Penology and Victimology

Introduction:
Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. 'The first thing to mention in relation to the definition of punishment is the ineffectiveness of definitional barriers aimed to show that one or other of the proposed justifications of punishments either logically include or logically excluded by definition.' Punishment has the following features:

It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant
It is consequence of an offence
It is applied against the author of the offence
It s applied by an organ of the system that made the act an offence

The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals. The law says that it does not really punish the individual but punishes the guilty mind.

Theories Of Punishment:
With change in the social structure the society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Kenny wrote: "it cannot be said that the theories of criminal punishment current amongst our judges and legislators have assumed...."either a coherent or even a stable form. B.Malinowski believes all the legally effective institutions....are....means of cutting short an illegal or intolerable state of affairs, of restoring the equilibrium in the social life and of giving the vent to he feelings of oppression and injustice felt by the individuals.
The general view that the researcher finds is that the researcher gathers is that the theories of punishment being so vague are difficult to discuss as such. In the words of Sir John Salmond, "The ends of criminal justice are four in number, and in respect to the purposes served by the them punishment can be divided as:
1. Deterrent
2. Retributive
3. Preventive
4. Reformative

Of these aspects the first is the essential and the all-important one, the others being merely accessory. Punishment before all things is deterrent, and the chief end of the law of crime is to make the evil-doer an example and a warning to all that are like-minded with him.

The researcher in this chapter would like to discuss the various theories and explain the pros and cons of each theory.

A) DETERRENT THEORY-
The term "Deter" means to abstain from doing an act. The main purpose of this theory is to deter (prevent) the criminals from doing the crime or repeating the same crime in future. Under this theory, severe punishments are inflicted upon the offender so that he abstains from committing a crime in future and it would also be a lesson to the other members of the society, as to what can be the consequences of committing a crime. This theory has proved effective, even though it has certain defects.

B) RETRIBUTIVE THEORY-

This theory of punishment is based on the principle- "An eye for an eye, a tooth for a tooth". Retribute means to give in turn. The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim. This theory aims at taking a revenge rather than social welfare and transformation.

This theory has not been supported by the Criminologists, Penologists and Sociologists as they feel that this theory is brutal and babric.

C) PREVENTIVE THEORY -

This theory too aims to prevent the crime rather than avenging it. As per this theory, the idea is to keep the offender away from the society. This criminal under this theory is punished with death, life imprisonment etc. This theory has been criticized by some jurists.

D) REFORMATIVE THEORY -

This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. The idea behind this theory is that no one is a born Criminal and criminals are also humans. Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists.

E) EXPIATORY THEORY -

Under this theory, it is believed that if the offender expiates or repents and realizes his mistake, he must be forgiven.

Various kinds of punishments are prescribed for various types of Crimes. Various Punishment theories are proposed with the various intentions. The variation in the modality of punishment occur because of the variation of societal reaction to law breaking.

The general forms of punishment are:

- Flogging
- Mutilation
- Branding
- Stoning
- Pillory
- Fine / Penalty
- Forfeiture of Property
- Security Bond
- Banishment
- Penal Servitude
- Simple Imprisonment
- Solitary confinement
- Imprisonment for Life
- Death or Capital Punishment

Types of Punishments according to IPC

Section 53 of the Indian Penal Code, 1860 prescribes five kinds of punishments.

1. Death Penalty
2. Life imprisonment
3. Imprisonment
    1. Rigorous
    2. Simple
4. Forfeiture of property
5. Fine

Death Penalty

Before discussing capital punishment, we must determine what punishment is and what the main theories of punishment are.

- Punishment is *harm* inflicted by a person in a position of *authority* upon another person who is judged to have violated the law.
    1. Since typically harming people is wrong, punishment is guilty utile proven innocent, as it were. So, *the burden of proof is on its proponents*.
    2. The notion of authority is crucial.
- The main theories of punishment are:
    - Retributivist, which aim at the balance justice: by the punishment proportionally fitting the crime justice is done.

- There is empirical evidence that applying retribution even at a cost to oneself is innate; whether it is justified is another issue.
- When punishing, parts of the brain associated with pleasure become activated

2. Utilitarian, which aim at incapacitation, amelioration, and deterrence

The constitutionality issue

The 5th (and the 14th) amendment state that "no person shall be deprived of life, liberty, or property without due process of law", while the 8th amendment prohibits 'cruel and unusual punishment." Since 5th and 8th amendments were passed at the same time it seems that:

- The Constitution allows the death penalty.
- The Constitution, at least as understood by its proponents, does not consider the death penalty cruel and unusual punishment.

The Constitution *only allows* capital punishment and does not require it.

The issue of interpreting the Constitution:

1. Originalism
   - Textualist approach
   - Purposivist approach
2. Non-originalism: the idea of evolving standards.

The common reading of the "cruel and unusual punishment" clause renders a punishment cruel and unusual if it is *severe* and at least one of

· Degrading
· Inflicted arbitrarily
· Clearly rejected by society
· Patently unnecessary.

The Supreme Court has given different answers to the issue of the constitutionality of the death penalty.

Furman v. Georgia (1972): By 5-4 majority the Court decided that the death penalty was unconstitutional because it was administered in an arbitrary and capricious manner due to the lack of explicit guidelines for juries, and this rendered it "unusual." Some Justices went as far as claiming that the death penalty itself was cruel and unusual.

After this decision, some stated introduced mandatory death penalty for certain crimes and some provided guidelines for juries.

Woodson v. North Carolina (1976): By a 5-4 majority, the Court decided that mandatory death sentences are unconstitutional because they fail to allow the consideration of special circumstances.

Gregg v. Georgia (1976): the death penalty is not unconstitutional for the crime of murder, provided that there are safeguards against arbitrary or capricious impositions by juries. However, the minority opinion claimed that the death penalty itself is cruel and unusual punishment.

Atkins v. Virginia (2002): In the case of mental retardation, the death penalty is cruel and unusual punishment incompatible with the Eighth Amendment.

Some constitutional problems for the death penalty

- Evolving standards of morality make the death penalty impinge on the cruel and unusual punishment clause

Answer:

1. An originalist would say that then one should amend the Constitution
2. Who decides what the present standards of morality are? The issue is complicated because there is a substantial percentage of the population that is in favor of the death penalty.

- Unequal distribution of the death penalty, e.g. blacks who kill whites are more likely to get the death penalty than blacks who kill blacks.

Answer:

1. this discriminates against black victims, not black perpetrators

2. there's no clear evidence that capital punishment is inherently discriminatory, and consequently its administration can be, and has been, improved.

2. **Moral problems for capital punishment**:

- The state is as wrong to execute a murderer as the murderer was in killing his victim.

Answer: there's no parity. The murderer just harms; the judge punishes; the murderer kills the innocent; the judge orders the killing of the guilty. The killing of a man need not be murder.

- Mill was in favor of capital punishment because he thought it was a powerful deterrent. However, it's unclear whether capital punishment is, *in our system of justice*, more deterrent than other punishments such as life imprisonment, especially given the fact that
  - good lawyers can lower one's chances of being executed.
  - some, when committing crimes, might think little about getting caught.
  - 12 states in the US have abolished the death penalty and in none has the murder rate increased as supporters of capital punishment expected.
- Capital punishment is discriminatory. Killers of whites are more likely to get the death penalty than killers of blacks. But discrimination is morally wrong (it's against equal justice).

Answers:

· Even if the death penalty were inherently discriminatory (which it isn't), as long as imposed only on the guilty it would be morally justified: unequal justice is still justice.

· The people who have been discriminated against are the blacks whose murderers have escaped death.

· Because we fall short of perfection we should not renounce the good.

