

THE CHANGING DIMENSIONS OF PENAL SYSTEM IN INDIA: AN ANALYTICAL VIEW

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Crime is an Act which is forbidden by Law. The liability is get fixed and accordingly the perpetrators are get punished. The forbidden behaviors and activities are controlled by the Penal Laws of the Land. The Penal Justice System in India is the fruits of the long journey it has undertaken with lots of changes taken place by means of the changing time and needs. The Indian Penal Code which is regarded as the most extensive Code of India deals with near about all kinds of Crimes and their respective punishments. For maintaining law and order in any State, it is very much necessary to make a strong penal system so that the guilty will suffer the punishments. From ages punishing the offenders is the main task before the Criminal Justice System of the country. Punishments were given by taking into account the Deterrent Theory of Punishment.

The Deterrent Theory of Punishment is based on the sole basis of deterring the offenders from commission of crimes so exemplary punishments were given so that the other people would discourage to do the same act again. The purpose behind this theory of punishment is very clear i.e. to discourage the punishments by affecting the minds of people. Retributive Theory of punishment was the purpose behind giving punishment. Bringing deterrence by taking retribution was the motto of criminal justice system in ancient times. The person who has been guilty for any offence should be given with the same punishment. He must suffer what he has committed. This theory of punishment was based on tit for tat so that the perpetrator must realize what he has done with the victim He must understand the pain and sufferings of the victim. With the time the philosophy of punishment is changing completely. At present the penal system is based on Reformative Theory of Punishment. We believe that no one is born criminal and somewhere the society is responsible for the criminal activity of a person. The Sociological Theory of Criminal Behavior clearly signifies that a person commits crime because of various circumstances occur in the society. The State must protect a person's life, liberty or property and this can be achieved through the involvement of criminal law by imposing an appropriate sentence Therefore, punishment can be used as a method of reducing the crime either by deterring the offenders or incapacitating or by reforming them into a new person. The prisons have been considered to be the most essential tool in achieving the objectives of punishment.

❖ **Punishments: the Historical Perspective :**

The aim of any Criminal Justice System is to prevent the perpetrators from doing the criminal activities as these kinds of activities are connected with the damage to society. In short *the object of punishment is to prevent the society from the mischievous and undesirable*



*elements by deterring potential offenders, by preventing the actual offenders from committing further offences and by reforming them and turning them into law abiding citizens.*ⁱ The aim of protecting society is based on various theories of Punishments. These theories are different and based on various modes of achieving the motto of the security of citizens including Deterrence, Preventive, Retributive and Reformative.

There are so many problems of Indian Prisons. Some of them are overcrowding, torture, neglect of health conditions, the problem due to lack of hygiene, restrictive jail visits, etc. Hence, a new form of alternative imprisonment system has been adopted in our country and one such practice that our Indian Judiciary has adopted is Community Service Order. Apart from this there are certain other types which are considered as the new alternatives to punishments in this contemporary era in the Indian scenario.

❖ **Tools for reformation and Rehabilitation of prisoners d alternatives to Imprisonment :**

The process of rehabilitation and reformation has to take care of both the offender and the victim. The scope of rehabilitation and reformation cannot be confined to either the offender or to the victim. If we consider the interest of the offender alone then it would give rise to extreme dissatisfaction among the victims and they may not feel satisfied with the performance and officiousness of the criminal justice system. Similarly, too much importance on the rehabilitation of victim may not be practical and effective since the offender may not be in a position to pay the required compensation to the victim and thus has to undergo imprisonment in default of such payment. Thus, rehabilitative and reformative techniques have to take care of the interests of both the offenders and the victims.

