Inviolable in Text, Violated in Practice: Prison Conditions and the Constitutional Right to Dignity in Pakistan

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Abstract

This research tracks the tension between Pakistan's Constitutional guarantee of dignity under Article 14 and the reality of its prisons. Though dignity is deemed "inviolable" it is constantly violated through overcrowding, torture, denial of healthcare and neglect. Neglect of juveniles and females under a penal practice is still characterized by the colonial Prisons Act 1894. The courts have generally held their peace in interpreting Article 14 to prison conditions as compared with comparative jurisprudence from India, South Africa and the European Court of Human Rights, in which dignity has brought change in penal regimes. Pakistan's accession to international conventions including the ICCPR, CAT, CEDAW, CRC and the Mandela, Bangkok, Beijing and Tokyo Rules more strongly anchor their obligation to observe humane custody. Through a doctrinal and comparative approach, this article argues that Pakistan's prisons are unconstitutional and advocates judicial interpretation, legislative reform and administrative redrafting to remake prisons as places of dignity, restoration and Constitutional integrity.

Keywords: Constitutional Dignity, Prisoners' Rights, Prison Reform, Comparative Constitutionalism, International Human Rights Law.

1. Introduction

The Prisons in Pakistan are caught between the constitutional guarantee of rights and the harsh realities of confinement. Article 14 of the Constitution of Pakistan states that "the dignity of man and, subject to law, the privacy of home, shall be inviolable" (Constitution of Pakistan, 1973). The Supreme Court of Pakistan has repeatedly reiterated this as a fundamental tenet of constitutionalism. Characterizing dignity as an absolute right subject to no limitation or derogation (Benazir Bhutto v Federation of Pakistan, 1988). However, a contradictory image is depicted by Pakistan's prisons.

The issue is neither recent nor insignificant. The Prisons Act 1894 (Prisons Act, 1894) remains the legal code regarding prison facilities. It is a colonial-era legislation with little to no amendment. Overcrowding, custodial torture, long-term and undertrial incarceration are the harsh realities of prison. The abandonment of women as well as juveniles remains the norm. Around 73% of Pakistan's prisoners are undertrial prisoners (Justice Project Pakistan, 2025). Living in conditions labeled "degrading and inhuman" by the Human Rights Commission of Pakistan (HRCP) (Human Rights Commission of Pakistan, 2023). Justice project Pakistan in its Prison Data Report records inadequate medical care, filthy unlivable conditions and lack of basic food (Justice Project Pakistan, 2025).

Despite these systemic issues scarce jurisprudence has been developed by the judiciary of Pakistan on prisoner's rights. Though torture and custodial violence have been acknowledged by the courts through sporadic habeas corpus petitions, no structural change or doctrine has been laid down linking dignity to the prison population. This strikes a stark contrast to comparative jurisprudence. The Supreme Court of India in *Sunil Batra V Delhi Administration* held that rights of prisoners are not stripped by the virtue of incarceration (Sunil Batra v Delhi Administration, 1978). Likewise, South African Courts have made dignity the core of their transformative constitutional order. Striking down capital punishment in *S v Makwanyane* being incompatible with

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dignity (S v Makwanyane, 1995)

This article analyzes the working of Pakistan's prison and its contradictions to the guarantee of dignity in the constitutional text. Article 14 states that everyone is to be treated with respect and dignity. In reality the prisons do not conform to the safeguard of dignity. In fact, it is quite contrary to not just to Constitution but also International Law such as International Covenant on Civil and Political Rights (ICCPR) (United Nations Treaty Collection, 2010b) and The Mandela Rules (2015) (United Nations General Assembly, 2015). These laws ensure that the prisoners are treated fairly by protecting their rights.

Methodologically, the paper adopts a doctrinal approach by interpreting the constitutional safeguards of rights against the jurisprudence of India, South Africa and the European Courts of Human Rights (ECHR). The selection of countries is a conscious choice. India has similarity on the basis of region and shared colonial past. South Africa is the epitome of dignity-based transformative Constitution. Lastly, the ECHR is a supranational body of law that has dealt significantly with prison reforms. This study makes two-dimensional contribution. First, it shifts the focus of prison reform from administrative inefficiency to constitutional violation. Second, it compares Pakistan's prison system with the international framework and standards. Stated directly, the central claim advanced here is that Article 14 must be read as an enforceable constitutional basis for structural prison litigation. Pakistani courts should move beyond episodic, complaint-driven habeas corpus relief toward a continuing supervisory jurisdiction over prison conditions adopting a dignity-centered constitutional doctrine of the kind South Africa's courts have used to convert an abstract guarantee into concrete institutional obligations.

