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ALTERNATIVE TO PUNISHMENTS IN INDIAN JUDICIARY

AUTHORED BY - UDAYANIDHI P¹

ABSTRACT

The present paper deals with the Alternatives methods of punishments. It starts with analyzing the meaning and modes of alternatives to punishment which does not only aim to prevent the crime from the society and also is responsible for providing satisfaction to the victim. India criminal justice system has increasingly recognized the limitations of traditional punitive approaches and has been exploring alternative methods that prioritize rehabilitation, restoration, and reintegration. However, in recent years, there has been a growing recognition of the limitations and adverse consequences associated with an over-reliance on punishment, particularly for non-violent crimes and juvenile offenders. As a result, various alternatives to punishment are being explored and implemented across the country. This paper also examines the different alternatives to punishment that have gained traction in India. These include restorative justice practices like victim-offender mediation and community conferencing, diversion programs that channel offenders toward rehabilitative measures, probation and parole systems, open prisons emphasizing reformation, community service orders, and specialized approaches like therapeutic jurisprudence and juvenile justice boards.

Keywords: Alternatives, Punishments, Victim satisfaction, Reformation and rehabilitation.

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INTRODUCTION

The fundamental aspect of criminal law and policy is the punishment of offenders. It becomes challenging for the judiciary to uphold the principles of proportionality, consistency, and fairness in sentencing given the discretionary power vested in it and the variety of sanctions available. The achievement of sentencing goals in India has been impeded by this difference in sentencing.

Section 53 of Indian Penal Code, 1860 and deals with the kinds of punishment that are generally awarded to the offenders in India. However, the problems faced by the judiciary are not with punishing the offenders rather the problems that stem from this are overcrowding, trial delays, torture and other cruel treatment, disregard for one's health and hygiene, inadequate clothing and food, prison vices, poor communication, streamlined jail visits, and oversight of open-air prisons. Criminal justice system administrators should be aware that certain freedoms and rights are essential to human existence and cannot be taken away. These include the fundamental right to safety or a sufficient standard of living, which includes access to enough food, water, shelter, sanitary conditions, air conditioning, clothing, bedding, and opportunities for physical activity. This implies that protecting this large population in jails requires a lot of resources, and that not having enough of them will result in inmates' human rights being violated. The Apex Court in the *Mohammed Giasuddin v. State of Andhra Pradesh*² observed that the judges should be offered a wide range of options for sentencing offenders so that the purpose of punishments can be achieved.

In India, as in many parts of the world, the traditional approach to dealing with wrongdoing has often been punitive in nature, involving measures such as incarceration, fines, or other forms of punishment. However, in the recent years there is an awareness arising in the criminal justice system regarding the disadvantage of imprisonment. The Ahmedabad government in 2014 revealed a study carried out by the Police States that only 20% of the crimes take place in the city are by the 'recidivist' and balance remains 'petty offenders'³. Therefore, incarceration leading to creation of gang between the prison inmates and other illicit activities could be avoided by using alternative mode of punishment.

²CrI. Appeal no. 195 of 1977, AIR 1977 (3) SCC 287.

³ Parth Shastri, *Over 20% petty crimes in Ahmedabad committed by habitual offenders*, THE TIMES OF INDIA (2014), <https://timesofindia.indiatimes.com/city/ahmedabad/over-20-petty-crimes-in-ahmedabad-committed-by-habitual-offenders/articleshow/35855744.cms> (last visited Apr 1, 2024).

ALTERNATIVES TO PUNISHMENT

In India, In India, the exploration and implementation of alternatives to traditional punitive measures are gaining momentum as the limitations of punitive approaches become increasingly evident. The Indian Penal Code, 1860 is a substantial law that primarily consist of the offences and punishment awarding to the offenders and the Code of Criminal Procedure, 1973 is a procedural law focuses on the administration of criminal justice. While punishment has traditionally been a cornerstone of criminal justice systems worldwide, contemporary legal perspectives emphasize the importance of alternatives to punishment. In India, the CrPC provides for various measures beyond conventional punishment to address the complexities of crime and promote rehabilitation. The court have resulted in development of various alternative to punishment, which are available in three stages:

