 1.

and the way to control the prisoners. Then I have mentioned all types of imprisonments which are awarded in Pakistan, and the crimes for which such punishments are awarded in Pakistan.

In the third chapter, I have discussed the problems of prisoners in Pakistan jails. It intends to throw light on the jail system in Pakistan. I have also discussed the conditions of prisoners in jails. Jails are overcrowded. Torture and degrading treatment is used with prisoners. Discrimination between prisoners in jails is rampant and fair trial is not provided. This chapter shows that there are violations of Human Rights law in Pakistani jails and prisons.

Forth chapter is devoted for the analysis of prison laws of Pakistan in light of International Human Rights Law provisions. I have stated international standards, Pakistani provisions, and practices in Pakistan. In the light to this analysis I have pointed out the defects in Pakistani legal provisions and the need for reforms under International Human Rights Law.

At the end of this thesis, I have given certain recommendations which I feel our government or law making authorities should adopt to improve the situation of Pakistan prisons. At the end, I have given some conclusions of the above discussion.

CHAPTER 1:

NORMS/STANDARDS OF INTERNATIONAL

HUMAN RIGHTS LAW

In this chapter, I will explain different standards of Human Rights law. These standards are not only for a general person but also for prisoners. In fact some standards are designed specifically for prisoners only. So, chapter 1 covers all these standards and also explains as to which type of treatment is prohibited for every human being and that prisoners are also included in human, so they should have all those rights which are available to other persons. All these issues are discussed in this chapter.

1.1. The prohibition against Torture:

Torture is prohibited as being immoral and a crime against humanity. Under international law many treaties and conventions on international level have been made in this respect. Various countries from the world have signed and ratified these conventions and treaties. Most of them have prohibited torture in their national and local laws as well. Despite all these prohibitions, torture is continued to be practiced in majority of the countries around the world. Many reports by the Amnesty International show that “every year thousands of perpetrators beat, rape and electrocute”¹⁷

Throughout the history, torture has been used as a totally legitimate mean for justice to extract confession or obtain the name of accomplice or any other information about the crime. Torture was a legitimate way to obtain testimonies and confessions from suspects for use in legal

¹⁷ Amnesty international, “Annual report for Pakistan 2006,” available at <<http://www.amnesty.org>> (Accessed December 16, 2010).

investigations and trials in middle ages. However, it depends on the victim's crime and his social status.¹⁸

The big deed of 18th century, the era of enlightenment, was the abolition of torture as was mentioned in the provisions for torture in the criminal code of Europe. The prohibition of torture was widely circulated on legal and moral bases. In 1764 a treaty had been passed in this regard titled "On crimes and punishment of 1764." The subject of torture in criminal law had been mentioned all over the Europe during 18th and 19th century as Hugo announced in 1874 that "torture has ceased to exist."¹⁹

In 21st century torture is considered to be a violation of human rights and is declared to be unacceptable under article 5, of the "universal declaration of human rights 1948"²⁰, that states, that torture is the severe violation of human rights which is strictly prohibited on international level. The uses of torture seriously harm civil and political freedom. It was the first issue raised by the United Nations during its development of human rights standards. The first step that was taken in this regard was the Universal Declaration of Human Rights. After that various conventions and treaties has been made on the prohibition of the torture.

International covenant on civil and political rights (ICCPR) 1966 under article 7²¹ also prohibited the torture and according to this article without free mutual consent no one can use others for scientific experiments. This convention also includes that there will be no exception to

¹⁸ Middle Age Article, available at www.middleage.org (Accessed December 7, 2010).

¹⁹ Herman burgers & Hans Danelius, *united nation's convention against torture*, (London: Martinus Nijhoff publisher, 1988), 10.

²⁰ Article 5 "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002), 296.

²¹ Article 7 "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentations" Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002), 296.

the prohibition of torture.²² Torture is prohibited by international instruments as well as regional instruments. The first declaration in this regard was The American Declaration of the Rights and Duties of Man (ADRD). According to article 26,²³ of ADRD, every person accused of an offence has the security from any inhuman treatments. In European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) under article 3,²⁴ torture and other inhuman treatments are strictly banned. American Convention on Human Rights (ACHR) is also against torture under article 5(2),²⁵ of the convention. African Charter on Human and Peoples' Rights (AfCHPR) provide prohibition of all forms of exploitation and degradation of human beings under Article 5.²⁶ All these declarations and conventions have prohibited the torture in all forms and manifestations.

“The right to freedom from torture as defined in the international and regional instruments encompasses the prohibition of seven distinct forms of conduct: torture, cruel treatment, inhuman treatment, degrading treatment, cruel punishment, inhuman punishment, and degrading punishment.”²⁷ All these forms of torture are absolutely prohibited, irrespective of the first and whether or not the law and order situation could be maintained. This is so even in dealing with the worst cases of terrorism where still human right standards prohibit all type of torture, cruel, inhuman, degrading treatment or punishment.²⁸ Despite the many declarations and conventions

²² P.R Gandhi, *International human rights documents*, (India).

²³ Article 26 “Every person accused of an offence has the right...not to receive cruel, infamous or unusual punishment.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 296.

²⁴ Article 3, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment” ibid-296.

²⁵ Article 5(2), “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment”. ibid.

²⁶ Article 5, “All forms of exploitation and degradation of man particularly... torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.” Ibid-297.

²⁷ Ibid-298.

²⁸ Ibid.

on prohibition of torture, many countries are still practicing torture activities. That's why the right to freedom from torture has become preemtory norm of international law.²⁹

By prohibiting torture human right instruments seek to protect the dignity and security against physical and mental pain to the individuals. That's why all the states are duty bound for the protection of individuals to apply some proper measures and legislations against the prohibited acts that are used by the officers in their official capacity or out of official capacity or privately. The prohibition is not only directed against the physical harm but also mental torture as well under the Human Rights Standards.³⁰ Moreover, The English Bill of Rights also prohibits all these inhuman treatments.³¹

There is a case law, which depend on torture and inhuman treatments that cause to physical pain and as well as mental suffering. In that case Human Right Commission held that these treatments which are mentioned in that case were imposed for fifteen days on twenty six year old female university student. She was tortured for confession related to her political activities.

The detainee was brutally beaten at the time of her arrest, on the street itself and in full view of passers-by. An “electric prod” was applied particularly in the genteel region. She was strung up, handcuffed, by the chain of her handcuffs. This was carried out in an open yard, in mid winter, with the victim naked, and happened only once. As a result she lost consciousness, so that she was unable to say how long she was kept in that position. She was also subjected to various forms of continuous degradation and violence, such as always having to remain naked with the guards and torturers, threats and insults, and promises of further acts of cruelty.³² The above mentioned methods of torture destroy her personality physically and mentally.

²⁹ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 299

³⁰ ibid-300

³¹ English bill of right by providing that “Excessive bail should not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

³² Gilboa v. Uruguay, Communication No. 147/1983, HRC 1986 Report, Annex VII.B.

Another case in which Judge Zekia has given an example of a sick man who was subjected to harsh treatment “after being given several blows and beaten to the floor, was dragged and kicked on the floor for several hours”.³³ It is un-understandable that the poor man has been tortured because such treatments are given to a strong man like wrestler and such rough handling is an inhuman treatment for him. He also gives an example of a mother who was separated from her suckling baby while both are kept in separate rooms. The baby cries of hunger for hours that is torture on the baby and the mother hears her baby’s cries that is also torture on her and is also an inhuman treatment.³⁴

The word treatment and punishment are not identical terms. Different countries are agreed on this point that the term treatment is larger than punishment. Thus any judge while giving punishment to the offender, he must be clear that which standards are used for giving punishment. In other words in which condition punishment is given because some times when punishment is given then the prisoners are not permitted to contact with their family, good food and environment is not provided, no medical or health care is given and prisoner’s condition becomes miserable with punishment. So, treatments of prisoners are broader in scope then punishment.

The European Commission accepted the evidence of such forms of non physical torture. These include in solitary confinement, isolation in a police cell without Food, water or access to toilets, mock executions, threat to throw a person out of window, the use of a insulation language, rubbing the head with vomit, being Forced to strip naked, and

³³ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University:Cambridge University Press, 2002), 302.

³⁴ ibid-302

being compelled to be present at the torture or inhuman or degrading treatment of relatives or friends.³⁵

These all types of torture are strictly prohibited as ECHR under article 3, is against to such torture. Physical and mental pain constitutes torture but the pain which is due to the law full sanctions are not include in torture. “In 1975, The Declaration on torture and other Cruel, Inhuman or Degrading Treatment or Punishment, exempts lawful sanctions”³⁶ that rule is ratified by many states, however some states declare that lawful sanctions are those standards which are lawful under national and also international law. These standard rules are used for the treatment of prisoners.³⁷

Torture is absolutely banned under International laws. This is proved from different conventions. There is another convention against torture and other Cruel, Inhuman or degrading Treatment or Punishment that is known as Committee against Torture (CAT). That convention is the part of customary international law, so all states are bound to follow all rules and measures against torture which are mention in it. It is the Jus Cogens Norm against torture as it takes effective means of preventing torture. According to Article 2(1),³⁸ of Convention, all states should take actions against torture from their Legislation, Administration, and judicial authorities.³⁹

³⁵ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University:Cambridge University Press, 2002), 307

³⁶ *ibid*308.

³⁷ *ibid*

³⁸ Article 2(1) “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” 2(2) “No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.” 2(3) “An order from a superior officer or a public authority may not be invoked as a justification of torture” Available on <http://www.hrweb.org/legal/cat.html> (last accessed 2 Jan, 2011).

³⁹ “Convention against torture and other cruel, inhuman or Degrading Treatment or Punishment,” available on <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf> (last accessed 1 Jan, 2011).

Article 2(2), of CAT clearly states that prohibition against torture is absolute and non-dirigible. There are no exceptions in torture under that convention. If any emergency condition is arises in the state or any type of circumstances, still no exception is given. All states are under that prohibition law against torture. Even religion or traditional justifications are also rejected by convention if any state not follow that rule it violate absolute prohibition.

Article 2, prohibited the torture while Article 15, describe that no exceptional circumstances for the justification of torture. For torture and ill treatment Committee accepted that Article 3 to 15⁴⁰ is obligatory on all state parties. Committee (CAT) also acknowledges that for adoption of

⁴⁰ "Article 3(1) No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 3(2), For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights. Article 4(1) Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. 4(2) Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature. Article 5(1) Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases: (i) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State (ii) When the alleged offender is a national of that State (iii) When the victim was a national of that State if that State considers it appropriate. 5(2) Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article. 5(3) This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law. Article 6(1) Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted. 6(2) Such State shall immediately make a preliminary inquiry into the facts. 6(3) any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides. 6(4) When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction. Article 7(1) The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. 7(2) these authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1. 7(3) any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages

these obligatory Articles, state parties should make some measures and with the help of these measures they must follow the obligations till these are effective under convention. State parties are also bound to apply the obligations in any territory in his jurisdiction and on all persons without any type of discrimination every person protected under the convention.

And the Article 16⁴¹ prohibits cruel, degrading, or inhuman treatment or punishment and three provisions “must be observed in all circumstances.”⁴²

of the proceedings. Article 8(1) The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. 8(2) If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State. 8(3) States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state. 8(4) Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1. Article 9(1) States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings. 9(2) States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them. Article 10(1) Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. 10(2) Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons. Article 11, Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture. Article 12, Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. Article 13, Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined by its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. Article 14(1) Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation. 14(2) nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law. Article 15, Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” Available on <http://www.hrweb.org/legal/cat.html> (last accessed 2 Jan, 2011).

⁴¹ Article 16(1) “Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person

And now I will mention that World Health Organization, also give some rules related with medical treatment and explains the concerns with respect to safety of persons, those are under locking up or custody against torture, degrading treatment or cruel and inhuman treatment or punishment.⁴³ And “Torture is prescribed as crime against humanity”⁴⁴ under Article 5(f),⁴⁵ of the ICTY statute, Article 3(f),⁴⁶ of the ICTR statute, and Article 7(1) (f),⁴⁷ ICC statute that also prescribed that the International Tribunal shall have the power to arrest that person who involve in any that type of crime which are under crime against humanity while torture is one of them.

1.2. Control on Degrading and Inhuman treatment with prisoners:

CRUEL TREATMENT:

There is no interpretation by any jurisprudence on the term cruel treatment. Cruel treatment is like that when a prisoner with death sentence Beaton by guards, with metal detector and his important things are destroyed. The Human Right Committee labeled it as cruel treatment.

acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment. 16(2) The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.” Available on <http://www.hrweb.org/legal/cat.html> (last accessed 2 Jan, 2011).

⁴² On 22 November 2001, the committee adopted a statement in connection with the events of 11 September which was sent to each state party to the Convention (A/57/44, paras. 17-18).

⁴³ Burgers J. Herman, Danelius Hans, *The convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, (Dordrecht: Martinus Nijhoff, 1988)15.

⁴⁴ Kriangsak Kittichaisaree, *International criminal law*, (New York oxford university: Oxford Press, 2000),110.

⁴⁵ Article 5(f), “the international tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population: (f) Torture.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002)

⁴⁶ Article 3(f), “the international tribunal for Rawanda shall have the power to prosecute persons responsible for the following crimes when committed as part of the widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds. (f) Torture.” ibid.

⁴⁷ Article 7(1)(f), “for the purpose of this statute crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (f) Torture.”ibid.

Disappeared persons, abduction of persons, contact with relatives, friends and especially with family are preventions and also include too cruel treatment.⁴⁸

INHUMAN TREATMENT:

Torture and inhuman are same terms. It is difficult to differentiate between both. Different types of inhuman treatments are used in all states. In a case of Ireland v. United Kingdom, British government applies five types of techniques. These were: "Wall standing,⁴⁹ Hooding,⁵⁰ Subjection to noise,⁵¹ Deprivation of sleep,⁵² Deprivation of food and drink.⁵³" European Commission described that these five techniques are amount to torture.⁵⁴

However, European court disagrees with it. They said in torture there must be physical and mental suffering. There must some physical injuries and then it will called torture. These five techniques are inhuman treatment but not torture because torture is broader in scope then inhuman treatment.⁵⁵ Rape of the detainees is ill- treatment.⁵⁶ Conditions of the detention are also inhuman treatment, if it causes to mental and physical harm. For example many prisoners are taken in one jail that is already over capacitated and overcrowded prisoners in a prison cell is inhuman treatment. Long solitary confinement is also under inhuman treatment.⁵⁷ Similarly, delay in the execution of the death sentence is inhuman treatment. According to Prvi Council if

⁴⁸ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002).

⁴⁹"Wall standing: forcing the detainee to remain for periods of several hours in a stress position, described as being spread-eagled against the wall, with the fingers placed high above the head against the wall, the legs spread apart and the feet back, causing him to stand on his toes with weight of the body mainly on the fingers."IBID-309.

⁵⁰ "Hooding: placing a black or navy blue bag over the detainees head and at least initially, keeping it there all the time except during interrogation."ibid.

⁵¹ "Subjection to Noise: pending his interrogation, holding the detainee in a room where there was a continuous loud and hissing noise." ibid.

⁵²"Deprivation of sleep: pending his interrogation, depriving the detainee of sleep."ibid.

⁵³ "Subjecting the detainee to a reduced diet pending interrogation." ibid.

⁵⁴ ibid-309.

⁵⁵ ibid-310

⁵⁶ ibid-316

⁵⁷ ibid-318.

a country give death sentence, then it is his duty to check that execution of order is followed after sentence or not and must give proper time to appeal in higher court.⁵⁸

DEGRADING TREATMENT:

Degrading treatment is that which are against the will of the person. The five techniques of the British forces are inhuman, and as well as degrading treatment. It is the treatment from which personal feelings of a person disturbed. It also affects the human dignity. When a prisoner is hand cuffed at the time of arrest, it is not under degrading treatment but if both his one hand and one foot are fasten in same handcuff then it is degrading. The American Constitutional Court has held that “the unnecessary application of physical force in escorting an arrested person to the police station, i.e. forcible seizing, taking hold of the trousers, rapid pushing forward, and violent thrusting into a room, constituting degrading treatment”⁵⁹

When prisoner is shown to the press in a cage, it is degrading treatment. The European Commission describe that some punishment like a person putt his hands in pockets and it had not incorrigible effect on a person did not come under degrading treatment. However, some members of the commission disagree from this point of view and said that the behavior of prison's staff is not good with prisoners and the staff must follow the prison rules as the facility of lawyers which is not provided and overloaded prisoners in jail came under degrading treatments. Both physical and mental harm is not including in degrading but the direct effect on the dignity of the person is degrading treatment. Any act which loses the personality or character of a person is also degrading.⁶⁰

⁵⁸ ibid-321

⁵⁹ ibid-311

⁶⁰ ibid- 312

Council of France has held that “the concept of human dignity, founded on the constitutional prohibition of all form of degrading treatment makes the possibility for everyone to have a decent home and a constitutionally supported objective.”⁶¹

EQUALITY AND NON DISCRIMINATION:

All are equal before the law, and there is no discrimination for the protection of law. In case of any violence, anyone can go to the court for justice. Everyone has right to equal treatments according to Article 7, of the Universal Declaration of Human Rights.⁶² There are also provision for the rights of equality without any discrimination in International Covenant on Civil and Political Rights. Three concepts of equality are given there in. These are equality before law, equal protection and equal protection against discrimination under Article 26, of International Covenant on civil and political rights.⁶³

It is the duty of a legislature when he makes laws to ensure that these laws give equal protection to all persons. According to article 26 of ICCPR all types of discrimination are prohibited but it does not mean that some compulsory discriminatory treatments are also prohibited. For example a blind person has no permission for driving or not allowing a very little baby to go to school. These differences are not under obligation of ICCPR. But any other rule or action which is against human rights or due to which equality or discrimination is occurred, the

⁶¹ ibid- 314

⁶² UDHR 7, “all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.” ibid816.

⁶³ ICCPR 26, “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law in this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, political or other opinion, national or social origin, property, birth or other status.” ibid.

higher authorities must control these differences. Moreover, for this in a society all persons must know about the equality between all human beings.⁶⁴

Dicey explained the concept thus “every official, from the prime minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen.”⁶⁵ American Declaration of the Rights and Duties of Man under Article 2, also give equal rights under the law to all persons.⁶⁶ All are equal before law means no one has more status than other. Law is equally applied to all higher and low ranked persons. Nonetheless, it does not mean that rules of law have changed but the conditions under which these laws are applied remain same or the treatment is equally applied to every person without any discrimination.⁶⁷

American convention on Human Rights (ACHR) explained equality and equal protection of all persons before law without discrimination under Article 24⁶⁸. Equal protection to the law is that the comfortable of the law and its function is same for all persons without having any discrimination.⁶⁹ African Charter on Human and Peoples Rights (AfCHPR) explained under Article 3(1) (2),⁷⁰ equal protection is compulsory obligation that every person is equal before law and has equal protection under law.

All persons are equal before law without any discrimination like sex, race, color, and all other status. The standards of equal protection of law is applied on both male female and also on children as these three categories are included in the word “person” or “individual. For non

⁶⁴ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 818,819,817.

⁶⁵ ibid-821

⁶⁶ ADRD 2, “all persons are equal before the law.”ibid-816.

⁶⁷ ibid-821.

⁶⁸ ACHR 24, “All persons are equal before the law; consequently, they are entitled, without discrimination, to equal protection of the law.” ibid-816.

⁶⁹ ibid-823.

⁷⁰ AfCHPR 3(1), “Every individual shall be equal before the law.

3(2), every individual shall be entitled to equal protection of the law.” ibid-816.

discrimination between prisoners there are some special standards which are especially used for women and children because they both are weak than male persons and they need for more care than male. Two very important standards for imprisonment are made in 1988 and 1999. These are body of principles for the protection of all persons under any form of detention and imprisonment in 1988 and the basic principles for the treatment of the prisoners in 1990. Both are accepted by United Nation Assembly and these instruments give rules under these standards or rules. It is mentioned that all prisoners have right for respect in detention and they must be treated with respect without any discrimination. Because the purpose of detention is to analyse the prisoners, so some other provisions are passed which are related to children detention. Namely the 1985 standard minimum rules for the administration of juvenile justice and 1990 rules for protection of juveniles deprived of their liberty.⁷¹

Right of equality is one of a fundamental right for all men, women, girls and children. Anyone of them in prison must have equal rights of protection, or any type of enjoyment of their all Human Rights, without having any discrimination. Universal Declaration of Human Rights explains under Article 2,⁷² According to this article there is no distinction between anyone under any aspect and all are equally entitled for their rights without any hurdle.

International covenant on civil and political rights under article 3,⁷³ explains that all rights of civil and political rights should equally enjoyed by men and women and the state parties of that covenant must guarantee that these rights are equally enjoyed by men and women.

⁷¹ "Women in prison," available on <<http://www.un.org/geneva/pdf/humanrights/Commentary-SMR-women-in-prison.pdf>> (last accessed 23 Dec, 2010).

⁷² UDHR, article 2, "Everyone is entitled to all the rights and freedom set forth in this declaration without distinction of any kind such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Nihal Jayawickramal, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002).

⁷³ ICCPR, article 3, "The states parties to the present covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present covenant." ibid.

International covenant on economic, social and cultural right explain in article 3,⁷⁴ men and women should equally enjoy the economic, social and cultural rights.

Convention on the Elimination of All forms of Discrimination against women is related with the rights of women in Article (1) and (2),⁷⁵ it is mentioned that there is no difference between men and women, and not restriction for women. They are free same like men and women are also free to enjoy all their basic rights and they are free to participate in all fields. It is the responsibility of the state parties that they confirmed that the public authorities and institutions must follow the rules of Eliminating Discrimination against Women and must create those procedures through which this act is done. Legislation, laws and customs must also obey these rules of non discrimination and all those laws must repeal which are against non discrimination.

Jails are made for men because in early times women do not do any crime. But now a day's situation has been changed and women also live in jails that are made for men and are made according to the needs of men. So, it is difficult for women that they live there. These jails are not perfect according to security point of view and other special needs for women, and their newly born children. These children are ignored in jails while they also have equal rights same

⁷⁴ ICESCR, article 3, "The states parties to the present covenant under take to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present covenant." . Nihal Jayawickramal, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002).

⁷⁵ CEDAW, "Article 1, For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. Article 2, States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation. (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. (g) To repeal all national penal provisions which constitute discrimination against women." ibid.

like other children. According to Universal Declaration of Human Rights (UDHR) article 25(2),⁷⁶ it is clear that child born in jail or any where he is a child and has equal right as others, so no discrimination is there.

