

Investing in People, Not Prisons: Rehabilitation of Ex-Prison Inmates –

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Abstract

The process of reintegrating released prisoners into society is a complex and multifaceted challenge that requires a concerted effort from all stakeholders. The social life of released prisoners is broadly a reflection of a host of social as well as legal institutions and practices at work. Rehabilitation, the process by which ex-prison inmates become connected and integrated into their communities, allowing them to build social capital and establish a sense of belonging is particularly important because it provides a support system that can help them overcome the numerous challenges they face upon reentry. These challenges can include finding employment, securing housing, and building healthy relationships. Without a strong support system, many ex-offenders are at risk of falling back into criminal behaviour and returning to prison (called recidivism). There is a dearth of academic works on this specific aspect, which leaves a major gap in our understanding of the life of released prisoners. This paper attempts to address these issues by understanding the existing practices and offering recommendations.

Introduction

“The duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation”

The United Nations Standard Minimum Rules
for the Treatment of Prisoners (Rule 90)

Modern prisons function as institutions that were primarily established for carrying out confinement as a punishment as well as act as reformation centres for people pronounced guilty by the judicial system. Those awaiting judicial trial are also confined in prisons, mostly for the duration of the trial. Academic studies on various aspects of the functioning of prisons covering policies and programmes implemented for the welfare of prisoners, socio-psychological conditions of prisoners and human rights issues of the prisoners become very crucial to understanding and

instituting better policies to effectively manage people who have gotten on the wrong side of the law. One of the primary principles of the restitutive or reformative penal system (which is presently followed all over the world) is to ensure that punishment must be able to reform the guilty and make them capable of returning to society as its functional member. Given this background, we shall now examine how the present prisoner rehabilitation system developed by discussing the punishment vs. rehabilitation debate.

History of the ‘Punishment vs. Rehabilitation’ debate

H.L.A Hart with Mr Bean and Professor Flew has defined “punishment” in terms of five elements:

1. It must involve pain or any other consequence normally considered unpleasant.
2. It must be for an offence against legal rules.
3. It must be intentionally administered by human beings other than the offender.
4. It must be an actual or supposed offender for his offence.
5. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.

According to the United Nations Office on Drugs and Crime (UNODC), one of the five main underlying theoretical justifications for criminal punishment is Rehabilitation. The central premise of rehabilitation theory is that punishment can prevent future crime by reforming the offender’s behaviour. The purpose of punishment is to address and reduce the risk and needs of individual offenders through intervention programmes, such as education, vocational training, and treatment, including cognitive-behavioural programmes so that they can return to society as law-abiding citizens. Its main focus is on the rehabilitation and social reintegration of offenders into society. The UNODC Introductory Handbook on the Prevention of Recidivism and the Social Reintegration of Offenders (updated in 2018) defines rehabilitation as ‘a wide variety of interventions aimed at promoting desistance from crime and the restoration of an offender to the status of a law-abiding person’.

Views on the rehabilitation of ex-prison inmates have shifted significantly throughout history. It has evolved from a belief in the rehabilitative potential of individualised support and education in the early 20th century to a more balanced approach that emphasises both punishment and evidence-based rehabilitation, with a focus on reducing recidivism and integrating ex-inmates back into society in contemporary times.

19th Century-Early 20th Century: The concept of rehabilitation began to emerge in the 19th and early 20th centuries as a response to the negative effects of punitive approaches to criminal justice. The underlying idea was that by providing education, job training, and counselling to inmates, they could be reformed and reintegrated into society. John Augustus, a Boston shoemaker, is often credited with being the father of probation. In the early 19th century, he began advocating for the idea of releasing offenders from jail on their recognizance, with the understanding that they would be supervised by a volunteer "bondsman" and receive support in finding employment and other resources to help them reintegrate into society. Similarly, Howard Belding Gill was a penologist who believed that the criminal justice system should focus on the individual needs of offenders, rather than punishing them for their crimes. He argued that offenders could be reformed through education and vocational training and that the ultimate goal of the criminal justice system should be to prevent future crimes.

