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**IMPRISONMENT AIMS AT REHABILITATION: AN ANALYSIS OF HISTORICAL
EVOLUTION OF PRISON**

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ABSTRACT

This paper is an attempt to consolidate the view that prisons in the modern Era are supposed to rehabilitate the prisoners. It has been shown in the light of the literature study that although imprisonment has witnessed many phases ranging from purely custodial functions and punitive functions to the recently emerged rehabilitative functions, throughout human history. However, it is evident that as a whole, prison's evolution has been from the more exploitative to the less exploitative, from the brutal to the humane, from the uncivilized to the civilized and from the punishment based practices to the rehabilitation and reintegration based approaches and practices. If history is any guide, then in today's Enlightened Age, it is direly needed and recommended that prisoners, no matter, what crime they have committed, are to be reformed to the core through various interventions so that they may become the law abiding, and contributing members of society once they leave the restricted world of prison and enter into the free world.

Keywords; Prison, Imprisonment, Rehabilitation/Reintegration, Evolution, History

INTRODUCTION

In this literature study prisons' birth, evolution and reformative efforts in the Indian sub-content, Europe, and more specifically in England and America, are reviewed so as to have an insight into the

course of prison history. Moreover, this review is helpful to understand the background which eventually resulted in the emergence of rehabilitative prison philosophy. It has been highlighted that if

history is any guide, then, imprisonment must aim at the rehabilitation of the offenders and nothing else.

Historical Evolution of Prison

Barnes (1921: 36) says that prisons for the confinement of political and religious people have a long history. However, general beginning of imprisonment as a punishment for crime is of recent origin. Norvel Morris refers to historical developments in his book, namely *The Future of Imprisonment*, as quoted by Raju (2014: 298) that custodial imprisonment existed on a large scale in Egypt, China, India, Assyria, Rome, Babylon and in the Renaissance Europe (These civilizations existed in around 7,000 BC). But imprisonment as a form of punishment is not that old. The Quran and the Bible have presented the account of Prophet Joseph, who was thrown into prison in Egypt by Pharaoh. In this regard, the Quran says: “Then it occurred to them to cast Yousaf into the prison for a while, even though they had seen the clear signs (of Yousaf’s innocence and the evil ways of their ladies)” (Al Quran, 12: 34-35). Also, when Prophet Moses was sent by Almighty Allah to Pharaoh with clear signs, Pharaoh threatened Moses by saying, “If you take any god other than me, I will certainly make you one of those (who are rotting) in prison” (Al Quran, 26: 29).

Similarly, Johnson (2002: 3) has confirmed that different types of prisons had been functional since the biblical times. World Encyclopedia of Police Forces & Correctional System (2006: 74) disclosed that prisons being places of confinement for lawbreakers, debtors, enemies’ combatants, political dissidents, religious heretics and apostates etc, existed thousands of years ago, particularly among the Christians, just for custodial function. However, their use as punishment for the offenders became the vogue in the 18th century. Welch (2001: 24-25) reveals that the history of prison is as old as the origin of state. As soon as states emerged, the need for the adoption of various legal codes as official norms to guide the people resulted in the introduction of a written language. In the code (language) of Hammurabi, for example, written in Babylon around 750 BC, the penalties for violation of the law were based on retaliation or vengeance. Other codes such as Sumerian code, Manama Dhama Astra code of India, the Hermes Trismegitus code of Egypt and the Mosanic code validate that punishment of retaliation was deeply rooted in the ancient times and, as indicated above, imprisonment was not considered a form of punishment. As stated by Mohanthy & Hazary (1990:3), punishments for the guilty ones could have

