**Forum:** Human Rights Commission

**Issue:** The Question of Prisons Being Retribution-Oriented

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**Introduction**

Recently, there has been immense controversy surrounding the incarceration of criminals and whether prisons should be punishment or rehabilitation oriented. The root of the issue is predominantly psychological, which has an underlying implication that a definitive measure of the effectiveness of a retribution oriented prison in comparison to other orientations, through means such as statistics and crime rate differences in alternative nations, covers at best a fraction of the scope of the matter in question, especially considering the involvement of a moral compass, and the legal implications on a particular nation. Attempts to justify retribution oriented prisons and the status quo of how criminals are punished ultimately comes down to the criticism of overcriminalization. One basis of overcriminalization that has not been thoroughly explored is that too many criminal offences, especially in first world countries, are malum prohibitum crimes, meaning that they are not necessarily morally innocuous, and do not contain malicious or criminal intent. These offences usually encompass conduct that would be considered desirable in business or everyday life.

The US currently has around 2.5 million people in prisons or jails- which, to put into perspective, is roughly 1 for every 143 U.S citizens. In order to limit the number of criminals that are victim to overcriminalization, many legal experts have claimed that retribution oriented prisons are the most effective way of doing, as they provide an account of how punishing those who commit more serious crimes is morally justified. However, this is not a simple black and white solution. According to the US Department of Justice, 15-20% of prison inmates are mentally ill; meaning that a retribution based system would not be ethical as it does not cater to their special needs. For example, prior to Alcatraz’s closing in 1963, mentally ill inmates suffering from PTSD, cognitive dysfunction, and traumatic brain injuries who tried to escape the prison, were ruthlessly shot, and killed by guards for their attempts. Whereas patients that were not mentally ill were not as likely to attempt a far fetched escape due to their rationality. Although prison systems have begun recognizing the plight of the mentally ill by providing them with mental health care services, it is often very inconsistent and these mental health care programs offered by psychologists cannot be integrated properly since they would have to juggle these programs alongside their regular prison caseloads.

**Definition of Key Terms**

**Retribution**

In legal terms, retribution is the punishment that is imposed on criminals, and its severity depends on the scale of the crime committed by the criminal. A first-degree murderer being sentenced the death penalty or a human trafficker being sentenced to life in prison are examples of penalties in a retribution-oriented prison.

**Rehabilitation**

This is the process of restoring someone (particularly mentally ill or unhealthy individuals) back to their normal state through therapy and forms of mental training, usually conducted on criminals who have suffered from substance abuse and/or addiction. Rehabilitation oriented prisons exist to change the criminal and eventually integrate them back into society instead of punishing them.

**Overcriminalization**

The idea that criminalization has increased tremendously due to an excessive number of laws and regulations deeming certain actions illegal is having a negative effect on society. This is mostly targeted towards crimes that occur without evil intent, known as “malum prohibitum” crimes.

**Malum Prohibitum**

These types of crimes refer to conduct that is considered unlawful or wrong by the law, but is not a crime with malicious intent such as murder or kidnap.

**Criminal Justice System**

A system established by the government to control crime and ensure that the laws and regulations of a country are protected to the highest degree by imposing penalties on those who violate them. A universal criminal justice system does not exist, and differs for every country depending on its respective government and whether religion and state are separated.

**Parole**

The release of a prisoner prior to the expiry of their sentence on the promise of good behaviour from the criminal on the basis of their performance and actions during their time in prison. In most legal systems, however, when the prisoner is released, they spend a period of time under probation. Incarcerated criminals have to be eligible for parole, and the eligibility is decided by a judge.

**Solitary Confinement**

A type of imprisonment that includes isolating a prisoner from their surrounding environment and excluding them from contact with other inmates. Criminals subject to solitary confinement are often strictly monitored by surveillance cameras and security. It is a form of punishment used in modern prisons.

**Recidivism**

This term refers to the tendency of a criminal to repeat a crime a second time and re-offend. It is also used to describe the percentage of criminals who were sentenced for a repeated offence.

**Background Information**

The ideology behind retribution-oriented prisons stems from the philosophy that justice is served when a criminal is punished for their wrongdoings and isolated from society to protect the innocent and the law. The mental state of the criminal and the ability to change their behaviour if they are eventually integrated back into society is not considered as much as the penance of committing a crime in the majority of legal systems and prisons in the modern-day. In fact, there has been a decline over time in the attention paid to rehabilitating criminals and safely allowing them to carry on with their lives after sentencing. Nowadays, more radical forms of punishment for vicious crimes such as solitary confinement and the death penalty are being enforced in prison systems, and efforts to civilize these criminals rather than punish them are growing weaker in most parts of the world.