However, one of the reasons that lead Governor Ryan of Illinois to commute all death penalties in Illinois was that the overwhelming majority of those executed in the state were psychotic, or alcoholic, or drug-addicts, or mentally ill. Almost all were poor.

- Some innocents will be executed

Answer: society foresees but does not intend the execution of the innocent. For example, driving trucks produces innocent deaths, but it would be absurd to forbid state-owned trucks from circulating.

Duplication: but we *intend* to kill the person convicted, and therefore we do take the moral responsibility of the action upon ourselves.

Thought Question: Is the death penalty permissible if we are reasonably sure that we'll kill someone who is innocent?

The justice system is capitalist, and therefore it replicates the class divisions of society. If you're rich, you get very good lawyers, and the chances of being put to death diminish dramatically; by contrast, if you're poor, your lawyers are likely not to be nearly as good, and your chances of getting the death penalty increase. The very structure of the justice system makes it, and its decisions, *inherently discriminatory*.

- Capital punishment damages human dignity.

Answer: what's the argument, assuming that capital punishment is carried out in a dignified manner? Indeed, Kant has argued the reverse. Waiting to die is unpleasant but, unfortunately, often part of the human condition.

Thought Question: some claim that the death penalty involves dehumanization, total subjugation of the inmate, and extreme psychological pain. What do you think?

- The sanctity of life prohibits the death penalty.

Answer:

1. What's meant by "the sanctity of life"? If it means that human life can never be taken, then self-defense would be wrong, which is unreasonable. Note that self-defense extends to severe bodily or psychological harm.
2. Appeals to the extreme value of human life has traditionally been used to justify capital punishment; see Kant, for example, who argues that the only way to do justice is to execute the murderer.

· Capital punishment is too severe. In the US the most common method of execution is lethal injection. Sometimes people take a long time (over 30 minutes) to die and doctors refuse to administer it because it violates their professional code of conduct.

Answer: The death penalty merely hastens one's natural end. Compare with torture. Moreover, the nature of some crimes demands a most severe punishment.

Thought Question: Do you think that as currently practiced lethal injection violates the Eighth Amendment?

- The role of the environment in determining behavior should deter us from inflicting the death penalty.

Answer: people are responsible for what they do. At most this shows that mitigating circumstances must be seriously considered.

- Capital punishment involves revenge, which makes it immoral.

Answer:

1. The balance of justice has nothing to do with revenge.
2. In the US, the criminal prosecution is by the state, not the family of the victim.

- The death penalty is too expensive compared to long term, or life, imprisonment NOTE: Retributivists are less impressed than Consequentialists by this objection.

Answer: It depends on what one believes the deterrent effect is.

Capital punishment in India

India retains **capital punishment** for a number of serious offences. The Indian Supreme Court has allowed the death penalty to be carried out in only 4 instances since 1995.

The Supreme Court in *Mithu vs State of Punjab* struck down Section 303 of the Indian Penal Code, which provided for a mandatory death sentence for offenders serving a life sentence. The number of people executed in India since independence in 1947 is a matter of dispute; official government statistics claim that only 52 people had been executed since independence. However, research by the People's Union for Civil Liberties indicates that the actual number of executions is in fact much higher, as they located records of 1,422 executions in the decade from 1953 to 1963 alone. In December 2007, India voted against a United Nations General Assembly resolution calling for a moratorium on the death penalty. In November 2012, India again upheld its stance on capital punishment by voting against the UN General Assembly draft resolution seeking to ban death penalty.

Crimes punishable by death

Under Article 21 of the Constitution of India, no person can be deprived of his life except according to procedure established by law.

Indian Penal Code, 1860

In colonial India, death was prescribed as one of the punishments in the Indian Penal Code,1860 (IPC), and the same was retained after independence.

Section under IPC	Nature of crime
120B	Punishment of criminal conspiracy
121	Waging, or attempting to wage war, or abetting waging of war, against the Government of India
132	Abetment of mutiny
194	If an innocent person be convicted and executed in consequence of such false evidence to procure conviction of capital offence
302, 303	Murder
305	Abetment of suicide of child or insane person
364A	Kidnapping for ransom
396	Dacoity with murder

	If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished
376A	Rape/Sexual Assault An amendment in the year 2013 provided for death penalty in case he inflicts an injury upon woman during rape which causes her death or to be in persistent vegetative state.[6]

Court proceedings

The Supreme Court of India ruled in 1983 that the death penalty should be imposed only in "the rarest of rare cases." While stating that honour killings fall within the "rarest of the rare" category, Supreme Court has recommended the death penalty be extended to those found guilty of committing "honour killings", which deserve to be a capital crime. The Supreme Court also recommended death sentences to be imposed on police officials who commit police brutality in the form of encounter killings.

An appeal filed in 2013 by Vikram Singh and another person facing the death sentence questioned the constitutional validity of Section 364A of the Indian Penal Code.

Other legislation

In addition to the Indian Penal Code, a series of legislation enacted by the Parliament of India have provisions for the death penalty.

Sati is an inhumane practice involving the burning or burying alive of any widow or woman along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative. Under the Commission of Sati (Prevention) Act, 1987 Part. II, Section 4(1), if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes. Under Section 3(2)(i) of the Act, bearing false witness in a capital case against a member of a scheduled caste or tribe, resulting in that person's conviction and execution, carries the death penalty In 1989, the Narcotic Drugs and Psychotropic Substances (NDPS) Act was passed which applied a mandatory death penalty for a second offence of "large scale narcotics trafficking".

In recent years, the death penalty has been imposed under new anti-terrorism legislation for people convicted of terrorist activities. On 3 February 2013, in response to public outcry over a brutal gang rape in Delhi, the Indian Government passed an ordinance which applied the death penalty in cases of rape that leads to death or leaves the victim in a "persistent vegetative state". The death penalty can also be handed down to repeat rape offenders under the Criminal Law (Amendment) Act, 2013.

Clemency in the Indian Constitution

After the award of the death sentence by a sessions (trial) court,the sentence must be confirmed by a High Court to make it final. Once confirmed, the condemned convict has the option of appealing to the Supreme Court. If this is not possible, or if the Supreme Court turns down the appeal or refuses to hear the petition, the condemned person can submit a 'mercy petition' to the President of India and the Governor of the State.

Power of the President

The present day constitutional clemency powers of the President and Governors originate from the Government of India Act 1935 but, unlike the Governor-General, the President and Governors in independent India do not have any prerogative clemency powers.

Constitutional power

Article 72(1) of the Constitution of India states:

The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

(a) in all cases where the punishment or sentence is by a Court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;
(c) in all cases where the sentence is a sentence of death.

Execution of death sentence
The execution of death sentence in India is carried out by two modes, namely hanging by the neck till death and being shot to death.

Hanging
The Code of Criminal Procedure (1898) called for the method of execution to be hanging. The same method was adopted in the Code of Criminal Procedure (1973). Section 354(5) of the above procedure reads as "When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead."

Shooting
The Army Act and Air Force Act also provide for the execution of the death sentence. Section 34 of the Air Force Act, 1950 empowers the court martial to impose the death sentence for the offences mentioned in section 34(a) to (o) of The Air Force Act, 1950. Section 163 of the Act provides for the form of the sentence of death as:-
"In awarding a sentence of death, a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead or shall suffer death by being shot to death".
This provides for the discretion of the Court Martial to either provide for the execution of the death sentence by hanging or by being shot to death. The Army Act, 1950, and the Navy Act, 1957 also provide for the similar provisions as in The Air Force Act, 1950.

