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From Idealism to Reality: Rethinking Prison Abolition

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"Justice must always question itself, just as society can exist only by means of the work it does on itself and on its institutions." ¹

ABSTRACT:

This essay critically examines the prison abolition movement, exploring the historical context, its ideological foundations, and whether such ideologies truly hold a dominating force in the future. The movement aims at the complete abolition of the prison system, with a stark focus on changing the current legal and social order to one that is more socialist in nature. However, the essay refutes the arguments for complete abolition and instead proposes comprehensive solutions that can be implemented to yield considerable results. The essay begins with tracing the history of the prison model, and its evolution since the 18th century, with the emergence of new beliefs. Further, it demonstrates how a punitive system causes more harm than good and should be replaced with something more humanizing. It details the need to move beyond a black-and-white mindset and focus on social nuances. Drawing on global examples, particularly Norway's successful prison reform model, the essay emphasizes the significance of using a restorative justice approach instead of a punitive framework, while advocating for targeted reforms within the prison systems. The essay also examines the socioeconomic factors contributing to crime, arguing for comprehensive community investments and poverty alleviation measures. It critiques the neoliberal model of privatized prisons, especially within a capitalist sphere, and attempts to call for better government accountability and reform policies.

In conclusion, the essay emphasizes that while the prison abolition movement raises important questions about justice and equity, a pragmatic approach focusing on systemic reforms and restorative justice offers a more viable path forward. We can take a lesson from successful global models and by prioritizing humane treatment and rehabilitation, we can ultimately create a criminal justice system that truly promotes societal upliftment to foster a more just and equitable society.

¹ Michel Foucault, *Society Must Be Defended: Lectures at the Collège de France, 1975-1976* 27 (Mauro Bertani et al. eds., David Macey trans., 2003).

I. Introduction

The modern prison system has existed in society ever since the 18th century, prior to which punishment was less a matter of penitence as much as it was a form of a public spectacle. Punishments earlier ranged all the way from physical torture, abuse, and emotional incapacitation to complete isolation. Prior to the 1800s, punishment was purely retributive, ones that violated the very core of human dignity and morale. The prisoners were completely banished from society and were not deemed to be capable of reform at all.² However, with the urgency of reformed ideas about individual change and establishing a humane system of justice, the institution of penitentiaries was created. It aimed at changing the model of deterrence to rehabilitation and reformation. This system led to a greater discourse around the concept of the criminal justice system, which followed greater advancements over the course of the upcoming years.

However, since the late 19th century, arguments that challenged the efficacy and effectiveness of prisons started arising. One of the earliest pioneers of the abolitionist movement was Ruth Wilson Gilmore, who in her book *The Golden Gulag*, highlighted how prisons perpetuate a cycle of systemic inequalities, rather than alleviate them.³ The massive growth of the Californian State prison system since 1982 brought with it a great share of opposition against using prisons to pacify societal ills. It has sparked a fierce debate, and disdain over the criminal justice system across the world, bringing to light humanitarian concerns that should not have been neglected otherwise. But, against such discrepancies, is abolishing prisons altogether the correct thing? Or could we discern ways that integrate the intention behind reform and combine it with a less and more pragmatic approach? In this paper, I aim to analyze this debate in light of the prison system in India and the U.S. and study the practicality of the case made by American activists.

The Dichotomy of Justice:

The binary notions of justice in society are navigating on rocky roads. Though, not explicit, within the punitive framework, punishment and justice remain tied—the harsher the punishment, the better justice served. In Kant's 'Metaphysics of Morals', he advocates for punishments that are commensurate with the gravity of the crimes. He further elaborates by

² Pollock, J.M. *The Philosophy and History of Prisons*, Jones & Bartlett Learning, (Feb. 01, 2024, 4:19 PM), http://samples.jbpub.com/9781284020212/15963_CH01_Pass3.pdf

³ Geography, <https://geography.oii.ox.ac.uk/about/>, (last visited Mar. 6, 2024).

