

## **Imprisonment of Women in India and the National Upgrading of Chastisement to Mirror the United States Penal System**

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### **ABSTRACT**

The attention given to female criminality is marginal compared to the degree of research conducted worldwide on male criminality. Though there have been some scholarly writings concerned exclusively on this area, however, almost without exception both the research upon which they were based and the conclusions drawn have been coloured by age old myths about the nature of women in general, that is , women are passive, more emotional than men, gentler in nature and inferior to men. However, prisons for women are unlike institutions for men, and women adapt to the prison environment differently than men. So, because of these important reasons women's prison was separately studied by the researchers. The research work is based on practical observations made during the visit to the lone women jail of State of Punjab, Ludhiana. The paper is divided into four parts. It starts by highlighting the international historical development of women jails with its peculiar features. The next part of the paper will deal with generalities of gendering criminology, elaborating different theories and causes of female criminality. Observations made during the visit coupled with sociological and physiological impact on women prisoners will be discussed in third part of paper. The work will wind up suggesting other modes of punishment for women, successfully working in USA's Criminal Justice System, in lieu of imprisonment.

Keywords: India, Punjab, Prison, Women, crime, Criminality

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### **INTRODUCTION**

During the long complex history of punitive actions against criminals, all manner of reactions have been employed at one time or another. Offenders have been subjected to death or torture, social humiliation such as the pillories and stocks, banishment and transportation, imprisonment, and financial penalties. Responses towards lawbreakers were originally retributive, compelling them to make amends in some way. Later, restraint and punishment became the principal reaction to deviants; this approach is still dominant in various societies of the world. Formalized legal codes and state-administered procedures of justice existed in ancient times. The earliest known system of laws was the Code of Hammurabi, developed by King Hammurabi of Babylon in the eighteenth century B.C. This exceedingly complicated code was designed to regulate a wide variety of human affairs. The ruling principle concerning crime was the retributive *lex talionis*, or 'an eye for an eye, a tooth for a tooth.' Death was a frequent means of dealing with lawbreaking, as were mutilation and monetary compensation. Mosaic laws and the legal codes of the Roman Empire are other cases of formalized legal codes and criminal

proceedings in antiquity. During the twelfth century, the crown gradually assumed control over administration of justice; compensation began to be paid to the King rather than to the wronged party. As the Crown intruded into the regulation of these matters, a system of punishment slowly began to emerge. In the Middle Ages and in the period up to the nineteenth century, corporal punishment and banishment were the most common forms of punishment in the Europe; imprisonment is relatively a recent invention (Gibbons, 1992).

European jails in the middle ages were places for the confinement of prisoners awaiting trial or punishment, rather than custodial institutions. These jails were frequently in castle towers, were managed by private citizens, and were wretched places in which persons of both sexes and all ages were indiscriminately thrown together. In the sixteenth and seventeenth centuries, offenders were often sentenced to labour in the galleys, but this was more an expedient for providing labourers in the ships than an effort to contrive a kind of imprisonment. Houses of corrections established in England in the 1500s were forerunners of imprisonment as a form of punishment. A house of correction known as Bridewell, opened in London in 1557, was used for incarceration of vagrants and other idle persons. This was a congregate institution, as were other English houses of correction; the inmates were not maintained in separate cells. Such institutions were constructed in some number on the European continent in the 1600s and 1700s. The most famous was a workhouse at Ghent, Belgium, opened in 1773. The institution featured individual cells and other characteristics that later became common in modern prisons. Some other prototypes of modern correctional institutions were found in Italy in the 1700s. The forerunner of the modern prison was the Walnut Street Jail, opened in Philadelphia in 1776 (Gibbons, 1992).

Punitive responses of offenders grew in advance of tightly reasoned philosophies of punishment. The first full-blown argument in defense of punishment is found in the classical school of thought that developed out of the writings of Locke, Hume, and Rousseau etc. The classical position on punishment viewed humans as rational animals who deliberately and willfully chose the courses of action they pursued. However, modern criminology is positivist, in the sense the criminologists contended that criminality can and should be studied by the methods of science.

Before the nineteenth century, all convicted criminals were housed together regardless of their sex or age. In fact one of the first recommendations of early penal reformers was the segregations of prisoners by age and sex (Howard, 1977). Prison administration eventually separated women convicts from the male inmates. Often, these women were moved to other parts of a predominately male penal institution. Women prisoners were frequently relegated to an attic because there were so few of them (Tonry, 1983). Unfortunately, these incarcerated women were often ignored by prison officials and given tasks traditionally associated with women's work such as sewing or cooking. Eventually, nineteenth-century prison administration established separate buildings for female inmates in male prisons.

The first women prisons were opened during 1800s in the United States. In 1835, the first correctional facility exclusively for women was opened in New York; it was named Mount Pleasant Female Prison (Grana, 2002:78). And it was not until the 1870s that the first large-scale, completely separate, and independent penitentiary for women was opened in the United States—the Indiana Reformatory Institution. The opening of these institutions coincided with a popular social movement of the late nineteenth century. The Progressive Movement of the nineteenth

century was concerned with prison reform, among many other things. Middle-class female reformers, such as Elizabeth Fry, attempted to re-socialize criminal women into respectable, law-abiding citizens. Often, this process involved educating female offenders about the 'ladylike' virtues of womanhood (chastity, self-sacrifice, motherhood). Today, many women's prisons continue to operate based on these principles and, particularly, the belief that the most acceptable role of women is wife and mother (Stanko, 2004).