Retribution oriented prisons have been criticized for their inability to take into account the mental conditions of a prisoner, a fundamentally flawed approach in the legal system when deciding the proportionality of punishment in relation to a crime committed, and the overall benefit it would bring to society. On the contrary, it has been supported because of the public's preconceived idea of justice, the claim that retribution is key to maintain order and prevent crime rates from spiralling out of control, and that criminals who commit major crimes should not be given a chance at redemption. There exists a thin line between crimes that are immoral and crimes that are prohibited by the law (Malum Prohibitum). According to The Heritage Foundation, the only method of dealing with malum prohibitum offences is through retribution because without a form of punishment for acts deemed illegal by government entities rather than a moral compass. This leaves room for exploitation of the law, and these types of offences cannot necessarily be “rehabilitated”, since they do not usually occur from mentally unstable people, as opposed to more serious crimes such as murder or the illicit selling of weapons.

**Psychological Impacts of Retribution on Criminals**

In the past few decades, countries with the highest crime rates, such as Brazil, South Africa and Afghanistan have relied heavily on retribution oriented prison systems as the primary tool for counteracting increased crime rates and recidivism. Ironically, the “tough on crime” era has yielded the highest incarceration rates in the world. Although it seems rational that retribution would be a reasonable justification for punishing criminals, its main utility is emotional satisfaction. Deterrence theory proposes that when a criminal suffers punishment for their wrongdoings, they are less likely to re-offend. This seems to be perfectly rational at first glance- punishment has played an imperative role in civilizing society; however, the flaw in thinking is that criminals function like us. Their past experiences and circumstances have changed their mental state.

The vast majority of criminals who enter retribution oriented prisons are disordered. According to estimates by the World Health Organization (WHO), approximately 60% of prisoners suffer from at least one mental health problem. Furthermore, 80% of criminals in South America were diagnosed with a substance abuse disorder, and such criminals often have a neurodevelopmental disorder or cognitive impairment. Furthermore, a large percentage of criminals come from a background of poverty, and its relationship with brain trauma and impairment is well established. Failure to fund public health for these criminals and directly address these disorders and mitigate them in the justice system, offenders tend to de-compensate. Most modern prisons, especially ones located in regions with the highest crime rates, do not acknowledge the mental health of criminals and address substance dependence or neurological disorders; criminals are simply punished instead, which worsens their conditions and increases their susceptibility to re-offend.

**The transition from Rehabilitation to Retribution Oriented Prisons in the U.S**

Up until the mid-1970s, the U.S experienced a punitive turn. Prior to this turning point, rehabilitation was an important aspect of the United States’ prison policy. Prisoners were encouraged to build on their occupational skills and tackle their psychological problems, such as drug abuse or excessive anger, which may hinder their integration back into society. The court sentences they received were long enough for the rehabilitation to take effect. Since that point, however, rehabilitation was thrown in the shadows and a punishment oriented system became the prison’s main function. This approach drastically increased prison populations, while having a slightly modest effect on crime rates. As previously stated, many inmates have serious mental health conditions which were effectively treated in the late 1950s and 1960s by the community health movement and psychotropic drugs. This reduced the number of people in state mental hospitals by roughly 45%; however, a third of the people who had left the mental institutions in the past started entering the criminal justice system.

**Effects of Retribution and Rehabilitation Oriented Prisons on Crime Rates**

In countries with high crime rates such as the United States and Brazil, recidivism rates are between 70-75%, which means that this percentage of criminals are rearrested within five years of being released from prison, most of which occur while the offender is on parole. In the United States, crime has declined greatly since the 1990s; however, expert consensus claims that only 10% of which is actually attributed to a retribution oriented policy, and other socio-economic and political factors have contributed more to the decrease in crime in the US. There appears to be a trend with countries having the highest crime and recidivism rates also having retribution oriented prison systems.

Incarceration in countries with the lowest crime rates in the world, particularly Scandinavian countries such as Sweden and Norway, contain a restorative justice system, focused on rehabilitating prisoners. Furthermore, Scandinavian countries emphasize the importance of criminal rehabilitation by having numerous correctional facilities to care for the offender until they are able to be integrated back into society. As a result, Norway has one of the lowest recidivism rates in the world of about 20%, with an estimated 3933 prisoners. Norway does not impose the death penalty or life imprisonment as part of its prison system, and their maximum sentence is 21 years.

