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### RESEARCH ARTICLE

#### A COMPARATIVE STUDY ON PRISON SYSTEMS: TIHAR AND HALDEN

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#### Abstract

In order to serve justice, countries rely on one of two systems of justice. The first way is through the method of retributive justice and the second way is through restorative justice. Countries which tend to follow the retributive system of justice in their prisons tend to have higher incarceration and recidivism rates. On the other hand, countries which rely on restorative justice have lower crime rates and recidivism rates. But despite these findings, many justice systems around the world put emphasis on the first approach even though studies have shown that the restorative justice system can turn ex-offenders into well-functioning members of society. The goal of this comparative study is to understand how retributive justice and restorative justice work in India's Tihar Jail and Norway's Halden Prison, respectively. Moreover, it is also important to understand the impact of both of these justice systems on the offenders, while they serve time and after they have left the prison. Secondly, the research aims to decipher the possibility for other prisons to implement the restorative approach. To understand the subject in-depth, the researcher has referred to a compilation of secondary sources, including articles, books, documentaries, as well as previous research done in the subject area.

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#### Introduction:-

Criminal justice systems are either based on the concept of retributive justice or restorative justice. While the former is focused on punishing the offender in proportion to the crime committed, the latter attempts to rehabilitate offenders by helping them make amends to their victims. Retributive justice is based on the ideology of 'an eye for an eye' and puts emphasis on punishment over redemption. It can also be described as "the attitude of hostility to the lawbreaker as an enemy to the society to which we belong," which brings "the attitudes of retribution, repression, and exclusion" (Mead). Restorative justice aims to "recreate a working community that supports the rehabilitation of offenders and victims and is active in preventing crime" (Marshall). Countries who follow the restorative approach tend to have lower incarceration and recidivism rates than the ones who follow the retributive approach. For example, as of 2014, in Norway where the former system is followed the incarceration rate is just 75 per 100,000 people, compared to 707 people for every 100,000 people in the US where the latter system is implemented. Moreover, Norway's recidivism rate is just 20% whereas the USA has a rate of 76.6%.

This research will be conducting a comparative study between India's Tihar jail which follows the retributive criminal justice system and Norway's Halden prison which operates on the restorative criminal justice system. Halden prison is one of the most popular prisons in the world which is known for its unique approach towards offenders and wrong-doers. While it does punish offenders by taking away their freedom, it also continues to treat

them like human beings. In contrast, India's Tihar jail operates on retribution and continues to emphasize on punishment. Prisoners are forced to live in animal-like conditions where violence is a common occurrence and so is physical and psychological torture. Furthermore, it is also important to understand if it is possible for other countries such as India to follow the footsteps of Norway.

It is important to study this subject because it will help us create a better criminal justice system based on the restorative approach which can benefit the offenders, victims and the country. It will provide the offenders with a chance to rehabilitate and make amends. This is done through victim-offender mediation or family group conference with a mediator where all the parties "explore the subjective and objective impact of the crime and, where possible, to restore the victim to his or her pre-crime circumstances" (Poulson). This gives the offenders and the victims closure because it aims to "provide some material benefit to the victim and, perhaps more importantly, to restore some peace of mind and well-being in his life, as well as to provide increased accountability for and responsiveness to the needs of the offender" (Poulson). Moreover, it will also create a stronger community given that restorative justice is a cost effective approach that results in reduced recidivism and increased safety.

Other research related to the subject has provided an in-depth analysis on retributive and restorative justice which also includes the advantages of latter over former. Many research papers examine how retributive and restorative justice work in our society. Through case studies and examples, these papers highlight efficiency of these two systems in various parts of the world. Some articles talk about Norway's prison system and analyze conditions of the prisoners. Furthermore, these articles analyze aspects of the system that make it successful. While many resources cover this vast set of information, not a lot of them mention a comparative study between two criminal justice systems that follow different approaches. Through this research, it will be clear how different retributive and restorative criminal justice systems are. It will also explore the possibilities of implementing restorative justice in Tihar jail and other prisons of the world.

This research is likely to prove that the restorative justice system has certain advantages over a retributive system. It can create a fairer system for the offender, their victims and the community. This is because "restorative justice not only seeks to engage victims in the justice process, but it also turns to the community as well as the offender in order to examine the ways in which an offender may directly repair the harm done to the victim and society. Restorative justice suggests that the criminal justice system can repair the harm done to both victims and the community by utilizing such methods as negotiation, mediation, victim empowerment, and reparation." (Shenk). In addition, it is possible for other prisons over the world to follow this approach, considering that they would have to first overcome some barriers to do that. These barriers can include a low funding, overcrowding of prisoners, understaffed prisons and in general no access to resources. According to Australian Institute of Criminology, countries like Australia face problems related to "achieving sufficient and appropriate referrals, maintaining high rate of victim participation, improving recruitment, training and monitoring to ensure quality of facilitation, offender completion of the intervention plan" (Hart and Pirc) and the cost of implementing the program.

