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## Rehabilitation of Prisoners in India and USA

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### Abstract

The duty of a sovereign is not limited to punish, restrain or deter a criminal or potential criminal. It must work beyond to facilitate a person with all those basic necessities or to put the person in such a position that it becomes less likely for him to run afoul of the law. This, act of the sovereign to bring change in the person and making him a clean law-abiding member of the society is known as Rehabilitation. [1] It is the most important stage, as no matter how well managed the prison is, the longer an offender stays in the prison the greater is the risk of psychological harm caused to him. [2] On the other hand with longer duration of imprisonment the stigma of the society gets enrooted even deeper.

Thus, by looking into these problems the penologist time and again made attempts to improve the punitive provisions of the society that will remove the criminal behaviour in the society but not the criminal person from the society. Though the concept of imprisonment still remains in every society yet after-care programs and services are provided to the released inmate of the correctional institutions to help them to restart a fresh clean life in a better surrounding.

This project studies the last stage of criminal justice system, i.e., the stage of rehabilitation. It makes a voyage to understand the notion of the stigmatised society and its pragmatic shift in the approach of managing crime and criminals. The modern legal framework of India and USA is studied and compared for coming up with suggestions for improvement in present Indian policies.

**Keywords:** Rehabilitation, Prisoner, Justice, Model Prison Manual, After-Care

### Introduction

*“Crime is the outcome of a diseased mind and jail must have an environment of hospital for treatment and care”*

*-Mahatma Gandhi*

The criminal justice mechanism begins with the filing of FIR and it ends with the reintegration of the criminal in the society after he has served his due term. The theory behind, is the main goal of criminal justice, i.e., not to punish the criminal but to treat the disorderly behaviour and remove the cause of such unruly behaviour from the society. This theory is preferable as it both prevents recidivism and also at the same time improves the society making it less favourable for breeding new criminals.

This concept of rehabilitation is based on the assumption that the offender commits the crime not on free will but because of some motivating factors. [3] It aims to rehabilitated and reintegrate the existing offenders to reduce recidivism. [4] The theory intends to inbuilt in the offenders a sense of responsibility and feelings of togetherness and commitment towards the society. The underline motto is to separate the sin from the sinners. [5] It is the after treatment and care to the offenders so that they realise their mistake and change their path and way of living. A person is a social animal and hence, he cannot live independently for a long time. Each person has other people (friends and family) whose lives are related to the offenders. His action has a direct effect on the circle of people who surrounds them more than the others in the society. Thus, by providing rehabilitation the State is not only performing its responsibility towards the offender but also to the society at large.

The process of rehabilitation is a two-way stream were constant work and counselling is essential to be conducted on both the prisoners and the society. As, neither the ex-prisoner feels comfortable to adjust with the new open world after serving years behind the bar, nor the society is devoid of sceptical attitude while letting an ex-prisoner become a member of it.

Here, comes the role of a proper rehabilitation program for ex-prisoners. It is the State who is entrusted with the responsibility to build a bridge between the deviated and/or startled ex-inmate and the stigmatised society.

### **India's Policy on Rehabilitation of Prisoners**

For ages punishment and imprisonment was seen to be the ultimate correctional process. In the modern times the function of the disciplinary institutions is thought to discover the means so as to restructure the thought process and behavioural characteristics of the prisoners. [6] By this a reformed prisoner would come from the institutional homes as a responsible member of the society. The additional duty of the penal institution to rehabilitate and re-socialised apart from confinement and punishment are very essential for a progressive socio-economic aspect of a state. Therefore, as rightly said by Justice Fazal Ali:

*"The modern concept of punishment and penology has undergone a vital transformation and the criminal is not now looked as 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...." [7]*  
(Emphasis Supplied)

Prisons were there always present in our society since the Vedic period. It was the 'house of the captives.' [8] Here the prisoners were put together without any categorisation like under trial or convict prisoner, serious or petty offender etc. Subsequently, in the modern times, after independence, the necessity to have a national policy on Prisons was recognised and which got subsequently reflected in the "Working Group on Prisons in 1972", constituted by The Ministry of Home Affairs, Government of India. [9]

### **Recent development in policy**

By way of New Prison Manual, 2016 among various new additions, have also improvised the after care and rehabilitation mechanism. The manual recognised the State's obligation to diversify and enhance the existing mechanisms for rehabilitation and reintegration of released felons. [10] The chapter XXII of Model Prison Manual, 2016 deals with 'After Care and Rehabilitation', which has thirty rules in total to address the issue of reintegration of the released prisoner by way of rehabilitation.