2. The Constitutional Right to Dignity in Pakistan

The right to dignity as a unique status that is absolute in nature. Article 14(1) of the Constitution stated in clear, unambiguous terms that *"The dignity of man and, subject to law, the privacy of home, shall be inviolable."* (Constitution of Pakistan, 1973) as against right to freedom which is not inherently an absolute right but rather a qualified one subject to "reasonable restrictions" in order to protect peace, security and public order. The text of the Constitution can be interpreted that right to dignity does not have any limitations per se as compared to the internal framework where dignity is not inviolable but rather is in the balancing scale with other rights.

The apex court of Pakistan has reiterated this unique status of the right of dignity being inviolable. In the case of Benazir *Bhutto v Federation of Pakistan,* it was iterated that dignity under Article 14 is absolute and cannot be curtailed even when the country is under emergency (Benazir Bhutto v Federation of Pakistan, 1988). This view has been reinforced by subsequent dicta.

2.1 Dignity as Foundational to Constitutionalism

The jurisprudence of Supreme Court has correlated Article 14 with the other provisions particularly Article 9 (right to liberty and right to life) and Article 10A (right to fair trial). In *Shehla Zia v WAPDA* the Court ruled that the right to life would be useless if it is without dignity (Shehla Zia v WAPDA, 1994). In *District Bar Association Rawalpindi v Federation of Pakistan,* it was held that the guarantee of fair trial under Article 10A must be read alongside dignity. This ensures that criminal procedure respects not only legality but also the inherent worth of individuals (District Bar Association Rawalpindi v Federation of Pakistan, 2015). If dignity is absolute as established by the Court, then it is the duty of the state to not only the prevention of degrading treatment but also the provision of humane treatment to ensure livable conditions even to those incarcerated.

2.2 The Prisoner as a Constitutional Subject

The Courts of Pakistan have sporadically intervened in form of Habeas Corpus petitions to order to avoid custodial torture or unlawful detention but has majorly viewed this as an administrative inefficiency or inadequacy, rarely as a matter of constitutional violation of right of dignity which is inviolable in nature. This has led to infrequent exercise of Article 14 by the Pakistani Judiciary. Though there have been interventions by the courts but these interventions have not caused a paradigm shift as to dignity being a right of prisoners. This ignorance creates a two-fold problem. First, it suggests that by virtue of detention, right of dignity is suspended making them administrative subjects as opposed to constitutional subjects. Secondly, it creates an ambiguity or inconsistency within the interpretation of the text of the Constitution that if dignity is inviolable in nature, its application is to all including prisoners.

The Jurisprudence in comparison tends to adopt a different approach. In the case of *Sunil Batra,* the Indian Supreme Court held that the fundamental rights do not extinguish in case of incarceration and right of dignity as well as humane treatment are applicable to prisoners (Sunil Batra v Delhi Administration, 1978). Similarly Constitutional Court of South Africa has uniformly upheld that apart from the lawful restrictions prisoners continue to possess legal and fundamental rights (S v Makwanyane, 1995). The same position has been held by European Court of Human Rights (ECHR) under Article 3 of the European Convention stating that overcrowding, insanitary conditions and neglect as contradictory to the inherent dignity of detained individuals (Kalashnikov v Russia, 2002).

2.3 Dignity as Substantive, Not Merely Negative

Supplementary challenge within the jurisprudence of Pakistan is the restrictive implementation of dignity. That is only restricted to the forbiddance of torture or ill-treatment. It is more than the prevention of abuse entailing the existence of decent humane conditions. Academics like Oscar Schachter maintain that dignity involves the respect for the inherent dignity of every person. It is the duty of the state to ensure liberty and wellbeing (Schachter, 1983). In context of prison this means that a state simply avoiding torture is not equal to maintenance of dignity. It must also provide food, sanitation, health facilities. Along with options for rehabilitation and effective reintegration into society. This substantive approach has been adopted by the Mandela Rules (2015) mandating that imprisonment should be administered in a manner consistent with respect for human dignity and gravitating toward social reintegration (United Nations General Assembly, 2015).

Pakistan prison governance can be transformed if the concept of substantive conception is applied. The issues of overcrowding, insanitary conditions and neglect of marginalized groups would not merely be administrative defects rather violations of Article 14. If applied in Pakistan, this interpretation would transform prison governance. Rather than treating overcrowding, insanitary cells or neglect of vulnerable groups as unfortunate administrative failures, they would be recognized as constitutional violations of Article 14. The inadequacy to provide healthcare will not only be mismanagement but breach of a non-derogable right.

2.4 The Doctrinal Gap

The doctrinal gap in Pakistan is significant. Though the Supreme Court has declared dignity as inviolable there has been no jurisprudence that is extending to prison population regarding dignity. This creates an inconsistency in the interpretation of constitutional text in context of incarceration due to the absolute nature of right of dignity. By the virtue of nature, it should not be breached in prison.

