

IN THE HONOURABLE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)

Constitution Petition No. _____ of 2019

1. Karamat Ali,
Son of (Late) Amanat Ali,
Muslim, Adult,
Resident/office at 143-A, Sector X-5,
Gulshan-e-Maymar,
Karachi-75340

2. Javed Iqbal Burki,
Son of (Late) Muhammad Deen,
Muslim, Adult,
Resident/Office at Panorama,
Centre No. 2, 3rd Floor, 316,
Raja Ghazanfur Ali Khan Road,
Saddar, Karachi

3. Muhammad Jibrán Nasir,
Son of Nasir Azhar Siddiqui,
Muslim, Adult,
Resident of 9/E, Askari 3,
School Road, Cantt,
Karachi

4. Pakistan Institute of Labour,
Education & Research,
Registered as an Association under Section 42,
Companies Ordinance, 1984,
Through its authorized person,
Having its registered office at PILER Centre,
ST-001, Sector X, Sub-Sector V,
Gulshan-e-Maymar,
Karachi-75340.....Petitioners

Versus

1. Province of Sindh,
Through the Chief Secretary,
Government of Sindh,
Sindh Secretariat, Karachi

2. Province of Sindh,
Through Prosecutor General,
Department of Law,
New Sindh Secretariat,
Shahrah- e – Kamal Ata Turk Road,
Karachi

3. Province of Sindh,
Through the Home Secretary,

Sindh Secretariat,
Karachi

4. I.G. Sindh
Sindh Police
Police Head Office,
I.I. Chundrigar Road,
Karachi

5. I.G. Prisons
Central Jail,
University Road,
Karachi.....Respondents

**CONSTITUTIONAL PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973**

It is most respectfully and most humbly submitted on behalf of the abovenamed Petitioners as under:

1. That the present Petition is in relation to the enforcement of the fundamental rights of under trial prisoners who have, inter alia, spent periods longer than the maximum term of imprisonment or half of the term for which they could be sentenced, if convicted [hereinafter referred to as 'Under Trial Prisoners']. The purpose of the present Petition is to highlight and to seek justice and enforcement of the fundamental rights and law against the unjustified detention of Under Trial Prisoners within the jail premises throughout the country, the systematic failures resulting in large number of Under Trial Prisoners and its resultant effects. The present Petition is a Public Interest Petition filed by public spirited individuals/organizations engaged in social activism, who are all based in the Province of Sindh.

2. That the Petitioners are known activists who are involved in various struggles for the enforcement of legal and human rights of the people of Pakistan, by particularly liasing with law enforcement agencies for the achievement of the aforementioned objective. The Petitioner No.1 is a known activist who is involved in various struggles for the enforcement of the legal and human rights of the people of Pakistan. In his individual capacity, as well as the Executive Director of Pakistan Institute of Labour Education and Research (PILER) (i.e. Petitioner No.4), the Petitioner No.1 is engaged in numerous social and welfare activities, which include, but are not limited to, the enforcement of the rights of labourers and workers, as evident from his

immense contribution towards, inter alia, fighting for the rights of the 2012 Baldia Factory Fire Victims. The Petitioner No.1 has also filed Constitution Petition No.7097 of 2016 [‘Karamat Ali and Others Versus Federation of Pakistan and Others’] before this Honourable Court in relation to, inter alia, reforms within Police force and for effective implementation of Police Order, 2002. The Petitioner No.2 is also a known activist who is involved in various struggles for the enforcement of the legal and human rights of the people of Pakistan.

*Copies of profiles of Petitioner No. 1 and 2 are attached herewith as **Annexure ‘A’ and ‘A-1’**.*

3. That the Petitioner No.3 is a law abiding citizen of Pakistan who is an Advocate of High Court of Sindh, since 2013. He is also actively engaged in advocacy and litigation for protection of constitutional and fundamental rights of the citizens of Pakistan and against extremism, terrorism and the activities of proscribed organization. He also contested the general elections for both the National Assembly and the Sindh Assembly in 2013 and 2018, as an independent candidate. The Petitioner No.4 is a known Non-Government Organization, which has undertaken dedicated efforts towards the betterment of the people of Pakistan through various measures and is dedicated to promoting a socially just and equitable society where the fundamental rights of people are respected and guaranteed. The Petitioner No.4 has fought for the rights of the victims of, inter alia, 2012 Baldia Factory Fire tragedy and had filed CP No.3318 of 2012 [‘PILER and Others Versus Federation of Pakistan and Others’] and CP No.295 of 2013 [‘PILER and Others Versus SBICA and Others’] before this Honourable Court in relation to the above tragedy. The Petitioners No.2 and No.4 had also filed CP No.1181 of 2014 [‘PILER and Others Versus Federation of Pakistan and Others’] before this Honourable Court regarding the deaths caused in Tharparkar due to, inter alia, drought and negligence of Federation and Province.

