



PRISON SYSTEM IN INDIA

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INTRODUCTION

- The Indian Socio-Legal system is based on non-violence, mutual respect and human dignity of the individual. A person who is once a criminal, need not always be a criminal. Prisoners are also entitled to rights to some extent as a normal human being when they are behind the prison. As a matter of fact, nobody is born as a criminal.
- The main objective of prisons is keep away criminals from society and reformation followed by rehabilitation of the criminals.
- Prisons are now treated more as a correctional or improvement facility which itself indicates that there is more emphasis on reformation of prisoners in the form of punishment.



DEFINITIONS

- The term ‘prison’ is derived from the Latin term which means ‘to seize’.
- According to Oxford English Dictionary ‘prison’ means a place properly efficient and equipped for the reception of persons who by legal process are committed to it for safe custody while pending of trial and punishment.
- Section 3(1) of the Prisons Act, 1894 defines prisons as: “Prison” means any jail or place used permanently or temporarily under general or special orders of the State Government for the detention of Prisoners and include all lands and buildings appurtenant thereto, but does not include any place for the confinement of prisoners who are exclusively in the custody of the police.



CLASSIFICATION OF JAILS IN INDIA

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graph TD; A[CLASSIFICATION OF JAILS IN INDIA] --> B[Classification on the basis of Region]; A --> C[Classification on the basis of types of Inmates]; A --> D[Other classification]; B --> B1[Central Jail]; B --> B2[District Jail]; B --> B3[SubJail]; C --> C1[Women's Jail]; C --> C2[Borstal Schools]; D --> D1[Open Jail]; D --> D2[Special Jail]; D --> D3[Other Jail];
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**Classification
on the basis of
Region**

