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Recidivism in India: An Analytical Study

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ABSTRACT

The purpose of punishment in India is to reform an offender and reintegrate him back into the society. But due to certain factors this process of reformation fails and further leads to recidivism. A recidivist is a person who relapses into crime again and again. There has been an increase in the recidivism rates around the world. In this research paper, the factors resulting in recidivism have been discussed, the legal provisions relating to the same in India have been mentioned along with few case laws and also the author has mentioned two extreme opposite criminal justice systems, one following retributive theory of punishment i.e. Saudi Arabia and the other, rehabilitative i.e. Norway. The impact of such systems on the crime rates and recidivism in their countries have been analyzed and finally the position of India with respect to the same has been analyzed along with some suggestions.

Keywords: Recidivism, Retribution, Rehabilitation.

I. INTRODUCTION

According to NCRB, “The tendency of relapsing into crimes by the criminals is known as Recidivism. A recidivist is a person who relapses into crime again and again.”²

According to the Washington State Department Of Corrections, “a return to a DOC facility within five years as a result of a new conviction or parole violation by an offender, who either had been paroled or been discharged from such a facility”.³

The general purpose of the prisons is to punish the criminals, to keep them away from society thus preventing crime and rehabilitating and reforming them prior to reintegrating them into society.

The recidivism rate in a country indicates the efficiency of the criminal justice system of that country. The determination of recidivism differs from country to country. According to the US department of Justice, recidivism is measured by criminal acts that resulted in rearrest, reconviction or return to prison irrespective of a new sentence within 3 years of the

¹ Author is a student at CMR University, India.

² *Recidivism*, NCRB(14th Nov 2022, 3:45pm), https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%2011_2014.pdf.

³ Michael Evans, *Recidivism Revisited*, DOC, (14th Nov 2022, 4:23pm), <http://www.doc.wa.gov/aboutdoc/measuresstatistics/docs/Recidivism%20Revisited.pdf>

Prisoner's release.⁴

II. FACTORS

There are 3 main factors resulting in recidivism among prisoners i.e. social, economic and institutional factors.⁵

1. Social Factors

- Substance Abuse:

Drug addiction is one of the main issues of today's society. Due to the lack of availability of resources to acquire or access drugs people keep committing offences to satisfy their need to consume drugs.

- Troubled childhood:

Family is one of the main Institutions of society. It shapes the moral values of a person. Most of the criminals according to criminology have troubled childhood resulting in deviant behaviour. A balanced parental supervision and a peaceful household is extremely important for a child in shaping his behaviour and personality.

- Lack of proper education

Education also plays a very important role in shaping a person's conscience and also a financially secured future which fulfills his necessities leaving him no scope to commit a crime . It instills integrity and discipline in a child thus making them a law abiding citizen.

- The Area Of Dwelling

As propounded by the philosophers of sociological school, the environment in which a person lives is one of the major contributors in determining a person's behaviour. If he is surrounded by deviants, then he is likely to become one too.

- The Labelling Theory Of Criminology

Once a person has committed a crime, then he is forever labelled as a criminal by society thus demotivating him to lead an ordinary life. For instance, once a Prisoner is released from jail, it is impossible for him to get a job and lead a normal life forcing him to return to criminality.

2. Economic factors:

Unemployment and financial instability is one of the main reasons for a person to become a

⁴ Recidivism, NIJ,(Nov 14th 2022, 4:49pm), <https://nij.ojp.gov/topics/corrections/recidivism>.

⁵ S. Manikandan and K. Jaishankar, 'Recidivism among Prisoners in Tihar Jail and Contributing Factors: A Qualitative Study' (2018-19) 46 & 47 IJC 46.

criminal. In order to satisfy his needs, he starts committing petty crimes which eventually becomes a habit for him.

3. Institutional factors

Lack of institutional rehabilitation:

Prisoners surrounded by other violent criminals with lack of rehabilitation programs leaves no scope for personality development thus resulting in recidivism after getting released into society. In order to fit in, they start committing crimes again.⁶

III. STATISTICS IN INDIA

In India, the recidivism rate in 2015 was 8.1% which then reduced to 6.4% in 2016 but this was not because of the efficiency of the prison system but because of a reduction in the conviction rate and an increase in the pendency rate in 2016. It was reduced to 46.8% in 2016.⁷ And in 2019, the rate of recidivism was 3.6% and in 2020, it was increased to 4.7%

According to the latest National Crime Records Bureau numbers for 2021, the conviction rate is 57% while pendency has increased to 91.2 per cent.⁸

IV. RELATIONSHIP BETWEEN IMPRISONMENT AND RECIDIVISM

The effect of imprisonment on prisoners can mainly be either deterrent or reformatory. The criminal behavior of a person can be remedied through correctional methods inside a prison by developing skills and values of the prisoners. Through these correctional methods, the vices and malignance are worn away.

