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# Imprisonment: A Boon or a Bane?

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## ABSTRACT

*Imprisonment takes away a person's freedom and liberty but at times removing the accused from the society becomes a necessity for the welfare of society itself and that of the prisoner too. But many a times, such imprisonment have been proven to defeat the main objective of imprisonment as innocent prisoners associate with the hardened criminals and engage further in the illicit and illegal activities. There are different types of prisons for different classes of prisoners which has proven to be beneficial but the occupancy rate in India is presently 130% which causes problems as many prisons are overcrowded and in turn this leads to issues like poor sanitation, hygiene, accommodation etc. The prison system in India has developed through various time periods in various ways which led to the present prison system prevailing in our country, although the present prison system can be said to be as a remnant of the british period's prison system. However, presently, prisoners have also been conferred with several rights from many acts like the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and also from the Constitution of India and various other acts. A vast portion of Indian Budget is allocated to the prison expenditure wherein 77% of prisoners are awaiting trial. This is the reason why several committees were established by the government of India to give suggestions and recommendations for the reduction of undertrial prisoners thus solving the issue of overpopulation in the prisons. These committees were also responsible for several prison reforms in India. However, imprisonment have many effects, and not just on the prisoner but on the society as well. The prisoner is obviously affected socially, psychologically, and economically but the society also gets affected, and not always in a good way as imprisonment does not always fulfil its objective of prevention of crime and rehabilitation of criminals.*

**Keywords:** *Imprisonment, Undertrial, Rehabilitation, Prison System, Overcrowded.*

## I. INTRODUCTION

The term "imprisonment" is derived from the French word "emprisonnement". In the language of a layman, imprisonment can be viewed as legal or statutory confinement of persons, whether under trial or finally convicted. The Cambridge Dictionary defines imprisonment as the act of putting someone in prison or the condition of being kept in prison.

From the provisions of the Indian Penal Code, 1860, imprisonment can be viewed as something

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which takes away a person's freedom. Confining someone in prison, or generally anywhere, violates the fundamental right enshrined in Article 21 of the Constitution of India, i.e., Protection of life and personal liberty. According to section 53 of the IPC, there are two kinds of imprisonment: Simple imprisonment and Rigorous imprisonment. Also, if any person is in imprisonment, there are many rights which have been mentioned in the provisions of the Code of Criminal Procedure, Constitution of India and in several other acts for the proper and humane treatment of the prisoners as well as to ensure speedy trial and justice in case the person imprisoned is awaiting trial and in the event of convicted prisoners, to ensure they are not getting mistreated.

The Oxford English Dictionary defines prison as a place properly arranged and equipped for the reception of persons who by legal process are committed to it for safe custody while awaiting trial or punishment.

Every person committed to imprisonment by the process of legal proceedings has its own purpose. These purposes can include protection of public from criminals who have committed a heinous crime, deterring the criminals from repeating the commission of crime time and again, punishing the criminals by depriving them of their freedom and personal liberty and removing them from society, giving the criminals an opportunity to change themselves and transforming them into a law-abiding citizen.

## **II. DEVELOPMENT OF IMPRISONMENT SYSTEM IN INDIA**

As the use of capital punishment began to decline in the late 18th century, the prison was increasingly used by courts as a place of punishment, eventually becoming the chief means of punishing serious offenders. The use of imprisonment subsequently spread worldwide, often by means of colonial empires that brought the practice to countries with no indigenous concept of prisons. By the early 21st century most countries had abolished the death penalty (in law or in practice), and imprisonment was consequently the most severe form of punishment their courts could impose

In India, the evolution or, the development of the prison system can be divided into 3 phases.

The first phase was from the Vedic period. In ancient time, the structure of society was based on the principles pronounced by Manu and explained by Yagnavalkya, kautilya and others. Imprisonment was the easiest kind of penalty known importantly in ancient Indian Penology among the various kinds of bodily punishments such as branding, hanging, mutilation and death.

This type of punishment was suggested in Hindu scriptures that the wrongdoer or evildoer was

put into prison to set aside him from the society. The main aim of imprisonment was to keep away the wrongdoer and not corrupt the members of society. These prisons were totally dark hole, cool and damp, unlighted and unwarmed. Thus, the prisoners were mistreated, not given even the least humane treatment, tortured, and had to face intolerable non-humane treatment.

