
CORRECTIONAL METHODS FOR REHABILITATION OF OFFENDERS IN INDIA

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ABSTRACT

This paper is being written with an intention of throwing light upon the mistreatments which are done towards the persons once they are convicted as offenders. The various correctional services which are available in India for the betterment of the offenders after they are convicted are quite a few but the implementation of them is not up to the mark in practicality. The condition of offenders and the correctional services in India is at such a stage today that if this is not addressed by law students or academicians, this would go be a matter of major concern today. Therefore this paper would help in finding out the major problem which persists in India regarding the condition and livelihood of the offenders, give solutions regarding the after-life of offenders and prisoners including the betterment of juveniles too. The paper would also list out about the different theories of punishment, the conceptual framework of the offenders as well as the law-makers pertaining, so that the law, implementation as well as the livelihood of prisoners is taking all at once. The paper would also throw light on the different correctional services present in India and it would also touch the topic of juveniles and their betterment post their life of punishment. The author hopes this paper would help in bring a few positive changes for rehabilitation of offenders in India.

Keywords: Offenders, Correctional Services, Prisoners

LIST OF ABBREVIATIONS

| | |
|--------|--------------------|
| & | And |
| § | Section |
| ¶ | Paragraph |
| A.I.R. | All India Reporter |
| Anr. | Another |
| Art. | Article |
| Edn. | Edition |
| Govt | Government |
| J. | Justice |
| No. | Number |
| Ors. | Others |
| Pg. | Page |
| r/w | Read with |
| S.C | Supreme Court |
| u/s | Under Section |
| v. | Versus |
| i.e. | That is |
| UN | United Nations |
| HR | Human Rights |

CHAPTER 1

INTRODUCTION

1.1 INTRODUCTION

With the advancement of time, crimes are growing more and more advanced. Authorities must keep them up to date and shall learn about latest methods/ techniques of checking and handling such crimes.

Today the justice system across the world has adopted a principle i.e. the rights of accused must be protected at all cost in a criminal justice system. Whenever a crime is committed the offender is punished, apprehended or acquitted and even sometimes tends to plea bargain or gets released on probation after the court even when the offender is found guilty. Today's criminal justice system is involved more in defending the rights of the accused than giving them stringent punishment.¹ The quality of justice being provided today in our society very well determines the nature of governance and criminal justice system in that society. The quality of judges and lawyers very well determines about the justice being delivered.²

The meaning of administration of justice can be interpreted in two ways; the dictionary meaning of the expression that is administration of justice is only taken in account after a case is filed till judgment is not given.³ The other meaning of administration of justice includes almost all the other aspects. A proper meaning of administration of justice basically involves a case between two parties, where one claims to be right and complaints about the other in the court of law following which a judgment is delivered and its execution is performed.

It is the duty of every government that it must maintain law and order in the society. It is the basic function which the government should perform. This is essentially done through the 'criminal justice system'. The word system in the expression denotes that it consist of the basic functionaries of the state. During the maintenance of law and order the functionaries such as prosecution, police, and judiciary system and prison authorities are involved⁴. Even though

¹ See, H.D. Mondal, *Crime Victims and Their Treatment in the Administration of Criminal Justice*, Central Indian Law Quarterly, 32, Jan. – March, (2001).

² See, Subhash Chandra Singh, *Criminal Justice System: An Overview*, Cr.L.J., 44, March (1999).

³ See, K. Madhava, *The Criminal Justice System*, CBI Bulletin, 4-5, July (1992).

⁴ P.J. FITZGERALD, SALMOMD ON JURISPRUDENCE 104-105 (12th Ed.2016).

these functionaries ought to perform their duties independently yet the ultimate goal of the entire system is to delivered justice to the innocent involved and punishes the criminal.

The criminal justice system of every society must consider at least these three perspectives. Firstly, it should have a body of legal rules which mentions about the social values, actions which are wrong and right and what is considered as harmful. Secondly it can also be taken as an administration system which consists of the frontline agency, judiciary, police and correctional facilities and services⁵. Lastly the criminal justice system is also considered as a social system meaning that it should not only include the penal laws which are enforced by the legislature but should also see that these laws are correctly understood by the citizen at all level. The above aspects of the criminal justice system should be taken into examining the society or system as a whole.⁶ Since the fundamental purpose of criminal justice systems is to reduce or eliminate the crime and mis-happenings and benefit the society as whole.

In present society the factors contributing in making of criminals and delinquents are several and complex.⁷ But now, reforming the offenders is something which every society is keen to take up. Even though the reformation is only taken up by a small segment of the society where serious crimes are not involved but the overall behavior has become more lenient and humane for the offenders. The reformative aspect in today's criminal justice system suggests that even though the offender has committed any heinous crime, even then the offender should be offered ways to correct themselves and to show the world that they can be better citizen to the society.

Today, the reformative theory has taken up a major role in our criminal justice system. The institutions of parole, probation, juvenile justice systems etc. has very well provided and are being helpful for the reformation and the correction of the offenders. Even the institution like prison has remodeled them to be in consonance with the corrective methods for treatment of offenders. The government is responsible for the rehabilitation of convicted offenders and to protect them from the society.⁸

1.2 REVIEW OF LITREATURE

⁵ SEE, SANFORD H. KADISH, *ENCYCLOPEDIA OF CRIME AND JUSTICE*, 450 (1983).

⁶ *Ibid.*

⁷ CHARLES, F. HEMPWILL, *CRIMINAL PROCEDURE: THE ADMINISTRATION OF JUSTICE* 3-4(1978).

⁸ N.K. CHAKRABARTI, *ADMINISTRATION OF CRIMINAL JUSTICE: PERCEPTION AND PERSPECTIVE*, Vol. 1(1999).

