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Socio-Legal Perspectives on Women's Prisoner Rights: A Study of Islamic and Contemporary Pakistani Law

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Abstract

Different fundamental rights protect women in Pakistan. Among the most important women's rights is the responsibility of the state to satisfy her basic needs in prison. Research is being performed to evaluate the laws of female prison inmates in Islamic law, International law, and Pakistani law in order to examine the rights of a female detainee. The doctrinal approach of research is used to identify gaps in the existing legislation for female convicts in Pakistan. Furthermore, the study covers international treaties and agreements to obtain information about the current rights of female inmates. According to the survey, women in Pakistani jails have insufficient facilities and aren't granted basic human rights. However, the judiciary played a role, and it turns out that sue-moto actions took place in many situations, but there is still room for improvement on their end. The research also focuses on the difficulties faced by female convicts and the solutions suggested by them. Finally, legal measures are suggested to safeguard a female prisoner whose basic rights have been violated.

Key-Words: Women Prisoners, Insufficient Facilities, Pre-emptive, Fundamental Rights, Reforms.

Introduction

The concept of prison depends on isolating a person from society in order for him or her to seek atonement for their actions. It is also true that not every prisoner is a criminal, but he or she may be incarcerated for a false claim. The prisoner would be denied some privileges that they have in their everyday lives. From a human rights standpoint, prisoners, both male and female, would be treated equally.¹(Megan & lauran 2008) Furthermore, female detainees have particular demands that need extra care. More facilities are needed for Muslim women convicts in terms of spiritual growth, counseling, and rehabilitation, which will help them avoid repeating their crimes.²(Mark 2009) In Islamic law, this phenomenon fulfills the reformatory (*al-islahwa al-tahdhib*) objective of punishment. The idea of disciplinary and reformatory punishment deters individuals from committing subsequent crimes, and they believe they will face penalties if they do so.³(Joycelyn Pollock 2009) The Muslim concept of remorse, or *tawbah*, given in the Qur'an provides the foundation for reformation in Islamic jurisprudence.

Provincial governments are responsible for designating facilities used for detention as prisons under the Prison Act 1894.⁴(PRP 1978) A prisoner can be described as an individual who is currently serving a period of incarceration in a prison or as a person who has been apprehended by a law enforcement official and is being held in their custody, regardless of whether they are incarcerated in a jail.⁵(BLD, (7th ed.1999)

¹Megan Bastick and Laurel Townhead. "Women in prison A commentary on the UN Standard Minimum Rules for the Treatment of Prisoners." *Human Rights & Refugees Publications* (2008): 45.

² Mark S Hamm. "Prison Islam in the age of sacred terror", *The British Journal of Criminology* 49, no. 5 (2009): 667-685.

³Joycelyn Pollock, *Prisons: Today and tomorrow*, Jones & Bartlett Learning, 1997

https://books.google.com.pk/books/about/Prisons_Today_and_Tomorrow.html?id=5fpzMQEACAAJ&redir_esc=y

⁴Pakistan Prison Rules, Jail Manual.At 1. Chrome

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⁵ Black's Law Dictionary, (editor in chief, Bryan A. Garner), West Group St.Paul, Minn., (7th ed.1999) at 1213 1998

1. Rights of Women Prisoner in Islamic Law

Islamic law ensures the equitable provision of essential human rights to individuals of both genders without any kind of discrimination.⁶(MashoodBaderin, 2003). Numerous instances of male prisoners recorded during the early Islamic period support this claim. It is worth noting that Islamic law imposes the same punishments on individuals of both genders. Those who are unmarried and found guilty of adultery, regardless of gender, face a sentence of one hundred lashes, according to a chapter in the Holy Qur'an. [ii](Qur'an 24:03).⁷ The passage explicitly specifies that the enforcement of sanctions is the same for men and women. Nonetheless, it is essential to emphasize providing special accommodations for women, such as keeping privacy, supporting childcare, and observing the *pardah* practice. Islamic precepts, which have been thoroughly investigated and developed, protect the treatment of female inmates.

