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## ARREST IN INDIA“COMPARATIVE STUDY WITH DEVELOPED COUNTRIES AND IMPORTANT REMEDIAL MEASURES”

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### **Abstract:-**

India is a country of about 1300 million(1.3 billion) where approximate 8.7 million people are arrested in a year however USA has population of about 330 million and people incarcerated are approximate 2.3 million. The budgetary provision for the financial year 2017 was 7299\$ (Rs.492463) in USA and Rs.515763 lakhs in 2015-16 in India. Thus incarcerated population which is 1/4<sup>th</sup> of the Indian arrestees are getting mostly same amount of budgets for their reformation and prison managements. Developed country’s correctional services are mostly reformation and rehabilitation based through community involvements and having statutory backups, thus having better infrastructure, health and vocational parameters. No doubt, India is having a huge population and crime occurrences are also increasing day by day but at the same time 8.7 to 10 million in Jails, requires reduction in arrest . Among all arrestees, approximate 90-94% are first timers in India , requires a chance for returning to their initial life rather than lodging them into prisons. Probation of offenders Act, Externment Act, security /bonds /surety measures , warning ,censors, fine ,arbitration, counseling, victim’s compensation, issue of notices before arrest, plea bargaining, liberal provisions of bails/anticipatory bails /interim bail, monitoring/surveillance through electronic tag system, open jails and reporting at Police Stations etc. are few methods which can be explored and implemented in reducing prison crowds .Thus the present topic is focusing on reducing incarceration ,promoting alternate of arrest , avoiding arbitrary arrest .The Data also leads where India becomes a top nation among world leaving behind US in the matter of incarcerations.”

**Important Words:** Incarcerations, Externment, Cognizable offences, Preventive, restorative justice, compensation, victim, integration, correctional services and detention.

**Object:**

- 1-Highest incarceration in India among World.
- 2-Comperative study with developed countries regarding arrest.
- 3- Lack-in rehabilitative measures.
- 4- Important measures in reduction of arrest and improving rehabilitation.

**Introduction:**

In India in the year 2016, about 2.9million **cognizable cases** were registered under Indian Penal Code(IPC) in which 3737870(3.74 million) person were arrested .The second category ie **Local and Special Acts of the States and Central governments** around 2.1 million FIRs(First information reports) wereregistered and 2392634(2.4 million) people were arrested. Total arrested person in a year in both categories under cognizable offences were 6130507(6.1million).

The third category is of **Preventive arrest** (107 to 116 and 151 cr.p.c) under various provisions of criminal procedure code (Cr.P.C.) and other local Acts of the States.NCRB (national crime records bureau) and CCTNS (crime criminal tracking and network system) are making hard to collect data from all police stations (approximate 17000 ) in India. So far 85% police stations have been internet connected and FIRs are syncing in National Database(Delhi). As far as preventive arrests are concerned, only 7 months an incomplete dataof the year 2016 is available where a trend can be guess under preventive measures.Since Police stations are not able to send data through CCTNS, however an incomplete data of 7 months in 2016 suggest that approximate 6 lakhs people have beenarrested. On the same line another 4 lakhs can be added for remaining 5 months, which may make total preventive arrest approximately 10 lakhs (1 million).

There are other agencies which are also registering criminal cases like Central Bureau of Investigation, Enforcement Department., Forest, Railways and Civil Supply etc.Bedside's above provisions,Courts are also taking direct cognizance in a sizable number of complaints u/s 156(3 ) Cr.P.C .About .15 million cases have been taken for cognizance directly by court in the year 2016.In such categories central data are not available at one point.

Indian Railway isregistering under their**Railway's Acts sizable number of cases** and have arrested around 11 Lakhs(1.1 million)offenders in 2017 for various cases like theft, trespass and snatching etc in railway premises .( Crime in India 2016)

Prisons in India statistics 2015 has mentioned about 2.7 lakhs (.27 million) under trials and 1.5 lakhs convicted person (.15 million) on 31<sup>st</sup> day of the year 2015.Here it is clarifies that person arrested and released are a continuous judicial phenomena which goes on unabated. Few are entering into prisons attempting/abetting/after committing a crime and few goes out from prisons

after completing their sentences through a process, known as conditional release (Bail). However on an average in one night as data is available suggest that only on the day 31<sup>st</sup> December about 4.5 lakhs inmates (.45 million) are remained in the jail in India.

Thus as discussed above and as per available government of India's data, the **total number of arrestees** broadly comes around **8.69 million** (approximate 87 lakhs). It can be said that **6.9% of the entire country's population is arrested (130 Crore)** in a year 2016 approximately which will be **669 person per 1,00,000 population of the country.**

(i) Cognizable offences /Substantive Acts like IPC etc.-3.74 million

(ii) Local and Special Acts of Central and State governments-2.4 million

(iii) Preventive arrests under Cr.P.C.- 1 million

(iv) Railways Acts-1.1 million

(v) Prison inmates (Under trials and Convicted)- .45 million.