*Copies of the Curriculum Vitae of Petitioner No. 3, Relevant portion of the manifesto of Petitioner No. 3, the Board Resolution and Certificate of Incorporation of Petitioner No.4, list of projects of Petitioner No.4, List of PIL cases filed by the Petitioner No. 4 Order dated: 17-03-2016 in CP No.1181 of 2014, Memo of CP No.7097 of 2016 and Order dated: 28-12-2016 and 03-04-2017 and summary of judgement dated: 07.09.2017 are annexed and marked as **Annexure ‘B’ to ‘B-9’**.*

4. That according to the Human Rights Commission of Pakistan [hereinafter referred to as ‘HRCP’] Report for the Year-2018, the prisons in Pakistan are severely overcrowded. On average, they are 57 percent over capacity. It is further noted that “[a]s many as eight prisoners could be confined for most of the day in a cell meant to accommodate two”. It is further

submitted that according to the aforesaid HRCP Report for the Year-2018, in a Suo Motu case, taken up in July 2018, in the matter of the conditions of inmates in prisons, by the Honourable Supreme Court of Pakistan, counsel for Wafaqi Mohtasib (Federal Ombudsman) informed the Honourable Court that there were a total of 78,160 inmates against a sanctioned capacity of 63,532 prisoners in 98 jails across Pakistan. It was further submitted that out of these 78,160 inmates, 25,195 were convicted, 48,780 were under-trial, and 4,688 were condemned prisoners. Similarly, the demography of Under Trial Prisoners as drawn, inter alia, by the HRCP, in their Reports for the Years-2010 through the Year-2018, reveal that the Under Trial Prisoners almost invariably form the majority of the prison population across the country. As a result of this, prisons are populated with those whose actual sentences have not even begun. It is submitted that as a result of overcrowding, it is very difficult to manage and maintain even the absolute minimum standards in jails.

*Copies of the extracts of the aforementioned HRCP Report of 2018, HRCP Report of 2010, and year-wise comparison of prison populations are annexed and marked as **Annexure 'C' to 'C-2'**.*

5. That According to the HRCP Report for the Year-2018 [**Annexure 'C'**], 18,420 prisoners were detained in 25 jails against a total capacity of 12,413 in Sindh. Moreover, according to the Sindh Prisons Department Website, Karachi's central jail had 6006 prisoners against a capacity of 2400, while the District Jail in Malir housed 3483 prisoners against a capacity of 1591. It is submitted that Under Trial Prisoners again accounted for most of the prison population around 50,000 to 78,000 in 2011.

*A copy of Statistics of prisoners from the Official Sindh Prisons Department website as they stood in 2019 and 2013-14 respectively is annexed and marked as **Annexure 'D'**.*

6. That as a result of overcrowding of prisons, it is not possible to provide prisoners and prison staff with adequate nutrition, healthcare and to diligently screen the prison population for contagious diseases. Moreover, the prison population continues to suffer deplorable and unhygienic living conditions; as a result, they are at greater health risk, especially for infectious and contagious diseases which spread rapidly in such conditions. According to HRCP Report for the Year-2018 [**Annexure 'C'**], in November 2017, around 71 prisoners incarcerated in different jails in Balochistan had been found to be infected with HIV/AIDS. At least 50 detainees at the prison in Sindh were HIV/AIDS patients and around 400 suffered from scabies. According to the

HRCP Report for the Year-2010 [**Annexure ‘C-1’**] there were only three doctors for nearly 2,200 prisoners at Malir Jail, Karachi. Moreover, no screening has been reported to have been done for contagious diseases nor are any vaccines administered to the prison population. No comprehensive numbers are available on the prevalence of disease in the prison population of Sindh. Furthermore, according to the HRCP Report for the Year-2018, 11 jails in Balochistan were facing severe water shortage. The jails in Sindh also stand to the same risks. Furthermore, adequate safeguards for the rights of prisoners with disabilities are not in place. Prisoners who need assistance with physical or psychosocial disabilities are not only un-facilitated but their conditions are also aggravated by the overcrowding.