History
About 26 mercy petitions are pending before the president, some of them from 1992. These include those of Khalistan Liberation Force terrorist Davinder Singh Bhullar, the cases of slain forest brigand Veerappan's four associates—Simon, Gnanprakasham, Meesekar Madaiah and Bilvendran—for killing 21 policemen in 1993; and one Praveen Kumar for killing four members of his family in Mangalore in 1994. On 27 April 1995, Auto Shankar was hanged in Salem, Tamil Nadu.
At least 100 people in 2007, 40 in 2006, 77 in 2005, 23 in 2002, and 33 in 2001 were sentenced to death (but not executed), according to Amnesty International figures. No official statistics of those sentenced to death have been released.
Afzal Guru was convicted of conspiracy in connection with the 2001 Indian Parliament attack and was sentenced to death. The Supreme Court of India upheld the sentence, ruling that the attack "shocked the conscience of the society at large." Afzal was scheduled to be executed on 20 October 2006, but the sentence was stayed. Guru was hanged on 9 February 2013 at Delhi's Tihar Jail.
On 3 May 2010, a Mumbai Special Court convicted Ajmal Kasab of murder, waging war on India, possessing explosives, and other charges. On 6 May 2010, the same trial court sentenced him to death on four counts and to a life sentence on five other counts. Kasab was sentenced to death for attacking Mumbai and killing 166 people on 26 November 2008 along with nine Pakistani terrorists. He was found guilty of 80 offences, including waging war against the nation, which is punishable by the death penalty. Kasab's death sentence was upheld by the Bombay High Court on 21 February 2011. and by the Supreme Court on 29 August 2012. His mercy plea was rejected by the president on 5 November and the same was communicated to him on 12 November. On 21 November 2012, Kasab was hanged in the Yerwada Central Jail in Pune.
On 5 March 2012, a sessions court in Chandigarh ordered the execution of Balwant Singh Rajoana, a terrorist from Babbar Khalsa, convicted for his involvement in the assassination of Punjab Chief Minister Beant Singh. The sentence was to be carried out on 31 March 2012 in Patiala Central Jail, but the Centre stayed the execution on 28 March due to worldwide protests by Sikhs that the execution was unfair and amounted to a human rights violation.

On 13 March 2012, a court in Sirsa, Haryana, condemned to death the 22-year-old Nikka Singh for raping and strangling to death a 75-year-old woman on 11 February 2011. "The imposition of the death sentence was most appropriate in this case. The court has held that it was a cold-blooded murder and where rape was committed on an innocent and hapless old woman," said Neelima Shangla, the Sirsa additional district and sessions judge. "The rape and cold-blooded murder of a woman, who was of grandmother's age of the accused, falls in the rarest of the rare case." The court held that Nikka Singh was a "savage" whose "existence on earth was a grave danger to society" as he had also attempted to rape two other village women.

In June 2012, it became known that Indian president Pratibha Patil near the end of her five-year term as president commuted the death sentence of as many as 35 convicts to life, including four on the same day (2 June), which created a storm of protest. This caused further embarrassment to the government when it came to light that one of these convicts, Bandu Baburao Tidke—convicted for the rape and murder of a 16-year-old girl—had already died five years previously from HIV.

As of 11 February 2013, there were 477 convicts on death row in India. States with the maximum number of prisoners on death row were Uttar Pradesh (174), Karnataka (61), Maharashtra (50) and Bihar (37)

Crimes Punishable by Death

Aggravated Murder.

Murder is punishable by death under Article 302 of the Penal Code, and in Bachan Singh v. State of Punjab, India's Supreme Court held that the death penalty was constitutional only when applied as an exceptional penalty in "the rarest of the rare" cases.

Other Offenses Resulting in Death.

According to the Penal Code, if any member of a group commits murder in the course of committing an armed robbery, all members of the group can be sentenced to death. Kidnapping for ransom in which the victim is killed is punishable by the death penalty. Being a member of an association or promoting an association while committing any act using unlicensed firearms or explosives that results in death, is punishable by death. Engaging in organized crime, if it results in death, is punishable by death. Committing, or assisting another person in committing sati – the burning or burying alive of widows or women – is also punishable by the death penalty. Under the Prevention of Atrocities Act, bearing false witness in a capital case against a member of a scheduled caste or tribe, resulting in that person's conviction and execution, carries the death penalty. Assisting individuals who are under the age of 18, mentally ill, mentally disabled, or intoxicated in committing suicide is punishable by the death penalty.

However, whether (or when) these offenses are death-eligible must be considered in the light of the Indian Supreme Court's decision in Bachan Singh. Courts may interpret Bachan Singh as overriding other law when sentencing for offenses resulting in death. For instance, using, carrying, manufacturing, selling, transferring, or testing prohibited arms or ammunition previously carried a mandatory death sentence if it resulted in the death of any other person under the Indian Arms Act, 1959. However, a recent Supreme Court ruling in February 2012 ruled this provision unconstitutional in light of the judgments in Bachan Singh v. State of Punjab and Mithu v. State of Punjab. This suggests that offenses resulting in death are punishable by death only when they meet the "rarest of rare" standard laid out in Bachan Singh.

Rape Not Resulting in Death.

Under the Criminal Law (Amendment) Act, 2013, a person who in the course of a sexual assault inflicts injury that causes the victim to die or to be left in a "persistent vegetative state" is punishable by death. Repeat offenders of gang rape are also punishable by death.

Kidnapping Not Resulting in Death.

Kidnapping or detaining an individual is punishable by death if the kidnapper threatens to kill or harm the victim, if the kidnapper's conduct makes the death or harm of the victim a possibility, or if the victim is actually harmed.

Drug Trafficking Not Resulting in Death.

If an individual who has been convicted of the commission of, attempt to commit, abetment of, or criminal conspiracy to commit any one of a range of offenses related to drug trafficking (e.g. trafficking of cannabis and opium) commits another offense related to the production, manufacture, trafficking, or financing of certain types and quantities of narcotic and psychotropic substances, he or she can be sentenced to death.

Treason.
Waging or attempting to wage war against the government and assisting officers, soldiers, or members of the Navy, Army, or Air Forces in committing mutiny are punishable by the death penalty.

Espionage.
Military Offenses Not Resulting in Death.
The following offenses, if committed by a member of the Army, Navy, or Air Forces, are punishable by death: committing, inciting, conspiring to commit, or failing to suppress mutiny; desertion or aiding desertion; cowardice; treacherous acts; committing or inciting dereliction of duty; aiding the enemy; inducing individuals subject to military law not to act against the enemy; imperiling Indian or allied military, air, or naval forces in any way.
Other Offenses Not Resulting in Death.

- Being a party to a criminal conspiracy to commit a capital offence is punishable by death.
- Attempts to murder by those sentenced to life imprisonment are punishable by death if the attempt results in harm to the victim.
- Calumniation: Providing false evidence with intent or knowledge of the likelihood that another individual, or a member of a Scheduled Caste or Tribe, would be convicted of a capital offense due to such evidence carries the death penalty if it results in the conviction and execution of an innocent person.

Does the country have a mandatory death penalty?
No. In Mithu v. State of Punjab, the Supreme Court ruled that the mandatory death penalty is unconstitutional. While subsequent legislation for drug and atrocity offenses prescribes the mandatory death penalty, and the Supreme Court has not expressly struck down the penalty as unconstitutional, Indian courts have not applied the mandatory death penalty for these crimes. Additionally, a line of cases since the 1980 case of Bachan Singh v. State of Punjab, in which the Court held that the death penalty should only be applied for the most heinous offenses ("the rarest of the rare"), illustrate that application of the death penalty is, while not always predictable, still highly restricted.

For Which Offenses, If Any, Is a Mandatory Death Sentence Imposed?
None. In Mithu v. State of Punjab, the Supreme Court ruled that the mandatory death penalty is unconstitutional. While subsequent legislation for drug and atrocity offenses prescribes the mandatory death penalty, and the Supreme Court has not expressly struck down the mandatory language as unconstitutional, Indian courts seem not to apply the mandatory death penalty for these crimes.

