



INCARCERATION



The earliest historical record of society penalizing criminals through revoking their right to free movement by confining them to a specific location is in Sefer Bereishis: Potifar imprisoned Yosef HaTzaddik in response to an alleged crime. Several years later the royal butler and baker met the same fate for failing to serve Pharaoh properly. Nevertheless, throughout history, humanity has tended to limit the scope of imprisonment as a means of detaining criminals pending their ultimate verdict and punishment. Serving jail time was not generally considered an adequate or appropriate consequence for criminal behavior.

Then, during the 18th century, governments seeking to abolish the excessive use of the death penalty developed the modern penitentiary: designating enclosed structures or areas where criminals are confined for extended periods of time, while providing for their every need and preserving their health.

During the 1970s, due to the soaring crime rates of the 1960s, the War on Drugs and mandatory sentencing rules, the prison population in the United States boomed. Since then, each year, millions of people have been incarcerated in federal, state and county prisons around the country. Today, just under one-quarter of the world's prisoners are held in American prisons!

During the spring of 5736 and the summer of 5745 the Rebbe addressed this phenomenon at length providing a unique Torah perspective.

A PUNISHMENT WORSE THAN DEATH

The Torah prescribes various forms of punishments for different sins: Financial penalties, *korbanos chatos* and *asham*, corporal punishment (*malkus*) and capital punishment

(the various forms of death penalty). There is absolutely no mention of incarceration as a standard form of punishment within Jewish law.¹

Superficially, the banishment of an accidental murderer to an *ir miklat* seems similar to incarceration. This

is not the case however, since *halacha* necessitates that the city of refuge be conducive to a fully productive and free lifestyle. Prison life is quite the opposite.

Man was created to fulfill Hashem's desire to have a *dira betachtonim* in this world. Freedom of movement and behavior is critical to accomplishing this mission.

As a *Toras chessed*, every element of Torah—including punishments—enables a Yid to fulfill this divine mission. Incurring financial loss through the various monetary penalties and *korbanos*, or suffering the pain and shame of *malkus*, allows the offender to start fresh with a clean slate. Exile to the *ir miklat* serves as atonement, and while there, he is accompanied by his Torah teacher to ensure his spiritual advancement as well. If the sin is so grave as to warrant the death penalty r"l, the sinner is nevertheless worthy of *Olam Haba*.

It would be inconsistent to keep someone alive in this world, which by definition means that he or she still plays a crucial role in making a *dira betachtonim*, and to limit his or



her mobility and ability to function properly—an impossible situation! From a Torah perspective, this is worse than death, for in the case of capital punishment, Hashem has terminated the sinner's divine mission.

For this reason, imprisonment has no place in the list of Torah punishments.

HALACHIC JUSTIFICATION

In the absence of the ability for the *beis din* to apply Torah penalties properly, the leadership of the Jewish community is obligated to preserve law and order by all means at their disposal² including imprisonment.³ Additionally, *dina demalchusa dina*—the secular law of the land is halachically binding.

In the modern era, incarceration is a universally accepted form of punishment. In a moral and compassionate country it even provides several benefits.⁴ While behind bars, the criminal cannot commit the crime or influence others to follow suit, thereby making society safer. Furthermore, the purpose of imprisonment is to educate, rehabilitate and prepare the offender to live an honest and productive lifestyle upon release, hence the term “correctional facilities.” Fear of incarceration also serves as a deterrent to would-be criminals.

A KLOTZ KASHE

Torah provides clear guidance for the implementation of many forms of punishment, emphasizing the contrast to the punishment methods of other ancient societies. For example, at the time of *matan Torah*, chopping off the hand of a thief was common practice and the Torah clearly prohibits this behavior.⁵

Incarceration of criminals was common practice in Mitzrayim.⁶ Why does the Torah not prohibit this form of punishment so as “not to follow the ways of Mitzrayim?”⁷ Contrarily, if imprisonment is acceptable, why are there no guidelines provided?