*A copy of the News Report on prevalence of disease in Sindh Prisons, is annexed and marked as **Annex ‘E’**.*

7. That overcrowding of prisons affects women and children in a manner far worse than men. According to the World Prison Brief data, 1.8% of the prisoners in Pakistan are female; i.e 1,955 women and 1,225 juveniles are imprisoned in different jails of the country. In Sindh, there were 192 female prisoners in 2018. It is submitted that according to various reports, there exist no separate barracks for hardened criminals, first offenders, juveniles, and women. Moreover, the Section 6 of the Juvenile Justice System Act, 2018, requires that a juvenile be granted bail for any bailable offence and otherwise to be placed in Juvenile Rehabilitation Centres; even convicted juveniles must only be confined in Juvenile Rehabilitation Centres. Furthermore, according to the HRCP Report for the Year-2018 [**Annexure ‘C’**], it was found that Children living with their mothers in women prisons are the most neglected ‘hidden victims’ of the incarcerated population. These children not only suffer overcrowding but they are also likely to be prone to a life of crime.

*Copies of the World Prison Brief data and of the News Report on the condition of women in Prisons are annexed and marked as **Annexure ‘F’ and ‘F-1’**.*

8. That the reasons behind such a large population of Under Trial Prisoners under detention within the jail premises in Pakistan are summarized as follows. Firstly, lack of information as what are the charges against them; statistics reveal that 91% Under Trial Prisoners do not know of the grounds for their arrest. Secondly, inability and/or failure to pay bail bonds or surety amounts. Thirdly, inability to engage legal counsel; 36% of the surveyed Under Trial Prisoners stated that they were not provided legal representation by the trial court when they could not

afford it themselves. Fourthly, denial of bail in bailable offences; despite the clear language of section 496 of Cr.P.C and various judgements of the superior judiciary, it is commonly found that bail is frequently denied to individuals who are accused of bailable offences in the trial court. Fifthly, low conviction rates and rising crime rates; although crime rates have continued to increase at an average of 17.86%, conviction rates in Pakistan are not found to be above 10%. Sixthly, it is further submitted that any criminal trial may take years for adjudication and as a result, Under Trial Prisoners are made to serve a punishment in the same way as any convicted person. Some Under Trial Prisoners even die before they are acquitted.

*Copies of the 2015 report on Sindh Prisons by the Legal Aid Office and Article regarding National Crime Data and rights of Under Trial Prisoners, Judicial Statistics for the years 2019 and 2013, and Report No. 60 of the Law and Justice Commission of Pakistan are annexed and marked as **Annexure 'G' & 'G-3'**.*

9. That the similar problem was faced and addressed by a judgement of the Supreme Court of India reported as 1980 (1) SCC 81 and as a result of the aforesaid of the Supreme Court of India which directed the States to release on bail those prisoners who had served at least half the sentence they would have been awarded if convicted – Under Trial Prisoners were released from jails in Maharashtra between July 2015 and January 2016.

*Copies of the News Articles published in Indian Express, dated: 05.09.2014, and dated: 24.11.2017, and Seventy-Seventh and Seventy-Eighth Reports of the Law Commission of India are annexed and marked as **Annexure 'H' and 'H-3'**.*

10. That in view of findings of numerous reports and the above stated facts, the Petitioners seek the kind indulgence of this Honourable Court for the enforcement of the Fundamental Rights enshrined in Chapter 1 of Part II of the Constitution of Pakistan, on the following, *inter alia*:

GROUND

A. That the aforementioned Reports depict completely inhumane conditions of the prisons in Pakistan and the Province of Sindh, particularly with respect to the Under Trial Prisoners. It is submitted that given that the criminal trials may take years for adjudication and as a result, Under Trial Prisoners are made to serve a punishment in the same way as any convicted person. In some instances Under Trial Prisoners even die before they are acquitted. It is submitted that it

is a basic tenet of international human rights law that nothing can put a human being beyond the reach of basic human rights protections, and the same is guaranteed under Article 14, of the Constitution, 1973. It is a denial of the rights of Under Trial Prisoners, inter alia, to be safeguarded against illegal arrests and detention, and the denial to the right of legal representation, bail and complete and correct investigation into the charges against them i.e. the right to be dealt with in accordance with law, their right to dignity, their right to due process of law, safety from unlawful detention and fair trial as guaranteed under Articles 4, 14, 10 and 10-A of the Constitution, 1973. It is imperative that, in the interests of justice, those Under Trial Prisoners, who have spent periods longer than the maximum term of imprisonment, if convicted for the charged offence, should be released by the Trial Court during the pendency of the trial, as per necessary terms and conditions, and should be entitled to expeditious disposal of their trials in accordance with Article 10-A of the Constitution, 1973.

