Problems and Prospects of Correction and Rehabilitation in India

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The primary object and function of criminal justice system is prevention of crime or at least reduction of crime rate because we all want to live in peace and order. What sort of peace and order the society needs is beyond the scope of this paper. That perhaps may hint towards the real problem and the real solution to which the writer has pointed in the conclusion. That apart, it is no more assumed that through severe punishment of the offenders crime can be eliminated or controlled satisfactorily. History holds testimony to that. So, the accent now is on control and prevention of crime through reform and rehabilitation of the offenders. This paper attempt to examine the problems and prospects of correction and rehabilitation in the context of Indian conditions.

The Problem

The study of the problem is of timely importance in view of the wide criticism against the investigating police officials generally and particularly the contemporary Bihar incidents involving brutal and inhuman blinding of accused criminals which were brought to light by the intervention of the Supreme Court. The Supreme Court has earlier criticised the practice of keeping undertrials without proper charge and without trying them for more duration of time than they could have been imprisoned,
had they been properly charged, tried and convicted. The same
court has also criticised the flouting of the rights of the con-
victed prisoners and the inhumanly treatment meted out to them
by prison authorities. The fact that the Supreme Court had to
intervene by way of writ to correct the illegal and inhuman con-
duct of jail authorities on many occasions is an eye-opener to
those who are concerned with rehabilitation of offenders.

All these point out to the need for appointing the right
type of persons to the police and prison departments. Investigat-
ing officials should be trained in modern methods of crime
detection without using violence. Prison and police authorities
should be trained in criminology and psychology; at least they
should not be criminals themselves. A correctional-cum-reorien-
tation course is necessary for prison staff as suggested by the
Supreme Court. Violations of the rights of the prisoners in
India is a serious hindrance to correction and rehabilitation.
Legislature and the executive have their own share of blame too.
Even after the Supreme Court has suggested reforms of Prison
Act and Jail Manuals on several occasions it has not been
carried out so far. The Prison Act dates back as early as 1894,
a time when the reformative and rehabilitative techniques have
not been properly accepted as objectives of punishment.

The courts have many responsibilities in this respect. At
the trial, the courts face with the problem of detecting offenders
as criminals, insane offenders and juveniles. In detecting insane
offenders and prescribing the treatment they deserve, the court
should either be equipped itself in psychiatry and psychology or
else it should be supported by qualified psychiatric experts.
Treating insane offenders as criminals or sentencing them to
ordinary prison is an exercise in futility because punishment will
work neither as deterrence nor as reformation in respect of them.

Young offenders also deserve special treatment from the

Sobraj v. Superintendent, Central Jail, Tihar, A.I.R. 1978 S.C. 1514,
stage of trial itself or even earlier. They need to be tried in juvenile courts in which the set up of the court and the procedure followed should be in such a way as to provide the parental approach and affection for the lack of which they have fallen into delinquency. The Children Act, 1964 (Kerala) as amended in 1978 is a step forward in this direction in Kerala. But it is regrettable to note that though in the treatment part, some headway is made by setting up a Borstal school in Kannore in co-ordination with voluntary child-care-centres, in the trial part, the Children's court envisaged in the Act has not yet started functioning properly. In Kerala, the young offenders are tried by the ordinary court most often even today. Children's court are set up in Maharashtra, Delhi, Bengal and some other states somewhat satisfactorily. In the success of correctional and rehabilitative techniques, a great role is played by the attention given to young offenders by the society and the law enforcement authorities. It is a great mistake to punish them excessively and turn them to hardened criminals and enemies of the society because of the attitude of vendetta and revenge they may develop in reaction to their sufferings.

**ROLE OF THE JUDICIARY**

The rehabilitative aspect of imprisonment is of great jurisprudential importance. The court and the jail authorities in this respect should play a co-ordinated role. The role of the court does not come to an end with the conviction of the offender and sending him to prison. In fact, conviction ought to be the beginning of a more significant responsibility for the Court. Judiciary should prescribe standards of treatment by jail administration if the convict is likely to become more sociopathic in jail than what he was prior to sentence.

