Rehabilitating criminals through probation and parole: a socio-legal analysis

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Abstract

In today's Modern Criminal Jurisprudence, it has been extensively discussed that criminals are not born but made, since when a crime occurs it takes place due to the culmination of various factors. Thus, modern laws try to reform criminals in order to control crime. Correctional services like Probation and Parole is an integral part of the punishment system in the contemporary legal world. Right from 1841, this method of correctional service evolved after the criminologists and legal jurists thought of means of reforming the criminals by giving them a chance to prove their worth and not confine them to the prison bars. Legal statutes like Probation of Offenders Act, 1958 and the Code of Criminal Procedure, 1973 have made probation a more viable method of dealing with offenders than imprisonment, because the judge is required to record special reasons in the judgment of a criminal case other than capital punishment and imprisonment for life stating why probation is not granted to all the eligible offenders irrespective of their ages.

The purpose of this Research Paper is to comprehensively analyze the jail reformatory system in India from a comparative perspective and argue how the system of Probation is in consonance with the present trend in the field of penology according to which efforts should be made to bring about correction and reformation of individual offenders and not to resort to retributive justice. The paper will also analyse the emerging concepts like juvenile justice administration in lights of international resolutions like the 'Beijing Rules'. Lastly, it will try to enlighten the reader about the economic and jurisprudential analysis behind prison reforms in the form of probation and parole.

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Introduction

Criminal Jurisprudence in the modern era recognizes that criminals are not born but made since when a crime occurs it takes place due to the culmination of the variety of factors; and that a good many crimes are the result of the socio-economic milieu.[3] The factors may be social and economic or even due to the erosion of moral values by parental neglect, stress or doing a criminal activity in the heat of the moment. Whenever a crime takes place it's not always that the accused had planned to commit the crime. Therefore, keeping such a man in a prison may often embitter him and when he comes out of the prison he becomes an enemy of society or the state. Therefore, there is a dire need to rekindle those people and bring them back into the mainstream of life. This type of rekindling can be best achieved through parole and probation, community service and create employment opportunities.

Notwithstanding the nature of a crime and that of the criminal, an inevitable situation or necessity is to be considered when it comes to the analyzing and punishing for the crime committed. Therefore, a well settled and accepted notion under the criminal jurisprudence, viz. "criminals are not born but made" becomes viable. In view of this notion, an attempt has been made by authors to provide a way out to rekindle, rejuvenate and reform such criminals. Both the authors with others as a Para-Legal Volunteer under the Delhi State Legal Services Authority were sent to record cases of domestic violence and drug abuse against children and women living in ‘juggies' and ‘chawls'. Majority of the houses were prone to crimes and criminals. People were highly unemployed and uneducated and were inevitably wanderers with no specific aim of life. Nonetheless, if they aimed or desired to earn their livelihood, most of them ended up being criminals callously due to psychological, social, economic and political factors.

In essence, the root cause of the crime must be the paramount variable while awarding and adjudicating a case and thereby leading propensity towards the principle ‘criminals are not born but made' invariably. The socio-economic condition of a person is one of the major factors that lead him to commit a crime; and the person committing such crime should be sentenced with humane custody, protecting his basic rights. Therefore, the objective of the punishment should be rekindling, reformation and rehabilitation and not deterrence. The

[3]SabyasachiGhosh, *Probation and Parole as Methods of Mainstreaming Criminals: A Socio-Legal Analysis from Indian Perspective*, SSRN (2008) https://poseidon01.ssrn.com/delivery.php?ID=803090114088005101001122098069019103016052085015079029126118078027126067064115119030006052013006037046016116071064007094115003048011066061044007103020122101107100025091015052087116007004069096121123115095100068084125111013090092094106121011102120104098&EXT=pdf.

present argument, however, in no manner whatsoever, professes the removal of the deterrent factor from the criminal justice system. It merely professes a paradigm shift from an isolated debilitating-deterrent system of punishment to a humanely-incarcerated and reformative system of punishment, simultaneously maintaining a chunk of deterrence to tackle with heinous crimes, whenever necessary.

