

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS (ISSN 2582 - 6433)

VOLUME 2 ISSUE 5
(February 2022)

Email –

editor@ijlra.com

Website – www.ijlra.com



IJLRA

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 5 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis


IJLRA
INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.

Nalsar Passout

Ms. Priya Singh

West Bengal National University of Juridical Science

Mr. Ritesh Kumar

Nalsar Passout

Mrs. Pooja Kothari

Practicing Advocate

Dr. Shweta Dhand

Assistant Professor

INTERNATIONAL JOURNAL
FOR LEGAL RESEARCH & ANALYSIS

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

PRISON SYSTEM AND INMATES: NEW EMERGING REFORMATIVE APPROACHES IN INDIA

By : Dr. Priyadarshi Nagda

Assistant Professor Law, Mohan Lal Sukhadia University, Udaipur Rajasthan

ABSTRACT

Prison reform is widely undertaken in developing and post authoritarian countries. The starting point for analysis of this phenomenon, it is suggested, is the absence of public trust in police and administration that characterizes prisoners- community relations in these countries. The nature of trust is examined in general terms and related to the problem of trust in governance. Then, the problematic nature of trust of the Prison officials is considered; structural features as well as performance aspects are invoked to explain distrust in Prison system. In the penultimate section, the question of how to build trustworthy Prison system is examined in the light of what has been learnt about the difficulties of maintaining or establishing Good prison system. Process as well as substantive improvements each plays a role here. In addition to building trust, ways of institutionalizing distrust are needed. The article includes the various aspects of prison system and new tools and techniques for reforms of inmates.

KEYWORDS: Prison, Prison Reform, Reformative Approach, Inmates, Prison System in India

1. INTRODUCTION

Since Independence, prison administration in the India has been a matter of intense debate and criticism at various public forums. In the recent times, the Supreme Court of India has come down heavily on the sub-human conditions obtaining in prisons. In many States, the problems of dilapidated prison structure, overcrowding and congestion, increasing proportion of the under trial prisoners, inadequacy of the prison staffs, lack of proper care and treatment of prisoners, etc., have been engaging the attention of the press and social activists. With growing of advocacy for the protection of the human rights in the various walks of lives, the plight of prisoners has emerged as a critical issue of public policy.¹ Prisons have started getting much attention since past 15-20 years. Now, India is preparing to sponsor the phase of prison modernization scheme. It aims at the construction of more prisons, staff quarters and the renovations of old buildings. Under the new phase, usage of technology in Prison Management is added. A lot of the changes have been witnessed in the management of prisons regarding issues of security, custody, inmates and staff of prisons. In India, seeds for prison reforms were mainly sowed by the political prisoners, who repeatedly launched protests with the prison authorities and made all possible efforts to see that the rigors of prison life were mitigated and prisoners were humanly treated. Besides, the reformative global trend in penology, which was gaining momentum, also stimulated the cause of correctional methods of treatment of offenders in India. It was realised that confining the convicts in closed prison cells hardly serves any useful purpose. Let us throw a light on newly emerging reforms tools in 21st century for inmates.

1.1 Furlough

Furlough is reformatory tool emerged in this century that is often confused with parole. Undoubtedly, parole and furlough are reformative tools of the penal system, but the two are different. Furlough is a matter of right while parole is not, Furlough must be granted to the prisoner periodically irrespective of any particular reason. since the object behind this tool is merely to enable him to retain family and social ties and avoid negative effects of a continuous prison life. The period of furlough is treated as remission of sentence². Parole, on the other hand, is not a matter of right and can be denied to a prisoner even if he makes out sufficient case for release on parole, where the competent

¹ Justice for prisoners under consideration. (2018, February). Retrieved December 18, 2018, from <http://justiceforsociety.com/practice-area/justice-for-prisoners-under-consideration/>

² Bhikhabhai Devshi v. State Of Gujarat And Ors., AIR 1987 Guj 136

authority is satisfied, of course on valid grounds, that release of the prisoner in question on parole would be against the interest of society at large or the prison administration. The courts have explained the subtle distinction between the two from time to time.