Post the Vedic period, comes the Mediaeval India. Mughals were the one who ruled India at the time and thus the source of law at that time was The holy Quran.

Crimes have been categorised as crimes against God, crimes against state and crimes against private persons. The punishments for these crimes were divided into four categories that is Hadd, tazir, quisas and tasir. Imprisonment was rather used as a means of detention than as an ordinary punishment for the commission of crimes by ordinary criminals. There were fortresses which were situated in different parts of the country in which criminals whose trial and judgement was pending, were detained. The only redeeming feature of the prisoners was that the order for his release was issued on special occasions.

And at last, the advent of Modern India comes into picture. The present prison system of our country is a gift of the British rule. It was a creative creation of the colonial rulers our local penal system with the motive of making imprisonment a terror to wrong doers. In 1835 Lord Macaulay drew the attention of the Legislative Councils of India towards the unacceptable conditions of the Indian Jails and proposed to appoint a committee for the purpose of collecting information related to the condition of the Indian prisons and preparing an improved plan of prison discipline and for the suggestion related to the reforms in the prison due to this the jail will become the model for other prisons. On the report, suggestion, and advice and in the pursuance of the recommendations of the committee a Central Prison was established at Agra in 1846.

In 1919-20, Sir Alexander Cardia led the Indian Jails Reform Committee to give recommendations for the reformation of Indian Prisons. The committee suggested rehabilitation strategy too after reviewing the prisons system all around the world. This commission gave recommendations related to the separate institution like Borstal school for juvenile developments. Offenders whose trial is pending should be kept separate from the convicted offender, there should be classification of habitual and casual offenders between the adults. This prison reform system received a sudden obstruction due to the constitutional changes which was brought by the Government of India Act, 1919. This Act transferred the control of the Jail Department from the Government of India to the Provincial Government. After the Independence of India there was increase in the reforms of prison. Indian leaders were

ready with blue print for the industrial development of the country, but the jail reforms could not escape their eyes as all of them passed their prime life in the jail.

Under the Indian constitution prison administration was the subject of state. This organisation was headed by the Inspector General of Prisons. This organisation consists several central prisons, sub jails, district jails. All states adopt different patterns of jail administration. The central jails are intended for long term prisoners who were convicted in court.

### **III. TYPES OF PRISON**

**Central Jail:** The prisoners who have been sentenced a longer period of imprisonment, i.e., more than 2 years, are generally put into central jails. These jails have larger accommodation and rehabilitation facilities to re-integrate morality in the prisoners who have committed a crime of heinous nature. In these jails, the prisoners earn their wages by doing hard work and get an opportunity to reform themselves. There are a total of 148 central jails in India as per the latest NCRB data.

**District Jail:** Central and District jails are almost same except that, that district jails are considered as the main jail in states and union territories where there are no central jails. As per the latest NCRB data, there are a total of 424 district jails.

**Sub-Jails:** These are the smaller institutions situated at the sub-divisional level and for this very reason, are well organised and properly set up in comparison to other jails. There is total 564 sub-jails.

**Open jails:** These jails are considered as the best category of jails. The reason is that that the prisoners are allowed to engage in agricultural activities and earn for their families. Only those prisoners who possess good behaviour and satisfy the norms which are prescribed in prison rules are admitted in this prison. These prisons are also the minimum-security prisons since the prisoners are not confined within the four walls or any area but are actually allowed to work and earn. First open jail in India was introduced in the Kerala by the Home Minister of Kerala P.T. Chacko in Nettukaltheri near Neyyar Trivandrum on 28 August 1962. At present, a total of 88 open jails are there.

**Special Jails:** These prisons are maximum security prisons as the prisoners who are confined in such jails are the ones who were involved in terrorism, are habitual offenders, have a very violent and aggressive nature toward other inmates or have seriously violated prison discipline. The NCRB data points out a total of 41 special jails.

**Women's Jail:** As the name suggests, these jails are exclusively for female prisoners with female

staff members. These jails are existing at sub-divisional, district and central level. A total of 32 women's jails are existing at the present time.

**Borstal School:** It is a type of youth detention centre exclusively for minors and juveniles to ensure their proper care, welfare and reformation who are in conflict with law also to shield them from the infecting atmosphere of the prison by providing them educational and vocational training through trained teachers. There are total 19 borstal schools in India.

**Other Jails:** Jails which do not fall under the above-mentioned categories then these jails are come under the category of other jails. Only three states have other jails which are Karnataka, Kerala and Maharashtra.

