SINDH PRISONS

A REVIEW OF THE CRIMINAL JUSTICE SYSTEM

ANNUAL RESEARCH REPORT 2015

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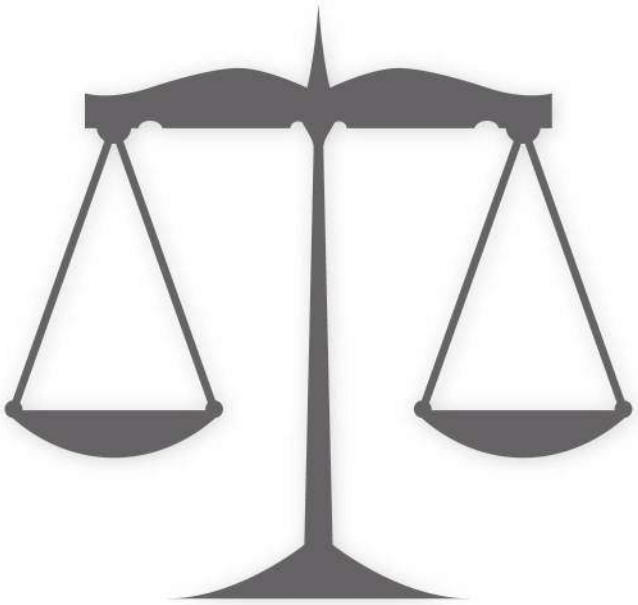

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Table Of Contents

CHAPTER A

Acknowledgments

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CHAPTER B

Abbreviations

AIG	Additional Inspector General
ADR	Alternative Dispute Resolution
ANF	Anti-Narcotics Force
AHRC	Asian Human Rights Commission
Cr.P.C.	Code of Criminal Procedure, 1898
Constitution	Constitution of Pakistan, 1973
Committee	Committee for the Welfare of Prisoners
CNSA	Control of Narcotic Substances Act, 1997
CJS	Criminal Justice System
DIG	Deputy Inspector General
DSP	Deputy Superintendent of the Police
Drug Plan	Drug Abuse Control Master Plan
FIA	Federal Investigation Agency
FIR	First Information Report
GCPPR	Good Conduct Prisoners Probational Release Act, 1926
GoP	Government of Pakistan
HRCP	Human Rights Commission of Pakistan
IG Police	Inspector General of Sindh Police
IG Prisons	Inspector General of Sindh Prisons
ICPS	International Centre of Prison Studies
ICCPR	International Covenant on Civil and Political Rights, 1966
I.O	Investigation Officer
JJSO	Juvenile Justice System (Amendment) Ordinance, 2012
LAO	Legal Aid Office
MNC	Ministry of Narcotics Control
NAB	National Accountability Bureau
NAO	National Accountability Ordinance, 1999
NCJP	National Commission for Justice and Peace
NJP	National Judicial Policy, 2009
NTS	National Testing Service
NGO	Non-Governmental Organisation
NOVs	Non-Official Visitors
PBC	Pakistan Bar Council
PPC	Pakistan Penal Code, 1860
Jail Manual	Pakistan Prison Rules, 1978
QSO	Qanun-e-Shahadat Order, 1984
SSP	Senior Superintendent of the Police
STD	Sexually Transmitted Diseases
Prosecution Act	Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009
PPOO	Pakistan Probation of Offenders Ordinance, 1960
SWP Act	Sindh Witness Protection Act, 2013
1961 Convention	Single Convention on Narcotic Drugs, 1961
SMR	Standard Minimum Rules for the Treatment of Prisoners, 1977
SP	Superintendent of Police
LPBCA	The Legal Practitioners and Bar Councils Act, 1973
WPA	The Protection of Women (Criminal Laws Amendment) Act, 2006
USAID	The United States Agency for International Development
UTPs	Under Trial Prisoners
U.K	United Kingdom
UN	United Nations
1988 Convention	United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
UNCAT	United Nations Convention against Torture, Degrading and Inhumane Treatment, 1984
UNODC	United Nations Office on Drugs and Crime
UDHR	United Nations Universal Declaration of Human Rights, 1948
U.S	United States of America
Y.O.I.S	Youthful Offenders Industrial School

CHAPTER C

Foreword

In 2004, the Government of Sindh established the Committee for Welfare of Women Prisoners, later renamed the Committee for the Welfare of Prisoners ("Committee"), and tasked the entity with the objective of providing legal aid to underprivileged prisoners and streamlining prison administration across the province. I was appointed as Chairperson for this ambitious endeavor and embarked upon the journey by setting up the LAO Project with my wife, Dr. Farhat Zahid. After a decade of operations, the LAO has, under the auspices of the Committee, grown from strength to strength and today represents over 1,500 underprivileged UTPs incarcerated across 20 prisons in the province of Sindh, with the efforts of our team we have facilitated the resolution of 2,384 cases on merit in the past 4 years. Our team comprises of young criminal defense lawyers, paralegals and research staff that have collectively established a one of a kind institutionalized free legal aid service unit specializing in prisons. The entrenched presence of the LAO together with the uninhibited access to prisons provides the unit with a unique insight into an otherwise opaque world behind prison bars. It is this access and insight into a seemingly impervious prison system that lies as the bedrock of this report. The report summarises the legislative landscape, maps prevailing prison conditions and highlights the stages of a typical criminal trial from the registration of a First Information Report to the pronouncement of a judgment and possible sentence. Primary data has meticulously been collected from prison surveys and interviews with stakeholders in order to provide a reasoned analysis of the current situation afflicting criminal trials. It is hoped that the humble suggestions put forward are able to stir the required debates within the relevant forums and provide an impetus for policy makers, donor organizations, state agencies and the key players of the Criminal Justice System for the challenging tasks ahead to make justice a realizable goal for the common man.

Justice Nasir Aslam Zahid
Former Judge of the Supreme Court of Pakistan
Chairperson Committee for the Welfare of Prisoners - Legal Aid Office

CHAPTER D

Executive Summary

The Criminal Justice System of Pakistan ("CJS") is primarily a product of the British colonial rule. Lack of reforms, coupled with Islamization of the legal system for political gains, has resulted in a deteriorated system which has failed to deliver justice for the common man.

According to the Human Rights Commission of Pakistan ("HRCP"), the conviction rate in the trial courts of Sindh is less than 10%[1]. This is a result of a system where investigators are poorly trained and inadequately funded. Despite the advancements in forensic science, the Sindh Police relies heavily on torture during the investigation stage. Moreover, despite limitations prescribed in the Constitution of Pakistan, 1973 ("Constitution") and prevalence of statutory laws, the police acts with impunity and frequently violates the basic rights of individuals from the period of arrest through the entire period of the incarceration of prisoners. Apart from the police, the failure of prosecutors to effectively and efficiently perform their duties in order to prosecute criminals has weakened the public's confidence in the state's ability to respond to crime and disorder. Despite the increasing urgency of reform, Sindh's prosecutors, and indeed the whole criminal justice system, still largely functions on the imperative of maintaining public order rather than tackling 21st century crime.

The failure of the CJS also rests heavily on the inadequacies of the judiciary. The trial courts of Sindh are confronted with chronic delays as a result of overburdened case dockets and inefficiency on the part of judges. Delays in the trial courts are in large part due to the inability of judges and prosecutors to compel witnesses to appear on time to record their evidence. Moreover, defense counsels and, to some extent, prosecutors are guilty of taking multiple adjournments; thus resulting in inordinate delays in proceedings before the courts. Another aspect contributing to the overburdening of the trial courts is frivolous litigation. Despite mechanisms and powers provided to judges to grant early acquittals to accused individuals in frivolous cases, it is often found that trial courts are wary of providing such relief thus prolonging the misery of litigants in the courts and contributing to overcrowded prison population.

Prisons in Sindh are also overcrowded due to the ineffectiveness of the procedure of bail. As evidenced by our surveys, a large number of UTPs are daily wagers or are either unemployed. Despite such an environment, it is found that courts are setting bail bond amounts which are unaffordable for a large number of prisoners. This results in an inability for these individuals to secure their freedom despite bail being awarded to them. In addition, bail is often withheld, even in cases of minor offences, as a mode of punishment. Judges are often inclined to examine the evidence in a case and do not grant bail if they conclude that an offender is guilty of the offence alleged. This results in a large number of individuals held in prisons for offences which are minor in nature. These individuals are consequently exposed to hardened offenders which defeats the purpose of their rehabilitation.

Finally, a major flaw in the CJS is the failure of the courts in awarding appropriate sentences. Non-custodial sentences, despite the presence of probation laws, are rarely granted. Besides, the absence of seperate sentencing hearings and sentencing guidelines results in prosecutors and courts vying for maximum punishments in a number of cases. Resultantly, major miscarriages in justice are observed as individuals are sentenced to punishments disproportionate to the crimes committed.

1. Jamal, Asad. Human Rights Commission Of Pakistan, '*Revisiting Police Laws*' Introduction, p.1. [2011]. [Online] Available at: http://hrcp-web.org/hrcpweb/wp-content/pdf/ff/19.pdf [Accessed 2 Mar, 2015]

Research Methodology & Limitations

CHAPTER E

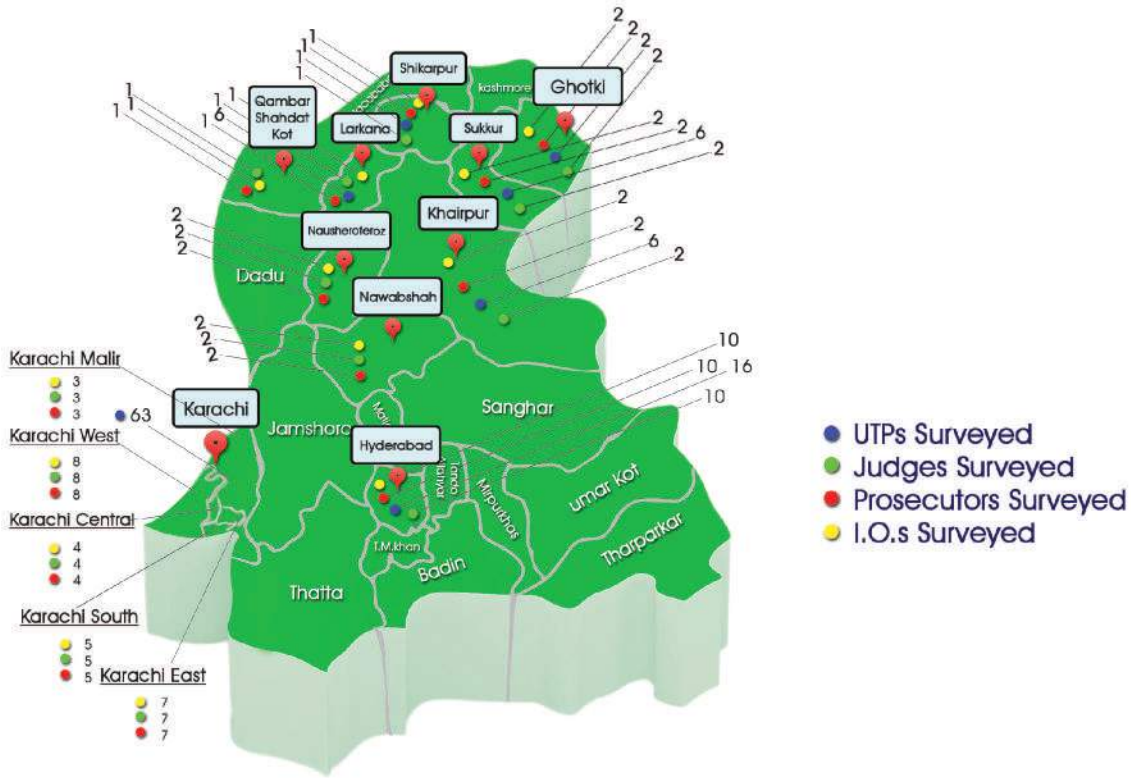
The research area addressed in this report was the prevalent conditions of Sindh's criminal justice system. Specifically, the key research questions were:

1. What is the quality of life of under trial prisoners in Sindh?
2. What reforms would improve these conditions and their experience at trial?

The objective of this report was to ascertain the problems that under trial prisoners typically face from their first encounter with the formal criminal justice system till the end of their trial. The objective was also to make recommendations for policymakers, legislators, donor organisations, CSOs and NGOs and other stakeholders for bringing about tangible reform in the system.

Data Collection:

To address these research questions LAO used a mixed method approach consisting of qualitative semi-structured interviews, observations and documentary analysis was used. Quantitative surveys were also used. Survey and interview forms were generated after a consultative process and were rolled out in 20 districts of Sindh in October 2014 and were completed in March 2015 with teams working across the province simultaneously. 18 prison facilities in Sindh were surveyed[2].



District wise Mapping of interviews conducted by LAO

2. List of Prisons visited include Central Prison, Karachi, Malir District Prison, Karachi, Women Prison, Karachi,Youthful Offenders Industrial School ("YOIS"), Karachi, Remand Home, Karachi, Women Prison, Hyderabad, YOIS, Hyderabad, District Prison Nara, Hyderabad, Central Prison, Hyderabad, YOIS, Sukkur, Central Prison Sukkur, District Prison, Sukkur, Women Prison, Larkana, YOIS, Larkana, Central Prison, Larkana, Shikarpur District Prison, Khairpur Central Prison and Ghotki District Prison.

CHAPTER E

Research Methodology & Limitations

A total of 100 UTPs were surveyed. The sample of prisoners interviewed was determined on the basis of convenience and strict time constraints for the completion of the report. All the UTPs interviewed were clients of the LAO and the number of prisoners interviewed from any one prison was determined in proportion to the ratio of cases LAO is working on in the region versus its entire litigation base. The sample of UTPs were randomly selected and include adult male and females and juvenile prisoners. The profiling indicated that they were mostly adult men, aged 18- 35 years. The surveys were carried out by a team of 40 lawyers and research associates. In addition, 50 Judges, 50 Prosecutors and 50 I.Os were interviewed using a semi-structured format. The sample was chosen in numbers determined by the ratio of cases LAO is involved in within a region versus its entire litigation base however these state actors were not necessarily involved in cases in which LAO is engaged.

The observations on prison conditions were made primarily on the basis of a comparison with the Standard Minimum Rules for the Treatment of Prisoners, 1977 ("SMR") and data collected through observation of inmates and prison environment.

Documentary analysis was carried out of multiple sources. Data pertaining to 1,348 bail applications filed by the LAO was analysed against the socio economic backgrounds of the clients . Legislation passed by the Federal and Provincial Government was also analysed as were judicial decisions as relevant to the topics discussed.

Research Ethics:

Permission for visiting prisons was sought from the Prisons Department and participants of interviews were guaranteed confidentiality of their identities.

Limitations:

Limitations included a strict timeline for the completion of research. All interviews of UTPs were conducted in the presence of at least one jail official and hence their answers may have been affected by this presence. The UTPs interviewed were also clients of the LAO and this may have also impacted the answers given. Errors relating to differences in interpretation of questions may also be taken into account. Further to this, there was a general reluctance on the part of prosecutors and Investigation Officers ("I.Os") in terms of answering key questions.

Background on Legal Landscape

CHAPTER F

I. Political and Legal Landscape

Pakistan's current legal landscape is the product of evolution through four periods; Hindu rule, Mughal rule, British colonial rule and the post-independence period. Within this spectrum, procedural laws and institutional structures pertaining to the CJS were mainly developed during the British era. For instance, the Indian Penal Code of 1860, which was later adopted by Pakistan, was largely the work of Lord Thomas Babington Macaulay. This was the first codification of criminal law in the Indian sub-continent and still remains the longest serving criminal code within the common law landscape. The CJS of Pakistan continues to be inherited from the British Raj. Lack of substantial reform, particularly in the laws governing it, have rendered it virtually ineffective for controlling rising crime in the country. Amendments and revisions in the law have historically been made only in furtherance of the vested interests of the successive governments which have been in power from time to time.

The process of undermining key constitutional tenets and the legal system started as a gradual process commencing immediately after the demise of Muhammad Ali Jinnah and continues into present times in 2015. Political Islamisation became a bench mark since 1949. However, Pakistan's Judicial System maintained a fine balance of the common law and the Shariah law (mostly in the personal laws). Serious erosion was perhaps witnessed during the period spanning from 1972 to 1989. The rule of General Zia-ul-Haq and the process of Islamisation of the Constitution and other laws has played a special role during the 1980s in terms of altering the basic structure of parliamentary democracy and installed a parallel judicial system in place. The Zia regime also introduced religious, sectarian and gender biases into law and made the violation of fundamental rights not just common practice but a matter of state policy. Following his death in a plane crash in 1988, Pakistan went through a turbulent democratic transition for eleven years till General Pervez Musharraf took over power in another military coup in 1999. Following Pervez Musharraf's departure in 2008, Pakistan has been able to sustain democratic rule for seven years which has also been marred by political instability and a clear lack of focus to reform the country's anarchic CJS.

Following the lawyers movement of Pakistan, which eventually saw the removal of General Pervez Musharraf from power and the reinstatement of the sacked Chief Justice of Pakistan, Mr. Iftikhar Muhammad Chaudhry, the Supreme Court produced the National Judicial Policy, 2009 ("NJP")[3] ostensibly to make the justice system more responsive to citizen needs. However, with a lopsided emphasis on speedier delivery, the NJP has failed to address critical weaknesses in the judiciary. Delays along with issues with ineffective investigation, prosecution and adjudication have only lead to more frustration amongst the growing population of the country. Even previously in Pakistan's history, various committees were formed to give recommendations for reforming the CJS. However, no serious initiative has been taken resulting in a deteriorating law and order situation in the country.

3. The National Judicial Policy, 2009. Revised Edition 2012. Available from: <http://www.supremecourt.gov.pk/web/user_files/File/NJP2009.pdf> [Accessed 2 Mar. 2015]

CHAPTER F

Background on Legal Landscape

As a result, Pakistan is flooded with statutory laws pertaining to the CJS most of which date back to the 19th century. As mentioned earlier, the Pakistan Penal Code ("PPC") which lays down punishments for most offences was enacted in 1860 whereas the Criminal Procedure Code ("Cr.P.C.") dates back to 1898. The Evidence Act or the Qanun-e-Shahadat Order, 1984 ("QSO") is primarily derived from the Indian Evidence Act of 1872. Moreover, the Prisons Act and the Prisoners Act have been in force since 1894 and 1900 respectively. In comparison, India has upgraded the criminal procedure in court (in this context the Cr.P.C 1898 is now known as the old code, the Indian Penal Code), the Indian Evidence Act and the Police Act have also been revised. The prison rules have also been updated in different states as per their own requirements. In addition, Bangladesh is to a great extent involved in upgrading its version of Cr.P.C. In view of these developments within the South Asian realm it is unfortunate that no serious reforms have taken place since Pakistan's independence to update the country's criminal laws in order to keep up with the modern age.

II. Fundamental Rights under the Constitution of Pakistan

Fundamental rights are derived from the United Nation's Universal Declaration of Human Rights, 1948 ("UNHCR") and are edited or abridged by the States according to their own requirements. It may be noticed that UNHCR is primarily based on natural rights. The Constitution contains about two-thirds of all the rights made part of UNHCR and contains various provisions which guarantee certain fundamental rights of individuals, including those who are under the custody of the police in Pakistan. These rights are not absolute in nature but are subject to "reasonable restriction" as stated in the case of Nawabzada Nasrullah Khan v The District Magistrate Lahore[4] wherein the Lahore High Court held that: "Absolute and unrestricted individual rights do not exist in any modern State and there is no such thing as absolute and uncontrollable liberty." This report seeks to discuss in sufficient detail how these guarantees are frequently restricted and trampled upon by the state machinery in relation to UTPs.

"Absolute and unrestricted individual rights do not exist in any modern State and there is no such thing as absolute and uncontrollable liberty." This report seeks to discuss in sufficient detail how these guarantees are frequently restricted and trampled upon by the state machinery in relation to UTPs.

4. Nawabzada Nasrullah Khan v The District Magistrate, Lahore – PLD 1965 Lah 642

Background on Legal Landscape

CHAPTER F

Article 10-A of the Constitution guarantees this right by stating that: "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."

Article 4 of the Constitution guarantees that each individual enjoys the protection of law and that treatment in accordance with the law is the inalienable right of every citizen. This provision guarantees that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with the law. These rights are to be read contextually with those incarcerated in the prisons and the law is required to take note of this mandatory aspect, which regrettably is often ignored when these rights are read and applied for UTPs, convicts and condemned prisoners.

After the passage of the 18th Amendment by the Pakistan People's Party led legislature in 2010, the right to a fair trial was inserted, albeit as an afterthought, as a fundamental right in the Constitution. Article 10-A of the Constitution guarantees this right by stating that: "For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process." This provision, taken in conjunction with Article 4, is meant to provide robust guarantees to any individual accused or charged with a crime under Pakistan's criminal codes.

In a judgment titled Shabbir Ahmed v Kiran Khursheed etc[5], the Lahore High Court stated that: "Article 10-A morphs Article 4 into a more robust fundamental right, covering both substantive and procedural due process. While substantive due process provides a check on legislation and ensures the protection of freedoms guaranteed to an individual under the Constitution, procedural due process, which concerns me here, provides that each person shall be accorded certain process if they are deprived of life, liberty or property".

Unfortunately, as will be detailed in this report, UTPs are routinely exposed to the brutality of police along with a judicial system that frequently fails to accord them a fair trial as guaranteed under the Constitution. Moreover historically, the state, in the name of national security and for political gains, has frequently enacted draconian laws such as the Hadood Ordinances 1979 enacted by General Zia-ul-Haq, the National Accountability Ordinance 1999 enacted by General Pervez Musharraf along with other legislation, which are heavily tainted with entrenched political biases and substantively reek of 'malice in law' and have made a mockery of an

5. Shabbir Ahmed v Kiran Khursheed – 2012 CLC 1236

CHAPTER F

Background on Legal Landscape

individual's right to substantive and procedural due process. Despite the guarantee provided in Article 8 of the Constitution which states that any law that violates the fundamental rights of an individual as provided in the Constitution is void, successive governments have introduced draconian legislation which seek out to target specific groups or individuals such as political opponents, religious minority groups etc.

Articles 9 and 10 of the Constitution specifically provide safeguards to individuals who may be imprisoned or held in detention by the State. Article 9 guarantees that no person shall be deprived of life or liberty except in accordance with the law of the land. In recent times, the Supreme Court and High Courts have widened the scope of this provision to include "each and every aspect of human life"[6]. However, as will be discussed in this report, the liberty of individuals is frequently taken for granted by the police. Frivolous criminal complaints frequently result in prolonged periods of detention. Emphasis on punishment, instead of rehabilitation and reformation, along with serious problems in police investigations and delays plaguing criminal trials, has resulted in prolonged periods of punishment for those who are often accused of crimes which they have not committed.

Article 10 of the Constitution elaborates on safeguards that are provided to individuals who are arrested by the police. Article 10(1) states that "no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice". Although an individual's right to be informed of his grounds for arrest is his fundamental right, this report will give detailed statistics on the number of individuals who are swiftly picked up by police without being informed about why they are being arrested. Moreover, most individuals are only able to engage a lawyer of their choice after the stage of the physical remand, during which accused individuals are routinely tortured by the police to extract confessions and to plant "evidence" allegedly recovered from them. Most of the individuals who do not have legal assistance from the time of their arrest implies an open violation of the due process of law and since 2010, violates their fundamental rights.

Article 10(2) elaborates on safeguards and procedures after an individual is arrested. This section states that an individual has to be produced before a Magistrate within a period of twenty-four hours of his arrest. Such an individual's detention beyond this period cannot be prolonged without the specific authority of a Magistrate. This provision of the Constitution is meant to safeguard against illegal confinement and any torture that may be inflicted by the police. However, despite this specific guarantee, it is often found that detained individuals are "formally" arrested much later than their actual period of detention. Quite often, prisoners are detained for a number of days before finally being produced before the area Magistrate. Detailed statistics and analysis regarding this issue will be shared later in this report.

Furthermore, Articles 12 and 13 of the Constitution also provide safeguards to individuals exposed to the CJS. Article 12 provides protection against retrospective punishment. Article 13 provides individuals protection against being punished for the same offence more than once and from being compelled to being a witness against his or her self.

6. In the matter of Petition regarding miserable conditions of schools - 2014 SCMR 396

Most importantly, the provision of the Constitution that is most frequently violated is Article 14. Article 14(1) states that the dignity of an individual is inviolable. Moreover, Article 14(2) deals specifically with the subject of torture and how it cannot be used for the purpose of extracting evidence. Despite this guarantee, torture is frequently used by the police to extract evidence and confessions from prisoners. In most cases, torture is inflicted during the period of physical remand at the police station. In addition, research indicates that prison officials occasionally use torture on those incarcerated[7]. Despite Pakistan's obligations under International Law as a signatory to the United Nation's Convention against Torture and other Cruel, Inhuman or Degrading Treatment and punishment ("UNCAT")[8] and the International Covenant on Civil and Political Rights ("ICCPR")[9], the state has not enacted a single piece of legislation prohibiting state torture against incarcerated individuals. So far as the ICCPR is concerned, no efforts to date have been made to incorporate the same in the municipal law of Pakistan. However, the LAO in collaboration with the Asian Human Rights Commission ("AHRC") has drafted a Bill to this effect in 2008[10].

However, the same is still being vetted by the Ministry of Human Rights with other stakeholders before it can be moved in the Parliament. Our report will seek to analyze the different ways in which prisoners are tortured by the police officials and how the lack of legal recourse has only helped to perpetuate torture in our prisons.

To sum up, the framers of the Constitution have provided sufficient safeguards to individuals undergoing criminal trials or those convicted and sentenced under Pakistan's criminal laws. Unfortunately, the letter and spirit of these constitutional safeguards are not frequently followed resulting in miscarriages of justice. This has led to a broken system plagued by inefficiency and delays where fair trials are few and far between and where the state provides its prison population very few rights and little dignity as citizens of Pakistan.

III. Relevant laws governing the Criminal Justice System

Pakistan Penal Code, 1860:

The PPC codifies most offences punishable under the local criminal courts of the country. Sadly, the state has done little in the way of reforming this crucial piece of legislation. British Raj implemented this penal code for furtherance of its own oppressive agenda in the Indian sub-continent. Pakistan's ruling elite have continued with the tradition while enacting selective amendments mainly to perpetuate its own political interests. Some of the important amendments in the PPC are discussed below.

In 1972, through the Law Reforms (Amendment) Act, 1972 changes were made which militated against the right of the accused and also the right of the counsel to appear on the behalf of an accused. Furthermore, in the 1980s, General Zia-ul-Haq's Islamization drive resulted in a total upheaval in the CJS bringing in a parallel judicial system which works under the Shariah with which the jurisdiction of the High Court and that of the Supreme Court were diminished due to the bifurcation of law between two tracks, first following the common law and the second following Shariah. Various crucial amendments to the Penal Code were enacted which further weakened the oppressed and the minorities of the country. An example of this are the Hudood and the Blasphemy Laws in Chapter XV of the Penal Code[11], which have resulted in various individuals using these laws to settle personal scores. These laws were specifically made for

7. LAO conducted UTP survey between 9th May, 2013 and 8th February, 2014, where 77 UTPs were interviewed across 18 prison facilities and it was discovered that 14.3% UTPs replied in the affirmative when asked if they had seen or experienced any abusive behavior. Furthermore, 6.5% UTPs replied in the affirmative when asked if they or anyone they know were placed in barfetters as a form of punishment.
8. UN Convention Against Torture, UN Treaty Collection. Available at: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en [Accessed 17 Jan 2015]
9. International Covenant on Civil and Political Rights., Office of the High Commissioner for Human Rights,. Available at: http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [Accessed 17 Jan 2015]
10. Justice Nasir Aslam Zahid and Professor Akmal Wasim *"The Province of Sindh as a Case Study on the Prosecution Service"*, . Available at: http://pp.lao.org.pk/wp-content/uploads/2013/07/The-province-of-Sindh-as-a-case-study-on-the-prosecution-service.pdf [Accessed 19 Jan 2015]
11. Chapter XV contain offences relating to religion.

CHAPTER F

Background on Legal Landscape

political victimization of a large segment of the population which was till then comprised of liberal and moderate muslims and to suppress any dissent against the wave of Islamisation. These amendments have proved to be very controversial and politically divisive. According to the National Commission for Justice and Peace, a total of 633 Muslims, 494 Ahmedis, 187 Christians and 21 Hindus have been accused under various clauses of the blasphemy law since 1987[12]. These figures are not conclusive as many unreported cases have not been included in the Report. Numerous individuals, including those accused of committing blasphemy and others who have opposed such laws such as Ex-Punjab Governor Mr. Salmaan Taseer[13], Ex-Federal Minister Mr. Shahbaz Bhatti[14] and most recently Mr. Rashid Rehman[15], a human rights lawyer have been killed as a result of these laws.

Apart from the blasphemy laws, the most consequential amendments to the PPC are in relation to qisas (retribution) and diyat (blood money). These laws were introduced, after a judgment of the Shariat Appellate Bench of the Supreme Court[16], through the Qisas and Diyat Ordinance, 1990 and later converted into the Qisas and Diyat Act, 1997, through which different amendments were made to Chapter XVI of the PPC[17]. Sections 229 to 338 of PPC, related to bodily hurt and murder, were repealed and replaced with new provisions, which then the government claimed were in accordance with the Islamic injunctions and judgment of the Shariat Appellate Bench of the Supreme Court. Similarly, some provisions of the Cr.P.C[18]. were amended and legal heirs of a deceased person were allowed to enter into compromise with the accused even at the last moment before execution of the sentence[19]. One important inclusion in law is that of section 311 of the PPC which empowers the court to convict a person, even if compromise took place in it, under the principle of fasad-fil-arz (mischief on earth), keeping in view the facts and circumstances of the case, and could sentence him up to 14 years of imprisonment.

Following these amendments to the PPC, the crimes affecting human body are no longer considered offences against the society or state, but are now considered offences against an individual. Thus, if these individuals so decide, offenders can walk free even after committing grave and heinous crimes like murder. These amendments have resulted in a culture where rich individuals accused of serious crimes like murder and assault have the ability to walk away with freedom after financially settling with the accused whereas poor individuals are mostly the only ones left to face the consequences.

Finally, it is important to mention an important development in the last decade in relation to the PPC. The Protection of Women (Criminal Laws Amendment) Act, 2006 ("WPA")[20] was enacted under General Pervez Musharraf's rule to amend certain draconian provisions introduced by General Zia-ul-Haq. The Hudood Ordinances, enacted by General Zia-ul-Haq in 1979, criminalised adultery and non-marital consensual sex.

12. BBC News, What are Pakistan's Blasphemy Laws ?Available from: < http://www.bbc.com/news/world-south-asia-12621225>
13. Governor Punjab Salmaan Tasser was shot dead by his police guard Mumtaz Qadri on 4th January, 2011. Salmaan Taseer was vocal in his support of Mst. Asia Bibi, a Christian woman accused of blasphemy
14. Shahbaz Bhatti was the only Christian Federal Minister in the PPP government. The Tehrik-e-Taliban Pakistan claimed responsibility for his killing on 2nd March, 2011
15. Mr. Rashid Rehman was the lawyer for Mr. Junaid Hafeez, a Multan-based university professor accused of blasphemy
16. Pakistan etc v Public at Large – PLD 1989 Supreme Court 6
17. Chapter XVI of the PPC are related to Offences affecting the human body
18. Section 345 Cr.P.C. states the different offences that are compoundable. 302 PPC became compoundable as a result of Criminal Law (Amendment) Ordinance, 1991
19. Section 381 of the Cr.P.C
20. Protection of Women (Criminal Laws Amendment) Act, 2006. Available from: <http://www.na.gov.pk/uploads/documents/1321341579_812.pdf>

Background on Legal Landscape

CHAPTER F

Under the Hudood Ordinance, women were often jailed for adultery on flimsy evidence. This risk of imprisonment, it is contended, has kept many women from trying to bring their attackers to justice. The Commission of Inquiry on Women, headed by Justice Nasir Aslam Zahid, had recommended the repeal of the Hudood Ordinances in 1997, as did the National Commission on the Status of Women in 2002.

The WPA was intended to amend the Hudood Ordinance in order to address these issues. The WPA made rape triable under the PPC instead of the Hudood Ordinance. The Act did away with the need for the production of four witnesses to substantiate an allegation of rape. However, even with the introduction of these ammendments, rape convictions are few and far between. This has a lot to do with societal pressures in reporting a case of rape to the police, the inadequate training of the police to investigate such a case, insensitivities shown by the police and the judiciary along with pressure on the victim's family to resile their witnesses and withdraw prosecution.

Criminal Procedure Code, 1898:

Similar to the PPC, the Cr.P.C. of the country is also a remnant of the British Raj. The Cr.P.C, introduced in the 19th century, has not been able to keep up with rising litigation in an ever increasing population. There have not been any serious reforms geared towards discouraging or penalizing frivolous litigation and minimizing delays which has resulted in a near breakdown of the CJS. Some relevant areas of the Cr.P.C. and issues arising from them are outlined below.

F.I.R and Remand:

The cornerstone of the Cr.P.C. is the First Information Report ("FIR")[21] –a criminal complaint formally registered by the police upon an allegation by the complainant/informant. The FIR sets the wheels of the CJS into motion as a police investigation can only take place after its registration. It is common to find that individuals register frivolous criminal cases in Pakistan to settle personal scores and agendas. Despite various judgments of the courts that the police are not duty bound to arrest an individual after the registration of a FIR[22], the police normally arrests an individual accused of a crime after which he/she can be kept in custody at the police station for a maximum period of fifteen days. During this period, more commonly known as the physical remand period[23], accused individuals are normally tortured for extraction of confessions and 'recoveries' i.e. corroboratory evidence which is usually planted on the accused. Due to absence of legislation against the use of torture, police authorities act with absolute impunity while the accused has little or no legal recourse at this juncture. After the period of physical remand is completed, the accused is sent to the local prison after which he/she can apply for bail.

Scrutiny of report submitted Under Section 173 Cr.P.C.:

After completion of its investigation, the police have to submit a report within 14 days of the registration of the FIR under Section 173 Cr.P.C. which is colloquially referred to as the 'challan'. The police can investigate and find the accused innocent or guilty in its findings. The prosecutor has the power to scrutinize the challan before it is submitted in the court[24]. Once submitted in the court, the magistrate also has the power to scrutinize the challan and proceed

21. When a complainant reports a non-cognizable case i.e a case in which a warrant for arrest is not required, the Officer Incharge of a police station is duty bound to register a FIR under section 154 Cr.P.C.
22. Sarwar and Iftikhar Ahmed v State – 2014 SCMR 1762
23. Section 167 Cr.P.C. states that when an investigation cannot be completed within 24 hours of the arrest of the accused, the Magistrate can authorize the police to extend the detention of an individual for up to 15 days.
24. Section 9 of the Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, empowers a public prosecutor to return the report under section 173 Cr.P.C to the police if defective. Otherwise, he/she can forward the said report to the court.

accordingly. After the challan is submitted, the court can frame the charge against the accused and the trial can commence. Unfortunately, in most cases, the prosecutor and judges normally do not scrutinize the challan resulting in great miscarriages of justice. The police falsely implicate a number of individuals in various offences without a lot of checks and balances resulting in a number of innocent accused individuals suffering through the clutches of the CJS.

Bail Laws:

The main issue confronting the law of bail[25] in Pakistan today, particularly in relation to non-bailable offences, is the fact that the courts are inclined to hear the entire merits of the case before making a decision on an individual's bail application. This leads to gross miscarriages of justice where individuals can be incarcerated for prolonged periods of time, even for petty offences. The bail process is also deeply impacted by the common problem of inherent delays plaguing the CJS. By the time the accused individual is fortunate enough to be granted bail by the court, considerable time elapses during which time accused individuals are not only commonly subjected to torture at the hands of the police but are also surrounded by hardened criminals in prisons in conditions where adequate segregation between offenders is not possible. Further discussion pertaining to this issue will be taken up later in this report.

Very little has been done to reform the law relating to bail since Pakistan's inception. However during the previous tenure of the Pakistan People's Party government, some positive amendments were introduced in the bail laws to minimize the impact of delays on the accused, at both the trial and appellate level. Consequently, if a UTP has been under incarceration for a prolonged period[26], he is automatically entitled to bail, provided the delays are being caused by the prosecution or the court itself. Similarly, if a prisoner has appealed his trial court sentence but his appeal has not being heard by the superior court, then he is automatically entitled to bail[27].

While these reforms have helped in lowering the burden on prisoners, Pakistan still has a long way to go in reforming its bail laws. For example, the grant of bail is subject to payment of surety on bail, also known as a bail bond. Sureties are fixed at a level where a lot of accused individuals cannot afford to furnish the required amount thus they continue to languish in prisons. This will be addressed further in our report.

Sentencing:

Another feature of the Cr.P.C. that causes miscarriages of justice is due to the absence of separation between convicts and UTPs. Moreover, no separate hearing is undertaken for the purposes of sentencing. These sentences are passed by the courts at the time of conviction. In most cases, courts are inclined to pass the maximum sentence that an offence carries, and an accused is not in a position to argue for a reduced sentence[28].

Guilty Pleas:

Guilty pleas are an admission of blameworthiness by a person accused of a crime. The accused person is allowed to enter a plea of guilt in the trial courts[29]. The court takes note of these guilt pleas and most of the accused are let of on the basis of the sentencing they have already undergone. However, in such cases the maximum punishment maybe far longer than the actual period of sentencing suffered by

25. Post-arrest bail is granted under section 497 Cr.P.C. Pre-arrest bail, or bail before arrest, is granted under section 498 Cr.P.C.
26. Added by Code of Criminal Procedure (Amendment) Act, VIII of 2011. Current law states that if an accused is under trial for an offence not punishable by death and delays are being caused to no fault of his own, he is entitled to bail after one year. For capital offences, this period is two years.
27. Added by Cr.P.C (Amendment) Act, 2011. If an individual has been imprisoned for a period not exceeding three years and whose appeal has not been decided within a period of six months, he is entitled to bail. For offences with imprisonment between three to seven years, this period is one year. For offences up to life imprisonment, this period is two years.
28. Judgment is passed by the courts under section 366 Cr.P.C.
29. In the Magistrate courts, the accused is allowed to enter a plea after his charge is framed under section 242 Cr.P.C. Similar provision for trial courts exists under section 265-E

them. In this situation the courts do not take into consideration the alternative methods available in law such as probation for application in these cases. In trials involving narcotics the same situation prevails.