B. That the aforementioned facts highlight the following broad-based reasons for a high percentage of Under Trial Prisoners in the total prison population. Firstly, most Under Trial Prisoners are those that are unlawfully arrested and detained for the offences that are not proven; secondly, inaccurate investigations or lack of investigations result in prolonged and compromised trials; thirdly, there is a lack of awareness in Under Trial Prisoners about their own rights and information on the charges against them; fourthly, a vast majority of Under Trial Prisoners do not have and cannot afford legal representation and/or apply for bail and pay requisite bail bonds and surety. Therefore, a bare reading of the foregoing facts and the Constitution of Pakistan shows that these circumstances are resulting in grave violations of Articles 4, 14, 10, 10-A and 19-A of the Constitution, 1973, which guarantee treatment in accordance with law, dignity, safeguard from unlawful detention, fair trial and right to information. Therefore, those Under Trial Prisoners, who have spent periods longer than the maximum term of imprisonment, if convicted for the offences charged, should be released by the criminal courts on specified terms and conditions of bail during the pendency of their trial.

C. That the Under Trial Prisoners who are unable to pay bail bonds or surety amount are suffering disproportionately because they are poor and less privileged. The concurrent loss of dignity and loss of livelihood, overcrowding of prisons, and inhumane treatment of Under Trial Prisoners being subjected to even worse treatment than that intended for convicted prisoners,

simply because they are poor unable to afford legal counsel and/or pay the bail bonds is a violation of fundamental rights. The unfair and unjust treatment of Under Trial Prisoners, and deprivation of the families of those who are unable to pay bail bonds or surety amount is contrary to the right to be treated equally and without discrimination. The consequent loss of freedom of movement primarily affects the socio-economically disadvantaged Under Trial Prisoners in a discriminatory manner. Moreover, the loss of the right to earn a proper livelihood for themselves and their families is a further discriminatory denial of the right of the socio-economically disadvantaged Under Trial Prisoners to earn a lawful livelihood. The aforementioned is a violation of Articles 9, 14, 15, 18, 23 and 25 of the Constitution, 1973. Therefore, it is imperative that those Under Trial Prisoners, who have spent periods longer than the maximum term of imprisonment, if convicted for the charged offence, should be examined by the criminal courts and a report should be submitted to this Honourable Court for the purpose of passing appropriate orders on the basis of the aforesaid report.

D. That in view of the foregoing, the fundamental rights of Under Trial Prisoners; to dignity, to life, to due process, to protection from unlawful detention and to fair trial as guarantees under Articles 4, 9, 10, 10-A and 14, Constitution, 1973, can only be enforced if there is effective implementation of the Section 497, Cr.P.C, 1898, and bail is swiftly granted as per necessary terms and conditions, wherever possible, so that Under Trial Prisoners are released at the earliest and those who cannot furnish bail bonds due to poverty are not subjected to incarceration and a further loss of income for that reason alone. In effective implementation of the said provision, it is necessary that Under Trial Prisoners who have spent periods of 50% of the maximum terms for the offences charged (if convicted for the offences charged) should be released by the criminal courts on specified terms and conditions of bail during the pendency of their trial.

E. That the large-scale detention of under trial prisoners condemns the prisoners before they are convicted by a court of law. An overwhelming majority of Under Trial Prisoners come from poor socio-economic backgrounds. The families of incarcerated breadwinners are often left bereft of a source of income due to unchecked and prolonged incarceration. Moreover, it is submitted that corrective guidelines have also been provided through the Orders of this Honourable Court, reported as PLD 2008 Karachi 285, providing that under trial prisoners, except those covered by Rule 624, Pakistan Prison Rules, 1978, could not be kept in cells under

any circumstances; that Rule 235 of the 1978 Rules cannot be construed so as to confer any power, in excess to section 28 of the Prisons Act, 1894, which permits confinement in cells for convicted accused. In these circumstances, all Under Trial Prisoners kept in cells were order to be immediately removed to barracks; It was further held that the prolonged detention without trial could be treated as detention in unlawful manner which was not merely liable to be struck down but could also entitle the detainee to be compensated by the detaining Authority; Special Assistant to M.I.T. was directed to require all the trial Courts to keep record of cases where Under Trial Prisoners are required to be produced; all trial judges were directed to take strict measures for production of witnesses and in the event of failure of the prosecution to produce them expeditiously power to grant bail might be liberally received; and the Jail authorities shall prepare a list of all Under Trial Prisoners convict to conduct trial of cases requiring urgency in jails. It is further submitted that a landmark judgment of Indian Supreme Court, reported as 1980 (1) SCC 81, also provides similar guidelines. Therefore, it is imperative criminal courts be required to examine and submit their report on the cases of whose Under Trial Prisoners that the who have spent periods of 50% of the maximum terms for the offences charged (if convicted for the offences charged) to this Honourable Court for passing of appropriate orders on such report.