3. Comparative Perspectives

Comparative Jurisprudence has elucidated the constitutional guarantee of dignity behind bars. Jurisdictions such as India, South Africa and the European Court of Human Rights (ECHR) have all established that incarceration restricts liberty but not dignity. These cases have proven that courts can act as catalysts for incorporation of right of dignity for prisoners. Pakistan's judicial silence on this matter appears stark in comparison. This divergence is not simply a matter of judicial attitude. It reflects identifiable institutional barriers. First, the superior judiciary in Pakistan carries a chronic case backlog that leaves little institutional bandwidth for the kind of sustained, multi-year supervisory litigation that structural prison reform requires. Second, procedural hurdles narrower standing rules in practice, the absence of a settled doctrine of continuing mandamus and reluctance to appoint monitoring commissions make it difficult to translate a single favourable ruling into durable institutional change. Third, public interest litigation in Pakistan has developed a markedly political character, concentrated on high-visibility disputes over governance, elections and executive accountability. This has left less doctrinal and reputational space for the slower, less newsworthy work of prison oversight. Recognizing these barriers matters because it changes the shape of the reform this article proposes. Judicial reform cannot rest on winning one more Article 14 judgment, but must include the procedural tools such as monitoring committees as well as phased compliance orders and clearer standing rules that Indian and South African courts already have at their disposal.

3.1 India: Prisoners as Bearers of Fundamental Rights

India and Pakistan both inherited a colonial jail system. The application of Prisons Act, 1894 continues to their prisons. Meanwhile, written Constitutions incorporate fundamental liberties enforceable by judiciary. Nevertheless, the Indian Supreme Court has formulated an elaborate body of jurisprudence on the dignity of prisoners hardly found in Pakistan.

3.1.1 Sunil Batra v Delhi Administration

The Court held in *Sunil Batra v Delhi Administration* that fundamental rights "do not part company with the prisoner at the prison gate." Justice Krishna Iyer emphasized that even convicts had a right to the right to dignity. They should be given humane treatment and freedom from cruel punishment. Solitary confinement, custodial torture as well as denial of adequate medical care were declared unconstitutional (Sunil Batra v Delhi Administration, 1978).

3.1.2 Hussainara Khatoon v State of Bihar

In *Hussainara Khatoon* the court unraveled the sufferings of the undertrial prisoners. Most of whom had spent longer periods in jail than the maximum sentence for their supposed offense (Hussainara Khatoon v State of Bihar, 1979). It iterated that the right to a speedy trial is inherent in the right to life and liberty under Article 21 (Constitution of India, 1950). This decision resulted in the release of thousands of undertrial prisoners. It showed the potential of judicial affirmation of dignity bringing about structural transformation.

3.1.3 Judicial Monitoring of Prisons

The Indian judiciary adopted a system of oversight through prison monitoring committees. In *Charles Sobhraj v Superintendent, Central Jail Tihar* it was held that the conditions of prison are subject to examination. It granted continued monitoring to enforce compliance (Charles Sobhraj v Superintendent, Central Jail Tihar, 1978). The acknowledgement of prisoners as constitutional subjects can be done without wreaking havoc on prison management. Judicial intervention can instigate transformation in case of legislative inertia.

3.2 South Africa: Transformative Constitutionalism and Dignity

Under section 10 The Constitution of South Africa codified dignity among the Constitution's values (Constitution of the Republic of South Africa, 1996). The Constitutional Court has applied dignity to reconfigure the criminal justice system, penal policy and the law on human rights. This trajectory is not accidental. South Africa's transformative constitutionalism was deliberately drafted in the aftermath of apartheid as a break with a legal order. That had used law itself as an instrument of degradation the 1996 Constitution therefore entrenches dignity as a justiciable, freestanding value rather than a mere interpretive aid. It pairs it with expansive standing rules a constitutional court with express structural-interdict powers and a constitutional culture. That treats socio-economic and carceral conditions as constitutional questions rather than purely administrative ones. Pakistan's 1973 Constitution by contrast, was not drafted as a rupture with a prior unjust order in the same sense. Article 14 sits within a framework that still channels most prison-related grievances through ordinary administrative law and episodic habeas corpus petitions. With no equivalent tradition of structural orders, continuing mandamus or a specialized constitutional court willing to supervise implementation over time. It is this absence of institutional mechanisms not an absence of textual guarantee that Pakistan lacks by comparison with South Africa.

3.2.1 S v Makwanyane

In *S v Makwanyane* death penalty was struck down being incompatible with safeguard of dignity in the Constitution (S v Makwanyane, 1995). It was declared by Justice O'Regan that right to life and human dignity go hand in hand. Dignity is a justiciable and enforceable right as well as a value of the Constitution. This ruling shows that dignity is both a principle of interpretation and a substantive right.

3.2.2 Prisoners' rights jurisprudence

The Court has applied this line of reasoning to prisons. In *August v Electoral Commission,* it was held that prisoners continue to possess the right to vote. Imprisonment does not deprive persons of dignity or citizenship (August v Electoral Commission, 1999). Proper nutrition, health care and access to rehabilitation have been recognized as the minimum requirement by South African courts (Lee v Minister of Correctional Services, 2012).