#### **limitations in getting data:**

a) In this data arrested person from CBI, Enforcement department and other such smaller agencies and courts have not been included.

(b) Similarly it is also a fact that a sizable quantity of the people is detained illegally at Police stations and with other investigating agencies also, has not been counted

(c) Besides above there are another major data which is with M.E.A (Ministry of External Affairs) i.e. Indian Citizens arrested in abroad are also becomes important for the purpose of rehabilitation. There exchanges are possible under International conventions and mutual treaties with India. At present data is not available as to know their rehab status etc.

#### **Comparative study of incarceration with Developed countries (USA, Germany, Russia, Singapore, Canada etc. ):-**

In October 2013, the incarceration rate of the United States of America was the highest in the world, at 716 per 100,000 of the national population. While the United States represents about 4.4 percent of the world's population, it houses around 22 percent of the world's prisoners. Corrections (which include prisons, jails, probation, and parole) cost around \$74 billion in 2007 according to the U.S. Bureau of Justice Statistics. Germany has an incarceration rate of 76/100000 population (2014), Russia is having 455/1 lakh (2015) and Singapore is 220/100000 (2014), Canada, Australia and Europe (average ) is around 100/100000 population.

The American criminal justice system holds more than 2.3 million people in 1,719 state prisons, 102 federal prisons, 901 juvenile correctional facilities, 3,163 local jails, and 76 Indian Country

jails as well as in military prisons, immigration detention facilities, civil commitment centers, and prisons in the U.S. territories.

In 2016, the Prison Policy Initiative estimated that in the United States about 2,298,300(2.3 million) people were incarcerated out of a population of 323.1 million. Thus 0.71% of the population was behind bars. Of those who were incarcerated, about 1,351,000 people were in state prison, 646,000 in local jails, 211,000 in federal prisons, 34,000 in youth correctional facilities, 33,000 in immigration detention camps, 14,000 in territorial prisons, 5,500 in civil commitment, 2,400 in Indian country jails, and 1,400 in United States military prisons. In USA 23 Lakhs (2.3 million ) people are arrested in a year in 330million (33 Crore) population and in India it is around 8.7 million in 1300 million (130Crores). **Thus 0.67% of the population have been arrested in India during the year in comparison of 0.71% of US population .**

Infact lack of documentation about arrestees, incomplete data bank on preventive arrest and arrest by other agencies etc. have not been collected by National Crime Records Bureau and more than 2000 police stations are not connected through online especially in Naxal affected areas whose data have not reached to the NCRB .In India, there is lack of awareness about legal rights among masses and people are detained by law enforcement agencies. Burking of offence is a common phenomenon. Criminal justice system in India is not friendly for poor and even middle class people. Thus a large number of people detained illegally for settling the matters without involving legal processes. **Thus by presuming all these, ratio of total detention will certainly cross over the US data.**

However arresting of about 9-10 million people ( 2.3 million in USA in 330 million population) in a developing country of 1300 million population in a year certainly will not allow to improve infrastructure , reformative and rehabilitative facilities among inmates. A country whose 27-30% population is below the poverty lines, having limited resources which needs to be diverted towards upliftment of downtrodden and lower strata people in providing basic minimum needs of the life ,will certainly take precedence over all priorities. Hence reformation and rehabilitation will always take least priorities from the people and government. Infact concept of rehabilitation ie integrating released inmates in the society with suitable skill and job have not been formulated either through effective policy or by evolving any statutes .Hence rehabilitation remained an unfinished task without any audit or feed back etc.

### **Reasons and Remedial measures.-**

**1-First timers and Recidivist:-** In the year 2016 under IPC: The Crime in India (CII) data reveals that person arrested under IPC Crime-2016 vide Table 18C.1, and 18C.2 mentioned that out of total person arrested 3737830, **new offenders were 3499986 i.e. 93.6%of the total** .The data further reveals that among repeated Offenders those who have committed once- 191849(5.1%), twice- 35608(1%) and thrice or more- 10427(0.3%). It has also seen that hardly 6.4% are recidivist in 3.7 million arrest in IPC . Similar rate can be calculated for other data

also. 94% arrestees are first timers. Here reformation theory needs to be applied and one chance has to be given to petty offenders among first timers as to bring them into social re-integration.

## **2- Arrest in all cases not necessary:**

The following methods can be adopted.