1.1. Fair and Equal treatment of Prisoners

According to Islamic jurisprudence, all individuals are considered equal under the law, irrespective of their gender, and are entitled to equal treatment without any kind of discrimination. The *Qur'an* explicitly states that Allah created males and females from a single human being and afterwards dispersed them among various tribes to foster mutual recognition and understanding.⁸(Qur'an 49: 13.) The teachings of the prophet (s.a.w.) indicate that he consistently demonstrated equitable treatment towards all individuals. He had consistently shown a lack of discrimination based on socioeconomic status or gender. The prophet (s.a.w.) was presented with a case involving stealing, in which a woman of affluent status from the Quraish tribe was identified as the perpetrator. According to Aisha's narration, the Quraish community expressed significant concern for the Makzumiya woman who was involved in a theft incident. It was said that there were no individuals who were willing to advocate for the woman in the presence of Allah's Apostle, except for Usama, who had a favored position in the eyes of Allah's Apostle. When Usama addressed Allah's Apostle

⁶MashoodBaderin, *International Human Rights and Islamic Law*, (Oxford: Oxford University Press, 2003), p.42-43.

⁷ Qur'an 24:03 <https://quran.com/en/an-nur/3>, <https://myislam.org/surah-nur/ayat-3/>

⁸ Qur'an 49: 13. <https://legacy.quran.com/49/13>

on the problem, the Apostle responded by questioning if Usama was requesting his intervention to contravene one of Allah's prescribed punishments. Subsequently, he rose from his seated position and proceeded to deliver a speech to the assembled individuals, beginning with the words, "O people!" The preceding societies deviated from the expected path when confronted with instances of theft perpetrated by individuals of high social standing, since they would administer the appropriate legal consequences to such individuals. According to Islamic teachings, it is believed that if Fatima, the daughter of Muhammad, were to engage in stealing, it is prescribed that her hand be amputated by Muhammad!"⁹(Sahih al-Bukhari,1422H)

According to the hadith, all adult male and female Muslims are subject to this punishment. The teaching of the prophet (s.a.w.) makes it clear that everyone, regardless of socioeconomic status, shall be treated fairly. When it comes to female inmates, everyone has to be on the same level. Therefore, pregnant female inmates need to be given extra consideration. Once, a pregnant lady accused of adultery was brought before the Prophet (s.a.w.). He put off the penalty until after she had the baby. A guardian was appointed by him to look after the lady and report back to him on her condition regularly.¹⁰ (Beirut: Dar-al-Fikr, 1994).From these fundamental sources of Islamic law, one learns that female prisoners need particular care and that the government must provide them with the bare necessities.

(i) Providing sufficient diet to the inmates

In terms of inmate rights, Islamic law requires that prisoners be provided with enough food. It was noted during the prophet's (s.a.w.) time that he directed his associates to provide enough food for the prisoners. When a prisoner from Thaqif is apprehended, the prophet directs that a healthy diet be sent to him. On another occasion involving Jews from BaniQurayzah, the prophet (s.a.w.) directed that adequate nourishment be given for him, and his associates presented him with beverages and dates.¹¹ (Beirut: BÉr al-Kutab al 'Ilmiyah, 1999) The prophet's (s.a.w.) associates followed the same tradition. During the time of Umar (r.a),

⁹ Muhammad IbnIsma'il, Sahih al-Bukhari, (n.p: Dar Tawq al-Najih, 1422H), vol 12, p.87.

¹⁰ Abu al-Hasan 'Ali ibnHabib, al-Hawi al-Kabir, (Beirut: DÉR-al-Fikr, 1994), vol.12, p.115.

