

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 6

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

The Changing Paradigm of Correctional Mechanism in India: A Critical Analysis

ANMOL PANIYA¹

ABSTRACT

Criminal justice System is a system comprising of police, judiciary, prison authorities and social welfare agencies focussing on the elimination of criminality with various correctional mechanisms. Imprisonment was considered as the primary solution to deal with criminals. However, captivation in the four walls of prisons led to further problems in prisons ranging from overcrowding, lack of health safety measures, lack of proper accommodation, lack of schemes for rehabilitation and reformation. Apart from this, it also posed the challenge of psychological and sociological deconstruct from the society. Hence, a major challenge today is exploring other terrains of correctional mechanism when incarceration no longer serves as a major anchor to corrective justice. The present paper delves into the evolving need of innovative correctional reforms in the form of non-custodial sanctions, non-institutional methods to address criminality. It delves into focussing on thereapeutic jurisprudence and restorative justice. To eliminate criminality and not the criminal from the society.

The paper further focuses on the growing wave of new alternatives to imprisonment such as Open-Air Prisons, community services and modernization of prisons. It focuses on means and methods adopted by open air prisons, community services and other prison programs in inculcating vocational training, skills, meditation and yoga as a means to rehabilitate the offender.

Conclusively, the paper delves into suggestive correctional reforms, which can be incorporated to shift towards more humane practice and emphasising on the need of treating the criminality in the prisoners rather than isolating and excluding them from the society.

I. INTRODUCTION

Are the prisons over-populated or the population over-imprisoned?"

-Michel Foucault

Incarceration rates have risen dramatically in the last few years in India. In India presently

¹ Author is a Ph.D. Research Scholar at Himanchal Pradesh National Law University, Shimla., India.

there are 4, 66, 084 prisoners² incarcerated in prisons across the country and 12 states of India accounted for the highest occupancy of prisons in India.³ These increases raise an important question on the impact of incarceration on the prisoners. It thus becomes important to analyze whether the time spent in prison is criminogenic or preventive. The time spent in prison has the potential to convince the offenders that crime does not pay or it can help them to rehabilitate and reintegrate back to the society. Conversely the prison time has the potential to depreciate the human capital by exposing them to hardened criminals and limiting their opportunities in educational and employment opportunities with social stigma attached.⁴

To understand the impact of incarceration the present paper deals into three sets. Firstly, what is the present status and challenges faced by the prison system in India. Secondly, what are the various rehabilitative programs run in various prisons and lastly, what can be the alternative ways to imprisonment that can help in improvising the very purpose of rehabilitation of prisoners in India.

II. CONCEPT OF CRIME, PUNISHMENT AND REHABILITATION

There is no single definition of crime. There is no one single phenomenon which fits the definition of crime. According to Terence Morris, “Crime is what society says is a crime by establishing that an act is in violation of criminal law. Without law there can be no crime at all. Although there may be more indignation which results in law being enacted.”⁵ Therefore, to understand the nature and extent of crime we should first of all know what is “Law” and what is Law in a given society. Law is nothing but an aggregate of rules set by the man with political superiority. It can thus be understood that disobedience or violation of law may be termed as a crime. The notion of crime is also ever changing, therefore what was not defined as a crime earlier may be defined as a crime today and what was a crime yesterday may not be identified as a crime today⁶. For example: Section 377⁷ and Adultery⁸ have been decriminalized.

Criminal behavior is a product of various factors that deeply influences the personal behavior and physical processes in interaction with the physical factors which effect the criminality.

The key factors that influence the crime are:

² NCRB, *Prison Statistics of India* (2018)

³ Tata Trusts, *Indian Justice Report* (2019)

⁴ Mandeep Bhuller, Gordon B. Dahl, Katrine V, Loken et al., *Incarceration, Recidivism and Employment*, NBER WORKING PAPER SERIES, 22648 WORKING PAPER 1, 1-93 (September, 2016)

⁵ Glory Nirmala K. and Serkaddus Zegeye (2012), *The Concept of Crime*, ABYSSINIA LAW, (March 11, 2012) <https://www.abysinnialaw.com/about-us/item/427-the-concept-of-crime> (last updated April 27, 2020)

⁶ *Ibid*

⁷ Navtej Singh Johar and Ors. vs. Union of India and Ors., (2018) 10 SCC 1.