1) **Community Service by Inmates of Jail :**

The major object of this theory of punishment is to reform criminals. In *State of Gujarat v Hon'ble High Court of Gujarat*ⁱⁱ, it was held that Reformation should be the main objective of imprisonment and during incarceration there should be an effort to create a good human being out of convicted prisoners. People who follow the Reformatory theory believe that if criminals are sent to prison to be transformed into good citizens, then that prison will be a dwelling house. For the reformation of criminals, they must be given education and trained the productive work. Therefore, the Indian Criminal Justice System in today modern era has adopted reformatory theory while awarding punishment to criminals instead affecting their individual liberty in imprisonment. Community Service has been recognized in our Criminal Justice System. According to it, Community Service is not punishment in the actual term but the service to society which he owes. At this theory the prisons should be treated as the Hospitals, the inmates should be treated as the patients and at the last the punishments as the medicines to treat them. This social service will not only be appreciated by society but also will give self-satisfaction and comfort to him, and can bring forward the positive changes in a person and can help towards making him a law abiding citizen.

Indian Penal Code (Amendment) Bill 1978ⁱⁱⁱ proposed to add community service as a form of punishment however this was rejected by the Law Commission of India. Community Service or corrective labour is a form of punishment in which the convict is not deprived of his



liberty. This community service shall be served either at the workplace of the accused or in a special place of work as authorized by the courts. Although this form of punishment has not been incorporated in IPC, as there are only 5 types of punishments provided under section 53. They are Death Penalty, Imprisonment for Life, Imprisonment which is either simple or rigorous, forfeiture of Property and Fine.

In *State Tr. PS Lodhi Colony, New Delhi v Sanjeev Nand*^{iv}., where six human lives were lost due to hit and run case, Court adopted community service as a form of punishment instead incarcerating the convict further in jail. On the same ground in the case of *R.K Anand v Registrar High Court Delhi*^v, the Court held that instead of sending contemnor to jail, it will be useful if we keep him out and let him do the things that will be utilitarian to the society. In *Solemen SK v State of West Bengal (2019)*^{vi}, the Supreme Court passed the order to plant 100 trees within a year to the person who was found to be juvenile at the time of alleged attempt to murder. The court was of the opinion that *“As the offence was committed in 2004, we do not feel it appropriate to send the petitioner to be dealt with by the Board. Instead, we are of the opinion that the ends of justice would be met by directing the petitioner who is now a registered medical practitioner aged 32 years, practicing in Murshidabad to perform community service. The learned counsel for the state suggested that this obligation of performing community service could be met with by a direction being to the petitioner to plant trees. We accept the suggestion made by the learned counsel for the petitioner and direct the petitioner to plant 100 trees within a period of one year.”*

At present of the main objectives of punishing criminals is to reform them, bringing positive changes in them and making them a law abiding citizen. Community service as an alternative to punishment is one of the best ways to reform the criminals as it creates a psychological impact on their minds which must be remembered. Our mind is the most powerful thing which is made responsible for keeping us aloof from committing the crime again. This situation has led to the innovation in the criminal justice system making imprisonment is not much effective than adopting alternatives to it and creating a new dimension where offenders are corrected and reformed.

2) Probation :

Probation is also regarded as an alternative to a prison. It is nothing but suspension of sentence by the court and releasing him on certain conditions to live in the community with or without the supervision of a probation officer. This system was firstly introduced in India in 1958 by passing the Probation Act. Section 562 in Criminal Procedure Code, 1898 permitted release of an offender on probation but it applied only to juvenile delinquents and first offenders.

At that time, there was no any specific provision for supervision and only the first class magistrates were empowered to grant probation. In the year 1958, all the provisions of Probation were came into front with the new Act called, Probation of Offender Act, 1958. This Act applies to all kinds of offenders including minors and regular criminals. It permits the release on probation for a maximum period of three years and also has a provision for revoking



