

The Rights of Prisoners: An Appraisal of Pakistani Law from Shariah Perspective



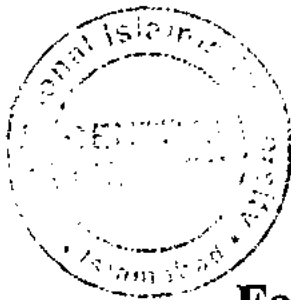
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**A Thesis submitted in Partial Fulfillment of the
Requirements for the Degree of MS HRL.**

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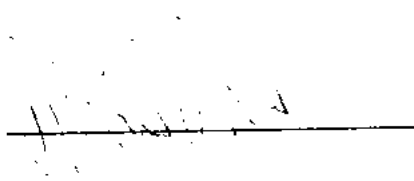
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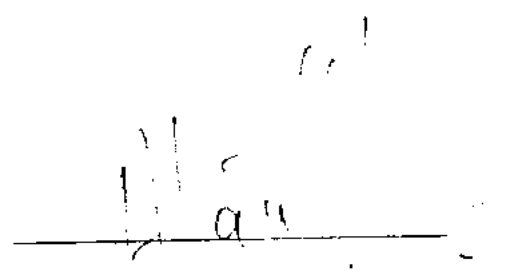
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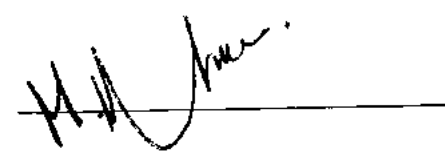
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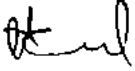
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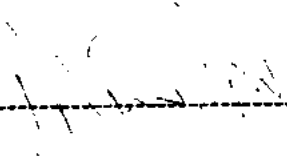
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DEDICATION

**My this contribution dedicated to the Professors, Lecturers, and members of Faculty of Shariah
and Law**

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All praise is to Almighty Allah, who deserves all praises alone. It is only his blessing, which enabled me to reach this level of knowledge in my field.

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LIST OF ACRONYMS

ASW	Allah Subha Na-o-TaAllah
AJK	Azad Jammu and Kashmir
Art.	Article
Cr.P.C	Criminal Procedural Code
HRL	Human Rights Law
ICCPR	International Covenant on Civil and Political rights
ICESCR	International covenant on Economic, Social and Cultural rights
IUI	International Islamic University Islamabad
PPC	Pakistan penal Code
R A	Razi Allah -o-Anhu
SAW	SallAllah-o-Alih-i-Wasllm
Sec	Section
UN	United Nation
UDHR	Universal Declaration of human Rights
WHO	World Health Organization

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Abstract

This study provides an overview of the rights of prisoners an appraisal of Pakistani Law from Shariah perspective. That, the actual concept of punishment according to Shariah, is to preserve the rights of individual from abusing and to secure the benefits and to repel the harms.

Furthermore, the status of prisoners is extremely worst in Jails. They are pushed behind the bar. The ill treatment of the concerned authorities have signaled the occurring of numerous events of suffocation and many more occurrence of wonderful brutal treatment with human resulting death at prisons.

The core of discussion is that various Pakistani laws promulgated for the purpose to protect the rights of prisoners are incompatible to some extent with Shariah. In Pakistan prisoner's rights has become a thorny issue, for on one hand there are some lacunas in legal regime with respect to prisoners while on the other hand there is nothing in practical to facilitate the prisoner or to treat them humanely, rather they impose harsh physical punishment that cannot be justified under any law.

Prisoner is a person who is apprehended by lawful authorities in due course of law is the arch of the issues. The discussion of issues are scattered among different pages of the study in hand. However Chapter I define these concepts i.e. prison, imprisonment and classification and types of prison and imprisonment of these concepts along with relevant laws and a brief history of these concepts is there in.

Chapter II elaborates about the condition of these prisons, prison authorities various criminal punishment and its justification.

Chapter III contains issues for the rights of prisoners, and the same chapter is described as contain my humble and poor views about the prisoner whom are facing difficulties in jails. The prisoners' rights Guaranteed in Pakistani Legal system from Shariah Perspective.

Thesis statement

“Keeping in view the gross violation of the rights of prisoners in order to realize there is an immense need to realize the rights of prisoners granted under Pakistani Prisoner Law from the perspective of Shariah”

Introduction

The actual concept of punishment according to Shariah is the attainment of Shariahi goals i.e. to preserve the rights from harmful actions of the accused described as to securing benefits and repelling the harm. Furthermore the status of prisoner is extremely worst in Jails. They are pushed behind the bar. The ill treatments of the concerned authorities have signaled the occurring of numerous events of suffocation.

After wave of human rights in the last century, particularly after the emergence of United Nations and the subsequent International bodies of human Rights and international community having stronger human rights conscious.

United Nation NGO, International Human Rights Organizations take immediate notice of all types of human rights violation including prisoner's rights. In Pakistan the prisoners are facing difficulties, prisoner's rights has become a sharp problem, for on one hand there are some legal regime with respect to prisoners while on the other hand there is nothing in practical to facilitate the prisoner , rather they impose harsh physical punishment that cannot be justified under any law to treat them humanely. Prisoner is a human being who is committed wrongful act and detained by lawful authorities. Despite of its imprisonment prisoners do keep hold of certain basic rights. The right of access to the courts and respect for one's bodily integrity is such fundamental right.

Others as cruelty, persecution and brutal treatment of the concerned authority while presume to be their duty, identify as just and according to law. Prisoners lose only those civil rights that

are taken away either expressly by any law or by necessary implication. How much strange it is to confine a free man in prisons despite of having a strong logic of reformation and rehabilitation. As the various theories elaborated in laws, thereby conveying the impression that it is justifiable and always favor humanity are wrong.

The Eighth Amendment of the U.S. Constitution too prohibits the government from inflicting cruel and unusual punishments. To confine one in prison with the purpose of punishment is unreasonable that misbalancing the rights of the prisoners. Evidence support that it is routine of the prison authorities to stifle in chain the prisoner and shut the iron doors behind, and press together more than hundreds bare bodies on the concrete floor of their cells. Their cages are filled with the fetid smell of sweat, dirt and human waste.

Evidenced that the prisoner are being stifled with prisoners, some on short sentences and others waiting to appear in court, is the exact scenario of the prisoners' rights in some jurisdiction. The Pakistan Human Rights Commission report revealed that over seventy five percent of the inmates are under trial prisoners. It further stated that the delaying process of the trial has further increased the number of these prisoners while on the other hand the prison authorities do not allow them for regular court process due to corruption tactics.

The importance of this research paper is threefold;

Firstly it provide awareness to the prisons authorities to stick with rules, principle and law while the prisoners too human beings to be treated as rather than animals. Secondly, it provides a chance to the parliamentarian to make legislation if the existing one required modification.

Thirdly, the interest of prisoners be kept according to law by providing rights and other facilities for treating on humanitarian biases while enshrined in various Shariah rules.

Literature Review

The Book *Kitab al Khiraj* written by *Abu Yusuf*. He wrote in this book about the Rights of Prisoners in Islamic perspective. He also stated that, persons those who are spreading terrorism, (Fasad) on earth. Shariah allowed to arrest them or to kill them, because to save the life of human beings and keep the honor of women from terror, it is Tazir punishments awarded by ruler. The holy Quran provided such punishments called Hudood (Qisas, Diat, Rajm, and whipping) for the protection of their society.

The author described that when the case submitted in front of Judge then he will decide if guilty than will be punished according to Shariah. In this book Abu Muhammad Yusuf guided to honor better treatment to the prisoners, because the Holy prophet PBUH order to spend money on non Muslim prisoners, but the people these are Muslim but they committed wrongful acts, and facing imprisonment. They are better than None Muslim. And he also advised that to provide them their basic needs food, clothes and other necessary things for their protection of their life. The jailor should treat them with justice and having fear of Allah.¹

Wajait Khan. *Islamic Legal and Preaching Studies* wrote about the divisions of prisoners and their discrimination. He also highlighted the rights of prisoners granted in Islam. He said that if prisoners are facing sick ill during their imprisonment, they should provided medical treatment in jail. If it is impossible then it need to transfer them outside in hospital for their better treatment. If prisoner need to live alone in jail cabin, they should provide them lonely accommodation.²

Fiqah al-jinaie al Islami, Abdul Qadir uda Darul kitab alawaji. Writer described Hudood, Muqasid, Tazirat, and their implementation; he also divided the punishments in the lights of

¹.Abu Yusuf yaqoob bin Ibrahim, *Kitab al Khiraj* (Qaira: Almktaaba Sfiya,1346),142.

².Wajait Khan. *Islamic Legal and Preaching Studies*. (Thesis M.S IIUI Islamabad: 2014).

Islam. These punishments are Taziri punishments. It is for the betterment of culprit, public and society.

Author says that the punishment is primary requirement; it may implement on the basics of culprits small and big, as a result the life of the prisoners tease. The government should provided help to them from their finance.³

The Book *Ainul hadaya* provided the relevant material about Sentences, Punishments, Hudoods, Tazir punishment and Justice.⁴

Pakistan penal Code (PPC) provides a proper mechanism of Punishments to the Criminals regarding the commission of crimes. Different sections of the Code describe crimes as well as punishments e.g. Murder, Qisas (Retaliation), Fine and another type of punishments i.e. rigorous imprisonment, rigorous with hard and simple Imprisonment, life imprisonments treated on the biases of Pakistani laws.⁵ Cr.P.C. provides for machinery for the punishment and prevention of offences against substantiates criminal law. The code lays down the procedure to be followed in every investigation, inquiry into or trial for every offence whether under the Penal Code or under any other law.⁶

The Geneva statutes are best documents on the rights of prisoners. Article 55 of the Geneva Statute ensures that the rights of individuals are protected throughout the prison life. Rights of prisoners in Islam by TahaJ, Alwani and Yusuf Talal Delorenzo provide certain rights in the perceptions of Islam. ICCPR also provides very authentic materials on the rights of prisoners.

³ Abdul Qadir uda Darul kitab alwaji, *Fiqah al-jinaieal islami* (Biroot: Darul kitab),1967.

⁴ Syed Ameer Ali *Ainul hadaya* Vol:2 (Lahore:Urdu Bazar)

⁵ Pakistan penal Code (PPC)

⁶ Cr.P.C. (Criminal procedure Code 1860)

Other documents like UDHR and ICCPR, ICESCR, and the optional Protocols are also protect the rights of prisoners. Pakistan prison laws are sufficient, but not fully implemented.

The authentic contributions available on the on prison Law from the master pieces of Prof Syed Afzaal Ahmed Kaka Khel on the topic of Prison in Islam a comparative study with Pakistani prisons law, highlighted the punishment and rules in Pakistan's laws about Prison and jail Ahkamat, Punishment it's comparison with Shariah, and the responsibilities of Administrator of prison in the perspective of Islamic Law. But it needs to identify all the rights of prisoners in Shariah Perspective. Weather Pakistani laws fulfill these requirements are prescribed in Sharia.⁷ Aysha Tariq wrote his dissertation on Legal discrepancies in ratification and incorporation of international conventions on prisoners. It described ratification and Incorporation of international Convention of prisoners. It is related only the International Law.⁸ Tabasum Kazmi wrote his thesis on prison Laws in Pakistan; Need for reformation under UDHR International Human Rights law. He wrote prison law of Pakistan in the perspective of Universal Declaration of Human Rights. But it need to focus on the rights of prisoners in the perspective of Shariah.⁹

The general material also may provide sufficient knowledge on this sector. But only the one matter, where I am concerned, there is no neat work on the prisoners' rights in the perspective of Shariah and Pakistani laws. The concept of Imprisonment misbalancing the rights of prisoners unjustifiable hub need to analysis the rights of the prisoners guaranteed under Pakistani Law from the perspective of Shariah" So this is the reason I would perform this liability being my research work of my specialization in Human Rights law.

⁷. Syed Afzaal Ahmad, "*Prison in Islam a comparative study with Pakistani prison laws*" (LLM diss., IIU, Islamabad, 1988).

⁸. Aysha Tariq, "*Legal discrepancies in ratification and incorporation of international conventions on prisoners*" (LLM diss IIU Islamabad, 2012).

⁹. Tabasum Kazmi, "*prison Laws in Pakistan; Need for reformation under UDHR International Human Rights law*"(LLM diss, IIU Islamabad,2011).

The Pakistani jail manual is consisting upon the various Acts and Ordinances. It provides fundamental rights to the prisoners. On the other hand these documents are never covering nor relevant to Shariah law. The Pakistani Penal Codes are prepared for Indo Pakistan, now it is applicable in Pakistan with little modification. Prisoner Act deals with all the prisoners. As well as the prisoners Act of concerned to the Jail only. The Hudood Ordinance is also not applicable in pure formed of Islam.

The judgment of Federal Shariat court are playing a unique role in the rights of Prisons in the perspective of Shariah, but these judgments are scattered and not available easily, the Shariat Court judgments are only decisions not a guidelines for the Prison. The Federal Shariat court the judgments for Accused weather they are acquitted or convicted, and not discussing about the rights of prisoners.

The topic on the rights of prisoners has not attracted authors as such. There are no separate books especially on this topic for the purpose to protect the rights of prisoners in the perspective of Islamic law. The internet and searching engines are full of relevant materials but unauthentic and the lack of reliability. The doctrines of Maslaha also pay very important role in this regard. The Prisoners Act, The current available material on the captioned topic is totally incomplete and does not cover the subject of my topic. The importance of my topic is the need of the time. The topic of rights of prisoners has not attracted authors as such.

All the above mentioned material is concerning either prison law of Pakistan, Legal Discrepancies the Book *Kitab ul Khiraj* written by *Abu Yousaf*. He wrote in his book the Rights of Prisoners in Islamic perspective. The Book *Ainul hedaya* provided the relevant material about Sentences, Punishment, and Hudood and Justice.