In view of the above-discussed paradigm shift, Parole and Probation infallibly serves to maintain the objectivity of humane-incarceration and reformative system of punishment. This affirmative shift in the field of penology has vehemently formed one of the unequivocal tools in the rejuvenation of the criminals and thereby led to the flourishing of one's self as well as the nation. After putting reliance on my personal experience as discussed initially, such precariously existing problems may be well-solved in tandem with both legal and social aspect. The entire discussion undoubtedly signifies a propensity towards the humanitarian aspect maintaining the chunk of deterrence in the field of Indian Penology. In case the reformative and rekindling sphere is removed from the system of punishment, one could possibly imagine the probable repercussions on every practical aspect. Therefore, in such a dominantly existing deterrence sphere, the State may satisfy its conscience but subsequently, it hideously kills the remaining humane corner in that person who committed the crime. It consequently ceases and diminishes the scope of bringing the person back into the mainstream of life and society. Mere satisfaction of the state's and people's conscience albeit deterrence would be a paradox in itself contradicting the humanitarian objective of the punishment.

Therefore, the authors attempt to elaborate the socio-legal aspect of parole and probation in view of their merits and challenges faced in their execution. Furthermore, legislation and other statutes governing parole and probation have been elaborated with full enormity. In the later section, the paper specifically emphasizes on how parole and probation can be used as a tool to rejuvenate, rekindle and bring back the juveniles to the mainstream of life. Since children are considered as future of the nation, their reformation should always remain the utmost importance.

Evolution of Legal Framework

Evolution

Since the ancient times, the complexities of human nature have played an important role in the offender’s mind. It has been observed that the probation system has its roots from earlier times but was legally recognized in India for the first time in 1898 through Sec. 562 of the

then Criminal Procedure Code, 1898. After analyzing the mentioned section, it was found that it actually originated from the English Probation of First Offenders Act, 1887. Further, Sec. 562 of the Code of Criminal Procedure, 1898 was amended by the amendment of Criminal Procedure Codein 1923 which drastically changed the law of Probation in India. To put further light on the matter it has been found that the older S.562 did not contain any specific provision empowering High Court as a court of Revision in Probation matters which was granted in the amended section. Also, due to the amendment now a court may grant probation even in the case of offenders above the age of 21 years for offences punishable with not more than 7 years and in respect of woman offenders below 21 years of age for offences punishable with death or imprisonment for life.

Early Central and State Laws

During 1931, the Government of India circulated a proposed draft of Probation of Offender Bills to the then local governments, provinces and princely states for their views. In pursuance of the above suggestion, some provinces enacted their own probation laws. The enactments include:

1. The C.P. & Berar Probation of Offenders' Act, 1937
2. The Bombay Probation of Offenders' Act, 1938
3. The U.P. First Offenders' Act, 1938

After India attained Independence, a joint committee was set up to provide for the release of offenders on Probation. This bill was presented in front of the LokSabha on the 25th of February, 1958. This bill was finally passed by the Legislature to give shape to an Act called Probation of Offenders' Act, 1958 on May 16, 1958. The objective of the Probation of Offenders' Act, 1958 was to protect the society by preventing crimes through rehabilitation of the offenders in the society as its useful member without curbing his freedom, subjecting him to rigorous prison life and depriving him of his social and economic obligations.

The above-mentioned Act also seems to have accomplished this object by replacing punitive approach of punishment with reformatory ones. Further, it is also significant in the modern liberal trend of reform in the field of penology with provisions for reformation, social rehabilitation and incorporation of other effective measures. Parole in India has emerged out as a necessary outcome as the treatment faced by the political sufferers in prisons during the period of their imprisonment is anything but humane. While the repetitive protests in prisons with the authorities continued, meanwhile, the reformative trend started gaining moment in

the field of penology all around the world.[4] It was, therefore, realized that confining convicts in the closed prison cells would hardly improve or serve the purpose of the punishment. The overall effect brought significant changes in the prison administration in India in the mid-20th century. In India, the laws provide for Parole only in cases of serious offences where the offenders have served a long time in prison. To look after these matters a Parole Board has been set-up and it has been given the duty to determine when an offender should be released on parole. The decision is based on the needs of the prisoner as well as the security of the community.

