

# The deprivation of liberty criminology essay



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' Deprivation of liberty should be regarded as a sanction or measure of last resort and should therefore be provided for only, where the seriousness of the offence would make any other sanction or measure clearly inadequate' declares Principle 1 of the Council of Europe's Recommendation Concerning Prison Overcrowding and Prison Population Inflation (Council of Europe, 1999). Despite these principles, various sources say that the prison population is on the boost in many parts of the world (U. K. Ministry of Justice, 2008; BJS, 2010; Clear, Cole & Reisig, 2008, p. 472; U. K. Home Office, 2003). And it is also predicted to increase in the coming years (U. K. Ministry of Justice, 2008; U. K. Home Office, 2003). At the same time it is interesting to note that, the prison population and growth rates vary considerably between different regions of the world, and even among different parts of the same continent (U. K. Home Office, 2003).

An analysis of the global prison population rates reveals the following facts. " In Africa the median rate for western and central African countries is 35 whereas for Southern African countries it is 231, the Americas the median rate for South American countries is 154 whereas for Caribbean countries it is 324. 5, in Asia the median rate for south central Asian countries (mainly the Indian sub-continent) is 53 whereas for (ex-Soviet) central Asian countries it is 184, in Europe the median rate for southern European countries is 95 whereas for central and eastern European countries it is 229, in Oceania (including Australia and New Zealand) the median rate is 102. 5" (Walmsley, 2008). These fluctuations and inconsistencies in the prison population rate raise many questions. The question concerning reasons for the increase and inconsistencies in the prison population is one of them.

Professor Nicola Lacey argues in one of her paper that, “ across the developed world today, we see striking contrasts in the level of and quality of imprisonment. In 2006, imprisonment rates per 1, 00, 000 of the population ranged from about 36 in Iceland to a staggering 725 in the U. S.... It is also generally explained that these differences cannot be explained in terms of crime rates, which – unlike levels of imprisonment- have risen and fallen over the last 50 years in broadly similar ways in most advanced countries” (2008, p. 9). Professor Lacey further says, “ These variations in punishment can be explained in terms of a differentiated model of varying forms of capitalist economy and democracy. Individualistic liberal economies such as the U. S, the U. K, Australia and New Zealand have over the last 50 years almost universally seen striking increase in the imprisonment rate, while coordinated market economies such as those of northern Europe and Scandinavia have seen, by and large, much more stable levels of imprisonment” (2008, p. 9).

The United States of America to be the nation with highest number of prison population in the world and United Kingdom is placed at seventeenth position where as the two coordinated market economies from Scandinavia, the Denmark and Norway occupies positions 129th and 133rd respectively (International Centre for Prison Studies, 2010a).

In this backdrop, this essay attempts to analyse the increase in the prison population in late modern liberal market economies. The essay is divided into five parts. After the first part, which obviously is the Introduction, the second part analyses the prison population statistics from two ‘ individualistic liberal economies’, the United States of America and the <https://assignbuster.com/the-deprivation-of-liberty-criminology-essay/>

United Kingdom. This part also compares the prison population rates with crime rates. In the third part an attempt is made to identify reasons for the variation in the prison population rates in these economies. The fourth part analyses the desirability of stemming this upward trend in prison population and last part includes conclusion with few suggestions for lessening the prison population.

In the following part, prison population rates of the two liberal market economies, i. e. the US and the U. K are analysed and then these rates are compared with crime rates.

#### Prison Population in the U. S-

At present, the “ United States imprisonment rates are now almost five times higher than the historical norm prevailing throughout most of the twentieth century, and they are three to five times higher than in other Western democracies” (Clear & Austin, 2009, p. 307). “ Contrary to the earlier views that the prison population was too less in the US, the increased population helped the US policy makers to have a broad consensus that Prison Population is too large. Many policy makers are also convinced, that the current system is no longer affordable due to pressing fiscal demands” (Clear & Austin, 2009, pp. 307- 308). The U. S. rate of incarceration of 702 inmates per 100, 000 populations represents not only a record high, but situates this nation as the world leader in its use of imprisonment (Mauer, 2003).

