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THE WORKING OF REFORMATORY MEASURES IN INDIA

ABSTRACT

Over a period of time, criminal offenses in India have grown rather drastically even though there are numerous laws and provisions aimed at preventing such criminal activities. The nature and severity of crimes have developed and undergone changes over the period of time which has made the present laws rather ineffective to control the rising ration of crimes. However, the reformatory theory of punishment has come up with the idea to curb crimes by reforming the individual so as to make him/her a law-abiding citizen of the society. This theory is based on insights from the field of psychology, sociology, and physiology in order to create a system where the offenders can be released back into society as responsible citizens. It also seeks to protect the basic human rights of an individual. The focus here is placed on the convict and his personality rather than the crime alone. This paper discusses the history of Punishment and Reformatory theory, gives an overview of the Reformatory theory, and later on provides an analysis of the corrective measures available in India and their application and implementation. It concludes with the author's opinion of the need of Reformatory measures and suggestions for its better implementation.

Keywords:*Reformatory, Punishment, Crime, Prison, Parole, Probation.*

INTRODUCTION

“Hate the crime and not the criminal”

- Mahatma Gandhi

Penal Law is often regarded as an instrument of social change in modern societies.¹ A healthy administration of criminal law is seen as essential for maintaining law and order and a proper functioning of a country. The Indian Penal Code, 1860 does not define the Punishment. However, according to the Oxford Dictionary punishment is “a means to make an offender suffer an offense.”² Thus it is understood as some pain or penalty warranted by law, inflicted on a person for the omission of the performance of an act required by law or for commission of an act prohibited by law.³ One of the most important duties of a state is to provide a peaceful life and society to its subject. It is observed that a lack of punitive measures or corrective measures leads to a society unable to maintain law and order and a government to protect its people. But excessive force often hardens an individual and makes them naturally disobedient towards its environment. According to the reformatory penology, punishment is only justifiable if it makes the individual a better member of the society in future rather to bind and punish him for his past criminal acts. As against deterrent, retributive and preventive theories of punishment, the main objective here is to bring about a change in the attitude of the offender and to make him a responsible citizen for the society.

HISTORY

The ancient Indian concept of Dharmawas an integrated concept of righteousness, truth, morality, & justice. The nature and aim of the law were to promote collective justice. Laws

¹ Dr. KI Vibhute, PSA Pillai’s Criminal Law (LexisNexis Butterworths, India, 10th edn.).

² <https://www.oxfordlearnersdictionaries.com/definition/english/punishment>

³ B.N. Mani Tripathi, Jurisprudence: Legal Theory (Allahabad Law Agency, Allahabad, 17th edn. 2006).

were generally governed by Religious texts which provided the rules of social conduct of human beings. Though the Vedic texts and various other religious manuscripts enshrined and encouraged the concept of equality, dignity, and respect of human beings there was discrimination and differentiation based on class character, the ancient Hindu society was thus an equal society as the Manusmriti provides evidences of the social realities of that time.

There were hardly any instances of reformative or corrective form of punishment being met out during the Hindu and Mughal period in India. The main form of punishment during this time was “Danda” which was primarily based on Deterrence and Retributive theory of punishment. The different types of recognized modes of punishment were a death sentence, hanging, whipping, or starving to death.⁴ Prisons were regarded as places of torture and evil, they were characterized by inhumane treatment and deplorable conditions. The British era was characterized by bringing prison reforms in India as they made monumental efforts for the reformation of Indian prisons and prisoners. They brought radical changes in the prison system so as to propagate that the idea of sending an individual to prison is to transform him into a responsible and law-abiding citizen. They setup Jail inquiry committees in 1836 and 1862 which examined and express their concern regarding the inhumane conditions of Indian prisons which led to degraded health and even deaths of the inmates.⁵ The reports of these Jail inquiry committees led to the enactment of the Prison Act 1894. The main object of the act was to ensure better administration of the prison system in the country. This act provided for several breakthrough measures such as the classification of prisoners and the abolition of the punishment of whipping. Steps were taken to ensure safe custody of prisoners and under trials and also on their rehabilitation in the society.⁶

The modern concepts of “rule of law” and “equality before the law” were introduced along with formalizing of the Indian Constitution. The Indian Constitution also embodies a concept of justice which is deeply influenced by the ideals of Western liberal democratic thought. The Preamble provides for justice as social, economic, and political. Part III of the constitution provides for the Fundamental Rights, which guarantee basic rights, Part IV states the Directive