The Geneva statutes and Prison in Islam a comparative study with Pakistani prison laws. Legal discrepancies in ratification and incorporation of international conventions on prisoner, is described ratification and Incorporation of international Convention of prisoners and Prison Laws in Pakistan: Need for reformation under UDHR International Human Rights law.

These are somehow relevant, which means that it may be benefited from in research in hand. Researcher in this thesis is a humbly effort to identify, compare the rights of prisoners in Pakistani law and Islamic law. Thus try to fill up the present deficiency in the relevant topic.

Research methodology

The research method may be in the form of case laws, books, and other relevant research material as a primary source. While secondary sources of information may include research papers, magazines and electronic media, In addition, I would try my best to include all up to-date materials relevant to the topic.

Chapter 1

Introduction to Prison

The term "Prison" construes and conveys a place for confinement of criminals. Generally, person who is proven guilty of offence under the law are detained in such places as punishment / sentenced. The purpose of imprisonment to achieved positive aspects which directly or indirectly have an impact on society in general and relief or justice to aggrieved person(s). Including but not limited to objectives like deterrent, to make an example of the offender for others, Preventive measures with the aim that the offender/ accused may not repeat crime. Reformation is as to reform the behavior of an offender.¹In the binging of Islam it was used for under trail offender, if a person proved guilty then punished with Shariah law or in case of innocent they were leased.²

1.1 Literal and Technical meaning of Prison

The term Prison is derived from the Latin word "prehensio" which means "laying hold of" and the term prison used in English as a building for confinement of criminals or those waiting for trial.³ The synonymous term in Arabic language is "sijn". Jail is a place where kept the criminals for their investigation before *qazi*, it's meant that, a punishment to a criminal for their criminal offence, that was decided by court or justice.⁴ The Black's Law Dictionary says that, the term imprisonment means the act of putting or confining a man in prison; the restraint of a man's

¹ .VD, Mahajan,, *Jurisprudence and legal Theories* (Lahore: Mansoor Book House, 2005), 162.

² Abdul Qadar Oudah Shaheed, *Criminal law & Islam, Vol:2* (Karachi: International Islamic Publisher (PVT)Ltd),176.

³ Judy Pearsaff , and Bill Trumble, *Oxford English Reference Dictionary*(Oxford: Oxford University Press, 2002),980.

⁴ .Alnbhani Taqi uddin , Trans: Imtiyaz Akhtar Ranjha , *Nizam ul Hukum fil Islam* (Lahore: Zia ul Quran),101-102.

personal liberty.⁵ A state of federal facility of confinement for convicted criminal, especially offender.⁶

A place in which a person is kept in captivity, especially legally while awaiting trial and physical punishments in jail.⁷ Generally the term is used in two different meanings one in Shariah perspective and the other one according to the contemporary perception. *Habs* (Imprisonment) means to deprive a person of his liberty by restraining him from free movement, or confining him in a house, mosque or any other place by appointing another person to keep him in his custody, to control his free movements.⁸ "Prison" means "any jail or place used permanently or temporarily under the general or special orders of a Federal or Provincial authority for the detention of prisoners, and includes all lands and buildings appurtenant there to, but does not include any place for the confinement of prisoners who are exclusively in the custody of the police; "any place specially appointed by the provincial Government under section 541 of the Cr.PC 1882 or "any place which has been declared by the Provincial Government, by general or special order, to be a subsidiary jail".⁹

Ibn Taymiyah defines that; "imprisonment is not confining the person in a narrow place. However, limiting his personal freedom, and preventing him from exercising his rights in a house or a mosque". Ibn-i-Hazm defines that "preventing and accusing from harming the people or from running away with rights due to people, while he is able to pay their rights. Imprisonment implies some sort of restriction, as it restrains the person's freedom and does not allow him to interact with others in society."¹⁰

⁵ <http://helawdictionary.org> "Last Accessed 30/01/1213"

⁶ Bryan A Garner, *Black's Law dictionary* (ST.PAUL MINN: Western Group, 1999).

⁷ *Ibid*, 1

⁸ Prof Dr Anwarullah, *The Criminal law of Islam* (Islamabad: Shariah Academy IIUI, 2005), 250.

⁹ Prisons Act 1894 sect: 3(1). Available at <http://www.onislam.net/english/ask-about-islam/islam-and-the-world/politics-and-economics/166870-islamic-perspective-of-jails-and-prisons.html> last "Accessed: 30/01/1213"

(The "Prisoners Act 1900") defines the word "prison" includes any place which has been declared by the Provincial Government, by general or special order, to be a subsidiary jail.¹¹ It is not permissible in Islam to arrest or imprison a person before it is proved that he is guilty, no citizen is to be arrested or imprisoned for offences committed by others. The Qur'an asserts this fact by saying "No owner of burdens can stand the burden of another".¹²

"Criminal prisoner" means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial.

Convicted criminal prisoner means any criminal prisoner under sentence of a Court or Court-martial, and includes a person detained in prison under the provisions of Chapter VIII of the Cr.PC. Any place which has been declared by the Provincial Government, general or special order to be a subsidiary jail.¹³

The word incarcerate used in Quran, Allah Almighty says about people those who conspired (revolt) against Islamic state and they should be punished with imprisonment or death penalty should be awarded to them. Our Holy Prophet (PBUH) arrested an accused in masque for investigation. He released when proved innocent.¹⁴

¹¹ The Prison Act, 1900 Sec. 2 (b)

¹² Al-Quran, XVII: 15, Trans: Muhammad Marmduke pickthall (Islamabad: IR1 , 1988)

¹³ Prisons Act, 1894 Sect. 3(2).

¹⁴. Al Nbhani, Taqi Uddin, Trans: Imtiyaz Ranja (Lahore: *Nizam ul Hukm fill Islam*, Zia ul Quran), 103.

1.2 The concept of Imprisonment in Islam

إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ
فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ
وَأَرْجُلُهُمْ مِّنْ خَلْفٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ
خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الْآخِرَةِ عَذَابٌ عَظِيمٌ ﴿٢٢﴾

“The punishment of those who wage war against Allah and His follower and struggle to make trouble in the land is only this, that they should be killed or crucified or their hands and their feet should be cut off on parallel sides or they should be (imprisoned) or exile; this shall be as a dishonor for them in this world, and in the hereafter, they shall have a serious chastisement”¹⁵ jurists said that’ this verse is used for imprisonment for those declared for Tazir punishment in case of Terrorism.

The actual concept of punishment and imprisonment according to Shariah is the attainment of Shariahi goals i.e. to preserve the rights from harmful actions of the accused described as for securing the benefits and repelling the harm.¹⁶

The concept of imprisonment in Islam is found during the period of Hazarat Muhammad (SAW), but it was not a customary imprisonment such like situated in these days, it was to detain an accused in Masque for impeachment, if evidence proved guilty, then he was awarded punished with Shariah and innocent were get free.

¹⁵ Al Quran Surah Maeda, 5:33

¹⁶ Imran Ahsan Khan Nayazi, *Theories of Islamic Law* (Islamabad: IRI, 2005), 75.

The Holy Prophet SAW imprisoned an accused in case of stealing a camel, accused provided evidence for his innocence, and naturally realized,¹⁷ as well as the rightly guided caliphs were repeated this practice in their caliph periods, while important reforms has been taken by everyone to their own needs and objectives for public interest and maintaining peace.

The punishment of detention was in practice in the period of the Holy Prophet (SAW). There was no proper building for prisoners at that time, and accused were detain in mosque. Such practice was continuing in the period of caliph Abu Baker (RA), Detention was taken place in mosque or house.¹⁸ when the territory and population of the Islamic state considerably expended and the number of prisoners (offenders) increased tremendously in the period of Hazrat Umar (RA), he arranged a proper prisons for the convicts suspicious persons and accused persons awaiting trail and they used to give the punishment of imprisonment in certain crimes liable to Tazir.

The punishments of imprisonment were awarded only in Tazir cases, but in Hadood cases after investigation of their witnesses, accused were punished according to Quran and the practice of the Holy Prophet (PBUH).¹⁹ It is narrated that; Hazrat Ummor (RA) imprisoned a man namely Abu Huhhjn saqafi he was detained in prison because he did not discontinue drinking wine even he was punished by lashes, but when he did not stopped than sent in jail.²⁰

The punishment of imprisonment can be given exclusively and can also be given along with other punishment like fine if it is required in the circumstances of a case.

¹⁷ Abdul Qadar Oudha Shaheed, *Criminal law & Islam, Vol-2* (Karachi: International Islamic Publisher (PVT)Ltd), 176

¹⁸ Dr. Anwarullah, *The Criminal Law of Islam* (Islamabad: Shariah Academy IIU, 2005), 251-52.

¹⁹ Supra Note 14, 251-52

²⁰ Sajid ur rehman kandehlw, *Islam man Police or Ahtsab ka nizam* (Lahore: Diyal singh trest library, 1988), 48.

According to opinion of Imam Shafi, the quantum of punishment of imprisonment should not be extended more than one year but according to other opinions among the Shafi School of thought there is no limit for the quantum of imprisonment and it is at the discretion of the legislator or judge, to prescribe any quantum which serves the purpose of reformation of the convict.

According to Imam Abu Hanifa, Imam Malik and Imam Ahmad bin Humble, the quantum of the punishment of imprisonment has been left to the discretion of the legislator or qazi. The punishment of imprisonment is given usually for a limited period, but in some heinous crimes it can be unlimited. Such offenders will ever remain in prisons and they will be released only when they repent and mend their conduct.

It is important to mention here that contrary to the modern laws, the punishment of imprisonment in Islamic law is not a common punishment for crimes. In Islamic law this punishment is secondary sentence and should only be given when it extent required in the circumstances of the case. The jurists have opposed long term imprisonment in general crimes and transgressions.²¹

Imprisonment is one kind of main object to reform criminal behavior and this punishment has been continued upon them during that period.²² There was another practice occurred by the Holy

²¹ *ibid*, 252-53

²² 70 men were arrested by the Muslims during the battle of Badar, and they had been brought them in the court of Messenger of Allah. And asked o" massager of Allah we are waiting for your order about their case. The Holy Prophet (PBUH) consulted with His companions, Hazrat Umer (RA) said that I think they should be kill, but Hazarat Abu Baker (RA) said that I thought they should pay ransom for their freedom, finally they were asked to pay ransom for their freedom and poor were released on the condition of to train the Muslims read and write to their children, and their parents were responsible for their accommodation and food, their families were urge to them. They should treat with them equally and justly, nobody was compelled to change his religion. They treated with them with kindly and soft behavior such like because of this behavior lot of prisoners willingly interred in Islam Muhammad Munir, *Islam in History*, (Lahore: PLD Lahore, 1974), 33. See also <http://qsm.ac.il> (Last Accessd: 30/01/1213).

Prophet (SAW) ,in releasing large number of non-Muslims prisoners of Badder, Muhammad (SAW) has to consultate the matter of ransom with his companions and some time they exchange their prisoners peacefully.²³

Once there an event was occurred during the period of Caliph Hazrat Abu Baker Siddique (RA). when a large number of apostate men belonging to Banu Haneefiyah were arrested by Muslims soldiers, they brought them in the service of Hazrat Abu Baker Saddique (RA), they deserved for death penalty.They were treated humbly; it is also evident from the above discussion that prisons were not built during the region of Caliph Hazrat Abu Baker Siddique. Apostate offenders belonging to Haneefiyah tribe were detained by Abu baker RA and enslaved their women and children. While providing them facilities, their basic needs such as food, cloth and proper accommodation. Concept was banished by Caliph himself.²⁴ After their education they were get freedom by Hazrat Umor RA, he returned their slaves; women and children were sent in their own tribes.²⁵

There are many incidents which occurred during the period of caliphs Hazrat Umar Ibn Al-Khattab (RA), Hazrat Uthman (RA) and Hazrat Ali (RA) to give a distinctive place of keeping the accused, a house in Makkah was specified as prison²⁶ with the passage of time

²³. Abul Ahmed Abbas bin Adrwis Qurani, Malki and Sheikh Abdul fatah Abul ghuda, Translated by Dr. hafiz Ghulam yusuf , *Al Ahkam fi tmiz ul fatwa anl Ahkam wa tsarfat al Qazi wl imam* (Islamabad: (Shariah Academy IIUI 626 h -684 h),136.

²⁴. Abul Ahmed Abbas, bin Adrwis Qurani, Malki and Sheikh Abdul fatah Abul ghuda, Translated by Dr.hafiz ghulam yusuf ,*Al Ahkam fi tmiz ul fatwa anl Ahkam w tsrfat al Qazi wl imam*, (Islamabad: Shariah Academy, IIUI 626),684136.

²⁵ Ibid.

²⁶<http://www.onislam.net> "Last Accessed: 30/01/1213"

Islamic empire expanded gradually, till the first hijrah. It expanded to North Africa, Spain and Samarqand.²⁷

More over most of the people diverted from the right path and they started lie witnesses and crimes rate was increasing highly. . It required new policies and rules for controlling the crimes and timely step were taken by Hazrat Ummor (RA), when he purchased a house and paid four thousand dirham to Umayyad al jumah in (661 AD) and specified it for prisoners. It was situated in Makah. This prison was just like a house for the offenders, availing all facilities, which is ideal for the present world.²⁸

During the period of caliph Hazrat Uthman (RA) a habitual thief was confined who was died in prison. It was not a life imprisonment; he was punished again and again when he was found impenitent. He was detained in House (jail) for penance, unfortunately he was died.²⁹

Usually this practice was continued during the period of Rightly Guided Caliphs, when the crimes rate increased they need to reform in their prison policies. A separate House for accused was built by Hazrat Ali (RA) too; where criminals were to be kept until repent their wrongful act.³⁰ Two Prisons namely al Nafi and al Makhis were built by Hazrat Ali (RA) in (661 AD)³¹ and Hazrat Ali Ibn Abi Talib was the first who built a prison in Kufah, where detainees were treated with care and Kindness.³²

²⁷. Hafiz Ahmed Jami & Dr. Yusuf Farooqi, *Imam Hassan Bin Shahbani or inky Faqai Khidmat* (Islamabad: International Islamic University Islamabad, 2005), 28.