- Pre-Trial Stage
- Sentencing Stage
- Post- Trial stage

1. PRE-TRIAL STAGE

A. Plea- bargaining

The plea-bargaining has been introduced by Parliament of India through the *Code of Criminal Procedure (Amendment) Act, 2005*, passed by the Parliament and it has come into force from July, 2006. Chapter **XXI-A, Section 265A to 265L**⁴ of the Criminal Procedure Code, 1973 delas with plea-bargaining to allow plea under specified condition. Plea-bargaining in its most basic form means negotiating for accepting the guilt and bargaining for a lesser sentence. It is a pre-trial negotiation, where the accused agreed to plead guilty, in exchange negotiate the sentence to be decreased. Under plea-bargaining, the accused and the prosecutor bargain wherein the accused present a no content in exchange for a lesser sentence.

The Law Commission of India recommended the introduction of concept of plea-bargaining in their **154th report**.⁵ In the beginning there was an opposition arising from the legal experts as well as the judiciary. Subsequently, the necessity of the plea-bargaining concept was emphasized in its 177th report, published in 2001. Additionally, the Justice **Malimath**

⁴ Inserted by Criminal procedure (amendment) act, 2005 in Act no. 2 of 1974.

⁵ Law Commission of India, 1996 report.

Committee supported several of the Law Commission's plea-bargaining proposals in 2003 and proposed changes to the criminal justice system.

In the case of *Natwar Harchandji Thakor v. State of Gujarat*,⁶ the legitimacy and constitutionality of plea bargaining were resolved. The court acknowledged the benefits of plea bargaining and held that each "plea of guilt," which is regarded as a step in the criminal trial process, should be considered individually rather than evaluated based on the facts.

EXCEPTION OF PLEA-BARGAINING

- ❖ Offence that are punished with death, life or a term exceeding 7 years
- ❖ Offence against women (354 to 354D or 376, IPC)
- ❖ Offence against children under age of 14
- ❖ Offence affecting the socio - economic condition of country
- ❖ Apart from this, the court finds that person has been convicted under the same offence previously or the application is not made voluntarily.

B. Compounding of offence

The concept of compounding of offences deals with the section 320 of the Code of Criminal Procedure, 1973 refers to the process by which certain offences can be settled or compromised between the accused and the victim or complainant, subject to certain conditions. It is an alternative to the regular punishment prescribed for the offence, and it allows for the case to be disposed of without a full trial or conviction. Certain offences like mischief, criminal trespass and assault which can be compounded between the parties without the permission of the court. However, certain more serious offences like theft, cheating, criminal breach of trust etc, require prior permission from the court before being compounded.

The Supreme Court in case of *Gian Singh's v. State of Punjab*⁷, affirmed that if the subject to be compounded is civil in nature or pertains to the parties in their individual capacities, the high court may Quash the criminal proceedings. The court also emphasized that this concept is predicated on the idea that, in situations where the offenses are not serious, goodwill between the parties should be encouraged and a peaceful resolution should occur.

⁶ 2005 (1) GLR 709.

⁷ AIR 10 SCC 303.

The Court also upheld that in *State of Madhya Pradesh V. Lakshmi Narayanan*⁸, it was affirmed that High Court has the inherent power under section 482 to quash the non-compoundable offence to be compounded if the case pertains to the civil nature.

1. Offences that can be compounded: Offences that can be compounded are generally those that are less serious and primarily affect the private interests of the individual, such as offences related to causing hurt, wrongful restraint, defamation, criminal trespass, and certain offences under the Indian Penal Code (IPC) related to property.

2. Persons who can compound: The persons who can compound an offence depend on the nature of the offence. In most cases, the victim or the person to whom the offence was committed can compound the offence. In certain cases, the legal heirs or representatives of the victim can also compound the offence.

3. Procedure for compounding: The compounding of an offence can take place at any stage of the case, either before or after the institution of the prosecution. The accused and the victim or complainant can agree to compound the offence, and the court, after considering the circumstances, can allow the compounding and dismiss the case.

4. Offences cannot be compounded: Certain offences, such as those against the state, offences affecting public interest, or those involving moral turpitude, cannot be compounded and must be prosecuted through the regular judicial process.

c. Imposing the time limits of Pre-Trial detention:

According to Article 21 of the Indian Constitution, which guarantees the right to life and personal freedom, the right to a quick trial is a basic right of a prisoner. The Indian Supreme Court has stressed the constitutional right to a prompt trial numerous times and established a number of recommendations in this area. The right to speedy trial flowing from Article 21 encompasses all the stages, like investigation, inquiry, trial, appeal, revision and retrial. The Criminal Courts have been given power under sections 309, 311 and 258 of the Code of Criminal Procedure, 1973, to effectuate the right to speedy trial.

