ABSTRACT

The present study entitled as “Short-term Imprisonment of Offenders” focuses on the effects of short-term imprisonment on the offender in particular and society in general. The sentence of imprisonment is imposed to achieve various objectives of punishment such as deterrence, retribution, reformation and rehabilitation of the offender. It is said to be the only custodial punishment which makes it possible to reform and rehabilitate the offender in an institution. The studies of the effects of imprisonment on the prisoners show that it does not seem to have any deterrent reformative or rehabilitative influence on the short-term offenders, rather it returns them to society infected with all types of vices.

Short-term imprisonment, instead of producing good effects on the over all personality of the offender becomes counter productive. It has been noticed that since most of the prisons are overcrowded, it becomes difficult for the prisons to make proper segregation of prisoners. The result is that new inmates even though they are sent to prison for short stay come in contact with the recidivites and experienced people of the underworld. This contact provides them an opportunity to learn and acquire technique of committing crimes.

The offenders who are serving short-term sentences get humiliated more than being rehabilitated. The society also suffers. It loses the productivity of the offender. The family members are deprived the source of maintenance and income.
Persons sentenced to short-term imprisonment (also known as short-termers) are a burden on the state. A major chunk of the public funds is spent in their maintenance and upkeep in prisons. It is estimated that to keep a prisoner in an institution is twenty times more than to release an offender on probation or community service order.

A number of studies as to the effects of short-term imprisonment show that a prison term less than six months is not likely to be useful for training, education and rehabilitation of the offender.

Chapter I introduces the topic of the research. First the problem of short-term imprisonment has been highlighted. The use of short-term imprisonment does not seem to fulfill the objects of punishment, rather it appears to be counter productive. Neither does it provide protection to society against crime nor it turn an offender into a good citizen. The next issue which has been discussed is the definitional problems of short-term imprisonment. The period of incarceration that may be termed "short-term imprisonment" has not been defined in the laws of the India and Malaysia. However, Section 354(4) of the Indian Code of Criminal Procedure identifies three months. This provision discourages the court to impose short-term sentence and requires the courts to give reasons for imposing short-term imprisonment. The object of incorporating this provision is the realization of the ill-effects of short-term imprisonment. The extent and magnitude of the problem of short-term imprisonment has also been highlighted.
Chapter II deals with forms and uses of imprisonment. In this chapter, place of imprisonment, its nature, efficacy, merits and weaknesses have been evaluated.

Imprisonment plays an important role in criminal justice system. It is employed to serve various purposes. It keeps a person in custody during trial and is also used as a substituted punishment in order to force the people into compliance with the orders of the court. It protects society by putting an offender behind the bar. It makes possible the reformation and rehabilitation of the offender. It also acts as individual and general deterrence so that the prospective offenders will take a lesson from the confinement of offenders. It also satisfies society’s desire for vengeance on behalf of the victim.

Imprisonment though aimed to achieve the above mentioned purposes is said to have many short-comings. It is said to provide wild justice in the form of crude retribution and have brutalising effect. It does not rehabilitate the offender and is detrimental to the re-entry of the offender into society. The most serious drawback of imprisonment is that it provides an opportunity to the short-termers to learn the technique of committing crimes in a short span of time. Most of our prisons are packed to the capacity causing overcrowding. Overcrowding in prison makes it impossible for the prison regime to make proper segregation of the prisoners. The prisoners are forced to stay with the recidivists, thus giving them an opportunity of learning criminal habits.
This chapter also discusses the types of imprisonment. The main types discussed include imprisonment for life, imprisonment for a fixed period i.e. simple and rigorous and imprisonment in default of payment of fine.

Chapter III focuses on short-term imprisonment. In this chapter an appraisal has been made of the effects of short-term imprisonment on the society and its implications on prevention of crimes and treatment of offenders.

One of the direct impacts of short-term imprisonment is its financial aspect on society and the offender. The society suffers by short-term sentences in two ways. Firstly, it is the most expensive way of dealing with the offenders. As noted above that the cost of maintaining the offender in prison is twenty times more than releasing the offender on probation or community service order. Secondly, the society loses in terms of productivity of the confined offender. Short-term sentence is also a source of hardship to the family of the confined prisoner. It deprives them from the earnings of the prisoner thus placing them at the mercy of charitable institutions. It also damages the self-respect of the offender and gives him a label of ex-convict. Short-term imprisonment is also a contributing factor to overcrowding in prisons. Most penal institutions in India and Malaysia are confining short-termers, making it difficult for the prison administration to apply reformative and rehabilitative methods on the prisoners. Overcrowding in prisons also makes it impossible to keep the short-termers or first offenders away from hardened criminals. It has been found that in the case of short-termers or petty offenders, prison term becomes counter productive and turns them into professional criminals.
The majority of prisoners in India consist of short-termers serving less than six months. It is estimated that in Indian prisons 66% in 1911 and 87% in 1961 were prisoners with less than six months' sentence. In a later survey conducted after a decade, in 1976, it was found that short-term sentences range between 85% to 95%. In Malaysia the situation is not much different. In the year 1993, prisoners serving less than six months were 47% of the prison population. During 1994 this figure rose to 51% and in 1995, 46% of offenders were imposed less than six months' sentence.

