

How to deal with Prisoners: An Islamic Perspective

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Abstract

This paper aims at highlighting the perspective of Islam regarding prisoners' dealing. In the light of Quranic verses and examples from the life of Muhammad (PBUH), the last messenger of Allah and his companions, it has been shown that some 14 centuries back, although there were no formal settings to captivate the inmates, yet the prisoners in individual custody or incarcerated somewhere else such as Mosques, had full rights in terms of inborn dignity, humane treatments, fair justice, practicing religion etc. They were fully protected from the torture at the hands of occupying powers or individuals. Therefore, majority of them embraced Islam within custody and become firm believers before they were released. It is therefore, recommended that any prisoners' reform strategy in the modern Era to be successful must take into consideration the glorious principles of Islam derived from Quran, authentic Hadith and the live examples of Muhammad (PBUH) and his companion.

Keywords: Prisoners, Qura'n, Sunnah, Muhammad (SAW), Rights

Introduction

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Since Islam is a complete code of life, therefore, it has its own philosophy regarding prison and prisoners. It is worth noting that in the light of Islamic injunctions, imprisonment is used as a last resort only. Secondly, it is not a common form of punishment for all offences. However, some crimes may land the offenders in jail (!).

In the pre-Islamic era, prisoners of war were treated in an inhuman and barbaric way. The only substitute for imprisonment was either to kill the prisoners of war or to enslave them. This practice was common even in the then civilized kingdoms, like Rome and Persia. The cruelties of the ancient Greeks and Persians were well known, and the most ill-treated community was prisoners. They were mere tools in the hands of their masters and they were usually torn apart by the hungry beasts to satisfy spectators in the festivals arranged on different occasions. Contrary to the ancient Greeks and Persians, Islam rooted out these evil practices and reformed the system to the core. When Makkah was conquered by the Muslims, the Prophet of Allah ordered that no wounded should be attacked, escaped people may not be chased and the prisoners should not be killed or ill-treated. Once the Governor of Basra, Hajjaj bin Yousaf, ordered Abdullah Bin Umar, to kill a war prisoner. He disobeyed and said that Allah had not made it lawful to kill a person in captivity; instead, he/she should be fairly treated or freed for ransom. Exceptions are allowed only in extreme cases wherein a prisoner of war is too dangerous to be pardoned (2)

Somewhere else in my study and analysis of the conditions of jails and prisoner I have come to the conclusion that that prisoners in Khyber-Pakhtunkhwa are confronted with problems like lack of job opportunities, homelessness and social stigmatization etc. which hinder their successful reintegration into society. Also, the well designed and well-coordinated network of pre and post release services i.e. educational, vocational, well thought-out pre and post release support etc. to equip prisoners with will and skill to cope with the challenges to their re-adjustment is missing. Hence, they are more likely to fall prey to the criminal networks and become liabilities for their respective social settings. It is therefore, recommended that released prisoners must be passed through a well calculated arrangement of pre and post release services. Moreover, society's role is of paramount importance, hence, awareness must be made by government and NGOs, that people should not treat the released prisoners' *persona no grata*. The special pre-release programs in the fashion

of China's **Beijing** Jail and Thailand Prisons, as well as "through the gate" approach of UK jails (discussed in the literature) should be in place in Pakistan jails. Also, government should revisit the laws (if any) which bar past convicted prisoners to be fit for any public office or government job. Moreover, the whole criminal justice system, CJS (police, prisons, judiciary, parole and probation) needs to be streamlined. Media is one of the powerful tools in today's Era; hence, an awareness campaign by media may change things for better.

The general rules regarding prisoners of war are enumerated as under:

ذَلِكَ بِأَنَّ الَّذِينَ كَفَرُوا اتَّبَعُوا الْبُطْلَانَ وَأَنَّ الَّذِينَ ءَامَنُوا اتَّبَعُوا الْحَقَّ مِنْ رَبِّهِمْ كَذَلِكَ بَضْرِبُ
 اللَّهُ لِلنَّاسِ أَمْثَلَهُمْ فَأِذَا لَقَيْتُمُ الَّذِينَ كَفَرُوا فَضَرْبِ الرِّقَابِ حَتَّىٰ إِذَا أَنتَحْتُمُوهُمْ فَشُدُّوا
 الْوَتَاقَ فَإِمَّا مَأْ بُعْدَ وَإِمَّا فِدَاءً حَتَّىٰ تَصْعَ الْحَرْبِ أَوْزَارَهَا ذَٰلِكَ وَلَوْ يَشَاءُ اللَّهُ لَانتَصَرَ مِنْهُمْ
 وَلَكِن لِّيَبْلُوَ بَعْضَكُمْ بِبَعْضٍ ۗ وَالَّذِينَ قَتَلُوا فِي سَبِيلِ اللَّهِ فَلَنْ يُضِلَّ أَعْمَلَهُمْ