Currently, depending on the term of imprisonment for the offense, Section 167 Cr.P.C. sets an outer limit of 90 or 60 days for keeping the detained individual in custody (both police and

⁸ AIR 2019 SC 513.

judicial custody combined) before submitting a chargesheet against him in court. Nonetheless, there is no upper limit on the length of time that can be spent holding someone in custody following the filing of a charge sheet against them in judicial custody.

An amendment to the Criminal Procedure Code was adopted in 2006, adding section **436-A** to the code to eliminate this Injustice. According to the section 436-A, an undertrial prisoners who has been detained for a period equal to half of the maximum amount of time allowed for the alleged offence and who is not the accused of an offense for which the death penalty has been prescribed may be released on a personal bond with or without sureties.

D. JUVENILE JUSTICE

The Indian government ratified the previous juvenile law and ratified the Convention on the Rights of the Child in 1992, adhering to the Convention's requirements and the Beijing Regulations. **The Juvenile Justice (Care and protection) Act, 2000** adopts a child-friendly approach in the adjudication relating to **Child in conflict with law**⁹. The object of the Act is to reform and rehabilitate the juvenile offender as useful citizens in the society.

The Act ruled out the imprisonment of Child in conflict with law. If any such minor is taken into custody by the police under Section 10 of this Act, he will be placed under the supervision of the Special Juvenile Police Unit or the assigned police officer, who will then promptly report the incident to a member of the Juvenile Justice Board established under Section 4 of this Act. According to Section 12 of this Act, when any juvenile accused of a bailable or non-bailable is arrested or be detained, appear before a Board, and be released on bail with or without a surety by the Board, regardless of any provisions in the Cr.P.C., 1973, or in any other law for the time being in force.

The Juvenile Justice (Care and Protection of Children) Act, 2015¹⁰, was the last major amendment made to the Juvenile Justice Act in India. This amendment replaced the earlier Juvenile Justice (Care and Protection of Children) Act, 2000. The 2015 amendment was aimed at bringing the Juvenile Justice Act in line with international standards and the principles of the United Nations Convention on the Rights of the Child. It also sought to strike a balance between the need for child protection and the demands of justice in cases involving serious offenses committed by children aged 16-18 years.

⁹ Section 2(13) of Juvenile Justice (Care and protection) Act, 2015.

¹⁰ Act no. 2 of 2016.

KEY HIGHLIGHTS OF 2015 AMENDMENTS:

- 1) Introduction of the concept of "heinous offenses"¹¹ for children aged 16-18 years, which allowed the transfer of cases involving such offenses to regular courts.
- 2) Mandated setting up of Juvenile Justice Boards and Child Welfare Committees in every district.¹²
- 3) Established a Juvenile Justice Fund for the welfare and rehabilitation of children.¹³

2. SENTENCING STAGE

Under Indian Penal Code, 1860 defines different types of punishments are prescribed for different offences. Section 53 of Indian Penal Code provide the punishment to which the offenders are liable under the code:

- i. Imprisonment for life
- ii. Imprisonment Rigorous or Simple
- iii. Forfeiture of property
- iv. Fine

There are 5 types of punishment prescribed under Section 53 of the Indian Penal Code, 1860. The act amended the Indian Penal Code, by the Parliament that is Bharatiya Nyaya Sanhita, 2023. Section 4(f) of **BHARATIYA NAGARIK SANHITA, 2023** includes **COMMUNITY SERVICE** as a form of punishment.

A. RELEASE ON ADMONITION

In the Criminal Procedure Code, an 'admonition' refers to a warning or reprimand given by the court to the accused person in certain cases, instead of imposing a sentence or punishment. The concept of admonition is dealt with under Section 360 of the CrPC.

Section 360 of the CrPC empowers the court to release an accused person on admonition in certain cases, where the accused appears to have committed an offence punishable with imprisonment for not more than two years, or with a fine, or with both. The court may, after

¹¹ Sec 2(33) of, Act 2 of 2016.

¹² Sec 2(33) of, Act 2 of 2016.