The statistics from the United States Bureau of Justice (BJS) also portrays a similar picture. It says that the number of adults in the correctional population has been increasing in the US (BJS, 2010). According to BJS

statistics the population under correctional supervision reached a staggering 7.3 million in the year 2008. This is 3.2% of all U.S. adult residents. In other words it can be stated that 1 out of every 31 adults in U.S is under correctional supervision (BJS, 2010). The total prison population that was 3,715,800 in the year 1988 in various correctional supervision centres reached a total of 7,308,200 by 2008 (BJS, 2010). The following table illustrate the details of prison population from 1992 to 2007.

Table 1. Prison population in the US

Year

Total prison population

### **Prison population out of**

1,00,000 of the total population

1992

1,295,150

(505)

1995

1,585,586

(600)

1998

1,816,931

(669)

2001

1, 961, 247

(685)

2004

2, 135, 335

(723)

2007

2, 298, 041

(758)

Source: International Centre for Prison Studies, 2010d.

The above given statistics shows the total prison population which was 1, 295, 150 in the year 1992 reached 2, 298041 in the year 2007 which is an increase of 77. 4% in the prison population. Similarly the number of people in every 100000 of the total national population in prisons was increased by 50% from 1992 to 2007 (International Centre for Prison Studies, 2010d). A search for the reasons for such a massive increase in the rates of people confined in prisons requires a search into the crime rates in USA during these years. It is because normally people tend to suppose that an increased crime rate would naturally also lead to an increased prison population rate.

While analysing the crime rates in US during this period, the statistics confirm a decline in all the categories of crimes. The Federal Bureau of Investigation (FBI) reports show that the crime rates have been falling in U. S ever since 1980's (FBI, 2008; US Census, 2010). The following table shows the pattern of falling crime rate in US.

Table 2. Crime rates in USA

Year

Murder and Non Negligent man slaughter rate

Forcible Rape rate

Robbery rate

Aggravated Assault rate

1992

757. 7

9. 3

42. 8

263. 7

1995

684. 5

8. 2

37. 1

220. 9

1998

567. 6

6. 3

34. 5

165. 5

2001

504. 5

5. 6

31. 8

148. 5

2004

463. 2

5. 5

32. 4

136. 7



2007

466.9

5.6

30.0

147.6

Source: FBI 2008.

The table given above evidently demonstrates that the crime rates have been declining in the USA under all categories. A similar fall can also be observed in other types of crimes, like property crime, burglary, larceny and motor vehicle theft cases (FBI, 2008). A comparative analysis of the rates of prison population and crime rates in the US proves that crime rates play only a minimal role in the increase of prison population rate.

Prison Population in the United Kingdom-

The United Kingdom is placed at seventeenth position in terms of population in prisons (International Centre for Prison Studies, 2010e).

The following table illustrate the details of prison population in the United Kingdom from 1992 to 2009.

## **Table 2. Prison Population in the U. K**

Year

Total prison population

## **Prison population out of**

1, 00, 000 of the total population

1992

44, 719

(88)

1995

50, 962

(99)

1998

65, 298

(126)

2001

66, 301

(127)

2004

74, 657

(141)

2007

80, 216

(148)

2008

81, 695

(152)

2009

82, 893

(155)

Source: International Centre for Prison Studies, 2010e & Ministry of Justice Statistics bulletin, 2009.

The above given data exhibits an increase of 79. 3% in the prison population and 68% increase in the number of prisoners in every 100000 of the total national population from 1992 to 2007. More recently this increase has become more marked: the average prison population has increased by 85% since 1993. Like the US, in UK also the trend show that crime rose steadily from 1981 through to the early 1990s, peaking in 1995. Crime then fell, making 1995 a significant turning point. The fall was substantial until 2004/05. Since then crime has shown little overall change with the exception of a statistically significant reduction of 10 per cent in 2007/08 to mark the lowest ever level since the first results in 1981 (U. K. Home Office, 2008). The population of public sector prisons in England and Wales at the end of

March 2008 was 72, 651 (HMPS Annual Report and Accounts, 2007-2008).

