
PRISON REFORMS AND ALTERNATIVES TO INCARCERATION

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ABSTRACT

“Society prepares the Crime; the Criminal commits it.” -Henry Thomas Buckle. These words of famous historian Henry Thomas Buckle highlight the role of society in shaping the mindset of a criminal. Crime is inevitable but can be reduced. The entire Criminal Justice System regulates Law Enforcement and Punishments to reduce crime rate in any society. Prisons stand as an important pillar of the Criminal Justice System. In India, Prisons are a gift of colonial era but with the changing needs of society, dynamics of Criminal Justice System change and so does the form of punishments and prisons. Prison Reform is a longstanding topic of concern in India and there is emergence of Reformatory Justice. This shift towards Reformatory Justice can solve the existing prison problems like overcrowding, lack of basic facilities, infrastructure etc. Incarceration is not the only way out in every case, segregating the offenders by sending them to jails does not suffice. Rehabilitation and Reintegration of reformed individuals back into the society after completion of their sentence is need of the hour and to make this practical it is important to look for some alternatives to Incarceration. Alternatives to Incarceration can be – Probation, Open Prison, Admonition, Community service, Fines and Compensatory mechanisms for victims. As per the theories of Deterrence and Retribution, the traditional practice of imprisonment is the most awarded form of punishment. But imprisonment can be avoided in less serious offences, non-violent or first-time offenders. This paper navigates the reason for choosing alternatives to Incarceration, focusing on Rehabilitation, reduced Recidivism, and better Community Engagement of the reformed individuals. Incarceration is a financial burden on the state which can be reduced by opting for Alternatives. Traditional Incarceration often fails to address the root causes of Criminal behaviour thus, more suitable techniques of punishing the individuals with a broader mindset can be adopted. This shall reduce the financial burden on State, reduce Prison problems, and allocate the funds for a more outcome based societal approach.

Keywords: Prison Reforms, Reformatory Justice, Incarceration, Alternatives to Incarceration, Criminal Justice System, Rehabilitation.

Introduction

“Society prepares the Crime; the Criminal commits it.” -Henry Thomas Buckle. These words of famous historian Henry Thomas Buckle highlight the role of society in shaping the mindset of a criminal. When we talk about Crime it is inseparable from society and cannot be eradicated completely. The genesis of crime takes place into criminal minds and major contributors are the surroundings of a criminal as no one is a criminal by birth. For an instance a son of police officer if born and brought up with criminals can become a criminal and a son of a thief born and brought up with police personnel can become a police officer. Therefore, the genesis of crime takes place in the mentality of a person which starts getting shaped as and when he meets criminal minded people, watches content and people indulging in crime around him, social media etc. Thus, it is inevitable to navigate through the mentality of a criminal and treat him like a patient with the disease of crime.

Prison System is designed to isolate the criminals from the society and subject them to a life of strict discipline, labour work and daily routine with only the daily essentials guaranteed to them under constant supervision. Traditionally, we had the system of prisons developed in colonial rule in India where it was observed that this system was used to detain the freedom fighters and torture them. This would act as a deterrence in the minds of people who were retaliating against the British Government. But, now after 78 years of Independence, there is a paradigm shift in the colonial mindset and the system of prisons. The passage of New Criminal Laws is also a major contributor in this shift.

Need for Prison Reforms

It is notable that the Prison system is one of the most important pillar of the Criminal Justice System. The forms of punishments and how they are executed largely depends upon the prison system of a country. In 1955 United Nations passed the Mandela rules that is –“ Standard Minimum Rules for the Treatment of Prisoners” which prescribes rules for humane treatment to prisoners and respect for their dignity universally across all the prisons. These rules were named in the honour of Nelsan Mandela an activist in South Africa who served 27 years of imprisonment for political charges.

Therefore, the movement of Human Rights and prisoners’ rights is globally addressed by the United Nations through various instruments and also at the National Level by each country.