Mid-20th Century: In the mid-20th century, the focus on rehabilitation was further emphasised, with many countries adopting a "treatment model" of criminal justice. This approach emphasised the importance of individualised treatment plans for inmates, intending to reduce recidivism and promote successful reintegration into society. William Healy was a psychologist who believed that criminal behaviour was rooted in psychological factors and that it could be treated through therapy and counselling. He argued that offenders should receive individualised treatment plans that addressed the underlying causes of their criminal behaviour. Hans Mattick was a criminologist who believed that the best way to reduce recidivism was through a combination of punishment and rehabilitation. He argued that offenders should be punished for their crimes, but that they should also receive treatment for any underlying issues that may have contributed to their criminal behaviour. In 1974, Robert Martinson published a widely-cited report (Martinson Report) that

concluded that rehabilitation programs were ineffective in reducing recidivism. This report was seen as a major blow to the rehabilitation model of criminal justice, and many policymakers began to gradually shift towards a more punitive approach.

Late 20th Century: In the late 20th century, there was a shift away from the rehabilitation model towards a more punitive approach to criminal justice. This shift was driven in part by rising crime rates and the perception that the rehabilitation model was ineffective. James Q. Wilson, a political scientist, was a prominent critic of the rehabilitation model. In his 1975 book "Thinking About Crime," he argued that rehabilitation was an unrealistic goal and that the criminal justice system should focus on punishment and deterrence. He has also argued that the focus on rehabilitation in the 20th century led to the "revolving door" of recidivism and that a more punitive approach is needed to break the cycle of crime. Michael Tonry, a criminologist, has argued that the shift away from rehabilitation in the late 20th century was driven in part by political factors, rather than empirical evidence. He has criticised the punitive turn in criminal justice policy, arguing that it has contributed to mass incarceration and social inequality. Angela Davis, a scholar and activist, has been a vocal critic of the punitive turn in criminal justice policy, particularly concerning its impact on communities of colour. She has called for a more humane approach to criminal justice that emphasises rehabilitation and restorative justice.

21st Century: In recent years, there has been a renewed interest in rehabilitation as a means of reducing recidivism and promoting public safety. This has been driven in part by research that has demonstrated the effectiveness of evidence-based rehabilitation programs in reducing recidivism and promoting successful reentry into society. Jeremy Travis, a criminologist and former president of John Jay College of Criminal Justice, has called for a renewed emphasis on rehabilitation in criminal justice policy. He has emphasised the importance of evidence-based practices, such as cognitive behavioural therapy and vocational training, in reducing recidivism and promoting successful reentry. Bruce Western, a sociologist, has written extensively about the impact of mass incarceration on communities and families. He has argued that a more rehabilitative approach to criminal justice policy could help to reduce the harm caused by mass incarceration and promote greater social equality. Todd Clear has written extensively about the need for a balanced approach

to criminal justice that emphasises both punishment and rehabilitation. He has argued that punishment alone is unlikely to reduce crime in the long term, and that rehabilitation programs are necessary to address the underlying issues that contribute to criminal behaviour.

Reformative Theory: Rationale behind Rehabilitative Sentencing

Robert Martinson's 1974 paper "What Works?" is often cited for his conclusion that "nothing works" in terms of rehabilitating inmates. His work sparked a debate about the effectiveness of rehabilitation programs, and it influenced criminal justice policy for many years. However, it is worth noting that Martinson himself later revised his views and argued that certain types of rehabilitation programs, such as cognitive-behavioural therapy and drug treatment, may be effective in reducing recidivism.

According to the reformative theory, also known as rehabilitative sentencing, the purpose of punishment is to *"reform the offender as a person, so that he may become a normal law-abiding member of the community once again. Here the emphasis is placed not on the crime itself, the harm caused or the deterrence effect which punishment may have, but on the person and the personality of the offender."*

Scholarly views

According to **Francis T. Cullen**, while some rehabilitation programs may not be effective, others have shown promise in reducing recidivism. He has called for more research to determine which programs work and for whom, as well as for a more individualised approach to rehabilitation that takes into account the specific needs of inmates. Similarly, David Garland has also emphasised the importance of addressing social and economic factors that contribute to criminal behaviour, such as poverty and inequality.