F. That it is most humbly and most respectfully submitted that Under Trial Prisoners and convicted prisoners are being housed together and the prisons in which they are housed are extremely overcrowded and well over their capacity with respect to space, sanitation, hygiene, health, maintenance of discipline and vocational facilities. Consequently, the prison population of Sindh is living in sub-human conditions and this makes them vulnerable to trauma, psychological harm, and criminal tendencies. It is submitted that Sections 33 and 38 of the Sindh Prisons and Corrections Services Act, 2019, and Chapter 9, and Rule 231(iii) of the Pakistan Prison Rules, 1978, mandates the classification and the separation of Under Trial Prisoners and convicted prisoners, as does the Juvenile Justice System Act, 2018. Moreover, Sections 35 to 38 of the Sindh Prisons and Corrections Services Act, 2019, and under Rule 752 and 760 of the Pakistan Prison Rules, 1978, stipulate clear procedures and precautions to prevent overcrowding. However, no such action has been taken which is a blatant violation of Articles 9 and 14 of the Constitution, 1973. This is also a violation of Articles 33 and 38 of the Constitution, 1973. Therefore, it is imperative that thorough investigation be conducted by the Respondents into the living conditions of the Under Trial Prisoners. Moreover, it is imperative that the Respondents be

directed to ensure implementation of the abovementioned Sindh Prisons and Corrections Services Act, 2019, and of the Pakistan Prison Rules, 1978, and the Juvenile Justice Act, 2018 and a Joint Commission should be formed in order to conduct a comprehensive and up to date survey of all prison facilities, particularly with respect to over-crowding, hygiene, medical, nutritional, recreational and vocational facilities, and submit the same to this Honourable Court for passing of appropriate orders.

G. That it is most respectfully and humbly submitted that the Petitioners seek the indulgence of this Honourable Court to raise further grounds at the time of the hearing of this Petition.

PRAYERS

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

(a) Declare that all Under Trial Prisoners are entitled to a speedy trial in accordance with Article 10-A, Constitution, 1973;

(b) Declare that Under Trial Prisoners who have spent periods longer than their maximum terms for the offences charged (if convicted for the offences charged) should be released by the trial court, on specified terms and conditions of bail/bond during the pendency of their trial;

(c) Direct all the criminal courts under the jurisdiction of this Honourable Court to submit a report of all Under Trial Prisoners who have spent periods longer than their maximum terms for the offences charged (if convicted for the offences charged) to this Honourable Court for passing of appropriate orders on such report;

(d) Declare that Under Trial Prisoners who have spent periods up to or more than 50% of the maximum terms for the offences charged (if convicted for the offences charged) should be released by the trial court, on specified terms and conditions of bail/bond during the pendency of their trial;

(e) Direct all the criminal courts under the jurisdiction of this Honourable Court to submit a report of all Under Trial Prisoners who have spent periods up to or more than 50% of the maximum terms for the offences charged (if convicted for the offences charged) to this Honourable Court for passing of appropriate orders on such report;

(f) Direct all the criminal courts under the jurisdiction of this Honourable Court to submit a report of all Under Trial Prisoners, whose criminal trials were initiated prior to the year 2010 and have still not concluded, to this Honourable Court for passing of appropriate orders on the basis of such report, for expeditious and priority conclusion of such old cases;

(g) Direct the Respondents No. 1, 2, 3, 4 and 5 to form a Joint Commission to conduct a comprehensive and up to date survey of all prison facilities, particularly with respect to over-crowding, hygiene, medical, nutritional, recreational and vocational facilities, and submit the same to this Honourable Court for passing of appropriate orders;

(h) Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper.

PETITIONER NO.1

PETITIONER NO.2

PETITIONER NO.3

PETITIONER NO.4

ADVOCATE FOR THE PETITIONERS

Karachi;

Dated: _____ 2019

DOCUMENTS FILED: As shown in the Petition

DOCUMENTS RELIED UPON: The abovementioned documents e.t.c.

ADDRESS OF PETITIONERS: As per in title of the petition

ADDRESS OF PETITIONERS COUNSEL: Faisal Siddiqi
Advocate

21st Street, Off Khayaban-e-Sehr,
Phase VI, DHA,

DRAWN BY ME
ADVOCATE

HC-8504/HC/KHI
4th Floor, 14-C,

Karachi.