²⁸. Dr. Muhammad Ghazali, *Islam ka Foogdari Qanoon* (Islamabad: Shariah Academy, International Islamic University, 2000),22

²⁹ Ibid, 22.

³⁰. Al Nibhani Taqi uddin, Translated by Imtiyaz Akhtar Ranja *Nizam ul hukm fill Islam* (Lahore: Zia ul Quran, 2000),101

³¹ I bid, 23.

³². "Islamic Perspective of Jails and Prisons" <http://www.onislam.net> (Last Accessed: 30/01/1213).(please recheck year)

During (661_680 AD) a new strategy was structured by Umayyad Caliph, when Caliph Mu'awiya bin Abu sufyan built new prisons and protected them with guards for security purpose. With the passage of time the concept of open jails were emerged, where poor offenders were being detained on the biases of personal controversy and political ground, and deprived them from their individual rights, third class method was used for threaten and harass them, it had protected by guards but without roofs.

A famous jails known as Al-Dimas was built by Yusuf al-Thaqafi in (d.714 AD), without roof where prisoners were punished with scorching heat in summer and swear cold in winter. In addition underground dark cells were created by them for torturing prisoners of heinous crimes physically.³³ The History of human beings is full of inhuman punishments, and they were detained into dim cells, underground dungeons palaces.

The Great scholars Imam Abu Hanifa, (d: 767 AD) and Ibni Tamyiah (d: 1327 AD) both were died in Prison.³⁴ It was usually practiced by Abbasside Judge Abu Yusuf who established a new judicial system, where prisoners were given the rights of Applications for justice on humanitarian basis.³⁵ They introduced a new mechanism for justice, and prisons were built for justice. Judges were appointed for justice in their own favor, and ordered that all decisions are the sole right of the caliph. Imam Abu Hanifa was offered the post of Chief Judge but on refusal he was detained in jails and harsh punishment was imposed on him, where he was punished with lashes and finally died in Jail.³⁶

³³. Khalid Sindawi, "PRISON AND PRISONERS IN ISLAM" <http://qsm.ac.il> (Last Accessed: 3/02/1213)

³⁴. Mehmood Ahmed Ghazi, *Islam ka Dstoori Qanoon, vol.5* (Islamabad :Shariah Academy International Islamic University, Islamabad ,2003),1.

³⁵ <http://www.moiegypt.gov> "Last Accessed: 3/02/1213"

³⁶. Gul Abdul Majeed, *Rights of Accused in International Criminal Law and Islamic Criminal Law: A Comparative Legal Study* (LL.M. Thesis, IIU, 2012), 31-32.

Till 18th century, jails were used as momentary lockup and the arrested criminals were usually kept for a short period of time to inquire them. If it was proved that they had committed crimes the punishment of whipping, death as the case would have been imposed on them. Initially the prison structure was worse in Europe; the prisoner had to be treated harshly with injustice.³⁷

1.3. Historical back ground of Imprisonment in Pakistan

Pakistan inherited the prison system from colonial legacy, after the partition of subcontinent in 1947. British ruler imposed some jails laws for their own purpose and also suppressed the freedom movement, imprisoned with harsh punishments because to prevent revolt against colonial empire, With the passage of time the deteriorating condition of prisons and prisoners indicated the attention of governments and human rights organization as it began to realized that life in prison is extremely worst. The ideas treatment changed the purpose and objectives of rationalized jail institute. To improved the living stander various commissions and committees have been comprised by government in context with classical change in the penal philosophy throughout the world. Pakistan Prison rules 1978, Rules for the Superintendence and Management of Prisons in Pakistan was adopted in all Pakistan jails.³⁸

The concept was belonging to English reformatory theory. To reform criminal behavior through imprisonment were emerged in 18th and 19th century, and they developed their jails and laws for their maintenance and built new jails, and their design were incorporated and reformation took place through counseling and training in institution. Federal court was active

³⁷ ibid 29, 11.

³⁸.Muhammad Siddique Akbar, "Prison Reforms and Situation of Prisons in Pakistan" (last access 21/07/2014). http://www.sapandssrp.com/attachments/File/Prison_reforms.pdf

and sentences were extended. The prison Authorities were worried for the rights of prisoners.³⁹ The status of prisoners was extremely worst in Jails. They are pushed behind the bar. The ill treatments of the concerned authorities were signaling the occurring of numerous events of suffocation.

After wave of human rights in the last century, particularly after the emergence of United Nations and the subsequent International bodies of human Rights and international community having stronger human rights conscious. International Human rights organizations took immediate notice of all types of human rights violation including prisoner's rights.⁴⁰ Capital punishments were authorizing wrong rules for many offenses. The shaming permeation was look upon as obsolete. Imprisonment had replaced with capital punishment for most grave offences excluding murder.⁴¹

Late 19th century, prisoners were detained in separate cells, although associations allowed visiting during the day. Certain correctional structure introduced, many corporations were establish for adult. Jails like local level institutions used to confine those awaiting for trail and also serving short sentences, usually less than one year. A great initiative was taken for young offenders, and introduced many institutions for young prisoners; it was introduced in the avoidance of Crime Act 1908.⁴²

Reformatory movements were started in later decades. Focusing on young offenders was started in 1870 and maintained gradually faille until 20th century. The States built prisons a few

³⁹. Joseph Shelley F, *Criminology company Belmont* (California: Wadsworth publishes, 1987), 48.

⁴⁰. Professor Pervaiz, *Principal of international Relations*, (Sawabi: Irshad Publishers, 2007), 78.

⁵⁰ "History of the prison system" (Last Accessed: 26/02/2013). <http://www.howardleague.org/history>.

⁵¹ *ibid.* 33, 380

decades before, in 1875 introduced new penal institutions and chosen them reformatories and correctional ideology for protected offender as young human beings who reformed by institutional reforms, provided them higher faculties morality and ethics.

But in 1973 they started educational professional and religious syllabus. During 1850-1950 mark the era of big houses, the wall enclosed in theoretical of prison life.⁴³ Before the new developments of nation's persons without keeping regard of sex or age were arrested together in one room or hall, or detained in large buildings.

The purpose of imprisonment was to repent the way of the accused and to abolish criminal activity which is always a threat to the society. Various laws promulgated to allow the imprisonment of the criminals until repenting their way and to make the accused good citizen.

Penal laws and the trial procedural laws are promulgated in this regard. A separate department was established under the Prison Act 1894, and Pakistan Prison Rule 1978. The worse conditions of prisons are becoming good. The importance of the establishing prisons in every District is to reduce the ratio of crimes, and save the lives and properties of the people from loss also, to preserve the interest of the citizens for the betterment of their life style.

1.4 Types of Prison in Pakistan

Pakistan Prison Rules 1978 prescribed that there are four types of prisons which are as under: District jail, Central Jail, Sub Jail, Special prisons (Women's Prisons, Open Prisons, Borstal Institutions and Juvenile Training Centers shall be considered to be Special Prisons under the Rule

1. District jail;

⁴³. Joseph Shelley, *Criminology company Belmont* (California: Wadsworth publishes, 1987),380-81.

2. Central Jail;

3. Sub Jail; and

4. Special prisons (Women's Prisons, Open Prisons, Borstal Institutions and Juvenile Training -Centers shall be considered to be Special Prisons under the Rule) ⁴⁴

1.5 Classifications of Prisoners in prison

The legal experts have divided the special prisoners into three classes. Which are as under?

1. Criminal Prisoners. ___ it has been divided further into two. First, convicted prisoner and the accused under trial in judicial Lock up.
2. Civil Prisoners;
3. State prisoners. ____, a person order to be detained in prison without trial under any law relating to the detention of such person. ⁴⁵

The kinds of prisoners have been divided into three classes with reference to privileges.

1. Superior Class;
2. Ordinary Class; and
3. Political Class. ⁴⁶

The convicted are further two types

- 1 Casuals and
- 2 Habitual criminals

39. Pakistan Prison rules 1978, Rules for the Superintendence and Management of Prisons in Pakistan, Rule: 4

⁴⁵ .Asma Mushtaq, *Pakistani Jailain or Quwaid Wa Dhwabit* (Islamabad: Woman Aid Trust Pakistan, 2010),18
See also: Pakistan Prison Rule, 1978 Rule: 224.

⁴⁶ Pakistan Prison rules 1978, Rules for the Superintendence and Management of Prisons in Pakistan, Rule,225

(i) Casuals are first offenders and who lapse into crime not because of a criminal mentality but on account of their surroundings, physical disability or mental deficiency.

(ii) Habitual criminals habitual prisoner; and

Professionals / repeaters.

(a) Ordinary habitual prisoners are those frequently lapse into crime owing to their surroundings or some physical or mental defects.

(b) Professional or repeaters are men with an object, sound in mind and in body, competent, often highly skilled, who deliberately and with open eyes prefer a life of crime and know all the tricks and maneuvers necessary for that life. They may be first offenders.⁴⁷

The convicted also divided according to age:

1. Juveniles: under the age of 18 Eighteen years,
2. Adolescent under the age of 21 Twenty one years;
3. Adult above the age of 21 Twenty one years
4. Extreme old age above the age of 60 Sixty years.⁴⁸

Generally the court award the punishment of imprisonment to the convicted person depends upon the jurisdiction of the court and separate the prisoners with relating to punishment into two types.

The prisoners are divided with the nature of sentence in two types:

1. Rigorous Imprisonment;
2. Simple imprisonment; and

⁴⁷ Ibid, 226 (i)(ii)

⁴⁸ Asma Mushtaq, *Pakistani Jailain or Quwaid Wa Dhwaabit* (Islamabad: Woman Aid Trust Pakistan, 2010), 18. See also: Pakistan Prison Rule, 1978 Rule: 227 (a)(b)(c)

3. Death penalty Prisoner (those whom has been kept as awaiting for the award of death punishment)⁴⁹

Under trial prisoners shall be classified as under;

(a) Committed in sessions.

(b) Committed to other courts.⁵⁰

1.5.3. I. Concept of political imprisonment and Pakistan (preventive detention)

The concept of political imprisonment is not a new phenomenon; historically British Empire used this phenomenon in subcontinent for the purposes to prevent the revolt against British Empire. They Built lot of jails and torture cell for to imprisoned those who revolt against him, where hard punishments were awarded to them.

The political class comprises of prisoners who have committed crimes not for their personal gains but for political purposes and political motives. They are not criminal and do not require reformatory or correctional treatment.⁵¹ The law says they may be kept separate from each other, if deemed necessary.⁵² Their classification will be determined by authority ordering for their retention in prison.⁵³ Further, superior class food, cloth and bedding shall be provided them.⁵⁴ They should be provided the facilities of books and News papers for reading⁵⁵ and the

⁴⁹ Ibid, 195

⁵⁰ Ibid, 229 (a)(b)

⁵¹ Pakistan Prison rules 1978, *Rules for the Superintendence and Management of Prisons in Pakistan*, Rule: 225.

⁵² Ibid, 232(vi)

⁵³ Ibid, 249.

⁵⁴ Ibid, 260.

⁵⁵ Ibid, 264.

facilities for writing letters to their families along with the facility of interviewer to visit.⁵⁶ On the other hand International Covenant on Civil and Political Rights (ICCPR) describe as that;

All persons are equal before the law and are treated without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵⁷

Pakistan is a Democratic country and Multi party theory was practiced since the day of independence. Unfortunately, due to political amenity it has been observed that opposition leaders are detained in prison.⁵⁸

Jurists maintained the view about political prisoners that those who have revolted against sovereignty of state are called political prisoners. They maintain that this condition must be satisfied for declaring a prisoner "political prisoner".

The four Sunni School of thoughts have agreed upon concession in the award of punishment and some time reprieve, pardon and partial imprisonment is also permissible depend upon the nature of the case.⁵⁹ Pakistan in practiced the political imprisonment since the independence of Pakistan, many of the people were arrested due to their political grounds,

⁵⁶ Ibid, 265.

⁵⁷ ICCPR, Art. 26.

⁵⁸ . Most of the people like political leaders and lawyers were arrested during 2007, when they started strikes for Democracy. They push behind the bar allegation of terror. Pakistan jails rules provided some facilities for political prisoner but unfortunately they imprisoned them and allegation of terrorism against them, they treated badly with the comparison of other prisoners. The ordinance of security of Pakistan act MPO have unlimited power used against them, they used too much power against them. Muhammad Idrees Qureshi, *Jail Qawaneen or Qaidyon k Haqooq* (Lahore: Legal Edition, 2010), 60-61. Trans: Wajahat Khan Ph.D Scholar in Islamic Legal and Preaching Studies, IUI.

⁵⁹ . Abdul Qadir udah Shaheed, Trans: by Sajedur Rehman Kandhlvi, *Islam ka foajdari Qanoon* (Lahore: Islamic Publication Limited),123.

because if one party is in Govt. other was organized strikes then they were punish badly, sometime Marshal Law accord and civilian leaders were pushed behind the bar due to political reason, for example Mr. Zulafqar Ali Bhutto was imprisoned under political reason and at last hanged in jails.

1.6.1. Justification and defiance of imprisonment in prison

“Those who commit illegal sexual intercourse of your women carry against them four witnesses from among you. And if they give evidence, confine the guilty women to houses until death takes them or Allah ordains for them way.”⁶⁰ This punishment is awarded for wrong dower but Almighty Allah give a method of punishment for the betterment of society, and preservation of progeny.

“The adulteress and the adulterer - punish each one of them with a hundred lashes; and may you not have pity on them in the religion to Allah, if you trust in Allah and the Last Day; and a group of believers must witness their sentence”.⁶¹

The primary duty of a state is to provide justice and all facility of life to the public. Laws are for the protection of rights and the redresses of liabilities, lays down the concept of punishing the wrong doer with imprisonment, also to restore the right of victim. The criminal uses different tactics while committing crime for the purpose to avoid the laws of punishments. Various penal and procedural laws have been promulgated by the legislature to encircle their bloody plan.

