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## Various imprisonment regimes and determining appropriate practices for Afghan prisons in Light of the applicable laws “A case study of Pul-e-Charkhi and Kabul female prisons”

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### Abstract

Given the growing number of recidivists and non-rehabilitated offenders in prisons, the condition of Afghanistan's prisons requires that scientific research be conducted and its results should be presented to relevant authorities. The purpose of sharing these findings and results is that lawmakers, while enacting relevant laws, judges while issuing sentences, and prison officials while executing sentences, consider the reduction of damages and harm caused by imprisonment to criminals and ultimately to society. This research method is descriptive-analytical, and the findings are based on library and field studies obtained through prison observation and inmate status studies and interviews with experts. This research is conducted in Pul-e-Charkhi and Kabul Female Prisons. The research findings show that Pul-e-Charkhi Prison and Kabul Female Prison lack sufficient facilities and capacity for prisoners, especially as the number of prisoners in Pul-e-Charkhi Prison exceeds its capacity. The detention regime applicable to the inmates of this prison is a mass detention regime, and the detainees are kept together despite significant differences in terms of age, mental status, type of crime committed, and criminal record. This regime is not only inappropriate, but also harmful, instead of being effective in terms of rehabilitation. Based on the findings of the gradual detention regime research and considering the explicitness of relevant legislative documents, three types of security regimes can cause less harm and be more corrective for prisoners. These three regimes are high security, medium security, and low security regimes. Therefore, the government is responsible for providing a proper detention regime with adequate facilities for prisoners. Although prisoners are indebted to society for committing crimes, indifference and negligence to their basic needs and their need for rehabilitation will leave a negative impact on the entire society.

**Keywords:** imprisonment regimes, applicable standards in prisons, mass imprisonment regime, gradual imprisonment regime, Pul-e-Charkhi Prison, Kabul female prison

### Introduction

Crime in different societies is a natural and intolerable phenomenon. From the very beginning of humanity until now, societies have sought to fight this phenomenon by relying on divine discipline and statutory law, and have implemented disciplinary measures to punish and correct offenders and prevent further crimes. The history of human societies has witnessed the application of various types of punishment for criminals, most of which have been severe, cruel, inhumane, and merely punitive. However, with the advancement of human knowledge and intellectual evolution, the tendency towards revenge against perpetrators has disappeared, and societies have decided to suggest and implement mechanisms for rehabilitation and re-education of offenders as unhealthy members of society who themselves are the victims of numerous factors.

Imprisonment was viewed as a punishment in the late Middle Ages in European criminal law, and was applied for different purposes throughout history; in the early era, it was used for the expulsion of a convict from society, and for rehabilitation as well. Later on, and with the passage of time, rehabilitation and social acceptance were taken into consideration as a purpose of applying punishment.

Today, prison sentences are accepted with quantitative and qualitative differences in the criminal laws of all countries, and are applied in more or less similar ways to those convicted of criminal offences. Even in countries where the death penalty is either not accepted or is eliminated, imprisonment is used as a last resort for achieving the stated goals of punishment.

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In fact, considering imprisonment without providing for and implementing corrective action may not be effective for offenders. That is why different regimes have been created since the emergence of this punishment and are being applied to offenders in accordance with the legal requirements and abilities of different communities.

While studying different types of imprisonment regimes, including collective, individual, intermittent, gradual, and some special regimes for specific categories of prisoners, this paper makes an effort to draw attention to a proper detention regime for the country's prisons based on desk and field research.

### **Description**

Imprisonment has been implemented as one of the primary forms of criminal punishment through deprivation of liberty in different societies since ancient times. Although such punishments are based on the perception of rehabilitation of criminals, reports by governmental and non-governmental organizations in different countries show that imprisonment, as it was thought, does not improve the lives of offenders. However, it has, in many cases, inflicted irreparable harm on them.

Due to the low quality and capacity of detention facilities in Afghanistan, often caused by the country's economic problems and lack of attention to and focus on the basic needs of prisoners, convicts often endure harms during their imprisonment and after their release. The negative impacts of imprisonment are far greater than the positive effects expected from punishment. For example, according to the Independent Human Rights Commission's report on detention centers issued in 2007, prisoners are deprived of their rights in many prisons across the country, and the government also neglects basic needed services for prisoners, such as health services, proper nutrition, comfort and cooling facilities throughout the year. Vocational training programs are also rarely available to them. According to the report, most prisoners have no access to a defense lawyer, and are even tortured in some of the country's prisons.

In order to assess prisons in a professional and specialized way, investigation of the current conditions and facilities available in the country's prisons was needed in order to determine the appropriate detention regime, and the advantages and disadvantages of various regimes. Considering the increase in severe and dangerous crimes, and the limitation on execution of death penalty for certain crimes due to human rights concerns, the imposition of imprisonment is inevitable. Due to the negative impacts arising from inappropriate imprisonment regimes and lack of appropriate facilities, there is a need to consider alternative punishments as well. Therefore, considering a proper detention regime in prisons is a fundamental and significant need in Afghanistan.

### **Background**

Some investigations have been carried out by the Afghan Independent Human Rights Commission on the situation of prisons in the country. For example, a study titled "The Situation of Detention Centers in Afghanistan" carried out by the Commission in 2006 found that facilities in Afghan prisons are limited in terms of space, education, and health. The results of another study in the year 2014 titled "The Situation of Detention Centers in Afghanistan" suggest that

the problems identified in the previous research have not been resolved, and some of them have even increased. The results of another study, "Torture and Ill-treatment in Detention Facilities" were published by the Commission in the year 2016, show that the level of torture in detention centers increased significantly compared to last year. In 2016, the Commission also released a report titled "Report on Detention Centers," indicating that torture and ill-treatment of detainees exist in several detention centers. Another report, published in 2018 under the title "Report on the Study of the Human Rights Situation in the detention centers," was based on an investigation into the living conditions, the legal and administrative status, and the treatment of suspects, defendants, and convicts in detention centers and prisons.

These research reports are different than the current research in terms of topic, aims, and scope. The above-mentioned reports are also for specific time periods, and no research has been conducted on conditions of prisons this year. Furthermore, in Afghanistan, no research has been conducted to examine existing detention regimes and propose proper remedies. Accordingly, it was necessary to conduct specific research and provide suggestions for identifying appropriate detention regimes and suitable conditions for the rehabilitation of offenders.

### **Research Questions**

1. What are the most common detention regimes in the world?
2. What is the position of Afghan laws regarding the status of applicable imprisonment regimes?
3. Which type of detention regime is the least harmful to prisoners in Afghanistan?

### **Hypotheses**

1. There are different detention regimes in the world such as collective, solitary, intermittent, gradual, open imprisonment, and special regimes for female offenders, children, people with mental disorders, political convicts, and those sentenced to death.
2. Although Afghan law explicitly states the application of imprisonment for a specific group of criminals, it does not have specific provisions on the type of detention regimes for detainees, and relies on applicable standards in detention centers.
3. If a detention regime is determined based on the background and character of individual convicts, including influential factors and a convict's criminal background, it will have more effective results.

### **Research Objectives**

1. Identify the standard and applicable prison regimes throughout the world.
2. Assess and study the position of Afghan legislation on regimes applicable to those sentenced to imprisonment.
3. Identify the gaps and shortcomings in Afghan laws regarding detention regimes, taking into account international instruments and the legislation and experiences of successful nations.
4. Identify the harm caused by the applicable imprisonment regimes in the country's prisons and identify appropriate and effective regimes for prisoners.