The paper talks about the current Criminal Justice Administration, how it is making new rules and coming up with new ideologies so as to provide a better platform for the people dealing in this administration. It also goes on to talk about the Criminal Justice System as in how is it bringing fair justice to one and all and it is making sure that each and every person be it the victim, offender or the witness are being taken care properly by the authorities associated. Eventually, it takes up the core topic regarding the treatment of offenders and how our criminal justice system is thinking about the life of the offenders after he has been declared guilty by the court of law. The system is keen to take up the correctional methods in a more sincere way as they also want that the offenders and especially the first time offenders can turn their life back to normal so that they don't regret of the mistake they did. The paper would take up the condition of prison and juvenile homes as they are the starting point for rehabilitation of the offenders.

Shiv Kumar Dogra, (2009), *Criminal Justice Administration in India*.⁹ The author in this book focuses on various phases of criminal justices' administration in India. The author takes us through the ancient period, medieval period and finally the modern era. He has co-related the development through the Dharmasastra period to the administration in Smriti Period, giving a broader preview of the developments and reasons for the administrative actions. This book includes the role of officers, the behavioral attitude of the officers, development of the correctional institutions and ends with suggestions that can make the system better and transparent. The researcher, in this present research paper, has referred to the historical advancement of the administrative system from the abovementioned book. The only limitation in this book is that it fails to take into consideration or statistical quantifiers of populous being members of rural sector and that of urban and how their individual behavior also affects the correctional system in our country.

N. Prabha Unnithan, (2009), *Crime and Justice in India*.¹⁰ The author has rightly mentioned about India emerging as one of the super powers and one of the hurdles the country has to face is the functioning anarchy. This journal mostly describes the nuances of evaluation and policy making factors of criminal justice system. Even after focusing on the execution part of criminal justice, this journal lacks two major adoptions. This article has considered only the developed

⁹ Shiv Kumar Dogra, *Criminal Justice Administration in India*, Deep & Deep Publications, 2009, https://www.google.co.in/books/edition/Criminal_Justice_Administration_in_India/cJVQxkAa9uEC?hl=en&gbpv=1.

¹⁰ N. Prabha Unnithan, *Crime and Justice in India*, *Journal of Contemporary Criminal Justice*, Volume 25 Number 2, May 2009, <https://journals.sagepub.com/doi/pdf/10.1177/1043986209332648>.

and urban sector including the metropolitan areas where as crime and criminal system is not meant for one sect of civilization only. The rural India, having higher crime rates have been excluded from the study. Another limitation of this journal is the passing glimpse put on the legality of the correctional sectors instead of an in depth study of the same.

Shiv Kumar Dogra (2015), *Criminal Investigation in Criminal Justice System: A Comparative Study*.¹¹ The author of the paper believes for development of any society, a smooth justice system is a sine qua non and an irreplaceable part of the human race. The paper studies the mechanism of the investigation of a crime. The paper discusses the sorry state of affair of the current justice system where hardly seven per cent cases result into conviction giving room for hypothecation of having unnecessary innocent people on trial or that guilty individuals are freed for shortcomings. The system of India in the paper is compared to the United States of America along with England and thereby analyzed. However, the scope of the paper is only limited to the investigative aspects of the conventional crimes like murder, theft, rape, sexual assault and others.

N.K Chakrabarti (1999), *Institutional Corrections in the Administration of Criminal Justice*.¹² The author in this book deals with the prison administrations' reformatory aspect including the methods of reforms for the prisoners and correctional institutions for the juveniles getting awarded any measures. The prison reformation of the inmates and the institutions of correction for the children are the major focus of the book.

Paul W. Tappan (1960), *Crime, Justice and Correction*¹³. The Author in his book describes about the various causes of crimes and talks about the various doctrines on the causation of the crime. The book also explains as how to understand the offender and what led him to commit that crime at the first place. The author very well focuses not only on the basic reasons behind an offender committing a crime but tries to differentiate between all of them so as to find about the nature of the crime. The way an offender is treated in the correction systems like prisons, special homes, juvenile homes, etc is being a major reason today which is making an offender

¹¹ Shiv Kumar Dogra, *Criminal Investigation in Criminal Justice System: A Comparative Study*, Vol. 1, February 2015, <http://www.socialresearchfoundation.com/upoadreserchpapers/5/41/1506111050371st%20shiv%20dogre> .

¹² N.K Chakrabarti, *Institutional Corrections In the Administration of Criminal Justice*, Deep & Deep Publications, 1999, https://www.google.co.in/books/edition/Administration_of_Criminal_Justice_Insti/g8oX-Pnfp4UC?hl=en&gbpv=1.

¹³ Paul W. Tappan, *Crime, Justice and Correction*, New York: McGraw-Hill Book Co., 1960, Pp. xiii, 781, <https://www.jstor.org/stable/1120061>

a more hardened criminal. The limitation of this paper is being as it does not talk anything regarding the sufferings of the victim and post this book many reforms have also taken place.

Somnath Mitra (2011), *Crime and Correctional Administration*¹⁴. The author in this paper defined about Crime, Crime as a social problem, classification of crimes and how the nature of crime should be a point of differentiation between the offenders. The origin of prison in the criminal justice system of India is also explained in this work with the penal reforms associated with it. It contains the importance of correctional service and how different statutes present in India are helping the rehabilitation services provided for the offenders. It even throws light on the condition of paroles and probation and the role of the authorities in the control and management of crime. The people concerned with human rights also have a big role to play in the treatment of offenders. So the role of police and other statutory agencies including the judiciary system have been also explained in this paper. The structure and functions of different correctional institutions shelter homes, observation homes; etc is also explained in it. The only limitation in this paper is that it does not have concrete data about the women offenders and only focuses on the male offenders and criminals.

Dae H. Chang and Jerome McKean (1981), *Criminology, Delinquency and Corrections*¹⁵. In their work they have very well explained regarding the attention which have been attracted by the treatment of offenders by the public and political institutions is huge. This work also contains about the recent educational programs, publications and funding which have been made to impact the ill-treatment of the offenders and have them get a chance to lead a good life even after committing a crime. Lastly the authors discuss regarding the consensus approach in relation to the criminal justice system, treatment of offenders at present and it lays out about the future of criminal justice too.