Chapter IV evaluates the role of non-custodial measures as an alternative to short-term imprisonment. The statistics of the prison population of India and Malaysia reveal that a large number of offenders of inmates consist of short-termers, and they are subjected to all types of vices. This chapter suggests various alternative non-custodial measures that may be employed to avoid short-term imprisonment. The alternative measures suggested include absolute or conditional discharge and binding over, probation, fine, community service order and attendance centres.

In India and Malaysia, the law relating to absolute or conditional discharge exist in the criminal procedure of both the countries. It is seen that unlike the Malaysian provision (Section 173A and 294 of the Criminal Procedure Code), the Indian provisions (Sections 360 and 361 of the Criminal Procedure Code) dealing with absolute and conditional discharge are mandatory in nature. If the circumstances of the case demand application of the these provisions and the court fails to apply them, it shall record its reasons for not doing so. The omission to record reason is an irregularity and on appeal if any miscarriage of justice has occasioned by the decision of lower court; the sentence may be set aside. In India this provision has helped the
court to a certain extent to contain prison population especially of petty offenders. In Malaysia if provision is made similar to Section 361 of the Indian Code of Criminal Procedure, it can protect the short-term offenders from the ill-effects of prison life.

This chapter also presents probation as an alternative to short-term imprisonment. In view of the high expenditure involved in maintaining petty offenders in prisons, probation appears to be most cost effective. The probation law in Malaysia is contained in the Juvenile Courts Act and Criminal Procedure Code. The case study of the cases decided by the courts show that probation is granted mostly to the juvenile while adults (youthful offenders) are rarely released on probation. But the statistics supplied by the Department of Social Welfare revealed that more adults than juveniles who were granted probation completed their probation period successfully. In India, the law concerning probation is contained in the Code of Criminal Procedure 1973, various state legislation and the Probation of Offenders Act. The Probation of Offenders Act is a central legislation which is applied in most parts of the country. The Act is designed to protect youthful offenders into obdurate criminals as a result of their association with hardened criminals who are sentenced to short-term sentence. The Indian provisions of probation are more comprehensive than Malaysian provisions.

Fine is also an important alternative to short-term imprisonment available to the courts in India and Malaysia. It is estimated that in 90% of the criminal cases, fines were imposed. This chapter assesses the utility of fine as a substitute to short-term sentence. To assess its proper place in the correctional system advantages and disadvantages of fine have been discussed. One of the important issues discussed
relates to the use of fine in place of default imprisonment. In the cases where the offender is unable to pay, the amount of fine he may be allowed to pay it in instalments. Fine can be a good substitute to short-term imprisonment in India and Malaysia, provided some statutory provisions are made to make the mode of payment flexible. In the United Kingdom, Section 71 of the Magistrate's Courts Act 1952, empowers the court to place an offender under supervision until the fine has been paid.

This chapter also looks at the viability of community service order as substitute to short-term imprisonment. In India and Malaysia no statutory provision exists for making community service order. However, in the United Kingdom, the provision has been made by the Powers of Criminal Courts 1973. In India the Indian Penal Code (Amendment) Bill 1972, which contained provisions for the introduction of community service order was presented before Rajya Sabha (the Upper House of Indian Parliament) which passed the Bill in 1978. But it could not be taken up by the Lok Sabha and with the prorogation of the Parliament, the Bill lapsed. Since then successive governments in India did not care to put the Bill on legislative lists. However, recently Mr. Ramakant Khalap, Indian Minister of Law and Justice, while visiting Kuala Lumpur on 3 September 1997, had announced that the Government of India is seriously considering to introduce community service as a penalty.

Attendance centres may also reduce the pressure on prison population and can be a good substitute for short-term imprisonment. In Malaysia, such centres were introduced by Compulsory Attendance Ordinance 1954. Unfortunately these centres are no more functioning in Malaysia. In India so far such centres have not been
established. This chapter also sees the viability of establishing these centres in India and revival in Malaysia.