stating that judicial punishment must only be imposed if the individual has committed a crime.⁴ It is often observed even in the present times, that the initiative to tackle crimes is gradually focusing on attacking those who commit it and the moralistic dichotomy between the innocent and the guilty persists. Nowadays, the criminal justice system, so to speak, operates on a more ‘correctional’ and ‘rehabilitative’ approach, but mere labels don’t prove to be that effective when they aren’t backed by potent strategies that could be implemented. The either/or approach in an adversarial system undermines how people’s connection with the criminal justice system varies, and how incarceration greatly impacts family dynamics, in varying socioeconomic classes. The government also plays a distinct role in endorsing such an approach—it treats incarceration as a measure to uphold justice to conveniently avoid addressing this socioeconomic disparity that breeds the grounds for the stemming of crimes. Angela Davis, one of the most prominent figures in the abolitionist movement argues that prisons, “serve as a place to warehouse people who represent major social problems.”⁵ This raises an interesting point about inequitable governmental policies. Policies are made not just with the intention of being beneficial to the public but also by keeping the funds and finances parallel to the policies. Funding prisons instead of funding policies that address poverty, homelessness, and marginalization may seem more affordable to the government. This often amplifies the issue by sustaining the cycle of disparity that causes the commission of crimes in the first place.

Even if there is a recent shift from mere incarceration to rehabilitation and reintegration, the issue lies in existing institutions that underpin the Indian and American criminal justice systems. It is imperative to shift the narrative of using prisons as an incentive to manage crimes to a both/and perspective. A multifaceted issue, like so, this cannot be approached with a simplistic black-and-white mindset, instead, it requires a perspective that acknowledges and navigates the nuanced grey areas, which goes beyond the punitive framework.

II. Mending the faults, not demolishing the roots

The prison abolition movement in the United States aims to transform how we perceive justice, and how we should act upon it too. It is crucial to leave no room for ambiguity, so let’s clearly define the movement’s goal: It seeks to completely end the use of prisons and jails. But the real

⁴ Guus Duindam, HOW CAN PUNISHMENT BE JUSTIFIED? ON KANT’S RETRIBUTIVISM, open.library.okstate, (Feb. 01, 2024, 4:19 PM), <https://open.library.okstate.edu/introphilosophy/chapter/how-can-punishment-be-justified-on-kants-retributivism/>

⁵ Davis, A.Y. (2016) *Freedom is a constant struggle*. Chicago, Illinois: Haymarket Books.

challenge that persists is how we turn this utopian notion into reality or whether that is possible altogether.⁶ The prison abolition movement not only seeks to end incarceration but to eradicate all social ills, ranging from racism all the way to capitalism. A goal as broad and radical as this presents an idyllic view of a utopia, which cannot be materialized in a short span of time and seems to be difficult to implement even in the future. Despite all its shortcomings, it does bring conversations about fundamental reform into the limelight, which can take on a dominating rhetorical role to embrace reform in prison conditions and greater investment in communities. Some individuals use the term “abolition” merely in a hyperbolic sense to adorn their arguments.

The fundamental question, though, still remains—is abolition the answer to all the problems? I believe that, although its ideologies could bring a drastic reform in society, starting with demolishing prisons isn’t the right approach. Especially since the abolitionist goals aren’t merely on moral grounds, but they also seek to challenge the American capitalist foundations, perhaps even advocating to remove them altogether. The transition from the existing American governance structure to one that is more communal would evoke great agitation, especially within the public, who might perceive such a radical reform with a grain of salt. This broader agenda would also overpower the immediate effective prison reform goals if they’re seen in the light of the same criticism of the American governance system.⁷ In India, a country that is socialist in matters of governance, there have been observed discrepancies in the crime and incarceration rates. As per (the NCRB) Indian Crime Records Bureau’s Crime in India report, in the year 2022, more than 58,00,000 cognizable crimes were reported, consisting of both the IPC and Special Local Laws (SLL) crimes. This data demonstrates that even in desired governmental setups disparities are expected to arise due to the varying social experiences of different communities, and this strengthens the argument of the need for reform, not outright demolishing the institution.

⁶ Bridget Conley & B. Arneson, WHAT PRISON ABOLITION HAS TO DO WITH INTERNATIONAL POLICY INKSTICK, INKSTICKMEDIA, (Feb. 01, 2024, 4:19 PM), (2023), <https://inkstickmedia.com/what-prison-abolition-has-to-do-with-international-policy/> (last visited May 19, 2024).