the term. Section 6 of the Probation of the Offenders Act, 1958^{vii} talks about the restriction on the imprisonment of offenders under twenty-one years of age. This provision says that offenders who are under 21 years of age are not sent to prison where the offence is not so serious as to warrant imprisonment for life or death. The probation officer has been assigned two functions: Social Investigation and Supervision of Probationers. In *Daulat Ram v. The State of Haryana*^{viii} In the case of *Ramji Nissar v. The State of Bihar*^{ix} the Supreme Court observed that the object of the Act, 1958 is to prevent the turning of youthful offenders into criminals by their association with hardened criminals of mature age within the walls of a prison. The method adopted is to attempt their possible reformation instead of inflicting on them the normal punishment for their crimes. The person's age problem is important not for the purpose of assessing his or her guilt, but rather for the purpose of punishing the crime for which he or she is found guilty. Consequently, if a court determines that the defendant was not under the age of 21 on the day the court found him guilty, Section 6 does not apply.

The probation system has certain advantages over the prison system. There is no any kind of stigma is attached to the offender released on probation; there is no break in the probationer's economic and social life; his family does not suffer due to his absence; the offender does not feel frustrated; and economically it is less expensive. But every coin has two sides. Some disadvantages are that the offender is put in the same environment in which he committed the crime; there is no fear of punishment.

3) Parole :

In India, the grant of Parole is largely governed by the rules made under the Prison Act, 1894 and Prisoner Act, 1900. Each of the States has its own parole rules. There are two types of Parole granted to the inmates; Custody Parole and Regular Parole. Custody Parole is granted specially in emergency circumstances like death in the family, serious illness or marriage in the family. The grant of parole is subject to verification of the circumstances from the concerned police station and is granted by the Superintendent of Jail.

Regular Parole is allowed for a maximum period of one month, except in special circumstances, to convicts who have served at least one year in prison. It is granted on certain grounds such as: Serious Illness of a family member, Accident or Death of a family member, Delivery of Child by wife of the convict, Marriage in Family, Maintain family or social ties Serious damage to life or property of the family of convict by natural calamities, Pursue filing of a Special Leave Petition etc. ^x

Certain categories of convicts are not eligible for being released on parole like prisoners involved in offences against the State, or threats to national security, non-citizens of India etc. People convicted of murder and rape of children or multiple murders etc. are also exempted except at the discretion of the granting authority.

4) Furlough :

Furlough is just like a ticket on leave from prison that every convict is entitled to by way of right. A prisoner is entitled to be released on furlough for 14 days in a year. However, he may seek a 14-day extension by citing reasons for it sometimes. For this, the prisoner has to



submit an application to the prison superintendent. The 14-day leave from prison is treated as a “reward” and is accounted for as a part of the prisoner’s jail sentence. This kind of leaves is regarded as essential for the purpose of maintaining social ties. While granting Furlough, the jail authorities may use their discretion in disallowing furlough applications made by those convicted for rape, dacoity or offences under the Narcotic Drugs and Psychotropic Substances (NDPS) etc. A prisoner’s conduct in the jail is considered as the major reason while granting him furlough. Generally, a relative of the prisoner is made to stand surety for him. If the jail authorities found that a prisoner may be a threat to society if given leaves from prison and allowed him directly in society, or is probable to abscond, they may turn down his application.

Prison comes under the State List. So furlough rules vary from state to state. According to the prison manual in Maharashtra^{xi} the sanctioning authority is the Deputy Inspector General (Prisons). If such application of release on furlough is refused by the Sanctioning Authority, an appeal shall lie to the Additional Director General of Prisons and Inspector General of Prison & Correctional Services. Depending on the various reasons cited by the prisoner, a sanctioning authority may or may not extend his furlough. In *Manoj Kumar Singh v. State (NCT of Delhi)* it is held that The Delhi High Court observed that, furlough could not be denied perennially even if the prisoner had earlier jumped parole and was re-arrested after committing another offence.^{xii}

5) Open Prison :

Open Prison is quite a liberal concept where the inmates are treated and be given with the preparatory training to live in the society. As the prison comes under the State List, each and every state in India has their own prison Rules, like the Rajasthan Prisoners Rules and Andhra Pradesh Prison Rules, 1979. The Rajasthan Prisoners Open Air Camp Rules, 1972^{xiii} define open prison as, “prisons without walls, bars and locks.” Inmates in Rajasthan open prisons are free to go out of the prison after a first roll call and have to return before the allotted second roll call. The jail does not confine them completely but requires them to earn their living to support their families, living with them inside the jail.