'The problem is not the right of the society to protect itself from the disorderly and antisocial person, but the right of the antisocial person to be made orderly and socially valuable....The problem of society is to produce the right attitudes in its members.' W.I. Thomas in his book 'The Unadjusted Girl', (1907)

Researchers and scholars have never given female criminality the attention they gave to male criminality. There are probably two reasons for this. *Firstly*, until relatively recently, the crime index for women has been too low to make it a significant social problem. *Secondly*, traditionally most of the researchers have been men. Though there have been some scholarly writings concerned exclusively with female criminality, however, almost without exception both the research upon which they were based and the conclusions drawn have been coloured by age old myths about the nature of women in general, that is, women are passive, more emotional than men, gentler in nature and inferior to men. These notions have been drilled into women for so many centuries. Aristotle said, 'Women maybe said to be an inferior man' (Deming, 1977). The Code of Manu stipulated, 'In childhood women must be subject to her father, in youth to her husband, when her husband is dead, to her sons. A woman must never be free of subjugation' (Deming, 1977). Lord Chesterfield, in a letter written to his son in 1748, counseled him, 'Women are to be talked to as below men, and above children' (Deming, 1977). Such sentiments show clearly in the early writings on female criminality, and more subtly even in many modern writings. Judging from the criminology texts and other works of the modern era on lawbreaking it was often seen that the world of crime has been a man's world. Although female crime has been passed over quickly in criminological texts, the subject has not been entirely overlooked.

Criminological interest in women offenders can be traced back with the seminal work of Adler (1975), Smart (1977), Leonard(1982), Morris (1987), Naffine (1987), and Heidensohn(1989). All these texts, while varied in content and theoretical approach, endeavoured in different ways to set the criminological record straight as far as women's relationship to criminal activity was concerned. They were concerned to challenge the conventional criminological wisdoms concerning women and crime and in so doing were concerned to render women more visible within those criminological wisdoms. Each of these texts addressed this issue in a differently focused way. They share, however, a number of common concerns. Several of these texts reflect a concern to appreciate the fact that women's relationship to the crime problem needs to be understood not only in terms of their offending behaviour, but also in relation to women's experiences as victims of crime. Various criminologists who had studied female criminality from time to time had focused on this section of criminals from different angles. Their views can be broadly summed up into different theories.

## **THEORETICAL FOUNDATIONS**

Italian psychiatrist Cesare Lombroso (1836-1909) was among the first to study scientifically female criminality (Ferrero, 1990). He examined the skeletal remains of female offenders, particularly the brain, face, jawbones, and cranium. He hypothesized that these females were 'born criminals' and thus biologically pre-disposed to criminality. Such females were believed to be atavistic, or throwbacks to primitive genetic traits-possessing certain physical anomalies absent in normal women (Flowers, 2008). A prostitute was, for instance, 'likely to have a very heavy lower jaws, large nasal spines, simple cranial sutures, deep frontal sinuses and wormian bones. A 'fallen women' usually possessed occipital irregularities, a narrow forehead, prominent cheekbones, and a 'virile' type of face' (Bowker, 1978). Lombroso also studied the 'occasional' female criminal, whom he believed accounted for most female offenders. According to him, 'these women generally had none or few degenerative qualities and possessed 'moral equipment' near that of normal women' (Flowers, 2008). Such women lacked the respect for property that men had and believed clothing to be essential for attracting a man (Flowers, 2008).

More recent biologically based research on female crime has studied the relationship between genetics and female delinquency. T.C. Gibbens found a high rate of sex chromosomal anomalies in female delinquents (Gibbens, 1971). Cowie (1968) identified genetic factors in female delinquency- relating obesity in girls to sexual promiscuity, and menstruation "to the distress females feel in recognizing that they can never be males, thereby, making them more susceptible to delinquent conduct". Other studies have also linked menstruation and pre-menstrual syndrome (PMS) to female criminality, noting such related symptoms as increased aggression, irritability, and tension (Dalton, 1961).

The 'Psychological Theories' perspective on female criminality is believed is rooted in the psychoanalytic writings of Sigmund Freud. Like Lombroso, Freud regarded females as biologically inferior to males. In 1933, he described female offenders as passive, narcissistic, and masochistic (Freud, 1933). He attributed these defective qualities to a 'masculinity complex' or 'penis envy'. As a result of these conflict, making them morally inferior and less able to control their impulses, which in turn affected such areas as the female's intellectual sphere. Such females were characterized by jealousy, immorality, emotionalism, and bad judgement (Flowers, 2008). Similarly, Sociologist William Thomas was among the first to relate female criminality to the social environment. In 1907, he criticized anthropologists for their 'assumption of the inferiority of women and their subsequent failure to distinguish between congenital and acquired characteristics' (Mann, 1984). He postulated that any gender differences in intellectual functioning were not a reflection of biological differences but social influences. He saw the female criminal as a product of inmate instincts in conjunction with influences within the social environment. Flowers (2008) developed a dyadic goals-means conflict theory in which he proposed that every human (particularly prostitutes) had some desires: security, recognition, new experience, and response. It was the desire for new experience and response that influences female criminality (Flowers, 2008).