⁷ Barkow, R.E. (2022) *Promise or peril?: The political path of prison abolition in America*, SSRN, (Feb. 01, 2024, 4:19 PM), <https://deliverypdf.ssrn.com/delivery.php?ID=645078002070009006011001101027123064049002040059035036071125125006005093004070028091100000007125053063114126082109077018095077033029000036017107122018084090020119042036052067065076005027027078089094017094084070104067118082010085070112066120096024084>

One of the fundamental arguments of this debate seeks to do away with punishment altogether. There have been several analogies invoked with slavery when it comes to prisons—comparing the prison model to a detestable practice. But it is important to understand that this statement holds more of a persuasive value to attract people to advocate for the same than it does literally.⁸ In fact, prison does not equate to social death; in many prisons, for ex: Tihar Jail, in Delhi, India, inmates have access to effective remedies for grievances, accompanied by educational, and vocational programs and link up with non-governmental organizations. The funds allocation as well as the well-functioning of a specific prison system varies greatly from state to state, thereby, to view the prison system with a contemptuous look on a generalized scale, isn't exactly valid. It is also important to note that prisons are an output of a hierarchical system of rules and regulations that operate to ensure the smooth functioning of the prisons. Yes, it does involve confinement, but that sets up a system of deterrence that further sets a standard for the public— 'if you commit an offense, there are repercussions that follow it', maintaining the social order in society.⁹ H.L.A. Hart, a distinguished legal scholar stated that 'Punishment, if it is to be justified, must respect the moral agency of individuals, treating them as responsible agents capable of understanding and responding to the law.'¹⁰ It was further elaborated that this reasoning is based on its positive effects, provided that these effects are under the limitations of principles that prevent injustice. This statement, upon closer examination, elucidates the persisting polarity of the idea—Of retribution v. Rehabilitation, and whether the term "Punishment" is really an apt one to use. It is vital here to switch focus from Punishment and replace it with 'Restorative Justice'. This allows room for the creation of a framework that provides convicted offenders with a safeguard to lead productive lives and have a better relationship with the world around them.

Under the frenzy of revolution, the abolitionists often fail to acknowledge the concept of reforms altogether. They reject 'reformist reforms' as they don't work towards entirely dismantling the existing legal order but rather take a more step-by-step approach towards actual reform. Abolitionists have also opposed laws that seek to release non-violent offenders, as they believe it would hamper the sentiments of those still in prison and would instead promulgate

⁸ *Id.* at 1460.

⁹ Shelby, T. (2022a) 'The Functional Critiques of Prisons', in *The Idea of prison abolition*. Princeton, New Jersey: Princeton University Press, pp. 17–20.

¹⁰ Hart, H.L.A. *Punishment and Responsibility: Essays in the Philosophy of Law*. Oxford University Press, 1968, p. 9.

that certain people deserve to be locked up in comparison with others.¹¹ This ‘all or nothing’ approach does more harm than good, as it runs the risks of letting go of too many beneficial reforms—ones that aren’t based on a utopian notion. Yes, there needs to be an urgency in establishing a more humane, non-discriminatory, and just society, but without immediate alternatives that can take into account all the factors (economic, social, geographical, etc.), the whole criminal justice system would fall apart.

The Socioeconomic Dilemma:

It is a well-understood concept that nobody is born a criminal, it is their life’s circumstances and injustices that turn them into one. In a broader sense, crimes are an outcome of the state’s negligence to fulfill its duty towards the citizens. This is what forms the grounds for a majority of the abolitionist argument, on the basis of which their demand for dismantling prisons persists. Prevention of crimes, as acknowledged even by the abolitionists, would require more than just colossal investments in institutions, all together seeking to create community mechanisms to address faults and enable people to take accountability for their actions. But, despite this utilitarian goal, this ideology still comes with its shortcomings.¹² While a significant amount of attention is given to the prisoner's experiences, it is also equally important to focus on the victims of the crimes, and their right to seek remedy and justice for the mental or physical harm they have to endure. Crimes differ in nature—white-collar crimes such as bribery, fraud, and corruption need not have been induced by societal conditions, they can simply stem from emotions like jealousy, greed, hate, the desire for power, etc. A social policy change cannot eradicate such human tendencies, in fact, if necessary, actions aren’t taken for such acts, it would further cause greater havoc and disorganization in the society, which would prove to be a grave irony.

The topic of “the dangerous few” is something that the abolitionists don’t have a concise stance on. Incarceration varies greatly for varying crimes, especially when we talk about grave offenses and the offenders who commit them. There are no solutions proposed to deter such offenders, and exceptions made for them cannot possibly be a pragmatic approach for it would lead to less accountability for other types of crimes; though they might not be as serious, they

¹¹ CRITICAL RESISTANCE, REFORMIST REFORMS V. ABOLITIONIST STEPS TO END IMPRISONMENT, https://criticalresistance.org/wp-content/uploads/2021/08/CR_abolitioniststeps_antiexpansion_2021_eng.pdf (last visited May 19, 2024).