¹³ Chapter VIII of Act 2 of 2016.

considering the age, character, antecedents, and other circumstances of the accused person, release the accused person on admonition, provided the accused person has not been previously convicted. *Azar Khan v. State of Uttar Pradesh*¹⁴. The Supreme Court held that the power to release an accused person on admonition under Section 360 of the CrPC should be exercised with caution and only in exceptional cases, where the court is satisfied that the accused person is not likely to commit any further offence.

Section 3 of PROBATION OF OFFENDERS ACT, 1958 defines power of court to release certain offenders after Admonition:

“When any person is found guilty of having committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code or any other law, and no previous conviction is proved against him and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4, release him after due admonition”

In *Bablu Sharma v. State of Rajasthan*¹⁵, the Rajasthan High Court held that the power to release an accused person on admonition should be exercised only in cases where the accused person has committed a minor offence and is unlikely to commit any further offence.

It is pertinent to note that in the *State of Maharashtra v. Sayyed Maheboob*¹⁶, The Bombay High Court held that the power to release an accused person on admonition should be exercised with caution and only in exceptional cases, where the court is satisfied that the accused person has realized the mistake and is unlikely to commit any further offence.

¹⁴ AIR 1999 CLJ 3989.

¹⁵ AIR 2008 CLJ 2897.

¹⁶ AIR 2010 CLJ 4579.

B. PROBATION

Probation is a form of extra-mural form of treatment i.e. treatment outside the four walls of the prison.¹⁷ The concept of probation is provided under the Code of Criminal Procedure (CrPC) through Sections 360, 361, and 362. Probation is a system of releasing an offender on certain conditions instead of sending them to jail, with the aim of reforming and rehabilitating them.

Section 360 of the CrPC deals with the release of an accused person on probation of good conduct. The court may, after considering the age, character, antecedents, and other circumstances of the accused person, release the accused person on probation of good conduct instead of sentencing them to imprisonment or fine, provided the accused person has not been previously convicted and the offence is punishable with imprisonment for not more than two years or with a fine or with both. In *Madan Lal v. State of Punjab*¹⁸, the Supreme Court held that the power to release an accused person on probation should be exercised with caution and only in exceptional cases, considering the age, character, and antecedents of the accused person, as well as the nature and circumstances of the offence.

Section 361 of the CrPC provides for the manner of dealing with convicted individuals who are released on probation. Section 362 of the CrPC deals with the provisions for dealing with individuals who fail to observe the conditions of their bond or probation.

In the case of *Abdul Qayyum v. State of Bihar*¹⁹, the court noted that if the offender was eighteen years old, in good physical and mental health, showed interest in his work, and his father had reasonable control over him and if there was no record of the offender's character or evidence of a prior conviction he was entitled to be released on Probation.

Offenders who have committed minor crimes for the first time may be subject to these procedures under **THE PROBATION OF OFFENDERS ACT, 1958**. Under the supervision of probation officers, they may be released on probation. If offenders swear to behave properly, they may be released on probation without the oversight of probation officers. There is also a restriction on imprisonment of offenders under 21 years of age, if they have not committed an offence punishable with life imprisonment. Such an offender must be released either on

¹⁷ James B. Moore, Treatment & Supervision of Probated Felons, Journal of Employment Counselling, Vol. 16, 1979.

¹⁸ AIR 1970 SC 1963.

¹⁹ AIR 1972 SCC 214.

admonition or probation unless there are reasons to be recorded having regard to the nature of offence and character of offender.

C. COMMUNITY BASED SERVICES

There is no mention of the word or any definition of Community services in the Indian Penal Code, 1860. However, in Bharatiya Nyaya Sanhita²⁰, 2023 defines 'COMMUNITY SERVICE' as a type of punishment under section 4(f) of the Sanhita.