Jeffrey Fagan has argued that rehabilitation programs should be evidence-based and tailored to the needs of individual inmates. He has emphasised the importance of education and job training programs, as well as mental health and substance abuse treatment. Fagan has also called for a greater focus on community-based alternatives to incarceration, such as probation and parole, that can provide support and supervision to offenders.

Legal scholar **Sudhir Krishnaswamy** has called for a more humane approach to incarceration in India, with a greater focus on rehabilitation and restorative justice. He has argued that punishment-based approaches are ineffective and can exacerbate social inequality.

Overall, the views of scholars on the rehabilitation of prison inmates vary widely depending on their theoretical perspectives and areas of expertise. However, there is general agreement that rehabilitation programs should be evidence-based, tailored to the individual needs of inmates, and focused on addressing the social and economic factors that contribute to criminal behaviour. Besides, their views highlight the need for evidence-based and culturally-sensitive programs that take into account the specific needs of inmates and their families.

The need and philosophy of rehabilitative sentencing have been convincingly summed up by **J.P. Marin** in these words:

“An effective penal system must aim for the re-integration of prisoners into society. In the last resort this is because there is a moral argument for after-care. It is simply that no man is so guilty, nor is society so blameless, that it is justified in condemning anyone to a lifetime of punishment, legal or social. Society must be protected but this is not done by refusing help to those who need it far more than most of their fellow citizens.”

International Conventions

The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)¹ covers the issue of Rehabilitation under the following provisions:

Rule 4

(1) The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life.

(2) To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners.

Rule 87

Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release regime organised in the same prison or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

Rule 88 (1)

The treatment of prisoners should emphasise not their exclusion from the community but their continuing part in it. Community agencies should therefore be enlisted wherever possible to assist the prison staff in the task of social rehabilitation of the prisoners.

Rule 96 (1)

¹ https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation, subject to a determination of physical and mental fitness by a physician or other qualified health-care professionals.

Rule 98 (2)

Vocational training in useful trades shall be provided for prisoners able to profit thereby and especially for young prisoners.

Rule 99 (1)

The organisation and methods of work in prisons shall resemble as closely as possible those of similar work outside of prisons, so as to prepare prisoners for the conditions of normal occupational life.

Rule 107

From the beginning of a prisoner's sentence, consideration shall be given to his or her future after release and he or she shall be encouraged and provided assistance to maintain or establish such relations with persons or agencies outside the prison as may promote the prisoner's rehabilitation and the best interests of his or her family

DOHA DECLARATION GLOBAL PROGRAMME (2015-2021)

Adopted at the conclusion of the 13th United Nations Congress on Crime Prevention and Criminal Justice, the Doha Declaration highlighted the importance of adopting measures to support the rehabilitation and social reintegration of prisoners into the community. Within the framework of the Global Programme for the Implementation of the Doha Declaration and its pillar on fair, humane and effective criminal justice systems, UNODC supported Member States in establishing a more rehabilitative approach to prison management. Under its prison component, the Global Programme has worked with authorities across the globe to start a number of programmes involving vocational training and certification areas. This includes construction

activities for female prisoners in Bolivia, baking centres in Kyrgyzstan, the growing of hydroponics in Namibia, electrical installations in the State of Palestine, and cooking oil production in Zambia.

A case of successful Rehabilitation of an ex-prison inmate:

In the Semarang Female Correctional Facility, a prison facility in the Indonesian capital of Jakarta, a new project was started a few years back. The initiative aimed at imparting the ancient technique of batik dyeing to the women prisoners to train them in commercially viable skills that they could use post-release. Batik artist, Asih Yuliani, is an ex-prisoner who was first exposed to batik production while serving a sentence in the Correctional Facility. She currently works with the prisoners to teach them about this art. She says, *“I left prison with a skill. Now I run my own business as well as I’m training others”*. This shows how vocational and skill training can help ex-prisoners in becoming dignified members of society by reducing recidivism and promoting constructive activity.