Crimes For Which Individuals Have Been Executed Since January 2008:
Terrorism-Related Offenses Resulting in Death.
On February 9, 2013, Muhammad Afzal, also known as Afzal Guru, was executed by hanging. He was convicted for the December 2001 attack on India's Parliament, in which five gunmen armed with grenades, guns and explosives opened fire, killing nine people.

On November 21, 2012, the sole-surviving gunman of the 2008 Mumbai attacks Mohammad Ajmal Amir Qasab (also spelled Kasab in some media reports) was hanged for several crimes, including waging war against India, murder and terrorist acts.

Categories of Offenders Excluded From the Death Penalty:
Individuals Below Age 18 At Time of Crime.

According to the Juvenile Justice (Care and Protection of Children) Act 2000, individuals who were under the age of 18 at the time of the crime cannot be executed.
Pregnant Women.
According to a 2009 amendment, a pregnant woman sentenced to death must be granted clemency.
Mentally Retarded.
According to the Indian Penal Code, individuals who were mentally ill at the time of the crime and who did not understand the nature of the act or know that the act was wrong or against the law cannot be held criminally liable. This could be interpreted to exclude mentally retarded persons from the death penalty.
Mentally Ill.
According to the Indian Penal Code, individuals who were mentally ill at the time of the crime and who did not understand the nature of the act or know that the act was wrong or against the law cannot be held criminally liable.

Imprisonments

Indian Penal Code, 1860 provides five types of punishment that can be awarded if a person found guilty of any offence these are as provided under section 53 of the code the punishments to which offenders are liable under the provisions of this Code are-

1.Death
2. Imprisonment for life
3.Imprisonment, which is of two descriptions, namely: -
(1) Rigorous, that is, with hard labour;
Rigorous Imprisonment by interpretation means hard labour. Hard labour is not defined either in the Indian Penal Code, or in the Jail Manuals. RI as a form of punishment started off in the British era, when it meant breaking rocks and making roads. This manifested in olden Bollywood films, where the villian or any jailed character was shown breaking rocks inside jail walls. 'Breaking Rocks' also assumed the meaning of 'being jailed' in some languages, for instance in Marathi.

However, today, Rigorous Imprisonment in India has come to mean 'do some work' as Indian jails do not have enough work inside that can be termed as hard labour. So simple imprisonment is 'doing no work' while rigorous imprisonment is 'doing some work'
Here rigorous imprisonment means it has to be served doing hard labour where as in simple imprisonment no hard labour is required to be done by the prisoner. In certain offences where both simple & rigorous imprisonment can be awarded, the court can decide which one has to be given as section 60 of IPC provides Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple
In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

(2) Simple;
4. Forfeiture of property;
The involuntary relinquishment of money or property without compensation as a consequence of a bre ach or nonperformance of somelegal obligation or the commission of a crime. The loss of a corporate ch arter or franchise as a result of illegality, malfeasance, orNonfeasance. The surrender by an owner of his or her entire interest in real property, mandated by law as a punishment for illegal conductor Negligen ce. Under old English
Law, the release of land by a tenant to the tenant's lord due to some breach of conduct, or the loss ofgoo ds or chattels (articles of Personal
Property) assessed as a penalty against the perpetrator of some crime or offense and as arecompense to the injured party.

Forfeiture is a broad term that can be used to describe any loss of property without compensation. A for feiture may be privately arranged.For example, in a contractual relationship, one party may be required to forfeit specified property if the party fails to fulfill its contractualobligations. Courts are often called u pon to resolve disputes regarding a forfeiture of property pursuant to a private contract. They mayexam ine these cases to see whether they are fair and not the result of duress, deception, or other nefarious ta ctics.

5. Fine
A civil **monetary penalty** is **defined** in relevant part as any **penalty**, fine, or other sanction that: is for a specific amount, or has a maximum amount, as provided by federal law; and is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.

6. Section 73 of IPC, **Solitary confinement**.—Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say— a time not exceeding one month if the term of imprisonment shall not exceed six months; a time not exceeding two months if the term of imprisonment shall exceed six months and 1[shall not exceed one] year; a time not exceeding three months if the term of imprisonment shall exceed one year.

Prison Administration
Prisons in India, and their administration, is a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments. Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations. Day-to-day administration of prisoners rests on principles incorporated in the Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950. An Inspector General of Prisons administers prison affairs in each state and territory.[1] The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures.
The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down 3 broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already inherent in the process of incarceration.

Types of prisons
Prison establishments in India comprise of 8 categories of jails. The most common and standard jail institutions are Central Jails, District Jails and Sub Jails. The other types of jail establishments are Women Jails, Borstal Schools, Open Jails and Special Jails.

Central jail
The criteria for a jail to be categorised as a Central Jail varies from state to state. However, the common feature observed throughout India is that prisoners sentenced to imprisonment for a long period (more than 2 years) are confined in the Central Jails, which have larger capacity in comparison to other jails. These jails also have rehabilitation facilities.
Maharashtra and Tamil Nadu have the highest number of 9 Central Jails each followed by Karnataka, Bihar, Madhya Pradesh, Rajasthan and Delhi with 8 each. Arunachal Pradesh, Meghalaya, Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep do not have any Central Jails.

District jail

District jails serve as the main prisons in States/UTs where there are no Central Jails.

States which have considerable number of District Jails are Uttar Pradesh (53), Bihar (30), Maharashtra and Rajasthan (25 each), Madhya Pradesh (22), Assam (21), Jharkhand (17), Haryana (16) and Karnataka (15).

Sub jail

Sub jails are smaller institutions situated at a sub-divisional level in the States.

Ten states have reported comparatively higher number of sub-jails revealing a well organized prison set-up even at lower formation. These states are Maharashtra (172), Andhra Pradesh (96), Tamil Nadu (94), Madhya Pradesh (92), Karnataka (74), Odisha (66), Rajasthan (60), West Bengal (31), Kerala (29) and Bihar (16). Odisha had the highest capacity of inmates in various Sub-Jails.

8 States/UTs have no sub-jails namely Arunachal Pradesh, Haryana, Manipur, Meghalaya, Mizoram, Sikkim, Chandigarh and Delhi.

Borstal School

Borstal Schools are a type of youth detention center and are used exclusively for the imprisonment of minors or juveniles. The primary objective of Borstal Schools is to ensure care, welfare and rehabilitation of young offenders in an environment suitable for children and keep them away from contaminating atmosphere of the prison. The juveniles in conflict with law detained in Borstal Schools are provided various vocational training and education with the help of trained teachers. The emphasis is given on the education, training and moral influence conducive for their reformation and prevention of crime.

Ten States namely, Andhra Pradesh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan and Tamil Nadu have borstal schools in their respective jurisdictions. Tamil Nadu had the highest capacity for keeping 667 inmates. Haryana and Himachal Pradesh are the only states that have the capacity to lodge female inmates in 3 of their Borstal Schools. There are no borstal schools in any of the UTs.

Open jail

Open jails are minimum security prisons. Prisoners with good behaviour satisfying certain norms prescribed in the prison rules are admitted in open prisons. Prisoners are engaged in agricultural activities.

Fourteen states have functioning Open Jails in their jurisdiction. Rajasthan reported the highest number of 23 open jails. There are no Open Jails in any of the UTs.

Special jail

Special jails are high security facilities that have specialized arrangements for keeping offenders and prisoners who are convicted of terrorism, insurgency and violent crimes. Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners which are broadly as follows:

- Prisoners who have committed serious violations of prison discipline.
- Prisoners showing tendencies towards violence and aggression.
- Difficult discipline cases of habitual offenders.
- Difficult discipline cases from a group of professional/organised criminals.