Reference to International Customary principles on Parole and Probation

Often it has been found that being dissatisfied with the functioning of law and justice, especially that of the police force, enrages people to react spontaneously and mercilessly resulting into beating or even killing the criminal apprehended by them. Therefore, people inevitably take law into their own hands. Subsequently, it has also been felt that such a criminal justice system shall sublimate or suppress these animal feelings aroused. Earlier, the logic was that a criminal is a source of infection to the society and therefore he deserved to be expiated. Various methods of punishments that had been adopted since earlier times included stoning to death, putting an iron rod on the back, dismemberment of limbs and other severe physical tortures. In Expiation form of punishment often the criminal is taken as a scape-goat for letting out the outraged feelings of vengeance of the society created by the offence. However, the penologists are against this form of expiatory punishment. If we look at the Article 5 of The Universal Declaration of Human Rights, it states that no one shall be subjected to torture or cruelty or inhumane treatment of punishment.

Also, in The International Covenant on Civil and Political Rights it has been mentioned in Article 6 that: -

1. No one shall be deprived of his life arbitrarily;
2. Death sentence is to be abolished or if allowed should be restricted to some serious crimes;
3. There shall be no genocide;
4. There shall be right to seek pardon;
5. There shall be no death sentence for persons below 18 years or for a pregnant woman.

Therefore, a bare perusal of this provision signifies that such punishments in today's world are considered to be an act of brutality and an expression of utter internal dissatisfaction

[4]SmitaChakraburty, *Mumbai's Prison Protest highlights the Cruel Custodial Practices in Jails*,THE WIRE(2017)https://thewire.in/152510/mumbais-prison-protest-highlights-the-cruel-custodial-practices-in-jails/.

which is often disproportionate to the crime caused. One of the main objectives of punishment is protecting the society from the actions of criminals. Most of the philosophy of punishment has been construed on the basis of this thesis. It is believed, that being confined within walls, a criminal becomes harmless to the society. In today's' era, the attitude towards punishment is that it is considered to be an individualized treatment process that responds to every individual event of the crime. Therefore, the question of deterring takes a secondary stand and the vengeance of the society based on who are the offenders and what are his offending phenomena are given left in the foreground.

Reformation and social rehabilitation of criminals or offenders are the important aspects with respect to the objectives of punishment in Criminal Justice administration in today's' world. The aforementioned two objectives can best be fulfilled if we can effectively introduce the system of Probation and Parole in Criminal Justice Administration. The year 1971 was declared as "Probation Year" by the Govt. of India in the backdrop of the alarming increase in crime, especially among teenagers and ideological breakers of the law. Further, Probation as a potent instrument, accepted in all civilized countries, for achieving social rehabilitation of the offender and the prevention of recurrence of crime, has been acknowledged by all serious administrators, judges, jurists, students of criminology and the heads of institutions of social welfare. They regard probation as an integral part of the social defence and correctional therapy. With proper opportunities for rehabilitation and incentives to conform to the needs of social behaviour, the society may hope to salvage the freshmen in the field of crime.

Present Status of Parole and Probation in India

In India even though “Right to Equality” is guaranteed under Art. 14[5] of the Constitution, it fails to serve the purpose sometimes. As a result, many of the people serving their trial don't even get the basic human needs. Correctional services like Probation and Parole, in reality, are a compromise between the twin objectives of punishment- the protection of the community and the rehabilitation of the criminal. The success of the scheme lies in the achievement of fulfilling these two social objectives. The main statute that governs the system of Probation and Parole in India is the Probation of Offenders Act, 1958.[6]

Most often it has been observed that imprisonment has become the usual mode of punishment in almost all communities of the world, people have this wrong notion that almost all purposes of punishment would be satisfied by imprisoning the offenders. But, the Probation

[5]CONST. INDIA art. 14.