Glueck and Glueck (1934) work in the field of female criminality concluded that female delinquency was the result of biological and economic factors. Pollak (1950) posited that female crime was primarily sexually motivated, while male crime was largely economically motivated, with the exception of crimes of passion. He argued that women were given preferential treatment at every stage of the criminal justice system, arising in part from men's 'chivalrous and

paternalistic regard for women,' allowing for fewer arrests, less prosecution, shorter sentences, and a lower rate of incarceration than male offenders (Pollak, 1950 and Crites, 1976).

A number of theories tied to social and economic forces have been proposed in explaining female criminality. In a study of delinquent girls and differential opportunity, Datesman (1975) found that perception of blocked opportunities was more closely related to female delinquency than the perception to male delinquency. In a review of the literature on the etiology of female criminality, Klein (1973) found that poor and Third World women 'negate the notions of sexually motivated crime,' instead engaging 'in illegal activities as a viable economic alternative'. Indeed, studies show that most female offenders tend to be economically disadvantaged, undereducated, self-supporting, and mothers, leading one researcher to comment that criminality may be a necessity for women 'to provide for themselves and their families, a factor which makes it conceivable to view their larcenies, burglaries, and robberies in simple economic terms'(Mann, 1984).

The increase in certain female crimes in recent decades had been linked by some researchers to the 'consciousness-raising' women's movement, which they credit for the increased participation of females in the labor force, changing women's identify and self-concept, and a parallel rise in female criminality. In her detailed study on women, crime, and the contemporary women's movement, Rita Simon advanced that 'women have no greater store of morality than do men. Their propensities to commit crimes do not differ, but in the past, their opportunities have been much more limited. As women's opportunities to commit crimes increase, so will their deviant behaviour and the types of crimes they commit will more closely resemble those committed by men (Simon, 1975).' The alleged correlation between the women's liberation movement and women's criminality has been challenged by critics as naive, methodologically weak, and inaccurate. Laura Crites pointed that many female offenders are poor, single, unemployed, uneducated, and belonging to racial minority, and thus they have not taken part in the women's movement and greater social and economic opportunities. Based on the review of self-report and official data on female crime; Weis (1976) argued that a new, liberated female criminal is less an empirical reality than a social invention.

In addition to the theories on female criminality, criminologists have studied causative elements that have been shown to correlate with the crime and delinquency of females. Significant factors that have been linked with female criminality are, The Broken Home (U.S. Department of Justice, 1989 and 1991), Child Abuse and Neglect (Flowers, 2008), Child Sexual Abuse (Silbert, 1982), Conjugal Abuse (Flowers, 2008), A Family Cycle of Abuse and Violence Substance Abuse (Dugdale, 1877), Race and Ethnicity (Silbert, 1980), Mental Illness (Silbert, 1980), The Menstrual Cycle (Glaser, 1974), Male Coercion, and Recidivism. Hence, these are some of the commonly quoted reasons for increase in female criminality, though the factors which results in enhancing it differ from society to society, however, some of the above discussed factors are prevalent in developed and developing societies like USA and India respectively. Moreover, the reasons of female criminality and its effects are different from men and so we require women sensitive, friendly, responsive criminal justice system which could address the issue separately.

Several feminist scholars working outside the realm of criminology and penology have suggested that the key to understand women involves appreciating the social relationships into which they enter. Gilligan suggested, 'Women's place in man's life cycle has been that of nurturer, caretaker, and helpmate, the weaver of those networks of relationships on which she in

turn relies'. She also claimed that moral reasoning of women cannot and should not be compared with that of men, because women value relationships above ethical maxims and rules (Stanko, 2004). So the experience of prison imprisonment itself varies considerably between the sexes. Hence, the criminal justice system should encourage empowerment and consciousness-raising initiatives for imprisoned women so as to enable them to overcome the social stigma that they face. These initiatives should also involve women with self-help networks. Female ex-convicts need a network of peers and mentors to assist with the restructuring of a stable life.

## **METHODS AND MATERIALS**

The researcher conducted an empirical study of the sole exclusive women Jail in State of Punjab, India, situated at Tajpur, Ludhiana. The questionnaires for 100 respondents were prepared but only 92 respondents responded as the rest were not willing to share their experiences. In all, three sets of questionnaires were prepared, one for Jail Staff, second for Under-trials and third for Convicted offenders. 31 Under-trial Prisoners and 61 Convicted Prisoners responded to the questionnaires. The questionnaires specified the demographic file of the respondents, their living conditions and the impact of imprisonment etc.

## **RESULTS AND DISCUSSIONS**

### **(a) *Evidence from Junjab***

Crime and punishment are gendered concepts. The types of crime in which women and men are engage are dissimilar. Female offenders seem to experience each stage of the criminal justice system differently than men. According to the Indian National Expert Committee on Women Prisoners (1987):

“Women-hood and childhood even in criminal wrapping and behavioral aberrations deserve to be nursed in dignity and restored to working normally using all the material, moral and spiritual resources at the society’s command”.