It is said that due to poor economic, non-implementation of law and order situation in Pakistan ratio of crimes is higher. Under these circumstances, there is a need that applicable law

⁶⁰. Al Quran Surah Al Nisa 4;15 Nobel Quran Mufti Muhammad Taqi Usmani.Vol:1

⁶¹. Al Quran Surah Noor 2: Nobel Quran Mufti Muhammad Taqi Usmani.Vol:1,p204.

related to prisons and their administration may be reviewed in light of best practices based upon principle laid down by Sharia'h. The Constitution of Islamic Republic of Pakistan, 1973 guaranteed fundamental rights of citizen of this country.⁶² Islamic penal law has same concepts about punishments, its aim is to reform the wrong dower and create deterrence in society, so that people should takes lessons from punishments avoiding to such omits such crimes, and taking laws in their hand. Theories of Islamic perspective as like Deterrence and Retribution are the principals in Islamic law.⁶³

The philosophy of Islam regarding punishments accepts the necessity of imprisonment and strictly instructed to inquire the situation of people in prison. Accused were detained in Mosque during the period of Prophet (SAW) for impeachment. Evidence proved innocent were naturally released, and guilty were treated according to Quran.⁶⁴

Criminals were imprisoned during the period of rightly guided Caliph, they were investigated for the charges leveled against. Caliph Ummer (RA) purchased a house for imprisonment and Hazrat Usman (RA) rework on jails and Hazrat Ali (RA) was one who built a house for accused and gifted it for the purposes of prison.⁶⁵

People were detained for personnel criminal, political and religious grounds during the colonial period by the executive authorities under the prison Laws 1894. After, partition the prison laws were executed with minor changes in Pakistan.⁶⁶ No one can challenge the validity of these laws of imprisonment.

⁶² Constitution of Pakistan 1973 Arts 9-25.

⁶³ Syed Afzal Ahmad Kaka Khel, "*Ahkaamaat-i- Jail*" (LLM Thesis, IIU, Islamabad: 1988), 1-10 .

⁶⁴ Prof Dr. Anwarullah, *The Criminal Law of Islam* (Islamabad: Shariah Academy IIUI, 2005), 251-52.

⁶⁵ Ibid, 251-2

⁶⁶ Pakistan Prison rules 1978, Rules for the Superintendence and Management of Prisons in Pakistan

The main object of imprisonment is the formation of character of accused. To made them good citizen for state and society, preservation of their rights. Secondly, to save the society from crime otherwise society will suffer irreparable loss. Third justification of imprisonment is that, where one has committed a crime he should be awarded the punishment accordingly.

Further justification for the punishment of imprisonment have analyzed from Shariah, perspective in the light of Pakistani laws with detail in the next chapter. But the law says that every person should be presumed innocent until proved guilty. Law gives a complete chance for proving oneself innocent. Once the charge of allegation proves him guilty, the person is accused, his arrest is legal, imprisonment justifies according to law and the duration of imprisonment varies from case to case.⁶⁷

⁶⁷ . Wajahat Khan, "*Islamic Legal and Preaching Studies*" (M.S diss., Islamabad: IIUI, ,2014),19.

Chapter-II

The condition of Prisons in Pakistan

The environment in Prisons in Pakistan is not good, neither administratively or geographically as well as physical condition of buildings. There are many factors which attributes for creating bad conditions of prison in Pakistan. Some of them are corruption and bribery and abuse of powers. Since buildings were constructed by British rulers hence at present there is need for either to re-construct or rebuild once again to meet the requirement of the current circumstances. .

Buildings for jail which are constructed by the British rulers were for those who were against them. These building / places were used as torucher cell against Muslims at that time. Now, afte independence, these building are being used for prisoner giving them sentenced under the penal laws. Thus the structural of those building is not suffice to meet the requirements of the prisoners detained under the panel law of Pakistan. Therefore, considering the requirement of accommodation, numbers of person to be detained in one barrack or two barrack, proper provision of basic needs and maintenance required true concentration of the State. For achieving such goals, principal laid down in Shairah may be adopted and taken care of. ⁶⁸and basic necessities may be provided as prescribed in Shariah,

⁶⁸. Aziz A.Siddiqui, *State of Human Rights in 2000(Lahore: Human Rights Commission of Pakistan, 2001),92-4.*

2.1 The Behavior of Prison Authority with Prisoners in practice in jails

It is worst conditions of prisoner in jails, some time beating by authority, they are facing overcrowding, and did not have proper looking by authority, they pushed them behind the bar and did not provided them proper accommodation in Jails, facing smell and abusing fear from homo sexual activities. And also women are kept together in cell, with criminals and other minor criminal, pregnant women did not having medical treatment and some of them were facing imprisonment with their child. They have tied by the behavior of wardens, and engaged in spreads drugs and facing imprison with babies.⁶⁹

Most of convicts said that it is measureable Horrible and the treatment of prison authorities are unfair and cruel, they believed that a convicted criminal could not expect an easy life or for the matter an honorable life, but they did expect to be treated as human beings and not as beasts of burden.

The administrative staff were inefficient unfair and dishonest, many of influential prisoners were enjoyed many of privileges, ordinary and poor could not imagine it, some of good well of convicts hire other poor for their clothes utensils, cook food for them and do their personal job. some accused staff particularly lower one of accepting gratification from well off inmates and their relatives for small favors like procurement of hashish, oil soap good food and fruit, walking for more than allowed time outside the condemned cell, meeting relatives for meeting for many hours or for long then allowed duration, and sometimes for reduction in the fatigue, but other those who do afford it they are created ill feeling, hatred. Fast detention

⁶⁹. Double jeopardy x police abuse of women Asia watch, " Divisions of human rights watch"1992.
[http://www.Book google.com.pk /cd=mluwz4avm8a\(pg=pa897dq-reports on prison conditions in Pakistan \(Last Accessed:0 6/08/2014\).](http://www.Book google.com.pk /cd=mluwz4avm8a(pg=pa897dq-reports on prison conditions in Pakistan (Last Accessed:0 6/08/2014).)

physically mentally poor food, good ration and meat always sent to officers houses, prisoners were given to worst eat.

Officers were misappropriating public fund supposedly to be spend on food and other small amenities in the prison.⁷⁰

Beating with bade and some time beating with whipping. Female prisoners were always abused by authority, and did not provided them foods water and other necessary things their basic needs and threatening, and medical treatment are not provided them, most of prisoner belong to under trail but due to careless of authority, they are facing prison. Poor are not afford fee and their cases are pending due to helpless, rich criminals having approach to lowers and pay money, to victim, and at last released, but unfortunately poor get imprison due did not afford high fee of lawyers, and beaten in jails due to pressure on authority take money from victim and as a result the offender was beaten by authority. Female and children were always abused by authority.

They hanging them from roofs, their foot are catch by rope and then beat them, pull their nails and pull their hair, pull their air, punch on body, beat with kick, pull stick in mouth and punch at face, and beat them with bade and sticks on his back bone, and water pressure on him. Keep them without food, for many hours; hard labor should be imposed on him .kept them into dark cell for many days. Sense less were kept in their cells he bath their and spread dirt and smell.

February 2013 jail was visited by Atta-ur-Rehman Tareen . But found Overcrowd is a main issue in a small space but imprisoned 4500. They were facing poor food, water and poor living accommodation no mineral water and facing diseases. Hshim treen was imprisoned for six

⁷⁰. Pervaiz Naeem Tariq and Naddm Durrani, "Socio *Psychological aspect of crime in Pakistan*"(National Institute of psychology centre of Excellence, Quaid-i-Azam University, Islamabad,1983), 99-100.

and seven weak weeks in Adiala Jail and after Judicial remand he find innocent. And reports that who payees Rs. 20-30 thousand for mobile and other facilities, as like separate room for accommodation. Muhammad Iqbal was he was imprisoned for 25 years but transfer due to wrong charge against him, because they have capacity of 2000 prisoners but detained 4500 in Main Wale jail. Superintendent Malik Mushtaq said that overcrowded is problem, but corrupt jail officer provided them illegal item that were prohibited in jail.⁷¹

Karachi jail has capacity to 18000 prisoners but kept 38000 and 200 Taliban were detained there. One of them said "I was hanged with fan hooks with my legs while kept my head down, even my nails were pulled." during interrogation by Pakistan Rangers and detained in poor housing.⁷²

legal behavior of prison authority with prisoner

Inspector General is appointed for the superintendence and control of prison department by the Government. The prison authorities have to treat with the prisoners equally irrespective of his status, race, colure, caste, creed and religion. Laws states that the behavior of the prison authorities with the prisoner shall be as follow:

1. They have to make such arrangement inside jail the redress the complaints of prisoners in lawful manner not to aggravate them further and shall show such kindness and affection to every prisoner as is compatible while discharging his duty.

⁷¹. "Prisoners speak of overcrowded, filthy jail conditions" <http://www.app.com.pk> (Last, Accessed 23/04/2014).

⁷² <http://voices.yahoo.com>, "pakistani-jails-birthing-jihadists-destroy" (Last accessed 23/04/2014).

2. The law states that every officer shall firmly maintain strict discipline and enforce all rules, regulations and orders applicable to the discharge of his duties.⁷³ It is important that every complaint made by a prisoner should be listened with attention, so that, if genuine, the grievance may be redressed or remedied, and there should not be any just cause for discontentment.⁷⁴
3. The law strictly bans the use of force and physical punishment. As the laws lay down that no officer shall, at any time, under any circumstances or under any pretext, strike any prisoner otherwise than in exercise of the right of private defense or in pursuance of his duty in giving effect to punishment lawfully inflicted or to any other provision of law.⁷⁵ Furthermore, the authorities of prison have no right to use force though discharging their duties, otherwise than is absolutely necessary for the purpose of enforcing the law and carrying out his duties.⁷⁶

Although it is lawful to use all means necessary to make effective an arrest⁷⁷ and a prisoner has no right of private defense against officers of the prison acting, in the discharge of his duty⁷⁸ and every officer may use all force necessary to resist any force used by prisoners against lawful authority.⁷⁹

4. It is not permissible by any way for the Jail authorities to make any business dealings with Prisoner in the prison. No officer has the right neither to conduct any deal of business with the prisoner for gaining any profit with the prisoners nor, to receive any gift

⁷³ Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan, Rule: 1065(i).

⁷⁴ Ibid, 1065.(i)(ii),(iii).

⁷⁵ Ibid, 1066(i).

⁷⁶ Ibid, 1066 (ii).

⁷⁷ Criminal Procedure Code ,Section 45,

⁷⁸ Pakistan Penal Code, section 98,

⁷⁹ Pakistan Prison Rules, 1978, Rules for the superintendence and Management of Prisons in Pakistan, Rule.1066 (iii).

from them.⁸⁰The Pakistan Prison Rules 1978, states that no officer shall directly or indirectly be concerned in contract or agreement for the supply of any article to the prison, or to receive directly or indirectly any fee, gratuity, present or loan from any contractor or supplier, or from any prisoner, prisoner's relative or friend or any person visiting the prison.⁸¹Even the use of improper language and harsh words are also prohibited for the authorities of prison.

5. The Superintendent shall not at any time award any punishment to any prisoner or, otherwise than in accordance with law and the orders of the Superintendent, inflict any punishment on any prisoner shall be lawful.
6. Officer of any prison shall not use violent, abusive, insulting or unnecessarily irritating language to any prisoner.⁸²
7. The jail authorities are strictly prohibited to get personal employing and waging of prisoners either directly or indirect. The Prison officers are prohibited from employing any prisoner directly or indirectly for their private benefit or advantage or of any other person except in a regular way by placing a proper order for the manufacture of an article.⁸³
8. It is the liability of the prison authorities to report misconduct and breach of rules by the prisoners for necessary action. Every prison officer shall forthwith report to the Superintendent or other superior officer any misconduct or deliberate breach of any rule

⁸⁰. I bid, 1067.

⁸¹. I bid. 1068.

⁸². I bid, 1069.

⁸³. I bid, 1070.

or regulation on the part of any subordinate prison officer or of any prisoner which may in any way come to his knowledge.⁸⁴

9. All officers of jail have the duty to prevent and report of escapes and breaches of rules, law and discipline.
10. It shall be the duty of every officer to do all lawful acts which may be necessary, and to exercise the utmost vigilance, for the purpose of preventing any prisoner from breaking out of prison or escaping or from creating any disturbance or riot, or from doing any other violent or disorderly act.
11. Every prison officer is required to take all lawful measures to prevent the commission of any offence in the prison and to enforce all rules, regulations and orders for the time being in force with regard to conduct and discipline of the prisoners and the administration of the prison. He is required to report, at the earliest opportunity, to superior authority every breach or attempted breach of discipline on the part of prisoners⁸⁵
12. The prison officer shall not enter a cell or barrack occupied by any prisoner at night unless accompanied by another officer and then only in case of emergency in due course of law.⁸⁶

2.2 Responsibilities of prison authority guaranteed in prison

The Superintendent, Deputy Superintendent, Assistant Superintendent along with subordinate official appointed by the government for the administration, management and control of the prison working with direction of government. The prison officers have the

⁸⁴ I bid, 1071.

⁸⁵ Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan, Rule:1072.

⁸⁶ I bid, 1073.

responsibilities to manage discipline in prison in due course of law.⁸⁷ Management of the prison discipline i.e. labor, expenditure and even the award of punishments is the responsibility of superintendent of jail.⁸⁸

They have to maintain a register for writing daily work done or to be done⁸⁹ i.e. the entry of any visitor, punishments awarded to a prisoner, medical treatment given to any prisoner, the occurrence of any accidental death etc. The sub ordinate officials via gate keeper and guards have the responsibilities of search and security of the prison. If they find anything prohibited by the law forfeit and report the matter to the authorities.⁹⁰

Unfortunately the Jails authority uses their powers wrongly. Usually give punishment to prisoners without any cause, with lashes or put a wooden orb in his mouth or pull his hair and nail, and adopt many more inhuman and brutal means for punishing them until become ridiculous.⁹¹

2.3. Prohibited activities and Sever Physical Punishments Behind the bars

Sometimes a new comer cannot get proper understanding of the internal environment of prison. The prison authorities have to arrange such programmers' to keep the prisoners aware of the prohibited activities inside Jail. A complete list of offences and punishments is given in the Pakistan Prison Rules 1978, declaring offences if committed by prisoner as under:

1. Quarrelling with any other prisoners;
2. Secreting any article whatever;

⁸⁷ Habib ur Rehman, *Pakistan jail Manual* (Islamabad: justice law and commission), 19.