According to International civil and political rights (ICCPR) article 24(1),⁷⁷ a child when born he has a right to select his name, and he registered after birth. This right is for all children without having any discrimination. State parties identify some special measures, like punishment of death is prohibited for minors, there must arrange speedy trial for them and their case judgment is not published. Minors are not kept in jails with adults as they must have special treatment and care then adults. Child means “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”⁷⁸

International covenant on economic social and cultural rights, Article 10(3),⁷⁹ impose responsibility on state parties. They make out those measures under whom no discrimination should make. All children have equal rights in any condition and there must be prohibition on child labor. Any act which is hard for children or more than their capacity must prohibit under law. If anyone do not follow this rule he must punished by law.

⁷⁶ UDHR, article 25(2), “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Available on <http://www.usp.com.au/fpss/un-humanrights.html> (last accessed, 25 Dec, 2010).

⁷⁷ ICCPR, “article 24(1), Every child shall have without any discrimination as to race, color, sex, language, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family society and the state. (2) every child shall be registered immediately after birth and shall have a name. (3) Every child has the right to acquire a nationality.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002)

⁷⁸ Ibid-785.

⁷⁹ ICESCR, “article 10(3), The state parties recognize that: (3), special measure of protection and assistance should be taken on behalf of all children and young person’s without any discrimination for reasons of parentage or other conditions. Children and young people should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labor should be prohibited and punishable by law.” available on

http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (last accessed 10jan, 2011).

Women have special care because they are weak than men and their conditions are different as compare to men. That's why their facilities and care are also different than men. In the condition of pregnancy women need more food for health and special medical care facility is provided to them. That condition is also with those women who live in jails and they have same right as other women, who are outside the jails. That principle is given by American declaration of the rights and duties of man under Article 7,⁸⁰ that all women need for exceptional care.

American convention on human rights Article 17(5),⁸¹ also mentioned that all children have equal rights, they may live in custody or in freedom there is no discrimination between them. African charter on human and people rights in Article 18(3)⁸² explain that it is the duty of a state that they must know about the situation of their country and the rights that are given to all persons without having any discrimination.

1.3. MEETING THE SOCIAL AND CULTURAL NEEDS:

When a person is in prison, he did not lose his humanity or mental capability. He has thinking, feels everything, his self respect is maintained, and he has ideas. All things are common in a prisoner as well as in a normal person. So, both have equal rights of participation in social and cultural, economical and religious matters. American library association makes some rules according to the need of education. They provide facility for reading books and give their more and more ideas in jails. All prisoners, adults and minors purchase these library materials

⁸⁰ ADRD, "article 7, all women during pregnancy and the nursing period, and all children have the right to special protection, care and aid." Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002).

⁸¹ ACHR, "article 17(5), The law shall recognize equal rights for children born out of wedlock and those born in wedlock." *ibid.*

⁸² AFR, "article 18(3), The state shall ensure protection of the rights of the woman and the child as stipulated in international declarations and conventions." *ibid.*

freely and that material is related on cultural and other social and economic aspects, for the participation of the prisoners in social and cultural matters.⁸³

International Covenant on Economic Social and Cultural Right recognize in Article 13,⁸⁴ the right of education, it is very important right for better life. That right is for all persons as the education of primary level is freely achieved by all, but the secondary education is with the capacity of the person. It is duty of parents they make private institutions of education for their children. It is also the duty of United Nations that they establish peace between nations, due to which no restrictions are made for education in every society. According to the Universal

⁸³ "Prisoners right to read," Available on<<http://www.ifmanual.org/prisoners>> (last Accessed Sjan, 2011).

⁸⁴ ICESCR, "article 1, The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace. 2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:(a) Primary education shall be compulsory and available free to all.(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education.(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved. 3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions. 4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State." Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (last Accessed 10jan, 2011).

Declaration of Human Rights under Article 27 (1) and (2)⁸⁵ that give the principle that all persons has right to involve in cultural maters and also enjoy the scientific facilities.

When prisoners are in jail they need for better health and environment they are mentally harm due to lack of care and food. Health facility is also not provided due to which they become weak day by day⁸⁶ under United nations standards minimum rules for the treatment of prisoners in Article 22(1), it is clear that the normal and abnormal person both have right for medical treatment and it is the duty of all institutions that, they provide health care to them. In Article 22(2), it is mentioned that sick prisoners need for very special care and medical treatment, so they must transfer into the proper place where medical facilities are provided to them.⁸⁷

Article 25, explains that medical officer must checked on daily basis, those who need special care and also give report to the director about their condition. If any prisoner whose condition is not improve due to imprisonment the medical officer must inform to director about that prisoner.⁸⁸

Under Article 12,⁸⁹ of International Covenant Economic, Social and Cultural Rights, the covenant is given to all person to freely enjoy the right of health, because it is not only a right but

⁸⁵ UDHR “Article 27(1), everyone has the right to freely participate in the cultural life of the community to enjoy the arts and to share in scientific advancement and its benefits. (2), everyone has the right to the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author.” Available on <http://www.usp.com.au/fpss/un-humanrights.html> (last accessed, 25 Dec, 2010).

⁸⁶ United nations office on drugs and crime, *Prisoners with special needs*, (New York: United Nations, 2009), 11.

⁸⁷ ibid-18

⁸⁸ ibid-19

⁸⁹ ICESCR, “Article 12(1), The States Parties to the present Covenant recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child. (b) The improvement of all aspects of environmental and industrial hygiene.(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases. (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.” Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (last Accessed 10jan, 2011).

it is the need of all persons for their development. It is the duty of state authorities to implement that right for all persons including children. Their health care is more important as compare to adults because of they are grown up.

All fundamental rights are for every person included prisoners and the right of health care is the social right. Due to mental illness person must treated with respect and humanity. There is no discrimination on ground for the protection of Human Rights. People with mental illness have all political, social, and cultural rights. Preventive environment should not use for the treatment of prisoners⁹⁰

According to International Covenant on Economic, Social and Cultural Rights (ICESCR) under Article 15(1,2,3,4),⁹¹ state parties must explain that cultural right is for every person and no one is deprived with this right, including the prisoners. They must achieve benefit from scientific developments for the safety of their ethical and objective rights such as the telephone is scientific development and all persons achieve the benefit from it and especially for prisoners who talk with their family out of jail. There must be the freedom for every person, he work more and more and make something new to create some scientific things or any other things with their efforts. The other class is require the protection of intellectual property but the Committee on

⁹⁰ United Nations office on drugs and crime, *Prisoners with special needs*, (New York: United Nations, 2009), 20.

⁹¹ ICESCR, "Article 1, The States Parties to the present Covenant recognizes the right of everyone: (a) to take part in cultural life. (b) To enjoy the benefits of scientific progress and its applications.(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. 2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. 3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. 4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields." Available on http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (last Accessed 10jan, 2011).

Economic, Social and Cultural Rights interprets it as “primarily protecting the moral rights of authors and proclaim the intrinsically personal character of every creation of the human mind and the ensuing durable link between creators and their creations.”⁹²

African Charter on Human and Peoples Rights under Article 17(2),⁹³ give to everyone the right of cultural life. American declaration of the rights and duties of man under Article 13,⁹⁴ states that everyone has the right of cultural life to involve in the property matters and for achieving progress to discover something new and to search for scientific matters for benefit.

International covenant on economic social and cultural right is a multilateral covenant. It gives different rights to all persons. It gives the right of education, right of health, labor rights but that right is effective with the will of a person. If someone takes their rights of work then give to him. But forced or labor for child must be prohibited and right to adequate standard of living means right of clean water and healthy food is provided to all persons, even who is in jails. They also have the right of clothing and right of housing. The prisoners are in jails, so it is their house and they have right to live in clean house.⁹⁵

⁹² “International covenant on economic, social and cultural rights” Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights (last Accessed 10jan, 2011).

⁹³ AfCHPR, “article 17(2), every individual may freely take part in the cultural life of his community.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002).

⁹⁴ ADRD, “article 13, every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially discoveries. He likewise has the protection of his moral and material interests as regards his inventions or any literary, scientific or artistic works of which he is the author.”IBID.

⁹⁵ “International covenant on economic, social and cultural rights,” Available on<

http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights> (last Accessed 10jan, 2011).

Article 9,⁹⁶ of that ICESCR gives the right of social security and social insurance. It explains that there must establish a social insurance scheme for the social security of those persons who are weak due to illness or have bad health and those are motherliness, old, and those who are not financially strong for their health treatment and whose families cannot support them. For the establishment of that right of social security there are different problems in different countries, like France and Monaco as they apply some reservations on that covenants rules and they apply their own country rules. Committee on economic, social and cultural rights gives permeation of these restrictions but only after reasonable and appropriate reasons.⁹⁷

1.4. THE RIGHT TO A FAIR TRIAL:

Universal declaration of Human Rights under article 10⁹⁸ gives the right of “equality”. All are equal before law, and also give to everyone the right of fair trial. The right of public hearing by an unbiased court is in the purpose of his rights and responsibilities and of any illegal blame beside him.

According to the principle of equality it never means that, in matter of appeal there is equal process followed in reverence of petition. It means that all persons who are appealing in competent court should be treated with same procedure. If that rule is applied on all persons then

⁹⁶ ICESCR, “Article 9, The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.” “International covenant on economic, social and cultural rights,” Available on <

http://en.wikipedia.org/wiki/International_Covenant_on_Economic,_Social_and_Cultural_Rights> (last Accessed 10jan, 2011).

⁹⁷ ibid.

⁹⁸ UDHR, “article 10, Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 494.

rule of equality is fulfilled. Same as in some cases, where leave of appeal is essential but in some cases leave of appeal is not obligatory. It does not breach the principle of equality.⁹⁹

International convention on civil and political rights under article 14(1)¹⁰⁰ gives the right of fair trial and also secure right of justice. That article gives some basic rules for prisoners on equal footing without any discrimination. Hearing of the case must be held in unlock court and not in a secrete room. Hearing must be open and it is closed only in case of privacy, for the need of justice like for national security, in divorce cases judgment may only be covered up and in the matter where children interest is disturbed. These rules are applied in both cases in civil hearing and in criminal hearing. All courts and tribunals are bound to follow these rules. That article gives the rights of the accused and it institute the opinion of virtue. It also prohibits twice punishment in one case and for the sake of justice prisoner must appeal in higher court, if he is not satisfied with the decision of lower court. He also has a right for counsel to present his case and the right for a speedy trial.¹⁰¹

⁹⁹ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 494.

¹⁰⁰ ICCPR, "article 14(1), All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children." ibid-478.

¹⁰¹ "International covenant on civil and political rights" Available on <

http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights> (Last Assessed 11jan, 2011).

American Declaration of the Rights and Duties of Man under article 26(2)¹⁰² also refers the right of fair trial and right of public hearing under independent court which is established by law. European Convention for the Protection of Human Rights and Fundamental Freedoms article 6(1)¹⁰³ gives full explanation on right to a fair trial and also give right to public hearing and ICCPR under article 14(1) hearing is sovereign and within a sensible time a person is presumed innocence till the time he approved guilty and a person who is arrested under criminal offence has a right of representation of his case and to observe witnesses and has a right to appoint best lawyer for his case. Generally reasonable time is not given by courts and there are long and long delay in both civil and criminal cases that is the violation of that article.¹⁰⁴

Public hearing of any case is the security of the interested person. Due to public hearing confidence of court improved and maintained, but in some matters for the sake of justice it is compulsory to hold secrete hearing. In these cases no public and press, even not required but the judgment must mentioned. Hearing of any case is not held before a group of some special persons, except in some exceptional cases. Otherwise hearing must in front of general public and press is also permitted to enter in court during hearing.¹⁰⁵

¹⁰² ADRD, "Article 26(2), every person accused of an offence has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws." Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 478.

¹⁰³ ECHR, 6(1), "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." ibid-479.

¹⁰⁴ "European convention on human rights" Available on <

http://en.wikipedia.org/wiki/European_Convention_on_Human_Rights> (Last Assessed 15jan, 2011).

¹⁰⁵ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 508.

American convention on human rights under article 8(1)¹⁰⁶ identifies the rights to a hearing with “due guarantee”¹⁰⁷ by a “competent court”¹⁰⁸ formerly recognized by law and classifies the rights and responsibility to consist of not on common but also those of a labor, economic or any other nature.¹⁰⁹

African Charter on human and peoples’ rights under article 7(1) and 26¹¹⁰ basically pass on to all persons’ right to have his foundation heard by an unbiased court and according to article 26 the assurance is given by the state that all their courts are fully sovereign.¹¹¹ Independence of the court means that court under which a person arrested is unbiased, and the court is on the merit of the case. It is competent for that case and it is under basic guarantees that a person has right to know that who is the judge of his case. In some cases face of judges are not mentioned to party, it is not under the justice because it is the right of the party to know about everything of his case and a person also has a right to know that who is a judge of his case. Is the judge able to detain his case or not if not then he challenge the incompetency of that judge.¹¹²

¹⁰⁶ ACHR, “Article 8(1), Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 479.

¹⁰⁷ (ACHR) Article 8(1), “The expression due guarantees means that in respect of the determination of rights and obligations of a civil, labor, fiscal or any other nature, the individual has the right to the fair hearing provided for in criminal cases.” (Paniagua Morales Case, Inter American court of Human Rights, Judgment of 8 March 1998, paragraph 149.

¹⁰⁸ “The use of the word “competent” before independent and impartial tribunal was intended to ensure that all persons should be tried in courts whose jurisdiction had been previously established by law and arbitrary action so avoided. Ibid-514.

¹⁰⁹ ibid-480

¹¹⁰ AfCHPR, “article 7(1), every individual shall have the right to have his cause heard. This comprises: (d) the right to be tried within a reasonable time by an impartial court or tribunal. 26, state parties to the present charter have the duty to guarantee the independence of the courts.” Ibid-479.

¹¹¹ Ibid- 480.

¹¹² Ibid-514.

1.5. OTHER RIGHTS OF A PRISONER:

International Covenant on Civil and Political Rights (ICCPR) gives special rights to the prisoners in Article 10(1, 2, and 3).¹¹³ According to that article any person who loss his freedom, he must take his basic rights without any type of discrimination. Prisoners should be treated humanely and have right of respect. They must enjoy all basic rights. It is the duty of a court, when it takes the right of liberty of any person, then the court make sure that prisoner's other constitutional rights are not infringed by any other person. Even the right to vote is also retain with prisoners. It is his one of the constitutional right and no one can deprive him with that right.¹¹⁴

Human Right Committee gives decision that it is against the ICCPR 10(1) when all facilities are not given to prisoners, because prisoners need these rights too with other fundamental rights. Like not to listen radio, sleep on wet and concrete floor, live in his cell for long time every day, right to talk, discuss his matters with other prisoners and even not to walk outside the cell, normal and mantel prisoners kept together in one cell, prisoners are kept in one cell and the cell is short in size and prisoners are large in number and due to overcrowded jail there are very severe disease occurred, prisoners kept in those cells where no facility of light is provided for whole day and night and their photos with cage are not mentioned in press.¹¹⁵

¹¹³ ICCPR "Article 10, (1) all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. (2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status." Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 425.

¹¹⁴ ibid-428.

¹¹⁵ ibid-431

ICCPR 10(2) is not violated if the human right committee held that, “while convicted and unconvicted persons must be kept in separate quarters, they need not be kept in separate buildings”¹¹⁶ juveniles are must kept in separate cells and no adult is with them they need special care and protection then adults. Jails are not for punishments and bad experiences.¹¹⁷ American convention on human rights (ACHR) under article 5(1, 2,3,4,5, and 6)¹¹⁸ gives same rights of prisoners as ICCPR but in article 5(3) also mentioned that the punishment of a prisoner is not increased in civil matters and remains same but in criminal matters it may be increase due to different circumstances of the case.

International Covenant on Civil and Political Rights under article 9¹¹⁹, according to it right of liberty is for everyone and with liberty there must be security and temporary arrest is not valid and in special circumstances if it done then only for very short time, a person who is arrested

¹¹⁶ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 432

¹¹⁷ ibid-434

¹¹⁸ ACHR “Article 5(1) every person has the right to have his physical, mental, and moral integrity respected. (2) No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. (3) Punishment shall not be extended to any person other than the criminal. (4) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as un-convicted persons. (5) Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. (6) Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social re-adaptation of the prisoners.” ibid.

¹¹⁹ ICCPR, “Article 9(1) everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. (3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment. (4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.” “International covenant on civil and political rights” Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights (Last Accessed 5jan, 2011).

must informed him what is the reason behind his arrest, and when a person is arrested in criminal case shall be bring in court or as early as possible brought front of judge and in proper time arrange his trial, a person who is lawfully detained has right for hearing and who detained unlawful arrest has a right for compensation.¹²⁰

Council of European Convention for the protection of human rights and fundamental freedoms (1953) under article 5¹²¹ every person has the right of his freedom and safety and these two rights are always remain with everyone but law take them. In case of suspicion of crime, for the fulfillment of imprisonment a person deprive his these rights but after that authorities follow the procedure of law a person who is arrested he must appear before appropriate court his arrest must lawful. It is according to the order of the court and at the time of arrest, must inform him in his language which he understand easily, that under which claim you are arresting him. After that he shall be brought before judge or any judicial authority within a reasonable time after arrest.

¹²⁰ "International covenant on civil and political rights" Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights (Last Accessed 5jan, 2011).

¹²¹(EHR), "Article 5(1) everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law. (a) the lawful detention of a person after conviction by a competent court(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law.(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so.(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority. (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants.(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.2, Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.3, Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.4, Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.5, Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation." Available on <http://en.wikipedia.org/wiki/European_Convention_on_Human_Rights> (Last Assessed 15jan,2011).

That person has a right for lawful proceedings and in case when that article is not followed then compensation is given to that arrested person because he has the right of compensation.

American convention on human rights under article 7,¹²² also give same rights as in Council of Europe Convention for the protection of human rights and fundamental freedoms (1953) under article 5, but in American convention on human rights under article 7(3), arbitrary arrest or imprisonment is prohibited that is “(restraints, solitary confinement) a small amount of space for physically movement, and freedom from constant physical restraint.”¹²³

African charter on human and people rights according to article 7(2),¹²⁴ punishment is related with a person on whom it implements it is his personnel matter so it is obligatory only for wrongdoer.

¹²² (AMR) “article 7(1) Every person has the right to personal liberty and security.(2) No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.(3) No one shall be subject to arbitrary arrest or imprisonment.(4) Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.(5) Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.(6) Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies. (7) No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for non fulfillment of duties of support.” Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002).

¹²³ “*Prisons rights*” Available on <<http://law.jrank.org/pages/9386/Prison-Prisoners-Rights.html>> (Last Assessed 10jan, 2011).

¹²⁴ (AFR) “Article 7(2), punishment is personal and can be imposed only on the offender.” Available at <http://www1.umn.edu/humanrts/instree/z1afchar.htm> (Last Accessed, 25 Dec, 2011).

CHAPTER TWO:

PRISON LAWS IN PAKISTAN

The second chapter of my thesis wholly depends on prison laws in the context of Pakistan. This chapter explores the prison laws that are applicable in Pakistan only and under this heading it is mentioned the types of prison laws that are used in Pakistan and the rights that are given to the prisoners under these prison laws. I also discuss the control and duties of officers of prisons and the criteria that they must use to manage the prisoners in prison and the behavior they should perform to them while studying everything related to the duty of officers of prisons. Moreover, all types of imprisonments that are awarded in Pakistan are also discussed in detail. At last of this chapter I also explore all those crimes for which punishments could be awarded in Pakistan and the punishments that are awarded to all those persons who commit crime. These punishments are awarded by Pakistan Penal Code which is applicable throughout Pakistan.

2.1. Overview of prison laws:

Prisons act 1894,¹²⁵ is related to the prisons and give rules of such type which help to regulate such prisons. 1st chapter is preliminary under this chapter and explains the different definitions of the construct. Section 3 is related to these definitions and gives clear meaning of “prison” as under section 3(1):

¹²⁵ *Prisons act 1894*, “passed by the Governor general of India in council (received the assent of the Governor General on the 22nd March, 1894) An Act to amend the law relating to prisoners”.

"Prison, means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include-

- (a) Any place for the confinement of prisoners who are exclusively in the custody of the police
- (b) any place specially appointed by the State Government under section 541 of the 1 Code of Criminal Procedure, 1882 or (10 of 1882.)
- (c) Any place which has been declared by the State Government, by general or special order, to be a subsidiary jail"¹²⁶

2nd chapter is related to the Maintenance and the officers of prisons. The rule of that chapter gives accommodation for prisoners in prisons and also appoints the inspector general and officers of prisons like superintendent and medical officer. 3rd chapter gives the duties of officers generally and the officers of prisons are bound to follow these rules for the regulation of prisons. In 4th chapter rules for admission, removal and discharge of prisoners are given. 5th chapter is related to the discipline of prisoners while 6th chapter is related to the food, clothing and binding of civil and un-convicted criminal prisoners.¹²⁷

7th chapter gives the rules for employment of prisoners that with the permeation of superintendent prisoners can work and join any profession. 8th chapter is related to the health care of prisoners. Chapter 9 "visits" to civil and un-convicted criminal prisoners. In 10th chapter the offences with respect to prisons are explained. Chapter 11 also gives the prisons' offences and the punishment of such offences. The last Chapter 12 of Prisons act 1894 is related to the miscellaneous issues.

¹²⁶ *Prisons Act 1894.*

¹²⁷ *ibid.*

“The Prisoners Act 1900”¹²⁸ “is an Act that consolidates the laws related to the prisoners and confined by order of a court.”¹²⁹ Part 1, of that Act is preliminary while part 2 is General. Part 3 and 4 are related to prisoners in presidency towns and Prisoners in outside presidency town respectively. In part 5, persons under the sentence of Penal Servitude are explained. Part 6 is related to the removal of prisoners. Part 7 shows the rules for persons under the sentence of Transportation and part 8 explains the rules for discharge of prisoners. The last part 9 of the Prisoners Act 1900¹³⁰ provides the provisions required for the attendance of prisoners and obtaining their evidence.