Women are often handled and treated differently from men by the correctional system, and it is incorrect to assume that the experience of imprisonment is identical for both women and men. Prisons for women are unlike institutions for men, and women adapt to the prison environment differently than men. Thus, because of these important reasons women’s prison was separately studied by the researchers. This part of the paper will discuss some annotations made by the researchers during the visit to the only Women Jail of State of Punjab. It will also debate around the crucial issues of prison life and its degrading effect on social, psychological and other areas of life of women prisoners, making imprisonment an out-dated and costly mode of punishment under Indian Criminal Justice System.

It is perhaps the psychological implications of imprisonment that may be most harmful to women inmates, for, in spite of the outward appearance of most women prisons, the effect can be confusing for female inmates and trends to ‘deadened any impetus for change.’ In her study of

women's corrections, Helen Gibson describe the psychological victimizations of women present in the typical women's prison. Women in prison are further psychologically impaired by the outdated rules and regimens present in many institutions, limiting both their mobility and opportunity to better themselves for their return to the outside world. But what is more psychologically damaging to most female inmates than the prison imprisonment itself is the reality that women are often the victims of a double standard in terms of the crimes they are convicted of, time served, and upon release (Flowers, 2008). Female prisoners cannot escape this form of psychological bondage once they come face to face with it. It was observed during the visit to the women jail that staying away from family led to psychological sickness among them. This kind of mental depression and sickness leads to deformity in their personality and with passage of time they become rude, angry, and insensitive towards their personal and social life.

It was perceived that the children of inmates suffer the most by prison life. Living in prison, without any fault, with their mothers have a negative impact on growth and overall development of their personality. Moreover, the researchers noticed that most of the children were mal-nourished; even though Punjab Jail Manual incorporates that special diet should be given to the children residing in jail. More attention should be paid for the educational growth of inmates and their children. Library should be developed and enriched through various newspapers, journals, books etc., for overall development. Hence, it can be assumed that purpose of imprisonment is not achieved as it not only fails to rehabilitate the inmates but also ignore the developmental avenues of their children.

Adequate facilities for segregating the children and those with mental problems from other inmates were unavailable. It was observed during the research that no doctor was available. The lady doctor (gynecologist) recruited, visited women jail twice a week only. No psychologist is recruited, and there is no counseling cell, even though counseling support is very essential for the inmates as it was revealed through informal talk that most of them were psychologically sick and depressed. Moreover, the sensitive issues like drug-addiction, AIDS were not the concern of authorities. No attention is being paid for the drug-addicts to undergo treatment and the studies reveal that most of the prisons have even become a safe place for drug dealers.

The present study reveals that most of the inmates were illiterates. Facility of elementary education was missing in the jail. The inmates were rude and illiteracy among them develops bad habits and erodes sense of responsibility and moral duty towards their life. It was observed during the visit that basic etiquettes among them were missing. Moreover, the environment within the four walls of prisons makes the prisoners loose all their morality, tenderness and politeness making their behaviour anti-social. The Committee on Empowerment of Women took up the issue of women in detention and held emphasis on the need for adoption of a specialized approach for rehabilitation through education. Computer education should be given to the women prisoners as this will not only boost up their personality and educational status but will also give them various job opportunities after their prison life.

It has become practically impossible to build up more prisons in order to reduce the congestion. As such, treatment and rehabilitation of prisoners become impossible. In addition, such congestion itself works as a source of tension among the prisoners and the personnel. Overcrowding in prisons is a common phenomenon which was witnessed even in this women detention center; therefore, there is an immediate need for the making of new and modern jails

with much more capacity, which obviously needs more financial aid from the governments. However, the present jails too needs to be renovated and upgraded with various facilities like a hospital, administrative block, training centre-cum-canteen, library block, central watch tower, workshops, educational facilities, firefighting system, solar water heater system, rainwater harvesting, a green central court with every ward, video-conferencing facility, sewage treatment plant, and dual water supply system. Moreover, methods used for imprisonment and segregation, harsh attitudes towards prisoners, and discriminations equally augment the dangerous status of inmates. Hence, the prisons can no more be considered as correctional homes; moreover, they have merely become stores of human beings.

The under-trials and convicted were though lodged in different cells but the common jail campus did not result in complete segregation. A need to sensitize Criminal Justice System for female offenders can be one of the options to handle the problem of under trials. *Firstly*, there is an urgent need for simplification of bail procedures for women under-trials, especially were separation from their families and anxiety about the well being of their children are major concerns for women in detention. *Secondly*, more family courts should be established for the smooth and flexible administration of justice and for speedy disposal of the cases. *Thirdly*, there is also an immediate need to recruit more female judges to deal with the cases of female offenders, which might ensure better understanding of the situation which led these women to crime. *Fourthly*, the whole judicial system needs to be sensitized towards women's issues. This can be achieved if all including judges, magistrates, and advocates orient themselves for a more sensitive handling of judicial and legal procedures affecting women. *Fifthly*, the Punjab Jail Manual should be amended and it should be made mandatory for absolute segregation of under-trials and convicted. The under-trials which remain in prison for many years put additional burden on the authorities which is another drawback of imprisonment as a source of punishment.