[6] Probation of Offenders Act, 1958, No. 20, Acts of Parliament,1958 (India).

of Offenders Act, whose purpose is to reform the offenders by subjecting them to correctional techniques in the prison, largely differs from this traditional view. However, many criminologists contradict the efficacy of the prison system in reforming hardened criminals. Hardened criminals stand out as a separate category not amenable to rehabilitation and it is always this category which plays the role of converting many ordinary new criminals into hard-core criminals.

In India, the demand for security and to ensure peace and good behaviour from certain classes of offenders implicitly endorses the use of non-punitive measures. The use of preventive procedure aims at affording the offender an opportunity to disengage himself from the path of criminal career with a view to reinforcing the interests of public safety and public tranquility. The law prescribes a detailed procedure for the exercise of this jurisdiction. The magistrate is required to inquire into the truth of the given information by making inquiries as "nearly as may be practicable, in the manner hereinafter prescribed for conducting trials and recording evidence in summons case" which would necessarily involve, without being too technical, the information as to the antecedents and circumstances of the offence as well as the offender. The exercise of this power is dependent on the information submitted to the court by police agency during an inquiry. It may also be exercisable in certain cases after the order for keeping good behaviour has been passed by the court. The existence of adequate machinery for the discharge of entrusted functions is a sine qua non for the exercise of this discretion, as because the laws while reckoning the fact of corrigibility of the offender do not permit that the interest of public safety to be bypassed. The Hon'ble Supreme Court of India in the matter of *Divisional Officer v. T.R.Chellappan,* had ruled that "the order of release on probation is merely in substitution of the sentence to be imposed by the Court and that the factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation".[7] Further, it can be said that the case involved statutory provisions incorporating the principles underlying the proviso (a) to Article 311(2)[8] of the Constitution of India to the effect that if a person has been convicted on a criminal charge, the disciplinary authority may consider the circumstances and make such orders thereon as it deemed fit. Also, the Supreme Court in Bakshi Ram's case has gone further and ruled that S.12[9] of the Probation of Offenders' Act, 1958does not obliterate the stigma of conviction.[10] But apparently to overrule the decision of the High Courts in *Divisional Officer v.*

[7]Divisional Officer v.T.R.Chellappan, (1976) 3 SCC 191.
[8]CONST. India art.311(2).
[9]*Supra* note 6 at Section 12.
[10]AIR (1990) SC 1013.

T.R.Chellappan[11],the apex court reasoned "A perusal of the provisions of the Probation of Offenders'Act, 1958, clearly shows the mere fact that the accused is released on probation does not obliterate the stigma of conviction".

It can be well argued that an offender can be transformed into a normal citizen if he co-operates in the procedure. Therefore, the active and willing cooperation of the offender has to be enlisted by the agencies in charge of the Probation system, *viz*- the Court, the Probation Officer and the social organization which may sponsor his case. A close watch over the offender's behaviour during the period of Probation is mandatory and the report of the Probation officer is primarily considered while granting parole. For effectiveness, the application of probation and the follow-up procedure, demand the probation officer's active involvement. The function that the Probation Officer undertakes include[12]: -

Making preliminary investigation

Making post-conviction supervision

Making friendly behaviour and kind disposition to win the cooperation of the delinquent's companions, family and social organization.

The major significance of a person being released on probation compared with a person who has been released from prison is that the social stigma attached to the crime does not remain any longer. It is guaranteed under Sec. 12 of the Probation of Offenders' Act, 1958. Therefore, a person released on probation does not suffer disqualification in terms of contesting elections, getting employment either in the private or the governmental sector.

Significance of Parole and Probation for Juveniles in India

The basic premise of most efforts to reform prison system is that it can be done without any fundamental transformation of the structure of the society as a whole. The liberal perspective on reform is that fundamental changes in the prison system are possible without fundamental changes in the rest of the society, while the radical perspective is that fundamental changes in prison can come about only through radical changes in the society itself. The attitude of the society needs to be changed in respect of prisoners. Prison constitutes important institution which protects the society from criminals by confining them within the four walls and curbing their liberty. This may or may not lead to social change but surely changes the psychology of the convict, and a sense of paranoia and social shame starts to build up in his

[11]Divisional Officer v. T.R.Chellappan, (1976) 3 SCC 191.