Gurmeet Nehra (2016), *Correctional System vis a vis Prison reforms in India*.¹⁶ The mentioned article talks at length about the prison and its reforms and how the prisoners are being treated and how they should be treated in the prison. It tells about how the prisoners were treated in the ancient and medieval times. The article criticizes about the prison and compares it with the harsh confinements which were in use in the war times. The article points out many flaws in

¹⁴ Somnath Mitra, *Crime and Correctional Administration*, MSW-Paper-12, 2011, http://www.wbnsou.ac.in/student_zone/e-resources/study_material/pg/MSWPaper-12.pdf

¹⁵ Dae H. Chang and Jerome McKean, *Criminology, Delinquency and Corrections*, International Review of Modern Sociology, Vol. II, 1981, <https://www.jstor.org/stable/41420786>

¹⁶ Gurmeet Nehra, *Correctional System vis a vis Prison reforms in India*, International Journal of Law, Vol 2 Issue 3 Pg. 43-47, 2016.

the prison system and even tells about some precedents which have been given with respect to the prison reforms and moreover on the treatment of offenders. It even gives out solutions which may be adopted by our criminal justice system so as to make the offenders into a good person later on. The rights of prisoners are something the author has given utter importance to and has stick to the fact that they should be treated by human dignity.

Philip J. Cook (1975), *The Correctional Carrot: Better Jobs for Parolees*.¹⁷ Here the author raises a very simple question that how can one prevent any person who has been released from prison to return to the crime life again. This has been a big point of contention from a long span of time and neither the authorities not the government has taken it up seriously. The author suggests various ways in which released prisoners should be given a chance for jobs like training programs and contractual jobs which can boost up the confidence of them and make them lead a good life. The author would try to demonstrate regarding the same about parolees and their success in the local market. The limitation regarding this paper is that even though situation of parolees after being released is a global problem even then the author has stuck to US.

D.C. Pande and V. Bagga (1974), *Probation—The Law and Practice in India*.¹⁸ Both the authors in their article directly criticize regarding the functioning of the system of probation in the criminal justice system of India. They very clearly set out that probation should not be given solely on humanitarian ground but also the rules which have been set out should also be followed rigidly. The authors are very keen on the laws and set of rules which are set out on probation and they feel that if the rules are followed and the deserving offenders get probation, it will help them be reformed as a good person post their sentence.

Banamali Barik (2017), *Rehabilitation of Released Prisoners in India through After- Care Programmes and Services: An Analysis*.¹⁹ The author in his work tells about the measures and rehabilitation which are to be taken up by every institution for the after care of the offenders. The author explains as to why the offenders released from the prison should be given up various opportunities and during their time how they should be treated. The paper's main objective is

¹⁷ Philip J. Cook, *The Correctional Carrot: Better Jobs for Parolees*, University of California Press, Vol. 1 No. 1 pp. 11-54, 1975, <https://www.jstor.org/stable/42783374>

¹⁸ D.C. Pande and V. Bagga, *Probation—The Law and Practice in India*, Journal of the Indian Law Institute, Vol. 16, No. 1, pp. 48-87, 1974, <https://www.jstor.org/stable/43950312>

¹⁹ Banamali Barik, *Rehabilitation of Released Prisoners in India through After- Care Programmes and Services: An Analysis*, 2017, <https://thelawbrigade.com/wp-content/uploads/2019/05/Banamali-1.pdf>

to extend care, guidance, counseling and support to the offenders released and tell as to how the social stigma regarding these people should be made right.

1.3 RESEARCH PROBLEM

The Indian Criminal Justice system has always been functioning with obstacles because of the fact that various external factors bring bumps in the smooth functioning of it. When the institutional programmes were decided to be introduced in our criminal justice system, it had been always brought with the intention that it would reform the current practices and make it more transparent for the offenders. The programmes would pave a way for the rehabilitation services and reform the way it functions at present. But this problem still persists to a great extent seeing the conditions of prison and juvenile homes in India and that the institutional programmes have not been happening leading to no knowledge about these to the offenders. Therefore the paper would deal with the problem as to how the programmes made for the prisoners and offenders will be effective in bringing reformation considering the condition of our Criminal Justice System.

The need for correctional services in India became a prominent talking point since many judges of the High court's and Supreme courts have started favouring the reformative and retributive theory of punishment rather than following the deterrent theory. Since then the courts as well as NGOs have been in pursuance for instituting good institutions of corrections in India. But, if the present system have so many lacunas, how will it grow further. Similarly there has been talk for the need to have more correctional institutions in the future seeing the rising number of offenders in our society. But if the present institutions are made reformed and the functioning of them is in good hands, then that might curtail the need for more institutions.

Thus, we can see that the major problem lies in the internal functioning of the Criminal Justice Administration. The need for changes in the system would automatically bring changes in the functioning of these institutions. Major problems like corruption, non-governance, etc have taken our system to slowly get hollow and now this have reached a stage where if these things are not dealt in time, it might lead to so many other problems which one might not have thought of. Hence this paper will try to focus on these problems and would try to give answers to each of them.

1.4 HYPOTHESIS

1. H1- If the Criminal Justice System in India increases being particular on the Correctional services being offered and come up with new services and organizations in this regard it would increase in a just and fair life of a prisoner post conviction and he can be evolved into a better human being if the rehabilitation services like parole, probation, etc, start getting offered in a more viable way to the offenders and if some organizations are also set up outside the prison it would benefit the society largely.
2. H2- The Current scenario regarding the correctional services rendered are very much implemented on paper but it is not at all getting fruitful for the offenders in general. Majority of the prisoners still don't know about the services like probation and parole and even for that matter the juvenile homes are in such a bad condition that juveniles once going in it for rehabilitation are suffering majorly.