A parole can be defined as conditional release of the prisoner i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Under the Guidelines, such a release of the prisoner is temporarily on some basic grounds, it is to be treated as suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies, as described above.

Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long-term imprisonment. The period of sentence spent on furlough by the prisoner need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission. A convict literally speaking must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens.³ Thus, redemption and rehabilitation of such prisoners for good of societies must receive due consideration while they are undergoing sentence of imprisonment. Both parole and furlough are conditional release. Parole can be granted in case of short term imprisonment whereas in furlough it is granted in case of long term imprisonment.⁴

1.2 Open Prison

Modern penologists believe that criminals respond more favourably to humane treatment and constructive rehabilitative process rather than to the purposeless infliction of pain in the name of punishment. Across the world, significant changes have been or are in the process of being introduced in penology aimed at meaningful treatment of criminals. Open prisons, also named as open air camps, open jails or parole-camps (being a sort of expanded form of parole), are another such significant tool of criminal reformation, Open air-institutions are essentially a 20th century device for rehabilitating offenders to normal life in the society through an intensive after-care programme.

The United Nations Congress on Prevention of Crime and Treatment of Offenders held in Geneva in 1955 defined an 'open prison' thus:

*An open institution is characterized by the absence of material and physical precautions against escape such as walls, locks, bars and armed-guards etc., and by a system based on self-discipline and innate sense of responsibility towards the group in which he lives.*⁵

Thus open prisons are minimum security' tools for jail inmates, aimed at rehabilitating

³ Asfaq v State of Rajasthan and others, 2017 (7) SC 53

⁴ Dinesh Kumar v. Govt. of NCT of Delhi, WP(C) 1229 of 2012, decided on 01 May 2012 by the Bench of Mr. Justice A K Sikri, CJ and Mr. Justice Rajiv Sahai, of the Delhi High Court.

⁵ Lopez-Rey, M. (1957). First U. N. Congress on the Prevention of Crime and the Treatment of Offenders, The. *Journal of Criminal Law and Criminology & Police Science*, 47(5), 526-538. Retrieved December 12, 2018, from <https://scholarlycommons.law.northwestern.edu/jclc>.

them in the society after final release. The open prisons provide work to the jail inmates in forests, agricultural farms and construction sites instead of allowing them to be idle inside the prison cells.

Open prisons play an important role in the scheme of reformation of a prisoner which has to be one of the desiderata of reformatory management. They represent one of the most successful applications of the principle of individualization of penalties with a 'jew to social readjustment because introduction of wages system, release on parole, educational, moral and vocational training of prisoners are some of the characteristic features of the open prison system. Besides, open prisons are far less costly than the closed prison establishments and the scheme has a further advantage of government being able to employ in work, for the benefit of the public at large, the jail population which would have otherwise remained unproductive. The open jails just need to be put into operation once and then they acquire financial self-sufficiency and the best part is that the monetary returns are positive.

During the 19th century open prisons existed in America in the name of prison farms. The convicts, who were nearing the end of their sentences, were generally transferred from conventional prisons to the open farms in forests as labourers. These open prisons however, differed from modern open prisons at least in one aspect that these were literally 'slave-camps'. However, the experience with these prison farm labourers was quite encouraging. It was found that majority of these prisoners could be trusted if engaged in corrective work outside the guarded enclosures under unarmed supervisors. Although the system involved a risk of prisoners escaping from the worksites, the number of actual escapes was so negligible that this mode of imprisonment was adopted as an integral part of correctional programme in the United States.⁶ The greatest contribution of open farms to the prison community was to develop self-reliance and self-confidence among the prison inmates by resorting to minimum security measures.

In the closing years of the 19th century, a semi-open prison institution called the Witzwill establishment was set up in Switzerland. Open-prisons in modern sense were, however, established, in UK in 1930's and in US around 1940's. Sir Alexander Parelson, the member secretary of the Prison Commission of UK from 1922 to 1927 made significant contribution to the development of open prison in England. The philosophy underlying such minimum security institutions is based on the basic assumptions that a person cannot be trained for freedom unless conditions of his captivity and restraints are considerably relaxed; that the gap between the institutional life and free life should be minimized so as to ensure the return of inmate as a law abiding member of society; that the dictum 'trust begets trust' holds good in case of prisoners as well, therefore, if the prisoners are allowed certain degree of freedom and liberty, they would respond favourably and would not betray the confidence reposed in them.