Kerala has the highest number of special jails - 9. Provision for keeping female prisoners in these special jails is available in Tamil Nadu, West Bengal, Gujarat, Kerala, Assam, Karnataka and Maharashtra.

Other jails

Jails that do not fall into the categories discussed above, fall under the category of Other Jails. Three states - Goa, Karnataka & Maharashtra - have 1 other jail each in their jurisdiction. No other state/UT has an other jail.

The capacity of inmates (male & female) reported by these three States in such jails was highest in Karnataka (250) followed by Goa (45) and Maharashtra (28).

Expenditure

All states and UTs in India had a combined sanctioned budget of ₹323720.8 lakh (US$520 million) in 2011-12 for prison related expenditure.

Prison expenditure is broadly categorised as Plan Expenditure and Non-Plan Expenditure. Expenditure on specific planned activities under the Five Year Plan is termed as Plan Expenditure. Expenditure made for meeting day-to-day expenses and running establishments like payment of salaries, wages, rent, etc. come under the Non-Plan Expenditure. Non-Plan Expenditure may also include activities for development of existing infrastructure and bringing about improvements in the prisons.

Expenditure on prison inmates is categorised as Food, Clothing, Medical, Vocational/Educational facilities, Welfare and Other expenses. Food expenses account for more than half the total expenditure on prison inmates.

Prison Reforms in India – a brief background and overview

The history of prison establishments in India and subsequent reforms have been reviewed in detail by Mahaworker (2006). A brief summary of the same is presented below.

The modern prison in India originated with the Minute by TB Macaulay in 1835. A committee namely Prison Discipline Committee, was appointed, which submitted its report on 1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between 1836-1838, Central Prisons were constructed from 1846.

The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiry into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care. In 1877, a Conference of Experts met to inquire into prison administration. The conference proposed the enactment of a prison law and a draft bill was prepared. In 1888, the Fourth Jail Commission was appointed. On the basis of its recommendation, a consolidated prison bill was formulated. Provisions regarding the jail offences and punishment were specially examined by a conference of experts on Jail Management. In 1894, the draft bill became law with the assent of the Governor General of India.

Prisons Act 1894

It is the Prisons Act, 1894, on the basis of which the present jail management and administration operates in India. This Act has hardly undergone any substantial change. However, the process of review of the prison problems in India continued even after this.

In the report of the Indian Jail Committee 1919-20, for the first time in the history of prisons, 'reformation and rehabilitation' of offenders were identified as the objectives of the prison administrator. Several committees and commissions appointed by both central and state governments after Independence have emphasised humanisation of the conditions in the prisons. The need for completely overhauling and consolidating the laws relating to prison has been constantly highlighted.

The Government of India Act 1935, resulted in the transfer of the subject of jails from the centre list to the control of provincial governments and hence further reduced the possibility of uniform implementation of a prison policy at the national level. State governments thus have their own rules for the day to day administration of prisons, upkeep and maintenance of prisoners, and prescribing procedures.

In 1951, the Government of India invited the United Nations expert on correctional work, Dr. W.C. Reckless, to undertake a study on prison administration and to suggest policy reform. His report titled 'Jail Administration in India' made a plea for transforming jails into reformation centers. He also recommended the revision of outdated jail manuals. In 1952, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of Dr. Reckless regarding prison reform.

Accordingly, the Government of India appointed the All India Jail Manual Committee in 1957 to prepare a model prison manual. The committee submitted its report in 1960. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

The Model Prison Manual

The Committee prepared the Model Prison Manual (MPM) and presented it to the Government of India in 1960 for implementation. The MPM 1960 is the guiding principle on the basis of which the present Indian prison management is governed.

On the lines of the Model Prison Manual, the Ministry of Home Affairs, Government of India, in 1972, appointed a working group on prisons. It brought out in its report the need for a national policy on prisons. It also made an important recommendation with regard to the classification and treatment of offenders and laid down principles.

The Mulla Committee

In 1980, the Government of India set-up a Committee on Jail Reform, under the chairmanship of Justice A. N. Mulla. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. The Mulla Committee submitted its report in1983.

The Krishna Iyer Committee

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

Subsequent developments

Following a Supreme Court direction (1996) in Ramamurthy vs State of Karnataka to bring about uniformity nationally of prison laws and prepare a draft model prison manual, a committee was set up in the Bureau of Police Research and Development (BPR&D).

The jail manual drafted by the committee was accepted by the Central government and circulated to State governments in late December 2003. How many have acted on it is anybody's guess. As in the case of the recommendations of the National Police Commission (1977), which had sought the creation of a State Security Commission and the promulgation of a new Police Act to replace the 1861 enactment, implementing jail reform recommendations rests with the States. The Home Ministry can do precious little if there is no political will on the part of States to push through both police and prison reforms.

In 1999, a draft Model Prisons Management Bill (The Prison Administration and Treatment of Prisoners Bill- 1998) was circulated to replace the Prison Act 1894 by the Government of India to the respective states but this bill is yet to be finalized. In 2000, the Ministry of Home Affairs, Government of India, appointed a Committee for the Formulation of a Model Prison Manual which would be a pragmatic prison manual, in order to improve the Indian prison management and administration.The All India Committee on Jail Reforms (1980-1983), the Supreme Court of India and the Committee of Empowerment of Women (2001-2002) have all highlighted the need

for a comprehensive revision of the prison laws but the pace of any change has been disappointing (Banerjea 2005). The Supreme Court of India has however expanded the horizons of prisoner‟s rights jurisprudence through a series of judgments.

Prisons in India

According to the UN Global Report on Crime and Justice 1999, the rate of imprisonment in our country is very low, i.e. 25 prisoners per one lakh of population, in comparison to Australia (981 prisoners), England (125 prisoners), USA (616 prisoners) and Russia (690 prisoners) per one lakh population. A large chunk of prison population is dominated byfirst offenders (around 90%) The rate of offenders and

recidivists in prison population of Indian jails is 9:l while in the UK it is 12:1, which is quite revealing and alarming.

Despite the relatively lower populations in prison, the problems are numerous.As of 2007, the prison population was 3,76,396, as against an official capacity of 277,304, (representing an occupancy rate of 135.7%) distributed across 1276 establishments throughout the country. The prison population has been steadily increasing during the last decade. A majority of the prison population is male (nearly 96%) and approximately two-thirds are pre-trial detainees (undertrials).

Prison Reforms

1.„Prisons‟ is a State subject under List-II of the Seventh Schedule to the Constitution of India. The management and administration of Prisons falls exclusively in the domain of the State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and authority to change the current prison laws, rules and regulations.

2. The existing statutes which have a bearing on regulation and management of prisons in the country are:

(i) The Indian Penal Code, 1860. (ii) The Prisons Act, 1894.
(iii) The Prisoners Act, 1900. (iv) The Identification of Prisoners Act, 1920.
(v) Constitution of India, 1950 (vi) The Transfer of Prisoners Act, 1950.
(vii) The Representation of People‟s Act, 1951. (viii) The Prisoners (Attendance in Courts) Act, 1955.
(ix) The Probation of Offenders Act, 1958. (x) The Code of Criminal Procedure, 1973.
(xi) The Mental Health Act, 1987. (xii) The Juvenile Justice (Care & Protection) Act, 2000.
(xiii) The Repatriation of Prisoners Act, 2003. (xiv) Model Prison Manual (2003).