The prison population in England and Wales, including those held in police cells, was at a record high of 81, 695 in 2008, while it increased to 82, 893 prisoners in 2009 (Ministry of Justice Statistics bulletin, 2009).

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The analysis in the preceding section shows a clear increase in the prison population rate both in USA and UK. The next part of this essay is an attempt to find an answer for this question -Reasons for the upward trend of the Prison Population in modern liberal market economies such as the USA and Britain?

Scholars working on the area of ‘ prison population’ point out various reasons for its growth. There have much scholarly deliberations on the role of ‘ crime rate’ on the rate of growth of ‘ prison population’.

The main drivers for prison population growth in US and Britain are discussed as follows-

#### Sentencing Policy-

Very often sentencing policy of the state is cited as a reason for increased prison population. It is stated, " In the 1970s, the prison population grew because the crime rate grew, resulting in greater numbers of people going to prison. In the 1980s, and stretching into the early 1990s, a host of sentencing policies restricted the use of probation as a sentence for felons, causing a substantial increase in the number of people entering prison during a period when crime rates were semi-stable" (Blumstein & Beck, 2005). It is further stated, " After that, legislation that enhanced penalties for felonies greatly increased the average length of prison terms, which led to growing prison populations even as crime rates dropped and the number of people entering prison began to stabilize. The result was a growing backlog of people serving long sentences, who made up a permanent population base upon which the flow into and out of prison was grafted. The point is that the size of the prison population is a matter of penal policy, and over the last thirty-six years, particularly, the United States has built a policy designed to grow prisons" (Clear & Austin, 2009, p. 312). The assassinations of Robert Kennedy and Martin Luther King in US 1968, riots and political violence resulted in toughening of criminal justice and penal policy (Downes, 2001). US federal system and California passed laws in 1994 " Three strikes and you're out", the strike-able offences included- murder, rape, robbery, arson and assaults. According to Zimring's article " Imprisonment Rates & New Politics", the ' three strike' system led to nine times increase in the prison

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population including all of the other 26 three strike laws in US (Zimring, 2001).

Penal commentators have tended to identify two factors namely - change in climate of political & public debates about crime & punishment and; change in the legislative framework & guidance within which sentences operate (Ashworth & Hough, 1996; Dunbar & Langdon, 1998). In February, 1993 drove public concern into public panic, the abduction and murder of a young child James Bulger, by two 10 year old boys, shocked England and there was demand to 'curb the delinquent tendencies of the new generation of ever younger and increasingly persistent offenders' (Graham & Moore, 2006). The new legislation, the Criminal Justice and Public Order Act, 1994 introduced stiffer penalties for juvenile offenders, including long term detention for 10-13 year olds, similar was done in section 53 of the Children and Young Person's Act, 1993. The introduction of 'three strike sentences' in Britain, 1999 for burglars where a third time offender for burglary receives 3 years sentence automatically (Powers of Criminal Courts (Sentencing) Act 2000; sec-111). These developments resulted in a substantial rise in juvenile custodial population and punitive responses to offending by children and young people (Graham and Moore, 2006). In Britain, theft and motoring offences were common for prisoners serving short sentences: violence, burglary and drugs offences were common for those sentenced for a year or more (Stewart, 2008).

Many legal systems through their penal laws prescribe mandatory minimum punishment for various offences. Many appreciate the policy of mandatory sentencing claiming that such policy would reduce crime rates. Many also

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argue that such policies would provide uniformity in sentencing for similar crimes. But if this mandatory minimum punishment were too long a period in the prison, it would gradually increase the size of the prison population. “ The Iron Law of Prison Populations states that the size of a prison population is completely determined by two factors: how many people go to prison and how long they stay. If either of these factors changes, the size of the prison population will also change. The corollary to this iron law is equally important: There is no way to change the prison population without changing either the number of people who go to prison or how long they stay there” (Clear & Austin, 2009, p. 312).

