

A Comparative Study of Imprisonment Policy and the Legal Environment

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Abstract

Our study aims to contribute to comparative criminal justice scholarship by providing evidence-based insights into how imprisonment is legally structured and politically justified across the selected countries. It addresses the following core questions: How do different legal systems define the purposes and limits of imprisonment? What role does judicial discretion play in sentencing decisions? How are prisoners' rights protected in law and practice? And to what extent do contemporary reforms reflect a shift toward proportionality, alternatives to imprisonment, and rehabilitation? By answering these questions, the study seeks to identify both converging trends and persistent divergences in imprisonment policy, while offering analytical foundations for future penal reform—particularly in transitioning and reform-oriented legal systems.

Keywords: Criminal Justice, Imprisonment Policy, Legal Environment

1. Introduction

Imprisonment remains one of the most severe and consequential instruments of criminal punishment in modern legal systems. As a deprivation of liberty, it directly engages fundamental human rights while simultaneously serving core state objectives such as crime control, public security, deterrence, and rehabilitation. Consequently, the design and implementation of imprisonment policy—and the legal frameworks that regulate interfere a state's broader legal philosophy, constitutional values, and approach to criminal justice governance. In recent decades, increasing attention has been paid to the proportionality, necessity, and humaneness of custodial punishment, particularly in light of international human rights standards and growing concerns about over-incarceration. Comparative analysis provides an essential methodological lens for understanding how different legal systems regulate imprisonment. By examining multiple jurisdictions side by side, comparative research reveals not only formal legal differences, but also deeper structural patterns shaped by legal tradition, political context, and historical experience. This article adopts a comparative perspective to analyze imprisonment policy and legal frameworks in Germany, Russia, South Korea, Malaysia and

Mongolia. These countries were selected because they represent diverse legal traditions—continental civil law, post-socialist legal systems, mixed and hybrid legal orders—and varying levels of institutional development and penal reform.

The concept of imprisonment policy in this study extends beyond sentencing outcomes to include the normative goals of punishment, the legal conditions under which custodial sanctions are imposed, and the mechanisms governing the execution of sentences. The legal framework encompasses constitutional provisions, criminal codes, sentencing laws, prison administration legislation, and oversight mechanisms that collectively regulate deprivation of liberty. Together, these elements determine not only who is imprisoned and for how long, but also the standards of treatment, access to rehabilitation, and protection of prisoners' rights. Differences in these frameworks often explain divergent incarceration rates, prison conditions, and reform trajectories across jurisdictions.

2. Theoretical Framework of the Enlightenment–Humanitarian School in Criminal Law

The Enlightenment–humanitarian school in criminal law emerged in the eighteenth century as a response to the widespread illegality and arbitrariness characteristic of the medieval legal order. Prior to the French Revolution of 1789, judicial systems, punishment practices, and legal institutions were largely underdeveloped and inconsistent, and classical criminology took shape under these conditions. At that time, Europe lacked a coherent and systematic criminal justice framework.

In France, debates surrounding the monarchy intensified, and imprisonment without clear or justifiable reasons became increasingly common. Numerous written and unwritten criminal norms existed simultaneously, yet they provided no clear limits regarding the forms or severity of punishment. Judicial discretion was virtually unrestricted, allowing judges to exercise boundless authority in sentencing.

The leading representatives of this school—Montesquieu, Rousseau, Voltaire, and Cesare Beccaria—boldly called for the replacement of a judicial system grounded in state cruelty, arbitrariness, and abuse of power with a new system based on humanitarian values, justice, and the principle of equality before the law. They advocated for fundamental reforms of criminal law and judicial institutions and developed concrete reform programs, which they presented to those in power. These ideas later became the theoretical foundation for the modernization of criminal law and judicial systems in many countries.

The modern theory of punishment in criminal law is fundamentally shaped by the Enlightenment philosophy of Cesare Beccaria (1764) constitutes a normative and rational break from pre-modern, retributive, and arbitrary penal practices. Beccaria's theory rests on a rational, social-contract-based understanding of law, punishment, and state authority, and it provides a coherent framework for evaluating the legitimacy, limits, and purposes of criminal sanctions [1].

