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# Critical Evaluation of the Working of Reformatory Measures in India

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## ABSTRACT

*The existence of punishment in the form of reform has been cause célèbre for a long time. The aim of punishment in any civil society is to act as a wall between the commission and the will to commit a crime. Thus, it seems the aim is deterrent, rather than reformatory, which would establish the need to develop as a human being and not further put them through humiliation and anguish. The deplorable conditions of Indian Prisons and penal system in general has been the pillar to promote violence and criminal behaviour rather than act as a place of rehabilitation. Whereas a true reformatory system aims to promote the humanity in criminals, by reforming their personalities and provide adequate infrastructure to develop their personality while granting them a chance at a better future. In this paper, the author tries to analyse the current reformatory system in India and the need to revamp the same.*

**Keywords:** *Reformatory, prison, punishment, penology, criminology*

## I. INTRODUCTION

India is the world's largest democracy and the second most populated country in the world. It plays home to a whopping 133 crore citizens and witnesses a surge in crime rate every year. As per the National Crime Records Bureau, the surge in crime rate since last year is only 1.3%. However, majority of these were less-threatening crimes with imprisonment under 5 years.<sup>2</sup> Under the standing Indian Penal System, such criminals are sent to the regular prisons where they mingle with hardened criminals and develop their acumen to commit further criminal activities instead of getting schooled on moral behaviour, which seems to be the aim of Indian Penal System. The blatant lack of the concept of 'Reform' or even the effort to do so has resulted in the failure of 'reform' as a part of criminal rehabilitation.

The concept of criminal justice system revolves around the procedure and infrastructure provided by the government with the motive to prohibit criminal activities. The Indian criminal justice system established under the British Government has not changed still, and

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<sup>2</sup> National Crime Records Bureau, Crime Report-2018

continues to exist without any infrastructural changes or otherwise, even without the much apparent need of the same.

### **(A) Objectives**

- To understand and analyse the concept of reformatory theory of punishment
- To understand the Reformatory measures adopted by various countries
- To analyse the Indian reform system

### **(B) Research Methodology**

The study undertaken by the author is based on both, qualitative and doctrinal research. Thus, under the qualitative research, several books, articles, research papers and journals were read and analysed which found foot in the current research. As a part of the doctrinal research methodology, several national and international legislations, case laws, commentaries along with theories and schools of penology were taken into account and further analysed so as to find relevance in the present study.

## **II. REFORMATORY THEORY OF PENOLOGY**

Aristotle defined 'Punishment' as a means to restore social equilibrium by conferring pain and taking away gain. Following this, almost all traditional definitions of Punishment include 'pain' or its infliction as an important component of the whole concept. The whole idea was to cause suffering to the person committing the crime as a counter to what he had done with the idea that the same infliction will not only prevent him from committing such a crime again, but will also pose as a lesson and further prevent crime in the society. Infliction of such pain or suffering was justified since it was sanctioned of law, that too in the furtherance of justice, criminal or civil.

The problem with this idea of punishment is that it dehumanizes the person who committed a crime to criminal.<sup>3</sup> It also fails into take into account adequate consideration that should be given to the circumstances under which a crime was committed which would then change the very purpose of a punishment. There can be several reasons behind why a crime was committed- it could be self-defence, accidental or even due to certain psychological conditions, such as kleptomania (compulsive stealing). However, majority of crimes are still violations of moral law, in which case the necessity of punishment comes into play.<sup>4</sup> Even if

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<sup>3</sup> Winthrop Lane, Punishment and Reformation, National Digital Library, (28.01.20, 16:22) <http://ndl.iitkgp.ac.in/document/UEtLM3JFNWxkMkwvOC84Q0sxNmkvMFlrV2tnMXhVcjk2bW5yKzg2L0pDbz0>

<sup>4</sup> C.S. Lewis, Humanitarian Theory of Punishment, National Digital Library, (29.01.20, 17.45) <http://ndl.iitkgp.a>

punishment is to be used as a means of social control<sup>5</sup>, an element of social reform can also be added to it.

Thus, the reformatory theory of Punishment focuses on this missing element of social reform. The focal point is to reform the character of this criminal, thus going to the very root of the problem, rather than simply slapping them with punishments. The method of individualization can be adopted wherein instead of dehumanizing them with pain and suffering, the focus stays on the human being in them.