Qanun-e-Shahadat Order 1984:

The QSO is the successor to the Indian Evidence Act 1872. It is an accepted position that most Articles in the QSO are substantially a mere reproduction of all sections of the repealed Act with few changes and amendments. However, General Zia-ul-Haq's efforts to Islamize the CJS brought certain significant changes to the laws which are outlined below.

Under the QSO, Article 3, the very purpose of the article is lost by its content which makes the set provision redundant and an obvious eyewash. The article states that "the Court shall determine the competence of a witness in accordance with the qualifications prescribed by the injunctions of Islam as laid down in the Holy Quran and Sunnah for witnesses, and, where such witness is not forthcoming, the Court may take the evidence of a witness who may be available".

While a bare reading of the provision suggests that this provision may apply on all matters, the Courts have interpreted this to apply the concept of "Tazkiyah al Shuhood" to cases falling under the Hudood Ordinance or where punishment under Qisas i.e. 302 (a) PPC is being given. Article 17 of the QSO was another departure from the Indian Evidence Act. According to this provision, in matters relating to finance or "future obligations" the testimony of women was considered half that of a man. Interestingly, the special laws enacted on financial liabilities and other commercial transactions such as the Negotiable Instruments Act, Article 17 makes this applicable, thereby reducing the potency of this article to criminal trials. Unfortunately, apart from these and other Islamic provisions, no serious effort has been made to reform the QSO. The Evidence Act is in dire need for revamping; however, no serious debate to that effect is taking place in Pakistan.

Prison Laws:

The Prisons Act of 1894 continues to serve as the primary legislative instrument governing prison administration. It defines 'Prisons,'[30] and regulates the maintenance of prisons and officers' conduct[31]; powers of prison staff[32]; admission, removal and discharge of prisoners[33]; and treatment and provision of services/supplies to civil and remand prisoners[34]. It also regulates convicted prisoners' discipline[35], assigning work, punishing offences within prison premises and controlling other areas such as health services and visits. Since its enactment, the Prisons Act has hardly undergone any substantial change and its key provisions centre around maintaining discipline amongst prisoners, classifying what constitutes offending behavior by prisoners and prescribing punishments for the same.

The term 'Prison' is defined in the Prisons Act of 1894, as any jail or place used permanently or temporarily, under the general or special orders of the Provincial Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto; but does not include places under the direct custody of police, subsidiary jails specially assigned by the Provincial Government.

The day-to-day supervision and management of prisons is governed by the Pakistan Prison Rules, 1978, more commonly

30. Section 3 Prisons Act, 1894
31. Ibid, Chapter II
32. Ibid, Chapter III
33. Ibid, Chapter IV
34. Ibid, Chapter VI-VIII
35. Ibid, Chapter V

known as the "Jail Manual" which is a vast compendium of regulations comprising 50 chapters and 1,250 rules.

The Prisoners Act of 1900 covers areas such as executing sentences[36]; transferring prisoners from one prison to another[37]; appointing places for confinement[38]; discharging prisoners[39]; and ensuring their attendance in court[40].

The Good Conduct Prisoners Probational Release Rules, 1927 ("GCPPR") provide for early release of prisoners on the basis of a track record and good conduct that suggests they were likely to "abstain from crime and lead a useful and industrious life". This Act keeps the prisons from over-crowding, provides minimum opportunities of exposure of vulnerable prisoners to hardened prisoners. Simultaneously, it incentivizes and promotes good behavior amongst the inmates. The Reclamation & Probation Department, that releases the prisoners on probation and parole, functions under this Act, the Pakistan Probation of Offenders Ordinance 1960 and Rules made thereunder in 1961, and the Juvenile Justice System (Amendment) Ordinance 2012 ("JJSO") together with Juvenile Justice System Rules 2002. These are, thus, effective tools that can be used for the protection and reformation of the prisoners. However, the efficiency and effectiveness of these laws remain a question mark as they are rarely applied.

IV. Relevant Departments

Prosecution Department, Sindh:

Every province in Pakistan has its own prosecution department which is responsible for conducting prosecution on behalf of the state. In Sindh, the prosecution services come under the purview of The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009 ("Prosecution Act")[41] which lays out in detail the powers and duties of the public prosecutors.

The Prosecution Department is headed by the Prosecutor General. The department consists of numerous prosecutors stationed throughout the Magistrate, District and Superior Courts of the province. The Prosecutor General has a team comprising of Additional Prosecutors General, Deputy Prosecutors General, Assistant Prosecutors General, District Public Prosecutors, Deputy District Public Prosecutors and Assistant District Public Prosecutors. Chapter III of the Prosecution Act lays out in detail the powers granted to a prosecutor, the most crucial of which includes scrutinizing the report submitted by the police under Section 173 of the Cr.P.C.[42]

Police Department, Sindh:

The Police Department falls under the purview of the Home Department of the province. The administration of the police in the entire province is headed by the Inspector General Police ("IG Police") whereas in each city or district, it is headed by the City Police Officer and the District Police Officer who hold the ranks of Deputy Inspector General ("DIG").As Karachi is the capital city of the province, its police department is headed by the Capital City Police Officer who holds the rank of an Additional Inspector General ("AIG"). The DIG is reported directly to by the Senior Superintendent of the Police ("SSP") who is followed by Superintendent of Police ("SP"). The AIG and/or the Deputy Superintendent of the Police ("DSP") report directly to the SP.

36. Part IV Prisoners Act 1900
37. Ibid, Part VII
38. Ibid, Part VII
39. Ibid, Part VIII
40. Ibid, Part IX
41. The Sindh Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2009, Website of the Sindh Provincial Assembly. Available from: <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.IX%20of%202010.pdf>
42. This law has later been taken up in the relevant topic.

Background on Legal Landscape

Each police station is headed by the Station House Officer who is a junior officer holding the rank of an Inspector. He is followed in the hierarchy by the Sub-inspector, Assistant Sub-inspector, Head Constable followed by a Constable. These are the officers who are present within a police station at all times and are in charge its day-to-day running.

Article 8 of the Repealed Police Order 2002[43] divided the police into various wings headed by police officials of senior rank. The most important for our purpose is the Investigation Wing of the Police, which is headed by an officer holding the rank of an AIG in a general police area. Once a case was registered in the police station, it was the investigation wing which then took charge of the case. In each police station, the investigation wing was headed by an officer generally with the rank of an Inspector. According to Article 18 (5) of the Repealed Police Order 2002, the District Police Officer was required to refrain from interfering with the investigation of a case. This gave the investigation wing, specifically the investigating officer, autonomy to thoroughly investigate cases without undue interference.

In 2009, the Police Order 2002 was repealed and the Police Act 1861 was revived[44].

Prison Administration:

Prison administration in each province falls under the purview of that province's Home Department. At the apex of prison management is the IG Prisons appointed by the Provincial Government exercising overall control and supervision of all prisons within the jurisdiction[45].

The post of IG Prisons is followed by the post of DIG based on the criteria of seniority[46]. In each prison, there is a superintendent and two or more deputy superintendents responsible for the day-to-day running of the prison[47]. The subordinate prison staff includes chief warders, changed to prison constable in the province of Sindh[48]. By law, warders areto be recruited from pensioned or released soldiers of the defence service, with a secondary school certificate being the minimum requirement[49]. Prison guards are also appointed in the jails to control the prisoners and maintain law and order. However, in reality, none of these rules are followed and it is left to the discretion of the Home Department and Senior Management to appoint warders.

43. Sindh Police Website. Police Order 2002. Available at <http://www.sindhpolice.gov.pk/aboutus/law_rules/police_order_2002_updated_version.pdf> [Accessed 2 Mar. 2015]
44. Supra
45. Jail Manual, Rule 888
46. Ibid, Rule 890
47. Ibid, Rules 939 and 940
48. These changes have been made through a Directive of the Home Department of Sindh.
49. Ibid, Rules 1113

CHAPTER G

A Review of Prison Conditions in Sindh

I. Overcrowding in Prisons

According to the International Centre of Prison Studies ("ICPS") more than 10.2 million people across the world were estimated to be held in penal institutions in 2012[50]. Prison overcrowding is a phenomenon which imposes negative externalities on inmates, prison administration and society at large. Research indicates that overcrowding in prisons leads to fueling competition for limited resources, increases stress levels, triggers aggressor tactics, spreads illnesses and upturns the chance of recidivism after release from custody. It should be noted that the degree of overcrowding varies between countries and whilst there is no internationally accepted standard for the minimum space requirement for each prisoner[51] the SMR suggest "accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation."[52].

The ICPS further estimates that in 2012 Pakistan had a prisoner population of 74,944 inmates being held in 97 prison facilities; out of which 26 were located in Sindh[53]. At present, there are 17 prison facilities for adult male prisoners (5 central prisons, 11 district prisons, 1 special prisons Nara), 3 prison facilities for adult female prisoners[54] and 4 prison facilities for male juvenile prisoners (under the age of 18 years) in the province of Sindh.[55] A decennial analysis of prison population statistics reveals that the population has grown from a grand total of 18,577 prisoners in January 2004 to 19,077 prisoners in December 2014 as against an authorized capacity of 12,416. The rising trend has not been constant, and sharp declines in population were observed from 2009 to 2011 when the total population dropped down to a favorable 12,988. However, 2012, 2013 and 2014 have witnessed annual growth rates as high as 10%, 17% and 12.5% respectively.

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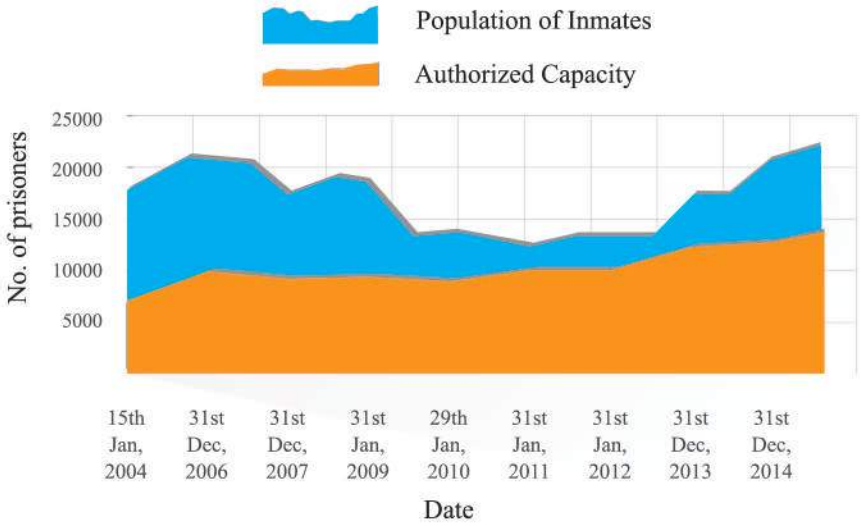
50. Walmsley, R. (2013). 'World Prison Population List' 10th edition. International Centre for Prison Studies, [online] p.1. Available at: http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf [Accessed 25 Apr. 2014].
51. Handbook on Strategies to Reduce Overcrowding in Prisons. (2013). UNODC, [online] pp.8-9. Available at: http://www.unodc.org/documents/justice-and-prison-reform/Overcrowding_in_prisons_Ebook.pdf [Accessed 24 Apr. 2014].
52. SMR, Rule 10.
53. Prisonstudies.org, (2014). Pakistan | International Centre for Prison Studies. [online] Available at: http://www.prisonstudies.org/country/pakistan [Accessed 25 Apr. 2014].
54. There is no female juvenile prison facility and in cases of an under 18 year old female, she is provided with accommodation in the adult female prison facilities. It should also be noted that there is only one institution known as the Remand Home, located in Karachi, for prisoners under the age of 15.
55. In addition there is also an open prison in Badin which is not in use.

A Review of Prison Conditions in Sindh

CHAPTER G

The present day overcrowding crisis that Sindh faces, with a swelling 54% of the population exceeding the prison capacity, is not typical of special prisons housing adult females and juveniles, but concerns itself primarily with adult male prisoners in 13 prison facilities. The adult female population has remained under 150 since 2009 which compares favourably with the authorized capacity of 510 in the three prisons in Karachi, Hyderabad and Larkana.

Decennial comparison of population of the prisons in Sindh



The present day overcrowding crisis that Sindh faces, with a swelling 54% of the population exceeding the prison capacity, is not typical of special prisons housing adult females and juveniles, but concerns itself primarily with adult male prisoners in 13 prison facilities. The adult female population has remained under 150 since 2009 which compares favourably with the authorized capacity of 510 in the three prisons in Karachi, Hyderabad and Larkana. Similarly, the juvenile population has remained below the authorized capacity of 590 prisoners for the past 7 years in the facilities located in Karachi, Larkana, Hyderabad and Sukkur.

The prime reason for the under population in special prisons is that the law in practice seems to be more lenient towards women and children. More offences were made bailable after the enactment of the WPA. The law was amended to provide that even in situations where women or those under 16 were accused of non bailable offences, once they had spent 6 months in prison they shall be released on bail.[56] [57]

56. Code of Criminal Procedure Second Amendment Ordinance 2006 , Section 497
57. The vigour of this law has been compromised to some extent by the Code of Criminal Procedure (Amendment) Act 2011.

CHAPTER G

A Review of Prison Conditions in Sindh

The Population in Prison Facilities In Sindh[58]

S.#	Name of Jail	Year Of Construction	Authorized Capacity	Total Population
	WOMEN			
1	Women Prison Karachi	1998	250	95
2	Women Prison Hyderabad	2003	150	33
3	Women Prison Larkana	1987	110	33
	Total Adult Female Prisoners		510	161
	JUVENILE			
4	Juvenile Prison Karachi	1993	350	203
5	Juvenile Prison Hyderabad	2008	150	72
6	Juvenile Prison Sukkur	2010	50	19
7	Juvenile Prison Larkana	2010	40	11
	Total Male Juvenile Prisoners		590	305
	MEN			
8	Central Prison Karachi	1899	2400	5823
9	Central Prison Hyderabad	1894	1527	2455
10	Central Prison Sukkur	1941	1498	918
11	Central Prison Larkana	1985	550	955
12	Central Prison Khairpur	1949	975	943
13	District Prison Malir	1962	1591	3581
14	District Prison Sukkur	1904	550	327
15	District Prison Nawabshah	1956	100	324
16	District Prison Sanghar	1992	250	310
17	District Prison Dadu	2005	250	376
18	District Prison Mirpurkhas	1956	75	216
19	District Prison Jacobabad	1990	250	207
20	District Prison Ghotki	2010	250	277
21	District Prison Shikarpur	2005	250	597
22	District Prison Badin	2005	250	417
23	District Prison Nausheroferoze	2009	250	364
24	Nara Prison Hyderabad	1942	300	628
25	Open Prison Badin	2012	0	0
	Total Adult Male Prisoners		11316	18718
	Grand Total		**12416**	**19184**

The sharp increase in numbers incarcerated is attributed to the myriad of problems plaguing the CJS in Sindh. Karachi and other areas of Sindh continue to experience high rates of kidnapping for ransom, sectarian violence, target killings, robberies, bombings and other violence and extortion based crimes[59]. The steady rise in lawlessness, street crimes and weaponisation of society has met with a large scale security operation launched collectively by the Sindh Police Force and Pakistani Para military force i.e. Rangers.

58. Official figures taken as of 30th January, 2015, provided by the office of the IG Prisons.
59. The following 2013 Karachi crime statistics are based on data released by the Sindh Police and Rangers. Many crimes remain unreported.
    2,715 killed (civilians)
    191 killed (police and Rangers)
    125 killed (suspected criminals/terrorists)
    108 kidnappings
    519 cases of extortion
    3,082 cases of robbery
    4,068 vehicle thefts
    22,284 motorcycle thefts
    10,501 cell phone thefts
    'Pakistan 2014 Crime and Safety Report: Karachi'. [online] Available at: https://www.osac.gov/pages/ContentReportDetails.aspx?cid=15809: [Accessed 16 Feb, 2015]

A Review of Prison Conditions in Sindh

CHAPTER G

The police force has made 1,238 arrests in 2014[60] alone in efforts to curb the increase in crime rates. However, the government has failed to capacitate and strengthen the prosecutorial and investigation wings and proceedings before criminal courts are marred with chronic defects and delays. There is no systematic coordination or sharing of key information between the prison and police departments that would enable early projections and the planning necessitated for augmenting capacity in advance of increased arrests. Despite this, barrack space has been enhanced in Khairpur Central Prison, Larkana Central Prison and Malir District Prison to accommodate 589 more prisoners since last observed by the LAO's research team in April 2014.[61]

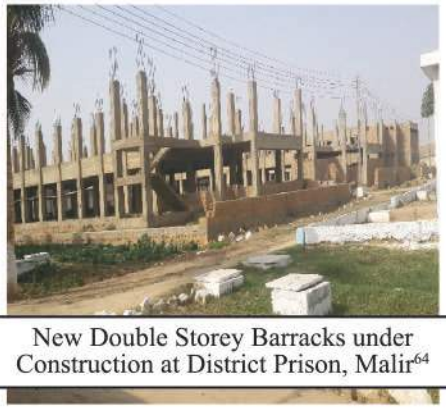
New Double Storey Barracks Constructed in Khairpur Central Prison[62]

New Barracks Being Constructed In Larkana District Prison [63]

60. Jabri, Parvez. '*Sindh Registers Decline in Crime Rate with 195 Criminals Killed, 1238 Arrested*'. Business Recorder 2014. [online] Available at: http://www.brecorder.com/pakistan/general-news/193887-sindh-registers-decline-in-crime-rate-with-195-criminals-killed-1238-arrested.html [Accessed 16 Feb, 2015]
61. Official Prison Capacity of Sindh Prisons has increased from 11,827 in April, 2014 to 12,416 on 1st January, 2015.
62. Pictures taken from LAO Research Team's visit to Khairpur District Prison on 17th November, 2014.
63. Pictures taken from LAO Research Team's visit to Central Prison, Larkana on 19th November, 2014

CHAPTER G

A Review of Prison Conditions in Sindh



New Double Storey Barracks under Construction at District Prison, Malir[64]

The IG Prisons, Mr. Mangan[65] has embarked upon an ambitious 5-year plan for constructing new prisons and expanding current ones. A prison facility in Mirpurkhas is almost complete, which shall be able to cater to 1,000 prisoners. An additional prison facility in Nawabshah is in the works with an estimated completion time of 2 years and a district prison in Thatta is also under construction. Proposals for construction of prisons in Umerkot, Mithi and Jamshoro districts have also been made and land has been identified for the same purpose. Mr. Mangan believes prison construction in the northern areas of Sindh such as Qambar Shahdadkot and Kashmore is the only viable way to decongest Larkana Central Prison bearing the entire brunt for arrests from northern Sindh.

But merely adding concrete space will remain a short-sighted effort. As part of a holistic strategy to decongest adult male prisons, parallel efforts to the addition of prison space are needed. The Government should explore effective crime prevention programmes such as community policing oriented initiatives and diversion mechanisms such as treatment programmes / orders for mentally ill prisoners and drug offenders. In addition, emphasis must be placed on reduction of the length of stay of remand prisoners. 81 % of Sindh's prison population comprises of remand prisoners serving pre-trial detention. There were 29,140 criminal cases pending before the Sindh High Court and its benches, while 73,227 criminal cases were pending before the District Judiciary of Sindh as of 31st December, 2013[66]. Minor and petty offences need to be processed through the system via an expedited track and the system must work to ensure that exposure to prison time is reduced, where the threat to society is minimal. Imprisonment must not be the default setting at the sentencing stage. A shift in sentencing philosophy is needed to reinvent the wheel so that Judges along with lawyers are aware of alternatives to incarceration such as conditional discharges and probation However, the alternatives to custodial sentencing can only be considered when they are available and the long term strategy must include development of parole and early release methods.

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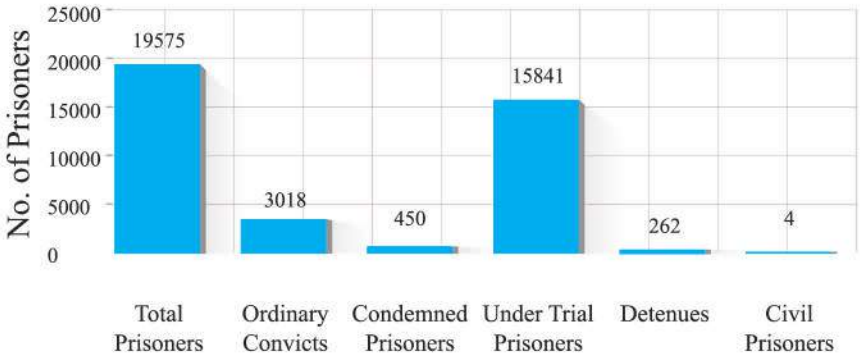
64. Pictures taken from LAO Research Team's visit to Malir District Prison, Karachi on 14th January, 2015.
65. Interview with LAO dated 17th February, 2015.
66. 'Judicial Statistics of Pakistan 2013' Available at: http://www.ljcp.gov.pk/Menu%20Items/Publications/2013/2013.pdf [Accessed 16 Feb 2015]

II. Segregation within the Demobilised Strata

Another spillover effect of overcrowding is the tendency of the prison system to 'misclassify prisoners'. Due to the shortage of space, prisoners entering the system are classified on the basis of space availability and not in terms of seriousness of criminal charge or their individual programming needs.

Classification of Prisoners as on 2nd March, 2015



The legislative framework in Pakistan chalks out the basic standards for classification and separation between prisoners. The Jail Manual provides for classification on the basis of the prisoners involvement in civil matters or criminal offences[67]. The rules further require the classification of convicts from UTPs, females and juveniles from adult male, and categorizes them as either class A, B or C[68]. UTPs are also classified in accordance with whether their case proceeds before Sessions Courts or other courts[69].

The law distinguishes between 'casual offenders' and 'habitual offenders', and defines the former as first time offenders who resort to crime on account of surroundings or physical disability[70] and habitual offenders as those that frequently lapse into crime or are professionals or repeat offenders with a preference for a life of crime. Following the classification, the law requires separation on the basis of males being separated from females, juveniles from adults, UTPs from convicted prisoners, civil prisoners from criminal prisoners, political prisoners from all other prisoners[71]. The law provides that 'to the extent that it is possible' UTPs may be kept separate from those previously convicted or committed to session courts, casual convicts separated from habitual convicts[72].

Interestingly the archaic rules envision a maximum security type of prison for serious offenders and provide that 'every habitual criminal shall as far as possible be confined in a special prison in which only habituals are kept. The IG Prisons may however sanction the transfer to such special prison of any prisoner not being a habitual prisoner whom for

67. Rules 224 to 249
68. Class A or B prisoners are initially required to fulfill the criteria set out under Rule 228 (ii); these being whether the offender is a first time offender or a habitual offender, whether the offence committed is serious according to the sentence given (where the offender is convicted), the income, profession, education, social status and financial background of the offenders' family.
69. Rule 229
70. Rule 226
71. Rule 231
72. Rule 232

A Review of Prison Conditions in Sindh

reasons to be recorded, the Superintendent of the prison believes to be of so vicious and depraved a character; as to make his association with other casual prisoners undesirable'[73].

Whilst the present law contains a simple yet reasonable scheme for classification and segregation of prisoners, the same is impossible to achieve in overcrowded prisons.

The LAO's research team surveyed the prevailing conditions in 18 facilities during 2014-2015[74]. It was noted that due to overcrowding in the majority of adult male prisons, the rules relating to segregation were not fully observed. In 7 facilities the key observation made was that some remand prisoners and convicts were kept in the same barracks or had easy access to each other. Civil prisoners were separated from criminal prisoners in all but 1 prison. In 10 prisons, hardened /habitual remand prisoners were not separated from other casual remand offenders. Juvenile prisoners were not found in any of the adult prison facilities except for Shikarpur District Prison which is an adult male facility where they were found in a separate barrack for juveniles[75]. It was also observed that the youngest of the offenders in adult facilities (i.e. those between the ages of 19-21) were kept separate from older prisoners.

The major hurdle in the proper implementation of the rules and directives pertaining to segregation is the need to commensurate priority accorded by the Government of Sindh in allocating sufficient budget for restructuring the prison system altogether. As of late, prisons have been seen as breeding grounds for violent extremism, wherein recruitment of idle and frustrated minds may easily take root. A lack of segregation between extremist pockets and the other population is an internal channel through which prison radicalization may easily take place. Different gangs exist in prisons, bifurcated on the basis of religious sects/ political affiliations and it is typical to find leadership roles being defined, and identities and loyalties being developed within these power structures. However, there is no one-size-fits-all theory on how and to what degree hardened /extremist prisoners are to be kept separated from the rest of the prison population.

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73. Rule 232 (v)
74. Central Prison, Karachi visited on 16th January, 2015, YOIS, Karachi visited on 13th January, 2015, Women Prison, Karachi visited on 14th January, 2015, Malir District Prison, Karachi visited on 14th January, 2015, Sukkur Central Prison visited on 21st November, 2014, Sukkur YOIS visited on 21st November, 2014, Ghotki District Prison visited on 20th November, 2014, Larkana Central Prison visited on 19th November, 2014, Larkana Women Prison visited on 19th November, 2014, Larkana YOIS visited on 19th November, 2014, Khairpur Central Prison visited on 17th November, 2014, Shikarpur District Prison visited on 18th November, 2014. Hyderabad District Prison Nara visited on 2nd February, 2015, YOIS, Women Prison and Central Prison, Hyderabad, District Prison, Sukkur visited on 16th February, 2015 and Remand Home, Karachi visited on 9th March, 2015.
75. The jail rules in Rule 231 (ii) stipulate that ' Juveniles shall be kept in a separate institution or jail, or if there be no separate institution or Jail in any area, in a separate part of the same prison in such manner as to prevent their meeting or holding communication with adult prisoners.'

A Review of Prison Conditions in Sindh

For example, in Australia, terrorists are segregated from normal convicts in prisons due to the fear that they might also be radicalized[76]. In the United Kingdom it has been found that by concentrating terrorists together a pressure to conform is created and they remain adherent to militancy values. Due to this reason terrorists are placed together, with normal convicts, albeit, with extra supervision[77].

However, overcrowded and chaotic prisons make it difficult for prison staff to understand what is happening 'on the ground' and, as a result, will allow extremists to operate at free will. Under such conditions, effective monitoring and detection of radicalization becomes impossible. In France and the UK, radicalisation training programmes have only recently been embarked upon. Unsafe and disorderly prisons aggravate the conditions that make prisoners vulnerable to radicalisation. Extremists will find it easier to fill the vacuum (spiritual and material) created by prisons that fail to provide prisoners with a perspective and a set of meaningful activities towards which their energies can be directed.

"They also create a 'security dilemma' in which inmates feel compelled to turn to extremists, or organise themselves as prison gangs for protection[78]."

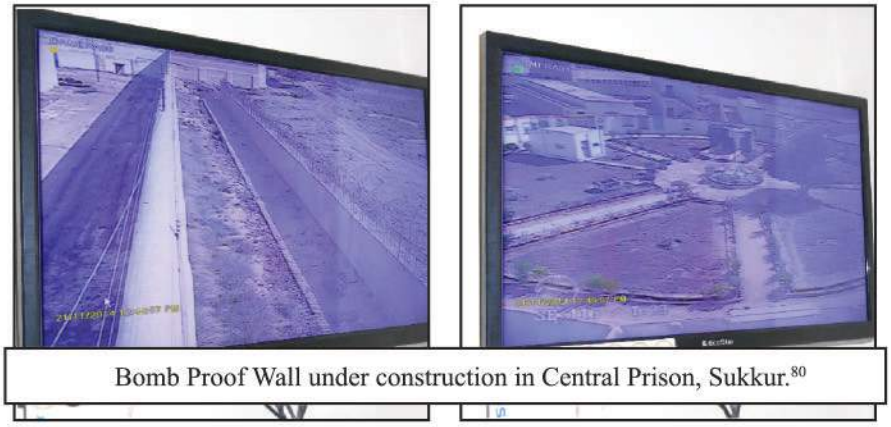
The strategy that is adopted in Sindh is one of dispersal and selective concentration in adult male prison facilities which distributes hardened and extremist elements between a few key central prisons. Despite the codified rules, maintaining these levels of separation in overcrowded prisons is not possible. However, in recent times, positive signs have emerged evidencing the importance being accorded to segregation of prisoners by the Home Department and Prisons Department. Directives have been passed for segregation between convicts undergoing a sentence for a politically affiliated crime but also in affiliation with extremist and terrorist related convictions and normal convicts. The prison authorities are also alive to the question of proscribed organisations and are making proper arrangements for their segregation from the normal convicts. Karachi Central Prison is the largest facility in the province accommodating 5,744 adult male prisoners[79] against an authorized capacity of 2,400, and efforts are under way at segregating shias from sunnis. The Sukkur Central Prison facility is being developed into a high security prison/maximum security prison.

Training prison staff so that they are able to monitor development of associations in prisons and detect threats of radicalization at a nascent stage will be an effective strategy that the government should incorporate in revisiting the prison constable pre-service training curricula.

76. Broadhurst, R., Fealy, G. and Jones, C., 2013. Does prison incubate violent Islamist extremists?. [online] East Asia Forum. Available at: <http://www.eastasiaforum.org/2013/06/25/does-prison-incubate-violent-islamist-extremists/> [Accessed 20 Apr. 2014].
77. Ibid.
78. The International Centre for the Study of Radicalisation and Political Violence, *Prisons and Terrorism Radicalisation and De-radicalisation in 15 countries*. Available at: <http://icsr.info/wp-content/uploads/2012/10/1277699166PrisonsandTerrorismRadicalisationandDeradicalisationin15Countries.pdf> [Accessed 16 Feb. 2015]
79. Population statement dated 31.12.2014

CHAPTER G

A Review of Prison Conditions in Sindh



Bomb Proof Wall under construction in Central Prison, Sukkur.[80]

III. Securing Prisons

Classification of prisons and prisoners plays a vital role for security purposes. In developed corrections systems prisoners are not just classified on the basis of age, gender or offence committed but are also categorized by the security level and their individual programming needs[81]. There are in general four security levels in developed correction systems; super maximum, maximum, medium and minimum. Prisons with the greatest internal and external security controls are known as super maximum (super-max) followed by maximum security prisons. Inmates in super-max facilities are locked in prison all day and are only allowed out from their cells for showers or recreational activities. The exterior security of maximum and super-max consists of combination of layers of razor wire, walls, lights, cameras, armed security guards, and attack dogs on patrol. Moreover, maximum security prisons can have the same exterior as the super-max prisons, but inside the inmates are not locked for the whole day and access to yard and outdoor space is given under supervision and contact with the outside world is less strict than with the super-max prison. The exterior of the medium security prisons can be similar to super-max and maximum security but the inmates confined there have more opportunities to attend school, treatment, and other recreational activities. They are also allowed visitors and have contact with the outside world which is less restricted as compared to super-max and maximum security prisons. The inmates confined in minimum security are of mix crime categories, from the convicted murderer doing life to burglars or drug users who is waiting to be transferred to a lower-security prison or who are engaged in the substance abuse programming that the prison affords[82]. On the other hand, minimum security prisons have the most relaxed exterior security. The inmates are provided with various programming facilities, either inside the institution or outside in the community. The accommodation options are as diverse as medium security prisons, where prisons can freely roam in the premises with recreational activities provided to them. The inmates incarcerated are usually "short-timers", or prisoners who are relatively close to their release dates[83].

In Pakistan, the prison infrastructure and classification system continues to flow from its primitive colonial past. The Jail Manual divides prisons into Central Prisons, Special Prisons, District Prisons and Sub-Jails[84] without any reference to security measures or nature of wrongdoing.

A Central Prison is one that is declared by the Provincial Government as such[85] and has accommodation for more than 1,000 prisoners irrespective of the length of their sentences[86]. The rules also provide that there shall be a central prison in each division of a province[87]. Special Prisons are usually women's prisons, open prisons, borstal institutions and juvenile training centers[88] and the provincial government may declare any prison as a special prison[89].

80. Pictures taken from LAO Research Team's visit to Central Prison, Sukkur on 21st November, 2014
81. Prisons, Chapter 7. (2014). [online] Available at: http://www.sagepub.com/upm-data/43448_7.pdf [Accessed 25 Apr. 2014].
82. Ibid
83. Ibid.
84. Rule 4, Jail Manual
85. Rule 3 (ii) Jail Manual HD Notification No So (PRS-11) 11-94 dated 13-5-1996.
86. Rule 5(i)
87. Rule 5(ii)
88. Rule 6(iii)
89. Rule 6(i)

A Review of Prison Conditions in Sindh

CHAPTER G

No indication as to capacity for such a prison is given in comparison to the definition of a central prison. District Prisons are defined in exclusionary terms as 'All Prisons, other than Central Prisons or Special Prisons shall be deemed to be District Prisons[90]. District Prisons are divided into three types: First Class, having accommodation ordinarily for 500 prisoners or more with sentences up to 5 years; Second Class, having accommodation ordinarily for 300 prisoners or more but less than 500 with sentences up to 3 years and Third Class, having accommodation ordinarily for less than 300 prisoners with sentences up to one year.[91] [92] The reference to tariffs on sentence lengths indicates that the district prisons accommodate the less serious offenders in comparison to central prisons and barring the silence of the legislation on this matter, this is the general practice.

There are only 5 prisons that were built prior to independence in 1947 and the oldest of these, the largest prison facility, Central Prison Karachi constructed in 1899. Similarly, the second largest prison the Central Prison of Hyderabad is another 19th century piece of architecture, which is in dire need of reinforcements. Only as recently as on 21st December 2014, a 20 feet portion of the outer wall of a prison housing over 191 death row prisoners crumbled amidst panic and chaos.[93] However, there is no substantial difference between these 19th century relics and those built after partition in the 50's, 70's and 80's. Particularly deploring conditions were found in Nawabshah District Prison constructed in 1956 which was a police lock-up with a capacity of 100 prisoners, which today acts as a district prison accommodating over 300 remand prisoners with lock up cells as small as approximately 10 feet in length and width of 5 feet in length. 11 prisons were constructed in between the 1990 and 2010. Despite the allocation of resources and development of technology, cases of dilapidation of buildings are rampant. Larkana Central Prison, constructed in 1985 witnessed the death of a UTP early in 2012 when a portion of the barrack's ceiling fell on him According to the Superintendent the barrack in which the incident occurred was constructed in 2008 and was recently renovated[94] which adds to suspicion on corruption in building and construction contracts. At the time of writing this report, construction work is in progress at the Central Prison Larkana to add to the capacity of the prison.

It was observed that until last year the wall protecting Central Prison, Sukkur, one of the most sensitive prisons in the province, was in shambles and begged immediate renovation before any mishap related to security occurred.[95] It is reassuring to note that at the time of writing this report a bomb proof exterior wall surrounding the prison is under construction with more than half the perimeter covered.[96]

90. Rule 7
91. Rule 8(i)
92. In addition, the provincial government may, by general or special order, declare any place to be a subsidiary jail. The provincial government has established judicial lock ups at tehsil and sub-tehsil level. In judicial lock ups, less than 100 prisoners are accommodated.
93. Panic in Hyderabad: Prison's outer wall collapses [online] Available at: http://tribune.com.pk/story/810784/panic-in-hyderabad-prisons-outer-wall-collapses/ [Accessed 22 Dec. 2014]
94. Prisoner dies as portion of jail roof falls. (2012). Dawn. [online] Available at: http://www.dawn.com/news/730231/prisoner-dies-as-portion-of-jail-roof-falls [Accessed 25 Apr. 2014].
95. Akmal Wasim et al, *Sindh Prison Reforms Through the Lens of Legal Aid: From Current Issues to Recommending Security and Legislative Measures.* Karachi: Legal Aid Office, 2014.
96. The work is expected to be completed in 2015.

CHAPTER G

A Review of Prison Conditions in Sindh

The sophisticated security classifications discussed above are unknown in Pakistan but the recent surge of terrorist attacks including the failed attempt to dig an underground tunnel opening into the barracks of high-profile militant prisoners in Central Prison Karachi[97] has sent seismic waves of concern throughout the establishment and paved the way for fortifying some prisons.[98] Higher walls, razor wires and electronic screening detectors have been installed in Karachi Central Prison this year. Metal detectors and CCTV cameras have been installed at entry points in four prisons[99]. Whilst the procurement of the equipment is a step in the right direction, it is unfortunate to note that on LAO's survey visits equipment including metal detectors and cameras were seen to be non-functional in two of these prisons.

It is interesting to note that the IG Prisons is of the view that the most serious security lapse occurs when prisoners are transported to courts for their trials and are allowed to interact with others present within the court premises. He states that the same is a practice unfounded in developed countries where prisoners may only take visitors under supervision of prison authorities inside prisons[100].

Unsupervised visits in court premises add pressure on the searches on prisoners after trips to court. The objective is to prevent them from bringing dangerous or prohibited items into the prison which can help escape attempts or risk injury to themselves or others. The prison staff in Karachi prisons has been observed as enforcing rigorous body and belonging checks at the entry and exit points for visitors and has received sophisticated training for the same. Unfortunately the same is not the case in prisons in interior Sindh nor is it a part of the pre service training of prison constables.

In addition, it has been observed that there are no clear rules regarding what items are permissible and what are not, and any directives or rules relating to the same are not displayed for ease of visitors. The legislative framework governing the same is hazy. While in principle, measures to prevent malpractice, corruption and staff smuggling items are legitimate, the safeguards described for detainees and visitors apply equally to staff working in places of detention. Pre-service training of prison staff must incorporate sophisticated training relating to searches of visitors, prisoners and staff members in addition to a separate module dedicated to countering security threats and breaches.