At the core of Beccaria's punishment theory lies the principle of legal equality. He argued that all individuals are equal before the law and that no person may be subjected to punishment based on status, power, or discretion. This principle directly rejects feudal and absolutist systems in which punishment varied according to social rank rather than culpability.

Closely connected to equality is the principle of proportionality, according to which punishment must correspond to the harm caused and the social danger of the offense. For Beccaria, crimes differ not in moral wickedness but in the degree to which they threaten public order and collective security. Therefore, punishments that exceed what is necessary to counterbalance the harm of the offense lose their moral and legal legitimacy and transform punishment into tyranny.

Regarding punishment, Cesare Beccaria consistently upheld two fundamental principles.

First, he argued that all individuals are equal before the law and that punishment must be proportionate to the harm and social danger caused by the offense.

Second, he advanced the principle that the effectiveness of punishment lies not in its severity, but in its certainty. Cesare Beccaria argued that punishment must conform to several fundamental principles:

- punishment must be clearly prescribed by law, in accordance with the principle of legality;
- a proportional relationship must be maintained between the seriousness of the crime and the severity of the punishment;
- punishment should involve the minimum degree of harm necessary to achieve its legitimate purpose;
- torture and cruel, inhuman, or degrading punishments must be categorically rejected.

Beccaria rejected the idea of punishment as an act of revenge. Instead, he defined the primary purpose of punishment as the prevention of future crimes, a view that laid the intellectual foundation for modern deterrence theory in criminal law.

Beccaria's theory of punishment establishes a rational and rights-based framework in which the principles of legality, proportionality, and certainty operate as fundamental constraints on the exercise of state penal power, ensuring that punishment remains predictable, limited, and justified by law. By rejecting retribution as vengeance and emphasizing crime prevention through moderate and predictable sanctions, Beccaria laid the normative foundations of modern deterrence theory while simultaneously advancing a humane conception of criminal justice grounded in reason rather than cruelty. Consequently, his principles continue to play a central role in contemporary constitutional and human-rights-oriented analyses of punishment, particularly in assessing the legitimacy, necessity, and proportional limits of criminal sanctions within democratic legal systems.

On the other hand, building on utilitarian philosophy, Jeremy Bentham developed a systematic theory of punishment grounded in the principle of utility, which holds that all legal and political actions should be evaluated according to their consequences for overall social welfare. Within this framework, punishment is not regarded as an intrinsic good or a moral end in itself, but rather as a means of minimizing overall social harm.

Bentham famously characterized punishment as an inherent evil, insofar as it deliberately inflicts suffering and restricts individual liberty. Consequently, punishment can be morally and legally justified only under strict conditions, namely when it serves to prevent greater evil than the harm it causes. From this perspective, the legitimacy of punishment depends entirely on its instrumental value in promoting public security and social order [2].

First, Bentham argued that punishment is justified only when the

social benefits it produces outweigh its negative effects. These benefits primarily consist in the prevention of crime through deterrence, incapacitation, and, to a limited extent, reform. If a punishment causes more suffering than the harm it prevents, it fails the utilitarian test and must be regarded as unjustified.

Second, Bentham emphasized that punishment should not impose unnecessary or excessive restrictions on individual liberty. Because liberty has intrinsic value within the utilitarian calculus, any limitation on freedom must be strictly proportionate to the public interest it seeks to protect. This principle anticipates modern doctrines of proportionality and necessity in criminal sentencing. Third, Bentham maintained that imprisonment must generate tangible benefits for public safety, rather than functioning as a purely retributive or symbolic response to wrongdoing. Imprisonment is legitimate only insofar as it effectively reduces future criminal behavior—either by deterring potential offenders, incapacitating dangerous individuals, or contributing to behavioral reform. Where imprisonment fails to achieve these objectives, Bentham viewed it as an irrational and unjustifiable exercise of state power.