Justice Krishna Iyer, in *L. Vijayakumar v. Public Prosecutor,* stressed the need to keep first offenders who were young,

5. *Charles Sobraj* (supra).
however, grave the nature of their offence may be, away from the hardened criminals in jail, so as to provide them with opportunities of reforming themselves into better citizens. The reformative jurisprudence of confinement and the need to personalise sentence were emphasised by the Court earlier in *Mohammad Giyasuddin v. State of A.P.*7 Stressing the need to reform and rehabilitate the criminals the Court observed: "The implication of harsh and savage punishment is thus a relic of the past and regressive times. The human today views sentencing as a process of reshaping a person who has a primary stake in the rehabilitation of the offender as a means of social defence."8

The Supreme Court in several cases9 has stressed the need for therapeutic outlook for the criminal courts referring to Section 248(2) of the new Criminal Procedure Code. The Section reads:

"Where in any case under this chapter the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law."

Significantly it empowers, the Court to consider the facts and circumstances of the case which will help to personalise the sentence and to look at the problem from a reformative angle. In fact, this provision as pointed by the Supreme Court, has to be put to dynamic judicial use.

In *Hiralal mallick v. State of Bihar*,10 the highest Court of the land gave certain directions to the jail authorities on how to treat young offenders, such as allowing them to use his own dress and releasing him on parole so as to have contact with family. Directions by the judiciary to the jail authorities on reformative aspects of criminals such as release on parole, payment of decent wages for prison labour, effective social and

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8. Id., at p. 1929.
9. Giyasuddin and Vijayakumar (supra).
moral education to convicts inside the prison, recommendation for providing transcendental meditation to willing prisoners occasional visits of the kith and kin in jail, etc. indicate that prison justice be mixed with humanism and goodwill rather than with vindictiveness and deterrence.

In *Sunil Batra v. Delhi Administration*,\(^{11}\) Justice V. R. Krishna Iyer canvassed for positive experiments in rehumanisation like meditation, music, arts of self-expression, games, useful work with wages, prison farestivals, sramdan, visits by and to families, even participative prison projects and controlled community life. In *Sunil Batra*'s case all the judges unanimously favoured reform of Prisons Act and Jail Manuals. They emphasised the need for making Jail Manual available to the prisoners. According to the Court, the decision on the necessity to put a prisoner in bar-fetters under the power of Section 56 of the Prisons Act, 1894, has to be made after application of mind to the peculiar characteristics of each case. Putting prisoners in bar fetters continuously for a long period is a cruel and unusual punishment which is against the spirit of the constitution and contrary to the purposes of correction and rehabilitation. Similarly solitary confinement can be awarded only with the permission of the Court. The court also suggested to keep complaint-box inside the prison and to make visits by the sentencing court and the jail visiting committee more effective. In fact, more sweeping directive were given by the Supreme Court to the Government and the Jail Authorities in the *Sunil Batra II. v. Delhi Administration*.\(^{12}\)

It is significant, in this respect to note that in *Rajendra Prasad v. State of U.P.*\(^ {13}\) the reasons given by the Supreme Court for reducing the death sentence awarded to one of the petitioners who had committed a second murder immediately after release from the prison, to one of R. I. for life, was that the petitioner is not solely responsible for not reforming himself after a term of imprisonment because the conditions in the Indian

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Prisons are not congenial for reform and rehabilitation. It may be relevant in this context to examine some of the typical jail systems existing in Indian States and see how far they are helpful in reforming and rehabilitating the offenders.

PRISONS

Important Jail Systems and Procedures in different States like Maharashtra, Bengal Madras and Kerala may be characterised by the following particulars: 14

(1) Classification of Prisons into Central Prisons (Jails), District Prisons, Special Prisons, Sub-Jails and Civil Jails.

(2) Segregation of prisoners. Female prisoners are kept separate from male prisoners. There is a separate yard for them; they are in charge of a Matron. Similarly juvenile prisoners are kept separate from other prisoners. Under-trial prisoners are segregated from convicted prisoners. There is a classification into Class I and Class II prisoners depending on the nature of the offence. Those committing offences which do not involve gross moral turpitude are classified separately. In the Class I are kept political prisoners. Prisoners coming from high position in life may also be assigned Class I prison. There is also segregation of habitual offenders.