been torture, branding, mutilation, exile and death, but never imprisonment. Pond (1999: 23) unearths that prison, as we know today, emerged just 200 years ago and hence, we can say that it is not an old phenomenon. However, the existence of private prisons, such as dungeons, has a long history. Yet, these were only used to confine the offenders prior to their trial. Cavadino & Dignan (1997:47) explore that execution and transportation were the main form of punishment in early ages. In Great Britain, for instance, transportation of offenders to the colonies (especially America and Australia) was a widespread form of punishment for the professional and hardened criminals. However, the American War of Independence in 1775 not only brought this practice to an end but also resulted in a paradigm shift. Floating prisons, or hulks, were moored in the Thames due to lack of space and in order to accommodate 2,000 convicts each (Pond, 1999: 123). Marshall (2002:3) disclosed that the power of cage and the power of sword had always been existed as a tool of human governance. However, imprisonment was not the way of punishment for common offenders. Prisons had served as holding tanks-- just to house the offenders before sentences of the courts were executed. Incarceration of the criminals as a legal way

of punishment emerged recently in the late 18th century. Quoting Durkheim, Barlow (1981: 432) narrates that prisons of the olden days were situated in or attached to imperial palaces, temples and churches, city walls and even the private homes of court officials and members of the aristocracy. Reid (1976:358) stated that in past abysmal pit, murky dungeon in the old castles, strong poles, trees and suspended cages and so on were used to hold prisoners.

To sum up, in the light of the above, it is clear that prisons had been functional for a long time, the exact period of its emergence, however, is not known. Moreover, its use was only restricted to confining people who were considered to be transgressing against the authorities i.e., it had only custodial functions in the early ages. Prison use to confine people for minor crimes and to make them comply with court orders had also been a historic fact. In addition, widespread use of imprisonment as punishment in itself emerged in the late 18th and 19th century. Also, primitive prisons were in the form of abysmal pit, Murky dungeon, strong poles, trees, and suspended cages, castles, fortresses, and the basement of public buildings etc. However, it can be said that in today's world that imprisonment as punishment is a widely practiced norm.

Moreover, incarceration is thought to be a lenient and civilized form of punishment. Although there are certain harsher forms of punishments such as execution, stoning to death and so forth, however, they are rarely carried out, because imprisonment has replaced majority of the capital punishments.

A Historical Perspective of Prison System in India

Historically, India has been under the influence of varying political and religious philosophies. Hence, punishment approach has witnessed many changes in the last 1000 years. For example, prisons in ancient India had just custodial functions, where the accused were confined either to be released or convicted (Raju, 2014: 298). Moreover, the widespread forms of punishment in ancient India were branding, hanging, mutilation and death. However, it may be noted that, in the Indian penology of the olden days, imprisonment was rarely practiced and it was considered to be a lenient mode of punishment which was recommended in Hindu Scripture for certain crimes. In addition, the prisons of those days were dark dens, humid, unlit and chilly. There was no proper arrangement for sanitation and the jails' settings were unfit for human dwelling. Jail life is not described in details by Indian legislators. However,

people like Yajnavalkya, Vishnu and Kautilya have talked about the crimes which should result in imprisonment and have raised their voice for reform in the then prison system (Mohaniy & Hazary, 1990: 19-20). In the Mughal Era (16th Century AD), as described by Mohantay & Hazray (1990: 21), the source of law was The Quran and Hadiths. Crimes were divided into three categories, namely, crime against God, crime against the State and crime against the private persons. The forms of punishment were *Hudd*, *Tazir*, *Quisas* and *Tashir*. Imprisonment was not the common mode of punishment, except for a few minor crimes. Fortresses were located in various parts of the country in which prisoners under trial and awaiting judgments were used to be detained. There were three well known prisons in the *Mughal* era, namely *Gawaliar*, *Ranthambore* and *Rohtas*. *Ranthambore* was for criminals sentenced to death, *Gawaliar* was for nobles who offended against the royalties, while those nobles/political opponents who were condemned to perpetual imprisonment were kept in *Rohtas*. Datir (1978: 47), with regard to the Maratha reign, stated that imprisonment as a form of punishment did not exist there. Similarly, Mohanty & Hazary (1990: 23) divulge that in both ancient and medieval India, there were no prisons in the

modern sense, i.e., there was no internal administration and rules to regulate the prisons and courts were not feeding centers for prisons.