3.2.3 Transformative Constitutionalism

The concept of transformative constitutionalism is adopted by South Africa. Constitutional law should not only limit state power but actively reshape society toward justice and equality (Klare, 1998). This framework does not exempt prisons from constitutional scrutiny. Instead, they must become sites of transformation consistent with human dignity.

Dignity should become a transformative principle of constitutionalism enabling the courts to insist on structural prison reform instead of intervention on an occasional basis.

3.3 The European Court of Human Rights: Structural Reform Through Dignity

The ECHR built extensive jurisprudence on the European Convention on Human Rights' Article 3 (European Convention on Human Rights, 1950) that prohibits torture and "inhuman or degrading treatment." Although Pakistan is not part of the Convention, the Court's jurisprudence is enlightening on the mechanism through which supranational adjudication can mandate prison reform.

3.3.1 Kalashnikov v Russia.

The Court held in *Kalashnikov v Russia* that detention under overcrowded, unsanitary conditions was degrading treatment even without physical torture (Kalashnikov v Russia, 2002).

The ruling stressed that long-lasting exposure to substandard conditions violates dignity and held states to a positive obligation to provide humane conditions of detention.

3.3.2 Torreggiani v Italy.

It went a step further in *Torreggiani v Italy*, holding systemic prison overcrowding in Italy to be a breach of Article 3 (Torreggiani v Italy, 2013). Structural reforms were imposed regarding compensation schemes within prisons and long-term improvement of prison facility.

3.3.3 Pilot Judgments and Structural Remedies.

"Pilot Judgement" employed by the courts directed state wide reforms. Recognizing that repeated violations come from systemic deficiencies as opposed to isolated misconduct. This recognition can result in structural solutions instead of adjudication on a case-by-case basis. It highlights the connection between dignity and the need for institutions to change. By affirming that prisons are violating the right of dignity that Courts are able to form an eagle-eyed view looking at the broader picture leading to practical solutions as compared to dealing with one case at a time.

3.4 Comparative Synthesis

Jurisprudence from India, South Africa and the European Court of Human Rights have three common themes. The first theme being that incarceration restricts liberty not dignity. Second that dignity is not just refraining from negative aspects such as torture or ill treatment but positive obligations such as food, sanitation and healthcare. Lastly that judicial intervention can act as a catalyst for systemic reform.

Retention of rights of prisoners have been demonstrated by comparative jurisprudence. It also established that proactive measures should be taken rather than reactive measures. The courts can bypass episodic rulings and move towards systematic metamorphosis. Article 14 proclaims dignity "inviolable," (Constitution of Pakistan, 1973) establishes a strong textual support yet the implementation and jurisprudence has remained silent. This gap can be bridged by aligning Pakistan's prison system with comparative jurisprudence and international standards.

4. International Law Obligations

Pakistan's constitutional safeguard of dignity under Article 14 is supported by its international human rights treaty obligations. Since Pakistan is part of the international community, it is by default party to the most important treaties. By that virtue it is committed to making its penal and detention policies compliant with international norms.

4.1 Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights (UDHR) under Article 1 and 5 enshrines the inherent dignity and equal rights of each human being. It categorically excludes torture and cruel, inhuman, or degrading treatment. Article 1 declares that "all human beings are born free and equal in dignity and rights". Article 5 is clear that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (United Nations General Assembly, 1948). These provisions form the legal basis of international human rights law.

4.2 The International Covenant on Civil and Political Rights (ICCPR)

ICCPR was approved and adopted in 2010 in Pakistan. This undertook the commitments of Article 7 (torture, cruel, inhuman or degrading treatment ban) and Article 10 (the right of every person deprived of liberty to be treated humbly and with dignity) (United Nations Treaty Collection, 2010b). Both articles reflect Article 14 of the Constitution of Pakistan. Affirming the absolute character of dignity in pretrial detention.

Article 10 of the General Comment No. 21 of the Human Rights Committee mandates

positive obligations. Prisons must ensure adequate accommodation, food, hygiene and medical care. Alongside it should facilitate rehabilitation and reintegration. (UN Human Rights Committee, 1992). Human Rights Committee in its concluding observations on Pakistan observed "severe overcrowding, unsanitary conditions and the large number of undertrial prisoners" requiring dire actions and reforms (UN Human Rights Committee, 2017).

4.3 The United Nations Convention against Torture (CAT)

United Nations Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was acceded in 2010 by Pakistan (United Nations Treaty Collection, 2010a). Criminalization of custodial violence as well as prevention of degrading and inhumane treatment is required by the convention. Articles 2 and 16 of the convention requires Pakistan to prevent custodial violence. It also requires ensuring independent monitoring of detention facilities. Instances of custodial torture and deaths remain prevalent with scarce accountability (Human Rights Commission of Pakistan, 2023).