### **The Background Basis of Indian After-Care and Rehabilitation -Policy**

Rehabilitation has been envisaged as an essential fragment of institutional care and treatment. The 'after-care and rehabilitation services' is not a de-linked mechanism rather it is a continuation or extension of the institutional treatment programs. Thus, it is a close working relationship and effective integration is looked forward between the administrative apparatus for running these programs with the department of prisons. [12] There was no doubt that not all ex-prisoners need follow-up or after-care service facilities. And also, such facilities cannot be uniform in nature, it needs to be of such extent that each individual's need could be catered to. For instances, many prisoners coming from a rural background, agrarian and business communities are generally accepted and re-assimilated in his family and society with less or no difficulty. The only support needed by them is an opportunity of continual contact with their kin and also counselling of the prisoners before their release, in order to bridge the gap between the free society and the prisoner. [13] On the other hand there are also prisoners who consider such follow-up actions as not a helping hand stretched towards them but is a continuance of surveillance of the state over their day-to day life even after completion of their term of imprisonment. However, there is a majority of released inmates who looks at such after-care programs as a helping hand from the state for their re-settlement and acceptance in the society. And such rehabilitation is to be of such a nature that there leaves no chance of reverting to crime. [14]

### **The Objectives of State After-care services in India**

1. Providing all prisoners with required assistance, direction, counselling, support and protection,
2. Assist the outgoing prisoner to overcome the mental, social and economic turmoil,
3. Removal of social stigma that got attached with him and with his family because of the incarnation
4. Making the released person understand that he needs to adjust his habit, attitudes, approaches and also values with that of the rational appreciation by a society. Also, he has social responsibilities and obligations towards the community.
5. Assisting the released individual with satisfactory re-adjustment and re-settlement with his not only his domestic or private life, but also with his community ties.
6. Ensure wholesome rehabilitation assistance post-release.

### **The Procedure of application of after-care and rehabilitation policy**

Though after-care is ought to be provided to all the persons who got released from the prisons either with a condition or without any condition or even if he got released on a license. However, only prisoners who had served for 5 years and more are entitled to after-care services. [15] Such care is to be provided by keeping in mind the whole social situation of the individual and not in isolation. [16] The after-care service is to be provided in 3 stages, [17] viz. At the stage when the inmate is under institutional care, when the inmate is released and finally post-release period.

The after-care service and the correctional services are to be provided in-hand-to-hand. [18] A special committee was appointed for serving this purpose. The special committee was named as “*Discharged Prisoners After-Care and Rehabilitation Committees*”. It was directed to set-up this committee in every district or if not possible to set-up in every district then at state-level. The function of the committee is to plan and putting appropriate measures in appropriate places for the purpose of better and smooth rehabilitation and after-care assistance to prisoners that is to say the released prisoners. If so asked for, special focus to be made to “protect and strengthen post-release care and special emphasis be put on habitual offenders and the marginalised group of women, children, sick, old, infirm and handicapped persons. [19]

### **Planning Procedure and Guidelines**

The planning procedure is to begin immediately after the admission of an inmate in the correctional institution. [20] From the time of admission only the prison must consider the post-release needs of the inmate. He must also be encouraged to maintain such relation with the outside world as would help him to promote not only his best interest but also of his family and by this his social rehabilitation would become easier. [21] An after-care is to be according to the interest of the inmate and the planning or structure of the program must not be general for all rather it must be based on individual needs and requirements of the inmate, keep in mind the “personality, weaknesses, strengths, limitations and capacities” of the inmate. The help to be provided must be realistic and practically useful and not merely remain a glory in the papers. [22] The planning must involve the inmate to include the insider’s perspective together. Post-release life planning would make the prisoner accept the plan willingly without any hesitation or doubt like the state is just keeping an eye on them and trying to influence their day-to-day life. [23]