⁴ V. Shankar, Theories of Punishment: Administration in India, available at National Digital Library, <http://nd.iitkgp.ac.in/document/MNW5MkC>

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⁵ http://parliamentlibraryindia.nic.in/writereaddata/Library/Reference%20Notes/Prison_reforms_in_India.pdf

⁶ S.P. Singh Makkar, Correctional Objectives of Prison: A Critique on Justice Krishna Iyer's Correctional Meditation 39 PULR 143 1992

Principles, which guide law-making & executive policies and the Fundamental duties, which guides individual activities, collectively they spell out how the three-dimensional concept of justice must be attained in the Indian context.

REFORMATIVE THEORY: AN OVERVIEW

The reformatory theory of punishment is also known as rehabilitative sentencing.⁷ The main objective of punishment here is to reform the offender as a law-abiding person, so that he may join the society once again and work for its betterment. Thus, according to this theory successful rehabilitation of the offender is regarded as the duty of the criminal justice system. The focal point here is on the offender and his personality, not the crime itself. It doesn't accord much significance to the crime committed or the harm caused. Crimes may be committed under certain circumstances or due to a particular environment the offender was put into and which might never occur again. Thus efforts are made to ameliorate him during the period of confinement so as to bring about a moral and social reform of the convict. He should be taught and educated, made to learn the skill of art or industry during the period of his imprisonment so that he may be able to start his life again after his release from jail.

According to the reformatory theory, while conferring the punishment the judge should assess various other factors of and surrounding the offender such as age, character, education, family background, the circumstances under which the crime was committed, and several other factors. The reason for doing so is to make the judge aware of that nature and circumstances so that a more suitable punishment can be awarded depending on the individual. The propagators of this theory believe that a more sympathetic, tactful, and a rather caring treatment of the offenders can bring a more reformatory change in the individual's character. By this even the cruelest, hardened criminals can be reformed into better and responsible citizens. Reformatory view of penology finds its theoretical justification on the premise that the offender commits a crime because of unfavorable social circumstances he is meted out within the society. Thus one hand, it is seen as an obligation of the society to intervene and on the other hand the right of the offender to secure some help from the society. Another justification for this theory is found in the utilitarianism theory of Bentham. According to which such measures should be adopted which

⁷SagarShelke, JyotiDharm , Theories of Punishment: Changing Trends in Penology, International Journal of Engineering and Advanced Technology (IJEAT), Volume-8, Issue-6S3, September 2019

produces the greatest happiness of the greatest number of people. The rehabilitation theory also advances the concept of restorative justice.⁸

ANALYSIS: REFORMATIVE MEASURES IN INDIA

Various reformative/corrective measures present in the Indian criminal justice system are open prisons, concept of parole, probation, prisons, Juvenile Justice Act, prison labor, etc. The oldest legislation on this subject in India is the Reformatory Schools Act, 1890 which aimed at preventing the depraved and delinquent children from becoming hardened criminals in the company of adult criminals in the coming years. It applied to children under the age of 15 years.⁹

Open prisons play an important role in the reformation of prisoners. They serve in several different ways and provide various advantages such as they are relatively less costly, they ensure that the capabilities and skills of the inmates are utilized in better ways and the most important they help in downsizing the overcrowding of the prisons. The Supreme Court in the case of *Ramamurthy v. State of Karnataka* applauded the notion of open prisons and remarked that “though open-air prisons create their own problems which are basically of management, we are sure that these problems are not such which cannot be sorted out. For the greater good of the society, which consists in seeing that the inmates of a jail come out, not as a hardened criminal but as a reformed person, no managerial problem is insurmountable”.¹⁰ Various states in India is coming forward in implementing the concept of open prisons, Rajasthan and Uttar Pradesh, in particular, have excelled in carrying out these exercises.¹¹

Parole is the most commonly used and effective measure for reforming an individual. It is a temporary release of the convict to allow him to spend some time in the society and with his close ones. It serves to benefit him by accustoming to the normal social life outside the jail and thus plays an important role in the transition from the imprisonment and to his freedom in the society. Parole order is awarded on certain special grounds so as to allow the inmate to live outside the jail premises but this liberty is subjected to certain terms and conditions which are

⁸Rai, Neetij, Theories of Punishment with Special Focus on Reformative Theory. SSRN Electronic Journal. 10.2139/ssrn.1600858. (2010)