4.4 The Nelson Mandela Rules (2015)

The UN Standard Minimum Rules on the Treatment of Prisoners also known as Mandela Rules are most authoritative international standards on incarceration. (United Nations General Assembly, 2015). Dignity and Rehabilitation are recognized as the cornerstone of prison law according to The Mandela Rules. Rule 1 states that every prisoner to be treated with dignity and respect. Humanity does not cease to exist by the virtue of incarceration. Rule 24 implores that same standard of healthcare should be provided to prisoners as provided to the general public. Rule 58 protects the right to retain contact with families as it pays an integral role in reintegration. These Rules reframe prisons as transformative institutions rather than punitive institutions. These bare essentials as provided in The Mandela Rules are barely adopted by the prisons of Pakistan.

4.5 CEDAW and CRC: Women and Children in Detention

Article 12(2) of CEDAW (Convention on the Elimination of all forms of Discrimination against Women) establishes that women prisoners should be kept decent conditions. This pertains especially to pregnant women and mothers. Proper medical and childcare facilities are to be provided. (UN Committee on the Elimination of Discrimination against Women, 1999). In Pakistan women suffer from neglect, unsanitary conditions and lack of proper maternal healthcare (Human Rights Watch, 2023). Article 37(c) of the CRC (Convention on the Rights of Child) states that children deprived of liberty should be kept apart from adults. They should be detained as the last possible measure. Opportunities for rehabilitation should be offered (United Nations General Assembly, 1989). However, in Pakistan juvenile convicts are often kept among adult. They are also deprived of education or psychosocial care.

4.6 Bangkok Rules (2010)

The Bangkok Rules (UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders) take into consideration the needs of women prisoners. Maternal health care is emphasized. Childcare facilities in detention centers and alternatives to imprisonment for family-liable women prisoners are necessary (United Nations General Assembly, 2010a). Pakistan is in breach of these rules. There are no open maternity wards and childcare facilities. This amounts to severe violations of the international responsibilities it has ratified.

4.7 Beijing Rules (1985)

UN Standard Minimum Rules for the Administration of Juvenile Justice are also known as Beijing Rules. The rules prescribe that the incarceration of a juvenile should be the last resort.

Rehabilitation and reintegration into society should navigate the entire procedure (United Nations General Assembly, 1985). Keeping juveniles with adult inmates is a violation of the above said rules. In Pakistan juveniles and adult inmates are kept together without facilities for education.

4.8 The Tokyo Rules (1990)

The UN Minimum Standard Rules for Non-custodial Measures (Tokyo Rules) encourage alternatives to detention. Probation, community services and conciliation/mediation are encouraged (United Nations General Assembly, 1990b). 73% of prison population is under-trial prisoners. (Justice Project Pakistan, 2025). The failure to adopt the rules amounts to overcrowding which is a violation of the international standards. Failure to adopt can also lead to arbitrary detention.

4.9 Basic Principles for the Treatment of Prisoners (1990)

GA Resolution 45/111 holds that "except for those limitations demonstrably necessitated by incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in international instruments." (United Nations General Assembly, 1990a). This rule directly challenges Pakistan treating prisoners as non-subjects of rights.

4.10 Implementation Gap in Pakistan

A vast implementation gap is present despite guarantee of dignity in Article 14 and accession to major human rights treaties. Prison Act 1894 drafted from a viewpoint of control rather than rehabilitation and reintegration remains in the colonial era with scarce adaptability with time. No legal reforms have been made in conformity to ICCPR, CAT or Mandela Rules. Oversight is frail. Inspection is rare and non-independent. Monitoring mechanisms as mentioned under CAT have not been set up as of yet.

Women and juveniles ignored. Juveniles are detained with adults without rehabilitation or education violating the terms of the CRC and Beijing Rules. Civil society reports (JPP, HRCP, HRW, NCHR) regularly report overcrowding, unhygienic arrangements and systemic abuse. Healthcare and childcare facilities are nonexistent. Such a gap reveals an enigma where the guarantee of dignity is absolute but in reality, its anti-thesis is prevalent.

5. Normative & Theoretical Analysis

The pledge of dignity enshrined in the Constitution of Pakistan raises a deep normative question: how does a legal order respect prisoners with dignity? This section argues that (a) dignity is one of the cornerstones of constitutionalism (b) prisoners remain constitutional subjects (c) dignity requires positive duties and (d) the prison regime in Pakistan is a failure because it constitutes a punitive, sovereignty-based regime rather than a dignity-based regime of constitutionalism.

5.1 Dignity as a Foundational Principle of Constitutionalism

Foundational Principles of Constitution anchor the legal system. In Pakistan Article 14 elevates dignity to such a value. Unlike qualified rights (such as freedom of speech, which may be restricted in the interests of public order), dignity is absolute. This textual elevation makes Pakistan's constitutional order exceptional (Ahmad, n.d.).