⁸ Joseph Shine V. Union of India, W.P. (Cr.) 194 of 2017

- (i) Ecological factors: It involves the interaction between people and their activities in a physical environment. Physical environment includes things such as geography, topography, crowding, and recreational opportunities. It also determines what opportunities for crime exist in interactions.
- (ii) Societal or Macro level factors: It deals with systematic interaction between social groups. It deals with relative distribution of population among groups. It includes the heterogeneity on racial/ethnic/cultural/productive groups.
- (iii) Motivation and opportunity: Motivation is the outcome of a process in which a goal is formulated. Costs and benefits are also accessed. It means that sometimes a person's motivation is influenced by rational decision making and other times by emotion such as anger, greed or lust. But motive alone cannot cause a crime to occur, opportunity is also required. Thus a person's tendency to commit a crime at a particular time is a result of both opportunity and motivation.

Many criminologists across the world have laid emphasis on a number of factors that result in motivation to commit a crime. It is the result of interactions over a person's life between biological, socio cultural, developmental factor. The psychological factors are thus the result of interactions between biological and socio cultural factors.

Punishment can be defined as an instrument that is used for infliction of penalty on offender who has broken the rule.

According to HLA Hart⁹, punishment is defined as an instrument which:

- a. Involves pain or unpleasant consequence
- b. Used for an offense against legal rules
- c. Must be for an actual or supposed offender for his offence.
- d. Must be intentionally administered by human beings other than offenders.
- e. Must be administered through legal system.

According to Bentham¹⁰, the quantum of punishment should vary according to offenders capacity to suffer. The offender must be dealt with "Individualization". The term "Individualization" means preventive as well as rehabilitative measures and an approach different from the concept of retribution in general deterrence.

⁹ HLA HART, PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY, (2nd Edition, New Oxford University Press, 1968)

¹⁰ JEREMY BENTHAM, PRINCIPLES OF MORALS AND LEGISLATIONS, (Batoche Books, Kitchener, 2000)

According to Foucault¹¹, the modern day prison is a penitentiary where a complex series of processes are at work. It is at once a panoptic observatory a workshop and a hospital. A combination of which he terms and penitentiary. The penitentiary thus replaces the offender with the delinquent. Crime is thus detached from the individual. The body of offender exists to make space for the soul of the delinquent because it is only the soul that can be corrected.

Rehabilitation is based on the notion of fixing the wrong in the mind of the criminal. According to Rob White¹², the idea of rehabilitation of the offender is based on the slowed approach. The burden is lessened when the process of rehabilitation is shared by the community. He was of the view that the main philosophy of community corrections includes two different orientations. The first is the community incapacitation where the main emphasis is given to community safety and offender control. The main agenda is to keep the offenders under close surveillance and deter them from reoffending. The second is the community rehabilitation in which efforts are made to change the offender's behavior by improving community relationship with the use of supportive and participatory measures.

The main idea behind this is to prevent recidivism with the use of therapeutic or skill based intervention. The main emphasis is on personal development and enhanced capabilities.

More emphasis should be laid on the strengthening the ties of the community with which the prisoner lives. It is also important to ensure prisoners do not go back to commit an offence after release and enhance the skill that enables him to get a regular employment after they are released from the prison.

The modern penology lays emphasis on the fact that the offender is a social being who needs to be associated back to the society after serving the punishment. It is thus important to make significant efforts for rehabilitation of offenders, where the society can play an important role in rehabilitation and reintegration of the offender.