“Reformatory Schools Act, 1897”¹³¹ “amend the law relating to Reformatory Schools and to make further provisions for dealing with youthful offenders”¹³² 1st chapter of the act is preliminary while 2nd is Reformatory School in which the power to establish and discontinue reformatory schools are explained and the requisites of schools and other measures. The 3rd chapter is related to the Management of reformatory Schools. 4th chapter explains the offences in relation to Reformatory Schools and at last 5th chapter gives Miscellaneous rules in this respect.¹³³

The Punjab Borstal Act, 1926”¹³⁴ is “An act to make provision for the establishment and regulation of Borstal institutions in the Punjab and for the detention and training of adolescent

¹²⁸ *The Prisoners Act 1900*, “received the assent of the Governor General on the 2nd February 1900”.

¹²⁹ *The Prisoners Act 1900*.

¹³⁰ *Ibid.*

¹³¹ *Reformatory school ACT 1897*, “passed by the Governor General of India in council received the assent of the Governor General on the 11th March 1897”.

¹³² *Reformatory School Act, 1897*.

¹³³ *Ibid.*

¹³⁴ *The Punjab Borstal act 1926*, “received the assent of Governor on the 22nd July 1926 and Governor General on the 16th August 1926 and was first published in the Punjab Government Gazette of the 27th August 1926.”

offenders therein".¹³⁵ Section 2 of this Act gives different definitions while one of them is "Borstal institutions, means a place in which offenders may be detained under this Act and given such industrial training and other instruction and subjected to such disciplinary and moral influences as will conduce to their reformation."¹³⁶ Section 3 is related to the establishment of Borstal institutions. On the other hand Section 4 gives the directions for the appointment of the directors of Borstal institutions' officers and visiting committee.¹³⁷

Section 5 gives the power of courts to pass a sentence of detention in a Borstal institution in the case of a convict under twenty one years of age in lieu of transportation or rigorous imprisonment. Section 6 is for the special powers of District Magistrates. Section 7 is related to the detention of prisoners confined in the Lahore Borstal jail. Section 8 gives the powers to the superintendent of jail to present prisoners having less than 21 years of age before District Magistrate for detention in Borstal institution. Section 9 gives rules that when actions may not be taken under section 8. The next section 10 is related to the application of the Code of Criminal Procedure 1898, and the limitation Act 1908 and the provisions for appeal and revision.¹³⁸

Section 11 gives the rule that no person who has been once detained to be detained again. Section 12 is for release on furnishing security. Section 13 states that inquiry should be made regarding the age of the offender before the passing of an order of detention. In section 14 the Magistrate has to give grounds of his opinion before ordering detention. Section 15 gives the powers to release on license. In section 16 absences under license should have to be counted toward period of detention. Section 17 explains the form of license. In section 18 the rules of

¹³⁵ *The Punjab Borstal Act 1926.*

¹³⁶ *ibid*

¹³⁷ *ibid*

¹³⁸ *ibid*

suspension and revocation of licenses are explained. Section 19 gives the penalty for escape. Section 20 is related to the incorrigibles. Section 21 gives the rules that inmates appointed officers should be public servants. Section 22 explains the extramural custody, control and employment of inmates. Section 23 gives the penalty or the introduction or removal of prohibited articles into or from Borstal institutions and communications with inmates.¹³⁹

Section 24 gives the powers to arrest for offences under section 23. Section 25 is related to the publication of penalties. Section 26 shows that officer in charge of Borstal institutions should detain persons, duly committed to their custody. In section 27 in charge officer of Borstal institutions to return orders, etc. after execution or discharge. Section 28 gives the powers of in charge officer of Borstal institutions to give effect to orders of certain courts. On the other hand Section 29 and 30 give warrant of officers of such courts to be sufficient authority produce where officer in charge of Borstal institution doubts the legality of order sent to him for execution.¹⁴⁰

Section 31 gives the rules for lunatic inmates that how to be dealt with and in section 32 applications to Borstal institution of certain provisions of the prison act 1894 and the prisoners' act 1900 are explained. Section 33 explains that how punishment of whipping may be inflicted on an inmate. Section 34 gives the powers to make rules under the Act and section 35 gives power to the Governor in Council to vary age limit, and to apply the Act to female and in last section of this Act there is prohibition of whipping not to be inflicted on females.¹⁴¹

Another Act is The Good Prisoners' Probational Release Act, 1926,¹⁴² "an Act to provide for the release of good conduct prisoners on conditions imposed by the Provincial Government."¹⁴³

¹³⁹ *The Punjab Borstal Act 1926.*

¹⁴⁰ *ibid*

¹⁴¹ *ibid*

¹⁴² *An Act The good conduct prisoner's probational release 1926, "passed on 27th August 1926."*

Section 2 of act gives power to Government to release by license on conditions imposed by it. Section 3 explores the period for which license is to be forced and section 4 explains the period of release to be reckoned as imprisonment for computing period of sentence served. Section 5 gives the form of license and section 6 states the power to revoke license. Section 7 is for the released absconders who escape from supervision to be punishable. Last section 8 of that Act gives the power to make rules.¹⁴⁴

This section will discuss some prisons laws which are related to the rights of minor prisoners. Juvenile justice system ordinance 2000,¹⁴⁵ “An ordinance to provide for protection of the rights of children involved in criminal litigation.”¹⁴⁶ After introductory sections, there is section 2 that gives some important definitions and section 3 gives the legal assistance. Under section 4 notifications for the established juvenile courts are explained. Section 5 explains that no joint trial of a child and adult persons should be made.¹⁴⁷

Section 6 gives the procedure of juvenile court. Section 7 shows the determination of age. Section 8 prohibits publishing proceeding of cases. Section 9 imposes the duty on probation officer and section 10 is related to the arrest and bail. Section 11 explains release on probation. Section 12 gives order that shall not be passed with respect to a child. Section 13 is related to the appeal etc. Section 14 explains that ordinance should not to derogate from other laws. Last section 15 of that ordinance gives the power to make rules.¹⁴⁸

¹⁴³ *An Act The good conduct prisoner's probational release 1926.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Juvenile justice system ordinance 2000*, published on 1.7.2000.

¹⁴⁶ *Juvenile justice system ordinance 2000*.

¹⁴⁷ *Ibid.*

¹⁴⁸ *Ibid.*

“Juvenile Justice Rules, 2001,¹⁴⁹ 1st part is preliminary part and under this part there are different definitions and also give the meaning of “Juveniles, means a person who at the time of commission of an offence has not attained the age of eighteen years.”¹⁵⁰ Part 2 is related with institutional treatments. Under which Rule 4 give rules for establishment of Borstal institutions and Rule 5 give accommodation for juvenile. Rule 6 related with the juvenile to be sent to borstal institution.¹⁵¹

And Rule 7 explain that juveniles to be admitted in borstal institution. In Rule 8 it is clear that every juvenile shall be searched thoroughly at the time of admission in Borstal institutions. Rule 9 related with transfer of juvenile. And Rule 10 detention of female juvenile. Rule 11 gives facility of meeting of juvenile. Rule 12 related with release of juvenile. Rule 13 gives rules for health, hygiene and medical care. In Rule 14 rules for moral treatment are explained. Rule 15 is for technical training. Rule 16 is for physical training sports and recreation. Rule 17 is for psychological development of juveniles. Rule 18 is for complaints and requests by juveniles in Rule 19 mention rules for discipline and punishment. In last Rule 20 no juvenile shall be stigmatization unless expressly certified by court.¹⁵²

2.2. Control and duties of officers of prisons:

In every prison there are officers of prisons like superintendent, medical officer, medical subordinate and deputy superintendents. It is option on the Government to appoint more officers if compulsory.¹⁵³ All officers of the prison must follow all rules which are made by

¹⁴⁹ *Juvenile Justice Rules 2001* “published on 11, December 2001. ICT Administrations is pleased to make the following rules for juveniles.”

¹⁵⁰ *Juvenile Justice Rules 2001*.

¹⁵¹ *Ibid.*

¹⁵² *Ibid.*

¹⁵³ *Prison Act 1894, section 6.*

superintendent. And deputy superintendent and his subordinates are also duty bound to follow these directions. Officers of prisons not to have any business dealing with prisoners directly or indirectly no benefit are gain from prisoners. And also not to be interested in prison contracts nor shall be gain any benefit from sale or purchase of any object of prison or belonging of prisoners.¹⁵⁴

According to the order of inspector General, superintendent shall handle the prison in all matters concerning to regulation, labor, expenses, penalty and management.¹⁵⁵ However, the records should be kept by the superintendent. He shall keep a register for record of prisoners who admitted and released. He must also keep a book for entry of punishments to all prison offenses. He should keep a visitors book and the record of the money and articles taken from prisoners.¹⁵⁶

General duties of the superintendent¹⁵⁷ are to maintain discipline in prisons, to provide maintenance care, control all expenditures, to visit prison daily, time expired prisoners to be released before noon, prisoners to be seen daily, inspection of food, surprise visits, prisons to be inspected and maintained in an efficient state, superintendents order book, distribution of duties, arrange of duties of officers, duty hours of superintendent, visits to the hospital, visits to the garden, storage of grain, checking of stores and equipment, weekly parade, checking and counting prisoners twice daily and that all business to be transacted on prison premises,

Superintendent is responsible to enquire into all prison offences and record punishments. Superintendent also has to visit prison when an unusual occurrence is reported, record of award of punishment by superintendent and appointment and punishment of subordinate officers.

¹⁵⁴ *Prisons Act 1894*, section 8,9,10.

¹⁵⁵ *ibid*, Section 11(1).

¹⁵⁶ *ibid*, Section 12.

¹⁵⁷ *Jail manual*, Rule 940 to Rule 972.

Superintendent is to report all important occurrences and to accompany inspector general or official visitors. Superintendent is also to exercise vigilant control over receipt and expenditure, payment of supplies and can give effect to requisition of the medical officer, precautions against fire, precautions for preventing escape, special precautions for security and superintendent not to leave station without sanction.¹⁵⁸

Medical officer shall have charge of sanitary administration; he shall work under the authority of superintendent and follow the rules made by law. Medical officer will give written report to the superintendent related to the treatment of prisoner if it negatively effect on prisoner and also give his own observation with that report. Medical officer will also give report on death of a prisoner and will maintain all particulars records in register on which day complain of illness were observed. At that day to which labor activity, he was busy. What he eat on that day. On which day he admitted in hospital. On the day in which medical officer inform for his illness. Nature of the disease before his death when the disease was seen by medical officer or medical subordinate is also recorded. When the prisoner passes away and when post mortem is made a description of the emergence after death with his remarks is prepared in that report.¹⁵⁹

General duties of medical officer¹⁶⁰ are to visit prison daily, responsibility of health of prisoners and hygiene, examination of the prisoners on admission and release, vaccination of prisoners. He should daily visit sick in hospital and in every week the medical officer shall inspect every part of the prison, inspection of cookhouse and rations, to inspect cemetery, examination of candidates, supply of medicines and diet, record to be made on death of prisoners, see all prisoners on weekly parades, prisoners in solitary confinement shall be visited

¹⁵⁸ *ibid*

¹⁵⁹ *ibid*, Section 13, 14, and 15.

¹⁶⁰ *Jail manual*, rule 973 to Rule 1001

daily, cleanliness of clothing and bedding in hospital, training of prisoners as nursing orderlies, and electric fans shall be provided for the use and comfort of the patients.

The deputy superintendent also has to live in prison unless the superintendent gives permeation in writing to live another place. Deputy Superintendent is responsible to inform superintendent about the death of any prisoner and also to the medical subordinate. The deputy superintendent shall be responsible to care all records which are kept by superintendent and all other documents, warrants must be kept in safe custody and also money and articles which are taken from prisoners. Deputy Superintendent should present all time in jail even at night. He shall not absent for a night without the permission in writing from superintendent. If he is found absent without permission in the case of urgent piece of work then he has to immediately report the reason of absence to the superintendent.¹⁶¹

The subordinate officer acting as gate keeper or any other officer of the prison must examine all those things which are carried in or out of the prison. He may stop them and if he feel any doubt then search them and if there is any prohibited article then immediately report to the deputy superintendent and without the leave from the superintendent or deputy superintendent he shall not be absent from the prison. Prisoners who are appointed as officers of prison deemed as a public servants under penal code.¹⁶²

According to the rule 1065,¹⁶³ every officer of a prison shall at all time keep away from all those conduct which disturb the prisoners, and he shall behave humanly with fact and good temper. He must listen all complains of prisoners with full attention, cool behavior and without

¹⁶¹ *ibid*, section 16, 17,18,19,20.

¹⁶² *ibid*, Section 21, 22, and 23.

¹⁶³ *Jail manual* 2011, chapter4, page 425.

interruption or disturbance and it is his duty to show all such kindness to all prisoners. He maintains discipline and follow rules and regulations which are applicable to fulfill his duties.

According to the rule 1066,¹⁶⁴ no officer shall at any time beat or hit any prisoner unless for private defense or when giving punishment to him lawfully. To enforce of law and carry out his duties, officer shall not use more force than is extremely essential. “It is lawful to use all means necessary to effect an arrest.”¹⁶⁵ And “a prisoner has no right of private defence against prison officers acting in the discharge of their duty.”¹⁶⁶

According to the rule 1069,¹⁶⁷ no officer of the prison can give any type of punishment to the prisoner only but the superintendent shall award the punishment to any prisoner and no officer shall use loose and unreasonably frustrating language.

According to the rule 1073,¹⁶⁸ at night no prison officer shall be permitted to enter in prison cell unless accompanied by another officer and then only at the time of emergency.

2.3. Types of imprisonment in Pakistan:

According to Pakistan Penal Code,¹⁶⁹ there are 10 types of punishments which are awarded at the time of offense. Under the provision of that code all offenders are liable for these punishments. It mentions ten types of punishments. 1st is Qisas, and it is an Islamic term the meaning of which is “retaliation” and it follows the principle of eye for an eye, for example in

¹⁶⁴ *Jail manual 2011, chapter4, page 425.*

¹⁶⁵ Section 45, *Criminal Procedure Code.*

¹⁶⁶ Section 98, *Pakistan Penal Code.*

¹⁶⁷ *Jail manual 426.*

¹⁶⁸ *Ibid-427.*

¹⁶⁹ *Pakistan Penal Code*, “it was presented to the legislative Council in 1856 and was passed on October 6, 1860. And shall take effect throughout Pakistan.”

case of murder the legal heirs of the murderer has right to demand for execution of the murderer.¹⁷⁰ According to the Quran:

O you who believe, equivalence is the law decreed for you when dealing with Murder, the free for the free, the slave for the slave, the female for the female. If one is pardoned by the victim's kin, an appreciative response is in order, and an equitable compensation shall be paid. This is alleviation from your Lord and mercy. Anyone who transgresses beyond this incurs a painful retribution.¹⁷¹

“Quran also give permeation to the aggrieved party they may forgive the right of Qisas as an act of charity or an act of atonement for sins.”¹⁷²

2nd punishment is Diyat, which means compensation, if the aggrieved party do not use their right of Qisas and they take ransoms or compensation and it is in the form of cash. It is provided in any condition if murder is occurred intentionally or unintentionally, a person is liable for Diyat.¹⁷³ According to Quran:

We have prescribed for thee therein ‘a life for a life, and an eye for an eye, and a nose for a nose, and an ear for an ear, and a tooth for a tooth, and for wounds retaliation;’ but whoso remits it, it is an expiation for him, but he whoso will not judge by what God has revealed, these be the unjust¹⁷⁴

3rd punishment is Arsh; it is also some sort of compensation.

“The Arsh means monetary compensation awarded to the victim by offender by order of court. The detail of the amount of compensation is been provided in section 337Q to 337X. The

¹⁷⁰ “*Qisas*” Available on <http://en.wikipedia.org/wiki/Qisas> (Last Assessed, 16 feb, 2011).

¹⁷¹ *Qur'an* 2:178.

¹⁷² *Qur'an* 5:45.

¹⁷³ “*Diyat*” Available on <http://en.wikipedia.org/wiki/Diyy> (Last Accessed, 15 Feb, 2011).

¹⁷⁴ *Qur'an* 5:45.

sections 337Q to 337S prescribed the value of the Arsh for causing itlaf if an organ which is found singly in a human body shall be equivalent to full value of the Diyat. The Arsh for organ of human body which are in pair shall be one half of the value of Diyat and Arsh for organ which are quadruplicate shall be equivalent to one fourth of the diyat. The value of the arsh for fingers shall be one tenth of diyat and teeth one-twentieth of diyat for one tooth, and value of the arsh have been defined in section 337V. The section 337W have prescribed that value of hurt shall be liable for each hurt. The section 337X has defined the method of payment either made in installment and failure to pay that amount could be punished in tazir by the order of the court.”¹⁷⁵

4th punishment is Damman and it is also some sort of compensation. The section 337Y has given the discretionary power to court to award compensation to the victim and value of compensation can be determined by the court, keeping in view of the expenses incurred by the victim in treatment and anguish and disability caused to the victim. Hurts not caused with intention or knowledge. Under subsection 1 and 2 of section 337H whoever causes hurt by rash or negligent shall be punished for arsh and Daman is also liable to imprisonment as Tazir for either description of term which may be extended over to three years. The section 337I has provided the condition for causing injury mistake shall be punished Arsh or Daman specified kind of hurt. Hurt is not liable to Qasis.¹⁷⁶

5th punishment is Ta’zir, it is the corporal punishment which is refereed by the judge, offenses for which punishment is not refer in Quran then tazir is applied. These are like

¹⁷⁵ “Pakistan penal law on body injuries,” Available on <http://article-knowledge-base.com/pakistan-penal-law-on-body-injuries-articleid121343.htm> (Last Accessed, 18 Feb, 2011).

¹⁷⁶ *ibid.*

misdemeanors¹⁷⁷ offences, the burden of prove is not in very strict sense only evidence of two witnesses or confessions are enough for tazir.¹⁷⁸

6th punishment is Death, it is known as capital punishment and it is the greatest form of punishment. It is given according to law by judge.

7th is imprisonment for life, under that punishment a person is live but under the custody of police. He spent his large part of life in jail, which is near to 25 years.

8th is imprisonment of two kinds, 1st is rigorous and 3rd is simple. Under rigorous imprisonment, offender is put to hard labor and in simple imprisonment he is confined in jail and not to do any type of work. He is simply in imprisoned. Maximum range of imprisonment is 14 years and minimum is 24 hours and it depends on case to case that when to give maximum and when to minimum. It is also on the discretion of court that they may give simple or rigorous imprisonment.

The 9th Punishment is Forfeiture of property. Generally it is applied on those persons who are found guilty of high political offences, and also apply on those which are punishable for death.

10th Punishment is Fine, and it is taken from wrongdoer when a person commits any wrong then he is liable for fine and amount of fine is decided by court.

¹⁷⁷ "Tazir" Available on <http://en.wikipedia.org/wiki/Tazir> (Last Accessed, 18 Feb, 2011).

¹⁷⁸ ibid.

2.4. Crimes for which Punishments could be awarded:

2.4.1. Qisas:

- Murder (premeditated and non-premeditated)
- Premeditated offenses against human life, short of murder
- Murder by error
- Offenses by error against humanity, short of murder¹⁷⁹

2.4.2. Tazir:

Tazir is given by state. Crimes which are not under Qisas they are included in Tazir.

2.4.3. Diyat:

That type of compensation is based on the percentage of responsibility. Not only for murder Blood money is to be paid, but also in case of by chance death, it means death in a fire, industrial or road accident, for instance, as long as the responsibility for it falls on the person who is responsible for the happening of these unnatural cases.¹⁸⁰

2.4.4. Death:

Death punishment is awarded to the offences of waging war against Pakistan, Abetting mutiny committed, Giving or fabricating false evidence, upon which an innocent person suffers

¹⁷⁹ “Human rights from an Islamic world view” Available on <<http://www.muhajabah.com/docstorage/hudud.htm>> (Last Accessed, 19 Feb, 2011).

¹⁸⁰ “Diyat” Available on <http://en.wikipedia.org/wiki/Diyya> (Last Accessed, 14 Feb, 2011).

death, Murder, Abetment of suicide of a miner or insane, or intoxicated person, Dacoits accompanied with murder, Attempt to murder by a person under sentence of imprisonment for life if hurt is caused, Murder committed during sentence of imprisonment for life, Hijacking.¹⁸¹

2.4.5. Imprisonment for life:

It is awarded to the cases of waging or attempting to wage war or abetting waging of war against Pakistan, Conspiracy to commit offence punishable under section 121, collecting arms, etc, with intention of waging war against Pakistan, Sedition, Waging war against any Asiatic power on alliance with Pakistan, Abetting mutiny or attempting to seduce a soldier, sailor or airman, Abetment of mutiny if mutiny is committed in consequence whereof, Giving or fabricating false evidence with intent to procure conviction or offence with imprisonment for life etc, Resistance or obstruction to lawful apprehension of another person.¹⁸²

it also includes omission to apprehend or sufferance of escape on part of public servant in case not otherwise provided for, Counterfeiting Pakistan coin, Making or selling instruments for counterfeiting coin, Counterfeit Government stamp, Punishment for murder, Punishment for culpable homicide not amounting to murder, Abetment of suicide a child or insane person, Attempt to murder, Punishment for thug, Causing miscarriage without women's consent, Death caused by act done with intent to miscarriage, Act done with intent to prevent child being born alive or to cause it to die after birth.¹⁸³

Imprisonment is awarded to Voluntarily causing grievous hurt by dangerous weapons or means, Voluntarily causing grievous hurt to extort property constrain illegal act, Kidnapping or

¹⁸¹ *Pakistan Penal Code 1860*, section 121,132,149,302,305,396,307,303,403-B.

¹⁸² *Ibid- 1860*, section 121, 121-A, 122, 124-A, 125, 131, 132, 194, 195, 225.

¹⁸³ *Ibid- section*, 225-A, 232, 233, 255, 302, 304, 305, 307, 311, 313, 314, 315.

abducting in order to murder, Habitual dealing in slaves, Extortion by threat of accusation of an offence punishable with imprisonment for life, Putting person in fear of accusation of offence in order to commit extortion, Voluntarily causing hurt in committing robbery, Dacoity with murder, Punishment for belonging to gang of dacoits, criminal breach of trust by public servant or by bankers, merchant or agent, Dishonestly receiving property stolen in the commission of a dacoity, Habitually dealing in stolen property.¹⁸⁴

Mischief by fire or explosive substance with intent to destroy house, etc, Mischief with intent to destroy or make unsafe a docket vessel or one of twenty tons burden, House trespass in order to commit offence punishable with death, Grievous hurt caused whilst committing lurking house trespass or house breaking, All persons jointly concerned in lurking house trespass or house breaking by night punishable with death or grievous hurt caused by one of them, Forgery of valuable security will, etc. Making or possessing counterfeit seal, etc, with intent to commit forgery punishable under section 467, having possession of document described in section 466 or 467 knowing it to be forged and intending to use it as genuine.¹⁸⁵

Counterfeiting device or mark used for authenticating documents described in section 467 or possessing counterfeit marked material, Fraudulent cancellation, destruction, etc, of will, authority to adopt of valuable security, Punishment for attempting to commit offence punishable with imprisonment for life or for shorter terms.¹⁸⁶

¹⁸⁴ *Pakistan penal code 1860*, Section, 326, 329, 364, 371, 388, 389, 394, 396, 400, 409, 412, 413.