(3) Prison factory and prison farms. In important prisons there is a prison factory, prison farm and prison school.

(4) Prison labour: The old types of hard, unproductive and educative labour have largely been abolished, or are now utilised only as punishments in prison. The aim of prison labour are supplying jail needs by prison labour, supplying government needs, providing prisoners with such training as may be useful to them after their release.

Prisoners sentenced to R. I. are examined by medical officer before they are assigned labour which may be hard, medium or light according to their fitness. Those sentenced to simple

imprisonment can be made to work only if they are willing to avoid monotony and to profit by wages. The Maharashtra Government has laid down that every prisoner should be paid, for his work in prison, at the market rate. For his food and clothing the Government can retain four-fifth and the remaining one fifth is paid to the prisoner in cash. One tenth is compulsorily deducted for savings so as to help him after his release. They are permitted to send portion of their wages to their families. To make prison labour more effective there should be provisions in the Jail Rules to send a reasonable portion, for support of his dependents, out of the prisoner’s wages. In cases of prisoners having no dependents, a reasonable portion of the wages should be retained to be given to him on his release so that he can use it for rehabilitation.

(5) **Prison punishments.** Some of the punishments used in modern times are (i) change of labour to some more severe or irksome form, (ii) hard labour for a prisoner not sentenced to R. I. and (iii) forfeiture of remission, class, grade or of a prison privilege. Abuse of authorised punishments is reported from many Jails. Some state Governments have already brought some amendments in the Jail Manual. Penal diet and assigning of gunny or other coarse fabric for clothing have been abolished as jail punishments.

(6) **Discontinuance of fetters:** Bar or chain fetters is no longer imposed even as a prison punishment, except in absolutely necessary circumstances for security reasons. Similarly prisoners with unexpired sentences of less than six months are no longer required to wear ankle-rings while engaged in out door work. There is considerable modernisation of dwelling accommodation, clothing and prison diet. Women prisoners are allowed bangles.

(7) **Writing and receiving letter and having interviews** is allowed as a privilege. Two letters per month are allowed.

(8) **News papers and books:** Newspapers and books in different languages have been issued to prisoners. Magazines are also provided.

(9) **Radio and music:** The Maharashtra Government sanctioned radios for central prisons. Music helps to develope the
inner beings of the prisoner and brings out what is good or lofty in him.

(10) Films and especially documentary films which help to develop the character of the prisoner are shown inside the prison.

(11) Education and Vocational training: The prisoner requires reformation; what is needed for that purpose is not only hard and elevating work, healthy diet, good living, work and sanitary condition, what is more important is good moralising education. He should be taught some trade which would be useful to him after discharge. There must be competent teachers and every prison must have a school and a psychiatric-physiological clinic attached to it. Libraries and newspapers are provided in our prisons. Instruction in First-Aid and hygiene and sanitation is also given. Female prisoners are taught in home nursing and baby welfare. Better lighting has been provided in the prison to enable reading after being locked up at night.

(12) Moral and religious lectures: At many prisons priests of the Church of England, Roman Catholic Church and of other denominations and members of the Salvation Army and others give religious and moral classes. For female jails lady visitors are appointed as lecturers.

(13) Prison visitors: Visitors include members of legislative bodies, magistrates, social workers, lawyers, mayors and municipal council chairmen.

(14) Prison panchayath: In 1952 the Bombay Government introduced the system of Prison Panchayaths in prison which was first started in the Nasik Road Central Prison. A committee of 40 members selected by the prisoners is formed. To this committee, prisoners from each barrack could, through their representatives, communicate their grievances. The meetings are attended by the prison officers also. If the committee considers the grievance as genuine the committee sends these representation to the authorities for necessary reform or redress.

(15) Remission of sentence: There is a fixed scale of remission for ordinary prisoners, night watchmen, convict-over-
Moreover, remission is given for education for each stage. Remission is allowed for performance of duties on sundays and for good conduct and work. It is desirable to extend the scope for remission so as to stimulate the desire for hard work and good behaviour and avoid overcrowding in jails.