#### **IV. CONSEQUENCES OF IMPRISONMENT**

The consequences of imprisonment can be viewed in various aspects such as social, psychological, and economical. After a person completes his term in jail and re enters in the society, it has been observed that even after being punished he is not accepted by the society. He leaves the prison but that does not really leave him. The prisoners are often boycotted and treated improperly after they come back. They are given educational and vocational training in prisons but only once in a blue moon any of the prisoners gets to earn livelihood by virtue of that as generally nobody hires such prisoners. And thus, this adds to their economic distress. There are prisoners who come back and again commit crimes but there also some of them who have actually worked on themselves to fit into the society again. But such reformation goes in vain when they are not accepted in the society on their return. This in turn affects them psychologically making them feel guilty and self-conscious all the time. Such prisoners often have low or no self-confidence and are not motivated at all to restart their life. And so sometimes these social and psychological distress again instigate them to commit crimes. Sometimes a person is convicted for committing a crime as basic as theft and is forced to imprisonment for a longer period and their whole life gets ruined because even after coming back and trying to start a new life, nothing comes out of it.

Thus, the consequences of imprisonment can be very disturbing and instead of prevention and lowering of crime, the rise in crime rates can be seen because of the above mentioned treatment of prisoners.

#### **V. EFFECT OF IMPRISONMENT ON CRIME RATES**

There has been a lot of studies to study the effect of imprisonment on crime rates and the results are varying. Some study suggests that recidivism rate goes up as a consequence and some

suggest that it goes down.

Generally it has been found that longer prison sentences were not associated with reduced recidivism, in fact, the result was completely opposite, i.e., longer prison sentences resulted in 3% increase in recidivism.

While some research shows that within a decade, a criminal career typically ends and recidivism rates fall majorly after a decade of imprisonment, wrote Senior Research Analysts Nazgol Ghandnoosh and Ashley Nellis. The paper analyzed year-end prison population data from the National Corrections Reporting Program, prison data from the Bureau of Justice Statistics and public data from agencies across the country. The report's authors argue that studies conducted using numerous research methodologies have demonstrated that long prison sentences imprison individuals who are no longer a threat to public safety.

To examine how prison affects violent crime, a study compared people sentenced to prison to those sentenced to probation supervision in the community, using data on all individuals sentenced for a felony in Michigan between 2003 and 2006. The study found that sentencing someone to prison had no effect on their chances of being convicted of a violent crime within five years of being released from prison. This means that prison has no preventative effect on violence in the long term among people who might have been sentenced to probation.

Thus, it is not possible to predict the accurate effect of imprisonment on crime rates and that is the reason why alternatives to imprisonment are implemented presently.

## **VI. PRISON BUDGET AND EXPENDITURE**

Provision of adequate fund is prerequisite in effective functioning of prison institutions. In this context, information on prison budget with details of sanctioned budget, plan expenditure, nonplan expenditure and other expenditures have been collected and presented in this chapter. Besides, information on cost of maintenance and development of various infrastructures in jails have also been presented separately. The sanctioned budget for the year 2021-22 (Rs.7,619.2 crores) has increased by 13.0% in comparison to the year 2020-21 (Rs. 6,740.6 crores) at All-India level.

The allocated annual budget was the highest in Uttar Pradesh (Rs. 1,204.5 crores) during 2021-22 among all the States/UTs, followed by Bihar (Rs. 797.3 crores), Karnataka (Rs. 467.3 crores), Madhya Pradesh (Rs. 462.4 crores) and Delhi (Rs. 461.2 crores).

Expenditure on specific planned activities under the Five-Year Plan is termed as Planned expenditure. The highest Plan expenditure was reported in Haryana (Rs. 350.3 crores) followed

by Karnataka (Rs. 193.1 crores) and Jharkhand (Rs. 115.0 crores) during 2021-22.

Expenditure made for meeting day-to-day expenses and running establishments like payment of salaries, wages, rent, etc. come under the non-Planned expenditure. Non-Planned expenditure may also include activities for development of existing infrastructure and bringing about improvements in the prisons. The highest non-Plan expenditure was reported from Uttar Pradesh (Rs. 928.6 crores) followed by Bihar (Rs. 541.0 263 crores), Delhi (Rs. 440.8 crores) and Madhya Pradesh (416.1 Crores).

