

DECOLONIZING JUSTICE – LEGAL CRITIQUE OF THE CARCERAL SYSTEMS IN POST-COLONIAL STATES WITH SPECIAL REFERENCE TO INDIA, SOUTH AFRICA, AND CANADA

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Abstract

This research paper examines the colonial roots and lasting impact of carceral systems in post-colonial countries, especially India, South Africa, and Canada. It looks into how colonial law continues to shape prison management, legislation, and the ongoing oppression of marginalized groups in these regions. Using doctrinal, analytical, and comparative methods, the study evaluates current penal laws and their alignment with restorative justice. It calls for decolonial strategies that challenge punitive colonial legacies and improve rehabilitation, human dignity, and community-based options. By comparing indigenous justice traditions with colonial punitive models, this article contributes to the academic discussion on decolonizing justice systems and proposes inclusive legal reforms for social equity and the protection of human rights.

Introduction

The question of justice in post-colonial societies is complicated by the historical impact of colonialism and its lasting effects. In terms of penal law and prisons, these effects show up as the continued existence of colonial legal systems, bureaucratic processes, and prison practices that still operate in present-day countries like India, South Africa, and Canada. These nations share a history of colonial rule, where legal and criminal systems were used to dominate, control, and exclude people racially, primarily targeting indigenous populations and marginalized groups.

¹⁵⁷⁶Even after gaining political independence, the prisons in these countries largely retain their colonial characteristics. They remain places of violence and social control, rather than centers for rehabilitation or restorative justice. Issues such as overcrowding, poor prison conditions, racial disparities in incarceration, and the disproportionate impact on indigenous and other marginalized communities continue to be

serious problems. The colonial prison system, based on punishment and retribution, reinforces inequalities and fails to consider the social and historical factors that lead to crime and punishment in post-colonial societies.

The project of decolonizing justice requires us to closely rethink these inherited systems. It also calls for dismantling colonial legal frameworks that continue to alienate and oppress. Decolonizing justice is not just about reform or abolitionist statements; it envisions a restorative, culturally focused approach that respects indigenous legal traditions, encourages community involvement, and values healing, dignity, and social equality. For instance, Canadian Indigenous-led initiatives, the use of traditional dispute resolution in India, and community-based restorative models in South Africa show pathways to breaking down the colonial prison system.

This study looks critically at the colonial origins and impacts of prison systems in India, South Africa, and Canada. It aims to uncover how colonial legal structures still influence today's prison management and laws, especially in

¹⁵⁷⁶ Emory University Library. (2023). Global Prison Studies: India.

maintaining marginalization and systemic injustices. Using a doctrinal, analytical, and comparative approach, the study evaluates the effectiveness of reform efforts and legal actions aimed at reducing prison violence and promoting restorative options. It positions decolonization as both a theoretical concept and a practical necessity, shifting legal practice from punitive measures to empowering, community-focused justice.

This work is significant where law, history and the experience of historically marginalized communities in postcolonial societies converge. The creation of knowing continuities in colonial carceral policy and legacy informs global debates about justice reform and Indigenous sovereignty. It makes the case that the voices and heritage of historically marginalized communities need to be central to future justice design that is humane, culturally appropriate and human rights based. Decolonization is both a stage and an outcome; a critical encounter with history and law to be able to transform justice in a concrete way today.

Statement of Problem

The post-colonial carceral systems of India, South Africa and Canada are still governed by the colonial law and institutional structures that continue to perpetuate racialized control, exclusion and systemic violence. Despite post-independence and multiple reform initiatives, prison systems are still punitive modalities of social control and political repression, rather than rehabilitative or restorative justice.

¹⁵⁷⁷In India, the colonial Prisons Act of 1894 and associated policies form the legal base of prison governance that continues to cause overcrowding, custodial violence and marginalization of oppressed groups such as Dalits and Adivasis. In South Africa, the penalty is still in the shadow of apartheid's racial and political regimes of imprisonment. Canadian prisons are still disproportionately imprisoning Indigenous communities as part of settler

colonialism.

The problem, is the continuing perpetuation of coloniality within carceral systems that advances systemic disparities, erodes prisoners' rights and optimizes punishment over rehabilitation and social rehabilitation. This issue is also shared cross-jurisdictionally and compounded by the shortfall between legislative changes that tend to insert human rights safeguards and their incomplete translation into institutional and social life. Addressing this issue requires a systemic knowledge and critical understanding of the way coloniality permeates present day prison laws, administration, and prison culture. It also requires an inquiry into the way colonial carceral logics continue to intersect with present day social hierarchies to serve marginalized populations. Perhaps above all, it requires an inquiry into alternate justice models that reject retributive philosophies and instead advance decolonial restorative justice that honors dignity, cultural sovereignty and human rights.

This research seeks to fill these knowledge gaps, and provide an understanding of the legacy of coloniality in carceral systems and the way decolonizing justice operates within the context of post-colonial societies.

Research Questions –

The aim of the research is as follows:

- To identify and examine the colonial roots and legacy of carceral systems in the post-colonial states.
- To analyse the implications of colonial structures in shaping the administration, laws and policies of prison in India.
- To critique the compatibility and continuities of interpreted penal and prison laws in the contemporary legal system.
- To examine the collateral social, political and legal damage of carceral violence and discrimination in Indian prisons as a continuation of colonial oppressor structures on the already vulnerable and

¹⁵⁷⁷ Jetir Journal (2021). History of Indian Prison System: An Overview.

oppressed sections of society.