Community-based services as an alternative to punishment have been gaining traction in recent years as a more restorative and rehabilitative approach to addressing criminal behaviour. These services aim to divert individuals away from the traditional criminal justice system and provide them with the necessary support and resources to address the underlying issues that led to their actions. Some of the Community Services as an alternative to punishments are

- 1. Rehabilitation and support services:** These services typically provide access to counseling, substance abuse treatment, educational and vocational training, mental health services, and other supportive programs designed to address the root causes of criminal behavior and equip individuals with the tool to make positive changes in their lives.
- 2. Community involvement:** Community-based services often involve collaboration between various stakeholders, including law enforcement, social service providers, community organizations, and victims. This approach fosters a sense of community ownership and accountability in addressing criminal behavior and its impacts.
- 3. Cost-effectiveness:** In many cases, community-based services can be more cost-effective than incarceration, as they avoid the high costs associated with maintaining prisons and provide opportunities for individuals to become productive members of society.
- 4. Diversion programs:** These services often take the form of diversion programs, which allow eligible individuals to avoid formal criminal charges or convictions by completing specific requirements, such as treatment, counseling, or community service.

While community-based services are not suitable for all types of offenses or individuals, they offer a promising alternative to traditional punishment for certain cases, focusing on rehabilitation, accountability, and community involvement.

²⁰ Act 45 of 2023.

D. RESTORATIVE JUSTICE:

Restorative justice is an approach that focuses on repairing the harm caused by criminal behavior and addressing the needs of both the victim and the offender, rather than solely punishing the offender. It has gained increasing recognition as an alternative to traditional punitive measures in the criminal justice system.

Restorative justice is an emerging approach that prioritizes repairing the harm caused by criminal behaviour over solely punishing offenders. It involves facilitated dialogues between victims, offenders, and community members, allowing victims to voice the crime's impact while offenders take accountability and make amends through restitution, community service, or agreed-upon measures. Offenders gain access to counselling, education, and support services to address underlying factors contributing to their actions. This community-involved process aims to promote victim healing, offender rehabilitation, and successful reintegration. By focusing on harm reparation, accountability, and support, restorative justice programs have demonstrated effectiveness in reducing recidivism rates compared to traditional punitive measures. While not suitable for all crimes, this alternative offers a more holistic, victim-centered approach toward achieving meaningful outcomes for those impacted and fostering positive behavior change.

Traditional Practices: India has a rich tradition of community-based conflict resolution mechanisms, such as panchayats (village councils), which have been used for centuries to resolve disputes and restore harmony within communities. These practices often involve mediation and reconciliation, which align with the principles of restorative justice.

Legislative Framework: In recent years, there have been efforts to integrate restorative justice principles into India's legal system. The Criminal Procedure Code (CrPC) was amended in 2009 to introduce provisions for victim-offender mediation and plea bargaining, which are considered forms of restorative justice.

Rehabilitation and support: Restorative justice programs often provide offenders with access to counseling, education, job training, and other support services to address the underlying factors that contributed to their criminal behavior and facilitate their successful reintegration into the community.

E. COMPENSATION TO VICTIMS

Courts may order criminals to pay appropriate compensation for any damage or harm caused to any person as a result of their offenses under Sections 357 to 359 of the Cr.P.C., 1973. In addition to any other further penalty, the courts award compensation. It is not a stand-alone sentence substitute for a brief jail sentence.

Chapter XXVII, Section 357A²¹ of Criminal Procedure Code, 1973 provides provision for the Victim Compensation scheme for the welfare and rehabilitation of the victim.

In 2009, the central government gave directions to every state to prepare a scheme that has to be in agreement with the center's scheme for victim compensation under Section-357A of CrPC. The primary purpose of this scheme is to provide fund to compensate the victim or his dependents who have suffered any loss or injury as a result of the crime and need rehabilitation. Section **357B** and **357C**²² was inserted by the Criminal Procedure (Amendment) Act, 2013

- According to Section 357A, each State Government must develop a plan in consultation with the Central Government to provide funds for compensating victims or their dependents who have experienced loss or injury and need rehabilitation.
- Section-357B, the State Government's payment of compensation under Section- 357A must be made in addition to the victim's payment of a fine under Sections 326A, 376AB, 376D, and 376DB of the IPC, 1860.
- Section 357C, all hospitals either public or private, that are operated by the Central government or state governments or local governments, or any persons must give victims of crimes covered by Sections 326A, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, or Section-376E of the Indian Penal Code first aid or medical treatment without charge as soon as possible. They must also notify the police of the incident right away.

²¹ Amendment to Act 5 of 2009 (w.e.f. 31-12-2009).

²² Amendment to Act 13 of 2013 (w.e.f. 03-02-2013).