Thus, it can be concluded that punishment in Hindu and Mughal India was based on the philosophy of deterrence. Flogging, branding, hanging and starvation to death were the widely practiced forms of punishment. Even before verdicts, the imprisoned were brutally tortured. Moreover, the prisons were places not fit for human lodging in the least degree.

Prison in British India and Reformatory Steps

Although, in India, imprisonment as a form of punishment was applied for the first time in 1773 (when the East India Company annexed Bengal after the Battle of *Plassy* and Warren Hastings became the first Governor General) yet, in 1860 (when the British Crown consolidated its hold on India after the Mutiny of 1857), it was introduced throughout India (Madan, 1981, p. 127). Arnold (2005:1) has made the following findings with regard to the prisons in the British India:

British India operated one of the largest prison systems in the world. During the 1860s the inmate population averaged 70,000, rising to 100,000 by the 1900s and

130,000 by the 1930s. Two to three times those numbers passed through the prisons in a single year owing to short-term sentences, numbers matched or exceeded only by the United States and Russia. The prison – an institution lacking extensive pre-colonial precedents – exemplified the British determination to control India.

Chadha, as cited by Roy (2003), stated that the administrative structure of India underwent several changes with the advent of the British rule. For example, with the passage of Regulating Act 1773, the British Criminal Law was enacted in India, too, and, with the promulgation of the Indian Penal Code and the Criminal Procedure Code in 1859 and 1860, respectively, imprisonment as punishment was introduced throughout India. In the context of history, Raju (2014: 299) claims, that today's prison system in India is the legacy of the British rule. The main objective of the British penal system was to suppress those who were not loyal to the then British rulers or were threat to their interests. However, realizing the myriad sufferings of the people of India, the British rulers made imprisonment the chief form of punishment which replaced many barbarous modes of penalty. Yet, people had undergone humiliating treatments in the then prisons. For example, describing the

deplorable state of prisons in British India, Clark (2015: 2) says, “Strikingly high mortality, overcrowding, disease, and a generally dysfunctional system, characterized the early British-India jails”. Nonetheless, with the prisons’ reform moment in the UK in 1824, the British parliament passed an enactment regarding the prerequisites of prison administration; the same was replicated in India as well (Mohanty & Hazarey, 1990). According to Gosh (1992:7), prison reforms in India started with the formation of a committee in 1836. This committee brought to the light that corruption, overcrowding, lack of discipline and extracurricular labours were prevalent in the Indian jails. For reviewing the performance of the prison administration and making suggestions for its improvement, another committee was set up in 1864. Furthermore, Prison Conference held in 1877, followed by the Indian Jail Committee in 1919, had been instrumental in the initiation of Prison Reforms in the British India. Also, the jail administration was decentralized and was made a provincial subject in 1921 and was consequently brought under the control of ministers in 1935. Chadha (1983:15) has discussed various reformatory measures in connection with the prison reforms in British India. For

instance, the first Reform Committee in 1836, the construction of Central Prison Agra, in 1846, appointment of Inspector General of Prisons by the provincial governments in 1852 to check the high rate of custodial deaths and to ameliorate other aspects of the prisons and the formation of the reform committees in 1864 and 1877, respectively, are the measures taken in this regard.

Prisons’ Condition in Europe (Especially UK & US): A Historical Perspective

Since Pakistan’s jails are a legacy of the British Rule, a cursory glance at the UK prisons in the past would give us an idea of how Europe in general and the UK in particular have witnessed some of the worst situations in their criminal justice history. Majority of the European countries have been under the strong influence of the UK and the US. Hence, the paradigm shifts which took place in both the leading countries have been replicated by other nations/states, too. In England, a majority of the prisoners by the 19th century were debtors. For example, out of a population of six million in 1774, over 4000 were prisoners and, astonishingly, more than half of them were seized for debt (West, 2011, p. 164). The condition of prisons in England and