3. Various Committees, Commissions and Groups have been constituted by the State Governments as well as the Government of India (GoI), from time to time, such as the All India Prison Reforms Committee (1980) under the Chairmanship of Justice A.N. Mulla (Retd.), R.K. Kapoor Committee (1986) and Justice Krishna Iyer Committee (1987) to study and make suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conducive to the reformation and rehabilitation of prisoners. These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel all over the country. In its judgments on various aspects of prison administration, the Supreme Court of India has laid down three broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person; secondly, a person in prison is entitled to all human rights within the limitations of imprisonment; and, lastly there is no justification for aggravating the suffering already inherent in the process of incarceration.

CENTRAL ASSISTANCE TO STATES

Based on the recommendations of various Committees, Central assistance was provided to the States on a matching contribution basis to improve security in prisons, repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosure. The total assistance provided to the State Governments from 1987 to 2002 was Rs. 125.24 crore. The Eleventh Finance Commission had also granted an amount of Rs 10 crore to theGovernment of Arunachal Pradesh for the construction of jail.

NON-PLAN SCHEME ON MODERNISATION OF PRISONS (2002-2007)

An assessment was made by the Bureau of Police Research and Development (BPR&D) on the requirements of the States depending on their prison population and available capacity etc. and a non-plan scheme involving a total outlay of Rs 1800 crore to be implemented over a period of five years from 2002-03 to 2006-07 was launched with the approval of Cabinet.

SALIENT FEATURES OF THE SCHEME

• Total Outlay: Rs. 1800 Crores

• Covering: 27 States (Except Arunachal & UTs)
• Cost Sharing (CS:SS): 75:25
• Project Duration: 2002-03 to 2006-07
• Scheme Extended: Upto 31.3.2009 (without Additional Funds)

MAJOR COMPONENTS OF THE SCHEME
• Construction of new prisons and additional barracks
• Repair and renovation of existing prisons
• Improvement in water and sanitation
• Living accommodation for prison personnel
As against the total Central share of Rs1350 crore over a period of 5 years, an amount of Rs. 1346.95 crores has been released to the State Governments upto 31.3.2009. Out of total central share of Rs. 1350 crore, Rs. 3.05 crore was uncommitted fund and central share of J&K which Rs 1.55 crore was uncommitted fund and Rs. 1.50 crore was the central share of J&K which could not be released to the State Government due to non-submission of utilization certificate. The progress of the Scheme is being monitored closely with a view to ensure that the funds released to the States are properly utilized for the purpose for which they have been released.

Major Problems of Prisons Relevant to India
Despite the relatively low number of persons in prison as compared to many other countries in the world, there are some very common problems across prisons in India, and the situation is likely to be the same or worse in many developing countries.
Overcrowding, prolonged detention of under-trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years.Overcrowding
Congestion in jails, particularly among undertrials has been a source of concern. The Law Enforcement Assistance Administration National Jail Census of 1970 revealed that 52% of the jail inmates were awaiting trial (Law Commission of India 1979). Obviously, if prison overcrowding has to be brought down, the under-trial population has to be reduced drastically. This, of course, cannot happen without the courts and the police working in tandem. The three wings of the criminal justice system would have to act in harmony.
Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency. Increasing the number of courts cannot bring about a desired difference as long as the current `adjournments culture' continues (Raghavan 2004).

Corruption and extortion
Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or special treatment, inmates supplement guards' salaries with bribes. Powerful inmates in some facilities in Colombia, India, and Mexico enjoyed cellular phones, rich diets, and comfortable lodgings, while their less fortunate brethren lived in squalor. An unpublished PhD dissertation from Punjab University on The Functioning of Punjab Prisons: An appraisal in the context of correctional objectives" cites several instances of corruption in prison. Another article suggested that food services are the most common sources of corruption in the Punjab jails. Ninety five percent of prisoners felt dissatisfied and disgusted with the food served (quoted in Roy 1989)

Unsatisfactory living conditions
Overcrowding itself leads to unsatisfactory living conditions. Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A special commission of inquiry,appointed after the 1995

death of a prominent businessman in India‟s high-security Tihar Central Jail, reported in 1997 that 10 000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities and a shortage of medical staff (Human Rights Watch 2006)
"No one wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing."To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible.Staff shortage and poor training Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners.

Inequalities and distinctions
"Though prisons are supposed to be leveling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behaviour in prison, other factors play an important part in many countries" (Neier et al 1991). This report by the Human Rights Watch, specifically cite countries like India and Pakistan, where a „rigid‟ class system exists in the prisons. It states that under this system, special privileges are accorded to the minority of prisoners who come from the upper and middle classes irrespective of the crimes they have committed or the way they comport themselves in prison.

Inadequate prison programmes
Despite the problems of overcrowding, manpower shortage and other administrative difficulties, innovative initiatives have been undertaken in some prisons. For e.g. the Art of Living has been carrying out a SMART programme in Tihar Jail. This includes two courses per month and follow up sessions every weekend. Two courses are annually conducted for prison staff. But these are more by way of exceptions and experiments. A Srijan project there is aimed at providing social rehabilitation. However, such programmes are few and far between. Many prisons have vocational training activities, but these are often outdated. Hardly any of the prisons have well planned prison programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring.

Poor spending on health care and welfare
In India, an average of US$ 333 (INR 10 474) per inmate per year was spent by prison authorities during the year 2005, distributed under the heads of food, clothing, medical expenses, vocational/educational, welfare activities and others.(National Crime Records Bureau 2005). This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was $ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure in Indian prisons is on food. West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chattisgarh reported relatively higher spending on welfare activities.

The scheme for modernisation of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel. The components include construction of new jails, repair and renovation of existing jails, construction of additional barracks, improvement in sanitation and water supply and construction of staff quarters for prison personnel. Activities under the scheme have been construction of 168 new jails, renovation, repairs and construction of 1730 new barracks, construction of 8965 staff quarters as well as improvement of water and sanitation in jails. The scheme was extended upto 31.3.2009 without affecting the total outlay of Rs.1800 crore (Govt of India, Ministry of Home Affairs). A second phase has been envisaged in 2009 with a financial outlay of Rs 3500 crores. However, questions have been raised whether modernisation can bring about change without integrity of purpose. Can isolation of any institution from public support and scrutiny make it transparent and attentive to its objectives? Any government that claims attempting to integrate the felon into society first of all should declare prison is as much a public institution as that of a university or hospital;

remove its isolation and integrate it functionally and physically into society; make police, judiciary, medical and educational departments, conscious of their accountability for pathetic prison conditions (Karnam 2008). Otherwise things are not going to change just with allocation of crores of rupees and launching of schemes.

Lack of legal aid

In India, legal aid to those who cannot afford to retain counsel is only available at the time of trial and not when the detainee is brought to the remand court. Since the majority of prisoners, those in lock up as well as those in prisons have not been tried, absence of legal aid until the point of trial reduces greatly the value of the country‟s system of legal representation to the poor. Lawyers are not available at the point when many of them mostly need such assistance.A workshop conducted by the Commonwealth Human Rights Watch in 1998 in Bhopal,focused on several aspects related to legal aid. It was pointed out that 70% of the prison population is illiterate and lacks an understanding of prisoner‟s rights. Thus the poor in prison do not always get the provisions in law though the State is obliged to provide legalaid. As also observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be attributed to their inability to arrange for the bail bond. Legal aid workers are needed to help such persons in getting them released either on bail or on personal recognisance. Bail provisions must be interpreted liberally in case of women prisoners with children, as children suffer the worst kind of neglect when the mother is in prison.