#### Unemployment, Poverty and Prison Population-

Is there any nexus between the increasing prison population rates in USA and UK and the economic policies of these states? A possible relationship between unemployment, poverty, crime rate and resulting increase in the prison population rate has been analysed in many studies (Crow, et al, 1989; Box & Hale, 1985). Box and Hale says “ One fairly orthodox view is that rising unemployment leads to crime and this in turn, assuming constant rates of reporting and recording of crimes, arrest, conviction and imprisonment sentences, leads automatically to an increase in prison population.” (p. 209). Similarly it is also argued that unemployment contributes to an increase in crime rate and whenever employment schemes have been effectively implemented; these schemes have a containment effect to keep people from trouble (Crow, et al, 1989). Even though it is also contented that the menace of crime cannot be always linked to the subpopulation of the unemployed (Box & Hale, 1985, p. 209), it is also

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argued that unemployment certainly is a factor though not in a direct way, but in an indirect and complex way (Crow, et al, 1989). Most commonly in US and to lesser extent in Britain the most influential explanation imputed rising crime and riots to newly jobless marauding underclass (Downes, 2001). Unemployment caused by the recent economic recession also increased the prison population according to some scholars. " The disappearance of many secure jobs in the low-skilled or manufacturing sector after the collapse of Fordism led to the creation of a large minority of unemployed or insecurely employed people who were protected by the social welfare system. The economic exclusion of this large group, along with their sense of their own relative deprivation fed both rising crime and a heightened sense of insecurity and demand for punishment among those securely employed" (Lacey, 2008, p 10). The concern with the crime and fear of victimisation has grown out of proportion ; fear which typically is most focussed on traditional ' street crimes' and crimes allegedly committed by powerless minority groups across Europe and US, as increasing prison population consist of ' minorities' and ' foreigners' (Marshall, 1996).

#### Politics of ' Tough on Crime'-

The policy to be ' tough on crime, tough on the cause of criminal' was adopted by Britain from the Americans Democratic Party's approach (Pease, 1997; Ryan, 1999). In the U. K "...from 1970's on, law and order has become a salient electoral issue; and on Tony Blair's accession to the position of shadow Home Secretary, Labour began to abandon its traditional analysis in favour of a ' tough on crime, tough on the causes of crime platform" (Lacey, 2008, p 10). The situation being this political parties do not have much



option except to be tough on crime. " In particular the support for strong law and order policies among a growing number of ' floating' median voters led to a situation in which criminal justice policy became highly politicised" (Lacey, 2008, p. 10). " The sad fact, moreover, is that the size and demographic structure of the prison population suggest that the socially exclusionary effects of the ' tough on crime' part of the criminal policy equation have, in relation to a significant group of population systematically undermined the, inclusionary ' tough on the causes of crime aspiration. The rate of imprisonment has continued inexorably even in a world of declining crime" (Lacey, 2008, p 11). New policies formulated by the Crime & Disorder Act 1998, inspired from American ' zero tolerance' policing and prosecution led to increase in prison population to approx 75, 000 prisoners in 2003 (Downes, 2001; Home office, 2003). The large-scale imprisonment of drug offenders in US also became a major factor in prison population growth (Donzinger, 1996; Blumstein & beck, 1999). The punitive response to drugs has been so potent, that drug trafficking lead to longer prison sentences than for homicide (Caplow &Simon, 1999).

Too many laws and too many crimes-

Anthony Gregory, who is a Research Analyst at the Independent Institute, cites a different reason for America's top rank in prison population. He says that it is because US have too many laws that prevent persons from enjoying " their right to liberty, property, and the pursuit of happiness" (Gregory, 2006). He says, " Those who have committed no crime against person or property should be released from the jails and prisons. These include drug offenders, sex workers, those in possession of illegal guns, and anyone else

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who has hurt and threatened no one, whose only offence was to violate a victimless crime statute” (Gregory, 2006). He further adds that “ As for minor property criminals, justice should be about making the victim whole, not about expensively caging people just to provide jobs for the prison guards, money for the bureaucracy, and talking points for tough-on-crime politicians” (Gregory, 2006). It is also noted that the law enforcement oriented approaches in most of the Western Europe have caused persons sentenced for drug offences to make up an increased percentage of prison population (Dunkel & van Zyl Smit, 2001). Even the use of remand and parole system contributed massively in prison population in both US and Britain. In UK, 2008 there were approximately 12, 566 males and 874 females on remand, while only 1424 males and 96 females were held in prison for non-criminal offences (Home Office, 2008).