III. PRESENT STATUS OF PRISONS IN INDIA

The Concept of punishment in India dates back to the ancient period. *Manusmriti* or quote of Manu dealt with the concept of punishment. With the advent of British rule IPC was enacted in 1860. In India, the choice of punishment is very limited. IPC 1860¹³ prescribes five kinds of punishments: Death, imprisonment for life, imprisonment with labor, rigorous or simple,

¹¹ MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON, (Penguin Books, London,1977)

¹² ROB WHITE, *Community Corrections And Restorative Justice*, 16Current Issues in Criminal Justice, <http://www.austlii.edu.au/au/journals/CICrimJust/2004/11.pdf> (last updated June 7, 2014).

¹³ Indian Penal Code, Act no. 45 of 1860, § 53

forfeiture or fine.

The various Central and State legislations that were enacted in India include:

- (i) Transfer of Prisoner Act 1950¹⁴ – It deals with transfer of prisoner from one state to another.
- (ii) Delhi Prisons Act 2000¹⁵ – This is applicable on National capital of Delhi. It prescribes the Power and duties of jail authorities of Tihar jail.
- (iii) Prisoner's Act 1894¹⁶ – It contains legislature relating to health, employment and duties of jail officers, medical examination of prisoners, prison offences etc.
- (iv) Prisoners Act 1955¹⁷ – It empower the court to summon prisoners to appear in the court for giving evidence or for answering criminal charge.

Prisons in India today faced various problems ranging from overcrowding to lack of health services and the rising rates of natural and unnatural deaths in prisons. According to Indian Justice Report 2019¹⁸, the courts in India have repeatedly highlighted on the issues of poor sanitation and nutrition, overcrowding, prisoner overstays, the shortage of prison staff, doctors and escorts to bring prisoners to court, the unavailability of quality and timely legal aid, poor mechanisms to review prisoner status, absence of mandated statutory mechanisms of prison oversight, as well as an absence of correctional and lack of educational, employment opportunities and aftercare services for prisoners after they are released.

The major challenges faced by prisons in India are

1. Overcrowding¹⁹: Each prison has a authorized capacity percentage of inmates against authorized capacity. In India, National Crime Records Bureau's Prison Statistics, 2018²⁰ states that 4, 66, 084 prisoners are kept in prison as on 31-12-2018 as against the sanctioned capacity of 3, 99, 223 prisoners. The Occupancy rate in the year 2018 was 117. 6% ²¹ This rate depicts the extent of overcrowding²². It strains prison infrastructure, it hampers correctional services, it spreads contagious diseases and it leads to multiple problems.

¹⁴ Act No. 29 of 1950.

¹⁵ Act No. 2 of 2002

¹⁶ Act No. 9 of 1894

¹⁷ Act No. 32 of 1955.

¹⁸ Tata Trusts, *Indian Justice Report* (2019)

¹⁹ NCRB, *Prison Statistics of India* (2018) defines Overcrowding in jail means when occupancy rate is more than 100.

²⁰ NCRB, *Prison Statistics* (2018)

²¹ *Ibid*

²² PSI, 2018

2. Deaths in jail: Death of an inmate is a serious concern for prison administration. The deaths in jail have been classified into two categories i. e. natural deaths and unnatural deaths. The unnatural deaths include suicides, murder by inmates, firing and negligence. It is in pertinent to note that in the year 2018, out of the total unnatural deaths, suicidal deaths accounted for 86. 6%.²³
3. Unsatisfactory conditions: Apart from overcrowding, unsatisfactory living conditions also form a cause of major concern in India prisons. For ages vast majority of prisons have been unable to provide acceptable conditions of health and hygiene to the inmates. Provided with this the overcrowding in prison further add to this problem. This is evident from the inadequacy in facilities and level of overcrowding in prisons of UP²⁴. There is a need of proper construction of bathrooms, drainage and water tanks. There is a need of modernization in the architectural setup of the prisons.
4. Health: According to Kazi, prisons are excellent venues for infectious diseases screening and intervention, given the conditions of poverty and drug addiction. Owing to the same problems, recently the Supreme Court ordered the release of prisoners on parole due to the outbreak of the pandemic COVID-19²⁵.