Often after serving a long sentence, e.g. 10 years, criminals find it difficult to settle back into the society. If we only think about the last decade, the social, technological and cultural shift is massive, which often fails to reach inside the prison walls. Furthermore, it is difficult for ex-convicts to secure jobs with criminal records. All of these circumstances lead the ex-convicts to committing some more crimes- be it for money, food, or to simply go back to prison because they end up getting so comfortable in the 10-year-old schedule. The reformatory view of penology suggests that punishment only justified if it focusses on the future, not the past.<sup>6</sup> Thus, the whole focus spreads to not just correcting the criminal while he is in a prison but to also to bring about a change in their perception.

However, as promising as the reformatory theory sounds, it cannot be stretched too far. Implementing such a strategy of rehabilitation might not work on a seasoned criminal. Hardened criminals ideally will not respond to this theory since they are committed to the crime. Whereas, for juvenile delinquents of first-time offenders, such a theory might be helpful as was reiterate by Salmond.

#### **(A) Reformatory measures in USA**

The U.S. prison history presents an elaborate account of prison reform over the years. The earliest prison system in the U.S. was the 'Pennsylvania System' under which, the concept of solitary confinement was introduced for hardened criminals with the idea that isolation will give them the opportunity for introspection. However, when adopted on all criminals for the whole of their sentence it collapsed. Then, the 'Auburn System' was introduced under which the inmates were only allowed to interact with each other during work hours. A major wave to recognise the need of reformatory theory was realised after the American Civil War. Soon afterwards, the concept of parole, probation and sentence changing was brought into place. Predominantly, the U.S. prisons still follow the Auburn System, but several changes taken

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c.in/document/Vlpzd1JHaWFCZ1hIOFkvcyvtvblorK3hzQkdodVVvWENYQ25tcWFqNno5QT0

<sup>5</sup> H.L.A Hart, *Punishment and responsibility: Essays in the philosophy of law*. Oxford University Press, 2008

<sup>6</sup> N. V. Paranjape, *Criminology and Penology*, Central Law Publication, 12<sup>th</sup> Edition (2011)

place with the course of time.<sup>7</sup>

Currently, the U.S. penal system classifies the convicts on various grounds.<sup>8</sup> The classification present in the said system, which is wide and based on multifarious grounds such as the graveness of the offense, sentence tenure, and in case of repeated conviction, prior conduct in prison, helps in sending the convicts to suitable prisons. For example, minor offenders go to minimum-security institutions and violent criminals go to high-security prisons.

In 2018, the U.S. government passed a new law<sup>9</sup>, known as the First Step Act, 2018 under which several noteworthy reform measures have been introduced. Along with increasing punitive measures for hardened criminals, such as revival of the three-strike concept, the law also allows to undertake measures to send more convicts in halfway houses<sup>10</sup> or under home confinement, and requires them to be jailed within 500 miles (800km) of their families.<sup>11</sup>

### **(B) Reformatory measures in EU**

Europe too, started with severe punishments focussed on inflicting pain and suffering rather than reform. The Italian school of criminology even considered bodily and structural deformities as signs of criminals.<sup>12</sup> The European prison system remained significantly harsh until the British started interfering. With the implementation of Magna Carta in 1215, trials became compulsory.<sup>13</sup>

Currently, the European Prison system thoroughly incorporates reformatory measures in their penological ideologies. The focal point of the European Prison system remains focus on restoration and protection of human rights via human treatment, good living conditions and implementation of rehabilitative schemes.<sup>14</sup>

Several laws have been passed in the Europe Union to give effect to these ideologies such as,

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<sup>7</sup> S.M.A. Qadri, *Criminology and Penology*, Eastern Book Company, 6<sup>th</sup> Edition, 2011

<sup>8</sup> The Prison Reform Movement, *Encyclopedia*, (30.01.20, 22.10) <https://www.encyclopedia.com/social-sciences/news-wires-white-papers-and-books/prison-reform-movement>,

<sup>9</sup> Anthony Zurcher, US Senate passes sweeping criminal justice reform bill, *BBC*, (31.01.20, 21:48) <https://www.bbc.com/news/world-us-canada-46613564>

<sup>10</sup> Section 609, The First Step (Formerly Incarcerated Re-enter Society Transformed Safely Transitioning Every Person) Act, 2018

<sup>11</sup> Section 601, The First Step (Formerly Incarcerated Re-enter Society Transformed Safely Transitioning Every Person) Act, 2018

<sup>12</sup> Raed S.A. Faqir, *The Philosophy of Punishment: A study to the history of Classical and Positive Schools of Penology*, FRCIJ, 1 (2015)

<sup>13</sup> History of Prisons, *Prison History*, (29.01.20, 23:18) <http://www.prisonhistory.net/prison-history/history-of-prisons/>

<sup>14</sup> Prisons and Community Sanctions and Measures, *Council of Europe*, (31.01.20, 22.18) <https://www.coe.int/en/web/prison/promoting-more-humane-and-socially-effective-penal-sanctions>

the European Prison Rules<sup>15</sup>, the Council of Europe Probation Rules<sup>16</sup>, the European Rules on community sanctions or measures, the European Rules for juvenile offenders' subject to sanctions, amongst others.