¹¹ Al- MaqrizÊ, *ImtÊ' al-AsmÊ bi mÊ li al-NabÊSallallÊhu 'AlayhiWasallÊm min al-Hafadatiwa al-MatÊ*, (Beirut: BÉr al-Kutab al 'Ilmiyah, 1999), vol.1 p.250.

he issued an order to give a proper food to an apostate who had been imprisoned for three days.¹² Kuwait: Maktabah al-Manir, 1987 In the instance of IbnMuljam, who injured Ali (r.a.), he said, "Give him food and drink and treat him well, and if I live, I will be the protector of my blood." If I choose to, I will forgive him; otherwise, I will respond (qisas).¹³ (Beirut: Dar al-Kutub al-'Ilmiyah, 2003),

During the time of Caliph Harun al-Rashid, QadiAbiYusaf, a highly regarded jurist, advised the government, recommending that detained people be fed in order to improve their general well-being. In addition, he proposed developing a method for allocating their stipend in order to protect against any maltreatment by the police. (Beirut: Dar al-Ma'rifah, n.d) Throughout their captivity, Caliph Harun al-Rashid emphasized the supply of food to his political opponents. The guy in question issued a command for the supply of sustenance and drinks to his opponents, namely Yahya al-Barmaki and his children, al-Fadl, in a dignified manner.¹⁴(Masud 2009). The aforementioned examples illustrate that Islamic law requires prisoners to be provided with appropriate food and drinks, with equal respect to these restrictions for people of both genders. Female inmates must have access to basic food requirements and be treated with respect.

(ii) Separation of male and female Prisoners

In Islamic jurisprudence, it is prescribed that those who are not closely related (non-mahram) are advised to observe segregation in their interactions and social environments. According to the teachings of Islam, it is prescribed that individuals of both genders refrain from engaging in privacy, as ordained by Allah. ¹⁵(Beirut: Dar ulAalam Al-Kutab, 2005) The consensus among Muslim jurists is that the mingling of genders is universally prohibited

¹²HasanAbiGhuddah, Ahkam al-SijinwaMuamalat al-SujanÉ fi al-Islim, (Kuwait: Maktabah al-Manir, 1987), p.349.

¹³ Ahmad ibn al-Husaynibn 'Ali al-Khurasani, AbuBakr al-Bayhaqi, *Al-Sunan al-Kubra*, (Beirut: Dar al-Kutub al-'Ilmiyah, 2003), vol.8,p.100.

¹⁴ . MASUD, M. K. (2009). The Significance of Istiftā' in the Fatwā Discourse. *Islamic Studies*, 48(3), 341–366.
<http://www.jstor.org/stable/20839171>, Hasan AbuGhuddah, p.349

¹⁵IbnQudamah, *AlMughni* (Beirut: Dar ulAalam Al-Kutab, 2005), vol.1, p. 402.

since it aligns with the concept of *sadd al-dhari'i*, which aims to prevent the occurrence of illegal actions.¹⁶(AbuGhuddah, p.310.) The idea of segregation is likewise adhered to inside correctional facilities. The practice of the prophet (s.a.w.) clearly demonstrates his setup of separate locations for incarcerating male and female prisoners. In the instance of IbnahHatim, it is stated that the prophet (s.a.w.) confined her in close proximity to the entrance of the mosque, where women were also kept.¹⁷ (Beirut: Dar al-Kutub al-Ilmiyyah, 1415H).In a different occurrence, the prophet (s.a.w.) locked up the male prisoners of al-Ja'ranah in one location while their women and children were held separately in another spot.¹⁸(Beirut: Dar al-Kutub al-Ilmiyyah, 1415H)

(iii) Providing proper education

It is the responsibility of Muslim men and women to pursue education, and it is the responsibility of the state to offer education for all genders. The value of education can be observed in the Qur'an passage where Allah says, "...Are those equal, those who know and those who do not know?".¹⁹(Qur'an 39: 9.) It is also clear from the prophet's (s.a.w.) practice of urging Muslim rulers to educate their people. The Prophet (saw) carried his companions to different regions of the globe to teach Muslims in order to disseminate knowledge.²⁰ (AbuGhuddah, p.382).As a result, Islam places a high value on the education of prisoners. The jail is a place where offenders can repent of their wrongdoing and turn away from the path of crime. The Holy Qur'an mentions a major episode involving the Prophet Yusuf in reference to the education of prisoners. "O My two companions of the prison! (I ask you): are many lords differing among themselves better, or the one Allah, Supreme and Irresistible?"²¹ (Qur'an 12:39).