According to Article 12 of ICESCR²⁶, “The right of everyone to the enjoyment of the highest attainable standard of physical and mental health. ” Those who are imprisoned are entitled to a standard fundamental right of medical care provided in the wider community. It is the duty of the state to provide basic healthcare facilities to the prisoners.

5. Mental Health Problems: The prisons are unequipped to meet the mental health needs of the inmates. Psychiatrists are more in demand in the closed settings of a prison. It is the lack in nutrition, physical exercise, excessive lock up, and anxiety among prisoners that take a heavy toll on the physical and psychological health of prisoners²⁷. Women prisoners are more subjected to mental health problems than males. This may be accounted to the amount of psychological distress in the form of suicidability and self harm, which is found more amongst females than the male

²³ NCRB, *Prison Statistics of India*, (2018), Chapter 8

²⁴ NCRB, *Prison Statistics of India*, (2018), Chapter 1

²⁵In Re Contagion Of Covid 19 Virus In Children Protection Homes, Suo Moto Writ Petition (Civil) No. 4 of 2020

²⁶ ICESCR, Article 12, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx> (last visited April 27, 2020)

²⁷ World Health Organization, *Information Sheet on Mental Health*, https://www.who.int/mental_health/policy/mh_in_prison.pdf(last visited April 27,2020)

prisoners. Suicidal factors which marginalize woman's status in the society such as poverty, lack of social support, separation and homelessness. Other factors such as separation from family and children further break a woman both physically and psychologically. The existing prison services and inadequate to address mental health issues.

6. Disparity in sentencing: There are no standard sentencing guidelines in India. Convicts with sentence of life imprisonment accounted for the highest number with 53.7% of the total population²⁸IPC only prescribes the offence and respective punitive measures for the same. And for many offences there are alternative punishments prescribed for the same offence. It depends on the discretion of the judges to decide the degree and nature of punishment, Therefore there is neither any uniformity nor any guideline for providing sentence according to the given circumstances of the case. Sentencing thus has become a judge centric sentencing rather than principled sentencing.²⁹
7. High cost in maintaining prisons: The increased budgetary allocation for prisons reflects the high cost in maintaining the prisons.³⁰ On the contrary in a report on open prisons of Rajasthan it was found that the open prisons are 70% less cost effective than the closed prisons.³¹

IV. RECENT TRENDS OF PRISON REFORMS

In India for the first-time correctional techniques were proposed by IPC amendment Bill 1978, which provided for community service, public censure, disqualification for holding office and payment of compensation.

Certain provisions of CrPC also provided for reforms in criminal justice system. It provided for bail provisions, compounding of offences and plea bargaining. At the post-trial stage section 360 and 361³² of CrPC provides for admonishing to first time offenders for an offence punishable with imprisonment of less than 2 years. Section 357 to 359³³ provides for conditional discharge the compensation to victims of crime. Article 72 and 161³⁴ provides for post-sentencing instruments such as parole, commutation and remission of sentence.

²⁸ NCRB, *Prison Statistics of India* (2018), Chapter 6

²⁹ State of Punjab v. PremSagar (2008) 7. SCC 550

³⁰ NCRB, *Prison Statistics of India*(2018) Chapter 12

³¹ RLSA, *The Open Prisons of Rajasthan: A detailed Study by Smita Chakraborty* (2017)

³² Code of Criminal Procedure 1973, Act No. 2 of 1974, § 360-361

³³ Code of Criminal Procedure 1973, Act 2 of 1974, §.357-359

³⁴ Constitution of India, art. 72,161

The commission on reforms of criminal justice 2003 also laid emphasis on discretion of judges and awarding the sentence within the statutory limits.

NCJP 2006 recommended that policy should be made to increase the choices in punishment. In *Mohammad Gissadin Vs State of Andhra Pradesh*³⁵, Justice Krishna Iyer observe that reformation must be the primary objective of punishment. Humanization of criminals should be the very essence while giving the sentence. A therapeutic rather than interrorem outlook must prevails in our quotes.