¹⁸⁵ ibid- section, 414, 437, 449, 459, 460, 467, 472, 474.

¹⁸⁶ *Ibid*- section, 475, 447, 511.

2.4.6. Imprisonment:

In these cases minimum term of imprisonment is fixed: if at the time of committing robbery or dacoity the offender uses any deadly weapon or causes grievous hurt to any person, he shall be punished with imprisonment of not less than seven years and if at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon he is punished with imprisonment of not less than seven year.¹⁸⁷

In these cases offender is punished with rigorous imprisonment. Giving or fabricating false evidence with intent to procure conviction of an offense which is capital by any law for the time being in force. Theft after preparation made for causing death, hurt, or restraint in order to the committing of the theft. Robbery House trespass in order to commit an offence is punishable with death.¹⁸⁸

In these cases offender is punished with simple imprisonment. Public servant who engages in Trade unlawfully or unlawfully buying or bidding for property. A person absconding to avoid service of summons or other proceeding from a public servant or preventing service of summons or other proceeding, preventing publication thereof or not attending in obedience to an order from a public servant. International omission to produce a document to a public servant by a person legally bound to produce such document or international omission to give notice or information to a public servant by a person legally bound to give it or intentional omission to assist a public servant when bound by law to give assistance.¹⁸⁹

¹⁸⁷ *Pakistan penal code 1860*, section, 397, 398.

¹⁸⁸ *ibid-* section, 194, 382, 392,449.

¹⁸⁹ *Pakistan penal code 1860*, section, 168, 169, 172, 173, 174, 175, 176, 187.

Refusing oath when duly required taking by a public servant or refusing to answer a public servant authorized to question or refusing to sign any statement made by a person himself before a public servant can be awarded imprisonment. Disobedience to an order duly promulgated by public servant. Escape from confinement negligently suffered by a public servant or negligent omission to apprehend or negligent sufferance of escape on the part of a public servant in cases not otherwise provided for.¹⁹⁰

International insult or interruption to a public servant who is sitting in the stage of a judicial proceeding, Continuance of nuisance after injunction to discontinue, Wrongful restraint, Defamation printing or selling defamatory matter known to be so, Uttering any word or making any sound or gesture with an intention to insult the modesty of a woman and Misconduct in a public place by a drunken person also came under imprisonment.¹⁹¹

2.4.7. Forfeiture:

In following cases forfeiture of specific property is retained. Whoever commits or prepares to commit depredation on the territories of any power at peace with the Government shall be liable in addition to other punishments to forfeiture of any property used or intended to be used in depredation or acquired thereby. Whoever knowingly receives property taken as above mentioned or in waging war against any Asiatic power at peace with the Government shall be liable to forfeit such property. A public servant who improperly purchases property which by virtue of his office he is legally prohibited from purchasing forfeits such property.¹⁹²

¹⁹⁰ *Pakistan penal code 1860*, section, 178, 179, 180, 188, 223, 225-A.

¹⁹¹ *ibid*- section, 228, 291, 341, 500, 501, 502, 509, 510.

¹⁹² *Pakistan penal code 1860*, section, 126, 127, 169.

2.4.8. Fine:

It is the only punishment which is given to the offences of Deserter concealed on board merchant vessel through negligence of master, Owner or occupier of land on which an unlawful assembly is held, Liability of person for whose benefit riot is committed, Liability of agent of owner or occupier for whose benefit riot is committed, False statement in connection with an election, Illegal payments in connection with an election, Failure to keep election accounts, Making atmosphere noxious to health, Danger or obstruction in public way or line of navigation, Punishment for public nuisance in cases not otherwise provided for and Keeping littery office.¹⁹³

¹⁹³ *Pakistan penal code 1860*, Section, 137, 154, 155, 156, 171-G, 171-H, 171-I, 278, 283, 290, 294-A.

Chapter 3:

Problems of prisoners in Pakistan:

In Pakistan there are many problems which are face by prisoners in jails. In this chapter I mention these problems in detail one of the most first is overcrowded jails. Most of the prisons in Pakistan are overcrowded and the prisoners, including women and children, are at the mercy of the state for the provision of basic necessities of life,¹⁹⁴ then torture and ill treatment with prisoners, discrimination and unfair trial these all problems faced by male prisoners female and children. Related case laws are also discussed under that third chapter of my thesis.

3.1. over crowded prisoners in jails:

Over Crowding is one of the major problems in the jails of Pakistan.¹⁹⁵ The increasing crime rate, inconsistent judicial system and an excess of cases in courts have resulted in greatly overcrowded jails in the country where 88,659 prisoners are set aside against a capability of 36,557, according to a report by the Interior Ministry. The report stated that jails in the country had old and falling down construction of the 19th century and that there was a severe deficiency of jail officers and an unsatisfactory safety measures could result in a misfortune.¹⁹⁶

There are 89 jails in the country, out of which 30 are in Punjab, 18 in Sindh, 22 in The NWFP, 10 in Balochistan, six in Azad Jammu and Kashmir and three in the Northern Areas.

¹⁹⁴ "Child and women's rights are being transgressed in prisons," Available on

<<http://www.pakistantoday.com.pk/2011/01/child-and-womens-rights-are-being-transgressed-in-prisons/>> (Last Accessed, 1 April, 2011).

¹⁹⁵ "Conditions of jails in Pakistan," Available on <<http://www.einfopedia.com/conditions-of-jails-in-pakistan.php>> (Last Accessed, 5 April, 2011).

¹⁹⁶ "Overcrowded jails cheer hell for inmates," Available on <http://www.dailytimes.com.pk/default.asp?page=story_22-6-2005_pg7_29> (Last Accessed, 5 April, 2011).

These include 23 central jails, 47 district jails, 13 sub jails, three juvenile jails, two women's jails and one open jail. The report revealed that there were only 14,300 staffers to control 89 prisons with one official for seven inmates which was very nominal according to international standards. In the Punjab jails, there are 52,332 inmates against a capacity of 17,637.”¹⁹⁷

Though the prisons in Pakistan are faced with the problem of housing inmates far beyond the quantity than what each of them was formerly planned for, In the District Prisons at Mardan and Peshawar, in the Khyber Pakhtunkhwa, for the reason to showing the conditions being looked by the prisoners.“The prison was built in 1846 by the British to accommodate 300 prisoners. Today the number of inmates exceeds 700.”¹⁹⁸ Due to insufficient funds, the old building is in decrepit condition and cause excessive health dangers for those who are restrained in its four walls.

This overcrowding also inserts to the already polluted situations, as the olden building not have a suitable sewerage system. The separate portion within the building for women prisoners presents an even worse example of the contradiction of the fundamental right with respect to the sacredness of human dignity. The rooms, initially built to contain no more than ten prisoners, are being used for the detention of more than 40. It is not only the women prisoners who are locked in these depressing, airless and dark rooms, but also the newborn children, some of whom are given birth in the same overcrowded place. The prisoners in such overcrowded room have no option but to sleep on the floor under dangerous conditions due to lack of space. “The meager resources at the disposal of the management allows not more than Rs. 20, 220

¹⁹⁷ ibid

¹⁹⁸ “Overcrowded prisons,” Available on <<http://newsletters.ahrchk.net/qaumi/mainfile.php/prison/63/?print=yes>> (Last Accessed, 9 April, 2011).

(approx US\$ 400) annually to be allocated for medicines,”¹⁹⁹ which in no way appropriate with the number of prisoners restricted in this prison. The prisoners, thus, run the hazard of being showing to health risk.

The housing situation in the prison at Peshawar, which is the provincial capital of the North West Frontier Province, is no different. Initially built to contain 800 prisoners, more than 2800 detainees are being reserved in its building which was built more than a century ago. Since the majority of the prisons all over the rest of the country were built during the same era, the circumstances of cleanliness, hygiene and other merciless and humiliating factors mainly due to overcrowding obviously breach the basic principle that “people come to prison as a punishment, not for punishment”.²⁰⁰

It is satirical that in such conditions, the hazard reasons by overcrowding eliminate the difference between the find guilty prisoners for dreadful criminal transgression, and those whose blame is yet to be confirmed; common prisoners, infantile, lunatics or prisoners confined for minor offences. Since all the prisoners have to face the same handling, the most regrettable victims are those guiltless children who have to bear these merciless and pitiless conditions just because of the detention of their mothers.²⁰¹

In Karachi’s four jails. They have people of over 8,700 prisoners which might have been easily compact if the “parole” and trial system had been functioning well. This procedure permits for the decrease by “as much as two-thirds of the term” granted to first time criminals if their

¹⁹⁹ “Overcrowded prisons,” Available on <<http://newsletters.ahrchk.net/qaumi/mainfile.php/prison/63/?print=yes>> (Last Accessed, 9 April, 2011).

²⁰⁰ *ibid.*

²⁰¹ *ibid.*

activities in jail has been excellent. Of course not every inmate would advantage from this proviso, but many would. This procedure is not being used just because of the Sindh government's negligence.²⁰²

Sindh prisons known as Guantanamo prisons and due to inhuman conditions of the prisons which rather than reforming the prisoners is forcing them to become hardcore terrorists once they are released, and in Sindh Pakistan several Guantanamo prisons. These are not only in Karachi even in Sakhar and Haiderabad same condition of prisons. It is due to overcrowded jails, prisoners not present in court at the time of their hearing and their cases are on pending due to the weakness of Pakistani prisons staff.²⁰³

“The overcrowded Adiala Jail is becoming a ‘hell’ for prisoners”²⁰⁴ as they are facing a huge number of problems, including unhygienic food, shortage of water and space in addition to power outages. A visit to the prison exposed that due to eating of unhygienic food a huge quantity of prisoners were constantly vomiting as they were misery from abdominal problems.²⁰⁵

People interviewed outside the Adiala Jail complained that they were facing difficulties in bringing compulsory items of daily use to their jailed family members because the prison employees insisted their full share. Adiala Jail Deputy Superintendent Malik Muhammad Feroz told that “the prison was overcrowded. He said that at present there were 5,800 prisoners in jail.

²⁰² “Overcrowded jails,” Available on <<http://www.paperarticles.com/2009/05/overcrowded-jails.html>> (Last Accessed, 10 April, 2011).

²⁰³ “Guantanamo like prisons of Sindh” Available on <<http://www.chowrangi.com/guantanamo-like-prisons-of-sindh.html>> (Last Accessed, 20 April 2011).

²⁰⁴ “Adiala jail a hell for prisoners,” Available on <<http://www.pakspectator.com/adiala-jail-a-%E2%80%98hell%E2%80%99-for-prisoners>> (Last Accessed, 20 April, 2011).

²⁰⁵ *ibid.*

According to him, the prison has a capacity to house 1,996 inmates only. More than 100 prisoners are put in a single room meant for 36 inmates. For this reason, prisoners face shortage of water and other necessities of life.”²⁰⁶ The jail superintendent said that “prisoners have been facing power outages for the last few days because of a fault in the main supply line. He said that there was an acute shortage of water due to frequent power outages. Though the prison administration is trying hard yet it is impossible for it to provide hygienic food to 5,800 prisoners.”²⁰⁷

Three hundred female detainees are being kept in the female prisoners’ quarters when it should hold 100 inmates. The jail consists of eight barracks with the death cell. More than 130 prisoners given death punishment are being held in the death cell. More than 3,000 juveniles and detainees under trial live in the barracks with hard-core criminals.²⁰⁸

Muhammad Sakhawat Shah, a prisoner, said that the jail administration was treating them like animals. “There is no water for drinking and washing and no electricity for operating fans and lights. Unhygienic food is being served to us. The management is using force against us instead of solving such problems,” he said. Qasim Mushtaq, an under-trial prisoner, said that it was impossible to survive without hygienic meal, water and other facilities, adding that they spend sleepless nights in the prison. Riasat Bashir, another under-trial prisoner, said that he has been suffering from diarrhea for the last two days and

²⁰⁶ “Adiala jail a hell for prisoners,” Available on < <http://www.pakspectator.com/adiala-jail-a-%E2%80%98hell%E2%80%99-for-prisoners>> (Last Accessed, 20 April, 2011).

²⁰⁷ Ibid.

²⁰⁸ “Plight of prisoners in Adiala Jail,” Available on < http://www.dailytimes.com.pk/default.asp?page=story_3-11-2003_pg7> (Last Accessed, 25 April 2011).

trying to get admission in the hospital. According to him, he does not have enough money to get admitted in the hospital.²⁰⁹

Over Crowding is approximately the solo major problem playing the jail system in Pakistan. Besides of sufferings living in extremely cramped quarters. Prisoners charged with petty crimes come into get in touch with hardened out laws. Finally the minor offender leaves jails irritated by his experience and armed with the knowledge needed to begin a career in heavy weight crime.²¹⁰

A free prisoner's movement about to obtain Pakistan's jails to court has highlighted the inhuman situation in prisons, where rights groups claim convicts, mainly those on the death row, live in restricted, overcrowded cells and frequently face violence. The number of death sentences meted out is terrifyingly high in this country. In the eastern province of Punjab alone, at least 5,260 prisoners are on the death line in 30 jails. But there are only 812 death row cells to accommodate them. The death row cells are generally small rooms that determine 9x12 feet, have attached toilets and are cordoned off by walls that's are around three feet high. On occasions, as many as 12 inmates have been crowded into cell, charge rights groups.²¹¹

Children are also face problem of overcrowded jails. Journalist Vera Frankl, in a story for the BBC, under the above title, overcrowded prisoners in jails of Pakistan, and published on Monday, November 6, 2006, gave a dreadful account of the plight of the country's prison children. "Throughout Pakistan, thousands of children are locked inside police cells or overcrowded jails, victims of a justice system that treats the very young much the same as adults,

²⁰⁹ "Adiala jail a hell for prisoners," Available on <<http://www.pakspectator.com/adiala-jail-a-%E2%80%98hell%E2%80%99-for-prisoners>> (Last Accessed, 20 April, 2011).

²¹⁰ "Conditions of jails in Pakistan," Available on <<http://www.einfopedia.com/conditions-of-jails-in-pakistan.php>> (Last Accessed, 5 July, 2011).

²¹¹ "Dead man walking in Pakistan's overcrowded prisons," Available on, <http://www.pakp.com/2004/06/dead-men-walking-in-pakistans.htm>> (Last Accessed, 5 July, 2011).

she wrote. Kids, as young as seven can spend years behind bars before the courts have even decided if they are innocent or guilty.”²¹²

Frankl quoted Hina Jilani, a human rights lawyer and activist, as saying,

They are not taken seriously because children have no voice. The kinds of children who get arrested are totally vulnerable because of lack of power and lack of resources. And that's why a lot of them have been subjected to illegalities.²¹³

And most children are locked up under the same top as hardened mature criminals.²¹⁴ In the face of the fact that around half Pakistan's population is under 18, the country has only one juvenile court.²¹⁵ In Lahore District Jail 150, teenager prisoners are crowded into one, two-storey building block.²¹⁶ Supreme Court lawyer Zia Awan said. “They conducted a raid in Hyderabad central jail some years ago, and found 50 children in jail for petty crimes who had been sexually abused because they were kept with the adult prisoners.”²¹⁷ In the whole of Pakistan there is not a particular capacity for female juveniles. They all are kept with women who are drug addicts or drug dealers or maybe murderers.²¹⁸

²¹² “BBC reporter reveals the tragedy of Pakistan's prison children,” Available on <<http://www.assistnews.net/Stories/2011/s11010190.htm>> (Last Accessed, 1 July, 2011).

²¹³ *ibid.*

²¹⁴ *Ibid.*

²¹⁵ “Tragedy of Pakistan's prison children,” Available on <http://news.bbc.co.uk/2/hi/south_asia/6111162.stm> (Last Accessed, 4 July, 2011).

²¹⁶ “Childhood lost in Pakistan jails,” Available on, <<http://www.independent.co.uk/news/childhood-lost-in-pakistan-jails-1170787.html>> (Last Accessed, 6 July, 2011).

²¹⁷ “BBC reporter reveals the tragedy of Pakistan's prison children” Available on <

<http://www.assistnews.net/Stories/2011/s11010190.htm>> (Last Accessed, 1 July, 2011).

²¹⁸ *ibid.*

Mr. Wahl²¹⁹ said The prisons in Pakistan, rather than improving prisoners' condition, have been stuffed with those involved in petty crimes who find ample time, support and opportunity to become professional criminal. Deprived and vulnerable prisoners, especially juveniles and women without access to prosecutors or legislators or are unable to bribe authorities have to suffer long imprisonment in Pakistan.²²⁰

3.2. Torture, degrading and ill treatment:

The dishonorable Pakistani police torture and aggression towards innocent people is not a hidden part of the country's history and the media, civil society campaigners and human rights group time and again unveiled the cruel face of these animals in the police uniform. The Pakistani police is between the most dishonest and violent forces in the world due to its dependence on torture as an enquiry method. Hundreds of innocent people drop their lives to illegal police imprisonment and in the false police encounters every year. In Pakistan the police are a planned mafia with strong political pressure on the police bureaucrats and the supporter in the force.

In 2010, more than 1441 people face the most horrible police torture. The common of them were innocent and the police perform their negative role and find them concerned in fake charges. The media highlighted the gloomy face of the police dark towards the masses and the

²¹⁹ "Mr. Wahl is the training program director for the Penal Reform International (PRI), an international organization working on human rights in developing countries. He is working on juvenile and women prisoners' rights and the judicial system in Pakistan in collaboration with the Human Rights Commission of Pakistan (HRCP) and the AGHS Legal Aid Cell. PRI started this project in 1998 and Mr. Wahl visited Pakistan to inspect prisons and lockups many times." Available on <
http://www.dailymail.co.uk/default.asp?page=story_30-8-2003_pg7_21> (Last Accessed, 6 July, 2011).

²²⁰ "Pakistani prisons producing hardened criminals," Available on <

http://www.dailymail.co.uk/default.asp?page=story_30-8-2003_pg7_21> (Last Accessed, 6 July, 2011).

horrifying footage rose anti police attitudes among the society. The inhuman conduct towards the accused and the detainees is a shameful act of the Pakistani system.²²¹

The Constitution and the Penal Code ban torture and other cruel, inhuman, or degrading treatment; however, security forces usually tortured, and if not ill-treated persons. Police regularly used force to obtain confessions. Human rights spectators suggested that, because of general torture by the police, suspects regularly confessed to crimes despite of their real responsibility; the courts consequently at times discharge such admission.

Security forces employees are constant to torture persons in custody throughout the country. For example, according to Human Rights Watch (HRW), Rasheed Azam was compressed and tortured at Khuzdar military cantonment. In September, two prison officers allegedly beat and killed 18-year-old Sunil Samuel at Camp Jail in Lahore after he was sexually assaulted by inmates.

Over the years, there have been charges that common torture methods “integrated Beating, burning with cigarettes, whipping the soles of the feet, sexual assault, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, forced spreading of the legs with bar fetters, and public humiliation.”²²²

According to the information arriving, at the start of August 2010, the jail staff of Toba Tek Singh District Prison, Punjab province, started a sleek of the cells of death-row prisoners actually

²²¹“Pakistan: No law or code of conduct against the torture that terms it as illegal practice,” Available on, <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-018-2011>> (Last Accessed, 6 July, 2011).

²²² “Torture and other cruel, inhuman, or degrading treatment or punishment,” Available on <

<http://www.ncbuy.com/reference/country/humanrights.html?code=pk&sec=1c>> (Last Accessed, 6 July, 2011).

to recover mobile phones. In this context, about 20 convicts were brought out of their cells and beaten up. Three men, namely Mr. Muzzammil Shah, Mr. Ghulam Hussain and Mr. Muhammad Javed, were strictly tortured after a cell phone was supposedly recovered from Mr. Muhammad Javed. The latter, who is suffering a five-year prison term at Toba Tek Singh District Prison had been allotted to take food to death row inmates, supposedly gave the names of two death row prisoners, Mr. Muzzammil Shah and Mr. Ghulam Hussain, after being tortured to get information on who had used that phone. Mr. Muzzammil Shah and Mr. Ghulam Hussain were then tortured. They deprived of having used the cell phone.

It is accounted that Mr. Muzzammil Shah, Mr. Ghulam Hussain and Mr. Muhammad Javed were subjected to the strict torture. They were supposedly stripped naked and their male organs were taped in such a way that they could no longer urinate. All was then pressured to drink three to four liters of water. The jail dispenser then controlled each of them injections after which they started vomiting and had a tough urge to urinate. The tape around their organs was only separate a few hours later. Mr. Muzzammil Shah and Mr. Ghulam Hussain supposedly lost perception at least three times during the period of torture.

The three abovementioned men have supposedly developed renal illness and one has also developed a urinary tract disease as a result of the acts of torture and ill-treatment. It is assumed that none of them has received sufficient medical action and no reaction has yet been given to an appeal made by the Pakistan-based human rights NGO, the Human Rights Commission of Pakistan, to the jail authorities to visit the three men. Still, according to the information, to date,

there has been no effective investigation carry out by the relevant authorities into the abovementioned charges²²³

Mirza Tahir Hussain, a British national who spent nearly two decades on death row in Pakistan before his sentence was commuted to life imprisonment in 2006, told IPS that the most popular torture methods of Pakistani jailers are the ‘Panja’ and the ‘Jahaz’.