### **III. REFORMATORY MEASURES IN INDIA**

#### **(A) History of Prison Reform in India**

Pre-Independence India witnessed a prison system vastly based on deterrent theory of penology, aimed at inflicting pain and suffering. Several 'Jail Committees' or 'All India Jail Committees' were established which attempted to improve the deplorable condition of the Indian Penal system but failed, none the less. Post-Independence, an All-India Jail Manual was made in 1957 on the recommendations given by Dr. W.C. Reckless of the UNO, under which certain reformatory measures such as abolition of solitary confinement, greater use of probation system, were introduced.

In 1980, an All-India Jail Reforms Committee was made which made recommendations on a national draft policy for Jail reforms, subsequent to which the National Commission of Prisons was formed which introduced the National Policy on Prisons. The policy made some significant recommendations for prison reform such as:

- No unnecessary detention of undertrial prisoners
- Introduction of fresh alternatives such as community service, seizure of property, victim compensation, etc.
- Effectual implementation of the Probation of Offenders Act, 1958
- Better living conditions in prisons with focus on hygiene and sanitation
- Rehabilitation and follow-up of offenders<sup>17</sup>

#### **(B) Legislations focussing on Reformatory Theory**

##### **1. Probation of Offenders Act, 1958**

The Probation of Offenders Act is a true instance of reformatory idea with its awareness on modern-day humanitarian method of reforming by giving them freedom to a certain extent rather than confinement. The object of the Act is to provide the convict with a chance to start afresh by monitoring them for a certain time period in which they are expected to abide by the terms of this act. However, probation is only granted after considering the circumstances

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<sup>15</sup> European Prison Rules, 1973

<sup>16</sup> The Council of Europe Probation Rules, 2010

<sup>17</sup> All-India Jail Reforms Committee Report (1980-1983)

of the case, the nature of the offence and the previous conduct indicating the ability of the offender to reform himself.

## **2. Juvenile Justice Act, 2000**

The JJ Act, focusses entirely on rehabilitation and reform of juvenile delinquents. The Act lays down several beneficiary components such as counselling, separate homes to keep the delinquents (i.e. under 18 years of age), maximum punishment of three years, establishment of the JJ Board to look into these cases, thus avoiding court interference amongst others. The act in its spirit recognises how keeping juvenile criminals with the hardened ones will only take them further down instead of rehabilitating them and implements it rather efficiently as well.

## **3. Parole Rules**

The word 'parole' means release of prisoner on solemn affirmation. It is considered revocation of sentence. Rather, it includes being released from the prison where the offender has served a part of their sentence and the parole is then granted after giving due consideration to their behaviour and conduct. Thus, a part of the sentence has to be served in order to avail parole. However, parole does not mean release from legal custody of the State since they are still monitored- setting the true example of reforming by giving flexibility.<sup>18</sup>

### **(C) Judiciary's role in shaping the Reformatory Measures**

The Hon'ble Supreme Court first recognised the need of rehabilitation and reformation by work in the case of Mohd. Giasuddin v. State of Andhra Pradesh<sup>19</sup> in which the sentence of a Government employee accused of a white-collar crime was decreased from 3 years to 18 months.

Following the same, in Dharambir v. State of U.P.<sup>20</sup> the court reiterated and applied the principle to young convicts who can be trained in useful crafts so that once they emerge from prisons, they become sensitive citizens.

In the matter of Prison Reforms Enhancement of Wages of Prisoners, *In re*<sup>21</sup>, the court held that free labour by prisoners is violative of Article 23(1) of the Constitution, and shed light on how even a decision as small as payment of wages to a prisoner finds footing in recognizing human rights and help him restore his self-respect.

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<sup>18</sup> Gopal Singh, Reformatory Theory and Contemporary Penal Provisions, Legal Service India (30.01.20, 20.08) <http://www.legalserviceindia.com/articles/Reformatory.htm>

<sup>19</sup> Mohd. Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC 287

<sup>20</sup> Dharambir v. State of U.P., (1979) 3 SCC 645

<sup>21</sup> Prison Reforms Enhancement of Wages of Prisoners, *In re*, AIR 1983 Ker 261

*In Re - Inhuman Conditions in 1382 Prisons*<sup>22</sup>, the Supreme Court hinted the need to install the Management Information System software in all Central and District prisons.