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97. 'Breakout foiled as tunnel discovered near Karachi Central Jail: Rangers', Express Tribune, Oct 13, 2014. [online]Available at: http://tribune.com.pk/story/774619/breakout-foiled-as-tunnel-discovered-near-karachi-central-jail-rangers/ . [Accessed 6 Mar. 2015]
98. Out of the twenty-two prisons in Sindh only five prisons were made before partition.
99. Metal detectors were observed in Central Prison, Karachi, District Prison Nara, Hyderabad, Central Prison, Larkana and Central Prison, Sukkur. Furthermore, CCTV cameras were observed in Central Prison Sukkur and Malir District Prison, Karachi.
100. Interview with IG Prisons by LAO on 17th February, 2015.

The protection of Pakistani prisons should result in a safer environment within the prisons and also across the world. Therefore, a new policy paper etching out best practices and standard operating procedures with reference to security of prisons needs to be developed, keeping in mind the whole of Sindh. In the short term, well-trained staff should be appointed to watch and ward duty of high security enclosures.

IV. Substance Abuse

The rise in terrorism is a double-edged sword threatening the state of security in Pakistan, as the growth in militancy is funded by the illicit and rampant drug trade. 'Pakistan's illegal drug trade is believed to generate $2 billion a year [making] Pakistan the most heroin-addicted country, per capita, in the world'[101]. According to the most recent nation-wide study in 2013 conducted by the United Nations Office on Drugs and Crime ("UNODC") 6.7 million Pakistanis used drugs; 4.25 million are drug dependent; drug rehabilitation programs and treatments were provided for only 30,000 of the addicts and 430,000 consumed drugs intravenously[102]. Cannabis, opium and heroin continue to be the most widely used drugs. The report also estimates that up to 44 tons of processed heroin are consumed in Pakistan annually and a further 110 tons of heroin and morphine from neighbouring Afghanistan are trafficked through Pakistan to international markets[103].

Whilst Pakistan has ratified the three main international drug control conventions namely the Single Convention on Narcotic Drugs, 1961 ("1961 Convention")[104] as amended by the 1972 Protocol,[105] the Convention on Psychotropic Substances, 1971[106] and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988[107] ("1988 Convention")[108] the government remains largely unable to respond to the endemic of narcotics addiction growing in the country.

Pakistan's drug control policy-making and planning is the responsibility of the Ministry of Narcotics Control ("MNC"). The Anti-Narcotics Force ("ANF") has been assigned the central role in combating drug trafficking by the Control of Narcotics Substances Act, 1997 ("CNSA"). The ANF has the primary responsibility for interdicting the production, smuggling, trafficking and abuse of narcotics and illicit psychotropic substances. The CNSA provides punishment for possession of narcotic drugs for a period up to two years where a person is found in possession of 100 grams or less of narcotic substances[109], and a period of up to seven years where it exceeds 100 grams but is less than 1 kilogram[110] and enhances the possible sanctions to death or imprisonment for life, or imprisonment for up to fourteen years where the possession exceeds 1 kilogram[111].

101. Quigley , J.T., *'Pakistan: The Most Heroin-Addicted Country In The World'*. The Diplomat, 2015. [Online] Available at: http://thediplomat.com/2014/03/pakistan-the-most-heroin-addicted-country-in-the-world/. [Accessed 17 Feb 2015]
102. United Nations Office on Drugs and Crime, Report on "*Drug Use in Pakistan, 2013*". Published 2014 [Online]. Available at: http://www.unodc.org/documents/pakistan/Survey_Report_Final_2013.pdf. [Accessed 17 Feb 2015]
103. Browne, David. '*How Pakistan Succumbed To A Hard-Drug Epidemic*'. Telegraph, 2014. [Online] Available at: http://www.telegraph.co.uk/news/worldnews/asia/pakistan/10705585/How-Pakistan-succumbed-to-a-hard-drug-epidemic.html. [Accessed 17 Feb 2015]
104. Furthermore, Article 38 of the 1961 Convention concerns the treatment and rehabilitation of drug addicts. According to paragraph 1, the parties to the Convention should give special attention to and take all practicable measures for the prevention of abuse of drugs and for the early identification, treatment, education, after-care, rehabilitation and social reintegration of the persons involved. Apart from drug addicts, this article, under paragraph 2 also provides for the training of personnel in the treatment, rehabilitation and reintegration of abusers of drugs back into society. The Convention recognizes that one of the most effective methods of treatment for addiction is treatment in a hospital institution having a drug free atmosphere and it urges those countries which have a serious drug addiction problem and the economic means to do so, to provide such facilities.
105. Ratified by Pakistan on 9th July 1965
106. Ratified by Pakistan on 9th June 1977
107. Ratified by Pakistan on 25th October 1991
108. Article 3 of the 1988 Convention establishes the offences and sanctions; Paragraph 1(a) states, inter alia, that the production, manufacture, extraction; preparation, offering, offering for sale, distribution, sale, delivery… the cultivation of opium poppy, coca bush or cannabis plant for the purpose of the production of narcotic drug…shall be considered criminal offences under the signatory state's domestic law. Under paragraph 2, the possession, purchase or cultivation of narcotic drugs or psychotropic substances for personal consumption will also be treated as a criminal offence if committed intentionally. Under paragraph 4(b) parties to the Convention can provide, as an alternative to conviction or punishment, or in addition to conviction and punishment of
an offence, measures for the treatment, education, aftercare, rehabilitation or social reintegration of the offender.
109. Section 9 (a) CNSA
110. Section 9(b) CNSA
111. Section 9(c) CNSA

CHAPTER G

A Review of Prison Conditions in Sindh

It is important to mention that the legislation is poorly drafted as it fails to differentiate between soft and hard drugs.[112] Chapter VI of the Act[113] also provides for treatment and rehabilitation of addicts. By the set law, every provincial government is mandated to register all addicts within its jurisdiction for the purpose for treatment and rehabilitation of addicts. Furthermore, the Federal Government has been burdened with the responsibility of bearing all expenses for first time compulsory detoxification or de-addiction of an addict. Section 53 requests the Provincial Governments to establish as many treatment centers as necessary for de-toxification, de-addiction, education, aftercare and rehabilitation, social integration of addicts and for supply of such medicines as are considered necessary for the de-toxification of the addicts. These are fine examples on how the state has (on paper) complied with its main obligations under the conventions and brought its domestic law in line with the same, but implementation remains at an exaggerated stretch of imagination.

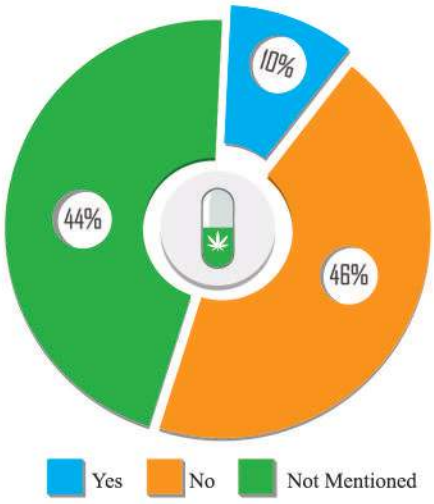
The 2010-2014 Drug Abuse Control Master Plan ("Drug Plan") lays out a detailed framework and strategy for making Pakistan drug free by 2020, but five years away from this fast approaching deadline, not much has been achieved.[114] One of the core recommendations with relation to drug abuse and treatment inside prisons made in the Drug Plan was for the MNC and ANF to work in collaboration with the National Prison Staff Training Institute Lahore to develop special training packages on drug abuse and drug-related HIV/AIDS prevention and rehabilitation of drug addicts for prison staff trainees at the institute. Moreover, a drug abuse prevention and treatment programme was to be established in 20 prisons. The funding estimate for the staff training and treatment programme was estimated at PKR 122 million. However, based on LAO's research and prison surveys conducted there are at present only 5 prison facilities in the province[115] that have separate barracks for drug users and have the capacity to run some form of treatment programmes.

When the heroin endemic reached its peak in 1980s, following the crack down on drug users after the proclamation of Hadd (Religious Injunctions) in 1979, the burden of treating addicts fell on departments of psychiatry in hospitals across the country. It is after the 1980s that government agencies and NGOs began setting up treatment centres and at present there are roughly 8 treatment centres in Sindh with out-patient services and 3 treatment centres in Sindh with in-patient facilities[116]. At the time of writing this report, no NGOs are seen as managing and running their own devised treatment programmes in engaging prisoners. Previously, the Drug Free Foundation Pakistan was managing and running a treatment programme in Central Prison, Karachi whereby they engaged 20 prisoners once a month. Out of 5,819 UTPs interviewed by LAO's research team in 20 prison facilities, 2,573 refused to answer when asked about drug addiction, 2,670 answered in the negative and 576 answered in the affirmative.

112. Under Section 2(s) of the CNSA, a "narcotic drug" means "coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs."
113. Sections 52 and 53 CNSA
114. ANF under the MNC was entrusted with the task of preparing a pragmatic National Drug Abuse Master Plan to control abuse and trafficking/transiting through Pakistan, for the period 2010-14. UNODC provided technical assistance in the preparation of the Master Plan.
115. Central Prison, Karachi, District Prison Malir, Karachi District Prison Nara, Hyderabad, Central Prison, Hyderabad and District Prison, Shikarpur.
116. Data collected by LAO Research Team during their visits to Central Prison, Karachi on 24th January, 2015, District Prison, Hyderabad on 2nd February, 2015 and Central Prison, Hyderabad on 12th February, 2015. The data from Malir District Prison, Karachi and District Prison, Shikarpur was collected by the LAO Advocates during their legal clinics in the month of January.

A Review of Prison Conditions in Sindh

Response of UTPs on whether or not they use narcotic substances



With regards to treatment of drug addicts in prisons, LAO has observed that in prisons in Karachi, Hyderabad and Shikarpur, drug addicts are segregated from others and kept in separate wards. They are given proper medication to help with withdrawal reactions which can include muscle aches, insomnia, abdominal pain, nausea and vomiting. There is also a doctor on call 24 hours a day, who also conducts daily visits to drug addicts and personally administers the medicine. A prison official interviewed by LAO informed the interviewer that drug addicts serving time in prison generally lose their addiction; however, on release from prison, most of them return to the use of drugs and suffer a relapse.

S.#	Prisons with Seperate Drug Treatment Wards	No. of Drug Addicts Kept In Seperate Treatment Ward[117]
1	Central Prison, Karachi	39
2	District Prison Malir, Karachi	88
3	District Prison Nara, Hyderabad	31
4	Central Prison, Hyderabad	10
5	District Prison, Shikarpur	01
	Total	**169**

Prison inmates who are addicts and consume narcotics intravenously, share needles and are at high-risk of transmission of Hepatitis B, C, HIV and other sexually transmitted diseases (STD). A study conducted in 2010 in which 7,539 prisoners were screened for Hepatitis C seropositivity from 14 prisons in Sindh, confirmed that the same is significantly higher (12.8%) in prisoners than measured in the general population through the national survey (4.9%). The study revealed that the higher prevalence was at prisons of North Sindh (Jacobabad, Shikarpur and Sukkur). Highest prevalence was found at District Jail Jacobabad (HCV-Ab prevalence 16.7%) followed by District Jail Shikarpur (HCV-Ab prevalence 15.8%), Central Jail Hyderabad (HCV-Ab prevalence 15.5%) and Central Prisons at Sukkur (HCV-Ab prevalence 11%). The high (15.4%) prevalence of Hepatitis C antibodies in District Jail Malir can also be explained by the fact that prisoners who are injection drug users are shifted to this specific jail. The same jail has the highest prevalence (2.8%) of HIV positive inmates in the province.[118]

One of the general observations in the Report of the Functional Committee on Human Rights on Conditions of Jails in Pakistan, 2005, relates to the use of drugs. It reads "there is an internal mafia of the Jail which includes inmates and Jail Staff. They are active in providing drugs and related item."[119] However, prisons often do not want to acknowledge that drug use takes place inside, in spite of their security measures. The IG Prisons states that medication supplies for the treatment of addicts was not the issue for prisoners in need; however there is a shortage of doctors. He was also unaware of the Drug Plan[120].

117. LAO sources informed on 12th February, 2015 that these prisoners are confined in a separate barracks from other prisoners. However, in Central Prison and District Prison, Nara Hyderabad and District Prison, Shikarpur they are only provided the treatment without any separation because of overpopulation in prison
118. Ali Gorar, Z, and Zulfikar, I. '*Seropositivity of Hepatitis C in Prison Inmates of Pakistan - A Cross Sectional Study In Prisons Of Sindh*'. J Pak Med Assoc Volume 60 No.6 (2010): p.477-478. [Online] Available at: http://www.jpma.org.pk/PdfDownload/2107.pdf [Accessed 17 Feb 2015]
119. The Senate of Pakistan, Report of the Functional Committee on Human Rights on Conditions of Jails in Pakistan, 2005.
120. Interview with IG prisons on 17th February, 2015 by LAO.

A Review of Prison Conditions in Sindh

The provision of drug treatment services in a prison setting requires training, funding, coordination between agencies and support from the prison administration. What is key in this scenario is ensuring the prison authorities can build synergies with treatment facilities outside prisons so as to ensure vulnerable prisoners being released are channeled towards further treatment and supervision. Both the prisoners and the prison staff must also be trained adequately on the perils of HIV /AIDS, its means of transmission, and prevention of the same within the prison environment's context. Moreover, corruption which allows narcotics to enter prisons must be curbed. Screening of inmates on admission should be mandated, and capacity should be developed so that treatment programmes running inside prisons may refer prisoners for diagnosis of concurrent conditions such as treatment and care of concurrent conditions or diseases such as Tuberculosis, Hepatitis C, HIV/AIDS, etc.

V. Visitation Rights

Decades worth of research indicates the negative correlation between the number of visits a prisoner receives during incarceration and the likelihood of recidivism[121], infliction of self-harm and substance abuse[122]. Very little research has been done in Pakistan on the potential that prison visits have in this connection and the positive manner in which families and friends can be engaged within the prisoner-prison administration nexus to change recidivism trends in our society. There is a general lack of awareness on the Jail Manual governing visitor categories, visitation times, frequency and length of visits and other facilities. With over populated prisons, the system is under more pressure, and families face the difficulties of costly and long commutes, literacy barriers, rampant corruption and illicit demands for bribery at every step of the way. In fact a lack of information, advice and support in prison access, rules, and search protocols can discourage families and friends from visiting prisons altogether.

What the LAO has observed from its first hand surveys of prison waiting areas in Karachi is that families suffer from long waiting periods, inadequate facilities for food and sanitary needs and often their visits are met with disappointment after exhausting trips and waiting spells. For mothers and children that are separated due to the incarceration of the parent, the situation is more helpless as there is no family liaison officer who can make contact with their families to convey messages, organize visits or relay the visitation needs of the prisoners and assist the incarcerated mother to continue with her relationships. The LAO team also observed that most prisons in Sindh have a Public Call Office where prisoners are allowed two minute phone calls per day to speak with family members or friends, albeit monitored by the prison authorities.[123]

Chapter 22, Rule 538 of the Jail Manual gives 'newly convicted' prisoners reasonable facilities for seeing or communication with their relatives, friends and legal adviser. He or she will also be allowed to write letters to his relatives or friends. Moreover, Rule 544 of the same Chapter facilitates the same privileges mentioned above to every convicted prisoner at least once a week. The problem that stems

121. Holt and Miller (1972) found that only 2 percent of prisoners who had three or more visitors in their final year of incarceration returned to prison within a year of release, compared to 12 percent of prisoners who had no visitors. Available at: http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf [Accessed 25 Mar. 2015]
122. Whitehouse and Copello (2005) "Among the conclusions reached was that families play a central role in supporting, or undermining, the management and treatment of substance misuse in prisons. Work with families, the authors argue, is significant both in decreasing drug supply and in enhancing the user's motivation to stop –hence it is potentially important in reducing re-offending. Available at: http://www.prisonersfamilies.org.uk/uploadedFiles/Information_and_research/Research%20on%20Prisoners%20Families%20Update.PDF [Accessed 25 Mar 2015]
123. However, it should be noted that the Public Call Office facility which was previously being practiced by the prisons covered by LAO has now been stopped since the removal of the moratorium on death penalty.

from these two rules is that, a newly convicted prisoner as stated in Rule 538 is not defined, and therefore no distinction can be drawn from an ordinary convicted prisoner. Under Section 40 of the Prisons Act 1894, the visitation rights to civil and unconvicted prisoners (UTPs) shall be adhered to in so far that the same maybe allowed to see their duly qualified legal advisors without the presence of any other person. Additionally, Rules 564 and 566 of Chapter 22 of the Jail Manual gives the same privileges of visitation as stated above to UTPs; however, any interview with a legal adviser and/or family member must take place within sight, but out of hearing of a prison official. This is an unfortunate set of circumstances because case proceedings can take many years to come to a conclusion, and until then a UTP will be deprived of seeing his or her loved ones in privacy. However the Home Department issued a notification to amend the Jail Manual that would allow every convicted prisoner "whose term of imprisonment exceeds (05) years" to keep their spouse with them "inside the jail premises in place specially meant for the purpose for one night in every three months."[124] The shortfall of this directive comes in two forms. Firstly, this privilege is allowed only for convicted prisoners and not UTPs. A UTP's disassociation from their spouse will in no doubt have a negative psychological toll on their overall well-being. The Home Department needs to bear in mind that the whole exercise of detaining UTPs in prison is undermined if they become hardened criminals due to pent-up frustration. By denying a human being from one of his or her basic necessities, the Government of Sindh is incurring great social costs for the future. Secondly, a shortfall that stems not from the Rule itself, strict sensu, but from implementation of the rules, is that there are barely any prisons in existence in Sindh that have built the necessary facilities for prisoners to meet with their spouse in a private setting. It has been over 4 years since the Home Department has issued the order amending the Jail Manual that allows convicted prisoners to meet with their spouse and it has yet to be implemented.

It is recommended that a policy be developed which carefully balances the security concerns along with facilitation of prison visits. Categories of visitors who may visit a prisoner may be developed to include, spouse, children, parents/guardians, siblings, grandparents, grand-children and one or two friends determined in advance after background checks and vetting. Each category should have a number of visits determined per year of incarceration, with increased visits for more immediate relatives. It is a known fact that corruption at the lower levels in prison administration expedites visits and their frequency based on who can pay how much bribe. Regardless of the fact that receiving illicit bribes is inherently against posited law, the prisoners who are not able to afford to pay prison officials have no choice but to languish behind bars with no contact from family members.

In general, UTPs are allowed to meet their relatives on designated days and this is a good indication that the visitation privileges as stated in the Jail Manual are being complied for most UTPs, although such privileges can be taken away as a form of punishment or through corrupt practices by prison officials.

Lastly, more qualitative research is needed on this area to ascertain the number of visits prisoners are receiving in different facilities, and to understand the role that visitors may play in drug reduction strategies and rehabilitation efforts.

124. Notification by Government of Sindh – Home Department. (No.SO Prison-I)/HD/9-163/09, May 07 2010. Now contained in the Jail Manual, Rule 544 (ii) provided that a photocopy of the Nikahnama (marriage contract) is furnished to the prison authorities.

VI. Education and Vocational Training

There is a provision under Chapter 12, Rule 296 and 298 of the Jail Manual which provides for education of juveniles and convicted prisoners. Furthermore, Rule 679 of Chapter 28 discusses the education of up to primary standard for all illiterate prisoners daily for at least an hour and the same provides that religious education shall be compulsory for all the prisoners. The dire truth is that prisoners in Sindh are deprived of the classroom/college setting education and instead are given petty vocational training implemented through ad hoc verbal directives issued by the Home Department. Rule 298 of the Jail Manual provides that every inmate sentenced to imprisonment for a year or more will be given instructions in reading, writing and arithmetic for two hours daily. However, this is not implemented and there is an absence in the Jail Manual on how such educational instructions should be carried out. The LAO team has observed that children confined in YOIS, also known as juvenile jail, are given rudimentary classroom setting education in language, arts and religion only. This is not only an infringement of the Constitutional rights of young offenders where it is their right to receive free compulsory education by the State until they attain the age of 16[125], but it is also defeating the purpose of a rehabilitation center.

If prisoners in Pakistan are to be reformed and rehabilitated into society, then education is the stepping stone to their self-sufficiency and successful reintegration. Constructing educational centers in prisons which would train prisoners on how to be productive members of society would benefit society as a whole. The rules mandate that a well-stocked library shall be provided in the institution and a reformatory centre[126]. By investing more in education, the Government of Sindh can expect to see less crime and less expenditure on law enforcement and criminal justice. It is no wonder why the current trends generated by LAO in its profiling exercises show a higher culpability for crime and a higher prisoner population amongst uneducated laborers and low-wage earners[127]. An astounding 53.7% UTPs interviewed by LAO between May 9th, 2013 to February 14th, 2015 were laborers or low-skilled workers. Not only this, but the data produced by LAO has repeatedly shown that any person employed as a low-skilled worker is more likely to be accused, arrested and charged for the suspicion of committing a crime.[128]

The Model Indian Jail Manual provides a great example on implementing a systematic educational programme for inmates in prison. Chapter XIII of the model focuses on using education as a reformative treatment.[129] This process not only focuses on providing literacy but also inculcating positive values amongst the inmate population through a comprehensive education programme.[130] By looking at the Model Indian Jail Manual, the main objective behind any educational programme should be to promote positive and constructive energies in the student and to give them a sense of social responsibility and social consciousness.

The executive branch of the Government of Sindh should: (1) amend the Jail Manual so it contains provisions on educating all types of prisoners; (2) create a clear cut syllabus that focuses on the needs of prisoners only, such as but not limited to, providing opportunities to illiterate prisoners so they can meet the minimum requirements of reading and writing, and provide advanced opportunities to literate prisoners so they can expand the horizons of their minds through increased knowledge and character; (3) prohibit the use of unsanctioned

125. Article 25A of the Constitution- Right to Education. The State shall provide free and compulsory education to all childrren of the age of five to sixteen years in such manner as may be determined by law.
126. Rule 298 (ii)
127. Legal Aid Office's Research and Profiling of UTPs in Sindh from May 9th, 2013 to 14th February, 2015
128. Ibid.
129. Bureau of Police Research & Development, (2014). Model Prison Manual for Prisons in India. [online] Available at: http://bprd.nic.in/writereaddata/linkimages/1445424768-content%20%20chapters.pdf [Accessed 22 Apr. 2014].
130. Ibid

Islamic instructors and education and create a proper Islamic education syllabus focused on the teachings of Islam relating to peace, harmony and the importance of brotherhood through the teachings of the Qur'an and Sunnah, and (4) develop proper education facilities in all prisons with a library that contains a catalogue of wide ranging literature both fiction and non-fiction to expand the horizon of the minds of the prisoners. Most importantly, the prison authorities themselves must be positive in their attitude and foster a train of thought that will encourage prisoners on the advantages of living a law-abiding life. This must be implemented not only through teaching the prisoners this universal, truth but practiced by the prison authorities themselves.

Vocational/technical training and work programmes are just as important as education when it comes to prison culture. Rule 297 of the Jail Manual provides that inmates shall be encouraged to pick up the industry of his choice. The prisoners must be able to rely upon a skill set that will come in use when they are released or else the chances of recidivism increase. Similarly, the Indian Jail Model Manual discusses in depth vocational training and work programmes as an essential feature of the correctional programmes.[131] From the research of LAO, it appears that there are limited vocational training or work programmes available to the prisoners and most are sewing clothing articles which prisoners can learn from other prisoners. Female and male prisoners are allowed to purchase sewing materials from their own money and create clothing articles which they can sell for a profit. A recent study done by the Rand Corporation shows inmates who participate in vocational training and work programmes have an astonishing 43% lower odds of returning to prison than those who do not. Furthermore, this study showed that prisoners who participated in vocational training had a 13% higher chance of being employed after being released than those who did not[132].

It has been observed that the Criminon programme is organized under the Society for the Advancement of Health, Education and Environment (SAHEE), an NGO that has benefited more than 500 prison inmates and has been running successfully in the Karachi Central Prison since 2007. SAHEE runs two classes in Karachi Central Prison and enrolls 100 students every year[133]. The article further states that those who undergo the programme do not return to prisons[134]. Furthermore, art classes and computer classes are also conducted in Central Prison, Karachi and computer classes have been observed in Malir District Prison.

Vocational/Recreational Facilities in Prisons

Prison Facility	Sports/Gym Classes	Stitching/ Sewing/ Embroidery	Religious/ Spiritual Instructions	Carpentry/ Mechanics	Art/ Painting	Computer Classes	Primary Education Classes
Central Prison, Karachi	■	■			■	■	
Women Prison, Karachi		■	■			■	
Y.O.I.S, Karachi	■	■	■		■	■	■
District Prison, Karachi		■		■	■	■	
Women Prison, Hyderabad		■	■				
Y.O.I.S, Hyderabad		■	■				■
Central Prison, Hyderabad			■	■			
District Prison, Hyderabad			■			■	
Central Prison, Sukkur		■		■			
Y.O.I.S, Sukkur			■				■
District Prison, Ghotki							
Central Prison, Larkana							
Women Prison, Larkana			■				
Y.O.I.S, Larkana			■				
District Prison, Shikarpur							
Central Prison, Khairpur							
District Prison, Benazirabad							
District Prison, Naushahferoze							

131. Ibid; Chapter XIV Vocational Training and Work Programmes
132. The primary data was provided by the Office of I.G. Prisons Sindh
133. Education and Vocational Training in Prisons Reduces Recidivism, Improves Job Outlook. (2013).Rand Corpor ation. [online] Available at: http://www.rand.org/news/press/2013/08/22.html [Accessed 23 Apr. 2014].
134. 'Rehabilition: Save a prison, build the nation'. Dawn 2013. [online] Available at: http://www.dawn.com/news/1027575/rehabilition-save-a-prison-build-the-nation [Accessed 17 Feb 2015]

CHAPTER G

A Review of Prison Conditions in Sindh

VII. External Oversight

The majority of prisons surveyed had poorly constructed structures and adult male facilities were predominantly overcrowded. Sanitation was found to be inadequate and an infrastructural inability to manage and control temperatures was also noted. The surveys were carried out in the winter months in Sindh and geysers for heating water were missing from most facilities.[135] However the food provisioning was found to be of a respectable standard with Rs 150 per day per prisoner being allocated for each prisoner's dietary needs. Doctors were present in most prisons and basic medical supplies and medicines were well stocked. However, screening was not done on regular basis for diseases.

What remains is the lack of an external accountability mechanism imposed on prison staff to minimize and deter abuse, corruption, and other malpractices. At present, there is no institutionalized mechanism to act as a check on prison authorities or the powerful civil bureaucracy. Prisons are institutions where the imbalance of power is at its greatest between detainer and detainee/state actor vs private citizen. Goods are scarce, demand is great, and essentially there is a danger of everything being commodified and a marked threat to national security when prison control is allowed to remain corrupt without checks and balances. The world of prisons remains opaque after dusk when no one from outside is permitted entry. SMR 55 provides that there shall be regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.

Even though the SMRs were introduced in the 1970's, the British Government in pre-partition India had introduced this concept in rudimentary form for the treatment of prisoners and their oversight in the 19th century. The institution of the Non-Official Visitors ("NOVs") was established as far back as 1890 which encapsulated the concept of accountability in the management, administration and supervision of the prisons and the prisoners therein. Regrettably, this laudable initiative has been lost in the narrative of decrying "colonial legacy" without taking into account the concepts made available to the sub-continent and the denial of the same, resulting in bruised governance in which prisons surface as gruesome.

Section 59(25) of the Prison Act, 1894 provides for the appointment of visitors in prisons and Chapter 38 of the Jail Manual addresses the issue of supervision of prisons in detail. The regime provided for can be categorized as the transparency and accountability tools provided for in the current legislation for external oversight of prisons by non-official visitors. Rule 913[136] divides visitors of prisons into ex-officio officials and non-officials who are appointed by name. The non-official visitors are appointed by the

135. LAO has donated electric geysers to Larkana women prison and Y.O.I.S on 17th December, 2014.
136. Jail Manual

A Review of Prison Conditions in Sindh

Home Department and are generally included from social workers, philanthropists, doctors, industrialists and the intelligentsia of the province. The appointment of NOVs is made by the Government for a period of four years and is required to be officially notified in the Provincial gazette[137]. In addition to District and Sessions Judges and DIG and Superintendents of Police, Members of the National and Provincial Assemblies including the Senate may also be appointed as ex-officio visitors of the prisons situated in their respective constituencies.

The rules provide that every non-official visitor is expected to take interest and visit the prison of which he is a visitor once a month and often, if possible and there is no requirement to give prior intimation to the prison about the intended visit[138]. An enabling environment is provided as the rules state that all visitors shall be afforded every facility for observing the state of the prison and its management, and shall be allowed access under proper regulations, to all parts of the prison and to every prisoner.[139] However, this access is curbed, as visits after the prisoners have been locked up for the night or on any public holiday or Friday are not permitted[140].

The scope of inspections of visitors is wide ranging as the rules provide that they shall inspect the barracks, cells, wards, workshops and other buildings of the prison generally and the food; ascertain whether considerations of health, cleanline and security are attended to, whether proper management and discipline are maintained in every respect, and if any prisoner is illegally detained, or is detained, for an undue length of time while awaiting trial; hear, attend to all representations and petitions made by or on behalf of prisoners and direct if deemed advisable that any such representation or petitions be forwarded to the Government.[141] These are undoubtedly serious responsibilities that are imposed upon those notified as NOVs.

In terms of the reporting and findings of the visits, the rules provide that copy of the remarks made by every visitor, together with the Superintendent's comments or the action taken by the Superintendent, shall be forwarded to the IG Prisons and in the case of remarks about the long detention of UTPs, a copy of such remarks shall also be forwarded to the District Magistrate.[142] The rules miss out any provision for directly forwarding grievances and reports to the Government / Home Department. The mechanism provided is limited, in that the reports of NOVs are to be submitted to the IG Prison alone.

The present legislative landscape etched by the British may not be in line with contemporary needs but irrespective of the shortcomings, the current provisions possess potential for opening up the opaque world of prison. Unfortunately it appears that the Government of Sindh

137. Rule 916(i) Government may appoint such number of persons, not exceeding ten for a District Prison and fifteen for a Central Prison, to be non-official visitors in respect of any prison, as it may think fit, depending on the population of the prison.
(ii)Every non-Official visitor shall hold office for four years, but may be re-appointed on the expiry of his term.
138. Rule 918 Jail Manual
139. Rule 919 Jail Manual
140. Rule 922 Jail Manual
141. Rule 921 Jail Manual
142. Rule 927 Jail Manual

has only recently taken up the issue and notified a panel of NOVs[143]. There is a requirement to actively engage those nominated and provide them with adequate training so that they are able to carry out the onerous reporting and supervisory responsibilities that the law imposes upon them.

One method of reviving the NOV system is to conduct joint meetings of the senior prison officials with the notified NOVs and bring the latter aboard and make them feel bounded to the prison administration. The Home Department should also take serious note of the lack of monitoring and evaluation by any NOVs notified and make it mandatory for them to take up their responsibilities under the Jail Manual and provide their expertise and specialized comments to the Home Department for further consideration by the Government of Sindh in the improvement of the conditions in prisons.

143. Notification: No. HD/SO(PRS-1)/11-302/2012; Government of Sindh Home Department, dated 24th May, 2013

Report Findings and Perceptions of Justice

CHAPTER H

I. Arrest & Detention

Introduction:

Article 9 of the Constitution guarantees the security of a person by stating that no individual shall be deprived of life and liberty except in accordance with the law. However, it is found that the life and liberty of individuals is frequently taken for granted by police officials. A large number of individuals, mostly belonging to poor backgrounds and without access to quality legal representation, spend prolonged periods of time under detention as a result of frivolous criminal litigation. From the time of their arrest till their entire period of detention, the rights of these individuals guaranteed to them under the Constitution and statutory law are frequently violated. Moreover, due to inadequate access to legal representation and little knowledge of their own rights, they often do not seek legal recourse for redressal of their legitimate grievances. This chapter will discuss the rights guaranteed to individuals arrested and detained, the procedure of their arrests and an analysis of the data collected which will show frequent violations of the rights of individuals arrested and detained by the police.

Constitutional Rights:

Article 10 of the Constitution provides safeguards to an individual who has been arrested and detained by law enforcement agencies. Article 10(1)[144] states that every individual, as soon as may be, should be informed about his grounds for arrest and he shall not be denied the right to consult and be defended by a legal practitioner of his choice.

Moreover, soon after being arrested, Article 10(2)[145] of the Constitution states that: "Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the nearest Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate."

Procedure for arrest and detention outlined in the Cr.P.C.

First Information Report:

The cornerstone of the Cr.P.C. is the FIR[146] – a criminal complaint formally registered by the police upon an allegation by the complainant/informant. A FIR is only registered if an offence alleged by the complainant is cognizable in nature i.e. an offence for which the police may arrest without warrant as per the second schedule of the Cr.P.C. In cognizable offences, the police may choose to arrest an individual without a warrant as part of its investigation. However, when a non-cognizable offence is alleged, the police is obligated to seek an order from the Magistrate to investigate such an offence.[147] Additionally, a warrant is required from the Magistrate in order to arrest an individual accused of a non-cognizable offence.

Arresting the accused:

Chapter V of the Cr.P.C. outlines in detail, the procedure the police is obligated to follow while arresting an individual. While the police have vast powers to arrest and detain as prescribed by the Cr.P.C., various safeguards are provided in the Cr.P.C. to protect the life and dignity of an individual.

Section 46(1) Cr.P.C. states that in making an arrest, the "police-officer or other person making the same shall actually touch or confine the body of person to be arrested, unless there be a submission to the custody by word or action."

144. Supra: Background on Legal Landscape
145. Ibid
146. When a complainant reports a non-cognizable case i.e a case in which a warrant for arrest is not required, the Station House Officer of a police station is duty bound to register a FIR under section 154 Cr.P.C.
147. Section 155 of Cr.P.C

Section 46 makes it clear that the police may use all means necessary to effect the arrest if an individual forcibly resists arrest. However, unless an individual is not accused of an offence punishable by death or life imprisonment, nothing in Section 46 gives the right to cause the death of such an individual while making his arrest.

Section 51 Cr.P.C. gives police officials' powers to search an arrested person, provided he is not arrested for a bailable offence[148] for which he can furnish bail. Under this provision, the police may choose to search such a person and place in safe custody, other than necessary wearing-apparel found upon him. Section 53 Cr.P.C. allows the police to take any offensive weapons which the arrested individual has about him/her and deliver the same to the Court or any officer whom the arrested person is to be produced.

Section 52 Cr.P.C. clarifies that in case the individual arrested is a woman, the search shall only be made by another woman with strict regard to decency. Section 54 Cr.P.C outlines various circumstances under which an individual may be arrested without an order and warrant from the Magistrate. This provision firstly states that any person who has been accused of any cognizable offence i.e. an offence under which an individual can be arrested without an order and warrant from a Magistrate, can be arrested if a complaint against him regarding such an offence has been made. Moreover, an individual can be arrested without a warrant if 'credible information' or 'reasonable suspicion' of him being involved in such an offence exists.

Secondly, this provision also states that any person having in his possession without lawful excuse, any object with which he intends to commit house-breaking, may be arrested without a warrant. Thirdly, any person who has been declared an absconder/proclaimed offender under Section 87 Cr.P.C.[149] can be arrested without a warrant.

Fourthly, any individual in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with such property may also be arrested without a warrant. Fifthly, any individual who obstructs a police-officer while in the execution of his duty or who has escaped or attempts to escape may also be arrested without a warrant.

Sixthly, an individual can be arrested without a warrant if he is reasonably suspected of being a deserter from the armed forces of Pakistan. Seventhly, any person can be arrested without a warrant who has been concerned in, or about him reasonable suspicion exists, or credible information has been received that he has been involved in any act committed at any place out of Pakistan which, if committed in Pakistan, would have been punishable as an offence and for which he is liable to be apprehended or detained in custody in Pakistan.

Eighthly, any individual can be arrested without a warrant who is a released convict committing a breach of any rule made under Section 565(3) Cr.P.C[150]. Lastly, any individual can be arrested without a warrant for whose arrest a requisition has been received from another police officer to arrest him in an offence for which no warrant is required.

148. Infra; Bail: Practices, Procedures and Bail Bond Values
149. Section 87 Cr.P.C. Proclamation for person absconding (1) If any Court is satisfied after taking evidence that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified Trial Court time not less than thirty days from the date of publishing such proclamation. (2) The proclamation shall be published as follows:- (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or home stead in which such person ordinarily resides or to some conspicuous place of such town or village; and (c) a copy thereof shall be affixed to some conspicuous part of the Court-house. (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that requirements of this section have been complied with, and that the proclamation was published on such day.
150. Section 565(3) Cr.P.C. states that the Provincial Government may make rules to carry out the provisions of this section relating to the notification of residence or change of or absence from residence by released convicts.

Report Findings and Perceptions of Justice

"In a recent full bench judgment of the Supreme Court of Pakistan, it was held by the Court that: "Even in cases of the most heinous offences, the police was under no statutory obligation to necessarily and straightaway arrest an accused person during an investigation as long as he was joining the investigation and cooperating with the same".

While the police has been given broad powers to arrest an individual for the purpose of investigation, it has been held time and again by the superior judiciary that the police is under no statutory obligation to detain a person even in the most heinous of offences. In a recent full bench judgment of the Supreme Court of Pakistan, it was held by the Court that: "Even in cases of the most heinous offences, the police was under no statutory obligation to necessarily and straightaway arrest an accused person during an investigation as long as he was joining the investigation and cooperating with the same"[151]. The same principle had been reiterated in several previous judgments of the superior judiciary. Moreover, the Lahore High Court[152] held that a police officer cannot arrest an individual in a cognizable offence at his sweet will and he is bound to fulfill that there should be a reasonable complaint, there should be credible information and that there should be reasonable suspicion against the person to be arrested while holding that the "arrest of persons without justification is one of the most serious encroachment upon the liberty of a subject".