**a-** Strictly follow notices system U/S 41 Cr.P.C (newly amended). Generally Police is not following. All concerned stake holders like Police, Court, Advocates ,Prosecutors , legislators, NGOs ,media ,and citizens must come forward and see that esprit of section 41 should be maintained.

**b-**Lack of awareness among people: There is lack of awareness among masses and that is reason that less than 10<sup>th</sup> pass and illiterate are more in jails .Educated people are very less.

**c-**More than 30-40 % criminal cases registered are closed at police station level due to lack of evidence and similarly around 30-40% are getting acquittals in the court. In both categories where accused has been declared as innocent, arrest at initial stage not required but Police does arrest and court also promotes. These arrests are mostly unjustified .Arrest should be in rare cases where clinching evidences are there. Thus arrest are not effected judicious at police station level.

**d-** Utilization of arbitration, alternate dispute resolutions, preventive measures and help from local bodies should also be taken rather than arresting directly.

**3- Professional approach of Prison:** Data suggests that maximum person is arrested first time. It has been seen that generally those person revert back if chances are given. **Thus therapeutic treatment is required case to case basis** . There are about 1400 prison in India, having capacity around .35 million with respect to physical presence of about .45 million total inmates on the day last of December of the year . However approximate 8.7 million person are getting arrested in IPC, Local Laws, Railways and preventive measures etc .

**3-Lack of Statutes on Rehabilitation** (Incarceration and Rehabilitative Programs in UK and USA):

In developed countries like U.K, there is Rehabilitation of offenders Act 1974 where some criminal conviction to be ignored after a rehabilitation period [C Smith, William (2015-12-12) “NACRO changing lives, reducing crime”) citation] It’s purpose is people do not have a life long float on their records because of a relatively minor offences in their past. The rehab period, is automatically determined by the sentence. After this period, if there has been no further conviction, the conviction is ‘spent’ and, with certain exceptions, need not be discussed by the ex-offenders in any context such as when applying far a job, obtaining insurance or in civil proceedings .(Amended Act of 1974 & came into effect 10.03.2014 “ Legal Aid, sentencing & punishment of offenders Act 2012 – (section 139)),

The Act applies in England & Wales updated to provide new rehabilitation periods. For example offenders who received a 2 year prison sentence will see the conviction spent 6 year from date of conviction – (2 year sentence + 4 year rehab period).”**Thus rehabilitation period is prescribed under U K statute, has been made compulsory.**As for as Rehabilitation of Offender’s Act is concerned, USA is not having like U.K. There are some legislation near by but not exactly like U.K, Queensland, Jamaica’s statue for Rehabilitation.

4)**Budgetary provisions India /USA:-**Incarceration rate in U.S.A in October 2013 was the highest in the world at 716 per 100000 of National population. USA population is world’s 4.4% and its incarceration rate is around 22% of the world’s prisoners. Correction which includes prisons, Jails, probation, paroleetc cost around 74\$ billion(4995370 lakhs)in 2007 according to the U.S Bureau of Justice statistics. Here cost on **per inmate comes around 2,17,190 rupees.**

In India Table 12 (A) of Prison statistics of India (PSI 2015) has mentioned about sanctioned budget for entire prisons was 427881.2 lakhs rupees for a prison population of around 87 lakhs ,thus it gives around 11.67 times lesser than US and cost on per Indian inmates will be **around Rs.4918 in a year.** Thus there is huge gap on expenditure on per inmate and this is the reason with this budge ,rehabilitative measures are not possible.

### **Conclusion:**

The total arrest in India is more than USA’s arrest either in terms of population ratio or in total number. In Indian scenario, no doubt there is an increasing pattern in crimes, particularly heinous offences but the putting alleged person in Jails are not sufficient alone to make society reasonably peaceful. Thus Lesser and selective arrest is one of the important key to the success of rehabilitation. Judicious approach is needed in arresting the person. Arbitrary arrest and detentions has to be avoided. Alternate dispute redressal, plea bargaining and Notices u/s 41 Cr.P.C. ie before arrest should be followed. There is need to go with more and more community oriented active participation as to solve matter amicably especially petty offences like restorative justice of developed countries. Arrest can also be minimized by ensuring surety and bond measures especially in petty offenders as well as known identified persons. Externment and probation of offender Acts can also be adopted. Electronic surveillance of developed countries can also be think for close monitoring over the person .Thus there is high time to evolve alternate of arrest and send minimum people into close walls towards making rehabilitative measures more meaningful.//

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7-Table 18A.1 IPC –(CII) Crime in India 2016 (NCRB) has mentioned that total Person arrested 3737870, C/S 3271262, Convicted 794616, Acquitted 1148824 and Discharged 10433. Table 18 A.3 has noted that total person arrested under Special & Local.

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