Inspired by the success of open prisons in UK and US, many countries across the world, including India adopted the said system.

In Netherlands, open prisons were established during 1957-1962 and the same were meant to serve as pre-release treatment centers operating between the period of prisoner's detention in a closed institution and his return of free life. The inmates of the open prisons were allowed to mingle freely with members of society while at work as also during leisure. The number of inmates in each of these institutions was limited to a maximum of twenty-five as a part of individualized treatment so that their individual progress could be kept under watch by the competent supervisors. Entitlement of prisoners for admission to the open prisons was and is on the basis of recommendations made by the Central Selection Committee which meets on monthly basis. The stay of a prisoner in the open prison cannot exceed five months. The open

⁶ Nagda, P. (2016). A Socio- Legal Study of Prison System and its Reforms in India. Thesis, p. 351. Retrieved 02 November, 2018, from <http://shodhganga.inflibnet.ac.in/bitstream/10603/147761/1/priyadarshi%20nagda.pdf>

prisons in Netherlands are located near provincial towns so that the prisoners have adequate chances of being engaged as wage earners by the private entrepreneurs. 30% of the total wage earnings of an inmate is deposited in his name, to be paid to him at the time of his final release whereas 10% is paid to him for his pocket expense. The inmates are, however, expected to spend their leisure time within the institutional framework with opportunities to visit the places of entertainment and recreation. They can meet their friends and relatives without any supervision and are also free to put on clothes of their choice.⁷

France also has the system of open prisons, where the inmates go for work as free workers without any supervision and return to the prison every evening or during non-working days. The scope for expansion of open prisons in France is rather limited because even the traditional prison system of France allows prisoners to work outside the institution with private employers under proper supervision.

In India, the first open prison was started in the year 1905 in Bombay Presidency, for which the inmates were selected from the special class of prisoners of Thane Central Jail, Bombay. However, this open prison was closed in 1910. Thereafter, in the year 1953, Uttar Pradesh established the first open prison aimed at the construction of a dam over Chandraprabha river near Varanasi. After completion of the dam construction, the prisoners were shifted to a nearby place of constructing the dam over Karamnasa river. The third open prison in Uttar Pradesh was made at Shahbad for digging a canal. Encouraged by the success of these experiments, a permanent open prison was started at Mirzapur on March 15, 1956 with a view to employ prisoners on the work of quarrying stones for Uttar Pradesh government cement factory at Churk, Mirzapur. Prisoners selected for the open jail from different jails of the state are transferred to District Jail, Bareilly, from where they are shifted to the open prison.⁸

Success of open prisons in Uttar Pradesh led to establishment of open prisons in many other states. In 1996, there were 24 open prisons (excluding semi-open camps) in 12 states across India. Such open prisons, usually located on the outskirts of a town fall within five kilometers of the nearest town, except in Kerala and Uttar Pradesh where the same are situated 15 to 35 kilometres from the nearest towns. The capacity of the Indian open prisons varies from less than 100 to 1000 prisoners. Some of these prisons provide work only in agriculture, some in industries, and some both in agriculture and industries.

In Delhi, for the first time in June, 2013, a proper semi-open jail was opened at the Tihar Prisons campus, and 20 inmates, mostly murder convicts were selected for it. Each of the selected inmates had to go through a tough selection process, the test including good behaviour and completion of more than 12 years of their jail term and their furnishing surety of Rs. 10,000/- each that they won't try to escape. Presently, the said open jail in Delhi covers only male inmates. The semi-open jail, converted from the staff quarters can house up to 100 inmates. Dressed in navy blue pants and light blue shirts, such inmates can go to work every day at around 06:00 am and come back to their rooms by 07:00 pm. The said convicts will stay within the jail premises but will be released out of their jails in the morning so that they can work during the day in an open environment with PWD, horticulture department or the Tihar Haat (where products manufactured in Tihar jail are sold).⁹

Researches carried out in India as well as abroad reflect that more prisoners in open

⁷ Paranjape, N. V. (2002). *Criminology and Penology* (11th ed.). Allahabad, Uttar Pradesh: Central Law Publications.