⁸⁸ Muhammad Idrees Qureeshi, *Jail Qawaneen or Qidiun k haqooq* (Multan: Legal addition, 2012), 19. Trans: Wajahat Khan Ph.D Scholar in Islamic Legal and Preaching Studies (IIU Islamabad, 2014).

⁸⁹ .I bid.

⁹⁰ .Ibid.

⁹¹ .Ibid.

3. Showing disrespect to any officer or visitor;
4. Making groundless complaints;
5. Holding any communication in writing or telephonic call inside prison with opposite sex, civil or under-trial prisoner or a prisoner of a different class, violation of the prison rules;
6. Abetting the commission of any prison offence;
7. Doing any act or using any language to harm the feelings of prisoners;
8. The refusal eating food, wearing clothes or losing, discarding damaging or alerting any part of it;
9. Refusing to keep his clothing, blankets, bedding, fetters utensils or disobeying any order as to the arrangement and discipline of such articles;
10. Tampering in any way with prison locks, lamps or lights or other property which he has no concern;
11. Stealing the prison clothing or any part of the prison kit another prison;
12. Manufacturing any article without the knowledge of permission of an officer of the prison;
13. Performing any portion of the task allotted to another prisoner or the assistance of another prisoner in the performance of his own task;
14. Non assistance in suppressing violence or strikes of any kind;
15. Refusing to help any officer of the prison in case of an attempted escape or of an attack upon such officer or upon another prisoner;
16. Disobeying any lawful order of an officer or the prison or omitting or refusing to perform duties in the manners prescribed;

Such willful disobedience to any rule and regulation of the prison as has been declared by law to be an offence in prison.⁹²

There is always a formal warning means a warning personally addressed to a prisoner by the Superintendent and recorded in the punishment book and on the prisoner's history-ticket.⁹³

Any assault or use of criminal force; shall be liable to change of labour to some more irksome or severe form of punishment for such period as may be prescribed by rules made by the Provincial Government.⁹⁴

The use of insulting or threatening language; shall be liable to hard labour for a period not exceeding seven days in the case of convicted criminal (prisoner) not sentenced to rigorous imprisonment.⁹⁵

For immoral or indecent or disorderly behavior; the person who committed such loss of privileges admissible under the remission system for the time being in force as may be prescribed by rules made by the Provincial Government⁹⁶

The imprisonment is either simple or rigorous. Rigorous imprisonment is further subdivided in the following categories.

1. hard labor
2. medium labor
3. Light labor.⁹⁷

⁹² Ibid.572.

⁹³ Pakistan Prison, act: 1894 Sect.46 (1).

⁹⁴ Ibid.46 (2).

⁹⁵ Ibid.46 (3).

⁹⁶ Ibid: 1894 Sec:46(4).

⁹⁷ Prison disciplines, Rule: 135.

Accession No. 7415252

Shariah divides punishment into three i.e. *Hudud*, *qisas* and *Tazir*. Shariah impose the punishment of Hadd in case of violation of the right of Allah. The following acts are the most severe crimes in Shariah. The purpose of Shariah is preserving the rights of the individual.⁹⁸

- a. *Zina* (unlawful sexual intercourse)
- b. *Sariqah* Theft from a place of safe custody
- c. *Hirabah* (Robbery with the force of arms)
- d. *Qadhf* (false accusation of sexual intercourse)
- e. *Shurb* (drinking of intoxicating beverage)
- f. *Riddah* (Apostasy)
- g. *Baghi* (Rebellion)⁹⁹

2. Qisas and Diyat

The punishment of Qisas is to be imposed in case of violation of the rights of individual. Qisas is to be imposed in case of physical injury while Diyat is the punishment for the wrongdoer who commits murder.¹⁰⁰ “But whoever transgresses after that will have a painful punishment.”¹⁰¹

3. Tazir punishment

The punishment of Tazir is to be awarded to those offenders who commit offences against state or Sultan. It is the third kind of punishment in Islam for person against the state. The

⁹⁸.Shahzad Iqbal sham, *Islam ka Tswr jurm o sza* (Islamabad : Shariah Academy IIU,2007),6.

⁹⁹ Imran Ahsan khan Nayazee, *General Principal of criminal law* (Lahore: Federal Law House, 2010), 178.

¹⁰⁰. Supra Not,20 <http://qsm.ac.il,07>),5.

¹⁰¹.Al-Quran,(178:2),Trans: Abdullah Yusouf Ali,Translation and Commentary.

limits of such punishment are the whim of the Sultan. The main purposes of punishment in Shariah are the attainment of Shariah goal, securing the benefit and repealing the harm.

According to Hanfi School of thought the Chalif can award the punishment of Tazir to an offender and imam Malik and imam shafi and Imam Ahmed think that Imprison means the punishment that does not amount to murder. They do not permit the physical punishment and the killing of Prisoners only rebellious person may be awarded the punishment death depends of the nature of the case. The award of either punishment of Hadd or Tazir is not the discretion of the judge but is guided principles of law.¹⁰² During the period of Holy Prophet (PBUH), a man was arrested charged with the blame of theft and then Prophet (PBUH) imprisoned him, when it proved that he was not a thief, and the theft was not proved. The Prophet (PBUH) set him free on awarding of.¹⁰³

To conclude the above discussion it is worth mentioning here that, Islamic law divide punishment into Hudud, Tazir and Sysia to secure the interest of man that pertains to the hereafter and in this world. Islamic legal system awards these punishments on the biases of violation of rights. Hudood punishments are severe in nature for the protection of the right of Allah for which the procedure of awarding punishments in the Holy Quran only, and Tazeer is punishment for those who violate the rights of individual.

The punishments of sysia come into action in case of the violation of the rights of Sultan. On the other hand English law has made this division of punishments into Capital punishment, corporeal punishment and imprisonment. Death punishment is capital punishment. This is to be

¹⁰². Abdul Qadir udah Shaheed, *Islam ka foojdari Qanoon*, Translated by Sajedur Rehman Kandhlvi (Lahore: Islamic Publicationr Limited)130 see also, *Al Ahkamul Sultania*, Imam Abul Hassan

¹⁰³. Dr. Abdul Aziz Amir, Trans. syed Maroof Shirazi, *Al-Tazirfi shariah al Islamia : Islam man jurm wa saza* (Lahore: Albader publication, 1984),121.

inflicted for grave crimes are a debatable issue among the scholars that it can not serve its object. Corporeal punishment is the physical punishment i.e. flogging and physical torturing for deterrence. Imprisonment may be solitary or indeterminate which can serve all the objects of punishment deterrence preventive and retributive.¹⁰⁴

2.4. Theories of Various Criminal Punishments and their comparison with Islamic laws

The Jurists have prescribed various types of punishments for the criminals to reduce the ratio of crimes. There are five theories of punishments as under:-

A Deterrent theory

Deterrent theory of punishment Salmond considered the deterrent aspect of punishment, because to reduce the crime through deterrent way, Salmond also agreed the chief end of crime is to punish the offender and it will example for other who has criminal tendencies. Punished with terror, other may learn lesson from him. The view penalty keeps the people under control.¹⁰⁵ It is also near to Islamic view point that to punish.

“The fornication woman and man, flog each one of them with one hundred strips. No piety upon them should prevail upon you in the matter of Allah’s religion if you really believe in Allah and the last day; and a group of believer must witness their punishment”.¹⁰⁶

¹⁰⁴ Prof. Dr. V.D. Mahajan , *Jurisprudence and legal Theories* (Lahore: Mansoor Book House,2005),.

¹⁰⁵ *ibid*, 136.

¹⁰⁶ Al Quran Surah An Nur:2 Nobel Quran Mufti Muhammad Taqi Usmani.Vol:1,p204

B Preventive theory

To prevent an offender from society, so the crime will never occur again in this society. Offender prevented through punishment by preventive or disabling. The offenders are disabled from repeating the offences. The punishments as imprisonment to death, exile, for future of office. They pushed them behind the Bars. He is prevented from committing crime again in society. Justice Holmass states that it is a chief end of crime through this punishment.¹⁰⁷

“The punishment of those who wage war against Allah and His Messenger, man with strive with might and man for mischief through the land. Is execution or crucifixion or cutting their hand opposite side and exile from the land”¹⁰⁸ jurists said that they should imprisoned if they repent then Released if did not repent they should be punished according to order of Allah.¹⁰⁹

C Reformatory theory

To arrest an accused after evidence if proved guilty, he was imprisoned in jail, for to reform the criminal behavior through moral and technical teaching to reform his criminal behavior, changes it in good behaviors. Salmond stated that punishment is a philosophy to reform the criminal behavior.¹¹⁰ the man was arrested and provided them a chance to repent, during the enicial jperiod one of the man namely Samama was imprisoned in Masque and he availed the opportunity, when he improved his character and repent to allah he was get free. Ibn e Qayam says that, a person who persists in misdeeds like Bidda’h stealing after imposing Hud

¹⁰⁷ Muhammad Abdullah vahed, *Crime and punsiahmant :A comparative analysis between Islamic Law(Shariah) and western law(south Africa: Al Noor Publisher s Durban,2003)*,136.

¹⁰⁸ Al Quran Surah Maeda, 5:33 Trans: Sahai Ibn e kaseer, Shaykh Safi ur rehman Mubarak puri, vol:7- Darul islam,2003)18.

¹⁰⁹ Sahai Ibn e kaseer, Shaykh Safi ur rehman Mubarak puri, vol:7-(Darul Islam,2003)18.

¹¹⁰ Muhammad Abdullah vahed, *Crime and punsiahmant :A comparative analysis between Islamic Law(Shariah) and western law(south Africa: Al Noor PublishersDurban,2003)*,139.

punishment he is to be imprisoned, kept him from his near and dears, and his activities will be judged strictly for his reformation.¹¹¹

D Retributive theory

A person who committed a crime, he should pay revenge against his criminal act. The principal was eye for eye and air for air; tooth for tooth was recognized and followed. This method was used in ancient penology system, for the purposes to prevent the criminal behavior.¹¹² as like Qisas and Diyat, the Quran says that 'There is a life for you in Qisas.'¹¹³

E Theory of compensation

The object of punishment must be not merely to prevent further crime but also compensate the victim. The contention is that the mainspring of criminality is greed and if the offender is made to return ill gotten benefits of the crime the spring of criminality would dry up.

These theories such like Deterrent, Preventive, Reformative, Retributive and theory of compensation indicated different purposes which are clear from names. The purpose of punishments defers to some extent among the exponents of these theories, but one thing which is common in, punishing the wrong doer is to make him a good citizen for the welfare of state and society, as well as to decrease the ratio of crimes. The purpose, of criminal law is to punish the wrongdoer is the right of victim.

The view of one class of jurists is that the end of criminal justice (punishment) is to protect and add to the welfare of the state and society. The opinion of other class is that the purpose of punishments is retribution. The offender must be made to suffer for the wrong

¹¹¹. Ibn e Farhoon, *Tabsra tul Hukam Ad kulyat Alzahriata* (Daruslam,1986),310 .

¹¹² I bid,147

¹¹³ Al Quran Sura Baqara:179, Trans: Abdullah Yusouf Ali, Translation and Commentary.

committed by him.¹¹⁴ In this regard the famous type of punishments and the concept of jurists are proposed. The Capital punishment has occupied a very important place. The prevention of crime should be the chief object of law and terror alone could prevent the commission of those crimes.¹¹⁵ Hence, the ultimate goal of punishment is to repel the harm and seek interest for the public at large to provide peace and tranquility.

Islamic and western theories for prevent criminal behavior

Islamic and western criminal justice system has three fundamental theories, Such like Deterrent theory, retributive, and reformative theories. Deterrence states that offender should receive such a severe punishment that not only he but the public in general will be deterred from committing similarly offence in future. The English term this is the utilitarian theory while the Americans refer to it as the consequentiality theory.

Retributive theory the severity of the punishment should be commensurate with the seriousness of the crime, nothing more and nothing less. American refer to this as the non consequentiality approach, the retributive or reformative is concerned with making the punishment to the offender, rather than making it fit the crime, the major emphasis in this case is the interest of the offender.

In England 1st theory of utilitarian was adopted (deterrent) which aim at reducing crime through terror. In 1800, 200 offenders were killed. In the next stage the English theory reformative theory was prominent is adopted. When it ineffective reducing crime and theory dealing with reformation and rehabilitation, the offender came to fore in the second half of the nineteenth century.

¹¹⁴ VD. Mahajan, *Jurisprudence and legal Theories*,(Lahore: Mansoor Book House, 2005), 148.

¹¹⁵I bid 148-49.

Sir Henry Maine said

“All theories on three subject of punishment have more or less broken down, and we are at sea as to first principal.”¹¹⁶

Crime and their punishments in Shariah

The penal laws of Shariah are called Hudood in the Sunnah of Prophet (SWS) and the book of jurisprudence. Hadd means prevention restraint or prohibition and hence it is a restrictive and preventive ordinance or structure of God concerning thing lawful and unlawful means.

Punishments divided into three classes

A Hudood

Fix penalties prescribed by God for Hudood crimes, namely adultery, false imputation of adultery, theft, high way robbery, treason and conspiracy, wine/alcohol drinking and apostasy.

B Qisas or Diyat

Crime of Murder and wounding are punished either by Qisas or Diyat. The punishment for this crime is also prescribed by God. Although Qisas is be remitted by the victim in the case of injury, or his heirs or guardian in the case of murder.