In many cases, it was observed during the visit to the women jail, that most of convicts belong to the poverty-stricken class of the society and it causes the same factors that worked as pretext for criminality to come up once again after the offender is released. So, it can be concluded that in most of the cases imprisonment does not help in preventing recidivism, as their weak financial condition and social problems drag them again to the world of crime.

The present study covers various areas related to female criminality and delinquency and impact of prison life on females. The analysis of the data helps in hypothesizing the role of low socio-economic status to be a crucial factor within women to commit crime. Various theories and studies reveal that inferior status of women in family and society makes her stressful which is ultimately a lead towards commission of crime. There is hence, a need for psychological and sociological approach by giving opportunities to them so that they can think of rehabilitating themselves once they are out of prison. The vocational training given to them in the form of embroidery, stitching, candle making etc., are neither sufficient for their economic independence nor the inmates show much interest in these activities. Moreover, there are virtually no special programs or incentives available for female inmates who are mentally challenged, handicapped, educationally disadvantaged, or simply uninterested in vocational training. The weak and outdated vocational courses make the female inmates lethargic and they gradually lose the sense of responsibility towards their social obligations. Hence, they are then unable to adjust in social routines once they are back in society.



The jail premise visited by the researchers was inefficient and inadequate according to the number of inmates. The convicts under the present system of imprisonment is facing difficulties in compensating damages inflicted to the victim, as they are disallowed to take part in any social and economic activities. This also entails an overall negative impact of imprisonment on the economic development of prisoners. Moreover, the present system of prison does not help in reducing recidivism so the endeavour of punishment is not being achieved.

Money does not guarantee decent prison conditions and operations, but lack of money assures the opposite. At present, our jails are experiencing very serious budget crises that may persist for years. General conditions relating to food, lodging, clothing, recreation etc., were far below standard and needed considerable improvement. Toilets were blocked, unhygienic and less in number as compared to the inmates, including children, using them. A need was also felt by the researchers to strengthen the free legal aid cell for the prisoners. The students of Law Schools can be involved to render legal assistance to the women prisoners. Moreover, all women in custody must be informed of their rights including their right to demand free legal aid. The lack of such basic facilities including experts, like psychologists, drug de-addiction experts to deal with criminals, reveals the fact that there is scarcity in the department.

The vacancies of administrative and other supportive staff were witnessed by the researchers. Most of the documentary work was done by the staff with the help of a few educated prisoners. Computers should be introduced in compilation of data and other details of prisoners as it'll not only reduce the documentary work of the official staff but will also make jail networking better. It was felt during an interaction with the custodial staff that they can be an important element in the reformation of prisoners. To achieve this aim there is a need for their motivation and better promotional avenues. The researchers were informed by the jail authorities that they at times feel helpless to handle inmates in emergency situations because of lack of proper and effective power and weapons. Moreover, the authorities sounded critical about the concept of 'human rights' because many a times prisoners take undue advantage. Hence, the rights of the prisoners and its limits need to be defined in prison laws because it should not be misused by the criminals as this result in adverse upshot of the deterrent effect of punishment, and better working conditions should be made available for the prison staff.

The laws and manuals dealing with prison administration should be thoroughly reviewed and amended regularly taking into consideration the changing nature and dimensions of crime in society. The present Act, Prison Act, 1894, which was prepared more than 114 years ago during the British Rule in accordance with the conditions prevailing at that time, should be replaced by new law keeping in view the present circumstances. The Punjab Prison and Correctional Service Bill, a demand which has been pending before the government since long should be speedily operationalized. The new law will not only target prison life of the inmates but will have some objectives to be fulfilled even after its completion. The provisions of the bill will have special focus on women prisoners as well. The real rehabilitation of women prisoners is possible if law makes it mandatory for government to take essential and compulsory steps for them after their release such as special employment schemes, financial assistance; low cost housing facilities etc., as it'll not only bring economic security but will also prevent women prisoners from social deprivation after their release.

In the eighteenth century, it was believed that imprisonment could work as a lesson for the offender and potential offenders who had not yet committed crime. Here, the emphasis was put upon the offender's remorse. In the twentieth century, criticism on short-term imprisonment and its deleterious effects drew attentions towards the rehabilitation and treatment theory. Yet, it seems, all those efforts and hopes have turned out in vain and imprisonment has not been unable to reach the goals for which it had been projected. A study conducted by Department of Criminal Justice at the University of Cincinnati and the Center for Criminal Justice Studies at the University of New Brunswick analyzed that firstly, prisons should not be used with the expectation of reducing criminal behaviour. Secondly, the excessive use of incarceration has enormous cost implications (Gendreau, 1999). The above discussed are some reasons for this frustration. The drawbacks of imprisonment as a mode of punishment can be checked but they cannot be removed completely; hence, we need to think of other modes of punishment in lieu of imprisonment.

*(b) Borrowing Models from the United States Penal System*

Prisoners are human beings. In most cases, they are also citizens of this country. They have lost their liberty whilst they are in prison. However, they have not lost their human dignity or their right to equality before the law as illustrated in *Muir v R [2004] HCA 21*.