The Supreme Court of Pakistan has acknowledged dignity as the cornerstone of the Constitution (Benazir Bhutto v Federation of Pakistan, 1988). The State's responsibility for promoting human dignity is the key since all basic rights are founded upon it (Jawwad S Khawaja & Others v Federation of Pakistan, 2023). Dignity is both a value and a right. It is a foundational "mother-right" from which other "daughter-rights" are derived (Barak, 2015). According to this

perspective violation of dignity of prisoners is not a sporadic issue rather a systematic failure of the constitutionalism itself. A state that permits degrading prison conditions undermines the very foundation of its constitutional order.

5.2 Prisoners as Constitutional Subjects

The theoretical error within the jurisprudence of Pakistan is the treatment of prisoners as administrative objects rather than constitutional subjects (Arif, 2022). Jail closes liberty but does not erase personhood. Like Justice Krishna Iyer had observed in the case of *Sunil Batra v Delhi Administration* that the prisoners are persons too and the guarantee of the basic right does not cease to operate on them (Sunil Batra v Delhi Administration, 1978).

The South African Constitutional Court have taken the same line. In *August v Electoral Commission*, it ruled that prisoners continued to enjoy political rights and that imprisonment did not turn the prisoner into a cipher (August v Electoral Commission, 1999). The ECHR too had held that persons arrested continue to be bearers of dignity even when found guilty of heinous crimes (Kalashnikov v Russia, 2002) (Hirst v United Kingdom (No 2), 2005). But prisoners in Pakistan tend to be absent from the imagination of the Constitution as shown by reports (Human Rights Watch, 2023). That absence betrays a harmful narrative. Prisoners are inferior to the citizenry, unworthy even of the safeguards ensured to others. That narrative is not merely ethically compromised, but constitutionally untenable. If dignity is supreme, its exercise cannot depend on the criminal status of a person.

5.3 The Positive Obligations of Dignity

Restricted reading of dignity prohibits torture or cruel treatment. This interpretation is inadequate and insufficient. Dignity demands positive state obligations. In General Comment No. 21 The Human Rights Committee emphasized that humane treatment of prisoners requiring active steps. Provision of adequate space, sanitation, healthcare and rehabilitation programs (UN Human Rights Committee, 1992). The Mandela Rules requires the same from states. States have to align prison administration with respect for dignity and rehabilitation (United Nations General Assembly, 2015). Dignity is not merely freedom from the abusive power of the government but it is also recognition of innate dignity. Respect for dignity means affirmatively providing an incarcerated individual the conditions to live as a person, rather than merely suffer imprisonment (UN Human Rights Committee, 1992). By this yardstick, the prisons of Pakistan that are marred by overcrowding, refusal to provide medical care and abandonment of the frail fail administratively (National Commission for Human Rights, 2025). Those same prisons fail constitutionally.

5.4 Philosophy of Punishment and the Limits of Retribution

Another tool used to evaluate dignity is punishment theory. Retributive classical models justify imprisonment on the grounds of just deserts. Retributive models oppose rehabilitative and restorative models on the view, that imprisonment is a chance to reform and re-integrate (Morris, 1974).

Punishment may not be unrestricted within modern constitutional democracies. As legitimate retribution may be, it must operate within the limits of constitutional safeguards (Packer, 1968). Justice Brennan, dissenting in the *Furman v Georgia* case, underscored the fact that the State's penalty does not take the dignity from its people. He added the comment that "the State, even as it punishes, must treat its members with respect for their inherent worth as human beings" (Furman v Georgia, 1972). The prison system of Pakistan continues to be retributive in nature. Prisoners are confined rather than rehabilitated (Arif, 2022).

5.5 Critical Constitutionalism: Sovereignty vs. Dignity

Prisons exist as mechanisms of control and discipline rather than rehabilitation (Foucault, 1977). This dynamic is intensified in Pakistan by the prioritization of order or control over safeguards of rights. The problem is structural. Prisons are locations where the sovereignty of the state overlaps with limits of the Constitution. The prison is treated as a space outside the Constitution. That is governed by executive discretion rather than constitutional norms. This creates a "rights vacuum". A space where dignity though absolute in text becomes invisible in practice. A dignity-centered constitutionalism requires rejecting this vacuum. The Constitution must follow the prisoner into the cell.

Foucault's account is not merely a descriptive backdrop here. It maps directly onto the administrative architecture that the Prisons Act, 1894 still supplies. The Act was drafted as an instrument of colonial discipline, vesting broad, largely unreviewable discretion in prison superintendents over classification, labour, diet and punishment. Discretion whose function, on a Foucauldian reading, was never rehabilitative but productive of docile, controllable bodies. That administrative structure was carried over into the independent state largely unamended, so that a colonial technology of control now operates inside a constitutional order that formally guarantees dignity under Article 14. The persistence is therefore not incidental. The 1894 Act still defines day-to-day prison governance, executive discretion continues to fill the space the Constitution left open and dignity remains textually absolute while remaining administratively negotiable. Aharon Barak's account of transformative constitutionalism offers the doctrinal tool to close that gap. On Barak's view, a constitution does not merely constrain state power but positively reshapes ordinary law and administration to conform to constitutional values. With courts bearing responsibility for testing subordinate legislation including colonial-era statutes against those values. Rather than treating them as presumptively valid because they predate the Constitution. Applied here, that means Pakistani courts reviewing the Prisons Act 1894 should ask not whether the Act was validly made in 1894, but whether its grant of unsupervised executive discretion over prisoners can survive Article 14 today. A negative answer would require reading dignity into prison administration as a standing constitutional constraint, rather than an aspiration external to it. This is what a realistically adopted transformative constitutionalism would require of Pakistan. Not the indiscriminate importation of South Africa's doctrine, but the more modest step of subjecting inherited colonial administrative law to ongoing constitutional review.