According to a different line of reasoning, imprisonment can have a deterrent effect on offenders thus stopping them from committing any crime. But this necessarily is not the case in every instance as the aspect of severity can be subjective. One of the basic questions that deterrence theory asks is if a particular punishment or sanction results in an elevation of law abiding behavior.⁹

There are generally two types of deterrence: General deterrence which focuses on whether the criminal sanctions imposed on one person is deterring the other from committing a crime. The

⁶ Subhasree Neogy, *An Analysis On Recidivism In The Indian Justice System*, PROBONO INDIA,(Nov 14th 2022,7:00pm), <http://probono-india.in/research-paper-detail.php?id=631>.

⁷ *Supra* note 4.

⁸ Sachin P Mampatta, *Share of 'habitual offenders' among convicts lowest since 2016: NCRB*, BUSINESS STANDARD,(Nov 14th 2022,7:21pm), https://www.business-standard.com/article/current-affairs/share-of-habitual-offenders-among-convicts-lowest-since-2016-shows-data-122090501148_1.html.

⁹ HONG LU & TERANCE MIETHE, *PUNISHMENT: A COMPARATIVE HISTORICAL PERSPECTIVE*,204, CAMBRIDGE UNIVERSITY PRESS,(2005).

other one is Specific Deterrence whether the criminal sanction imposed on a person is deterring him from committing any further crime.¹⁰

For example according to the available data, the deterrence method of punishment does not work in the United States as two thirds of Prisoners are rearrested within 3 years while it works in Saudi Arabia and China but at the cost of personal freedom as they tend to be repressive in nature when compared to the United States.

V. LEGAL PROVISIONS DEALING WITH RECIDIVISM IN INDIA

- Code of Criminal Procedure, 1973

Sec.110: Security for good behaviour from recidivists

This section talks about habitual offenders of offences like kidnapping, abduction extortion, cheating, mischief or a habitual offender under section 489A of IPC or a habitual offender under the drugs and cosmetics act the foreign exchange Regulation Act the Employees Provident Fund the prevention of Food Adulteration Act the essential commodities act the untouchability offence act the customs act the foreigners act etc.

If he is so dangerous and hazardous that he is a threat to society at large, then the court can draw an inference that he is a threat to society unless kept captive.

Search inference can only be drawn when there is a compulsory testimony having some credit in abundance to prove the same exists.¹¹

Section 365: order for notifying address of previously convicted offender.¹²

According to the section a magistrate of the first class or a judicial officer may impose a condition upon a previously convicted person to provide his residential address and inform any changes regarding the same for 5 years from the date of his release from jail.

- Indian Penal Code 1860

Section 75: Enhancement of punishment¹³

According to the section if a person is convicted twice for an offence mention under chapter XII of IPC that is offences relating to coin and government stamp

And offences under chapter XVII i.e. Offences against property. Then his punishment would be

¹⁰ *Id.*

¹¹ Isha Gupta, *Concept Of Recidivism In India*, RESEARCH GATE,(Nov 15th 2022,3:14am), https://www.researchgate.net/publication/311922915_CONCEPT_OF_RECIDIVISM_IN_INDIA.

¹² Code of Criminal Procedure, § 110 No. 02, Acts of Parliament,1972(India).

¹³ Indian Penal Code,1860, § 75, No. 45, Acts of Parliament,1860(India).

enhanced. He would be punished with imprisonment for life or imprisonment up to 10 years as it is evident that the previous punishment provided by the state was not effective.

Section 310 and 311:

According to this section, people who have been habitually associated with others for committing robbery or stealing children accompanied with Murder is a Thug. And the imprisonment would be for life and the offender shall also be liable to fine.

Section 400:

This section punishes those persons who belong to a Gang of persons who make it their business to commit dacoity.

The word belong means persons who habitually commit the crime.

Section 401:

Punishment for belonging to a Gang of Thieves.

The same principle is followed in this section. Persons who belong to a gang of thieves or robbers who habitually commit these offences shall be punished with upto 7 years of imprisonment and liable to fine.

Section 413: Habitually dealing in stolen property

Whoever habitually receives or deals with stolen property shall be punished with imprisonment for life or up to 10 years and shall also be liable with fine.