Europe can be understood by the statements and recommendations of John Howard, who was the Sherriff of Bedfordshire in 1773. He was shocked after his visits to the country jails across England, Scotland, Wales and Europe where he got firsthand information. He also published his famous book entitled, *The State of Prisons in 1777*, to highlight the agonizing condition of prisoners in the then Europe and, specifically England. He stated that prisoners had been suffering from exploitation and lack of food and medical care. Prisons were dungeons situated in deep, humid cellars without light and air. The inmates included hardened criminals as well as those who could not pay their civil debts. The writer also made several suggestions to reform prisons, such as providing proper training to the prison staff and raising their salary, putting an end to the practice of accommodating a large number of prisoners in a single cell, giving access to the outside teams to observe the prisons' conditions, providing healthy food and humane living conditions to the prisoners (Guts & Gore, n.d). The findings of Howard show that the then Europe and England's prisons were far from civilized and humane. For instance, regarding a jail owned by the Bishop of Ely, Howard writes that prisoners were chained to the floor on their backs for ten long years,

with spiked collars around their necks and iron bars over their legs. Describing another prison, owned by the Duke of Portland, he reveals that a one-room cellar in Chesterfield housed four prisoners, with no straw or bed, which had not been cleaned for months. Regarding Lord Arundel's jail in Penzance, Howard writes that he saw a debtor lying in an 11x11x6 ft room with a small window. The door of the room remained closed for four weeks (Griffiths, 1884:429). McGowen (1995: 73-74) divulged that in England, prisoners had to arrange their own food and clothes and also had to pay rents of their cells. The prisoners, without outside support had to face the specter of starvation. Shedding light on the condition of prisons in America, Joseph Fisherman, who was the only Federal Prison Inspector for years and whose evaluation was based on personal visits to 1,500 jails, as cited by Reid (1976), had exposed that in extremely unhygienic condition both male and female inmates were kept to serve their sentences for minor and major crimes. Also, those who had yet to be declared guilty were captivated therein. Except very few prisons, majority had no segregation between convicted and under trial, the healthy and the ill and the juvenile and the hardened adults. The insects such as bedbugs, roaches, lice and other vermin were

to be found in every nook and cranny of the prison. The inmates had to live in complete idleness, having ample time and opportunity to undergo a complete course in every kind of viciousness and crime. In a nutshell, these jails were a melting pot in which the worst elements of the raw material in the criminal world were brought forth, blended and turned out in absolute perfection. (p. 359)

Efforts to Reform Prisons in Europe

Throughout the eighteenth century, demand for the reform of the prison system was rising. The Papal Prison of San Michele in Rome and the Prison of Ghent, Belgium, were established in 1704 and 1773, respectively. In 1776, due to the newly emerging situation demanding the elimination of galley slaves (indicating prison reforms) and decrease in the use of 'hulks' as prisons, a bill was introduced and legalized. Needless to say that prison as alternative to corporal and capital punishment was based on humanitarian approach that emerged in the era of Enlightenment. People like, Voltaire, a French philosopher, criticized strongly the way criminals were treated and demanded changes in criminal justice system. It was none other than Voltaire and the Encyclopedists, who prepared ground for the accomplishment of the most effective work

in the reform of criminal jurisprudence of Beccaria. The developments which took place in France during the Revolution also had a great impact on American criminal justice system. Because many French men were in America and many influential Americans had close ties with the French. In addition, John Howard (1726-1790), an Englishman, is accredited to be the founder of Penitentiary system. His work *State of Prisons* (1777) had been of extraordinary importance in prison reforms in Europe (Reid, 1976: 514-520). The English parliament in 1779, passed a Bill drafted by Howard with the aid of Sir William Eden and Sir William Blackstone, whereby penitentiaries were approved. Penitentiary institutions according to the Act would encompass the traits of hygiene, medical help, and regular service of labor, solitary confinement during the interval of work, due religious instruction to sooth despondent offenders, to keep them from pernicious company, to familiarize them to serious reflection, and to teach them both the principles and practices of Christian morality. But scarcity of funds and the war with France and the American colonies stood in the way of its execution. Nevertheless, English law greatly influenced the American prison reformers, specifically the Quaker of