[12]*Supra* note 6 at Section 14.

mind. The mechanisms of social change can be varied and interconnected. Several mechanisms may be combined in one explanatory model of social change.

In India, the main objective of Criminal Law is to protect the society from the reoccurrence of crimes and criminals. Therefore, the duty of every court is to award proper sentence having regard to the nature of the offence and the manner in which it had been executed or committed, etc.[13] Law relating to prisoners is the main area where the main goal of the instrumentality of law is to achieve a social change through the punishment of offenders.[14] The law indicates that the terms of the crimes are within the society, then why punish the offenders; rather, they should be reformed and rehabilitated. A person with a sick mind can never be rectified by enclosing him in the solitude of a room; it only leads to the furtherance of his sickness. It is to be kept in mind that He is a sick person and by making him a prisoner, he does not cease to be a person. Justice Krishna Iyer has stated that 'prisoners are built with the stones law'.

The occasional lapses which are the outcome of extraneous factors are curable if proper guidance, assistance and supervision are pressed into action. It cannot be denied that till now individualization of offenders punitive or otherwise, has failed to achieve the desired objective of prevention of recidivism or in checking the growth of criminality. Further, the prison has no utility in case of short-term sentences. For short-termed young offenders, the association with hardened criminals inside prisons instead of reforming them for the better pushes them further into the darkness of the criminal world. This, in turn, acts as a breeding platform for a class of persons making their way into a career of crime. Juveniles often commit crimes out of social, psychological and non-mature factors existing inevitably around them due to such vulgar and vicious surroundings;they invariably turn out vulnerable to commit crimes without considering its effect on himself the victim as well as the society on the whole. Therefore, the causation of crimes must utterly be given due significance in order to positively escalate the reformative and rehabilitative nature of punishment that the entire criminal system seeks to achieve. Sentencing a convict solely on the basis of the nature of his crime and the intensity of heinousness cannot be possibly justified. It not only frustrates the succinct objectivity of the criminal justice system but also violates the very sanctity of the fundamental principles of reformative jurisprudence attached to it.

In India, The Apprentices Act 1850 was the first statue to deal with children in conflict with the law. It provided that children under the age of 15 who were found guilty of committing

[13]SevakaPermual v. State of Tamil Nadu, AIR (1991) SC 1463.
[14]Mohd.Giasuddin v. State of A.P, AIR (1977) SC 1926.

petty offences were to be placed as an apprentice in trades.[15]Further, there were certain provisions such as Sec. 82 & Sec 83 of the Indian Penal Code[16], 1860, protecting the rights of the children. Subsequently, a jails committee was appointed in 1919 and by its recommendations, different legislations dealing with children were enacted in different provinces. Therefore, the first Children Act was the Madras Children Act 1920 followed by Bengal in 1922 and Bombay in 1924. Although all the Children Acts had similarities. They had prescribed different cut-off ages for the definition of children and included two different categories of children, viz. delinquent and neglected children. However, 'neglected children' have been defined differently in each of these legislations. They also provided for the establishment of separate children's court to deal with all the cases falling under the Children Act. Moreover, provisions for the establishment of residential institutions for children, both during the pendency of their proceedings as well as after disposal of their cases, needed to be established under the Act. It further directed them to be sent to an institution and prison sentence was permitted only in exceptional circumstances.

The first central legislation was The Children Act 1960[17], which was enacted as a model legislation to be followed by the states while enacting their own Children Acts. The Central Act[18] extended only to the Union Territories and its objective was to "provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union Territories." The Act provided for a discriminatory definition of a child since a boy below 16 years of age was considered to be a child, whereas for a girl it was 18 years.The Act also established two separate bodies: one to adjudicate matters pertaining to children in conflict with the law and another for children in need of care known as the Children's Court and Child Welfare Board respectively. Despite all these legislative enactments, the juvenile justice system was still not devoid of problems. The Supreme Court of India in *SheelaBarse v. Union of India* observed that any law passed by the Parliament should also contain mandatory provisions for ensuring psychological, economic and social rehabilitation of the juveniles who are either accused or destitute or abandoned due to some inevitable reasons. The Court also emphasized on the implementation of the legislation, and not merely on the formation and designing of the