Connecticut Department of Corrections Committee on Prison Overcrowding-

In the year 2000, the Department of Corrections in the State of Connecticut constituted a Program Review Committee to study the main factors causing the prison overcrowding problem and the options available to the legislative and executive and judicial branches to control the growth of the inmate population (Connecticut General Assembly, 2000). The committee report showed most of the causes of prison overcrowding occurred outside the administration and jurisdiction of the Department of Correction and these complex issues and problems cannot be addressed by a single state agency (Connecticut General Assembly, 2000).

The Committee identified five main causes of prison overcrowding- firstly, despite the decrease in arrest and crime rates, the number of offenders in prison or jail continued to increase due to the ' war on drugs', increased funding for police, increased role of victims and victim advocacy groups in the court process, recidivism and technical violations of probation and parole, harsher penalties for certain types of crimes, and alternative sanction options; secondly, convicted inmates were remaining incarcerated for a greater portion of their court-imposed prison sentences as a result of the shift from an indeterminate to a determinate sentencing structure, elimination of ' good time', creation of time-served standards for parole eligibility, and the enactment of several ' truth in sentencing' initiatives; thirdly, the aggressive ' tough on crime' approach supported by the legislature and adopted by the executive and judicial branches allows the criminal justice system to narrow its use of discretion and take a more conservative and less controversial approach to punishment; fourthly, lack of prison beds, especially high security and pre-trial beds, forced Department of Correction's to operate at capacity and; lastly, poor planning and a lack of an accurate population projection and offender needs analysis contributed to the cycle of overcrowding and hampered Department of Correction's efforts to adequately plan for new or expanded facilities" (Connecticut General Assembly, 2000).

The concept of private prison also to some extent leads to increase in prison population. Private prison is a place where individuals are physically confined by private parties. Private prison companies enter into contractual arrangements with local, state, or federal governments that commit

prisoners and then pay a per diem or monthly rate for each prisoner confined in the facility. Privatization of prisons refers both to the takeover of existing prison facilities by private operators and to the building and operation of new prisons by for-profit by prison companies. Proponents of privately run prisons argue that cost-savings and efficiency of private prisons are advantages over public prisons, even though doubts have been raised regarding the cost effectiveness of private prisons. An important criticism is that private prisons would lead to a market demand for prisoners and efforts by private companies to ensure prison population is on the rise. This may create a lobby of interested individuals who would purposely impede the cause of lessening of prison population. The reasons are many. It is more money for the private prisons management if they get more inmates. More number of inmates means more money from the State and the cheap prison labour (Smith, 1993).

#### Desirability of Stemming Prison Overcrowding and Risks involved-

One prominent reason for stemming prison overcrowding is that there seems to be little or no nexus between the duration a prisoner spends in the prison and his chances of reformation. Offender do not always reform and refrain from doing a crime after release. Prisoners do not become less likely to commit crimes upon release, increasing the prison release rate seems to have little disadvantage, certainly, some prisoners will commit crimes upon release" (Jacobson, 2005, p. 310 311). The conclusion we can draw from this analysis is that the size of the prison population and the amount of crime are related, but not strongly. A 'tough on crime' punishment policy decreases crime rate and provides a smooth functioning of the society and would also

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increase the efficiency of the market. But at the same time long imprisonment term is not related to the prisoner's likelihood of staying crime free. The issue which requires deeper analysis is on the risks involved in increasing release rate and stemming prison overcrowding.

There are obvious advantages of imprisonment. Imprisonment is not totally undesirable; rather, imprisonment achieves most aims of punishment. The theories of punishment, such as the utilitarian, restorative, retributive and reformative justifications, suggest aims of punishment and look at punishment as a means to a definite end. These theories and justifications influence the penal policy of the state. Jeremy Bentham the prominent utilitarian says, " The business of the government is to promote the happiness of the society, by punishment and rewarding , .. In proportion as an act tends to disturb that happiness, in proportion as the tendency of its pernicious will be the demand it creates for punishment" (Bentham, 1789, Chapter 1). According to another author, " The degree of punishment, and the consequence of a crime, out to be so contrived as to have the greatest possible effect on others, with the least possible pain to the delinquent.." (Baccana, 1809, Chapter 11).