(16) Parole system: Prisoners undergoing long-term sentences are let out, at the discretion and by permission of the I. G. of Prisons on the recommendations of the parole committee, to visit their families on 'furlough.' Suitable punishments has been provided for any breach of the regulations while on parole or on furlough. Release on parole is a great solution regarding sex problem of the offender. Without his normal sexual life, an average man of the type of the prisoner may deteriorate completely in his sexual life. The solution is allowing short visits to home surroundings.

It is a serious subject for thought why the prison even after having the infrastructure for reform and rehabilitation is failing to reform the offenders. The answer may lie in the incompetency of prison officials and ineffective implementation of the reformative techniques. Perhaps, as suggested by Sutherland, "the success of imprisonment as a means of reformation is very slight, although this, also, is difficult to determine accurately." The failure is accountable to the attitude of the prison officials to the prisoners, the rigid discipline by the Government and the officials, isolation of the prisoners, loss of status from the prison life and above all attitude of the society towards the released prisoners.

PRISON REFORM

The prison is a place of detention but it also should be a reformatory abode. The object of punishment ought to be the destruction of vices and the saving of the individuals. Prison authorities must take care to see that prisoners are not allowed to deteriorate under too harsh or too easy conditions; prisoners should be so trained both in body and mind and so treated that they become fit for living in society after release. There should

be hard work of an ameliorating type. The importance and value of cultural and moral education should be recognised. Personal contact with prisoners are very important to avoid a feeling of seclusion, spite and malice in the minds of the prisoners. The prison clinics, hospitals and schools should function effectively.

The system of rewards and punishments should be progressively implemented. At present, there are rewards like gradation and early release for good work and behaviour. The prisoner who shows good behaviour are made warder and watchman. Similarly punishments are given for breach of discipline and failure to do work. Fetters are given only in extreme cases. No useful purpose can be served by corporal punishments which may degrade the prisoner. Yet, there are many instances, as discussed earlier, where the court had to interfere by way of writ in extreme cases of brutality.

Prison labour should be fit for the individual offender. Wages should be given according to the quantity and quality of the work done. Out of the desire to get better wages, the prisoner would be inclined to do better work. It is desirable that, on sundays, instructive films may be shown, to which entrance must be regulated through tickets. According to Dr. Sethna, "If the prisoner is left to understand 'No work, no meals,' he would soon be brought to industrious habits. Not by physical force, or repression but by indirect necessity and by system of assigning fair returns could a prisoner be made to be a voluntary hard worker."16

The sexual life of prisoners need adequate attention. In order to avoid sexual perversions short visits to home by the prisoners should be allowed. There should be individualisation of prisoners and segregation of prisoners between ordinary, habitual and dangerous criminals.

Open jail system is also being experimented in states like Maharashtra, Bengal and Kerala:

After-care Work

Madras has a developed system of after-care work. There is the Madras Discharged Persons Aid Society established in 1926. There are district Societies and Associations doing after-care work, e.g., North Arcot Discharged Prisoners Aid Society with probation officers to help and supervise the released prisoners and to arrange for their repatriation or to find work for them. Many other districts have such released prisoners aid societies.

Bombay also has been doing good work in this field. For example, jobs were often found by the Bombay Released Prisoners Aid Society for discharged persons. Many other States have followed suits in this line.

Special Attention for Juvenile Offenders

The problems of correction and rehabilitation assume more importance in the case of young offenders because there is clearly greater justification in their case for the use of remedial measures. Penalties may be necessary for adults, but prove ineffective for juveniles and more over, the prospects of redemption are greater at a more formative stage of development. All civilized legal systems necessarily make special provision for children, just as it will make for those who, because of insanity or mental abnormality, are not fully capable of managing their own affairs.

Juvenile delinquency involves wrong doing by a child or by a young person under an age prescribed by law. A statute may include in the definition or delinquent child even a wayward, incorrigible or habitually disobedient child. According to Robinson, delinquency includes “peddling and begging, disorderly conduct, malicious mischief and ungovernable behaviour, itself a poliglot.”17 A child or a young person, growing up idly or living in crime, or associating with thieves, robbers, or bad characters, vagrant, prostitutes or vicious persons, or a child who visits a gambling saloon or wanders about streets, who absents himself from home without the consent of parent or guardian may be regarded as a delinquent child.

