

Application of Reformatory Theories in Our Prisons: An Analysis

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Introduction

Developed and developing countries are changing their law and punishment system to suit with modern exigencies. Prison system constitutes an important part of this paradigm shift. Prisons are not to punish the offender rather bring reformation in the behaviour of the offender. Unfortunately, Bangladesh is still holding on the two-hundred-year-old brutal and inhumane prison system laid down by the British rulers. While prisons are being reformed, still there are incarceration, hard labour and immense mental trauma. These are regarded as a viable penalty for the crime. Though there is no direct indication in the Constitution of Bangladesh about reformation theory in prison, Article 11 provides that “fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed.” Also, the implied social stigmatisation and different treatment arising from punitive measures are a clear violation of the right to equality and equal protection of law enshrined in Article 27 of the constitution.¹ Moreover, apart from sketching the present punishment philosophy of Bangladesh, this article argues for replacing the outdated concept of prison for punishment into prison for reformation.

The aim of the ancient punishment system

The kinds of punishment given are surely influenced by the kind of society one lives in. In primitive time, crimes were mainly attributed to the influence of evil spirits, and a major purpose of punishment was to placate the gods. Later, in the evolution of punishment, more stress was laid on social revenge. The crime was considered a willful act of a free moral agent. Society, outraged at an act of voluntary perversity, indignantly retaliated. Thus, we started punishing primarily for vengeance or to deter or in the interest of just balances of accounts between “deliberate” evildoers on the one hand and an injured and enraged society on the other.² But with a change in time and development of the human mind, the punishment theories have become more tolerant of the criminals.³

Theory of Reformation and its object

The pioneer of civil rights movement, Mahatma Gandhi’s “*An eye for an eye will turn the whole world blind*”⁴ – is the core instinct and abstract of reformatory Theory. The earlier approach held that imprisonment (custodial measure) is the only way to curb crime. The

¹ Muhammad Ziadul Islam Chowdhury, Punishment fails, rehabilitation works, , Dhaka Tribune, 29 May, 2014 Available at < <https://www.dhakatribune.com/uncategorized/2014/05/28/punishment-fails-rehabilitation-works>, last visited on 7 October, 2018

² Imran, Mohd, Theories of Punishment with Special Reference to Preventive and Reformatory Theories, International Journal of Socio-Legal Analysis and Rural Development, Volume 3, Issue1, P. 87

³ Dutta, Shaswata, Theories of Punishment- A Socio-Legal View, Legal Service India available at <http://www.legalserviceindia.com/articles/pun_theo.htm, last visited on 7 October, 2018

⁴ Mahatma Gandhi used the phrase “An eye for an eye, and soon the whole world is blind”, in reference to his Satyagraha philosophy of non-violent resistance.

modern approach has ushered in new forms⁵. By the positive school, “punishment fitting the criminal”, it is the individual criminal, not the crime that is the focal point. The reformatory theory emerged of such positive thinking. According to this theory, the object of punishment should be the reformation of the offender. This theory of punishment is not virtually a punishment, but a mere rehabilitative process. It aims at making the criminal as far as possible a better citizen by means of moral and ethical training that is teaching him to go straight as an upright man and meaningful citizen and a law-abiding member of the society. It is based on that the offender is the victim of the environment where he lives. Thus he must be treated as a patient, not as a criminal. And the proponents of this theory advocate for treating the offenders as victims of society and urge to make efforts for their rehabilitation. Besides, the institution expected to play the foremost role in putting this theory into practice in prison.⁶

The increased necessity of the Reformation Theory

Rehabilitation of the released prisoners and the effective role of different correctional initiatives for the reintegration of the prisoners in the society can be properly understood by the rates of recidivism.⁷ For example, Sweden has the lowest re-offending rate in all of Europe at just 16%. Since 2004, prison population numbers in Sweden had been falling 1%. Since then, prison numbers dropped by 6%.⁸ Similarly, Norway has one of the lowest recidivism rates in the world at 20%.⁹ In recent time, concerns see lights up in our neighbouring countries as well. For example, our very neighbouring country Nepal’s legal minds are kept stressing on reformation Of their prison system and rehabilitating the prison inmates for the overcrowding in prison.¹⁰ And in India demand is growing to implement the reformatory theory in its prisons as well. In India, Prison at Paithan is an important land mark in the history of prison administration of Maharashtra, as it has laid the foundation of the development of correctional approach.¹¹ Therefore, implementing the reformatory theory in prison is now become not a fantasy but a necessity to uphold the right of prisoners and implementation should not be a far cry.