But, still there has been a constant concern of prisoners conditions across the globe due to various reasons like- overcrowding, discrimination, prison offences, lack of adequate prison infrastructure and staff, neglect by government, prolonged incarceration period, delayed trials and problems of undertrial prisoners, harsh forms of punishment etc. There has been a change in the theories of punishments from times ancient, medieval to modern times. But, the change in theories of punishments requires change in prisons as well.

Prisons in India

In India during ancient period the Prisons were used to isolate the criminal from the society so that they cannot infect the society with crime. They have evolved as social control institutions, shielding and cutting prisoners from the outside world. Prisons were initially based on principles of retribution and deterrence, which were punitive in character.¹ In the colonial era also the same pattern continued with the passage of British criminal laws relating to punishments and criminal procedure. But, the British rulers also practiced a primitive criminal justice system with very less scope of reform in punishments and economic exploitation of prisoners was added. The Prisons Act of 1894 was passed by the British Legislators in India for prison administration and is in force even today though it is outdated law. In current Indian scenario, the theory of punishment under the Criminal Justice System is shifted from Deterrent and retributive to Reformative and rehabilitative approach. This shift also marks or rather demands a change in existing Laws. Prisons being a State subject in List II of the Constitution, not much can be done by the Parliament other than passing Model Laws which has been passed in 2023. The Model Laws of 2023 covers various aspects of modern prison system, use of Electronic means and reformative and rehabilitative measures adopted.

Some of the States are doing good job and have also passed legislations specific to the reformative approach but the problems of prisons remain a longstanding problem and area of concern. The State of Maharashtra has passed the Maharashtra Prisons and Correctional Services Act, 2024 which enumerates about modern Prison infrastructure, reintegration programmes, categorization of prisons, rehabilitative focus etc. It also provides that all Jails in Maharashtra will be connected by an Integrated Criminal Justice system.² Thus, there is a

¹ Geetanjali Das Saikia, Dr. Pritirupa Saikia, Prison System in India, In Ancient Times and in Modern Period- A Critical Overview, Volume 12 Issue 4, IJIRT,(2025)

² Vaibhav Ganjapure, Assembly passes landmark bill to overhaul Maha prison system, Times of India (2024), http://timesofindia.indiatimes.com/articleshow/116514649.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst (last visited 25 January, 2026)

significant change which is coming up in the prison system in India.

Punitive Vs Therapeutic Approach

When we talk about a traditional conception of crime and criminal justice system it is pretty sure that punitive approach is adopted. In the modern era also, punitive system has always been most commonly adopted methods of treatment to the prisoners. In Indian scenario as well the colonial flavor is still persistent in prison systems and existing laws. Though, this fact cannot be denied that some change is coming in the prison system and laws with respect to human rights of prisoners, technological advancement and modernization of prison infrastructure. The Supreme Court has time and again taken cognizance of the plight of prisoners and the responsibility of prison officials to give humane treatment to the prisoners.

Internationally, in 2015 the United Nations General Assembly officially adopted the Nelson Mandela Rules³ and there was a shift towards guarantee of humane treatment to the prisoners. It is a myth that human rights approach towards a prisoner is lenient and punitive approach only can eradicate criminal mentality. To the contrary, criminal mindset can be treated through therapeutic approaches and rehabilitation of the convicts after release. Rehabilitative measures help the prisoners to integrate back into the society. The common saying “*hate the crime and not the criminal*”, just like the words “*Hate the sin not the sinner*” is appropriate to mention here at this point.

The Punitive approach is based on old theories of Punishment like deterrence, retribution etc. and Incarceration works on these lines. The prison environment becomes punitive for prisoners in Incarceration and the reformatory approach and rehabilitative measures do not get success in this setting. There are more chances that a convict may become recidivist after release. Therefore, in lines with the therapeutic approach it is suggested that the mind of the criminal has to be treated like a patient whose mind is diseased. This disease of crime has to be removed which leads to Reformation of the individual and Rehabilitation of the individual into the society.⁴

Therapy is given to the prisoners by holding campaigns inside prison, skill based courses and

³ United Nations Standard Minimum Rules for the Treatment of Prisoners, December, 2015

⁴ Apel, Alexis B. & Diller, James W., Prison as Punishment: A Behavior-Analytic Evaluation of Incarceration, 62(11) J. Behav. Anal. 243-256 (2016).

community engagement. Alternatives to Incarceration can help in achieving the goal of therapeutic approach significantly.