C Tazir

Crimes which are no fix punishments have been prescribed by the shariah, for each Tazir crime the judge has to use his discretion in regard to the form severity of the punishment.

¹¹⁶. Muhammad Abdullah vahed, *Crime and punsiahmant :A comparative analysis between Islamic Law(Shariah) and western law(south Africa: Al Noor PublishersDurban,2003),49-50.*

There are various punishments theories but Shariah and western they used Deterrence theory, Retribution, and rehabilitation theory have a part play in Shariah. If the crime is so serious that is calls for deterrent or exemplary punishments. In case of crimes that are liable to Hudood, such punishments are prescribed in Shariah.

If the crime is serious but it infringes the rights of an individual, as in case of crime liable to Qisas and Diyat, then a reformatory sentence is prescribed, however where the Hudood, Qisas or Diyat punishments have not been prescribed, a suitable rehabilitative sentence is given to the offender.¹¹⁷ But there are two things that shariah have hudood, and described legal way of marriage concept, but European they have contract for time mirages system, according to their religious concepts.

2.5. The Doctrine of Maslahah and rigorous imprisonment

Quran says that;

Almighty Allah says that; “you are the most excellent of the society develop for the Human beings, benefit from what is right forbidding what is in the wrong, and believe in Allah”.¹¹⁸

The world Maslahah and Manfaah are treated as synonyms Manfaah means benefit or utility, Maslahah literally means seeking of benefits and repelling the harm, as expounded by Jeremy Bentham the securing of maximum happiness for human beings.

¹¹⁷. Muhammad Abdullah vahed, *Crime and punsiahmant :A comparative analysis between Islamic Law(Shariah) and western law(south Africa: Al Noor Publishers Durban ,2003), 71-72.*

¹¹⁸ Al Quran Ahl e Imran,3:110

Imam Gazhali defines *Maslahah* is the acquisition of benefit and the repulsion (injury harm) *madarrah* which represent the attainment of human goals. In this way the imprisonment for the attainment and securing the interest of man is valid for the attainment of the purposes of Shariah, and the goals that the law giver has determined.

These are the preservation and protection of interest secure by Islamic law *din*, life, Family, intellect and wealth categorically. Qaradawai has further extended the list of interest to include social welfare support freedom human dignity and human fraternity among the highest objectives of Shariah.¹¹⁹

Muhammad Hashim Kamali further extended these objectives and proposed to the protection of fundamental rights and liberties that these find support from Quran and Sunnah¹²⁰ does not mean acquiring benefit or repelling harm; it means protecting the purposes of the Islamic law links the punishments of *hadd*, *ta'zir* and *syisa* to the right of God, the right of individual and the joint right of God and individual as the rights of Sultan or State, respectively.

"Islamic law links the punishments of *had*, *ta'zir* and *qisas* to the right of God, the right of individual and the joint right of God and individual, respectively."¹²¹ Rigorous imprisonment has no concept in Shariah which is clear from the above discussion. However the preservation and protection of interest are the primary purposes of Shariah. The punishment of death and whipping beyond the rigorous imprisonment can also be awarded for the attainment of the goals of Shariah.

¹¹⁹. Imran Ahsan Khan Nayyaz, *Islamic jurisprudence Usul al-Fiqah* (Islamabad: IRI, 2000), 195.

¹²⁰. Muhammad Hashim Kamali, *Foundation of Islam shariah law in introduction*, 126-27.

¹²¹. Abdul Jabbar Khatiar, "Hadd, Qisas and Tazir" (Last access 13/04/2014). <http://www.cssforum.com.pk>

There are five theories of criminal punishments such as Deterrent way of punishments and preventive and rehabilitate, disable theory and theory of compensation but all theories are not provided satisfactory answer how to deter the criminal behavior. The capital punishment of imprisonment was a custom in all over the English world and it is emerging in Muslim world.¹²²

It has three aspects as like Islamic theory Deterrent, preventive and rehabilitative. Pakistan is adopted this theory for reforming criminal behavior, but due to this prison become overcrowded badly and crimes are increasing badly, because it is a lengthy system and rich people having good conditions and they get rid of prison, or got good facilities in jails, it provided a chance to authority for Taking bribe and produced illegal faculties. For those whom are belong to poor family and they are arrested in low crime they are pushed behind the bars.

The Large number of under trail prisoners is facing imprisonment because of lengthy justice system. they need heavy fee to hair lawyers for court, but poor are not able to pay and their cases are pending, adults having some facilities and also children having reformative centre, but it need to proper justification what type of crime was committed and who are involved in this case, if the case is like serious, and it is happened due to involvement, the people who are involved they should be punished with sharia, because the child have not understanding about the crime.

The legal council should be hired for those who are unable to pay the fee of lawyers that should be spent from Zikat Sadqat, or Gov'ts behalf. And under trail should be treated free and if proved guilty then given them conviction.

¹²². V.D. Mahajan , *Jurisprudence and legal Theories* (Lahore: Mansoor Book House,2005).

Maslaha'h and Imprisonment.

When it is famous that some people involved in illegal activities, and involved in spreading in society, such like public property and honor of innocent is not saved, then it need to imprison them for public interest till his repentance.¹²³

If terrorists gathered for war against Islamic State, due to safety of public interest, they should be imprisoning. Contention should be preventing before it spread.

Hazrat Ali said, "do not kill any prisoner, if you satisfied that he will not revolt again in future, should be release. if against then will be imprison till penance."

Four Schools Of Thought agreed that if they are dangerous for future, they should be imprisoned, till remove from revolt.¹²⁴

1.6.Ground of Justification

The object of punishment of imprisonment in Islamic legal system is obvious that it is the preservation of rights to secure the benefit and repel the harm. However, the objectives of Pakistan imprisonment laws are also based upon the injunctions of Islam as to preserve the rights of individuals from encroachment.

Though these are theoretical purposes would not seems in prison where the prisoners suffer complexities and hardship due to the prevailing concept of discrimination between rich and poor. It happens that poor prisoner always cope corporal punishment wrongly.¹²⁵ The Jail

¹²³. Dr. Abdul aziz Aamar, Trns,Syed Maroof shrozi ,*Al Tazir Fil Shariah Al Islamiyah :Islam Man jurm wa saza* (lahore: Albaddr publications, 1984),20-21.

¹²⁴*I bid*,1984),46-48.

¹²⁵. Naeem, Pervaiz Tariq & naecm Durani, "*Socio psychological Aspects of crime in Pakistan*" (Ph.D diss, Islamabad: national Institute of Psychology centre of excilence, Quaid I Azam University, 1983),100-101.

authority did not follow the rules use power their power according to their whim. The poor get punishment and the rich get reward. These prevailing policies of jail administration are wrong.

“*Jahan Mina* was a young orphan girl, unfortunately she was raped by her uncle and her Cousin and she was pregnant. But on that biases she was punished by One hundred lashes, because evidence of pregnancy, but in case of rape she did not provided four eye witnesses, court released his uncle and Cousin, due to delay in complaint she was imprisoned for three years. But the Federal Shariah Court described that, only the evidence of pregnancy is not enough.”

This is against the Caliph’s tradition. Hannifin Scholar did not consider pregnancy for punishment. During the caliph period one woman said his pregnancy was as a result of raped accrued in his sleep, and she was released by Hazrat Ummor (RA).¹²⁶ Three years imprisonment was as a result of Fresh complaint rule of England not it is justified in Shariah.¹²⁷

“Gul Hamda was also pregnant by raped, but delay in Fresh report, she did not imprisoned because judge said, and awarding punishment only on the evidence of pregnancy is against the Caliph traditions. It is double crime on women.¹²⁸

“A 9/10 years old girl raped by Abdur Razaq, and proved guilty, he was awarded Rigorous with hard imprisoned for 25 years, and 30 lashes. High Court continuous his imprisonment and 30 lashes abolished in the light of The Abolition of punishment of Whipping Act 1996”.¹²⁹

¹²⁶ Ibid.

¹²⁷ Shahzad Iqbal Sham, *Pakistan man Hudood or Qawaneen* (Shariah Academi International Iismic University Islamabad) 235. Encyclopedia of bartanika thesis on rape.

¹²⁸ Pakistan Criminal largnrl, Federal Shariat Court 2000.

¹²⁹ PCL J1256, 2003, Abolition of whipping act 1996.

Imam Abu Hanifa said that ' Rape case is belonging to spreading Terrorism on the earth. Humbly Scholar Bahoti said that without evidence, imprisonment is unusual and cruel punishment.¹³⁰

¹³⁰. Shahzad Iqbal Sham, *Pakistan man Hudood or Qawaneen* (Shariah Academi International Islamic University Islamabad), 176.

Chapter-III

The rights of prisoners

Holy prophet (SWS) said that, Feed the hungry, visit to sick, and free the prisoner if he be unjustly bound.¹³¹ Prisoner is human beings but they have committed some wrongful act. They pushed behind the bars. But they have some basic rights; Imam Abu Yusuf described a framework for treatment of prisoners during Abbasid period. For prisoner's treatment and fulfill their basic needs. ¹³²The Holy Prophet (SAW) gives a right path for impeachment of accused criminal behaviors, for providing justice in the interest of preservation of Din, life, Progeny, wisdom and property of an individual. It is a right of Allah and also the rights of individual. ¹³³

3.1. The prisoner's rights guaranteed in Pakistani Law in the perspective of Sharia'h

The rights of prisoner are debatable issues among the scholars. Rights and liabilities go side by side. According to the Constitution of Islamic Republic of Pakistan 1973, no person shall be detained without adhering the due course of law. During imprisonment the appropriate review board shall fix subsistence allowance for his family.¹³⁴ The Pakistan prison rules provide that unconvinced prisoners have the right to purchase necessary articles for himself with his own expenses at proper hours.¹³⁵ A prisoner has incurred liability does not mean that he has no right. Prisoners are entitled to have the rights of all facilities and concession while some restrictions are imposed for the maintenance discipline and the cruelty, persecution and brutal treatment of the

¹³¹ Al Hadith, Sahai Muslim: Syed Afzal Haider, *Judgement on Pakistan Prison discipline* (Islamabad: Federal Shariat court of Pakistan).

¹³² *Abu Yusuf yaqoob bin Ibrahim, Kitab al Khiraj* (Qaira: Almktaaba Sifia, 1969), 142.

¹³³ Imran Ahsan khan Nayzjee, *Islamic jurisprudence Usul al- Fiqah* (Islamabad: IRI, 2000), 195.

¹³⁴ Constitution of Pakistan 1973, Art: 10 (8).

¹³⁵ Pakistan Prison Act, 1894 Sec:31.

concerned authority is the violation of the right of the prisoner. The objectives of the punishment of imprisonment are the attainment of goals to make prisoners good citizens for the state and society. Islamic law states to preserve the interests from encroachment and to secure the benefit and repel the harm. Prisoners lose only the right of movement outside prison for necessary repercussion¹³⁶ and prisoners inherit fundamental rights. The Pakistan Prison Act 1894 recognized the right of food, health, and clothing etc as follow.

3.1.1. Right to life, food, shelter, health and mental care

The rights of food, clothes included necessities of life shall be provided to everyone irrespective of social, racial and religious status of the prisoner. To provide necessities to the prisoner is the responsibility of prison authorities' life food and shelter and mental health is guaranteed in Pakistan prison rules.¹³⁷ It is also mention that they accommodated on the biases of their crimes civil are separate from criminal, under trail are separated from convicted. Male and female are accommodated separate from each other those who have below 18, they should be separate from all other.¹³⁸ A prisoner can demand the sufficient available or even the sufficient standard of treatment.¹³⁹

Imam Abu yusuf advised the caliph, if the people those who are in prison, if they have nothing for fulfillment of their Zarurat. They should be helped from the Bait ul Mal and Zikat, the help provided them daily baies in the shape of their pocket money. If the prisoners belong to non Muslim but captured they should be treated well and provided them good food till the final

¹³⁶ www.yourrights.org.uk "Last Accessed :05/07/2014"

¹³⁷ Pakistan prison rules 1978, rule, 472 a b ,260.

¹³⁸ Pakistan prison rules 1894, Chpt:2 Dafa 27(I,ii,iii,iv)

¹³⁹ <http://www.hg.org/prisoner-rights-law.html>(Access:05/07/2014)Timing:01:17

decision. If Muslim have done some wrongful act they pushed behind the bar is not solution, Caliph Ali And caliph Hisham have payed money to prisoners for their food clothes etc.¹⁴⁰

Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a Shari'ah prescribed reason.¹⁴¹ The injunctions of Islam stress the importance of health and mental care. The purposes of Shariah include the preservation and protection of life and intellect.¹⁴²

Islamic law in the light of maslahah prescribed by jurist that the preservation of life is first right, because it need food and proper accommodation for protection of life and health, and wisdom for the sake of restore the rights of individual and right of God for the betterment of the human life.¹⁴³ (a) The injured and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.¹⁴⁴

3.1.2. Right to Medical Treatment and examination

Prisoners must always be examined by an authorized medical officer from time to time which is important for the prisoner health.¹⁴⁵ Laws stress on the medical examination of the

¹⁴⁰ . *Abu Yusuf yaqoob bin Ibrahim, Kitab al Khiraj* (Qaira: Almktaaba Sifiya,1969),433-34.

¹⁴¹ Cairo Declaration on Human Rights in Islam, Art. (2).

¹⁴² . Imran Ahsan khan Nayzee, *Islamic jurisprudence Usul al- Fiq*(Islamabad;IRI,2000),195.