⁹ <https://www.legalcrystal.com/act/51765/reformatory-schools-act-1897-complete-act>

¹⁰ *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642

¹¹ <http://www.legalserviceindia.com/legal/article-1030-brief-analysis-on-open-prison-system-in-india.html>

imposed depending upon case to case basis. If there is any contravention or infringement of the Parole order, it can lead to the annulment or reversing of the order taking the prisoner back to the prison. Parole thus cannot be regarded as a right of the convict but something which is to be earned by him.¹² It is generally granted to those who are sentenced to a long term of imprisonment and not to those who are serving relatively shorter imprisonment. In *HiralalMallick v. State of Bihar*¹³, the Supreme Court also observed that “Parole is one method of reducing tension by providing for vital links between the prisoners and his family. A prisoner insulated from the world becomes bestial and, if his family ties are snapped for long, becomes dehumanized.”

Probation is also an important tool for the reformation of the offenders. During probation, the individual is not kept in prisons rather he lives in the society under the special terms and conditions imposed by the courts. They are kept under supervision by the probation officer. The main aim or objective here is to ensure compliance by the first time offenders, generally young individuals, who may fall prey to a bad company in the prison so as to prevent them from becoming hardened criminals. Distinguishing from parole, Probation is a power vested with the judiciary which helps in eliminating extra-judicial authorities from misusing such power for their own considerations. Section 360, CrPC provides for probation of offenders which has to be awarded by the courts.¹⁴

The Indian government enacted The Probation of Offenders Act, 1958 with a similar objective. In *Rattan Lal v. State of Punjab*¹⁵, the Supreme Court **remarked** that “the Act is a milestone in the progress of the modern liberal trend of reform in the field of penology”. Furthermore, in the case of *Musa Khan v. State of Maharashtra*¹⁶, the Supreme Court regarded this act “as a piece of social legislation which is meant to reform juvenile offenders with a view to preventing them from becoming hardened criminals by providing an educative and reformatory treatment to them by the government.”

¹² Charles L. Newman Source book on probation, parole and pardons 73 (3rd ed. Springfield, IL 1970)

¹³ *HiralalMallick v. State of Bihar* (1977)4 SCC 44:1977 SCC(Cri)538

¹⁴ Section 360, The Code of Criminal procedure, 1973

¹⁵ *Rattan Lal v. State of Punjab* AIR 1965 SC 444

¹⁶ *Musa Khan v. State of Maharashtra* AIR 1976 SC 2566

Prisons are an instrumental part of any criminal justice system. Prisons are confinements where criminals are put, as a form a punishment so as to restrain them from being in the society. Convicts in prison are deprived of personal liberty, there are restraints on their freedom and they are deprived of personal contact with their family or close ones. Though prisons are a vital part of reforming the offenders but their utility and in-practice use for transforming them as improved individuals has always been a rather dubious issue. The main aim of putting and sentencing criminals in prison is to reform them into responsible citizens by imparting in them a renunciation for criminal activities. But in reality, the prison authorities mostly use force and compulsive methods to bring out transformation in the inmates which usually results in hardened criminals. Prison reforms in India were not a result of any social or political movement but rather a fallout of the inhumane treatment and conditions faced by the prisoners.¹⁷ Jailors in the prison were atrocious and were treated convicts with cruelty and harsh measures.¹⁸

In 1980-83, the All India Committee on Jail Reforms was constituted under the chairmanship of Justice Anand Narain Mulla known as the Mulla Committee. The overall aim of the committee was to examine the existing law, rules, and regulations of the prison system with the objective of developing measures for rehabilitating offenders. The committee recommended various important measures such as setting up a National Prison Commission to ensure the modernization of prisons in India and also provided for a complete ban on putting juvenile offenders together with hardened criminals. The deteriorating situation of the prisons in the country is a matter of grave importance, even the Supreme Court has identified several issues hindering the reformation of criminals they are: over-crowding, Delay in trial, Torture and ill-treatment, Neglect of health and hygiene, Insubstantial food and inadequate clothing, Prison vices, Deficiency in communication, Streamlining of jail visits, Management of open-air prisons.¹⁹

Other than these, few other significant measures taken by the government of India to ensure reformation/ rehabilitation of certain classes of society are the **Juvenile Justice Act** and measures taken for **women prisoners**. Juvenile Justice Act was enacted in the year 1986 so as to provide

¹⁷ Law Commission of India, 42nd Report on Indian Penal Code (June, 1971).