In ‘Panja’, he said, ‘the victim is held by both his arms and slapped on the neck and head, which leaves him severely shocked and unconscious. In ‘Jahaz’, the victim is made to lie face down. He is held and stretched by four guards lift him off the ground and whip him with a terrible invention called ‘chitter’ on the back and bottom.’ He added: ‘And this is just the tip of the iceberg. He also said, ‘Someone on death row can become a target of severe torture by the prison authorities from lowest to highest ranks without even the slightest provocation and this may continue over a long period of time.’²²⁴

On standard, death row prisoners in Pakistan spend 10 years in imprisonment before they are implemented, usually by hanging. This can also be much lengthier, as in the case of Hussain who tired 18 years behind bars. Estimates by rights groups put the present number of death row prisoners in Pakistan at about 7,400 one-third of the global total and the largest in the world.²²⁵

²²³ “Urgent Appeal Case AHRC-UAC-166-2010” Available on <

http://crisisbalochistan.com/secondary_menu/human-rights/pakistan-prison-officials-remain-unpunished-despite-torturing-inmates-by-taping-their-male-organs.html> (Last Accessed, 7 July, 2011).

²²⁴ “Rights-Pakistan: Death Row Convicts Bear Brunt of Torture” Available on <

<http://www.globalissues.org/news/2010/10/30/7495>> (Last Accessed, 7 July, 2011).

²²⁵ ibid.

There is tacit tolerance of the torture for those facing capital punishment. Explaining the prevailing attitude, rights campaigner Zohra Yusuf says, "They death row inmates are guilty of heinous crimes and so do not deserve a humane treatment." Indeed, the treatment of prisoners is itself objectionable, with the ways of torturing them including foot whipping with a cane or rod, prying out of fingernails, rubbing chili into eyes, and beatings with the victim stripped and hung upside down.²²⁶

Twenty-six inmates died in jails all over Pakistan in 2009, according to a report issued by Global Foundation earlier this year. Causes of the prisoners' deaths included illness, riots, heatstroke, torture, neglect and delay in treatment and bad food.²²⁷ And 19 prisoners was died in Adiala Jail last year, said a report issued by Global Foundation (GF).²²⁸ The Adiala Jail, along with other jails in the country, has turned into a torture cell.²²⁹

It's horrifying. There are beatings, or sometimes even sexual abuse. They are kept like slaves. Inside the police station, they are being tortured. All things aside from electric shocks are being used. This includes beatings with leather whips, or being hung upside down to extract confessions.

²²⁶ "Death Row Convicts Bear Brunt of Torture," Available on <<http://ipsnews.net/news.asp?idnews=53406>>

(Last Accessed, 6 July, 2011).

²²⁷ "Over 280 suffering from hepatitis in Adiala Jail," Available on <<http://tribune.com.pk/story/17726/over-280-suffering-from-hepatitis-in-adiala-jail/>> (Last Accessed, 6 July, 2011).

²²⁸ "Torture lack of health facilities 19 prisoners died in Adiala jail in 2008," Available on <http://www.dailytimes.com.pk/default.asp?page=2009%5c04%5c20%5cstory_20-4-2009_py7_34> (Last Accessed, 7 July, 2011).

²²⁹ "Plight of prisoners in Adiala Jail" Available on <

http://www.dailytimes.com.pk/default.asp?page=story_3-11-2003_pg7_32> (Last Accessed 7 July, 2011).

Khadim, the boy who agreed to talk until his real name was not to be used. He said "At the police station they beat me four of them set about me with batons and they just kept beating me," "They kept asking me for information, and when I couldn't tell them anything, they beat me. They only stopped because we paid them off. We gave the officer in charge a month's wages to stop the beatings." At the time, Khadim was only 14, and both he and his older brother were charged with stealing but it was days before the police notified their parents. Although that is a violation of the law, it is not at all unusual.

Retired judge Nasir Zahed, who has been working at Karachi's juvenile jail to improve the lives of youngsters, said that of 500 inmates, only 30 are convicts the other 470 are under trial prisoners. "They arrest the juveniles, keep them in custody, one year, two years or three years," he said. "Then they release them or acquit them on account of the fact that there was no evidence."²³⁰

The rights of the child to special care and assistance are being disregarded by the very institutions that should be protecting them. Children often suffer neglect, abuse and violence in the administration of juvenile justice. When children are picked up and questioned by police, they are frequently beaten and humiliated. Their legal rights are often ignored: their parents are not informed of their whereabouts; they are held in degrading conditions, and often have to share cells with adults. Some are denied their right to fair trial, and are given sentences that disregard the key objectives of juvenile justice the child's rehabilitation and reintegration into society. For

²³⁰ "Tragedy of Pakistan's prison children," Available on <http://news.bbc.co.uk/2/hi/south_asia/6111162.stm> (Last Accessed, 4 July, 2011).

the vast majority of children, the reality is not rehabilitation and special care, but punishment, intolerance and greater marginalization.²³¹

Also Women in Pakistan suffer widespread human rights violations. Police officers use to torture and rape women in their custody with impunity. If the victims bring complaints of rape before the courts, unless they can prove that they did not give their consent they may be punished for unlawful sexual intercourse under laws which explicitly discriminate against women. Women face cruel, inhuman and degrading punishments such as floggings and stoning to death. Women's rights are seen as being of secondary importance and women are in a particularly weak position if they try to gain redress.

It is always difficult to prosecute law enforcement personnel who have raped women in their custody. In Pakistan the law relating to rape creates an additional hurdle. Despite the number of women who have been beaten and raped in police custody, few police officers have ever been prosecuted for such violations of women's basic human rights. In the rare cases in which police officers have been convicted of abusing women in their custody, the convictions have always been overturned on appeal.

Women who have been raped are at risk of being convicted of unlawful sexual intercourse. The victim's testimony is not taken into account in rape trials when maximum penalties are at stake. So a woman who has been raped can be sentenced to imprisonment, flogging in public or death by stoning after a trial in which she was given no chance to testify. Shameem, a 21-year-old mother of three, went to the police to file a rape complaint. She was raped again this time by

²³¹ Humankind owes the child "the best it has to give" 1959 UN Declaration on the Rights of the Child

the police. Shameem, from North Nazimabad in Karachi, was kidnapped with two of her children and raped by a cleric in July 1991. Shameem's mother filed a complaint with the police. Several months later, the accused cleric was detained in police custody for questioning but he was released in June 1992, reportedly for lack of evidence. Shameem escaped from the cleric's house after almost 13 months' of captivity. She and her mother went to Peerabad police station to file a complaint about the abduction and rape. The police officers refused to register Shameem's complaint, stating that she must have acquiesced in the act, and charged her with zina. The police then detained Shameem and demanded a bribe of Rs. 15,000 (US\$ 500) for her release.

Shameem said the police officers beat her regularly, and insulted her. She reported that at night: "two of them beat me and held me down while the third one raped me. Then the other ones raped me, one after another. They took turns holding me down and raping me, every night. They threatened to kill me and my children if I told anyone about it." Shameem was acquitted of the charge of zina with the cleric, but to Amnesty International's knowledge no action has been taken against the police officers who raped her in custody.²³²

Special women's police stations have been established in response to complaints of custodial abuse of women, including rape. Female personnel staffed these stations, but they receive even fewer material and human resources than regular police stations. Efforts to raise funds for the stations during the year achieved minimal results. According to the Government's National Commission on the Status of Women, the stations did not function independently or fulfill their purpose. Despite court orders and regulations that only female officers may interrogate female

²³² "Women in Pakistan disadvantaged and denied their rights," Available on <<http://www.cssforum.com.pk/css-compulsory-subjects/essay/essays/12429-women-pakistan.html>> (Last Accessed 8July, 2011).

suspects, women continued to be detained overnight at regular police stations and abused by male officers. Instances of abuse of women in prisons are less frequent than in police stations.²³³

Even well attested cases of torture and ill-treatment have failed to secure convictions. In September 1992 members of a legal aid organization in Lahore were told by two women prisoners awaiting trial in Kot Lakhpat Jail, Lahore, that they had been tortured in Shah Bagh police station. One of the women said that she had been tied up by two constables and the Station House Officer and beaten with leather thongs for an entire night. The other woman reported that she had been beaten by one of the constables; she was then three months pregnant and said that she had miscarried as a result. Seven days after their arrest the two women were brought before a magistrate and transferred to judicial custody. When lawyers visited them in jail they noted visible marks of violence on their bodies. The jail authorities later confirmed that the Senior Woman Medical Officer of the General Hospital Lahore had "recorded multiple injuries" on the bodies of the two women but had failed to report this fact to the higher authorities. The two women appeared before a magistrate in Lahore in November 1992 and repeated their allegations that they had been tortured by police officers. Nevertheless, the magistrate's report stated that the two women:

"Categorically stated that no police violence was persecuted against them both of them did not desire any criminal proceedings against the police people or someone else this court is

²³³ "Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment," Available on <

[http://www.ncbuy.com/reference/country/humanrights.html?code=pk&sec=1c>](http://www.ncbuy.com/reference/country/humanrights.html?code=pk&sec=1c) (Last Accessed, 6 July, 2011).

constrained to conclude that allegations of police violence are baseless." The complaint of torture by police was not pursued.²³⁴

There are several cases and incidents reported by the media and human rights organization of sexual abuse to the prisoners in the police confiscation by the police personnel's. There are numerous cases on the record, which has been also highlighted by the media in which the police personnel's raped the females in the lockup and even in the prisons. There is fear among the females who involved in family disputes when they go to the police station as they aware of the atmosphere of the police stations in this country.²³⁵

We still came across the unhealthy conditions especially for the women who had been sentenced to death. They have been exposed to the most inhuman treatment. They cannot leave their present rooms where they have been locked up. There are no separate bath rooms attached to the room, so they have to fulfill all their physical and personal requirements within the boundaries of that room.²³⁶

However no one is outraged at the bloody torture of prisoners and the inhuman treatment meted out to the men and women most of who are jailed for no reason at all. The innocent victim of biased justice simply has to bear the incarceration. According to some estimates 60% of the prisoners in Pakistani prisons are innocent of the crimes that they are convicted of. The prisoners are the poor and the destitute who cannot afford attorneys who can get them off with bribes and

²³⁴ "Women in Pakistan disadvantaged and denied their rights," Available on <<http://www.cssforum.com.pk/css-compulsory-subjects/essay/essays/12429-women-pakistan.html>> (Last Accessed 8 July, 2011).

²³⁵ "Pakistan: No law or code of conduct against the torture that terms it as illegal practice," Available on <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-018-2011>> (Last Accessed, 7 July, 2011).

²³⁶ "Pakistani Jails," Available on <<http://pakistanijails.blogspot.com/>> (Last Accessed, 8 July, 2011).

intimidation. Ever heard of a rich person's child go to prison in Pakistan? It doesn't happen. Pakistani prisoners have leg irons, and are subjected to the worst atrocities known to man. If one does not know what a leg iron is, it a steel rod about half an inch thick and is clasped to both feet. This keeps the legs of the prisoner apart so that he has limited motion and literally cannot walk. These leg irons are part of the British legacy.²³⁷

The Asian Human Rights Commission (AHRC) has received information regarding the torture and extrajudicial murder of a young man in Pakistan. The man was reportedly beaten and abused in a number of police stations and Karachi central prison for not paying bribes in the lead up to Eid, and was beaten unconscious in front of his mother. The medico-legal department of the civil hospital in Karachi has confirmed that the man's death was caused by the injuries he received during the custodial period, and the police have the number of the mobile phone used to solicit the bribes, however no action has yet been taken by the Sindh provincial government. The young man belonged to the minority Christian community and was arrested shortly before Eid, a period in which crimes and bribe requests by police significantly increase. The case demonstrates the pressing need to combat corruption in order to make any headway on human rights protection in the country.²³⁸

²³⁷ "Prison Torture," Available on <
<http://pahttp://pakistanjails.blogspot.com/2009/12/prison-torture.htmlkistanjails.blo>> (Last Accessed, 9 July, 2011).

²³⁸ "Urgent Appeal Case AHRC-UAC-166-2010," Available on <
http://crisisbalochistan.com/secondary_menu/human-rights/pakistan-prison-officials-remain-unpunished-despite-torturing-inmates-by-taping-their-male-organs.html> (Last Accessed, 7 July, 2011).

3.3. Discrimination between prisoners in jails:

Unluckily we have class system in our jails as well. There are three classes. Class a, class b and class c. Class C prisons are for ordinary people.²³⁹ That inmate face severe pathetic, poorer living situation. Health and cleaning conveniences are not enough and leave a lot to be preferred. Transferable and infectious diseases like tuberculosis and hepatitis are common with dirty toilets also located within the prison cells. Proper hygiene services are not provided resulting in uncontrolled skin diseases amongst the prisoners.²⁴⁰ The use of restraining devices on prisoners in these cells is common.²⁴¹

They are divided into grouping, based on the type of crime. Murderers are kept in separate quarters. Murderers on death row are kept in separate quarters. All other criminals are housed together. There is a separate quarter for medically challenged criminals. All inmates are housed in large barracks, with at least 8 per barrack. All prisoners must do some work, in return for which, they get commutation in their sentences. For an 8 hour work day, they get 3 or 4 weeks reduction per year. All the jobs for the prisoners are done by the prisoners themselves. The cooks are prisoners. The cleaners are prisoners. The launderers are prisoners. There are facilities like libraries, school and gym, and all these places are run by prisoners as well.²⁴²

²³⁹ Available on <www.paklinks.com/gs/pakistan-affairs/177530-what-are-pakistani-prisons-like.html177530> (Last Accessed, 8 AUG, 2011).

²⁴⁰ “Violence against women in Pakistan,” Available on <

<http://local.citizenseye.com/pakistan/tag/human-rights/>> (Last Accessed, 8 Aug, 2011).

²⁴¹ “Petition filed against Jail torture & maltreatment of prisoners in Sindh-Pakistan” Available on <http://www.facebook.com/note.php?note_id=151937842387> (Last Accessed, 2Aug, 2011).

²⁴² Available on <www.paklinks.com/gs/pakistan-affairs/177530-what-are-pakistani-prisons-like.html177530> (Last Accessed, 8 AUG, 2011).

Situation in A and B cells are relatively improved.²⁴³ Class B detainees are Grade 19 and up employees. They get a lot of facilities. They obtain their own room, their own bathroom, TV, fridge, heater, ac, and a host of other matter. They get a cook (who is a class c prisoner). They don't have to work. They find to sit all day in their weskits. And Class A prisoners mainly have a home away from home.²⁴⁴ Cells are reserved for well-known criminals.²⁴⁵ They have all the services in the world but the capacity to leave the grounds.²⁴⁶

The discrimination between prisoners also depends on money. The prisoner continues to get thumped every few minutes unless one is a previous Prime Minister's hubby or a big fish. "What strikes you at the 1st glance as the 2nd door is flung open is the vastness of the premises, a huge ground, which is like a totally parched /arid ground"²⁴⁷ because the ground is plastered with mud by the condemned prisoners, on a regular basis. According to the inmates that is the 1st task for every prisoner, though not for a VIP prisoner as it's the toughest task and most of the prisoners stop working in a few minutes to a maximum of half an hour and start begging the jail staff to give them an easier job. This is where the 1st intervention takes place between the jail staff and the prisoner, it is determined how much would a prisoner pay, on a daily basis for reaching an easier job e.g. Kitchen or clinic duty. The quantity differs from prisoner to prisoner, depending how well he can give-away. The poorest of the poor generally get fixed with this job and the

²⁴³ "Petition filed against Jail torture & maltreatment of prisoners in Sindh-Pakistan," Available on <http://www.facebook.com/note.php?note_id=151937842387> (Last Accessed 9 AUG, 2011).

²⁴⁴ Available on <www.paklinks.com/gs/pakistan-affairs/177530-what-are-pakistani-prisons-like.html> (Last Accessed, 8 AUG, 2011).

²⁴⁵ "Petition filed against Jail torture & maltreatment of prisoners in Sindh-Pakistan," Available on <http://www.facebook.com/note.php?note_id=151937842387> (Last Accessed 9 AUG, 2011).

²⁴⁶ Available on <www.paklinks.com/gs/pakistan-affairs/177530-what-are-pakistani-prisons-like.html> (Last Accessed, 8 AUG, 2011).

²⁴⁷ "Pakistani Jails," Available on <http://www.facebook.com/topic.php?uid=190242755031&topic_id=12168> (Last Accessed, 3 Aug, 2011).

daily payment can vary everything from a few hundred Rupees to a few thousands, and the prisoner gets an easier job according to a fixed 'rate'. With this step out of the way, the prisoner is allotted a barrack, depending upon his crime, age and duration of his challenge.

Normally those below 20 are separate in a separate barrack, the Mallas in a separate one and so on. Those who pay the most or are former students, normally given B Class, which is next to the kitchen area and has raised area, about 4 inches high, 3 feet in width and 6 feet in length cemented construction which provides as a bed. This type of a 'bed' is not available anywhere else in the Larkana District jail. Those who can pay the highest going price are admitted in the jail's clinic, which used to have 6 regulation hospital beds, with mattress and all. This is as good as it can get for the prisoners in Larkana Jail. The separation into different barracks is usually done to keep away from clash between detainees in a barrack, and to avoid homosexual rapes, which are very general. The prisoners, who reject to bend their heads or give a body investigation or taunt to look the jail staff in the eyes are considered as 'inkaris i.e. those who reject, and are sent to a 'bunnd ward', which also houses the most required criminals or those who have a price on their heads.

The difference between a Bunnd ward and a normal barrack is that a bunnd ward is a jail within jail and there is totally no privacy for the prisoner, even while using the open aired toilet. There is only a roof and a ground and both front and back are prepared with extra heavy iron, while in other normal barracks, only one side is open, with a comparatively private toilet. The bottom line is that you can have a 'better' accommodation inside the Jail, if you got the cash, otherwise be prepared to be treated like an animal.

The food served comes from the kitchen and mostly consist of cold 'nans', lukewarm to cold

tea and 'dal', everyday 24/7. Though the jail is apparently supplied with eggs, fruit, and meat by the contractor, but all that is just on paper. The jail authorities in responsibility with the jail doctor and the contractor divide the money which should have been used to get half decent food. The 'nan', which is supposed to weigh say 1000 gram normally weighs only 500 grams, and the difference again is pocketed by the staff. This is a great agreement for the jail authorities ranging from a simple constable to the IG prisons and the Minister of Jails, Chief Minister Etc., but means a visit to the toilet every few hours for the prisoners, who constantly suffer from diarrhea and dysentery. There was no cooking allowed for the prisoner till 1992 in Larkana District Jail. Then if you can afford another thousand Rupees a day, the doctor in league with the Superintendent can allow you domestic food, citing medical reasons for the same.

Jail staff offers all kinds of narcotics like heroine to anyone who cares to pay for it. Cell phones are supplied with multiple SIMS, and while matrimonial visits by spouses are not authorized but if you are high and powerful, you are authorized to have 'fun' even with the actresses of Lolly wood, and have air-conditioned accommodation inside the jail, have a personal staff to prepare 5 star quality food for yourself and your friends and even host parting dinners for the whole who is who of the country, even get the food catered by leading caterers of the city, inside a jail which is supposed to be locked down after 5pm.²⁴⁸

In disparity, the tabulation of related unrefined data and in order relating to discrimination, material support, and the determination of social welfare needs of women in prison with their children, is negligible in a developing country like Pakistan. Yet public objection over reported cases of abuse of women and their children could result in positive steps being taken to deal with

²⁴⁸ "Pakistani Jails," Available on <<http://www.facebook.com/topic.php?uid=190242755031&topic=12168>> (Last Accessed, 3Aug, 2011).

the condition. Such consciousness could, in the long run, direct to the construction of much needed organizations to address these trouble; these organizations could also observe the working of the government branch related to prison performance.

Under the prison rules, all pregnancies in prison have to be reported to the district magistrate if bail is to be secured. Though the grant of bail in such cases is optional; bail is normally decided in the upper courts. However, proofs recommend that in practice, lower courts are not as helpful to granting bail towards the affected.

In one case investigated by the Human Rights Commission of Pakistan, the Lahore High Court ordered:

A woman, who had been in jail for nearly a year should be released on personal surety. The woman had given birth to a child in prison and the baby was confined with its mother. She complained to the Lahore High Court that she had requested bail from the lower court several times and was repeatedly rejected.²⁴⁹

In adding, as before examine, many bail cases that are mature for positive arbitration by the courts never approach before the court, as the troubled women are uninformed of their lawful right to submit an application for bail. In addition, information about many pregnant women, mothers and children is hidden from the judicial system, because the Courts are not provided notice of the woman's status and the child's existence. This is because the superintendent of the jails and the district magistrates do not perform their duties vigilantly. Inside the jails the women

²⁴⁹ "Rights of imprisoned women in Pakistan," Available on <http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed 7Aug, 2011).

and children are not informed of their legal right to apply for bail and continue to remain in prison. Children are subjected to the same appalling conditions as their mothers.²⁵⁰

Women are accorded special position under bail legislation as specified in the Code of Criminal Procedure. In *Rahim Khatoon vs. the State*, 1989²⁵¹ the High Court provided a decision that unbreakable the exceptional position enjoyed by women in jail. The client, Ms Rahim Khatoon was approved bail without the obligation of any form as to the security to be a mehram. Ms Khatoon was jailed under section 10/11/16 of the Offence of Zina Ordinance, 1979 for executing zina with assent. The Court determined that her case clearly fell under the proviso to section 497 of the Cr. P.C²⁵² and stated that:

The grant of bail in her case is a right and refusal is an exception. I do not see any special reason to deprive her of the concession of bail. It is a matter of common experience that in such like cases, the female accused invariably refuses to be released on bail furnished by a person not of her choice. In some cases the mehram do not come forward to stand surety for the accused with the result that in spite of bail in her favor, the female accused remains in jail. In a number of cases, the similar condition imposed by the court has virtually frustrated the bail order.²⁵³

However, in *MST Asia vs. The State*,²⁵⁴ where the petitioner assisted her husband in the rape of an 11 year old kidnapped girl, bail was denied. The petitioner moved the court under 497 of the Cr.P.C, arguing that grant of bail was her right. The Court rejected this argument by stating:

A woman is not entitled to the grant of bail as a right in every case. Generally the Courts take lenient view while dealing with the bail application of women and

²⁵⁰ "Rights of imprisoned women in Pakistan," Available on <http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed 7Aug, 2011).

²⁵¹ *P Cr. L.J 1861 (Lahore)*

²⁵² "Rights of imprisoned women in Pakistan" Available on <

http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed 7Aug, 2011).