Central Jail

District Jail

SubJail

**Classification
on the basis of
types of Inmates**

Women's Jail

Borstal Schools

**Other
classification**

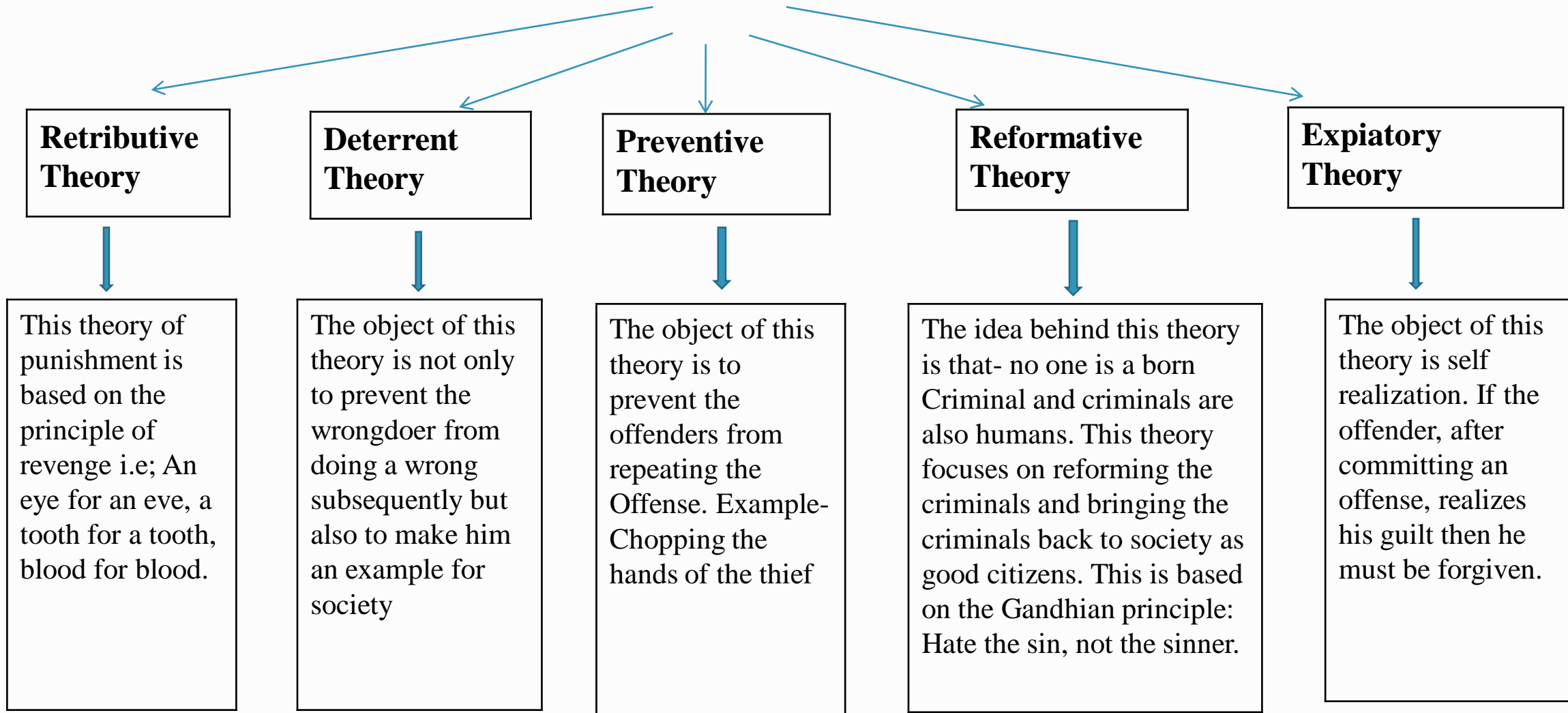
Open Jail

Special Jail

Other Jail



THEORIES OF PUNISHMENT



PROBLEMS OF JAIL INMATES IN INDIA

- Prison Violence
- Overcrowding
- Health Problems
- Delay in Trials
- **Staff Shortage**
- **Custodial Rape**
- Unnatural Deaths



HISTORICAL REFORMS OF PRISONS IN INDIA

- ❑ The modern prison in India was originated by **Lord Macaulay in 1835**.
- ❑ **Prison Discipline Committee (1835):** Recommended in its 1838 report that there should be increase in rigorousness of treatment while rejecting the need for any humanitarian and reforms for the prisoners.
- ❑ **Second Commission of Inquiry into Jail Management and Discipline (1864):** This Commission had similar suggestions but was in favour of improving the accommodation of prisoners, health and hygiene, diet, clothing and bedding.
- ❑ **Prisons Act 1894:** In 1894, the draft bill became law with the assent of the Governor General of India. This Act was enacted to bring uniformity and reforms in prison administration and management throughout the country.
- ❑ **Indian Jail Reform Committee(1919-20):** This committee was headed by Sir Alexander Cardew. The committee recommended first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator.
- ❑ **Government of India Act (1935):** The administration shifted the Prison subject from central list to state list. Now, Prison is a state subject under List II of the Seventh Schedule of the Constitution.



- **Report of UN Expert (Dr W.C. Reckless) on Correctional work (1951)**
- **All India Jail Manual Committee(1957-1960) :** Recommended amendments in the Prison Act 1894 and Prison Manuals through a Model to provide a legal base for correctional work.
- **The Mulla Committee on Jail Reform (1980-1983):** Made a comprehensive review of the laws, rules and regulations with the objective of protecting society and rehabilitating offenders.
- **The Krishna Iyer Committee (1987):** It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.
- **BPR&D Committee (1996):** Basing on *Ramamurthy vs State of Karnataka* judgment to make prison administration uniform, the jail manual was re-drafted by the committee and accepted by the Central government and circulated to State governments in late December 2003. But States are lagging behind on this.
- **Justice Amitava Roy panel, 2018 :** Supreme Court newly constituted Justice Amitava Roy panel will look into various matters including overcrowding in prisons and the issues concerning women prisoners.



MODES OF PRISON REFORMS

Probation

- It is suspension of sentence of an offender by the court and releasing him on certain conditions to live in the community with or without the supervision of a probation officer.

Parole

- Parole is a temporary release of prisoner who agree to certain condition before the completion to the maximum sentence period. It is a kind of reward granted to prisoner based on the good behaviour.