Similarly, prisoners in India, especially female prisoners, can be trained in local/traditional arts and techniques along with training in entrepreneurial activity and microfinancing through Self Help Groups (SHGs) so that they could establish their own small scale businesses post release. Also, they could be provided assistance by the prison authorities in applying for cheaper credit under government schemes like,

- Bharathiya Mahila Bank Business Loan - a scheme for female entrepreneurs looking to start a manufacturing business.
- Mudra Yojana Scheme - a scheme for women seeking to start or expand their small business.
- Dena Shakti Scheme - a scheme that provides loans for women entrepreneurs.
- Udyogini Scheme - a scheme to help women from economically struggling backgrounds to become self-sufficient.
- Mahila Udyam Nidhi Scheme - a scheme promoting modernisation and technological advancement in small scale industries by providing hassle-free loans.

Besides, they could be made aware about existing government schemes providing support to women entrepreneurs besides credit, like the Women Entrepreneurship Platform (WEP) established by the NITI Aayog to bring together women entrepreneurs and sponsors willing to support them.

‘Leaving no one behind’: SDGs and Prisoner Rehabilitation

The Prisoner Rehabilitation programmes based on the Doha Declaration are intrinsically linked to the 2030 Agenda for Sustainable Development and the subsequent 17 Sustainable Development Goals (SDGs), which were adopted in 2015.

While **SDG 16** – Peace, Justice and Strong Institutions – is central to the Global Programme’s activities and is directly addressed by the initiatives taken, the steps taken take us closer to the achievement of other SDGs like **SDG 4** (Quality Education), **SDG 8** (Decent Work and Economic Growth), **SDG 11** (Sustainable Cities and Communities) and **SDG 16** and **17** as well.

SDG 8 - Promote sustained, inclusive, and sustainable economic growth, full and productive employment, and decent work for all - To sustain per capita economic growth (Target 8.1), ensuring effective rehabilitation programmes in prisons will ensure a healthier population who can better contribute towards economic growth. Supporting people leaving prison in gaining access to a bank account and financial advice, as part of their resettlement, can facilitate their access to welfare and return to the workforce.

SDG 10 - Reduce inequality within and among countries - As people in prison often come from the most deprived communities, incorporating them, within Targets 10.1 and 10.2, can sustain income growth of the bottom 40% of the population, which can reduce social inequalities, providing a community dividend for safer, healthier and more resilient communities. Efforts to remove arbitrary and discriminatory practices in recognising the importance of people in prison rehabilitation is an important measure that aims to achieve this goal. As a result of prison-based

rehabilitation programmes based on the Doha Declaration, prisoners have a better chance of finding decent work post-release, contributing to society and facing less risk of reoffending.

The Intersection of Human Rights and Rehabilitation

Prisoners are subject to discrimination generally and more so if they belong to certain specific sections of society. Underlying this reality, often, is a belief that the purpose of imprisonment is merely to punish or deter. Such an approach not only runs counter to the commitments countries have made to protect the basic rights of prisoners, but it also negates the potential social benefits and cost savings associated with the rehabilitation of ex-offenders. As Mahatma Gandhi said, 'Hate the sin, not the sinner', human rights activists argue that prison, as part of the more extensive criminal justice system, can contribute to creating a peaceful and inclusive society by upholding the rule of law by ensuring appropriate and right-based treatment of prisoners and offering them opportunities for rehabilitation.

A classic case study on the humane treatment of prisoners is the Prison System in Norway. With an unofficial motto of "Better out than in", the Norwegian Correctional Service makes a reintegration guarantee to all released inmates by working with other government agencies to secure accommodation, employment and availability of a supportive social network for each inmate before release. In 1998, Norway's Ministry of Justice reassessed the Correctional Service's goals and methods, putting the explicit focus on rehabilitating prisoners through education, job training and therapy. A second wave of change since 2007 has made a priority of reintegration, with a special emphasis on helping inmates find housing and work with a steady income even before they are released.