¹⁴³ . Imran Ahsan khan Nayzee,Hassan Muhammad Abdul latif al shafi and Zain ul Abidin,*Islamabad law review*(Islamabad: IIU,2003),36

¹⁴⁴ Cairo Declaration on Human Rights in Islam, Article 3(a)

¹⁴⁵ .Richard Gordon QC &Tim Ward. *Judicial review and the Human Rights Act* (Londen:Cavendish publishing Limited,2000),129.

accused even before imprisonment by an authorized medical officer.¹⁴⁶ Moreover, every prisoner should be examined daily for this purpose there will be a hospital in every jail to provide medical facilities to the prisoners. Sick prisoner must be in the supervision of an authorized medical officer in the prison hospital. To adopt all possible preventive measures for the prevention of fatal diseases in the prison among the prisoner is the duty of the prison authority.¹⁴⁷

Pregnant women need proper medical examination, care in food accordingly recommended by an authorized medical doctor, and all medical facilities in jails.¹⁴⁸ Because preservation of progeny they should be treated in good manner, if they have child then need relaxation in their punishments. Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.¹⁴⁹

3.1.3. Right to Protection of Honor and Reputation

Prisoners have the rights of honor and reputation. All prisoners have the rights to be treated with respect in due course of law. prisoner have a right to be free from sexual harassment or sex crimes¹⁵⁰ like being raped or ill-treated while in custody. It happens that young age prisoner become the subject of sexual harassment. The occurrences of rape are usual in prison.¹⁵¹ The protection of honor and reputation is the rights of the prisoner for the attainment of Shariah

¹⁴⁶ .*Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan*: Rule,18

¹⁴⁷ . *Pakistan prison rule (788-800)*

Isma Advocate and Shagufta ummor, *Pakistani jailain or Quaid o Zawabit* (Pakistans: Director Research cell women trust, 2011), 23. –

¹⁴⁸ .*Ibid.* 488.

¹⁴⁹ Cairo Declaration on Human Rights in Islam, Article ,17(a), Imran Ahsan khan Nayzzee,Hassan Muhammad Abdul latif al shafi and Zain ul Abidin,*Islamabad law review(Islamabad: IIU,2003*

¹⁵⁰ . Prof .N. Sanajaoba, *International Human Rights Vol: 1* (New Delhi: Manas Publications, 2005), 180.

¹⁵¹ <http://www.hg.org/prisoner-rights-law.html> (Access:05/07/2014)Timing:01:17

goals as to make the prisoners a good citizen for the welfare of state and society.¹⁵² Every human being is entitled to human sanctity and the protection of one's good name and honor during one's life and after one's death.¹⁵³

3.1.4. Right to Avoid Cruel and Unusual Punishments

Every prisoner has the right to be free from inhumane treatment or anything that could be considered cruel and unusual punishment. Generally speaking punishment is considered inhumane treatment, like torture or abuse, or a violation of a person's basic rights may be considered cruel and unusual within the discretion of the court.¹⁵⁴ Civil prisoners have the right to work inside the jails, but not exceed to nine hours. Medical officer checked them for work and their health,¹⁵⁵ but the punishment with Whipping is not granted to child while they should be treated as School punishment with light bade.¹⁵⁶ The juvenile offenders those whom are below 21 they should be detained in Borstal Institution.¹⁵⁷ The Children should be punished bade at their hand.¹⁵⁸ The punishment with bade is not allowed for women or girls.¹⁵⁹ Physical punishment or corporal punishment is not justified under any law for the prisoner. Islamic law provides physical punishment in the form of lashes and flogging in some criminal activities like hudood cases for the preservation of Din, life, progeny, wisdom and property.¹⁶⁰ Imam Abu Yusuf described the practice of Umar bin Abdul Aziz said that if you have Muslim prisoners in their jails, you should unchain them during prayers, and give them daily wages for their basic needs. Except

¹⁵² Muhammad Hashim Kamali, *Shariah law an introduction* (England: oxford, 2008), 126

¹⁵³ Cairo Declaration on Human Rights in Islam, article 4

¹⁵⁴ UDHR: Article: 2-3

¹⁵⁵ Prison Act 1894 Article: 34

¹⁵⁶ Prison Act 1894 Article: 53 (i)(ii)

¹⁵⁷ Punjab Borstal Act 1926 Article 5(1)

¹⁵⁹ Punjab Borstal Act 1926 Article 33, 36

¹⁶⁰ Hasham kamali, *catch the hand of cruels*

Murderer.¹⁶¹ In case of Tazir Middle punishment should be awarded not high or not low. Those who are offering prayers they should not be punished with Whipping.¹⁶²

3.1.4. Right of non-Discrimination (Equal treatment)

Prisoner has the right to be free from discrimination while imprisoned. This includes racial segregation, disparate treatment and discrimination based on ethnicity, religion, age, race, colour, sex, language, faith political and other opinion, national or social origin, property, birth or other status.¹⁶³ The discriminatory treatment is the violation of the right of individual particularly those imprisoned.¹⁶⁴ Law says that everyone should be treated according to law and no action shall be taken against the life, liberty, property of another except in accordance with law.¹⁶⁵ But due to injustice Rich get richer and poor get imprisoned.

The Rights of Second Category (Secondary Rights)

3.2.1. Right to have Religious freedom and Faith

Islam is the religion of peace, tranquility and gives freedom to all. The Quran says that; *there is no compulsion in Din.*¹⁶⁶ The holy prophet (SAW) said on the occasion of battle of Bader and advised to their companion that prisoner should be treated with love and affection and do not force to seek Islam.¹⁶⁷ Every prisoner has the right to freedom of religion. Facilities must be awarded to the prisoner for professing his own creed. There will be no unnecessary interfering in the religious activities, he shall be allowed for devotion of faith in quiet and ordinary

¹⁶¹ . *Abu Yusuf yaqoob bin Ibrahim, Kitab al Khiraj* Trans. Muhammad Najat ullah (Karach: Danish wa Hakumat,2009) 434

¹⁶² *Ibid* 437

¹⁶³ Prof .N. Sanajaoba, *International Human Rights* Vol: 1, (New Delhi: Manas Publications, 2005)180.

¹⁶⁴ <http://www.hg.org/prisoner-rights-law.html> (Access:05/07/2014)Timing:01:17

¹⁶⁵ Gul Abdul Majeed, "*Rights of Accused in Int. Criminal Law and Isl. Criminal Law :A Comparative Legal Study* (LL.M Thesis, IIUI,slamabad::2012),76.

¹⁶⁶ .Al-Quran: II:256,Trans: Abdullah Yusuf Ali,2005.?

¹⁶⁷ Sahahi Muslim. 1793. Muhammad Munir, *Islam in history* (Lahore: Law publishing Company, 1974), 33.

manners.¹⁶⁸ Congregational prayers will be allowed in prison along with collective prayers, Friday and Eid prayers.¹⁶⁹ The Prison Act 1894, award the rights religious freedom is granted,¹⁷⁰ for the purpose to Preservation of Life and private and public rights. Everyone is perform is duty of his own worship according to their religion.¹⁷¹

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.¹⁷²

3.2.2. Right of Remission and concession in imprisonment

According to the nature of remission in Prison Rules remission in punishment is the right of prisoner that all arrangement should be made by the prison authorities to reduce the prisoner sentenced of imprisonment according to law.¹⁷³ Remission of punishment is either general or special. General remission is to be awarded in case of some occurrence, and the special is to be awarded to those who deserved the most. The law provides on adducing cogent proofs from and authorized from an medical officer, a prisoner may be released from prison irrespective of keeping regard of the period of imprisonment earlier on medical grounds. The shariah provided a compensation in many cases for the purpose to interest of life and preservation of property, in case of Qisas, revenge, if victim forgive them or compensated them with blood money, he may

¹⁶⁸. *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan: Rule, Rule:681(ii)*

¹⁶⁹. Isma Advocate and Shagufta ummor, *Pakistani jailain or Quaid wa- Zawabit* (Lahore: Director Research cell, women trues Pakistan, 2011), 23.

¹⁷⁰. Prof .Naorem Sanjaoba, *International Human Rights Vol: 1, b.1945* (New Delhi: Manas Publications, 2005)180.

¹⁷¹

¹⁷² Cairo Declaration on Human Rights in Islam. Trans: Imran Ahsan Khan Naysi Article, (10).

¹⁷³ *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan: , Rule199.*

released, for the purposes to restore the right of victim and public.¹⁷⁴ Below 21 Juvenile did not punished with rigorous with hard imprisonment while detain in Borstal institutions.¹⁷⁵ The prisoner was detained in jail since six years and facing mental disease may be released on bail.¹⁷⁶ Some time the President has the power to remit the imprisonment¹⁷⁷, but the Supreme Court could release him on his self responsibility.¹⁷⁸ Cr.P.C. section 401 assigned a power to provincial Government to remit the imprisonment.¹⁷⁹

3.2.3. Right to appeal

Every prisoner has the right to appeal. It is the responsibility of superintendent to inform the prisoner about the time of appeal and provide facility.¹⁸⁰

Everyone shall be allowed reasonable opportunity of interviewing his relatives, friends and legal advisers for the purpose of preparing his appeal and allowed within sight, but out of hearing of the prison official supervising the interview. The law clearly lays down the procedure for submitting in appeal of the prisoner through the relative or agent subject the authorization of power of attorney on his behalf along with the proper signature of authorization of the prisoner concerned.¹⁸¹ Moreover the prison authorities cannot submit an appeal or petition on behalf of prisoners without the proper signature of the prisoner and permission of the superintendent.¹⁸²

¹⁷⁴ Muhammad Khalid Masud, *Islamic Legal philosophy A Study of Abu Ishaq Al-Shatibi's life and thought* (Islamabad: Islamic Research Institute, 1977)226.

¹⁷⁵ Boarstal Institution act:1926 Art:26(1)F

¹⁷⁶ PCr LJ 614,1996

¹⁷⁷ Pakistan Prison act 1900, Art:33 CrPC:401 assigned a power to provincial Government to remit the imprisonment.

¹⁷⁸ Pakistan Prison Rule: 198-223

¹⁷⁹ AIR1953 pat 302, PLD 1963 Dacca 422, PLD 1955 lah 65

¹⁸⁰ *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan: Rule, 90*

¹⁸¹ *I bid*, 92

¹⁸² *I bid*, 93

It is the right of the prisoner to file appeals in the courts of law for the reduction of his punishment.¹⁸³ It is also the right of the prisoners to consult an advocate of his own choice for the information and legal aid. He shall be conveyed the limitation periods for appeal or filing any other petition in the court of law to get concession of his imprisonment.¹⁸⁴ The prisons laws described the right of prisoners to meet with his family members and friends. Prisoners have the right to get assistance for the betterment of his health.¹⁸⁵

Various laws state that the prisoners are entitled for receiving all necessary documents describing his punishment and the cause of his imprisonment.¹⁸⁶ All these reasons and causes should be orally conveyed to the prisoner in case he could not understand or read the concerned documents.¹⁸⁷ In case of scarcity of financial means or otherwise to hire the services of a counsel it is the right of prisoner that he should be provided legal aid on the expenses of government.¹⁸⁸ Islamic law awarded a legal way that, no one is imprison without justice. Once an accuse was detained in case of theft, the Holy prophet(PBUH) gave him time for provided evidence, when he give evidence of his innocence, and was naturally released.¹⁸⁹

3.2.4. The conjugal right of the prisoner

It is the right of the prisoner to visit their respective spouses for the attainment of conjugation. A verdict of the Federal Shariat Court of Pakistan lays down the principals for the satisfaction of conjugal rights while permitting the prisoners to hold a separate joint meeting

¹⁸³ *Ibid*, 91(i)

¹⁸⁴ *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan*: Rule, 91, i(d)

¹⁸⁵ . Isma Advocate and Shagugta ummor, *Pakistani jailain or Quaid o Zawabit*, (Pakistans: Director research cell, women trest.2011),23

¹⁸⁶ *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan*: Rule, 94(i)

¹⁸⁷ *Ibid* . 94 (ii)59

¹⁸⁸ *Ibid* Principle 18(1)

¹⁸⁹ . Abdul Qadar Oudah Shaheed, *Criminal law & Islam, Vol-2*(Karachi: International Islamic Publisher (PVT) Ltd),176.

after every three months with their spouses and young child.¹⁹⁰ Islamic laws give this right for the purpose to preservation of progeny and honors for the interest of both public and private life.¹⁹¹

3.2.5. Right to release on parole and probation

Prison law provides a license to a prisoner on his background of good behavior, to give them in custody of any organization and a religious person for their reformation.¹⁹²

- An officer called parole officer get control and supervision of the drug addict prisoner.

While probation means trial or test. Hence, giving prisoner in the hand of a noble person for award of good education and training is called the releasing of prisoner on probation.¹⁹³ This practice is common in the cases of juvenile offender. Instead of placing to be kept them in a place that is suitable for their reformation. The main purposes of excising the authority for releasing the prisoner on the basis of parole or probation are to promote public safety and strive for justice and fairness and proper supervision of prisoners¹⁹⁴ Imam abu yusuf described a frame work for prisoners, and said that, prisoners should release for offering juma prayers and others Islamic events, they should be released temporary for offering prayers and meeting with their families.¹⁹⁵

¹⁹⁰ *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan: Rule, 1065*

¹⁹¹ Imran Ahsan Khan Nayazi, *Theories of Islamic Law The Methodology of Ijtihad* (Islamabad: Islamic Research Institute, 1945), 214.

¹⁹² Good conduct Prisoners Probation release act 1926, CRPC Article: 401

¹⁹³ I bid, 1152.

¹⁹⁴ <http://www.hg.org/prisoner-rights-law.html> (Access: 05/07/2014) Timing: 01:17

¹⁹⁵ . *Abu Yusuf yaqoob bin Ibrahim, Kitab al Khiraj* (Qaira: Almktaaba Sliya, 1969), 145-60.

3.2.6. The right to avoid double punishments

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.¹⁹⁶ Cruel and double punishment Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.¹⁹⁷

The constitution guarantees the fundamental rights of the individual from double jeopardy. The period of imprisonment of a prisoner cannot be prolonged in either way by any law. These are the inviolable rights of the prisoner that on the expiry of the period of his imprisonment, he must be released from prison. If the punishment of imprisonment prolonged later than that final verdict of the court in which he was imprisoned shall be unlawful and the violation of the right of the prisoner also that the prisoner shall not be subjected to any physical punishment.