[15]VedKumari, *Juvenile Justice: Securing the Rights of Children during 1998-2008*, 2 NUJS L. REV.557, 558 (2009).
[16]The Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 §§ 82, 83.
[17] The Children Act, 1960, No. 60 Acts of Parliament, 1960 (India).
[18]*Ibid.*

legislation.[19]

On November 29, 1985, the United Nations Standard Minimum Rules for the Administration of Juvenile Justicewas adopted by the UN General Assembly wherein the "juvenile" and "juvenile justice" were used for the first time in international law which is also known as Beijing Rules. Beijing Rules are divided into six parts covering the whole of juvenile justice process and they are:

1. General Principles
2. Procedure of Investigation and Prosecution
3. Adjudication and Disposition
4. Non-Institutional Treatment
5. Institutional Treatment, Research and Planning
6. Policy Formulation and Evaluation.

This led to the enactment of Juvenile Justice Act 1986 in India for the care, protection and rehabilitation of neglected children and juvenile delinquents. With the enactment of the Act in 1986, two distinctive types of machinery were set-up to deal with "delinquent juveniles" and "neglected juveniles". Further, the children of both the groups were housed in Observation Homes as long as their inquiries were pending before the respective competent authorities and the previous Act was later replaced by the Juvenile Justice Act, 2000[20].

The deficiency in the former Act of 1986 was the main reason for such replacement as it failed to provide for a different approach towards neglected juveniles and delinquent juveniles. Juvenile Justice Act, 2000 specifically provides for "juveniles in conflict with law" and "children in need of care and protection" to be kept separate during the pendency of their inquiries. Further, this Act of 2000 has been timely amended according to the needs but in wake of the Delhi gang-rape case, it was criticized widely due to its helplessness against the heinous crimes committed by juveniles. Therefore, a new Act came into force named The Juvenile Justice Act, 2015[21].

Societal and Practical Problems And Their Solutions: Recommendations

Several countries have incorporated some very efficient methods of managing and administering their prisons. The United Kingdom is one such example. Certain societal and legal problems have highlighted below along with the necessary changes which need to be brought about effectively.

[19]SheelaBarse v Union of India (1986) 3 SCC 632.
[20]The Juvenile Justice Act, 2000, No. 56, Acts of Parliament, 2000 (India).
[21]The Juvenile Justice Act, 2015, No. 2, Acts of Parliament, 2016 (India).

No specialized Departments to conduct a proper study on rehabilitation

In UK, prison administration and prison management are the significant areas of policy-making and research. It has the Home Office Research Unit, which functions in collaboration with university's criminology departments and social work departments to bring in effective policy changes through detailed analysis of the prison administration and performing an extensive research on the process of rehabilitation. Criminology and Correctional Social Work or Criminal Justice Social Work are important disciplines in many universities abroad. The state employs graduates from these disciplines as social workers, probation officers, parole officers and aftercare workers to work with prisoners in jail and those who had already been released. There is continuity of policy-making, and changes are based on ground realities and data-based research, after extensive debate and discussion with key stakeholders.

Policymaking at a 'Halt'

In India, however, policy-making on matters relating to criminal justice is left to the wisdom of police officers and judges. Moreover, recommendations on prison administration and prisoners' rehabilitation by the Justice Mulla Committee (1983) and the Justice Krishna Iyer Committee (1987) fell on deaf ears.

Ineffective and Non-Influential Administration

Prisons are a state subject. There is no ministry at the Centre to look into prisons and prisoners' rehabilitation. Despite the fact that The Bureau of Police Research and Development and the Ministry of Home Affairs have incorporated a Correctional Administration Wing and Correctional Administration Division they haven't possessed much influence on policy-making.

Corruption and Unscrupulousness

The "third degree" is said to be familiar in India. The use of such mechanism aggravates the situation for the accused and he, therefore, loses the left respect for the police and the judicial system of the country. The society loses thereby loses that person abruptly who could have been possibly brought back to the mainstream of life. The unscrupulous and bribe-ridden police system aggravates the victimisation of an accused horrendously.