The reasons for juvenile delinquency may be widely divided into (1) environmental and (2) personal i.e. physiological or psychological. Some of the causes for delinquency are (1) broken home or undesirable conditions at home, particularly quarrels between parents, desertion, intoxication, immorality or parents, poverty and unemployment of parents, overcrowding in one-room-lodgings, lack of proper sanitation or conveniences, cruelty of step-parents, desertion or lack of care in the case of unwanted child, partiality of parents in treatment of children, (2) bad company (3) adolescent instability and impulses, (4) early sex experience, (5) mental conflicts, (6) love of adventure, (7) motion pictures, (8) school dissatisfaction, (9) poor recreation, (10) vocational dissatisfaction, (11) special physical conditions etc. These are not exhaustive. The causes are many more.

There is a need for saving children from being corrupted in the company of bad neighbours and also from being utilised by adult offenders as implements for crime. Labour under unhealthy conditions or child labour may cause delinquency. The exploitation of children by their parents for begging or the sending of children to work to add to their family income are some of the sources of delinquency. Adult education programme should train the parents to understand and provide for the welfare of their children. Lack of education at home is a cause of delinquency. Juvenile delinquency is mainly the result of lack of protection and organisation of the right type. Children left without security and neglected or not properly cared by their parents or left to their own selves because of the lack of schooling and parental care, run the risk of falling into anti-social conduct. Young delinquents have to be handled with great attention and imagination, if good results are to be expected in correcting them.

Education must have a socialising value. The atmosphere in school must be congenial to that purpose. Education inculcating intelligence, free choice and social responsibility may be a means to prevent juvenile delinquency. A proper way of thinking, a proper way of doing things, good behaviour with others, socialising and proper conditioning of the emotions, a proper habitualising to right action are the traits of character. Moralising or preaching in an interesting or attractive style may be made
part of training. Teachers, who are competent and inspiring should encourage introspection with regard to their students under their care. The teachers should encourage self-help in their students. There should be a teacher who visits the home of the child so as to communicate with his parents.

Problem-children should be treated and trained in children’s home. Children who suffer from maladjustments or other personality traits and behaviour disorders must be kept separately from children who are merely victims of circumstances. The latter needs economic protection, education and training for good citizenship, but the former need diagnosis of the disease and adequate treatment.

As far as vocational training is concerned, there should be vocational guidance institutions or clinics, and government, universities or other educational institutions should provide all facilities for holding vocational guidance tests so as to inform the prospective student of the desirability or otherwise of taking up a contemplated course of technical or vocational studies. But the advice should be only as guidance and everybody should be at liberty to take up such occupation in life as he chooses.

The problem of juvenile delinquency has to be dealt with as a socio economic problem that concerns the society. The delinquent child of today may become the formidable criminal of tomorrow. Early detection and treatment are necessary. Cultural and psychological education is the most potent way to meet the problem and to prevent the formation of future criminals. Application of modern scientific methods in reforming the problem child will be of great help in this direction.

CHILDREN ACTS IN INDIAN STATES

For the protection of children in India Children Acts were passed in Bengal, Bombay, Madras, Central Provinces of Berar and Travancore and other States even from the first part of this century. Some of the provisions are similar.

In Bombay, there was the Bombay Children Act 1924, which was replaced by the Bombay Children Act of 1948. The Bombay Children Act, 1948 applies to Mahrashtra and
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Gujarat. It provides for the proper custody and protection of children and for dealing with offences against them. Under the amended Act, a child means a boy under the age of sixteen or a girl who has not completed 18 years of age. Under the Act, no delinquent child who could be reformed should be sent to jail, offences against children are made cognisable, exploitation of children is sought to be prevented, homeless and destitute children are sought to be protected, a variety of Children's institutions are set up. The Bombay Borstal Schools Act 1929 provides for the establishment of Borstal Schools for the detection and education of juvenile delinquents up to the age of twenty-one years.