Bentham's theory represents a decisive shift away from retributive conceptions of punishment toward a consequentialist and prevention-oriented model, in which the severity, form, and duration of punishment must be continuously assessed against its real-world social effects. His utilitarian approach laid the intellectual groundwork for modern criminal justice principles emphasizing deterrence, proportionality, and the minimization of penal harm, and remains highly influential in contemporary debates on sentencing policy and the limits of imprisonment.

3. The Comparisons of Comparative Perspective

We compared about policy on imprisonment and the legal environment in Germany, Russia, South Korea, Malaysia and Mongolia.

Imprisonment policy is not only a question of how often courts impose custodial sentences, but also why imprisonment is used, under what legal limits, and how deprivation of liberty is executed and supervised. In comparative criminal justice, “the legal environment” refers to the set of constitutional principles, criminal law rules, sentencing doctrines, prison administration laws, institutional responsibilities, and oversight mechanisms that shape both the imposition and the execution of imprisonment. Differences across countries therefore reflect not only legal texts, but also legal culture, state capacity, and political priorities.

In Germany that proportionality and rights-based execution of punishment. Germany is often analyzed as a model where imprisonment is strongly constrained by rule-of-law principles and a constitutional culture emphasizing human dignity and proportionality. Imprisonment is typically treated as a last resort measure relative to structured sentence practices and the availability

of non-custodial sanctions. The legal environment tends to stress that imprisonment must be executed in a way compatible with fundamental rights, making prison governance and rehabilitation central components of legitimacy. As a result, policy debates often focus on balancing public safety with reintegration and lawful, humane conditions of detention.

In Russia, formal legality alongside a security-oriented penal tradition. Russia can be comparatively characterized by a stronger historical association between imprisonment, state authority, and centralized penal administration. While formal legal guarantees exist, comparative scholarship often highlights tensions between normative protections and implementation capacity or oversight strength. In such systems, imprisonment policy may be influenced more heavily by security rationales and institutional centralization. For comparative research, Russia is particularly important for analyzing how the effectiveness of judicial review, complaint mechanisms, and prison governance structures shapes the real meaning of “legal safeguards.”

In South Korea, modern constitutionalism with strong administrative capacity. South Korea represents a highly modernized legal system where imprisonment policy operates within a constitutional framework while correctional governance benefits from comparatively strong administrative capacity and policy implementation. In comparative terms, Korea is useful for studying how reforms can combine rule-of-law commitments with effective institutional delivery, especially in areas such as prison management standards, rehabilitation programming, and structured sentencing practices. It also provides a contrast between legal design and practical effectiveness: even where laws are similar across countries, differences in institutions and resources may generate different outcomes.

In Malaysia, mixed legal environment and plural normative influences. Malaysia provides a distinct comparative case because its legal environment reflects a mixed legal heritage (common-law influence, statutory law, and Islamic legal elements in certain domains). This affects sentencing culture, penal sanctions, and prison governance. Malaysia is analytically valuable for understanding how plural legal sources and institutional arrangements shape imprisonment policy, especially in areas such as sentencing rationales, custodial discipline, and the distribution of authority across legal and administrative bodies. Comparative analysis also benefits from examining how rights protections and oversight mechanisms operate in mixed systems.

In Mongolia, transition, reform pressures, and alignment with international standards. Mongolia is a crucial case for a comparative study because it reflects challenges common to transitioning and reform-oriented legal systems: legal modernization, institutional capacity constraints, and the need to align imprisonment policy with evolving constitutional and international human-rights expectations. Mongolia's legal environment can be assessed by

looking at how sentencing policy is framed (proportionality and necessity), how alternatives to imprisonment are designed and used, and how prison governance and oversight mechanisms function in practice. In comparative terms, Mongolia provides a practical reform lens: which institutional and legal design choices—observed in other jurisdictions—are adaptable to Mongolia’s context.

We conclude that our comparative analysis of imprisonment policy and the legal environment across Germany, Russia, South Korea, Malaysia, and Mongolia demonstrates that while imprisonment remains a central instrument of criminal justice in all five jurisdictions, its legal justification, scope, and execution are shaped by markedly different normative priorities, institutional capacities, and legal traditions.