Binding force of International laws implementing reformation theory

The imprisoned people do not cease to be human beings regardless of the degrees of their crimes for which they have been Accused and they can only be neglected their liberty not their rights as a human being . Thus, the rights of prisoners in Bangladesh are also guaranteed by

⁵ Arya, Akanksha, Reformatory Theory Of Punishment: An Analysis, Lexkhoj Internationaljournal Of Criminal Law (Vol I Issue I), P. 13

⁶ Farah Sonda, “Life in Prison: Social Demise or Birth of a New Hope?” (DHLR Blog, 5 September 2014) Available at < <http://www.dhakalawreview.org/blog/2014/09/life-in-prison-social-demise-or-birth-of-a-new-hope-300>, last visited on 7 October, 2018

⁷ McKean, L. and Ransford, C., “Current Strategies for Reducing Recidivism”, Centre for Impact Research, August 2004, available at < <http://www.impactresearch.org/documents/recidivismfullreport.pdf>, last visited on 7 October, 2018

⁸ Orange, Rechard, Sweden closes four prisons as number of inmates plummets, The Guardian, 11 November, 2013. Available at <<https://www.theguardian.com/world/2013/nov/11/sweden-closes-prisons-number-inmates-plummets>

⁹ W. Deady, Carolyn, Incarceration and Recidivism: Lessons from Abroad, March, 2014 available at <http://www.antonioacasella.eu/nume/Deady_march2014.pdf, last visited on 7 October, 2018

¹⁰ Maharjan, Aayushma, Reforming Nepal’s prison system, The Himalayan Times, June 11, 2017

¹¹ F. Khan, Nawaz, Prison A Changing Concept from Institution of Punishment to System of Reformation and Social Re-Entry, IOSR Journal of Humanities and Social Science, 2014, P. 11

numerous International Conventions, Treaties, Rules, Declarations, Regulations, and Instruments¹², and through these instruments, it has been sought to implement the theory of reformation in prison system. Universal Declaration of Human Rights, Article 5 declares that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Furthermore, Article 10 of the International Covenant on Civil and Political Rights, (1966)¹³ states-

1. All persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human persons.
2. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation Juvenile offenders shall be segregated adults and be accorded treatment appropriate to their age and legal status.

Bangladesh, being a signatory of these international instruments is bound to ensure proper rehabilitation of prisoners in society. Again, according to Principle no. 1 of the Basic Principles for the Treatment of Prisoners¹⁴, All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. Besides, the United Nations (UN) approved “Standard Minimum Rules for the Treatment of Prisoners.”¹⁵ These Rules are not legally binding, but nonetheless can have powerful soft law impact, especially given their promotion by the UN. Rule 58 states:

The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty are ultimate to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

These international human rights instruments do not leave room for any doubt clearly stating that torture or other cruel, inhuman or degrading treatment or punishment can never be justified in any circumstances.

Present status of prisons and inmates’ rights in Bangladesh

The reformation generally takes place either through probation or parole as measures for reforming criminals. It looks at the seclusion of the criminals from the society as an attempt to reform them and to prevent the person from social ostracism.¹⁶ Although Application of reformatory theory in prison is a newer concept in our country, Its application in the prison system are going on with the flow of time in other parts of the world. Realising the importance of applying the reformation system in prison; progressive western countries have already taken initiatives to change their prison system into the prison for reformation according to the international instruments. Under German law, the primary goal of prison is “to enable prisoners to lead a life of social responsibility free of crime upon release.”¹⁷ Germany and the Netherlands rely heavily on alternatives to prison — including fines, probation and other community-

¹² Tamim,Mashfiq, Prisoners’ Right in Bangladesh: Laws, Reality and Solutions, Law Journal Bangladesh, August 27, 2016, available at < <http://www.lawjournalbd.com/2016/08/prisoners-right-in-bangladesh-laws-reality-and-solutions/>, last visited on 7 October, 2018

¹³ The International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976)

¹⁴ Basic Principles for the Treatment of Prisoners , Adopted and proclaimed by General Assembly resolution 45/111 of 14 December 1990

¹⁵ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

¹⁶ Supra note 5, p. 13

¹⁷ The Editorial Board, Lessons from European Prisons, New York Times, 7 Nov, 2013

service programs.¹⁸ Sweden championed in changing its prison system as now Swedish prisons are renowned for being liberal and progressive, which focus on the rehabilitation of the rehabilitation method is achieved through giving the inmates sufficient library access, access to university courses, and apprentice courses in learning a range of skills¹⁹. Norway has taken the similar steps²⁰ along with the other Scandinavian countries. Even now in America, the continuous utterance is going by the legal personnel on to implement the theory of reformation in prison as the rate of recidivism is getting higher and higher in the US.

In Bangladesh, there has been brought no changes in prison system and nor even in statutes yet it had passed so many years since its independence and is still stuck in the outdated statute books of the British colonial rulers. The Jail Code consists of the provisions of Prisons Act of 1894, Prisoners Act of 1900, and the Identification of Prisoners Act of 1920. According to these old statutes, the main objective of the prison system is the confinement and safe custody of prisoners through suppressive and punitive measures. There has neither significant modification been brought in the jail code, nor have the vital recommendations of the Jail Reform Commission, 1978 been implemented. However, the prison act 1984 has shown some kindness to the prisoner by mentioning some facilities like medical treatment; separate residence for male, female and convicted under the age of twenty-one; nutritious food; clothing; family visiting etc. Under the section no, 24, 26, 27, 29, 31, 33, 34, 35(1) and (3), 37, 39, and 40. But the harsh reality is that those interesting provisions of the Prison Act. 1984 are being implemented very little.