Under the Children Act 1948, juvenile courts have been established for trying cases of children. These courts have the exclusive jurisdiction regarding guidance, safe custody and treatment of children. Under the Act, a police officer or an authorised person, can produce before a juvenile court a child who is homeless or, without any perceptible means of subsistence or, destitute with a parent undergoing imprisonment or, a child under the protection or care of a person who is incapable of being his guardian on account of bad character and habit or, a child found in the company on a thief or prostitute or, a child exposed in anyway to moral danger or liable to enter into a career of crime.

A juvenile court can send a delinquent child to an approved centre or children's home or commit him to the guardianship of a relative or other fit and proper person who is willing to undertake or accept responsibility regarding the child. The Bombay Children Act provides for the placing of juvenile delinquents under the supervision of child welfare officers (Probation) or some other fit and proper person appointed by the court. These officers can befriend and guide delinquent children entrusted to their care and protection. There should be such officers and probation associations in all places for the efficient execution of these provisions.

Any adult person who has victimised or improperly treated any child or has offended against any child can be punished. Making or allowing a child to beg renders the adult concerned
liable. Going about, with a child in charge, in a drunken state, or giving intoxicating liquor or dangerous drug to a child or inciting a child to beg or wager or borrow, is also punishable under the 1948 Act. The police officers can seize any cigarette, tobacco, or other smoking material or instrument found in the possession of a child found smoking in a street or public place.

The West Bengal Children Act, 1959: The West Bengal Children Act provides for the establishment of juvenile courts and for sending juvenile delinquents to industrial schools and for release on licence from industrial schools. The State Government establishes industrial schools for receiving youthful offenders and children who may be sent there by the courts. Person under 18 years of age will come under the definition of child. Act applies to neglected child also. The Act provides for penalty for cruelty to children and also for after-care organisation. There is provision for bail and safe custody. The parent or guardian of a child (charged on an application for an order for sending the child to an industrial school) can be required to attend at the court at all the stages of the proceedings before the court. The Act provides for discharging of juvenile after due admonition or for committing them to the custody of their parents, or relative or in the absence of such person, to the custody of any respectable person upon a bond executed by such parent or relative or person. In West Bengal, there is also a Borstel Schools Act passed in 1928 for the establishment of Borstal Schools. Other legislations in the field in Bengal are the Reformatory Schools Act 1897, the Vagrancy Act 1948, the Suppression of Immoral Traffic Act 1954, the Prevention of Juvenile Smoking Act 1919. Under the earlier Children Act, the Central Children's Court was established in 1914 for the city of Calcutta and the district of Howarh. Now there is the Juvenile Court by the 1959 Act.

Laws in Kerala: Previously there was the Travancore Children Act for custody and protection of juveniles under sixteen years of age. Where the Madras Act applied, it protected children up to 18 years of age. After the State of Kerala has come into existence there was a new legislation in the field, i.e. the Children Act, 1964, which was amended in 1978. Under the Act if a child
below 16 years is committing an offence or found wandering without anybody to look after he may be arrested by the police and brought before the Children's Court. The presiding officer should be a lady dressed in sari only (not in black robes) and may be sitting together with two or more male members. If anybody comes forward to look after the delinquent child claiming his guardianship he will be sent with a security bond to be executed by that person. If nobody is turning up he will be sent to the Borstal School. The Act envisages also some vocational training for juvenile offenders in the Children's Home. There is one Borstal School set up in Canannore. Children may be sent to voluntary organisations also who undertakes their custody and welfare.

There are similar legislations in almost all States and Union Territories including Delhi. The Children's Court is functioning, to an extend, satisfactorily in Delhi.