With the above discussed reasons in mind, it must be mentioned that abolitionists believe in harmfulness of the prison, as they all have their own justified arguments and views. A number of them consider the present style criminal justice system as being unfair and, as such, believe in the total elimination of prisons from this system. Along with this group and those radical opponents of imprisonment who are against the State organized punishments, particularly imprisonment, a number of criminologists and sociologists are of the opinion that steps must be taken towards the abolition of prison systems. Yet, on the way to this end, restorative methods must be applied in order to change the elements of prison systems, especially by taking advantage of alternatives to imprisonment and broad social control. The myth of the prisons healing the criminals and saving them from their criminality has failed, so prisons are no longer of utility. Some of the options in lieu of incarceration or making imprisonment useful are discussed below which could help in rehabilitation of prisoners and pull off the real purpose of punishment.

House imprisonment is routinely used; it involves a series of liberty restricting measures ranging from prohibition of nightly movements to house imprisonment at the time where the offender is not working. The concept of house imprisonment requires the convicts to spend most of their time in their houses as an alternative to incarceration. In USA, house imprisonments are ordered either by probation departments, or by judicial orders handled by the supervisory officers. In some of these schemes, offenders are controlled more than 20 times a month, while others merely investigate a number of violations of movement prohibition. Hence, the goal of house imprisonment schemes is to reduce the prison population by keeping offenders at home. House imprisonment only involves those offenders who pose less threat to the society. In order to control those under house imprisonment, the technology of electronic supervision is used. While the means are changing over time, four techniques are most commonly used in developed countries like USA; they are incessant signaling device, programmed contact device, radio signal,

and beeper (Anderson, 1998). The scheme of house imprisonment can be useful especially in cases of women offenders who are pushed into prisons for non-violent crimes and not a threat to society. They can stay with their children and continue with their normal family life with deterrence of punishment as well. This will not only help in rehabilitation of women offenders with their family and children but will also reduce financial burden on prisons.

Electronic control is rather a new way of ensuring the observance of house imprisonment regulations. To control the movements of the offender, an anklet is worn by the offender which is connected to a computer in a control centre (e.g. a prison) and sends signals to it. In this way, the offender is only able to go to work or to do certain activities. She is imprisoned in her own house and all her movements are controlled. Electronic control is known as a significant innovation of late 1980s, since, in addition to taking advantage of technology for correcting and rehabilitating as well as reducing prison costs, it has become a big industry since its preliminary use in late 1980s and thousands of offenders are controlled in this every day. There are basically two types of electronic control systems used in USA namely:

(i) *Passive Electronic Control*: In this system, a transmitter is attached to the offender's body (her wrist or ankle), and a dialer is connected to a telephone. Once the offender leaves the place, the signal will be disconnected and the dialer will automatically dial the number of the probation office. Since it is the convict who must answer the phone, failing to do so indicates that she has left the place.

(ii) *Active Electronic Control*: This is based upon the phone contact system involving a continuous and often casual phone contact with the offender's house. This may be done automatically by an apparatus or by the officer himself. By sending permanent signals to the control office, the active system keeps offenders under permanent control. Whenever an offender leaves her house without being allowed to do so, the signals will be cut off and this will be recorded. In some cases, the control officer will become automatically informed of the incident by an electronic device. Electronic supervision is applicable on non-violent offenders but not to violent criminals. In addition to the seriousness of the crime, motivation behind the offence and protection of the society are among the criteria used for determining the eligibility of offenders which can be benefited by electronic control of imprisonment (Anderson, 1998).

*The Secure Remote Alcohol Monitor (SCRAM)* is an alcohol-monitoring device that detects whether an offender drinks a small, moderate or substantial amount of alcohol. An ankle bracelet with a tamper-proof strap is worn continuously by the offender for the duration of her court-ordered abstinence period, typically 12 to 24 months. Alcohol can be released through the pores of the skin. Twice an hour, the anklet captures alcohol reading by sampling insensible perspiration- that evaporates before it is perceived as moisture on the skin. The anklet stores the data and, at predetermined intervals, transmits it via a wireless signal to a modem. The modem plugs into an analog telephone line, usually in the offender's home or place or work. When the bracelet communicates with the modem, retrieves all available data from the bracelet. Encrypted data are stored in a web-based application. It can be accessed around-the-clock, from any location, using a standard web browser. The anklet can detect a blood-alcohol content level of 0.01 or higher, the equivalent of a single shot, depending on the person's size (Fredrick, 2009). The biometric anklet represents a recent technological break-through whose popularity is gaining in USA as the state and local governments search for ways to close budget deficits during the

recession. More than half of the states have slashed spending on corrections this year, while some, including New Hampshire, Michigan, California, and Virginia, are closing prisons, releasing some prisoners early or expanding the use of electronic monitoring. The National Conference of State Legislatures in USA lists twenty-eight states that are squeezing savings from corrections by erasing harsh drug laws, laying off staff workers or closing prisons (Fredrick, 2009).