### **Functions Of the Concern Officers**

Every prison to have a probation/welfare/rehabilitation officers. He is to contact the inmate during the inmate’s admission-quarantine period, so that a dodge could be made to for post-released life of his. Such an officer shall also make a regular visit once in every month during the stay of the prisoner in the institution. [24] It is the responsibility to take care of all the individuals effected from the crime that is to say, the inmate himself, his family and also the victim and the family of the victim. [25] At the headquarter level, the prisoner’s welfare services should try to maintain an association with the released prisoner. [26]

### **Role of NGOs and Industry Association**

Participation of approved NGOs is extensively encouraged in the participation program and to encourage their participation in helping the government in rehabilitation projects, financial and other help as required by them should be provided by the Government. The inspector general of the prison is to be given such services in its due appreciation. [27] The rehabilitation program is to be seen as a two way process and the public too has to be made aware through various audio-visual mediums about the necessity of rehabilitation of ex-prisoners. [28] Much emphasis has to be put on agencies and individuals generous to help with or provide employment to the released prisoners. [29] Companies are to be encouraged to spend its CSR activities under the companies Act, 2013 towards rehabilitation of prisoners. State Governments are also vested with the responsibility of framing appropriate policies and changes in Chapter 80G of the Income Tax Act, 1961 for tax-deduction against donations made for the purpose of rehabilitation. [30]

### **Assistance To Be Provided by The Committee**

The space of after-care assistance is defined by a committee and the following matters must be looked after: [31]

1. Monetary assistance after release of an inmate to help him/her with employment and to reconnect with the society;
2. Food and temporary lodging assistance till proper housing provisions are made or to make arrangements at any district shelter, after-care hostel or wheresoever possible;
3. Assistance in safeguarding a proper home in urban areas, land, agricultural equipment or things which are of basic necessity.
4. Assistance in securing apprenticeship in a workshop/ technical institute/ industry/trade, and supplying with artisan’s tool or trade equipment and also assistance for starting any small business trade or stall or starting any small-scale industry or getting an employment.

5. Assistance and maintenance of relationship with the family of the prisoner and also with employers and community.
6. Similarly, preparing the family and neighbour for the receiving of the individual after his released.
5. Providing appropriate guidance in setting up a home and resettling in life,
6. Establish and maintaining proper relationship between the released individual and local police so that he is not harassed unnecessarily.

### **Adjustments To Be Made for Proper Reintegration in The Society**

In order to have the best outcome from a rehabilitation program the following adjustments are to be made by the authorities both within the individual and also in the society. [32]

1. To get cooperation in the process of resettlement from the Police, Panchayat, Community Development Officer, National Extension Service Worker, And Gram Sevak by explaining to the police the problems, needs and the background of the individual.
2. Referring the matter with a Social Service Organisation in the area where after release the prisoner is likely to settle.
3. Encouraging the prisoners to adopt good habits, grow interest in education and study, to accrue new skills and also to improve the existing ones, have health recreation and use the leisure time in a constructive manner.
4. Assisting the inmate to plan his investments, balance his budget and leave any unnecessary costly habit.
5. Provide the prisoner with any long-term medical treatment.
6. To prevent the inmates from any getting connoted with any anti-social groups or morally hazardous activities like gambling and at the same time helping in adjusting and making acquaintance with decent and reliable neighbourhood, co-residents or co-workers.

### **Providing Legal Aid**

The released individual is provided with aid in order for successful rehabilitation and resettlement, which is ensured through the intersection of “aftercare services” and planning of the after-care program. [33] The “after-care services” can make all the necessary changes in the after-care plan for the benefit of the individual. [34] The probation/welfare/rehabilitation officer is to keep and maintain all the prescribed records as required and directed by the Superintendent. [35] Also after the release there are follow-ups for next one to five years according to the requirements of each case. [36] Such follow-ups are done by the probation/welfare/rehabilitation officer through interviews and correspondences. A report of six months is to be prepared by him providing the details as to the person’s adjustments and resettlement in the society. Then the copies of such report are forwarded to both the correctional institution of the inmate and also to the headquarter’s record branch, which has a depository of all case reports and indexed centrally. [37]

### **Formulation Of Employment Opportunity**

The Industrial Department of the government is vested with the responsibility of formation of systems to ensure employment of former inmates in small scale industrial units. [38] Simultaneously, big industrial houses also look after employment of released inmates for their rehabilitation and social-reintegration. [39]

### **Comment On Indian Policy With Speaking Data**

According to the data collected and published by the National Crimes Record Bureau in the year 2007 the highest number of prisoners in India were provided with financial assistance on release with a steep fall in 2009 with only 953 prisoners provided with such assistance. The lowest assistance with financial aid on release was recorded in the year of 2001. On the other hand 2009 marked with 50721 numbers of prisoner being provided with legal aid the highest legal aid assistance of the last decade and the lowest being in 2001 with 23528 prisoners. Also, 2001 was the year with lowest number of convicts being rehabilitated with only 417 rehabilitated convicts. The highest in the category of rehabilitated convicts was in the year of 2004 with 2555.