When you meet the unbelievers (in battle), smite their necks until you have crushed them, then bind your captives firmly, thereafter (you are entitled to) set them free, either by an act of grace, or against ransom until the war ends.(3)

Commenting on the above verse, Maududi (1971) says that, during the war, the believers should focus entirely on undermining and destroying the power of the enemy; but once the fighting is over, they are no longer allowed to kill the captives. The Muslim army is to release them for ransom or exchange them for Muslim prisoners. Moreover, they are to treat the prisoners under their custody with great kindness or better release them gratuitously, if possible. One of the characteristics of the believers, which will make them enter Paradise, is their generosity towards prisoners and other vulnerable segments of the society, as enjoined by the Almighty:

وَيُطْعَمُونَ الطَّعَامَ عَلَىٰ حُبِّهِ مِسْكِينًا وَيَتِيمًا وَأَسِيرًا إِنَّمَا نُطْعِمُكُمْ لِوَجْهِ اللَّهِ لَا نُرِيدُ مِنْكُمْ جَزَاءً وَلَا شُكْرًا إِنَّا نَخَافُ مِنْ رَبِّنَا يَوْمًا عَبُوسًا قَمْطَرِيرًا فَوَقَاهُمُ اللَّهُ شَرَّ ذَٰلِكَ الْيَوْمِ
 وَلَقَدْهُمْ تَضْرَةٌ وَسُرُورًا ۗ وَجَزَائِهِمْ بِمَا صَبَرُوا جَنَّةً وَحَرِيرًا

Those, who for the love of Him feed the needy, and the orphan, and the captive, saying, 'We feed you only for Allah's sake. We don't seek from you any recompense or thanks. We fear our Lord Who will call us to account on the Day that shall be long and distressful.

(4)

Commenting on these verses, Imam Abu Yusuf (1382 AH), as quoted by Maududi (1993:197), said that it was an established practice in the ancient days that prisoners, while chained and fettered, had to beg for their needs in the streets. Later on, the Islamic State weeded out this practice for ever and restored the dignity of prisoners. Maududi explains that, in this verse, captive means anyone in captivity, irrespective of his/her religion, or combatant or non-combatant.

Islam categorically states that no person may be imprisoned unless he/she is proved guilty in open courts. It is highly unreasonable to throw a person into prison without legal proceedings, but merely on the basis of suspicion. For example, once the Prophet of Allah was delivering a lecture in the mosque, a person interrupted and said, "Why are my neighbors arrested?" The prophet continued his speech without replying him. He repeated the question, but again was ignored by the Prophet Muhammad (SAW). But when the man asked the same question for the third time, the Prophet of Allah ordered that his neighbors be released, because a police officer was sitting in the mosque and the Prophet of Allah was expecting him to satisfy the complainant. However, when he did not produce any proof against the detainees in the open court, the Prophet of Allah ordered their release. According to the Islamic law, it was not permissible for the police officer to say that he would inform the Prophet in camera. (4-A) has quoted the statement of Caliph Omer who said that By Allah, in Islam, nobody could be incarcerated unless proven guilty on solid grounds. Referring to the saying of the Holy Prophet Muhammad(SAW), he stated that punishment should be avoided, even if there is a little room for it.

According to the Islamic traditions, prisoners can practice their religion without any fear. It may be noted that Islam endorsed this right long before the emergence of modern concept of human rights(5). In the light of the Islamic injunctions, prisoners are always to be treated with extreme care and respect, as the verse below states:

O Prophet! Tell those who are captives in your hands: 'If Allah finds any good in your hearts, He will give you something better than what has been taken from you and He will forgive you. For Allah is oft forgiving and is Most Merciful.(6)

There are many examples such as that of Thamamah b. Athâl al-Hanafi, who was captured by the Muslims in a battle and was captivated in the

Mosque. The Prophet treated him with extreme benevolence and set him free on the third day. Soon after he was released, he took bath and embraced Islam. His words below are worth consideration:

By Allah, O, Muhammad! There was no face on the surface of earth most disliked by me than yours, but now your face has become the most beloved face to me. By Allah, there was no religion most disliked by me than yours, but now it is the most beloved religion to me. By Allah, there was no town most disliked by me than your town, but now it is the most beloved town to me.(7)

It is evident from the traditions of the Holy Prophet and his companions that as long as a person is in captivity under the state control, he must be provided with food, clothing, medical assistance and other necessities by the state. Keeping them hungry or naked or torturing them in any other way has nothing to do whatsoever with the teachings of Islam. They are to be treated fairly, justly and munificently. For example, the Prophet of Allah directed his companions in the words *إِسْتَوْصُوا بِالْأَسَارَى خَيْرًا* (treat these prisoners well) after he distributed the prisoners of Badar among them(8).

