MENTAL HEALTH AND THE INCARCERATED

Barrister Haya Emaan Zahid

Legal Aid Office | Legal Aid Society

SETTING THE CONTEXT

Question is have our prisons become dumping grounds for people who require mental health treatment?

Do the incarcerated continue to languish behind bars undiagnosed and untreated?

- 80,169 Prisoners in Pakistan (population of 43 prisoners per 100,000 persons)
- 69% are under trial (low conviction on merit rates of around 2%)
- Occupancy is 171.6% (overpopulated by 72% - ADDITIONAL 63 prisons required!)

Studies provide that those that are incarcerated are two to four times more likely to suffer from depression and serious illness such as bipolar disorders, schizophrenia etc. in contrast to the general public.

There are many reasons for disproportionately higher rate of mental disorders in prisons and many disorders may be present before admission and may only be exacerbated by the stress of imprisonment and poor living conditions.

Our mental health facilities inside prisons are woefully inadequate and standards deployed are extremely loose -But this needs to be pulled up as a priority area as proper mental health treatment and interventions are necessary to ensure prison safety and community safety.

INTERNATIONAL STANDARDS

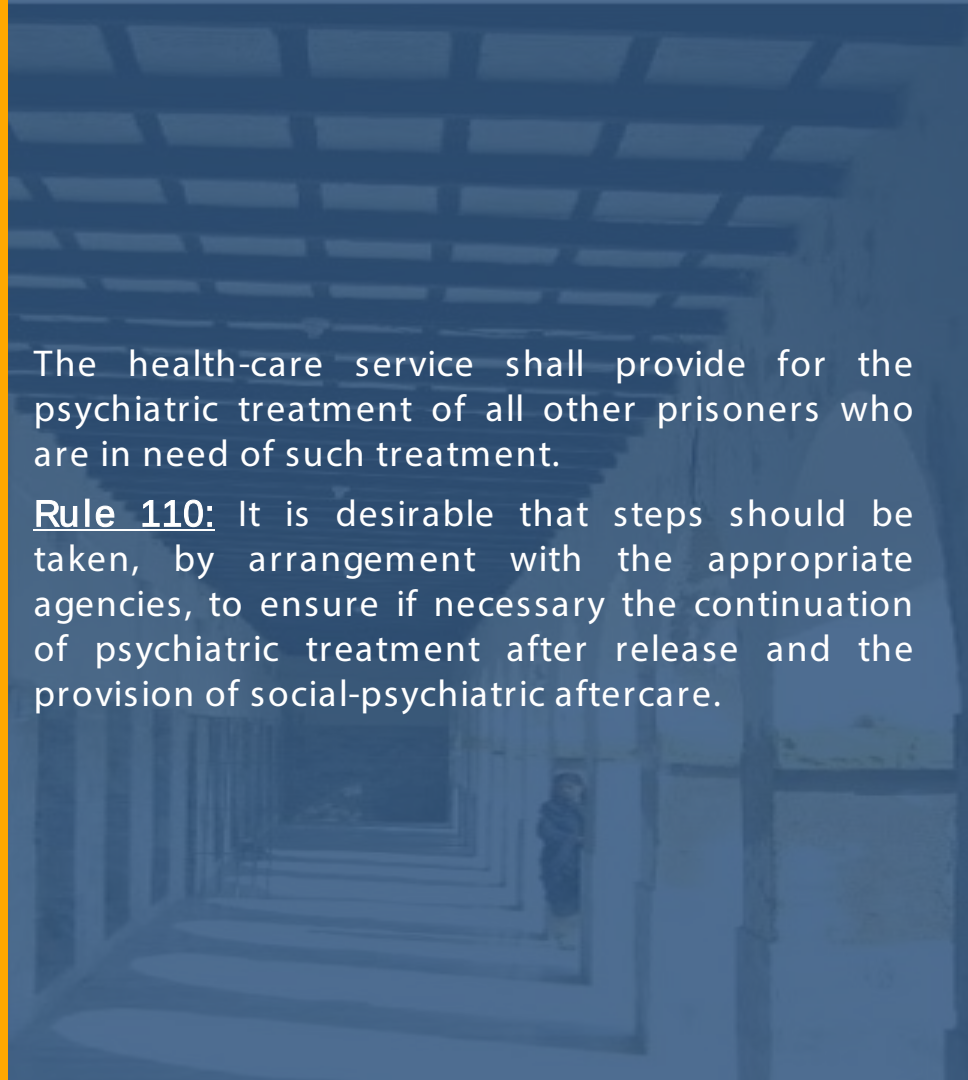
Health personnel, charged with the medical care
of prisoners have a duty to provide them wit h protection of their physical and mental health and treatment of disease of th e same quality and standards as is afforded to those who are not imprisoned or detained.