- To critically examine the antecedents and provisions of retributive justice system.
- To understand the power dynamics and mechanisms of surveillance of prisoners and state agents.
- To examine the alternatives and transformative approaches for justice systems with an aim of decolonising colonial carceral practices and enhancing the rehabilitation, human dignity and restorative justice perspectives.

Significance of research –

This research addresses profound disjunctions in the understanding of the intersections of colonial past, legal orders, and carceral strategies in the present. It focuses specifically on India and seeks comparative insights from South Africa and Canada, and how entrenched colonial structures give rise to structural inequalities, institutional violence, and racialized barriers in contemporary justice systems.

The research seeks to make a theoretical and empirical contribution to postcolonial legal studies, international human rights law, and criminology. The insights and recommendations of this research will attempt to influence the work of policymakers, lawyers, activists, and researchers who are committed to reforming justice systems. Ultimately, it seeks to create more just, culturally relevant, and humane justice systems in post-colonial societies haunted by colonial pasts.

Scope and limitations of research

This research is primarily concerned with the legal and institutional character of carceral systems in post-colonial states, where India is the primary case study and South Africa and Canada are used for comparative purposes. The study examines penal legislation, institutional management, prison conditions and reform schemes to interrogate continuities and ruptures from colonial era to the

contemporary context. The analysis is focused on the ways in which legal systems and administrative culture, usually transplanted from colonial powers, shape the reality of imprisonment, criminalisation and reform today. The research approach is interdisciplinary and draws upon postcolonial legal scholarship, criminology and human rights law. However, its core concern remains with law and institutional practice rather than with broader criminological or sociological analysis.

¹⁵⁷⁸The study focuses on prisons as the exemplar of the site of analysis, treating them as both a material space of confinement and as an extension of colonial control. In this sense, the research emphasises the enduring role of law as an institutional and legitimising mechanism for making carceral logic institutionalised and reproducing it from one generation to the next.

The comparative element of the research draws attention to common colonial legacies as well as contextual divergences. South Africa and Canada were chosen as comparators for specific reasons: South Africa as a post-apartheid country with a highly racialised penal history; and Canada as a settler-colonial country with one of the most acute human rights challenges involving Indigenous over-incarceration. The lessons from the comparative element of the

research sharpen the analysis of India by making clear how colonial legal legacies, in one form or another, continue to shape the contemporary carceral regimes in widely differing post-colonial societies.

Notwithstanding all this, this study is limited methodologically and substantively. Firstly, the nature of criminal justice systems in the different jurisdictions makes it impossible to comprehensively cover all aspects of carceral governance in a single study. While the analysis is linked to policing and prosecution insofar as they co-extend with prison governance, these are not covered in depth. Similarly, the research

¹⁵⁷⁸ Rote, K. (2020). Prison Reform and Social Change in India. [NIU].

does not provide a full criminological mapping of crime rates, sentencing, and rehabilitation outcomes, beyond the extent that they inform the persistence of colonial modes of thought in prison systems.

Secondly, data for the three jurisdictions are limited, unevenly distributed, and not readily comparable. In India, prison data are haphazard at both state and central levels, and traditionally reported only in governmental reports that tend to minimize issues such as custodial violence, overcrowding, and surreptitious forms of control. In South Africa, while there are more systematic prison data, the intensity and openness of political change impact the comprehensiveness of the record. In Canada, documentation is relatively more reliable, but the problem remains of rendering Indigenous experiences invisible in official accounts. These disparities in data availability require caution in cross-country comparisons as equality of data cannot be assumed.

Thirdly, research is time-sensitive. Criminal justice reforms are ongoing processes and subject to abrupt socio-political change. India's recent criminal law changes (2023–24), ongoing prison oversight controversies in South Africa, and changing strategies for Indigenous-led justice in Canada are all living processes of change. Thus, the analysis presented is subject to obsolescence, and must be readjusted in the light of new legislation, judicial decisions, and institutional change.

Finally, there are scope exclusions to note. This research does not account extensively for broader transitional justice discussions or truth and reconciliation commissions, or the politics of policing outside of their carceral connections. Nor does it provide a full ethnographic description of the lives of prisoners, though secondary work is cited pushing towards these lived experiences. These are not indicators of secondary importance but rather are indications of the need to maintain prisons as target sites, with a rigorous legal and institutional focus.

Research Methodology

Descriptive, Analytical, Comparative

Descriptive – The descriptive research methodology is used to systematically analyze and record the current legal systems, institutional frameworks, and historical contexts of carceral systems in post-colonial countries with a focus on India. Using this methodology, we can conduct an in-depth analysis of colonial legacies embedded in constitutional provisions, laws, and judicial decisions, as well as international human rights norms that impact prison reforms.

Analytical – Secondly, we use the analytical research methodology to analyze and interpret the legal statutes, judicial rulings, and policy frameworks that regulate carceral systems in post-colonial societies, particularly in India. This methodology allows us to identify underlying colonial biases, systemic inequalities, and inconsistencies in current laws and practices. By scrutinizing legal provisions and international human rights treaties, as well as significant court decisions, we can identify patterns of systemic oppression and assess the adequacy of decolonization efforts.