The share of expenses on inmates in total annual expenditure at National level is 31.3%. States which are spending significantly less than the National Average are Nagaland (5.6%), Arunachal Pradesh (7.6%), Himachal Pradesh (8.0%), Puducherry (8.6%), Tripura (9.9%), Ladakh (10.0%), Goa (10.5%), Manipur (12.2%), Karnataka (12.9%), A & N Islands (13.1%), Mizoram (14.0%), Punjab (14.7%) and Maharashtra (15.6%).

Approximately, 54.3% of the total money spent on prison inmates was for Food only. Delhi has reported the highest medical expenditure of Rs.28.01 crores during 2021-22 followed by Uttar Pradesh (Rs.13.50 crores) and Madhya Pradesh (Rs.12.58 crores).

West Bengal has reported the highest expenditure (Rs.10.32 crores) on welfare activities of prison inmates followed by Kerala (Rs.4.77 crores) and Jharkhand (Rs.2.67 crores) during the financial year 2021-22.

Bihar had spent considerable amount of Rs.5.67 crores on clothing during the financial year 2021-22.

Out of 20 States/UTs, which reported vocational/ educational expenses on inmates for the financial year 2021- 2022, the highest expenditure was reported from Chandigarh (Rs.4.65 crores) followed by Karnataka (Rs.3.71 crores) and Chhattisgarh (Rs. 2.43 crores).

Haryana (Rs.306.52 crores), Delhi (Rs.162.48 crores) and Andhra Pradesh (Rs.141.89 crores) have reported maximum expenditure under the head 'Other expenses'.

During 2016-17 to 2021-22 (Chart12.3), the sanctioned annual budget has increased by 39.5% (Rs. 5,463.38 crores in 2016-17 to Rs. 7,619.20 crores in 2021- 22) and the actual expenditure has increased by 36.0% (Rs. 4,944.73 crores in 2016-17 to Rs. 6727.30 crores in 2021- 22). During the financial year 2016-17, 90.5% (Rs. 4,944.73 crores spent out of Rs. 5,463.38 crores) of the sanctioned budget was utilized, whereas, during the financial year 2021-22, 88.3% (Rs.6,727.30 crores spent out of Rs.7,619.20 crores) of the sanctioned budget was utilized.

## **VII. REFORMATION OF PRISON IN INDIA**



Although imprisonment is the final stage of the criminal justice process, but prisoners are both undertrials and convicted. Moreover, children whose either or both parents are prisoners are also confined in the premises of jail with their parents if they do not have any guardian to look after them outside. Generally, children up to the age of 6 years are kept in jail with their parents. “Prisons” and “persons confined in prison” comes under Entry 4, List II (State List) of the 7<sup>th</sup> Schedule of the Constitution of India.

There are many issues in the prison system of India, such as overcrowding (the jails of India have an occupancy rate of 130% as per the latest NCRB data), undertrial prisoners, pendency of cases, shortage of staff etc. Women prisoners face several difficulties such as custodial rape, poor hygiene and sanitation, inadequate dietary intake, sexual abuse. The prisoners are also exposed to torture, indignable bodily pain, custodial violence, cruel psychological torment, violent altercations. Moreover, the general public is also put at risk when the prisoners are conferred with life endangering infectious diseases such as tuberculosis, HIV etc.

Thus keeping the above issues in view, various committees were established by the government of India to improve the conditions inside prison.

All India Committee on Prison Reforms Report (Mulla Committee) gave recommendations for the reformation of prisons. The suggestions included proper accommodation for items like clothing, food, hygiene and ventilation to improve the state of jails nationwide. It also recommended properly trained personnel divided into various cadres along with regular visits by public, media and other correctional facilities to know first-hand, the conditions inside the prison and collaborate with prison administrators for rehabilitation facilities. Reduction of under trial prisoners through expediated trial and liberal bail provisions was also laid out as a recommendation.

Recommendations of Law Commission in 268<sup>th</sup> report of prison reform: It was recommended that persons convicted for up to 7 years should be released after they have served 1/3<sup>rd</sup> of their term and persons convicted for longer period than 7 years should be released after they have served ½ of their term. Also, it was laid down that magistrates should not issue mechanical remand orders and police should avoid unnecessary arrest.

