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Alternatives to Punishment

- Parole

Parole is thus a grant of partial liberty or lessening of restrictions to a convicted prisoner, but released on parole does not, in any way, change the status of the prisoner. Parole is a penal device which seeks to humanize prison justice. It enables the prisoners to return to the outside world on certain conditions. The main objects of the parole as stated in the Model Prison Manual are:

1. a) To enable the inmate to maintain continuity with his family life and deal with family matters
2. b) To save the inmate from the evil effects of continuous prison life.
3. c) To enable the inmate to retain self-confidence and active interest in life.

- Fine

Fines are a common punishment for an assortment of violations, particularly for less serious offences committed by first-time offenders. Offences that are normally rebuffed with fines incorporate minor drug possession, fish and game violations, traffic violations, first-time drunken driving cases. In more serious offences or where the litigant has a criminal record, many judges combine fine with other punishment, for example, detainment, community service, suspended sentence and probation.

- Suspended Sentence

As another option to detainment, a judge can issue a suspended sentence where he or she either forgoes passing on a sentence or settles on a sentence yet avoids doing it. This is by and large saved for less serious offences or first-time offenders. Suspended sentences can be unconditional or conditional.

- Probation

Another alternative to prison is probation. Like a suspended sentence, probation discharges a defendant back into the community, but he or she does not enjoy the same level of freedom as a normal citizen. Courts normally allow probation for first-time or low-risk offenders. Statutes decide when probation is conceivable, yet it is up to the condemning judge to decide if to really allow probation.

Probation accompanies conditions that confine conduct, and if the probationer disregards one of those conditions, the Court may repudiate or change the probation. Courts have a great deal of watchfulness while probation conditions.

- Restitution

Restitution is like a fine, but the payment made by the culprit goes to the victims of that crime rather than to the Court or municipality. This was suggested in the 78th Law Commission Report^[27]. Judges usually order restitution in cases where victims endured some sort of monetary loss due to the crime committed. The payment is intended to make the victims whole and restore them financially to the point they were at prior to the commission of the crime.

For example, a litigant who harmed the victim in a fight might be asked to pay the victim for his medicinal expenses.

- Community Service

Judges can condemn litigants to perform unpaid community work called “community service” to compensate an obligation to society for having committed the offense. The litigant might be required to perform community service notwithstanding getting some other type of punishment, for example, probation, a fine, or compensation.

- Diversion

Certain sort of offences and offenders may qualify for programs that bring about having charges rejected if the respondent completes indicated conditions. It can be called diversion or deferred adjudication; these projects take out the respondent from the common procedure of indictment so he or she can complete certain conditions. When he or she is done, either the prosecutor or the Court expels the charges.

The objective of diversion programs is to permit a litigant a chance to show that they are fit to act responsibly, and this method is commonly used for drug offences or first-time offenders. Normally the conditions imposed include counseling or probation.

Problems

The Supreme Court, in its landmark decision in Ramamurthy v. State of Karnataka^[28] has identified nine major problems which need immediate attention for implementing prison reforms.

The Court observed that the present prison system is affected with major problems of-

- Rampant Overcrowding

India's prisons are overcrowded with an occupancy ratio of 14% more than the capacity of the prisons. Due to severe overcrowding in these prisons, the segregation of serious criminals and minor offenders has turned out to be difficult, which can, in turn, cause bad influence over minor offenders. They might turn into professional offenders due to their continuous contact with hard criminals. Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000.

- Delay in Trials

According to what statistics represent, 67% of the people in Indian jails are undertrials. Under trials refer to those people who are detained in jail amid trial, investigation or inquiry yet not indicted of any crime in the Court of law. The share of the jail populace anticipating trial or sentencing in India is commendably high when compared to other countries.

- Torture and Ill-treatment

The prisoners including the undertrials are forced to do severe labour without any remuneration and treated with utmost torture and are made to do rigorous work which is barred by law. There has been a continuous rise in the custodial deaths due to torture and ill-treatment towards prisoners in jail. Women prisoners are more vulnerable to abuse.

- Severe staff crunch

While 33% of the aggregate prerequisite of jail authorities still lies vacant, right around 36% of opening for regulating officers is yet unfulfilled. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners.

Without adequate prison staff, overcrowding in the prisons prompts widespread savagery and other criminal exercises inside the prisons.

- Neglect of Health and Hygiene

The prisoners in India suffer from severe unhygienic conditions, lack of proper medical facilities and consistent risk of torment and misuse. Women prisoners suffer more in these prisons due to lack of hygiene facilities. It may be at the time of their pregnancy or other complications.

- Insufficient food and Inadequate clothing

Food and clothing provided in the prisons are barely enough to survive. It is inadequate and insufficient for the prisoners which lead to harsh effects on their health.

- Deficiency in Communication

The prisoners are left to live in isolation without any contact with the outside world, their family members and relatives. They remain uninformed about the lives and wellbeing of their family.

- Management of Open-Air prisons

It becomes very difficult to manage open-air prisons due to the prevailing overcrowding scenario in the prisons, staff crunch and weak management in prisons.