Procedure to be followed after the arrest of an accused:

If the police arrests an accused named in an offence, the police officer has to produce him before a Magistrates Court within twenty-four hours of his arrest[153]. In case the arrest is being made by an officer, who is not the officer-in charge of the Police Station within whose jurisdiction the offence had taken place, then the accused has to be produced before the concerned Station House Officer of the Police Station. However, under no circumstances can an individual who has been arrested without a warrant be detained beyond the period of twenty-four hours, without him being produced before the Magistrate having jurisdiction in the matter as provided under Sections 60 and 61 of the Cr.P.C. The only exception to such an instance is when the investigation of a case or the journey time required in producing an accused before the Magistrate cannot be completed within twenty-four hours. Even in such cases, the accused has to be produced before a Magistrate, who has to grant time to the officer, has the custody of an accused, to produce him before the Magistrate, having jurisdiction in the matter, as is provided in Section 167 Cr.P.C.

151. 2014 SCMR 1762; Sarwar and Iftikhar Ahmed v The State
152. 2010 MLD 271 ; Allah Rakhi vs The State, Ali Nawaz Chowhan, J
153. Section 61 Cr.P.C

In cases where the investigation cannot be concluded within twenty-four hours of the arrest of an accused, the officer investigating the case has to seek permission of a Magistrate for the police remand of the accused for a specific period. This period in ordinary criminal cases cannot be beyond a term exceeding fifteen days, as a whole. Surely, while granting physical remand/custody of the accused to the police, the Magistrate has to give cogent reasons in writing for the same[154]. The procedure in this regard has been clearly highlighted in Section 167 Cr.P.C.

Provisions relating to investigation of offences will be discussed in detail later in this report. However, it is pertinent to mention that if an I.O concludes that an individual has committed the offence he has been accused of, he is to submit a challan/police report before the Magistrate having jurisdiction to try the offence or to send the same for trial to the Sessions Court[155]. However, if an I.O concludes that an individual has no nexus, or that there is insufficient evidence to connect him with the offence alleged, then such an officer may release him on his executing a bond, with or without sureties[156]. The said officer may also choose to direct the accused to appear, if and when so required, before a Magistrate empowered to take cognizance of an offence on a police report and to try the accused or to send him for trial before a Sessions Court.

The purpose of discussing the above provisions is to not only outline the powers of the police to detain an individual but to also outline the various constitutional and statutory checks and balances on the authority of the police once they have detained an individual.

Arrests of women:

The procedure for arresting women is laid out in detail in Rule No. 26.18-A of the Police Rules, 1934. According to this provision, all arrests of women shall be carried out by police officers not below the rank of assistant sub-inspector of police or when no such officer can be made available, by a head constable in presence of responsible male relatives and village or town officials[157].

If the offence for which a woman is arrested for is a bailable offence, the woman should not be detained longer than is necessary for the production of bond or sureties[158].

This provision states that no women in police custody shall be lodged even for a night in a police station except in unavoidable circumstances. They shall be placed at once before remand to judicial custody, except where a remand to police custody is necessary[159].

Women remanded to judicial custody shall be immediately transferred to police headquarters or properly equipped sub-divisional female judicial lock-ups. All remands to judicial custody shall be reported immediately to the District Magistrate. If a woman is sent to police custody, the police officer supporting an application for remand to police custody shall be responsible for taking necessary measures for the safe custody of the prisoner. Where women in police custody have to be escorted about for the purpose of investigation, the officer-in-charge of the police party shall not be below the rank of assistant sub-inspector; provided that, when no assistant sub-inspector is posted to the police station concerned, a head constable may be placed in charge of the escort[160].

154. Section 167 (3) CrPC
155. Requirement of submission of police report before the Magistrate laid out in Section 173 Cr.P.C
156. Section 169 Cr.P.C
157. Rule 26.18-A(1) of the Police Rules, 1934
158. Ibid
159. Rule 26.18-A(2) of the Police Rules, 1934
160. Ibid

Report Findings and Perceptions of Justice

Arrests of juveniles:

Procedure and safeguards for arrest of juveniles are provided in the JJSO. According to Section 10(1) of the JJSO, where a child is arrested for commission of an offence, the officer in charge of the police station where the child is detained shall, as soon as possible, inform the parent/guardian of the child and inform him of the time, date and name of the Court before which a child may be produced.

Section 10(2) states that if the juvenile is arrested for a non-bailable offence, he shall be immediately produced before the Court. If arrested for a bailable offence, Section 10(3) provides that the child shall be immediately released by the Court on bail. However, if the Court believes that the release of the juvenile may bring him into association with any criminal or expose him to danger, he shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of children if the parent or guardian of the child is not present. If the parent/guardian of the child is traced out and present, the juvenile shall be immediately released on bail by the Court and into the custody of his parent/guardian.
Furthermore, Sub-sections 5 and 6 of Section 10 of the JJSO provide that any juvenile under the age of fifteen years, if arrested for an offence punishable with imprisonment under 10 years, shall automatically be entitled to bail. Moreover, a juvenile under the age of fifteen will not be detained under any preventive detention laws of Pakistan.

Analysis of data collected pertaining to arrest of accused individuals:

Various questions, in relation to the arrest and detention of accused individuals, were put by our research team to 50 I.Os and 100 UTPs from all across Sindh. Stark differences were noted in some of the responses which underline the different issues faced by the accused individuals at the hands of the state.

Were UTPs informed about their grounds for arrest?

Firstly, I.Os and UTPs were asked whether the UTPs were informed regarding their grounds for arrest. As mentioned earlier, informing an accused individual about his/her grounds for arrest is a fundamental right enshrined in Article 10 of the Constitution. Out of the 50 I.Os interviewed by our team, all of them answered that they did indeed inform the accused of the grounds for their arrest. However, this is in stark contrast to the experience of the UTPs, as out of 100, 91 UTPs stated that the police did not inform them of their grounds for their arrest.

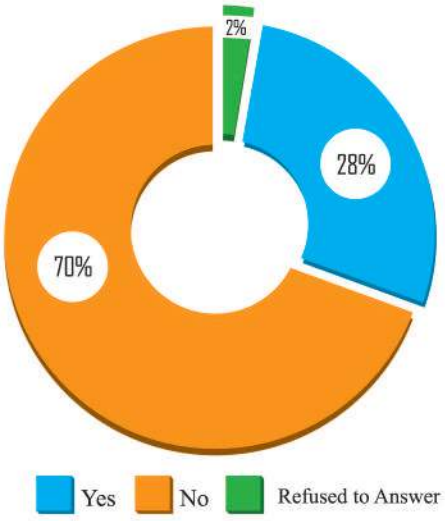
This contrast in their response is a repetitive pattern in our entire survey wherein the Police claims to provide the accused individuals their constitutional and statutory rights while answers provided by UTP's are in direct contradiction to those claims.

Report Findings and Perceptions of Justice

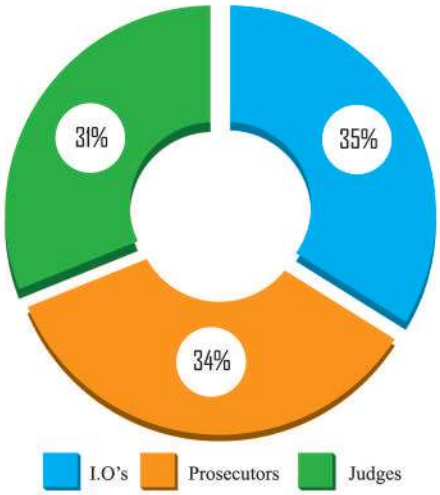
Were UTPs allowed access to a legal practitioner of their choice?

I.Os and UTPs were also asked whether UTPs were allowed access to a legal practitioner of their choice, a fundamental right guaranteed under Article 10 of the Constitution. 48 I.Os answered in the affirmative while only 28 UTPs answered that they were allowed such access. 70 UTPs answered that they were not allowed access to a legal practitioner of their choice.

UTPs response on whether they were allowed access to a legal practioner



Other State Actors response on whether UTPs were allowed access to a legal practitoner



The same question was also put to 50 prosecutors and 50 judges selected from all across Sindh. 47 prosecutors and 43 judges answered that access to legal practitioners was granted to UTPs.

The contradiction in the responses can be explained by the fact that most UTPs engage a counsel of their choice after the period of physical remand and at the stage of bail and/or trial, at which time judges and prosecutors encounter these individuals. Most UTPs do not have access to a lawyer of their choice immediately after their arrest till the conclusion of the police investigation. During that time, UTPs are not able to engage legal counsel leading them to be at the mercy of police officials who routinely inflict

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Even if the answers provided by police officials are completely believed, 32% of police officials admit to not seeking warrants for offences in non-cognizable cases which means that a large number of arrests in such cases are blatantly illegal.

The UTPs were asked if the police demand money at the time of arrest. 84 answered in the affirmative while 16 claimed that the police made no such demand. Out of the individuals who answered yes to this question, only 25 individuals had not paid any amount to the police. The amounts quoted by UTPs who had claimed to have paid such a bribe to the police range from Rs. 10,000 to Rs. 500,000.

torture on the accused for the purpose of extraction of 'evidence' and/or confessions. Use of torture, mainly for the purposes of extraction of confessions and evidence, will be addressed at a later stage of this report.

If the offence is non-cognizable, did the police have a warrant for arrest?

When the I.Os were asked the above question, only 16 answered yes, while 27 answered no. 8 did not answer this question at all. With regards to the UTPs, 33 answered that the police did not have warrants for their arrest and only one individual answered that the police did have a warrant. 66 individuals did not answer this question at all as they were arrested for cognizable offences.

As mentioned earlier in this section, a non-cognizable offence is one in which police requires a warrant from a Magistrate to arrest an individual. A list of such offences is laid out in Schedule II of the Cr.P.C. Despite a statutory obligation on the police to seek such a warrant, it seems that in a vast number of cases the police do not have a warrant to arrest accused individuals in non-cognizable offences which is a flagrant violation of the law.

Even if the answers provided by police officials are completely believed, 32% of police officials admit to not seeking warrants for offences in non-cognizable cases which means that a large number of arrests in such cases are blatantly illegal.

Demand for money at the time of arrest and the use of force by the police:

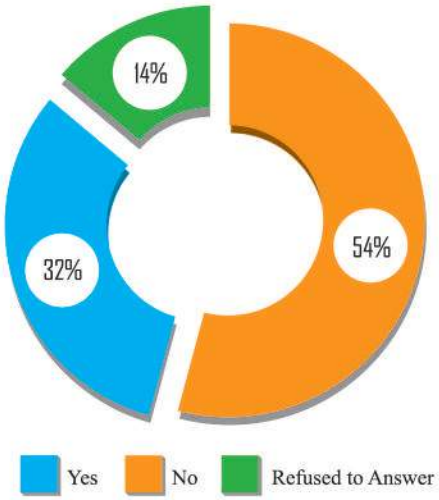
The UTPs were asked if the police demand money at the time of arrest. 84 answered in the affirmative while 16 claimed that the police made no such demand. Out of the individuals who answered yes to this question, only 25 individuals had not paid any amount to the police. The amounts quoted by UTPs who had claimed to have paid such a bribe to the police range from Rs 10,000 to Rs 500,000.

From the time of registration of FIR through the various stages of investigation and imprisonment, the police are known to repeatedly demand money from individuals held under confinement. 84% of UTPs stating that police demand money at the time of arrest indicates that such demands are common practice. Unfortunately, most individuals held by the police are poor and not influential, thus most vulnerable to the corrupt practices of the police.

Report Findings and Perceptions of Justice

Despite such a large percentage of UTPs claiming to have paid a bribe to the police at the time of arrest, 60 answered yes when asked if the police had used any force against them at the time of arrest while only 31 answered in the negative. When the I.Os were asked if force was used against UTPs at the time of arrest, 16 out of 50 answered yes. Interestingly, 7 refused to answer this question at all while 27 stated that they did not use any force at all at the time of arrest.

I.Os response on whether force was used against UTPs at the time of arrest



Out of the police officials who had admitted to using force at the time of arrest, 2 admitted to using verbal force, 1 admitted to using physical force, 5 admitted to using fire shots and 1 stated to have used handcuffs.

Use of Force:

Whereas, when the UTPs were asked what kind of force was used upon them at the time of arrest, various answers came forth. One of the most popular answers was that the police verbally threatened them to charge them under false cases. Other popular answers included "maltreatment when refusing to pay the police", being physically beaten and/or slapped, physical and mental torture and maltreatment.

From the aforementioned data, it is clear that a number of police officials do demand bribery from the accused at the time of arrest. However, despite being paid handsome amounts by the accused at the time of arrest, the police still resort to violence when affecting an arrest. Moreover, 32% of police officials in our survey admit to using force when arresting an individual. This includes physical and mental torture along with threatening to charge the accused with false cases. Although Section 46 Cr.P.C. allows the police to use force when arresting an accused, such force can only be used when an accused forcibly resists his arrest. Moreover, nothing in the Cr.P.C. allows the police to demand bribes, resort to torture or threaten individuals with false cases. Thus it is clear that the police oversteps its legal limits when arresting individuals while continuing its physical and mental abuse of individuals while keeping them detained.

Whereas, when the UTPs were asked what kind of force was used upon them at the time of arrest, various answers came forth. One of the most popular answers was that the police verbally threatened them to charge them under false cases. Other popular answers included "maltreatment when refusing to pay the police", being physically beaten and/or slapped, physical and mental torture and maltreatment.

Report Findings and Perceptions of Justice

Out of the 100 individuals questioned, 82 stated that they had been detained for a period of more than one day. The maximum period stated by a prisoner in our survey was 1.5 months.

However, when the police was asked if they produce an individual in front of the Magistrate within 24 hours of his arrest, all 50 police officials answered in the affirmative.

From a perusal of the answers to these questions, it becomes clear that a vast majority of individuals who are arrested are illegally confined for a number of days before they are produced before the Magistrate. During this period, police officials are known to inflict physical and mental abuse on these detained individuals for the purposes of 'solving' their case. Formal arrests, as shown by our survey, are often affected after the constitutionally prescribed period of 24 hours. Lack of access to legal representation at this juncture for the accused gives the state a free hand to contravene the law for its own ends.

Period of detention and production before a Magistrate:

As stated earlier, Article 10(2) obligates the police to produce an individual within 24 hours of the time of his arrest. Moreover, Section 61 Cr.P.C. also obligates the police to do the same.

The UTPs were asked the period for which they were detained by the police authorities. Most individuals answered above the statutory maximum of one day. Out of the 100 individuals questioned, 82 stated that they had been detained for a period of more than one day. The maximum period stated by a prisoner in our survey was 1.5 months. Moreover, 90 individuals answered in the negative when asked whether they were taken straight into remand. However, when the police was asked if they produce an individual in front of the Magistrate within 24 hours of his arrest, all 50 police officials answered in the affirmative.

Moreover, 25 police officials answered in the negative when asked if the arrested individuals demand to be produced in front of a Magistrate. This corresponds relatively closely with the answers of the UTPs as only 28 of whom stated that they demanded to be produced before a Magistrate after they were arrested. UTPs and I.Os were also asked where they were detained by the police after their arrest. A majority stated that they were detained in the police lock-up thereby complimenting each other's answers.

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Questions pertaining to juvenile and women:

As outlined above, the police are obligated to ensure that all necessary precautions are taken for the safety of female and juvenile detainees if they are taken under police custody. For this purpose, various police stations have separate lock ups for women and juvenile. This is meant to ensure that women and juvenile are not exposed to adult, male offenders so as not to be vulnerable to dangers such as violence, intimidation and sexual harassment/assault.

Female and juvenile UTPs were asked if they were put in separate juvenile and women lockups in police stations. Out of 100 UTPs surveyed, 4 were females; only 1 answered yes while 14 juveniles and women answered no. These responses corroborate the reality in police lock ups as it is common to find juveniles and women detained with adult male offenders in police lockups which make them vulnerable to violence and sexual harassment/offences in an extremely dangerous environment.

Out of the 100 UTPs interviewed, 12 were juveniles. When asked whether they were allowed to inform their families of their arrest/remand, 7 answered that they were not given such permission. This is another contravention of the law, as Section 10(1) of the JJSO obligates the police to inform the guardians/parents of the juveniles who have been arrested along with the time, date and name of the Court before which they will be produced. This unfortunate practice exposes juveniles to the CJS without any recourse as juveniles generally do not have direct access to legal representation and are unfamiliar with the criminal justice process.

II. Faulty Investigations

Introduction:

The term 'investigation' is defined in the Cr.P.C. to include "all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf"[161].

It can be broadly understood as referring to finding out the factual account of the incident and consequently reporting the findings of the investigation to some other authority. Often this includes a recommendation that a specific action should be taken. It involves the collection of all necessary evidence to determine the veracity of the allegations levelled in the information or the complaint upon which an early determination of the probable innocence or guilt can be reached. Consequently, individuals who are probably innocent are screened out and those who are probably guilty are to face the adjudicative part of the criminal process. The Lahore High Court in a case[162] held that "The purpose of the investigation is to enquire into the allegations of offence made against the persons and to find out if the allegations are true or otherwise."

It is also pertinent to note that 'investigation' under the Cr.P.C does not mean investigation by the police only. An offence can be investigated by a Magistrate, by a Justice of the Peace or even by a private person. For example, under Section 202 of Cr.P.C[163], a court, on receipt of a complaint of an offence, may postpone the issue of process to the accused and may direct an investigation to be made by the Justice of the Peace or by a police officer or by a private person. A Court of Session may direct an investigation to be made by any Magistrate or Justice of the Peace to determine the veracity of the complaint[164]. Moreover agencies such as the Federal Investigation Agency ("FIA"), ANF and the National Accountability Bureau ("NAB") also have investigatory powers under the laws regulating them.

However, it is the I.O that plays a dual role of coordinating activities between different agencies and conducting the detective like investigatory work. In this report, we will mainly deal with investigations conducted by I.Os after the registration of a FIR[165]. Despite modern advances in forensic science, police investigations in Pakistan are heavily reliant on torture for the purposes of extraction of confessions and collection of evidence. Due to the archaic methods of evidence collection, heavily reliant on the use of physical force, it is common to find individuals falsely implicated in criminal cases that are exposed to heavy handed tactics used by the police. This section will analyze constitutional and statutory safeguards provided against the use of torture during police investigation. We will also discuss some typical defects in investigations made by the

161. Section 4(1) (l)
162. 1967 PLD Lah 176; Muhammad Nawaz Khan v Noor Muhammad
163. Section 202 of Cr.P.C. - Postponement of issue of process (1) Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, or which has been sent to it under Section 190, sub-section (3), or transferred to it under Section 191 or Section 192, may, if it thinks fit, for reasons to be recorded postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case itself or direct an inquiry or investigation to be made by [any Justice of the Peace or by] a police-officer or by such other person as it thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint. Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of Section 200.
164. Section 202 (2) of Cr.P.C. - A Court of Session may, instead of directing an investigation under the provisions of sub-section (1), direct the investigation to be made by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint.
165. When a cognizable offence, i.e an offence for which no warrant is required to initiate investigations or affect arrests, is reported to the police, FIR is registered under Section 154 of Cr.P.C.

police which contribute towards low level of convictions in the country[166]. Moreover, by relying on primary data we will analyze the reality of investigations being conducted by the police specifically in Sindh.

Police investigation and relevant constitutional and statutory provisions:

The investigation of a case commences immediately after the registration of a FIR, or in the case of non-cognizable offences it commences after due authorization by the concerned Magistrate[167]. If an accused person nominated in the FIR/complaint is arrested, he is to be produced before a Magistrate within a period of twenty four hours[168].

If an investigation cannot be completed within twenty-four hours, the procedure to continue the investigation is laid out in Section 167 Cr.P.C. According to Section 167(2) Cr.P.C., the Magistrate "to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such the Magistrate thinks fit, for a term not exceeding fifteen days in the whole…". Although, this provision is applicable to most criminal offences, certain special laws allow for a longer period of detention[169], thus prolonging the agony of the detained individual. Fortunately, it is commonly observed that Magistrates do not allow the detention for a consecutive period of 15 days. However, if the police contend that the investigation needs to be continued and the detention of the accused is necessary at the police lockup or a police station, the Magistrate can prolong the detention for no more than fifteen days. It is pertinent to mention that the individual arrested cannot file for bail during this period. Therefore, during his detention at the police station the individual has no recourse to seek liberty from the clutches of the police. Section 166 of the PPC[170] prohibits a public servant from disobeying the law, with the intent to cause an injury to another person. The PPC also strictly prohibits the wrongful confinement in order to extract confession that may lead to the detection of an offence or misconduct[171].

166. Conviction rates fall below 10% in Sindh as per Jamal, Asad. Human Rights Commission Of Pakistan, 'Revisiting Police Laws' Introduction, p.1. [2011]. [Online] Available at: http://hrcp-web.org/hrcpweb/wp-content/pdf/ff/19.pdf [Accessed 2 Mar, 2015]
167. Section 156 of Cr.P.C –(1)Any officer incharge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial..
Section 157 of Cr.P.C.-(1)If, from information received or otherwise an officer incharge of a police station has reason to suspect the commission of an offence, which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the Provincial Government may, by general or special order, prescribe in this behalf to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary to take measures for the discovery and arrest of the offender: Provided as follows: (a) Where local investigation dispensed with . When any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer incharge of a police-station need not proceed in person or dispute a subordinate officer to make an investigation on the spot: (b) Where police officer incharge sees no sufficient ground for investigation. If it appears to the officer incharge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case. .
Section 155(2) of Cr.P.C- Investigation into non-cognizable cases. No police-officer shall investigate a non-cognizable case without the order of a Magistrate of first or second class having power to try such case [or send the same for trial to the Court of Session].
168. Section 61 of the Cr.P.C.- Person arrested not to be detained more than twenty four hours- No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.
169. Section 5(4) of the Pakistan Protection Act, 2014 allows for a detention period of ninety days after arrest of the accused
170. Section 166 of PPC- Public servant disobeying law with intent to cause injury to any person. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
171. Section 348 of PPC- Wrongful confinement to extort confession, or compel restoration of property. Whoever, wrongfully confines any person for the purpose of extorting from the person confined or any person interested in the person confined any confession or any information which may lead to a detection of an offence or misconduct, or for the purpose of constraining the person confined or any person interested in the person confined 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 be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

However, it is common that during the period of physical remand, most accused individuals do not have access to legal representation and suffer severe physical and mental abuse at the hands of the police. This is despite the fact that Article 37 (d) of the Constitution imposes the responsibility of providing inexpensive and expeditious justice on the State. The State along with the Bar Councils have failed to establish effective 'duty solicitor-type'[172] schemes in which a state appointed lawyer visits the police station offering free services. As a result, 'confessions' are the most common by-product of the abuse during the period of of remand. It is unfortunate that Pakistan, despite being a signatory to the ICCPR[173] and the UNCAT[174], does not have any statutes which prohibit the use of torture by law enforcement agencies. However, as mentioned earlier in this report, Article 14(2)[175] of the Constitution does specifically prohibit torture for the purpose of extraction of evidence. In a Supreme Court authority[176], Justice Yaqoob Ali observed that Article 14 of the Constitution was ignored. He further observed 'Words are not adequate to express our sense of horror at this outrage. It seems to us a positive affront that these officers should now seek our assistance to evade what we consider an inadequate punishment for their behavior'. The Lahore High Court in the year 1996[177] stated that '…it has been time and again held that dignity of citizens is guaranteed by the Constitution and no citizen can be subjected to torture by the Law Enforcing Agencies charged with the duty to protect citizens. The modern development of criminology has revolutionized the system of treatment of the accused and the old brutal treatment has given place to more humane one. Torture of all kinds is prohibited by law and the persons allegedly involved in crimes have to be treated like human beings and the police who is duty bound to protect citizens cannot be allowed to themselves perpetrate acts of inhuman torture upon persons in their custody. Their primary duty is to detect crime and bring the criminals before the Court of law and not to punish them, themselves'. Not only is torture for the purposes of extraction of evidence prohibited by the Constitution, Pakistan's Evidence Act or what is known as the QSO also places no evidentiary value on confessions extracted by police officials[178]. While such confessions are common and do tend to lead to convictions during trial, the superior judiciary of the country has placed great emphasis on placing little value on such 'extra-judicial confessions'. Only confessions recorded before the Magistrate, during the period of investigation, are recognized by law. Under Section 164 Cr.P.C., such confessions are recorded only during the course of investigation before the commencement of the trial. Before recording such a confession, certain steps are taken by the Magistrate to safeguard the accused[179].

172. A duty solicitor is a lawyer whose services are made available free of cost to those who are suspected of criminal wrongdoing.
173. Pakistan ratified the ICCPR on June 23, 2010
174. Pakistan ratified the UNCAT on June 23, 2010
175. Article 14(2) of the Constitution – No person shall be subjected to torture for the purpose of extracting evidence.
176. 1977 PLD SC 545; Sher Ali and Others vs Sheikh Zahoor Ahmed
177. 1996 PLD Lahore 325; Rana Muhammad Afzal vs Home Secretary, Government of Punjab
178. Article 38 of QSO – Confession to police officer not to be proved. No confession made to a police-officer shall be proved as against a person accused of any offence.
Article 39 of QSO – Ibid
179. Section 364 Cr.P.C. provides the procedure for the recording of confession before a Magistrate.

For instance, the Magistrate is obligated to explain to the person that he is not bound to make a confession and if he does, it may be used as evidence against him. Moreover, no such confession shall be made unless, upon questioning the accused, the Magistrate has reasons to believe that the confession was made voluntarily. Finally, if the Magistrate records a confession, he shall make a signed memorandum at the foot of such record to the following effect: "I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him" [180].

Due to lack of resources and training of the police in forensic science[181], police officials are heavily reliant on the use of torture for recovery of 'evidence' during the investigation stage. In a lot of cases, such evidence is planted upon the accused to implicate him/her in the crime. Independent witnesses are rarely present as witnesses to the recovery of evidence, despite a statutory obligation upon the police to recover such evidence in their presence[182], as 'recovery memos' are generally made in the police station in the absence of any independent witnesses. Insensitivity to the plight of the accused is not only restricted to the police as it is found that the trial courts also do not take a pro-active role in minimizing the impact of the abuse on the accused persons. This results in investigations in which police officials operate with impunity without any regards to the fundamental rights of individuals held under detention. There have been instances, as mentioned above, where action has been

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180. Section 164(3) Cr.P.C. prescribed the precautions to be taken by a Magistrate while recording a confession under this provision
181. No formal training is imparted to the police officials in forensic evidence collection. Moreover, due to lack of resources, the forensic science laboratory is very rarely used by the police officials unless the complainant provides funds for its utilization.
182. Section 103 of Cr.P.C - Search to be made in presence of witness. (1)Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do. (2)The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

66 UTPs replied that force was used against them during their interrogation while 47 replied that they were subjected to "cruel and unusual punishment". Moreover, when 50 judges were asked the same question, 31 answered that they did believe that detained individuals were subjected to cruel and unusual punishment during their physical remand.

taken against police authorities to punish them for the abuse they inflicted upon individuals during the investigation stage. However, due to the lack of access to legal representation during the investigation stage, lack of awareness of their own rights and possible insensitivity or lack of empathy of the trial courts to their plight, individuals detained by the police are naturally vulnerable to these excesses. Such excesses not only include physical beatings but also the lack of access to utilize basic amenities, use of threats of violence against the families of the accused, demands of bribery and threats of false implication in other cases.

An analysis of the primary data collected by LAO will show that despite the aforementioned constitutional and statutory checks on the police, violence and intimidation is invariably a regular feature of police investigations as the police operate with impunity with little or no accountability.

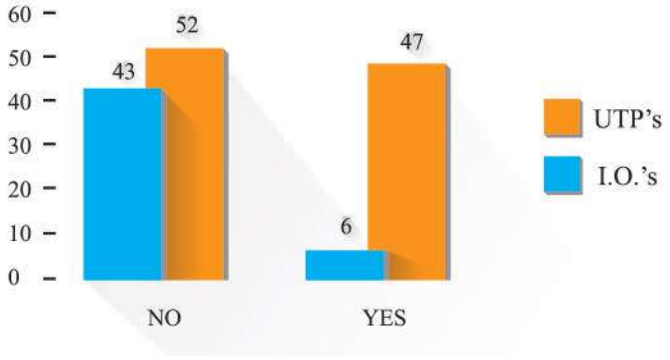
Analysis of our data pertaining to police investigations:

Various questions, in relation to the arrest and detention of accused individuals, were put by our team to I.Os, UTPs and Judges from across Sindh. Stark differences were noted in some of the responses which underline the various issues faced by the accused at the hands of the state.

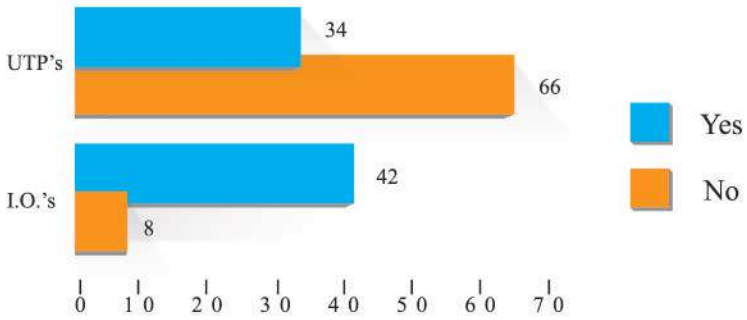
Physical and mental abuse used by the police during physical remand:

The UTPs and the I.O. were asked several questions pertaining to their interrogation. Firstly, the UTPs were asked whether any force was used during their interrogation. Not surprisingly, 66 UTPs replied that force was used against them during their interrogation while 47 replied that they were subjected to "cruel and unusual punishment". Moreover, when 50 judges were asked the same question, 31 answered that they did believe that detained individuals were subjected to cruel and unusual punishment during their physical remand.

Were the UTPs subject to cruel & unusual punishment during interrogation?



Were the UTPs subjected to physical force during interrogation?



Conversely, the I.O.s gave completely contradictory answers to the aforementioned questions. Only 8 answered that they use force during interrogation while 6 replied in the affirmative when asked if they used cruel and unusual punishments during interrogation techniques.

Next, the UTPs were asked whether they submitted any applications for their medical examination before the Magistrate or informed the Magistrate during their remand of their physical abuse. Out of the 100 UTPs who responded to this question, 48 stated that they did not submit any such application or inform the Magistrate of abuse suffered at the hands of police.

Further, the UTPs were asked whether any threats of violence against their families were used against them during police interrogations. Whereas 51 UTPs answered in the affirmative, when the same question was put to the I.O.s, only 3 out of the 50 questioned replied that they used such threats.

It is interesting to note that the responses of the judges and UTPs with regards to the UTPs being at the receiving end of physical abuse from the police corroborate. This indicates that

Further, the UTPs were asked whether any threats of violence against their families were used against them during police interrogations. Whereas 51 UTPs answered in the affirmative, when the same question was put to the I.O.s, only 3 out of the 50 questioned replied that they used such threats.

When UTPs were asked whether they were provided basic amenities during the period of physical remand, 66 answered in the negative whereas only 3 I.Os responded in the negative to this question. The response by the UTPs confirms a widely known fact that individuals detained by the police are not only subjected to physical abuse but are also denied basic amenities such as humane quantities of food, water and access to lavatories.

there was a certain level of dishonesty exhibited by the I.Os while answering te aforementioned questions put forth to them. These answers also confirm that physical and mental abuse is commonplace in the police lockups of Pakistan, particularly in Sindh. As mentioned earlier, police resort to violence, threats and intimidation as a means of investigation. Violence is used for extraction of confessions and consequently for planting mostly false corroboratory evidence on the accused. Furthermore, due to the fear of being further persecuted by the police, the UTPs avoid bringing this abuse to the attention of the Magistrates even though judges are well aware of the conditions suffered by these individuals in police lockups. Such practices are likely to continue in the absence of legal representation at the stage of physical remand combined with the lack of sensitivity shown by the CJS to the plight of detainees and the lack of effective legislation punishing the state functionaries for inflicting torture.

Instruments of restraint used during remand:

Various questions were asked from the UTPs regarding instruments of restraint used against them during the period of physical remand. When asked whether they were placed under bar fetters as a form of restraint or punishment during their physical remand, 37 UTPs answered in the affirmative. In addition they were also asked whether they were constantly placed under hand cuffs after their arrest, 37 UTPs again answered yes.

Provision of basic amenities to UTPs during interrogation:

When UTPs were asked whether they were provided basic amenities during the period of physical remand, 66 answered in the negative whereas only 3 I.O.s responded in the negative to this question. The response by the UTPs confirms a widely known fact that individuals detained by the police are not only subjected to physical abuse but are also denied basic amenities such as humane quantities of food, water and access to lavatories. It is common to find that food provided to these individuals is often stale, in addition, access and the permission to utilize the lavatories, if provided, are found in poor conditions as well. Also, the police officials are known to regularly demand payments in order to provide access to amenities. Such conditions are part and parcel of the interrogation techniques used by the police to 'soften up' the accused in order to extract confessions and help them with their investigation.

Report Findings and Perceptions of Justice

Presence of witnesses during recovery of evidence:

Section 103 Cr.P.C. requires search and seizure of evidence to be done in the presence of two or more 'respectable inhabitants of the locality in which the place to be searched is situated'. However, this provision is frequently violated as no independent witnesses attest to the recovery of any evidence seized. More often than not, this is due to the fact that evidence procured is generally planted upon the accused and 'recovery memos' are generally made in the police station rather than anywhere else.

When the UTPs were asked whether any independent witnesses were present at the time of search and recovery of evidence, 53 answered in the negative while only 7 I.Os answered no to the same question. Furthermore, when UTPs were asked whether documents pertaining to the recovery of evidence were made in their presence and that of witnesses, 96 UTPs replied in the negative, while only 2 out of 50 I.Os answered no to the same question.

The answers provided by the I.O.s continue to show a certain element of fabrication of the truth as they differ vastly from the answers provided by UTPs. If the answers provided by the I.O.s were deemed to be correct, it would indicate that no structural issues pertaining to investigation exist, which is far from the truth. Defective or faulty investigations are one of the prime reasons for the low conviction rate in the country. The answers provided by the UTPs indicate that evidence for the most part is planted on the accused and no independent witnesses corroborate its recovery.

When the UTPs were asked whether any independent witnesses were present at the time of search and recovery of evidence, 53 answered in the negative while only 7 I.Os answered no to the same question. Furthermore, when UTPs were asked whether documents pertaining to the recovery of evidence were made in their presence and that of witnesses, 96 UTPs replied in the negative, while only 2 out of 50 I.Os answered no to the same question.

III. Bail Practices and Bail Bond Values

Introduction:

Bail generally means to "procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court. To set at liberty a person who is arrested or imprisoned, on security being taken for his appearance on a day and a place certain, which security is called "bail," because the party arrested or imprisoned is delivered into the hands of those who bind themselves for his forthcoming, (that is, become bail for his due appearance when required,) in order that he may be safely protected from prison"[183].

When a person is arrested and detained in connection with a criminal offence, he is deprived of his liberty, and the question immediately arises whether his detention is, in the language of Article 4, clause (2)(a)[184], and Article 9 of the Constitution[185], "in accordance with law". The authority to arrest and detain a person accused of a criminal offence, as well as the authority for the continued detention of such person, is a statutory authority; if there is no law authorizing such arrest or detention, the same will be violative of the due process as stipulated in "accordance with law". When the arrest is made "in accordance with law", the question which arises for determination, is whether it is necessary for a person to remain in detention during trial. Secondly, the continued detention during trial also leads to the question of the categories of persons and the circumstances under which bail will be granted finally. The question of "setting of bail" is the determination of those conditions that the accused would have to meet to gain release from custody, pending his trial. This invariably includes the surety amount of "the value of bonds".

The primary question of liberty of a person has to be first addressed and grasped at the ground level before taking up further issues pertaining to bail. The Constitution, Article 10(1) requires that no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest; the Article further guarantees to the person arrested, the right to consult and be defended by a legal practitioner of his choice.

While deciding whether an accused person should be released on bail or not, the courts have to be mindful of striking a balance between the rights of society and individuals. It is plainly clear that the question of release on bail is directly related to the right of liberty guaranteed by Article 9 of the Constitution. In a Supreme Court case[186], Justice Mukhtar Ahmed Junejo held that: "The concept of "bail" emerges from the conflict between the police power to restrict the liberty of a man who is alleged to have committed a crime and the presumption of innocence in favour of the alleged criminal……The law of bails is not a static law but is growing all the time moulding itself with the exigencies of time, as in times of war and crisis it leans in favour of the society and the Government, while in times of peace it leans in favour of the individual and the subject. The main purpose of keeping an undertrial accused in detention is to prevent repetition of the offence with which he is charged or perpetration of some other offence and to secure his attendance at the trial. Such object has to be achieved within the framework of a man's right to liberty……."

183. thelawdictionary.org, What is BAIL, V? Definition of BAIL, V (Black's Law Dictionary). [online] Available at: http://thelawdictionary.org/bail-v/ [Accessed 17 Feb 2015]
184. This provision states that: "no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."
185. This provision states that: "no person shall be deprived of life or liberty save in accordance with law".
186. 1998 PLD SC 1; Hakim Ali Zardari v State

CHAPTER H

Report Findings and Perceptions of Justice

The release of a person on bail serves the same purpose as his detention, namely, it assures that he will be available to face the charges at his trial and receive the judgment of the court. Moreover, granting of bail to an individual also ensures that incarceration of innocent persons is avoided along with enabling an accused to prepare his defence and further collect his evidence. It also safeguards against inflicting of punishment on an individual prior to his conviction.

Unfortunately, despite the fact that the aforementioned provision provides for an automatic ground for bail, if an individual is accused of an offence punishable with less than ten years, it is quite often found that bail is not granted immediately for even the most minor offences while courts are inclined to examine the entire breath of evidence against the accused at this juncture. Resultantly, even if an accused has been implicated in a frivolous case and/or accused of a minor offence, he ends up spending considerable time under detention extending from the time of arrest, to the physical remand and finally his release on bail. Sadly, the mindset remains that of presumption against bail.