3. POST-SENTENCING

A. PAROLE

The Code of Criminal Procedure does not explicitly define Parole. However, Section 432 of the CrPC empowers the appropriate government to commute a sentence or suspend its operation for a specific period. (CrPC), parole is a temporary release of a prisoner from jail or prison for a specific period of time. It is a concession granted to convicts as a matter of favor and not as a matter of right. The provisions related to parole are contained in various state prison manuals and model prison manuals.

The Supreme Court case of *Smt. Poonam Lata v. Waden*²³ provides insight into the history of parole, since it established that the notion originated in military law and pertains to the release of prisoners of war on the condition of their return. This means that all fixed-term sentences that last longer than 18 months are subject to license release, which means that they can be released after serving out one-third of their sentence.

The Prison Act of 1894 and Prisoners Act of 1900 set forth regulations that govern the Parole system in India. Every State has slightly different regulations in this regard. In India, parole decisions are made in accordance with the Prison Act of 1894 and the Prisoners Act of 1900. The Prisons Act, 1984, Section 59(5), which grants the government the authority to enact regulations, was used to justify the release of the Prisons (Bombay Furlough and Parole) Rules, 1959.

Eligibility for Parole

According to the 2010 Parole/Furlough Guidelines, to be eligible for parole

- A convicted person must have spent a minimum of one in jail, not including any time spent in remission.
- The prisoner had to behave well at all times.
- If parole was already granted, the offender should not have committed any offenses during that time.
- The convicted party wasn't supposed to have disregarded any of the conditions and limitations of their prior release.
- A minimum of six months should have passed since the previous parole was terminated.

²³ AIR 1987 SC 1383.

In *Suresh Chandra v. State of Gujarat*²⁴ it was stated that Parole is regarded as an innovation in penology and has resulted in reforming the offender thereby stopping him from doing the same offence again.

In *Dharambir and Another v. State Of U.P* It was directed by the Apex Court that such prisoners who are serving long time in jail be given two weeks once a year throughout their period of imprisonment.

B. PARDON

Since offences are committed against the State, the Indian law does not permit the victim to grant pardon. The power to grant pardon or executive clemency is vested to the Head of the State. In India, the power to grant pardons is vested in the President of India under Article 72 of the Constitution of India. This power allows the President to grant pardons, reprieves, respites, or remissions of punishment to individuals convicted of certain offenses.

Pardoning power of President

Article 72 of the Constitution of India provides power to the President to grant emission to a convict has to be exercised on the advice of the Council of Ministers *Union of India vs Sriharan (2016)*

- Punishment or sentence is for an offense against a Union Law or the offense made under Concurrent List.
- Punishment or sentence is by a court martial (military court); and
- The sentence is a sentence of death

Pardoning power of Governor

Article 161 of Constitution of India provide power to the Governor of State to tender a Pardon.

- The Governor does not have the authority to pardon court-martial penalties; instead, the President may pardon sentences from military courts.

²⁴ 2016 (7) SCC 1.

- The governor is not permitted to commute a death sentence, but the president may. Even in cases when a state statute specifies the death penalty, the President, not the governor, has the authority to pardon. Nonetheless, the governor can choose to commute, remit, or suspend a death sentence. Stated differently, the authority to suspend, remit, or commute a death sentence is shared by the governor and the president.

Process Of Grant of Pardon

- a) The mercy petition is filed by the concerned person to the President under Article 72
- b) Such petition is transferred to Ministry of Home affairs for consideration
- c) The above petition was discussed by the Ministry of Home Affairs in consultation with concerned state Government.
- d) After the consultation, recommendation made by the Home Minister and send them back to the President.

The power of pardon is considered a constitutional safeguard to correct judicial errors or to show leniency in appropriate cases. However, it's important to note that the power to pardon is discretionary and is usually exercised based on the advice of the government. Typically, requests for pardons are thoroughly reviewed by the President or relevant authorities before a decision is made.

c. OPEN PRISON SYSTEM

India has a long history of using open prisons in one form or another. There are 26 open prisons in India, with a total capacity of 4353. For a variety of reasons, open jails have fared better in some Indian states than in others. Inmates serving life sentences are moved to open prisons due to their good behaviour. Various steps have been taken in several Indian states to open prisons. Through the instillation of a sense of responsibility, the Open Prisons help individuals regain their dignity and develop a sense of self-confidence and self-reliance. There are similar open prisons in several Indian states.

