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Imprisonment and Recidivism

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Introduction:

India's written constitution, which is the world's longest, demonstrates how a democratic society in the Republic of India takes every effort to preserve its citizens' rights. If not the greatest, the provisions have at least given strive to ensure that their nationals' rights are safeguarded and not infringed, so that all inhabitants of the country live with the dignity that they deserve.

In this pursuit, a lot of wrongdoers have been incarcerated for the crimes they committed. Often, when the criminals get punished for their actions, the society at large, view these convicts as a negative element and this perception, in a lot of cases, stay forever; thus, affirming a mindset of being perceived as a criminal their entire life. This leaves a very narrow scope for small-time prisoners to get back to the real world and be able to function in a society as a normal citizens after serving their time. As a result, these ex-convicts turn back to crime to conduct their daily livelihood. It is just one of the reasons why recidivism takes place. Which brings us to the question – What is recidivism?

A brief into the concept of recidivism:

There are several definitions available for recidivism. Although, there isn't one single definition that is universally accepted.

Merriam-Webster defines recidivism as –

*“a tendency to relapse into a previous condition or mode of behavior especially: relapse into criminal behavior”.*¹

Oxford Learner's Dictionaries has defined recidivism as –

*“The act or habit of continuing to commit crimes, and seeming unable to stop, even after being punished”.*²

National Crime Record's Bureau (NCRB) defines this concept as –

*“The tendency of relapsing into crimes by the criminals is known as Recidivism. A recidivist is a person who relapses into crime again and again”.*³

Basically, recidivism is the resumption of a person's criminal activity after they have been released from jail. They are habitual offenders. For example, a person 'A' commits a crime of larceny and goes to prison for the same. But shortly after being released from prison, 'A' goes back over the same ground and resumes to involving in criminal violence and lawbreaking. In this scenario, 'A' will be called a recidivist.

Recidivism is a matter of grave concern according to criminologists and judicial bodies because no change in the rate of recidivism would mean that the imprisonment, which ideally serves as correctional facilities are failing in grooming the convicts into becoming better citizens and living a life abiding by the law. This would suggest that keeping track of the recidivism rate could potentially contribute to finding resolutions and tackle this issue.

Reasons to Measure Recidivism:

According to a dissemination by Queensland Productivity Commission, there are three important reasons as to why measuring recidivism is important⁴.

The first and foremost reason for evaluating recidivism is that reduction in the rate of reoffending helps reduce a huge burden on the criminal justice system. Managing correctional institutions is a costly endeavour. According to a report by the National Crime Records Bureau (NCRB), A total of 2060.96 Crore Rupees was spent on inmates during FY 2019-20⁵. If the number of repeat offenders can be decreased, then a significant portion of those funds can be employed in other areas of general administration.

The second rationale for assessing recidivism using the aforementioned dissemination is that a high number of re-offenders may indicate that the existing incarceration and rehabilitation regimen isn't up to the mark and it would help in indicating that adjustments are required.

The third reason for measuring recidivism is that it helps to identify harm for families and communities where *“recidivism can lead to repeat victimisation, normalise crime, damage local economies and weaken community networks”*⁶. Also, normalising crime could result in more crime in general which is of course, not at all beneficial to these communities and society at large.

Statistics on recidivism rate in India:

In a statistical survey conducted by the NCRB⁷, it can be found that, while the number of recidivists convicted thrice or more in the past shows a downward trend (starting with 27,484 in 2010 and decreasing till 12,960), the number of recidivists convicted twice in the past seems to be at a constant rate with mild fluctuations here and there witnessing a dip in the year 2012 with 36,710 recidivists (from the previous numbers of 49,139 and 41,791 in the year 2012) but again increasing with 47,884 by the year 2014. Unfortunately, the statistics of recidivists convicted once in the past (i.e., two-time offenders) witness a rapid increase starting with 1,63,858 in the year 2010 and reaching 2,34,896 by the year 2014. Table given below⁸.

Table-11 (A)
Category of Recidivists arrested during
2009-2013

SNo.	Year	Number of Recidivists convicted in the past		
		Once	Twice	Thrice or more
1	2010	1,63,858	49,139	27,484
2	2011	1,58,605	41,791	15,793
3	2012	1,75,046	36,710	14,973
4	2013	1,95,183	44,171	14,144
5	2014	2,34,896	47,884	12,960

Another data provided by National Crime Records Bureau which presents the recidivism convicts in the year 2019⁹, shows that the total number of recidivists arrested under IPC rose to 31,12,639 and 21,00,765 recidivists were arrested under SLL (Special and Local Laws) which seems to be skyrocketing figures.

Although, a study into the figures of recidivism gives an insight into tracking the progress in achieving the goal (of minimum or zero recidivism) it is also important to know certain factors causing recidivism in the first place.

Causes of Recidivism:

According to a study by e-PG Pathshala (A project by the Ministry of Human Resource and Development, abbreviated as MHRD (Currently referred to as Ministry of Education)), they have pointed out some causes of recidivism¹⁰. They have also suggested that after being released, the former prisoner would either re-offend or desist (abstain from reoffending); and having the former be the case would be a matter of concern.

1. **The Prisons:**

When criminals are convicted and are put to prison, they are expected to successfully go through correctional treatment so that when they are out of prison, they are ready to live abiding by the law. But, in reality, the situation is quite the opposite. Rather than being rehabilitated, a convict gets exposed to “*notorious and hardened*”¹¹ criminals which sent exposure to high profile crimes and get glorified. However, there have been opposing claims that having exposure to high-profile prisoners would provide first-time offenders with awareness of the threat and the consequences associated, thereby leading to a decrease in recidivism. As a result, depending on the circumstances, this point may be debatable.