In India the basic problem lies in the implementation of any planned rehabilitation program. Lack of motivation and urge in the prisoners needs to be address. At the same time the sceptical mind-set of the society also needs to be modified to the better. As already stated, the process of rehabilitation is a two-way stream, no prisoner may be rehabilitated unless he gets a welcoming environment in the community, he lives in. In other words, for the criminals to forget their criminal nature and past must be provided with the atmosphere of forgiveness. Similarly, for the UTPs to the society must have compassionate eyes. In the latter case the UTPs are the victim of failed criminal justice system.

The positive highlight is that the scheme of the provisions is:

1. Based on encouraging the prisoner to keep social connection as that would create and maintain social responsibility within him. Additionally, this would lessen mingling with the bad elements of the prison.

2. The legal policy is also taking up a two-way resettlement initiative. On one hand it is taking care of the prisoner's need and requirement to settle in the society and on the other hand it is also trying to moderate the stigmatised society.
3. The planning of the post-release begins from the very date of the inmates entering the prison.
4. The policy is not only limited in providing with socio-economic benefit and advancement to the prisoner but also expands itself to make him an overall better person with good lifestyle.
5. Additional provisions for women prisoners were added for with the objective of achieving the utmost important aim of providing safety, health and reformation of women prisoners. It added the provision of "*Focussed after-care and rehabilitation measures to ease women's re-integration into society*". [40]

### **United States of America Policy**

The 110<sup>th</sup> Congress of United States of America had introduced an Act "*to reauthorize the grant program for re-entry of offenders into the community in the Omnibus Crime Control and Safe Streets Act of 1968, to improve re-entry planning and implementation, and for other purposes.*"<sup>i</sup> The Second Chance Act, 2007 was introduced with varied purpose including to address the problem of recidivism, rebuilding the ties of offenders with his family and communities. The act aims to guide the lawbreakers reintegrated back into the community from imprisonment and create a self-sustaining life. It aims to do so by providing adequate transitional services for a reasonable time but not exceeding beyond a year unless more time is deemed required by a medical or appropriate professional. It also intends to provide various training to the law offenders within the prison.

### **Salient Features**

- 1 Assist the inmates at development of a benign, vigorous, and accountable family relationships and parent-child relationships; and also encourage the entire family unit to be a part of the re-entry services[41].
2. The Federal and the state government would share the funding of rehabilitation projects. [42]
3. The State applicant receiving financial aid have to provide with a comprehensive strategic annual re-entry plan along with five years performance output. The application is to be submitted to the attorney general and he is to accept the grant only if satisfied with few provided guidelines. Further to receive the grant, the applicant has to also establish a Re-entry Task Force. [43]
4. The re-entry plan is to involve all the stake holders from varied fields of public policy dealing with juveniles and adult criminals and also members of non-profit organizations (NGOs) providing re-entry services. [44]
5. Annual Report to be submitted to the Attorney General by each grantee. [45]
6. A lot of focus is provided to substance abuse treatment even a part is dedicated to family-based substance abuse treatment.
7. The Director of the Bureau of Prisons and the Attorney General is entrusted with the duties of conducting activates for re-entry. [46]
8. The Director of the Bureau of Prisons is assigned the responsibility of ensuring that the inmate serving at prison spends his last slice of his term under conditions giving him the opportunity to prepare for re-entry back into the community[47].