The lack of good and efficient lawyers in legal aid panels at that time was also a concern raised. Several suggestions were made to speed up trial processes so that the population of undertrials could be reduced. Some of the suggestions provided were expeditious holding of trials, making it possible for undertrials to plead guilty at any stage of the trial, system of plea bargaining. In a seminar, efforts made at the Tihar Jail by the University of Delhi faculty and students of law in the field of legal aid were highlighted. These included imparting legal literacy to the prisoners, sensitizing the prison administration, taking up individual prisoners to provide legal aid, involving para-legal staff to work with prisoners, both convicts and undertrials. The seminar suggested for Lok Adalat involvement to be greater and that constant monitoring of prisons was necessary to identify inadequacies and shortcomings in the prison administration. It finally suggested the need for law reform as essential to the entire system of legal aid.

A similar finding was noted in the NIMHANS-National Commission for Women study in the Central Prison, Bangalore. Many of the women were illiterate, had never stepped out of their houses, had no financial resources and many had been arrested on petty charges. Most had no idea about legal procedures, such as, what is the process of trial, how to arrange for a defense lawyer, what laws exist to protect their children or property etc.

Abuse of prisoners

Physical abuse of prisoners by guards is another chronic problem. Some countries continue to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. In many prison systems, unwarranted beatings are an integral part of prison life. Women prisoners are particularly vulnerable to custodial sexual abuse. The problem was widespread in the United States, where male guards outnumbered women guards in many women's prisons. In some countries, Haiti being a conspicuous example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence.

A book reviewing prison services in Punjab, reported that, „to get food supplements, or blankets in winter, class c-prisoners must fan the convict officers, or massage their legs, or even perform sexual favours for them. The enslavement of other prisoners to the convict officers who effectively run the prisons is particularly severe for new comers (known as amdani). They are teased, harassed, abused and even tortured as part of the process of breaking them in (Human Rights Watch 2001).

Consequence of prison structure and function

In many places, non-governmental organisations provide rehabilitation programmes and a few provide aftercare. Some notable examples include the Prison Fellowship International. Most prisoners are ill

prepared for release. No steps are taken to minimise their chance of committing re-offences. Programmes to develop a set of values, the ethos of honest labour and to build pro-social ties with the community are essential. Well-established prisons with continuous good leadership generally impart literacy to the illiterate inmate and offer facilities for higher education to those who are already reasonably educated and are willing to improve on their knowledge so that they are usefully employed after getting back to the community.

The Indian Jail Reforms Committee 1919-20

The Indian Jail Reforms Committee 1919-20 which was appointed to suggest measures for prison reforms was headed by Sir Alexender Cardew. The Committee visited prisons in Burma, Japan, Phillipines, Honkong and Britain besides the Indian jails, and came to the conclusion that prisons should not only have deterring influence but they should also have a reforming effect on inmates.

The Committee underlined the need for reformative approach to prison inmates and discouraged the use of corporal punishment in jails. It recommended utilisation of prison inmates in productive work so as to bring about their reformation. The Committee also emphasised the need for an intensive after-care programme for the released prisoners for their rehabilitation.

As a measure of prison reform, the Jail Committee further recommended that the maximum intake capacity of each jail should be fixed, depending on its shape and size. In the meantime, there was a movement against retention of solitary confinement as a method of punishment. Taking a lead in this direction, the State of Bombay abolished solitary cells from its prisons. Other Provinces followed the suit and reformed their prisons on humanitarian principles.

The Pakwasa Committee in 1949 accepted the system of utilising prisoners as labour for road work without any intensive supervision over them. It was from this time onwards that the system of payment of wages to inmates for their labour was introduced. Certain good time laws woe also introduced in jails under which the inmates who behaved well during their term of imprisonment were rewarded by suitable reduction in the period of their sentence. The ultimate object of these reforms was to protect the society from criminals, to reform the offenders, to deter them and to extract retribution for criminal acts to the satisfaction of the society.

Prisoners Reforms: Prior independence and Post-independence

The modern prison system in India was originated by TB Macaulay in 1835. A committee namely Prison Discipline Committee,1836 was appointed, which submitted its report on1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the Macaulay Committee between1836-1838, Central Prisons were constructed from 1846.The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the Second Commission of Inquiryinto Jail Management and Discipline made similar recommendations as the 1836Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care.

Accordingly, the Government of India appointed the All India Jail Manual Committee In1957 to prepare a model prison manual. The committee submitted its report in 1960. In 1957, the Eighth Conference of the Inspector Generals of Prisons also supported the recommendations of Dr. Reckless regarding prison reform. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

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a measure of prison reform, the Jail Committee further recommended that the maximum intake capacity of each jail should be fixed, depending on its shape and size3.

A Jail Reform Committee, 1946 was constituted in the year 1946 for the formation of the jails. This committee gave the suggestions as:

a) The child offenders should be treated differently

b) Modern jails should be constructed

c) The classification of offenders should be scientific such as; Women offenders

Habitual offenders, Handicapped offenders.

Prison reforms after independence of India:

After independence of India, the work on the reformation of jails speeded up. It was accepted that prisoners are also human beings and have right of humanitarian. So in 1956 the punishment of transportation (Kala-pani) was substituted by the imprisonment for life.

In 1949 Pakawasha Committe gave the permission to take work from the prisoners in making the roads and for that wages shall be paid. The treatment of prisoners on psychological and psychiatric basis received some attention as a measure of prison reform during 1950's. As G. B Vold rightly observed, "the rehabilitation activities of the modern prison are generally of two kinds, namely (1) psychological and psychiatric treatment and (2) Educational or vocational training programmes. The Government of India invited Dr. W. C. Reckless, a technical expert of the United Nations on Crime prevention and treatment of offenders, to male recommendations on Prison reforms in 1951. Later on the Committee was appointed to prepare an All India Jail Manual in 1957 on the basis of the suggestions made by the Dr. Walter Rackless.

The All India Jails Manual Committee 1957-59 was appointed by the government to prepare a model prison manual. The committee was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the India. The report was presented in 1960.they not only enunciated principles for an efficient management of prisons, but also lay down scientific guidelines for corrective treatment of prisoners.

Mulla Committee:

All India Committee on Jail Reforms 1980-83 was constituted by the government of India under the chairmanship of Justice Anand Narain Mulla. The committee suggested setting up of a National Prison Cmmission as a continuing body to bring about modernisation of prisons in India. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with hardened criminals in prisons. To constitute an All India Service called the Indian Prisons and Correctional Service for the recruitment of Prison Officials. After-care, rehabilitation and probation should constitute an integral part of prison service. The Mulla Committee submitted its reportin1983. Some other recommendations of Mulla Jail Committee were as follows:

1. The conditions of prison should be improved by making adequate arrangements for food, clothing, sanitation and ventilation etc.
2. The prison staff should be properly trained and organised into different cadres.
3. The media and public men should be allowed to visit prison so that they may have first hand information about the conditions inside prison and be willing to co-operate with prison officials in rehabilitation work.
4. Lodging of undertrial in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners.
5. The Government should make an endeavour to provide adequate resources and funds for prison reforms.

Prison Reforms:

Nowadays imprisonment does not mean to break the stones or grind the chakkies but the sense has changed. Undoubtedly, the condition of modern prison system is far more better than that in the past but still much remains to be done in the direction of prison reforms for humane treatment of prisoners.

The following modification in prison administration can be suggested for improving the efficiency of these institutions:

1) The maintenance of prison establishment is an expensive affair. It is in fact an burden on the public. Therefore the offender should be confined to the prison for only a minimum period which is absolutely necessary for their custody. The elimination of long term sentences would reduce undue burden on prison expenditure. It is further suggested that where the term of imprisonment exceeds one year, a remission of one month or so per year be granted to the inmate so as to enable him home town and meet his relatives. This will help in his rehabilitation and after his release he can face the outside world courageously casting aside the stigma attached to him on account of imprisonment.

2) The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. The woman who fall prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. Women prisoners should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under-trial prisoners. Women prisoners should be handled only by women police or prison officials. The idea of setting up separate women jails exclusively for women prisoners, however does not seem to be compatible keeping in view the heavy expenditure involved in the process.