## Research Method

The research method is quantitative, descriptive-analytical, and relies on desk and field research. The data collected for the study is from 100 detainees convicted of different crimes, being held at Pul-e-Charkhi Prison and the Female Prison in Kabul city, who were selected for this study. Interviews with experts and specialists, including prison officials and prosecutors overseeing the detention centers, have also been conducted to inform this research, from August 2019 up to January 2020.

## Definition, Theory, and Types of Common Imprisonment Regimes in the World

In addition to defining imprisonment as a type of punishment, it is necessary to elaborate on the theory and other types of well-known imprisonment regimes.

### Definition of Imprisonment

The Arabic word "Habs,"<sup>[1]</sup> which is composed of three Arabic letters "ح. ب. س", means restriction on movement or action<sup>[2]</sup>. In the Moein Persian Thesaurus, imprisonment is also defined as incarceration and detention<sup>[3]</sup>. Also, in the Dehkhoda Persian Thesaurus, prison, or a detention center is defined as a place where convicts and suspects are held<sup>[4]</sup>. As a term, imprisonment is deprivation of liberty and autonomy for a fixed or indefinite period, in which there is no state of release, and if there is a state of waiting, it is termed detainment, not imprisonment<sup>[5]</sup>. In Afghan law and legislative documents, prison is described as: "a place where individuals are held based on a final verdict<sup>[6]</sup> of a court<sup>[7]</sup>." According to all these definitions, imprisonment is a form of punishment which deprives an individual of his or her freedom, and is enforced on those who have been convicted through final verdicts of competent courts.

### Basic Theory of Imprisonment

An important philosophical issue is how punishment is ethically justified. It can be viewed from two completely different perspectives. Based on a prospective view, punishment is justified for attainment of goals in the future, goals that are expected to be attained by imposing a particular type of punishment, or any punishment in general. The alternate view is the retrospective view on punishment. This view emphasizes concepts such as the offender deserving the punishment, and the proportionality between the crime and the punishment. Based on this view, the focus is not on the future results, but on the mistakes an offender has committed in the past. Therefore, the purpose of punishment from the judicial viewpoint is the correction of past mistakes.

In general, given the prospective and retrospective views, theories on the creation and execution of punishment can be expressed as follows:

**The theory of retribution, compensation or retaliation** the word "retaliation" is derived from Latin word "retribuere" means to retribute something lost. The retribution theory says that punishment is the offender's compensation for the crime committed. The retribution theory is similar to revenge on a basic level, as it is often said that an offender owes something to society and he or she is considered to have repaid the debt once he or she has been given a punishment<sup>[8]</sup>. According to this theory, the purpose of punishment should be not only prevention of other crimes in the future, but also vindication for the victim. However, as far as the victim is concerned, imprisonment of the offender does not compensate the victim for the damage, as long as the damage remains in spite of the imprisonment.

### The crime reduction theory

Those who seek to justify punishment in terms of its consequences usually points to a straightforward and explicit conclusion that the criminal justice system claims to produce: a reduction in crime. Two main theories of punishment can explain crime reduction: deterrence and intimidation.

**A. Deterrence:** Punishment is first of all deterrent when the subject is a manifestation of the absurdity of the offense and thereby teaches others a lesson. The purpose of this theory is to restrict the offender from committing another crime in the future by issuing, for example, a death sentence, imprisonment, or prohibition from driving for a specific period. This theory holds that if the offender is imprisoned for a certain period, he or she will not be able to commit robbery, rape, or any other crime while secluded from community. If the prison sentences are long enough, there seems to be little doubt about reducing crime. It should be noted that if the purpose of detention is to deter offenders from committing further crimes in the future, through limiting their liberty, then their detention is justified as long as they are posing a threat to society.

**B. Intimidation:** The correct theory of crime reduction as the primary justification for punishment is the theory of intimidation. The central idea of the intimidation theory is that the fear of arrest and imposition of sanctions will discourage criminals from committing crimes. According to this theory of punishment, imprisonment and other criminal punishments try to put an end to the crime by creating fear in the minds of the offenders of being caught and of being deprived of their liberty. The punishment of imprisonment will affect many people and will prevent them from committing crimes or repeating commission of crimes, so it is beneficial and necessary to apply a prison sentence. However, caution should be exercised so that the severity and duration of the prison sentence does not have a disproportionately negative effect. Many criminals have committed further crimes upon their release, after being imprisoned for several years, perhaps in part because spending a few years in jail has diminished their initial fear of retribution and has made them more prepared to commit future crimes. Mass or public intimidation creates fear in people and prevents them from committing crimes. By punishing criminals, the community warns others not to commit crimes.

<sup>1</sup> Incarceration, imprisonment, prison.

<sup>2</sup> Masooma Mohammadi, (1395 Shamsi).

<sup>3</sup> Mohammad Moeen, (1188 Shamsi), Farhang Farsi Moeen, 4<sup>th</sup> Edition, Tehran, Ashja – Mekaeeel, 453.

<sup>4</sup> Ali Akbar Deh Khuda, (1364 Shamsi), Farhang Loghat Deh Khuda, Tehran, Siros Publication, 486.

<sup>5</sup> Mohammad Jafar Jafari Lingrodi, (1374 Shamsi), Huquq Terminology,

<sup>6</sup> Pursuant to Article 301 of the Criminal Procedure Code,

<sup>7</sup> Law on Prisons and Detention Centers of the Islamic Republic of Afghanistan, (1386 Shamsi), Official Gazette No. 923, Article 7.

<sup>8</sup> Deterrence<sup>8</sup>

### Remedial theory of punishment

One of the goals set for the prison is the “rehabilitation” of offenders to regain their place in society by enduring punishment. By doing so, detention centers must become an appropriate place to remedy offenders' biological, psychological, and social harms, and prison should be converted from a human parking lot to a rehabilitation and treatment facility similar to "Disease and Patients Clinic and.»

### Types of Common Imprisonment Regimes around the World

Regime is a French term, originally a Latin word that means a system, order, method, or style. The regime of imprisonment is the method and style of detention for those convicted of crimes. Different countries choose specific regimes, taking into account the conditions and the identification of social and individual interests. Today, to achieve the goals of punishment, efforts are made to determine or decide an imprisonment regime proportionate to the status of prisoners. In other words, the principle of individualization of punishment that the Italian scientist Enrico Fourie emphasized that ultimately results in the rehabilitation of offenders. There are two types of prison regimes: first, general imprisonment regimes, and second, special regimes for different convicts.

### Common Imprisonment Regimes

As previously discussed, imprisonment is the most common punishment in different countries around the world, as most of the major punishments are imprisonment, which is divided into five categories. According to the Penal Code of Afghanistan, imprisonment is divided into five types: short-term, medium-term, long-term, grade two continued imprisonment, and grade one continued imprisonment.<sup>9</sup> Today, for the implementation of prison sentences, various scholars and legislators have come up with different ways and system to try to maximize the rehabilitation goals of imprisonment, by choosing such systems considering the facilities, conditions of society, and past experiences.

### General Imprisonment Regime

The simplest and most basic form of imprisonment is the general regime. In this way, inmates live together, and the only classification between them is the separation of males and females, and sometimes adults from children. The primary benefit of this type of regime is its low cost. This means that a large number of people can be accommodated and provided with food, rest, and security. The other positive effects of this method of imprisonment are maintaining the collective spirit of detainees, and preventing the harmful effects of being alone.