Pennsylvania (McGee, 1969). Mohantay & Hazaray (1990: 19) described that by the end of the 18th century, prisons in England were so poorly managed that those who passed out were pests in the society if they were fortunate enough to come out alive. However, owing to the tremendous contribution of John Howard, the British parliament in 1824 came out with somewhat decent prison management approach. Since then, the reformatory journey of prisons in the UK, the United States and other European countries continued slowly and steadily. Likewise, Barnes (1921: 60) unearthed that at the end of the eighteenth century and the beginning of the nineteenth century there was a widespread movement across the Europe to modernize criminal code and to introduce imprisonment as a general mode of punishment. The European leaders in the forefront of reforms were Beccaria, Romilly, Howard, and Elizabeth Fry. In America Philadelphia reformers, played a fundamental role in providing a humane criminal jurisprudence and the modern prison system to America.

Jeremy Bentham and other penal reformers were the advocates of punishment with hard labor; however, they were uncompromising in their stance that this should not be done at the cost of prisoners'

health. In the 19th century, replacement of capital punishment by imprisonment was also accompanied by rehabilitative outlook. For instance, Religious groups like Quaker and Evangelicals started to promote the idea of reform through personal redemption. Also, the state prisons emerged for equipping inmates with skills in that very stage: for instance, the National Penitentiary was completed at Mill bank in London, in 1816. Prisoners were kept in different cells to be engaged in productive works such as, coir and weaving. The Prison Reform Act 1898, reaffirmed reformation to be the main function of prison regime. The emergence of Borstal system in the beginning of the 20th century is another reformatory steps in prisons' reform. The Borstal system was characterized by hard physical work, technical and educational instructions, and a strong moral atmosphere, in order, to make a young offender fit for release back into the society. The first Open Prison in 1933 at New Hall Camp near Wakefield based on the philosophy described by Sir Alex Paterson that "you can't train a man for freedom under the conditions of captivity", indicate another significant move in the rectification of prisons (Howard League for Penal Reform, n. d). Reckless (1971: 497), refers to another reform move and revealed that many

reformists in Europe strongly demanded the separation of prisoners to overcome the filth and vice of indiscriminate herding in most prisons of the then era. Moreover, Roberts (1996: 32-33) argue that support for solitary confinement was to develop the culture of introspection, which would eventually be helpful in correcting the offenders. Furthermore, Roy (1989: 32) said that Howard's advocacy for the Hospice of San Michele prison at Rome and the House of Correction at Ghent (monastic approach to correct the prisoners was dominant there) indicate that he and his contemporaries tried hard to improve the lot of the inmate.

Likewise, to ameliorate the condition of women prisoners, Elizabeth Fry in England, in 1810, worked day in and day out. She helped women prisoners get better in their skill so as to earn their livelihood. In 1816, with the aid of her friends she established a school for the children of imprisoned women. Moreover, she played a vital role in the foundation of Association for the Reformation of the Female Prisoners in Britain, which later on resulted in the creation of the British Ladies' Society for Promoting the Reformation of Female Prisoners. She also authored many books on prison reform (Achakzai, Bukhari & Tahir 2015: 2). It is pertinent to note that the

reforms efforts in UK were replicated in its colonies. For instance, Pennsylvania System in America is the outcome of the law passed by the English parliament in 1777 (Taft & England, 1964:3). It may also be noted that in America, in the years after revolution punishment was judged on pragmatic, political, theological and philosophical grounds. Reformers were rationally thinking over the question whether harsh treatment really works to deter crimes. For example, some stated that an indiscriminate system of punishment was making the criminal indiscriminate too and minimize the chances of their deterrence and reformation. Those who were looking at punishments on political grounds thought that death penalty reflected a monarchial system of government, while reformation was reinforcing the republican ideals. That was why they should not give way to the British monarchial system anymore and stick to the principle of republicans. Religious reformers were of the opinion that God loves reformation. Those who were analyzing punishment on theological grounds argued that human beings were the products of social institutions and many crimes were the fallout of dysfunctional social system. Therefore, the system was basically making criminals. However, despite those efforts, evils such as