¹² Mr. Justice S. S. Dhavan, The Indian Judicial System, allahabadhighcourt, Feb. 01, 2024, 4:19 PM), https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html

are still crimes and, so cannot be neglected altogether. Abolitionists argue for a community-based approach instead, but what constitutes ‘community’ remains obscure. Who would consist of this community, and who would be held accountable for issues? In any system, no matter how favorable, certain elements of hierarchy are bound to arise, and if it did what would ensure that such a system does not extend its control over people the same way that prisons have been doing?

This movement often solely takes into account the American carceral system which overlooks a global context when it comes to incarceration. Countries such as Norway, have implemented successful strategies to mend prison conditions and have, therefore, set a global example of effective policy planning and implementation. Norway's prison system emphasizes the need to reduce recidivism, accompanied by ‘cognitive-behavioral programs’ that promote the concept of integration of a convicted person into society.¹³ The global justice dynamic is closely knitted; therefore, it is essential to have a comprehensive understanding of how the criminal justice system of different nations interplays with each other.

III. Navigating the corridors of reform:

Throughout this whole discussion, capitalism has been observed to add fuel to the fire. The recent increase in the use of privatized prisons in the US, containing up to 8% of the total prison population as of 2019, has garnered scornful looks in the eyes of the public. The private institutions and investors, those who obtain cheap labor from the inmates work to ensure that this status quo remains maintained. This neoliberal model of management demands a certain level of unemployment to fulfill their needs, and thus, criminal activity proves to be favorable to them--as incarceration rates increase, so does the cheap labor. Usually, the institutions meant to favor the public end up favoring the authorities that created it.¹⁴ A situation like so requires the government to have an incentive to reform such a draconian model, which worsens both the prison conditions, as well as people’s belief in the system. If a state limits its men, in order to suit its purpose, it will find no great accomplishments with such limitations. The government hasn’t been giving this issue the priority that it needs and that is why, even after the existence

¹³ Sterbenz, C., *Why Norway’s prison system is so successful: Business Insider India, Business Insider*, (Feb. 01, 2024, 4:19 PM), <https://www.businessinsider.in/law-order/why-norways-prison-system-is-so-successful/articleshow/45483042.cms>

¹⁴ Navarro, V. “Neoliberalism, "globalization," unemployment, inequalities, and the welfare state.” *International journal of health services : planning, administration, evaluation* vol. 28,4 (1998): 607-82. doi:10.2190/Y3X7-RG7E-6626-FVPT

of discourses around reform, not a substantial improvement has been made. This corroborates the need for external agencies such as non-governmental organizations, to be appointed as inspecting agencies that could collaborate with area-specific prisons to ensure the maintenance and promotion of better prison conditions. US President Joe Biden in his 2021 address issued an order to phase out the federal criminal system's use-for-profit prisons; this is a step in the right direction.¹⁵

An attempt to shift the narrative from Retribution to Restorative Justice is being made; this should be coupled with greater amounts of investments in rehabilitation centers, community service units, and training programs, only then such an attempt can prove to be successful. The problem of overcrowding has overtly been a major concern for both the prison systems of the US and India. According to NCRB, Indian prisons displayed an occupancy rate of 130%,¹⁶ in 2021, side by side, the Bureau of Prisons in the US estimates that its overcrowded prisons will expand 10% more in capacity, in 2024. This issue in India is accompanied by the overburden of courts and trials that take decades before nearing a judgment. Here, increasing the number of courts cannot bring an effectual difference as long as the current deferral tradition continues. If we go by the abolitionist ideals in times of crisis like this and cut funds, it will only exacerbate the problem even further. No action can be taken keeping merely the long-term goals in mind, it must be decisive and take note of the implications of its immediate implementation. Immediate reform goals should switch the existing narrative and work towards 'Funding more Prisons', 'Improving prison conditions', and 'Creating more prisons', which could potentially mark the beginning of a significant amount of societal upliftment, for it is always beneficial to go about anything, one step at a time. Even in the abolitionist framework, diverse ideas, that are not as radical and argue for societal reform exist. So, keeping the scope of criminal law in mind, the concept of criminal law minimalism as proposed by Ferrajoli, could prove as a suitable and less extremist approach. It emphasizes limiting the offenses in society, while also minimizing the punishment duration for non-serious offenses, upholding a utilitarian notion. However, this external reform would only materialize exponentially when reforms within the prison walls are carried out functionally. As prisoners are not a homogenous group, it is crucial to protect those who are more vulnerable to physical or psychological harm than others, such

¹⁵ Whitehouse, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/26/executive-order-reforming-our-incarceration-system-to-eliminate-the-use-of-privately-operated-criminal-detention-facilities/>, (last visited Mar. 6, 2024).