Political Will

Turning our correctional system from warehousing structures for marginalized sections into human resource-building facilities requires financial resources and trained human power. But more importantly, it needs political will.

Rehabilitation within the walls

Previous efforts to bring about a qualitative change in our prisons have been successful. For example, the Tihar prison had initiated counseling, mental health programmes, support services for children of prisoners, vocational training and job placement in collaboration with NGOs. Maharashtra's prisons have earned a laudable record of involving educational and academic institutions along with the voluntary organizations to provide educational, recreational, legal, vocational and family support services for prisoners, and to foster research activities around prisoners' rights and rehabilitation. Initiatives like open prisons (without walls) and open colonies where selected life imprisonment prisoners are allowed to live with their families and go out during the day for work have been running successfully in Rajasthan, Maharashtra and Uttar Pradesh. However, in the absence of continuity in correctional philosophy, these remain islands of excellence.

The superfluous existence of Elitism

We often hear in the media reports of 'special treatment' to a VIP prisoner or the release on parole of a heinous offender, or a celebrity, the humanisation agenda is set back by a few years, and the government rushes in to prove its credentials of being a 'hard state'.

Prison, not a home

As long as prison reforms are viewed through the lens of leniency to people who have offended society, age-old traditions and ad hoc changes will continue to rule our prisons. We must realise that it costs money to keep a person in custody and with no guarantee that he or she will come out a better human being, such expenditure becomes all the more futile. The use of the prisons should only be vested for those who are necessarily required to be imprisoned rather than as a quick-fix solution to 'invisibles' people (by putting them behind bars). Our prisoners, more often than not, end up there due to social inequity and injustice.

Will of the policy makers

Our law and policy makers must show courage and will to move towards this kind of change. The author's experience, during the visit to vulnerable places and people in New Delhi agglomerates to the fact that it is the will of policy makers and executors to come forward and eradicate this ferocious and dampened picture of the society. The reason which compels the authors to finish on this note is that such vulnerable people are languishing helpless with no hope of rejuvenation and reformation left. Therefore, it is high time for the policy makers and the executors to act smart for the helpless and vulnerable ones and lead to a better future of this country.

Conclusion

The main goal of these correction systems like Probation and Parole is the prevention of crime and reformation of the offenders and is to engage them so as to prevent mental disorder and to enable them to contribute to the cost of their maintenance. But the release of the offender for good conduct without the supervision of concerned authorities is unjustified and undesirable as it defies the very definition of probation. The violation of conditions of probation leads to its revocation and imposition of the suspended sentence, which implies that there must be someone to watch and ensure the compliance of conditions by the probationers. Further, an abuse of the system is at its peak in our country and there is a dire need for police officials to acknowledge that the parole system is being misused and find ways to ensure that parole laws are properly enforced in prisons across the country. When there is no one to enforce these conditions, practically it means there is no condition. This is the present scenario due to the absence of strong public protest, court supervision or any other controlling authority, which can detect and report violence to the Court. The correction systems cannot be successful unless we have a much larger number of courts with time and skill at their disposal.

Moreover, anadequate number of criminal courts at the block and municipal levels to deal with the simpler run of first offender cases needs to be established, skimming of the lighter species and leaving the toughest type of cases to the regular, salaried magistrates, leading local men and women with balance and poise, various professionals of different fields with aptitude and responsibility, may be hand-picked and benches need to be constituted comprising them to reflect a variety of experience and talent. This scheme will diversify and strengthen the judicial system, quicken the pace of disposal and involve the community in the social side of the administration of justice. Also, it will also harmonize the spirit of Article 40[22] of the Constitution of India. It has been felt that close cooperation and coordination among all the agencies concerned with the working of probation which sadly missing for the time is being which is somewhat a failure of the cherished goals of correctional law. An honest endeavor in this respect is a dire need of the time, so that the non-institutional treatment cum case disposition method of release through the correction system in the country on good conduct is put in its proper perspective so that modern reformatory object of criminal justice is achieved in letter and spirit, and also the noble wishes of the makers of the act.

[22]CONST. INDIA art. 40.