²⁵³ *ibid*

²⁵⁴ *PLD 1996 Lahore 45.*

exercise discretion in their favor in suitable cases in the light of the first proviso to section 497, Cr.P.C. However, this discretion is to be exercised keeping in view the circumstances and facts of the case.²⁵⁵

The fact that the courts have the authority and discretion to award bail to the accused even when the accused does not move the court is highlighted by the case of Sajjad and 3 others vs. The State,²⁵⁶. The petitioners, four men, were charged under the Zina Ordinance, 1979 for commission of adultery. The petitioners were finally granted bail. The court then determined that the four imprisoned women assumed to have been concerned in the adultery must also be granted bail even when these women had not applied for bail, after the proviso of a security acceptable to the Duty Magistrate. The court stated:

The allegations are identical and the ocular evidence is common, so the women should be released on bail and the concessions of bail should not be withheld similarly because they are not in a position to pursue their cases or they have not filed any application for bail. Nothing in the Code of Criminal Procedure shall be deemed to limit, or affect the inherent powers of this court to make such order as may be necessary to secure the ends of justice or to do complete justice.²⁵⁷

Last year, during a visit to a jail in Larkana, the group members of the District Public Safety Commission found that for women prisoners no medicines were available. The press reports say that in 2003, 33 per cent of the jailed under trial women were not produced in courts in Karachi for periods of three months or longer²⁵⁸ in Pakistani jails the problem of discrimination is not

²⁵⁵ "Rights of imprisoned women in Pakistan," Available on <http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed 7Aug, 2011).

²⁵⁶ 1991 P Cr. L J 1 (Lahore)

²⁵⁷ "Rights of imprisoned women in Pakistan," Available on <

http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed 7Aug, 2011).

²⁵⁸ "Pakistani jail," Available on <<http://pakistanjails.blogspot.com/2009/11/about-7000-women-children-in-75.html>> (Last Accessed 7Aug, 2011).

only with male prisoners but also with women, children and young girls. They all are treated discriminately.

3.4. Fair trial not provided:

The delay in the death sentence of inmate is in fact due to the long procedure of petition and the slow and inefficient judicial system in the country. When a death sentence prisoner has passed more than 18 years in jail pending the judgment of a plea he has previously served a life punishment. To be implement after that is a ridicule of justice. The Pakistani jails and judicial authorities reject authorization to the media and reporters to visit the jails. There are a number of death punishment prisoners who have die in jail while pending their tragic fate, the death sentence as granted by the courts. It is not justice that their family members have spent decades in the jails while the government decides their destiny.

Muhammad Junaid, whose father was granted the death punishment in 1986, when he was just two year old, is now 27. He said:

I have passed the most beautiful age of my life in the struggle for fighting the life of my father, who has been trapped in a fake murder case. The division of our ancestral land led us to this prevailing situation as the bothers of my father make him the accused in a fake murder case to grab the whole property, even to make us deprived from our share. Junaid said that he has been passing from the courts and police matters for last 24 years. But still he is not sure that whether his father will be released or hanged in that fake murder charge.²⁵⁹

²⁵⁹ “The Saga of the Prisoners on Death Row,” Available on <

<http://alaiwah.wordpress.com/2011/03/15/the-saga-of-the-prisoners-on-death-row/>> (Last Accessed 8Aug, 2011).

There are hundreds of cases under trial in Pakistani courts in which the judges failed to declare the final decision because they are confused. These cases have been remaining for the last two decades. The inmates protest against the Pakistani jails laws and the control of the jail staff. There are prisoners who have been granted the death punishment and have a preference to stay in prison due to family hostility and the option of being murder. They feel they are secure in the jails.

A death sentence prisoner Khalid Khan (not his real name on his request) said: "I am safe in jail until there is a formal friendship agreement finalized between my family and our rival group. I had not applied even for the bail and I am in jail for last seven years."²⁶⁰

There are also prisoners who are operating their criminal system while sitting in these jails with the suitable support and full collaboration of jails authorities. Generally of the prisoners who are coming up for the death punishment are there, due to the slow legal system and long awarded petition process. The land cases and the family clashes are the root causes of these crimes and murders. Even if there is conciliation between the two parties, the defendant and plaintiff then there is also a long procedure to get clear of the murder case.

The poor police act and diplomacy to mold the cases according to their own vested interest is the cause after the delay in the criminal cases. The case and challan is the duty of police to present in face of the court. The unskilled police staffs have even failed to write the cases and challan's history due to the need of education and carelessness.

²⁶⁰ "The Saga of the Prisoners on Death Row," Available on <

<http://alaiwah.wordpress.com/2011/03/15/the-saga-of-the-prisoners-on-death-row/>> (Last Accessed 8Aug, 2011).

In an ordinary murder case in Pakistani courts approximately 10 years are obligatory from the Session Court to the Supreme Court. If the Session Court awards the death punishment to a killer then according to the new alteration in the Pakistani laws he is not send to the Death Cell until or if the High Court proclaimed its decision. In Pakistani courts there are roughly 2.5 to 3 million cases are under trial. The prisoners live in expectation of their discharge but understand that they may have to look an expected destiny. There is a lot hard work and effort essential for these “Death Awarded” inmates to gear up the slow speed of the case trial procedure in this country.²⁶¹

In 1988, Mr. Mirza Tahir Hussain, a Pakistani born British nationwide who was 18 years old at that time, come to Pakistan from London to see his resident place. He was tried and offender of murdering a taxi driver while travelling to the village of Bhubar from Rawalpindi, Punjab Province on 17 December 1988. The taxi driver apparently stopped up the car and produced a gun, and Mr. Mirza Tahir Hussain, was reportedly bodily and sexually assaulted by the taxi driver. In the fight that followed, the gun went off, and the taxi driver was seriously hurt.

Mr. Mirza Tahir Hussain was punishment to death in 1989 at the Sessions Court in Islamabad. The case was arrived to the Sessions Court where Mr. Mirza Tahir Hussain was decree to life imprisonment in 1994. Following a second appeal, the Lahore High Court then discharged this sentence in 1996 for not have of evidence, and Mr. Mirza Tahir Hussain was released of all charges beside him.

²⁶¹ “The Saga of the Prisoners on Death Row,” Available on <

<http://alaiwah.wordpress.com/2011/03/15/the-saga-of-the-prisoners-on-death-row/>> (Last Accessed 8Aug, 2011).

While Mr. Mirza Tahir Hussain was waiting for his release from prison, one week after the high court the case was referred to the Federal Sharia Court, which announced the case under its jurisdiction based on the fact that charges from the original case, including robbery involving murder fell under Islamic offences against property law. According to the Constitution of Pakistan, the duties of Federal Sharia Court's duties are to review the laws of the country to ensure that they are in conformity with Islamic Doctrine and to deal with appeals of cases tried under Islamic Laws. However, the Constitution does not mention that the Federal Sharia Court can reopen the case which was completed by the secular courts. Interestingly, the Federal Sharia Court never claimed its jurisdiction on this case while it was being tried in the secular Session Courts in Islamabad and the High Court's from 1988 to 1996, until the High Court acquitted him.

The whole case against Mr. Mirza Tahir Hussain was reopened, and in 1998, he was decree to death by the Federal Shariat Court, even with their confession that no stealing had taken place due to the taxi being borrowed. In the case of Mr. Mirza Tahir Hussain, there was neither eye witness nor the accused of the supposed robbery case during entire court trial. According to the Islamic law, the death sentence is obligatory only if "reliable eyewitness" accounts or a "confession" to the court are accepted.

However, Supreme Court upholds the judgment of the Federal Shariat Court in 2003 and discharged Mr. Mirza Tahir Hussain's appeal in 2004. An appeal for mercy was forward to the President in 2005 but was refused. In the meantime, the killed taxi drivers family rejected reward offered Mr. Mirza Tahir Hussain's family, which could permit Mr. Mirza Tahir Hussain to be pardon under the Islamic law.

Mr. Mirza Tahir Hussain's case is a classic case of double judicial system of Pakistan, the Islamic courts and secular courts. The secular courts are coming under the Supreme Court of Pakistan, while the Federal Sharia court is coming under Supreme Court. At provincial level, Sharia courts come under the provincial high courts.

Several local and international human rights groups including Amnesty International, the associates of European parliament and the members of parliament of United Kingdom have requested to the President of Pakistan to pardon Mr. Mirza Tahir Hussain as he did not receive a fair trial due to the conflicting declarations of the different courts and lack of evidence. Mr. Mirza Tahir Hussain, who is now 38 years, has been locked up for 18 years and is pending implementation in the dishonorable Adiala Jail in Rawalpindi, Pakistan.

The second appeal for clemency for Mr. Mirza Tahir Hussain has been waiting with the President's office since 2005. His execution was scheduled for 1 October 2006 but the President delayed it for one month, which means early November, due to the holy month of Ramadan in October. This was the fifth time that the President postponed Mr. Mirza Tahir Hussain's execution awarded by the Federal Sharia Court.²⁶²

The postponed and prolonged trial system also makes a difficult practice for the prisoners. Some of under-trial inmates were undeservedly awaiting the trial procedure from last four years. Most of the criminals expend more time in jail than the real period of the detention that could be awarded against the committed crime. About 70% of the prisoners in jails of Pakistan are under-

²⁶² "UA-339-2006 Pakistan: A man deprived of a fair trial faces imminent execution," Available on <<http://www.humanrights.asia/news/urgent-appeals/UA-339-2006>> (Last Accessed 5Aug, 2011).

trial. “No one listens to the poor; I am under trial since 2003. We want justice” said one inmate of Karachi central jail.²⁶³

Sarim the head of Ansar Burney He said that when a death punishment detainee has conceded more than 18 years in jail until the judgment of a petition he has previously served a life punishment. To be implemented after that is a contempt of integrity. In Pakistani courts there are approximately 2.5 to 3 million cases are in trial.²⁶⁴

A Non Government Organization NGOs working for the rights of the prisoner in Pakistan, Chairperson, and Madiha Noor Latifi She said that:

The poor people of Pakistan were optimistic for the judiciary in Pakistan after its restoration but the situation is worse than before because now there is another power corridor emerged in the country stakeholders and the judiciary is also in the fight to save its writ in the country, as per their own vested interests. The prisoners live in hope of their release but realize that they may have to face an inevitable fate.²⁶⁵

Enlarging on miscarriage of due procedure of law and confinement with no trial in Pakistan in 1999, the Human Rights Commission of Pakistan report called “state of human rights in 1999”, cited the case of one Pakistani Saeed-ul-Haq who exhausted 28 years in jail without trial. According to facts presented in the report, Saeed-ul-Haq had been in detention by the Artillery

²⁶³ “Our jail system – an eyewitness account,” Available on <
<http://local.citizenseye.com/pakistan/2010/08/our-jail-system-an-eyewitness-account/>> (Last Accessed 5Aug, 2011).

²⁶⁴ “The Saga of the Prisoners on Death Row,” Available on <
<http://alaiwah.wordpress.com/2011/03/15/the-saga-of-the-prisoners-on-death-row/>> (Last Accessed 8Aug, 2011).

²⁶⁵ ibid.

Maidan police in Karachi in 1971 and was never present in a court. The Sindh High Court ordered his discharge. The report refer to the case of two other inmates Siraj and Munir Shah who were found in Central Jail and were jailed with no trial for 15 and 12 years, correspondingly. In the same prison, Mohammad Khalid had exhausted seven years without trial because the related files had not here. The report cited the case of Mohammad Asif of whom This Hon Court took perceive of the imprisonment and free him. He was without trial for nine years and reserved in Hyderabad Central Jail.²⁶⁶

Another inmate, who was arrested by a military court for declining to connect the military action in Swat last year, said that he was dispossessed of his right to fair trial. The convict, who did not want to be recognized, said that he had not been presented the documents on the basis of which the trial was performed, then how could he protect himself before the court martial?²⁶⁷

Not only adult prisoners face that difficulty even thousands of children in Pakistan are being held in jail for up to a year waiting for trials at which only 10 per cent are found responsible. Often detained for minor crimes such as vagrancy or petty theft, they are generally kept in adult jails to await trial, suffering dreadful conditions and harsh sexual and physical abuse. Some are jailed for two or more years before being discharge when the case against them fails on reaching court.

²⁶⁶ “Petition filed against Jail torture & maltreatment of prisoners in Sindh-Pakistan,” Available on <http://www.facebook.com/note.php?note_id=151937842387> (Last Accessed 2Aug, 2011).

²⁶⁷ “Case of diminishing hopes,” Available on <<http://www.dawn.com/2010/08/30/case-of-diminishing-hopes.html>> (Last Accessed 9Aug, 2011).

In Lahore District Jail 150, child prisoners are crowded into one, two- storey cell block. One of them, Habib, who is nine years old, is accused of murdering his cousin. He has been in jail for 10 months. The evidence against him is approximately non-existent. According to Habib's father, Mohammed, he is the victim of a false charge made as part of a family dispute. Standing less than 4ft tall in his naked feet, with a dirty tee shirt hardly hiding a thin structure, he does not look much like a murderer. His trial may not be for several years.

Even small cases take months to achieve court. Next to Habib squats 12- year-old Mohammed Sidiq, who was detained for the control of heroin in February. His legal representative says the drugs were planted by police after the boy's group failed to give the right bribe to the right officer. Another boy, Kamel, was 11 when arrested for supposedly stealing 2,000 rupees from a neighbor in the slum district of Shera Kot a year ago. Again, his lawyer says, there is almost no evidence against him.

At the instant there are approximately to be 3,200 child inmates in Pakistan's rotting prisons. More than a quarter have tired six months pending trial; a number of hundred have been in prison for more than a year. One child has spent three years and four months waiting for his case to come to court.²⁶⁸

The minister Sheik Rasheed Ahmed says the problem is that many of the children are from the streets or from poor or broken homes. "Basically there is no one to stand bail for them. The rich

²⁶⁸ "Childhood lost in Pakistan jails," Available on <

<http://www.independent.co.uk/news/childhood-lost-in-pakistan-jails-1170787.html>> (Last Accessed 9Aug, 2011).

can afford to buy their freedom. But just because there is no one to put up the money for a poor prisoner then I can't just order their release,"²⁶⁹

No one is expected to get hold of Habib released soon. His surety was set at 50,000 rupees a roundabout not possible form for a poor family to rise in a country where the normal annual cash income is approximately pounds 300. Even Kamel's father, Nawaz, with his son on a relatively minor theft charge, had found it impossible to get 5,000 rupees. Many of the 10,000 or so children arrested and jailed each year in Pakistan simply do not have anyone on the outside remotely interested in helping them.²⁷⁰

The most disgusting case hold by the Ansar Burney Trust about children who are born in jail was that of Mohammed Akhtar who was born after his mother was raped in jail. She dies five years later, but Akhtar was reserved in jail. His whole life from birth to the age of 40; never see the outside world. He was only unconfined when his case was hold by Ansar Burney, Advocate. Such is the jail system in Pakistan.

Children who have been arrested for doubt of severe crimes such as murder are in many cases held for several years in prison awaiting trial. They are treated as adults in their condemnation, without any concern of their age and their lack of ability to differentiate right

²⁶⁹ "Childhood lost in Pakistan jails," Available on <

<http://www.independent.co.uk/news/childhood-lost-in-pakistan-jails-1170787.html>> (Last Accessed 9Aug, 2011).

²⁷⁰Ibid.

from wrong. They are tied with chains in detention and when being presented to courts. Some are decree to death.²⁷¹

²⁷¹ “Children rights- Children in prisons and mental institutions,” Available on <http://www.ansarburney.org/childrens_rights-prisons.html> (Last Accessed 7Aug, 2011).

CHAPTER 4:

Analysis of prison laws of Pakistan in the light International Human Right Law provisions:

That is the 4th chapter of my thesis and under it I analyze the Pakistani prison laws with International Standards. What are these standards which I already explain in 1st chapter and now mention how and why these standards are compulsory for the prison conditions and for the welfare of prisoners in the premises of jails? I also explain in that chapter the Pakistani provisions which are related with prisons and prisoners and what is the level of their implementation. And at the end of that chapter I explain the ground reality of Pakistani prisons.

4.1. International standards:

4.1.1. General Welfare:

Things which are very important for human beings there use is compulsory in life. Prisoners are also including in human. So all those things, which are used by a general person for life, a prisoner also has a right to use those things. One thing which is most important for the sake of life is food. Without food no one survive. It is the basic need of every one. And food must be good for better health. And United Nations standards give minimum rules for the treatment of prisoners. Under Article 22(1) (2), which I already mention in my 1st chapter normal person and abnormal person both are need for medical treatment and it is the duty of all institutions to

provide better health facility to them. And those prisoners who are weak then other prisoners they need special care and medical treatment.²⁷²

Under article 25, Medical officer is duty bound to visit all prisoners on daily basis. And if any prisoner's condition is poor then immediately inform director.²⁷³ And under Article 12 of International Covenant economic, social and cultural rights, Health care is not only a right of all persons including prisoners; it is a need for development. It is the duty of state parties to implement that right for all persons. And also children they need more health care then adults because they are grown up.

Fundamental rights are for all including prisoners. And all people have political, social, and cultural rights. Defensive environment is not used for treatment of prisoners.²⁷⁴ Prisoner must enjoy all his basic rights. If a court take a person's right of life then he make sure that prisoners other constitutional rights are not infringed by any other person.²⁷⁵ And it infringe the article 10 (1) if all fundamental rights are not given to all prisoners like right to walk in jails, right to talk, right to sleep, right to listen radio and like so. These types of all rights are included in fundamental rights.

Prisoners also face problem of overcrowded jails international human right conventions explain that, Prisoners must kept in separate quarters not in separate building. Like convicted and no convicted persons kept in separate quarters. Even the juveniles must keep in separate cells. No adult is kept with them because children need special care then adults. And if it is not follow

²⁷² United nations office on drugs and crime, *Prisoners with special needs*, (New York: United Uations, 2009),18

²⁷³ ibid-19

²⁷⁴ ibid-20

²⁷⁵ See also provision of ICCPR, Article 10(1, 2, and 3) for further: Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 428.

then it must violate the ICCPR article 10(2) which I already explain in 1st chapter. And American Convention on Human Rights under Article 5(1,2,4,5, and 6) gives same rights of prisoners as ICCPR.²⁷⁶

4.1.2. Legal issues:

The 1st legal issue is Fair Trial, and International Covenant on Civil and Political Rights, explain in Article 9, everyone has right of liberty. And with liberty there must be security. Temporary arrest is not valid but in special circumstances if it is done then the arrest must be for the short time. And informed him the reason behind his arrest is. In criminal cases arrested person immediately bring in court. And his trial is arranged in proper time. Because a person who is lawfully arrested have right for proper hearing of his case. And who detained unlawfully has a right for compensation.²⁷⁷

Council of Europe convention for the protection of human rights and fundamental freedom 1953 under Article 5 also give right of fair trial to the prisoners. And American convention on human rights under article 7, also give same right of fair trial. Universal declaration of human rights under article 10 gives right of fair trial to everyone and right of public hearing by unbiased court. And these all provisions are explain in detailed in 1st chapter.

International convention on civil and political rights under Article 14(1), also give right of fair trial and some basic rights to all prisoners on equal footing. And also give right of open hearing except some special cases. And in the matters of children there must be closed hearing because their interest is not disturbed. Right of appeal and speedy trial is also with all

²⁷⁶ See also provision of ICCPR, Article 10(1, 2, and 3) for further: Nihal Jaywickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 434.

²⁷⁷ "International covenant on civil and political rights," Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights (Last Accessed 5 Jan, 2011).

prisoners.²⁷⁸ American declaration of the rights and duties of man under Article 26(2), also refer the right of fair trial. European convention for the protection of human rights and fundamental freedoms in Article 6(1), and American convention on human rights under Article 8(1), give same right of fair hearing by a competent court.

African charter on human and people's rights under Article 7, explain that court must be unbiased. And give proper hearing to all persons. And state gives surety for sovereignty of the court. Court must be on the merit of the case and independence. Every person has the right to know that who is the judge of his case. And if judge is incompetent for case party must challenged his incompetency.²⁷⁹

After right of fair trial another issue is Equality and Non Discrimination. According to Article 7 of Universal Declaration of Human Rights, All are equal before law without any discrimination. And the international covenant on civil and political right gives three concepts of equality under Article 26. Equality before law, equal protection, and the third is equal protection against discrimination. According to this Article it is the duty of the legislature when he makes laws. He must sure about that these laws are followed or not. ICCPR prohibits all type of discrimination.²⁸⁰

Dicey explain that president to peon all are equal before law. And American declaration of the rights and duties of man explain under Article 2, give equal right to all persons. And also explain in article 7, that all women need for exceptional care. And also American convention on

²⁷⁸ "International covenant on civil and political rights," Available on

http://en.wikipedia.org/wiki/International_Covenant_on_Civil_and_Political_Rights (Last Accessed 5 Jan, 2011).

²⁷⁹ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002)514

²⁸⁰ ibid-818

human rights under Article 24, give same right of equality. African charter on human and people rights under Article 3(1) (2), also explain compulsory obligation on equality for every person.²⁸¹

Equality means that without any discrimination like sex, race, color, and all other status. The standards of equal protection are for all people like man, women and children because they all are include in word person. And for the non discrimination in prisons there must be special standards for women and children because they both are weak then men and need for more care. Two very important standards are made for imprisonment. One is in 1988 Body of principles for the protection of all persons under any form of detention and imprisonment. Second is in 1990 basic principle for the treatment of the prisoners. And some provisions are passed which are related with children detention. In 1985 standards minimum rules for the administration of juvenile justice. And in 1990, rules for the protection of juveniles deprived of their liberty.²⁸²

International covenant on civil and political right under article 3, explain that all civil and political rights are equally enjoy by men and women. And according to the international covenant on economic, social and cultural right under article 3, men and women are equally enjoy the economic, social and cultural rights. Convention on elimination of all forms of discrimination against women under article 1 and 2 explain that both men and women are equal in all aspects of life.

And in jails if women need special care then their children also needs special care according to Universal declaration on human rights under article 25(2), child is born in jail or outside the

²⁸¹ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press,2002), 823

²⁸² "Women in prison," Available on<<http://www.un.org/geneva/pdf/humanrights/Commentary-SMR-women-in-prison.pdf>> (Last Accessed 23 Dec, 2010).

jail he is a child. And have all rights without any discrimination. And American convention on human rights under Article 17(5), also give equal rights to children.

4.1.3. In Human Treatment:

There are many international standards which are strictly prohibiting all type of inhuman treatment. American declaration of the rights and duties of man under Article 26, explain that every accused of an offence has the security from any inhuman treatments. In European convention for the protection of human rights and fundamental freedom under article 3, explain that Torture and other inhuman treatments are strictly banned. American convention on human rights also against torture under Article 5(2). African charter on human and people's rights provide under Article 5, prohibition of all forms of exploitation and degradation of human beings.