¹⁶ Uncg, <https://web.uncg.edu/dcl/courses/viccrime/pdf/m7.pdf>, (last visited Mar. 6, 2024).

as the elderly, or those with physical disabilities.¹⁷ Providing up-to-the-mark healthcare facilities is also an important factor that needs to be considered because when inmates are completely under the custody of the authorities, it also becomes their responsibility to uphold and maintain quality conditions that are not just necessary for mere survival but also for leading healthy and productive lives. One of the main reasons for the existence of debate has to do with the poor infrastructure and planning inside the prisons, especially when it comes to Women's Jails that often fall short of living up to a hygiene standard and providing adequate facilities. In The National Women's Law Center's analysis of prenatal care in US prisons, 21 states received Ds or Fs, while only one state attained an A. India though has a relatively low population of female offenders (3.7%), it still isn't sensitive enough to tend to the mental health problems that women tend to face in a timely fashion, and neither is emphasis placed on women's vocational education.¹⁸ It is also crucial to put a strain on the societal implications of a woman's imprisonment and how that may lead to further marginalization in society. So, it becomes a necessity to equip women with the means and knowledge, as well as funding to support themselves, first, inside the prisons, and then, help them reintegrate into society afterward.

Another important issue to highlight is the treatment of pregnant women in prisons. Often times insufficient funds are allocated to take care of the physical and emotional needs which leads to further distress and can cause a lot of harm to both the mother and the child.¹⁹ Policy reforms pertaining to adequate healthcare provisions for both the mother and child would considerably reduce the risk of any fatalities. Including the sensitization of the prison staff to handle the specific needs of pregnant women, coupled with more compassion and greater understanding. One key proposal is to replace prison-specific medical services with the standard National Health Service, once again overlooked by welfare organizations. This would enhance the quality of healthcare provisions and increase accountability amongst healthcare providers. Moreover, the infrastructure should aim at creating a more humane environment for the

¹⁷ unodc, <https://www.unodc.org/unodc/en/justice-and-prison-reform/prison-reform-and-alternatives-to-imprisonment.html>, (last visited Mar. 6, 2024).

¹⁸ Anju Anna John, Period poverty in prisons: ensuring menstrual hygiene and dignity in India, *penalreform*, (Feb. 01, 2024, 4:19 PM), <https://www.penalreform.org/blog/period-poverty-in-prisons-ensuring-menstrual-hygiene-and/>

¹⁹ Alirezaei, Somayeh, and Robab Latifnejad Roudsari. "The Needs of Incarcerated Pregnant Women: A Systematic Review of Literature." *International journal of community based nursing and midwifery* vol. 10,1 (2022): 2-17. doi:10.30476/IJCBNM.2021.89508.1613

inmates, one that provides initiative for change and promotes vocational and educational training, tailored to the interests of the individuals. Such systemic reforms would promote comprehensive development in the personal sphere and further align with the OHCHR Guidelines of the United Nations. Provisions aiming at restorative justice create a rehabilitative setup that actually yields results when it comes to the reduction in recidivism rates. They would not only provide immediate short-term solutions but would also have a positive outcome in society in the long run.

IV. Conclusion:

‘Restorative justice’ as an alternative was completely crossed out as a possibility by the abolitionists, as they saw it as lacking incentive and believed that it would nullify an actual reform. In order for this system to yield results, it becomes imperative for authorities to look at convicted persons with a look of empathy and deem them worthy of being able to reform into better individuals. By adopting such a pragmatic approach, we can dive deeper into the root socioeconomic causes of the crime, and if it persists, can cause a considerable amount of decline in the overall criminal and recidivism rates. Making such a drastic change is difficult, but not impossible, especially if it is in collaboration with welfare organizations; that could significantly reduce the room for any sort of corruption or manipulation. Ultimately, this issue must be looked at without a binary perspective, this is often what causes rifts between people, and to a point where the persistence of those rifts causes no considerable change in the society. By questioning the notions of justice and equity and humanizing the offenders, we can considerably improve the stature of the criminal justice system.

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