Presently, Norway's recidivism rate based on re-conviction within two years has reduced to 20%, the lowest rate in the world, from 60-70% before the prison reforms in 1990s. The rehabilitative aspect of Norway's prison system being the primary factor in the low recidivism rate.

Prisoner Rehabilitation in India

According to the latest Prison Statistics India data (2021) released by National Crime Records Bureau:

- A total of (5,54,034) prisoners were confined as of 31st December 2021 in various jails across the country.
- A total of 93,077 convicts were released (including 1713 convicts getting transferred to other States/UTs) during the year 2021.
- A total of 14,68,627 undertrial prisoners were released during 2021, out of which 95.0% of undertrial prisoners (13,95,635) were released on bail.
- A total of 9,409 detainees were released in 2021.

After-care programme in India was started during the 2nd and 3rd Five Year Plans at the instance of the Central Social Welfare Board and a few after-care homes and shelters were set up in some states. The All India Committee on Jail Reform (1980-83) strongly recommended that after-care of prisoners discharged from prison and allied institutions should be the statutory function of the Department of Prison and Correctional Services. In *Narotam Singh v. State of Punjab*, the Supreme Court has taken the following view-

“Reformative approach to punishment should be the object of criminal law, to promote rehabilitation without offending community conscience and to secure social justice.”

Krishna Iyer, J has opined prison as:

“A reformative philosophy, rehabilitative strategy, therapeutic prison treatment and enlivening of prisoner’s personality through the technology of fostering the fullness of being such a creative art of social defence and correctional process activating fundamental guarantees of prisoner’s rights is the hopeful note of national prison policy struck by the constitution and the court.”

The reformation and rehabilitation of offenders is the ultimate objective of prison administration in India. In pursuance to meet this objective, many States/UTs under the direction and supervision of the Central Government have been taking several initiatives in the field of rehabilitation and welfare of prison inmates. According to PSI data (2021), a total of 1,918 convicted inmates were rehabilitated in 2021. A total of 1,359 inmates were given financial assistance on their release in 2021. A total of 1,62,654 inmates were provided legal aid in 2021. The number of prisoners who benefitted from Elementary Education, Adult Education, Higher Education and Computer Courses was 38,784, 32,544, 14,083 and 4,350 respectively in 2021. Also, 39,313 inmates were imparted various vocational training by the jail authorities in 2021. 587 NGOs who were working exclusively for prison reforms and 202 NGOs were working exclusively for the welfare of women during the year 2021.

Way Forward

Today, there is a growing recognition that the criminal justice system must balance punishment with rehabilitation, with a focus on evidence-based practices that promote successful reintegration into society. This includes the provision of education and job training, mental health and substance abuse treatment, and support for families of incarcerated individuals. The goal is to not only reduce recidivism but to also promote public safety and foster a more just and equitable society.

The existing communication between released prisoners and after-care institutions is practically inadequate to bridge the gap between what the institutions can offer and what a released prisoner can avail of those services on one hand. It is the lack of proper coordination between the Prison Department and voluntary efforts in matters of organisation after-care services on the other hand.

Recommendations:

Given that imprisonment is economically unsustainable, governments should consider alternatives for those who do not need to be confined for security and public protection purposes. Prison

rehabilitation has the potential to reduce reoffending and contribute towards a safer and healthier society. Certain recommendations to bolster the already existing framework in the country for ex-prison inmates are given below:

1. *Specialised programmes for women, first-time offenders and juvenile delinquents* - Women tend to be in prison for different reasons than men, and there may be a case for a specific roadmap for them. Under the United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules), Member States are encouraged to take a gender-sensitive approach concerning their rehabilitation and social reintegration. About Juvenile Delinquents, Individual-based plans for rehabilitation instead of a generalised plan should be adopted as the need of a prisoner who is married and with kids is completely different from an adolescent. Child psychologists, pedagogical experts and parents are equal stakeholders in the rehabilitation process of juveniles and a joint strategy must be developed which caters to their age-specific needs.
2. *Increasing employability of the training imparted*- As of 31st December 2021 the maximum number of inmates (2,41,320 inmates, 43.6%) were belonging to the age group 18-30 years followed by the age group 30-50 years (2,39,814 inmates, 43.3%). As is evident, the majority of inmates are of economically productive age. A study² was conducted to collect information regarding the socio-economic status of the released prisoners to understand how effectively they were reintegrated with the system after their release from prison. According to the results, though several respondents received a fund, none of them had taken to entrepreneurship. Rather they stated the vocational training they received in prison did not help them get any job. Often the amount of training was so meagre that they could not take up any economically productive activities (98.1 per cent stated that training did not help them find a job). Thus, the orientation of the training programmes may have to be changed if the idea was to make them financially independent and self-sufficient.

² Dr. R Santhosh. (2019b). FROM CELL TO SOCIETY: A STUDY ON THE SOCIAL REINTEGRATION OF RELEASED PRISONERS IN KERALA AND TAMIL NADU. Retrieved March 13, 2023, from <https://nhrc.nic.in/sites/default/files/Dr.Santhosh%20Research%20Report.pdf>

3. *Facilitating adjustment to the drastically changed world-* Many of the prisoners, especially those who are imprisoned for a long time without paroles, find the world completely changed and find themselves to be ill-equipped to deal with modern technologies. Robert, who was released from Puzhal prison in Chennai after 18 years of incarceration and without availing even a single parole, described how difficult it was for him to get adjusted to the outside world. He finds mobile phones with touch screens a real wonder and happily stated that he has mastered the device. Bringing ex-prison inmates under the ambit of government schemes like the Pradhan Mantri Kaushal Vikas Yojana (PMKVY 3.0) which aims ‘to impart skills in services and in new-age job roles that have become crucial with the advent of COVID-19 pandemic’ by registering the eligible prisoners under these schemes during their stay in the prison would help in upskilling according to the changing times.
4. *Streamlining Job Melas-* In January 2019 Telangana government with the central prison of Telangana conducted a job fair for ex-convicts where almost 200 ex-convicts were offered jobs. The organisation of Job Melas by prison authorities is a welcome step. However, presently these are merely scattered instances and need to be streamlined into an institutional framework so that more and more released prisoners can benefit from them. Because government schemes like Prime Minister’s Employment Generation Programme (PMEGP), Pradhan Mantri MUDRA Yojana (PMMY) and National Apprenticeship Promotion Scheme (NAPS) have already established institutional infrastructure, prison authorities can collaborate with the ministerial departments implementing these schemes to transfer their benefits to ex-prison inmates as well.
5. *Address the stigma associated with incarceration -* Minimal attention has been given to the perspectives and experiences of individuals post-incarceration regarding stigma and its impact on reintegration and occupational engagement. In a study published in the Open Journal of Occupational Therapy, interviews were conducted with 10 participants of a work rehabilitation program for people who had previously been incarcerated. They reported facing bias, arising from stigmatising perceptions of formerly incarcerated people,

making it increasingly difficult for one to escape the effects of a criminal record when seeking employment. Private landlords and public programs also adopt the same principles as employers when it comes to housing. Furthermore, the characteristics correlated with an individual's likelihood to be incarcerated also pose barriers to their community integration. One of the ways to tackle this issue is to increase the prisoners' social interaction while being in the prison through community meet-ups, entrepreneurship/trade fairs where prison inmates can showcase the products prepared by them, live streaming of community events for prisoners and vice-versa to maintain contact on both sides of prison walls, etc.

Thus, after-care programmes and services need to be streamlined to assist pre/post-released prisoners including proper counselling, adequate financial assistance, campus placement, follow-up units, avoiding unnecessary harassment by the local police and societal acceptance without social 'stigma'.

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