6. Counterarguments

6.1 Judicial Overreach and the Separation of Powers

A predictable objection to reading Article 14 as a basis for structural prison litigation is that, this asks courts to do executive work, breaching the separation of powers by turning judges into prison administrators. The objection has force where courts attempt to run institutions directly, substituting judicial preference for administrative expertise. But structural litigation as developed in India and South Africa does not require courts to administer prisons. It requires them to set minimum constitutional standards. To order the executive to produce compliance plans and retain supervisory jurisdiction to test those plans against results. That role is recognizably judicial, interpreting and enforcing a constitutional guarantee, rather than executive. It leaves the executive branch responsible for the operational detail of implementation. The separation-of-powers objection therefore counsels caution about the form supervisory jurisdiction takes, not against its existence.

6.2 Institutional Capacity and Resource Constraints

The prison system in Pakistan suffers from resource constraints, overcrowding, understaffing and inadequate healthcare infrastructure that no judgment can remedy by itself and courts risk issuing orders the state cannot fund. This is a genuine constraint, but it argues for phased, resource-sensitive compliance orders rather than against judicial involvement altogether. Comparative experience, including the European Court of Human Rights' pilot-judgment procedure for systemic overcrowding, shows that courts can calibrate remedies to institutional capacity. Setting minimum non-negotiable standards (such as an end to torture and a floor for cell space), while allowing longer monitored timelines for capital-intensive reforms. Such as new facilities or expanded medical staffing. Resource scarcity is a reason to design remedies carefully, not a reason to treat dignity violations as unreviewable.

6.3 Risk of Under-Enforcement and Symbolic Constitutionalism

A third, more skeptical objection is that Pakistani courts have already declared dignity absolute under Article 14 without changing prison conditions. Therefore, a new doctrinal label "structural litigation" or "transformative constitutionalism" will simply produce more unenforced text. This risk is real and it is precisely why this article's reform proposals in Section 7 pair doctrinal change with institutional mechanisms monitoring committees, phased compliance orders and reporting requirements rather than proposing doctrine alone. A right that exists only in judgments without a mechanism to track compliance, will remain symbolic regardless of how it is characterized. The object of this article is to argue for both the doctrinal shift and the institutional infrastructure needed to make it more than symbolic.

7. Reform Proposals

The recognition of the violation of constitutional guarantee of dignity should come with reforms. Meaningful reforms as suggested by comparative jurisprudence are threefold being legislative reforms, executive reforms and judicial reforms. Other than these reforms innovative reforms such as climate resilient prisons and restorative justice should be adopted.

7.1 Judicial Reforms by Enforcing Constitutional Dignity

A pivotal role can be played by the judiciary in narrowing the divide between the constitutional texts and the realities of Pakistani Prisons. A robust judicial system can bring transformative change in the penal system as have been demonstrated by the courts of India, South Africa and Europe. The judicial system of Pakistan should follow suit.

7.1.1 Recognition of Prisoners as Constitutional Subjects

The applicability of Article 14 should explicitly extend to prison population by The Supreme Court. Incarcerated population should be viewed as constitutional subjects. This would align Pakistan with the comparative jurisprudence and complete the doctrinal gap.

7.1.2 Judicial Monitoring Committees

Prison monitoring committees should be institutionalized under supervision of Judiciary (Arif, 2022). This would ensure compliance with international standards as well as constitutional text as the committees would inspect facilities and report degrading or inhumane treatment. This will be a step from text to binding requirements.

7.2 Legislative Reforms by Replacing Colonial Frameworks

The legislation on Prisons is The Prison Act 1894. The lack of recent legislations depicts inertia in the Pakistan's prison policy (Khattak, 2012). This legislation being drafted in 1894 was made for colonial rule cannot be prevalent today and is not compatible with Article 14 of the

Constitution.

7.2.1 Repeal and Replace the Prisons Act 1894

Pakistan needs to repeal the Prison Act 1894 and consolidate a new Law as per the current situation in Pakistan. The new act will be an overall, comprehensive act that ensures dignity. The Act shall be in conformity to the Mandela Rules (2015) (United Nations General Assembly, 2015) reaching the minimum requirements health, nutrition and rehabilitation (Research Society of International Law, 2022).