1.5 RESEARCH QUESTIONS

1. Whether institutional programmes are reformatory and rehabilitative in its application in the Criminal Justice system of India?
2. Whether present correctional institutions are sufficient for the future? Do we need more reformatory organizations for the prisoners?
3. Is there any need for change in the present system of correctional administration? Have the internal functioning of these institutions on the correct path?

1.6 OBJECTIVE OF RESEARCH

The objectives of my paper are:-

- To study the philosophy of correctional administration in India and provisions relating to it.
- To examine the development and reformation in correctional institutions.
- To study and find out the laws applicable to correctional institutions along with judicial precedents relating to it.
- To study and compare different type of correctional institutions and to examine the present correctional programmes and suggest changes.

1.7 RESEARCH METHODOLOGY

The author has adopted doctrinal legal methodology in furtherance of the research. To evaluate the current laws efficiency, analytical method will be adopted and the demerits it poses and the researcher will provide for a critical evaluation of the matter at hand. In order to recommend improvements the author has adopted descriptive and analytical research methodology. Applied and Pure Legal research methodology will be adopted by the author in order to give proper suggestions to the issue i.e. whether the different correctional methods available for the rehabilitation of the offenders are sufficient or not.

1.7.1 NATURE

The author has adopted doctrinal legal methodology in furtherance of the research. To evaluate the current laws' efficiency, analytical method will be adopted and the demerits it poses and the researcher will provide for a critical evaluation of the matter at hand To evaluate the current laws' efficiency, analytical method will be adopted and the demerits it poses with suggestions for improvement of the same

The sources of information on the area of this study have been thematically analysed so as to gain an understanding of the broad themes, principles and rules laid out therein. Collectively, the methodology adopted for this study is suitable with the view of the researcher as it allows for both analysis and comprehension as regards obtaining answers to the aforementioned questions raised, and the need for a non-doctrinal or empirical study is unnecessary. The rules are a set of legal principles, hence theoretical in nature, and merit doctrinal research and analysis

1.7.2 DOCTRINAL RESEARCH

The nature of the research is doctrinal and not empirical An empirical research is not required given the subject matter as a questionnaire and data gathered from individuals unaware of the subject matter at hand is not fruitful. The sources used primarily are secondary sources in the form of articles, journals and books. The secondary data, since this is a doctrinal-based, the available limited research initiative has been sourced from articles, journals, books and online sources.

1.8 SCOPE AND LIMITATION OF THE RESEARCH

The subject of the paper deals with the different correctional methods which are available to offenders for their rehabilitation in India. The paper focuses on this very subject and would

revolve around the different mechanisms which are taken up by our criminal justice system as well as the administration. Some of the methods which are available to the offenders in our criminal justice system are Probation, Parole, Juvenile Homes, etc. These systems of rehabilitation are very well defined on paper but when the practicability of such mechanisms is seen, they differ. The major problem in India is that all the laws made in respect of the rehabilitation of offenders, doesn't even get to the knowledge of offenders. Since majority of criminals are illiterate and poor, which being a reason for the committing a crime at first place also becomes a reason for them not knowing about their rights. The condition of prisons is also something which is of major concern, as the condition of prisons in India are so pathetic that anyone who gets in does not even think of changing positively. Therefore we need to find a solution as to how to overcome all the problems which are in the way of an effective rehabilitation services for the offenders. One of the few things which we need to get in place in that our criminal justice system and administration needs to reconstruct the way prison, juvenile homes, special homes have been working. Secondly the offenders as soon as they are taken to prison should be told about the rights which they have like parole, probation, etc. These few things if dealt with efficiently can make a great impact on the correctional services and our system.

This paper would be limited to the correctional services which are available to the offenders in India. The paper would only take up the articles, cases and secondary materials which are available for the research and would not take up surveys i.e. it won't be based on empirical data provided. The paper will limit itself on the laws and statutes of India and would not compare or contrast it with the laws of the foreign land.

1.9 SCHEME OF STUDY

Chapter 1- It will introduce the subject matter at hand and will give you basic understanding regarding the Criminal Justice System and about the Criminal Justice Administration. It will also talk about the different theories of punishment specifically focusing on the reformatory theory. The need of different correctional services will be dealt herein with the objective as to provide a means of way for the offenders to lead a good life.

Chapter 2- This chapter will tell us about the corrections which are needed by the offender. The framework behind these services would also be told. The philosophy of correctional institutions will also be discussed herein. The rehabilitation of offenders is also point which will be dealt under this chapter and why it is so necessary.

Chapter 3- This chapter will contain the issues of correctional institution in India. It would go deeper on how the different correctional institutions function. We will talk very thoroughly about different institutions like prison, open prison, fine, furlough, observation homes, special homes, and children homes. This chapter would also give light about the after care services which are available to offenders and about the two big reformatory mechanisms i.e. probation and parole.

Chapter 4- The author would conclude the complete paper in this chapter. It would give a gist about the overall analysis of the research undertaken, will determine whether the correctional services are adequate or not to deal with the current scenarios of crime of offenders. Lastly the author would conclude the chapter.

Chapter 6- This chapter shall suggestions which are made by the author based upon his research and study.

CHAPTER II

CORRECTION OF THE OFFENDER

2.1 THE CONCEPTUAL FRAMEWORK

The inherent concepts which have been established regarding the correctional methods need to change in a way that if today our criminal justice system has taken its ultimate objective to eradicate crime, one needs to even give attention to the correctional part of the criminals and offenders too. This system how much efficient it may become but has never attended to all the subjects of concern.

The basic objective which we make out through the word 'correction' herein is the rehabilitation of the criminals and the offenders. It basically means that's one needs to correct, change and monitor the behaviour of the offender and suggest them positive changes if needed. Correction if taken seriously can have a large impact on the way offenders behave after coming out of their sentence or punishment.