**Major Countries and Organizations Involved**

**Penal Reform International (PRI)**

The PRI is a non-governmental organization that advocates fair and effective criminal justice through practical programs (including rehabilitation) and systematically reforming prison systems around the world. Their goal is to “see criminal justice systems that uphold human rights for all and do no harm, to allow the development of safe societies”. The PRI’s ambition is to ensure that the rights of detainees are not violated and that they are not subject to inhumane treatment, with particular emphasis on nations that are predominantly retribution oriented since they statistically have the highest rates of violence. The organization campaigns a less brutal approach to the justice system, promoting a recovery/rehabilitation based approach to handling prison inmates rather than a punishment oriented one, which is why the organization is strongly against the death penalty and advocate against it. The PRI has consultative status in the United Nations Economic and Social Council (ECOSOC), and works with the UN and other intergovernmental organizations to promote detainee rights and aid national policymakers in forming laws and legislative decisions pertaining to the justice system.

**Human Rights Watch (HRW)**

The HRW is an international non-governmental organization (NGO) that operates as part of a movement to improve human rights globally and ensure that human rights protocol is not violated. The HRW formed an ongoing prison project in 1987 to accumulate international awareness regarding the conditions of prisons worldwide. Recently, the Prison Project conducted investigations and published reports on prison conditions in Brazil, Spain, Turkey, and the United Kingdom. The organization pressures governments around the world to make sure that the treatment of their prisons is in compliance with basic human rights, and not subject to violent guard abuse, minimal access to sanitation, and in some cases starvation. The U.N standard minimum rules for the treatment of prisons is accepted as a conventional model around the world in prison systems; however, these standards are rarely enforced. The HRW global report on prisons shows that a large percentage of the millions detained annually are kept in conditions of filth and corruption, with very little access to adequate food or medical care.

**United States**

Millions of United States citizens are incarcerated in prisons that are violent, unsanitary, and overcrowded that provide little health care, education and rehabilitation to detained criminals. Ever since the punitive turn, prison systems in the United States have become more corrupt as an increased number of incarcerated prisoners are being abused, raped, and murdered within prison facilities that are run by individuals who abuse their power with impunity. Numerous detained prisoners in the US who require urgent health care, rehabilitation from substance abuse, or suicide prevention are usually ignored, punished, and occasionally sent to solitary confinement. Although the US constitution requires the protection of incarcerated prisoners, The US Department of Justice released a report that showed prisoners in Alabama, home to the most violent prisons in the US, are often stabbed, sexually assaulted, and even tied up for days without the awareness of prison guards. Furthermore, prison sentences are often very prolonged in the United States, even for minor crimes and malum prohibitum offences, which often changes the detained individual mentally during their sentenced period, increasing the likelihood of reoffending once released. This results in high recidivism rates in the USA, hence, PRI’s headquarters are located here and run most of their operations in the country.

**Brazil**

On December 8th 2017, federal government reports indicated that Brazilian prison capacities were not able to sustain the influx of prisons, as they had increased by 14% in the span of 12 months. This facilitated the spread of diseases and made it a lot more difficult for prison authorities to maintain control over their population. In 2019, Brazil was labelled as having the most violent prison system in the world, due to it being radically retribution orientated. However, along with their influx of prisoners, Brazil still has one of the highest crime rates in the world, with a murder rate of 32.4 per 100000, and over 64000 homicides in 2017. Approximately 32% of prisoners in Brazil were detained for substance abuse or the illegal selling of prohibited drugs. However, instead of appointing these detainees to mental institutions or rehabilitation centres to free them of their addictions, they are bearing miserable conditions in densely populated prison cells with poor treatment from prison guards, increased tensions with other inmates and no adequate healthcare or sanitation.

**Norway**

Norway is a country with extremely low crime and recidivism rates, amongst the lowest in the world, and this can be attributed to its prison system. Norway’s incarceration system focuses on the restorative aspect of their prisons and ensuring that their criminal justice system is effective in rehabilitating criminals and safely reintegrating them back into society. Norway’s prison systems are designed for the conformity of the prisoners and provides them with the essentials they need to function without the expense of their cleanliness or health, as opposed to the US which predominantly contains poorly designed prisons with weak infrastructure and a lack of sanitation. Norway does not take a retribution oriented approach in its justice system, which is why punishments such as the death penalty or solitary confinement do not exist in their prison system. For example, the Halden Prison in is designed to simulate as much normalcy as possible, with no bars on the window, a comfortable bed, a fully equipped kitchen, and friendships between inmates and guards. Not only does the Halden prison focus on restoring their prisoners, they also run programs to gradually reconnect them with reality through woodworking, a recording studio and assembly workshops.