In *Dilip K Basu Vs State of West Bengal*³⁶, Supreme Court also laid down to install cameras in all prisons and police stations to prevent incidents of custodial death and torture.

In *Re-Inhumane Conditions in 138 prisoners*³⁷, SC laid emphasis on the installation of main information system software in all central and district prisons. Following which the NHA prepared the New Model Prison Manual 2016 which dealt with various rights and duties of prisoners. It also has separate chapter dedicated for trial prisoners women prisoners and prison computerization.

1. Education: Education is an important element for rehabilitating the inmates. It plays an important role in shaping the psyche and attitude towards the society. In the year 2018, out of total prisoners, 53009 prisoners were provided elementary education, 40122 prisoners were provided adult education, 14380 prisoners were provided higher education and 8443 prisoners were educated in field of computers³⁸.

Some of the initiative taken by different states includes:

- (i) Secondary education is imparted by National Institute of open school on Andhra Pradesh.
- (ii) Graduation and Post-Graduation are being imparted by open universities, such as Ambedkar open university, Andhra University. Special remission is awarded to those prisoners who are successful in exam in Andhra Pradesh.
- (iii) Special study centers of IGNOU have been established in various jails through which inmates are pursuing their education.
- (iv) In Maharashtra, for higher education Degree courses are conducted by Yashwantrao Chawan Maharashtra Open University and IGNOU.

³⁵ Mohd.Gissaddin v. State of A.P. AIR 1977 SC 1926

³⁶ Dilip K. Basu v. State of West Bengal, 2015 SCC OnLine SC 651: (2015) 41 SCD 800

³⁷ (2016) 3 SCC 700

³⁸ *Prison Statistics of India* (2018)

- (v) In Delhi, Padho or Padhao scheme is launched in collaboration with ministry of HRD, Government of India for illiterate inmates. Along with that permanent study centers of National Institute of Open Schooling(NIOS) and IGNOU are established inside jail campus for prisoner's who want to pursue further studies.³⁹

2. Health:

- (i) In Andhra Pradesh all central prisons and district jails are provided with full fledged hospitals with full time medical officers and supporting staff.
- (ii) In Punjab Out Patient Opioid Assisted Treatment centers have been setup in 9 central jails in which free treatment is provided to prisoners suffering from drug addiction.
- (iii) In Maharashtra, 59 specialized health camps are organized in different jails. Social worker's networking with government hospitals and NGO's have also resulted in specialized health care for terminally ill patients suffering from cancer and HIV.
- (iv) Steps have also been taken to improve the mental health of prisoners. Prisoners were provided counseling support. And a self help group of 25 prisoners in Nasik central prison was trained to identify and counsel depressed prisoners. A stress management workshop using art based therapy was also conducted.
- (v) Yoga and Meditation: It has been practiced on a daily basis in jails of Andhra Pradesh and Jammu and Kashmir. Art of living workshops and meditation are being organized in jails of Maharashtra and Manipur.

3. Vocational Training:

A total of 54426 prison inmates were provided vocational training during the year 2018.⁴⁰ For the objective of social reintegration of prisoners into mainstream society new training programs have also been introduced.

4. Spiritual and Cultural Activities:

Spiritual and cultural activities have also been organized by prisons of Andhra Pradesh, J&K Maharashtra, Manipur, Sikkim and Delhi.