However, the disadvantages of this system have proven far more significant than the advantages throughout history. These can include: learning from one another's abusive traits through companionship, friendship; gang formation for extortion, or gang formation for offenses, ease of strike, and

demonstrations and riots in the prison that can damage facilities and may result in escape or even killing of other detainees; threatening and enticing of ordinary prisoners by habitual offenders to cooperate with them after being released; difficulties for accidental, mentally impaired, or educated offenders, and offenders with useful skills, in living with dangerous and violent offenders, transmission of disease; and lack of reformation can also be counted as disadvantages of this system.

According to Article 10 of the Law on Prisons and Detention Centers, if an accused person or a prisoner, due to his or her misconduct or improper behavior, causes problems for the rest of the accused persons and prisoners or the administrations of the detention center, he or she shall subsequently be kept in a detention center with a higher level of security. If a center that has better security does not exist, this prisoner can be kept in a section of the same detention center with a higher level of security. According to Article 40 of the mentioned law <sup>[10]</sup>, some detainees and prisoners shall be held in continued quarantine, such as detainees with a chronic health problem, and detainees who resort to constant misbehavior to prevent prison and detention center staff from fulfilling their duties.

The Regulations on Prison and Detention Center Affairs foresee three other types of imprisonment regimes: the regimes of high surveillance, moderate surveillance, and low surveillance. Furthermore, detainees should be placed in the various regimes after consideration of their age, criminal record, and type of crime, length of sentence, drug addiction, health status, citizenship, personality, social status, characteristics, habits, and mental state.

### Solitary Confinement Regime (Pennsylvania type)

This system was first proposed and adapted by Benjamin Franklin in Pennsylvania (in the United States), for the first time in the year 1790, so the system is also called the Pennsylvania system. In this system, inmates live in solitary confinement and are separated during the entire course of their sentence, thus avoiding the corruption of public prisons. In this prison regime, inmates are kept separately: they eat separately, work separately, and use blindfolds when crossing corridors, so that they cannot identify one another.

The advantage of this system is that prisoners have more time to think and regret their actions, and it also provides grounds for rehabilitation. A prisoner in this system is not affected by the ill-treatment of others, and the punishment can be better matched with the individual prisoner's personality. In such a system, the intimidation aspect is greater than the other methods. Despite these benefits, the disadvantages of this method have also been seen in prison history. These include the high costs of this method, mental illness of prisoners kept under such conditions, and the insufficient readiness of prisoners to adapt to society after release.

<sup>9</sup> Based on the Article 147 of the Penal Code of Afghanistan, the duration of short-term imprisonment is 3 months up to 1 year, medium-term imprisonment is more than 1 year up to 5 years, long-term imprisonment is more than 5 years up to 16 years, grade two continued imprisonment is more than 16 years up to 20 years, and grade one continued imprisonment is more than 20 years up to 30 years. Penal Code of Afghanistan (2017), Official Gazette no. 1260, Art. 147.

<sup>10</sup> Article 40: Persons deprived of liberty shall be permanently kept separate from other detainees/prisoners in the following circumstances:

- 1) In presences of permanent health-related reasons & considerations
- 2) In case of continued/permanent rebellion as such that hinder application of laws and rules by the authorities
- 3) If the person deprived of liberty is under investigations
- 4) Other circumstances foreseen by the relevant laws/Bi-laws.



### **Auburn Imprisonment Regime**

The system seeks to maintain the benefits of the two previous systems, while avoiding their disadvantages. This type of imprisonment was first introduced in New York's Auburn Prison in 1816, thus taking the title of the Auburn system. In this system, inmates are kept in solitary confinement at night, but they work together in groups during the day while observing silence and having no contact with each other.

The advantage of this system is that it considerably reduces the disadvantages of the two previous systems. It prevents prisoners from getting mental illnesses that arise from solitary confinement, and also prevents transferring experiences of other detainees' crime and other flaws that are caused by the mass detention regime. This method of detention also prevents the spread of sexual abuse in prisons. However, one of the disadvantages of this method is the strict and inhumane control of prison officials over the detainees in preventing them from talking to each other, which is contrary to human nature.

### **Gradual Imprisonment Regime (Irish)**

This regime originated in the year 1828, from the French Minister Hyde de Neuville. However, the system was later implemented by the Englishman Captain Maconochie in the year 1840. This type of system is a mixed form of the two primary systems, with an improved style. This system was later implemented by Walter Crofton on a larger scale in Ireland, where it achieved excellent results. Therefore, this system has become known as the Irish system.

In this method, an inmate is initially held in solitary confinement, and if a positive change is made in his or her behavior, he or she will be put into a period of communal work, and later in "intermediate prisons." If the inmate is successful at all stages and shows good behavior and competence, he or she will be given more freedom, and may even be allowed to go on leave, and will eventually be released under some conditions. The most important disadvantages of this regime are related to inmates who pretend to behave well but who are not truly reformed, leading to the postponement of freedom for other individuals, which in turn can lead to discrimination. This issue can create problems for prison officials in terms of increased crime inside the prison, such as riots, clashes, suicides, and strikes.

### **Open Imprisonment Regime**

In the various systems described above, except for the Irish imprisonment regime, prisoners are generally held in confined establishments. Nevertheless, in the late nineteenth century, some countries took steps to create institutions that do not have walls and fences. This method was first introduced in Switzerland, and the most famous prison of such kind was called the Witzwil Open Prison which was established in 1891. Also, in France, the same open regime was implemented in 1948 in the Casabianda prison. In this regime, countries usually allocate a large agricultural area to convicts, and the territory can reach several hectares. In part of the large area, common rooms and dormitories are built for the prisoners that are unlike prison cells, without strong walls, solid fences, iron windows, or armed guards. In this way, criminals live under normal conditions. Thus, this type of open regime is also called the imprisonment regime of trust. The advantage of this system is its favorable effects on

a prisoner's psyche, and the provision of social adjustment and rehabilitation. Of course, this system cannot be used for all inmates, because of the threat of escape. Therefore, this method should be applied gradually, and after studying the character of an individual prisoner.

### **Semi-Open Imprisonment Regime**

In this regime, inmates often spend the day outside the prison environment in order to carry out their lives, and return to the prison at the designated time of the night, and spend the night in jail. Likewise, these offenders spend all the official holidays in the detention centers. In Belgium, a slight variation of this regime, known as the weekend detention regime, was put into practice in 1963. In this version, inmates stay out of prison on regular working days and nights, and only report back to the prison on weekends. This procedure could be applied for certain offenders <sup>[11]</sup>.

### **Exclusive Imprisonment Regimes**

The issue of individualization of punishments strongly requires that the punishment of imprisonment also be tailored in line with individual and social attributes of prisoners, and according to the scientific and practical data. That is, the punishment of imprisonment should be adjusted according to the sex, age, and mental condition of the convict, or the type and degree of punishment, motivation for the crime, personality of the offender, and ultimately his or her military or civilian status. Therefore, there have to be special prisons for every class of convict, such as women, older persons, and persons with disabilities, offenders sentenced to death, or criminals with political, military, or foreign status, for example <sup>[12]</sup>.

### **Imprisonment Regime for Women**

Around the world, women make up a small number of all inmates (about 5%), but the degree of risk and the adverse effects that prison has on women, and especially on mothers, in the long run requires that this group of inmates receive special care and support <sup>[13]</sup>. In all countries, men and women are supposed to be detained separately from each other, and if this is not possible, men and women are kept in two separate sections of the prison so that there is no way they can contact each other <sup>[14]</sup>. The UN Standard Minimum Rules for the Treatment of Prisoners states:

- (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.
- (2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.
- (3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in

<sup>11</sup> Homan, 132.

<sup>12</sup> Homan, Jawed Salahi, 260.