¹⁸ Donald T. Shanahan, *The Administration of Justice: An Introduction* (Holbrook Press Inc., Boston)

¹⁹ Rama Murthy v. State of Karnataka, (1997) 2 SCC 642

observation homes or juvenile homes where the neglected and the juvenile offenders can be admitted. The main objective was to ensure that a juvenile delinquent should not be tried or kept with non-juvenile offenders. With the period of time, the need for special measures for women prisoners was also felt by the government. For this the Government of India appointed the Justice Krishna Iyer Committee in the year 1987 to undertake a study on the situation of women prisoners in India. It had recommended the induction of more women in the police force in view of their special role in tackling women and child offenders.²⁰ Women prisoners should be treated more generously and allowed to meet their children frequently. Also, women, who fall prey to sex offenses, should be treated with sympathy and their illegitimate children should be assured an upright life in the society. The idea of setting up separate jails for women seeks to ensure a free environment for providing special treatment to them. The first women jail was established in Maharashtra at Yerawada.²¹

CONCLUSION AND SUGGESTIONS

No society can be liberated from crimes. Crimes will be carried out regardless of how harsh the laws will get. It will be absurd to think about a society with no criminals in today's world. Reformatory or corrective measures are thus required to transform a criminal into capable, decent, and law-abiding individuals so that after his discharge he will add to the society in any capacity he can. Different governments are additionally concentrating on turning the manpower caught in these correctional facilities to their advantage in any way possible. Inventive and valuable strategies are being developed with the cooperation of various NGO's, spirited citizens in this area of reformation of criminals. Reformatory measures are a step towards this noble thought. We should pursue this effort even though there are some downsides in implementing them.

It is however, imperative that the reformatory theory of penology cannot be applied wholeheartedly without any limits as the excessive application will defeat its purpose itself. Thus, reformatory measures should always be in tandem with deterrent and retributive measures with

²⁰S.P. Singh Makkar, Correctional Objectives of Prison: A Critique on Justice Krishna Iyer's Correctional Meditation 39 PULR 143 (1992)

²¹ http://news.bbc.co.uk/2/hi/south_asia/women-jail-in-india8611631.stm

corrective measures being the guiding principle. A certain amount of fearfulness is also desirable, and at times, evens necessary. Thus a perfect blend of deterrence and reformation is required in today's time and it can be seen in the Indian criminal system.

In modern civilized societies, however, the reformatory aspect is being given somewhat greater importance. But there are certain issues in effectively implementing the reformatory measures in India such as:

- **Overcrowded Prisons:** Overcrowding impairs the ability of prison systems to meet the basic needs of prisoners, such as healthcare, food, and accommodation and leads deplorable conditions. It also jeopardizes their basic human rights and also degrades their mental and physical health.
- **Human Rights Violations:** Prisons have become the hub of human rights violations. There are continuous instances of inhumane activities and treatment. Imprisonment deprives the offender of his liberty and self-determination.
- **High Cost in Maintaining the Prisons:** The cost of maintaining the prisoners is increasing and the prison administration is generally been overlooked in the budgetary allocation. Hence the quality of prison life is substantially compromised. As it was seen in the post-independence era, where various steps were undertaken by the authorities to bring about substantial reforms in prison administration but often lacked the adequate budget for implementing it.²²

Some measures for better implementation of the reformatory measures can be:

- Reducing the population in jails will not only improve the physical conditions of the inmates but also reduce unnecessary exploitation of newcomers.
- Differentiating criminals on the basis of the crimes committed is of utmost importance, as criminals of heinous crimes have a bad influence on petty criminals and mold them in serious offenders
- Providing better living conditions to the prisoners will make them more optimistic about life and in turn can help in changing them for good.

²² Jail Administration in India, Dr. Walter C. Reckless Commission Report, 1952, The All India Jail Manual Committee 1957-59, All India Committee on Jail Reforms, 1980-83 (Mulla Committee)

- Special jails or wards need to be established for under trials as they are not criminals yet and should not be treated and kept like one. This would help them in safeguarding them from unnecessary disturbances.
- The role of jail authorities cannot be understated in reforming criminals as they are the ones who directly come in contact with them.
- Providing skill and educational classes to inmates to prepare them for the society outside and also to help them utilize this time in some productive work.
- Measures should be taken so that the prison authorities can also generate some funds which can be used for organizing yearly activities for the inmates.
- The government allocation of the budget of these institutions should be increased and these individuals should be seen in the form of manpower that can be utilized.

