

טעמו וראו

A taste of the
Rebbe's teachings

Mikeitz



Is Incarceration a Just Penalty?

This week's Parsha describes how Pharaoh subjected Joseph and several royal ministers to protracted prison sentences. In our day, incarceration is an integral part of every justice system around the world. But is it included in Torah's laws? How does Judaism view a practice which denies a person his freedom?

Index:

| | | |
|--------|--|----|
| Part 1 | Does Prison Exist in Torah?..... | 2 |
| Part 2 | When Judaism Allows Incarceration..... | 5 |
| Part 3 | The Lesson and the Chanukah Message.. | 10 |

Part 1 - Does Prison Exist in Torah?

Source 1

Genesis 39:19-20



When his master heard his wife's story and her description of the incident, he became furious. Joseph's master had him arrested, and he placed him in the dungeon where the king's prisoners were kept. He was to remain in that dungeon.

חומש בראשית, פרק לט פסוקים י"ט - כ'

יט וַיְהִי כַשְׁמַע אֲדֹנָיו אֶת-דְּבָרֵי אִשְׁתּוֹ אֲשֶׁר דִּבְרָה אֵלָיו לֵאמֹר, כַּדְּבָרִים הָאֵלֶּה עָשָׂה לִי עַבְדְּךָ, וַיַּחַר אָפוֹ. כ וַיִּקַּח אֲדֹנָי יוֹסֵף אֹתוֹ וַיִּתְּנֵהוּ אֶל בַּיִת הַסֵּהַר מְקוֹם אֲשֶׁר אֲסִירֵי הַמֶּלֶךְ אֲסוּרִים, וַיְהִי שָׁם בְּבַיִת הַסֵּהַר.

Source 2

Genesis 40:1-3



Soon after this, Pharaoh's cupbearer and baker offended their master, the king of Egypt. Pharaoh was incensed at his two courtiers, the cupbearer and the baker, and he had them arrested. They were placed in the house of the captain of the guard, in the same dungeon where Joseph was imprisoned.

חומש בראשית, פרק מ' פסוקים א' - ג'

א וַיְהִי אַחֲרֵי הַדְּבָרִים הָאֵלֶּה חֲטָאוּ מִשְׁקָה מְלַךְ-מִצְרַיִם וְהָאֹפֶה לְאֲדֹנָיָהֶם לְמֶלֶךְ מִצְרַיִם: ב וַיִּקְצַף פַּרְעֹה עַל שְׁנֵי סְרִיסָיו עַל שֶׁר הַמִּשְׁקִים וְעַל שֶׁר הָאוֹפִים: ג וַיִּתֵּן אֹתָם בְּמִשְׁמַר בַּיִת שֶׁר הַטְּבָחִים אֶל-בַּיִת הַסֵּהַר מְקוֹם אֲשֶׁר יוֹסֵף אֲסוּר שָׁם:

Excerpt from Shabbat Parshat Naso, 5745-1985

Incarceration? Not in Our Book!



The Baal Shem Tov taught that everything a Jew sees or hears must teach him a lesson in his service of the Creator. This includes learning a lesson from incarceration.¹

Torah doesn't regard incarceration as a legitimate form of punishment. Punishments of all sorts are listed in the Torah; monetary fines, lashes, even capital punishment – Heaven forefend – but incarceration is not counted among them.

We do find the concept of prison mentioned in the story of Joseph. “Joseph’s master had him arrested, and he placed him in the dungeon where the king’s prisoners were kept.”² In fact, he reached the throne as a result of his imprisonment; a verse states, “from prison,³ he rose to rule.”⁴ The Torah also mentioned two other prisoners – Pharaoh’s cupbearer and baker: “Pharaoh was incensed at his two courtiers . . . They were placed in the . . . dungeon where Joseph was imprisoned.”⁵ However, Torah is obviously describing an element of Egyptian culture, not a behavior recommended by Torah.

We do find two instances where Moses imprisoned Israelites in the desert: When someone blasphemed G-d's Divine name,⁶ and when someone publicly desecrated the Shabbat.⁷ However, it didn't serve as a punishment. It was, as the verses there continue, “to consult with G-d,” “Because the law needed been clarified.” The individuals were incarcerated only until the proper course of action could be determined. This concept does indeed exist in Jewish law:⁸ incarceration is used not as a punishment but as a practical component of the legal system.

Every Person – Even a Criminal – Has a Mission

Torah doesn't sanction incarceration for a simple reason:⁹

The mission of a human being in this world is to serve G-d by creating a dwelling place for G-d in this world.¹⁰ Therefore, a person must not be placed under lock and key, because that would rob him of his ability to fulfill his purpose in life. Incarceration stands in the way of him fulfilling his G-d-given mission.

1) A group of prisoners were present at that Shabbat gathering.