<sup>13</sup> International Coach Training Program (1382 Hijri Shamsi), Human Rights and Vulnerable Prisoners, Guideline #1, International Criminal Justice Organization.

<sup>14</sup> Homan, Jawid Salahi, 204.

institutions or parts of institutions set aside for women [15].

The first paragraph of Article 9 of the Law on Prisons and Detention Centers of Afghanistan also emphasizes the separation of women from men in prisons. The Regulation on Prison and Detention Center Affairs also emphasizes the separation of women from men, and the restrictions against men entering women's prisons. In this study, 100 detainees have been interviewed, among which 65 are male, and 35 are female.

### **Imprisonment Regime for Transgender Prisoners**

In today's world, a person may be born with typical male or female anatomy, but feels as though he or she is born into the wrong body. These are individuals whose gender identity or expression does not conform to the social expectations for their assigned sex at birth. A sex change is a surgical change in the body or genitalia by a medical procedure for individuals who want to change their sexual or gender identity [16]. Therefore, prisoners may be placed among other prisoners who do not share their gender or sexual identity. For many reasons, selecting a general, plain prison uniform that can be worn by both female and male detainees can ensure fewer complications in accommodating all types of prisoners. Transgender prisoners should also have access to medical and hormonal treatments in order to minimize their exposure to mental or psychological harm.

Although there is no specific mention of how transgender detainees are to be held under Afghan law, the content of Article 10 of the Regulation on Prison and Detention Center Affairs can be interpreted in favor of additional protections. In this Article, one of the ways of grouping offenders is the characteristics and habits of prisoners. Otherwise, prisoners could be prone to mental disorders, or sexual assault could occur between them and other prisoners.

### **Imprisonment Regime for Criminals with Mental Disorders**

One of the obstacles to criminal responsibility in the laws of many countries is insanity or mental illness. However, individuals who commit crimes under the influence of a mental disorder should not be endorsed through unconditional release. Instead, necessary measures must be taken to improve the morale and spirit of the prisoners with mental disabilities. If criminals with mental disabilities are kept together in the same institutions along with ordinary criminals, the results could be disastrous. The social and individual interests of offenders and non-offenders require that they should be kept in separate sections of the prison, and under different conditions. Additionally, some people's mental disorders will not have reached the level of insanity, but still have some role in the perpetration of their crimes. Criminals with mental disabilities, compared to other criminals, are more vulnerable to abuse, sexual assault, and violence by other inmates or prison staff, so they should not be kept in a regular detention regime; instead, a special

regime of imprisonment should be provided to this category of offenders [17].

The Afghan Penal Code notes the following in this regard: "The court may order the confinement of a convict who has a mental illness, upon request of the prosecutor or legal representative of the person who has the mental illness, and after approval of the expert, to a mental health center designated for this purpose." [18] The Law on Prisons and Detention Centers and related regulations also state that prisoners with mental disabilities must be kept in health facilities [19]. In the absence of health centers, such individuals shall be kept in specific health units.

### **Imprisonment Regime for Drug Addicts**

Addicts need special attention and care in prison, both physically and mentally. Keeping addicts with non-addicted criminals also increases the risks of addiction. Therefore, addicts should be given a special detention regime if possible, or kept separate from other offenders, and should be supported in quitting their addiction. Based on Article 10 of the Regulation on Prison and Detention Center Affairs, drug addicts shall be kept separately. However, the results of this study show that about 16 percent of inmates are drug addicts, and they are held with other inmates under a regular detention regime.

### **Imprisonment Regime for Convicts Sentenced to Death**

In general, prisoners sentenced to death must be continuously monitored in order to prevent them from fleeing or committing suicide. That is why such prisoners are usually kept in solitary confinement, which can be observed and controlled from a nearby location, and watched by a permanent officer. Such convicts may be exempt from work in prison, and can smoke, enjoy extra food, and have some other special privileges [20]. The Criminal Procedure Code also stipulates that a person who is sentenced to death shall be held in prison under specific conditions until the sentence is carried out. According to this law, the death penalty is enforced 10 days after the president approves the order. If the person sentenced to death is a pregnant woman, enforcement of her punishment is postponed for two years after the date of delivery. In this case, the convicted person is kept in prison until the implementation of punishment.

Among the detainees interviewed, 1 female and 6 male detainees have been sentenced to death by a final decision of the court. However, despite serving long sentences, even up to 16 years, their death sentences have been upheld. The mentioned detainees are also being held alongside other inmates.

### **Imprisonment Regime for Political Prisoners**

The political prisoner regime has privileges over the regime for ordinary prisoners. Political prisoners are often held in separate places apart from ordinary prisoners, and held in solitary confinement so that they cannot cause disorder in the prison through an exchange of ideas or conspiracies. Such inmates have the right to move around during the day, under the supervision of correctional officers and prison officials, often for an unlimited time. They may not be

<sup>15</sup>Standard Minimum Rules for the Treatment of Prisoners, UNODC (1955), paragraph 53.

<sup>16</sup> Caroline Gordon and others (2017). A literature review of transgender people in prison: an invisible population in England and Wales. *Prison Service Journal*, No. 233, p.13.

<sup>17</sup> Handbook on prisoners with special needs (2009). UNODC, p.15.

<sup>18</sup> Penal Code, Article 42.

<sup>19</sup> The Law on Prisons and Detention Centers, art. 11:

required to work in the prison or wear a prison uniform. They have more freedom in using meeting and correspondence facilities. They can buy books from outside the prison at their own expense, and such inmates may also have a better feeding regime compared to ordinary prisoners.<sup>20</sup> As discussed earlier, Article 5 of the Regulation on Prison and Detention Center Affairs has emphasized the grouping of prisoners based on the type of crime and their characteristics, habits, and natural intellect. It also gives the competent commission the authority to determine the appropriate detention regime in terms of security (high, medium, or low security).

### **Imprisonment Regime of Foreign Convicts**

Foreign prisoners, due to differences from other inmates, special needs, and on many occasions, their inability to communicate with others, are considered more vulnerable prisoners. Therefore, they deserve special attention and support.<sup>21</sup> Article 36 of the Vienna Convention on Consular Relations states that:

(b) [. . .] the competent authorities of the receiving State shall, without undue delay, inform the consular post of the sending State if, within its consular district, a national of that State is arrested or committed to prison or to custody pending trial or is detained in any other manner. Any communication addressed to the consular post by the person arrested, in prison, custody or detention shall also be forwarded by the said authorities without delay. The said authorities shall inform the person concerned without delay of his rights under this subparagraph.

(c) Consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment.<sup>22</sup>

According to the provisions of Article 5 of the Regulation on Prison and Detention Center Affairs, prisoners are to be classified based on their nationality. The findings of the study show that 97% of the detainees interviewed are Afghan, only 3% of them are foreign nationals, and no special regime was considered for the foreigners. They are held together with Afghan nationals under similar conditions.

### **Standards Applicable in Prisons**

The proper detention regime for detainees and the necessity of rehabilitation requires detention centers to provide suitable condition in terms of discipline, health, nutrition, education, work, leave, and other matters.

### **Disciplinary Requirements (Prison Management)**

The relevant authorities must manage prisons in a manner that avoids disorder. Prisoners should not dominate one another, confront prison staff inappropriately, possess prohibited objects, or disobey rules and regulations in prison. Prison should be a place for the prisoner to become more disciplined and to return to society as an obedient and competent person. Prison staff should refrain from any form of discrimination on the grounds of religion, social status, or

similar characteristics, and should not chain the detainees unless it is necessary.<sup>23</sup>

The Law on Prisons and Detention Centers emphasizes observance of internal order and discipline of prisons and detention centers. It obliges prisoners to compensate for any damage they cause to moveable or immovable property of the government.<sup>24</sup> In another article, the Law on Prisons and Detention Centers describes the consequences of not observing the order and discipline for prisoners:

(1) Detainees and prisoners who do not observe order and discipline shall be punished by prison and detention center authorities as follows:

1. Warning in private;
2. Warning in public;
3. Depriving them of work and other common activities for a maximum period of 15 days;
4. Repealing their leave grant.