With rigorous imprisonment due to low harm prisoners are facing double punishments in jail by authority. For the preservation of honor and life Islamic law prevent the criminal behavior.

¹⁹⁶ Cairo Declaration on Human Rights in Islam, Article (20)

3.2.7. Right to Complain About Prison Conditions and Access to the Courts

Prisoners have the right raise objection in case of worst conditions of the prison and to notify the same to the prison authority. Access to the court of justice in either stage of trial is the right of the prisoner.¹⁹⁸

The prisoners have full freedom to claim all facilities in jail provided by the law and in case of deficiencies he should have to bring it into the notice of the prison authorities in due course.

The purposes to preservation of Din, and life Islamic law allowed to anyone who did not have basics facilities he need to complained against higher authority.

1.2.7.1 The right to release on Bail and license

The prison rules guaranteed that if a prisoner faced imprison since 6 years and he was fell into mental disease on the decision of High court, he will released on bail. Section 401 of Cr.P.C if anyone is guaranteed in their punishment, superintendent will release him from jail.¹⁹⁹ If the prisoner is facing mental disease due to imprisonment, if it is impossible to improve in this environment, he will be released on bail.²⁰⁰ Similarly Abu Mohjin was imprisoned in case of Wine, but during battle of Qadsia when he saw the defeat of Muslim soldiers he asked for permission, when he released and he fought and defeated the enemies, and repent, when returned back he was released of his good character.²⁰¹

¹⁹⁸ <http://www.hg.org/prisoner-rights-law.html> (Access:05/07/2014)Timing:01:17

¹⁹⁹ PLD 1964 Sec:502

²⁰⁰ SCMR 1065,1998

²⁰¹ . *Abu Yusuf* yaqoob bin Ibrahim, *Kitab al Khiraj* (Qaira: Almktaaba Sifiya,1969),145-60.

The Facilities and Concessionary Category (Tertiary Rights) Miscellaneous rights of prisoners

3.3.1. Facility of Cleanliness and Hair Cutting

The hygienic system inside the jail is mandatory to the jail administration for the sake of cleanliness and purity. It is the obligation of the authorities concerned to provide all items and tools which are normally uses for health care i.e. nil cutter, scissor, soap and towel. According to the prison laws of Pakistan it has been admitted that prisoner will be allowed to keep all necessary harmless hygienic devices.²⁰² The injunctions of Islam also stress the need of physical cleanness.

For the purpose to preservation of life, health, and din he need to good environment.

Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.

The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.²⁰³

3.3.2. Facility of Education and Training and welfare of Prisoners

A prisoner shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject

²⁰². Pakistan Prison rules 1978, Rules for the Superintendence and Management of Prisons in Pakistan ,Rule: 682.

to reasonable conditions to ensure security and good order in the place of detention or imprisonment. Upper Class prisoners should avail the chance of nice food and diets is granted²⁰⁴ mineral waters should be provided them.²⁰⁵ They should paste a notice about their punishment for prisoners their offences and punishment.²⁰⁶ Islam emphasized seeking education is the duty of every Muslim. The first revelation of the Holy Quran is to read. Jails are correctional centre for behaviors. So the prison authorities have to make all possible arrangements for providing good education to the prisoners for the attainment of the real purpose of the punishment of imprisonment these of making the prisoners good citizens for the welfare of the state and society. Providing them technical education and training. Government has to avail all possible means in this regard.²⁰⁷ Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect and defense of both rights and obligations.²⁰⁸

Education plays a vital role in building the values of society, and in the apprehension of rights and wrong as education is the change of behavior without that the purpose of imprisonment can't be achieved.

²⁰⁴ *Pakistan Prison Rules, 1978 Rules for the superintendence and Management of Prisons in Pakistan: Rule,260(i) (ii) (iii) (iv) (v) (vi) (vii)*

²⁰⁵ *Ibid*, Rule 504-765-769-802

²⁰⁶ Prison rules 25

²⁰⁷ . Isma Advocate and Shagugta ummor *Pakistani jailain or Quaid o Zawabit*, (Pakistan: Director Research cell women trust, 2011), 23.

3.3.3. The Rights of Women prisoner on the basis of sex

Jail Authority has the responsibility to provided them separate wards in jail, where they should be kept separate from male prisoners. A women warden must be appointed in this regard for the preservation and protection of female prisoners.²⁰⁹ Honors of women and are granted in Islamic law, for the purpose for preservation of life, progeny.

3.3.4. Pregnant Women and his rights

It is responsibility of the prison authorities that to take due care of pregnant women about their health, food and medical aid and to avoid rigorous imprisonment and releasing on probation becomes the rights of pregnant women.²¹⁰ Despite these, consultation with the council of her choice and meeting with her family members are also the rights of the women prisoner.

3.3.4.1 Right to punishment according to Shariah

It is a right to an accused that he may be punished according to Shariah for the purpose to preservation of din, life, progeny, wisdom, and public property, and reform criminal behavior or punishment like deterrent way to prevent harm, and make an example for other. Hudood ordinance 1979 was passed for the implementation of Shariah Punishments.

3.3.4.2 Equality in justice

The justice is treated on equal biases without differentiate of sex and children and adult, all of them are equal in front of law. "Main purposes to preservation of din, life, progeny, wisdom and property." All human beings form one family whose members are united by their

²⁰⁹.ibid, 2011), 23.

²¹⁰ Ibid , 488

subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity²¹¹ but in case of imprisonment, prisoners divided into Classes. A, B have enjoys good facilities but c class living in worst condition.

3.3.4.3 Financial help Zikat and sadqat

Imam yusuf given a solution and a frame work to Caliph and give some rights to prisoner, to help them from Zikat and Sadaqat in the shape of their daily expenses for their basic needs, buried their dead body, while expenses should be granted from Bait ul Mall for needy prisoners.²¹²

²¹¹ Cairo Declaration on Human Rights in Islam, Article :1(a)

²¹². Ibn I Ibrahim, Qazi abu Yusuf. Yaqoob. Trans. Muhammad Najat ullah Saddiqui ,*Kitab ul Khiraj* (Idara Danish Wa Hakumat,2009),151-60.

4.1.1 Certain deficiencies which need to be reform for the betterment of prisoners

1 **Shariah Rules are need to practiced in Pakistani jails (deny from the Shariah Hudood Laws)** Method of imprisonment should need to reform with Shariah, population of prisoner is increasing badly due to unpracticed the Hudood Laws.

Rigorous Imprisonment was unpracticed in Pakistani jails

.1 Pakistan Prison rules in practice rigorous imprisonment, it is a basic punishment repeated in every cases. Life Imprisonment, and fix period like three years, five, ten, twelve, and fourteen and twenty five years it lose the focus on the impeachment on the cases.

2 Rigorous with hard labour, Rigorous with light labour or simple imprisonment, empowered their authority to used it for their own purposes, they work nine hours and wages should not be guaranteed by prison authority, discrimination behavior behind the Bars and wages belong to property. The right of property is violated.

3 Hudood Cases are practiced with English Laws

4 Prisoners are divided into classes, A and B Class having good facilities granted while the condition of C Class is worst. Right to equality is violated by authority.

5 Due to overcrowding some convicts are working as government employee how can they reform the Criminal Behavior? They used their power for their interest.

6 Political class has enjoying the tertiary rights. Where they lived with honour and respect, and enjoying the facilities just like haven.

7 Accommodation is a basic right of human being. It need to provided them a good environment of living but Overcrowding problem should be resolved, it is a responsibility of authority, to provided them facility of accommodation such where they reform their criminal behavior, how can they reform in overcrowding, and they involved in some illegal activities and strikes in jails. How can they sleep?

6 Crime are growing behind the Bars

These are like torture cell not a reformative center. Sexual harassment is practiced in jails. Due to the careless of authority and Bribery and (Rishwat) Intoxication is practiced in jails. male and female prisoners are involved in intoxication. So that they should hating to the criminal behavior, how can a criminal behaviors change with accompany with criminals, it make the prisoners habitual in future.

1. There is a space between rich and poor, rich having money and they give money and get rid of them. But poor are facing rigorous imprisonment.
2. Classes A, B and c class prisoner, a class having good facilities, than B is low, and facilities related to c is worst. It should be guaranteed equally.

7 Cruel and unusual punishment behind the bars is in practiced and diseases are spreading behind the bars. Prisoners are facing Hbv and HCV, and aids and other daises, due to the dirty environment.

8 Fair trial is not in practiced but only to pushed them behind the bars. Justice should be insure by authority, but poor are prevent to avail justice, authority having power taking money and rich get compensation and poor get convection. But in sharia'h all are equal in front of justice.

6 Their help should not be granted with Zikat and Dadqat .Their Basic needs food, clothes toilets and proper maintenance air and cool and hot, bedding and proper maintenance should be provided to them with discrimination.

Chapter-IV

Conclusion

How much strange it is to confine a free man in prisons despite of having a strong logic of reformation and rehabilitation for the welfare of state and society. As the various theories elaborated in laws, thereby conveying the impression that it is justifiable and always favor humanity are wrong. Constitutional Laws of many states prohibit their respective governments from inflicting cruel and unusual punishments.²¹³

To confine one in prison with the purpose of punishment is unreasonable that misbalancing the rights of the persons. Evidence support that it is routine of the prison authorities to stifle in chain the prisoner and shut the iron doors behind, and press together more than hundreds bare bodies on the concrete floor of their cells. Their cages are filled with the fetid smell of sweat, dirt and human waste. Evidenced that the prisoner are being stifled with prisoners, some on short sentences and others waiting to appear in court, is the exact scenario of the prisoners' rights in some jurisdiction.²¹⁴

The Pakistan Human Rights Commission report revealed that over seventy five percent of the prisoners are under trial prisoners. It further stated that the delaying process of the trial has further increased the number of these prisoners while on the other hand the prison authorities do not allow them for regular court process due to corruption tactics.²¹⁵

Criminal law in a broad sense is the body of law that defines criminal offences, regulates the apprehension, charging and trial of suspected persons and fixes punishments and modes of

²¹³ <http://www.legal-dictionary.thefreedictionary.com>

²¹⁴ www.news.bbc.co.uk

²¹⁵ [Www.Humanrights.inPakistan](http://www.Humanrights.inPakistan) <http://qsm.ac.il>, By M. G. Chitkara APH Publishing, 1997. p.120

treatment applicable to the offenders. The object of criminal law is to control the commission of the crimes so as to protect the rights and interest of the public and insure peace in the society.²¹⁶ The punishment other than whipping is imprisonment which has been given in crimes liable to ta'zir throughout Islamic history. The punishments of imprisonment are very old and it was usually given to convicted criminals, suspicious persons and the accused persons remanded in custody and awaiting for trial.²¹⁷

Various Pakistani laws promulgated for the purpose to protect the rights of prisoners are incompatible to some extent with Shariah. In Pakistan prisoner's rights has become a thorny issue, for on one hand there are some lacunas in legal regime with respect to prisoners while on the other there is nothing in practical to facilitate the prisoner or to treat them humanely, rather they impose harsh physical punishment that cannot be justified under any law. Prisoner is a person who is apprehended by lawful authorities in due course of laws remains the arch of the torture in prisons.

Islamic law focus in the basics of terrorism, how to stop the violence and granted the justice, deterrence method is used for criminals, If the punishment of Whipping one hundred lashes in case of illegal sexual intercourse (zina), drinking wine and Qadhf (false accusation of sexual intercourse) they are punished accordingly, *Sariqah* (Theft) from a place of safe custody he will punish with cutting his hand in public. *Hirabah* (Robbery with the force of arms). *Riddah* (Apostasy) *Baghi* (Rebellion) are deserved for death penalty. And some scholar says that to imprison them if repent than released.²¹⁸ Qisas and Diyat in difference offence should be guaranteed. Then judged will never lost his focused on the prisoners. As like Abu Yusuf address.

²¹⁶ Prof.Dr. Anwarullah, *The Criminal Law of Islam*(Islamabad: Shariah Academy,IU,2005),vii.

²¹⁷ I bid,(250).

Imran Ahsan khan Nayazee, *General Principal of criminal law* (Lahore: Federal Law House, 2010),178.

To Focused on their cases and impeach their cases of one group and then other in next meeting, those who deserved for punishment they should punished with Shariah and most of them are facing illegal convection to released them with kindness.

Despite treating so inhumanly, the prisoner may have to be treated with kindness, love, and affection for the purpose to make him a perfect human being and a good citizen.and make a peace in over society.

Recommendations

Based upon the discussion in proceedings chapter and conclusion drawn, following are the recommendations for reformation of Jails in terms of structures as well as better administrations:

1. To make the criminal good human being, there is need to given special attention and care in all respects so that positive results may be achieved. This purpose can only be achieved once principle laid down by Shairah will be adapted like respect of human beings, bifurcating separate barracks age wise and gender wise. Though in some Jails this has already been done, yet there is a need to implement the same in all buildings respectively.
2. To provide opportunities of educations. Education in form of short courses, schoolings, courses for female prisoners would be most efficient and effective tool to make them as a good citizen. Considering the nature of offences, ratio of crimes and socio behavior attitude of prisoner special course should be developed, so that root cause of criminality and criminal intention may be abolished.
3. Maintenance of building is another one essential factor which need to be taken care of. Mere construction of buildings do not suffice to detain the prison and shall not give positive result unless building are not maintained as to provide basic necessities of utilities like clean water, electricity and clean environment. To achieve this goals prisoner may be trained to keep building clean in all aspects.
4. Proper legal aid should be provided to prisoner who opts to take such facilities. ,.
5. Communication gap between administration and prisoner should be maintained confidently and with trust. Like meetings with prisoners and their officers should be in practice by Caliph

(Ruler)

.A Visit to the prisons and prison officers monthly for the purposes to impeachment of their Cases, those who come first they should treated primary biases and rather will discussed in 2nd and then 3rd meetings.

6. Measure should taken to curb the manch of corruption and corrupt practices . It can be done by judiciary and accountability courts.

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