³⁹ *Prison Statistics of India*, (2018)

⁴⁰ *Prison Statistics of India*, (2018),Chapter 12

V. ALTERNATIVES TO IMPRISONMENT: WAY FORWARD

Reformation means to make changes in order to improve or to cause to relinquish an immoral or criminal lifestyle. It implies instead of leaving the offender or criminal if bad or immoral things are removed from his personality it will be rather reformation of gentleness and humanity lost by the offender. It is a process of bringing back the person to the origin of his mind. It involves a process to compel the offender to leave immorality and criminality from his life. The offender thus can be seen as a patient who needs treatment of reformation. The correctional institutions should be aimed to have an institutional setup which aims at rehabilitation and reformation. Formation of a thing previously bestowed in the mind of human being maybe called as the process of reformation. No human being has an instinctive nature to commit a crime. But owing to varied social conditioning he becomes a criminal. Criminality thus can be viewed as a disease which grabs or covers its dust and germs in the mind under specific situations and one ought to cure or save the patient from the disease. Humanization of the diseased mind is the only way to solve the problem of criminality. The only panacea for a restless diseased mind is to master the consciousness and spirituality of the diseased mind.

UN Standard Minimum Rules For Non Custodial Measures⁴¹ lays that greater emphasis should be given to the factors leading to perpetuation of the crime and unnecessary imprisonment must be avoided. The Criminal Justice System should rather provide a wide range of non custodial measures from pretrial to post sentencing dispositions and it also requires the member states to develop alternatives to prison which would be more suitable for rehabilitation of offender within the community.

Tokyo Rules prescribe the following alternatives to sentencing:

- (i) Verbal sanctions, such as admonition, reprimand and warning;
- (ii) Conditional discharge;
- (iii) Status penalties;
- (iv) Economic sanctions and monetary penalties, such as fines and day-fines; Confiscation or an expropriation order;
- (v) Restitution to the victim or a compensation order;
- (vi) Suspended or deferred sentence;

⁴¹ UN General Assembly, *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, UNGAR 45/110, (December 14th, 1990)

- (vii) Probation and judicial supervision;
- (viii) A community service order;
- (ix) Referral to an attendance centre;
- (x) House arrest;
- (xi) Any other mode of non-institutional treatment;
- (xii) Some combination of the measures listed above.

It also provides the following Post-sentencing dispositions may include:

- (i) Furlough and half-way houses;
- (ii) Work or education release;
- (iii) Various forms of parole;
- (iv) Remission;
- (v) Pardon.

There also exists punishment in international community which are referred to as alternatives to improvement. Some of them are as follows :

1. Community Services: In Canada The Correctional And Conditional Release Act 1992⁴² provides for community services. It provides for various community service mechanisms through which an offender can be rehabilitated. Which includes conditional release, parole, long term supervised release and statutory release.

In US after release on probation or parole, Electronic Monitoring is used for keeping a supervision on released offenders to ensure public safety. This technique is found to be successful in rehabilitation and reducing recidivism.

In UK Power of Criminal Courts Sentencing Act 2000⁴³, general provision for community order, community sentences, curfew order, drug treatment testing order, attendance order and all orders are covered under the ambit of community order and community sentences and monitoring order.

2. Job Training: In Norway, the most common job training is the job training provided on a regular work place where the employer receives a temporary subsidy to train the individuals and expose them to different kind of jobs. The job training is specifically targeted for those who need work experience in order to find employment. It is often paired with job

⁴² Correctional And Conditional Release Act 1992, c.20

⁴³ Criminal Courts Sentencing Act 2000, U.K. Public General Acts (c.6 of 2000)

assistance where a councilor helps the inmates in finding a suitable workplace and negotiates with wages and employment conditions. The classroom training program provides them with short skill focused courses, vocational training and ordinary education.⁴⁴

3. Sports: Sports in prisons can be used as an effective tool in the Criminal Justice System. It can play a huge role in improving mental and physical health, reduced violence and tackle reoffending.⁴⁵

4. Health Care Services: Most of the jails do not have specialized doctors such as dentists, gynecologists, dermatologists, psychiatrists and psychologists to deal with predominant health problems like dental issues, gynecological issues faced by women inmates, skin allergies or scabies, depression, anxiety or even drug addiction and drug withdrawal. And the number of outpatient cases each day treated by Medical Officers is very high, approximately 80-100, which means that proper attention is not given to each patient.