(2) Pregnant women and nursing mothers shall only be punished by keeping in mind the provisions mentioned in clauses 1 and 2 of paragraph (1) of this article.

(3) The duration of the punishment mentioned in clauses 3 and 4 of paragraph (1) of this article regarding men and women between 18 and 25 cannot exceed half of the maximum period.<sup>25</sup>

This study found that 56% of prisoners were highly satisfied with their treatment by prison officials, 17% were quite satisfied, 22% were satisfied, and 5% were less satisfied and did not consider the behavior of prison officials appropriate for the rehabilitation of prisoners. Among the detainees interviewed, none of them complained about torture or harassment by prison authorities. Among the female detainees, only one of them, who was a foreign national, spoke of a police officer's attempt to sexually exploit her when she was taken to a hospital outside the prison for treatment. Also, the level of control of the authorities, especially regarding irregularities and harassment of prisoners toward other prisoners, is 40% of respondents highly satisfied with the level of control, 29% quite satisfied, 18% satisfied, 6% less satisfied, and 6% very much less satisfied.

### **Health Conditions**

According to UN recommendations, inmates should live in a healthy environment, both in terms of the protection and maintenance of buildings, and in terms of regulations governing the provisions of personal hygiene and sanitation, and serve their sentences in a suitable environment. The building must receive adequate light, heat, and ventilation. Prisoners have the right to bathe or shower at least twice a week. Male prisoners have to get their hair cut in order to prevent the spread of contagious diseases caused by parasites or insects in human head hair. Every prisoner shall have at least one and up to two hours of suitable exercise in the open air daily. Sick prisoners should be treated free of charge in prison by a doctor, and those prisoners who require specialist treatment shall be transferred to specialized institutions or the civilian hospital. All health

<sup>20</sup> Homan, 273.

<sup>21</sup> Homan, International Criminal Justice Reform Organization.

<sup>22</sup> Andrew Coyle (2013), Human Rights Approach to Prison Management, Zindan International Center of Studies, 36.

<sup>23</sup> El-Dakkak, M.shokry. (2014). Criminology and Penology, 1<sup>st</sup> ed., Abu Dhabi: Judicial Department, 117.

<sup>24</sup> Law on Prisons and Detention Centers, Art. 39.

<sup>25</sup> Law on Prisons and Detention Centers, Art. 43.

care workers must be professional and understand the right to confidentiality of a sick prisoner <sup>[26]</sup>.

The Law on Prisons and Detention Centers states that "mentally ill, physically disabled, and pregnant women prisoners shall be kept in the health centers of the detention centers and prisons. In the absence of such health centers, such persons shall be kept in the special medical rooms of the detention centers and prisons." <sup>[27]</sup> Article 27 of the Law provides for free health services to detainees and prisoners, and the treatment of ailing detainees or prisoners in a hospital outside the detention center if treatment is not possible inside the health section of the detention center <sup>[28]</sup>. According to paragraph 2 of Article 17 of the Regulation Prison and Detention Center Affairs, prison health authorities shall be required to examine detainees at least once a month. Article 15 of the Regulation also specifies the conditions of accommodations in prison.

Among the prisoners interviewed in this study, considering their physical and mental health, 15% of prisoners were mentally ill, 27% were physically ill, 1% were pregnant, 8% were physically and mentally ill, and 49% were in good health. Regarding health services, including the provision of medical facilities in prison, 24% were highly satisfied, 22% were quite satisfied, 25% were satisfied, 16% were less satisfied, and 13% were very less satisfied. The majority of inmates stated that they are facilitated with treatment, if necessary, in outside hospitals. Their satisfaction level from cooling and heating facilities inside detention centers were, 27% were highly satisfied, 16% much satisfied, 24% satisfied, 16% less satisfied, and 17% were very much less satisfied.

### Food and Nutrition

International and national laws emphasize the provision of food to prisoners. Inadequate and insufficient nutrition makes prisoners vulnerable to infections and various diseases. According to Paragraph 20 of the Standard Minimum Rules for the Treatment of Prisoners, "every prisoner shall be provided by the [prison] administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served" <sup>[29]</sup>. According to the Law on Prison and Detention Center Affairs, the administrators of detention centers and prisons, shall provide proper and healthy food and water to the detainees and prisoners considering their age, gender, health, especially pregnancy and child rearing, work and the climate of the area <sup>[30]</sup>. Among the prisoners interviewed in this study, 8% were highly satisfied with the prison food, 16% were quite satisfied, 40% were satisfied, 22% less satisfied, and 14% were very much less satisfied. Pregnant women and prisoners with children interviewed in this study had the same diet as other inmates.

### Education Requirements

Prison sentences deprive inmates of permanent opportunities, such as employment, education, family, and other opportunities. The damage imprisonment has on a

person can be lessened to some extent by appropriate prison conditions and comprehensive management. One of these opportunities is to emphasize educational opportunities in prison. Therefore, learning opportunities and the use of the library should be provided to inmates in order for them to benefit from these opportunities and knowledge upon their release from prison.

According to Paragraph 77 of the Standard Minimum Rules for the Treatment of Prisoners:

- Provision shall be made for the further education of all prisoners capable of profiting thereby, including religious instruction in the countries where this is possible. The education of [illiterate prisoners] and young prisoners shall be compulsory, and special attention shall be paid to it by the [prison] administration.
- So far as practicable, the education of prisoners shall be integrated with the educational system of the country so that after their release they may continue their education without difficulty <sup>[31]</sup>.

The Law on Prisons and Detention Centers has also emphasized this issue, stating: "The administration of detention centers and prisons are required to set up well-equipped libraries, enable detainees' and prisoners' study, worship, education, vocational training, recreational and cultural activities, and provide them with the needed facilities" <sup>[32]</sup>. The Regulation on Prison and Detention Center Affairs also emphasizes the establishment of vocational education and literacy courses and educational and training programs in order for inmates to understand the social harm of the crimes they have committed, to strengthen the sense of responsibility, social discipline, human obligation, and respect for other people and culture, and establishing of libraries with scientific, religious, ethical, technical and professional books, considering the number of prisoners, and their access to magazines, newspapers and journals <sup>[33]</sup>.

In terms of education, the majority of inmates, 45% were illiterate. 26% did not complete their baccalaureate education, 19% had baccalaureate education, 7% had a bachelor's degree, and 3% had a master's degree. No distinction was made between the detainees from the

<sup>31</sup> Standard Minimum Rules for the Treatment of Prisoners, UNODC (1955), paragraph 77.

<sup>32</sup> Law on Prisons and Detention Centers, Art. 28.

<sup>33</sup> Ibid arts 20- 22: With the aim to create skills, generate employment and raise the determination of the persons deprived of liberty in detention centers and prisons; literacy and vocational courses can be held, with the support from Ministry of Labor & Social Affairs (MOLSA), Ministry of Education (MoE) and with the assistance from local and international humanitarian organizations. A separate Bi-law shall govern such affairs.

The prison management authorities, in accordance with a separate Bi-law, shall devise educational programs for persons deprived of liberty, aimed at raising awareness of the negative impact of the crimes committed, enhancing sense of responsibility, social discipline & individual responsibilities, and promoting respect for others and to social and cultural norms.