Chapter V assesses the importance of mitigating factors affecting short-term imprisonment. The mitigating factors may affect sentencing process in different ways. It may lessen the quantum of punishment as where an offender is sent to prison for a short-term or fined a small sum of money. Sometimes, mitigating factors may influence the court to completely abandon the idea of punishment and to apply non-custodial measures such as probation, conditional discharge and the use of other community based sanctions. Some of the mitigating factors discussed in this chapter include: age of the offender, his record, good character, circumstances resulting in the commission of the offence, plea of guilty, health of the offender, effect of sentence on the family and behaviour subsequent to the commission of the offence.

The mitigating factors do help the court whether to use institutional or non-institutional methods of punishment. These factors may be helpful to the courts to impose appropriate sentence in cases punishable with short-term imprisonment.

In India no specific provision has been made by law for the consideration of mitigating factors, however the Probation of Offenders Act mentions some factors such as age, character and antecedents of the offenders. In Malaysia statutory law makes provisions for the consideration of mitigating factors and the courts are required to incorporate in notes of evidence.
Chapter VI evaluates the use of Islamic penal punishment or *ta’zir* as an alternative to short-term imprisonment. Islamic penal system contains mandatory, retaliatory and discretionary punishments. The offences for which these punishments are prescribed fall into three groups: (i) *Hudud*, (ii) *Qisas* and *Diyat* (Retaliation and Blood Money), (iii) *Ta’zir* (Discretionary punishments). For the first two categories of offences, punishments are prescribed by the Holy Quran and Sunnah of the Prophet (S.A.W). While for offences punishable with *ta’zir* or penal punishments, the Ruler has been conferred the right to create offences by legislation and to prescribe punishments in accordance with the prevailing circumstances of the case so as to treat and reform the offender and to prevent him from repeating the offence. Imprisonment falls in the category of *ta’zir* or penal punishments. It is divided in two kinds: For a limited or that of unlimited term. The imprisonment for a limited period is one day while unlimited term is to be decided by the Ruler in accordance with the nature of the offence and circumstances of the case. The evils of imprisonment were well realised by the jurists of Islamic law. They discouraged the use of imprisonment rather they recommended the use of other types of *ta’zir* or penal punishments.

Fine is one of the punishments prescribed for offences liable to *ta’zir*. The penalty of fine as a mode of punishment is accepted by all schools of Islamic jurisprudence. In some cases the amount of fine was fixed e.g. in the cases of theft in which the value of stolen property did not reach the minimum *nisab*. In other cases it was left to the discretion of the Ruler or Qadi to fix the amount of fine according to the gravity of the offence and the capability of the offender to pay. Islamic penal law prohibits imprisoning an offender who is unable to pay fine. He can only be imprisoned for non-payment of fine when he is capable to pay it but fails to do so.
Islamic law also allows to make the offender to work and pay the amount of fine out of the wages earned by him.

Islamic law provides public disclosure or *tashhir* as a penal punishment. By this punishment the offence committed by the offender is announced in public. The purpose of this punishment is to draw the attention of the public to the fact that the offenders should not be trusted. Public disclosure or *tashhir* can be a good substitute for petty offences liable with short-term imprisonment.

Threat or *al-Tahdid* is another form of *ta'zir* punishment which requires the offenders to put under fear of punishment. It is carried out either by putting the offender under fear of punishment if he repeated the offence or the execution of sentence is delayed until the offender has committed another offence within a stipulated period. This punishment is similar to the modern punishment of suspended sentence. However there is a marked difference between Islamic law and modern form of suspended sentence. In Islamic law the judge has the authority to suspend any sentence including imprisonment while under modern penal system the judge cannot suspend a sentence other than the sentence of imprisonment.

Warning or admonition is also a form of punishment under Islamic penal law. The purpose of this punishment is to caution or remind the offender of criminal activities. This punishment is similar to the modern form of probation. Admonition has existed in Islamic Law for the last thirteen centuries while in western system admonition is of recent origin and applied only at the end of 19th century or the beginning of the 20th century.
Boycott is also one of ta'zir punishments prescribed under Islamic law. Modern form of “ex-communication” practiced in some societies is close to Islamic law of boycott. An order of ex-communication may be a good substitute for short-term imprisonment.

By making provision of ta'zir or penal punishments, Islamic law discourages the use of imprisonment due to the evils involved in imprisonment as a form of punishment. The imprisonment is allowed to be imposed only in the circumstances when it is not possible to deal with the offender by any other form of ta'zir punishment. Islamic penal law provides a wide range of punishment in the category of ta'zir. These punishments are both deterrent and reformative in nature and therefore can be a good substitute for short-term imprisonment.

Chapter VII deals with conclusions and suggestions. In this chapter comparison has been made of various provisions of Indian laws and Malaysian vis-a-vis. Islamic penal law, with a view to setting forth conclusions of the study in order to advance some suggestions to meet the problem of short-termers in India and Malaysia.