7.2.2 Codification of Prisoners' Rights

The rights of Prisoner should be codified in the legislature comprehensively including right to medical care, right to retain relation with family and vocational training (Islamabad Policy Research Institute, 2024). Having an established statutory provision would allow a uniform enforcement of rights.

7.2.3 Bail and Undertrial Reform

The focus should be on reducing under trial prisoners by emphasizing on alternatives such as non-custodial sentencing for minor violations. Limitations on pre-trial imprisonment should also be imposed (Justice Project Pakistan, 2025).

7.3 Administrative and Executive Reforms

Following the adoption of Judicial and Legislative reforms, administrative and executive reform need to be implemented to ensure the effective enforcement of rights of prisoners.

7.3.1 Independent Monitoring Bodies

An Independent Monitoring Body should be established comprising of inspectorates, medical experts and retired judges. This along with Judicial Monitoring Committees can be effective to provide oversight and transparency (Law and Justice Commission of Pakistan, 2001).

7.3.2 Rehabilitation and Healthcare Programs

The 24 Rule of the Mandela Rules states that each prisoner should get the same standard of medical care that is provided to the general masses (Rule 24). There should be Rehabilitation Programs such as literacy, vocational courses and technical skills. Psychosocial counseling should be a mandatory (Human Rights Watch, 2023).

7.3.3 Special Measures for Women and Juveniles

Separation of facilities for women and children should be available. This will segregate them in accordance to Bangkok Rules (United Nations General Assembly, 2010a) and Beijing Rules (United Nations General Assembly, 1985) compliance. This includes the construction of maternity wards, childcare facilities as well as separate facilities for children with access to education (National Commission for Human Rights, 2025).

7.4 Innovative and Transformative Approaches

Aside from conventional reforms of legislature, executive and judiciary, Innovative reforms need to be adopted by Pakistan. Transformative strategies can be adopted to reduce imprisonment.

7.4.1 Restorative Justice Models

Restorative Justice Processes need to be implemented instead of heavily relying on imprisonment. Pakistan can implement probation, mediation and community service as specified in Tokyo Rules (United Nations General Assembly, 1990b). These processes promote responsibility instead of overcrowding prisons (United Nations Office on Drugs and Crime, 2020).

7.4.2 Climate-Resilient Prisons

The climate poses another risk for the incarcerated populations. The prisons are not built to be climate resilient, experiencing extreme weather and climate conditions. The prisons of Sindh and Punjab faced severe risk of flooding and heat stress during the 2022 flood in Pakistan (Dawn, 2022). Ventilation, flood management and disaster preparedness should be adopted as measures for climate resilience (International Committee of the Red Cross, 2022).

7.4.3 Technology for Transparency

A web-based complaint portals along with open prison data can improve transparency and accountability. There should be an online tracking system. It can reduce the risk of abusive practices (United Nations Office on Drugs and Crime, n.d.).

7.5 The Integrated Model of Reform

Reforms if taken alone cannot be effective. Judicial, Legislative and Executive reforms need to be operated in the same system simultaneously in order to achieve a transformative penal system, that ensures dignity. Anything less than simultaneous reform would risk making the right of dignity an empty text rather than the norm and the prevalent reality. It is only by an integrated approach, that will enable to close the gap between the constitutional promise and everyday experience of an incarcerated individual.

8. Conclusion

The ideation is therefore finalized on the argument that The Constitution of Pakistan in Article 14 secures the dignity of man "inviolable," a clear constitutional assurance. However, the jails of Pakistan present a harsh dichotomy. The clauses of law are ratified but there is systematic abuse of the type of overcrowding, custodial torture, long-term and undertrial detention. Disregard for juveniles and females is pervasive. It situates the crisis into three primary frames. First, it addresses Pakistan's constitutional jurisprudence and notes that while the Supreme Court holds that dignity is a fundamental right, regular application does not occur in prisons. Second, it compares constitutional practice in India, South Africa and the European Court of Human Rights where the courts maintain that detention restricts liberty but not dignity. Third, it locates international obligations of instruments of law like the ICCPR, CAT, CEDAW, CRC and the Mandela, Bangkok and Beijing Rules that require humane detention standards.

The conclusion is clear. Pakistan's prison system is unconstitutional. Violation of a non-derogable right of dignity and breach of international commitments is the failure of state. Dignity is a foundational constitutional principle that requires the recognition of prisoners as rights-bearing citizens. The state must ensure humane treatment, healthcare and rehabilitation. Replacing outdated punitive models with restorative justice approaches. Reform is long overdue and possible. The judiciary can enforce standards of prison dignity via suo motu proceedings. Parliament must revise the colonial-era Prisons Act of 1894, with a modern reform Act in accordance with the Mandela Rules. The executive must effect reforms through oversight, access to health care and protection of vulnerable groups. Reforming jails is not only a legal requirement; it is a constitutional requirement.

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