The prison management authorities, with assistance from other national and international organizations, and considering the numbers and needs of persons deprived of liberty, shall establish libraries and purchase books on scientific topics as well as religion, ethics, vocational and technical skills.

Persons deprived of liberty can use the library in allocated times and in accordance with the relevant rules and subject to permission of authorities, can lend books.

Persons deprived of liberty can purchase inscriptions to magazines, journals and newspapers.

<sup>26</sup> Prisons and Health (2014). World Health Organization, Regional Office for Europe, p.2.

<sup>27</sup> Law on Prisons and Detention Centers, Art. 11.

<sup>28</sup> Law on Prisons and Detention Centers, Art. 27.

<sup>29</sup> Standard Minimum Rules for the Treatment of Prisoners, UNODC (1955), paragraph 20.

<sup>30</sup> Law on Prisons and Detention Centers, Art. 25.



educational perspective, and the illiterate and literate detainees were kept together. However, one of the achievements of the Central Prison Administration has been the discovery of the hidden talents of inmates, and given their talents, abilities, and expertise, they have been assigned to help improve the prison conditions, such as building mosques, building new detention facilities, building greenhouses, taking part in medical treatment of detainees, and providing religious education.

### Work Conditions

Traditionally, prisoners have been employed for the purposes of punishment or torture, commonly referred to as the method of forced labor. Such actions were not considered as modern-day “work”, and prisoners were used as a tool. Many great historical monuments around the world are the result of such inhumane treatment of prisoners. Later, influenced by religious thought and scientific and industrial developments, the punitive aspect of work was adjusted and changed to the rehabilitative model for the prisoners. In addition to the rehabilitative aspect of prison work, its economic benefits also help the prisoner and ultimately the whole community<sup>[34]</sup>.

According to Articles 28 and 33 of the Law on Prisons and Detention Centers, prison administrations must provide employment opportunities appropriate to prisoners' occupations and they have to be remunerated for their work based on the decision of the Supreme Council of the prison. According to the Regulation on Prison and Detention Center Affairs, the remuneration of prisoners shall be 60% of the wages or salaries of persons employed in the same profession or occupation in public offices. Prisoners responded differently about their right to work and their facilities in prison, with 22% who were highly satisfied, 16% who were quite satisfied, 21% who were satisfied, 10% who were less satisfied, and 31% who were very much less satisfied. Female inmates had the least satisfaction.

### Exceptional Leave

In order to maintain the psychological health of prisoners, it is sometimes necessary for them to be able to meet their spouses outside the prisons. Likewise, they should be able to leave the prison under conditions of illness or the funeral of close relatives, or if the prisoner wishes to attend his or her own marriage ceremony<sup>[35]</sup>. The Law on Prisons and Detention Centers provides for up to 20 days' leave for prisoners by keeping the in mind the need to maintain a good relationship between prisoners and their families, and to ensure prisoners obey the law inside and outside the prison. In the circumstances mentioned in paragraph (2) of Article 35 of this Law, the concerned authority is authorized to grant up to 7 days' leave to prisoners to go home and visit an ailing relative or arrange for shrouding and burial of a deceased relative, at the suggestion of the head of the prison. The Regulation on Prison and Detention Center Affairs states that a prisoner shall be granted leave based on the type of crime, the size of the punishment, maintaining the code of conduct, reliable guarantees of return, and the procedures for the supervision of the inmate during his or her leave. Inmates imprisoned from 1 up to 5 years can be granted the leave once a year, provided that they have

already served half of their detention period, and their conduct and behavior have been assessed positively. However, those convicted of crimes against domestic and foreign security, foreign nationals, and recidivists cannot benefit from leave. Providing such leave to a prisoner requires the permission of the General Head of prisons and detention centers<sup>[36]</sup>. About 74% of detainees interviewed reported a lack of knowledge about the leave mentioned in the Law on Prisons and Detention Centers, and the Regulation on Prison and Detention Center Affairs: 9% were satisfied, 8% were less satisfied, 2% were quite satisfied, and 2% were highly satisfied.

### Meeting and Correspondence Conditions

By making it possible to meet and correspond with others, a prisoner can avoid the psychological problems caused by separation from loved ones. Every prisoner has the right to visit his or her spouse, close relatives, and a lawyer or a guardian. Other people can also visit the prisoner with the permission of the prison authorities<sup>[37]</sup>. The right to visit and correspond with family is emphasized in the Law on Prisons and Detention Centers. The Regulations on Prison and Detention Center Affairs have stipulated that detainees, subject to the provisions of the mentioned Article, may meet with their family members and relatives one to three times each month, for one hour at a time. If a visitor comes from a distance (more than 3 kilometers), the head of the prisons and detention centers can extend the visit by another hour.<sup>38</sup> In terms of the possibility of meeting spouses, relatives, and friends in prison, 39% of prisoners were highly satisfied, 21% were quite satisfied, 19% were satisfied, 8% were less satisfied, and 13% much less satisfied.

### Freedom to Practice Religious Rituals

The United Nations Standard Minimum Rules for the Treatment of Prisoners stipulates that:

- If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.
- A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his or her religion at proper times.
- Access to a qualified representative of any religion shall not be refused to any prisoner<sup>[39]</sup>.

This issue is also explained in the Law on Prisons and Detention Centers and the relevant Regulations. The Regulations state:

- The prison and detention center administration, along with the assistance of the Ministry of Hajj, shall take the following measures in order to better educate prisoners with religious education:
  - 1- Employing religious scholars;
  - 2- The performance of prayer five times per day;

<sup>36</sup> Regulations on Prison and Detention Center Affairs, Art. 27.

<sup>37</sup> Homan Jawed Salahi, 284.

<sup>38</sup> Regulations on Prison and Detention Center Affairs, Art. 28.

<sup>39</sup> Standard Minimum Rules for the Treatment of Prisoners, UNODC (1955), paragraphs 41, 42.

<sup>34</sup> Homan, Ali Safari, 180.

<sup>35</sup> Homan, Jawed Salahi, 284.

- A prisoner or a person in custody of another religion can carry a copy of his or her religious book for study.<sup>40</sup>

In terms of religious freedom, the satisfaction of prisoners was as follows: 49% were highly satisfied, 13% were quite satisfied, 14% were satisfied, 11% were less satisfied, and 13% very much less satisfied.

### Legal Assistance

In order to know about their rights and to prevent wasting judicial resources in trials and the enforcement of sentences, detainees must have access to a lawyer or legal counsel, and be able to meet with him or her when necessary. According to the provisions of paragraph 6 of Article 28 of the Regulation on Prison and Detention Centers Affairs, the detention facility shall provide for the confidential meeting of a lawyer or legal counsel and the inmate with no restriction whatsoever. According to this study, the satisfaction level of inmates in having access to a lawyer or legal counsel are as follows: 34% were highly satisfied, 21% were quite satisfied, 21% were satisfied, 9% were less satisfied, and 15% very much less satisfied.

### Research Findings

In the current study, 100 prisoners, both male and female, were interviewed about their satisfaction with the condition and facilities of the prisons. In addition, nine experts including the Director-General of Prisons and Detention Centers, the Head of the Pul-e-Charkhi Prison, the Advisor on Prison and Detention Center Affairs, the Prison Relations Officer, the head of the Central Prison Regime, three responsible authorities of cell blocks/sections in Puol-e-Charkhi prison the Health Director of Prisons of Afghanistan, and two of the prosecutors in charge of monitoring detention facilities have also been interviewed.