On the other hand, recent trends show the superior judiciary to be moving away from the established orthodox approach to bail. In 2005, the Lahore High Court laid down the dictum "A general impression entertained by some quarters that an arrest of a suspect or an accused person is necessary or sine qua non for investigation of a crime is misconceived. A suspect is not to be arrested straightaway upon registration of an F.I.R. or as a matter of course and, unless the situation on the grounds so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegation levelled by the complainant party against such suspect or regarding his involvement in the crime in issue. The law requires an investigating officer to be generally slow in depriving a person of his liberty on the basis unsubstantiated allegations and, thus, insistence by the interest complainant party regarding his immediate arrest should not persuade the investigating officer to abdicate his discretion and jurisdiction in the matter before the whims or wishes of the complainant party"[187]. Later, in 2014, the same view was taken by another bench of the Lahore High Court in the case of Pervaiz Rasheed and others vs. Ex-Officio Justice of Peace, to the effect that "the arrest of a suspect or an accused is not necessary during the course of investigation and the general impression in this regard is misconceived because a person named in the FIR is not to be arrested straight away upon registration of an FIR or as a matter of course unless there is sufficient incriminating evidence regarding culpability of accused. The arrest of the accused is to be deferred till the availability of incriminating evidence in order to satisfy the investigating officer regarding correctness of allegations levelled by the complainant against person named in the crime-report"[188]. Though, both these judgments are exceptions to the presumption enunciated above, yet these are founded on the same line of reasoning which the Indian Supreme Court and the High Courts have recently begun to chart. The Supreme Court of India observed that "it is a matter of common knowledge that a large number of under trials are languishing in jail for a long time even for allegedly committing very minor offences. When conviction rate is admittedly less than 10%, then the police should be slow in arresting the accused.

187. 2005 PLD LHC 470; Khizer Hayat and others versus Inspector General of Police (Punjab), Lahore and others, Iftikhar Hussain Chaudry, C.J., Asif Saeed Khan Khosa and Sheikh Abdul Rashid, JJ
188. 2014 PLD LHC 7019; Pervaiz Rasheed and others versus Ex-Officio Justice of Peace and others

The courts considering the bail application should try to maintain fine balance between the societal interest vis-a-vis personal liberties while adhering to the fundamental principle of criminal jurisprudence that the accused is presumed to be innocent till he is found guilty by the competent court"[189]. While the objectives of trial and thereby of arrest are of paramount importance to society, the grave consequences of pre-detention trial have a negative impact on the accused person since he/she may be presumed to be innocent in the court of law but subjected to physical and psychological deprivations that prison life carries[190]. In Pakistan it remains to be seen whether the dicta laid down by the Lahore High Court will gain momentum thus reducing the cumbersome overcrowding in prisons, or will the judicial fallacies continue to crowd up the prisons compelling the construction of new barracks.

Bailable Offences:

The law in Pakistan bifurcates offences into two categories as they relate to bail. These categories are bailable and non-bailable offences. As stated earlier, offences can be termed as 'bailable' according to the second schedule of the Cr.P.C.[191] Bailable offences are those in which bail is deemed to be an automatic right of the accused and may be classified as the less serious offences though there are exceptions.

According to Section 496 Cr.P.C: "When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer incharge of a police station or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided." From the language of the aforementioned section, it is apparent that it applies to any person who is arrested or detained without warrant by police, or appears, in answer to a process issued by a court[192] or is brought before a court but is not a person accused of a non-bailable offence, that is to say,

i) He is accused of a bailable offence; or
ii) His arrest or detention is in connection with something, which is not an offence, e.g. security proceedings, to prevent him from committing breach of the peace or disturbing public order under Section 107 Cr.P.C.

189. 2010 Supreme Court of India, para 93; Siddharam Satlingappa Mhetre vs State of Maharashtra and Others
190. Witnesslive.in, (2015). Bail: Law, Trends & Judgments. [online] Available at: http://www.witnesslive.in/in-depth/176-bail-law-trends-a-judgments [Accessed 19 Feb 2015].
191. The Second Schedule of the Cr.P.C. lays out all the offences in the PPC and states whether therein: (i) the police can arrest an accused without warrant or not, (ii) whether a warrant or a summon shall ordinarily be issued in the first instance, (iii) whether the offence is bailable or not, (iv) whether it is compoundable or not, (v) the quantum of punishment and (vi) by what court is the offence triable
192. 1966 PLD SC 1003; Muhammad Ayub v Muhammad Yaqub and the State, A.R Cornelius, C.J., S.A. Rahman, Fazle-Akbar, Hamoodur Rahman and Muhammad Yaqub Ali, JJ

The word 'shall' in section 496 is mandatory; if the arrestee is prepared to give bail, he must be released on bail and the court or police officials cannot exercise their discretion to the contrary. As held by the Supreme Court[193], "it is crystal clear that in bailable offences the grant of bail is a right and not favour."

Despite the clear language of section 496 of Cr.P.C. and various judgments of the superior judiciary, it is commonly found in the trial court that bail is frequently denied to individuals who are accused of bailable offences. This is an unfortunate practice that not only contravenes the aforementioned section, but is also in contravention of Article 9 of the Constitution. This has also led to a large number of incarcerated individuals who should otherwise be at liberty as guaranteed by the law.

Non-Bailable Offences:

Any offences not stated to be bailable in the second schedule of the Cr.P.C are automatically deemed to be non-bailable. This means that in offences that are non-bailable, bail is not granted as an automatic right but can still be granted in certain circumstances which will be outlined below.

In the case of non-bailable offences, section 497(1) Cr.P.C.[194] states that an individual may be released on bail, but he shall not be released if there appear to be reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. This provision is commonly known as the 'prohibitory clause'. If an individual has been accused of an offence not punishable by death or imprisonment of ten years or imprisonment for life, then this offence is deemed to fall outside the prohibitory clause. The Superior Courts of Pakistan have repeatedly held that in offences which fall outside the prohibitory clause, grant of bail had to be considered favourably as a rule, and could only be declined in exceptional cases, namely, where the accused was likely to abscond, tamper with prosecution evidence, repeat the offence if released and/or where the accused was a previous convict[195].

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193. 1995 PLD SC 34; Tariq Bashir and 5 others v The State, Mir Hazar Khan Khoso and Muhammad Munir Khan, JJ
194. Section 497 Cr.P.C. states the conditions under which bail may be taken in cases of non-bailable offences
195. 2015 P.Cr.L.J. 224; Muhammad Abid Farooq v The State, Ather Minallah, J

It is clear from the language of the 'prohibitory clause' that an individual, who has been accused of an offence punishable with imprisonment of ten years or life or has been sentenced to death, may be released on bail by the court, if there are no reasonable grounds for believing that he is guilty of the offence he has been accused of.

'Reasonable grounds' is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, 'grounds' being a word of higher import than suspicion. However strong a suspicion may be, it cannot take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or rejection. The reasonableness of the grounds has to be shown by the prosecution by displaying its cards to the court, as it may possess or is expecting to possess as demonstrating evidence available in the case both direct and circumstantial[196]. If such grounds exist tending to connect the accused with the crime, bail shall be refused without the need to go into a deeper appreciation of the merits of those grounds. Similarly, where such reasonable grounds do not exist but the grounds exist for a further investigation or enquiry into the guilt of an accused person, the case will fall under Section 497 (2) Cr.P.C.[197] in which case bail shall not be withheld. As was held in a case[198], bail in such cases is to be allowed to him as of right under this provision if an important prior condition is fulfilled, namely, that the court comes to a definite conclusion on consideration of the entire material that there are no reasonable grounds for believing that the accused has committed a non-bailable offence.

Unfortunately, it is common practice in the trial courts to deny bail in offences which fall outside the prohibitory clause i.e offences which do not attract punishment of ten years or life or a death sentence. This is because bail, despite repeated judgments of the superior courts to the contrary[199], is withheld as a means of punishment to the accused. Evidence is commonly examined in detail at this stage, and bail is withheld in cases in which the probability of the accused being convicted, according to the perception of the court, is quite high. This is despite the fact that in most such cases, the investigation conducted by the accused has been concluded and there is no further need for the accused individual to be detained by the police.

The Supreme Court of Pakistan[200] held that while deciding a bail application, the Court should avoid making observations which can embarrass or prejudice the accused in his defense. However, it is common to observe that judges examine the merits of the case in great detail while deciding bail applications and make observations which can jeopardize the chances of acquittal for an accused at the trial stage. This is particularly fatal if bail is denied by the High Court or the Supreme Court, as trial courts are generally reluctant to award acquittals to individuals in such instances.

196. 1968 PLD SC 349; Abdul Malik v The State, S.A. Rahman, C.J., Hamaodur Rahman and Sajjad Ahmad, JJ
197. Section 497 (2) states that if there are no reasonable grounds for believing that an accused has committed a non-bailable offence, but there are sufficient grounds for further inquiry into the guilt, the accused shall, pending such inquiry, be released on bail.
198. 1985 SCMR 382; Ibrahim v Hayat Gul, Muhammad Afzal Zullah, Nasim Hasan Shah and Abdul Qadir Shaikh, JJ
199. 1968 PLD SC 349; Abdul Malik v The State, S.A. Rahman, C.J., Hamaodur Rahman and Sajjad Ahmad, JJ
200. 1995 SCMR 387; Sikander Karim v The State, Saiduzzmnan Siddiqui and Mukhtur Ahmad Junejo, JJ

Report Findings and Perceptions of Justice

Bail to minors, women and sick persons:

Section 497(1) Cr.P.C also allows that any person under the age of sixteen years, or any individual who is sick or infirm, may be granted bail even though it appears that there are reasonable grounds for believing that he or she has been guilty of an offence punishable with death or imprisonment for life or imprisonment for ten years. It seems, therefore, that the cases in which the accused person is less than 16 years of age or is a sick or infirm person, even though the offence is punishable with death or imprisonment for life or imprisonment for ten years, are on par with ordinary non-bailable cases and the court has a discretion to release or not to release such a person depending upon the facts of each case[201]. In a relatively recent development[202], a special provision for bail has been enacted for women. Similar to juveniles and sick or infirm individuals, a woman may be granted bail, even if she is accused of an offence punishable with death, imprisonment for life or for ten years.

Bail in case of delay in conducting of trial:

Section 497(1) allows an individual to be released on bail if there are delays, due to no fault of his own or his counsel, in conducting of his trial. For instance, if a person accused of any offence not punishable with death has been detained for a period exceeding one year, then he may automatically be granted bail provided that the delay in proceedings against him are not due to his own or his counsel's doing. Moreover, if the offence is punishable with death, then the period of detention after which an individual is entitled to bail in such circumstances is two years.

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201. 1966 PLD SC 658; Abdul Aziz v Bashir Ahmad and The State
202. Enacted by the People's Party led Government in 2011

Pre-arrest Bail:

It is well settled law that the High Court and the Court of Session have power under Section 498, read with Section 497 Cr.P.C., to grant pre-arrest bail. The jurisdiction to grant bail under Section 498 vests concurrently in the High Court and the Court of Session. Ordinarily, the applicant must first approach the Court of Session. The tendency of applications for pre-arrest bail being brought in the High Court has been discouraged repeatedly by the Courts[203].

The granting of pre-arrest bail is considered to be an extraordinary relief given in extraordinary circumstances. In essence, an individual has to prove that the case registered against him is tainted with malafide, and that the accused will suffer humiliation and harassment if arrested in such a case. Therefore, the scope for granting pre-arrest bail is quite narrow, as it is granted only in cases where the malice of the complainant and/or the police is glaringly visible. The scope of granting pre-arrest bail has been reiterated innumerable times by the superior judiciary. For instance the Supreme Court[204] stated that: "Pre-arrest bail may be granted when a case is based on enmity, mala fide, registered for ulterior motive, or where no offence is shown to have been committed on the basis of the record because the object is to protect the innocent persons from humiliation, harassment and disrespect."

If pre-arrest bail is not granted by the Court of Session, the accused individual has the option to consequently file a pre-arrest bail application before the High Court and then finally the Supreme Court. This is obviously contingent on the fact that the accused evades arrest before approaching the said forums.

Under Section 497(5) Cr.P.C., "A High Court or Court of Session and, in the case of a person released by itself, any other court may cause any person who has been released under this section to be arrested and may commit him to custody". Thus, the court which granted the bail, and the High Court and the Court of Session whether or not the bail was granted by it, have power to cancel the bail of an accused person.

Considerations for granting of bail and cancellation of bail are vastly different. Once courts grant bail to an individual, strong and exceptional circumstances would be required to cancel it. To deprive a person, on bail, of his liberty is the most serious step to be taken. Bail can neither be withheld nor cancelled as punishment[205].

Bail Bond Values:

The gloomy episode of bail does not end with the bail order, but enters another facet, that is the amount of bail bonds and sureties decided by the courts, while granting bails.

Bail is generally granted to an accused upon execution of a surety bond. This bond is either provided by the accused himself or any individual willing to take responsibility for his/her presence during the course of the trial. According to Section 498 Cr.P.C., "the amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive…".However, it is unfortunate that the amount of the surety is often fixed at a level which cannot be afforded

203. 1971 PLD SC 174; Nisar Ahmed v The State, Sajjad Ahmad and Wahiduddin Ahmad, JJ
204. 2008 SCMR 980; Alam Chand v Jamil Ahmed and another, Abdul Hameed Dogar, C.J., Ijaz-ul-Hassan Khan and Ch. Ejaz Yousaf, JJ
205. 1995 PLD SC 34; Tariq Bashir and 5 others v The State, Mir Hazar Khan Khoso and Muhammad Munir Khan, JJ

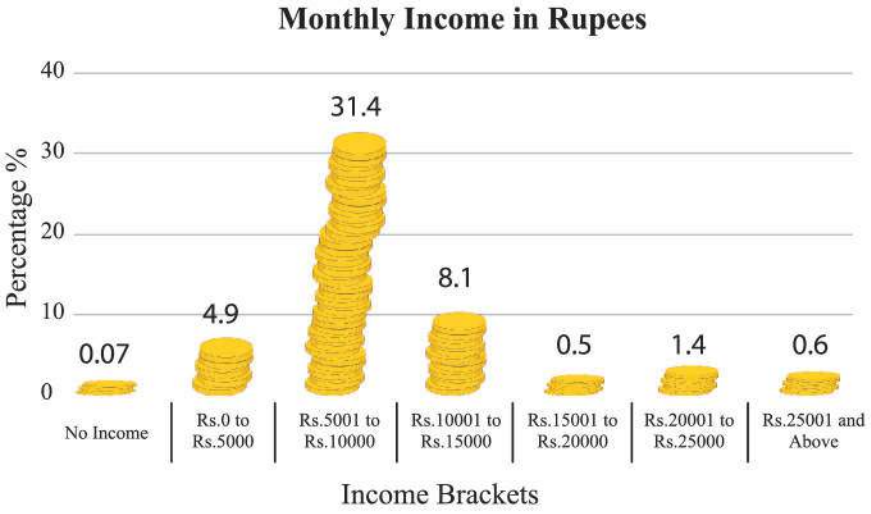
by the individual granted bail. This has led to a situation where there are several thousand people imprisoned across Pakistan only due to the fact that they cannot afford to furnish these sureties and secure their freedom. This conundrum will be examined in detail below.

Through surveys the LAO has analyzed cases of 1,348 individuals who had been granted bail from across the province. These individuals were alleged to have been involved in cognizable and non-cognizable offences which were both serious and minor in nature. This sample of individuals was taken across different occupations which included labourers, fishermen, rickshaw drivers, factory workers, cleaners, drivers, bus conductors, painters, house maids etc. Only 5 claimed to have no occupation, whereas, 643 did not mention any occupation; while the most popular occupation were stated to be labourers which were 384 in total. The survey also took into account the court before which the case was proceeding, the income each individual claimed to have made on a monthly basis prior to arrest, the surety amount fixed at the time of granting of bail, whether that surety amount was reduced by the trial court and finally whether the surety amount fixed was submitted/paid or not.

Interestingly, only 1 of the individuals surveyed stated to have no income while another 715 individuals did not mention any income at all. An additional 489 individuals had incomes between Rs 1,000-10,000 per month while 66 individuals claimed to have incomes between Rs 1,000-5,000 per month. 109 individuals surveyed had incomes between Rs 10,001-15,000 per month. An additional 26 individuals surveyed had monthly incomes between Rs 15,001-25,000 per month. 8 individuals surveyed had an income in the maximum range i.e Rs 25,001- 40,000 per month. No individual had an income above Rs 40,000. Out of the total 1,348 individuals surveyed, in the case of 686 individuals, surety amounts were fixed at Rs 40,000 and above.

According to Section 498 Cr.P.C., "the amount of every bond executed under this Chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive…".However, it is unfortunate that the amount of the surety is often fixed at a level which cannot be afforded by the individual granted bail. This has led to a situation where there are several thousand people imprisoned across Pakistan only due to the fact that they cannot afford to furnish these sureties and secure their freedom.

Report Findings and Perceptions of Justice



It is interesting that almost half of the individuals surveyed, 649 in total, did not submit their surety amount after being granted bail by the trial courts. 690 individuals did submit their sureties whereas it was not confirmed for 9 individuals whether they did submit their surety amount or not.

For individuals who did not submit their surety amounts, these amounts were fixed between the ranges of Rs 15,000 - Rs 500, 000 with the most common surety amount which was not paid was Rs 50,000 which was fixed for 218 individuals. Surety amounts of Rs 40,000 and above were fixed for 344 out of these 649 individuals. It is pertinent to mention that 44 individuals could not furnish their sureties despite a reduction of their sureties by the court. From the 690 individuals who did submit their surety amounts, 27 paid the said amounts after a reduction in their sureties.

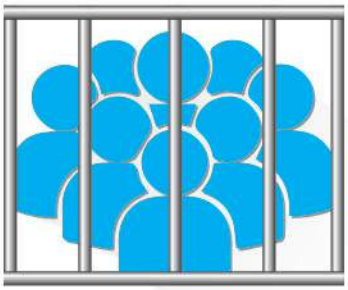
Out of the 649 individuals who did not submit their surety amount, 194 individuals who did not state their occupation, or were unemployed, were unable to pay the surety. A whopping 257 individuals who claimed to be labourers could not furnish their surety amount.

Only 1 individual who stated to have no income could not pay the surety amount fixed by the court. Another 238 who did not mention the income they made, did not pay. Out of the 66 individuals who claimed to have an income between Rs 1,000-5,000, 36 individuals could not pay their surety amount. In the income bracket of Rs 1,000-10,000 per month in which 489 individuals surveyed were included, 316 individuals did not furnish their surety amounts. Out of the total of total 109 individuals who stated to have incomes between Rs.10,001-15,000, 70 individuals did not pay their surety amounts. Out of the 26 individuals who stated that their incomes were in the range of Rs 15,001-25,000, 19 did not submit their surety amounts. Finally out of the total 8 individuals who had incomes between the range of Rs 25,001-40,000, 5 individuals did not furnish their surety amounts.

CHAPTER H

Report Findings and Perceptions of Justice

Comparison between UTPs on bail & those who are unable to furnish surety



649 UTPs who could not furnish their surety continued to languish in prison

690 UTPs were released on bail from the harsh prison environment

What does this data show?

An analysis of the data gathered by us clearly shows that surety amounts set by the courts are disproportionately high in a country where minimum wage is only Rs 12,000[206]. Even in the case of individuals who make a comparatively higher income, surety amounts are set at a level which makes them unaffordable for the common man. Therefore, a large number of individuals are languishing in prisons ,as they are unable to avail the liberty that is granted to them by the courts.

In rare cases, surety amounts are reduced by the courts. Even after reduction of the surety amounts, a lot of individuals are unable to furnish the revised surety, thereby making these reductions inconsequential.

The CJS needs to be more responsive to the realities of the common man. A large number of individuals who are detained behind bars are either without employment or are daily labourers/wagers leading to further overcrowding of an already strained prison system. Most of these individuals make a monthly wage between Rs 1,000-15,000. Therefore, it is completely unjustified that surety amounts, usually set against an individual's assets, are set at amounts which far exceed his income and asset base. This has invariably led to a proliferation of the business of fake/forged surety bonds which are easily accessible in the trial courts.

The CJS needs to be more responsive to the realities of the common man. A large number of individuals who are detained behind bars are either without employment or are daily labourers/wagers leading to further overcrowding of an already strained prison system. Most of these individuals make a monthly wage between Rs 1,000-15,000.

206. The News,. 'Minimum Wage Increased To Rs 12,000'. 2014. [Online]; Available at: http://www.thenews.com.pk/Todays-News-4-257226-Minimum-wage-increased-to-Rs12,000 [Accessed 17 Mar. 2015]

IV. Prosecutorial Expertise & Powers

Law officers and their functions:

Under the Constitution the highest law officer, at the federal level is the Attorney General of Pakistan, who under Article 100, is appointed by the President, advises the Federal Government upon all the legal matters and performs such legal functions as may be referred to or assigned to him by the Federal Government. The Attorney General, thus holds the right of audience in all courts and tribunals in Pakistan in the performance of such duties. At the provincial level, there is an Advocate General in each province, who, under Article 140, is appointed by the Governor, serves during the pleasure of the Governor, advises the Provincial Government upon such legal matters and performs such other legal functions as may be referred or assigned to him.

Under section 492 of the Cr.P.C., the Provincial Government may appoint generally or for any class of cases in any local area or more public prosecutors. By its sub-section (2), which was enacted in 2001, the officer in charge of prosecution in a district may in the absence of a public prosecutor, appoint any other person as public prosecutor for the purpose of any case.

Under section 493 Cr.P.C., the public prosecutor can appear before any court in any case of which he has charge, without any written authority. If a private person has engaged a private counsel to prosecute any person in any such case, that is, any case of which the public prosecutor has charge, the public prosecutor shall conduct the prosecution and the private counsel shall act in that case under the direction of the public prosecutor.

Under section 494 Cr.P.C., the public prosecutor has the power, with the consent of the court, before the final judgment, to withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is being tried. The effect of such withdrawal is that if the withdrawal is before the charge has been framed, the accused shall stand discharged and if the withdrawal is after the framing of the charge, the accused shall be acquitted.

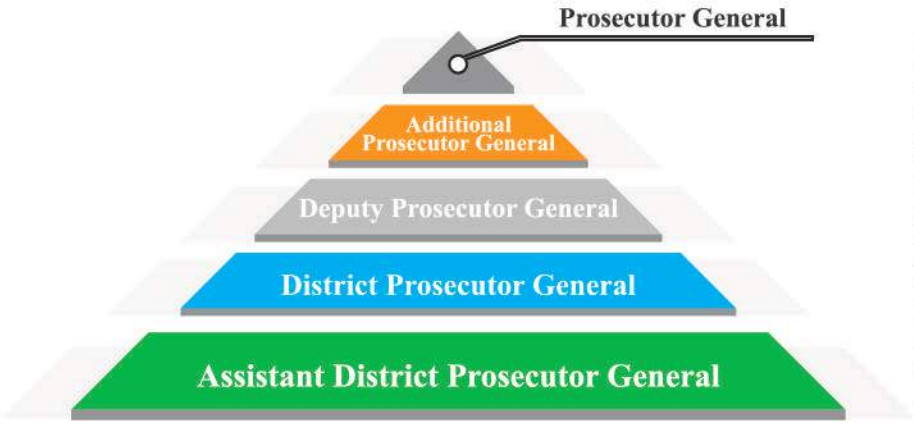
The Sindh Prosecution Department

Each Province has now established a Criminal Prosecution Service with a view to having as, for example, the preamble to the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act, 2006, says, "an independent, effective and efficient service for the prosecution of criminal cases, to ensure prosecutorial independence, for better coordination in the Criminal Justice System". Similarly, the Sindh Government has enacted the Prosecution Act. The Act has allowed for the establishment of the Sindh Criminal Prosecution Service which consists of the Prosecutor General, Additional Prosecutors General, Deputy Prosecutors General, District Public Prosecutors and Assistant District Public Prosecutors.

CHAPTER H

Report Findings and Perceptions of Justice

Hierarchy within the Prosecution Department



The general superintendence of the Service vests in the Provincial Government, and the administration of the Service vests in the Prosecutor General, who is, as Section 6 of the Prosecution Act provides, removable from service by the Provincial Government on the grounds of misconduct or physical infirmity. The Prosecutor General can represent the Government in all the courts.

Powers and functions of prosecutors under the Prosecution Act:

Historically, the prosecution service in different provinces as well as Sindh have throughout remained under the Home Department and their service was regulated by the police from which the prosecutors and the deputy public prosecutor were drawn from the rank of deputy superintendents of police and inspectors. No police officers below the rank of a sub-inspector was authorized to act as prosecutor in any case[207].

Between 1985 to September, 2001 the prosecution services were transferred from the administrative control of the Police Department and were placed under the Law Department. From 2001, the restructuring of the police department through the Police Order 2002 and the promulgation of the Prosecution Act changed the landscape of the police system and equally that of the prosecution agency. For the first time in the history of Pakistan, the prosecution service began to come closer to the minimum standards and the international guidelines of the prosecutorial services. Article 2 of the ICCPR[208] requires the prosecution service in any criminal jurisdiction to be viewed and assessed through the kaleidoscope of human rights. Implementation of such international guidelines was observed in the powers conferred on the Prosecutor General to issue general guidelines to the prosecutors or officers responsible for investigation for effective and efficient prosecution. In furtherance to this power, disciplinary action against any public servant working in connection with the investigation or prosecution for any act committed by, which was prejudicial to the prosecution could be taken up on the recommendation of the Prosecution General or the Deputy Prosecutor General. Besides this a prosecutor was authorized to call for a report within a specified time from any officer by the Law Enforcement Agencies in relation with the investigation. Additionally, he could also recall the record of any other document from any other Government Department or Agency as was necessary for the purposes of the prosecution.

207. The Province of Sindh As a Case Study on the Prosecution, Justice (Retd.) Nasir Aslam Zahid and Professor Akmal Wasim, Hamdard University; Article 2 AHRC, Hong Kong. [Online] Available at: http://www.article2.org/mainfile.php/0704/333/ [Accessed 2 Mar, 2015]
208. Ratified by Pakistan on 23 June, 2010

A qualified prosecutor could be deputed for conducting prosecution before the Supreme Court, High Court or Federal Shariat Court by the powers conferred on the Advocate General, the Prosecutor General and the Additional Prosecutor General. The Prosecutor General was also authorized to keep a liaison with the office of the Attorney General and the Advocate General with respect to or in relation to the criminal matters pending in the Courts.

Under Section 9 of the Prosecution Act, all prosecutions are to be conducted by the prosecutors on behalf of the Government. At the district level, the head of prosecution agency is the District Public Prosecutor, who is to distribute work within the local courts of his district among the prosecutors[209].

In 2010, the Ordinance of 2006 was repealed and was replaced by the Prosecution Act. The new law took away the powers of the prosecutor provided in the repealed section 10 and 11 of the Ordinance 2006. The remaining contents of the repealed law were however, adopted in the Act. Thus, despite the Prosecution Act providing for the substantial provisions conferring procedural powers upon the prosecutors, it did away with the substantive provisions through which proper and efficient prosecutorial scrutiny of the investigations could be implemented. This left little space for the faulty and inadequate investigations which, inter alia, lead to a dismally low conviction rate of less than 10% of the total accused persons brought up for trial[210].

The most important power of the prosecutor under the SCPS Act is outlined under section 9, sub-sections (4) and (5). Under these provisions, a police report under section 173 of the CrPC whether it recommends the prosecution of the person accused, or cancellation of a FIR or the discharge of an accused, shall be submitted to the court through the public prosecutor, who may return it to the I.O for the removal of any defect, or if it is fit for submission, to file it in the competent court. On receipt of an interim/incomplete report by the I.O. , the prosecutor shall "examine the reasons assigned for the delay in the completion of investigation and if he considers the reasons compelling, request the Court for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial"[211]. Moreover, if the reasons assigned for the delay are not compelling, the prosecutor can request the court for the commencement of the trial on the basis of the evidence available on record.

It is pertinent to mention that the prosecutor is obligated by duty to keep an independent file of all cases prescribed to him. Additionally, a prosecutor, working under the supervision of the District Public Prosecutor, is required to keep the concerned District Public Prosecutor informed about the progress of all criminal cases under his charge This ensures accountability of all prosecutors at the district level who are conducting several trials on a daily basis.

209. Section 9(2) of the Prosecution Act
210. Jamal, Asad. Human Rights Commission Of Pakistan, 'Revisiting Police Laws' Introduction, p.6. [2011]. [Online] Available at: http://hrcp-web.org/hrcpweb/wp-content/pdf/ff/19.pdf [Accessed on 2 Mar, 2015]
211. Section 9(5) of the Prosecution Act

CHAPTER H

Report Findings and Perceptions of Justice

The police also have certain duties to fulfill under the Prosecution Act. Under section 10 of the Act, the police are obligated to immediately report to the District Public Prosecutor, the registration of each criminal case by sending a copy of the FIR. Moreover, the police is also obligated to submit its report pertaining to the investigation under section 173 Cr.P.C. to the prosecutor within the statutory prescribed time. If such an investigation cannot be completed on time, the police are obligated to record in writing the reasons for not doing so. The police are also obligated to remove any defects the prosecutor point out in the report under section 173 Cr.P.C within the time prescribed by the prosecutor.

The powers prescribed to the prosecutor under the Prosecution Act, specifically in relation to the scrutiny of the police report under section 173 Cr.P.C., are quite vast in nature. It gives the prosecutor a kind of supervisory role over the police. However, it is unfortunate that public prosecutors do not exercise their powers to their full extent. It is a common sight to see the police submitting incomplete investigation reports while not investigating the offence within the prescribed time. Moreover, the police frequently submit reports in frivolous cases, with no substantial evidence collected, in which accused individuals go through a long, protracted trial. The public prosecutors, who are burdened with an enormous case load, generally act as a post office, whereby with little or no scrutiny they submit the police report to the courts for the commencement of the trial.

The LAO took a survey of 50 prosecutors asking them several questions pertaining to the trial. The findings of this survey are outlined below.

Survey of Public Prosecutors and its findings:

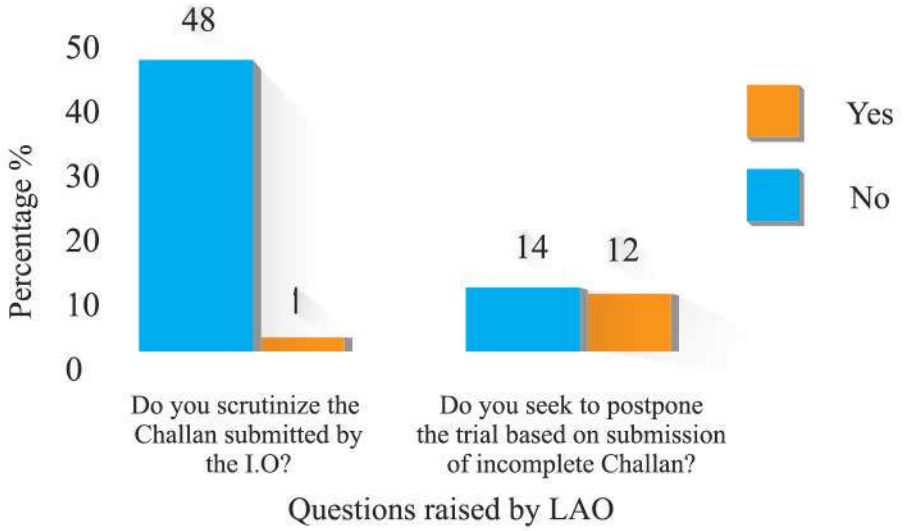
A survey of 50 public prosecutors was conducted from all across Sindh. Various questions pertaining to the trial, specifically relating to their own powers/duties were put to them. Some of the questions asked and the respective responses are outlined below.

Scrutiny of the report under section 173 Cr.P.C:

The prosecutors were asked whether they scrutinize the report submitted by the police under section 173 Cr.P.C as required by the Prosecution Act. 48 prosecutors responded that they did scrutinize the said report whereas only 1 responded that he did not and 1 refused to answer. While such a response is encouraging, it fails to explain the quality of the reports submitted by the police before the trial courts. In many instances, incomplete reports are submitted by the police well beyond the time limit of two weeks set out by the Cr.P.C. Insofar, as explained above, many individuals are implicated in frivolous litigation proceeding based on little or no evidence collected by the police. Given the powers provided to prosecutors under the Prosecution Act, public prosecutors have a responsibility on behalf of the state to ensure that investigations conducted by the police are complete, thorough and any defects in the report submitted by the police should be removed before the investigation is finalized.

The prosecutors were asked to point out the standard defects in reports submitted by the police before the trial courts. Surprisingly, almost half of the prosecutors refused to answer this question at all. The remaining prosecutors pointed out various defects in the police reports, which include the police not attaching the memo of inspection and arrest, non-recovery of case property along with other technical defects. The majority of the prosecutors agreed that the lack of police papers and incorrect under sections framed were the major defects.

View of Prosecutors on scrutinizing the Challan & the postponement of trial where an incomplete Challan is submitted



Standard defects found in police reports submitted under Section 173:

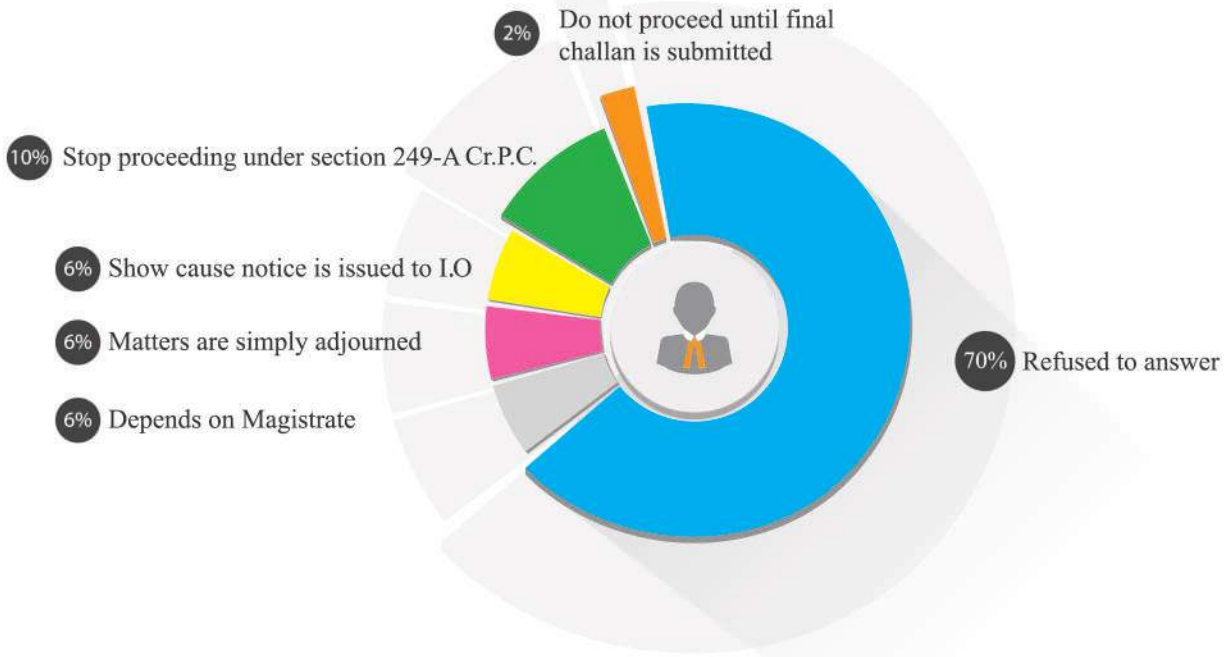
The prosecutors were asked to point out the standard defects in reports submitted by the police before the trial courts. Surprisingly, almost half of the prosecutors refused to answer this question at all. The remaining prosecutors pointed out various defects in the police reports, which include the police not attaching the memo of inspection and arrest, non-recovery of case property along with other technical defects. The majority of the prosecutors agreed that the lack of police papers and incorrect under sections framed were the major defects.

Questions regarding submission of an incomplete report under section 173 Cr.P.C:

As stated above, the Prosecution Act empowers prosecutors to examine the reasons for the police submitting an interim report. The prosecutors can either seek permission from the court for a delay in the commencement of the trial or request the court for commencement of the trial.

During our survey, when prosecutors were asked the reasons for submission of interim reports by the police, 17 refused to answer this question at all. Most prosecutors who did give reasons, stated that the police did not complete their investigation

How do Prosecutors proceed where the reason to postpone trial do not seem compelling?



due to which it submitted an interim report before the trial court.

Consequently, the prosecutors were asked whether they seek to postpone the trial on the basis of an interim report. 24 individuals refused to answer this question. Out of the remaining 26 prosecutors, 12 stated that they did not seek to postpone the trial whereas 14 stated that they did seek to postpone the trial based on an interim report. While it is disappointing to note that a large number of prosecutors refused to answer the questions put forth to them, it is also discouraging to note that a number of prosecutors do not seek to exercise their powers fully and seek to commence the trial based on interim reports.

As stated earlier, prosecutors have the power to compel the police to complete their investigation within a given period so that the findings of the investigation, completed and free of defects, can be relied upon by them during the trial. Unfortunately, a large number of trials commence without the investigation being completed. Resultantly, prosecutors rely upon defective and incomplete investigations which hamper their own performance in the court room.

Report Findings and Perceptions of Justice

During our survey, prosecutors were asked about their average case load. The range given in response was between 20-300 cases. It was most commonly found that prosecutors managed approximately an average of 100 cases daily.

When asked how they managed their daily case load, 19 out of 50 prosecutors refused to answer this question. Out of the remaining who did answer the question, a large number of prosecutors answered that they prepared their cases during courts hours, on the same day the cases were fixed.

Questions pertaining to case load of prosecutors:

During our survey, prosecutors were asked about their average case load. The range given in response was between 20-300 cases. It was most commonly found that prosecutors managed approximately an average of 100 cases daily. When asked how they managed their daily case load, 19 out of 50 prosecutors refused to answer this question. Out of the remaining who did answer the question, a large number of prosecutors answered that they prepared their cases during courts hours, on the same day the cases were fixed.

