**Incarcerated Indefinitely**

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These days every time you switch on a news channel or pick up a newspaper, a major chunk of space is taken up by the news related to court proceedings or orders. It may seem very natural as a predictable aftermath of the general elections but if one tries to categorize these cases being heard in superior courts it emerges that many cases are not related to the recent elections at all but of political hue, nevertheless. The same political cases, sometimes attain such an urgency in the eyes of the courts that day-to-day hearing too is ordered. Similarly, it is not rare that we hear of frivolous and vexatious litigation bordering on ridiculous going on in the superior courts thus not allowing the same courts to hear cases of urgent nature such as violation of fundamental human rights.

A few days ago, we heard of a petition in the Supreme Court for cancelling the elections and ordering new elections, which got unusual coverage by the print, electronic and social media. It was not long before we were told that the petitioner had left the country and was seemingly not interested in pursuing the case. An absolute waste of the court’s time and resources. On the other hand, there are cases of prisoners languishing in the jails of this country pending for years either for their post-arrest bail or appeal against conviction. The inhuman and inhumane treatment of prisoners away from the public view is another reason that the state institutions do not feel pressed to take steps to ameliorate their conditions.

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Among numerous problems faced by the prison administration and the prisoners, overcrowding remains the most fundamental problem and is the major obstacle to bringing about any humane reforms. Retribution is not the only function of the prisons, but reform and rehabilitation are as important if not more. When we mention prisoners, let us be mindful of the distinction between the convicts and the undertrial ones (though both suffer in equal measures from the injustices of the criminal justice system). Ironically, the undertrial ones make up the largest segment of the prison population.

The prolonged incarceration of under-trial persons is no less than a punishment without conviction which not only takes away their liberty but also their dignity, social respect, livelihoods, social relations and much more. It was more than a thousand years ago that the Magna Carta demanded that no one should be punished unless duly convicted. We in Pakistan still have to follow the principle. Add to the list of hardships of inmates the rotten and wretched living conditions of the cramped prisons, making them vulnerable to mental health problems including depression, anxiety and suicidal thoughts. The unsanitary living conditions and poor healthcare of the prisoners in these conditions are not unimaginable. These inmates are at the mercy of the criminal justice system.

According to an international organization working on prison conditions and the prisoners, International Penal Reforms, “Overcrowding is a consequence of criminal justice policy not of rising crime rates”. The judiciary’s role is more important than any other office in reducing overcrowding and releasing the persons incarcerated for years awaiting their trials or decisions on appeals against convictions. The easiest way to ease this overcrowding is to fix and hear cases of bail or appeals against convictions on priority and grant bail wherever reasonable grounds exist instead of rejecting the same for whimsical and arbitrary reasons.

The courts need to follow the rule of consistency, which demands that the persons similarly placed in similar circumstances should be similarly treated, to dispel the impression that only the resourceful people get bail whereas disadvantaged people are not granted the same. The scenarios where the bail may be refused have consistently been enumerated as “likelihood of the accused: (a) to abscond to escape trial; (b) to tamper with the prosecution evidence or influence the prosecution witnesses to obstruct the course of justice; or (c) to repeat the offence keeping in view his previous criminal record, nature of the offence or the desperate manner in which he has prima facie acted in the commission of offence” (CrP No. 910 of 2022). Consistency demands that the judiciary should make its judgments the guiding principle for deciding bail cases. The judiciary needs to take proactive steps to make people believe that there is no discrimination between the poor and the privileged in matters of justice.

On more than one occasion the superior courts have laid down the conditions for arrest and have clarified several times that a mere registration of FIR does not merit an arrest. It has further been stated in several judgements that whenever a case of further inquiry into the guilt of an accused exists, the arrest may cause the abuse of the process of law. The LEAs need to heed the words of the superior courts. The lawmakers should also make the necessary amendments in the CRPC to give effect to the interpretations of the superior courts relating to the matters of bail.

Article 4 of the Constitution guarantees every citizen protection of the law, therefore, this is an alienable right of the prisoners that they too should be treated in accordance with the law. It is suggested that the high courts of all the provinces exercising administrative control over the lower courts should call for the record of the prisoners entitled to statutory bails under section 497 of the CrPC and order expeditious proceedings. (Section 497 orders bail for the under-trial persons whose trial has exceeded one year without conclusion in offences other than punishable by death without the fault of the accused or any person acting on his behalf like adjournments on the request of the defence counsel etc).

The Supreme Court has noted in a case that “the statutory right to be released on bail on the ground of delay in the conclusion of the trial flows from the constitutional rights to liberty, fair trial and dignity guaranteed under Articles 9, 10A and 14 of the Constitution of Pakistan” (Crl.P.588-L/2023). Secondly, the record of those under trial prisoners too should be called who have spent more time behind bars than the imprisonment prescribed as penalty for the offence they are accused of and should be released. It has been noted by courts in their bail orders that keeping an accused in jail may interfere with his right to defend himself in his trial. A strict application of the bail provisions of the CrPC as interpreted by the superior courts will ease the overcrowding of the prisons and bring relief to those who are wasting away behind bars in the hope of getting their freedom one day.

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