2) Genesis 39:20

3) See Rashi's commentary on the verse.

4) Ecclesiastes 4:14

5) Genesis 40:2-3

6) Leviticus 24:12

7) Numbers 15:34

8) Tractate Sanhedrin 91b. Maimonides, Hilchot Rotzeach U'shmirat Hanefesh chp. 4 law 8. Hilchot Sanhedrin chp. 18 law 4-5.

9) See also Purim 5736 Sicha 4. Shabbat Parshat Tzav Sicha 2. Shabbat Parshat Korach segment 3.

10) See Tanchuma Bichukotai 3. Naso 16. Bireishit Rabbah 3. Bamidbar Rabbah 13:6. See Tanya chap. 36.

Yet imprisonment is considered normal and acceptable in cultures throughout the world; as mentioned, we find it used in ancient Egypt, and it has existed ever since.

Civilized Nations Turn Prison into Rehabilitation

However, in cultured nations which seek the betterment of society, there has been a change for the better in the use of imprisonment. They have begun to understand that the purpose is not merely to punish and cause pain, but to accomplish a goal. The first goal is that the prisoner should not be a danger to society. But moreover, we can use his prison sentence to help him become an upright citizen and to prepare for his new life – a life based on justice and morality – after he leaves prison.

There are still places where prisons are used solely as a form of punishment, but they end up causing pain and suffering to those outside of prison as well...

But here we speak of upright and just societies, where they seek to minimize the suffering of the inmates and instead focus on rehabilitating them; helping them turn a new page on life after their release to lead honest and upstanding lives, and to even serve as examples for others by sharing their experiences and its consequences.

In these countries, due to lobbying on behalf of inmates, they also allow inmates to fully observe the dictates of their religion during their sentence even when it costs the prison management extra time and effort.

They also provide occasional furloughs, and when an inmate demonstrates stellar conduct, they will even grant him a pardon and allow him to rejoin society before his sentence is over.

Torat Menachem 5745 vol. 4 pg. 2274

Part 2 - When Judaism Allows Incarceration

Source 3

Jeremiah 37:12-15



Jeremiah was going to leave Jerusalem and go to the territory of Benjamin to share in some property there among the people. When he got to the Benjamin Gate, there was a guard officer there named Irijah son of Shelemiah son of Hananiah; and he arrested the prophet Jeremiah, saying, “You are defecting to the Chaldeans!” Jeremiah answered, “That’s a lie! I’m not defecting to the Chaldeans!” But Irijah would not listen to him; he arrested Jeremiah and brought him to the officials. The officials were furious with Jeremiah; they beat him and put him into prison, in the house of the scribe Jonathan—for it had been made into a jail.

ספר ירמיהו, פרק לז, פסוקים י"ב-ט"ו

יב. וַיֵּצֵא יִרְמְיָהוּ מִירוּשָׁלַם לְלֶכֶת אֶרֶץ בְּנֵימִן לְחַלֵּק מִשָּׂם בְּתוֹךְ הָעָם: יג. וַיְהִי־הוּא בִשְׁעַר בְּנֵימִן וְשָׁם בָּעַל פִּקְדֹת וְשָׂמוּ יִרְאִיָּה בֶן־שְׁלֵמְיָה בֶן־חַנְנִיָּה וַיִּתְּפֹשׂ אֶת־יִרְמְיָהוּ הַנְּבִיא לֵאמֹר אֶל־הַכַּשְׂדִּים אַתָּה נֹפֵל: יד. וַיֹּאמֶר יִרְמְיָהוּ שָׁקֵר אֵינְנִי נֹפֵל עַל־הַכַּשְׂדִּים וְלֹא שָׁמַע אֲלָיו וַיִּתְּפֹשׂ יִרְאִיָּה בְּיַרְמְיָהוּ וַיִּבְאֶהוּ אֶל־הַשָּׂרִים: טו. וַיִּקְצְפוּ הַשָּׂרִים עַל־יִרְמְיָהוּ וְהִכּוּ אֹתוֹ וַנִּתְּנוּ אוֹתוֹ בְּבֵית הָאֲסוּר בֵּית יְהוֹנָתָן הַסֹּפֵר כִּי־אֵתוֹ עָשׂוּ לְבֵית הַכֶּלֶא:

Source 4

Kings I 22:26-27



Then the king of Israel said, “Take Micaiah and turn him over to Amon, the city’s governor, and to Prince Joash, and say, “The king’s orders are: Put this fellow in prison, and let his fare be scant bread and scant water until I come home safe.”