Incarceration and Its Alternatives

The meaning of Incarceration is Imprisonment, the act of keeping undertrials or convicts in prisons to keep them isolated from the society and subjecting them to discipline and labour, hard labour in case of rigorous imprisonment. But, Imprisonment is not the only form of punishment which serves the purpose every time. There are several problems due to the prevalent use of this form of punishment in all serious offences. Overcrowding which is a major problem in prisons of India is aggravated due to Imprisonment and rejection of its alternatives. Prison offences and caste-based discrimination are also the reported problems on prisons due to prolonged incarceration period and lack of reformation and rehabilitation of prisoners. Lack of infrastructure and prison staff is also one of the major problem. Thus, considering the shift in goals of punishment from retribution and deterrence to Rehabilitation, it is suggested to also shift to the alternatives of imprisonment. Simply put, the use of alternatives to imprisonment is a more effective and rational means of responding to crime in many cases and a key measure in mitigating the challenges posed by overcrowded prisons.⁵

Alternatives to Incarceration-

- 1. Probation:** Supervised release with conditions, allowing offenders to reintegrate into society under supervision of probationary officer.
- 2. Fines and Financial Penalties can be awarded in case of** minor offenses and compensation can be awarded to the victims. This serves as a practicable solution and contributes in justice delivery.
- 3. Community Service:** Unpaid work serving the community, promoting a sense of responsibility and civic sense among the offenders.
- 4. House Arrest under Electronic Monitoring** can be adopted as an alternative to imprisonment by adopting restrictive measures for low-risk offenders, using technology

⁵ Office of UNODC, Alternatives to Imprisonment, UNODC Alternatives to Imprisonment(last visited 24 January,2026)

to ensure compliance.

5. Open Prisons also act as an effective system of prisons which serve in reformation and rehabilitation of the convicts as they are subjected to freedom of movement across the prison and carry out various business activities as well which helps them re-integrate themselves back to the society.

6. Parole, Furlough are emergency release from prison for temporary period granted for medical emergency or in case of family function, death etc. **Remission** is reduction of sentence in case of good behavior of the prisoners granted by Government. These remedies are reliefs from Imprisonment and serve the aim of Rehabilitation of prisoners, Reduces prison overcrowding and Promote social reintegration of prisoners.

Advantages of Incarceration

The benefits of Incarceration are reduced recidivism with alternatives focus on rehabilitation, reducing the likelihood of reoffending. These methods are cost-effective and community-based alternatives are often less expensive than incarceration. The financial burden of states can be reduced reducing the use of incarceration as a form of punishment.

The alternatives also boost community integration of offenders as they maintain family and social ties which are essential for reintegration.

Most importantly, alternatives to incarceration have the capability to address the root causes and underlying issues, such as addiction or poverty which incarceration fails to address.

Reformative Justice and Recidivism

Reformative Justice is a long-term goal-oriented conception which proposes about reformation of the criminal not just his isolation from the society. Reformative punishment is founded on the conviction that punishment ought to penalize but, more importantly, to rehabilitate the offender and thereby reintegrate them into society as law abiding citizens.⁶Reformation is beneficial for society as it cures the criminals who are diseased with crime and makes sure that they do not re-offend. Recidivism is a major problem which is found in criminal psychology

⁶ Ananya Kapoor, The Effectiveness of Reformative Punishment in reducing recidivism: evidence-based analysis, Vol 4 Issue 2, ILJRS

when they even turn into hardened criminals after serving long incarceration period. Reformatory Justice and Recidivism are inversely proportional and help in maintaining the balance in society with respect to crime and criminals.⁷

The various theories of Punishment like deterrent theory which was prevalent in the society for creating fear in the minds of other people and set a harsh example by subjecting the offender to very serious form of punishment. Earlier, it was even having the basis of retribution theory which talks about revenge- eye for eye, bone for bone theory. These forms of punishments were harsh and caused gross violation of Human Rights.