- UN Human Rights Committee: Affirmed the positive obligation of states to protect the rights of those whose vulnerability arises from their status as persons deprived of liberty.

- UDHR: Human rights in the UDHR are grounded in the inherent dignity of all persons.
- ICCPR: Article 10(1) requires prisoners to be treated with humanity and inherent dignity. Article 10(3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.
- UN Principles for Protection of Persons with Mental Illnesses: Principle 20: All persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness should receive the best available mental health care

MANDELA RULES

Rule 109: Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.



The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

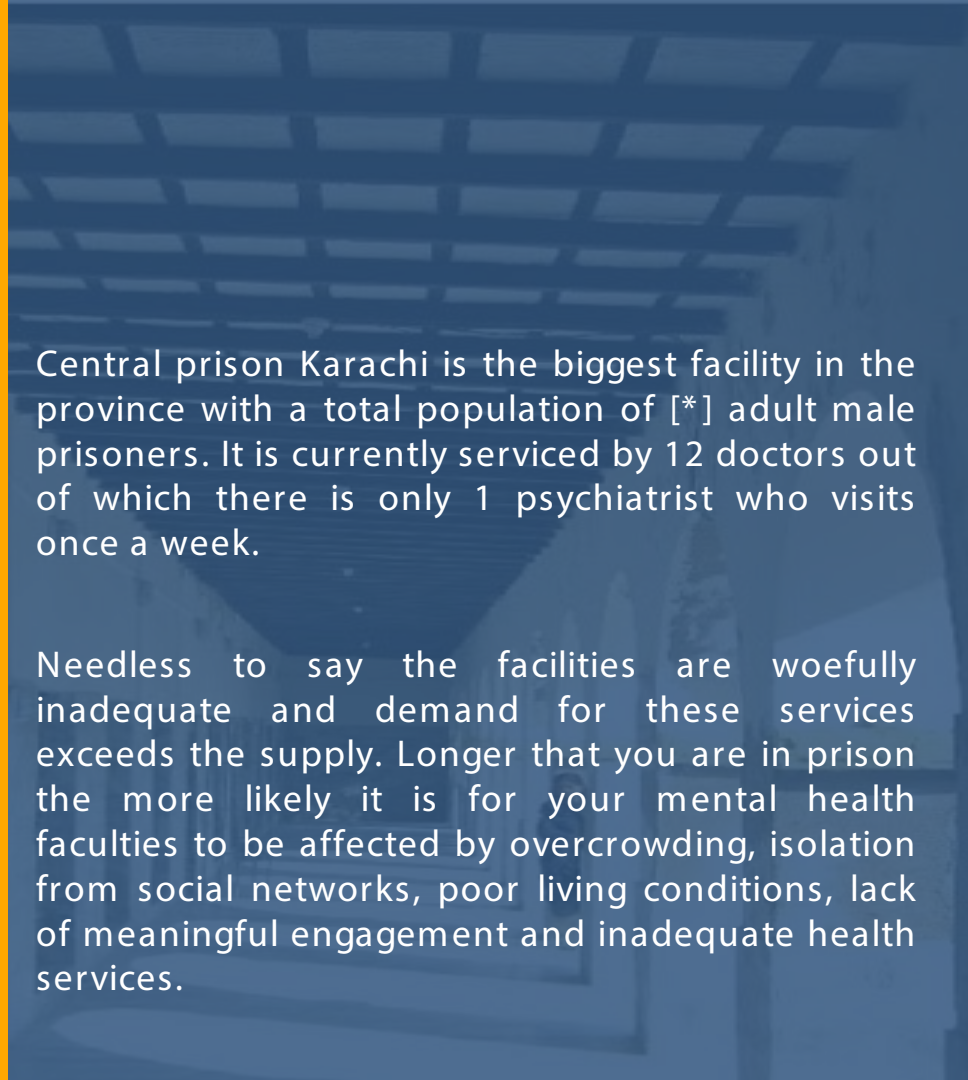
Rule 110: It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.

PRISONS AND MENTAL HEALTH FACILITIES IN SINDH

There are 24 operational prisons in Sindh with a current total population of 20,787 prisoners, out of which 15,858 (76%) are under trial.

There are 2 mental health wards/clinics in Central Prison Karachi and Hyderabad Prison respectively.

There are 4 Drug treatment facilities/wards in Central Prison Karachi, Malir Prison Karachi, Hyderabad Prison and Sukkur Prison respectively.