corruption, bribery, custodial deaths etc, were rampant within jails (Lynch, 2011). In addition, reformatory efforts of Benjamin Bush and his group of Quakers in 1794 resulted in the establishment of Philadelphia's Walnut Street Jail on revolutionary model. It was the first ever attempt to segregate woman, vagrants, debtors, witnesses, misdemeanants, and felons in the criminal justice system of America (Gray, 1948: 22). What's more, the Quakers in 1824 at Auburn New York developed a system with maximum industrial productions to prevent contamination and plotting (Goldfarb & Singer, 1973: 44). Also, in that era enlightened and progressive prison administration realized that exploitive and atrocious means in penitentiary could hardly reform the prisoners and that only humane ways could purge their criminal tendencies (Taft & England, 1964:3). For example, Sir Walter Crofton, Chairman of the Board of Directors of the Irish Prisons, argued that brutal means had failed to reform the hardened criminals in his charge and supervision. He, therefore, introduced Irish Prison System on humane lines (Barnes, 1939). The Irish Prison system greatly influenced America and eventually in 1870 the First Congress of the National Prison Administration had to declare that Prisons'

Management must focus on the reformation of the prisoners (McGee, 1969). In the same phase of history, many reformatory steps were taken in connection with juvenile prisoners. For example, in 1876, the Elmira (New York) reformatory opened for the rehabilitation of the young offenders. However, due to architectural limitations, overcrowding, and lack of adequately trained personnel, juvenile rehabilitation was almost neglected till 1930. Nevertheless, from 1930 onward most of the Federal or State Prisons focused on juvenile rehabilitation (American Correctional Association, 1968: 17). Thus, this section can be summed up with the findings of McGee (1969) that unlike a vague, haphazard and loosely defined process of the past, rehabilitation of the prisoners is well understood and widely practiced program in today's America. Also, Kaufmann (1973:55) words are worth consideration to comprehend the vision of modern Europe on prisoners, "The demand not to hate them, but to remain mindful of their humanity no longer sounded utopian".

CONCLUSION AND RECOMMENDATIONS

It can be concluded in the light of the foregoing literature review that existence of prisons for custodial purposes has a long history, and the beginning is almost

unknown. Early prisons were located in or attached to royal palaces, temples and churches, city walls, and the private homes of court officials, members of the nobility, and others in positions of wealth and privilege. Furthermore, dungeon, fortress, broken down ships, the basements of buildings, trees, and so forth were used for the temporary confinement of the accused or convicts or those who could not pay debts. In addition, transportation of the prisoners to the colonies had been a known phenomenon at certain stage of history. However, at the end of the 18th century and in the beginning of the 19th century, following a persistent effort by reformers, imprisonment of punishment was introduced. And eventually, it replaced majority of the capital punishments and was thought to be the humanitarian and civilized form of dealing with offenders. From then onward reformative endeavors are underway across the Europe and other parts of the World to overcome the evils within prisons. This is also revealed that historically, imprisonment has witnessed many ups and downs, but as a whole, the direction of change has been from the more exploitative to the less exploitative, from the brutal to the humane, from the uncivilized to the civilized and from the punishment based practices to the rehabilitation and reintegration based

approaches and practices. Also, the philosophy of rehabilitative imprisonment got matured and prevailed with the passage of time. In today's world, at least legally and theoretically imprisonment is for correcting the wrong doers with due respect to the interests of society and the rights of victims i.e., prisons are supposed to be settings capable enough to prepare an inmate for law abiding, productive and constructive life on his/her release. Therefore, it is strongly **recommended** that taking into account historical development of the imprisonment, across the globe and specifically in Pakistan, prison regimes need to be transformed into correction/rehabilitation centers by the application of various programmatic interventions.

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