The Indian Council for Child Welfare resolved in 1959 that a uniform Children Act in the States and Union Territories for the protection, training and rehabilitation of children and young offenders was necessary. The idea faced some constitutional difficulty and was dropped. The most effective requirement for the successful working of Children Acts is the proper and whole-hearted implementation of their provisions. It may be suggested that the age should be raised on a uniform level in all the States to include within the definition of the child any person under 18 years of age. At the Dharwad Borstal School young delinquents, under the age of 21 came to be looked after and trained both culturally and occupationally producing good results. They are trained in carpentry, blacksmithy, spinning, weaving, agriculture and industry. For reshaping their potentialities and sentiments a long term detention may be necessary, but such detention far from unjustly depriving them of their liberty may remould them, giving them new social birth.18

ROLE OF CHILDREN'S INSTITUTIONS

The Correction and Administration Wing Bombay needs mention. In 1957, in Bombay, a department was established, as

Social Welfare Department with a section dealing with behavioral problems and with implementation of the Children Act 1948, the Probation of Offenders Act 1958 (Central Act) applicable to Bombay and the Habitual Offenders Act. This wing, in Bombay, deals with implementation of social legislation and socio-correctional activities. Institutional activities of the wing are concerned with running observation Homes, Approved Centres, Approved Institutions, receiving centres for beggars, protective homes, probation and welfare home or hostels, corrective settlements under the Habitual Offender Act etc. Under the Bombay Children Act 1948, children are kept at the observation Homes under the direction of the Juvenile Court. Child Welfare Officer at the Observation Home study the cases of the children kept there and assigned to them for study and report. The report helps the lady magistrate in the Juvenile court.

The Child Guidance Clinic at the Observation Home Umerkhadi, Bombay, renders very useful service concerning the study of the problems of the juveniles sent to the home. The clinic team deals with diagnosis and treatment of juveniles and with emotional and behaviour problems in a systematic and scientific manner. The clinic has been functioning wholetime since July 1, 1971.

The Juvenile Service Bureau, Bombay is concerned with preventing juvenile delinquency in Greater Bombay. It provides case work service, counselling and guidance to children and their parents, education through library service, visual activities, nutrition, medical aid, financial assistance for school equipment, and recreational activities to young folk.

Children’s Aid Societies and Certified and Industrial Schools are established for protection and care of children who are likely to go astray and for reformation of delinquent children. There are also institutions, under the provisions of the Borstal Schools Acts. The English Borstel law has been adopted in India, subject to some necessary modifications. Under the Borstal Schools Acts, Borstal Schools have been established in the different States. The Borstel system as an institution for the correction of the young offender can have a great value in protecting the children from going astray.
Some examples of Borstal Schools and Children Aid Societies in different parts of the country are The David Sasson Industrial School, Bombay, Chembur Children’s Home, Mankhurd, The Home for Mentally Different Children, Mankhurd, The Yeravada Industrial School, Poona, The Industrial School, Alipore, The Borstal School, Dharwar and The Borstal School, Canannore (Kerala).

EVALUATION OF THE CORRECTIONAL INSTITUTIONS

Now, we have to examine the success or failure of the reformatory institutions and techniques. A large proportion of the offenders under the care of agencies for correction are recidivists or persistent criminals. This shows the failure of the reformatory techniques. The high rate of recidivism is to be taken into account in the formulation of correctional policy. A large part of the work of police, courts and penal and reformatory institutions have to be devoted to the recidivists. The problem of recidivism may be explained in terms of either the characteristics and conditions of offences and offenders or the inadequacy of agencies of reformation. The first involves a social psychology of the recidivists and the second involves an analysis of the techniques of reform.

Social psychology of recidivists needs to be correctly understood. Perhaps who live in areas having low crime rates, who are reared in non-delinquent homes, and who have a comfortable scale of living are less likely to fall into criminality and if they occasionally commit crime they are not likely to return to crime after any method of punishment. Repeaters often were brought up in slum or other deteriorated areas, in homes where destitution, vice and criminality were usual, in isolation from law abiding groups of the community. Recidivism may be explained in terms of simple habit formation, persistence of crime is persistence of habits. It can also be attributed to personality traits or pathological traits such as mental defectiveness, emotional instability, egocentrism and psychosis. Isolation from law-abiding society is explained as another cause of recidivism. Ordinarily the offender acquires no facility in the manners of law-abiding groups. At the same time, criminality and the me-
Methods of dealing with crime stimulate criminals to form associations, loyalties, and friendships with each other and as a result, their attitudes and behaviour pattern persists.

