



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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 7 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

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

2582-6433 is an Online Journal is Monthly, 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.

REFORM VS REHAB

AUTHORED BY - NAGA YOGITHA THOTA

COURSE: BA.LLB

ACKNOWLEDGEMENT

I would like to express my sincere gratitude to my mentors for guiding me in making this research paper on “REFORM VS REHAB” and for providing me the knowledge during my research. We cherish the motivation that has brought in me to work harder and think more vibrantly. It has been an enlightening experience under professors guidance and I take immense proud in being called her student.

INTRODUCTION

An estimated 10.2 million people are believed to be incarcerated around the world - either pre-trial prisoners or convicted prisoners. Crime or criminal activity is similar to what has been rampant for decades. Crime may be a necessity - like a poor man stealing apples from his hungry child. It can also be a way of pure happiness - like a murderous killer because he finds it "fun"; The lure of crime is rare for most people - be it a small crime or a major crime. In this article, we will learn about Transformation and Rehabilitation.

Former sociologist Emile Durkheim, on the subject of crime, was quoted as thinking that “crime exists in all societies because it affirms moral boundaries and sometimes aids social change”. With crime so prevalent, the question arises as to how to deal with the perpetrators -whether to punish them severely, or whether to crack down on criminals by trying to change behaviour and rehabilitate them.

OBJECTIVE

To know the challenging difference between Reformation and Rehabilitation.

RESEARCH QUESTIONS

1. Difference between Reformation and Rehabilitation?
2. Reformation vs Rehabilitation
3. What are the common needs needed for Reformation and Rehabilitation even though they are different?

SCOPE OF RESEARCH PAPER

This research paper mainly explains about the difference between Reformation and Rehabilitation.

RESEARCH METHODOLOGY

Descriptive and Analytical Methodology has been followed by the Researchers throughout the Research paper. Secondary Sources like books, Articles and Websites have been Referred by the Researcher for the accomplishment of the research paper.

What Do We Mean By Reformation And Rehabilitation?

Transformation, derived from the word 'transformation,' is the process of making changes in something - usually in an institution or practice - in order to improve. In the case of perpetrators, reform can help criminals to break free from immorality or crime. "The process of re-educating and retraining those who commit crimes" is one definition of rehabilitation.

Repentance and rehabilitation go hand in hand, rehabilitating gives offenders an understanding of the world and their actions, as well as transformation that gives them the freedom and power to overcome their mistakes¹.

Reformation

The Criminal Justice System is a system that integrates the various organizations / institutions involved in the criminal justice process. In particular there are three components of the program - a - vis Police, Judiciary, and Prisons all working together to ensure the delivery of justice.

¹ Khushboo Garg, Reformation and Rehabilitation of Offenders, 4th December 2020, <https://legalreadings.com/reformation-and-rehabilitation-of-offenders/#:~:text=Rehabilitation%20can%20be%20defined%20as,power%20to%20overcome%20their%20mistakes.>

Throughout India's history, various reports have been published / proposed to reform the justice system. Various reports from the Indian Law Commission and dedicated committees have been set up, submitting their reports to improve the aging and criminal justice system. In this article, we will explain the reports of Justice V.S. Malimath Committee and Madhav Menon Committee².

Rehabilitation

Perhaps the best and most humane intention to punish in criminal law is to restore order. When a citizen's criminal tendencies are "cured" (literally) so that we no longer have the desire to commit a crime and, even more so, become a productive member of society, then society is not only protected from future harm. but it is also enriched by the successful re-entry of one of its members. A state of prosperity in which both the community and the perpetrators benefit.

Logically, rehabilitation is the most sensible goal of punishment. It is interesting and good to think about the success of restoring the criminal behaviour of society. If only adult offenders can be successfully dealt with, then the crime can be eliminated, and criminal cases can be limited from that time to child abuse and occasional act of love³.

What Is the Reformation of Offenders Vs Rehabilitation of Offenders?

Transformation, derived from the word 'transformation,' is the process of making changes in something - usually in an institution or practice - in order to improve. In the case of perpetrators, reform can help criminals to break free from immorality or crime. Repentance and rehabilitation go hand in hand, and rehabilitation gives offenders an understanding of the world and their actions, and transformation gives them the freedom and power to overcome their mistakes.