To conclude it can be said that every individual is capable of reforming provided he is meted with more sympathetic and structured measures which makes him a better individual and allows him to see his release back in the society as an award for him. No person is born as a criminal; it is often their social environment or due to influence from bad company at the wrong age that leads to such criminal activities. Reforming and sending the offenders into society also reduces overcrowding in prisons, who otherwise would have languished in such deplorable conditions all their life. Thus reformative or rehabilitative measures try to resolve various criminal justice problems. As in the end it's the fight against crime and not criminals.

BIBLIOGRAPHY

BOOKS AND REPORTS

- Dr. KI Vibhute, PSA Pillai's Criminal Law (LexisNexisButterworths, India, 10thedn.)
- K.D. Gaur, Commentary on the Indian Penal Code, 1860(Universal Law Publishers, New Delhi, 2013).
- Law Commission of India, 42nd Report on Indian Penal Code (June, 1971).
- Law Commission of India, 156th Report on The Indian Penal Code, Vol-I, 15 (April, 1992).
- The All India Jail Manual Committee 1957-59, (W. C. Reckless Committee Report)
- All India Committee on Jail Reforms, 1980-83 (Mulla Committee Report)
- Government of India, Report: Committee on Reforms of Criminal Justice System 170, 171 (Ministry of Home Affairs, 2003).

ARTICLES AND JOURNALS

- SagarShelke, JyotiDharm, Theories of Punishment: Changing Trends in Penology, International Journal of Engineering and Advanced Technology (IJEAT), Volume-8, Issue-6S3, September 2019
- Dr. Krishna Pal Malik, Penology, Victimology & Correctional Administration in India (Allahabad Law Agency, Allahabad
- Rai, Neetij, Theories of Punishment with Special Focus on Reformative Theory. SSRN Electronic Journal. 2010
- Donald T. Shanahan, The Administration of Justice: An Introduction, Holbrook Press Inc., Boston.

- S.P. Singh Makkar, Correctional objectives of Prison: A Critique on Justice Krishna Iyer's Correctional Meditation 39 PULR 143 1992
- Travis C. Pratt, Jacinta M. Gauet.al., Key Ideas in Criminology and Criminal Justice (Sage Publications. Inc., 2011), available at: - http://www.sagepub.com/upm-data/36811_6.pdf
- Granja, Rafaela, Beyond prison walls: The experiences of prisoners' relatives and meanings associated with imprisonment, 9 Probation Journal (2016)

CASE LAWS

- Rama Murthy v. State of Karnataka, (1997) 2 SCC 642
- Hiralal Mallick v. State of Bihar (1977) 4 SCC 44:1977 SCC(Cri)538
- Rattan Lal v. State of Punjab AIR 1965 SC 444
- Musa Khan v. State of Maharashtra AIR 1976 SC 2566
- Bachan Singh v. State of Punjab (1980) 2 SCC 684
- Jagmohan v. State of U.P. (1973) 1 SCC 20

WEBSITES

- http://news.bbc.co.uk/2/hi/south_asia/women-jail-in-india8611631.stm
- <http://ncrb.nic.in/StatPublications/PSI/Prison2015/Full/PSI-2015-%2018-11-2016.pdf>
- <https://www.legalserviceindia.com/act/51765/reformatory-schools-act-1897-complete-act>
- <http://www.legalserviceindia.com/legal/article-1030-brief-analysis-on-open-prison-system-in-india.html>

NATIONAL DIGITAL LIBRARY

- Camelo Bennet, John Macrae Moir, Karl Schaibl, C. J. (1965). History and Development of Reformatory Theory. Retrieved from <http://community.ebooklibrary.org/> accessed from National Digital Library on 31.01.2020
- L. H. Lodha (2007). Prison Reforms in India: development, Based on a Searching. Retrieved from <http://community.ebooklibrary.org/> accessed from National Digital Library on 31.01.2020
- V. Shankar, Theories of Punishment: Administration in India, available at National Digital Library, <http://nd.iitkgp.ac.in/document/MNW5MkC>

HD5Gin5kchbDRCDq6ddBInSSu3PQbJemLe2uajlSAG448MquZTz1QfBh77Q15fF4E
W2q6XLx7fIDQ

T. Siefert, An Analysis of Reformative theory – its measures and Implications, PubMed Central
(Aug, 1974) available at National Digital Library,