One of the prisoners namely, Sohail Bin Omro, was a fiery speaker and used to utter profanities against the Prophet in his speeches. When he was arrested in the battle of Badar, the Prophet was requested by some of his companions to break his teeth, but the Prophet answered that had he done so, Allah would have broken his teeth despite the fact that he was His Prophet. On another occasion, when one of the tribal chiefs, Samama Bin Asal, was arrested, the Prophet ordered that he should be provided with fine food, milk and other things of need during his captivity. That was why one of the captives of Badar, Abu Aziz, stated that, during his captivity, he was served with bread morning and evening, while his custodians contended themselves just with dates (9), while describing the attitude of the Muslims towards prisoners, stated that Muhammad's commands were so enthusiastically followed by his companions that it was divulged by the prisoners that the people in whom custody they were, treated them extremely well. So much so, as admitted by the prisoners, that they were given camels and horses for riding, while their custodian walked on their two feet all the way, they were given wheaten bread and their keepers had nothing to eat except dates. Therefore, when those prisoners were

released for ransom, they declared their faith in Islam. It was just the kind treatment within custody, which brought them into the fold of Islam.

In the time of the Prophet, prisoners were used to be tied (with pillars and other things) to avoid escape. However, it was the mercy of the Prophet that he often ordered to untie the prisoners. For example, once when the Prophet's uncle (captured in a war) was moaning due to the tightness of the knots, sleeplessness gripped the holy Prophet. Realizing this, one of his companions untied the Prophet's uncle. But the Prophet ordered that all prisoners be untied for he didn't want to extend special treatment to his uncle only (10). During the reign of Prophet Muhammad and his four Caliphs, great stress was laid on the kind treatment of the prisoners. It was the state's responsibility to meet their basic needs. Inflicting of pain on prisoners or humiliating them was strictly forbidden (11). The fourth Caliph of Islam, Ali (RA), would often pay surprise visits to the jails to ensure that prisoners were not treated unkindly (12). Moreover, torturing a person is undoubtedly un-Islamic, but some argue that without it truth can't be extracted from a person. The counter argument is that once you resort to torture, then you might get unfounded statements. Therefore, other viable options, whereby human dignity is not at stake, are to be used for facts finding.(13)

It is to be noted that prisons, along with various other institutions, were introduced during the Caliphate of Omer (RA). A residential house, so spacious that prisoners could easily move in the rooms and the courtyard during the day and early evenings, was bought to be used as prison.(14)

Conclusion:

Since Islam is a complete code of life, therefore, it has its own philosophy regarding prison and prisoners. It is worth noting that in the light of Islamic injunctions, imprisonment is used as a last resort only. Secondly, it is not a common form of punishment for all offences. However, some crimes may land the offenders in jail (15). In the pre-Islamic era, prisoners of war were treated in an inhuman and barbaric way. The only substitute for imprisonment was either to kill the prisoners of war or to enslave them. This practice was common even in the then civilized kingdoms, like Rome and Persia. The cruelties of the ancient Greeks and Persians were well known, and the most ill-treated community was prisoners. They were mere tools in the hands of their masters and they were usually torn apart by

the hungry beasts to satisfy spectators in the festivals arranged on different occasions. Contrary to the ancient Greeks and Persians, Islam rooted out these evil practices and reformed the system to the core. When Makkah was conquered by the Muslims, the Prophet of Allah ordered that no wounded should be attacked, escaped people may not be chased and the prisoners should not be killed or ill-treated. Once the Governor of Basra, Hajjaj bin Yousaf, ordered Abdullah Bin Umar, to kill a war prisoner. He disobeyed and said that Allah had not made it lawful to kill a person in captivity; instead, he/she should be fairly treated or freed for ransom. Exceptions are allowed only in extreme cases wherein a prisoner of war is too dangerous to be pardoned (16).

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So, we can say that Islam allows full respect and honor to the prisoners, give them their due human rights and believes not jailing people but in

releasing people as Islam wants to make people good citizens and not extended criminals.

References

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- (2) Maududi, 1973:142-43
- (3) Al-Qura'n 47:3-4
- (4) Al-Qura'n 76:8-12
- (4-A) Nadavi (2012: 24 &29
- (5) Al-Oadah, 2012
- (6) Al-Qura'n 8: 70
- (7) Khan, 1997:401
- (8) Al-Zamil, 2002
- (9) Maududi, 2014:156-57/ Munir ,1861:122
- (10) Al Zamil, 2002
- (11) Abu Ghudah, 1987
- (12) Al-Samad, 1995
- (13) Olyabek, 2002:7
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- (15) Olyabek, 2003: v
- (16) Maududi, 1973:142-43)

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