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# Analysis of Imprisonment and Recidivism with Reference to Indian Laws

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**Abstract:** *In the modern era it is challenge before every country there is crimeless country or there should be less rate of crimes, but because of growth of the population the number of crimes increasing day by day. The current situation in all over the world is lack of prisons and if the reformation schemes implemented by the Governments the released Prisoners again and again committing same crimes for fulfill the needs or for taking the revenge from the members of the society. In the eyes of the law specific word used for the habitual criminals i.e. Recidivism.*

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

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

**Keyword:** *Recidivism, Imprisonment, Prisoners.*

## I. INTRODUCTION

In the field of law and order there is specific word for the persons who repeatedly committing crimes even though they undergone the rehabilitation schemes implemented by the Government. These types of criminals known as recidivist. Recidivists and Recidivism is a very big challenge before India, where the failure of the Deterrent theory of the Punishment. India is the country where the law and religion is focus on the human values and individual rights but at the time of protecting human values and individual rights there is restriction in exceptional circumstances. And out of that there is need of law and procedure regarding Recidivists and Recidivism. India is as a developing country where focusing on the education, employment, skill development in the children's of the country there is no reduction of the rate of the crimes committed by the recidivists.<sup>1</sup>

Age factor of citizens, education level, class of the society, need of the society, expectations of the members of the society if systematically studied by the Government definitely it will be helpful to reduce the rate of Recidivists and Recidivism in India. As per the reports of the NCR the rate of Recidivism is very high in the age group of 25 to 35 and thereafter the age group of 36 to 45. These age groups are relatively with the responsibility of themselves and family members and if they are not successful in maintaining the responsibility they are doing crimes again and again without fearing to the system of law and order in the country.

A brief into the Concept of Recidivism

The Concept of Recidivism is not new in the whole of the world. Many Jurisprudents try to define the concept of recidivism and try to find remedies for eradication of it. There are several definitions available for recidivism. Although, there isn't one single definition that is universally accepted.

Merriam-Webster defines recidivism as –

*“a tendency to relapse into a previous condition or mode of behavior especially relapse into criminal behavior”.*<sup>2</sup>

Oxford Learner's Dictionaries has defined recidivism as –

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

<sup>1</sup> NCRB Reoprt,2023

<sup>2</sup> Online Merriam Webster Dictionary

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

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

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

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

According to an Indian Jurisprudents, there are three important reasons as to why measuring recidivism is important i.e. Fearless Country, Eradication of Corruption, and development of the country in the less time.

## II. CAUSES OF RECIDIVISM

According to a study conducted under the guidance of Ministry of Human Resource and Development, abbreviated as MHRD (Currently referred to as Ministry of Education) and National Crime Records Bureau, it is said that a convict after being released from the prison is bound to act upon either of the two things. The ex-convict would either reoffend or desist, i.e., “arrive at a permanent state of non-offending” and choosing the former would raise questions to finding out principle causes of recidivism. Some of them are mentioned below:

- 1) *The Prisons:* When criminals are convicted and are put to prisons, they are expected to successfully go through a correctional treatment so that when they are out of prison, they are ready to live abiding the law. But, in Veritate, the situation is quite the opposite. Rather than being rehabilitated, a convict gets exposed to “notorious and hardened” criminals which sent exposure to high profile crimes and get glorified. However, there have also been contrary arguments about the same saying that not having exposure to high profile convicts would give the first timers an understanding of the threat and the punishments involved there which could, perhaps, lead to decrease in recidivism. Thus, this point may seem debatable, depending upon the situation.
- 2) *Inappropriate Punishment:* Another possible explanation which constitutes as a factor for causing recidivism is that, sometimes, the punishment that is granted to the convicts are either too lenient or too harsh. If the criminal penalty is excessively mild, it fails to make individuals realise the magnitude of their violation. This means that justice would not be served to the victims of those crimes and the criminals might not be rehabilitated completely. The other end of this spectrum is the punishment that is granted is too harsh. With harsh punishments sanctioned, the offenders may “fall apart from the norms of society”. This can cause the convicts to reoffend after being released from prison. According to National Institute of Justice (NIJ), by increasing the severity of punishments, it could not be determined that it has maximal effect on crime prevention. In fact, the longer period a person stays in prison the more exposure that person has in gaining insight over being better while pursuing criminal activity.<sup>4</sup>
- 3) *Lack of reintegration opportunities:* As mentioned in the previous point, prisoners who have been incarcerated for a long period of time may diverge from societal standards and consequently find it difficult to reintegrate into society. For a long duration away from the outside world, an ex-convict may find it extremely difficult to cope with the outside world mainly because of the technological, social or the political changes. As they are unable to adjust to new changes, they resort to illegal activity to meet their requirements.
- 4) *Incorrigibility:* To be incorrigible means to not be able to change or reform. Out of all the recidivists, there are certain incarcerators who despite multiple rehabilitative programs don't seem to change and fall back to their criminal activities. In most of such cases it can be observed that incorrigible offenders aren't the ones who commit crimes out of desperation. Rather, these offenders are generally white-collar criminals and cybercrime criminals who return to committing these crimes because they are financially rewarding.
- 5) *Materialistic way of life and peer pressure:* Financial stability is demanded by every individual to fulfil their needs but not scoring enough opportunity can lead to financial stress and in order to get out of the socioeconomic conditions, convicts may relapse to crime thus becoming a recidivist. Ex-convicts who are at a fairly young age are often easily prone to reoffend

<sup>3</sup> National Crime Records Bureau (NCRB)

<sup>4</sup> Dr. Rajendra Sharma, “Criminology and Penology” Edn.1998



- 6) *Mental health and drug abuse*: Rehabilitative techniques may not function for certain prisoners due to poor mental health caused by biological factors or substance misuse. Drug abuse and reoffending is a vicious circle since drug addicts are more likely to relapse to addiction and fall back on committing crimes of dealing with substance.<sup>5</sup>

### III. EXISTING LAWS REGARDING RECIDIVISM

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

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

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

And according to S.311 of IPC –

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

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

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

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

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

### IV. SUGGESTIVE MEASURES TO DEAL WITH RECIDIVISM

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

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

- 1) *Reintegration Programmes*: The first thing that can be done to combat recidivism is to invest in reintegration programmes. As stated earlier, ex-convicts find it difficult to get back into the world as they diverge from the standard social norms which makes it difficult for them to land into stable financial positions. Most of these offenders also face social issues like being ostracized from the community. All these issues would increase the possibility of recidivism and such people could end up being stuck in the vicious cycle of offending, being rehabilitated, being released, be rejected and going to back reoffending. With reintegration programmes, such as skill development courses and therapy, prisoners could have an opportunity to mix with the world desist from crime.<sup>6</sup>
- 2) *Public Awareness*: Letting people know about recidivism and the role that society plays could also hugely impact in declining the rate of reoffending. If people don’t ostracize the ex-convicts after being released, then it would be easier for them to desist from crimes and get back to the world and live abiding the law.
- 3) *Invigilation by government agencies*: If the government agencies can run programmes to invigilate and check on ex-offenders after they are released from prison, it could exponentially lower the rate of recidivism as the ex-convicts are under the watch. It could also work well within the incorrigible white-collar criminals as they would also be under check and risk of running scams and getting caught would be high.

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

<sup>5</sup> Steven B. Karch, “Handbook on Drug Abuse” Second Edition, 2023

<sup>6</sup> <https://www.iom.int/sites>

## V. CONCLUSION

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

As per the study made by the various institutions and NGO 's basic education is very important to every part of the society for reduce the rate of recidivism along with basic education there is need to develop some of the skills for the achievement of employment in the locality of the person which the person can fulfill his all needs in the native of the person with maintain the parents and other family members.

It is duty of the Government to provide basic facilities for the skill-oriented education and takes the efforts for establishing the various projects in all parts of the country because of which people in the same locality can achieve the employment and satisfy themselves and the family members and if the Government successfully implements its project and meet the need of the peoples definitely the recidivism rate will be reduced in drastically.

Finally it can be say that if the Biological, Psychological, religious, educational factors considered by the ruling Government definitely the rate of recidivisms reduced in the country.

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