Similarly the word rehabilitation which is so often referred in this paper means that during the course of the punishment of the offender a proper exercise or therapy or supervision should be

provided to the offenders so that after they get through the hardships they have faced in the time of their punishment, they may be able to restore themselves as good human being and have a way ahead of them.

Rehabilitation is a process which any society should be able to provide to the offender so that even if a person has committed a crime which was because of unfavorable circumstances, even then he gets a reason to live and lead his life.²⁰ The concept of utilitarianism given by Bentham was also made a justification for rehabilitation as it may cause more happiness to a greater number of people. Even the concept of restorative justice is somewhat in consonance with the rehabilitation theory.²¹ One of the other ways of seeing the basic concept rehabilitation is by the way Mr. White have acknowledged in his book²² “Community Corrections and Restorative Justice” in two ways that are welfare approach and justice approach. He even talked about an underlying approach between these two and have always cleared that all these concepts have come into existence by studying the criminal justice system of different countries.

2.2 UNDERSTANDING CORRECTIONAL PHLOSOPHY

The meaning of the word ‘correctional’ changes altogether when we read it in the context of the criminal justice system. To understand the meaning of correctional, firstly we need to understand the need of it in a system which gives punishments to the wrongdoers. Criminal justice system of any country has a basic work i.e. keeping the law and order of the country, giving punishment to the criminals and making sure that they get to suffer for what they do. Criminal justice system have always had taken away the joy of life from the criminals when they are under punishments. In the 18th and 19th century, when the world was witnessing so many wars, the basic aim of the criminal system became to punishment all the wrongdoers and given them strict punishment.

The problem did not start with how the punishments were getting awarded to the wrongdoers, it started in the way those wrongdoers were going through in the institutions like prisons which were in a havoc condition. As we approached to the 21th Century, people around the globe started to read about the criminal justice system and why crime almost everywhere was at peak. The reason being the institutions like prison were not only made for the offenders to suffer but it was to be taken as a correctional institution wherein offenders should be made to taught as

²⁰ Travis C. Pratt, Jacinta M. Gauet.Al., Key Ideas in Criminology and Criminal Justice (2011).

²¹ Linnet Dolinen-Gahar, Handbook on Institutional Correction, (2013).

²² Rob white, “Community Corrections and Restorative Justice”, Current Issues in Criminal Justice.

to how to correct themselves and come out of it as a better person and not as a hardened criminal.

In the 20th century the feeling of revenge had always been present against the criminals which needed to be changed. Some of the old concepts which people followed had given them the philosophy that if a hard punishment is not served by the criminals, then the evil spirits would not leave that criminal.²³ But soon a need to for change was seen by the new leaders and activists around the world which helped in changing the way of functioning of the correctional institutions. Then, correctional institutions become places for “reflection in solitude leading to repentance and redemption”.²⁴

2.3 REFORMATIVE THEORY OF PUNISHMENT

As the criminal justice system progressed there was a sea of changes in theories and studies related to criminal science. The new approach which was coming to picture was more dependent on the way how individuals react and how punishments should differ from individual to individual. So the treatment of the individuals based on their situation became the backbone of the reformatory theory of punishment.

The reformatory theory of punishment was a total critique of the deterrent theory of punishment but was somewhere inspired by the other two theories of punishment that is retributive and preventive theories of punishment. The main objective of the reformatory theory of punishment is to bring changes in the offenders who have been given punishment by the adjudicating authority so that after he or she is released, he can be more inclined to become a law abiding citizen and have all the opportunities like any other citizen. Reformatory theory of punishment always negates any kind of corporal punishments and has major emphasis on the reformation and rehabilitation of an individual. The people or the reformists who firstly started to understand the need of correctional services for offenders so that they can reform also lay emphasis on the corrections which should happen inside the prison and how the criminal justice system should start some programmes for the same. The reformists also made comments about how the offenders should be properly trained to become law abiding citizens. Institutions like parole and probation are highly recommended by the reformists for the offenders, that is if the

²³ N.K. Chakrabarti, Administration of Criminal Justice: Institutional Correction, Vol. 2 (1999).

²⁴ Donald T. Shanahan, The Administration of Justice: An Introduction 317-318. Cited In S.P. Singh Makkar, “Correctional Objectives Of Prison: A Critique On Justice Krishna Iyer’s Correctional Mediation” 39 Pulr 143 (1992).

offenders themselves want to induce that change, they should have opportunities like probation and parole for the same.²⁵

This view of reformatory theory of punishment even became prominent because of the reformists who always stood behind it and try to support it by saying always giving the explanation that keeping institution like prison is a must for any criminal justice system but it should be looked as a home for criminals that is keeping them away from the society but as a correctional institution where the more term of sentence is awarded the more the chance is for the authorities to make the offender a just and a lawful person and respectful citizen.

One of the questions which the author raised regarding the correctional programmes being reformatory in the Indian criminal justice system can now be answered correctly. In India, the reformatory theory of justice has not been completely adopted by the Criminal justice system or the judiciary leading to different approaches at different times. Although India have never gone towards the deterrent theory of justice but it has always tried to made balance between the reformatory theory of punishment and the retributive theory of punishment. But the Indian prisons and even other correctional institutions like juvenile homes, special homes and concepts like probation and parole have been kept in light for almost two decades now which is making our correctional programmes being reformatory are resulting in the goodwill of the offenders. The Indian judiciary system has also tried to make these concepts floating in the courts so that the offenders can understand about them. In this way the objective of the institutional programmes being used in a positive way for the offenders has been a success in many cases in India.

2.4 REHABILITATION- A NECESSITY

In a society, today the main objective when it comes to the criminal justice system is prevent the commission of crimes by educating the people and retraining the criminals so that they don't commit crime further. Institutional programmes for corrections have been started with a view that the offenders can reform and rehabilitate themselves so as to become a part of the concept of correctional services. So the main objective of any correctional institution is has become rehabilitation of the offenders so that they can easily go back to the society and adjust themselves accordingly.²⁶

²⁵ See supra note 24.