Today, information is readily available in our hands at any time. As the media focuses more on the situation of inmates within prisons and the problems they face with re-entry into society, the need for reform and rehabilitation is now more clearly emphasized than ever before. Today, many people go to prison for a long time after committing atrocities.

Conversion and rehabilitation of criminals can be found in Scandinavia or Norway, where crime

² Byju's, Reforms in Criminal Justice System, 22nd September 2021, <https://byjus.com/current-affairs/criminal-justice-system-reforms-of-india/>

³ upcounsel, Punishment as Rehabilitation and Reform: Criminal Law Basics, 2nd March 2020, <https://www.upcounsel.com/lectl-punishment-as-rehabilitation-and-reform-criminal-law-basics>

rates are generally lower compared to the rest of the world. They consider it more important to have the perpetrators released than to have them sentenced to long prison terms. On the other side of the spectrum could be a country like the United States, with the highest arrest rate in the world. They focus on ensuring that offenders receive the highest sentences, even in the lowest cases.

Difference Between Reformation And Rehabilitation

The Reformation welcomes the introduction of any part of the Reformation, which is widely considered. The journal is interested in subjects on topics including theology and Bible studies; church history or religious affairs - Protestant, Catholic or radical; English and continental literature; social, political and psychological history; modern Catholic history; Book History; Renaissance Humanism; history of art and architecture; and music. The journal is also of interest to the bursary which points to the persistence and persistence of medieval religions and religions. All Transformation articles are reviewed extensively by peers, based on the inclusion of anonymous referees by at least two referees⁴.

Rehabilitation involves a huge spectrum in the paths of our patients. Includes support for learning basic communication skills; exercise classes to promote or maintain good health, well-being and employment; and complex emotional rehabilitation following severe trauma or stroke. Rehabilitation may be appropriate at any age as a person's needs change throughout his life⁵.

Classification in Reformation and Rehabilitation

Reformation

Legal action: The process of our criminal justice system, therefore, begins with legal action. The legislature, however, is not part of a program organization unless it emphasizes that the basis of the whole system is based on the rules they make, and their abuse must be controlled or minimized.

⁴ Taylor & Francis, Aims and Scope of Reformation, 6th April 2019, <https://www.tandfonline.com/action/journalInformation?show=aimsScope&journalCode=yref20>

⁵ Joseph Ayotunde Aderonmu, Introduction to Rehabilitation, 19th December 2019, https://www.physio-pedia.com/Introduction_to_Rehabilitation#:~:text=Gives%20hope-.Range%20and%20Scope%20of%20Rehabilitation,following%20major%20trauma%20or%20stroke.

Law enforcement: The police or law enforcement systems are the next part of the criminal justice system. The police are tasked with maintaining order, law, and order, preventing crime and arresting offenders. Most criminal justice systems are unable to perform their duties without a minimal law enforcement system. Thousands of laws can be passed by lawmakers but the law can be broken without punishment when the police refuse to take action. As a basic law enforcement agency, the police should not only focus on trying to enforce various laws but also on issuing them free of charge.

Judgment: It is a judging process and is divided into two parts namely:

Prosecutor - The prosecutor decides how the minor justice system should prosecute a suspected criminal. If the prosecutor views the case as serious, the legal case will be settled. However, he does not have the ability to intervene.

Court - The role of the courts is much more critical and important than that of the police in the criminal justice system. The ultimate goal of the Court is to provide justice that should be “fair”, equitable, expeditious, and impartial. Judges must perform their duties with utmost care and diligence to ensure that public trust in the justice system is not compromised. The presiding officer must keep in mind that his decision in the case will give both the defendant and the victim a fair trial, as opposed to the release or sentencing of the defendant, whether it is lawful or unfair. The first requirement for justice is an independent, impartial, and competent court. It must be understood that unfair dismissal is a violation of justice and an unreasonable view. ‘Rule of law’ in a democratic society is an effective tool of justice.

Correctional Center: Correctional facilities are the last critical component of the criminal justice system. The minor rehabilitation program is trying to get the perpetrator back in order to keep him from breaking the law again. It is hoped that by punishing the perpetrator, more and more people will be prevented from breaking the law. In the disciplinary system, there are two main options: probation and imprisonment, each with specific limitations on human rights. Including rehabilitation, resources and other rehabilitation programs such as courts, juvenile courts, and correctional homes, correctional facilities should not only be considered as correctional agencies or correctional agents, but as a measure of their success in the

criminal justice system⁶.