- Psychological effect

Lack of inspection and crude usage of oversight mechanisms transform prisons into startling wrecks with poor living conditions. This rot in the criminal justice framework affects the psychological condition of the prisoner. It causes adverse psychological effects such as depression, claustrophobia, anxiety and panic attacks, stress etc. it makes the prisoner more vulnerable than before to criminal penchants. The prisoner leaves the prison more demolished than improved.

- Lack of transparency

Another issue confronting the Indian justice system is the absence of transparency. It is seen that the Right to Information (RTI) Act is thoroughly out of the ambit of the legal framework. Hence, in the working of the judiciary, the significant issues like the nature of equity and responsibility are not known appropriately.

- Disparity in Laws and Dispensing Justice

It is evident that disparity exists in the implementation and application of the law. There is a lack of uniformity in the remission laws governing each state. The quantum of punishment differs at varied length.

Remedies

- Increase in wages

The remuneration given to the prisoners should be enough to suffice their sustainable living.

- Speedy Trials

The prisoners languishing in jail should be given legal aid at the earliest by accelerating the pace of the criminal justice system.

- Separation of Under Trials, women offenders, first-time offenders and youth offenders

Under trials are usually people who haven't been convicted of the offence yet and such prisoners should be kept in a separate prison cell, away from hardened criminals so that they do not get influenced by such offenders.

- Increasing to number of prisons

To deal with the problem of overcrowding the number of prisons should be increased in the country and prisoners should be transferred from overcrowded prisons to prisons where there are prisoners are sparse. People should be appointed with such management skills that are required to deal with overcrowding. Imprisonment should not be the punishment but should be substituted with high penalty in case of petty offences.

- Improved Transparency

The transparency in the judicial system should be increased to understand the actual scenario in the prisons. Transparency can be brought by NHRC inspections and Court mandated inspections and mainly the follow up of these would serve the purpose.

Suggestions

- Touch-screen Kiosk Application: There are numerous touch-screen kiosks around the prison for prisoners to use. At these kiosks' prisoners can access their PDR, remission earned, prisoner property and cash details, parole/furlough application status, transfer status and under-trial detention alarm. Most prisoners are literate, but those, that are not, can get education classes inside the prison, including how to read and write in English.
- A mobile complaint box should be installed outside the prisoner's cell to ensure the problems of the prisoners are taken into consideration. The key to such should be only with the bodies which will inspect the prison.
- The prison waste which is collected should be turned into a biofertilizer and sold to various companies and the profit should be shared with the prisoners.
- Mentally ill should be accommodated in the psychiatric wing if such wing exists in the prison hospital, or he should be sent to the nearest mental hospital for treatment. Further, if the prisoner fails to recover from mental illness even after completing half of the maximum term of conviction, the State Government should consider his case for release.
- Campus placements to the ones who have completed their education in the prisons.
- Prisoners Welfare Fund with Government contribution shall be created in all the States to undertake various welfare measures for Discharged Prisoners and their families.

- To set up a State Board of Visitors to visit prisons at regular periodicity and to report on conditions prevailing in the prisons for consideration of the State Government;
- Sanitation and hygiene: Some of the important recommendations in this area are properly equipped laundries for washing, disinfecting and fumigating clothes and beddings; ratio of latrines should be 1:7 prisoners; cubicles for bathing at the rate of 1:10 prisoners; covering of open gutters in prisons; inspection of every prison by the local Public Health Officer periodically.
- Inspection shall be carried by the advisory body at regular intervals without interference from the prison authorities. The prison administration should be brought under the ambit of the Right to Information, Act 2005.
- Use of Technology: For people on parole and for first-time offenders, it would be better if, instead of imprisoning them, the State could simply put an ankle tracker on them and provide them with a relative degree of freedom. This would also cost the State far less money to house, feed and care for them. While the state has the technical capability to do this, it does not yet have the system to monitor and ensure that people on GPS software are doing what they are supposed to do.
- Installation of CCTV cameras in the cells.
- Appointment of the Welfare Officer
- Insertion of a new Section 357-A in the Cr.P.C, 1973 for the payment of compensation to the victims of crime out of the earnings of the Prisoners under Wage Earning Scheme.
- Amending the existing Section 53 of the Indian Penal Code to include the Community services as one of the punishments prescribed under this Section.
- Amending suitably the existing Section 433 of the Cr.P.C to consider and release under the Advisory Board Scheme the Lifers who offer a good prognosis for reformation and rehabilitation even before the completion of 14 years of actual imprisonment say 8-10 years.

- Allowing NGOs and Philanthropists who are really interested in the welfare of Prisoners liberally in all the treatment programs in Prisons like Classification, Education, Vocational training, Medical and Health care, Sanitation and Hygiene, Recreation Activities etc.

Conclusion

Prison is the important wing of administration of crime and criminology in the country. Ironically the research in the development of it is still in infancy. There are many hurdles to cross for the prisons to be a reformatory institution than a custodial home of torture. The progress is mainly hindered by factors such as resource allocation, deterrent functions of punishment and rehabilitation approach. Prisons in the country shall endeavour to reform and re-assimilate offenders in the social milieu by giving them appropriate correctional treatment. Though there have been suggestions and recommendations by various committees, the major concern in India stand to be that of actual enforcement.