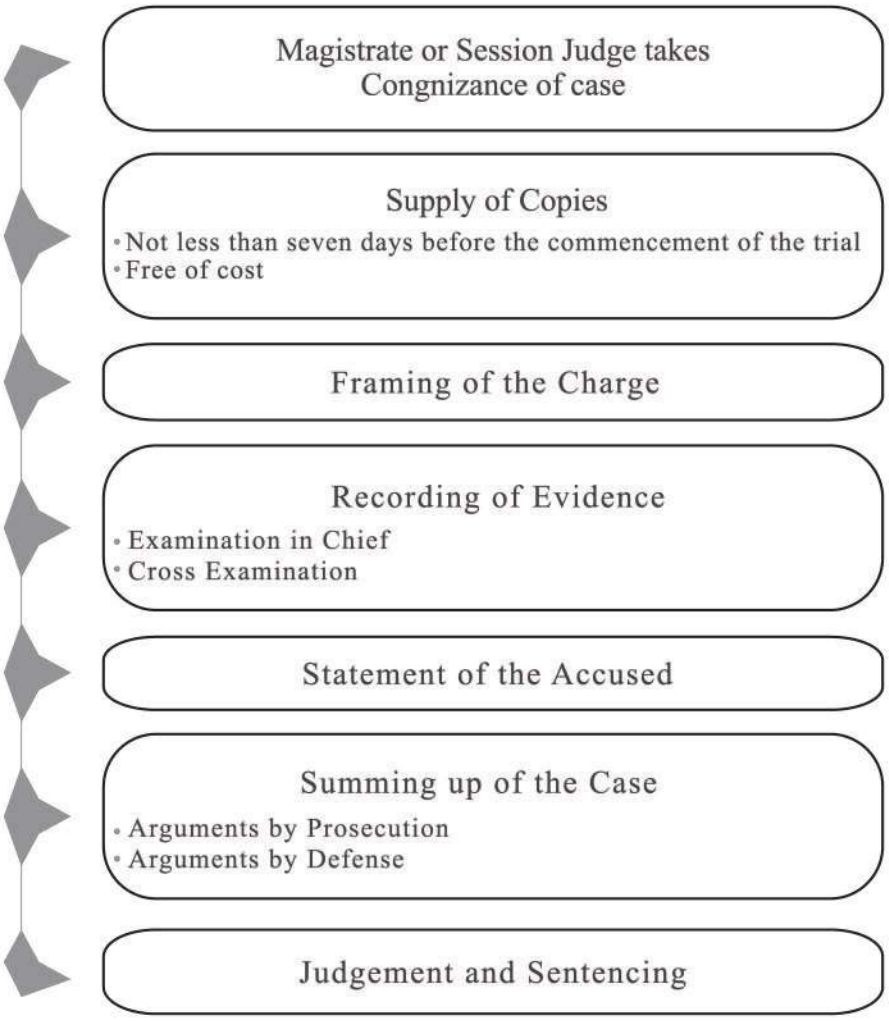
These answers clearly indicate the extent to which prosecutors are overburdened with work on a daily basis. This results in lack of preparation in each case that is fixed before the trial courts and little time to fulfill their duties as required under the Prosecution Act. Moreover, due to lack of resources along with the heavy burden of work, prosecutors are unable to perform their functions effectively leading to situations where quality advocacy is rarely provided by the state. Unless their work load is decreased, their resources are increased and prosecutors are adequately trained, public prosecutors will remain unable to perform their duties and exercise their powers diligently and effectively.

V. Issues At trial

Introduction:

A 'trial' under the Cr.P.C. comprises of all stages including the imposition of the sentence. The provisions prescribing the conditions for the commencement of proceedings for summary trials and regular trials[212] are outlined in Part VI of the Cr.P.C under sections 190 to 352. Additionally, sections 353 to 403 of Cr.P.C[213] govern the procedures relating to the mode of taking evidence, the mode of delivering the judgment, the provisions relating to the imposition of sentences and the rule of double jeopardy.

Stages of trial in CJS



212. Chapter XV to XXIV, Part VI of Cr.P.C
213. Chapter XXV to XXX of the Cr.P.C

Report Findings and Perceptions of Justice

CHAPTER H

The objective of the summary procedure is the speedy disposal of cases concerning offences of comparatively lesser gravity. Summary trial should be restricted to simple cases and should not be resorted to in complicated cases involving heinous or serious offences.

Summary trials:

The Cr.P.C. provides for:

(1) Summary trials; and

(2) Regular trials

The Provincial Government holds the authority to confer on any bench of Magistrates the power to try summarily all or any of the offences mentioned in that section[214].

The objective of the summary procedure[215] is the speedy disposal of cases concerning offences of comparatively lesser gravity. Summary trial should be restricted to simple cases and should not be resorted to in complicated cases involving heinous or serious offences.

Even where a Magistrate exercises the initial discretion to try a case summarily, he may find that as the case progresses, it should not be tried as such. He can[216] then resort to the regular procedure[217] provided by Chapter XX[218].

Procedure in a summary trial:

The procedure applicable in summary trials is the same as is provided in Chapter XX for regular trials by the Magistrate Courts subject to the following exceptions: -

(1) No sentence of imprisonment exceeding three months can be passed in a summary case[219];

(2) Where no appeal lies, the evidence of the witnesses does need not to be recorded and a formal charge is not required to be framed as it will be sufficient if the summary court enters the particulars stipulated under section 263 of Cr.P.C.[220];

214. Section 261 of Cr.P.C; Power to invest Bench of Magistrates invested with less power: "The Provincial Government may [on the recommendation of the High Court]to confer on any Bench of Magistrate invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences: (a) offences against the Pakistan Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, [337-A (i), 337-L (2), 337-H (2), 341, 352, 426, 447, and 504; (b) offences against Municipal Acts, and the conservancy clauses of Police Acts which are punishable only with fine or with imprisonment for a term not exceeding one month with or without fine: (c) abetment of any of the foregoing offences: (d) an attempt to commit any of the foregoing offences, when such attempt is an offence."
215. Chapter XXII of Cr.P.C
216. Section 260 of Cr.P.C; Power to try summarily: "(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to-hear the case in manner provided by this code."
217. Provided under sections 241 to 247 and 265-A to 265-H of Cr.P.C
218. Chapter XX of the Cr.P.C. is titled as "Of the Trial of Cases by Magistrates"
219. Section 262 of Cr.P.C; Procedure [prescribed in Chapter XX] applicable: (2) Limit of imprisonment: "No sentence of Imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."
220. Section 263 of Cr.P.C; Record in cases where there is no appeal: "In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Provincial Government may direct the following particulars: (a) the serial number, (b) the date of the commission of the offence; (c) the date of the report or complaint; (d) the name of the complainant (if any); (e) the name. parentage and residence of the accused; (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e) clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed. (g) the plea of the accused and his examination (if any), (h) the finding, and, in the case of a conviction, a brief statement of the reason therefor, (i) the sentence or other final order, and (j) the date on which the proceedings terminated.

(3) In appealable cases the substance of the evidence, the particulars stipulated under section 264 of Cr.P.C and the judgment of the case must be recorded before the passing of a sentence[221].

Procedure in a regular trial;

The different stages of a criminal trial are explained below.

(1) Supplying of statements and documents to the accused:

Once a Magistrate or Sessions Judge takes cognizance of a case the accused, before the commencement, of the trial shall be supplied free of cost in not less than seven days with copies[222] of; the statements made by all the witnesses recorded under sections 161[223] and 164[224] of Cr.P.C., the FIR, the Police Report/ Challan and the inspection note recorded by the I.O on his first visit to the place of incident. However, it has been observed that in cases where the proceedings against the absconding co-accused are underway, the supply of copies may be delayed for a month[225].

The only exception provided is that if any part of a statement recorded under Section 161 of Cr.P.C. is such that the disclosure of the statement to the accused would be inexpedient in the public interest, then such part will not be provided to the accused[226].

Once a Magistrate or Sessions Judge takes cognizance of a case the accused, before the commencement, of the trial shall be supplied free of cost in not less than seven days with copies of; the statements made by all the witnesses recorded under sections 161 and 164 of Cr.P.C., the FIR, the Police Report/ Challan and the inspection note recorded by the I.O on his first visit to the place of incident.

221. Section 264 of Cr.P.C; Record in appealable cases: In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case."
222. Section 241-A of Cr. P.C; Supply of statements and documents to the accused: "(1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of all witnesses recorded under sections 161 and 164 and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial; Provided that if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest such part of the statement shall be excluded from copy of the statement furnished to the accused."
223. Examination of witnesses by the police is done as per the procedure outlined in Section 161 of Cr.P.C,; Examination of witnesses by police: "(1) Any police-officer making an investigation under this Chapter or any police-officer not below such rank as the Provincial Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case. (2) Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. (3) The police-officer may reduce into writing any statement made to him in the course of an examination, under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records."
224. Statements of witnesses and/or accused along with confession of the accused are recorded under Section 164 Cr.P.C; Power to record statements and confessions. "(1) Any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf by the Provincial Government may, if he is not a police-officer, record any statement or confession made to him in the course of an investigation under this Chapter or at any time afterwards before the commencement of the inquiry or trial. [(1A) Any such statement may be recorded by such Magistrate in the presence of the accused, and the accused given an opportunity of cross-examining the witness making the statement.] (2) Such statement shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and such statements or confessions shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried. (3) A Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him and no Magistrate shall record any such confession unless, upon questioning the person making, it, he has reasons to believe that it was made voluntarily: and, when he records any confession, he shall make a memorandum at the foot of such record to the following effect: 'I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and. I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed} A.B., Magistrate'."
225. Observations provided by the LAO Litigation Team Leader on 28th March, 2015
226. Section 241-A of Cr. P.C; Ibid

If the case is tried by the Magistrate Court, the relevant provision for the supplying of statements and documents to the accused is under section 241-A[227] of Cr.P.C. For the Court of Session, copies of statements and documents are to be provided under Section 265-C[228] of Cr.P.C.

(2) Framing of the charge and plea of guilt

After the perusal of the police report or the complaint along with all the documents and statements filed by the prosecution, if the court is of the opinion that there is ground for proceeding with the trial of the accused then it shall frame the charge against the accused in writing[229].

After the charge is framed against the accused, he shall be asked by the Court whether he admits to committing the offence with which he is charged that is, the accused is asked whether he pleads guilty or not guilty to which the accused has to reply accordingly. In the Magistrate Court, the plea of the accused is taken under section 242[230] Cr.P.C. whereas, in the Court of Session, the plea from an accused is taken under section 265-E (1)[231] Cr.P.C.

If the accused admits that he has committed the offence with which he is charged, his admission shall be recorded as closely as possible to the words used by him; and, if he shows no sufficient cause as to why he should not be convicted, the Magistrate may convict him accordingly. Section 243[232] Cr.P.C states the procedure to be followed when an accused pleads guilty to an offence in the Magistrate Court and section 265-E (2)[233] Cr.P.C. lays out the same for the Court of Session.

There is wisdom behind the use of the word 'may' and not 'shall' in the aforementioned provisions because the facts and circumstances differ from case to case, and keeping in view the circumstances of the case, the court may convict on a plea of guilt or may call for the prosecution evidence[234].

227. Section 241-A of Cr. P.C; Ibid
228. Chapter XXII-A "Trials Before High Courts and Courts of Session"; Section 265-C of Cr.P.C; Supply of statements and documents to accused: "(1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely: (a) the first information report; (b) the police report; (c) the statements of all witnesses recorded under sections 161 and 164, and (d) the inspection note recorded by an investigating officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any: Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused…."
229. Such a charge is to be framed in accordance with the requirements of section 221, Chapter XIX of the Cr.P.C; Charge to state offence. "(1) Every charge under this Code shall state the offence with which the accused is charged. (2) Specific name of offence; sufficient description. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only. (3) How stated where offence has no specific name. If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. (5) What implied in charge. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particulars case. (6) Language of charge. The charge shall be written either in English or in the language of the Court. (7) Previous conviction when to be set out. If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it any time before sentence is passed."
230. Section 242 of Cr.P.C; Charge to be framed: "When the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged."
231. Section 265-E of Cr.P.C; Plea: "(1) The charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make."
232. Section 243 of Cr.P.C; Conviction on admission of truth of accusation: "If the accused admits that he has committed the offence [with which he is charged] his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly."
233. Section 265-E of Cr.P.C; "(2) If the accused pleads guilty the Court shall record the plea, and may in its discretion convict him thereon
234. As cited in the 2000 P.Cr.L.J. 837 case of; Tariq Mehmood v The State; before Mian Shakirullah Jan and Talat Qayum Qureshi, JJ

This dicta was cited from the judgment by the High Court of Peshawar in Habibur Rehman v The State[235] where it was held that: "....where the charge is of an offence carrying capital punishment of death or transportation of life, the Court is required to examine the prosecution evidence even if the guilt is admitted by the accused in response to a charge, as discussed 'in the case of Loung v The State 1976 P.Cr.L.J. 204."

(3) Recording of evidence, cross-examination and summing up the case.

If the accused pleads not guilty, or if the trial judge does not convict despite an admission of guilt by the accused, the Court shall proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution including recording of the evidence given by witnesses of the prosecution. The accused will consequently be given the opportunity to cross-examine the witnesses of the prosecution after which the prosecution will close its evidence. The procedure is laid down under section 244[236] for the Magistrates and under section 265-F(1) to section 265-F (3)[237] for the Court of Session.

Following this, if the accused says that he means to adduce evidence, the Magistrate under section 244[238] or the Court of Sessions under section 265-F(4)[239] shall call on the accused to enter on his defense and produce evidence. After the defense witnesses produce their evidence before the Court, the prosecution will be given the opportunity to cross-examine these witnesses. The defense will subsequently close its evidence.

This dicta was cited from the judgment by the High Court of Peshawar in Habibur Rehman v The State where it was held that: "....where the charge is of an offence carrying capital punishment of death or transportation of life, the Court is required to examine the prosecution evidence even if the guilt is admitted by the accused in response to a charge, as discussed 'in the case of Loung v The State 1976 P.Cr.L.J. 204."

235. 1997 P.Cr.L.J. 1930; before Mian Muhammad Ajmal and Shah Jehan Khan Yousufzai, JJ
236. The procedure laid down for cases triable by Magistrates as per Section 244 of Cr.P.C; Procedure when no such admission is made: "(1) If the Magistrate does not convict the accused under the preceding section or if the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. Provided that the Magistrate shall not be bound to hear any person as a complainant in any case in which the complaint has been made by a Court. [(2) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue a summons to any witness directing him to attend or to produce any document or other thing.] (3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court: [Provided that it shall not be necessary for the accused to deposit any such expenses in Court in case where he is charged with an offence punishable with imprisonment exceeding six months.]"
237. The procedure laid down for cases triable by the Court of Sessions as per Section 265-F of Cr.P.C; Evidence for prosecution. "(l) If the accused does not plead guilty or the Court in its discretion does not convict him on his plea, the Court shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution: Provided that the Court shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court. (2) The Court shall ascertain from the public prosecutor or, as the case may be, form the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it. (3) The Court may refuse to summon any such witness, if it is of opinion that such witness is being called for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by the Court in writing."
238. Section 244 of Cr.P.C; Ibid
239. Procedure for cases triable by Court of Sessions as laid down under Section 265-F of Cr.P.C; "(4) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence. (5) If the accused puts in any written statement, the Court shall file it with the record. (6) If the accused, or any one of several accused, says that he means to adduce evidence, the Court shall call on the accused to enter on his defence and produce his evidence. (7) If the accused or any one or several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of justice such ground shall be recorded by the Court in writing."

Report Findings and Perceptions of Justice

Section 366 of Cr.P.C. states that the judgment in every trial in any criminal court shall be pronounced in open court either immediately after the conclusion of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. While delivering the judgment, the accused shall, if in custody, be brought up, or if not in custody, be required by the Court to attend and hear the judgment delivered unless during his trial his appearance has been dispensed by the Court and the sentence is one of fine or the accused is acquitted .

In a case where the accused does not adduce evidence in his defense, the Court shall, on the close of the prosecution case; call upon the prosecutor to sum up his case where the accused shall make a reply[240]. In cases where the accused examines evidence in his defense, the Court shall, on the close of the defense case, call upon the accused to sum up the case after which the prosecution shall make a reply[241].

(4) Judgment and Sentencing

The mode of delivering of the judgment by a criminal court is outlined in Chapter XXVI of the Cr.P.C. Section 366[242] of Cr.P.C. states that the judgment in every trial in any criminal court shall be pronounced in open court either immediately after the conclusion of the trial or at some subsequent time of which notice shall be given to the parties or thier pleaders. While delivering the judgment, the accused shall, if in custody, be brought up, or if not in custody, be required by the Court to attend and hear the judgment delivered unless during his trial his appearance has been dispensed by the Court and the sentence is one of fine or the accused is acquitted[243].

Section 367[244] of Cr.P.C. mandates that the judgment be written in the language of the Court, or in English and shall contain the point(s) for determination, the decision thereon and the reasons for the decision. The judgment is required to be dated and signed by the judge in open Court at the time of pronouncing it and every page of such judgment (if not written by the judge) shall be signed by him. Additionally, this provision requires that the judgment shall specify the offence for which the accused is convicted and the punishment to

240. Procedure for cases triable by Court of Sessions as laid down under Section 265-G of Cr.P.C; Summing up by prosecutor and defence: "(1) In case where the accused, or any one of several accused, does not adduce evidence in his defence, the Court shall on the close of the prosecution case and examination (if any) of the accused call upon the prosecutor to sum up his case whereafter the accused shall make a reply."
241. Procedure for cases triable by Court of Sessions as laid down under Section 265-G of Cr.P.C; "(2) In cases where the accused, or any one of the several accused examines evidence in his defence, the Court shall, on the close of the defence case, call upon the accused to sum up the case whereafter the prosecutor shall make a reply."
242. Section 366 of Cr.P.C; Mode of delivering judgment: "(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced or the substance of such judgment shall be explained (a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and (b) in the language of the Court, or in some other language which the accused or his pleader understands: Provided that the whole judgment shall be read out by the presiding judge, if he is requested so to do either by the prosecution or the defence. (2) The accused shall, if in custody, be brought up, or, if not in custody, be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of the fine only or he is acquitted, in either of which cases it may be delivered in the presence of his pleader. (3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place. (4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537."
243. Section 366(2) of Cr.P.C; Ibid
244. Section 367 of Cr.P.C; Language of judgment- Contents of judgment: "(1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and where it is not written by the Presiding Officer with his own hand, every page of such judgment shall be signed by him. (2) It shall specify the offence (if any) of which, and the section of the Pakistan Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced. (3) Judgment in alternative. When the conviction is under the Pakistan Penal Code and it is doubtful under which of two sections, or under which or two parts of the same section of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative. (4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty. (5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, and Court shall in its judgment state the reason why sentence of death was not passed. (6) For the purposes of this section, an order under section 118 or section 123, subsection (3), shall be deemed to be a judgment."

which he is sentenced. If the judgment is of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty. In the case of a sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court[245].

(5) Appeals/Revisions

Section 367 of Cr.P.C. mandates that the judgment be written in the language of the Court, or in English and shall contain the point(s) for determination, the decision thereon and the reasons for the decision.

Difference between Summary and Regular Trial

Summary Trial	Regular Trial
Only triable by Magistrate	Tried either by Magistrate or Session Court Judge
Can be converted to a 'Regular Trial'	Cannot be converted to a 'Summary Trial'
Maximum sentence of imprisonment of 3 months or less can be passed	Sentence can be passed for more than 3 months imprisonment
Where no right of appeal exists, the evidence of witnesses does not need to be recorded and formal charge does not need to be framed, if particulars under section 263 Cr.P.C. are met	

245. Section 374 of Cr.P.C; Sentence of death to be submitted by Court of Session: "When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court."

Report Findings and Perceptions of Justice

Appeals:

An appeal does not exist in the nature of things; a right of appeal from a decision of any tribunal or court must be given by express provision. It must, therefore, be shown to exist before the higher forum can claim to exercise it[246]. Thus, if no appeal is provided by the Constitution or law against the determination of a court or tribunal, its decision is final. Section 404 of Cr.P.C. recognizes this principle and provides that: "No appeal shall lie from any judgment or order of a Criminal Court except as provided for this Code or any other law for the time being in force".

According to section 408[247] of Cr.P.C., appeals, against the orders and judgments, of the Judicial Magistrates or Special Magistrates under the Cr.P.C. are to be heard by the Court of Session. Under section 408, proviso (b)[248], appeals against the orders or judgments of an Assistant Sessions Judge where the sentence of imprisonment exceeds four years are to be heard by the High Court. Additionally, section 410[249] of Cr.P.C., mandates that the appeals against the orders and judgments of a Sessions Judge or an Additional Sessions Judge should be heard by the High Court.

Except in cases where an appeal lies to the Supreme Court under Article 185[250] of the Constitution, any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may appeal to a larger bench (Divisional Court) of the High Court. Furthermore, an appeal against an order or judgment of the Divisional Court can be made in an intra-court appeal under section 411-A (4)[251] Cr.P.C. to the Supreme Court.

It is pertinent to mention that under the Cr.P.C., a convicted person has no right of appeal in: (a) cases in which a High Court passes a sentence of imprisonment not exceeding six months or of a fine not exceeding Rs 200/-; (b) cases in which a Court of Session passes a sentence of imprisonment not exceeding one month; (c) cases in which a Court of Session or a Magistrate of the 1st Class passes a sentence of fine not exceeding Rs 50/- only;

246. 1993 SCMR 1853: Habib Bank v The State;Before Shafiur Rahman, Abdul Qadeer Chaudhry and Muhammad Afzal Lone, JJ
247. Section 408 of Cr.P.C; Appeal from sentence of Assistant Sessions Judge or [Judicial Magistrate]: "Any person convicted on a trial held by an Assistant Sessions Judge, [or any Judicial Magistrate] [Special Magistrate] or any person sentenced under section 349 [....] may appeal to the Court of Session: Provided as follows: [(a) Clause (a) Rep. by Act 12 of 1923. S. 23.] (b) when in any case an Assistant Sessions Judge [....] passes any sentence of imprisonment for a term exceeding four years, [....] the appeal of all or any of the accused convicted at such trial shall lie to the High Court: (c) when any person is convicted by a Magistrate of an offence under section 124-A of the Pakistan Penal Code, the appeal shall lie to the High Court."
248. Section 408 of Cr.P.C; Ibid
249. Section 410 of Cr.P.C; Appeal from sentence of Court of Session: "Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the HighCourt."
250. Appellate Jurisdiction of Supreme Court. (1)Subject to this Article, the Supreme Court shall have jurisdiction to hear and determine appeals from judgments, decrees, final orders or sentences of a High Court.(2) An appeal shall lie to the Supreme Court from any judgment, decree, final order or sentence of a High Court(a)if the High Court has on appeal reversed an order of acquittal of an accused person and sentenced him to death or to transportation for life or imprisonment for life; or, on revision, has enhanced a sentence to a sentence as aforesaid; or (b)if the High Court has withdrawn for trial before itself any case from any court subordinate to it and has in such trial convicted the accused person and sentenced him as aforesaid; or(c)if the High Court has imposed any punishment on any person for contempt of the High Court; or(d)if the amount or value of the subject matter of the dispute in the court of first instance was, and also in dispute in appeal is, not less than fifty thousand rupees or such other sum as may be specified in that behalf by Act of [Majlis-e-Shoora (Parliament)] and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or(e)if the judgment, decree or final order involves directly or indirectly some claim or question respecting property of the like amount or value and the judgment, decree or final order appealed from has varied or set aside the judgment, decree or final order of the court immediately below; or(f)if the High Court certifies that the case involves a substantial question of law as to the interpretation of the Constitution. (3)An appeal to the Supreme Court from a judgment, decree, order or sentence of a High Court in a case to which clause (2) does not apply shall lie only if the Supreme Court grants leave to appeal.
251. Section 411-A of Cr.P.C; "…(4) Subject to such rules as may from time to time be made by the Supreme Court in this behalf, and to such conditions as the High Court may establish or require, an appeal shall lie to the Supreme Court from any order made on appeal under subsection (1) by a Divisional Court of the High Court in respect of which order the High Court declares that the matter is a fit one for such appeal."

(d) cases in which a sentence of imprisonment has been passed by a Court of Session or Magistrate in default of payment of fine when no substantive sentence of imprisonment has also been passed[252]. Also, section 414 of Cr.P.C. provides that there is no right of appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two thousand rupees only[253].

Under Section 417[254] of Cr.P.C., an appeal against an acquittal lies only to the High Court. According to Section 418[255] of Cr.P.C., an appeal lies on a matter of fact as well as a matter of law and the severity of the sentence is for the purpose of this section a matter of law. As an appeal lies both on a question of fact and a question of law, this does away with the distinction, which assumes importance in civil cases, between a question of law and a question of fact.

The Court has the option of summarily dismissing[256] the appeal if it deems that there is no sufficient ground for its interference. If the appeal is not dismissed summarily, the appellate court shall give notice to the appellant or his pleader and to the Public Prosecutor of the time and place at which such appeal will be heard[257]. After summoning the record of the case and hearing arguments from all sides, the Appellate Court can then give a conclusive judgment on the matter.

Revisions:

A revision is simply an examination of the matter for the purpose of seeing the propriety and legality of the orders of the subordinate and inferior authorities and it does not carry the same incidents that are peculiar to appeal. Similar to an appeal, a revision is not a matter of right[258].

However, in 2015, the Supreme Court[259] further stated that the remedy of review petition "…cannot be sought as a matter of right, as it is a discretionary relief." The Supreme Court further emphasized that where a

252. Section 413 of Cr.P.C; No appeal in petty cases: "Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a High Court passes a sentence of imprisonment not exceeding six months only or of fine not exceeding two hundred rupees only or in which a Court of Session passes a sentence of imprisonment not exceeding one month only, or in which a Court of Session or [a] Magistrate of the first class passes a sentence of fine not exceeding fifty rupees only. Explanation. There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence or imprisonment has also been passed."
253. Section 414 of Cr.P.C; No appeal from certain summary convictions: "Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two thousand rupees only."
254. Section 417 of Cr.P.C; Appeal in case of acquittal: "(1) Subject to the provision of sub-section (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court. (2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf grants special leave to appeal from the order of acquittal the complainant may present such an appeal to the High Court. (2-A) A person aggrieved by the order of acquittal passed by any Court other than a High Court, may, within thirty days, file an appeal against such order.' (3) No application under sub-section (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order. (4) If, in any case, the application under sub-section (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1)."
255. Section 418 of Cr.P.C; Appeal on what matters admissible: "(1) An appeal may lie on a matter of fact as well as matter of law [....]. (2) [....] Explanation. The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law."
256. As per the provisions under section 421 of Cr.P.C; Summary dismissal of appeal: "(1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall pursue the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same. (2) Before dismissing an appeal under this section, the Court may call for the record of the case but shall not be bound to do so."
257. As per the procedure mandated by section 422 of Cr.P.C; Notice of appeal: "If the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Provincial Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall on the application of such officer, furnish him with a copy of the grounds of appeal. And, in cases of appeals under section 411A, sub-section (2) or section 417 the Appellate Court shall cause a like notice to be given to the accused."
258. PLD 1969 SC 187; Adnan Afzal v Sher Afzal; Hamoodur Rahman, C. J., Sajjad Ahmad and Abdus Sattar, JJ
259. PLD 2015 SC 50, Khalid Iqbal vs Mirza Khan; Before Mian Saqib Nisar, Asif Saeed Khan Khosa, Amir Hani Muslim, Ejaz Afzal Khan and Ijaz Ahmed Chaudhary, JJ

judgment had been concluded by the Supreme Court, a second review petition could not be entertained as the findings of the Court against a party would "never attain finality"[260].

Sections 435 to 440 of Chapter XXXII of Cr.P.C. deals with the authority of the High Court and the Court of Session to revise the decisions of inferior courts. These sections must be read together to understand the relevant procedure and provisions that allow the revision of a decision of lower courts. Under Section 435[261] of Cr.P.C., the High Court or any Sessions Judge, for the purpose of being satisfied as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by an inferior court, has the authority to call for or examine the record of the proceeding in question.

It will be noticed that section 435 Cr.P.C. by itself gives no power to set right errors, illegalities or irregularities. The machinery for doing so is provided by sections 436 to 440 Cr.P.C. Under Section 438[262] Cr.P.C., an Additional Sessions Judge may exercise all the powers of a Sessions Judge under Chapter XXXII[263] in respective of any case which may be transferred to him by or under any general or special order of the Sessions Judge.

There are certain restrictions on the power of the High Court and the Court of Session to revise the judgments of inferior courts. They are as follows:

i) Under Section 439(3) of Cr.P.C., when the sentence passed by a Magistrate, the High Court or the Court of Session shall not inflict a greater punishment for the offence which in the opinion of such court the accused had committed than might have been inflicted for such offence by a Magistrate of 1st class;

ii) Under Section 439(4)(a)[264] of Cr.P.C, the High Court cannot convert a finding of acquittal into one of conviction;

iii) Under Section 439(4)(b)[265] of Cr.P.C., no further revision lies to the High Court against an order of the Court of Session made in the exercise of its revisional jurisdiction under section 439-A Cr.P.C.

iv) Under Section 439(5)[266] of Cr.P.C., where an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed. In other words, no revision lies against appealable orders or judgments;

260. Ibid
261. Section 435 of Cr.P.C; Power to call for records of inferior Courts: "(1) The High Court or any Sessions Judge [….], may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending examination of the record. [Explanation. All Magistrates, shall be deemed to be inferior to the Session Judge for the purposes of this sub-section.] (2) If any Sub-divisional Magistrate acting under sub-section (1) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate. (3) [* * * * *] (4) If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them."
262. Section 438 of Cr.P.C; Report to High Court; "(1) The [….] District Magistrate may, if he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the result of such examination, and, when such report contains a recommendation that a sentence be reversed or altered, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond. (2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him by or under any general or special order of the Session Judge."
263. Titled "Of Reference and Revision" containing section 435 to 442 of Cr.P.C
264. Section 439 of Cr.P.C; "(4) Nothing in this section shall be deemed to authorize a High Court: (a) to convert a finding of acquittal into one of conviction; or…"
265. Section 439 of Cr.P.C; "(4) … (b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439-A.]"
266. Section 439 of Cr.P.C; "(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed..."

Framing of the charge:

A charge is the precise formulation of the specific accusation(s) made against a person who is entitled to know their nature at an early stage of the case. The purpose of the charge is to tell an accused, as precisely and concisely as possible, of the matter in which he is charged and must convey to him, with sufficient clearness and certainty, what the prosecution intends to prove against him and of which he will have to clear himself from the court.

The essentials of a charge, as stated in Chapter XIX of the Cr.P.C.[267] are:

i) The charge should state the offence with which the accused is charged[268].

ii) If the offence is named specifically by the law which creates the offence, the offence may be described in the charge by that name only[269].

iii) If the law which creates the offence does not give it any specific name, the definition of the offence must be stated as to give the accused a notice of the matter with which he is charged[270].

iv) The law and the section of the law against which the offence is committed should be mentioned[271].

v) The charge shall be written in English or in the language of the Court[272].

vi) The fact, place and date of the previous conviction, if any, shall be stated in the Charge[273].

vii) Particulars such as the time, place of the offence, and the person against whom or the thing in respect of which it is committed[274].

viii) The charge should also contain such particulars of the manner in which the alleged offence was committed[275].

The Court has the power to alter or add to any charge at any time before the judgment is pronounced[276]. Every such alteration or addition shall also have to be read and explained to the accused. It is pertinent to mention that immediately after the charge is framed, the plea of the accused i.e whether he pleads guilty or not guilty is taken. Issues pertaining to pleas will be dealt with in a latter section of this report[277].

267. This Chapter includes sections 221-240 Cr.P.C.
268. Section 221 (1) of Cr.P.C; Supra Footnote 22
269. Section 221 (2) of Cr.P.C; Supra Footnote 22
270. Section 221 (3) of Cr.P.C; Supra Footnote 22
271. Section 221 (4) of Cr.P.C; Supra Footnote 22
272. Section 221 (6) of Cr.P.C; Supra Footnote 22
273. Section 221 (7) of Cr.P.C; Supra Footnote 22
274. Section 222 of Cr.P.C; Particulars as to time, place and person: "(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom; or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."
275. Section 223 of Cr.P.C; When manner of committing offence must be stated: "When the nature of the case is such that the particulars mentioned in section 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."
276. Section 227 of Cr.P.C; Court may alter charge: (1) Any Court may later or add to any charge at any time before judgement is pronounced [.....]. (2) Every such alteration or addition shall be read and explained to the accused.
277. Supra: Plea Bargaining: The Correlation and Consequences of Pleas of Guilt and Non-Custodial Sentencing

Report Findings and Perceptions of Justice

It is often observed that courts can make errors while framing a charge against the accused, However, Section 225 Cr.P.C. makes it clear that unless the accused was in fact misled by such an error or omission occasioning in a failure in justice, the proceedings will not be invalidated.

Since the charge is framed in English, its language is quite often incomprehensible to the accused. The courts often do not translate the language of the charge to the UTP in his native tongue. This also leads to a scenario where the UTP is not aware of the consequences of the crime he is alleged to have been involved in.

It is often observed that courts can make errors while framing a charge against the accused, However, Section 225[278] Cr.P.C. makes it clear that unless the accused was in fact misled by such an error or omission occasioning in a failure in justice, the proceedings will not be invalidated. This provision was further clarified by the Supreme Court where an established principle was cited as: "Omissions in a charge cannot be regarded as material unless in terms of S.225 it is shown by the accused that he has in fact been misled by such omissions or that there has been a failure of justice as a result of such omissions. Where the accused is not misled, a defect in the charge is not material. Where the accused is prejudiced, the defect is material"[279].

Understanding the charge:

While the law requires the charge to be written and explained to the accused in detail, it is unfortunate that in practice the accused individuals are frequently not familiar with the provision(s) they are charged under. This is due to the fact that in many cases, the UTP does not engage the counsel of his/her choice at the preliminary stage. Therefore, legal advice pertaining to the offence with which they are charged with is generally not available to UTPs while the court is indicting the accused. Additionally, even if a counsel of their choice is engaged at the time of framing of the charge, it is frequently found that counsels do not apprise the individual of the offences that they are being charged with. This leads to the accused not being cognizant of the precise offence he is accused of and its consequences.

Since the charge is framed in English, its language is quite often incomprehensible to the accused. The courts often do not translate the language of the charge to the UTP in his native tongue. This also leads to a scenario where the UTP is not aware of the consequences of the crime he is alleged to have been involved in.

It is also an unfortunate practice that the thumb prints of the UTP are taken at the beginning of the proceedings while the charge is often drafted later. Resultantly,

278. Section 225 of Cr.P.C; Effect of errors: "No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."
279. 2005 SCMR 364: S.A.K Rehmani v The State; Nazim Hussain Siddiqui, CJ and Javed Iqbal, J

the accused has supposedly been informed of the offence he has been charged for, but in reality the charge has not even been framed in his presence. This practice impacts the plea that the accused consequently takes. As the UTP is generally not aware of the offence he is going to be tried for, he will not be in the best position to decide whether to plead guilty or not guilty when asked by the Court.

Finally, the UTP is required to be provided with certain documents seven days before the commencement of the trial. As stated earlier, these documents include the FIR, the police report, the statements of all witnesses recorded under sections 161 and 164 along with the inspection note recorded by an investigating officer on his first visit to the place of occurrence and the note recorded by him on recoveries made. It is a common practice that despite being a statutory obligation, these documents are quite often not provided to the accused before the charge is framed against him. This frequently leads to a situation where the UTP is not aware of the allegations and evidence available against him at the time of framing of the charge.

Therefore, the UTP is often unable to decipher which crime he is being indicted for, what allegations have been leveled against him, and what witnesses will appear on behalf of the allegation along with the nature of the evidence that has been collected against him.

Acquittals under Sections 249-A, 265-K and quashing of the FIR:

Sections 249-A[280] and 265-K[281] Cr.P.C. allow the trial court to acquit an accused at any stage of the case if, after hearing the prosecutor and the accused, the trial court considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.

Applications for acquittal can be moved before the Magistrate Court, at any stage of the trial, under Section 249-A. If the offence is triedby the Sessions Court, then this application has to be made under section 265-K. If the Magistrate Court rejects an application for acquittal, then the accused has the option to move a similar application under section 265-K before the Sessions Court. If these applications are rejected by the trial courts, they can be filed under section 561-A Cr.P.C.

It is also an unfortunate practice that the thumb prints of the UTP are taken at the beginning of the proceedings while the charge is often drafted later. Resultantly, the accused has supposedly been informed of the offence he has been charged for, but in reality the charge has not even been framed in his presence. This practice impacts the plea that the accused consequently takes. As the UTP is generally not aware of the offence he is going to be tried for, he will not be in the best position to decide whether to plead guilty or not guilty when asked by the Court.

280. Section 249-A of Cr.P.C; Power of Magistrate to acquit accused at any stage: "Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence."
281. Section 265-K of Cr.P.C; Power of Court to acquit accused at any stage: "Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case; if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence."

before the High Court. Since these orders are not liable to be appealed, the inherent powers of the High Court under section 561-A[282] Cr.P.C. are invoked in such instances.

The courts of Pakistan have elaborated upon the scope of the aforementioned in various judgments over time, whereby it has been repeatedly held that these provisions could be invoked at any stage of the trial. In The State v Asif Ali Zardari[283], the Supreme Court held that, "Section 249 A, Cr.P.C empowers the Presiding Officer of the Trial Court to acquit accused at any stage of the trial and the only requirements to be fulfilled are firstly that hearing is to be given to the prosecutor and counsel of accused and secondly reasons are to be recorded in support of conclusion that charge is groundless or that there is no probability of accused being convicted. It is very clear that application can be filed at any stage of the proceedings and it is not necessary and there is no requirement that such application is to be filed after evidence of all the witnesses is recorded". A similar view pertaining to Sections 249-A and 265-K Cr.P.C. was taken by the Supreme Court in State v Ashiq Ali Bhutto[284], wherein it was held that, "It is obvious that the legislature in its wisdom did not leave the question of the recording of the evidence as a condition before taking action under either of the provisions. The use of the expression "at any stage" of the case is indicative enough of the intention that any such stage could be the very initial stage, after taking cognizance or it could be a middle stage after recording some proceedings and/or even, it could be later stage as well."