מלכים א, פרק כב, פסוקים כו-כז

כו. וַיֹּאמֶר מֶלֶךְ יִשְׂרָאֵל קַח אֶת־מִיכָיָהוּ וְהַשִּׁיבֵהוּ אֶל־אֲמוֹן שַׂר־הָעִיר וְאֶל־יֹאָשׁ בֶּן־הַמֶּלֶךְ: כז. וְאָמַרְתָּ כֹה אָמַר הַמֶּלֶךְ שִׁימוּ אֶת־זֶה בְּבֵית הַכֶּלֶא וְהֶאֱכִילֵהוּ לֶחֶם לַחֵץ וּמִים לַחֵץ עַד בֹּאִי בְּשָׁלוֹם:

Source 5

Ezra 7:11, 13, 25, 26



The following is the text of the letter which King Artaxerxes gave Ezra the priest-scribe, a scholar of G-d's commandments and laws to Israel:

"I hereby issue an order that anyone in my kingdom from the people of Israel and its priests and Levites who feels impelled to go to Jerusalem may go with you.

"And you, Ezra, by the divine wisdom you possess, appoint magistrates and judges to judge all the people in the province of Beyond the River who know the laws of your G-d, and to teach those who do not know them.

"Let anyone who does not obey the law of your G-d and the law of the king be punished quickly, whether by death, corporal punishment, confiscation of possessions, or imprisonment."

עזרא, פרק ז', פסוקים י"א, י"ג, כ"ה, כ"ו

י"א. וְזֶה תִּקְצִיר הָאֲגָרָת, אֲשֶׁר
נָתַן הַמֶּלֶךְ אֶרְתַּחְשֶׁשְׁתָּא לְעֶזְרָא
הַכֹּהֵן הַסֹּפֵר, סֵפֶר דְּבָרֵי מִצְוֹת
ה' וְחֻקָּיו עַל יִשְׂרָאֵל... י"ג.
מִמְּנֵי נָתַן צִוּ אֲשֶׁר כָּל מִתְנַדָּב
בְּמַלְכוּתִי, מֵעַם יִשְׂרָאֵל וְכַהֲנָיו
וְהַלְוִיִּים, לְלַכֵּת לִירוּשָׁלַיִם
עִמָּךְ, יְלָךְ...
כ"ה. וְאַתָּה עֶזְרָא, כְּחֻכְמַת אֱלֹהֶיךָ
אֲשֶׁר בִּידְךָ, מִנְּהָ שׁוֹפְטִים
וְדַיָּנִים, שִׁיְהִיו דָּנִים אֶת כָּל
הָעָם אֲשֶׁר בְּעֵבֶר הַנָּהָר, לְכָל
יֹדְעֵי חֻקֵי אֱלֹהֶיךָ; וְאֲשֶׁר לֹא
יֹדְעֵי, תוֹדִיעֵם. כ"ו. וְכָל שְׂלֵא
יְהִי עוֹשֶׂה הַחֻק שֶׁל אֱלֹהֶיךָ
וְהַדִּין שֶׁל הַמֶּלֶךְ, מִהֵרָ הַדִּין
יְהִי נַעֲשֶׂה מִמְּנוֹ, אִם לְמוֹת,
אִם לְחַרָם, אִם לְעֵנָשׁ נְכֹסִים,
וְלְאַסּוּרִים.

Excerpt from Shabbat Parshat Korach 5745-1985



We mentioned at an earlier gathering that Torah does not use prison as a punishment. However, there were some who commented¹ that Tanach does occasionally mention the use of prison. For example, the prophet Jeremiah was held in a prison,² and other similar stories. The use of prison is also mentioned in responsa of Halachic authorities during the Geonim and Rishonim periods [spanning the years 500–1500].

Bless them for paying attention and further researching the subject, but, as we have often said, they heard the words but failed to understand the underlying meaning.

In Halachic literature, there are no detailed discussions about incarceration.

First of all, a fundamental question arises:

Torah teachings go into great detail when describing various punishments (as they go into detail regarding all other matters). For example, in regard to the punishment of lashes, we are told the size and look of the whip, the handle, the number of lashes, the necessity for a doctor to evaluate how much the delinquent could handle, and so on.³ This is definitely true about capital punishment.⁴ It is also true of repentance through sacrificial offerings: there are many rules regarding sacrifices.⁵ Financial penalties as well; there are many detailed rules, because Torah views every penny as valuable; “the rule of one penny is equivalent to the rule of one hundred dinar,”⁶ because even one penny can be used to purchase one’s life-sustenance.

However, we find no details at all regarding prison. In fact, Torah takes no stand on the issue; it doesn’t say how to carry it out, nor it doesn’t say to desist from carrying it out.

1) Kovetz Haarot Ubiurim Oholei Torah (issue 288-9)

2) Jeremiah 37:15.

3) See Maimonides, Hilchot Sanhedrin 16:8.

4) Ibid chapters 14-15.

5) Maimonides, Maaseh Korbanot chapters 7-9.