²⁶ N.K. Chakrabarti, Administration of Criminal Justice: Institutional Correction, Vol. 1 (1999).

Coming to the Indian criminal justice system, the institutional programmes which have been introduced by our criminal justice system is getting great response as they being reformative as discussed earlier are also rehabilitative which is proving to be very effective for the offenders. In India, earlier when people used to hear about rehabilitation, they always thought it to be a negative mechanism, but in the last 20 years, this has completely changed all thanks to the amendments in our criminal justices system as well as because of interest which has been shown by our judiciary and the part played by the non-governmental organizations has always been upto the mark.

Therefore the functioning of the correction programmes by various institutions have very well brought a changes by reforming the way and rehabilitating the offenders in a way that they now start to gain knowledge regarding the different rights they have as soon as they enter any correction institution and they don't hesitate in asking for rehabilitation as they start to understand that they can have a better life if they can go through a certain things when they are in punishment.

CHAPTER III

CORRECTIONAL INSTITUTION IN INDIA

3.1 INTRODUCTION

In the criminal justice systems around the world, the need to correct someone after their wrongdoing is the penultimate aim in the process of criminal systems. As the basic objective of the criminal justice system was to eliminate the harsh behaviour of the offenders and to punish them for their acts, a last step which was added was the corrections of the offenders. Correction is the early part of 2000s became very essential part of the criminal justice system especially in India. Corrections became such an integral part of our criminal system that criminologists around the world started to base the productivity of the criminal justice system and of the institutions associated with it on the basis of effectiveness of corrections. Many studies around the world started to base the productivity of criminal justice system on the effectiveness of the correction mechanism.²⁷

²⁷ Charles, F. Hempwill, Criminal Procedure: The Administration of Justice 3-4(1978).

As the world stepped into the 21st century, the words punishments and corrections were started to be taken in consonance with each other. People now did not only want the criminals and offenders to be punished and brutally made to live, but also wished to provide them with a chance to correct themselves so that they can have a great chance of coming back as a law abiding citizen in the society. Even then, one part of the society thought that being deterrent with the offenders is the correct way to handle them and if we give them this leniency in the institutions like prisons, it would just promote that criminals can easily get through the life at prisons even after committing heinous crimes.²⁸

But with time and studies it was brought to the light that as the commission of crimes was increasing day by day, it was way more necessary to start practicing the reformatory theory of punishment than the deterrent theory of punishment especially in India. Different institutions and systems for corrections were brought up under the reformatory theory so that the offenders can have a good way of life even after their time at the prison by the virtue of systems like probations, paroles and different reformatories set up for adult as well as juvenile to cope up with the society post their punishment time.

3.2 DIFFERENT CORRECTIONAL INSTITUTIONS IN INDIA

India being a state where everything was getting changed and developed as it entered the 21st century. Criminal justice system was also on the same path. Crimes were getting too high and it was time to stop this or it would create a society not worth living. Correctional institutions were brought into our criminal system so that offenders while making their punishment can be exposed to the good side of it and can be given good treatment with respect to rehabilitation and reformation. The correctional institutions started with the reshaping all the offenders individually by looking at their interests, backgrounds, life values and habits. It was the first step in making the corrections more effective for the offenders.

Justice Fazal Ali had very well kept his point regarding this subject as, “The modern concept of punishment and penology has undergone a vital transformation and the criminal is not now looked like a grave menace to the society which should be got rid of but is a diseased person suffering from mental malady or psychological frustration due to sub-conscious reactions and is, therefore, to be cured and corrected rather than to be destroyed”.

²⁸ Roberts D. Punsley, Introduction to Criminal Justice 7 (3rd Ed.1977).

Now the author in order to provide a better explanation to the questions of the research , would lay out the different correctional institutions present in India and how they are playing an important role in the reformation of the offenders.

3.2.1 PRISON

Whenever a crime is committed, the criminals are subjected to suffer if they are guilty by our criminal justice system in a place called prison. Punishment is given according to the act done and what law is made in view of that act. The modes of punishment differ from case to case but in India, the most common punishment has to spend a part of life in prison which is a form of curtailment for that individual. So anytime a person is found guilty of any crime in India, he may be subjected to spend a term in a place called prison.²⁹ In India, prison have been through a lot of changes because of the outlook of the society was constantly changing. The objective behind sending a person to prison changed so much over the years that prison can now be accorded as a place of more being a correctional institution rather than being just a confinement for an offender. Prison has always been the most trustworthy place for our criminal justice system for sending our prisoners to. It has been an institution which has kept the crimes very low and has now also been proving as a rehabilitation center for the criminals who really want to change and have their life turn around.

Therefore this correctional institution is very much essential and sufficient for the future. Yes there are some lacunas in it which exist because of the defects in the governments but it has been a great place for the reformation and this correctional institution needs to be there now as well as in the future.

In one of the landmark cases which was given on the basis of the complaint made by a prisoner that his life was subjected to cruel treatment by the officers in the tihar jail was taken up by the Supreme Court and it was observed that prisons are being made for the corrections of the offenders going in there. If episodes like sexual indulgence, beatings, ill treatments, etc are being done against the people living there, it is a very shameful thing for the administration of that prison. The Supreme Court compared that very prison to a human zoo and ordered that these things should be immediately made to stop and also gave a strict warning in this regard.

²⁹ B.R. Sharma and Vandan Kashyap, Prison System in India: a Historical Retrospection, CMLJ, 136, Vol. 30, April-June, (1994).