Despite the power given to the trial courts to acquit under section 249-A and section 265-K Cr.P.C., it is often found that courts are reluctant to grant acquittals particularly after the charge has been framed. Trial Courts are often inclined to record the evidence of the prosecution, particularly if the offence involved is deemed to be heinous in nature, even if the allegations are such that conviction of the accused may not be possible at the conclusion of the trial. In cases conducted by the LAO, 22.5%[285] of cases resolved have been the result of successful applications under sections 249-A[286] or 265-K[287]. However, the overall percentage is perceived to be much lower due to the general reluctance of the courts to grant early acquittals and the consequent reluctance of lawyers to pursue this remedy.

282. Section 561-A, Chapter XLVI of Cr.P.C; Saving of inherent power of High Court: "Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code; or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."
283. 1994 SCMR 798; Saad Saood Jan and Sajjad Ali Shah, JJ
284. 1993 SCMR 523; Muhammad Afzal Zullah, CJ., Nasim Hasan Shah and Muhammad Afzal Lone, JJ
285. The litigation database used was from May, 2013 till January, 2015 and comprised of 1,411 cases.; Details mentioned below in Table; Plea Bargaining: The Correlation and Consequences of Pleas of Guilt and Non-Custodial Sentencing
286. Section 249-A of Cr.P.C; Supra Footnote 69
287. Section 265-K of Cr.P.C; Supra Footnote 70

Also, it is commonly seen that the Trial Courts powers under section 249-A and 265-K Cr.P.C are frequently invoked if prosecution witnesses do not appear before the court for prolonged periods of time. This is an unfortunate exercise as these provisions can be invoked at the earliest possible stage of the case so as to minimize the agony of the UTPs and secure their earliest possible release.

Another remedy that the accused individual can avail is the quashing of the FIR. In order to avail this remedy, the accused can file a constitutional petition before the High Court under Article 199[288] of the Constitution. In the case titled Ajmeel Khan v Abdul Raheem[289], the Supreme Court held that "F.I.R. can be quashed by High Court in its writ jurisdiction when its registration appears to be misuse of process of law or without any legal justification". However, the courts are extremely reluctant to quash criminal cases using their constitutional jurisdiction. In practice, the High Courts are reluctant to interfere in the investigation of the case and direct the accused to avail their remedy under sections 249-A and 265-K Cr.P.C. As a result, even if frivolous litigation is initiated in which there is apparent misuse of the process of law, the accused can only revert to the trial courts to seek their acquittal. Due to the inherent delays in the criminal courts, such a process can take a long time to conclude, thus prolonging the misery of the accused and their families.

Other issues at trial:

To understand the various difficulties present during trial, a 100 UTPs and 50 judges across Sindh were surveyed by LAO with questions pertaining to the arrest and detention of accused individuals.

Also, it is commonly seen that the trial courts powers under Section 249-A and 265-K Cr.P.C are frequently invoked if prosecution witnesses do not appear before the court for prolonged periods of time. This is an unfortunate exercise as these provisions can be invoked at the earliest possible stage of the case so as to minimize the agony of the UTPs and secure their earliest possible release.

288. Article 199 of Consitution: Jurisdiction of High Court.(1)Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law,-(a)on the application of any aggrieved party, make an order-(i) Directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a local authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or(ii)declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or(b)on the application of any person, make an order-(i)directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner; or(ii)requiring a person within the territorial jurisdiction of the Court holding or purporting to hold a public office to show under what authority of law he claims to hold that office; or(c)on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.
289. PLD 2009 Supreme Court 102; Ijaz-ul-Hassan Khan and Muhammad Qaim Jan Khan, J

Were UTPs provided with legal counsel where they could not afford one themselves?

Article 37(d) of the Constitution places an obligation on the state to provide inexpensive and expeditious justice for its citizens. However, despite this guarantee, a number of individuals who are unable to afford legal counsel are not provided representation by the State. 36% of the surveyed UTPs stated that they were not provided legal representation by the trial court when they could not afford it themselves. Whereas, when judges were asked if they provided/directed UTPs with/towards legal representation when they could not afford it, 30% answered in the negative.

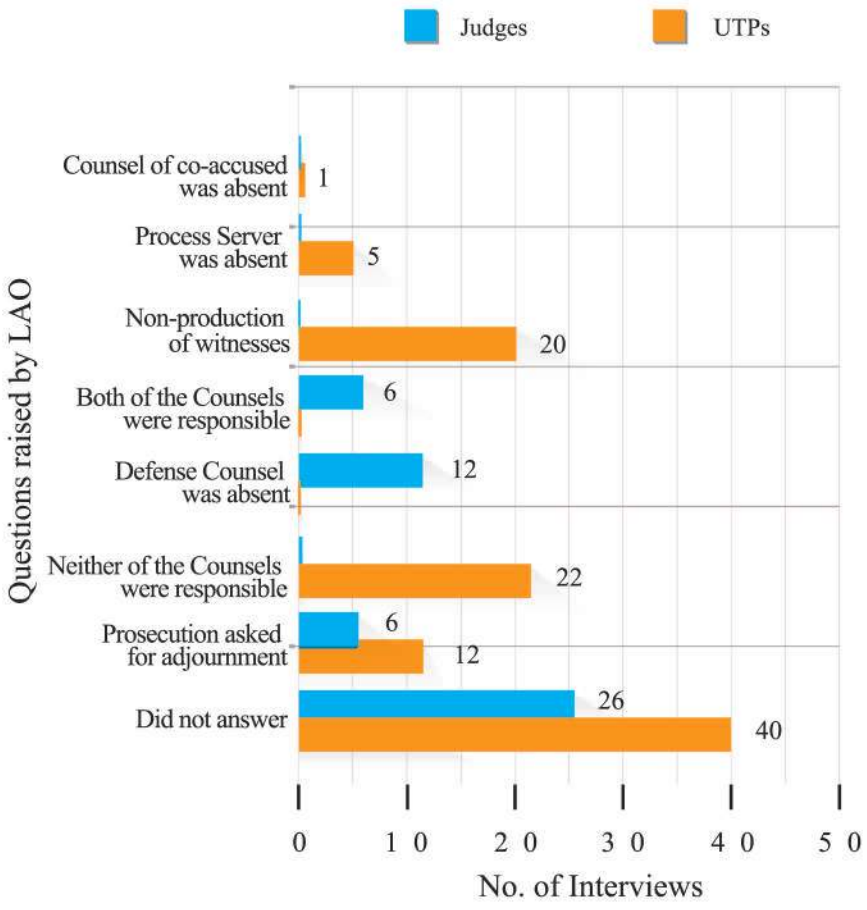
These numbers show that there is gross miscarriage of justice in a number of cases, as a large number of UTPs who are unable to afford legal counsel are not provided this facility by the state. This results in a broken CJS where the state prosecutes a number of individuals who do not have access to a lawyer and thus do not have the ability to defend themselves against charges pressed by the state.

Reasons for delay in proceedings:

Inordinate delays have become a permanent feature of the CJS. Trials, even in frivolous cases, last for years during which the accused faces extreme difficulties and prolonged periods of incarceration. A lot of the times, these delays are due to non-production of witnesses and adjournments taken by prosecution and/or defense counsels.

Additionally, UTPs were asked regarding the causes for delay during proceedings. Not surprisingly, 40 UTPs did not answer this question. 12 UTPs answered that the prosecution counsel took repeated adjournments in their case. Whereas 20 UTPs answered that adjournments took place due to non-production of witnesses. Interestingly, none of the UTPs attributed adjournments to the absence of his /her own lawyer.

Causes of adjournment faced by UTPs during proceedings



26 judges refused to answer the same question. 6 answered that the adjournments took place due to prosecutors whereas 6 answered that adjournments took place due to both prosecutors and defense counsel. 24% answered that adjournments took place due to the absence of defense counsel.

UTPs and judges were also asked to state the main reason for the delay in the disposal of their case(s). 22 UTPs refused to provide any reason for the delay. 47% of the UTPs replied that non-production of witnesses was a major reason for the delay in disposal of their case. The rest of the answers included strikes called by lawyers, adjournments taken by counsels, lack of interest shown by judges and court staff, and courts lying vacant. Additionally, 10 judges refused to answer this question at all whereas, 21 judges cited non-production of witnesses while the remaining judges mostly cited apathy of counsels and/or strikes called by lawyers as the main reason for delay in disposal of cases.

The answers of the UTPs and judges show two things. Firstly, non-appearance/non-production of witnesses plays a major role in delays during criminal trials. Despite the fact that the courts have authority to expedite proceedings and strictly compel production of witnesses, 67% of UTPs stated that the courts did not take any interest in expediting proceedings.

Additionally, non-production of witnesses results in prolonged periods of incarceration of UTPs which is why it is a habit that is not discouraged by prosecutors and complainant counsels. Lethargy and inefficiency on the part of defense counsels and judges ensure that strict action is not taken when witnesses repeatedly do not appear when summoned to give evidence before the court.

Secondly, adjournments taken by lawyers, particularly defense counsels, have become a common feature of our court system. Quite frequently, these adjournments are taken on account of strikes called over one pretext or another by the local bar associations.

The answers of the UTPs and judges show two things. Firstly, non-appearance/non-production of witnesses plays a major role in delays during criminal trials. Despite the fact that the courts have authority to expedite proceedings and strictly compel production of witnesses, 67% of UTPs stated that the courts did not take any interest in expediting proceedings. Additionally, non-production of witnesses results in prolonged periods of incarceration of UTPs which is why it is a habit that is not discouraged by prosecutors and complainant counsels.

UTPs were asked whether judicial staff issued process/warrants for witnesses who were not appearing before the court. 38% of the UTPs replied that this was not the case. Following this when asked if they thought that the judicial staff had failed to perform their duties, 37% of the UTPs replied in the affirmative. This clearly shows that in a lot of instances, the court staff was deemed responsible for delay in proceedings. If notices/warrants are issued and executed promptly, delay due to the non-production of witnesses would be reduced and trials would proceed at a quicker pace.

Additionally, ineffectiveness and lethargy shown by lawyers also means that unnecessary adjournments are taken by them during the course of proceedings. This results in frustration for the UTPs who are stuck in litigation for long periods of time.

Duties of judicial staff:

UTPs were asked whether judicial staff issued process/warrants for witnesses who were not appearing before the court. 38% of the UTPs replied that this was not the case. Following this, when asked if they thought that the judicial staff had failed to perform their duties, 37% of the UTPs replied in the affirmative. This clearly shows that in a lot of instances, the court staff was deemed responsible for delay in proceedings. If notices/warrants are issued and executed promptly, delay due to the non-production of witnesses would be reduced and trials would proceed at a quicker pace.

Non-production of UTPs during proceedings:

In order to receive a fair trial as guaranteed under Article 10-A of the Constitution[290], all proceedings in a criminal trial are obligated to be carried out in the presence of an accused individual. In rare cases, the court may grant an accused exemption to appear before the Court. Unfortunately, in a lot of cases, UTPs are not produced before the courts as a result of which evidence is often recorded by the prosecution in their absence.

When UTPs were asked if they were produced before the courts in all their proceedings, 39% of the UTPs replied in the negative. For the same question, 32% of judges stated that UTPs were not produced before the court in all their proceedings. This shows negligence on part of the police which is supposed to produce the UTP, if held under detention, during the course of his trial. Also, judges should not proceed in cases in which UTPs are absent. However, as evidenced by the numbers above, it is obvious that judges often proceed in the absence of UTPs which deprive them their right to observe all proceedings that take place in their case.

290. Supra: Background; Fundamental Rights in the Constitution of Pakistan

VI. Plea Bargaining

Plea bargain is the practice which generally encompasses the negotiation and reduction of a sentence. Subsequently, there is a withdrawal of some or all of the charges, or reduction in the charges leveled against the accused in exchange for an admission of guilt. At the backhand of this negotiation lies the admission of certain facts, foregoing of an appeal or cooperation in another criminal case. This is understood to aid the overall interests of judicial economy[291].

In Pakistan, the codified procedure for plea bargaining is not available in the CJS except for the cases falling under the NAO under which specific provisions have been provided for plea bargaining. Several prominent countries have adopted the same in their systems as in the U.S. The plea bargain is available in support for the negotiation of the sentence to any crime, including the most serious crimes such as homicide. However, there are certain exceptions. The plea bargaining process can begin at the pre-trial stage, but where an accused pleads 'not guilty' at the outset and later reaches a plea agreement with the prosecution, the accused is re-arraigned in order to enter the guilty plea[292].

The concept of plea bargaining in Pakistan was formally introduced in 1999 by virtue of the NAO as mentioned above. In 2013, a reported 45 individuals entered into plea-bargaining with the NAB and a staggering amount of Rs 807.15 million has been recovered[293]. The entire process of a recovery follows through accountability courts where the defendants pleading guilty are debarred from holding public office for ten years alongside paying the stipulated amount in question[294].

The principle of plea bargain has been borrowed from the plea of guilt. "Nolo Contendere" is a Latin phrase which means "I DO NOT WISH TO CONTEST". It refers to a plea by an individual in a criminal proceeding where he/she does not wish to contest the charges on him/her but at the same time would leave up to the judge to decide whether he/she is guilty. Such pleas are entered after seeking the courts permission. The plea of "Nolo Contendere", is also referred to as plea of "Nalvult"[295]. This doctrine is also expressed as an implied confession, a quasi-confession of guilt, a plea of guilt, a substitute for plea of guilt, a formal declaration that the accused will not contend, a query directed to the court to decide on the plea of guilt, a promise between the government and the accused, and a government agreement on the part of the accused that the charge of the accused must be considered as true for the purpose of a particular case[296].

This concept has been adopted by the Courts of Pakistan unconciously. Here, it is used during the criminal proceeding where once the accused has pleaded not guilty, changes its version to that of plea of guilt through a written application to the court. Whilst the general practice has for long been to accept such applications and the judges convict the accused and reduces the sentence of punishment to the extent of the period of incarceration which

291. J. Messitte, Judge Peter. 'Plea Bargaining In Various Criminal Justice Systems'. (2010): p.1. [Online] Available at: http://www.law.ufl.edu/_pdf/academics/centers/cgr/11th_conference/Peter_Messitte_Plea_Bargaining.pdf. [Accessed 23 Feb 2015].
292. Ibid, p. 2.
293. National Accountability Bureau. 'Annual Report 2013'. p. 48-50, 2014. [Online} Available at: http://www.nab.gov.pk/Downloads/Annual-Report-2013.pdf. [Accessed 23 Feb 2015]
294. Jamal, Nasir. "The Plea-Bargain, National Accountability Bureau Pakistan". [Online} Available at: http://www.icac.org.hk/newsl/issue14eng/button3.htm [Accessed 23 Feb 2015]
295. Dutt, Alo. 'Plea Of Nolo Contendere In The Indian Criminal Justice System'. (2015): p. 1. [Online} Available at: https://www.academia.edu/3891522/plea_bargaining_crpc [Accessed 23 Feb 2015]
296. Ibid

the accused has already served in the prison. Additionally, the Supreme Court has ruled that a plea bargain may be treated as a plea of guilt as long as the accused makes a well-informed and educated voluntary bargain which is deemed as satisfactory by the judge[297], this practice has now become well engrained in NAB cases.

In this practice several questions arise, some of which may be summarized as follows; the due process required under section 243 of the Cr.P.C. is not taken into consideration[298], the role of the prosecution and that of the defense counsel is in its entirety removed and the matter is decided directly between the judge and the accused. The question of plea of guilt that is raised in the application of the accused, contravenes the QSO and its provisions. Any confession made on the inducement of a reduced sentence or any promise of such nature makes the confession invalid. Justice Akhtar Ali G. Kazi in his judgment[299] noted that "...it is well-settled law that before a plea of guilt can be relied upon for the purpose of basing conviction on it, the court should satisfy itself by putting questions to the accused in order to see whether he is aware of the facts on which the charge is framed against him and also to see whether he has admitted his guilt voluntarily without any pressure or expectation of lenient sentence."

The reason for the accrual of the problems indicated above is simply that in Pakistan, plea bargaining has been introduced in the ordinary criminal trials without a corresponding codified structure for its mechanism in the Cr.P.C. The accused initially pleading not guilty at the stage of charge, during the trial proceedings adds on his plea of guilt, thereafter the judge in most cases convicts the accused but reduces the sentence to the extent of that period of incarceration which the latter has already served in the prison.

The problem with pleading guilty in the same circumstances has also been witnessed in India. Recently the Gujarat High Court in 2005 has held, "…the 'plea bargaining' and the raising of "plea of guilty", both things should not have been treated, as the same and common"[300]. Additionally, the Court held that "…Nobody can dispute that "plea bargaining" is not permissible,

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297. 2011 SCMR 1560; Javed Iqbal, Anwar Zaheer Jamali and Khilji Arif Hussain JJ; Dr. Muhammad Anwar Kund vs. The State
298. Section 243 of Cr.P.C. Conviction on admission of truth of accusation. If the accused admits that he has committed the offence [with which he is charged] his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly.
299. 1992 P.Cr.L.J 1575; Nasir Aslam Zahid and Akhtar Ali G. Kazi JJ; Tariq alias Baboo v The State
300. State of Gujarat v Natwar Harchandji Thakor, 22 February, 2005; J Bhatt, D Patel; [Para 68] 2005 Cr L J 2957, (2005) 1 GLR 709

CHAPTER H

Report Findings and Perceptions of Justice

In India by virtue of the Criminal Law (Amendment) Act, 2005 Chapter XXI-A was inserted in the Indian Criminal Procedure Code, 1973 which introduced a codified mechanism for Plea Bargain in the Indian Criminal Jurisprudence. Prior to the amendment, as observed by Gujarat High Court, Supra, the State High Courts and the Supreme Court were averse to the concept of plea bargaining in the mask of pleading guilty . The plea bargain procedure as is laid out in the Indian Criminal Procedure Code, 1973 is very clear and does not allow any ambiguity to seep in. The new chapter on plea bargaining makes provision for plea bargaining in cases of offences punishable by an imprisonment up to seven years.

The Sindh High Court has held that the court before relying on the plea of the guilt for the basing of conviction on the same should satisfy itself by putting questions to the accused if he was aware of the facts on which the charge was framed against him and that he had admitted his guilt voluntarily without any "pressure or expectation of a lenient sentence."

but at the same time, it cannot be overlooked that raising of "plea of guilty", at the appropriate stage, provided in the statutory procedure for the accused and to show the special and adequate reasons for the discretionary exercise of powers by the trial Court in awarding sentences cannot be admixed or should not be treated the same and similar"[301]. Accordingly, the Judge stated that every plea of guilt cannot be automatically treated as a plea bargain and there is a requirement of evaluating the factual profile of each accused in the criminal proceeding before reaching a conclusion[302].

In India by virtue of the Criminal Law (Amendment) Act, 2005 Chapter XXI-A was inserted in the Indian Criminal Procedure Code, 1973[303] which introduced a codified mechanism for plea bargain in the Indian Criminal Jurisprudence. Prior to the amendment, as observed by Gujarat High Court, the State High Courts and the Supreme Court were averse to the concept of plea bargaining in the mask of pleading guilty[304]. The plea bargain procedure as is laid out in the Indian Criminal Procedure Code, 1973 is very clear and does not allow any ambiguity to seep in.The new chapter on plea bargaining makes provision for plea bargaining in cases of offences punishable by an imprisonment up to seven years.

The Superior Courts in Pakistan similarly have generally not appreciated the mixing of pleading guilty with plea bargain. Unfortunately, no substantive amendments have been made and the Cr.P.C continues to govern the criminal jurisdiction. Section 243 can be said to have been massively corrupted to the point where the trial courts consistently continue to misinterpret and apply it in cases where pleading out is made after the framing of the charge. The Sindh High Court has held that the court before relying on the plea of guilt for the basing of conviction on the same should satisfy itself by putting questions to the accused if he was aware of the facts on which the charge was framed against him and that he had admitted his guilt voluntarily without any "pressure or expectation of a lenient sentence"[305]. A primary reason that maybe attributed in such cases is the summary reasoning in practice of letting the offender of by the judges. The Peshawar

301. Ibid
302. Ibid
303. Indian Criminal Law Amendment 2005. [Online] Available at: http://indiankanoon.org/doc/1732853/ [Accessed 25 Mar 2015]
304. Aarora, N. (2010). Plea Bargaining- A New Development in the Criminal Justice System. [online] Legallyindia.com. Available at: http://www.legallyindia.com/Blogs/Entry/plea-bargaining a-new-development-in-the-criminal-justice-system-html [Accessed 16 Feb. 2015]
See also Murlidhar Meghraj Loya v. State of Maharashtra, AIR 1976 SC 1929; Kasambhai v. State of Gujarat, AIR 1980 SC 854
305. 1992 P Cr L J 1575; Nasir Aslam Zahid and Akhtar Ali G. Kazi JJ; Tariq alias Baboo v The State

High Court has observed that where a person involved in a criminal case wanted to plead guilty to the charge leveled against him and placed himself at the mercy of the court, he became a friend of the court and a lenient view was to be taken in respect of his sentence[306]. Ironically, this was a case of possessing 10 kilograms of narcotics, where the maximum punish it carries is death or imprisonment for life; where the quantity of narcotic substance exceeds 10 kilograms, the minimum sentence is 14 years[307].

As discussed earlier, the concept of plea bargain is nonexistent in our CJS. The only procedure available is laid out under section 243 of the Cr.P.C. A strict procedure had been evolved by the Supreme Court and the High Courts for the recording of such pleas of guilt. Due to the prevailing environment of ignorentia[308] the authorities are generally no longer followed, nor even read. The main component involving the procedure of plea bargaining is also missing in these cases, i.e. the role of the prosecution and the defense lawyers, thus turning the exercise inconsistent. It may also be added that in the absence of any statutory provision allowing for plea bargain, and discouragement of such practice by the Superior Courts, the issue of 'plea bargain' raises questions as to its legality in the prevalent regime of law in Pakistan.

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306. PLD 2013 Pesh. 35 Dost Muhammad Khan CJ and Shah Jehan Khan Akhunzada J; The State through Regional Director ANF v Ikramullah and others
307. Section 9 (c), 1997, CNSA
308. It is a latin form for "Ignorance of the Law", Blacks Law Dictionary 8th Edition. P. 762.

CHAPTER H

Report Findings and Perceptions of Justice

The following table reflects the dismal picture of the resolution of cases based on tabulation of figures provided by the LAO from its litigation database[309]:

Month	Acquittal on Merit	Acquittal on Quashment of Proceeding U/S 249-A, 265-K	Plead Guilty and Currently Serving Sentence	Plead Guilty and Undergone	Convicted on Merit	Case Filed as Dormant	Others	Total Resolution of Cases Month Wise
May,13	16	21	1	25	2	1	1	67
Jun,13	9	9	7	16	2	4	4	51
Jul,13	10	15	13	38	1	2	8	87
Aug,13	6	11	1	42	0	2	10	72
Sept,13	9	12	2	34	2	1	5	65
Oct,13	17	8	1	34	5	7	10	82
Nov,13	14	15	6	19	2	2	1	59
Dec,13	23	13	1	18	1	3	10	69
Jan,14	21	21	0	17	5	5	6	75
Feb,14	25	26	1	18	3	5	15	93
Mar,14	38	18	5	14	4	3	6	88
Apr,14	32	33	6	16	3	8	8	106
May,14	26	31	11	18	5	6	8	105
Jun,14	15	14	0	21	0	3	8	61
Jul,14	22	26	4	33	5	0	11	101
Aug,14	21	20	0	22	1	5	5	74
Sept,14	27	23	0	23	1	3	28	105
Oct,14	23	23	4	40	1	2	14	107
Nov,14	20	13	5	15	3	0	23	79
Dec,14	16	5	0	23	5	0	13	62
Jan,15	16	24	6	28	2		11	87
Grand Total	406	381	74	514	53	62	205	1695
Percentage	24.0	22.5	4.4	30.3	3.1	3.7	12.1	100.0

309. The litigation database used was from May, 2013 till January, 2015 and comprised of 1,411 cases.

Report Findings and Perceptions of Justice

CHAPTER H

Out of a total of 1,695 cases resolved, it has been observed that 30 % are resolved as a result of the accused pleading guilty and his sentence is then deemed as having been already served in prison which leads to some level of skepticism on the environment and pressures under which the same takes place. This practice at the one hand implicitly encourages casual offenders to repeat the crime on a 'valid' assumption that if they are prosecuted they can get away by employing the same practice of pleading guilty. Secondly, the casual offenders in their ignorance after being convicted become soft targets of the police, in majority of cases where the FIR does not nominate any specific person. Both consequences lead to serious miscarriage of justice.

In order for courts to negate the culture of pleading guilty in order to be released from the stringent atmosphere of prison, the alternative non-custodial measure such as probation can be used. The GCPPRA became the legislative footing for probation in the Indian sub-continent. The act provided not only for the protection, but also gave the guidelines to the prisoners for their readjustment and rehabilitation in a free life. In the year 2000, the Government of Pakistan introduced the JJSO. This law is perhaps one of the most beneficial laws legislated by the Government of Pakistan which comes closest to the universal standards of parole and probation. Section 11 thereof, stands out as an important departure from the conventional legislation which has been regulating probation issues as non-custodial methods[310].

The proper course which ought to be adopted would entail the importing of the provisions of Pakistan Probation of Offenders Ordinance, 1960 ("PPOO"), in cases where it applies. Section 4 thereof, is of significant character which takes into consideration the age, character, antecedent and physical or mental condition of the offender; it also takes account of the nature of the offense or any extenuating circumstances attending the commission of the offense; while providing for the probation[311]. The 'due process of law' requires that if the case of the accused merits eligibility for availing PPOO; the casual offender ought to be put under probation for a certain period of time. The probation officer under the rules prescribed by the PPOO must make every effort to reintegrate the casual offender into the society.

A further glimpse at cases handled by the LAO between May 2013 and January 2015 indicates that from a total of 1,695 cases that were resolved / concluded, probation orders were made in only 25 of these and this is to some extent reflective of the culture of Pakistani courts which appear to be hesitant in releasing an individual on probation.

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

311. Section 4, Conditional Discharges etc; Probation of Offenders Ordinance 1960 (XLV of 1960 promulgated on 1st November, 1960). See also sections 5 & 6; Ibid

CHAPTER H

Report Findings and Perceptions of Justice

Percentage of cases resulting in Probation

Month	Total Number of LAO Cases Resolved on Probation	Total Number of Cases Resolved by LAO	Percentage of Cases Resolved on Probation by LAO	Total Number of LAO Case Load
May, 2013	0	67	0%	836
June, 2013	1	51	2%	918
July, 2013	1	87	1%	902
August, 2013	0	72	0%	897
September, 2013	1	65	2%	1,017
October, 2013	0	82	0%	1,082
November, 2013	3	59	5%	1,177
December, 2013	1	69	1%	1,245
January, 2014	0	75	0%	1,278
February, 2014	1	93	1%	1,281
March, 2014	0	88	0%	1,319
April, 2014	1	106	1%	1,351
May, 2014	2	105	2%	1,275
June, 2014	0	61	0%	1,311
July, 2014	4	101	4%	1,275
August, 2014	0	74	0%	1,303
September, 2014	0	105	0%	1,316
October, 2014	3	107	3%	1,302
November, 2014	3	79	4%	1,298
December, 2014	0	62	0%	1,285
January, 2015	4	87	5%	1,411
Total	25	1695	31.00%	

Prison overcrowding is a primordial problem confronting the prison administration as in most of the under developed prison systems, Pakistan has its own share of overcrowded prisons. According to the latest figures available, there are 311 juvenile offenders awaiting their trial and a total of 15,791 adult under trial prisoners confined in prison vicinity. To highlight these figures we may also put down the actual population of the prison which comes to 19,557[312]. Thus, the figures show the visible disproportion in the UTPs populating the prisons in comparison to the convicts and the condemned prisoners. The fact that overcrowding is strongly correlated to heavy use of imprisonment is an indisputable fact and the laxity of the judicial system in utilizing the available probation law provides an overwhelming support in the overcrowding of the prison. Unfortunately, the parole systm has been so widely corrupted that this system was mostly being used for purposes of political and vested interest which not only destroy the purpose of the parole laws but go further in aggravating the law and order condition of the respective population in the province of Sindh. To this effect, the Supreme Court of Pakistan has taken up numerous cases pertaining to the law and order situation being faced in Karachi. In these petitions the question of prisoners being released on parole was also taken up and the Supreme Court directed for a proper reevaluation of the parole prisoners. The court took serious notice of ensuing discrepancies and also the criteria on which parole had been given[313].

312. Sindh Prison Population Statement issued by the IG Prison Office, Karachi on 13-02-2015
313. Suo Moto case no. 16 of 2011 etc. (Implementation proceedings of judgment of Supreme Court of Pakistan reported in PLD 2011 SC 997)

VII. Sentencing Policies: The Absence of Sentencing Guidelines

The language used to codify criminal conduct is often drafted in broad terms and the wrongs committed may have varying levels of seriousness attached to them. In this context, sentencing guidelines provide for consistency in terms of the sentences judges set. Therefore, the absence of clear and consistent benchmarks for sentencing leaves room for unwarranted discrepancies. Sentencing guidelines dominate the landscape in developed jurisdictions to ensure that the sentence reflects the gravity of the crime, that the punishment furthers the goal of deterrence and also that it may aid in reintegrating the offender back in the community. In countries such as the U.S., U.K, Canada, Japan and Australia, conviction and sentencing are separated. The question of sentencing is the proposition before the judge on the criteria on which to determine the quantum of punishment once an accused is convicted. However, in Pakistan, the judicial system does not follow such benchmarks and practice dictates that the quantum of sentence is to be determined by the judge at the time of delivering the final judgment.

As outlined in, Chapter XXVI of the Cr.P.C.[314] Section 366[315] states that the judgment in every trial in any criminal court shall be pronounced in open court either immediately after the conclusion of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. While delivering the judgment, the accused shall, if in custody, be brought up, or if not in custody, be required by the Court to attend and hear the judgment delivered.

As mentioned earlier in the report[316], section 367 of Cr.P.C[317]. explicitly states the requirements of the judgement whereby, it should be written in the language of the Court and, the punishment to which an accused is sentenced is to be similarly specified in the judgment delivered. In most offences laid out under the law, including the PPC, punishments are subscribed for up to a maximum period. No sentencing guidelines are provided in Pakistani law and no separate hearings for sentencing are conducted. For instance, according to Section 379 PPC, the maximum punishment for theft is three years. Therefore, it is the complete prerogative of the judge to decide the quantum of punishment for such an offence, provided it does not exceed the maximum punishment. This creates an area of uncertainty in the law where the complete discretion of the presiding officer determines the amount of time an individual spends behind bars. This will be dealt with in more detail later in this section.

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314. Chapter XXVI is titled 'of the judgment'.
315. Section 366; Supra: Issues at Trial
316. Supra; Issues At Trial
317. Section 367; Supra: Issues at Trial

CHAPTER H

Report Findings and Perceptions of Justice

At the time of recording the conviction of an accused, prosecutors are vying for maximum punishments which are frequently handed down by the trial courts. This leads to inequitable sentences where the gravity of the offence is generally not factored in when deciding the quantum of punishment.

At the time of recording the conviction of an accused, prosecutors are vying for maximum punishments which are frequently handed down by the trial courts. This leads to inequitable sentences where the gravity of the offence is generally not factored in when deciding the quantum of punishment. In the case of Ameer Zeb vs The State[318], the Supreme Court of Pakistan laid down the dictum that the harder the sentence the stricter the standard of proof that is required is. In the present case, the court held that sentences specified in the CNSA depend upon the quantity of recovered narcotic substance and not upon the narcotic content of the recovered substance. Further, the quantity in such cases is the determinative factor as far as sentencing is concerned. In all such cases, there should be no room for doubt as to the exact quantity of the substance recovered and also as to the entire recovered substances being narcotic substance. The Court based its view on the established principles that the accused person is at the receiving end of long and stringent punishments; and therefore, safeguards from his point of view should not be allowed to be sacrificed at the altar of mere comfort or convenience of the prosecution.

The absence of proper sentencing guidelines in Pakistan, the erratic use of the PPOO and the failing parole system has meant that a sizeable number of UTPs are not diverted towards a non-custodial punishment. This is despite the nature of the offence being non-serious. In both the U.S and U.K, the need to develop and implement sentencing guidelines stemmed from research that established that sentencing patterns were inconsistent and were diminishing the value of the CJS by adding uncertainty and a systematic failure to create deterrence and offer rehabilitation. However, all is not lost, in Pakistan, judges have from time to time mulled over the need for better sentencing keeping in mind various factors. There are some examples of well-crafted judgments that spell out the process of sentencing and set precedent for future judgments.

In the case titled Ghulam Murtaza v The State[319], a three member bench headed by Justice Asif Saeed Khosa "pondered and mulled over the issue of sentence from diverse angles, including legal, social and economic perspective". Resultantly, they approved and prescribed sentences for different quantities

318. PLD 2012 SC 380
319. PLD 2009 Lahore 362, Asif Saeed Khan Khosa, Tariq Shamim and M.A. Zafar, JJ

of various kinds of contraband narcotic substances recovered in connection with CNSA while providing charts and principles thereof. The Court, before prescribing the guidelines, held: "…that in the matter of passing sentences in cases of recovery of contraband narcotic substances under the CNSA different Judges, both at the trial and the appellate stages, had been passing sentences upon convicts placed in similar situations which sentences were quite often hideously variable as they oscillated and fluctuated between unduly lenient and grossly oppressive. Such discrepant and vacillating judicial responses to similar situations not only gave rise to confusion and uncertainty but they also encouraged unscrupulous litigants and lawyers to try to shop for a suitable judge." Moreover, the High Court held that: "…such variable approaches clearly underscored the importance of uniformity and standardization in the matter of sentencing in this area and, thus, the efficacy and necessity of adopting a sentencing policy in that regard could not be overstated." This judgment can be deemed as a landmark effort for much needed improvement as the High Court approved and prescribed sentencing guidelines for different quantities of various contraband narcotic substances recovered in connection with the CNSA. For instance under Section 9(a), if heroine upto 30 grams is recovered then seven months imprisonment was prescribed along with a fine of Rs 5,000/-. However, if a similar amount of charas (hashish) was recovered, then the prescribed imprisonment was six months along with a fine of Rs 3,000/-. Similar guidelines were prescribed for bhang, poast and opium as well for amounts recovered up to 100 grams. The judgement stressed upon the social and economic factors including the background, gender and the previous convictions of the accused to be taken into account whenever sentencing. The sentence to

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Report Findings and Perceptions of Justice

The aforementioned judgement was reaffirmed by the Supreme Court in 2012 and the Supreme Court further directed for copies of the judgment to be sent to all the Chief Justices of the High Court, the Director General, the ANF, the IG Police and the Prosecutor General of all the Provinces. Therefore, sentencing guidelines in CNSA cases do currently exist in Pakistan and it is hoped that the courts are differentiating between the nature of narcotic substances recovered while awarding punishment at the trial level.

be laid down with regards to these factors was mentioned whereby, a previous convict was to be awarded one-third more of the sentence and a woman and a child were to be awarded one-third less of the sentence.

The aforementioned judgement was reaffirmed by the Supreme Court in 2012[320] and the Supreme Court further directed for copies of the judgment to be sent to all the Chief Justices of the High Court, the Director General, the ANF, the IG Police and the Prosecutor General of all the Provinces. Therefore, sentencing guidelines in CNSA cases do currently exist in Pakistan and it is hoped that the courts are differentiating between the nature of narcotic substances recovered while awarding punishment at the trial level.

Absence of sentencing guidelines leads to a situation where the prosecution, defense counsels and the accused encounter significant uncertainty in the CJS. As evidenced by the aforementioned discussion pertaining to the CNSA, punishments given are frequently not proportional to the nature of the offence committed and thus by their very nature unjust. Moreover, apart from crimes related to narcotics and other common offences such as theft, dacoity, and criminal trespassing etc, varying and disproportionate sentences are frequently passed in matters pertaining to financial crimes as well. For instance, the punishment for dishonoring a cheque in lieu of a loan or an obligation is a maximum of three years under Section 489-F of the PPC[321]. This frequently results in scenarios where an individual is punished by the trial court for the maximum period of three years even if the amount involved is meager. The scheme of sentencing guidelines in the U.K is an example from which the judicial system in Pakistan can draw its own mechanism. The Sentencing Council in the U.K is comprised of 9 judicial and 7 non-judicial members[322]. The guidelines developed by the Sentencing Council are binding on Courts, and any departure from the guidelines must be in the interests of justice[323]. The Sentencing Council has established an exhaustive development and monitoring process for guidelines. The key aspects of this process include comprehensive research studies which are undertaken and involve mapping precedents and court orders passed over time, consultations and discussions on draft guidelines with stakeholders. The council issues guidelines and conducts trainings where necessary and monitors the use of the guidelines by surveys[324].

320. PLD 2012 SC 380; Ameer Zeb vs. The State; before Asif Saed Khan Khosa, Ejaz Afzal Khan, Ijaz Ahmed Chaudhary, Gulzar Ahmed and Muhammad Athar Saeed, JJ
321. Section 489-F of PPC. Dishonestly issuing a cheque: Whoever dishonestly issues a cheque towards repayment of a loan or fulfilment of an obligation which is dishonoured on presentation, shall be punishable with imprisonment which may extend to three years or with fine, or with both, unless he can establish, for which the burden of proof shall rest on him, that he had made arrangements with his bank to ensure that the cheque would be honoured and that the bank was at fault in not honouring the cheque.
322. Sentencing Council, Council Members. [Online] Available at: http://www.sentencingcouncil.org.uk/about-us/council-members/. [Accessed 26 Mar 2015]
323. Section 125 of Coroners Justice Act 2009. (1) Every court- a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.
324. Sentencing Council, About Guidelines. [Online] Available at: https://www.sentencingcouncil.org.uk/about-sentencing/about-guidelines/. [Accessed 26 Mar 2015]

Report Findings and Perceptions of Justice

CHAPTER H

The problem which plagues the Pakistan prison system, as a result of the absence of any rational sentencing policy available, is to be found in India[325] although the Law Commission in India has been working on developing modules for a sentencing policy[326]. Yet these remain illusory and the judges are again involved in applying their judicial discretion on the question of sentencing which, as in the case of Pakistan, remains inconsistent.