¹⁶ AbuGhuddah, p.310.

¹⁷ Ahmad ibn 'Ali ibn Muhammad ibn Ahmad ibnHajar al-Asqalani, *Al-Isabah fi Tamyiz al-Sahabah*, (Beirut: Dar al-Kutub al-Ilmiyyah, 1415H.), vol.8, p.180.

¹⁸ Ibid, vol.7,p.48.

¹⁹ Qur'an 39: 9. <https://legacy.quran.com/39/9>

²⁰ AbuGhuddah, p.382

²¹ Qur'an 12:39. [https://myislam.org/surah-yusuf/ayat-](https://myislam.org/surah-yusuf/ayat-39/#:~:text=%E2%80%9Ctwo%20companions%20of,Fellow%2Dprisoners!)

39/#:~:text=%E2%80%9Ctwo%20companions%20of,Fellow%2Dprisoners!

If they do not worship him, they are simply venerating mere names that they and their predecessors have allocated to themselves, with no lawful authority from Allah. Allah has complete power, and the command is solely his. The person has issued a directive indicating that worship should be limited to a single entity, namely the individual himself. This is seen as the right and suitable religious practice. However, it is regrettable that the majority of people do not understand this concept.²² (Qur'an 12:40.)

The prophet (s.a.w.) detained Thum'amah in the mosque and ordered her to receive education. After three days with the Thum'amah, he became inspired by the teachings of Islam, said the *shahadah*, and accepted Islam as his religion.²³ (Abū Ghuddah, 382). The companions also observed the prophet's (s.a.w.) sunnah and educated the prisoners. Caliph Umar ibn Abdul Aziz directed his governor to visit the prisoners and provide suitable educational and guiding services.²⁴ (Ibn Sa'd, 1968). The intention of teaching prisoners is to offer them the chance to repent for their wrongdoing and to expose them to Islam.²⁵ (Ibn Qudamah, *Al-Mughni*, vol.9, p.6

Providing Proper Health Facilities

The Islamic tradition recognizes the necessity of providing accessible medical care. Thumamah was sick, so the prophet (s.a.w.) commanded that he be treated with compassion.²⁶ (Ibn Shabbah, *Tarikh al-Madinah li ibn Shabbah*, (n.p, 1399), vol.2, p.435). In another incident, the prophet (s.a.) instructed to take care of the pregnant woman prisoner.²⁷ (Abū Ghuddah, p.112). Later, both the Caliphs Umar (r.a.) and Ali (r.a.) followed the prophet's (s.a.w.) example and insisted on providing for pregnant detainees until they gave birth.²⁸ (Abū Ghuddah, p.112) Ali, the fourth Caliph,

²² Qur'an 12:40. <https://myislam.org/surah-yusuf/ayat-40/>

²³ Abū Ghuddah, 382.

²⁴ Ibn Sa'd, *Al-Tabaqat al-Kubra*, (Beirut: Dar Sadir, 1968), vol.5, p.276.

²⁵ Ibn Qudamah, *Al-Mughni*, vol.9, p.6

²⁶ Ibn Shabbah, *Tarikh al-Madinah li ibn Shabbah*, (n.p, 1399), vol.2, p.435.

²⁷ Abū Ghuddah, p.112.

²⁸ Ibid.

visited the Kuffar prisons and oversaw the prison hospitals for women.²⁹ (Beirut: Dar al-Kitab al-'Arabi, n.d), p.219).