Based on the above it is clear: The only justification for incarceration is to preserve law and order in unique situations.⁸ There is no divine quality associated with imprisonment and therefore the details of implementation are the purview of the authority charged with preserving law and order.

A CALL TO ACTION

Clearly, incarceration is a tragic and traumatizing experience for the inmates and their families. It is an enormous financial burden on society in general and it is to the shared benefit of all that this program succeeds in its purpose. As we all are affected by this harrowing reality, it is important to appreciate the unique Torah lessons to be applied.

A prisoner must know that the current situation is a stepping-stone

for a greater future. Yosef HaTzaddik's ascent to the pinnacle of power was a result of his imprisonment. By focusing on self-improvement and continued education, the chances for a more productive life after release than before incarceration become stronger. As a result of this experience, the released prisoner will be a more effective role-model for others that crime does not pay. And just as Am Yisrael managed to move on from their painful slavery in Egypt, this too will pass.⁹

It is crucial for wardens, guards and prison staff to remember that the inmates are just as human as they are, deserving of respect and their dignity. Causing them undue pain and suffering is counterproductive. It breeds resentment, bitterness and rebelliousness, greatly reducing the chances for rehabilitation and increasing the chances of recidivism.



We need to have extra compassion for our fellow citizens in such an extraordinarily terrible circumstance. It is imperative to advocate on their behalf, to ensure that they be provided all the necessary resources to prepare themselves to rejoin society. Yidden should be able to learn Torah and observe as many mitzvos as possible and the gentiles should be educated about the *sheva mitzvos b'nei Noach*.

In 5736, the Rebbe called on all Chassidim to energetically arrange *mitvzoim* activities with Jews in prison and to strongly advocate for their ability to observe all mitzvos and Yomim Tovim behind bars. Since then, this has become an integral part of our holy mission of *hafatzas hamaayanos* and *hafatzas hayahadus*.

1. In the two instances in Torah that Jewish sinners were imprisoned (Emor 24:12, Shelach 15:34), they were merely detained until their respective verdicts and punishments were determined.
2. Shulchan Aruch, Choshen Mishpat, Simanim 2, 425.
3. Hisvaaduyos 5745, vol. 4 p. 2358.
4. Contrast this with repressive regimes (such as the USSR) that use incarceration as a means of torturing innocent citizens.
5. Since it would reduce the ability to function and to accomplish the mission of

making a *dira betachtonim*. Sichos Kodesh 5736, vol. 1 p. 615.

6. As evidenced by the possuk (Vayeishev 39:20) "[Yosef was placed] in the prison where the king's prisoners were incarcerated."
7. Acharei 18:3. Especially considering the fact that from the Torah view, imprisonment is a punishment worse than death!
8. Such as *yeridas hadoros* – a progressive recession of righteousness throughout the generations, especially as a result of galus.
9. See the Rebbe's message to an ex-convict in the sidebar.



MAIN SOURCES:

Purim 5736, Sichos Kodesh 5736 volume 1 page 611. Listen to the recording here: Chabad.org/552128

Shabbos Parshas Tzav 5736, Sichos Kodesh 5736 vol. 1 p. 667.

Shabbos Parshas Nasso 5745, Hisvaaduyos 5745 vol. 4 p. 2274.

Shabbos Parshas Korach 5745, Hisvaaduyos 5745 vol. 4 p. 2356.

FORGET THE PAST

A conversation with an ex-convict at "Dollars":

P: I was in prison, and this rabbi here, and the feeling of you, helped me get through it, and I want to thank you for that.

Rebbe: May G-d A-lmighty . . . you'll soon forget about all this past...

P: I don't forget...

Rebbe: [It is now] *Zman Cheiruseinu* . . . You know what Passover is?

P: Yes.

Rebbe: If the Jews have forgotten about Egypt, it is time for you to forget about your prison, also.

P: Okay.

Rebbe: May G-d A-lmighty bless you. Even if it is difficult [to forget], but try your best.

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