⁸ Nanda, V. Open jails are a great idea, but why do we not want more of them? (2018, June 29). Retrieved December 18, 2018, from <http://zeenews.india.com/blogs/open-jails-are-a-great-idea-but-why-do-we-not-want-more-of-them-2101159.html>

⁹ Basu, I. (2013, June 12). Capital gets its first semi-open jail - Times of India. Retrieved October 05, 2015, from <https://timesofindia.indiatimes.com/city/delhi/Capital-gets-its-first-semi-open-jail/articleshow/20549129.cms>

prisons indicate a high level of adjustment to personal problems as well as to co-inmates and the staff than those in closed prisons, which is the result of better facilities and free environment; that the inmates in open prisons exhibit more positive self-esteem and positive attitude towards co-inmates than those in closed prisons; that anxiety, insecurity and guilt feelings are higher amongst the inmates of closed jails than in those of open jails; that attitude towards authorities is more cooperative amongst prisoners in open camps than those in closed jails; that neuroticism and extroversion among convicts are found to be much less in open prisons than in closed prisons; and that inmates of open prisons show more positive attitude towards society than those in closed prisons. These findings establish the positive role of open prisons in the reformation and rehabilitation of criminals. There is a need to establish open prisons in all those states where they do not exist at present. At the same time, there is also a need to frame common rules of eligibility for admission and the facilities for inmates of open prisons in all states across the country. Then, there is also a need to ensure ruling out biases, pressures and corruption in preparing lists of prisoners to be sent to open prisons by superintendents. Courts also need to be empowered explicitly by law to send certain categories of convicts to the open prisons.

2. SELF GOVERNANCE BY INMATES

In order to ensure discipline and obedience among prisoners, experiments on self-government in prisons have been carried out in few systems, like San Pedro in Bolivia and few other states in the US. The underlying purpose of the exercise is to ensure complete or at least partial freedom for prison population from external control, which ultimately serves also as an effective tool of reformation. Under the system of self-government in prisons, the inmates elect some of their fellow prisoners as their representatives and the entire prison management is run by that elected body of prisoners, who exercise complete or at least partial control over mess and are expected to take care of the interests and welfare of their fellow prisoners.

The self-government of prisoners in Osborn USA jails proved to be very successful and even reduced the number of jail escapes. The inmates generally behaved well and never tried to misuse the liberty extended to them.¹⁰

In India, however, the system of self-government in prisons has not been much successful, because perhaps of the lack of overall moral discipline among the criminals who are generally illiterate persons from the lower strata of society. Therefore, instead of introducing complete self-government system, India has experimented with a system of partial self-government in its prisons. Under this partial system, the prisoners who have good conduct record in the prison are attached to work with jail officials and thus they act as a connection between the prison authorities and their fellow inmates. Such privileged prisoners are granted certain facilities and are even allowed to move out of the prison occasionally during the course of their work. This proves advantageous multifariously. Firstly, it develops a sense of duty, honesty, trust and loyalty among the prison inmates and secondly, it leads to a psychological effect on other prisoners by conveying that a disciplined behavior in prison can get them also certain facilities including reduction in term, of their sentence like their fellow prisoners.

2.1 Work Release

Work release is considered to be a very effective reformation tool in modern criminal justice. In this method, the prisoner is allowed to work for pay in the society for part time basis. This gives him an opportunity to mix up with the society in a normal manner without any limitations. The control of the prison authorities in, however not completely taken away since he has to work within the permitted parameters and during non-working hours, he has to return the concerned correctional institution. The correctional authorities collect his earnings and which are paid to the prisoner on the completion of sentence. However it differs from parole as inmates continues

¹⁰ Glory, N. K. (2016, February 12). *Criminology: Teaching Material*. Prepared under the Sponsorship of the Justice and Legal System Research Institute, 2009.

live in and subject to control of jail authorities except the working hour. This helps the prisoner to adjust in the situation at the work place after the release.¹¹