Comparative – Finally, the comparative research methodology is used to compare and contrast India's carceral system and justice reform with those of other post-colonial countries. Using this methodology, we can identify common colonial legacies, as well as unique national approaches and solutions to decolonizing justice. We can compare legal systems and prison reforms across jurisdictions and comparable legal frameworks and international concepts to identify best practices, common challenges, and innovative solutions that can help shape India's efforts to transform its carceral system.

Literature Review

The writing on decolonizing justice and critiquing carceral systems in post-colonial contexts has become increasingly scholarly in recent years. The literature clusters around

three general themes: the colonial origins and long-lasting legacies of penal legal systems, the overrepresentation of carceral systems' effects on Indigenous and marginalized populations, and the development of restorative and Indigenous justice models as counterpoints to colonial punitive regimes.

Colonial Legacies in Carceral Regimes

¹⁵⁷⁹A core assumption throughout the literature is that prisons and penal codes of post-colonial nations are direct heirs of colonial legal structures built to regulate racial hierarchies and political domination. For example, Mohd. Asadullah (2023) critically examines India's

colonial rule to govern and control subaltern communities, particularly Dalits and Adivasis. Even after post-independence legal reforms, these colonial frameworks have continued to endure, enforcing systemic injustices and caste-based discrimination in regimes of incarceration.

¹⁵⁸⁰In South African scholarship places recent carceral practices in the historical context of apartheid and colonial segregation. As Khaund and Singh (2022) highlight, the prison system reaffirms racialized control by policy measures that disproportionately confine Black South Africans, responding to remnant colonial and apartheid logics even in the face of constitutional assurances of equality and human rights. The racialized construction of sentencing, the brutal imposition of prison discipline, and the spatial segregation of prisoners are viewed as continuations of colonial social engineering.

¹⁵⁸¹In Canada, Megan Korchak's research sheds light on Indigenous peoples' disproportionate rates of incarceration as a result of settler colonialism. The imposition of European legal frameworks undermined Indigenous systems

of governance, leading to punitive state reactions to Indigenous identity and resistance. Korchak and Seth Adema's work contend for the recognition of Indigenous law and sovereignty as paramount to any reform of the justice system, criticizing the Eurocentric and carceral character of the criminal justice system that excludes Indigenous peoples.

¹⁵⁸²Critical criminologists like Biko Agozino (2019) and Angela Davis (2018) place their critiques within international perspectives of racial capitalism and colonial domination. Agozino recommends decolonizing criminology itself, calling for a departure from Eurocentric premises that efface the facts of racialized oppression that colonized people face in carceral systems across the globe. Davis places prison abolition within anti-colonial and anti-racist movements, highlighting the prison system as a state violence that perpetuates racial capitalism and colonial subordination.

Impact on Indigenous and Marginalized Communities

Literature consistently places in the foreground here the disproportionate harms incurred by Indigenous peoples and other marginalized groups across these regimes. In Canada, healing lodges led by Indigenous peoples and culturally based justice programs are exemplary of attempts to break colonial cycles of incarceration. These programs are framed as sites of resistance and reclamation, integrating Indigenous cultural values with alternative mechanisms of justice to produce relational and healing-oriented spaces differentiated from dominant prisons (Chartrand & Rougier, 2021).

¹⁵⁸³South African restorative justice scholarship borrows from African customary law philosophies to provide trauma-informed, community-based models of justice that

¹⁵⁷⁹ Asadullah, M. (2022). Decolonization and Justice: An Introductory Overview. [Open Library].

¹⁵⁸⁰ McGuire, M. M. (2022). (In)-justice: An exploration of the dehumanization of Indigenous peoples in the justice system. *Sociology of Race and Ethnicity*.

¹⁵⁸¹ Chartrand, V. (2019). Unsettled Times: Indigenous Incarceration and the Links between Colonialism and the Penitentiary in Canada. *Critical Criminology*.

¹⁵⁸² Masiero, S. (2023). Colonial Lives of the Carceral Archipelago. *International Political Sociology*.

¹⁵⁸³ Asadullah, M. (2021). Decolonization and Restorative Justice: A Proposed Theoretical Framework. *Journal of Restorative Justice*.

confront punitive colonial inheritance (Asadullah, 2023). Both the National Development Plan and the Truth and Reconciliation Commission have offered templates for embracing the importance of cultural appropriateness and community engagement within justice reforms, but with uneven implementation.

In India, critical scholarship centers on caste, tribal, and class-based inequalities in the criminal justice system. The continuation of colonial criminal statutes aggravates marginalization, while restorative justice advocacy emphasizes reviving indigenous and traditional measures of conflict resolution as part of indigenous and tribal social systems (Asadullah, 2023).

Alternative and Restorative Models: Decolonizing Justice

There is an emerging literature that examines decolonizing justice as a revolutionary endeavor beyond abolitionism or reformism that prioritizes Indigenous sovereignty, legal pluralism, and culturally grounded restorative justice. Routledge International Handbook on Decolonizing Justice (Cunneen et al., 2024) brings together case studies that illustrate how Indigenous-led legal institutions and community justice practices express ideals of relationality, healing, and self-determination. This guide stresses the need to dismantle colonial epistemologies and institutions in order to construct justice systems that pay attention to history and socio-cultural diversity. Canadian political science and criminology scholars propose relational abolitionist strategies that prioritize repairing social relations and reconstituting community ties that have been ruptured through colonial carceral activities (Mussell, 2023). These strategies contest carcerality not merely in terms of legal reform but through transformative social work, cultural renewal, and people's organizing.