5. Open Prisons: Open prisons are the prisons without bars. These are based on the “Reformative Theory of Punishment”. The objective of this institution is to restore dignity of an inmate so that he can later return to society as a functional and responsible citizen. The development of open prison system can be traced to one of the recommendations of All India Jail Committee Reforms⁴⁶. The main emphasis for establishment of open jails was on self-discipline and self-help. In the open prison system, the offenders are placed under open air camps or farm colonies or other outside work with a reasonable amount of safety. The advantages of this system are that it helps in reducing overcrowding in jails and reduces the construction cost. The operational cost is also fairly less. In a report on open prisons of Rajasthan it was found that the cost of open prisons is 78 times⁴⁷ cheaper than closed prisons. Thus, it plays dual purpose of eliminating criminals from the society and the reformation of offenders by routing out the condition that made them law violators. The open space natural surroundings and lesser tension helps in culminating a more conducive environment for rehabilitation in the society. It is an antidote to what is known as “Prisonization” of convict. To facilitate the goal of reformation and rehabilitation more open prisons must be setup.

VI. CONCLUSION

Prison reform is a crucial element. For bringing reforms it is important to access the criminal

⁴⁴Mandeep Bhuller, Gordon B. Dahl, Katrine V, Loken et al., *Incarceration, Recidivism and Employment*, NBER WORKING PAPER SERIES, 22648 WORKING PAPER 14, 1-93 (September, 2016)

⁴⁵Rosie Meek, *A Sporting Chance: Independent Review of Sports in Youth and Adult Prisons*, (August 2018)

⁴⁶BPR&D, *All India Prison Reform Committee*, (1983)

⁴⁷RLSA, *The Open Prisons of Rajasthan: A detailed Study* by Smita Chakraborty, (2017)

justice system as a whole. Thus, an attempt needs to be made to improvise the prison system as a whole. A comprehensive program is thus needed to address the entire criminal justice system. One of the major problem of prisons includes overcrowding of the prisons. Under trial prisoners account for the highest number amongst the imprisoned prisoners. Hence the courts and the government should focus on easing bail provisions and other effective tools such as parole, probation and speedy justice for reducing the burden on prisons. Also overcrowding becomes a major cause for the spread of contagious diseases, therefore a health informed approach should be focused while devising new prison reforms. Further, the policy framers need a devise a uniform sentencing policy ad sentencing guideline which focuses more on providing “individualized treatment” of the offenders. The role of psychiatrists and mental health services is also underutilized in India. Appointment of psychiatrists and regular mental health services in each and every prison should be made compulsory. Also, for the purpose of devising individualized treatment to the offenders, psychiatrists should be a made a part of the legal structure. They can act as a advisor to the existing justice system by examining the “dangerous” element in the criminal and what individualized treatment must be given on the basis of the nature of the offence, historical background and personality traits of the individual.

Further the use of Sports, educational and recreational activities inside the prisons can also help in improving the mental and physical health of the prisoners and also help in giving them confidence and dignity. Also, the ill-effects of imprisonment can be reduced by opting to alternatives to imprisonment such as OpenAir Jails, which can not only help in reducing the excessive use of custody but also improve the mental and physical health of the prisoners. All the state government must be encouraged to set up more open jails since they not only provide a free and healthy environment for rehabilitation but also gives them livelihood and a sense of dignity. They are found to be more cost effective than the closed prisons.

From the above analysis of the problem of prisoners it is needed to be understood that the life of a prisoner is not merely and animal existence. Just being imprisoned, a person does not cease to be a human being. He should not be treated as a disposal commodity and rather should be rehabilitated in a way as to reintegrate back to society. The offender thus should be put in an educated and healthy environment to reduce criminality the basic idea must be to reshape the character of the criminal and the mind of the criminal must be molded once again. In the process of rehabilitation, the individuals must be brought in such a way that they do not engage in criminal activities even when the opportunities are available. The idea is to “Humanize” so that they can live a life with dignity after they are released.