*The use of Educational and Rehabilitative Camps* are used as short-term imprisonment of first time offenders. They are also referred to as 'boot camps' and 'shock imprisonment', and are among the most recent alternatives methods in criminal law in USA. The first example of such military camps was inaugurated in 1983 in the Georgia State of USA. It has been proved that this scheme will contribute to the thinking process of young offenders and their ability towards their life style and behaviour towards the society, and family. The offender is generally selected either by court's judgement or by local prisons select team in USA. Once the offender is selected under this scheme at first stage, the offender is involved in a medical test by which he is tested for the disease. The second stage, involves military exercises which lasts for four weeks. At the third stage, which also lasts for four weeks, offenders take part in other organized classes including vocational trainings and professions needed for an ordinary type of life. The fourth stage, which is prior to the release, is allocated to the counseling services, such as job searching, interview, and searching for accommodations. Though this method is still passing from experimental stages in USA but still it is seen as an alternative to imprisonment, which is now considered as an expensive mode of punishment (Anderson, 1998).

The USA's Bureau of Prison for Correctional Programs, Employment Facilities, and Rehabilitation Techniques are relatively effective; they are based on the theories outlined by Norval Morris in his book, "*The Future of Imprisonment*" (1974), in which he proposed a 'voluntary prison'. He said that prisons fail to rehabilitate because they try to cure criminal tendencies in such a degrading environment that nothing more than pretended cooperation from prisoners can be expected. Instead of compulsory helping programs he recommended that prisons require only their set sentences. Vocational training and other assistance, such as psychotherapy, should be available, but the choice to accept should be on prisoners. Morris theory was that such things help only prisoners who actually want them, and are useless for others; hence, the authorities should upgrade rehabilitative techniques and employment facilities from time to time (Deming, 1977). Some of the correctional programs, employment and rehabilitative techniques practices in USA are briefly discussed below.

(i) *Residential Re-Entry Centers (RRCs)*: One of such rehabilitative technique is, a community correction, which is an integral component of the Bureau of Prison's Correctional Programs in USA. The Bureau has developed agreements with state and local governments and contracts with privately-operated facilities (prisons) for the confinement of federally adjudicated juveniles and for the detention of some Federal inmates. The Bureau contracts with RRCs, also known as halfway houses which is kind of privately operated prison, to provide assistance to inmates who are nearing release. RRCs provide a safe, structured, supervised environment, as well as employment counseling, job placement, financial management assistance, and other programs. Another important component of this program is transitional drug abuse treatment for inmates. RRC staff monitors an inmate's location and movement throughout the day. The contractor

authorizes an inmate to leave the RRC through sign-out procedures which approves activities, such as seeking employment, working, counseling, visiting or recreation. The staff also assists inmates in locating suitable houses. Ordinarily, inmates are expected to be responsible for their own medical expenses while residing in a RRC, however, contractors usually maintain a network of social service agencies to assist inmates, in case of medical emergency (BOP, 2009).

(ii) *Comprehensive Sanction Centers (CSCs)*: Another program initiated by Bureau, the CSCs which offers a more structured system for granting inmates gradual access to the community. CSCs have different levels of supervision, ranging from 24-hour confinement to home confinement. CSC also requires that inmates participate in more programs. They may include an intensive treatment component consisting of substance abuse education, life skills training, mental health counseling, education, employment assistance, and monitoring. The inmate's progress is systematically reviewed by a Program Review Team (PRT), with representatives from the Bureau, U.S. Probation, and the contractor. The U.S. Probation Office is also formally involved in the release planning process (BOP, 2009).

(iii) *UNICOR*: For providing employment facilities, Federal Prison Industries of USA was established. UNICOR is a self-sustaining, self-funded corporation established in 1934 by executive order to create a voluntary real-world work program to train federal inmates. UNICOR is a critical correctional program within the Bureau of Prisons, serving as an essential correctional management tool. It provides constructive job skills training and work experience, which eliminates inmate idleness and greatly assists in the safe and efficient operation of the institution. Inmates in UNICOR are less likely to be involved in misconduct while incarcerated. UNICOR has a positive impact on recidivism. Inmates who works in UNICOR are less likely to return to a life of crime after they are released (INICOR, 2009).

(iv) *Treatment*: Treatment procedures for dealing with lawbreakers can be lumped into two categories: psychotherapies and environmental or social therapies. The first group of strategies proceeds from psychogenic assumptions that because offenders are emotionally troubled, their psyches must be altered. In general, psychotherapeutic approaches center on the individual, with less concern for his or her group affiliations or social circumstances. Environmental or social treatment assumes that lawbreakers are relatively normal individuals who exhibit anti-social conduct definitions related to their social relations. Consequently, these tactics are aimed at groups of deviants rather than at individuals such as group therapies (Empey, 1971). Over the past decades, drug-related crimes have become more complicated. The treatment approach, has been mobilizing influential public and private sectors in USA and various European countries against the outbreak and spread of drug abuse, in a way that addicts and their families can be saved.