6) Tractate Sanhedrin 8a. Hilchot Sanhedrin 20:10.

It seems quite surprising:

The concept of incarceration existed in ancient civilizations, as we read in Torah about the prison of Egypt where Joseph was imprisoned, “Joseph's master had him arrested, and he placed him in the dungeon.” Clearly, this was a commonplace punishment, as the Torah itself continues, “where the king’s prisoners were kept,”⁷ meaning that Egypt had an established prison where they regularly held people, as the Torah continues regarding Pharaoh’s cupbearer and baker, “they were placed in the . . . dungeon.”⁸

The question arises: why doesn’t Torah take a stand? Is prison prohibited like other Egyptian behaviors of which the Torah says, “Do not do the deeds of Egypt and do not follow their laws”?⁹ And if not, Torah should detail the specific laws regarding its implementation.

Now, the answer is as simple as the question, but some people seem to enjoy remaining with the question, especially when the answer is simple, and doesn’t have any brilliant, novel proposition.

The Halachic State of Emergency

The explanation is as follows:

There are several forms of penalties – monetary compensation, sacrifices, lashes, and capital punishment – depending on the severity of the sin (as we mention during the prayer of Al Chet). Throughout all these laws, we do not find any mention of a sin for which the punishment is prison.

However, in addition to Torah’s detailed laws about sins and punishments, there is a general obligation to “destroy evil from among you.”¹⁰ In other words, the court or the city leaders are obligated to do everything in their power to ensure proper civilized behavior, and they have the authority to do as they see fit to ensure the goal is met, including the use of prison.¹¹ It is not considered a form of Torah punishment, but if there is a situation where Torah’s punishment cannot be carried out – because Jews don’t have the legal right to do so, etc. – then other penalties can be employed “to create boundaries”¹² for appropriate behavior.

7) Genesis 39:20.

8) Ibid 40:3.

9) Leviticus 18:3. Maimonides Hilchot Akum chapter 11.

10) See Deuteronomy 13:6, 17:7, 19:19, 21:21, 22:21,24.

11) Maimonides, Hilchot Sanhedrin 24:9 Tur Choshen Mishpat 2.

12) Maimonides Ibid. segment 4-10. Tur Choshen Mishpat ibid, and 225.

That is clearly why Torah doesn't have any mention of imprisonment nor any detailed laws on the subject. Incarceration is not counted among Torah's penalties and is therefore not mentioned at all (as other punishments are). Nevertheless, because the Jewish court has the authority to penalize as they see fit, they can imprison people if the need arises. But Torah has no reason to describe the details for its implementation, because it is merely an optional method for ensuring the propriety of the society.

Torat Menachem 5745 vol. 4 pg. 2356

Part 3 - The Lesson and the Chanukah Message

Source 6

Igrot Kodesh vol. 9 letter 2817



It is fascinating that there is a fundamental difference between Torah's judicial system and the judicial systems of other nations. In Torah, there is no penalty of imprisonment (prisons were used, as in Sanhedrin 9:5, but not as a punishment of its own). This is an amazing expression of Torah's view about the importance of practical accomplishment and the preciousness of life. According to Torah, a person's days are numbered. Since Torah's punishments are not to retaliate but to repair, there is no place for denying a person his freedom even for the sake of maintaining a civilization—unless the individual is incapable of fulfilling his mission at all and is sentenced to capital punishment.

This tells us three fundamental points: a—the preciousness of every moment of life, b—the importance of each individual, c—even a criminal is a human being, and has a divine purpose.

אגרות קודש חלק ט', אגרת ב'תתיז

נפלא הדבר, אשר בתורת המשפטים והעונשין של תורתנו הק' יש חילוק עקרי לגבי ספרי המשפטים של שאר העמים, והוא שבתורתנו אין לגמרי עונש בית האסורים (זה שהיו מכניסין לכיפה - סנה' ט, ה' - לא הי' בזה דין עונש של מאסר, וכמבואר במשנה שם). ובזה ג"כ רואים בעליל השקפת התורה על גודל ערך המעשה בפועל ויוקר החיים, וכמאמר הכתוב ימים יוצרו ולא אחד בהם, אשר כל רגעי חיי האדם ספורים הם, וכיון אשר עונש על פי התורה אין זה ענין של נקמה אלא של תיקון, הרי אין מקום לשלול מן האדם אפשריות המעשה אפילו בשביל תיקון הרבים שזהו ענין בית האסורים, פרט למי שאינו ראוי למילוי תפקידו כלל שעונשו מיתה. ולמדים מזה ג' נקודות עקריות: א. כנ"ל גודל ערך כל רגע ורגע מחיי האדם, ב. גודל ערך היחיד. ג. אף על פי שחטא אדם הוא, ותפקיד מיוחד עליו בשליחותו של בורא עולם.