Rehabilitation

These are temporary homes where the child is kept before it is fully integrated into the community. Back care organizations are specialized homes registered with the activities of a government agency for the welfare of rebellious children.

In aftercare organizations, children were provided with,

- Vocational training
- Therapeutic training to improve mental behaviour
- Continuing education
- Consensus on community values
- The economic ability to feed oneself
- Physical and mental fitness activities

The children are being cared for by the After Care Organization which is a temporary home after leaving special homes and a children's home. Unlawful youth and children in need of care and protection, both categories are placed in aftercare organizations. Back care organizations help children live an honest and active life. Back Care Organizations are set to achieve the primary goal of allowing children and young people to become acquainted with the community. In after-care services, children and young people are encouraged to live in a normal community from their previous lives in institutional homes.

Background organizations are nothing but a temporary home built for a youth group. In new born care organizations, suspended teens are encouraged to learn a trade, and they contribute to the continuation of the after-home work. Any voluntary institution or organization designated as an aftercare organization strives to prepare children and youth for independence and to develop community skills and health to fully integrate them into society.

⁶ Ayush Verma, Reforms needed in the Indian criminal justice system, 5th November 2020, <https://blog.ipleaders.in/reforms-needed-indian-criminal-justice-system/>

In the after-child care program the children and youth are also provided with access to social, legal and medical services and appropriate financial support. Regular vocational education and training opportunities are provided to children and youth in the aftercare organization to help them become financially independent and, in turn, make their own income.

The After Care Organization should ensure regular follow-up and support after the child or adolescent is reunited with the community or community. Members of the various governmental bodies also work together to reintegrate a child or child into a normal society by providing psychological and economic support and providing them with post-social support through constant monitoring.

Both institutional and non-institutional measures are used not only for the proper care and development of children but also for the proper management of children's problems as the ultimate solution for the well-being of children and youth, institutional measures must be applied⁷.

Common Challenges

Although there are differences between Reformation and Rehabilitation there are few things where both need few procedures/process even though they are different-

Public attitude toward perpetrators

Society, in general, tends to have a negative attitude and a negative attitude towards offenders. Many fail to understand the causes of many crimes - poverty, addiction, mental health, etc. it can be a descriptive feature of why crimes are sometimes committed. Most people do not see the problems of criminals before and after being released from prison. Criminals are rarely given jobs; they are struggling to find jobs or continue their careers after being released from prison because of negative employers' perceptions of the law. For many men, going to prison means they can no longer support their families financially - in many cases, men are the breadwinners. Then they will no longer be able to earn money because of imprisonment.

⁷ Anjali Dhingra, Rehabilitation, 24th June 2019, <https://blog.ipleaders.in/rehabilitation-of-juveniles/>

The need for change and rehabilitation of perpetrators

Changes and renovations are often overlooked and are rarely considered a viable remedy. Currently, corrective measures for inmates / offenders include the selection of open prisons, trials, parole, etc. There are a number of reasons why transformation and rehabilitation should be considered as effective and efficient measures for criminal justice. Some of the reasons are:

Sinner's re-entry into society

Many lawmakers, once released, do not know how to function properly in society. Re-entering the community and community can be very difficult and challenging for them. Despite having a small crime record, they may face some obstacles. Employment opportunities are also hard to come by, as employers often do not trust people who have just been released from prison.

Repeat the crime

Because of the time of crime in prisons and the challenges they face when they re-enter society in terms of social or economic problems, it is essential for them to return to a life that includes crime. Once released from prison, offenders are not given adequate support and are often left to fend for themselves outside the home. A 2005 study by the Bureau of Justice Statistics found that in a survey of 15 states in the United States, more than two-thirds of released prisoners were re-arrested within three years of their release.