This case showed that the judiciary even after sending the offenders to prison care about their proper living and their rehabilitation and corrections.³⁰

3.2.2 OPEN PRISONS

This concept of open prisons was brought into light in India for the offenders who wish to really change their life, reform themselves and show themselves open to change to the authorities present. India has around twenty six open prisons, which basically has no restrictions, no walls or boundaries and are just as open as a playground. Offenders who realise their mistakes and are keen to make themselves as good as any other person in the society are given a chance to live in an open prison. Of course not everyone is eligible for these prisons. Prisoners who show change in themselves by showing good conduct and showing a self desire to reform are given a chance to get admitted to the open prisons. Places like these have helped very much in rehabilitation of offenders as the offenders themselves see a chance to get out of this worthless life if they keep the determination to change. If this trend keeps on increasing especially in a country like India, then crimes rate can be drastically reduced.³¹

Some of the major positives about this open prisons are, firstly it helps categorizing between offenders who really want to transform. It is a very cost effective place compared to a fully fledged prison and most importantly it helps in gaining the confidence back that is the self respect, dignity, etc which is a very essential element in the life of a criminal. Therefore, open prisons are a very effective place for the corrections for the offenders.

To answer our questions, yes open prison is very much sufficient for the future of corrections institutions in India. There is some scope of improvement in open prisons too, like implementing rehabilitation programmes and other social activities which if introduced can very much help the offender in there.

3.2.3 FINE

A fine is a monetary amount imposed on the offender for commission of any crime. It can be regarded as an ad judicious form of punishment as it is sometimes taken along with the physical punishment given. In any crime, there s no fixed amount of fine to be taken by the

³⁰ Rakesh Kaushik vs, B.L. Vig, Superintendent Central Jail, New Delhi, AIR 1981 SC 1767.

³¹ K. Madhava, The Criminal Justice System, CBI Bulletin, 4-5, July (1992).

offender. It totally depends upon the nature of crime and on the circumstances as to how much penalty of fine should be imposed.

Fines can be taken as a correctional method as sometimes if the court leaves the offender just with fine, it may have an positive impact on the person and he may not go towards committing any other crime as he has the knowledge that committing one more crime would result in harsh punishment.

3.2.4 FURLOUGH

Furlough basically means that “It is a leave of absence from prison granted to a prisoner”. In furlough an offender is granted leave from prison for sometime so that they can go outside the prison and come back after a certain period of time. It can be because of medical reasons, work related reasons or just a mere leave. In India even visiting the family members for spending some time comes under furlough. It is not to be confused with the definition of parole. In parole the offender due to the good behavior is given suspension from the remaining sentence but on the other hand furlough is leave in between the sentence and not remitting it. But one catch with furlough is that it is generally granted to offenders who have committed less heinous crimes.³² This type of correctional mechanism very well fits the current criminal justice system and such mechanism needs to be there and it is one which needs to change as it is working very efficiently with the system. Furlough is always taken as a right which is based on various conditions that is, if the prisoner fulfills those, then only it should be granted. Furlough cannot be taken as a constitutional right³³.

3.2.5 OBSERVATION HOMES

Observation homes can be also called pre-juvenile homes as the basic function of them is to keep the juveniles who have done anything wrong in such a place till the decision regarding his or her act is not decided. It is a mere provisional home for the any juvenile who is established by any nongovernmental organizations or associations with the state governments³⁴.

It is the duty of the state governments to keep an eye on the functioning of these observation homes and how they should be kept at all times. If the government at any time thins that the

³² N.K. Chakrabarti, Administration of Criminal Justice: Institutional Correction, Vol. 2 (1999).

³³ Mahanbhai Prasaangbhai vs. The State of Gujarat, AIR 1994(2) GLR 977.

³⁴ N.K. Chakrabarti, Administration of Criminal Justice: Institutional Correction, Vol. 4 (1999).

standards are not met, it can withdraw its support³⁵. The juveniles should be kept in groups which should be divided on the basis of their age groups and as well as a good consideration should be given to the juvenile about his mental conditions and regarding why he committed that crime³⁶.

The observation homes should now be made completely under the supervision of state governments as some of the observation homes are not correctly following the protocols which they should which makes the juveniles suffer. This correctional institution should be made to dissolve and a completely state government controlled observation homes should be opened.

3.2.6 SPECIAL HOMES

Special homes are made for the care and protection of juveniles after they are convicted. Which basically means that after the period at observation homes, juveniles needs to come to special homes for their care and protection. They should spend their punishment time at such homes till they are adults or they are finished with their sentence.

Herein too, the state governments should be the supervising authority and any association should run it. The basic postulates of observations homes are applied here but the state governments

3.2.7 CHILDRENS HOME

Whenever a child needs any kind of help and is produced before the any of the authority that is a public servant, any police officer, is given information in a Childline which is an organization in India which helps in giving protection to the children who are under any kind of abuse or ill treatment. The state governments are the authorities which are responsible for maintaining children homes. All the details regarding the children should be sent, and they should be taken proper care at this place.

Children homes are basically set up to provide care and rehabilitation to the children below eighteen years of age.³⁷ Each and every care should be taken by the people present there and proper rehabilitation should be seen. Children homes are an essential part in the correctional

³⁵ Section 8(3) of Juvenile Justice (Care and Protection of Children) Act, 2000.

³⁶ Section 8(4) of Juvenile Justice (Care and Protection of Children) Act, 2000

³⁷ Section 33 of Juvenile Justice (Care and Protection of Children) Act, 2000

services present in India. Yes there is lot of change which needs to be done in the working of these homes and the internal functioning of these homes is not at all at the correct place.

3.2.8 AFTERCARE OF RELEASED PRISONERS

Aftercare of offenders is something which is very essential for the correction of offenders. This thing is to be taken care of by the government as after an offender is released by the prison he has to face lots of social stigmas, and difficulties in getting his normal life back in the society. So if proper after care is provided as a correctional service to the prisoners then it would be a great opportunity for the offenders as well as giving them a respectful life back would mean that he or she may not at all think of going back to the criminal life from where he or she had connections with.

The author would like to state this correctional service for rehabilitation as the most important one and if this is followed by all the society across, it would result in a less crime life for all.