Germany illustrates a rights-based and constitutionally constrained model in which imprisonment is treated as a measure of last resort. The strong emphasis on human dignity, proportionality, and judicial reasoning limits excessive reliance on custodial punishment and reinforces rehabilitation and lawful prison administration as key sources of legitimacy. In contrast, Russia reflects a system where imprisonment is more closely associated with state authority and centralized penal governance. Although formal legal guarantees exist, persistent tensions between normative standards and practical enforcement highlight the decisive role of institutional oversight, judicial effectiveness, and accountability mechanisms in determining the real protection afforded to prisoners’ rights.

South Korea occupies an intermediate but distinct position, combining modern constitutional commitments with comparatively strong administrative capacity. Its experience demonstrates that effective implementation of imprisonment policy depends not only on legal design but also on institutional professionalism and resources. Even where legal norms resemble those of other jurisdictions, differences in governance capacity significantly influence prison conditions, rehabilitation outcomes, and public trust in the penal system. Malaysia, as a mixed legal system, further underscores how plural normative sources shape imprisonment policy. The coexistence of common-law traditions, statutory regulation, and Islamic legal influences produces a distinctive sentencing culture and governance structure, illustrating how legal pluralism affects both the rationale and practice of custodial punishment.

Mongolia, as a transitioning and reform-oriented legal system, provides a particularly instructive comparative case. Its imprisonment policy reflects ongoing efforts to modernize criminal law, expand alternatives to incarceration, and align domestic practice with constitutional principles and international human rights standards. At the same time, institutional capacity constraints and implementation challenges reveal the gap that may persist between legal reform and practical outcomes. From a comparative perspective, Mongolia highlights the importance

of adapting—not merely transplanting—foreign legal models to domestic social, institutional, and political contexts.

Taken together, the findings reveal a pattern of partial convergence toward proportionality, legality, and rehabilitation, driven by constitutionalism and international norms, alongside persistent divergence in implementation, oversight strength, and penal governance. The study confirms that effective imprisonment policy cannot be evaluated solely on the basis of statutory provisions; rather, it must be assessed through the interaction of legal principles, institutional capacity, and political commitment. For reform-oriented systems in particular, the comparative evidence suggests that strengthening judicial reasoning, expanding non-custodial sanctions, and enhancing independent oversight are as crucial as formal legal change. In this sense, the comparative perspective offered by this study provides both analytical clarity and practical guidance for future penal reform.

4. Conclusion

Our study contributes to comparative criminal justice scholarship by examining how imprisonment is legally structured and normatively justified across Germany, Russia, South Korea, Malaysia, and Mongolia. Through a comparative framework focusing on the purposes and limits of imprisonment, judicial discretion, prisoners’ rights, and recent reform trajectories, the study identifies both shared developments and enduring structural differences in imprisonment policy.

The findings confirm that imprisonment remains a central sanction in all five jurisdictions, yet its scope and execution are shaped by distinct legal traditions and institutional capacities. Germany represents a rights-oriented and constitutionally bounded model in which proportionality, human dignity, and rehabilitation constrain the use of custodial punishment. In contrast, Russia demonstrates a more centralized and security-oriented penal tradition, where the effectiveness of legal safeguards depends heavily on institutional oversight and enforcement capacity. South Korea illustrates how strong administrative competence can enhance the practical effectiveness of constitutionally grounded imprisonment policies, while Malaysia highlights the influence of legal pluralism on sentencing rationales and prison governance. Mongolia, as a transitioning legal system, underscores the challenges of aligning formal legal reform with implementation realities and institutional development.

Across these jurisdictions, the comparative analysis reveals a partial convergence toward proportionality, legality, and rehabilitative goals, driven by constitutional principles and international human rights standards. At the same time, significant divergence persists in implementation quality, oversight mechanisms, and penal governance structures. These findings suggest that effective imprisonment policy cannot be evaluated solely through statutory design; rather, it emerges from the interaction of legal norms, institutional capacity, and political commitment. For reform-

oriented systems in particular, the study highlights the importance of strengthening judicial reasoning, expanding alternatives to imprisonment, and ensuring independent oversight as essential components of sustainable penal reform.

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