Moreover, the imprisoned inmates in prisons are far higher than their holding abilities. In fact, in Bangladeshi prison, there is a serious shortage of accommodation and place. As result prisoners, even women prisoners, have to sleep in shifts due to a shortage of sleeping space²¹. Besides, lack of proper healthcare combines with corruption to create a nightmare scenario. Furthermore, inmates are sometimes denied visiting rights or their family is turned away at the jail gate if they are unable to pay bribes. They suffer further humiliation in the fact that within 24 hours their numbers are counted several times.²² This type of environment of the prison cannot change the criminal mind rather create barriers to create a good and law-abiding citizen.

Challenges to be met

A question may arise whether it is feasible for our country or not as the behaviour of people here is different from that of Europe. But Advocates of this theory believes that a convicted person is the victim of the society, and he or she should be given a chance to be reformed.²³ For successful implementation of this theory into practice following steps may be considered:

1. The Correctional system's operations should be characterised by a humane attitude, good care of an active influence upon the prisoner, observing a high degree of security as well

¹⁸ Sweden's prison system: Rehabilitation, not incarceration

Available at < <https://rehabilitationnotincarceration.weebly.com/swedens-prison-system.html>, last visited on 7 October, 2018

¹⁹ Ibid

²⁰ Supra note 9, P. 3

²¹ Supra note 14

²² Asaduzzaman, Md., The Plight of Prisoners in Bangladesh, The Daily Star, July 21, 2013

Available at < <https://www.thedailystar.net/news/the-plight-of-prisoners-in-bangladesh>, last visited on 7 October, 2018

²³ Supra note 8

as by due reference to the prisoner's integrity and due process. Operations shall be directed to influence the prisoner not to commit further crimes. The objective should be to promote and maintain the humane treatment of offenders without jeopardizing security.²⁴

2. To establish such an environment in prison: the prisoner should be given proper food, residence, medical facilities etc. as these are the basic human rights which are guaranteed in our constitution; inalienable in nature. Though the provision exists in Prison Act 1984, separate residence for Different kinds of inmates like a male, female child and juvenile should have to be maintained strictly.
3. To rehabilitate the inmates and to enrich them with Ethical and religious teaching, meditation facilities and available library access should be given during imprisonment. Furthermore, they should be given proper and adequate vocational training like on facilities more to make them skilful. So that after being released from jail, they can get a good job. In fact, by imprisonment means keeping a huge amount of economically earning person from working. So, if they can be skilled, they will able to help our national economy grow. Also, Inmates should be allowed to go family visits like to establish a community tie.
4. The Probation of Offenders Ordinance, 1960 has given judges the power to discharge an offender conditionally or sending him in probation in certain cases under section 4 of this Ordinance. Yet, our judges are so reluctant to use the provision. But the successful application of the provisions of the Ordinance may bring back non-habitual offenders to a law-abiding citizen. Along with it, community sentence can be imposed on the petty offender to decrease overcrowding in prison.
5. Besides, in view of the changed socio-economic and political conditions of Bangladesh, the existing Prisons Act, 1894, Prisoners Act, 1900, Jail Code, 1920 and rules made under the Prisons Act, 1894 and Prisoners Act, 1900 needs to be revised²⁵. The policymakers should also focus on promoting the human dignity of prisoners as a legal value within national discourse. Moreover, now what is urgently required is full-fledged legislation precisely for rehabilitation purposes like that of UK's Rehabilitation of Offenders Act of 1974.²⁶

Conclusion

The goal of punishments is deterring wrong, rehabilitating criminal and lessening crime, maintaining social security and personal liberty and upholding justice in the society. Again, with the change in human values, it is believed that criminals are not by born but by the environment of the society, No longer the criminal is regarded as offender rather than a victim of society. The reformation theory is taking place in prison instead of degrading imprisonment thus crime rate is controlled, and human rights and social welfare are upheld to a greater extent. To achieve the goal of punishments is to secure the possibility that the prisoner will resettle into the civil society as a law-abiding citizen after the sentence has been served. To ensure that crucial aim, Bangladesh should also embrace the change.

²⁴ Peter Lindström Eric Leijonram, The Swedish Prison system, Ministry of Justice, p. 564
available at <

<http://rageuniversity.com/PRISONESCAPE/PRISON%20THEORY/Swedish%20prison%20system.pdf>, last
visited on 7 October, 2018

²⁵ Supra note 14

²⁶ Supra note 1