Criticism of Indigenized programming in prisons also arises, with some critics positing

that efforts, although crucial, are incapable of atoning for colonial harms unless there is deeper systemic change (Tetrault, 2023). Cultural healing and cultural programming, though necessary, are required to be complemented by decarceration efforts and policy changes that reassert Indigenous jurisdiction and correct systemic racism.

Research Gaps and Emerging Directions

In spite of this dense literature, there are continuities in knowing how these theories and methods translate into practice, particularly in nations such as India, where prison studies continue to lag behind and access to carceral sites is strictly regulated. Questions around the intersectionality of caste, class, gender, and indigeneity in carceral contexts must be pursued with greater specificity. There is, therefore, also a need to enhance cooperation among scholars, Indigenous peoples, and policymakers to put the decolonial theory into practical legal reforms and community practice.

Body

¹⁵⁸⁴Penal facilities in India, South Africa, and Canada are inextricably bound with colonial pasts. Anything but instruments of law and order, prisons were deliberately developed under colonial powers as instruments of control, domination, and exclusion. They were intended to discipline colonized groups, organize labor, and repress political opposition. By doing so, these facilities internalized structural logics of race, caste, and class hierarchies that still resonate in the postcolonial era.

The post-independence or post-apartheid transitions in these societies did not involve any radical remaking of the prison system. Rather, colonial laws, practices, and bureaucratic rationalities were maintained and legitimized as contemporary legal frameworks. The durability of such continuities

¹⁵⁸⁴ Deckert, A. (2024). Neo-Colonial Criminology 10 Years On: The Silence Continues. *International Journal for Crime, Justice and Social Democracy*.

demonstrates what Achille Mbembe describes as the "necropolitical" aspect of colonial inheritances, where the sovereign determines who can live and who should die, more often than not through incarceration, deprivation, and exclusion. how the colonial legacy continues to haunt punitive logics, analyzes the postcolonial crisis of imprisonment, and marks out new paradigms of restorative and transformative justice.

Through comparative references, the analysis illustrates how carceral regimes remain core locales of unresolved decolonization while also indicating ways of deconstructing the colonial matrix of power.

India: Colonial Legacy and Structural Violence in the Prison System

The contemporary Indian prison system was a legacy of the British colonial period. In pre-colonial times, punitive justice in India was characterized by community-based punishments, restitution, or corporal punishment, but the prison as a systematic apparatus was unusual. The British changed this scenario, bringing in prisons as a technology of rule.

The Prisons Act of 1894 legislated these developments, creating a standardized set of rules for the administration of prisons throughout provinces. Written in the aftermath of the 1838 Prison Discipline Committee, the Act was influenced by utilitarian notions of deterrence and punishment rather than rehabilitation. Pragmatically speaking, this implied the disciplined surveillance, forced labor, and the application of imprisonment as an instrument of politics. Colonial states employed prisons to disempower political opposition. Freedom movement leaders such as Bal Gangadhar Tilak, Jawaharlal Nehru, and Mahatma Gandhi were incarcerated, and their texts illustrate the carceral experience as an intentional attempt to demolish morale and destroy networks of resistance. Prisons also replicated social hierarchies: caste differentiations decided access to food, labor

assignments, and sleeping quarters, entrenching Dalit and Adivasi subordination in an already repressive social order.

In 1947, independence did not result in a clear break from penal rule. The 1894 Act continues to be the main legislation, being minimally supplemented by the Prisoners Act (1900) and state-level regulations. Reforms have been ad hoc, reactive, and inadequate to correct systemic breakdown. The magnitude of the crisis can be seen in numbers. As per the Prison Statistics India (2022), Indian prisons are at 117% occupancy, and a few states, such as Uttar Pradesh and Delhi, have occupancy figures beyond 150% figures. Around 69% of prisoners are undertrials, i.e., they are not convicted but are held in prison due to delayed trials, lack of funds to post bail, or procedural flaws. This erodes the promise of freedom in the Constitution under Article 21 and underlines the exclusionary character of India's adversarial system.

Custodial violence is still rampant. Even after the Supreme Court judgments in *D.K. Basu v. State of West Bengal* (1997), which established guidelines against torture, custodial deaths, and abuses continue unabated. The National Human Rights Commission consistently reports cases of beatings, rape, and psychological torture. The fact that such violence continues to seep into prisons is a testament that prisons are less rehabilitation centers and more exhibits of coercive state power. Nutritional and health deficiencies perpetuate structural violence. Incarcerated persons are plagued with high rates of HIV and tuberculosis, and overpopulation renders quarantine infeasible. Female inmates, whose children are commonly jailed with them, are subjected to extreme denial of maternity care and sanitation.

Indian prison populations disproportionately represent marginalized groups. Dalits, Adivasis, and Muslims are grossly overrepresented in prisons compared to their proportion in the population. Adivasis, for instance, make up just 8% of India's population but almost 22% of

prisoners in Chhattisgarh and Jharkhand. This indicates structural casteism as well as communal prejudice at each point, policing, bail determination, and sentencing.

Academics claim that the prison is a "caste-carceral nexus," wherein domesticated caste hierarchies are colonial racial hierarchies. Policing strategies criminalizing entire groups (e.g., "Denotified Tribes") perpetuate colonial logics of collective suspicion and regulation.