A Person who receives or deals in various stolen properties in one day cannot come under this category. It must be proved that it is on different occasions on different dates.¹⁴

- Indian Evidence Act 1872

Section 54: Previous Bad Character Not Relevant Except In Reply

In criminal proceedings, if a person has a bad character then it cannot be taken into consideration unless evidence has been given that he has a good character.¹⁵

Evidence of general bad repute and evidence of previous conviction

In the case of Bai Chaturi v. State, it was held that explanation 1 of section 54 provides that the section in question does not apply to cases where the bad character of the person is itself a fact in issue. Explanation 2 provides that any previous conviction can be evidence of a bad

¹⁴*Supra* note 10.

¹⁵ Indian Evidence Act 1872, § 54, No. 1, Acts of Parliament, 1872(India).

character.¹⁶

In the case of *Mankura Pasi v. Queen Empress*¹⁷ evidence of the bad character of the accused was produced in front of the court. It was held that since the character of the accused was not a fact in issue in this case, such evidence is inadmissible.

In the case of *Bonai v. Emperor*¹⁸, it was held that if the evidence has been provided with respect to the previous convictions against property or for bad livelihood as evidence of habit instead of character, then such evidence must be considered. It was also held that, there must be at least two or more offences committed by the offender in order to constitute a habit.

VI. DETERRENCE OR REFORMATION?

Saudi Arabia:

A Different origin and custom can be witnessed in Islamic law when compared to other legal traditions. The main source of Islamic law is the Hadith that is the teachings of the prophet.

The Islamic law i.e. Sharia imposes harsh punishments for those who deviate from law. Especially in the case of hudud crimes i.e. Crimes like theft, adultery, defamation, consumption of alcohol, apostasy etc. are considered to be crimes against god. Hence the punishments for these offences are extremely severe in nature like stoning to death, beheading, amputation, flogging etc.

Saudi Arabia has Sharia law as its national law. It follows a retributive and deterrent form of punishment. For example, Recently a mass execution of 81 men took place in the country. It even sentenced a 14 years old juvenile to death sentence for being accused of robbery and murder based on confession of guilt given due to torture.

Saudi Arabia has extremely less crime rate and has a high rate of corporal punishments compared to other Islamic countries.¹⁹

Norway:

Norway has one of the lowest recidivism rates in the world which is about 20%. It also has the lowest crime rates on earth. The prison system of Norway is said to be one of the most humane systems in the world. It neither has capital punishment nor life imprisonment.

The Norwegian prison system solely focuses on rehabilitation which could be the reason for

¹⁶ Bai Chaturi v. State AIR 1960 Guj 5. [21]1911 Cri LJ 97 (Cal)

¹⁷ Mankura Pasi v. Queen Empress (1871) 6 Mad. H.C. 120

¹⁸ Bonai v. Emperor [1911] 16 C.W.N. 69.

¹⁹ *Supra* note 8.

reduced recidivism in the country.

The experience in prison highly contributes and determines a Prisoner's attitude after he reintegrated into the society. The willingness of the society to support him with his employment and his societal engagement has a great impact on him by deterring him from returning to crime by making him not feel ostracized or neglected.²⁰

Openness of presence is one of the main characteristics of present systems in Scandinavian countries especially Norway. It adds a strong sense of trust between the citizens and the government due to which there has been a reduction of crime rate in these countries.

Normalization is another concept that is followed in these prisons. The authorities try to maintain normal conditions in prisons similar to life outside. This has a positive effect on the Prisoners which helps in their overall rehabilitative process .

The openness prevalent in the Norwegian prisons also instil a sense of responsibility in the inmates. Sometimes the prisoners are allowed to choose their own jobs in prison which is similar to the society out there. This also helps them to reintegrate into society after their release.

Moreover the "import model" of education in Norway presents an opportunity for the Prisoners to avail education from educators outside. The educators from outside visit the prisons and impart education as well as soft skills that are essential for their everyday life.

So normalisation, openness, responsibility and education are the main important factors that help in the rehabilitation process of prisoners in Norway thus reducing crime rates as well as the rate of recidivism in the country.²¹

(A) Does the Indian criminal Justice System provide rehabilitation ?

The objectives of the Indian criminal justice system are reforming and rehabilitating the offender. The ultimate goal of the system is to reform the Prisoner. It tends to be more rehabilitative rather than retributive.

But the Indian criminal justice system is more punitive in nature in reality. And there is an absence of reformatory policies by the Legislature hence resulting in no implementation of a reformatory and rehabilitative environment in prisons.²² The conditions of jails make it extremely difficult to have a rehabilitative environment in India.

²⁰ Meagan Denny, Norway's Prison System: Investigating Recidivism and Reintegration,10,BRIDGES,21,24-28,(2016).

²¹ *Id.*

²² Joyshel Shrivastava, *Criminal Justice System: Does it want Retribution, Reformation or Rehabilitation?*, NEWS CLICK (16th Nov 2022, 8:12pm), <https://www.newsclick.in/Criminal-Justice-System-Does-want-Retribution-Reformation-Rehabilitation>.