Prisons notably function under the principles of two systems of justice, this includes restorative justice and retributive justice. Prisons which are based on the first approach focus on rehabilitation and help prisoners repair the harm caused. "One form which restorative justice in prisons takes is that of courses designed to enable prisoners to understand better the impact of crime on victims and to take responsibility for their actions" (Johnstone). This is done through a number of practices such as victim offender mediation, conferencing and peacemaking circles. Moreover, another point worth noticing about the restorative justice system is that "the victim and the convicted criminal are given the assistance they need to reintegrate into their community. Mental health professionals, faith leaders, social workers, and/or peers form support networks designed to mitigate the negative effects" (The Role of Restorative Justice in a Criminal Justice System, Walden University). On the other hand, prisons under retributive justice tend to emphasize on punishment. This is done by imposing "some sort of cost or hardship on, or at the very least withdrawing a benefit that would otherwise be enjoyed by, the person being punished" (Walen and Alec). These punishments "drastically restricts the freedom of movement and freedom of association of offenders, and deprives them of much of their privacy" (Lippke). Moreover, it also usually includes denying basic necessities, isolation and withdrawing visitor privileges.

The Halden prison in Norway operates on the principle of normality which means "progression through a sentence should be aimed at reentering the community" (About the Norwegian Correctional Service, Kriminalomsorgen). "In this way, prison is not viewed as a permanent or even long-term placement of prisoners. Prisoners are members of

society temporarily removed” (Labutta). Normality is encouraged through a number of ways like the architecture of the prison, opportunities available and interactions between guards and inmates. Halden believes that “the more isolated and confined a system is, the harder it will be for a person to return to freedom successfully” (Hoidal). To further carry out this belief, Halden prison was set in the middle of a forest which is surrounded by trees and blueberry bushes. According to the architects of the prison, nature acts as a social rehabilitative factor which helps inmates clarify the passage of time. The interior is well equipped with communal amenities among those are workshops, library, game rooms, open kitchens. In addition, each prisoner has their own cell which resembles a normal room and has facilities like unbarred windows, televisions and mini fridges. Furthermore, there are also opportunities available for prisoners to enhance their skills and take part in jobs such as carpentry, woodworking, graphic designing so they can build a future move they get out of prison.

Lastly, to encourage normality guards interact and “socialize with inmates over meals or card games, and inmates often move unaccompanied by guards and unwatched by surveillance” (Labutta). Through all of these initiatives Halden prison creates an environment “which has been designed to minimize the sense of incarceration” (Gentleman).

Contrary to the Halden prison, Tihar jail is an overcrowded and understaffed establishment that fails to prepare all of their inmates for a life after incarceration. Prisoners live in an overcrowded environment where basic necessities such as adequate medical care is denied. Tihar jail has a long history of accommodating more inmates than its capacity. As of 2016, Tihar jail’s capacity exceeded by 221% which means that there were 14,300 prisoners accommodated when the prison could hold only 6500 inmates. Moreover, official statistics from 2017 say that there are just one jail personnel available for eight prisoners. This has created extreme pressure on the jail and has resulted in violent clashes among inmates. Other than accommodation problems, Tihar jail is also unable to provide its inmates with adequate health facilities. According to a former inmate, the prisoners are treated worse than animals in a zoo and medical care was only provided in case of severe conditions. Many deaths caused my deteriorating health were also passed off as suicide because there were no medical specialists and ambulances available. Moreover, violence on fellow inmates, torture, drug trafficking and corruption are just some of the illegal activities that happen on the premises. While certainly Tihar jail has its issues, it is also equipped with some basic facilities such as meeting rooms, food and canteen facilities, legal aid services and security systems. It also has a number of activities for the prisoners to engage in such as meditation, yoga and work and educational facilities.

While comparing prison life it is important to focus on treatment of inmates by the authorities. Both the prisons greatly differ when it comes to this subject. In Halden prison, there are 190 guards for 259 inmates (as of 2016) who are referred to as officers and act as mentors for the inmates. Moreover, the official job says “they must motivate inmates so that his sentence is as meaningful, enlightening and rehabilitating as possible” (Snyder). Officers do this by socializing with inmates and “routinely eat meals and participate in sports with their charges. They strive to create a sense of family for inmates...and transform lives” (Johnson). On the other hand, in Tihar jail, the guard to prisoner ratio is 1:8 (as of 2017). In Tihar, privilege plays a great role in deciding how guards will treat the inmates. According to Sunil Gupta, a senior officer in the jail, inequality and corruption go hand in hand. Rich prisoners use their money to get access to special perks like air-conditioned rooms, Wi-Fi and phones whereas the others are forced to live in crowded cells. Moreover, there have been many cases where guards have sneaked in phones and prohibited items such as cigarettes for prisoners. Kiran Bedi in her book recalls how “certain doctors, court guards, prison guards and lawyers acted as illegal couriers delivering messages to prisoners.”