Although reforms like the Model Prison Manual (2016) focus on rehabilitation, implementation gaps persist owing to underfunding and bureaucratic resistance. A decolonial strategy would involve breaking free from piecemeal reform to rethink justice altogether.

Indigenous and community dispute resolution mechanisms like panchayats or gram sabhas provide restorative models based on dialogue, restitution, and dignity. Integration of these into the formal system could start to dismantle the retributive colonial model.

South Africa: The Carceral Afterlife of Apartheid

¹⁵⁸⁵The prison system in South Africa is racially grounded in colonial domination. During British domination and afterward under the apartheid government, prisons were specifically aimed at sustaining segregation, controlling Black labor, and quelling political resistance.

The Prisons and Reformatories Act (1911) solidified racial segregation in prisons. Black South Africans were disproportionately incarcerated for minor offenses, especially pass law offenses, which criminalized state-unauthorized movement.

Incarceration was, under apartheid a primary policy of repression. Prisons were places of systematic torture and forced labor. High-profile political detainees like Nelson Mandela, Walter Sisulu, and Ahmed Kathrada were detained on Robben Island, where inhuman

conditions aimed at dehumanizing anti-apartheid leaders. The prison was hence both a literal and symbolic tool of apartheid rule.

The advent of democracy in 1994 was optimistic. The Truth and Reconciliation Commission (TRC) attempted to address past atrocities through restorative mechanisms. The Correctional Services Act (1998) prioritized rehabilitation and reintegration over punishment. However, structural issues persist. South African prisons experience 130% overcrowding, decaying infrastructure, and excessive violence. Black South Africans continue to be grossly overrepresented in prisons, demonstrating the enduring reality of racialized policing and sentencing. Judicial Inspectorate of Correctional Services reports identify inadequate health care, sexual abuse, and gang control within prisons. The persistence of inequality outside prison walls feeds incarceration. Socioeconomic marginalization, based on apartheid land dispossession, drives poor Black communities into poverty cycles of criminalization. This uncovers that the post-apartheid prison continues to be an institution that oversees poverty instead of guaranteeing justice.

Restorative justice is taking hold in South Africa. Victim-offender mediation, trauma-informed programs, and community sentencing initiatives seek to mend harm instead of imposing punishment. The TRC itself set the example for restorative practices by prioritizing truth-telling, apology, and reconciliation. However, systemic obstacles obstruct extensive implementation. Restorative initiatives are underfinanced, and punitive ideologies within correctional bureaucracies retain their grip. Decolonial scholars push for the inclusion of African indigenous epistemologies of justice, like Ubuntu, where community interdependence and dignity are valued. Inculcating the principles of Ubuntu in law may transform the justice system from retribution to relational repair.

Canada: Settler Colonialism and Indigenous

¹⁵⁸⁵ Gillespie, J. (2008). Rehabilitation in South African Prisons: A Critical Analysis. Penal Reform International.

Over-Incarceration

¹⁵⁸⁶Canada's carceral system is inseparable from settler colonialism. The state used prisons, alongside residential schools and the Indian Act, to dismantle Indigenous sovereignty and assimilate Indigenous peoples. Criminal law became an instrument of cultural genocide: prohibiting ceremonies like the Sun Dance, criminalizing traditional governance, and policing land use. Now, the over-incarceration of Indigenous peoples shows the persistence of such colonial logics. While Indigenous peoples make up approximately 5% of the population, they make up more than 26% of federal prisoners; in women's prisons, it is more than 40%. Such disproportionality testifies to systemic racism in policing, bail, and sentencing.

The Supreme Court of Canada ruling in *R v. Gladue* (1999) was a watershed moment. The Court established that sentencing judges are required to take into account the distinctive systemic considerations against Indigenous offenders, such as the intergenerational effects of colonialism, and give precedence to restorative alternatives. These were dubbed the Gladue principles. Though promising, its implementation has been patchy. Judges too frequently go short of proper training, and Gladue reports, which outline an offender's history, are routinely unavailable. Without radical change in policing and prosecution, Gladue critics say, it risks being no more than symbolic reform, not transformative change.

Indigenous-led options, on the other hand, are actual decolonial routes. Healing lodges, founded under Section 81 of the Corrections and Conditional Release Act, permit Indigenous communities to govern correctional centers according to cultural customs. Restorative circles, sentencing circles, and land-based programming prioritize sovereignty and cultural persistence. These efforts are contested.

¹⁵⁸⁶ McGuire, M. M. (2022). (In)-justice: An exploration of the dehumanization of Indigenous peoples in the justice system. *Sociology of Race and Ethnicity*.

Financing is tenuous, and state intervention threatens to co-opt Indigenous models into the carceral logic instead of dismantling it. Critics such as Megan Korchak and Seth Adema contend that authentic decolonial justice depends on Indigenous control, epistemic autonomy, and legal pluralism recognition. Without this transformation, reforms threaten to reinscribe colonial structures in the name of cultural sensitivity.

Comparative Analysis: Colonial Carceral Logics and Modern Reforms

A comparative framework identifies remarkable similarities in India, South Africa, and Canada. ¹⁵⁸⁷All three settings demonstrate how prisons were brought over or consolidated under colonial rule as means of control, either through segregation by race, hierarchies based on caste, or the undermining of Indigenous sovereignty. Across jurisdictions, subaltern groups continue to be over-represented in prisons: Dalits, Adivasis, and Muslims in India; Black South Africans in apartheid prisons; and Indigenous people in Canada. These trends substantiate the persistence of colonial logics of criminalization.