Recently, the Supreme Court, to prevent the growing incidents of custodial death and torture resulting in gross violation of human rights issued guidelines to all the states to install CCTV cameras in all the prisons and police stations.<sup>23</sup> The court went a step ahead and held that the defence of sovereign immunity cannot be availed by the State while contravening fundamental rights.<sup>24</sup>

#### IV. CRITIQUE OF THE REFORMATORY MEASURES IN INDIA

Justice Krishna Iyer, in the landmark case of *Sunil Batra v. Delhi Administration*<sup>25</sup> said that “*Tihar Jail is a college for criminals*”. This one statement is enough to highlight the condemnable condition of Indian Prisons.

A simple reading of the above policies would give any layman the idea of evident and well-functioning reformatory systems in India. However, the reality is far from the same.

Indian prisons and the penal system are known for its deplorable conditions. The prisons are barely maintained, the living conditions are far from inhabitable and there are continuous stories of harassment and torture by authorities and fellow inmates, alike.<sup>26</sup>

The Apex Court is well aware of the deteriorating situation of the prisons as well as of the prisoners living there. The Hon’ble Supreme Court recognised nine primary issues in the Indian prisons, viz. over-crowding, unaccountable delay in trials, torture of inmates, lack of attention to health and hygiene, low standard of food and clothing including further lack thereof, prison vices, lack of communication with authorities and families alike, lack of regular jail inspection, administration of open air prisons.<sup>27</sup>

It is this author’s regret that these are not even the beginning of the problems. Even after the All-India Jail Reforms Committee of 1980, several other committees were formed which suggested changes and reforms of all types to be implemented. However, the blatant lack of attempt from the government is apparent in the prisons till date.

Of the massive budget allocated to the prisons, only 56.8% money is spent on food and 0.8

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<sup>22</sup>*In Re - Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700

<sup>23</sup> *Dilip K. Basu v. State of West Bengal*, 2015 SCC OnLine SC 651

<sup>24</sup> *State of M.P. v. Shyam Sundar Trivedi*, (1995) 4 SCC 262

<sup>25</sup> *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579

<sup>26</sup> Human Rights Watch, *Prison Conditions in India*, ISBN 0-929692-92-6

<sup>27</sup> *Rama Murthy v. State of Karnataka*, (1997) 2 SCC 642

and 0.9% money is spent on welfare activities and vocational skills.<sup>28</sup>

The whole idea of the reformatory theory is to pay attention to the criminal, his behaviour, then realise and effectuate the process of rehabilitation. As understood before, the impact of reformatory measures is much more on first time offenders, but the lack of classification of criminals often puts the first timers and the hardened criminals in the same prison complex making the attempts at rehabilitation more difficult. Inhumane treatment, violence, overcrowding, lack of infrastructure, only adds on to the already evident pile of problems. Thus, the Indian penal system fails to pay even an iota of attention to these criminals who then opt for recidivism.

## **V. CONCLUSION**

Just a scratch on the surface of the Indian Prison System reveals its counterproductivity resulting in the dissolution of the rehabilitative aspect of punishment- a fundamental part of the Gandhian perspective of penology and reform. Even though, prisons and their surrounding regulations are a state subject, there is an apparent need for a strong Central legislation in order to promote a uniform penal system based on rights and duties of prisoners alike. The undue dependence on judiciary to initiate or guide into a reform does not only put unnecessary pressure on it, but also to an extent absolves the government of its responsibility to address these issues by themselves without waiting for the Supreme Court to deliver another landmark judgement. While forming a truly effective policy to bring about significant deliverable changes in the Indian Penal System, opinions of all stakeholders-including prisoners themselves, needs to be considered. Sentences need to be tailor made to suit the case and accused without stepping outside the purview of law. The presence of established and effective reformatory policies will not just humanize prisoners by curbing human rights violation, but also promote restoration of rule of law. The possibility of minimization of the evil effects of incarceration, such as deprivation of liberty, possibility of earning a livelihood, maintenance of social ties should be motivation enough for resorting to alternatives. Hence, it becomes pertinent to develop and give legal recognition to modernised penology theory and techniques in general statutes in order to rationalize the existing punishment mechanism.

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<sup>28</sup> Vidit, *Correctional and Rehabilitative Techniques of Punishment: A need for legislative reform in India*, IJLLJS 114, 123, ISSN:2348-8212: Volume 4 Issue 1 (2017)

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