Central prison Karachi is the biggest facility in the province with a total population of [*] adult male prisoners. It is currently serviced by 12 doctors out of which there is only 1 psychiatrist who visits once a week.

Needless to say the facilities are woefully inadequate and demand for these services exceeds the supply. Longer that you are in prison the more likely it is for your mental health faculties to be affected by overcrowding, isolation from social networks, poor living conditions, lack of meaningful engagement and inadequate health services.

PAKISTAN PRISON RULES/JAIL MANUAL

Legal framework for prisons is unfortunately strongly grounded in colonial legislation which has become out of line with today's ideology and requirements.

Rule 433: describes a mental patient as an 'idiot'. Derogatory terms are still found in the jail manual.

The rules provide a redundant scheme for non criminal and criminal mental patients- the former being those that were governed by the Lunacy Act 1912, which is no longer good law. Incarcerating non criminal patients has been deemed as illegal by the Indian Supreme Court in 1993.

Rules require segregation of mental patients from others inside prisons seems to be more focused on protecting others from these patients rather than safeguarding their own rights

Criminal Patients include convicts who become insane, those who are suspected as being of unsound mind by courts and are remanded to prisons for medical observations,

- Rule 440 provide mental patients cannot be punished but restraints can be placed on them for their own protection or that of others (rule 455)

CRIMINAL PROCEDURE CODE

Chapter 34 provides for special provisions at the trial stage before the magistrates courts, sessions courts and high courts.

Section 464 When a magistrate has reason to believe that the accused is of unsound mind and incapable of making his defense, the magistrate shall inquire into the fact of such unsoundness and shall have the accused examined by civil surgeon or medical officer of the district and shall examine such officer as a witness and shall reduce the examination to wiring.

Case law provides that applications should not be disposed in slipshod manner, or a few verbal questions put to the accused by magistrate are not enough and trial court without examining medical officer passing order as to fitness of accused was set aside (PLD 1984 Lah 434)

However there is no obligation to appoint medical officer upon every such application if the magistrate has no reason to believe that the accused is of unsound mind at the time of the trial.

Section 464 attracted when accused is found to be of unsound mind at the time of trial and not time of commission of the offence (1992 MLD 414)

Failure of the accused's counsel to raise such an application at trial court would not disentitle the accused to be treated in accordance with the law (PLD 1997 SC 847)

Section 465 provides for procedure before sessions court and high court,

Insanity at time of trial and at time of commission of offence are to be tried and adjudicated as separate matters (PLD 1960 Lah 111)

Those found to be unsound of mind at trial stage may be released on bail subject to furnishing of adequate surety. (PLD 1985 Kar 594)

Section 469: Magistrate may proceed with trial if accused appears to be sound of mind at the time of trial and the court is satisfied from evidence before him or there is reason to believe accused committed an act which if he was sound of mind would be an offence and that he was at time when act committed by reason of unsoundness of mind in capable of knowing nature or that it was wrong- court will proceed with case.

NON IMPLEMENTATION OF LAWS

- Mental Health Ordinance 2001.
- Mental Health Policy 2003.
- **Sindh Mental Health Act 2013 -** only province that has integrated the CJS and mental health – however the mental health authority has yet to be constituted , visiting board needs to be notified and no separate special security forensic psychiatric facility (Under Section 55) for transferring under trial prisoners has been established.

BARRIERS

- Lack of Empathy –institutional attitudes and cultures are unsympathetic- The province employs 3,500 prison constables in watch and ward duties at various facilities, making the prisoner to constable ratio in the province 6:1 in the male prisons and 2:1 in women's prisons. No training dedicated to handle or understand needs of vulnerable segments.
- Lack of funds and facilities.
- Lack of Knowledge- crippled understanding- lack of systematic assessment of prevalence and patterns of mental morbidity in prisoners or the responses of the system.
- Lack of political will and interest in implementing the new law.

WHAT CAN BE DONE?

- Diversion mechanisms away from CJS: Our system is retribution and deterrence oriented as opposed to being rehabilitation oriented. It is the wrong place for such persons. So at all stages of the proceedings, such persons should be in separate facilities.
- Screening of inmates at the time of jail admissions and regular reviews: leading to early detection and classification and needs assessments.
- Access to mental health treatment and care inside prisons: Include regular visits of community mental health workers, referring to specialist treatment, access to timely assessment and treatment and referrals. Appoint full time mental health doctors and nurses.
- Temporary transfer for acute care needs to psychiatric wards of general hospitals- provision of security arrangements.
- Training to prison staff: include recognition and prevention of suicide, raise awareness of human rights.
- Inter sectoral coordination needed : bring ministries together to address mental health issues of prisoners.
- Reduce the stigma!