Some Muslim jurists may argue for a sick prisoner's release on bail because of the significance of medical care under Islamic law. They argue that a sick inmate would get better care outside of jail.³⁰ (AbuGhuddah, p.370.) If prison medical care is inadequate, Ibn 'Abideen states, a prisoner can be released on bail and get medical care outside of jail.³¹ (Beirut: Dar al-Fikar, 1992) The examples from Islamic history shows that it is the duty of the state provide medical facilities to the woman prisoners.

Conditions and Legislation for Women Inmates in Pakistan

Women's criminal activity is on the rise in Pakistan. This is why there is insufficient jail capacity. Pakistan has only five female jails in the whole nation.³² (Bagri K.A 2010). Despite the fact that some prisons provide separate facilities for female prisoners.³³ (Bagri K.A 2010).

Female prisoners are entitled to certain privileges (Chapter 13 of Pakistan's rules for the superintendent and administration of prisons). Women detainees are kept in separate female wards to keep them distinct from male prisoners.³⁴ (Bagri K.A 2010). It is the prison administration's primary responsibility to keep female prisoners safe. Women are not subject to harsh punishment. They are permitted to wear less expensive jewelry if they so desire. A pregnant woman prisoner is required under Rule 322 to report to the inspector general for the postponement of her sentence, particularly if she is facing the death penalty.³⁵ (PPR 1978)

While the Constitution of Pakistan does not have a specific clause guaranteeing women in jail special treatment, the protections afforded by the Bill of Rights ensure their safety behind bars. The court has the authority to release female detainees in both bailable and non-bailable cases

²⁹ Al-Muttarizi, *al-Mughrab fi Tartib al-Mu'rab*, (Beirut: Dar al-Kitab al-'Arabi, n.d), p.219.

³⁰ AbuGhuddah, p.370.

³¹ Ibn 'A bidin, *Radd al-Muhtar 'ala al-Durr al-Mukhtar*, (Beirut: Dar al-Fikar, 1992), vol.5, p.378.

³² Khushboo Ali Bagri, "Women Prisoners in Pakistan: A Case Study of Rawalpindi Central Jail," *Available at SSRN 1716825* (2010). Accessed on 13th April 2023

³³ *ibid*,

³⁴ *Ibid*

³⁵ Pakistan Prison Rules, Jail Manual, rule no 322. chrome-extension://efaidnbmninnibpcapjpcglclefindmkaj/https://prisons.punjab.gov.pk/system/files/Pakistan%20Prison%20Rules.pdf
2004

under Pakistan's Criminal Procedure Code.³⁶(Criminal Procedure Code 1898, sec 497 (1).) The laws of Pakistan provide numerous guidelines, such as education and Rule 679 of the Jail Manual. Detainees who meet the requirements of Rule 215 can be forgiven in exchange for an examination. Rules 199 through 223 of the Pakistan Prison Rules, 1978, outline the various remission categories and grounds available. Prisoners' access to healthcare is addressed under Rules 776 through 809 of the Pakistan Prison Rules, 1978. Meeting with relatives and friends, Rules 552 to 662 of the Pakistan Prison Rules, 1978. Rule 312 of the Prison Rules of 1978 addresses the issue of women prisoners' employment and states that lighter and easier tasks may be assigned to them.

International Laws to Safeguard Female Inmates

International law also protects female prisoners. That "recognition of the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world" was spelled out in the preamble of the Universal Declaration of Human Rights.³⁷(UDHR,1948) "No one shall be subjected to torture or a harsh treatment, heartless or degrading handling or punishment," reads the International Convent on Civil and Political Rights, which also describes unwanted treatment towards those who are imprisoned. To be more explicit, no one's health should ever be put at risk for the sake of a scientific or medical experiment without his informed permission.³⁸(ICCPR,1966). Standard Minimum Rules provide that (1) Every prisoner on admission shall be provided with written information about the guidelines prevailing in the dealing of inmates of his category, the corrective requirements of the institution, the authorized methods of seeking visitation, and similar matters. This is one of two other imperative concepts defended by the international law auxiliary. (2) The above materials must be communicated verbally to an illiterate prisoner.