During an interview with the Director-General of the country's prisons and detention centers, it was found that there are 37 prisons and 190 detention centers in Afghanistan. There are 31,530 inmates in the country's prisons all over Afghanistan, 750 of whom are female prisoners, along with 300 of their children. According to the Head of Pul-e-Charkhi Prison, initially, the prison was built for 4500 up to 5000 prisoners, but at the moment, there are 9682 prisoners in the prison. The prison has ten blocks for prisoners, and each has the capacity to hold 800 prisoners. However, some blocks held up to 2000 prisoners, and the Deputy Head of Kabul Female Prison indicated that 140 female prisoners are held in Kabul Female Prison.

The Director-General of Prisons in Afghanistan also noted that there are 750 prisoners awaiting execution, who have been held in prison for many years, and their execution order is yet to be approved by the president. He suggested that the death sentence for those prisoners who have spent many years in prison should be converted to long-term imprisonment instead of execution. The head of the Communications Department of the prison noted that even the execution of prisoners whose execution orders are approved by the president have not been carried out yet.

According to the experts interviewed and the other data, it appears that the detention regime in Afghanistan is a collective one. Sometimes, a solitary confinement regime is also implemented for certain groups of prisoners, such as

those who cause turmoil and disorder, and for drug-related offenders and some dangerous criminals. The General Head of the Prisons and Detention Centers of the country, Colonel Abdul Aleem Khohistani, and the country's Prison Affairs Advisor, General Shamir Amirpour, referred to three types of prison regimes, namely imprisonment with high, medium or low security. According to these experts, the detention regimes mentioned in the law can be the most effective in rehabilitation of prisoners, provided that sufficient facilities are available to provide such regimes.

General Amirpour also emphasized the detention regimes mentioned in the law (high, medium and low security). However, he agrees with the idea of establishing a gradual detention regime. He strongly opposes the solitary confinement regime because of its damaging effects, and even in the gradual detention regime, he believes in keeping a limited number of inmates together (due to age, sex, morale, illness, and language). According to the country's Prison Advisor, Bagram Prison and the Special Prison for drug-related offenders, are the high-security prisons in the country. In the Central Prison, some blocks, such as Block 8 (Criminal Block), where about 100-200 inmates are held have moderate security, and other blocks are low-security blocks. Contrary to this, the Head of the Kabul Central Prison believes that the solitary confinement regime is more useful for reforming and rehabilitating offenders due to the prisoners being well-controlled. Through solitary confinement, escape, corruption, suicide, and chaos can be prevented. Prosecutors overseeing detention centers had no favored detention regime, but emphasized the alternatives to imprisonment, and are in favor of delaying sentences for criminal offenders and supporting conditional release for perpetrators who have completed the conditions of their release, as discussed below. They support the current detention regime, provided the conditions get better.

The General Director of Prisons states that 5-10 cases of conditional release occur every day. He emphasized the implementation of alternatives to imprisonment as one of the prerequisites for reducing the harms caused by imprisonment. The Prison Affairs Adviser supports the idea of conditional release for detainees who have been rehabilitated and have shown proper behavior while serving their prison sentences. Nevertheless, the head of the Central Prison in Kabul stated that the conditional release of prisoners is not applied, so it is understood that the courts do not order the release of the prisoners on conditions. One of the authorities in Pul-e-Charkhi Prison believes that if a prisoner wishes to enter conditional release, he or she can simply fill out the form and submit it to the court after the prison authorities' approval. The Manager of the Pul-e-Charkhi Prison Regime is strongly opposed to the implementation of conditional release due to problems in the monitoring of prisoners released with conditions. Prosecutors overseeing detention centers are in favor of conditional release for reasons such as attempting to reform and rehabilitate prisoners, and to comply with court orders, as well as the reduction of the prison population, especially in the current situation where most prisons in Afghanistan do not have the capacity to accommodate inmates, and seek greater use of conditional release for prisoners whose good behavior is known to the competent authorities.

Regarding the classification of prisoners, authorities in Pul-e-Charkhi Prison in Kabul say that they have a plan for prisoners, such as inmates sentenced to death, political

<sup>40</sup> Regulations on Prison and Detention Center Affairs, Art. 16.

offenders, criminal offenders, military detainees, and government employees, to be kept in various specific blocks, and to keep convicts of different classes in separate detention units. As of now, Block 11 is dedicated to military detainees and government employees. The supervisor of one of the blocks in this prison stated that the plan for the classification of prisoners was prepared in 2014, according to which prisoners sentenced with 1-5 years would be kept on the first floor, prisoners sentenced to 5-10 years would be kept on the second floor, those sentenced to 10-15 years would be kept on the third floor, and those sentenced to 15-20 years would be kept on the fourth floor. However, due to the lack of facilities and opposition from the prisoners themselves due to being separated from friends or relatives, the project was not successfully implemented. Prosecutors overseeing detention centers insist that the lack of sufficient facilities has led to many procedures not being applied to classify offenders in prisons. However, according to prosecutors, efforts are underway in this regard, and the second block of Pul-e-Charkhi Prison will be dedicated to prisoners addicted to drugs.

Regarding the open and semi-open detention system, the General Director of Afghan Prisons stated that these two systems were not compatible in Afghanistan due to lack of sufficient facilities. He added that inmates could be granted leave to resume and maintain their relationships with their families and attend some important ceremonies of relatives, pursuant to the country's laws. All experts provided the same opinion, but according to one expert, the issue of granting leave largely depends on the extent of acquaintance and connections with people outside prison, and particularly the types of leave that are within the scope of authority of the prosecutor's office. About educational facilities, officials in Kabul's Pul-e-Charkhi Prison reported that a high school exists inside the prison (Pul-e-Charkhi Prison School), which currently has about 482 students. In this prison, the opportunity for religious studies is provided through teachers appointed by the Ministry of Hajj and Religious Affairs, and sometimes by prisoners themselves who have sufficient religious knowledge. The competition of recitation of the Holy Quran also takes place in the prison. Also, working opportunities are provided for a number of inmates in the boot factory, in carpet weaving, in a bakery, and in production of mineral water and non-alcoholic beverages. According to Colonel Nazifa Ebrahimi (Afghanistan Prison Health Services Manager), there are 279 doctors for the prison system, 174 of whom are military doctors, and the rest are civilian doctors. There are 30 doctors in the Pul-e-Charkhi Prison in Kabul, twenty of whom are employed by the Ministry of Health, two doctors and two midwives. In addition to the twenty bed hospital in this prison, which provides free medical facilities to sick prisoners, a hospital with the capacity of fifty beds is currently being built for all prisons across the country, on the outskirts of Pul-e-Charkhi Prison.

### Discussion

According to the views expressed by experts, it can be stated that the applicable detention regime in Pul-e-Charkhi Prison and the Kabul Female Prison is a collective detention regime. Sometimes, the solitary confinement regime is also temporarily applied to those offenders who cause problems in the prison. To compensate for the shortcomings of prison facilities and to prevent the detrimental effects on prisoners,

considering a gradual detention regime and a conditional release for prisoners whose rehabilitation has occurred may be the best option. In the final analysis, it can be said that the best option for reducing damage caused by detention for prisoners in Afghanistan is to have a gradual detention regime in line with the necessary security procedures suggested in the country's laws. This means that the high-security solitary confinement regime should initially be in place for prisoners, followed by a medium-security public detention regime, and eventually a conditional release with less supervision and control, and eventually the sentence term of the prisoner will expire and he or she will re-join the community as an ordinary citizen. In fact, for specific categories of prisoners discussed, special regimes should be considered and such prisoners should be kept under special circumstances. For less dangerous convicts, a semi-open imprisonment could be applied, meaning that these prisoners can spend certain times in prison with a moderate level of supervision, and occasionally go out of prison.