Incarceration can lead to many mental health issues such as depression and hostility. Both prisons take different initiatives to combat the same. Halden’s aim to create normality also acts in their favor because it helps motivate inmates and help them cope up with mental health issues. Another advantage worth noticing is that Halden is surrounded by nature, which according to Kaplan’s attention restoration theory can increase attention and reduce stress. Moreover, Halden spent a million dollars on paintings and light installations which “bring a touch of humour to a rather controlled space” (Dolk). Whereas initially in Tihar jail there was less emphasis on psychological issues which led to more than half of the prisoners suffering from mental illnesses and an increased rate of suicide. These statistics encouraged new programs such as ‘Project Samarthan’ (trans. support) which provided free counselling to the inmates which did not only reduce suicides but also violence. Furthermore, a research on the effect of vipassana (trans. meditation) on inmates concluded that it leads to some noteworthy changes in prisoners’ behavior. The study also concluded that “there was a statistically significant reduction in the feelings of helplessness of prisoners immediately after the course. Three months later further reduction in the scores was noticed which was sustained

even after six months” (Psychological Effects of Vipassana on Tihar Jail Inmates, Vipassana Research Institute). It also played a greater role in helping inmates achieve mental peace.

Prisoners in Halden and Tihar have various opportunities and activities to participate in during the day. In Halden prison, inmates have the option to choose between work or school. There are a number of courses provided ranging from Chemistry to Philosophy so that inmates can build a successful life once they leave the prison. Other than pursuing subjects, inmates also have the option to choose occupational courses such as carpentry and ceramics, mechanics, recording music and graphic designing. Moreover, inmates also have the option to be involved in sports such as basketball, soccer and rock climbing among a wide range of activities. In Tihar Jail, the inmates also have the option to pursue their studies or training in retail sales, beauty wellness and other skills for which they receive a certificate so they can find a job after their release. Many prisoners also work at the factories inside the prison, which produce a variety of goods like dresses and handicrafts. There are other opportunities available such as vocational training, meditation and health counselling.

The effect of restorative and retributive justice systems on prisoners can be effectively noticed when they leave the prison. Norway has a 20% recidivism rate which is the lowest in the world. According to Are Hoidal, governor of Halden prison, one of the major reasons for this is that Halden “starts planning their (inmates) release on the first day they arrive”. Moreover, because of initiatives such as silent retreats and victim offender mediations, restorative systems help offenders come in terms with their actions which leads to a lower chance of them committing a crime. Another point worth considering is, that “after release, in Norway, there is an emphasis on helping offenders reintegrate into society, with access to active labor market programs set up to help ex-convicts find a job and access to a variety of social support services such as housing, social assistance and disability insurance” (Bhuller et al.). Whereas, in India one in every five male prisoners returns to prison because while many inmates have access to free legal aid during their time, they are left alone to fend for themselves once they get out of prison. Despite the fact that schemes and initiatives do exist on paper, they are rarely implemented in real life. Many prisoners face difficulty in rehabilitating and only a few are able to properly reintegrate into society. Another reason for this could be that society does not accept them as a part of their community and still sees them as criminals even after they have served their time.

Both the systems are capable of having long term effects on their offenders. A restorative justice system “provides the offender opportunity for some restoration of moral status through confession, repentance, and reparation” (Hermann). Moreover, “Instead of ignoring the victims and placing offenders in a passive role, the new paradigm of restorative justice places both victim and offender in active and interpersonal problem-solving roles” (Umbrett). While in retributive justice offenders are sidelined and don’t often get to make amends which is a huge part of recovery. Retributive justice often ignores “the victim’s need for compensation and reparation and the offender’s need for forgiveness and return to full membership in the community” (Hermann).

Restorative and retributive justice also impact victims of offenders in different ways. Under the restorative justice system, there are a number of programs such as victim offender mediation which helps in catering the needs of victims. It is “primarily dialogue driven, with the emphasis upon victim healing, offender accountability, and restoration of losses” (Umbreit). Moreover, it often results in “high levels of victim and offender satisfaction with the mediation process and outcome. The victim-offender mediation process has a strong humanizing effect on the justice system response to crime, victims, and juvenile offenders”. Contrary to restorative justice, many believe “that the traditional criminal justice system, characterized by confrontation and vengeance, cannot address victims’ needs” (Wemmers). Many victims have expressed that under this system they “are left on the sidelines of justice, with little or no input. Crime victims frequently feel twice victimized – first, by the offender and second, by the criminal justice system” (Umbreit).