According to the Merriam Webster Dictionary, an open jail is one where inmates are allowed freedom as opposed to a regular prison. **The Rajasthan Prisoners Open Air Camp Rules,**

Section 2(A), defines an open jail as "a place declared for the detention of prisoners to be an Open Air Camp,"²⁵ or, in simple words "prisons without walls, bars, and locks.

- Open prisons or open-air camps do exist in several states like Rajasthan, Delhi, Maharashtra etc. These allow selected inmates to live with minimal supervision and engage in paid employment or vocational programs outside.
- Open prisons aim to aid rehabilitation and prepare inmates for reintegration into society after release through semi-open environments.

In State of Karnataka v. Rama Murthy (1997), a petition in form of letter was addressed to Chief Justice India over the subject of inmates' wages not being paid for their labor. It was mandated that the Bangalore District Judge visit the Central Jail and provide a report with specific suggestions, including:

- a. PWD maintains the structure in an appropriate manner.
- b. Better sanitation is required.
- c. Adding at least two additional doctors with specialized training to the jail population.
- d. Schedule routine house visits for inmates on a periodic basis.

INTERNATIONAL FRAMEWORK ON ALTERNATIVES TO PUNISHMENT

The international community has recognized the need to explore alternatives to imprisonment, particularly for non-violent offenses, as part of broader efforts to reform criminal justice systems and promote more humane, effective, and sustainable approaches to addressing crime and fostering public safety. Several international frameworks and initiatives have been developed to encourage and guide countries in adopting and implementing non-custodial measures as alternatives to traditional punitive approaches.

1. One of the most significant international instruments in this regard is the United Nations Standard Minimum Rules for Non-custodial Measures, also known as the **Tokyo Rules, adopted in 1990**. There are several international frameworks and initiatives that promote alternatives to imprisonment and punitive approaches to justice, particularly for non-violent offenses.

²⁵ Rajasthan Prisoners open Air Camp rules, 1972.

2. United Nations Standard Minimum Rules for Non-custodial Measures (**The Tokyo Rules**): **Adopted in 1990**, these rules provide a set of guidelines for promoting the use of non-custodial measures and alternatives to imprisonment, such as community service, probation, and restorative justice programs.
3. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (**The Bangkok Rules**): **Adopted in 2010**, these rules supplement the Tokyo Rules and provide specific guidance on developing gender-sensitive alternatives to imprisonment for women offenders.
4. **United Nations Office on Drugs and Crime (UNODC)** Criminal Justice Reform initiatives: The UNODC has been actively promoting criminal justice reform, including the use of alternatives to imprisonment, as part of its work on crime prevention and criminal justice.
5. Council of Europe Recommendations and Resolutions: The Council of Europe has adopted several recommendations and resolutions encouraging member states to develop and implement alternatives to imprisonment, such as probation, electronic monitoring, and community service.
6. European Union initiatives: The EU has funded various projects and initiatives aimed at promoting the use of alternatives to imprisonment, particularly for non-violent offenses, such as the European Union Criminal Justice Programme.
7. Non-Governmental Organizations (NGOs): Several international NGOs, such as Penal Reform International (PRI) and the International Centre for Prison Studies (ICPS), have been actively advocating for the use of alternatives to imprisonment and providing technical assistance to countries in developing and implementing such measures.

These international frameworks and initiatives recognize the potential negative impacts of imprisonment, particularly on vulnerable groups, and the potential benefits of alternative measures in terms of reducing recidivism, promoting rehabilitation, and reducing the social and economic costs associated with incarceration.

CONCLUSION

In conclusion, there are several effective alternatives to punitive approaches that can promote positive behavior change and accountability without the harmful effects of punishment. Restorative justice practices like victim-offender dialogues, community conferencing, and peace-making circles allow offenders to take responsibility, understand the impacts of their actions, and make amends. Rehabilitation programs focused on counseling, education, job training, and addressing root causes like mental illness or substance abuse can reduce recidivism rates. Positive reinforcement techniques that provide incentives and rewards for good behavior have also shown success, especially for youth. While punishment may seem like a straightforward solution, these alternative approaches grounded in restoration, prevention and behavior change represent a more humane and effective path forward for creating safer communities long-term. By prioritizing accountability, support services, and addressing underlying issues, society can break cycles of crime and violence.

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