3) The prisoners belonging to peasant class should be afforded an opportunity to go to their fields during harvesting season on temporary 'ticket on leave' so that they can look after their agriculture. This would enable them to keep in touch with their occupation and provide means of living to the other members of their family. Thus the unity of family life can be maintained which would help rehabilitation of the prisoner after his release from jail.

4) Thought the prisoners are allowed to meet their close relatives at a fixed time yet there is further need to allow them certain privacy during such meeting. The meeting under supervision of prison guards are really embarrassing for inmates as well as the visitors and many thoughts on the both sides remain unexpressed for want of privacy. The rights of prisoners to communicate and meet their friends, family, relatives and legal advisers should not be restricted beyond a particular limit.

5) The present system of limiting the scope of festivals and other ceremonial occasions merely to delicious dishes for inmates need to be changed. These auspicious days and festivals should be celebrated through rejoicings and other meaningful programmes so that the prisoners can atleast momentarily forget that they are leading a fettered life.

6) The existing rules to the restrictions and scrutiny of postal mail of inmates should be liberalised. This shall infuse trust and faith among inmates for the prison officials.

7) The prison legislation should make provision for remedy of compensation to prisoner who are wrongfully detained or suffer injuries to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concern for prisoners right to justice and fair treatment and requires prison officials to initiate measures so that prisoners basic right are not violated and they are not subjected to harassment and inhuman conditions of living..

8) The education in prisons should be beyond three R's and there should be greater emphasis on vocational training of inmates. This will provide them honourable means to earn their livelihood after release from jail. The facilities of lessons through correspondence courses should be extended to inmates who are desirous of taking up higher or advanced studies. Women prisoners should be provided training in tailoring, doll making, embroidery etc. The prisoners who are well educated should not be subjected to rigorous imprisonment, instead they should be engaged in some mental cum manual work.

9) On completion of term of sentence, the inmates should be placed under an intensive 'After Care'. The process of After Care will offer them adequate opportunities to overcome their inferior complex and save them from being ridiculed as convicts. Many non penal institutions such as Seva Sadans, Nari Niketans and Reformation Houses are at work in different places in India to take up the arduous task of After Care and rehabilitation of criminals.

10) There is dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programmes using the media of press, platform and propaganda will. It will certainly create a right climate in society to accept the

released prisoners with sympathy and benevolence without any hatred or distrust for them. The media men should be allowed to enter into prison so that their misunderstanding about prison administration may be cleared. The Supreme Court , in its landmark decision in Ramamurthy v. State of Karnataka, has identified nine major problems which need immediate attention for implementing prison reforms. The court observed that the present prison system is affected with major problems of;

a) Overcrowding
b) Delay in trial
c) Torture and ill treatment
d) Neglect of health and hygiene
e) Insufficient food and inadequate clothing
f) Prison vices
g) Deficiency in communication
h) Streamlining of jail visits and
i) Management of open air prisons.

with legal and social referral services, to honor his right to be consulted and to offer his opinions when the prosecutor plea bargains with the accused, and to totally revamp the compensation-restitution idea. Some police departments report to victims the progress being made in investigating and solving their cases, and communities may provide such services as rape crisis centers and spouse abuse shelters to assist crime victims by intervening in the crisis and referring the victims to community and others resources in the case of rape, the women's movement has spurred victimologists-mostly males-to give more equitable and balanced attention to the issues surrounding what some have called "the most despicable but least punished crime."

Attention to the victim calls for an examination of the appropriate remedies forvictimization. Too often the remedies offered to poor victims reflect middle-class values. The victim‟s point of view should be sought when systems are developed for compensating crime victims, and the concept of relative loss should be introduced indebate and deliberations for compensation.

GRIEVANCES AND PROBLEMS OF VICTIMS

The grievances of the victims can be summarized as follows-

1. Inadequacy of the law in allowing the victim to participate in the prosecution in a criminal case instituted on a police report.
2. Failure on the part of the police and prosecution to keep the victims informedabout progress of the case.
3. Inconvenience during interrogation by the police and lengthy court proceeding.
4. Lack of prompt medical assistance to the victims of body offences and victimsof accident.
5. Lack of legal assistance to the victim.
6. Lack of protection when the victims are threatened by the offender.
7. Failure in restitution of victim.

Along with these grievances, the victims of crimes faced multifarious problems:

I Economic strain of the family
II Change in Social role of dependents.
III Frustration and helplessness leading to suicide.
IV Social stigma.
V Emergence of criminal behavior.

An important aspect of investigating a violent crime is an understanding of thevictim and the relation that their lifestyle or personality characteristics may have contributed to the offender choosing them as a victim. Please do not misunderstand the previous statement. In no way are victims being blamed for becoming a victim of a violent crime. Even high risk victims (to be described shortly) have the right to live how they wish without becoming a victim of the type of offenses described on this site. Yet the fact remains, that to understand the offender, one must first understand the victim.

Victims are classified during an investigation in three general categories thatdescribe the level of risk their lifestyle represents in relation to the violent crime that has been committed. The importance of understanding this in an investigation is directly related back to the level of risk to the offender during the commission of the crime. This information is important to the investigation to better understand the sophistication or possible pathology of the offender. High Risk Victims - Victims in this group have a lifestyle that makes them a higher risk for being a victim of a violent crime. The most obvious high risk victim is the prostitute. Prostitutes place themselves at risk every single time they go to work. Prostitutes are high risk because they will get into a stranger's car, go to secluded areas with strangers, and for the most part attempt to conceal their actions for legal reasons. Offenders often rely on all these factors and specifically target prostitutes because it lowers their chances of becoming a suspect in the crime. Therefore, in this example, the prostitute is a high risk victim creating a lower risk to the offender. Moderate Risk Victims - Victims that fall into this category are lower risk victims, but for some reason were in a situation that placed them in a greater level of risk.

A person that is stranded on a dark, secluded highway due to a flat tire that accepts a ride from a stranger and is then victimized would be a good example of this type of victim level risk. Low Risk Victims - The lifestyle of these individuals would normally not place them in any degree of risk for becoming a victim of a violent crime. These individuals stay out of trouble, do not have peers that are criminal, are aware of their surroundings and attempt to take precautions to not become a victim. They lock the doors, do not use drugs, and do not go into areas that are dark and secluded.

CONCLUDING REMARKS

The victim is essentially an inseparable part of crime. Therefore the phenomenon of crime cannot be comprehensively explained without incorporating the victim of a crime. Crime victim, despite being an integral part of crime and a key factor in criminal justice system, remained a forgotten entity as his status got reduced only to report crime and appear in the court as witness and he routinely faces postponements, delays, rescheduling, and other frustrations. All their means loss of earnings, waste of time, payment of transportation and other expenses, discouragement, and the painful realization that the system does not live up to its ideals and does not serve its constituency, but instead serves only itself. Many believe that the victim is the most disregarded participant in criminal justice proceedings. It is, therefore, the Indian Higher Courts have started to award the compensation through their writ jurisdiction in appropriate cases.

Definition of White Collar Crimes

Edwin H Sutherland: White-collar crime is committed by a person of responsibility and high social status in the course of his occupation".

Types of White Collar Crimes

- Hoarding
- Black marketing
- Adulteration
- Tax-evasion
- Crimes in Medical profession - issuance of false medical certificate, helping illegal abortions, selling sample drugs etc
- Crimes in Engineering profession - passing sub-standard works and materials etc
- Crimes in Legal profession - engaging false professional witnesses, violating ethical standards, helping criminals and gangsters to avoid arrest etc.
- Crimes in Educational institutions - Getting government grants or financial aid with fabricated bills etc