Reforms are limited, even if well-intentioned. Legal codes such as India's Model Prison Manual, South Africa's TRC, or Canada's Gladue principles tend to fail because they are inconsistently followed, hindered by bureaucratic inertia and systematized bias. They address symptoms, overcrowding, bad healthcare, without reversing the structural inequalities that fuel the carceral system.

Emergent transformative and restorative justice models offer other routes. Canadian Indigenous-led initiatives, Ubuntu-jus in South Africa, and Indian community dispute resolution all constitute epistemic challenges to colonial penalty. These, however, remain peripheral and localized and not central to justice systems. States need to redistribute power and give space to legal orders run by

¹⁵⁸⁷ Cunneen, C., & Tauri, J. (Eds.). (2023). *The Routledge International Handbook on Decolonizing Justice*. Routledge.

communities for actual transformation.

Toward Decolonizing Justice

Decolonization of justice entails more than reformist adjustments. It involves dismantling the epistemic, legal, and political structures of colonial carcerality. This involves the revocation of archaic colonial legislation, institutionalized discrimination, and the acknowledgment of indigenous and community-based legal orders as coequal instead of subaltern. There are examples already: healing lodges in Canada, Ubuntu justice practices in South Africa, and restorative community frameworks in India. These models put at the center dignity, relationality, and cultural sovereignty. They need to be scaled not just with money but also with a transfer of power from the state to marginalized communities themselves.

Only by dismantling the colonial matrix of power and re-centering justice on historically grounded experiences is it possible to decolonize carceral systems. This shift promises not only more humane prisons but societies premised on equity, dignity, and collective healing.

Persistence of Colonial Legal and Institutional Logics

One of the most significant findings of this research is the persistence of colonial penal logics and institutional frameworks in structuring modern carceral systems.

¹⁵⁸⁸India's prison system remains governed by the Prisons Act of 1894, an outmoded colonial law that continues to be the central law governing prisons throughout India. The Act emphasizes discipline, segregation, and custodial control over rehabilitation or reintegration. Prison manuals in other states also persist with colonial issues of surveillance and order over rights-based management. Academics like Ujjwal Kumar Singh contend that the Act "encapsulates the colonial logic of containment" and accounts for the continuity of

custodial violence, undertrial detention, and bureaucratic lethargy in reforms.

¹⁵⁸⁹South Africa also shows a similar persistence of colonial and apartheid practices. The 1911 Prisons and Reformatories Act, although technically repealed, established a legacy of racial segregation and coercive prison labor. Under apartheid, imprisonment became an overt instrument of racial control, with the prison network accommodating thousands of political prisoners. Institutionally, long after 1994, the architecture remains deeply shaped by these antecedents, security-oriented prison design, militarized personnel structures, and punitive discipline regimes. Legislative reworks, such as the Correctional Services Act of 1998, have yet to dislodge the carceral orientation inherited from apartheid's punitive apparatus.

¹⁵⁹⁰In Canada, the carceral system cannot be separated from settler colonial dispossession and assimilation strategies. The Indian Act, residential school regime, and RCMP policing have a long history of criminalizing Indigenous life and culture. Although residential schools officially closed in the 1990s, their logics are rearticulated in present-day incarceration practices. The Canadian carceral state continues to be characterized by classification, surveillance, and control, reminiscent of imperial forms of governance. Measures like mandatory minimum sentences and hyper-policing of Indigenous communities continue the colonial endeavor of disciplining Indigenous people through prisons.

In all three jurisdictions, carceral systems persist on colonial logics of surveillance, discipline, and exclusion. Legislative terminology may have changed, but the structural foundations continue to be based on the needs of empire and settler colonialism. Such continuity highlights that formal independence or democratic transformation

has not always entailed substantive decolonization of penal policy.

Another important finding is the glaringly disproportionate representation of marginalized groups among prisoners.

¹⁵⁹¹Statistics from the National Crime Records Bureau (NCRB) indicate Dalits, Adivasis, and Muslims, three groups combined, which account for approximately 39% of India's population, are more than 55% of the incarcerated population. Muslims, who are about 14% of the population, account for over 16% of the prisoners, and similarly, Dalits (Scheduled Castes) and Adivasis (Scheduled Tribes) are also disproportionately represented. Academics such as Baxi and Nalla attribute this imbalance to caste-based policing, biased prosecution, and socio-economic marginalization that makes them more vulnerable to criminalization.

In South Africa, the disproportionate imprisonment of Black South Africans is a grim indication of the long-lasting legacies of apartheid. Black South Africans, who are a majority, are disproportionately criminalized compared to their socio-economic status, whereas White South Africans are underrepresented. A report by the Department of Correctional Services in 2018 revealed that more than 95% of prisoners were Black African, despite the fact that

socio-economic disparities and crime patterns don't call for such statistics. Academics like Dirk van Zyl Smit highlight how the structurally ingrained racism within the police and judicial discretion keeps on reinforcing apartheid's racially patterned incarceration.