For example in the state of Uttarakhand, Uttar Pradesh and Delhi the Occupancy rate crossed 180% in 2021 that is 180 prisoners for every 100 vacancies.²³

Even the police force is under-staffed. The ratio of Indian police is 195 per 100000 people.

States like Jharkhand and Bihar have as low as 44.59 and 54.90 respectively. There is even a problem of overworking of the police force. Almost 44% of the force have a 14 hour work day and 24% have 16 hours of work with very few holidays.²⁴

Most of them do not have adequate training and they also do not have a proper knowledge of human rights and constitutional principles. The amount of custodial deaths and torture can be traced back to this sort of unrest and distress in the police force.

Most of the presence do not even have proper financial and material resources and personnel. They have questionable hygiene, medical facilities and nutrition which are basic human rights. A quality vocational training, education and well being of prisoners is quite a questionable facility, considering the lack of basic facilities. Nonetheless, vocational training in Indian prisons has improved tremendously over the years. But is it enough?

The rehabilitation in the present system in India only provides for vocational training and education to the offenders. But rehabilitation is much more than that. It is empowering and enabling offenders to reintegrate into society. There must be soft skill training provided in the prisons. It must include assisting the prisoner in acquiring a source of livelihood after he is released, providing counselling services, psychological well being etc. Financial constraints, lack of focus on rehabilitation and lack of political will to incorporate these measures make it impossible for the Indian prison system to achieve its goal of reformation and rehabilitation.²⁵

The prisoners who belong to economically weaker sections find it the hardest to rehabilitate. For example if a person is imprisoned at the age of 18 and released after 25 years, then he has no definite source of income or employment in the society and he would also be stigmatized by the society leaving him no option other than to recidivate.²⁶

VII. RECOMMENDATIONS

- Hardened prisoners must be imprisoned separately in special jails so that they do not disrupt the

²³ *Indian Jails Are Overflowing, In 26 States Prisoner Count Exceeds Capacity*, THE HINDU, (16th Nov 2022, 8:57pm), <https://www.thehindu.com/data/data-indian-jails-are-overflowing-in-26-states-prisoner-count-exceeds-capacity/article65998284.ece>.

²⁴ *Supra* note 10.

²⁵ *Supra* note 10.

²⁶ *Supra* note 10.

- Government should provide adequate financial assistance to jail authorities which should be wholly accounted for so that the prisoners can live in better conditions receiving the basic facilities as well as the rehabilitation training in jails which the Indian prison system stands for.
- The police authorities should be given adequate training on human rights and the constitutional rights that the prisoners are entitled to so that there would be no custodial violence in jails which would only make prisoners more thick skinned and callous.
- Government should initiate after care programmes like Norway post release of the prisoners ensuring better employment opportunities so that they can reintegrate back into society with ease and to help them overcome their mental, social and economic difficulties. This would even prevent them from committing the crimes again out of sheer necessity.
- In order to sustain in society, along with vocational training, there mainly must be an availability of behavioural training and soft skill training. Because without this, a prisoner cannot be reintegrated back into society completely as it dictates the core conscience of a person.
- The prisoners should not be denied of the opportunity to meet his family when they are serving the sentence as it might dehumanize them and make them insensitive because when a person is in touch with his family there is a sense of belongingness to them which is extremely essential for their psychological well-being and for the whole rehabilitation process.

VIII. CONCLUSION

Rehabilitation helps in understanding why the criminal has committed the crime. This understanding and the help provided regarding the same could help in prevention of recidivism by the criminal. It may also help the offender to lead a normal life post release provided that he was also adequately provided with enough educational and training. In the author's personal opinion, deterrence and retributive modes of punishment cannot be used in the criminal justice system although they prove to be effective in Saudi Arabia as it could result in a rebellion at one point and scar a person's personality on a deeper level which is traumatic in the long run which is not the ultimate goal that any justice system is aiming for. And it would be a grave violation of one's criminal justice system if an innocent person is punished using a retributive mode of punishment for a crime which he did not commit.

The Norwegian criminal justice system is the best example of how a country's criminal justice system should be with the least conviction rates and recidivism rates in the world. It purely focuses on the rehabilitation of prisoners, following the principles of restorative justice. As opposed to India, mainly there is an actual implementation of these principles in the country which led to its success.

India has a very long way to go in order to reach such a criminal justice system. Moreover, the author personally feels that such a restorative form of system is nearly impossible to attain in India because it mainly depends on the kind of society that is present in the country. The socio-economic and cultural setting of both the countries varies a lot resulting in a huge gap between the mentality of people living in these countries.