Pardon

- Articles 72 & 161 of the Indian Constitution allow the President of India and the Governors of the states, respectively, the ability to give pardon, reprieve, or commute the sentence of any offender.

Furlough

Furlough is seen as a matter of right for a prisoner, to be granted periodically irrespective of any reason, and merely to enable the prisoner to retain family and social ties, and to counter the ill-effects of prolonged time spent in prison.

Open prisons

An open prison means any penal establishment in which the prisoners serve their sentence with minimal supervision and are not locked up in prison cells

INTERNATIONAL PERSPECTIVE

The Nelson Mandela Rules are based on obligations to treat all prisoners with respect for their inherent dignity and values as human being and to prohibit torture and others forms of ill- treatment.

There are some International Conventions such as The Universal Declaration of Human Rights (UDHR) 1948, International Covenant on Civil and Political Rights (ICCPR) 1966, The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, states that everyone has the right to life, liberty and security of person. Prisoners are not subjected to torture, cruel, inhuman treatment in the prisons.



DEMOGRAPHIC PROFILE OF PRISONERS

Demographic Profile Of Prisoners In India

Year	No. of Prisons	Actual Capacity of Prisons	No. of Prisoners at the end of the year
2019	1,351	4,00,934	4,81,387
2020	1,306	4,14,033	4,88,511
2021	1,319	4,25,609	5,54,034

The 1,319 prisons in the country consist of 148 Central Jails, 424 District Jails, 564 Sub Jails, 88 Open Jails, 41 Special Jails. The 1,319 prisons in the country consist of 148 Central Jails, 424 District Jails, 564 Sub Jails, 88 Open Jails, 41 Special Jails, 32 Women Jails, 19 Borstal Schools and 3 Other Jails as per Prison Statistics 2021.

Demographic Profile of Prisoners in the State of H.P

Central Jails	2	Nahan and Kanda(Shimla).
District Jails	2	Dharamshala and Chamba.
Open Air Jail	1	(at Bilaspur) + 6 Extended Facility (at Nahan, Shimla, Chamba, Dharamshala, Mandi and Solan)
Borstal Jail	1	Mandi
Sub Jails	8	(One each at Mandi, Kullu, Bilaspur, Solan, Kaithu (Shimla), Una, Nurpur and Hamirpur
TOTAL	14	

The authorized capacity of jails in Himachal Pradesh is 1626 including 106 female prisoners. One barrack in each in Central Jail Nahan and Kanda, District Jails Dharamshala, Chamba and Sub jails of Solan and Mandi have been declared for the purpose of housing inmates entitled for open air jail facility.

CONSTITUTIONAL PROVISIONS

- Prison is a state subject covered by entry 4 under the State list in the Seventh schedule of the Constitution of India.
- The state shall not deny to any person equality before law or the equal protection of laws within the territory of India as per **Article 14 of Indian Constitution**.
- **Article 19 of the Constitution** guarantees six freedoms to the citizens of India. Among these, certain freedoms like freedom of movement, freedom to reside and to settle and freedom of profession, occupation; trade or business cannot be enjoyed by the prisoners.
- **Article 20(1) of the Constitution** restricts the power of legislature to implement any criminal law retrospectively.
- **Article 20(2) of the Constitution** means a person is not prosecuted again for the same offence for which he has already been prosecuted
- **Article 20(3) of the Constitution** says that no person accused of any offence shall be compelled to be a witness against himself.
- The Protection of Life and Personal Liberty right is available not only for the free people but even to those behind bars. The right to speedy trial, right against torture, and right against inhuman and degrading treatment in the prison also covered under **Article 21 of the Constitution**.
- No person who is arrested shall be denied the right to consult and to be defended by the legal practitioner of his choice as well under **Article 22(2) of the Constitution**.
- **Article 39-A of the Constitution** embodies principle of fair procedure during trial by courts. Free legal aid was considered as an essential ingredient of reasonable fair and just procedure for a person accused of an offence.



STATUTORY PROVISIONS

- **The Prisons Act, 1894**

This act is the first legislation regarding prison regarding prisoner's rights such as accommodation sanitary for prisoners, examination of prisoners by qualified medical officer, separation of prisoners for male, female, criminal, civil, convicted and under trial prisoners.