The United Nations Standard Minimum Rules for the Treatment of Prisoners^{xiv}, commonly known as the Nelson Mandela Rules, laid down the objectives of open prisons explaining, that such prisons provide no physical security against escape but rely on the self-discipline of the inmates, provide the conditions most favorable to the rehabilitation of carefully selected prisoners.

There are total 19 Open Prisons in Maharashtra as per the Reports of January 2023.^{xv} This theory is based on the object that punishment should be to achieve reformation of the criminal, through the method of individualization. The humanistic principle has been adopted that even if an offender commits a crime, he does not cease to be a human being. As we are accepting the Sociological Theory of Criminal Behavior, we believe that no one is born criminal. The Criminal activity of any person is the consequence of the society. The societal conditions are responsible as the breeding ground for the criminal behavior, so opportunities should be provided to reformat and rehabilitate the person.

❖ Concluding Remarks :

The Bhartiya Nyaya Sanhita, Bill no. 121 of 2023^{xvi} under Chapter II , total 6 kinds of



Punishments are provided. At present only 5 kinds of punishments are in practice under Indian Penal Code, 1860. Now the Community Services is added as one of the kinds of punishments and as an alternative to the imprisonment. It clearly signifies that the Law Making Authority is also thinking positively for the reformation and rehabilitation of the accused. These kinds of alternative methods are necessary to cope up with the changing dimensions of penal system of the country where the reformation is considered as far better than retribution. At present the imprisonment only does not serve the purpose of corrections. Various new methods are necessary to introduce and implement to make society better place to live.

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- Gaur K. D. Textbook on Indian Penal Code, Seventh Edition, Universal Lexis Nexis Publications, p.n. 68
 - A.I.R. 1998 S.C. 3164
 - <http://www.bareactslive.com/LCR/LC156.HTM?AspxAutoDetectCookieSupport=1>
 - A.I.R. 2012 S.C. 3104
 - A.I.R. 2013 SC 670
 - <https://indiankanoon.org/doc/157685009/>
 - https://www.indiacode.nic.in/bitstream/123456789/15408/1/the_probation_of_offenders_act%2C_1958.pdf
 - 1972 SC 2434 available on <https://indiankanoon.org/doc/1107328/>
 - AIR 1963 SC 1088 available on <https://indiankanoon.org/doc/1794254/>
 - <https://bnblegal.com/article/parole-laws-in-india-a-tool-to-social-rehabilitation-or-route-to-recidivism/>
 - https://upload.indiacode.nic.in/showfile?actid=AC_MH_166_857_00001_00001_1611919011180&type=notification&filename=notification_16.04.2018.pdf
 - 2023 SCC OnLine Del 1164, decided on 21-2-2023]... available on <https://blog.scconline.gen.in/post/2023/03/03/furlough-cannot-be-denied-perennially-even-if-the-prisoner-had-earlier-jumped-parole-and-was-rearrested-after-committing-another-offence-delhi-high-court-legal-research-updates-news/>
 - <https://home.rajasthan.gov.in/content/dam/homeportal/jaildepartment/pdf/Rules-Act-Notification-Amendments/THE%20RAJASTHAN%20PRISONERS%20OPEN%20AIR%20CAM P%20RULES,%201972.pdf>
 - https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf
 - <https://timesofindia.indiatimes.com/city/mumbai/maharashtra-prisons-overcrowded-government-plans-five-new-jails-expansion/articleshow/98745662.cms>
 - https://www.livelaw.in/pdf_upload/the-bharatiya-nyaya-sanhita-2023-485731.pdf