¹⁵⁹²The strongest disproportionality occurs in Canada. Indigenous individuals, who make up around 5% of the general population, account for over 26% of federal prison populations. Indigenous peoples are over 40% of women incarcerated. The Office of the Correctional

Investigator has consistently pointed to systemic factors for this overrepresentation:

Indigenous over-policing, cultural bias within risk assessment instruments, and socio-economic disparities that are themselves a result of colonial dispossession.

Comparative Finding

In each of these jurisdictions, overrepresentation is not accidental but structurally generated. Policing operations disproportionately engage marginalized populations; prosecutorial and sentencing policy cumulatively exacerbate systemic bias; and wider socio-economic exclusion guarantees that marginalized groups are directed into the penal system. Carceral institutions therefore reproduce and entrench the very hierarchies—of caste, race, and indigeneity—that colonialism instituted.

Another key finding relates to the structural and functional weaknesses that mark prison life in all these settings.

India's prisons suffer from persistent overcrowding. NCRB reports reveal an overall occupancy rate of 117% in 2022, with several states reaching over 150%. Undertrial inmates, those not yet tried, sometimes for many years, make up close to 70% of all prison inmates.

Overcrowding worsens unsanitary conditions, lack of proper medical facilities, and enhanced susceptibility to contagious diseases. Custodial violence is widespread; the National Human Rights Commission documents scores of custodial deaths each year, commonly attributed to torture or negligence.

The same problems confront South Africa, with an average rate of occupancy at approximately 130%. Prisons are typically violent environments with high rates of gang activity, sexual violence, and poor mental health care. The Judicial Inspectorate for Correctional Services (JICS) has repeatedly denounced the conditions as inhumane, citing the denial of access to medical care and the continued use of degrading forms of punishment.

¹⁵⁹¹¹⁵⁹¹ <https://www.ncrb.gov.in/uploads/files/PSI-20231.pdf>

¹⁵⁹² Chartrand, V. (2019). Indigenous Incarceration in Canada and Its Colonial Roots. *Critical Criminology*.

In Canada, overcrowding is not as bad, but Indigenous and racialized inmates are subjected to disproportionately punitive treatment. Security classification systems disproportionately place Indigenous prisoners in higher security levels, restricting their access to parole and rehabilitative programming. Office of the Correctional Investigator reports have documented Indigenous prisoners' increased rates of solitary confinement, even after Supreme Court decisions curtailed its use.

Throughout all three sites, prison life exacerbates trauma and reproduces inequality. The similarities, overcrowding, violence, inadequate healthcare, and discrimination—identify the structural continuity of prisons as places of systemic violence. These operational failures illustrate that reforms have not transcended the punitive and exclusionary nature of colonial-era penal systems.

Although all three jurisdictions have introduced reforms aimed at humanizing prisons and addressing historical injustices, the study finds a significant gap between legislation and practice.

India has enacted reformist policies like the Model Prison Manual (2016) and the Juvenile Justice (Care and Protection of Children) Act, 2015. Weak implementation by bureaucratic resistance, lack of resources, and ingrained punitive attitudes among prison officials is the reasons. For instance, despite repeated highlighting of the rights of undertrial prisoners by the

Supreme Court under Article 21 of the Constitution, lengthy pretrial detention is still common.

Post-apartheid South Africa launched the Truth and Reconciliation Commission (TRC), premised on restorative theories of justice. Nevertheless, the penal system is still shaped by retributive thinking. The Correctional Services Act of 1998 brought rights-based reforms to the fore, but overcrowding, custodial violence, and underfunding undermined their

implementation. The critics contend that the TRC's focus on individual amnesty at the expense of a broader reform effort bred this disconnect.

In Canada, the Gladue principles in *R v. Gladue* (1999) and reaffirmed in *R v. Ipeelee* (2012) mandate that courts take into account the special circumstances of Aboriginal offenders.

Their application, though, has been uneven. Numerous judges do not have proper training, and Gladue reports are underfunded or even nonexistent. Likewise, Indigenous healing lodges have been put in place, but their reach is limited and access narrow.

In all three jurisdictions, reforms have been symbolic rather than transformative. Though law and policy appeal to the language of rehabilitation and restorative ideals, such implementation is compromised by structural inertia, the absence of political will, and the scarcity of funds. The persistence of adversarial and punitive models illustrates the tenacity of colonial models of justice.

In spite of the continued persistence of colonial logics, the research spots potential alternative models of justice based on decolonial and restorative principles.

Increased calls exist for bringing indigenous mechanisms of dispute resolution into mainstream justice processes. Community-based panchayat institutions and restorative practices drawing on local customs focus on reconciliation and social cohesion. Civil society groups have also started to pilot restorative justice circles with juveniles and marginalized offenders. Yet these efforts remain on the periphery of the mainstream criminal justice system.

Restorative justice has picked up much momentum in South Africa, partly as a function of the TRC's legacy. Community sentencing schemes, victim-offender mediation, and youth offender diversion schemes have been experimented with some success. They align with African communitarian values like ubuntu,

which stress interdependence, dignity, and healing through community. Despite this, underfunding and institutional opposition have restrained their growth.

In Canada, Indigenous initiatives have become powerful counter-narratives to settler colonial justice. Healing lodges, Gladue courts, and restorative community-based programs place Indigenous epistemologies, spirituality, and traditions at the center. These programs prioritize healing and sovereignty, standing in contrast to punishment-oriented state practices. But they also risk cooptation and lack of resources, and their ability to bring about systemic change within a settler colonial matrix is uncertain.