Not only offenders and victims are impacted by these systems, but also the community around them. Restorative justice helps resolving conflicts within communities and helps in healing relationships. This is because “the Norwegian penal approach removes the isolating line between the ‘us’ of society and the ‘the’ of criminals. By eliminating the line, Norway cultivates community. If both prisoners and non-prisoners see each other as part of the same ‘us’, then each has a reason to seek preservation of society” (Labutta). This is achieved “through community involvement the offender and victim might feel better supported and assured of access to resources for their reintegration” (Crime, Justice and Society, University of Sheffield). It also leads to lower recidivism rates which leads to a stronger community with less crime. In the case of retributive justice, most of the times recidivism rates

are high because many times the society refuses to help prisoners reintegrate into society. This is also because society is not involved in the process of rehabilitation unlike the restorative justice system. This also badly impacts the community because of high crime rates and recidivism rates.

One important component of this study is to figure out if it is possible for Tihar jail to follow Halden prison's footsteps. It is very clear that Halden provides its inmates with the best resources possible by spending \$129,222 per prisoner (as of 2018). On the contrary, Tihar jail is unable to provide its inmates with basic things such as proper food. This aspect of the prison is clear in Kiran Bidi's book where she recalls that "sometimes the food was so completely inedible that the prisoners were compelled to throw it into the already backed up sewer. Neither the food, the cooks, nor the prisoners were clean." This shows that Tihar jail faces issues with providing basic necessities and also, that Tihar jail has a long way to go if it wants to adopt the restorative justice system. While Tihar jail is clearly on its way to a better system it certainly has a long way to go. In recent years, Tihar jail has adopted a number of new initiatives like vipassana meditation and educational facilities which has helped inmates in numerous ways. Despite these programs, Tihar jail is still the centre of problems like corruption and drug trafficking. To implement a system like Halden's, Tihar jail would need to come over many barriers and would also require help from the government for sufficient funds and the community's support for helping prisoners reintegrate back into society.

Restorative justice and retributive justice are the two methods through which prisons operate. As highlighted earlier, these two systems vary greatly when it comes to their approach towards prisoners. The first one tends to focus more on helping prisoners see the error of their ways and make amends, while the other focuses on punishment. The Halden prison in Norway follows the restorative justice approach by working on the principle of normality. This principle helps "ensure that prisoners do not feel more segregated from society than their imprisonment necessarily requires" (Labutta). On the contrary, Tihar jail in India follows the second approach and tends to put more emphasis on punishment rather than rehabilitation. Sometimes this also includes denying inmates basic minimum facilities such as proper food. It can also take the form of torture and other clashes. Another point worth noticing is that Norway has a lower crime and recidivism rate which builds up a stronger community. However, India has a higher rate for the same because it doesn't put much focus on rehabilitation and that ultimately leads to more crime.

The retributive justice system makes prisoners suffer "not only the time served, but also what the time served does to them—removing them from society, reinforcing bad habits, and making reintegration upon release nearly impossible and recidivism inevitable" (Labutta). Yet all of this can be prevented to a great extent by adopting a system that puts emphasis on rehabilitation. In order to that, countries can completely transform into a restorative justice system or they can adopt another approach by "integrating retributivism as adequate punishment with rehabilitation" (Labutta). Even if it is currently not possible for countries to implement a new criminal justice system organization should keep working towards helping prisoners by organizing victim-offender mediations and other practices that can help them make adequate amends. These "rehabilitative programs would give prisoners the opportunity to develop a sense of purpose or self-worth, which are much better collateral consequences than the destabilization and alienation that are currently created by forced isolation in prison" (Labutta).

This research plays a modest role in analyzing the different principles under which both of these systems of justice work. It attempts to provide an in-depth analysis of two specific prisons and their conditions while functioning under one of the two systems. It draws attention towards the conditions of the inmates when they first arrive, during their stay and after they leave the system. Moreover, it also highlights the impacts of these systems on the offender and their victims. Painting a clear picture of what is necessary for the retributive justice system to be adopted, the study aims to help transform ex-convicts in India into law-abiding citizens. This includes sufficient funds so that a prison can help prisoners provide basic facilities and also, an inclusive community willing to help ex-convicts reintegrate into society.

This research has helped in understanding exactly where the problem lies in the retributive justice system through Tihar jail's case study. It gives us a look into how the cycle of incarceration keeps repeating itself, because as soon as ex-convicts get released with no support whatsoever, most of them face "a variety of problems that often shocks and overwhelms them," (Long) "causing them to return to the life and strategies they knows—the same life and strategies that resulted in his incarceration" (Labutta). Moreover, this research also highlights how a country can help prisoners break away from this vicious cycle. This is a crucial change which will create a stronger community where there is minimum crime, and optimum alleviation of the human institutes and communities.

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