2. **Inappropriate Punishment:**

Another possible explanation that constitutes a factor for causing recidivism is that, sometimes, the punishment that is granted to the convicts is either too lenient or too harsh. If the criminal penalty is excessively mild, it fails to make individuals realise the magnitude of their violation. This means that justice would not be served to the victims of those crimes and the criminals might not be rehabilitated completely. The other end of this spectrum is the punishment that is granted is too harsh. With harsh punishments sanctioned, the offenders may “*fall apart from the norms of the society*”¹². This can cause the convicts to re-offend after being released from prison. According to the National Institute of Justice (NIJ), by increasing the severity of punishments, it could not be determined that it has a maximal effect on crime prevention¹³. In fact, the longer period a person stays in prison the more exposure that person has in gaining insight over being better while pursuing the criminal activity.

3. **Lack of reintegration opportunities:**

As mentioned in the previous point, prisoners who have been incarcerated for a long period of time may diverge from societal standards and consequently find it difficult to reintegrate into society. For a long duration away from the outside world, an ex-convict may find it extremely difficult to cope with the outside world mainly because of technological, social, or political changes. As they are unable to adjust to new changes, they resort to illegal activity to meet their requirements.

4. Incorrigibility:

To be incorrigible means to not be able to change or reform. Out of all the recidivists, there are certain incarcerators who despite multiple rehabilitative programmes don't seem to change and fall back to their criminal activities. In most such cases, it can be observed that incorrigible offenders aren't the ones who commit crimes out of desperation. Rather, these offenders are generally white-collar criminals and cybercrime criminals who return to committing these crimes because they are financially rewarding.

5. The materialistic way of life and peer pressure:

Financial stability is demanded by every individual to fulfil their needs but not scoring enough opportunity can lead to financial stress and in order to get out of the socioeconomic conditions, convicts may relapse to crime thus becoming a recidivist. Ex-convicts who are at a fairly young age are often easily prone to re-offend.

6. Mental health and drug abuse:

Rehabilitative techniques may not function for certain prisoners due to poor mental health caused by biological factors or substance misuse. Drug abuse and reoffending is a vicious circle since drug addicts are more likely to relapse to addiction and fall back on committing crimes of dealing with substances.

Existing laws regarding recidivism:

According to data collected on Droit Penale: Indian Law Journal on Crime and Criminology, there are several provisions relating to recidivism¹⁴

There are several laws provided in the Indian Penal Code (IPC) regarding recidivism. Section 75 says that a person who is a second-time offender is liable to enhanced punishment under chapters X – C, D, and XIV. Although, this punishment may be used only in certain cases where the provided punishment seems unnecessary. Also, under S.310 which defines thug as –

“Whoever, at any time after the passing of this Act, shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing by means of or accompanied with murder, is a thug.”¹⁵

And according to S.311 of IPC –

“Whoever is a thug, shall be punished with 1 [imprisonment for life], and shall also be liable to fine.”¹⁶

Besides these, S.376(e) of the IPC provides punishment to recidivists of rape or sexual assault with life imprisonment or death, and S.413 deals with punishing people *“habitually dealing with stolen property”¹⁷*.

The Indian Evidence Act, too, has some provisions in giving reliance to the past character of the accused under S.53 and S.54

Also, with the introduction of the Habitual Offenders Act, 1952, various other states came up with laws to deal with recidivism at their respective states. Punjab Habitual Offenders Act was the first act that was introduced and later on this act was largely followed by other states.

Various other acts also recognized the issue of recidivism and introduced provisions regarding it. Like the Arms Act, 1959 where if the Licensing Authority has the power to restrict obtaining a license on reoffenders and The Prevention of Corruption Act charges punishment of a maximum of seven years (along with fine) to reoffenders under S.8, S.9, and S.12

Suggestive Measures to deal with Recidivism:

“The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.”¹⁸

Certain measures can be taken to deal with recidivism with respect to the factors that contribute to reoffending in the first place.

1. **Reintegration Programmes:**

The first thing that can be done to combat recidivism is to invest in reintegration programmes. As stated earlier, ex-convicts find it difficult to get back into the world as they diverge from the standard social norms which makes it difficult for them to land stable financial positions. Most of these offenders also face social issues like being ostracized from the community. All these issues would increase the possibility of recidivism and such people could end up being stuck in the vicious cycle of offending, being rehabilitated, being released, being rejected, and going back to re-offending. With reintegration programmes, such as skill development courses and therapy, prisoners could have an opportunity to mix with the world and desist from crime.

2. **Public Awareness:**

Letting people know about recidivism and the role that society plays could also hugely impact declining the rate of reoffending. If people don't ostracize the ex-convicts after being released then it would be easier for them to desist from crimes and get back to the world and live to abide by the law.

3. **Invigilation by government agencies:**

If the government agencies can run programmes to invigilate and check on ex-offenders after they are released from prison, it could exponentially lower the rate of recidivism as the ex-convicts are under the watch. It could also work well within the incorrigible white-collar criminals as they would also be under check and the risk of running scams and getting caught would be high.

Apart from these points, there could also be initiatives to introduce new re-correctional strategies as we have seen that with the current imprisonment programme there doesn't seem to be much progress, and taking a step to make certain changes in the rehabilitation programme seems to be a step in the right direction.

Conclusion:

It is very necessary to realise that recidivism is a real problem and concern amongst people, the system, and even the convicts. With a recidivism rate that is static in nature, it is imperative to make efforts into knowing the factors which lead to this situation. It can also be understood that a lot of times not being able to cope with society may also cause problems and the solution around it is to introduce reintegration programmes so that the convicts can develop skills to be able to tackle the world with also people being aware of the criminal psychology involved

behind recidivism. When the psychology of such ex-convicts are understood and dealt with, we can expect a change in the rate of recidivism.



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