There are seven form of conduct which must be prohibited: Torture, cruel treatment, inhuman treatment, degrading treatment, cruel punishment, inhuman punishment, and degrading punishment. And the declaration on torture and other cruel, inhuman or degrading treatment or punishment 1975 exempts lawful sanctions. And the lawful sanctions mean which are lawful under national and international law. And these rules used for treatment of prisoners.²⁸³

There are another convention which is against torture and that convention known as Committee against Torture. And it is the part of customary international law. So it is the Jus Cogens norm and all states are bound to follow it. Article 2(2) of the convention clear that prohibition against torture is absolute and non-dirigible.

Cruel treatment is also prohibited and when a person is under death sentence and Beaten by guards with metal detector. That type of treatment is under cruel treatment which is absolutely

²⁸³ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 308.

banned like torture. And when a prisoner not permitted for contact with his family, friends or relatives it is also cruel treatment with prisoners.

Inhuman and degrading treatments are based on five techniques. These are wall standing, Hooding, Subjection to noise, Deprivation of sleep, Deprivation of food and drink. And all those treatments which effect the human dignity. When a prisoner's one hand and one foot both are fasten in same handcuff it is degrading treatment. When a prisoner shows to the press in a cage it is also degrading treatment. Physical and mental harm is not including in degrading treatment but it directly affects the dignity of a person. Any act which loses the personality or character of a person is also degrading treatment. And these all type of inhuman treatments is if followed then it is the violation of all international standards which prohibit torture, inhuman and degrading treatment.²⁸⁴

Punishments are given to the prisoners because of their misconduct. But according to the American convention on human rights under article 5(2), "no one shall be subjected to torture or to cruel, inhuman, or degrading punishments or treatment. And according to 5(3), punishment not is extended to any person other than the criminal."²⁸⁵ It means according to international standards punishment is given to the prisoners when need but that punishment is not cruel in nature. It is just punishment equal to prisoners act. And the punishment is remaining same in civil matters it will not extend. But in criminal matters it may extended.

American convention on human rights also explains in article 7(3), "arbitrary arrest or imprisonment is prohibited. That is solitary confinement, where a small amount of space for

²⁸⁴ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002), 312,312,321

²⁸⁵ *ibid.*

physically movement, and freedom from constant physical restraint.”²⁸⁶ And African charter on human and people rights also explain under article 7(2), punishment is the personal matter of the prisoner and it is only related with prisoner. And punishment of death penalty is also prohibited under international standards, because it infringes the right of life. And right of life is one of the fundamental rights of all people. According to international civil and political rights under Article 24(1), state parties recognize some special measures like punishment of death penalty is banned for children.²⁸⁷

4.2. Pakistani Provisions:

In Pakistan there is different Act which is related with prison laws and with prisoners. And I already mention these all Acts in chapter 2, now in this chapter I give a short review of them. First of all is Prisons Act 1894, under that Act Government of Pakistan give accommodation to the prisoners. And appoint officers in prisons. Also give some directions to the officers of prison and they shall obey these duties. Discipline of prisoners also mention under that Act.²⁸⁸

Then the prisoners Act 1900, it gives the rules for prisoners in presidency towns. And prisoners outside presidency town. And how to be dealt with persons under sentence of penal servitude. Then the removal of prisoners. And discharge of prisoners. All are explain under that Act.²⁸⁹ Then is the Reformatory Schools Act 1897, that Act give power with the sanction of the Governor General in council the local Government may establish and maintain reformatory school. And provide requisites of schools. Inspection of reformatory school must establish.²⁹⁰

²⁸⁶ “Prisons rights,” available on <<http://law.jrank.org/pages/9386/Prison-Prisoners-Rights.html>> (Last Assessed 10 Jan, 2011).

²⁸⁷ Nihal Jayawickrama, *The Judicial Application of Human Rights law*, (Cambridge University: Cambridge University Press, 2002)785.

²⁸⁸ *The prison Act, 1894.*

²⁸⁹ *The prisoners Act, 1900.*

²⁹⁰ *Reformatory school Act, 1897.*

And the Punjab Borstal Act, 1926 give power to the local government to establish one or more Borstal institutions. And the local Government shall appoint director of Borstal institutions and visiting committee. According to that Act, it is the power of court to pass a sentence of detention in a borstal institution in the case of a convict under twenty one years of age in lieu of transportation or rigorous imprisonment.²⁹¹

And the other one Act is The Good Conduct Prisoners' Probational Release Act, 1926. an Act to provide for the release of good conduct prisoners on conditions imposed by the Provincial Government.²⁹² And now discuss some prisons laws which are related with the rights of minor prisoners. Juvenile justice system ordinance 2000. An ordinance to provide for protection of the rights of children involved in criminal litigation.²⁹³ And then the Juvenile Justice Rulers, 2001. Give rules for the establishment of Borstal institutions. And provide for the accommodation for juvenile.

And The Constitution of the Islamic Republic Of Pakistan, 1973. Give rights to all citizens of Pakistan. According to Article 4, "every citizen of, and every other person in, Pakistan is entitled to the protection of the law and is to be treated in accordance with law."²⁹⁴ Constitution of Pakistan gives fundamental rights to all citizens of Pakistan. Under article 9, no person has power to take the liberty or life of any other person except with the permission of law.

And Article 10 of the constitution provides to every person certain safeguards against arbitrary arrest or detention. And according to Article 11 forced labor of all forms are prohibited in Pakistan. In the matter of prisoners shall not be any compulsory service provided which is cruel in nature or unsuited with human dignity. Article 13 gives the protection against dual

²⁹¹ *The Punjab Borstal Act, 1926.*

²⁹² *The Good Conduct Prisoners' Probational Release Act, 1926*

²⁹³ *Juvenile justice system ordinance 2000.*

²⁹⁴ *Constitution of Pakistan page 69 article 4.*

punishment for same offence. And Article 14 gives responsibility which can't violate. "The dignity of man and, subject to law, the privacy of home, shall be inviolable. (2) And no person shall be subjected to torture for the purpose of extracting evidence."²⁹⁵

4.3. Practical happening in Pakistan:

Human right violations occurred in Pakistan. And its result is also very poor. According to the Human Right report 2010, the Human Rights problems are Poor prison conditions, instances of arbitrary detention, prolonged pre-trial detentions, a weak criminal justice system, unsatisfactory training for prosecutors and criminal investigators, and a lack of judicial independence in the lower courts, stayed problems. Rape, domestic violence, sexual harassment, honor crimes, abuse, and discrimination against women remained serious problems. Religious freedom violations, as well as violent behavior and discrimination against religious minorities continuous. Child abuse and exploitative child labor were problems. And the major Human Right problem is Torture.

The law banned torture and other cruel, inhuman, or degrading treatment, but there were information that security forces, as well as intelligence services, tortured and badly treated prisoners in custody. "During the year the NGO Society for Human Rights and Prisoners' Aid (SHARP) reported 4,069 cases of torture by police, of which 2,690 allegedly occurred in Punjab alone."²⁹⁶ During the year a major enhance in the total quantity of torture and rape cases was examined, about double the number contrast with 2009. Human rights organizations reported that way of torture "included beating with batons and whips, burning with cigarettes, whipping soles of the feet, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, and

²⁹⁵ *Constitution of Pakistan page 69 article 4. Page-109.*

²⁹⁶ *Human Right Report 2010.*

forced spreading of the legs with bar fetters.”²⁹⁷ Torture rarely resulted in death or severe injury. Viewer noted the underreporting of torture all over the country.

The country sanctions the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture in 2010. Concerns have been raised over the number and width of its substantive conditions, as well as its reservation to the influence of the Human Rights Committee to request and accept interrupted reports on the country's functioning of the ICCPR.

There was allegation of security forces raping women during questioning. The government hardly ever took action against those in charge. According to the Women's Action Forum, although the 2006 Women's Protection Act (WPA) modified the Hudood Ordinance, women were at rest in prison pending trial under these laws; however, there was a refuse with the course of the WPA.

On January 24, Dawn reported that family members of a man said, police say he committed suicide. While in detention assumed that he was tortured to death after his arrest for suspected concern in a kidnapping case. The relatives refused the argument that Liaquat Ali Bughio hanged himself with a belt. Rasheed Bughio, a cousin of Liaquat, tell journalists that police detained Liaquat four days before his death. He said his cousin had told him that police were torturing him to force him to confess his concern in the kidnapping.

On May 19, The News accounted that a 13-year-old girl named Natasha allegedly was raped for 21 days by police after they unlawfully locked up her at the Wah Cantonment Police Station in January. On its own power the Lahore High Court ordered an investigation. After the early

²⁹⁷ *Human Right Report 2010.*

enquiry by the Rawalpindi police, police detained the two accused police officials, two others stayed at large.

On May 25, Dawn accounted that a female detainee, Abida Hameed, supposedly was tortured by police executives in the Sialkot central jail after being sexually harassed. An investigation was initiated on the orders of the Supreme Court, after which a case against 31 persons, as well as police officers, was stuck for torturing the woman.

By year's end the government had not taken steps to impeach Sub inspector Shujat Ali Malhi and other police officials liable for the 2008 alleged torture and rape of an unknown 17-year-old girl in Faisalabad. There were no improvements in the 2008 case of Agha Mahboob Ahmed, who was detained on doubt of concern in a bank robbery and supposedly tortured at the Hyderabad Criminal enquiry Agency centre.

The other problems are that, the Prison conditions were frequently very poor and failed to rally international standards. Overcrowding was universal, excluding for the cells of rich or powerful prisoners. Prisons and confinement centers were mainly managed by the provincial governments. Human rights groups that inspection prison conditions originate sexual abuse, torture, and long-lasting detention common. Prisons in might not be classified as correctional organizations, because the conditions in many of the prisons are so inhumane that criminals frequently leave more hardened than before their capture. Insufficient food and medical care in prisons lead to continual health problems and underfeeding for those unable to increase their diet with help from family or friends. In many conveniences provisions for cleanliness, airing, temperature, lighting, and right to use to potable water were not enough.

Most prison conveniences were of very old creation, without the ability to control inside temperatures. A system survived for basic and urgent situation medical care, however, in practice it did not always function well. Prisoners sometimes also had to give bribes, and officious procedures slowed way in to medical care. Foreign prisoners often remained in prison long after end of their sentences because they were incapable to pay for exile to their home countries. There were a variety of reports of prison riots during the year. Objections that forced the riots included overcrowding, deficiency of legal rights, slow nature of cases, conduct of the jail management, and be short of facilities.

Christian and Ahmadi communities stated that their members were more likely to be misused in prison facilities. Minority prisoners normally were given poorer facilities than Muslim prisoners and often bearded violence at the hands of fellow prisoners. Police allegedly sometimes tortured and mistreated those in detention and at times engaged in extrajudicial killings.

According to SHARP, “more than 100,000 prisoners occupied 73 jails originally built to hold approximately 36,000 persons. According to an estimate, the prisoner per capita ratio is 50 per 100,000. According to an August 17 Dawn report, all 32 jails in Punjab Province faced acute overcrowding.”²⁹⁸ According to certified figures, these jails functioned at 42 percent over ability. According to Punjab Prisons Department officers, overcrowding not only reason, of security, adjustment, and health problems for prisoners but also harmfully affected the general management of jails. The report noted that as of June 30, about 52,162 prisoners were in Punjab's prisons, which had an authorized facility of 21,527 prisoners. Of these, 696 were women, and 708 were juveniles.

²⁹⁸ *Human Right Report 2010.*

An executive from the Sindh Prison Department noted that in his region the jails were overcrowded but that the area had noted a drop in the number of inmates. As of the end of the year, a total of 12,908 prisoners were jailed in jails with a capacity of 10,450. This specified a reject from August statistics, which showed use of 13,886 prisoners in 25 jails across the province. Central Jail Larkana and Malir Jail Karachi were the largely crowded in the province. Central Jail Larkana had the maximum number of AIDS patients in Sindh. In Sindh jails there were 118 female detainees and 277 juvenile inmates.

Police often did not separate prisoners from convicted criminals. Prisoners with mental illness generally lacked sufficient care and were not separated from the general prison population. Prison officer become softer kept juvenile wrongdoers in the same amenities as adults, but in separate barracks. Even though keeping juveniles in separate barracks, at some point during their detention, children would be mixed with the common prison population. Frequently children were subject to violence, rape, and cruelty from other prisoners and jail staff.

On July 2, the Society for the Protection of the Rights of the Child (SPARC) issued a report on the 10th anniversary of the 2000 Juvenile Justice System Ordinance (JJSO), under which jails that held at least 1,300 juvenile prisoners, and as many as 10,000 children, were facing criminal litigation. SPARC noted that the number of juvenile prisoners represented a significant decline from more than 5,000 when the JJSO was issued in 2000. SPARC stated that juvenile prisoners, the majority of whom were awaiting trial, were among the worst off in the country. The jail conditions in which they were held were extremely poor, and they were subject to a slow process and lack of special juvenile courts or judges. Many spent longer periods behind bars because they were unable to pay bail. A fair and just juvenile justice system does not exist in the country,

according to SPARC. SPARC's regular visits to juvenile sections across the country revealed that little had changed since the introduction of the JJSO in 2000.²⁹⁹

According to SPARC, "child prisoners languished in prison, victims of an overburdened, under committed and uncaring justice system and the circumstances that brought them in conflict with the law. Rather than being rehabilitated, the majority of child prisoners became hardened criminals by spending long periods in the company of adult prisoners. Women were held in separate spaces from men in some, but not all, prisons. There were many reports of violence against women and rape in the prisons."³⁰⁰

The 18th amendment to the constitution, passed in April, authorize that religious-minority detainees be given places to worship within jails. There is an ombudsman for prisoners, with a middle office in Islamabad and one in each region. It was doubtful that this office would work on substitutes to imprisonment or bail. An objection system survived for prisoners to accept complaints. However, in exercise it did not function efficiently. Inspectors general of jails visit prisons and imprisonment facilities to observe conditions, but visits were not usual. According to government representatives, this system was based on objections filed by individual's exposure misconduct of civil servants.

"According to SHARP, by law prison authorities must permit prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. After submitting the complaint, the inmates must remain in the same prison with the same prison authorities. Therefore, although there were many problems and an available channel for complaints, the prisoners remained silent to avoid confrontation with the jail authorities."³⁰¹

²⁹⁹ 2010 Country Reports on Human Rights Practices.

³⁰⁰ *ibid.*

³⁰¹ *ibid.*

Authorities at the local, provincial, and national level allowed some human rights groups and journalists to observe prison circumstances for juveniles and female prisoners. According to SHARP, “the government did little to improve conditions in detention facilities and failed to monitor existing conditions. As a result the situation appeared to deteriorate. Reports of torture increased during the year.”³⁰²

And the grounds behind these main problems are, “there is no law and code of conduct.”³⁰³ Pakistan in which police torture have to be called an unlawful practice and the police authorities are lawfully bound to prohibit the use of torture and violent behavior on innocent people, detainees, and charged. There is not even a single point out of torture in the whole Pakistan Penal Code (PPC) but the word that has been used in PPC is ‘Hurt’ so when there is no law and no section concerning torture how it can be probable to stop torture in the actions and manner of Pakistani police. The Pakistani police stations and jails have turned into the terrible ghost in the name of prisons on the globe earth. According to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of United Nation: Article 1 stated as:

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or

³⁰² 2010 Country Reports on Human Rights Practices.

³⁰³ “Pakistan: No law or code of conduct against the torture that terms it as illegal practice,” Available on, <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-018-2011>> (Last Accessed, 1 Sep, 2011).

other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.³⁰⁴

As there constant breach's on the part of Pakistan of the international law and human rights where police torture in concerned, Pakistan is abusing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act of the United Nation. The inhuman actions towards the accused and the prisoners are a disgraceful act of the Pakistani authorities.

When asked a number of sufferers of police torture called it terrible. Muhammad Junaid an occupant of Jaatli village near Rawalpindi said: "I came to Rawalpindi city for the purchasing of some goods for my small departmental store but some police constables asked me to prove my identity, in the meanwhile they took me to the nearest police station (Pirwadhai). They put me in the lockup without any crime or justification. Junaid said that the police constables asked him for a bribe but when he refused to give them handsome money, they registered an FIR against him in which he was being charged for carrying Hashish."³⁰⁵

Jaunaid told that he was badly beaten for several days and was put in the illegal confinement for more than one week. He was tortured and his leg was injured. After three weeks when the family members came to know about this they rushed to the police station but no one listened to them. There are several incidents on the record on a daily basis in which mostly the innocent people were badly trapped by the police machinery.³⁰⁶

A source in the disreputable Punjab police told this reporter on the condition of secrecy. The Station House Officers (SHO's) have to prove the performance and to improve his competence

³⁰⁴ "Pakistan: No law or code of conduct against the torture that terms it as illegal practice," Available on, <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-018-2011>> (Last Accessed, 1 Sep, 2011).

³⁰⁵ ibid.

³⁰⁶ ibid.

in front of the police high ups that's why they normally registered the cases against those people who are wandering late night in false cases of possessing illegal weapon or delivery narcotics.

The source said that it is not a problem for the police to put any innocent person behind the bars against any charges. It will be later decided by the court or bailiff that he is accused or innocent in that case. Despite a ban on police torture made verbally there is no clause in the Pakistan Penal Code (PPC) that defines torture. The higher ups of the police are hesitant to accept this reality and there is no clarification of torture in Pakistan Penal Code. They have to accept that there is no law and there is a great urge of legislation on the police torture in Pakistan. When this correspondent contacted a number of senior officials serving in the police department they said that there is no authorization of police torture on the public according to the Pakistan Penal Code.³⁰⁷

Torture in custody in Pakistan is common because of the absence of any law beside torture which provides impunity to the executors. Torture in custody is a severe problem affecting the rule of law in Pakistan. It is used as the most ordinary means to get confessional statements. As yet, there has been no serious attempt by the government to make torture a crime in the country. The State establishments provide impunity to the perpetrators who are mainly either policemen or members of the armed services. Furthermore, there is no means for the security of witnesses. This discourages victims from making complaints. While the international jurisprudence on the issue has developed into very high standards, the real situation in Pakistan is similar to that of the Stone Age.

³⁰⁷ "Pakistan: No law or code of conduct against the torture that terms it as illegal practice," Available on, <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-018-2011>> (Last Accessed, 1 Sep, 2011).

Pakistan has also approved the UN Convention against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR) but with many suspicions on the CAT. This act of the government gives free hand to the law enforcement groups to torture the persons in detention.³⁰⁸

Constitution of Pakistan 1973 gives different fundamental rights to all citizens of Pakistan. And Freedom from torture' is one of these fundamental rights. The word 'torture' means an intentional act of causing pain, anguish, hurt, or suffering, whether mental, physical, or psychological, even for the purpose of criminal investigation, or preventive measure and it includes the use of methods intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if no physical pain or mental anguish is caused. Torture, in any form, is unacceptable to the society. However, we can find examples of torture in all the societies. Despite the commitments to protect human rights, torture is allowed by the governments in more than one hundred countries. However, a State does not allow torture expressly or impliedly.³⁰⁹

The Constitution of Pakistan, 1973, has provided a list of fundamental rights with equipment to implement these rights but as far as the 'prohibition of torture' is concerned, it says: "No person shall be subjected to torture for the purpose of extracting evidence."³¹⁰ The above proviso seems to have an injudicious approach with suggestion to the meaning of fundamental rights. It

³⁰⁸ "Pakistan: Prison officials remain unpunished despite torturing inmates by taping their male organs," Available on <http://crisisbalochistan.com/secondary_menu/human-rights/pakistan-prison-officials-remain-unpunished-despite-torturing-inmates-by-taping-their-male-organs.html> (Last Accessed, 1 Sep, 2011).

³⁰⁹ "Pakistan constitution and prohibition of torture," Available on <http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/> (Last Accessed, 5 Sep, 2011).

³¹⁰ *Constitution of Pakistan, Article 14(2).*

clearly means that there is only one single exclusion of torture and that is to extract the evidence, i.e., one cannot be tortured to take out evidence only. What about the rest, the Constitution is quiet and this silence may be taken, impliedly, to think that torture is not banned in all other cases.

There may be another analysis of the said proviso that torture is prohibited in general but it is banned specially in cases where the Authorities use torture as a means to dig out evidence but it would be secondary approach. The first accepting of the proviso implies that the torture is not forbidden in all the other cases. In USA, all the basic rights are not declared in the constitution. “Some rights are so important and fundamental that they are protected and enforced even without finding their place in the constitutional provisions, i.e., prohibition of torture, prohibition of child labor, freedom of trade and profession, etc. In this way, having no provision would be better than having a bad provision.”³¹¹

With reference to Article 14(2), it would be authorized by presumption to mean that torture is partially (and not fully) forbidden by the constitution. In Pakistan, people are detained and kept in jails as well as in personal places without lodging FIR. They are also held under home arrest without any blame. They do not have right to use their lawyers and families. In mainly cases, this is done to take out money from them. So they violate the right of fair trial. And Torture in police custody_and jails (sometimes leading to death) is very common. Sexual violence of juvenile prisoners by the jail staff, extra-judicial killings of criminal expects, aggression against women with rape, honor killings, domestic aggression against children, etc. are the most dreadful

³¹¹ “Pakistan constitution and prohibition of torture,” Available on <http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/> (Last Accessed, 5 Sep, 2011).

examples of torture. Assault and torture, by the Military, over the people forceful them to pass over land for a military farm shows the worst condition of Human Rights in Pakistan.

Torture is considered as mother of all human rights violations. It not only affects the victim but also the society at large. That is why, a large number of Conventions and Declarations passed for the prevention of torture. The UDHR states that no one would be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Geneva Conventions also ban cruel treatment and torture. The ICCPR prohibits torture using the same words. It also prohibits medical or scientific experimentation without one's free consent. The European Convention and American Convention both state that there is no room for torture or like activities.³¹²

The Universal Islamic Declaration of Human Rights says: No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests." African Charter prohibits all forms of exploitations including torture. The CAT prohibits torture under any circumstances. The Cairo Declaration forbids psychological torture or any form of humiliation, cruelty or indignity. Thus, torture is completely prohibited by the international community.³¹³

A fair analysis of Article 14(2) may invite to think:

1. That all acts of torture are not prohibited by the constitution.
2. That the said provision may be taken as a justification in certain cases, i.e., in emergency, etc.