### Conclusion

Different methods of detention have been implemented in the past to reduce the risks and harms that accompany imprisonment. From the oldest imprisonment regime—the general imprisonment regime—to other forms of imprisonment such as solitary confinement, mixed, gradual, semi-open and open regimes, and specific prison regimes for female prisoners, prisoners with mental disabilities, political prisoners, addicts, foreigners, and those sentenced to death, various regimes of imprisonment have been implemented to reduce the unnecessary harms of imprisonment. Afghanistan's laws, including the Law on Prisons and Detention Centers, and the relevant Regulation, provide for three types of detention regimes in terms of security levels: namely, high security, medium security, and low security. In addition, these legislative documents emphasize the segregation of women from men, the segregation of mentally disabled prisoners, and keeping pregnant women and persons with disabilities in the health facilities of the prisons or in special sections of the prisons if health facilities are unavailable, considering Special Commission for classification of prisoners based on their criminal background, Crime Type, Duration of Penalty, Drug Addiction, Health Status, Citizenship, Personality and Social Status, Characteristics, Habits, Common Sense and Consideration of a Sustainable Quarantine Regime for Prisoners with Permanent Health issues, and Prisoners who create continuous problems and prevent legal principles from being implemented in prisons. Based on the findings of the research, the current prison regime in the prisons of Afghanistan is a collective (mass) prison regime, but sometimes the solitary confinement regime is also temporarily applied to specific prisoners. Despite the explicitness of the relevant legal documents, in practice there are no special regimes for the categories of detainees in need of special care, or for other reasons subject to special detention. Among the areas mentioned in the legal documents are the separation of men from women, the consideration of a special block for military criminals in the central prison, and the establishment of some high security prisons. Kabul Pul-e-Charkhi Prison also suffers from a lack of space for inmates, and also lack of sufficient health, visitation facilities, exercise, fresh air, work, leave allowances, and cooling and heating facilities. In addition to some of the problems mentioned about Pul-e-Charkhi Prison, Kabul Female Prison does not have a special diet for pregnant women and infants, and does not have adequate



facilities for children kept with their mothers, even kindergartens. However, the problem of the space for the inmates in Kabul Female Prison is not as significant as that of Pul-e-Charkhi prison, and this is largely due to the considerable difference in the number of male and female prisoners.

### Recommendations

1. Allocation of adequate funds for constructing of specific sites for prisons, preparation and construction of sufficient buildings for this purpose, rebuilding of existing prisons and increasing staff and prison authorities' capacity, providing them with the necessary training to manage detainees appropriately. This can improve prisoner morale and provide grounds for their rehabilitation.
2. Providing opportunities for the application of alternative imprisonment sentences and encouraging judges to issue such punishments within the scope of the law.
3. Appropriate oversight of the Prosecutor's Office and other bodies such as the Independent Human Rights Commission and civil society for the country's prisons, and the provision of necessary guidance to the concerned authorities to improve any shortcomings.
4. Consider the gradual detention regime, in line with the provisions stipulated in the law regarding security measures inside of prisons, in a way that provides for a high level of security for dangerous offenders, and in later stages medium and low security, respectively.
5. Providing detainees with information about their rights, including the right to leave, work and conditional release.
6. Facilitate the implementation of conditional release for detainees whose rehabilitation and social remedies have been obtained earlier than the completion of their sentence.
7. Encourage judges to issue orders of conditional release to eligible prisoners, pursuant to the law.
8. Encourage judges to issue minimum sentences within the limits stipulated by the law, given the problems within prisons in the country.
9. Issuance of presidential pardon on absolution and commutation of punishments for prisoners who have served long sentences, for prisoners who have committed less serious crimes, for prisoners with mental illnesses, and prisoners with complex diseases, aged prisoners, and detainees who have shown good behavior while in prison and have proven their correction and rehabilitation for prison authorities.
10. Improvement of health conditions, visitations, exercise, recreation, nutrition, vocational training, education, religious practice, and the use of legal assistance for prisoners in prisons.

### References

1. The Holy Quran.
2. Ahmadi Movahed, Asghar. Implementation of the provisions of Penology. Third Edition, Tehran: Mizan Publication 1387.
3. Bullock, Bernar. Penology. Translated by Ali Hossein Najafi Abrand abadi, Eighth Edition, Tehran: Majd Publication 1387.
4. Jafari Langroudi, Jafar. Terminology of Law. Tehran: Ganji Danish Publications 1374.
5. Danish, Hafizullah. Penology. Eighth Edition, Kabul: Independent Press. ۱۳۹۷
6. Dehkhoda, Ali Akbar. Dehkhoda Diction. Tehran: Siros Publications 1364.
7. Safari, Ali. Penology. Twenty-fifth edition, Tehran: Jangal Jawedana Publications 1392.
8. Salahi, Jawed. Peology. Third Edition, Tehran: Mizan Publication 1595.
9. Goodarzi Broujerdi, Mohammad Reza, Moghaddadi, Leila. Penology, First edition, Tehran: Majd Publisher 1384.
10. Goodarzi, Mohammad Raza. History of prison developments. Second Edition, Tehran: Mizan Publication 1384.
11. Mohammadi, Masooma. Analysis of the effects of imprisonment on prisoners in light of Gabriel Tard's triple laws of imitation. First edition, Tehran: Majad Publication 1590.
12. Moin, Mohammad. Moeen Persian dictionary. Fourth Edition, Tehran: Ashja, -Mikail 1388.
13. International ToT Training Program, Human rights and vulnerable prisoners. Guideline # 1, International Criminal Justice Organization.
14. Abdi, Abbas. (1381), Imprisonment and Committing repeated crimes, Iranian Journal of Sociology, #14.
15. Coil, Andrew. 2013, Human Rights Approach to Prison Management. International Center for Prison Studies.
16. Makhshan, Marilyn, Gholami, Hussein. 1996, Accepting prison culture. American Prison Encyclopedia, New York: Garland Publications.
17. Malekpoor, Ehsan. 1396, Effectiveness of offenders in prison for repeat offenses. United Nations Research Monthly, #19.
18. Ministry of Justice. 1396, Penal Code. Official Gazette # 1260, Kabul: Government Publisher.
19. Ministry of Justice. 1392, Law of the Organization and Authority of the Judiciary. Official Gazette # 1109, Kabul: Government Publisher.
20. Ministry of Justice. 1386, The law on prisons and detention centers. Official Gazette # 923, Kabul: Government Publication.
21. Ministry of Justice. 1386, Regulation on Regulating Prisons and Detention Centers Affairs. Official Gazette # 935, Kabul: Government Publication.
22. El-Dakkak, M. shokry. Criminology and penology. First edition, Abu Dhabi: Judicial department 2014.
23. Gorden, Caroline, Hughes, Caroline and others. a literature review of transgender people in prison: an invisible population in England and Wales. Prison service Journal, NO 233. 2017.
24. UNODC. The United Nations standard minimum rules for the treatment of prisoners. Geneva 1955.
25. UNODC. Handbook for prison manager and policymaker women and imprisonment. New York 2008.
26. UNODC. Handbook on prisons with special needs. New York 2009.
27. UNODC. Prisons and health. World health organization, Regional office for Europe 2014.
28. Wildgoose, Emma, Shuker, Richard, Disspain, Sarah. Exploration of a Trans female prisoner's experience of a prison therapeutic community. Prison service Journal, NO 219, 2015.