### **USA And India-Comparison, Inspiration and Suggestions**

1. A lot of power is vested to the Attorney General but the same is not feasible to be adopted in India as here the separation of power is stricter and an attorney is only vested with legal duty to represent a case for the state before a court. He does not act as an agent of correctional agency.
2. A lot of focus in USA is made to grant allotment and distribution. This might be adopted to a reasonable extent in India. As India does already have a well-defined separation of work and duties between central and state under schedule 7 of the Indian Constitution so a venture into the distribution of burden between state and central for grant is not required but India's policy fails to provide a detailed description like USA in allocation of what share to whom and for what purpose could and should be adopted.
3. Family based substance abuse and other assistance could also be incorporated in India like its western counterpart could be adopted as many times, if not all the time it is because of the family background the person inclines towards crime. A reformation of the family is very essential to stop recidivism.
4. Task force and other authorities are established in USA have a better ability to address the re-integration problem than one appointed rehabilitation officer in India. Thus, India may look forward to have a separate department vested with the duty to re-integrate the released prisoners.
5. India may adopt similar policy like USA of providing grant part by part on the basis of development report and not on the basis of a paper-based plan for years together.
6. Involvement of representatives from all stakeholders and not just the offender and the rehabilitation officer for making the re-integration plan would have an effect of better and wholesome development of both the released prisoner and the society.

## Suggested Changes for Indian Policy

India has clearly adopted the need-based approach of rehabilitation. [48] This is one of the four approaches that can be adopted by the state. This strategy focus on offenders' "criminogenic needs." Here the authorities provide the offender with appropriate treatment such as giving vocational training and skill programs. Overall, the approach adopted in India is though practical but still is quite primitive in nature.

However, the provisions have few lacunas and could be criticised on the following grounds:

1. The words of ¶22.05 of the Prison Manual are also too vague and it could be implied that it is only directive in nature to help all the needs. As only prisoners who served imprisonment of 5 years or more are only entitled and are able to claim for the benefit of after-care services. In the hands of the police as to who are needy thus a high chance of unreasonable preference and influence of the prisoner's background plays a vital role.
2. An office of appropriate rank is only mentioned in ¶ 22.14 of the Prison Manual. Without any specific proper details such general term is very vague and arbitrary thus creating a pool for corruption in the correctional system.
3. Given the wide-ranging issues of undertrials prolonged detentions, overcrowding of prisons, unhygienic living conditions, ill-equipped staff involved in corruption and illegal activities, and many inadequacies relating to social reintegration and healthcare, [49] practical application of the provision is very difficult especially as the number of officers required to be adopted is only one according to ¶22.14 of the Prison Manual.
4. The phraseology used is "till the time the released person reaches his family or obtains employment" a prisoner can be provided with the monetary assistance in ¶ 22.21 of the Prison Manual. Without any proper guidelines giving such a wide discretionary power to the committee is very dangerous for the justice mechanism. A corruption in the committee could defeat the very purpose of the rehabilitation and re-integration program.
5. A separate provision for reintegration of under trial prisoner can be adopted as in India society gets stigmatise with the very idea of prison. Many a times an innocent is forced to live long years behind the bars.

## Conclusions

One of the major aims of any rehabilitation program is to in vibe within the prisoners the feeling of togetherness and sense of responsibility both towards the family of the prisoner and also to the society. On the other hand it also aims to reduce the stigma of the society and helping it to neutralise its feelings for an ex-prisoner. Thus, the ultimate goal is to fill the gap of norms, behavioural discipline and way of life between the worlds that gets divided by the tall walls of the prison. However, Indian laws for rehabilitation are not apt. It has a lot of scope for improvement. The implementation policies and programs are even worse. It lacks in motivation and seriousness on the part of all stakeholders. A dedicated on-field team is equally important as a well-structured plan.

Indian need-based approach legal policy has a moderate framework in comparison with USA. The basic problem lies in the implementation of the rehabilitation and reintegration policy. It is prima facie evident that the provisions of India lack practical application. Further India also has lacunas in its provisions. On the other hand, USA has an able drafted legislation with all necessary details.

The Indian legislature did very little for prison reformation. There is a lack of human resource and finance deployment for the welfare of prisoner. The prison population comprises more under trial prisoners than real convicts however; there is no proper provision for reintegration for the UTPs. At this juncture, it is important to note that rehabilitation must not be a limited access only for the convicted prisoners (serving imprisonment sentence) but also needs to be made available to Under Trial Prisoners, as society in general gets stigmatise with the very concept of 'prison' and any person who in anyway related to the world behind bars.

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