- **The Identification of Prisoners Act, 1920**

This Act allows police officers to collect certain identifiable information (fingerprints and footprints) of persons including convicts and arrested persons. In case of acquittal or discharge of the person, all material must be destroyed.

- **The Transfer of Prisoners Act, 1950**

This act was enacted for the transfer of prisoners from one state to another for rehabilitation or vocational training and from over-populated jails to less congested jails within the state. The Prisoners (Attendance in Courts) Act, 1955

- **The Prisoners (Attendance in Courts) Act, 1955**

This Act contains provisions authorizing the removal of prisoners to a civil or criminal court for giving evidence or for answering to the charge of an offence.

- **The Repatriation of Prisoners Act, 2003**

The Act enables the transfer of foreign prisoners to the country of their origin to serve the remaining part of their sentence

- **The Criminal Procedure (Identification) Act, 2022**

This Act repeals the Identification of Prisoners Act of 1920. The Criminal Procedure (Identification) Act, 2022, empowers police officers or prison officers to collect certain identifiable information such as fingerprints, photographs, iris and retina scan, biological samples and their analysis, from convict or those who have been arrested for an offence.



PRISONERS RIGHT UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

- **Section 41D of The Code of Criminal Procedure, 1973** provides that when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.
- It is the duty of the arresting police officer or Magistrate to inform the person of the offence with which he/she is being charged and also whether it is a bailable or not. When the person is arrested for a bailable offence then he/she can as a matter of right ask to be released on bail under **Section 50 The Code of Criminal Procedure, 1973**
- **As per Section 54, The Code of Criminal Procedure 1973**, an arrested person has been given the right to be medically examined by a medical officer when he is produced before magistrate or at any time while in custody, with a view to establishing that the offence with which he is charged was not committed by him or that he was subjected to physical torture .
- It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused under **Section 55A, The Code of Criminal Procedure, 1973**
- Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defence at the expense of the State under **Section 304 The Code of Criminal Procedure, 1973**
- As per **Section 436-A of the Code of Criminal Procedure, 1973**, an undertrial prisoner who is not accused of an offence punishable with life imprisonment or death should be released if they have been detained for half the period of imprisonment prescribed for the offence.
- If the case of an under-trial prisoner accused of a non bailable offence is pending before a Magistrate and more than 60 days have elapsed after the first date of the recording of evidence was fixed then he/she the right to be released on bail subject to the satisfaction of the Magistrate. The Magistrate has to record reasons for not doing so under **Section 437(6) of the Code of Criminal Procedure, 1973**



JUDICIAL APPROACH

- ❑ In *Sunil Batra's v. Delhi Administration* (1978)4 SCC 409 case, the Apex court held that Prisoners are entitled to all fundamental rights.
- ❑ In *Hussainara Khatoon v. State of Bihar* (AIR 1979 SC 1377), the court adopted a dynamic and constructive role with regard to prison reforms. Court apart from other things stressed on the improvements of the conditions of the prisons in India.
- ❑ In *Sheela Barse v. State of Maharashtra* (AIR 1983 SC 378) case was the case of custodial violence concerning women prisoners and detainees in state of Maharashtra. The court held that whenever a person is arrested by the police and taken to the police lock up, the police should immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee to provide the legal assistance.
- ❑ In *Rudul Shah v. State of Bihar* (AIR 1983 SC 1086) case, the Supreme Court, stipulate that, illegal detention of the person without authorization of the law and procedure, amounts to violation of the Article 21 of the Constitution
- ❑ In *D. K. Basu v. State of West Bengal* (AIR 1997 SC 610) case, the court held that, the information of arrest is required to be given to the friend or relative of accused immediately, while he is arrested. The purpose is very clear that, by this communication the relative or friends of accused can start the efforts to know the facts of accused, to obtain the legal advice and take the defense against an application for remand and do the necessary preparation for bail.
- ❑ In *Re Inhuman Conditions in 1382 Prisoners* case, the Supreme Court held that the Prisoners are not less than humans and therefore must be treated with dignity.



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