(v) *Conciliation and Mediation*: These are methods of settlement outside of the court, depending on the circumstances. In this way, either the mediator or conciliator, during the process of settlement, directs and advises the parties and, by taking into account the content of the agreement between the victim and offender, reports the result to the prosecutor or the judge in the end. One further point with regard to the mediation and conciliation schemes is that, generally,

those offenders are eligible for such schemes who have committed less serious offences punishable by less severe punishments. In other words, these schemes are applicable to those who committed minor offences and have no criminal record. Nowadays, a diversity of mediation and conciliation schemes has been developing across Europe as well as some African countries. In the Republic of Tunisia, for instance, the Law on the Protection of Children (1997) has allocated a section to the institution of conciliation. In Western Europe, and particularly in Germany, there exists valuable experience on how to perform such methods of settlement outside of the court (Deming, 1977). Generally speaking, one consequence of a successful dispute settlement outside of the court is that judicial investigations will be avoided. In these countries, the decrease in the prison population in recent decades has been attributed to the development of diversionary alternatives of imprisonment including schemes for conciliation and mediation.

(vi) *Reform the Pardon Process and Establishment of Pardon Board:* When the founders of the United States Constitutions imbued the office of the President/Governor with the power to pardon, they did not envision criminal sentences that would confine hundreds of thousands. Further, long-term imprisonment should require some type of review. The interest of justice should warrant an inquiry as to whether multiple decades in prison meet the need of our evolving society. The President/Governor ought to have effective system to evaluate whether continued incarceration is appropriate for all prisoners and to assist the President/Governor a pardon board can be established by the government. An act of executive clemency is really an act of grace, or compassion; if offenders had a mechanism through which they could work towards earning meaningful consideration for clemency, many more prisoners would strive to build records that might advance their candidacy. A new system needs to be placed that would reward those who built long records of working to reconcile with society. The President/Governor could instruct those within the pardon board office to evaluate such offenders on a regular basis, and political connections should not have as much influence on decision as records of merit.

## **CONCLUSION**

A commission appointed by President Lyndon Johnson to study the crime problem in the USA concluded that 'rehabilitation of offenders to prevent their return to crime is, in general, the most promising way to achieve this end (reduction of crime)' (Palmer and Palmer, 1999). Justice, for a civilized person, would advance if society were to operate a prison system that helped more people emerge as contributing citizens. Requiring people to live in cages for years or decades at a time does not condition them for the challenges they will face upon release.

Society could change the dismal statistics by incorporating the concept of earning freedom that former United States Chief Justice Warren Burger wrote about in *Factories with Fences*. By encouraging people to earn freedom, society would reap far more benefit than warehousing offenders for lengthy sentences. He was of the opinion that it makes no sense to put people in prison and not train them to do something constructive.

The problem with the traditional prisons system is that they condition the offenders to live inside boundaries, though they do not simultaneously condition them upon release. We need prison reforms that would lower recidivism rates and simultaneously lower prison operating costs.

The way to accomplish such goals would require fundamental changes with the ways administrators manage prisons. Rather than extinguishing hope and erecting barriers that obstruct prisoners from preparing offenders for law-abiding lives upon release, administrators ought to implement incentive programs that encourage the opposite. As Justice Burger once said in his speech *Factories with Fences*, 'We need prison reforms that will encourage offenders to earn and learn their way to freedom.' Hence, community release programs and the other modes discussed above, that are conducted under strict guidelines and conditions enhance public safety because offenders who re-enter society under supervision are far less likely to re-offend than those who are released without the benefit of a supervised release.

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### **Internet Links**

BOP (2009) The Bureau of Prisons: [http://www.bop.gov/inmate\\_programs/index.jsp](http://www.bop.gov/inmate_programs/index.jsp) (last accessed 22 December, 2009).

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### **Case Law**

*Muir v R [2004] HCA 21*; High Court of Australia



World Female Imprisonment List. (Women and girls in penal institutions, including pre-trial detainees/ remand prisoners). Roy Walmsley. The World Female Imprisonment List shows the number of women and girls held in penal institutions, as pre-trial detainees (remand prisoners) or having been convicted and sentenced, in 187 prison systems in independent countries and dependent territories. National prison administration United Nations 8th Survey US State Dept. human rights report National prison administration United Nations 7th Survey United Nations 7th Survey United Nations 8th Survey. 2,870\* 700\* 511\*. 12.1.06 30.1.06 30.1.06. World Female Imprisonment List. Female prison population (number of women and girls in penal institutions). Date. Crimes against women in India will serve here as merely case studies for this persistent social plague which afflicts nearly half of the population of the world. Nationality has pretty much zero stakes in the story. Having listed out the provisions in the Indian Penal Code, it is now time to take a look at the gender specific laws in the country for which data is available as per records: The Dowry Prohibition Act, 1961. The Indecent Representation of Women (Prohibition) Act, 1986. The National Crime Records Bureau publishes an annual report entitled "Crime in India". The report for 2015 provides us with the latest status update of crime records in tune with the above provisions on women-related violence. United States and India: Two of the world's worst countries for women? | FACTUAL FEMINIST. Contemporary women writers and feminism in india (WS). Several Indian states were ruled by women during British colonial advance including Jhansi (Rani Laxmibai), Kittur (Rani Chennama), Bhopal (Quidisa Begum) and Punjab (Jind Kaur).[24]. Second Phase: 1915-1947. During this period the struggle against colonial rule intensified. Women were grappling with issues relating to the scope of women's political participation, women's franchise, communal awards, and leadership roles in political parties.[3]. The 1920s was a new era for Indian women and is defined as 'feminism' that was responsible for the creation of localised women's associations.