3.2.9 PROBATION

The term probation is derived for the Latin word probare, which means to test or to prove. Probation can be understood as a modern technique for treatment of offenders. An individual's social rehabilitation is taken as the main objective under his modern criminal policy. Legal practices going on around the globe can be taken as the outcome of the so called probation and it is not at all a result of any act or rule made in emergency³⁸. The introduction of the first legal statutory rules and regulations in the field of probation were introduced by the United States of America and England³⁹.

The Department of Social Affairs under the United Nations signified probation as a method which is devised by the courts or any authority for the convicted persons which is supervised by a probation officer and the probationer is needed to live in an environment and in a certain community which is administered by the court or any authority. The UN have always been on the line of advising all the nations to follow this modern method of probation as it serves a dual purpose for the life of the probationer. Firstly it gives him the hope that if he lives and behaves the way the authorities want him i.e. his behavior is good, he would have the opportunity to be free and hence giving him motivation to lead a new life away from criminality. Moreover this

³⁸ United Nations, Department of social Affairs, (1951) Probation and Related Measures. New York

³⁹ Hamai Kochi, Robert Hough, Mike Ville, Zvekic Ugljesa, *Probation Round the World : A Comparative Study*, Taylor & Francis Group (1995)

way keeps both the theories of criminality balanced, deterrent as it has the strictness of him not again indulging in crimes and secondly getting the apt reforms which would be necessary for the life of a probationer.⁴⁰

So probation can be a very effective way of correctional mechanism by which the first time offenders get a chance to reform themselves and do not have to go within the four walls of prison for a long time, if they follow certain condition given by the probationer. This is one of the promising correctional mechanisms which would be available for the future and with a few changes in the current way of it, it can be one of the best way for reformation of offenders.

3.2.10 PAROLE

Parole basically means that an prisoner may have a chance of getting an early release for a short span of time or for the complete time of what is sentence is left on the basis of just and good behaviour.

It is one of major concepts when it comes to reformation of offenders and this correctional mechanism is simply available to each and everyone present at prison. There is only one condition which is good behaviour and complying with things in the prison.

Parole can be great correctional service available to the offenders, but in India, every prisoner does not get the right even if it is there. Half the offenders don't know about such a concept and the other halves don't even get the opportunity to showcase their good behaviour. This is basically is left for the rich and corrupted which have good sources, so that they can have an officer to even look as to how they are performing.

This correctional mechanism must change and there is no iota of doubt that is it continues like this it is just a theory available for law students to study and nothing of it can be practically applied.

CHAPTER IV

CONCLUSION AND SUGGESTION

As the quote says "Hate the Crime, not the Criminal", meaning that efforts should be made to abolish the crimes from any society but to punish the criminal can be a questionable thing. The punishments were originally made so that the offenders should suffer but these things had

⁴⁰ E. Green, *Judicial Attitudes in Sentencing* (1961)

started to changed as we entered 21st century. Societies started to consider the pain through which the offenders were made to suffer. Punishments now started getting focused more upon the rehabilitation and reformation of offenders rather than just making them suffer through pain. The people concerned started to follow more of the reformatory theory of punishment rather than following retributive or deterrent theory of punishment.

The various correctional services available in India now has increased to so many that it is believed that soon India would be more and more concerned about the offenders rather than the crimes. The various correctional institutions we talked about have a good future ahead of them, but if we take the correctional setting in India, according to a report in the UN, it states that, “India works under a combination of four major sub-systems and these are police, prosecution, judiciary and the correctional services. Each sub-system is expected not only to play its own statutory role to contribute towards the achievement of the main objective of the Criminal Justice System as a whole but also to strengthen each other’s role in a strenuous manner. But the ground reality shows that each of this system usually tends to function like a system of its own and many a time works at cross purposes with the other segment of the Criminal Justice System. India’s Criminal Justice System has not been able to deliver on what is anticipated of it and is, in fact, under mammoth sprain because of the problems in all the components law enforcement, adjudication and correction and therefore the need for the reforms is the question of the hour.”

But even if we are thinking so much ahead in time, we should also look at the statues which are still governed by an act which was made in 1984⁴¹, which had just a glimpse of reformatory theories and correctional methods which are not a major role in the present criminal justice system. India being a country which has one of the most versatile constitutions in the world gives various rights to the prisoners which entitle them for all the correctional services.

The author would like to suggest that many of the correction services which are mentioned above in the paper needs changes. There are certain changes which the author would like to state which if taken care would give rise to more systematic and easy correctional services and it would be very beneficial things for the offenders too.

⁴¹ Prison Act of 1984.

SUGGESTIONS

- The most important thing India which should happen is the involvement of Media should be encouraged more towards the situation and condition of prison and prisoners. If these issues are highlighted by the media in day t day life the authorities will try to keep the condition better than it would happen if there is nothing like it
- The nongovernmental organizations are another important player which should be made a type of supervisor of these prisons so that the happenings inside these are not hidden and are brought in daylight if something fishy happens in these functionaries, then the NGO's can act accordingly with the help of the government functionaries and provide justice too prisoner and offenders.
- There should be complete transparency in the working f the Jail officials and government should transfer the jail officials and persons on a regular basis so that there isn't all mis happenings at one place.
- The provision of Bail, probation and parole should be taught to the prisoners inside the jails even if they are adjudged guilty so that they can resort to some at the later stage if they can and don't regret for the decisions. Right to know about their rights is also a fundamental right which is given by the constitution,
- Effective legal Service should be set up the government in every prison so that any prisoner if he/she wants can take up any issue to the courts with the help of the lawyer present and that should be provided free of cost to the person. To promote this, a great infrastructure should be built and a handsome salary should be given to such lawyers who choose to this job over other things.
- Lastly the author would like to bring up the subject of a new Prison Manual which was also taken up by the Supreme Court in the case of *Ramamurthy vs. State of Karnatak*, where even the court pressed on the matter of new manual for prisons which would embody with all the new government regulations and the other jail reforms.

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