With the development of Human Rights and progressive realization by the States about the right to life and dignity it was observed that Right to life and dignity is even granted to prisoners under International Instruments like Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, UN Standard Minimum rules for the Treatment of Prisoners and Basic Principles for the Treatment of Prisoners etc. In India also the Hon'ble Supreme Court has taken cognizance of the problems of prisoners in various cases and upheld the prisoners right to life behind the bars.

Use of Alternatives to Incarceration in Finland etc.

Finland reduced its prison population by adopting a coherent long-term reform policy. In the 1960s, Finnish authorities realized its prison numbers, at 150 prisoners to every 100,000 inhabitants, were disproportionately high compared to its Scandinavian neighbours, which had just 50 to 70 prisoners to every 100,000 inhabitants. Politicians reached a consensus that they should and could deal with prison overcrowding. Systematic legislative reforms aimed at releasing prisoners began after the mid-1960s, and continued up through the mid-1990s.⁸

Finland's experience demonstrates that reducing prison numbers is achievable. The Finns emphasize the importance of strong political will and a systematic strategy that leverages various stages of the criminal justice process. Consensus-based decision-making and involving

⁷ The Campbell Collaboration, 'Correctional Education and Recidivism Reduction: A Meta-Analysis of Studies' (2018) <https://www.campbellcollaboration.org/library/correctional-education-recidivism.html> (Last visited 20 January 2026)

⁸United Nations Office of Drugs and Crime, 'Handbook of basic principles and promising practices on Alternatives to Imprisonment' (2007) https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf (Last visited 10 April, 2026)

diverse stakeholders in law-making help prevent knee-jerk reactions to high-profile cases. A well-informed media also supports this approach. Collaboration between the judiciary, practitioners, police, and researchers, along with training and info-sharing, proved valuable in implementing reforms. Ultimately, Finland found that a humane and rational criminal policy relies on understanding crime, effective justice systems, and broader crime prevention strategies.

Choosing alternatives to Imprisonment has been adopted by several countries like Finland, Germany etc. The Tokyo Rules deal with the objective of sentencing in general terms only. Rule 3.2 provides: “The selection of non-custodial measures shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality, the background of the offender, the purposes of sentencing and the rights of victims.”⁹

Courts can implement the use of alternatives in a manner that meets these multiple sentencing objectives, at least to some extent. This is particularly true where a non-custodial sentence has an arguably equivalent punitive effect to what the judge would otherwise seek to achieve with a prison sentence.

Judicial Appraisal of right to life of Prisoners-

The Hon’ble Supreme Court has in various cases observed that the prisoners retain fundamental rights that is right to life behind the bars as well. Right to life includes dignity, health and protection from torture. The prisoners also have been guaranteed right to speedy trial in the case of **Hussainara Khatoon Vs. UOI**.¹⁰ The right to legal aid also has been recognized for the prisoners. In many of the rulings of Supreme Court there has been constant supervision and strict directions are giving to the State governments, Legal aid cells for failure in providing legal aid to the undertrials as well as convicts. **Maneka Gandhi v. Union of India**¹¹ case recognizes right to life and personal liberty under Article 21 which is not limited to mere animal existence but includes the right to live with dignity. In **Francis Coralie Mullin v.**

⁹ United Nations Office of Drugs and Crime, ‘Handbook of basic principles and promising practices on Alternatives to Imprisonment’ (2007) https://www.unodc.org/pdf/criminal_justice/Handbook_of_Basic_Principles_and_Promising_Practices_on_Alternatives_to_Imprisonment.pdf (Last visited 10 April, 2026)

¹⁰ Hussainara Khatoon Vs. UOI, AIR 1369 (1979)

¹¹ Maneka Gandhi Vs UOI, AIR 597, (1978)

Union Territory of Delhi¹² case the Supreme Court held that the right to life includes the right to live with basic human dignity, even for prisoners. This in turn provides dignity to prisoners. In the **Sunil Batra v. Delhi Administration**¹³ case also Supreme Court emphasized that prisoners do not lose their fundamental rights upon incarceration, except those necessarily curtailed by imprisonment.