2.2 Vipassana

Vipassana' which means 'insight' or 'to see things as they really are' in Pali, is the essence of the Buddha's teachings. It is a straightforward way to achieve peace of mind and to live a happy, useful life. It equips one with the inner strength to face the challenges of life in a calm, balanced manner, and gain mastery over one's mind. It is a practical experiential way of understanding the mind-matter phenomenon and purifying one's mind of underlying negativities. Vipassana meditation, as taught by S.N. Goenka is being used as a prison reform measure with the ultimate objective of reducing recidivism, and reintegration of prisoners back into the society once they are released. Vipassana was rediscovered by Gautama, the Buddha, about 2500 years ago in India. Although this technique became very popular and was practiced by many at the time of the Buddha, its purity got lost in India after the Buddha's death. It was only in Myanmar (formerly called Burma) that Vipassana meditation was preserved in its true form and was passed on traditionally from teacher to student over the years. Sayagyi U Ba Khin was one of the last teachers from whom S.N. Goenka learnt this technique and brought it back to India. Today there are more than 90 Vipassana meditation centers all over the world.

The first Vipassana course in a prison took place in Jaipur, India, in 1975. However, it was only after almost 20 years that Vipassana established itself as a tool for social and prison reform in the 1990s. It was Kiran Bedi, the then Inspector General of Prisons of Tihar Jail, the highest security prison in the country and the largest in Asia, who introduced Vipassana as one of the reform techniques of Tihar jail. The tremendous impact and change that it brought about in the prisoners was the turning point and very soon more and more prisons began organizing these meditation courses for the prisoners. Today, the meditation practice is not just confined to India but its non-sectarian and universal application is being recognized in prison facilities in many other parts of the world, especially North America, where Vipassana has had the same positive effects on the prison inmates.

It was with this purpose of dealing with the emotional and psychological problems of prison inmates that Dr.¹² Kiran Bedi, the then Inspector General of Tihar Jail introduced Vipassana in Prisons. Her strong belief in 'offender rehabilitation', rather than punishment, spearheaded many fundamental and systemic changes in Tihar. Improving living conditions of the inmates, providing better facilities, dealing with corruption, ensuring improved medical services were all a part of the reform measures. To ensure that the inmates used their time in the prison usefully and productively, various educational and vocational programs became an integral part of the prison, which helped in building community as well as developing their personality in a positive manner.

REFERENCES:

¹¹ Kaur, H. (n.d.). Prisoners' Reforms in India. Retrieved December 17, 2018, from https://www.academia.edu/2221298/Prisoners_Reforms_in_India

¹² Kela, A. (2003, May 19). Role of Vipassana in Prison reform & reintegration of prisoners into society. Retrieved December 16, 2018, from <https://www.vridhamma.org/research/Role-of-Vipassana-in-Prison-reform-&-reintegration-of-prisoners-into-society>

1. Prison Reform Trust briefing. Retrieved December 20, 2018, from <http://www.prisonreformtrust.org.uk/standard.asp?id=2030> House of Commons Education and Skills Committee, 2004 report
2. Prisoners' Education Trust survey report to the All-Party Parliamentary Penal Affairs Group. (May 19, 2009). Retrieved December 10, 2018, from <http://www.open.ac.uk/cetl-workspace/cetlcontent/documents/4a8293cab678c.pdf>
3. Blomberg, T. G., & Lucken, K. (2000). *American penology: A history of control*. New York: Aldine de Gruyter.
4. Clemmer, D. (1940). *The prison community*. Boston: Christopher.
5. Garabedian, P. G. (1963). Social roles and processes of socialization in the prison community. *Social Problems*. 11 (pp.139–152).
6. Malik, K. P., & Raval, K. C. (2015). *Law and Social Transformation in India*. Faridabad, Haryana: Allahabad Law Agency.
7. Goa launches country's first jail monitoring system, *Times of India*, Issue Feb 20, 2009, Retrieved December 07, 2018, from http://articles.timesofindia.indiatimes.com/2009-02-20/goa/28028101_1_sada-sub-jail-manohar-parrikar-video-conferencing-facility, accessed on June 7, 2012
8. Prison Management System, Retrieved June 5, 2012, from http://www.powershow.com/view/15e0bc-MTExN/Prison_Management_System_PRISMS_flash_ppt_presentation