Institutional failure and inadequacy of the methods of reformation also account for the increase of crime rate and recidivism. If the offenders were reformed when the first agency had supervision over him the problem of crime would be solved to a great extent. As a matter of fact, if we take the experience of United States, every policy that has been tried has resulted in a large proportion of failures in America and it is true of prisons, probation, parole and fines. The failure of reformative policies was recognised two generations ago, and it was explained that it is necessary to start when offenders are young. When the juvenile court failed to reduce crime rates, the measures were pushed further back into childhood, and child clinics were established. Even these agencies have had a relatively low degree of success in modifying behaviour and personality.

**Conclusion**

The failure of the various departments of the administration of criminal justice points out to a definite conclusion in the minds of those who are concerned with a smooth functioning of the criminal justice system. That is, different departments concerned with justice should work in co-ordination and unity. If crimes go on increasing, it will give a heavy burden not only to the investigating authorities but also to the courts. The courts will be over burdened with files which will cause delay in disposal. Delay will lead to injustice to the innocent and losing of confidence in the minds of public about criminal justice system because really guilty may escape also with passing of time.

The conventional penal policies aimed at indiscriminate and uniform punishment for all those who violated law have failed. As a matter of fact, this policy was the product of the classical school of criminal law, and the expression of religious and social beliefs and conditions of the day. In its place, the new

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20. *Id.*, at p. 590.
policy of individualisation, directed specifically at reform of the individual is being experimented. The success depends upon the proper implementation of techniques of reform. One important reason for the failure of the conventional system was the lack of co-ordination between the various departments of justice resulting in the lack of unity of control and organisation. Legislature, government, court, police, prison authorities, probation department and parole board all acted independently and without considering the experience and opinion of one by the other.

This experience calls for the organisation of a co-ordinated approach between different departments. There must be co-ordination in policy as well as functioning. The courts must put to proper use of the individualisation of punishment like indeterminate sentence, probation and directions for parole. The prison authorities should promptly carry out the directions of the court with the spirit of reform and rehabilitation and welfare of the society. There should be, a spirit of co-operation from the public also to co-operate with the court and the police in bringing the real offenders to justice and, with the correctional agencies in reforming the offenders. There need a basic change in the approach of the public also towards the criminal, a sense of responsibility towards crime problem and sympathy towards the criminals who are the victims of their unfortunate surroundings. Members of the public should help the work done by the juvenile courts, probation officers, Children’s Aid Societies, Schools and homes and after-care associations by providing work for the young folk after release. There is a unity and social connection of all that is in the society. Reform cannot be implemented on compartmental basis. There should be reform from various directions in the society.

In India, we have problems peculiar to our own apart from the problems of underdevelopment, poverty and ignorance characteristic of other poor countries. Historical, cultural and social backgrounds rooted in outdated religious dogmas and superstitious believes are standing in the way of reform and transformation of the society. This general resistance from a section of the society has its role not only in the prevalence of certain offences like untouchability, bonded labour, sati, burning
of brides for want of dowery etc., but also in the failure of preventive or reformative measures adopted to meet the situation. The emerging capitalist culture also contributes much to the resistance against reform and change. The desire for easy money and aggrandisement has pervaded the thinking of the general society to such an extent that it holds its sway in all fields of national life. Ruthlessness in making money, fraudulent claims of advertisements, bribing and purchasing agents of business have become universal in business. Political leadership is indulging in corruption and bigotry and only aids the general corruption, racketeering, cheating and exploitation which prevail in the general society. The causes of crime characteristic of a capitalist society are also accountable to the failure of the measures of social defence as well. All the agencies of criminal justice system like judiciary, police, prison authorities and reformatory institutions are not above corruption. Police and prison authorities often indulge in brutalities and thwarts reformation and rehabilitation not out of a desire for reducing crime but out of the desire for money to be extorted from them. Perhaps, as believed by criminologists of the sociological school like Sutherland, criminality is characteristic of the level of social development of the society. Reform and rehabilitative techniques may at best serve as a hotch-potch arrangement. A real clue to the solution of crime problem may lie in political, cultural and social revolution.