Decolonial and restorative justice programs in all three nations prioritize healing, cultural sovereignty, and repair of relationships. They are foundational departures from colonial

punitive systems. However, their marginalization within wider penal systems underscores structural impediments to systemic change.

One of the most important findings from the study is that effective decolonization needs to place Indigenous sovereignty and epistemic justice at its center.

Colonial carceral regimes are maintained not just by institutions and laws but also by epistemologies that support Eurocentric definitions of crime, punishment, and justice. Decolonial theory contends that to deconstruct these regimes, there needs to be an epistemic break: the acceptance of the legitimacy of Indigenous legal orders, local dispute resolution, and culturally informed conceptions of justice.

Indigenous and marginalized community leadership is at the heart of this change. In Canada, Indigenous peoples' organizations like the Native Women's Association and the Aboriginal Legal Services have led community-based justice models. In South Africa, civil society movements have advocated for ubuntu-based restorative initiatives. In India, Dalit and Adivasi movements for rights have

called for culturally sensitive legal transformation.

Throughout all three contexts, seeking epistemic justice and Indigenous sovereignty is needed for transcending reformist methods in the direction of true decolonization. Without a change of the focus of power and knowledge from colonial state institutions, carceral systems will only continue to repeat exclusion and violence.

Recommendations

¹⁵⁹³Consistent with the conclusions drawn from the endurance of colonial legacies and system flaws in the carceral systems of India, South Africa, and Canada, this chapter presents specific recommendations for dismantling colonial carceral models and advancing restorative, culturally appropriate, and community-based justice.

Legal and Policy Reforms

Repeal and Replace Colonial Penal Laws

States need to undertake the dismantling of colonial penal laws and regulations that underpin punitive and exclusionary paradigms. India's Prisons Act of 1894, apartheid legislation in South Africa, and Canada's settler colonial laws need thorough reviews and substitution with legislation that upholds rehabilitation, human dignity, and justice by cultural relevance.

Embed Restorative Justice Principles in Law

Legislative frameworks ought to explicitly enshrine restorative justice practices like community sentencing, victim-offender mediation, and Indigenous justice processes. This entails codifying legal provisions for alternative dispute resolution mechanisms based on indigenous cultural values and epistemologies.

Ensure Judicial Training on Decolonial and Restorative Practices

¹⁵⁹³ Cunneen, C., & Tauri, J. (Eds.). (2023). *The Routledge International Handbook on Decolonizing Justice*. Routledge.

Decolonial, trauma-informed, and culturally responsive justice training programs must be made mandatory for prosecutors, police, prison officers, and judges to eliminate biases and ensure humane case processing of marginalized populations.

Institutional and Structural Reforms

End Prison Overcrowding and Better Conditions

Governments should invest in infrastructure, decrease pretrial detention by fast-tracking judicial processes, and enhance the use of non-custodial sentences. Prison facilities need to be at international standards for health, sanitation, and habitation to reduce custodial violence and promote human rights.

Expand Indigenous and Community-Based Justice Programs

Indigenous healing lodges, customary dispute resolution forums, and community-based alternatives need to be increased, well-funded, and given autonomy to operate as valid components of the justice system. Such programs must be created and directed by community members in order to maintain cultural integrity and self-determination.

Increase Transparency and Accountability in Carceral Facilities

Independent oversight bodies consisting of civil society and Indigenous peoples must have the authority to monitor prison administration, investigate abuse, and propose reforms.

Mechanisms for transparency foster accountability and dislodge entrenched cultures of impunity.

Socioeconomic and Intersectional Approaches

Tackle Root Causes of Criminalization

Redress systemic social disparities—poverty, casteism, racial discrimination, and illiteracy—that propel marginalized groups into carceral systems. Comprehensive social policies such as access to health, education, and employment must accompany justice

reforms.

Emphasis on Rehabilitation and Reintegration

Rehabilitation programs need to incorporate culturally sensitive mental health and substance abuse treatment, education, and job training, with specific support for marginalized groups like Dalits, Black South Africans, and Indigenous peoples. Reintegration support lowers recidivism and helps community wellness.

Conclusion

The study categorically concludes that the carceral systems in India, South Africa, and Canada continue to be deeply influenced by colonial pasts and rationalities of punishment, surveillance, and racialized domination. Even after formal independence and legislative amendments, systemic challenges such as overcrowding, custodial violence, overrepresentation of vulnerable groups, and implementation gaps continue to haunt these countries. Authentic decolonization requires a paradigm shift that goes beyond reformist adjustments to legal documents or policy. It requires the deconstruction of colonial logics

internalized in law, institutions, and civic culture, brought about by Indigenous epistemologies, sovereignty, and restorative justice models that center on healing and community control.

Decolonizing justice is not only about ending prisons but reimagining the whole structure of accountability, social order, and healing in ways that break up coloniality's persistent harms. It must be led by Indigenous and marginalized peoples, however, with legal and policy tools that confirm their rights, cultures, and dignity.

The future necessitates holistic legal reforms, institutional transformation, popular empowerment, and socio-economic justice. It is only through abandoning colonial carceral continuities and adopting culturally embedded alternatives that post-colonial states can achieve justice systems attuned to their heterogeneous peoples' lived experiences and

aspirations for equity, dignity, and shared well-being.

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