Difference of Reformation and Rehabilitation in Prison

Reformation

The following are important norms and standards that have a direct bearing on prison reform:

- United Nations Standard Minimum Rules for the Treatment of Prisoners
- A set of guidelines for safeguarding everyone detained or imprisoned in any way
- Fundamental Guidelines for the Care of Prisoners
- Tokyo Rules, or United Nations Standard Minimum Rules for Non-Custodial Measures
- The Bangkok Rules (United Nations Regulations for the Treatment of Female Prisoners and Non-Custodial Measures for Female Offenders)

Other UN documents pertaining to the criminal justice system:

- ❑ Human Rights Declaration of Universal
- ❑ The Economic, Social, and Cultural Rights International Covenant
- ❑ Civil and Political Rights International Covenant
- ❑ The Convention prohibiting the use of torture and other cruel, inhuman, or degrading methods of punishment or treatment
- ❑ Fundamental Guidelines for the Care of Prisoners
- ❑ The following international agreements have been signed:
 - ❑ The UN Declaration on the Protection of All Persons from Enforced Disappearance
 - ❑ The Convention on the Elimination of All Forms of Racial Discrimination
 - ❑ The Convention on the Elimination of All Forms of Discrimination Against Women
 - ❑ The Code of Conduct for Law Enforcement Officials
 - ❑ The Basic Principles on the use of Force and Firearms by Law Enforcement Officials
 - ❑ The UN Recommendations on Life Imprisonment
 - ❑ The Kampala Declaration on Prisoners.⁸

Rehabilitation

Prisons are no longer seen as places of punishment, instead they are called correctional facilities. People who come here after the crime and their trial usually wait for their sentencing which usually takes place after a long time. During this time the perpetrator is expected to spend his time learning various skills that will enable him to transform himself from a disorderly and disturbed criminal character into a person with a sense of remorse who is ready to defend himself. In India according to the prescribed rules of the Indian Jail Manual only a prisoner whose sentence has been confirmed is required to participate in prison activities. They are paid a small amount in the form of salaries. This has two aspects, one encouraging the prisoner to learn a new skill, the second helping the convict to help his family financially or in prison. The fastest way to convert a prisoner is used. Her brain is analyzed and also given medication to stabilize her

⁸ United Nation, Why promote prison reform?, 29th July 2018, <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>

emotions and improve her mood. Meditation and Yoga are taught in many Indian prisons so that inmates can count their mistakes and change new leaves. All of these systems and procedures are effective as long as one remains incarcerated. What will happen next is a thought-provoking question yet lies in one of the pockets of the rehabilitation program. How far does the transition work? Who are the rebels, and what is the problem with prison re-enactment? And what is the role of the criminal justice system in criminal rehabilitation in the community is among the many questions this current paper seeks to explore. A debate on these questions is required. The idea of rehabilitation is further put forward by the criminal justice system as its main effort is to change the judge when he is in prison. Community safety and security play a major role. However, rehabilitation is an important chapter in the life of a prisoner as he leaves the gates of a secure prison and enters an unprotected world that poses new challenges to him with the option of correction or not. Restoration of a prisoner in a free society reveals a serious lack of support that can help the offender to be an effective role in public life. The community finds it difficult to deal with the offender to successfully participate in the problem of re-entry into the community. This inconsistency reflects the lack of co-operation between the various sections of the criminal justice system. Prisoners released on parole and without family support are experiencing difficulties in rehabilitation. The disciplinary process seeks to secure public safety in restoring the offender's morals emphasizing simultaneously on developing self-control and strengthening his ability to achieve his goals through law-abiding conduct. Rehabilitation often means a positive, kind intervention aimed at helping a prisoner return to normalcy in the community. A psychologist may describe rehab as a result of positive reinforcement as counselling instead of negative reinforcement as imprisonment. They all, however, disagree with this view. Scientifically there is no difference between promoting good and bad. Behavioural psychologists are of the opinion that both reinforcement has similar effects. It is not always true that rewards will change behaviour in addition to punishment or vice versa. Correctional rehabilitation can involve a great deal of coercion and even intimidation as the prisoner realizes that he must change in order to be rehabilitated. Participation in programs is focused as a step towards rehabilitation. Behavioural therapy helps to further guide the perpetrator to correct himself according to the norms of the free world⁹.

⁹ Shubhra Sanyal, Rehabilitation of Prisoners: A Debatable Issue, 18th August 2018, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226279

CONCLUSION

While it is still a theory that requires more understanding and more experiments for up till now, the view of reformation and rehabilitation stands its ground and makes a successful case for itself. It would be in the best interest of all countries to implement this system – both for the betterment of society and the offender’s benefit.