In the absence of sentencing guidelines, the legislative framework which outlines maximum punishments becomes redundant. Judges frequently imparting maximum punishments make mitigating factors in such cases irrelevant. This has led to an overcrowded prison system where individuals convicted of minor crimes are detained alongside those convicted of more serious and heinous crimes. Therefore, instead of rehabilitating such a prisoner, lack of sentencing guidelines expose him to individuals convicted of much more heinous offences for prolonged periods of time. The problem of mixing the conviction with sentencing is not one limited to Pakistan but also traverses the South Asian sub-continent. Unfortunately, Pakistani CJS in the context of conviction and sentencing as a major concern, has never been addressed by the Law Commission Reports which have not withstanding taken note of the most minor of the issues facing criminal trials and prisons, yet the reason for not touching upon the area of conviction and sentencing is quite surprising.

To this effect we find judgments from the Supreme Court and the High Court referring to questions arising in sentencing. As observed in the Supreme Court judgement of Muhammad Rafique v The State[327], the maximum and minimum sentence of imprisonment under section 13 of West Pakistan Arms Ordinance, 1965 was discussed and the courts were left with a complete discretion in the matter of the length of the imprisonment for the offence. However, such judgments did not get the notoriety that they deserved and currently there is no proper sentencing guideline established for courts for all the offences. In these circumstances it is admissible to have our own sentencing policy as is available in U.S and U.K which provides guidelines in depth in order to avoid uncertainty. It is therefore, important that the Law and Justice Commission of Pakistan may take an initiative to discuss sentencing policy so that the discretion exercised by courts while sentencing an accused is based on prescribed principles.

325. Report Volume 1, Committee on Reform of Criminal Justice System, Government of India, Ministry of Home Affairs, 2003. P. 170 [Online] Available at: http://www.mha.nic.i/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf.[Accessed 26 Mar 2015]
326. Sentencing Guidelines, April 2014, The Law Library of Congress, Global Research Centre. [Online] Available at: http://www.loc.gov/law/help/sentencing-guidelines/sentencing-guidelines.pdf. [Accessed 26 Mar 2015]
327. 1995 SCMR 1525; Saleem Akhtar and Fazal Karim, JJ.

CHAPTER H

Report Findings and Perceptions of Justice

VII. Quality of Legal Representation

The Peshawar High Court has held,"It is the duty of the advocate/counsel specially in cases where the accused are behind the bars languishing either for their release on bail or for their acquittal or for conviction, the counsel is duty bound to assist the Court and to provide speedy justice to his client."

Criminal justice refers to the agencies of government charged with enforcing the law, adjudicating crime, and correcting criminal conduct. It is an essential tool for social control, as society considers certain behavior and actions to be extremely dangerous and destructive. Therefore, it strictly controls their occurrence or outlaws them outright. It should be noted that it is only the CJS in a legal system which has the power to control crime and punish criminals. Amongst the many travesties and lacunae undermining the legal system lies the problem of backlog of cases that are pending decision before courts. The life and liberty of the incarcerated is exploited by casual attitudes and year long delays in matters which could perhaps be resolved on merit within months. This is a foremost violation of Article 4[328] and 9[329] of the Constitution. It also militates against Article 37(d)[330] of the Constitution which promises the citizen of provision of expeditious and inexpensive justice. The Peshawar High Court has held "It is the duty of the advocate/counsel specially in cases where the accused are behind the bars languishing either for their release on bail or for their acquittal or for conviction, the counsel is duty bound to assist the Court and to provide speedy justice to his client"[331].

The Legal Practitioners and Bar Councils Act, 1973 ("LPBCA") is the regulatory law for the ministration of the advocates as well as providing rules for the establishments and the working of the Bar Councils and the Bar Associations. It may be noted that the Bar Councils are also the regulatory bodies which control and manage the advocates from their enrolments to their conduct. Section 41 of LPBCA[332] provides for the misconduct of an advocate and its punishment.

328. Article 4 of the Constitution of Pakistan- Right of individuals to be dealt with in accordance with law, etc. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan. (2) In particular:- (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not required him to do.
329. Article 9 of the Constitution of Pakistan- Security of person. No person shall be deprived of life or liberty save in accordance with law.
330. Article 37 of the Constitution of Pakistan- Promotion of social justice and eradication of social evils. The State shall:- (d) ensure inexpensive and expeditious justice.
331. 2008 YLR 812, Peshawar; Muhammad Shafi vs. The State; Before Muhammad Alam Khan, J
332. Section 41 of LPBCA- Punishment of advocates for misconduct. (1) An advocate may, in the manner hereinafter provided, be reprimanded suspended, removed from practice or be made to pay such amount of compensation, fine or penalty as may be ordered, if he is found guilty of professional or other misconduct. (2) A complaint that an advocate has been guilty of misconduct maybe made by any Court or person:- (a) in the case of an advocate of the Supreme Court to the Pakistan Bar Council; and (b) in any other case, to the Provincial Bar Council. (3) Every complaint against an advocate made under subsection (2), except where the complaint has been made by the Court shall be accompanied by such fee as may be prescribed by the Pakistan Bar Council from time to time. (4) Upon receipt of a complaint under subsection (2) against any advocate, the disciplinary committee of the Bar Council may, unless it summarily rejects the complaint after making such enquiry and giving the parties such opportunity of being heard as it may consider necessary, either reject the complaint or refer the same to a Tribunal for decision: Provided that the disciplinary committee shall not summarily reject a complaint made by the Supreme Court or a High Court. (5) If a Bar Council has reason to believe that an advocate has been guilty of professional or other misconduct, it may of its own motion refer the case to its disciplinary committee. (6) Any person whose complaint is rejected by the disciplinary committee under subsection (4) may, within thirty days of the day on which the order of the committee is communicated to him, prefer an appeal to the Tribunal, whose decision in such appeal shall be final.

Report Findings and Perceptions of Justice

CHAPTER H

The Peshawar High Court in its Judgment[333] took into consideration the facts that the accused in that case was languishing in prison and the order sheet revealed that on every date of hearing the witnesses were available, the prosecution was present but the counsel for the accused was always getting the case adjourned on one pretext or another[334].

A paramount principle of the CJS is that an accused is punished only after his guilt is proved beyond a shadow of doubt. The serious drawback of the administration of justice is the ensuing delay. Unusual delays occur in the disposal of cases by the courts. This is evidenced from the observation that 80% of those incarcerated in prisons in Sindh are UTPs awaiting the conclusion of their trials. Justice delayed is undoubtedly justice denied. According to the data compiled by LAO from a pool of 54,442 case proceedings scheduled for the UTPs represented by LAO from 1st May, 2013 to 31st January, 2015 , 31,276 case proceedings were adjourned[335] i.e. approximately 43% of the time the case did not proceed for one reason or another.

The Constitution provides, "The State shall ensure inexpensive and expeditious Justice"[336].

However, it has been observed that the reality is quite opposite; as much of the criminal litigation in Pakistan suffers from chronic delays, which not only frustrates the person being accused for the crime but also diminishes the trust of the public towards justice. In addition, it has been observed that lawyers turn out to be the ones who not only pocket money but also further contribute towards delays via seeking adjournments based on non-serious reasons and non-appearances in case proceedings.

According to a criminal litigator appearing in Malir City Court working at LAO, majority of times the backlog occurs due to advocates charging professional fee of Rs 500/- to the maximum of Rs 2,000/- from the accused while he is in the police custody and is produced for remand. Moreover, the advocates who file their power of attorney at the remand stage do not appear in case proceedings during the trial[337]. This leads towards greater vulnerability and impoverishment of UTPs who are unable to pay any additional professional fee of lawyers. Many cases which had later been dealt by LAO have shown no appearance of private legal counsel on behalf of the UTP prior to taking the Vakalatnama (power of the case) and the court ignoring such an important fact leads to a large number of

The Peshawar High Court in its Judgment took into consideration the facts that the accused in that case was languishing in prison and the order sheet revealed that on every date of hearing the witnesses were available, the prosecution was present but the counsel for the accused was always getting the case adjourned on one pretext or another .

333. Ibid
334. Ibid
335. Primary data compiled by the Para legal Team of LAO, of the number of cases LAO is representing and the number of cases that were adjourned
336. Art 37 (d) of the Constitution of Pakistan
337. Observations provided by the LAO Section Head of District Prison, Malir as on 31st January, 2015.

CHAPTER H

Report Findings and Perceptions of Justice

Moreover, in surveys conducted by LAO of 50 judges and prosecutors respectively, 12 judges and 20 prosecutors answered that delay in proceedings may be attributed to inaction by defense counsels.

The Judges went as far as stating that the Government should allocate the equivalent fund to the defense of an accused as compared to the prosecution of the same .

convictions of the accused. Moreover, in surveys conducted by LAO of 50 judges and prosecutors respectively, 12 judges and 20 prosecutors answered that delay in proceedings may be attributed to inaction by defense counsels. Interestingly, 26 judges and 21 prosecutors refused to answer when asked why cases were adjourned before the trial court which shows that the aforementioned figures are probably much higher. These are vivid examples of the negation of the established principle of law audi alteram partem[338] and a very distinct violation of Article 10-A of the Constitution[339].

The same issue was addressed by the High Court of Lahore in 2010[340]. Justice Sh. Najam-ul-Hassan and Justice Syed Mazahar Ali Akbar Naqvi pronounced in open court that "If the government exchequer can bear the expenditure of paying heavy fee to the Public Prosecutor/Special Public Prosecutors to establish the clutches of guilt then if the same analogy is applied in the case of the accused persons, the responsibility of the State equally renders to pay the expenses of defence counsel to the accused persons to meet the ends of ends of justice". The Judges went as far as stating that the Government should allocate the equivalent fund to the defense of an accused as compared to the prosecution of the same[341].

The quality of legal representation depends on the professional qualification of the legal representative and his or her professionalism towards the case without using adjournment as a tool to safeguard his or her lack of competency to proceed with the matter. According to a representative of Sindh Bar Council, around 1,500 fresh lawyers get enrolled with the Sindh Bar Council per annum[342]. The problem does not lie in the inflow of the legal representatives but also the institutes which are delivering legal degrees. From the data compiled by LAO, 10,953[343] students were enrolled in various LLB degrees across 26 law universities and colleges[344] in Sindh. Out of those, 3,055[345] students were enrolled in their final year for their LLB degrees. It can be analyzed that despite only 49% of the total final year students enrolling with the Sindh Bar Council, the quality of representation remains abysmal. It is pertinent that the institutes preparing these students play a

338. Latin word for "Hear the other side; No one should be condemned unheard", Black's Law Dictionary 8th Edition. P. 1760.
339. Article 10A of the Constitution of Pakistan- Right to fair trial. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.
340. 2010 P.Cr.LJ 812 (Lahore); Muhammad Shahid v State; Criminal Appeal No. 136J and murder reference no. 632 of 2004
341. Ibid
342. LAO interviewed Mr. Asif Uddin (In-Charge of Enrollments in Lower Courts) of the Sindh Bar Council, Karachi on 2nd February, 2015
343. Data compiled by the LAO Research Team between 20th November to 4th December, 2014 via interviews conducted with representatives of the colleges and universities
344. 26 Colleges contacted for the information: Government Islamia Law College, Karachi; S. M. Law College, Karachi; Hamdard School of Law, Karachi; L'ecole School for Advanced Studies, Karachi; Szabist, Karachi; Shaheed Zulfiqar Ali Bhutto Law College, Karachi; Federal Urdu Law College, Karachi; School of Law, University of Karachi; Indus College of Law, Hyderabad; Government Sindh Law College, Hyderabad; Government Jinnah Law College, Hyderabad; Department of Law, Sindh University, Hyderabad; Makhdoom Talibul Mola Law College, Hala; Law College, Ghotki; Law College, Mirpurkhas; Agha Badr-e-Alam Durrani Law College, Sukkur; Sistech, Sukkur; Shaheed Benazir Bhutto Law College, Larkana; Shah Abdul Latif University, Khairpur; Government Law College, Khairpur; Pir Illahi Bux Government Law College, Dadu; Benazirabad Law College, Nawabshah; Quaid-e-Azam Law College, Nawabshah; Haji Moula Bux Soomro Law College, Shikarpur; Constitutient Law College, Naushahro Feroze; Sain Dino Khan Law College, Jacobabad
345. Data compiled by the LAO Research Team between 20th November to 4th December, 2014 via interviews conducted with representatives of the colleges and universities

vital role in improving the level of legal representation for future clients. Unfortunately, the number of graduates does not reflect the outflow of practicing lawyers, as after graduation there is a struggle period for the young graduates to find mentors or their place within the legal fraternity. A lack of adequate and supportive guidance at the initial stage of their career remains missing. Where a graduate does find a mentor in the form of a senior advocate, the ground reality perpetuates the same culture dominated by delay tactics. Additionally, the Chairman of LAO, Justice Nasir Aslam Zahid, commented in his report that, "The 'Rule of Law' has been lost in Pakistan and Access to Justice has become an illusion to the ordinary citizens, much of the blame can evenly be laid on the institution of part time legal education systems."[346]

Hence, the quality of litigation can also be assessed by what has been taught to these lawyers in the first place. Thus, in order for the Government to control the inflow of incompetency, in 2014, the first National Testing Service ("NTS") was introduced for graduates entering the legal fraternity, which aimed to filter lawyers based on their legal knowledge. However, the same has currently been discontinued[347] Furthermore, the limitation of legal aid in this country has made access to justice an unrealistic achievement, where justice is denied on the very step when the poor are targeted on the basis of suspicion continuing with the brutality faced during interrogation to the framing of charge and ongoing process of being presented to face the trial which in actual is either adjourned due to lack of legal representation or due to non-production of private witnesses in the concerned case.

Rule 93 of the SMR mentions the provision of legal aid[348]. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the UN General Assembly in December 2012, also provide a useful framework of the principles on which a legal system in criminal justice should be based. It also correctly stresses on the importance of making sure that the public is aware of their right to legal aid, and also about the CJS in

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346. Justice (Retd.) Nasir Aslam Zahid; "The Role of Legal Education in Pakistan" [Online] Available at: http://www.sja.gos.pk/JAS/summit/speeches/Prof.NasirAslamZahid.pdf [Accessed 21 Mar. 2015]
347. 'High Court Declares NTS unapproved body' Dawn News, published on 24th March, 2014. [Online] Available at: http://www.dawn.com/news/1095280 {Accessed 31 Mar. 2015]
348. Rule 93 of SMR;- For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions. For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official. [Online] Available at: http://www.ohchr.org/Documents/ProfessionalInterest/treatment prisoners.pdf [Accessed 27 Mar 15]

general. In Pakistan, the LPBCA establishes the Pakistan Bar Council ("PBC") along with a Bar Council for each province. Section 13(1)(la)[349] discusses the provision of free legal aid, on this basis Pakistan Bar Council Free Legal Aid Rules, 1999 was formulated. This is arguably the only legislation throughout the country providing for legal aid. However, the current legislative framework on legal aid service does not consider the UTPs as being entitled to free legal aid. The absence of mentioning UTPs shows a legislative bias which traverses the right to fair trial and the international standards prescribed for the treatment of the UTPs. According to the profiling exercise of UTPs from 9th May, 2013 to 14th February, 2015 conducted by LAO, it has been observed that out of 5,819 UTPs, an astounding 4,282 UTPs required legal aid; whereas, 1,537 UTPs did not require legal assistance[350]. This reflects that legal assistance was required by majority of UTPs, across 21 prison facilities in Sindh[351], languishing in prison and awaiting for free and quality legal representation.

In view of the CJS's fault lines which have been taken up in this report, a matter of concern dominating the narrative is the undue delay occurring in the resolution of criminal proceedings in courts. As an explicit example of these delays it has been emphasized that 81% of the prison population of Sindh comprises of UTPs. Whilst there is a plethora of reasons for this delay in dispensation of justice, the salient causes may be summarized as obsolete laws, inadequate number of judges, untrained judges, non-attendance of witnesses, non-production of the accused during the trial, excessive adjournments and weak investigatory and prosecutorial preparation for the case.

349. Section 13 of LPBCA- (1) Subject to the provisions of this Act and the rules made thereunder, the functions of the Pakistan Bar Council shall be:- (la) to provide free legal aid.
350. Data compiled from the legal clinics conducted by LAO Advocates between 9th May, 2013 to 14th February, 2015
351. C.P, Karachi, W.P, Karachi, D.P, Karachi, Remand Home, Karachi, Y.O.I.S, Karachi. C.P, Hyderabad, W.P, Hyderabad, D.P, Hyderabad, Y.O.I.S, Hyderabad, C.P, Sukkur, D.P, Sukkur, Y.O.I.S, Sukkur, C.P,Larkana, W.P, Larkana, D.P, Larkana, Y.O.I.S, Larkana, D.P, Ghotki, D.P, Shikarpur, C.P, Khairpur, D.P, Naushahroferoze and D.P, Nawabshah.

Recommendations

CHAPTER I

Criminal Procedure:

1. It is recommended that the procedural law regulating the criminal jurisdiction i.e., the Cr.P.C., should be thoroughly revised in order to bring it in conformity with modern needs and requirements. An introduction of legislative reforms through either repealing the Cr.P.C. or introducing a new procedural law may be taken up as has been the case in India where the Indian Code of Criminal Procedure was repealed and in its place the Indian Code of Criminal Procedure 1973 was introduced.

Alternative Dispute Resolution:

2. While these measures have significance on their own, measures focusing on introduction of alternate dispute resolution mechanisms such as mediation and arbitration should also be considered in compoundable cases. Provisions of the Small Claims and Minor Offences Courts Ordinance committees at district levels[352] 2002[353] mandating the creation of arbitration and mediation must be enforced and judges and lawyers alike must be sensitized towards channeling cases away from formal proceedings where possible.

Investigations:

3. Delayed submission of investigation reports is another cause of delay in the disposal of criminal cases. The investigation branch should be strengthened and pre-service training in investigations must be mandatory for all I.Os. Trainings must continue on the job so as to keep officers abreast with modern techniques of the investigation proceedings and with the changes and amendments made with the law in relation to their field.

4. Forensic science laboratories should be set up across the province with easy access and budgetary provisions need to be made to make these facilities 'accessible'.

5. The courts should not hesitate to make use of section 167 of PPC which provides for the punishment of a public servant who deliberately frames or prepares an incorrect document or statement[354]. In addition, undue delays in submission of investigation reports should be taken up by the Police Department and station house officers should be made answerable in this regard[355].

Ethical Integrity with Citizen Centric Policing

6. The absence of ethical integrity during the investigation stage is also one of the main hurdles in bringing a successful end to the trial. In this regard, the Home Department must issue a code of conduct based on ethical grounds for an efficient investigation and other branches of the police. Oversight committees engaging citizens must be established to oversee and monitor the conduct of the police officers. These efforts will also attain the

352. Section 4 of the Small Claims and Minor Offences Courts Ordinance 2002- Establishment of Courts.--(1) The Government, in consultation with the High Court, may establish one or more Small Claims and Minor Offences Courts in each district or at such other place or places as it may deem necessary. (2) The Court shall be presided over by a Civil Judge-cum-Judicial Magistrate. (3) The local limits of jurisdiction of the Court shall be such as the High Court may by notification in the official Gazette, determine and define from time to time.
Section 5 of the Small Claims and Minor Offences Courts Ordinance 2002- Jurisdiction.--(1) The Court shall have exclusive jurisdiction to:(a) try all suits and claims arising therefrom, specified in Part I of the Schedule to this Ordinance, the subject-matter of which does not exceed one hundred thousand rupees in value for the purposes of jurisdiction: Provided that the High Court may, by notification in the Official Gazette, vary such value from time to time; and (b) try offences specified in Part II of the Schedule to this Ordinance.
353. Section 15 provides for the nomination of lists of persons for amicable settlement and such lists shall be maintained by the Court and may refer cases for settlement to these persons.
354. Law and Justice Commission of Pakistan, Expediting Trial Proceeding, Report No.60. [online] Available at: http://www.commonlii.org/pk/other/PKLJC/reports/60.html. [Accessed 7 March 2015]
355. The Police Order 2002 had taken a serious note on this and provisions for the due diligence in investigations were comprehensively dealt with. However, with the repealing of the Order by every Provincial Government and in some cases, the revival of the Police Act 1861 has opened up investigation gaps and legislative lacunae.

Recommendations

objective of making policing and investigations specifically more transparent.

Witness Protection:

7. The rise in crime especially target killings, abductions and murder have added a serious consequence to becoming a witness in a criminal proceeding. Sindh has enacted the Sindh Witness Protection Act 2013 ("SWP Act") for the protection of witnesses so as to enable them to give evidence in criminal proceedings. The law is sophisticated and provides for witness protection programmes run by a witness protection unit in the Home Department staffed with witness protection officers. The statute etches out a complex scheme covering establishment of new identities, concealment of old identities, relocation of witnesses etc. At the time of writing this report, no witness protection unit has been established at the Home Department and implementation steps including the drafting of supporting Rules are awaited. The mechanism for witness protection as envisaged in the SWP Act, should be developed and introduced as early as possible.

Non-production of the Under Trial Prisoners:

8. The non-production of the UTPs for hearings before courts is the responsibility of the Home Department and the Police. The blame cannot be laid on the Prison Administration for their non-production in courts. The procedure provided is that on non-production the court issues a "Production Order" which in routine is sent to the concerned Prison Authorities who thereon forward the same to the concerned police agency providing the police transport services. Frequently, in metropolitan cities the police officials are involved in provision of security with police escorts for VIPs. On other occasions, the inadequate modes of transportation available to the police force are also the cause of the non-production as a result of which the court issues the Production Orders. It has been observed that police officials are reprimanded for the non-production of the UTPs, this, in fact is the travesty of law and the court must take into account the extraneous factors impacting the delay in trial due to the non-production of the UTPs. The Chief Justice of the Sindh High Court and the Senior Judges of the Sindh High Court should take up the matter with the Provincial Government for allocating proper budgetary funds for the production of the UTPs.

Case Management :

9. Generally, in Pakistan and especially in Sindh, the Presiding Officers of the Court have to cope with a daily cause list of at least 120 to 150 cases[356]. In this situation the adjournments given by the Courts cannot outright be rejected but in many cases could become situationally imperative. There is no proper case management system in place despite the fact that the Sindh High Court during the period of Justice Mushir Alam, Chief Justice as he then was, a high level Committee was set up and the process of placing the

356. Law and Justice Commission of Pakistan, Expediting Trial Proceeding, Report No.60. [online] Available at: http://www.commonlii.org/pk/other/PKLJC/reports/60.html. [Accessed 7 March 2015]

court management system in the district judiciary was halfway done. After his Lordships' elevation to the Supreme Court the matter was never taken up .It is suggested that to overcome the problems in developing a well-tuned case flow and case management system, due changes in the criminal procedure as well as utilization of already available provisions of law such as section 476(1) Cr.P.C[357] and section 495(1)[358] of the code maybe utilized. To this effect the Law and Justice Commission of Pakistan has already recommended that a district investigator in each district with senior investigator and junior investigator be appointed, who should work under the supervision of the superintendent of the police and a designated D.I.G police (Investigation) at the provincial level be nominated. This recommendation has been made for the purpose of a separate police force to be created for effecting service on witnesses in criminal cases and which has further being recommended to be responsible for the production of witnesses in court. In this context the sections of the code cited above have been recommended to be used for the purpose[359].

Court Infrastructure:

10. Currently, the subordinate judiciary is suffering from inadequate infrastructural facilities. The courtroom themselves are attached to administrative offices and lack essential equipment and research facilities. With regards, to the litigants and public at large, there are inadequate seating and toilet arrangements. For a common person, the visit to court is a nightmarish experience much less becoming a part of the litigation process[360]. It is time that the government take serious interest in developing and expanding the facilities provided to the district judiciaries without which mere claims of right to fair trial and rule of law are nothing but misnomers. What is required is the re-prioritization of the budgetary allocations to the provincial judiciaries and the timely utilization of the resources.

Judicial Training and Sensitisation:

11. Since 2006, the Sindh Judicial Academy has been providing training courses to the District Court Judicial Officers which comprise of judges from the level of Additional Session Judges to the Magistrates. During the period of late Justice Saleem Akhtar, former judge of a Supreme Court who later served as a Director General of Sindh Judicial Academy, different courses for the judges were designed on different subjects for example, PPC, QSO, Cr.P.C, Anti-Terrorism laws and other areas of criminal law. Ms. Huma Kashif Ikramullah, who served as the coordinator during the late Justice Saleem Akhtar's tenure, in an interview[361] informed that the late Justice Saleem Akhtar had recommended a full one

357. Section 476 of Cr.P.C.-Procedure in cases mentioned in section 195-(1) When any offences referred to in section 195, sub-section (1) clause (b) or clause (c), has been committed in, or in relation to a proceeding in any Civil, Revenue or Criminal Court, the Court may take cognizance of the offence and try the same in accordance with the procedure prescribed for summary trials in Chapter XXII.
358. Section 495 of Cr.P.C.- Permission to conduct prosecution- (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Provincial Government in this behalf but no person other than Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Provincial Government in this behalf, shall be entitled to do so without such permission.
359. Ibid
360. Law and Justice Commission of Pakistan, Criminal Justice System, Report No.22. [online] Available at: http://www.commonlii.org/cgi-bin/disp.pl/pk/other/PKLJC/reports/22.html?stem=0&synonyms=0&query=Criminal%20justice [Accessed 7 March 2015]
361. Interview was conducted with Ms. Huma Ikramullah on 31st March, 2015 at LAO Head Office.

year training of the judges in various areas of specialization. In those due care had been taken for sensitizing the district judiciary on the issues of women, juvenile and minors. This recommendation was not accepted and initially the Sindh Judicial Academy imparted six months courses, some of which were later shrunk to three months. In view of the above, it is recommended that attention may be given to the quality and the time frame of the courses so that they substantively induce positive results. In this regard the role of the Sindh High Court is of vital significance as their lordships may take up the matter and revisit the system of judicial courses and give due consideration to this aspect.

Amendment to the Provision of Bail:

12. It has been observed that section 497 of the Cr.P.C. provides ample grounds for the release of the accused on bail if there are no extenuating circumstances which could compel the courts from withholding bail. However, due to various reasons which impinge the society as a whole, especially in the view of rising trend in crime, the judges are reluctant to grant bails. In cases where bail is granted by trial courts, it has been observed that the bail bonds and sureties at times are kept at values which are beyond the means of the UTP. Since there are no guidelines available on setting the bail bonds and surety amounts, it is recommended that policy measures may be taken up by the Supreme Court and the High Courts through the Judicial Commission of Pakistan to categorize and provide measures and criteria for determining the surety amounts and the bail bond values. Without these guidelines, bail remains illusory to most of the UTPs despite the court granting the same.

Diversion from Custodial Sentencing:

13. The PPOO and the rules thereunder, provide for probation which has been provided to the judges as an alternative to imprisonment and custodial sentencing. Though the law has been in existence for the last 55 years it is exceptionally seen that this alternate prerogative of the judge is exercised. It is recommended that the PPOO be revised and such provisions be included which would encourage the presiding officersof the trial courts to take cognizance of the law and apply it more frequently. To make the PPOO substantially implementable, the Judicial Academies should take up seminars and training programs for judges and lawyers alike to facilitate the implementation of probation.

14. The matter does not end here, the probation when allowed should be for the purpose of implementing community services as a form of sentence and treatment based alternatives. For this purpose, the Government should be involved in making the necessary infrastructure for such community service sentencing and earmarking the resources required and building partnerships with community work based organisations.

15. Parole presently is in the control and management of the Provincial Home Departments. However, these remissions remain within the discretionary powers of the Home Department and the provisions provided under the GCPPRA do not seem to have any relevance to the parole anymore. In recent years, convicts belonging to political parties or sympathetic to political parties or those with influential backing were

released on parole without ever having reported back. This deemed parole as a politically motivated measure for the Home Department to exercise on the basis of influential or political backing. This was taken serious note of in the Suo Moto Case No. 16 of 2011 concerning the Karachi security conditions wherein the Supreme Court ordered the re-arrest of many of the convicts on parole. The parole system is envisaged to act as a rehabilitation mechanism, however, inadvertently, its corruption has resulted in it being a vicious law which is sending out hardened criminals to repeat the crime and bring notoriety to the parole system, ignoring the plight of the first time offenders. Due consideration must be given to amending this law to curb misuse.

Guilt and Plea Bargaining:

16. The Cr.P.C. and QSO lay down procedures for confessions before the court. Any error or noncompliance of the statutes makes the confession invalid even if it is being made in front of the Magistrate. Since long a practice has developed not only in Pakistan but also in India and Bangladesh. While the accused pleads not guilty at the time of the framing of the charge, after a few hearings he files a written application before the trial court pleading guilty and the judge at that very point stops the proceedings, convicts the accused and in most cases either the sentence is reduced and the accused is convicted and the sentence is passed as already having served/undergone; thus, releasing the said accused. In the process the requirements of section 243 Cr.P.C. are often overlooked which lays down a certain procedure and the judgments of the superior courts, for example, in the High Court judgment the position of pleading guilty was clearly identified[362]. If these convictions are to be taken out from the total convictions being made in the trial courts, there would hardly be 2 to 3% convictions on merit. New legislation is required, keeping in view the reality of the question of pleading guilty during the trial which has somehow have been acknowledged by the Indian Parliament and new chapter under section 265-A in the Indian Code of Criminal Procedure, 1973[363] has been introduced. Likewise, it is felt necessary that the legislative amendments may also be brought in the Cr.P.C. in Pakistan which will provide the trial court judges or at the appellate stage the procedure as is universally followed in the cases of plea bargaining giving an effective role to the judges, prosecutor and the defense counsel in arriving at the plea bargain and the ensuing sentence which may at this time also involve non-custodial sentencing as probation.

Conviction and Sentencing:

17. In Pakistan the conviction and the ensuing sentence is in practice done together at the stage of rendering the judgment. However, the issue of conviction and sentencing are quite separable and sentencing cannot be amalgamated with conviction as was the practice in the 19th or early 20th century. Pakistan, unfortunately, continues to follow the same practice as was provided in 1898 and continuously suffers from the absence of any sentencing guidelines. Therefore, the circumstances concerning the nature of the offence, the conduct of the accused, his historical background, aggravating and mitigating

362. 1992 P.Cr.L.J. 1575, Tariq alias Baboo vs The State. Nasir Aslam Zahid and Akhtar Ali G. Kazi, JJ
363. Supra: Plea Bargaining: The Correlation and Consequences of Pleas of Guilt and Non-Custodial Sentencing

circumstances which directly impact the sentence to be announced are never taken up while the judgment is at par. If surprisingly the proceeding the Court Martial of the Armed Forces Personnel is observed which takes place under the Pakistan Army Act, 1952[364] or the laws related to Pakistan Air Force and Navy) it will be seen that the conviction is separate from the sentencing. The current practice violates the substantive due process of law and the right to fair trial. Therefore, it is recommended that due changes be made and the Cr.P.C. and the issues of conviction and sentencing be taken up as separate issues at trial.

Prosecutorial Expertise and Powers under the Prosecution Act

18. The Prosecution Act requires immediate amendment whereby, a prosecutor calls for a report from investigating officer in relation to the investigation of a case within a specified time. The prosecutor must also be given the powers to call for record and any documents in sync with such records. The Prosecution Act is suggested to include the powers of scrutiny of the investigation by the prosecution. The law must allow the authority to the prosecution to return any case which the prosecution in its professional view deems to have insufficient evidence which cannot withstand the trial proceedings. The prosecution wing must be trained in the art of examination of the witnesses; must have adequate knowledge of English and local vernacular language of the locality where the prosecutor is appointed. The prosecutors are suggested to have a workload which would make it possible for them to effectively proceed in cases, and for that purpose, sufficient time must beavailable to them for conducting research and arguments in the respective cases.

Quality of Legal Representation:

19. For quality legal representation as a pre-requisite, the law graduates being produced by the mushrooming law institutes and universities ought to undergo strict standard tests which would assess their knowledge base and the understanding of the procedure in civil and criminal jurisdictions. The NTS system which was recently been adopted and suspended must be re-introduced as a first step for entitlement to be legible for the bar entry examination. The professional test for the enrollment in the Bar Council is suggested to consider testing analytical skills along with the understanding of the law of candidates.

20. The Civil Procedure Code, as well as the Cr.P.C., must be amended to change the provision relating to adjournments. However, the obligation may also be put on the courts not to grant adjournments. In exceptional cases where the counsel is physically not capable of appearing before the court the adjournment must be given but with reasons which should be recorded in the order. The number of adjournments may be curtailed to the minimum possible.

21. The Higher Education Commission and PBC must be mandated with the task of coming up with a revised and quality based LLB curriculum which must be enforced in letter and spirit by universities and institute. The course is suggested to be 5 years and taught on a full time basis. The curriculum may also include internal and external externships with law firms with a course specifically on Access to Justice.

364. Section 17 of Pakistan Army act, 1952- Dismissal or removal by Commander in Chief, or other authorised officer. (1) The Commander in Chief may dismiss or remove from the service any junior commissioned officer, or warrant officer, or any per¬son enrolled under this Act. (2) An officer having power not less than that of a brigade com¬mander or any officer not below the rank of brigadier empowered by the Commander in Chief in this behalf may dismiss or remove from the service any person enrolled under this Act who may be serving under his command.

Conclusion

CHAPTER J

With its geo-political prominence Pakistan's CJS has been at the fore of scrutiny and criticism alike by international watchdog bodies such as the USAID[365] and the International Crisis Group[366]. Today Pakistan stands at serial no. 96 out of 99 countries surveyed, in which the rating of Pakistan on law and order and security is 0.3 on a scale of 10[367]. The same situation, more or less, exists on the question of fundamental rights in Pakistan with both order and security and fundamental rights being intertwined within the deep complexities of the CJS. In Pakistan the problem is becoming more acute with the sharp rise in extremism, radicalization and the surge in terrorism, coupled with the broadening inability of the system to respond to the rise in crimes. As evident, the malaise has finally seeped into the weakest link of the system that is the prisons. As on 2nd March, 2015 the total population of prisons in Sindh stood at 19,575 prisoners while the under trial prisoners languishing as inmates comprise 80.9% of this.

The above figures verily provide sufficient proof of the dismal situation in Pakistan, especially in the province of Sindh, as it continues to face a surge of extremism from southern Punjab. With the widening inadequacy of the legal system to address the issues at hand, the system as a whole is churning out more hardened criminals into the community. We are close to a situation where the remaining shambles of the system itself become a factory for producing criminals.

In this report efforts have been made to examine and take up those questions which, in view of the LAO, are quite visible on the face of the trials and which have become key players in diminishing the capacity of the law enforcement authorities from the stage of arrest of an offender to the point where the trial culminates in conviction and sentencing. Not all blame can be leveled against any one of the institutions involved, which is the investigating agencies, the prosecution or the courts. Matters such as the quality of advocacy, the role of regulatory bodies for legal professionals and the reforms in the appointment and training of the investigating personnel (police), prosecutor and judges at the district level must be taken up in the narrative. In the province of Sindh, even if these factors are to be superficially examined, many of the reasons for the increasing incapacity of the CJS would become obvious.

LAO wishes to place on record that the areas touched in the report are not exhaustive given the wide expanse and should be construed within the confined contents which have been raised in this report.

As far as legal education is concerned, even though the Higher Education Commission and the PBC are working together to develop a full-time Professional Programme for Law, the vested interests continue to prevail the education sector and part-time education continues to dominate the landscape. With the passage of time, individually and collectively, the majority of criminal justice professionals are losing inter-personal skills and command over English language which in some ways lays the very foundation of the legislative framework and the court system. The legal system, being the progeny of the British rule in India, requires a very firm grip on verbal and written English language. Sadly, today tudents who are completing their masters degree cannot

365. USAID, Pakistan Rule of Law Assessment- Final Report, 2008. [Online] Available at: http://pdf.usaid.gov/pdf_docs/PNADO130.pdf [Accessed 27 Mar 2015]
366. International Crisis Group, Reforming Pakistan's Criminal Justice System, 2010. [Online] Available at: http://www.crisisgroup.org/~/media/Files/asia/south-asia/pakistan/196%20Reforming%20Pakistans%20Criminal%20Justice%20System.pdf [Accessed 27 Mar 2015]
367. World Justice Project, Rule of Law Index 2014, [Online] Available at: http://worldjusticeproject.org/sites/default/files/files/wjp_rule_of_law_index_2014_report.pdf. [Accessed 27 Mar 2015]

CHAPTER J

Conclusion

students who are completing their masters degree cannot properly draft a simple application in English. This further aggravates the quality and capacity of lawyers and judges alike while dealing with intricate legal facets during the trial. The role of the Bar Council and Bar Associations can never be underplayed in maintaining the minimum standards of advocacy. This invariably affects the legal ethics and integrity of the advocates in their conduct with the courts, the adversary party between themselves intercede the public at large. As is apparent in every other sector of life in Pakistan, ethical standards have almost collapsed to a point of zero rating, and corruption is extremely high which not only involves financial corruption but also moral and intellectual corruption. Thus the legal fraternity cannot be held at fault solely due to other damaging aspects casting their shadow on the legal system.

While crimes are technologically and scientifically becoming more advanced, the investigation skills and expertise remain reminiscent of pre-partition concepts and doctrine. Though since the U.S. Declaration of War on Terror, Pakistan and especially Sindh have been receiving substantial foreign aid and support to develop its investigation system, no substantial development is evident in the field. Forensic expertise is still illusory to the investigative branch of the government, while we also witness politics corrupting the law. As shown in this report, one of the main reasons for prosecutorial failures is witnessed by the history of prosecution as to how it was manipulated. Later, the repealing of the Prosecution Services Ordinance can be cited as an example of the power of the prosecution again being diminished. Notwithstanding the issues of legislation, the question of the appointment of prosecution itself remains a question mark, especially in the context of their experience on criminal side practice, their presentation of cases, their knowledge on examining witnesses and their research skills for the preparation of cases. These are only some of the problems facing the CJS. As we go deeper in the scrutinization, we find bigger holes and gaps, which lead to making the system dysfunctional. Unless the recommendations made by the Law Commission and presently the Law and Justice Commission of Pakistan are taken into account, along with such recommendations made by international bodies, by the government at the administrative level, parliament and provincial assemblies at the legislative level and revisiting the judicial policies by the superior courts, not much hope is available for a fast declining legal system which may lose its writ both outside the prisons and within the prison system.