³¹² "Pakistan constitution and prohibition of torture,"

Available on <http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/> (Last Accessed, 5 Sep, 2011).

³¹³ Ibid.

3. That the above provision is against the dignity of the citizens as it does not prohibit the torture fully.
4. That Article 14(2) is in contradiction with the other Articles relating to Fundamental Rights because when there is no complete prohibition of torture, other fundamental rights are meaningless.
5. That if the constitution is not clear on this issue, it would cause frustration and a state of insecurity in the minds of the citizens.
6. That while making our Constitution, we followed the Indian pattern but we find no such provision in the Constitution of India. Similarly, UK and USA Constitutions provide nothing in this respect. It is covered by other provisions. However, use of torture is expressly prohibited by their Conventions. Why, then, we made such a provision part of our Constitution? ³¹⁴

That in absolute violation of prison Laws and Article 9 and 14 of the Constitution a detainee is asked to pay Rs.5000 to Rs.250000 for being put aside from torture. When a prisoner is not able to obey with this unlawful demand, his torture and disgraced, his hand and lags are fastening, his mouth is full with a piece of cloth till he falls down due to the suffocation. Then he is laid downwards on the floor and one person stand up on his legs, other on his upper body, pillow is given under the reverse side of the head and the combination of lime and snuff water is transfer into the nose. This torture is carried on, till the confined agrees to give money.

There are lawful provisions under Pakistani law to defend the individual from acts of torture. The Constitution of Pakistan openly forbids torture under article 14 (2), which provide that "No

³¹⁴ "Pakistan constitution and prohibition of torture," Available on <http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/> (Last Accessed, 5 Sep, 2011).

person shall be subjected to torture for the purpose of extracting evidence. Further, under the Qisas and Diyat Ordinances, the causing of hurt by any person to extort any confession or any information which may lead to the detection of any offence or misconduct is defined as a distinct punishable offence.”³¹⁵ Similarly, article 337 k of the Pakistan Penal Code states:

Whoever causes hurt for the purpose of extorting from the sufferer, or any person in the sufferer, any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years as ta'zir.³¹⁶

The Law of Evidence also provides certain legal safeguards. Article 37 provides that:

A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused persons grounds which would appear to him reasonable

³¹⁵ “U.N. Commission on Human Rights, Report of the Special Rapporteur on torture and cruel, inhuman degrading treatment or punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2 (1996)(Nigel Rodley, Special Rapporteur).” Available on <

<http://www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm> > (Last Accessed, 15 Sep, 2011).

³¹⁶ ibid.

for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.³¹⁷

Moreover, "no confession made to a police officer shall be permissible against a person accused of any offence"³¹⁸ (art. 38 of law of evidence) and "no confession made by any person whilst he is in custody of a police officer unless it be made in the immediate presence of a Magistrate shall be proved as against such person"³¹⁹ (art. 39 of law of evidence). even though these lawful safeguards, torture, as well as rape, in the custody of the police, paramilitary forces and the army, as well as in prisons, is generally reported by national and international NGOs.

In one well exposed case brought to the notice of the Special Reporter during his work, a prisoner in a Lahore police station had been exposed naked, his hands and feet had been joined and he had been hung up by them from bamboo canes. A photograph of this cruel happening appeared in a Lahore daily newspaper. The photograph obviously identifies the station house officer of the police station, shown examining uniformed police officers beating and whipping the prisoner. When the Special Reporter carries the photograph to the notice of his interlocutors from the Ministry of Human Rights, they assured that the occasion had been examined and that the officer in question had been suspended from his place. However, they approved that no criminal charges had been brought against any that officer or the police officers who had caused the behavior.³²⁰ "Further, the Special Reporter learned that the station house officer had been

³¹⁷ "U.N. Commission on Human Rights, Report of the Special Rapporteur on torture and cruel, inhuman degrading treatment or punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2 (1996)(Nigel Rodley, Special Rapporteur)." Available on <

<http://www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm> > (Last Accessed, 15 Sep, 2011).

³¹⁸ ibid.

³¹⁹ ibid.

³²⁰ ibid.

suspended for only a brief period and that he had resumed his duties after being transferred to a different station house.”³²¹

Pursuant to rule 294 of the Prison Rules, juvenile prisoners, who are defined in the case of males as those who at the time of conviction are under 18 years of age, are to be separated from adult prisoners. Rule 295 provides, all juveniles shall receive careful individual attention. The features of their treatment will be (1) sustained work; (2) physical, mental and moral training with a view to teach them self-discipline; and (3) careful arrangement for their future after discharge. The aim of prison treatment shall be to give the young offenders whose mind and character are still pliable, such training as is likely to create in them a high standard of social behavior.³²²

Although these severe rules, during his visit to the Karachi Central Jail the Special Reporter saw a juvenile locked up in Ward 2 of the Security Cells, which is for prisoners pending capital punishment. The juvenile up to date the Special Reporter that he was 17 years old and that he had been offender of murder when he was 15 years old. The boy's file did not have his age, but his youthful character disproved the authorities argue that he was mature. The boy was held in a

³²¹ “U.N. Commission on Human Rights, Report of the Special Rapporteur on torture and cruel, inhuman degrading treatment or punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2 (1996)(Nigel Rodley, Special Rapporteur).” Available on <

<http://www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm> > (Last Accessed, 15 Sep, 2011).

³²² Ibid.

small room with seven other major prisoners, all of whom had been prisoners of murder and were awaiting the death punishment.³²³

And “Very few provisions of the 1973 constitution of Pakistan have been directly implicated or specifically mentioned in Pakistani case law with regard to the plight of imprisoned women and their children.”³²⁴ Where such provisions are point out, courts have nebulously settled that the fundamental rights provisions of the constitution are concerned, without given that any sort of analysis or mention of a definite proviso.

Section 497(1) CrPC allows bail in non bailable offenses to the infirm. Therefore, when a woman is infirm there is an even stronger case for granting her bail. Infirmitiy includes pregnancy. Courts generally do grant bail to the affected women and children, because the Courts take into account the nature of the illness and the lack of medical facilities in prisons.³²⁵

Local human rights observers have determined that the special conduct regarding bail under section 497 has not provided any significant relief for women. In addition, although the procurement of bail appears to be much easier under the law for women, in practice women are deprived of bail more habitually than men.

³²³ “U.N. Commission on Human Rights, Report of the Special Rapporteur on torture and cruel, inhuman degrading treatment or punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2 (1996)(Nigel Rodley, Special Rapporteur).” Available on <

<http://www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm> > (Last Accessed, 15 Sep, 2011).

³²⁴ “Rights of Imprisoned Mothers in Pakistan,” Available on < http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm > (Last Accessed, 15 sep, 2011).

³²⁵ Ibid.

The prison rules are highly basic, conceptual and brief. They do not elaborate on facts and the jail authorities have a lot of discretion to deal with circumstances on which the rules are quiet. In addition, no circulars interpreting the rules have been produced by the jail authorities. In some cases even when jail rules are appropriate to circumstances they are violated, for example, the jail rule requiring immediate medical test of in-coming female prisoners is rarely pursued. Pregnant women are not provided medical notice or extraordinary food in jail. The abuse of prison rules is not imperfect to those rules that direct the daily life of prisoners but also to other kinds of substantive rights abuses, such as those linked to analysis women on their right of bail.

Under the jail rules the Superintendent of the prison is necessary to update all prisoners of the time for a petition of sentence and to give all support and services in filing it. Under the Hudood laws, convictions can be demanded as a matter of right. Arithmetical evidence historically lean to prove that such support is not given. “Studies of women prisoners reveal that nearly a third never appealed their convictions to the higher court. Approximately 13 percent of 90 women prisoners interviewed in 1988 had no idea whether or not an appeal had ever been filed on their behalf.”³²⁶

³²⁶ “Rights of Imprisoned Mothers in Pakistan,” Available on

<http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed, 15 sep, 2011).

RECOMMENDATIONS AND CONCLUSIONS:

Recommendations:

In the above circumstances, we must consider the following:

1. There is a vital need to modify the said constitutional provision at least by amending the words, “for the purpose of extracting evidence”.³²⁷ Because such a proviso not only damages beauty of the constitution but it is also unfair and immoral.
2. It is recommended that Pakistan should sign and ratify the ‘Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984. This step would increase honor of The Pakistani nation in international society on one side, while it would inspire and enable the government to take measures to reduce the torture and terrorism from Pakistani society.
3. There is an immediate need to legislate on torture. The use of torture by police or other officers must be stated as a crime and liable to compensation to its victims. In this respect, we must take guidance from the ‘Inter-American Convention to prevent and punish Torture, which asserts that a public servant would be responsible of the crime of torture if he orders, initiates or induces the use of torture, or directly executes it or being able to prevent it, fails to do so.³²⁸ It further provides that “the fact of having acted under

³²⁷ *Constitution of Pakistan 1973, Article 14(2).*

³²⁸ *Inter-American Convention to prevent and punish Torture, Article 3*

orders of a superior shall not provide exemption from the corresponding criminal liability".³²⁹

4. The police officers and other public officials should be made liable for custody of accused or such other persons as are deprived of freedom, and there should be complete ban of use of torture during questioning, detention or arrest.³³⁰ The similar responsibility should be obligatory on the jail authorities as well.
5. The persons responsible for use of torture must be awarded such punishments. As are likely to prevent them from such practice.
6. Such of the verses of the Holy Quran and Traditions of the Holy Prophet regarding prohibition of torture, be made part of the syllabus from early education so that we may teach the young minds against the training of torture to produce an anti-torture state.
7. Amnesty International believes that the Government of Pakistan should take the following steps in order to bring torture, including rape, to an end;
 - i. To publicly condemn torture, including rape of women in custody;
 - ii. To enforce and strengthen existing safeguards for women in detention;
 - iii. To conduct prompt, thorough and impartial investigations into all reports of rape, torture or ill-treatment of women in custody;
 - iv. To bring to justice all law enforcement officials who are found to have committed torture.³³¹

³²⁹ *Inter-American Convention to prevent and punish Torture*, Article 4

³³⁰ *Inter-American Convention to prevent and punish Torture*, Article 7

³³¹ "Pakistan Constitution and prohibition of torture," Available on, < <http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/>> (Last Accessed, 6 Sep, 2011).

8. We should conduct seminars and workshops beside the use of torture, violence and assault and should condemn such activities everywhere.³³²
9. The prisoners to be contained in single cells at night, and to be sanctioned natural light, fresh air and artificial light when required.
10. To provide such sanitation as is necessary for prisoners to comply with the needs of nature when, and to make sure a clean and decent mode for this purpose.
11. There are provisions describing to medical services and connections with friends and relatives at regular periods.³³³
12. Similarly the “International Covenant in Civil and Political Rights acknowledge that the essential aim of the confinement of prisoners is their reformation and social rehabilitation which requires that they be treated humanely, and with respect for the inherent dignity of human person. The European Convention on Human Rights outlaws torture and inhuman or degrading treatment or punishment.”³³⁴
13. The Government of Pakistan should discharge all prisoners of conscience without delay and unconditionally, including women offender of non-violent crimes after trials where openly discriminatory rules of evidence have led to their certainty.
14. The Government of Pakistan “should review all legislation that leads to the imprisonment of prisoners of conscience and that does not conform to the provisions for fair trial enshrined in international human rights standards, such as those recognized in Articles 9

³³² “Pakistan Constitution and prohibition of torture,” Available on, < <http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/>> (Last Accessed, 6 Sep, 2011).

³³³ “Overcrowded prisons,” Available on, < <http://newsletters.ahrchk.net/qaumi/mainfile.php/prison/63/>> (Last Accessed, 6 Sep, 2011).

³³⁴ *Ibid.*

and 14 of the International Covenant on Civil and Political Rights, the UN Basic Principles on the Independence of the Judiciary, the UN Basic Principles on the Role of Lawyers and the UN Guidelines on the Role of Prosecutors.”³³⁵

15. Existing safeguards recommend that women may not be arrested and searched but by a female police officer, and that a female police officer should be there until the prisoner is handed over to judicial authorities.
16. Women may not be locked up in police custody overnight and all questioning must be carried out in the presence of a male relative or a female police officer. These safeguards are normally neglected. The Government should ensure strict devotion to these regulations. This may entail increasing the number of women in the police force to certify that female police officers are there at all times in every police station.
17. The government should certify that all prisoners are always held in openly recognized places, that up-to-date and exact records about the whereabouts of detainees are maintained at all times and that such records are made accessible to relatives and lawyers.
18. The government should also make sure that any police officer who holds any woman prisoner in unacknowledged custody is brought to justice.
19. Where detention of women in police stations is obligatory, women prisoners should be medically examined upon take into custody and at any later time upon demand.
20. Similarly, the obligation that women prisoners should be medically examined when moved to judicial custody should be strictly imposed. If any women on arrival in jail is found to be injured or complains of rape in police custody, such signs or allegations

³³⁵ “Women In Pakistan,” Available on, <<http://www.cssforum.com.pk/css-compulsory-subjects/essay/essays/12429-women-pakistan.html>> (Last Accessed, 6 sep, 2011).

should be immediately transmitted to the highest prison authorities and a medical investigation initiated.

21. Should there be any sign that the women prisoner was tortured or raped in police custody, an independent and fair investigation should be on time set up with a view to bringing those liable to justice.
22. The government should also think about setting up independent and fair institutions staffed by women all over the country to provide legal aid and support to women who have been subjected to human rights abuses.
23. "The Human Rights Cell should be made independent of the government and be given sufficient powers and resources to investigate all violations of human rights. Further, all victims of rape and other torture or ill-treatment by state officials should be entitled to compensation and appropriate medical care and rehabilitation, in line with Article 11 of the Declaration against Torture."³³⁶
24. "Amnesty International urges the government to ensure that all allegations of rape and other torture or ill-treatment in custody are thoroughly, promptly and impartially investigated, in line with Articles 8 and 9 of the UN Declaration against Torture."³³⁷
25. Amnesty International also advises the government to ensure without delay and independent investigations into all claims of human rights abuses.
26. The Constitution of Pakistan prohibits torture for the reason of extracting confessions from prisoners, but does not forbid cruel, inhuman and degrading punishments. Amnesty International advises the government to change such punishments with other penalties

³³⁶ "Women In Pakistan," Available on, <<http://www.cssforum.com.pk/css-compulsory-subjects/essay/essays/12429-women-pakistan.html>> (Last Accessed, 6 sep, 2011).

³³⁷ Ibid.

which are reliable with recognized international standards for the punishment of crime and the treatment of criminals.

27. Pakistan, as a state party to the UN Convention on the Rights of the Child, is under a responsibility to bring its domestic laws into accord with the provisions of the Convention. The Convention clearly forbids the imposition of the death penalty on anyone who was under the age of 18 at the time of committing the wrongdoing. It also bans cruel, inhuman and degrading punishments for children. Amnesty International advise the government to alter its laws so as to look after the children in line with the UN Convention on the Rights of the Child.
28. Amnesty International has frequently urged the Government of Pakistan to sanction, without restrictive reservations, international human rights treaties, including the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, and the International Covenant on Civil and Political Rights and its Optional Protocol.
29. Amnesty International worries that as it has in the case of the UN Convention on the Rights of the Child, Pakistan will sign the UN Convention on the Elimination of All Forms of Discrimination against Women with reservations of a broad nature; such reservations may prevent major changes being introduced into laws that now differentiate against women. Actual respect for the rights of women would require ratification the Convention without reservations and taking imperative steps to bring domestic legislation into accord with the Convention's provisions.³³⁸

³³⁸ "Women In Pakistan," Available on, <<http://www.cssforum.com.pk/css-compulsory-subjects/essay/essays/12429-women-pakistan.html>> (Last Accessed, 6 sep, 2011).

30. All juveniles shall obtain careful individual concentration. The type of their treatment will be constant work, physical, mental and moral training with a view to educate them self discipline, and careful planning for their future after release. The aim of jail treatment shall be to give the young criminals whose mind and character are still pliable, such training as is likely to produce in them a high standard of social manners.³³⁹

31. Duration of punishment is started not on the day of decision but on the first day of conviction.

32. In jails there must be some factories and all prisoners should be required to work in these factories as a part of this punishment. This step can play an important role in the improvement of economy of Pakistan.

33. Jail authorities should be give some wages to the prisoners on behaves of their work in these factories.

34. If the convicted person is the only supporter of his family, such working in these factories may encases them to help his family during imprisonment.

35. There must be some separate quarters to facilitate spouses of prisoners in all over the Pakistan. This recommendation is already apply in Khyber Pakhtun Khwa (KPK) and in Sindh jails but only for temporary basis.

36. The educated prisoners should be required to teach the young prisoners.

37. Education is not compulsory only for young prisoners if any adult prisoner wish to take education then he permitted for doing so.

³³⁹ "Commission on Human Rights," Available on,

<<http://www1.umn.edu/humanrts/commission/thematic53/97TORPAK.htm>> (Last Accessed, 5 Sep, 2011).

38. There should be a fine for petty crimes and not imprisonment. This may help to overcoming the overcrowding in jails.
39. There must be no Bar fitters because it is against the dignity of human beings.
40. There should be proper food and clean water is provided in jails to all prisoners.
41. Male and female prisoners must be kept in separate jails.
42. Male prisoners are not permitted to visit female jails at any time.
43. Young prisoner's jail should be separate from the adult prisoners. And there must be good teachers for their education.
44. There should be female superintendents and female staff in the women prisons.

CONCLUSIONS:

From the above discussion it is concluded that the rule of Human Right Law is compulsory so as to the prison problems in Pakistan. Without these standards the condition of prisons are very poor. It is also clear that Pakistan is a state party in different international conventions but the rules are not applied in Pakistan prisons. And a convention against torture (CAT) is most important for prohibition against torture, but Pakistan signed on it with reservation and it gives free hand to police for torture or any cruel treatment with prisoners.

Farzana Bibi, a human rights activist said: How I can go to the police station. They don't spare any one. If I go for complain. I might come back with some more troubles, as everything and wrong act could be expected by police constables. In our Pakistani society people are afraid and terrified to appear before the police because they know that by appearing before police instead of getting some relief they may be more troubled and their self respect may be infringed.³⁴⁰

In short we can say that we need a lot of effort and work regarding the legislation and there is a need for change in the manners and behavior of the police and as well in the atmosphere of the society. In this regards human rights organizations can only get successful result against police torture when the people of society themselves rise up and struggle at both national and international forums.³⁴¹

³⁴⁰ "Pakistan: No law or code of conduct against the torture that terms it as illegal practice," Available on, <<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-018-2011>> (Last Accessed 2 Sep, 2011).

³⁴¹ Ibid.

It is also clear from my thesis that Pakistan has different prison rules and Acts, but all these rules are not applied in jails. Due to which jail system of Pakistan is miserable. There is need for improvement in jail rules and some Articles of Constitution of Pakistan with the help of International standards. Constitution of a country is a supreme law of the land if it has weak points then it is the responsibility of state government to amend these Articles immediately.

Because the constitution of a country is the ultimate law of the land. It is a document which represents the country, which indicates the approach, and opinions of the nation. As an exercise, this document is planned in a way to include some rights as fundamental and a method is also provided to defend these rights, which are called fundamental human rights. ‘Human Right’ means and contains everything that a human being needs to live with dignity. Fundamental human rights are afforded absolutely to all the citizens because they justify it being members of the human civilization. The spirit of a fundamental right is that it requires restraints on the illogical use of power by the State authorities and it cannot be obstructed or taken away but by a constitutional amendment. It would not only be “technically inartistic but a fraud on the citizens for the makers of a Constitution to say that a right is fundamental but that it may be taken away by the law.”³⁴²

And it is concluded that the fundamental rights are not taken away. So the prisoner’s fundamental rights are also given to them. If the right of equality is given then the problem of discrimination between prisoners is controlled. Men prisoners, women and children they all are

³⁴² “Pakistan Constitution and prohibition of torture,” Available on, <

<http://www.pakistanlaw.net/law-articles/legal/pakistan-constitution-and-prohibition-of-torture/> > (Last Accessed, 1 Sep, 2011).

treated equally in prisons and have right of good food and clean water and fresh air. They also have right to treat them humanely.

“Pakistan ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 12 March 1996 and the Convention on the Rights of the Child (CRC) on 12 November 1990.”³⁴³ However, if one is to analyses the status of pregnant jailed women, and children in jails, Pakistan has abused several provisions of both these standards. In Pakistan women and child prisoners condition is very poor and they are weak so that the rule establishing authorities infringe their rights easily and no one stop them to do so.

The High Courts and the Federal Shariat Courts are normally favorable towards conceding bail to the concerned women. But, many cases relating to such women do not reach the superior courts because the women are unaware of their right to challenge their detention and as such never receive relief. Where a judgment is challenged, the inferior courts having the authority to take notice of bail applications normally deny such applications immediately. Yet in cases where women are provided bail, they still have to send a bond and grant sureties. Both these desires are unwieldy for the women to grant because of having no financial capacity and socio cultural rank. Very frequently women are powerless to gain the bail because of the prevalent circumstances.³⁴⁴

Pakistan prison has many problems. If the judicial system of our country is strong and follow the rules of Human Right Law then major part of these problems must be solved. If right of fair

³⁴³ “Rights of Imprisoned Mothers in Pakistan,” Available on,

<http://www.southasianmedia.net/Magazine/Journal/13_rights-of-Imprisoned.htm> (Last Accessed, 1 Sep, 2011).

³⁴⁴Ibid.

trial is given to all prisoners and decision gives on time. Due to the lengthy process of trial prisoners stay for a long time in jails. This is the major reason of overcrowding in jails. If our judicial system is strong, we can overcome these problems. Because it is the duty of all judges and lawyers that their work is under International Standards. Then Pakistan's jail system is improved and prisoners take their Human Rights properly.

I also give some recommendations if they are followed by the prison authorities, they will be also to show better result for the improvement of Pakistani jails. It is difficult but not impossible to solve all problems of prisons which I have already mentioned in my thesis in the third chapter. My thesis is that prisoners are also human beings and they have rights similar to other human beings. And if any right is violated they may go to the court. Finally, it is clear that without International Human Right Law our prison rules are defective; there must be some changes according to the International Standards for the betterment of prisons conditions. I have proved through this dissertation that the Pakistan prison laws need reforms so as to confirm to the standards of International Human Right Law.

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