Same valuable recommendations were also given by Justice Amitava Roy Committee of prison reforms. Justice Amitava Roy was the chairman of 3-person committee established in 2018 to study the jail reforms and give suggestions on prison overpopulation. The suggestions given were laid out as establishment of special fast track courts to handle minor offences outstanding for more than 5 years. It was also brought in view that persons charged with minor crimes who

had been granted bail but are unable to furnish surety should be released on personal recognizance (PR) bond and also a national mission should be established for legal reforms and delivery of justice.

At last, comes the Krishna Iyer Committee on prison reforms which was established in 1987 by the government of India for evaluating conditions of women prisoners. The committee recommended more recruitment of women in police force as it had a special role in dealing with women and child criminals.

### **VIII. ALTERNATIVES TO IMPRISONMENT**

Since the inception of society, commission of crime has been a constant. People commit crimes out of their greed, vengeance, anger, etc and consequently, are generally committed to imprisonment to protect the society from such criminals and to reform the criminals and re-integrate morality and emotion in them.

However, it has been seen that the objective of imprisonment has been defeated many times when the persons convicted for petty offences have been imprisoned and there they brought in the company of the hardened criminals and form gangs to perform illicit activities and harm the society. So, imprisonment instead of reforming and protecting the society brings more dangerous and heinous criminals out in the public endangering the innocent ones.

With the increased awareness of the disadvantages of imprisonment, several alternatives have been brought into light to prevent and protect petty offenders to converting into heinous ones.

Some of the alternatives are absolute and conditional discharge, fines and compensation, probation, plea bargaining, compounding of offences etc.

A fine is a preliminary penalty imposed upon a person who is held guilty of a crime. Fine is a modern development however very little attention is paid to this form. Fines have proven to be beneficial in a number of ways as it prevents overcrowding of prisons, acts as a revenue for state and can be adjusted according to the means and financial status of the offender, i.e., if the offender is poor, his means shall be considered before imposing fine while a rich man can be fined 10 times more than the poor one account being taken of all the means in his possession for the payment of fine. However, in cases where the accused cannot pay fine, is also committed to imprisonment. Provisions for such imprisonment have been provided under the Indian Penal Code, 1860.

Probation is a form of extra-mural form of treatment i.e., treatment outside the four walls of the prison. The objective of probation is to prevent the petty and first-time offenders from becoming

a heinous criminal by company of the hardened offenders in the prisons. The purpose is to reform them and bring them into society with the help of experts and learned counsels. In India, the Probation of Offenders Act, 1958, provides for a uniform law on probation of criminal offenders.

A discharge in its most basic sense means that the courts set free the offender while holding him guilty. The provisions for absolute and conditional discharge are provided under Section 360 of the Code of Criminal Procedure. The main objective is to prevent the young offenders from interacting and living with hardened criminals and committing further illicit activities. The court releases the person on discharge instead of sentencing when the court is of the opinion that such a person is not a threat to the society.

Section 320 of the Criminal Procedure Code provides for compounding of offences which basically means that the court allows settlement of differences between the injured parties and the accused in exchange for some gratification.[6] There are certain category of offences like mischief, criminal trespass and assault which can be compounded without the permission of the court and between the parties themselves. However, certain more serious offences like theft, cheating, criminal breach of trust etc, require prior permission from the court before being compounded.

Plea bargaining in its most basic form means bargaining for a lesser sentence. Under plea bargaining, the accused and the public prosecutor bargain wherein the accused presents a no content in exchange for a lesser sentence. This process saves the time of the courts and the public prosecutor. In India, the concept of plea bargaining was upheld for the first time in the case of *State of Gujarat V. Natwar Harchanji Thakor*, wherein a division bench of the Gujarat High Court ruled that the very object of law is to provide easy, cheap, and expeditious justice and therefore fundamental reforms like plea bargaining are inevitable and necessary.

## **IX. CONCLUSION**

Thus, it can be concluded that imprisonment can be a boon and a bane, both. If the prisoners actually reform and come back in the society with integrity, it is a very relevant contribution to the society as there is one less criminal present among us.

However, if the same person gets in bad influence, then after being released from prison or even while being in prison, can prove to be very fatal for the society.

Since a major portion of Indian Budget is allocated for prison expenditure, it is critical that the prisoners come out as reformed and a law-abiding citizen because otherwise, all the financial

and economical resources would go in vain. Moreover, the wastage of resources is not the sole concern here, the society won't be a safe place to live in and enjoy the basic rights.

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