**Timeline of Events**

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| **Date** | **Description of Event** |
| 17th December 1955 | Adoption of the U.N. Standard Minimum Rules for the Treatment of Prisoners by U.N Congress |
| 19th December 1957 | U.N Standard Minimum Rules for the Treatment of Prisoners was officially approved by the U.N Economic and Social Council. |
| 9th December 1988 | Establishment of the “Body of Principles for the Protection of all Persons under any Form of Detention or Imprisonment” |
| 14th December 1990 | “Basic Principles for the Treatment of Prisoners” adopted and proclaimed by General Assembly Resolution. |
| 19th September 1996 | Kampala Declaration on Prison Conditions in Africa |
| 11th December 2010 | U.N rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) |
| 18th December 2015 | Adoption of the “Nelson Mandela Rules” as the revised rules for “the United Nations Standard Minimum Rules for the Treatment of Prisoners” |

**Relevant UN Treaties and Events**

* Basic Principles for the Treatment of Prisoners, 14th December 1990 **(A/REE/45/111)**
* Revised UN Standard Minimum Rules for the Treatment of Prisoners, 18th December 2015 **(A/RES/70/175)**
* Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, 14th December 2000 **(A/RES/2000/14)**

**Previous Attempts to Solve the Issue**

There have been many attempts to solve the issues that come with having punishment oriented prisons. The prison reform movement in the United States began because of the inability to preserve the prisoner’s humanity while also inflicting punishment upon them, problems with safely integrating them back into society, and providing justice for crime victims. As part of the US’ prison reform movement, there have been efforts to explore how restorative justice plays a role in reducing recidivism rates and increasing the effectiveness of their prison system. The State of Colorado has been on a progressive track to reform their prisons and include restorative justice in their policies and practices. The legislature has added restorative justice to its Children’s Code and in its victims' rights act. According to the WHO, 33% of US prisons are assigning weekly rehabilitation sessions for prisoners suffering from drug withdrawal symptoms (mostly in juvenile prisons) and mental illnesses such as schizophrenia, depression and bipolar disorder. This statistics has been constantly increasing throughout the years as more prisons begin to include restorative justice programs into their system.

Although restorative justice has been increasing, many prisons in the US have been neglecting reform because of the fact that it is more time, capital, and resources consuming than simply incarcerating criminals and punishing them. Reform has also been avoided because it’s ideology contradicts conservative expectations of a cruel, punishment inflicting system with no restorative aspect. However, pressure groups and prison rights organizations have been advocating for a change in the treatment of prisoners in countries with high prison populations such as Brazil, the US, and Thailand by urging them to comply with UN treaties regarding prisoner treatment and prison rights such as the Nelson Mandela Rules, and the Basic Principle for the Treatment of Prisoners. These rules cover all the required needs for prison systems to function effectively, ranging from access to adequate sanitation to regulations for prison-guard interactions.

Prisons in Bangkok had appalling prison conditions and the root cause was their excessive population and overcrowding. The Thai government began devising ways of countering this issue because of applied pressure by the UN to comply with their requirements for the treatment of women and the overcrowding in their prisons. In 2013, Bangkok began constructing correctional facilities within the proximity of their prisons, since 48% of their prison population was faced with drug charges and/or substance abuse. The transfer of these prisoners to correctional institutions will eventually free up space in current prisons and introduce a restorative and retribution merged approach to dealing with prisoners in the future. However, prison conditions in Thailand do not seem to be improving at a moderate pace, and they are still being urged to reduce their detention rates and improve the standard of their prison system.

**Possible Solutions**

In order to reduce violence in prisons and safely reintegrate incarcerated people back into society with a lower chance of reoffense, it is important to distinguish between the types of prisoners that were incarcerated. Countries such as Norway, Sweden and Denmark have a prison system that distinguishes between prisoners who commit malum prohibitum crimes such as property damage, tax evasion, and patent infringement from prisoners who commit more serious crimes that have a moral implication on others or oneself such as homicide or substance abuse. Criminals who commit major crimes are treated with more emphasis on rehabilitation and restorative justice and are appointed professional psychologists from mental institutions to take gradual steps in civilizing these criminals and eventually reintegrating them back into society. In these restorative programs, criminals are taught certain breathing techniques, engage in team-building activities, and were even offered education. This approach has drastically reduced crime rates in Scandinavia and has built a healthy and effective prison system without the need for retribution.

However, many retribution oriented prisons today function from a solely punishment-based approach, that they operate unethically by withdrawing access to healthcare, sanitation, and basic rights from prisoners. Pressure groups and organizations concerned with prisoner rights must continue to urge the UN to strictly enforce its regulations for the treatment of prisoners and ensuring they have access to basic rights. This will eventually lead to initiatives being taken to reduce overcrowding in prisons by sending a portion of their populations to correctional facilities which will reduce prisoner violence, the rapid spread of diseases, and human rights violations. Prisons in many countries are in need of urgent reform to reduce crime and recidivism rates, and retribution must be fused with rehabilitation in order for this to be achieved.

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