CONCLUSION

³⁶Criminal Procedure Code 1898, Sec 497 (1). chrome-extension://efaidnbmninnbpcjpcglclefindmkaj/https://www.supremecourt.gov.pk/downloads_judgements/crl.p.910_2022%20.pdf

³⁷UDHR 1948 Preamble. <https://ruralindiaonline.org/en/library/resource/universal-declaration-of-human-rights/#:~:text=Its%20Preamble%20stated%2C%20for%20the,over%20500%20languages%2C%20says%20the>

³⁸ International Covenant on Civil and Political Rights 1966, art 7 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights#:~:text=the%20present%20Covenant.-,Article%207,to%20medical%20or%20scientific%20experimentation.>

At all levels, i.e., at the time of case registration, investigation entrustment, investigation conduct, the beginning of trial or prosecution of the case(s) in court, and most importantly, in prison, all concerned must keep in mind the nature of the offense with which the female accused is charged, her age, and her prior criminal history, if any. It is also essential to note that not every woman accused of a crime is a first-time offender or culpable of a trivial offense; therefore, we must consider all relevant facts, figures, and circumstances when discussing this crucial matter.

The first-time offender needs special care during the investigation, the court process, and her time behind bars; she should be kept among other female accused persons who are also serving their first sentence. Such a first-time offender must be taken to court in a way that does not include the hardened criminal(s). Another important consideration is the age of the women who have been accused of crimes; this is especially important in developing countries, where young people of both genders are particularly vulnerable to the allure of criminal activity because of the easy money and rapid social advancement it promises. The immaturity and youth of the mind(s) make them more amenable to change, which is an important consideration here.

Women's marital status is an important consideration because, in many cases, they are accused of crimes related to their marriages, which can have devastating effects on other women who are single. Additionally, women who are married could give young women false impressions about what it's like to be married and the responsibilities and obligations that come with it. The legislative and competent authorities should take action to alleviate the circumstances of mothers accused of crimes who must stay at home with their dependent children while they serve their sentences in jail. The United Nations' various bodies have all noted in their reports and analytical observations that the age of the women accused and their dependent children is an important factor that must be taken into account whenever cases, reforms, or other issues are being addressed. A report recommends categorizing instances of women charged according to the seriousness of the crime, the age of the women accused, and the number of dependent children, as well as providing for their needs in terms of health care, education, and accommodation.

The responsible authorities must exercise utmost vigilance throughout the alarming second phase of an accused person's life, which begins after the woman has been sent to jail. It is

imperative that every possible effort be made to build a female-only prison, and within that prison, the barracks should be organized so that first-time offenders are kept in one set of cells, repeat offenders are housed in another, and those who have committed particularly heinous crimes are locked up in yet another. No type of inmate can be housed alongside another, even convicted people and those awaiting trial. In these distinct facilities, female law enforcement officers at all levels are appointed and get specialized training to better care for female inmates. Female inmate caretakers need specialized training to handle all prisoners, whether they are first-time offenders, repeat offenders, or women with extensive criminal records.

Medical care in Pakistani prisons is only a paper showcase for the authorities. When a high-ranking person is scheduled to visit a prison, the administration makes temporary improvements to make the facility seem less deplorable to the visitor. Inmates, both male and female, often have complex and significant medical needs, yet there is no adequate medical facility for them. There is not a single full-time female doctor working in Pakistani jails, and female inmates are not given special medical checkups or medical care, according to a 2013–14 report by the Human Rights Commission of Pakistan. It is argued that female inmates are facing problems and adequate facilities should be provided.

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[,Article%207,to%20medical%20or%20scientific%20experimentation.](https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights/#:~:text=the%20present%20Covenant.-,Article%207,to%20medical%20or%20scientific%20experimentation.)