In **DK Basu v. State of West Bengal**¹⁴ also the Supreme Court laid down guidelines to prevent custodial violence and protect prisoners' rights. In a recent judgment Supreme court has taken cognizance of caste-based discrimination in prisons in **Sukanya Santha Vs UOI**.¹⁵ The contribution of Judiciary has been enormous in the development of prisoners' rights jurisprudence and upholds the guarantee of right to life to prisoners.

Right to Life and Reformation of prisoners

Guaranteeing the right to life for prisoners can significantly boost their reformation in several ways like recognizing prisoners' right to life promotes dignity, encouraging them to reform. The improved focus on rehabilitation supports shifts from punishment to rehabilitation and reintegration. The theories of punishments with the modern objectives reduce recidivism as a result the reformed prisoners are less likely to reoffend, promoting societal safety. This approach encourages a supportive prison environment, aiding reformation.

Conclusion

When non-custodial measures are used as an alternative to imprisonment, they contribute directly to the reduction of the prison population. They also better support the rehabilitation and reintegration prospects of offenders, which in turn results in long-term alleviation of prison overcrowding. Furthermore, non-custodial measures are often more cost-effective than imprisonment and enable diverting the much-needed resources to support services, such as social, welfare and health agencies.¹⁶ The prison population is much more than the capacity of prisoners which goes up to 120% in Indian Prisons. To solve this existing problem of overcrowding and for effective guarantee of right to life with adequate standard of living,

¹² Francis Coralie Mullin v. Union Territory of Delhi, AIR 746,(1981)

¹³ Sunil Batra v. Delhi Administration, SCR 557, (1979)

¹⁴ DK Basu v. State of West Bengal, AIR SC 610, (1997)

¹⁵ Sukanya Santha Vs UOI, AIR SC 758,(2024)

¹⁶ Office of UNODC, Alternatives to Imprisonment, UNODC Alternatives to Imprisonment(last visited 24 January,2026)

sanitation, health etc. reformatory justice plays a very important role and use of alternatives to incarceration shall be boosted by making it compulsory especially in case of less serious offences. These alternatives can work on the root causes and target the prisoners in less number more effectively for treatment of criminal mentality.

The Indian Legislature has a Golden opportunity of making use of the New Criminals law for enhancing alternatives to incarceration which was done in a limited sense by adding community service as a form of punishment. Use of Alternatives to Imprisonment can be promoted by training judiciary in the first instance as to which cases can be suitable for lighter punishments and alternatives to imprisonment. Also, training, counselling and rehabilitative programmes can serve the purpose for making reformation of criminals a practicality.

References and Bibliography

- National Crime Records Bureau. (2020)
- Ministry of Home Affairs. (2023).
- Model Prisons and Correctional Services Act, 2023.
- Law Commission of India. (2018). 268th Report on Alternatives to Imprisonment.
- National Institute of Criminology and Forensic Sciences. (2020). Alternatives to Imprisonment in India.
- UNODC Alternatives to Imprisonment
- Sukanya Shantha vs Union Of India on 3 October, 2024
- IJIRT184563_PAPER.pdf
- 36.-Ananya-Kapoor.pdf
- https://ijirt.org/publishedpaper/IJIRT184563_PAPER.pdf
- http://timesofindia.indiatimes.com/articleshow/116514649.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst
- Prison as Punishment: A Behavior-Analytic Evaluation of Incarceration - PMC