Similarly efforts have been made by scholars to analyse the purposes of punishment from an economic perspective. Richard Posner writes, " The major function of criminal law in a capitalist society is to prevent people from bypassing the system of voluntary compensated exchange-the market, explicit or implicit- In situations where because transaction costs are low, the market is a more efficient method of allocating resources than forced exchange...Most of the distinctive doctrines of criminal law can be explained

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as if the objective of that law were to promote economic efficiency” (Posner, 1985, pp 1230-31). Core of Posner’s argument is that punishment is for market efficiency. Similarly the retributive justification considers that if a punishment is proportionate to the wrong that has been committed by the offender that is justifiable. The gravity of the punishment also needs to be viewed from the victim’s perspective (Kant, 1887).

Crime is a major social problem. If the crime rate in an economy is uncontrolled, it will definitely affect the efficiency of its market. If an investor were given an option, he would definitely invest in that economy where his money would be secure and protected from criminals and mafias (Pyle, 2000). At the same time maintaining of prisoners for a long duration in the prisons is also viewed to be uneconomical (Clear & Austin, 2009, p 307).

The JFA report, provided ways to reduce prison population in US (Austin, 2007) – the time served in prison should be reduced, technical parole and probation violators should not serve time in prison for such behaviour and people convicted for ‘victimless’ crimes should not be sentenced to state prison as in case of drug offences etc (Austin, 2007, p 23-24).

Thus, all these problems can be tackled and prison population can be controlled firstly, by bringing a change in the outlook of the people towards crime and punishment, so that less use of prison, instead use of alternative for prison should be made. A change in the legal and legislative framework of sentences is required, to bring down the custody rates and sentence lengths served by the offenders. Improvement in understanding of the various ranges of non-custodial penalties including the fine among sentences should

be imposed (Hough, et al, 2003). In, addition imposition of day fines to be readily applied in US and Britain, as they have been successfully used in countries like - Germany, Austria and Sweden to reduce the use of short prison sentences (Scottish Consortium on crime and Criminal Justice, 2005).

#### Conclusion-

From proactive and human rights perspective it is always desirable to stem overcrowding.

The less likelihood of transformation as result of long term in prisons and continuing a tough on crime policy by the state requires a rethinking about the existing long-term punishment policy. It is suggested “ that prisoners can serve shorter sentences without triggering an increase in the crime rate. Furthermore, maintaining a large prison population does not necessarily significantly decrease the number of crimes committed” (Jacobson, 2005, p. 311). According to Jacobson any solution to the problem of mass incarceration must begin with two points, firstly, programmatic tinkering has not reduced the prison population to date, and it will never have much effect, even under the most optimistic assumptions and secondly, to overcome mass incarceration requires that we incarcerate fewer people, reduce length of stay for persons placed on probation and parole and make greater use of fines, restitution, and community service in lieu of probation (Jacobson, 2005). If “ mass imprisonment is the problem then the solution is to change the laws that send people to prison and sometimes keep them there for lengthy terms, that is reducing the number going in, their length of stay, or both” (Jacobson, 2005, p 316). “ Provision should be made for an

appropriate array of community sanctions and measures, possibly graded in terms of relative severity; prosecutors and judges should be prompted to use them as widely as possible" (Council of Europe, 1999, principle 2). It is also suggested that " States should consider the possibility of decriminalising certain types of offence or reclassifying them so that they do not attract penalties entailing the deprivation of liberty" (Council of Europe, 1999, principle 4). " Measures aimed at combating prison overcrowding and reducing the size of the prison population need to be embedded in a coherent and rational crime policy directed towards the prevention of crime and criminal behaviour, effective law enforcement, public safety and protection, the individualisation of sanctions and measures and the social reintegration of offenders" (Council of Europe, 1999).